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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

ENDORSED
FILED
San Francisco County Superior Court

FEB 27 1990

DONALD W. DICKINSON, Clerk
BY: J. W. Allen
Deputy Clerk

916401

William Coffelt by his Guardians)
ad Litem William and Roberta)
Coffelt, Conrado Diaz by his)
Guardians ad Litem Conrado and)
Elvia Diaz, Gary Eoff, Jr. by his)
Guardians ad Litem Gary, Sr. and)
Laurie Eoff, Damon Haberman by)
his Guardian ad Litem Adelaide)
Haberman, John Haskin by his)
Guardian ad Litem Marian)
Trentman, Jordon Jenkins by her)
Guardian ad Litem Maxine Jenkins,)
Zakary Kunkel by his Guardian ad)
Litem Bruce Kunkel, Christa)
Lawson by her Guardian ad Litem)
Dianne Lawson, Jason Pease by his)
Guardians ad Litem David and)
Cheryl Pease, Jeff Richman, Arsia)
Sazegari by his Guardians ad)
Litem Steve and Sima Sazegari,)
John Tossetti, Erin Walls by her)
Guardians ad Litem Billy and)
Betty Walls, on behalf of)
themselves and all others)
similarly situated; Association)
for Retarded Citizens-California,)
Autism Society of California,)
Capitol People First, Oaks Group,)
The Association for Persons with)
Severe Handicaps-California)
Chapter, United Cerebral Palsy)
Association of California, Inc.,)

Plaintiffs-Petitioners;

(Caption continued on next page)

CASE NO. _____

CLASS ACTION

COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF
AND PETITION FOR
WRIT OF MANDATE
(CCP §§ 526, 527,
1060, 1085)

Coffelt v. Dept. of Developmental Serv



MR-CA-001-001

1 v.)
2 Department of Developmental)
3 Services; Gary D. Macomber,)
4 Director of Developmental)
5 Services; State of California;)
6 Department of Finance; San)
7 Andreas Regional Center; Golden)
8 Gate Regional Center, Inc.;)
9 Regional Center of the East Bay)
10 Inc.; North Bay Regional Center;)
11 Does 1 through 50, inclusive,)
12)
13)
14)
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Defendants-Respondents.

NATURE OF THE CONTROVERSY

1. This class action is brought on behalf of persons with developmental disabilities so that they may receive the quality community living arrangements and services they need to avoid inappropriate institutionalization, to remain in their home communities and to develop the skills necessary to live independent and more productive lives.

2. The State in the Lanterman Act recognized the right of developmentally disabled persons to receive an individual determination of their needs and an entitlement to receive services, including residential services in the least restrictive setting. The State undertook an obligation to provide these services and, in order to fulfill its mandate, established a statewide network of regional centers, an individualized program planning process, and an orderly fiscal scheme under the supervision of the Department of Developmental Services (DDS).

3. For many the promise of the Lanterman Act is not being kept. Over 2,000 people living in state institutions, at an average cost nearly twice that permitted for care in the community, are on a waiting list for community homes. These 2,000 people, and over 2,000 more who are living in inappropriate community residences, are being denied the services they, their families and the professionals involved in their care agree they need in order to achieve their potential. In many cases plaintiffs are losing skills they previously possessed.

1 4. DDS' policies and practices and the actions of
2 regional centers, in response to such policies, have caused a
3 critical lack of stable, quality residential options in the
4 community. DDS' rate structures and method of allocating
5 program start-up funds are unrealistic and fail to insure the
6 ability of private providers to open and maintain stable
7 quality residential services. DDS policies and practices
8 interfere with the individualized decision making process which
9 is the cornerstone of the Act, prohibit the regional centers
10 from developing an array of residential options based on local
11 need, and prevent the development of innovative programs with
12 varied configurations of services and staffing.

13 5. This suit, which also states claims pursuant to the
14 California Constitution (Art 1 Sections 1 and 7),
15 non-discrimination statutes (Government Code Section 11135,
16 Welfare and Institutions Code Section 4502), and the
17 Administrative Procedures Act (Government Code Section 11380 et
18 seq.) challenges virtually every aspect of the defendants
19 implementation of the Lanterman Act (Welfare and Institutions
20 Code, Section 4500 et seq.) from their failure to provide
21 services which will enable class members to reach their full
22 potential, the rate structure for providers which precludes
23 plaintiffs from obtaining their entitlement to services under
24 the Act and their failure to seek adequate funding from the
25 Legislature.

26 6. Plaintiffs-Petitioners (Plaintiffs) seek declaratory
27 and injunctive relief and a writ of mandate that
28 Defendants-Respondents (Defendants) the State of California,

1 DDS, Gary Macomber, Department of Finance, San Andreas Regional
2 Center (SARC), Golden Gate Regional Center (GGRC), Regional
3 Center of the East Bay (RCEB) and North Bay Regional Center
4 (NBRC) have violated these statutory and Constitutional
5 requirements and seek to compel defendants to comply with these
6 laws in the future so that plaintiffs may live and grow in the
7 community.

8 II

9 JURISDICTION AND VENUE

10
11 7. Jurisdiction of this Court is conferred, pursuant to
12 the California Constitution Article 6 § 10, in that plaintiffs
13 seek equitable relief under CCP §§ 1060, 526, 527 and 1085.
14 Venue in the San Francisco Superior Court is appropriate
15 pursuant to CCP §§ 395(a) and 395.5 in that this is an action
16 in which defendants reside in different counties including San
17 Francisco and in which defendants' breaches of their
18 obligations occurred in different counties including San
19 Francisco. Venue is also appropriate under CCP § 401(1) in
20 that this is an action against the State and its Departments
21 and such action may be commenced in any county including San
22 Francisco, where the Attorney General has an office.

23 III

24 PARTIES

25 Individual Plaintiffs

26 8. Plaintiff JORDAN JENKINS is 21 years old and appears
27 in this action through the duly appointed conservator of her
28 estate and person, Maxine Jenkins. She is autistic, mentally

1 retarded and has a hearing loss. Jordan is a client of SARC
2 who has been on the wait list for community placement since she
3 was first admitted to Sonoma Developmental Center (Sonoma) in
4 April 1988.

5 9. Plaintiff JOHN TOSSETTI is a 27 year old client of
6 SARC with hydrocephalus and mild mental retardation. In April
7 1989, the Superior Court of Santa Clara County, following a
8 hearing on a writ of habeus corpus, ordered John placed into an
9 appropriate community home. John remains at Agnews
10 Developmental Center (Agnews) solely because no appropriate
11 placement is available.

12 10. Plaintiff JOHN HUGHES is 37 years old and appears in
13 this action through his guardian ad litem Hyland J. Hebert.
14 John has mental retardation and is labeled schizophrenic. In
15 January 1989, the Superior Court of Santa Clara County,
16 following a hearing on a writ of habeus corpus, ordered John
17 placed into an appropriate community home. John remains at
18 Agnews because SARC has neither located nor developed an
19 appropriate placement for him.

20 11. Plaintiff JEFF RICHMAN is a 27 year old man with
21 cerebral palsy who wants to move out of his elderly mother's
22 home and learn to live independently. SARC has acknowledged
23 Jeff's need for an out-of-home placement for several years, but
24 has not located or developed an appropriate living arrangement
25 for Jeff.

26 12. Plaintiff JOHN HASKIN is a 47 year old man who
27 appears in this action through his guardian ad litem Marian
28 Trentman. John, who has cerebral palsy and mental retardation,

1 lives in a skilled nursing facility. His Individual Program
2 Plan (IPP) prepared by SARC indicates he should, and he desires
3 to, be moved to a small group home but none is available.

4 13. Plaintiff CHRISTA LAWSON is 12 years old and appears
5 in this action through her guardian ad litem Dianne Lawson.
6 Christa, who has autism and mental retardation, was placed at
7 Sonoma by GGRC at age 11. Christa's Individual Program Plan
8 (IHP) specifies that she should live in a community group home
9 with behavioral emphasis by January 31, 1990.

10 14. Plaintiff ARSIA SAZEGARI is 16 years old and appears
11 in this action through his guardians ad litem, Steve and Sima
12 Sazegari. Arsia, a client of GGRC, has Downes Syndrome and
13 hepatitis. Arsia is currently awaiting community placement
14 from Sonoma but there are no placements available which can
15 meet his individual needs.

16 15. Plaintiff JASON PEASE is 16 years old and appears in
17 this action through his guardians ad litem, David and Cheryl
18 Pease. Jason has mild retardation and autism and is a client
19 of RCEB. Jason lives at Sonoma, although his IHP specifies
20 that he should live in the community, but he is unable to do so
21 because no placements are available.

22 16. Plaintiff GARY EOFF, JR. is 8 years old and appears
23 in this action through guardians ad litem, Gary, Sr. and Laurie
24 Eoff. He is moderately retarded and has a severe speech
25 delay. Gary is a client of RCEB and resides at Sonoma. His
26 IHP, which specifies that he should live in a small community
27 home with a family focus by September 30, 1989, has not been
28 implemented because no appropriate home is available.

1 17. Plaintiff CONRADO DIAZ is 14 years old and appears
2 in this action through his guardians ad litem, Conrado and
3 Elvia Diaz. Conrado is a client of RCEB who resides at
4 Sonoma. He is severely mentally retarded with autistic
5 features. His IHP specifies that Conrado should live in the
6 community and he is on the wait list for placement as no home
7 is presently available.

8 18. Plaintiff ERIN WALLS is 21 years old and appears in
9 this action through her guardians ad litem, Billy and Betty
10 Walls. Erin is autistic and has mental retardation. RCEB has
11 failed to locate or develop an appropriate out-of-home
12 placement for Erin, although it has been mandated by her IPP
13 since 1984.

14 19. Plaintiff WILLIAM (BILLY) COFFELT is 12 years old
15 and appears in this action through his guardians ad litem,
16 William and Roberta Coffelt. Billy who is severely mentally
17 retarded is a client of NBRC. He was admitted to Sonoma in
18 June 1989 only because no appropriate community home was
19 available. He has been waiting for community placement ever
20 since.

21 20. Plaintiff DAMON HABERMAN is 16 years old and appears
22 in this action through his guardian ad litem, Adelaide
23 Haberman. He is autistic and mentally retarded. Damon is a
24 client of NBRC who has been waiting for out-of-home placement
25 since July 1989, but no appropriate residential placement is
26 available.

27 21. Plaintiff ZAKARY KUNKEL is 18 years old and appears
28 in this action through his father and guardian ad litem, Bruce

1 Kunkel. He has mental retardation and is a client of NBRC.
2 Zakary resides at Stockton Developmental Center (Stockton),
3 although, in August 1989, the Superior Court of Santa Clara
4 County found that Zakary did not meet commitment criteria. His
5 IHP specifies he should live in the community, but no
6 appropriate placement is available.

7 Organizational Plaintiffs

8 22. Organizational plaintiff, ASSOCIATION FOR RETARDED
9 CITIZENS - CALIFORNIA (ARC-CAL) is a non-profit public benefit
10 corporation founded in 1950 whose members include persons with
11 mental retardation, parents and other concerned citizens.
12 ARC-CAL promotes the general welfare of persons with mental
13 retardation and advocates for programs and policies to help
14 individuals receive appropriate services in order to develop to
15 their highest potential. ARC-CAL's members are adversely
16 affected and its organizational mission is thwarted by the acts
17 and omissions of defendants complained of herein which impede
18 the rights of its members and other persons with mental
19 retardation to live in appropriate community settings.

20 23. Organizational Plaintiff, THE ASSOCIATION FOR
21 PERSONS WITH SEVERE HANDICAPS, CALIFORNIA CHAPTER ("CAL-TASH"),
22 is a non-profit corporation whose members include disabled
23 individuals, their families, and professionals. One of the
24 central purposes of CAL-TASH is to support and advocate for the
25 rights of persons with severe disabilities to integrated, high
26 quality, community living opportunities in the least
27 restrictive setting. CAL-TASH members are injured and its
28 purpose is thwarted by the acts and omissions of defendants

1 complained of herein in that members and other persons with
2 developmental disabilities have been denied appropriate
3 community living options in the least restrictive setting.

4 24. Organizational plaintiff, UNITED CEREBRAL PALSY
5 ASSOCIATION OF CALIFORNIA, INC. ("UCPA") is a non-profit
6 organization whose members include persons with cerebral palsy,
7 their families, and professionals. UCPA's mission is to affect
8 positively the quality of life for persons with cerebral palsy
9 and other severe disabilities and their families. UCPA members
10 and its constituents are injured and its mission is thwarted by
11 the acts and omissions of defendants complained of herein in
12 that its members and other persons with cerebral palsy have
13 been denied community living options, thereby adversely
14 affecting the quality of life of these individuals.

15 25. Organizational plaintiff, AUTISM SOCIETY OF
16 CALIFORNIA ("ASC") is a non-profit agency composed of chapters
17 of parents and professionals. The purpose of ASC is to promote
18 and encourage research, training, programs and services and
19 advocate for the right to dignified, productive and independent
20 lives for individuals with autism. ASC's constituency is
21 adversely affected and its purpose is thwarted by the acts and
22 omissions of defendants complained of herein which impede the
23 right of persons with autism, including ASC's sons and
24 daughters' right to receive community residential services.

25 26. Organizational plaintiff, CAPITOL PEOPLE FIRST (CPF)
26 is a non-profit organization based in Sacramento, California
27 whose members are persons with mental retardation and other
28 developmental disabilities. CPF is dedicated to self-advocacy

1 and helping primary consumers assume greater control over their
2 own lives and enabling disabled people to live, learn, work and
3 play in integrated environments with non-disabled people.
4 CPF's members are adversely affected and its organizational
5 mission is thwarted by the acts and omissions of defendants
6 complained of herein which impede the integration and self
7 determination of people with disabilities.

8 27. Organizational plaintiff, the OAKS GROUP is a group
9 whose members include parents of developmentally disabled
10 persons, their children and the professionals who work with
11 them. The purpose of the Oaks Group is to promote the health,
12 safety and welfare of persons at Sonoma state hospital and to
13 advocate for the development of community placements and
14 services which meet the needs of developmentally disabled
15 people throughout California. The Oaks Group's members are
16 adversely affected and its goals are thwarted by the acts and
17 omissions of defendants complained of herein which impede the
18 development of stable quality community homes for the children
19 of its members and other disabled individuals who need them.

20 Defendants

21 28. Defendant STATE OF CALIFORNIA is a political entity
22 and suit against the State of California is authorized by
23 Article XX, Section 6, of the California State Constitution.
24 Pursuant to the Lanterman Act, the State has undertaken an
25 obligation to provide services to its developmentally disabled
26 citizens in the least restrictive appropriate environment.

27 29. Defendant DEPARTMENT OF DEVELOPMENTAL SERVICES (DDS)
28 is the state agency charged with the implementation and

1 administration of the Lanterman Act and with the mandatory duty
2 of ensuring that, pursuant to the Act, programs and living
3 arrangements for Californians with developmental disabilities
4 are provided in the least restrictive environment necessary to
5 meet the needs of each individual.

6 30. Defendant GARY D. MACOMBER is sued in his official
7 capacity as the Director of Developmental Services. As such,
8 he is responsible for DDS' implementation of and compliance
9 with the mandates of the Lanterman Act.

10 31. Defendant DEPARTMENT OF FINANCE (DOF) has the
11 authority to approve, revise, alter or amend the budget of any
12 state agency including DDS prior to enactment of the fiscal
13 year appropriation, has the authority to approve budget
14 augmentations and has oversight responsibility with respect to
15 any regulation promulgated with a financial impact. Plaintiffs
16 are informed and believe that DOF's participation could be
17 necessary in order for plaintiffs to obtain full relief in this
18 action.

19 32. Defendant SAN ANDREAS REGIONAL CENTER (SARC) is a
20 non-profit corporation which contracts with DDS pursuant to the
21 Lanterman Act to fulfill the State's obligation to its
22 developmentally disabled citizens residing in Santa Clara, San
23 Benito, and Monterey counties.

24 33. Defendant GOLDEN GATE REGIONAL CENTER, INC. (GGRC)
25 is a non-profit corporation which contracts with DDS pursuant
26 to the Lanterman Act to fulfill the State's obligation to its
27 developmentally disabled citizens residing in Marin, San
28 Francisco, and San Mateo counties.

1 34. Defendant REGIONAL CENTER OF THE EAST BAY, INC.
2 (RCEB) is a non-profit corporation which contracts with DDS
3 pursuant to the Lanterman Act to fulfill the State's obligation
4 to its developmentally disabled citizens residing in Alameda
5 and Contra Costa counties.

6 35. Defendant NORTH BAY REGIONAL CENTER (NBRC) is a
7 non-profit corporation which contracts with DDS pursuant to the
8 Lanterman Act to fulfill the State's obligation to its
9 developmentally disabled citizens residing in Solano, Napa, and
10 Sonoma counties.

11 36. Plaintiffs are ignorant of the true names and
12 capacities of defendants sued herein as Does 1 through 50
13 inclusive, and therefore, sues these defendants by such
14 fictitious names. Plaintiffs will amend this Complaint to
15 allege their true names and capacities when ascertained.

16 IV

17 CLASS ALLEGATIONS

18 37. ~~Named~~ plaintiffs set forth at paragraphs 8 to 21
19 above bring this class action on their own behalf and on behalf
20 of all others similarly situated. Plaintiffs consist of
21 Californians with developmental disabilities who are or will be
22 clients of SARC, GGRC, RCEB or NBRC and who are being or will
23 be denied their rights under the Lanterman Act, Gov't. Code
24 §§ 11135 and 11340 et seq. and the California Constitution to
25 live in appropriate, stable, quality community homes which can
26 provide them with the services they need to lead more
27 independent, productive and normal lives.

28 38. The plaintiff class consists of both State

1 Developmental Center (state hospital) residents whose
2 Individual Habilitation Plans (IHPs) have or will indicate
3 their need for a community living arrangement and/or who are or
4 will be on the community referral wait list, and community
5 residents whose living situations have or will be determined by
6 regional centers inappropriate to meet their needs and whose
7 need for appropriate community homes is or will be acknowledged
8 in their Individual Program Plans (IPPs) or other regional
9 center documentation. Persons inappropriately placed in the
10 community are often at risk of being placed and are placed in
11 state hospitals. Plaintiffs describe a single class of persons
12 who state hospital and regional center professionals have
13 determined require appropriate community residential services
14 and who are not receiving these services solely because the
15 defendants' actions and omissions have resulted in the lack of
16 an array of appropriate community options. Members of the
17 plaintiff class are suffering and will continue to suffer harm
18 as a result of being denied these mandated community
19 residential services.

20 39. The class action requirements of CCP § 382 are met
21 in that the class presently numbers in excess of 950 persons
22 and thus is so numerous that joinder is impracticable; there
23 are questions of law or fact common to the class; the claims of
24 the representative parties will fairly and adequately protect
25 the interests of the class; and defendants acted or refused to
26 act on grounds generally applicable to the class, thereby
27 making appropriate final injunctive, declaratory and mandamus
28 relief with respect to the class as a whole. Notice to the

1 members of the proposed class is not required. The plaintiffs'
2 urgent need for appropriate community living arrangements can
3 best be addressed in one action on their behalf.

4 V

5 STATEMENT OF FACTS

6 40. Plaintiffs in this lawsuit have a variety of
7 developmental disabilities, including cerebral palsy, autism
8 and mental retardation. Plaintiffs also have a variety of
9 abilities, skills, likes and dislikes similar to those of
10 non-disabled people who live in our communities. For example:

11 a) Plaintiffs Jason Pease and Zakary Kunkel both
12 have worked at paid jobs doing, respectively, janitorial work
13 and bus boy duties.

14 b) Like most people her age, 21 year old plaintiff
15 Jordan Jenkins likes dressing up, wearing make-up and listening
16 to rock and roll. At the state hospital, Jordan lives with
17 younger children who do not share the same interests.

18 c) Eight year old plaintiff Gary Eoff likes riding
19 a bike and amusement parks and he needs individualized
20 nurturing which is difficult to receive on the unit of 24
21 individuals in which he lives at Sonoma.

22 d) Plaintiff Jeff Richman holds an associate degree
23 and is taking courses toward a degree in counselling. At 27,
24 he no longer wants to live with his elderly mother and he is
25 capable of living independently with, due to his physical
26 disabilities, the support of consistent attendant care services.

27 c) Plaintiff John Tossetti can read simple words,
28 do simple math and has a good sense of humor. He requested a

1 court hearing to secure his release from Agnews because he
2 wants to live outside of locked doors.

3 41. Over 600 plaintiff class members reside in state
4 hospitals, living in an institutional environment, in isolation
5 from the community and non-disabled persons. Many are on
6 locked wards. The professional staff of the state hospitals
7 responsible for determining their needs have determined that
8 these individuals' needs are appropriately met in community
9 living arrangements. Plaintiffs remain in the state hospitals
10 solely because there is no space available in presently
11 existing community residential options which can meet their
12 needs.

13 42. For many of these class members, state hospital
14 placement was never appropriate. For example:

15 a) In the last few years there has been a rapid
16 influx of children with challenging behaviors but no medical
17 involvement into the state hospitals solely because there is a
18 lack of homes for children in the community. Plaintiffs Gary
19 Eoff, Christa Lawson, Conrado Diaz and Billy Coffelt are all
20 part of this influx. Plaintiffs are informed and believe that
21 the services available at Sonoma have not been able to meet
22 these childrens' needs.

23 b) Plaintiff Zakary Kunkel was placed temporarily
24 at Stockton when he was evicted from his group home for a
25 behavioral incident. The Superior Court for Santa Clara County
26 determined in August 1989 that there were insufficient grounds
27 to commit Zakary pursuant to WIC § 6500. However, Zakary
28 remains in the state hospital solely because no community

1 options exist.

2 c) Plaintiff Jordan Jenkins was committed to Sonoma
3 in April 1988 because the community home in which she had lived
4 successfully for two years closed due to financial difficulties
5 and no appropriate alternative program could be located. She
6 has been on the wait list for community placement ever since.

7 43. Other plaintiffs, like John Hughes and John
8 Tossetti, have been ordered placed in the community by the
9 courts on writs of habeus corpus. In spite of Court orders,
10 these individuals remain at Agnews state hospital solely
11 because appropriate community placements are not available.

12 44. The prospect for plaintiffs promptly receiving
13 appropriate community homes is dim. In November 1989, there
14 were 2096 people on the community referral wait list
15 statewide. However, the DDS 1989-90 community placement plan
16 budgeted placement for only 530 people. Moreover, new
17 admissions to state hospitals in 1988-89 slightly outnumbered
18 community placements.

19 45. The long frustrating wait for placement in the
20 community causes plaintiffs to suffer irreparable harm. For
21 example, the conditions under which plaintiffs live in the
22 state hospitals:

23 a) frequently result in regression and deterioration
24 of skills, the parents of class representatives Gary Eoff,
25 Conrado Diaz, Jason Pease and Jordan Jenkins all believe their
26 children have regressed;

27 b) exposes plaintiffs to physical injury from other
28 residents, class representatives Billy Coffelt, Jordan Jenkins

1 and Conrado Diaz have all suffered such injuries;

2 c) restricts plaintiffs' personal privacy and
3 liberty and their opportunities to associate with non-disabled
4 persons;

5 d) subjects plaintiffs to the stigma of
6 institutionalization;

7 e) makes it impossible for plaintiffs to participate
8 to the extent they are able in the normal activities of daily
9 living, such as meal preparation and laundry; and,

10 f) deprives plaintiffs of the kind and quality of
11 individualized treatment that they need to achieve their
12 developmental potential and lead more independent and
13 productive lives.

14 46. Over 350 plaintiff class members reside in community
15 living arrangements which regional center personnel have
16 determined cannot meet their needs. Some of these plaintiffs
17 continue to live at home with their families, causing extreme
18 family stress and depriving the disabled persons of the
19 opportunity to progress, as their families lack the skills to
20 assist them. Others live in community facilities which do not
21 have the staff and/or programs to meet their unique needs.
22 Many of them have been waiting for years for appropriate
23 homes.

24 47. Plaintiffs suffer irreparable harm while living in
25 inappropriate community placements. Some plaintiffs suffer
26 regression and deterioration of skills. Some suffer injury to
27 themselves as a result of uncontrolled self-abusive behavior.
28 Others injure their family members or destroy family

1 possessions because of the lack of programming to control their
2 behaviors. All plaintiffs are failing to meet their
3 developmental potential and acquire the skills necessary to
4 live more independent and productive lives.

5 48. Examples of these inappropriate community placements
6 include:

7 a) Plaintiff Erin Walls needs constant one-to-one
8 supervision because, due to her disability, she eats non-edible
9 objects and has other inappropriate behaviors. Her parents
10 must supervise her constantly, yet they do not have the skills
11 to assist Erin in overcoming her behavior deficits. Although
12 RCEB has recognized Erin's need for an out-of-home placement in
13 a structured environment with skilled staff since 1984, it has
14 failed to locate or develop an appropriate community placement.

15 b) Plaintiff John Haskin was placed in a large
16 skilled nursing facility (SNF) after he suffered a stroke in
17 1977. John no longer needs SNF level care, however he remains
18 at the SNF where the staff do not have the time or
19 qualifications to assist him in maintaining or improving his
20 skills. Since he has been at the SNF, John has lost some of
21 his vocabulary, lost the ability to walk with a leg brace, and
22 has been put in diapers when he previously used the toilet.
23 SARC has for several years been looking unsuccessfully for a
24 small community home for John which can meet his physical and
25 social development needs.

26 49. Plaintiffs' needs are urgent. The time they spend
27 waiting for appropriate community living arrangements
28 represents an irretrievable loss of time which could be used to

1 acquire skills in community settings and otherwise participate
2 as members of their communities.

3 VI

4 FIRST CAUSE OF ACTION AGAINST

5 DDS, MACOMBER, STATE AND REGIONAL CENTERS

6 (Entitlement to Community Living Arrangements

7 Based on Individual Need)

8 (Declaratory and Injunctive Relief and Writ of Mandate)

9 50. Plaintiffs reallege paragraphs 7 to 49 and
10 incorporate them herein.

11 51. The Lanterman Act is a comprehensive statutory
12 scheme designed to provide services which meet the needs of
13 each person with developmental disabilities, regardless of age
14 or degree of handicap, and at each stage of life. WIC § 4501.

15 52. Pursuant to the Act, developmentally disabled
16 Californians are entitled to receive treatment and habilitation
17 services which assist them in maximizing their potential. WIC
18 § 4502. A prime purpose of the Act is to prevent the
19 unnecessary institutionalization of developmentally disabled
20 persons, thus defendant the State of California is obligated to
21 provide treatment and habilitation services in the least
22 restrictive appropriate environment. Direct responsibility for
23 implementing the Lanterman Act on the State's behalf is
24 allocated between DDS and regional centers. WIC § 4500 et seq.

25 53. Under WIC § 4416, defendant DDS, under the control
26 of its Director defendant Macomber (collectively referred to as
27 DDS) is responsible for ensuring that the Lanterman Act is
28 fully implemented. DDS is specifically mandated to establish a

1 residential rate system. WIC § 4680, et seq. DDS also has
2 jurisdiction over the state hospitals and funds, with both
3 State and Medi-Cal monies, services provided to persons
4 residing therein. WIC § 4440, et. seq.

5 54. Regional centers are non-profit corporations which,
6 pursuant to the Lanterman Act, WIC §§ 4620 - 4638, contract
7 with DDS to fulfill the State's obligation to developmentally
8 disabled persons living in a specific geographic area.
9 Regional centers are responsible for determining the individual
10 needs of developmentally disabled persons, WIC § 4648, and
11 ensuring that they have "access to the facilities and services
12 best suited to them throughout their lifetime," WIC § 4620.

13 55. The Act requires that an Individual Program Plan
14 (IPP) shall be developed for each regional center client
15 jointly by the regional center client program coordinator, the
16 developmentally disabled person and, as appropriate, the
17 person's parents, guardian, or conservator. WIC §§ 4646-4647.
18 The IPP must include an assessment of the client's capabilities
19 and problems, a statement of time limited objectives for
20 improving his/her capabilities and a schedule of the type and
21 amount of services necessary to achieve these objectives. WIC
22 § 4646.

23 56. Regional centers have a mandatory nondiscretionary
24 duty to implement an IPP in that the IPP sets forth each
25 individual's entitlement to services under the Lanterman Act.
26 WIC § 4648; ARC v. DDS (1985) 38 Cal.3d 384. The regional
27 center must secure the services specified in the IPP, including
28 community placement, by referral or purchase, or, if needed

1 services are not currently available, by program development.
2 WIC §§ 4648, 4651, 4677.

3 57. Developmentally disabled persons who are currently
4 residing in a state hospital have their needs determined
5 through an analogous procedure resulting in an Individual
6 Habilitation Plan (IHP) which is prepared jointly by state
7 hospital personnel, the developmentally disabled person, and,
8 as appropriate, the person's parents, guardians, or
9 conservator, and, at times, regional center personnel. When
10 the IHP requires a community living arrangement, the
11 individual's regional center is responsible for locating or
12 developing the community placement. DDS' Regional Center
13 Operations Manual §§ 5708, 5710.

14 58. DDS' authority is limited in that it cannot control
15 the manner in which the regional center provides services nor
16 can it amend or alter the IPP's/IHP's determination of service
17 needs. ARC v. DDS (1985) 38 Cal.3d 384.

18 59. Defendants DDS and Regional Centers have an
19 obligation together and separately, pursuant to WIC §§ 4501 and
20 4620, to provide an array of community residential options
21 which are adequate to meet the needs of each person with
22 developmental disabilities and, pursuant to WIC § 4502(a), a
23 duty to insure that all treatment and habilitation services are
24 provided in the least restrictive environment.

25 60. In order to implement these obligations, WIC § 4510
26 requires DDS to develop and implement a statewide plan which
27 will encourage the development of a sufficient number and type
28 of community placements to meet the needs of all

1 developmentally disabled people. Further, WIC §§ 4630(b) and
2 4651 require defendants DDS and Regional Centers to use
3 innovative programs, techniques and staffing to carry out their
4 obligations to provide placements in the least restrictive
5 environment.

6 61. DDS is violating the aforesaid provisions of the
7 Lanterman Act by arrogating to itself rights and
8 responsibilities conferred by the Legislature on regional
9 centers and by restricting and deterring regional centers from
10 executing their obligations to provide appropriate, innovative,
11 quality community living arrangements.

12 62. Plaintiffs are informed and believe that DDS
13 restricts, and will continue to restrict, regional centers'
14 ability to implement IPPs and IHPs regarding community
15 placement and to develop needed new residential options through
16 its policies, practices, actions, and inactions, including, but
17 not limited to those which impermissibly:

18 a) interfere with determinations made through the
19 statutory IPP process regarding the level and type of
20 residential services needed by developmentally disabled
21 persons, including redeterminations by DDS of staffing ratios
22 and facility types which will best serve clients;

23 b) prohibit regional centers from augmenting
24 residential staffing patterns and determining residential
25 programming hours based on the unique needs of individuals;

26 c) deter regional centers from developing or
27 providing innovative residential service options, including
28 supported independent living situations or foster home settings;

1 d) restrict regional centers ability to develop
2 sufficient emergency and crisis response systems, including
3 short and long term emergency beds in the community which would
4 minimize unnecessary institutionalization;

5 e) restrict development of new residential options
6 to an arbitrary yearly schedule;

7 f) require regional centers to propose the
8 development of fewer new residential resources than are
9 necessary to meet the actual needs of their clients;

10 g) reserve to DDS the right to authorize how many
11 and what types of new residential programs and services the
12 regional centers can develop;

13 h) restrict the number of resource development
14 staff at regional centers, thereby effectively limiting
15 residential resource development;

16 i) fail to provide start-up funds which are
17 sufficient to cover the necessary and reasonable start-up costs
18 of residential programs, including the expenses of modifying
19 buildings to meet fire and life safety requirements;

20 j) allocate operational funds for new programs in
21 an arbitrary fashion not based on the number of developmentally
22 disabled persons needing residential services;

23 k) fail to make available to the greatest extent
24 possible interim funding for Medi-Cal facilities during
25 start-up.

26 63. Plaintiffs are informed and believe that Defendant
27 Regional Centers have engaged in, and will continue to engage
28 in, policies, practices, acts and omissions which violate their

1 duties under the Lanterman Act including, without limitation:

2 a) failing to record clients' present need for
3 community living arrangements on IPPs, particularly when an
4 appropriate placement is not currently available;

5 b) failing to secure appropriate community living
6 arrangements for clients whose IPPs or IHPs or other
7 documentation specify the need for and, therefore, an
8 entitlement to those services;

9 c) failing to develop an array of stable, quality
10 community living arrangements, including innovative options,
11 such as residential support to foster home and supported
12 independent living, sufficient to meet the individual needs of
13 each person with developmental disabilities throughout their
14 lives;

15 d) failing to accurately determine and report to DDS
16 the cost of developing and maintaining stable quality community
17 living arrangements, including innovative options;

18 e) referring clients for state hospital placement
19 solely because appropriate community placements are not
20 available;

21 f) following DDS policies which, as alleged in
22 paragraph 62 above, illegally restrict the development and
23 implementation of residential options.

24 64. Defendants have a clear, present ministerial duty to
25 discharge their responsibilities in a manner consistent with
26 the Lanterman Act. DDS has a clear, present, ministerial duty
27 not to arrogate to itself responsibilities conferred
28 exclusively on the regional centers by the Act. Defendant DDS,

1 on behalf of the State and regional centers, has a clear,
2 present and ministerial duty to provide an array of stable,
3 quality community living arrangements which meet the individual
4 needs of plaintiffs. Defendants have failed and refused to
5 perform their duty and/or abused their discretion in
6 performance of their duties.

7 65. As a result of defendants DDS' and Regional Centers'
8 failure to fulfill their mandatory statutory duties, plaintiffs
9 have suffered and will continue to suffer irreparable injury
10 caused by the denial of their entitlement to appropriate,
11 quality community living arrangements which would result in
12 more independent, productive and normal lives and minimize
13 regression or injuries.

14 66. Plaintiffs are not required to exhaust any
15 administrative remedies because defendants had and have none to
16 pursue for the claims raised in this suit. Plaintiffs have no
17 plain, speedy and adequate remedy at law for defendants'
18 actions complained of herein. An actual controversy exists
19 between plaintiffs and defendants, in that plaintiffs claim
20 defendants have violated their rights under the Lanterman Act
21 and defendants deny all such contentions.

22 VII

23 SECOND CAUSE OF ACTION AGAINST STATE, DDS AND MACOMBER

24 (Establishment of Invalid Rate Structure)

25 (Declaratory and Injunctive Relief and Writ of Mandate)

26 67. Plaintiffs reallege paragraphs 7 to 49 and 51 to 60
27 and incorporate them herein.

28 68. WIC §§ 4680, 4681, 4681.1, 4682 and 4786 require

1 Defendants DDS and Macomber (collectively DDS) on behalf of the
2 State to establish rates for residential services which are
3 adequate to assure the availability of an array of stable,
4 quality community living arrangements which can provide a range
5 of levels of care as needed by developmentally disabled people
6 with varying disabilities. The rates established must be
7 flexible and sufficient to ensure that persons placed out of
8 home are in the most appropriate, least restrictive living
9 arrangement. Cost is not intended to bar the development of
10 community living arrangements. The only limitation is WIC
11 § 4682 which provides that payments for out-of-home placements
12 in the community shall not exceed the average monthly cost of
13 state hospital placement.

14 69. Plaintiffs are informed and believe that DDS is
15 violating the aforesaid provisions of the Lanterman Act in
16 that, without limitation:

17 a) the rates established for community care
18 facilities under both §§ 4681 and 4681.1 are below the actual
19 market cost of providing the needed services and, therefore,
20 providers are unwilling to develop new community living
21 arrangements, and some providers have closed or are threatening
22 to close existing community living arrangements;

23 b) the rates established provide for a salary range
24 for direct care staff barely above the minimum wage, which
25 results in providers being unable to recruit and retain
26 adequate qualified staff, and further results in high staff
27 turnover and high training costs for new staff, all to the
28 detriment of plaintiffs who require stable staffing patterns

1 and skilled staff;

2 c) the rate structures established are not
3 sufficiently flexible to permit providers to meet the special
4 needs of each class member by, for example, allowing for rate
5 augmentations for one to one aids, for awake night staff,
6 and/or for modifications of programming hours based on
7 individual need;

8 d) the rate structures established do not
9 sufficiently reflect or provide for the differing costs
10 associated with the differing types and levels of care
11 provided, for example, the extra costs of children's programs;

12 e) the rate structures essentially preclude the
13 development of innovative community living models;

14 f) the rates for specialized services are not the
15 same as prevailing rates for similar services in the area as
16 required by WIC §§ 4681(c) and 4681.1(b)(2)(3);

17 g) the rate structures do not include adequate
18 differential~~s~~ to reflect differences in the cost of living for
19 various geographic areas in the State as required by WIC
20 §§ 4681(g) and 4681.1(b)(7);

21 h) the rates are not adequate to provide services
22 for persons who are mentally disordered, as well as
23 developmentally disabled, and no higher rates have been fixed,
24 as permitted by WIC §§ 4681(h) and 4681.1(b)(8);

25 i) the rate ceiling for community living
26 arrangements under the present rate structures is substantially
27 lower than the ceiling authorized by WIC § 4682.

28 70. Defendant DDS, on behalf of the State, has a clear,

1 present and ministerial duty to establish a rate structure that
2 assures development of an array of stable, quality community
3 living arrangements which can meet the individual needs of
4 plaintiffs. Defendants have failed and refused to perform
5 their duties and/or have abused their discretion in performing
6 their duties.

7 71. As a result of defendants' failure to establish an
8 adequate lawful rate structure, plaintiffs have suffered and
9 will continue to suffer irreparable injury by being denied
10 their rights to live in the least restrictive environment and
11 receive services which will result in more independent,
12 productive and normal lives and minimize regression or injury.

13 72. Plaintiffs are not required to exhaust any
14 administrative remedies because defendants had and have none to
15 pursue for the claims raised in this suit. Plaintiffs have no
16 plain, speedy and adequate remedy at law for defendants'
17 actions complained of herein. An actual controversy exists
18 between plaintiffs and defendants in that plaintiffs claim
19 defendants have violated their rights under the Lanterman Act
20 and defendants deny all such contentions.

21 VIII

22 THIRD CAUSE OF ACTION AGAINST STATE, DDS, MACOMBER AND DOF

23 (Understated Budget Request

24 and Failure to Provide the Legislature with Information)

25 (Declaratory and Injunctive Relief and Writ of Mandate)

26 73. Plaintiffs reallege paragraphs 7 to 49 and 51 to 60
27 and incorporate them herein.

28 74. In order to implement the obligations it undertook

1 in the Lanterman Act, the State, through its entities DDS and
2 DDS Director Macomber (collectively DDS) and DOF must seek
3 adequate funds from the Legislature. The fiscal scheme
4 established by the Lanterman Act is intended to ensure that DDS
5 provides the Legislature with accurate and adequate information
6 so that the Legislature can make informed and timely decisions
7 regarding appropriations necessary to fund those services,
8 including adequate numbers of quality community living
9 arrangements, needed by regional center clients in accord with
10 rights established under the Lanterman Act.

11 75. DDS has a legal duty to prepare and submit an annual
12 budget for sufficient funds to allow regional centers to
13 purchase all services to which clients are entitled under the
14 Act in the coming year, and a duty to submit annual Program
15 Development Fund and Community Placement Plan requests which
16 are adequate for regional centers to provide sufficient
17 start-up funds for the development of new residential programs,
18 WIC § 4677. DOF has the authority to review, revise and
19 approve DDS' annual budget, however, DOF lacks the authority to
20 make revisions which interfere with plaintiffs' entitlements
21 under the Lanterman Act.

22 76. Plaintiffs are informed and believe that DDS and DOF
23 have engaged, and will continue to engage, in the general
24 practice of developing and/or revising annual budget proposals
25 that substantially understate the amount of funds regional
26 centers need in the coming year to purchase services clients
27 are entitled to receive under the Act and the practice of
28 recommending inadequate levels of funding for new program

1 development by, without limitation:

2 a) forcing regional centers to provide insufficient
3 services to eligible clients and to spend within inadequate
4 annual allocations and then forcing regional centers to base
5 their annual projections for services on their historically
6 understated costs;

7 b) preventing regional centers from developing
8 accurate data on the actual scope of services needed by
9 eligible clients;

10 c) preventing regional centers from submitting to
11 DDS the actual costs of community placements when making their
12 separate budget requests;

13 d) basing the DDS budget request on regional centers
14 median costs for services, not actual costs, including
15 geographic and other differentials;

16 e) failing to base recommendations for amounts of
17 start-up funds needed for program development and purchase of
18 service funds needed to provide new services to unserved and
19 underserved clients on regional centers' annual needs
20 assessments;

21 f) using no other accurate data base for projecting
22 the actual service needs of eligible regional center clients to
23 prepare the annual budget request; and

24 g) failing to prepare an adequate annual report to
25 the Legislature pursuant to WIC § 4510 identifying obstacles to
26 the development of quality community living arrangements and
27 providing sufficient solutions and recommendations.

28 77. Plaintiffs are informed and believe that when DDS is

1 informed that regional centers have insufficient funds to
2 fulfill their statutory obligations, DDS and DOF, separately
3 and together, fail to seek additional funds from the
4 Legislature as is required by the Lanterman Act.

5 78. As a result of the actions alleged herein,
6 plaintiffs are informed and believe that:

7 a) DDS and DOF never seek and the Governor's budget
8 never proposes sufficient funds for regional centers to
9 purchase the services to which eligible clients are entitled
10 under the Act;

11 b) Regional centers never receive sufficient funds
12 from DDS to purchase those services;

13 c) Regional centers deny needed services to which
14 eligible persons are entitled under the Act solely because they
15 do not have sufficient funds to purchase them; and

16 d) DDS and DOF never seek adequate program
17 development funds and, as a result, regional centers cannot
18 develop an adequate number or variety of new community
19 residential options.

20 79. Defendants the State, DOF, DDS and Macomber have
21 clear, present and ministerial duties to provide the
22 Legislature with accurate and adequate information on obstacles
23 to the development of residential options and the unmet
24 residential services needs of developmentally disabled
25 Californians, to submit annual budget proposals and requests
26 for budget augmentations as needed to the Legislature that, if
27 funded, will enable regional centers to carry out the mandates
28 of the Lanterman Act and implement plaintiffs' entitlement to

1 appropriate least restrictive community living arrangements.
2 Defendants have failed and refused to perform their duties
3 and/or abused their discretion in performance of their duties.

4 80. As a result of defendants' actions alleged herein,
5 plaintiffs suffer irreparable injury, as they are denied the
6 quality community living arrangements they need to develop
7 their potential and minimize regression and injury.

8 81. Plaintiffs are not required to exhaust any
9 administrative remedies because defendants had and have none to
10 pursue for the claims raised in this suit. Plaintiffs have no
11 plain, speedy and adequate remedy at law for defendants'
12 actions complained of herein. An actual controversy exists
13 between plaintiffs and defendants, in that plaintiffs claim
14 defendants have violated their rights under the Lanterman Act
15 and defendants deny all such contentions.

16 IX

17 FOURTH CAUSE OF ACTION AGAINST DDS AND MACOMBER

18 (Violation of Administrative Procedure Act)

19 (Declaratory and Injunctive Relief Writ of Mandate)

20 82. Plaintiffs reallege paragraphs 7 to 49 and 62 and
21 incorporate them herein.

22 83. DDS and Macomber (collectively DDS) have implemented
23 policies which control the development of community living
24 arrangements and services which are in fact regulations within
25 the meaning of Government Code § 11342. These policies
26 include, but are not limited to, policies found in the Regional
27 Center Operations Manual and Letters to Regional Center
28 Directors denominated "RCOs" and "CSDs".

1 84. In promulgating the aforementioned policies, DDS has
2 failed and refused to comply with the minimal procedural
3 requirements of the California Administrative Procedure Act,
4 Government Code § 11340 et seq., including but not limited to
5 the following:

6 a) defendants failed to provide public notice of the
7 proposed regulations, Government Code § 11346.4-.5;

8 b) defendants failed to provide opportunities for
9 comment by interested persons and for public hearings,
10 Government Code § 11346.8;

11 c) defendants failed to submit statements of reasons
12 for adopting regulations to the Office of Administrative Law,
13 Government Code § 11346.7;

14 85. DDS and Macomber have a clear, present and
15 ministerial duty to follow the mandates of the Administrative
16 Procedures Act. DDS has failed and refused to perform its
17 duties and/or abused its discretion in performance of its duty.

18 86. Plaintiffs are irreparably harmed by the invalid
19 policies and practices of DDS as they serve to restrict the
20 development of the quality community living arrangements which
21 plaintiffs need.

22 87. Plaintiffs are not required to exhaust any
23 administrative remedies because defendants had and have none to
24 pursue for the claims raised in this suit. Plaintiffs have no
25 plain, speedy and adequate remedy at law for defendants'
26 actions complained of herein. An actual controversy exists
27 between plaintiffs and defendants in that plaintiffs claim
28 defendants have violated their rights under the Administrative

1 Procedures Act and defendants deny all such contentions.

2 X

3 FIFTH CAUSE OF ACTION AGAINST DDS, MACOMBER

4 AND REGIONAL CENTERS

5 (Non-Discrimination)

6 (Declaratory and Injunctive Relief and Writ of Mandate)

7 88. Plaintiffs reallege paragraphs 7 to 49 and
8 incorporate them herein.

9 89. Pursuant to Cal. Gov't Code § 11135 and WIC § 4502
10 and the implementing regulations, any program or activity which
11 receives State financial assistance or that is funded by the
12 State is prohibited from discriminating against a person with a
13 physical or mental disability and is required to provide
14 services in the most integrated setting possible.

15 90. Plaintiff class members are disabled persons within
16 the meaning of Gov't. Code § 11135 and WIC § 4502.

17 91. Defendants DDS and Macomber (collectively DDS) and
18 regional centers operate programs and activities that are
19 funded directly by the State.

20 92. DDS and regional centers have discriminated against
21 those class members who reside in state hospitals by failing to
22 provide services in the most integrated setting possible even
23 though defendants themselves have determined that plaintiffs
24 should be served in less restrictive residential settings in
25 the community.

26 93. DDS and regional centers have discriminated and
27 continue to discriminate against class members on the basis of
28 severity of their handicaps. While defendants provide many

1 persons with less severe developmental disabilities appropriate
2 residential services in the community, class members who have
3 more severe disabilities, such as challenging behaviors and
4 medical conditions, are frequently and arbitrarily denied these
5 same opportunities.

6 94. DDS, Macomber and regional centers have a clear,
7 present and ministerial duty to discharge their
8 responsibilities in a manner consistent with Cal. Gov't. Code
9 § 11135 and WIC § 4502 and the implementing regulations.
10 Defendants have failed and refused to perform their duty and/or
11 abused their discretion in performing their duties.

12 95. As a result of defendants' discrimination, class
13 members have been denied their right to services in the
14 community. The plaintiff class members have suffered and will
15 continue to suffer irreparable injury as a result of not being
16 placed in appropriate community living arrangements.

17 96. Plaintiffs are not required to exhaust any
18 administrative remedies because defendants had and have none to
19 pursue for the claims raised in this suit. Plaintiffs have no
20 plain, speedy and adequate remedy at law for defendants'
21 actions complained of herein. An actual controversy exists
22 between plaintiffs and defendants in that plaintiffs claim
23 defendants have violated their rights under Govt. Code § 11135
24 and WIC § 4502 and defendants deny all such contentions.

25 //
26 //
27 //
28 //

XI

SIXTH CAUSE OF ACTION AGAINST STATE, DDS, MACOMBER
AND REGIONAL CENTERS

(Violation of State Constitutional Rights)

(Declaratory and Injunctive Relief and Writ of Mandate)

97. Plaintiffs reallege paragraphs 7 to 49 and incorporate them herein.

98. Article 1, § 1 of the California Constitution guarantees to every citizen of the State the fundamental right to be free and independent, to enjoy and defend life and liberty, and to pursue and obtain safety, happiness, and privacy. Article 1, § 7(a) of the California Constitution provides that "[a] person may not be deprived of . . . liberty . . . without due process of law or denied equal protection of the laws"

99. Defendant regional centers contract with, and receive State funds from DDS to provide services for developmentally disabled persons. In fulfilling their statutory duties, defendant regional centers act as agents for State Defendants and are acting under color of State law.

100. The policies, actions and failures to act of the State, through DDS and Macomber (collectively DDS) and regional centers, which are challenged in this action have resulted and will result in the indefinite and inappropriate institutionalization of plaintiffs. These policies, actions and failures to act thereby violate the rights guaranteed plaintiffs under Article 1, §§ 1 and 7(a) for the following reasons:

1 a) The personal liberty interests protected under
2 Article 1, § 1 include a fundamental interest in habilitation
3 -- that is, the right to achieve one's maximum potential. The
4 policies and actions of defendants have prevented plaintiffs
5 from achieving their maximum potential by, inter alia, denying
6 them the opportunity to acquire skills, and causing them to
7 lose skills, that would enable them to achieve greater
8 independence and become more productive members of society.

9 b) The State must provide treatment and services in
10 a manner which least drastically curtails the freedom of the
11 individual. By failing to ensure that plaintiffs receive
12 services under the least restrictive conditions necessary to
13 meet their individual needs, defendants DDS and Regional
14 Centers have violated and continue to violate plaintiffs' right
15 to personal liberty guaranteed under Article 1, § 1.

16 c) Plaintiffs' inappropriate institutionalization
17 constitutes a form of physical restraint and violates the
18 guarantees of Article 1, §§ 1 and 7(a) which establish
19 substantive and procedural protections against unreasonable
20 bodily restraint.

21 d) Plaintiffs' inappropriate confinement in state
22 hospitals infringes on plaintiffs' fundamental freedom to
23 associate by preventing plaintiffs from living in the
24 community, thereby restricting their ability to participate in
25 community activities and associate with non-disabled members of
26 the community, including family and friends.

27 e) The unnecessary and inappropriate segregation in
28 state hospitals of developmentally disabled persons whose needs

1 could be met in less restrictive placements in the community,
2 but for the defendants' policies, actions and failures to act,
3 denies these individuals equal protection of the laws in
4 violation of Art. 1, § 7(a). Moreover, the inappropriate
5 segregation and confinement of plaintiffs in state hospitals
6 adversely affects plaintiffs' fundamental rights, including the
7 rights to liberty, privacy, and freedom of association, thereby
8 further denying plaintiffs' rights to due process and equal
9 protection of the laws guaranteed under the California
10 Constitution.

11 101. Defendants the State, DDS, Macomber and regional
12 centers have a clear, present and ministerial duty to discharge
13 their responsibilities in a manner consistent with the State
14 Constitution. Defendants have failed and refused to perform
15 their duties and/or abused their discretion in performance of
16 their duties.

17 102. As a result of defendants' actions and omissions,
18 class members have been denied their constitutional rights.
19 The plaintiff class members have suffered and will continue to
20 suffer irreparable injury as a result of not being placed in
21 appropriate community living arrangements.

22 103. Plaintiffs are not required to exhaust any
23 administrative remedies because defendants had and have none to
24 pursue for the claims raised in this suit. Plaintiffs have no
25 plain, speedy and adequate remedy at law for defendants'
26 actions complained of herein. An actual controversy exists
27 between plaintiffs and defendants in that plaintiffs claim
28 defendants have violated their rights under the California

1 Constitution and defendants deny all such contentions.

2 XII

3 RELIEF REQUESTED

4 Plaintiffs respectfully request this Court to grant the
5 following relief:

6 1. Assume jurisdiction over this action and maintain
7 continuing jurisdiction until defendants are in full compliance
8 with every order of this Court.

9 2. Certify this action as a class action.

10 First Cause of Action

11 3. Enter a final judgement declaring that the policies,
12 practices, acts and omissions of defendants DDS and Macomber on
13 behalf of defendant State of California and defendant regional
14 centers which prevent full implementation of the Lanterman
15 Act's entitlement to community living arrangements based on
16 individual need and in the least restrictive appropriate
17 environment are invalid, including, without limitation, those
18 alleged in paragraphs 61 to 63 of this complaint.

19 4. Enjoin defendants from implementing and enforcing all
20 said invalid policies and practices.

21 5. Issue a writ of mandate and an injunction compelling
22 defendants to undertake the actions for which each is
23 responsible in order promptly to provide an array of stable,
24 quality community living arrangements which meet the individual
25 needs of named plaintiffs and the plaintiff class, including,
26 without limitation and as necessary according to proof in this
27 action, State owned and operated residential programs,
28 residential support services in foster home settings, privately

1 owned small group homes and supported independent living
2 services.

3 Second Cause of Action

4 6. Enter a final judgement declaring that the rate
5 structures for community living arrangements and services
6 established by defendants DDS and Macomber on behalf of
7 defendant State of California are invalid under the Lanterman
8 Act.

9 7. Enjoin defendants from implementing and enforcing
10 said invalid rate structures.

11 8. Issue a writ of mandate and an injunction compelling
12 defendants to establish and implement a rate structure that is
13 based on actual market costs and assures development of an
14 array of adequate numbers and types of stable quality community
15 living arrangements which can meet the individual needs of
16 plaintiffs. Said rate structure shall include without
17 limitation:

18 a) adequate rates for specialized services
19 comparable to the rates paid for similar services in state
20 hospitals;

21 b) adequate compensation for direct care staff such
22 that qualified staff can be recruited and retained by providers
23 of residential options;

24 c) adequate differentials to reflect differences in
25 the cost of living for various geographic areas in the State;

26 d) adequate rates to enable providers to accommodate
27 the individual needs of class members with varying disabilities
28 and special needs, including, without limitation, children with

1 developmental disabilities;

2 e) higher rates as needed to enable providers to
3 serve persons with mental disorders as well as those with
4 developmental disabilities;

5 f) rates which are sufficiently flexible to permit
6 and encourage the use of innovative programs and service models
7 including, without limitation, services in foster home
8 settings, small-facilities with varying staff to client ratios
9 and supported independent living services.

10 Third Cause of Action

11 9. Enter a final judgment declaring that:

12 a) Defendants DDS, Macomber and DOF, on behalf of
13 defendant State of California have engaged in an unlawful
14 practice of submitting annual budget proposals that
15 substantially understate the amount of funds needed by regional
16 centers to purchase services from and provide start-up funds to
17 the providers of residential options;

18 b) Defendants have failed and refused to provide
19 the Legislature with adequate and accurate information on which
20 to base its determinations of funding for the Lanterman Act,
21 including, without limitation, submitting inadequate reports on
22 obstacles to the development of residential options pursuant to
23 WIC § 4510.

24 10. Enjoin defendants from continuing to submit annual
25 budget proposals which understate the amount of funds necessary
26 to implement the Lanterman Act's mandates regarding provision
27 of appropriate community residential options.

28 11. Issue a writ of mandate and an injunction

1 compelling defendants separately and/or together to do the
2 following:

3 a) provide the Legislature with adequate and
4 accurate information regarding obstacles to the development of
5 an array of residential options pursuant to WIC § 4510;

6 b) provide the Legislature with accurate and
7 adequate information on the unmet needs of developmentally
8 disabled persons in California for residential services;

9 c) submit annual budget proposals to the Legislature
10 and, if necessary, requests for budget augmentations, that, if
11 funded, will enable the regional centers to carry out the
12 mandates of the Lanterman Act, and implement plaintiffs'
13 entitlement to appropriate least restrictive, stable quality
14 community living arrangements.

15 Fourth Cause of Action

16 12. Enter a final judgement declaring that the policies
17 and practices promulgated by defendants DDS and Macomber,
18 including, without limitation, and according to proof those
19 alleged in paragraphs 62 and 83, are invalid in that they
20 constitute regulations which were not promulgated pursuant to
21 the Administrative Procedures Act.

22 13. Enjoin defendants from implementing and enforcing
23 all policies proved to be invalid under the Administrative
24 Procedures Act.

25 Fifth Cause of Action

26 14. Enter a final judgement declaring that defendants
27 DDS, Macomber and regional centers have discriminated against
28 class members by failing to provide services in the most

1 integrated setting possible and by arbitrarily denying
2 community residential services to class members on the basis of
3 the severity of their handicaps.

4 15. Enjoin defendants from continuing to discriminate
5 against class members.

6 16. Issue a writ of mandate and an injunction compelling
7 defendants promptly to provide stable, quality community living
8 arrangements in the most integrated setting possible and to
9 provide such services to the plaintiff class, including those
10 with the most severe disabilities.

11 Sixth Cause of Action

12 17. Enter a final judgement declaring that defendants
13 DDS, and Macomber, on behalf of defendants State of California,
14 and defendant regional centers, by their actions and failures
15 to act have violated the constitutional rights of plaintiffs
16 under Article 1 Sections 1 and 7(a) of the California
17 Constitution.

18 18. Enjoin defendants from continuing to violate the
19 constitutional rights of the plaintiff class.

20 19. Issue a writ of mandate and an injunction compelling
21 defendants promptly to provide the plaintiff class with stable
22 quality community living arrangements in the least restrictive
23 conditions necessary to meet their individual needs. Said
24 community living arrangements must provide the plaintiff class
25 with due process and equal protection, ensure plaintiffs'
26 personal liberty and privacy interests, protect plaintiffs from
27 unreasonable restraint and ensure plaintiffs freedom of
28 association.

On All Causes of Action

20. Order defendant DOF to take all actions necessary within the scope of its authority to ensure and enable that defendants DDS, Macomber and regional centers can carry out the Court's orders.

21. Award plaintiffs their costs, disbursements and reasonable attorneys fees, pursuant to Gov't Code §1021.5.

22. Grant such other and further relief as the Court deems just and proper.

DATED: 2/26/90

Respectfully Submitted,

COBLENTZ, CAHEN, McCABE, AND BREYER
William H. Orrick III
Virginia A. Crisp

PROTECTION AND ADVOCACY, INC.
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On All Causes of Action

20. Order defendant DOF to take all actions necessary within the scope of its authority to ensure and enable that defendants DDS, Macomber and regional centers can carry out the Court's orders.

21. Award plaintiffs their costs, disbursements and reasonable attorneys fees, pursuant to Gov't Code §1021.5.

22. Grant such other and further relief as the Court deems just and proper.

DATED: _____ Respectfully Submitted,

COBLENTZ, CAHEN, MCCABE, AND BREYER
William H. Orrick III
Virginia A. Crisp

PROTECTION AND ADVOCACY, INC.
Kimberly C. Swain
Eric R. Gelber
Catherine J. Blakemore

BY: _____
Ellen S. Goldblatt
Attorneys for Plaintiffs

PROOF OF SERVICE BY MAIL - CCP §1013 (a) (3)

1 I declare that:

2 I am a citizen of the United States. I am employed in the county
3 of San Francisco, California, where this mailing occurs. I am over
4 the age of eighteen years and not a party to the within cause. My
5 business address is 222 Kearny Street, San Francisco, California.

6 I am readily familiar with this firm's practice for collection
7 and processing of correspondence for mailing with the U.S. Postal
8 Service. Such correspondence would be deposited with the U.S.
9 Postal Service the same day it is placed for collection in the
10 ordinary course of business.

11 On March 1, 1990, I served the within SUMMONS, COMPLAINT FOR
12 DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR WRIT OF MANDATE
13 (CCP §§ 526, 527, 1060, 1085), and NOTICE AND ACKNOWLEDGMENT OF
14 RECEIPT on the following person(s), by placing a true copy thereof
15 enclosed in a sealed envelope with postage thereon fully prepaid,
16 for collection in this office and mailing on that date following
17 ordinary business practice, in the U.S. Mail at San Francisco,
18 California, addressed as follows.

19
20 SEE ATTACHED LIST
21

22 I declare under penalty of perjury that the foregoing is true and
23 correct, and that this declaration was executed on March 1, 1990
24 at San Francisco, California.

25
26 

1 Gary D. Macomber
2 Director of Developmental Services
3 Department of Developmental Services
4 1600 Ninth Street, 2nd Floor
5 Sacramento, CA 95814

6 J. F. Gaillard, Executive Director
7 Golden Gate Regional Center, Inc.
8 120 Howard Street, 3rd Floor
9 San Francisco, CA 94105

10 Ann Klink, Executive Secretary
11 North Bay Regional Center
12 1710 Soscol Avenue, Suite 1
13 Napa, CA 94559-1387

14 David Peach, Director
15 San Andreas Regional Center
16 300 Orchard City Drive
17 Campbell, CA 95008

18 Kathryn Fennell, Director
19 Regional Center of the East Bay, Inc.
20 2201 Broadway, 5th Floor
21 Oakland, CA 94612

22 State of California
23 John K. Van de Kamp
24 Office of the Attorney General
25 6000 State Building
26 350 McAllister Street
San Francisco, CA 94102

NOTICE TO DEFENDANT: (Aviso a Acusado)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

SEE ATTACHED

**YOU ARE BEING SUED BY PLAINTIFF:
(A Ud. le está demandando)**

SEE ATTACHED

You have **30 CALENDAR DAYS** after this summons is served on you to file a typewritten response at this court.

A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your case.

If you do not file your response on time, you may lose the case, and your wages, money and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).

Después de que le entreguen esta citación judicial usted tiene un plazo de 30 DIAS CALENDARIOS para presentar una respuesta escrita a máquina en esta corte.

Una carta o una llamada telefónica no le ofrecerá protección; su respuesta escrita a máquina tiene que cumplir con las formalidades legales apropiadas si usted quiere que la corte escuche su caso.

Si usted no presenta su respuesta a tiempo, puede perder el caso, y le pueden quitar su salario, su dinero y otras cosas de su propiedad sin aviso adicional por parte de la corte.

Existen otros requisitos legales. Puede que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencia de abogados o a una oficina de ayuda legal (vea el directorio telefónico).

The name and address of the court is: *(El nombre y dirección de la corte es)*

SAN FRANCISCO COUNTY SUPERIOR COURT
317 City Hall
400 Van Ness
San Francisco, CA 94102

CASE NUMBER: **9T6401**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es)

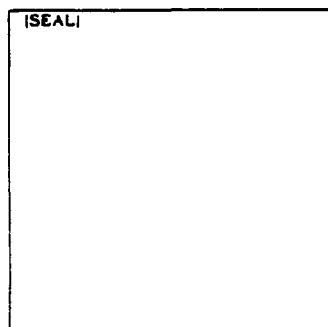
ELLEN S. GOLDBLATT
PROTECTION AND ADVOCACY, INC.
1330 Broadway, Suite 1550
Oakland, CA 94612
415/839-0811

DONALD W. DICKINSON

DATE: **MAR 1 1990**
(Fecha)

Clerk, by **BETTY A. CONNELL**
(Actuario)

Deputy
(Delegado)



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify)*:
3. ☐ on behalf of *(specify)*:

 under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (individual)
☐ other:
4. ☐ by personal delivery on *(date)*:

DEFENDANTS

Department of Developmental Services;
Gary D. Macomber, Director of Developmental Services;
State of California;
Department of Finance;
San Andreas Regional Center;
Golden Gate Regional Center, Inc.;
Regional Center of the East Bay Inc.;
North Bay Regional Center;
Does 1 through 50, inclusive,

Defendants-Respondents

PLAINTIFFS

William Coffelt
by his Guardians ad Litem William and Roberta Coffelt,
Conrado Diaz
by his Guardians ad Litem Conrado and Eliva Diaz,
Gary Eoff, Jr.
by his Guardians ad Litem Gary, Sr. and Laurie Eoff,
Damon Haberman
by his Guardian ad Litem Adelaide Haberman,
John Haskin
by his Guardian ad Litem Marian Trentman,
Jordon Jenkins
by her Guardian ad Litem Maxine Jenkins,
Zakary Kunkel
by his Guardian ad Litem Bruce Kunkel,
Christa Lawson
by her Guardian ad Litem Dianne Lawson
Jason Pease
by his Guardians ad Litem David and Cheryl Pease,
Jeff Richman,
Arsia Sazegari
by his Guardians ad Litem Steve and Sima Sazegari
John Tossetti,
Erin Walls
by her Guardians ad Litem Billy and Betty Walls,
on behalf of themselves and all others similarly situated;
Association for Retarded Citizens-California,
Autism Society of California,
Capitol People First,
Oaks Group,
The Association for Persons with Severe Handicaps-California
Chapter,
United Cerebral Palsy Association of California, Inc.,

Plaintiffs-Petitioners