DEPARTMENT OF
PUBLIC HEALTH AND HUMAN SERVICES

BRIAN SCHWEITZER
GOVERNOR

JOAN MILES
DIRECTOR

STATE OF MONTANA

Developmental Disabilities Program
406-444-2995

111 N. Sanders Room 305
PO Box 4210
Helena, MT 59604

March 12, 2008

To: Interested Persons

Subject: Notice of settlement of class action litigation concerning developmental disabilities services

Enclosed is a legal notice approved by the First Judicial District Court, Lewis & Clark County, that provides details of a proposed settlement agreement in class action litigation concerning the provision of developmental disabilities services by the State Of Montana. This notice is being provided to all persons who are in receipt of developmental disabilities services through the State administered developmental disabilities services program.

The proposed settlement is in the case of S.L., et al. v Joan Miles, et al., Cause No. BDV 2002-558. This litigation was initiated by the Montana Association For Independent Disability Services, Inc., since renamed the Montana Association Of Community Disability Services (Association), along with several individual recipients of developmental disabilities services. In the course of the litigation, the District Court entered an order establishing a class of persons who collectively are plaintiffs in the action. The Association and the State Of Montana, having entered into an agreement for the proposed settlement of the case, must now obtain approval of the District Court for that settlement. Since this case involves a court approved class, it is necessary to give the class notice of the proposed settlement and to allow members of the class the opportunity to voice their views concerning the proposed settlement to the District Court and, if they so chose, to contest the proposed settlement. The details of this process are set out in the enclosed notice.

The notice is being provided to you as a potential member of the class in the case. The notice is also being given to persons who have close association to a potential member of the class or who has represented the interests of that person.. The parties have not confirmed whether you are a member of the class. If you believe that you are a member of the class, have interest in the proposed settlement and wish to participate in some manner in the settlement, Section V of the enclosed document provides direction for you.

Sincerely;

Joe Mathews

Joe Mathews
Administrator
Disability Services Division
Department Of Public Health & Human Services

ATTACHMENT B

S. L. et.al v. Joan Miles (Cause No. BDV 2002-558)

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT AND FAIRNESS HEARING

TO: ALL THOSE INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES WHO ARE PRESENTLY, HAVE BEEN, OR ARE PERSONS WITH A DEVELOPMENTAL DISABILITY AS DESCRIBED HEREIN BEGINNING SEPTEMBER 22, 2002, AND ENDING ON Jan 14, 2008 **[*INSERT HERE THE DATE OF THE COURT'S PRELIMINARY APPROVAL OF SETTLEMENT AGREEMENT*]. MORE SPECIFIALLY, THESE ARE THE FOLLOWING CLASSES OF PEOPLE:**

1) **ALL PERSONS WITH A DEVELOPMENTAL DISABILITY, AS THAT TERM IS DEFINED IN SECTION 53-20-202, MCA, WHO RECEIVE COMMUNITY-BASED SERVICES BUT ARE AT RISK OF BEING INSTITUTIONALIZED BECAUSE OF THE CLOSURE, REDUCTION OR TERMINATION OF SUCH (COMMUNITY BASED) SERVICES;**

2) **ALL PERSONS WITH A DEVELOPMENTAL DISABILITY, AS THAT TERM IS DEFINED IN SECTION 53-20-202, MCA, WHO THE**

MONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES (DPHHS) HAS QUALIFIED AS CAPABLE OF SUCCESSFULLY LIVING IN A COMMUNITY-BASED FACILITY BUT REMAIN INSTITUTIONALIZED IN MONTANA'S STATE-RUN INSTITUTIONS.

3) **ALL PERSONS WITH A DEVELOPMENTAL DISABILITY, AS THAT TERM IS DEFINED IN SECTION 53-20-202, MCA, WHO LIVE IN PRIVATE RESIDENCES AND RECEIVE ASSISTED LIVING SUPPORT FROM COMMUNITY-BASED FACILITIES BUT ARE AT RISK OF BEING FORCED TO BE PLACED IN A COMMUNITY-BASED FACILITY OR INSTITUTION.**

FROM: THE CLERK OF THE COURT OF THE FIRST JUDICIAL DISTRICT, LEWIS AND CLARK COUNTY, MONTANA

RE: PROPOSED SETTLEMENT OF LITIGATION SEEKING FROM THE MONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES PLACEMENT OF PERSONS WITH A DEVELOPMENTAL DISABILITY IN COMMUNITY SETTINGS WHEREVER POSSIBLE.

PLEASE READ THIS NOTICE IN FULL. IT CONTAINS IMPORTANT INFORMATION ABOUT LEGAL RIGHTS.

I. BACKGROUND

This notice is to advise you that a proposed settlement agreement has been reached in this case: S.L, et al. v. Joan Miles, et al., Cause No. BDV 2002-558, First Judicial

District Court, Lewis and Clark County, Montana. If you meet the requirements stated in the first paragraph of this notice, your legal rights may be affected by this settlement agreement.

On or about September 22, 2002, a number of developmentally-disabled Montana citizens and the Montana Association for Independent Disability Services, Inc., now called Montana Association of Community Disability Services (the Plaintiffs) filed a class action lawsuit in state district court in Montana. The amended class action complaint (the Complaint) alleges that Joan Miles, Director Department of Health and Human Services and Joe Mathews, Administrator of the Disability Services Division, (the Defendants) had violated and were violating the rights of the Plaintiffs under various federal and state provisions referenced in the proceedings including Mont. Code Ann. §§ 53-2-201, 53-6-113, Mont. Code Ann. Title 53, chapter 6 Part 6 and the Montana Constitution, Article II, § 3 Article II § 4 (human dignity, equal protection) and Article XII § 3.

The Complaint generally challenged the disparity in wages and benefits as between employees of community services providers providing services to persons with developmental disabilities and state employees at state institutions such as the Montana Developmental Center (MDC). This disparity, the Plaintiffs contended, made it difficult for community service providers to provide support services to persons with a developmental disability in a community setting. Plaintiffs further alleged that this disparity also threatened persons with a developmental disability living with a community service provider, funded at least in part by the State of Montana, or living in a private home and

receiving services funded in part from the State of Montana, with the possibility of institutionalization at MDC or another institutional setting.

The Defendants have asserted various defenses to the Plaintiffs' allegations and claims for relief in the Complaint, and do not admit any liability.

II. PROPOSED SETTLEMENT

The Plaintiffs have entered into a settlement agreement with the Defendants, and the settlement agreement has been submitted to the First Judicial District Court in Lewis and Clark County for approval by the Court. The Court has ruled that this case may be maintained as a class action. The class includes those persons described in the first portion of this Notice, Items (1)-(3), who will be referred to in this Notice as "class members."

In considering whether to approve the settlement, the Court must decide whether the settlement is fair, reasonable, and adequate. This Notice has attached to it the Class Action Settlement Agreement, including Attachments A, B, and C. This Notice also presents the options of individuals who may be affected by the settlement, and directs where to get more information on the settlement. If you are one of the persons described in the first paragraph of this Notice, the settlement confers specific benefits upon you.

The proposed settlement, if finally approved by the Court, will result in the Complaint being dismissed with prejudice, which means that all of the claims of the Plaintiffs which are based upon, or which could be based upon or could arise from, any of the conduct or violations alleged in the Complaint are finally extinguished and can no longer be pursued by the Plaintiffs or class members.

In addition, if the Court approves the proposed settlement, the Defendants will be released from liability for any of the Covered Claims, whether asserted or unasserted, known or unknown, foreseen or unforeseen. A complete description of the Covered Claims is set forth in the attached copy of the Class Action Settlement Agreement, at Paragraph 2.5, Page 4.

III. FURTHER INFORMATION

If you would like more information about the proposed settlement, please write, fax, or call the Plaintiffs' lawyer:

Mr. Ron Waterman
Ms. Julie Johnson
Gough, Shannahan, Johnson & Waterman
33 S. Last Chance Gulch
P.O. Box 1715
Helena, MT 59624

You can also view the settlement agreement on the Montana Department of Public Health and Human Services website, "www.dphhs.state.mt.us", or on the website of the Montana Association for Independent Disability Services, Inc., now called Montana Association of Community Disability Services, if operational, at www.maids.org.

IV. HEARING ON THE PROPOSED SETTLEMENT

District Court Judge Jeffery Sherlock will hold a hearing on the proposed settlement on May 7, 2008 at 2:00 pm [*date, time*] in Courtroom B 228 Broadway Helena, MT 59601 [*Courtroom No., full address*]. The purpose of this hearing is to decide if the proposed settlement is fair and reasonable and if the class members have been adequately represented by the Plaintiffs and their attorneys. Any class member who wishes to appear at the hearing or to object to

the proposed settlement may do so in the manner set forth in the next section of this Notice, "Your Options."

V. YOUR OPTIONS

If you meet the qualifications stated in the first paragraph of this Notice, you may appear in this action through your own attorney or Mr. Waterman, although retention of an attorney is not required for you to participate in the settlement. If you chose to appear in this action through your own attorney other than Mr. Waterman, **your attorney must file a written notice of entry of appearance not less than 20 days before** May 7, 2008 **[*insert the date of the hearing*] with the Clerk of District Court of Montana, and must also mail a copy of the written notice to the attorneys of record for the Plaintiffs and Defendants.** The addresses for the Clerk of Court and for the attorneys of record are listed at the end of this Notice.

If you meet the qualifications stated in the first paragraph of this Notice, and you have objections to the proposed settlement, you may object to the proposed settlement only as follows:

1. You must file your objections and comments in writing by mailing them to each of the addresses listed below. Your objections and comments must contain the title and docket number of the case as follows: Sandy L. et. al v. Joan Miles, Cause No. BDV 2002-558.

Clerk of Court
First Judicial District
Lewis and Clark County
228 Broadway Street
Helena, MT 59601-4263

Mr. Ronald F. Waterman
Counsel of Record for the Plaintiffs
Gough, Shannahan, Johnson & Waterman
33 S. Last Chance Gulch
P.O. Box 1715
Helena, MT 59624

Ms. Katherine J. Orr
Assistant Attorney General
Counsel of Record for Defendants
1712 Ninth Avenue
P.O. Box 201440
Helena, MT 59620-1440

2. Your written comments must include a statement of why you believe the settlement applies to you and why you object to the settlement.

3. **Your written objections and comments must be <u>received</u> by the Clerk of Court not later than 20 days before** May 7, 2008 **[*insert the date of the hearing*].**

If you file written objections on time, you or your attorney may also appear at the hearing to object to the settlement. Your written objections will be considered by the parties and the Court even if you are not present at the hearing.

Nancy Sweeney
CLERK OF COURT
First Judicial District of Montana
Lewis and Clark County

3-13-2008
DATE

KATHERINE J. ORR
Assistant Attorney General
Agency Legal Services Bureau
1712 Ninth Avenue
P.O. Box 201440
Helena, MT 59620-1440
Telephone: (406) 444-2026
Facsimile: (406) 444-4303

MIKEL L. MOORE
CHRISTENSEN, MOORE, COCKRELL,
CUMMINGS & AXELBERG, P.C.
P.O. Box 730
Kalispell, Montana 59904-0370
Telephone: (406) 751-6000
Facsimile: (406) 756-6522

COUNSEL FOR DEFENDANTS

MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

S.L., L.M., G.A., J.S., G.M., L.W., L.R., D.H., and MONTANA ASSOCIATION FOR INDEPENDENT DISABILITY, SERVICES INC., Plaintiffs, v. JOAN MILES, in her official capacity as Director of the Montana Department of Public Health and Human Services; and JOE MATHEWS, in his official capacity as the Administrator of the Montana Department of Public Health and Human Services, Defendants.	Cause No. BDV-2002-558 **CLASS ACTION SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT (Agreement) is made and entered into this Aug 8, 2007, between Plaintiffs, S.L. et al. and Montana Association for Independent Disability Services, Inc. and Defendants, Joan Miles and Joe Mathews, in their official capacities, for themselves and their Principals and

Associates (as defined in paragraph 2.4). Plaintiffs and Defendants are otherwise referred to in this Agreement as "the Parties." In mutual consideration of the terms, covenants, and conditions of this Agreement, the Parties agree as follows:

1. INTRODUCTION

1.1 Plaintiffs filed a Class Action Complaint in Lewis and Clark County, Montana on September 17, 2002. The Complaint is incorporated by reference herein. The Complaint alleges that the Defendants' administration of services for persons with developmental disabilities violates various federal and state provisions referenced in the proceedings including Mont. Code Ann. §§ 53-2-201, 53-6-113, Mont. Code Ann. Title 53, chapter 6, Part 6, and the Montana Constitution, Article II § 3, Article II § 4 (human dignity, equal protection) and Article XII, §3. Plaintiffs allege that Defendants create and maintain a wage and benefit disparity between the State employees of the Montana Development Center and employees of community service providers -- non-profit corporations that provide services to consumers under contracts with the Department of Public Health and Human Services ("Department"). The Plaintiffs allege the compensation disparity results in a high rate of employee turnover among community service providers and difficulty in recruiting employees and this in turn results in community service providers being unable to employ or retain enough staff to serve consumers adequately or generally to support consumers. The Plaintiffs further allege that the wage and benefit disparity threatens Plaintiffs living in the community with living in more restrictive settings in the community or institutionalization in state-run institutions. Plaintiffs allege the wage and benefit disparity precludes Plaintiffs now living in state-run institutions from living in community-based facilities. Plaintiffs allege that by creating the wage and benefit disparity, the Defendants have breached their duty to do all things necessary in conformity with federal and state law for the proper

fulfillment of public assistance purposes in administering state and federal funds to provide services to persons with developmental disabilities.

1.2 On March 22, 2004, the Court certified three classes in this case pursuant to Mont. R. Civ. P. 23(b)(2) as follows:

(1) All persons with a developmental disability, as that term is defined in section 53-20-202, MCA, who receive community based services but are at risk of being institutionalized because of the closure, reduction or termination of such services.

(2) All persons with a developmental disability, as that term is defined in section 53-20-202, MCA, who the Montana Department of Public Health and Human Services (DPHHS) has qualified as capable of successfully living in a community-based facility but remain institutionalized in Montana's state-run institutions.

(3) All persons with a developmental disability, as that term is defined in section 53-20-202, MCA, who live in private residences and receive assisted living support from community-based facilities but are at risk of being forced to be placed in a community-based facility or institution.

2. DEFINITIONS

2.1 "Agreement" or "Settlement Agreement" means this Class Action Settlement Agreement, including Attachments A, B and C, which by this reference are incorporated herein.

2.2 "Plaintiffs" means: (a) the named Plaintiffs, Sandy L., Lloyd M, Gwen A., Jeannie S., Glen M., Leo W., Lorna R., Darren H (now deceased); (b) the three classes of individuals with developmental disabilities certified by the Court as class Plaintiffs on March 22, 2004, who were in either of the three classes at the time of the filing of the Complaint and up to the date upon which the Court enters its final order incorporating the terms of the Settlement Agreement and issuing a Judgment of Dismissal with Prejudice and (c) the Montana Association for Independent Disability Services, Inc., now called the Montana Association of Community Disability Services, a substitute name for the same organization

(hereinafter, MAIDS), the non-profit organization comprised of community organizations providing services to persons with developmental disabilities. Attachment C contains a list of MAIDS member organizations.

2.3 "Defendants" means the Named Defendants in the Complaint, Joan Miles, in her official capacity as Director of the Department and Joe Mathews, in his official capacity as the Administrator of the Disability Services Division of the Department.

2.4 "Principals and Associates" means the State of Montana and its past and present agencies, offices, departments, officers, employees, agents, predecessors, successors, assigns, and attorneys of the Defendants, the Department and the Governor of the State of Montana.

2.5 "Covered Claims" means any and all claims, demands, obligations, actions, causes of actions, rights, expenses, damages, and injuries which are set forth in the Complaint, or which could have been set forth in the Complaint, whether known or unknown, foreseen or unforeseen, arising out of the above-captioned Complaint. "Covered Claims" also includes attorneys' fees, whether pursuant to state or federal statutory or common law, and costs incurred by the Plaintiffs up to and including the date the Court enters Judgment of Dismissal With Prejudice as set forth in Section 3.1(f) of this Agreement.

3. APPROVAL OF SETTLEMENT, FAIRNESS HEARING, DISMISSAL WITH PREJUDICE, RETENTION OF JURISDICTION

3.1 Upon execution of this Agreement, the Parties shall promptly submit to the Court a joint motion of the Parties for an order:

(a) preliminarily approving this Agreement;

(b) setting a hearing, after notice to the Plaintiff Class as provided below, to determine the fairness, reasonableness, and adequacy of the proposed settlement (Fairness Hearing);

(c) approving the attached proposed Notice of Proposed Class Action Settlement and Fairness Hearing to the Plaintiff Class ("the Notice," attached as Attachment B to this Agreement);

(d) directing service of the Notice as follows:

(i) The Defendants will provide the Plaintiffs' Counsel of Record with the following information to the extent it is in their custody or control, which includes information possessed by state employees and contractor-provider organizations: the names and last known addresses of each class member. Not less than 45 days before the Fairness Hearing, Defendants shall serve the Notice on each member of the Plaintiff Class, (named and putative class members) and to each such class members' guardian, or if there is no guardian, to a family member, if known, of each such class member. Such service shall be by U.S. Mail, return receipt requested, to the last known address of each member of the Plaintiff Class and the legal guardian for each class member, or if there is no legal guardian, to a family member, if known, of each class member. Defendants shall maintain a list of each member of the Plaintiff Class so served (Service List), including, if applicable, the legal guardian or a family member, if known.

(ii) not less than 30 days before the date set by the Court for the Fairness Hearing, Defendants shall file and serve a complete copy of the Service List and certify that the Notice has been sent to all persons on the list.

(iii) Defendants shall serve the Notice on the Plaintiff Class by publication at least once a week for four consecutive weeks in the following Montana newspapers: the Billings *Gazette*, the *Missoulian*, the Bozeman *Chronicle* and the Great Falls *Tribune*, such service by publication to be completed not less than 45 days before the date set by the Court for the Fairness Hearing;

(iv) Defendants shall publish the Notice and the Agreement on the Department's website for at least two consecutive weeks, such publication to

be completed not less than 45 days before the date set by the Court for the Fairness Hearing. Plaintiffs' counsel of record shall publish the Notice and the Agreement on the MAID's website, if operational, for at least two consecutive weeks, such publication shall be completed not less than 45 days before the date set by the Court for the Fairness Hearing; and

(v) The Plaintiffs shall pay to the Defendants the first $2,000.00 of costs of service of the Notice on the Plaintiff Class members and the Defendants shall pay the remaining costs;

(e) in a separate final order from the Order Preliminarily Approving Class Action Settlement, Notice, etc, finally approving and adopting and incorporating the terms of the Agreement as an order of the Court if, following the fairness hearing, the Court finds the settlement terms to be fair, reasonable, and adequate as to the Plaintiff Class; and

(f) entering in the final order a Judgment of Dismissal With Prejudice of the above-captioned case and an express statement that the Court agrees to retain jurisdiction for one year from the date of execution of the Judgment of Dismissal with Prejudice for the limited purpose of interpreting and enforcing the terms of this Agreement. The Defendants agree they shall subject themselves to the continuing jurisdiction of the District Court for one year for the limited purpose of submitting to the Court's continuing jurisdiction to interpret and enforce the terms of the Settlement Agreement (which includes Attachments A, B and C) following entry of the Judgment of Dismissal With Prejudice.

3.2 This Agreement, with Attachments A, B, and C, shall be presented with the joint motion of the Parties referenced in Paragraph 3.1 and the proposed Order Preliminarily Approving the Class Action Settlement, Notice, etc.

3.3 Except as otherwise specifically provided herein, this Agreement, including Attachments A, B and C, shall be interpreted and construed pursuant to the laws of the State of Montana.

3.4 Upon entry of the Judgment of Dismissal With Prejudice, and in consideration of this Agreement (including Attachments A, B, and C), the Plaintiffs fully and forever release and discharge the Defendants and their Principals and Associates from any and all of the Covered Claims.

3.5 It is specifically acknowledged and agreed by the Parties that this Agreement confers specific benefits in favor of the Plaintiffs and the Plaintiff Class, and that the Judgment of Dismissal With Prejudice shall be binding upon all of the Named Plaintiffs and all members of the Plaintiff Classes. This Agreement is a binding and complete settlement between the Plaintiffs, and the Defendants. The Plaintiffs agree that the Defendants and their Principals and Associates may raise the defenses of release and res judicata in any court or tribunal in the event the Plaintiffs or any of them file any future claim or complaint against the Defendants or their Principals or Associates, arising out of the Covered Claims.

4. ENFORCEMENT OF AGREEMENT

4.1 Disputes arising over this Agreement shall be enforceable only by motion to the Court.

4.2 The Liaison for the Defendants shall be the Chief Counsel, or his designee, of the Department. The Liaison for the Plaintiffs shall be Counsel for the Plaintiffs, Mr. Ronald F. Waterman, or his designee.

4.3 Each Party shall pay its own attorney fees and costs incurred in any proceeding conducted pursuant to this section 4 of the Agreement.

5. ADVICE OF COUNSEL; COOPERATION

5.1 The Parties agree that this Agreement was reached after arm's length bargaining and negotiation, and through a negotiation process. The Parties further

agree that counsel for opposing Parties are experienced counsel; that there has been sufficient discovery taken and investigation completed to enable such counsel to be fully informed in order to act in their respective clients best interests, and to enter this Agreement intelligently. The Parties agree to cooperate to submit this settlement to the Court promptly, to recommend approval of the Agreement by the Court, and to obtain whatever action by the Court may be necessary to approve, apply or enforce the settlement. The Parties agree to take all steps that may be required by the Court, and shall otherwise use their respective best efforts to consummate the terms of this Agreement.

5.2 The undersigned attorneys for the Plaintiffs acknowledge and warrant that they have advised their clients or, where applicable, the legal guardians or next friends of their clients (collectively, "their clients"), of the nature and effect of this Agreement; that they believe their clients understand the nature and effect of this Agreement; and that the undersigned attorneys believe that the settlement and this Agreement are fair and equitable with respect to all of the Plaintiffs including the Plaintiff Class.

6. PROVISION OF SERVICES

The agreement of the parties with respect to the parties' goals and conduct is set forth in Attachment A, captioned "Agreement as to Common Goals." This Attachment A is incorporated by reference herein.

7. ATTORNEY FEES AND COSTS

Each of the parties shall bear his or her, their, or its own attorneys' fees, whether pursuant to State or federal statutory or common law, and costs incurred by the Plaintiffs up to and until the date the court enters a Judgment of Dismissal with Prejudice, as set forth in Section 3.1(f) of this Agreement and as set forth in Section 4, if applicable.

8. MISCELLANEOUS

8.1 This Agreement, including Attachments A, B, and C, contains all of the terms agreed upon between the Parties, and supersedes and cancels each and every other conflicting agreement, promise, or negotiation between them. For emphasis, in some places in this document, the terms, "Agreement including Attachments A, B, and C" are used. This terminology does not change the fact that when Agreement is used in this document it also includes Attachments A, B, and C.

8.2 This Agreement and each of its provisions and Attachments and the implementation of this Agreement shall not be construed as an admission by the Defendants or the State of Montana or any of their Principals or Associates of any fault, wrongdoing, negligence, willful misconduct, or liability of any kind whatsoever, and this Agreement and Attachments is entered into solely as a compromise to resolve disputed claims and to avoid further litigation, costs, and expenses.

Likewise, this Agreement and each of its provisions and Attachments shall not be construed as an admission by the Plaintiffs that the relief obtained therein constitutes all of the relief Plaintiffs may have received had this matter been litigated.

8.3 This Agreement consists of this document numbered pages 1 through 10 and three Attachments appended to it and identified as Attachment A, Agreement as to Common Goals, Attachment B, Notice of Proposed Class Action Settlement And Fairness Hearing, and Attachment C, MAIDS Member Organizations, which Attachments are incorporated by reference herein.

9. AMENDMENT

This Agreement shall only be amended as agreed by the Parties in writing.

10. WARRANTY OF AUTHORITY

Each person signing this Agreement warrants that he or she has authority to sign on behalf of himself or herself or of the entity that he or she represents, and that this Agreement has been validly authorized and constitutes a legally binding and enforceable obligation of each undersigned party.

11. EFFECTIVE DATE

This Agreement shall be valid, binding, and enforceable between the Parties upon signature as of the date first-referenced above.

*_____ _____

Signature of named Plaintiffs or by his or her parent and/or Guardian — DATE

The original signature pages for the named Plaintiffs shall be maintained in a sealed envelope on file with the Court.

* Original signature provided in sealed envelope.

_____, Executive
Director, Montana Association
For Independent Disability Services, Inc.

August 8, 2007
DATE

_____
Ronald F. Waterman
Gough, Shannahan, Johnson and Waterman
33 South Last Chance Gulch
P.O. Box 1715
Helena, MT 59601

Lead Counsel for the Plaintiffs

Aug 8, 2007
DATE

_____
Joan Miles, Director of Montana Department
Of Public Health and Human Services

January 10, 2008
DATE

_____
Joe Mathews
Administrator Disability Services
Division, Department of Public Health and Human Services

January 10, 2008
DATE

_____
Katherine J. Orr
Assistant Attorney General

Lead Counsel of Record for the Defendants

August 8, 2007
DATE

ATTACHMENT A

KATHERINE J. ORR
Assistant Attorney General
Agency Legal Services Bureau
1712 Ninth Avenue
P.O. Box 201440
Helena, MT 59620-1440
Telephone: (406) 444-2026
Facsimile: (406) 444-4303

MIKEL L. MOORE
CHRISTENSEN, MOORE, COCKRELL,
CUMMINGS & AXELBERG, P.C.
P.O. Box 730
Kalispell, Montana 59904-0370
Telephone: (406) 751-6000
Facsimile: (406) 756-6522

COUNSEL FOR DEFENDANTS

MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY

S.L., L.M., G.A., J.S., G.M., L.W., L.R., D.H., and MONTANA ASSOCIATION FOR INDEPENDENT DISABILITY, SERVICES INC., Plaintiffs, v. JOAN MILES, in her official capacity as Director of the Montana Department of Public Health and Human Services; and JOE MATHEWS, in his official capacity as the Administrator of the Montana Department of Public Health and Human Services, Defendants.	Cause No. BDV-2002-558 **AGREEMENT AS TO COMMON GOALS**

WHEREAS, by Complaint dated September 17, 2002, Plaintiffs, S.L. et al. and Montana Association for Independent Disability Services, (now called Montana Association of Community Disability Services), hereinafter MAIDS, filed suit against the Defendants, Judy Martz, Gail Gray and Joe Mathews, acting in their official capacity (now replaced by Order of the Court with Defendants, Joan Miles and Joe Mathews, acting in their official capacities, as Defendants, regarding wages for employees of services providers; and

WHEREAS, an order granting class certification was signed on March 27, 2004, certifying a class of plaintiffs to be maintained against the Defendants all of the following persons:

1) those with a developmental disability, as that term is defined in § 53-20-202, MCA, who receive community-based services but are at risk of being institutionalized because of the closure, reduction or termination of such services;

2) all persons with a developmental disability, as that term is defined in § 53-20-202, MCA, who the Montana Department of Public Health and Human Services ("DPHHS" or "Department") has qualified as capable of successfully living in a community-based facility but remain institutionalized in Montana's state-run institutions; and

3) all persons with a developmental disability, as that term is defined in § 53-20-202, MCA, who live in private residences and receive assisted living support from community-based facilities but are at risk of being forced to be placed in a community-based facility or institutionalized.

WHEREAS, the parties agree that they share many of the same goals and that it is in all parties' best interests to work together to achieve those mutual goals; and

WHEREAS, the parties realize that protracted litigation may result in a deterioration of the parties' working relationship, thereby preventing them from furthering their common goals; and

WHEREAS, the parties recognize that while increased funding is often a corollary for implementation of a goal, the Department has sole discretion to address

the goals as it determines to be appropriate given its discretionary authority pursuant to statute; and

WHEREAS, the parties recognize that the Department has engaged in, and continues to engage in long-term planning for developmental disabilities services through collaborative public processes such as ADA/Olmstead and Strategic Planning Across Montana (SPAM) and those processes have as principal objectives the development of a service system that fosters the appropriate integration of persons in community settings; and

WHEREAS, the parties recognize that the legislature has established statutorily a Commission on Providers Rates and Services to monitor on a regular basis provider services, costs, and reimbursement rates, including the services, costs and reimbursement rates of developmental disabilities service providers, and to make recommendations and reports based upon the results of its review; and;

WHEREAS, Plaintiffs agree with the Department's four overarching goals, which are:

(a) all Montana children are healthy, safe and in permanent loving homes.

(b) all Montanans have the tools and support to be as self-sufficient as possible.

(c) all Montanans are injury free, healthy and have access to quality health care.

(d) all Montanans can contribute to the above through community service.

WHEREAS, consistent with the Department's overarching goals, the parties share the following further goals specifically affecting individuals with developmental disabilities:

1. Services provided to persons with developmental disabilities shall be responsive to the needs of those persons.

2. Community integration of persons eligible for state-administered developmental disabilities services is desirable when such placement

is recommended by appropriate treating professionals and appropriate community services are available.

3. The Department's rate systems for providers of developmental disabilities services shall incorporate, among other things, consideration of service costs inclusive of direct care wages. Service costs may also include, among other things, the costs of non-traditional services. The parties recognize that in order to accurately consider service costs, the providers' cost of business shall be reviewed periodically. To meet the needs of persons with developmental disabilities, providers should provide competitive wages and benefits to their direct care staff.

4. The planning processes for the future of developmental services should incorporate consideration of the further development of community-based services, including supported living and supported work, that offer services to persons in integrated community settings and that foster the movement of persons to the least restrictive service setting appropriate to serve their needs. The Department shall facilitate and coordinate meetings involving the planning process for the future of developmental disabilities services and shall involve consumers, providers, and others in the meetings, inclusive of setting the agendas for the meetings. To this end, the planning process shall consider the infrastructure need of providers.

5. Communication between the Department, service providers, and persons with developmental disabilities with regard to their respective concerns and needs will be encouraged and shall occur on a regular basis. Subjects of communication may include, among other things, funding concerns of the providers. The Department and service providers will endeavor to communicate on a quarterly basis. This shall include meetings between providers and the Department decision makers as is necessary.

WHEREAS, the parties agree that nothing contained herein is intended to supersede or modify Mont Code Ann. § 53-10-204, as that section is applicable to the parties.

IT IS HEREBY AGREED by the parties, through undersigned counsel:

1. The parties agree to continue to work together mutually to achieve the above-listed common goals.

2. The goals expressed in this Agreement as to Common Goals are not intended to be legally binding or to be deemed to give rise to legislative action or positions before the legislature of any kind.

AGREED this 8th day of August 2007.

GOUGH, SHANAHAN, JOHNSON & WATERMAN

By _____
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