In the United States District Court
In and For the Western District for the State of Washington

People First of Washington, Inc., a Washington corporation, on behalf of its members and

James Campbell, a real person, by and through his next friend, Dennis Campbell,

Chris Olson, a real person, by and through his next friend, Diane Grace,

Houston Williams, a real person, by and through his next friend and legal guardian, Steven Cassio,

Peter Bohnke, a real person, by and through his next friend, John Domenic Revello,

Dawn Lavery, a real person, by and through her next friend and legal guardian, Emerson Fosner,

John Mann, a real person, by and through his next friend, Resa Hayes, on behalf of themselves and all others similarly situated;

and

The Arc of Washington State, Inc., a Washington corporation, on behalf of its members;

The Autism Society of Washington, on behalf of its members; and

The Washington Protection and Advocacy System, Inc., a Washington corporation,

Plaintiffs,

vs.

Civil Cause No.....

C96-5906

Class Action
Civil Rights Complaint

Washington Protection & Advocacy System
1401 East Jefferson Street, Suite 506
Seattle, Washington 98370
Telephone: (206) 324-1521/Facsimile: (206) 324-1783

The Rainier Residential Habilitation Center;

Michael Lowry, in his official capacity as Governor of the State of Washington;

The Washington Department of Social and Health Services;

Lyle Quasim, in his official capacity as the Secretary of the Washington Department of Social and Health Services;

The Washington Division of Developmental Disabilities;

Norm Davis, in his official capacity as the Director of the Washington Division of Developmental Disabilities;

Leanna Lamb, in her official capacity as the Superintendent of the Rainier Residential Habilitation Center;

The Washington Office of Financial Management; and

Gary Robinson, in his official capacity as the Acting Director of the Washington Office of Financial Management,

Defendants.

Preliminary Statement

1.1. This is a civil rights class action brought by six Washington citizens with developmental disabilities who currently reside at the Rainier Residential Habilitation Center in Buckley, Washington, on behalf of themselves and all others similarly situated; and People First of Washington, Inc.; The Arc

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of Washington State, Inc.; the Autism Society of Washington; and the Washington Protection and Advocacy System, Inc., in its capacity as the designated protection and advocacy agency for those Washington citizens who have mental and physical disabilities.

1.2. The representative plaintiffs and the other members of the plaintiff class that they represent (hereinafter "Class Plaintiffs") are residents of the Rainier Residential Habilitation Center (hereinafter "Rainier"), a large state institution for individuals with mental retardation and developmental disabilities. Specifically, plaintiffs bring this action to redress the unconstitutional, unlawful, unsafe, and unprofessional conditions imposed on them by the defendants under color of state law. Approximately four hundred fifty persons with mental retardation and developmental disabilities currently reside at Rainier.

1.3. Rainier is a dangerous place to live. Many members of the plaintiff class have been and continue to be subjected to abuse, neglect, injury, and unnecessary physical and chemical restraint. In addition, Rainier and the defendant state officials responsible for the conditions at Rainier routinely deprive the plaintiff class of liberty and fundamental human rights in violation of their rights under the Constitution and laws of the United States.

1.4. By this action, the plaintiffs seek to enforce the constitutional and statutory rights of those individuals with mental retardation and developmental disabilities currently residing at Rainier to receive their habilitation, vocational, and other services and supports in integrated settings and in accordance with current professional standards.

1.5. The plaintiff class' need for habilitation, vocational training, and other supports and services require placement in small, community-based programs where their individual developmental and daily living needs can be met. However, the defendants deny the plaintiffs these services because of the plaintiffs' perceived severe disabilities, complex medical conditions, and challenging behaviors.

1.6. The defendants' attitudes on the severity and complexity of the individual class members' disabilities, medical conditions, and behaviors are based, in large part, on plaintiffs' prolonged

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institutionalization at Rainier, as well as the defendants' failure to meet their federal statutory and regulatory obligations to place, monitor, and discharge the members of the plaintiff class to alternative non-institutional programs.

1.7. The defendants have failed to properly assess the plaintiff class' skills and abilities, in contravention of the requirements of the federal laws and regulations governing the provision of habilitation and active treatment to individuals with mental retardation and developmental disabilities.

1.8. The acts and omissions of the defendants have violated the rights of the plaintiff class under the First and Fourteenth Amendments to the United States Constitution; Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12131, et seq. (hereinafter "ADA"); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, et seq. (hereinafter "Section 504"); and the Social Security Act, 42 U.S.C. § 1396, et seq. (hereinafter "SSA").

Jurisdiction and Venue

2.1. This action arises under the Civil Rights Act, 42 U.S.C. § 1983, to redress the deprivation, under color of state law, of the plaintiffs' rights, privileges and immunities secured by the Constitution and laws of the United States. The rights which plaintiffs seek to redress are guaranteed by the First and Fourteenth Amendments to the United States Constitution, as well as 29 U.S.C. §§ 720 and 794, 42 U.S.C. §§ 1396, 1396a, 1396d, and 12131.

2.2. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331(a), 1343(3) & (4), and 1367 as this action arises under the Constitution and laws of the United States, and seeks injunctive and other equitable relief under acts of Congress providing for the protection of civil rights.

2.3. This Court also has authority pursuant to 28 U.S.C. §§ 2201 & 2202 to enter declaratory judgments declaring the rights and other legal relations of parties to the action, as well as 42 U.S.C. § 1983.

2.4. Venue is proper pursuant to 28 U.S.C. § 1391(b) as all of the parties reside in the State of Washington and plaintiffs' claims for relief arise within this state.

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Parties

A. Plaintiffs

3.1. The plaintiff People First of Washington, Inc. (hereinafter "People First"), a nonprofit corporation duly organized under the laws of the State of Washington, is a state wide self-advocacy organization governed entirely by people with developmental disabilities. More than one thousand Washington citizens are members of People First through its thirty-three chapters and support groups located throughout Washington. People First maintains its main administrative office at 932½ Sixth Street in Clarkston, Washington.

3.2. People First's members include individuals with disabilities who currently live in state institutions, residential facilities, and nursing homes, including Rainier. People First believes that all of its individual members could live in their local communities if appropriate habilitation programs and other support services were available to them.

3.3. People First's purpose, for which it expends its resources, are as follows:

a. To promote the philosophy that everyone, no matter what disability he or she has or its severity, has the same basic civil rights and responsibilities;

b. To advocate and defend the rights of persons with disabilities in the areas of employment, education, housing and transportation; and

c. To provide a way for persons with disabilities to express and remedy their concerns and enhance their well-being.

3.4. To advance these goals, People First and its members advocate for legislation to enable those Washington citizens with disabilities to live more independently. Its members travel around the state teaching people with disabilities about self-advocacy and their legal rights and responsibilities at regularly scheduled local, regional, and statewide conferences, meetings, and programs. People First provides leadership and self-advocacy training, and fosters community awareness through the volunteer service activities of its members. Its individual members also represent the interests of Washington's citizens with disabilities by serving on regional, state, and national committees, including, but not limited to: the Managed Care Feasibility Work Group, the Developmental Disabilities Council for the

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State of Washington, and the Statewide Advisory Committee for Developmental Disabilities.

3.5. People First International was founded in 1974 by residents of the Fairview Training Center, a state institution for persons with mental retardation in Oregon. In discussing the selection of a name for their new organization, one of the founding members said, "Why not call ourselves People First, because we want to be known as people first before we're known for our handicaps?" After that, they formed People First organizations in many other states, including Washington. These organizations share a common purpose -- to support their members' right to speak for themselves, make their own decisions, and know how to exercise their rights as citizens, including their right to live in their home communities.

3.6. People First has many individual members who reside at the Rainier. These individual members, who actively support the goals and purposes of People First, are individuals who are directly harmed by the actions and inactions of the defendants, as set forth and more fully described in paragraphs 4.1 through 5.12 below.

3.7. Plaintiff James Campbell (hereinafter "Campbell"), who was born on June 2, 1972, was first diagnosed as having mental retardation when he was a child. Since December 1, 1983, when he was just eleven years old -- and for the last thirteen years -- Mr. Campbell has continuously resided and has been unnecessarily institutionalized at Rainier.

3.8. Dennis Campbell, who is a resident of Vancouver, Washington, brings this action on behalf of James Campbell in his capacity as James Campbell's next friend. Dennis Campbell, who is a member of People First, is familiar with James Campbell.

3.9. James Campbell resides at PAT E / Shasta House, a residential unit at Rainier for men and women with developmental disabilities.

3.10. James Campbell is a capable man with good communication skills who has been labeled as moderately retarded. He has repeatedly stated that he wants to leave Rainier and live in a normal home in the community. However, because of the defendants' disparate discharge policies and

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discriminatory development of community-based services, the defendants have denied James Campbell the individualized habilitation programs and services he needs.

3.11. James Campbell has little opportunity to model appropriate social skills or to learn how to act in the community. Instead, he is regularly exposed to persons whose social skills and inappropriate behaviors are at least as problematic as his own.

3.12. James Campbell is not receiving adequate habilitation at Rainier. James Campbell and the individuals in his residential unit have little or no choice about when to wake up and go to bed, what to eat, or what to do from day to day. On average, plaintiff James Campbell receives less than two hours of programming per day, which is neither adequate nor appropriate for his needs. James Campbell's limited habilitation program does not constitute active treatment according to accepted professional standards.

3.13. James Campbell lacks meaningful employment training opportunities at Rainier. He participates in an inadequate and segregated workshop at Rainier, where much of his "vocational training" amounts to repetitive and monotonous tasks, interrupted by extended periods of "dead time" when he has nothing to do. This "program" is the only "employment" opportunity available to James Campbell and the vast majority of his fellow Rainier residents.

3.14. James Campbell could receive all of his habilitation, vocational, and attendant services in the community. However, he remains at Rainier because of barriers caused by the defendants' development and operation of a community service system that discriminates against him because of his disabilities and prevents his successful discharge. These barriers include, but are not limited to, the defendants' failure to develop adequate habilitation programs for persons living in the community; their failure to develop appropriate supported employment and other day services for persons living in the community; their failure to develop adequate residential and behavioral support services for persons living in the community; and their failure to provide adequate staff development training and technical assistance available to those people who work in this state's community service system.

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3.15. Since James Campbell's admission to Rainier, no one has developed or implemented an appropriate discharge plan. To date, contrary to professional judgement, plaintiff James Campbell has never been placed in a supervised community-based program and placement appropriate to meet his needs.

3.16. Although plaintiff James Campbell could live in the community with appropriate habilitation, vocational training, and support services, he experiences on a daily basis the harmful and unlawful conditions described in paragraphs 4.1 through 5.12 herein and below. Because of the defendants' discriminatory policies and practices, he has no alternative to Rainier.

3.17. The failure to provide James Campbell with the necessary support services has resulted in direct and immediate injury to him, has caused him physical and emotional harm, and has been the direct cause of his deterioration and regression. This failure is unreasonable, constitutes a substantial departure from accepted professional standards, and needlessly deprives James Campbell of his liberty.

3.18. Plaintiff Chris Olson (hereinafter "Olson"), who was born on June 11, 1954, was first diagnosed as having mental retardation when he was a child. Since March 2, 1970, when he was just fifteen years old -- and for the last twenty-six years -- Mr. Olson has continuously resided and has been unnecessarily institutionalized at Rainier.

3.19. Diane Grace, who is a resident of Seattle, Washington, brings this action on behalf of Chris Olson in her capacity as Chris Olson's next friend. Ms. Grace, who is a member of People First, is familiar with Chris Olson.

3.20. Mr. Olson resides at PAT B / Meyer House, a residential unit at Rainier for men and women with developmental disabilities and behavior problems.

3.21. Chris Olson has multiple disabilities and is labeled as severely retarded. He does not say many words clearly and has difficulty with the activities of daily living. Mr. Olson engages in stereotypical, perseverative behaviors that are the result of his long institutionalization at Rainier. With the appropriate supports, Mr. Olson could live in a normal home in the community. However, because

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of their discriminatory discharge policies and practices with respect to community-based habilitation services and supports, the defendants have denied Mr. Olson the individualized habilitation programs and services he needs.

3.22. Mr. Olson has little opportunity to model appropriate social skills, behaviors, or to learn how to act in the community. He is exposed without respite to persons whose social skills and inappropriate behaviors are at least as problematic as his own.

3.23. Chris Olson is not receiving adequate habilitation at Rainier. Mr. Olson and the individuals in his residential unit have little or no choice about when to wake up and go to bed, what to eat, or what to do from day to day. On average, plaintiff Olson receives less than two hours of programming per day, which is neither adequate nor appropriate for his needs. Mr. Olson's limited habilitation program does not constitute active treatment according to accepted professional standards.

3.24. Mr. Olson has sustained numerous and frequently unexplained injuries while in the care of the defendants that have required medical treatment. During 1995 and 1996, these injuries have included, but have not been limited to: lacerations to the area around his eyes, bruising about his body, abrasions, and severely torn finger and toe nails.

3.25. Despite Mr. Olson's injuries, incident reports were not done to explain how or when his injuries were sustained, as required by Rainier's policies and regulations, except in limited instances. Defendants also failed to conduct any investigation into how these injuries were sustained, in spite of Rainier policies and regulations that require such investigations when residents are injured.

3.26. Chris Olson lacks meaningful employment training opportunities at Rainier. He participates in a limited, inadequate, and segregated workshop at Rainier, where much of his "training" amounts to repetitive and monotonous tasks, interrupted by extended periods of "dead time" when he has nothing to do. This "program" is the only "employment" opportunity available to Mr. Olson and the vast majority of his fellow Rainier residents.

3.27. Mr. Olson could receive all of his habilitation, vocational, and individual support services

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in the community. He remains at Rainier because the defendants refuse to consider him for placement in the community because they believe he requires specialized supports -- supports that they have chosen to provide only at Rainier.

3.28. The community service system operated by the defendants discriminates against Chris Olson and precludes his appropriate discharge from the segregation of Rainier to an appropriate community placement. Plaintiff Olson could receive all of his habilitation, vocational, and attendant services in the community were it not for the barriers caused by the defendants' community service system. These barriers include, but are not limited to, the defendants' failure to develop adequate habilitation programs for persons living in the community; their failure to develop appropriate supported employment and other day services for persons living in the community; their failure to develop adequate residential and behavioral support services for persons living in the community; and their failure to provide adequate staff development training and technical assistance available to those people who work in this state's community service system.

3.29. Since Mr. Olson's admission to Rainier, no one has developed or implemented an appropriate discharge plan. To date, plaintiff Olson has never been placed in a supervised community-based program and placement appropriate to his needs.

3.30. Although Chris Olson could live in the community with appropriate habilitation, vocational training, and support services, he experiences on a daily basis the harmful and unlawful conditions described in paragraphs 4.1 through 5.12 herein and below. Because of the defendants' discriminatory policies and practices, he has no alternative to Rainier.

3.31. Defendants' failure to provide Chris Olson with the necessary support services he requires has resulted in direct and immediate injury to him, caused him physical and emotional harm, and has been the direct cause of his deterioration and regression. This failure is unreasonable, constitutes a substantial departure from accepted professional standards, and needlessly deprives Mr. Olson of his liberty.

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3.32. Plaintiff Houston Williams (hereinafter "Williams"), who was born on February 14, 1949, was first diagnosed as having mental retardation when he was a child. Since February 21, 1956, when he was just seven years old -- and for the last forty years -- Mr. Williams has continuously resided and has been unnecessarily institutionalized at Rainier.

3.33. Steven Cassio, who is a resident of Bonney Lake, Washington, is the duly-appointed legal guardian for Houston Williams, pursuant to an order of the Superior Court for Pierce County, Washington. Steven Cassio brings this action on behalf of Houston Williams, in his capacity as his ward's next friend and legal guardian.

3.34. Until recently, Houston Williams resided at PAT C / 2015 Quinault Court, a residential unit at Rainier for men with severe developmental disabilities and challenging behaviors. Last month, Rainier staff, over the objections of his legal guardian, moved Mr. Williams to PAT C / 1040 Quinault, another residential unit at Rainier. In both of his Rainier cottages, Mr. Williams has had little opportunity to model appropriate behavior or to learn how to act in the community. Instead, he is exposed without respite to persons whose behaviors are at least as problematic as his own.

3.35. Houston Williams has limited communication skills, but understands others when they speak to him. He can walk, feed himself, and make his choices and preferences known to others. Mr. Williams has been labeled as severely retarded and behaviorally impaired. While the defendants have repeatedly stated that Houston Williams is appropriate for community placement if they provide him with extensive supports, and have acknowledged that his challenging behaviors are substantially decreased when he is able to go into the community on visits, defendants have not helped Mr. Williams and his legal guardian in finding an appropriate community placement.

3.36. Mr. Williams and the other men in his residential unit have little or no choice about when to wake up and go to bed, what to eat, or what to do from day to day. Plaintiff Williams was placed at Rainier because of his severe developmental disabilities and challenging behavior, and because the State of Washington and the defendants' predecessors only offered services to people with his disabilities at

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institutions like Rainier.

3.37. Mr. Williams hardly ever leaves Rainier, and spends most of his time in his residential unit. Defendants provide him with minimal activities and opportunities for socialization outside the institution.

3.38. Defendants have repeatedly used and continue to use a variety of inappropriate and discriminatory restraints to address Mr. Williams' challenging behaviors, including the use of antipsychotic medications and other unspecified manual restraints, despite the fact that these interventions have had little effect on decreasing the frequency or severity of Mr. Williams' challenging behaviors.

3.39. Although Houston Williams has the potential to acquire adaptive, functional life skills focused on the maintenance of a home, meal-preparation, and personal care skills, he cannot learn these skills at Rainier because it cannot provide him with an appropriate, community-based habilitation program.

3.40. Mr. Williams is not receiving even minimally adequate habilitation at Rainier. He lives in a barren residence with stark, institutional furniture, a television blaring for most of the day, and little else to do. During his forty years at Rainier, Mr. Williams has not had access to meaningful activities, vocational training, or the opportunity to learn real-life skills in the natural environments where those skills can be practiced, which has resulted in a loss of his individual skills and competencies. Mr. Williams' current habilitation program does not constitute active treatment according to accepted professional standards.

3.41. The defendants have denied Houston Williams community placement because of his challenging behaviors. With proper habilitation, support, and training in a small community home, however, these challenging behaviors could be decreased or eliminated. Further, in an appropriate community-based program and placement, Mr. Williams could also receive much richer and more meaningful habilitation, consistent with his individual needs and the judgment of qualified professionals.

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3.42. Since Mr. Williams' admission to Rainier, no one has developed or implemented an appropriate discharge plan. To date, contrary to professional judgement, plaintiff Williams has never been placed in a supervised setting appropriate to his individual needs.

3.43. Houston Williams experiences on a daily basis the harmful and unlawful conditions described in paragraphs 4.1 through 5.12 below. Because the defendants have limited their community services to persons who do not have severe developmental disabilities and challenging behaviors, Mr. Williams remains confined and segregated at Rainier.

3.44. Due to the length and circumstances of his institutionalization, Houston Williams will require appropriate clinical, programmatic and habilitative services to support his placement in a community-based program for an extended period.

3.45. If Mr. Williams is discharged from Rainier without an appropriate habilitation program and the necessary supports and services required to meet his individual needs, there is a significant likelihood that he will be deprived of his liberty by his reinstitutionalization in the future.

3.46. The failure to provide Houston Williams with the necessary support services and has resulted in direct and immediate injury to him, has caused him physical and emotional harm, and has been the direct cause of his deterioration and regression. This failure is unreasonable, constitutes a substantial departure from accepted professional standards, and needlessly deprives Mr. Williams of his liberty.

3.47. Plaintiff Peter Bohnke (hereinafter "Bohnke"), who was born on July 31, 1940, was first diagnosed as having mental retardation when he was a child. Since July 24, 1947, when he was just six years old -- and for the last forty-nine years -- Mr. Bohnke has continuously resided and has been unnecessarily institutionalized at Rainier. He has no family who is involved in his life and activities at Rainier.

3.48. John Domenic Revello, who is a resident of Seattle, Washington, brings this action on behalf of Peter Bohnke in his capacity as Peter Bohnke's next friend. Mr. Revello is familiar with Peter

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Bohnke.

3.49. Mr. Bohnke resides at PAT C / 2015 Quinault Court, a residential unit at Rainier for men with severe developmental disabilities and challenging behaviors. Mr. Bohnke has little opportunity to model appropriate behavior or to learn how to act in the community. He is exposed without respite to persons whose behaviors are at least as problematic as his own.

3.50. Due to the severity of his developmental disabilities, Peter Bohnke has limited communication skills, as well as difficulty with activities of daily living. He engages in stereotypical, perseverative behaviors that are the result of his long institutionalization. The irony is that because of the disabilities that were created in part by prolonged institutionalization and inadequate habilitation, plaintiff Bohnke is now considered inappropriate for community living. The defendants refuse to consider him for community living on the ground that he requires specialized supports -- supports that they have chosen to provide only at Rainier.

3.51. Peter Bohnke and the other men in his residential unit have little or no choice about when to wake up and go to bed, what to eat, or what to do from day to day. Mr. Bohnke was placed at Rainier because of his severe developmental disability and challenging behavior, and because the State of Washington and the defendants' predecessors only served people with his disabilities at institutions like Rainier.

3.52. Mr. Bohnke never leaves Rainier, and rarely leaves his residential unit, mostly because the defendants have frequently restrained him twenty-four hours a day for weeks at a time with a variety of inappropriate and discriminatory physical and chemical restraints, as well as aversive therapies. These restraints and therapies have included: physical restraints, antipsychotic medications, manual holds, locking helmets, and prolonged five-point prone restraints, along with other forms of restraint and therapies, despite the fact that these interventions have had little effect on decreasing the frequency or severity of Mr. Bohnke's challenging behaviors.

3.53. During his forty-nine years at Rainier, Mr. Bohnke has had little or no opportunity to

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practice vocational skills, recreational skills, or community living skills. His environment is barren, monotonous, and unpleasant. He is currently condemned to live from day to day without hope or companionship. Mr. Bohnke's current habilitation program is provided less than two hours a day and does not constitute active treatment according to accepted professional standards.

3.54. Despite the fact that Peter Bohnke could live in the community with appropriate habilitation, vocational training, and support services, he experiences on a daily basis the harmful and unlawful conditions described in paragraphs 4.1 through 5.12 below. Because the defendants have discriminated in the development and operation of their community services against persons who they perceive as having severe developmental disabilities and challenging behaviors, he has no alternative to Rainier.

3.55. Plaintiff Dawn Lavery (hereinafter "Lavery"), who was born on June 24, 1956, was first diagnosed as having mental retardation when she was a child. Since February 26, 1973, when she was just 16 years old -- and for the last twenty-three years -- Ms. Lavery has continuously resided and has been unnecessarily institutionalized at Rainier. She has no family who is involved in her life and activities at Rainier.

3.56. Emerson Fosner, who is a resident of Tacoma, Washington, is the duly-appointed legal guardian for Dawn Lavery, pursuant to an order of the Superior Court for King County, Washington. Emerson Fosner brings this action on behalf of Dawn Lavery in his capacity as his ward's next friend and legal guardian.

3.57. Ms. Lavery resides at PAT B / Tyee House, a residential unit at Rainier for men and women with severe developmental disabilities and challenging behaviors. Ms. Lavery has little opportunity to model appropriate behavior or to learn how to act in the community. She is exposed without respite to persons whose behaviors are at least as problematic as her own.

3.58. Due to the severity of her developmental disabilities, Dawn Lavery has limited communication skills, as well as difficulty with activities of daily living. She engages in stereotypical,

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perseverative behaviors that are the result of her long institutionalization. The irony is that because of the disabilities that were created in part by institutionalization and inadequate habilitation, plaintiff Lavery is now considered inappropriate for community living. The defendants refuse to consider her for community living on the ground that she requires specialized supports -- supports that they have chosen to provide only at Rainier.

3.59. Plaintiff Lavery lives in a barren residence with stark, institutional furniture, a television blaring for most of the day, and little else to do. Ms. Lavery and the other individuals in her residential unit have little or no choice about when to wake up and go to bed, what to eat, or what to do from day to day. Plaintiff Lavery was placed at Rainier because of her developmental disability and challenging behaviors, and because the State of Washington and the defendants' predecessors served people with her disabilities at institutions like Rainier.

3.60. Ms. Lavery rarely leaves her residential unit, mostly because the defendants have frequently restrained her twenty-four hours a day for weeks at a time with a variety of physical and/or chemical restraints. During her twenty-three years at Rainier, Ms. Lavery has had little or no opportunity to practice vocational skills, recreational skills, or community living skills. She is currently condemned to live from day to day without hope or companionship.

3.61. During her twenty-three years at Rainier, Ms. Lavery has not had access to meaningful activities, vocational training, or the opportunity to learn real-life skills in the natural environments where those skills are practiced. Her environment is barren, monotonous, and unpleasant. On average, she receives less than two hours of programming per day, which is neither adequate nor appropriate for her needs. Ms. Lavery's current habilitation program does not constitute active treatment according to accepted professional standards.

3.62. In an attempt to address Dawn Lavery's challenging behaviors, Rainier staff has continually and regularly used a variety of inappropriate and discriminatory physical and chemical restraints, as well as aversive therapies, including the use of antipsychotic medications and other

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unspecified manual restraints. These restraints and therapies have included: physical restraints, cold water baths, antipsychotic medications, visual occlusion, manual holds, locking helmets, and wheelchair restraints, along with other forms of restraint and therapies.

3.63. Ms. Lavery's current Behavioral Treatment Plan (BTP) does not allow for the use of chemical or physical restraints. Her BTP calls for the use of an aversive therapy known as "visual occlusion."

3.64. "Visual occlusion" therapy, as implemented by Rainier staff, consists of "blocking" Ms. Lavery's vision with a screen and/or a ski mask placed over her head and eyes to address her self-injurious behavior. This "visual occlusion" therapy is to be used for approximately thirty seconds or until Ms. Lavery stops the alleged self-injurious behavior, but not beyond thirty minutes.

3.65. Despite the fact that physical restraints are not to be used on Dawn Lavery, on or about August 18, 1994, she was placed in a wheelchair restraint for "medical" reasons for three days.

3.66. On or about August 3, 1995, Dawn Lavery's hand was severely injured in a paper shredder which resulted in her being placed in wrist to wrist restraints.

3.67. On or about February 21, 1996, Rainier staff used a manual hold on Dawn Lavery on at least three separate occasions, despite the fact that this type of restraint is not permitted and is specifically prohibited by her BTP because it causes her self-injurious behaviors to worsen.

3.68. On or about March 15, 1996, Rainier staff restrained Dawn Lavery with a locked helmet, despite the fact that this type of restraint is not permitted by her BTP and there was no authorization from her legal guardian for this type of restraint.

3.69. On or about March 17, 1996, Rainier staff restrained Ms. Lavery with a locked helmet on four separate occasions, despite the fact that this type of restraint is not permitted by her BTP. Further, her legal guardian had not authorized Rainier to use this type of physical restraint.

3.70. Despite the fact that Dawn Lavery could live in the community with appropriate habilitation, vocational training, and support services, she experiences on a daily basis the harmful and

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unlawful conditions described in paragraphs 4.1 through 5.12 below. Because the defendants have discriminated in the provision of community services against persons who have severe developmental disabilities and challenging behaviors, Ms. Lavery remains confined and segregated at Rainier.

3.71. Plaintiff John Mann (hereinafter "Mann"), who was born on November 18, 1942, was first diagnosed as having mental retardation when he was a child. Since December 15, 1947, when he was just five years old -- and for the last forty-eight years -- Mr. Mann has continuously resided and has been unnecessarily institutionalized at Rainier. He has no family who is involved in his life and activities at Rainier.

3.72. Resa Hayes, who is a resident of Spokane, Washington, brings this action on behalf of John Mann in her capacity as John Mann's next friend. Ms. Hayes, who is a member of People First, is familiar with John Mann.

3.73. John Mann resides at PAT B / Oakley House, a residential living unit at Rainier for men and women with severe developmental disabilities and challenging behaviors. Mr. Mann has little opportunity to model appropriate behavior or to learn how to act in the community. He is exposed without respite to persons whose behaviors are at least as problematic as his own.

3.74. Mr. Mann hardly ever leaves Rainier, and spends most of his time in his residential unit. Defendants provide him with minimal activities and opportunities for socialization outside the institution.

3.75. John Mann lives in a barren residence with stark, institutional furniture, a television blaring for most of the day, and little else to do. Mr. Mann and the other individuals in his residential unit have little or no choice about when to wake up and go to bed, what to eat, or what to do from day to day. John Mann was placed at Rainier because of his developmental disability and challenging behaviors, and because the State of Washington and the defendants' predecessors served people with his disabilities at institutions like Rainier.

3.76. Due to the severity of his developmental disabilities, John Mann has limited

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communication skills, as well as difficulty with activities of daily living. He engages in stereotypical, preservative behaviors that are the result of his institutionalization. The irony is that because of the disabilities that were created in part by institutionalization and inadequate habilitation, John Mann is now considered inappropriate for community living. The defendants refuse to consider him for community living on the ground that he requires specialized support-- support that they have chose to provide only at Rainier.

3.77. Mr. Mann is not receiving adequate habilitation at Rainier. During his forty-eight years at Rainier, he has not had access to meaningful activities, vocational training, or the opportunity to learn real-life skills in the natural environments where those skills are practiced. On average, Mr. Mann receives less than two hours of programming per day, which is neither adequate nor appropriate for his needs. Mr. Mann's current habilitation program does not constitute active treatment according to accepted professional standards.

3.78. John Mann rarely leaves his residential unit, mostly because the defendants have frequently and extensively restrained him with a variety of physical and/or chemical restraints. During his time at Rainier, he has had little or no opportunity to practice vocational skills, recreational skills, or community living skills. Mr. Mann's environment is barren, monotonous, and unpleasant. He is currently condemned to live from day to day without hope or companionship.

3.79. In an attempt to address Mr. Mann 's behaviors, Rainier staff has continually and regularly used various forms of physical and chemical restraints, as well as aversive therapies, since his admission. These restraints and therapies have included, but not been limited to: body wraps, specialized jump suits, prone restraints, manual holds, Haldol, Lithium, Mellaril, and other physical restraints and therapies.

3.80. John Mann has a severe cardiac condition that exacerbates the risk of harm he must endure when placed in restraints. Despite defendants' acknowledgment of this condition, Mr. Mann's behavioral support plan currently allows for the use of manual restraints when he is sitting on a couch or mat, as well as a restrictive jumpsuit restraint. In the recent past, his behavioral support plan has also

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allowed for the use of prone restraint, body wraps, and other physical and chemical restraints, despite his heart condition.

3.81. Despite the fact that John Mann could live in the community with appropriate habilitation, vocational training, support services, he experiences on a daily basis the harmful and unlawful conditions described in paragraphs 4.1 through 5.12 below. Because the defendants have discriminated in the provision of community services against persons who have severe developmental disabilities and challenging behaviors, he remains confined and segregated at Rainier.

3.82. Plaintiff The Arc of Washington State, Inc. (hereinafter "Arc"), a nonprofit corporation duly organized under the laws of the State of Washington in 1936, is this state's oldest and largest membership organization for individuals with developmental disabilities, their families, friends, and persons providing services to them. Arc's administrative office is located at 1703 East State Avenue in Olympia, Washington. It has chapters in counties across the state.

3.83. In 1936-37, the Arc drafted and successfully lobbied for the legislation that created the state's second institution for persons with developmental disabilities, now known as Rainier, because their sons and daughters with mental retardation were then excluded by law from attending their local public schools. Later, it supported the creation of the Fircrest Residential Habilitation Center in Seattle, as well as the Yakima Valley Residential Habilitation Center in Selah, Washington. For decades, the Arc provided the mainstay of support in Olympia for appropriations to support and expand such institutions. Gradually, however, the members of plaintiff Arc became convinced that such segregated facilities could not provide individuals with developmental disabilities with minimally adequate living, training, working, and recreational supports and opportunities.

3.84. Among the Arc's purposes is the education of individuals with disabilities, their families, and the public on issues affecting persons with developmental disabilities. The Arc's membership includes individuals who are at risk of institutionalization at Rainier due to their developmental disabilities.

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3.85. The Arc devotes considerable resources to support and promote the development of community-based habilitation programs. Further, the Arc seeks to render defendants aware of the competencies and potential of persons with severe developmental disabilities, and to ensure that all such persons, including the children of its parent members, are not forced into segregated institutional centers, which always retard, and often defeat, their personal growth and development.

3.86. Defendant's actions and inactions adversely effect the Arc's organizational purposes and the interests of its members, as set forth and more fully described in paragraphs 4.1 through 5.12 below.

3.87. Plaintiff Autism Society of Washington (hereinafter "Autism Society") is a local chapter of the Autism Society of America, which provides advocacy, support, and education on issues affecting persons with autism and their families and friends. The Autism Society's members include individuals with autism and other similar disabilities, as well as their families and friends. The Autism Society's main administrative office is located at 15230 Fifteenth Avenue N.E. in Seattle, Washington.

3.88. Many of the Autism Society's members include individuals who currently live in institutions and nursing homes, and who could live in their local communities if there were appropriate habilitation programs and support services available to them. The Autism Society's membership includes individuals who are at risk of institutionalization at Rainier due to their developmental disabilities.

3.89. The Autism Society's purpose, among others, is to empower and support the self-advocacy efforts of individuals with developmental disabilities, including those individuals who are currently residing in institutions and nursing homes but could live in their local communities in non-institutional alternatives.

3.90. Defendants' actions and inactions adversely affect the Autism Society's organizational purposes and the interests of its members, as set forth and more fully described in paragraphs 4.1 through 5.12 below.

3.91. Plaintiff Washington Protection and Advocacy System, Inc. (hereinafter "WPAS"), a

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nonprofit corporation duly organized under the laws of the State of Washington, is the statewide protection and advocacy system designated by the Governor of the State of Washington to protect and advocate for the legal and civil rights of those citizens of this state who have physical or mental disabilities, pursuant to the "Developmental Disabilities Assistance and Bill of Rights Act", 42 U.S.C. § 6000, et seq.; the "Protection and Advocacy for Individuals with Mental Illnesses Act", as amended, 42 U.S.C. § 10801, et seq.; and RCW 71A.10.080. WPAS maintains its offices at 1401 East Jefferson Street, Suite 506, in Seattle, Washington.

3.92. As the duly designated statewide protection and advocacy system for individuals with mental and physical disabilities in the State of Washington, WPAS has the authority and responsibility to pursue legal, administrative, and such other appropriate remedies or relief as may be necessary to protect and advocate for the rights of those persons within the State of Washington who are or who may be eligible for treatment, services, or habilitation due to their developmental, mental, or physical disabilities. 42 U.S.C. §§ 6000, et seq., and 10801, et seq., 29 U.S.C. § 794e.

3.93. Defendants' actions and inactions adversely affect WPAS' organizational interests and the legal rights of its clients, as set forth and more fully described in paragraphs 4.1 through 5.12 below.

B. Class Action Allegations

3.94. The individual plaintiffs, their legal guardians, next friends, and People First, Arc, Autism Society, and WPAS bring this action pursuant to FRCP 23(a) and (b)(1)(A) & (B), 23(b)(2), and 23(b)(3) on behalf of themselves and all of the other persons similarly situated.

3.95. The plaintiff class consists of all persons who: (1) presently reside at Rainier; (2) may be admitted or are at risk of being admitted to Rainier; or (3) have been discharged from Rainier to group homes, nursing facilities, intermediate care facilities for individuals with mental retardation and developmental disabilities, and other community living arrangements funded, operated, or licensed by the defendants after October 1, 1991.

3.96. There are approximately four hundred and fifty-nine individual class members who

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presently reside at Rainier. Approximately thirty individuals have been discharged from Rainier during the past five years. The number of class members who may be admitted or are at risk of institutionalization at Rainier in the future is not known to plaintiffs at the present time.

3.97. The defendants' actions, inactions, policies, and practices have deprived the members of the plaintiff class of their rights under federal laws. The plaintiffs seek for themselves and all of the other members of the class declaratory and injunctive relief to eliminate those actions, inactions, policies, and practices of the defendants, and to require defendants to create, develop, and establish standards and procedures that do not arbitrarily deny to plaintiffs and the class those rights guaranteed by federal law.

3.98. That plaintiffs' complaint is proper as a class action pursuant to FRCP 23 because:

a. the class is so numerous as to make joinder of all members impracticable;

b. there are substantial questions of law and fact common to the entire class;

c. the claims of the representative plaintiffs are typical of the class they seek to represent in that they are all individuals who, because of their disabilities, have been, are, or in the future will be at risk of placement at Rainier, and who, as a direct result of such placement, have, are, or will suffer from one or more of the violations of rights enumerated in this complaint. The named plaintiffs herein do not in this action seek individual damages, which are specifically reserved for other actions these plaintiffs may wish to pursue;

d. the plaintiffs' attorneys have the legal resources and experience necessary to protect all of the members of the class, and the representative plaintiffs will adequately and fairly represent the interests of the class;

e. the defendants have acted on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole;

f. the prosecution of separate actions by individual members of the class might establish incompatible standards of conduct for the defendants in this action; and

g. separate actions would create a risk of adjudications with respect to individual members of the class that would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

3.99. The questions of law and fact common to the entire plaintiff class include, but are not limited to:

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a. Are the conditions at Rainier unconstitutional, unlawful, unsafe, and unprofessional as alleged herein?

b. Does the plaintiffs' segregation at Rainier violate, among other rights, plaintiffs' right to: equal protection of the laws; habilitation in the least separate, most integrated community setting; freedom of association; freedom of expression; the right to participate in public services, programs, and activities receiving federal assistance regardless of the severity of the plaintiff's disabilities, medical conditions, and behavioral challenges?

c. Do the defendants have an obligation under the Constitution and laws of the United States to provide necessary services to the representative plaintiffs and all of the other members of the class they represent in the least separate, most integrated community setting?

d. Have the defendants subjected the residents of Rainier to unnecessary abuse or neglect?

e. Have the defendants deprived the residents of Rainier of adequate and humane care, habilitation, medical care, vocational training, and support services?

f. Have the defendants failed to develop and deliver a professionally designed, consistently and aggressively implemented program of training, treatment, habilitation, and other services to each Rainier resident to enable her or him to function with the greatest self-determination and independence possible?

g. Have the defendants subjected the residents of Rainier to unnecessary and inappropriate physical and chemical restraint?

h. Have the defendants deprived the residents of Rainier of their rights to secure appropriate community-based habilitation and services in order to prevent needless hospitalization and thus ensure their continued liberty?

i. Have the defendants deprived the residents of Rainier of their rights to humane and adequate habilitation and treatment designed to prevent further deterioration and to restore functioning sufficient to allow class plaintiffs to return to their home communities and ensure their liberty?

C. Defendants

3.100. Defendant Rainier is a state-owned and state-operated institution for individuals with mental retardation and developmental disabilities located at 2120 Ryan Road in Buckley, Washington. Rainier is classified as an Intermediate Care Facility for the Mentally Retarded (hereinafter "ICF/MR") under Title XIX of the SSA, 42 U.S.C. § 1396, et seq., and receives federal funds under said Act.

3.101. Defendant Michael Lowry (hereinafter "Lowry") is sued in his official capacity as the

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Governor for the State of Washington. Defendant Lowry's administrative office is located in Olympia, Washington, and his office mailing address is as follows: Governor's Office, Legislative Building, AS-13, P.O. Box 4002, Olympia, Washington 98504.

3.102. Under Article III of the Washington Constitution, defendant Lowry is the state's chief executive officer, and in his official capacity, has, pursuant to Article III, § 5 of the Washington Constitution, and RCW 43.06.010, supreme executive power to execute the laws of the State of Washington. Defendant Lowry, in his official capacity, is charged with, and, at all times relevant herein, has exercised overall responsibility, supervision, and control over the operation of all of the State of Washington's institutions, departments, and agencies.

3.103. Among his official duties as governor, defendant Lowry, pursuant to RCW 43.17.020, selects and appoints, subject to Senate confirmation, the individual who heads the Washington Department of Social and Health Services, the state agency that operates Washington's Residential Habilitation Centers (hereinafter "RHC"), including Rainier. Further, as governor, defendant Lowry reviews and approves budget requests made by the Secretary concerning the Washington Department of Social and Health Services and its state mental health and developmental disability programs and services, which are then submitted to the Legislature for funding. The Washington Department of Social and Health Services' budget determines the level of staff and programmatic resources available for: (1) the state's community-based mental health and developmental disability programs and services; (2) the state's institutional programs and services at the RHCs, including Rainier; and (3) the state's capital outlays for physical plant improvements at the aforesaid institutions. Defendant Lowry, acting in his official capacity, has reviewed and approved from time to time various policy proposals submitted by the Secretary of the Washington Department of Social and Health Services concerning the role and scope of the department's community-based and institutional programs and services, including those provided at Rainier.

3.104. Defendant Washington Department of Social and Health Services (hereinafter "DSHS"),

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is the only state agency in the state of Washington authorized to administer the Medicaid program under Title XIX of the SSA, 42 U.S.C. § 1396, et seq. DSHS' responsibilities include, but are not limited to, (1) the review of the needs and level of care required by all persons in intermediate care facilities for people with mental retardation and developmental disabilities in order to insure that appropriate placements are made; and (2) the identification of persons inappropriately placed in such facilities instead of community-based programs and placements. DSHS is also responsible for ensuring that Medicaid-certified facilities in Washington, including Rainier and other ICF/MR institutions and facilities, meet the minimum standards for certification for the receipt of Medicaid funds pursuant to the provisions of Title XIX of the SSA.

3.105. Defendant Lyle Quasim (hereinafter "Quasim") is sued in his official capacity as Secretary of DSHS. Defendant Quasim's administrative office is located in Olympia, Washington, and his office mailing address is as follows: DSHS, State Office Building, OB-2, Fourteenth & Jefferson Streets, Olympia, Washington 98504.

3.106. Defendant Quasim, in his official capacity, is charged with, and at all times relevant herein has, pursuant to RCW 43.20A.050, exercised general responsibility, supervision, and oversight of the policies, practices, and operations of DSHS. Defendant Quasim's responsibilities include the care, custody, and welfare of persons with developmental disabilities who are confined in or receive services at those state facilities and programs that are funded, operated, licensed, or supervised by DSHS for the receipt of Medicaid funds pursuant to Title XIX of the SSA.

3.107. Defendant Quasim, in his official capacity as the Secretary of DSHS, is charged with and has at all times relevant herein, pursuant to RCW 43.20A.060, exercised overall responsibility for the policies, practices, and operations of the Washington Division of Developmental Disabilities of DSHS. Specifically, he is generally responsible for the promulgation, administration, supervision, and control of the rules, regulations, and laws related to the provision and coordination of all of the institutional and community-based developmental disability clinical programs, medical services, mental health services,

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residential services, and habilitation services offered by the State of Washington through DSHS, to those citizens of the State of Washington who are entitled to receive such services, including those programs and services offered at Rainier.

3.108. Defendant Washington Division of Developmental Disabilities of DSHS (hereinafter "DDD") is charged with executing the primary functions of the State of Washington pertaining to persons with mental retardation and developmental disabilities. DDD does this through the administration, operation, and oversight of the five state-operated Residential Habilitation Centers (hereinafter "RHC"), including Rainier, and by contracting with private and public agencies to provide residential and other services to persons with mental retardation and developmental disabilities in community-based settings.

3.109. That DDD has the statutory authority, with the approval of the governor, to make grants to counties and nonprofit corporations for the construction, maintenance, and operation of mental retardation and developmental disability facilities, programs, and services, or to provide such services directly. DDD also has the duty and authority to make and enforce rules for the efficient and lawful operation of such services.

3.110. Defendant DDD is responsible for ensuring that each individual receiving services and/or residing in a mental retardation and developmental disability program or facility licensed and funded by DSHS through DDD has an opportunity for a fair hearing before an impartial decision-maker before that person can be discharged from such program or facility.

3.111. Defendant Norm Davis (hereinafter "Davis") is sued in his official capacity as the Director of DDD. Defendant Davis' administrative office is located in Olympia, Washington, and his office mailing address is as follows: DSHS/DDD, State Office Building, OB-2, P.O. Box 45310, Olympia, Washington 98504-5310.

3.112. Defendant Davis, in his official capacity, is charged, pursuant to RCW 71A.12.010, with the responsibility for the policies, practices, and operations of DDD. Defendant Davis' responsibilities

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include the care, custody, and welfare of persons with developmental disabilities who are confined in or receive services at those facilities and programs that are funded, operated, licensed, or supervised by DSHS through DDD. Defendant Davis' responsibilities also include the promulgation, administration, supervision, and control of the rules, regulations, and laws related to the development, provision, and coordination of all of the institutional and community-based habilitation programs and services offered by the State of Washington through DSHS and DDD to those citizens of the State of Washington who are entitled to receive such services.

3.113. Specifically, defendant Davis is directly responsible for the admission and transfer of residents of Washington's mental retardation and developmental disability institutions, facilities, and programs, including Rainier, and for the provision of the care, maintenance, and treatment provided to the people who reside in such facilities. Further, he is responsible for making alterations at such facilities, including Rainier, as required for the proper treatment and well-being of the residents. Defendant Davis is also responsible for ensuring that the institutional residents are placed in meaningful employment and other activities of therapeutic and rehabilitative benefit to the residents, and that the residents have appropriate opportunities for physical exercise and recreation.

3.114. Defendant Leanna Lamb (hereinafter "Lamb"), is sued in her official capacity as the Superintendent of Rainier. Defendant Lamb's administrative office is located in Buckley, Washington, and her office mailing address is as follows: Rainier, Administration Building, 2120 Ryan Road, Buckley, Washington 98321.

3.115. Defendant Lamb, in her official capacity, exercises overall responsibility for the day-to-day operation and control of Rainier and the care, custody, and treatment provided to those individuals who are confined at Rainier, and as such is responsible for enacting and enforcing the policies and practices of said facility.

3.116. Defendant Washington Office of Financial Management (hereinafter "OFM") is responsible for the long-range financial planning, budgeting, and oversight of expenditures by the departments,

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agencies, and officers of the State of Washington. OFM assists DSHS and DDD in the planning and establishment of Medical Assistance programs in the State of Washington and is responsible for all financial matters related to Medical Assistance.

3.117. Defendant Gary Robinson (hereinafter "Robinson"), is sued in his official capacity as the Acting Director of OFM. Defendant Robinson's administrative office is located in Olympia, Washington, and his office mailing address is as follows: OFM, 300 Insurance Building, P.O. Box 43113, Olympia, Washington 98504-3113.

3.118. Defendant Robinson, in his official capacity, is responsible for preparing the governor's annual budget to the state legislature; for financial planning of the Medical Assistance programs in Washington; for review and audit of the expenditure of funds by state agencies; for determining the amount of reserve allotments; and for ensuring that program expenditures are maintained within legislative appropriations, pursuant to the provisions of RCW 43.41.100. Before other departments, agencies, and officers of state government are allowed to enter into contracts, defendant Robinson must certify that there is a balance in the appropriation from which the contract obligation is to be paid. Defendant Robinson is authorized to use the general reserve account of the state treasury to offset revenue shortfalls for which other funds are not available.

3.119. In 1992 the defendants or, where applicable, their predecessors, were informed by the Washington State Legislative Budget Committee (hereinafter "LBC") that it was commencing an investigation into issues of legislative interest connected with the "downsizing" of Washington's state institutions for people with developmental disabilities by moving residents to community settings. Thereafter, the LBC conducted several comprehensive tours of Rainier with independent experts and consultants who observed conditions at all of the state's institutions, including Rainier; interviewed institutional and community service administrators, staff, and resident-clients; and examined records and analyzed documents pertaining to staffing, injury, abuse, mortality, medications, and habilitation policies and practices.

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3.120. Based on that extensive investigation, the LBC concluded that the populations living in the state's developmental disability institutions and community residential programs and services, generally speaking, were not distinct in terms of problem behaviors, daily living skills, and needed services and supports. The LBC's findings included, but were not limited to, the following:

a. Many of the current residents at state institutions could be supported successfully in home and community-based placements;

b. Placement in home and community-based settings is most conducive to personal growth and independence, and is generally more cost-effective than institutional care; and

c. Services provided in both community and institutional settings should be designed to promote the acquisition of independent living skills and self-sufficiency.

3.121. The LBC notified the defendants or, where applicable, their predecessors, of these findings, and of the remedial measures and resource allocations necessary to address these issues in a report dated January 14, 1993.

3.122. At all times relevant herein, the defendants, in their official capacities, were and are under an affirmative obligation to make their programs, services, and activities accessible to otherwise qualified individuals with disabilities pursuant to Title II of the ADA and Section 504.

3.123. At all times relevant herein, the defendants, and each of them, knew or should have known of the policies, practices, acts and conditions alleged herein.

Factual Allegations

A. How Plaintiffs came to Rainier

4.1. Washington's original institution for persons with mental disabilities, now known as Western State Hospital, was organized during the territorial period. In 1874 Congress granted lands at Steilacoom for "an asylum for the insane." Ch.98, 18 Stat. 29, part 3 (1874). In 1875 the territorial legislature named the facility the "Hospital for the Insane in Washington Territory" and established a board of trustees. Laws of 1875, pp. 83-89.

4.2. In 1886 the legislature authorized a "school for the deaf mute, blind and feeble-minded

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youth of Washington Territory." It was located at Steilacoom and called the School for Defectives. In 1892 the superintendent praised the decision "to discriminate against the admission of epileptics, paralytics, and profound idiots," whose entrance into the school would defeat its objectives. J. Laing, A History of the Provision for Mentally Retarded Children in the State of Washington, Ph.D. dissertation, Univ. of Washington 96 (1955).

4.3. During the first session of the new State Legislature, a statute was enacted that governed not only the newly renamed Western Washington Hospital for the Insane, but also the hospital "now in process of erection at Medical Lake, in Spokane county," to be called the Eastern State Hospital for the Insane. Laws of 1889-90, pp. 482-95. In section 29 of the Act, the Legislature demonstrated that it continued to discriminate against persons with mental retardation or other developmental disabilities, by providing that:

> No case of idiocy, imbecility, harmless chronic mental unsoundness, or acute mania a potu shall be committed to the hospital for the insane; and whenever in the opinion of the superintendent, after a careful examination of the case of any person committed, it shall be satisfactorily ascertained by him that the party has been unlawfully committed, and that he or she comes under the rule of exemptions provided for in this section, he shall have the authority to discharge such person so unlawfully committed, and return him or her to the county from which committed, at county expense.

4.4. The first Legislature also made segregated education compulsory for all deaf, mute, blind or feeble-minded youth. Laws of 1889-90, pp. 497-98. Each county superintendent of schools was ordered to report the names of such youth to the county commissioners, who were, in turn, required to send such youth to the Washington School for Defective Youth (unless proof was provided that they were being adequately educated at home).

4.5. In 1891 the Legislature authorized erection of a separate building for the "feeble-minded" pupils of the Washington School for Defective Youth. Laws of 1891, chap. 101.

4.6. In 1907 a separate State Institution for the Feeble-Minded, now known as the Lakeland Village Residential Habilitation Center, was organized at Medical Lake near Spokane, near what is now Eastern State Hospital. In 1917 the Legislature changed its name to the State Custodial School. In 1924

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the superintendent attacked the word "School" in its title, since it gave false hope to parents that their "hopelessly defective" children could be educated and then returned home. E. Bixler, Superintendent's Report on the State Custodial School. Second Biennial Report of the Department of Business Control, State of Washington. (1924).

4.7. In 1937 the Legislature authorized a second "Western" State Custodial School on the west side of the Cascade Mountains at Buckley in rural Pierce County. Laws of 1937, chap. 10. That institution, now known as the Rainier Residential Habilitation Center, was open to children and adults. County superintendents of schools were required to apply for admission of all children between six and twenty-one who:

> . . . . by reason of defective intellect, are rendered unable to acquire an education and/or training in the common schools, Provided, That they are free from loathsome or contagious diseases: Provided also, that children who are idiotic, epileptic, or afflicted in any particular that renders them unfitted for companionship with other children, may be segregated and admitted at the State Custodial School located at Medical Lake . . . .

Section 8.

4.8. Adults under the age of fifty (50) could be committed to the Western State Custodial School, using the same commitment procedure employed for insane persons, if they were:

> . . . . determined to be feeble-minded and who are of such unoffensive habits as to make them proper subjects for classification, education and discipline in an institution for defectives . . . , but no insane person or those who are properly subjects for county infirmaries, hospitals or asylums, or cases of senile dementia shall be admitted to the Western State Custodial School.

Section 15.

4.9. Fircrest School, now Fircrest Residential Habilitation Center, was opened in 1958 on the site of a former tuberculosis sanitarium north of Seattle for 200 "grossly handicapped children," according to Rainier Superintendent Wesley D. White. 7 HOPE for Retarded Children 1 (1958). The following year it received legislative authorization. Laws of 1959, chap. 31.

4.10. The population totals for those individuals residing at the State's institutions for persons with mental retardation -- Fircrest, Rainier, and its other Residential Habilitation Centers at Lakeland Village, Yakima Valley, Frances Haddon Morgan, and Interlake -- peaked at 4,197 in 1968 and began

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to decline thereafter.

4.11. The representative plaintiffs and all of the other members of the class they represent are institutionalized at Rainier because of the defendants' failure to serve persons with severe developmental disabilities, physical disabilities, complex medical conditions, challenging behaviors, and other severe disabilities in community-integrated programs and placements. A significant number of the class plaintiffs were admitted to Rainier after their parents and families sought services in community-based programs, but were denied such access to such programs because of the severity of their developmental disabilities, physical disabilities, complex medical conditions, and/or challenging behaviors.

4.12. Other class members came to Rainier after being discharged or transferred from a community-based group home program due to the severity of their developmental disabilities, complex medical conditions, and/or challenging behaviors. To date, the defendants' have failed or refused to prevent this practice or to ensure that group home residents are not discharged without adequate procedural due process.

4.13. Many of the members of the plaintiff class were placed at Rainier because they were initially classified, in accordance with the defendants' policies and practices of "ranking" people with disabilities by their level of functioning. The defendants disproportionately consign persons classified at the lowest level of functioning to institutions like Rainier rather than small community-based programs and placements, despite the fact that persons with the most significant disabilities have the greatest need for the individualized services and close personal attention that is only possible in such small community-based programs and placements.

4.14. Before their placement at Rainier, the members of the plaintiff class and, where applicable, their legal guardians, were not informed of any feasible alternatives available under the Medicaid Waiver Program, nor were they given the choice of either institutional or community-based services.

4.15. Prejudice and stereotype continue to support the segregation of people with severe developmental disabilities, complex medical conditions, and/or challenging behaviors in institutions

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Seattle, Washington 98370
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such as Rainier, away from their families, friends, neighbors and fellow citizens.

B. Harmful Conditions at Rainier

4.16. Rainier is a segregated institution located in a rural area outside the small town of Buckley, Washington. All of the individuals residing at Rainier are further segregated from the local community, as well as the communities where they once lived, solely because of the nature and severity of their disabilities.

4.17. The conditions at Rainier are dangerous, and have caused and continue to pose an immediate and great threat of harm to the individuals residing there.

4.18. Rainier is a "total institution" where habilitation programs, recreational activities, social activities, and medical care services are provided on the same institutional grounds where its residents eat and sleep. Rainier's self-contained character inhibits meaningful community involvement. Many residents never leave the institution or their respective living units at all.

4.19. The vast majority of Rainier's residents spend their days waiting out the hours. Many of those residents with physical handicaps sprawl in ill-fitting wheelchairs or carts. These individuals are frequently parked in day rooms or hallways unattended, or are left alone in their rooms, unattended for hours, with no stimulation or human contact except when they are changed and fed. Interaction between staff and residents is minimal.

4.20. The physical environment at Rainier was designed for mass management and custodial care. Its architecture cannot be adapted to the habilitative needs of persons with developmental disabilities. Activity space is limited to "classrooms" that are only used during the residents' limited "program hours" and to the day rooms attached to the residents' living units. These restricted spaces and rooms are inadequate for habilitation and active treatment.

4.21. The living activity space at Rainier is dehumanizing. The facility's physical layout encourages passivity and dependence rather than activity and growth. The environment is bare, uncarpeted, devoid of warmth, individuality, or dignity. Living and sleeping areas are sparsely furnished

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Seattle, Washington 98370
Telephone: (206) 324-1521/Facsimile: (206) 324-1783

and do not contain age-appropriate furnishings associated with normal active living. Plaintiffs are denied the developmental opportunities, the sensory and intellectual stimulation, and the comfort and pleasure that community residents obtain from their usual surroundings and conveniences in homes, schools, restaurants, work places and recreational facilities.

4.22. At best, the staff at Rainier provide bare custodial care. More often, they fail to provide the attention necessary to safeguard the residents from deterioration, atrophy, physical injury and abuse.

4.23. In a representative case, Rainier staff have not provided plaintiff Peter Bohnke with appropriate attention to safeguard him from deterioration, atrophy, and physical abuse. Specifically, Mr. Bohnke has not been adequately protected by Rainier staff from self-injurious behaviors so that he no longer has a substantial portion of his nose.

4.24. In another representative case, Rainier staff have not provided plaintiff Dawn Lavery with appropriate attention to safeguard her from deterioration, atrophy, and physical abuse. Specifically, Ms. Lavery has been restrained excessively throughout her residency at Rainier to the point where she had been restrained to a wheelchair for such a long period of time that she lost the ability to walk. Ms. Lavery must now use a walker to walk short distances and a wheelchair for long distances.

4.25. Defendants have created, fostered, and condoned conditions, policies, and practices at Rainier that are unreasonable and directly contrary to professionally accepted standards of habilitation, are anti-therapeutic, are emotionally debilitating, and have caused deterioration in the well-being and self-esteem of many of the members of the plaintiff class.

4.26. An essential prerequisite of appropriate habilitation is a humane environment. At Rainier, class plaintiffs are frequently subjected to treatment from direct care staff that is totally lacking in human dignity and decreases their self-esteem. For example, members of the class are frequently transferred from their residence to a completely different residence at times convenient to staff, with no prior planning or notice to the individual residents or their legal representative, nor relationship to the individual resident's needs.

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4.27. On information and belief, during 1995, the individual residents of the PAT C / 2025 Quinalt Court residence decided that they wanted to purchase a "big screen" television set for their personal use and enjoyment. The residents, acting on their own and without staff support or supervision, raised the necessary money through a variety of projects and activities, and purchased a "big screen" television set for their residence. Shortly thereafter, without prior notice or explanation from staff, all of the individual residents were moved to other residential units at Rainier. The "big screen" television set remained at the PAT C / 2025 Quinalt Court residence, unable to be used by any of the residents who purchased it.

C. Inadequate Basic Care

4.28. Many of the plaintiffs' basic care needs are frequently ignored. Residents are often left alone for hours.

4.29. In many residential units, staff ratios are inadequate to meet residents' basic care and attendant support needs. Due to the inadequate staffing, some of the staff who are on duty commonly ignore their clients and leave residents unattended.

4.30. Because of staff shortages at Rainier, staff often "float" to areas of the institution to which they are not typically assigned and care for a large number of residents whom they do not know. This practice creates an unacceptable high risk of harm.

4.31. In a representative case, on or about February 15, 1996, Daniel Coffield, a male resident residing at Rainier was insufficiently supervised and therefore was able to leave the Rainier premises. Mr. Coffield was found dead in a nearby field by a farmer the next day, having died as a result of his exposure to the hostile weather conditions and his inability to take sufficient measures to protect himself from same. Daniel Coffield was left unsupervised despite the fact that he had a history of running away from the facility and the defendants were aware of this fact.

4.32. In another representative case, on or about December 15, 1995, Lorreta Westin, a female resident was restrained with a "seatbelt"on a toilet and left unsupervised. While left alone, strapped to

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Seattle, Washington 98370
Telephone: (206) 324-1521/Facsimile: (206) 324-1783

the toilet, Ms. Westin fell off the toilet and became unconscious. Rainier staff subsequently found her catatonic on the bathroom floor with vomit beside her face, and no pulse or respiration. She died five days later. She was strapped to the toilet and left unsupervised despite the fact that there was at least one other documented instance where she had fallen off the toilet in August of 1995, and had a well documented history of seizures, falling, and a need for attendant support and care.

4.33. Many of the direct care staff at Rainier lack the skills and training required to provide adequate basic care to those members of the plaintiff class who have severe disabilities, complex medical needs, and/or challenging behaviors.

4.34. For instance, during the evening of February 12, 1996, Rainier staff placed plaintiff Peter Bohnke in bed while he was wearing a locked helmet with the expectation that he would go to sleep. At about 10:30 pm later that same evening, Rainier staff found plaintiff Peter Bohnke choking on his helmet after he had tried to remove it with his hands. At that time, Mr. Bohnke's face was a bluish-purple color and it was apparent that his circulation had been cut off and that he suffered a near strangulation. In addition, one of his hands was injured when it became caught in the locking neck/chin strap while he was attempting to remove the helmet.

4.35. In another example, plaintiff Dawn Lavery is frequently subjected to an aversive therapy known as visual occlusion for hours at a time to address her challenging behaviors. This therapy, which is provided for in Ms. Lavery's Behavioral Treatment Plan is to be used for approximately thirty seconds or until she stops the alleged behaviors, but not beyond thirty minutes.

D. Inadequate Medical Care

4.36. Many members of the plaintiff class do not receive adequate and timely medical care or dental care. Their health problems often go unrecognized and untreated.

4.37. Medical staffing at Rainier is grossly inadequate, thus depriving the residents of appropriate and timely medical care that is consistent with currently accepted professional standards.

4.38. The number of adequately trained nurses at Rainier is insufficient to meet the current

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Seattle, Washington 98370
Telephone: (206) 324-1521/Facsimile: (206) 324-1783

residents' health care and psychological treatment needs.

4.39. Nursing staff are hired without adequate experience or training in caring for individuals with severe developmental disabilities, complex medical conditions, and challenging behaviors, and do not receive sufficient in-service training in these areas after they begin working at Rainier.

4.40. Due to the lack of properly trained and experienced medical staff, Rainier residents receive inadequate preventive and ongoing care. Instead, medical care is characterized by "crisis management", which inevitably causes a decline in the health of the residents. These problems could be avoided if the defendants would hire properly trained and/or experienced physicians and nursing staff in sufficient numbers to meet the medical needs of Rainier's current residents, or, in the alternative, insure that the residents can access appropriate medical care in the community, in order to treat their ongoing health care needs.

4.41. In a representative case, for the past several months Chad Phillips has had a large, infected growth resembling an epithelial carcinoma tumor on his leg which caused him a great deal of discomfort and fear. Mr. Phillips has a legal guardian who has abused him in the past, and this fact is known to the Rainier staff. Mr. Phillips has repeatedly requested medical assistance to treat and/or remove this growth, however, to date, Rainier staff have refused to provide Mr. Phillips with any form of medical treatment because Mr. Phillips' legal guardian has refused to respond to their requests that he consent to medical treatment for his ward. Consequently, this infected growth has not been treated and continues to cause Mr. Phillips' great pain.

4.42. Seizure management is deficient at Rainier. Many residents with seizure disorders have not been seen by a neurologist for several years. Some residents continue to receive anticonvulsant medications long after they have stopped having seizures, while others receive grossly sub-therapeutic doses of the anticonvulsant medications they need. The inconsistent recording of seizures by Rainier staff seriously compromises the rationale for, and the efficacy of, prescribed medications and treatment.

4.43. Emergency medical care at Rainier is inadequate. The institution has no written guidelines

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Seattle, Washington 98370
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prescribing when 911 should be called. Residents who need immediate emergency medical care are transported from their living units to the medical building by non-medical personnel such as security officers when they should be taken by emergency medical technicians directly to the hospital.

4.44. Psychiatric services at Rainier are seriously deficient. The psychiatric consultation currently available at Rainier is limited to a part-time (.6 FTE) psychiatrist under contract, which is completely inadequate to supervise and monitor the care of the hundreds of Rainier residents who are receiving psychoactive medications or require intensive behavioral supports due to their complex conditions and challenging behaviors.

4.45. Defendants' failure to adequately monitor the effects of these psychoactive medications and the failure to monitor implementation of individual treatment plans is dangerous to residents. It greatly enhances the risk that psychoactive medications and physical restraints will be used instead of active treatment and non-aversive behavioral intervention strategies.

4.46. In a representative case, plaintiff Peter Bohnke, suffered several seizures as a result of the antipsychotic medication, Clozaril, that had been prescribed for him by a Rainier psychiatrist's order. Finally, on or about April 9, 1996, Mr. Bohnke, suffered from agranulocytosis as a result of his reaction to the Clozaril that he was still taking pursuant to the same psychiatrist's order. Agranulocytosis is an acute disease in which the white blood cell count drops to extremely low levels. As a result of this condition, Mr. Bohnke had to be hospitalized in the Rainier infirmary. After a prolonged delay, the Clozaril was finally discontinued.

4.47. Rainier staff members often present conflicting data about residents to the psychiatrist that, in turn, may lead to inappropriate prescriptions and administration of psychoactive medications.

4.48. Rainier's procedures for tracking medication side-effects is similarly deficient. This absence compounds the risk of harmful side-effects and jeopardizes the rights and liberty of those class members who are unnecessarily medicated. Many of Rainier's current residents exhibit visible signs of the negative side-effects resulting from inappropriate prescriptions and excessive administration of

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1401 East Jefferson Street, Suite 506
Seattle, Washington 98370
Telephone: (206) 324-1521/Facsimile: (206) 324-1783

psychoactive medications.

4.49. Medical care and services provided to the residents of Rainier are inadequate and inconsistent with their identified needs and abilities, and with accepted standards of professional practice.

4.50. Medical care and services provided to the residents of Rainier are distinctly different, less, and far more segregated when compared with the medical care and services provided to individuals with developmental disabilities in the community.

4.51. The significant lapses in the medical care and services provided to residents of Rainier are unacceptable. They compromise the plaintiffs' long-range outlook and create an undue risk of physical harm and loss of life.

E. Excessive Injury and Abuse

4.52. Residents' safety at Rainier is constantly at risk. The rate of injury is alarmingly high. Many of the injuries are of unknown cause and were unobserved at the time they occurred.

4.53. In congregate care settings such as Rainier, residents with maladaptive behaviors will hurt other residents. This risk is severe at Rainier, where residents suffer injuries and assaults on a regular basis and are at serious risk of harm in their own living units and throughout the institution.

4.54. The defendants do not make reasonable professional attempts to prevent injury at Rainier. Some residents push, hit and bite other residents, often causing injury serious enough to require stitches or loss of teeth, in plain view of staff.

4.55. The lack of trained staff, non-implementation of individual programs, and the almost complete lack of activity or stimulation in the units contributes significantly to the high rate of injury and death.

4.56. Rainier does not conduct the analysis needed to prevent recurrence of avoidable injuries. Without adequate reporting of data on causes and patterns of injuries, it is impossible to know how to prevent them.

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4.57. The defendants have failed to protect Rainier residents from physical abuse and neglect.

4.58. For example, during February 1996, Daniel Coffield, a male resident residing at Rainier, was insufficiently supervised, due to the defendants' failure to insure that there was sufficient direct care staff to meet the needs of the institution's residents, thus allowing Mr. Coffield to leave his residential unit and the Rainier grounds without the knowledge of his residence's direct care staff. Mr. Coffield was found dead in a nearby field by a farmer the next day. Mr. Coffield was left unsupervised and allowed to "wander off", despite the fact that he had a history of running away from the facility and the Rainier staff was aware of this fact.

4.59. Verbal abuse of residents is widespread at Rainier. Staff uses abrupt, verbal commands to communicate with residents; often, they scream at residents.

4.60. Staff reporting of abuse or neglect is not adequately monitored or supervised at Rainier. Some staff use intimidation to prevent other staff from reporting such incidents. In a representative case, when plaintiff Peter Bohnke choked on his locked helmet while in bed on February 12, 1996 and almost died, Rainier staff did not even complete an incident report, as is required by the policies of DSHS and DDD, as well as Rainier.

4.61. Resident abuse investigations are cursory, and many potential incidents of abuse are never investigated, in violation of DSHS and Rainier policies and regulations. Those investigations that are carried out typically conclude with a finding that the allegation is not substantiated, even in cases in which the evidence suggests that abuse did occur.

4.62. Neglect of residents at Rainier is common. Residents are left for extended periods in soiled clothes or engaging in self-injurious behavior unattended with no staff intervention. For example, during December 1995, Loretta Westin was restrained with a "seat belt" on a toilet and left unsupervised. While left alone strapped to the toilet, Ms. Westin fell off the toilet and became unconscious. Sometime later, Rainier staff found her catatonic, lying on the bathroom floor with vomit beside her face, and no pulse or respiration. Ms. Westin died five days later. She was strapped to the

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toilet and left unsupervised despite the fact that she had fallen off the toilet at least once before (August 1995) and had a well-documented history of falling and seizure disorders.

4.63. Defendants' policies and practices to prevent abuse and neglect of Rainier residents, as well as their staff training activities on prevention, are inadequate and inconsistent with accepted standards of professional practice.

F. Inadequate Habilitation and Training

4.64. Habilitation is the teaching and training process required by persons with significant disabilities so that they can reach their fullest potential in physical, social and mental growth.

4.65. Nearly all persons with significant disabilities have the capability, with proper education and training, to learn some basic self-care skills: to participate in feeding, toileting, mobility and other bodily needs. Most of Rainier's current residents could, with proper individualized instruction and adaptations, more fully participate in their self-help functioning.

4.66. Active treatment is the formal process of training, treatment and care that must be delivered to each Medicaid-eligible resident of in Intermediate Care Facility for the Mentally Retarded (ICF/MR). Active treatment is a professionally designed, consistently and aggressively implemented program of training, treatment, and other services to enable each ICF/MR resident to function with the greatest self-determination and independence possible. 42 U.S.C. § 1396d(d); 42 C.F.R. § 483.440.

4.67. Active treatment requires the development and implementation of an individualized program of intervention that is based upon and accountable to a comprehensive assessment of the individual needs of the resident and an Individual Program Plan (IPP). Assigning an ICF/MR resident to a generic activity (one that is generally available at a facility) is not active treatment unless the activity fulfills an individual goal or objective that, in turn, addresses an assessed need of the individual resident. 42. C.F.R. § 483.440(a), (c)(3), (c)(4), (d)(3).

4.68. No long-term view for each individual resident leading to greater independence, productivity and integration guides the program planning process for residents of Rainier. Long-term

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Seattle, Washington 98370
Telephone: (206) 324-1521/Facsimile: (206) 324-1783

views are the basic first-step to the development of an adequate IPP.

4.69. At Rainier, IPPs are meaningless as a guide to habilitation. They frequently ignore the residents' individual needs, even when those needs are obvious and substantial.

4.70. Rainier residents' IPPs fail to specify the specific interventions needed to support the person toward independence. Their IPPs also fail to provide training in personal and functional skills essential for privacy and independence.

4.71. Rainier residents' IPPs fail to identify the mechanical supports needed to achieve proper body position, balance or alignment, as well as the reasons for each support and the situation in which each is to be applied.

4.72. Residents' IPPs also fail to include opportunities for individual choice and self-management. Class members are not offered reasonable treatment choices and alternatives. Individual program plans do not reflect the expressed needs and opinions of the individual residents or her or his family/legal guardian.

4.73. Most of the residents' IPP goals are "canned," not individualized. Plans and programs for Rainier residents with different levels of ability are virtually identical.

4.74. The defendants do not revise and update Rainier residents' IPP plans and programs in light of each resident's changing needs. Instead, their IPPs often remain unchanged from one year to the next.

4.75. The number of professional staff who work at Rainier is inadequate.

4.76. The professional staff who are employed at Rainier do not adequately monitor the delivery of the programs they develop for class members. There is no effective method to ensure quality and consistency of performance among direct care staff.

4.77. The direct care staff at Rainier have little knowledge of the persons for whom they have care giving responsibility and thus are unaware of the significant issues in their lives.

4.78. The direct care staff at Rainier are not adequately trained to carry out their clients' individual program plans and often do not even know the content of those plans. They do not

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Seattle, Washington 98370
Telephone: (206) 324-1521/Facsimile: (206) 324-1783

understand their clients' needs nor the techniques required to teach them functional skills. They do not know how to collect meaningful progress data.

4.79. At Rainier, accurate and meaningful data are not kept that can show progress, regression or lack of change.

4.80. Rainier lacks the capability to deliver active treatment because the basic components of active treatment -- adequate professional staff, functioning interdisciplinary teams, adequate assessments, professionally-designed individual habilitation plans, and direct care staff trained and supervised in the delivery of each resident's plan -- do not exist.

4.81. Rainier staff fail to carry out active treatment programs for class members, especially for those individuals with severe physical disabilities, complex medical conditions, or challenging behaviors. Class members spend only a fraction of their time in program-related activities.

4.82. Untrained, unsupervised, unfamiliar with their client's needs and abilities and unaware of what is expected of them, Rainier staff often stand idle in a roomful of Rainier residents -- or they socialize with one another and ignore the residents.

4.83. Rainier residents receive little attention from staff, and rarely interact with anyone other than a paid staff member. Most of their time is "dead time." They spend long periods "waiting" to go from one activity to another, engaging in self-stimulation, rocking, milling around, dozing, or simply doing nothing.

4.84. The interdisciplinary teams for each resident at Rainier do not have a sufficient array of services available to make reasonable habilitation decisions that meet the needs of the individual residents.

4.85. The amount of habilitation services offered to each class member at Rainier is grossly inadequate to meet their individual needs or to qualify as active treatment. Most residents receive two hours or less of planned habilitation each day.

4.86. The individual habilitation, vocational training, and behavior modification programs at

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Seattle, Washington 98370
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Rainier depart substantially from current professional judgment, standards, and practices. They are inappropriate to the learning needs of persons with severe intellectual disabilities.

4.87. Individual habilitation, vocational training, and behavior modification programs at Rainier do not teach functional skills. Residents of Rainier are denied the opportunity to learn the skills of daily living, such as dressing and tooth-brushing. In the living units, there are no materials that can be used to teach age-appropriate, functional skills. Further, many of the objects and possessions that are found in these environments are age-inappropriate.

4.88. Many Rainier residents are capable of going to the store, choosing and purchasing their food, cooking and serving meals and caring for their own living units, but they have no opportunity to do so. Staff cook and clean while the residents remain idle.

4.89. The defendants do not provide the residents of Rainier with adequate individualized adaptions to enable them to do things for themselves. Adaptive equipment is generally not available to residents who need it in their education and living areas.

4.90. Communication and cooperation between cottage and adult education programs at Rainier are virtually nonexistent.

4.91. Rainier residents' opportunities to interact with non-disabled persons and to spend time outside the institution is extremely limited. Residents of the institutions receive little or no community-based instruction. They have little or no opportunity to learn skills that will enable them to function in their communities, such as acting and dressing appropriately in public, eating in a restaurant, going to a movie, or crossing streets.

4.94. Recreational and leisure-time services, supports, and activities provided to the residents of Rainier are inadequate and inconsistent with their identified needs and abilities, or with accepted standards of professional practice.

4.95. Recreational and leisure-time services, supports, and activities provided to the residents of Rainier are distinctly different, less, and far more segregated when compared with the recreational

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Seattle, Washington 98370
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and leisure-time services, supports, and activities provided to individuals with developmental disabilities in the community.

4.96. Habilitation at Rainier does not lead to greater independence, productivity, and social integration. The quality of life of persons at Rainier is unacceptable because it offers no opportunity for progress, participation in valued life activities, daily life style choices, privacy, safety, dignity or hope for improvement.

4.97. The consequences of the defendants' failure to provide active treatment at Rainier, or to carry out professional recommendations for placement elsewhere, are devastating to class members. Their basic needs are neglected, their time is wasted, their bodies are constricted, they develop behavior problems. Many residents, like plaintiff Lavery, lose basic skills such as the ability to speak and walk. The defendants also deprive class members of the opportunity to live in a decent home and to build relationships with non-disabled people. Their human potential is wasted.

G. Inadequate Behavior Management

4.98. Appropriate behavior management programs and supports are important components of habilitation and active treatment. However, at Rainier, programs to deal with plaintiffs' behavioral problems are seriously deficient. As a result, physical and chemical restraints are used as a substitute for appropriate care and programs, with the consequence that residents' behavioral problems are exacerbated and escalate.

4.99. Rainier residents do not have the environmental and physical supports to develop and maintain positive behaviors. Without those supports, behavior management techniques are ineffective and reduced to crisis intervention after harm and injury have already occurred.

4.100. Rainier does not properly conduct the assessments needed to develop effective programs of behavioral support. Few, if any, functional behavioral analyses, which are the foundation for developing adequate behavior intervention strategies, are conducted.

4.101. The defendants do not individualize behavior modification and behavior support programs

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Seattle, Washington 98370
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for each resident. Programs for different persons are virtually identical. The programs are incomplete, incoherent, and implemented inconsistently.

4.102. Documentation of residents' behavior is inaccurate, unreliable, inconsistent and incomplete. Data collected on residents' behavioral and skill training programs are often identical from day to day, giving the appearance that data is fabricated or recorded at the end of the day, week or month. The meaningless quality of the data deprives professional staff of the information necessary to make professional, appropriate and safe decisions regarding the residents' behavioral support needs.

4.103. Rainier staff does not have the skills and competence necessary to appropriately implement behavioral interventions or to develop appropriate individual program plans. Staff intervention to manage inappropriate behavior has no clear treatment objectives or positive long-term effect.

4.104. In place of adequate behavioral support, staff at Rainier practice emergency physical restraint. This is an inherently risky procedure that places residents at serious risk of injury and death.

4.105. Without adequate programming and non-aversive behavioral intervention strategies to teach positive behavior, Rainier residents are subjected to unnecessary restraint.

4.106. Psychoactive medication for control of behavior is used at Rainier outside of and not in conjunction with individuals' IPPs and in violation of ICF/MR standards.

4.107. Rainier staff often physically restrains Rainier residents when the demands of their individual habilitation needs or challenging behaviors become inconvenient to staff.

4.108. Defendants' failure to adequately develop, carry out, and monitor residents' behavior support programs, as needed, is dangerous to residents. It greatly enhances the residents' risk of harm and safety from Rainier staff's dependance on chemical and/or physical restraints due to the lack of appropriate, non-aversive behavior support programs.

4.109. Rainier staff is often unfamiliar with the behavioral programs of the residents they supervise.

4.110. In a representative case, plaintiff Dawn Lavery has repeatedly been subjected to aversive

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and anti-therapeutic forms of physical restraint in lieu of a properly implemented behavioral program because the Rainier staff are unfamiliar with Ms. Lavery's behavioral program.

4.111. In a representative case, plaintiff Peter Bohnke has repeatedly been subjected to aversive, anti-therapeutic, and prolonged forms of physical and chemical restraints in lieu of a properly implemented behavioral program because the Rainier staff are unfamiliar with Mr. Bohnke's behavioral program.

4.112. The inability of Rainier staff to deal with continual behavior problems results in more frequent accidents and injuries to class members.

4.113. The behavioral modification and support practices at Rainier are inadequate to prevent or reduce the incidence of abuse and injury to class members, or to ensure their freedom from undue restraint.

4.114. Behavioral modification services, supports, and activities provided to the residents of Rainier are inadequate and inconsistent with their identified needs and abilities, or with accepted standards of professional practice.

4.115. Behavioral modification services, supports, and activities provided to the residents of Rainier are distinctly different, less, and far more segregated when compared with the behavioral modification services, supports, and activities provided to individuals with developmental disabilities in the community.

H. Inadequate Physical Therapy and Physical Management

4.116. Many Rainier residents who have contractures or are non-ambulatory require physical therapy and frequent positioning and repositioning in order to prevent skin breakdown and muscle and joint deterioration.

4.117. Physical therapy services at Rainier are seriously deficient. Direct care and professional staff are untrained in how to properly position, transfer or move residents. Programs are inadequate and inconsistently implemented despite the residents' identified needs and their IPPs.

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4.118. Rainier staff does not position residents properly for sitting, eating or other activities requiring proper body alignment or support.

4.119. Rainier staff place residents with physical disabilities in inappropriate positions or allow them to remain in devices or postures that inhibit their ability to function and may even exacerbate their deformities.

4.120. Therapeutic equipment helps to hold a developmentally disabled person's body in alignment, prevent the progression of deformity and allow the person to move as normally as s\he can. With proper individualized therapeutic equipment, persons with severe developmental disabilities, severe physical disabilities and deformities, and severe and profound mental retardation can achieve better alignment, better control of their muscles and limbs, and more normal and varied movements. They can learn to sit in more upright positions that facilitate growth and learning.

4.121. Rainier does not provide adequate assistive devices to enable residents to walk, move, or communicate. Individual residents who could walk and move with assistance are unreasonably prevented from doing so and lose the ability to walk altogether. Individual residents who could learn to express their needs, wants, and desires by using assistive devices are prevented from doing so.

4.122. Because of improper positioning and the lack of adequate physical therapy, residents' deformities actually have increased through the loss of existing motor skills and physical abilities.

4.123. The lack of proper positioning and therapy has also led to osteoporosis, kidney stones, digestive difficulties, circulatory problems, respiratory problems, and deterioration of normal function, growth, sensory, and cognitive abilities.

4.124. Physical therapy services, supports, and activities provided to the residents of Rainier are inadequate and inconsistent with their identified needs and abilities, and with accepted standards of professional practice.

4.125. Physical therapy services, supports, and activities provided to the residents of Rainier are distinctly different, less, and far more segregated when compared with the physical therapy services,

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Seattle, Washington 98370
Telephone: (206) 324-1521/Facsimile: (206) 324-1783

supports, and activities provided to individuals with developmental disabilities in the community.

I. Inadequate Occupational Therapy

4.126. Occupational therapy is a component of habilitation and active treatment. Occupational therapists help people with disabilities to master the functional activities of everyday living and meet the demands of their environment.

4.127. Because occupational therapy is environmentally and contextually bound, the limitations of the environment at Rainier limits the ability of occupational therapists at Rainier to train or teach. Occupation therapists cannot adequately teach community living skills there because the environment of the institution is completely unlike the community.

4.128. The occupational therapy services, supports, and activities provided to the residents of Rainier are inadequate and inconsistent with their identified needs and abilities, and with accepted standards of professional practice.

4.129. The occupational therapy leisure-time services, supports, and activities provided to the residents of Rainier are distinctly different, less, and far more segregated when compared with the recreational and leisure-time services, supports, and activities provided to individuals with developmental disabilities in the community.

J. Inadequate Language and Communication Services

4.130. Communication services are an important part of habilitation and active treatment. If the defendants do not provide people with developmental disabilities with adequate services and supports to address their speech and language needs, they will regress.

4.131. Little speech and language therapy is conducted at Rainier. As a result, residents do not receive the speech/language therapy and services they need to improve or maintain their ability to understand others and communicate their needs. Augmentative devices to enable residents to communicate are virtually nonexistent or are not in use. Staff do not attempt to communicate with

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residents in sign language, although some residents could benefit from learning sign language.

4.132. The defendants have failed to provide class members with assistive technology and other methods through which many persons previously labeled severely and profoundly retarded have learned to communicate and express ideas. As a result of this failure, coupled with the defendants' pervasive denial of appropriate habilitation and vocational programs for class members, defendants have diminished and failed to protect the capacity of class members to produce ideas by thinking and learning, and to express those ideas through communication.

4.133. Speech and language therapy services, supports, and activities provided to the residents of Rainier are inadequate and inconsistent with their identified needs and abilities, and with accepted standards of professional practice.

4.134. Speech and language therapy services, supports, and activities provided to the residents of Rainier are distinctly different, less, and far more segregated when compared with the speech and language therapy services, supports, and activities provided to individuals with developmental disabilities in the community.

K. Inadequate Vocational Training and Employment Opportunities

4.135. Individuals with severe intellectual disabilities and challenging behavior can participate in productive work and work at real jobs in real workplaces.

4.136. With individualized systematic instruction and practice, most of the residents at Rainier are able to learn and maintain vocational skills.

4.137. The opportunity to use and practice vocational skills in real work settings gives persons severe disabilities not only with the benefits of earning wages and decreasing their dependence on public support, but also provides the benefits of participating in the community in a valued role and developing relationships with their co-workers, friends and other non-disabled people who are not paid to be with them. Opportunities to work in real job settings allows for modeling and learning appropriate work habits and social behaviors from non-disabled peers, something that is not possible at Rainier.

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4.138. There are no systematic attempts to develop true vocational programs for Rainier residents. The programs called "vocational" at Rainier are not truly vocational because they do not lead to real jobs, nor do they teach skills that can prepare the class plaintiffs for real jobs.

4.139. Meaningful opportunities for employment and vocational training at Rainier are severely limited due to the inadequacies and limitations of Rainier's vocational training programs. Most of the residents "lucky" enough to receive or participate in Rainier's vocational training program receive less than two hours of vocational training per day. Approximately seventy-five per cent of the institution's current residents do not participate in or receive any form of vocational training at Rainier.

4.140. Employment opportunities and vocational services, supports, and activities provided to the residents of Rainier are inadequate and inconsistent with their identified needs and abilities, and with accepted standards of professional practice.

4.141. Employment opportunities and vocational services, supports, and activities provided to the residents of Rainier are distinctly different, less, and far more segregated when compared with the employment opportunities and vocational services, supports, and activities provided to individuals with developmental disabilities in the community.

L. Denial of Personal Choice, Dignity, Privacy, and Freedom of Association

4.142. The defendants routinely deprive Rainier residents of their dignity. Staff interact with them either as children or objects to be managed. Rainier staff are allowed to treat residents with indifference, and to abuse and neglect them without consequence.

4.143. Rainier residents are denied privacy because of the lack of adequate staff to help residents with intimate bodily functions in private.

4.144. Rainier residents are routinely denied the basic rights of freedom of association and communication, access to personal property, and participation in community activities.

4.145. The overwhelming majority of the members of the plaintiff class are denied an adequate opportunity to participate in community activities. Some never leave the institution at all.

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4.146. Residents of Rainier experience acute social isolation. The living, learning and working environments for the vast majority of residents are completely segregated from the community. Class plaintiffs have little or no opportunity to acquire and practice life skills in typical settings, such as home, social functions, or work sites in the community. They have little or no opportunity to make friends who are non-disabled who are not paid staff.

4.147. Members of the plaintiff class are denied the right to make basic choices about their lives that other citizens take for granted. They have no opportunity to make basic decisions for themselves.

4.148. The defendants have denied plaintiffs their right to freedom of association and expression by restricting their access to community activities, friendships and visitation. Plaintiffs are denied the opportunity to leave the facility to participate in outside community activities.

4.149. Rainier residents are denied the right to marry or to enjoy intimate relationships. The policy and practice of the institution is to separate residents who wish to engage in sexual activity.

4.150. Rainier fails to monitor the residents' personal property or to protect it from theft.

4.151. Members of the plaintiff class are denied the right to attend religious services in the faith and congregation of their choice. Most class plaintiffs do not have the choice of attending services off campus because they are not provided with transportation to do so. In this regard, many class plaintiffs are denied their right to freely exercise their respective religious beliefs, since the services offered at the institution do not and cannot reflect the variety of class members' religious preferences.

4.152. Residents of Rainier spend nearly all their time in their living units and rarely, if ever, are allowed to recreate out of doors.

4.153. Many of the members of the plaintiff class are denied the right to make the basic choices about their lives that other citizens take for granted. They have no opportunity to learn to make decisions for themselves.

4.154. The size, scale, isolation and segregation of Rainier present almost insurmountable impediments to the exercise of basic rights. Residents are assigned to large groups within the institution

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because of the logistical needs of the facility and cannot choose with whom to associate. This "group" approach to life precludes choice for most residents.

4.155. More than half of the class members do not have legal guardians and therefore, defendant Lamb and/or her designees make decisions on behalf of these individuals that has the effect of not only resulting in a conflict of interest, but also of preventing those class plaintiffs from exercising their basic rights.

M. Inadequate Discharge Planning

4.156. Post-discharge planning and follow-along services at Rainier are inadequate. Several Rainier residents have been discharged from the institution without adequate effort to assure that they will receive the proper support in an alternative community-based setting. As a result, these Rainier residents who have been discharged are at risk of harm and of readmission to Rainier.

4.157. During the past five years, Rainier has discharged thirty residents, often without proper planning and provision of the services needed to meet their individual needs.

4.158. The defendants have also discharged residents to general nursing facilities during the past five years. Nursing facilities are considered by professionals and federal regulators to be totally inappropriate settings for persons with developmental disabilities, since they do not provide the active treatment or habilitation services needed by persons with those disabilities. The staffing ratio in a typical nursing facility falls far short of the staffing needed to provide adequate care to persons with significant developmental disabilities and challenging behaviors.

N. Needless Regression

4.159. Because of the conditions set forth in paragraphs 4.16-4.149 above, Rainier residents have suffered regression with respect to their individual skills and abilities.

4.160. Members of the plaintiff class who were in good health now have serious, even life-threatening health problems, including damaged lungs and difficulties with breathing and digestion.

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4.161. Due to the numbing effect of idleness and the institution's barren environment, many class plaintiffs have lost cognitive skills, the ability to relate to others and to respond to their environment. Other class plaintiffs have lost the ability to speak and communicate. From being denied the opportunity to engage in the activities of daily living, many class plaintiffs have lost those skills altogether.

4.162. Custodial facilities like Rainier inherently deny the class plaintiffs the experiences, interactions, and opportunities for growth and development that other members of society enjoy.

4.163. By segregating individuals they perceive as having significant disabilities from the rest of the community and isolating them at Rainier with others who are disabled, defendants emphasize their "difference" from the rest of society, stigmatizing them for life.

4.164. Individuals who are perceived as having significant disabilities, like other persons, vary in their needs, wishes, and abilities. At different points of life, different activities and environments are appropriate to each person. The environment of Rainier is designed for a single purpose -- for custodial care and mass management of persons with severe disabilities. Plaintiffs' confinement in this environment deprives them of their individuality, the possibility of habilitation, and of living freely.

4.165. In an environment designed for mass management of large numbers of residents, individuals who are perceived as having significant disabilities cannot receive the consistent individual attention they need to grow, develop, and avoid regression. Persons who cannot communicate in words need attention from others who know them well and understand their method of communication. Far more than those who can speak articulately and whose disabilities are less severe, people with severe disabilities and those who cannot speak need close personal attention that they can receive only in a family-scale setting.

4.166. Individuals with complex needs fare the least well in large congregate settings. The more complex the individual's needs, the smaller the setting must be, to enable staff to focus on and provide consistent attention to the individual.

4.167. A congregate care facility like Rainier is not a natural environment. It is an artificial

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environment in which persons with intellectual disabilities cannot learn real life skills or functional activities. In such an environment, persons with developmental disabilities cannot receive what their specific learning needs require: the opportunity to learn real-life skills in the environments where those skills are practiced.

4.168. Congregate care facilities, particularly where there are ten or more residents, are dangerous because of a high risk that a resident will lose her own sense of personal identity and the reinforcing and stimulating aspects of direct handling in a stable and family-like atmosphere.

4.169. The threat of abuse of individuals with disabilities is increased in an institutional setting because the institution congregates a large number of people with dependent needs.

4.170. Individuals with challenging behaviors need "models" -- persons without maladaptive behaviors. When individuals with challenging behaviors are congregated together, as they are at Rainier, there is an enhanced risk of learning maladaptive behaviors from the inappropriate behavior of others.

4.171. The size and scale of Rainier is an impediment to the consistent, effective delivery of therapeutic activities and services. In a large setting, many more staff must be trained in consumers' therapy and management programs than would be the case in a smaller setting.

4.172. Maintenance of employee resolve and standards is much more complicated at a congregate care facility like Rainier than at a small program. Holding staff accountable to deliver residents' IPP programs is difficult in a large facility. The complexity of the institutional bureaucracy and the lack of staff accountability in a large congregate environment makes it difficult to get the simplest things done.

4.173. Recruiting qualified professional staff to work at places like Rainier is tremendously difficult. This is due not only to the low pay but to the administrative barriers that staff must overcome to work efficiently in that environment.

4.174. Because so many persons with complex disabilities are congregated together at Rainier, their needs overwhelm the staff. Congregating a large number of persons with complex needs greatly

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increases the difficulty for staff of finding activities that are interesting, stimulating or meaningful for the residents. Conversely, however, when persons with significant disabilities spend time with persons without disabilities, each non-disabled person serves as a natural teacher, and opportunities for learning are multiplied.

4.175. The opportunity to share places with individuals who are not labeled "retarded" cannot be provided to people with disabilities in institutions; it can only be provided in communities. The opportunities and benefits of being around other people who do not have disabilities, including the benefits of modeling and learning personal and community living skills, the opportunity to form friendships with people who do not have disabilities, and the opportunity to gain the respect of members of the community, are not available in institutions.

4.176. No matter how large the ratio of staff to clients in a large congregate care setting, such a facility can never achieve the same favorable results as a normal home with support. Increasing the ratio of staff to clients will only lead to a point of diminishing returns, at which one additional staff member will not result in any additional interaction with the people who live there. However, when only one staff person works with a very small number of residents, the quality of staff interaction with residents improves greatly.

O. Ineffectiveness of Institutionalization

4.177. Rainier embodies the "medical" or "deficit" model of services to persons with developmental disabilities. The "medical model" was a paradigm or framework for providing services to people with disabilities that was current when most state institutions were built, but it is now obsolete. That model was based on the premise that a person with a developmental disability should be placed in a special setting whose purpose was to "treat" her or his disability or deficit. An aspect of the medical model is the concept of the "continuum of care," that is, a continuum of residential settings from the most restrictive to the least restrictive, from the most heavily staffed to the least heavily staffed. According to the "medical model," a person was expected to move through the various stages of the

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Seattle, Washington 98370
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continuum--from a state institution to a nursing home or large ICF/MR, to a small ICF/MR, to a group home, to a semi-independent living arrangement and finally to a home of one's own -- as she or he "improved" and met the exit criteria for each setting. According to this concept, people could move from a restrictive congregate setting such as Rainier only by demonstrating their "readiness" for the next level of the continuum. In vocational services, the medical model dictated that the person earned his way along a similar "continuum of care": from a day activity center to a work activity center to sheltered work and eventually to a real job only when her or his skills improved.

4.178. Research and experience have shown conclusively that the medical model and the continuum of care are unnecessary and highly unsuccessful in preparing persons with developmental disabilities to live and work in more integrated and normal settings.

4.179. Research and experience have shown that institutions are not needed to serve persons with developmental disabilities, including persons with complex needs such as challenging behaviors or serious medical problems; that everyone can live in the community; and that people with developmental disabilities are better off in integrated community settings than in large congregate settings based on the "deficit" model.

4.180. Other states have reduced their admissions to state institutions to zero, demonstrating conclusively that the institutional model and the continuum of care are unnecessary. Other states serve people with disabilities as severe as those of the residents of Rainier in home and community-based settings. Still other states have concluded explicitly that they do not need state mental retardation institutions. The District of Columbia, Maine, New Hampshire, Rhode Island, and Vermont have closed their state institutions. Other states, including Colorado, Michigan, New Mexico, New York, and Wyoming, have explicit or implicit plans to close all of their state institutions within the next five years.

4.181. No services are provided at Rainier that cannot feasibly be made available to class plaintiffs in the community, and particularly for those class members with severe disabilities, complex medical needs, and challenging behaviors. To the contrary, critically-needed services such as physical therapy,

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Seattle, Washington 98370
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speech-language therapy, assistive technology, vocational training, and behavioral support management are provided inadequately and sporadically at Rainier, or not at all. In the community, the professional services that the members of the plaintiff class need are widely available.

4.182. In a family-scale residence, it is easy for staff to become familiar with an individual's needs in a way that staff at Rainier cannot.

4.183. The defendants' failure to make residential services available to class plaintiffs with serious medical needs is irrational since in Washington, as in other states all over the country, children with complex medical needs -- children who are technology dependent, ventilator dependent, or have catheterization tubes -- are living at home with their families with support services funded by Medicaid, maternal health demonstration grants and the Washington Medicaid waiver program. Adults with serious medical needs live in their own homes with support services provided by home health care agencies and other support services. The vast majority of Washington's citizens with serious medical needs do not go to institutions to receive their medical, therapeutic, or educational services. They receive those services in their own homes and communities.

4.184. The intent of Congress, in amending the Social Security Act in 1971 to allow states to use Title XIX funds to pay for services in Intermediate Care Facilities for the Mentally Retarded (ICF/MR), was to support "[t]he active provision of *rehabilitative, educational and training services* to enhance the capacity of mentally retarded individuals to care for themselves or to engage in employment." 117 Cong. Rec. 44720 (December 4, 1971). The unintended consequence of the use of ICR/MR funds by state officials, including the defendants, is that most ICF/MR dollars have flowed to large, custodial institutions like Rainier where little habilitation, education, and training take place.

4.185. Under the federal ICF/MR program, federal funds pay for fifty-two percent of the cost of care at Rainier. The ICF/MR program in effect gives states a right to draw against an open-ended federal bank account for their state institutions as long as the state's own surveyors continue to certify those facilities.

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4.186. The State of Washington is highly dependent upon the ICF/MR funding stream, not because of the professional judgment that persons with developmental disabilities are appropriately served in an ICR/MR facility, but because the ICF/MR program provides the most secure, stable, and predictable form of federal financial assistance to states for service delivery to persons with developmental disabilities. Defendants' discriminatory and inappropriate use of ICF/MR funds to sustain its large, custodial state institutions inhibits and slows the growth and creation of alternative community-based services for persons with significant disabilities.

4.187. DSHS surveyors have an inherent conflict of interest when they survey a state facility such as Rainier. The state has a strong fiscal interest in continued Medicaid reimbursement for services at Rainier, and that interest is jeopardized when surveyors find violations of the conditions for continued participation.

4.188. The defendants' ICF/MR survey process is inadequate. DSHS surveyors fail to ensure that Medicaid-certified facilities in Washington, including Rainier and other ICF/MRs, meet the minimum standards for certification for the receipt of Medicaid funds pursuant to Title XIX of the Social Security Act. Under the Medicaid regulations, failure to meet all eight of the ICF/MR conditions for participation requires that the facility be decertified. However, DSHS surveyors often ignore the myriad violations of the ICR/MR standards at Rainier and routinely certify the facility, even though deficiencies are so massive that a reasonable surveyor could not find the institution in compliance with all of the ICF/MR conditions for participation.

P. Integrated Community-Based Programs and Placements

4.189. Professional judgment dictates that persons with significant disabilities be served in life patterns that are integrated with and similar to those followed by other persons. The overwhelming majority of developmental disability professionals, public agencies and service providers now reject the medical or deficit model and see their purpose as that of supporting people with significant disabilities in normal, integrated residential and work settings. Professionals now believe that the task of the service

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Seattle, Washington 98370
Telephone: (206) 324-1521/Facsimile: (206) 324-1783

system is not to assign the persons to a facility based on a diagnosis, but to support people in homes they choose themselves, where they can live with the people with whom they want to live. This paradigm shift from the "medical model" to the "support model" is reflected in the mission statements, goals and objectives of all the major national organizations concerned with people with developmental disabilities, as well as the policies of the State of Washington and its executive and legislative branches.

4.190. The longstanding federal policy toward individuals with developmental disabilities, articulated and enacted over the course of nearly three decades, is based on the values of independence, productivity, and integration of citizens with disabilities. This policy in turn mirrors the professional consensus that the proper place for individuals with developmental disability is in normal homes, schools and workplaces, and not in segregated "facility-based" programs.

4.191. The defendants themselves have recognized that it is good for individuals with disabilities to live in the most normal setting possible. They know that individuals with significant disabilities benefit enormously from opportunities to practice daily living skills in normal environments, and to exercise choice and judgment in their lives.

4.192. The defendants have acknowledged and recognize that the most important concept shaping the delivery of developmental disability services during the last decade included "normalization" and "community integration" as formal objectives for those state agencies administering services to individuals with disabilities. "Normalization" is the principle that "the 'treatment' of individuals with mental retardation and related conditions must recognize and reflect each individual's dignity as a person, his or her natural membership in their native society and community, and his or her right to live as closely as possible in the manner of their culture." 'Community integration' is a concept "reflecting the value to people with developmental disabilities of sharing in community life" that includes the following key principles:

a. Physical Integration: To be a member of a community one must live in that community;

b. Cultural Integration: To be a member of a community one must exhibit culturally

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valued lifestyles and roles;

c. Social Integration: To be a member of a community one must enjoy reciprocal interpersonal relationships with other community members; and

d. Self-Determination: To be a member of a community one must be able to affirm one's individuality through expressions of personal independence and preference within the limits and according to the standards of the community.

4.193. The defendants, as well as those professionals who work at Rainier, are in general agreement that the residents of Rainier could successfully be placed in the community if provided with adequate supports and services. In particular, defendant Davis, the Director of DDD, has frequently stated that the residents of Rainier could be served in the community if they were provided with appropriate habilitation services and supports.

4.194. Research, demonstrations, and practice have shown conclusively that individuals with developmental disabilities are better off in integrated community settings than in large congregate settings based on the "deficit" model. Individuals with developmental disabilities grow, gain skills, and overcome institution-imposed regression when provided with opportunities to learn and practice basic skills in small, well-structured, supervised community settings.

4.195. In the last twelve years a body of research has developed showing what happens to the quality of life of individuals with developmental disabilities when they move from large congregate care settings to community living in small, family-scale homes.

4.196. In a five-year study commissioned by the Secretary of the United States Department of Health and Human Services comparing the growth and development of individuals moved from Pennhurst, a large congregate institution in Pennsylvania structurally similar to Rainier, to family-scale community living arrangements, researchers monitoring residents for five years found that persons with severe disabilities placed in community living arrangements increased in skills and developmental growth while residents of the institution did not. The federal government study concluded that persons who moved from Pennhurst to community placements were "better off in every way." J.W. Conroy and V.J. Bradley, The Pennhurst Longitudinal Study: A Report of Five Years of Research and Analysis,

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Temple Univ. Philadelphia, PA (1985). After the initial five-year study was competed, the authors of the Pennhurst Longitudinal Study continued to follow the 1700 members of the Pennhurst class and found significant continued gains in growth and well-being.

4.197. Similarly, a systematic longitudinal study on the progress of 1,350 members of the plaintiff class in CARC v. Thorne, No. H-78-653 (TEC) (D. Conn.), concluded that "the people who have thus far moved from congregate care to community settings are, on the average, much better off in every way we know how to measure." J.W. Conroy, et al., 1990 Results of the CARC v. Thorne Longitudinal Study (1991) (emphasis in original).

4.198. These and other systematic studies of what happens to institutional residents when they move to the community have found:

a. When former institutional residents are placed in the community, they make highly significant gains in skills and development (adaptive behavior);

b. Former institutional residents who move to the community make significantly greater gains in adaptive behavior than those individuals with comparable needs who remain at the institution;

c. When people who are labeled severely or profoundly retarded move into family-like community settings, they show even greater gains, proportionally, in adaptive behavior than persons labeled mildly and moderately retarded. No support exists for the proposition that some people are "too low functioning" to succeed in the community;

d. Although the initial gains in adaptive behavior following class members' placement in the community are generally the most dramatic, the gains do not level off but continue. Former institutional residents continue to make significant gains in the community;

e. Former institutional residents make significant gains in reducing challenging or maladaptive behavior after they are placed in the community;

f. An inverse relationship exists between the size of a residential setting and the degree of community integration of its residents;

g. Former institutional residents generally receive more hours of service in the community than they received at the institution; and

h. Before community placement, the majority of families of former institutional residents are strongly opposed to community placement of their relatives. However, after community placement, this pattern is completely reversed: the majority of family members become strongly supportive of community placement.

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4.199. The experience of properly planned institutional closures in other states demonstrates that virtually all residents of state institutions can live in small, integrated residential settings in the community, and that closure can be accomplished without adverse effects to institutional residents.

4.200. The issue of whether individuals with developmental disabilities are better off in family-scale, integrated settings than in large congregate settings (settings with more than fifteen residents) is no longer an issue for scholars and professionals in the field. There is a strong consensus among scholars who have studied the relation between size and quality of care that family-scale residences are better than institutions for individuals with developmental disabilities in every way that is measurable.

Q. Discriminatory Exclusion from Community-Based Services

4.201. The defendants refuse to refer many members of the plaintiff class for community placement because they perceive them as having severe disabilities, complex medical conditions, or challenging behaviors. Professional recommendations for community placement cannot be made or acted upon because of the unavailability of community services for those members of the plaintiff class.

4.202. The State of Washington's mental retardation and developmental disabilities program embodies the obsolete "medical model." It is characterized by a system of "levels" of residential facilities from the large and most heavily staffed institutions, such as Rainier, to the smallest and least heavily staffed residential facilities, such as typical homes, duplexes, or apartments where residents live semi-independently. This system is a substantial departure from the current professional consensus in the field. By continuing to operate this system, the defendants intentionally discriminate against those individuals who are perceived as having severe developmental disabilities, complex medical conditions, or challenging behaviors.

4.203. The defendants have failed to prevent their community-based residential service providers from discriminating against those plaintiff class members who are perceived as having severe developmental disabilities, complex medical conditions, or challenging behaviors. Defendants have failed to provide funding on a per diem basis for community-based services that is non-discriminatory

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and equitable in comparison to the funding available to the state's institutions, including Rainier. The service system operated by defendants is characterized by absence of planning and lack of coordination between the separate agencies that share responsibility for serving individuals with developmental disabilities.

4.204. The defendants, through DSHS, have applied for and received a waiver from the Health Care Financing Administration of the United States Department of Health and Human Services as provided under Section 2176 of the Omnibus Budget Reconciliation Act of 1981. The Section 2176 waiver allows Medicaid funds to be used to support a variety of non-institutional home and community-based services for former ICF/MR residents or those who are at risk of ICF/MR placement. To obtain a waiver, the defendants must show the Health Care Financing Administration of the United States Department of Health and Human Services that they will use the waiver to close ICF/MR beds or refrain from opening new ones. The wavier provides the same federal match -- fifty-two cents for every forty-eight cents -- that the defendants receive for services at Rainier. Effective use of the federal Medicaid Waiver Program would enable Washington to provide integrated services to persons currently residing at Rainier at no greater expense to the state treasury.

4.205. The defendants have failed to use the waiver program to provide home and community-based services for Rainier residents with the most significant disabilities. If community programs were funded at the same level as Rainier, community providers could develop services for everyone.

4.206. The defendants do not plan for services based on the identified needs of individual residents. Many of the class plaintiffs are placed at Rainier because institutional beds are available, not because that service meets their individual needs.

4.207. The defendants have chosen to allocate the majority of their fiscal resources for developmental disabilities services to the state's institutions. This is a political, rather than a professional, decision. Class plaintiffs are denied community services, not because of the professional judgment that they should be institutionalized, but because the distribution of resources is skewed

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toward the state's institutions.

4.208. In their actions and inactions recited above, the defendants have failed to exercise proper professional judgment. Defendants' actions and inactions are such a substantial departure from professional judgment and current standards and practices as to demonstrate that they actually did not base their decisions on professional judgment.

4.209. In their actions and inactions recited above, the defendants have acquiesced, with deliberate indifference, in a policy and practice of failing to adequately train their employees and in other policies, practices, customs and usages that are likely to result and have resulted in the violation of the class plaintiffs' constitutional rights.

4.210. The actions and inactions of the defendants that are recited above have resulted and will continue to result in harm, injury, and regression to the class plaintiffs.

4.211. The class plaintiffs have no other adequate remedy at law.

Claims

Count I: Americans With Disabilities Act

5.1. The ADA contains four substantive titles that address discrimination in the areas of employment, public services, public accommodations, and telecommunications. Plaintiffs have brought this action, in relevant part, pursuant to Title II of the ADA.

5.2. The defendants have violated the rights of the members of the plaintiff class secured by Title II of the ADA, 42 U.S.C. §§ 12161-12165 and the regulations promulgated pursuant thereto to, 28 C.F.R., Part 35, by:

a. Denying the representative plaintiffs and the other members of the plaintiff class the opportunity to participate in and benefit from the public services and programs that are as effective and meaningful as those delivered to other citizens with less severe disabilities in less separate and more integrated settings;

b. Failing to make reasonable modifications in their policies, practices, and procedures to enable the representative plaintiffs and the other members of the plaintiff class to participate in integrated public services and programs;

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c. Imposing eligibility criteria that unnecessarily excludes certain classes of individuals with disabilities and that prevents the representative plaintiffs and the other members of the plaintiff class from fully and equally enjoying the defendants' public services, programs, and activities;

d. Failing to administer their public services, programs, and activities for the representative plaintiffs and the other members of the plaintiff class in the most integrated settings appropriate to their individual needs;

e. Failing to furnish appropriate auxiliary aids and services to enable class members an equal opportunity to participate in and enjoy the benefits of the defendants' public services, programs, and activities;

f. Failing to remove the architectural and communication barriers that prevent the representative plaintiffs and the other members of the plaintiff class from participating in and benefiting from the defendants' public services, programs, and activities; and

g. Aiding and perpetuating discrimination against the residents of Rainier in their public programs, services, and activities.

5.3. Defendants are agents of the State of Washington, and therefore obligated to comply with the requirements of Title II of the Americans With Disabilities Act.

5.4. Defendants' policies, procedures, and practices that separate those residents with complex medical conditions and challenging behaviors from the other residents of Rainier and from other persons with developmental disabilities violate their right to be free from discrimination based on the nature or severity of their disability in violation of Title II of the ADA, 42 U.S.C. §§ 12132 and 12182 (b) (1) (B), and 28 C.F.R. § 35.130 (d).

5.5. Defendants' practice of not providing equal access to active treatment and meaningful habilitation to those residents of Rainier who have severe disabilities, complex medical conditions, or challenging behaviors violate their right to be free from discrimination based on the nature or severity of their disabilities in violation of Title II of the ADA, 42 U.S.C. § 12132.

5.6. The defendants' practice of providing inadequate habilitation services to the representative plaintiffs and other members of the plaintiff class in the institutional environment at Rainier, which are less effective than treatment in community-based programs and settings, and which are unnecessary for their habilitation, violates their right to be free from discrimination based on the nature or severity of

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their disabilities in violation of 42 U.S.C. §§ 12132 and 12182 (b) (1) (A) (iii), and 28 C.F.R. § 35.130 (b) (1) (iv).

Count II: Rehabilitation Act

5.7. The defendants have violated the rights of the members of the plaintiff class secured by Sections 100 and 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 720 and 794, and the regulations promulgated pursuant thereto, 45 C.F.R., parts 84 and 1361, by:

a. Denying the representative plaintiffs and the other members of the plaintiff class the benefits of federally assisted community-based habilitation and vocational services and programs;

b. Failing to provide the representative plaintiffs and the other members of the plaintiff class federally assisted services that are as effective and meaningful as those delivered to other citizens of this state, and that are delivered in less separate and more integrated settings;

c. Denying the representative plaintiffs and the other members of the plaintiff class the benefits of federally assisted vocational training, habilitation, active treatment, and other programs on the basis of the severity of their intellectual or other disabilities;

d. Segregating the residents of Rainier on the basis of their developmental, physical, behavioral, or medical disabilities;

e. Providing federally assisted programs and services to individuals with severe developmental disabilities, complex medical conditions, and challenging behaviors in the segregated institutional environment at Rainier, which is less effective than treatment in the community and is unnecessary for their habilitation; and

f. Aiding and perpetuating discrimination against the residents of Rainier in federally-funded programs.

Count III: Due Process Clause

5.8. The defendants have violated the rights of the members of the plaintiff class secured by the Due Process Clause of the United States Constitution, and by 42 U.S.C. § 1983, by:

a. Subjecting the representative plaintiffs and the other members of the plaintiff class to harm and injury, including abuse, injuries from neglect, regression, physical deterioration, deprivation of social relationships, and the harms arising from segregation and confinement;

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b. Failing to provide the representative plaintiffs and the other members of the plaintiff class with adequate food, shelter, clothing, and health care;

c. Imposing unnecessary and excessive restraints, physical and chemical, on the representative plaintiffs and the other members of the plaintiff class;

d. Failing to provide the representative plaintiffs and the other members of the plaintiff class with minimally adequate and meaningful training and habilitation;

e. Failing to give consideration to the habilitative placement and other needs and rights of each of the representative plaintiffs and the other members of the plaintiff class, and to treat him or her in accordance with his or her own situation;

f. Conclusively presuming that the representative plaintiffs and the other members of the plaintiff class can not benefit from particular services or live in non-institutional settings;

g. Denying the representative plaintiffs and the other members of the plaintiff class adequate and meaningful opportunities to be heard on the appropriateness of their vocational and habilitative plans, programs, and residential environment;

h. Failing to provide an advocate to assist each of the representative plaintiffs and the other members of the plaintiff class in the exercise their rights as enumerated above; and

i. Failing, in the actions and inactions set forth above, to exercise professional judgment.

Count IV: Social Security Act

5.9. The defendants have violated the rights of the members of the plaintiff class secured by Title XIX of the SSA, 42 U.S.C. §§ 1396, 1396a, 1396d(d), and the regulations promulgated pursuant thereto, 42 C.F.R. § 435.1009; part 483, subpart D; and part 456, subparts E, F, and I; and by 42 U.S.C. § 1983, by:

a. Failing to exercise adequate operating direction over Rainier, as required by 42 C.F.R. § 483.410(a)(1);

b. Failing to adequately document the health care services, active treatment, and other information concerning the representative plaintiffs and the other members of the plaintiff class, as required by 42 C.F.R. §§ 483.410(c)(1) and 483.440(c)(5)(iv);

c. Failing to allow and encourage the representative plaintiffs and the other members of the plaintiff class to exercise their rights as citizens of Washington and the United States, as required by 42 C.F.R. § 483.420(a)(3);

d. Failing to enable the representative plaintiffs and the other members of the plaintiff

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class to communicate, associate, and meet privately with persons of their choice, and to participate in social, religious, and community group activities, as required by 42 C.F.R. § 483.420(a)(9) and (11);

e. Failing to enable the representative plaintiffs and the other members of the plaintiff class to retain and use appropriate personal possessions and clothing, as required by 42 C.F.R. § 483.420(a)(12);

f. Failing to promote participation of the representative plaintiffs and the other members of the plaintiff class, as well as their parents and/or legal guardians, in the process of providing active treatment to the plaintiffs, as required by 42 C.F.R. § 483.420(c)(1);

g. Failing to implement procedures that prohibit physical, verbal, sexual, and psychological abuse or punishment, as required by 42 C.F.R. § 483.420(d)(1);

h. Failing to provide the representative plaintiffs and the other members of the class with an active treatment program that is integrated, coordinated, and monitored by a qualified mental retardation professional, as required by 42 C.F.R. § 483.430(a);

i. Failing to provide sufficient professional staff and adequate professional program services to implement the active treatment program defined and set forth in the individual program plans of each of the representative plaintiffs and the other members of the plaintiff class, as required by 42 C.F.R. § 483.430(b);

j. Failing to provide appropriately qualified, trained, and competent staff in numbers that are sufficient to assist and supervise the representative plaintiffs and the other members of the plaintiff class in carrying out their individual program plans, as required by 42 C.F.R. § 483.430(c), (d), and (e);

k. Failing to provide the representative plaintiffs and the other members of the class with a continuous, aggressively and consistently implemented program of active treatment consisting of the needed interventions and services in sufficient number and frequency to enable the plaintiffs to attain as much self determination, independence, and optimal functional status as possible, as required by 42 C.F.R. § 483.440(a);

l. Failing to provide the representative plaintiffs and the other members of the class with minimally adequate post-discharge plans, as required by 42 C.F.R. § 483.440(b);

m. Failing to provide the representative plaintiffs and the other members of the plaintiff class which they represent with accurate, comprehensive functional assessments identifying their developmental strengths, their developmental and behavioral needs, and their need for services, without regard to the need for availability of services, as required by 42 C.F.R. § 483.440(c)(3);

n. Failing to provide the representative plaintiffs and the other members of the plaintiff class with adequate individual program plans setting forth the specific objectives necessary to meet their individual needs, as required by 42 C.F.R. § 483.440(c)(6)(iv);

o. Failing to ensure that the representative plaintiffs and the other members of the plaintiff class' individual program plans identify the mechanical supports needed to

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achieve proper body position, balance or alignment, and specify the reason for each support, the situations in which they are to be applied, and a schedule for their use, as required by 42 C.F.R. § 483.440(c)(6)(iv);

p. Failing to ensure that the representative plaintiffs and the other members of the class' individual program plans include opportunities for individual choice and self-management, as required by 42 C.F.R. § 483.440(c)(6)(vi);

q. Failing to ensure that each representative plaintiff and the other members of the plaintiff class' comprehensive functional assessment are reviewed at least annually by their interdisciplinary team for relevancy and updated as needed, and that each of their individual habilitation programs are revised as appropriate, as required by 42 C.F.R. § 483.440(f)(2);

r. Failing to ensure that the behavioral support plans for managing challenging behaviors of the representative plaintiffs and the other members of the plaintiff class are employed with sufficient safeguards and supervision to protect their safety, health, and welfare, as well as their civil and human rights, as required by 42 C.F.R.§ 483.450(b)(2);

s. Failing to incorporate the use of positive behavioral supports to manage the challenging and inappropriate behaviors into the behavioral support plans and individual habilitation plans of those representative plaintiffs and other members of the plaintiff class who require such supports, as required by 42 C.F.R. § 483.450(b)(4);

t. Failing to assure that antipsychotic medications and other drugs used for control of challenging and inappropriate behaviors are approved by the individuals' interdisciplinary team and used only as an integral part of an individual habilitation plan and behavioral support plan that is directed specifically toward the reduction of and eventual elimination of the behaviors for which such drugs are employed, rather than for the convenience of staff or punishment, as required by 42 C.F.R. § 483.450(e)(2);

u. Failing to provide medical services and care necessary to maintain an optimum level of health for each of the representative plaintiffs and the other members of the plaintiff class in order to prevent further disability, as required by 42 C.F.R. § 483.460(a);

v. Failing to assure that health services and care are adequately integrated into the representative plaintiffs and the other members of the plaintiff class' individual habilitation programs, as required by 42 C.F.R. § 483.460(b);

w. Failing to assure that the representative plaintiffs and the other members of the plaintiff class members an adequate living environment, as required by 42 C.F.R. § 483.470;

x. Failing to assure adequate food, nutrition, and meal services, as required by 42 C.F.R. § 483.470;

y. Failing to maintain the compliance of the Rainier Residential Habilitation Center with conditions of participation for intermediate care facilities for persons with mental retardation;

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z. Failing to determine whether series available at Rainier and the other Title XIX facilities in which the representative plaintiffs and the other members of the plaintiff class may reside are adequate to meet their health, rehabilitative, and social needs, and to promote their maximum physical, mental, and psychosocial functioning, as required by 42 C.F.R. § 456.609(a);

aa. Failing to determine whether it is necessary and desirable for the representative plaintiffs and the other members of the plaintiff class to remain at Rainier and the other Title XIX facilities in which they may reside, as required by 42 C.F.R. § 456.609(b);

bb. Failing to review the appropriateness of the representative plaintiffs and the other members of the plaintiff class' continued placement at Rainier and the other Title XIX facilities in which they may reside, and failing to determine the feasibility of meeting their needs through alternative non-institutional services and settings, as required by 42 C.F.R. § 456. 609(c);

cc. Failing to ensure adequate utilization review of discharge planning; and

dd. Failing to properly evaluate each plaintiff's need for admission prior to their placement at Rainier.

Count V: First Amendment

5.10. The defendants have violated the rights of the members of the plaintiff class to the freedoms of expression and association secured by the First Amendment to the United States Constitution by:

a. Preventing the representative plaintiffs and the other members of the plaintiff class from associating and assembling with others of their choice;

b. Preventing the representative plaintiffs and the other members of the plaintiff class from meeting and speaking privately with friends, advocates, and others of their choice;

c. Preventing the representative plaintiffs and the other members of the plaintiff class from communicating with others of their choice;

d. Diminishing and failing to protect the capacity of the representative plaintiffs and the other members of the plaintiff class to produce ideas by thinking and learning, and to express those ideas through communication with other people; and

e. Preventing and interfering with the representative plaintiffs and the other members of the plaintiff class in the free exercise of religion.

5.11. Each resident at Rainier has a constitutional right to be treated with dignity and to be afforded the maximum personal freedom that she or he is capable of exercising. Whenever defendants

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restrict class plaintiffs' rights to dignity and personal freedom, they may do so only for a habilitative purpose, and they are constitutionally required to utilize the least drastic alternative sufficient to achieve that purpose.

5.12. Each of the class plaintiffs could be more adequately served and have their rights less drastically restricted then the conditions now existing at Rainier.

Prayer for Relief

Wherefore your plaintiffs respectfully pray to this honorable Court for the following relief:

A. An order declaring that defendants' actions and inactions, as described herein, violate class plaintiffs' rights under Title XIX of the Social Security Act and its implementing federal regulations; Title II of the Americans with Disabilities Act and its implementing regulations; the Rehabilitation Act of 1973 and its implementing federal regulations; the Due Process Clause of the Fourteenth Amendment to the United States Constitution; and the First Amendment to the United States Constitution.

B. After hearing, enter an order preliminarily and permanently enjoining the defendants:

1. To arrange for the independent evaluation, by qualified professionals not employed by the State of Washington, of the individual habilitation and treatment needs of each plaintiff class member to determine whether adequate treatment consistent with constitutional and statutory standards is being provided to each plaintiff class member, and to determine whether any class members have been injured as a result of constitutionally inadequate treatment at Rainier in the past;

2. To develop community living arrangements for all members of the plaintiff class, together with the community services necessary to provide members of the plaintiff class with minimally adequate habilitation, as defined in an individual person-centered planning process that is consistent with contemporary standards of practice, until such time as the class member no longer is in need of services;

3. To provide services to the members of the plaintiff class in a manner which promotes their independence, enhances their dignity, and is as consistent as possible with societal norms;

4. To provide each representative plaintiff and all of the members of the plaintiff class with effective habilitation and vocational services in the most integrated setting appropriate to their needs;

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5. To make available the necessary alternative residential facilities, home services, vocational services, and day services in the community, including:

a. An effective, independent, conflict-free system of case management and service coordination for class members;

b. Individual service plans based on need rather than availability of services, reflecting the value of supporting an individuals with relationships, productive work, participation in community life, and personal decision-making;

c. Identification of the support and services needed by class members by a process of person-centered planning with procedures for members of the plaintiff class to dispute portions of their individual service plan;

d. A system of personal advocacy and self-advocacy to assist the class plaintiffs in asserting their rights;

e. A system of rights and rights protection for persons living in the community and served by programs funded, licensed, or operated by the defendants through DSHS;

f. An effective, systematic resource development capability, including but not limited to a program to ensure the availability of appropriate community residential services; appropriate medical, dental, psychiatric, therapeutic, and behavioral support services; appropriate community-integrated employment services and other day activities in community-integrated settings;

g. An effective quality assurance system in the community capable of detecting and remedying problems in the class plaintiffs' individual programs in systemic and coordinated fashion;

h. An effective, mutually supportive management information systems in which systems of reporting, oversight and communication of information are organized and operational; and

i. An effective performance contracting system.

6. To provide class plaintiffs and their families with an opportunity to be heard by a neutral decision-maker on the substance of their program and placement;

7. To cease admitting individuals to Rainier or from transferring present residents from Rainier unless such transfer is to the most integrated community setting appropriate to their needs, and appropriate developmental disability services are provided to them;

8. To establish a system to prevent abuse and neglect of Rainier residents, to thoroughly and promptly investigate allegations of abuse and neglect and to establish appropriate consequences for abuse and neglect of residents by Rainier staff.

9. To hire sufficient numbers of professional and direct care staff at Rainier, including sufficient numbers of qualified physicians, physical therapists, occupational therapists, speech and language pathologists, psychologists, and aides;

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10. To provide adequate medical care to Rainier residents;

11. To develop and deliver a professionally designed, consistently and aggressively implemented program of training, treatment, and other services to each Rainier resident to enable her or him to function with the greatest self-determination and independence possible;

12. To provide professionally designed therapeutic support services, including adaptive equipment, positioning, mealtime programs, behavioral programs, and other assistance necessary to protect each class member from harm and regression;

13. To develop and provide adequate training programs for professional and direct care staff at Rainier, and assure that all staff are able to demonstrate the skills and competencies to provide active treatment to the class members they serve;

14. To provide a safe environment for each class member at Rainier;

15. To allow class members to participate in community activities, and to allow reasonable access to Rainier and reasonable opportunities to communicate with class members at Rainier, to People First of Washington, other advocates, and members of religious and community organizations;

16. To make available a friend-advocate to each plaintiff and member of the plaintiff class to assist each in securing the substantive and procedural protections aforesaid; and

17. To submit to plaintiffs and this honorable Court for approval a plan for implementation of the aforesaid; and

C. An order awarding such other relief as may just, proper, and equitable, including plaintiffs' costs and a reasonable fee award for their attorneys.

Dated this 21st day of October, 1996.

Respectfully submitted,

People First of Washington, Inc., James Campbell, by and through his next friend, Dennis Campbell, Chris Olson, by and through his next friend, Diane Grace, Houston Williams, by and through his next friend and legal guardian, Steven Cassio, Peter Bohnke, by and through his next friend, John Domenic Revello, Dawn Lavery, by and through her next friend and legal guardian, Emerson Fosner,

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and John Mann, by and through his next friend, Resa Hayes, on behalf of themselves and all others similarly situated; and the Arc of Washington State, Inc., The Autism Society of Washington, and the Washington Protection and Advocacy System, Inc., Plaintiffs

By: .....
Randal B. Brown WSBA #28141

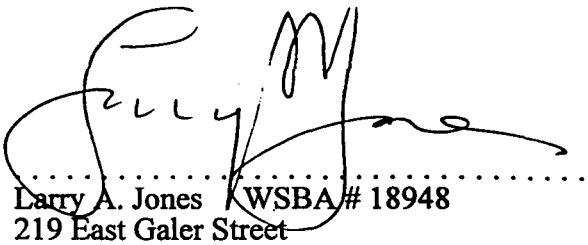
.....
Deborah A. Dorfman WSBA #23823

.....
Michael J. Smith WSBA #14111
1401 East Jefferson Street, Suite 506
Seattle, Washington 98370
Telephone: (206) 324-1521
Facsimile: (206) 324-1783

.....
Steven J. Schwartz MSBA # 448440

.....
Cathy E. Costanzo MSBA #553813
Center for Public Representation
22 Green Street
Northampton, Massachusetts 01060
Telephone: (413) 586-6024
Facsimile: (413) 586-5711

Attorneys for plaintiffs People First, James Campbell, Chris Olson, Houston Williams, Peter Bohnke, Dawn Lavery, John Mann, Autism Society of Washington, and the Washington Protection and Advocacy System



Larry A. Jones WSBA # 18948
219 East Galer Street
Seattle, Washington 98102
Telephone: (206) 324-4300
Facsimile: (206) 324-1140

Attorney for plaintiff Arc of Washington State

Verification

State of Washington :
: ss.
County of King :

I, Al Lewis, am the President of the Board of Directors of The Arc of Washington State, Inc., one of the organizational plaintiffs in the above and foregoing complaint. Plaintiff The Arc of Washington State, a non-profit corporation duly organized under the laws of the State of Washington, is a state wide advocacy organization whose members include individuals with disabilities, their families, and others interested in issues affecting persons with developmental disabilities. The Board of Directors of The Arc of Washington State, Inc., have joined with the other individual and organizational plaintiffs in the preparation and filing of this class-action complaint. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and, as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this 19. , day of October, 1996, in Olympia, Washington.

.....
Al Lewis

Subscribed and Sworn to before me by Al Lewis this 19. day of October, 1996.

.....
Notary Public in and for the State of Washington:
LARRY A JONES
SEATTLE, Washington 98102

My Commission Expires:
6-17-2000

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Verification

State of Washington :
: ss.
County of Asotin :

I, Chari Lincoln, am the Chairperson of the Board of Directors of People First of Washington, Inc., one of the organizational plaintiffs in the above and foregoing complaint. Plaintiff People First of Washington, a non-profit corporation duly organized under the laws of the State of Washington, is a state wide self-advocacy organization governed entirely by people with developmental disabilities. The Board of Directors of People First of Washington, Inc., have joined with the other individual and organizational plaintiffs in the preparation and filing of this class-action complaint. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and, as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this . .16th day of October, 1996, in .Clarkston . . . . , Washington.

..Chari Lincoln.....
Chari Lincoln

Subscribed and Sworn to before me by Chari Lincoln this 16th day of October, 1996.

ELAINE R. WARWICK NOTARY PUBLIC STATE OF WASHINGTON Commission Expires JAN. 06, 1998

..Elaine R. Warwick.....
Notary Public in and for the State of Washington:

.....
Clarkston . . . . . , Washington . . . . . .

My Commission Expires:

January 6, 1998
. . . . . .

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1401 East Jefferson Street, Suite 5(
Seattle, Washington 983
Telephone: (206) 324-1521/Facsimile: (206) 324-17

Verification

State of Washington :
: ss.
County of Spokane :

I, Donna Lowary, am the Executive Director of People First of Washington, Inc., one of the organizational plaintiffs in the above and foregoing complaint. Plaintiff People First of Washington, a non-profit corporation duly organized under the laws of the State of Washington, is a state wide self-advocacy organization governed entirely by people with developmental disabilities. The Board of Directors of People First of Washington, Inc., have joined with the other individual and organizational plaintiffs in the preparation and filing of this class-action complaint. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and, as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this 16th day of October, 1996, in Clarkston, Washington.

Donna Lowary

Subscribed and Sworn to before me by Donna Lowary this 16th day of October, 1996.

ELAINE R. WARWICK NOTARY PUBLIC STATE OF WASHINGTON Commission Expires JAN. 06, 1998

Notary Public in and for the State of Washington:

Clarkston, Washington

My Commission Expires:

January 6, 1998

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Verification

State of Washington :
: ss.
County of Clark :

I, Dennis Campbell, am a member of People First of Washington, one of the organizational plaintiffs in the above and foregoing complaint. I am acquainted with James Campbell, one of the individual plaintiffs in the above and foregoing complaint. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and, as to those matters, I believe them to be true. I bring this action on James Campbell's behalf in my capacity as his next friend.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this 15th, day of October, 1996, in Buckley, Washington.

Dennis Campbell, Next Friend of James Campbell

Subscribed and Sworn to before me by Dennis Campbell this 15th day of October, 1996.

Notary Public in and for the State of Washington:
1401 E. Jefferson St #504
Seattle, Washington 98122

My Commission Expires:

10-09-00

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Verification

State of Washington :
: ss.
County of King :

I, Diane Grace, am a member of People First of Washington, one of the organizational plaintiffs in the above and foregoing complaint. I am acquainted with Chris Olson, one of the individual plaintiffs in the above and foregoing complaint. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and, as to those matters, I believe them to be true. I bring this action on Chris Olson's behalf in my capacity as his next friend.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this 15, day of October, 1996, in Buckley, Washington.

.....
Diane Grace, Next Friend of Chris Olson

Subscribed and Sworn to before me by Diane Grace this 15th day of October, 1996.

Heidi A. Reynolds
Notary Public in and for the State of Washington:
1401 E. Jefferson St 506
Seattle, Washington 98122

My Commission Expires:

10-09-00

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1401 East Jefferson Street, Suite 506
Seattle, Washington 98370
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Verification

State of Washington :
: ss.
County of Pierce :

I, Steven Cassio, am the duly-appointed legal guardian for Houston Williams, one of the plaintiffs in the above and foregoing complaint. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and, as to those matters, I believe them to be true. I bring this action on my ward's behalf in my capacity as his legal guardian and next friend.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this .14th., day of October, 1996, in Seattle....., Washington.

Steven Cassio
Steven Cassio, Legal Guardian of Houston Williams

Subscribed and Sworn to before me by Steven Cassio this .14th. day of October, 1996.

Heidi A. Rajnola
Notary Public in and for the State of Washington:
1401 E Jefferson St Ste 506
Seattle, Washington 98122

My Commission Expires:

10-09-00

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Verification

State of Washington :
: **ss.**
County of King :

I, John Domenic Revello am acquainted with Peter Bohnke, one of the individual plaintiffs in the above and foregoing complaint. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and, as to those matters, I believe them to be true. I bring this action on Peter Bohnke's behalf in my capacity as his next friend.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this 17, day of October, 1996, in Seattle, Washington.

John Domenic Revello, Next Friend of Peter Bohnke

Subscribed and Sworn to before me by John Domenic Revello this 17th day of October, 1996.

Notary Public in and for the State of Washington:
1401 E. Jefferson Ste 506
Seattle, Washington 98122

My Commission Expires:

10-09-00

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Seattle, Washington 98370
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Verification

State of Washington :
: ss.
County of Pierce :

I, Emerson Fosner, am the duly-appointed legal guardian for Dawn Lavery, one of the plaintiffs in the above and foregoing complaint. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and, as to those matters, I believe them to be true. I bring this action on my ward's behalf in my capacity as her legal guardian and next friend.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this 18th, day of October, 1996, in Tacoma, Washington.

Emerson Fosner

Emerson Fosner, Legal Guardian of Dawn Lavery

Subscribed and Sworn to before me by Emerson Fosner this 18th day of October, 1996.

Heidi A. Ruffalo

Notary Public in and for the State of Washington:
1401 E. Jefferson St 506
Seattle, Washington 98122

My Commission Expires:

10-29-00

Washington Protection & Advocacy System
1401 East Jefferson Street, Suite 506
Seattle, Washington 98370
Telephone: (206) 324-1521/Facsimile: (206) 324-1783

Verification

State of Washington :
: ss.
County of Spokane :

I, Resa Hayes, am a member of People First of Washington, one of the organizational plaintiffs in the above and foregoing complaint. I am acquainted with John Mann, one of the individual plaintiffs in the above and foregoing complaint. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and, as to those matters, I believe them to be true. I bring this action on John Mann's behalf in my capacity as his next friend.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this .15. , day of October, 1996, in .Buckley., ... , Washington.

Resa Hayes

Resa Hayes, Next Friend of John Mann

Subscribed and Sworn to before me by Resa Hayes this .15th day of October, 1996.

Heidi A. Reynolds

Notary Public in and for the State of Washington:
1401 E. Jefferson Ste 506
Seattle, Washington 98122

My Commission Expires:

10-09-00

Washington Protection & Advocacy System
1401 East Jefferson Street, Suite 506
Seattle, Washington 98370
Telephone: (206) 324-1521/Facsimile: (206) 324-1783

Verification

State of Washington :
: ss.
County of King :

I, Renata Lac, am the Executive Director of The Autism Society of Washington, one of the organizational plaintiffs in the above and foregoing complaint. Plaintiff The Autism Society of Washington, a non-profit corporation duly organized under the laws of the State of Washington, is a state wide advocacy, support, and education organization for persons with autism, their families, and friends. The Board of Directors of The Autism Society of Washington have joined with the other individual and organizational plaintiffs in the preparation and filing of this class-action complaint. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and, as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this 17, day of October, 1996, in Seattle, Washington.

.....
Renata Lac

Subscribed and Sworn to before me by Renata Lac this 17th day of October, 1996.

Heidi A. Reynolds
.....
Notary Public in and for the State of Washington:
1401 E. Jefferson St 506
Seattle, Washington 98122

My Commission Expires:

10-09-00

Washington Protection & Advocacy System
1401 East Jefferson Street, Suite 506
Seattle, Washington 98370
Telephone: (206) 324-1521/Facsimile: (206) 324-1783

Verification

State of Washington :
: ss.
County of King :

I, Mark G. Stroh, am the Executive Director of the Washington Protection and Advocacy System, Inc., one of the organizational plaintiffs in the above and foregoing complaint. Plaintiff Washington Protection and Advocacy System, Inc., a non-profit corporation duly organized under the laws of the State of Washington, is the protection and advocacy system designated by the Governor of the State of Washington to protect and advocate for the legal rights of persons with disabilities. The Board of Directors of Washington Protection and Advocacy System, Inc., have joined with the other individual and organizational plaintiffs in the preparation and filing of this class-action complaint. I have read the foregoing complaint and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and, as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on this 18th, day of October, 1996, in Seattle, Washington.

Mark G. Stroh

Mark G. Stroh

Subscribed and Sworn to before me by Mark G. Stroh this 18th day of October, 1996.

Heidi A. Reynolds

Notary Public in and for the State of Washington:
1401 E. Jefferson St #506
Seattle, Washington 98122

My Commission Expires:
10-09-00

Washington Protection & Advocacy System
1401 East Jefferson Street, Suite 506
Seattle, Washington 98370
Telephone: (206) 324-1521/Facsimile: (206) 324-1783