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SENT VIA EMAIL

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**Re: *JM. v. DOH et al*, Case. No. 07-CV-00604-RB-ACT
Defendants' Fifth Annual Report**

Dear Mr. Block:

This report constitutes Defendants' obligation to report annually, for a period of five years, on the status of the individuals who may be eligible for the benefits of the Settlement Agreement signed January 8, 2010 and this report covers the time period from July 15, 2014 through today. Defendants continue to meet with individuals identified as eligible according to the terms of the Agreement and to facilitate referrals to various programs as appropriate.

During the past year the Plaintiffs and Defendants have exchanged significant amounts of information as explained below.

Sixth Arbitration Status

The parties conducted depositions on July 17, 18 and 19, 2014 in preparation for the Sixth Arbitration scheduled for July 29, 2014. Following a status conference with the Arbitrator, the Arbitration was continued. Defendants' provided Plaintiffs' counsel with the word version of those tables previously shared with Plaintiffs regarding the status of all Columbus Recommendations for the 32 individuals subject to the Sixth Arbitration. Defendants requested that, for each individual, Plaintiffs specify the Columbus recommendation(s) which they assert the Defendants were not in compliance. Defendants made this request so that the Arbitrator would be able to review the specific documentation each party put forward (CSI contact note entry, Service Plan documentation, deposition designations) related to each specific recommendation that remained in dispute.

On August 18, 2014, Plaintiffs' submitted their proposed Findings of Fact to Defendants. On September 2, 2014, Defendants filed their 218 page Findings of Fact and Conclusions of Law for the Sixth Arbitration. On October 30, 2014, Plaintiffs' provided comments on Defendants' Findings of Fact and Conclusions of Law. On December 2, 2014, the Arbitrator held a status conference to discuss the parties' respective positions on the Findings of Fact and Conclusions of Law. At the conclusion of the status conference, the Arbitrator stated that both parties could supplement the record to demonstrate compliance or lack thereof. Plaintiffs were to send their revised documents to Defendants by January 5, 2015 and then a date for the Sixth Arbitration was to be set.

On December 11, 2014, Plaintiffs sent the Arbitrator a list of additional questions. Plaintiffs' agreed to revise their Findings of Fact and to re-issue them by January 15, 2015. Plaintiffs' actually filed their Revised Findings of Fact and Conclusions of Law for the Sixth Arbitration on February 4th, 2015, along with a Table detailing the specific allegations of non-compliance for some of the individuals subject to the Sixth Arbitration. On March 19, 2015, a status conference was set for April 15, 2015 with the parties and Arbitrator Gross.

On or about May 5, 2015, the parties submitted a joint table to the Arbitrator regarding their respective positions on Plaintiffs' allegations of non-compliance with some Columbus recommendations for 17 of the original 32 individuals subject to the Sixth Arbitration. (Plaintiffs' now limited their concerns to 17 of 32). On or about May 4, 2015, Defendants submitted Defendants' Proposed Findings of Fact in Table format including both Defendants' and Plaintiffs' positions on disputed proposed facts.

On July 9, 2015 the Sixth Arbitration was scheduled for September 9, 2015 at 9 a.m. at the Bank of the West in Albuquerque. On August 21, 2015, Arbitrator Gross informed the parties that, based on the documentation and information previously submitted, further in person hearings were not necessary for him to rule on the issues. The September 9, 2015 hearing was cancelled. On August 26, Defendants sent the following communication to Arbitrator Gross and the Parties: "The State Defendants agree with your proposal to base your ruling on the extensive documentation that has already been provided and to forego an additional hearing. The State Defendants remain firm

in their position that they have complied with the terms of the Settlement Agreement and do not presently see the need to provide any additional evidence or to summarize their argument. The issues and core facts have already been discussed and documented at length in the previous arbitration and in documents and summaries submitted to the Arbitrator. Defendants simply request that they be afforded an opportunity to reply if Plaintiffs provide any additional new evidence”.

On August 27, 2015, Plaintiffs submitted additional documents and letters to the Arbitrator. A written ruling is anticipated.

CONCLUSION

In January 2010, the parties successfully settled pending litigation in J.M. v DOH et al. A significant portion of the settlement required the Department of Health to locate individuals who may have resided or received respite care from the years 1970 through 1987 at one of the state’s institutions for the developmentally disabled. These institutions were closed in 1997. The search required extensive investigative work and analysis in New Mexico, the greater United States, Mexico and Europe. Despite the lack of electronic database records, over 1000 individuals were finally accounted for. Of those 1000, roughly half were deceased or no longer in New Mexico. Of those individuals in New Mexico, roughly half were being served by one of the State’s Community Based Waivers, either the Developmentally Disabled Waiver, the (then) Elderly and Disabled Waiver or the Medically Fragile Waiver. The final group was very diverse, some individuals working, others receiving various forms of state and federal assistance. The individuals who were potentially eligible for the benefits resulting from, the settlement agreement resided in all regions of New Mexico. In compliance with the terms of the Settlement Agreement, DOH CSI workers met at least quarterly with each individual, and their families, guardians, or friends as appropriate. In many cases, the relationships developed between the CSI workers, the eligible individuals and their families has resulted in increased services and additional ongoing support. Other individuals, or in some instances, guardians, have declined the offer of ongoing visitation and facilitation of application for services by the State. In each case where visitation or assistance was declined, the CSI worker assured the individual or family that the support of the CSI worker was always available and required no more than a phone call.

The State firmly assert that they have met the terms of the settlement agreement, they will continue to meet with those individuals who are eligible under the settlement agreement and who are interested in the support and services defendants can provide.

Respectfully Submitted,

WALZ AND ASSOCIATES, P.C.

/s/ Jerry A. Walz

Jerry A. Walz

August 28, 2015

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