IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

LYNN E., et al. Plaintiffs, v. JOHN H. LYNCH, et al., Defendants.	)	
THE UNITED STATES OF AMERICA, Plaintiff-Intervenor, v. THE STATE OF NEW HAMPSHIRE, Defendant.	)	1:12-CV-53-LM

UNITED STATES' MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

On February 9, 2012, this case was initiated by plaintiffs Lynn E., Kenneth R., Sharon B., Amanda D., Amanda E., and Jeff D., (collectively the "named plaintiffs") to vindicate the rights of people with disabilities who are subjected to or at risk of needless and prolonged institutionalization in State facilities like the New Hampshire Hospital ("NHH") and the Glencliff Home ("Glencliff'). They allege that the State is unnecessarily institutionalizing individuals with serious mental illness and seek an injunction requiring the State to develop community-based services sufficient to avoid class members' unnecessary institutionalization.

After conducting an investigation, issuing a letter identifying violations of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101 *et seq.*, by the State of New Hampshire, and engaging in months of negotiations attempting to resolve those findings, the United States filed a

motion to intervene in this action. On April 4, 2012, the Court granted this motion to intervene. Like the plaintiffs, the United States alleges that the State is violating the ADA in its administration of its mental health system and that this results in the unnecessary institutionalization of individuals with serious mental illness. The United States' complaint-in-intervention seeks systemic injunctive relief on behalf of all people in New Hampshire with serious mental illness who are unnecessarily institutionalized or at risk of institutionalization at NHH and Glencliff.

After filing their complaint, plaintiffs filed a motion for class certification, along with a memorandum supported by numerous exhibits. They identified the State's overinvestment in institutional care and failure to develop an array of community services as the common cause of plaintiffs' injuries and alleged that defendants had acted on grounds generally applicable to a class of individuals such that injunctive relief is appropriate. In support, they presented evidence – including defendants' own reports and data – that the discriminatory segregation that the putative plaintiffs suffer results from the State's administration of its resources, which favors institutional care over more effective, integrated services in the community. The State's funding policy and its failure to provide critical community supports affect both putative class members who are currently in the State's facilities and those who are at serious risk of entering the institutions. In response, the defendants filed a motion to strike plaintiffs' class certification motion, or in the alternative, to grant additional time to object, and also filed an objection to the class certification motion. Their primary argument in their motion to strike is that extensive discovery is needed before the Court can determine whether plaintiffs meet the requirements for class certification, particularly after the Supreme Court's recent decision in *Wal-Mart v. Dukes*, 131 S.Ct. 2541 (2011).

The United States files this memorandum to assist the Court in addressing the pending motions related to plaintiffs' request for class certification.[1] The United States urges the Court to deny defendants' motion to strike and grant plaintiffs' motion for class certification because: 1) class actions are an efficient, effective, and appropriate means for resolving civil rights matters, especially those, like this one, that seek to vindicate the rights of persons with disabilities pursuant to the integration mandate of the ADA, and the Supreme Court's opinion in *Olmstead v. L.C.*, 527 U.S. 581 (1999); and 2) the plaintiffs have met the requirements for class certification set forth in Rule 23 of the Federal Rules of Civil Procedure as recently interpreted by the Supreme Court in *Wal-Mart*. The United States agrees with plaintiffs that class certification in this case does not require further discovery given that defendants have in their own custody the documents and records central to this case, and the information plaintiffs have already placed before the Court.

ARGUMENT

I. Class Certification Allows for Efficient, Effective Resolution of Civil Rights Cases, Especially *Olmstead* Cases

Class certification is appropriate in civil rights cases seeking injunctive relief, like this one, and remains appropriate after *Wal-Mart*. In *Wal-Mart*, the Supreme Court discussed the standard for establishing the commonality and cohesiveness elements of Rule 23 in the context of employment discrimination cases. *Wal-Mart* was a case that involved claims for money –

[1] The Unites States has a vested interest in the enforcement of the ADA and has the authority to seek systemic relief for violations of the law in this and other cases. However, the United States cannot be a party to all ADA litigation across the nation. The United States presents this memorandum to offer its understanding of *Wal-Mart*, namely that class actions remain an appropriate and essential mechanism for private plaintiffs to employ when seeking to remedy systemic violations under the ADA.

back pay and punitive damages – and so did not fit within the scope of more traditional civil rights cases, like the instant suit, that merely seek declaratory and injunctive relief. In *Wal-Mart*, while only a plurality underlined the need for close scrutiny of class certification petitions in employment cases for money, a unanimous Supreme Court took great pains later in the *Wal-Mart* opinion to recognize the important role that class actions play in remedying civil rights violations outside the limited and very different facts before the Court in *Wal-Mart*. The unanimous Court concluded: "As we observed in *Amchem*, '[c]ivil rights cases against parties charged with unlawful, class-based discrimination are prime examples' of what [Rule 23](b)(2) is meant to capture." *Wal-Mart*, 131 S.Ct. at 2557-58. The Court did not, therefore, disturb well-established class certification parameters in more traditional civil rights cases, such as the case at bar. Indeed, the advisory notes to Rule 23 explain that civil rights cases are illustrative of the type of cases appropriately brought under section (b)(2) of the rule, the section at issue in this case. Advisory notes to Fed. R. Civ. P. 23 ("Illustrative [of cases brought under 23(b)(2)] 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.").

Class actions are particularly appropriate in *Olmstead* cases brought under Title II of the ADA. Indeed, the *Olmstead* case itself illustrates the pitfalls of proceeding as a civil rights action involving only the needs of a few plaintiffs, rather than as a class action. *Olmstead* was filed on behalf of two individuals, L.C. and E.W., who were unnecessarily institutionalized in Georgia's state psychiatric hospitals. *Olmstead,* 527 U.S. at 593. Plaintiffs prevailed in that case, and L.C. and E.W. obtained relief. *See id.* at 607. However, the hundreds of other individuals who were also unnecessarily institutionalized in Georgia's institutions obtained no relief until more than a decade later. It was not until the United States filed an *Olmstead* case on

behalf of all of the individuals in Georgia's mental health system who were unnecessarily institutionalized or at risk of unnecessary institutionalization, that Georgia changed its funding policy which had favored institutions over services in the community. *See United States v. Georgia*, No. 1:10- 249 (N.D. Ga. Oct. 29, 2010) (order granting settlement affording systemic relief to remedy ADA violations). That is the relief that plaintiffs are seeking here. While it would be a step in the right direction to protect the civil rights of the named plaintiffs, systemic relief cannot be ordered if this case proceeds as an action by six individuals.

The *Olmstead* Court recognized that community supports for people with disabilities should not be provided to one person who commenced legal action under the ADA while others who have been seeking the same services are pushed down the list. 527 U.S. at 606. It is difficult to see how a district court can ensure that institutionalized individuals for whom community care is appropriate, and who are not opposed to it, will all be treated fairly if they are not all before the court. Moreover, when *Olmstead* cases are brought as class actions, the court can order comprehensive relief where appropriate. On the other hand, in *Olmstead* cases brought by individuals, a state may simply provide community-based care for the individual plaintiffs without comprehensively addressing its broader *Olmstead* obligations.

Since the Supreme Court's decision in *Wal-Mart*, other courts have continued to certify classes of plaintiffs in cases brought under Title II of the ADA and other civil rights laws. *See, e.g., McReynolds v. Merrill Lynch, Pierce, Fenner & Smith, Inc*., 672 F.3d 482, 489 (7th Cir. 2012) (reversing denial of class certification to African American financial advisors alleging racial discrimination under Title VII); *Ross v. RBS Citizens, N.A.*, 667 F.3d 900, 910 (7th Cir. 2012) (upholding class certification for a group of employees alleging violations of the Fair Labor Standards Act); *Chen-Oster v. Goldman, Sachs & Co.*, No. 10-6950, 2012 U.S. Dist.

LEXIS 12961 (S.D.N.Y. Jan. 19, 2012) (denying defendants' motion to strike class allegations where class of women alleged discrimination under Title VII); *Pashby v. Cansler*, No. 5:11- 273, 2011 WL 6130819 (E.D.N.C. Dec. 8, 2011) (certifying class of all current or future North Carolina Medicaid recipients age 21 or older who have, or will have, coverage of personal care denied, delayed, interrupted, terminated, or reduced as a result of new eligibility requirements); *D.L. v. District of Columbia*, 277 F.R.D. 38, 45-6 (D.D.C. 2011) (denying defendants' motion to decertify a class of children alleging denial of free appropriate public educations under the Individuals with Disabilities Education Act); *Connor B. v. Patrick*, 278 F.R.D. 30, 33 (D. Mass 2012) (denying defendants' motion to decertify a class of children in foster harm alleging harm due to systemic deficiencies in the foster care system); *Youngblood v. Family-Dollar Stores, Inc.*, No. 09-376, 2011 WL 4597555 (S.D.N.Y. Oct. 4, 2011) (certifying class of store managers alleging violations of the New York Labor Law); *Bouaphakeo v. Tyson Foods, Inc.*, No. 5:07-04009, 2011 WL 3793962 (N.D. Iowa Aug. 25, 2011) (denying defendants' motion to decertify a class of employees alleging violations of the Fair Labor Standards Act). Class actions are an efficient tool for resolution of these claims, which warrant systemic reform. *See American Pipe & Const. Co. v. Utah*, 414 U.S. 538, 553 (1974) (finding class actions promote "the efficiency and economy of litigation"). Courts around the country continue to recognize the benefit and appropriateness of certifying classes in civil rights matters.

II. Plaintiffs Have Met the Requirements of Fed. R. Civ. P. 23 as Recently Interpreted by the Supreme Court in *Wal-Mart v. Dukes*

The standard for certifying class actions is set out in Rule 23 of the Federal Rules of Civil Procedure. Rule 23(a) requires that all classes meet four criteria: "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the

class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(1)-(4). Class actions also must satisfy one of the categories of class actions listed in Rule 23(b). In this case, plaintiffs' motion seeks certification under 23(b)(2), which requires that "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). Pls.' Mot. Class Cert. at 23

a. New Hampshire's funding policy results in a common injury

Wal-Mart is legally distinguishable from this case. The violations of law alleged here are the result of government funding polices that privilege institutional care over community services, leading to insufficient community supports. In *Wal-Mart*, the Supreme Court noted that the plaintiffs challenged the broad discretion afforded to low-level supervisors at stores across the country and attempted to cast this discretion as a unified "policy." 131 S.Ct. at 2549, 2554. Plaintiffs in that case failed to demonstrate "significant proof that Wal–Mart operated under a general policy of discrimination." *Id.* at 2554 (citations omitted). Here, plaintiffs point to a pattern of State decisions made by high-level officials favoring institutional care over community-based services, and those decisions are causing a common injury. Here, the fatal flaw identified by the Court in *Wal-Mart* does not exist.

Wal-Mart explains that "[c]ommonality requires the plaintiff to demonstrate that the class members 'have suffered the same injury.'" *Id.* at 2551. In that case, the plaintiffs could not demonstrate that more than a million employees across thousands of stores nationwide experienced the same harms, for the same reasons. *Id.* at 2555. Here, however, plaintiffs allege that they all suffer the same specific harm – unjustified segregation, now or in the future – as a

result of their disabilities. This harm is recognized by the Supreme Court as a violation of the ADA. *Olmstead*, 527 U.S. at 600 ("Congress explicitly identified unjustified 'segregation' of persons with disabilities as a 'for[m] of discrimination.'"). *See also M.R. v. Dreyfus,* 663 F.3d 1100, 1116-17 (9th Cir. 2011) ("An ADA plaintiff need not show that institutionalization is 'inevitable' or that she has 'no choice' but to submit to institutional care in order to state a violation of the integration mandate. Rather, a plaintiff need only show that the challenged state action creates a serious risk of institutionalization."). Where, as here, all class members can show that they suffer a common harm due to a single policy, a class action remains appropriate under the *Wal-Mart* analysis. *See, e.g.*, *McReynolds*, 672 F.3d at 489 (finding question regarding impact of employer's "teaming policy" was common to class and appropriate for class-wide determination); *Ross*, 667 F.3d at 910 (finding policy of intentional failure to pay overtime a common claim); *Connor B.*, 278 F.R.D. at 33 (finding specific deficiencies in the foster care system give rise to common claims appropriate for class-wide analysis); *D.L.*, 277 F.R.D. at 45-46 (finding plaintiffs provided sufficient "glue" to bind the class members claims in form of systemic deficiencies in special education system).

Courts applying *Wal-Mart's* analysis continue to find class certification appropriate, even in cases where the injuries are more broadly defined and result from policies that are not as clear as that identified in this case. For example, in *McReynolds v. Merrill Lynch,* Judge Posner wrote for a Seventh Circuit panel that distinguished *Wal-Mart* in a Title VII case and found that class certification was appropriate for a class of African American financial advisors alleging racial discrimination and requesting both declaratory relief and damages. *McReynolds*, 672 F.3d 482. The court there explained that the class in *Wal-Mart* failed because "the incidents of discrimination complained of do not present a common issue that could be resolved efficiently in

a single proceeding" due to the size of the class, the discretion afforded to the individual supervisors, and the absence of a uniform policy set by top management. *Id.* at 488. The class in *McReynolds* was certified, however, due to the presence of company-wide policies that allegedly exacerbated discrimination. *Id.* Judge Posner concluded that resolution of the claims for injunctive and declaratory relief should go forward on a class-wide basis in the interest of efficiency, even though any individual monetary relief for class members would be determined in separate proceedings, with the benefit of the court's decision. *Id.* at 490-91. Similarly, a district court in Massachusetts recently found that its previous certification of a class of children in foster care who were exposed to harms due to deficiencies in the foster care system remained appropriate after *Wal-Mart*. The court explained that, "[c]ontrary to Defendants' contention, the *Wal–Mart* decision did not change the law for all class action certifications. Instead, it provided guidance on how existing law should be applied to expansive, nationwide class actions that are very different from the case currently before the court." *Connor B.*, 278 F.R.D. at 33. Though the violations alleged in that case were quite diverse, the deficiencies in care offered by a single state agency "are the alleged causes of the class members' injuries" and meet the requirement of commonality. *Id.* at 34. Courts recognize that even after *Wal-Mart*, it is appropriate to grant class certification where, as here, a common question and injury affect a class of plaintiffs.[2]

[2] Of course, as was the case prior to the Supreme Court's decision in *Wal-Mart*, some civil rights suits fail to pass the test for class certification post-*Wal-Mart*. For example, prior to deciding the *McReynolds* case described above, the Seventh Circuit found that a case under the Individuals with Disabilities Education Act was not appropriate for class treatment where resolving each individual class member's claim would require a particularized inquiry. *Jamie S. v. Milwaukee Pub. Schs.*, 668 F.3d 481, 498 (7th Cir. 2012). Unlike that case, the statutory framework that is the basis for this action does not require that individualized inquiry. The Fifth Circuit also recently found class certification was not appropriate in *M.D. v. Perry*, because a variety of constitutional claims asserted by the class members did not meet the standard of a common

b. Classwide resolution of the plaintiffs' injuries is possible and appropriate under Rule 23(b)(2).

In addition to requiring that plaintiffs seeking class certification suffer the same harms and share a "common question," *Wal-Mart*, 131 S.Ct. at 2556, the Court also noted that this question "must be of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.* at 2551. In *Wal-Mart*, each class member who was seeking individual relief would need the court to determine the scope of the individual remedy if liability was established, such that the court could not simply resolve the case with a single injunction. *Id.* at 2561. In contrast, class certification is appropriate where the "classwide proceeding [will] generate common answers apt to drive resolution of the litigation." *Wal-Mart*, 131 S.Ct. at 2551. That is the case here.

As explained above, *Olmstead* cases are best adjudicated on a systemic level, with comprehensive injunctive relief as is required by Rule 23(b)(2) and *Wal-Mart*. In this case, the plaintiffs seek only injunctive relief requiring the defendants to develop an array of community-based services sufficient to avoid class members' unnecessary institutionalization. An order requiring defendants to take this action would resolve the plaintiffs' complaint. There will be no need to require specific assessments of individuals' needs and preferences and the development of plans for unique services. Plaintiffs do not request this. Rather, plaintiffs request that the Court require defendants to fund and make available the array and mix of services that New Hampshire has acknowledged are necessary to meet plaintiffs' needs and avoid unnecessary institutionalization. *See* Ex. 2 to Pls.' Mem. in Support of Mot. for Class Cert. (stating that

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"policy." No. 11-40789, 2012 U.S. App. LEXIS 6061, *7-8 (5th Cir. Mar. 23, 2012). This case is also inapposite as there is a common funding policy at issue here.

admissions and census at NHH rose due to insufficient community services including supported housing and Assertive Community Treatment "ACT"). The exact amount and array of services necessary to meet the needs of the class will be determined at the remedy phase of proceedings, if the Court finds the defendants in violation of the law.

Each individual member of the plaintiff class need not share the exact same qualities, disabilities, needs, and circumstances in order for class relief to be appropriate. *See Connor B.*, 278 F.R.D. at 33-34. If the Court were to accept the defendants' contention that all distinctions between individual class members' diagnoses, providers, and treatment histories make class certification improper, then no class actions would be possible under the ADA. People, by their natures, are unique. However, as decades of successful class action lawsuits on behalf of people with disabilities demonstrate, it is possible to remedy discrimination against a diverse group of individuals through comprehensive injunctive relief. *See, e.g., Miranda B. v. Kulongoski*, No. 00-01753 (D. Or. Dec. 13, 2004); *Consumer Advisory Bd. v. Glover*, 151 F.R.D. 490 (D. Mass. 1993); *Halderman v. Pennhurst State Sch. and Hosp.*, 610 F. Supp. 1221 (E.D. Pa. 1985); *Horacek v. Exon*, 357 F.Supp. 71 (D. Neb. 1973). Many cases listed above were brought by the private bar on behalf of classes of people with disabilities; if this were no longer possible, only the United States would be left to litigate all systemic reform under the ADA.

Plaintiffs' requested remedy is the appropriate remedy for a case under Rule 23(b)(2) which "applies only when a single injunction or declaratory judgment would provide relief to each member of the class." *Wal-Mart*, 131 S.Ct. at 2557. It is not only possible to issue an injunction that resolves the plaintiffs claim by creating the array of services that will enable them to live in integrated settings and avoid unnecessary institutionalization, it is the efficient approach to litigating this claim.

III. Discovery Is Not Necessary Prior to Class Certification In This Case

a. Sufficient facts are already before the Court to make an appropriate assessment regarding class certification

Plaintiffs have already presented to this Court substantial evidence supporting class certification. While "[r]eviewing the complaint alone is not normally a suitable method for determining whether a class eventually can be certified," *Coll. of Dental Surgeons of Puerto Rico v. Connecticut Gen. Life Ins. Co.*, 585 F.3d 33 (1st Cir. 2009), the Court may review facts before it – including exhibits and declarations like those submitted by plaintiffs here – and make decisions about class certification even outside the formal discovery process. *Gooch v. Life Investors Ins. Co. of America*, 672 F.3d 402, 418 (6th Cir. 2012) (finding court's review of affidavits and exhibits a sufficient basis for its certification of a class).

Plaintiffs' exhibits support their motion for class certification by providing the required evidence that they meet the conditions for class certification. Plaintiffs demonstrate the numerosity of their proposed class through the New Hampshire 2010 Mental Health Outcome Measures and the New Hampshire Hospital Annual Report. Exs. 4 and 5 to Pls.' Mem. in Support of Mot. for Class Cert. New Hampshire Hospital admitted over 1,800 adults in 2010 and 35% of those admitted were readmitted within 180 days. The number of people who are residents at Glencliff, demonstrated through the census data from the Glencliff Home, adds to the size of the class. Ex. 7A to Pls.' Mem. in Support of Mot. for Class Cert. The individuals who are currently at Glencliff or NHH, or are cycling in and out of those institutions and are at serious risk of readmission are so numerous that joinder is not appropriate.

Similarly, the plaintiffs have shown that they meet the commonality, typicality, and cohesiveness requirements through the defendants' own reports including, *Addressing the Critical Mental Health Needs of NH's Citizens: A Strategy for Restoration; Fulfilling the*

Promise: Transforming New Hampshire's Mental Health System volumes I and II; and *Addressing the Critical Mental Health Needs of NH's Citizens: A Strategy for Restoration, Report of the Listening Sessions*. Exs. 2, 3, and 5 to Pls.' Mem. in Support of Mot. for Class Cert. These documents support plaintiffs' claim that they have suffered a common injury that is susceptible to remedy through injunctive relief. State documents included as exhibits with plaintiffs' motion affirm that the insufficiency of community-based services for people with intensive needs for supports resulted in unnecessary reliance on New Hampshire Hospital. *See, e.g.*, Ex. 3 at 4, 14. The documents also support the assertion that an injunction requiring New Hampshire to develop an array of community supports, including services such as supported housing, supported employment, and ACT, would resolve the plaintiffs' claims and be appropriate to serve a range of individual needs. *See, e.g.*, Ex. 2 at 9-14; Ex. 3 at 11-12, 14, 18; Ex. 6 at 6.

The evidence before the Court is sufficient to support plaintiffs' motion for class certification. Should defendants wish to place other facts before the Court prior to its decision regarding class certification, it is in a position to do so without discovery, as the State funds and operates the institutions and services that are at issue in this case. For example, the State has access to and control over records of those served in State institutions, state policy and budget documents, and regulations regarding community care. The State does not need discovery to marshal its own facts.

b. Wal-Mart preserves courts' autonomy to determine the extent of inquiry necessary prior to class certification

While *Wal-Mart* reminds courts and litigants that "[a] party seeking class certification must affirmatively demonstrate his compliance with the Rule—that is, he must be prepared to prove that there are *in fact* sufficiently numerous parties, common questions of law or fact, etc.,"

131 S.Ct. at 2551, this is not a new requirement. "Rigorous analysis" of the basis for petitions for class certification has been required for decades. *Id.* (*quoting Gen. Tel. Co. of Sw. v. Falcon,* 457 U.S. 147, 160 (1982).) As in the past, the scope of evidence required by a court prior to certification will vary depending on the specific circumstances. *See Connor B.*, 278 F.R.D. at 33 ("The court remains convinced that, while a preliminary evidentiary hearing may be required before certifying some class actions, it is not required in this case."). As the First Circuit explained in *In re New Motor Vehicles Canadian Exp. Antitrust Litig.*, it is clear that some level of inquiry into the merits of the claims is permissible and appropriate where class criteria and merits overlap, but the extent of the inquiry that is required is fact dependent and relates to the types of claims at issue. 522 F.3d 6, 24-26 (1st Cir. 2008). Where, unlike here, there is a "novel theory of legally cognizable injury," the inquiry into the facts prior to class certification will be "searching." *Id.* at 25. In contrast, here, where the claim is not novel,[3] the Court may certify the class after determining that plaintiffs have proved the necessary elements of Fed. R. Civ. P. 23(a).

[3] Cases around the country have vindicated plaintiffs' rights to support in the community under *Olmstead*. *See, e.g., Fisher v. Oklahoma Health Care Auth.*, 335 F.3d 1175 (10th Cir. 2003); *Benjamin v. Dep't of Pub. Welfare*, 768 F. Supp. 2d 747 (M.D. Pa. 2011), *aff'd*, 432 Fed.Appx. 94 (3rd Cir. 2011); *Long v. Benson*, 2008 WL 4571903 (N.D. Fla. Oct. 14, 2008), *aff'd*, 383 Fed.Appx. (11th Cir. 2010); *Messier v. Southbury Training Sch.*, 562 F. Supp. 2d 294 (D. Conn. 2008).

CONCLUSION

For the foregoing reasons, the Court should deny defendants' motion to strike and grant the plaintiffs motion for class certification.

Dated: April 20, 2012

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2012, I electronically filed the United States' Memorandum in Support of Plaintiffs Motion for Class Certification, with the Clerk of the Court using the CM/ECF system which will automatically send email notification of such filing to the attorneys of record.

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