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6 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

7 C.F., by and through his parent and guardian,
8 L.F., J.P., by and through her mother and next
9 friend, M.P., and L.B., by and through her parent
10 and guardian, D.W., individually, and on behalf
of similarly situated individuals,

11 Plaintiffs

12 v.

13 PATRICIA LASHWAY, in her official capacity
as Acting Secretary of the Washington State
Department of Social and Health Services; and
14 DOROTHY F. TEETER, in her official capacity
as Director of the Washington State Health Care
15 Authority,

16 Defendants.

NO. 16-1205

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

(CLASS ACTION)

17 **I. OVERVIEW**

18 1. Plaintiffs C.F., J.P., and L.B. are adults with developmental disabilities who are
19 institutionalized, or at serious risk of institutionalization. All three of these individuals have
20 intensive needs for long-term supports and habilitative services and have no desire to receive
21 these services in an institutional setting. All three have been, at some point, determined eligible
22 to receive residential and habilitative support services in the community. However, due to
23 Defendants' failure to establish an effectively working system to ensure such services are

1 available, all three have lost support services they need and cannot replace. As a result, Plaintiffs
2 are suffering, or are at risk of suffering, unnecessary institutionalization and segregation.

3 2. Defendants, and their agencies, the Health Care Authority (HCA) and the
4 Department of Social and Health Services (DSHS), do not have an adequate system for ensuring
5 persons with developmental disabilities receive necessary services in the most integrated setting
6 appropriate to their needs. In addition to the named Plaintiffs, dozens more individuals are
7 entitled to services, but wait for prolonged periods to receive those services because they are
8 unavailable. These individuals are waiting in state-operated Residential Habilitation Centers
9 (RHC) and other unstable or unsuitable settings in which they are at risk of institutionalization.

10 3. Defendants have no effectively working plan to ensure that Plaintiffs and these
11 putative class members will avoid institutionalization. This failure violates their rights under
12 Title II of the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12132 *et seq.*, Section 504
13 of the Rehabilitation Act of 1973 (“Rehabilitation Act”), 29 U.S.C. § 794 *et seq.*, the United
14 States Supreme Court’s landmark decision in *Olmstead v. L.C.*, 527 U.S. 581 (1999), and the
15 Social Security Act, 42 U.S.C. § 1396 *et seq.*

16 4. This litigation seeks injunctive and declaratory relief to require Defendants
17 establish an adequate system to provide community-based integrated placement for Plaintiffs and
18 class members, who need community-based habilitative services to avoid institutionalization.
19 Without injunctive and declaratory relief, dozens of individuals with developmental disabilities
20 will continue to languish, either with limited services or in institutions isolated from their home
21 communities, without the services they need to live as independently as possible.

II. PARTIES

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2 5. ***Plaintiff C.F.*** Plaintiff C.F. is a twenty-five year old man who has never wanted
3 to live in an institution. Unfortunately, he was institutionalized in October 2014 after his
4 community-based supported living provider abruptly terminated his services. With no services to
5 replace the supported living provider who terminated services, Plaintiff C.F. was admitted as a
6 short-term resident to one of DSHS's state-operated RHC's. Since he has been institutionalized,
7 DSHS has been unable to find any other provider willing or able to support him, and he was
8 transferred to a different RHC that is closer to his family, where he has remained segregated
9 from his community.

10 6. ***Plaintiff J.P.*** Plaintiff J.P. is a thirty-two year old woman who, for most of her
11 adult life, has been institutionalized. After being hospitalized for years at Western State Hospital,
12 she discharged to an RHC in 2009. Since then, one supported living agency attempted to provide
13 her with community-based residential services in 2012, but she was re-institutionalized within
14 weeks. She continued to seek services from a different supported living agency, but it took three
15 years before another agency agreed to offer services. Although a supported living agency has
16 agreed to serve her, it has been attempting for over a year and half to recruit and retain enough
17 staff to support her in the community. Plaintiff J.P. continues to be institutionalized with no
18 planned discharge date.

19 7. ***Plaintiff L.B.*** Plaintiff L.B. is a fifty-one year old woman who has lived her entire
20 life in the community. After Plaintiff L.B. had received brief respite services in an RHC earlier
21 in her life, her mother and guardian decided she should never be institutionalized on a long-term
22 basis. Nevertheless, Plaintiff L.B. has been at risk of institutionalization since October of 2015,
23 when her supported living provider decided to discontinue services. Because DSHS was unable

1 to identify a substitute supported living agency, Plaintiff L.B. temporarily moved into the home
2 of her aging mother (also guardian) and stepfather. DSHS has sent referral packets to various
3 supported living providers multiple times but has found no agency to accept her referral due to
4 lack of staff. Without the robust supports provided through residential habilitation services,
5 Plaintiff L.B. remains at risk of institutionalization.

6 8. ***Defendant Patricia Lashway.*** Defendant Patricia Lashway is the Acting
7 Secretary of DSHS, the state agency that includes the Developmental Disabilities Administration
8 (DDA). DSHS, through DDA, is responsible for implementing the Home and Community-
9 Based services authorized under the Medicaid Act for individuals with developmental
10 disabilities. Ms. Lashway is sued in her official capacity only. All alleged acts by Ms. Lashway,
11 DSHS and the Developmental Disabilities Administration were taken under color of state law.

12 9. ***Defendant Dorothy F. Teeter.*** Defendant Dorothy Teeter is the Director of the
13 Washington State Health Care Authority. The Health Care Authority is the designated single
14 state agency for Washington's Medicaid programs. Ms. Teeter is responsible for ensuring that
15 the Medicaid program is administered in a manner consistent with all state and federal laws. Ms.
16 Teeter is sued in her official capacity only. All alleged acts by Ms. Teeter and the Health Care
17 Authority were taken under color of state law.

18 **III. JURISDICTION AND VENUE**

19 10. Jurisdiction of this Court arises under 28 U.S.C. § 1331 because this action arises
20 under the laws of the United States, and 28 U.S.C. § 1343(3) and (4) which confer on the federal
21 district courts original jurisdiction over all claims asserted pursuant to 42 U.S.C. § 1983 to
22 redress deprivations of rights, privileges or immunities guaranteed by Acts of Congress and the
23 United States Constitution.

1 11. Venue is proper pursuant to 28 U.S.C. § 1391(b). A substantial part of the events
2 or omissions giving rise to Plaintiffs’ claims occurred in the Western District of
3 Washington and Defendants may be found here.

4 **IV. LEGAL FRAMEWORK**

5 **A. The Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act**

6 12. Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12131-
7 12134, and the Rehabilitation Act of 1973, 29 U.S.C. § 794, are designed to ensure that
8 individuals with disabilities receive their services in the least restrictive, most integrated setting
9 appropriate.

10 13. The ADA was enacted in 1990 “to provide a clear and comprehensive national
11 mandate for the elimination of discrimination against individuals with disabilities[.]” 42 U.S.C.
12 § 12101(b)(1). In enacting the ADA, Congress found that “historically, society has tended to
13 isolate and segregate individuals with disabilities, and, despite some improvements, such forms
14 of discrimination against individuals with disabilities continue to be a serious and pervasive
15 social problem[.]” 42 U.S.C. § 12101(a)(2).

16 14. Congress further recognized that “people with disabilities, as a group, occupy an
17 inferior status in our society, and are severely disadvantaged socially, vocationally,
18 economically, and educationally; [and] the Nation’s proper goals regarding individuals with
19 disabilities are to assure equality of opportunity, full participation, independent living, and
20 economic self-sufficiency for such individuals[.]” 42 U.S.C. § 12101(a)(6)-(7).

21 15. Title II of the ADA applies to public entities, including state or local governments
22 and any departments, agencies, or other instrumentalities of state or local governments. 42
23 U.S.C. §§ 12131, 12132. It provides that “no qualified individual with a disability shall, by

1 reason of such disability, be excluded from participation in or be denied the benefits of the
2 services, programs, or activities of a public entity, or be subjected to discrimination by any such
3 entity.” 42 U.S.C. § 12132.

4 16. Title II’s implementing regulations prohibit public entities from utilizing “criteria
5 or methods of administration” that “have the effect of subjecting qualified individuals with
6 disabilities to discrimination,” or “[t]hat have the purpose or effect of defeating or substantially
7 impairing accomplishment of the objectives of the public entity’s program with respect to
8 individuals with disabilities[.]” 28 C.F.R. § 35.130(b)(3)(i), (ii).

9 17. The Title II implementing regulation known as the “integration mandate” requires
10 that public entities “administer services, programs, and activities in the most integrated setting
11 appropriate to the needs of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d). “The
12 most integrated setting” is one that “enables individuals with disabilities to interact with
13 nondisabled persons to the fullest extent possible.” 28 C.F.R. § Pt. 35, App. B.

14 18. The U.S. Supreme Court has held that Title II of the ADA prohibits the
15 unjustified institutionalization of individuals with disabilities (*Olmstead v. L.C.*, 527 U.S. 581,
16 597-600 (1999)), noting that segregation of people with disabilities “perpetuates unwarranted
17 assumptions that persons so isolated are incapable or unworthy of participating in community
18 life,” and “severely diminishes the everyday life activities of individuals, including family
19 relations, social contacts, work options, [and] economic independence.”

20 19. According to case law and the Statement of the Department of Justice on
21 Enforcement of the Integration Mandate of Title II of the ADA and *Olmstead v. L.C.*, the ability
22 to state a claim under Title II of the ADA and *Olmstead* is not limited to people currently in
23 institutional or other segregated settings, but applies equally to those at serious risk of

1 institutionalization or segregation (*e.g.*, if a public entity’s failure to provide community
2 services “will likely cause a decline in health, safety, or welfare that would lead to the
3 individual’s eventual placement in an institution”). *Available at*
4 http://www.ada.gov/olmstead/q&a_olmstead.htm. As a result, “[i]ndividuals need not wait
5 until the harm of institutionalization or segregation occurs or is imminent” before they may state
6 a claim for illegal discrimination. *Id.*

7 20. Like the ADA, the Rehabilitation Act prohibits discrimination against people with
8 disabilities under any program or activity that receives federal financial assistance. 29 U.S.C. §
9 794(a). The Rehabilitation Act’s implementing regulations prohibit recipients of federal
10 financial assistance from utilizing “criteria or methods of administration” that have the effect of
11 subjecting qualified persons with disabilities to discrimination on the basis of disability, or that
12 have the purpose or effect of defeating or substantially impairing accomplishment of the
13 objectives of the recipient’s program with respect to persons with disabilities. 45 C.F.R. §
14 41.51(b)(3)(i)-(ii); 45 C.F.R. § 84.4(b)(4)(i)-(ii). These implementing regulations also require
15 entities receiving federal financial assistance to “administer programs and activities in the most
16 integrated setting appropriate to the needs of qualified . . . persons [with disabilities].” 28 C.F.R.
17 § 41.51(d); *see also*, 45 C.F.R. § 84.4(b)(2).

18 **B. Title XIX of the Social Security Act**

19 21. Having chosen to participate the Medicaid program, the State of Washington is
20 required to operate its Medicaid services in compliance with the Social Security Act, 42 U.S.C.
21 § 1396, and its implementing regulations. Section 1915(c) of the Social Security Act, 42 U.S.C.
22 § 1396n(c), allows states to submit a request to the U.S. Secretary of Health and Human
23 Services (“Secretary”) to “waive” certain federal Medicaid requirements in order to offer a

1 broad range of home and community-based services as an alternative to institutional care in an
2 Intermediate Care Facility (ICF).

3 22. In order to comply with federal requirements governing Medicaid Home and
4 Community-Based Services (HCBS) waivers for people with intellectual and developmental
5 disabilities, the Defendants must evaluate all individuals referred for admission to an ICF, and
6 periodically re-evaluate those in ICFs, to determine if they require an institutional level of care
7 and whether they may be eligible to receive home and community-based services in lieu of
8 residing in an ICF. 42 U.S.C. § 1396n(c)(2)(B).

9 23. Defendants must inform individuals determined to likely require an ICF level of
10 care of the feasible alternatives to institutional placement, including the availability of home and
11 community-based services which could prevent or avoid their continued institutionalization. 42
12 U.S.C. § 1396n(c)(2)(B)-(C). Defendants must assure that “when a beneficiary is determined to
13 be likely to require the level of care provided in . . . [an ICF], the beneficiary or his or her legal
14 representative will be—(1) [i]nformed of any feasible alternatives available under the waiver;
15 and (2) [g]iven the choice of either institutional or home and community-based services.” 42
16 C.F.R. § 441.302(d). The state must ensure HCBS Waiver participants have a “person-centered
17 service plan” that “[r]eflect[s] that the setting in which the individual resides is chosen by the
18 individual.” 42 C.F.R. § 441.301(c)(2)(i).

19 24. Defendants must also ensure that Medicaid services for which each individual is
20 eligible are provided with reasonable promptness to ensure each participant’s health and
21 welfare. 42 U.S.C. § 1396a(a)(8); 42 U.S.C. §1396n(c)(2)(C).

22 25. Defendants must provide an opportunity for a fair hearing before the State agency
23 to any individual whose claim for medical assistance under the plan is denied or is not acted

1 upon with reasonable promptness. 42 U.S.C. § 1396a(a)(3); 42 C.F.R. § 431.201 (a)(1).

2 Defendants must provide notice of each individual's right to a hearing, the method for obtaining
3 a hearing, and options for representation. 42 C.F.R. § 431.206(b). This information must be
4 provided at the time of any action affecting an individual's claim. 42 C.F.R. § 431.206(c)(2).

5 VI. CLASS ALLEGATIONS

6 26. *Definition of Class.* The class consists of all individuals who:

7 a. Are Medicaid recipients with an intellectual or developmental disability;

8 b. Need an institutional level of care provided in a Medicaid-certified ICF in the
9 State of Washington; and

10 c. Qualify for and desire DDA home and community-based habilitative services
11 which they are not receiving.

12 27. *Size of Class.* The class of Medicaid recipients who qualify for, have requested,
13 and are not receiving home and community-based services administered by DDA is expected to
14 be so numerous that joinder of all members is impracticable. Defendants have identified as
15 many as ninety-one DDA clients as waiting for residential habilitative services in the
16 community, while only a handful of these individuals have been offered these services.

17 28. *Class Representative C.F.* Named Plaintiff C.F. is diagnosed with a
18 developmental disability and is a DDA client who has been unable to access home and
19 community-based waiver services to replace the services that were terminated by his residential
20 provider. As a result, he has had no option but to be institutionalized for the past year and a half.
21 His claims are typical of the claims of the other members of the class, and, through his mother
22 and guardian, he will fairly and adequately represent the interests of the class. There is no
23 known conflict of interest among class members.

1 29. ***Class Representative J.P.*** Named Plaintiff J.P. is diagnosed with a
2 developmental disability and is a DDA client who has been unable to access home and
3 community-based waiver services to replace the services that were terminated by her residential
4 provider. As a result, she has had no option but to be institutionalized for the past seven years.
5 Her claims are typical of the claims of the other members of the class, and, through her mother
6 and next friend, she will fairly and adequately represent the interests of the class. There is no
7 known conflict of interest among class members.

8 30. ***Class Representative L.B.*** Named Plaintiff L.B. is diagnosed with a
9 developmental disability and is a DDA client who has been unable to access home and
10 community-based waiver services to replace the services that were terminated by her residential
11 provider. As a result, she is at risk of being institutionalized. Her claims are typical of the claims
12 of the other members of the class, and, through her mother and guardian, she will fairly and
13 adequately represent the interests of the class. There is no known conflict of interest among
14 class members.

15 31. ***Common Questions of Law and Fact.*** This action requires the determination of
16 whether Defendants violate the requirements under the ADA, the Rehabilitation Act, and the
17 Medicaid Act by failing to have an adequate system in place to (1) provide Plaintiffs and the
18 proposed class with services in the most integrated, least restrictive community-based setting;
19 (2) provide, with reasonable promptness, home and community-based services to Plaintiffs and
20 the proposed class necessary to ensure their health and welfare; and (3) provide adequate notice
21 and due process to Plaintiffs and the proposed class of their eligibility for Medicaid
22 services, including provision of services in the least restrictive setting, and their right to appeal
23 any such determinations through an administrative fair hearing.

1 32. *Defendants Have Acted on Grounds Generally Applicable to the Class.*
2 Defendants, by failing to establish a system for providing a choice of home and community-
3 based services to Plaintiffs and proposed class members with reasonable promptness in the most
4 integrated least-restrictive setting, have acted on grounds generally applicable to the class,
5 rendering declaratory relief appropriate respecting the whole class. Certification is therefore
6 proper under Fed. R. Civ. P. 23(b)(2).

7 33. *Questions of Law and Fact Common to the Class Predominate Over Individual*
8 *Issues.* Alternatively, the class may be certified under Fed. R. Civ. P. 23(b)(3). The claims of
9 the individual class members are more efficiently adjudicated on a class-wide basis. Any
10 interest that individual members of the class may have in individually controlling the
11 prosecution of separate actions is outweighed by the efficiency of the class action mechanism.
12 Upon information and belief, there has been no class action suit filed against these defendants
13 for the relief requested in this action. This action can be most efficiently prosecuted as a class
14 action in the Western District of Washington, where Defendants have their principal place of
15 business, do business, and where Plaintiffs reside. Issues as to Defendants' conduct in applying
16 standard policies and practices towards all members of the class predominate over questions, if
17 any, unique to members of the class. Certification is therefore proper under Fed. R. Civ. P.
18 23(b)(3).

19 34. *Class Counsel.* Plaintiff has retained experienced and competent class counsel.

20 **VI. BACKGROUND**

21 35. Washington State operates four RHCs at Rainier School, Fircrest School, Yakima
22 Valley School, and Lakeland Village, which cumulatively support over 800 residents. RHCs
23 offer residential supports and training and are certified to be funded as Medicaid state plan

1 Intermediate Care Facility (ICF) Services and skilled nursing facilities. In an RHC, there are far
2 more limited opportunities for community-based activities, and the vast majority of training and
3 support services occur in a segregated institutional setting at the RHC.

4 36. In addition to providing residential habilitation services in RHCs, Defendants
5 provide community-based residential habilitation services for individuals with developmental
6 disabilities in individuals' own homes rather than in congregate institutional settings.
7 Defendants fund community-based residential habilitation services through the Core and
8 Community Protection Waivers, both of which are Home and Community-Based Services
9 (HCBS) Medicaid waivers.

10 37. Community-based residential habilitation services are typically delivered by
11 privately operated for-profit or non-profit supported living agencies. In addition, residential
12 habilitative services are also delivered through the State Operated Living Alternatives (SOLA)
13 program, which is a supported living program run by DDA.

14 38. Residential habilitation services provided by private supported living agencies
15 and the SOLA program are a combination of training, personal care, and supervision to address
16 outcomes in several areas of the individual's life, including "personal power and choice,"
17 "competence and self-reliance," "positive recognition by self and others," and "positive
18 relationships." These services should be provided in integrated settings and support individuals
19 in opportunities to engage in a variety of community-based activities. 42 C.F.R. §
20 441.301(c)(2)(i).

21 39. Under the approved Core and Community Protection HCBS waivers, the limit to
22 the amount, frequency, or duration of residential habilitation services is determined by the
23 negotiated daily rates, which are "based on residential support levels (assigned by DD[A])

1 assessment), specific support needs listed in the assessment, support provided by others (e.g.
2 family members), and the number of people living in the household who can share the support
3 hours.” Individuals may receive anywhere from a few hours a week (Levels 1-3) to daily
4 support with intermittent checks through the night (Level 4) to 24/7 onsite support (Levels 5-6).

5 40. Individuals wishing to be discharged from an RHC with more integrated supports
6 may be referred to Washington’s “Roads to Community Living” program, which is funded
7 through a federal Medicaid grant called “Money Follows the Person.” This grant provides
8 federal matching funds to provide additional discharge planning and community-based supports
9 for up to one year after a person moves into the community. After twelve months, Roads to
10 Community Living funding expires and participants are placed on one of the HCBS waivers.
11 Washington’s Roads to Community Living plan has estimated eighteen individuals with
12 developmental disabilities will be discharged each year until 2019.

13 41. When RHC residents are ready to discharge to community-based residential
14 habilitation services, or waiver participants are seeking new residential habilitation service
15 providers, their DDA case managers prepare a “referral packet” with information about their
16 support needs, history, and preferences. The case managers then submit this referral packet to
17 DDA resource managers, who send the packets to private supported living agencies that are
18 certified to deliver community-based residential habilitation services.

19 42. If a supported living agency receiving a referral packet is interested in serving an
20 individual, the agency can notify DDA to proceed with starting services. No supported living
21 agencies are obligated to accept any referrals, and agencies may rescind their offers to serve
22 individuals. Once contracted, a supported living agency may also terminate services if it
23 determines it can no longer meet an individuals’ health and welfare needs.

1 43. If no supported living agency receiving the packet agrees to serve an individual,
2 DDA may send referral packets to additional agencies, or resend referral packets to the same
3 agencies.

4 44. If all private supported living agencies decline DDA's referrals, DDA does not
5 provide the individual with any notice of their right to a fair hearing to address Defendants'
6 failure to provide services with reasonable promptness, or notice of other available options.
7 Instead, individuals must continue to wait indefinitely for a supported living agency willing to
8 provide them with services.

9 VII. FACTUAL ALLEGATIONS

10 45. In 2013, DSHS retained a private consultant, Navigant Healthcare, to conduct an
11 independent review of its supported living program. Navigant's November 11, 2013 report
12 documented that there was a waitlist for supported living services. It went on to explain, "DDA
13 manages the wait list to prioritize those with the highest levels of need. Due to budget
14 constraints, only individuals whose needs fall into levels 4 through 6 are generally admitted into
15 the program."

16 46. Navigant interviewed three supported living providers regarding DDA rate setting
17 and documented the following:

18 "Providers also discussed the challenge they face due to high staff turnover. They
19 associated low reimbursement rates with an inability to pay competitive wages
20 and high staff turnover. Specifically, the hourly ISS [(Instruction and Support
21 Services)] rates have been decreasing since 2009 while the Washington State
22 minimum wage has increased. In addition, the high turnover puts pressure on their
23 training budgets as they must train all new staff."

47. In December 2015, DDA identified fifty individuals residing in an RHC who had
requested community-based supported living services on or before August 15, 2015, and did not

1 have a discharge date or supported living agency committed to serving them. In April 2016,
2 DDA identified an additional forty-one HCBS waiver participants who were authorized to
3 receive community-based supported living services on or before December 31, 2015, and did
4 not currently have any supported living agency committed to serving them.

5 48. *Plaintiff C.F.* is one of the fifty RHC resident identified in December 2015 as
6 waiting for community-based residential habilitation services. His experience is typical of the
7 proposed class. He has a developmental disability that qualifies him for HCBS waiver services,
8 including residential habilitation.

9 49. Plaintiff C.F. was approved for residential habilitation services through the Core
10 Waiver in 2013, when he began to receive services from a private supported living agency. Due
11 to a series of incidents arising from his unmet complex behavioral support needs, Plaintiff C.F.'s
12 provider was unable to retain sufficient staff to provide him with services. After a physical
13 altercation involving Plaintiff C.F. and the provider's staff, both of whom made cross-
14 allegations of assault against the other, Plaintiff C.F.'s provider gave DDA a notice of
15 termination effective within hours. Without the ability to live independently, Plaintiff C.F.'s
16 only option was to be admitted to an RHC while DSHS searched for a new provider.

17 50. DSHS sent referral packets to several private supported living agencies, but all
18 agencies declined to accept his referral. In addition, DSHS inquired about supporting him in its
19 SOLA program, but there were no openings in that program. Plaintiff C.F. received no notice of
20 any opportunity to request a fair hearing.

21 51. Since he has been institutionalized, Plaintiff C.F. and his guardian have continued
22 to desire Medicaid-funded services provided in a more integrated setting. However, his
23 guardian has significant concerns about him discharging to a supported living agency that could

1 terminate services with little to no notice if the agency is unable to meet his needs or retain
2 sufficient staff. His guardian recently re-requested SOLA services, but was again told there
3 were no openings in this program. Because DSHS has been unable to identify a supported
4 living provider who could guarantee services to appropriately support his behavior support
5 needs arising from his dual diagnoses of schizophrenia and autism, he has been unable to access
6 community-based residential habilitation services necessary to discharge from the RHC.

7 52. *Plaintiff J.P.* is also one of the fifty RHC residents, identified in December 2015,
8 to be waiting for community-based residential habilitation services. Her experience is also
9 typical of the proposed class. She has a developmental disability that qualifies her for HCBS
10 waiver services, including residential habilitation.

11 53. Plaintiff J.P. was a class member of *Allen, et al., v. Western State Hospital, et al.*,
12 USDC C99-5018-RBL, another federal class action lawsuit brought in 1999 on behalf of
13 patients with developmental disabilities at Western State Hospital. Under a series of settlement
14 agreements that were in effect from 1999 to 2009, DSHS improved both inpatient and
15 community-based services to meet the needs of people with developmental disabilities who
16 need intensive behavioral supports to be discharged, successfully live in the community, and
17 avoid re-institutionalization.

18 54. After being involuntarily committed at the state hospital, DSHS retained a
19 supported living agency who initially agreed to provide Plaintiff J.P. with community-based
20 services and initiated the implementation of a transition plan. However, the transition was not
21 successful and she was discharged from WSH to an RHC in 2009.

22 55. Three years later, in 2012, Plaintiff J.P. was discharged from the RHC with
23 supported living services, only to return to the RHC a few weeks later when her supported living

1 agency failed to implement the recommendations in her discharge plan for responding to her
2 behavioral health needs. Since she was re-admitted to the RHC, she continued requesting
3 Medicaid-funded community-based services from a new provider, but all supported living
4 agencies in her home region declined to accept her referral. Plaintiff J.P. received no notice of
5 any opportunity to request a fair hearing.

6 56. In January 2015, after DDA sent referral packets to providers in a broader
7 geographic region, a supported living agency outside Plaintiff J.P.'s preferred region accepted a
8 referral, with the caveat that it could take up to a year to find the necessary staff. Presently, a
9 year and a half later, Plaintiff J.P. still has been unable to transition to the community due to the
10 agency's inability to recruit and retain a sufficient number of staff. Defendants have no
11 alternative plan or timeline to ensure Plaintiff J.P. does not continue to be institutionalized
12 indefinitely while the supported living agency continues to attempt to recruit and retain the staff
13 needed to support her.

14 57. *Plaintiff L.B.* is one of the forty-one HCBS waiver participants who is waiting for
15 the community-based residential habilitation services she is qualified to receive. Her experience
16 is also typical of the proposed class. She has a developmental disability that qualifies her for
17 HCBS waiver services, including residential habilitation.

18 58. When Plaintiff L.B.'s supported living agency provided notice that it would be
19 terminating her residential habilitation services, DDA sent referral packets to other agencies that
20 support individuals in the county where her mother resides. All of the agencies declined the
21 referral. Plaintiff L.B. received no notice of any opportunity to request a fair hearing.

1 59. DDA suggested admission to an RHC as an alternative, and threatened to report
2 Plaintiff L.B.'s guardian to Adult Protective Services (APS) when she requested an additional
3 extension of supported living services while Plaintiff L.B.'s fragile health stabilized.

4 60. Refusing to institutionalize her daughter, Plaintiff L.B.'s guardian agreed for
5 Plaintiff L.B. to live temporarily with her and her husband while DDA searched for an
6 alternative Medicaid-funded community-based supported living provider. As an elderly woman
7 over the age of seventy, Plaintiff L.B.'s guardian does not believe she can indefinitely continue
8 to support Plaintiff L.B. to live at home, which requires that she provide Plaintiff L.B. with
9 significant personal care assistance when hired caregivers cancel, do not show up, or cannot
10 cover a shift. As a result, Plaintiff L.B. is not receiving the combination of training, personal
11 care, and supervision included in residential habilitation services, and she is at risk of
12 institutionalization.

13 61. Plaintiffs C.F., J.P., and L.B. would like to receive the residential habilitative
14 services they need in an integrated community-based settings.

15 **VII. CLAIMS FOR RELIEF**

16 **FIRST CLAIM: DECLARATORY RELIEF FOR VIOLATIONS OF THE AMERICANS 17 WITH DISABILITIES ACT**

18 62. Plaintiffs re-allege the paragraphs above.

19 63. Plaintiffs and the putative class are all "qualified individuals with a disability"
20 within the meaning of 42 U.S.C. § 12131(2). Plaintiff and class members have not been
21 provided services they would need to live in an integrated setting in the community.

22 64. Defendants' acts and omissions effectively deny Plaintiffs and the putative class
23 the community-based services that they need in order to avoid continued segregation in an

1 institution in violations of Title II of the ADA, 42 U.S.C. § 12132 and its implementing
2 regulations.

3 65. Defendants' "methods of administration" further have the effect of subjecting
4 Plaintiffs and the putative class to discrimination on the basis of disability by subjecting
5 them to unnecessary and unjustified segregation, or placing them at risk of unnecessary and
6 unjustified segregation, in violation of 28 C.F.R. § 35.130 (b)(3).

7 66. Defendants further discriminate against Plaintiffs and the putative class by
8 denying them access to services based upon the severity of their disabilities, in violation of 28
9 C.F.R § 35.130(b)(1). As a result, Defendants relegate Plaintiffs and the putative class to
10 segregated facilities or place them at risk of institutionalization in violation of the ADA.

11 **SECOND CLAIM: DECLARATORY RELIEF FOR VIOLATIONS OF**
12 **SECTION 504 OF THE REHABILITATION ACT**

13 67. Plaintiffs re-allege the paragraphs above.

14 68. Plaintiffs and putative class members are qualified individuals with disabilities
15 under Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 (a). Defendants' agencies, HCA
16 and DSHS, receive federal financial assistance.

17 69. Defendants violate Section 504 of the Rehabilitation Act and its implementing
18 regulations by denying Plaintiffs and putative class members access to integrated community-
19 based programs appropriate to meet their needs, thereby requiring that Plaintiffs and putative
20 class members be confined in segregated institutions in order to receive the services that they
21 need, or suffer risk of institutionalization.

22 **THIRD CLAIM: DECLARATORY RELIEF FOR VIOLATIONS OF**
23 **TITLE XIX OF THE SOCIAL SECURITY ACT**

70. Plaintiffs re-allege the paragraphs above.

1 71. Plaintiffs and the putative class are entitled to declaratory relief pursuant to 42
2 U.S.C. § 1983 that Defendants have acted under color of state law to violate Title XIX of the
3 Social Security Act by failing to provide Plaintiffs and class members with (1) Medicaid
4 benefits with reasonable promptness, 42 U.S.C. § 1396a(a)(8); (a)(10)(A) and its implementing
5 regulations; (2) a meaningful choice of providers, including a choice between institutional and
6 community-based services, 42 U.S.C. § 1396n(c)(2)(B); (C); and (3) adequate written notice
7 of defendants' determinations, as well as their right to appeal to defendants' administrative
8 hearing process, pursuant to 42 C.F.R. § 431.200 et seq.

9 **FOURTH CLAIM: DECLARATORY RELIEF FOR VIOLATIONS OF**
10 **TITLE XIX OF THE SOCIAL SECURITY ACT**
 DUE PROCESS

11 72. Plaintiffs re-allege the paragraphs above.

12 73. Plaintiffs and the putative class are entitled to declaratory relief pursuant to 42
13 U.S.C. § 1983 that Defendants have acted under color of state law to violate Title XIX of the
14 Social Security Act by failing to provide adequate notice and access to an administrative
15 hearing, 42 U.S.C. § 1396a(a)(3).

16 **FIFTH CLAIM: INJUNCTIVE RELIEF**

17 74. Plaintiffs re-allege the paragraphs above.

18 75. Plaintiffs and the putative class are entitled to preliminary and permanent
19 injunctive relief pursuant to 42 U.S.C. § 1983 to require Defendants to fully implement the
20 ADA, Rehabilitation Act, and Medicaid requirements as they apply to plaintiff and the proposed
21 class.

22 **VIII. DEMAND FOR RELIEF**

23 WHEREFORE, Plaintiffs requests that this Court:

1 1. Certify this case as a class action; designate the named Plaintiffs as class
2 representatives; and designate DISABILITY RIGHTS WASHINGTON, Sarah Eaton, Susan
3 Kas, and David Carlson, as class counsel;

4 2. Declare that that Defendants' failure to implement an adequate system for
5 ensuring the choice of integrated community based services results in unnecessary
6 segregation and institutionalization of Plaintiffs and the class, or places them at risk of
7 unnecessary institutionalization, and violates the Title II of the ADA, Section 504 of the
8 Rehabilitation Act, the Medicaid Act, and the 14th Amendment of the United States
9 Constitution.

10 3. Enjoin Defendants from continued violations of Title II of the ADA, Section 504
11 of the Rehabilitation Act, the Medicaid Act, and the 14th Amendment of the United States
12 Constitution and require Defendants to amend its policies, practices, and procedures to ensure
13 that Plaintiffs and the class are:

14 (a) provided with appropriate community-based residential services with
15 reasonable promptness; and

16 (b) informed that they are eligible for community-based services, that they
17 have the right to choose to receive such services in an institutional or integrated
18 community setting, and that they are entitled to a fair hearing if requested
19 residential habilitative services are not provided with reasonable promptness;

20 4. Enter judgment in favor of Plaintiffs and the class;

21 5. Award Plaintiffs and the class their attorney fees and costs; and

22 6. Award such other relief as is just and proper.

23 //
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1 DATED: August 2, 2016.

2 **DISABILITY RIGHTS WASHINGTON**

3 */s/ Susan Kas*

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5 David Carlson, WSBA #35767

6 Sarah Eaton, WSBA #46854

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