

1 LOUGHREY & WOELFEL, LLP
2 TAMARA LOUGHREY, Bar No. 227001
3 ROBERT WOELFEL, Bar No. 250343
4 31 Panoramic Way, Suite 200
Walnut Creek, CA 94595
Telephone: (925) 935- 4600
Fax: (925) 935- 4602

5 Attorneys for Plaintiffs

6 THE UNITED STATES DISTRICT COURT FOR
7 THE EASTERN DISTRICT OF CALIFORNIA

8 Z.F, a minor, by and through his parents)
9 M.F and J.F. and M.F. and J.F.)
10 individually; L.H., and J.H., minors, by)
11 and through their parents J.A.A.H. and)
12 J.R.H. and J.A.A.H. and J.R.H.)
13 individually; A.N., a minor, by and through)
his parents, G.N. and M.R., and G.N. and)
14 M.R. individually; E.F., a minor, by and)
15 through his parents M.F. and A.F., and)
16 M.F. and A.F. individually and E.R., a)
17 minor, by and through her parents D.R. and)
18 A.R, and D.R. and A.R. individually)

19 Plaintiffs, on behalf of themselves)
20 and all others similarly situated)

21 v.)

22 RIPON UNIFIED SCHOOL DISTRICT)
23 (RUSD) SAN JOAQUIN COUNTY)
24 OFFICE OF EDUCATION; SAN)
25 JOAQUIN COUNTY SPECIAL)
26 EDUCATION LOCAL PLAN AREA)
27 (SELPA), VALLEY MOUNTAIN)
28 REGIONAL CENTER (VMRC),)
MODESTO CITY SCHOOLS,)
MODESTO CITY SCHOOL SELPA,)
MODESTO CITY SCHOOLS OFFICE OF)
EDUCATION, TRACY UNIFIED)
SCHOOL DISTRICT (TUSD); TRACY)
UNIFIED SCHOOL DISTRICT BOARD)
OF EDUCATION; SYLVAN UNION)
SCHOOL DISTRICT; STANISLAUS)
COUNTY SELPA; STANISLAUS)
COUNTY OFFICE OF EDUCATION;)
CALIFORNIA OFFICE OF)
ADMINSTRATIVE HEARINGS;)
CALIFORNIA DEPARTMENT OF)
EDUCATION; CALIFORNIA)
DEPARTMENT OF DEVELPOMENTAL)
SERVICES; RICHARD JACOBS,)
Executive Director of VMRC, in his)

CLASS ACTION

CIVIL RIGHTS COMPLAINT FOR
DAMAGES, COSTS AND ATTORNEYS
FEES:

1. Violation of 20 U.S.C. § 1400, et seq.;
2. Violations of Section 504 of the Rehabilitation Act;
3. Violations of Title II of the Americans with Disabilities Act;
4. Violation of California Constitution, Article I, Sec 31;
5. Violations of Due Process Rights;
6. Violations of Equal Protection Rights;
7. Violations of California Civil Code § 51 et. Seq.
8. Violations of 42 U.S.C. § 1983, and
9. Declaratory Relief.

JURY TRIAL DEMANDED

1 official and individual capacity; TARA
2 SISEMORE-HESTER, Coordinator for
3 Autism Services for VMRC, in her official
4 and individual capacity; LEO ZUBER,
5 Superintendent for RUSD, in his official
6 capacity; CAMILLE TAYLOR, Director
7 of Special Education for RUSD, in her
8 official and individual capacity; ARTURO
9 FLORES, Superintendent of Modesto City
10 Schools, in his official and personal
11 capacity; DIANE SCOTT, Supervisor of
12 Pre-K – 6 Special Education, Modesto City
13 Schools SELPA, in her official and
14 individual capacity; VIRGINIA
15 JOHNSON, Director of Modesto City
16 Schools SELPA, in her official and
17 individual capacity; JAMES FRANCO,
18 Superintendent of TUSD, in his official
19 and individual capacity; JAMES
20 VAUGHN, President of TUSD Board of
21 Education; JANET SKULINA, Director of
22 Special Education for TUSD, in her official
23 and individual capacity; DORIAN RICE,
24 Director of San Joaquin County Office of
25 Education and SELPA, in his official and
26 individual capacity; SANDEE KLUDT,
27 Assistant Superintendent of San Joaquin
28 County Office of Education, in her official
and individual capacity; REGINA HEDIN,
Director of Stanislaus County SELPA, in
her official and individual capacity;
BONNIE JONES-LEE, Special Education
Director for Stanislaus County Office of
Education, in her official and individual
capacity; TOM CHAGNON,
Superintendent of Stanislaus County Office
of Education, in his official and individual
capacity; SHERIANNE LABA, Presiding
Judge of Office of Administrative
Hearings, Special Education Division, in
her official and individual capacity; JACK
O'CONNELL, Superintendent of
California Department of Education, in his
official and individual capacity; TERRI
DELGADILLO, Director of the
Department of Developmental Services, in
her official and individual capacity and
Does 1 – 200.

Defendants.

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JURISDICTION

1. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1343(a)(3) and 1343(a)(4) for claims arising under the United States Constitution, the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, *et seq.*, for claims arising under Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794, *et seq.*, for claims arising under the Individual with Disabilities Education and Improvement Act of 2004 (“IDEA”), 20 U.S.C. § 1415 *et. seq.*, and the regulations promulgated thereunder.

2. Under the doctrine of pendant and supplemental jurisdiction, 28 U.S.C. § 1367, this Court has jurisdiction over Plaintiffs’ claims arising under California state law.

3. This Court has jurisdiction to issue a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202.

4. To the extent required by law, Plaintiffs have exhausted their remedies under the Individuals with Disabilities Education and Improvement Act of 2004 (IDEA), pursuant to 20 U.S.C. § 1415, and/or such exhaustion would be futile, inadequate, or unavailable.

VENUE

5. Pursuant to 28 U.S.C. § 1391(b), venue is proper in the district in which this Complaint is filed, which is the judicial district in which the claim has arisen.

INTRODUCTION

6. In California, the provision of special education programs and services to students with disabilities is a shared responsibility among various government and private agencies and individuals. The California Department of Education (“CDE”) is the state agency responsible for supervising the education of all students in the state of California, including students with disabilities. The California Department of Education’s supervisory duties include oversight of the Special Education Local Plan Areas (SELPA’s)

1 and Local Education Agencies (LEAs). Similarly, the California Department of
2 Developmental Services (“DDS”), is charged with overseeing the 21 Regional Centers in
3 California. Regional Centers are private non-profits that contract with DDS to provide
4 services to persons with qualifying developmental disabilities.

5 7. Created by state law, the Lanterman Act, Welfare and Institutions code
6 §4400 et seq., Regional Centers are a localized source of support and services for
7 qualified individuals with disabilities and their families. “Region 6” of California is
8 serviced by the Valley Mountain Regency Center (“VMRC”)and includes 5 counties,
9 San Joaquin, Stanislaus, Amador, Tuolumne, and Calaveras County. VMRC is
10 contracted by DDS to provide services to individuals with disabilities.

11 8. Special Education Local Plan Areas (“SELPA”) are local government
12 agencies contracted by the California Department of Education (“CDE”) to provide
13 special education services. Local education agencies (“LEAs”) are responsible for
14 providing special education and related services to eligible children as mandated by the
15 Individuals with Disabilities Education Improvement Act of 2004. School systems must
16 work with parents to develop an Individualized Education Program that specifies planned
17 educational services for each child. IDEA, 20 U.S.C. §1400 et seq.

18 9. In or around 1998, government and private agencies and individuals within
19 “Region 6” of California, including the Valley Mountain Regional Center, San Joaquin
20 SELPA, Stanislaus SELPA, LEA’s and certain non-public agencies (“NPA’s”),
21 specifically the Central Valley Autism Project (“CVAP”), Therapeutic Pathways/Kendall
22 School, Applied Behavior Consultants, Inc. (“BBC, Inc.”), and BEST, Inc. collaborated
23 in the development of a funding mechanism to provide behavioral services to students
24 diagnosed with Autistic Spectrum Disorder (ASD). Beginning in or around 2001, this
25 funding mechanism became a written document entitled the “NPS/NPA Contract.”
26 Parents of students diagnosed with ASD were presented with the “NPS/NPA Contract”
27 and were required to sign the contract for their children to receive behavioral services.
28 Parents were not provided with complete information regarding the contract that they

1 were signing because the creators of the “NPS/NPA Contract” claimed that aspects of
2 their behavioral assessment and treatment of children constituted “trade secrets” under the
3 law.

4 10. In 2002, a disability advocacy group, Central Valley FEAT objected to the
5 “NPA/NPS Contract” in correspondence addressed to the VMRC Board of Directors to
6 no avail. Central Valley FEAT shared its concerns with VMRC that the “NPA/NPS
7 Contract” was in violation of state and federal laws due to express written clauses in the
8 document that stripped parents of their rights related to their children. The “NPA/NPS
9 Contract” abridged parents’ rights to view their own child’s educational records and
10 determine the scope and content of their child’s program and placement. Parents had also
11 reported that they were forced to sign the contract when they first received it in order for
12 their child to received services, despite the contracts terms stating that “parents
13 acknowledge that they have been urged to consult legal council regarding the negotiation,
14 preparation, and execution of this agreement, and parents have been given reasonable
15 time to do so” and that “each party enters into this agreement freely without coercion.”
16 Despite the serious nature of the problems with the “NPA/NPS Contract”, the creators of
17 the document continued to implement it and took steps to further entrench themselves as
18 they formed and became members in the “Autism Connection” committee in 2003 and
19 the “Early Intensive Behavioral Treatment (EIBT) Sub Committee” in 2004.

20 11. The EIBT Sub Committee developed the “NPS/NPA Contract” into a new
21 document, which has been alternatively named the “EIBT 4-Way Agreement” and/or the
22 “EIBT Program, Procedures, and Guidelines, or “PP& G”. “Autism Connection” and
23 “EIBT Sub Committee” minutes reveal details regarding the development and
24 implementation of the “4-Way Agreement” and “PP & G”.

25 12. Currently, in “Region 6” of California, the Valley Mountain Regional Center,
26 San Joaquin SELPA, Stanislaus SELPA, LEA’s and certain non-public agencies
27 (“NPAs”), specifically the Central Valley Autism Project (“CVAP”), Therapeutic
28 Pathways/Kendall School, Applied Behavior Consultants, Inc. (“BBC, Inc.”), and BEST,

1 Inc. have an inter-agency, co-funded program called the “Early Intensive Behavioral
2 Treatment” (“EIBT”) program. This program provides intensive one-to-one intensive
3 behavior treatment based on the UCLA/Lovaas model. It is also an ongoing live,
4 community-based research study which uses children starting at age 18 months to conduct
5 on-going studies regarding intensive behavioral treatment and efficacy of various
6 community based classrooms. Although the NPAs are claimed to be “private” agencies
7 who have the right to develop criteria and exclude individuals who do not meet their
8 criteria, the NPAs involved do not and are not allowed to accept private (parent) pay
9 clients under their agreement with the public agencies (SELPAs, Districts and VMRC).
10 In reality, these NPAs are merely extensions of the public agencies they serve and are
11 being used to illegally deprive children with Autism access to otherwise appropriate
12 intensive ABA services.

13 13. Parents of autistic children ages 18 months to 5 years (children over age 5
14 are also being denied access to intensive ABA because the contract excludes children
15 over 5 access to the “private” providers), in Region 6 do not have access to intensive one-
16 to-one behavioral treatment unless they agree to participate in the EIBT study and they
17 must agree to the “EIBT Program, Procedures, and Guidelines.” Parents are no longer
18 required to sign the PP & G (under the former 4-Way Agreement, Parents were required
19 to sign the document and agree to its terms). This has lead to Parents not being fully
20 informed of the criteria and requirements contained in the 53 page contract. Entrance,
21 continuation, and exit is based upon the child’s ability to meet the EIBT program which
22 by its own terms is not uniquely tailored to the unique needs of each student. The terms
23 of the agreement require that children first receive a referral to VMRC, pass screening to
24 meet EIBT criteria such as date of residence, geographical residence, diagnosis date, and
25 receive a diagnosis of Autism by a “VMRC-approved” evaluator and other criteria.
26 Students who have received diagnosis of autism from a third party must be re-assessed
27 and re-diagnosed by a “VMRC-approved evaluator” in order to be eligible to participate
28 in the EIBT program.

1 14. Contrary to the published studies discussing the EIBT Program, parents of
2 participants who are able to meet the initial entrance requirements do not have “parental
3 preference” to educational services or settings. Parents further waive their right to
4 consent to testing of their children as one of the provisions states that agencies can
5 conduct student assessments such as IQ testing at any time, without assessment plan or
6 parental consent. In addition, Parents lose the right to participate in the determination of
7 their child’s placement and program as the agreements expressly states that if the child
8 cannot maintain 80% criteria on all target lessons, the child will be exited to a SELPA or
9 LEA lesser intensive setting. The EIBT program is described in its entirety in a contract
10 called the “EIBT Program, Procedures, & Guidelines” (versions January and May 2006)
11 and its predecessor the 4-Way Agreement (2005 version). Attached as exhibits A and B
12 are copies of the 4-Way Agreement and PP & G, respectively, which are incorporated
13 into this complaint filed herewith.

14 15. Recent audio recordings of Plaintiffs’ IEP’s and written correspondence
15 reveals that “agencies” are now instituting a new policy which requires a child to try less
16 intensive programs first. While placed in the less intensive setting, the child will be
17 assessed to determine if the student has the potential to meet the high expectations of
18 EIBT participants. It has also been admitted that as a condition to the agreement among
19 the agencies in the EIBT program, third party behavior services providers who receive
20 EIBT program funds are barred from accepting private consumers, thereby excluding
21 parents from accessing the intensive Applied Behavioral Analysis (ABA) model
22 treatment outside of the EIBT program. Parents have further been told that though their
23 child may meet the initial entrance criteria for the EIBT program and therefore require
24 behavior services in order to receive a free and appropriate public education, they cannot
25 receive services because there is a “waiting list”, or “referral list”, or “interest list” of
26 students ahead of them. Moreover, an individual associated with the EIBT 4-Way
27 Agreement has stated that it “is tied to the early intensive program, if a parent rejects the
28 agreement, they are rejecting the program”. According to IDEA, a parent is not required

1 to accept the contract agreement in order for their child to receive free and appropriate
2 public education programs and services.

3 16. While the EIBT studies indicate that parents were able to select educational
4 and ‘matrix’ options for ABA, Plaintiffs all allege that this is a false and misleading
5 statement based on their experiences while advocating for an intensive model of ABA
6 services. Plaintiffs have each requested ABA services provided by any one of the Central
7 Valley’s ‘matrix’ NPA agencies, but were denied access to intensive treatment for their
8 children because of the EIBT 4-Way Agreement/Program, Procedures & Guidelines’
9 eligibility criteria, referral process, and the actions of agencies and individuals involved
10 with the agreement, including service coordinators, administrators, and educators.
11 Complaints regarding the “4-Way” have been submitted to Richard Jacobs, Howard
12 Cohen, and Robin Dickinson at VMRC (4731 complaints), Carol Risley and Faye Borton
13 at DDS, Jack O’Connell, State Superintendent, and Governor Schwarzenegger.

14 17. Additionally, the required “diagnostic” placement is different for each child.
15 This diagnostic placement is used to see if the child can meet the agencies criteria instead
16 of an individualized program being developed to meet the unique needs of the child.
17 Thus, many children who are otherwise benefiting from the intensive ABA program are
18 prematurely exited for failure to meet the program’s criteria.

19 18. This contract also operates as a programmatic barrier under Title II of the
20 American’s with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act
21 because it denies all PETITIONERS access to an intensive ABA program, a public
22 program and service, and also denies students access to a continuum of services and
23 placements under these statutes and the IDEA. Moreover, the contract also violates
24 Plaintiffs’ constitutional rights under the U.S. Constitution.

25
26 **THE PARTIES**

27 19. Plaintiff Z.F. is a child with a disability within the meaning of IDEA and is a
28 qualified person with a disability within the meaning of ADA and Section 504. Plaintiff

1 Z.F. is eligible to receive and receives special education and related services from RUSD,
2 San Joaquin SELPA, San Joaquin Office of Education and Valley Mountain Regional
3 Center. Plaintiff Z.F. and his guardians ad litem, M.F. and J.F. reside within Ripon,
4 California.

5 20. Plaintiff J.H. is a child with a disability within the meaning of IDEA and is a
6 qualified person with a disability with the meaning of ADA and Section 504. Plaintiff
7 J.H. is eligible to receive and receives special education and related services from MCS,
8 MCS SELPA and MCS Board of Education. Plaintiff J.H. and his guardians J.A.A.H.
9 and J.R.H. reside within Modesto, California.

10 21. Plaintiff L.H. is a child with a disability within the meaning of IDEA and is a
11 qualified person with a disability with the meaning of ADA and Section 504. Plaintiff
12 L.H. is eligible to receive and receives special education and related services from MCS,
13 MCS SELPA and MCS Board of Education. Plaintiff L.H. and his guardians J.A.A.H.
14 and J.R.H. reside within Modesto, California.

15 22. Plaintiff A.N. is a child with a disability within the meaning of IDEA and is a
16 qualified person with a disability within the meaning of ADA and Section 504. Plaintiff
17 L.H. is eligible to receive and receives special education and related services from
18 RUSD, San Joaquin County SELPA and San Joaquin County Office of Education.
19 Plaintiff A.N. and his guardians ad litem, M.R. and G.N. reside in Ripon, California.

20 23. Plaintiff E.F. is a child with a disability within the meaning of IDEA and is a
21 qualified person with a disability within the meaning of the ADA and Section 504.
22 Plaintiff E.F. is eligible to receive and receives special education and related services
23 from TUSD, San Joaquin County SELPA and San Joaquin County Office of Education.
24 Plaintiff E.F. and his guardians ad litem, M.F. and reside in Tracy, California.

25 24. Plaintiff E.R. is a child with a disability within the meaning of IDEA and is a
26 qualified person with a disability within the meaning of the ADA and Section 504.
27 Plaintiff E.R. is eligible to receive and receives special education and related services
28 from Sylvan Union School District,

1 25. Defendant DISTRICTS are created pursuant to California Education Code
2 Section 35000, et seq. Defendant DISTRICTS are at all times responsible for the
3 provision and supervision of special education services by the DISTRICTS or any other
4 agency providing special education services to Plaintiffs pursuant to the IDEA at Title 20
5 U.S.C. 1412 et seq. and the California Education Code Section 56000 et seq.

6 26. San Joaquin County office of Education (SJCOE), Stanislaus County Office of
7 Education (SCOE) and Tracy Unified School District Board of Education (TUSDBE) are
8 created pursuant to California Education Code Section 1000 and provide special
9 education services for, and on behalf of students enrolled at schools governed by school
10 districts who are member districts of the Special Education Local Plan Areas
11 (“SELPAS”). DISTRICTS are members of the SELPAS. Similarly, MODESTO CITY
12 SCHOOLS (MCS) has its own SELPA which is responsible for the provision of FAPE to
13 its students.

14 27. Defendants San Joaquin SELPA, Stanislaus County SELPA and Modesto City
15 Schools SELPA are at all times responsible for the provision of special
16 education services to PETITIONERS pursuant to 20 U.S.C. Section 1400, et seq. and
17 California Education Code Section 56205.

18 28. VALLEY MOUNTAIN REGIONAL CENTER (VMRC) is created pursuant
19 to the Welfare and Institutions Code Section 4400 et seq. Districts (RUSD, MCS, HUSD,
20 MUSD), SJCOE, SCOE, SELPAS and VMRC collectively referred herein as
21 “AGENCIES”. SJCOE, SCOE and MCS and their SELPAS are respectively referred
22 herein as SJCOE/SELPA, SCOE/SELPA and MCS/SELPA.

23 29. CALIFORNIA OFFICE OF ADMINISTRATIVE HEARINGS (OAH) is a
24 government body responsible for conducting independent hearings pursuant to the
25 California Administrative Procedure Act.

26 30. CALIFORNIA DEPARTMENT OF EDUCATION (CDE) oversees
27 California’s public school system, which is responsible for the education of the state’s
28 children. It is legally responsible for ensuring compliance with federal special education

1 law and regulations within the California public school system. Defendant CDE is a
2 public entity with the meaning of Title II of the ADA. Defendant CDE receives federal
3 financial assistance and is covered by Section 504 of the Rehabilitation Act.

4 31. Defendant JACOBS is the Executive Director of Valley Mountain Regional
5 Center (VMRC), and is legally responsible for ensuring compliance with federal and
6 California special education law and regulations within the VMRC. Defendant JACOBS
7 is legally responsible for the unlawful policies, practices and procedures challenged
8 herein, and has the authority and legal obligation to abolish these policies, practices and
9 procedures. Defendant JACOBS is sued in his official and individual capacity.

10 32. Defendant SISEMORE-HESTER is the Coordinator of Autism Services for
11 VMRC, and is legally responsible for ensuring compliance with federal and California
12 special education law and regulations within the VMRC. Defendant SISEMORE-
13 HESTER is legally responsible for the unlawful policies, practices and procedures
14 challenged herein, and has the authority and legal obligation to abolish these policies,
15 practices and procedures. Defendant SISEMORE-HESTER is sued in her official and
16 individual capacity.

17 33. Defendant ZUBER is the Superintendent of Ripon Unified School District
18 (RUSD) and is legally responsible for ensuring compliance with federal and California
19 special education law and regulations within RUSD. Defendant ZUBER is legally
20 responsible for the unlawful policies, practices and procedures challenged herein, and has
21 the authority and legal obligation to abolish these policies, practices and procedures.
22 Defendant ZUBER is sued in his official and individual capacity.

23 34. Defendant TAYLOR is Director of Special Education for RUSD, and is legally
24 responsible for ensuring compliance with federal and California special education law
25 and regulations within RUSD. Defendant TAYLOR is legally responsible for the
26 unlawful policies, practices and procedures challenged herein, and has the authority and
27 legal obligation to abolish these policies, practices and procedures. Defendant TAYLOR
28 is sued in her official and individual capacity.

1 35. Defendant FLORES is the Superintendent of Modesto City Schools (MCS) and
2 is legally responsible for ensuring compliance with federal and California special
3 education law and regulations within MCS. Defendant FLORES is legally responsible
4 for the unlawful policies, practices and procedures challenged herein, and has the
5 authority and legal obligation to abolish these policies, practices and procedures.
6 Defendant FLORES is sued in his official and individual capacity.

7 36. Defendant SCOTT is the Supervisor of Pre-K-6 Special Education for MCS
8 SELPA and is legally responsible for ensuring compliance with federal and California
9 special education law and regulations within MCS. Defendant SCOTT is legally
10 responsible for the unlawful policies, practices and procedures challenged herein, and has
11 the authority and legal obligation to abolish these policies, practices and procedures.
12 Defendant SCOTT is sued in her official and individual capacity.

13 37. Defendant JOHNSON is the Director of MCS SELPA and is legally responsible
14 for ensuring compliance with federal and California special education law and
15 regulations within MCS. Defendant JOHNSON is legally responsible for the unlawful
16 policies, practices and procedures challenged herein, and has the authority and legal
17 obligation to abolish these policies, practices and procedures. Defendant JOHNSON is
18 sued in her official and individual capacity.

19 38. Defendant FRANCO is the Superintendent of Tracy Unified School District
20 (TUSD) and is legally responsible for ensuring compliance with federal and California
21 special education law and regulations within TUSD. Defendant FRANCO is legally
22 responsible for the unlawful policies, practices and procedures challenged herein, and has
23 the authority and legal obligation to abolish these policies, practices and procedures.
24 Defendant FRANCO is sued in his official and individual capacity.

25 39. Defendant VAUGHN is the President of TUSD's Board of Education and is
26 legally responsible for ensuring compliance with federal and California special education
27 law and regulations within TUSD. Defendant VAUGHN is legally responsible for the
28 unlawful policies, practices and procedures challenged herein, and has the authority and

1 legal obligation to abolish these policies, practices and procedures. Defendant VAUGHN
2 is sued in his official and individual capacity.

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4 40. Defendant SKULINA is the Director of Special Education for TUSD and is
5 legally responsible for ensuring compliance with federal and California special education
6 law and regulations within TUSD. Defendant SKULINA is legally responsible for the
7 unlawful policies, practices and procedures challenged herein, and has the authority and
8 legal obligation to abolish these policies, practices and procedures. Defendant
9 SKULINA is sued in her official and individual capacity.

10 41. Defendant RICE is the Director of the San Joaquin County Office of Education
11 and San Joaquin County SELPA and is legally responsible for ensuring compliance with
12 federal and California special education law and regulations within San Joaquin County
13 schools. Defendant RICE is legally responsible for the unlawful policies, practices and
14 procedures challenged herein, and has the authority and legal obligation to abolish these
15 policies, practices and procedures. Defendant RICE is sued in his official and individual
16 capacity.

17 42. Defendant KLUDT is the Assistant Superintendent of San Joaquin County
18 Office of Education and is legally responsible for ensuring compliance with federal and
19 California special education law and regulations within San Joaquin County Schools.
20 Defendant KLUDT is legally responsible for the unlawful policies, practices and
21 procedures challenged herein, and has the authority and legal obligation to abolish these
22 policies, practices and procedures. Defendant KLUDT is sued in her official and
23 individual capacity.

24 43. Defendant HALVERSON is the Superintendent of Sylvan Union School
25 District (SUSD) and is legally responsible for ensuring compliance with federal and
26 California special education law and regulations within SUSD. Defendant
27 HALVERSON is legally responsible for the unlawful policies, practices and procedures
28 challenged herein, and has the authority and legal obligation to abolish these policies,

1 practices and procedures. Defendant HALVERSON is sued in his official and individual
2 capacity.

3 44. Defendant JONES-LEE is the Special Education Director for Stanislaus County
4 Office of Education (SCOE) and is legally responsible for ensuring compliance with
5 federal and California special education law and regulations within SCOE. Defendant
6 JONES-LEE is legally responsible for the unlawful policies, practices and procedures
7 challenged herein, and has the authority and legal obligation to abolish these policies,
8 practices and procedures. Defendant JONES-LEE is sued in her official and individual
9 capacity.

10 45. Defendant HEDIN is the Director of Stanislaus County SELPA and is legally
11 responsible for ensuring compliance with federal and California special education law
12 and regulations within Stanislaus County SELPA. Defendant HEDIN is legally
13 responsible for the unlawful policies, practices and procedures challenged herein, and has
14 the authority and legal obligation to abolish these policies, practices and procedures.
15 Defendant HEDIN is sued in her official and individual capacity.

16 46. Defendant CHAGNON is the Superintendent of SCOE and is legally
17 responsible for ensuring compliance with federal and California special education law
18 and regulations within SCOE. Defendant CHAGNON is legally responsible for the
19 unlawful policies, practices and procedures challenged herein, and has the authority and
20 legal obligation to abolish these policies, practices and procedures. Defendant
21 CHAGNON is sued in his official and individual capacity.

22 47. Defendant LABA is the Presiding Judge of the California Office of
23 Administrative Hearings, Special Education Division. She is legally responsible for
24 ensuring compliance with federal and California special education law. Defendant
25 LABA is legally responsible for the unlawful actions challenged herein. Defendant
26 LABA is sued in her official and individual capacity.

27
28 48. Defendant O'CONNELL is the chief of the CDE and California's public school

1 system, and is is legally responsible for ensuring compliance with federal and California
2 special education law and regulations within the California public school system.
3 Defendant O'CONNELL is legally responsible for the unlawful policies, practices and
4 procedures challenged herein, and has the authority and legal obligation to abolish these
5 policies, practices and procedures. Defendant O'CONNELL is sued in his official and
6 individual capacity.

7 STATEMENT OF FACTS

8 49. Plaintiff Z.F. is a 5 year old student who is currently receiving special
9 education services from RUSD. Plaintiff Z.F. has experienced, and continues to
10 experience, the unlawful actions and inactions described herein. Z.F. currently receives
11 intensive ABA services from a non-public agency as part of his special education
12 services.

13 50. Plaintiff L.H. is a 4 year old student who received special education services
14 from MCS in 2007. Plaintiff L.H. has experienced, and continues to experience, the
15 unlawful actions and inactions described herein. L.H. has not received intensive ABA
16 services despite his parents repeated requests for these services.

17 51. Plaintiff J.H. is a 4 year old student who received special education services
18 from MCS in 2007. Plaintiff J.H. has experienced, and continues to experience, the
19 unlawful actions and inactions described herein. J.H. has not received intensive ABA
20 services despite his parents repeated requests for these services.

21 52. Plaintiff A.N. is a 4 year old student who currently receives special education
22 services from RUSD. Plaintiff A.N. has experienced, and continues to experience, the
23 unlawful actions and inactions described herein. A.N. has not received intensive ABA
24 services despite his parents repeated requests for these services.

25 53. Plaintiff E.F. is a 4 year old student who received special education services from
26 TUSD in 2007. Plaintiff E.F. has experienced, and continues to experience, the unlawful
27 actions and inactions described herein. E.F. has not received intensive ABA services
28 despite his parents repeated requests for these services.

1 54. Plaintiff E.R. is a 2 year old student who is currently receiving special education
2 services from SUSD. Plaintiff E.R. has experienced, and continues to experience, the
3 unlawful actions and inactions described herein. E.R. is currently receives intensive
4 ABA services from a non-public agency.

5 49. Federal and California law set forth several requirements regarding the
6 placement of children in educational programs by public educational agencies:

7 (a) School Districts must ensure that a continuum of alternative placements is
8 available to meet the needs of children with disabilities for special education and
9 related services¹.

10 (b) Placement decisions must be made by an IEP team which includes the child's
11 parents².

12 (c) Informed parental consent must be obtained before conducting any evaluation
13 on a child³.

14 (d) Assessments of children must be conducted in an unbiased manner in the form
15 most likely to yield accurate information on what the child knows and can do
16 academically, developmentally, and functionally⁴.

17 1 34 C.F.R. 300.115 provides that “[a] [e]ach public agency must ensure that a continuum
18 of alternative placements is available to meet the needs of children with disabilities for
19 special education and related services. (b) The continuum... must... include... instruction
20 in regular classes, special classes, special schools, home instruction, and instruction in
21 hospitals and institutions.” Cal. Ed. Code 56361(e) requires the continuum of placements
22 to include nonpublic, nonsectarian schools services.

23 2 34 C.F.R. 300.116 requires that “in determining the educational placement of a child
24 with a disability, each public agency must ensure... (a) the placement decision (1) is made
25 by a group of persons, including the parents, knowledgeable about the child, the meaning
26 of the evaluation data, and the placement options.” Cal. Ed. Code 56341 states that
27 “[e]ach meeting to develop, review, or revise the individualized education program of an
28 individual with exceptional needs shall be conducted by an individualized education
program team.”

3 34 C.F.R. 300.300 (c)(1)(i) requires each public agency to “obtain informed parental
consent... prior to conducting any reevaluation of a child with a disability.”

4 34 C.F.R. 300.304(c)(1) provides that assessments and other evaluation materials used
to assess a child under this part (1) Are selected and administered so as not to be
discriminatory on a racial or cultural basis; (ii) Are provided and administered... in the
form most likely to yield accurate information on what the child knows and can do
academically, developmentally, and functionally, unless it is clearly not feasible to so

1 (e) Children have the right to an independent assessment by an outside provider.⁵

2 50. The PPG/4-Way agreement states that a child “must be certified by the VMRC
3 clinical team that s/he meets the diagnostic guidelines for an Autism Spectrum Disorder.”
4 It also states that “an EIBT referral is based on the date the child met the EIBT Diagnostic
5 Education Placement Entrance Guidelines. EIBT providers agree to serve the child in the
6 order the referral was received.” In order to even obtain a diagnostic EIBT education
7 placement, the contract requires, among other things, that a child “have between 20 and 25
8 functional expressive words (vocal verbal, sign or Picture Exchange Communication
9 System.” It also requires that “the child [have] no chronic medical, motor or sensory
10 deficits that would preclude full participation in treatment.⁶

11 50. Defendants have implemented a system under the PPG/4-Way Agreement
12 which has unlawfully restricted access to intensive ABA services for Plaintiffs, as well as
13 those similarly situated, in contravention of federal and state law. This system (a) denied
14 access to students whose parents refuse to sign the contract, (b) denies access to students
15 who do not meet the contract’s criteria, (c) allows students to be removed from a program
16 of intensive services for not meeting the contract’s criteria, (d) creates a system of
17 waiting lists for students which denies them access to a continuum of placements, (e)
18 allows for the development of children’s educational program outside of the IEP team
19 process and (f) allows for assessments of children without the consent of their parents,
20 (g) creates a barrier which prevents students access to needed services under ADA and
21 504 and (h) prevents parents from obtaining independent evaluations for their children.

22 51. As a result of the violations of federal and state law described herein,
23 Plaintiffs and other similarly situated students have unlawfully been denied access

24 provide or administer; (iii) Are used for the purposes for which the assessments or
25 measures are valid and reliable.

26 5 34 C.F.R. 300.502(1) provides that “the parents of a child with a disability have the
27 right under this part to obtain an independent educational evaluation of a child.

28 6 All quotes from the Early Intensive Behavioral Treatment Program Procedures and
Guidelines, Revised 1/4/06 version. The 5/24/06 version contains the same provisions.

1 intensive ABA services, which they require to gain an educational benefit. By denying
2 Plaintiffs these services, Defendants have caused them serious delays in making
3 educational and social progress.

4 52. Students who are denied access to intensive ABA services lose a great deal
5 of educational and social benefit. A student who does not receive intensive ABA is not
6 provided the appropriate service to address behavior replacement and modification
7 needed for education. Intensive ABA (the specific EIBT program of Region 6 Autism
8 Connection) serves the student in 3 phases: Phase 1 - 35-40 hours of 1:1 tutoring (the
9 student starts slow first, but as he/she progresses, the educational sessions extend to 50
10 minutes instruction; 10 minutes break- 50 minutes instruction; 10 minutes break, and so
11 on for a total of 35-40 hours. Phase 2- preschool inclusion with one to one support
12 maintained at 35-40 hours. Phase 3 - General Education kindergarten placement.
13 Intensive instruction involves academics, receptive/expressive language, functional
14 communication, reducing unwanted behaviors, reduction of echolia and other repetitive
15 restricted behaviors, teaching replacement behaviors, teaching peer play and appropriate
16 toy play, teaching conversation skills, teaching social skills, teaching community outing
17 skills, and functional life skills. Non compliance is addressed and behavior intervention
18 plans are developed with "schedules of reinforcement" and differential reinforcement.

19 53. There can be drastic consequences for children who do not receive these
20 intensive services. The difference between receiving intensive ABA and non intensive
21 services can be the difference between a life of independence and self sufficiency or a life
22 of institutionalization.

23 **EXHAUSTION**

24 **Exhaustion of OAH Remedies**

25 53. Because Plaintiffs have all been denied intensive ABA services because of
26 the PPG/4-way Agreement, Plaintiffs attempted to file a joint claim with the Office of
27 Administrative Hearings for several of the named Plaintiffs. However, OAH did not open
28 the case. Petitioner's request for due process was originally filed on November 9, 2007 as

1 part of a joint request which included due process requests from five other students. The
2 due process requests were filed jointly due to the fact that each complaint involved denial
3 of FAPE involving the 4-way Agreement.

4 54. On November 13, 2007, Tamara Loughrey, attorney for Petitioner received a
5 call from Jen, a clerk at OAH, who informed her that she had never seen a case such as
6 the one that was filed, and requested that the cases be re-filed individually. Ms. Loughrey
7 told Jen that she would make some corrections to the complaint in order to clear up any
8 confusion. She also requested that OAH put any decision in writing. Petitioners filed a
9 Corrected and Clarified Joint Request for Due Process the same day.

10 55. On November 20, 2007, an OAH clerk named Laura left a message with Ms.
11 Loughrey's office stating that the complaints would not be opened. On November 27,
12 2007, Ms. Loughrey wrote a letter to Judge Sherianne Laba, expressing her concern that
13 the case had not been opened or dismissed by OAH. The letter requested that OAH open
14 the complaint or provide a written decision stating why it was dismissed.

15 56. On January 11, 2008, Ms. Loughrey once again wrote to Judge Laba, this
16 time to express her concern that she had not received a response regarding her request
17 that OAH provide written notice of a decision. She also wrote to express her concern
18 regarding a phone call her office received from OAH clerk Laura stating that OAH had
19 no record of the case. In this letter, she included three exhibits – the November 9, 2007
20 Due Process Complaint with proof of service, the November 13, 2007 Corrected and
21 Clarified Joint Request for Due Process, and a copy of the November 27, 2007 letter to
22 Judge Laba.

23 57. It was not until January 22, 2008 that Ms. Loughrey received a written
24 response from OAH in the form of a letter from Judge Laba. In this letter, Judge Laba
25 stated that OAH “will not file an order regarding whether or not this case is opened.”
26 The letter also noted that OAH would not hear any of the issues regarding ADA, 504, the
27 Lanterman Act, the 14th Amendment and the California Constitution Art. 1 § 31. Finally,
28 the letter noted that Plaintiffs were not prevented from pursuing the claims as a class

1 action in District Court. As OAH refused to hear Plaintiffs issues regarding the 4-way
2 agreement, Plaintiffs have been left with no choice but to file this action in Federal court.

3 **Exhaustion of CDE Remedies**

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5
6 **CLASS ALLEGATIONS**

7 60. Plaintiffs bring this action on behalf of themselves and all others similarly
8 situated. The class which Plaintiffs represent is composed of all children with disabilities
9 who have been prevented from receiving intensive ABA Services by implementation of
10 the PPG/4-Way Contract .

11 61. The persons in the class are so numerous that joinder of all such persons is
12 impractical and the disposition of their claims in a class action is a benefit to the parties
13 and to the Court.

14 62. There is a well-defined community of interest in the questions of law and fact
15 involved affecting the parties to be represented in that they have all been forced to accept
16 inadequate services for their disabilities because of the implementation of the PPG/4-Way
17 Contract.

18 63. Common questions of law and fact predominate in the class.

19 64. The claims of Plaintiffs are typical of those of the class and Plaintiffs will fairly
20 and adequately represent the interests of the class.

21 65. The references to Plaintiffs shall be deemed to include the named Plaintiffs and
22 all others similarly situated.

23 **PLAINTIFFS' CAUSES OF ACTION**

24 **COUNT I: Violation of 20 U.S.C. §1400 et. seq.**

25 **(Each Plaintiff and all others similarly situated Against their respective School District,
26 Board/Office of Education, SELPA and Valley Mountain Regional Center and the school
27 district and SELPA of all others similarly situated)**

28 66. Plaintiffs incorporate, by reference herein, the allegations in the preceding

1 paragraphs, inclusive.

2 . 67. Federal and California law set forth several requirements regarding the
3 placement of children in educational programs by public educational agencies:

4 (a) School Districts must ensure that a continuum of alternative placements is
5 available to meet the needs of children with disabilities for special education and
6 related services.

7 (b) Placement decisions must be made by a group of person, including the
8 parents, within an IEP meeting.

9 (c) Informed parental consent must be obtained before conducting any evaluation
10 on a child.

11 (d) Assessments of children must be conducted in an unbiased manner in the form
12 most likely to yield accurate information on what the child knows and can do
13 academically, developmentally, and functionally.

14
15 68. Defendants have implemented a system under the PPG/4-Way Agreement
16 which has unlawfully restricted access to intensive ABA services for Plaintiffs, as well as
17 those similarly situated, in contravention of federal and state law. This system (a) denies
18 access to students whose parents refuse to sign the contract, (b) denies access to students
19 who do not meet the contract's criteria, (c) allows students to be removed from a program
20 of intensive services for not meeting the contract's criteria, (d) creates a system of
21 waiting lists for students which denies them access to a continuum of placements, (e)
22 allows for the development of children's educational program outside of the IEP team
23 process and (f) allows for assessments of children without the consent of their parents (g)
24 creates a barrier which prevents students access to needed services under ADA and 504
25 and (h) prevents parents from obtaining independent evaluations for their children.

26 69. Defendants' unlawful actions were and continue to be intentional, willful,
27 malicious, and/or done with reckless disregard to the right of Plaintiffs and others
28 similarly situated to obtain services which they require to gain an educational benefit.

1
2 **COUNT II: Violation of Section 504 of the Rehabilitation Act of 1973**
3 **(By J.H, L.H. and all others similarly situated Against Modesto City Schools,**
4 **Modesto City Schools SELPA and Valley Mountain Regional Center and the**
5 **school district and SELPA of all others similarly situated)**

6 70. Plaintiff incorporates and realleges as though fully set forth herein the
7 allegations set forth in preceding paragraphs, inclusive.

8 71. The acts herein constitute violations of Section 504 of the Rehabilitation Act
9 of 1973, 29 U.S.C. § 749 et seq., and the regulations promulgated thereunder. Section 504
10 provides, inter alia, that no otherwise qualified individual with a disability shall, solely by
11 reason of his disability, be excluded from participation in, be denied the benefits of, or be
12 subjected to discrimination under, any program or activity receiving federal financial
13 assistance.

14 72. Each defendant named herein is a direct recipient of federal financial
15 assistance sufficient to invoke the coverage of Section 504.

16 73. All plaintiffs are qualified individuals with disabilities.

17 74. Solely by reason of their disabilities, Plaintiffs have been, and continue to be,
18 excluded from participation in, denied the benefit of, and subjected to discrimination in
19 their attempts to receive full and equal access to the facilities, programs, services and
20 activities offered by Defendants.

21 75. This discrimination includes, but is not limited to, denying Plaintiffs access to
22 intensive ABA services, on the basis that Plaintiffs are unable to meet an entrance criteria
23 and removing Plaintiffs from the intensive ABA program if they do not perform at a
24 minimum level.

25 76. As a direct and proximate result of the Defendants' discrimination, Plaintiffs
26 suffered damages in an amount to be proven at trial.
27

1 77. Plaintiffs are entitled to reasonable attorney's fees pursuant to 29 U.S.C. §
2 794(a).

3 WHEREFORE, Plaintiffs request relief as set forth below.

4 **COUNT III: Violations of Title II of The Americans with Disabilities Act**
5 **(By J.H, L.H. and all others similarly situated Against Modesto City Schools,**
6 **Modesto City Schools SELPA, Valley Mountain Regional Center and the school**
7 **district and SELPA of all others similarly situated)**

8 77. Plaintiff incorporates and realleges as though fully set forth herein the
9 allegations set forth in preceding paragraphs.

10 78. Title II of the ADA, 42 U.S.C. § 12131 et. seq. (ADA) and the regulations
11 promulgated thereunder, 28 C.F.R. Part 35, governing state and local governmental
12 entities, protect persons from discrimination by public entities on the basis of disability.

13 79. The acts alleged herein constitute violations of the ADA., and the
14 regulations promulgated thereunder. Title II of the ADA provides, that no qualified
15 individual with a disability shall, by reason of such disability, be excluded from
16 participation in or be denied the benefits of the services, programs, or activities of a
17 public entity, or be subjected to discrimination by any such entity.

18 80. Each Defendant named herein has employed and continues to employ more
19 than 15 people.

20 81. Defendants' discriminatory conduct includes, but is not limited to, denying
21 Plaintiffs access to intensive ABA services, on the basis that Plaintiffs are unable to meet
22 an entrance criteria and removing Plaintiffs from the intensive ABA program if they do
23 not perform at a minimum level.

24 82. Defendants' conduct constitutes ongoing and continuous violations of the ADA
25 and, unless restrained from doing so, Defendants will continue to violate said law. Said
26 conduct, unless enjoined, will continue to inflict injuries for which Plaintiffs have no
27

1 adequate remedy at law.

2 83. Consequently, Plaintiffs are entitled to injunctive relief pursuant to section 308
3 of the ADA (42 U.S.C. section 12188). Plaintiffs are also entitled to reasonable
4 attorneys' fees and costs.

5 WHEREFORE, Plaintiffs request relief as set forth below.

6
7 **COUNT IV: Violation of Due Process Rights Under the U.S. Constitution**
8 **Amendment 14, Sec. 1 and the California Constitution, Article 1, Section 7(a)**
9 **(All Plaintiffs and all others similarly situated Against OAH and CDE)**

10 84. Plaintiffs incorporate, by reference herein, the allegations in the preceding
11 paragraphs, inclusive.

12 85. The Fourteenth Amendment to the United States Constitution provides that no
13 state shall deprive any person of life, liberty or property without due process of law.
14 Similarly, the California Constitution, Art 1, Sec. 7(a) also provides that a person may not
15 be deprived of life, liberty or property without due process of law. Education is a
16 property right protected by the Due Process Clause of the Fourteenth Amendment. Gross
17 v. Lopez, 419 U.S. 565, 574 (1975). Due process includes, at minimum, the right to be
18 provided notice and opportunity to be heard. Jones v. Flowers, 547 U.S. 220, 240-241
19 (2006).

20 86. A student who receives special education services' opportunity to be heard is set
21 forth under the IDEA, which allows students to be heard in the form of a due process
22 hearing. Specifically, 20 U.S.C. § 1415(b)(6)(a) requires any state or local educational
23 agency which takes federal money to establish procedures to allow a parent of a child to
24 present a complaint with respect to "the provision of a free appropriate public education
25 to such child." When parents exercise their right to file a complaint, 20 U.S.C.
26 1415(f)(1)(a) allows them to "have an opportunity for an impartial due process hearing."
27 Once a parent files a request for a due process hearing, a hearing officer is required by
28 Cal. Ed. Code § 56502(f) to "immediately... notify, in writing, all parties of the request
for the hearing and the scheduled date for the hearing. The notice shall advise all parties
of all their rights relating to procedural safeguards. Both 34 C.F.R. 300.511 and Cal. Ed.

1 Code § 56502(f) mandate that a hearing officer must hold a hearing and render a final
2 decision within 45 days after the request for a due process hearing has been filed.

3 87. In this case, Plaintiffs filed a request for due process with OAH on November 9,
4 2007. Plaintiffs did not receive a written response from OAH until January 22, 2008, a
5 full 71 days after the filing and 26 days beyond the date when a *decision* should have
6 been rendered. Unfortunately, this severely delayed response did not do anything to allow
7 Plaintiffs to proceed with the case at the administrative level. OAH determined that it
8 “will not file an order regarding whether or not this case is opened.” By failing to provide
9 Plaintiffs with an opportunity to present their complaints in the form of a due process
10 hearing, Defendants have violated Plaintiffs Constitutional rights to Due Process.

11 WHEREFORE, Plaintiffs request relief as set forth below.

12 **COUNT V: Violations the 14th Amendment’s Right to Freely Travel**

13 **(By J.H., L.H. and all others similarly situated, Against Modesto City Schools,
14 Modesto City Schools SELPA, Modesto City Schools Board of Education, VMRC
15 and the school district and SELPA of all others similarly situated)**

16 88. Petitioners incorporate, by reference herein, the allegations in the preceding
17 paragraphs, inclusive.

18 89. Under the Equal Protection Clause of the 14th Amendment of the United
19 States Constitution, citizens have the right to freely travel. The Supreme Court has been
20 clear that it is “constitutionally impermissible’ for a State to enact durational residency
21 requirements for the purpose of inhibiting the migration of needy persons into the
22 State.” Saenz v. Roe, 526 U.S. 489, 499 (1999). (quoting Shapiro v. Thompson, 394
23 U.S. 618,629 (1969)). This prohibition on restricting the right to travel extends to
24 restrictions on intrastate travel as well. See Valenciano v. Bateman, 323 F.Supp. 600,
25 603 (D.C. Ariz. 1971).

26 90. Defendants have purposefully instituted a waiting list system designed to
27 exclude those children who have recently moved to one of the school Districts which
28 are part of the PPG/4-Way agreement from receiving intensive ABA services. This
system violates Plaintiffs constitutional right to freely travel by denying them services

1 to which they are entitled on the basis of their migration from another area.

2
3 **COUNT VI: Violation of Substantive Due Process Rights Under the U.S.**
4 **Constitution Amendment 14, Sec. 1**

5 **(By all Plaintiffs and all others similarly situated Against their respective**
6 **school district, SELPA and Office/Board of Education and Valley Mountain**
7 **Regional Center and the school district and SELPA of all those similarly**
8 **situated)**

9 91. Plaintiffs incorporate, by reference herein, the allegations in the preceding
10 paragraphs, inclusive.

11 92. The Due Process clause “contains a substantive component that bars certain
12 arbitrary, wrongful government actions ‘regardless of the fairness of the procedures used
13 to implement them.’” Foucha v. Louisiana, 504 U.S. 71, 79 (1992) (quoting Zinermon v.
14 Burch, 494 U.S. 113, 125 (1986).

15 93. In this case, Defendants have arbitrarily implemented the 4-Way Agreement
16 to limit the availability of intensive ABA services for children and to determine which
17 children are eligible for the services. The agreement has created an artificial monopoly
18 on intensive ABA services in the Central Valley by limiting the number of providers. In
19 addition, the criteria used by Defendants to determine which children obtain these
20 services and which children can remain in the programs that provide these services is not
21 based on solid scientific principles. Instead of being designed to include all children who
22 could benefit from this program, the criteria is arbitrarily designed to exclude children
23 based on impermissible and illegitimate purposes unrelated to educational benefit, such as
24 IQ, race, nationality, or the language spoken by their parents. Thus, the agreement and its
25 method of implementation violate Plaintiffs’ substantive rights under the Due Process
26 clause.

27 **COUNT VII: Violations of the Unruh Civil Rights Act**
28 **(By J.H, L.H. and all others similarly situated Against Modesto City Schools,**
29 **Modesto City Schools SELPA and Valley Mountain Regional Center and the**
30 **school district and SELPA of all those similarly situated)**

1 94. Plaintiff incorporates and realleges as though fully set forth herein the
2 allegations set forth in preceding paragraphs, inclusive.

3 95. Pursuant to California Civil Code § 51 et seq. and 54 et seq. all persons
4 within the jurisdiction of the State of California are entitled to the full and equal
5 accommodations, advantages, facilities, privileges, or services in all business
6 establishments of every kind whatsoever.

7 96. Defendants and their facilities constitute business establishments under
8 California Code § 51 and 54 and as such are prohibited from discriminating against
9 Plaintiffs on the basis of disability. Defendants violated California Civil Code § 51 by
10 discriminating against Plaintiffs by the examples set forth above. As a result, Plaintiffs
11 are entitled pursuant to California Civil Code § 52(a) for actual damages up to three times
12 the amount of actual damages but no less than \$4,000 per each violation. Additionally,
13 Plaintiffs are entitled to reasonable attorney's fees pursuant to California Civil Code §
14 52(a).

15 WHEREFORE, Plaintiffs request relief as set forth below

16
17 **COUNT VIII: Violation of 42 U.S.C.A. § 1983**

18 **(Each Plaintiff and all others similarly situated Against the respective School**
19 **District, Board/Office of Education, SELPA and Valley Mountain Regional Center**
20 **and the school district and SELPA of all others similarly situated)**

21 97. Plaintiffs incorporate and reallege as though fully set forth herein the
22 allegations set forth in preceding paragraphs, inclusive. The acts and omissions of the
23 Superintendent, Board Members, and Director of Special Education, under color of law as
24 well as official policy and custom, as herein above set forth, deprive Plaintiffs of their
25 rights under IDEA, Title II of the ADA, Section 504 of the Rehabilitation Act of 1973, the
26 Due Process Clause of the Fourteenth Amendment and the Equal Protection Clause of the
27 Fourteenth Amendment, in violation of 42 U.S.C. § 1983, for which Plaintiffs seek and
28 are entitled to injunctive and declaratory relief.

98. The acts of Defendants as herein alleged were willful, intentional, and

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oppressive. Plaintiffs have no adequate remedy at law and unless the relief requested herein is granted, Plaintiffs will suffer irreparable harm by the deprivation of their rights under federal law. Plaintiff has suffered harm and continues to suffer harm, as a result of Defendants 42 U.S.C.A. violations.

WHEREFORE, Plaintiffs request relief as set forth below.

PRAYER FOR RELIEF

1. An order and judgment enjoining Defendants from implementing the PPG/4-Way Agreement or any policies or actions substantially similar to the agreement. .
2. A declaration that the PPG/4-Way Agreement, and Defendants manner of implementing the agreement, is a violation of Federal and State law.
3. A restraining order and/or preliminary and permanent injunctive relief calling for the immediate cessation of the PPG/4-Way agreement.
4. Damages pursuant to California Civil Code Section 52(a) in an amount up to three times actual damages but no less than \$4,000 per violation per Plaintiff per day;
5. Plaintiffs' reasonable attorneys' fees;
6. For costs of suit incurred by this complaint; and
7. For other and further relief as the Court deems proper.

LOUGHREY & WOELFEL, LLP

DATED: April, 2007

Tamara Loughrey
Attorneys for Petitioners

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