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FILED  
ALAMEDA COUNTY

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14  
15 IN THE SUPERIOR COURT  
16 COUNTY OF ALAMEDA, STATE OF CALIFORNIA

17 CAPITOL PEOPLE FIRST; ) Case No.: 2002-038715  
18 ADOLPH ANGULO, )  
appearing through his guardian ad litem, ) CORRECTED SIXTH AMENDED  
19 Janice Vogliardo; ) PETITION FOR WRIT OF MANDATE  
) (CCP § 1085); VERIFIED COMPLAINT FOR  
) DECLARATORY AND INJUNCTIVE  
20 HARRY ASPREY, ) RELIEF  
appearing through his guardian ad litem, )  
21 Tolley Gorham; ) **CLASS ACTION**  
)  
22 LUCIEN CORPOLONGO, )  
appearing through his father and guardian ad )  
23 litem, Doug Corpolongo; )  
)  
24 EDSON CRUZ, )  
appearing through his guardian ad litem, )  
25 Deborah A. Dorfman; )  
)  
26 SHARON FORSTER; )  
)  
27 DAVID KELTY, )  
appearing through his guardians ad litem, )  
28 Corina and Mario Razo; )

1 KIMBERLY McANNELLY,  
2 appearing through her guardian ad litem,  
3 John P. Kelly;  
4 ANDRE MILLS,  
5 a minor, appearing through his guardian ad  
6 litem, Wesley Crawford;  
7 JACOB ASHBROOK MYERS,  
8 appearing through his parents and guardians ad  
9 litem, Kay Ashbrook and Ray Myers;  
10 JOHN PINEDA,  
11 Appearing through his guardian ad litem,  
12 Deborah A. Dorfman;  
13 ALANA RIDGEWAY,  
14 appearing through her guardian ad litem,  
15 James Roberts;  
16 AVERY RUSSELL;  
17 JANE SHUSTER,  
18 appearing through her guardian ad litem,  
19 Tony Anderson;  
20 JIMMY WHITE,  
21 appearing through his guardian ad litem,  
22 Areta Guthrey;  
23 SHAWN WOODWARD-KATZ,  
24 appearing through his guardian ad litem,  
25 James Hill  
26 JANICE LORD-WALKER;  
27 CURTIS KITTY CONE;  
28 CALIFORNIA ALLIANCE FOR  
INCLUSIVE COMMUNITIES, INC.  
THE ARC OF CALIFORNIA,  
Petitioners/Plaintiffs,  
vs.  
DEPARTMENT OF DEVELOPMENTAL  
SERVICES (DDS);  
TERRI DELGADILLO,  
in her official capacity as Director of  
Department of Developmental Services;

1 STATE OF CALIFORNIA;  
2 DEPARTMENT OF HEALTH CARE  
3 SERVICES (DHCS);  
4 SANDRA SHEWRY,  
5 in her official capacity as Director of DHCS;  
6 DEPARTMENT OF MENTAL HEALTH  
7 (DMH);  
8 ALTA CALIFORNIA REGIONAL CENTER,  
9 INC. (ACRC);  
10 CENTRAL VALLEY REGIONAL CENTER,  
11 INC. (CVRC);  
12 EASTERN LOS ANGELES REGIONAL  
13 CENTER, INC. (ELARC);  
14 FAR NORTHERN COORDINATING  
15 COUNCIL ON DEVELOPMENTAL  
16 DISABILITIES, dba FAR NORTHERN  
17 REGIONAL CENTER (FNRC);  
18 LOS ANGELES COUNTY  
19 DEVELOPMENTAL SERVICES  
20 FOUNDATION, dba FRANK D.  
21 LANTERMAN REGIONAL CENTER  
22 (FDLRC);  
23 GOLDEN GATE REGIONAL CENTER,  
24 INC. (GGRC);  
25 HARBOR DEVELOPMENTAL  
26 DISABILITIES FOUNDATION, dba  
27 HARBOR REGIONAL CENTER (HRC);  
28 INLAND REGIONAL CENTER, INC (IRC);  
KERN REGIONAL CENTER (KRC);  
NORTH BAY DEVELOPMENTAL  
DISABILITIES SERVICES, INC., dba  
NORTH BAY REGIONAL CENTER  
(NBRC);  
NORTH LOS ANGELES COUNTY  
REGIONAL CENTER, INC. (NLACRC);  
REDWOOD COAST DEVELOPMENTAL  
SERVICES CORPORATION, dba  
REDWOOD COAST REGIONAL CENTER  
(RCRC);

1 REGIONAL CENTER OF THE EAST BAY, )  
INC. (RCEB); )  
2 REGIONAL CENTER OF ORANGE )  
3 COUNTY, INC. (RCOC); )  
4 SAN ANDREAS REGIONAL CENTER )  
(SARC); )  
5 SAN DIEGO-IMPERIAL COUNTIES )  
6 DEVELOPMENTAL SERVICES, INC., dba )  
SAN DIEGO REGIONAL CENTER (SDRC); )  
7 SAN GABRIEL/POMONA VALLEYS )  
8 DEVELOPMENTAL SERVICES, INC., dba )  
SAN GABRIEL/POMONA REGIONAL )  
9 CENTER (SGPRC); )  
10 SOUTH CENTRAL LOS ANGELES )  
11 REGIONAL CENTER FOR )  
DEVELOPMENTALLY DISABLED )  
12 PERSONS, INC., dba SOUTH CENTRAL )  
LOS ANGELES REGIONAL (SCLARC); )  
13 TRI-COUNTIES ASSOCIATION FOR THE )  
14 DEVELOPMENTALLY DISABLED, INC., )  
dba TRI-COUNTIES REGIONAL CENTER )  
(TCRC); )  
15 VALLEY MOUNTAIN REGIONAL )  
16 CENTER, INC. (VMRC); )  
17 COASTAL DEVELOPMENTAL SERVICES )  
18 FOUNDATION, dba WESTSIDE )  
REGIONAL CENTER (WRC); )  
19 and DOES 1 through 100,

20 Respondents/Defendants.  
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I.

NATURE OF THE CONTROVERSY

1  
2  
3 1. Thousands of Californians with developmental disabilities are needlessly isolated and  
4 segregated from mainstream society in large congregate public and private institutions. Every year  
5 hundreds more find themselves at risk of institutionalization due to the lack of appropriate  
6 community supports and crisis intervention. Plaintiffs bring this lawsuit to restore their legal rights  
7 to freedom from such institutionalization and to live, with appropriate supports, in our  
8 neighborhoods.

9 2. The current circumstances violate Federal and State law. In the Lanterman  
10 Developmental Disabilities Services Act (“Lanterman Act”), for example, California created an  
11 entitlement for people with developmental disabilities to an array of services and supports  
12 sufficiently complete to meet their needs and choices, to support their integration into the  
13 mainstream life of the community and to enable them to approximate the pattern of everyday living  
14 available to people without disabilities. *Ass’n for Retarded Citizens – Cal. v. DDS*, 38 Cal.3d 384  
15 (1984). In order to fulfill its mandate, the State established 21 local non-profit regional centers  
16 which are obligated to prepare individual program plans jointly with each person and develop the  
17 needed service resources under the supervision of, and with funding from, the Department of  
18 Developmental Services (DDS). *Welf. & Inst. Code § 4500, et seq.* Despite this mandate, thousands  
19 of people with developmental disabilities are unnecessarily institutionalized because the State and  
20 the regional centers have failed in their obligation under the Lanterman Act to develop and provide  
21 community-based alternatives.

22 3. In 1990, President Bush signed into law the Americans with Disabilities Act (ADA),  
23 establishing one of the most important civil rights law for people with disabilities in our nation’s  
24 history. 42 U.S.C. § 12100, *et seq.* In enacting the ADA, Congress found that “historically, society  
25 has tended to isolate and segregate individuals with disabilities, and ... such forms of  
26 discrimination ... continue to be a serious and pervasive social problem.” 42 U.S.C. § 12101(a)(z).  
27 The United States Supreme Court held that, under the ADA, unnecessary institutionalization is  
28 discrimination based on disability and required that States take actions to ensure that people with



1 disabilities who can be served in integrated, non-isolated settings are actually served in such settings.  
2 *Olmstead v. L.C.*, 527 U.S. 581 (1999). It is over two years since the *Olmstead* decision was issued,  
3 yet, in violation of the ADA, California has failed to take adequate steps to reduce the unnecessary  
4 institutionalization of people with developmental disabilities at a reasonable pace.

5 4. Unnecessary segregation also contravenes other State and Federal statutory rights as  
6 well as fundamental constitutional rights, including the rights to liberty, privacy and freedom of  
7 association.

8 5. In spite of these rights and obligations, state and regional center defendants do not do  
9 adequate assessments of individuals' ability to benefit from community living, do not do adequate  
10 program planning, and, therefore, do not develop sufficient quality programs to meet the needs of  
11 people with developmental disabilities. Because of defendants' policies and practices, and because  
12 California continues to under-fund its community service system, there is a continuing shortage of  
13 stable, quality community living arrangements and ancillary supports that would enable people with  
14 developmental disabilities to achieve their potential for independence and integration into the  
15 community. The further and inevitable result of defendants' conduct is the continued unnecessary  
16 institutionalization of thousands of people with developmental disabilities.

17 6. By this action, plaintiffs, on behalf of themselves and the class they represent, on  
18 behalf of their organizations and members, on behalf of the general public, or as taxpayers, seek to  
19 enforce those statutory and constitutional rights that guarantee that people with developmental  
20 disabilities have the choice and opportunity to live as part of, rather than apart from, our  
21 neighborhoods and communities.

22 7. Plaintiffs' needs are urgent. The time they spend waiting for appropriate community  
23 living arrangements represents an irretrievable loss – it is time which could and should be used to  
24 acquire skills and develop independence in community settings and participate as members of their  
25 communities.

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**II.**

**JURISDICTION AND VENUE**

8. Jurisdiction of this Court is conferred, pursuant to the California Constitution Article 6 section 10, because plaintiffs seek equitable relief under Code of Civil Procedure sections 1060, 526, 527 and 1085. Venue in the Superior Court for Alameda County is appropriate pursuant to Code of Civil Procedure sections 395(A) and 395.5 in that this is an action in which defendants reside in different counties, including Alameda, and in which defendants' breaches of their obligations occurred in different counties, including Alameda. Venue is also appropriate under Code of Civil Procedure section 401(1) in that this is an action against the State and its Departments and such action may be commenced in any county, including Alameda, where the Attorney General has an office.

**III.**

**PARTIES**

**Representative Petitioners/Plaintiffs**

**Adolph Angulo**

9. Plaintiff/Petitioner Adolph Angulo is a 45-year-old man who is a client of Tri-Counties Regional Center (TCRC). He has resided in various large private and public institutional settings for most of his life because defendants failed to locate or develop the community supports he needed. Due to his disabilities, including profound retardation, Down's Syndrome, and diabetes, Mr. Angulo requires staff assistance with personal hygiene and all activities of daily living. He is able to distinguish what he likes and dislikes. If made to do something he does not like, he resists and voices his displeasure. He responds to things he likes by smiling and laughing and is able to follow basic instructions and respond to requests. Mr. Angulo appears in this action through his guardian ad litem, Janice Vogliardo.

10. In October 1999, Mr. Angulo finally moved to a 6-bed community home, but shortly thereafter he was hospitalized, determined to have diabetes, and developed aspiration pneumonia. Consequently, he was placed on a ventilator and a gastronomy tube was inserted. TCRC sought to place him at Lanterman Developmental Center (DC), but, with assistance from the Lanterman

1 Regional Project, he was deflected to another 6-bed home. Mr. Angulo did well at this home,  
2 however, in a few months he developed further respiratory issues which resulted in a tracheostomy  
3 tube being inserted.

4 11. Mr. Angulo was not able to return to his prior home, although they wanted him to,  
5 because they were not licensed to do tracheostomy care. Thus, in April 2000, Mr. Angulo was  
6 admitted to Lanterman DC where he remains today. At Lanterman, Mr. Angulo suffered a fall while  
7 unsupervised which resulted in the loss of two teeth.

8 12. The Los Angeles County Superior Court has held hearings on Mr. Angulo's status  
9 almost every month. Court orders require TCRC to report regularly on Mr. Angulo's "placement  
10 status." TCRC's plan was to wait for Mr. Angulo to be weaned from his tracheostomy tube so he  
11 could return to his prior home. However, no efforts were made to locate or develop providers who,  
12 with appropriate funding and supports, would be willing and able to handle his present combination  
13 of medical and behavioral needs. In fact, community services can and should be provided to people  
14 with these conditions.

15 13. One and a half years later, treatment has not resulted in Mr. Angulo being weaned  
16 from the tracheostomy tube, and he remains in the DC only because the system has failed to provide  
17 him with community care that can meet his unique needs.

18 **Harry Asprey**

19 14. Plaintiff/Petitioner Harry Asprey is a 49-year-old man who has resided at Porterville  
20 DC for 42 years and is a client of Central Valley Regional Center. Mr. Asprey has profound  
21 retardation, obsessive-compulsive disorder, and is becoming blind. Moving to the community has  
22 never been attempted or considered for Mr. Asprey, although he is cooperative and does not require  
23 extraordinary services. Mr. Asprey was originally placed in the DC by his parents at age seven. His  
24 placement has never been reviewed by a court. Mr. Asprey appears in this action through his  
25 guardian ad litem, Tolley Gorham.

26 15. Mr. Asprey's verbal communication is limited, but he interacts with staff by  
27 mimicking them, smiling, or reaching out to touch their hands. Mr. Asprey shows dislike of an  
28

1 activity by frowning, pulling away, or standing and pacing in a circle. Mr. Asprey works well with  
2 staff. He requires assistance with activities of daily living.

3 16. When very frustrated, Mr. Asprey sometimes engages in self-injurious behaviors such  
4 as slapping himself or biting his upper arms. This happens most frequently when he is interrupted in  
5 the middle of performing a compulsive ritual, is in a crowded or noisy situation, or finds another  
6 client occupying his preferred seat. Each of these antecedents would be mitigated in a family-scale  
7 community home where he could receive more individualized attention.

8 17. Mr. Asprey's most recent Individual Program Plan (IPP), dated March 2001, lists the  
9 services that he would require were he to live in the community. Primarily, these are a home suited  
10 for the blind with four or fewer residents, 24-hour awake-staff, and specialists he could see for his  
11 medical and behavioral issues. The inclusion of these services in Mr. Asprey's IPP acknowledges  
12 the feasibility of living in the community for him. Yet, while these services are fairly readily  
13 available, Mr. Asprey is not considered "recommended for community placement" and there are no  
14 plans to assist him to move. In fact, Mr. Asprey's Central Valley Regional Center service  
15 coordinator did not even attend his last annual IPP meeting.

16 **Edson Cruz**

17 18. Plaintiff/Petitioner Edson Cruz is a 17 year-old man who has resided at Fairview  
18 Developmental Center since March 2001 and is a client of Central Valley Regional Center (CVRC).  
19 Mr. Cruz is profoundly retarded, has attention-deficit-hyperactivity disorder, autistic with severely  
20 challenging behaviors. His maladaptive behaviors include shredding fabrics, grabbing others, and  
21 resisting by dropping to the ground and refusing to get back up. Mr. Cruz appears in this action  
22 through his guardian ad litem, Deborah A. Dorfman.

23 19. Mr. Cruz is nonverbal but will respond to attention and affection with smiles, hand  
24 clapping and eye contact. Mr. Cruz requires assistance with most activities of daily living and all  
25 self-care needs. Mr. Cruz is able to complete simple chores when asked to do so and is especially  
26 good at weeding. He likes to be outdoors playing ball, swimming, and taking long walks.

27 20. For most of his life, Mr. Cruz lived with his mother in a monolingual Spanish speaking  
28 household. As he became older and stronger at 15 years old, Mr. Cruz's challenging behaviors

1 increased and his needs exceeded his mother's ability to provide for him. CVRC did not have an  
2 available home for minors with his behaviors and sought to commit him to Fairview DC. With the  
3 assistance of the regional project, Mr. Cruz was deflected to the crisis home for children which has  
4 only two residents, 2:1 staffing during the day and professional support to address behavioral  
5 challenges. Minors usually live at the home for 3 months during which time the regional center is  
6 expected to develop a community home and the individual's behavior can be stabilized.

7 21. Mr. Cruz lived at Central Valley Crisis House for approximately six months. Mr. Cruz  
8 did well at the crisis home, and his behavior progressed. Although he still made some attempts at  
9 aggression and property destruction, staff found that he responded to them when they set limits.  
10 Once Mr. Cruz learned how to communicate his needs effectively, his behavioral problems began to  
11 decrease in frequency. During this time, he also attended school four hours per day.

12 22. As they are intended for short term stays, Mr. Cruz could no longer remain in the crisis  
13 home. In the discharge summary, the crisis home stated "Edson displays the potential for being able  
14 to function in a less restrictive environment than a DC." CVRC had failed, however, to develop a  
15 similar permanent home or provide additional 1:1 staffing and clinical supports to a current provider.  
16 Mr. Cruz was thus forced to go to Fairview DC far from his family who cannot visit him.  
17 Furthermore, he could not be served on the unit where other minors at Fairview reside. Instead, he  
18 was placed on an adult unit where he does not have an appropriate peer group.

19 23. Mr. Cruz has inappropriately been institutionalized at Fairview solely because CVRC  
20 has not located or developed a community home, similar to the crisis house, where he could  
21 successfully live. His parents clearly wish for him to be close to them. Yet, Mr. Cruz remains at  
22 Fairview DC, very far from his parents in Fresno and with non-Spanish speaking adults.

23 **David Kelty**

24 24. Plaintiff/Petitioner David Kelty is a 36-year-old man who currently resides at Casa  
25 Carmen, a private, 110 bed institution licensed as a community care facility. Mr. Kelty is a client of  
26 Inland Regional Center. Mr. Kelty has mild retardation, full autistic syndrome, and a history of  
27 seizures which have been controlled by medication. Mr. Kelty appears in this action through his  
28 guardians ad litem, Corina and Mario Razo.

1           25. Mr. Kelty is social and has a great memory. He appears to remember everyone he  
2 meets and directions to every place that he has ever been. He is able to prepare simple meals on his  
3 own using the stove and microwave. Mr. Kelty is literate and likes to watch programs on C-SPAN.  
4 He enjoys traveling and spends time at the local library.

5           26. Mr. Kelty had his own home, with supports, for almost two years until his apartment  
6 was broken into and vandalized. Unfortunately, Inland Regional Center and Mr. Kelty's supported  
7 living provider failed to repair this damage and was evicted. Consequently, he began bouncing  
8 between his mother's home and several other facilities until finally landing at Mountain View Manor  
9 for approximately two years. When this institution closed in 2000, Mr. Kelty moved to Casa  
10 Carmen.

11           27. Mr. Kelty has lived independently in the past and has clearly expressed a desire to live  
12 on his own again. Yet, Inland Regional Center is not currently working on plans for Mr. Kelty to  
13 return to a supported living situation and he remains needlessly institutionalized.

14           **Kimberly McAnnelly**

15           28. Plaintiff/Petitioner Kimberly McAnnelly is a 26-year-old woman who has resided at  
16 Sonoma DC since 1998 and is a client of North Bay Regional Center. Ms. McAnnelly is dually  
17 diagnosed with borderline personality disorder and mild retardation. Since the age of 5, she has been  
18 in a series of state hospitals for the mentally ill and/or developmental disabilities and has spent time  
19 in McClaren Children's Center. Ms. McAnnelly appears in this action through her guardian ad  
20 litem, John P. Kelly.

21           29. Ms. McAnnelly is social and easily engages in conversation. She willingly  
22 participates in many different activities. Ms. McAnnelly is able to make choices for herself and  
23 communicate her needs and desires appropriately. She is developing a sense of care for others and  
24 enjoys being helpful. She exercises independence to the degree that she can within Sonoma DC and  
25 would like to live in a community setting closer to her family. She keeps in consistent contact with  
26 her family and friends through phone calls and letters.

27           30. When Ms. McAnnelly is disappointed or upset, she may exhibit aggressive behavior  
28 toward others, as well as harmful behavior to herself. Her program at Sonoma DC inadvertently

1 encourages these behaviors. She has no peers on her residence because Sonoma DC does not have a  
2 unit for those who are dually diagnosed. Most of her behavioral problems occur at the end of  
3 activities, when she is faced with returning to her unit, or within a short time after she has returned to  
4 her unit. She is on a Step program, which denies her privileges if she is not reaching her goals. Ms.  
5 McAnnelly is told that she must meet many requirements in her training program before she can be  
6 considered for placement. When she witnesses others advancing in levels while she remains unable  
7 to move toward community living, she both lashes out at them and abuses herself.

8 31. Ms. McAnnelly has never been appropriately assessed and considered for moving to a  
9 community home, as her team has imposed inappropriate “readiness” criteria. Moreover, there is a  
10 dearth of services for people with dual diagnoses in the community. Thus, she unnecessarily  
11 remains in an institutional setting, which exacerbates her challenges.

12 *Andre Mills*

13 32. Plaintiff/Petitioner Andre Mills is a 17-year-old who has resided at Porterville DC  
14 since August 2000, and is a client of Kern Regional Center. He has mild retardation, a mild bilateral  
15 hearing loss, speech impediments including a stutter and impulsivity problems. His mother was a  
16 poly-substance abuser during her pregnancy with Mr. Mills and he was removed from her care and  
17 raised by his grandmother from the age of nine months. Mr. Mills appears in this action through his  
18 guardian ad litem, Wesley Crawford.

19 33. Mr. Mills was in special education classes throughout his schooling, but was not  
20 identified as developmentally disabled until he was fifteen. Thus, he received no regional center  
21 services during his childhood. Mr. Mills disliked being teased by his peers for stuttering. He was  
22 often suspended from school and was arrested for stealing a bicycle in 1999. He was placed in  
23 juvenile hall, then in a children’s group home, was returned to juvenile hall and then transferred to  
24 Porterville.

25 34. Mr. Mills’ strengths include his independence in daily living skills (he can cook  
26 simple meals and make purchases), his cooperative attitude and motivation to succeed. He is on the  
27 highest level of his unit’s point system and takes pride in being an officer in the unit government.  
28

1           35. Mr. Mills' planning team at Porterville has identified the services he would need to be  
2 successful in the community, including: a small 4-6 person group home near his grandmother,  
3 speech therapy, anger and behavior management, mental health services and crisis intervention.  
4 Because his regional center has no space available in a home of this type for minors, Mr. Mills  
5 remains inappropriately institutionalized at Porterville behind two 16-foot tall security fences  
6 patrolled by peace officers. He is not able to leave the secure area without an escort and is not able  
7 to leave the Porterville campus for any community outings.

8           *Alana Ridgeway*

9           36. Plaintiff/Petitioner Alana Ridgeway is a 46-year old Regional Center of Orange  
10 County (RCOC) client. She has mild retardation, cerebral palsy, spina bifida and uses a wheelchair.  
11 She has a history of depression with schizo-affective disorder. Ms. Ridgeway appears in this action  
12 through her guardian ad litem and family friend, James Roberts.

13           37. Ms. Ridgeway is an alert personable expressive woman who enjoys interacting with  
14 others. She has a good sense of humor and loves cartoons. She is able to communicate verbally her  
15 wants, needs and preferences. She wheels herself around and likes attending community activities.

16           38. While successfully living in a small group home, she attended an adult educational day  
17 program. She was a confident, enthusiastic student who always "did her best." She was helpful and  
18 would assist her classmates with tasks. She read poetry, participated in dramatic readings,  
19 improvisational acting and was an imaginative storyteller. During music classes, she learned the  
20 autoharp and did not hesitate to sing out.

21           39. Due to her family's concerns regarding the quality of care Ms. Ridgeway was  
22 receiving at her home, they asked for her to be moved. Instead of finding a new appropriate  
23 community home, RCOC referred her to a large skilled nursing facility (SNF), where she did not  
24 have a peer group. Ms. Ridgeway repeatedly states she does not like interacting with the older  
25 residents who she has very little in common with. In addition, her day program activities ended  
26 when she was transferred.

27           40. At the SNF, Ms. Ridgeway exhibits behavioral challenges that the staff are not  
28 equipped to address. Thus, she has repeatedly been admitted to and released from the psychiatric



1 unit of the local hospital. Most recently, the SNF did not hold her bed for the entire hospital stay,  
2 and she was sent to another similarly large SNF where she resides today.

3 41. Ms. Ridgeway has been and still can be served in a small community home setting,  
4 with supports that meet her physical and mental health needs, but she remains inappropriately  
5 institutionalized due to the lack of available community homes.

6 *Avery Russell*

7 42. Petitioner/Plaintiff Avery Russell is a 45-year-old man who has been residing at  
8 Agnews DC since 1999 and is a client of Far Northern Regional Center. He has Prader Willi  
9 Syndrome, a condition that keeps him from being able to control his appetite, consequential obesity,  
10 diabetes, depression, and osteoporosis, as well as mild retardation. Mr. Russell brings this action on  
11 his own behalf.

12 43. Mr. Russell is a sociable person who carries on conversations and is generally polite  
13 and considerate. He is independent in daily living tasks and capable of sustained and meaningful  
14 employment. He enjoys being paid for his work. Mr. Russell currently has a paid job making beds  
15 on his residence and he self-initiated recycling cans and bottles for money. He shops for personal  
16 items on community outings.

17 44. A psychological evaluation of Mr. Russell describes Prader Willi Syndrome as being  
18 characterized by an “insatiable appetite” and says that, “eating governs his life.” Mr. Russell’s  
19 planning team states that his dietary restriction appears as an antecedent to virtually all of his  
20 behavioral problems. Agnews DC has not been able to contain Mr. Russell’s eating habits. In fact,  
21 within one year of admission to Agnews DC in 1999, Mr. Russell gained more than 62 pounds  
22 bringing him to a weight of over 350 pounds. Agnews staff feel they have tried numerous  
23 techniques to help him lose weight and none have worked.

24 45. Mr. Russell has clearly expressed his desire to live in a community home for  
25 sometime. He does not feel safe at Agnews as he has been injured by other residents; nor does he  
26 have many peers who can share his interests.

1 46. At his IPP meeting of October 2000, Mr. Russell was told that movement to the  
2 community would not be explored until he weighed less than 300 pounds and his behaviors had  
3 decreased. The very nature of Mr. Russell's disability was thus keeping him confined.

4 47. Mr. Russell was not satisfied and sought a writ of release from the Superior Court of  
5 Santa Clara. The court granted the writ in October 2001, stating that Agnews DC is not the least  
6 restrictive environment possible for Mr. Russell. However, Mr. Russell remains inappropriately  
7 institutionalized as living arrangements with appropriate supports has not been located or developed  
8 by his regional center.

9 **Jimmy White**

10 48. Plaintiff /Petitioner Jimmy White is a 60-year-old man who has resided in institutions  
11 for most of his life. He currently resides at Sonoma DC and is a client of Regional Center of the  
12 East Bay. Mr. White is mildly retarded and has borderline personality disorder; however, it is his  
13 Pica disorder, a compulsion to swallow inedible objects, which has resulted in his  
14 institutionalization. Mr. White is very social and is able to engage in moderately complex  
15 conversation. He is proud of his work at the institution's laundry and has accumulated \$900 in his  
16 workshop savings account. Mr. White appears in this action through his guardian ad litem, Areta  
17 Guthrey.

18 49. There is no peer group for Mr. White at Sonoma which matches his intellectual ability.  
19 Staff at Sonoma believes that Mr. White's ingestion of foreign objects may be interpreted as a  
20 coping mechanism used for surviving in an environment that he has very little control over and is  
21 aimed at obtaining more attention and independence. Episodes of Pica occur most often when Mr.  
22 White feels that his desires are being ignored. When his needs are met, his episodes of Pica have  
23 greatly decreased and even stopped for long periods of time.

24 50. Mr. White consistently expresses his desire to live in the community. In June 2000,  
25 the Sonoma County Superior Court requested that Mr. White's treatment team meet and outline the  
26 structural conditions which would allow him to be released from Sonoma DC into a community  
27 option where he could reside safely. In July 2000, the team agreed on a list of supports Mr. White  
28 would need in the community, including a 1:1 staff ratio which he currently receives in the DC. Yet,

1 by May 2001, no progress had been made and Mr. White filed a writ with the Court seeking  
2 appropriate community services. In July 2001, his IPP team met to clarify placement planning  
3 issues and determined that customized supported living arrangements would best meet Mr. White's  
4 unique needs. The team anticipated that the intensity of Mr. White's needs would decrease in such a  
5 setting commensurate with his increased personal satisfaction.

6 51. Over the summer, Regional Center of the East Bay contacted supported living  
7 agencies in its area and was told they were full and had lengthy waiting lists. Instead of developing  
8 the services Mr. White requires, the regional center has kept Mr. White's writ from Court review by  
9 continually requesting postponement on the grounds that there continues to be no appropriate  
10 provider available to meet his needs. Thus, despite the efforts of Mr. White, the recommendations of  
11 his team and the actions of the Court, Mr. White remains inappropriately institutionalized.

12 **Shawn Woodward-Katz**

13 52. Plaintiff/Petitioner Shawn Woodward-Katz is a 20-year-old man who has resided at  
14 Fairview DC since 1998 and is a client of San Gabriel/Pomona Regional Center. He has mild  
15 retardation, a variety of mental health diagnoses, including oppositional-defiant disorder, and a long  
16 history of disability-related behavioral problems. He appears in this action through his guardian ad  
17 litem, James Hill.

18 53. Mr. Woodward-Katz is extremely verbal with an extensive vocabulary and is able to  
19 articulate his feelings, wants and needs. He has awareness of his behavioral issues. He is friendly  
20 and outgoing. Mr. Woodward-Katz attends a public high school in a special education program.

21 54. Mr. Woodward-Katz has not been well-served by a variety of social services system  
22 throughout his life. He was removed from his mother early in life, made a ward of the court and  
23 placed in a series of foster homes. When he was nine, he was moved to a stable foster home with  
24 Mr. and Mrs. H. In 1993, when his foster father died, he became extremely upset and his acting out  
25 resulted in his arrest and removal from the Hs' home. Mrs. H and his foster brother continue to be  
26 involved in Mr. Woodward-Katz's life.

27 55. In 1994, Mr. Woodward-Katz was placed in a state psychiatric hospital, Camarillo  
28 State Hospital, where it was determined for the first time that he had a developmental disability. Mr.

1 Woodward-Katz moved to another state psychiatric hospital, Metropolitan State Hospital, in 1997,  
2 and in 1998, he was confined for six months in MacLaren Children's Center, a juvenile detention  
3 facility which is not intended to provide long term services. During these years, his formal  
4 education was limited.

5 56. Since his arrival at Fairview, Mr. Woodward-Katz has repeatedly expressed his  
6 feelings that he is inappropriately placed. He is one of the youngest and most able (high-  
7 functioning) men on his unit so he does not have a peer group. He tends to tease the less able  
8 residents, resulting in behavioral problems. He typically prefers to socialize with staff and his  
9 behaviors are exacerbated when his favorite staff leave.

10 57. In May 2001, Mr. Woodward-Katz filed a writ of habeas corpus seeking to leave  
11 Fairview. Mr. Woodward-Katz and Ms. Blumental, his advocate, requested San Gabriel/Pomona  
12 Regional Center to obtain an assessment for supported living services so he could move to his own  
13 apartment near his foster mother. In supported living, Mr. Woodward-Katz would not have less-able  
14 housemates, could control his own schedule and have a voice in selecting his own staff. This would  
15 mitigate his behavioral challenges. The Fairview planning team supported this request and agreed  
16 that Mr. Woodward-Katz is ready to move to the community. The court has continued the writ  
17 hearing awaiting results of the assessment.

18 58. More than six months later, an adequate assessment for supported living services has  
19 not been obtained and Mr. Woodward-Katz remains frustrated and depressed by his inappropriate  
20 institutionalization.

21 **Lucien Corpolongo**

22 59 A. Lucien Corpolongo is a twenty-seven-year-old consumer of Harbor Regional Center  
23 (HRC) and became a resident of Intercommunity Care Center, a large Nursing Facility ("Nursing  
24 Facility") with locked main doors and perimeter fences, in May 2005.

25 59 B. With a dual diagnosis of a developmental disability (mild retardation) and a psychiatric  
26 disability (often diagnosed as schizoaffective disorder), Mr. Corpolongo is eligible for both mental  
27 health services and regional center services. Nonetheless, due to a lack of coordination between  
28 these two systems, Mr. Corpolongo does not receive the services and supports that he needs.

1 59 C. Immediately prior to being admitted to the Nursing Facility, Mr. Corpolongo spent five  
2 months inappropriately placed in the acute psychiatric ward of Pacific Oaks Hospital. On  
3 information and belief, Mr. Corpolongo resided at this hospital for far longer than was medically  
4 necessary; the hospital, designed for short-term stays, provided high doses of psychiatric medication,  
5 with no appropriate treatment regimen.

6 59 D. On April 26, 2005, Pacific Oaks Hospital, frustrated by HRC's failure to provide  
7 services to Mr. Corpolongo, called Doug Corpolongo (Mr. Corpolongo's father), threatening to  
8 abandon Mr. Corpolongo at HRC's offices. This crisis was averted, but Mr. Corpolongo remained at  
9 the hospital without a stable living situation for nearly another month.

10 59 E. Finally, the alternative that HRC offered Mr. Corpolongo was a Nursing Facility, an  
11 institutional setting not designed to meet his unique needs as a young man with a dual diagnosis.  
12 Mr. Corpolongo wants to live with peers in an integrated community setting, but on information and  
13 belief, the Nursing Facility where he has been placed is designed to house confused, wandering,  
14 geriatric people. Mr. Corpolongo enjoys having independence: his ability to carry on a  
15 conversation, feed himself, perform all hygiene and grooming requirements, and prepare non-cooked  
16 food testify to the inappropriateness of the Nursing Facility placement.

17 59 F. Mr. Corpolongo is represented in this action by his father, conservator, and guardian  
18 ad litem, Doug Corpolongo.

19 **Sharon Forster**

20 59 G. Sharon Forster, a sixty-five-year-old consumer of Golden Gate Regional Center  
21 ("GGRC"), has lived at Burlingame Healthcare Center, a large Nursing Facility, since January 11,  
22 2004. Cerebral palsy impairs Ms. Forster's speech, mobility, and use of her hands; she also has  
23 asthma. She uses an electric wheelchair and needs assistance with transfers to and from her  
24 wheelchair, although she helps by bearing some weight on her legs.

25 59 H. Ms. Forster, unlike other residents of the Nursing Facility, is not cognitively impaired;  
26 most other Burlingame residents have dementia or some other reduction in cognitive function, so  
27 Ms. Forster lives surrounded by people who either are non-verbal or cannot communicate  
28 meaningfully with her. Despite the fact that most of its 250 residents use wheelchairs, Burlingame

1 has only two elevators, making it challenging for residents to access the outside world. An ardent  
2 fan of San Francisco Giants baseball, Ms. Forster is often frustrated when Burlingame staff insist on  
3 putting her to bed at 9:30 p.m., in the middle of televised Giants games.

4 59 I. Ms. Forster is a warm, outgoing person with many friends. Her interests and hobbies  
5 include reading novels, dancing, listening to music, swimming, and going to parties at the Veterans'  
6 Memorial Center.

7 59 J. Ms. Forster moved to Burlingame after living for two years in San Mateo Medical  
8 Center, an acute-care hospital, after undergoing surgery. Inappropriately placed at the hospital for  
9 almost two years after she had recuperated from surgery and was ready for discharge, Ms. Forster  
10 could not be released because GGRC found no placement for her. She was finally informed by  
11 GGRC that the only available placement was a nursing facility, and she has been at Burlingame ever  
12 since.

13 59 K. Prior to hospitalization, Ms. Forster lived independently in her own Redwood City  
14 home for over fifty years, first with her mother, then with an attendant. She was able to move about  
15 the community as she pleased. Ms. Forster is a well-known and an active member of her  
16 community. Her biggest dream is to return to a community residence with supports so that she can  
17 make her own decisions about where to go, what to eat, what time to go to bed, and other matters,  
18 rather than being reliant on Burlingame staff.

19 **Jacob Ashbrook Myers**

20 59 L. Jacob Ashbrook Myers is a twenty-six-year-old consumer of North Bay Regional  
21 Center ("NBRC"). He has been a resident of Sonoma DC since August 2000. Prior to moving to a  
22 DC, Mr. Myers lived first at home with his parents, then at two group homes in the community.

23 59 M. Mr. Myers has been diagnosed with autism, mild to moderate retardation, diabetes,  
24 traits associated with conduct disorder, spondylosis causing back pain, and seizure disorder.

25 Compared to the population of individuals with autism, Mr. Myers has relatively good receptive  
26 language skills and is able to express his needs and desires verbally.

27 59 N. For years, Mr. Myers has stated a strong preference for living on his own, as he does  
28 not like crowded situations and is very sensitive to stimulation; at Sonoma, he lives with at least 20

1 people and is exposed to a great deal of stimulation. Mr. Myers dislikes chaotic, noisy, crowded  
2 environments where he is in close contact with others, but thrives in structured, interesting, engaging  
3 environments where he can exercise independence and decision-making ability.

4 59 O. DC staff support Mr. Myers' consistently expressed wish to move into an integrated  
5 setting in the community; however, neither the DC nor NBRC has taken appropriate action to find a  
6 community home for Mr. Myers. Finally, Mr. Myers filed a writ seeking release from the DC; the  
7 court granted his writ in September 2004, yet NBRC still failed to take sufficient action to assist him  
8 in moving into the community. Indeed, NBRC attempted to find an appropriate community living  
9 arrangement for Mr. Myers only when it was at risk of being found in contempt of court, in both  
10 December 2004 and March 2005.

11 59 P. Mr. Myers is represented in this action by his guardians ad litem: his mother (Kay  
12 Ashbrook) and his father (Ray Myers), who also serve as his limited conservators.

13 **John Pineda**

14 59 Q. John Pineda is a forty-year-old consumer of Kern Regional Center who has lived at  
15 Porterville DC for 10 years and previously lived for many years at Camarillo DC. Mr. Pineda has  
16 profound retardation, blindness, insulin-dependent diabetes, a history of seizures, and a severe  
17 hearing impairment; he uses a wheelchair. While he cannot speak, he can use simple signs, yells,  
18 and cries to indicate his likes and dislikes and can respond to loud, simple requests.

19 59 R. Because of the nature or severity of his disability, Mr. Pineda cannot express his choice  
20 with respect to living arrangements; however, he never made a decision to be placed at a DC, and the  
21 legal presumption should be that he would choose to live in the most integrated setting in which his  
22 needs can be met, rather than to remain unnecessarily institutionalized. Moreover, it is clear that Mr.  
23 Pineda often prefers to be alone and does not like crowded, noisy environments or others invading  
24 his space, situations often encountered in a DC. Mr. Pineda's family does not oppose his moving to  
25 an appropriate community setting.

26 59 S. According to his assessment planning team, Mr. Pineda would benefit from moving to  
27 a community home. Kern Regional Center has included Mr. Pineda in its Community Placement  
28 Plan but is having difficulty locating or developing the resources that are necessary to meet his

1 health needs as an insulin-dependent diabetic. Kern Regional Center's attempt to place Mr. Pineda  
2 in a small Intermediate Care Facility/Developmental Disabilities-Nursing has been stymied by State  
3 Defendant California Department of Health Care Services. Kern Regional Center has also explored  
4 other placements, but necessary resources are difficult to find in his community. Since Mr. Pineda  
5 does not need to be institutionalized, defendants must develop an appropriate community living  
6 arrangement that can meet his needs.

7 59 T. Mr. Pineda is represented in this action by his guardian ad litem, Deborah A.  
8 Dorfman.

9 *Jane Schuster*

10 59 U. Jane Schuster is a forty-three-year-old consumer of Alta California Regional Center  
11 ("Alta"), and has been a resident of Gardens Healthcare, a large Intermediate Care  
12 Facility/Developmental Disabilities institution ("ICF/DD institution"), since August 1983. She has  
13 expressed an interest in moving out of the ICF/DD institution for years, but has not received  
14 appropriate support from Alta.

15 59 V. Ms. Schuster, who has been diagnosed with cerebral palsy, spastic bladder,  
16 gastroesophageal reflux disorder, a psychiatric disability, and mild to borderline retardation, uses a  
17 power wheelchair. She has good receptive communication skills, talks understandably, and is a very  
18 sociable person with strong family support.

19 59 W. Having expressed a strong interest in moving into the community for several years,  
20 Ms Schuster is particularly eager to move to a supported living arrangement – a home of her own  
21 with supports. Her requests have been approved by the Alta Supported Living Services committee.  
22 Nonetheless, Alta views movement to the community as a long-term goal. On information and  
23 belief, Alta has made no attempt to locate or develop supported living services for Ms. Schuster.  
24 Instead, Alta has applied inappropriate readiness criteria, requiring Ms. Schuster to improve her  
25 continence prior to community placement and to manage her moods more effectively. Supported  
26 living services are available "regardless of the degree of disability." Welf. Inst. Code § 4689; thus,  
27 Ms. Shuster should be able to move to supported living without waiting to meet the readiness criteria  
28 imposed by Alta.



1 59 X. Ms. Schuster is represented in this action by her guardian ad litem, Tony Anderson.

2 **Taxpayer Petitioners/Plaintiffs**

3 60. Plaintiff/Petitioner Janice Lord-Walker is a resident of the City of Oakland in Alameda  
4 County, California. She is the parent of a 19-year old son with Down's Syndrome and has been an  
5 active advocate for the rights of people with disability since his birth. She is a member of  
6 Harambee, an advocacy group for African Americans with developmental delays. Ms. Lord-Walker  
7 has been assessed, and is liable to pay, state income and property taxes in California. She has paid  
8 these taxes to the State of California within one year of the commencement of this action.

9 61. Plaintiff/Petitioner Curtis Kitty Cone is a resident of the City of Berkeley in Alameda  
10 County, California. She has been actively involved in the disability rights movement for 30 years  
11 and worked as Development Director of the Disability Rights Education and Defense Fund, Inc.  
12 from 1990-1999. Ms. Cone has been assessed, and is liable to pay state income and property taxes  
13 in California. She has paid these taxes to the State of California within one year of the  
14 commencement of this action.

15 **Organizational Petitioners/Plaintiffs**

16 62. Organizational petitioner/plaintiff Capitol People First, is a non-profit organization  
17 based in Sacramento, California whose members are persons with developmental disabilities.  
18 Capitol People First is dedicated to self-advocacy, helping primary consumers assume greater  
19 control over their own lives and enabling people with disabilities to live, learn, work and play in  
20 integrated environments with non-disabled people. Capitol People First members are adversely  
21 affected and its organizational mission is thwarted by the acts and omissions of defendants  
22 complained of herein which impede the integration and self-determination of people with  
23 disabilities.

24 63. Organizational petitioner/plaintiff California Alliance for Inclusive Communities, Inc.  
25 (CAIC), is a non-profit public benefit corporation whose members include people with  
26 developmental disabilities, their family members, and other concerned citizens. CAIC was  
27 founded in 1998 to advocate for high-quality community-based services and supports for  
28 individuals with developmental disabilities and their families throughout the individual's life

1 span. CAIC promotes the removal of physical, attitudinal and systemic barriers in all areas of  
2 community living to enhance the life quality of people with developmental disabilities. CAIC's  
3 members are adversely affected and its organizational mission is thwarted by the acts and omissions  
4 of defendants complained of herein which impede the rights of its members and other people with  
5 developmental disabilities to live in appropriate quality community settings.

6 64. Organizational petitioner/plaintiff Arc California, is a non-profit public benefit  
7 corporation founded in 1950 whose members include people with developmental disabilities, their  
8 families and other concerned citizens. Arc California is committed to securing for all people with  
9 developmental disabilities the opportunity to choose and realize their goals of where and how they  
10 live, work and play. Arc California advocates for quality community services and adequate financial  
11 resources so that people with developmental disabilities may live, work and play in integrated  
12 community settings. The members of the Arc California are adversely affected and its mission is  
13 thwarted by the acts and omissions of defendants complained of herein which impede the rights of  
14 its members to live, work and play in quality, community settings of their choice.

#### 15 **State Respondents/Defendants**

16 65. Respondent/defendant STATE OF CALIFORNIA is a political entity and suit against  
17 the State of California is authorized by Article XX, section 6, of the California State Constitution.  
18 The State must ensure that the services it provides comply with federal and state laws including its  
19 obligation under the Lanterman act to provide residents with developmental disabilities supports in  
20 the least restrictive community setting.

21 66. Respondent/defendant DEPARTMENT OF DEVELOPMENTAL SERVICES (DDS)  
22 is the department within the CHHS Agency charged with the implementation and administration of  
23 the Lanterman Act and with the mandatory duty of ensuring that, pursuant to the Act, programs and  
24 living arrangements for Californians with developmental disabilities are provided in the least  
25 restrictive, most integrated setting for each individual. DDS operates and administers California's  
26 developmental disabilities services program, which includes California's seven public institutions,  
27 the developmental centers, and community-based services for Californians with developmental  
28

1 disabilities. DDS is a “public entity” within the meaning of the ADA, a recipient of state and federal  
2 funds and provides, administers and oversees services funded under Title XIX.

3 67. Respondent/defendant TERRI DELGADILLO is sued in her official capacity as the  
4 Director of Developmental Services. As such, she is responsible for DDS’ implementation of and  
5 compliance with the mandates of the Lanterman Act and other state and federal laws. Director  
6 Delgadillo is responsible for directing, organizing, and administering California’s developmental  
7 disabilities services program, including both the DCs and community-based services.

8 68. Respondent/defendant DEPARTMENT OF HEALTH CARE SERVICES (DHCS) is a  
9 department within the CHHS Agency and is the single State agency responsible for administration of  
10 all aspects of the Medicaid program, entitled Medi-Cal in California. DHCS is a “public entity”  
11 within the meaning of the ADA, as well as a recipient of state and federal funds and provides,  
12 administers, and oversees services funded under Title XIX.

13 69. Respondent/defendant SANDRA SHEWRY is sued in her official capacity as the  
14 Director of DHCS. Director Shewry is responsible for directing, organizing and administering  
15 California’s Medi-Cal program, which provides funding for California’s developmental disabilities  
16 services program, including both institutions and community-based services. Director Shewry is  
17 charged with administering this program in compliance with federal and State law.

18 70. Respondent/defendant DEPARTMENT OF MENTAL HEALTH (DMH) is a  
19 department within the CHHS Agency and a “public entity” within the meaning of the ADA. DMH  
20 is a recipient of state and federal funds. DMH has responsibilities under the Lanterman Act, the  
21 ADA, Section 504, Government Code section 11135, and other state and federal laws to ensure that  
22 the needs of people with developmental disabilities who also have psychiatric disabilities or mental  
23 health services needs are met, including responsibility for collaborating with DDS to ensure the  
24 provision of such services.

25 71. Respondents/defendants State, DDS, DHCS, DMH, and Directors Delgadillo and  
26 Shewry are referred to jointly as “State defendants.” References to DDS include defendant Director  
27 Delgadillo.  
28

**Regional Center Respondents/Defendants**

1  
2           72.    Respondent/defendant Alta California Regional Center, Inc. (ACRC) is a non-profit  
3 corporation which contracts with DDS, pursuant to the Lanterman Act, to fulfill the State's  
4 obligation to people with developmental disabilities residing in Alpine, Colusa, El Dorado, Nevada,  
5 Placer, Sacramento, Sierra, Sutter, Yolo, and Yuba counties.

6           73.    Respondent/defendant Central Valley Regional Center, Inc. (CVRC) is a non-profit  
7 corporation which contracts with DDS, pursuant to the Lanterman Act, to fulfill the State's  
8 obligation to people with developmental disabilities residing in Fresno, Kings, Madera, Mariposa,  
9 Merced, and Tulare counties.

10          74.    Respondent/defendant Eastern Los Angeles Regional Center, Inc. (ELARC) is a non-  
11 profit corporation which contracts with DDS, pursuant to the Lanterman Act, to fulfill the State's  
12 obligation to people with developmental disabilities residing in portions of Eastern Los Angeles  
13 County.

14          75.    Respondent/defendant Far Northern Coordinating Council on Developmental  
15 Disabilities, dba Far Northern Regional Center (FNRC), is a non-profit corporation which contracts  
16 with DDS, pursuant to the Lanterman Act, to fulfill the State's obligation to people with  
17 developmental disabilities residing in Butte, Glenn, Lassen, Modoc, Plumas, Shasta, Siskiyou,  
18 Tehama, and Trinity Counties.

19          76.    Respondent/defendant Los Angeles County Developmental Services Foundation, dba  
20 Frank D. Lanterman Regional Center (FDLRC), is a non-profit corporation which contracts with  
21 DDS, pursuant to the Lanterman Act, to fulfill the State's obligation to people with developmental  
22 disabilities residing in Central Los Angeles County.

23          77.    Respondent/defendant Golden Gate Regional Center, Inc. (GGRC) is a non-profit  
24 corporation which contracts with DDS, pursuant to the Lanterman Act, to fulfill the State's  
25 obligation to people with developmental disabilities residing in Marin, San Francisco, and San  
26 Mateo Counties.

27          78.    Respondent/defendant Harbor Developmental Disabilities Foundation, dba Harbor  
28 Regional Center (HRC), is a non-profit corporation which contracts with DDS, pursuant to the

1 Lanterman Act, to fulfill the State's obligation to people with developmental disabilities residing in  
2 portions of Southern Los Angeles County.

3 79. Respondent/defendant Inland Regional Center, Inc. (IRC) is a non-profit corporation  
4 which contracts with DDS, pursuant to the Lanterman Act, to fulfill the State's obligation to people  
5 with developmental disabilities residing in Riverside and San Bernardino Counties.

6 80. Respondent/defendant Kern Regional Center (KRC) is a non-profit corporation which  
7 contracts with DDS, pursuant to the Lanterman Act, to fulfill the State's obligation to people with  
8 developmental disabilities residing in Inyo, Kern, and Mono Counties.

9 81. Respondent/defendant North Bay Developmental Disabilities Services, Inc., dba North  
10 Bay Regional Center (NBRC), is a non-profit corporation which contracts with DDS, pursuant to the  
11 Lanterman Act, to fulfill the State's obligation to people with developmental disabilities residing in  
12 Napa, Solano, and Sonoma Counties.

13 82. Respondent/defendant North Los Angeles County Regional Center, Inc. (NLACRC) is  
14 a non-profit corporation which contracts with DDS, pursuant to the Lanterman Act, to fulfill the  
15 State's obligation to people with developmental disabilities residing Northern Los Angeles County.

16 83. Respondent/defendant Redwood Coast Developmental Services Corporation, dba  
17 Redwood Coast Regional Center (RCRC), is a non-profit corporation which contracts with DDS,  
18 pursuant to the Lanterman Act, to fulfill the State's obligation to people with developmental  
19 disabilities residing in Del Norte, Humboldt, Mendocino, and Lake Counties.

20 84. Respondent/defendant Regional Center of the East Bay, Inc. (RCEB) is a non-profit  
21 corporation which contracts with DDS, pursuant to the Lanterman Act, to fulfill the State's  
22 obligation to people with developmental disabilities residing in Alameda and Contra Costa Counties.

23 85. Respondent/defendant Regional Center of Orange County, Inc. (RCOC) is a non-profit  
24 corporation which contracts with DDS, pursuant to the Lanterman Act, to fulfill the State's  
25 obligation to people with developmental disabilities residing in Orange County.

26 86. Respondent/defendant San Andreas Regional Center (SARC) is a non-profit  
27 corporation which contracts with DDS, pursuant to the Lanterman Act, to fulfill the State's  
28

1 obligation to people with developmental disabilities residing in Monterey, San Benito, Santa Clara,  
2 and Santa Cruz Counties.

3 87. Respondent/defendant San Diego Imperial Counties Developmental Services, Inc., dba  
4 San Diego Regional Center (SDRC), is a non-profit corporation which contracts with DDS, pursuant  
5 to the Lanterman Act, to fulfill the State's obligation to people with developmental disabilities  
6 residing in Imperial and San Diego Counties.

7 88. Respondent/defendant San Gabriel/Pomona Valleys Developmental Services, Inc., dba  
8 San Gabriel /Pomona Regional Center (SGPRC), is a non-profit corporation which contracts with  
9 DDS, pursuant to the Lanterman Act, to fulfill the State's obligation to people with developmental  
10 disabilities residing in portions of Eastern Los Angeles County.

11 89. Respondent/defendant South Central Los Angeles Regional Center for  
12 Developmentally Disabled Persons, Inc., dba South Central Los Angeles Regional Center  
13 (SCLARC), is a non-profit corporation which contracts with DDS, pursuant to the Lanterman Act, to  
14 fulfill the State's obligation to people with developmental disabilities residing in portions of  
15 Southern Los Angeles County.

16 90. Respondent/defendant Tri-Counties Association for the Developmentally Disabled,  
17 Inc., dba Tri-Counties Regional Center (TCRC), is a non-profit corporation which contracts with  
18 DDS, pursuant to the Lanterman Act, to fulfill the State's obligation to people with developmental  
19 disabilities residing in San Luis Obispo, Santa Barbara, and Ventura counties.

20 91. Respondent/defendant Valley Mountain Regional Center, Inc. (VMRC) is a non-profit  
21 corporation which contracts with DDS, pursuant to the Lanterman Act, to fulfill the State's  
22 obligation to people with developmental disabilities residing in Amador, Calaveras, San Joaquin,  
23 Stanislaus, and Tuolumne Counties.

24 92. Respondent/defendant Coastal Developmental Services Foundation, dba Westside  
25 Regional Center (WRC), is a non-profit corporation which contracts with DDS, pursuant to the  
26 Lanterman Act, to fulfill the State's obligation to people with developmental disabilities residing in  
27 Western Los Angeles County.  
28

1 93. Respondents/defendants ACRC, CVRC, ELARC, FNRC, GGRC, HRC, IRC, KRC,  
2 FDLRC, NBRC, NLACRC, RCRC, COC, RCEB, SARC, SDRC, SGPRC, SCLARC, TCRC,  
3 VMRC, and WRC are referred to jointly as “regional center defendants.”

4 94. Each of the regional center defendants is a recipient of state and federal funds and  
5 administers, oversees and, in limited circumstances, provides services funded under Title XIX.

6 95. Petitioners/plaintiffs are ignorant of the true names and capacities of  
7 respondents/defendants sued herein as Does 1 through 100 inclusive, and therefore, sue these  
8 defendants by such fictitious names. Plaintiffs will amend this complaint to allege their true names  
9 and capacities when ascertained.

10 96. Because this action is brought a complaint for injunctive and declaratory relief, as well  
11 as through a petition for mandamus relief, references to plaintiffs are also references to petitioners,  
12 and references to defendants are also references to respondents.

#### 13 IV.

#### 14 CLASS ALLEGATIONS

15 97. Pursuant to Code of Civil Procedure section 382, the representative plaintiffs named  
16 above bring this action on their own behalf and on behalf of all others similarly situated. The  
17 plaintiff class consists of all Californias residents with a developmental disability, as defined in  
18 Welfare and Institutions Code section 4512(b), who are (or become) institutionalized, and those  
19 who are at risk of being institutionalized, in congregate residential facilities having a capacity of 16  
20 or more individuals.

21 98. Under this definition, “institutions” are public and private, licensed or certified  
22 facilities, including but not limited to state developmental centers (DCs) including the state-owned-  
23 and-operated Sierra Vista and Canyon Springs facilities, state psychiatric hospitals; intermediate care  
24 facilities-developmentally disabled (ICF-DDs); and those skilled nursing facilities (SNFs),  
25 residential community care facilities (CCFs), or children’s shelters with a capacity of 16 or more.  
26 This definition refers to facilities on the same grounds or parcel, irrespective of whether the provider  
27 has one or more discrete licenses.  
28

1           99.       By statute, Welfare and Institutions Code section 4418.7, a person is “at risk” of  
2 institutionalization in a DC when “the regional center determines, or is informed by the consumer’s  
3 parents, legal guardian, conservator, or authorized representative that the community placement of  
4 [the] consumer is at risk of failing and that admittance to a state developmental center is a  
5 likelihood.” For purposes of the class definition, the same criteria apply to determine those at risk of  
6 institutionalization in institutions other than DCs. In addition, pursuant to Welfare and Institutions  
7 Code section 4508, individuals who are released from DCs may be on provisional placement for one  
8 year and have an “automatic right of return.” Under the class definition, therefore, persons at risk of  
9 institutionalization also include those who are within one year of release or discharge from a DC or  
10 other institution

11           100.     All of these class members are entitled, under the Lanterman Act, the Government  
12 Code section 11135, the ADA, section 504 of the Rehabilitation Act, the State and Federal  
13 Constitutions and/or Title XIX of the Social Security Act, to be informed of and to adequate  
14 assessments of the services which could meet their needs and choices in non-institutional integrated  
15 community settings. Those class members who can “handle and benefit” from community services  
16 and/or live in less restrictive integrated settings are entitled, under these same laws, to receive  
17 appropriate community living options and ancillary supports with reasonable promptness. Due to  
18 defendants’ policies and practices, many class members have never received adequate assessments  
19 or information, in an understandable form, about community service options. Other class members  
20 have already been determined, through assessments and/or by their planning teams and/or by courts,  
21 to need community services. Yet, due to defendants’ policies, practices and funding methods, they  
22 remain needlessly institutionalized. Members of the plaintiff class are suffering and will continue to  
23 suffer harm as a result of being denied these mandated assessments and quality community services.

24           101.     Plaintiffs are informed and believe that over 6,000 people with developmental  
25 disabilities in California are unnecessarily institutionalized or at risk of becoming so, including a  
26 substantial proportion of the approximately 3,730 current residents of the state-operated DCs and  
27 the approximately 1,000 current residents of publicly or privately operated nursing facilities. The  
28 needs and desires of these individuals could appropriately be met in more integrated community



1 settings. The size of the class is so numerous that joinder of all members is impracticable. Joinder is  
2 also impracticable because the plaintiff class lacks the knowledge and financial means to maintain  
3 individual actions and because the class includes people who will be unnecessarily institutionalized  
4 or at risk in the future and their identities are unknowable.

5 102. There are questions of law and fact common to the class and the plaintiffs' claims are  
6 typical of the claims of the class. These questions include, but are not limited to:

7 a) Whether defendants violate the integration mandates of the Lanterman Act,  
8 ADA, section 504 and Government Code section 11135 by requiring plaintiffs to be  
9 segregated and confined unnecessarily in institutional settings in order to receive the living  
10 arrangements and ancillary supports to which they are entitled, rather than providing those  
11 services in appropriate integrated settings in plaintiffs' homes and communities.

12 b) Whether defendants violate plaintiffs' fundamental constitutional rights,  
13 including their rights to liberty, privacy and freedom of association by confining plaintiffs to  
14 segregated institutional settings as appropriate community options are not available;

15 c) Whether regional center defendants violate Business and Professions Code  
16 section 17200.

17 d) Whether defendants fail to conduct adequate, timely and comprehensive  
18 assessments and develop the person-centered Individual Program Plans necessary to identify  
19 the services for which class members are eligible and that could meet their needs in less  
20 restrictive, more integrated community settings.

21 e) Whether defendants fail to ensure that an adequate array of appropriate quality  
22 community living options and the necessary ancillary supports are developed so that class  
23 members may access the services and supports needed to live in non-institutional community  
24 settings.

25 f) Whether defendants fail to apply for or allocate adequate funding to enable  
26 defendants DDS and regional centers to conduct said assessments and develop said resources  
27 and to enable service providers to provide quality services and supports with well-trained,  
28 stable staff.

1           g)       Whether defendants fail to effectively communicate information concerning  
2 alternatives to institutional care to persons at risk of placement into institutions, to residents  
3 of such institutions, and to their legal representatives, as required, for example, by the  
4 Lanterman Act and Title XIX of the Social Security Act.

5           h)       Whether defendants fail to inform institutionalized individuals or persons at  
6 risk of institutionalization of the availability of home and community-based services under  
7 federal Medicaid waiver programs for which they are eligible, to offer individuals a  
8 meaningful choice of home and community-based services in lieu of institutional care and to  
9 provide those services.

10          i)       Whether defendants fail to offer and provide with reasonable promptness  
11 Medicaid services, including home and community-based waiver services, for which  
12 residents of institutions such as the DCs, SNFs or ICF-DDs, or persons at risk of placement  
13 in such institutions, are eligible and which they need to live in more integrated, community-  
14 based settings.

15          103.   The claims of the named representative plaintiffs—including claims that defendants  
16 have violated their rights to proper assessments and to receive appropriate living arrangements and  
17 ancillary services in integrated, non-institutional settings—are typical of the class members' claims.  
18 These claims arise from the same unlawful and discriminatory policies and practices of defendants.

19          104.   The representative plaintiffs will fairly and adequately protect the interests of the class.  
20 Plaintiffs will vigorously represent the interests of the unnamed class members and all members of  
21 the proposed class will benefit by the class proposed by the plaintiffs. The named plaintiffs have no  
22 interests which are in conflict with other class members. Plaintiffs and the class are represented by  
23 qualified, experienced, and competent counsel.

24          105.   The prosecution of separate actions by individual members of the class would create a  
25 risk of inconsistent or varying adjudication establishing incompatible rules of law for the provision  
26 of services to people with developmental disabilities in California.



1 110. Defendant DDS, under the control of its director, defendant Delgadillo (collectively  
2 referred to as DDS), is ultimately responsible for ensuring that the Lanterman Act is fully  
3 implemented. Welf. & Inst. Code § 4416. Additionally, DDS' roles include, but are not limited to:

4 a) Contracting with, supporting and monitoring regional centers to ensure, *inter alia*,  
5 that the regional centers operate in compliance with federal and state law, provide high  
6 quality service coordination, services and supports to individuals and their families, and those  
7 individuals receive the services and support identified in their individual program plans.

8 Welf. & Inst. Code §§ 4434, 4500.5, 4501, 4620;

9 b) Allocating funds to the regional centers for both operations and purchase of  
10 services, including specific funding to purchase community supports for those who are  
11 projected to move into the community from the DCs. Welf. & Inst. Code §§ 4620, 4787;

12 c) Operating the seven public institutions for people with developmental  
13 disabilities – the DCs. Welf. & Inst. Code § 4440, *et seq.*; and

14 d) Providing staff to assist in the deflection of individuals from placement in and  
15 transition of individuals out of the DCs to community homes. Welf. & Inst. Code §§ 4418.3,  
16 4418.7. For this purpose, DDS has created the Regional Resource Development Projects.

17 111. Regional centers are to “assist persons with developmental disabilities and their  
18 families in securing those services and supports which maximize opportunities and choices in living,  
19 working, learning and recreating in the community.” Welf. & Inst. Code § 4640.7(a).

20 112. Regional centers function on a service coordination model, in which each individual  
21 they serve, including plaintiffs and others in the DCs and other public and private institutions, should  
22 have a designated service coordinator who is responsible for planning and providing or ensuring that  
23 needed services and supports are available to the individual and family. Welf. & Inst. Code  
24 §§ 4640.7(b), 4647.

25 113. The centerpiece of the Lanterman Act scheme is the individualized person-centered  
26 planning process through which decisions are made concerning appropriate least restrictive  
27 treatment, services and supports for each person served by a regional center, including those residing  
28 in the DCs and other public and private institutions.

1 114. The planning team consists of the person and his/her representatives, the designated  
2 regional center service coordinator, other regional center representatives, if needed, DC staff if the  
3 person resides in a DC, and additional appropriate professionals or service providers by invitation.  
4 The team jointly prepares a person-centered individual program plan (IPP). Welf. & Inst. Code  
5 §§ 4418.3, 4512(j), 4646, 4646.5, and 4647.

6 115. In order to enable people with developmental disabilities, and their representatives, to  
7 participate meaningfully in the IPP process, DDS and regional centers must provide information in  
8 an understandable form to aid people in making choices. Welf. & Inst. Code § 4502.01.

9 116. The planning process includes the conducting of assessments by qualified individuals  
10 to determine the life goals, capabilities, strengths, preferences, barriers, and concerns or problems of  
11 the individual. The IPP contains a statement of goals based upon the individual's needs, preferences  
12 and life choices; a statement of specific objectives for implementing the person's goals and  
13 addressing his or her needs and a schedule of the type of amount of services and supports to be  
14 provided. The goals should maximize opportunities and teach skills needed for the person to  
15 develop relationships, be part of community life, increase control over his or her life and acquire  
16 increasingly positive roles in the community. Welf. & Inst. Code § 4646.5.

17 117. Planning teams must give the highest preference to those services and supports which  
18 allow minors to live with their families and adults to live as independently as possible in the  
19 community. Welf. & Inst. Code § 4648(a)(1). Thus, the planning team is required to consider for  
20 each resident of a DC or other institution whether alternative integrated community services can be  
21 provided. *See also* Welf. & Inst. Code § 4509.

22 118. In California, services for people with developmental disabilities are an "entitlement."  
23 Welf. & Inst. Code § 4648; *ARC*, 38 Cal.3d 384. Once services or supports are included in an  
24 individual's IPP, the regional center has a mandatory non-discretionary duty to provide these  
25 services and supports. The regional center must secure the services specified in the IPP, including  
26 community living arrangements and ancillary supports, by referral or purchase or, if needed services  
27 are not currently available, by program development. Welf. & Inst. Code §§ 4648(d)(e), 4651, and  
28 4677.

1 119. DDS' authority is limited in that it cannot control the manner in which the regional  
2 center provides services nor can it amend or alter the IPP's determination of service needs. *ARC*, 38  
3 Cal.3d 384.

4 120. Defendants DDS and regional centers have an obligation together and separately to  
5 provide an array of community living arrangements. Living arrangements include, but are not  
6 limited to, supported living where an adult lives in his/her own home with supports; adult family  
7 homes; alternative/foster family homes for children; and small group homes licensed either as  
8 community care facilities (CCF), or intermediate care facilities for the developmentally disabled,  
9 designated as habilitative (ICF-DD/H) or nursing (ICF-DD/N). Minors and adults with  
10 developmental disabilities may also receive family supports when they live with their families. *E.g.*,  
11 *Welf. & Inst. Code* § 4648(a)(9)(A).

12 121. Defendants DDS and regional centers must also provide or arrange for the provision of  
13 a broad array of ancillary services that are necessary for an individual to live successfully in the  
14 community including, but not limited to, supported or sheltered employment, day activities,  
15 occupational or physical therapy, adaptive equipment, mental health services, behavioral training  
16 and behavior modification programs, daily living skills training, transportation, assistance in locating  
17 a home, education, recreation, community integration supports and specialized medical and dental  
18 care. *Welf. & Inst. Code* § 4612(b). (Referred to jointly throughout as "ancillary" services.)

19 122. In order that the mandated array of quality services and supports is available. DDS is  
20 required to establish and maintain equitable systems of payment for the providers of services and  
21 supports, which reflect the actual costs of ensuring high quality, stable services, and ensure that  
22 people live in the least restrictive setting. *Welf. & Inst. Code* §§ 4648(a)(5), 4680, 4690, 4697,  
23 4786.

24 123. If the services and supports needed by an individual to live in the least restrictive  
25 community setting are not currently available, regional centers are to engage in program  
26 development. *Welf. & Inst. Code* § 4648(d)(e). DDS may be required to provide the services or  
27 supports directly where there are identified gaps in the system of services or where there are  
28

1 identified consumers for whom no provider will provide the services in his/her IPP. Welf. & Inst.  
2 Code § 4648(g).

3 124. In order that people with developmental disabilities not lose their community homes,  
4 DDS and regional centers are specifically required to provide emergency and crisis intervention  
5 services. Welf. & Inst. Code § 4648(a)(10). DDS and regional centers must also arrange for an  
6 assessment of any individual whose community living arrangement is failing causing the likelihood  
7 of admittance to a DC and ensure that the regional center provides needed services and supports on  
8 an emergency basis. Welf. & Inst. Code § 4418.7.

9 125. Special attention is paid in the Lanterman Act to the needs of people who are dually  
10 diagnosed – meaning they have a psychiatric disability as well as a developmental disability. Welf.  
11 & Inst. Code § 4646. DDS is required to consider, with the Department of Mental Health (DMH),  
12 higher rates for living arrangements for the dually diagnosed. Welf. & Inst. Code § 4681(d).  
13 Cooperative efforts between regional centers and county mental health agencies are mandated.  
14 Welf. & Inst. Code § 4696.1(c).

15 126. The provision of services under the Lanterman Act is intended to reflect the cost-  
16 effective use of public resources and to assure the maximum use of federal funding. Welf. & Inst.  
17 Code §§ 4645(a), 4683. Further, Welfare and Institutions Code section 4657 requires defendants  
18 DDS and regional centers to use innovative, economical programs, techniques and staffing to carry  
19 out their obligations to provide services in the least restrictive setting.

20 **B. Anti-Discrimination Laws: Americans with Disabilities Act Section 504 and**  
21 **Government Code Section 11135**

22 127. 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), 28 C.F.R. § 35.130.

26 128. Title II of the ADA prohibits public entities, such as State defendants, from  
27 discriminating against the individuals with disabilities that they serve. 42 U.S.C. §§ 12131-12132.  
28

1 Discrimination under the ADA includes the segregation and isolation of persons with disabilities  
2 from society as a result of unnecessary institutionalization. *Olmstead v. LC*, 527 U.S 581 (1999).

3 129. 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). In the section-by-section  
6 analysis that accompanied issuance of Title II’s binding regulations, the Attorney General defined  
7 “integrated setting” as “a setting that enables individuals with disabilities to interact with  
8 nondisabled persons to the fullest extent possible ... “ 56 Fed. Reg. 35705 (Jul. 26, 1991).

9 130. The ADA regulations also specify a variety of requirements to ensure  
10 nondiscrimination, including the provision of access, modification of practices and policies, and the  
11 provision of auxiliary aides and services. 28 C.F.R. Part 35. The regulations prohibit the defendants  
12 from administering programs in a discriminatory manner. 28 C.F.R. § 35.130(b)(3)(i).

13 131. The regulations also prohibit discrimination caused by providing different or separate  
14 services to individuals based on the severity of their disability, unless necessary for the services to be  
15 effective. 28 C.F.R. § 35.130(b)(1)(iv).

16 132. Section 504 of the Rehabilitation Act, on which the ADA is modeled, sets forth similar  
17 protections against discrimination by recipients of federal funds, such as the State and regional  
18 center defendants herein, including prohibiting unnecessary segregation. 29 U.S.C. § 794, *et seq.*, 45  
19 C.F.R. § 84.4 and 28 C.F.R. § 41.51.

20 133. California law also contains similar protection against discrimination by the State and  
21 by the State and recipients of state funds, such as the regional center defendants herein, including the  
22 requirement to provide services in the most integrated setting possible. Gov’t Code § 11135.  
23 Government Code section 11135(b) says that state law provides at least the same protections as are  
24 available under the ADA and its implementing regulations, but may provide even stronger  
25 protections.

### 26 C. The Medicaid Scheme

27 134. Medicaid is a federal program administered jointly by the federal and state  
28 governments to provide medical services to low-income persons pursuant to Title XIX of the Social



1 Security Act, and to provide health, rehabilitation and other services to help them attain or retain  
2 capability for independence or self care. 42 U.S.C. §§ 1396, *et seq.* Over 50% of the cost of  
3 medical care through Medicaid is federally funded. 65 Fed. Reg. 69560 (2000).

4 135. The purpose of Title XIX of the Social Security Act is to “enabl[e] each State ... to  
5 furnish ... rehabilitation and other services to help such families and individuals attain or retain  
6 capacity for independence or self-care.” 42 U.S.C. § 1396.

7 136. The Center for Medicare and Medicaid Services (CMS) (previously known as the  
8 Health Care Financing Administration) of the United States Department of Health and Human  
9 Services (HHS) is the agency which administers Medicaid at the federal level. A state’s  
10 participation in Medicaid is voluntary. States that choose to participate in the Medicaid program  
11 receive federal matching funds for their Medicaid program. To receive federal funds, states must  
12 comply with the requirements of the federal Medicaid Act and with the federal regulations governing  
13 state Medicaid programs promulgated by the HHS. 42 U.S.C. § 1396, *et seq.*; 42 C.F.R. § 430, *et*  
14 *seq.* Each state must submit an appropriate Medicaid plan to CMS.

15 137. California participates in the Medicaid program called “Medi-Cal.” Welf. & Inst.  
16 Code § 14000, *et seq.* Medi-Cal is administered by defendant Shewry, the Director of DHCS, the  
17 state agency responsible for administering Medi-Cal mandatory, optional and waiver services. 42  
18 U.S.C. § 1396a(a)(5); Welf. & Inst. Code § 14137; 22 Cal. Code Regs. § 50004.

19 138. {Preserved for Appeal} Medi-Cal must “provide such safeguards as may be necessary  
20 to assure ... such care and services will be provided, in a manner consistent with simplicity of  
21 administration and the best interests of the recipients.” 42 U.S.C. § 1396a(19).

22 139. Title XIX requires states that participate in the Medicaid program to make certain  
23 mandatory medical assistance benefits available. 42 U.S.C. § 1396a(a)(10)(A). These mandatory  
24 services include, *inter alia*, inpatient hospital services, physician’s services, and nursing facility  
25 services. 42 U.S.C. § 1396a(a)(10)(D).

26 140. In addition to these mandatory services, Medi-Cal, also provides optional benefits,  
27 such as funding for intermediate care facilities for the mentally retarded (“ICF/MR”). 42 U.S.C.  
28 §§ 1396a(a)(10), 1396d(a)(15); Welf. & Inst. Code § 14007.9.

1 141. Federal law authorizes some federal rules to be “waived” so that a state can provide  
2 and receive federal reimbursement for extra Medi-Cal services to a targeted group of individuals  
3 who would otherwise qualify for Medi-Cal funded long-term care. 42 U.S.C. § 1396n(c)(1). Waiver  
4 services allow individuals who would otherwise require care in an institution to receive services in  
5 their own homes or in home-like settings in the community. 42 C.F.R. § 441.300.

6 142. The purpose of Title XIX’s home and community-based waivers is to encourage states  
7 to provide services to assist individuals with disabilities to avoid institutionalization.

8 a) Title XIX requires that persons with disabilities who live in or are at risk of  
9 being placed in an institution be informed of and given a meaningful choice of “feasible  
10 alternatives” available under the waivers. 42 U.S.C. § 1396n(c)(2)(C), 42 C.F.R. §§  
11 435.217, 441.302(d)(1)-(2).

12 b) A State must offer waiver services to eligible individuals with “reasonable  
13 promptness.” 42 U.S.C. § 1396a(a)(8).

14 c) The Committee Report to Title XIX stressed “assuring that patients are  
15 receiving appropriate care in an appropriate setting--frequently in a lower cost facility or  
16 setting.” S. Rep. No. 744, 90th Cong., 2nd Sess. (1967), *reprinted at* 1967 U.S.C.C.A.N.  
17 2866, 3029.

## 18 VI.

### 19 STATEMENT OF FACTS

#### 20 A. Community Services Provide A Better Quality Of Life

21 143. Plaintiffs and class members in this action have a variety of developmental disabilities,  
22 including mental retardation, cerebral palsy and autism. Many plaintiffs have a “dual diagnosis,”  
23 meaning they have both a developmental disability and a psychiatric diagnosis.

24 144. By definition, under the Lanterman Act, a developmental disability manifests itself  
25 prior to the age of 18 and substantially limits a person’s functioning in one or more major life areas  
26 such as mobility, communication and/or basic daily living skills. It is now well established that all  
27 people with developmental disabilities can learn—academically, vocationally, socially and  
28 otherwise—and that their learning advances most when done in integrated community settings. It is

1 also in integrated surroundings that people with developmental disabilities have the fullest  
2 opportunity to exercise and apply their personal, social and work skills.

3 145. In recognition of this knowledge, California, pursuant to the Lanterman Act, has  
4 developed in the past four decades a system of community-based living options, day services and  
5 ancillary supports including specialized health services, transportation, behavioral and integration  
6 supports to serve people with developmental disabilities. California, which, at one time, had a  
7 reputation as a pioneer among states in the development of community services for people with  
8 developmental disabilities now lags behind the nation in the provision of community services.

9 146. While California still operates seven public institutions for people with developmental  
10 disabilities – the DCs – several of which are among the nation’s largest, at least ten other states have  
11 expanded their community services sufficiently in the last decade to close all of their state  
12 institutions for people with developmental disabilities.

13 147. Current research and practice have shown that persons with developmental disabilities  
14 can, with appropriate support, live in integrated community settings. Professional researchers who  
15 study what happens to the quality of life of people with developmental disabilities when they move  
16 from large congregate care settings to community living have consistently concluded that people are  
17 better off when they leave large congregate care settings for community living in small, family-scale  
18 homes. When properly staffed and supported, these programs provide a level of service far superior  
19 to segregated institutions. People with developmental disabilities develop independence,  
20 occupational skills, and an enhanced sense of self worth when they live among other people without  
21 disabilities, and are able themselves to live, work and participate as members of their communities.

22 148. The experiences of several states, including California, have shown that the needs of  
23 people with severe developmental disabilities, including those with severe physical, behavioral and  
24 medical needs, can be safely and adequately met in integrated, community-based settings.  
25 Nationwide, empirical studies, including studies conducted in California by defendants and their  
26 agents, of what happens to institutional residents when they move to appropriate community settings  
27 show that people with severe needs gain the most from individually-structured community services.  
28

1 149. DDS and regional center defendants and their executive staff have admitted that  
2 people with developmental disabilities should be served in the most integrated setting possible and  
3 that, with proper supports, almost all of the people in the DCs would do well in a smaller community  
4 setting.

5 150. As a result of the 1994 settlement of a previous class action lawsuit, *Coffelt, et al. v.*  
6 *DDS, et al.*, San Francisco Superior Court No. 91640, state agencies and regional centers (who are  
7 also defendants in this case), made efforts at moving people out of and deflecting people from  
8 admission to the DCs, resulting in a net reduction in the DC population of 2,452 people between the  
9 years 1993 and 1998. The individuals who moved from the DCs to the community during the  
10 *Coffelt* term included persons with the full spectrum of disabilities and severity of disability.

11 151. The *Coffelt* settlement was funded by over \$334 million of additional federal funds  
12 generated by expansion of California's Medicaid developmental disability home and community-  
13 based waiver.

14 152. A multi-year longitudinal research study of the people who moved from the DCs to the  
15 community and those who moved to alternative community living arrangements demonstrated a  
16 significant improvement in quality of life. *Center for Outcome Analysis Studies, 1994-2000,*  
17 *Berkeley Planning Associates Study, 1997.*

18 **B. Thousands of Californians with Developmental Disabilities Are**  
19 **Unnecessarily Institutionalized**

20 153. In June 1998, at the end of the *Coffelt* settlement period, DDS documents indicated  
21 2,214 of the approximately 3900 DC residents were recommended and waiting for movement to  
22 community homes. Yet, in Fiscal Years 1998/99 and 1999/00, only 144 and 125 DC residents  
23 moved to community homes while 158 and 165 people, were respectively, admitted to the DCs in  
24 those years. The net population of the DCs was slightly lowered only because of the deaths of people  
25 residing in the DCs. In Fiscal Year 2000/01 the regional centers had a placement goal of 200 people,  
26 but only 128 people moved and 115 were admitted to the DCs.

27 154. In December 1999, DDS documents indicated that 1,528 of the 3,852 DC residents  
28 were still recommended and waiting for movement to community homes. Plaintiffs allege, on

1 information and belief, that the decrease in community recommendations since 1998 is based not on  
2 the needs and choices of the individual residents but, rather, on the lack of a mandate from DDS, on  
3 inadequate individualized IPP planning by regional centers and DC staff, and/or a lack of sufficient  
4 fiscal resources for the development of quality community living arrangements and ancillary  
5 supports.

6 155. On information and belief, there are many DC residents throughout the state who have  
7 had writs granted, pursuant to Welfare & Institutions Code sections 4800-4801, ordering their  
8 release to appropriate community living arrangements; however, they remain in the DCs because  
9 their regional centers have not located or developed the needed services.

10 156. For Fiscal Year 2001/02, the regional centers' collective goal for moving people from  
11 the DCs to the community is only 243. Each of the twenty-one regional centers was allowed by  
12 DDS to set its own placement goal, yet some regional centers that have over 100 of their clients  
13 residing in a DC set goals of moving 5 or fewer people to the community. Four months into the  
14 2001/02 Fiscal Year, only 55 DC residents have moved out and, at the same time, 77 others have  
15 been admitted to the DCs.

16 157. The vast majority of institutionalized individuals with developmental disabilities could  
17 and would choose to live in small homes in natural communities if quality supports and services  
18 were available to them. On information and belief data show that:

19 a) Approximately 3,730 people live in the seven DCs. While most of the people who  
20 reside in the DCs have severe disabilities, there are many more people living successfully in  
21 the community with disabilities of equal severity.

22 b) Approximately 1,000 people live in skilled nursing facilities, including  
23 approximately 100 children.

24 c) Over 1,200 live in Intermediate Care Facilities – Developmentally Disabled (ICF-  
25 DDs) which house over 16 and often 50 to 100 people.

26 d) Many hundreds live in Community Care Facilities (CCFs) that house over 16 and  
27 often 50 to 100 people.  
28

1 e) Many individuals are inappropriately sent to acute psychiatric hospitals and/or  
2 remain in such settings long beyond the time when it is medically appropriate.

3 f) Minors with developmental disabilities who are wards of the state often end up in  
4 children's shelters which cannot meet their needs.

5 158. The unnecessary segregation and isolation of people with disabilities in these  
6 institutions severely diminishes their everyday life activities, including family relations, social  
7 contacts, work options, economic independence, educational advancement, and cultural enrichment.

8 159. On information and belief, well over 400 hundred more people with developmental  
9 disabilities are "at risk" of institutionalization each year due to the lack of community services and  
10 crisis intervention supports which could meet their challenging needs. Many of those "at risk" end up  
11 in institutions.

12 160. State and regional center defendants and their executive staff have failed to carry out  
13 professional recommendations and, in some instances, court orders for movement to the community  
14 and discharge from institutions because adequate numbers and varieties of appropriate community  
15 services are unavailable.

16 **C. Inadequate Individualized Planning**

17 161. On information and belief, far greater numbers of individuals would be referred by  
18 their IPP teams for movement from public and private institutions to small integrated community  
19 homes if the assessment and planning process was conducted in compliance with the Lanterman Act  
20 and other laws.

21 162. On information and belief, IPP planning teams at the DCs do not conduct IPPs  
22 consistently with the standards of the Lanterman Act and the state and federal anti-discrimination  
23 laws and constitutions. For example:

24 a) Individuals frequently are not provided with information in an understandable  
25 form (including experiential information) on the variety of possible community living  
26 options;

1           b) Many IPP teams discuss the issue in terms of the individual's "readiness" to live  
2 in the community rather than appropriately assessing the services and supports the individual  
3 would need to live successfully in the community;

4           c) In spite of the clear Lanterman Act mandate, regional center service coordinators  
5 attend IPP meetings in the DCs less than 50% of the time even where the regional center is  
6 also the conservator;

7           d) Partially as a result of the absence of regional center representatives, there is often  
8 no professional at the IPP meeting with an understanding of the scope and variety of  
9 community living options;

10           e) In violation of the April 2000 injunction in *Richard S et al. v. DDS et al. v. Bell,*  
11 *et al.*, Federal District Court for the Central District of California (SACV 97-219-GLT), many  
12 individuals in the DCs are not seriously considered for movement to a community home  
13 because of objections from their family members;

14           f) Even when the IPP team does recommend movement to the community, an  
15 adequate individualized discussion of the services and support the individual prefers and  
16 needs upon movement is often not conducted and the individual is simply slated for  
17 movement to a certain category of existing services.

18       163. On information and belief, IPP planning teams for residents of private and non-state  
19 operated public institutions also do not conduct IPP meetings consistently with requirements of state  
20 and federal law. For example:

21           a) Individualized assessments of the non-institutional services which could support a  
22 person are not conducted;

23           b) Individuals are not meaningfully informed of their right to choose integrated less-  
24 restrictive community supports and/or HCB waiver services; and

25           c) When it appears there is no readily available non-institutional alternative,  
26 consideration is not given to developing innovative alternatives or expanding existing  
27 services that could meet the person's needs and choices.

1 164. As a result of the inadequate individualized IPP process, many people are not  
2 recommended for movement to a community home and/or fail to understand their rights to choose to  
3 move to a community home and/or are moved to living arrangements that are not the least restrictive  
4 and most integrated.

5 **D. Lack Of An Adequate Array Of Community Services**

6 165. Defendants' policies, practices and underfunding have resulted in a community service  
7 system which cannot meet its mandate to provide a sufficient array of quality community living  
8 arrangements responsive to the individualized needs and choices of people with developmental  
9 disabilities. Nor is there adequate availability of needed ancillary supports such as health and mental  
10 health care, meaningful quality day programs and crisis services. This lack of services appears to be  
11 most acute for children and adolescents with behavioral challenges, people with dual diagnoses and  
12 people with health care needs. As a result, people are needlessly institutionalized or at risk of  
13 institutionalization. For example:

14 a) When a person needs community services not currently available in his/her  
15 regional center's geographic area, the regional centers frequently conduct fruitless "statewide  
16 searches" and then institutionalize the individuals. Instead, regional centers should issue  
17 requests to local providers to modify or expand their service capacity to provide the needed  
18 services.

19 b) The lack of mandated crisis services, which can assist people to remain in their  
20 current living arrangements, frequently results in individuals being inappropriately taken to  
21 county-run psychiatric hospitals where they often remain institutionalized for prolonged  
22 periods without medical justification.

23 c) There is a dearth of homes for people with dual diagnoses. No higher rates for  
24 such homes have been set in spite of statutory authority. Nor is there adequate cooperation  
25 between community mental health agencies and regional centers. Moreover, DDS and DMH  
26 have failed to collaborate and provide technical assistance when requested by local agencies  
27 as mandated by the Lanterman Act. Welf. & Inst. Code § 4696.1(c).



1 166. The population of California's state institutions for people with developmental  
2 disabilities (the DCs) tends to be persons with severe disabilities. Similarly, the people with  
3 developmental disabilities who reside in private skilled nursing facilities (SNFs) and psychiatric  
4 hospitals tend to be people with severe disabilities. The residents of these institutions remain  
5 isolated because defendants have not developed a sufficient number of appropriate small community  
6 living arrangements with the services and supports to meet their needs and have not developed the  
7 needed ancillary supports in the community, e.g., medication management, nursing supports, and  
8 mental health services for the dually-diagnosed.

9 167. Many community residential providers are unable to successfully serve people with  
10 severe disabilities because they are unable to pay wages and benefits which attract staff who are  
11 competent and trained to provide supervision, treatment and support to people with severe  
12 disabilities. Under defendants' current system, persons with severe disabilities often remain isolated  
13 in large institutions, or are at great risk of being placed into institutions.

14 168. DDS and many regional center defendants and their executive staff have admitted that  
15 existing community services do not have the capacity to serve adequately all of the people now  
16 institutionalized in California.

17 169. Defendant regional centers have publicly admitted they are unable to develop needed  
18 crisis, medical, dental, psychiatric, day program and residential options. *E.g.*, Association of  
19 Regional Centers Agencies, *Planning for a Unified Developmental Disabilities Service System*,  
20 2000.

21 **E. The Developmental Disabilities System is Funded by Both State General**  
22 **Funds and Title XIX Medicaid Funds**

23 170. The Lanterman Act entitlement to services is funded by a combination of state general  
24 fund dollars and federal financial reimbursements through regular Title XIX Medi-Cal funds and  
25 through Title XIX home and community-based waivers and other sources. Services in institutions  
26 and in the community receive federal financial participation through Medicaid. For example, on  
27 information and belief:  
28

1 a) Services in the DCs are funded approximately 50% by state general fund dollars  
2 which are in DDS' budget and 50% by Medicaid reimbursements so long as the DCs are  
3 certified by CMS;

4 b) Services in both the large congregate ICF-DDs and SNFs and in family-scale ICF-  
5 DD/Hs and ICF-DD/Ns are funded 50% by state general fund dollars which are in DHCS'  
6 budget and 50% by Medicaid reimbursements;

7 c) Community services, including small community care facilities, supported living,  
8 day programs and many ancillary services can be funded either by 100% state general fund  
9 dollars or by 50/50 general fund and Medicaid home and community-based waiver dollars.  
10 The general fund dollars that regional centers use to purchase services go through the DDS  
11 budget; and

12 d) Regional center service coordination activities are funded by 50/50 general funds  
13 and Medicaid targeted case management funds.

14 171. Defendant DHCS, as the single state agency responsible to the federal government  
15 (CMS) on how California administers its Medi-Cal program including home and community-based  
16 (HCB) waivers, has the authority to request additional waivers or expansion of current HCB waivers.

17 172. The HCB waiver services currently available under the Medi-Cal program which are  
18 most relevant for people with developmental disabilities are:

19 a) *Developmental Disability (DD) Waiver* for which Medi-Cal eligible individuals  
20 who have a developmental disability may qualify if they require Intermediate Care Facility  
21 for Mentally Retarded (ICF/MR) level of care which includes ICF/MR units at the DCs and  
22 ICF-DDs. *See* Cal. Code Regs. tit. 22 § 51343, *et seq.* A five year DD waiver was approved  
23 by CMS with a rising population cap from 45,094 in 2001 to 50,754 in 2006. DHCS has an  
24 agreement with DDS so that DDS and the regional centers are responsible for the day-to-day  
25 administration of the DD Waiver. DHCS regularly reviews how the DD Waiver is being  
26 administered locally to insure federal requirements are being met.

27 b) *Nursing Facility (NF) Waiver* for which Medi-Cal eligible individuals qualify if  
28 they: (i) would otherwise require nursing facility level of care for at least 90 consecutive

1 days; (ii) are over age 65 or disabled; and (iii) have a physical disability. Cal. Code Regs. tit.  
2 22 § 51344(c).

3 173. On information and belief, at present there are 14,165 open places on the DD Waiver  
4 which could be used by plaintiff class members moving from institutions, or at risk of  
5 institutionalization. However, there is a lack of available community resources so individuals  
6 eligible for and desiring waiver services remain in institutions.

7 174. On information and belief, the current NF Waiver approved by CMS can serve only  
8 500 people and all of the places are filled. The NF Waiver serves many individuals outside the  
9 developmental disabilities system as well as those within. The approximately 2,000 regional center  
10 clients who live in either NF units at the DCs or private SNFs have no current waiver places  
11 available.

12 175. On information and belief, community-based services, whether funded with state  
13 dollars or waiver dollars, are more cost-effective than institutional care.

14 176. On information and belief, California ranks 49<sup>th</sup> in its per capita expenditures for the  
15 provision of home and community-based “waiver” services and 48<sup>th</sup> in its total provision of home  
16 care.

17 177. California’s waiver expenditures per beneficiary were the lowest in the nation at an  
18 average of \$21,356 during 2000.

19 **F. Disproportionate Allocation of Funds on Institutional Care**

20 178. On information and belief, California provides over three billion dollars annually to  
21 institutionalize people with disabilities, including people with developmental disabilities, at great  
22 human and economic cost to the state.

23 179. California spends a mere 20% of its overall Medicaid long-term care dollars on home  
24 and community-based care, with the vast majority of money supporting institutional care.

25 180. California serves approximately 170,000 people in its community services system for  
26 people with developmental disabilities as compared to the approximately 3800 people who are  
27 served in the seven DCs. Yet, on information and belief, approximately 25% of California's  
28 developmental disabilities budget goes to the 2% of the people in the DCs.

1 181. On information and belief, in Fiscal Year 2001/2002, California spends \$169,646 on  
2 average per resident per year in the DCs. The average expenditure for a person living in the  
3 community is less than one-sixth of this amount.

4 182. Direct care staff in the DCs are state civil service employees. On information and  
5 belief, in 1999, the average annual salary for a community direct care worker in California was  
6 \$18,500, while the annual salary for direct care workers in the DCs ranges from \$36,000 to \$52,000.  
7 Moreover, in the last two years, when unemployment was at a low in California, defendants  
8 provided newly recruited and hired workers at several DCs permanent "recruitment and retention"  
9 bonuses of \$300 to \$700 dollars a month on top of the state pay scale. Defendants also offered two-  
10 years of community college tuition. No such bonuses, salary supplements or education benefits have  
11 been made available by defendants to attract workers in the community, even in high cost areas such  
12 as Silicon Valley.

13 183. The low wages and lack of benefits for direct service workers results from the  
14 underfunding of the community system by defendants. In turn, the low uncompetitive wages and  
15 lack of benefits makes it difficult for community service providers to recruit and retain qualified,  
16 competent staff to support people with developmental disabilities. On information and belief, staff  
17 turnover in community services averages 50% and ranges up to 100%. High staff turnover yields  
18 instability and contributes to a lack of quality and the inability of services to address the needs of  
19 those with the most challenging disabilities.

20 184. The condition of the physical plants at the five older DCs is deteriorating. Vanir  
21 Construction Management, a private consultant under contract to DDS, issued a report in 1998  
22 indicating that it would require \$1.4 billion to bring the DCs into compliance with life, safety and  
23 health requirements, seismic safety and ADA accessibility mandates. Even if brought up to code,  
24 significant ongoing funding would be needed to maintain these old facilities. On information and  
25 belief, in Fiscal Year 2001/2002, \$27 million was appropriated for DC infrastructure needs.

26 185. Pursuant to Budget Trailer bill language enacted as part of the Fiscal Year 2000/01  
27 budget, DDS was required to issue a report to the Legislature by March 1, 2001 identifying a range  
28

1 of options to meet the future needs of individuals currently served by, or who will need services  
2 similar to those provided in, the DCs. Stats. 2000, Ch.93, § 104.

3 186. Following issuance of the Vanir Report and in response to the Trailer bill language,  
4 DDS convened a task force made up of stakeholders from all parts of the system (e.g., consumers  
5 and family from the DCs and community, regional centers, DC staff and unions, advocates,  
6 community service providers) to address the need to develop alternatives to current state institutional  
7 services. DDS put forward five principles upon which to proceed with restructuring DC services, as  
8 follows:

- 9 a) No major capital outlays to rebuild DCs;
- 10 b) People will live in homes of 4 persons or less;
- 11 c) Capture and extend DC resources into the community;
- 12 d) Leverage the proceeds from the sale of DC lands to create new resources in the  
13 system;
- 14 e) Conduct highly individualized personal assessments and resource development  
15 before a person moves to the community.

16 187. The March 2001 report required by the Legislature has not been issued. On  
17 information and belief, the report was completed by DDS and submitted to defendant DHCS and/or  
18 CHHS; however, either DHCS or CHHS has stopped its issuance.

19 188. Defendants DDS and Delgadillo and DDS' executive staff have admitted that more  
20 people could move out of the DCs to community settings if the developmental disabilities system  
21 had more resources. Plaintiffs allege that restructuring DC services and leveraging the resources  
22 from the sale of DC lands, as initially proposed by DDS and approved by the system stakeholders,  
23 would create such additional resources from within the developmental disabilities system.

#### 24 **G. Underfunding of the Community System**

25 189. The need for additional community resources is clear. Studies of the community  
26 service system by the California Bureau of State Audits and by private consultants to the defendants  
27 have found that the system is underfunded.

1 190. In 1998, the Legislature required DDS, in collaboration with system stakeholders, to  
2 review the service delivery system and make recommendations to, *inter alia*, improve the quality of  
3 services, maximize cost effectiveness while emphasizing quality, variety and flexibility in the  
4 delivery of services and develop performance-based consumer-outcome driven rate systems. Welf.  
5 & Inst. Code §§ 4690.4 and 4697. The process established by DDS to implement this mandate came  
6 to be known as “Service Delivery Reform.” DDS, regional centers, consumers, families, service  
7 providers and advocates met many times over more than two years to review the service delivery  
8 system. However, the process had stalled and new rate systems effectively linking funding to the  
9 achievement of consumer outcomes have not been put in place. Nor have other elements of Service  
10 Delivery Reform such as improved quality assurance, personal outcomes evaluation and revised  
11 service and staff requirements been operationalized.

12 191. In Fiscal Year 2001/2002, there were no rate increases for community providers of  
13 developmental disabilities services.

14 192. In spite of legislative mandates and the variations in cost levels around California,  
15 geographic differentials in rates have never been implemented.

16 193. Regional center operations are also underfunded meaning, *inter alia*, that service  
17 coordination, which is central to the Lanterman Act process, is not provided effectively.

18 194. Community services will remain more cost-effective than institutional care even if  
19 regional center allocations and service provider rates are raised. On information and belief, other  
20 states which have deinstitutionalized successfully have spent 80% of the cost of institutional care to  
21 serve previously institutionalized people in the community. California spends only about 50%.

#### 22 **H. California Has Not Developed An *Olmstead* Plan**

23 195. The plaintiff class members in this action include people who are fully able to “handle  
24 and benefit from community settings,” *Olmstead v. L.C.*, 527 U.S. 581 (1999), but are retained in  
25 institutions or at risk of institutionalization because of inadequate assessments of their needs and/or  
26 inadequate person-centered planning and because stable, quality community living arrangements and  
27 the necessary array of ancillary supports are not available to them.

1 196. In the *Olmstead* decision, the United States Supreme Court suggested that one way  
2 states could demonstrate compliance with the ADA integration mandate is by developing a  
3 comprehensive, effective plan to move people with disabilities who do not require  
4 institutionalization into the community at a reasonable pace.

5 197. In a series of letters beginning in January 2000, the federal Secretary of Health and  
6 Human Services and the Directors of the Health Care Financing Administration (now CMS) and the  
7 Office of Civil Rights wrote to State Governors and Medicaid Directors challenging them to  
8 undertake *Olmstead* planning and offering a variety of technical assistance and incentives to the  
9 states.

10 198. CAIC and California Arc, plaintiffs in this action, joined with other advocacy  
11 organizations in California in writing to and meeting with representatives of the Governor, the  
12 state's Long Term Care Council and DDS, asking them to take action to implement *Olmstead*.

13 199. In May 2003, State defendants issued what is purported to be an *Olmstead* plan;  
14 however, it does not meet the requirements for such a plan as contemplated by either the *Olmstead*  
15 case or CMS in that it is not comprehensive and does not include reasonable timelines for assessing  
16 all people with developmental disabilities in institutions or for moving those people who are  
17 unnecessarily institutionalized into integrated, community-based settings. Moreover, much of the  
18 plan is conditional and only selected provisions are being implemented. As a result, State  
19 defendants have yet to comply with *Olmstead*.

20 200. The regional center defendants in 2000, through the Association of Regional Center  
21 Agencies, adopted a *Strategic Plan for a Unified System* which embraces the concepts of the  
22 *Olmstead* decision; however, they cannot implement the plan without actions and funding from the  
23 State defendants.

## 24 VII.

### 25 STATE ACTION

26 201. Defendants State, , DDS, DHCS, , DMH, Delgadillo and Shewry are all state entities,  
27 state officials, or agents or employees of the state. State defendants' actions with respect to the  
28

1 actions and omissions complained of herein are within the scope of their authority as state  
2 employees and officials and are thereby under color of state law.

3 202. Defendant regional centers are, by statutory mandate, responsible for providing  
4 support and services to people with developmental disabilities within the communities of this state,  
5 an area that has traditionally been a governmental function. The regional centers have no  
6 independent existence apart from the state; rather through contract, funding, extensive regulation and  
7 legislative oversight the state has insinuated itself into a position of such interdependence that the  
8 regional centers may be fairly treated as the state itself for purposes of state action.

9 **VIII.**

10 **ALLEGATIONS CONCERNING INJUNCTIVE AND DECLARATORY RELIEF**

11 203. Defendants' actions, as alleged herein, have resulted in, and will continue to result in  
12 irreparable injury to plaintiffs and class members caused by their unnecessary isolation and  
13 segregation in institutions and the denial of appropriate, quality community living arrangements and  
14 ancillary supports to which they are entitled. Plaintiffs have no plain, speedy or adequate remedy at  
15 law.

16 204. An actual controversy exists between plaintiffs and defendants, in that plaintiffs claim  
17 that defendants have violated their rights under the Lanterman Act, the ADA, and other state and  
18 federal anti-discrimination laws, the State and Federal Constitutions, Title XIX of the Social  
19 Security Act and Business and Professions Code sections 17200, and defendants deny all such  
20 contentions.

21 205. Unless the requested relief is granted, the three organizational plaintiffs' missions will  
22 be thwarted as set forth above, and plaintiffs and class members will be denied the services and  
23 supports that would allow them to live in their local communities. Without the availability of such  
24 services and supports, plaintiffs and class members will continue to live in unnecessarily restrictive  
25 institutional settings and suffer harm, including deprivation of personal autonomy and personal  
26 freedoms and of the opportunity to live more independent, productive and normal lives. Taxpayer  
27 plaintiffs are and will continue to be injured by the unlawful expenditure of tax monies.



1 IX.

2 ENTITLEMENT TO MANDAMUS RELIEF

3 206. Pursuant to Code of Civil Procedure section 1085, respondents/defendants have the  
4 clear present and ministerial duty to act in accord with state and federal law and the United States  
5 and California Constitutions as set forth above. Where respondents/defendants are lawfully required  
6 to exercise their discretion in carrying out their duties, respondents are bound to exercise such  
7 discretion within proper limits and under a correct interpretation of the law. *Common Cause of*  
8 *California v. Board of Supervisors*, 49 Cal. 3d 432, 442 (1989) (“[m]andamus may issue [] to  
9 compel an official both to exercise his discretion (if he is required by law to do so) and to exercise it  
10 under a proper interpretation of the applicable law.”); *Young v. Gannon*, 97 Cal. App. 4<sup>th</sup> 209, 221  
11 (2002) (“[w]here a public official is required by law to exercise his or her discretion, mandamus will  
12 lie to compel the official to exercise his or her discretion under a proper interpretation of the law.”)  
13 The responsibilities and duties of respondents/defendants which are subject to mandamus relief  
14 include, but are not limited to, ensuring that the plaintiff class receives services in the least  
15 restrictive, most integrated community settings, performing adequate assessments and person-  
16 centered IPP meetings to determine the least restrictive, most integrated community settings for  
17 plaintiffs, giving adequate information to plaintiffs regarding their choice of services, and providing  
18 adequate funding to develop a sufficient number of quality community services necessary to meet  
19 the needs and choices of people with all types and levels of disability, all as required by the  
20 Lanterman Act, the ADA, section 504 of the Rehabilitation Act, Government Code section 11135,  
21 Title XIX of the Social Security Act, the State and Federal Constitutions, and Business and  
22 Professions Code section 17200. Although respondents have had and currently have the capacity  
23 and ability to discharge their duties, as set forth above, in a manner consistent with all applicable  
24 state and federal laws and the California and United States Constitutions, respondents have failed  
25 and refused to do so and/or abused their discretion in performance of such duties, and/or exercised  
26 their discretion under an improper interpretation of the law.

27 207. Petitioners have no plain speedy and adequate remedy at law for respondents’ actions  
28 complained of above.

1 208. Petitioners and each of them are beneficially interested in respondents' discharge of  
2 their obligations as set forth herein and suffer irreparable injury from defendants' failure to discharge  
3 their obligations.

4 X.

5 **FIRST CAUSE OF ACTION**

6 **(Violation of Lanterman Act Entitlement To Non-Institutional Community Living**  
7 **Arrangements Based On Individual Need)**

8 209. Plaintiffs reallege and incorporate every allegation and paragraph set forth above.

9 210. This cause of action is brought by all plaintiffs against all defendants.

10 211. The individual plaintiffs and class members are people with developmental disabilities  
11 as defined in Welfare and Institutions Code section 4512(a) and are consumers of a specific regional  
12 center defendant.

13 212. The Lanterman Act charges the regional center defendants with responsibility for  
14 providing service coordination and securing services and supports for people with developmental  
15 disabilities. Welf. & Inst. Code § 4640 *et seq.* The regional center defendants are responsible for  
16 assessing each consumer's needs and developing and implementing individual program plans  
17 ("IPPs") which are individually-tailored to meet those needs by, *inter alia*, securing the services and  
18 supports each individual needs to be integrated into the mainstream of community life. Welf. & Inst.  
19 Code §§ 4646 - 4648.1. Defendants DDS and Delgadillo are responsible for ensuring that the  
20 Lanterman Act is fully implemented and that regional centers provide services in compliance with  
21 the requirements and principles of the Lanterman Act (*e.g.*, Welf. & Inst. Code §§ 4416, 4434,  
22 4500.5, 4620 and 4629).

23 213. State defendant DDS is the operator of the developmental centers ("DCs") (Welf. &  
24 Inst. Code § 4400, *et seq.*), and thus is responsible for providing direct care and services to persons  
25 with developmental disabilities who reside in DCs. In this capacity, DDS is jointly-responsible with  
26 regional center defendants for assessing each DC resident's needs and for developing and  
27 implementing IPPs which are individually-tailored to meet those needs. Welf. & Inst. Code  
28 §§ 4418.3, 4646, 4646.5. With respect to DC residents and individuals at risk of placement in the

1 DCs, however, defendant DDS and the DDS-administered Regional Resource Development  
2 Programs (RRDPs) often fail to develop IPPs recommending community placement and/or  
3 identifying the community services and supports which would allow DC residents and individuals at  
4 risk to avoid DC placement to successfully live in less restrictive settings.

5 214. With respect to residents of non-DC institutions, and people at-risk of placement in  
6 non-DC institutions, DDS has failed to adequately assist and monitor regional centers to ensure that  
7 they fulfill their responsibilities under the Lanterman Act, including their compliance with the  
8 mandate that consumers be afforded opportunities to live and remain in the least restrictive setting.

9 215. State defendants DHCS, DMH and have directly and/or indirectly impeded DDS and  
10 regional center efforts to fulfill their responsibilities to prevent unnecessary institutionalization and  
11 enable class members to live in non-institutional settings.

12 **A. DIRECT LIABILITY OF THE STATE DEFENDANTS FOR**  
13 **VIOLATIONS OF THE LANTERMAN ACT.**

14 216. The State defendants, including DDS, in DDS's capacity as the department within the  
15 CHHS Agency with responsibility for implementing and ensuring regional center compliance with  
16 the Lanterman Act, and as the operator of the DCs, have violated specific ministerial duties set forth  
17 in the Lanterman Act. Additionally, the State defendants have violated numerous other sections of  
18 the Lanterman Act by exercising their discretion under an improper interpretation of the law.

19 **1. Violations of Ministerial Duties.**

20 **{The allegations in Paragraph 224(a)-(f) have been dismissed by the Court.**

21 **These allegations are included to preserve Plaintiffs' right to seek appellate review of the**  
22 **dismissal of these allegations.**

23 217. The State defendants have violated ministerial duties set forth in the Lanterman Act by  
24 their policies, practices, actions and omissions including, but not limited to:

25 a. **{Preserved For Appeal}** Failing to conduct required activities to deflect  
26 class members from placement in DCs. Welfare and Institutions Code section 4418.7(b)  
27 requires the RRDPs, which are administered and staffed by State defendant DDS, to perform  
28 three ministerial tasks whenever a regional center provides notice that a community

1 placement is at risk of failing and admission to a DC is a likelihood. The RRDPs shall: (1)  
2 immediately arrange for an assessment of the situation; (2) attend an emergency IPP planning  
3 team meeting to discuss additional supports and services; and (3) follow up with the regional  
4 center as to the success of any recommended interventions. Plaintiffs are informed and  
5 believe that State defendant DDS, in its capacity as the administrator of the RRDPs, has  
6 violated Welfare and Institutions Code section 4418.7(b) by failing to arrange for immediate  
7 assessments and attend emergency planning meetings, and by failing to follow up with  
8 regional centers as to the success of any recommended interventions;

9           b.       **{Preserved For Appeal}** Failing to make available aggregate data on the  
10 outcomes of efforts to assist at-risk consumers to remain in the community and on regional  
11 center performance under their Community Placement Plans ("CPPs"). Welfare and  
12 Institutions Code sections 4418.25 (c) and 4418.7(d), respectively, mandate that State  
13 defendant DDS "shall" collect and make available upon request aggregate data on regional  
14 center performance under their CPPs and on implementation of the deflection requirements  
15 of section 4418.7. Plaintiffs are informed and believe that State defendant DDS has violated  
16 sections 4418.25(c) and 4418.7(d) by failing to collect and/or make available aggregate data  
17 on these matters;

18           c.       **{Preserved For Appeal}** Failing to monitor and assist the regional centers to  
19 ensure they fulfill their responsibilities under the Lanterman Act. Welfare and Institutions  
20 Code sections 4434(b), 4434(c), 4434(d), 4629, 4635 and 4651(b), among others, set forth  
21 State defendants' mandatory responsibility to monitor, assist and support the regional centers  
22 in complying with their contracts and the provisions of the Lanterman Act. These sections  
23 of the Lanterman Act -- viewed together, as required by California law, and/or viewed  
24 separately -- give rise to a ministerial duty on the part of State defendant DDS to  
25 communicate regularly with regional centers, to respond to regional centers' requests for  
26 guidance and/or assistance, and to monitor regional centers' compliance with the provisions  
27 of their contracts and the Lanterman Act. Plaintiffs are informed and believe that State  
28

1 defendant DDS has violated sections 4434(b), 4434(c), 4434(d), 4629, 4635 and 4651(b) by  
2 failing to monitor and assist the regional centers;

3 d. **{Preserved For Appeal}** Failing to hold individual planning meetings with  
4 the "planning teams" of plaintiff class members residing in the DCs as required by, *inter alia*,  
5 Welfare and Institutions Code sections 4418.3(b)&(c), 4512(j), 4646, 4646.5 and 4647. The  
6 Lanterman Act requires that a "planning team" jointly develop an individual program plan for  
7 every person eligible for regional center services. Welf. & Inst. Code §§ 4646(c) & 4646(d).  
8 The Lanterman Act defines the "planning team" as a group which includes "one or more  
9 regional center representatives, including the designated regional center service coordinator."  
10 Welf. & Inst. Code § 4512(j); *see also* Welf. & Inst. Code §§ 4647(a) & 4646.5(b)  
11 (mandating regional center participation in the IPP process and setting forth planning team  
12 duties including periodic review of all IPPs.). Welfare and Institutions Code sections  
13 4418.3(b) and 4418.3(c) make State defendant DDS responsible for convening planning team  
14 meetings for DC residents and ensuring that those planning teams develop IPPs consistent  
15 with the mandates of sections 4646 and 4646.5. Plaintiffs are informed and believe that State  
16 defendant DDS has violated Welfare and Institutions Code sections 4418.3(b) and 4418.3(c)  
17 by routinely convening planning team meetings for DC residents that are not attended by one  
18 or more regional center representatives, including the designated regional center service  
19 coordinator;

20 e. **{Preserved For Appeal}** Failing to collaborate for the care and treatment of  
21 persons with dual diagnoses as required by Welfare and Institutions Code sections 4510 and  
22 4681.1(d). Section 4510 requires that State defendants DDS and DMH jointly develop and  
23 implement a statewide program for encouraging the establishment of sufficient numbers and  
24 types of living arrangements, including community living arrangements, to meet the needs of  
25 persons served by both departments. In developing this program, State defendants DDS and  
26 DMH are commanded to consult with specific organizations and agencies, including the  
27 League of California Cities, the County Supervisors Association of California. Welf. & Inst.  
28 Code § 4510. Plaintiffs are informed and believe that State defendants DDS and DMH have

1 violated section 4510 by failing to hold interagency meetings for developing a statewide  
2 program and by failing to consult with the organizations specified in subsections (a) through  
3 (c). Section 4681.1(d) further requires that State defendants DDS and DMH "shall" work  
4 together to establish criteria upon which higher rates may be fixed for the provision of  
5 services and supports to dually diagnosed persons. While State defendants DDS and DMH  
6 have limited discretion in establishing the ultimate criteria, the duty to meet and work  
7 together to establish such criteria is ministerial. Plaintiffs are informed and believe that State  
8 defendants DDS and DMH have failed to work together as required by section 4681.1(d);

9 f. **{Preserved For Appeal}** Failing to develop IPPs recommending community  
10 placement of DC residents over the objection of family members or conservators. Welfare  
11 and Institutions Code section 4646(d) provides that family members and/or conservators may  
12 be included in the decision-making process, but commands that "[i]ndividual program plans  
13 shall be prepared jointly by the planning team." In addition, permitting family members or  
14 conservators to unilaterally veto community placement recommendations violates DC  
15 residents' due process rights and the permanent injunction issued in *Richard S. et al. v. DDS*  
16 *et al. v. Bell et al.* (U.S. District Court Case No. SACV 97-219-GLT; CD Cal. 2000). State  
17 defendant DDS, by virtue of its participation on IPP planning teams for DC residents (Welf.  
18 & Inst. Code §§ 4418.3(c)), has a ministerial duty to ensure that IPPs are prepared jointly by  
19 the planning team. Plaintiffs are informed and believe that State defendant DDS has violated  
20 section 4646(d) by permitting family members and conservators of DC residents to, in effect,  
21 unilaterally prevent community placement of DC residents who could live in less restrictive  
22 settings.

## 23 **2. Violations of Statutory Requirements.**

24 218. The Lanterman Act contains numerous individual provisions which grant the State  
25 defendants discretion in carrying out their duties thereunder. California law requires that these  
26 individual provisions be construed in light of the overall purpose of the Lanterman Act statutory  
27 scheme. *See People v. Morris*, 46 Cal. 3d 1, 16 (1988) ("Statutory language should not be  
28 interpreted in isolation, but must be construed in the context of the entire statute of which it is a part,

1 in order to achieve harmony among the other parts"); *People v. Hammer*, 30 Cal. 4<sup>th</sup> 756, 762-63  
2 (2003) (Courts must "harmonize the various parts of a statutory enactment by considering the  
3 particular clause or section in the context of the statutory framework as a whole").

4 **a. The Integration Mandate Forms a Hard Boundary**  
5 **for Acts of Discretion Set Forth in Specific Sections**  
6 **of the Lanterman Act.**

7 219. The paramount purpose of the Lanterman Act is furthering the right of each person  
8 with developmental disabilities to be integrated into the community to the greatest extent possible.  
9 The California Supreme Court has construed the Lanterman Act and found that "[t]he purpose of the  
10 statutory scheme is twofold: to prevent or minimize the institutionalization of developmentally  
11 disabled persons and their dislocation from family and community, and to enable them to  
12 approximate the pattern of everyday living of nondisabled persons of the same age and to lead more  
13 independent and productive lives in the community." *ARC*, 38 Cal. 3d at 388. Through the IPP  
14 process, "the developmentally disabled person on an individual basis receives, *as an entitlement*,  
15 services that enable him to live a more independent and productive life in the community." *Id.* at  
16 392 (emphasis added).

17 220. The Lanterman Act's core right to integration is set forth initially in sections 4501 and  
18 4502. Through section 4501, the State of California accepts "responsibility for persons with  
19 developmental disabilities and an obligation to them which it must discharge." Section 4502  
20 provides that "[n]o otherwise qualified person by reason of having a developmental disability shall  
21 be excluded from participation in, be denied the benefits of, or be subjected to discrimination under  
22 any program or activity, which receives public funds." Through section 4502, the Legislature grants  
23 persons with developmental disabilities the "right to treatment and habilitation services in the least  
24 restrictive environment." *Id.* § 4502(a). Section 4502(b) further requires that "[t]o the maximum  
25 extent possible, treatment, services, and supports shall be provided in natural community settings."  
26 The California Supreme Court confirmed that "sections 4501 and 4502 clearly speak in terms of the  
27 *responsibility* of the state and the *rights* of persons with developmental disabilities." *ARC*, 38 Cal.  
28 3d at 393. The Lanterman Act is replete with additional references to the requirement to promote  
integration into the mainstream of community life and to provide community-based services,

1 including Welfare and Institutions Code sections 4418.25, 4418.3, 4418.7, 4500.5, 4501, 4502,  
2 4502.1, 4507, 4509, 4512(b), 4640.7, 4646(a), 4646.5 (a)(1)&(2), 4648(a)(1) & (2), 4685, 4688,  
3 4689, 4691, 4697, 4750, and 4790. These provisions work together to form an integration mandate.  
4 “[T]he Act defines a basic right and a corresponding basic obligation: the right which it grants to the  
5 developmentally disabled person is to be provided with services that enable him to live a more  
6 independent and productive life in the community; the obligation which it imposes on the state is to  
7 provide such services.” *ARC*. 38 Cal.3d at 392.

8 221. The Lanterman Act as a whole, and each of its individual provisions, must be  
9 construed liberally so as to give effect to the primary purpose of integration. California courts agree  
10 that “remedial statutes such as the Lanterman Act must be liberally construed to effectuate the  
11 purposes for which they were enacted.” *Clemente v. Amundson*, 60 Cal. App. 4<sup>th</sup> 1094, 1102 (1998);  
12 *see also Hansen v. Department of Social Services*, 193 Cal. App. 3d 283, 290 (1987) (holding that  
13 “laws governing welfare programs are to be liberally interpreted and actively enforced”); *California*  
14 *Association of Health Facilities v. Department of Health Services*, 16 Cal. 4<sup>th</sup> 284, 295 (1997) (“a  
15 remedial statute . . . is to be liberally construed on behalf of the persons it is designed to protect.”).  
16 The Lanterman Act’s primary right to integration – as stated by the California Supreme Court and in  
17 sections 4501, 4502 and elsewhere in the Act – provides a hard boundary for any acts of discretion  
18 performed by the persons, agencies and/or others charged with carrying out its provisions.  
19 Discretion must be exercised with the constant goal of preventing or minimizing institutionalization  
20 and enabling people with developmental disabilities to lead more integrated, independent and  
21 productive lives in the community. As set forth below, the State defendants have violated specific  
22 statutes by failing to exercise their discretion under a proper interpretation of the Lanterman Act.

23 **b. Liability of the State Defendants for Violation of**  
24 **Statutory Requirements.**

25 222. Plaintiffs allege that the State defendants, through their policies and practices, acts and  
26 omissions, have violated the Lanterman Act by carrying out their duties and obligations under an  
27 improper interpretation of the Lanterman Act: an interpretation that ignores the right of each person  
28 with developmental disabilities to treatment and services in the least restrictive environment in



1 which his or her needs can be accommodated. *See* Welf. & Inst. Code § 4502(a); *ARC*, 38 Cal. 3d at  
2 393 (setting forth core "rights" and "responsibilities" of the Lanterman Act). The State defendants'  
3 violations include, but are not limited to:

4           a.       Failing to ensure that IPPs are prepared with the constant goal of placing each  
5 resident of public and/or private institutions in the least restrictive environment in which his  
6 or her needs can be accommodated and deflecting individuals at risk from institutional  
7 placement. The Lanterman Act states that IPPs "shall include" a statement of goals, based on  
8 the individual's needs, preferences and life choices, and objectives "which should maximize  
9 opportunities for the consumer to . . . be part of community life in the areas of community  
10 participation, housing, work, school, and leisure . . . ." Welf. & Inst. Code § 4646.5(a)(2).  
11 The IPP must include a schedule of the type and amount of services and supports to be  
12 purchased or otherwise obtained in order to achieve the IPP goals. Welf. & Inst. Code  
13 § 4646.5(a)(4). State defendant DDS is responsible for convening planning meetings and the  
14 preparing IPPs for residents of DCs, as described in section 4646.5. Welfare and Institutions  
15 Code section 4646(d) commands that IPPs "shall be prepared jointly by the planning team."  
16 With respect to the preparation of IPPs for residents of State-operated DCs, "[t]he planning  
17 team shall include developmental center staff knowledgeable about the service and support  
18 needs of the consumer." Welf. & Inst. Code § 4418.3(c). In addition to employing DC staff  
19 and RRDP staff who directly participate in the preparation of IPPs for DC residents and  
20 individuals at risk of DC placement, State defendant DDS has authority over the IPP  
21 preparation process for all regional center consumers by virtue of its duty to monitor the  
22 regional centers' compliance with the Lanterman Act and to support and assist the regional  
23 centers in carrying out their duties. *See* Welf. & Inst. Code §§ 4434, 4629, 4635 & 4651(b).  
24 Plaintiffs are informed and believe that State defendant DDS has violated Welfare and  
25 Institutions Code sections 4646 and 4646.5 by failing to exercise its discretion thereunder  
26 with the constant goal of providing services and supports in the least restrictive environment;

27           b.       Failing to ensure that IPPs are modified to reflect court determinations that a  
28 DC is no longer the least restrictive appropriate placement in which the individual's needs

1 can be accommodated and failing to ensure implementation of IPPs reflecting such court  
2 determinations. Placements in DCs that are not voluntary must be pursuant to court order  
3 following a hearing meeting stringent due process requirements. *In re Hop*, 29 Cal.3d 82  
4 (1981). When a court determines — either in reviewing a prior commitment order or in  
5 reviewing a petition for writ of habeas corpus pursuant to Welfare & Institutions Code  
6 sections 4800-4801 -- that a DC is no longer the least restrictive appropriate placement in  
7 which a DC resident's needs can be accommodated, the Lanterman Act requires that the IPP  
8 be modified to reflect the individual's current needs. *E.g.*, Welf. & Inst. Code § 4646.5(b)  
9 (requiring that IPPs be modified as necessary in response to the persons achievement or  
10 changing needs). Plaintiffs are informed and believe that DDS has violated section  
11 4646.5(b), and its responsibility to ensure regional center compliance with state law (as  
12 provided in Welfare and Institutions Code sections 4416, 4418.25, 4434, 4620, 4629, 4635  
13 and 4651(b)), by failing to exercise its discretion thereunder with the constant goal of  
14 providing services and supports in the least restrictive environment;

15 c. Failing to ensure the adequate assessment of community-integrated service  
16 and support options and failing to develop IPPs identifying the community services and  
17 supports which would allow individuals to move to or remain successfully living in less  
18 restrictive settings. The Lanterman Act requires that each resident's IPP include an  
19 assessment, performed by qualified individuals, of the services which could support them in  
20 non-institutional, community settings. Welf & Inst. Code §§ 4418.3, 4418.7, 4646.5, 4647 &  
21 4648 (a) (1). While the regional centers are primarily responsible for assessing community-  
22 integrated service and support options, in the case of DC residents, State defendant DDS  
23 employs DC staff who convene planning meetings, conduct assessments and directly  
24 participate as members of IPP planning teams. Welf. & Inst. Code § 4418.3(c). For  
25 individuals at risk of placement in the DCs, the DDS-administered RRDPs have  
26 responsibility for assessment, IPP development and follow-up until a consumer's living  
27 arrangement is stable. Welf & Inst. Code §§ 4418.7. Additionally, State defendant DDS has  
28 authority over these assessments and the IPP preparation process for all regional center

1 consumers residing in institutions and for people at risk of placement in an institution by  
2 virtue of its duty to monitor the regional centers' compliance with the Lanterman Act and to  
3 support and assist the regional centers in carrying out their duties. *See* Welf. & Inst. Code  
4 §§ 4434, 4629, 4635 & 4651(b). Plaintiffs are informed and believe that State defendant  
5 DDS has violated Welfare and Institutions Code sections 4418.3, 4418.7, 4646, 4646.5, 4647  
6 and 4648(a)(1) by failing to exercise its discretion thereunder with the constant goal of  
7 providing services and supports in the least restrictive environment;

8 d. With respect to DC residents, failing to develop IPPs recommending  
9 community placement and failing to implement IPP recommendations for community  
10 placement over the objection of family members or conservators. The Lanterman Act  
11 requires that decisions of IPP planning teams be made "jointly." Welf. & Inst. Code  
12 § 4646(d). Permitting conservators and family members of DC residents to, in effect,  
13 unilaterally prevent community placement of DC residents who could live in less restrictive  
14 settings is inconsistent with the Lanterman Act IPP process and the integration mandate. In  
15 addition, permitting family members or conservators to unilaterally veto community  
16 placement recommendations violates DC residents' due process rights and the permanent  
17 injunction issued in *Richard S. et al. v. DDS et al. v. Bell et al.* (U.S. District Court Case No.  
18 SACV 97-219-GLT; CD Cal. 2000). State defendant DDS employs DC staff who convene  
19 planning meetings and directly participate in the preparation of IPPs as members of planning  
20 teams. *E.g.*, Welf. & Inst. Code § 4418.3(c). Moreover, State defendant DDS has authority  
21 over the IPP preparation process at DCs as the entity that operates the DCs and by virtue of  
22 its duty to monitor the regional centers' compliance with the Lanterman Act and to support  
23 and assist the regional centers in carrying out their duties. *See* Welf. & Inst. Code §§ 4434,  
24 4629, 4635 & 4651(b). Plaintiffs are informed and believe that State defendant DDS has  
25 violated Welfare and Institutions Code section 4646(d) by failing to exercise its discretion  
26 there under with the constant goal of providing services and supports in the least restrictive  
27 environment;

1 e. Failing to afford class members the opportunity to make meaningful choices,  
2 including but not limited to choices regarding where and with whom they live. The  
3 Lanterman Act requires that every public or private agency that serves persons with  
4 developmental disabilities shall provide those individuals with the opportunity to exercise  
5 decision-making skills and make meaningful choices concerning their own lives. Welf. &  
6 Inst. Code §§ 4418.3(d), 4502.1, 4646, 4646.5. State defendant DDS deprives class members  
7 of these rights by, for example, failing to provide them with information in an understandable  
8 form, including experiential information, on the variety of possible alternatives to  
9 institutions. Moreover, State defendant DDS, by virtue of its monitoring and support  
10 functions, has failed to ensure that regional centers meet these obligations. *See* Welf. & Inst.  
11 Code §§ 4434, 4629, 4635 & 4651(b). Plaintiffs are informed and believe that State  
12 defendant DDS has violated Welfare and Institutions Code sections 4418.3(d), 4502.1, 4646  
13 and 4646.5 by failing to exercise its discretion thereunder with the constant goal of providing  
14 services and supports in the least restrictive environment;

15 f. Depriving plaintiffs and the class they represent of the opportunity for  
16 integration into the mainstream of community life by failing to maintain sufficient quality,  
17 stable, community living arrangements and ancillary supports to adequately provide for the  
18 needs and choices of class members who currently reside in public and private institutions,  
19 and who are at risk of placement in an institutional setting. Welfare and Institutions Code  
20 sections 4418.25, 4418.5, 4512(b), 4513, 4648, 4651(b), 4652, 4677, 4669.2, 4680, 4685,  
21 4685.1, 4688, 4689, 4689.1, 4690, 4696, 4696.1 and 4787 provide for placement in  
22 community living arrangements, including home-based arrangements, provide for the  
23 development of innovative resources to meet consumers' needs and require the State and  
24 regional center defendants to maintain, develop and adequately fund a sufficient array of  
25 quality, community living arrangements and ancillary supports to ensure that class members  
26 can be served in least restrictive community settings. When necessary to expand the  
27 availability of needed services, regional centers may, for example, solicit providers through  
28 requests for proposals, request funds for the start-up costs of new services and use creative

1 service delivery models. Welf. & Inst. Code §§ 4648 (e) & 4418.25. With the approval of  
2 DDS, regional centers may develop service delivery alternatives outside the confines of other  
3 provisions of law. Welf. & Inst. Code § 4669.2. Additionally, DDS may “where there are  
4 identified gaps in the system of services and supports or where there are identified consumers  
5 for whom no provider will provide services and supports contained in his or her individual  
6 program plan” provide the supports directly. Welf. & Inst. Code § 4648(g). Plaintiffs are  
7 informed and believe that State defendant DDS does not make use of community service  
8 models, and does not ensure that defendant regional centers fully and effectively utilize  
9 available community service models, expand the availability of current service models and  
10 develop new and innovative resources, which would enable class members to live  
11 successfully in non-institutional settings. Thus, plaintiffs are informed and believe that the  
12 State defendants have violated Welfare and Institutions Code sections 4418.25, 4418.5,  
13 4512(b), 4513, 4648, 4651(b), 4652, 4677, 4669.2, 4680, 4685, 4685.1, 4688, 4689, 4689.1,  
14 4690, 4696, 4696.1 and 4787 by failing to exercise their discretion thereunder with the  
15 constant goal of providing services and supports in the least restrictive environment;

16 g. Failing to fully and effectively obtain and utilize community-based waiver  
17 services for those class members eligible for such services. State defendants DDS and  
18 DHCS are responsible for identifying and maximizing utilization of federal funding and other  
19 sources of funding for community-based services, including utilizing community-based  
20 waiver services for eligible class members. Welf. & Inst. Code §§ 4651(b), 4659, 4683,  
21 4780. Though the State defendants have limited discretion in making use of available  
22 funding sources, Plaintiffs are informed and believe that State defendants DDS and DHCS  
23 have violated Welfare and Institutions Code sections 4651, 4659, 4683 and 4780 by failing to  
24 exercise their discretion thereunder with the constant goal of providing services and supports  
25 in the least restrictive environment;

26 h. Failing to ensure that all necessary steps are taken to deflect people at risk of  
27 institutionalization from placement in an institution. Welfare and Institutions Code section  
28 4418.25(b) makes State defendant DDS responsible for approval and monitoring of

1 community placement plans which ensure "deflection of selected individuals from  
2 developmental center placement." Welfare and Institutions Code section 4418.7(b) states  
3 State defendant DDS "shall" ensure that regional centers provide needed services and  
4 supports on an emergency basis. Additionally, Welfare and Institutions Code sections 4434,  
5 4629, 4635 and 4651(b) make State defendant DDS responsible for monitoring and  
6 supporting the regional centers in ensuring that all consumers receive adequate assessments,  
7 crisis services and supplemental supports as required by Welfare and Institutions Code  
8 sections 4646, 4646.5, 4648(a)(9)-(10) &(e), 4685(c)(2) and 4696.1. By virtue of its  
9 monitoring and support function, and its administration of the RRDPs, State defendant DDS  
10 is also responsible for ensuring that consumers whose community placement is at risk of  
11 failing receive an immediate assessment of any further services and supports which would  
12 make the placement successful, as well as emergency and crisis intervention services to assist  
13 in maintaining the consumer in the living arrangement of his or her choice. Welf. & Inst.  
14 Code §§ 4418.7, 4648(a)(10) & 4696.1. Plaintiffs are informed and believe that State  
15 defendant DDS has violated Welfare and Institutions Code sections 4418.25(b), 4418.7,  
16 4646, 4646.5, 4648(a)(9)-(10), 4648(e), 4685(c)(2) and 4696.1 by failing to exercise its  
17 discretion thereunder with the constant goal of providing services and supports in the least  
18 restrictive environment;

19 i. Approving community placement plans ("CPPs") that set inordinately low  
20 goals for placing individuals in community settings. State defendant DDS is responsible for  
21 developing criteria for the regional centers' annual CPPs, which are "not intended to limit  
22 [DDS's] or the regional centers' responsibility ... to provide needed services and supports in  
23 the least restrictive, most integrated setting in accord with the Lanterman" Act. Welf. & Inst.  
24 Code §§ 4418.25(a)-(b). Section 4418.25(c) mandates that State defendant DDS review and  
25 approve regional centers' CPPs in light of "each regional center's current developmental  
26 center population and their corresponding placement level, as well as each regional center's  
27 need to develop new and innovative service models." Section 4418.25(c) further commands  
28 that State defendant DDS hold the regional centers accountable for the development and

1 implementation of their approved plans. Plaintiffs are informed and believe that State  
2 defendant DDS has violated Welfare and Institutions Code section 4418.25 by failing to  
3 exercise its discretion thereunder with the constant goal of providing services and supports in  
4 the least restrictive environment;

5 j. Failing to recommend adequate funding for unmet systemic needs for resource  
6 development to enable people living in institutions to move to less restrictive, more  
7 integrated living arrangements. The Lanterman Act requires that the State Council on  
8 Developmental Disabilities, in consultation with DDS, recommend to DOF the level of  
9 program development funding to be included in the Governor's Budget. This  
10 recommendation must be based upon information provided by the regional center defendants,  
11 who are required to regularly identify and assess unmet systemic needs. Welf. & Inst. Code  
12 § 4677(b) & (e); *see also* Welf. & Inst. Code §§ 4648(d)-(g). DDS may allocate funds from  
13 the Program Development Fund, with the consultation of the State Council, to provide the  
14 resources necessary to initiate needed, but unavailable, priority services/ programs. Welf. &  
15 Inst. Code § 4677(a) & (e). Thus, State defendant DDS is responsible for the identification  
16 and funding of unmet systemic needs both directly, through its consultation with the State  
17 Council on Developmental Disabilities, and indirectly, by virtue of its duty to monitor and  
18 assist the regional centers in carrying out their responsibilities under the Lanterman Act.  
19 Welf. & Inst. Code §§ 4434, 4629, 4635 & 4651(b). Plaintiffs are informed and believe that  
20 State defendant DDS has violated Welfare and Institutions Code sections 4677 and 4648(d)-  
21 (g) by failing to exercise its discretion thereunder with the constant goal of providing services  
22 and supports in the least restrictive environment;

23 k. Failing to collaborate to ensure that class members with dual diagnoses are  
24 provided with the supports needed to live in least restrictive community settings. The  
25 Lanterman Act requires defendants DDS and DMH to jointly develop and implement a  
26 statewide program for encouraging the establishment of sufficient numbers and types of  
27 living arrangements, including community living arrangements, as necessary to meet the  
28 needs of persons served by those departments. Welf. & Inst. Code § 4510. The Lanterman

1 Act also mandates that State defendant DDS collaborate with DMH to establish criteria by  
2 which higher rates may be fixed for living arrangements for people who are dually diagnosed  
3 with a mental disorder and to provide solutions for the care and treatment of the dually  
4 diagnosed when local agencies request assistance. Welf. & Inst. Code §§ 4681.1(d). Section  
5 4696.1(c) says that defendants DDS and DMH "shall collaborate" to provide a statewide  
6 perspective and technical assistance to local service regions when local problem resolution  
7 mechanisms have been exhausted and state level participation has been requested by both  
8 local agencies. Additionally, Welfare and Institutions Code sections 4434, 4629, 4635 and  
9 4651(b) make State defendant DDS responsible for monitoring and supporting the regional  
10 centers in complying with their responsibilities under Welfare and Institutions Codes sections  
11 4696 and 4696.1 to cooperate with county mental health agencies and obtain needed mental  
12 health services for class members with dual diagnosis. Plaintiffs are informed and believe  
13 that State defendants DDS and DMH have violated Welfare and Institutions Code sections  
14 4510, 4681.1(d) and 4696.1 by failing to exercise their discretion thereunder with the  
15 constant goal of providing services and supports in the least restrictive environment;

16 I. Failing to establish adequate systems of payment for providers of services and  
17 supports which reflect the actual costs of ensuring high quality, stable services, including  
18 geographic differentials. Welfare and Institutions Code sections 4648(a)(5), 4680, 4681.1  
19 and 4690 require that State defendant DDS establish and maintain payment systems for the  
20 services and supports identified in a consumer's IPP. "The system shall include a provision  
21 for a rate to ensure that the provider can meet the special needs of consumers and provide  
22 quality services and supports in the least restrictive setting as required by law." Welf. & Inst.  
23 Code § 4648(a)(5). Sections 4680, 4681.1, 4690, 4697(a)(1) and 4786 also establish  
24 parameters for payment systems. Section 4681.1(b)(2) states payment systems for group  
25 homes should take into account geographic differentials. Plaintiffs are informed and believe  
26 that State defendant DDS has violated Welfare and Institutions Code sections 4648(a)(5),  
27 4680, 4681.1, 4690, 4697(a)(1) and 4786 by failing to exercise its discretion thereunder with  
28 the constant goal of providing services and supports in the least restrictive environment;



1 m. Failing to request the allocation of sufficient funds to the regional centers to  
2 carry out their mandated responsibilities. Welfare and Institutions Code sections 4434(b) &  
3 (c), 4620, 4621 and 4629 require that the State, through defendant DDS, contract with and  
4 fund regional centers to carry out their statutorily mandated responsibilities, including  
5 conducting assessments and developing and implementing IPPs to enable consumers to live  
6 in non-institutional, community-based settings whenever appropriate. Plaintiffs are informed  
7 and believe that State defendant DDS has violated Welfare and Institutions Code sections  
8 4434(b) & (c), 4620, and 4629 by failing to exercise its discretion thereunder with the  
9 constant goal of providing services and supports in the least restrictive environment;

10 n. Failing to adequately communicate with and monitor the regional centers to  
11 ensure they fulfill their responsibilities under the Lanterman Act. Welfare and Institutions  
12 Code sections 4416, 4418.25, 4434, 4620, 4629, 4635 and 4651(b), among other sections of  
13 the Act, mandate that State defendant DDS support and monitor the regional centers and, if  
14 necessary, take corrective actions to ensure full compliance with federal and State law,  
15 including the requirement that services and supports be provided to each consumer in the  
16 least restrictive environment in which his or her needs can be accommodated. Plaintiffs are  
17 informed and believe that State defendant DDS has violated Welfare and Institutions Code  
18 sections 4416, 4418.25, 4434, 4620, 4629, 4635 and 4651(b) by failing to exercise its  
19 discretion thereunder with the constant goal of providing services and supports in the least  
20 restrictive environment;

21 o. Proposing budget allocations that disproportionately allocate funds for  
22 developmental disabilities services to institutional care rather than to community services in  
23 violation of the Lanterman Act mandates for least restrictive services and for cost-effective  
24 services. The Lanterman Act requires that State defendants provide funding for persons with  
25 developmental disabilities in a cost-effective manner, with special preference given to  
26 community services and supports. *E.g.*, Welf. & Inst. Code §§ 4512(b), 4646(a),  
27 4648(a)(6)&(11), 4669.75(d). For class members in the DCs whose needs could be met in  
28 the community, in most instances, the cost of DC placement far exceeds the cost of

1 community-based services and supports. Plaintiffs are informed and believe that the State  
2 defendants have violated Welfare and Institutions Code sections 4512(b), 4646(a), 4648(a)(6)  
3 &(11), and 4669.75(d) by failing to exercise their discretion thereunder with the constant  
4 goal of providing services and supports in the least restrictive environment;

5 p. Failing to support State defendant DDS in its efforts to implement the  
6 provisions of the Lanterman Act. State defendants DHCS and its director, defendant Shewry,  
7 have hindered DDS in its efforts to implement the provisions of the Lanterman Act by their  
8 actions and omissions as the single state agency for the administration of Medicaid services  
9 in California. DHCS and its director have power to supervise every phase of the  
10 administration of health care services and medical services in order to secure full compliance  
11 with state and federal laws. Welf. & Inst. Code § 10740. DHCS has the power to work as an  
12 agent of and in cooperation with the federal government to acquire additional funds for the  
13 implementation of state health programs. Welf. & Inst. Code § 10748. Medicaid services in  
14 California (called Medi-Cal) are administered by defendant Shewry, the Director of DHCS,  
15 the state agency responsible for administering Medi-Cal mandatory, optional and waiver  
16 services. 42 U.S.C. § 1396a(a)(5); Welf. & Inst. Code § 14137. Defendant DHCS, as the  
17 single state agency responsible to the federal government (CMS) on how California  
18 administers its Medi-Cal program including HCB waivers, has the authority to request  
19 additional waivers or expansion of current HCB waivers. Welf. & Inst. Code §§ 10740 and  
20 10748. State defendant DHCS's actions and omissions include, but are not limited to, failing  
21 to apply for administrative costs, expansion of population caps and/or service definitions in  
22 Medicaid Home and Community-Based Waiver programs, including, but not limited to, the  
23 Developmental Disabilities and Nursing Facility A/B Waivers. As a result of these actions  
24 and omissions, federal funds available to provide community-based services to many  
25 institutionalized persons with developmental disabilities have not been accessed by the State.  
26 Defendants DHCS and Shewry have misinterpreted and violated the Lanterman Act by  
27 failing to exercise their discretion with the constant goal of providing services and supports  
28 in the least restrictive environment;

1 q. Failing to make available aggregate data on the outcomes of efforts to assist  
2 at-risk consumers to remain in the community and on regional center performance under  
3 their Community Placement Plans ("CPPs"). Welfare and Institutions Code sections 4418.25  
4 (c) and 4418.7(d), respectively, mandate that State defendant DDS "shall" collect and make  
5 available upon request aggregate data on regional center performance under their CPPs and  
6 on implementation of the deflection requirements of section 4418.7. Plaintiffs are informed  
7 and believe that State defendant DDS has violated sections 4418.25(c) and 4418.7(d) by  
8 failing to collect and/or make available aggregate data on these matters. To the extent that  
9 the duty to collect and/or make available aggregate data involves the exercise of discretion,  
10 the State defendants have violated sections 4418.25(c) and 4418.7(d) by failing to exercise  
11 their discretion with the constant goal of providing services and supports in the least  
12 restrictive environment;

13 r. Failing to hold individual planning meetings with the "planning teams" of  
14 plaintiff class members residing in the DCs as required by, *inter alia*, Welfare and  
15 Institutions Code sections 4418.3(b)&(c), 4512(j), 4646, 4646.5 and 4647. The Lanterman  
16 Act requires that a "planning team" jointly develop an individual program plan for every  
17 person eligible for regional center services. Welf. & Inst. Code §§ 4646(c) & 4646(d). The  
18 Lanterman Act defines the "planning team" as a group which includes "one or more regional  
19 center representatives, including the designated regional center service coordinator." Welf.  
20 & Inst. Code § 4512(j); *see also* Welf. & Inst. Code §§ 4647(a) & 4646.5(b) (mandating  
21 regional center participation in the IPP process and setting forth planning team duties  
22 including periodic review of all IPPs.). Welfare and Institutions Code sections 4418.3(b) and  
23 4418.3(c) make State defendant DDS responsible for convening planning team meetings for  
24 DC residents and ensuring that those planning teams develop IPPs consistent with the  
25 mandates of sections 4646 and 4646.5. Plaintiffs are informed and believe that State  
26 defendant DDS has violated Welfare and Institutions Code sections 4418.3(b) and 4418.3(c)  
27 by routinely convening planning team meetings for DC residents that are not attended by one  
28 or more regional center representatives, including the designated regional center service

1 coordinator. To the extent that the convening of planning team meetings involves the  
2 exercise of discretion, State defendant DDS has violated sections 4418.3(b) and 4418.3(c) by  
3 exercising its discretion in a manner that ignores the statutory command that a "planning  
4 team" shall include "one or more regional center representatives, including the designated  
5 regional center service coordinator." Welf. & Inst. Code § 4512(j).

6 s. **{Plaintiffs preserve the right to seek appellate review of the dismissal of**  
7 **this allegation.}** Plaintiffs incorporate every allegation set forth above and allege that each  
8 and every allegation above states a claim for violation of "a clear, present, and ministerial  
9 duty." *Unnamed Physician v. Board of Trustees*, 93 Cal. App. 4<sup>th</sup> 607, 618 (2001). The  
10 Lanterman Act is a remedial statute enacted for the purpose of redressing "social, medical,  
11 economic, and legal problems of extreme importance." Welf. & Inst. Code § 4501.

12 "[R]emedial statutes such as the Lanterman Act must be liberally construed to effectuate the  
13 purposes for which they were enacted." *Clemente v. Amundson*, 60 Cal. App. 4<sup>th</sup> 1094, 1102  
14 (1998). Thus, sections of the Lanterman Act that state what "may" or "should" be done are  
15 enforceable as clear, present, ministerial duties. *See Hayes v. County of Los Angeles*, 99 Cal.  
16 74, 80 (1893) ("[w]here the statute directs the doing of a thing for the sake of justice or for  
17 the public good, the word 'may' is the same as the word 'shall.' Where persons or the public  
18 have an interest in having the act done by the public body, *may* in such a statute means  
19 *shall.*"); *People v. Ledsema*, 16 Cal. 4<sup>th</sup> 90, 95 (1997) (same).

### 20 3. Violations Based Upon Exercise of Quasi-Legislative 21 Power.

22 223. In light of the Court's direction that Plaintiffs' allegations meet a stringent standard of  
23 specificity, Plaintiffs do not presently allege that the State defendants have enacted plans and/or  
24 regulations which violate the Lanterman Act. However, discovery is ongoing and Plaintiffs reserve  
25 the right to amend their Petition for Writ of Mandate to conform to proof that the State defendants  
26 have improperly exercised quasi-legislative power.  
27  
28

1           **B.     DIRECT LIABILITY OF THE REGIONAL CENTER**  
2           **DEFENDANTS FOR VIOLATIONS OF THE LANTERMAN**  
3           **ACT.**

4           224. Plaintiffs' claims against the regional center defendants are not limited by the  
5 separation of powers principles which command that any action seeking to compel official action by  
6 State officials must sound in mandamus. *See Common Cause*, 49 Cal. 3d at 442 (holding that  
7 mandamus is the only method for obtaining judicial compulsion of official acts). The regional center  
8 defendants are private non-profit corporations which contract with State defendant DDS to provide  
9 services and supports to people with developmental disabilities. *See Welf. & Inst. Code § 4640, et*  
10 *seq.*

11           225. Plaintiffs' claims against the regional center defendants sound in mandamus, however  
12 injunctive and declaratory relief are also available for any proven violations of the Lanterman Act by  
13 the regional center defendants. *See ¶¶ 210-212* (setting forth basis for injunctive and declaratory  
14 relief).

15                   **1.     Violations of Ministerial Duties.**

16           226. The regional center defendants have violated ministerial duties set forth in the  
17 Lanterman Act by their policies, practices, actions and omissions including, but not limited to:

18           a.     Failing to attend all planning team meetings and transition conferences for  
19 residents of DCs. Section 4646 (c) provides that an individual program plan “shall” be  
20 developed for any person eligible for regional center services and section 4646(d) requires  
21 that individual program plans “shall” be prepared jointly by the planning team. Section  
22 4512(j) defines the “planning team” as a group which includes “one or more regional center  
23 representatives, including the designated regional center service coordinator.” Section  
24 4647(a) identifies participation in the individual program plan process as one of the required  
25 regional center service coordination activities necessary to implement individual program  
26 plans. Section 4646.5(b) provides that individual program plans “shall” be periodically  
27 reviewed and modified and further provides that such reviews “shall” be done “by the  
28 planning team.” Section 4418.3(e) requires that participants in transition conferences “shall”  
include a regional center representative. Viewed together, as required by California law,

1 and/or viewed separately, these sections of the Lanterman Act obligate regional center  
2 representatives to attend and participate in all planning team meetings. Plaintiffs are  
3 informed and believe that the regional center defendants have violated these and other  
4 Lanterman Act provisions by failing to attend planning team meetings and transition  
5 conferences for residents of developmental centers;

6 b. Failing to conduct individualized planning according to the mandatory criteria  
7 set forth in, *inter alia*, Welfare and Institutions Code sections 4646 and 4646.5, which  
8 includes an assessment of the services that would support individuals in the least restrictive  
9 setting. Section 4646(c) provides that an individual program plan “shall” be developed for  
10 any person eligible for regional center services. Section 4646.5 specifies matters that “shall”  
11 be included in the individual program plans described in section 4646. Section 4646.5(a)(1)  
12 requires the “[g]athering of information and conducting assessments to determine the life  
13 goals, capabilities and strengths, preferences, barriers, and concerns or problems of the  
14 person with developmental disabilities.” Based on the assessment process, section  
15 4646.5(a)(2) requires, for example, that the regional centers develop IPPs that “shall include”  
16 a statement of goals designed to maximize opportunities for the consumer to “be part of  
17 community life in the areas of community participation, housing, work, school, and  
18 leisure....” Section 4646.5(a)(4) further requires regional centers to create a schedule of the  
19 type and amount of services and supports to be purchased or otherwise obtained by the  
20 regional center in order to achieve the IPP goals described in section 4646.5(a)(2). Plaintiffs  
21 are informed and believe that the regional center defendants have violated sections 4646 and  
22 4646.5 by failing to conduct assessments of class members for purposes of including in all  
23 IPPs a statement of goals designed to maximize opportunities for community integration, and  
24 by failing to develop IPPs for class members that include a statement of such goals or a  
25 schedule of services and supports needed to achieve those goals;

26 c. Failing to implement Plaintiffs' and class members' IPPs that specify services  
27 needed for movement to non-institutional, community living arrangements or to avoid  
28 placement in an institution. Section 4648(a) states that regional centers “shall secure

1 services and supports that meet the needs of the consumer, as determined in the consumer's  
2 individual program plan." Citing section 4648, the California Supreme Court affirmed the  
3 non-discretionary requirement that regional centers implement all IPPs by holding that, while  
4 regional centers have discretion in determining how to implement individual program plans,  
5 they "have no discretion at all in determining whether to implement [IPPs]: they must do  
6 so." *ARC*, 38 Cal. 3d at 390. Plaintiffs are informed and believe that the regional center  
7 defendants have violated section 4648, as construed by the California Supreme Court, by  
8 failing to implement IPPs that specify services needed for movement into less restrictive  
9 settings or deflection from institutions;

10 d. Failing to follow the criteria set forth in Welfare and Institutions Code section  
11 4648(a) in securing services and supports for consumers. Section 4648 sets forth the  
12 activities regional centers "shall" conduct to achieve the objectives of each person's  
13 individual program plan. Section 4648(a) requires that the regional center "shall" secure  
14 needed services and supports. Section 4648(a)(1) requires that regional centers "shall give  
15 highest preference to those services and supports which would allow minors with  
16 developmental disabilities to live with their families, adult persons with developmental  
17 disabilities to live as independently as possible in the community, and that allow all  
18 consumers to interact with persons without disabilities in positive meaningful ways." Section  
19 4648(a)(2) specifies that regional centers "shall first consider services and supports in natural  
20 community, home, work and recreational settings." Plaintiffs are informed and believe that  
21 the regional center defendants have violated section 4648 by failing to give primary  
22 consideration, if any consideration at all, to services and supports which would maximize  
23 community integration;

24 e. Failing to hold annual meetings with county mental health directors. Welfare  
25 and Institutions Code section 4696.1(d) commands that regional center directors "shall" meet  
26 with county mental health directors "as needed but no less than annually" to review the  
27 effectiveness of interagency collaboration, address outstanding policy issues between the  
28 agencies, and establish direction and priorities for future collaboration. Plaintiffs are

1 informed and believe that the regional center defendants have failed to hold at least annual  
2 meetings with county mental health directors as required by section 4696.1(d);

3 f. Failing to develop IPPs recommending community placement and failure to  
4 implement IPP recommendations for community placement of developmental center  
5 residents over the objection of family members or conservators. Welfare and Institutions  
6 Code section 4646(d) provides that family members and/or conservators may be included in  
7 the decision-making process, but commands that "[i]ndividual program plans shall be  
8 prepared jointly by the planning team." In addition, permitting family members or  
9 conservators to unilaterally veto community placement recommendations violates DC  
10 residents' due process rights and the permanent injunction issued in *Richard S. et al. v. DDS*  
11 *et al. v. Bell et al.* (U.S. District Court Case No. SACV 97-219-GLT; CD Cal. 2000).  
12 Plaintiffs are informed and believe that the regional center defendants have violated section  
13 4646(d) by permitting family members and conservators of DC residents to, in effect,  
14 unilaterally prevent community placement of DC residents who could live in less restrictive  
15 settings;

16 g. Failing to ensure deflection from placement in an institution by providing  
17 emergency and crisis intervention services as mandated by, *inter alia*, Welfare and  
18 Institutions Code sections 4648(a)(2) and 4648(a)(10). Section 4648(a)(2) requires that, in  
19 implementing individual program plans, regional centers "shall" first consider services and  
20 supports in the community. Section 4648(a)(10) commands that "[c]risis services shall first  
21 be provided without disrupting a person's living arrangement. If crisis intervention services  
22 are unsuccessful, emergency housing shall be available in the person's home community."

23 Plaintiffs are informed and believe that the regional center defendants have violated sections  
24 4648(a)(2) and 4648(a)(10) by failing to provide emergency and crisis intervention services  
25 in consumers' own homes and the community when consumers are at risk of placement in an  
26 institution;

27 h. Failing to conduct required activities to deflect class members from placement  
28 in DCs. Welfare and Institutions Code section 4418.7 commands that regional centers



1 immediately notify the RRDP to arrange for an immediate assessment of the need for  
2 additional services and supports and to conduct IPP meetings with RRDP staff whenever a  
3 community placement is at risk of failing and admittance to a state DC is a likelihood.  
4 Plaintiffs are informed and believe that the regional center defendants have failed to adhere  
5 to the process described in section 4418.7 whenever a community placement of a consumer  
6 is at risk of failing;

7 i. Failing to identify and pursue all possible sources of funding and failing to  
8 disseminate information and training to all service coordinators regarding the availability and  
9 requirements of federally funded and private insurance programs as mandated by Welfare  
10 and Institutions Code sections 4659(a) and 4659(d)(2). Section 4659(a) mandates that  
11 regional centers identify and pursue all possible sources of funding for consumers receiving  
12 regional center services. In order to make full use of all available resources, section  
13 4659(d)(2) commands that regional centers disseminate information about federally funded  
14 and private insurance to all service coordinators. Plaintiffs are informed and believe that the  
15 regional center defendants have not complied with the directives of sections 4659(a) and  
16 4659(d)(2).

## 17 **2. Violation of Statutory Requirements.**

18 227. The Lanterman Act contains numerous individual provisions which grant the regional  
19 center defendants discretion in carrying out their duties thereunder. California law requires that  
20 these individual provisions be construed in light of the overall purpose of the Lanterman Act  
21 statutory scheme. *See People v. Morris*, 46 Cal. 3d 1, 16 (1988) ("Statutory language should not be  
22 interpreted in isolation, but must be construed in the context of the entire statute of which it is a part,  
23 in order to achieve harmony among the other parts"); *People v. Hammer*, 30 Cal. 4<sup>th</sup> 756, 762-63  
24 (2003) (Courts must "harmonize the various parts of a statutory enactment by considering the  
25 particular clause or section in the context of the statutory framework as a whole").

26 228. Plaintiffs allege that the regional center defendants, through their policies and  
27 practices, have violated the Lanterman Act by carrying out their duties and obligations under an  
28 improper interpretation of the Lanterman Act: an interpretation that ignores the right of each person

1 with developmental disabilities to treatment and services in the least restrictive environment in  
2 which his or her needs can be accommodated. *See* ¶¶ 226-229 above (detailing core rights and  
3 minimum requirements of Lanterman Act); *also* Welf. & Inst. Code § 4502(a); *ARC*, 38 Cal. 3d at  
4 393 (setting forth core "rights" and "responsibilities" of the Lanterman Act). These violations may  
5 be remedied by issuance of a writ of mandate and/or through injunctive and/or declaratory relief.

6 The regional center defendants' violations include, but are not limited to:

7           a.       Failing to conduct assessments and develop IPPs with the constant goal of  
8           placing each resident of public and/or private institutions in the least restrictive environment  
9           in which his or her needs can be accommodated and deflecting individuals at risk from  
10           institutional placement. The Lanterman Act requires that IPPs developed by regional centers  
11           or DDS "shall include" a statement of goals, based on the individual's needs, preferences and  
12           life choices, and objectives "which should maximize opportunities for the consumer to . . . be  
13           part of community life in the areas of community participation, housing, work, school, and  
14           leisure . . ." Welf. & Inst. Code § 4646.5(a)(2). The Lanterman Act also requires that, in  
15           securing community services and supports, regional centers "shall give highest preferences to  
16           those services and supports which would allow minors with developmental disabilities to live  
17           with their families, adult persons with developmental disabilities to live as independently as  
18           possible in the community, and that allow all consumers to interact with persons without  
19           disabilities in positive meaningful ways." Welf. & Inst. Code § 4648(a)(1). In implementing  
20           IPP, regional centers "shall first consider services and supports in natural community, home,  
21           work and recreational settings." Welf. & Inst. Code § 4648(a)(2). Plaintiffs are informed  
22           and believe that the regional center defendants have violated the IPP process requirements in  
23           Welfare and Institutions Code sections 4646.5(a)(2), 4648(a)(1) and 4648(a)(2) by failing to  
24           exercise their discretion thereunder with the constant goal of providing services and supports  
25           in the least restrictive environment;

26           b.       Failing to modify IPPs to reflect court determinations that a DC is no longer  
27           the least restrictive appropriate placement in which the individual's needs can be  
28           accommodated. When a court determines — either in reviewing a prior commitment order

1 or in reviewing a petition for writ of habeas corpus pursuant to Welfare & Institutions Code  
2 sections 4800-4801 — that a DC is no longer the least restrictive appropriate placement in  
3 which a DC resident's needs can be accommodated, the Lanterman Act requires that the IPP  
4 be modified to reflect the individual's current needs. *E.g.*, Welf. & Inst. Code § 4646.5(b)  
5 (requiring that IPPs be modified as necessary in response to the persons achievement or  
6 changing needs). Plaintiffs are informed and believe that regional centers have violated  
7 section 4646.5(b) by failing to develop or implement IPPs in accord with such court orders,  
8 thereby failing to exercise their discretion with the constant goal of providing services and  
9 supports in the least restrictive environment;

10 c. Failing to adequately assess community-integrated service and support options  
11 and failing to develop IPPs identifying the community services and supports which would  
12 allow individuals to move to or remain successfully living in less restrictive settings. The  
13 Lanterman Act requires that each resident's IPP include an assessment, performed by  
14 qualified individuals, of the services which could support them in non-institutional,  
15 community settings. Welf & Inst. Code §§ 4418.3(b)-(h), 4509, 4646.5, 4647 and 4648(a)(1).  
16 Plaintiffs are informed and believe that the regional center defendants have violated Welfare  
17 and Institutions Code sections 4418.3(b)-(h), 4509, 4646.5, 4647 and 4648(a)(1) by failing to  
18 exercise their discretion thereunder with the constant goal of providing services and supports  
19 in the least restrictive environment;

20 d. With respect to DC residents, failing to develop IPPs recommending  
21 community placement and failing to implement IPP recommendations for community  
22 placement over the objection of family members or conservators. The Lanterman Act  
23 requires that decisions of IPP planning teams be made jointly. Welf. & Inst. Code § 4646(d).  
24 Permitting conservators and family members of DC residents to, in effect, unilaterally  
25 prevent community placement of DC residents who could live in less restrictive settings is  
26 inconsistent with the Lanterman Act IPP process and the integration mandate. In addition,  
27 permitting family members or conservators to unilaterally veto community placement  
28 recommendations violates DC residents' due process rights and the permanent injunction

1 issued in *Richard S. et al. v. DDS et al. v. Bell et al.* (U.S. District Court Case No. SACV 97-  
2 219-GLT; CD Cal. 2000). Plaintiffs are informed and believe that the regional center  
3 defendants have violated Welfare and Institutions Code section 4646(d) by failing to exercise  
4 their discretion thereunder with the constant goal of providing services and supports in the  
5 least restrictive environment;

6 e. Failing to afford class members the opportunity to make meaningful choices,  
7 including but not limited to choices regarding where and with whom they live. The  
8 Lanterman Act requires that every public or private agency that serves persons with  
9 developmental disabilities shall provide those individuals with the opportunity to exercise  
10 decision-making skills and make meaningful choices concerning their own lives. Welf. &  
11 Inst. Code §§ 4502.1, 4646, 4646.5. The regional center defendants deprive class members  
12 of these rights by, for example, failing to provide them with information in an understandable  
13 form, including experiential information, on the variety of possible alternatives to  
14 institutions. Plaintiffs are informed and believe that the regional center defendants have  
15 violated Welfare and Institutions Code sections 4502.1, 4646 and 4646.5 by failing to  
16 exercise their discretion thereunder with the constant goal of providing services and supports  
17 in the least restrictive environment;

18 f. Depriving plaintiffs and the class they represent of the opportunity for  
19 integration into the mainstream of community life by failing to maintain sufficient quality,  
20 stable, community living arrangements and ancillary supports to adequately provide for the  
21 needs and choices of class members who currently reside in public and private institutions,  
22 and/or who are at risk of placement in an institutional setting. Welfare and Institutions Code  
23 sections 4418.25, 4418.5, 4512(b), 4513, 4648, 4651(b), 4652, 4677, 4669.2, 4680, 4685,  
24 4685.1, 4688, 4689, 4689.1, 4690, 4696, 4696.1 and 4787 provide for placement in  
25 community living arrangements, including home-based arrangements, provide for the  
26 development of innovative resources to meet consumers' needs and require the State and  
27 regional center defendants to maintain, develop and adequately fund a sufficient array of  
28 quality, community living arrangements and ancillary supports to provide for class members

1 to be served in least restrictive community settings. When necessary to expand the  
2 availability of needed services, regional centers may, for example, solicit providers through  
3 requests for proposals, request funds for the start-up costs of new services, and use creative  
4 service delivery models. Welf. & Inst. Code §§ 4648 (e) & 4418.25. With the approval of  
5 DDS, regional centers may develop service delivery alternatives outside the confines of other  
6 provisions of law. Welf. & Inst. Code § 4669.2. Plaintiffs are informed and believe that  
7 regional center defendants fail to fully and effectively utilize available community service  
8 models, expand the availability of current service models and develop new and innovative  
9 resources, which would enable class members to live successfully in non-institutional  
10 settings. Thus, Plaintiffs are informed and believe that the regional center defendants have  
11 violated Welfare and Institutions Code sections 4418.25, 4418.5, 4512(b), 4513, 4648,  
12 4651(b), 4652, 4677, 4669.2, 4680, 4685, 4685.1, 4688, 4689, 4689.1, 4690, 4696, 4696.1  
13 and 4787 by failing to exercise their discretion thereunder with the constant goal of  
14 providing services and supports in the least restrictive environment;

15 g. Failing to fully and effectively obtain and utilize community-based waiver  
16 services for those class members eligible for such services. The regional center defendants  
17 are responsible for identifying and maximizing utilization of federal funding and other  
18 sources of funding for community-based services, including utilizing community-based  
19 waiver services for eligible class members. Welf. & Inst. Code § 4659. Though the regional  
20 center defendants have limited discretion in making use of available funding sources,  
21 plaintiffs are informed and believe that the regional center defendants have violated Welfare  
22 and Institutions Code section 4659 by failing to exercise their discretion with the constant  
23 goal of providing services and supports in the least restrictive environment;

24 h. Failing to take all necessary steps to deflect people at risk of  
25 institutionalization from placement in an institution. The Lanterman Act requires regional  
26 centers to conduct adequate assessments and provide needed services and supports, including  
27 crisis services and supplemental supports, to enable consumers to remain in the least  
28 restrictive, most integrated setting in which their needs can be accommodated. Welf. & Inst.

1 Code §§ 4646, 4646.5, 4648(a)(9) & (a)(10), 4685(c)(2) & 4696.1(b)&(d). In addition to  
2 these overall requirements, whenever a community placement of a consumer is at risk of  
3 failing and admittance to a state developmental center is a likelihood, the Lanterman Act  
4 requires the regional center to notify and collaborate with the DDS-administered RRDPs on  
5 an immediate assessment, on conducting an IPP and on the provision of needed additional  
6 emergency services until the consumer's living arrangement is stable. Welf. & Inst. Code  
7 §§ 4418.7 . Plaintiffs are informed and believe that the regional center defendants have  
8 violated Welfare and Institutions Code sections 4418.7, 4646, 4646.5, 4648(a)(9) & (a)(10),  
9 4685(c)(2), and 4696.1(b)&(d) by failing to exercise their discretion with the constant goal of  
10 providing services and supports in the least restrictive environment;

11 i. Submitting community placement plans ("CPPs") that set inordinately low  
12 goals for placing individuals from the DCs in community settings, failing to request  
13 sufficient resources for placement and deflection, and failing to fully implement approved  
14 CPPs. Welfare and Institutions Code section 4418.25 mandates that regional centers submit  
15 annual CPPs identifying selected DC residents for movement to community settings,  
16 identifying the funding needed for comprehensive assessments and community supports, and  
17 identifying services needed for deflection. The review criteria of section 4418.25(c) makes  
18 clear that each regional center must develop its plan light of its "current developmental center  
19 population and their corresponding placement level, as well as each regional center's need to  
20 develop new and innovative service models." Regional centers are to be held accountable for  
21 development and implementation of their approved plans. *Id.* Plaintiffs are informed and  
22 believe that regional center defendants have violated Welfare and Institutions Code section  
23 4418.25 by failing to exercise their discretion thereunder with the constant goal of providing  
24 services and supports in the least restrictive environment;

25 j. Failing to provide specialized services for class members with dual diagnoses  
26 in order that they may live in least restrictive community settings. The Lanterman Act  
27 requires that the regional center defendants coordinate with county mental health agencies to  
28 plan for and deliver services and supports to people with dual diagnoses. Welf. & Inst. Code

1 §§ 4696, 4696.1. Regional centers are required to develop memoranda of understanding  
2 addressing specific issues and to meet with local health directors at least annually to review  
3 the effectiveness of interagency collaboration, address outstanding policy issues between the  
4 agencies, and establish direction and priorities for future collaboration. Welf. & Inst. Code  
5 § 4696.1(b)&(d). Further, regional centers may request higher rates for residential living  
6 arrangements for people who are dually diagnosed (Welf. & Inst. Code § 4681.1(d)), and  
7 may seek to negotiate higher than normally permissible rates for services, including  
8 psychiatric services, that people with dual diagnoses may need (Welf. & Inst. Code  
9 § 4669.2(a)(3)). Plaintiffs are informed and believe that the regional center defendants have  
10 violated Welfare and Institutions Code sections 4681.1(d), 4669.2(a)(3), 4696 and 4696.1 by  
11 failing to exercise their discretion with the constant goal of providing services and supports  
12 in the least restrictive environment;

13 k. Failing to maintain the staffing and/or expertise necessary to ensure that class  
14 members have the supports they need to move to or remain successfully living in less  
15 restrictive settings. Welfare and Institutions Code section 4640.6(g) requires that regional  
16 centers, pursuant to their contracts, must have, or contract with, staff possessing expertise in  
17 the areas of, *inter alia*, community integration, housing, criminal justice, family support, and  
18 quality assurance. Plaintiffs are informed and believe that the regional centers provide  
19 inadequate expertise and assistance in these areas and have thus violated Welfare and  
20 Institutions Code section 4640.6(g) by failing to exercise their discretion with the constant  
21 goal of providing services and supports in the least restrictive environment;

22 l. Failing to adequately identify unmet systemic needs for resource development  
23 to enable people living in institutions to move to less restrictive, more integrated living  
24 arrangements. Welfare and Institutions Code sections 4648(d), (e), (f) & (g), and 4677(b)  
25 require that the regional center defendants identify services and supports needed but currently  
26 unavailable so that services and supports are developed to support consumers in integrated  
27 settings. Plaintiffs are informed and believe that the regional center defendants have violated  
28 Welfare and Institutions Code sections 4648(d), (e), (f) & (g), and 4677(b) by failing to

1 exercise their discretion with the constant goal of providing services and supports in the least  
2 restrictive environment;

3 **C. ALL DEFENDANTS ARE INDISPENSABLE PARTIES WITH**  
4 **RESPECT TO ANY VIOLATIONS OF THE LANTERMAN**  
5 **ACT.**

6 229. All of the defendants have an interest relating to this action because all of the  
7 defendants play key roles in the administration and delivery of services and supports to Californians  
8 with developmental disabilities. All of the defendants are so situated that the disposition of the  
9 action in the absence of any of the defendants may impede their ability to protect their interest, or  
10 may leave any of the remaining parties subject to the risk of incurring obligations that are  
11 inconsistent with the systems and procedures set forth in the Lanterman Act.

12 230. Because all of the defendants play key roles and work together in the administration  
13 and delivery of services and supports to Californians with developmental disabilities, complete relief  
14 cannot be accorded in the absence of any of the defendants.

15 **XI.**

16 **SECOND CAUSE OF ACTION**

17 **(Deprivation of Rights Under State Non-Discrimination Law)**

18 231. Plaintiffs reallege and incorporate every allegation and paragraph set forth above

19 232. This cause of action is brought by all plaintiffs against all defendants.

20 233. Pursuant to California Government Code section 11135 and Welfare and Institutions  
21 Code section 4502 and the implementing regulations, any program or activity which receives State  
22 financial assistance or that is funded by the State, including the State itself, is prohibited from  
23 discriminating against a person with a physical or mental disability and is required to provide  
24 services in the most integrated setting possible.

25 234. Plaintiffs and class members are persons with disabilities within the meaning of  
26 Government Code section 11135 and Welfare and Institutions Code section 4502.

27 235. Defendants operate programs and activities that are funded directly by the State.

28 236. Defendants DDS and regional centers have discriminated against those class members  
who reside in institutions in violation of Government Code section 11135 by failing to provide



1 services in the most integrated setting possible even though in many cases these defendants have  
2 determined or recommended that class members could be served in less restrictive residential  
3 settings in the community.

4 237. All defendants, by their policies, practices, and methods of administration—including  
5 those related to assessment of needs, funding, rate-setting, and program development—have failed to  
6 identify the services that would enable individual plaintiffs and class members to live in the most  
7 integrated settings appropriate and failed to ensure the availability of sufficient community programs  
8 to meet the long-term care needs of plaintiffs and class members. The result of defendants' conduct  
9 is unnecessary segregation and isolation of plaintiffs and class members, and the risk of unnecessary  
10 institutionalization for some class members, in violation of Government Code section 11135  
11 requiring that services be provided in the most integrated setting appropriate to the needs of qualified  
12 individuals with disabilities.

13 238. In addition, while defendants provide many people with less severe developmental  
14 disabilities appropriate residential services in non-institutional community-based settings, class  
15 members who have more severe disabilities, including those with challenging behaviors, dual  
16 diagnoses, or medical conditions, are disproportionately denied the same opportunities. Defendants  
17 have thereby additionally violated Government Code section 11135 by discriminating against  
18 plaintiffs and class members based on the severity of their disabilities.

## 19 XII.

### 20 THIRD CAUSE OF ACTION

#### 21 (Deprivation of Rights Under the Americans with Disabilities Act)

22 239. Plaintiffs reallege and incorporate every allegation and paragraph set forth above.

23 240. This cause of action is brought by all plaintiffs against defendants Delgadillo and  
24 Shewry, who are public agency directors responsible for the operation of a public entity, pursuant to  
25 42 U.S.C. sections 12131(1)(A) and (B).

26 241. Plaintiffs and class members are “qualified individuals with a disability” within the  
27 meaning of 42 U.S.C. section 12131(2), in that they have a physical and/or mental impairment which  
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1 substantially limits one or more major life activities, including their ability to live independently  
2 without support.

3 242. Defendants are obligated under the ADA to administer their programs in a manner that  
4 supports rather than undermines the availability of an integrated community service delivery system.  
5 28 C.F.R. §§ 35.130(b)(3); 35.130(d).

6 243. Defendants Delgadillo and Shewry violate Title II of the ADA by utilizing methods of  
7 administration that subject qualified people with disabilities to discrimination on the basis of  
8 disability in, *inter alia*, failing to properly assess the services and supports that would enable  
9 plaintiffs to live in the community, failing to utilize available sources of funding for community  
10 services, favoring institutional care over community care in the allocation of funds, and failing to  
11 inform plaintiffs of community living options and ancillary services.

12 244. Defendants Delgadillo's and Shewry's policies and practices—including those related  
13 to assessment, funding, rate-setting and program development—have failed to ensure the availability  
14 of community programs sufficient to meet the needs of plaintiffs and class members and have made  
15 the creation of a sufficient number and variety of integrated community living options and ancillary  
16 services all but impossible. These defendants have thereby discriminated against those class  
17 members who reside in institutions and those who are at risk of institutionalization in violation of  
18 Title II of the ADA by failing to provide services in the most integrated setting appropriate even  
19 when plaintiffs and class members have been recommended for more integrated community living  
20 arrangements. Defendants Delgadillo and Shewry thereby violate Title II of the ADA and  
21 implementing regulations including, but not limited to, the ADA's integration mandate, which  
22 requires that such services be provided in the most integrated setting appropriate to the needs of  
23 qualified individuals with disabilities. 28 C.F.R. § 35.130(d).

24 245. In addition, while defendants provide many people with less severe developmental  
25 disabilities appropriate in non-institutional community living arrangements, class members who  
26 have more severe disabilities, including those with challenging behaviors, dual diagnoses, or medical  
27 conditions, are disproportionately denied the same opportunities. Defendants Delgadillo and Shewry  
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1 have thereby additionally violated Title II of the ADA by discriminating against class members  
2 based on the severity of their disabilities.

3 **XIII.**

4 **FOURTH CAUSE OF ACTION**

5 **(Violation of Section 504 of the Rehabilitation Act)**

6 246. Plaintiffs reallege and incorporate every allegation and paragraph set forth above

7 247. This cause of action is brought by all plaintiffs against all defendants.

8 248. Plaintiffs and class members are "otherwise qualified individuals with a disability"  
9 under section 504 of the Rehabilitation Act of 1973, as amended—29 U.S.C. section 794 and  
10 implementing regulations—in that they have mental and/or physical disabilities which substantially  
11 limit their ability to live independently without adequate supports and meet the essential eligibility  
12 requirements for long-term care under Medi-Cal and other state and local programs.

13 249. Defendants are recipients of federal financial assistance within the meaning of 29  
14 U.S.C. section 794(b), including federal Medicaid (Medi-Cal) funds and targeted case management  
15 funds under Title XIX of the Social Security Act.

16 250. Defendants have denied plaintiffs and class members access to the array of  
17 community services they need and, instead, have offered them services only if they are confined in  
18 segregated facilities, thereby excluding them from participation in, denying them the benefits of, and  
19 otherwise subjecting them to discrimination under programs and activities receiving federal financial  
20 assistance, in violation of section 504 and its implementing regulations

21 251. Unnecessary segregation and isolation of people with disabilities in institutions  
22 constitutes unlawful discrimination under section 504. Yet, as set forth previously, defendants have  
23 perpetuated the segregation of plaintiffs and class members in large institutions and placed class  
24 members who need out-of-home care at risk of institutionalization, in violation of section 504.

25 252. The population of California's state institutions, large SNFs, ICF-DDs, and psychiatric  
26 facilities who have developmental disabilities tends to be persons with severe disabilities, including  
27 dual diagnoses. These people remain isolated in institutions because of defendants' policies and  
28

1 practices and underfunding which restrict the development of stable, quality community services for  
2 people with severe disabilities.

3 253. Under defendants' system, persons with severe disabilities remain isolated in large  
4 institutions, or are at great risk of moving to institutions. Defendants have therefore further  
5 discriminated against plaintiffs and class members based on the severity of their disabilities by  
6 denying community services to people with severe disabilities or challenging needs in violation of  
7 section 504.

8 254. Defendants have further violated section 504 by discriminating against plaintiffs and  
9 class members by utilizing criteria and methods of administration that discriminate against people  
10 with disabilities as set forth previously. Defendants' policies and practices preclude the availability  
11 or provision of integrated, community programs even when such programs constitute the most  
12 integrated setting appropriate to class members' needs. Defendants' criteria and methods of  
13 administering developmental disability services have caused the continued, unnecessary segregation  
14 and isolation of people with developmental disabilities in large public and private institutions.

15 **XIV.**

16 **FIFTH CAUSE OF ACTION**

17 **(Violation of State Constitutional Rights)**

18 255. Plaintiffs reallege and incorporate every allegation and paragraph set forth above.

19 256. This cause of action is brought by all plaintiffs against all defendants.

20 257. Article 1, section 1 of the California Constitution guarantees to every citizen of the  
21 State the fundamental right to be free and independent, to enjoy and defend life and liberty, and to  
22 pursue and obtain safety and happiness. Article 1, section 7(a) of the California Constitution  
23 provides that "[a] person may not be deprived of ... liberty ... without due process of law or denied  
24 equal protection of the laws ..."

25 258. Defendants' policies and practices which are challenged in this action have resulted  
26 and will result in the indefinite and inappropriate institutionalization of plaintiffs and class members.  
27 These policies and practices thereby violate the rights guaranteed plaintiffs and class members under  
28 Article 1, sections 1 and 7(a) for the following reasons:

1 a) The personal liberty interests protected under Article 1, section 1 include a  
2 fundamental interest in habilitation – that is, the right to achieve one’s maximum potential.  
3 The policies and actions of defendants have prevented plaintiffs and class members from  
4 achieving their maximum potential by, *inter alia*, denying them the opportunity to acquire  
5 skills, and causing them to lose skills that would enable them to achieve greater  
6 independence and become more productive members of society.

7 b) The State must provide treatment and services in a manner which least drastically  
8 curtails the freedom of the individual. By failing to ensure that plaintiffs and class members  
9 receive services under the least restrictive conditions necessary to meet their individual  
10 needs, defendants have violated and continue to violate class members’ right to personal  
11 liberty guaranteed under Article 1, section 1.

12 c) Inappropriate institutionalization constitutes a form of physical restraint and  
13 violates the guarantees of Article 1, sections 1 and 7(a) which establish substantive and  
14 procedural protections against unreasonable bodily restraint.

15 d) The inappropriate segregation and confinement of class members in public and  
16 private institutions adversely affects their fundamental rights, including the rights to liberty,  
17 thereby further denying them rights to due process of the laws guaranteed under the  
18 California Constitution.

19 **XV.**

20 **SIXTH CAUSE OF ACTION**

21 **(Violation of Federal Constitutional Rights)**

22 259. Plaintiffs reallege and incorporate every allegation and paragraph set forth above.

23 260. This cause of action is brought by all plaintiffs against all defendants.

24 261. Plaintiffs and class members have a constitutionally protected liberty interest in  
25 receiving minimally adequate or reasonable care and services and in being free from undue restraint,  
26 including the right to be free of confinement in an institution, when professional judgment  
27 recommends that institutionalization is not necessary. Plaintiffs and class members also have a  
28 fundamental liberty interest in being able to move to the community and seek their release from

1 institutions without arbitrary procedures. Thus, plaintiffs and class members have the right to an  
2 assessment of the appropriateness of community services by qualified professionals who have  
3 knowledge of the possible variety of community living options and ancillary services and no conflict  
4 of interest.

5 262. The policies, practices, actions and omissions of defendants deprive plaintiffs of their  
6 fundamental liberty interests in violation of the Due Process Clause of the Fourteenth Amendment  
7 including, but not limited to:

8 a) Plaintiffs and class members have been denied minimally adequate habilitation  
9 and/or have been subject to undue restraint by being confined in institutional settings when  
10 they could live successfully in small integrated community homes;

11 b) Many individual plaintiffs and class members have been recommended by their  
12 IPP teams, including state and regional center professionals, for movement from public or  
13 private institutions to less restrictive community homes, yet they remain institutionalized due  
14 to the lack of adequate community resources which can meet their individual needs;

15 c) The state and/or regional center professionals on the IPP teams of other plaintiffs  
16 and class members residing in public and private institutions have failed to recommend them  
17 for movement to community homes; however, frequently these decisions substantially depart  
18 from accepted professional judgment standards and practices in that the professionals making  
19 placement recommendations; for example, were not qualified, lacked sufficient knowledge of  
20 community options and/or made decisions based on factors other than whether the  
21 individual's needs could be met in a more integrated community setting; and

22 d) The arbitrary failure to recommend or consider plaintiffs or class members for  
23 movement to a community home is a substantial departure from professional judgment,  
24 standards and practices including, but not limited to, the failure to recommend an individual  
25 for movement to the community based on the objections of his/her family or conservator in  
26 violation of the injunction in *Richard S et al. v. DDS et al. v. Bell, et al*, Federal District  
27 Court for the Central District of California (SACV 97-219-GLT).

1 263. In all of this, defendants have, under color of state law, regulation, usage or ordinance,  
2 deprived plaintiffs and class members of rights, privileges or immunities secured to them by the  
3 Constitution or laws of the United States in violation of 42 U.S.C. section 1983.

4 **XVI.**

5 **SEVENTH CAUSE OF ACTION**

6 **(Violation of Title XIX: Medicaid)**

7 264. Plaintiffs reallege and incorporate every allegation and paragraph set forth above.

8 265. This cause of action is brought by all plaintiffs against State defendants.

9 266. Defendants oversee and are responsible for administering and providing Medi-Cal, a  
10 program of medical aid and services to people in California, some of whom have developmental  
11 disabilities, that is governed by the Medicaid Act, Title XIX of the Social Security Act, and by  
12 Welfare & Institutions Code section 14000 *et seq.*

13 267. Plaintiffs and class members are eligible for Medi-Cal Home and Community-based  
14 (HCB) waiver services.

15 268. Defendants' policies and practices violate the rights of plaintiffs and class members  
16 including, but not limited to:

17 a) Failing to determine whether it is necessary and desirable for them to remain in  
18 the DCs and other Title XIX facilities, as required by 42 C.F.R. section 456.609(b);

19 b) Failing to review adequately the appropriateness of their continued placement in  
20 the DCs and other Title XIX facilities in which they reside and failing to determine the  
21 feasibility of meeting their needs through alternative non-institutional services, as required by  
22 42 C.F.R. section 456.609(c);

23 c) Failing to inform them of the non-institutional HCB waiver alternatives to Medi-  
24 Cal funded DCs, SNFs, ICF-DDs and other large ICF/MR facilities as required by 42  
25 U.S.C. sections 1396n(c)(2)(C) and 1396n(d)(2)(C); 42 C.F.R. section 441.302(d)(1);

26 d) Failing to offer a meaningful choice between segregated institutional care and  
27 appropriate integrated community services because a sufficient array of quality community  
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1 services, including those specified in HCB waivers, does not in fact exist, as required by 42  
2 U.S.C. sections 1396n(c)(2)(C) and 1396n(d)(2)(C), 42 C.F.R. section 441.302(d)(2);

3 e) **{This allegation has been dismissed by the Court. Plaintiffs preserve the**  
4 **right to seek appellate review of the dismissal of this allegation.}** Failing to ensure the  
5 provision of necessary safeguards to assure that care and services are provided in a manner  
6 consistent with simplicity of administration and the best interests of the recipients, in  
7 violation of 42 U.S.C. § 1396a(19).

8 f) Failing to provide HCB waiver services with reasonable promptness, as required  
9 by 42 U.S.C. section 1396a(a)(8), 42 C.F.R. section 435.930(a);

10 269. As a result, plaintiffs and class members are at risk of being, or continue to be  
11 unnecessarily institutionalized.

12 270. **{This allegation has been dismissed by the Court. Plaintiffs preserve the right to**  
13 **seek appellate review of the dismissal of this allegation.}** In all of this, defendants have, under  
14 color of state law, regulation, usage or ordinance, deprived plaintiffs and class members of rights,  
15 privileges or immunities secured to them by the Constitution or laws of the United States in violation  
16 of 42 U.S.C. section 1983.

17 271. Petitioners have no plain, speedy, and adequate remedy at law for defendants' actions  
18 complained of above.

19 272. Petitioners and each of them are beneficially interested in respondents' discharge of  
20 their obligations as set forth herein and suffer irreparable injury from defendants' failure to discharge  
21 their obligations.

22 273. **{This allegation has been dismissed by the Court. Plaintiffs preserve the right to**  
23 **seek appellate review of the dismissal of this allegation.}** In all of this, defendants have violated  
24 their clear, present, and ministerial duty pursuant to California Code of Civil Procedure section 1085  
25 to act in accordance with state and federal law.

26 274. In all of this, defendants have violated their obligation pursuant to California Code of  
27 Civil Procedure section 1085 to exercise their discretion within proper limits and under a correct  
28 interpretation of the law.



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**XVII.**

**EIGHTH CAUSE OF ACTION**

**(Unlawful & Unfair Business Practices)**

275. Plaintiffs reallege and incorporate every allegation and paragraph set forth above.

276. This cause of action is brought by the named representatives plaintiffs, organizational plaintiffs, taxpayer plaintiffs and/or on behalf of the general public against the regional center defendants.

277. Regional center defendants have committed and continue to commit numerous unlawful business practices as defined by Business and Professions Code section 17200 by engaging in policies and practices, that violate the Lanterman Act, state and federal laws prohibiting discrimination on the basis of disability and constitutional protections as set forth in the causes of action one through six above.

278. Defendant regional centers have committed and continue to commit unfair business practices as defined by Business and Profession Code section 17200 by conducting their business in a manner that is injurious to the plaintiffs and members of the class, by unnecessarily segregating them in institutional settings, the resulting substantial injury plaintiffs and class members suffer is not outweighed by the utility of defendants' practice, and is not something that the plaintiffs or class members could have easily avoided.

279. Defendant regional centers' unlawful and unfair business practices are enjoined pursuant to Business and Professions Code section 17200.

**XVIII.**

**NINTH CAUSE OF ACTION**

**(Illegal Expenditure of Taxpayer Money)**

280. Plaintiffs reallege and incorporate every allegation and paragraph set forth above.

281. This cause of action is brought by the taxpayer plaintiffs against all defendants.

282. Defendants have expended tax moneys and threaten and will continue to spend tax moneys in an illegal manner as set forth in causes of action one through seven above.

1 283. There is no provision in law for plaintiffs, as taxpayers, to receive money damages for  
2 unlawful government conduct.

3 284. Money damages are extremely difficult to ascertain.

4 285. Money damages would not adequately compensate plaintiffs, as taxpayers, for  
5 unlawful government conduct.

6 286. Plaintiffs are without a plain, speedy and adequate remedy in the ordinary course of  
7 the law to compel defendants to enforce and comply with the legal requirements described herein.

8 287. Plaintiffs have suffered and will continue to suffer irreparable injury unless and until  
9 this Court enjoins the defendants from continuing their illegal conduct.

10 288. An actual controversy has arisen between plaintiffs and defendants as set forth in  
11 causes of action one through seven.

12 289. A judicial declaration is necessary so that the parties may ascertain their rights in this  
13 controversy.

14 **XIX. RELIEF REQUESTED**

15 1. WHEREFORE, plaintiffs respectfully request this Court to grant the following relief:

16 2. Assume jurisdiction over this action and maintain continuing jurisdiction until  
17 defendants are in full compliance with every order of this Court.

18 3. Certify this action as a class action.

19 4. As to all defendants, declare that defendants' policies, practices, acts and omissions as  
20 set forth above violate plaintiffs' and class members' rights under the Lanterman Act, section 504 of  
21 the Rehabilitation Act, Government Code section 11135, the California Constitution, the United  
22 States Constitution, and 42 U.S.C. section 1983 by, *inter alia*:

23 a) Denying plaintiffs and class members their entitlement to services and living  
24 arrangements in the least restrictive environment based on individual need;

25 b) Discriminating against plaintiffs and class members on the basis of disability, and  
26 on the basis of severity of disability, by utilizing methods of administration, applying  
27 policies, and engaging in practices that result in unnecessary segregation and  
28 institutionalization;

1 c) Failing to conduct adequate and comprehensive assessments of plaintiffs' and  
2 class members needs for services that would enable them to live in integrated, community  
3 settings instead of being unnecessarily segregated in institutions; and

4 d) Depriving plaintiffs and class members of their due process liberty interests.

5 5. As to defendants Delgadillo and Shewry, declare that defendants' policies, practices,  
6 acts and omissions, as set forth above, discriminate against plaintiffs and class members on the basis  
7 of disability, and on the basis of severity of disability, by utilizing methods of administration,  
8 applying policies, and engaging in practices that result in unnecessary segregation and  
9 institutionalization in violation of Title II of the ADA and its implementing regulations.

10 6. As to the State defendants, declare that defendants' policies, practices, acts and  
11 omissions as set forth above deny plaintiffs their rights to reasonable promptness, equal access, and  
12 freedom of choice of community services in violation of Title XIX of the Social Security Act and its  
13 implementing regulations and 42 U.S.C. section 1983.

14 7. As to the regional center defendants, declare that defendants' unfair and/or unlawful  
15 conduct constitutes unfair and unlawful business practices in violation of Business and Professions  
16 Code section 17200.

17 8. Enjoin all defendants, their officers, agents, employees, successors, and all other  
18 persons in active concert or participation with any of them from further violation of plaintiffs' and  
19 class members' rights under the Lanterman Act, Government Code section 11135, section 504 of  
20 the Rehabilitation Act, the California Constitution and the United States Constitution and 42 U.S.C.  
21 section 1983.

22 9. Enjoin defendants Delgadillo and Shewry, their officers, agents, employees,  
23 successors, and all other persons in active concert or participation with any of them from further  
24 violation of plaintiffs' and class members' rights under the ADA and its implementing regulations.

25 10. Enjoin State defendants, their officers, agents, employees, successors, and all other  
26 persons in active concert or participation with any of them from further violation of plaintiffs' and  
27 class members' rights under the Title XIX of the Social Security Act and its implementing  
28 regulations and 42 U.S.C. section 1983.

1           11. Enjoin regional center defendants, their officers, agents, employees, successors, and all  
2 other persons in active concert or participation with any of them from further violation of plaintiffs'  
3 and members of the general public's rights by committing unlawful and/or unfair business practices  
4 in violation of Business and Professions Code section 17200.

5           12. Issue a writ of mandate compelling all defendants to comply with their ministerial  
6 duties under the Lanterman Act, Government Code section 11135, the ADA, section 504 of the  
7 Rehabilitation Act, the California Constitution, the United States Constitution, Title XIX of the  
8 Social Security Act, and 42 U.S.C. section 1983 as applicable.

9           13. Issue a writ of mandate compelling all defendants to exercise their discretion within  
10 the proper legal limits and under a correct interpretation of the Lanterman Act, Government Code  
11 section 11135, the ADA, section 504 of the Rehabilitation Act, the California Constitution, the  
12 United States Constitution, Title XIX of the Social Security Act, and 42 U.S.C. section 1983 as  
13 applicable.

14           14. Issue an injunction and/or writ of mandate compelling all defendants, their officers,  
15 agents, employees, successors, and all other persons in active concert or participation, with any of  
16 them, to comply with their obligations under the Lanterman Act, State and Federal anti-  
17 discrimination laws, State and Federal Constitutions, Title XIX of the Social Security Act and  
18 Business and Professions Code section 17200, as applicable, by ordering them to:

19           a. Provide plaintiff class members with easily understood information, including  
20 where needed experiential information, on community living options;

21           b. Inform plaintiffs and class members of community alternatives to institutional  
22 services and provide with reasonable promptness those services and supports needed to  
23 enable plaintiffs and class members to live in the most integrated appropriate setting in  
24 their homes and communities rather than in segregated institutional facilities;

25           c. Inform plaintiffs and class members of home and community-based Medicaid  
26 waivers as an alternative to institutional services;

27           d. Comply with the person-centered, assessment and individualized program  
28 planning provisions of the Lanterman Act, including conducting timely and

1 comprehensive assessments of the services and supports needed by individual plaintiffs'  
2 and class members to which they are entitled and that would enable them to live in the  
3 least restrictive, most integrated community placement;

4 e. Ensure that regional center service coordinators attend all IPP meetings of  
5 their clients who reside in institutions;

6 f. Ensure that state and regional center professionals conducting assessments  
7 and/or on IPP planning teams are qualified and exercise professional judgment  
8 comporting with contemporary standards and practices;

9 g. Ensure that state and regional center professionals conducting assessments  
10 and/or on IPP planning teams do not arbitrarily fail to recommend plaintiffs and class  
11 members for movement to a community home due to the objections of their families or  
12 conservators;

13 h. Ensure that IPPs are based on choice and need rather than availability of  
14 services and reflect the values of supporting the person with relationships, productive  
15 work, participation in community life, and personal decision-making;

16 i. Develop, expand, and make available with dispatch a sufficient array of  
17 integrated, stable, quality community living arrangements, including supported living  
18 services, adult and children's foster homes, and homes that can serve the needs of people  
19 of all ages and with all types and severity of developmental disabilities including, but not  
20 limited to, dual diagnoses, nursing or medical needs, and behavioral challenges.

21 j. Develop, expand, and make available with dispatch the necessary ancillary  
22 services including, but not limited to, medical, nursing and mental health care, integrated  
23 vocational and day programs, behavioral supports, assistive technology, medication  
24 management, and quality assurance.

25 k. Develop, expand and provide community-based crisis services and  
26 intervention so people can avoid losing their community homes and sufficient emergency  
27 housing so that people who must leave their current living arrangement may remain in  
28 their home community while an alternative community home is located or developed;

1           l.       Develop an effective, systemic resource development capability including, but  
2 not limited, to a program to ensure the availability of appropriate community living  
3 services, appropriate medical, dental, psychiatric, therapeutic and behavioral support  
4 services, and appropriate community-integrated employment services and other day  
5 activities in community-integrated settings;

6           m.       Provide promptly to each plaintiff and member of the plaintiff class  
7 appropriate quality community living arrangements as called for by assessments and/or  
8 person-centered IPPs and/or individual court orders, consistent with contemporary  
9 standards of practice, until such time as the class member is no longer in need of  
10 community services;

11           n.       Provide services to plaintiffs and class members in a manner which promotes  
12 their ability to live independent, productive and normal lives, and promotes their  
13 inclusion in communities;

14           o.       Offer plaintiffs and class members the full range of home and community-  
15 based waiver services, including DD and NF waiver services, for which they are eligible,  
16 within a specifically defined reasonably prompt time period; including, as necessary,  
17 applying for expansions of or modifications to California's home and community-based  
18 waivers.

19           p.       Take all action necessary within the scope of their authority to apply for,  
20 allocate or otherwise obtain sufficient funding to provide plaintiffs and class members,  
21 with adequate assessments and those services and supports needed to enable them to live  
22 in their homes and communities, rather than in unnecessarily segregated institutional  
23 facilities;

24           q.       Cease admitting Californians with developmental disabilities whose needs  
25 could be met in more integrated community settings to the developmental centers;

26           r.       Cease placement of Californians with developmental disabilities in other  
27 public and private institutions when their needs could be met in more integrated  
28 community settings;

1           s.       Develop an effective quality assurance system in the community to enhance  
2 the quality of life for plaintiffs and class members through adoption of appropriate  
3 standards, performance measurement, incentives and sanctions that promote community  
4 inclusion, choice, family unity, relationships, health and well-being;

5           t.       Provide quality assurance for plaintiffs and class members community living  
6 arrangements focused on the above quality of life outcomes and capable of detecting and  
7 remedying problems in class members programs in systemic and coordinated fashion;

8           u.       Develop an effective management information system in which systems of  
9 reporting, oversight and communication of information are organized and operational;  
10 and which allows monitoring of resource development across the state;

11          v.       Make available a friend-advocate to each plaintiff and member of the plaintiff  
12 class to assist each in securing the substantive and procedural protections aforesaid; and

13          w.       Take all other actions necessary to comply with law and keep individuals with  
14 developmental disabilities from being unnecessarily institutionalized.

15       15.       Issue an injunction compelling defendants, their officers, agents, employees,  
16 successors and all other persons in active concert or participation, with any of them, to take all  
17 actions necessary within the scope of their authority to ensure that defendants DDS, DHCS,  
18 Directors Delgadillo, Shewry and regional center defendants have available, adequate funding and  
19 can promulgate needed regulations, if any, to carry out the Court's orders.

20       16.       Enjoin defendants to promptly develop and submit to plaintiffs and the Court for  
21 approval a plan including reasonable timetables for the implementation of the aforesaid orders.

22       17.       Award plaintiffs their costs, disbursements and reasonable attorney's fees pursuant to  
23 law including, but not limited to, California Government Code section 1021.5, 29 U.S.C.  
24 section 794a(b), and 42 U.S.C. sections 1988 and 12205.

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1 18. Grant such other and further relief as the Court deems just and proper.

2 Respectfully submitted,

3 BINGHAM McCUTCHEN

4 DLA PIPER

5 PROTECTION & ADVOCACY, INC.

6 Barbara Dickey

7 Ellen S. Goldblatt

8 Dara Schur

9 Sujatha Jagadeesh Branch

10  
11 Dated: May 23, 2008

12 By: Barbara Dickey  
13 Barbara Dickey  
14 ATTORNEYS FOR PETITIONERS/PLAINTIFFS  
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