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ATTORNEYS FOR PLAINTIFFS

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA
HELENA DIVISION

SHIRLEY SMALL, et. al.,

Plaintiffs,

vs.

STATE OF MONTANA, et.al.,

Defendants.

NO. CV-96-49-H-CCL

**PLAINTIFFS' PRE-DISCOVERY
DISCLOSURE STATEMENT
PURSUANT TO LOCAL
RULE 200.5 (a)**

INTRODUCTION

Plaintiffs' respectfully submit this Pre-Discovery Disclosure Statement pursuant to Local Rule 200.5 (a) of the United States District Court for the District of Montana and in conformity with this Court's Order dated November 7, 1996.

Representations of fact made herein are made in good faith and upon information and belief, however they are made without the benefit of civil discovery. Therefore, plaintiffs reserve

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the right to introduce additional facts or legal theories as such facts and theories are uncovered and developed through the discovery process or otherwise.

I. FACTUAL BASTS OF THE PLAINTIFFS' CLAIMS

Plaintiffs' and the proposed plaintiff class are individuals who are confined, or at risk of confinement, within state operated institutions for the treatment of mental disorders,

Plaintiffs filed this civil rights action on behalf of themselves and the approximately 200 persons residing at the Montana State Hospital (MSH) at Warm Springs, Montana, and the approximately 144 persons residing at the Montana Mental Health Nursing Care Center (MMHNCC) in Lewistown, Montana. All of the plaintiffs and the proposed plaintiff class are
10 qualified individuals with disabilities, and qualify for the protections of the Americans with Disabilities Act 42 U.S.C. 12101, et seq, and 42 U.S.C. 1983.'

12 Plaintiff Shirley Small was unnecessarily segregated within the Montana State Hospital
13 (MSH) because the services appropriate for her undifferentiated schizophrenia and borderline
14 intellectual functioning were not made available to her in the most integrated setting appropriate
15 to her needs. She received no habilitation and languished on a discharge placement list. After the
16 filing of this lawsuit, Shirley was discharged to community services. Only after being named a
17 plaintiff in this lawsuit were appropriate community services provided to Shirley. She now lives in
18 a Great Falls group home, receiving services in a community based setting which could have been
19 made available to her prior to this suit. She exhibited no change in behaviors, no fundamental
20 alteration in community services was made and her diagnosis did not change since being named a
21 plaintiff in this filing on July 15th of 1996. However, by virtue of being a named plaintiff in this
22 suit, she obtained community services.

23 Plaintiff Howard Jay Woods remains unnecessarily segregated at MSH for treatment of a
24 organic personality disorder brought on by two automobile accidents. Jay is warehoused, without
25

26 ¹ The arguments of plaintiffs on the issue of class certification have been fully articulated in
27 two memoranda supporting plaintiffs' motion for class certification, and will not be repeated
28 herein.

1 specialized treatment, and without the likelihood of ever receiving any. He could be placed in a
2 community setting if services were made available to him. As they are not he remains
3 unnecessarily segregated and confined at MSH.

4 Plaintiff Andrew Adler has bipolar disorder and a developmental disability. He receives no
5 rehabilitation. Recently he suffered a stroke and was hospitalized at Anaconda Community Hospital.
6 Andy is a double amputee in his sixties, who still awaits return to the community, but finds himself
7 languishing on a statewide developmental disability waiting list. Andy could be provided services
8 in an integrated community setting, however he remains confined, deteriorating at MSH, while
9 awaiting a placement.

10 Plaintiff Dian Wallila, age 49, has been a patient at MSH for the majority of her adult life.
11 Recently, when trying to access community services through Montana's mental health system she
12 was cavalierly informed by her treatment team at MSH that she could not qualify as she is not,
13 and never has been mentally ill. This is in spite of numerous commitments and recommitments as a
14 seriously mentally ill person, and volumes of testimony from her prior treatment teams at MSH
15 that she was mentally ill. Now, she remains a "voluntary" patient, waiting for a community
16 placement in the developmental disability system, after having spent her lifetime labeled and
17 locked away as mentally ill.

18 Plaintiff Edward W. Nelson suffers from schizophrenia and mild mental retardation. At
19 the time of the filing of this lawsuit, he was an involuntary patient at MSH. There was no active
20 planning for his discharge to community services in his home town of Havre. However, after
21 being named as a plaintiff in this suit, he was discharged to Havre where he now lives in his own
22 apartment. Ed's condition did not change after the filing of this suit, and no additional services
23 were created for him that did not already exist. He would have remained institutionalized if not
24 for the fact he was a named plaintiff in this action.

25 Plaintiff Charles Zwerneman, likewise now lives in Livingston. At the time this lawsuit
26 was brought he had been a patient at MSH for over a year. No change occurred in his condition
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1 after the filing of this suit, and no special services were made available to him that were not
2 available to others prior to the filing of this suit. The event that brought about his discharge was
3 being a named plaintiff in this action. The treatment services he currently utilizes could have been
4 made available to him prior to this lawsuit. His condition and behavior did not change. However,
5 now he lives in Livingston and previously he was segregated at Warm Springs and confined on a
6 locked ward of MSH.

7 The treatment of the named plaintiffs typifies the treatment of the members of the plaintiff
8 class. The discharge of Shirley Small, Ed Nelson and Charles Zwememan without any change in
9 [heir conditions or behaviors evidences the ability of defendants to provide services to plaintiffs in
10 a community setting. Providing services to Shirley, Ed and Charles did not place an undue burden
11 on defendants, nor require any fundamental alteration in the existing system of providing
12 community care. Providing similar services to the class would not require a fundamental alteration
13 in the existing system, nor place an undue burden on defendants.

14 Instead of seeking to provide plaintiffs the type of treatment services that would integrate
15 them into Montana's broader community, defendants have opted instead to redesign MSH and
16 pay for it in such a manner that the unnecessary segregation of persons at MSH and MMHNCC
17 will be ongoing. The defendants propose a funding scheme under which the only way to pay for
18 this reconstruction project will be to have a minimum patient population confined within MSH
19 and MMHNCC, regardless of need. This will create powerful incentives that will lead to the
20 unnecessary segregation and confinement of persons at those institutions. As the lender on the
21 proposed MSH redesign project, defendant Montana Health Facility Authority (MHFA) is
22 providing aid in the perpetuation of this unnecessary segregation, by funding the project in a
23 manner that will require the confinement of persons who could be served in integrated community
24 settings.

25 The state of Montana is about to contract with a managed care organization for the
26 provision of all publicly funded mental health services in Montana. The managed care contract
27
28

1 **excludes** plaintiffs and the proposed plaintiff class from the protections, benefits and services of
2 **managed** care. Every person in the state receiving publicly funded mental health services, whether
3 :they are involuntarily committed patients or voluntary patients, will have the managed care
4 **organization** overseeing their care. Defendants have chosen to deny persons involuntarily
5 **committed** and segregated within their institutions these same benefits and protections.

6 Defendants undertook all of the above without completing the self-evaluation for
7 **programmatic** discrimination, and making those necessary modifications to avoid discrimination
8 **based on** disability, that is required under ADA.

9 Plaintiffs have no adequate remedy at law available to them. They are therefore required to
10 **seek** the equitable relief available through this Court on behalf of themselves and the proposed
11 class.

12 II. LEGAL BASIS OF THE PLAINTIFFS' CLAIMS

13 The Americans With Disabilities Act ("ADA"), 42 U.S.C. 12101, et seq, and its
14 interpretive regulations establish the right of qualifying persons with disabilities to be free **from**
15 unnecessary discrimination.² The discrimination made unlawful under the ADA is exactly that
16 which plaintiffs are subject to. By isolating plaintiffs in segregated treatment settings, refusing to
17 provide reasonable accommodations that would allow plaintiffs to return to their homes, by
18 depriving plaintiffs the benefits, services and protections of managed care, and by configuring a
19 financing scheme that will keep members of the plaintiff class unnecessarily segregated for years
20 to come, defendants discriminate against plaintiffs and the proposed class in violation of ADA
21 and 42 U.S.C. 1983.

22 The ADA has established as a matter of law that persons have a right to receive services in
23 the "most integrated setting appropriate to the needs of the qualified individual with disabilities."
24

25 ² It is firmly established that validly promulgated regulations have the force and effect of
26 law, unless they conflict with the express terms of the underlying authorizing statute.
27 Southeastern Community College v. Davis, 442 U.S. 379, 411 (1979); Chrysler Corp. v. Brown,
442 U.S. 281, 301-303 (1979).

1 42 U.S.C. 12132, 28 C.F.R. 35.130(d). In the seminal case of Helen L. v. DiDario, 46 F. 3d 325,
2 343 (3rd Cir. 1995) the only Circuit Court to rule on the integration mandate under ADA held
3 that unnecessary segregation is unlawful, saying, “. . . the ADA and its attendant regulations
4 clearly define unnecessary segregation as a form of illegal discrimination against the disabled.”

5 The holding of the Helen L. court has been embraced in the following cases: Charles O. v.
6 Houstoun, No. 1:CV-95-280, Memorandum and Order (M.D. Pa. 1996); Wvatt v. Hanan, No.
7 3 195-N, Order (M.D. Ala, March 6, 1995); Williams v. Wasserman, No. CCB-94-880,
8 Memorandum and Order (D. Maryland, July 3 1, 1996). Further, the issuing of bonds has
9 previously been held to be a “service” within the meaning of ADA, thus bringing the
10 bonding/lending authority within the scope of ADA. Independent Housing Services v. Fillmore
11 Ctr., 840 F.Supp. 1328 (N.D. Cal. 1993).³

12 Defendants propose to make major changes within Montana’s mental health system by
13 building a redesigned MSH and implementing managed care, yet they have failed and refused to
14 undertake the programmatic “self-evaluation” of its services, policies and practices and the effects
15 thereof that is required under ADA. They have further refused to make modifications necessary to
16 avoid programmatic discrimination. This is violative of 28 C.F.R. 35.105 (a)(b).

17 Defendants have violated ADA by failing and refusing to modify their programs in order
18 to make them accessible to individuals with disabilities by making “reasonable modifications in
19 policies, practices or procedures when the modifications are necessary to avoid discrimination on
20 the basis of a disability.” 28 C.F.R. 35.130 (b)(7).

21 Defendants refusal to provide community treatment services violates the ADA’s
22 requirement that a public entity may not, based upon disability, provide a qualified individual with
23 a disability services that are not as “effective” as that provided others. 28 C.F.R. 35.130
24 (b)(1)(iii).

25
26 ³ The legal basis of plaintiffs’ and the proposed plaintiff class’ claims have been more fully
27 developed in separate memoranda submitted to this Court, and therefore these claims will not be
28 dealt with exhaustively herein.

1 Institutional care is not “necessary” in order to provide services as effective as those that
2 could be provided in an integrated setting, thus segregating plaintiffs and the proposed class
3 within institutions is in violation of 28 C.F.R.. 35.130 (b)(1)(iv).

4 The exclusion of plaintiffs from the benefits, services and protections of the managed care
5 system is unlawful discrimination under ADA. Separate services could be provided only if
6 “necessary” in order to provide services as effective as those provided under the managed care
7 system. As it is not “necessary” in the instant case, it is unlawful. 42 U.S.C. 12132 and 28 C.F.R..
8 35.130 (b)(1)(iv). Under the ADA, separate but equal is not equal.

9 The proposed funding scheme, under which defendants will build a segregated institution
10 and needlessly confine plaintiffs and the plaintiff class within, is unlawful. The ADA and its
11 interpretive regulations require that services be provided in the “most integrated setting
12 appropriate to the needs of the qualified individuals with disabilities.” 42 U.S.C. 12132 and 28
13 C.F.R. 35.130 (d). By participating in this funding scheme, the MHFA violates ADA’s
14 requirement that a public entity may not aid or perpetuate discrimination. 28 C.F.R. 35.130
15 (b)(1)(v).

16 Defendants’ actions apply to all members of the proposed class, making class certification
17 appropriate and necessary. All of the requirements of Rule 23 (a), Fed. R. Civ. P. have been met.
18 This action seeks to declare and vindicate the civil rights of the plaintiffs and class members.
19 Declaratory and injunctive relief on a class basis is appropriate and necessary.

20 **III. INDIVIDUALS WITH DISCOVERABLE INFORMATION**

21 Local Rule 200.5 (a)(1)(iv) requires disclosure of “the identity of all persons known or
22 believed to have discoverable information about the claims or defenses, and a summary of that
23 information.” The listing of a person below does not constitute an admission or determination by
24 plaintiffs that such a persons’ testimony may be taken in any way, and plaintiffs reserve any and all
25 rights to object to any deposition notices, subpoenas or any other attempt to obtain the testimony
26 of these individuals. It is certain that there are unidentified individuals within the groups of

1 persons listed hereafter, and elsewhere, that have discoverable information. Absent discovery,
2 plaintiffs cannot at this time disclose and identify those individuals.

3 **Current or former employees of Montana State Hospital:**

4 **Dan Anderson** - Acting Superintendent of Montana State Hospital, Warm Springs,
5 MT., 59756, 693-7000. Mr. Anderson is generally familiar with the operation, policies and
6 practices of the hospital as well as the treatment it provides and DPHHS procedures.

7 **Randy Vetter** - Admission Coordinator of Montana State Hospital, Warm Springs, MT.
8 59756, 693-7000. Mr. Vetter is generally familiar with admission and discharge criteria for
9 patients at the hospital.

10 **Sue Beausoleil** - Director of Nursing Services at Montana State Hospital, Warm Springs,
11 MT., 59756, 693-7000. Ms. Beausoleil is generally familiar with the operation, policies and
12 practices of the hospital as well as the treatment it provides.

13 **Archie McPhail** - Director of Treatment Services of Montana State Hospital, Warm
14 Springs, MT. 59756, 693-7000. Mr. **McPhail** is generally familiar with the operation, policies and
15 practices of the hospital as well as the treatment it provides.

16 **Carl Keener** - Medical Director of Montana State Hospital, Warm Springs, MT. 59756,
17 693-7000. Dr. Keener is generally familiar with the operation, policies and practices of the
18 hospital as well as the treatment it provides.

19 **Ed Amberg** - Program Analyst at Montana State Hospital, Warm Springs, MT. 59756,
20 693-7000. He is generally familiar with the operation, policies and practices of the hospital as well
21 as the treatment it provides.

22 **Gretchen Geller** - Quality Assurance at Montana State Hospital, Warm Springs, MT.
23 59756, 693-7000. She is generally familiar with the operation, policies and practices of the
24 hospital as well as the treatment it provides.

25 **Martin Hankins** - Former Quality Assurance Officer at Montana State Hospital. His
26 current address and telephone number are unknown. Dr. Hankins is generally familiar with the
27

1 operation, policies and practices of the hospital as well as the treatment it provides.

2 Henry Hislop - Rehabilitation Counselor at Montana State Hospital, Warm Springs, MT.
3 59756, 693-7000. He is generally familiar with the operation, policies and practices of the hospital
4 as well as the treatment it provides.

5 David Cassan - Rehabilitation Counselor at Montana State Hospital, Warm Springs, MT.
6 59756, 693-7000. He is generally familiar with the operation, policies and practices of the hospital
7 as well as the treatment it provides.

8 Mick Buben - Rehabilitation Counselor at Montana State Hospital, Warm Springs, MT.
9 59756, 693-7000. He is generally familiar with the operation, policies and practices of the hospital
10 as well as the treatment it provides.

11 Dale Miller - Rehabilitation Counselor at Montana State Hospital, Warm Springs, MT.
12 59756, 693-7000. He is generally familiar with the operation, policies and practices of the hospital
13 as well as the treatment it provides.

14 Diana Vashro - Rehabilitation Counselor at Montana State Hospital, Warm Springs, MT.
15 59756, 693-7000. She is generally familiar with the operation, policies and practices of the
16 hospital as well as the treatment it provides.

17 Cindy Sanders - Patient Employment Counselor at Montana State Hospital, Warm
18 Springs, MT. 59756, 693-7000. She is generally familiar with the operation, policies and practices
19 of the hospital as well as the treatment it provides.

20 Mike Sbragia - Special Education Counselor at Montana State Hospital, Warm Springs,
21 MT. 59756, 693-7000. He is generally familiar with the operation, policies and practices of the
22 hospital as well as the treatment it provides.

23 Cheryl Eamon - Activity Therapist at Montana State Hospital, Warm Springs, MT. 59756,
24 693-7000. She is generally familiar with the operation, policies and practices of the hospital as
25 well as the treatment it provides.

26 Robert Jordan - Psychiatrist at Montana State Hospital, Warm Springs, MT. 59756, 693-
27

1 7000. Dr. Jordan is generally familiar with the treatment and services available at the hospital and
2 provided to certain of the plaintiffs in this action.

3 James Dick - Psychologist at Montana State Hospital, Warm Springs, MT. 59756, 693-
4 7000. Mr. Dick is generally familiar with the treatment and services available at the hospital and
5 provided to certain of the plaintiffs in this action.

6 Steve Volman - Former Psychologist at Montana State Hospital, present address
7 unknown, he has relocated to Grand Junction, Colorado. His telephone number is (970) 241-
8 2866. Dr. Volman is generally familiar with the treatment and services available at the hospital
9 and provided to certain of the plaintiffs in this action.

10 Robert Munro - Social Worker at Montana State Hospital, Warm Springs, MT. 59756,
11 693-7000. Mr. Munro is generally familiar with the services and treatment available at the
12 hospital and provided to certain of the plaintiffs in this action.

13 Kathy Quinn - Social Worker Montana State Hospital, Warm Springs, MT. 59756, 693-
14 7000. Ms. Quinn is generally familiar with the services and treatment available at the hospital and
15 provided to certain of the plaintiffs in this action.

16 Charlotte Gray - Chemical Dependency Counselor at Montana State Hospital, Warm
17 Springs, MT. 59756, 693-7000. Ms. Gray is generally familiar with the services and treatment
18 available at the hospital and provided to certain of the plaintiffs in this action.

19 Laurie Mitchell - Registered Nurse at Montana State Hospital, Warm Springs, MT.
20 59756, 693-7000. Ms. Mitchell is generally familiar with the services and treatment available at
21 the hospital and provided to certain of the plaintiffs in this action.

22 Rav Lappin - Program Director, Acute Psychiatric Program, at Montana State Hospital,
23 Warm Springs, MT. 59756, 693-7000. Mr. Lappin is generally familiar with the services and
24 treatment available at the hospital and provided to certain of the plaintiffs in this action.

25 Robert Caldwell - Former psychiatrist at Montana State Hospital. Dr. Caldwell is
26 presently associated with St. Peter's Hospital, 2475 Broadway, Helena, MT 59601, 442-2480. He
27

1 is generally familiar with the treatment and services available at the hospital and provided to
2 certain of the plaintiffs in this action.

3 Ellen Lappin - Psychologist at Montana State Hospital, Warm Springs, MT., 59756, 693-
4 7000. Ms. Lappin is generally familiar with the treatment and services available at the hospital
5 and provided to certain of the plaintiffs in this action.

6 Liana Schmidt - Social Worker at Montana State Hospital, Warm Springs, MT., 59756,
7 693-7000. Ms. Schmidt is generally familiar with the services and treatment available at the
8 hospital and provided to certain of the plaintiffs in this action.

9 Raelene Gress - Social Worker at Montana State Hospital, Warm Springs, MT., 59756,
10 693-7000. Ms. Gress is generally familiar with the services and treatment available at the hospital
11 and provided to certain of the plaintiffs in this action.

12 Ken Schmidt - Administrative Officer at Montana State Hospital, Warm Springs, MT.,
13 59756, 693-7000. Mr. Schmidt is generally familiar with the services and treatment available at
14 the hospital and provided to certain of the plaintiffs in this action.

15 Tom Per-rick - Chemical Dependency Counselor at Montana State Hospital, Warm
16 Springs, MT., 59756, 693-7000. Mr. Perrick is generally familiar with the services and treatment
17 available at the hospital and provided to certain of the plaintiffs in this action.

18 Paul Mayer - Psychiatrist at Montana State Hospital, Warm Springs, MT., 59756, 693-
19 7000. Dr. Mayer is generally familiar with the psychiatric services and treatment available at the
20 hospital and provided to certain of the plaintiffs in this action.

21 Barbara Sene - Program Director, Extended Treatment Program, at Montana State
22 Hospital, Warm Springs, MT., 59756, 693-7000. Ms. Sene is generally familiar with the services
23 and treatment available at the hospital and provided to certain of the plaintiffs in this action.

24 John VanHassel - Psychologist at Montana State Hospital, Warm Springs, MT., 59756,
25 693-7000. Dr. VanHassel is generally familiar with the services and treatment available at the
26 hospital and provided to certain of the plaintiffs in this action.

1 Carol Smith - Psychologist at Montana State Hospital, Warm Springs, MT., 59756, 693-
2 7000. Ms. Smith is generally familiar with the services and treatment available at the hospital and
3 **provided** to certain of the plaintiffs in this action.

4 Ruth Frisina - Former psychologist at Montana State Hospital. Ms. Frisina's current
5 **address** and telephone number are unknown. Ms. Frisina is generally familiar with the services and
6 **treatment** available at the hospital and provided to certain of the plaintiffs in this action.

7 Rick Davis - Recreation Therapy at Montana State Hospital, Warm Springs, MT., 59756,
8 593-7000. Mr. Davis is generally familiar with the services and treatment available at the hospital
9 **and** provided to certain of the plaintiffs in this action.

10 Janet Stobie - Social Worker at Montana State Hospital, Warm Springs, MT., 59756,
11 593-7000. Ms. Stobie is generally familiar with the services and treatment available at the
12 hospital and provided to certain of the plaintiffs in this action.

13 John Schaack - Former Social Worker at Montana State Hospital. Mr. Schaack's present
14 address and telephone number are unknown. Mr. Schaack is generally familiar with the services
15 and treatment available at the hospital and provided to certain of the plaintiffs in this action.

16 Sue Sedminik - Social Worker at Montana State Hospital, Warm Springs, MT., 59756,
17 693-7000. Ms. Sedminik is generally familiar with the services and treatment available at the
18 hospital and provided to certain of the plaintiffs in this action.

19 David Olson - Registered Nurse at Montana State Hospital, Warm Springs, MT., 59756,
20 693-7000. Mr. Olson is generally familiar with the services and treatment available at the hospital
21 and provided to certain of the plaintiffs in this action.

22 Helen Amberg - Program Director, Geriatric Treatment Program, at Montana State
23 Hospital, Warm Springs, MT., 59756, 693-7000. Ms. Amberg is generally familiar with the
24 services and treatment available at the hospital and provided to certain of the plaintiffs in this
25 **a c t i o n .**

26 Ardean Moore - Psychiatrist at Montana State Hospital, Warm Springs, MT., 59756, 693-

7000. Dr. Moore is generally familiar with the services and treatment available at the hospital **and**
2 provided to certain of the plaintiffs in this action.

George Orr - Social Worker at Montana State Hospital, Warm Springs, MT., 59756, 693-

7000. Mr. Orr is generally familiar with the services and treatment available at the hospital and
provided to certain of the plaintiffs in this action.

Betty Jo Monforton - Former Social Worker at Montana State Hospital. Her address and
telephone number are presently unknown. Ms. Monforton is generally familiar with the services
and treatment available at the hospital and provided to certain of the plaintiffs in this action.

Edward King - Former Medical Doctor at Montana State Hospital. His present address
10 and telephone number are unknown. Dr. King is generally familiar with the services and treatment
available at the hospital and provided to certain of the plaintiffs in this action.

Warren Swager - Medical Doctor at Montana State Hospital, Warm Springs, MT., 59756,
12 693-7000. Dr. Swager is generally familiar with the services and treatment available at the
13 hospital and provided to certain of the plaintiffs in this action.

Robert Holm - Social Worker at Montana State Hospital, Warm Springs, MT., 59756,
15 693-7000. Mr. Holm is generally familiar with the services and treatment available at the hospital
16 and provided to certain of the plaintiffs in this action.

Mary Pat Clark - Nursing Supervisor, Secure Treatment Program, at Montana State
18 Hospital, Warm Springs, MT., 59756, 693-7000. Ms. Clark is generally familiar with the services
19 and treatment available at the hospital and provided to certain of the plaintiffs in this action.

David Sturm - Former Program Director, Secure Treatment Program, at Montana State
21 Hospital. His current address is unknown, his telephone number is 444-7756. Mr. Sturm is
22 generally familiar with the services and treatment available at the hospital and provided to certain
23 of the plaintiffs in this action.

Virginia Hill - Psychiatrist at Montana State Hospital, Warm Springs, MT., 59756, 693-
25 7000. Dr. Hill is generally familiar with the services and treatment available at the hospital and
26

1 provided to certain of the plaintiffs in this action.

2 Harry Xanthopoulos - Psychiatrist at Montana State Hospital, Warm Springs, MT.,
3 59756, 693-7000. Dr. Xanthopoulos is generally familiar with the services and treatment
4 available at the hospital and provided to certain of the plaintiffs in this action.

5 Jeffrey Ritow - Psychologist at Montana State Hospital, Warm Springs, MT., 59756, 693-
6 7000. Dr. Ritow is generally familiar with the services and treatment available at the hospital and
7 provided to certain of the plaintiffs in this action.

8 Judith Bowman - Former Psychologist at Montana State Hospital, 2203 North Weber St.,
9 Colorado Springs, CO 80907, (719) 444-8686. Dr. Bowman is generally familiar with the services
10 and treatment available at the hospital and provided to certain of the plaintiffs in this action.

11 Jim Skoolund - Rehabilitation Counselor at Montana State Hospital, Warm Springs, MT.,
12 59756, 693-7000. Mr. Skoglund is generally familiar with the services and treatment available at
13 the hospital and provided to certain of the plaintiffs in this case.

14 Rav McMillan - Rehabilitation Counselor at Montana State Hospital, Warm Springs, MT.,
15 59756, 693-7000. Mr. McMillan is generally familiar with the services and treatment available at
16 the hospital and provided to certain of the plaintiffs in this case.

17 Robert Holm - Social Worker at Montana State Hospital, Warm Springs, MT., 59756,
18 693-7000. Mr. Holm is generally familiar with the services and treatment available at the hospital
19 and provided to certain of the plaintiffs in this case.

20 Diane White - Former Social Worker at Montana State Hospital, Cogswell Building,
21 Licensing Division, Helena, MT 59620, 444-9758. Ms. White is generally familiar with the
22 services and treatment available at the hospital and provided to certain of the plaintiffs in this case.

23 Joseph Thompson - Social Worker at Montana State Hospital, Warm Springs, MT.,
24 59756, 693-7000. Mr. Thompson is generally familiar with the services and treatment available at
25 the hospital and provided to certain of the plaintiffs in this case.

26 Steve Ryan - Social Worker at Montana State Hospital, Warm Springs, MT., 59756, 693-
27

1 7000. Mr. Ryan is generally familiar with the services and treatment available at the hospital **and**
2 **provided** to certain of the plaintiffs in this case.

3 Cathy Orrino - Social Worker at Montana State Hospital, Warm Springs, MT., 59756,
4 593-7000. Ms. Orrino is generally familiar with the services and treatment available at the
5 hospital and provided to certain of the plaintiffs in this case.

6 Gladys Richter - Admissions Clerk at Montana State Hospital, Warm Springs, MT, 59756,
7 593-7000. Ms. Richter is generally familiar with the admissions and discharge criteria for patients
8 at Montana State Hospital.

9 Margaret Ulstad - Medical Records File Clerk at Montana State Hospital, Warm Springs,
10 MT, 59756, 693-7000. She is generally familiar with the services and treatment available at the
11 hospital and provided to certain of the plaintiffs in this case.

12 Gary Sagen -Grounds Crew at Montana State Hospital, Warm Springs, MT, 59756, 693-
13 7000. He is generally familiar with the services and treatment available at the hospital and
14 provided to certain of the plaintiffs in this case.

15 Nita Johl- Former Chemical Dependency Counselor at Montana State Hospital, P.O. Box
16 1680, Helena, MT 59601, 444-3889. Ms. Johl is generally familiar with the services and
17 treatment available at the hospital and provided to certain of the plaintiffs in this case.

18 **Current or former employees of the Department of Public Health and Human Services:**

19 Peter Blouke - Director of the Department of Public Health and Human Services, P.O.
20 Box 4210, Helena, MT, 59604, 444-5622. Dr. Blouke is generally familiar with the operation,
21 policies and practices of DPHHS.

22 Rick Day - Former Director of the Department of Corrections and Human Services,
23 current Director of Department of Corrections, 1539 1 Ith Ave., Room 209 B, Helena, MT
24 59620, 444-3930. Mr. Day is generally familiar with the operation, policies and **practices of**
25 DPHHS.

26 Rusty Redfield - Community Support Program Manager, P.O. Box 4210, Helena, MT,

1 9604, 444-4924. Mr. **Redfield** is generally familiar with the operation, policies and practices of
2 DPHHS.

3 Jim Obie - Former Legal Counsel to the DPHHS, 3 IO Broadway, Helena, MT 59601,
4 143-5565. Mr. Obie is familiar with commitments and recommitments of patients at MSH and
5 VMHNCC.

6 Randy Poulsen - Managed Care Bureau, DPPHS, P.O. Box 210, Helena, MT 59604, 444-
7 2706. Dr. Poulsen is familiar with the operation, policies and practices of DPHHS.

8 **Members of the Mental Health Advisory Committee on Managed Care**

9 Mignon Waterman - 530 Hazelgreen Place, Helena, MT 59601, 442-8648. Senator
10 Waterman is familiar with the proposed managed care system in Montana, and the mental health
11 system in Montana generally.

12 Loren Soft - 161 Norris Ct., Billings, MT 59101, 248-4393. Representative Soft is
13 familiar with the proposed managed care system in Montana, and the mental health system in
14 Montana generally.

15 Kathy Standard - 2009 Billings Ave., Helena, MT 59601, 442-7416. Ms. Standard is
16 familiar with the proposed managed care system in Montana, and the mental health system in
17 Montana generally.

18 Sophie Price - 904 Tara Ct., Helena, MT 59601, 442-7416. Ms. Price is familiar with the
19 proposed managed care system in Montana, and the mental health system in Montana generally.

20 Linda Hatch - P.O. Box 3089, Great Falls, MT 59403, 771-8648. Ms. Hatch is familiar
21 with the proposed managed care system in Montana, and the mental health system in Montana
22 generally.

23 Nathan Munn - 1803 Jerome Pl., Helena, MT 59601, 442-3323. Dr. Munn is familiar with
24 the proposed managed care system in Montana, and the mental health system in Montana
25 generally.

26 Kelly Moorse - P.O. Box 200804, Helena, MT 59620, 444-3955. Ms. Moorse is familiar

1 with the proposed managed care system in Montana, and the mental health system in Montana
2 generally.

3 **Current and former employees of the Montana Mental Health Nursing Care Center:**

4 **Ron Balas** - Superintendent of the Montana Mental Health Nursing Care Center, 800
5 Casino Creek Dr., Lewiston, MT, 59457, 538-745 1. Mr. Balas is generally familiar with the
6 operation, policies and practices of the MMHNCC.

7 **Glenda Oldenburg** - Director of Nursing, of the Montana Mental Health Nursing Care
8 Center, 800 Casino Creek Dr., Lewiston, MT, 59457, 538-745 1. Ms. Oldenburg is generally
9 familiar with the operation, policies and practices of the MMHNCC.

10 **Kathy Ahlgren** - Clinical Support Director, of the Montana Mental Health Nursing Care
11 Center, 800 Casino Creek Dr., Lewiston, MT, 59457, 538-7451. Ms. Ahlgren is generally
12 familiar with the operation, policies and practices of the MMHNCC.

13 **Rocky McDermat** - Psychiatrist (Part Time), Montana Mental Health Nursing Care
14 Center, 800 Casino Creek Dr., Lewiston, MT, 59457, 538-7451. Dr. McDermat is generally
15 familiar with the services and treatment available at MMHNCC.

16 **Don Bell** - Social Worker (Part Time), Montana Mental Health Nursing Care Center, 800
17 Casino Creek Dr., Lewiston, MT, 59457, 538-745 1. Mr. Bell is generally familiar with the
18 services and treatment available at MMHNCC.

19 **Alice Matzick** - Social Worker, Montana Mental Health Nursing Care Center, 800 Casino
20 Creek Dr., Lewiston, MT, 59457, 538-745 1. Ms. Matzick is generally familiar with the services
21 and treatment available at MMHNCC.

22 **Mary Harrett** - Recreation Therapist, Montana Mental Health Nursing Care Center, 800
23 Casino Creek Dr., Lewiston, MT, 59457, 538-745 1. Ms. Harrett is generally familiar with the
24 services and treatment available at MMHNCC.

25 **Deanne Scorten** - Day Nurse Supervisor, Montana Mental Health Nursing Care Center,
26 800 Casino Creek Dr., Lewiston, MT, 59457, 538-745 1. Ms. Scorten is generally familiar with
27

1 the services and treatment available at MMHNCC.

2 Catherine Murray - Afternoon Nurse Supervisor, Montana Mental Health Nursing Care
3 Center, 800 Casino Creek Dr., Lewiston, MT, 59457, 538-745 1. Ms. Murray is generally familiar
4 with the services and treatment available at MMHNCC.

5 Kay Tedesco - Evening Nurse Supervisor, Montana Mental Health Nursing Care Center,
6 800 Casino Creek Dr., Lewiston, MT, 59457, 538-745 1. Ms. Tedesco is generally familiar with
7 the services and treatment available at MMHNCC.

8 Wallace Walker - Medical Director, Montana Mental Health Nursing Care Center, 800
9 Casino Creek Dr., Lewiston, MT, 59457, 538-745 1. Dr. Walker is generally familiar with the
10 policies, practices, services and treatment available at MMHNCC.

11 **Montana Health Facility Authority**

12 Jerry Hoover - Executive Director, Montana Health Facility Authority, P.O. Box 200125,
13 Helena, MT, 59620, 444-5435. Mr. Hoover is familiar with the operations of the MHFA,
14 DPHHS' loan application, and the bonding/lending process.

15 Amos (Bud) Little, Jr. - Chairman, Montana Health Facility Authority, P.O. Box 200125,
16 Helena, MT., 59620, 444-5435. Dr. Little is familiar with the operations of the MHFA, DPHHS'
17 loan application, and the bonding/lending process.

18 Michelle Barstad, Associate Director, Montana Health Facility Authority, P.O. Box
19 200125, Helena, MT, 59620, 444-5435. Ms. Barstad is familiar with the operations of the
20 MHFA, DPHHS' loan application, and the bonding/lending process.

21 **Surveyors, data collectors and professionals involved with the Ernst & Young report**

22 The identity of these persons is presently unknown. They are familiar with the data
23 collected and contained in their report to DPI-IHS, upon which DPHHS determined state hospital
24 needs and alternatives.

25 **Records Custodians**

26 The custodians of the records or documents noted at Article III hereof, presently
27
28

1 **unknown**, who are generally familiar with the location and possibly the contents of the tangible
2 evidence and documents referenced hereafter.

3 **Managed Care Organization Representatives**

4 The representatives of the managed care organizations that bid on the managed care
5 contract for Montana, who are presently unknown, but who have information about the proposed
6 managed care system in Montana, and the availability and need for community treatment services
7 in Montana.

8 **Employees of Community Mental Health Centers**

9 The employees of various community mental health centers in Montana, currently
10 unknown, who are generally familiar with the availability and need for community treatment
11 services, managed care and mental health services in Montana generally.

12 **Other individuals:**

13 **Marc Racicot** - Governor, State of Montana, P.O. 200801, Helena, MT., 59620-0801,
14 444-3 111. Governor Racicot is familiar with the policies, practices and operations of the
15 DPHHS, and the funding scheme under which the redesign of MSH will occur.

16 **Beth Sullivan** - Program Manager, Office of Managed Care, Health Care Financing
17 Administration, 7500 Security Blvd., S-3-02-01, Baltimore, MD 21244, (410) 786-4596. Ms.
18 Sullivan is familiar with managed care in Montana, and the federal waiver authorizing managed
19 care within the state.

20 **Kreg Jones** - Vice President, DA Davidson. Address and telephone number presently
21 unknown. Mr. Jones is familiar with the bonding/lending process, bond insurance and the
22 underwriting process.

23 **Carol Wald** - Former Director of Stepping Stones, Missoula, MT. Address and telephone
24 number currently unknown. Ms. Wald is familiar with mental health services in Montana.

25 **Ted Mizner** - Judge of District Court, Thirteenth Judicial District, Powell County
26 Courthouse, Deer Lodge, MT 59722, 846-3680. Judge Mizner is familiar with the basis of

1 commitments and recommitments to MSH.

2 Robert Factor - Professor, University of Wisconsin Medical School, 600 Highland Ave.,
3 Madison, WI 53792, (608) 263-6025. Dr. Factor is generally familiar with mental health services
4 in Montana, the operations and practices of MSH and current standards and practices within the
5 profession of psychiatry.

6 **III. TANGIBLE EVIDENCE AND DOCUMENTS**

7 Local Rule 200.5 (a)(1)(iv) requires “a description, including the location and custodian of
8 my tangible evidence or relevant documents reasonably likely to bear on the claims or defenses.”
9 Plaintiffs identify the following documents that may pertain to this case and describes them below.
10 Plaintiffs reserve the right, however, to object to any specific document request on any
11 appropriate ground. The identification of documents below does not constitute an admission or
12 determination by plaintiffs that any of the documents identified below are discoverable. It is
13 certain that there are unidentified records and/or documents within the groups of records listed
14 hereafter, and elsewhere, that contain discoverable information. Absent discovery, plaintiffs
15 cannot at this time disclose and identify those documents and records.

16 **Medical Records. Montana State Hospital. Warm Springs. Montana.**

17 The medical records pertaining to plaintiffs’ medical and psychiatric histories and
18 treatment which are stored at MSH. The administrative records pertaining to policies, operations
19 and practices at MSH dealing with identification or assessments of patients needs, placement
20 criteria, costs of services, treatment protocols, utilization review, descriptions or analysis of
21 treatment options and availability and need for community treatment services which are stored at
22 MSH.

23 **Records held by the Department of Public Health and Human Services.**

24 The records pertaining to policies, practices and operations of the Addictive and Mental
25 Disorder Division of DPHHS which pertain to policies, operations and practices at MSH and
26 MMHNCC dealing with identification or assessments of patients needs, placement criteria, costs

1 of services, treatment protocols, utilization review, descriptions or analysis of treatment options,
2 availability and need for community treatment services, managed care in Montana, and the lending
3 and bonding contract by and between DPHHS and the Montana Health Facility Authority. These
4 records are in the possession of defendant DPHHS and are believed to be located at the Capitol
5 Complex, Helena, MT.

6 **Medical Records. Montana Mental Health Nursing Care Center, Lewistown, Montana.**

7 The medical records pertaining to plaintiffs' medical and psychiatric histories and
8 treatment which are stored at the MMHNCC. The administrative records pertaining to policies,
9 operations and practices at MMHNCC dealing with identification or assessments of patients
10 needs, placement criteria, costs of services, treatment protocols, utilization review, descriptions
11 or analysis of treatment options and availability and need for community treatment services which
12 are stored at MMHNCC.

13 **Records held by the Mental Disabilities Board of Visitors**

14 The records held by the Mental Disabilities Board of Visitors, Capitol Complex, Helena,
15 Montana, including site reviews of MSH and MMHNCC and records pertaining to policies,
16 operations and practices at MMHNCC and MSH, dealing with identification or assessments of
17 patients needs, placement criteria, costs of services, treatment protocols, utilization review,
18 descriptions or analysis of treatment options and availability and need for community treatment
19 services.

20 **Architectural Reports**

21 Architectural reports prepared for DPHHS in regards to MSH and MMHNCC, held by
22 DPPHS and in architectural offices, the location of which are currently unknown.

23 **Ernst & Young Reports**

24 The reports of Ernst & Young pertaining to MSH and mental health treatment in
25 Montana, all data collected for the report and any materials regarding MSH used to compile the
26 report. These materials are currently in the possession of Ernst and Young, at a site unknown to
27

1 plaintiffs.

2 **Records of Montana Health Facility Authority**

3 The records pertaining to the loan application of DPHHS and bond issue for the redesign
4 of the Montana State Hospital, including reports containing data pertaining to the facilities at
5 Montana State Hospital and Montana Mental Health Nursing Care Center. It is believed that
6 these records are located at the offices of MHFA, 555 Fuller Ave., Helena, MT 59604, 444-5435.

7 **Administrative Discharge and Review Team Records**

8 The records pertaining to discharge and review of patients institutionalized within the
9 MSH and the MMHNCC compiled by ADART teams, the present location of which is unknown
10 to plaintiffs.

11 **Office of the Legislative Fiscal Analyst**

12 The records and reports pertaining to the Montana State Hospital reconstruction project,
13 the present location of which is unknown to plaintiffs.

14 **Community Mental Health Centers**

15 The records and reports pertaining to policies, operations and practices at
16 community mental health centers dealing with identification or assessments of patients needs,
17 placement criteria, costs of services, treatment protocols, utilization review, descriptions or
18 analysis of treatment options and availability and need for community treatment services.

19 **Statements or transcripts of statements made by MSH and MMHNCC clinicians.**

20 The transcripts of statements or written statements made by staff at MSH and MMHNCC
21 appearing at commitment/recommitment hearings or otherwise, indicating the lack of need for
22 hospital treatment on the part of plaintiffs and/or the plaintiff class, and the availability and need
23 for community treatment services generally.

24 **Managed Care Organizations**

25 The records pertaining to policies, operations and practices at MMHNCC and MSH,
26 dealing with identification or assessments of patients needs, placement criteria, costs of services,
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1 treatment protocols, utilization review, descriptions or analysis of treatment options, availability
2 and need for community treatment services and managed care generally in Montana.


3 **IV. COMPUTATION OF DAMAGES**

4 Plaintiffs claim no money damages in the instant case.

5 **V. INSURANCE AGREEMENTS**

6 Plaintiffs believe there are no insurance agreements involved in the instant case.

7
8
9 DATED this 13th of November, 1996.

10
11 
12 ~~Lonnie J. Olson~~
13 ~~Allen Smith, Jr.~~
14 ~~Marie Gallagher~~
15 Attorneys at Law
16 Montana Advocacy Program
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18 3 16 North Park, Room 2 11
19 Helena, MT 59624
20 (406) 444-3 889

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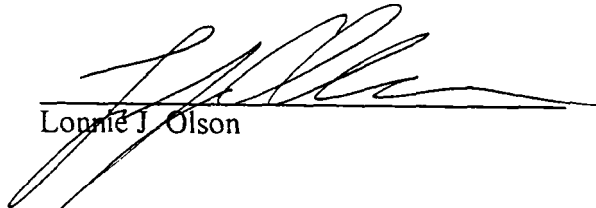
CERTIFICATE OF SERVICE

I hereby certify that on November 13th, 1996, I caused a true and accurate copy of the foregoing Rule 200-5 Pre-Discovery Disclosure Statement, to be served upon the following by depositing a true and correct copy thereof in the United State Mail, postage prepaid, and addressed as follows, to wit:

Kimberly A. Kradolfer
Assistant Attorney General
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Helena, MT 59620- 140 1

Russ Cater
Beda Lovitt
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& Human Services
1400 Broadway
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