The Honorable Franklin D. Burgess

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

The Arc of Washington State, Inc., a Washington Corporation, on behalf of its members, et al., Plaintiffs vs. Lyle Quasim, in his official capacity as the Secretary of the Washington Department of Social & Health Services, et al., Defendants, and Sharon Allen, et al. Proposed Intervenors.	**Civil Cause No. C99-5577FDB** **Memorandum in Support of Motion To Intervene for Limited Purposes**

I. Introduction

The plaintiff class in Allen, et al v Western State Hospital, et al ("Allen"), C99-5018RJB, and the Washington Protection and Advocacy System ("WPAS"), an organizational plaintiff in Allen, (hereinafter "Applicants") seek to intervene in this action for the limited purpose of objecting to the proposed Settlement Agreement filed in this case, seeking class decertification, and opposing the parties joint Motion for Preliminary Approval of Class Settlement to ensure that their rights and interests under the Allen Settlement are fully protected Applicants are not in any way attempting to lift the stay in Allen Applicants file this memorandum in support of their Motion to Intervene into the above-captioned action as a matter of right under Fed R Civ P 24(a)(2) or, alternatively, permissively under Fed R Civ P 24(b)

II. Relevant Facts

A Arc, et al v Quasim, et al

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On October 9, 1999, three individually named plaintiffs and the Arc of Washington filed a class action with this Court seeking injunctive and declaratory relief to receive Medicaid services with reasonable promptness Plaintiffs did not file a Motion for Class Certification [1] On December 22, 2000, this Court certified a class under Fed R Civ P 23(a) and (b)(2) defined as

> all developmentally disabled persons in the State of Washington who i) meet the medical and financial requirements for eligibility for ICF-MR services, ii)have applied for HCB services, and iii) have not received HCB waiver services, or not received them with reasonable promptness, and individuals who will be similarly situated in the future

Order Granting Plaintiff's Motion to Maintain Class Action, slip op at 6

On April 27, 2001, the existing parties in Arc reached and signed a proposed Settlement Agreement, Release and Order of Stay ("Settlement") The Settlement contains many objectionable provisions See Plaintiffs Objections, attached as Exh 1 As part of this Settlement, the parties agreed that plaintiffs will ask the Court to determine their adequacy as representatives of the class proposed as

> all DDD clients who are eligible for ICF/MR and/or HCBS waiver services administered by DDD in the State of Washington and who are not receiving all the services they need with reasonable promptness and those who may become similarly situated in the future prior to December 31, 2006, the Arc of Washington State, Inc , on its own behalf and on behalf of its members, and the class representatives .

Settlement, ¶ 2 3, attached as Exh 2

In addition, the Settlement includes a provision for "Covered Claims" which specifically waives the rights of the named plaintiffs and members of the plaintiff class to bring a large array of claims that are the subject of the Complaint, including, but not limited to, damages claims, administrative claims, claims under Title II of the Americans with Disabilities Act ("ADA"), and claims under Medicaid, for at least six years See id , ¶ 2 11 The Settlement also states that "[t]his Agreement contains all of the terms agreed upon between the Undersigned Parties, supersedes, and cancels each and every and every [sic] other conflicting Agreement, promise or negotiation between them " Id , ¶ 11 3

The Settlement provides that DSHS will seek $14 million for the current biennium Id at 4 1 -

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[1] Defendants filed a Motion to strike the class allegations from the Complaint This Court deemed plaintiffs' opposition to that motion to be a Motion for Class Certification and ordered defendants to respond to it Order Denying Defendants' Motion to Strike Class Allegations, dated September 15, 2001

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4 2 However, by the state's own estimates, this figure is inadequate [2] DDD will attempt to negotiate an additional undetermined sum Id To Applicants' knowledge, plaintiffs did not enlist the advice of experts in determining the proper scope of relief Decl of Stroh, at ¶ 31

B Allen, et al v Western State Hospital, et al

Allen was filed as a class action in federal court in Tacoma on January 12, 1999, by seven individual plaintiffs and two organizational plaintiffs, including the WPAS, seeking injunctive and declaratory relief for violations of the plaintiffs' class' rights under the Fourteenth Amendment of the United States Constitution and other federal laws including, but not limited to, the ADA, due to inadequate care at WSH and in the community All of the Arc defendants are defendants in Allen See Arc Complaint, Allen Complaint, dated 1/12/99, attached as Exh 3

On May 18, 1999, the Honorable Robert J Bryan certified Allen as a class action with WPAS and the named plaintiffs as class representatives The class was defined as follows

> individuals with developmental disabilities 1) who presently reside at Western State Hospital, 2) who have been discharged from Western State Hospital after June 1, 1997, to residential habilitation centers, or community living arrangements funded, operated or licensed by the defendants, and 3) who will be admitted to Western State Hospital in the future

Order Certifying Class Action, slip op at 11, attached as Exh 4

The Allen class currently includes over 200 individuals and is expected to grow See Decl of Stroh, ¶ 12 Allen class members[3] either currently do not get all the services they need with reasonable promptness or are likely to be similarly situated in the future Decl of Gardner at ¶14, Decl of Beasley at ¶ 14 Thus, most Allen class members are members of the Court certified class in the Arc Moreover, most, if not all, Allen class members are or will be members of the proposed class as defined in the Arc Settlement Thus, the Arc class, under either definition, encompasses virtually the entire Allen class

On December 2, 1999, the Honorable Robert J Bryan signed an Agreed Order on Joint Motion

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[2] A study conducted by the Division of Developmental Disabilities ("DDD") found that "the total increased costs to provide the service and support needs of all the FY 2001 caseload exceeds $262 6 million General Fund -state dollars ($447 million total) " Decl of Stroh,¶ 32, Exh 14

[3] The Allen class members include individuals who are currently admitted to Western State Hospital ("WSH"), and are in need of appropriate community supports funded under the Home and Community Based Services Waiver ("HCBS") or as Intermediate Care Facilities for individuals with developmental disabilities ("ICFs") See Decl of Gardner at ¶ 10, Decl of Beasley at ¶ 11 Additionally, the class includes individuals who have been at WSH, but who currently reside at residential habilitation centers ("RHCs"), which are licensed as ICFs, or in community programs contracting with DDD, most of which are funded or licensed as HCBS or ICF See Decl of Gardner at 11, Decl of Beasley at 10, Decl of Stroh at ¶ 34, Exh 15, at 8 - 10

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to Stay Proceedings in Allen ("Agreed Order") See Agreed Order, attached as Exh 5 The Allen Settlement addressed the claims raised in the Complaint including, but not limited to claims under the ADA that individuals should be served in the most integrated setting appropriate to their individuals needs See id Additionally, plaintiffs filed a motion[4] to amend the Complaint to include Medicaid claims to ensure the provision of adequate community services See Decl of Stroh, ¶ 8, Exh 5

The terms of the Allen settlement stays plaintiffs' claims while requiring that defendants complete three phases of implementation to improve community supports and services at WSH Agreed Order at 1 and attachment 1 at p 3- 14, Exh 5 If plaintiffs in Allen believe that defendants are not complying with the settlement agreement, their only remedy is to lift the stay and try the case Id at 2 - 3 Additionally, the Allen settlement preserves all of the Allen class members, including claims for damages and other relevant claims Id at 3

The Settlement in Arc conflicts with and potentially impairs the rights of the Allen class members The "Covered Claims" in the proposed Settlement Agreement waives claims specifically preserved in the Allen settlement Arc Settlement at ¶ 2 11, Agreed Order, at 3 Thus, if plaintiffs were to lift the stay in Allen, they may be precluded from raising their ADA and proposed Medicaid claims because of the waiver in the Arc Settlement The Allen class members may not be able to raise damages claims which were preserved under the Settlement Agreed Order, at 3_ Moreover, the Arc Settlement contains a provision which supersedes and cancels all previous Agreements, which may include the Allen Settlement since all of the Arc defendants are Allen defendants and most, if not all, Allen class members are Arc class members. See Settlement at ¶ 11 3

The Settlement impairs WPAS' role as the designated protection and advocacy agency for the state of Washington RCW 71A 10 080, see also Decl of Stroh, ¶¶ 3- 5 and 24- 25 WPAS has the authority and is mandated to pursue any necessary remedies and relief, including legal action, on behalf of individuals with developmental disabilities and other disabilities to redress any rights violations 42 U S C § 6042, 45 C F R § 1386 21 The Governor of Washington has guaranteed that WPAS will have

[4] This motion was pending at the time the parties reached settlement and, therefore, the court did not rule on it See Agreed Order, at 1, Decl of Stroh, ¶ 8 The essence of this claim was to ensure that individuals with developmental disabilities with mental health needs are not unnecessarily admitted to WSH, but rather receive all their medically necessary services in the community Decl Of Stroh, ¶ 8

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the ability to meet all of its federal obligations including pursuing legal action See Decl of Stroh, ¶ 5, Exh 4 The provisions of the Arc Settlement impede this authority and mandate Id , ¶¶ 24 - 25

Applicants met and corresponded with plaintiffs to discuss concerns and considerations regarding the potential settlement including the preclusive and binding effects of the proposed language on unnamed class members and requested an opportunity to comment on drafts Id , ¶¶ 14 - 17, Exhs 6-7 On April 25, 2001, plaintiffs provided Applicants with a draft of defendants' proposed settlement agreement and assured Applicants they would have time to comment on future drafts Id at ¶ 17, Exh 7 On April 30, 2001, WPAS learned of the final settlement Id at ¶¶ 16 - 17, Exh 7 On May 1, 2001, Applicants sent a letter to plaintiffs, setting forth in detail Applicants' serious concerns regarding the settlement Id at ¶ 17, Exh 7

Beginning on June 15, 2001, Applicants corresponded with plaintiffs and defendants stating their intention to preserve their rights and to intervene if their interests remain neglected Id at ¶¶ 18, 20, Exh 8, 11 Plaintiffs were willing to exclude the Allen class members from the Settlement, but defendants refused See id , ¶¶ 19, 21, Exhs 9, 10, 12 and 13 The Settlement was filed on August 16, 2001 and one week later Applicants file the attached Motion for Limited Intervention

III. Legal Argument

A Limited Intervention Is Permissible

An applicant may intervene for limited purposes, such as challenging a proposed settlement Kirkland v New York State Dept of Corrections, 711 F 2d 1117, 1125 (2d Cir 1983) Indeed, it is often the trial court which limits the status of the intervention See id at 1121 (Applicants sought full intervention, but were only granted partial intervention), see also Shore v Parklane Hosiery Co , 606 F 2d 354, 355 (2d Cir 1979) Thus, it is neither unusual nor objectionable that here Applicants have sought intervention for limited purposes

Although Fed R Civ P 24(c) requires a party moving to intervene to file a pleading such as a Complaint or Answer along with the Motion to Intervene, the courts have not applied this rule strictly See Beckman Industries, Inc v International Insurance Co , 966 F 2d 470, 474 (9th Cir 1992) Where the movant describes the basis for intervention with sufficient specificity to allow the district court to rule, the failure to submit a pleading is not grounds for reversal Id at 475

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Here, Applicants fully describe the basis for their Motions to Intervene, to Decertify the Class and in their Objections in the accompanying motions and memoranda See "Facts", § II above Applicants are not raising claims against defendants requiring the filing of a Complaint

B Applicants Meet the Criteria Required for Intervention as a Matter of Right under Federal Rules of Civil Procedure Rule 24(a)(2)

Rule 24(a)(2) of the Federal Rules of Civil Procedure requires intervention as a matter of right

> when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties

Thus, intervention as a matter of right requires that 1) the applicant file a timely application to intervene, 2) the applicant have a "significantly protectable" interest related to the property or transaction involved in the pending lawsuit, 3) disposition of the lawsuit may adversely affect applicant's interest unless intervention is allowed, and 4) the existing parties do not adequately represent the would-be intervenor's interest See Cabazon Band of Mission Indians v Wilson, 124 F 3d 1050, 1061 (9th Cir 1997), cert denied, 524 U S 926 Rule 24 is to be interpreted "broadly in favor of intervention " Forest Conservation Council v United States Forest Ser , 66 F 3d 1489, 1493 (9th Cir 1995) Here, Applicants meet all four criteria for intervention as a matter of right

1. Intervenors' Application is Timely

Under Rule 24(a)(2), timeliness is a threshold requirement League of United Latin American Citizens v Wilson, 131 F 3d 1297, 1302 (9th Cir 1997) The Ninth Circuit considers three factors to determine an application's timeliness a) the stage of the proceedings at the time of application, b) the length of and any reason for delay in moving to intervene, and c) the prejudice caused to existing parties from applicant's delay in moving to intervene See United States v State of Washington, 86 F 3d 1499, 1503 (9th Cir 1996) "The timeliness factor is essentially a reasonableness inquiry, requiring potential intervenors to be reasonably diligent in learning of a suit that might affect their rights, and upon learning of such a suit, to act to intervene reasonably promptly " People Who Care v Rockford Bd of Ed , 68 F 3d 172, 175 (7th Cir 1995) The timeliness requirement is to be reviewed in a manner most favorable to intervention, especially in consideration of intervention as a matter of right Forest Conservation

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Council, 66 F 3d at 1493, United States v Oregon, 745 F.2d 550, 552 (9th Cir 1984)

a. The Stage of the Proceedings is Relatively Early

The stage of proceedings should be considered when determining timeliness of application See State of Washington, 86 F 3d at 1503 A threat to any substantial investment of time and resources made by either party or the court will count against granting intervention See League of the United Latin American Citizens, 131 F 3d at 1302 Here, the case has not yet gone to trial and is currently stayed See Arc Complaint, dated 11/9/99, See Stipulation and Order Striking Trial Date and Staying Litigation, dated May 8, 2001 Although the parties are in the settlement stage of the proceedings, intervention by Applicants at this juncture is timely and appropriate The reason for Applicants' motion rests with the terms of the proposed Settlement which was only filed on August 16, 2001 See "Facts", Section II above Furthermore, federal rules contemplate that the parties will voice their objections at this juncture, and that class certification will be reconsidered as necessary throughout litigation Fed R Civ P 23 (e) and (c)(1) Accordingly, Applicants' motion is timely

b. Applicants Have Not Delayed Their Motion

The length of and the reason for delay for filing a motion to intervene must also be considered by the Court when determining whether to grant an applicant leave to intervene as a matter of right State of Washington, 86 F 3d at 1502 The measurement of delay begins at the point at which the applicant becomes aware that the existing parties are not protecting his or her interests United Airlines, Inc v McDonald, 432 U S 385, 394 (1977). Intervention for the purpose of objecting to a settlement is timely if made after notice of the settlement has gone out See Crawford v Equifax Payment Services, Inc , 201 F 3d 877, 881 (7th Cir 2000) (application timely, where applicants began preparation for intervention immediately after the existing parties provided unnamed class members notice)

Here, Applicants seek to intervene for limited purposes Applicants did not discover that their interests were not being adequately protected until counsel for Applicants obtained the Settlement on May 1, 2001 [5] After reviewing the Settlement and determining that it conflicted with the Allen

[5] Applicants did not receive draft of defendants proposed settlement agreement until April 25, 2001 Decl of Stroh at ¶ 17, Exh 7 In addition, Applicants received assurances from plaintiffs that they would have an opportunity to review and comment on the final settlement language before plaintiffs would agree to anything with the defendants Id Despite these assurances, Applicants were not afforded such an opportunity Id

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settlement and did not protect the interests of the plaintiff class in Allen and of WPAS, Applicants attempted, throughout June and July 2001, to resolve the situation with plaintiffs and defendants in an effort to avert litigation, but to no avail Thus, Applicants filed this motion only one week after learning that the Settlement had been filed One week is clearly not an undue delay

c. Intervention by Applicants Will Not Prejudice the Parties

When determining timeliness of application to intervene, the Court should consider any prejudice caused to the parties due to the applicant's delay in moving to intervene State of Washington, 86 F 3d at 1503 Prejudice as a result of delay is a "crucial" factor in determining whether leave for intervention as a matter of right should be granted Petrol Stops Northwest v Continental Oil Co , 647 F 2d 1005, 1010 (9th Cir 1981)

Here, neither plaintiffs nor defendants will be prejudiced by Applicants' intervention First, Applicants placed plaintiffs on notice of their concerns regarding the settlement negotiations immediately after learning of the provisions of the proposed settlement See "Facts", § II above Soon thereafter, Applicants alerted defendants to their concerns and both parties were given written notice of Applicants' intention to protect the legal interests of the Allen class members Id Second, Applicants are entitled to notice of settlement and proper time to object to it See Fed R Civ P 23(e) Clearly, the drafters of the federal rules recognized that intervention to object is not prejudicial Finally, Applicants only seek to intervene only for limited purposes Thus, the existing parties will not be prejudiced by Applicant's intervention at this time

2. Applicants Have a "Significantly Protectable" Interest Related to the Property or Transaction Involved in the Pending Lawsuit.

Under Rule 24(a)(2) a party moving for intervention as a matter of right must show "a protectable interest of significant magnitude to warrant inclusion in the action " Cabazon Band of Mission Indians, 124 F 3d at 1061 An applicant has significant protectable interest in an action if a) it asserts an interest that is protected under some law, and b) there is a relationship between its legally protected interest and the plaintiff's claims See Northwest Forest Resource Council v Glickman, 82 F 3d 825, 837 (9th Cir 1996) The "protectable interest" requirement is to be viewed most favorably to intervention Forest Conservation Council, 66 F 3d at 1493

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a. Applicants Have An Interest in this Litigation Which Is Protected by Law

"Prospective intervenor's interest need only be protected under *some* law " Northwest Forest Resource Council, 82 F 3d at 837 (citation omitted) Applicants in this case have a significant protectable interest in Arc that is legally protected under the Allen Settlement and federal law

The class members overlap, the defendants overlap, and the terms of the Arc Settlement directly conflict with the provisions of the Allen Settlement impeding the Allen class members' ability to raise claims including, but not limited to those under the ADA and Medicaid against the Arc defendants See "Facts", § II above WPAS also has a significant legally protectable interest in this litigation WPAS has the authority and a mandate under federal law to pursue legal, administrative, and other appropriate remedies for individuals with developmental disabilities See "Facts", § II above Thus, Applicants have significant protectable interest protected under *some* laws including the Allen Agreed Order, the ADA, Medicaid and 42 U S C § 6042

b. There is a Relationship Between Applicants' Legally Protected Interests and Plaintiffs' Claims

The "protectable interest" requirement is generally satisfied when the disposition of plaintiff's claims will have an actual effect on the applicant Donnelly v Glickman, 159 F 3d 405, 410 (9th Cir 1998), Northwest Forest Resource Council, 82 F 3d at 837 Here, due to the overlap and conflict between class members in Allen and Arc, the proposed Settlement in Arc will clearly have an "actual effect" on Applicants See "Facts", § II above

Additionally, the Arc Settlement significantly impedes WPAS' ability to fulfill its federal mandate The overly broad language in the Arc Settlement's "Waiver" and "Settlement" sections may impede WPAS' ability to bring legal claims on behalf of individuals with developmental disabilities, including lifting the Allen stay and litigating claims such as those under the ADA and Medicaid

3. The Disposition of the Lawsuit May Adversely Affect Applicants' Interest Unless Intervention is Allowed.

Under Fed R of Civ P 24(a)(2), a party moving for intervention as of right must show that its interest may be adversely affected absent intervention See Cabazon Band of Mission Indians, 124 F 3d at 1061 For example, a judicial decision, which "as a practical matter" would foreclose the would-be intervenor's interest, is a sufficient impairment to satisfy this requirement, despite a subsequent technical

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ability to protect that interest See Sierra Club v United States EPA, 995 F 2d 1478, 1481, 1486 (9th Cir 1993) The "adverse effect" requirement is to be applied in a manner most favorable to intervention See Forest Conservation Council, 66 F 3d at 1493

Here, unless intervention is granted, Applicants will not have the necessary party status to preserve their appellate rights Furthermore, Applicants must intervene in order to seek decertification of the class to protect their interests Since only parties are generally permitted to appeal, "it is vital that the district courts freely allow the intervention of unnamed class members who object to proposed settlements and want an option to appeal an adverse decision " Crawford 201 F 3d at 881

4. The Existing Parties in Arc Do Not Adequately Represent Applicants' Interests.

A party moving for intervention as a matter of right must show that the existing parties of the action do not adequately represent the moving party Fed R Civ P 24(a)(2), Cabazon Band of Mission Indians, 124 F 3d at 1061 However, a minimal showing of inadequacy is sufficient Sagebrush att, 713 F 2d 525, 528 (9th Cir 1983) A showing that representation "may be inadequate" is sufficient Trbovich v United Mine Workers, 404 U S 528, 538 n 10 (1972) (emphasis added) While there is presumption of adequate representation if one of the existing parties shares the same "ultimate objective" as the applicant, the court will also consider a number of factors which may override such a presumption See Northwest Forest Council, 82 F 3d at 838 These factors include a) whether the existing parties will "undoubtedly" make all of the intervenor's arguments, b) whether they are capable of and willing to make these arguments, c) and whether the intervenor would add some necessary element to the suit that would otherwise be neglected See Forest Conservation Council, 66 F 3d at 1489- 99 The "inadequate representation" requirement is to be viewed in the light most favorable to intervention Id at 1493

Here, the existing parties in Arc have entered into a Settlement that does not adequately protect Applicants' interests, and in fact compromises those interests See "Facts", § II above, see also Objections Additionally, they are unwilling to protect Applicants' interests, as they refused to stipulate to remove the Allen class from the Arc class Id Additionally, as detailed in Applicants' Motion for Decertification of the Class, plaintiffs in Arc do not adequately represent the interests of the class See Applicants' Motion for Decertification of the Class and supporting memorandum and documents

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Accordingly, Applicants meet the standard for intervention as of right

C Applicants Meet the Criteria for Permissive Intervention under Fed R Civ P 24(b)

Applicants also meet the requirements for permissive intervention Under Fed R Civ P 24(b), courts have discretion to grant permissive intervention where a proposed intervenor shows that "(1) it shares a common question of law or fact with the main action, (2) its application is timely, and (3) the court has an independent basis for jurisdiction over the applicant's claims " Donnelly, 159 F 3d at 412, San Jose Mercury News, Inc v U S Dist Court – Northern Dist (San Jose), 187 F 3d 1096, 1100 (9th Cir 1999)

1. Applicants' Motion Is Timely

Applicants' Motion to Intervene here is timely See § III B 1 above While the timeliness standard is applied more leniently for intervention as a matter of right than for permissive intervention, Applicants have not delayed in moving to intervene for limited purposes United States v Oregon, 745 F 2d at 552 Applicants waited only one week to file this motion from the filing of the Settlement Thus, Applicants' motion is timely

2. Common Questions of Law and Fact Exist

A common question of law or fact must exist between the Applicants' claims and the main action Donnelly, 159 F 3d at 412, Venegas v Skaggs, 867 F 2d 527, 530 (9th Cir 1989), Stallworth v Monsanto Co , 558 F 2d 257, 264 (5th Cir 1977) [6]

Here, Applicants' claims raise common questions of both law and fact with the Arc case All defendants in Arc are defendants in Allen and most, if not all, Allen class members are members of the Arc class Both classes in Arc and Allen assert claims under the ADA and Medicaid, and the provisions of the Settlement in Arc conflict with the Allen Settlement and WPAS' federal rights

3. There Are Independent Grounds for Jurisdiction

The Court must have an independent source of federal subject matter jurisdiction San Jose Mercury News, Inc, 187 F 3d at 1100, see, e g , Northwest Forest Resource Council, 82 F 3d at 839 (denying permissive intervention where intervenors failed to allege grounds for independent

[6] The Fifth Circuit found that a common question of law and fact existed when non-union white employees claimed that remedial provisions of consent order entered by the district court in a civil rights case instituted by black employees unnecessarily deprived the white employees of their seniority rights

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jurisdiction) Under 28 U S C § 1331 courts have "original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States " Here, Applicants seek to intervene in order to protect the rights of Allen class members under the ADA and Medicaid Additionally, WPAS seeks intervention to protect its interests and fulfill its responsibilities under its federal mandates 42 U S C § 6042, see also 45 C F R § 1386 21 Thus, Applicants have claims arising under the laws of the United States, they have an independent source of subject matter jurisdiction pursuant to 28 U S C § 1331

4. Court Discretion

Once the court determines that all of the grounds for permissive intervention exist, it must apply its own discretion to determine whether to permit the intervention Venegas, 867 F 2d at 530, San Jose Mercury News, 187 F 3d at 1100 Courts consider factors such as prejudice to existing parties and judicial economy Venegas, 867 F 2d at 530-31 The existing parties are required to allege the delay or prejudice resulting from permissive intervention Id at 530

As discussed in Section III B 1 C above, intervention will not prejudice the existing parties Additionally, allowing Applicants to intervene may serve judicial economy by simplifying the pending litigation One of Applicants' purposes in intervening is to decertifying the class Thus, if the class is decertified, litigation will be limited to three individual plaintiffs and an organizational plaintiff, making it more manageable for the court

IV. Conclusion

For the reasons outlined above, Applicants' Motion to Intervene should be granted

Dated this 23rd day of August, 2001

Respectfully submitted,
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