

1 PROTECTION & ADVOCACY, INC.
Ellen S. Goldblatt (SBN 79284)
2 Eric R. Gelber (SBN 95256)
Stephen Rosenbaum (SBN 98634)
3 Margaret Roberts (SBN 163981)
Sujatha Jagadeesh Branch (SBN 166259)
4 Sherri L. Rita (SBN 206780)
433 Hegenberger Road, Suite 220
5 Oakland, CA 94621
Telephone: (510) 430-8033
6 Fax: (510) 430-8246

7 BINGHAM McCUTCHEM
8 Michael T. Pyle (SBN 172954)
Christina M. Wheeler (SBN 203395)
9 Todd M. Hardy (SBN 223581)
1900 University Avenue
10 East Palo Alto, CA 94303
Tel: (650) 849-4400
11 Fax: (650) 849-4800

12 Attorneys for Petitioners/Plaintiffs
13
14

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

17 CAPITOL PEOPLE FIRST;

18 ADOLPH ANGULO,
19 appearing through his guardian ad litem,
Janice Vogliardo;

20 HARRY ASPREY,
21 appearing through his guardian ad litem,
Tolley Gorham;

22 LUCIEN CORPOLONGO,
23 appearing through his father and guardian ad
litem, Doug Corpolongo;

24 EDSON CRUZ,
25 appearing through his father and guardian ad
litem, Juan Cruz;

26 SHARON FORSTER;

27 DAVID KELTY,
28 appearing through his guardians ad litem,

) Case No.: 2002-038715

) FIFTH AMENDED PETITION FOR WRIT
) OF MANDATE (CCP § 1085); VERIFIED
) COMPLAINT FOR DECLARATORY AND
) INJUNCTIVE RELIEF

) **CLASS ACTION**

1 Corina and Mario Razo;

2 KIMBERLY McANNELLY,
 3 appearing through her guardian ad litem,
 John P. Kelly;

4 ANDRE MILLS,
 5 a minor, appearing through his aunt and
 guardian ad litem, Freddie Leonore;

6 JACOB ASHBROOK MYERS,
 7 appearing through his parents and guardians ad
 litem, Kay Ashbrook and Ray Myers;

8 JOHN PINEDA,
 9 Appearing through his guardian ad litem,
 Deborah A. Dorfman;

10 ALANA RIDGEWAY,
 11 appearing through her guardian ad litem,
 James Roberts;

12 AVERY RUSSELL;

13 MELBERT SCHANZENBACH,
 14 appearing through his guardian ad litem,
 Lisa Rye Skokan;

15 JANE SHUSTER,
 16 appearing through her guardian ad litem,
 Tony Anderson;

17 JIMMY WHITE,
 18 appearing through his guardian ad litem,
 Areta Guthrey;

19 SHAWN WOODWARD-KATZ,
 20 appearing through his guardian ad litem,
 James Hill

21 JANICE LORD-WALKER;

22 CURTIS KITTY CONE;

23 CALIFORNIA ALLIANCE FOR
 24 INCLUSIVE COMMUNITIES, INC.

25 THE ARC OF CALIFORNIA,
 26 Petitioners/Plaintiffs,

27 vs.

28 DEPARTMENT OF DEVELOPMENTAL
 SERVICES (DDS);

1 CLIFF ALLENBY,
 2 in his official capacity as Director of
 Department of Developmental Services;

3 STATE OF CALIFORNIA;
 4 CALIFORNIA HEALTH AND HUMAN
 SERVICES AGENCY (CHHS);

5 KIMBERLY BELSHÉ,
 6 in her official capacity as
 Secretary of CHHS Agency;

7 DEPARTMENT OF HEALTH SERVICES
 8 (DHS);

9 DIANA M. BONTÁ,
 in her official capacity as Director of DHS;

10
 11 DEPARTMENT OF FINANCE (DOF);

12 MIKE GENEST ,
 in his official capacity as acting Director of
 13 DOF;

14 DEPARTMENT OF MENTAL HEALTH
 (DMH);

15 ALTA CALIFORNIA REGIONAL CENTER,
 16 INC. (ACRC);

17 CENTRAL VALLEY REGIONAL CENTER,
 INC. (CVRC);

18 EASTERN LOS ANGELES REGIONAL
 19 CENTER, INC. (ELARC);

20 FAR NORTHERN COORDINATING
 COUNCIL ON DEVELOPMENTAL
 21 DISABILITIES, dba FAR NORTHERN
 REGIONAL CENTER (FNRC);

22 LOS ANGELES COUNTY
 23 DEVELOPMENTAL SERVICES
 FOUNDATION, dba FRANK D.
 24 LANTERMAN REGIONAL CENTER
 (FDLRC);

25 GOLDEN GATE REGIONAL CENTER,
 26 INC. (GGRC);

27 HARBOR DEVELOPMENTAL
 28 DISABILITIES FOUNDATION, dba
 HARBOR REGIONAL CENTER (HRC);

1 INLAND REGIONAL CENTER, INC (IRC);)
 2 KERN REGIONAL CENTER (KRC);)
 3 NORTH BAY DEVELOPMENTAL)
 4 DISABILITIES SERVICES, INC., dba)
 5 NORTH BAY REGIONAL CENTER)
 6 (NBRC);)
 7 NORTH LOS ANGELES COUNTY)
 8 REGIONAL CENTER, INC. (NLACRC);)
 9 REDWOOD COAST DEVELOPMENTAL)
 10 SERVICES CORPORATION, dba)
 11 REDWOOD COAST REGIONAL CENTER)
 12 (RCRC);)
 13 REGIONAL CENTER OF THE EAST BAY,)
 14 INC. (RCEB);)
 15 REGIONAL CENTER OF ORANGE)
 16 COUNTY, INC. (RCOC);)
 17 SAN ANDREAS REGIONAL CENTER)
 18 (SARC);)
 19 SAN DIEGO-IMPERIAL COUNTIES)
 20 DEVELOPMENTAL SERVICES, INC., dba)
 21 SAN DIEGO REGIONAL CENTER (SDRC);)
 22 SAN GABRIEL/POMONA VALLEYS)
 23 DEVELOPMENTAL SERVICES, INC., dba)
 24 SAN GABRIEL/POMONA REGIONAL)
 25 CENTER (SGPRC);)
 26 SOUTH CENTRAL LOS ANGELES)
 27 REGIONAL CENTER FOR)
 28 DEVELOPMENTALLY DISABLED)
 PERSONS, INC., dba SOUTH CENTRAL)
 LOS ANGELES REGIONAL (SCLARC);)
 TRI-COUNTIES ASSOCIATION FOR THE)
 DEVELOPMENTALLY DISABLED, INC.,)
 dba TRI-COUNTIES REGIONAL CENTER)
 (TCRC);)
 VALLEY MOUNTAIN REGIONAL)
 CENTER, INC. (VMRC);)
 COASTAL DEVELOPMENTAL SERVICES)
 FOUNDATION, dba WESTSIDE)
 REGIONAL CENTER (WRC);)
 and DOES 1 through 100,
 Respondents/Defendants.

1 **TABLE OF CONTENTS**

2 **Page(s)**

3 **I. NATURE OF CONTROVERSY** 1

4 **II. JURISDICTION AND VENUE** 3

5 **III. PARTIES** 3

6 Representative Petitioners/Plaintiffs 3

7 Taxpayer Petitioners/Plaintiffs 19

8 Organizational Petitioners/Plaintiffs 19

9 State Respondents/Defendants 20

10 Regional Center Respondents/Defendants 23

11 **IV. CLASS ALLEGATIONS** 26

12 **V. LEGAL FRAMEWORK** 29

13 A. The Lanterman Act Scheme 29

14 B. Anti-Discrimination Laws: Americans with Disabilities Act Section 504
and Government Code Section 11135 34

15 C. The Medicaid Scheme 35

16 **VI. STATEMENT OF FACTS** 37

17 A. Community Services Provide a Better Quality of Life 37

18 B. Thousands of Californians with Developmental Disabilities Are
Unnecessarily Institutionalized 39

19 C. Inadequate Individualized Planning 41

20 D. Lack of an Adequate Array of Community Services 42

21 E. The Developmental Disabilities System is Funded by Both
State General Funds and Title XIX Medicaid Funds 44

22 F. Disproportionate Allocation of Funds on Institutional Care 46

23 G. Underfunding of the Community System 48

24 H. California Has Not Developed An *Olmstead* Plan 49

25 **VII. STATE ACTION** 50

26 **VIII. ALLEGATIONS CONCERNING INJUNCTIVE AND DECLARATORY
RELIEF** 51

27 **IX. ENTITLEMENT TO MANDAMUS RELIEF** 51

28 **X. FIRST CAUSE OF ACTION** 52

Violation of Lanterman Act Entitlement To Non -Institutional Community Living
Arrangements Based On Individual Need 52

A. Direct Liability of the State Defendants
for Violations of the Lanterman Act 54

	Page(s)
1	
2	
3	1. Violations of Ministerial Duties 54
4	2. Violations of Statutory Requirements..... 57
5	3. Violations Based Upon Exercise of Quasi-Legislative Power..... 73
6	B. Direct Liability of the Regional Center Defendants
7	for Violations of the Lanterman Act 73
8	1. Violations of Ministerial Duties 73
9	2. Violations of Statutory Requirements..... 77
10	C. All Defendants Are Indispensable Parties With Respect to Any
11	Violations of the Lanterman Act 84
12	XI. SECOND CAUSE OF ACTION 84
13	Deprivation of Rights Under State Non-Discrimination Law 84
14	XII. THIRD CAUSE OF ACTION 86
15	Deprivation of Rights Under the Americans with Disabilities Act 86
16	XIII. FOURTH CAUSE OF ACTION 87
17	Violation of Section 504 of the Rehabilitation Act 87
18	XIV. FIFTH CAUSE OF ACTION 88
19	Violation of State Constitutional Rights 88
20	XV. SIXTH CAUSE OF ACTION 90
21	Violation of Federal Constitutional Rights 90
22	XVI. SEVENTH CAUSE OF ACTION 91
23	Violation of Title XIX: Medicaid 91
24	XVII. EIGHTH CAUSE OF ACTION 94
25	Unlawful & Unfair Business Practices..... 94
26	XVIII. NINTH CAUSE OF ACTION 95
27	Illegal Expenditure of Taxpayer Money 95
28	XIX. RELIEF REQUESTED 95

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.

26 ///

27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 and father, Juan Cruz.

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 mother and guardian ad litem, Roberta Kelty.

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, Edwina Taylor.

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 grandmother and guardian ad litem, Fannie Mae Robinson.

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 **Melbert Schanzenbach**

10 48. Plaintiff/Petitioner Melbert Schanzenbach is a 78-year-old man who has resided at
11 Sonoma DC since 1993 and is a client of Alta California Regional Center (ACRC). Mr.
12 Schanzenbach has moderate retardation and a lymph edema condition in one leg, which necessitates
13 that he use a walker to get around and be seen three times a week in a physical therapy clinic. Mr.
14 Schanzenbach appears in this action through his guardian ad litem, Merry Edwards.

15 49. Mr. Schanzenbach communicates using basic words in both English and German. He
16 has considerable freedom to come and go from his unit independently. He especially enjoys going
17 to work and loves anything mechanical. Mr. Schanzenbach also enjoys outings and behaves
18 appropriately while in the community.

19 50. In June 2001, Mr. Schanzenbach’s IPP Team determined that “there is currently no
20 viable option for Melbert on any residence within SDC.” Mr. Schanzenbach’s program director
21 emphasized that placement outside of Sonoma DC as soon as possible was “essential and crucial.”

22 51. The IPP Team determined Mr. Schanzenbach would succeed in a supported living
23 arrangement. ACRC had been pursuing group homes in which Mr. Schanzenbach’s team felt he
24 would regress. Mr. Schanzenbach would like to move to supported living and his brother, sister-in-
25 law, and nephew support this. Moving to the Sacramento area would also allow for his 80-year-old
26 relatives to visit him more often. The Sonoma County Superior Court is requiring ACRC to report
27 monthly on their progress in developing a community home.
28

1 52. Yet, more than six months later Mr. Schanzenbach remains at Sonoma DC solely
2 because ACRC has not located or developed a supported living provider and the medical supports he
3 needs to successfully move to a community home.

4 **Jimmy White**

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

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

19 55. Mr. White consistently expresses his desire to live in the community. In June 2000,
20 the Sonoma County Superior Court requested that Mr. White's treatment team meet and outline the
21 structural conditions which would allow him to be released from Sonoma DC into a community
22 option where he could reside safely. In July 2000, the team agreed on a list of supports Mr. White
23 would need in the community, including a 1:1 staff ratio which he currently receives in the DC. Yet,
24 by May 2001, no progress had been made and Mr. White filed a writ with the Court seeking
25 appropriate community services. In July 2001, his IPP team met to clarify placement planning
26 issues and determined that customized supported living arrangements would best meet Mr. White's
27 unique needs. The team anticipated that the intensity of Mr. White's needs would decrease in such a
28 setting commensurate with his increased personal satisfaction.

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

7 **Shawn Woodward-Katz**

8 57. Plaintiff/Petitioner Shawn Woodward-Katz is a 20-year-old man who has resided at
9 Fairview DC since 1998 and is a client of San Gabriel/Pomona Regional Center. He has mild
10 retardation, a variety of mental health diagnoses, including oppositional-defiant disorder, and a long
11 history of disability-related behavioral problems. He appears in this action through his guardian ad
12 litem, Patricia Blumenthal.

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

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

22 60. In 1994, Mr. Woodward-Katz was placed in a state psychiatric hospital, Camarillo
23 State Hospital, where it was determined for the first time that he had a developmental disability. Mr.
24 Woodward-Katz moved to another state psychiatric hospital, Metropolitan State Hospital, in 1997,
25 and in 1998, he was confined for six months in MacLaren Children's Center, a juvenile detention
26 facility which is not intended to provide long term services. During these years, his formal
27 education was limited.
28

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

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

14 63. More than six months later, an adequate assessment for supported living services has
15 not been obtained and Mr. Woodward-Katz remains frustrated and depressed by his inappropriate
16 institutionalization.

17 **Lucien Corpolongo**

18 63 A. Lucien Corpolongo is a twenty-seven-year-old consumer of Harbor Regional Center
19 (HRC) and became a resident of Intercommunity Care Center, a large Nursing Facility (“Nursing
20 Facility”) with locked main doors and perimeter fences, in May 2005.

21 63 B. With a dual diagnosis of a developmental disability (mild retardation) and a psychiatric
22 disability (often diagnosed as schizoaffective disorder), Mr. Corpolongo is eligible for both mental
23 health services and regional center services. Nonetheless, due to a lack of coordination between
24 these two systems, Mr. Corpolongo does not receive the services and supports that he needs.

25 63 C. Immediately prior to being admitted to the Nursing Facility, Mr. Corpolongo spent five
26 months inappropriately placed in the acute psychiatric ward of Pacific Oaks Hospital. On
27 information and belief, Mr. Corpolongo resided at this hospital for far longer than was medically
28

1 necessary; the hospital, designed for short-term stays, provided high doses of psychiatric medication,
2 with no appropriate treatment regimen.

3 63 D. On April 26, 2005, Pacific Oaks Hospital, frustrated by HRC's failure to provide
4 services to Mr. Corpolongo, called Doug Corpolongo (Mr. Corpolongo's father), threatening to
5 abandon Mr. Corpolongo at HRC's offices. This crisis was averted, but Mr. Corpolongo remained at
6 the hospital without a stable living situation for nearly another month.

7 63 E. Finally, the alternative that HRC offered Mr. Corpolongo was a Nursing Facility, an
8 institutional setting not designed to meet his unique needs as a young man with a dual diagnosis.
9 Mr. Corpolongo wants to live with peers in an integrated community setting, but on information and
10 belief, the Nursing Facility where he has been placed is designed to house confused, wandering,
11 geriatric people. Mr. Corpolongo enjoys having independence: his ability to carry on a
12 conversation, feed himself, perform all hygiene and grooming requirements, and prepare non-cooked
13 food testify to the inappropriateness of the Nursing Facility placement.

14 63 F. Mr. Corpolongo is represented in this action by his father, conservator, and guardian
15 ad litem, Doug Corpolongo.

16 **Sharon Forster**

17 63 G. Sharon Forster, a sixty-five-year-old consumer of Golden Gate Regional Center
18 ("GGRC"), has lived at Burlingame Healthcare Center, a large Nursing Facility, since January 11,
19 2004. Cerebral palsy impairs Ms. Forster's speech, mobility, and use of her hands; she also has
20 asthma. She uses an electric wheelchair and needs assistance with transfers to and from her
21 wheelchair, although she helps by bearing some weight on her legs.

22 63 H. Ms. Forster, unlike other residents of the Nursing Facility, is not cognitively impaired;
23 most other Burlingame residents have dementia or some other reduction in cognitive function, so
24 Ms. Forster lives surrounded by people who either are non-verbal or cannot communicate
25 meaningfully with her. Despite the fact that most of its 250 residents use wheelchairs, Burlingame
26 has only two elevators, making it challenging for residents to access the outside world. An ardent
27 fan of San Francisco Giants baseball, Ms. Forster is often frustrated when Burlingame staff insist on
28 putting her to bed at 9:30 p.m., in the middle of televised Giants games.

1 63 I. Ms. Forster is a warm, outgoing person with many friends. Her interests and hobbies
2 include reading novels, dancing, listening to music, swimming, and going to parties at the Veterans'
3 Memorial Center.

4 63 J. Ms. Forster moved to Burlingame after living for two years in San Mateo Medical
5 Center, an acute-care hospital, after undergoing surgery. Inappropriately placed at the hospital for
6 almost two years after she had recuperated from surgery and was ready for discharge, Ms. Forster
7 could not be released because GGRC found no placement for her. She was finally informed by
8 GGRC that the only available placement was a nursing facility, and she has been at Burlingame ever
9 since.

10 63 K. Prior to hospitalization, Ms. Forster lived independently in her own Redwood City
11 home for over fifty years, first with her mother, then with an attendant. She was able to move about
12 the community as she pleased. Ms. Forster is a well-known and an active member of her
13 community. Her biggest dream is to return to a community residence with supports so that she can
14 make her own decisions about where to go, what to eat, what time to go to bed, and other matters,
15 rather than being reliant on Burlingame staff.

16 **Jacob Ashbrook Myers**

17 63 L. Jacob Ashbrook Myers is a twenty-six-year-old consumer of North Bay Regional
18 Center ("NBRC"). He has been a resident of Sonoma DC since August 2000. Prior to moving to a
19 DC, Mr. Myers lived first at home with his parents, then at two group homes in the community.

20 63 M. Mr. Myers has been diagnosed with autism, mild to moderate retardation, diabetes,
21 traits associated with conduct disorder, spondylosis causing back pain, and seizure disorder.
22 Compared to the population of individuals with autism, Mr. Myers has relatively good receptive
23 language skills and is able to express his needs and desires verbally.

24 63 N. For years, Mr. Myers has stated a strong preference for living on his own, as he does
25 not like crowded situations and is very sensitive to stimulation; at Sonoma, he lives with at least 20
26 people and is exposed to a great deal of stimulation. Mr. Myers dislikes chaotic, noisy, crowded
27 environments where he is in close contact with others, but thrives in structured, interesting, engaging
28 environments where he can exercise independence and decision-making ability.

1 63 O. DC staff support Mr. Myers' consistently expressed wish to move into an integrated
2 setting in the community; however, neither the DC nor NBRC has taken appropriate action to find a
3 community home for Mr. Myers. Finally, Mr. Myers filed a writ seeking release from the DC; the
4 court granted his writ in September 2004, yet NBRC still failed to take sufficient action to assist him
5 in moving into the community. Indeed, NBRC attempted to find an appropriate community living
6 arrangement for Mr. Myers only when it was at risk of being found in contempt of court, in both
7 December 2004 and March 2005.

8 63 P. Mr. Myers is represented in this action by his guardians ad litem: his mother (Kay
9 Ashbrook) and his father (Ray Myers), who also serve as his limited conservators.

10 **John Pineda**

11 63 Q. John Pineda is a forty-year-old consumer of Kern Regional Center who has lived at
12 Porterville DC for 10 years and previously lived for many years at Camarillo DC. Mr. Pineda has
13 profound retardation, blindness, insulin-dependent diabetes, a history of seizures, and a severe
14 hearing impairment; he uses a wheelchair. While he cannot speak, he can use simple signs, yells,
15 and cries to indicate his likes and dislikes and can respond to loud, simple requests.

16 63 R. Because of the nature or severity of his disability, Mr. Pineda cannot express his choice
17 with respect to living arrangements; however, he never made a decision to be placed at a DC, and the
18 legal presumption should be that he would choose to live in the most integrated setting in which his
19 needs can be met, rather than to remain unnecessarily institutionalized. Moreover, it is clear that Mr.
20 Pineda often prefers to be alone and does not like crowded, noisy environments or others invading
21 his space, situations often encountered in a DC. Mr. Pineda's family does not oppose his moving to
22 an appropriate community setting.

23 63 S. According to his assessment planning team, Mr. Pineda would benefit from moving to
24 a community home. Kern Regional Center has included Mr. Pineda in its Community Placement
25 Plan but is having difficulty locating or developing the resources that are necessary to meet his
26 health needs as an insulin-dependent diabetic. Kern Regional Center's attempt to place Mr. Pineda
27 in a small Intermediate Care Facility/Developmental Disabilities -Nursing has been stymied by State
28 Defendant California Department of Health Services. Kern Regional Center has also explored other

1 placements, but necessary resources are difficult to find in his community. Since Mr. Pineda does
2 not need to be institutionalized, defendants must develop an appropriate community living
3 arrangement that can meet his needs.

4 63 T. Mr. Pineda is represented in this action by his guardian ad litem, Deborah A.
5 Dorfman.

6 **Jane Schuster**

7 63 U. Jane Schuster is a forty-three-year-old consumer of Alta California Regional Center
8 (“Alta”), and has been a resident of Gardens Healthcare, a large Intermediate Care
9 Facility/Developmental Disabilities institution (“ICF/DD institution”), since August 1983. She has
10 expressed an interest in moving out of the ICF/DD institution for years, but has not received
11 appropriate support from Alta.

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

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

26 63 X. Ms. Schuster is represented in this action by her guardian ad litem, Tony Anderson.
27
28

1 **Taxpayer Petitioners/Plaintiffs**

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

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

14 **Organizational Petitioners/Plaintiffs**

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

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

1 community living to enhance the life quality of people with developmental disabilities. CAIC's
2 members are adversely affected and its organizational mission is thwarted by the acts and omissions
3 of defendants complained of here in which impede the rights of its members and other people with
4 developmental disabilities to live in appropriate quality community settings.

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

14 **State Respondents/Defendants**

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

20 70. Respondent/defendant CALIFORNIA HEALTH AND HUMAN SERVICES
21 AGENCY (CHHS) is the State agency which oversees the administration of the Department of
22 Health Services, California's single State agency under Title XIX of the Social Security Act, the
23 Department of Developmental Services and other departments. Together the departments under
24 CHHS are responsible for the direction and administration of long-term care services, both
25 institutional and community-based, for Californians with all disabilities, including the developmental
26 disabilities of plaintiffs herein. CHHS is a "public entity" within the meaning of the ADA, a
27 recipient of state and federal funds and oversees services funded under Title XIX.

1 71. Respondent/defendant KIMBERLY BELSHÉ is sued in her official capacity as the
2 Secretary of CHHS Agency. As Secretary of CHHS Agency, defendant Belshé oversees the
3 California Department of Developmental Services, the Department of Health Services, the
4 Department of Mental Health, and other departments. Secretary Belshé is charged with ensuring that
5 the services of all of these subsidiary departments are provided in compliance with federal and state
6 law.

7 72. Respondent/defendant DEPARTMENT OF DEVELOPMENTAL SERVICES (DDS)
8 is the department within the CHHS Agency charged with the implementation and administrati on of
9 the Lanterman Act and with the mandatory duty of ensuring that, pursuant to the Act, programs and
10 living arrangements for Californians with developmental disabilities are provided in the least
11 restrictive, most integrated setting for each individual. DDS operates and administers California’s
12 developmental disabilities services program, which includes California’s seven public institutions,
13 the developmental centers, and community-based services for Californians with developmental
14 disabilities. DDS is a “public entity” within the meaning of the ADA, a recipient of state and federal
15 funds and provides, administers and oversees services funded under Title XIX.

16 73. Respondent/defendant CLIFF ALLENBY is sued in his official capacity as the
17 Director of Developmental Services. As such, he is responsible for DDS’ implementation of and
18 compliance with the mandates of the Lanterman Act and other state and federal laws. Director
19 Allenby is responsible for directing, organizing, and administering California’s deve lopmental
20 disabilities services program, including both the DCs and community-based services.

21 74. Respondent/defendant DEPARTMENT OF HEALTH SERVICES (DHS) is a
22 department within the CHHS Agency and is the single State agency responsible for administration of
23 all aspects of the Medicaid program, entitled Medi-Cal in California. DHS is a “public entity”
24 within the meaning of the ADA, as well as a recipient of state and federal funds and provides,
25 administers, and oversees services funded under Title XIX.

26 75. Respondent/defendant DIANA M. BONTÁ is sued in her official capacity as the
27 Director of DHS. Director Bontá is responsible for directing, organizing and administering
28 California’s Medi-Cal program, which provides funding for California’s developmental disabilit ies

1 services program, including both institutions and community-based services. Director Bontá is
2 charged with administering this program in compliance with federal and State law.

3 76. Respondent/defendant DEPARTMENT OF FINANCE (DOF) has the authority to
4 approve, revise, alter or amend the budget of any State agency, including CHHS, DHS, Department
5 of Mental Health (DMH) and DDS, prior to enactment of the fiscal year appropriation, has the
6 authority to approve budget augmentations and has oversight responsibility with respect to any
7 regulation promulgated with a financial impact. DOF is a “public entity” within the meaning of the
8 ADA, a recipient of state and federal funds. Plaintiffs are informed and believe that DOF’s
9 participation is necessary in order for plaintiffs to obtain full relief in this action.

10 77. Respondent/defendant MIKE GENEST is sued in his official capacity as the acting
11 Director of DOF. Acting Director Genest has general powers of supervision over all matters
12 concerning the financial and business policies of the State, including with regard to medical
13 assistance and services to people with developmental disabilities under the Lanterman Act and
14 services funded from the State general fund or under Title XIX Medicaid program. Acting Director
15 Genest is charged with ensuring that State appropriations and expenditures are made in compliance
16 with federal and State law.

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

24 79. Respondents/defendants State, CHHS, DDS, DHS, DOF, DMH, and Directors Bel shé,
25 Allenby, Bontá and Genest, are referred to jointly as “State defendants.” References to DDS include
26 defendant Director Allenby.
27
28

Regional Center Respondents/Defendants

1
2 80. 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 81. 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 82. 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 83. 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 84. 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 85. 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 86. 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 87. 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 88. 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 89. 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 90. 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 91. 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 92. 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 93. 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 94. 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 95. 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,
5 pursuant to the Lanterman Act, to fulfill the State's obligation to people with developmental
6 disabilities residing in Imperial and San Diego Counties.

7 96. 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 97. 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 98. 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 99. 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.

24 100. 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 resid ing in
27 Western Los Angeles County.
28

1 from community services and/or live in less restrictive integrated settings are entitled, under these
2 same laws, to receive appropriate community living options and ancillary supports with reasonable
3 promptness. Due to defendants' policies and practices, many class members have never received
4 adequate assessments or information, in an understandable form, about community service options.
5 Other class members have already been determined, through assessments and/or by their planning
6 teams and/or by courts, to need community services. Yet, due to defendants' policies, practices and
7 funding methods, they remain needlessly institutionalized. Members of the plaintiff class are
8 suffering and will continue to suffer harm as a result of being denied these mandated assessments
9 and quality community services.

10 107. Plaintiffs are informed and believe that over 6,000 people with developmental
11 disabilities in California are unnecessarily institutionalized or at risk of becoming so, including a
12 substantial proportion of the approximately 3,730 current residents of the state-operated DCs and
13 the approximately 1,000 current residents of publicly or privately operated nursing facilities. The
14 needs and desires of these individuals could appropriately be met in more integrated community
15 settings. The size of the class is so numerous that joinder of all members is impracticable. Joinder is
16 also impracticable because the plaintiff class lacks the knowledge and financial means to maintain
17 individual actions and because the class includes people who will be unnecessarily institutionalized
18 or at risk in the future and their identities are unknowable.

19 108. There are questions of law and fact common to the class and the plaintiffs' claims are
20 typical of the claims of the class. These questions include, but are not limited to:

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

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

1 c) Whether regional center defendants violate Business and Professions Code
2 section 17200.

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

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

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

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

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

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

1 necessary to achieve the purposes of the treatment, services or supports, and enable the individual to
2 approximate the pattern of every day living available to people without disabilities of the same age.
3 Welf. & Inst. Code §§ 4501, 4502(a)(b), 4750.

4 114. One of the primary purposes of the Lanterman Act is to avoid unnecessary
5 institutionalization of people with developmental disabilities. *Ass'n for Retarded Citizens-Cal. v.*
6 *DDS*, 38 Cal.3d 384 (1985) (“ARC”).

7 115. The Legislature determined that Lanterman Act services were so unique, they could
8 not satisfactorily be provided by state agencies. Thus, direct responsibility for implementing the
9 Lanterman Act is allocated between the state department, DDS, and twenty -one private non-profit
10 community agencies, the regional centers, which, pursuant to contracts with DDS, provide services
11 to individuals who reside or once resided in a specified geographic area. Welf. & Inst. Code § 4620,
12 *et seq.*

13 116. Defendant DDS, under the control of its director, defendant Allenby (collectively
14 referred to as DDS), is ultimately responsible for ensuring that the Lanterman Act is fully
15 implemented. Welf. & Inst. Code § 4416. Additionally, DDS’ roles include, but are not limited to:

16 a) Contracting with, supporting and monitoring regional centers to ensure, *inter alia*,
17 that the regional centers operate in compliance with federal and state law, provide high
18 quality service coordination, services and supports to individuals and their families, and th ose
19 individuals receive the services and support identified in their individual program plans.
20 Welf. & Inst. Code §§ 4434, 4500.5, 4501, 4620;

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

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

26 d) Providing staff to assist in the deflection of individuals from placement in and
27 transition of individuals out of the DCs to community homes. Welf. & Inst. Code §§ 4418.3,
28 4418.7. For this purpose, DDS has created the Regional Resource Development Projects.

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

4 118. Regional centers function on a service coordination model, in which each individual
5 they serve, including plaintiffs and others in the DCs and other public and private institutions, should
6 have a designated service coordinator who is responsible for planning and providing or ensuring that
7 needed services and supports are available to the individual and family. Welf. & Inst. Code
8 §§ 4640.7(b), 4647.

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

13 120. The planning team consists of the person and his/her representatives, the designated
14 regional center service coordinator, other regional center representatives, if needed, DC staff if the
15 person resides in a DC, and additional appropriate professionals or service providers by invitation.
16 The team jointly prepares a person-centered individual program plan (IPP). Welf. & Inst. Code
17 §§ 4418.3, 4512(j), 4646, 4646.5, and 4647.

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

21 122. The planning process includes the conducting of assessments by qualified individuals
22 to determine the life goals, capabilities, strengths, preferences, barriers, and concerns or problems of
23 the individual. The IPP contains a statement of goals based upon the individual’s needs, preferences
24 and life choices; a statement of specific objectives for implementing the person’s goals and
25 addressing his or her needs and a schedule of the type of amount of services and supports to be
26 provided. The goals should maximize opportunities and teach skills needed for the person to
27 develop relationships, be part of community life, increase control over his or her life and acquire
28 increasingly positive roles in the community. Welf. & Inst. Code § 4646.5.

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

6 124. In California, services for people with developmental disabilities are an “entitlement.”
7 Welf. & Inst. Code § 4648; *ARC*, 38 Cal.3d 384. Once services or supports are included in an
8 individual’s IPP, the regional center has a mandatory non-discretionary duty to provide these
9 services and supports. The regional center must secure the services specified in the IPP, including
10 community living arrangements and ancillary supports, by referral or purchase or, if needed services
11 are not currently available, by program development. Welf. & Inst. Code §§ 4648(d)(e), 4651, and
12 4677.

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

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

24 127. Defendants DDS and regional centers must also provide or arrange for the provision of
25 a broad array of ancillary services that are necessary for an individual to live successfully in the
26 community including, but not limited to, supported or sheltered employment, day activities,
27 occupational or physical therapy, adaptive equipment, mental health services, behavioral training
28 and behavior modification programs, daily living skills training, transportation, assistance in locating

1 a home, education, recreation, community integration supports and specialized medical and dental
2 care. Welf. & Inst. Code § 4612(b). (Referred to jointly throughout as “ancillary” services.)

3 128. In order that the mandated array of quality services and supports is available. DDS is
4 required to establish and maintain equitable systems of payment for the providers of services and
5 supports, which reflect the actual costs of ensuring high quality, stable services, and ensure that
6 people live in the least restrictive setting. Welf. & Inst. Code §§ 4648(a)(5), 4680, 4690, 4697,
7 4786.

8 129. If the services and supports needed by an individual to live in the least restrictive
9 community setting are not currently available, regional centers are to engage in program
10 development. Welf. & Inst. Code § 4648(d)(e). DDS may be required to provide the services or
11 supports directly where there are identified gaps in the system of services or where there are
12 identified consumers for whom no provider will provide the services in his/her IPP. Welf. & Inst.
13 Code § 4648(g).

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

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

26 132. The provision of services under the Lanterman Act is intended to reflect the cost -
27 effective use of public resources and to assure the maximum use of federal funding. Welf. & Inst.
28 Code §§ 4645(a), 4683. Further, Welfare and Institutions Code section 4657 requires defendants

1 DDS and regional centers to use innovative, economical programs, techniques and staffing to carry
2 out their obligations to provide services in the least restrictive setting.

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

5 133. In enacting the ADA, Congress was particularly concerned about the unnecessary
6 segregation and institutionalization of people with disabilities and the resulting lack of full
7 participation in and access to community services and activities. 42 U.S.C. § 12101(a)(2), (a)(5),
8 (a)(8), 28 C.F.R. § 35.130.

9 134. Title II of the ADA prohibits public entities, such as State defendants, from
10 discriminating against the individuals with disabilities that they serve. 42 U.S.C. §§ 12131-12132.
11 Discrimination under the ADA includes the segregation and isolation of persons with disabilities
12 from society as a result of unnecessary institutionalization. *Olmstead v. LC*, 527 U.S. 581 (1999).

13 135. The regulations promulgated under Title II specifically provide that “a public entity
14 shall administer services, programs and activities in the most integrated setting appropriate to the
15 needs of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d). In the section-by-section
16 analysis that accompanied issuance of Title II’s binding regulations, the Attorney General defined
17 “integrated setting” as “a setting that enables individuals with disabilities to interact with
18 nondisabled persons to the fullest extent possible ... “ 56 Fed. Reg. 35705 (Jul. 26, 1991).

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

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

26 138. Section 504 of the Rehabilitation Act, on which the ADA is modeled, sets forth similar
27 protections against discrimination by recipients of federal funds, such as the State and regional
28

1 center defendants herein, including prohibiting unnecessary segregation. 29 U.S.C. § 794, *et seq.*, 45
2 C.F.R. § 84.4 and 28 C.F.R. § 41.51.

3 139. California law also contains similar protection against discrimination by the State and
4 by the State and recipients of state funds, such as the regional center defendants herein, including the
5 requirement to provide services in the most integrated setting possible. Gov't Code § 11135.
6 Government Code section 11135(b) says that state law provides at least the same protections as are
7 available under the ADA and its implementing regulations, but may provide even stronger
8 protections.

9 **C. The Medicaid Scheme**

10 140. Medicaid is a federal program administered jointly by the federal and state
11 governments to provide medical services to low-income persons pursuant to Title XIX of the Social
12 Security Act, and to provide health, rehabilitation and other services to help them attain or retain
13 capability for independence or self care. 42 U.S.C. §§ 1396, *et seq.* Over 50% of the cost of
14 medical care through Medicaid is federally funded. 65 Fed. Reg. 69560 (2000).

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

18 142. The Center for Medicare and Medicaid Services (CMS) (previously known as the
19 Health Care Financing Administration) of the United States Department of Health and Human
20 Services (HHS) is the agency which administers Medicaid at the federal level. A state's
21 participation in Medicaid is voluntary. States that choose to participate in the Medicaid program
22 receive federal matching funds for their Medicaid program. To receive federal funds, states must
23 comply with the requirements of the federal Medicaid Act and with the federal regulations governing
24 state Medicaid programs promulgated by the HHS. 42 U.S.C. § 1396, *et seq.*; 42 C.F.R. § 430, *et*
25 *seq.* Each state must submit an appropriate Medicaid plan to CMS.

26 143. California participates in the Medicaid program called “Medi-Cal.” Welf. & Inst.
27 Code § 14000, *et seq.* Medi-Cal is administered by defendant Bontá, the Director of DHS, the state
28

1 agency responsible for administering Medi-Cal mandatory, optional and waiver services. 42 U.S.C.
2 § 1396a(a)(5); Welf. & Inst. Code § 14137; 22 Cal. Code Regs. § 50004.

3 144. Medi-Cal must “provide such safeguards as may be necessary to assure ... such care
4 and services will be provided, in a manner consistent with simplicity of administration and the best
5 interests of the recipients.” 42 U.S.C. § 1396a(19).

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

10 146. In addition to these mandatory services, Medi-Cal, also provides optional benefits,
11 such as funding for intermediate care facilities for the mentally retarded (“ICF/MR”). 42 U.S.C.
12 §§ 1396a(a)(10), 1396d(a)(15); Welf. & Inst. Code § 14007.9.

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

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

20 a) Title XIX requires that persons with disabilities who live in or are at risk of
21 being placed in an institution be informed of and given a meaningful choice of “feasible
22 alternatives” available under the waivers. 42 U.S.C. § 1396n(c)(2)(C), 42 C.F.R. §§
23 435.217, 441.302(d)(1)-(2).

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

26 c) Title XIX also requires participating states to “provide such methods and
27 procedures relating to the utilization of, and the payment for, care and services available
28 under the plan... as may be necessary to safeguard against unnecessary utilization of such

1 care and services...” 42 U.S.C. § 1396a(a)(30)(a). In requiring states to provide methods and
2 procedures of payment “to safeguard against unnecessary utilization,” Congress intended to
3 “provid[e] suitable alternatives to institutional care.” 113 Cong. Rec. 11417 (1967). The
4 Committee Report to Title XIX stressed “assuring that patients are receiving appropriate care
5 in an appropriate setting--frequently in a lower cost facility or setting .” S. Rep. No. 744,
6 90th Cong., 2nd Sess. (1967), *reprinted at* 1967 U.S.C.C.A.N. 2866, 3029.

7 VI.

8 STATEMENT OF FACTS

9 A. Community Services Provide A Better Quality Of Life

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

13 150. By definition, under the Lanterman Act, a developmental disability manifests itself
14 prior to the age of 18 and substantially limits a person’s functioning in one or more major life areas
15 such as mobility, communication and/or basic daily living skills. It is now well established that all
16 people with developmental disabilities can learn—academically, vocationally, socially and
17 otherwise—and that their learning advances most when done in integrated community settings. It is
18 also in integrated surroundings that people with developmental disabilities have the fullest
19 opportunity to exercise and apply their personal, social and work skills.

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

26 152. While California still operates seven public institutions for people with developmental
27 disabilities – the DCs – several of which are among the nation’s largest, at least ten other states have
28

1 expanded their community services sufficiently in the last decade to close all of their state
2 institutions for people with developmental disabilities.

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

12 154. The experiences of several states, including California, have shown that the needs of
13 people with severe developmental disabilities, including those with severe physical, behavioral and
14 medical needs, can be safely and adequately met in integrated, community -based settings.
15 Nationwide, empirical studies, including studies conducted in California by defendants and their
16 agents, of what happens to institutional residents when they move to appropriate community settings
17 show that people with severe needs gain the most from individually -structured community services.

18 155. DDS and regional center defendants and their executive staff have admitted that
19 people with developmental disabilities should be served in the most integrated setting possible and
20 that, with proper supports, almost all of the people in the DCs would do well in a smaller community
21 setting.

22 156. As a result of the 1994 settlement of a previous class action lawsuit, *Coffelt, et al. v.*
23 *DDS, et al.*, San Francisco Superior Court No. 91640, state agencies and regional centers (who are
24 also defendants in this case), made efforts at moving people out of and deflecting people from
25 admission to the DCs, resulting in a net reduction in the DC population of 2,452 people between the
26 years 1993 and 1998. The individuals who moved from the DCs to the community during the
27 *Coffelt* term included persons with the full spectrum of disabilities and severity of disability.
28

1 157. The *Coffelt* settlement was funded by over \$334 million of additional federal funds
2 generated by expansion of California's Medicaid developmental disability home and community-
3 based waiver.

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

8 **B. Thousands of Californians with Developmental Disabilities Are**
9 **Unnecessarily Institutionalized**

10 159. In June 1998, at the end of the *Coffelt* settlement period, DDS documents indicated
11 2,214 of the approximately 3900 DC residents were recommended and waiting for movement to
12 community homes. Yet, in Fiscal Years 1998/99 and 1999/00, only 144 and 125 DC residents
13 moved to community homes while 158 and 165 people, were respectively, admitted to the DCs in
14 those years. The net population of the DCs was slightly lowered only because of the deaths of people
15 residing in the DCs. In Fiscal Year 2000/01 the regional centers had a placement goal of 200 people,
16 but only 128 people moved and 115 were admitted to the DCs.

17 160. In December 1999, DDS documents indicated that 1,528 of the 3,852 DC residents
18 were still recommended and waiting for movement to community homes. Plaintiffs allege, on
19 information and belief, that the decrease in community recommendations since 1998 is based not on
20 the needs and choices of the individual residents but, rather, on the lack of a mandate from DDS, on
21 inadequate individualized IPP planning by regional centers and DC staff, and/or a lack of sufficient
22 fiscal resources for the development of quality community living arrangements and ancillary
23 supports.

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

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

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

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

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

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

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

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

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

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

26 165. On information and belief, well over 400 hundred more people with developmental
27 disabilities are "at risk" of institutionalization each year due to the lack of community services and
28

1 crisis intervention supports which could meet their challenging needs. Many of those "at risk" end up
2 in institutions.

3 166. State and regional center defendants and their executive staff have failed to carry out
4 professional recommendations and, in some instances, court orders for movement to the community
5 and discharge from institutions because adequate numbers and varieties of appropriate community
6 services are unavailable.

7 **C. Inadequate Individualized Planning**

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

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

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

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

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

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

27 e) In violation of the April 2000 injunction in *Richard S et al. v. DDS et al. v. Bell,*
28 *et al*, Federal District Court for the Central District of California (SACV 97 -219-GLT), many

1 individuals in the DCs are not seriously considered for movement to a community home
2 because of objections from their family members;

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

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

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

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

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

17 170. As a result of the inadequate individualized IPP process, many people are not
18 recommended for movement to a community home and/or fail to understand their rights to choose to
19 move to a community home and/or are moved to living arrangements that are not the least restrictive
20 and most integrated.

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

22 171. Defendants' policies, practices and underfunding have resulted in a community service
23 system which cannot meet its mandate to provide a sufficient array of quality community living
24 arrangements responsive to the individualized needs and choices of people with developmental
25 disabilities. Nor is there adequate availability of needed ancillary supports such as hea lth and mental
26 health care, meaningful quality day programs and crisis services. This lack of services appears to be
27 most acute for children and adolescents with behavioral challenges, people with dual diagnoses and
28

1 people with health care needs. As a result, people are needlessly institutionalized or at risk of
2 institutionalization. For example:

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

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

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

17 172. The population of California's state institutions for people with developmental
18 disabilities (the DCs) tends to be persons with severe disabilities. Similarly, the people with
19 developmental disabilities who reside in private skilled nursing facilities (SNFs) and psychiatric
20 hospitals tend to be people with severe disabilities. The residents of these institutions remain
21 isolated because defendants have not developed a sufficient number of appropriate small community
22 living arrangements with the services and supports to meet their needs and have not developed the
23 needed ancillary supports in the community, e.g., medication management, nursing supports, and
24 mental health services for the dually-diagnosed.

25 173. Many community residential providers are unable to successfully serve people with
26 severe disabilities because they are unable to pay wages and benefits which attract staff who are
27 competent and trained to provide supervision, treatment and support to people with severe
28

1 disabilities. Under defendants' current system, persons with severe disabilities often remain isolated
2 in large institutions, or are at great risk of being placed into institutions.

3 174. DDS and many regional center defendants and their executive staff have admitted that
4 existing community services do not have the capacity to serve adequately all of the people now
5 institutionalized in California.

6 175. Defendant regional centers have publicly admitted they are unable to develop needed
7 crisis, medical, dental, psychiatric, day program and residential options. *E.g.*, Association of
8 Regional Centers Agencies, *Planning for a Unified Developmental Disabilities Service System*,
9 2000.

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

12 176. The Lanterman Act entitlement to services is funded by a combination of state general
13 fund dollars and federal financial reimbursements through regular Title XIX Medi-Cal funds and
14 through Title XIX home and community-based waivers and other sources. Services in institutions
15 and in the community receive federal financial participation through Medicaid. For example, on
16 information and belief:

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

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

23 c) Community services, including small community care facilities, supported living,
24 day programs and many ancillary services can be funded either by 100% state general fund
25 dollars or by 50/50 general fund and Medicaid home and community-based waiver dollars.
26 The general fund dollars that regional centers use to purchase services go through the DDS
27 budget; and
28

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

3 177. Defendant DHS, as the single state agency responsible to the federal government
4 (CMS) on how California administers its Medi-Cal program including home and community-based
5 (HCB) waivers, has the authority to request additional waivers or expansion of current HCB waivers.

6 178. The HCB waiver services currently available under the Medi-Cal program which are
7 most relevant for people with developmental disabilities are:

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

16 b) *Nursing Facility (NF) Waiver* for which Medi-Cal eligible individuals qualify if
17 they: (i) would otherwise require nursing facility level of care for at least 90 consecutive
18 days; (ii) are over age 65 or disabled; and (iii) have a physical disability. Cal. Code Regs. tit.
19 22 § 51344(c).

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

24 180. On information and belief, the current NF Waiver approved by CMS can serve only
25 500 people and all of the places are filled. The NF Waiver serves many individuals outside the
26 developmental disabilities system as well as those within. The approximately 2,000 regional center
27 clients who live in either NF units at the DCs or private SNFs have no current waiver places
28 available.

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

3 182. On information and belief, California ranks 49th in its per capita expenditures for the
4 provision of home and community-based “waiver” services and 48th in its total provision of home
5 care.

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

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

9 184. On information and belief, California provides over three billion dollars annually to
10 institutionalize people with disabilities, including people with developmental disabilities, at great
11 human and economic cost to the state.

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

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

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

21 188. Direct care staff in the DCs are state civil service employees. On information and
22 belief, in 1999, the average annual salary for a community direct care worker in California was
23 \$18,500, while the annual salary for direct care workers in the DCs ranges from \$36,000 to \$52,000.
24 Moreover, in the last two years, when unemployment was at a low in California, defendants
25 provided newly recruited and hired workers at several DCs permanent "recruitment and retention"
26 bonuses of \$300 to \$700 dollars a month on top of the state pay scale. Defendants also offered two -
27 years of community college tuition. No such bonuses, salary supplements or education benefits have
28

1 been made available by defendants to attract workers in the community, even in high cost areas such
2 as Silicon Valley.

3 189. The low wages and lack of benefits for direct service worker s results from the
4 underfunding of the community system by defendants. In turn, the low uncompetitive wages and
5 lack of benefits makes it difficult for community service providers to recruit and retain qualified,
6 competent staff to support people with developmental disabilities. On information and belief, staff
7 turnover in community services averages 50% and ranges up to 100%. High staff turnover yields
8 instability and contributes to a lack of quality and the inability of services to address the needs of
9 those with the most challenging disabilities.

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

16 191. Pursuant to Budget Trailer bill language enacted as part of the Fiscal Year 2000/01
17 budget, DDS was required to issue a report to the Legislature by March 1 , 2001 identifying a range
18 of options to meet the future needs of individuals currently served by, or who will need services
19 similar to those provided in, the DCs. Stats. 2000, Ch.93, § 104.

20 192. Following issuance of the Vanir Report and in response to the Tr ailer bill language,
21 DDS convened a task force made up of stakeholders from all parts of the system (e.g., consumers
22 and family from the DCs and community, regional centers, DC staff and unions, advocates,
23 community service providers) to address the need to develop alternatives to current state institutional
24 services. DDS put forward five principles upon which to proceed with restructuring DC services, as
25 follows:

- 26 a) No major capital outlays to rebuild DCs;
- 27 b) People will live in homes of 4 persons or less;
- 28 c) Capture and extend DC resources into the community;

- 1 d) Leverage the proceeds from the sale of DC lands to create new resources in the
2 system;
- 3 e) Conduct highly individualized personal assessments and resource development
4 before a person moves to the community.

5 193. The March 2001 report required by the Legislature has not been issued. On
6 information and belief, the report was completed by DDS and submitted to defendant DHS and/or
7 defendant CHHS; however, either DHS or CHHS has stopped its issuance.

8 194. Defendants DDS and Allenby and DDS' executive staff have admitted that more
9 people could move out of the DCs to community settings if the developmental disabilities system
10 had more resources. Plaintiffs allege that restructuring DC services and leveraging the resources
11 from the sale of DC lands, as initially proposed by DDS and approved by the system stakeholders,
12 would create such additional resources from within the developmental disabilities system.

13 **G. Underfunding of the Community System**

14 195. The need for additional community resources is clear. Studies of the community
15 service system by the California Bureau of State Audits and by private consultants to the defendants
16 have found that the system is underfunded.

17 196. In 1998, the Legislature required DDS, in collaboration with system stakeholders, to
18 review the service delivery system and make recommendations to, *inter alia*, improve the quality of
19 services, maximize cost effectiveness while emphasizing quality, variety and flexibility in the
20 delivery of services and develop performance-based consumer-outcome driven rate systems. Welf.
21 & Inst. Code §§ 4690.4 and 4697. The process established by DDS to implement this mandate came
22 to be known as "Service Delivery Reform." DDS, regional centers, consumers, families, service
23 providers and advocates met many times over more than two years to review the service delivery
24 system. However, the process had stalled and new rate systems effectively linking funding to the
25 achievement of consumer outcomes have not been put in place. Nor have other elements of Service
26 Delivery Reform such as improved quality assurance, personal outcomes evaluation and revised
27 service and staff requirements been operationalized.

1 197. In Fiscal Year 2001/2002, there were no rate increases for community providers of
2 developmental disabilities services.

3 198. In spite of legislative mandates and the variations in cost levels around California,
4 geographic differentials in rates have never been implemented.

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

7 200. On information and belief, defendants DOF and acting Director Genest have exercised
8 their budgetary authority in a manner which hinders and/or prevents state agency defendants
9 CHHS, DHS and DDS and their Directors and regional center defendants from fulfilling their legal
10 obligations under the Lanterman Act, state and federal anti -discrimination laws, Title XIX, and the
11 State and Federal Constitutions.

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

16 **H. California Has Not Developed An *Olmstead* Plan**

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

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

26 204. In a series of letters beginning in January 2000, the federal Secretary of Health and
27 Human Services and the Directors of the Health Care Financing Administration (now CMS) and the
28 Office of Civil Rights wrote to State Governors and Medicaid Directors challenging them to

1 undertake *Olmstead* planning and offering a variety of technical assistance and incentives to the
2 states.

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

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

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

17 VII.

18 STATE ACTION

19 208. Defendants State, CHHS, DDS, DHS, DOF, DMH, Belshé, Allenby, Bontá, and
20 Genest are all state entities, state officials, or agents or employees of the state. State defendants'
21 actions with respect to the actions and omissions complained of herein are within the scope of their
22 authority as state employees and officials and are thereby under color of state law.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VIII.

ALLEGATIONS CONCERNING INJUNCTIVE AND DECLARATORY RELIEF

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

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

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

IX.

ENTITLEMENT TO MANDAMUS RELIEF

213. Pursuant to Code of Civil Procedure section 1085, respondents/defendants have the clear present and ministerial duty to act in accord with state and federal law and the United States and California Constitutions as set forth above. Where respondents/defendants are lawfully required to exercise their discretion in carrying out their duties, respondents are bound to exercise such discretion within proper limits and under a correct interpretation of the law. *Common Cause of California v. Board of Supervisors*, 49 Cal. 3d 432, 442 (1989) (“[m]andamus may issue [] to compel an official both to exercise his discretion (if he is required by law to do so) and to exercise it

1 under a proper interpretation of the applicable law.”); *Young v. Gannon*, 97 Cal. App. 4th 209, 221
2 (2002) (“[w]here a public official is required by law to exercise his or her discretion, mandamus will
3 lie to compel the official to exercise his or her discretion under a proper interpretation of the law.”)
4 The responsibilities and duties of respondents/defendants which are subject to mandamus relief
5 include, but are not limited to, ensuring that the plaintiff class receives services in the least
6 restrictive, most integrated community settings, performing adequate assessments and person-
7 centered IPP meetings to determine the least restrictive, most integrated community settings for
8 plaintiffs, giving adequate information to plaintiffs regarding their choice of services, and providing
9 adequate funding to develop a sufficient number of quality community services necessary to meet
10 the needs and choices of people with all types and levels of disability, all as required by the
11 Lanterman Act, the ADA, section 504 of the Rehabilitation Act, Government Code section 11135,
12 Title XIX of the Social Security Act, the State and Federal Constitutions, and Business and
13 Professions Code section 17200. Although respondents have had and currently have the capacity
14 and ability to discharge their duties, as set forth above, in a manner consistent with all applicable
15 state and federal laws and the California and United States Constitutions, respondents have failed
16 and refused to do so and/or abused their discretion in performance of such duties, and/or exercised
17 their discretion under an improper interpretation of the law.

18 214. Petitioners have no plain speedy and adequate remedy at law for respondents’ actions
19 complained of above.

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

23 **X.**

24 **FIRST CAUSE OF ACTION**

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

27 216. Plaintiffs reallege and incorporate every allegation and paragraph set forth above.

28 217. This cause of action is brought by all plaintiffs against all defendants.

1 218. The individual plaintiffs and class members are people with developmental disabilities
2 as defined in Welfare and Institutions Code section 4512(a) and are consumers of a specific regional
3 center defendant.

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

14 220. State defendant DDS is the operator of the developmental centers ("DCs") (Welf. &
15 Inst. Code § 4400, *et seq.*), and thus is responsible for providing direct care and services to persons
16 with developmental disabilities who reside in DCs. In this capacity, DDS is jointly -responsible with
17 regional center defendants for assessing each DC resident's needs and for developing and
18 implementing IPPs which are individually-tailored to meet those needs. Welf. & Inst. Code
19 §§ 4418.3, 4646, 4646.5. With respect to DC residents and individuals at risk of placement in the
20 DCs, however, defendant DDS and the DDS-administered Regional Resource Development
21 Programs (RRDPs) often fail to develop IPPs recommending community placement and/or
22 identifying the community services and supports which would allow DC residents and individuals at
23 risk to avoid DC placement to successfully live in less restrictive settings.

24 221. With respect to residents of non-DC institutions, and people at-risk of placement in
25 non-DC institutions, DDS has failed to adequately assist and monitor regional centers to ensure that
26 they fulfill their responsibilities under the Lanterman Act, including their compliance with the
27 mandate that consumers be afforded opportunities to live and remain in the least restrictive setting.
28

1 222. State defendants CHHS, DHS, DMH and DOF have directly and/or indirectly impeded
2 DDS and regional center efforts to fulfill their responsibilities to prevent unnecessary
3 institutionalization and enable class members to live in non-institutional settings.

4 **A. DIRECT LIABILITY OF THE STATE DEFENDANTS FOR**
5 **VIOLATIONS OF THE LANTERMAN ACT.**

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

11 ///

12 ///

13 **1. Violations of Ministerial Duties.**

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

15 **These allegations are included to preserve Plaintiffs' right to seek appellate review of the**
16 **dismissal of these allegations.}**

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

19 a. **{Preserved For Appeal}** Failing to conduct required activities to deflect
20 class members from placement in DCs. Welfare and Institutions Code section 4418.7(b)
21 requires the RRDPs, which are administered and staffed by State defendant DDS, to perform
22 three ministerial tasks whenever a regional center provides notice that a community
23 placement is at risk of failing and admission to a DC is a likelihood. The RRDPs shall: (1)
24 immediately arrange for an assessment of the situation; (2) attend an emergency IPP planning
25 team meeting to discuss additional supports and services; and (3) follow up with the regional
26 center as to the success of any recommended interventions. Plaintiffs are informed and
27 believe that State defendant DDS, in its capacity as the administrator of the RRDPs, has
28 violated Welfare and Institutions Code section 4418.7(b) by failing to arrange for immediate

1 assessments and attend emergency planning meetings, and by failing to follow up with
2 regional centers as to the success of any recommended interventions;

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

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

24 d. **{Preserved For Appeal}** Failing to hold individual planning meetings with
25 the "planning teams" of plaintiff class members residing in the DCs as required by, *inter alia*,
26 Welfare and Institutions Code sections 4418.3(b)&(c), 4512(j), 4646, 4646.5 and 4647. The
27 Lanterman Act requires that a "planning team" jointly develop an individual program plan for
28 every person eligible for regional center services. Welf. & Inst. Code §§ 4646(c) & 4646(d).

1 The Lanterman Act defines the "planning team" as a group which includes "one or more
2 regional center representatives, including the designated regional center service coordinator."
3 Welf. & Inst. Code § 4512(j); *see also* Welf. & Inst. Code §§ 4647(a) & 4646.5(b)
4 (mandating regional center participation in the IPP process and setting forth planning team
5 duties including periodic review of all IPPs.). Welfare and Institutions Code sections
6 4418.3(b) and 4418.3(c) make State defendant DDS responsible for convening planning team
7 meetings for DC residents and ensuring that those planning teams develop IPPs consistent
8 with the mandates of sections 4646 and 4646.5. Plaintiffs are informed and believe that State
9 defendant DDS has violated Welfare and Institutions Code sections 4418.3(b) and 4418.3(c)
10 by routinely convening planning team meetings for DC residents that are not attended by one
11 or more regional center representatives, including the designated regional center service
12 coordinator;

13 e. **{Preserved For Appeal}** Failing to collaborate for the care and treatment of
14 persons with dual diagnoses as required by Welfare and Institutions Code sections 4510 and
15 4681.1(d). Section 4510 requires that State defendants DDS and DMH jointly develop and
16 implement a statewide program for encouraging the establishment of sufficient numbers and
17 types of living arrangements, including community living arrangements, to meet the needs of
18 persons served by both departments. In developing this program, State defendants DDS and
19 DMH are commanded to consult with specific organizations and agencies, including the
20 League of California Cities, the County Supervisors Association of California. Welf. & Inst.
21 Code § 4510. Plaintiffs are informed and believe that State defendants DDS and DMH have
22 violated section 4510 by failing to hold interagency meetings for developing a statewide
23 program and by failing to consult with the organizations specified in subsections (a) through
24 (c). Section 4681.1(d) further requires that State defendants DDS and DMH "shall" work
25 together to establish criteria upon which higher rates may be fixed for the provision of
26 services and supports to dually diagnosed persons. While State defendants DDS and DMH
27 have limited discretion in establishing the ultimate criteria, the duty to meet and work
28

1 together to establish such criteria is ministerial. Plaintiffs are informed and believe that State
2 defendants DDS and DMH have failed to work together as required by section 4681.1(d);

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

17 **2. Violations of Statutory Requirements.**

18 225. The Lanterman Act contains numerous individual provisions which grant the State
19 defendants discretion in carrying out their duties thereunder. California law requires that these
20 individual provisions be construed in light of the overall purpose of the Lanterman Act statutory
21 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. 4th 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 **a. The Integration Mandate Forms a Hard Boundary**
27 **for Acts of Discretion Set Forth in Specific Sections**
28 **of the Lanterman Act.**

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

11 227. The Lanterman Act’s core right to integration is set forth initially in sections 4501 and
12 4502. Through section 4501, the State of California accepts “responsibility for persons with
13 developmental disabilities and an obligation to them which it must discharge.” Section 4502
14 provides that “[n]o otherwise qualified person by reason of having a developmental disability shall
15 be excluded from participation in, be denied the benefits of, or be subjected to discrimination under
16 any program or activity, which receives public funds.” Through section 4502, the Legislature grants
17 persons with developmental disabilities the “right to treatment and habilitation services in the least
18 restrictive environment.” *Id.* § 4502(a). Section 4502(b) further requires that “[t]o the maximum
19 extent possible, treatment, services, and supports shall be provided in natural community settings.”
20 The California Supreme Court confirmed that “sections 4501 and 4502 clearly speak in terms of the
21 *responsibility* of the state and the *rights* of persons with developmental disabilities.” *ARC*, 38 Cal.
22 3d at 393. The Lanterman Act is replete with additional references to the requirement to promote
23 integration into the mainstream of community life and to provide community-based services,
24 including Welfare and Institutions Code sections 4418.25, 4418.3, 4418.7, 4500.5, 4501, 4502,
25 4502.1, 4507, 4509, 4512(b), 4640.7, 4646(a), 4646.5 (a)(1)&(2), 4648(a)(1) & (2), 4685, 4688,
26 4689, 4691, 4697, 4750, and 4790. These provisions work together to form an integration mandate.
27 “[T]he Act defines a basic right and a corresponding basic obligation: the right which it grants to the
28 developmentally disabled person is to be provided with services that enable him to live a more

1 independent and productive life in the community; the obligation which it imposes on the state is to
2 provide such services.” *ARC*, 38 Cal.3d at 392.

3 228. The Lanterman Act as a whole, and each of its individual provisions, must be
4 construed liberally so as to give effect to the primary purpose of integration. California courts agree
5 that “remedial statutes such as the Lanterman Act must be liberally construed to effectuate the
6 purposes for which they were enacted.” *Clemente v. Amundson*, 60 Cal. App. 4th 1094, 1102 (1998);
7 *see also Hansen v. Department of Social Services*, 193 Cal. App. 3d 283, 290 (1987) (holding that
8 “laws governing welfare programs are to be liberally interpreted and actively enforced”); *California*
9 *Association of Health Facilities v. Department of Health Services*, 16 Cal. 4th 284, 295 (1997) (“a
10 remedial statute . . . is to be liberally construed on behalf of the persons it is designed to protect.”).

11 229. The Lanterman Act’s primary right to integration – as stated by the California
12 Supreme Court and in sections 4501, 4502 and elsewhere in the Act – provides a hard boundary for
13 any acts of discretion performed by the persons, agencies and/or others charged with carrying out its
14 provisions. Discretion must be exercised with the constant goal of preventing or minimizing
15 institutionalization and enabling people with developmental disabilities to lead more integrated,
16 independent and productive lives in the community. As set forth below, the State defendants have
17 violated specific statutes by failing to exercise their discretion under a proper interpretation of the
18 Lanterman Act.

19 **b. Liability of the State Defendants for Violation of**
20 **Statutory Requirements.**

21 230. Plaintiffs allege that the State defendants, through their policies and practices, acts and
22 omissions, have violated the Lanterman Act by carrying out their duties and obligations under an
23 improper interpretation of the Lanterman Act: an interpretation that ignores the right of each person
24 with developmental disabilities to treatment and services in the least restrictive environment in
25 which his or her needs can be accommodated. *See Welf. & Inst. Code* § 4502(a); *ARC*, 38 Cal. 3d at
26 393 (setting forth core “rights” and “responsibilities” of the Lanterman Act). The State defendants’
27 violations include, but are not limited to:
28

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

24 b. Failing to ensure that IPPs are modified to reflect court determinations that a
25 DC is no longer the least restrictive appropriate placement in which the individual ’s needs
26 can be accommodated and failing to ensure implementation of IPPs reflecting such court
27 determinations. Placements in DCs that are not voluntary must be pursuant to court order
28 following a hearing meeting stringent due process requirements. *In re Hop*, 29 Cal.3d 82

1 (1981). When a court determines — either in reviewing a prior commitment order or in
2 reviewing a petition for writ of habeas corpus pursuant to Welfare & Institutions Code
3 sections 4800-4801 -- that a DC is no longer the least restrictive appropriate placement in
4 which a DC resident's needs can be accommodated, the Lanterman Act requires that the IPP
5 be modified to reflect the individual's current needs. *E.g.*, Welf. & Inst. Code § 4646.5(b)
6 (requiring that IPPs be modified as necessary in response to the persons achievement or
7 changing needs). Plaintiffs are informed and believe that DDS has violated section
8 4646.5(b), and its responsibility to ensure regional center compliance with state law (as
9 provided in Welfare and Institutions Code sections 4416, 4418.25, 4434, 4620, 4629, 4635
10 and 4651(b)), by failing to exercise its discretion thereunder with the constant goal of
11 providing services and supports in the least restrictive environment;

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

1 §§ 4434, 4629, 4635 & 4651(b). Plaintiffs are informed and believe that State defendant
2 DDS has violated Welfare and Institutions Code sections 4418.3, 4418.7, 4646, 4646.5, 4647
3 and 4648(a)(1) by failing to exercise its discretion thereunder with the constant goal of
4 providing services and supports in the least restrictive environment;

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

25 e. Failing to afford class members the opportunity to make meaningful choices,
26 including but not limited to choices regarding where and with whom they live. The
27 Lanterman Act requires that every public or private agency that serves persons with
28 developmental disabilities shall provide those individuals with the opportunity to exercise

1 decision-making skills and make meaningful choices concerning their own lives. Welf. &
2 Inst. Code §§ 4418.3(d), 4502.1, 4646, 4646.5. State defendant DDS deprives class members
3 of these rights by, for example, failing to provide them with information in an understandable
4 form, including experiential information, on the variety of possible alternatives to
5 institutions. Moreover, State defendant DDS, by virtue of its monitoring and support
6 functions, has failed to ensure that regional centers meet these obligations. See Welf. & Inst.
7 Code §§ 4434, 4629, 4635 & 4651(b). Plaintiffs are informed and believe that State
8 defendant DDS has violated Welfare and Institutions Code sections 4418.3(d), 4502.1, 4646
9 and 4646.5 by failing to exercise its discretion thereunder with the constant goal of providing
10 services and supports in the least restrictive environment;

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

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

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

22 h. Failing to ensure that all necessary steps are taken to deflect people at risk of
23 institutionalization from placement in an institution. Welfare and Institutions Code section
24 4418.25(b) makes State defendant DDS responsible for approval and monitoring of
25 community placement plans which ensure "deflection of selected individuals from
26 developmental center placement." Welfare and Institutions Code section 4418.7(b) states
27 State defendant DDS “shall” ensure that regional centers provide needed services and
28 supports on an emergency basis. Additionally, Welfare and Institutions Code sections 4434,

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

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

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

19 k. Failing to collaborate to ensure that class members with dual diagnoses are
20 provided with the supports needed to live in least restrictive community settings. The
21 Lanterman Act requires defendants DDS and DMH to jointly develop and implement a
22 statewide program for encouraging the establishment of sufficient numbers and types of
23 living arrangements, including community living arrangements, as necessary to meet the
24 needs of persons served by those departments. Welf. & Inst. Code § 4510. The Lanterman
25 Act also mandates that State defendant DDS collaborate with DMH to establish criteria by
26 which higher rates may be fixed for living arrangements for people who are dually diagnosed
27 with a mental disorder and to provide solutions for the care and treatment of the dually
28 diagnosed when local agencies request assistance. Welf. & Inst. Code §§ 4681.1(d). Section

1 4696.1(c) says that defendants DDS and DMH "shall collaborate" to provide a statewide
2 perspective and technical assistance to local service regions when local problem resolution
3 mechanisms have been exhausted and state level participation has been requested by both
4 local agencies. Additionally, Welfare and Institutions Code sections 4434, 4629, 4635 and
5 4651(b) make State defendant DDS responsible for monitoring and supporting the regional
6 centers in complying with their responsibilities under Welfare and Institutions Codes sections
7 4696 and 4696.1 to cooperate with county mental health agencies and obtain needed mental
8 health services for class members with dual diagnosis. Plaintiffs are informed and believe
9 that State defendants DDS and DMH have violated Welfare and Institutions Code sections
10 4510, 4681.1(d) and 4696.1 by failing to exercise their discretion thereunder with the
11 constant goal of providing services and supports in the least restrictive environment;

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

25 m. Failing to request the allocation of sufficient funds to the regional centers to
26 carry out their mandated responsibilities. Welfare and Institutions Code sections 4434(b) &
27 (c), 4620, 4621 and 4629 require that the State, through defendant DDS, contract with and
28 fund regional centers to carry out their statutorily mandated responsibilities, including

1 conducting assessments and developing and implementing IPPs to enable consumers to live
2 in non-institutional, community-based settings whenever appropriate. Plaintiffs are informed
3 and believe that State defendant DDS has violated Welfare and Institutions Code sections
4 4434(b) & (c), 4620, and 4629 by failing to exercise its discretion thereunder with the
5 constant goal of providing services and supports in the least restrictive environment;

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

17 o. Proposing budget allocations that disproportionately allocate funds for
18 developmental disabilities services to institutional care rather than to community services in
19 violation of the Lanterman Act mandates for least restrictive services and for cost-effective
20 services. The Lanterman Act requires that State defendants provide funding for persons with
21 developmental disabilities in a cost-effective manner, with special preference given to
22 community services and supports. *E.g.*, Welf. & Inst. Code §§ 4512(b), 4646(a),
23 4648(a)(6)&(11), 4669.75(d). For class members in the DCs whose needs could be met in
24 the community, in most instances, the cost of DC placement far exceeds the cost of
25 community-based services and supports. Plaintiffs are informed and believe that the State
26 defendants have violated Welfare and Institutions Code sections 4512(b), 4646(a), 4648(a)(6)
27 &(11), and 4669.75(d) by failing to exercise their discretion thereunder with the constant
28 goal of providing services and supports in the least restrictive environment;

1 p. Failing to ensure that defendants DDS and Director Allenby conduct their
2 activities and provide services, and properly fund and supervise the regional centers in
3 compliance with Welfare and Institutions Code sections 4400 *et seq.* and the Lanterman Act.
4 The Secretary of the CHHS Agency has supervisory power over, and is directly responsible
5 to the Governor for, the operation of DDS. Gov't Code § 12850. Defendants CHHS Agency
6 and its Secretary, defendant Belshé (who has succeeded Secretary Johnson) is responsible for
7 sound fiscal management of DDS, for reviewing and approving its budget, and for ensuring
8 that the director of DDS maintains control of the administrative, fiscal and program
9 performance of DDS. Gov't Code § 12850.6. Defendant Belshé is also required to review
10 the operation and performance of DDS, and to seek to improve its operation. *Id.* Further,
11 defendant Belshé is responsible for reporting to the Governor when changes in the
12 organization or operation of the agency are necessary, and to report to the Governor on
13 efforts taken to ensure that the agency's programs are properly administered and the goals of
14 the agency accomplished. Gov't Code §§ 12851, 12852. Plaintiffs are informed and believe
15 that State defendants CHHS Agency and Belshé have violated Government Code sections
16 12850, 12850.6, 12851 and 12852 by failing to properly ensure that defendant DDS is
17 meeting its responsibilities, and have interfered with DDS's ability to meet its responsibility
18 to ensure implementation of the Lanterman Act. This includes failing to approve the
19 allocation of or proposals for sufficient funds to enable DDS and regional center defendants
20 to provide integrated community-based services and supports to class members who need
21 such services and supports. To the extent that this duty requires the exercise of discretion,
22 defendants CHHS Agency and Belshé have misinterpreted and violated the Lanterman Act
23 by failing to exercise their discretion with the constant goal of providing services and
24 supports in the least restrictive environment;

25 q. Failing to exercise budgetary authority in a manner which permits State
26 defendants CHHS Agency, DDS, DHS, DMH and the regional center defendants to fulfill
27 their legal obligations under state and federal law, including the Lanterman Act. State
28 defendant DOF and its director have the general power of supervision over all financial

1 policies of the state and are charged with ensuring that the rights and interests of the state are
2 conserved. Gov't. Code § 13070. DOF must approve all requests for additional funding
3 submitted by DDS. DOF is also required to work with the agencies and departments of the
4 state government to consult with and assist them in managing the funds budgeted to them in a
5 cost effective manner. Gov. Code § 13877 *et. seq.* DOF is required to carry out its
6 responsibilities in a manner that enables the other State defendants to conduct their activities
7 and provide services in compliance with the Lanterman Act. Plaintiffs are informed and
8 believe that State defendant DOF and its director have failed to take steps necessary to
9 provide funding to DDS and other State defendants sufficient to ensure that State defendants
10 and regional center defendants can conduct their activities and provide services in
11 compliance with the Lanterman Act. To the extent that their duties require the exercise of
12 discretion, State defendant DOF and its director have misinterpreted and violated the
13 Lanterman Act by failing to exercise their discretion with the constant goal of providing
14 services and supports in the least restrictive environment;

15 r. Failing to support State defendant DDS in its efforts to implement the
16 provisions of the Lanterman Act. State defendants DHS and its director, defendant Bontá,
17 have hindered DDS in its efforts to implement the provisions of the Lanterman Act by their
18 actions and omissions as the single state agency for the administration of Medicaid services
19 in California. DHS and its director have power to supervise every phase of the
20 administration of health care services and medical services in order to secure full compliance
21 with state and federal laws. Welf. & Inst. Code § 10740. DHS has the power to work as an
22 agent of and in cooperation with the federal government to acquire additional funds for the
23 implementation of state health programs. Welf. & Inst. Code § 10748. Medicaid services in
24 California (called Medi-Cal) are administered by defendant Bontá, the Director of DHS, the
25 state agency responsible for administering Medi-Cal mandatory, optional and waiver
26 services. 42 U.S.C. § 1396a(a)(5); Welf. & Inst. Code § 14137. Defendant DHS, as the
27 single state agency responsible to the federal government (CMS) on how California
28 administers its Medi-Cal program including HCB waivers, has the authority to request

1 additional waivers or expansion of current HCB waivers. Welf. & Inst. Code §§ 10740 and
2 10748. State defendant DHS's actions and omissions include, but are not limited to, failing to
3 apply for administrative costs, expansion of population caps and/or service definitions in
4 Medicaid Home and Community-Based Waiver programs, including, but not limited to, the
5 Developmental Disabilities and Nursing Facility A/B Waivers. As a result of these actions
6 and omissions, federal funds available to provide community-based services to many
7 institutionalized persons with developmental disabilities have not been accessed by the State.
8 Defendants DHS and Bontá have misinterpreted and violated the Lanterman Act by failing to
9 exercise their discretion with the constant goal of providing services and supports in the least
10 restrictive environment;

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

23 t. Failing to hold individual planning meetings with the "planning teams" of
24 plaintiff class members residing in the DCs as required by, *inter alia*, Welfare and
25 Institutions Code sections 4418.3(b)&(c), 4512(j), 4646, 4646.5 and 4647. The Lanterman
26 Act requires that a "planning team" jointly develop an individual program plan for every
27 person eligible for regional center services. Welf. & Inst. Code §§ 4646(c) & 4646(d). The
28 Lanterman Act defines the "planning team" as a group which includes "one or more regional

1 center representatives, including the designated regional center service coordinator." Welf.
2 & Inst. Code § 4512(j); *see also* Welf. & Inst. Code §§ 4647(a) & 4646.5(b) (mandating
3 regional center participation in the IPP process and setting forth planning team duties
4 including periodic review of all IPPs.). Welfare and Institutions Code sections 4418.3(b) and
5 4418.3(c) make State defendant DDS responsible for convening planning team meetings fo r
6 DC residents and ensuring that those planning teams develop IPPs consistent with the
7 mandates of sections 4646 and 4646.5. Plaintiffs are informed and believe that State
8 defendant DDS has violated Welfare and Institutions Code sections 4418.3(b) and 441 8.3(c)
9 by routinely convening planning team meetings for DC residents that are not attended by one
10 or more regional center representatives, including the designated regional center service
11 coordinator. To the extent that the convening of planning team mee tings involves the
12 exercise of discretion, State defendant DDS has violated sections 4418.3(b) and 4418.3(c) by
13 exercising its discretion in a manner that ignores the statutory command that a "planning
14 team" shall include "one or more regional center repre sentatives, including the designated
15 regional center service coordinator." Welf. & Inst. Code § 4512(j).

16 u. **{Plaintiffs preserve the right to seek appellate review of the dismissal of**
17 **this allegation.}** Plaintiffs incorporate every allegation set forth above and allege that each
18 and every allegation above states a claim for violation of "a clear, present, and ministerial
19 duty." *Unnamed Physician v. Board of Trustees*, 93 Cal. App. 4th 607, 618 (2001). The
20 Lanterman Act is a remedial statute enacted for the purpose of redressing "social, medical,
21 economic, and legal problems of extreme importance." Welf. & Inst. Code § 4501.
22 "[R]emedial statutes such as the Lanterman Act must be liberally construed to effectuate the
23 purposes for which they were enacted." *Clemente v. Amundson*, 60 Cal. App. 4th 1094, 1102
24 (1998). Thus, sections of the Lanterman Act that state what "may" or "should" be done are
25 enforceable as clear, present, ministerial duties. *See Hayes v. County of Los Angeles*, 99 Cal.
26 74, 80 (1893) ("[w]here the statute directs the doing of a thing for the sake of justice or for
27 the public good, the word 'may' is the same as the word 'shall.' Where persons or the public
28

1 have an interest in having the act done by the public body, *may* in such a statute means
2 *shall.*”); *People v. Ledsema*, 16 Cal. 4th 90, 95 (1997) (same).

3 **3. Violations Based Upon Exercise of Quasi-Legislative**
4 **Power.**

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

10 **B. DIRECT LIABILITY OF THE REGIONAL CENTER**
11 **DEFENDANTS FOR VIOLATIONS OF THE LANTERMAN**
12 **ACT.**

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

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

24 **1. Violations of Ministerial Duties.**

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

- 27 a. Failing to attend all planning team meetings and transition conferences for
28 residents of DCs. Section 4646 (c) provides that an individual program plan “shall” be
developed for any person eligible for regional center services and section 4646(d) requires
that individual program plans “shall” be prepared jointly by the planning team. Section

1 4512(j) defines the "planning team" as a group which includes "one or more regional center
2 representatives, including the designated regional center service coordinator." Section
3 4647(a) identifies participation in the individual program plan process as one of the required
4 regional center service coordination activities necessary to implement individual program
5 plans. Section 4646.5(b) provides that individual program plans "shall" be periodically
6 reviewed and modified and further provides that such reviews "shall" be done "by the
7 planning team." Section 4418.3(e) requires that participants in transition conferences "shall"
8 include a regional center representative. Viewed together, as required by California law,
9 and/or viewed separately, these sections of the Lanterman Act obligate regional center
10 representatives to attend and participate in all planning team meetings. Plaintiffs are
11 informed and believe that the regional center defendants have violated these and other
12 Lanterman Act provisions by failing to attend planning team meetings and transition
13 conferences for residents of developmental centers;

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

1 are informed and believe that the regional center defendants have violated sections 4646 and
2 4646.5 by failing to conduct assessments of class members for purposes of including in all
3 IPPs a statement of goals designed to maximize opportunities for community integration, and
4 by failing to develop IPPs for class members that include a statement of such goals or a
5 schedule of services and supports needed to achieve those goals;

6 c. Failing to implement Plaintiffs' and class members' IPPs that specify services
7 needed for movement to non-institutional, community living arrangements or to avoid
8 placement in an institution. Section 4648(a) states that regional centers "shall secure
9 services and supports that meet the needs of the consumer, as determined in the consumer's
10 individual program plan." Citing section 4648, the California Supreme Court affirmed the
11 non-discretionary requirement that regional centers implement all IPPs by holding that, while
12 regional centers have discretion in determining how to implement individual program plans,
13 they "have no discretion at all in determining whether to implement [IPPs]: they must do
14 so." *ARC*, 38 Cal. 3d at 390. Plaintiffs are informed and believe that the regional center
15 defendants have violated section 4648, as construed by the California Supreme Court, by
16 failing to implement IPPs that specify services needed for movement into less restrictive
17 settings or deflection from institutions;

18 d. Failing to follow the criteria set forth in Welfare and Institutions Code section
19 4648(a) in securing services and supports for consumers. Section 4648 sets forth the
20 activities regional centers "shall" conduct to achieve the objectives of each person's
21 individual program plan. Section 4648(a) requires that the regional center "shall" secure
22 needed services and supports. Section 4648(a)(1) requires that regional centers "shall give
23 highest preference to those services and supports which would allow minors with
24 developmental disabilities to live with their families, adult persons with developmental
25 disabilities to live as independently as possible in the community, and that allow all
26 consumers to interact with persons without disabilities in positive meaningful ways." Section
27 4648(a)(2) specifies that regional centers "shall first consider services and supports in natural
28 community, home, work and recreational settings." Plaintiffs are informed and believe that

1 the regional center defendants have violated section 4648 by failing to give primary
2 consideration, if any consideration at all, to services and supports which would maximize
3 community integration;

4 e. Failing to hold annual meetings with county mental health directors. Welfare
5 and Institutions Code section 4696.1(d) commands that regional center directors "shall" meet
6 with county mental health directors "as needed but no less than annually" to review the
7 effectiveness of interagency collaboration, address outstanding policy issues between the
8 agencies, and establish direction and priorities for future collaboration. Plaintiffs are
9 informed and believe that the regional center defendants have failed to hold at least annual
10 meetings with county mental health directors as required by section 4696.1(d);

11 f. Failing to develop IPPs recommending community placement and failure to
12 implement IPP recommendatio ns for community placement of developmental center
13 residents over the objection of family members or conservators. Welfare and Institutions
14 Code section 4646(d) provides that family members and/or conservators may be included in
15 the decision-making process, but commands that "[i]ndividual program plans shall be
16 prepared jointly by the planning team." In addition, permitting family members or
17 conservators to unilaterally veto community placement recommendations violates DC
18 residents' due process rights and the permanent injunction issued in *Richard S. et al. v. DDS*
19 *et al. v. Bell et al.* (U.S. District Court Case No. SACV 97-219-GLT; CD Cal. 2000).
20 Plaintiffs are informed and believe that the regional center defendants have violated section
21 4646(d) by permitting family members and conservators of DC residents to, in effect,
22 unilaterally prevent community placement of DC residents who could live in less restrictive
23 settings;

24 g. Failing to ensure deflection from placement in an institution by providing
25 emergency and crisis intervention services as mandated by, *inter alia*, Welfare and
26 Institutions Code sections 4648(a)(2) and 4648(a)(10). Section 4648(a)(2) requires that, in
27 implementing individual program plans, regional centers "shall" first consider services and
28 supports in the community. Section 4648(a)(10) commands that "[c]risis services shall first

1 be provided without disrupting a person's living arrangement. If crisis intervention services
2 are unsuccessful, emergency housing shall be available in the person's home community."
3 Plaintiffs are informed and believe that the regional center defendants have violated sections
4 4648(a)(2) and 4648(a)(10) by failing to provide emergency and crisis intervention services
5 in consumers' own homes and the community when consumers are at risk of placement in an
6 institution;

7 h. Failing to conduct required activities to deflect class members from placement
8 in DCs. Welfare and Institutions Code section 4418.7 commands that regional centers
9 immediately notify the RRDP to arrange for an immediate assessment of the need for
10 additional services and supports and to conduct IPP meetings with RRDP staff whenever a
11 community placement is at risk of failing and admittance to a state DC is a likelihood.
12 Plaintiffs are informed and believe that the regional center defendants have failed to adhere
13 to the process described in section 4418.7 whenever a community placement of a consumer
14 is at risk of failing;

15 i. Failing to identify and pursue all possible sources of funding and failing to
16 disseminate information and training to all service coordinators regarding the availability and
17 requirements of federally funded and private insurance programs as mandated by Welfare
18 and Institutions Code sections 4659(a) and 4659(d)(2). Section 4659(a) mandates that
19 regional centers identify and pursue all possible sources of funding for consumers receiving
20 regional center services. In order to make full use of all available resources, section
21 4659(d)(2) commands that regional centers disseminate information about federally funded
22 and private insurance to all service coordinators. Plaintiffs are informed and believe that the
23 regional center defendants have not complied with the directives of sections 4659(a) and
24 4659(d)(2).

25 **2. Violation of Statutory Requirements.**

26 235. The Lanterman Act contains numerous individual provisions which grant the regional
27 center defendants discretion in carrying out their duties thereunder. California law requires that
28 these individual provisions be construed in light of the overall purpose of the Lanterman Act

1 statutory scheme. *See People v. Morris*, 46 Cal. 3d 1, 16 (1988) ("Statutory language should not be
2 interpreted in isolation, but must be construed in the context of the entire statute of which it is a part,
3 in order to achieve harmony among the other parts"); *People v. Hammer*, 30 Cal. 4th 756, 762-63
4 (2003) (Courts must "harmonize the various parts of a statutory enactment by considering the
5 particular clause or section in the context of the statutory framework as a whole").

6 236. Plaintiffs allege that the regional center defendants, through their policies and
7 practices, have violated the Lanterman Act by carrying out their duties and obligations under an
8 improper interpretation of the Lanterman Act: an interpretation that ignores the right of each person
9 with developmental disabilities to treatment and services in the least restrictive environment in
10 which his or her needs can be accommodated. *See* ¶¶ 226-229 above (detailing core rights and
11 minimum requirements of Lanterman Act); *also* Welf. & Inst. Code § 4502(a); *ARC*, 38 Cal. 3d at
12 393 (setting forth core "rights" and "responsibilities" of the Lanterman Act). These violations may
13 be remedied by issuance of a writ of mandate and/or through injunctive and/or declaratory relief.

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

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

1 work and recreational settings.” Welf. & Inst. Code § 4648(a)(2). Plaintiffs are informed
2 and believe that the regional center defendants have violated the IPP process requirements in
3 Welfare and Institutions Code sections 4646.5(a)(2), 4648(a)(1) and 4648(a)(2) by failing to
4 exercise their discretion thereunder with the constant goal of providing services and supports
5 in the least restrictive environment;

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

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

1 d. With respect to DC residents, failing to develop IPPs recommending
2 community placement and failing to implement IPP recommendations for community
3 placement over the objection of family members or conservators. The Lanterman Act
4 requires that decisions of IPP planning teams be made jointly. Welf. & Inst. Code § 4646(d).
5 Permitting conservators and family members of DC residents to, in effect, unilaterally
6 prevent community placement of DC residents who could live in less restrictive settings is
7 inconsistent with the Lanterman Act IPP process and the integration mandate. In addition,
8 permitting family members or conservators to unilaterally veto community placement
9 recommendations violates DC residents' due process rights and the permanent injunction
10 issued in *Richard S. et al. v. DDS et al. v. Bell et al.* (U.S. District Court Case No. SACV 97-
11 219-GLT; CD Cal. 2000). Plaintiffs are informed and believe that the regional center
12 defendants have violated Welfare and Institutions Code section 4646(d) by failing to exercise
13 their discretion thereunder with the constant goal of providing services and supports in the
14 least restrictive environment;

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

27 f. Depriving plaintiffs and the class they represent of the opportunity for
28 integration into the mainstream of community life by failing to maintain sufficient quality,

1 stable, community living arrangements and ancillary supports to adequately provide for the
2 needs and choices of class members who currently reside in public and private institutions ,
3 and/or who are at risk of placement in an institutional setting. Welfare and Institutions Code
4 sections 4418.25, 4418.5, 4512(b), 4513, 4648, 4651(b), 4652, 4677, 4669.2, 4680, 4685,
5 4685.1, 4688, 4689, 4689.1, 4690, 4696, 4696.1 and 4787 provide for placement in
6 community living arrangements, including home -based arrangements, provide for the
7 development of innovative resources to meet consumers' needs and require the State and
8 regional center defendants to maintain, develop and adequately fund a sufficient array of
9 quality, community living arrangements and ancillary supports to provide for class members
10 to be served in least restrictive community settings. When necessary to expand the
11 availability of needed services, regional centers may, for example, solicit providers through
12 requests for proposals, request funds for the start -up costs of new services, and use creative
13 service delivery models. Welf. & Inst. Code §§ 4648 (e) & 4418.25. With the approval of
14 DDS, regional centers may develop service delivery alternatives outside the confines of other
15 provisions of law. Welf. & Inst. Code § 4669.2. Plaintiffs are informed and believe that
16 regional center defendants fail to fully and effectively utilize available community service
17 models, expand the availability of current service models and develop new and innovative
18 resources, which would enable class members to live successfully in non -institutional
19 settings. Thus, Plaintiffs are informed and believe that the regional center defendants have
20 violated Welfare and Institutions Code sections 4418.25, 4418.5, 4512(b), 4513, 4648,
21 4651(b), 4652, 4677, 4669.2, 4680, 4685, 4685.1, 4688, 4689, 4689.1, 4690, 4696, 4696.1
22 and 4787 by failing to exercise their discretion thereunder with the constant goal of
23 providing services and supports in the least restrictive environment;

24 g. Failing to fully and effectively obtain and utilize community-based waiver
25 services for those class members eligible for such services. The regional center defendants
26 are responsible for identifying and maximizing utilization of federal funding and other
27 sources of funding for community-based services, including utilizing community-based
28 waiver services for eligible class members. Welf. & Inst. Code § 4659. Though the regional

1 center defendants have limited discretion in making use of available funding sources,
2 plaintiffs are informed and believe that the regional center defendants have violated Welfare
3 and Institutions Code section 4659 by failing to exercise their discretion with the constant
4 goal of providing services and supports in the least restrictive environment;

5 h. Failing to take all necessary steps to deflect people at risk of
6 institutionalization from placement in an institution. The Lanterman Act requires regional
7 centers to conduct adequate assessments and provide needed services and supports, including
8 crisis services and supplemental supports, to enable consumers to remain in the least
9 restrictive, most integrated setting in which their needs can be accommodated. Welf. & Inst.
10 Code §§ 4646, 4646.5, 4648(a)(9) & (a)(10), 4685(c)(2) & 4696.1(b)&(d). In addition to
11 these overall requirements, whenever a community placement of a consumer is at risk of
12 failing and admittance to a state developmental center is a likelihood, the Lanterman Act
13 requires the regional center to notify and collaborate with the DDS-administered RRDPs on
14 an immediate assessment, on conducting an IPP and on the provision of needed additional
15 emergency services until the consumer's living arrangement is stable. Welf. & Inst. Code
16 §§ 4418.7. Plaintiffs are informed and believe that the regional center defendants have
17 violated Welfare and Institutions Code sections 4418.7, 4646, 4646.5, 4648(a)(9) & (a)(10),
18 4685(c)(2), and 4696.1(b)&(d) by failing to exercise their discretion with the constant goal of
19 providing services and supports in the least restrictive environment;

20 i. Submitting community placement plans ("CPPs") that set inordinately low
21 goals for placing individuals from the DCs in community settings, failing to request
22 sufficient resources for placement and deflection, and failing to fully implement approved
23 CPPs. Welfare and Institutions Code section 4418.25 mandates that regional centers submit
24 annual CPPs identifying selected DC residents for movement to community settings,
25 identifying the funding needed for comprehensive assessments and community supports, and
26 identifying services needed for deflection. The review criteria of section 4418.25(c) makes
27 clear that each regional center must develop its plan light of its "current developmental center
28 population and their corresponding placement level, as well as each regional center's need to

1 develop new and innovative service models." Regional centers are to be held accountable for
2 development and implementation of their approved plans. *Id.* Plaintiffs are informed and
3 believe that regional center defendants have violated Welfare and Institutions Code section
4 4418.25 by failing to exercise their discretion thereunder with the constant goal of providing
5 services and supports in the least restrictive environment;

6 j. Failing to provide specialized services for class members with dual diagnoses
7 in order that they may live in least restrictive community settings. The Lanterman Act
8 requires that the regional center defendants coordinate with county mental health agencies to
9 plan for and deliver services and supports to people with dual diagnoses. *Welf. & Inst. Code*
10 §§ 4696, 4696.1. Regional centers are required to develop memoranda of understanding
11 addressing specific issues and to meet with local health directors at least annually to review
12 the effectiveness of interagency collaboration, address outstanding policy issues between the
13 agencies, and establish direction and priorities for future collaboration. *Welf. & Inst. Code*
14 § 4696.1(b)&(d). Further, regional centers may request higher rates for residential living
15 arrangements for people who are dually diagnosed (*Welf. & Inst. Code* § 4681.1(d)), and
16 may seek to negotiate higher than normally permissible rates for services, including
17 psychiatric services, that people with dual diagnoses may need (*Welf. & Inst. Code*
18 § 4669.2(a)(3)). Plaintiffs are informed and believe that the regional center defendants have
19 violated Welfare and Institutions Code sections 4681.1(d), 4669.2(a)(3), 4696 and 4696.1 by
20 failing to exercise their discretion with the constant goal of providing services and supports
21 in the least restrictive environment;

22 k. Failing to maintain the staffing and/or expertise necessary to ensure that class
23 members have the supports they need to move to or remain successfully living in less
24 restrictive settings. Welfare and Institutions Code section 4640.6(g) requires that regional
25 centers, pursuant to their contracts, must have, or contract with, staff possessing expertise in
26 the areas of, *inter alia*, community integration, housing, criminal justice, family support, and
27 quality assurance. Plaintiffs are informed and believe that the regional centers provide
28 inadequate expertise and assistance in these areas and have thus violated Welfare and

1 Institutions Code section 4640.6(g) by failing to exercise their discretion with the constant
2 goal of providing services and supports in the least restrictive environment;

3 1. Failing to adequately identify unmet systemic needs for re source development
4 to enable people living in institutions to move to less restrictive, more integrated living
5 arrangements. Welfare and Institutions Code sections 4648(d), (e), (f) & (g), and 4677(b)
6 require that the regional center defendants identify s ervices and supports needed but currently
7 unavailable so that services and supports are developed to support consumers in integrated
8 settings. Plaintiffs are informed and believe that the regional center defendants have violated
9 Welfare and Institutions Code sections 4648(d), (e), (f) & (g), and 4677(b) by failing to
10 exercise their discretion with the constant goal of providing services and supports in the least
11 restrictive environment;

12 **C. ALL DEFENDANTS ARE INDISPENSABLE PARTIES WITH**
13 **RESPECT TO ANY VIOLA TIONS OF THE LANTERMAN**
14 **ACT.**

15 237. All of the defendants have an interest relating to this action because all of the
16 defendants play key roles in the administration and delivery of services and supports to Californians
17 with developmental disabilities. All of the defendants are so situated that the disposition of the
18 action in the absence of any of the defendants may impede their ability to protect their interest, or
19 may leave any of the remaining parties subject to the risk of incurring obligations that are
20 inconsistent with the systems and procedures set forth in the Lanterman Act.

21 238. Because all of the defendants play key roles and work together in the administration
22 and delivery of services and supports to Californians with developmental disabilities, complete relief
23 cannot be accorded in the absence of any of the defendants.

24 **XI.**

25 **SECOND CAUSE OF ACTION**

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

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

28 240. This cause of action is brought by all plaintiffs against all defendants.

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

6 242. Plaintiffs and class members are persons with disabilities within the meaning of
7 Government Code section 11135 and Welfare and Institutions Code section 4502.

8 243. Defendants operate programs and activities that are funded directly by the State .

9 244. Defendants DDS and regional centers have discriminated against those class members
10 who reside in institutions in violation of Government Code section 11135 by failing to provide
11 services in the most integrated setting possible even though in many cases these defendants have
12 determined or recommended that class members could be served in less restrictive residential
13 settings in the community.

14 245. All defendants, by their policies, practices, and methods of administration—including
15 those related to assessment of needs, funding, rate-setting, and program development—have failed to
16 identify the services that would enable individual plaintiffs and class members to live in the most
17 integrated settings appropriate and failed to ensure the availability of sufficient community programs
18 to meet the long-term care needs of plaintiffs and class members. The result of defendants' conduct
19 is unnecessary segregation and isolation of plaintiffs and class members, and the risk of unnecessary
20 institutionalization for some class members, in violation of Government Code section 11135
21 requiring that services be provided in the most integrated setting appropriate to the needs of qualified
22 individuals with disabilities.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

XII.

THIRD CAUSE OF ACTION

(Deprivation of Rights Under the Americans with Disabilities Act)

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

248. This cause of action is brought by all plaintiffs against defendants Belshé, Allenby, Bontá and Gage who are public agency directors responsible for the operation of a public entity, pursuant to 42 U.S.C. sections 12131(1)(A) and (B).

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

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

251. Defendants Belshé, Allenby, Bontá and Genest violate Title II of the ADA by utilizing methods of administration that subject qualified people with disabilities to discrimination on the basis of disability in, *inter alia*, failing to properly assess the services and supports that would enable plaintiffs to live in the community, failing to utilize available sources of funding for community services, favoring institutional care over community care in the allocation of funds, and failing to inform plaintiffs of community living options and ancillary services.

252. Defendants Belshé’s, Allenby’s, Bontá’s, and Genest’s policies and practices—including those related to assessment, funding, rate -setting and program development—have failed to ensure the availability of community programs sufficient to meet the needs of plaintiffs and class members and have made the creation of a sufficient number and variety of integrated community living options and ancillary services all but impossible. These defendants have thereby discriminated against those class members who reside in institutions and those who are at risk of institutionalization in violation of Title II of the ADA by failing to provide services in the most integrated setting appropriate even when plaintiffs and class members have been recommended for

1 more integrated community living arrangements. Defendants Belshé, Allenby, Bontá, and Genest
2 thereby violate Title II of the ADA and implementing regulations including, but not limited to, the
3 ADA's integration mandate, which requires that such services be provided in the most integrated
4 setting appropriate to the needs of qualified individuals with disabilities. 28 C.F.R. § 35.130(d).

5 253. In addition, while defendants provide many people with less severe developmental
6 disabilities appropriate in non-institutional community living arrangements, class members who
7 have more severe disabilities, including those with challenging behaviors, dual diagnoses, or medical
8 conditions, are disproportionately denied the same opportunities. Defendants Belshé, Allenby,
9 Bontá, and Genest have thereby additionally violated Title II of the ADA by discriminating against
10 class members based on the severity of their disabilities.

11 **XIII.**

12 **FOURTH CAUSE OF ACTION**

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

14 254. Plaintiffs reallege and incorporate every allegation and paragraph set forth above

15 255. This cause of action is brought by all plaintiffs against all defendants.

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

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

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

1 pursue and obtain safety, happiness, and privacy. Article 1, section 7(a) of the California
2 Constitution provides that “[a] person may not be deprived of ... liberty ... without due process of
3 law or denied equal protection of the laws ...”

4 266. Defendants’ policies and practices which are challenged in this action have resulted
5 and will result in the indefinite and inappropriate institutionalization of plaintiffs and class members.
6 These policies and practices thereby violate the rights guaranteed plaintiffs and class members under
7 Article 1, sections 1 and 7(a) for the following reasons:

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

14 b) The State must provide treatment and services in a manner which least drastically
15 curtails the freedom of the individual. By failing to ensure that plain tiffs and class members
16 receive services under the least restrictive conditions necessary to meet their individual
17 needs, defendants have violated and continue to violate class members’ right to personal
18 liberty guaranteed under Article 1, section 1.

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

22 d) Inappropriate confinement in public and private institutions infringes on
23 plaintiffs’ and class members’ fundamental freedom to associate by preventing them from
24 living in the community, thereby restricting their ability to participate in community
25 activities and associate with non-disabled members of the community, including family and
26 friends.

27 e) The unnecessary and inappropriate segregation in public and private institutions
28 of persons with developmental disabilities, including plaintiffs and class members, whose

1 needs could be met in less restrictive placements in the community, denies these individuals
2 equal protection of the laws in violation of Art. 1, §7(a). Moreover, the inappropriate
3 segregation and confinement of class members in public and private institutions adversely
4 affects their fundamental rights, including the rights to liberty, privacy, and freedom of
5 association, thereby further denying them rights to due process and equal protection of the
6 laws guaranteed under the California Constitution.

7 **XV.**

8 **SIXTH CAUSE OF ACTION**

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

10 267. Plaintiffs reallege and incorporate every allegation and paragraph set forth above.

11 268. This cause of action is brought by all plaintiffs against all defendants.

12 269. Plaintiffs and class members have a constitutionally protected liberty interest in
13 receiving minimally adequate or reasonable care and services and in being free from undue restraint,
14 including the right to be free of confinement in an institution, when professional judgment
15 recommends that institutionalization is not necessary. Plaintiffs and class members also have a
16 fundamental liberty interest in being able to move to the community and seek their release from
17 institutions without arbitrary procedures. Thus, plaintiffs and class members have the right to an
18 assessment of the appropriateness of community services by qualified professionals who have
19 knowledge of the possible variety of community living options and ancillary services and no conflict
20 of interest.

21 270. The policies, practices, actions and omissions of defendants deprive plaintiffs of their
22 fundamental liberty interests in violation of the Due Process Clause of the Fourteenth Amendment
23 including, but not limited to:

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

27 b) Many individual plaintiffs and class members have been recommended by their
28 IPP teams, including state and regional center professionals, for movement from public or

1 private institutions to less restrictive community homes, yet they remain institutionalized due
2 to the lack of adequate community resources which can meet their individual needs;

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

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

16 271. Defendants have violated the rights of plaintiffs and class members to the freedoms of
17 expression and association secured by the First Amendment by preventing them from living in the
18 community, thereby restricting their ability to participate in community activities and associate with
19 non-disabled members of the community including family and friends.

20 272. Defendants have violated the rights of plaintiffs and class members secured by the
21 Equal Protection Clause of the Fourteenth Amendment by establishing, encouraging and otherwise
22 sanctioning programs, policies and practices that have excluded, separated and segregated people
23 with developmental disabilities from society without any rational basis.

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

27 **XVI.**

28 **SEVENTH CAUSE OF ACTION**

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

2 274. Plaintiffs reallege and incorporate every allegation and paragraph set forth above.

3 275. This cause of action is brought by all plaintiffs against State defendants.

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

8 277. Plaintiffs and class members are eligible for Medi-Cal Home and Community-based
9 (HCB) waiver services.

10 278. Defendants' policies and practices violate the rights of plaintiffs and class members
11 including, but not limited to:

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

14 b) Failing to review adequately the appropriateness of their continued placement in
15 the DCs and other Title XIX facilities in which they reside and failing to determine the
16 feasibility of meeting their needs through alternative non-institutional services, as required by
17 42 C.F.R. section 456.609(c);

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

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

25 e) **{This allegation has been dismissed by the Court. Plaintiffs preserve the**
26 **right to seek appellate review of the dismissal of this allegation.}** Failing to ensure the
27 provision of necessary safeguards to assure that care and services are provided in a manner
28

1 consistent with simplicity of administration and the best interests of the recipients, in
2 violation of 42 U.S.C. § 1396a(19).

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

5 g) Failing to furnish community services comparably to all eligible individuals, as
6 required by 42 U.S.C. section 1396a(a)(10)(B);and

7 h) Failing to use methods and procedures, including funding, necessary to safeguard
8 against unnecessary utilization of institutional services and enlist enough providers so that
9 community services are available as required by 42 U.S.C. section 1396a(a)(30)(A) and in
10 violation of Congressional intent to “provid[e] suitable alternatives to institutional care.” 113
11 Cong. Rec. 11417 (1967).

12 279. As a result, plaintiffs and class members are at risk of being, or continue to be
13 unnecessarily institutionalized.

14 280. Defendants, through defendants DHS and Bontá, have failed to apply for expansion of
15 the HCB Nursing Facility waiver sufficient to meet the needs of eligible individuals throughout the
16 state, including plaintiffs and class members, so that feasible community alternatives are available
17 promptly to people with nursing needs in violation of 42 U.S.C. section 1396a(a)(8), 42 C.F.R.
18 section 435.930(a), and 42 U.S.C. section 1396n(c)(2)(C), Welfare & Institutions Code section
19 14137.

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

25 282. Petitioners have no plain, speedy, and adequate remedy at law for defendants’ actions
26 complained of above.

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

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

7 b) Discriminating against plaintiffs and class members on the basis of disability, and
8 on the basis of severity of disability, by utilizing methods of administration, applying
9 policies, and engaging in practices that result in unnecessary segregation and
10 institutionalization;

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

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

15 5. As to defendants Belshé, Allenby, Bontá and Genest, declare that defendants’ policies,
16 practices, acts and omissions, as set forth above, discriminate against plaintiffs and class members
17 on the basis of disability, and on the basis of severity of disability, by utilizing methods of
18 administration, applying policies, and engaging in practices that result in unnecessary segregation
19 and institutionalization in violation of Title II of the ADA and its implementing regulations.

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

24 7. As to the regional center defendants, declare that defendants’ unfair and/or unlawful
25 conduct constitutes unfair and unlawful business practices in violation of Business and Professions
26 Code section 17200.

27 8. Enjoin all defendants, their officers, agents, employees, successors, and all other
28 persons in active concert or participation with any of them from further violation of plaintiffs’ and

1 class members' rights under the Lanterman Act, Government Code section 11135, section 504 of
2 the Rehabilitation Act, the California Constitution and the United States Constitution and 42 U.S.C.
3 section 1983.

4 9. Enjoin defendants Belshé, Allenby, Bontá and Genest, their officers, agents,
5 employees, successors, and all other persons in active concert or participation with any of them from
6 further violation of plaintiffs' and class members' rights under the ADA and its implementing
7 regulations.

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

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

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

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

25 14. Issue an injunction and/or writ of mandate compelling all defendants, their officers,
26 agents, employees, successors, and all other persons in active concert or participation, with any of
27 them, to comply with their obligations under the Lanterman Act, State and Federal anti-
28

1 discrimination laws, State and Federal Constitutions, Title XIX of the Social Security Act and
2 Business and Professions Code section 17200, as applicable, by ordering them to:

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

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

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

11 d. Comply with the person-centered, assessment and individualized program
12 planning provisions of the Lanterman Act, including conducting timely and
13 comprehensive assessments of the services and supports needed by individual plaintiffs'
14 and class members to which they are entitled and that would enable them to live in the
15 least restrictive, most integrated community placement;

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

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

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

25 h. Ensure that IPPs are based on choice and need rather than availability of
26 services and reflect the values of supporting the person with relationships, productive
27 work, participation in community life, and personal decision-making;
28

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

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

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

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

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

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

27 o. Offer plaintiffs and class members the full range of home and community -
28 based waiver services, including DD and NF waiver services, for which they are eligible,

1 within a specifically defined reasonably prompt time period; including, as necessary,
2 applying for expansions of or modifications to California's home and community-based
3 waivers.

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

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

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

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

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

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

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

26 w. Take all other actions necessary to comply with law and keep individuals with
27 developmental disabilities from being unnecessarily institutionalized.
28

