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7 VALLEY MOUNTAIN REGIONAL CENTER,
RICHARD JACOBS and TARA SISEMORE-HESTER

8 UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA
10 SACRAMENTO

11 Z.F., a minor by and through his parents M.A.F.)
12 and J.F. and M.A.F. and J.F. individually; L.H.,)
and J.H., minors, by and through their parents)
13 J.A. and J.R.H. and J.A. and J.R.H. individually;)
A.N., a minor, by and through his parents G.N.)
14 and M.R. and G.N. and M.R. individually,)

15 Plaintiffs,)

16 v.)

17 RIPON UNIFIED SCHOOL DISTRICT)
(RUSD); RIPON UNIFIED SCHOOL)
18 DISTRICT BOARD OF TRUSTEES; SAN)
JOAQUIN VALLEY COUNTY OFFICE OF)
19 EDUCATION; VALLEY MOUNTAIN)
REGIONAL CENTER (VMRC); MODESTO)
20 CITY SCHOOLS; MODESTO CITY)
SCHOOLS BOARD OF EDUCATION;)
21 RICHARD JACOBS, Executive Director of)
VMRC, in his official and individual capacity;)
22 TARA SISEMORE-HESTER, Coordinator for)
Autism Services for VMRC, in her official and)
23 individual capacity; VIRGINIA JOHNSON,)
Director of Modesto City Schools SELPA, in)
24 her official and individual capacity; SUE)
SWARTZLANDER, Program Director for)
25 Modesto City Schools, in her official and)
individual capacity and DOES 1-200,)

26 Defendants.)
27)
28)

Case No. 2:10-CV-00523-FCD-EFB

**COUNTERCLAIMANTS VALLEY
MOUNTAIN REGIONAL CENTER,
RICHARD JACOBS AND TARA
SISEMORE-HESTER'S
COUNTERCLAIM AND COMPLAINT
FOR:**

- 1. LIBEL
 - 2. SLANDER
 - 3. MALICIOUS PROSECUTION
- JURY TRIAL DEMANDED**

1	VALLEY MOUNTAIN REGIONAL CENTER,)
2	RICHARD JACOBS, TARA SISEMORE-)
	HESTER)
3	Counterclaimants,)
4	v.)
5	M.A.F., and J.A., SPECIAL NEEDS)
6	ADVOCATES FOR UNDERSTANDING, and)
	AUTISM REFORM CALIFORNIA)
7	Counterdefendants,)
8)
9)
10)
11)

NOW COMES Counterclaimants Valley Mountain Regional Center (“VMRC”), Richard Jacobs (“Jacobs”), and Tara Sisemore-Hester (“Sisemore-Hester”) (collectively “Counterclaimants”) pursuant to Federal Rules of Civil Procedure, Rules 13 and 14, to complain against Counterdefendants M.A.F., J.A., Special Needs Advocates For Understanding (“SNAFU”) and Autism Reform California (“Autism Reform California”) (collectively “Counterdefendants”) in the case of *Z.F. v. Ripon Unified School District, et al.*, Case No. 2:10-CV-00523-FCD-EFB. Counterclaimants demand a jury trial of all causes of action contained herein.

JURISDICTION AND VENUE

1. Pursuant to Rules 13 and 20, jurisdiction exists over this Complaint in that the liability asserted herein is derivative of the liability alleged by Plaintiffs against Counterclaimants in this case. Further, this action arises under, and jurisdiction is conferred on this Court by virtue of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §§ 749 *et seq.*); Title II of The Americans With Disabilities Act (42 U.S.C. §§ 12131 *et seq.*; 28 C.F.R. Part 35); Title III of The Americans With Disabilities Act (42 U.S.C. §§ 12182 *et seq.*); and 42 U.S.C. § 1983.

1 8. Counterdefendant M.A.F. is, and at all times mentioned herein was, a citizen of
2 the State of California. M.A.F. is the mother of Plaintiff Z.F.

3 9. Counterdefendant J.A. is, and at all times mentioned herein was, a citizen of the
4 State of California. J.A. is the mother of Plaintiffs L.H. and J.H.¹

5 **NATURE OF THE ACTION**

6 10. This is an action for defamation and malicious prosecution arising out of
7 Counterdefendants' unlawful smear campaign directed against Counterclaimants. As set forth
8 herein, Counterdefendants have repeatedly made defamatory statements regarding
9 Counterclaimants.

10 11. Further, Counterdefendants filed a baseless complaint against Counterclaimants in
11 2008, alleging causes of action against Jacobs and Sisemore-Hester that are not available against
12 individual defendants.

13 12. Then, just two years later, Counterdefendants filed an equally frivolous lawsuit
14 against Counterclaimants, and, again, alleged causes of action against Jacobs and Sisemore-
15 Hester that are not available against individual defendants (herein referred to as "VMRC Action
16 II").

17 **GENERAL ALLEGATIONS**

18 13. Counterclaimants are informed and believe, and thereon allege, that, in doing the
19 things complained of herein, Counterdefendants, and each of them, conspired and agreed among
20 themselves to cause Counterclaimants to sustain injury and damage as herein alleged.

21 14. VMRC has an established process for providing services to its clients. After an
22 initial assessment, VMRC employees work with the family of an autistic child to explore the
23 appropriate treatment options. Based on all relevant factors, the child's family along with
24 clinical and educational input from VMRC, create an Individual Education Plan ("IEP") which
25 sets forth the major outcomes to be achieved for the child and the family, as well as an
26 itemization of the programs and services necessary to achieve those outcomes.

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28 ¹ Counterclaimants possess the true and full names of Counterdefendants M.A.F. and J.A. However, in the interests of protecting the identities of the minor Plaintiffs, Counterclaimants have not included Counterdefendants' full names in their Counterclaim and Complaint.

1 15. A child’s IEP involves both active family participation and direct and consultative
2 treatment from VMRC personnel. Families are expected to strictly adhere to their child’s IEP.

3 16. On or about April 16, 2008, Counterdefendants M.A.F. and J.A., on behalf of
4 themselves and their minor children, commenced and filed a civil lawsuit against
5 Counterclaimants, among other persons and entities, in the Eastern District of California
6 (hereinafter referred to as “VMRC I Action”). VMRC I Action alleged violations of: 20 U.S.C.
7 §§ 1400 *et seq.*; Section 504 of the Rehabilitation Act of 1973; Title II of the Americans With
8 Disabilities Act; due process rights; the Unruh Civil Rights Act; and 42 U.S.C. § 1983. The case
9 was entitled Z.F. v. Ripon Unified School District *et al.*, Case Number 2:08-cv-00855-GEB-
10 JFM. A true and correct copy of the Complaint is attached hereto as **Exhibit A**.

11 17. Counterdefendants M.A.F. and/or J.A. improperly named Jacobs and Sisemore-
12 Hester as defendants in VMRC Action I, despite clear legal precedent establishing that the
13 claims were not viable against individual defendants.

14 18. Specifically, M.A.F. and/or J.A. alleged that they were unlawfully denied
15 intensive behavior treatment for Autism Spectrum Disorder at local government agencies
16 contracted by the Department of Education due to the eligibility criteria and referral process set
17 forth in the Early Intensive Behavioral Treatment (“EIBT”) Program, Procedures and Guidelines
18 document, which set the parameters under which autistic children qualified for treatment.

19 19. In response to the VMRC Action I Complaint, Counterclaimants argued that the
20 action should be dismissed on the grounds that Plaintiffs failed to exhaust their administrative
21 remedies, and because Jacobs and Sisemore-Hester could not be held liable in their individual
22 capacities. On November 7, 2008, Judge Garland E. Burrell, Jr. of the Eastern District of
23 California dismissed VMRC Action I on the grounds that Plaintiffs failed to exhaust their
24 administrative remedies. The Ninth Circuit Court of Appeals unanimously affirmed the
25 dismissal on February 10, 2010.

26 20. Counterclaimants are informed and believe, and thereon allege, that
27 Counterdefendants have made derogatory statements regarding Counterclaimants, and made
28 false and defamatory statements to, *inter alia*, parents seeking EIBT services from VMRC.

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3 21. Counterclaimants are informed and believe, and thereon allege, that M.A.F.
4 and/or J.A. made false and defamatory statements concerning Counterclaimants to other parents
5 seeking EIBT services. Recently, Sisemore-Hester had an e-mail exchange with Gabriela
6 DeVelbiss (“DeVelbiss”). In this exchange, DeVelbiss stated that she would not permit VMRC
7 employees to be present at her son’s IEP. Further, DeVelbiss also referenced VMRC Action II
8 in a manner suggesting, incorrectly, that VMRC personnel could be excluded from the IEP. A
9 true and correct copy of this e-mail exchange is attached hereto as **Exhibit B**.

10 22. Counterclaimants are informed and believe, and thereon allege, that M.A.F.
11 and/or J.A. is aligned with and acting in concert with DeVelbiss, and further, that M.A.F. and/or
12 J.A. made false and defamatory statements regarding Counterclaimants to DeVelbiss to induce
13 her to criticize and refuse to cooperate with VMRC.

14 23. Counterclaimants are informed and believe, and thereon allege, that M.A.F.
15 and/or J.A. have made false and defamatory statements to reporters or online news organizations
16 regarding Counterclaimants, which subsequently proved inaccurate.

17 24. On March 20, 2010, the website Examiner.com published an article entitled
18 “Gatekeepers preventing children’s access to therapy results in class action suit.” The story
19 contained numerous incorrect and blatantly misleading factual assertions, including some made
20 by M.A.F. and/or J.A. A true and correct copy of this article is attached hereto as **Exhibit C**.
21 Upon being notified of the numerous factual errors contained in the article, Examiner.com
22 removed the article from its website.

23 25. Specifically, the Examiner.com article referenced in Paragraph 24 contained the
24 following false and defamatory statements:

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- 2 • “VMRC only allows providers to be vendorized IF they agree to adhere to
3 the PP&G (which violates numerous laws under IDEA and the California Ed
4 Code) and IF they agree to NOT accept private-pay. That means that if a
5 parents [sic] wants to private pay for an assessment and/or services, there is
6 not a single company in the five-county region VMRC serves that is allowed
7 to do this. (Recently, VMRC has informed the ABA providers that they can
8 accept private pay, but if you call and act like you are a parent, you won’t get
9 a return phone call or email.)”
- 10 • “ We have many parents that are not even told ABA is available. Case in
11 point is the parent of two children whose children were receiving 40
12 hour/week programs in the Bay Area. When she moved here, the school
13 district told her they had nothing like that available. Later when asked at a
14 tape-recorded IEP why she was never told, the school district said they
15 would respond in writing. We are still waiting for such a response.”
- 16 • “EIBT is a research project. Data generated by the subjects has been used in
17 several published studies and VMRC has even given money to some of the
18 ABA providers to fund the studies. One of the ABA provider company’s
19 owners, Jane Howard, is one of the lead researchers for one of the studies
20 whom I believe (although not positive) received \$500,000 from VMRC to
21 conduct this research. Her husband happens to be Rick Ingraham of DDS
22 (Department of Developmental Services) who is a high-level officer with
23 DDS that has the power to influence funding and other policy which has
24 nicely lined his wife Jane’s pockets.”

25 26. In addition, on December 24, 2005, the website Recordnet.com published an
26 article quoting M.A.F. which contained false and defamatory statements regarding
27 Counterclaimants. A true and correct copy of this article is attached hereto as **Exhibit D**.

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2 27. Specifically, the article referenced in paragraph 26 contained the following false
3 and defamatory statements:

- 4 • “That worries some parents, including Ripon mother Shirley Nutt. ‘It tells
5 you these are the exact, specific things that your child has to do to remain in
6 that program, or you’re gone,’ she said. Nutt said the rules discriminate
7 against children who are slow to progress. [M.A.F.] agreed, adding that
8 special education should be tailored to a child’s needs, and not to any
9 agency’s criteria.”

10 28. Counterclaimants are informed and believe, and thereon allege, that M.A.F.
11 and/or J.A. and/or SNAFU and/or Autism Reform California posted false and misleading
12 information on the website of Autism Reform California in order to disparage and defame
13 VMRC and Sisemore-Hester. Further, Counterclaimants are informed and believe, and thereon
14 allege, that M.A.F. and/or J.A. and/or SNAFU and/or Autism Reform California surreptitiously
15 recorded the statements of Sisemore-Hester for the purpose of publishing them out of context
16 and in a fashion which would disparage Sisemore-Hester and VMRC.

17 29. The homepage for Autism Reform California recently displayed several
18 disparaging remarks concerning Sisemore-Hester, as well as several out of context statements by
19 Sisemore-Hester which were contorted to support Counterdefendants’ and Third-Party
20 Defendants’ smear campaign against Counterclaimants. A true and correct copy of Autism
21 Reform California’s homepage is attached hereto as **Exhibit E**.

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1 30. Specifically, the website autismreformcalifornia.com displayed the following
2 false and defamatory statements:

- 3 • “EIBT is only offered to elite autistic children....Autism agencies wishing to
4 set up business within this region *must* agree to implement and enforce these
5 criteria, which are outlined in a 53-page policy formerly known as ‘*Region 6*
6 *Early Intensive Behavioral Treatment 4-Way Agreement*’. Several agencies
7 who attempted to apply for vendorization with Valley Mountain Regional
8 Center, who disagreed to this policy were not allowed to open their business
9 here, continuing to limit autism business operations and financial
10 disbursements of public autism monies to five autism agencies.”
- 11 • “VMRC’s autism coordinator confirmed on the record that attendance to an
12 EIBT meeting is by invitation only. To date, publicly funded EIBT meetings
13 are not publicly disclosed and are held discretely.”
- 14 • “Public and private agencies, namely Valley Mountain Regional Center
15 (VMRC), San Joaquin SELPA, Stanislaus SELPA, Family Resource
16 Network, and four autism agencies...collaborated on the development of an
17 autism service delivery model that discriminates against children through the
18 policy’s entrance, continuation, and exit criteria....VMRC’s autism
19 coordinator, Tara Sisemore-Hester has been audio recorded in an IEP
20 meeting to say that she is the ‘gatekeeper’ of EIBT and indicated on record
21 that every kid who gets EIBT goes through her desk....[T]he EIBT PP & G
22 policy and its autism service delivery model violates federal and state special
23 education laws and regulations and violates parents and children’s U.S.
24 Constitutional Rights under Equal Protections [sic].”

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1 32. Specifically, the website autismreformcalifornia.com displayed the following
2 false and defamatory statements:

- 3 • “As a green but passionate parent of a newly-diagnosed son with autism
4 experienced the deceptive implementation of an autism policy known as *The*
5 *4 Way Agreement*, she launched a website to report on the discriminatory
6 provisions contained in the 53-page contract that she was being required to
7 sign if she wanted her son to enter into the intensive EIBT program....After a
8 settlement agreement and the filing of the original class action lawsuit, the
9 parents on behalf of their son with autism survived a 9th Circuit Court of
10 Appeals decision, which, while affirming the District Courts [sic] decision
11 regarding students who did not exhaust their administrative claims, in fact
12 allowed those parents who did exhaust, either by settlement or by hearing, to
13 pursue additional claims in federal court. The resulting 2010 amended class
14 action complaint was amended and filed.”
- 15 • “One of the major concerns among parents and caregivers involves nepotism
16 and misuse of government monies. VMRC’s autism coordinator of services
17 Tara Sisemore-Hester has gone on record many times to remind families that
18 NPA’s (Non Public Agencies) stand to make a lot of money in the EIBT co-
19 funded supposedly collaborative model of intensive autism treatment
20 program known as “EIBT” which offers 35-40 hours of one-to-one
21 intervention....Many parents and caregivers believe...that it is high time for
22 Federal and State investigators and lawyers to look into the matter, request
23 for all accounting documentation, and investigate the nepotistic transfer of
24 EARLY START and EIBT public dollars that seems to be making a lot of
25 money for ABA Agencies CVAP, Pathways, B.E.S.T. per Ms. Tara
26 Sisemore-Hester’s comment.”
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1 33. Counterclaimants are informed and believe, and thereon allege, that
2 Counterdefendants M.A.F. and/or L.A. direct the actions of, or are otherwise directly affiliated
3 with SNAFU.

4 34. Counterclaimants are informed and believe, and thereon allege, that M.A.F is a
5 co-founder of SNAFU, and that she remains aligned with SNAFU's current coordinator.

6 35. Counterclaimants are informed and believe, and thereon allege, that SNAFU, at
7 the direction of and with the participation of M.A.F and/or J.A., has made false and defamatory
8 statements regarding Counterclaimants. Sisemore-Hester was informed by several parents that,
9 while attending a SNAFU meeting, they were warned by SNAFU members not to trust VMRC,
10 and further, that numerous disparaging remarks were made about Sisemore-Hester and VMRC.

11 36. In addition, SNAFU's website contains numerous defamatory statements
12 regarding VMRC and Sisemore-Hester, as well as a misleading description of the EIBT program.
13 A printout of SNAFU's website is attached hereto as **Exhibit G**.

14 37. Specifically, SNAFU's website contains the following defamatory statements:

- 15 • "While the question of legality is left up to attorneys and courts, you should
16 be aware that a 2008 due process decision found the EIBT PP&G in conflict
17 with the federal law IDEA on several points....You should also know that a
18 class-action lawsuit has been filed in the Eastern District of the Federal Court
19 regarding EIBT and how it has harmed children. SNAFU is not a party to
20 this lawsuit. However, many SNAFU children have been harmed by the
21 criteria and politics of the EIBT program."
- 22 • "You should also know that some providers and VMRC have attached
23 additional criteria such as Therapeutic Pathways/Kendall School observation
24 policy released in July 2009 which includes a policy that, on its face, is
25 retaliatory in nature. Specifically it states that if a parent has made a
26 complaint about the program, Therapeutic Pathways/Kendall school can
27 have their attorney present for your parental observation. Some parents have
28 reported they are no longer allowed inside the Kendall School building and

1 must pick up and drop off their children outside the classroom. Parents may
2 wish to explore their feelings about leaving their children in a place they are
3 not allowed to observe and/or observe under very strict guidelines.”

- 4 • We know of many children and their parents who were not even told about
5 the existence of EIBT. We know of parents that were talked out of the
6 program ("oh, that program is a much more restrictive program than the
7 county autism program), your child doesn't qualify for this program, there is
8 a waiting list (or interest list), etc. One VMRC staff person has repeatedly
9 indicated she controls who gets EIBT and who doesn't....This is incorrect.....
10 If an authority figure at VMRC touts she controls who gets EIBT and who
11 doesn't, that flies directly in the face of this comment. Additionally, many
12 parents have reported that they were not given the full continuum of
13 placement options to consider. And even if they were, signing the 53-page
14 PP&G document was a requirement for their child to receive ABA therapy.
15 By removing choices, the ‘types of intervention children would receive’ was
16 limited and parents were not given enough information and options to make
17 fully-informed decisions.”

18 38. Counterclaimants are informed and believe, and thereon allege, that
19 Counterdefendants M.A.F. and/or J.A. have made defamatory statements regarding VMRC and
20 Sisemore-Hester during IEP meetings. During several such meetings attended by Sisemore-
21 Hester, M.A.F. and/or J.A. referred to the VMRC Action II against VMRC in a defamatory
22 manner by implying that the claims against VMRC and Sisemore-Hester had legal merit. In
23 doing so, M.A.F. and/or J.A. attempted to disparage both VMRC and Sisemore-Hester in front of
24 parents seeking EIBT services.

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CAUSES OF ACTION

COUNT ONE FOR LIBEL (Cal. Civ. Code § 46)

(Against All Counterdefendants)

39. Counterclaimants hereby incorporate by reference and reallege each of the allegations contained in paragraphs 1 through 38, inclusive, as though fully set forth in their entirety in this cause of action.

40. At all times herein mentioned, Counterclaimants have enjoyed a good reputation both generally and in their respective occupations.

41. Counterclaimants are informed and believe, and thereon allege, that M.A.F. and/or J.A. were the agents of SNAFU and/or Autism Reform California and in doing the things hereinafter alleged were acting within the course of and scope of such agency and the permission and consent of SNAFU and/or Autism Reform California.

42. As alleged in paragraphs 30, 32, and 37, Counterclaimants are informed and believe, and thereon allege that, M.A.F and/or J.A. and/or SNAFU and/or Autism Reform California published statements on their websites which are attached hereto as Exhibits E-G.

43. The publications were made of and concerning Counterclaimants and were so understood by those who read the publications.

44. The false and misleading statements identified in paragraphs 30, 32 and 37 above are false as they apply to Counterclaimants because they misrepresent the nature of the EIBT program, imply that the EIBT program is illegal, and improperly impute false motives for Counterclaimants' performance of their occupations.

45. The false and misleading statements identified in paragraphs 30, 32, and 37 above are libelous on their face. They clearly expose Counterclaimants to hatred, contempt, ridicule and obloquy, and further, have a tendency to injure Counterclaimants in their respective occupations because they disparage Counterclaimants' abilities and motivations for providing services to disabled children and their families.

1 54. The words uttered constituted false statements because they misinformed parents
2 of children seeking EIBT treatment, they disparaged the reputation and motivations of
3 Counterclaimants, they incorrectly asserted that Counterclaimants' policies were illegal, and
4 falsely stated that Counterclaimants have improper financial motives for providing their services.

5 55. The words carried a defamatory meaning because, as alleged in paragraphs 21-22,
6 25 and 27, parents of children seeking EIBT services were misled as to the legality of
7 Counterclaimants' programs, and because the words disparaged Counterclaimants' reputations
8 and motives for performing their occupations.

9 56. As a result of the above-described words, Counterclaimants have suffered general
10 damages to their reputations.

11 57. As a further proximate result of the above-described words, Counterclaimants
12 have suffered injury to their business, trade, profession or occupation.

13 58. The above-described words were spoken by M.A.F. and/or J.A. and/or SNAFU
14 and/or Autism Reform California with malice, oppression and fraud, and thus an award of
15 exemplary and punitive damages is justified.

16 **COUNT THREE FOR MALICIOUS PROSECUTION**

17 **(Against Counterdefendants M.A.F. and J.A.)**

18 59. Counterclaimants hereby incorporate by reference and reallege each of the
19 allegations contained in paragraphs 1 through 29, inclusive, as though fully set forth in their
20 entirety in this cause of action.

21 60. Counterdefendants M.A.F. and J.A. initiated the aforementioned VMRC Action I
22 in 2008.

23 61. VMRC Action I was dismissed by the Eastern District of California in 2008. The
24 dismissal was upheld on appeal by the Ninth Circuit Court of Appeals in 2010. Therefore,
25 Counterdefendants pursued their claims to a legal termination in favor of Counterclaimants.

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1 62. Counterdefendants M.A.F. and J.A. acted without probable cause in bringing
2 VMRC Action I. In fact, Counterdefendants M.A.F. and J.A. knew, or should have known, that
3 VMRC Action I was not legally tenable at the time they filed their complaint because they had
4 failed to exhaust their administrative remedies prior to the commencement of the lawsuit.
5 Further, in their Complaint in VMRC Action I, Counterdefendants M.A.F. and J.A. asserted
6 claims against Jacobs and Sisemore-Hester under statutes which do not permit claims against
7 individuals. Yet, Counterdefendants M.A.F. and J.A. persisted in the prosecution of VMRC
8 Action I until the Ninth Circuit affirmed the Eastern District of California's dismissal of the case.

9 63. No circumstances sufficiently strong existed at any time on which a suspicion
10 could have been founded to warrant a reasonable person's belief that the allegations set forth in
11 VMRC Action I were true, or that Jacobs or Sisemore-Hester could be held individually liable as
12 Counterdefendants alleged.

13 64. As a direct and proximate result of the Counterdefendants' acts and omissions, as
14 set forth above, Counterclaimants have been damaged in such sum as may be proved at the time
15 of trial, including but not limited to the sums expended by Counterclaimants in defending against
16 VMRC Action I.

17 65. Counterdefendants acted with malice and oppression toward Counterclaimants in
18 bringing VMRC Action I in that the Counterclaimants knew or should have known their causes
19 of action were not legally viable.

20 66. Counterdefendants openly disparaged and discredited the work of Jacobs,
21 Sisemore-Hester and VMRC, despite the fact that each of the minor Plaintiffs in the VMRC
22 Action I has received the educational opportunities originally sought.

23 67. Furthermore, Counterdefendants have continued to provide false and misleading
24 information concerning Counterclaimants to various organizations and parents seeking services
25 through VMRC. Counterdefendants' motive in doing so was to harass and tarnish the reputation
26 of Counterclaimants.

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EXHIBIT A

1 LOUGHREY & WOELFEL, LLP
2 TAMARA LOUGHREY, Bar No. 227001
3 ROBERT WOELFEL, Bar No. 250343
4 JUSTIN ARNOLD, Bar No. 252030
5 31 Panoramic Way, Suite 200
6 Walnut Creek, CA 94595
7 Telephone: (925) 935- 4600
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9 Attorneys for Plaintiffs

10 THE UNITED STATES DISTRICT COURT FOR
11 THE EASTERN DISTRICT OF CALIFORNIA

12 Z.F, a minor, by and through his parents
13 M.A.F and J.F. and M.A.F. and J.F.
14 individually; L.H., and J.H., minors, by
15 and through their parents J.A.A.H. and
16 J.R.H. and J.A.A.H. and J.R.H.
17 individually; A.N., a minor, by and through
18 his parents, G.N. and M.R., and G.N. and
19 M.R. individually; E.F., a minor, by and
20 through his parents M.Y.F. and A.F., and
21 M.Y.F. and A.F. individually and E.R., a
22 minor, by and through her parents D.R. and
23 A.R, and D.R. and A.R. individually and
24 J.M, a minor, by and through his parents
25 E.M. and R.M and E.M. and R.M.
26 individually.

27 Plaintiffs, on behalf of themselves
28 and all others similarly situated

v.

RIPON UNIFIED SCHOOL DISTRICT
(RUSD); RIPON UNIFIED SCHOOL
DISTRICT BOARD OF TRUSTEES;
SAN JOAQUIN COUNTY OFFICE OF
EDUCATION; SAN JOAQUIN COUNTY
SPECIAL EDUCATION LOCAL PLAN
AREA (SELPA), VALLEY MOUNTAIN
REGIONAL CENTER (VMRC),
MODESTO CITY SCHOOLS,
MODESTO CITY SCHOOL SELPA,
MODESTO CITY SCHOOLS BOARD
OF EDUCATION, TRACY UNIFIED
SCHOOL DISTRICT (TUSD); TUSD
BOARD OF EDUCATION;
STANISLAUS COUNTY SELPA;
STANISLAUS COUNTY OFFICE OF
EDUCATION; STOCKTON UNIFIED
SCHOOL DISTRICT; STOCKTON
UNIFIED SCHOOL DISTRICT SELPA,
STOCKTON UNIFIED SCHOOL

CASE NO.

CLASS ACTION

CIVIL RIGHTS COMPLAINT FOR
INJUNCTIVE RELIEF, DECLARATORY
RELIEF, DAMAGES, COSTS AND
ATTORNEYS FEES:

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

JURY TRIAL DEMANDED

1 DISTRICT BOARD OF EDUCATION;
2 CALIFORNIA OFFICE OF
3 ADMINSTRATIVE HEARINGS;
4 CALIFORNIA DEPARTMENT OF
5 EDUCATION; CALIFORNIA
6 DEPARTMENT OF DEVELOPMENTAL
7 SERVICES; RICHARD JACOBS,
8 Executive Director of VMRC, in his
9 official and individual capacity; TARA
10 SISEMORE-HESTER, Coordinator for
11 Autism Services for VMRC, in her official
12 and individual capacity; LEO ZUBER,
13 Superintendent for RUSD, in his official
14 capacity; CAMILLE TAYLOR, Director
15 of Special Education for RUSD, in her
16 official capacity; ARTURO FLORES,
17 Superintendent of Modesto City Schools,
18 in his official and personal capacity;
19 DIANE SCOTT, Supervisor of Pre-K – 6
20 Special Education, Modesto City Schools
21 SELPA, in her official and individual
22 capacity; VIRGINIA JOHNSON, Director
23 of Modesto City Schools SELPA, in her
24 official and individual capacity; JAMES
25 FRANCO, Superintendent of TUSD, in his
26 official and individual capacity; NANCY
27 HOPPLE, Director of Special Education
28 for TUSD, in her official and individual
capacity; DORIAN RICE, Director of San
Joaquin County Office of Education and
SELPA, in his official and individual
capacity; SANDEE KLUDT, Assistant
Superintendent of San Joaquin County
Office of Education and SELPA, in her
official and individual capacity,
FREDERICK WENTWORTH,
Superintendent of San Joaquin County
Office of Education, in his 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; JACK MCLAUGHLIN,
Superintendent of Stockton Unified School
District, in his official and individual
capacity; JULIE PENN, Director of
Stockton Unified School District Special
Education Department and SELPA, in her
official and individual capacity,
SHERIANNE LABA, Presiding Judge of)

1 Office of Administrative Hearings, Special)
2 Education Division, in her official)
3 capacity; JACK O'CONNELL,)
4 Superintendent of California Department)
5 of Education, in his official and individual)
6 capacity; TERRI DELGADILLO, Director)
7 of the Department of Developmental)
8 Services, in her official and individual)
9 capacity and Does 1 – 200.)

Defendants.

JURISDICTION

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

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

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

21 4. To the extent required by law, Plaintiffs have exhausted their remedies under
22 the Individuals with Disabilities Education and Improvement Act of 2004 (IDEA),
23 pursuant to 20 U.S.C. § 1415, and/or such exhaustion would be futile, inadequate, or
24 unavailable. Plaintiffs have also filed an administrative tort claim(s) notice and believe
25 that these claims will either be or have been rejected.

VENUE

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

INTRODUCTION

1
2 6. In California, the provision of special education programs and services to
3 students with disabilities is a shared responsibility among various government and private
4 agencies and individuals. The California Department of Education (“CDE”) is the state
5 agency responsible for supervising the education of all students in the state of California,
6 including students with disabilities. The California Department of Education’s
7 supervisory duties include oversight of the Special Education Local Plan Areas (SELPA’s)
8 and Local Education Agencies (LEAs). Similarly, the California Department of
9 Developmental Services (“DDS”), is charged with overseeing the 21 Regional Centers in
10 California. Regional Centers are private non-profits that contract with DDS to provide
11 services to persons with qualifying developmental disabilities.

12 7. Created by state law, the Lanterman Act, Welfare and Institutions code
13 §4400 et seq., Regional Centers are a localized source of support and services for
14 qualified individuals with disabilities and their families. “Region 6” of California is
15 serviced by the Valley Mountain Regency Center (“VMRC”)and includes 5 counties,
16 San Joaquin, Stanislaus, Amador, Tuolumne, and Calaveras County. VMRC is
17 contracted by DDS to provide services to individuals with disabilities.

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

25 9. In or around 1998, government and private agencies and individuals within
26 “Region 6” of California, including the Valley Mountain Regional Center, San Joaquin
27 SELPA, Stanislaus SELPA, LEA’s and certain non-public agencies (“NPA’s”),
28 specifically the Central Valley Autism Project (“CVAP”), Therapeutic Pathways/Kendall

1 School, Applied Behavior Consultants, Inc. (“BBC, Inc.”), and BEST, Inc. collaborated
2 in the development of a funding mechanism to provide behavioral services to students
3 diagnosed with Autistic Spectrum Disorder (ASD)¹. Beginning in or around 2001, this
4 funding mechanism became a written document entitled the “NPS/NPA Contract.”
5 Parents of students diagnosed with ASD were presented with the “NPS/NPA Contract”
6 and were required to sign the contract for their children to receive behavioral services.
7 Parents were not provided with complete information regarding the contract that they
8 were signing because the creators of the “NPS/NPA Contract” claimed that aspects of
9 their behavioral assessment and treatment of children constituted “trade secrets” under the
10 law.

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

26 _____
27 1 According to the New York Times, Autism affects approximately one child out of every 150 children in
28 the U.S. by the age of eight. *Study Puts Autism at 1 in every 150*, New York Times, February 9, 2007; on-
line at: <http://www.nytimes.com/2007/02/09/health/09autism.html>.

1 the “Early Intensive Behavioral Treatment (EIBT) Sub Committee” in 2004.

2 11. The EIBT Sub Committee developed the “NPS/NPA Contract” into a new
3 document, which has been alternatively named the “EIBT 4-Way Agreement” and/or the
4 “EIBT Program, Procedures, and Guidelines, or “PP& G”. “Autism Connection” and
5 “EIBT Sub Committee” minutes reveal details regarding the development and
6 implementation of the “4-Way Agreement” and “PP & G”. The contract is currently
7 referred to as the Early Intensive Behavioral Treatment Program Procedures and
8 Guidelines (hereinafter referred to as EIBT/PPG contract and attached hereto as Exh. A
9 dated September 8, 2005 and Exh. B dated May 24, 2006 is a true and correct copy of
10 these documents).²

11 12. Currently, in “Region 6” of California, the Valley Mountain Regional Center,
12 San Joaquin SELPA, Stanislaus SELPA, LEA’s and certain non-public agencies
13 (“NPAs”), specifically Genesis Behavior Services (Genesis), Central Valley Autism
14 Project (“CVAP”), Therapeutic Pathways/Kendall School, Applied Behavior Consultants,
15 Inc. (“ABC, Inc.”), and Behavioral and Educational Strategies and Training (BEST, Inc.)
16 have an inter-agency, co-funded program called the “Early Intensive Behavioral
17 Treatment” (“EIBT”) program. This program provides intensive one-to-one intensive
18 behavior treatment based on the UCLA/Lovaas model (a.k.a. Applied Behavior Analysis
19 or ABA)³. Although the NPAs are claimed to be “private” agencies who have the right to

20 ² These are the two versions of the contract which are at issue. The September 8, 2005 version affected
21 Z.F., M.A.F. and J.F., while the May 24, 2006 version affected the rest of the named Plaintiffs. The two
22 versions are substantially similar in their provisions as they relate to the Plaintiffs. One key difference is
23 that a signature requirement which was present in the September 8, 2005 version was dropped in the May
24 24, 2006 version.

25 ³ Hundreds of published studies show that ABA is one of the most effective treatments for children with
26 Autism when it is delivered in an intensive model one to one between 25 to 40 hours per week provided
27 over a 1 to 3 year period. The research indicates that the students who received intensive ABA lost their
28 characteristics of autism and were able to be more independent than those who did not receive the
29 treatment. Some of the studies conducted compared the intensive model with a less intensive model or
30 “eclectic or mixed” model. These studies showed that the students who received the less intensive
31 treatment made significantly less progress than the students who received the intensive model. Today,
32 ABA is recognized by the Surgeon General, the New York State Dept. of Health, the National Research
33 Council, as a safe, effective treatment of Autism. Source:
34 http://www.autismspeaks.org/whattodo/what_is_aba.php.

1 develop criteria and exclude individuals who do not meet their criteria, the NPAs
2 involved do not and are not allowed to accept private (parent) pay clients under their
3 agreement with the public agencies (SELPAs, Districts and VMRC). In reality, these
4 NPAs are merely extensions of the public agencies they serve and are being used to
5 illegally deprive children with Autism access to otherwise appropriate intensive ABA
6 services.

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

22 14. A child’s right to have his or her parents consent to an assessment is waived as
23 one of the provisions states that agencies can conduct student assessments such as IQ
24 testing at any time, without assessment plan or parental consent. In addition, Parents lose
25 the right to participate in the determination of their child’s placement and program as the
26 agreements expressly states that if the child cannot maintain 80% criteria on all target
27 lessons, the child will be exited to a SELPA or LEA lesser intensive setting. The EIBT
28 program is described in its entirety in a contract called the “EIBT Program, Procedures, &

1 Guidelines” (versions January and May 2006) and its predecessor the 4-Way Agreement
2 (2005 version).

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

20 16. Plaintiffs have requested ABA services provided by any one of the Central
21 Valley’s NPA agencies, but were denied access to intensive treatment for their children
22 because of the EIBT 4-Way Agreement/Program, Procedures & Guidelines’ eligibility
23 criteria, referral process, and/or the actions of agencies and individuals involved with the
24 agreement, including service coordinators, administrators, and educators. Complaints
25 regarding the “4-Way” have been submitted to Richard Jacobs, Howard Cohen, and
26 Robin Dickinson at VMRC (4731 complaints), Carol Risley and Faye Borton at DDS,
27 Jack O’Connell, State Superintendent, and Governor Schwarzenegger.

28 17. Additionally, the required “diagnostic” placement is different for each child.

1 This diagnostic placement is used to see if the child can meet the agencies criteria instead
2 of an individualized program being developed to meet the unique needs of the child.

3 Thus, many children who are otherwise benefiting from the intensive ABA program are
4 prematurely exited for failure to meet the program's criteria.

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

11
12 **THE PARTIES**

13 19. Plaintiff Z.F.⁴ is a child with a disability within the meaning of IDEA and is a
14 qualified person with a disability within the meaning of ADA and Section 504. Plaintiff
15 Z.F. is eligible to receive and receives special education and related services from RUSD,
16 San Joaquin SELPA, San Joaquin Office of Education and Valley Mountain Regional
17 Center. Plaintiff Z.F. and his guardians ad litem, M.A.F. and J.F. reside within Ripon,
18 California.

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

24 21. Plaintiff L.H. is a child with a disability within the meaning of IDEA and is a
25 qualified person with a disability with the meaning of ADA and Section 504. Plaintiff
26 L.H. is eligible to receive and receives special education and related services from MCS,

27

4 Each student plaintiff is diagnosed with an Autism Spectrum Disorder (ASD) and has a
28 recommendation for an intensive applied behavior analysis (ABA) program from a qualified assessor.

1 MCS SELPA and MCS Board of Education. Plaintiff L.H. and his guardians J.A.A.H.
2 and J.R.H. reside within Modesto, California.

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

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

13 24. Plaintiff E.R. is a child with a disability within the meaning of IDEA and is a
14 qualified person with a disability within the meaning of the ADA and Section 504.
15 Plaintiff E.R. is eligible to receive and receives special education and related services
16 from Valley Mountain Regional Center (VMRC).

17 25. Plaintiff J.M. is a child with a disability within the meaning of the ADA and
18 Section 504. Plaintiff J.M. is eligible to receive and receives special education and
19 related services from Stockton Unified School District (SUSD) and SUSD SELPA.

20 26. Defendant DISTRICTS are created pursuant to California Education Code
21 Section 35000, et seq. Defendant DISTRICTS are at all times responsible for the
22 provision and supervision of special education services by the DISTRICTS or any other
23 agency providing special education services to Plaintiffs pursuant to the IDEA at Title 20
24 U.S.C. 1412 et seq. and the California Education Code Section 56000 et seq.

25 27. San Joaquin County office of Education (SJCOE), Stanislaus County Office of
26 Education (SCOE) and Tracy Unified School District Board of Education (TUSDBE) are
27 created pursuant to California Education Code Section 1000 and provide special
28 education services for, and on behalf of students enrolled at schools governed by school

1 districts who are member districts of the Special Education Local Plan Areas
2 (“SELPAS”). DISTRICTS are members of the SELPAS. Similarly, MODESTO CITY
3 SCHOOLS (MCS) has its own SELPA which is responsible for the provision of FAPE to
4 its students.

5 28. Defendants San Joaquin SELPA, Stanislaus County SELPA and Modesto City
6 Schools SELPA are at all times responsible for the provision of special
7 education services to Plaintiffs pursuant to 20 U.S.C. Section 1400, et seq. and California
8 Education Code Section 56205.

9 29. VALLEY MOUNTAIN REGIONAL CENTER (VMRC) is created pursuant
10 to the Welfare and Institutions Code Section 4400 et seq. Under the Welfare and
11 Institutions Code (a.k.a. the Lanterman Act), VMRC is to provide services and supports
12 to persons with developmental disabilities, including Autism, which allow those persons
13 to remain and be served in their communities. Pursuant to an Individual Program Plan
14 (IPP), behavior services to address behaviors in the home and community is one of the
15 many services and supports VMRC is supposed to provide based on the consumers’ need.
16 VMRC is also the provider of services to children at risk age birth to their third birthday
17 under the IDEA, Part C.

18 30. CALIFORNIA OFFICE OF ADMINISTRATIVE HEARINGS (OAH) is a
19 government body responsible for conducting independent hearings pursuant to the
20 California Administrative Procedure Act and was awarded the contract to conduct special
21 education hearings under the IDEA in July 2005.

22 31. CALIFORNIA DEPARTMENT OF EDUCATION (CDE) oversees
23 California’s public school system, which is responsible for the education of the state’s
24 children. It is legally responsible for ensuring compliance with federal special education
25 law and regulations within the California public school system. Defendant CDE is a
26 public entity with the meaning of Title II of the ADA. Defendant CDE receives federal
27 financial assistance and is covered by Section 504 of the Rehabilitation Act.

28 32. CALIFORNIA DEPARTMENT OF DEVELOPMENTAL SERVICES (DDS)

1 oversees all regional centers in California, including VMRC. It is legally responsible for
2 ensuring compliance with federal special education law and regulations within DDS and
3 the regional centers. Defendant DDS is a public entity with the meaning of Title II of the
4 ADA. Defendant DDS receives federal financial assistance and is covered by Section
5 504 of the Rehabilitation Act.

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

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

19 35. Defendant ZUBER is the Superintendent of Ripon Unified School District
20 (RUSD) and is legally responsible for ensuring compliance with federal and California
21 special education law and regulations within RUSD. Defendant ZUBER 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 ZUBER is sued in his official and individual capacity.

25 36. Defendant TAYLOR is Director of Special Education for RUSD, and is legally
26 responsible for ensuring compliance with federal and California special education law
27 and regulations within RUSD. Defendant TAYLOR 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 TAYLOR
2 is sued in her official capacity.

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

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

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

21 40. Defendant MCLAUGHLIN is the Superintendent of Stockton Unified School
22 District (SUSD) and is legally responsible for ensuring compliance with federal and
23 California special education law and regulations within SUSD. Defendant
24 MCLAUGHLIN is legally responsible for the unlawful policies, practices and procedures
25 challenged herein, and has the authority and legal obligation to abolish these policies,
26 practices and procedures. Defendant JOHNSON is sued in her official and individual
27 capacity.

28 41. Defendant PENN is the Director of Stockton Unified School District's Special

1 Education Department and SELPA and is legally responsible for ensuring compliance
2 with federal and California special education law and regulations within MCS.

3 Defendant PENN 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 PENN is sued in her official and individual
6 capacity.

7 42. Defendant DELGADILLO is the Director of the Department of Developmental
8 Services (DDS) and is legally responsible for ensuring compliance with federal and
9 California special education law and regulations within DDS. Defendant DELGADILLO
10 is legally responsible for the unlawful policies, practices and procedures challenged
11 herein, and has the authority and legal obligation to abolish these policies, practices and
12 procedures. Defendant DELGADILLO is sued in her official and individual capacity.

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

19 44. Defendant RICE is the Director of the San Joaquin County Office of Education
20 and San Joaquin County SELPA and is legally responsible for ensuring compliance with
21 federal and California special education law and regulations within San Joaquin County
22 schools. Defendant RICE is legally responsible for the unlawful policies, practices and
23 procedures challenged herein, and has the authority and legal obligation to abolish these
24 policies, practices and procedures. Defendant RICE is sued in his official and individual
25 capacity.

26 45. Defendant WENTWORTH is the Superintendent of the San Joaquin County
27 Office of Education and is legally responsible for ensuring compliance with federal and
28 California special education law and regulations within San Joaquin County schools.

1 Defendant WENTWORTH is legally responsible for the unlawful policies, practices and
2 procedures challenged herein, and has the authority and legal obligation to abolish these
3 policies, practices and procedures. Defendant WENTWORTH is sued in his official and
4 individual capacity.

5 46. Defendant KLUDT is the Assistant Superintendent of San Joaquin County
6 Office of Education and SELPA and is legally responsible for ensuring compliance with
7 federal and California special education law and regulations within San Joaquin County
8 Schools. Defendant KLUDT is legally responsible for the unlawful policies, practices
9 and procedures challenged herein, and has the authority and legal obligation to abolish
10 these policies, practices and procedures. Defendant KLUDT is sued in her official and
11 individual capacity.

12 47. Defendant VAUGHN is the President of Tracy Unified School District Board
13 of Education (TUSD) and is legally responsible for ensuring compliance with federal and
14 California special education law and regulations within TUSD. Defendant VAUGHN is
15 legally responsible for the unlawful policies, practices and procedures challenged herein,
16 and has the authority and legal obligation to abolish these policies, practices and
17 procedures. Defendant VAUGHN is sued in his official and individual capacity.

18 48. Defendant JONES-LEE is the Special Education Director for Stanislaus County
19 Office of Education (SCOE) and is legally responsible for ensuring compliance with
20 federal and California special education law and regulations within SCOE. Defendant
21 JONES-LEE is legally responsible for the unlawful policies, practices and procedures
22 challenged herein, and has the authority and legal obligation to abolish these policies,
23 practices and procedures. Defendant JONES-LEE is sued in her official and individual
24 capacity.

25 49. Defendant HEDIN is the Director of Stanislaus County SELPA and is legally
26 responsible for ensuring compliance with federal and California special education law
27 and regulations within Stanislaus County SELPA. Defendant HEDIN is legally
28 responsible for the unlawful policies, practices and procedures challenged herein, and has

1 the authority and legal obligation to abolish these policies, practices and procedures.
2 Defendant HEDIN is sued in her official and individual capacity.

3 50. Defendant CHAGNON is the Superintendent of SCOE and is legally
4 responsible for ensuring compliance with federal and California special education law
5 and regulations within SCOE. Defendant CHAGNON is legally responsible for the
6 unlawful policies, practices and procedures challenged herein, and has the authority and
7 legal obligation to abolish these policies, practices and procedures. Defendant
8 CHAGNON is sued in his official and individual capacity.

9 51. Defendant LABA is the Presiding Judge of the California Office of
10 Administrative Hearings, Special Education Division. She is legally responsible for
11 ensuring compliance with federal and California special education law. Defendant
12 LABA is legally responsible for the unlawful actions challenged herein. Defendant
13 LABA is sued in her official capacity.

14 52. Defendant O'CONNELL is the chief of the CDE and California's public school
15 system, and is legally responsible for ensuring compliance with federal and California
16 special education law and regulations within the California public school system.
17 Defendant O'CONNELL is legally responsible for the unlawful policies, practices and
18 procedures challenged herein, and has the authority and legal obligation to abolish these
19 policies, practices and procedures. Defendant O'CONNELL is sued in his official and
20 individual capacity.

21 **STATEMENT OF FACTS**

22 53. Plaintiff Z.F. is a 5 year old student who is currently receiving special
23 education services from RUSD. Plaintiff Z.F. has experienced, and continues to
24 experience, the unlawful actions and inactions described herein. Z.F. currently receives
25 intensive ABA services from a non-public agency as part of his special education
26 services. Z.F. was denied intensive ABA services for several months because his parents
27 refused to sign the PPG/4-Way Agreement. His parents have suffered financial and
28 emotional harm because they have paid for private assessments, programs and/or

1 program materials and related services due to Defendants' actions.

2 54. Plaintiff L.H. is a 4 year old student who received special education services
3 from MCS in 2007. Plaintiff L.H. has experienced, and continues to experience, the
4 unlawful actions and inactions described herein. L.H. has not received intensive ABA
5 services despite expert recommendations and his parents repeated requests for these
6 services. He has been denied these services based upon his placement on a waiting list
7 and based upon discrimination on the basis of his disability. His parents have suffered
8 financial and emotional harm because they have paid for private assessments, programs
9 and/or program materials and related services due to Defendants' actions.

10 55. Plaintiff J.H. is a 4 year old student who received special education services
11 from MCS in 2007. Plaintiff J.H. has experienced, and continues to experience, the
12 unlawful actions and inactions described herein. J.H. has not received intensive ABA
13 services despite expert recommendations and his parents repeated requests for these
14 services. He has been denied these services based upon his placement on a waiting list
15 and based upon discrimination on the basis of his disability. His parents have suffered
16 financial and emotional harm because they have paid for private assessments, programs
17 and/or program materials and related services due to Defendants' actions.

18 56. Plaintiff A.N. is a 4 year old student who currently receives special education
19 services from RUSD. Plaintiff A.N. has experienced, and continues to experience, the
20 unlawful actions and inactions described herein. A.N. has not received intensive ABA
21 services despite his parents repeated requests for these services. He has been denied
22 these services based upon discrimination on the basis of his disability. His parents have
23 suffered financial and emotional harm due to Defendants' discrimination.

24 57. Plaintiff E.F. is a 4 year old student who received special education services from
25 TUSD in 2007. Plaintiff E.F. has experienced, and continues to experience, the unlawful
26 actions and inactions described herein. E.F. has not received intensive ABA services
27 despite expert recommendations and his parents repeated requests for these services. He
28 has been denied these services based upon his placement on a waiting list. His parents

1 have suffered financial and emotional harm because they have paid for private
2 assessments, programs and/or program materials and related services due to Defendant's
3 actions.

4 58. Plaintiff E.R. is a 2 year old student who is currently receiving special education
5 services from SUSD. Plaintiff E.R. has experienced, and continues to experience, the
6 unlawful actions and inactions described herein. E.R. is currently receives intensive
7 ABA services from a non-public agency. She has been subjected to an assessment to
8 which her parents did not consent. Her parents have suffered emotional harm over the
9 fact that she was assessed without their knowledge in their own home due to Defendants'
10 actions.

11 59. Plaintiff J.M. is a 3 year old non-verbal student who is currently receiving special
12 education services from SUSD. Plaintiff J.M. has experienced, and continues to
13 experience, the unlawful actions and inactions described herein. J.M. has been denied
14 access to intensive ABA services based upon discrimination on the basis of his disability.
15 His parents have suffered financial and emotional harm due to Defendants'
16 discrimination.

17 60. Federal and California law set forth several requirements regarding the
18 placement of children in educational programs by public educational agencies:

19 (a) School Districts must ensure that a continuum of alternative placements is
20 available to meet the needs of children with disabilities for special education and
21 related services⁵.

22 (b) Placement decisions must be made by an IEP team which includes the child's
23 parents⁶.

24 ⁵ 34 C.F.R. 300.115 provides that "(a)[e]ach public agency must ensure that a continuum of alternative
25 placements is available to meet the needs of children with disabilities for special education and related
26 services. (b) The continuum... must... include... instruction in regular classes, special classes, special
schools, home instruction, and instruction in hospitals and institutions." Cal. Ed. Code 56361(e) requires
the continuum of placements to include nonpublic, nonsectarian schools and services.

27 ⁶ 34 C.F.R. 300.116 requires that "in determining the educational placement of a child with a disability,
28 each public agency must ensure... (a) the placement decision (1) is made by a group of persons, including
the parents, knowledgeable about the child, the meaning of the evaluation data, and the placement

1 (c) Informed parental consent must be obtained before conducting any evaluation
2 on a child⁷.

3 (d) Assessments of children must be conducted in an unbiased manner in the form
4 most likely to yield accurate information on what the child knows and can do
5 academically, developmentally, and functionally⁸.

6 (e) Children have the right to an independent assessment by an outside provider.⁹

7 61. Both the past and current EIBT agreement contain several provisions in conflict
8 with California and Federal law¹⁰. (a) A previous version of the contract had a signature
9 requirement¹¹. The 9/8/05 version, called the EIBT 4-Way Agreement contained a
10 signature page for parents to sign that they have “read and agree to the conditions as
11 outlined in the EIBT 4-Way Agreement.” (Early Intensive Behavioral Treatment 4-Way
12 Agreement, page 22) The current version of the contract contains the following provisions
13 which conflict with the law. (b) The contract sets out requirements for children to enter the
14 program. In order to even obtain a diagnostic EIBT educational placement¹², the contract

15 _____
16 options.” Cal. Ed. Code 56341 states that “[e]ach meeting to develop, review, or revise the individualized
17 education program of an individual with exceptional needs shall be conducted by an individualized
18 education program team.”

19 7 34 C.F.R. 300.300 (c)(1)(i) requires each public agency to “obtain informed parental consent...prior to
20 conducting any reevaluation of a child with a disability.”

21 8 34 C.F.R. 300.304(c)(1) provides that assessments and other evaluation materials used to assess a child
22 under this part (i) Are selected and administered so as not to be discriminatory on a racial or cultural
23 basis; (ii) Are provided and administered... in the form most likely to yield accurate information on what
24 the child knows and can do academically, developmentally, and functionally, unless it is clearly not
25 feasible to so provide or administer; (iii) Are used for the purposes for which the assessments or measures
26 are valid and reliable.

27 9 34 C.F.R. 300.502(1) provides that “the parents of a child with a disability have the right under this part
28 to obtain an independent educational evaluation of a child.

10 The current version of the contract is referred to as the Early Intensive Behavioral Treatment Program
11 Procedures and Guidelines. This version was approved on 5/24/06. This version is referred to through out
12 the complaint as the EIBT/PPG agreement or contract.

13 11 This was the version that Z.F.’s parents were required to sign for him to obtain services.

14 12 In order for a child to gain full entry into an intensive program, he first must be placed in a diagnostic
15 placement for up to three months.

1 requires, among other things, that a child “have between 20 and 25 functional expressive
2 words (vocal verbal, sign or Picture Exchange Communication System).” (EIBT/PPG
3 contract, page 11) It also requires that “the child [have] no chronic medical, motor or
4 sensory deficits that would preclude full participation in treatment.” (EIBT/PPG contract,
5 page 11) (c) In order for a child to continue in the intensive program, the current contract
6 has “guidelines”¹³ for what the child should be able to do at various stages. For instance,
7 after 12 months of the program, there should be “some indication that the child’s cognitive
8 abilities may be in the average range which would typically be an IQ of 85 or above.”
9 (EIBT/PPG contract, page 13) Another guideline contained in the contract is that
10 “[s]tandard scores/percentile ranks on language tests demonstrate child’s acquisition rate is
11 accelerating.” (EIBT/PPG contract, page 13) (d) The contract creates a system of waiting
12 lists for students to obtain intensive services. It states that “an EIBT referral is based on
13 the date the child met the EIBT Diagnostic Education Placement Entrance Guidelines.
14 EIBT providers agree to serve the child in the order the referral was received.” (EIBT/PPG
15 contract, page 11) (e) The contract allows for development of educational goals outside of
16 the IEP team process. It states that “continuation of service is contingent upon a
17 determination by VMRC clinical and case management staff and the family
18 that...transition guidelines have not [sic] been met. If it appears outcomes are not being
19 accomplished, the family will be asked to request an IEP, IFSP or IPP meeting.”¹⁴
20 (EIBT/PPG contract, page 33) (f) The contract denies access to meaningful independent
21 assessments of children. It states that a child “must be certified by the VMRC clinical team
22 that s/he meets the diagnostic guidelines for an Autism Spectrum Disorder. (EIBT/PPG
23 contract, page 10) (g) The contract allows for assessments of children without parental
24 consent. It states that “VMRC reserves the right to conduct independent assessment at any

25 ¹³ The 1/4/06 version of the contract stated that the child “must meet the...markers.”

26 ¹⁴ Plaintiffs submit that this must be a typing error and the clause should read “Continuation of services is
27 contingent upon a determination...that transition guidelines have been met.” Any other reading would
28 contradict the rest of the paragraph. Additionally, some named defendants have attempted to remove a
child, who is not a named plaintiff, for not meeting the criteria.

1 time. (EIBT/PPG contract, page 33)

2 62. Defendants have implemented a system under the EIBT/PPG contract which
3 has unlawfully restricted access to intensive ABA services for Plaintiffs, as well as those
4 similarly situated, in contravention of federal and state law. This system violates the law
5 because it (a) denied access to students whose parents refuse to sign the contract, (b)
6 denies access to students who do not meet the contract's criteria, (c) allows students to be
7 removed from a program of intensive services for not meeting the contract's criteria, (d)
8 creates a system of waiting lists for students which denies them access to a continuum of
9 placements, (e) allows for the development of children's educational program outside of
10 the IEP team process and (f) prevents parents from obtaining meaningful independent
11 evaluations for their children, (g) allows for assessments of children without the consent
12 of their parents, (h) creates a barrier which prevents students access to needed services
13 under ADA and 504.

14 63. As a result of the violations of federal and state law described herein, Plaintiffs
15 and other similarly situated students have unlawfully been denied access intensive ABA
16 services which they require to gain an educational benefit¹⁵. By denying Plaintiffs these
17 services, Defendants have caused them serious delays in making educational and social
18 progress.

19 64. Students who are denied access to intensive ABA services lose a great deal
20 of educational and social benefit. Intensive instruction involves academics,
21 receptive/expressive language, functional communication, reducing unwanted behaviors,
22 reduction of echolia and other repetitive restricted behaviors, teaching replacement
23 behaviors, teaching peer play and appropriate toy play, teaching conversation skills,
24 teaching social skills, teaching community outing skills, and functional life skills. A

25 ¹⁵ Plaintiffs also believe that they may have sufficient evidence in the future to support causes of action
26 based upon race and national origin discrimination. This belief stems, in part, from statements made by
27 named Defendants and their employees. For instance, at an Autism Connection meeting on October 26,
28 2007, Tara Sisemore-Hester of VMRC emphasized the demand for intensive ABA services by stating "I
get calls from people who don't even speak English." This implies that racial bias may impact the
selection process for intensive services.

1 student's non-compliance issues are addressed and behavior intervention plans are
2 developed with "schedules of reinforcement" and differential reinforcement.

3 65. A student who does not receive intensive ABA is not provided with
4 appropriate behavior replacement and modification services. Intensive ABA (the specific
5 EIBT program of Region 6 Autism Connection) serves the student in 3 phases. Phase 1
6 consists of 35-40 hours of 1:1 tutoring. Phase 2 consists of preschool inclusion with one
7 to one support maintained at 35-40 hours. In Phase 3, the student is placed in a general
8 education kindergarten placement. There are often dramatic discrepancies in the
9 development between those children who do receive intensive ABA services and the
10 children who do not receive them. The difference between receiving intensive ABA
11 services and receiving non intensive services can be the difference between a life of
12 independence and self sufficiency and a life of institutionalization.

13 **EXHAUSTION**

14 **Exhaustion of OAH Remedies**

15
16 66. Because Plaintiffs have all been denied intensive ABA services because of
17 the PPG/EIBT contract, several of the named Plaintiffs filed a request for Due Process
18 with the Office of Administrative Hearings (OAH) challenging the legality of the
19 PPG/EIBT contract.¹⁶ However, OAH did not open the case. The request for due process
20 was originally filed on November 9, 2007 as part of a joint request which included due
21 process requests from five other students. The due process requests were filed jointly due
22 to the fact that each complaint involved denial of FAPE involving the EIBT/PPG
23 Agreement.

24 67. On November 13, 2007, Tamara Loughrey, attorney for the Plaintiffs
25 received a call from Jen, a clerk at OAH, who informed her that she had never seen a case
26 such as the one that was filed, and requested that the cases be re-filed individually. Ms.

27

16 The Plaintiffs who filed the due process complaint at OAH are Z.F., J.H., L.H., and
28 A.N.

1 Loughrey told Jen that she would make some corrections to the complaint in order to
2 clear up any confusion. She also requested that OAH put any decision in writing.
3 Plaintiffs then filed a Corrected and Clarified Joint Request for Due Process the same
4 day.

5 68. On November 20, 2007, an OAH clerk named Laura left a message with Ms.
6 Loughrey's office stating that the complaints would not be opened. On November 27,
7 2007, Ms. Loughrey wrote a letter to Judge Sherianne Laba, expressing her concern that
8 the case had not been opened or dismissed by OAH. The letter requested that OAH open
9 the complaint or provide a written decision stating why it was dismissed.

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

18 70. It was not until January 22, 2008 that Ms. Loughrey received a written
19 response from OAH in the form of a letter from Judge Laba. In this letter, Judge Laba
20 stated that OAH "will not file an order regarding whether or not this case is opened."
21 The letter also noted that OAH would not hear any of the issues regarding ADA, 504, the
22 Lanterman Act, the 14th Amendment and the California Constitution Art. 1 § 31. Finally,
23 the letter noted that Plaintiffs were not prevented from pursuing the claims as a class
24 action in District Court. As OAH refused to hear Plaintiffs issues regarding the
25 EIBT/PPG agreement, Plaintiffs have been left with no choice but to file this action in
26 Federal court.

27
28

1 **Exhaustion of CDE Remedies**

2
3 71. On December 19, 2005, Plaintiff M.A.F. sent a letter to CDE requesting
4 complaint investigation regarding what was then called the 4-Way Agreement. On
5 December 20, 2005 Patty Beck, an employee of CDE, called M.A.F. and suggested that
6 she alter some the language in her complaint so it could be more inclusive of other
7 complaints, as M.F's letter stated that other parents had similar complaints. In a letter to
8 Ms. Beck dated December 21, 2005, M.A.F. sent another complaint which incorporated
9 the suggestions she had previously made. The letter formally filed a complaint and
10 requested an investigation of VMRC and the Region 6 SELPA's and providers on behalf
11 of her son Z.F. regarding the 4-Way Agreement.

12 72. In telephone and email exchanges, Patty Beck recommended that M.A.F.
13 request that the complaint be "held" or stayed, until CDE had received all of the
14 documents from other parents who had complaints about the 4-Way Agreement. On
15 December 22, 2005 in a letter sent to Patty Beck, M.A.F. requested the hold of the
16 complaint, as recommended by Ms. Beck.

17 73. Several meetings between the participants in the 4-Way agreement occurred
18 between December 21, 2005 and January 4, 2006. After these meetings, the parent
19 signature requirement was removed from the 53-page contract. The "4-Way" was
20 removed from SELPA and VMRC websites, and a new document was loaded called the
21 "EIBT Program Procedures & Guidelines."

22 74. Other parents sent in letters requesting to be added to the various
23 complaints between January and February 2006. On March 20, 2006, the CDE issued an
24 extension of the investigation. On May 17, 2006, M.A.F. wrote a letter to CDE and
25 requested for an additional 20 day extension. Ultimately, CDE concluded that the District
26 was in compliance with the law.

27 **EXHAUSTION OF LANTERMAN ACT REMEDIES**

28 75. On December 6, 2005, M.A.F. filed a complaint request with Carol Risley

1 of the Department of Developmental Services. Between the months of January and March
2 2006, M.A.F. filed numerous complaints regarding the "4-Way Agreement" to Valley
3 Mountain Regional Center executive director, Richard Jacobs, under Cal. Welfare and
4 Institutions Code § 4731. Written responses from Mr. Jacobs indicated that the "EIBT 4-
5 Way Agreement" was legally sound. M.A.F. rejected the findings and filed a class
6 complaint to VMRC Board members, and copied various agencies including CDE, DDS,
7 Amador SELPA, Tuolumne SELPA, Calaveras SELPA, San Joaquin SELPA, and
8 Stanislaus SELPA. Plaintiffs L.H. and J.H. also filed through their parent, J.A.A.H., a
9 4731 complaint in October 2007. After Mr. Jacobs rejected the complaint, an appeal
10 complaint was sent to Defendant DELGADILLO, the Director of DDS. Since at or
11 around the same time, plaintiffs filed their initial November 9, 2007 OAH due process
12 request, the appeal was not ruled on by DDS.

13 CLASS ALLEGATIONS

14 76. Plaintiffs bring this action on behalf of themselves and all others similarly
15 situated. The class which Plaintiffs represent is composed of all children with disabilities
16 who have been prevented from receiving intensive ABA Services by implementation of
17 the EIBT/PPG contract between November 9, 2005 to present. The class also includes
18 the parents of those children.

19 77. The persons in the class are so numerous that joinder of all such persons is
20 impractical and the disposition of their claims in a class action is a benefit to the parties
21 and to the Court. It is estimated that the class of plaintiffs that is comprised of students
22 with autism and their parents will exceed 1000 persons.

23 78. There is a well-defined community of interest in the questions of law and fact
24 involved affecting the parties to be represented in that they have all been forced to accept
25 inadequate services for their disabilities because of the implementation of the EIBT/PPG
26 contract.

27 79. Common questions of law and fact predominate in the class.

28 80. The claims of Plaintiffs are typical of those of the class and Plaintiffs will
fairly and adequately represent the interests of the class.

1 81. The references to Plaintiffs shall be deemed to include the named Plaintiffs
2 and all others similarly situated.

3
4 **PLAINTIFFS' CAUSES OF ACTION**

5
6 **COUNT I: Violations of 20 U.S.C. §1400 et. seq and regulations therunder.**
7 (By Z.F., M.A.F., J.F., Against RUSD, RUSD Board of Trustees, San Joaquin SELPA, San
8 Joaquin County Office of Education, CDE, DDS, VMRC, Leo Zuber, Dorian Rice, Sandee
9 Kludt, Jack O'Connell and Terri Delgadillo and By J.H, L.H., J.A.A.H. and J.R.H. Against
10 Modesto City Schools, Modesto City Schools SELPA, Modesto City Schools Board of
11 Education, VMRC, CDE, DDS, Richard Jacobs, Tara Sisemore-Hester, Arturo Flores,
12 Diane Scott, Virginia Johnson, Jack O'Connell and Terry Delgadillo and By A.N., G.N. and
13 M.R. Against Ripon Unified School District, Ripon Unified School District Board of
14 Trustees; San Joaquin County SELPA, San Joaquin County Office of Education, VMRC,
15 Leo Zuber, Camille Taylor, Dorian Rice, Sandee Kludt, Tara Sisemore-Hester, Richard
16 Jacobs, Jack O'Connell and Terry Delgadillo and By E.F., M.Y.F. and A.F. Against TUSD,
17 TUSD Board of Education; San Joaquin County SELPA, San Joaquin County Office of
18 Education, VMRC, CDE, DDS, James Franco, Dorian Rice, Sandee Kludt, Jack O'Connell
19 and Terry Delgadillo, Richard Jacobs and Tara Sisemore-Hester and By E.R., A.R. and
20 D.R. Against VMRC, Stanislaus County SELPA, Stanislaus County Office of Education,
21 CDE, DDS, Tom Chagnon, Bonnie Jones-Lee, Regina Hedin, Tara Sisemore-Hester,
22 Richard Jacobs, Jack O'Connell and Terry Delgadillo and By J.M., R.M. and E.M. Against
23 Stockton Unified School District (SUSD), SUSD SELPA, SUSD Board of Education,
24 VMRC, CDE, DDS, Julie Penn, Jack McLaughlin, Richard Jacobs, Tara Sisemore-Hester,
25 Jack O'Connell and Terry Delgadillo and By all similarly situated children and the parents
26 of those children Against those named Defendants responsible for the violations)

27 82. Plaintiffs incorporate, by reference herein, the allegations in the preceding
28 paragraphs, inclusive.

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

- (a) School Districts must ensure that a continuum of alternative placements is
available to meet the needs of children with disabilities for special education and

1 related services. The School District must also ensure that parents are afforded a
2 “meaningful” opportunity to participate in the development of the IEP.

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

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

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

10 84. Defendants have implemented and/or allowed for implementation of a system
11 under the EIBT/PPG and EIBT 4-Way contracts which has unlawfully restricted access to
12 intensive ABA services for Plaintiffs, as well as those similarly situated, in contravention
13 of federal and state law. This system (a) denied access to students whose parents refuse to
14 sign the contract¹⁷, (b) denies access to students who do not meet the contract’s criteria, (c)
15 allows students to be removed from a program of intensive services for not meeting the
16 contract’s criteria, (d) creates a system of waiting lists for students which denies them
17 access to a continuum of placements, (e) allows for the development of children’s
18 educational program outside of the IEP team process and (f) prevents parents from
19 obtaining meaningful independent evaluations for their children, (g) prevents parents from
20 meaningful participation in the IEP process, (h) allows for assessments of children without
21 the consent of their parents and (i) creates a barrier which prevents students access to
22 needed services under ADA and 504.

23 85. Defendants’ unlawful actions in implementing the EIBT/PPG and EIBT/4-
24 Way were intentional, willful, malicious, and/or done with reckless disregard to the right
25 of Plaintiffs and others similarly situated to obtain services which they require to gain an
26 educational benefit. Defendants’ unlawful actions in implementing the EIBT/PPG

27 ¹⁷ The signature requirement only pertains to the September 8, 2005 version of the agreement. The
28 requirement was dropped under the May 24, 2006 version.

1 continue to be intentional, willful, malicious, and/or done with reckless disregard to the
2 right of Plaintiffs and others similarly situated to obtain services which they require to
3 gain an educational benefit.

4
5 **COUNT II: Violation of Section 504 of the Rehabilitation Act of 1973**

6 (By Z.F., M.A.F., J.F., Against RUSD, RUSD Board of Trustees, San Joaquin SELPA, San
7 Joaquin County Office of Education, CDE, DDS, VMRC, Leo Zuber, Dorian Rice, Sandee
8 Kludt, Jack O'Connell and Terri Delgadillo and By J.H, L.H., J.A.A.H. and J.R.H. Against
9 Modesto City Schools, Modesto City Schools SELPA, Modesto City Schools Board of
10 Education, VMRC, CDE, DDS, Richard Jacobs, Tara Sisemore-Hester, Arturo Flores,
11 Diane Scott, Virginia Johnson, Jack O'Connell and Terry Delgadillo and By A.N., G.N. and
12 M.R. Against Ripon Unified School District, Ripon Unified School District Board of
13 Trustees; San Joaquin County SELPA, San Joaquin County Office of Education, VMRC,
14 Leo Zuber, Camille Taylor, Dorian Rice, Sandee Kludt, Tara Sisemore-Hester, Richard
15 Jacobs, Jack O'Connell and Terry Delgadillo and By E.F., M.Y.F. and A.F. Against TUSD,
16 TUSD Board of Education; San Joaquin County SELPA, San Joaquin County Office of
17 Education, VMRC, CDE, DDS, James Franco, Dorian Rice, Sandee Kludt, Jack O'Connell
18 and Terry Delgadillo, Richard Jacobs and Tara Sisemore-Hester and By E.R., A.R. and
19 D.R. Against VMRC, Stanislaus County SELPA, Stanislaus County Office of Education,
20 CDE, DDS, Tom Chagnon, Bonnie Jones-Lee, Regina Hedin, Tara Sisemore-Hester,
21 Richard Jacobs, Jack O'Connell and Terry Delgadillo and By J.M., R.M. and E.M. Against
22 Stockton Unified School District (SUSD), SUSD SELPA, SUSD Board of Education,
23 VMRC, CDE, DDS, Julie Penn, Jack McLaughlin, Richard Jacobs, Tara Sisemore-Hester,
24 Jack O'Connell and Terry Delgadillo and By all similarly situated children and the parents
25 of those children Against those named Defendants responsible for the violations)

26 86. Plaintiffs incorporate and reallege as though fully set forth herein the
27 allegations set forth in preceding paragraphs, inclusive.

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

1 assistance.

2
3 88. Each defendant named herein is a direct recipient of federal financial
4 assistance sufficient to invoke the coverage of Section 504.

5 89. All plaintiffs are qualified individuals with disabilities.

6 90. By reason of their disabilities, Plaintiffs have been, and continue to be,
7 excluded from participation in, denied the benefit of, and subjected to discrimination in
8 their attempts to receive full and equal access to the facilities, programs, services and
9 activities offered by Defendants.

10 91. Defendants have discriminated against Plaintiffs by using the EIBT/PPG and
11 EIBT/4-Way agreements as a barrier which has denied them access to intensive ABA
12 services. This barrier has created a system which provides Plaintiffs only access to
13 inferior educational programs which are less adequate than that of non-disabled students.
14 Moreover, the agreement also discriminates on its face by utilizing criteria based system
15 that denies access to students with autism who also have intellectual disabilities and/or
16 are non-verbal because these children are denied access to otherwise appropriate behavior
17 services solely based upon their degree disability.

18 92. As a direct and proximate result of the Defendants' discrimination, Plaintiffs
19 suffered damages in an amount to be proven at trial.

20 93. Plaintiffs are entitled to reasonable attorney's fees pursuant to 29 U.S.C. §
21 794(a).

22 WHEREFORE, Plaintiffs request relief as set forth below.

23
24
25 **COUNT III: Violations of Title II of The Americans with Disabilities Act**
26 **COUNT II: Violation of Section 504 of the Rehabilitation Act of 1973**

27 (By Z.F., M.A.F., J.F., Against RUSD, RUSD Board of Trustees, San Joaquin SELPA, San
28 Joaquin County Office of Education, CDE, DDS, VMRC, Leo Zuber, Dorian Rice, Sandee Kludt, Jack O'Connell and Terri Delgadillo and By J.H, L.H., J.A.A.H. and J.R.H. Against

1 Modesto City Schools, Modesto City Schools SELPA, Modesto City Schools Board of
2 Education, VMRC, CDE, DDS, Richard Jacobs, Tara Sisemore-Hester, Arturo Flores,
3 Diane Scott, Virginia Johnson, Jack O'Connell and Terry Delgadillo and By A.N., G.N. and
4 M.R. Against Ripon Unified School District, Ripon Unified School District Board of
5 Trustees; San Joaquin County SELPA, San Joaquin County Office of Education, VMRC,
6 Leo Zuber, Camille Taylor, Dorian Rice, Sandee Kludt, Tara Sisemore-Hester, Richard
7 Jacobs, Jack O'Connell and Terry Delgadillo and By E.F., M.Y.F. and A.F. Against TUSD,
8 TUSD Board of Education; San Joaquin County SELPA, San Joaquin County Office of
9 Education, VMRC, CDE, DDS, James Franco, Dorian Rice, Sandee Kludt, Jack O'Connell
10 and Terry Delgadillo, Richard Jacobs and Tara Sisemore-Hester and By E.R., A.R. and
11 D.R. Against VMRC, Stanislaus County SELPA, Stanislaus County Office of Education,
12 CDE, DDS, Tom Chagnon, Bonnie Jones-Lee, Regina Hedin, Tara Sisemore-Hester,
13 Richard Jacobs, Jack O'Connell and Terry Delgadillo and By J.M., R.M. and E.M. Against
14 Stockton Unified School District (SUSD), SUSD SELPA, SUSD Board of Education,
15 VMRC, CDE, DDS, Julie Penn, Jack McLaughlin, Richard Jacobs, Tara Sisemore-Hester,
16 Jack O'Connell and Terry Delgadillo and By all similarly situated children and the parents
17 of those children Against those named Defendants responsible for the violations)

18 94. Plaintiffs incorporate and realleges as though fully set forth herein the
19 allegations set forth in preceding paragraphs.

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

23 96. The acts alleged herein constitute violations of the ADA., and the
24 regulations promulgated thereunder. Title II of the ADA provides, that no qualified
25 individual with a disability shall, by reason of such disability, be excluded from
26 participation in or be denied the benefits of the services, programs, or activities of a
27 public entity, or be subjected to discrimination by any such entity.

28 97. Each Defendant named herein has employed and continues to employ more
than 15 people.

98. Defendants have discriminated against Plaintiffs by using the EIBT/PPG and

1 EIBT/4-Way agreements as a barrier which has denied them access to intensive ABA
2 services. This barrier has created a system which provides Plaintiffs access only to
3 inferior educational programs which less adequate than that of non-disabled students.
4 Moreover, the agreement also discriminates on its face by utilizing criteria based system
5 that denies access to students with autism who also have intellectual disabilities and/or
6 are non-verbal because these children are denied access to otherwise appropriate behavior
7 services solely based upon their degree disability.
8

9 99. Defendants' conduct constitutes ongoing and continuous violations of the
10 ADA and, unless restrained from doing so, Defendants will continue to violate said law.
11 Said conduct, unless enjoined, will continue to inflict injuries for which Plaintiffs have no
12 adequate remedy at law.
13

14 100. Consequently, Plaintiffs are entitled to injunctive relief pursuant to section 308
15 of the ADA (42 U.S.C. section 12188). Plaintiffs are also entitled to reasonable
16 attorneys' fees and costs.

17 WHEREFORE, Plaintiffs request relief as set forth below.

18
19 **COUNT IV: Violation of Due Process Rights Under the U.S. Constitution**
20 **Amendment 14, Sec. 1 and the California Constitution, Article 1, Section 7(a)**
21 **(All Plaintiffs and all other similarly situated children and the parents of those**
22 **similarly situated children Against OAH, CDE, Sherianne Laba and Jack**
23 **O'Connell)**

24 101. Plaintiffs incorporate, by reference herein, the allegations in the preceding
25 paragraphs, inclusive.

26 102. The Fourteenth Amendment to the United States Constitution provides that no
27 state shall deprive any person of life, liberty or property without due process of law.
28 Similarly, the California Constitution, Art 1, Sec. 7(a) also provides that a person may not
be deprived of life, liberty or property without due process of law. Education is a
property right protected by the Due Process Clause of the Fourteenth Amendment. Gross

1 v. Lopez, 419 U.S. 565, 574 (1975). Due process includes, at minimum, the right to be
2 provided notice and opportunity to be heard. Jones v. Flowers, 547 U.S. 220, 240-241
3 (2006).

4 103. A student who receives special education services' opportunity to be heard is
5 set forth under the IDEA, which allows students to be heard in the form of a due process
6 hearing. Specifically, 20 U.S.C. § 1415(b)(6)(a) requires any state or local educational
7 agency which takes federal money to establish procedures to allow a parent of a child to
8 present a complaint with respect to "the provision of a free appropriate public education
9 to such child." When parents exercise their right to file a complaint, 20 U.S.C.
10 1415(f)(1)(a) allows them to "have an opportunity for an impartial due process hearing."
11 Once a parent files a request for a due process hearing, a hearing officer is required by
12 Cal. Ed. Code § 56502(f) to "immediately... notify, in writing, all parties of the request
13 for the hearing and the scheduled date for the hearing. The notice shall advise all parties
14 of all their rights relating to procedural safeguards. Both 34 C.F.R. 300.511 and Cal. Ed.
15 Code § 56502(f) mandate that a hearing officer must hold a hearing and render a final
16 decision within 45 days after the request for a due process hearing has been filed.

17 104. In this case, Plaintiffs filed a request for due process with OAH on November
18 9, 2007. Plaintiffs did not receive a written response from OAH until January 22, 2008, a
19 full 71 days after the filing and 26 days beyond the date when a *decision* should have
20 been rendered. Unfortunately, this severely delayed response did not do anything to allow
21 Plaintiffs to proceed with the case at the administrative level. OAH determined that it
22 "will not file an order regarding whether or not this case is opened." By failing to provide
23 Plaintiffs with an opportunity to present their complaints in the form of a due process
24 hearing, Defendants have violated Plaintiffs' Constitutional rights to Due Process.

25 WHEREFORE, Plaintiffs request relief as set forth below.

26 **COUNT V: Violations the 14th Amendment's Right to Freely Travel**

27 (By J.H., L.H., J.A.A.H, J.R.H. and all other similarly situated children and the
28 parents of those similarly situated children, Against Modesto City Schools, Modesto
City Schools SELPA, Modesto City Schools Board of Education, VMRC, Richard
Jacobs, Tara Sisemore-Hester, Arturo Flores, Diane Scott and Virginia Johnson and
By all other similarly situated children and the parents of those similarly situated

1 children Against the named Defendants who have caused these violations)

2 105. Plaintiffs incorporate, by reference herein, the allegations in the preceding
3 paragraphs, inclusive.

4 101. Under the Equal Protection Clause of the 14th Amendment of the United
5 States Constitution, citizens have the right to freely travel. The Supreme Court has been
6 clear that it is “constitutionally impermissible’ for a State to enact durational residency
7 requirements for the purpose of inhibiting the migration of needy persons into the
8 State.” Saenz v. Roe, 526 U.S. 489, 499 (1999). (quoting Shapiro v. Thompson, 394
9 U.S. 618,629 (1969)). This prohibition on restricting the right to travel extends to
10 restrictions on intrastate travel as well. See Valenciano v. Bateman, 323 F.Supp. 600,
11 603 (D.C. Ariz. 1971).

12 106. Defendants have purposefully instituted a waiting list system designed to
13 exclude those children who have recently moved to one of the school Districts which
14 are part of the EIBT/PPG contract from receiving intensive ABA services. This system
15 violates Plaintiffs constitutional right to freely travel by denying them services to which
16 they are entitled on the basis of their migration from another area.

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

19 (By Z.F., M.A.F., J.F., Against RUSD, RUSD Board of Trustees, San Joaquin SELPA, San
20 Joaquin County Office of Education, CDE, DDS, VMRC, Leo Zuber, Dorian Rice, Sandee
21 Kludt, Jack O’Connell and Terri Delgadillo and By J.H, L.H., J.A.A.H. and J.R.H. Against
22 Modesto City Schools, Modesto City Schools SELPA, Modesto City Schools Board of
23 Education, VMRC, CDE, DDS, Richard Jacobs, Tara Sisemore-Hester, Arturo Flores,
24 Diane Scott, Virginia Johnson, Jack O’Connell and Terry Delgadillo and By A.N., G.N. and
25 M.R. Against Ripon Unified School District, Ripon Unified School District Board of
26 Trustees; San Joaquin County SELPA, San Joaquin County Office of Education, VMRC,
27 Leo Zuber, Camille Taylor, Dorian Rice, Sandee Kludt, Tara Sisemore-Hester, Richard
28 Jacobs, Jack O’Connell and Terry Delgadillo and By E.F., M.Y.F. and A.F. Against TUSD,
TUSD Board of Education; San Joaquin County SELPA, San Joaquin County Office of
Education, VMRC, CDE, DDS, James Franco, Dorian Rice, Sandee Kludt, Jack O’Connell
and Terry Delgadillo, Richard Jacobs and Tara Sisemore-Hester and By E.R., A.R. and

1 **D.R. Against VMRC, Stanislaus County SELPA, Stanislaus County Office of Education,**
2 **CDE, DDS, Tom Chagnon, Bonnie Jones-Lee, Regina Hedin, Tara Sisemore-Hester,**
3 **Richard Jacobs, Jack O’Connell and Terry Delgadillo and By J.M., R.M. and E.M. Against**
4 **Stockton Unified School District (SUSD), SUSD SELPA, SUSD Board of Education,**
5 **VMRC, CDE, DDS, Julie Penn, Jack McLaughlin, Richard Jacobs, Tara Sisemore-Hester,**
6 **Jack O’Connell and Terry Delgadillo and By all similarly situated children and the parents**
7 **of those children Against those named Defendants responsible for the violations)**

8 107. Plaintiffs incorporate, by reference herein, the allegations in the preceding
9 paragraphs, inclusive.

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

14 109. In this case, Defendants have arbitrarily implemented and/or allowed
15 implementation of the EIBT/PPG and EIBT/4-Way contracts to limit the availability of
16 intensive ABA services for children and to determine which children are eligible for the
17 services. The agreement has created an artificial monopoly on intensive ABA services in
18 the Central Valley by limiting the number of providers. In addition, the criteria used by
19 Defendants to determine which children obtain these services and which children can
20 remain in the programs that provide these services is not based on solid scientific
21 principles. Instead of being designed to include all children who could benefit from this
22 program, the criteria is arbitrarily designed to exclude children based on impermissible
23 and illegitimate purposes unrelated to educational benefit, such as IQ and the level of
24 progress made by the children.

25 **COUNT VII: Violations of the Unruh Civil Rights Act**

26 **(By Z.F., M.A.F., J.F., Against RUSD, RUSD Board of Trustees, San Joaquin SELPA, San**
27 **Joaquin County Office of Education, CDE, DDS, VMRC, Leo Zuber, Dorian Rice, Sandee**
28 **Kludt, Jack O’Connell and Terri Delgadillo and By J.H, L.H., J.A.A.H. and J.R.H. Against**
Modesto City Schools, Modesto City Schools SELPA, Modesto City Schools Board of
Education, VMRC, CDE, DDS, Richard Jacobs, Tara Sisemore-Hester, Arturo Flores,
Diane Scott, Virginia Johnson, Jack O’Connell and Terry Delgadillo and By A.N., G.N. and
M.R. Against Ripon Unified School District, Ripon Unified School District Board of

1 Trustees; San Joaquin County SELPA, San Joaquin County Office of Education, VMRC,
2 Leo Zuber, Camille Taylor, Dorian Rice, Sandee Kludt, Tara Sisemore-Hester, Richard
3 Jacobs, Jack O'Connell and Terry Delgadillo and By E.F., M.Y.F. and A.F. Against TUSD,
4 TUSD Board of Education; San Joaquin County SELPA, San Joaquin County Office of
5 Education, VMRC, CDE, DDS, James Franco, Dorian Rice, Sandee Kludt, Jack O'Connell
6 and Terry Delgadillo, Richard Jacobs and Tara Sisemore-Hester and By E.R., A.R. and
7 D.R. Against VMRC, Stanislaus County SELPA, Stanislaus County Office of Education,
8 CDE, DDS, Tom Chagnon, Bonnie Jones-Lee, Regina Hedin, Tara Sisemore-Hester,
9 Richard Jacobs, Jack O'Connell and Terry Delgadillo and By J.M., R.M. and E.M. Against
10 Stockton Unified School District (SUSD), SUSD SELPA, SUSD Board of Education,
11 VMRC, CDE, DDS, Michael Lyons, Jack McLaughlin, Richard Jacobs, Tara Sisemore-
12 Hester, Jack O'Connell and Terry Delgadillo and By all similarly situated children and the
13 parents of those children Against those named Defendants responsible for the violations)

110. Plaintiffs incorporate and reallege as though fully set forth herein the
12 allegations set forth in preceding paragraphs, inclusive.

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

112. Defendants and their facilities constitute business establishments under
16 California Code § 51 and 54 and as such are prohibited from discriminating against
17 Plaintiffs on the basis of disability. Defendants violated the statute by discriminating
18 against Plaintiffs by the examples set forth above under the ADA and 504 sections. As a
19 result, Plaintiffs are entitled pursuant to California Civil Code § 52(a) for actual damages
20 up to three times the amount of actual damages but no less than \$4,000 per each violation.
21 Additionally, Plaintiffs are entitled to reasonable attorney's fees pursuant to California
22 Civil Code § 52(a).

23 WHEREFORE, Plaintiffs request relief as set forth below

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

25 (By Z.F., M.A.F., J.F., A.N., M.R., and G.N. Against RUSD, RUSD Board of Trustees, San
26 Joaquin SELPA, San Joaquin County Office of Education, CDE, DDS, VMRC, OAH, Leo
27
28

1 **Zuber, Dorian Rice, Sandee Kludt, Jack O’Connell Sherianne Laba and Terri Delgadillo**
2 **and By J.H, L.H., J.A.A.H. and J.R.H. Against Modesto City Schools, Modesto City**
3 **Schools SELPA, Modesto City Schools Board of Education, VMRC, CDE, DDS, OAH,**
4 **Richard Jacobs, Tara Sisemore-Hester, Arturo Flores, Diane Scott, Virginia Johnson, Jack**
5 **O’Connell, Sherianne Laba and Terry Delgadillo and By A.N., G.N. and M.R. Against**
6 **Ripon Unified School District, Ripon Unified School District Board of Trustees; San**
7 **Joaquin County SELPA, San Joaquin County Office of Education, VMRC, OAH, CDE,**
8 **DDS, Leo Zuber, Camille Taylor, Dorian Rice, Sandee Kludt, Tara Sisemore-Hester,**
9 **Richard Jacobs, Sherianne Laba, Jack O’Connell and Terry Delgadillo and By E.F.,**
10 **M.Y.F. and A.F. Against TUSD, TUSD Board of Education; San Joaquin County SELPA,**
11 **San Joaquin County Office of Education, VMRC, CDE, DDS, James Franco, Dorian Rice,**
12 **Sandee Kludt, Jack O’Connell and Terry Delgadillo, Richard Jacobs and Tara Sisemore-**
13 **Hester and By E.R., A.R. and D.R. Against VMRC, Stanislaus County SELPA, Stanislaus**
14 **County Office of Education, CDE, DDS, Tom Chagnon, Bonnie Jones-Lee, Regina Hedin,**
15 **Tara Sisemore-Hester, Richard Jacobs, Jack O’Connell and Terry Delgadillo and By J.M.,**
16 **R.M. and E.M. Against Stockton Unified School District (SUSD), SUSD SELPA, VMRC,**
17 **CDE, DDS, Michael Lyons, Jack McLaughlin, Richard Jacobs, Tara Sisemore-Hester, Jack**
18 **O’Connell and Terry Delgadillo and By all similarly situated children and the parents of**
19 **those children Against those named Defendants responsible for the violations)**

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

28 114. The acts of Defendants as herein alleged were willful, intentional, and
 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. Plaintiffs have suffered harm and continues to suffer harm, as a result
 of Defendants 42 U.S.C.A. § 1983 violations.

1 WHEREFORE, Plaintiffs request relief as set forth below.

2
3 **COUNT IX Violation of 34 C.F.R. 300.300 (c)(1)(i)**

4 **(By E.R., D.R. and A.R. Against VMRC, Stanislaus County SELPA,**
5 **Stanislaus County Office of Education, Richard Jacobs, Tara Sisemore-Hester,**
6 **Regina Hedin and Bonnie Jones-Lee and By all other similarly situated children**
7 **Against the named defendants responsible for the violations)**

8 115. Plaintiffs incorporate and reallege as though fully set forth herein the
9 allegations set forth in the preceding paragraphs, inclusive.

10 116. 34 C.F.R. 300.300 (c)(1)(i) requires each public agency to “obtain informed
11 parental consent...prior to conducting any reevaluation of a child with a disability.”

12 117. On October 18, 2007, a woman named Margo went to E.R.’s home when her
13 parents were not home. E.R.’s grandmother, who was watching her, was told by the
14 woman that she needed to visit with E.R. Margo performed an assessment on E.R.
15 without getting permission from her parents. When A.R. was informed of the assessment,
16 she contacted Mila Amerine-Dickens, the Executive Director of Central Valley Autism
17 Project (CVAP) which is a non-public agency hired by VMRC to provide E.R. with
18 intensive ABA services. Ms. Amerine-Dickens told A.R. that the assessment was
19 required by CVAP and performed on all children.

20 118. A.R. contacted Kirsten Joseph, a Behavior Consultant with CVAP. Ms. Joseph
21 informed A.R. that the woman who performed the assessment was a CVAP employee
22 named Margo. Upon A.R.’s request, Ms. Joseph gave A.R. a copy of the assessment.
23 The form is titled “ELM Data Sheet”. Upon information and belief, Plaintiffs allege that
24 this test was an Early Learning Measure assessment, which is used to measure a child’s
25 rate of acquisition of skills during an intensive ABA program. The form contains several
26 phrases, such as “come here” and “give me a hug”. Next to each phrase is a plus or
27 minus, sign, which presumably indicates whether or not E.R. was able to perform the
28 task. Despite their best efforts, E.R.’s parents have been unable to determine Margo’s last
name and have not been able independently confirm that she is in fact a CVAP employee.

1 119. Defendant VMRC is ultimately responsible for E.R's education. In this case, it
2 allowed an employee of an agency it hired to educate E.R. to perform an assessment of
3 E.R. despite the fact that her parents never gave their consent. This action is a direct
4 violation of 34 C.F.R. 300.300 (c)(1)(i) which prohibits unauthorized assessments.
5 WHEREFORE, Plaintiffs request relief as set forth below.

6
7 **COUNT X Violation of California Government Code §§ 11135, et seq.**
8 **(All Plaintiffs Against All Defendants)**

9 120. Plaintiffs incorporate and reallege as though fully set forth herein the
10 allegations set forth in the preceding paragraphs, inclusive.

11 121. Plaintiffs are individuals with disabilities within the meaning of Section
12 11135(c) of the California Government Code.

13 122. Plaintiffs are informed and believe that Defendants receive financial assistance
14 from the State of California sufficient to invoke the coverage of Sections 11135, *et seq.*,
15 of the California Government Code.

16 123. By its actions or inactions in refusing on the basis of disability to provide
17 Plaintiffs full and equal access to the facilities, programs services and activities of the
18 District, Defendants have denied Plaintiffs the benefits of, or unlawfully subjected them
19 to discrimination in violation of Plaintiffs' rights under Sections 11135 *et seq.* of the
20 California Government Code and the regulations promulgated thereunder.

21 124. Plaintiffs have no adequate remedy at law. Unless the relief requested herein is
22 granted, Plaintiffs will suffer irreparable harm in that, on the basis of disability, they will
23 continue to be discriminated against and denied full and equal access to Defendants'
24 facilities, programs, services and activities.

25 125. Plaintiffs are entitled to reasonable attorneys' fees and costs.

26 WHEREFORE, Plaintiffs request relief as set forth below.

27 **COUNT XI Declaratory Relief**
28 **(All Plaintiffs Against All Defendants)**

126. Plaintiffs incorporate and reallege as though fully set forth herein the

1 allegations set forth in the preceding paragraphs, inclusive.

2 127. Plaintiffs contend and are informed and believe that Defendants deny that the
3 they have failed to comply with applicable law prohibiting discrimination against persons
4 with disabilities and is in violation of the Americans with Disabilities Act, 42 U.S.C.
5 sections 12101, *et seq.*, the Rehabilitation Act, 29 U.S.C. section 794, the Individuals
6 with Disabilities Education and Improvement Act (IDEA) California Civil Codes
7 Sections 51 and 54, and California Government Code Section 11135, *et seq.*

8 128. A judicial declaration is necessary and appropriate at this time in order that each
9 of the parties may know their respective rights and duties and act accordingly.

10 WHEREFORE, Plaintiffs request relief as set forth below.

11
12 **PRAYER FOR RELIEF**

- 13 1. An order and judgment enjoining Defendants from implementing the
14 EIBT/PPG Agreement and any policies or actions substantially similar to
15 the agreement that violate Plaintiffs and other similarly situated children's
16 rights under Federal and California law.
- 17 2. A declaration that the EIBT/PPG Agreement, and Defendants manner of
18 implementing the agreement, is a violation of Federal and State law.
- 19 3. A restraining order and/or preliminary and permanent injunctive relief
20 calling for the immediate cessation of the EIBT/PPG Agreement.
- 21 4. Damages according to proof;
- 22 5. Plaintiffs' reasonable attorneys' fees;
- 23 6. For costs of suit incurred by this complaint; and
- 24 7. For other and further relief as the Court deems proper.

25
26 Respectfully Submitted,

27 LOUGHREY & WOELFEL, LLP

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DATED: April 18, 2008

s/Tamara Loughrey
Tamara Loughrey
Robert Woelfel
Attorneys for Petitioners

PLAINTIFFS HEREBY DEMAND A JURY TRIAL

LOUGHREY & WOELFEL, LLP

DATED: April 18, 2008

/s/ Tamara Loughrey
Tamara Loughrey
Robert Woelfel
Attorneys for Petitioners

EXHIBIT B

REDACTED

From: Gabriela DeVelbiss [mailto:gabrieladevelbiss@yahoo.com]
Sent: Thursday, May 20, 2010 10:43 PM
To: Tara Sisemore-Hester
Cc: Regina Hedin
Subject: Re: IEP Meeting Notice for N. DeVelbiss

Tara,

Please forward this email to Janie Vizzolini or whomever it needs to go to. I will reiterate that I do not need anyone to attend my son's IEP meeting from VMRC. Please provide the law that "requires" someone from VMRC to attend. I believe this may only be a VMRC policy and one that is under scrutiny as part of the EIBT class-action lawsuit. IDEA indicates that between the ages of 3 and 22, the school district is responsible for my son's education. Funding is not me or my son's concern as IDEA also indicates a child must receive a FAPE regardless of funding, personnel, availability, waiting list, etc. I appreciate your concern, however. You probably are already aware that I have revoked consent to release information between the school district and VMRC as well as Kendall School and VMRC. If VMRC needs any documentation regarding my son's education, please put your request in writing to me.

Again, please forward this email to whomever needs to be notified that their presence is unnecessary. Should someone from VMRC show up at the IEP meeting against my wishes, they will be asked to leave. I am copying my son's school district on this email as well so they are aware of the situation and the non-necessity of VMRC's attendance at the IEP meeting. Thank you.

Love, Gabby. :0)

"I know of nobody who is purely Autistic or purely neurotypical. Even God had some Autistic moments, which is why the planets all spin." ~ Jerry Newport

EXHIBIT C

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Finding hidden services

Stockton/Modesto, CA. Valley Mountain Regional Center (VMRC) serves the residents of Stockton Modesto in central California. VMRC provides a program called Early Intensive Behavioral Treatment (EIBT) which is an intensive 35-40 per week ABA program for children with autism. They have agreements with every school district that the five counties serve. If a parent requests ABA(Applied Behavioral Analysis), the school district refers them to VMRC.

ABA is a therapy that can be highly effective for many autistic children in curbing the symptoms of autism. However, the VMRC requires potential clients to go through a re-diagnostic process if the child was not diagnosed by an "approved" physician. If the child succeeds in jumping through this and many other flaming hoops of fire, they may be approved to receive ABA. The criteria the child must meet to first be approved to receive ABA and then subsequently continue to meet is very rigid and not at all individualized as IDEA requires. (i.e. The child must speak at least 10-20 words to be accepted, once accepted the child must maintain at least in 80% acquisition rate or

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no other child that has received intensive ABA without the illegal criteria of EIBT. Under EIBT criteria, my son didn't qualify for ABA, but my husband and I spent years and well over \$100,000 in legal fees to get and keep his program."

The Jones family was persistent and did not give up. Laura continues, " Today he is in a general ed classroom and at grade level. We are currently fading out his ABA because he no longer needs it. He is a true success story that never would have happened if we allowed the EIBT criteria to stop us from helping our son. Unfortunately, there are hundreds and hundreds of kids that have not had the same opportunity as our son".

The short sighted and illegal actions of denying these kids the possibility of a normal life may save the school district funds in the short run, but will now burden taxpayers with the exponential costs of supporting these future adults for the rest of their natural lives because they will never have the skills to be financially self sufficient.

VMRC only allows providers to be vendorized IF they agree to adhere to the PP&G (which violates numerous laws under IDEA and California Ed Code) and IF they agree to NOT accept private-pay. This means that if a parents wants to private pay for an assessment and/or services, there is not a single company in the five-county region VMRC serves that is allowed to do this. (Recently, VMRC has informed the ABA providers they can accept private pay, but if you call and act like you are a parent, you won't get a return phone call or email.

Laura also points out, "We have many parents that are not even told ABA is available. Case in point is the parent of two children whose children were receiving 40 hour/week programs in the Bay Area. When she moved here, the school district told her they had nothing like that available. Later when asked at a tape-recorded IEP why she was never told, the school district said they would respond in writing. We are still waiting for such a response."

Laura has other concerns over recent allegations, "EIBT is a research project. Data generated by the subjects has been used in several published studies and VMRC has even given money to some of the ABA providers to fund the studies. One of the ABA provider company's owners, Jane Howard, is one of the lead researchers of one of the studies whom I believe (although not positive) received \$500,000 from VMRC to conduct this research. Her husband happens to be Rick Ingraham of DDS (Department of Developmental Services) who is a higher-level official with DDS that has the power to influence funding and other policy which has nicely lined his wife Jane's pockets. Talk about a conflict of interest!"

Laura offers the following information, "To read more about EIBT, the class-action lawsuit, the studies, etc, please visit our website at <http://www.valleysnafu.com/EIBT.htm>. The two biggest cheerleaders of this program is Sandee Kludt, former San Joaquin SELPA (Special Education Local Plan Area) Director, and Tara Sisemore, Coordinator of Autism Services at VMRC (who several times on tape has indicated that she is the "gatekeeper" of EIBT and she "controls who gets ABA and who doesn't.") These two, and others, have been traveling to other regional centers and agencies in California, throughout the country and even into Canada to promote EIBT. I believe one of the Bay Area regional centers has adopted a similar funding model with similar criteria that

be exited from the program, etc). Parents must then agree (that is IF they are given the chance to see exactly what they are agreeing to) a 53 page document called the Program, Procedures and Guidelines or PP&G.

Parent Laura Jones* has a son with autism. He is a resident of Modesto/Stockton area who was denied ABA services. She is very concerned for all the children with autism whose parents are unaware that their children are being short changed and their parental rights circumvented. Laura says, "Out of all the children that have or are receiving intensive ABA, my son is the ONLY child that has never been (and never will be) a VMRC client. To date, I have found

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excludes the lower-functioning autistic children from receiving intensive ABA,"

If you are a family of a child with autism who resides in the Modesto/Stockton area, please visit the website to find out if your child's rights to service have been violated. The website is <http://www.valleysnafu.com/EIBT.htm>

* name has been changed due to retaliation issues for speaking out

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
EXHIBIT D

NEWS01

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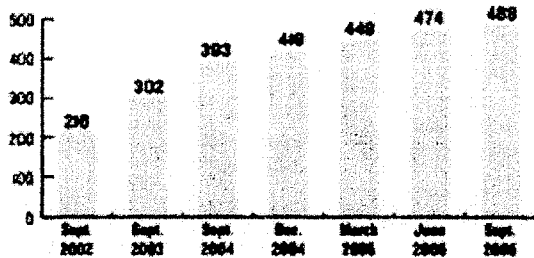
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Autism in San Joaquin County

The number of people in San Joaquin County receiving services for autism has increased steadily.



Source: California Department of Developmental Services. 

Record Staff Writer
December 24, 2005 4:35 AM

Rules that outline how certain services for autistic children are provided in San Joaquin County are discriminatory and violate education laws, some parents argue.

They have called on state and federal investigators to examine and eventually eliminate the county's Early Intensive Behavioral Treatment Four-Way Agreement.

"It's not what's best for each of our children," Ripon mother Mary Ann Fiedler said.

But special-education administrators say the 2-year-old pact is legally sound, protects children and ensures the availability of high-quality programs for autistic students.

Autism is a neurological disorder that makes communication difficult and can produce repetitive, seemingly obsessive behaviors, such as rocking. The state Department of Developmental Services reports that as of September, 489 people in the county have autism. Three years ago, that number was 216.

Applied behavior analysis is widely regarded as one of the most promising autism treatments. It is the core of the county's Early Intensive Behavioral Treatment program. Children in the program work one-on-one with a tutor 35 to 40 hours per week on drills that include life skills like reading or even learning how to play appropriately with others.

But in order to receive that treatment in San Joaquin County, parents are required to sign a "four-way agreement," which spells out the responsibilities assigned to four groups of caregivers that will help a child mature and learn.

The four groups are: school representatives who evaluate a child's educational needs; Valley Mountain Regional Center, which helps coordinate services for the developmentally disabled; providers who administer training and treatment; and parents, who can help develop and evaluate children's special-education plans.

The four-way agreement helps ensure the groups work together effectively, said Sandee Kludt, who oversees special education for the San Joaquin County Office of Education. The agreement, however, also outlines the criteria children must meet to stay in the program.

Children who don't meet those standards can be withdrawn from the therapy and given different services.

That worries some parents, including Ripon mother Shirley Nutt.

"It tells you these are the exact, specific things that your child has to do to remain in that program, or you're gone," she said.

Nutt said the rules discriminate against children who are slow to progress.

Fiedler agreed, adding that special education should be tailored to a child's needs, and not to any agency's criteria.

The county's early intensive program is expensive, costing as much as \$60,000 per year per child. It also is successful, helping 47 percent of children move into traditional classrooms.

But it's not right for every child, Kludt said.

"I think where those programs are most appropriate is with the higher-functioning children," she said. For other children, different treatments are more effective.

Stockton father Bryan Vargem hopes that will be true for his 7-year-old son, William.

"He hasn't met all their benchmarks," Vargem said after his son was removed from the program in part for failing to meet goals. "I think he kind of is just outgrowing the program."

He said the change is a positive one but added that meetings to discuss his son's progress often became discouraging sessions in which the boy's failures were highlighted.

"It's like 17 pages of 'He didn't do this, he didn't do that,' " Vargem said. "It started to become insanity for me. ... They give him so many benchmarks. He made 92 percent of them. Great. But they're focused on the other 8 percent."

Because the four-way agreement is tied to the early intensive program, if a parent rejects the agreement, they are rejecting the program, Kludt said.

But as Fiedler, Nutt and other parents interpret it, special-education law prohibits that requirement. Children should receive early intensive therapy even if their parents refuse to sign the agreement, they said. As it is now, parents feel compelled to sign a document that might not be in their child's best interest, Fiedler said.

Contact reporter Jennifer Torres at (209) 546-8252 or jtortes@recordnet.com

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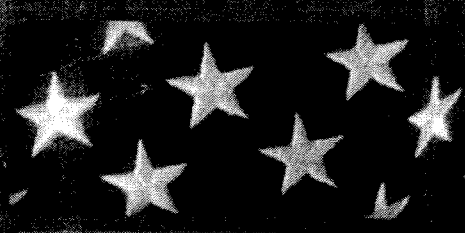
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EXHIBIT E



Autism Reform California

Ensuring Equal Opportunities For All Children With Autism

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Background History

Intensive autism treatment, known in the behavioral industry as *Intensive Behavioral Treatment (IBT)* or *Intensive Behavioral Intervention (IBI)* continues to be inaccessible to thousands of children with autism in California. Parents and lay persons in autism communities are more familiar with the term *Applied Behavior Analysis* or "ABA".

In Northern California's *Region 6*, which includes the counties of San Joaquin, Stanislaus, Calaveras, Tuolumne, and Amador, intensive autism treatment is provided under a program called "*Early Intensive Behavioral Treatment*" or *EIBT*. EIBT is offered only to elite autistic children - those who meet benchmark entrance and continuation criteria created by public and private agencies. Autism agencies wishing to set up business within this region *must* agree to implement and enforce these criteria, which are outlined in a 53-page policy formerly known as "*Region 6 Early Intensive Behavioral Treatment 4-Way Agreement*". Several agencies who attempted to apply for vendorization with Valley Mountain Regional Center, who disagreed to this policy were not allowed to open their business here, continuing to limit autism business operations and financial disbursements of public autism monies to five autism agencies.

Two groups were created to meet regularly to discuss matters related to Region 6 autism information and services: the *Autism Connection* and the *EIBT Committee*. A brief paragraph on the *Autism Connection* can be found disguised under an unrelated ["/intercom.aspx"](#) file extension [HERE](#), although there is no site information regarding the *EIBT Committee*. While both meeting groups are publicly funded and *should* be announced and open to the public, attendance to the EIBT Committee meeting is by invitation only and not announced except to those invited to be part of the group. VMRC's autism coordinator confirmed on record that attendance to an EIBT meeting is by invitation only. To date, publicly funded EIBT meetings are not publicly disclosed and are held discreetly.

Discrimination is Born

Public and private agencies, namely Valley Mountain Regional Center (VMRC), San Joaquin SELPA, Stanislaus SELPA, Family Resource Network, and four autism agencies, Central Valley Autism Project (CVAP), Behavioral & Educational Strategies & Training (BEST), Therapeutic Pathways/Kendall Schools (PATHWAYS), and Applied Behavioral Consultants (ABC), collaborated on the development of an autism service delivery model that discriminates against children through the policy's *entrance, continuation, and exit criteria*. The provisions of this so-called "collaboration" gave rise to the "*Region 6 Early Intensive Behavioral Treatment 4-Way Agreement*". This illegal policy, re-named on January 4, 2006 to "*Region 6 Early Intensive Behavioral Treatment Program, Procedures, and Guidelines*" or "*PP & G*", is now the subject of a class action lawsuit. The original lawsuit can be read [HERE](#). (The class action documents can be found on our [Resources](#) page). VMRC's autism coordinator, Tara Sisemore-Hester has been audio recorded in an IEP meeting to say that she is the "gatekeeper" of EIBT and indicated on record that *every kid who gets EIBT goes through her desk*. Those tapes were part of a due process hearing and continue to be part of the evidence of the class action. Where the federal law known as the *Individuals With Disabilities Education Act (IDEA, 2004)* states that children with disabilities are entitled to a *free and appropriate public education (FAPE)* that meets each child's *individualized* and unique needs, the EIBT PP & G policy and its autism service delivery model violates federal and state special education laws and regulations and violates parents and children's U.S. Constitutional Rights under Equal Protections. Note: the named ABA agencies seems to have had a monopoly control

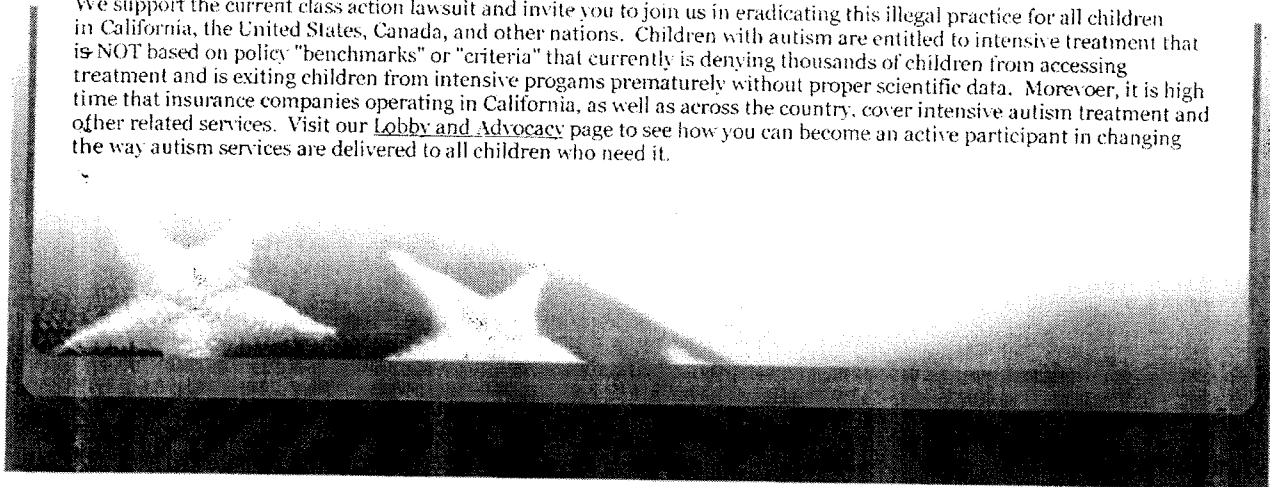
Dr. Sandee Kludt, former director of San Joaquin County SELPA, and Tara Sisemore-Hester of VMRC have, together, presented this autism service delivery model in several autism conferences and to our state government, promulgating the EIBT PP & G and its provisions as a positive "*collaborative*" service delivery model for approximately a decade. Their most recent speaking engagement was at the 2009 Council For Exceptional Children Convention in Seattle, Washington on April 4, 2009. The provisions of the 53-page PP & G policy were also the basis for several California Senate Bills introduced during the November 2008 ballot which, after our dedicated advocacy efforts and letter writing, those autism bills were *vetoed* by Governor Schwarzenegger himself. Copies of our supporting evidence were sent to numerous House and Senate leaders to warn them against supporting legislation that would authorize public and private agencies and their representatives to create state-wide criteria that would determine which child could receive intensive ABA and which child would not. As part of our lobbying and advocacy efforts, *Autism Reform California* intends to send out notifications to all California State Legislators. The Board of Directors of each of the twenty (20) Regional Centers in

California (VMRC has been duly informed through the Welfare & Institutions Code Section 4731), all California chapters of Autism Society of America and other autism groups who are dedicated to serving the needs of children with autism.

To date, this illegal criteria continues to be implemented against children to support the selfish interests of agencies and their representatives: to pay for expensive intensive ABA treatment to only those children who, according to Dr. Kludt, would "make it". Read about it [HERE](#) and [HERE](#). Tara Sisemore-Hester offered this irrelevant but interesting piece of information during an *Autism Connection* meeting (and at several IEP meetings) saying that Non Public Agencies (those that provide EIBT in Region 6: CVAP, BEST, Pathways, and ABC) stand to "*make a lot of money*" through this collaborative service model. How is that statement relevant to parents seeking intensive ABA? While rumors continue that EIBT and other VMRC services are *lucrative* for VMRC contracted providers, and while we may call for an investigation into the possible misappropriation of state and federal funds, *Autism Reform California's* primary focus is to alert the public about the EIBT's illegal provisions as it continues to operate underhandedly and outside the legal IEP process, and rally support to end its existence through the legal process.


Hope On The Horizon

We support the current class action lawsuit and invite you to join us in eradicating this illegal practice for all children in California, the United States, Canada, and other nations. Children with autism are entitled to intensive treatment that is NOT based on policy "benchmarks" or "criteria" that currently is denying thousands of children from accessing treatment and is exiting children from intensive programs prematurely without proper scientific data. Moreover, it is high time that insurance companies operating in California, as well as across the country, cover intensive autism treatment and other related services. Visit our [Lobby and Advocacy](#) page to see how you can become an active participant in changing the way autism services are delivered to all children who need it.



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EXHIBIT F



Autism Reform California
Ensuring Equal Opportunities For All Children With Autism

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Resources

The Law

- [Individuals With Disabilities Education Act/Improvement Act 2004 \(The Act Reauthorized\)](#)
- or
- [Comparing IDEA 1997 vs. IDEA 2004 \(Wrightslaw\)](#)

Autism Advocacy In Action

California Autism Bills Vetoed By Governor Schwarzenegger, 2008

The power of a people organized can influence action and change. While we watched and waited for years as Dr. Sandee Kludt, Tara Sisemore-Hester, and their known associates promulgated the discriminatory EIBT policy to the *California Autism Advisory Committee* and the *California Blue Ribbon Commission on Autism*, as *the best services in the world*, spinning that *collaborative service delivery* model into proposed bills for the State of California, we rallied families together to initiate letters to State Legislators and our Governor about the potential harm that would be caused by developing autism *criteria*. As a result, victory came by way of the Governor's *vetoes* to each of the bills we vehemently opposed.

- Senate Bills
- Copy of Letter to Governor Schwarzenegger
- Copy of Letter to Senator Cogdill
- Advocacy Victory: Autism Senate Bills Vetoed

Fledgling Website Sets up the Winds Of Change

As a green but passionate parent of a newly-diagnosed son with autism experienced the deceptive implementation of an autism policy known as *The 4-Way Agreement*, she launched a website to report on the discriminatory provisions contained in the 53-page contract that she was being required to sign if she wanted her son to enter into the intensive EIBT program. She refused to sign that contract and subsequently, her son was denied entrance into the intensive ABA program. The parent submitted a request for a complaint investigation to Patty Beck at the California Department of Education, only to learn that her complaint would be manipulated by State officials, in effect, mooted her allegations regarding the 53-page 4-Way Agreement contract. She also pursued administrative complaint procedures through the Lanterman Act filing additional 4731 complaints against Valley Mountain Regional Center to Executive Director Richard Jacobs, and appealing VMRC's findings to Carol Risley and Faye Borton at the Department of Developmental Services(DDS). DDS did not respond. In November 2007, the parents filed for a due process hearing as a class action against various agencies. After a settlement agreement and the filing of the original class action lawsuit, the parents on behalf of their son with autism, survived a 9th Circuit Court of Appeals decision, which, while affirming the District Courts decision regarding students who did not exhaust their administrative claims, in fact, allowed those parents who did exhaust, either by settlement or by hearing, to pursue additional claims in federal court. The resulting 2010 amended class action complaint was amended and filed.

California's Region 6 Early Intensive Behavioral Treatment ("EIBT")4-Way Agreement/P.P. & G Class Action Lawsuit

Parents and caregivers in the San Joaquin and Stanislaus Counties of California have long-been alleging unethical and illegal behavior among SELPA agencies, local school districts, Valley Mountain Regional Center (VMRC), Department of Developmental Services (DDS), California Department of Education (CDE), and intensive Applied Behavior Analysis (ABA) agencies Central Valley Autism Project (CVAP), Therapeutic Pathways/The Kendall Schools, Behavioral & Educational Strategies & Training (BEST), and Applied Behavioral Consultants (ABC) and their representatives/staff. One of the major concerns among parents and caregivers involves *nepotism* and *misuse of government monies*. VMRC's autism coordinator of services **Tara Sisemore-Hester** has gone on record many times to remind families that NPA's (Non Public Agencies) stand to make a lot of money in the EIBT co-funded supposedly collaborative model of intensive autism treatment program known as "EIBT" which offers 35-40 hours of one-to-one intervention modeled after Dr. Lovaas's UCLA YAP project. Speculation continues since 1998 and even earlier that **Dr. Jane Howard** co-founder of Therapeutic Pathways, an NPA, together with co-owner **Coleen Sparkman**, CCC SLP have benefited and continue to benefit from the EARLY START monies, authorized in part by **Dr. Howard's husband Rick Ingraham** Director of

Early Start Services at DDS, which monies also help co-fund EIBT for children three years and older. It is suspected that Rick Ingraham's part in the knowing allocation and distribution of public funds, to the private inurement of his wife and her ABA agency, is, as many believe, a ***Conflict of Interest*** worthy of an investigation. Could there be a ***RICO*** violation as well? Many parents and caregivers believe so, and believe that it is high time for Federal and State investigators and lawyers to look into the matter, request for all accounting documentation, and investigate the nepotistic transfer of EARLY START and EIBT public dollars that seems to be making *a lot of money* for ABA agencies CVAP, Pathways, B.E.S.T. per Ms. Tara Sisemore-Hestor's comment. Ms. Sisemore-Hestor has been, for numerous years, allegedly engaged in the complicated interrelationships between the creators and funders of EARLY START and EIBT research programs and IEP services that interlock the agencies listed above, which list of agents likely include **Jane Howard (Pathways)** and **husband Rick Ingraham (DDS) Patty Beck (CDE), Carol Risley (DDS), Faye Borton (DDS), Ann Ciremele (FRN), Sandee Kludt (SJCOE), Regina Hedin (SCOE)**, and many others. (See the *Original Class Action Complaint* below.) Moreover, there is evidence from VMRC Consumer Reports that 15 hours of ABA is being paid at a whopping \$5,400 per month, while a 35-40 hour ABA program costs the same. Critics who represent these agencies have attempted to argue that ABA programming for children under 3 are billed at a higher rate but have offered no valid explanation for this discrepancy. Why would a mere 15 hours of ABA under EARLY START delivered to a child under 3 cost a whopping \$5,400, but for a child who is 3 years or older, an intensive 35-40 hours of ABA costs \$5,400? At these rates, an ABA agency would have ***absolutely NO INCENTIVE*** to serve students 3 and over! As the public, parents, and caregivers continue to ruminate over these and other issues, parents and caregivers of children with autism are praying that the preponderance of the evidence in the recently filed class action will favor the claims of its Plaintiffs who seek to eradicate the illegal systemic policies and practices of the 53 page EIBT 4-Way/PP&G contract and its agents.

- [The Original Class Action Complaint 2007](#)
- [Plaintiff's Appellate Brief 2009](#)
- [Class Action Cover Sheet 2010](#)
- [Class Action Complaint Amended 2010](#)
- [Exhibit A](#)
- [Exhibit B](#)
- [Exhibit C](#)

Other Legal Cases Relating To Autism Services

Appeals Court Allows Parents Sue To Kaiser Permanente In a Class Action For Denying Applied Behavior Analysis Treatment as "Experimental" 2010

- [9th Circuit Court of Appeals Decision](#)
- [Kaiser Permanente Exposed](#)
- [Kaiser's Petition To Compel Arbitration](#)
- [Kaiser's Notice of Demurrer](#)
- [Kaiser's Request For Judicial Notice](#)

Consumer Watchdog Sues the California Department of Managed Health Care For Denying Medically Necessary Autism Treatment, 2009

- [Order on Demurrer 2009](#)
- [Petitioners/Plaintiffs Complaint 2009](#)
- [Exhibits](#)

Advocate and Attorney Listings

- [Senator Dan Burton, Indiana 5th District](#) (scroll down for excellent links to other autism-related sites)
- [Lawyers and Advocates For Disability Rights](#)
- [EIBT Analysis](#)
- [Council of Parent Advocates and Attorneys](#)
- [Wrightslaw Yellow Pages For Kids](#)

EXHIBIT G

Early Intervention Behavior Treatment (EIBT)

and

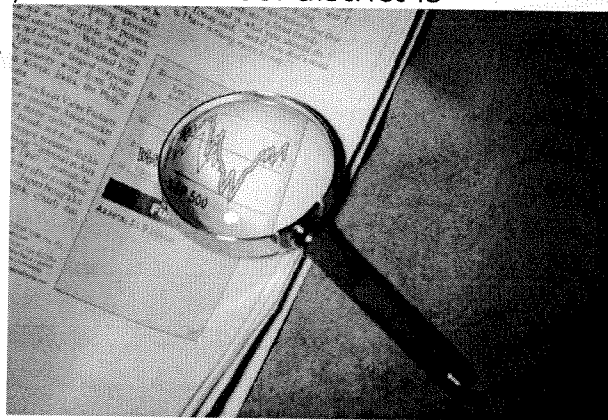
Valley Mountain Regional Center (VMRC)

What is EIBT?

EIBT is a program and phrase coined by Valley Mountain Regional Center (VMRC) located in the San Joaquin Valley of California that serves 5 counties (Stanislaus, San Joaquin, Calaveras, Amador, and Tuolumne). The EIBT program is a clearly-defined program that offers Applied Behavioral Analysis (ABA) to young children with autism. EIBT does have some stringent guidelines for entrance to and exiting from the program. A large document is part of the EIBT program. This document used to be called the 4-way agreement and is now called the Programs, Procedures and Guidelines (or PP&G). This 53 page document is automatically required if you accept the EIBT program for your child. Therefore, you must be fully-informed before you consent to it and the EIBT program. Remember that being fully-informed means that you have been told not only the positives of agreeing to the program, but any possible negatives. You can read the full PP&G **HERE**.

Does my child need EIBT and/or VMRC to receive ABA treatment and therapy?

NO. According to the federal law called IDEA, if your child is over the age of three years old, he or she must be provided with a Free and Appropriate Public Education (or FAPE). If your child needs ABA, then the school district is responsible for providing it. EIBT is merely a funding model whereby VMRC will foot half the bill of the cost of ABA therapy in exchange for the parents to agree for their child to be a part of the EIBT program and adhere to the PP&G. There are many children that receive 35-40+ hours of ABA therapy per week that are not part of EIBT. In fact, there are children that are receiving this level of treatment that are not even



VMRC clients. The fact is, your school district is responsible for your child after the age of three. If your child is under the age of three, he or she is covered under the Lanterman Act. Please contact us for more information if you are being offered EIBT and your child is under the age of three. SNAFU recommends that you write on your signature page of your IEP: "I do not consent to the EIBT program. However, I do consent to the _____ hours per week of ABA therapy."

Is EIBT legal?

While the question of legality is left up to attorneys and courts, you should be aware that a 2008 due process decision found the EIBT PP&G in conflict with the federal law IDEA on several points. You can read the full due process decision **HERE**. You should also know that a class-action lawsuit has been filed in the Eastern District of the Federal Court regarding EIBT and how it has harmed children. SNAFU is not a party to this lawsuit. However, many SNAFU children have been harmed by the criteria and politics of the EIBT program. You can read the federal lawsuit complaint **HERE** and the appellate brief for this lawsuit **HERE** and the oral argument in the 9th Circuit Court of Appeals **HERE**. If you have any questions on this matter, please contact us. *Again, your child can receive EIBT-type services (known throughout the industry as Applied Behavioral Analysis) without the stringent criteria of EIBT. We can help you!*

You should also know that some providers and VMRC have attached additional criteria such as Therapeutic Pathways/Kendall School observation policy released in July 2009 which includes a policy that, on its face, is retaliatory in nature. Specifically it states that if a parent has made a complaint about the program, Therapeutic Pathways/Kendall school can have their attorney present for your parental observation. Some parents have reported they are no longer allowed inside the Kendall School building and must pick up and drop off their children outside the classroom. Parents may wish to explore their feelings about leaving their children in a place they are not allowed to observe and/or observe under very strict guidelines. The rest of the Therapeutic Pathways/Kendall School Visitation and Observation Policy and Procedures can be found **HERE**. Parents whose children receive Therapeutic Pathways/Kendall School or other providers on a school campus and are subject to these policies that differ from the policies of general education students are encouraged to ask the providers to rescind the policies. If they refuse, we strongly recommend filing a complaint of discrimination with the U.S. Department of Education Office for Civil Rights (OCR). More information on how to file a complaint with OCR can be found **HERE** under "Section 504 and the Americans with Disabilities Act" or you may contact us. Update August 2009: After posting this information, we received many phone calls and emails including **THIS** letter from a parent.

Is EIBT a research project?

YES. Although on page 19 of 53 of the PP&G (see above), question number 33

indicates participating in research is not a requirement to participate in EIBT. We suggest specifically stating that you do not consent to your child being a part of any research project on the signature page of the IEP. There are several studies that have used EIBT children. Read CVAP's correspondence with the State of California Committee for the Protection of Human Studies [HERE](#). These studies have come under scrutiny in professional journals. You can read about two of the studies [HERE](#) (Central Valley Autism Project or CVAP) and [HERE](#) (The Kendall School and Therapeutic Pathways).

Even though your child may not be in an ABA program provided by CVAP, Therapeutic Pathways/Kendall School, BEST, ABC or Genesis Behavior Center, your child's information may still be used for the research project. You may want to write a letter or email asking if your child is part of the research project...particularly if your child is in one of the Autism Matrix placements which you can read about [HERE](#). This document was provided by Tara Sisemore of VMRC.

The Howard et al study prompted an ongoing debate and defense of the study. The first scrutiny of the study can be found [HERE](#) followed by the first rebuttal by Tristram Smith which can be found [HERE](#). A special education attorney wrote a rebuttal which can be found [HERE](#). The professional journal was compelled to publish an interesting editorial note [HERE](#) along with Howard et al's rebuttal which can be found [HERE](#). Finally, currently the last page in this hot debate can be found [HERE](#).

While it is a considerable amount of reading, SNAFU's mission is to fully-inform parents so they in turn can make fully-informed decisions regarding their children. In the Howard et al rebuttal, some key points to think about if your child is or has been in EIBT:

"* The nonpublic agency that provided intensive behavior analytic treatment to the experimental group in our study has never refused to serve a child with autism who was referred to its in-home or center-based programs from any of its 17 different funding sources (Special Education Local Planning Agencies, Regional Centers, and school districts), as long as there were adequate resources to staff and supervise the programming."

We know of many children and their parents who were refused entrance into EIBT for many reasons. Some examples include: child is non-verbal, absence of english-speaking supervision in the home, child is too low-functioning, child is too high-functioning, and many more.

"* Neither the staff of the nonpublic agency nor any Regional Center staff person ever directed a child to be placed in any particular intervention program."

We know of many children and their parents who were not even told about the existence of EIBT. We know of parents that were talked out of the program ("oh, that program is a much more restrictive program than the county autism program), your child doesn't qualify for this program, there is a waiting list (or interest list), etc. One VMRC staff person has

repeatedly indicated she controls who gets EIBT and who doesn't.

"* All 61 IEP/IFSP teams responsible for the educational placements of the children in the study acted in accordance with state and federal laws governing special education placement and procedures. That is, those teams--not the authors of the study or any other single individuals--decided which type of intervention children would receive."

This is incorrect. See above discussion. If an authority figure at VMRC touts she controls who gets EIBT and who doesn't, that flies directly in the face of this comment. Additionally, many parents have reported that they were not given the full continuum of placement options to consider. And even if they were, signing the 53-page PP&G document was a requirement for their child to receive ABA therapy. By removing choices, the "types of intervention children would receive" was limited and parents were not given enough information and options to make fully-informed decisions.

You should also be aware that if your child is in EIBT, they are bound to the provisions in the PP&G. One of these provisions is that your child may be assessed at any time. You should also be aware that your child must continually meet the 80% acquisition criteria or could face exiting from the program. If your child is facing exiting (or "transition") from EIBT, please contact us. If your child is over the age of three, the federal law called IDEA contains certain safeguards, including stay-put, that might be very important to your child.

The Point

The point of providing you with all this information is not to overwhelm you but to insure you have access to all the information necessary to make a fully-informed decision regarding your child. If you have any questions, please do not hesitate to contact us. ***Additionally, due to recent threats, we feel we must make an additional disclaimer on this page. Please understand that no information on this site is intended, nor should be construed, as a personal attack on anyone. SNAFU strives to freely share accurate information. Should you feel any information is inaccurate, SNAFU welcomes your input.***

