Kathleen L. Wilde, OSB No. 971053
kwilde@disabilityrightsoregon.org
James A. Wrigley, OSB No. 904134
jwrigley@disabilityrightsoregon.org
Theodore E. Wenk, OSB No. 001239
ted@disabilityrightsoregon.org
DISABILITY RIGHTS OREGON
620 S.W. Fifth Avenue, Suite 500
Portland, Oregon 97204
Telephone: (503) 243-2081
Fax: (503) 243-1738
Attorneys for Plaintiffs

[ADDITIONAL COUNSEL APPEAR ON SIGNATURE PAGE]

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

PORTLAND DIVISION

PAULA LANE; **ANDRES PANIAGUA**; **ELIZABETH HARRAH**; **ANGELA KEHLER**; **GRETCHEN CASON**; **LORI ROBERTSON**; **SPARKLE GREEN**; and **ZAVIER KINVILLE**,

on behalf of themselves and all others similarly situated, and

UNITED CEREBRAL PALSY OF OREGON AND S.W. WASHINGTON,

Plaintiffs,

v.

JOHN KITZHABER, Governor of the State of Oregon; **ERINN KELLEY-SIEL**, Director of the Oregon Department of Human Services; **MARY LEE FAY**, Administrator of the Office of Developmental Disability Services; **STEPHAINE PARRISH TAYLOR**, Administrator of the Office of Vocational Rehabilitation Services,

all in their official capacities,

Defendants.

Case No.: 3:12-cv-00138-ST

CLASS ACTION ALLEGATION

PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR CLASS CERTIFICATION

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

STATUTES

OTHER AUTHORITIES

I. INTRODUCTION

On January 25, 2012, Paula Lane, Andres Paniagua, Elizabeth Harrah, Angela Kehler, Gretchen Cason, Lori Robertson, Sparkle Green, and Zavier Kinville (collectively the "named plaintiffs") filed their class action complaint on behalf of themselves and other individuals with intellectual or developmental disabilities who are in, or who have been referred to, sheltered workshops. They seek injunctive and declaratory relief under Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101 and 12131 *et seq.*, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 ("Section 504"), including an order directing the defendants to end their needless segregation of plaintiffs in sheltered workshops and to provide plaintiffs with supported employment services so they can participate in competitive employment in integrated settings.

Rule 23(c)(1) of the Federal Rules of Civil Procedure states that as soon as practicable after the commencement of an action, the court shall determine whether the matter is to be maintained as a class action. The plaintiffs' Motion for Class Certification requests certification of a class consisting of all individuals residing in Oregon with intellectual or developmental disabilities who are in, or who have been referred to, sheltered workshops. This Memorandum is submitted in support of that Motion.

II. STATEMENT OF FACTS

The named plaintiffs are all persons with disabilities within the meaning of the ADA and Section 504, since they all are substantially limited in major life activities such as learning and functioning due to their intellectual and developmental disabilities. Each of the named plaintiffs is qualified for and receives employment services from the Oregon Department of Human Services ("DHS"). Although the named plaintiffs are able and would prefer to work in an integrated employment setting, they remain unnecessarily segregated in sheltered workshops and are denied virtually all contact with non-disabled persons in these workshops, as a direct result of

the defendants' administration, management, and funding of their employment service system. Compl., ¶¶ 1-2.

Thousands of similarly-situated individuals in the State of Oregon also are unnecessarily segregated because of the defendants' excessive reliance on sheltered workshops, their failure to timely develop and adequately fund integrated employment services, including supported employment programs, and their failure to conduct professionally adequate assessments of people's abilities. Compl., ¶¶ 5-6. *See* Declaration of Ann Coffey ("Coffey Decl.") ¶ 5, attached hereto as Exhibit 1.

The named plaintiffs and the class they seek to represent are harmed by their placement in segregated sheltered workshops. The defendants' own documents acknowledge this persistent pattern of segregation. *See* Declaration of Theodore Wenk Regarding Exhibits in Support of Plaintiffs' Motion for Class Certification ("Wenk Decl."), Ex. 2 at 7 (*Community Leadership for Employment First in Oregon* (2010), available at *http://www.dhs.state.or.us/dd/supp_emp/docs/wise.pdf* ("Call to Action Report")[1] (as of 2008, "71% of Oregonians with disabilities were in facility-based programs, supporting the claim that a majority of working age adults with significant disabilities are supported today in programs that offer segregation and long-term dependency"); Wenk Decl., Ex. 3 at 17 (Jane Steveley, *Supported Employment for Oregonians with Developmental Disabilities: Recommendations for Action* (2005), available at *http://www.oregon.gov/DHS/vr/eep/se_dd_stevely.doc* ("the White

[1] As described in the Wenk Declaration, the Call to Action Report was generated in 2010 by the Oregon Employment First Outreach Project, which is a joint project of the Oregon state agencies that serve persons with developmental disabilities. The Call to Action Report contained numerous recommendations for effectuating Employment First's mission, but DHS and the Office of Developmental Disability Services ("ODDS") have not implemented most of those recommendations. Compl., ¶ 105.

Paper").[2] (Over 80% of individuals in the Comprehensive Services Waiver reported spending their days in segregated settings; over 45% indicated there are no people without disabilities in their immediate environment; over 38% reported there were 1-5 people without disabilities; and over 60% reported rare interactions or only exchanging greetings with people without disabilities in the work setting, excluding paid staff.)

Without meaningful supported employment services, the plaintiffs are stuck in long-term, dead-end, segregated workshops that offer virtually no interaction with non-disabled peers, that do not provide any real pathway to integrated employment, and that provide compensation that is well below minimum wage. Compl., ¶¶ 7, 108; *see also* Coffey Decl. ¶ 6. Each year several hundred young people with intellectual and developmental disabilities graduate, age out, or otherwise leave special educational vocational training programs and are harmed by their referral and relegation to segregated sheltered workshops, despite their training, talents, interests, and ambitions. Compl., ¶¶ 109-10.

III. STANDARDS FOR CLASS CERTIFICATION

The party moving for class certification must satisfy all of the requirements of Rule 23(a) of the Federal Rules of Civil Procedure, as well as at least one of the subdivisions of Rule 23(b).

Rule 23(a) has four distinct criteria: (1) the class must be so numerous that joinder of all members is impracticable; (2) the members of the class must share common questions of law or fact; (3) the claims or defenses of the named representatives must be typical of those of the class; and (4) the persons representing the class must be able to fairly and adequately represent the interests of the class. Fed. R. Civ. P. 23(a)(1)-(4); *see Rodriguez v. Hayes*, 591 F.3d 1105 (9th Cir. 2010) (certifying a class of aliens detained during immigration proceedings for more than six

[2] As described in the Wenk Declaration, the White Paper was issued in 2005 by the Oregon Council on Developmental Disabilities. Among other recommendations, the White Paper emphasized the need to examine the policies of other states that had successfully implemented supported employment programs for individuals with developmental disabilities, as well as the need to build provider capacity to deliver supported employment services. Compl., ¶ 100.

months without a hearing even though class members were detained for different reasons, under authority of different statutes, and were at different points in removal process, since all class members raised similar constitutionally-based arguments and were alleged victims of the same practice of prolonged detention); *Wilcox Development Co. v. First Interstate Bank*, 97 F.R.D. 440, 443 (D. Or. 1983); *Staley v. Kitzhaber,* No. 00-cv-78 (D. Or. Oct. 30, 2000) (certifying for settlement purposes a class of persons with intellectual and developmental disabilities who need support services to live in integrated community settings).

Rule 23(b) also has three subparts, though only one must be satisfied to qualify for class certification. The relevant subpart in this case requires that the defendants act or refuse to act on grounds generally applicable to the class, making declaratory or injunctive relief appropriate. Fed. R. Civ. P. 23(b)(2). *See Sorenson v. Concannon,* 893 F. Supp. 1469, 1479 (D. Or. 1994) (plaintiffs who alleged injury as a result of delay and denial of Social Security benefits satisfied requirement for class certification by showing that defendants acted on grounds generally applicable to class which would make injunctive and declaratory relief appropriate with respect to class as whole); *see also Walters v. Reno,* 145 F.3d 1032, 1047 (9th Cir. 1998); *Gete v. Immigration & Naturalization Service,* 121 F.3d 1285 (9th Cir. 1997).

In almost every case involving a challenge under Title II of the ADA and/or Section 504 to discriminatory governmental policies and practices, courts have certified a class. *See, e.g.,* 7 Newberg on Class Actions § 23:10 (4th ed. 2011). This is particularly true with respect to cases claiming a violation of the integration mandate of the ADA. *See* List of Selected ADA Class Action Cases, attached as Appendix to this Memorandum. Thus, it is now common practice for courts to certify a class consisting of persons with disabilities who are unnecessarily segregated as a result of the state defendants' policies, practices, and discriminatory administration of their service systems.

IV. THE PROPOSED CLASS MEETS THE REQUIREMENTS OF RULE 23(A)

A. The Class Is So Numerous That Joinder of All Members Is Impractical.

Rule 23(a)(1) of the Federal Rules of Civil Procedure has two components: the number of class members and the practicability of joining them individually in the case.

The first element presents a relatively "low threshold" for plaintiffs, and does not impose a precise numerical requirement for purposes of certification. Here the proposed class consists of at least two thousand (2,000) members and is clearly sufficient to satisfy the numerosity requirement. *See* Wenk Decl., Ex. 5 (Institute for Community Inclusion: StateData.info, *http://www.statedata.info/charts/comparison_2.php?agency=agency_mrdd&state%5B%5D=OR&state%5B%5D=OR&state%5B%5D=0&var=Facility-based+work* (last visited Feb. 21, 2012).[3] Typically, classes consisting of only a fraction of this number are certified under Rule 23(a)(1). *See Immigrant Assistance Project of Los Angeles County Federation of Labor v. INS*, 306 F.3d 842, 869 (9th Cir. 2002) (noting case that found classes of 39, 64, and 71 met the numerosity requirement); *Jordan v. County of Los Angeles*, 669 F.2d 1311, 1319 (9th Cir. 1982), *vacated on other grounds*, 459 U.S. 810 (1982) (citing same cases); *Acosta v. Trans Union, LLC*, 243 F.R.D. 377, 384 (C.D. Cal. 2007) ("[C]ourts have consistently held that joinder is impracticable in cases involving more than 35 parties."). This Court has held that approximately 40 members is sufficient to satisfy the numerosity requirement. *Staley,* No. 00-cv-78 at 4*; Wilcox Development Co. v. First Interstate*

[3] As described in the Wenk Declaration, data is collected by the Institute for Community Inclusion ("ICI") which is a federally-funded entity that collects extensive information from every state on the services they provided to persons with developmental disabilities. ICI's StateData.info web site provides information, by state, concerning the number of persons in facility-based employment (sheltered workshops) and community-based employment (supported employment). StateData.info also provides information about the funding from various agencies for their employment programs in each state, as well as trend data concerning services, funding, and persons served for the past 20 years. StateData.info is considered one of the most reliable sources of information about state developmental disability services, and particularly the extent to which states continue to support segregation in employment through sheltered workshops.

Bank, 97 F.R.D. 440, 443 (D. Or. 1983) ("This district has held that, as a rough rule of thumb, approximately forty members is sufficient to satisfy the numerosity requirement.").

The plaintiffs need not establish the precise number or identity of proposed class members, particularly in Rule 23(b)(2) classes. *Yaffe v. Powers*, 454 F.2d 1362, 1366 (1st Cir. 1972) (in civil rights actions members of the class are often "incapable of specific enumeration") (quoting Committee's Notes to Revised Rule 23, 3B Moore's Federal Practice 23.0 [10-2](2d ed. 1969); *Carpenter v. Davis*, 424 F.2d 257, 260 (5th Cir. 1970); *In re Computer Memories Securities Lit.*, 111 F.R.D. 675, 679 (N.D. Cal. 1986); *Ikonen v. Hartz Mountain Corp.*, 122 F.R.D. 258, 261 (S.D. Cal. 1988) ("When considering numerosity and impracticability of joinder, it is unnecessary for the class representatives to either identify each particular member of a class, or to state the exact number of persons in a class"); *Westcott v. Califano*, 460 F. Supp. 737, 744 (D. Mass. 1978); *Jane B. v. New York City Dept. of Social Servs.*, 117 F.R.D. 64, 70 (S.D.N.Y. 1987) (precise determination of proposed class not a prerequisite to maintenance of a class action).

The second element of the numerosity requirement requires courts to examine the impracticability of joining all class members. Significant weight is given to factors such as the plaintiffs' ability to bring their own separate actions, their geographical diversity, and the likely presence of unidentified, future class members. *Jordan,* 669 F.2d at 1319 ("The joinder of unknown individuals is inherently impractical"), *vacated on other grounds*, 459 U.S. 810 (1982); *National Ass'n. of Radiation Survivors v. Walters*, 111 F.R.D. 595, 599 (N.D. Cal. 1986).

In the present case, the named plaintiffs seek injunctive and declaratory relief on behalf of themselves and over 2,000 other persons with intellectual and developmental disabilities who are in almost 100 sheltered workshops scattered throughout Oregon. As a result, the class is characterized by size, geographic diversity, and disabling limitations that make joinder of all members impracticable.

In certifying classes comprised of individuals with disabilities, courts also have relied upon a combination of factors, including the class members' segregation, the nature or effect of their disabilities, and their limited access to attorneys. *See, e.g., Armstead v. Pingree*, 629 F. Supp. 273, 279 (M.D. Fla. 1986) ("Considering plaintiffs' confinement, their economic resources, and their mental handicaps, it is highly unlikely that separate actions would follow if class treatment were denied."). Much like the plaintiffs in *Armstead*, it would be extremely difficult, and thus impracticable, for the members of the proposed class to maintain individual suits against the defendants, particularly given the persistent nature of their disabilities and their limited financial resources. Therefore, it is highly unlikely that individual class members could institute separate suits for declaratory and injunctive relief in this case, in the event class certification is denied. *See, e.g., Staley*, No. 00-cv-78 (certifying class for settlement purposes a class of individuals with developmental disabilities seeking Medicaid services in integrated community settings); *Van Meter v. Harvey*, 272 F.R.D. 274, 282 (D. Me. 2011); *Raymond v. Rowland,* 220 F.R.D. 173, 179 (D. Conn. 2004) (multiple factors indicate that disabled and impoverished nursing home residents unlikely to maintain individual actions for relief).

The proposed class members are all seriously disabled adults with intellectual and developmental disabilities, who comprise "precisely the type of group which class treatment was designed to protect." *Armstead*, 629 F. Supp. at 279. Under these circumstances "the difficulty or inconvenience of joining all members makes class litigation desirable." *Koster v. Perales*, 108 F.R.D. 46, 49 (E.D.N.Y. 1985) (quoting *Northwestern National Bank of Minneapolis v. Fox & Co.*, 102 F.R.D. 507, 511 (S.D.N.Y. 1984)); *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913-4 (9th Cir. 1964) ("'[I]mpracticability' does not mean 'impossibility,' but only the difficulty or inconvenience of joining all members of the class.") (quoting *Advertising Specialty Nat. Ass'n, v. FTC*, 238 F.2d 108, 119 (1st Cir. 1956))); *Risinger v. Concannon*, 201 F.R.D. 16, 19

(D. Me. 2001) (difficulties associated with identifying and formally joining a geographically dispersed group of more than 391 disabled children and families made joinder impractical).

Therefore, in light of its size and the circumstances of those persons who compromise it, the proposed class satisfies the requirements of Rule 23(a)(1).

B. *Members of the Class Share Common Questions of Law and Fact.*

Fed. R. Civ. P. 23(a)(2) requires that there be "questions of law or fact common to the class." *Parra v. Bashas*, 536 F.3d 975, 978 (9th Cir. 2008) (plaintiffs' allegations of discriminatory pay policies, practices and working conditions met commonality requirement). The commonality requirement "'serves chiefly two purposes: (1) ensuring that absentee members are fairly and adequately represented; and (2) ensuring practical and efficient case management.'" *Rodriguez*, 591 F.3d at 1122 (quoting *Walters v. Reno*, 145 F.3d 1032, 1045 (9th Cir. 1998)).

Rule 23(a)'s commonality requirement is permissively construed. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998). "Common" for purposes of Rule 23(a)(2) does not require "complete congruence." *Rodriguez*, 591 F.3d at 1122. Either shared legal issues with different facts or a common core of salient facts with disparate legal remedies is sufficient. *Id.* *See also, Staton v. Boeing Co.*, 327 F.3d 938, 953 (9th Cir. 2003); *Beebe v. Pacific Realty Trust*, 99 F.R.D. 60, 64 (D. Or. 1983).

In particular, courts have broadly applied the rule to class actions where injunctive and declaratory relief is sought. *See, e.g., Baby Neal for and by Kanter v. Casey*, 43 F.3d 48, 57 (3rd Cir. 1994) ("[I]njunctive actions by their very nature often present common questions satisfying Rule 23(a)(2)") (internal quotation marks omitted); *Anderson v. Dep't of Public Welfare,* 1 F. Supp. 2d 456, 461 (E.D. Pa. 1998) ("Commonality is easily established in cases seeking injunctive relief."). Class actions are particularly appropriate where, as here, governmental policies and practices have a broad impact upon a class of recipients and are challenged as discriminatory under federal law. *See, e.g., Califano v. Yamasaki*, 442 U.S. 682, 700-703 (1979) (affirming class

treatment where relief sought involved members' entitlement to request a hearing prior to recoupment of Social Security benefits);[4] *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001), *cert denied*, 537 U.S. 812 (2002) (holding in ADA and Rehabilitation Act lawsuit that "[c]ommonality is satisfied where the lawsuit challenges a system wide practice or policy that affects all of the putative class members"); *Van Meter,* 272 F.R.D. at 282 (finding commonality in case involving persons with disabilities segregated in nursing facilities, where the state agency's "course of conduct" presents questions common to all class members, implicates a common set of federal statutes, and the class seeks relief from systemic barriers to proper treatment); *Colon v. Wagner,* 462 F. Supp. 2d 162, 174 (D. Mass. 2006) (certifying class of shelter benefit recipients alleging the constitutional inadequacy of statewide termination notices); *Ass'n for Disabled Americans v. Amoco Oil Co.,* 211 F.R.D. 457, 463 (S.D. Fla. 2002) ("Plaintiffs' allegations of common discriminatory practices of ADA noncompliance, as a matter of law, satisfy the requirement that the representative plaintiffs share at least one question of fact or law with the grievances of the putative class") (citations omitted).

Rule 23(a)(2) of the Federal Rules of Civil Procedure requires that the proposed class have at least one common factual or legal issue, the resolution of which will affect all or a significant number of putative class members.[5] *See Lightbourn v. County of El Paso*, 118 F.3d 421, 426 (5th

---

[4] As the Supreme Court noted in *Califano*, 442 U.S. at 701: "[t]he issues involved are common to the class as a whole. They turn on questions of law applicable in the same manner to each member of the class. The ultimate question is whether a pre-recoupment hearing is to be held. . . . It is unlikely that differences in the factual background of each claim will affect the outcome of the legal issue."

[5] The common questions of fact in this case include *inter alia*:

1. whether the named plaintiffs and members of the plaintiff class are unnecessarily relegated to segregated settings in order to receive employment services, as a result of the defendants' actions and inactions in planning, administering, and funding their employment service system for persons with developmental disabilities;

Cir. 1997) (commonality found when class of individuals with different disabilities and accommodation needs were impacted by the same governmental inaction); *see also, Mulligan v. Choice Mortgage Corp. USA*, No. Civ. 96-596-B, 1998 WL 544431 at *3 (D.N.H. Aug. 11, 1998) ("Because the class need share only a single legal or factual issue at this stage of the analysis, the commonality prerequisite ordinarily is easily established"); *Connor B. v. Patrick*, 272 F.R.D. 288, 293 (D. Mass. 2011) ("Commonality is easily satisfied in part because 'there need be only a single issue common to all members of the class'") (quoting *Natchitoches Parish Hosp. Serv. Dist.v. Tyco Int'l, Ltd.*, 247 F.R.D. 253, 263-64 (D. Mass 2008) (emphasis in the original).

Rule 23(a)(2) does not require all putative class members to share ***identical*** facts or claims. Rather, the rule requires only "that complainants' claims be common and not in conflict." *Hassine v. Jeffes*, 846 F.2d 169, 177 (3d Cir. 1988); *Rodriguez*, 591 F.3d. at 1122 ("[T]he commonality requirements ask us to look only for some shared legal issue or a common core of facts"); *James v. City of Dallas*, 254 F.3d 551, 570 (5th Cir. 2001) ("[T]hat some of the Plaintiffs may have different claims, or claims that may require some individualized analysis, is not fatal to commonality"); *Rosario v. Livaditis*, 963 F.2d 1013, 1017-18 (7th Cir. 1992) ("The fact that there is some factual variation among the class grievances will not defeat a class action.") (citing *Patterson v. General*

---

2. whether the named plaintiffs and members of the plaintiff class are denied the opportunity to work with non-disabled peers, as a result of the defendants' actions and inactions in planning, administering, and funding their employment service system for persons with developmental disabilities;

3. whether the named plaintiffs and members of the plaintiff class are given vocational training in segregated work settings that bears little or no connection to their skills, abilities, or interests and that rarely leads to integrated employment at competitive wages, as a result of the defendants' actions and inactions in planning, administering, and funding their employment service system for persons with developmental disabilities; and

4. whether the defendants have a comprehensive and effectively working plan for serving the named plaintiffs and members of the plaintiff class in integrated employment settings.

Motors Corp., 631 F.2d 476, 481 (7th Cir.), *cert. denied*, 451 U.S. 914 (1980)). Only where there are ***no*** common questions of fact or law should certification be denied. *See Wal-Mart v. Dukes*, 131 S. Ct. 2541, 2556 (2011).

Commonality does not require that each class member be identically situated or that their common injury arise in exactly the same way. *D.L. v. District of Columbia,* 2011 WL 5559927 at *7 (D.D.C. Nov. 16, 2011) (the reasons for class members common injury – denial of a Free Appropriate Public Education ("FAPE") – do not have to be common to all members of the class); *see also*, *Milonas v. Williams*, 691 F.2d 931, 938 (10th Cir. 1982) (factual distinctions among plaintiffs not relevant where legal theories are similar).

Since commonality refers to the defendant's conduct towards the class, it is not defeated by the presence of individual differences among class members. *Jordan,* 669 F.2d. at 1320 ("The commonality requirement is satisfied where the question of law linking the class members is substantially related to the resolution of the litigation even though the individuals are not identically situated") (internal quotations omitted). *See also*, *Curtis v. Commissioner, Maine Dep't. of Human Servs.*, 159 F.R.D. 339, 341 (D. Me. 1994) ("Where a question of law refers to standardized conduct of the defendant towards members of the proposed class, commonality is usually met"); *Marisol A. v. Giuliani*, 126 F.3d 372, 376-7 (2nd Cir. 1997) (affirming district court's certification of class of children in foster care system despite varying reasons for placement and varying alleged injuries among class members.); *Murray v. Auslander*, 244 F.3d 807, 812 (11th Cir. 2001); *Appleyard v. Wallace*, 754 F.2d 955, 958 (11th Cir. 1985), *overruled on other grounds, Green v. Mansour,* 474 U.S. 64 (1985); *Fields v. Maram*, 2004 WL 1879997 at * 7, n.8 (N.D. Ill. Aug. 17, 2004); *Raymond,* 220 F.R.D. at 179; *George Lussier Enterprises, Inc. v. Subaru of New England, Inc.*, 2001 WL 920060 at *3 (D.N.H. Aug. 3, 2001) ("The reality that differing fact patterns underlie the claims of individual class members will not necessarily prevent a finding of commonality so long as class members have at least one issue in common.").

For these reasons, when the class shares a common legal theory and challenges a common pattern or practice of the defendants, as is the case here, certification is not defeated by individual differences among class members. *See, e.g., Hanlon*, 150 F.3d at 1019 (Rule 23(a)(2) is construed permissively and for purposes of commonality, "[t]he existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class"); *Medearis v. Oregon Teamster Employers Trust*, 2008 WL 4534108 (D. Or. Oct. 1, 2008); *Gagnon v. Comm'r. New Hampshire Dept. of Health and Human Services,* No. CIV. 98-299-M, 1999 WL 813953 (D.N.H. Aug. 31, 1999) (certifying class of all persons whose conditional discharge is revoked and are, or may be, involuntarily confined to New Hampshire Hospital or other facilities without a hearing); *Risinger,* 201 F.R.D. at 20 (court need not make individual determinations of eligibility before certifying a client of youth with mental impairments who alleged a systemic pattern of failure to provide needed evaluations and services); *Christina A. ex rel. Jennifer A. v. Bloomberg,* 197 F.R.D. 664, 667-68 (D. S.D. 2000) (the fact that prison conditions, policies and procedures "affect plaintiffs differently does not defeat the commonality of their claims"); *Boulet v. Cellucci,* 107 F. Supp. 2d 61, 81 (D. Mass. 2000) (class of persons with mental retardation waiting for community support services shared a common legal theory despite differences in medical and support needs of each individual); *Rolland v. Cellucci,* 1999 WL 34815562 at *7 (D. Mass. Feb. 2, 1999).

Where a court can identify a common question of fact or law, including a common defense, class certification is appropriate.[6] *Smilow v. Southwestern Bell Mobile Sys., Inc.,* 323 F.3d 32, 39

---

[6] Specifically, the questions of law common to the class include, but are not limited to, the following:

1. whether the defendants are violating the ADA and Rehabilitation Act by planning, administering, funding and operating an employment services system that unnecessarily relies upon segregated sheltered workshops and that denies the named plaintiffs and members of the plaintiff class supported employment services in integrated employment settings;

(1st Cir. 2003) ("[B]oth the factual basis for and the legal defense of waiver present common issues for all class members") (citation omitted). Where there are common discriminatory practices alleged, "...the actions of the defendant need not affect each member of the class in the same manner." *Arnold v. United Artists Theatre Circuit, Inc.*, 158 F.R.D. 439, 448-49 (N.D. Cal. 1994) (quoting *Walthall v. Blue Shield of Calif.*, 1977 WL 34 (N.D. Cal. 1977)). Nor is there a requirement that "all questions of law and fact involved in the dispute be common to all members of the class." *Id.* at 448 (citation omitted); *see also,* William B. Rubenstein, 1 *Newberg on Class Actions* § 3:20 (5th ed. 2011) ("...courts uniformly recognize that not all questions of law and fact need be common to the class.").

The Supreme Court's recent decision in *Wal-Mart* affirms that only where there are no common questions of fact or law should certification be denied. *Wal-Mart*, 131 S. Ct. at 2556 ("We quite agree that for purposes of Rule 23(a)(2) '[e]ven a single [common] question will do") (citations omitted). Rather, *Wal-Mart* applied the existing test of commonality in the context of a class of unprecedented size and diversity. *Id.* at 2541, 2557; *see also*, *Connor B.*, 2011 WL 5513233 at *3, 5 (concluding that Wal-Mart provides "...guidance on how existing law should be applied to expansive, nationwide class actions" but does not preclude injunctive relief designed to remedy overarching deficiencies in a state service system). Unlike *Wal-Mart*, this case does not involve a claim for damages, does not require subjective, individual determinations of liability, and

---

2. whether the defendants are violating the ADA and Rehabilitation Act by failing to provide the named plaintiffs and members of the plaintiff class with supported employment services in integrated settings, consistent with their needs; and

3. whether the defendants are violating the ADA and Rehabilitation Act by administering the employment services system in a manner that discriminates against the named plaintiffs and members of the plaintiff class by providing them employment services in segregated settings and by failing to provide them supported employment services necessary to allow them to engage in competitive employment in integrated settings.

is susceptible to a common remedy. In fact, as long as there are some common causes that contribute to the class members' injuries, certification is appropriate. *McReynolds v. Merrill, Lynch, Pierce, Fenner and Smith,* __ F.3d __, 2012 WL 592745 (7th Cir. Feb. 24, 2012) (reversing a denial of class certification in an employment discrimination case seeking injunctive as well as compensatory relief, since the defendant's policies arguably contribute to the plaintiffs' claim of racial discrimination in promotion, even if individualized employment decisions by supervisors may also be a factor).

In this case, all members of the plaintiff class are segregated in sheltered workshops, denied access to non-disabled peers, and not provided basic supports needed to work in integrated settings, in violation of their rights under the ADA and Section 504. They suffer a common harm from the defendants' pattern and practice of unnecessarily segregating individuals with intellectual and developmental disabilities in sheltered workshops. *See* Coffey Decl. ¶ 5. This unnecessary segregation is the direct result of the defendants' conduct, and specifically the defendants' planning, administration, funding, and operation of their employment services system that unnecessarily relies upon segregated sheltered workshops and that denies the plaintiff class supported employment services in integrated employment settings. *Id.* ¶ 7.

The defendants' own documents acknowledge that although Oregon was once a national leader in the implementation of supported employment services in the 1980s, there has been a decline in the number of individuals with intellectual disabilities who have access to supported employment as a result of a lack of leadership by state officials and decreased training efforts directed at supported employment over the last two decades. *See* Wenk Decl., Ex. 3 at 3. The defendants' own data illustrates how only a small percentage of individuals are in supported employment while thousands remain in segregated sheltered workshops. *See* Wenk Decl., Ex. 6 at 10 (*Employment First Strategic Planning: Stakeholder Planning Group Meeting* (Jan. 27, 2012)

(PowerPoint presentation)[7] (September 2011 data showing 15% of individuals in Comprehensive Waiver were in integrated employment, while 1,641 or approximately 40% of waiver clients were in sheltered workshops).

That class members may have different diagnoses or different individual service needs does not affect their common injury or the fact that they have common legal claims. Nor does it alter or require modification to the common remedy – supported employment services sufficient to avoid unnecessary segregation and redress the common legal violations under the ADA and Section 504. The plaintiff class's right not to be subjected to unnecessary segregation in sheltered workshops, as well as the right to receive employment services in the most integrated setting appropriate for their needs can only be properly and fully vindicated in the context of a class action for declaratory and injunctive relief. As a result, the proposed class satisfies commonality requirements for Rule 23(a)(2).

C. The Claims or Defenses of the Named Representatives Are Typical of the Class.

The third component of Rule 23(a) requires that the named plaintiffs' claims for relief be typical of the claims of all class members. Fed. R. Civ. P. 23(a)(3). The purpose of the typicality requirement is to ensure that the nature of the claims brought by the class representatives are so interrelated that the interests of the class members will be fairly and adequately protected in their absence. *General Telephone Co. of Southwest. v. Falcon*, 457 U.S. 147, 157-58 (1982).

Like commonality, typicality is permissive and requires "only that the representative's claims are 'reasonably co-extensive with those of absent class members; they need not be substantially identical.'" *Rodriguez*, 591 F.3d at 1124 (quoting *Hanlon*, 150 F.3d at 1020); *Jordan*, 669 F.2d at 1321; *Staton*, 327 F.3d at 953 (typicality requirement was satisfied in employment

[7] As described in the Wenk Declaration, Exhibit 6 is a PowerPoint slide presentation concerning ODDS' employment services system for persons with developmental disabilities that was produced and distributed to DHS on January 27, 2012.

discrimination action notwithstanding objection that counsel did not present evidence that each job category had a class representative for each type of discrimination claim alleged).

The typicality requirement does not demand a complete identity between the legal claims of a representative and each class member, but only "a showing of sufficient interrelationship between the claims of the representative and those of the class so that adjudication of the individual claims will necessarily involve the decision of common questions affecting the class." William B. Rubenstein, *et al.*, 1 *Newberg on Class Actions*, §3:29 (5th ed. 2011). For this reason, typicality is achieved when the class representatives generally "possess the same interest and suffer the same injury" as other unnamed class members. *General Telephone*, 457 U.S. at 156 (quoting *East Texas Motor Freight Sys. v. Rodriguez*, 431 U.S. 395, 403 (1977); *Jones v. Shalala*, 64 F.3d 510, 514 (9th Cir. 1995) (in government benefit class actions, the typicality requirement is met when the representative plaintiff is subject to the same statute, regulation or policy as class members); *Rancourt v. Concannon*, 207 F.R.D. 14, 16 (D. Maine 2002) (citing *5 Newberg* § 23:04).

Courts in the Ninth Circuit have liberally applied the typicality standard consistent with these principles. The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct. *Hanon v. Dataproducts Corp.*, 976 F.2d 479, 508 (9th Cir. 1992) (quoting *Schwartz v. Harp*, 108 F.R.D. 279, 282 (C.D. Cal. 1985) (internal quotations omitted); *Staley,* No. 00-cv-78 (plaintiffs alleging systemic violations of the Social Security Act, ADA, Rehabilitation Act, and Due Process Clause of the United States Constitution "easily" met the typicality requirement having been adversely affected the same as the other class members by having been denied needed services); *Armstrong*, 275 F.3d at 869, *cert denied*, 537 U.S. 812 (2002) (minor differences in nature of specific injuries suffered by class members insufficient to defeat typicality where plaintiffs all suffer the deprivation of, or fail to receive the full benefit of, services, programs or activities provided by defendants);

Jordan, 669 F.2d at 1321 ("[A] named plaintiff's claim is typical if it stems from the same event, practice, or course of conduct that forms the basis of the class claims and is based upon the same legal or remedial theory"); *Rodriguez*, 591 F.3d at 1124 (though Petitioner and some members of the proposed class were detained under different statutes and did not raise identical claims, they raise similar constitutionally-based arguments and are the alleged victims of the same practice of prolonged detention while in immigration proceedings).

Thus, a strong similarity of legal theories will satisfy the typicality requirement, even where there are substantial factual differences between and among individual class members. Typicality "is 'satisfied when each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability.'" *Rodriguez*, 591 F.3d at 1124 (quoting *Armstrong*, 275 F.3d 849). *See Neff v. VIA Metropolitan Transit Authority*, 179 F.R.D. 185, 194 (W.D. Tex. 1998) (typicality standard satisfied in ADA case where named representatives are adversely affected by the same facilities, policies and practices as absent class members, regardless of the manner in which they have been injured).

The typicality requirement of Rule 23(a)(3) is satisfied in this case because the common factual and legal injuries resulting from the named plaintiffs' unnecessary segregation in sheltered workshops as a result of the defendants' operation of its employment services system are typical of the legal claims and violations suffered by the proposed class. Like the classes certified in other ADA cases (*see* Appendix attached to this memorandum), the fact that the named plaintiffs have different types of intellectual and developmental disabilities and varying vocational needs, may enter the employment services system in different ways, or require slightly different service combinations does not defeat a finding of typicality. *See also, D.G. ex. Rel. Stricklin v. Devaughn*, 594 F.3d 1188, 1199 (10th Cir. 2010) ("[T]ypicality exists where, as here, all class members are at risk of being subjected to the same harmful practices, regardless of any class member's individual circumstances."). Here, the defendants are administering, funding, and operating an employment

service system that excessively relies upon sheltered workshops and needlessly segregates the named plaintiffs and members of the proposed class in these workshops, in violation of the ADA and Rehabilitation Act. Typicality is established precisely because the named plaintiffs are aggrieved by the same limitations on employment services, and share the same legal theories regarding the discriminatory administration of Oregon's employment services system, as do all members of the plaintiff class.

Finally, the named plaintiffs have a personal interest in this litigation and seek a remedy which is reasonably related to the harm experienced by all proposed class members. *Risinger*, 201 F.R.D. at 22 (finding typicality where plaintiffs invoke the same legal provisions, allege the same system deficiencies, and seek the same relief). Thus where, as here, the named plaintiffs' legal theories do not conflict with those of the class, and their claims are "comparably central" to the claims of the unnamed class members, the requirements for typicality under Rule 23(a)(3) are satisfied. *Connor B.*, 272 F.R.D. at 292 (quoting *Baby Neal*, 43 F.3d at 57).

D. *The Class Representatives Fairly and Adequately Represent the Interest of the Class.*

Rule 23(a)(4) requires that the named plaintiffs fairly and adequately represent the interests of the entire class. Satisfaction of this requirement depends upon: (1) the qualifications of counsel; (2) an absence of antagonism among the class members; (3) a sharing of interests between representatives and absentees; and (4) the unlikelihood that the case is collusive. *Crawford v. Honig*, 37 F.3d 485, 487 (9th Cir. 1994); *Rodriguez*, 591 F.3d at 1125; *Sacora v. Thomas*, 2009 WL 4639635 (D. Or. Dec. 2, 2009). Each of these elements of Rule 23(a)(4) is met in this case.

(1) Qualifications of Counsel

Factors considered in determining the adequacy of the counsel in class actions include the attorneys' professional skills, experience, and resources. *See N. Am. Acceptance v. Arnall, Golden & Gregory*, 593 F.2d 642, 644 (5th Cir. 1979). In the instant matter, plaintiffs' attorneys Kathleen Wilde, James Wrigley, and Theodore Wenk are attorneys with Disability Rights Oregon, a public

interest law firm which is the federally-funded protection and advocacy agency in Oregon designated to represent people with intellectual and developmental disabilities. Miller Nash LLP is one of the leading private law firms in Oregon. For decades, its practice has included complex state and federal litigation. Perkins Coie LLP also is a leading private law firm in Oregon. For decades its practice has included complex state and federal litigation. The Center for Public Representation has been involved in complex class action litigation on behalf of persons with disabilities for over 30 years and has been lead counsel in numerous systemic reform lawsuits throughout the country. Finally, the named plaintiffs' counsel resources are more than adequate to represent the class competently, and they have no other professional commitments which are antagonistic to, or which would detract from, their efforts to seek a favorable decision for the proposed class in this case.

(2) Adequacy of the Named Representatives

In order for the named representatives to be adequate representatives of the class, their interests must coincide with those of the unnamed class members. *See generally, General Telephone*, 457 U.S. 147 (1982). Additionally, the interests of the named plaintiffs must not be antagonistic to the unnamed class members. *Crawford*, 37 F.3d at 487. In the present case, named plaintiffs and members of the plaintiff class all have the same interest: to avoid unnecessary segregation in sheltered workshops. They all seek the same remedy: the opportunity to work in the most integrated setting, consistent with their interests, abilities, and preferences. Compl., ¶¶ 112-176. There are no meaningful differences among the plaintiff class on these fundamental issues. The named plaintiffs do not, therefore, have interests divergent from, or antagonistic to, other class members. Similarly, the named plaintiffs and their counsel do not have any conflicts of interest with other class members, or any ability to collude with other class members. Rather, the named plaintiffs in this case can fully and adequately represent the legal rights and seek the legal remedies to which all members of the proposed class are entitled.

V. THE DEFENDANTS HAVE ACTED OR REFUSED TO ACT ON GROUNDS GENERALLY APPLICABLE TO THE CLASS, MAKING FINAL INJUNCTIVE OR DECLARATORY RELIEF APPROPRIATE.

A class may be certified under Rule 23(b)(2) when each of the prerequisites of Rule 23(a) are met and "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). In interpreting this requirement, courts have held that where the primary purpose in bringing the action is to seek injunctive relief, the action is properly certifiable under Rule 23(b)(2). *Elliot v. Weinberger*, 564 F.2d 1219, 1228 (9th Cir. 1977), *aff'd in relevant part, rev'd in part*, 442 U.S. 682 (1979) (although plaintiffs sought recovery of money recouped from their Social Security benefit checks, class was properly certified within the scope of Rule 23(b)(2), where plaintiffs' primary purpose in bringing action was to enjoin defendants from recouping Social Security benefits without a hearing and their pecuniary recovery was purely incidental).

Courts have long recognized that certification under subsection (b)(2) of Rule 23 is particularly important in, and an appropriate vehicle for, civil rights actions. *Amchem Products v. Windsor*, 521 U.S. 591, 614 (1997). *See also, Staley*, No. 00-cv-78, ("Rule 23(b)(2) is especially appropriate to those actions involving government regulation, welfare administration, and other areas of group remedies against government officials") (citing *Macera v. Chinlund*, 595 F.2d 1231, 1240 (2d Cir. 1979)). "The Ninth Circuit has frequently certified class actions when plaintiffs have sought declaratory and injunctive relief in response to allegedly unlawful governmental policies and practices." *Id.* (citing *Walters v. Reno*, 145 F.3d at 1047 (9th Cir. 1998); *Gete*, 121 F.3d at 1300; *Yaffe,* 454 F.2d at 1366 ("[t]he conduct complained of is the benchmark for determining whether a subdivision (b)(2) class exists, making it uniquely suited to civil rights actions...").

In the instant case, the elements of Rule 23(b)(2) are satisfied, and class certification is appropriate, because plaintiffs allege systemic civil rights violations and seek declaratory and

injunctive relief that would benefit the class as a whole. This case is an example of exactly the type of litigation that the Federal Rules Advisory Committee anticipated would be certified under Rule 23(b)(2). *See* Notes of Advisory Committee to Revised Rule 23 –1966 Amendment. ("Illustrative are various actions in the civil-rights field where a party is charged with discriminating unlawfully against a class, usually one whose members are incapable of specific enumeration.")

The defendants have administered Oregon's employment services system for persons with intellectual and developmental disabilities by excessively relying upon segregated workshops and by failing to provide supported employment services sufficient to allow class members to engage in competitive employment in integrated settings with non-disabled peers. *See* Coffey Decl. ¶ 6. The defendants' conduct towards the proposed class, and their actions and inactions in planning, administering, and funding Oregon's employment services system in a discriminatory manner, apply equally to both named plaintiffs and unnamed class members, a fact that defendants have acknowledged in their own documents. *See* Wenk Decl., Ex. 2 at 27. ("Making the change to integrated employment with diminished funding, and at first, with a state infrastructure—including a funding system, administrative rules, definitions, and licensing, for example—that does not value integrated individual jobs over group or facility-based sheltered employment or alternatives to employment presents a formidable mountain to climb."). *See also,* Coffey Decl. ¶ 9.

As a result of the defendants' actions and inactions, the plaintiff class is subject to unnecessary segregation, in violation of the ADA and Section 504. Thus, the defendants are acting or refusing to act in a manner that equally affects and is "generally applicable" to the entire class. Injunctive and declaratory relief is appropriate precisely because it will resolve the legality of the defendants' conduct towards the class as a whole and ensure that any mandatory relief will extend to not only the named plaintiffs, but to all similarly-situated persons with intellectual or developmental disabilities. Therefore, certification under Rule 23(b)(2) is appropriate. *Sacora v.*

Thomas, 2009 WL 4639635 at *11 (D. Or. Dec. 3, 2009) (citing *Walters v. Reno*, 145 F.3d at 1047; *Rodriguez v. Hayes*, 578 F.3d 1032, 1105).

VI. DISABILITY RIGHTS OREGON, MILLER NASH LLP, PERKINS COIE LLP, AND THE CENTER FOR PUBLIC REPRESENTATION SHOULD BE APPOINTED CLASS COUNSEL PURSUANT TO RULE 23(G).

The named plaintiffs are jointly represented by Disability Rights Oregon, Miller Nash LLP, Perkins Coie LLP, and the Center for Public Representation, each of which brings unique resources, experience, and skills to the case. These four law firms should be appointed as class co-counsel pursuant to Rule 23(g).

Disability Rights Oregon is the federally-designated protection and advocacy organization for the state of Oregon and is charged with protecting the rights of individuals with disabilities throughout Oregon. It brings to this case knowledge of and experience with the workings of Oregon's service array and service delivery systems for individuals with intellectual and developmental disabilities. It is also in direct contact with the named plaintiffs and numerous other class members through its ongoing outreach and intake processes. Kathleen Wilde, the lead Disability Rights Oregon attorney on this case, has over 30 years of experience representing individuals with disabilities and has litigated six class action cases. She is not counsel in any pending class actions.

Miller Nash LLP ("Miller Nash") is a leading law firm in the Pacific Northwest with over 100 lawyers in four offices. Bruce Rubin is a partner with Miller Nash LLP and has worked on 12 class action cases since 1999. Miller Nash LLP adds expertise in the area of class actions, litigation and trial skills, and provides extensive litigation support capabilities.

Perkins Coie LLP ("Perkins Coie") is a leading national law firm with over 800 lawyers in 19 offices worldwide. Lawrence Reichman is a partner with Perkins Coie LLP in its Portland, Oregon office. Mr. Reichman has litigated cases, including class actions, in state and federal courts

and before administrative agencies for over 25 years. Perkins Coie adds expertise in the area of class actions, litigation and trial skills, and provides extensive litigation support capabilities.

The Center for Public Representation is a Massachusetts-based public interest law firm that focuses on systemic advocacy on behalf of individuals with psychiatric and intellectual disabilities. It provides litigation support and assistance to the National Disabilities Rights Network and federally-funded protection and advocacy organizations throughout the country. It has litigated dozens of class actions on behalf of institutionalized individuals, raising claims under the Americans with Disabilities Act, the Nursing Home Reform Amendments Act, the Medicaid Act, Section 504 of the Rehabilitation Act, and the Due Process and Equal Protection Clauses of the Fourteenth Amendment. Both of the Center for Public Representation's lead attorneys, Steven Schwartz and Cathy Costanzo, have been lead counsel in numerous class actions. Mr. Schwartz is a nationally-recognized expert concerning the rights of institutionalized individuals and has over 40 years of experience representing individuals with psychiatric and intellectual disabilities. He is currently counsel in eight class action lawsuits in Arizona, New Mexico, Massachusetts, Texas (class motion pending), and New Hampshire (class motion to be filed). Ms. Costanzo has over 25 years of experience representing individuals with disabilities and is currently class counsel in four pending class action lawsuits in the Arizona, the District of Columbia, New Mexico, and Massachusetts.

There is no conflict among counsel. This is a Rule 23(b)(2) class action seeking only declaratory and injunctive relief. Any attorney fees for plaintiffs' counsel will be awarded by the Court pursuant to federal fee-shifting statutes based upon the time reasonably expended by plaintiffs' counsel.

VII. CONCLUSION

For all the reasons set forth above, the Court should certify a plaintiff class consisting of all individuals with intellectual or developmental disabilities who are in, or who have been referred to, sheltered workshops. Pursuant to Rule 23(g), plaintiffs request that this Court appoint Disability Rights Oregon, Miller Nash LLP, Perkins Coie LLP, and the Center for Public Representation as co-class counsel in this case.

DATED this 6th day of March, 2012.

DISABILITY RIGHTS OREGON
Kathleen L. Wilde, OSB No. 971053
E-mail: kwilde@disabilityrightsoregon.org
James A. Wrigley, OSB No. 904134
E-mail: jwrigley@disabilityrightsoregon.org
Theodore E. Wenk, OSB No. 001239
E-mail: ted@disabilityrightsoregon.org
620 S.W. Fifth Avenue, Suite 500
Portland, Oregon 97204
Telephone: (503) 243-2081
Fax: (503) 243-1738

MILLER NASH LLP

s/ Bruce A. Rubin

Bruce A. Rubin, OSB No. 763185
E-mail: bruce.rubin@millernash.com
Justin C. Sawyer, OSB No. 014057
E-mail: justin.sawyer@millernash.com
Jennifer J. Roof, OSB No. 001586
E-mail: jennifer.roof@millernash.com
111 S.W. Fifth Avenue, Suite 3400
Portland, Oregon 97204
Telephone: (503) 224-5858
Fax: (503) 224-0155

PERKINS COIE LLP
Stephen F. English, OSB No. 730843
E-mail: senglish@perkinscoie.com
Lawrence H. Reichman, OSB No. 860836
E-mail: lreichman@perkinscoie.com
Nathan R. Christensen, OSB No. 093129
E-mail: nchristensen@perkinscoie.com
1120 N.W. Couch Street, Tenth Floor
Portland, Oregon 97209
Telephone: (503) 727-2000
Fax: (503) 727-2222

CENTER FOR PUBLIC REPRESENTATION
Steven J. Schwartz (*admitted pro hac vice*)
E-mail: sschwartz@cpr-ma.org
Cathy E. Costanzo (*admitted pro hac vice*)
E-mail: ccostanzo@cpr-ma.org
Bettina Toner (*admitted pro hac vice*)
E-mail: btoner@cpr-ma.org
22 Green Street
Northampton, Massachusetts 01060
Telephone: (413) 586-6024
Fax: (413) 586-5711

Attorneys for Plaintiffs

I hereby certify that I served the foregoing Plaintiffs' Memorandum in Support of Their Motion for Class Certification on:

Mr. John J. Dunbar
Ms. Christina L. Beatty-Walters
Oregon Department of Justice
1515 S.W. Fifth Avenue, Suite 410
Portland, Oregon 97201
Fax: (971) 673-5000
E-mail: john.dunbar@doj.state.or.us
tina.beattywalters@doj.state.or.us

Attorney for Defendants

by the following indicated method or methods on the date set forth below:

☒ **CM/ECF system transmission.**

☐ **E-mail.** As required by Local Rule 5.2, any interrogatories, requests for production, or requests for admission were e-mailed in Word or WordPerfect format, not in PDF, unless otherwise agreed to by the parties.

☐ **Facsimile communication device.**

☐ **First-class mail, postage prepaid.**

☐ **Hand-delivery.**

☐ **Overnight courier, delivery prepaid.**

DATED this 6th day of March, 2012.

s/ Bruce A. Rubin
Bruce A. Rubin, OSB No. 763185

Of Attorneys for Plaintiffs