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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

PADRES BUSCANDO EL CAMBIO,
also known as COALISION DE
PADRES BUSCANDO EL CAMBIO,

Plaintiff,

v.

HARBOR DEVELOPMENTAL
DISABILITIES FOUNDATION, INC.;
NANCY BARGMANN, in her official
capacity as Director of the California
Department of Developmental Services;
and DOES 1–20,

Defendants.

Case No.: 21STCP03671

**VERIFIED SECOND AMENDED
COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

Gov't Code § 11135; Welf. & Inst.
Code §§ 4500–4885; Code Civ.
Proc. §§ 526, 526a, 1060.

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1 Plaintiff Coalision de Padres Buscando el Cambio (Plaintiff) alleges as follows against
2 Defendants Harbor Developmental Disabilities Foundation, Inc., California Department of
3 Developmental Services Director Nancy Bargmann, and Does 1–20 (collectively referred to as
4 Defendants):

5 **INTRODUCTION**

6 1. Under state law, California Department of Developmental Services (DDS)
7 Director Nancy Bargmann and 21 state-funded regional centers that deliver services statewide
8 through a statutory framework are required to administer state-mandated assistance,
9 commonly referred to as “services and supports,” in a non-discriminatory manner to
10 individuals with developmental disabilities. The Lanterman Developmental Disabilities
11 Services Act (Lanterman Act) sets forth DDS’s and regional centers’ duty to ensure
12 individuals with developmental disabilities receive—as an entitlement—these services and
13 supports.

14 2. But DDS and Harbor Developmental Disabilities Foundation, Inc. (Harbor),
15 the state-funded regional center obligated to serve the geographical areas of southeast Los
16 Angeles County, administer services and supports in a discriminatory manner. DDS’s and
17 Harbor’s actions harm Hispanic/Latinx children and their families. Despite repeated notice—
18 *for years*—of the discriminatory results of their actions, DDS and Harbor did not take steps to
19 stop this discrimination. This lawsuit is brought to end this discrimination.

20 3. For every dollar authorized for white individuals with developmental
21 disabilities, Harbor and DDS authorize only 37 cents for Hispanic/Latinx individuals with
22 developmental disabilities. As a result of this unequal distribution of funds, Hispanic/Latinx
23 children are deprived of the services and supports they are entitled to under state law.

24 4. Plaintiff Padres Buscando el Cambio is an advocacy association for families of
25 Hispanic/Latinx children with developmental disabilities who rely on Harbor for state-funded
26 services and supports. Padres Buscando el Cambio members are entitled—under the
27 Lanterman Act—to lifelong state-funded services to allow children with developmental
28 disabilities to live independent, productive lives at home in their communities. Despite this

1 statutory entitlement to services, Padres Buscando el Cambio members do not receive
2 necessary services and supports because of Harbor's and DDS's discriminatory actions.

3 5. In June 2020, Padres Buscando el Cambio demanded that Harbor and DDS cease
4 discriminating against Hispanic/Latinx consumers. Padres Buscando el Cambio detailed how
5 Harbor had discriminated against, intimidated, and shamed its members for requesting services,
6 asserting their rights, or disagreeing with a service coordinator's position on a request for
7 service.

8 6. Despite Padres Buscando el Cambio's efforts, DDS and Harbor continued to
9 administer their programs and services in a manner that disproportionately and adversely
10 impacts Hispanic/Latinx families, disregards their unmet needs, and precludes their access to
11 vital in-home services and supports.

12 7. This suit seeks injunctive and declaratory relief to end Harbor's and DDS's
13 discriminatory actions and to compel Harbor and DDS to administer Lanterman Act programs
14 and services in compliance with state law.

15 **PARTIES**

16 8. Plaintiff COALISION DE PADRES BUSCANDO EL CAMBIO, also known
17 as and operating under the name PADRES BUSCANDO EL CAMBIO, is an advocacy
18 association that seeks to promote education, full inclusion, and the empowerment of
19 individuals with developmental disabilities and their families. Plaintiff and its members
20 typically refer to themselves as Padres Buscando el Cambio. Padres Buscando el Cambio
21 members are parents whose children with developmental disabilities receive services from
22 Harbor. Of the approximately 60 families participating in Padres Buscando el Cambio, most
23 are Hispanic/Latinx, including individuals whose primary language is Spanish. Padres
24 Buscando el Cambio provides assistance and education about navigating and advocating
25 within various health and developmental service systems to ensure children with
26 developmental disabilities have continued access to necessary services and supports. Padres
27 Buscando el Cambio pays taxes within the State of California. Padres Buscando el Cambio
28 seeks Harbor's and DDS's compliance with state law.

1 9. Defendant NANCY BARGMANN is the current Director of DDS. DDS is a
2 political subdivision of the state that operates and administers California's statewide system of
3 services, including community-based services provided by 21 regional centers under DDS
4 contract, for Californians with developmental disabilities. Director Bargmann is responsible
5 for directing, organizing, and administering DDS's programs and contractual arrangements.
6 Director Bargmann has the responsibility to ensure DDS's compliance with federal and state
7 laws. Defendant Bargmann is sued only in her official capacity.

8 10. Defendant HARBOR DEVELOPMENTAL DISABILITIES FOUNDATION,
9 INC. (Harbor) is a non-profit entity incorporated in the State of California. Harbor is also
10 known as Harbor Developmental Disabilities Foundation and Harbor Regional Center. Harbor
11 is headquartered in Los Angeles County, California. Harbor is one of 21 regional centers
12 established by the Legislature under a statutory framework to secure services and supports for
13 individuals with developmental disabilities, a responsibility that has traditionally been solely a
14 governmental function but is now delegated to regional centers. As a regional center, Harbor
15 contracts with DDS to deliver services under the direction of DDS as part of a coordinated
16 statutorily-based system through which DDS and Harbor seek to accomplish a common goal
17 of effectuating the Lanterman Act. Harbor receives state funds, and is accountable to and
18 monitored by the Legislature and DDS, and subject to extensive statutory regulations
19 controlling its day-to-day operations. Under contract with DDS and by statutory mandate,
20 Harbor secures services and supports for individuals with developmental disabilities in the
21 geographical areas of southeast Los Angeles County.

22 11. Plaintiff is ignorant of the true names and capacities of the persons or entities
23 named herein as DOES 1–20 but is informed and believes, and on that basis alleges, that each
24 of such Defendants is legally required to act in the manner herein sought. Plaintiff will seek
25 leave to amend this complaint when said Defendants' true names and capacities have been
26 ascertained.

27 **JURISDICTION AND VENUE**

28 12. This Court has personal jurisdiction over Defendants because Harbor is located

1 in and conducts business in Los Angeles County and DDS conducts business in Los Angeles
2 County.

3 13. Venue is proper in this county as the acts upon which this action is based
4 occurred in this county, Harbor is headquartered in this county, and DDS conducts substantial
5 business in this county. Venue is also appropriate under Code of Civil Procedure Section
6 401(1) in that this is an action against the State and its departments and such action may be
7 commenced in any county, including Los Angeles, where the Attorney General has an office.

8 **HISTORICAL AND STATUTORY FRAMEWORK**

9 **A. California's History of Institutionalizing Children with Developmental** 10 **Disabilities**

11 14. In the past, discriminatory and isolationist policies, including the unnecessary
12 and harmful institutionalization of children with developmental disabilities, were prevalent in
13 California.

14 15. Due to the lack of centralized care, thousands of Californians with
15 developmental disabilities, including children, were separated from their families and
16 communities to live a life of isolation in large state institutions. By 1965, over 12,000
17 Californians with developmental disabilities resided in these institutions, exposed to inhumane
18 and cage-like conditions.

19 16. Alarmed by increasing revelations of these conditions, most families preferred
20 community-based alternatives to state institutionalization of their family members. The media
21 reports, subsequent hearings, and investigations, combined with advocacy for government-
22 funded, community-based services and supports, catalyzed enactment and implementation of
23 a statewide comprehensive protection scheme called the Lanterman Act.

24 **B. California Enacts the Lanterman Act**

25 17. The Lanterman Developmental Disabilities Services Act (Lanterman Act) was
26 enacted to ensure persons with developmental disabilities receive—as an entitlement—the
27 services and supports necessary to meet their individualized needs at home without
28

1 institutionalization. Welf. & Inst. Code §§ 4500–4885.¹

2 18. The Lanterman Act defines “developmental disability” as a disability that
3 originates before the age of 18 which will continue indefinitely, constituting a substantial
4 disability. § 4512(a). The definition includes intellectual disability, cerebral palsy, epilepsy,
5 autism, conditions closely related to intellectual disability, and disabling conditions found to
6 be closely related to intellectual disability or to require treatment similar to that required for
7 individuals with an intellectual disability. *Id.* These disabilities include Down syndrome and
8 what was historically labeled mental retardation.

9 19. The primary purpose of the Lanterman Act is to ensure families are able to
10 meet the needs of children with developmental disabilities at home and without
11 institutionalization. §§ 4501, 4502, 4685.

12 20. By providing necessary “supports and services” through the Act, individuals
13 with developmental disabilities remain connected with their families and communities and are
14 able to approximate the pattern of everyday living of nondisabled persons of the same age,
15 leading more independent and productive lives. In enacting the Act, the Legislature found that
16 “the mere existence or the delivery of services and supports is, in itself, insufficient evidence
17 of program effectiveness. It is the intent of the Legislature that agencies serving persons with
18 developmental disabilities shall produce evidence that their services have resulted in
19 consumer or family empowerment and in more independent, productive, and normal lives for
20 the persons served.” § 4501.

21 21. In addition to providing greater opportunities for educational and social
22 growth, it is more cost-effective to provide “services and supports” to enable a child to live at
23 home instead of providing an out-of-home placement. § 4685(a).

24 **C. Coordination of Lanterman Act Services and Supports**

25 22. The Lanterman Act designates DDS as the state agency responsible for
26 executing the laws relating to the care, custody, and treatment of developmentally disabled
27 persons. § 4416. DDS is obligated to provide “[a]n array of services and supports . . . to meet

28 ¹ All statutory citations herein are to the Welfare & Institutions Code unless otherwise noted.

1 the needs and choices of each person with developmental disabilities.” § 4501. To fulfill that
2 obligation, regional centers were established to serve as “fixed points of contact in the
3 community” for eligible individuals and their families. § 4620(a). Under the statutory scheme,
4 DDS must contract with these regional centers. *Id.*

5 23. DDS is also responsible for ensuring the effective implementation of its state
6 obligations through annual appropriations of funds and five-year contracts with each regional
7 center. §§ 4620, 4621, 4629(a), 4787. Regional centers are required to render services in
8 accordance with state laws and regulations, and DDS is responsible for regularly monitoring
9 regional centers, collecting and reviewing materials issued by regional centers, preventing
10 regional centers from utilizing policies or guidelines that violate the Lanterman Act or its
11 regulations, and annually assessing regional centers to ensure compliance. §§ 4629, 4635(b).
12 Regional centers are subject to statutory control over their day-to-day operation. *See, e.g.*, §§
13 4434, 4640.6, 4641, 4641.5, 4642, 4643.3, 4647, 4648, 4648.1–.2, 4650.

14 24. Each individual eligible for regional center services, a “consumer,” receives
15 their services through their Individual Program Plan (IPP). The IPP is developed by the
16 regional center and consumer and focuses on the consumer’s needs, preferences, and life
17 choices with a goal of maximizing the consumer’s ability to be a part of community life. §§
18 4646, 4646.5. The Lanterman Act dictates how and when the IPP is developed, the process
19 regional centers must follow in conducting IPP meetings (including regional centers’
20 obligation to gather information and conduct assessments), and the contents of the IPP. *Id.*

21 25. Regional centers must consider every possible way to assist families in
22 maintaining consumers at home, whether the consumer is an adult or a minor, when that is the
23 preferred objective in the consumer’s IPP. §§ 4685(c)(2), 4648(a)(1).

24 26. The Lanterman Act makes clear that it is the responsibility of regional center
25 service coordinators to develop a consumer’s IPP and identify, secure, and coordinate the
26 necessary services and supports to implement the IPP. §§ 4640.7(b), 4647(a). The consumer
27 and their family are entitled to rely on the service coordinator’s expertise in this area. Indeed,
28 neither the consumer nor their family may perform all or even part of the service coordinator’s

1 duties without the permission of the regional center director. § 4647(c).

2 27. When children who receive regional center services live with their families, the
3 IPP must include a family plan component. § 4685(c)(2). The family plan component describes
4 those services and supports necessary to successfully maintain the child at home. *Id.* If there is
5 a possibility of out-of-home placement or the family needs additional specialized services to
6 assist in caring for the child in the home, the regional center must solicit from the family what
7 supports would be necessary to maintain the child in the home, and utilize creative and
8 innovative ways of meeting the family's needs and providing adequate supports to keep the
9 family together. *Id.*

10 28. A regional center has a mandatory, non-discretionary duty to implement the
11 consumer's IPP. § 4648. The regional center does this by providing or securing the services
12 and supports set forth in the consumer's IPP, and if the services are not currently available, by
13 program development. §§ 4648(d)–(e), 4651, 4677.

14 29. A consumer's IPP goals can be achieved by “using creative and innovative
15 service delivery models, including, but not limited to, natural supports.” § 4648(e)(3); *see also*
16 § 4512(e). Natural supports are typically personal associations and relationships developed in
17 the community that enhance the quality and security of life for the consumer, such as
18 neighborhood friends, classmates, or other individuals providing the consumer assistance to live
19 in their own apartment. § 4512(f). Natural supports may also include family members who
20 provide, with compensation, services to the consumer.

21 30. “Personal care,” “child care,” and “respite” are among the services and
22 supports guaranteed by the Lanterman Act. §§ 4512(b), 4685.

23 31. The regional center is prohibited from ignoring individual needs by relying on
24 a fixed policy that does not provide services sufficient to meet the needs of each person with
25 developmental disabilities. § 4501.

26 32. The Lanterman Act delineates the specific activities that must be provided in
27 service coordination. These activities include “securing, through purchasing or by obtaining
28 from generic agencies or other resources, services and supports specified in the person's

individual program plan” and “coordination of service and support programs.” § 4647(a). The services and supports obtained through purchasing services are referred to as “purchase of service” supports.

33. The Lanterman Act requires regional centers to not only identify generic resources² but also to work with families to pursue these resources. §§ 4647, 4659, 4685(c)(1).

34. To reduce, terminate, or change a service set forth in a consumer’s IPP without a consumer’s consent, a regional center must issue a written notice of action sent by certified mail. § 4710(a)(1). The notice of action must be issued 30 days prior to the decision. *Id.*

35. The Lanterman Act dictates the information regional centers must include in a notice of action, including the reason for the action, the action’s effective date, the legal authority or policy supporting the action, and the consumer’s fair hearing rights. § 4701.

36. DDS and regional centers are required to compile and post data relating to purchase of service authorization, utilization, and expenditures. § 4519.5. Annually, regional centers must report to DDS whether the data “indicate a need to reduce disparities in the purchase of services among consumers in the regional center’s catchment area.” § 4519.5(f)(1)(C). If the data indicates a need to reduce disparities, the regional center must report to DDS “the regional center’s recommendations and plan to promote equity, and reduce disparities, in the purchase of services.” *Id.*

FACTS

A. Race and Ethnicity-Based Discrepancy in Harbor-Authorized Services and Supports

37. In 2019 and 2020, Harbor complied with this statutory duty to submit annual data to DDS. § 4519.5. Harbor’s data shows that Harbor authorized on average more services

² “Generic” resources are resources available outside of the regional center system, including from school districts and government agencies that serve the general public. Examples of generic resources include Medi-Cal, In-Home Supportive Services (IHSS), Social Security Disability Insurance, Supplemental Security Income (SSI), CalFresh, housing subsidies, and services through Individualized Education Programs. *See* § 4644(b).

1 per year for white consumers than Hispanic consumers. Harbor bases its ethnicity and race
2 categories on those used by the United States Census Bureau, specifically defining Hispanic as
3 “Cuba, Mexico, Puerto Rico, South or Central America, or other Spanish culture regardless of
4 race.”

5 38. In fiscal year 2019–2020, Harbor authorized only 37 cents in services for
6 Hispanic consumers for every dollar it authorized for white consumers.

7 39. On information and belief, Harbor currently continues to authorize
8 significantly fewer dollars per capita for Hispanic/Latinx consumers than for white
9 consumers, which results in significantly fewer services for Hispanic/Latinx consumers.

10 40. On information and belief, because Harbor categorizes a number of consumers
11 as “other” and not as Hispanic—when these consumers may in fact be Hispanic because
12 “other” includes those who fall in multiple categories—the discrepancy is likely even greater
13 than the data illustrates.

14 41. Harbor and DDS knew of this discrepancy and failed to modify their
15 administration of Lanterman Act services and supports for Harbor consumers.

16 **B. Harbor’s Administration of Lanterman Act Services and Supports**

17 42. At all times relevant herein, Harbor failed, and continues to fail, to adequately
18 serve Hispanic/Latinx families in many service areas, including service coordination, in-home
19 services and supports, and respite services.

20 43. Harbor has a pattern and practice of dismissing Hispanic/Latinx families’
21 requests for services, responding to Hispanic/Latinx families’ requests by issuing the least
22 comprehensive service with an across-the-board – rather than individualized – number of
23 service hours, and adopting policies – including internal policies – that prevent
24 Hispanic/Latinx families from accessing necessary in-home services.

25 Service Coordination

26 44. At all times relevant herein, Harbor systematically failed, and continues to fail,
27 to provide Hispanic/Latinx families with adequate service coordination.

28 ///

1 45. For Hispanic/Latinx children and their families, Harbor systematically failed to
2 conduct Individual Program Plan (IPP) meetings in a manner that complied with the
3 Lanterman Act.

4 46. In conducting IPP meetings, Harbor systematically failed to gather
5 information, conduct assessments, and review the preferences, circumstances, and needs of
6 Hispanic/Latinx children and their families. Harbor failed to consider these families' family
7 units as a whole.

8 47. When serving Hispanic/Latinx consumers, Harbor failed to assess for services
9 using person-centered practices that take into account consumers' needs and choices. Harbor
10 systemically disregarded or ignored input and requests from Hispanic/Latinx consumers and
11 their families, and these consumers' IPP goals and objectives were not developed using
12 person-centered practices. Despite these families' increasing and/or changing needs for
13 services and supports, Harbor predetermined IPP goals and objectives based on old planning
14 documents.

15 48. Harbor also failed to conduct the IPP assessment process in a manner that
16 reflects awareness of, and sensitivity to, the cultural background of Hispanic/Latinx children
17 and their families.

18 49. Harbor knew the IPPs for Hispanic/Latinx consumers failed to reflect
19 consumers' needs and choices. But Harbor relied on these IPPs to authorize and deny services
20 and supports. As a result, Harbor failed to authorize necessary services and supports,
21 including respite, for Hispanic/Latinx families.

22 50. Harbor's failure to conduct IPP meetings in a manner that complies with the
23 Lanterman Act contributed to Hispanic/Latinx families' inability to access necessary services
24 and supports.

25 51. Harbor's inadequate service coordination regarding the IPP process precluded
26 Hispanic/Latinx families' access to necessary services and supports, jeopardized the health
27 and safety of their children, and threatened their ability to stay together and safe at home.

28 ///

1 52. Harbor failed to verify whether services authorized for Hispanic/Latinx
2 families were actually provided and disregarded these families' need for help utilizing their
3 authorized service hours. Service coordinators knew that Hispanic/Latinx families were not
4 receiving the services authorized by Harbor.

5 53. Harbor administered its service coordination policy in a manner that failed to
6 require service coordinators to:

- 7 a. identify and pursue generic resources;
- 8 b. provide advocacy assistance to help Hispanic/Latinx consumers and
9 families access any benefits to which they are entitled;
- 10 c. timely secure, through purchasing or by obtaining from generic
11 agencies or other resources, services and supports specified in an
12 individual's IPP; and
- 13 d. ensure that no gaps occur in the provision of services and supports,
14 including providing funding to address unmet needs while generic
15 resources are being pursued.

16 In-Home Services and Supports

17 54. At all times relevant herein, Harbor administered, and continues to administer,
18 its in-home services and supports (in-home supports) policies in a manner that failed to
19 account for individuals' specific needs, including needs that arose or changed due to new
20 circumstances.

21 55. Harbor has a pattern and practice of dismissing Hispanic/Latinx families'
22 requests for services.

23 56. In response to requests from Hispanic/Latinx parents for increases in services
24 or service hours, Harbor service coordinators debated and ultimately dismissed the requests
25 and the parents' underlying needs and concerns. Harbor service coordinators responded by
26 telling parents their families were too large. One service coordinator advised that "it was your
27 decision to have so many kids." This service coordinator also responded to a parent's request
28 for more assistance by stating that it is "a parent's responsibility to care for her own child."

1 57. When granting requests from families for more in-home services, Harbor did
2 not consider each family's specific circumstances but instead issued a predetermined number
3 of hours regardless of whether it met each family's needs.

4 58. When issuing services in response to a request for services, Harbor issued the
5 least comprehensive service. For example, when members requested comprehensive in-home
6 support services, such as an aide to provide one-on-one support to children who were
7 struggling to access and benefit from their remote learning, Harbor ignored the needs of the
8 children and only granted limited respite relief.

9 59. Harbor knew Hispanic/Latinx families needed additional in-home supports to
10 keep their children safe at home, but Harbor chose to continue to administer its policies in a
11 way that precluded access, despite the unmet needs of Hispanic/Latinx families.

12 60. Harbor has a pattern and practice of adopting policies, including internal
13 policies, that prevent Hispanic/Latinx families from accessing necessary in-home services.

14 61. Harbor administered its in-home support policies in a manner that placed time
15 limitations and month-to-month renewals on in-home supports. These limitations and
16 renewals were not individualized to each consumer's situation and were administered in a
17 manner that circumvented the IPP process.

18 62. Harbor denied requests for in-home services on grounds that a family had not
19 exhausted generic resources, without assessing the family to determine if the family meets
20 basic eligibility requirements for the resource and without providing the family with *any*
21 assistance pursuing the resource.

22 63. On information and belief, Harbor directs parents to apply to serve as IHSS
23 providers before Harbor will consider the families' requests for in-home services, including
24 Personal Attendant Care. Harbor directs parents to apply even when it knows or should know
25 that parents are categorically ineligible (due to immigration status) to serve as IHSS providers.
26 As a result, these families are left without both IHSS and sufficient in-home supports, despite
27 their unmet needs.

28 ///

1 64. On information and belief, Harbor denies parents' requests for in-home supports,
2 including Personal Attendant Care services, on grounds that consumers' respite workers could
3 sign up for IHSS hours, even though parents notified Harbor that the respite workers are
4 unwilling or unable to serve as the IHSS providers.

5 65. Harbor's administration of in-home supports policies disproportionately and
6 adversely impacted, and continues to impact, Hispanic/Latinx consumers, precluded their
7 ability to access in-home supports, and failed to meet their needs.

8 66. On information and belief, Harbor's administration of its in-home supports
9 policies exacerbated disparities in funding between Hispanic/Latinx consumers and white
10 consumers.

11 Respite Services

12 67. Respite is meant to provide temporary relief for parents and primary caregivers
13 by freeing up time for breaks, self-care, errands, appointments, and management of other
14 family needs.

15 68. Harbor's respite policy allows for the purchase of respite when: (1) the
16 consumer has behavioral challenges, special medical needs, or supervision needs that exceed
17 those of people of the same age without developmental disabilities, and either (2) there are
18 few or no natural or generic supports available to provide necessary supervision during times
19 when family members are away, or (3) the family is experiencing a short-term crisis or
20 emergency situation. Harbor service coordinators are responsible for assessing whether a
21 family has adequate resources or networks of supports.

22 69. Harbor administered its respite policy in a manner that failed to account for
23 Hispanic/Latinx consumers' individualized needs, including factors that affect a particular
24 family's need for respite.

25 70. The COVID-19 crisis only amplified these longstanding disparities.
26 Hispanic/Latinx families face a number of new circumstances that result in desperately needed
27 respite services, including decreased regular services and family isolation due to state and
28 local "stay at home" directives, increased supervision demands from other children in the

1 home due to closed schools or quarantine directives, and shuttered day and other programs
2 designed to provide daily out-of-home opportunities for persons with developmental
3 disabilities.

4 71. Harbor has a pattern and practice of adopting policies, including internal
5 policies and assessment tools, that prevent Hispanic/Latinx families from accessing a
6 sufficient number of respite service hours.

7 72. Harbor disregarded factors relevant to assessing a family's need for respite
8 service hours, including the presence of other family members such as children, in the home
9 and in need of care or supervision.

10 73. Harbor administered its respite policy in a non-individualized manner that
11 provided Hispanic/Latinx families with a predetermined across-the-board number of service
12 hours without assessing a family's need or circumstances. These across-the-board issuances
13 were insufficient to meet families' needs.

14 74. Harbor administered its respite policy in a manner that restricted residents of a
15 consumer's home from serving as respite providers. Harbor's living arrangement restriction
16 adversely impacted Hispanic/Latinx individuals who are more likely to live in multi-
17 generational households than white individuals. In addition, during the COVID-19 crisis,
18 Harbor knew that there was a lack of care providers going to private homes. Yet, Harbor's
19 living arrangement restriction prohibited any member of a locked-down household from
20 serving as a respite provider.

21 75. In or around July 2020, Harbor lifted its living arrangement restriction. On
22 information and belief, Harbor's waiver of its restriction was only temporary. Harbor's
23 administration of its respite policy, including internal policies and assessments,
24 disproportionately and adversely impacted Hispanic/Latinx consumers.

25 Notices of Action

26 76. Harbor administered, and continues to administer, its notice of action policy in
27 an irregular manner that fails to issue legally required notices of action when Harbor reduced,
28 terminated, or changed a service deemed necessary in a consumer's IPP.

1 77. To reduce, terminate, or change a service set forth in a consumer's IPP without
2 a consumer's consent, a regional center must issue a written notice of action sent by certified
3 mail. § 4710(a)(1). The notice of action must be issued 30 days prior to the decision to reduce,
4 terminate, or change a service. *Id.*

5 78. Harbor service coordinators authorized increased service hours for some
6 Hispanic/Latinx consumers, but they informed the consumers that Harbor would authorize the
7 hours on a month-to-month or every-two-month basis. Some of these consumers informed
8 Harbor that the time limitations and the month-to-month renewal process did not meet their
9 needs, but Harbor failed to issue notices of action regarding the changes. Some of these
10 consumers did not find out whether Harbor would authorize their services through the
11 following month until the last day of the current month. This resulted in the consumer having
12 to wait until the day services were set to expire to find out whether services would continue
13 the very next day. Harbor failed to issue notices of action 30 days prior to reducing,
14 terminating, or changing services without the consent of these consumers.

15 79. Harbor service coordinators informed some Hispanic/Latinx consumers that
16 Harbor planned to terminate or reduce the consumers' hours at the end of the month. At that
17 point, the service coordinator would then decide whether to authorize hours for the following
18 month and the number of hours it would authorize. Consumers informed Harbor that the
19 termination or reduction did not meet their needs, but Harbor failed to issue notices of action
20 for these proposed reductions and terminations in services.

21 80. Some Hispanic/Latinx consumers informed their service coordinators that their
22 service hours were not sufficient to meet their needs. They requested more service hours.
23 Service coordinators responded to these consumers by stating that the hours were enough.
24 Harbor failed to issue notices of action for denying these consumers' requests for services.

25 81. On information and belief, Harbor's administration of its notice of action
26 policy disproportionately and adversely impacted Hispanic/Latinx consumers.

27 ///

28 ///

C. Harbor and DDS Refused to Modify Their Discriminatory Policies

82. On information and belief, Harbor maintains internal policies for services and service coordination, including purchase of service policies, and other policies, guidelines, or assessment tools that it utilizes when determining the service needs of a consumer.

83. On information and belief, Harbor also maintains general policies for providers, consumers and families, and instructions and training materials for its staff members.

84. Since June 2020, Padres Buscando el Cambio (Padres), through its counsel, demanded that Harbor comply with its duties under the Lanterman Act, specifically in the administration of in-home supports, and cease all activities that discriminate against Hispanic/Latinx consumers. Padres sent copies of its demands to DDS.

85. Padres' demands illustrated how Harbor's discriminatory administration of its policies and practices harmed Hispanic/Latinx families, prevented them from having access to necessary services and supports, exacerbated race- and ethnicity-based inequities in services Harbor provided to consumers, and violated the Lanterman Act. Padres also demanded that Harbor cease retaliating against consumers and engaging in discriminatory treatment of Hispanic/Latinx consumers. Padres cited Hispanic/Latinx families' experiences being intimidated and shamed by Harbor for requesting services, asserting their rights, or disagreeing with a service coordinator's position on a request for service.

86. In July 2020, Padres' members signed onto a letter to DDS demanding DDS intervene to help Hispanic/Latinx families address Harbor's discriminatory policies and practices. The letter detailed Harbor's inequitable distribution of services and how Harbor precluded families' access to needed services. The letter also requested that DDS investigate the documentation maintained by Harbor service coordinators as well as Harbor's unfair and inequitable denials of services.

87. Padres' members forwarded to Harbor a copy of their July 2020 letter to DDS. In response, Harbor service coordinators contacted a number of Padres' members who had signed onto the letter to DDS. Harbor service coordinators offered these members a belated

1 increase in hours and questioned them about contacting DDS. Harbor service coordinators’
2 questioning made Padres’ members feel shamed for contacting DDS. As a result, twenty of
3 Padres’ members later declined to have their names included on a follow-up letter to DDS
4 because they were scared their service coordinators would find out and rescind their newly
5 issued hours.

6 88. At all times relevant herein, Harbor refused to comply with Padres’ demands to
7 stop discriminating against Hispanic/Latinx consumers and their families and to further begin
8 administering all of its policies in a manner that would not discriminate against
9 Hispanic/Latinx consumers and families.

10 89. The Lanterman Act provides, but does not require, a complaint process for
11 addressing broader systemic issues beyond the scope of services and supports included in an
12 individual’s IPP. This process allows any consumer or any representative acting on behalf of
13 one or more consumers who believes that any consumer rights have been “abused, punitively
14 withheld, or improperly or unreasonably denied by a regional center, developmental center or
15 service provider” to proceed with a complaint pursuant to the Lanterman Act. § 4731.

16 90. If the complainant is not satisfied by a resolution proposed by the regional
17 center, developmental center or service provider, Section 4731 allows the consumer to refer
18 the complaint to DDS for review and response. The Section 4731 complaint process is not
19 mandatory prior to filing a lawsuit to enforce any consumer rights.

20 91. On December 18, 2020, Padres submitted its Welfare and Institutions Code
21 Section 4731 complaint against Harbor, demanding that Harbor comply with its duties under
22 the Lanterman Act, cease discriminating against Hispanic/Latinx consumers, and stop all
23 retaliatory actions against consumers.

24 92. On January 8, 2021, Padres formally referred, pursuant to statute, its Welfare
25 and Institutions Code Section 4731 complaint to DDS, a copy of which is attached as Exhibit 1
26 (attachments omitted). Padres’ complaint:

- 27 • Detailed Harbor’s legally inadequate service coordination and
28 discriminatory administration of services and supports;

- Outlined problems with Harbor’s policies and practices related to the assessment, approval, and procurement of in-home supports;
- Proposed changes to address the root of the discrimination, including specific amendments to Harbor’s assessment tools.

93. Padres’ Section 4731 complaint to DDS cited Harbor’s own data to illustrate how Harbor authorizes only 37 cents on Hispanic/Latinx consumers for every dollar it authorizes to spend on white consumers.

94. On February 26, 2021, DDS issued its letter of findings in response to Padres’ Section 4731 Complaint, a copy of which is attached as Exhibit 2. In its letter, DDS ordered Harbor to take “corrective actions” on only three issues:

- (1) language accessibility,
- (2) notices of action, and
- (3) community engagement/relations.

95. DDS’s corrective actions failed to provide adequate remedies to resolve Padres’ claims, and did not address other concerns raised in Padres’ complaint. For example, DDS’s letter failed to address the services disparities and further failed to acknowledge or accept Padres’ proposals to address the root or systemic causes of discrimination.

96. DDS’s letter did not provide any alternative proposals, including additional corrective actions, to address the root causes of the disparity in services for Hispanic/Latinx consumers.

97. DDS also instituted a timeline for Harbor to take some actions in Spring and Summer 2021, but most of these actions were non-responsive to Padres’ complaint and did not address the core issues raised in its complaint.

98. DDS’s corrective plan was vague, uncertain and ineffective, requiring Harbor only to make monthly status reports and only obligating DDS to “ongoing monitoring activities to ensure . . . improved service access and equity....” The corrective plan did not set forth an end date to determine final compliance nor did it include any penalty or consequence to Harbor due to inaction or lack of improvement.

1 99. On March 25, 2021, Padres again demanded DDS take further action to
2 remedy Padres' claims. (A copy of Padres' response demand dated March 25, 2021 is
3 attached as Exhibit 3). In its follow-up demand to DDS, Padres explained how DDS's
4 findings and corrective actions were inadequate because it failed to remedy all of Padres'
5 claims and further failed to even address some of Padres' claims. Exhibit 3 at 2-3.

6 100. In its second demand, Padres detailed how DDS's letter failed to remedy the
7 discriminatory manner in which Harbor administers service coordination and services. *Id.* at
8 3-4.

9 101. In its second demand, Padres explained how DDS incorrectly applied a facial
10 discrimination standard to its review of Harbor's policies. Padres again directed DDS to its
11 Section 4731 complaint which detailed how Harbor's policies cause discriminatory effects,
12 and proposed changes to those policies to address the root of the discrimination. *Id.* at 3-4.

13 102. In addition, Padres' second demand pointed out how, in its response pursuant
14 to Section 4731, DDS acknowledged that Harbor withholds services and supports from
15 Hispanic/Latinx families. However, DDS excused Harbor's actions as only "language
16 accessibility" issues—even though Padres never raised language accessibility issues in its
17 complaint. *Id.* at 2-3.

18 103. On April 6, 2021, DDS responded that it would monitor Harbor's compliance
19 with its corrective actions, but it again ignored Padres' demands that DDS address the service
20 disparities confronting Hispanic/Latinx consumers and their families.

21 104. At the request of DDS, Padres met with DDS in May 2021 to discuss how
22 DDS could address the root causes of Harbor's discrimination and the inadequacies in DDS's
23 response and corrective actions. Following the meeting, Padres provided DDS with a
24 proposed agreement creating a structured framework for resolving DDS's inadequacies in its
25 corrective actions in a timely manner.

26 105. DDS declined the opportunity to discuss a structured framework and again
27 refused to acknowledge or address Padres' specific outstanding concerns. DDS again
28 reiterated that it would monitor Harbor's compliance with its corrective actions issued on

February 26, 2021.

106. Between January 2021 and June 2021, Padres repeatedly communicated with DDS in a continued and unsuccessful attempt to resolve the lack of services provided to Hispanic/Latinx families by Harbor and DDS.

107. DDS did not, at any time, notify Padres that Harbor made the corrective actions, fully or in part, and within the timeframes mandated by DDS in its corrective action plan.

108. In July and August 2021, Padres submitted California Public Records Act (PRA) requests to DDS for documents related to DDS's monitoring of Harbor's progress in completing the corrective actions. The documents produced by DDS in response to the PRA requests indicated that Harbor reported that it had completed its corrective actions required by DDS.

109. Despite Harbor's alleged compliance with DDS's corrective actions, Padres members continued to experience discriminatory treatment from Harbor, including poor service coordination, inadequate in-home supports, and failure to provide notices of action when Harbor intended to reduce or terminate a service.

110. At all times relevant herein, Harbor and DDS refused to comply with Padres' demands.

111. For years, Harbor and DDS knew of the discriminatory results of their actions.

112. For example, in December 2020, Harbor unilaterally canceled a scheduled meeting with Padres regarding the discriminatory effects of Harbor's administration of its policies. Harbor also declined any further discussion with Padres regarding this topic. Rather than state an intention to use the information Padres provided – regarding the discriminatory effects of Harbor's policies – to change how Harbor was administering services to prevent the perpetuation of inequities, Harbor stated in writing that it intended to use the information Padres provided as an opportunity to *reinforce* Harbor's policies.

113. Director Bargmann has repeatedly acknowledged the racial disparities in the DDS system and the extent to which consumers in multigenerational homes –

1 disproportionately communities of color, including Hispanic/Latinx consumers – rely on
2 services.

3 114. Despite DDS’s knowledge of the racial disparities in the DDS system, DDS did
4 not at any time take meaningful steps to remedy the administration of services and supports,
5 on either the state or regional center level, to address to the root causes of discrimination and
6 the statewide disparities affecting Hispanic/Latinx consumers and families.

7 115. Despite Harbor’s and DDS’s knowledge of the discriminatory results of their
8 actions, Harbor and DDS did not take steps to modify Harbor’s administration of services and
9 supports. Instead, Harbor adhered to its administration of services and supports, with full
10 knowledge of the predictable adverse effects its adherence had on Hispanic/Latinx consumers.

11 116. Harbor and DDS had many opportunities to modify Harbor’s administration of
12 services and supports. Harbor and DDS chose to continue to allow the administration of
13 Harbor’s policies in a way that disproportionately and adversely impacted Hispanic/Latinx
14 families, jeopardized the health and safety of their children, and threatened their ability to stay
15 together and safe at home. Harbor’s and DDS’s actions discriminate against Hispanic/Latinx
16 families and violate the Lanterman Act.

17 117. On information and belief, DDS failed to collect and review Harbor’s policies,
18 guidelines, instructions, and training materials to determine the extent of disparities and
19 discriminatory impact caused by Harbor’s administration of services.

20 118. On information and belief, DDS’s failure to collect and review Harbor’s
21 policies, guidelines, instructions, and training materials contributed to Harbor administering
22 its policies in a way that discriminates against Hispanic/Latinx families and violates the
23 Lanterman Act.

24 **FIRST CAUSE OF ACTION**
25 **Discrimination in State-Funded Programs**
26 **Gov’t Code § 11135**
(Against All Defendants)

27 119. Plaintiff incorporates by reference and realleges each and every allegation of
28 all previous paragraphs as if fully set forth herein.

1 120. Pursuant to Government Code Section 11135(a), “[n]o person in the State of
2 California shall, on the basis of sex, race, color, religion, ancestry, national origin, ethnic
3 group identification, age, mental disability, physical disability, medical condition, genetic
4 information, marital status, or sexual orientation, be unlawfully denied full and equal access to
5 the benefits of, or be unlawfully subjected to discrimination under, any program or activity
6 that is conducted, operated, or administered by the state or by any state agency, is funded
7 directly by the state, or receives any financial assistance from the state.”

8 121. Discriminatory practices include “utiliz[ing] criteria or methods of
9 administration that:

- 10 (1) have the purpose or effect of subjecting a person to discrimination on the
11 basis of ethnic group identification, religion, age, sex, color, or a physical
12 or mental disability;
- 13 (2) have the purpose or effect of defeating or substantially impairing the
14 accomplishment of the objectives of the recipient’s program with respect
15 to a person of a particular ethnic group identification, religion, age, sex,
16 color, or with a physical or mental disability; or
- 17 (3) perpetuate discrimination by another recipient on the basis of ethnic
18 group identification, religion, age, sex, color, or a physical or mental
19 disability.”

20 Cal. Code Regs. tit. 2, § 11154.

21 122. DDS operates programs and activities that are funded directly by the State.
22 DDS is legally obligated to monitor regional centers to ensure regional centers operate in
23 compliance with federal and state law.

24 123. Harbor operates programs and activities that are funded directly by the State
25 and conducted under the statutory framework.

26 124. Harbor and DDS failed to comply with Government Code Section 11135 by
27 denying full and equal access to Hispanic/Latinx families in its provision of services and
28 supports required under the Lanterman Act (Welfare and Institutions Code Sections 4500–

1 4885), including the administration of policies and provision of services sufficient to meet the
2 needs of each person with developmental disabilities.

3 125. Harbor and DDS failed to comply with Government Code Section 11135 by
4 utilizing criteria and methods of administration that have the purpose and effect of
5 discriminating against Hispanic/Latinx consumers and their families, and defeat and
6 substantially impair Hispanic/Latinx consumers' access to the services they are entitled to
7 under the Lanterman Act.

8 126. In failing to provide adequate services and supports to Hispanic/Latinx
9 families, Harbor and DDS administered and continue to administer state-funded services and
10 supports in a manner that has unlawfully denied Plaintiff access to necessary supports and
11 services in violation of Government Code Section 11135 and its implementing regulations.

12 127. Plaintiff seeks declaratory and injunctive relief to prevent Defendants from
13 continuing to discriminate against Hispanic/Latinx consumers of regional center services and
14 to order Defendants' compliance with Government Code Section 11135.

15 **SECOND CAUSE OF ACTION**
16 **Waste of Public Funds**
17 **Civ. Proc. Code § 526a**
18 **(Against All Defendants)**

19 128. Plaintiff incorporates by reference and realleges each and every allegation of
20 all previous paragraphs as if fully set forth herein.

21 129. Plaintiff, within one year before the filing of this complaint, has paid a tax that
22 funds both defendants Harbor and DDS.

23 130. Plaintiffs' members, within one year before the filing of this complaint, have
24 paid taxes that fund both defendants Harbor and DDS.

25 131. Harbor and DDS administer their state-funded programs and services in a
26 manner that discriminates against Hispanic/Latinx consumers and substantially impairs the
27 accomplishment of the objectives of the Lanterman Act (Welfare and Institutions Code
28 Sections 4500–4885) with respect to Hispanic/Latinx consumers and their families. Because
these actions violate Government Code Section 11135 and the Lanterman Act, Harbor and

1 DDS engage in an illegal expenditure of public funds.

2 132. Plaintiff seeks a declaration of Harbor's and DDS's waste of public funds and
3 an order enjoining Harbor and DDS from continuing the illegal expenditure of taxpayer
4 monies.

5 **THIRD CAUSE OF ACTION**
6 **Declaratory and Injunctive Relief**
7 **Civ. Proc. Code §§ 526, 1060**
8 **(Against All Defendants)**

9 133. Plaintiff incorporates by reference and realleges each and every allegation of
10 all previous paragraphs as if fully set forth herein.

11 134. There is an actual and justiciable controversy between Plaintiff and Defendants
12 because Harbor and DDS dispute that their actions violate applicable laws, including
13 Government Code Section 11135, the Lanterman Act (Welfare and Institutions Code Sections
14 4500–4885), and Code of Civil Procedure Section 526a.

15 135. Plaintiff seeks a judicial declaration that Harbor and DDS violated the laws
16 alleged herein.

17 136. A judicial declaration of the respective parties' rights and duties is needed so
18 that the parties can each conduct themselves in accordance with those rights and duties.
19 Without such a judicial declaration, there will continue to be disputes and controversy over
20 whether Harbor's and DDS's actions comply with applicable laws.

21 137. Unless compelled by this Court to comply with Government Code Section
22 11135 and the Lanterman Act, Harbor and DDS will continue to refuse to comply with, and
23 thus continue to violate, the law. Plaintiff, Plaintiff's members, and other Hispanic/Latinx
24 Harbor consumers and their families will continue to be injured as a result.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff prays for entry of judgment as follows:

- 27 1. For injunctive relief enjoining Harbor and DDS from:
28 a. Violating California's prohibition on discrimination in state-funded
programs, Gov't Code § 11135;

- 1 b. Committing an illegal expenditure of public funds by continuing to
2 administer state-funded programs and services in a manner that
3 discriminates against Hispanic/Latinx consumers and substantially
4 impairs the accomplishment of the objectives of the Lanterman Act
5 (Welfare and Institutions Code Sections 4500–4885) with respect to
6 Hispanic/Latinx consumers, Civ. Proc. Code § 526a;
- 7 c. Violating the Lanterman Act, Welf. & Inst. Code §§ 4500–4885 by:
- 8 i. Failing to develop and implement policies and practices for in-
9 home supports, including respite and personal attendant
10 services, that facilitate equity for Hispanic/Latinx consumers,
11 consider every possible way to assist families in maintaining
12 their children at home, Welf. & Inst. Code § 4685;
- 13 ii. Applying policies and practices that:
- 14 1. Restrict residents of a consumer’s home from serving as
15 the consumer’s provider;
- 16 2. Condition access to in-home supports on parents
17 categorically ineligible to serve as IHSS providers
18 (including due to immigration status) applying to serve as
19 IHSS providers;
- 20 3. Disregard the presence of other family members,
21 including children, in the home in need of care or
22 supervision; and
- 23 4. Predetermine hours for in-home supports, regardless of
24 the individual needs and circumstances of the consumer
25 and family.
- 26 iii. Failing to develop and implement a service coordination policy
27 that addresses the duty of Harbor and service coordinators to:
28

1. Conduct Individual Program Plan meetings and assess for services using person-centered practices that take into account consumer and family input about Individual Program Plan development and provider choice, Welf. & Inst. Code §§ 4646, 4646.5;
 2. Identify and pursue generic resources, Welf. & Inst. Code §§ 4647, 4659;
 3. Provide advocacy assistance to help consumers and families access any benefits to which they are entitled, Welf. & Inst. Code § 4685(c)(1);
 4. Timely secure, through purchasing or by obtaining from generic agencies or other resources, services and supports specified in the consumer's Individual Program Plan, Welf. & Inst. Code §§ 4647, 4685(c)(1); and
 5. Ensure that no gaps occur in the provision of services and supports, including providing funding to address unmet needs while generic resources are being pursued, Welf. & Inst. Code §§ 4501, 4648(g).
- iv. Failing to develop and implement a notice of action policy which requires Harbor to issue legally adequate notices of action when Harbor decides to reduce, terminate, or change services set forth in a consumer's Individual Program Plan, Welf. & Inst. Code §§ 4701, 4710(a)(1).

2. For injunctive relief mandating Harbor and DDS to adopt and implement policies and procedures in compliance with state law and to develop necessary measures to ensure that regional center service coordinators and other staff provide services in a non-discriminatory manner;

///

- 1 3. For a declaration that Harbor and DDS administers Lanterman Act programs
2 and services in a discriminatory manner in violation of state law;
3 4. For reasonable attorneys' fees and costs; and
4 5. For such other and further relief as the Court deems just and proper.
5

6 Date: January 31, 2024

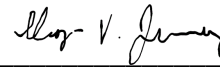
Disability Rights California
Western Center on Law & Poverty
Akin Gump Strauss Hauer & Feld LLP
Public Counsel

By: Nishanthi Kurukulasuriya
Nishanthi Kurukulasuriya
Attorneys for Plaintiff

VERIFICATION

I, Mayra Jimenez, am an agent of Coalision de Padres Buscando el Cambio, the Plaintiff in the above-entitled action. I am authorized to make this verification on behalf of Coalision de Padres Buscando el Cambio. I have read the foregoing complaint for declaratory and injunctive relief and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 31st day of January, 2024, in Long Beach, California.



Mayra Jimenez

EXHIBIT 1

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LEGAL ADVOCACY UNIT

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Intake Line: (800) 776-5746
www.disabilityrightscalifornia.org

January 8, 2021

Via FedEx and E-mail: nancy.bargmann@dds.ca.gov

Nancy Bargmann
Director, California Department of Developmental Services
P.O. Box 944202
Sacramento, CA 94244-2020

Re: Welfare & Institutions Code §4731 Complaint

Dear Director Bargmann:

As you know, Disability Rights California represents the parent group Padres Buscando el Cambio, whose members are primarily Latinx parents of individuals served by Harbor Regional Center (HRC), and are Complainants in this matter.

Between June and December 2020, we served several complaint and demand letters, to both HRC and DDS, regarding HRC's failure to coordinate necessary supports and services to meet families' critical needs during the COVID-19 pandemic. We also complained that HRC is taking discriminatory and retaliatory actions against our clients when requesting such services. Our clients also made similar complaints directly to HRC and DDS.

We served our most recent complaint and demand letter on December 18, 2020. We emailed this letter to you on the same date. Please let us know if you would like us to send you another copy.

000001

Nancy Bargmann, Director, DDS
January 8, 2021
Page 2 of 3

On December 30, 2020, we received a written proposed solution from HRC Executive Director Patrick Ruppe. While the proposed solution lists steps HRC will take to train staff and communicate with consumers, the steps are insufficient to address the concerns raised by our client. Moreover, the proposed solution fails to address a number of the concerns raised in our December 18, 2020, complaint.

Nevertheless, in a good faith effort to expeditiously reach a resolution for our client, we intend to request that HRC enter into a structured negotiation agreement with our client to resolve this complaint. We would appreciate any assistance your office can provide, including facilitating or participating in any future meetings with HRC. In particular, we need to review HRC's internal operating procedures, instructions to its staff and training materials. We would appreciate your assistance in obtaining these materials from HRC. We also sent a public records act request to your Office of Legal Counsel on January 6, 2021, in hopes that your Department may have copies.

Please note that this letter constitutes the referral of our client's complaint to your office under Welfare & Institutions Code Section 4731(c). Accordingly, we expect to receive the written administrative decision within 45 days, *i.e.* February 22, 2021. If we reach a resolution with HRC prior to receiving the decision, we will notify your office.

For purposes of exhaustion, this letter constitutes our final attempt to resolve this matter administratively. Given the urgency of our client's concerns, particularly because of the escalating COVID-19 pandemic, we will have no choice but to proceed with litigation if this matter is not timely resolved.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Parisa Ijadi-Maghsoodi".

Parisa Ijadi-Maghsoodi
Nishanthi Kurukulasuriya

000002

Nancy Bargmann, Director, DDS
January 8, 2021
Page **3** of **3**

Emily Ikuta
Disability Rights California

CC: *via email only*
Patrick Ruppe, Harbor Regional Center
Hiren Patel, Brian Winfield, Ernest Cruz, Department of Developmental
Services



LEGAL ADVOCACY UNIT

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www.disabilityrightscalifornia.org

December 18, 2020

Via FedEx and E-mail: patrick.ruppe@harborrc.org;
nancy.bargmann@dds.ca.gov

Nancy Bargmann
Director, California Department of Developmental Services
P.O. Box 944202
Sacramento, CA 94244-2020

Patrick Ruppe
Executive Director, Harbor Regional Center
21231 Hawthorne Blvd
Torrance, CA 90503

**Re: Pre-Litigation Demands to Modify Policies and Practices, and
Cease Retaliatory and Discriminatory Actions**

Dear Mr. Ruppe and Director Bargmann:

Disability Rights California represents the parent group Padres Buscando el Cambio, whose members are primarily Latinx parents of individuals served by Harbor Regional Center (HRC). We write seeking urgent action to address HRC's failure to provide adequate support to families affected by the COVID-19 pandemic. HRC's inaction has only exacerbated the existing inequities in services provided to Latinx individuals, for whom HRC spends only 37 cents for every dollar it spends on white individuals. This discrimination must end.

000004

Nancy Bargmann, Director, DDS
Patrick Ruppe, Executive Director, HRC
December 18, 2020
Page 2 of 11

On behalf of our clients, we demand that HRC immediately (1) develop and implement mutually agreeable interim policies and practices to meet pandemic-related consumer needs; (2) refrain from implementing any existing policies or practices that have the effect of categorically excluding consumers from receiving certain regional center funded in-home supports, such as personal assistance services; (3) develop and implement mutually agreeable personal assistance, service coordination, notice of action, and respite policies, including the changes related to respite outlined in this letter; and (4) send to every consumer a notice with the information outlined in section IV of this letter, including the statement that HRC will reassess all service needs.

HRC must also immediately cease retaliating against consumers and engaging in discriminatory treatment of Latinx consumers. We further demand that California Department of Developmental Services (DDS) ensures that HRC immediately takes these actions to ensure regional center compliance with its duties to its consumers.

I. **As the Health Crisis Surged Between June and December 2020, HRC Repeatedly Dismissed Our Clients' Concerns and Refused to Act**

Despite the urgency of these issues, particularly because of the escalating COVID-19 pandemic, HRC has engaged in repeated delays since our initial notification of non-compliance six months ago. Subsequent correspondence to both of HRC's executive directors did not mitigate the harm to our clients caused by HRC's policies and procedures, and retaliatory and discriminatory actions. Copies of our correspondence to HRC, as well as HRC's responses, are attached as Exhibit A. DDS has not provided any response to our correspondence.

A. Correspondence with HRC Executive Director Patricia Del Monico

We first notified HRC of its non-compliance with its legal requirements, together with our legal analysis supporting our clients' claims, on June 15, 2020. We also copied DDS on this letter. HRC and DDS ignored our

Nancy Bargmann, Director, DDS
Patrick Ruppe, Executive Director, HRC
December 18, 2020
Page 3 of 11

correspondence. Our second letter dated June 23, 2020, resulted in a phone call with former-Executive Director Patricia Del Monico. We also received a letter from Patricia Del Monico on June 23, 2020. The letter, dated June 22, 2020, did not address our concerns, but rather posited that HRC was providing essential services to meet consumers' needs, had systems in place to ensure full compliance with Lanterman Act requirements, and any disputes must be resolved through the individual fair hearing process. Patricia Del Monico further refused our request for a meeting.

B. Correspondence with HRC Executive Director Patrick Ruppe

When Mr. Ruppe replaced Patricia Del Monico as Executive Director in October 2020, we wrote again to HRC, requesting a meeting to discuss these unresolved issues. We also raised concerns about HRC's acts of retaliation and intimidation against Latinx families. As a courtesy, we enclosed our previous correspondence, including the June 15, 2020, legal analysis.

On November 12, 2020, Mr. Ruppe responded that without "information regarding a specific client", HRC "must concur" with Patricia Del Monico's position. Nonetheless, Mr. Ruppe scheduled a meeting on November 20, 2020. However, this meeting was brief and ineffective because HRC had not yet reviewed our legal analysis – despite having six months to do so. Because HRC was not prepared to engage in a substantial discussion, HRC agreed to meet with us again on December 4, 2020, for an *actual* discussion regarding (1) personal attendant care/personal assistance, (2) respite, (3) notices of action, and (4) service coordination.

Mr. Ruppe also requested that we re-send our legal analysis before the December 4, 2020, meeting, which we did on November 23, 2020.

Two days before our scheduled meeting on December 4, 2020, HRC cancelled our meeting and declined any further discussion on the issues we raised. HRC dismissed our concerns, stating that it would "use this as an opportunity to *reinforce* [HRC's] policies" (emphasis added). Even

though we advised that HRC's policies have discriminatory effects on our clients and other Latinx families, and despite well-known, public data showing that HRC approves fewer services for Latinx consumers and their families compared to every other discrete ethnic group¹, HRC did not agree to evaluate, amend, or otherwise address any of the policy and procedural issues raised by our clients.

As outlined above, our clients, through counsel, demanded urgent attention to the issues raised in its several letters. To date, HRC has not provided a substantive response regarding the items raised by our law firm. HRC's failure to respond to these urgent requests and DDS's failure to ensure adequate compliance, especially now in light of the *increasing* issues arising from an escalating pandemic, is inexcusable. By ignoring these demands, HRC and DDS demonstrate a blatant disregard for the increasing concerns raised by our clients, and other Latinx families, regarding discrimination in HRC's administration of HRC's policies and practices.

II. HRC Failed to Ensure that its Policies and Tools Provide Adequate Services for Consumers and Families Impacted by the COVID-19 Pandemic

HRC failed to take necessary steps to reassess consumer needs and to modify its policies and tools to address the impact of the ongoing public health crisis on consumers and their families. Nine months into the pandemic, HRC's inaction is unacceptable.

First, we are increasingly alarmed that consumers and their families are not being assessed for in-home services and supports in a manner that accounts for the impacts COVID-19 has on their daily lives.

¹ In Fiscal Year 2018-19, HRC approved an average of \$9,832 in services for each Hispanic consumer. In contrast, HRC approved an average of \$26,807 in services for each white consumer. See Harbor Regional Center Purchase of Service and Expenditure Data, Fiscal Year 2018-19, available at http://www.harborrc.org/files/uploads/FY_2018-19_Expenditures_Report_Intro_FINAL.pdf.

Consumers and their families know best what their needs and goals are, and their preferences should drive the discussion about services from the regional center. In addition, HRC staff are trained about the statutory consumer protections under the Lanterman Developmental Disabilities Services Act, codified at Welfare and Institutions (W&I) Code §§4500, *et seq.*, and the array of services available to people with developmental disabilities. HRC staff are in the best position to collaborate with the consumer and family to identify appropriate services, particularly for consumers and families unaware of specific service terms and conditions. Therefore, HRC must conduct assessments in a manner that respects cultural differences and recognizes the pandemic's impact on consumers and their families.

Given the ongoing nature of the public health crisis, it is crucial that HRC service coordinators (1) evaluate whether every consumer's IPP goals are still being met; (2) determine whether current service delivery or implementation is placing additional demands on families; (3) verify whether the services identified for meeting goals and objectives are provided in a meaningful way; and (4) identify any additional service or protections that fit the consumers' needs and goals.

We are particularly concerned with HRC's policies and practices related to the assessment, approval, and procurement of in-home supports. For example, HRC's practices related to personal assistance have the effect of categorically excluding consumers from receiving this service, without regard to individual needs. In addition, IPP goals and objectives are not developed using person-centered practices and are often predetermined based on old planning documents, input from consumers and their families is disregarded or ignored, and authorizations for critical and time-sensitive services can take many months, requiring consumers and families to provide unnecessary or arbitrary documentation to justify the need. And even when in-home supports are finally approved, consumers and families are not offered meaningful choices about where or from whom they receive services. Lastly, our analysis of HRC's respite policies identified specific changes in the respite policy, set forth below, that HRC should immediately adopt. These changes are necessary to ensure that requests for in-home

supports such as respite are assessed in a manner that accounts for the impact of the COVID-19 pandemic on consumers and their families.

III. Respite: Changes for Immediate HRC Adoption

Over the last several months, DRC has received calls from multiple families about difficulty accessing necessary services from HRC. With COVID-19 cases surging at record levels, schools and other community programs remain closed or at significantly reduced capacity. HRC consumers and families urgently need more in-home services and supports, particularly respite services. However, requests for additional respite hours are either denied, or a much lower amount than requested is approved, regardless of each consumer's individual circumstances that necessitated the request.

According to HRC's 2019 Respite Fact Sheet and its Respite Care Policy, respite is meant to provide temporary relief for parents and primary caregivers by freeing up time for breaks, self-care, errands and appointments, and management of other family needs.² Additionally, HRC's Respite Assessment Guidelines ("Assessment Guidelines") set forth factors for assessing respite needs.³

In light of COVID-19, however, the tools and guidelines are too restrictive. The tool does not take into consideration the pandemic and other factors that affect a particular family's need for respite. For instance, many families are taking on additional caregiving demands because of the pandemic. While HRC could not have anticipated the coronavirus or its impact on consumers' lives, HRC nevertheless must amend its Assessment Guidelines to include additional questions in order to identify the appropriate number of hours.

² *Respite Fact Sheet* (January 2019), Harbor Regional Center, available at: http://www.harborrc.org/files/uploads/Respite_Fact_Sheet-3_19.pdf and *Respite Care Policy* (March 19, 2019), Harbor Regional Center, available at: http://www.harborrc.org/files/uploads/12_Respite_Care_Policy.pdf.

³ *Respite Services: Assessment and Guidelines* (October 28, 2019), Harbor Regional Center, available at: <http://www.harborrc.org/files/uploads/G00194.pdf>.

To ensure the tool is effective during this public health crisis, the following areas must be considered when assessing the need for respite:

- There are other children in the home in need of supervision. These other children are not able to leave the home due to the pandemic.
- There are other family members in the home in need of care and supervision.
- Because of the pandemic, families are not able to have others come into the home to help.
- Caregivers have to work to provide for the family.
- The consumer normally attends a day program, school, or other out-of-home program but due to the pandemic is not able to attend.
- The consumer cannot access or benefit from programs or services being provided remotely.
- The consumer needs assistance and supervision from the caregiver even when accessing programs or services remotely.
- Some in-person therapies meant to be provided to the consumer by professionals in person now require parent caregivers to take on that role.
- Remote services require additional training and support by the primary caregiver.
- Some caregivers provide all academic and special education services (e.g., teacher, one-to-one aide, socialization service provider, and other service providers) to the consumer (to the extent possible), while simultaneously providing appropriate care and supervision to protect the consumer's safety.
- Shelter-in-place orders require more time for basic tasks, such as grocery shopping, picking up medications, medical appointments, etc.

HRC must update HRC's respite tool to reflect all of the situations described above, as well as any others it has encountered due to COVID-19. An updated tool will assist consumers and align the Assessment

Guidelines with HRC's respite policy and Fact Sheet. Service coordinators should also consider whether the consumer and family would benefit from some other type of service like child care or personal assistance.

IV. To avoid litigation, our clients demand that HRC confirm that it will (A) immediately cease all intimidation and retaliation against families; and (B) take the immediate actions identified in this letter to resolve outstanding issues

The issues raised here are systemic in nature, as they concern the discriminatory manner in which HRC carries out its policies and practices governing the provision of services to the nearly 15,000 individuals served by HRC. These issues cannot be resolved one family at a time, especially given that many families are fearful of retaliation and intimidation by HRC. HRC's failure to address these urgent and systemic issues results in irreparable harm to thousands of families.

As we shared with Mr. Ruppe on October 30, 2020, and November 20, 2020, multiple families experience intimidation and shaming from HRC staff when asserting their rights or disagreeing with a service coordinator's position on a request for service.

- In response to pandemic-related requests for an increase in services or service hours, service coordinators debate and ultimately dismiss issues and concerns raised by parents, scold parents for asking for more service hours, and tell parents "it was your decision to have so many kids" and it is "a parent's responsibility to care for her own child."
- Upon finding out that parents of HRC consumers signed onto a letter to DDS, service coordinators contacted parents to shame them for seeking DDS' help and to offer a belated increase in hours. Subsequently, many of these parents declined to have their names included on a follow-up letter to DDS because they were scared their service coordinators would find out and rescind their newly issued hours.

- HRC made calls to a parent's workplace to inform the parent's boss of the parent's advocacy at a recent board meeting, and to complain that the parent's advocacy was inconsistent with the relationship between the regional center and the parent's employer. One of these calls was made by an HRC executive director.

HRC's actions effectively deter families from asserting their rights and the rights of consumers. HRC's actions have a chilling effect on families who are now hesitant, or unwilling, to openly discuss their needs and concerns with HRC. This is unacceptable and unlawful under W&I Code §4905.

To remedy HRC's illegal actions and prevent ongoing harm to families and consumers, HRC must take immediate steps to inform HRC staff, including all service coordinators, that retaliation or intimidation in any form will not be tolerated. These steps include education or training to HRC staff to ensure that staff understand what constitutes retaliation and intimidation.

Please provide written confirmation on or before December 30, 2020, that HRC has taken necessary steps to remedy this issue, including a description of all remedies undertaken by HRC and a specific timeline for any additional steps that will be taken in the future.

In light of the renewed urgency of this matter caused by the ongoing surge in COVID-19 infections, hospitalizations, and deaths, please also respond by December 30, 2020, with confirmation that HRC will immediately:

- Develop and implement mutually agreeable interim policies and practices to meet pandemic-related consumer needs.
- Refrain from implementing any existing policies or practices that have the effect of categorically excluding consumers from receiving certain regional center funded in-home supports, such as personal assistance services.
- Develop and implement mutually agreeable personal assistance and respite policies, including the changes related to respite outlined in this letter.

- Develop and implement a mutually agreeable service coordination policy which addresses the duty of HRC and service coordinators to: (1) conduct IPP meetings and assess for services using person-centered practices that take into account consumer and family input about IPP development and provider choice; (2) identify and pursue generic resources; (3) provide advocacy assistance to help consumers and families access any benefits to which they are entitled; (4) timely secure, through purchasing or by obtaining from generic agencies or other resources, services and supports specified in the person's individual program plan; and (5) ensure that no gaps occur in the provision of services and supports, including providing funding to address unmet needs while generic resources are being pursued.
- Develop and implement mutually agreeable notice of action policies, including when HRC decides to reduce, terminate, or change services set forth in a person's individual program plan, and when HRC denies a requested service or support.
- Send to every consumer a notice stating at least the following:
 - A statement that HRC will reassess all service needs, including the need for additional in-home supports, based on the ongoing impact of the COVID-19 pandemic.
 - A description of how each consumer and/or their family can request this reassessment.
 - A description of in-home supports that are potentially available to consumers and families, as well as the criteria HRC uses to assess for each of these supports.
 - The role and duty of service coordinators, including assessing needs, identifying and pursuing generic resources, purchasing or obtaining needed services and supports, and authorizing funding to address unmet needs while generic resources are being pursued.
 - The circumstances under which HRC must issue adequate notice and the consumer's right to appeal.

Nancy Bargmann, Director, DDS
Patrick Ruppe, Executive Director, HRC
December 18, 2020
Page **11** of **11**

Please direct your email response to Parisa.Ijadi-Maghsoodi@disabilityrightsca.org. Please do not respond only via U.S. Mail.

Finally, because the need for COVID related services is so urgent, please be advised that this letter constitutes our last attempt to avoid litigation in this matter. Further, at the request of our client organization, we are making this letter public so that they can provide it to their members and interested community members.

Sincerely,

A handwritten signature in blue ink, appearing to read "Parisa Ijadi-Maghsoodi".

Parisa Ijadi-Maghsoodi
Nishanthi Kurukulasuriya
Emily Ikuta
Disability Rights California

Enclosure

EXHIBIT 2

DEPARTMENT OF DEVELOPMENTAL SERVICES

1600 NINTH STREET, Room 340, MS 3-12
SACRAMENTO, CA 95814
TTY: 711
(916) 651-6309



February 26, 2021

Parisa Ijadi-Maghsoodi
Disability Rights California
530 B Street, Ste.400
San Diego, CA 92101

Re: Welfare and Institutions Code §4731 Complaint Appeal

Dear Ms. Ijadi-Maghsoodi:

On January 8, 2021, the Department of Developmental Services (DDS) received the complaint appeal filed by Disability Rights California (DRC), pursuant to Welfare & Institutions (W&I) Code §4731(c), against Harbor Regional Center (HRC). The appeal was filed on behalf of Padres Buscando el Cambio (PBC), an organization of Latinx parents of individuals served by HRC.

DDS examined documents submitted by DRC, HRC and appeals filed against HRC pursuant W&I Code §4731(c). The alleged violations identified in the appeal, and DDS' findings are contained in this correspondence.

Complaint Summary

In correspondence dated December 18, 2020, DRC requested that HRC address the "failure to provide adequate support to families affected by the COVID-19 pandemic," and raised concern about accessibility to services through Individual Program Plan (IPP) and Person-Centered planning practices.

Additionally, DRC's correspondence identified a variety of corrective actions that it requested HRC undertake, such as: (1) meeting consumers' pandemic-related needs; (2) improving service coordination; (3) consistently providing Notices of Action; (4) ensuring zero tolerance for intimidation and retaliation against consumers and families; (5) sending a letter to consumers and families regarding reassessment of needs, notices of action and complaint and appeal rights; and (6) engaging in meaningful communication with families to resolve issues.

DDS Actions, Investigative Activities and Findings

Response to Family Letter Dated June 15, 2020

Beginning in April 2020, DDS' Office of Community Operations (OCO) began receiving complaints, primarily via phone calls, from Hispanic families in HRC's catchment area regarding inadequate and/or denied services and poor communication with case management staff. On June 16, 2020, DDS Director, Nancy Bargmann, received a letter (dated June 15, 2020) signed by 13 parents, and supported by 40 additional parents of individuals served by HRC, expressing concerns regarding poor communication and lack of support from case management, not getting needed services nor assistance with accessing generic services, disparity and inequity in service delivery as well as with HRC policies and practices. Additionally, DDS was copied on a letter from DRC to HRC dated June 15, 2020, requesting a meeting based on similar complaints. DRC sent a second letter dated June 23, 2020, with the same request to meet, which HRC declined. In August 2020, the Department was contacted by the State Council on Developmental Disabilities (SCDD) upon receipt of similar complaints about HRC practices.

Between June and October 2020, DDS staff met several times with the two leaders representing the families who signed and supported the June 16, 2020 letter. DDS staff, including Director Bargmann, held a meeting on August 25, 2020, with many of the families to hear about their experiences with HRC firsthand. DDS' OCO staff subsequently followed up with those families and spoke with HRC's case management leadership numerous times regarding specific situations in which families reported inadequate and/or denied services, poor communications with service coordinators and reports of retaliation. DDS' OCO staff also reviewed HRC's website in September 2020 to ensure purchase of service (POS) policies were posted and met statutory requirements with special attention given to respite, personal assistance and day care policies.

In examining these concerns, DDS attended HRC's public board meetings and disparity meetings, held various meetings with family leaders, spoke directly with numerous families, reviewed HRC's purchase of service expenditure data, policies and procedures, and communicated with HRC case management leadership.

DDS confirmed that there were issues with Spanish translation at HRC's POS disparity meeting held on June 12, 2020, necessitating a second meeting with appropriate translation on August 27, 2020. Though not given individuals' names or specific examples, DDS consistently heard that families were not given a list of agreed upon services or draft Individual Program Plans (IPPs) in their preferred language. Additionally, families reported that IPPs were not updated to reflect the changing needs of their children, particularly after the onset of the COVID-19 pandemic. Families reported frustration with service coordinators' lack of responsiveness, support and compassion during the pandemic. Families were especially concerned that they had not received notices of action after requests for personal assistance had been denied; stating that HRC said they authorized child-care services instead, so a requested service was not actually denied.

On September 18, 2020, DDS' review of POS policies and procedures posted on HRC's website revealed that respite, and day care policies, which includes personal assistance services, are posted in both English and Spanish. They outline a process for the use of generic resources and information about proof of generic resources denials. POS policy literature reflected a person-centered approach to help individuals and families prepare for IPP/IFSP meetings but are provided in English only. There are tools and handbooks posted explaining the planning team process and the types of services HRC authorizes. The HRC Respite policy is available in both English and Spanish and includes the assessment tool used to determine service hours.

The policies do not outline the exception policy process nor instructions of how to appeal regional center decisions. The title of the "Day/After School Care" POS policy was unclear, as it covers day care, personal assistance and other service types. There was also no reference to an assessment process for this policy.

Given the ongoing concerns regarding service access and equity from HRC's Hispanic community, DDS sent correspondence to HRC on December 21, 2020, requiring them to submit a plan of corrective actions. HRC submitted its plan on February 12, 2021, and that plan was used, in part, to develop the corrective plan of action found at the end of this correspondence. Areas of concerns identified in the December 21, 2020, letter and the required corrective actions included:

Language Accessibility – Complaints were received from families reporting that they were asked to sign the list of agreed-upon services and/or draft IPP documents in English when they explicitly asked for them to be provided in Spanish. Several families indicated they were informed that documents would remain in

English until the IPP was finalized, at which time they would be translated in Spanish. Per W&I Code §4646, regional centers must provide individuals, parents, legal guardians, conservators or authorized representatives with a list of agreed-upon services and supports, including the projected start dates, frequency and duration, and service providers at the conclusion of the IPP meeting in the family's preferred language.

Corrective Actions Required –HRC to address language accessibility for all public and service-related meetings held with Spanish-speaking families, including the provision of copies of a list of services and supports and the IPP in the native language of the individual or the individual's family, legal guardian, conservator, or authorized representative.

Right to Due Process – Families reported that when they request a service, they are often told they do not meet the criteria for the service and a notice of action is not warranted based on HRC's POS policies. Pursuant to W&I Code §4710(a)(2) and §4710(b), regional centers are required to issue a written notice of action when a new service or support is denied by the regional center, or a service or support is reduced, changed or terminated and the individual or their family disagrees.

Corrective Actions Required – HRC to review relevant policies and procedures regarding issuance of notices of action and revise them as needed. To ensure HRC staff are trained in this area and that individuals' and families' right to due process remains intact, HRC must also evaluate its case management leadership as well as its service coordinators' knowledge of and compliance with due process requirements and include actions to remediate existing training or compliance issues in this area.

Community Engagement/Relations – A group of families has addressed HRC in public board meetings, POS disparity meetings and contacted DDS, DRC and SCDD for assistance because they reported feeling marginalized, disrespected and ignored by HRC's Board and executive leadership. As families have escalated their complaints to the Department, they report fearing retaliation for voicing their concerns and that filing a fair hearing request or consumers' rights complaint with HRC will jeopardize their ability to get needed services.

Corrective Actions Required – HRC to assess the culture within the regional center and take immediate action to remediate the perceived insensitivity of staff in their communications with the individuals and families served. This may

include, but is not limited to, requiring all staff to complete cultural and linguistic sensitivity training and increasing the Community Outreach Specialist's engagement with Hispanic families to repair the relationship.

Actions after Receipt of DRC Complaint

Upon receipt of DRC's complaint pursuant to W&I Code §4731 on January 8, 2021, DDS requested additional information from HRC regarding consumers' rights complaints and whistleblower complaints they had received between July 1, 2017, and January 21, 2021. DDS reviewed that information as well as any consumers' rights complaints that had been appealed to DDS and whistleblower complaints received by DDS during that same time period. A summary and analysis of that information is as follows:

W&I Code §4731 Complaints

A total of 25 W&I Code §4731 complaints were filed with HRC between July 1, 2017, and January 21, 2021. Of the 25 complaints, 16 were filed on behalf of Hispanic individuals, 14 for whom Spanish is their primary language. Of the 25 complaints filed, 13 related to the complaints of this investigation. Ten (10) of those complaints were related to service coordination with eight (8) being filed on behalf of Hispanic individuals, six (6) for whom Spanish is their primary language. The other three (3) were related to HRC not issuing a notice of action with two being filed on behalf of Hispanic individuals whose primary language was Spanish.

W&I Code §4731 Complaint Appeals

DDS received four W&I Code §4731 complaint appeals between July 1, 2017, and January 21, 2021. One of the four (25%) was on behalf of an individual identified as Hispanic and Spanish-speaking. One of the four (25%) were related the complaints of this investigation, specifically regarding IPP implementation. DDS did not identify any consumer rights violations.

Whistleblower Complaints

Between July 1, 2017, and January 21, 2021, HRC reported receiving two (2) Whistleblower complaints and DDS received five (5). Upon DDS review, none of the Whistleblower complaints were related to the complaints of this investigation.

Calls Received by DDS

Upon receipt of DRC's complaint, DDS summarized the calls received by DDS' OCO staff in calendar year 2020 and analyzed them based on the complaints of this investigation. Of the total calls received by OCO in calendar year 2020, approximately 12% were from individuals and families served by HRC and approximately half of those calls were relevant to the complaints of this investigation. Those calls represent 33 individuals/families and were related to in-home or respite service needs not being met, lack of issuance of notices of action when services were denied, and retaliation of HRC when families complained to DDS, DRC or SCDD.

In response to complaint calls, OCO staff assess the caller's concern, provide technical assistance based on the complaint and when given permission, contact the regional center to assist the caller in resolving the issue, as appropriate. Additionally, OCO staff explain the caller's complaint, appeal and due process rights, including the statutory process for a service-related disagreement. Contact information is also provided for DRC's OCRA and SCDD if the caller has a concern about individual rights.

HRC Policy Review

DDS reviewed the following HRC policies and procedures for consistency with statute, regulation and contractual obligation: Consumer Complaint Process (adopted September 25, 2018), Due Process/Fair Hearings (adopted November 12, 2019), and Whistleblower Policy (adopted October 1, 2020).

These policies and procedures were determined to be consistent with statutory, regulatory and contractual requirements. Based on a review of HRC's website on February 17, 2021, the regional center's Whistleblower Policy is available in English only. Forms to file a W&I Code §4731 or fair hearing request are available in English and Spanish. There is also a link to the DDS webpage for information on how to file various complaints.

Based on the current complaint, DDS re-reviewed HRC's website on February 19, 2021, to again ensure POS policies were posted and met statutory requirements with special attention given to respite, personal assistance and day care policies. There were no changes in the findings from the previous review.

In summary, after review of W&I Code §4731 complaints and appeals, and Whistleblower complaints, DDS found that more Hispanic families are filing complaints. Though we do not have insight into the ethnicity or primary language of individuals and

families who called DDS to make a complaint, the investigation confirms that more complaints are filed by Hispanic families and that many of the issues raised align with the complaint of this investigation.

HRC serves approximately 15,000 individuals and approximately 42% are Hispanic and Spanish is the primary language for 17%. Though the number of letters, calls, consumers' rights complaints, appeals, and Whistleblower complaints may be small in comparison, the message is clear and concerning. There are Hispanic families who report that they are denied needed services or do not receive adequate services to meet their needs. When services are denied, they report not receiving appropriate notices of action. As families have escalated their concerns to DDS, they report fearing retaliation for voicing their concerns and that filing a fair hearing or consumers' rights complaint with HRC will jeopardize their ability to get needed services. DDS is dedicated to ensuring that individuals and their families receive needed services in a responsive, respectful and culturally competent and sensitive manner. As such, the following corrective actions will be required of HRC:

Required Corrective Actions

Building upon the corrective actions required in DDS' December 21, 2020 letter to HRC; and consistent with the timelines identified below, HRC shall submit evidence that the following corrective actions have been taken. All corrective actions must be verifiable through written documentation. HRC shall submit monthly status updates to DDS until all corrective actions have been taken.

Language Accessibility

DDS identified that HRC was not providing a list of agreed upon services in the preferred language of the family at the conclusion of IPP meetings. W&I Code §4646, requires regional centers to provide individuals, parents, legal guardians, conservators or authorized representatives with a list of agreed-upon services and supports, including the projected start dates, frequency and duration, and service providers at the conclusion of the IPP meeting in the individual or family's preferred language.

In correspondence dated February 12, 2021, HRC indicated that training on this requirement was provided to all service coordinators who were instructed to leave a copy of the list of agreed upon services with the family at the conclusion of the IPP meeting.

Corrective Actions Required – By March 31, 2021, HRC will update and formally approve its *Meetings* and *Individual/Person Centered Plan* procedures to include a list of agreed upon services shall be left with the individual or family at the conclusion of the IPP, and that it is provided in the individual or family's preferred language. HRC will submit a plan to conduct regular audits of case records to ensure information is being provided in the preferred language for all individuals. All service coordination staff will receive training on the revised procedures by April 30, 2021. HRC's website shall be updated to include the ability to translate information into different languages and the Complaints section will provide forms in English and Spanish. Links to DDS' website will also be available.

Notice of Action

Families reported to DDS that they are told they do not meet the criteria for a service and a notice of action is not warranted based on HRC's POS policies. Families have also reported fearing retaliation for filing a fair hearing request or consumers' rights complaint with HRC and jeopardizing their ability to get needed services. W&I Code §4710(a)(2) and §4710(b), require regional centers to issue a written notice of action when a new service or support is denied by the regional center, or a service or support is reduced, changed or terminated and the individual or their family disagrees.

HRC's February 12, 2021, correspondence indicated that service coordinators were trained in this area and HRC has a procedure that directs service coordinators to review and provide a copy of the regional center's *Notice of Complaint and Fair Hearing Process* to the individual or family. At the conclusion of the IPP, the individual or family is asked to verify, through signature, they have been provided fair hearing information.

Corrective Actions Required – HRC's adequate notice process will be reviewed with staff formally by April 30, 2021, and shall include training on providing appropriate adequate notice and providing individuals and families information on their appeal and/or complaint rights. Additionally, HRC's Client Complaint Process policy shall be revised by April 30, 2021, to incorporate specific language indicating that HRC has zero-tolerance for retaliation toward individuals and families. All HRC staff, including management staff, and the Board of Directors shall be trained on the zero-tolerance policy by May 31, 2021.

Community Engagement/Relations

Families have addressed HRC in public board meetings, POS disparity meetings and contacted DDS, DRC and SCDD for assistance because they report feeling marginalized, disrespected and ignored by HRC's Board and executive leadership. As families have escalated their complaints to DDS, they have indicated they fear retaliation for bringing their complaints to light.

HRC's February 12, 2021, correspondence indicates the regional center is making efforts to provide outreach to their Hispanic community and engage in discussions with the goal of healing existing relationships and establishing new relationships with the various Hispanic groups within their community. Additionally, a training plan is being developed with DRC's OCRA and the Learning Rights Law Center to assist HRC in addressing the needs of the Hispanic community. A training calendar will be completed by May 31, 2021. HRC also indicated that quarterly meetings with DRC's OCRA will have a standing agenda topic to identify both overarching and specific concerns from the community.

Corrective Actions Required – HRC will provide linguistic and cultural competency training to all new staff as part of their formal onboarding. This training will also be provided to all HRC staff by August 31, 2021. Linguistic and cultural competency training shall also be provided to HRC's Board of Trustees in fiscal year 2021-22. The specific date of the board's training session will be posted to the HRC website's Board Training calendar by June 30, 2021.

By copy of this correspondence, HRC will be notified of the decisions contained in this determination. In conjunction with HRC's monthly status reports verifying that corrective actions have been taken, DDS will also continue its ongoing monitoring activities to ensure changes are sustained that result in improved service access and equity for HRC's Hispanic community.

Parisa Ijadi-Maghsoodi, Disability Rights California
February 26, 2021
Page ten

If you have questions regarding this correspondence, please contact Tom Blythe, Assistant Chief, Appeals, Complaints and Projects Section, at (916) 654-2426, or by email, at tom.blythe@dds.ca.gov.

Sincerely,

Original signed by:

ERNIE CRUZ
Assistant Deputy Director
Office of Community Operations

cc: Patrick Ruppe, Harbor Regional Center
Brian Winfield, Department of Developmental Services
Erica Reimer Snell, Department of Developmental Services
Aaron Christian, Department of Developmental Services
LeeAnn Christian, Department of Developmental Services
Hiren Patel, Department of Developmental Services

EXHIBIT 3



LEGAL ADVOCACY UNIT

530 B Street, Ste. 400

San Diego, CA 92101

Tel: (619) 239-7861

TTY: (800) 719-5798

Fax: (619) 239-7906

Intake Line: (800) 776-5746

www.disabilityrightsca.org

March 25, 2021

Via U.S. Mail and E-mail: nancy.bargmann@dds.ca.gov

Nancy Bargmann
Director, California Department of Developmental Services
P.O. Box 944202
Sacramento, CA 94244-2020

Re: Pre-litigation Demands to Address Deficiencies in Welfare & Institutions Code §4731 Appeal Decision

Dear Director Bargmann:

As you know, Disability Rights California represents the parent group Padres Buscando el Cambio, whose members are primarily Hispanic parents of individuals served by Harbor Regional Center (HRC). Our client and its members are the Complainants in this matter.

On February 26, 2021, DDS issued a decision on our client's Welfare & Institutions Code § 4731 complaint. The decision accurately finds that Hispanic families are *denied* needed services and have *unmet* needs. The decision also accurately sets forth DDS's legal *duty* (phrased in the decision as a "dedication") to ensure HRC consumers receive services in a responsive manner. But as discussed below, DDS's corrective actions fall woefully short of resolving our client's complaint.

DDS's Appeal Decision Does Not Respond to the Concerns Raised in the Appeal

The decision fails to remedy the unlawful and discriminatory manner in which HRC administers its service coordination and in-home support policies. To the extent the decision intends to remedy these issues by requiring language access corrections, the corrective actions are insufficient and disregard the issues raised in the complaint. Language access was not one of the issues raised in the complaint. Moreover, defining (and perhaps, excusing) the discriminatory effects of HRC's actions as a result of a "language barrier" is offensive.

We understand HRC is an integral part of DDS's system, but DDS is legally required to ensure HRC complies with all governing laws. This responsibility includes Government Code § 11135 which prohibits discrimination in state-funded programs and activities. We urge DDS to issue the corrective actions necessary to resolve the outstanding issues in our client's complaint. Here, we address the decision's deficiencies to provide DDS the opportunity to take further action.

The Decision Fails to Remedy the Discriminatory Manner in which HRC Administers its Service Coordination and In-Home Supports Policies, and Incorrectly Equates Hispanic Families' Unmet Needs with Language Access

The complaint details HRC's discriminatory administration of services and supports. The complaint outlines problems with HRC's policies and practices related to the assessment, approval, and procurement of in-home supports. It also specifies urgent changes necessary to ensure families' requests for in-home supports are met during the COVID-19 pandemic. In addition, the complaint provides data illustrating how HRC authorizes only 37 cents on Hispanic consumers for every dollar it authorizes to spend on white consumers.

Yet, the only corrective action DDS requires, presumably in response to these concerns, pertains only to language access. Equating Hispanic families' *unmet* need for necessary in-home supports to solely a language access problem is insufficient given the detailed allegations in the

complaint. These allegations are supported by DDS's findings in its decision.

The complaint details how HRC administers in-home supports and provides legally inadequate service coordination in a manner that harms Hispanic families. For example, in-home support assessments fail to account for COVID-19 related factors, including caregiving duties for other members in the home. To the extent HRC may insist that certain in-home supports should be provided by generic resources, it fails to provide service coordination to help Hispanic families both identify and pursue those resources, and it fails to ensure that no gaps in necessary services occur pending that identification and pursuit. This failure disproportionately adversely impacts Hispanic families. The complaint also proposes changes that will address the root of the discrimination, including specific amendments to assessment tools. But DDS's decision avoids entirely these concerns.

Moreover, pointing the finger at the language ability of Hispanic consumers as the sole cause of the discrimination and disparities is alarming. In effect, DDS acknowledges that HRC withholds services and supports from Hispanic families, but excuses HRC's actions as a language barrier issue. Given the detailed complaint, DDS's summary disregard about the problems identified as sources of the disparity is unreasonable and further evidences DDS's ongoing failure to comply with its responsibilities under state law.

In addition, given DDS's role in overseeing HRC's compliance with governing law, the decision's focus on language access is suspect. As a statutorily created and state funded entity, HRC is legally obligated to provide language access and DDS is the entity legally obligated to ensure compliance. If DDS considers language access to be the sole source of the disparity, we question how DDS failed to identify this deficiency during its regular audits and/or reviews.

Because the Complaint Alleges Disparate Impact, DDS Erred in Applying a Facial Discrimination Standard

In its decision, DDS finds that HRC's POS policies "met statutory requirements". But the complaint challenges the way in which HRC

administers its service coordination and in-home support policies, because its administration causes a disparate impact. The complaint does not allege that HRC's publicly posted policies are facially discriminatory.

Conclusion

Unfortunately, DDS did not contact, at any time, our office during its investigation. We posit that if it had, we could have addressed these inadequacies in DDS's decision. As a result, due to the urgency of the requested relief and DDS's inadequacies illustrated above, our client demands that DDS take immediate action to remedy its insufficient response to the appeal. Moreover, if more information is needed, please contact us immediately at parisa.ijadi-maghsoodi@disabilityrightsca.org or (619) 814-8518. It is imperative that DDS utilize these offered resources to ensure that it does not cause any further delay. Accordingly, please contact our office before April 9, 2021 with the steps DDS will take to resolve the issues raised above and a specific timeframe for each step.

Finally, we advise that this letter constitutes our client's final attempt to avoid litigation in this matter. If we do not hear from you by April 9, 2021, our client reserves the right to pursue all legal and equitable remedies against HRC and DDS.

Sincerely,



Parisa Ijadi-Maghsoodi
Nishanthi Kurukulasuriya
Emily Ikuta
Disability Rights California

CC: *via email only*

Patrick Ruppe, Harbor Regional Center
Tom Blythe, Hiren Patel, Brian Winfield, Ernest Cruz, Department of
Developmental Services