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

STANLEY LIGAS, et al.,	)	
	)	
Plaintiffs,	)	No. 05 C 4331
	)	
vs.	)	Chief Judge Holderman
	)	
BARRY S. MARAM, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM IN SUPPORT OF JOINT MOTION FOR SETTLEMENT CLASS CERTIFICATION, PRELIMINARY APPROVAL OF CONSENT DECREE, AND APPROVAL OF NOTICE PLAN

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

Statutes

Other Authorities

Rules

Plaintiffs Stanley Ligas, Jamie McElroy, David Cicarelli, Isaiah Fair, and Jennifer Wilson, on behalf of themselves and all others similarly situated ("Plaintiffs"), and Defendants Barry Maram[1] and Michelle R.B. Saddler, submit this joint memorandum in support of their Motion for Settlement Class Certification, Preliminary Approval of Consent Decree, and Approval of Notice Plan ("Motion"). For the reasons explained below, certification of the narrowly defined settlement class addressed by the recently executed proposed Consent Decree ("Decree," attached as Exhibit A) entered into between the Plaintiffs, Defendants and Intervenors is appropriate.[2] The proposed Decree is fair, reasonable, and provides substantial benefits to those individuals who affirmatively seek Community-Based Services and/or placement in a Community-Based Setting[3], while protecting the interests of individuals who are happy with the care they currently receive and/or have no interest in receiving such services. This Court should certify the proposed class, grant preliminary approval of the Decree, adopt the Notice Plan and related proposed forms of notice (attached hereto as Exhibit B) and proceed to consider any objections to the Decree and final approval.

BACKGROUND

[1] Since this lawsuit was filed, Julie Hamos has succeeded Mr. Maram as the Director of the Illinois Department of Healthcare and Family Services. Pursuant to Fed. R. Civ. P. 25(d), Ms. Hamos, as the successor to Mr. Maram, is deemed "automatically substituted as a party." The Parties respectfully request that this Court enter an Order consistent therewith.

[2] As set forth in the Decree, Intervenors, with the exception of the Mt. St. Joseph's Intervenors, join in the Motion to approve the Decree, and have represented to Plaintiffs' counsel that they do not oppose certification of the proposed class and approval of the proposed Notice Plan. Counsel for the Mt. St. Joseph Intervenors represented to Plaintiffs' counsel that he does not anticipate any objections from his clients to the proposed Decree, as well as the relief sought in the Motion, but simply was not able to obtain client consent prior to filing.

[3] The terms "Community-Based Services" and "Community-Based Setting" are defined in the Decree at page 4.

This action, as originally filed on July 28, 2005, and as the Second Amended Complaint continued to set forth, seeks to provide the choice of community placement to adults with developmental disabilities in compliance with Title II of the Americans with Disabilities Act, 42 U.S.C. § 12132, Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a), Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v, and the Supreme Court's integration mandate in *Olmstead v. L.C.*, 527 U.S. 591 (1999). Among other things, the *Olmstead* decision requires the State to develop a comprehensive, effectively working plan to offer individuals with developmental disabilities services in the most integrated setting appropriate to their needs. The named Plaintiffs are five adults with developmental disabilities who currently reside in Intermediate Care Facilities for individuals with Developmental Disabilities ("ICFs-DD"), or who reside in a Family Home and are in need of community-based services or placement, *and* who have affirmatively requested to receive Community-Based Services or placement in a Community-Based Setting. Defendants, named in their official capacities, operate the Illinois Department of Healthcare and Family Services ("HFS") and the Illinois Department of Human Services ("DHS").[4] Those agencies are responsible for administering Illinois' programs for providing services to persons with developmental disabilities. Intervenors are Illinois residents with developmental disabilities who have intervened in this lawsuit to ensure that the State of Illinois continues to meet its obligations to provide ICF-DD services. Plaintiffs, Defendants and Intervenors have agreed to all of the terms and relief set forth in the Decree.

The Class encompassed within the scope of the previously proposed consent decree agreed to by the Plaintiffs and Defendants in their first attempt to settle this matter included all developmentally disabled adults who either reside in ICFs-DD with nine or more beds or are at

[4] As stated above, Defendant Barry Maram has been succeeded by Julie Hamos and therefore no longer operates HFS.

risk of being placed in an ICF-DD. (CM/ECF Doc. Nos. 326, 327.) Due to the concern expressed by a large number of guardians and/or family members of persons within that group -- who either had no interest in, or objected to even being considered for Community-Based Services or a placement in a Community-Based Setting -- about the potential impact of the broadly applicable provisions of that earlier proposed decree, on July 7, 2009, the Court entered an Order denying approval of that decree and vacating its prior Order certifying the class. (CM/ECF Doc. No. 420.) In its decertification Order, the Court explained that "the class definition fails to restrict the class to developmentally disabled individuals that are eligible for, and desire, community placement." (*Id.* at p. 2.) All of the concerns previously expressed by the Court have been rectified by the Decree now presented.

Following the Court's July 7, 2009 Order, Plaintiffs filed their Second Amended Complaint on August 31, 2009, in which Plaintiffs sought relief for a significantly revised class specifically limited to those individuals who are expressly seeking Community-Based Services and/or placement in a Community-Based Setting. (CM/ECF Doc. No. 485). On or about January 11, 2010, Plaintiffs and Defendants agreed to settle this matter and entered into a second proposed consent decree. (CM/ECF Doc. No. 462-1.) On January 25, 2010, Plaintiffs and Defendants jointly moved for class certification and preliminary approval of the second proposed consent decree. (CM/ECF Doc. No. 455.) On February 11, 2010, approximately 2,000 individuals with developmental disabilities (through their guardians) who reside at, or wish to reside at, ICFs-DD, (collectively, the "Intervenors"), sought to intervene as Defendants for the limited purpose of participating in the Court's consideration of class certification and preliminary and final approval of that proposed consent decree. (CM/ECF Doc. No. 465.)

The Court granted the Intervenors' motion on April 7, 2010, denied the Plaintiffs' and Defendants' joint motion without prejudice, and instructed the Parties to work together to seek a mutually agreeable resolution of the case. (CM/ECF Doc. No. 479.) Since that time, those parties have met on numerous occasions to negotiate and draft the terms of a proposed agreement that will provide substantial benefits to those individuals who affirmatively seek Community-Based Services and/or placement in a Community-Based Setting, while protecting the interests of individuals who are happy with the care they currently receive and/or have no interest in receiving such services. Those efforts were successfully concluded with the completion of a new, more focused and limited Decree and a Notice Plan. Indeed, both the class and the proposed relief granted to that class are significantly revised and squarely address the concerns previously expressed by the Court and the Intervenors.

First and foremost, with respect to the "desire" and "choice" of individuals, the class is expressly defined to include only those individuals who have actually requested community services or placements. To that end, Plaintiffs and Defendants jointly move this Court to certify a class consisting of individuals with developmental disabilities for whom Defendants have a "Current Record" (as defined in the Decree) reflecting that the individual has affirmatively requested Community-Based Services and/or placement in a Community-Based Setting. The proposed class expressly does *not* include any individual who objected to the proposed consent decree that was the subject of the July 1, 2009 Fairness Hearing. Nor will the relief provided in the Decree impact or impair the rights of individuals who wish to remain in an ICF-DD and/or oppose Community-Based Services or placement in a Community-Based Setting.[5]

[5] The Decree gives those individuals multiple opportunities to change their minds and affirmatively request such services, thus allowing them to join the class, if and when they choose to do so.

Second, with respect to "eligibility," as a matter of law, all individuals who are "eligible" to receive services in an ICF-DD are "eligible" to be considered for community services because the eligibility criteria for community services under both Illinois and federal law are virtually identical to the criteria for placement in an ICF-DD. *Biekert v. Maram*, 388 Ill. App. 3d 1114, 1121, 905 N.E.2d 357, 364 (Ill. App. Ct. 2009) ("Pursuant to federal and state law and its own documentation, the [Home and Community-Based Services for the Developmentally Disabled] waiver program is available only to recipients who, in the absence of the waiver services, would require the Medicaid-covered level of care provided in an ICF/MR,[6] in that the waiver services are an alternative to an ICF/MR placement"); 59 Ill. Adm. Code §120.50 ("The target population to be served under [Illinois' Waiver Program] is Medicaid-eligible Illinois adults with developmental disabilities who otherwise would require services in a State-operated developmental center or a community ICF/MR."). Thus, the members of the proposed class -- those individuals who (i) currently live in ICFs-DD or who otherwise are eligible to live in ICFs-DD, *and* (ii) who have expressly requested Community-Based Services and/or placement in a Community-Based Setting -- are all indisputably "eligible" to be considered for such services by the State of Illinois should they affirmatively request them.

Third, the Decree resolves the concerns previously raised by the Intervenors. In particular, and as stated above, the Decree in no way affects the rights of individuals who choose to reside in ICFs-DD or otherwise do not wish to receive Community-Based Services or placement in a Community-Based Setting. Resources necessary to meet the needs of those individuals who choose to reside in ICFs-DD will continue to be made available and such resources will not be affected by Defendants' fulfillment of their obligations under the Decree.

[6] ICF/MR is the federal term for the facilities that Illinois refers to as ICFs-DD.

In addition, the Decree affords Intervenors' and their counsel a role in creating and implementing an Implementation Plan (as defined in the Decree) to accomplish the obligations and objectives set forth in the Decree.

CLASS CERTIFICATION IS APPROPRIATE

In connection with the agreement set forth in the Decree, Plaintiffs, Defendants and Intervenors have stipulated to certifying the following two sub-classes for purposes of settlement:

1) Adult individuals in Illinois:

> (a) who have mental retardation and/or other developmental disabilities within the meaning of the ADA, 42 U.S.C. § 12131(2) and the Rehabilitation Act, 29 U.S.C. § 794(a), and who qualify for Medicaid Waiver services;
>
> (b) who reside in private ICFs-DD with nine or more residents; and
>
> (c) for whom Defendants (including Defendants' agencies, employees, contractors and agents, and those acting in concert with them) have a Current Record reflecting that the individual has affirmatively requested to receive Community-Based Services or placement in a Community-Based Setting; or

2) Adult individuals in Illinois:

> (a) who have mental retardation and/or other developmental disabilities within the meaning of the ADA, 42 U.S.C. § 12131(2) and the Rehabilitation Act, 29 U.S.C. § 794(a), and who qualify for Medicaid Waiver services;
>
> (b) who reside in a Family Home and are in need of Community-Based Services or placement in a Community-Based Setting; and

> (c) for whom Defendants (including Defendants' agencies, employees, contractors and agents, and those acting in concert with them) have a Current Record reflecting that the individual has affirmatively requested to receive Community-Based Services or placement in a Community-Based Setting.[7]

For the reasons discussed below, this class meets the requirements of both Rules 23(a) and (b).

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

The overriding objective of class certification pursuant to Federal Rule 23 is to obtain "economies of time, effort and expense." Advisory Committee's Notes on Fed.R.Civ.P. 23(b)(3), 28 U.S.C. App., p 697. It is entirely proper for Plaintiffs, Defendants and Intervenors to negotiate a proposed settlement prior to certification. Although a court should consider the settlement agreement when deciding certification issues, *In re Asbestos Litigation*, 90 Fed.3d 35, Fed.R.Serv. 3d 1360 (5th Cir. 1996), it is settled that a class action must meet the requirements of Fed.R.Civ.P. 23 when certified for settlement purposes. *Amchem Products, Inc., v. Windsor*, 521 U.S. 591, 614 (1997).

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 Amchem*, 521 U.S. at 614; *Robert E. v. Lane*, 530 F. Supp. 930, 944 (N.D. Ill. 1980) (a case alleging civil rights violations in an institutional

[7] The terms "Current Record", "Developmental Disabilities", "ICFs-DD", are defined in the Decree at pages 3-7.

setting represents a "prototypical candidate" for class certification). In particular, class certification is routinely allowed in civil rights cases alleging states' violations of the community integration mandates of the Americans with Disabilities Act. *See Colbert v. Blagojevich*, 2008 WL 4442597, *10 (N.D. Ill. Sept. 29, 2008) (J. Lefkow) (certifying class consisting of "all Medicaid-eligible adults with disabilities in Cook County, Illinois, who are being, or may in the future be, unnecessarily confined to nursing facilities and who, with appropriate supports and services, may be able to live in a community setting"); *Williams v. Blagojevich*, 2006 WL 3332844, *5 (N.D. Ill. Nov. 13, 2006) (J. Hart) (certifying class consisting of Illinois residents who "(a) have a mental illness; (b) are institutionalized in a privately owned Institution for Mental Diseases; and (c) with appropriate supports and services may be able to live in an integrated community setting").[8]

Under Rule 23(a), courts may certify a class when 1) its members are so numerous that joinder of all claims is 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 all of these requirements.

[8] Most recently, Judge Hart granted preliminary approval of the proposed Consent Decree in that action which was largely modeled on the Decree that Plaintiffs and Defendants seek approval of here. *See Williams v. Quinn*, 2010 WL 3894359 (N.D. Ill. Sept. 29, 2010).

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) (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. Defendants have previously acknowledged that just through their Prioritization of Urgency of Need for Services (PUNS) database, at least 300 current ICF-DD residents and more than 4,000 individuals with developmental disabilities who live at home had requested placement in Community-Based Settings or Community-Based Services. *See* Second Am. Compl. ¶89. Based on these numbers alone, joinder is impracticable. *See Long v. Thornton Township High Sch.*, 82 F.R.D. 186, 189 (N.D. Ill. 1979) (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."). 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, 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 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 after they specifically requested such services. This is a "common nucleus of operative fact" that affects all members of the class. Indeed, unlike the previously certified class, this class consists solely of those individuals who have specifically requested Community-Based Services or placement in a Community-Based Setting. 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 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)).

Courts have found commonality exists in classes of adults with developmental disabilities. In *M.A.C., et al. v. Betit*, the court certified a class similar to the class proposed here, where the class consisted of individuals who had affirmatively requested community services. *M.A.C., et al. v. Betit*,284 F. Supp. 2d 1298 (D. Utah 2003). The court, finding that commonality existed, noted that the facts shared by each class member, all of whom were adults with developmental disabilities, were nearly identical in that each proposed class member "is being denied a meaningful choice between the receipt of HCBS waiver services and institutionalization in violation of the Medicaid Act; and each is threatened with unnecessary institutionalization in violation of the ADA and § 504." *Id*. Similarly, in *Rancourt v. Concannon*, 207 F.R.D. 14 (D. Me. 2002)), the court found commonality existed in a class comprised of developmentally disabled individuals who were eligible for, but were not receiving community-based services, stating "[w]hile there is variation in the specifics of their individual medical circumstances, Plaintiffs do not allege that they have suffered isolated difficulties, but rather, that they face systemic barriers to receiving services" and that therefore "this common fact pattern gives rise to common legal issues, alleging violations of the Medicaid Act and its implementing regulations. *Id.* at 16; *see also Boulet v. Celluci*, 107 F. Supp.2d 61, 81 (D. Mass. 2000) (limiting class only to include adults with developmental disabilities who are eligible for and requested community services and finding that "the claims of the plaintiffs and the proposed class as amended share a common legal theory that adults eligible for waiver services are not being provided such services with reasonable promptness and, therefore, satisfy the commonality and typicality requirements of Rule 23(a)"). Thus, this Court should find that commonality exists here.

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 (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."); *M.A.C., et al. v. Betit*, 284 F. Supp. 2d at 1303 (finding typicality exists among class of individuals with developmental disabilities who had affirmatively requested community services); *City of New York v. Maul,* 59 A.D. 3d 187 (N.Y. App. 1st Dept. Feb. 10, 2009).

In *City of New York v. Maul*, defendants argued that a class of children with developmental disabilities lacked commonality because "to determine the appropriateness of a particular facility requires an individualized inquiry into that individual's needs". *Id.* at 190. The court rejected this argument finding that "it ignores all of the other alleged harmful results of [defendants'] conduct which do not require specific factual inquiry." *Id.*

Here, the named Plaintiffs have affirmatively requested and been denied Community-Based Services or placement in a Community-Based Setting by Defendants. Therefore, their claims are identical to those of the putative class, which consists of other persons with

developmental disabilities who have also requested and been denied Community-Based Services or placement in a Community-Based Setting from Defendants. Because the named Plaintiffs and the class share the same deprivations of federal rights, typicality is 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, those requirements are met 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, the named Plaintiffs' interests are entirely coextensive with those of the class. The named Plaintiffs who are currently residing in private ICFs-DD have requested placement in Community-Based Settings just like the rest of the class members residing in ICFs-DD who have made similar requests. Similarly, the named Plaintiffs who are currently residing in a Family Home have requested Community-Based Services or placement in a Community-Based Setting just like the rest of the class members residing at home. They share the same claims as the class members as well as a strong interest in securing the declaratory and injunctive

relief they seek. This relief will benefit all members of each of the two sub classes. 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

This Court has already determined Plaintiffs' counsel are qualified. (CM/ECF Doc. No. 86.) Nothing has happened that should lead to a different result here. Plaintiffs' 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.[9]

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 expressly identifies class members as adults with developmental disabilities who either reside in ICFs-DD or in a Family Home and have affirmatively requested Community-Based Services or placement in a Community-Based Setting. This definition properly relies on objective, readily identifiable criteria. Moreover, the proposed class is significantly more identifiable than the previously certified class because here the individual must have affirmatively requested such services. Whether a person is a class

[9] The depth of Class Counsel' class action experience was previously set forth in detail in Plaintiffs' and Defendants' February 1, 2010 Memorandum in Support of Joint Motion for Settlement Class Certification, Preliminary Approval of Consent Decree, and Approval of Notice Plan (Doc. No. 462), which is adopted and incorporated by reference herein. Their experience and expertise has not been challenged in these proceedings.

member is dependent upon both an individual's affirmative request and Defendants' actions or inactions, and therefore the Court can feasibly determine whether an individual is a class member. *See 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 …"); *Fields*, 2004 U.S. Dist. LEXIS 16291 at *40.

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 resides in an ICF-DD or in a Family Home and have affirmatively requested placement in a Community-Based Setting; therefore, they meet the criteria for class membership.

B. PLAINTIFFS MEET 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 proposed 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 common for class

actions to proceed under Rule 23(b)(2) where people with disabilities seek to enforce their rights to community integration and services. *See Bzdawka v. Milwaukee County*, 238 F.R.D. 469, 476 (E.D. Wis. 2006) (class of elderly disabled persons in claim under ADA integration mandate); *Williams v. Blagojevich*, 2006 WL 3332844, *5 (N.D. Ill. Nov. 13, 2006) (J. Hart) (certifying class consisting of Illinois residents who "(a) have a mental illness; (b) are institutionalized in a privately owned Institution for Mental Diseases; and (c) with appropriate supports and services may be able to live in an integrated community setting"); *M.A.C.*, 284 F. Supp. 2d at 1301-04 (D. Utah 2003) (certifying class of "all current and future Medicaid-eligible individuals residing in Utah who, because of their developmental disabilities or mental retardation have or will be determined to be eligible for, and are or will be on the waiting list to receive, services under the HCBS waiver by the Division of Services for People with Disabilities"); *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); *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").

THE COURT SHOULD PRELIMINARILY APPROVE THE CONSENT DECREE

A. THE PRINCIPAL TERMS OF THE DECREE PROVIDE FAIR AND REASONABLE RELIEF THAT IS LIMITED TO INDIVIDUALS WHO WANT RELIEF

The Decree fairly, reasonably and adequately affords relief to all class members. The essence of Plaintiffs' Complaint is that all individuals with developmental disabilities who want Community-Based Services must be afforded opportunities to make meaningful, informed choices regarding where they live, and that Defendants must ensure that supports and services are available, where appropriate, in Community-Based Settings. The relief afforded under the Decree fully addresses and achieves that goal and addresses the concerns of those individuals who previously objected to the terms of the earlier, proposed consent decree. A brief description of the key provisions and features of the Decree follows:

1. Development of Community Capacity

The Decree requires Defendants to ensure the availability of services, supports and other resources necessary to meet their obligations under the Decree, and, in particular, to increase the choices and opportunities for people with developmental disabilities who want Community-Based Services and/or placement in a Community-Based Setting.

2. Relief Affects Private ICF-DD Residents Who Affirmatively Request Community-Based Services or Placement in A Community-Based Setting

The Decree ensures that individuals currently residing in ICFs-DD who affirmatively request placement in a Community-Based Setting will receive such services in the most integrated setting appropriate to their needs. Defendants will then develop a Transition Service Plan (as defined in the Decree) specific to each individual who requests such services. The Transition Service Plan will describe the services required; where and how such services will be

developed and obtained; and a timetable for promptly completing that transition. The Transition Service Plan will be developed by a Qualified Professional (as defined in the Decree) in conjunction with the Class Member and, where one has been appointed, the Class Member's legal guardian, and, where appropriate, the Class Member's family members, friends and support staff who are familiar with the Class Member. For those individuals who have never requested Community-Based Services or who inform Defendants that they no longer wish to receive Community-Based Services, a Transition Service Plan will not be developed. The Transition Service Plan process is for only those who have affirmatively indicated that they want placement in a Community-Based Setting.

Within six years, all persons residing in ICFs-DD who have affirmatively requested placement in Community-Based Settings will transition to such Settings consistent with their Transition Service Plans and consistent with their ongoing desire for such placement. The Decree sets forth interim benchmarks as well, with not less than one-third of such persons transitioning within two and a half years, and not less than two-thirds transitioning within four and a half years of approval of the Decree. Individuals residing in ICF-DDs can request placement in a Community-Based Setting, and therefore join the class, at any time during the six-year implementation period.

3. Relief Afforded to Class Members Who Reside at Home

The relief afforded by the Decree is not limited to private ICF-DD residents. Individuals with developmental disabilities who reside in a Family Home also benefit from the Decree. Under the Decree, Defendants must maintain a Statewide database in which all individuals with developmental disabilities who reside in a Family Home and have been identified as expressly having requested either Community-Based Services or placement in a Community-Based Setting

are enrolled. These individuals will be placed on a waiting list for community services with selection prioritized by the individual's urgency of need for such services, the length of time that has passed since the individual enrolled, geographical considerations and other factors. As each individual is selected to receive community services, Defendants will develop a Transition Service Plan (as defined in the Decree) specific to each person, and as described above. Within two years following approval of the Decree, Defendants shall provide such services to at least 1,000 individuals on the waiting list who are not in Crisis situations, and in each of the third, fourth, fifth and sixth years following approval of the Decree, defendants shall provide such services to at least 500 additional individuals each year.

The Decree provides that individuals in "Crisis" situations (as defined in the Decree) will receive necessary and appropriate Community-Based Services and/or placement in a Community-Based Setting expeditiously. The Decree places no limit to, or cap upon, the number of individuals in Crisis situations whom Defendants are obligated to serve.

4. Monitoring and Compliance

Under the Decree, the Court will appoint an independent and impartial Monitor who is knowledgeable concerning the management and oversight of programs serving individuals with developmental disabilities. The Monitor will be responsible for gauging Defendants' compliance with the Decree, identifying actual and potential areas of non-compliance with the Decree, and recommending appropriate action by the Court in the event any issues cannot be resolved by discussion and negotiation among the Monitor and the Parties. The Monitor will file annual, publicly available reports with the Court to provide information sufficient for the Court to evaluate Defendants' compliance or non-compliance with the Decree.

5. Implementation Plan

The Decree requires Defendants (with assistance from the Monitor, Plaintiffs, Class Counsel, Intervenors and Intervenors' Counsel) to develop an "Implementation Plan" to accomplish the obligations and objectives set forth in the Decree. The Implementation Plan will set forth specific tasks, timetables, and protocols to ensure that Defendants fulfill the requirements of each provision of the Decree; describe the hiring, training and supervision of the personnel necessary to implement the Decree; describe necessary resource development activities; identify any services or supports required in Transition Service Plans that are not currently available; and identify any services and supports which, based on demographic or other data, are expected to be required to meet defendants' obligations under the Decree.

6. Attorneys' Fees and Costs

In full settlement of attorneys' fees incurred in connection with the litigation, Defendants will pay $1,740,000.00 to Class Counsel and $500,000.00 to Intervenors' Counsel, all of which will be donated to charitable 501(c)(3) organizations that serve individuals with developmental disabilities. Additionally, Defendants will pay costs and expenses incurred by Class Counsel through and including the approval of the Decree and any appeal thereof.

7. Jurisdiction and Termination of Consent Decree

Under the Decree, the Court shall retain exclusive jurisdiction to oversee, supervise, modify and enforce the terms of the Decree. The Court shall retain such jurisdiction for at least nine years following the approval of the Decree; after that time period, termination of jurisdiction can be accomplished through a specific procedure set forth in the Decree.

B. THE PROPOSED CONSENT DECREE MERITS PRELIMINARY APPROVAL

Preliminary approval of a proposed settlement or, as is the case here, a proposed consent decree, is the first in a two-step process required before a class action may be settled. David F. Herr, MANUAL FOR COMPLEX LITIGATION, FOURTH ("MANUAL FOURTH"), § 30.41 (2005). In considering preliminary approval, the court must first determine whether the proposed settlement is within the range of reasonableness that ultimately could be given final approval. *See Armstrong v. Board of School Directors of the City of Milwaukee*, 616 F.2d 305, 312 (7th Cir. 1980). The court must review the settlement for fairness, adequacy, and reasonableness. *Id.* ("The courts of appeals have required that district court approval of a settlement pursuant to Rule 23(e) be given only where the district court finds the settlement fair, reasonable and adequate."). If the court finds that a settlement is "within the range of possible approval," it then proceeds to the second step in the review process, the fairness hearing. *Id.*; *see also* 4 Robert Newberg, NEWBERG ON CLASS ACTIONS § 11:25 at 38 (4th ed. 2002) ("NEWBERG") ("If the preliminary evaluation of the proposed settlement does not disclose grounds to doubt its fairness or other obvious deficiencies … and appears to fall within the range of possible approval, the court should direct that notice under Rule 23(e) be given to the class members of a formal fairness hearing…"). The purpose of the fairness hearing is to "provide class members an opportunity to present their views on the proposed settlement and to hear arguments and evidence for and against the terms." MANUAL FOURTH, *supra*, § 21.633.

The Seventh Circuit has identified six factors for analyzing whether a class action settlement or consent decree should be given final approval. These factors are equally germane in deciding whether to grant preliminary approval:

1. the strength of the plaintiff's case on the merits balanced against the settlement;

2. the complexity, length and expense of continued litigation;

3. the amount of opposition to the settlement;

4. the presence of collusion in gaining a settlement;

5. the opinion of competent counsel regarding the reasonableness of the settlement; and

6. the stage of the proceedings and the amount of discovery completed.

See GE Capital Corp. v. Lease Resolution Corp., 128 F.3d 1074, 1082 (7th Cir. 1997); *Donovan v. Estate of Fitzsimmons*, 778 F.2d 298, 308 (7th Cir. 1985). Because the object of settlement is to avoid, not confront, the determination of contested issues, the approval process should not be converted into an abbreviated trial on the merits. *Van Horn v. Trickey*, 840 F.2d 604,607 (8th Cir. 1987) ("the district court need not undertake the type of detailed investigation that trying the case would involve"). Instead, the court's inquiry should be "limited to the consideration of whether the proposed settlement is lawful, fair, reasonable, and adequate." *Isby v. Bahy*, 75 F.3d 1191, 1196 (7th Cir. 1996). As set forth in the following sections, application of these six factors in the context of this litigation merits preliminary approval of the Decree.

1. Strength of the Plaintiffs' Case on the Merits Balanced Against the Terms of the Consent Decree

The terms of the Decree are fair, reasonable and adequate when balanced against the strength of the Plaintiffs' case on the merits. Plaintiffs allege that Defendants have failed to comply with the integration mandates required by the ADA, Section 504 and Title XIX, and specifically allege that Illinois does not have "a comprehensive, effectively working plan for placing qualified persons with [ ] disabilities in less restrictive settings" as required by *Olmstead*, 527 U.S. at 605-06. Plaintiffs have developed the necessary proof to support these claims,

including the retention of four experts who would testify, among other things, that Illinois does not have a comprehensive, effectively working plan; that Illinois ranks last or near last among the states in the percentage of people with developmental disabilities living in small Community-Based Settings; that depriving persons with developmental disabilities with meaningful opportunities to live in such settings can cause a diminution in overall quality of life; and that persons who currently reside in ICFs-DD and have made a record wanting placements in Community-Based Settings, are eligible for Community-Based Settings, and that such placements should be made where appropriate.

Despite the strengths of Plaintiffs' case, Plaintiffs are mindful of the hurdles to establish Defendants' liability and overcome any affirmative defenses. Plaintiffs also are mindful of the possibility of an adverse ruling on appeal if they prevail at trial. Importantly, however, because the Decree ensures that persons with developmental disabilities are offered the opportunity to make informed, meaningful choices as to whether or not their needs can best be met in Community-Based Settings or ICFs-DD, and ensures the availability of Community-Based options for those who choose them, the Decree fully implements the relief sought in Plaintiffs' Complaint, which Defendants acknowledge is appropriate for the persons who their agencies are intended to serve. Defendants, without conceding the merits of the Plaintiffs' allegations, believe that the services and supports required by the Decree are consistent with their goals for the future direction of the developmental disabilities system in Illinois.

2. Complexity, Length and Expense of Continued Litigation

If the Decree were not approved, expensive and protracted litigation will ensue. Any trial will be complex, contentious and cumbersome. Such a proceeding would likely involve over thirty witnesses, including four expert witnesses who reside outside Illinois, and numerous State

employees who reside in Springfield, Illinois. The costs and expenses of preparing these witnesses, and for trial in general, would be enormous.

In addition, both Plaintiffs and Defendants submit that if they were not to prevail at trial, they would likely appeal the matter to the Seventh Circuit Court of Appeals. An appeal would all but guarantee that this litigation would drag on for several more years without resolution or the implementation of any relief for members of the proposed class, many of whom have been waiting years for Community-Based Services. These factors strongly weigh in favor of preliminary and final approval of the Decree.

3. Opposition to the Settlement

Plaintiffs and Defendants believe there will be few, if any, objections to the Decree. Importantly, Intervenors are parties to the Decree and the Decree resolves all concerns raised by the Intervenors. In particular, the Decree affords substantial benefits to members of the proposed class, while protecting the rights of individuals who choose to reside in ICFs-DD or who otherwise do not wish to receive Community-Based Services or placement. Further, the Decree obligates Defendants to make available the resources necessary to meet the needs of individuals who choose to reside in ICFs-DD. Those resources will not be affected by Defendants' fulfillment of their obligations under the Decree.

4. Lack of Collusion

As a matter of law, a court should presume that negotiations were conducted in good faith and that the resulting agreement was reached without collusion in the absence of evidence to the contrary. *Mars Steel v. Continental Ill. Nat'l Bank & Trust*, 834 F.2d 677, 681-81 (7th Cir. 1987); *Armstrong*, 616 2d at 325; Newberg at § 11.41. Nothing supports a different result here. Plaintiffs, Defendants and Intervenors, with the assistance of Magistrate Judge Cole, have

participated in numerous meetings and conferences to discuss and negotiate the terms of the Decree. *See, e.g., Maley v. Del Global Techs. Corp.*, 186 F.Supp.2d 358, 366 (S.D.N.Y. 2002) (finding negotiations leading to class action settlement were arm's length in part because they had occurred over several months and had involved several in-person meetings). Because the Decree resulted from arm's length negotiations between experienced counsel, and no evidence exists to the contrary, the Decree should be presumed to have been reached without collusion. *See, e.g., Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) ("presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery").

5. Opinion of Competent Counsel as to the Reasonableness of the Settlement

The court is "entitled to rely heavily on the opinion of competent counsel." *Armstrong*, 616 F.2d at 325. Counsel for Plaintiffs, Defendants and Intervenors, who are competent and experienced in class action and civil rights litigation, all recommend acceptance of the Decree. The Decree provides a fair, reasonable, and adequate disposition of the lawsuit.

6. Stage of the Proceeding and Amount of Discovery Completed

Another factor strongly supporting approval of the Decree is the extent of written, oral, fact and expert discovery and fact finding which had been completed in this case before settlement was reached. Plaintiffs and Defendants have thoroughly explored the factual and legal underpinnings, as well as the merits, of this case. They have produced and reviewed hundreds of thousands of pages of documents, conducted over thirty depositions on the merits, and worked extensively with five experts in related fields. Considerable third-party discovery was also conducted. Plaintiffs and Defendants spent considerable time getting the matter ready for the original trial date of October 20, 2008, all of which would have been used in a trial based

on the allegations in the Second Amended Complaint. Thus, there was a complete factual record upon which experienced Class Counsel could evaluate what would be a fair resolution for Plaintiffs and the Class.

THE PROPOSED NOTICE PLAN SATISFIES THE REQUIREMENT OF RULE 23 AND DUE PROCESS

Rule 23(e)(1) requires the court to direct notice of a proposed settlement in a "reasonable manner to all class members who would be bound by the proposal." Although notice is mandatory to satisfy due process considerations, the extent of the notice is discretionary, particularly with a Rule 23(b)(2) class with no right of opt-out. *See Walsh v. Great Atlantic & Pacific Tea Co.*, 726 F.2d 956, 962 (3d Cir. 1983) (Rule 23(c)(2)'s requirement of "the best notice practicable" is inapplicable for notice of settlement of a Rule 23(b)(2) class); *Fontana v. Elrod*, 826 F.2d 729, 732 (7th Cir. 1987) (notice not required after certification of a Rule 23(b)(2) class). In a Rule 23(b)(2) class action, "mechanics of the notice process are left to the discretion of the court subject only to the broad 'reasonableness standards imposed by due process.'" *Fowler v. Birmingham News Co.*, 608 F.2d 1055, 1059 (5th Cir. 1979).

In determining what type of notice is reasonable, courts consider whether the notice is sufficient to "bring the proposed settlement to the attention of representative class members who may alert the court to inadequacies in class representation, or conflicts among subclasses, which might bear upon fairness of settlement." *Walsh*, 726 F.2d at 963-64 (upholding notice by publication and mail to representative members in Rule 23(b)(2) class). Courts have routinely approved notice plans in Rule 23(b)(2) cases, such as this one, where notice consisted of publication and/or other reasonable forms of direct or indirect notice. *Fresco v. Auto Data Direct, Inc.*, 2007 WL 2330895, at *8 (S.D. Fla. May 14, 2007) (approving a notice plan that included a combination of publication and Internet notice but did not require individual notice);

Hawker v. Consovoy, 198 F.R.D. 619, 621 (D.N.J. 2001) (publication notice in two newspapers as well as in all relevant prisons and jails was sufficient). For example, in *Kaplan v. Chertoff*, 2008 WL 200108, *13 (E.D. Pa. Jan. 24, 2008), the court approved a notice plan where a Rule 23(b)(2) class of approximately 50,000 non-US citizens seeking injunctive relief from the government settled the case, and the proposed notice included posting the notice on the appropriate governmental websites, and providing notice to a network of community-based and non-profit immigration organizations. *Id.* at *13. Of particular relevance here is the court's finding that "the organizations that receive[d] the notice are well-positioned to spread information regarding the settlement to their clients by posting the notice in their facilities or on their websites." *Id.*

The Notice Plan (Exhibit B) proposed here provides for the most reasonable notice under the circumstances. The Notice Plan includes: (1) publication notice in nine newspapers throughout Illinois with a collective circulation of over one million readers; (2) posting notice on the websites of the Illinois Department of Human Services, Division of Developmental Disabilities and Equip for Equality, the not-for-profit corporation appointed by the State of Illinois to implement the federally-mandated Protection and Advocacy System in Illinois for persons with, among other things, developmental disabilities; (3) mailed notice to all eighteen preadmission screening ("PAS") agencies throughout Illinois, which are responsible, by contract with the State of Illinois, for determining an individual's eligibility for developmental disabilities services; (4) mailed notice to numerous disability rights-related organizations; (5) mailed notice to all adults with developmental disabilities (and their guardians) for whom Defendants have a Current Record containing an affirmative request for Community-Based Services or placement in a Community-Based Setting; and (6) mailed notice to all 240 private ICFs-DD in Illinois with

nine beds or more. The cost of the Notice Plan will be fully borne by Defendants. The Notice Plan is reasonable and clearly satisfies due process.

In conjunction with the proposed Notice Plan, the undersigned request that the Court approve the form and content of the proposed Notices. (*See* Exhibit B.) The Notices are written in simple terminology and include (i) a description of the class; (ii) a description of the Decree; (iii) an explanation of the rights of Class Members; (iv) the names of class counsel; (v) the fairness hearing date; (vi) a statement regarding attorneys' fees and expenses; (vii) a statement of the deadline for filing objections to the Decree; and (viii) instructions for obtaining further information. Those Notices satisfy the content requirements of Rule 23 of the Federal Rules of Civil Procedure. *See* MANUAL FOURTH, supra § 21.633.

CONCLUSION

For the foregoing reasons, and pursuant to Rule 23, Plaintiffs and Defendants respectfully request that the Court enter an Order (1) certifying the settlement class as described; (2) granting preliminary approval of the Decree; (3) commanding notice in the form and method of the Parties' proposed Notice Plan; and (4) setting a date for a Fairness Hearing on the Decree.

Dated: January 11, 2011 Respectfully submitted,

For Plaintiffs	**For Defendants**
By: /s/ Wendy N. Enerson	**By: /s/ (with consent of) Brent D. Stratton**
John Grossbart Wendy N. Enerson Corey Shapiro SNR Denton US LLP 233 S. Wacker Dr., Suite 7800	Brent D. Stratton Thomas A. Ioppolo Kathleen Kreisel Flahaven Office of the Illinois Attorney General 100 W. Randolph Street, 12th Floor

Chicago, Illinois 60606 Barry C. Taylor Laura J. Miller John W. Whitcomb Barry G. Lowy Kendra K. Hartman Equip for Equality 20 North Michigan Avenue, Suite 300 Chicago, Illinois 60602 Ed Mullen Access Living of Metropolitan Chicago 115 West Chicago Avenue Chicago, IL 60610 Benjamin S. Wolf Roger Baldwin Foundation of ACLU, Inc. 180 North Michigan Avenue, Suite 2300 Chicago, Illinois 60601	Chicago, Illinois 60601 Karen Konieczny John E. Huston Christopher S. Gange Office of the Illinois Attorney General 160 North LaSalle Street, Suite N-1000 Chicago, Illinois 60601

CERTIFICATE OF SERVICE

The undersigned, an attorney for the Plaintiffs, certifies that on January 11, 2011, he electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the counsel of record.

/s/ Wendy N. Enerson