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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION**

Disability Rights California, California
Protection and Advocacy Agency For
Persons With Disabilities,

Plaintiff

v.

Sierra Vista Rehabilitation Center,
SunBridge Healthcare Corporation

Defendants

CASE NO.: CV09-3664

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

Dept:
Judge:
Hearing Date and Time:
Action Filed:

VBF
(FFM)

JURISDICTION

1
2 1. This Court has jurisdiction over the claims brought herein pursuant to
3 28 U.S.C. § 1331 (West 2009) and 28 U.S.C. § 2201 (West 2009).

4 2. Plaintiff brings its claims for access to information, records, and
5 residents at the facility under the Protection and Advocacy for Individuals with
6 Mental Illness Act (hereinafter "PAIMI"), 42 U.S.C. § 10801, *et seq.* (West 2009);
7 the Developmental Disabilities Assistance and Bill of Rights Act (hereinafter
8 "PADD"), 42 U.S.C. § 15001, *et seq.* (West 2009); and California Welfare and
9 Institutions Code Section 4900 *et seq.* (West 2009). Supplemental jurisdiction
10 over state law claims is allowed under 28 U.S.C. § 1367 (West 2009).

PRELIMINARY STATEMENT

11
12 3. This case involves Plaintiff's authority to access information and
13 records pursuant to its probable cause determination that Defendant Sierra Vista
14 staff use excessive force with behavioral restraint and that facility residents are at
15 significant risk of unnecessary and inappropriate behavioral restraint, which can
16 cause serious injury or death.

17 4. Plaintiff, Disability Rights California (hereinafter "DRC"), brings this
18 action against the Defendants, Sierra Vista Rehabilitation Center (hereinafter
19 "Sierra Vista") and SunBridge Healthcare Corporation (hereinafter "SunBridge"),
20 seeking to compel Defendants to provide to DRC information and records,
21 including reports prepared by Defendants, in order that DRC may fulfill its
22 statutory mandates under federal and state law.

23 5. DRC has been mandated and designated as the Protection and
24 Advocacy System for persons with disabilities in California under federal and
25 state law. This mandate arose due to the federally acknowledged vulnerability
26 and resulting risk of abuse and neglect of persons with developmental and mental
27 disabilities, particularly while residing in facilities.
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1 6. Current professional and medical standards suggest that the use of
2 behavioral restraint and seclusion is a sign of treatment failure. Further,
3 behavioral restraint and seclusion are risky practices for any facility to undertake
4 because when used inappropriately or excessively, these practices can lead to
5 serious injury or death. When restraint and seclusion are used inappropriately or
6 excessively, such practices become abuse, which is criminally actionable.

7 7. When abuse or neglect is reported to DRC or there is probable cause
8 to believe that the incidents occurred, DRC has the authority as California's
9 Protection and Advocacy System to access information, records, and reports
10 prepared by Defendants in order to conduct a full investigation.

11 8. Multiple residents at Sierra Vista have reported to DRC incidents of
12 excessive or inappropriate use of restraints by facility staff toward them and other
13 residents. DRC has reason to believe that these incidents have occurred and
14 continue to occur at Sierra Vista. Further, DRC has reason to believe that there is
15 significant risk of other residents being subject to such abuse at the facility.

16 9. DRC is the final arbiter of probable cause for the purpose of triggering
17 its access to information and records relevant to its abuse investigation.

18 10. Pursuant to its full investigation into abuse, DRC has made repeated
19 requests to Defendants for information and records, including reports prepared by
20 facility staff concerning the incidence and types of behavioral restraint used at
21 Sierra Vista. Defendants repeatedly have denied such requests in violation of
22 federal statutes and implementing regulations as well as State law.

23 11. As part of its mandate, DRC also has authority to access facilities,
24 such as Sierra Vista, to provide information to residents, monitor compliance with
25 respect to the rights and safety of residents, and investigate abuse or neglect of
26 residents.
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1 12. Defendants have delayed or denied DRC access to Sierra Vista and
2 residents.

3 13. DRC has been harmed as a result of Defendants illegal denial of
4 access to both information and records and the facility and residents therein. Its
5 ability to conduct a full investigation has been impeded. As a result, it has been
6 forced to spend time and resources on repeated requests to little or no avail,
7 thereby delaying its investigatory findings.

8 14. DRC hereby seeks the following relief: 1) a declaratory judgment that
9 Defendants, by refusing to provide DRC the requested reports, delaying or
10 denying access to other information and records, and delaying or denying access
11 to facility residents have violated federal and state law; 2) a preliminary and
12 permanent injunction requiring Defendants to provide the requested access to
13 records and residents at the facility; and 3) a preliminary and permanent
14 injunction forbidding Defendants from interfering, in any way, with DRC's
15 statutorily authorized access to facility reports and residents consistent with
16 federal and state law.

17 18 **VENUE**

19 15. Venue is appropriate in this district pursuant to 28 U.S.C. § 1391(b)
20 (West 2009) as a substantial portion of the events or omissions giving rise to
21 Plaintiff's claims occurred within this judicial district.

22 **PARTIES**

23 16. Plaintiff DRC is a non-profit agency designated as California's
24 Protection and Advocacy System for persons with disabilities pursuant to
25 California Welfare and Institutions Code (hereinafter "Cal. Welf. & Inst. Code")
26 Sections 4900(i) and 4901. DRC has standing pursuant to an express private
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1 right of action to enforce its authorizing statutes and to bring suit on behalf of its
2 constituents.

3 17. Defendant Sierra Vista is located in Highland, California, within San
4 Bernardino County, and is licensed as a skilled nursing facility pursuant to
5 California Health and Safety Code Section 1250; Title 22, California Code of
6 Regulations, §§ 72001-72713.

7 18. Based on information and belief, the facility is licensed for 116 beds,
8 and has a Special Treatment Program that serves approximately 71 adults with
9 mental health disabilities. Title 22, California Code of Regulations, §§ 72443-
10 72475. It also has a Specialized Behavioral Program that serves approximately
11 45 adults with developmental and mental health disabilities; both programs serve
12 deaf and hearing-impaired adults. Individuals who reside at Sierra Vista are from
13 San Bernardino and other California counties. Care for at least some of the
14 residents at the facility is funded in part by Medicaid (Medi-Cal in California), and
15 therefore the facility must comply with 42 U.S.C. Sections 1395-1395ggg and
16 1396-1396v, and federal regulations under 42 C.F.R. Parts 424 (2009) and 483
17 (2006).

18 19. Defendant SunBridge is a corporation having headquarters in Irvine,
19 California. It operates Sierra Vista as well as at least 18 other Behavioral Health
20 centers, six of which are also located in California.

21 **FACTS**

22 20. On October 17, 2008, a DRC staff member from the Peer and Self-
23 Advocacy Unit (hereinafter "PSAU") was conducting a regularly scheduled group
24 meeting with residents at Sierra Vista. In the group meeting, residents reported
25 excessive force being used by staff in events they termed as "wall slammings"
26 and "take downs."
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1 21. On November 7, 2008, DRC Legal Unit staff accompanied a DRC
2 PSAU staff member to her regular advocacy meeting with Sierra Vista residents.
3 Also present at this meeting were representatives of the local Long-Term Care
4 Ombudsman Program (See Cal. Welfare & Institutions Code §§ 9700 *et seq.*) and
5 of the San Bernardino County Patient's Rights Advocate Office (See Cal. Welf. &
6 Inst. Code §§ 5520-5523).

7 22. Residents reported that excessive force was being used during "wall
8 slammings" initiated by Sierra Vista staff with the following characteristics: 1)
9 residents were pushed forcefully against the wall at a high elevation off the
10 ground; 2) residents' limbs were forcefully pulled and spread against the wall; and
11 3) residents were then dropped to the floor on their knees. Residents reported
12 bruising, pain, general fear, and trauma.

13 23. After the November 7, 2008 meeting, DRC Legal Unit staff began to
14 investigate what the residents described as "Pro-Act" through on-line research.
15 DRC staff learned that Professional Assault Crisis Training ("Pro-Act") was a
16 method of crisis intervention that included restraint techniques only to be used as
17 a last resort. DRC also learned that these principles and techniques were used
18 by multiple facilities other than Sierra Vista.

19 24. Since DRC was receiving complaints about abusive incidents related
20 to restraint practices and techniques at Sierra Vista, Plaintiff limited its
21 investigation to policies, practices and techniques for use of behavioral restraint at
22 Defendant Sierra Vista.

23 25. As a result of DRC's on-going investigation and the two group
24 meetings on October 17, 2008 and November 7, 2008 with residents reporting
25 highly similar complaints, DRC opened a full investigation into possible abuse and
26 neglect at Sierra Vista based on probable cause that facility residents had been
27 subject to inappropriate restraint and excessive force in the use of restraint and
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1 that there was a significant risk of other residents being subject to such treatment
 2 at the facility. See 42 U.S.C. § 10805(a)(1)(A) [authority to investigate abuse and
 3 neglect]; 42 C.F.R. § 51.2 (1997) [definitions of “abuse”, “full investigation”, and
 4 “probable cause”].

5 **LIMITATIONS ON RESTRAINT**

6 **Federal Law**

7
 8 26. Under federal law, Sierra Vista residents have the right to be free from
 9 physical or mental abuse, including any physical or chemical restraint imposed for
 10 purposes of discipline or convenience. 42 U.S.C. § 1396r(c)(1)(A)(ii); 42 U.S.C. §
 11 290ii(a); 42 C.F.R. § 483.13(a) (1992). Each “resident has the right to be free
 12 from verbal, sexual, physical, and mental abuse, corporal punishment, and
 13 involuntary seclusion.” 42 C.F.R. § 483.13(b) (1992).

14 27. Restraint and seclusion may only be imposed to ensure physical
 15 safety and upon a written order by a physician or other authorized medical
 16 provider that specifies duration and circumstances under which restraints are to
 17 be used. 42 U.S.C. § 290ii(b).

18 28. Sierra Vista has a duty to “develop and implement written policies and
 19 procedures that prohibit mistreatment, neglect, and abuse of residents” 42
 20 C.F.R. § 483.13(c) (1992).

21 29. Defendants “must promote care for residents in a manner and in an
 22 environment that maintains or enhances each resident’s dignity and respect in full
 23 recognition of his or her individuality.” 42 C.F.R. § 483.15(a) (1992).

24 30. Each Sierra Vista resident “must receive and the facility must provide
 25 the necessary care and services to attain or maintain the highest practicable
 26 physical, mental, and psychosocial well-being” 42 C.F.R. § 483.25 (2005).

1 31. Federal law shall not be construed to impede any state law or
2 regulations that provide greater protections regarding restraint and seclusion. 42
3 U.S.C. § 290ii(c).
4

5 **State Law**

6 32. State law also provides that persons with psychiatric disabilities have
7 a right to be free from harm, including unnecessary or excessive physical restraint
8 or isolation. Cal. Welf. & Inst. Code § 5325.1(c).

9 33. Behavioral Restraint and/or seclusion may only be used for behavioral
10 emergencies when a person's behavior presents an imminent danger of serious
11 harm to self or others. Cal. Health & Safety Code § 1180.4(b).

12 34. Restraint and/or seclusion may only be used when alternative
13 methods are not sufficient to protect the patient or others from injury. Cal. Code
14 Regs. tit. 9, § 865.2(a).

15 35. Restraint and/or seclusion must never be used as a punishment, for
16 staff convenience, or as a substitute for a less restrictive alternative form of
17 treatment. Cal. Code Regs. tit. 9, § 865.4(a); Cal. Code Regs. tit. 22, §§ 72319(d),
18 72527(a)(23).

19 36. Restraint and/or seclusion may only be used for as long as necessary
20 to protect the patient or others from injury and there is no less restrictive ways of
21 protecting against such injury. Cal. Code Regs. tit. 9, §§ 865.4(a), 865.5.

22 37. Restraint and/or seclusion may be imposed only upon written order of
23 a physician, or in a legally defined emergency, upon telephone order by a
24 physician within one hour of seclusion and/or restraint. Cal. Code Regs. tit. 22, §
25 72461(a).

26 38. Use of restraint must be properly documented in the patient's medical
27 records. Cal. Code Regs. tit. 22, § 72461(c); Cal. Code Regs. tit. 9, § 865.3.
28

1 39. Restraints shall be used in such a way so as not to cause physical
2 injury to the patient. Cal. Code Regs. tit. 22, § 72319(g).

3 40. State law requires Defendants to adopt written policies and
4 procedures regarding the use of manual and/or behavioral restraints at Sierra
5 Vista, and to make such information available to facility residents. Cal. Code
6 Regs. tit. 22, §§ 72523, 72319, 72527; Cal. Health & Safety Code § 1599.1.

7 **INFORMATION REQUESTS & ON-GOING INVESTIGATION**

8 41. In a letter dated November 21, 2008 to Sierra Vista, DRC referenced
9 the multiple reports of excessive physical force by facility staff, requested a
10 meeting to discuss Pro-Act techniques and facility policies concerning physical
11 contact between staff and residents, and requested copies of policies and
12 procedures regarding the facility's use of Pro-Act restraint. DRC stated that its
13 goal was to inform residents of their rights in regards to restraint techniques being
14 used at the facility, to ensure residents' rights to dignity and respect were upheld,
15 and that the agency sought to address resident reports in a coordinated,
16 pragmatic, and problem-solving manner consistent with 42 C.F.R. Section
17 51.32(a) (1997).

18 42. Defendants' counsel sent a December 2, 2008 letter to DRC stating
19 that they were gathering the requested Pro-Act policies and procedures and were
20 considering whether or not to produce them. They also requested client-specific
21 information.

22 43. DRC provided a written response the same day citing access
23 authority under federal and state law, and referencing 42 C.F.R. Section
24 51.45(a)(1) (1997), which require protection of client name and information
25 underlying a probable cause determination.

26 44. On December 8, 2008, Defendants' counsel sent DRC the "Pro-Act
27 procedures and materials" used at Sierra Vista as follows: Pro-Act workshop
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1 manual, Pro-Act Exercise Booklet, Pro-Act Restraint Certification, and Pro-Act
2 Restraint Certification Exercise Booklet, which in total constitute 371 pages.

3 45. Based on information and belief, Defendants have not adopted written
4 policies and procedures for emergency use of behavioral restraints at Sierra
5 Vista. The facility was found out of compliance with state law and regulations on
6 the issue by the State Department of Mental Health and by the Riverside County
7 Patients' Rights Advocates Office in 2005 and 2007, respectively.

8 46. Based on information and belief, the above-referenced Pro-Act
9 procedures and materials used at Sierra Vista do not constitute the requisite
10 facility policies and procedures for use of behavioral and/or manual restraints, and
11 the behavioral restraint techniques employed by facility staff are inconsistent with
12 professional standards.

13 47. Defendants' counsel and DRC arranged a meeting at Sierra Vista on
14 December 18, 2008 for a discussion among DRC staff, Sierra Vista and
15 SunBridge staff, and a representative of the San Bernardino County Patients'
16 Rights Office on use of restraint at the facility. Defendants' counsel requested,
17 and DRC agreed, that "all statements made at the meeting" would be covered by
18 applicable settlement privileges, including but not limited to California Evidence
19 Code section 1152 and Rule 408 of the Federal Rules of Evidence.

20 48. On December 26, 2008, DRC sent a written request to Defendants for
21 information and records, including reports prepared by Defendants on "data from
22 January 1, 2008 to the present regarding the number of restraint incidents at
23 Sierra Vista, by type of restraint used and facility program." DRC also therein
24 requested the following information and records used at the facility: Psychiatric
25 Advance Directive form, and policies and procedures for its completion; Adverse
26 Report form, and policies and procedures for its completion; Notable Incident
27 Report form, and policies and procedures for its completion; and Forms for
28

1 Documentation, Debriefing and Evaluation of the use of restraint, and policies and
2 procedures for their completion.

3 49. On January 16, 2008, DRC received from the San Bernardino County
4 Patients' Rights Office copies of Sierra Vista's "Denial of Rights/Seclusion and
5 Restraint Monthly Reports" for the year of 2008. For the entire year of 2008,
6 Defendants reported only 3 incidents of restraint on the Denial of Rights Reports.

7 50. Based on information and belief, hundreds of restraint incidents likely
8 took place at Sierra Vista in 2008.

9 51. On February 6, 2009, Defendants' counsel sent a letter stating they
10 would supply most of the information and records requested in DRC's December
11 26, 2008 letter, but refused to provide information or reports on restraint incidents
12 at the facility, stating: "the collection and reporting of such data is covered by
13 state and federal peer review and quality assurance privileges." Defendants
14 produced documents on February 13 but failed to provide behavioral restraint
15 incident data for 2008.

16 52. On February 24, 2009 DRC renewed the request for restraint incident
17 data, pointing out that such information or reports were not covered by peer
18 review statutes and, even if they were, that Protection and Advocacy Systems
19 such as DRC have access to peer review records under federal and state law.

20 53. DRC also continued to review client medical records. In reviewing
21 these medical records, DRC staff noticed that in some instances the Psychiatric
22 Advance Directives, which include statements of preference by residents for
23 specific and individualized crisis intervention techniques, appeared not to be used
24 by staff prior to use of so-called Pro-Act restraint techniques.

25 54. DRC also found that the Notable Incident Form, the Adverse Incident
26 Form, and the other restraint debriefing forms were not present in the client
27 medical records.
28

1 55. In a letter dated March 11, 2009, Sierra Vista again denied DRC's
2 request for restraint incident information or reports, this time referencing
3 C.F.R. § 483.75(o)(3) (2003), which relates to information developed by members
4 of a nursing facility's quality assessment and assurance committee.

5 56. On March 20, 2009, DRC renewed its request for restraint incident
6 information or reports, asking that the time period be expanded from January 1,
7 2008 to February 28, 2009 due to the amount of time that had elapsed, and
8 explaining why 42 C.F.R. Section 483.75(o)(3) (2003) did not apply. Further,
9 DRC broadened its request to include the following records for the period of
10 January 1, 2008 to February 28, 2009 with resident identifying information
11 redacted:

- 12 a. Psychiatric Advance Directives completed by residents;
- 13 b. P.A.R.T. Debriefing forms completed by facility staff;
- 14 c. Behavioral Restraint(s) Debriefing & Resolution forms
15 completed by facility staff;
- 16 d. Interview Narrative Records completed by facility staff;
- 17 e. Notable Incident Reports completed by facility staff;
- 18 f. Restraint log(s) kept by the facility including but not limited to
19 that required under Title 22, Cal. Code Regs., § 72461(b); and
- 20 g. The names of all facility staff trained on the use of restraints,
21 including so-called Pro-Act restraints, the date of such training,
22 and copies of the training materials.

23 57. In its March 20, 2009 letter to Defendants, DRC reiterated its desire to
24 work with Defendants in a coordinated, pragmatic and problem-solving fashion
25 toward resolution of the concerns brought to light by facility residents. DRC
26 proposed working with Defendants to: (a) establish facility policies and
27 procedures on the right of residents to be free from unnecessary or excessive
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1 physical restraint; (b) train facility staff; (c) provide information and training to
2 residents, and (d) monitor restraint usage. At the same time, DRC stated that it
3 would "have no option but to seek judicial resolution" if Defendants declined to
4 provide the requested information and records.

5 58. In an April 6, 2009 letter, DRC requested that Defendants provide a
6 written explanation as required under 29 U.S.C. Section 794e(f)(2) and 45 C.F.R.
7 Section 1386.22(i) (1996) if they had decided not to provide the requested
8 information and records.

9 59. In an April 8, 2009 letter, DRC requested access to Sierra Vista
10 residents for the provision of information about individual rights and the services
11 available from the agency, and monitor conditions at the facility. The request was
12 for reasonable unaccompanied access to all areas of the facility used by
13 residents, including but not limited to patio areas during break times and
14 otherwise used by residents. The request was for access to all residents of the
15 facility, and in particular residents who were deaf or had hearing impairments, on
16 Friday, April 17, 2009, from 11 am to 3 pm. Cal. Welf. & Inst. Code § 4902(a)(3);
17 PAIMI, 42 U.S.C. § 10801 *et seq.*; PADD, 42 U.S.C. § 15001 *et seq.*

18 60. Defendants' counsel denied DRC's access to the facility in an e-mail
19 on April 10, 2009, stating "I can tell you right now that an April 17 visit will not
20 work. I will get back to you with alternative dates"

21 61. On April 27, 2009, Defendants' counsel wrote a response to DRC's
22 April 8, 2009 request for reasonable unaccompanied access to Sierra Vista and
23 the residents therein. Defendants' counsel proposed a meeting to "meet and
24 confer . . . to develop a protocol for [reasonable] access."

25 62. DRC sent a letter dated May 13, 2009 to Defendants stating its
26 willingness to discuss its access authority to the facility and residents therein
27 upon Defendants' commitment to respect DRC's facility access authority under
28

1 federal and state law. In addition, DRC requested alternative dates as promised
2 in the April 10, 2009 e-mail from Defendants' counsel. DRC also reserved the
3 right to ensure its authority.

4 63. Defendants' counsel replied to DRC's May 13, 2009 letter regarding
5 access to the facility and residents with a letter dated May 20, 2009. In this letter,
6 Defendants' counsel stated their intent to "comply with applicable law regarding
7 DRC's right of access to Sierra Vista, but then went on to lay out several "terms
8 and conditions" under which DRC would be permitted to access Sierra Vista. The
9 stated conditions went beyond what statutes, regulations, and case law have
10 determined to be reasonable restrictions on DRC's right to access a facility
11 providing information to residents, monitoring the safety of residents, and the
12 facility's compliance with laws or investigating a report of possible abuse or
13 neglect.

14 64. In a separate April 27, 2009 letter, Defendants declined to produce
15 any of the information requested by DRC in its March 20, 2009 letter. Defendants
16 again asserted that data regarding the number of restraint incidents at the facility
17 was protected as facility quality assessment and assurance committee records.
18 In addition, restraint data and all of the other requested reports were deemed
19 "beyond the scope of the authority granted to protection and advocacy systems
20 such as DRC." Defendants claim that the "plain language of [federal and state]
21 statutes and regulations . . . precludes DRC from obtaining general information
22 about the facility and its operations." Finally, Defendants asserted that DRC
23 "does not have the right to access any [staff] training materials or data regarding
24 [staff] training" on use of restraints.

25 65. On May 15, 2009, DRC requested that Defendants promptly provide
26 information on the number of Sierra Vista residents between January 1, 2008 and
27 February 28, 2009, and the names, addresses and phone numbers for the
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1 guardians, conservators or other legal representatives of such individuals,
 2 pursuant to 42 C.F.R. §§ 51.41(a), 51.43 (1997); 45 C.F.R. § 1386.22(i) (1996).

3 66. As a result of Defendants' refusal to provide information and records,
 4 including reports prepared by facility staff, DRC is unable to complete its
 5 statutorily mandated abuse investigation into the use of behavioral restraints at
 6 Sierra Vista. DRC deems data regarding the frequency and pervasiveness of
 7 behavioral/physical restraint necessary to its full investigation into abuse at the
 8 facility. Absent this aggregate data, DRC is unable to carry out potential
 9 advocacy to implement changes in and inform residents of facility practices, issue
 10 public reports on restraint incidents across facility programs, monitor trends in
 11 restraint usage, and protect the rights of all Sierra Vista residents. In addition,
 12 Defendants' denial of and delay in DRC's access to the facility and residents
 13 therein undermines DRC's ability both to provide information to residents about
 14 their rights and to monitor facility compliance with respect to the rights and safety
 15 of residents.

16 CLAIMS FOR RELIEF

17 **First Claim for Relief—Violation of the Protection and Advocacy for 18 Individuals with Mental Illness Act (PAIMI)**

19 **(Access to Individual and General Information, Records, and Reports)**

20 67. DRC incorporates and re-alleges paragraphs 1 through 66, as if fully
 21 set forth herein.

22 68. 42 U.S.C. § 10805(a)(1)(a) authorizes DRC as the protection and
 23 advocacy system for California to investigate incidents of abuse and neglect of
 24 individuals with mental illness if such incidents are reported to DRC or when DRC
 25 has probable cause to believe that incidents of abuse or neglect have occurred.

26 69. Defendants have an obligation to provide all records of any individual
 27 who has authorized DRC to have such access under 42 U.S.C. § 10805(a)(4)(A);
 28

1 42 C.F.R. § 51.41(b)(1) (1997). *See also* 42 C.F.R. § 51.41(d) (1997) (providing
 2 that DRC shall have “reasonable access and authority to interview and examine
 3 all relevant records of any facility service recipient”).

4 70. Defendants have an additional obligation to provide general reports
 5 prepared by or for the facility itself that describe incidents of abuse, neglect, or
 6 injury taking place at the facility; steps taken to investigate such incidents;
 7 relevant personnel records regarding such incidents; and other supporting
 8 information relied upon in creating such a report. 42 C.F.R. § 51.41(c)(2) (1997).
 9 Such information includes restraint incident data when DRC has probable cause
 10 to suspect that restraint practices result in injury, abuse, or neglect. *See also* 42
 11 U.S.C. § 10806(b)(3)(A) (defining “records” broadly to include “reports” prepared
 12 by any staff of a facility).

13 71. Additionally, Defendants have an obligation to provide general
 14 “demographic and statistical information” relating to the facility’s restraint
 15 practices. *See* 42 C.F.R. § 51.41(c)(5).

16 72. Further, Defendants have an obligation to provide assessments
 17 prepared by its staff, contractors, or related entities regarding the use of restraint.
 18 *See* 42 C.F.R. § 51.41(c)(4).

19 73. By refusing to provide DRC access to requested information, records,
 20 and reports Defendants have violated the PAIMI Act and the regulations
 21 promulgated pursuant to the statute.

22 74. DRC has no adequate remedy at law.

23
 24 **Second Claim for Relief—Violation of the Protection and Advocacy for**
 25 **Individuals with Developmental Disabilities Act (PADD)**
 26 **(Access to Individual and General Information, Records, and Reports)**

27 75. DRC incorporates and re-alleges paragraphs 1 through 74, as if fully
 28 set forth herein.

1 76. 42 U.S.C. § 15043(a)(2)(B) authorizes DRC as the protection and
2 advocacy system for California to investigate incidents of abuse and neglect of
3 individuals with developmental disabilities if such incidents are reported to DRC or
4 when DRC has probable cause to suspect that incidents of abuse or neglect have
5 occurred.

6 77. Defendants have an obligation to provide all records of any individual
7 who has authorized DRC to have such access under 42 U.S.C. § 15043(a)(2)(I)(i)
8 and 45 C.F.R. § 1386.22(a) (1996).

9 78. Defendants have an additional obligation to provide general reports
10 prepared by or for the facility itself that describe incidents of abuse, neglect, or
11 injury taking place at the facility; steps taken to investigate such incidents;
12 relevant personnel records regarding such incidents; and other supporting
13 information relied upon in creating such a report. 45 C.F.R. § 1386.22(b)(2)
14 (1996). Such information includes restraint incident data when DRC has probable
15 cause to believe that restraint practices result in injury, abuse, or neglect. See
16 *also* 42 U.S.C. § 15043(c) (defining "record" broadly to include a "report" prepared
17 by any staff of a facility).

18 79. Additionally, Defendants have an obligation to provide general
19 "demographic and statistical information" relating to the facility's restraint
20 practices. See 45 C.F.R. § 1386.22(c)(2) (1996).

21 80. Further, Defendants have an obligation to provide assessments
22 prepared by its staff, contractors, or related entities regarding the use of restraint.
23 See 45 C.F.R. § 1386.22(c)(1) (1996).

24 81. By refusing to provide DRC access to requested information, records,
25 and reports Defendants have violated the PADD Act and the regulations
26 promulgated pursuant to the statute.

27 82. DRC has no adequate remedy at law.
28

**Third Claim for Relief—Supplemental State Law
(Access to Individual and General Information, Records, and Reports)**

83. DRC incorporates and re-alleges paragraphs 1 through 82, as if fully set forth herein.

84. Cal. Welf. & Inst. Code § 4902(a)(1) authorizes DRC as the protection and advocacy system for California to investigate incidents of abuse and neglect of individuals with mental illness if such incidents are reported to DRC or when DRC has probable cause to believe that incidents of abuse or neglect have occurred.

85. Defendants have an obligation to provide all individual records concerning the alleged abuse under Cal. Welf. & Inst. Code § 4903(a)(1).

86. Defendants have an additional obligation to provide general reports prepared by or for the facility itself that describe incidents of abuse, neglect, or injury taking place at the facility; steps taken to investigate such incidents; relevant personnel records regarding such incidents; and other supporting information relied upon in creating such a report. Cal. Welf. & Inst. Code § 4903(b)(2). Such information includes restraint incident data when DRC has probable cause to suspect that restraint practices result in injury, abuse, or neglect.

87. Additionally, Defendants have an obligation to provide general “demographic and statistical information” relating to the facility’s restraint practices. See Cal. Welf. & Inst. Code § 4903(c)(2).

88. Further, Defendants have an obligation to provide assessments prepared by its staff, contractors, or related entities regarding the use of restraint. See Cal. Welf. & Inst. Code § 4903(c)(1).

89. By refusing to provide DRC access to requested information, records, and reports Defendants have violated state law.

90. DRC has no adequate remedy at law.

**Fourth Claim for Relief—Violation of PAIMI Act
(Provision of Access to Residents at Facilities)**

91. DRC incorporates and re-alleges paragraphs 1 through 90, as if fully set forth herein.

92. DRC has authority to access facilities in California providing care and treatment authority to provide information to individuals with mental health disabilities, monitor their well-being and investigate significant risk of abuse or neglect in accordance with 42 U.S.C. § 10805(a)(3). Defendants have an obligation to provide DRC reasonable unaccompanied access to Sierra Vista, and to recipients of services therein under 42 C.F.R. § 51.42 (1997).

93. By refusing to allow DRC reasonable unaccompanied access to Sierra Vista and residents therein, Defendants have violated the PAIMI Act and its implementing regulations.

94. DRC has no adequate remedy at law.

**Fifth Claim for Relief—Violation of PADD Act
(Provision of Access to Residents at Facilities)**

95. DRC incorporates and re-alleges paragraphs 1 through 94, as if fully set forth herein.

96. DRC has authority to provide information to individuals with developmental disabilities, monitor their well-being and investigate significant risk of abuse or neglect in accordance with 42 U.S.C. § 15043(a)(2)(A)(ii). Defendants have an obligation to provide DRC reasonable unaccompanied access to Sierra Vista, and to individuals with developmental disabilities therein under 45 C.F.R. § 1386.22(g) (1996).

97. By refusing to allow DRC reasonable unaccompanied access to Sierra Vista and residents therein, Defendants have violated the PADD Act and its implementing regulations.

98. DRC has no adequate remedy at law.

**Sixth Claim for Relief—Supplemental State Law
(Provision of Access to Residents at Facilities)**

99. DRC incorporates and re-alleges paragraphs 1 through 98, as if fully set forth herein.

100. Cal. Welf. & Inst. Code § 4902(a)(3) authorizes DRC to provide information to Sierra Vista residents, monitor their well-being and investigate significant risk of abuse and neglect.

101. Defendants have an obligation to provide reasonable unaccompanied access to Sierra Vista, and to recipients of services therein under Cal. Welf. & Inst. Code §§ 4902(b), 4902(b)(2).

102. By refusing to allow DRC reasonable unaccompanied access to Sierra Vista and residents therein, Defendants have violated State law.

103. DRC has no adequate remedy at law.

**Seventh Claim for Relief—Violation of PAIMI and PADD Acts
(Prompt Notice of Delay or Denial in Access)**

104. DRC incorporates and re-alleges paragraphs 1 through 103, as if fully set forth herein.

105. Defendants have a duty to provide DRC with a written statement of reasons for delay or denial of access to Sierra Vista and residents or information and records therein under 42 C.F.R. § 51.43 (1997) and 45 C.F.R. § 1386.22(i) (1996).

106. Defendants have failed to provide promptly a written statement of reasons for denial of DRC's access to restraint incident data and other records, and for delay or denial of DRC's access to the Sierra Vista and residents therein.

107. By refusing to provide DRC prompt denial or delay notice of reasons, Defendants have violated federal law.

108. DRC has no adequate remedy at law.

**Eighth Claim for Relief—Supplemental State Law
(Prompt Notice of Delay or Denial in Access)**

109. DRC incorporates and re-alleges paragraphs 1 through 108, as if fully set forth herein.

110. Defendants have a duty to provide promptly a written statement of reasons for delay or denial in DRC's access to records or a facility under Cal. Welf. & Inst. Code § 4902(c).

111. Defendants have failed to provide promptly a written statement of reasons for denial of DRC's access to restraint incident data and other records, and for delay or denial of DRC's access to the Sierra Vista and residents therein.

112. By refusing to provide DRC prompt access denial or delay notice, Defendants have violated State law.

113. DRC has no adequate remedy at law.

INJUNCTIVE RELIEF

114. DRC repeats, reiterates, and realleges all of the foregoing, as if fully set forth herein.

115. DRC has standing to bring this action on its own behalf, because the refusal of access by defendants constitutes an injury in fact to DRC's legally-protected interests and the interests of its constituents. This injury is concrete, particularized, actual, and imminent. There is a causal relationship between the injury and Defendants' challenged conduct, and a favorable decision by this Court will address the injury.

116. Due to Defendants' violation of the PAIMI and PADD Acts, as well as the Cal. Welf. & Inst. Code, DRC is irreparably harmed as it is prevented from carrying out its responsibilities under those Acts.

117. Further, due to Defendants' violation of the PAIMI and PADD Acts, as well as Cal. Welf. & Inst. Code, Sierra Vista residents are irreparably harmed because they are denied access to DRC for information about their legal rights,

1 they are denied the opportunity for DRC to monitor health and safety conditions at
 2 the facility, and they are denied DRC's full investigation into probable cause to
 3 suspect abuse at the facility.

4 118. Unless Defendants are enjoined to provide to DRC the access
 5 required by federal and state law, DRC and its constituents will continue to be
 6 irreparably harmed as DRC will be unable to protect and advocate for persons
 7 with disabilities consistent with federal and state law.

8 **PRAYER FOR RELIEF**

9
 10 119. Wherefore, DRC, California's Protection and Advocacy System,
 11 respectfully prays that this Court grant it the following relief:

- 12 a. Enter a declaratory judgment that Defendants' refusal to provide the
 13 records requested, including but not limited to restraint incident data,
 14 by DRC is in violation PAIMI and PADD Acts, as well as the Cal. Welf.
 15 & Inst. Code.
- 16 b. Preliminarily and permanently enjoin Defendants to provide to DRC
 17 the access to information and records, including reports prepared by
 18 facility staff, mandated by federal and state law.
- 19 c. Preliminarily and permanently enjoin Defendants from interfering, in
 20 any way, with DRC's access to records.
- 21 d. Preliminarily and permanently enjoin Defendants to provide DRC
 22 reasonable unaccompanied access to Sierra Vista and residents
 23 therein as mandated by federal and state law.
- 24 e. Preliminarily and permanently enjoin Defendants from interfering, in
 25 any way, with DRC's access to Sierra Vista and residents therein.

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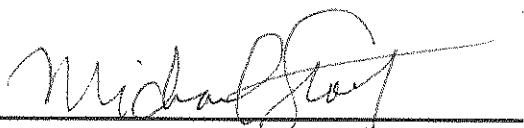
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1 f. Grant DRC such other and further relief which to this Court
2 seems just and proper.
3

4 Dated: May 21, 2009

Respectfully submitted,

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6 Disability Rights California

7
8 By: 
9

10 Michael Stortz, SBN 153378
11 Attorney for Plaintiff
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