Elissa Gershon, State Bar No. 169741
Kimberly Swain, State Bar No. 100340
Elizabeth Zirker, State Bar No. 233487
DISABILITY RIGHTS CALIFORNIA
1330 Broadway, Suite 500
Oakland, CA 94612
Telephone: (510) 267-1200
Facsimile: (510) 267-1201
Elissa.Gershon@disabilityrightsca.org
Kim.Swain@disabilityrightsca.org
Elizabeth.Zirker@disabilityrightsca.org

Attorneys for Plaintiffs

[Complete list of counsel on following pages.]

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

MARK CHAMBERS, et al. Plaintiffs, v. CITY AND COUNTY OF SAN FRANCISCO Defendant.	Case No.: C06-06346 WHA **JOINT CASE MANAGEMENT STATEMENT** **CLASS ACTION** **Date:** June 16, 2010 **Time:** 11:00 a.m. **Room:** 450 Golden Gate Avenue, 19th Floor, Courtroom 9 **Judge:** Hon. William H. Alsup

Arlene Mayerson, State Bar No. 79310
Larisa Cummings, State Bar No. 131076
Silvia Yee, State Bar No. 222737
DISABILITY RIGHTS EDUCATION AND DEFENSE FUND, INC.
2212 Sixth Street
Berkeley, CA 94710
Telephone: (510) 644-2555
Facsimile: (510) 841-8645
amayerson@dredf.org
lcummings@dredf.org
syee@dredf.org

Ira Burnim, *Pro Hac Vice*
Jennifer Mathis, *Pro Hac Vice*
BAZELON CENTER FOR MENTAL HEALTH LAW
1101 – 15th Street, N.W., Suite 1212
Washington, D.C., 20005-2002
Telephone: (202) 467-5730
Facsimile: (202) 223-0409
irab@bazelon.org
jenniferm@bazelon.org

Bruce Vignery, *Pro Hac Vice*
AARP FOUNDATION LITIGATION
601 "E" Street, N.W., Bldg A4-170
Washington, DC 20049
Telephone: (202) 434-2060
Facsimile: (202) 434-2127
BVignery@aarp.org

Henry Su, State Bar No. 211202
Aaron Myers, State Bar No. 200145
HOWREY LLP
1950 University Avenue, 4th Floor
East Palo Alto, CA 94303
Telephone: (650) 798-3500
Facsimile: (650) 798-3600
Suh@howrey.com
Myersa@howrey.com

Robert Kramer, State Bar No. 181706
Joseph Song, State Bar No. 239494
HOWREY LLP
525 Market Street, Suite 3600
San Francisco, CA 94105
Telephone: (415) 848-4900
Facsimile: (415) 848-4999
Songj@howrey.com
Kramerr@howrey.com

DENNIS J. HERRERA (SBN 139669)
City Attorney
DANNY CHOU (SBN 180240)
Chief of Affirmative and Complex Litigation
JAMES M. EMERY (SBN 153630)
ALEETA VAN RUNKLE (SBN 124563)
Deputy City Attorneys
Fox Plaza
1390 Market Street, 6th Floor
San Francisco, California 94102-5408
Telephone: (415) 554-3987
Facsimile: (415) 554-3837

ATTORNEYS FOR DEFENDANT
CITY AND COUNTY OF SAN FRANCISCO

Pursuant to this Court's Order of May 17, 2010, the parties hereby submit a written report as to the status of implementation of the Settlement Agreement.

BENEFITS TO CLASS MEMBERS

San Francisco has developed individual Community Living Plans for 1,146 class members since January 2008, including individuals currently residing at Laguna Honda Hospital, individuals diverted from admission to Laguna Honda, individuals discharged from Laguna Honda into the community, individuals transferred to acute settings, and individuals who have subsequently died. Since January 2008, 290 class members have been discharged into the community, pursuant to their Community Living Plans. San Francisco has identified and secured 110 scattered-site housing units for class members to date.

With respect to services to class members, Class Counsel continue to monitor benefits they receive via San Francisco's quarterly reporting, a review of randomly selected class member files, individual client advocacy, and regular outreach to residents at Laguna Honda. Class Counsel receive quarterly reporting from San Francisco as to more than 30 data elements related to discharge and access to community services. With an expert consultant, Dr. Michael Franczak, Class Counsel conducted a two day visit to class members in June 2009, and provided San Francisco with Dr. Franczak's written report and recommendations. In May 2010, Class Counsel and Dr. Franczak again conducted a two day visit to class members and provided San Francisco with Dr. Franczak's written report dated May 20, 2010 containing findings as to San Francisco's implementation of the Agreement, and recommendations for improved compliance.

PROVISIONS FOR NAMED PLAINTIFFS (SECTION IV)

All of the named plaintiffs have moved from Laguna Honda, with the exception of one who is waiting for subsidized housing to become available in Berkeley. As reported to the Court on February 19, 2010, lead Plaintiff Mark Chambers moved in February 2010 into an accessible two bedroom apartment with a live-in attendant, and receives case management and habilitative services.

ACCESS TO THE NURSING FACILITY WAIVER (SECTION V)

As reported previously, San Francisco appointed a Waiver point person to coordinate the

Nursing Facility Waiver and other services, as the Settlement Agreement provides. Nine class members are now living in the community supported by the Nursing Facility Waiver, and eighteen class members are in the intake process with the State's In-Home Operations Division, which operates the Nursing Facility Waiver. As of June 2010, the following non-profit organizations are Nursing Facility Waiver providers: The Institute on Aging (IOA), Toolworks, On Lok 30th Street Services, and the IHSS Consortium. IOA is providing services to eight waiver participants and Toolworks has been providing services under the Nursing Facility Waiver to lead plaintiff Mark Chambers since February 2010.

In addition, the Diversion and Community Integration Program (DCIP) coordinates with the Institute on Aging, San Francisco County's lead agency for providing services under the California Community Transitions, Money Follows the Person Demonstration Project (CCT-MFP). This program provides additional state and federal funding to assist class members moving from Laguna Honda. The program has been operational since July 2009, with thirty-one Laguna Honda residents currently enrolled, eighteen of whom have been discharged to the community with services funded through the program.

DIVERSION AND COMMUNITY INTEGRATION PROGRAM (DCIP)/PROVISION OF CASE MANAGEMENT AND WRAP-AROUND SERVICES (SECTIONS VI AND VII)

San Francisco continues its DCIP activities and is working with class members who are diverted and discharged from Laguna Honda to provide them with services and supports needed for community living. The DCIP evaluates each eligible class member, according to the Settlement Agreement. Based on the evaluation, the DCIP develops a Community Living Plan for each eligible class member that identifies the services and supports necessary to facilitate a successful discharge or diversion from Laguna Honda Hospital. As mentioned above, 1146 class members have individual Community Living Plans, and DCIP has discharged 290 of these class members into community placements.

Dr. Franczak noted in his May 20, 2010 report that the Community Living Plans developed by the DCIP are not currently, but should be, updated on a regular basis to reflect changes in class

members' status, and that a tracking mechanism to ensure that the plans are dynamic and current needs to be put in place. The Parties are in discussions regarding how best to achieve this recommendation.

The Peer Mentor program referenced in the Parties' previous Case Management Statements of June and December 2009 continues to be in operation and to assist class members in the transition process. Peer mentors have served a valuable role in assisting class members to become informed about the discharge process, in motivating class members toward greater independence, and in facilitating the discharge process. The Peer Mentor program currently has 16 trained staff who are working with 30 class members, some residing at Laguna Honda and others who have been discharged.

This program is operated by the San Francisco Public Authority and funded by the Department of Aging and Adult Services, which is not connected to Laguna Honda. San Francisco is unable to guarantee funding for this program, but will seek to preserve it as long as possible, taking into account the numerous competing funding needs of the population served.

1. SAN FRANCISCO'S STATEMENT

Dr. Franczak reported that the DCIP's Community Living Plans did not appear to be updated on a regular basis. Dr, Franczak may have not been familiar with all the elements of the online Community Living Plan as the plan is updated to reflect changed conditions and needs. In addition to the Community Living Plan, at the time of discharge, the client's discharge plan includes the Form 705 which is a comprehensive document that includes information such as the individuals who support the client in the community, the client's contact information in the community, all the service providers who will be assisting the client at discharge, such as those that will assist with managing mental health, substance use, securing medical equipment, financial management, meals, etc. The discharge plan also includes the Community Living Plan. At the point of a client's discharge from LHH, the Community Living Plan is current and reflects the individual's needs, preferences and the necessary services. Any subsequent changes in the individual's circumstances are entered by case managers directly in the Community Living Plan, identified with a current date and as additions to

the progress notes.

HOUSING (SECTION VIII)

San Francisco has made housing subsidies available for class members diverted and discharged from Laguna Honda, and has contracted with West Bay Housing Corporation to administer the Laguna Honda Hospital Rental Subsidy Program. As of June 2010, San Francisco has identified and secured 110 scattered-site housing units. As set forth in the Settlement Agreement, housing modifications to make units accessible will be provided for; to date Westbay has completed six wheelchair accessibility projects, has five in progress, and has installed grab bars in sixteen units.

In order to assist class members who want to move out of Laguna Honda but prefer or require supportive or assisted living rather than independent housing, the Community Living Fund (CLF) took on the responsibility to pay the board and care (assisted living facilities) subsidies to enable these class members to live in the community. CLF currently pays board and care subsidies for eighteen class members who have transitioned out of Laguna Honda Hospital. These board and care subsidies now cost $385,000 for the eighteen class members currently being served. As of June 2010, an additional nine class members await discharge to board and care facilities.

MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES (SECTION IX)

By letter dated June 4, 2009, Class Counsel invoked the dispute resolution process set forth in the Settlement Agreement due to delayed timelines and other provisions of this section of the Agreement. Parties met in person to discuss Class Counsel's specific concerns on July 15, 2009. Class Counsel subsequently agreed to defer continuation of a formal dispute resolution process in order to monitor Defendant's implementation of commitments made at that meeting and in further communications. The Parties again met in person on May 4, 2010, and have subsequently held teleconference meetings to discuss Class Counsel's outstanding concerns. San Francisco responded to concerns generated by Dr. Franczak's May 20, 2010 report by letter dated June 2, 2010, and the Parties continue to negotiate regarding Class Counsel's concerns.

1. CLASS COUNSEL'S STATEMENT

Based on Dr. Franczak's findings, and the lack of data provided by San Francisco to Class Counsel regarding mental health and substance abuse services, as discussed below, Class Counsel remain concerned about delays in and lack of data and reporting regarding implementation of the provisions of Sections of the Agreement pertaining to mental health and substance abuse services.

Section IX.B 1-4

In response to the final recommendations from Dr. Davis Ja regarding mental health and substance abuse services provided at LHH as required under this section, San Francisco created the Laguna Honda /Community Behavioral Health Services (LH/CBHS) Recovery and Wellness Implementation Executive Committee. The purpose of the Committee was to develop recommendations regarding behavioral health services focused on meeting the mental health and substance abuse needs of class members at or discharged from Laguna Honda.

In his May 20, 2010 report, Dr. Franczak found that the philosophy and principles set forth by the committee were appropriate to the current needs of the population served by the Agreement. However, he also found that due to lack of integration, continuity, coordination, and collaboration between Community Behavioral Health Services, Laguna Honda and the DCIP, it would be challenging to implement and achieve the stated outcomes of the Committee. In addition, he found that the materials generated by the Recovery and Wellness Committee did not contain specific committee recommendations, implementation plans, or accountable parties, although he noted that the standardized measurement tools proposed were reliable and valid assessment tools.

Given the lack of specific timelines for implementation of and benchmarks for achieving these recommendations and the general delay in their development, Class Counsel are concerned that class members are not being served appropriately. As discussed below, the lack of data also contributes to Class Counsel's concern that the mental health and substance abuse provisions of the Agreement are not being implemented.

Sections V.I.E.2. and IX. C.1

The Settlement Agreement specifically provides for referral to and provision of mental health

and substance abuse services for class members and that all class members will receive mental health and substance abuse services in accordance with their Community Living Plans. The lack of data reporting, as discussed below, and the delay in implementing the Committee recommendations, make it difficult for Class Counsel to determine the extent to which this section of the Settlement Agreement is being implemented. In addition, Dr, Franczak found that although there have been improvements to the Quality Assurance program, the identification of clients who access medical/behavioral health services are not being captured through Quality Assurance.

Section XII

The Settlement Agreement provides for data reporting on, *inter alia*, specific issues related to mental health services and numbers of class members in need of and receiving mental health services. (Settlement Agreement, Attachment A, 30-33). To date Class Counsel has received only one of the four data items required, element 33(names and number of class members receiving CBHS case management pursuant to Section IX.C.1 of the settlement agreement), which San Francisco provided to Class Counsel in its third and fourth quarter 2009 Status Updates. Class Counsel have not received data on three additional elements which are necessary to understand whether and how class members are receiving services to which they are entitled under the Settlement Agreement. In addition, Class Counsel have not been provided with copies of assessments completed on class members, which would yield important information about their needs and whether their needs are being met. This information is vital for Class Counsel; without accurate and comprehensive data, it is difficult to determine the extent of San Francisco's implementation of and compliance with the mental health and substance abuse sections of the Agreement.

At the Court's request, copies of correspondence and the reports referenced above can be made available.

2. SAN FRANCISCO'S STATEMENT

The city agrees with Michael Franczak's observation that many of the class members have diagnoses of mental health and/or substance abuse disorders. The city is offering the identified

services. But of course class members can always refuse services. Membership in the class and placement in the community does not mean that the individual no longer has the right to choose among treatment options. Dr. Franczak went on to note that in each of the cases he reviewed, the city's case manager had offered the class member services; and in every case, the individual had declined services. Dr. Franczak attributed the class members' refusal of services to a lack of training on the part of the case managers in making repeated attempts to engage clients. Dr. Franczak had previously recommended that the city's case managers participate in training in the motivational interviewing technique. This technique involves an intensive and often extended process of encouraging a client to acknowledge the need for services and then to take steps to keep appointments, etc. The city recognized the value of Dr. Franczak's recommendation and a large portion of the city's case managers and placement staff have been trained. The city has offered to provide further training on documentation so that a case manager's efforts at engaging a client will be clearly identified as motivational training. Notwithstanding the city's repeated efforts to convince a client to engage in substance use or mental health treatment, many clients continue to refuse services.

Section XII

Class counsel alleges that the city has not provided them with assessments of class members. This may reflect class counsel's misunderstanding as to the information available to the class counsel through the DCIP database. Counsel may be unaware that they have online access to the MDS-HC (Minimum Data Set-Health Care) assessments completed on class members in the data base under the assessment tab. The city would be glad to assist Plaintiffs' counsel in navigating the online system.

Plaintiffs also note that they have not yet received three data elements out of the 33 required under the settlement agreement. Plaintiffs are correct that they have not received aggregate data on these elements. The city will report on the additional three elements going forward.

Section IX.B 1-4

The city satisfied the obligation to assess the mental health/substance abuse services needed,

provided, and available to all LHH residents. The resulting report was sixty (60) pages in length and contained numerous recommendations. The city exceeded the commitments made in the settlement report by creating a Recovery and Wellness Committee to improve the delivery of all behavioral health services, not just those provided to LHH residents.

LAGUNA HONDA HOSPITAL (SECTION X)

The rebuild of Laguna Honda Hospital is underway and that the planned capacity is no more than 780 skilled nursing beds. The current population of Laguna Honda is 754. San Francisco anticipates moving to the new buildings in August 2010.

QUALITY ASSURANCE (SECTION XIII)

San Francisco reports that Quality Management protocols include in-person visits to class members after they have been discharged into the community. San Francisco developed a Quality Assurance Implementation Plan (QAIP), and now reports on a quarterly basis to Class Counsel as to the Quality Management protocols. In addition, San Francisco reports that clients are followed at regular intervals and by different providers, using a multiple check system when appropriate. Dr. Franczak, he found improvement in the implementation of the Quality Assurance Implementation Plan from his May 2009 review. However, in his review of the Quality Assurance Quality and Volume Indicator reports, he noted that information regarding class members who access behavioral health services is not being captured and reported currently, as mentioned above, nor is information related to barriers to housing retention and community services. Dr. Franczak identifies these three areas as particularly important indicators for the development of a responsive and comprehensive system of care. The Parties are in discussions regarding how to improve Quality Assurance based on Dr. Franczak's findings.

1. SAN FRANCISCO'S STATEMENT

Dr. Franczak observed that the city's Quality Assurance program did not capture class members who access behavioral health services nor information related to the barriers to housing retention and community services. The city initiated collecting quality assessment data in a number of areas, including those related to substance use treatment, mental health service, appropriateness of

housing, and other relevant supportive needs, in late 2009. The data has been reviewed in the Quality Assurance meetings comprised of multi-disciplinary clinical staff members from various departments and community agencies and the data will be included in the city's second quarter report for 2010. Data collection on the barriers to community services will be available by July, 2010.

CONCLUSION

The parties respectfully request that the Court schedule another Case Management Conference in six months.

Respectfully Submitted,

Date: June 9, 2010 By: */s/ James M. Emery*

James M. Emery
Attorneys for Defendant City and County of San Francisco

Date: June 9, 2010 By: */s/ Elissa Gershon*

Elissa Gershon
Attorneys for Plaintiffs

Filer's Attestation: Pursuant to General Order No. 45, § X(B), I attest under penalty of perjury that concurrence in the filing of the document has been obtained from each of its signatories.

Date: June 9, 2010 By: */s/ James M. Emery*

James M. Emery
Attorneys for Defendant City and County of San Francisco