STANLEY LIGAS, et al., Plaintiffs, vs. BARRY S. MARAM, et al., Defendants.

No. 05 C 4331

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

2005 U.S. Dist. Ct. Motions 54331; 2006 U.S. Dist. Ct. Motions LEXIS 78358

January 10, 2006

Motion to Certify Class

COUNSEL: [*1] attorneys for Plaintiffs, Barry G. Lowy, Laura J. Miller, Barry C. Taylor, John W. Whitcomb, EQUIP FOR EQUALITY, Chicago, Illinois, John I. Grossbart, Kendra K. Hartman, SONNENSCHEIN NATH & ROSENTHAL LLP, Chicago, Illinois, Max Lapertosa, Kenneth M. Walden, ACCESS LIVING OF METROPOLITAN CHICAGO, Chicago, Illinois, Benjamin S. Wolf, AMERICAN CIVIL LIBERTIES UNION OF ILLINOIS, Chicago, Illinois, Judith A. Gran, PUBLIC INTEREST LAW CENTER OF PHILADELPHIA, Philadelphia, Pennsylvania.

JUDGES: Holderman; Magistrate Judge Ashman

TITLE: PLAINTIFFS' RENEWED MOTION FOR CLASS CERTIFICATION

TEXT: Plaintiffs, through counsel, respectfully renew their request to this Court to enter an Order to maintain this case as a class action under Rules 23(a), 23(b)(2) and 23(c) of the Federal Rules of Civil Procedure. n1

n1 Plaintiffs' initial Motion for Class Certification was filed on August 8, 2005, and denied as moot on October 31, 2005, so that the Court could first address pending motions to intervene. On December 27, 2005, the Court denied the motions to intervene. In light of that ruling, Plaintiffs hereby renew their request for certification of a class that is more narrowly defined, consistent with the suggestion made by the Court in its December 27th ruling.

[*2]

Plaintiffs propose a class of all persons in Illinois with disabilities who:

(1) have mental retardation and/or other developmental disabilities and who qualify for long-term care services;

(2) with appropriate supports and services, could live in the community and who would not oppose community placement; and

(3) either (a) are institutionalized in private Intermediate Care Facilities for the Developmentally Disabled ("ICF-DDs") with nine or more residents or (b) are living in a home-based setting, and are at risk of institutionalization because of their need for services.

In support of this renewed motion, Plaintiffs aver as follows:

1. Plaintiffs seek declaratory and injunctive relief on their own behalf and on behalf of all others similarly situated. Plaintiffs allege that Defendants have unnecessarily segregated them or placed them at risk of unnecessary segregation in large, private ICF-DDs, in violation of the Americans with Disabilities Act, *42 U.S.C. § 12132,* Section 504 of the Rehabilitation Act, *29 U.S.C. § 794*(a), and Title XIX of the Social Security Act, *42 U.S.C. §§ 1396* [*3] -1396v.

2. The defined class is so numerous that joinder of all individual claims is impracticable. The class potentially includes nearly 6,000 people in ICF-DDs and thousands more people at risk of ICF-DD placement.

3. There are questions of law and fact common to the class. Those questions predominate over questions affecting individual class members.

4. The claims of the named Plaintiffs are typical of those of the class. The named Plaintiffs are segregated unnecessarily in ICF-DDs, or at risk thereof, because Defendants have denied or failed to provide them appropriate supports and services that would allow them to live in the community.

5. The named Plaintiffs will fairly and adequately protect the interests of the class. They have no interests that conflict with or are antagonistic to the class, and they seek relief that will benefit all members of the class. Plaintiffs' counsel are competent and experienced in class-action civil rights cases of this nature.

6. Defendants, by unnecessarily segregating Plaintiffs in ICF-DDs or placing them at risk thereof, have acted on grounds generally applicable to the class. Therefore, declaratory and injunctive [*4] relief with respect to the entire class is appropriate.

7. Plaintiffs have prepared a Memorandum, attached hereto and filed concurrently with this Motion, articulating in greater detail the grounds for class certification.

WHEREFORE, Plaintiffs respectfully request this Court enter an Order certifying this case as a class action for the class of persons described above.

Respectfully submitted,

Dated: January 10, 2006

By /s/ Kendra K. Hartman
One of the attorneys for Plaintiffs

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PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF RENEWED MOTION FOR CLASS CERTIFICATION

I. INTRODUCTION

Plaintiffs, on behalf of themselves and all others similarly situated, have brought this action to enjoin Defendants, state officials who run Illinois's long-term care system for people with disabilities, from compelling their unnecessary segregation in large, privately run institutions, known as Intermediate Care Facilities for the Developmentally Disabled ("ICF-DDs"). The proposed class consists of all persons in Illinois with developmental disabilities who, with appropriate supports and services, could live in the community and who would not oppose community placement; but who are either segregated unnecessarily in ICF-DDs or at risk of such segregation due to Defendants' failure to provide these community services. n1

n1 See *Olmstead v. L.C., 527 U.S. 581, 589 (1999)* (there is a right to community services when they are "not opposed by the affected individual").

[*6]

Plaintiffs submit this memorandum in support of their renewed motion to maintain this case as a class action under Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure.

II. ARGUMENT: CLASS DETERMINATION IS APPROPRIATE

A. PLAINTIFFS MEET THE REQUIREMENTS OF RULE 23(a)

When determining a class under Rule 23(a), the Court may not consider the merits of Plaintiffs' claims and must take all factual allegations in the complaint as true. *Eisen v. Carlisle & Jacquelin, 417 U.S. 156, 177 (1974); Gomez v. Ill. State Bd. of Educ., 117 F.R.D. 394, 398 (N.D. Ill. 1987).* Additionally, civil rights cases alleging discriminatory policies or practices are "by definition" class actions, provided they meet the other requirements of Rule 23(a). *Gen. Tel. Co. v. Falcon, 457 U.S. 147, 157 (1982);* see also *Robert E. v. Lane, 530 F. Supp. 930, 944 (N.D. Ill. 1980)* (a case alleging civil rights violations in an institutional setting represents a "prototypical candidate" for class certification).

Under Rule 23(a), courts may certify a class when 1) its members are so numerous that joinder of all claims is [*7] impracticable, 2) there are questions of law or fact common to the class, 3) the claims of the representative parties are typical of the class claims, and 4) the representative parties and their counsel will fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a); *Alliance to End Repression v. Rochford, 565 F.2d 975, 977 (7th Cir. 1977);* Fields v. Maram, No. 04-*C-0174, 2004 U.S. Dist. LEXIS 16291* at *8-*9 (N.D. Ill. Aug. 16, 2004). Additionally, courts have recognized two implied requirements under Rule 23(a): the class must be readily identifiable and the named plaintiffs must be part of the class. *Alliance to End Repression, 565 F.2d at 977-78; Gomez, 117 F.R.D. at 397-98.* As shown below, the proposed class here easily meets these requirements.

1. Joinder Would Be Impracticable

Although commonly referred to as the "numerosity" requirement, "the crux of the numerosity requirement is not the number of interested persons per se, but the practicality of their joinder into a single suit." *Arenson v. Whitehall Convalescent & Nursing Home, 164 F.R.D. 659, 663 (N.D. Ill. 1996)* [*8] (quoting *Small v. Sullivan, 820 F. Supp. 1098, 1109 (S.D. Ill. 1992)).* While the number of class members is an important factor, others include "judicial economy, geographic diversity of class members, and the ability of individual class members to institute individual lawsuits ...." Id.; see also *Riordan v. Smith Barney, 113 F.R.D. 60, 61 (N.D. Ill. 1986)* ("[T]he test for impracticability of joinder is not simply a test for the number of class members."). Under these guidelines, this Court has certified classes with as few as 29 members. *Riordan, 113 F.R.D. at 61;* see also *Swanson v. Am. Consumer Indus., 415 F.2d 1326, 1333 (7th Cir. 1969)* (40 members sufficient).

In this case, there is no question joinder is impracticable. According to the Illinois Department of Public Health, approximately 5,935 people resided in ICF-DDs with nine or more beds as of December 31, 2003. See www.idph.state.il.us. Thousands of other residents live in the community and are at risk of institutionalization. Based on their sheer number alone, joinder is impracticable. See *Long v. Thornton Township High Sch., 82 F.R.D. 186, 189 (N.D. Ill. 1979)* [*9] (plaintiff not required to specify exact size of class as long as good-faith estimate is provided); *Fields, 2004 U.S. Dist. LEXIS 16291* at *13 ("[I]t is appropriate for the Court to make such common sense assumptions in determining whether the numerosity requirement is met."); *Wyatt v. Poundstone, 169 F.R.D. 155, 164 (M.D. Ala. 1995)* (in case on behalf of institutionalized persons with mental retardation, numerosity was met because "[t]here are approximately 1,000 mentally retarded individuals in the defendants' institutions ...").

Other circumstances also point to impracticability of joinder. As Medicaid recipients, class members are located throughout the state and do not have the financial means to bring individual lawsuits. *Fields, 2004 U.S. Dist. LEXIS 16291* at *18 ("Because the class members reside throughout the state, and because they are disabled and therefore are often of limited financial resources, joinder would be particularly difficult in this case."); *Arenson, 164 F.R.D. at 663* ("Class members who are residents of a nursing home may also lack the ability to pursue their claims individually."). It [*10] also is impracticable to join claims of future class members, who by their very nature cannot be readily identified. *Gomez, 117 F.R.D. at 399* ("The Court also notes that numerosity is met where, as here, the class includes individuals who will become members in the future.") (emphasis in original). Finally, judicial economy plainly would be served by consolidating the actions of all similarly-situated persons rather than having them litigate individually. *Arenson, 164 F.R.D. at 663.*

2. There Are Questions of Law and Fact Common to the Class

Rule 23(a) requires that there "need be only a single issue common to all members of the class." *Edmondson v. Simon, 86 F.R.D. 375, 380 (N.D. Ill. 1980); Hispanics United v. Vill. of Addison, 160 F.R.D. 681, 688 (N.D. Ill. 1995).* "A common nucleus of operative fact is usually enough to satisfy the commonality requirement of Rule 23(a)(2)." *Rosario v. Livaditis, 963 F.2d 1013, 1018 (7th Cir. 1992).* See also *Lightbourn v. County of El Paso, 118 F.3d 421, 425 (5th Cir. 1997)* ("The commonality test is met when there is at least one issue, [*11] the resolution of which will affect all or a significant number of the putative class members.") (citations omitted); *Baby Neal v. Casey, 43 F.3d 48, 55 (3d Cir. 1994)* (commonality met where "named plaintiffs share at least one question of fact or law with the grievances of the prospective class."); *Marisol A. v. Guiliani, 126 F.3d 372, 375 (2d Cir. 1997)* (class must "share a common question of law or fact").

Even when the effect on each class member differs, an allegation that the defendant's discriminatory policy or practice affects the class as a whole will suffice to prove commonality of claims. *Rosario, 963 F.2d at 1017* ("The fact that there is some factual variation among class grievances will not defeat a class action.") (citing *Patterson v. Gen. Motors Corp., 631 F.2d 476, 481* (7th Cir.), cert. denied, *451 U.S. 914 (1980)).* Thus, even if each class member's remedy differs, there is commonality if the injury flows from the same discriminatory acts or omissions. See *Marisol A., 126 F.3d at 376* (in class action involving foster children, "[t]he unique circumstances of each [*12] child do not compromise the common question of whether, as plaintiffs allege, defendants have failed to meet their federal and state law obligations.").

In this action, Plaintiffs have challenged the systematic failure of Defendants to provide them with services in integrated community settings as opposed to segregated institutions. This is a "common nucleus of operative fact" that affects all members of the class. Additionally, the class members share overriding questions of law: whether Defendants' conduct violates the Americans with Disabilities Act, *42 U.S.C. § 12132*, Section 504 of the Rehabilitation Act, *29 U.S.C. § 794*(a), and Title XIX of the Social Security Act, *42 U.S.C. §§ 1396*-1396v. Class actions routinely are certified in civil rights cases presenting common questions of this nature. See *Wyatt, 169 F.R.D. at 164-65* (commonality and typicality existed where "[t]he named plaintiffs share multiple interests and claims identical to the class members' claims."). As this Court has recognized, "[w]here 'broad discriminatory policies and practices [*13] constitute the gravamen of a class suit, common questions of law or fact are necessarily presumed.'" *Hispanics United, 160 F.R.D. at 688* (quoting *Midwest Cmty. Council v. Chicago Park Dist., 87 F.R.D. 457, 460 (N.D. Ill. 1980)).*

3. The Named Plaintiffs' Claims Are Typical of Those of the Class

The "typicality" requirement is met when the named plaintiffs' claims "arise[] from the same event or practice or course of conduct that gives rise to the claims of other class members and ... are based on the same legal theory." *De La Fuente v. Stokely-Van Camp, 713 F.2d 225, 232 (7th Cir. 1983).* This question is "closely related to the preceding question of commonality." *Rosario, 963 F.2d at 1018;* see also *Falcon, 457 U.S. at 157 n.13* ("the commonality and typicality requirements of Rule 23(a) tend to merge..."). As with commonality, typicality does not require that all class members suffer the same injury as the named plaintiffs. "Instead, we look to the defendant's conduct and the plaintiffs'

legal theory to satisfy Rule 23(a)(3)." Id.; see also *De La Fuente, 713 F.2d at 232* [*14] (typicality satisfied regardless of whether "there are factual distinctions between the claims of the named plaintiffs and those of other class members. Thus, similarity of legal theory may control even in the face of differences of fact.").

Here, the named plaintiffs have been refused community services by Defendants and as a result are, or are at risk of being, unnecessarily institutionalized; therefore, their claims are identical to those of the putative class, which consists of other persons with developmental disabilities who are unnecessarily institutionalized or at risk thereof. Because the named plaintiffs and the class share the same deprivations of federal rights, typicality is easily met here.

4. The Named Plaintiffs and their Counsel Will Fairly and Adequately Protect the Interests of the Class

The question of whether the named plaintiffs will adequately protect the interests of the class is twofold. The first inquiry is the adequacy of the named plaintiffs' representation of the interests of the class; the second is the adequacy of the named plaintiffs' counsel. *Hispanics United, 160 F.R.D. at 689.* As shown below, plaintiffs meet both requirements [*15] here.

a. The Named Plaintiffs' Interests are Not Antagonistic to Those of the Class

The ability of the named plaintiffs to represent the class goes to whether they have "sufficient interest in the outcome to ensure vigorous advocacy" (*Rosario, 963 F.2d at 1018)* as well as any interests "antagonistic to the interests of the class." *Riordan, 113 F.R.D. at 64.* Courts may deny certification based on grounds of antagonism only if that antagonism "goes to the subject matter of the litigation." Id. Potential conflicts that are remote or speculative will not defeat class certification. *Hispanics United, 160 F.R.D. at 689.*

In this case, Plaintiffs' interests are entirely coextensive with those of the class. They share the same claims as the class members as well as a strong interest in securing declaratory and injunctive relief to remedy their actual or threatened unnecessary segregation in ICF-DDs. This relief will benefit all members of the class. There are no conflicts or antagonism, whether actual or apparent, between the named plaintiffs and the class.

b. Plaintiffs' Counsel Are Qualified to Maintain This Action

Plaintiffs' [*16] counsel are personally experienced in disability civil rights and class action litigation and are well qualified to prosecute this action. The fact that counsel have been found adequate to represent classes of plaintiffs in the past constitutes "persuasive evidence" that they will serve as adequate counsel in this case. *Gomez, 117 F.R.D. at 401.*

Equip for Equality is the state-designated Protection and Advocacy agency for people with disabilities. See *42 U.S.C. § 15043.* It serves as class counsel in Access Living v. Chicago Transit Auth., No. 00-C-0070 (N.D. Ill.) (see *2001 U.S. Dist. LEXIS 6041* (N.D. Ill. May 9, 2001)). Its lawyers regularly litigate individual cases on behalf of individuals with disabilities. Additionally, Laura Miller of Equip for Equality served as class counsel in the following disability rights cases: Corey H. v. Board of Educ., No. 92-C-3409 (N.D. Ill.) (see *995 F. Supp. 900 (N.D. Ill. 1998))* and Calvin G. v. Board of Educ., No. 90-C-3248 (N.D. Ill.). John Whitcomb of Equip for Equality has served as class counsel in Norman v. Johnson, No. 89-C-1624 (N.D. Ill.) and [*17] Bates v. Johnson, No. 84-C-10054 (N.D. Ill.).

Access Living served as class counsel in Access Living v. Chicago Transit Auth., supra, and was certified as class counsel in Fields v. Maram, No. 04-C-0174 (N.D. Ill.) (see *2004 U.S. Dist. LEXIS 16291,* at *33 (N.D. Ill. Aug. 16, 2004)). It regularly litigates civil rights cases on behalf of people with disabilities. Additionally, Max Lapertosa of Access Living has served as class counsel in the following disability rights cases: Gaskin v. Pennsylvania, No. 94-CV-4048 (E.D. Pa.) (see *2002 U.S. Dist. LEXIS 14148* (E.D. Pa. July 22, 2002)) and Messier v. Southbury Training Sch., No. 94-CV-1706 (D. Conn.) (see *183 F.R.D. 350 (D. Conn. 1998)).* Other disability civil rights cases where Mr. Lapertosa has served as counsel include: *Jim C. v. United States, 235 F.3d 1079 (8th Cir. 2001); Birmingham v. Omaha Sch. Dist., 220 F.3d 850 (8th Cir. 2001); Bowers v. Nat'l Collegiate Athletic Ass'n, 171 F. Supp. 2d 389 (D.N.J. 2001)* and *151 F. Supp. 2d 526 (D.N.J. 2001).*

Benjamin Wolf of the American Civil Liberties Union [*18] of Illinois has over twenty years' experience representing institutionalized children and people with disabilities. He has served as class counsel in the following civil rights cases: B.H. v. McDonald, No. 88-C-5599 (N.D. Ill.) (see *49 F.3d 294 (7th Cir. 1995)* and *856 F. Supp. 1285 (N.D. Ill. 1994));* K.L. v. Edgar, No. 92-C-5722 (N.D. Ill.) (see *2000 U.S. Dist. LEXIS 15404* (N.D. Ill. Oct. 6, 2000)); A.N. v. Kiley, No. 86-C-9486 (N.D. Ill.) (see *1995 U.S. Dist. LEXIS 13993* (N.D. Ill. Sept. 22, 1995)); and A.T. v. County of Cook, No. 85-C-0325 (N.D. Ill.) (see *613 F. Supp. 775 (N.D. Ill. 1985)).*

Judith A. Gran of the Public Interest Law Center of Philadelphia has over twenty years' experience representing people with disabilities who are unnecessarily institutionalized. Cases in which she has served as class counsel include: People First v. Arlington Developmental Center, No. 92-02213 (W.D. Tenn.) (see *1998 U.S. App. LEXIS 9537* (6th Cir. May 7, 1998) (upholding class certification)); Haldeman v. Pennhurst State Sch. & Hosp., No. 94-1674 (E.D. Pa.) (see *43 F.3d 939 (3d Cir. 1995);* [*19] *901 F.2d 311 (3rd Cir. 1990); 9 F. Supp. 2d 544 (E.D. Pa. 1998); 899 F. Supp. 209 (E.D. Pa. 1995));* Jackson v. Fort Stanton Hosp. & Training Sch., No. CIV-87-0839 (D.N.M.) (see *964 F.2d 980 (10th Cir. 1992));* Gaskin v. Pennsylvania, No. 94-C-4048 (E.D. Pa.) (see *2002 U.S. Dist. LEXIS 14148* (E.D. Pa. Jul 22, 2002)); Messier v. Southbury Training Sch., No. 3:94-CV-1706 (D. Conn.) (see *183 F.R.D. 350 (D. Conn. 1998)),* and Bogard v. Duffy, No. 88-C-2414 (N.D. Ill.). Other prominent disability rights cases in which Ms. Gran served as counsel include *Jim C. v. United States, 235 F.3d 1079 (8th Cir. 2001); Birmingham v. Omaha Sch. Dist., 220 F.3d 850 (8th Cir. 2001); Shaw v. Stackhouse, 920 F.2d 1135 (3d Cir. 1990); Thompson v. U.S. Dep't of Labor, 813 F.2d 48 (3d Cir. 1987).*

Finally, counsel from Sonnenschein Nath & Rosenthal LLP, John Grossbart and Kendra Hartman, are experienced litigators who have represented clients in class action proceedings in more than 30 state and federal courts, including: In re The Prudential [*20] Ins. Co. of Am. Sales Practices Litig., No. 95-4704 (see *962 F. Supp. 450 (D.N.J. 1997),* aff'd, *148 F.3d 283 (3d Cir. 1998),* cert. denied, *525 U.S. 1114 (1999))* (an MDL of several nationwide class actions); Azar v. Prudential Ins. Co. of Am., 2003-NMCA-062 (N.M.); In re VMS Sec. Litig., No. 89-C-9448 (N.D. Ill.); Daniels v. Bursey, No. 03-C-1550 (N.D. Ill); and Sims v. Allstate Ins. Co., No. 99-L-393-A (20th Jud. Cir. Ill.).

5. The Class Is Readily Identifiable

A class under Rule 23(a) must be "readily identifiable." Specifically, "the description of the class must be sufficiently definite to permit ascertainment of the class members...." *Alliance to End Repression, 565 F.2d at 977.* A class description is sufficiently definite when its "scope is defined by the activities of the defendants." *Id. at 978.*

Here, the proposed definition identifies class members as persons with developmental disabilities who are unnecessarily institutionalized, or at risk thereof, due to Defendants' failure to provide appropriate community services and supports. This definition properly relies [*21] on objective, readily identifiable criteria. Whether a person is a class member is dependent upon Defendants' actions or inactions, and therefore "the Court can feasibly determine whether an individual is a class member ...." *Fields, 2004 U.S. Dist. LEXIS 16291* at *40. See also *Makin v. Hawaii, 114 F. Supp. 2d 1017, 1020 (D. Haw. 1999)* (in case under ADA integration mandate, court certified class of "mentally retarded people living at home who are on a wait list for services ..."). Thus, the class meets Rule 23(a)'s requirement for definitiveness.

6. Plaintiffs Are Members of the Class

Finally, the named plaintiffs must show they are part of the class they seek to represent. *Hendrix v. Faulkner, 525 F. Supp. 435, 442 (N.D. Ind. 1980),* aff'd in relevant part, *Wellman v. Faulkner, 715 F.2d 269 (7th Cir. 1983),* cert. denied, *468 U.S. 1217 (1984).* Here, each of the named plaintiffs is an actual resident of an ICF-DD, or is at risk of placement in an ICF-DD, who is nevertheless capable of living in the community; therefore, they meet the criteria for class membership.

B. PLAINTIFFS MEET [*22] **THE REQUIREMENTS OF RULE 23(b)(2)**

In addition to meeting the requirements of Rule 23(a), Plaintiffs must meet one of the requirements of Rule 23(b). Plaintiffs move here under Rule 23(b)(2), which allows courts to certify a class if the defendant "has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole." Fed. R. Civ. P. 23(b)(2). Civil rights cases against parties charged with broad-based discrimination are "prime examples" of actions under Rule 23(b)(2). *Amchem Prods v. Windsor, 521 U.S. 591, 613 (1997).*

This case is exemplary of a Rule 23(b)(2) action because Defendants' policies and practices affect all members of the class as well as the named plaintiffs, the remediation of which is well-suited for and requires declaratory and injunctive relief. Plaintiffs do not seek monetary damages for themselves or the class. Indeed, it is commonplace for class actions to proceed under Rule 23(b)(2) where people with disabilities seek to enforce their rights to community integration and services. [*23] See *Fields, 2004 U.S. Dist. LEXIS 16291,* at *39-*42; Hawkins v. Comm'r, No. 99-143-*JD, 2004 U.S. Dist. LEXIS 807,* at *11-*12 (D.N.H. Jan. 23, 2004); *Boulet v. Cellucci, 107 F. Supp. 2d 61, 81 (D. Mass. 2001); Verdow v. Sutkowy, 209 F.R.D. 309, 313 (N.D.N.Y. 2002);* Benjamin H. v. Ohl, No. 3:99-0338, *1999 U.S. Dist. LEXIS 22454,* at *11-*12 (S.D.W.V. Oct. 8, 1999); *Makin, 114 F. Supp. at 1020* (class of persons living at home certified in claim under ADA integration mandate); *Martin v. Taft, 222 F. Supp. 2d 940, 947 (S.D. Ohio 2002); Rolland v. Cellucci, 52 F. Supp. 2d 231, 233 (D. Mass. 1999); Haldeman v. Pennhurst State Sch. & Hosp., 995 F. Supp. 534, 536 (E.D. Pa. 1998); Wyatt, 169 F.R.D. at 164-68* (certifying class of "all current and future mentally-retarded and mentally-ill residents of any facility, hospital, center, or home, public or private, to which they are assigned or transferred for residence by the Alabama Department of Mental Health and Mental Retardation"); *Jackson v. Fort Stanton Hosp. & Training Sch., 757 F. Supp. 1243, 1257 (D.N.M. 1990)* [*24] (court certified class of "all persons presently residing at" four state institutions, "all persons who became or will become residents of the institutions during the pendency of the action; and all persons who have been transferred ... to skilled nursing facilities, intermediate care facilities, homes for the aged and similar facilities, and whose services are funded in whole or in part by defendants."), rev'd in part on other grounds, *964 F.2d 980 (10th Cir. 1992); Weaver v. Reagen, 701 F. Supp. 717, 722-23 (W.D. Mo. 1988),* aff'd, *886 F.2d 194 (8th Cir. 1989); Mitchell v. Johnston, 701 F.2d 337, 345-46 (5th Cir. 1983).*

III. CONCLUSION

For the reasons stated above, Plaintiffs respectfully request this Court grant their Renewed Motion for Class Certification.

Dated: January 10, 2006

Respectfully Submitted,

/s/ Kendra K. Hartman
By: One of the Attorneys for Plaintiffs

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