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COPY

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DEVELOPMENTAL SERVICES AND FAIRVIEW  
7 DEVELOPMENTAL CENTER

8

9

UNITED STATES DISTRICT COURT

10

CENTRAL DISTRICT OF CALIFORNIA

11

12 RICHARD S., CYNTHIA R., )  
VALDINA R., and ROES 1 through )  
13 800, individually and on behalf )  
of all those similarly situated )  
14 by WILLIAM CABLE, M.D., as )  
Guardian At Litem, )

No.: SACV97-219GLT (EEEx)

DECLARATION OF  
MICHAEL B. MOUNT

15

Plaintiffs, )

16

v. )

17

DEPARTMENT OF DEVELOPMENTAL )  
SERVICES OF THE STATE OF )  
18 CALIFORNIA, FAIRVIEW )  
DEVELOPMENTAL CENTER, SOUTH )  
19 COAST REGIONAL PROJECT, HARBOR )  
REGIONAL CENTER, REGIONAL CENTER )  
20 OF ORANGE COUNTY, SAN DIEGO )  
REGIONAL CENTER, SOUTH CENTRAL )  
21 LOS ANGELES REGIONAL CENTER, )  
WESTSIDE REGIONAL CENTER, )

22

DENNIS G. AMUNDSON, as Director )  
of the DEPARTMENT OF DEVELOP- )

23

MENTAL SERVICES, STATE OF )  
CALIFORNIA, HUGH KOHLER, as )

24

Executive Director of FAIRVIEW )  
DEVELOPMENTAL CENTER, LILIA )

25

TAN-FIGUEROA, M.D., as Medical )  
Director of FAIRVIEW DEVELOP- )

26

MENTAL CENTER, DAWN LEMONDS, )  
as Director of SOUTH COAST )

27

REGIONAL PROJECT, and DOES 1 )  
through 500, inclusive, )

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Defendants. )

DATE: March 31, 1997

TIME: 3:30 p.m.

DEPT: 2

1 I, Michael B. Mount, declare:

2 1. I am an attorney licensed to practice law in the State  
3 of California, and if called to testify in this matter, I could  
4 and would testify to the facts as set forth in this declaration.

5 2. I am currently employed by the Department of  
6 Developmental Services, State of California, and serve as the  
7 Department's Chief Counsel. I have held that position since May  
8 1992. I have been a practicing attorney for almost 21 years,  
9 with 15 of those years as an employee of the Department.

10 3. The statutory scheme for provision of services to  
11 individuals who are developmentally disabled, whether in the  
12 community or residing in a developmental center, is focused on  
13 consumer choice and the rights of the individual. Services and  
14 supports are to be provided in a way that assists consumers in  
15 maximizing their opportunities and choices (Welf. & Inst. Code  
16 section 4640.7). The services and supports necessary to meet an  
17 individual consumer's needs, including the person's residential  
18 placement, are matters discussed and decided by the  
19 interdisciplinary team, as part of the individual program plan  
20 (IPP) process (Welf. & Inst. Code sections 4646 and 4646.5). The  
21 interdisciplinary team consists of the consumer, regional center  
22 representatives, including the service coordinator, the person's  
23 parents, legal guardian or conservator, and other individuals  
24 invited to participate. In the present case, this could include  
25 staff at the developmental center, including the treating  
26 physician. If the consumer, or his or her parent, guardian, or  
27 conservator object to the recommended placement, including  
28 placement in a community living arrangement, then placement may

1 not occur (Welf. & Inst. Code section 4803). The process for  
2 resolving placement objections is through the fair hearing  
3 procedure specified in Welfare & Institutions Code section 4700  
4 et seq. (Id.).

5 4. The fair hearing process specifies the notice  
6 requirements and the procedural rights and protections afforded  
7 to the developmentally disabled consumer. This includes the  
8 appointment of an authorized representative. Welfare and  
9 Institution Code sections 4701.6 and 4703 identify the  
10 individuals who may be appointed as authorized representatives.  
11 In addition, section 4710.8 authorizes the appointment of a  
12 representative by the local area board if, in the opinion of any  
13 person, a consumer is not being adequately represented, and a  
14 representative needs to be appointed in order to protect and  
15 advocate the individual's rights. Under this process, family  
16 members and other individuals, including friends, service  
17 providers, and treating physicians, could seek appointment to  
18 represent the interests of the individual. Pursuant to the  
19 statutory procedures, both an informal hearing, and formal  
20 hearing before the Office of Administrative Hearings is provided  
21 for the individual. (Welf. & Inst. Code sections 4712 through  
22 4712.5.) During the pendency of the hearing, services will  
23 continue to be provided. Thus, the person is not in jeopardy of  
24 losing services until the dispute has been resolved. (Welf. &  
25 Inst. Code section 4715.) Finally, should the consumer or his or  
26 her authorized representative still disagree with the final  
27 administrative decision, they may pursue the matter through a  
28 Writ of Administrative Mandamus under Calif. Code of Civ. Proc.

1 section 1094.5 and seek a stay of enforcement pending the outcome  
2 of the court's ruling.

3 5. In addition to the fair hearing process described above,  
4 the statutory scheme also provides for local advocacy services in  
5 both the developmental centers and the community. These services  
6 are provided by either the local clients' rights advocate or the  
7 Area Board. (See Title 17, Calif. Code of Reg. section 50500 et  
8 seq., Welf. & Inst. Code section 4590.)

9 6. Included on top of these statutory protections is the  
10 judicial review procedure identified in the Supreme Court  
11 decision of In re Hop 29 Cal.3d 82 (1981). In that case, the  
12 California Supreme Court looked at the process for admission of  
13 persons to a developmental center who are incompetent and non-  
14 protesting, and concluded that absent a knowing and intelligent  
15 request for admission, an incompetent and non-protesting  
16 developmentally disabled individual could not be admitted without  
17 judicial review of the appropriateness of that admission. As  
18 part of the rights afforded to the individual, the court required  
19 proof beyond a reasonable doubt, court-appointed counsel, and a  
20 right to jury trial. In addition, only if it was determined that  
21 the person was developmentally disabled, as well as gravely  
22 disabled or a danger to self or others, and that state  
23 developmental center placement was warranted, would admission be  
24 appropriate. Subsequent to the Hop decision, some courts in  
25 California have also used this process in reviewing the person's  
26 continued placement.

27 7. In 1989, two appellate courts further clarified who was  
28 authorized to apply for admission for placement in a state

1 developmental center (North Bay Regional Center v. Sherry S. 207  
2 Cal.App.3d 449 (1989), and In re Violet C. 213 Cal.App.3d 86  
3 (1989)).

4 8. In North Bay Regional Center v. Sherry S., the court  
5 indicated that admission to a developmental center could be made  
6 on the application of a parent or conservator, or if no parent or  
7 conservator was available, through appointment of the Director of  
8 Developmental Services as conservator for that purpose. Under  
9 Health and Safety Code section 416.1 et seq., the Director of  
10 Developmental Services is authorized to be appointed conservator  
11 of any individual eligible for regional center services or  
12 currently residing in a state developmental center.<sup>1</sup> The process  
13 for nomination and the responsibilities of the Director are  
14 spelled out in these sections, and it is important to note that  
15 the means for obtaining appointment of the Director as guardian  
16 or conservator is through the state courts (superior court,  
17 probate department). In reviewing and accepting nominations, it  
18 is the policy of the Director to serve as conservator of last  
19 resort. As such, if any parent, family member, or other  
20 interested person or agency is willing, able, and appropriate,  
21 then the Director will decline acceptance. I am personally aware  
22 of the application of that policy, inasmuch as the responsibility  
23 for acceptance or rejection of nominations has been delegated to  
24 the Department's legal office.

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26 <sup>1</sup>The propriety of these provisions as they apply to  
27 individuals residing in developmental centers and the  
28 potential conflict of interest has been upheld by the  
appellate courts (see In re Guardianship of Raymond C. 72  
Cal.App.3d 417(1977)).

1           9. In the case of In re Violet C., the appellate court held  
2 that only a conservator of an adult developmentally disabled  
3 individual could seek the placement and admission of a non-  
4 violent legally incompetent developmentally disabled person.

5           10. The practical application of these decisions, including  
6 the requests for various conservatorship nominations for  
7 individuals residing at Fairview Developmental Center, have been  
8 and are continuing to take place in the probate department of  
9 Orange County Superior Court. I am informed and believe that  
10 except for two current residents at Fairview, every adult has  
11 received, or is scheduled to receive, a judicial review pursuant  
12 to In re Hop regarding the appropriateness of their continued  
13 placement at a developmental center. As part of the procedural  
14 protection, court-appointed counsel is provided and the placement  
15 is reviewed on a routine basis.           /

16           11. As a result of the individual program plan process, the  
17 interdisciplinary team, the fair hearing procedures, and judicial  
18 review of the appropriateness of the continued placement, it is  
19 my opinion that substantial due process protections exist to  
20 ensure that residents are not discharged, or retained in the  
21 facility unless that placement is appropriate.

22           / 12. In my role as Chief Counsel, I was the principal  
23 attorney assigned by the Department to Coffelt, et al. v. The  
24 Department of Development Services, et al., San Francisco  
25 Superior Court Case No. 916401. In that capacity, I negotiated,  
26 along with the Deputy Attorney General assigned to the case,  
27 Beverly Meyer, and other Department staff, the settlement  
28 agreement and judgment in that case.

1           13. The Coffelt lawsuit was filed in February 1990 by 14  
2 named individuals and six representative organizations. The  
3 principal defendants were the Department and four regional  
4 centers serving individuals in the bay area (San Andreas, Golden  
5 Gate, East Bay, and North Bay). That suit, which was a class  
6 action, was brought on behalf of persons with developmental  
7 disabilities residing in developmental centers and the community,  
8 who were seeking a different living arrangement. In that suit,  
9 plaintiffs alleged that the placements identified in their  
10 individual program plans (IPP) were not being provided and that  
11 under the provisions of the Lanterman Act (Wel. & Inst. Code  
12 section 4500 et seq., and Association of Retarded Citizens v. The  
13 Department of Developmental Services 38 Cal.App.3d 384 (1985))  
14 they were entitled to the services and supports identified.  
15 Consequently, persons both in the developmental centers and in  
16 the community were not being placed in the least restrictive  
17 placement appropriate for their needs. For persons in the  
18 developmental centers, that meant that a less-restrictive  
19 community placement was more appropriate. Thus plaintiffs were  
20 not only seeking new placements for individuals, but a change in  
21 the overall implementation of the Lanterman Act.

22           14. Following extensive discovery and almost two years of  
23 negotiations, the parties agreed to a settlement of the case.  
24 Implementation was to take place over a five-year period. During  
25 that time, the State would reduce the state developmental center  
26 population by approximately 2,000 individuals and provide  
27 alternative community living arrangements for 300 individuals  
28 currently residing in the community, receiving services from the

1 four named defendant regional centers. Because the Department's  
2 own data indicated that over 2,000 current developmental center  
3 residents had IPPs which identified placement in the community as  
4 the future goal, the State agreed to the net reduction of 2,000  
5 individuals. This goal was state-wide, and with placement  
6 milestones (specifying the number of individuals to be placed  
7 out) established for each year. The settlement agreement  
8 specifically recognized that residents initially identified for  
9 placement may ultimately not be placed, either because the  
10 individual or, where appropriate, the person's parent, guardian,  
11 or conservator, decided that the person should remain in the  
12 developmental center or because the individual's service needs  
13 had changed and state developmental center placement was still  
14 warranted. Thus the selection and placement of individuals was  
15 recognized as a fluid process and driven by the individual's  
16 choices and needs. This includes the right of parental  
17 objection. More importantly, the settlement agreement  
18 specifically states that the Department was to not place out of  
19 the state developmental center any individual whose IPP indicated  
20 that developmental center placement was appropriate. The only  
21 caveat to that provision was where a court order required  
22 otherwise (e.g., writ of habeas corpus under Welf. & Inst. Code  
23 section 4800 et seq., or pursuant to judicial review under In re  
24 Violet C. 213 Cal.App.3d 86 (1989), and In re Hop 29 Cal.3d 82  
25 (1981)). In addition, the parties also agreed to develop and  
26 implement a new assessment/placement planning process, provide  
27 additional funding for case management services, increase the  
28 availability of flexible living options in the community, enhance

1 the availability of crisis intervention emergency services, and  
2 develop and implement a statewide quality assurance system for  
3 residential services and supports.

4 15. Although the Department has reached its placement  
5 milestones approximately a year and a half early (January 1997),  
6 the remaining aspects of the settlement are still ongoing and  
7 additional placements will be pursued in accordance with the IPP  
8 process. I am informed and believe that these placements, as  
9 well as those which occurred as part of the 2,000 reduction in  
10 developmental center population, were the result of a thorough  
11 evaluation of the individual resident's needs and the development  
12 of an alternative community living arrangement designed to meet  
13 those needs, and that the residents placed included individuals  
14 with varying levels and degrees of disability. The express  
15 provisions of the settlement precluded the Department from  
16 discriminating against individuals on that basis when placement  
17 decisions were made.

18 16. In order to fund the placements and other activities  
19 specified in the settlement agreement, the State relied on  
20 substantial amounts of federal funds. The total amount of funds  
21 estimated over the five-year period of the agreement, in order to  
22 ensure the placements and fund the other aspects of the  
23 settlement, including the new living arrangements, crisis  
24 services, and quality assurance, was \$334,023,000. Thus it is  
25 clear that the scope and purpose of the settlement was to not  
26 only develop new, less restrictive, placements for individuals,  
27 but to increase the number of quality, stable, integrated  
28 community living options available statewide.

1           17. In carrying out the other major components of the  
2 settlement agreement, the Department was required to develop a  
3 new assessment/placement planning process. The materials, once  
4 developed, were to be used, along with person-centered planning,  
5 to determine class membership for the purposes of placement and  
6 to identify the services and supports needed and preferred by  
7 individuals in order to live in an appropriate living arrangement  
8 of their choice. The development of this planning process  
9 included input from a variety of developmentally-disabled  
10 individuals, their representatives and constituents. Also, the  
11 Department was required to fund additional case management  
12 personnel at regional centers in order to enable them to enhance  
13 community services. Likewise, new and different living options  
14 were to be developed and implemented. One of the major goals of  
15 the settlement agreement was to increase the variety of such  
16 options in the community by developing new policies for the  
17 purchase of services, obtaining the resources and startup funding  
18 to provide different types of supported living services, and  
19 increasing services for children through foster family agencies  
20 and residential services for children with specialized health  
21 care needs. As a part of this process, additional training to  
22 regional center staff, developmentally-disabled individuals,  
23 their representatives and providers, was also contemplated. To  
24 help ensure that individuals placed in the community would remain  
25 without being reinstitutionalized, emergency and crisis  
26 intervention services were also to be developed. The obvious  
27 purpose was to permit individuals currently residing in the  
28 community to remain there, and to receive the necessary services

1 locally so that once the crisis had been eliminated, the  
2 individual could return to his or her community placement. This  
3 process included various interagency collaboration, development  
4 of housing and other after-hours response systems. Finally, the  
5 settlement agreement proposed the development of a new quality  
6 assurance system for residential services, which was to include  
7 quality of life assessment for each individual and a study,  
8 conducted by an independent consultant, regarding the ultimate  
9 satisfaction and appropriateness of community placement versus  
10 placement in the developmental center. The quality assurance  
11 system was to include outcome and value-based standards, quality  
12 of life indicators and assessment of consumer and family  
13 satisfaction, program quality enhancement, and procedures which  
14 address corrective actions and sanctions. Once again, an  
15 advisory group of developmentally-disabled individuals, and other  
16 constituents, was included in this process.

17 18. Attached as Exhibit "A" are copies of two adverse  
18 actions taken by Fairview Developmental Center against Dr.  
19 William Cable in 1996.

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

22 Executed this 26<sup>th</sup> day of March 1997, at Sacramento,  
23 California.

24  
25   
26 MICHAEL B. MOUNT  
27  
28