MR-CA-004-014

DANIEL E. LUNGREN, Attorney General
of the State of California
JOHN E. SANDERS,
Supervising Deputy Attorney General
KAREN L. FRIED, State Bar No. 74420
Deputy Attorney General
300 S. Spring Street, 9th Floor-North Tower
Los Angeles, California 90013
Telephone: (213) 897-2438

Attorney for Defendants, DEPARTMENT OF DEVELOPMENTAL SERVICES AND FAIRVIEW DEVELOPMENTAL CENTER

COPY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

RICHARD S., CYNTHIA R., VALDINA R., and ROES 1 through 800, individually and on behalf of all those similarly situated by WILLIAM CABLE, M.D., as Guardian At Litem, Plaintiffs, v. DEPARTMENT OF DEVELOPMENTAL SERVICES OF THE STATE OF CALIFORNIA, FAIRVIEW DEVELOPMENTAL CENTER, SOUTH COAST REGIONAL PROJECT, HARBOR REGIONAL CENTER, REGIONAL CENTER OF ORANGE COUNTY, SAN DIEGO REGIONAL CENTER, SOUTH CENTRAL LOS ANGELES REGIONAL CENTER, WESTSIDE REGIONAL CENTER, DENNIS G. AMUNDSON, as Director of the DEPARTMENT OF DEVELOPMENTAL SERVICES, STATE OF CALIFORNIA, HUGH KOHLER, as Executive Director of FAIRVIEW DEVELOPMENTAL CENTER, LILIA TAN-FIGUEROA, M.D., as Medical Director of FAIRVIEW DEVELOPMENTAL CENTER, DAWN LEMONDS, as Director of SOUTH COAST REGIONAL PROJECT, and DOES 1 through 500, inclusive, Defendants.	No.: SACV97-219GLT(EEx) DECLARATION OF JEFFREY HELFER DATE: March 31, 1997 TIME: 3:30 p.m. DEPT: 2

I, JEFFREY HELFER, declare:

1. I am employed by the State of California, Fairview Developmental Center (Fairview) as the Clients Rights Advocate. If called to testify in this matter, I could and would testify to the facts as set forth in this declaration. As Clients Rights Advocate, I am responsible for assuring Fairview's compliance with laws and policies relative to residents' rights, investigating all allegations of denial of such rights, serving as advocate to individual residents in any matter relating to their rights, and serving as a consultant to facility staff on rights issues. I may intervene in any situation where there is concern of a violation of a resident's rights which is brought by or on behalf of any resident. To my knowledge, no resident, or person acting on his or her behalf, has requested referral to an independent advocate.

2. Residents, their families, legal representatives and Fairview staff (including physicians) have all been advised of options regarding the assertion and preservation of residents' rights. They have also received information from Fairview on how to contact independent advocacy organizations, such as the local Area Board (an oversight body), Protection and Advocacy, Inc. and/or court appointed or independent legal representatives. I believe that all of the staff physicians, including Dr. Cable, are aware of my job duties and of my legally imposed obligation to protect residents' rights. Nonetheless, to my knowledge, Dr. Cable has not consulted with me on any alleged violation of residents' rights, nor has he requested the referral of any of his alleged concerns to an independent advocacy organization for

persons with developmental disabilities.

3. Pursuant to Title 17, California Code of Regulations, section 50510(a)(12)(C), a person with developmental disabilities has a right of access to the courts to inquire into the terms and conditions of placement in any community care or health facility, or state hospital, by way of a Writ of Habeas Corpus. As Clients Rights Advocate at Fairview, pursuant to Title 17, California Code of Regulations, section 50550(a)(5), I have the obligation to assist residents in the pursuit of administrative and legal remedies. If the complaint is against a employee, a policy, or the operations of the state hospital, I may, as discussed above, refer the resident to an agency such as Protection and Advocacy, Inc. which can provide independent representation. Title 17, California Code of Regulations, sections 50510(a)(12)(C) and 50550(a)(5) are attached as Exhibit "B".

4. In 1981, the California Supreme Court decided every person who was not a true voluntary admission to a developmental center, be entitled to a judicial hearing as to whether, because of a developmental disability, being gravely disabled, or a danger to self or others, placement in a state developmental center was warranted. In re Hop, 29 Cal.3d 82, 171 Cal.Rptr. 721 (1981). Each county where a developmental center was located decided how to implement this decision. The Orange County Superior Court requires any new admission to Fairview be placed, only after a court review, under In re Hop. (This is true unless there is a Welfare and Institutions Code section 6500 civil commitment, wherein the court has found that the person poses a danger to self or others. Pending the hearing on a Section 6500

commitment, the court may order the person placed in a state developmental center pursuant to Welfare and Institutions Code section 6506.)

5. Plaintiff Cynthia R. has a Hop hold and no conservator or family involvement. Plaintiff Richard S. has a Hop hold and parents who oppose community placement. I am informed and believe that DDS will not place a developmental center resident in the community against a family's wishes, unless court ordered to do so. Plaintiff Valdina R., who moved to the community on June 26, 1996, has DDS serving as limited conservator of her person.

6. In January 1992, the Orange County Superior Court decided it was necessary to ensure that all of Fairview's residents be afforded their right to a judicial hearing on the appropriateness of placement. Therefore, since 1992, each regional center responsible for Fairview residents has been pursuing the appropriate judicial reviews. Currently, Fairview has 738 residents. Of that number, 705 persons are adults, with 281 persons having conservators. Forty-four persons are conserved by the Department of Developmental Services (DDS) via a regional center nomination, 16 persons are conserved by a regional center, 220 persons by family/other, and one by the public guardian. Of the persons living at Fairview: 523 persons have Hop placements; 100 consumers have Hop holds pending their Hop review hearing, 78 persons are placed pursuant to Welfare and Institutions Code section 6500, two persons are held pursuant to Welfare and Institutions Code section 6506, and only two have not had a judicial review. The anticipated population of Fairview,

once the persons from Camarillo Developmental Center arrive, is 850. Fairview has a licensed bed capacity of 1,228. The new arriving residents from Camarillo will not require an acceleration of placements out of Fairview, contrary to Dr. Cable's allegation.

7. The following is a sequential order of events in the ongoing Hop review proceedings for Fairview residents.

a. The regional center case worker identifies the person to the attorney. (Each regional center hires an attorney to file Hop petitions.)

b. The regional center reviews the person's file, gathers information, and provides this information to the attorney.

c. The attorney prepares the declaration for the case worker to sign.

d. The declaration becomes part of the Hop petition.

e. The attorney files the petition with the court and a date is set for the hearing.

f. A Hop hold order is obtained, allowing Fairview to retain the person until the hearing.

g. A delegation form is prepared by the attorney, and given to the regional center.

h. The regional center forwards this delegation to the parent or conservator for signature.

i. The parent or conservator must sign this delegation and return it to the regional center, who in turn forwards it to the attorney prior to the hearing.

j. The parents or conservators are not required to

attend the hearing, but if they wish to attend, they can contact either the regional center or Fairview, for the hearing date and time.

k. The Public Defender investigators interview the person at Fairview, review the file, and make recommendations to the Public Defender.

l. The hearing is held on the specified date.

m. The judge reads all materials prior to the hearing, and makes his or her decision. The judge signs the Hop order, which is good for one year.

8. The following statistical information describes some of the characteristics of the individuals residing at Fairview: Ages range from 5 years to 77 years of age; 88% of the ages fall between 22 and 54 years; 41% are female; 59% are male; 95% have an intellectual handicap to at least a severe degree; 46% have a visual impairment; 20% have a hearing impairment; 63% experience seizures; 49% exhibit behaviors that interfere with their participation in structured programs; 5% participate in Special Education; 1% attend community school program; and 31% participate in paid vocational training.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this _____ day of March 1997, at Costa Mesa, California.

_____

JEFFREY HELFER

Clients Rights Advocate
Fairview Developmental Center