IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Plaintiffs AW, WL, RC, MJ, CM, and HH on behalf of themselves and all others similarly situated, and Protection and Advocacy for People with Disabilities, Inc., a South Carolina non-profit corporation;	)	
Plaintiffs,	)	CIVIL CASE NO: 2:17-cv-01346-RMG
vs.	)	
John H. Magill, in his official capacity as the Director of the South Carolina Department of Mental Health; the South Carolina Department of Mental Health; and the South Carolina Mental Health Commission;	)	
Defendants.	)	

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR CLASS CERTIFICATION

I. INTRODUCTION

The individual Named Plaintiffs, together with Protection and Advocacy for People with Disabilities, Inc., filed this class action on behalf of themselves and all individuals unnecessarily institutionalized in G. Werber Bryan Psychiatric Hospital ("Bryan").

The individual Named Plaintiffs and the Class are entitled to receive mental health services in integrated community settings. But Defendants John H. Magill (in his official capacity as the Director of the South Carolina Department of Mental Health), the South Carolina Department of Mental Health, and the South Carolina Mental Health Commission (collectively, "Defendants") have failed to develop sufficient community mental health services that would

allow the individual Named Plaintiffs and the Class to leave Bryan and live in integrated settings. As a result, Class members are needlessly segregated and confined to Bryan for months or years, where they are forced to experience the type of "[u]njustified isolation" that the Supreme Court has held to be "discrimination based on disability." *See Olmstead v. L.C.*, 527 U.S. 581, 597 (1999).

This case seeks declaratory and injunctive relief under Title II of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101 et seq., and Section 504 of the Rehabilitation Act ("Section 504") (codified at 29 U.S.C. §§ 701 et seq.), including a single injunctive order requiring that Defendants make sufficient community mental health services available to ensure that the Class receives the services they need to live in their communities instead of in an institution.

This Memorandum is submitted in support of Plaintiffs' Motion for Class Certification. Pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2), Plaintiffs request certification of a class consisting of:

> All current and future adult, non-forensic residents of Bryan Hospital who, with appropriate supports and services, would now or in the future be able to live in an integrated community setting and who do not oppose living in an integrated community setting.

Similar classes have been certified in virtually every recent case seeking to enforce the ADA's integration mandate. *See* Ex. A, List of Selected ADA Class Action Cases. Class certification is similarly appropriate here.

II. STATEMENT OF FACTS

The individual Named Plaintiffs and the Class are persons with mental health disabilities, who are eligible for, and would prefer to receive, mental health services in integrated community settings. (Compl. ¶¶ 12, 20, 29, 37, 45, 55, 64.) But the individual Named Plaintiffs and the Class are nevertheless segregated from the community and consigned to prolonged and unnecessary hospitalization at Bryan, a 530-bed institution for people with mental health disabilities in Columbia, South Carolina. (*Id.* ¶¶ 103, 110, 119, 121.) This needless and harmful institutionalization results from Defendants' failure to implement effective discharge processes and failure to make available the community mental health services and supports that the individual Named Plaintiffs and the Class require. (*See generally* Compl.)

Approximately 152 individuals from across the state are assigned to Bryan's non-forensic, "adult services" beds. (*Id.* ¶¶ 104–05, 122–23.) They are held in five separate units called "lodges," each of which contains three "pods," which consist of three bedrooms and a common area. Up to four residents share each bedroom. (*Id.* ¶¶ 125.) Residents are confined in their lodges, behind locked doors, for the majority of each day. (*Id.* ¶ 126; *see also* Ex. B, Breen Dep. 143:15–25.) All of the individual Named Plaintiffs had been in Bryan for longer than 90 days as of the filing of the Complaint. (Compl. ¶ 140.) This length of stay is not unusual for residents confined at Bryan: within the adult care lodges, the average length of stay in 2012 ranged from 27 days in Lodge D to over 800 days in Lodge G. (*Id.*) In fact, according to the Accountability Report for the South Carolina Department of Mental Health ("SCDMH") for 2013—the last year this statistic was reported—64 percent of SCDMH's inpatient population (which includes those who are institutionalized at Bryan) remained hospitalized for more than 90 days. *See* Ex. C, SCDMH, *Accountability Report FY 2013* at DMH-0656; *see also* Ex. D, Karen

Graydon Dep. 47:10–12 (Feb. 22, 2018) (two-thirds of Ms. Graydon's patients discharged after more than 150 days). Even within Bryan's acute care units, some residents have been unable to leave the hospital for three or more years. *See* Ex. B, Robert Breen Dep. 15:18–16:1 (Jan. 16, 2018).

The individual Named Plaintiffs and the Class have suffered and continue to suffer significant harm as a result of their unnecessary institutionalization at Bryan. Their ability to interact with those outside the hospital is severely restricted. (Compl. ¶ 129.) This includes restrictions on their ability to visit with friends and family beyond designated "visiting hours" and the inability to use the phone outside of "phone hours." (*Id.*) Class members also incur massive medical bills while they remain needlessly confined at Bryan; during their current admissions, for example, the individual Named Plaintiffs have accrued charges ranging from hundreds of thousands of dollars to more than one million dollars. (*Id.* ¶¶ 19, 28, 36, 44, 54, 63.) Defendants charge a minimum daily rate of $503 for each of the members of the proposed Class. (*Id.* at ¶ 133.)

Defendants' policies prevent the individual Named Plaintiffs and the Class from regularly leaving the hospital, and further restrict their movement even within the facility. (*Id.* ¶¶ 126, 128.) All Bryan residents must remain behind the locked doors of their lodge for the majority of the day, while those who violate one of the numerous rules of the lodges are placed on "restriction," during which they cannot leave their lodge to attend group sessions or even to eat in the canteen. (*Id.*) The individual Named Plaintiffs and the Class are therefore unable to make basic choices about their daily lives, such as what food to eat, when to shower, when to go to bed, or how they will pass the time while they are confined within their lodges. (*Id.* ¶ 129.)

The individual Named Plaintiffs and the Class remain at Bryan not because of any clinical need, but because Defendants' systemic policies and practices have caused them to remain needlessly institutionalized. (*Id.* ¶ 124.) In fact, each of the individual Named Plaintiffs could live in the community instead of being confined at Bryan if Defendants made appropriate services and supports available. (*Id.* ¶ 12.) Each of the individual Named Plaintiffs desires to leave Bryan, preferring the opportunity to live more independently, obtain employment, and better maintain relationships with family and friends rather than continuing to languish at the hospital. (*Id.* ¶¶ 20, 29, 37, 45, 55, 64.) Similarly, the rest of the Class could be discharged to the community with appropriate services and supports and would not oppose discharge if Defendants provided a meaningful choice to live in a more integrated setting. (*Id.* ¶ 123.)

Many of Defendants' policies and practices contribute to their violation of the integration mandate of the ADA and Section 504, including their use of inadequate discharge processes that are ineffective in transitioning Bryan residents to the community. (*Id.* ¶ 152.) For example, the SCDMH "Continuity of Care" policy divides responsibility for discharge planning between the hospital social worker and the Community Mental Health Centers ("CMHCs"), which operate the limited amount of community services in the state, leaving no one responsible for ensuring timely discharge. *See* Ex. E, SCDMH, *Community Liaison and Casemanger [sic] Discharge Planning Policy* at DMH-00065–67; (*see also* Compl. ¶ 106; 143–168). Meanwhile, the official policy of the SCDMH Division of Inpatient Services makes the patient's social worker, who may not be the hospital social worker mentioned above, responsible for coordinating the necessary transfer, living arrangements, and follow-up care for Bryan residents who are ready for discharge. Ex. F, SCDMH, Division of Inpatient Services, *Discharge Planning and Procedures* at DMH-00384–89. In practice, however, yet another individual, the

"CMHC hospital liaison," is actually responsible for coordinating discharge planning for most residents, despite the fact that these hospital liaisons generally do not attend treatment team meetings and have little to no contact with their assigned residents, limiting their understanding of the residents' preferences and needs. (Compl. ¶¶ 147–50; *see also* Ex. B, Breen Dep. 37:5–11; Ex. D; Graydon Dep. 142:10–24; Ex. G, Wm. McDaniel Dep. 50:3–17 (Feb. 8, 2018).)

Bryan itself has yet another conflicting discharge policy that applies to the individual Named Plaintiffs and the Class, and which sets forth various steps for identifying discharge placement options. *See* Ex. H, *Social Work Discharge Planning Manual* at DMH-00143–52 (Oct. 1, 2015). But the reality is that this policy is also ineffectual in actually facilitating discharge from Bryan because the decision as to whether a resident may be discharged is limited by what is available in the community. (Compl. ¶ 136.) As a result, residents remain stuck at Bryan both because Defendants fail to ensure that someone is actively looking for placements outside of the hospital, and because there is no place in the community for residents to go. (*Id.* ¶¶ 136–37.) In other words, systemic deficiencies in the discharge process prevent effective discharge planning from ever taking place. (*See* Compl. ¶¶ 152, 171).

Defendants further impede successful transitions into integrated community settings by overreliance on other types of institutional settings, mainly Community Residential Care Facilities ("CRCFs"). (Compl. ¶ 185.) Also known as assisted living facilities, CRCFs are themselves segregated, restrictive settings where the residents, virtually all of whom are people with disabilities, are denied the ability to engage with the greater community or make basic decisions about their daily lives. (*Id.* ¶¶ 153, 177–78.)[1] For Bryan residents without an

[1] Notably, CRCF residents do not even receive community services that would reduce the risk of re-hospitalization. (*Id.* ¶¶ 184, 189.) As a 2016 report from the Office of the State Inspector General noted, residents of many CRCFs were simply "untreated," which the report

established residence, a CRCF is typically the only placement option that will be considered for discharge, especially given the shortage of more appropriate options in the community. (*Id.* ¶ 153); *see also* Ex. G, McDaniel Dep. 58:24–59:8 ("it's very rarely that I'll take somebody out of Bryan and put them in independent living"); Ex. D, Graydon Dep. 18:15–22 (fourteen out of sixteen patients discharged to CRCFs, two discharged to families.) This practice forces residents to remain at Bryan for long periods of time, even after they have been found discharge-ready, if they do not want to be discharged to an isolated, institutional CRCF (with no community services). (Compl. ¶¶ 157–59.)

Defendants' overreliance on CRCFs is indicative of their broader decision to fund beds at institutions instead of developing needed community mental health services. (*See id.* ¶¶ 192–96, 216; Ex. J, Solicitation for Bids at DMH-00208 (seeking additional CRCF providers for DMH clients); c*f.* Answer, ¶ 72.) Indeed, by focusing on the expansion of institutional settings like hospitals and CRCFs, Defendants have diverted needed funds away from the development of community mental health services and supports.[2] As a result, and despite decades of reports identifying state-wide deficiencies in the availability of community services, Defendants have failed to ensure access to community services that are known to prevent unnecessary institutionalization, including supportive housing, mobile crisis units, Assertive Community Treatment, intensive case management teams, supportive employment, and peer support services.

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identified as "a form of abuse." Ex. I, Office of the State Inspector General, *Review of the Community Residential Care Facilities Program* at 12 (March 2016).

[2] A 2016 report commissioned by the South Carolina Department of Health and Human Services found that "[n]ot only is funding limited in South Carolina, but funding that is available is often spent on supporting agency owned and operated facility-based settings. Large amounts of [Department of Mental Health] . . . resources are tied to residential programs, funding bricks and mortar as opposed to developing services and supports that would allow individuals to live in housing of their choice. . . . Consumers and advocates agree that there would be less reliance on CRCFs if [Permanent Supportive Housing] options were available." Ex. K, Technical Assistance Collaborative, *Permanent Supportive Housing Strategic Plan* at 9 (February 2016).

See Ex. L, South Carolina Institute of Medicine & Public Health Behavioral Health Taskforce, *Hope for Tomorrow: The Collective Approach for Transforming South Carolina's Behavioral Health Systems* at 8, 24–25 (May 2015) ("*Hope for Tomorrow*"); *see also* Ex. B, Breen Dep. 42:4–9; Ex. G, McDaniel Dep. 45:3–7; Ex. K, Technical Assistance Collaborative, *Permanent Supportive Housing Strategic Plan* at 10–11 (February 2016); (Compl. ¶¶ 202–10).

This lack of community services is a direct—but not the only—cause of the individual Named Plaintiffs and the Class remaining unnecessarily institutionalized at Bryan. *See* Ex. L, *Hope for Tomorrow* at 25; *see also* Ex. B, Breen Dep. 51:1–12. The systemic shortage of community services also causes individuals with mental health disabilities to be needlessly hospitalized at Bryan in the first place, and forces former Bryan residents who have been discharged to return to the hospital when they experience setbacks for lack of adequate care. (*See* Compl. ¶ 187.) For instance, the state's Mental Health Housing Task Force explained in its January 2017 Progress Report that "[s]afe, appropriate, and affordable housing with access to mental health services is a key component in ensuring a person with a mental illness living in the community remains stable and in recovery." Ex. M, Mental Health Housing Task Force, *Progress Report* at 1 (January 2017).[3] But despite this fact, the "housing crisis continues for persons with mental illnesses in South Carolina," and "there remains a critical need to expand community-based housing options." *Id.*; *see also* Ex. D, Graydon Dep. 64:11–17 (no patients on Lodge F discharged to supported living).

This action seeks to enforce the rights of the individual Named Plaintiffs and the Class, under Title II of the ADA and Section 504, to live and receive services in integrated community

[3] The Mental Health Housing Task Force includes representatives from SCDMH, CMHCs, and inpatient facilities, as well as additional stakeholders including other state agencies and private providers.

settings instead of being unnecessarily hospitalized at Bryan. Defendants have uniformly subjected class members to needless institutionalization and segregation as a result of inadequate discharge processes and their failure to develop an appropriate state-wide array of community mental health services and supports. The individual Named Plaintiffs and the Class therefore remain confined at Bryan not because hospitalization is necessary, but as a result of Defendants' systemic actions and inactions in the administration and funding of the state's mental health system. These actions and inactions are the cause of the class members' shared injury and the basis of their common legal claims, all of which can be resolved by a single injunction requiring Defendants to reform their discharge processes and develop community services, creating a benefit for the entire Class.

III. ARGUMENT: THE PROPOSED CLASS SATISFIES FRCP 23

The party moving for class certification must satisfy the four criteria listed in Rule 23(a): (1) the class must be so numerous that joinder of all members is impracticable; (2) there must be questions of law or fact common to the class; (3) the claims or defenses of the representative parties must be typical of the claims or defenses of the class; and (4) the representative parties must fairly and adequately protect the interests of the class. Fed. R. Civ. P. 23(a)(1)–(4). The moving party must also satisfy one of the three components of Rule 23(b). The relevant component here, Rule 23(b)(2), requires that the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive or declaratory relief is appropriate for the class as a whole. Fed. R. Civ. P. 23(b)(2).

The Fourth Circuit has instructed district courts to give Rule 23 "a liberal, rather than a restrictive, construction." *Good v. Am. Water Works Co.*, 310 F.R.D. 274, 285 (S.D.W. Va. 2015) (quoting *Gunnells v. Healthplan Servs., Inc.*, 348 F.3d 417, 424 (4th Cir. 2003)); *see also KBC Asset Mgmt. NV v. 3D Sys. Corp.*, No. CV 0:15-2393-MGL, 2017 WL 4297450, at *2

(D.S.C. Sept. 28, 2017) (also citing *Gunnels*). Courts routinely certify classes in cases challenging government officials' noncompliance with Title II of the ADA. *See* Ex. A, List of Selected ADA Class Action Cases. Class certification is especially common where the action challenges the unnecessary institutionalization of people with disabilities in violation of the ADA's integration mandate; in fact, courts have certified numerous classes of people with disabilities who were unnecessarily institutionalized and seeking declaratory and injunctive relief similar to the systemic remedies sought here. *See, e.g.*, *Steward v. Janek*, 315 F.R.D. 472 (W.D. Tex. 2016) (certifying class of persons with intellectual or developmental disabilities who were current or future residents in nursing facilities or were or should have been screened for admission to nursing facilities); *Dunakin v. Quigley*, 99 F. Supp. 3d 1297 (W.D. Wash. 2015) (certifying class of current or future nursing facility residents with an intellectual disability); *Kenneth R. ex rel. Tri-Cnty CAP, Inc./GS v. Hassan*, 293 F.R.D. 254 (D.N.H. 2013) (certifying class of persons with serious mental illness unnecessarily institutionalized in a state facility or at serious risk of unnecessary institutionalization); *Van Meter v. Harvey*, 272 F.R.D. 274 (D. Me. 2011) (certifying class of persons either admitted to nursing facilities or are candidates for admission); *Colbert v. Blagojevich*, No. 07 C 4737, 2008 WL 4442597 (N.D. Ill. Sept. 29, 2008) (certifying class of adults with disabilities unnecessarily confined to nursing facilities).

Here, the individual Named Plaintiffs are members of the Class, and the Class is precisely defined.[4] Furthermore, and as set forth below, the proposed Class easily satisfies the

[4] At the time of certification, plaintiffs "need not be able to identify every class member," *EQT Prod. Co. v. Adair*, 764 F.3d 347, 358 (4th Cir. 2014), and must establish only "that there is a method by which class membership could be clearly ascertained." *Brooks v. GAF Materials Corp.*, No. 8:11–CV–00983–JMC, 2012 WL 5195982, at *3 (D.S.C. Oct. 19, 2012) (aff'd as clarified, 2013 WL 461468 at *4 (Feb. 6, 2003). Because Defendants routinely document the names and status of Bryan residents, (*see* Ex. B, Breen Dep. 103:8–12), the Court will be able to "readily identify the class members in reference to objective criteria." *EQT Prod. Co.*, 764 F.3d

requirements for certification because Defendants' systemic actions and inactions have caused the entire Class to be injured through unnecessary institutionalization at Bryan, and the individual Named Plaintiffs are seeking injunctive and declaratory relief that will benefit the Class as a whole.

A. The proposed class is so numerous that joinder is impracticable.

A proposed class must be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). There is "[n]o specified number" needed to satisfy this requirement, *Cypress v. Newport News Gen. & Nonsectarian Hosp. Ass'n*, 375 F.2d 648, 653 (4th Cir. 1967), although courts have presumed that joinder is impracticable whenever a proposed class includes more than 25 members. *See Scott v. Clarke*, 61 F. Supp. 3d 569, 584 (W.D. Va. 2014); *see also Brady v. Thurston Motor Lines*, 726 F.2d 136, 145 (4th Cir. 1984) (class of 74 persons was "well within the range appropriate for class certification"). Rule 23(a)(1) may also be satisfied where problems with the "ease of identifying [class member's] numbers and determining their addresses, facility of making service on them if joined and their geographic dispersion" make joinder impracticable. *George v. Duke Energy Ret. Cash Balance Plan*, 259 F.R.D. 225, 231 (D.S.C. 2009) (quoting *Kilgo v. Bowman Transp., Inc.*, 789 F.2d 859, 878 (11th Cir. 1986)).

These factors all weigh strongly in favor of finding that Rule 23(a)(1) is satisfied here. The Class consists of approximately 152 individuals who are currently institutionalized in the adult care lodges at Bryan, (Compl. ¶ 110), as well as additional persons who will be needlessly hospitalized at Bryan in the future. Courts have frequently found that much smaller classes satisfy Rule 23(a)(1). *See, e.g.*, *Cypress*, 375 F.2d at 653 (proposed class of 18 people was sufficient); *Kirven v. Cent. States Health & Life Co. of Omaha*, No. 3:11-CV-2149-MBS, 2014

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347 at 358; *see also* Ex. D, Graydon Dep. 120:20–121:5 (master treatment plan updates indicate when patient is ready for discharge).

WL 12734325, at *4–5 (D.S.C. Dec. 12, 2014) (finding numerosity satisfied for proposed class of "at least thirty-six policyholders in addition to Plaintiff"); *Dashiell v. Van Ru Credit Corp.*, 283 F.R.D. 319, 321 (E.D. Va. 2012) (certifying class of 65 members, noting that a class of this size was "large enough to create a presumption of numerosity"); *see also Thomas v. La.-Pac. Corp.*, 246 F.R.D. 505, 509 (D.S.C. 2007) (numerosity requirement satisfied by proposed class estimated to include 130 homeowners).

This estimate of the size of the class is sufficient to satisfy Rule 23(a)(1), as Plaintiffs are not "required to identify the precise number of persons in the purported class in order to demonstrate impracticability of joinder" and can instead rely upon a reasonable estimate of the size of the class. *See Mitchell v. Conseco Life Ins. Co.*, No. CA 8:12-548-TMC, 2013 WL 5372776, at *3 (D.S.C. Sept. 24, 2013) (citing *Doe v. Charleston Area Med. Ctr., Inc.*, 529 F.2d 638, 645 (4th Cir.1975) ("[w]here the plaintiff has demonstrated that the class of persons he or she wishes to represent exists, that they are not specifically identifiable supports rather than bars the bringing of a class action, because joinder is impracticable"); *see also Brooks v. GAF Materials Corp.*, No. 8:11-CV-00983-JMC, 2013 WL 461468, at *3 (D.S.C. Feb. 6, 2013) ("the court is not required to identify all potential class members to determine numerosity for class certification purposes"); *Talbott v. GC Servs. Ltd. P'ship*, 191 F.R.D. 99, 102 (W.D. Va. 2000) ("[t]he court may certify a class based on a common sense estimation"); *Jordan v. Lyng*, 659 F. Supp. 1403, 1410 (E.D. Va. 1987) (numerosity satisfied "[a]lthough the precise number is not known"); *Haywood v. Barnes*, 109 F.R.D. 568, 576–77 (E.D.N.C. 1986) ("the fact that the precise number of potential members of the class can not [sic] be ascertained does not bar class certification" where plaintiffs rely upon a "reasonable estimate").

In fact, where a class seeks injunctive and declaratory relief—as the proposed class does here—courts regularly find that Rule 23(a)(1) is satisfied absent a precise enumeration of class members. *See, e.g., Charleston Area Med. Ctr., Inc.*, 529 F.2d at 645 ("[w]here 'the only relief sought for the class is injunctive and declaratory in nature . . . ,' even 'speculative and conclusory representations' as to the size of the class suffice as to the requirement of many") (quoting *Doe v. Flowers*, 364 F. Supp. 953, 954 (N.D.W. Va. 1973), *aff'd mem.*, 416 U.S. 922 (1974)); *Harris v. Rainey*, 299 F.R.D. 486, 490 (W.D. Va. 2014) (certifying class of same-sex couples seeking injunctive relief based on plaintiffs' "good faith estimate" of the size of the class).

Finally, courts find Rule 23(a)(1) satisfied where, absent certification, class members are "unlikely to seek vindication of their rights." *Moodie v. Kiawah Island Inn Co.*, 309 F.R.D. 370, 377 (D.S.C. 2015) (finding Rule 23(a)(1) met for class consisting of foreign workers who, lacking financial resources and familiarity with the judicial system, were unlikely to pursue their claims absent class certification). To that end, courts have consistently recognized the impracticability of joinder in actions brought by populations of institutionalized persons or persons with disabilities. *See, e.g.*, *Scott*, 61 F. Supp. at 584 (factors including fluidity of prison populations and individual prisoners' lack of access to counsel made joinder impracticable); *Kenneth R.*, 293 F.R.D. at 265 ("The size of the class, the asserted disabilities of proposed class members, and geographic diversity, make it 'highly unlikely that separate actions would follow if class treatment were denied.'") (quoting *Armstead v. Pingree*, 629 F. Supp. 273, 279 (M.D. Fla. 1986)); *Pashby v. Cansler*, 279 F.R.D. 347, 353 (E.D.N.C. 2011), *aff'd and remanded sub nom. Pashby v. Delia*, 709 F.3d 307 (4th Cir. 2013) (the inclusion of future Medicaid recipients who would be affected by the policy, disbursement of class members throughout the state, and

fluid composition of the Medicaid recipient population all supported a finding of numerosity); *Van Meter*, 272 F.R.D at 282 ("The putative class members all suffer from disabilities . . . they are all either admitted to nursing facilities or candidates for admission. Their enrollment in MaineCare suggests their financial resources may be limited. These qualities would make it difficult for the putative class members to bring their own individual actions."); *Rolland v. Cellucci*, No. Civ. A 98-30208-KPN, 1999 WL 34815562 at *3 (D. Mass., Feb. 2, 1999) ("the inability of nursing home residents with mental retardation and developmental disabilities to initiate actions on their own behalf is an obvious factor strongly supporting class certification").

In this case, the proposed class is composed of individuals with serious mental illness who are unnecessarily institutionalized in a segregated, restrictive setting. (*See* Compl. ¶¶ 108–09.) They face limitations on their access to telephones, writing materials, and visitors, generally lack access to counsel, and often have limited financial means. (*Id.* ¶¶ 125–30.) This proposed class of at least approximately 152 individuals is therefore not only sufficiently numerous, but also consists of those who are unlikely to vindicate their own rights, making joinder impracticable. Accordingly, the proposed class satisfies the requirements of Rule 23(a)(1).

B. Class members share common questions of law and fact.

Plaintiffs also must establish that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). This requires a showing that the class members have "suffered the same injury," and that the claims of the class "depend on a common contention" that "is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Plaintiffs need only establish the existence of "a single [common] question" of law or fact. *Id.* at 359 (internal citation and quotation marks

omitted); *see also, e.g.*, *Kirven*, 2014 WL 12734325 at *5 (finding a "single common question" regarding adjustment of insurance claims was sufficient to satisfy commonality).

The Fourth Circuit has rejected the argument that the Supreme Court's holding in *Wal-Mart* represents a "sea change" meant to limit class litigation to "the most exceptional of cases." *See Brown v. Nucor Corp.*, 785 F.3d 895, 901 (4th Cir. 2015) (internal quotations omitted). In particular, courts in this circuit have recognized that *Wal-Mart* is largely limited to "claims for damages as to which certification [is] sought under Rule 23(b)(3)," finding that Rule 23(a)(2)'s "commonality element is more easily established in proposed class actions seeking injunctive or declaratory relief" because "'suits for injunctive relief by their very nature present common questions of law and fact.'" *Scott*, 61 F. Supp. 3d at 585 (quoting *McGlothlin v. Connors*, 142 F.R.D. 626, 633 (W.D. Va. 1992)).

Thus, in the wake of *Wal-Mart*, courts in the Fourth Circuit have continued to find that "[w]here the injuries complained of by named plaintiffs allegedly result from the same unlawful pattern, practice, or policy of the defendants, the commonality requirement is usually satisfied." *Parker v. Asbestos Processing, LLC*, No. 0:11-CV-01800-JFA, 2015 WL 127930, at *7 (D.S.C. Jan. 8, 2015) (finding commonality satisfied by claims regarding defendants' practices of using uniform documents and using paralegals to sign retainer agreements); *see also Scott v. Family Dollar Stores, Inc.*, 733 F.3d 105, 114 (4th Cir. 2013) (noting that a putative class could still satisfy the commonality requirement by stating "an allegation of a company-wide policy of discrimination"); *Moodie*, 309 F.R.D. at 377 (finding commonality among claims arising from defendants' general practices in setting and deducting from wages); *Pashby*, 279 F.R.D. at 353 (finding commonality requirement satisfied because a determination of the validity of state

Medicaid policy and whether defendants' conduct violated due process would "resolve the claims of all potential plaintiffs, irrespective of their particular factual circumstances").

Courts also usually find that Rule 23(a)(2) is satisfied in ADA Title II actions challenging systemic policies and procedures that have resulted in unnecessary institutionalization and segregation. *See, e.g.*, *Kenneth R.*, 293 F.R.D. at 268–69 (finding commonality satisfied in case challenging unnecessary institutionalization as a result of systemic deficiencies in state's policies and practices); *Lane v. Kitzhaber*, 283 F.R.D. 587, 595–96 (D. Or. 2012) (finding Rule 23(a)(2) satisfied in challenge to a state's systemic policies, practices, and failures, all of which had led to the unnecessary segregation of people with disabilities in sheltered workshops and rejecting the argument that *Wal-Mart* imposes a heightened proof standard in class actions alleging violation of the integration mandate). That commonality is frequently met in ADA Title II cases is not surprising: these cases focus on the standardized conduct of defendants rather than on individualized determinations of liability or remedy. *See Steward*, 315 F.R.D. at 482 (plaintiffs' claims alleging unnecessary institutionalization as a result of systemic deficiencies in the availability of community services raised common questions because, "although the State's failures may be unique to each individual class member, the failures can also be quantified and remedied by the Court in ways that are common across the class").

Like other ADA Title II cases, the commonality requirement is satisfied here. Class members are suffering a common injury—unnecessary segregation and institutionalization—as a result of a common course of conduct by Defendants. Plaintiffs have identified a number of common questions of law and fact sufficient to satisfy Rule 23(a)(2), including:

- Whether Defendants are violating the ADA and Section 504 by failing to provide services in the most integrated setting appropriate.

- Whether Defendants are violating the ADA and Section 504 by utilizing methods of administration in their mental health system resulting in unnecessary segregation.
- Whether Defendants are violating the ADA by failing to make reasonable modifications to programs and services to provide integrated community services required to end unnecessary hospitalization.
- Whether Defendants are violating the ADA and Section 504 by overly and inappropriately relying upon segregated facilities, namely CRCFs, as a basis for community services.
- Whether Defendants have a comprehensive and effective working plan for providing services in the most integrated setting appropriate, i.e., an *Olmstead* plan. *See Olmstead*, 527 U.S. at 587.

(Compl. ¶ 111.) Each of these common factual and legal questions can be resolved on a class-wide basis because they turn on the "alleged systemic failure" of Defendants rather than on "an individual plaintiff's particular" circumstances. *See Scott*, 61 F. Supp. 3d at 585–86, 587 (W.D. Va. 2014) (finding Rule 23(a)(2)'s commonality requirement satisfied because resolving whether defendants' "policies and practices place the Plaintiffs and other current and future FCCW prisoners at a substantial risk of serious harm to which the Defendants are deliberately indifferent implicates questions of fact and law common to the entire putative class").

The fact that Class members' claims arise out of their shared experiences within a *single* institutional setting further underscores the commonality of their claims. *See Brown*, 785 F.3d at 914 (explaining that a "centralized, circumscribed environment generally increases the uniformity of shared injuries"). All Class members are subject to the same institution-wide set of discharge policies imposed by Defendants. *See, e.g.*, Ex. E, SCDMH *Community Liaison and*

Casemanger [sic] Discharge Planning Policy at DMH-00065–67; Ex. F, SCDMH, Division of Inpatient Services, *Discharge Planning and Procedures* at DMH-00384–89; Ex. H, *Social Work Discharge Planning Manual*, Oct. 5, 2015 at DMH-00145. All Class members are also subject to Defendants' overreliance on placing Bryan residents in other restrictive, segregated settings—especially CRCFs. (*See* Compl. ¶ 185–88; *see also* Ex. G, McDaniel Dep. 58:24–59:8; Ex. I, Office of the State Inspector General, *Review of the Community Residential Care Facilities Program* at 12 (March 2016).) Likewise, Class members are uniformly affected by Defendants' decision to fund institutions instead of developing community services, notwithstanding decades of reports identifying statewide deficiencies in the availability of community services known to prevent unnecessary institutionalization. (Compl. ¶¶ 195–200; Ex. L, *Hope for Tomorrow* at 8, 24–25.)

In short, Class members are unnecessarily institutionalized and segregated at Bryan—instead of receiving the services and supports that would enable them to live in the community—because of how Defendants have chosen to administer South Carolina's mental health system. (*See, e.g.*, Compl. ¶¶ 136–37, 147–52, 170.) A single injunction requiring that Defendants rectify these systemic deficiencies will resolve the Class members' common injury of needless institutionalization in violation of the ADA and Section 504. Accordingly, like other ADA Title II cases where courts have found commonality, Rule 23(a)(2) is satisfied here. *See* Ex. A, List of Selected ADA Class Action Cases.

C. <u>The claims of the named representatives are typical of those of the class</u>.

Plaintiffs also must show that "the claims or defenses of the representative parties" are "typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). Individual Named Plaintiffs do not need to have claims that are "perfectly identical or perfectly aligned" with other

class members. *Deiter v. Microsoft Corp.*, 436 F.3d 461, 467 (4th Cir. 2006). Instead, the claims of named plaintiffs are typical of those of the class when facts supporting the elements of named plaintiffs' prima facie case "would also prove the claims of the absent class members," *Soutter v. Equifax Info. Servs.*, LLC, 498 F. App'x 260, 264–65 (4th Cir. 2012); *see also Gresser v. Wells Fargo Bank, N.A.*, No. CIV. CCB-12-987, 2014 WL 1320092, at *2 (D. Md. Mar. 31, 2014) ("[f]actual differences do not necessarily render a claim atypical"). In other words, the interests of the representative parties "must simultaneously tend to advance the interests of the absent class members," *Deiter*, 436 F.3d at 466–67, such that "as goes the claim of the named plaintiff, so go the claims of the class." *Id.* (quoting *Broussard v. Meineke Discount Muffler Shops, Inc.*, 155 F.3d 331, 340 (4th Cir. 1998)).

Rule 23(a)(3) is therefore met when the named plaintiffs and the absent class members are all aggrieved by the same conduct and rely on the same legal theories. *See, e.g.*, Adair, 320 F.R.D. at 398 (typicality satisfied where named plaintiffs' evidence that "the defendants engaged in certain practices common to all putative class members . . . and any breach of fiduciary duty arising from them, would likewise apply to the claims of the rest of the class"); *Rehberg v. Flowers Baking Co. of Jamestown*, No. 3:12-CV-00596-MOC, 2015 WL 1346125, at *9–10 (W.D.N.C. Mar. 24, 2015) (named plaintiff's claims were typical of the class because all were subject to defendants' "uniform application" of the "same standardized policy," "signed the same agreement" with defendants, "were subject to similar managerial oversight and executive decision making," and suffered the same injury); *Scott*, 61 F. Supp. 3d at 589 (finding typicality satisfied because establishing named plaintiffs' claims of systemic deficiencies in medical care system at correctional facility would lead to relief that "would doubtless benefit the named Plaintiffs and all other FCCW prisoners alike"); *Gray v. Hearst Commc'ns, Inc.*, C/A No. 8:08-

CV-01833-GRA, 2010 WL 11531121, at *9 (D.S.C. Feb. 1, 2010), *aff'd*, 444 F. App'x 698 (4th Cir. 2011) (Rule 23(a)(3) met because the inquiry into the plaintiffs' claims of unfair trade practices "focuses solely on the conduct of Defendants and does not require individual inquiry of class members. As such, the claims of the representative parties are the same as those of the class").

Courts further find Rule 23(a)(3) satisfied in cases focusing on the failure of government officials to comply with Title II of the ADA. *See* Ex. A, List of Selected ADA Class Action Cases; *see also supra* at p. 16 (discussing certification of classes in Title II cases challenging unnecessary institutionalization and segregation). Rule 23(a)(3) is likewise satisfied here. The individual Named Plaintiffs and the Class have all have been subject to the same unnecessary segregation and institutionalization at Bryan as a result of Defendants' policies and practices, including Defendants' uniform imposition of faulty discharge policies at Bryan, overreliance on institutional settings, and failure to develop adequate community services. (*See, e.g.*, Compl ¶ 151–57; *see also supra* at pp. 16–18 (describing Defendants' policies and practices that are common to the Class and give rise to the Class' claims).) Furthermore, the claims of the individual Named Plaintiffs and the Class are based on the same legal theories regarding Defendants' discriminatory administration of South Carolina's mental health system, and the evidence establishing these claims will simultaneously resolve the claims of the entire class. *See supra* at pp. 16–18. Accordingly, the typicality requirement under Rule 23(a)(3) is met.

D. <u>The named representatives will fairly and adequately represent the class.</u>

The final requirement of Rule 23(a) provides that the representative parties must "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). This requirement has two components. First, the individual Named Plaintiffs must not "have any interest antagonistic

to the rest of the class." *Brunson v. La.-Pac. Corp.*, 266 F.R.D. 112, 120 (D.S.C. 2010) (quoting *S.C. Nat'l Bank v. Stone*, 139 F.R.D. 325, 329–30 (D.S.C.1991)). Second, the Plaintiffs' attorneys must be "qualified, experienced and generally able to conduct the proposed litigation." *Id.* Adequacy of representation is "presumed in the absence of any evidence that named plaintiffs have a conflict of interest with other class members, or that counsel are unqualified." *DeGidio v. Crazy Horse Saloon & Rest., Inc.*, No. 4:13-CV-02136-BHH, 2017 WL 5624310, at *13 (D.S.C. Jan. 26, 2017), *aff'd and remanded Degidio v. Crazy Horse Saloon & Rest. Inc.*, 880 F.3d 135 (4th Cir. 2018)).

Courts commonly find that Rule 23(a)(4) is met. *See, e.g.*, *Ward v. Dixie Nat. Life Ins. Co.*, 595 F.3d 164, 181 (4th Cir. 2010) (no abuse of discretion in finding named representative adequate when defendants alleged only a hypothetical conflict with some members of the class); *Reed v. Big Water Resort, LLC*, No. 2:14-CV-1583-DCN, 2015 WL 5554332, at *8 (D.S.C. Sept. 21, 2015) (finding named plaintiffs could adequately represent the proposed class because they "share the common objective of seeking a remedy for defendants' alleged unlawful conduct and . . . have the same interests as the class in establishing the liability of the defendants"); *Rehberg v. Flowers Baking Co. of Jamestown*, LLC, No. 3:12-CV-00596-MOC, 2015 WL 1346125, at *11 (W.D.N.C. Mar. 24, 2015) (named plaintiff was adequate representative because he shared "the same interests as all other distributors" and sought the same resolution as other class members); *Temp. Servs., Inc. v. Am. Int'l Grp., Inc.*, No. 3:08-CV-00271-JFA, 2012 WL 13008138, at *3 (D.S.C. July 31, 2012) (named representatives were adequate because "there has been no showing of either an actual or potential conflict between the Lead Plaintiffs and the members of the class," and the Lead Plaintiffs and counsel had vigorously represented the class); *Romero v. Mountaire Farms, Inc.*, 796 F. Supp. 2d 700, 715 (E.D.N.C. 2011) (finding "no

conflicts or antagonistic interests of the named Plaintiffs to the interests of any other" class members because all had the same interests of recovering wages). Rule 23(a)(4) is likewise met here.

1. The named representatives are adequate.

The individual Named Plaintiffs and the Class share the same goal of pursuing their rights to live and receive services in integrated community settings. Moreover, the resolution sought by the individual Named Plaintiffs—injunctive and declaratory relief requiring that Defendants reform their policies and procedures in accordance with these rights—would equally benefit absent Class members. Because "all class members share common objectives and the same factual and legal positions [and] have the same interest in establishing the liability of [defendants]," the individual Named Plaintiffs are adequate representatives. *See Ward*, 595 F.3d at 180 (quoting *Gunnells*, 348 F.3d at 424).

2. Class counsel are adequate.

Class counsel will be found adequate where the attorneys have experience with class actions and with the particular claims asserted, and will vigorously pursue the case. *See Kirven*, 2014 WL 12734325 at *6 (proposed class counsel were adequate based upon experience with class actions and the particular contractual terms at issue); *Cuming v. S.C. Lottery Comm'n*, No. 3:05-CV-03608-MBS, 2008 WL 906705, at *5 (D.S.C. Mar. 31, 2008) ("In the absence of proof to the contrary, courts presume that class counsel is competent and sufficiently experienced to prosecute vigorously the action on behalf of the class.") (quoting *Hewlett v. Premier Salons Int'l, Inc.*, 185 F.R.D. 211, 218 (D. Md. 1997)).

Protection and Advocacy for People with Disabilities, Inc. ("P&A") has been designated by the State of South Carolina as the protection and advocacy organization for South Carolina

since 1977. S.C. Code Ann. § 43-33-310 to 43-33-400. Pursuant to federal and state law, P&A has the statutory authority to pursue legal, administrative, and other appropriate remedies to advocate for the rights and interests of people with disabilities. P&A's experience includes bringing class action lawsuits on behalf of people with disabilities. In addition, P&A brings a deep knowledge of the state's mental health system to this case, including extensive experience working with people receiving both institutional and community services. P&A is also in direct contact with the individual Named Plaintiffs and others in the Class.

The Judge David L. Bazelon Center for Mental Health Law (the "Bazelon Center") is nationally recognized for its expertise in disability law, including its advocacy for the rights of adults with mental health disabilities to live in integrated settings. A primary focus of the Bazelon Center's work involves efforts to remedy disability-based discrimination through enforcement of the ADA. Since its founding in 1972, the Bazelon Center has served as co-counsel in many class action cases seeking to enforce the ADA around the country, including playing a significant role in the *Olmstead v. L.C.* case.

Womble Bond Dickinson (US) LLP ("Womble") is a private law firm with more than 540 attorneys in the United States, including three offices based in South Carolina. Womble, in its current form and under its previous iteration as Womble Carlyle Sandridge & Rice, LLP, has broad experience in complex federal and state litigation, including class actions. It has served as local and class counsel in numerous state and federal class matters, including matters relating to building trim products, condominium conversions, synthetic stucco, shingles, window products, car emissions, and other complex matters.

The Plaintiffs' resources are adequate to represent the Class competently, and they have no interests or commitments that are antagonistic to, or that would detract from, their efforts to seek a favorable decision for the Class in this case. As a result, Rule 23(a)(4) is satisfied.

E. Defendants have acted and refused to act on grounds that apply generally to the class, so injunctive relief is appropriate for the class as a whole.

In addition to satisfying the requirements of Rule 23(a), plaintiffs seeking certification under Rule 23(b)(2) must also establish that defendants have "acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). The key to this requirement is "the indivisible nature of the injunctive or declaratory remedy warranted," such that "a single injunction or declaratory judgment would provide relief to each member of the class." *Wal-Mart Stores, Inc.*, 564 U.S. at 360–61 (internal citations and quotations omitted).

Courts readily certify classes in civil rights cases under Rule 23(b)(2), recognizing that this rule is well suited to address discrimination cases "seeking a court order putting an end to that discrimination." *Thorn v. Jefferson-Pilot Life Ins. Co.*, 445 F.3d 311, 330 (4th Cir. 2006) (citing *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997) ("[c]ivil rights cases against parties charged with unlawful, class-based discrimination are prime examples [in which class certification is proper under Rule 23(b)(2)]")). In fact, Rule 23(b)(2) itself was adopted in 1966 in the wake of civil rights class actions that challenged various policies and practices concerning racial segregation. *Wal-Mart Stores, Inc.*, 564 U.S. at 361 ("[i]n particular, the Rule reflects a series of decisions involving challenges to racial segregation—conduct that was remedied by a single classwide order"); *see also Harris v. Rainey*, 299 F.R.D. 486, 494 (W.D. Va. 2014) (noting the propriety of certifying a Rule 23(b)(2) class in actions alleging "a class-wide violation of civil rights" and certifying class in action challenging state marriage laws);

Bumgarner v. NCDOC, 276 F.R.D. 452, 457 (E.D.N.C. 2011) ("Rule 23(b)(2) has been liberally applied in the area of civil rights, including suits challenging conditions and practices at various detention facilities, as well as claims for violations of the ADA and Rehabilitation Act."); Fed. Rule Civ. P. 23(b)(2), Advisory Committee Notes, 1966 amendments ("Illustrative [of Rule 23(b)(2) classes] are various actions in the civil-rights field where a party is charged with discriminating unlawfully against a class, usually one whose members are incapable of specific enumeration.").

The "twin requirements of Rule 23(b)(2)—that the defendant acted on grounds applicable to the class and that the plaintiff seeks predominantly injunctive or declaratory relief" are easily satisfied here because the individual Named Plaintiffs allege systemic civil rights violations and seek injunctive relief to benefit the Class as a whole. *See Thorn*, 445 F.3d at 330; *see also* Ex. A, List of Selected ADA Class Action Cases. First, Defendants' actions and inactions have harmed the entire Class in the same manner by causing them to remain needlessly hospitalized at Bryan. Defendants control the state's public mental health system, including services delivered within Bryan and CRCFs, as well as in the community. Defendants have administered and funded this system in a manner that unlawfully segregates and isolates people with disabilities, including relying on discharge processes that are ineffective at transitioning residents who are unnecessarily hospitalized at Bryan to the community. (*Id.* ¶¶ 98, 152, 282; *see also* Ex. E, SCDMH *Community Liaison and Casemanger [sic] Discharge Planning Policy* at DMH-00065–67; Ex. F, SCDMH, Division of Inpatient Services, *Discharge Planning and Procedures* at DMH-00384–89; Ex. H, *Social Work Discharge Planning Manual*, Oct. 5, 2015 at DMH-00145.)

In addition, despite a stated goal of reducing unnecessary institutionalization, Defendants continue to expand the state's inpatient bed capacity and inappropriately rely on other institutional settings like CRCFs. (*Id.* ¶¶ 185, 214; *see also* Ex. G, McDaniel Dep. 58:24–59:8; Ex. J, Solicitation for Bids at DMH-00208.) Indeed, Defendants continue to ignore decades of reports identifying state-wide deficiencies in the availability of community services, and they have failed to make such services available in a sufficient quantity and quality that would enable the individual Named Plaintiffs and the Class to live in integrated community settings. *See, e.g.*, Ex. L, *Hope for Tomorrow* at 8, 24–25; Ex. K, *Permanent Supportive Housing Strategic Plan* at 10–11; Ex. B, Breen Dep. 42:4–9; (*see also* Compl. ¶¶ 202–10; 227–29).

Second, the individual Named Plaintiffs and the Class are seeking injunctive and declaratory relief to end the systemic discrimination by Defendants that is keeping the Class unnecessarily segregated and institutionalized at Bryan. Because this "indivisible" injunctive and declaratory relief will benefit the entire Class at once, this action is "a paradigmatic Rule 23(b)(2) case." *Berry v. Schulman*, 807 F.3d 600, 604, 609 (4th Cir. 2015) (affirming certification of settlement class under Rule 23(b)(2) because the settlement—which required "sweeping changes to [defendant's] product offerings in order to protect consumer information"—secured injunctive relief for the entire class); *see also Pashby*, 279 F.R.D. at 347 ("the declaratory and injunctive relief sought in this action," including an injunction preventing defendants from implementing a Medicaid policy, "is of the type contemplated by Rule 23(b)(2)"); *Knight v. Lavine*, No. 1:12-CV-611, 2013 WL 427880, at *4 (E.D. Va. Feb. 4, 2013) (certifying class under Rule 23(b)(2) because "a single declaratory judgment that the conduct of Defendants was unlawful (or not) would resolve all of the Plaintiffs' claims"); *Bumgarner*, 276 F.R.D. at 458 (certifying class under Rule 23(b)(2) in action challenging a correctional facility's

policies and practices of discriminating against inmates with disabilities because "Plaintiffs seek declaratory and injunctive relief appropriate to the class as a whole").

Accordingly, because Defendants are acting and refusing to act on grounds equally applicable to the Class, and because the requested injunctive and declaratory relief would benefit the Class as a whole, class certification pursuant to Rule 23(b)(2) is appropriate.

IV. CLASS COUNSEL SHOULD BE APPOINTED PURSUANT TO FED. R. CIV. P. 23(g)

The individual Plaintiffs are represented by P&A, Womble, and the Bazelon Center, each of which brings unique resources, experience, and skills to this case. The organizational qualifications of counsel are described above at Section III(D). Together, these attorneys request appointment as co-class counsel.

Sarah Garland St. Onge has been an attorney with P&A since 2008. While at P&A, Mrs. St. Onge has brought federal litigation to enforce the rights guaranteed by the Americans with Disabilities Act, drafted amicus briefs in both state and federal court, and advocated for the rights of individuals receiving services from Defendants both in the community and in institutions. Thornwell Simons has served as an attorney at P&A for over ten years. In his time at P&A, he has made over a hundred visits to the Bryan campus, and is personally familiar with the individual Named Plaintiffs and with many other hospital residents. He has represented clients in their interactions with every level of the state mental health system, and was a primary author of P&A's 2009 Report, "No Place to Call Home," on the state of South Carolina's Community Residential Care Facilities.

Bazelon Center attorney Mark Murphy has over 30 years of experience representing people with disabilities in state and federal court litigation and has served as both lead counsel and co-counsel in numerous class actions involving the right to integrated community services.

Mr. Murphy is supported by Bazelon Center staff attorney Maura Klugman, who also has significant experience representing individuals with mental illness and litigating cases in federal court.

Sean Houseal, Dana Lang, and Kathryn Mansfield have over 30 years of combined experience practicing in federal court, including defending class action lawsuits. Each has participated in class action matters, including certification disputes, involving broad subject matters, from construction products to allegations of fraud.

There is no conflict among counsel. Pursuant to Rule 23(g), Plaintiffs request that this Court appoint P&A, Womble, and the Bazelon Center as co-class counsel in this action.

V. CONCLUSION AND REQUEST FOR RELIEF

For all the reasons set forth above, Plaintiffs respectfully request that the Court, pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2), certify a class consisting of:

> *All current and future adult, non-forensic residents of Bryan Hospital who, with appropriate supports and services, would now or in the future be able to live in an integrated community setting and who do not oppose living in an integrated community setting*.

In addition, Plaintiffs respectfully request that the Court appoint P&A, Womble, and the Bazelon Center as co-class counsel in this action pursuant to Rule 23(g).

(signature page follows)

Respectfully submitted this 3rd day of April, 2018.

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