

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	CIVIL ACTION NO: 3:12CV59-JAG
v.)	
)	
COMMONWEALTH OF VIRGINIA,)	
)	
Defendant,)	
)	
and)	
)	
PEGGY WOOD, et al.,)	
)	
Intervenor-Defendants.)	

DEFENDANT COMMONWEALTH'S RESPONSE TO INTERVENORS' MOTION TO DISMISS

Comes now the Defendant, the Commonwealth of Virginia ("Commonwealth"), by counsel, and in response to Intervenor's Motion to Dismiss states as follows:

On February 10, 2011, the United States issued a findings letter to the Commonwealth alleging that the Commonwealth failed to provide services to individuals with developmental disabilities in the most integrated setting appropriate to their needs in violation of title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131 -12134. After receipt of the findings letter, the Commonwealth engaged in negotiations with the United States in an effort to reach an amicable and voluntary resolution of the United States' claims to avoid complex and costly litigation and the risks to the Commonwealth inherent in such litigation. After almost a

year of negotiations, the Commonwealth and the United States entered into a settlement agreement. In the settlement agreement, the Commonwealth agreed to the jurisdiction of this Court and to defend the agreement if it was attacked. The Commonwealth filed a Joint Motion for Entry of the Settlement Agreement with the Court and at this time, will not take a position that is adverse to that motion or the settlement agreement.

Should the Court deny the Joint Motion for Entry of the Settlement Agreement and the case proceeds to trial, the Commonwealth does not waive any arguments, grounds, or justification that it may have to assert that the Court lacks jurisdiction, including an argument that the United States has failed to satisfy the statutory prerequisites to bringing suit under 42 U.S.C. § 2000d-1 (incorporated by 42 U.S.C. § 12133). Without admitting the truth or validity of the United States' claims that the Commonwealth is in violation of the ADA, the Commonwealth would maintain that its willingness to enter into the settlement agreement demonstrates that the United States could secure, and in fact did secure, the compliance of the Commonwealth with the ADA by voluntary means without the need to resort to litigation. Because 42 U.S.C. § 2000d-1 requires the United States to make a determination that it cannot secure the Commonwealth's voluntary compliance with the ADA prior to bringing suit, it is the Commonwealth that is in the best position to challenge whether this prerequisite has been met. However, at this time, and in accordance with the settlement agreement, the Commonwealth believes it to be in its best interests to pursue its Joint Motion for Entry of the Settlement Agreement.

Respectfully submitted,

COMMONWEALTH OF VIRGINIA

By: _____/s/_____
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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of May, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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