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14 IN THE UNITED STATES DISTRICT COURT
15 FOR THE NORTHERN DISTRICT OF CALIFORNIA

16 MARK CHAMBERS, WOODROW FALLS,)
17 JR., M. H., PHILLIP K., GERALD SCOTT,)
18 MARY T. and THE INDEPENDENT LIVING)
19 RESOURCE CENTER OF SAN)
20 FRANCISCO, et al.)

21 Plaintiffs,

22 v.

23 CITY AND COUNTY OF)
24 SAN FRANCISCO)

25 Defendant.)

26 Case No.: C06-06346 WHA

27 **FIRST AMENDED COMPLAINT FOR
28 DECLARATORY AND INJUNCTIVE
RELIEF**

CLASS ACTION

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NORTHERN DISTRICT OF CALIFORNIA

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PAGE NUMBER AND LINE	ADDITION
Page 4, Lines 3-6	INTRADISTRICT ASSIGNMENT 15. Pursuant to Civil L.R. 3-2(c), this action should be assigned to the San Francisco Division of the Northern District of California which serves the City and County of San Francisco, in which the events or omissions giving rise to the claims are believed to have occurred.
Page 30, Lines 4-9	CERTIFICATION OF INTERESTED ENTITIES OR PERSONS 132. Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, October 12, 2006, other than the named parties: Mark Chambers, Woodrow Falls Jr., M.H., Phillip K., Gerald Scott, Mary T., the class of individuals defined in Paragraph 58 above represented by the named plaintiffs, and the Independent Living Resource Center of San Francisco, there is no such interest to report.

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INTRODUCTION

1. Federal and state law require that people with disabilities who need long-term care receive these services in the most integrated setting appropriate to their individual needs and that they not be unnecessarily segregated and isolated in nursing homes. Instead, needed services must be provided in a manner that enables people with disabilities to remain in or return to their home communities if they so choose. The United States Supreme Court affirmed this right in *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581 (1999), which held that unnecessary institutionalization is a form of illegal discrimination under the Americans with Disabilities Act (ADA). The *Olmstead* holding requires that individuals with disabilities be provided services in community settings, instead of in institutions, when the individuals are determined to be capable of, and do not oppose, community-based treatment.

2. Plaintiffs, who are individuals with disabilities and need long-term care, bring this case to challenge the City and County of San Francisco's (Defendant's) long-term care policies and practices. Defendant's actions and omissions result in the unnecessary segregation and isolation of Plaintiffs and class members at Defendant-owned and operated Laguna Honda Hospital and Rehabilitation Center (Laguna Honda) in violation of the ADA (42 U.S.C.A. §§ 12101-12213 (West 2005)), Section 504 of the Rehabilitation Act (Section 504) (29 U.S.C.A. §§ 794-794a (West 2006)), and California Government Code section 11135 (CAL. GOV'T CODE § 11135 (West 2006)). Defendant is responsible for securing and/or providing a range of community-based, long-term care services. Plaintiffs seek declaratory and injunctive relief to compel Defendant to provide Plaintiffs and class members with timely access to the home and community-based long-term care services which Defendant's own assessments have determined are the appropriate and preferred alternative to institutionalization at Laguna Honda.

3. In a prior lawsuit, *Davis et al. v. California Health and Human Services Agency, et al.* No. C00-2532-SBA (N.D. Cal.), Plaintiffs partially settled claims against Defendant with respect to providing class members with information about long-term care options and conducting non-biased assessments to Plaintiffs and class members to identify their care needs and preferences for

1 community living. (*See*, Exhibit A, Settlement Agreement with San Francisco, approved March 31,
2 2004). Defendant has implemented these provisions of the settlement through establishment and
3 operation of the Targeted Case Management (TCM) Program, which is responsible for assessing and
4 developing discharge plans for all individuals who are placed in, or at risk of placement in, Laguna
5 Honda. Defendant was to have complied with the settlement by September 29, 2004, but has
6 requested and received numerous stipulated extensions in order to fully meet its reporting and other
7 obligations under the settlement. Defendant's Motion for Compliance with the partial settlement is
8 due to be filed by April 1, 2007. (*See* Exhibit B, Stipulation and Order dated June 6, 2006). The
9 parties stipulated that the June 2006 extension would not prejudice Plaintiffs' right to file the claims
10 herein regarding discharge and the provision of community-based long-term care services, which
11 were not resolved in the previous case. (Exhibit B at 2:25-27).

12 4. Plaintiffs bring this action at this time because Defendant continues to fail to divert
13 and/or discharge individuals from Laguna Honda even though assessments by its own professionals
14 unequivocally show that the vast majority of Laguna Honda's more than 1,000 residents are capable
15 of living, and prefer to live, in a more integrated setting. State Pre-Admission Screening and
16 Resident Review (PASRR) evaluations of Laguna Honda residents with psychiatric disabilities
17 concur with these findings.

18 5. According to Defendant's City Controller, "[t]he City has effectively institutionalized
19 more of its population, across a wider spectrum of needs, than anywhere in the country...
20 approximately one out of every 700 San Franciscans is living at Laguna Honda Hospital."
21 Defendant operates Laguna Honda at a cost of \$180 million per year — up to \$500 per person per
22 day — in local, state, and federal funds.

23 6. Reports and recommendations produced by Defendant, its consultant, and other
24 entities — including findings of ADA violations by the United States Department of Justice (DOJ) —
25 demonstrate that Plaintiffs and class members could be appropriately served in the community but
26 for Defendant's discriminatory practices. Defendant has ignored these reports and
27 recommendations, most notably by pursuing plans to rebuild Laguna Honda as a segregated facility

1 with up to 1,200 beds and failing to make the recommended modifications to its community-based
2 long-term care system. Construction of the new Laguna Honda institution will cost taxpayers over
3 \$600 million – more than \$500,000 per bed.

4 7. By its conduct, Defendant denies Plaintiffs and class members the community long-
5 term care alternatives that should otherwise be available to them, including personal care services,
6 nursing and medical care, assistance with meals, case management, mental health and substance
7 abuse treatment, and other medically necessary services, as well as affordable, accessible housing.
8 Defendant's discriminatory practices, including methods of administration, funding and policy
9 priorities, and failure to make reasonable modifications in its programs and policies to prevent the
10 unnecessary isolation and segregation of Plaintiffs and class members, violate the ADA's
11 "integration mandate."

12 JURISDICTION

13 8. This action is brought pursuant to the Americans with Disabilities Act. 42 U.S.C. §§
14 12101-12213.

15 9. Defendant is a public entity subject to Title II of the Americans with Disabilities Act.
16 42 U.S.C. §§ 12131-12134.

17 10. This action is brought pursuant to The Rehabilitation Act of 1973 § 504. 29 U.S.C.
18 §§ 794-794a.

19 11. Defendant is a recipient of federal funds and is therefore subject to Section 504. 29
20 U.S.C. §§ 794-794a.

21 12. This Court has jurisdiction to decide Plaintiffs' action for declaratory relief pursuant
22 to 28 U.S.C.A. §§ 1331 and 1343(a)(3) (West 2006). This Court also has jurisdiction over Plaintiffs'
23 action for declaratory relief pursuant to 28 U.S.C.A. § 2201 (West 2006) and Rule 57 of the Federal
24 Rules of Civil Procedure. Injunctive relief is authorized by 28 U.S.C.A. § 2202 (West 2006) and
25 Rule 65 of the Federal Rules of Civil Procedure.

26 13. The Court has supplemental jurisdiction over Plaintiffs' state claim pursuant to
27 28 U.S.C.A. § 1367 (West 2006).

1 14. Venue is proper in this Court because Defendant is located in, maintains an office in,
2 and/or enforces the laws relevant to this litigation in the Northern District of California.

3 **INTRADISTRICT ASSIGNMENT**

4 15. Pursuant to Civil L.R. 3-2(c), this action should be assigned to the San Francisco
5 Division of the Northern District of California which serves the City and County of San Francisco,
6 in which the events or omissions giving rise to the claims are believed to have occurred.

7 **PARTIES**

8 **Organizational Plaintiff**

9 16. The Independent Living Resources Center San Francisco (ILRCSF) is a non-profit
10 organization providing a range of services and programs for San Franciscans with disabilities,
11 including class members. The ILRCSF's mission is to empower people with disabilities to achieve
12 full economic and social participation in the mainstream of society and to promote opportunities for
13 independence, self-direction and freedom of choice. Defendant's actions and failures to act impede
14 the ILRCSF's ability to carry out its mission and assist people with disabilities and members of the
15 Plaintiff class in accessing services to support independent living choices. The ILRCSF receives
16 federal and state funding and must file annual reports with the federal Rehabilitation Services
17 Administration, which sets performance goals and imposes reporting requirements related to the
18 percentage of clients whom the ILRCSF assists in moving from institutions to community settings.
19 Defendant's actions compromise the ILRCSF's ability to fulfill its federal and state responsibilities,
20 which results in potential noncompliance with its mandate. The ILRCSF has had to divert scarce
21 resources from its usual education, advocacy, counseling, and referral services to Laguna Hospital
22 residents, to investigation of Defendant's actions and inactions and efforts to counteract them.

23 **Individual Plaintiffs**

24 **Mark Chambers**

25 17. Mark Chambers is a 47-year-old man who has been at Laguna Honda for over six
26 years. He was admitted in 1999 after a severe head injury, which resulted in traumatic brain injury
27 (TBI) and a seizure disorder. Mr. Chambers uses a wheelchair and a computerized communication
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1 device; although he is able to speak, due to his TBI he is aphasic and difficult to understand.
2 Before his injury he worked in San Francisco as a computer systems manager.

3 18. Mr. Chambers desires discharge to a community living setting in San Francisco. In
4 2003, Laguna Honda staff identified the following services he needs to live in the community:
5 housing, meals, nursing care, transportation, rehabilitation services, adult day care, case
6 management, medication management, part-time personal care services, and substance abuse
7 treatment.

8 19. Mr. Chambers is desperate to leave Laguna Honda and be part of the outside world.
9 He has many interests, including photography and astronomy, and, while living at Laguna Honda,
10 has had volunteer jobs at Glide Memorial Church and the San Francisco Public Library.

11 20. Mr. Chambers' Laguna Honda treatment team recommended that he be discharged
12 to the community with supportive services. The TCM program has assessed him as eligible for
13 discharge.

14 21. Despite his stated preference to leave, Mr. Chambers remains at Laguna Honda. All
15 of the supports and services identified by Defendant in order for Mr. Chambers to live in a more
16 integrated setting are available, or can be provided with reasonable modifications to Defendant's
17 programs and/or policies.

18 **Woodrow Falls, Jr.**

19 22. Woodrow Falls, Jr. is a 56-year-old man who was first admitted to Laguna Honda in
20 1997 because of multiple strokes. Mr. Falls is HIV-positive, has a seizure disorder, is hemiplegic as
21 a result of his strokes, and uses a wheelchair. Mr. Falls requires assistance with transfers and
22 personal care and has difficulty communicating; however, when given adequate time, he can express
23 himself.

24 23. Mr. Falls desires to leave Laguna Honda and live in the community.

25 24. Several assessments from Laguna Honda indicate that Mr. Falls is capable of living in
26 the community. In July 1999, Laguna Honda staff determined that Mr. Falls had "good" potential
27 for rehabilitation. Assessments in 2002 and 2003 indicate that Mr. Falls could "potentially live in

1 some assisted living situation,” and that he “could consider community discharge with services.” A
2 2004 “Discharge Assessment” report stated that with the following resources, Mr. Falls could be
3 cared for outside of Laguna Honda: meals, transportation, adult day care, psychiatric care, substance
4 abuse services, case management, medication management, 24-hour personal care services, age-
5 appropriate setting, and housing.

6 25. Mr. Falls’ May 2006 evaluation by a state-contracted psychiatrist (PASRR Level II)
7 recommended that he be considered for a variety of services in an alternative placement including:
8 mental health services, targeted case management, medication support services, adult day health
9 care, physical and occupational therapy, personal care services, meal assistance, and AIDS waiver
10 services provided by the State.

11 26. Mr. Falls has demonstrated that he is capable of living independently in the
12 community. He regularly takes trips by himself to San Francisco with passes from Laguna Honda.
13 Mr. Falls has even attended community college classes at City College of San Francisco while
14 residing at Laguna Honda.

15 27. Despite his stated preference to leave, Mr. Falls remains at Laguna Honda. All of the
16 supports and services identified by Defendant and State evaluators in order for Mr. Falls to live in a
17 more integrated setting are available, or can be provided with reasonable modifications to
18 Defendant’s programs and/or policies.

19 **M. H.**

20 28. M.H. is a 40-year-old man with a history of multiple admissions to Laguna Honda as
21 early as 1997. He was most recently admitted to Laguna Honda in September 2005 from San
22 Francisco General Hospital (SFGH) after treatment there for depression and suicidal ideation. He
23 has advanced AIDS and uses a wheelchair due to avascular necrosis of the hips.

24 29. M.H. was previously able to walk with crutches, but his hips have deteriorated to the
25 point that he mainly uses a wheelchair to ambulate. In addition, he needs assistance with personal
26 care and medication management.

27 30. M.H. has repeatedly expressed a desire to leave Laguna Honda and live in San
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1 Francisco in a community setting.

2 31. Assessments from Laguna Honda show that M.H. is capable of living in the
3 community. M.H.'s September 20, 2005 "Admission Assessment" indicated that he could be
4 discharged to "more independent but structured" community housing in the future. A Laguna Honda
5 discharge assessment from a previous stay at Laguna Honda, dated November 18, 2004,
6 recommended independent community housing, nursing care, psychiatric care, substance abuse
7 services, case management, and medication management as resources needed to support M.H.
8 outside of Laguna Honda.

9 32. TCM assessments also show that M.H. desires and is capable of living in the
10 community with appropriate supports. His TCM case manager has identified a number of services
11 he would need to live in the community, including paratransit services, personal care services, case
12 management, housing, and meals on wheels.

13 33. Most recently, M.H.'s May 2006 evaluation by a state-contracted psychiatrist
14 (PASRR Level II) concluded that M.H. did not have a physical condition that appeared to require his
15 continued stay in a nursing facility.

16 34. The PASRR evaluation documented M.H.'s current preference to live in a
17 community setting and recommended community placement for M.H. with psychotropic medication
18 education and monitoring, individual psychotherapy, substance abuse treatment, day treatment
19 rehabilitation, personal care services, and peer counseling.

20 35. During August and September of 2006, M.H. traveled independently to Chicago and
21 spent almost three weeks visiting his mother there.

22 36. Despite his stated preference to leave, M.H. remains at Laguna Honda. All of the
23 supports and services identified by Defendant and State evaluators in order for M.H. to live in a
24 more integrated setting are available, or can be provided with reasonable modifications to
25 Defendant's programs and/or policies.

26 **Phillip K.**

27 37. Phillip K. is a 62-year-old man with a history of admissions to Laguna Honda. In
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1 July 2005, he came to Laguna Honda from SFGH, where he had been admitted in June 2005 for
2 treatment for a right hip fracture. Phillip K. has severe gastroesophageal reflux disease, a
3 tracheostomy, a gastronomy tube for feeding, and a diagnosis of mild organic brain disease and
4 psychosis. He also has a history of substance abuse. His physical and mental disabilities require
5 careful monitoring of his food intake, as well as assistance with personal care, ambulation, and the
6 management of his medication.

7 38. In his "Social History Assessment" of July 19, 2005, Phillip K.'s stay at Laguna
8 Honda is listed as "short term" and his discharge potential as "fair." His recommended discharge
9 destination is to "disabled subsidized housing with appropriate services."

10 39. Phillip K. has repeatedly stated a desire to be discharged from Laguna Honda. In a
11 meeting in January 2006, his discharge planning team noted his participation in the TCM Program,
12 and the areas of his care that needed to be addressed prior to discharge. According to Laguna
13 Honda and TCM staff, Phillip K. would need supportive housing, senior-focused case management,
14 home health services, adult day health care, transportation services, personal care services, and
15 home-and community-based waiver services administered by the state.

16 40. Despite Mr. K's stated preference to leave, he remains at Laguna Honda. All of the
17 supports and services identified by Defendant in order for Phillip K. to live in a more integrated
18 setting are available, or can be provided with reasonable modifications to Defendant's programs
19 and/or policies.

20 **Gerald Scott**

21 41. Plaintiff Gerald Scott is a 53-year-old man who has lived at Laguna Honda for over
22 26 years. He was a named plaintiff in the *Davis v. CHHSA* lawsuit. Mr. Scott was disabled by an
23 assault, which caused brain damage, quadriplegia, and a seizure disorder. He uses an electric
24 wheelchair to assist with mobility, and he has limited use of the right side of his body.

25 42. Due to his disabilities, Mr. Scott requires substantial assistance with transferring in
26 and out of his wheelchair, medication, money management, independent living skills, and personal
27 care, including toileting, bathing, and dressing.

1 43. In the years that Mr. Scott has been at Laguna Honda, numerous assessments have
2 shown him to be able to, and prefer to, live in the community with specified supports, including
3 personal care services and accessible housing.

4 44. The TCM program created a discharge plan for Mr. Scott in May 2004 that
5 recommended 24-hour personal care services, adult day care, accessible housing, case management
6 and peer mentoring.

7 45. Mr. Scott continues to want to leave Laguna Honda and would do so if appropriate
8 services were available to him. All of the supports and services identified by Defendant in order for
9 Mr. Scott to live in a more integrated setting are available, or can be provided with reasonable
10 modifications to Defendant's programs and/or policies.

11 **Mary T.**

12 46. Mary T. is a 52-year-old woman who was admitted to Laguna Honda in December
13 2005. She has five children, one of whom is a current resident of Laguna Honda as well. Mary T.
14 came to Laguna Honda from SFGH where she was admitted for stomach pain and weakness. Mary
15 T. has AIDS and has had a number of strokes, which require her to use a cane for balance. Due to
16 her continued disabilities, Mary T. needs assistance with medication monitoring, personal care,
17 money management, shopping, and transportation.

18 47. In her initial "Resident Social History Assessment," Mary T.'s social worker reported
19 Mary T.'s desire to leave Laguna Honda, and stated her discharge potential as "good" and her stay as
20 "short term." Similarly, the "History and Physical Examination" performed at Mary T.'s admission
21 to Laguna Honda stated that, "She will probably be able to be discharged from Laguna Honda
22 possibly, but only in several months."

23 48. From the moment she arrived at Laguna Honda through today, Mary T. has
24 consistently expressed a desire to leave Laguna Honda.

25 49. Mary T. has been working with a TCM case manager since she was accepted into the
26 program at the beginning of March 2006. Her TCM Linkage plan lists a number of services she
27 needs in the community, including case management, supportive housing, home health care,
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1 vocational rehabilitation, and transportation assistance. At a June 2, 2006 meeting, her discharge
2 planning team agreed that she no longer needs to remain in a skilled nursing facility and identified a
3 need for substance abuse counseling and primary health care, as well as representative payee
4 services.

5 50. Despite Mary T.'s stated preference to leave, she remains at Laguna Honda. All of
6 the supports and services identified by Defendant in order for Mary T. to live in a more integrated
7 setting are available, or can be provided with reasonable modifications to Defendant's programs
8 and/or policies.

9 **Defendant**

10 51. Defendant is the entity responsible for administration of the Medi-Cal program in the
11 City and County of San Francisco, including, but not limited to, Medi-Cal funded specialty mental
12 health services and targeted case management.

13 52. Defendant owns, operates, and subsidizes Laguna Honda Hospital and Rehabilitation
14 Center and San Francisco General Hospital.

15 53. Defendant is responsible for administering long-term care services for San Francisco
16 residents, including through its Department of Public Health, Department of Aging and Adult
17 Services, Department of Human Services, and Mayor's Office on Housing.

18 54. Defendant is responsible for referring eligible individuals to, administering,
19 contracting for, funding, and/or directly providing community-based long-term care services,
20 including housing, in San Francisco.

21 55. Defendant receives federal financial assistance to provide long-term care services at
22 Laguna Honda and in the community, such as Medi-Cal and various federal housing monies.

23 56. Defendant receives State financial assistance to provide long-term care services at
24 Laguna Honda and in the community, such as Medi-Cal, various State housing monies, and State
25 General Fund dollars.

26 57. Defendant receives and allocates various local monies, including tobacco litigation
27 settlement funds, to provide health care services, including long-term care services, to its residents.

1 **CLASS ACTION ALLEGATIONS**

2 58. Plaintiffs bring this action on behalf of a class consisting of all adult Medi-Cal
3 beneficiaries who:

- 4 a. are or will become residents of Laguna Honda Hospital and Rehabilitation
- 5 Center, or
- 6 b. are or will be on waiting lists for Laguna Honda Hospital and Rehabilitation
- 7 Center; or
- 8 c. are or will be within two years of discharge from Laguna Honda Hospital and
- 9 Rehabilitation Center; or
- 10 d. are or will become patients at San Francisco General Hospital or other
- 11 hospitals owned or controlled by the Defendant, who are eligible for discharge
- 12 to Laguna Honda Hospital and Rehabilitation Center.

13 59. A class of this definition was certified in *Davis v. CHHSA* by Order dated June 12,
14 2002. Pursuant to the *Davis* settlement terms, Defendant agreed to waive all objections to class
15 certification provided that claims are filed within one year of the Court’s ruling on Defendant’s
16 motion for compliance with the prior lawsuit, due to be filed by April 1, 2007. Exh. A at ¶ 8.1.

17 **STATUTORY FRAMEWORK**

18 **Anti-Discrimination Laws**

19 60. On July 26, 1990, President George H.W. Bush signed into law the Americans with
20 Disabilities Act (ADA), 42 U.S.C. §§ 12101-12213, establishing the most important civil rights law
21 for persons with disabilities in our nation’s history.

22 61. In enacting the ADA, Congress was particularly concerned about the unnecessary
23 segregation and institutionalization of people with disabilities and the resulting lack of full
24 participation in and access to community services and activities. 42 U.S.C. §§ 12101(a)(2), (a)(5),
25 (a)(8).

26 62. Title II of the ADA prohibits public entities, such as Defendant, from discriminating
27 against the individuals with disabilities that they serve. 42 U.S.C. §§ 12131-32. “Discrimination” as

1 defined by the ADA includes the segregation of persons with disabilities from society as a result of
2 unnecessary institutionalization. 42 U.S.C. § 12101.

3 63. The regulations promulgated under Title II specifically provide that “a public entity
4 shall administer services, programs and activities in the most integrated setting appropriate to the
5 needs of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d) (2006). The regulations also
6 specify a variety of requirements aimed at ensuring nondiscrimination, including the provision of
7 access, modification of practices and policies, and the provision of auxiliary aids and services. The
8 regulations prohibit Defendant from administering programs in a discriminatory manner.
9 28 C.F.R. Part 35.

10 64. The United States Supreme Court in *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581
11 (1999), held that the unnecessary institutionalization of individuals with disabilities is a form of
12 discrimination under Title II of the ADA. In doing so, the high Court interpreted the ADA’s
13 “integration mandate” as requiring persons with disabilities to be served in the community when: 1)
14 Defendant determines that community-based treatment is appropriate; 2) the individual does not
15 oppose community placement; and, 3) community placement can be reasonably accommodated. 527
16 U.S. at 607.

17 65. Section 504 of the Rehabilitation Act of 1973, on which the ADA is modeled, sets
18 forth similar protections against discrimination by recipients of federal funds, such as Defendant
19 herein. These protections include the prohibition against unnecessary segregation. 29 U.S.C. §§
20 794-794a.

21 66. Likewise, California’s non-discrimination statute prohibits, and provides civil
22 enforcement rights against, unnecessary institutionalization by entities receiving State funds, such as
23 Defendant. CAL. GOV’T CODE §§ 11135-11139 (West 2006).

24 **Medi-Cal**

25 67. The federal Medicaid statute, at 42 U.S.C.A §§ 1396-1396v (West 2006), establishes
26 a cooperative federal-state medical assistance program designed to provide necessary medical
27 services to low-income people. Known as “Medicaid,” the program is administered by the states,
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1 which are required to follow federal statutory and regulatory guidelines. California's plan for
2 medical assistance under the federal Medicaid statute is known as Medi-Cal, and is set forth in the
3 Welfare and Institutions Code. CAL. WELF. & INST. CODE §§ 14000-14685 (West 2006).

4 68. The Medi-Cal State Plan provides payments for a variety of services such as nursing
5 facility care, acute hospital care, personal care services (PCSP), and home health care. CAL. HEALTH
6 & SAFETY CODE § 1250(a),(c) (West 2006); CAL. WELF. & INST. CODE § 14132.95; CAL. CODE
7 REGS. tit. 22 § 51337 (2006). Medi-Cal State Plan services are available to persons with disabilities
8 in the community as an entitlement: if individuals meet the eligibility criteria for receipt of the
9 services, including the requirement that the services be medically necessary, then they have a right to
10 receive them with reasonable promptness. 42 U.S.C.A § 1396a(a)(8).

11 69. Medi-Cal funded targeted case management services are available in San Francisco to
12 persons who are at high risk for institutionalization, who have language or comprehension barriers,
13 who lack community support, or who are in frail health and in need of assistance to gain access to
14 services and prevent institutionalization. CAL. CODE REGS. tit. 22 § 51365 (2006). Defendant is
15 obligated to commit local matching funds to provide targeted case management to all eligible
16 individuals.

17 70. San Francisco is also responsible for delivering Medi-Cal funded comprehensive
18 Specialty Mental Health services, and other mental health services, to eligible individuals. CAL.
19 WELF. & INST. CODE §§ 14680-14685 and implementing regulations; CAL. WELF. & INST. CODE §§
20 5600-5898 (West 2006).

21 71. In addition to Medi-Cal State Plan services, federal law allows the federal
22 government to waive certain provisions of federal Medicaid law in order to allow states to provide
23 home and community-based services in lieu of institutional care, for qualifying individuals.
24 42 U.S.C. § 1396n(c)(1). These programs are known as "Home and Community-Based Waivers"
25 and they offer a broad range of community-based long-term care services, such as personal care
26 assistance, nursing care, home modifications, and habilitation. CAL. CODE REGS. tit. 22 §§ 51173.1,
27 51176 (2006).

1 **STATEMENT OF FACTS**

2 **Davis Lawsuit**

3 72. In July 2000, 10 residents of Laguna Honda and the ILRCSF filed a class action
4 lawsuit in this Court, *Davis et al. v. California Health and Human Services Agency et al.*, No. C00-
5 2532-SBA, alleging that Defendant and State Defendants Health and Human Services Agency, and
6 Departments of Health Services, Aging, Social Services and Mental Health had violated the rights of
7 Plaintiffs and class members by failing to inform them of, assess them for, and provide them with,
8 appropriate home and community based long-term care services in lieu of placement at Laguna
9 Honda. That case was partially settled with Defendant and the State Defendants in March 2004 and
10 the entire case was dismissed without prejudice.

11 73. During the *Davis* lawsuit, the parties agreed to bifurcate the case in order to attempt
12 to settle only the claims regarding information about and assessment for home and community-based
13 long-term care services. A final settlement was achieved after almost two years of good faith
14 negotiations, during which time the remaining claims regarding discharge to the community and
15 provision of community-based long-term care services were not litigated or settled. Pursuant to the
16 settlement, the Court retained jurisdiction for the limited purposes of enforcing Defendant's
17 reporting obligations under the settlement and to preside over Defendant's Motion for Compliance
18 with the settlement terms (*See Exhibit A at ¶ 2.2.2*). Defendant San Francisco agreed to waive all
19 objections to class certification in the present case provided that claims herein are filed within one
20 year of the Court's ruling on Defendant's Motion for Compliance with the claims settled in the
21 *Davis* lawsuit, due to be filed by April 1, 2007. (*Exhibit A at ¶ 8.1*). Pursuant to the parties'
22 stipulation to extend Defendant's timeline for compliance, Plaintiffs reserved the right to file the
23 claims herein regarding discharge and provision of community-based long-term care services, at any
24 time. (*Exhibit B at ¶ 2:25-27*).

25 74. The settlement with the State Defendants provided that Defendant Department of
26 Mental Health revamp its assessment of Laguna Hospital residents with psychiatric disabilities
27 through the Pre-Admission Screening and Resident Review (PASRR) process to include a

1 determination of the most integrated setting appropriate for those individuals and the services
2 necessary for such individuals to live outside of Laguna Honda. State Defendants have fully
3 complied with the settlement and relevant claims have been dismissed with prejudice. The results of
4 the state assessments show that of 166 Laguna Honda residents assessed between October 2004 and
5 August 2006:

- 6 • Approximately 80 percent of Laguna Honda's residents with psychiatric disabilities
7 were determined to qualify for placement in a nursing facility but were also
8 recommended for consideration for community placement, using an array of
9 recommended home and community-based services and supports;
- 10 • Approximately 20 percent of residents with psychiatric disabilities evaluated were
11 determined to be inappropriate for skilled nursing facility placement altogether and
12 were recommended for alternative community placement;
- 13 • Of those residents with preferences recorded, approximately 60 percent expressed a
14 preference to live in a community alternative to nursing facility care.

15 75. Pursuant to the settlement with Plaintiffs, Defendant has developed and operates the
16 Targeted Case Management Program (TCM), which is responsible for assessing and creating
17 discharge plans for all current and potential Laguna Honda residents, as well as providing case
18 management for class members who are determined to be capable of discharge within 180 days.
19 TCM is independent from Laguna Honda and is operated under the auspices of Defendant's
20 Department of Public Health. TCM case managers are social workers and nurses who are specially
21 trained and experienced in community living for seniors and people with disabilities. TCM uses an
22 assessment and discharge planning instrument that was developed specifically for use with Laguna
23 Honda residents. TCM has, to date, assessed and reassessed all current residents of Laguna Honda,
24 and has assessed all new admittees, either prior to or soon after admission.

25 76. According to TCM assessments, the vast majority of the over 1,000 Laguna Honda
26 residents could live at home or in the community if housing and appropriate services were provided
27 to them. TCM assessments also show that, at the time of assessment, half of all class members have

1 stated that they would prefer to live in the community rather than at Laguna Honda; during discharge
2 planning, 70 percent have indicated a preference to return to the community.

3 77. TCM has identified numerous barriers to timely discharge from Laguna Honda,
4 including access to services, which, if efficiently and reasonably made available to Plaintiffs and
5 class members, would enable them to leave Laguna Honda. These service include: 1) appropriate
6 housing, including supportive housing for clients who have multiple diagnoses such as mental
7 illness, physical disabilities and substance abuse problems, physically accessible board and care
8 homes that accept clients who receive SSI, low-income independent housing, and housing for
9 individuals under age 62; 2) intensive case management (*i.e.*, at least weekly visits or as needed); 3)
10 substance abuse services; 4) transportation; 5) home-delivered meals; and 6) representative payee
11 programs for individuals who need assistance managing their money. Many individuals who have
12 been assessed to be capable of, and who would prefer, community living, remain at Laguna Honda
13 due to Defendant's failure to provide directly, contract for, or link Plaintiffs and class members to
14 the needed services identified by TCM. Problems in Defendant's long-term care system, such as
15 poor coordination between programs, fragmented information systems, and an inadequate database
16 of housing stock further impede the ability of TCM case managers to discharge Laguna Honda
17 residents in a timely fashion.

18 78. Moreover, Defendant's discriminatory practices and failures prevent the TCM
19 program from achieving its potential and hinder the ability of eligible individuals to receive the
20 targeted case management services to which they are entitled. First, in order to qualify for TCM
21 case management, individuals must have a likelihood of being discharged from Laguna Honda
22 within 180 days. Due to Defendant's failure to make housing and community-based services
23 available in a timely way, medically stable class members who could otherwise be discharged within
24 180 days are denied TCM because the housing and services they would need to be discharged are
25 not available in that time period (*e.g.*, waitlists for subsidized housing and other needed services
26 often exceed 180 days). This creates a vicious cycle—the right to receive community services is
27 undermined by the illegal failure to provide access to community services.

1 79. Second, despite its obligation to provide Medi-Cal funded targeted case management
2 to all eligible individuals, Defendant has elected to provide this service primarily through its TCM
3 program, which does not offer ongoing community-based targeted case management. Thus, while
4 many class members are eligible for, and entitled to, Medi-Cal funded ongoing intensive case
5 management in the community after they are discharged, Defendant fails to provide this service that
6 many class members need in order to transition successfully to, and remain in, the community.

7 80. Third, due to the limited number of TCM staff, TCM currently has a waitlist of
8 approximately 75 Laguna Honda residents who have been determined to be likely to be able to be
9 discharged within 180 days, but for whom no TCM case manager is available. The results of
10 Defendant's failures are that TCM has discharged only a fraction of class members whom it has
11 determined to be eligible for community placement and that many qualified class members continue
12 to languish in the institution.

13 **Laguna Honda**

14 81. Laguna Honda Hospital and Rehabilitation Center was founded in 1866 as a Poor
15 House. It is owned and operated by Defendant. The main building houses almost 1,000 residents
16 while Clarendon Hall houses approximately 140 residents. Most residents of the main building live
17 in large, open wards with as many as 37 residents sleeping in close quarters, separated only by
18 hospital curtains. Laguna Honda is licensed for 1,214 skilled-nursing facility beds and 243 acute
19 care beds. In 1997, Defendant was forced to lower the census to a maximum of 1,065 by the federal
20 Centers for Medicare and Medicaid Services (CMS), which have repeatedly cited Laguna Honda for
21 standard of care deficiencies and threatened to withdraw federal funding. In February 2006, the
22 State Department of Health Services issued a 274-page statement of deficiencies against Laguna
23 Honda, finding that the facility is providing substandard care.

24 82. In comparing the demographic characteristics of Laguna Honda residents with those
25 of San Francisco County in general, they are disproportionately low-income and African-
26 American—approximately 38 percent are Caucasian, 25 percent are African-American, 22 percent
27 are Asian, and 13 percent are Hispanic. By comparison, the overall population of San Francisco
28

1 County is 56 percent Caucasian and 7.6 percent African-American. At least 95 percent of residents
2 are Medi-Cal eligible or indigent, while only 12 percent of the overall population of San Francisco
3 lives below the poverty level. Almost 50 percent of Laguna Honda residents are below 70 years of
4 age; 13 percent are younger than 50 years. Over 40 percent of residents have only physical
5 functioning needs, requiring primarily unskilled personal care services; only three percent have
6 “extensive special care” needs.

7 83. Over 50 percent of admissions to Laguna Honda come from San Francisco General
8 Hospital, also owned and operated by Defendant. In 2005, 580 individuals were admitted to Laguna
9 Honda, up from 529 in 2001. Defendant has not reduced the census at Laguna Honda from
10 approximately 1,030 - 1,040 residents, despite continually escalating costs to operate the facility.
11 Defendant actively works to maintain Laguna Honda at its maximum capacity.

12 84. State, federal and local funds pay for services at Laguna Honda. Medi-Cal is the only
13 health insurance for approximately 95 percent of Laguna Honda residents. Laguna Honda is a
14 “distinct part” skilled-nursing facility, meaning that it must either have some acute care beds or
15 operate under the license of an acute care facility. As a distinct part skilled-nursing facility, Laguna
16 Honda receives a daily rate of at least \$271 per person per day from State and federal Medi-Cal
17 funds. In addition, Defendant pays approximately \$130 per person per day out of its General Fund,
18 making the total cost of care at Laguna Honda more than \$180 million per year — almost \$500 per
19 day per resident. Defendant’s General Fund subsidy to Laguna Honda has skyrocketed in recent
20 years, from approximately \$30 million in 2004-05 to approximately \$48.7 million in 2006-07.

21 85. Laguna Honda consumes approximately 15 percent of Defendant’s total Department
22 of Public Health (DPH) budget while serving only one percent of the total number of recipients that
23 are served by DPH’s Community Health Network annually. Laguna Honda utilizes approximately
24 44 percent of DPH’s Medi-Cal funds.

25 **Building a New Institution**

26 86. In response to the 1997 CMS citations, Defendant, in the 1999 election, placed on the
27 ballot and San Francisco voters passed, Proposition A, which allowed Defendant to incur bonded

1 debt in an amount not exceeding \$299 million for the “acquisition, improvement, construction and/or
2 reconstruction of a new health care, assisted living and/or other type of continuing care facility or
3 facilities” to replace the aging and outmoded Laguna Honda facility. Defendant decided that, to
4 implement Proposition A, it would use the first \$100 million of tobacco settlement monies received
5 by the City, with the exception of \$1 million to be set aside each year for smoking education and
6 prevention programs, to pay for a new Laguna Honda Hospital built on the current campus, with any
7 remaining tobacco settlement monies received by the City to be used to offset the cost to property
8 owners of repaying the bonds. As of May 2005, Defendant had received at least an additional,
9 unrestricted \$92 million in tobacco funds that could be earmarked for home and community-based
10 long-term care services, according to the City Controller.

11 87. Defendant is free to use the Proposition A funds to build small, community-based
12 facilities in lieu of rebuilding Laguna Honda. On March 30, 2005, at Defendant’s urging, Judge
13 James L. Warren of the San Francisco Superior Court issued a decision holding that, “[n]othing in
14 the Proposition A “bond contract” limits the type of facility the City must construct to a “long term
15 care facility.” Moreover, nothing in the Proposition A “bond contract” requires the City to construct
16 a facility of a specific size. *Monette-Shaw v. San Francisco Board of Supervisors*, San Francisco
17 Superior Court Case No. CPF 04-504777, *affirmed*, *Monette-Shaw v. San Francisco Bd. of*
18 *Supervisors*, 139 Cal.App.4th 1210, 43 Cal.Rptr.3d. 659 (Cal. Ct. App. 1st Dist., May 26, 2006).

19 88. Nonetheless, Defendant has developed plans for constructing a 1,200-bed skilled
20 nursing facility on the Laguna Honda campus, and has approved funding for the construction of at
21 least 780 of those beds.

22 **Investigation by U.S. Department of Justice**

23 89. In April 2003, the United States Department of Justice (DOJ) issued a letter of
24 findings against Defendant for violations of the ADA with respect to its administration of Laguna
25 Honda. The letter concluded that “a significant number of Laguna Honda residents are
26 unnecessarily isolated in the nursing home,” and that “the City continues to be in violation of the
27 ADA and continues to fail to ensure that Laguna Honda residents are being served in the most

1 integrated setting appropriate to meet their needs.”

2 90. The DOJ ordered Defendant to implement remedial measures, including: 1)
3 expanding community-based services (specifically, residential services for individuals with mental
4 health or substance abuse disorders, housing and housing supports, housing and residential programs
5 for individuals who have physical as well as mental disabilities, assertive community treatment,
6 vocational services and day treatment options); 2) conducting a needs assessment of Laguna Honda
7 residents to “reconsider the need to rebuild 1,200 beds at Laguna Honda Hospital and review the
8 City budget to determine how to allocate funds appropriately to ensure that Laguna Honda residents
9 are not unnecessarily isolated;” and 3) creating and maintaining an inventory of housing options in
10 San Francisco that will be utilized by Laguna Honda residents.

11 91. To date, the required remedial measures have not been implemented.

12 **DEFENDANT’S FAILURE TO PROVIDE COMMUNITY-BASED LONG-TERM CARE SERVICES**

13 92. Defendant has produced or commissioned numerous studies and reports that identify
14 many reasons that individuals such as Plaintiffs and class members become or remain
15 institutionalized, and recommendations for changes that Defendant can make to its programs and
16 policies to enable them to be served in the community. Despite this consensus by experts, Defendant
17 has failed to develop a plan to allocate its resources with an even hand and implement a genuine,
18 comprehensive effort to place eligible individuals in the community. Rather, Defendant knowingly
19 continues to institutionalize individuals whom it has assessed as not needing to remain at Laguna
20 Honda.

21 93. In 1999, the San Francisco Board of Supervisors passed a resolution which found that
22 “current funding of long term care services is primarily focused on institutional care and does not
23 adequately address the needs of those individuals who do not want or need institutional care or for
24 whom home or non-institutional care is more appropriate and cost effective.”

25 94. In 2001, the Board of Supervisors passed a resolution to establish the San Francisco
26 Hospital Discharge Planning Task Force, and adopted, in December 2003, the Task Force
27 recommendations, which included improving coordination of services, centralizing information

1 systems to facilitate discharge planning, and expanding community-based services. Defendant has
2 not implemented these recommendations.

3 95. In 2002, San Francisco's Legislative Analyst Office found that San Francisco's
4 community-based long-term care system is "decentralized" and that there is evidence demonstrating
5 that it is "fragmented, uncoordinated, and not consumer-friendly." Subsequent reports demonstrate
6 that these problems continue.

7 96. The Living with Dignity Policy Committee was established to provide guidance to the
8 Department of Aging and Adult Services, as well as to DPH and the Department of Human Services,
9 for planning and implementation of improvements in the long term care system for seniors and
10 people with disabilities. The Committee conducted an extensive needs assessment between August
11 2002 and December 2003, which resulted in a four-year strategic plan in April 2004, called the
12 *Strategic Plan to Improve Community-Based Long Term Care and Supportive Services in San*
13 *Francisco*. The Plan described the current system as "fragmented," characterized by limited
14 coordination and access to services, as well as service gaps and duplication. Consistent with others'
15 recommendations, the Committee urged better coordination of services, increased access to services,
16 and expansion of the community system's capacity. Defendant has taken little, if any, action to
17 implement the Plan's goals.

18 **San Francisco Controller's Report**

19 97. In May 2005, the San Francisco City Controller was asked, due to concerns about the
20 enormous cost-overruns of the proposed 1,200-bed Laguna Honda rebuild, to make
21 recommendations for successful completion of the rebuild. His report concluded that there are only
22 two options worth considering. Option One would use "all reasonably available funds to complete a
23 1,200 bed skilled nursing facility at Laguna Honda," which would cost an estimated \$221 million
24 over the \$400 million approved through Proposition A, or approximately \$500,000 per bed. Option
25 Two would downsize the rebuild to 780 skilled nursing facility beds, build 235 assisted living units
26 in lieu of the remaining skilled nursing facility beds, and use the cost savings to fund a variety of
27 services in the community. The total estimated number of people served under Option Two would

1 exceed 1,800.

2 98. The Controller's Report found that for each \$2 million not spent at Laguna Honda,
3 100 people could be served in the community, by providing a combination of payment supplements,
4 or "patches" to residential care providers, supportive housing and services, and accessibility
5 modifications to existing housing.

6 99. Defendant has already begun construction of at least a 780-bed skilled nursing
7 facility.

8 100. Defendant has not taken any action to redirect funds or provide community supports
9 as proposed in Option Two, nor has it conducted any assessment to justify the need for even a 780-
10 bed institution.

11 **Health Management Associates' Report**

12 101. In July 2005, Health Management Associates (HMA), a consultant retained by
13 Defendant, issued a report on long-term care provided by DPH. HMA found that Defendant's
14 investment in health care services is "second to none" in the nation, approximately \$400 per capita
15 compared to a nationwide average of \$64. A tremendous portion of that money is used to fund
16 institutional services, however, primarily at Laguna Honda.

17 102. HMA recognized that Defendant over-relies on institutional care due to its lack of
18 integrated planning and management, which results in duplication of services and insufficient
19 community-based services. HMA strongly criticized the proposed Laguna Honda rebuild, stating,
20 "[w]hile it appears that 780 beds will be constructed at the Laguna Honda Hospital site, a [skilled
21 nursing facility] of this size is contrary to all national trends." HMA advised against investing
22 resources in additional institutional services, stating that "the disparate interests of various parties
23 should not be permitted to be used to justify business as usual in regards to the rebuild of LHH."
24 HMA stated that new nursing homes should have no more than 100-200 beds to allow for
25 "reasonable quality control, patient safety, and good economics."

26 103. HMA's recommendations for improving Defendant's delivery of long-term care
27 services included: 1) identifying appropriate long-term care options to enable individuals to be
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1 diverted or discharged from Laguna Honda; 2) reducing the need for institutional care by expanding
2 the availability of community-based services such as respite care, companion services, assistance
3 with meals, adaptive equipment, environmental accessibility modifications, housing, transportation,
4 and adult day health care; 3) completing an inventory of the current housing infrastructure to enable
5 online monitoring of housing availability; and 4) increasing Defendant's investment in case
6 management in order to facilitate utilization of community-based long-term care resources.

7 **San Francisco Long-Term Care Coordinating Council**

8 104. In November 2004, San Francisco's Mayor appointed the Long-Term Care
9 Coordinating Council (LTCCC) as an advisory body to provide advice and policy guidance on all
10 aspects of long-term care in San Francisco. The LTCCC drafted the *Community Placement Plan*,
11 which recommends measures intended to "provide safe and healthful transitions" from Laguna
12 Honda and other institutions, including ensuring that individuals have timely access to housing,
13 discharge planning services, case management, and appropriate community-based services. The
14 LTCCC has recommended that Defendant substitute day health/housing for some of the nursing
15 facility beds planned in the rebuilt Laguna Honda. To date, Defendant has neither formally adopted
16 the *Community Placement Plan* nor implemented any of its recommendations.

17 105. Defendant is obligated to directly provide, contract for, and/or assist Plaintiffs and
18 class members in accessing an array of home and community-based services that includes, but is not
19 limited to: Medi-Cal State Plan and Home and Community-Based Waiver services, including
20 personal care services, home nursing care, adult day health care, durable medical equipment,
21 habilitation, and case management; Mental Health services, including crisis services, case
22 management, medication management, 24-hour treatment, and various housing options; meals
23 assistance; money management; senior programs; programs for people with AIDS; and various other
24 types of affordable, accessible housing. Defendant's improved and successful delivery of these
25 services, as well as the recommendations described above, can be implemented with reasonable
26 modifications to Defendant's programs and policies.

1 **LEGAL CLAIMS**

2 **FIRST CLAIM FOR RELIEF**

3 **Americans with Disabilities Act:**

4 **Failure to Provide Services in the Most Integrated Setting Appropriate**

5 106. Plaintiffs reallege and incorporate herein by reference each and every allegation and
6 paragraph set forth previously.

7 107. Individual Plaintiffs and class members are "qualified individuals with a disability"
8 within the meaning of 42 U.S.C. § 12131(2), in that they have a physical and/or mental impairment
9 which substantially limits one or more major life activity, including their ability to live
10 independently without support.

11 108. Individual Plaintiffs and class members meet the essential eligibility requirements for
12 long-term care services under the state Medi-Cal and other state and local programs.

13 109. Organizational Plaintiff Independent Living Resource Center of San Francisco
14 (ILRCSF) represents the interests of individual Plaintiffs and their class in that it provides advocacy
15 and assistance to individuals with disabilities to live in their own homes and communities.
16 ILRCSF's mission is thwarted by Defendant's actions and omissions, which hinder its ability to
17 provide such advocacy and assistance and divert its resources from the work it is designed to do.

18 110. Defendant is a public entity within the meaning of 42 U.S.C. § 12131(1)(A).

19 111. Defendant is obligated under the ADA to administer its programs in a manner that
20 enables qualified individuals with disabilities to live in the most integrated setting appropriate to
21 their needs. Defendant has assessed Plaintiffs and class members and has determined them to be
22 capable of receiving supports and services in their homes and communities rather than at Laguna
23 Honda. Defendant has also determined that Plaintiffs and the majority of class members would
24 prefer to live in the community. Nonetheless, Defendant discriminates against Plaintiffs and class
25 members in ways that include, but are not limited to: utilizing methods of administration that
26 subject qualified people with disabilities to discrimination on the basis of disability; failing to
27 provide reasonable modifications to programs and services; and otherwise failing to provide

1 community-based options for long-term care in the most integrated settings appropriate. As a result,
2 named Plaintiffs and class members are denied community-based care and access to the full range of
3 home and community-based services.

4 112. Defendant has denied Plaintiffs and class members access to the array of home and
5 community-based services they need and instead, has offered them services only if they are confined
6 in an unnecessarily segregated environment – *i.e.* Laguna Honda – in violation of Title II of the
7 ADA and implementing regulations, including but not limited to the ADA’s integration mandate,
8 which requires that such services be provided in the most integrated setting appropriate. 42 U.S.C
9 §§ 12131-12134; 28 C.F.R. Part 35.

10 **SECOND CLAIM FOR RELIEF**

11 **Section 504 of the Rehabilitation Act –**

12 **Failure to Provide Services in the Most Integrated Setting Appropriate**

13 113. Plaintiffs reallege and incorporate herein by reference each and every allegation and
14 paragraph set forth previously.

15 114. Individual Plaintiffs and class members are “otherwise qualified individuals with a
16 disability” under Section 504 of the Rehabilitation Act of 1973, as amended – 29 U.S.C. § 794 and
17 implementing regulations – in that they have mental and/or physical disabilities which substantially
18 limit their ability to live independently without adequate supports.

19 115. Individual Plaintiffs and class members meet the essential eligibility requirements for
20 long-term care services under the State Medi-Cal and other state and local programs.

21 116. Organizational Plaintiff Independent Living Resource Center of San Francisco
22 (ILRCSF) represents the interests of individual Plaintiffs and their class in that it provides advocacy
23 and assistance to individuals with disabilities to live in their own homes and communities.
24 ILRCSF’s mission is thwarted by Defendant’s actions and omissions, which hinder its ability to
25 provide such advocacy and assistance and divert its resources from the work it is designed to do.

26 117. Defendant has received, and continues to receive federal financial assistance,
27 including federal Medicaid (Medi-Cal) and low-income housing monies, and is thereby a recipient of

1 federal aid within the meaning of 29 U.S.C. § 794(b).

2 118. Defendant is obligated under Section 504 to administer its programs in a manner that
3 enables qualified individuals with disabilities to live in the most integrated setting appropriate to
4 their needs. Defendant has assessed Plaintiffs and class members and has determined them to be
5 capable of receiving supports and services in their homes and communities rather than at Laguna
6 Honda. Defendant has also determined that Plaintiffs and the majority of class members would
7 prefer to live in the community. Nonetheless, Defendant discriminates against Plaintiffs and class
8 members in ways that include but are not limited to: utilizing methods of administration that subject
9 qualified people with disabilities to discrimination on the basis of disability; failing to provide
10 reasonable modifications to programs and services; and otherwise failing to provide community-
11 based options for long-term care in the most integrated settings appropriate. As a result, named
12 Plaintiffs and class members are denied community-based care and access to the full range of home
13 and community-based services.

14 119. Defendant has denied Plaintiffs and class members access to the array of community-
15 based services they need and prefer, and has offered them services only if they are confined in an
16 unnecessarily segregated environment – *i.e.*, Laguna Honda, thereby excluding them from
17 participation in, denying them the benefits of, and otherwise subjecting them to discrimination under
18 programs and activities receiving federal financial assistance, in violation of Section 504 and its
19 implementing regulations. 29 U.S.C. §§ 794-794a.

20 **THIRD CLAIM FOR RELIEF**

21 **California Government Code sections 11135 and 11139**

22 **[Subject to Motion for Reconsideration]**

23 120. Plaintiffs reallege and incorporate herein by reference each and every allegation and
24 paragraph set forth previously.

25 121. Plaintiffs and class members are persons with disabilities within the meaning of
26 California Government Code section 11135(c) and its implementing regulations.

27 122. Individual Plaintiffs and class members meet the essential eligibility requirements for
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1 long-term care services under the State Medi-Cal and other State and local programs.

2 123. Organizational Plaintiff Independent Living Resource Center of San Francisco
3 (ILRCSF) represents the interests of individual Plaintiffs and their class in that it provides advocacy
4 and assistance to individuals with disabilities to live in their own homes and communities.
5 ILRCSF's mission is thwarted by Defendant's actions and omissions, which hinder its ability to
6 provide such advocacy and assistance and divert its resources from the work it is designed to do.

7 124. Programs and activities operated by Defendant, including programs and activities
8 involved in the provision of long-term care services, are either funded by or receive financial
9 assistance from the State of California; Defendant is thereby a recipient of State financial assistance
10 within the meaning of California Government Code section 11135.

11 125. Defendant is obligated under California Government Code section 11135 to
12 administer its programs in a manner that enables qualified individuals with disabilities to live in the
13 most integrated setting appropriate to their needs. Defendant has assessed Plaintiffs and class
14 members and has determined them to be capable of receiving supports and services in their homes
15 and communities rather than at Laguna Honda. Defendant has also determined that Plaintiffs and the
16 majority of class members would prefer to live in the community. Nonetheless, Defendant
17 discriminates against Plaintiffs and class members in ways that include, but are not limited to:
18 utilizing methods of administration that subject qualified people with disabilities to discrimination
19 on the basis of disability; failing to provide reasonable modifications to programs and services; and
20 otherwise failing to provide community-based options for long-term care in the most integrated
21 settings appropriate. As a result, named Plaintiffs and class members are denied community-based
22 care and access to the full range of home and community-based services.

23 126. Defendant has unlawfully denied Plaintiffs and class members access to the array of
24 community-based services they need and prefer, and, instead, has offered them services only if they
25 are confined in an unnecessarily segregated environment -- *i.e.*, Laguna Honda, thereby unlawfully
26 denying them full and equal access to the benefits of, and otherwise subjecting them to
27 discrimination under programs and activities receiving state financial assistance, in violation of

1 California Government Code section 11135.

2 127. Since the Court's ruling in the *Davis* case to dismiss Plaintiffs' California
3 Government Code section 11135 claim for failure to exhaust administrative remedies, the statute has
4 been amended to make explicit the right to bring a civil action without the need to exhaust
5 administrative remedies. The amended section, California Government Code section 11139, makes
6 clear that the statute and its implementing regulations may be enforced by a civil action for equitable
7 relief which is independent of any other rights and remedies.

8 **Allegations Concerning Injunctive and Declaratory Relief**

9 128. Defendant's actions, as alleged herein, have resulted in, and will continue to result in
10 irreparable injury to Plaintiffs for which they have no adequate remedy at law.

11 129. An actual controversy exists between Plaintiffs and Defendant, in that Plaintiffs claim
12 that Defendant has failed to provide services in the most integrated setting appropriate to meet
13 Plaintiffs' needs, in violation of federal and state law.

14 130. Unless the requested relief is granted, Organizational Plaintiff's mission to assist San
15 Franciscans with disabilities to live independently and in the community will be thwarted and
16 individual Plaintiffs and class members will be denied services and supports that would allow them
17 to live in their local communities. Without the availability of such services and supports, individual
18 Plaintiffs and class members will continue to live in an unnecessarily restrictive institutional setting
19 and suffer harm, including the loss of independent living skills, personal autonomy and personal
20 freedoms.

21 **PRAYER FOR RELIEF**

22 131. WHEREFORE, the Plaintiffs request that the Court grant the following relief:

- 23 a. Certify a class identical to the class certified in *Davis v. CHHSA*, C00-2532-
24 SBA by Order of this Court dated June 12, 2002. Defendants have waived
25 any objection to certification of such a class pursuant to the Settlement
26 Agreement in *Davis*, attached herein as Exhibit A, ¶ 8.1.
- 27 b. Declare that Defendant's practices, as set forth above, violate Plaintiffs' and
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1 class members' rights under the Americans with Disabilities Act, 42 U.S.C.
2 §§ 12101-12213 and implementing regulations. 28 C.F.R. Part 35.

3 c. Declare that Defendant's practices, as set forth above, violate Plaintiffs' and
4 class members' rights under Section 504 of the Rehabilitation Act, 29 U.S.C.
5 §§ 794-794a and implementing regulations.

6 d. Declare that Defendant's practices, as set forth above, violate Plaintiffs' and
7 class members' rights under California Government Code section 11135 and
8 implementing regulations.

9 e. Enjoin Defendant, its officers, agents, employees, successors and all other
10 persons in active concert or participation with any of them, from further
11 violation of Plaintiffs' and class members' rights under the Americans with
12 Disabilities Act and require Defendant to offer and provide, as appropriate,
13 Plaintiffs and class members with long-term care services in their homes and
14 communities, rather than in an unnecessarily segregated institutional facility.

15 f. Enjoin Defendant, its officers, agents, employees, successors, and all other
16 persons in active concert or participation with them, from further violation of
17 Plaintiffs' and class members' rights under Section 504 of the Rehabilitation
18 Act and require Defendant to offer and provide, as appropriate, Plaintiffs and
19 class members with long-term care services in their homes and communities,
20 rather than in an unnecessarily segregated institutional facility.

21 g. Enjoin Defendant, its officers, agents, employees, successors, and all other
22 persons in active concert or participation with them, from further violation of
23 Plaintiffs' and class members' civil rights under California Government Code
24 section 11135 and require Defendant to offer and provide, as appropriate,
25 Plaintiffs and class members with long-term care services in their homes and
26 communities, rather than in an unnecessarily segregated institutional facility.

27 h. Order any other relief that the Court deems appropriate.

- 1 i. Award Plaintiffs their costs, expenses, including expert witness fees, and
2 reasonable attorneys' fees, pursuant to CAL. CIV. PROC. CODE § 1021.5 (West
3 2005); 29 U.S.C. § 794a (b); and 42 U.S.C. §§ 1988 and 12205 (West 2005).

4 **CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

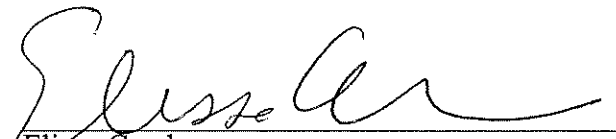
5 132. Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, October 12,
6 2006, other than the named parties: Mark Chambers, Woodrow Falls Jr., M.H., Phillip K., Gerald
7 Scott, Mary T., the class of individuals defined in Paragraph 58 above represented by the named
8 plaintiffs, and the Independent Living Resource Center of San Francisco, there is no such interest to
9 report.

10 Dated: 10/12/06

Respectfully submitted,

11 Protection and Advocacy, Inc.
12 Disability Rights Education and Defense Fund
13 Bazelon Center for Mental Health Law
14 AARP Foundation Litigation
15 Howrey LLP

16 By:


Elissa Gershon

17 Attorneys for Plaintiffs

18
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