UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

STANLEY LIGAS, *et al.*, on behalf of themselves and all others similarly situated,	)	
Plaintiffs,	)	Case No. 05-4331
vs.	)	Judge Holderman
BARRY S. MARAM, *et al.*,	)	
Defendants.	)	

STATEMENT OF INTEREST OF THE UNITED STATES OF AMERICA

Preliminary Statement

The United States files this Statement of Interest pursuant to 28 U.S.C. § 517 in support of a grant of preliminary approval of the parties' jointly submitted Consent Decree. This litigation implicates the proper interpretation and application of Department of Justice regulations implementing the Americans with Disabilities Act, 42 U.S.C. § 12101 et. seq., ("ADA") and compliance with the mandate of community integration under *Olmstead v. L.C.*, 527 U.S. 581 (1999). Accordingly, the United States has a strong interest in the resolution of this matter.

Plaintiffs allege that Illinois relies on large, privately-run congregate care institutions[1] to provide long-term care services for individuals with developmental disabilities while failing to offer services to these individuals in community-based settings. This practice, plaintiffs claim, violates Title II of the ADA, Section 504 of the Rehabilitation Act, Title XIX of the Social

[1] Known as "intermediate care facilities for people with developmental disabilities" ("ICF-DDs").

Security Act, and 42 U.S.C. § 1983. (Second Amended Complaint for Declaratory and Injunctive Relief, Aug. 31, 2009 ("Compl."), ¶ 1.)

Plaintiffs are a putative class of Medicaid eligible adults with developmental disabilities who either 1) reside in ICF-DDs and who have requested community placements, or 2) are at risk of institutionalization and have requested community placement. Plaintiffs maintain that the State has violated the "integration mandate" of Title II and § 504 by failing to develop a comprehensive, effectively working plan to offer developmentally disabled individuals services in the most integrated settings appropriate to their needs. (Compl. ¶¶ 6, 86.)

After lengthy litigation initiated in 2005, the parties proposed a consent decree in November 2008, which the Court subsequently rejected because of concerns raised by objectors about the definition of the class and the scope of the remedy. In response to these concerns, the parties revised their consent decree and filed with this Court on January 25, 2010. The Second Proposed Consent Decree addresses the objectors' concerns by limiting the class for whom relief will be granted to individuals who have affirmatively "expressed preferences to reside in more integrated settings."[2] (Compl. ¶ 1.) Plaintiffs estimate that the class includes at least 320 current ICF-DD residents and more than 4,000 individuals with disabilities who live at home and have expressed a desire for placement in community settings. (Compl. ¶ 89.)

[2] Specifically, the new class comprises "two sub-classes of individuals: (1) ICF-DD residents who have requested community placements; and (2) individuals who are at risk of institutionalization and who have requested community based services or placements." (Compl. ¶ 86.) While the parties in this case have narrowed the class to individuals who have affirmatively expressed a desire to be placed in the community, *Olmstead* itself held that a broader class – those who can appropriately be served in the community and do not oppose such placement – should be served in an integrated setting. *Olmstead*, 527 U.S. at 607. The class in this case comprises a subset of the individuals who would be entitled to relief under *Olmstead*.

The parties' revisions to the class definition address the concerns raised by objectors that under *Olmstead*, community placement is only appropriate where "the affected persons do not oppose such treatment." *Olmstead*, 527 U.S. at 607. The proposed consent decree ensures the autonomy of each class member to choose whether to live in a community placement, and does not force any individual out of a placement with which he or she is currently satisfied. The Consent Decree importantly *excludes* any individual who objected to the previous proposed consent decree. (Proposed Order at 3.) Indeed, the proposed consent decree requires that there be a "current record" reflecting the individual's desire to live in a community placement. (Second Proposed Consent Decree at 2-3.)

The Consent Decree will ensure, however, that community capacity exists for individuals who choose to reside in community-based settings. In doing so, this decree offers the promise of relief for individuals who are appropriate for such placement and desire to be in such placements in a system that has failed to realize the goals of community integration in the ten years since *Olmstead* was decided.[3] By committing to develop this infrastructure for community-based placements, the state of Illinois demonstrates its commitment to shift from relying on institutional settings that unnecessarily segregate individuals with developmental disabilities, to developing integrated, community-based settings, as required by *Olmstead*. The United States recognizes the systemic reform embodied in this Second Proposed Consent Decree as significantly advancing the enforcement of *Olmstead* in Illinois. Such reform aligns with the

[3] Illinois "ranks 51st among all states and the District of Columbia in its placement of people with developmental disabilities in small Community Settings." (Compl. ¶ 3.)

Administration's commitment to the goals of community integration.[4]

Statutory and Regulatory Background

Congress enacted the Americans with Disabilities Act ("ADA") in 1990 "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). Congress found that "historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem." 42 U.S.C. § 12101(a)(2). For those reasons, Congress prohibited discrimination against individuals with disabilities by public entities.

> [N]o qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity.

42 U.S.C. § 12132.

As directed by Congress, 42 U.S.C. § 12134, the Attorney General issued regulations implementing Title II, which are based on regulations issued under section 504 of the

[4] "President Obama Commemorates Anniversary of Olmstead and Announces New Initiatives to Assist Americans with Disabilities," June 22, 2009, Office of the Press Secretary, *available at* http://www.whitehouse.gov/the_press_office/President-Obama-Commemorates-Anniversary-of-Olmstead-and-Announces-New-Initiatives-to-Assist-Americans-with-Disabilities/). The United States has filed briefs in a number of *Olmstead* enforcement cases, including *State of Connecticut Office of Protection and Advocacy for Persons with Disabilities, et al. v. State of Connecticut, et al.*, No. 3:06-CV-00179 (D. Conn. motion to participate as amicus filed Nov. 25, 2009); *ARC of Virginia, Inc. v. Kaine, et al.*, No. 3:09-CV-686 (E.D. Va. amicus filed Nov. 24, 2009); and *Marlo M. v. Cansler, et al.*, No. 5:09-cv-00535 (E.D. N.C. amicus filed Dec. 21, 2009). Additionally, the United States recently intervened in *Disability Advocates, Inc. v. Paterson* No. 03-CV-3209 (E.D.N.Y. intervention granted Nov. 23, 2009).

Rehabilitation Act.[5] See 42 U.S.C. § 12134(a); 28 C.F.R. § 35.190(a); Executive Order 12250, 45 Fed. Reg. 72995 (1980), reprinted in 42 U.S.C. § 2000d-1. The Title II regulations, 28 C.F.R. § 35.130(d), require public entities to "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." The preamble to the "integration regulation" explains that "the most integrated setting" is one that "enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible." 28 C.F.R. §35.130(d), App. A, at 571 (2009).

Ten years ago, in a landmark decision, the Supreme Court held under Title II of the ADA and its integration regulation, that unjustified segregation of individuals with disabilities by public entities constitutes unlawful discrimination. *Olmstead v. L.C.*, 527 U.S. 581, 586 (1999). *Olmstead* held that public entities are required to provide community-based services for persons with disabilities who would otherwise be entitled to institutional services when (a) treatment professionals reasonably determine that such placement is appropriate; (b) the affected persons do not oppose such treatment; and (c) the placement can be reasonably accommodated, taking into account the resources available to the entity and the needs of others who are receiving disability services from the entity. *Olmstead*, 527 U.S. at 607.

A public entity's duty to provide integrated (i.e., community-based) services, however, is not absolute. A public entity is required only to make reasonable modifications that do not "fundamentally alter the nature of the service, program, or activity." 28 C.F.R. § 35.130(b)(7) (2009). Thus, a public entity violates Title II if it segregates individuals in institutions when

[5]Section 504 prohibits state and local governments that receive federal funds from discriminating against individuals with disabilities. 29 U.S.C. § 794.

those individuals could be served in the community through reasonable modifications to its program, unless it is able to demonstrate that doing so would result in a "fundamental alteration" of its program. *Olmstead*, 527 U.S. at 595-596.

Argument

The proposed consent decree merits preliminary approval as it is "within the range of possible approval" that ultimately could be given final approval as it is fair, adequate, and reasonable. *Kaufman v. American Exp. Travel Related Services Co., Inc.*, No. 07-1707, 2009 WL 5166229, *7-8 (N.D. Ill. Dec. 22, 2009) and *Kessler v. American Resorts Intern.'s Holiday Network, Ltd.*, No. 05-5944, 2008 WL 687287, *3 (N.D. Ill. March 12, 2008) (citing *Armstrong v. Bd. of School Directors of the City of Milwaukee*, 616 F.2d 305, 312 (7th Cir. 1980), *overruled on other grounds by Felzen v. Andreas*, 134 F.3d 873 (7th Cir. 1998)). The consent decree fairly addresses Plaintiffs' allegations that Defendants have systematically failed to provide them with services in appropriate community-based settings that Plaintiffs have requested. This allegation provides the "common nucleus of operative fact" to ensure that the commonality requirement is satisfied. Further, the creation of community-based services for individuals with developmental disabilities who have requested such placements is an appropriate class-based remedy for the systemic discrimination alleged by Plaintiffs. For the reasons set forth below, the relief afforded to the narrow class as defined under the proposed consent decree meets the standard for preliminary approval, and the settlement should proceed to the second step in the review process, the fairness hearing.

I. Unnecessary Segregation of Individuals with Disabilities Violates Title II

The Court in *Olmstead* found that "unjustified isolation . . . [is] discrimination based on

disability." *Olmstead*, 527 U.S. at 597. The Consent Decree before the Court advances an important public interest in allowing individuals with developmental disabilities to live in community settings. As noted in *Olmstead*, the unjustified segregation of persons with disabilities can stigmatize them, "perpetuat[ing] unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life."[6] *Olmstead* 527 U.S. at 600. And while 10 years have passed since *Olmstead* was decided, the same goals underlying that case and the ADA are present today: a goal of "full participation, independent living, and economic self-sufficiency for such individuals." 42 U.S.C. 12101(a)(8).

Recently, in *Disability Advocates, Inc. v. Paterson*, No. 03-3209, 2009 WL 2872833 (E.D.N.Y. Sep. 8, 2009) ("*DAI*"), the court found that New York State was liable under Title II for denying thousands of individuals with mental illness in New York City the opportunity to receive services in the most integrated setting appropriate to their needs. The court further found that adult homes were not the most integrated setting appropriate to their needs and that "virtually all of DAI's constituents are qualified to receive services in supported housing and are unopposed to receiving services in a more integrated setting" and that defendants failed to prove that the relief requested would constitute a fundamental alteration of the State's mental health service system. *DAI* at *87. The instant case presents similar legal issues as in *Disability Advocates*. Here, defendants can make a reasonable modification to their existing administration of services by choosing to fund care in community settings, rather than in segregated

[6] *See also* U.S. Amicus Brief in *Olmstead* at 16-17, citing to 136 Cong. Rec. H2603 (daily ed. May 22, 1990) (statement of Rep. Collins) ("To be segregated is to be misunderstood, even feared," and "only by breaking down barriers between people can we dispel the negative attitudes and myths that are the main currency of oppression." The segregation of plaintiffs "has the potential to engender or perpetuate negative attitudes.") (Attached as Exh. A.)

institutional settings.[7] Thus, plaintiffs allege a straight-forward ADA Title II violation that is prohibited by the Supreme Court decision in *Olmstead*.

II. Title II Claims May Require Systemic Reform and Class Actions are Appropriate Tools for Such Claims

A. Class Actions are Important Tools to Enforce the Integration Mandate

The class action is an appropriate mechanism to achieve relief for violations of Title II in the community integration context. *Rolland v. Patrick*, No. 98-30208, 2008 WL 4104488 (D. Mass. Aug. 19, 2008), *Williams v. Blagojevich*, No. 05-04673, 2006 WL 3332844, *5 (N.D. Ill. Nov. 13, 2006). As a practical matter, integration claims typically involve large service systems that affect hundreds or thousands of individuals, and thus the class action device is a useful and necessary tool to address such systemic problems (rather than forcing individual plaintiffs to pursue innumerable individual complaints).

To proceed as a class action, a class must satisfy the following criteria: (1) numerosity; (2) commonality of facts and law; (3) typicality between the class claims and those of the named parties; and (4) adequacy of the representation by the named parties and class counsel. Fed R. Civ. P. 23(a). *Harper v. Sheriff of Cook County*, 581 F.3d 511, 513 (7th Cir. 2009), *Rosario v. Livaditis*, 963 F.2d 1013, 1017 (7th Cir. 1992). A class must fit within one of the types of classes described in Rule 23(b). Fed R. Civ. P. 23(b).

A common nucleus of operative fact is usually enough to satisfy the commonality requirement of Rule 23(a)(2). *Rosario*, 963 F.2d at 1018. Common nuclei of fact are typically

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[7]The most integrated setting requirement applies not only to individuals currently in institutional settings, but also to individuals at "risk of institutionalization." *Fisher v. Oklahoma Health Care Authority*, 335 F.3d 1175 (2003). Thus, the Proposed Consent Decree's provisions relating to individuals residing in home settings appropriately addresses a Title II violation.

manifest where, as in this case, the defendants have engaged in standardized conduct towards members of the proposed class. *See Chandler v. Southwest Jeep-Eagle, Inc.*, 162 F.R.D. 302, 308 (N.D. Ill. 1995) (citing cases). The commonality requirement does not necessitate "every class member's factual or legal situation to be a carbon copy" of those of the named plaintiffs. *Wesley v. Gen. Motors Acceptance Corp.*, No. 91-3368, 1992 WL 57948, at *3 (N.D. Ill. Mar. 20, 1992). *See also Smith v. Aon Corp.*, 238 F.R.D. 609, 614 (N.D. Ill. 2006) ("The commonality requirement is not difficult to meet"); *Gen. Tel. Co. of the Southwest v. Falcon*, 457 U.S. 147, 155 (1982).

In decertifying a prior class in this case, the Court pointed to concerns with commonality and typicality: "sufficient commonality does not exist among the highly specialized needs and desires of the class members and their legal guardians. Similarly, because the named plaintiffs meet the conditions set forth in *Olmstead* insofar as they have been adjudged eligible for, and desirous of, community placement, the named plaintiffs' claims are not typical of class members who may or may not satisfy the *Olmstead* criteria." (Order Decertifying Class at 2, July 7, 2009.) Since decertification, Plaintiffs have revised the class covered by the Proposed Consent Decree before this Court to include "two sub-classes of individuals: (1) ICF-DD residents who *have requested community placements*; and (2) individuals who are at risk of institutionalization and who *have requested community based services or placements*." (Compl. at 12, emphasis added.) The commonality requirement of Rule 23 is satisfied for this proposed class based on the defendants' standardized conduct towards class members in its administration of services to individuals with developmental disabilities in allegedly unnecessarily segregated settings.

Differences in the individualized facts regarding putative class members' specific

medical needs and the specific supports they would need in the community do not serve as a bar to class certification. *Rolland v. Patrick*, No. 98-30208, 2008 WL 4104488, *4 (D. Mass. Aug. 19, 2008) ("any identified factual differences between the named Plaintiffs and some of the class they sought to represent did not undermine commonality and, in particular, did not preclude certification of a class of persons with mental retardation who were challenging Defendants' practices.") *See also Ricci v. Okin*, 537 F.Supp. 817 (D. Mass. 1982). Such factual differences can be addressed in the remedial phase, as the appropriate placement for each putative class member is determined. *Rolland*, 1999 WL 34815562 at *5 (noting that class certification was appropriate and "individualized determinations of needs and services were more properly left for post-judgment relief"); *Marisol A. v. Guiliani*, 126 F.3d 372, 375 (2d Cir. 1997) (individual needs of children within the class did not defeat commonality).

The question of typicality is closely related to the question of commonality. *Rosario*, 963 F.2d at 1018. A "plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and his or her claims are based on the same legal theory." *De La Fuente v. Stokely-Van Camp, Inc*., 713 F.2d 225, 232 (7th Cir. 1983) (citations and internal quotation omitted). This requirement "primarily directs the district court to focus on whether the named representatives' claims have the same essential characteristics as the claims of the class at large." *Retired Chicago Police Ass'n v. City of Chicago*, 7 F.3d 584, 596-7 (7th Cir. 1993). Defendants engaged in the same course of conduct in administering services intended for the members of the class and the named Plaintiffs, and all have the same claim – that Defendants are violating Title II of the ADA integration mandate. Thus, typicality is satisfied.

Furthermore, as this court has noted, the mere fact that a particular individual does not desire to have his or her civil rights vindicated cannot serve as a bar to the resolution of such rights. *Imasuen v. Moyer*, No. 91-C-5425, 1992 WL 26705, *2 (N.D. Ill. Feb. 7, 1992) (Holderman, J.) ("[T]he fact that some class members may be satisfied with an unconstitutional system and would prefer to leave violations of their rights unremedied is not dispositive under Rule 23(a)"); *Wyatt v. Poundstone*, 169 F.R.D. 155, 161 (M.D. Ala. 1995) (refusing to decertify class where some institutional residents opposed community placement because doing so "would, in effect, preclude the use of the class action device in many of the very cases where it could be the most advantageous"); *Waters v. Berry*, 711 F. Supp. 1125, 1131-32 (D.D.C. 1989); *Lanner v. Wimmer*, 662 F.2d 1349, 1357 (10th Cir. 1981); *Wilder v. Bernstein*, 499 F.Supp. 980, 993 (S.D.N.Y. 1980); Newberg on Class Actions § 16:17 (4th ed. 2009).

Class certification has regularly been granted in the *Olmstead* context.[8] The individualized needs of potential class members do not defeat the ability to employ the class action device where the requirements of Rule 23 are nonetheless met. The class covered by the proposed consent decree easily satisfies the standards described above.

B. Federal Courts Have Frequently Approved Class-Based Remedies to Redress Violations of the Integration Mandate of Title II

Systemic reform is often necessary to remedy class-based community integration claims. For instance, in *Rolland v. Cellucci*, No. 98-cv-30208, 1999 WL 34815562 (D. Mass. Feb. 2, 1999), the court approved a class settlement to remedy allegations that Massachusetts relied on

[8] *See Ball et al v. Rodgers*, 492 F.3d 1094 (9th Cir. 2007); *Messier v. Southbury Training School*, 562 F.Supp. 2d 294 (D. Conn. 2008); *Colbert v. Blagojevich*, No. 1:07cv4737 (N.D. Ill. Sept. 29, 2008); *Williams v. Blagojevich*, No. 1:05-cv-04673 (N.D. Ill. Nov. 11, 2006). (Unpublished Orders are attached as Exh. B.)

inappropriate nursing home placements to serve individuals with developmental disabilities, in violation of the Nursing Home Reform Amendments to the Medicaid Act and the ADA.[9] Under the 2000 settlement, the State successfully moved approximately 1,000 class members from the restrictive nursing home settings into the community. *Voss v. Rolland*, No. 08-1874, 2010 WL 157475 (1st Cir. Jan. 19, 2010); *Rolland*, 191 F.R.D. 3, 15-16 (D. Mass. 2000). A group of parents of individuals with developmental disabilities who desired to remain in nursing homes challenged the settlement and the class certification, objecting that it did not adequately protect class members who wished to remain in nursing homes. The District Court rejected this challenge, and the First Circuit affirmed the District Court's finding that the settlement was fair, reasonable, and adequate. The First Circuit recognized that the settlement agreement reflected a preliminary determination that the class would be appropriate for community placement, but that individualized determinations would be made during the transition planning process that would result in community placement only where appropriate, and would take into consideration the wishes of the class members' families. *Voss*, 2010 WL 157475 at *7.

Similar system-wide relief was reached in a settlement agreement in *Long v. Benson*, No. 4:08-cv-26-RH-WCS (N.D. Fla. Sept. 15, 2009) (Attached at Exh. C). *Long* involved a state-wide class action brought on behalf of Florida residents who currently, or at any time during the litigation, are Medicaid eligible adults with disabilities; are unnecessarily confined to a nursing facility that receives Medicaid funds; desire to reside in the community instead of a nursing

[9] The class certified was of "all adults with mental retardation and other developmental disabilities in Massachusetts who resided in nursing facilities on or after October 29, 1998, or who are or should be screened for admission to nursing facilities pursuant to 42 U.S.C. § 1396r(e)(7) and 42 C.F.R. 483.112 et seq." *Rolland*, 1999 WL 34815562 at *2.

facility; and could reside in the community with appropriate services. Plaintiffs alleged that class members were being unnecessarily institutionalized because of Defendants' failure to cover services and support in appropriate, integrated community settings. The parties reached a settlement of the class claims requiring the state to spend $27 million on new waiver slots over a 12 month period. While the settlement did not expressly state the number of class members who would be served under the settlement, the amount of funds committed reflects the sort of systemic relief contemplated in the consent decree before this court.

Similar system-wide relief will likely be forthcoming in *Disability Advocates, Inc*. *v Paterson*. In September 2009, the court ruled for the plaintiffs on liability, finding that New York discriminated against DAI's 4,300 constituents with mental illness by denying them services in the most integrated setting appropriate to their needs. *DAI*, 2009 WL 2872833 at *1. In *Disability Advocates*, the court cited to authority that the court has "broad discretion to fashion equitable relief that is commensurate with the scope of the violation" and outlined the basic elements of the proposed remedial plan that Plaintiffs had already submitted. *Id.* at *86. Plaintiffs' proposed plan included large-scale capacity building of community placements; developing infrastructure to administer these community services; providing community based options for individuals at risk of entry into adult homes; and providing for oversight by an independent monitor.[10] *Id*. at *87.

The United States intervened in *DAI* and filed a brief supporting the plaintiff's proposed

[10] Plaintiff's proposal would require the development of at least 1,500 supported housing beds per year, ensuring that no fewer than 4,500 supported housing beds are developed. Additionally, plaintiff's guidelines would require detailed descriptions of the responsibilities of the different State agencies and Defendants in carrying out the plan and a time line for accomplishing all aspects of the plan. *Id.* at *87.

remedy. (Pl. Intervenor U.S.'s Mem. in Supp. of Pl.'s Remedial Plan and in Opp. to Defs.' Proposed Remedial Plan, Nov. 24, 2009, Attached as Exh. D) The defendants' proposal, while differing on the ultimate number of beds (200 beds per year, for 5 years), nonetheless sets forth a plan of systemic reform. (Defs.' Proposed Remedy at 7, Attached as Exh. E) The consent decree here contemplates exactly the sort of systemic reform that was reached in *Long* and *Rolland* and that will likely result from the *Disability Advocates, Inc*. litigation.

In addition to the cases above, many community integration cases have reached settlements resulting in systemic reform that has led to the development of community-based settings.[11] Class-wide systemic relief is appropriate for integration violations of the state's administration of its programs and services. To impose more stringent rules on plaintiffs' ability to vindicate their rights to live in the most integrated setting would obstruct the ADA's goals of community integration.

Conclusion

For the above stated reasons, the Court should grant preliminary approval of the proposed

[11] *Chambers et al. v. the City and County of San Francisco*, No. 06-06346 (N.D. Ca. Sept. 18, 2008) (order granting final approval of settlement providing for community-based living options to class members)*; Hawaii Disability Rights Center v. State of Hawaii,* No. 03-00524 (D. Hawaii Aug. 12, 2005) (settlement providing for Home and Community Based Services for class of individuals with developmental disabilities, *available at* http://www.hawaiidisabilityrights.org/forms/S.M.SETTLEMENT8-12-05(final-redact).DOC); *Brown et al v. Bush et al*, No. 98-673 (S.D. Fla. Aug. 11, 2005 Order approving settlement calling for community placements for a class of approximately 280 individuals with developmental disabilities in institutional settings, *available at* http://www.centerforpublicrep.org/uploads/1h/Ew/1hEw39KXGykQddtjztXKew/Approval-of-Settlement-Agreement.pdf); *ARC of Connecticut et al v. O'Meara & Wilson Coker*, No. 01-1871 (D. Conn. May 20, 2005) (settlement providing for expansion of HCBS waiver for class of individuals who were eligible for, but had been denied waiver services). (Settlement agreements attached as Exh. F.)

consent decree. With the Court's permission, counsel for the United States will be present at the hearing scheduled for January 28, 2010.

Dated: January 26, 2010

Respectfully submitted,

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