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July 2, 2012

VIA EMAIL: Frank.Fajardo@state.nm.us

Agnes Maldonado
Interim Executive Director
NM Developmental Disabilities Planning Council
810 W. San Mateo, Suite C
Santa Fe, NM 87505

Frank Fajardo
Manager
NM Office of Guardianship
810 W. San Mateo, Suite C
Santa Fe, NM 87505

Re: *JM v. NM DOH*, NO. CV-07-604 RB/ACT

Dear Ms. Maldonado and Mr. Fajardo:

We are writing to provide Plaintiffs' submission for inclusion in the DDPC's second annual report with respect to implementation of the January 8, 2010 settlement agreement in *JM et al. v. the New Mexico Department of Health et al.*. For the reasons set forth below, Plaintiffs' counsel have serious concerns regarding Defendants' continuing failures to implement the settlement agreement, as well as at least two of the Arbitrator's Orders, in a timely and fair way.

History of Noncompliance During the First Year

The letter drafted by Plaintiffs' counsel last year that was included in the DDPC's first annual report set out with specificity the violations of the settlement agreement that occurred between May 2010 and June 2011, and are summarized here to give context to the more recent problems.

The first substantial violation of the settlement agreement occurred in early 2010, when Defendants excluded from the benefits of the settlement agreement to which they were entitled all people who were enrolled in any Waiver program; over 100 people. On May 17 and July 19, 2010, Plaintiffs' counsel wrote to Defendants asking them to correct the violation. Defendants never responded to either letter. On July 29, 2010, Plaintiffs' counsel made their first arbitration demand, requesting

that the Arbitrator order Defendants to remedy their violation of the settlement agreement and give "decisional capacity" assessments to those people.

On August 9, 2010, the first Arbitration Hearing was held, and on August 10, 2010, the Arbitrator ruled in favor of Plaintiffs, ordering DOH to comply with the settlement agreement and to promptly arrange for professionals from the Columbus Organization to provide the required decisional capacity evaluations to all eligible persons, including those persons enrolled in a Waiver program.

The next problem with Defendants' compliance with the settlement agreement was their failure to honor releases of information signed by members of the proposed class. Beginning in the spring of 2010, numerous members of the proposed class signed releases of information authorizing Defendants to provide records regarding them to Plaintiffs' counsel. Plaintiffs' counsel needed those records both to assist those individuals in obtaining the benefits of the agreement and to monitor Defendants' compliance efforts. On June 14 and 30, 2010, Plaintiffs' counsel sent 30 release forms to Defendants, but Defendants did not provide any of the requested documents. On October 22, 2010, Plaintiffs' counsel made their second arbitration demand, requesting that the Arbitrator order Defendants to provide to Plaintiffs' counsel copies of the documents responsive to the 30 class members' requests.

On November 9 the second Arbitration Hearing was held. The Arbitrator ruled in favor of Plaintiffs, directing Defendants to comply with such record requests within 30 days of receipt of a request. The Arbitrator additionally ordered Defendant DOH to verify in writing any refusal by a member of the proposed class to be contacted by DOH agents, and also ordered DOH to comply with the requirements of the settlement agreement that requires DOH employee case workers, working for the Community Services Integration team ("CSI") to provide periodic visits to members of the proposed class.

On November 20, 2010, Plaintiffs' counsel made their third arbitration demand, requesting that the Arbitrator order Defendants to provide information regarding the activities of the CSI caseworkers, the Columbus evaluations, their efforts to provide the required notice of the terms of the settlement to eligible people, and Personal Care Option and Waiver services, so that Plaintiffs' counsel would have sufficient information to determine whether there were other additional areas of non-compliance.

On December 16, 2010, the third Arbitration Hearing was held, and on January 20, 2011, the Arbitrator issued an order requiring Defendants: to regularly report on the activities and status of PCO and Waiver applications; to comply with certain CSI personnel, caseload, and visitation standards; and to meet and confer with Plaintiffs' counsel regarding provision of notice of the settlement agreement.

On March 23, 2011, Plaintiffs' counsel and Defendant DOH met and conferred, and agreed upon 11 follow-up actions. As of June 29, 2012, Defendant DOH still had not provided Plaintiffs' counsel with the following information, pursuant to their March 23, 2011 meeting:

1. A single table documenting all CSI contacts with members of the proposed class;

2. An update regarding the search for the computer disks containing DOH records that were created as part of the *La Familia/Elisa C* case, and regarding what has been done to check state Records Archives for the records of the people who have signed releases (now 46 people);
3. Details regarding DOH's representations that certain eligible persons have elected to "opt out" of the benefits of the settlement agreement, and whom DOH has placed on a "Do Not Call" list; and
4. What has been done, and is planned, for members of the proposed class who have been removed from the Do Not Call list.

Noncompliance During The Second Year

The remainder of this letter summarizes the areas of noncompliance, and continuing noncompliance, which have persisted from June 2011 through the present.

On August 24, 2011, Plaintiffs' counsel wrote to Defendants, asking them to address the fact that, according to the monthly reports provided to us by Defendants, 29 individuals were not receiving the PCO services to which they were entitled under the settlement agreement. (Email attached as Exhibit 1.) For each of those individuals, we also asked for their name, contact information, and copies of all CSI materials pertaining to them to enable us to assist them ourselves. We acknowledged that we did not have signed releases from each of them (because we do not know who they are) and offered to enter into the type of confidentiality order we had recently entered into with the DDPC, to protect those people's confidentiality. We asked Defendants to let us know whether they would provide the requested information and stated that, if necessary, we would seek an order from the Arbitrator to get that information.

Ten (10) weeks later, on November 2, 2011, Plaintiffs' counsel received the response from Defendants. (Letter attached as Exhibit 2.) In that letter Defendants responded to some of our questions and ignored others. Defendants refused to provide us with the individuals' names and contact information, preventing us from assisting the individuals.

On February 10, 2012, Plaintiffs' counsel again wrote to Defendants, asking them to promptly address our ongoing concerns regarding Defendants' apparent failure to fully comply, over a year later, with the Arbitrator's Orders dated November 11, 2010 ("2010 Order") and January 20, 2011 ("2011 Order"), as well our settlement agreement. (Letter attached as Exhibit 3; 2010 and 2011 Orders attached as Exhibits 4 and 5, respectively.) Our concerns were described under the following headings:

1. **Third Report**. Defendants failed to comply with the requirement of the 2011 Order that they provide to Plaintiffs' counsel, by February 21, 2011, a third report describing the activities of Defendants' CSI personnel.

2. **Release of Documents**. Defendants failed to comply with the requirement of the 2010 Order that they provide to Plaintiffs' counsel any documents sought within 30 days of receipt

of the release. Plaintiffs' counsel had requested documents for individuals for whom we had provided a release, but DOH had not provided the requested documents.

3. **Affidavit**. Defendants failed to comply with the requirement of the 2010 Order that they provide to Plaintiffs' counsel and to the Arbitrator an affidavit verifying that they have confirmed and documented in writing on file an explicit refusal to be contacted by Defendants for the 41 individuals listed as "Do Not Contact" in Defendants' November 2010 status report. The affidavit provided by Defendants addressed only 14 of the 41 individuals and, for those 14, Defendants failed to specify who told which DOH official on what date that they wanted no further contact and what DOH did to determine whether that person had the legal authority to speak for the individual. DOH also refused to meet to discuss these concerns with the purported "Do Not Contact" people. Plaintiffs' counsel also requested additional information regarding the 25 individuals listed as Do Not Contact in Defendants' January 2012 CSI Visitation Compliance Report.

4. **Monthly Reports**. Defendants' five (5) monthly reports failed to comply with Defendants' reporting requirements as established by the settlement agreement and the 2011 Order. Specifically:
   a. 21 individuals received a DD Waiver referral but not a PCO referral;
   b. 24 individuals received a PCO referral but not a DD Waiver referral;
   c. Although Columbus referred a total of 69 individuals to the DD Waiver, the January 2012 reports state that these referrals were still not complete for 38 of those 69 people;
   d. Although Columbus had referred a total of 45 individuals for PCO Services, the January 2012 reports state that the referrals were still not complete for 20 of them;
   e. CSI was not making the (at least) quarterly visits required by the settlement agreement for 39 individuals; and
   f. CSI failed to provide eight (8) individuals with a Healthcare Decision-Maker and three (3) individuals with a Power of Attorney for the reason "Closed by Regional Office."

5. **Inadequacy of CSI Supports**. It appeared that CSI personnel were failing to provide the needed level of assistance to some eligible individuals that is required by the settlement agreement. We offered to discuss how to improve the efficacy and intensity of CSI workers.

6. **Names of 101 Individuals**: Because of the numerous concerns we expressed to Defendants in the letter, we asked Defendants to provide us with the names of the 101 individuals about whom we had expressed concerns. We stated that we wanted the names in order to review the records and other information we already have regarding those people to evaluate whether each of them is receiving the benefits to which they are entitled under the settlement agreement.

We closed our February 2012 letter by indicating that we would seek another arbitration proceeding in the event that we could not resolves these issues by the end of February 2012.

Defendants asked for a meeting to discuss the letter and we met on March 2, 2012. At that meeting, Defendants provided us with some updated service plans, and agreed to provide us with a written response to our letter by April 2, 2012. In addition, at the meeting Plaintiffs' counsel submitted to Defendants 22 Regional Office Requests for Intervention ("RORIs") regarding individuals about whom we had specific concerns.

On April 2, 2012, Defendants provided their written response to Plaintiffs' counsel. (Letter attached as Exhibit 6.) Unfortunately, although their response did provide Plaintiffs' counsel with some additional information (some of which we had been awaiting for over a year), the response failed to remedy a number of violations of the 2010 and 2011 Orders, as well as the settlement agreement.

On June 4, 2012, Plaintiffs' counsel made our fourth arbitration demand, requesting that the Arbitrator schedule an arbitration to remedy Defendants' failures to fully comply with the 2010 and 2011 Orders, and to enter additional remedial orders regarding Defendants' other violations of the settlement agreement. (Demand attached as Exhibit 7.)

On June 11, 2012, Defendants responded to Plaintiffs' fourth arbitration demand in a letter to the Arbitrator. (Letter attached as Exhibit 8.)

On June 22, 2012, Defendants provided Plaintiffs' counsel with updated Service Plans regarding the individuals referred by Columbus for services from CSI. These Service Plans, unfortunately, provide additional and ongoing evidence that CSI is failing, and has failed, our clients, as illustrated below by the examples of Mr. A and Ms. B. (Service Plans for Mr. A and Ms. B attached as Exhibit 9.)

Mr. A. is a 58-year old man with developmental disabilities who is still stuck in a nursing home after being placed there over three and one-half years ago. He was placed there against his wishes, and he continues to want out of the nursing home. The nursing home has never provided him with the specialized services to which he is entitled because he has developmental disabilities. When Columbus evaluated Mr. A on October 20, 2010, it found, among other things, that:

> It is unclear why [Mr. A] is still living at the facility.... He clearly could live in his own home again or another less restrictive alternative with adequate supports for health and safety.... There is absolutely no justification for the restrictiveness of the setting and his day-to-day lifestyle at the nursing home.... It does not appear that any specialized services are in place or that any have been offered during [Mr. A's] period of service at the skilled nursing facility.

Columbus made the following two referrals to CSI:

> [1] The status of [Mr. A's] PASRR evaluations should be reviewed.... Further evaluation, identification of specialized services (as appropriate), and consideration of less restrictive living alternatives should be incorporated into that process.

[2] [Mr. A] could benefit from support from an advocate independent of his family in voicing his preferences regarding his living situation and in reviewing his due process options.

CSI's sole response to these referrals was to share the information with the nursing home's director of nursing and case manager, after which CSI closed its work on the Columbus referrals.

Ms. B is an 87-year old woman with developmental disabilities who lived with people who are not her family, without a guardian, for at least the last 32 years since she was discharged to their Shelter Care Home by the state's Training School. After the state shut down the facility, the owner took Ms. B into her home, where Ms. B performs chores for the owner. After Columbus evaluated Ms. B on August 4, 2010, it made, among other referrals to CSI, the following referrals:

[2] Expedite obtaining PCO Services, if possible.
[6] Discuss with [Ms. B] any interest in exploring the whereabouts of her children and assist and support her in whatever decision she makes.
[7] [Apply for the DD Waiver.]
[8] [Apply for a guardian for Ms. B.]

Fourteen (14) months later, a corporate guardian was finally appointed for Ms. B. Nearly 23 months later, a DD Waiver application for Ms. B has still not been completed. CSI has closed its work regarding PCO Services, handing the unfinished referral over to Ms. B's new guardian in March 2012, after CSI failed to secure PCO Services for Ms. B, 20 months after they were recommended. Finally, CSI closed its efforts to explore with Ms. B her interest in her missing children after being told by *Ms. B's non-family caregivers* that *they* were not interested in finding Ms. B's children.

The fourth Arbitration Hearing is scheduled for July 19, 2012.

Guardianship Concerns

The settlement agreement provides: "The Columbus Organization will determine which individuals should have a petition for limited guardianship initiated on their behalf." As of its July 21, 2011 report, according to the Office of Guardianship ("OOG"), OOG had received from the Columbus Organization 52 referrals for guardianship. At that time, OOG had only completed 19 (37%) of those 52 referrals. Unfortunately, that means that, 18 months after the effective date of the settlement agreement, 33 (63%) of the individuals for whom Columbus recommended a guardian had still not received a guardian. Seventeen (17) of the 33 incomplete referrals from Columbus were rejected by OOG (e.g. "not incapacitated," "currently has Power of Attorney and Rep. Payee," "already has a Rep. Payee and surrogate"). Six (6) of the 33 incomplete referrals were withdrawn (e.g. "sister declined Guardianship services" "family did not wish to pursue Guardianship"). Ten (10) of the incomplete referrals were still pending, and some of these had been assigned nearly a year before.

The troubling statistics above only pertain to those guardianship referrals made by Columbus prior to July 21, 2011. We are not aware of how many, if any, guardianship referrals have been made by

Columbus since that time, and of those how many have been completed. If the OOG does not file a petition for every individual referred by Columbus for a guardian, and ensure that their agents finalize all pending guardianships with all possible speed, we will need to raise these guardianship issues with the Arbitrator.

Most of the failures to comply with the settlement agreement that were identified in our 2011 submission have not been addressed. These are the most important violations of the settlement agreement at this time:

1. Members of the proposed class who need assistance making decisions still do not have the guardians or medical surrogate decision-makers they need;
2. Members of the proposed class who are eligible for the Personal Care Option program still are not receiving those services;
3. Some people who are entitled to receive at least quarterly visits from the CSI case workers have not received the quarterly visits;
4. The CSI personnel have not implemented some of the service plans developed for members of the proposed class, and some CSI personnel are not effectively providing needed assistance to members of the proposed class;
5. Members of the proposed class who are eligible for, and need, Waiver services are not getting them;
6. The Defendants are improperly reducing Personal Care Option services for members of the proposed class; and
7. Some people who are stuck in nursing homes are not getting assistance from CSI to get out

A full two and one-half years have passed since Plaintiffs agreed to dismiss their lawsuit against Defendants in exchange for Defendants taking the actions set forth in the settlement agreement. Nevertheless, many members of the proposed class still have not received the benefits of the settlement agreement. Many of those people are no better off as a result of the settlement agreement

In light of Defendants' continuing failures to comply with their obligations under the settlement agreement, counsel for Plaintiffs again urge the DDPC to advocate on behalf of members of the proposed class, to assist those people to obtain the things to which they are entitled under the settlement agreement and, especially, to help them to get the assistance they need to make informed choices about their living arrangements, their finances and the services they receive.

Very truly yours,

Peter Cubra

Peter Cubra

cc via electronic mail:

Weiss, Norm (nweiss@srw-law.com)
Walz, Jerry A. (jerryawalz@walzandassociates.com)
Kunkel, Kathyleen (kathy_kunkel@walzandassociates.com)

Sanchez-Sandoval, Gabrielle, Assistant General Counsel, DOH
(Gabrielle.SanchezSandoval@state.nm.us)
Galvez, Christina, DOH (Christina.Galvez@state.nm.us)
Peggy Jeffers, General Counsel NM ALTSD (Peggy.Jeffers@state.nm.us)
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Peifer, Charles (cpeifer@peiferlaw.com)
Simmons, Nancy L. (nlsimmons@swcp.com)
Higgins, Rachel E. (rachelhigginsjd@gmail.com)
Cubra, Peter (pcubra@qwestoffice.net)
Hall, John (johnfordhall@mac.com)

Exhibit #1

Fajardo, Frank, DDPC

From:	John Hall [johnfordhall@mac.com]
Sent:	Wednesday, August 24, 2011 4:56 PM
To:	Kathy Kunkel
Cc:	Anne Alexander; Sanchez-Sandoval, Gabrielle, DOH; Galvez, Christina, GSD; nweiss@srw-law.com; Cecilia Nunez; Charles Peifer; Nancy Simmons; Rachel Higgins; Peter Cubra; John Hall
Subject:	JM et al. vs. NM DOH et al. 29 Individuals Not Receiving PCO Services
Attachments:	Service Status PCO 72611w-o.pdf

Hi Kathy. I apologize about the earlier email, which I have been told arrived rather, um, blank.

I am writing to provide you the information we have about problems with PCO services that are not being properly provided as required by our Settlement Agreement. According to the monthly updated report on PCO service status you provided to us on July 27, 2011 (attached), twenty-nine (29) individuals are not receiving PCO services.

Twenty-four (24) of the individuals are not receiving PCO services because some person or persons, who may or may not include the individual entitled to receive PCO services, reportedly:
- Declined the services (1046, 6876, 1009, 1498, 7495, and 4426);
- Refused the services (2785, 3052, 2059, 8787, 5837, 6749, and 9074);
- Stated they were not interested in the services (5601, 2398, 3160, 8249, and 2503); or
- Stated the services were not neccesary (9446, 4259, 6590, 4772, 6626, and 2842).

Who declined, refused, stated they were not interested in the services, or stated that the services were not necessary? If it was the individual, did she have all pertinent information and also have the decisional capacity to waive her entitlement to PCO services? If it was someone other than the individual, who was that person, and who or what authorized them to waive the PCO services to which the individual is entitled?

As an example, and as the only one of the twenty-nine individuals whose identity is known to us, please consider Josie Pena (6590). Your report indicates that Josie will not receive PCO services because "Individual and supports have indicated that PCO is not necessary at this time." Mary Evans has had control over Josie for the 32 years since Josie's discharge from the Training School, and Josie has never had a guardian or other independent advocate appointed for her, although she lacks decisional capacity. Josie's "supports" have a substantial interest in refusing any services for Josie that might entail someone observing what is happening to Josie. Josie does not have the decisional capacity to waive her entitlement to PCO services. Who, precisely, are Josie's "supports," and who or what authorized them to waive the PCO services to which Josie is entitled?

Two (2) of the individuals are not receiving PCO services because they were denied those services by Molina (8122 and 1625). Did either of these individuals have the decisional capacity to waive their right to appeal this determination by Molina? Does either of these individuals have the wherewithal to undertake an appeal of the determination *pro se*?

Finally, three (3) of the individuals are not receiving PCO services for the following reasons:
- Unable to locate (2618);
- Unable to contact since individual currently a resident at NMBHI (2610); or
- CSI delivered a new MAD 075 to individual at individual's request (6407).

These reasons do not provide a sufficient explanation for why these individuals are not receiving the PCO services to which they are entitled. And at least they do not explain why DOH is not helping them pursue PCO services.

As to each of the twenty-nine (29) individuals, we need their name, contact information, and copies of all CSI materials pertaining to them in order to assist them. We do not have signed releases as to each of them so, in order to protect the confidentiality of those individuals for whom we do not have a signed release, we are willing to enter into a confidentiality order of the sort we recently entered into with the DDPC.

If DOH will not provide us with this information, we will then seek it from the arbitrator. Please let me know whether you will give us the requested information.

John

On Aug 22, 2011, at 11:49 AM, Kathy Kunkel wrote:

Hi John
Peter explained that you have been out of town for awhile. Defendants asked Peter July 8th for the names of Foley individuals who are not receiving PCO services. Peter indicated that you would have this information. I would very much appreciate if you would send me those names, as we are not aware of individuals who want the service who have not been appropriately assessed.

Anne is unraveling the confusion regarding the provision of the unique identifiers.
Thank youi
Kathy
Kathy

From: John Hall [mailto:johnfordhall@mac.com]
Sent: Monday, August 22, 2011 11:40 AM
To: Anne Alexander
Cc: Kathy Kunkel; Sanchez-Sandoval, Gabrielle, DOH; Galvez, Christina, DOH; nweiss@srw-law.com; Cecilia Nunez; Charles Peifer; Nancy Simmons; Rachel Higgins; Peter Cubra
Subject: Re: JM et al. vs. NM DOH et al. CV 07 604 Monthly updated reports

Hi Anne. In response to my request nearly a month ago for the unique identifiers for the six individuals listed below, you provided the identifier for Eva Toledo. Please provide the unique identifiers for the remaining five individuals. Thanks. John

On Jul 27, 2011, at 2:29 PM, John Hall wrote:

Thank you, Anne. Please let me know if there remain any issues with the releases we provided. John

On Jul 27, 2011, at 10:12 AM, Anne Alexander wrote:

John,

I have had a conversation with DOH OGC and they are gathering documentation that you have requested, and will provide you with the unique identifiers for the six individuals. As I recall, there was an issue regarding the some of the releases that were submitted to the DOH, which caused a delay.

Anne

From: Kathy Kunkel
Sent: Tuesday, July 26, 2011 4:27 PM
To: John Hall
Cc: Anne Alexander; DOH Sanchez-Sandoval Gabrielle; nweiss@srw-law.com; Cecilia Nunez; Charles Peifer; Nancy Simmons; Rachel Higgins; Peter Cubra
Subject: RE: JM et al. vs. NM DOH et al. CV 07 604 Monthly updated reports

Jon
I will ask Anne Alexander to follow up on the six individuals you do not have the unique identifiers for.

Mr. Hooper was referred to Columbus for assessment. There were no referrals.

Please let me know if you want to attend the meeting I suggested or if the receipt of the last 6 identifiers is sufficient.

Kathy

From: John Hall [mailto:johnfordhall@mac.com]
Sent: Tuesday, July 26, 2011 4:19 PM
To: Kathy Kunkel
Cc: Anne Alexander; DOH Sanchez-Sandoval Gabrielle; nweiss@srw-law.com; Cecilia Nunez; Charles Peifer; Nancy Simmons; Rachel Higgins; Peter Cubra
Subject: Fwd: JM et al. vs. NM DOH et al. CV 07 604 Monthly updated reports

Kathy. DOH has still not provided us with the unique identifiers for the six individuals whom we represent and I listed in my April 27 email below. Please also let us know what has been done for Mr. Hooper since we informed you on April 27 of his desire to be removed from your Do Not Call list. Thanks. John

Begin forwarded message:

From: John Hall <johnfordhall@mac.com>
Date: April 27, 2011 3:52:55 PM MDT
To: Kathy Kunkel <Kathy_Kunkel@walzandassociates.com>
Cc: Peter Cubra <Pcubra@qwestoffice.net>, Anne Alexander <AAlexander@walzandassociates.com>, 'Norm Weiss' <nweiss@srw-law.com>, "cnunez@peiferlaw.com" <cnunez@peiferlaw.com>, "cpeifer@peiferlaw.com" <cpeifer@peiferlaw.com>, "nlsimmons@swcp.com" <nlsimmons@swcp.com>, "rachelhigginsjd@gmail.com" <rachelhigginsjd@gmail.com>, '"Lauer, Gregory, DOH"' <Gregory.Lauer@state.nm.us>, '"Sutin, Jessica, DOH"' <Jessica.Sutin@state.nm.us>, "Jerry A. Walz" <JerryAWalz@walzandassociates.com>, Alfred Creecy <alcreecy@walzandassociates.com>
Subject: Re: JM et al. vs. NM DOH et al. CV 07 604 Monthly updated reports

Kathy. With regard to the specific issue of whether we received a list of your unique identifiers, yes. I failed to remind Peter that Anne had passed to me a list of these identifiers during our March 23, 2011 meeting. I apologize.

However, that March 23rd list does not include identifiers for the following 4 people for whom we have submitted requests: Clara Davidson, Frank Frenger, Eva Toledo, and Barbara Ann Sanchez (request faxed this

afternoon). In addition, your list notes that we initially provided you with an expired release for Elizabeth Vigil-Holt; we have since provided you with a current release for her on April 11, 2011. Finally, your list notes Darryl Hooper as "Do Not Call." This is not correct. We have worked with him this year, he desires to learn of the services to which he is entitled, and he signed a release to that effect which we provided to you with our request dated February 15, 2011.

Therefore, please provide us with the unique identifiers for the following 6 persons:
- C. Davidson;
- F. Frenger;
- E. Toledo;
- B. Sanchez;
- E. Vigil-Holt; and
- D. Hooper.

Also, please let us know what is done for Mr. Hooper now that he has been removed from the Do Not Call list.

I have attached the list of 39 people for whom we have made requests (and provided current releases) as of today.

Thanks. John

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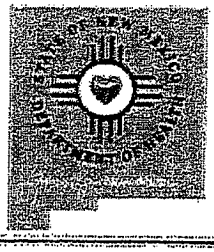
Exhibit #2

SUSANA MARTINEZ, GOVERNOR



CATHERINE D. TORRES, M.D., CABINET SECRETARY

November 2, 2011

FACSIMILE
(505) 256-7641

John Hall
3500 Comanche Road NE, Suite H
Albuquerque, New Mexico 87107-4546

RE: *JM v. NM DOH, No. CV-07-604 RB/ACT*

Dear Mr. Hall:

Mr. Hall:

In response to your email related to PCO services, generally I will say that I believe in our efforts to have succinct monthly reports, the brevity of some of the information has caused some confusion; it's a delicate balance trying to create an informative but brief status report. I also believe some of the language that is used, or the inconsistency of some language that is, also created some confusion. We are working to address these issues for future reports.

I must say, however with regard to your use of the word "entitlement", we have to be careful. While making referrals for PCO services is a part of the settlement agreement, considering PCO an entitlement service is not legally accurate. Further, with regard to your comments related to decisional capacity, DOH CSI staff is not in a position to unilaterally assess and make findings as to an individual's decisional capacity. DOH will honor the consent or refusal of an individual as long as they remain their own legal guardian/legally recognized decision maker. It should be noted that we often rely on natural supports as witnesses and as individuals that can assist in explaining issues to the individuals who are part of the Foley group. Natural supports include family and friends.

Many times it can feel like DOH is in between a rock and hard place because we have been criticized or accused of not talking to an individual directly, but in the same breath we are also criticized for relying on the consent of a non adjudicated adult if there is a question in your mind as to their capacity. From our perspective, all individuals retain the right to make their own decisions unless or until a court or other legally recognized process takes that right away (or the individual gives it away). Keeping in mind of course, that if we have concerns about an individual's capacity to consent, we can and do make referrals to the OOG or other appropriate referrals. As previously stated, DOH does work with natural supports as those are the people that the individual trusts and who usually have information about the individual.

DOH has relied on the agreed upon evaluations completed by Columbus with regard to decisional capacity in their interactions with Foley individuals. If and when CSI has a concern about an individual's decisional capacity they have been trained to make referrals to the OOG. The OOG did a presentation for CSI staff about the type of information the office needs to process such referrals. Additionally, CSI staff has been trained by APS with regard to what APS does and does not do; including their role in guardianship proceedings and how to make a report to them.

I recognize that you have requested contact information in order to assist the individuals you specifically mentioned in your email. By way of this letter I will provide you information of each of the individuals PCO referral status and ask that instead of us "handing over the follow-up" to you that you agree to work with DOH. We have common goals and DOH wants to assist any individual that requests assistance. If we work together, perhaps we can avoid some of the back and forth that can sometimes occur when we don't both have the same information. I trust that this update will clarify some of your questions and also give more information than the monthly reports, thus you may have a clearer picture of each person's PCO referral status. If this update does not suffice; perhaps for any individual that we have inconsistent information for, or experiences with, CSI could make a special visit to address concerns you still have regarding PCO, in addition to their regularly scheduled visits.

In considering the updates below, please be advised that all individuals subject to Foley were referred for PCO before all were contacted to 'get a jump on referrals', so sometimes it looks like they were initially interested and then changed their mind, but actually some of the activity took place before the individual made their wishes directly known.

I have contacted each CSI worker directly to obtain the information below.

Here is the specific information:

1) 1046 - DDSD made a referral for PCO services. Individual is non-adjudicated. Columbus made no recommendation for Guardianship. Evercare did an assessment and began services. Evercare reported being sent away and services being declined by family (mother); sisters then told CSI the service was needed and a new application was submitted to HSD. PCO services are being pursued and CSI is working with individual, supports, and Evercare to schedule a new evaluation to determine needs based on new program standards.

2) 6876 – DDSD made a referral for PCO services. Individual is non- adjudicated. Columbus made no recommendation for Guardianship. Individual initially declined

services verbally; individual contacted CSI and indicated they are now open to some limited assistance, CSI provided the MAD form to the individual and instruction for completion. PCO is now being pursued and CSI is working with individual and supports to obtain service.

3) 1009 – DDSD made a referral for PCO services. Individual is non-adjudicated. Columbus made no recommendation for Guardianship. Individual originally declined, but did not sign a declination form. Individual then expressed interest in PCO services. Individual was given MAD form and an appointment was made with PCP. PCO services began in September 2011.

4) 1498 – DDSD made a referral for PCO services. Individual is non-adjudicated. Columbus made no recommendation for Guardianship. Individual signed a Service Declination form for both DD Waiver and PCO.

5) 7495 - DDSD made a referral for PCO services. Individual is non-adjudicated. Columbus did not assess or recommend Guardianship. Molina sent individual a letter saying he qualifies and asking if they could do an assessment; no response from individual to Molina. Individual lives with girlfriend, has continually been a DNC, does not want state assistance. Individual signed the Do Not Contact during the face to face visit and requested that the Department of Health not contact him in the future. He stated that he wants no assistance from the State.

6) 4426 – DDSD made a referral for PCO services. Individual is non-adjudicated. Columbus did not assess or recommend Guardianship. Individual refused to sign Do Not Contact form for CSI or RCI investigator some time ago, a referral was made on his behalf at the inception of the settlement, but individual has declined service and any requested or required follow-up.

7) 2785 – DDSD made a referral for PCO services. Individual is non-adjudicated. Columbus did not make a recommendation for guardianship. Individual has signed a Service Declination form. The Columbus assessment stated "If … has been referred for the Personal Care Option, he does not want this service and it is this reviewer's recommendation that he does not need this service at this time."

8) 3052 – DDSD made a referral for PCO services. Individual is non-adjudicated. Columbus made no recommendation for Guardianship. Individual signed a Service Declination form.

9) 2059 – DDSD made a referral for PCO services. Individual is non-adjudicated. Columbus made no recommendation for Guardianship. A referral was made on behalf of the individual initially, individual declined service to Amerigroup. Individual also signed Service Declination form.

10) 8787- DDSD made a referral for PCO services. Individual is non-adjudicated. Columbus made no recommendation for Guardianship. Individual signed Service Declination form. A referral was made on behalf of the individual initially, individual also declined services to Evercare.

11) 5837 – DDSD made a referral for PCO services. Individual is non-adjudicated. Columbus made no recommendation for Guardianship. Individual signed a Service Declination form. A referral was made on behalf of the individual initially. Amerigroup indicated the individual also declined services to them.

12) 6749 (6719) – DDSD made a referral for PCO services. Individual is non-adjudicated. Columbus made no recommendation for Guardianship. A referral was made on behalf of the individual initially, Evercare indicated declination of services. Individual also signed a Service Declination form.

13) 9074 – DDSD made a referral for PCO services. Individual is non-adjudicated. Columbus made no recommendation for Guardianship. Individual signed Service Declination form. A referral was made on behalf of the individual initially. Amerigroup also indicated declination of services.

14) 5601 – DDSD made a referral for PCO services. Individual has been adjudicated. Guardian initially declined PCO, but later indicated an interest. CSI is working with individual and guardian to obtain PCO.

15) 2398 – DDSD made a referral for PCO services. Individual has been adjudicated. Guardian signed Service Declination. Guardian and individual indicate they are not interested in PCO at this time.

16) 3160 - DDSD made a referral for PCO services. Individual is non-adjudicated, relative is POA. Columbus made no recommendation for Guardianship. Both POA and individual signed the Service Declination form.

17) 8249 – DDSD made a referral for PCO services. Individual is non-adjudicated, relative is POA. Columbus made no recommendation for Guardianship. Both POA and individual signed the Service Declination form.

18) 2503 – DDSD made a referral for PCO services. Individual is non-adjudicated. Columbus made no recommendation for Guardianship. Individual signed Service Declination form.

19) 9446 – DDSD made a referral for PCO services. Individual is non-adjudicated. Columbus made no recommendation for Guardianship. This individual rarely opens the door for CSI and if the individual does, won't talk. CSI has provided her with the MAD form and provided detailed instructions on taking it to the PCP to have it completed and signed. Individual will not communicate with us. We do not know if the form was taken to the PCP, though, we know that there is no Medicaid billing for PCO under the individual's name. On 10/19/2011 CSI was allowed in the home because the daughter was there. The daughter did all the talking and stated that her uncle was the caregiver. The daughter knew nothing about the PCO. To date, the individual has not been willing to sign a Service Declination form.

20) 4259 – DDSD made a referral for PCO services. Individual is non-adjudicated. No Columbus assessment or recommendation for Guardianship, as individual declined to participate in assessments. Individual initially declined, but later indicated an interest. CSI is working with individual to obtain PCO services.

21) 6590 – DDSD made a referral for PCO services. Individual has a corporate guardian recently put in place. The Quality of Life has been appointed as Corporate guardian, but they have not yet identified the individual from their agency who will serve as the guardian. The family with whom the individual resides and the individual did not want PCO. They signed a Service Declination form and it was complete. Now, we are waiting to see what services the new guardian wants to put in place.

22) 4772 – DDSD made a referral for PCO services. Individual is non-adjudicated. Columbus made no recommendation for Guardianship. Individual signed a DNC on 2-24-11.

23) 6626 – DDSD made a referral for PCO services. Individual is non-adjudicated. Columbus was unable to locate and therefore, did not complete assessments; no Columbus recommendation for Guardianship. Individual signed the DNC on 3/23/2011. CSI was able to locate following the completion of the Columbus portion of the project. During that face to face visit, the individual stated that they wanted no further contact with the State or its contractor.

24) 2842 – DDSD made a referral for PCO services. Individual is non-adjudicated. Individual was not seen by Columbus as the individual "declined to set appointment and participate in the assessment; … stated not interested and 'did not need anything'"; no Columbus referral for Guardianship. Individual signed a DNC. Family insists individual never an inpatient at LLCP. Indications are that the individual attended the summer program through Villa Solano.

25) 8122 (aka 5043) – DDSD made a referral for PCO services. Individual is non-adjudicated. Columbus made no referral for Guardianship. Individual was part of the initial referral to ALTSD for PCO services. On August 6, 2010 the individual received a letter stating that Molina had been assigned as the Personal Care Option (PCO) assessment services. Molina also sent him the MAD 075 form for him to take to his PCP for completion. The MAD 075 was completed and submitted to Molina. In October of 2010, individual received a letter, dated 10/11/2010, from Molina denying services to the individual. As the result of your conversation with Sarah, on 9/21/2011, Sarah contacted Juliette at Utilization Review to request information regarding the PCO Denial. Juliette reported that the PCO criteria had not been met as per review by the Medical Director. The home assessment indicated that the individual only needed assistance with meal preparation and individuals must demonstrate a need in at least two areas of IADLs. The individual and the support system chose not to appeal the denial. CSI continued to discuss the benefits of the PCO program with the individual and supports at each home visit. Individual insisted that he was not interested in additional services. On 7/6/2011 the individual requested and signed the Service Declination form. Therefore, the individual was both "denied" by Molina and "declined" to pursue PCO as indicated by the Service Declination form.

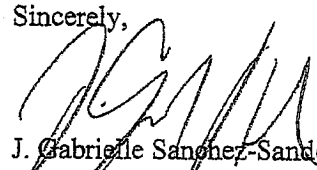
26) 1625 –DDSD made a referral for PCO services. Individual is non-adjudicated. Columbus made no referral for Guardianship. Individual was denied by Molina. There have been multiple attempts to locate the individual. Individual has reached out to CSI staff in the past, when in need. Until July of 2011 CSI continued to leave voice messages on her phone. Individual failed to respond to any messages. Individual used to live with son but he does not know where the individual is living now.

27) 2618 – DDSD made a referral for PCO services. Individual is non-adjudicated. This person was referred for Guardianship services, no guardianship proceeding has taken place; OOG is working with the family to gather necessary information. The individual and her sister were home on 9/29/2011 and made themselves available to CSI. CSI provided the sister with the information on PCO including a packet of information from the HSD website and the MAD 375. The sister stated that she would make an appointment with the PCP to get form completed.

28) 2610 – DDSD made a referral for PCO services. Individual is non-adjudicated. Columbus made no recommendation for Guardianship. Amerigroup had difficulty contacting the individual. CSI was able to locate the individual. He was not interested in PCO until recently. CSI is currently working with individual to pursue services.

29) 6407 – DDSD made a referral for PCO services. Individual is non-adjudicated. Columbus did not make a recommendation for Guardianship. Individual initially declined services, but then expressed an interest in obtaining the service. CSI delivered the MAD form to him and explained what he needed from his PCP. The individual then signed a Do Not Contact form. Omnicaid shows no billing for PCO for this individual to date.

Sincerely,



J. Gabrielle Sanchez-Sandoval
Acting General Counsel
New Mexico Department of Health

GSS:cvg
cc: Kathyleen Kunkel, Walz & Associates (via email)
Anne Alexander, Walz & Associates (via email)
Peter Cubra (via email)

Exhibit #3

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February 10, 2012

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Peggy.Jeffers@state.nm.us

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Peggy Jeffers
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2550 Cerrillos Rd.
Santa Fe, NM 87505

Re: *JM v. NM DOH*, NO. CV-07-604 RB/ACT

Dear Ms. Sanchez-Sandoval and Ms. Jeffers:

We are writing to you to ask the Departments of Health (DOH) and Aging and Long Term Services (ALTSD) to promptly address Plaintiffs' ongoing concerns regarding Defendants' apparent failure to fully comply, over a year later, with the Arbitrator's most recent Orders, dated November 11, 2010 and January 20, 2011 (Sections I-V, below). In light of these failures, and related directly to them, we also by this letter make a new request to Defendants (Section VI, below).

As we have stated in emails and discussed during our last meeting regarding these issues, a number of individuals have died since the last arbitration before they received the full benefits to which they were entitled under the Agreement. For example, in the spring of 2011, Clara Davidson and Gilbert Sanchez died. Then, in September of 2011, we learned on a visit to Santa Rosa that Emmitt Armijo had died two and a half months earlier. When we informed DOH of his death, DOH personnel told us that this was the first they had learned of his death.

More people will die without receiving the benefits to which they are entitled under the Agreement if we do not move expeditiously to help them. Just days ago we spoke to Imelda Garcia (505-466-1577, 1 Lucero Rd., Santa Fe, NM 87508), the sister and guardian of Gerald Garcia, who was discharged from Los Lunas Hospital and Training School on June 8, 1979. Although Gerald received an AgePlan interview in 2008 and one follow-up visit by Steve Coca in 2009, his sister states that, since that time, Gerald has not been evaluated by Columbus and has not been visited by DOH or CSI.

However, not only is DOH allowing eligible individuals to fall through the cracks, but DOH's actions and failure to provide us with additional information on these individuals have frustrated our attempts to help these individuals receive all of the benefits to which they are entitled under the Agreement. For example, on December 29, 2011, we attempted to speak with Joanna Gutierrez, who is enrolled with Santa Maria El Mirador. SMEM's Program Director, reportedly based in part upon advice by DOH's Bert Dennis, refused to provide us access to Ms. Gutierrez.

We hope to meet with DOH and ALTSD as soon as the legislative session is over to discuss our concerns and to see if we can resolve them without resorting to further arbitration.

I. THIRD REPORT

It appears that Defendants have failed to comply with the following provision on page 4 of the Arbitrator's January 20, 2011 Order:

> 9. By no later than 30 days from the effective date of this Order, Defendants shall prepare and provide to Plaintiffs' counsel a third report that includes the following information:
> A. With regard to each of Defendants' CSI personnel,
> i. Provide a list of the recommendations from Columbus for each individual on the caseload;
> ii. Identify the actions taken to facilitate the application for the programs and services which were recommended by Columbus in "I" above;
> iii. List any other actions taken on behalf of the individual; and
> iv. Arrange for an appropriate Power of Attorney to be established for each client identified by Columbus as needing a Power of Attorney, including whether they have discussed this subject with the client, whether an appropriate person to serve as the Power of Attorney has been identified, whether the appropriate forms have been provided to the client, and whether the client refused any part of this process.

We have reviewed our files and correspondence with DOH, and it does not appear that DOH has provided us with this third report.

II. RELEASE OF DOCUMENTS

It appears that Defendants have failed to comply with the following provision on page 2 of the Arbitrator's November 11, 2010 Order:

> 1. The New Mexico Department of Health shall provide to Plaintiffs' counsel any documents sought by a release within thirty (30) days of receipt of the release."

During our March 22, 2011 meeting with DOH, we asked that DOH provide us with additional documents for people for whom we have already provided DOH with signed releases. We put this request in writing on March 23, and followed up with further inquiries on April 27, May 22, and July 26, 2011. DOH did not respond at all until July 27, and has still never provided these additional requested documents.

For each of the individuals for whom we have provided a signed release, we requested, and again request, the following:

- A copy of all CSI records and documents (i.e. notes, narratives, documentation, logs) created since the original, and only, production of the same to us by DOH;
- A copy of any TEASC or other evaluation in DOH's possession;
- A copy of each person's entire eligibility file; and
- A copy of all Training School records in DOH's possession, including those stored at the State's Records Archives.

By what date will DOH provide this additional documentation?

III. AFFIDAVIT

It appears that Defendants have not fully complied with the following provision on page 2 of the Arbitrator's November 11, 2010 Order:

> 2. Exhibit A to the status report dated November 1, 2010 names certain individuals who have either refused to be contacted or have on file instructions to not be contacted... Paragraph 5 of the Settlement Outline dated January 8, 2010 (Kunkel Changes 5:16 L.M.) states as follows:
>
> > Former residents will receive written and oral notice of the Agreement. After receiving such notice, individuals may decline to receive the benefits of this Agreement if an Agent of the State Agency Defendants has already documented in writing that any former resident has explicitly requested that they not be contacted again by the State Agency Defendants.
>
> The New Mexico Department of Health shall provide an affidavit to Plaintiffs' counsel and the Arbitrator within thirty (30) days of this order, verifying that it has confirmed and has documented in writing on file, an explicit refusal to be contacted by the State Agency Defendants by those individuals so noted on Exhibit A.

As noted in Exhibit A to the November 1, 2010 status report, 41 individuals allegedly refused in some manner to be contacted, consisting of 13 "Do Not Contact On File, 10 "Individual Refused," and 18 "Guardian Refused" (see Appendix A, § III). DOH provided us with an affidavit by Bert Dennis. Unfortunately, Ms. Dennis' affidavit only addressed 14 of these 41 alleged refusals, failing to address nine of those individuals listed as "Individual Refused" and all 18 of those individuals listed as "Guardian Refused." The affidavit did not specify who told which DOH official on what date that they wanted no further contact and what DOH did to determine whether the persons who purportedly spoke on behalf of an individual had the authority pursuant to a court order to speak for the individual. We asked for a meeting with DOH, including Bert Dennis, to have DOH explain the affidavit to us, but DOH has not agreed to this meeting.

The January 24, 2012 CSI Visitation Compliance Report lists 25 individuals as Do Not Contact (see Appendix A, § 3). We request the identities of all of these individuals, as well as the information we have previously requested; who told which DOH official on what date that they wanted no further contact; and what DOH did to determine whether the persons who purportedly spoke on behalf of an individual had the authority pursuant to a court order to speak for the individual.

If Defendants are unwilling to have the requested meeting, we ask that DOH provide us with a new affidavit that addresses all of the deficiencies in the first affidavit, and provides all such information regarding all 25 individuals identified in the January 24, 2012 CSI Report. We request specifically that this new affidavit answer at least the following:

- On what date was the individual informed orally and in writing about the Agreement?
- On what date was a refusal to be contacted provided?
- Who received this information?
- Who indicated, and in what manner, that the individual refused to be contacted, and what is their authority and legal relationship to the individual?
- If any refusals were made by the individual's guardian, what was done to ensure that the appointment of any such guardian was not facilitated by DOH, in compliance with paragraph 3(f) of the Settlement Outline ("Columbus will not defer to a decision to decline services by a guardian whose appointment was facilitated by DOH (conflict of interest) but shall instead refer such cases for consideration whether to challenge the guardian's decision to Disability Rights of New Mexico.")?

IV. MONTHLY REPORTS

It appears that Defendants have failed to comply with the following provision on pages 2-3 of the Arbitrator's January 20, 2011 Order:

> 6. By no later than 15 days from the effective date of this Order, Defendants shall prepare and provide to Plaintiffs' counsel a second report describing the status of the PCO and Waiver application process for every person identified by Columbus as eligible for a Waiver, including what Defendants have done, and plan to do, to get the necessary documentation to support such applications. Beginning thirty (30) days from the effective date of this Order, Defendants will then report to Plaintiffs' counsel each month what progress has been made on those applications."

Beginning in March 2011, DOH has provided to Plaintiffs' counsel just five "monthly updated reports submitted by the Department of Health as ordered by Arbitration": DDW Report; PCO Report; POA Report; HCDM Report; and CSI Visit Compliance Report.

Substantively, we are also concerned that DOH is not fully complying with paragraph 3(c) of the Agreement: "DOH shall be responsible for gathering the documents necessary to support the application for services for any individual needing such applications to be processed. Applications shall be processed promptly." The questions that follow arise from the most recent production of these five reports in January 2012.

Subsection A

Based upon the January 24, 2012 DDW and PCO Reports, 21 individuals received a DD Waiver referral but not a PCO referral (see Appendix A, § IV(A)). According to paragraph 3(c) of the Agreement, everyone who receives Waiver referral also receives a PCO referral ("In the event Columbus determines that a person appears eligible for a Waiver program, Columbus will initiate applications for those Waiver services on the behalf of each person and will simultaneously apply for PCO services. The State Defendants will promptly process all applications initiated by Columbus.")

If these 21 individuals received a DD Waiver referral, why did each of them not also receive a PCO referral?

Subsection B

Based upon the January 24, 2012 DDW and PCO Reports, 24 individuals received a PCO referral but not a DD Waiver referral (see Appendix A, § IV(B)). In light of the passage from the Agreement cited above in Subsection A, if these 24 individuals received a PCO referral, why did each of them not also receive a DD Waiver referral?

Subsection C

Based upon the January 24, 2012 DDW Report, of 69 total referrals (see Appendix A, § IV(C)):

- For 20 individuals, "Declined Service"
  - Who declined service, when, to whom, and by what authority? For example, we understand that DOH determined that Josie Pena ostensibly declined DD Waiver services, but it appears that Mary Evans declined on Josie's behalf, although Ms. Evans had no authority to do so.
- For 4 individuals, "Do Not Contact"
  - Who refused contact, when, to whom, and by what authority?
- For 1 individual, "Unable to Locate"
  - What methods were attempted to locate this individual? Please provide us with this individual's information so that we can attempt to locate her/him.
- For 3 individuals, "Individual Requested Closure of Recommendation / Individual and Supports Not Interested in DD Waiver Services"
  - Who requested closure or expressed a lack of interest, when, to whom, and by what authority?
- For 6 individuals, referral for a TEASC assessment
  - Who made the referral, when was it made, when did TEASC perform the assessment, and when was the DD Waiver application packet completed?
- For 4 individuals, no match for services for other reasons
  - Please explain in greater detail why these individuals failed to obtain a match.

Subsection D

Based upon the January 24, 2012 PCO Report, of 45 total referrals (see Appendix A, § IV(D)):

- For 5 individuals, "Now pursuing PCO"
  - Who is pursuing PCO services, what is being done, when can the individual expect to begin receiving services, and why have the services not begun?
- For 2 individuals, "Pending MAD 075 per Molina"
  - Please explain.
- For 2 individuals, "Denied"
  - When were PCO services denied, by whom and on what basis?
- For 1 individual, "Unable to Locate per Evercare"
  - What methods were attempted to locate this individual? Please provide us with this individual's information so that we can attempt to locate her/him.
- For 3 individuals, "Do Not Contact"
  - Who refused contact, when, to whom, and by what authority?
- For 17 individuals, "Declined Service"
  - Who declined service, when, to whom, and by what authority?

Section E

Based upon the January 24, 2012 CSI Visitation Compliance Report (see Appendix A, § IV(E)):

- For 7 individuals, "Unable to Locate"
  - What was attempted?
  - Will you give us their information so that we can try as well?
- For 25 individuals, "Do Not Contact"
  - Who said this, when, to whom, and by what authority?
- For 7 individuals, no CSI Visitation according to the requirements of the Agreement for other reasons
  - Please explain in greater detail why these individuals did not receive the level of CSI visitation required by the Agreement.

Section F

Based upon the January 24, 2012 Healthcare Decision-Maker Report, of 21 total referrals (see Appendix A, § IV(F)):

- For 8 individuals, "Closed by Regional Office [Date]"
  - What does this mean, who made the determination, and on what basis was the determination made?

Section G

Based upon the January 24, 2012 Power of Attorney Report, of 11 total referrals (see Appendix A, § IV(G)):

- For 3 individuals, "Closed by Regional Office [date]"

  - What does this mean, who made the determination, and on what basis was the determination made?
- For 4 individuals, "Service Declination form signed on [date]"
  - Who declined service, to whom, and by what authority?

V. INADEQUACY OF CSI SUPPORTS

Section 3(d) of our Settlement Agreement provides:

> d. Every former resident who is not receiving services through Waiver program will be offered assistance from the DOH Community Services Integration project. If the results of the screening and assessment above identifies other services a former resident may need, they will be referred by CSI workers to the appropriate agency or program for processing in accordance with the program guidelines, eligibility, criteria and available funding, subject to the agency's respective statutory and regulatory responsibilities. There shall be a minimum frequency of visits to each person served by CSI and a maximum caseload per CSI worker. The minimum visits shall be once every quarter for people receiving PCO or ICF/MR services; for others, it shall be more frequently as needed.

Unfortunately, it appears that CSI personnel are not providing the needed level of assistance to each eligible individual. Many individuals are experiencing difficulties obtaining or maintaining their public benefits such as PCO or DD Waiver or D&E Waiver services. Others are having difficulties with their medial care and/or with managing their financial affairs. We had explicitly stated as part of our mediation that we were relying on CSI workers to provide people with the functional equivalent of DD Waiver case management services while they were without recommended services. However, it appears that some CSI workers may be spending most of their time arranging for their visits, driving between individuals' residences, and completing reports documenting their visits. Additionally, it seems clear that individuals whose difficult circumstances necessitate more frequent visits than quarterly are not getting visited as needed.

We want to discuss how to improve the efficacy of, and intensity of, the work of CSI workers.

VI. NAMES OF 101 INDIVIDUALS

In the course of this litigation we have received over a million pdfs and pieces of paper pertaining to the individuals in the putative class. We have made physical contact with many of these individuals, and we know the stories of many more of them. And, based upon what we have learned from and about these individuals, coupled with what we can piece together from DOH's monthly reports, we cannot be confident that each of these individuals is receiving the full benefits of the Agreement.

As to each of the one hundred and one (101) individuals, indentified by their unique identifier, about whom we have expressed a concern(s) in this letter (see Appendix A, § VI), please provide us with their names so that we can review the records and other information we have regarding them to assure ourselves that each individual is receiving the benefits to which they are entitled under the

Agreement. The DDPC entered into such an order and provided us with the information we needed regarding individuals about whom we had concerns. Your agencies can easily do the same.

In the event that we cannot resolve these issues by the end of February, we will initiate another arbitration proceeding. We want to put Defendants on notice that, if we must initiate another arbitration, we will seek an order from the Arbitrator ordering Defendants to compensate us for our legal work enforcing the Arbitrator's orders.

Very truly yours,

for Peter Cubra

cc via electronic mail:

Kunkel, Kathyleen (kathy_kunkel@walzandassociates.com)
Anne Alexander (AAlexander@walzandassociates.com)
Jerry Walz (jerryawalz@walzandassociates.com)
Rachel Higgins (rachelhigginsjd@gmail.com)
Nancy Simmons (nlsimmons@swcp.com)
Charles Peifer (cpeifer@peiferlaw.com)
Cecelia Nunez (cnunez@peiferlaw.com)

APPENDIX A

III. AFFIDAVIT

"Do Not Contact On File" in Exhibit A to 11/01/10 Status Report

1. Emmitt Armijo
2. Henrietta Cailouette
3. Juanita Chacon
4. Clara Davidson
5. Darryl Hooper
6. Maria Juarez-Hipp
7. Marian J. Mumma
8. Virginia Northe-Scarberry
9. Geraldine D. Padilla
10. Larry R. Padilla
11. Joseph Paiz
12. Eva Trujillo
13. Telesfor Vallejos

"Individual Refused" in Exhibit A to 11/01/10 Status Report

1. Joseph P. Chavez
2. Martin Duarte
3. Karen Erdman
4. Anthony Farnsworth-Garcia
5. Robert Flores
6. Larry Givens
7. Santos Martinez
8. Richard Romero
9. Frank Saavedra
10. Barbara Sanchez

"Gd Refused" in Exhibit A to 11/01/10 Status Report

1. Linda Lou Baca
2. Erica Dickens
3. Pamela J. Edwards
4. Jerry Gallegos
5. Christopher Hamilton
6. Rose Hepner
7. Richard Jaramillo
8. Terry N. Jones
9. Jasper Jumbo
10. Lenora M. King
11. Marie Marchbanks
12. Sidney McGee

13. Matthew Montoya
14. Cheryl D. Pack
15. Nancy D. Rotuno
16. Bruce Sherwood
17. Marcella J. Stromberg
18. Sharon Thompson

"Do Not Contact" in 12/22/11 CSI Visitation Compliance Report

1. 210
2. 1153
3. 1723
4. 2474
5. 2842
6. 3115
7. 3160
8. 3509
9. 3666
10. 4426
11. 4739
12. 4772
13. 5599
14. 6132
15. 6407
16. 6533
17. 6598
18. 6626
19. 6655
20. 7495
21. 7882
22. 8000
23. 8249
24. 8860
25. 9926

IV. MONTHLY REPORTS

(A)

1. 1206
2. 1235
3. 1267
4. 1689
5. 1925
6. 1987
7. 2276

8. 2543
9. 2813
10. 2980
11. 3204
12. 3867
13. 3904
14. 4587
15. 5177
16. 5763
17. 6107
18. 7777
19. 8017
20. 8093
21. 9205

(B)

1. 1498
2. 1620
3. 1986
4. 2398
5. 2474
6. 2503
7. 2610
8. 2785
9. 2842
10. 3018
11. 3160
12. 4259
13. 5017
14. 6407
15. 6626
16. 6749
17. 6876
18. 7495
19. 7536
20. 8249
21. 8787
22. 8974
23. 9446
24. 9734

(C)

"Declined Service"

1. 1206
2. 1267
3. 1870
4. 1920
5. 1925
6. 1948
7. 2276
8. 2315
9. 2543
10. 2654
11. 2813
12. 2980
13. 3052
14. 3594
15. 4352
16. 5043
17. 5763
18. 6107
19. 6425
20. 7455

"Do Not Contact"

1. 1153
2. 3666
3. 4739
4. 4772

"Unable to Locate"

1. 1625

"Individual Requested Closure of Recommendation / Individual and Supports Not Interested in DD Waiver Services"

1. 2618
2. 6590
3. 8093

"TEASC"

1. 1235 (DDW app packet at eligibility, individual has been assessed by TEASC)
2. 2882 (referred to TEASC, app packet completed)
3. 5177 (needs psych eval, CSI working on scheduling app with TEASC)
4. 5837 (referred to TEASC, obtained TEASC app packet on 8/22/11)

5. 9205 (referred to TEASC, app packet completed)
6. 9815 (referred to TEASC, needs psych eval, app packet completed)

Other

1. 1422 (allocation on hold as of 1/19/05)
2. 1987 (need app packet, dx info, individual not currently eligible for DDW or PCO services, CSI will follow-up as soon as situation changes)
3. 4426 (no match)
4. 8017 (need app packet, dx info, supports need to produce docs)

(D)

"Now pursuing PCO"

1. 2610
2. 4259
3. 5601
4. 6407
5. 6876

"Pending MAD 075 per Molina"

1. 6590
2. 9446

"Denied"

1. 1030
2. 1625

"Unable to Locate per Evercare"

1. 2618

"Do Not Contact"

1. 2842
2. 4772
3. 6626

"Declined Service"

1. 1046
2. 1498
3. 2059
4. 2398
5. 2503
6. 2785
7. 3052
8. 3160

9. 4426
10. 5043
11. 5837
12. 6749
13. 7495
14. 8249
15. 8624
16. 8787
17. 9074

(E)

"Unable to Locate"

1. 1625
2. 2416
3. 3018
4. 4666
5. 4689
6. 6209
7. 7784

"Do Not Contact"

1. 210
2. 1153
3. 1723
4. 2474
5. 2842
6. 3115
7. 3160
8. 3509
9. 3666
10. 4426
11. 4739
12. 4772
13. 5599
14. 6132
15. 6407
16. 6533
17. 6598
18. 6626
19. 6655
20. 7495
21. 7882
22. 8000

23. 8249
24. 8860
25. 9926

Other

1. 2212 (family does not want quarterly visits, and wishes to contact CSI if need something)
2. 2398 (family requested one visit per year)
3. 3366 (DNC mailed to individual, but no response)
4. 4427 (seen 9/15; "scheduled to be seen in March 2012")
5. 6719 (individual requests CSI visit one time per year)
6. 8012 (family requests email contact only)
7. 8093 (attempted visits since 2/22, without success)

(F)

1. 1265W
2. 2296W
3. 3539W
4. 5972W
5. 6498W
6. 7536W
7. 7951W
8. 8677W

(G)

"Closed by Regional Office [date]"

1. 1265W
2. 7951W
3. 8224W

"Service Declination form signed on [date]"

1. 2337
2. 2358
3. 7676
4. 8276

VI. NAMES OF 101 INDIVIDUALS

1. 210
2. 1009
3. 1024
4. 1030
5. 1046
6. 1153

7. 1206
8. 1235
9. 1265W
10. 1267
11. 1422
12. 1498
13. 1620
14. 1625
15. 1723
16. 1870
17. 1920
18. 1925
19. 1948
20. 1986
21. 1987
22. 2059
23. 2212
24. 2276
25. 2296W
26. 2315
27. 2337
28. 2358
29. 2398
30. 2416
31. 2451
32. 2474
33. 2503
34. 2543
35. 2610
36. 2618
37. 2654
38. 2785
39. 2813
40. 2842
41. 2980
42. 3018
43. 3052
44. 3115
45. 3160
46. 3204
47. 3366
48. 3509
49. 3594
50. 3666

51. 3867
52. 3904
53. 4259
54. 4352
55. 4426
56. 4427
57. 4587
58. 4666
59. 4689
60. 4739
61. 4772
62. 5017
63. 5043
64. 5177
65. 5599
66. 5601
67. 5763
68. 5837
69. 6107
70. 6132
71. 6407
72. 6498W
73. 6533
74. 6598
75. 6626
76. 6655
77. 6719
78. 6749
79. 6876
80. 7455
81. 7495
82. 7536
83. 7676
84. 7784
85. 7882
86. 8000
87. 8012
88. 8017
89. 8093
90. 8224W
91. 8249
92. 8276
93. 8624
94. 8787

95. 8860
96. 8974
97. 9074
98. 9446
99. 9734
100. 9906
101. 9926

Exhibit #4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO
(Filed with the Arbitrator)

JM, through her next friend John Foley, and
JE, through her next friend Maria Fellin, on
their own behalf and on behalf of a class of
all other similarly-situated persons,

Plaintiffs,

vs.

No. CV-07-604 RB/ACT
CV-09-640 JC/KBM

NEW MEXICO DEPARTMENT OF HEALTH,
et al.,

Defendants.

ORDER

THIS MATTER having come before the arbitrator on November 9, 2010 as a result of Plaintiffs' Second Arbitration Demand; the parties having appeared, and being represented by their counsel, the Arbitrator having heard arguments and otherwise being fully informed of the premises hereby Finds:

1. The parties have met and conferred with respect to the Release forms that the New Mexico Department of Health needs in order to release documents to Plaintiffs' counsel so they can assess Defendants' compliance with the Settlement Agreement and Outline.

2. The New Mexico Department of Health has now accepted 32 releases and produced responsive documents to Plaintiffs' counsel.

3. Plaintiffs' counsel has an additional set of releases that have been executed and the New Mexico Department of Health will provide documents responsive to the release and accept the form of the release provided by Plaintiffs' counsel.

4. The New Mexico Department of Health will provide counsel with their approved release form and Plaintiffs' counsel will use that form in order to request any additional documents in the future.

5. The New Mexico Department of Health has provided Plaintiffs' counsel and the Arbitrator with a status report dated November 1, 2010. This Order will adopt and refer to by reference certain provisions of the letter.

As a result of the hearing it is hereby ORDERED, ADJUDGED and DECREED:

1. The New Mexico Department of Health shall provide to Plaintiffs' counsel any documents sought by a release within thirty (30) days of receipt of the release.

2. Exhibit A to the status report dated November 1, 2010 names certain individuals who have either refused to be contacted or have on file instructions to not be contacted... Paragraph 5 of the Settlement Outline dated January 8, 2010 (Kunkel Changes 5:16 L.M.) states as follows:

> "Former residents will receive written and oral notice of the Agreement. After receiving such notice, individuals may decline to receive the benefits of this Agreement if an Agent of the State Agency Defendants has already documented in writing that any former resident has explicitly requested they not be contacted again by the State Agency Defendants."

The New Mexico Department of Health shall provide an affidavit to Plaintiffs' counsel and the Arbitrator within thirty (30) days of this order, verifying that it has confirmed and has documented in writing on file, an explicit refusal to be contacted by the State Agency Defendants by those individuals so noted on Exhibit A.

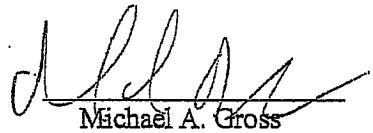
3. The parties shall meet and confer with in five (5) days to attempt to resolve the

following issues:

A. The status of the additional 71 individuals who did not appear on the initial list of 1041 former residents who resided for summer school or respite care (outlined in paragraph 3 of the November 1, 2010 status report).

B. The New Mexico Department of Health compliance issues with regard to the minimum frequency of visits to each person served by CSI and the maximum caseload per CSI worker set forth in paragraph D page 2.

4. In the event the parties do not resolve the issues set forth in the preceding paragraph of this Order, Plaintiffs may send the Arbitrator a third demand for arbitration.



Michael A. Gross
Arbitrator

Exhibit #5

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Robert A. Corchine
Jim M. Dines
Michael A. Gross
Jeannie Hunt
Steven J. Leibel
Gregory P. Williams

*also licensed in WA

In Response Please Reply To:
05089.08045

January 20, 2011

VIA EMAIL ONLY

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Re: *John Foley et al v. NM DOH et al*

Dear Counsel:

I have attached the Arbitration order we discussed today by telephone with regard to the December 16, 2010 Arbitration hearing.

Thank you for your input.

Sincerely,

DINES & GROSS PC

By: _____
Michael A. Gross

MAG/sbl
Enc: Arbitrator's Order Regarding December 16, 2010 Arbitration Hearing

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

JM, through her next friend John Foley, and
JE, through her next friend Maria Fellin, on
their own behalf and on behalf of a class of
all other similarly-situated persons,

Plaintiffs,

vs.

No. CV-07-604 RB/ACT
CV-09-640 JC/KBM

NEW MEXICO DEPARTMENT OF HEALTH,
et al.,

Defendants.

ARBITRATOR'S ORDER
REGARDING DECEMBER 16, 2010 ARBITRATION HEARING

This matter having come before the Arbitrator pursuant to the October 22 and November 20, 2010 Arbitration Demands submitted by Plaintiffs' counsel; and the Arbitrator having conducted Arbitration Hearings on November 9, 2010 and December 16, 2010, having considered the evidence presented and the presentations of counsel for Plaintiffs and Defendants, and being otherwise advised in the premises;

IT IS HEREBY ORDERED:

1. By no later than December 16, 2010, Defendants will assign at least three additional employees to work on the CSI project;

2. By no later than December 23, 2010, Defendants shall prepare and provide to Plaintiffs' counsel a report describing the contacts between CSI personnel and eligible individuals. The Arbitrator reserves ruling upon whether reports by the Defendants must contain the names of the individuals about whom they are reporting. Unless otherwise directed by the Arbitrator, the Defendants may at this time redact the name of any individual for whom Plaintiffs' counsel have

not provided an effective authorization to release information. Provided, however, that if the Defendants redact individuals' names, they will assign an identifying number or pseudonym to those individuals whose names they do not provide;

3. By no later than January 3, 2010, Defendants will meet the CSI caseload standards established in Paragraph 3(d) of the Agreement;

A. There shall be a minimum frequency of visits to each person served by CSI and a maximum caseload per CSI worker. The minimum visits shall be once every quarter for people receiving PCO or ICF/MR services; for others, it shall be more frequently as needed.

B. Maximum caseload per CSI worker shall be 40 individuals.

C. For purposes of measuring Defendants' compliance in 2011 with its obligation under the Agreement to provide at least quarterly visits by CSI personnel to all eligible persons, January 1, 2011 shall be the first day of the first quarter in 2011;

4. During the next two months, the Defendants' CSI personnel will conduct a face-to-face visit with every person who is eligible for assistance from CSI who has not received a face-to-face visit since July 1, 2010, and document what efforts were made to meet, if the meeting face to face did not occur.

5. Beginning no later than January 1, 2011, the Defendants' CSI personnel will conduct face to face visits with those members of the proposed class who are eligible for assistance from CSI according to the minimum frequency requirements of ¶ 3 (d) of the 1/8/10 settlement outline, and document what efforts were made to meet if the meeting face to face did not occur;

6. By no later than 15 days from the effective date of this Order, Defendants shall prepare and provide to Plaintiffs' counsel a second report describing the status of the PCO and Waiver application process for every person identified by Columbus as eligible for a Waiver, including

what Defendants have done, and plan to do, to get the necessary documentation to support such applications. Beginning thirty (30) days from the effective date of this Order, Defendants will then report to Plaintiffs' counsel each month what progress has been made on those applications;

7. By no later than 15 days from the effective date of this Order, Defendants' and Plaintiffs' counsel will meet to confer regarding what Defendants have done to provide written and oral notice of the Agreement to all people who fall within the proposed class definition;

8. By no later than 30 days from the effective date of this Order, Plaintiffs' counsel:

A. Shall review all of the information in their possession regarding people who appear to meet the proposed class definition;

B. Shall compare that information with the lists provided by Defendants of which people have been referred by Defendants to Columbus for assessment;

C. Shall provide to Defendants a list of any people whom Plaintiffs' counsel determine appear to fall within the proposed class definition whose names are not on the lists of people the Defendants have referred to Columbus for assessment;

D. For every name referred to Defendants, to the extent possible, Plaintiffs will provide Defendants with the source documents utilized to identify such individual as having been discharged from Los Lunas Hospital and Training School or Fort Stanton Training School between the years of 1970 and 1987, and to the extent possible where the documents originated;

E. Any individual identified as meeting the requisite discharge date from the two named state facilities as well as the terms of the settlement agreement defining eligibility for assessment, will be referred to Columbus for the appropriate assessment(s) immediately; and

F. Defendants will refer all people on this list to Columbus or provide a written explanation to Plaintiffs' counsel describing why Defendants will not do so.

9. By no later than 30 days from the effective date of this Order, Defendants shall prepare and provide to Plaintiffs' counsel a third report that includes the following information:

A. With regard to each of Defendants' CSI personnel,

i. Provide a list of the recommendations from Columbus for each individual on the caseload;

ii. Identify the actions taken to facilitate the application for the programs and services which were recommended by Columbus in "i" above;

iii. List any other actions taken on behalf of the individual; and

iv. Arrange for an appropriate Power of Attorney to be established for each client identified by Columbus as needing a Power of Attorney, including whether they have discussed this subject with the client, whether an appropriate person to serve as the Power of Attorney has been identified, whether the appropriate forms have been provided to the client, and whether the client refused any part of this process.

Effective this 20th day of January, 2011

MICHAEL A. GROSS
Arbitrator

Exhibit #6

Jerry A. Walz, Esq.

*Also Admitted
in Texas & Colorado

Walz and Associates

Attorneys at Law

"Making Legal History"

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David Dayog Black, Esq.

April 2, 2012

Peter Cubra, Esq.
John Hall, Esq.
Attorneys at Law
3500 Comanche Rd. NE, Suite H
Albuquerque, NM 87107-4546

Re: ***JM v. NM DOH, et al.*, No. 07-CV-604 RB/ACT**

Dear Mr. Cubra and Mr. Hall,

This letter is in response to your letter of February 10, 2012.

I. THIRD REPORT

Plaintiffs allege that Defendants have failed to comply with the provision on page 4 of the Arbitrator's January 20, 2011 Order.

Defendants have complied with the following provision on page 4 of the Arbitrator's January 20, 2011 Order through submission of the following:

1. Service Plans for each individual with a list of the recommendation from Columbus for each individual, identification of the actions taken by CSI to follow up with recommendations and other actions taken on behalf of the individual. These Service Plans were provided to Mr. Michael Gross, Arbitrator, and Mr. Peter Cubra on a CD with a cover later dated January 19, 2011 in PDF form, Bates No. 000001-000664. (see Attachment 1, letter of 1/19/2012).
2. Service Status Reports (DDW, PCO, HCDM and Power of Attorney) which identify the actions taken to facilitate the application for the programs and services recommended by Columbus, submitted 2/21/2011 electronically to Michael Gross, Arbitrator, and plaintiffs' counsel, which have been updated and submitted monthly thereafter.(see Attachment 2, email of 2/21/2011)
3. The Power of Attorney (POA) Service Status report provided at the meeting with Peter Cubra and John Hall on 3/2/2012 clarified for each individual whether a Power of Attorney has been identified, or, if the individual chose to decline the recommended service, the date on which a Service Declination Form was signed (FN1). During the March 2nd, 2012 meeting, Plaintiffs' counsel was reminded that Gabrielle Sanchez-Sandoval, Acting General Counsel provided a training to all CSI workers including the appropriate paperwork to provide to individuals in order

1 Whenever possible, Defendants have documented the declination of any service by having the individual or guardian sign a "Declination of Services" form. These documents are retained by the Department of Health. A sample of the Declination of Services form is attached as Attachment 3.

to have a discussion regarding the POA process and the selection of an appropriate person to serve as the Power of Attorney. Trainings were also provided to CSI with information and appropriate forms regarding the Guardianship process and how to select a Health Care Decision Maker.

II. RELEASE OF DOCUMENTS

Plaintiffs allege that Defendants have failed to comply with the following provision on page 2 of the Arbitrator's November 11, 2010 Order:

1) The New Mexico Department of Health shall provide to Plaintiffs' counsel any documents sought by a release within thirty (30) days of receipt of the release.

Defendants retained a private investigator to catalog all documents stored in Cottage 2 of the LLCP, the storage rooms at the Bank of the West, including the micro fiche which contained the CST documents. Defendants' investigator searched State Archives for documents related to the individuals for whom Plaintiffs' counsel had produced valid releases.

Defendants provided copies of all additional documents for each of the individuals for whom plaintiffs' counsel provided a valid release of information. At the meeting on March 2, 2012, Defendants included a checklist of all previously released documents for each individual for whom Plaintiffs' counsel provided a valid release. Counsel for both the Department of Health and Aging and Long Term Services Department were required to engage in multiple conversations with Plaintiffs' counsel to cure deficiencies in the most of the releases. This resulted in delays. There are no further documents to produce.

III. AFFIDAVIT

Plaintiffs' counsel allege that Defendants have not fully complied with the provision on page 2 of the Arbitrator's November 11, 2010 Order, specifically, "to provide an affidavit to Plaintiffs' counsel and the Arbitrator within thirty (30) days for this Order, verifying that it has confirmed and has documented in writing on file, an explicit refusal to be contacted by the State Agency Defendants by those individuals so noted on Exhibit A."

Plaintiffs' counsel requested a new affidavit, or, in the alternative, a meeting with Plaintiffs' counsel to explain the Affidavit of 12/12/2010. Plaintiffs' counsel further request that DOH "provide us with a new affidavit that addresses all of the deficiencies in the first affidavit, and provides all such information regarding all 25 individuals identified in the January 24, 2012 CSI report as "Do Not Contact". Plaintiffs' counsels go on to request that Defendants' new affidavit include information, inter alia, on who made the refusal, what was their authority and if any refusals were made by guardians whose appointment was facilitated by DOH.

Defendants respond to the allegations as follows:

Defendants produced the required Affidavit on 12/12/2010.

For each individual on the January 24, 2012 CSI Visitation Compliance Report identified as "Do Not Contact" (DNC)(FN 2) the updated CSI visitation report for the month of March 2012 indicates the date on which the individual (or the guardian if appropriate) signed the DNC form. For any refusals made by the individual's guardian, a list of those individuals was sent to Disability Rights of New Mexico in accordance with paragraph 3(f) of the Settlement Outline. The Department continues to respect an individual's right to accept or decline a service or assistance, until the individual has been formally declared to lack capacity.

The Columbus Organization was contracted pursuant to the terms of the Settlement Agreement to provide oral and written notice, conduct assessments and make recommendations to CSI to follow-up regarding services. The Department is in the process of verification that each individual received the required notice. Some individuals were referred to the Columbus Organization despite a DNC on file if the DNC was received prior to January 8th, 2010.

Regarding the 25 individuals identified in the January 24, 2012 CSI Visitation Report:

1. 210 Family has requested that CSI not initiate contact, but will contact CSI if and when they need assistance.
2. 1153 Individual signed DNC on 1/19/2011 received by CSI worker.
3. 1723 Individual signed DNC on 3/7/2011 received by CSI.
4. 2474 Individual and family states he does not want contact from CSI.
5. 2842 Individual signed DNC on 3/1/2011 received by CSI.
6. 3115 Individual signed DNC on 6/28/2011 received by CSI.
7. 3160 Individual signed DNC on 3/30/2011 received by CSI.
8. 3509 Individual verbally requested DNC on 6/27/2011.
9. 3666 Guardian signed DNC 3/21/2011 received by CSI.
10. 4426 Individual verbally requested DNC received 5/26/2011 by RCI.
11. 4739 Guardian signed DNC 4/4/2011 received by CSI.
12. 4772 Individual signed DNC on 2/24/2011 received by CSI.
13. 5599 Guardian signed DNC on 2/28/2011 received by CSI.
14. 6132 Individual signed DNC on 11/26/2010 received by CSI.
15. 6407 Individual signed DNC on 3/22/2011.
16. 6533 Individual signed DNC on 2/28/2011 received by CSI.
17. 6598 Individual verbally requested DNC on 3/16/2011 to CSI.
18. 6626 Individual signed DNC on 3/23/2011.
19. 6655 Individual signed DNC 2/24/2011 received by CSI.
20. 7495 Individual signed DNC 3/14/2011 received by CSI.
21. 7882 Individual signed DNC 10/24/2011 received by CSI.
22. 8000 Individual and proposed guardian signed DNC 3/22/2011.
23. 8249 Individual signed DNC on 3/30/2011 received by CSI.
24. 8860 Individual signed DNC on 6/7/2011 received by RCI.
25. 9926 Individual signed DNC on 2/18/2011 received by CSI worker.

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2 Whenever possible, Defendants have documented the request to cease all contact by having the individual or guardian sign a "Do Not Contact" form. These documents are retained by the Department of Health. A sample of the Do Not Contact Form is attached as Attachment 4.

IV. MONTHLY REPORTS

Plaintiffs' counsel alleges that Defendants have failed to comply with the following provision on pages 2-3 of the Arbitrator's January 20, 2011 Order, which directs Defendants to report to Plaintiffs' Counsel on contact between CSI workers and eligible individuals. The second report requires Defendants to describe the status of the PCO and Waiver application process for every person identified by Columbus as eligible for a waiver, including what Defendants have done, and plan to do, to get the necessary documentation to support such applications. Defendants were ordered to report to Plaintiffs' counsel on the progress every thirty days.

Defendants have submitted five monthly updated Service Status Reports (DDW, PCO, POA, HCDM and CSI Visitation Compliance) every month, beginning on February 21, 2011. These monthly updated reports list the status of the relevant application process for each individual and include what CSI has done, and intends to do, to assist the individuals in gathering the necessary documentation to support such applications.

Subsection A

According to paragraph 3(c) of the Agreement, each individual who receives Waiver referral shall "simultaneously apply for PCO services". As was related to plaintiffs' counsel during the meeting on March 2, 2012, a decision was made by the Department to refer all individuals for PCO services. As plaintiffs' correctly noted, 21 individuals listed on the DDW report were inadvertently not listed on the PCO report, however these 21 individuals were in fact referred for PCO services, and CSI workers provided and continue to provide information and assistance. The status of the PCO application process for each of the 21 individuals indentified by Plaintiffs' counsel is listed below, and these individuals will be included in the March 2012 Service Status Report.

1. 1206 N/A; Individual lives in ICF/MR
2. 1235 Receives PCO services
3. 1267 Individual not eligible for PCO; receives QMB
4. 1689 N/A; Individual lives at Ft. Bayard Medical Center
5. 1925 Individual signed Service Declination form 7/25/2011
6. 1987 Individual not currently eligible – currently incarcerated
7. 2276 Individual signed Service Declination form 7/27/2011
8. 2543 Individual has expressed frustration to CSI worker about PCO application process, CSI worker offered to accompany individual to PCP appointment to explain PCO benefits to doctor; no guardianship
9. 2813 N/A; Individual lives in ICF/MR
10. 2980 N/A; Individual lives in ICF/MR
11. 3204 N/A; Individual lives in ICF/MR
12. 3867 N/A; Individual lives in ICF/MR
13. 3904 N/A; Individual lives in ICF/MR
14. 4587 Guardian and Individual declined PCO services on 3/08/2012
15. 5177 Individual lives in nursing facility
16. 5763 Guardian signed Service Declination Form 3/19/2012

17. 6107 Service Declination form signed by individual 4/21/11
18. 7777 Individual lives in nursing facility
19. 8017 N/A; Individual lives in ICF/MR
20. 8093 Individual was provided with MAD 379 form on 2/3/12
21. 9205 N/A; Individual lives in ICF/MR

Subsection B

As noted above, it was the decision of the Department of Health to refer all individuals to the PCO program. However, the determination to refer individuals for waiver services was only made by the Columbus reviewer. For this reason there will be a discrepancy between the number of individuals referred to PCO and the number of individuals referred to DDW.

Subsection C

In response to questions based upon the January 24, 2012 DDW Report, information on each declination follows, as requested:

"Declined Service"

1. 1206 Guardian sent letter to Eligibility requesting closure of DDW app 1/5/11
2. 1267 Individual signed Service Declination on 5/05/11
3. 1780 Service Declination Form signed by individual 4/28/11
4. 1920 Guardian signed service declination form on 6/20/11
5. 1925 Individual signed service declination form on 7/22/11
6. 1948 Individual with PoA signed service declination form on 4/27/11
7. 2276 Individual signed service declination form 7/27/11
8. 2315 Guardian signed service declination form 6/20/11
9. 2543 Individual signed service declination form 7/6/11
10. 2654 Individual signed service declination form 8/10/11
11. 2813 Individual signed service declination form 10/11/11
12. 2980 Guardian sent letter to Eligibility requesting closure of DDW app 10/28/10
13. 3052 Individual signed service declination form 7/28/11
14. 3594 Guardian signed service declination form 8/3/11
15. 4352 Individual signed service declination form 7/27/11
16. 5043 Individual signed service declination form 8/17/11
17. 5763 Guardian signed service declination form 3/19/12
18. 6107 Individual signed service declination form 4/21/11
19. 6425 Individual signed service declination form 8/2/11
20. 7455 Individual signed service declination form 9/22/11

"Do Not Contact"

1. 1153 Individual signed Do Not Contact form on 1/19/11
2. 3666 Tribal guardian signed Do Not Contact form on 3/21/11
3. 4739 Guardian signed Do Not Contact form on 4/4/11
4. 4772 Individual signed Do Not Contact form on 2/24/11

"Unable to Locate"

1. 1625 Last contact 5/3/11 by telephone individual would not give current address. Attempts to contact since that time have been unsuccessful.

"Individual Requested Closure of Recommendation/Individual and Supports Not Interested in DD Waiver Services"

1. 2618 Individual and sister signed Service Declination form 9/29/11
2. 6590 CSI sent DDW application to intake and eligibility; TEASC application mailed on 3/21/12
3. 8093 Individual states he is not interested in DDW services.

"TEASC"

1. 1235 Match for services 1/7/2012
2. 2882 TEASC evaluation scheduled for 3/22/12
3. 5177 TEASC evaluation to be scheduled
4. 5837 Individual refuses to set TEASC appointment for evaluation
5. 9205 TEASC evaluation scheduled for 3/29/12
6. 9815 TEASC evaluation scheduled for 4/26/12

"No Match for Services for Other Reasons"

1. 1422 (allocation on hold as of 1/19/05) Allocation on hold at individual's request.
2. 1987 (need app packet, dx info, individual not currently eligible for DDW or PCO services) Individual is currently incarcerated
3. 4426 (no match) Eligibility determined no match for DDW services
4. 8017 Documents submitted on 3/26/12 to Eligibility to support application

Subsection (D)

Information has been updated from the comprehensive letter submitted by Gabrielle Sanchez-Sandoval, Acting General Counsel to John Hall dated November 2, 2011 (Attachment 5). Please note that the application MAD075 is now referred to as MAD379. In response to questions based upon the January 24, 2012 DDW Report, information on each individual follows, as requested:

"Now pursing PCO"

1. 2610 Receiving PCO
2. 4259 Delivered MAD 379 on 12/16/11; individual assessed by Columbus 3/2012; DNC signed 3/26/2012
3. 5601 CSI delivered MAD 379 to guardian on 11/29/11
4. 6407 Individual signed DNC 3/22/11
5. 6876 CSI delivered MAD 379 to individual on 9/9/11; CSI to support physician contact; multiple attempts by CSI to contact in March were unsuccessful

"Pending MAD 075 per Molina"

1. 6590 MAD 379 submitted by Guardian; CSI faxed MAD 379 to Molina on 3/21/12 to initiate PCO services
2. 9446 Individual states no interest in PCO services at this time

"Denied"

1. 1030 Not eligible for PCO
2. 1625 Not eligible for PCO

"Unable to Locate per Evercare"

1. 2618 MAD 379 delivered to home on 9/29/11; multiple attempts by CSI to contact have been unsuccessful

"Do Not Contact"

1. 2842 Individual signed Do Not Contact form on 3/1/11
2. 4772 Individual signed Do Not Contact form on 2/24/11
3. 6626 Individual signed Do Not Contact form on 3/23/11

"Declined Service"

1. 1046 Individual signed Service Declination Form 1/11/12
2. 1498 Individual signed Service Declination Form 4/26/11
3. 2059 Individual signed Service Declination Form 8/17/11
4. 2398 Individual signed Service Declination Form 8/3/11
5. 2503 Individual signed Service Declination Form 4/28/11
6. 2785 Individual signed Service Declination Form 8/8/11
7. 3052 Individual signed Service Declination Form 7/28/11
8. 3160 Individual and PoA signed Service Declination Form 7/28/11
9. 4426 Individual verbally declined to CSI 4/6/11
10. 5043 Individual signed Service Declination Form 7/6/11
11. 5837 Individual signed Service Declination Form 7/30/11
12. 6749 Individual signed Service Declination Form 9/9/11
13. 7495 Individual signed Do Not Contact 3/14/11
14. 8249 Individual and PoA signed Service Declination Form 7/28/11
15. 8624 Individual signed Service Declination Form 9/26/11
16. 8787 Individual signed Service Declination Form 4/27/11
17. 9074 Guardian and Individual signed Service Declination Form 7/26/11

Subsection (E)
In response to your questions based upon the January 24, 2012 CSI Visitation Compliance Report, information regarding each individual follows:

"Unable to Locate"

1. 1625 Last contact 5/3/11 by telephone, individual would not give current address. Attempts to contact since that time have been unsuccessful. Six attempted phone contacts; messages left each time. CSI contact information left at son's home. Most recent telephone contact attempt on 3/6/2012; message left with CSI contact information. Individual receives SSI with son's mailing address.
2. 2416 Multiple attempts to contact; no one will answer the door. CSI contact information has been left multiple times. Receives PCO and SSI.
3. 3018 Individual was seen by CSI in March 2012; re-referred to Columbus for assessment.
4. 4666 CSI has not been able to contact this individual. Attempts by RCI to locate have been unsuccessful.
5. 4689 Attempts by CSI to contact individual at last known address unsuccessful throughout 2011; phone contacts and letter sent 6/2011. CSI made face-to-face contact with individual in October 2011 and again in January 2012.
6. 6209 Multiple attempts to contact; no one will answer the door; CSI contact information left at the door, attempt on 8/24/2011 mailbox labeled vacant.
7. 7784 During attempted home visit on January 21, 2011, the home was boarded up and vacant. On January 28, 2011, RCI located individual. All attempts by CSI to contact have been unsuccessful. CSI contact information left at the home. Referred again to RCI to locate. Individual signed DNC; received by RCI.

Of the seven individual's listed above, three were assessed by Columbus, one was referred to Columbus for assessment, but Columbus was unable to make contact with the individual, and one individual refused the assessment. The Department recognizes that an individual's life is not static, and for that reason the CSI workers continue to attempt to make contact with individuals for whom they have contact information, even though attempts at contact have been unsuccessful. The Department continues to respect an individual's right to accept or decline a service or assistance, until the individual has been formally declared to lack capacity.

"Do Not Contact"

Plaintiffs' counsel asks "for 25 individuals, Do Not Contact" information. This appears to be the same list submitted by Plaintiffs' counsel under "Affidavit" supra.

For each individual on the January 24, 2012 CSI Visitation Compliance Report identified as "Do Not Contact" (DNC) the updated CSI visitation report for the month of March 2012 indicates the date on which the individual (or the guardian if appropriate) signed the DNC form. If any refusals were made by the individual's guardian, a list of those individuals was sent to Disability Rights of New Mexico in accordance with paragraph 3(f) of the Settlement Outline. The Department continues to respect an individual's right to accept or decline a service or assistance, until the individual has been formally declared to lack capacity. In response to your questions based upon the January 24, 2012 CSI Visitation Compliance Report, information regarding each individual follows:

1. 210 Family has requested that CSI not initiate contact, but will contact CSI if and when they need assistance.
2. 1153 Individual signed DNC on 1/19/2011 received by CSI worker.
3. 1723 Individual signed DNC on 3/7/2011 received by CSI.
4. 2474 Individual and family states he does not want contact from CSI.
5. 2842 Individual signed DNC on 3/1/2011 received by CSI.
6. 3115 Individual signed DNC on 6/28/2011 received by CSI.
7. 3160 Individual signed DNC on 3/30/2011 received by CSI.
8. 3509 Individual verbally requested DNC on 6/27/2011.
9. 3666 Guardian signed DNC 3/21/2011 received by CSI.
10. 4426 Individual verbally requested DNC received 5/26/2011 by RCI.
11. 4739 Guardian signed DNC 4/4/2011, received by CSI.
12. 4772 Individual signed DNC on 2/24/2011 received by CSI.
13. 5599 Guardian signed DNC on 2/28/2011 received by CSI.
14. 6132 Individual signed DNC on 11/26/2010 received by CSI.
15. 6407 Individual signed DNC on 3/22/2011.
16. 6533 Individual signed DNC on 2/28/2011 received by CSI.
17. 6598 Individual verbally requested DNC on 3/16/2011 to CSI.
18. 6626 Individual signed DNC on 3/23/2011.
19. 6655 Individual signed DNC 2/24/2011 received by CSI.
20. 7495 Individual signed DNC 3/14/2011 received by CSI.
21. 7882 Individual signed DNC 10/24/2011 received by CSI.
22. 8000 Individual and proposed guardian signed DNC 3/22/2011.
23. 8249 Individual signed DNC on 3/30/2011 received by CSI.
24. 8860 Individual signed DNC on 6/7/2011 received by RCI.
25. 9926 Individual signed DNC on 2/18/2011 received by CSI worker.

"Other"

Plaintiffs' counsel allege that seven (7) individuals did not receive the level of CSI visitation required by the Agreement.

The Department respects the rights of individuals and families to decline visitation or request specific scheduling of visits. This information is included in the monthly Service Status Reports.

For seven (7) individuals, the following information is in response to your request for explanation in greater detail why these individuals have not received quarterly visitation by CSI:

1. 2212 (family does not want quarterly visits, and wishes to contact CSI if need something)
2. 2398 (family requested one visit per year)
3. 3366 (Individual stated over the phone that he wants no contact with the State; DNC mailed to individual, but no response)
4. 4427 (Individual requested two visits per year; seen 9/15/11; scheduled to be seen in March, 2012; phone contact made 3/19/2012, individual requested the visit be made at a later date)
5. 6719 (Seen 9/09/11; individual requests CSI visit one time per year)
6. 8012 (family requests email contact only)
7. 8093 (Seen 3/9/12; individual is inconsistent with permitting CSI to assist; CSI has contact with caregiver)

Subsection (F)

In response to your questions based upon the January 24, 2012 Healthcare Decision-Maker Report, information regarding each individual follows. Each of these 8 individuals is already on the DD Waiver. CSI submitted a Request for Regional Office Intervention (RORI) with a request that the Columbus recommendation be discussed by the team. When the Regional Office received the information below, the Regional Office closed the Recommendation per RORI policy.

1. 1265W Individual signed PoA appointing sister
2. 2296W IDT currently pursuing guardianship for individual
3. 3539W IDT met and identified HCDM
4. 5972W Individual has identified brother and aunt as HCDM
5. 6498W IDT met and identified HCDM
6. 7536W Individual's sister has been identified as HCDM, alternate is brother HCDM
7. 7951W 4/26/11 IDT minutes received addressing IDT's desire to invoke UHCDM if needs should arise
8. 8677W Individual has identified brother and aunt as HCDM

Subsection (G)

In response to your questions based upon the January 24, 2012 Power of Attorney Report, information regarding each individual follows. In response to your questions based upon the January 24, 2012 Power of Attorney Report, information regarding each individual follows. Each of these 8 individuals is already on the DD Waiver. CSI submitted a Request for Regional Office Intervention (RORI) with a request that the Columbus recommendation be discussed by the team. When the Regional Office received the information below, the Regional Office closed the Recommendation per RORI policy.

1. 1265W Sister is PoA for individual
2. 7951W IDT met and declined PoA and decided to invoke UHCDM Act if needs should arise
3. 8224W Mother is PoA for individual

"Service Declination form signed"

The Department continues to respect an individual's right to accept or decline a service or assistance, until the individual has been formally declared to lack capacity.

1. 2337 Individual signed Service Declination Form 6/8/11
2. 2358 Guardian signed Service Declination Form 4/28/11
3. 7676 Individual signed Service Declination Form 6/10/11
4. 8276 Individual signed Service Declination Form 6/8/11

V. INADEQUACY OF CSI SUPPORTS

Plaintiffs' counsel allege that CSI personnel are not providing the needed level of assistance to each eligible individual, that many individuals are experiencing difficulties obtaining or maintaining their public benefits such as PCO or DD Waiver or D&E Waiver services, and that others are having difficulties with their medical care and/or with managing their financial affairs.

The Department continues to respect an individual's right to accept or decline a service or assistance, until the individual has been formally declared to lack capacity. Section 3(d) of the Settlement Agreement provides that individuals will be referred by CSI workers to the appropriate agency or program for processing *in accordance with the program guidelines, eligibility, criteria and available funding, subject to the agency's respective statutory and regulatory responsibilities (italics added)*. During the meeting with Peter Cubra and John Hall on 3/2/2012, DDSD Director Cathy Stevenson informed Plaintiffs' counsel that CSI workers would continue to assist individuals in applying for services for which they may be eligible, but CSI workers would not engage in advocacy on behalf of individuals.

During the meeting with Peter Cubra and John Hall on 3/2/2012, DDSD Director Cathy Stevenson informed Plaintiffs' counsel that the CSI workers had been reorganized and were now reporting to supervisors in their geographical area, such as a DDSD Regional Office manager, or to other DDSD leadership who could provide guidance if any questions arose in the final completion of the Settlement Agreement tasks. The detail of each individual CSI worker's chain of command is available as public record. A list of each CSI worker and respective supervisor is included in this formal response to your letter of February 10, 2012, as follows:

CSI	Supervisor
Dave Doyle	Chris Futey
Angela Pacheco	Charlene Cain
Steve Coca	Roberta Duran
Doug Baker	Scott Doan
Sarah Humbard	Phil Moskal
Kathy Baker	Kathleen Linnehan
Shadee Brown	Kathleen Linnehan

VI. NAMES OF 101 INDIVIDUALS

As summarized in Defendants' letter to Plaintiffs' counsel on March 26, 2012, the parties discussed Plaintiffs' counsel request for the names of the 101 individuals who are the subject of the February 10, 2012, letter and currently identified by their unique identifiers, so that Plaintiffs' counsel can "assure themselves" that each individual is receiving the benefits available under the Settlement Agreement. The common goal of both parties, to provide the eligible individuals with the benefits of the Settlement Agreement, was acknowledged, as well as the fact that the individuals visited by Plaintiffs' counsel and the Defendants' agents might not always respond in the same way to the same question. The lives of the individuals are not static, and both needs and desires may change for any number of reasons. The futility of having the parties visit at different times, resulting in different responses, was acknowledged, and Defendants suggested that joint visits might be the most expeditious means of ending the cycle of disparate responses. Plaintiffs' counsel suggested that Defendants enter into an Order similar to the one executed by the DDPC to effectuate the provision of names of individuals for whom Plaintiffs' counsel does not have an effective release of information, and provided Defendants with a copy of the DDPC / Plaintiff Stipulated Protective Order Regarding Confidentiality dated July 15, 2011.

Defense counsel has reviewed the Order and determined that the terms of this document provide redundant reassurances as to the confidentiality of the protected health information of the individuals who would be impacted. As the Order notes, this information is currently protected by the Health Insurance Portability and Accountability Act of 1996. The assurances that the confidential information will not be used for any purposes other than "this litigation" and agreeing to "destroy or return all confidential information within 90 days of the conclusion of the litigation" overlooks the fact that the litigation was concluded in March 2010.

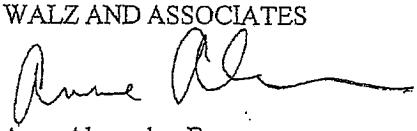
While Defendants understand that both parties have the common goal of offering services to the former residents of the State facilities, divulging the names, locations and protected health information of any individuals who are not represented by Plaintiffs' counsel would violate their federally protected privacy, substantially exceed the terms of the Settlement Agreement, and possibly interfere with the effective relationships established by the CSI workers with many of these individuals over the past several years.

VII. ADDITIONS TO SERVICE STATUS REPORTS

As a result of the thorough review performed by Defendants, individuals who did not previously appear on some of the service status reports are now reported on the updated service status reports. Defendants are confident that although the individuals did not appear on the previous reports, this was an inadvertent error. These individuals are clearly identified on each report.

Sincerely,

WALZ AND ASSOCIATES



Anne Alexander, Esq.
Kathyleen Kunkel, Esq.

ATA/KMK/sch
Attachment(s): As stated.

cc via email with attachments:

Gabrielle Sanchez-Sandoval, DOH Acting General Counsel
Peggy Jeffers, Esq.
Cathy Stevenson, Director of DDSD
Jerry A. Walz, Esq.
Rachel Higgins, Esq.
Nancy Simmons, Esq.
Charles Peifer, Esq.
Cecilia Nunez

Exhibit #7

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June 4, 2012

VIA EMAIL ONLY: Mike@mikegrosslaw.com

Mr. Michael A. Gross, Arbitrator

Re: Plaintiffs' Fourth Arbitration Demand

Dear Arbitrator Gross:

I am writing to follow up the telephone conversation we had today regarding scheduling our next arbitration. I apologize that a death in my family delayed my sending this letter to you by a month.

As you know, pursuant to arbitrations conducted by you on November 9, 2010 and December 16, 2010, you served the parties with two orders dated November 11, 2010 (attached as Exhibit 1) and January 20, 2011 (attached as Exhibit 2), respectively. On February 10, 2012, Plaintiffs' lawyers wrote to Defendants and their counsel, identifying with specificity how Defendants appeared to have failed to fully comply with significant portions of the two Orders, even though more than a year had passed. We also articulated other violations by Defendants of the Settlement Agreement and requested that Defendants promptly address their apparent failures to comply with the Orders and with certain terms of the Settlement Agreement ("Agreement")(see February 10, 2012 letter attached as Exhibit 3). On April 2, 2012, DOH wrote a response to our letter (attached as Exhibit 4). Unfortunately, while DOH's response did provide us with some additional information, some of which we had been awaiting for over a year, the response nevertheless failed to remedy a number of substantial violations of the Orders and of the Settlement Agreement.

This matter needs prompt resolution. A number of individuals entitled to the benefits of the Agreement have died since the Agreement was approved by the Court in March 2010, without ever realizing the benefits of the Agreement. Others have died since the last arbitration before they received the benefits of the Orders. For example, in the spring of 2011, Clara Davidson and Gilbert Sanchez died. Then, in September of 2011, we learned on a visit to his home that Emmitt Armijo had died at his apartment two and a half months earlier. When we informed DOH of his death, DOH personnel told us that our notification was the first they had learned of Emmitt's death.

We fear that more people will die without receiving the benefits to which they are entitled under the Agreement if we do not move expeditiously to help them. Accordingly, we request that you promptly schedule a full day to conduct an arbitration to remedy Defendants' failures to fully comply with your November 11, 2010 and January 20, 2011 Orders, and to enter additional remedial orders regarding their other violations of the Settlement Agreement. You told me on the phone that you are

available during the week of July 13-19. Plaintiffs' representatives are available any of those days, and we request that you set the arbitration at your first opportunity.

I. THIRD REPORT

Pursuant to Paragraph 9 on page 4 of your January 20, 2011 Order, DOH was required to create and provide to us by February 21, 2011 a Third Report. Defendants have failed to comply with certain provisions of Paragraph 9, which provides:

> 9. **By no later than 30 days from the effective date of this Order, Defendants shall prepare and provide to Plaintiffs' counsel a third report that includes the following information:**
> A. With regard to each of Defendants' CSI personnel,
> i. Provide a list of the recommendations from Columbus **for each individual** on the caseload;
> **ii. Identify the actions taken to facilitate the application for the programs and services which were recommended by Columbus in "I" above;**
> **iii. List any other actions taken on behalf of the individual;** and
> iv. **Arrange for an appropriate Power of Attorney to be established for each client identified by Columbus as needing a Power of Attorney**, including whether they have discussed this subject with the client, whether an appropriate person to serve as the Power of Attorney has been identified, whether the appropriate forms have been provided to the client, and whether the client refused any part of this process.

We have never received a "Third Report." On January 19, 2011, DOH did provide us with copies of 664 pages of Service Plans, and on February 21, 2011 DOH provided us with its first Service Status Report, and provides similar Service Status Reports. However, even taken together, the information contained in these two types of documents did not convey critical elements of the information you ordered the Defendants to provide in the Third Report. These are the major deficiencies:

Service Plans. It appears that DOH has not provided us with Service Plans (and the Columbus Recommendations they contain) for several individuals covered by our Agreement, in violation of DOH's obligations under Section 9(A)(i), and in violation of your Order. In Section VI of Appendix A to our February 10, 2012 letter, we listed 101 individuals by their unique identifying number that Defendants are using to avoid providing us with the names of the people. After comparing these 101 identifiers with the Service Plans provided by DOH, we were unable to locate Service Plans for eleven individuals with the following unique identifiers: 1987, 2842, 3509, 3867, 6132, 6407, 6598, 6749, 7882, 8624, and 8860. And these are only the individuals we were able to identify by cross-checking these 101 names and numbers. We believe that there are other people whose Service Plans have never been provided, especially because, in the last year, several additional people have been added by Defendants to the lists of people entitled to Service Plans and services. We cannot

determine how many other Service Plans have not been provided to us for other individuals entitled to the benefits of our Agreement.

Actions Taken. When read together, the Service Plans and the Service Status Report did tell us "the actions taken to facilitate the application for" *most* of the programs recommended by Columbus (i.e. DD Waiver, PCO, guardianship and powers of attorney). However, they do not inform us regarding 1) what actions, if any, have been taken by CSI personnel on behalf of the individuals; 2) *all* "services which were recommended by Columbus"; and 3) "any other actions taken on behalf of the individual."

Defendants have provided us with some of those three types of information with respect to the forty-one people who signed Release of Information forms; but they have not provided such information regarding the hundreds of other people entitled to the benefit of Paragraph 9 of the January 20, 2011 Order.

Power of Attorney. The Service Plans and the first Service Status Report fail to satisfy DOH's obligations under Section 9(A)(iv). Specifically, they fail to identify, for each individual on whose behalf Columbus recommended a Power of Attorney: 1) whether CSI has discussed this subject with the client; 2) whether CSI has identified an appropriate person to serve as the Power of Attorney; 3) whether CSI has provided the appropriate forms to the client; and 4) whether the client refused any part of this process.

II. RELEASE OF DOCUMENTS

According to No. 1 on page 2 of your November 11, 2010 Order, DOH was to "**provide to Plaintiffs' counsel any documents sought by a release within thirty (30) days of receipt of the release.**" On March 23, 2011, and then again on February 10, 2012, including several follow-up inquiries in between, we requested that DOH provide us with the following documentation for individuals for whom we had already provided a signed release:

1. A copy of all CSI records and documents (i.e. notes, narratives, documentation, logs) created since the original, and only, production of the same to us by DOH;
2. A copy of any TEASC or other evaluation in DOH's possession;
3. A copy of each person's entire eligibility file; and
4. A copy of all Training School records in DOH's possession, including those stored at the State's Records Archives.

In response to these repeated requests over nearly a year, on March 2, 2012 DOH finally provided to Plaintiffs' counsel an explanation of its efforts to comply with No. 4, as well as some minimal additional documentation. Unfortunately, this minimal additional documentation does not include the entire eligibility file, Training School records or Community Service Team records; the documents provided do not begin to fully address Nos. 1, 2, and 3. DOH does not affirmatively assert that their efforts and production to date are fully responsive to Nos. 1, 2, and 3.

III. AFFIDAVIT REGARDING "DO NOT CONTACT"

According to No. 2 on page 2 of your November 11, 2010 Order, **DOH was to create and provide to you and to us by December 12, 2010 an affidavit "verifying that it has confirmed and has documented in writing on file, an explicit refusal to be contacted by the State Agency Defendants by those individuals so noted on Exhibit A** [attached to Defendants' November 1, 2010 status report]." According to Exhibit A to the November 1, 2010 status report, 41 individuals allegedly refused in some manner to be contacted.

DOH did provide an affidavit by Bert Dennis on December 12, 2010. However, Ms. Dennis' affidavit was grossly insufficient. It only addressed 14 of the 41 individuals. Furthermore, the affidavit did not specify who told which DOH official that they wanted no further contact (although we know that some of the beneficiaries of the Agreement do not speak verbally and have no guardian authorized to make binding decisions for them). The affidavit also did not state what DOH did to determine whether the person(s) who purportedly spoke on behalf of an individual had the authority to speak for the individual. It also did not state on what date the "do not contact" request was made (although we spoke to a number of people entitled to the benefits of the Agreement who reported that no one representing Defendants had *ever* spoken to them after the Agreement was approved by the Court in March 2010). DOH's sole response in 2012 to these concerns with the deficient Dennis affidavit was: "Defendants produced the required Affidavit on 12/12/2010."

In addition, after noting in our February 10, 2012 letter that the January 24, 2012 CSI Visitation Compliance Report lists 25 individuals as Do Not Contact, we requested a second affidavit identifying by name these 25 individuals and providing at least the following information as to each of the 25:

1. On what date was the individual informed orally and in writing about the Agreement?
2. On what date was a refusal to be contacted provided?
3. Who received this information?
4. Who indicated, and in what manner, that the individual refused to be contacted, and what is their authority and legal relationship to the individual?
5. If any refusals were made by the individual's guardian, what was done to ensure that the appointment of any such guardian was not facilitated by DOH, in compliance with paragraph 3(f) of the Settlement Outline ...?

While DOH appears to have satisfied No. 5, it has refused to identify by name these 25 individuals and has not fully responded to Nos. 1-4:

No. 1: No confirmation of compliance for any of the 25 individuals;
No. 2: Failure to comply for at least 2 individuals (210 and 2474);
No. 3: Failure to comply for at least 6 individuals (210, 2474, 3509, 6407, 6626, and 8000); and
No. 4: Failure to comply for at least 2 individuals (210 and 2474).

IV. MONTHLY REPORTS

According to No. 6 on pages 2-3 of the January 20, 2011 Order, DOH was to create and provide to us, beginning February 4, 2011 and continuing with monthly updates thereafter, a **Second Report "describing the status of the PCO and Waiver application process for every person identified by Columbus as eligible for a Waiver, including what Defendants have done, and plan to do, to get the necessary documentation to support such applications."** In addition, under paragraph 3(c) of our Agreement, **"DOH shall be responsible for gathering the documents necessary to support the application for services for any individual needing such applications to be processed. Applications shall be processed promptly."**

DOH has provided to Plaintiffs' counsel the initial report as well as five types of "monthly updated reports submitted by the Department of Health as ordered by Arbitration": DDW Report; PCO Report; POA Report; HCDM Report; and CSI Visit Compliance Report. Unfortunately, the information provided in these periodic reports continues to be inadequate for a number of reasons.

Subsection A

Based upon our review of the January 24, 2012 DDW and PCO Reports, we identified in our February 2012 letter 21 individuals who received a DD Waiver referral but not a PCO referral. We asked DOH why these 21 individuals failed to receive the PCO referral to which they were entitled. DOH has now acknowledged that these 21 individuals were "inadvertently not listed on the PCO report," but stated that each of the 21 has indeed received a PCO referral.

Subsection C

Based upon our review of the January 24, 2012 DDW Report:

1. DOH has been unable to locate individual # 1625. Nevertheless, DOH refuses to provide to us this individual's information so that we can attempt to locate her/him ourselves.
2. Although DOH identified two individuals as "Individual Requested Closure of Recommendation / Individual and Supports Not Interested in DD Waiver Services"
   a. For individual # 6590, DOH refuses to tell us who requested closure or expressed a lack of interest, when, to whom, and by what authority; and
   b. For individual #8093, DOH refuses to tell us when, and to whom, the individual stated he is not interested in DD Waiver services.
3. Although DOH stated that Columbus referred 6 individuals for a TEASC assessment, DOH refuses to tell us who made the referral, or when it was made.

Among the forty individuals we are working with directly, we have been told that they never declined any services recommended by Columbus, but the DOH reports stated "Individual and Supports Not Interested in Services." Without knowing the identities of the people with whom we are not in direct contact who purportedly are "not interested," we cannot determine whether the people who are housing the individuals, or someone else who may not have the individual's own

interests in mind, are the people who are preventing the individual from getting recommended services.

Subsection D

Based upon our review of the January 24, 2012 PCO Report:

1. When we asked why two individuals had been "denied" PCO services, DOH simply stated "Not eligible for PCO."

   DOH refuses to tell us when PCO services were denied, by whom, and on what basis. Since all the beneficiaries of the Agreement were previously held in a state-operated ICF facility, and since the basic criteria for PCO eligibility is that the person is eligible for an ICF, we want to know who has been deemed "not eligible for PCO," in order to assist them, if needed.

2. DOH and the State's managed care organization, Evercare, have reportedly been unable to locate individual # 2618. Nevertheless, DOH refuses to provide to us this individual's identity and other information, preventing us from attempting to locate her/him ourselves.

Section E

Based upon our review of the January 24, 2012 CSI Visitation Compliance Report:

1. DOH has been unable to locate individual ## 1625, 2416, 3018, 4666, 4689, 6209, and 7784. Nevertheless, DOH refuses to provide to us these individuals' information so that we can attempt to locate them ourselves.
2. We want the contact information for all individuals now being listed as "do not contact;" this is the same list of 25 individuals presented above in our request for a second affidavit.
3. We asked DOH to explain in greater detail why seven individuals did not receive the level of CSI visitation required by the Orders. While the explanation provided for individual ## 3366, 4427, and 8093 was helpful, DOH provided no explanation for individual ## 2212, 2398, 6719 and simply restated what we already knew.

DOH's own reports show that some Waiver applications are not yet complete, although it is over two years since Defendants committed to completing them "promptly." Therefore, we seek an additional order setting a deadline for completing all PCO and Waiver applications.

V. INADEQUACY OF CSI SUPPORTS

Section 3(d) of our Settlement Agreement provides:

> d. **Every former resident who is not receiving services through Waiver program will be offered assistance from the DOH Community Services Integration project. If the results of the screening and assessment above identifies other services a former resident may need, they will be referred by CSI workers to the appropriate agency or program for processing** in accordance with the program

guidelines, eligibility, criteria and available funding, subject to the agency's respective statutory and regulatory responsibilities. There shall be a minimum frequency of visits to each person served by CSI and a maximum caseload per CSI worker. **The minimum visits shall be once every quarter for people receiving PCO or ICF/MR services; for others, it shall be more frequently as needed.**

Unfortunately, it appears that CSI personnel are not providing the needed level of assistance to each eligible individual.

1. Many individuals are experiencing difficulties obtaining or maintaining their current levels of publicly-funded services such as PCO, DD Waiver, or D&E Waiver. Defendants have explicitly stated that they will not authorize CSI workers to advocate for individuals facing cuts to their services.

2. Lengthy delays in obtaining needed documents to pursue Waiver or PCO services are not remedied by CSI personnel.

3. People needing assistance from CSI regarding their public benefits (i.e. Medicaid, food stamps, low-income heating) sometimes are not getting assistance in a timely manner, if at all.

4. Other people are having difficulties with their medical care and/or with managing their financial affairs. For example, one person without a guardian who is being financially exploited is getting no assistance from CSI with this problem, although it threatens him with homelessness.

5. People in Las Cruces, Albuquerque and Clovis are stuck in nursing homes where they don't want to be, but CSI workers are doing nothing to assist them to get into community-based settings.

6. Finally, for people who are not receiving PCO or ICF/MR services (the substantial majority of the people entitled to the benefits of the Agreement), the Agreement requires visits by CSI "more frequently [than once every quarter] as needed." Defendants' reports show that CSI visits very rarely occur more than once per quarter.

We explicitly stated as part of our mediation that we were relying on CSI workers to provide people with the functional equivalent of DD Waiver case management services while they were waiting for recommended services. However, it appears that CSI services are often insubstantial, and that some CSI workers may be spending most of their time arranging for their visits, driving between individuals' residences, and completing reports documenting their visits, with little benefit to the individual.

We therefore seek an order establishing independent oversight of CSI's activities by a neutral party acceptable to Plaintiffs' counsel, and periodic reporting regarding CSI to Plaintiffs' counsel by the neutral party.

VI. NAMES OF 101 INDIVIDUALS

As to each of the one hundred and one (101) individuals whom we identified to Defendants in our February 2012 letter by their unique identifier, about whom we expressed a concern(s) in the letter (see Appendix A, § VI), we asked Defendants to provide us with their names so that we could review the records and other information we have regarding those people to assure ourselves that each of them is receiving the benefits to which they are entitled under the Agreement. Defendant Developmental Disabilities Planning Council entered into a stipulated order and provided us with the confidential information we needed regarding individuals about whom we had concerns. The other Defendant agencies can easily do the same, but they have refused.

In the course of this litigation we have already received a million PDFs and pieces of paper pertaining to the hundreds of individuals in the proposed class, most of it Protected Health Information. We have made physical contact with scores of these individuals, and we know the stories of many more of them. And, based upon what we have learned from, and about, these people, coupled with what we can piece together from DOH's monthly reports, we believe that many of them are not receiving the full benefits of the Agreement.

Accordingly, we request that the Arbitrator enter a Qualified Protective Order directing Defendants to disclose to us the names and correlating unique identifying numbers of all people who are described in DOH reports by numbers, rather than their names.

I have asked Defendants' counsel in an email whether they are unavailable on any day during July 13-17, but haven't yet gotten a reply. I request that you select a date for the arbitration at your earliest opportunity, so we can schedule this matter as soon as possible.

Also, please be aware that, as we stated to Defendants in our February 10, 2012 letter to them, we will seek from you an order requiring DOH to compensate us for our reasonable and necessary legal work enforcing your two Orders, as provided in the Arbitration Procedures you adopted in June of 2010.

Very truly yours,

Peter Cubra

Peter Cubra
cc w/ encl. via email only:
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Exhibit #8

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June 11, 2012

VIA EMAIL ONLY: Mike@mikegrosslaw.com

Michael A. Gross, Esq., Arbitrator

Re: ***JM v. DOH et. Al, Case No. 07-cv-00604 and 09-cv-640,***
Defendants' Response to Plaintiffs' Fourth Arbitration Demand

Dear Arbitrator Gross:

Defendants submit the following documentation in response to Plaintiffs' counsel, Peter Cubra's letter accompanying Plaintiffs' June 4, 2012, Fourth Arbitration Demand, and the allegations of failure to comply with the Arbitrator's Orders of November 9, 2010 and December 16, 2010. As will be demonstrated, Defendants have not only met the terms of the Settlement Agreement and complied with the Arbitration Orders, but have also met with Plaintiffs' counsel in response to their concerns, provided the detailed information requested, and continue to update Plaintiffs' on a monthly basis. See Exhibit A.

The Defendants DDPC, ALTSD and DOH have diligently worked to meet the terms of the Settlement Agreement, and have successfully discharged their obligations. Since the Agreement involves individuals who control their decisions, there will continue to be follow up by the CSI team to assist as needed.

The allegations contained in Plaintiffs' letter are unfounded, the demands are an impermissible expansion of the Settlement Agreement, and the requests for relief are totally outside the scope of the Agreements reached by the parties on January 8, 2010.

Plaintiffs' counsel is inference that some individual's deaths are in any way related to the possible referrals to which the individuals may have been eligible is reckless and unfounded. The parties agreed that the Columbus Organization would provide written and oral notice, conduct assessments and make recommendations to CSI to follow up on those recommendations and provide assistance as needed. Plaintiffs' counsel provide no causal connection that would justify this assertion, however, Defendants will provide testimony as to their efforts to assist these

individuals.

The referrals which are the substance of the Settlement Agreement are to have former residents (who consent) to be assessed for referral to the DD Waiver, the Personal Care Option, and to follow up on further Columbus recommendations. As Plaintiffs' counsel notes, these referrals are subject to "*...processing in accordance with program guidelines, eligibility criteria and available funding, subject to the agency's respective statutory and regulatory responsibilities...*" (See Agreement at paragraph 3(d)) To suggest that people will die without receiving the benefits to which they may be eligible, not entitled, is both misleading and specious. This suggestion is based on a false premise as the Agreement does not create entitlements. Further, to be eligible for the DD Waiver, for example, is in reality placement on an 8 year waiting list. The parties were fully aware of this when the Agreement was signed in 2010.

Defendants' question the necessity of a 4th Arbitration as the issues identified in Plaintiffs' June 4' 2012 demand letter have been previously addressed in meetings and a comprehensive written response attached as Defendants' Exhibit B. However, Defendants will respond again to the specific allegations and are prepared to present testimony that will demonstrate that the terms of the Settlement Agreement and the Arbitration Orders have been satisfied.

THIRD REPORT

Plaintiffs' counsel allege that Defendants failed to comply with certain provisions of Paragraph 9, of the January 20, 2011, Arbitration Order which required Defendants to prepare a third report that included "a list of the recommendations of the Columbus Organization for each individual on the caseload, the actions taken to facilitate application for the programs and services which were recommended by Columbus, list any actions taken on behalf of the individual and arrange for an appropriate Power of Attorney to be established for each client identified by Columbus as needing a Power of Attorney." All recommendations by the Columbus Organization are recorded in the Service Plans. The language governing service plans is located in the Settlement Agreement, at paragraph 3(g). "The service plans to be created following assessments shall be prepared by CSI team members who are supervised by the DDSD."

Plaintiffs' counsel states that they never received the required third report, however, Defendants provided Plaintiffs with copies of all Service Plans on January 19, 2011. See Exhibit C, Cover Letter, Service Plans 000001 through 000664.

The Service Plans and the Service Status Reports are generated using the individual's name and unique identifier. The names are removed prior to releasing the monthly service status reports to Plaintiffs' counsel. There were no recommendations by Columbus for ten of the individuals listed by Plaintiffs' counsel on p. 2 of the Demand Letter. (2842, 3509, 3867, 6132, 6407, 6598, 6749, 7882, 8624, and 8860). These unique identifiers will appear on the monthly

visitation report as CSI continues to visit, even though Columbus made no recommendations. This information could have been provided to Plaintiffs' counsel had they inquired.

The reports provided to Plaintiffs' counsel were created upon the Order of the Arbitrator; the unique identifiers are used to protect the confidentiality of individuals who have no relationship with Plaintiffs' counsel. Defendants do not track individuals by their unique identifiers, but by their names. In the creation of the reports, there were occasional typographical errors. Unique identifier 1987 is such an error. This individual has a service plan that was provided to Plaintiffs' counsel on January 19, 2011 as Unique Identifier 8832. Unique Identifier 6749 above is actually 6719. When these errors were discovered, the individual was reported with both numbers. While Defendants regret the error, this clarification could have been provided to Plaintiffs' counsel, had they inquired.

Additional People

Plaintiffs' counsel is correct that several additional people have been added to the CSI visitation report and the monthly service status reports in the past two months. In February 2012, the Department of Health reorganized the CSI Unit and removed the project manager. The CSI Unit was decentralized to integrate the workers more fully into the Developmental Disabilities Services Division and the regions the CSI workers serve. Plaintiffs' counsel was informed of this significant operational change at our meeting with Mr. Cubra and Mr. Hall on March 2, 2012. At that meeting, Plaintiffs' counsel was informed that DDSD Director Cathy Stevenson, DOH Acting General Counsel Gabrielle Sanchez-Sandoval, and defense counsel would supervise a meticulous review of all data. In the course of that review, individuals who were receiving CSI supports, but not appearing on the monthly service status reports, were discovered. These individuals were added to the reports and identified as "Additions". Again, these individuals were receiving services by CSI but were not reported due to administrative error. This information was communicated to Plaintiffs' counsel via a letter on April 2, 2012. See Exhibit B, p. 13 of 13.

In addition, as the case by case review was conducted, some individuals were re–referred to the Columbus Organization when there was any question regarding the individual's status. For example, individuals who had been "unable to locate" by Columbus were located by CSI, individuals who had previously declined services made contact with CSI and Columbus was dispatched to perform the assessments, and a few individuals who had requested not to be contacted prior to the Settlement Agreement of January 8, 2010 were referred to Columbus to assure effective notice.

Plaintiffs' counsel is correct, that any service plans created by CSI based on Columbus assessments performed after January 19, 2011, have not been provided to counsel. The review prompted by the reorganization included a complete review of all Service Plans to ensure that the Columbus recommendations had been addressed and completed. Defendants were still in the process of addressing recommendations in January 2011, and updates are now available to

Plaintiffs' counsel. All updated Service Plans as well as any Service Plan created after January 19, 2011, will be provided to Plaintiffs' counsel within ten business days of this letter.

Actions Taken

Defendants have provided actions taken on behalf of the individual which derive from the Columbus assessments; however, the steps required, for example, to process a DD waiver referral are varied and extensive. Defendants have not identified every action taken by CSI workers on behalf of the individuals they serve for issues in addition to Columbus recommendations because the needs of each person are unique and evolving. For this reason, Defendants will make available the CSI workers at the July 19, 2012 hearing to personally describe the nature and extent of the work that they perform.

Defendants are prohibited from releasing confidential information on individuals for whom they have provided services to counsel for Plaintiffs in the absence of a current valid release of information. For those individuals for whom Plaintiffs' counsel provided such a release, the details of all efforts to assist were provided. Since this information contains confidential health information and other personal data, it is the Department's position that the provision of such information would violate both state and federal law. This was communicated to Plaintiffs' counsel in the letter of April 2, 2012, "While Defendants understand that both parties have the common goal of offering services to the former residents of the state facilities, divulging the names, locations and protected health information of any individuals who are not represented by plaintiffs' counsel would violate their federally protected privacy, substantially exceed the terms of the Settlement Agreement and possibly interfere with the effective relationships established by the CSI workers with many of these individuals over the past several years". See Exhibit B, p. 12 of 13.

Power of Attorney

Plaintiffs' counsel's allegation that Defendants failed to satisfy their obligations under Section 9 (A)(iv) of the January 20, 2011, Order is without merit. At a meeting with counsel on March 2, 2012, and again in the letter provided April 2, 2012, Plaintiffs' counsel was informed that the follow up to all Columbus recommendations for Power of Attorney is documented on the monthly status report on Power of Attorney (POA). See Exhibit A. The Power of Attorney (POA) Service Status report provided at the meeting with Peter Cubra and John Hall on March 2, 2012, clarified for each individual whether a Power of Attorney has been identified, or, if the individual chose to decline the recommended service, the date on which a Service Declination Form was signed. During the March 2, 2012 meeting, Plaintiffs' counsel was reminded that Gabrielle Sanchez-Sandoval, Acting General Counsel, provided a training to all CSI workers including the appropriate paperwork to provide to individuals in order to have a discussion regarding the POA process and the selection of an appropriate person to serve as Power of Attorney. Trainings were also provided to CSI with information and appropriate forms regarding the guardianship process and how to select a Health Care Decision Maker. See Exhibit B.

Columbus made recommendations that certain individuals name a Power of Attorney, but this does not remove a person's capacity. If Columbus did not make a referral for guardianship, and there was no determination that the individual lacked capacity, the individual retains the authority to decline this recommendation. In the POA report it states whether the individual declined and whether or not Columbus had made a recommendation for guardianship referral. See Exhibit A.

II. Release of Documents

On April 2, 2012, Defendants provided the following information:

> Plaintiffs allege that Defendants have failed to comply with the following provision on page 2 of the Arbitrator's November 11, 2010 Order:
>
> 1) The New Mexico Department of Health shall provide to Plaintiffs' counsel any documents sought by a release within thirty (30) days of receipt of the release.
>
> Defendants retained a private investigator to catalog all documents stored in Cottage 2 of the LLCP, the storage rooms at the Bank of the West, including the micro fiche which contained the CST documents. Defendants' investigator searched State Archives for documents related to the individuals for whom Plaintiffs' counsel had produced valid releases.
>
> Defendants provided copies of all additional documents for each of the individuals for whom Plaintiffs' counsel provided a valid release of information. At the meeting on March 2, 2012, Defendants included a checklist of all previously released documents for each individual for whom Plaintiffs' counsel provided a valid release. Counsel for both the Department of Health and Aging and Long Term Services Department were required to engage in multiple conversations with Plaintiffs' counsel to cure deficiencies in the most of the releases. This resulted in delays. There are no further documents to produce.

Defendants conducted an extensive search for the documents requested as detailed above. The time involved in contracting with a private investigator and cataloging thousands of documents that were previously unorganized necessarily required more than 30 days. Information was provided to Plaintiffs' counsel as soon as it was available. Defendants affirmatively asserted that there were no further documents to produce.

AFFIDAVIT

Defendants did produce the affidavit required by the November 11, 2010, Order. In a letter dated February 10, 2012, Plaintiffs' counsel complained that the Affidavit produced by Bert Dennis was insufficient and requested a second affidavit, or, in the alternative, a face to face meeting with Defendants' counsel to "explain the affidavit". See Plaintiffs' June 4, 2012, letter at Exhibit 3 page 3. Plaintiffs' Demand letter fails to mention the offer of a meeting in place of a second affidavit. A meeting was held on March 2, 2012.

The substance of Ms. Dennis' Affidavit dealt with individuals who were not currently being visited by CSI and were identified as "Do Not Contact" on the Visitation Report. As was explained earlier, individuals frequently change their minds as to how much contact they desire from the State and CSI. Therefore, the "Do Not Contact" list is a point in time and is not static.

Plaintiffs' Demand letter also fails to note that Defendants' provided extensive information in response to the questions posed in the Plaintiffs' February 10, 2012 letter. Plaintiffs' counsel was informed that the Department was in the process of verification that every individual received the required notice, which is why there was no answer to Question #1 at that time. This information, contained in Exhibit B is reproduced below:

> For each individual on the January 24, 2012 CSI Visitation Compliance Report identified as "Do Not Contact" (DNC), the updated CSI visitation report for the month of March 2012 indicates the date on which the individual (or the guardian if appropriate) signed the DNC form. For any refusals made by the individual's guardian, a list of those individuals was sent to Disability Rights of New Mexico in accordance with paragraph 3(f) of the Settlement Outline. The Department continues to respect an individual's right to accept or decline a service or assistance, until the individual has been formally declared to lack capacity.
>
> The Columbus Organization was contracted pursuant to the terms of the Settlement Agreement to provide oral and written notice, conduct assessments and make recommendations to CSI to follow-up regarding services. The Department is in the process of verification that each individual received the required notice. Some individuals were referred to the Columbus Organization despite a DNC on file if the DNC was received prior to January 8, 2010.
>
> Regarding the 25 individuals identified in the January 24, 2012 CSI Visitation Report:
>
> 1. 210 and — Family has requested that CSI not initiate contact, but will contact CSI if when they need assistance.
> 2. 1153 — Individual signed DNC on 1/19/2011 received by CSI worker.
> 3. 1723 — Individual signed DNC on 3/7/2011 received by CSI.

4. 2474 Individual and family states he does not want contact from CSI.
5. 2842 Individual signed DNC on 3/1/2011 received by CSI.
6. 3115 Individual signed DNC on 6/28/2011 received by CSI.
7. 3160 Individual signed DNC on 3/30/2011 received by CSI.
8. 3509 Individual verbally requested DNC on 6/27/2011.
9. 3666 Guardian signed DNC 3/21/2011 received by CSI.
10. 4426 Individual verbally requested DNC received 5/26/2011 by RCI.
11. 4739 Guardian signed DNC 4/4/2011 received by CSI.
12. 4772 Individual signed DNC on 2/24/2011 received by CSI.
13. 5599 Guardian signed DNC on 2/28/2011 received by CSI.
14. 6132 Individual signed DNC on 11/26/2010 received by CSI.
15. 6407 Individual signed DNC on 3/22/2011.
16. 6533 Individual signed DNC on 2/28/2011 received by CSI.
17. 6598 Individual verbally requested DNC on 3/16/2011 to CSI.
18. 6626 Individual signed DNC on 3/23/2011.
19. 6655 Individual signed DNC 2/24/2011 received by CSI.
20. 7495 Individual signed DNC 3/14/2011 received by CSI.
21. 7882 Individual signed DNC 10/24/2011 received by CSI.
22. 8000 Individual and proposed guardian signed DNC 3/22/2011.
23. 8249 Individual signed DNC on 3/30/2011 received by CSI.
24. 8860 Individual signed DNC on 6/7/2011 received by RCI.
25. 9926 Individual signed DNC on 2/18/2011 received by CSI worker.

The information on the two individuals noted by Plaintiffs' counsel as "failure to comply" (210 and 2474) has been provided quarterly in the CSI visitation report since the 2nd Quarter of 2011. See Exhibit A.

All requests from individuals identified as "Do Not Contact" were received by CSI and are documented in the monthly service status reports. (See #3, Plaintiffs' Demand letter p. 4)

Individuals # 210 and #2474, listed by Plaintiffs' counsel as "Do Not Contact" are not considered "Do Not Contact" by Defendants as the individuals actually have requested that they be permitted to initiate contact with CSI. Neither individual has a guardian. Contact information is documented in the CSI visitation report.

IV. Monthly Reports

Subsection A

The individuals referenced in Plaintiffs' Demand letter had all been referred for the Personal Care Option and were inadvertently left off the monthly status report. An explanation was provided on April 2, 2012, and these individuals were added to the monthly PCO report. Ms. Gabrielle Sanchez-Sandoval also provided Plaintiffs' counsel with a detailed report regarding PCO issues November 2, 2011. See Exhibit D, attached.

Subsection C.

1. #1625 was located following the exhaustive search conducted by Defendants which included contracting with private investigators, nationwide database searches and door to door canvassing. The CSI worker was in regular contact with 1625 until the individual ceased to return telephone calls. CSI continues to attempt to locate and is in contact with a family member. Plaintiffs' counsel have not provided Defendants with a Release of Information that would permit the disclosure sought by Plaintiffs' counsel.

2. a. #6590. In the April 2, 2012 letter, Plaintiffs' counsel was informed that CSI had processed the waiver application through Department of Health Intake and Eligibility and also mailed a TEASC application to the Transdisciplinary Evaluation and Support Clinic at the University of New Mexico. This information is reported on the monthly DDW Service Status Report in April and May.

b. #8093 Individual does not have guardian, and refused Columbus assessments. CSI has been in contact, but as is evidenced by the number of attempts to perform face to face visits on the CSI Visitation report, this individual is difficult to reach. CSI worker will be available to provide details.

3. Columbus made no referrals to TEASC. These individuals were subject to intense CSI follow up. CSI makes referrals to TEASC when the individual and his family are unable to locate the historical documents necessary for making determinations of eligibility for the DD Waiver. This information was provided to Plaintiffs' counsel on page 6 of the April 2, 2012 letter, copied from Exhibit B, below.

"TEASC"

1. 1235 Match for services 1/7/2012
2. 2882 TEASC evaluation scheduled for 3/22/12
3. 5177 TEASC evaluation to be scheduled
4. 5837 Individual refuses to set TEASC appointment for evaluation
5. 9205 TEASC evaluation scheduled for 3/29/12

6. 9815 TEASC evaluation scheduled for 4/26/12

At the meeting on March 2, 2012, Defendants and Plaintiffs' counsel discussed the fact that these individuals may respond differently to Plaintiffs and their agents and Defendants have already stated that individuals change their mind regarding their interest in services. The facts of each case are specific to that individual; CSI workers will be available to provide the context for each case.

Subsection D.

1. In the April 2, 2012, letter Plaintiffs' counsel was informed that # 1030 was not eligible. The monthly service status reports provide the explanation that the individual is a Qualified Medicare Beneficiary (QMB). Although most of the former residents are on SSI and therefore eligible for the PCO Program, PCO is paid through the Medicaid program known as COLTs. #1030 is not eligible for PCO because #1030 is not eligible for Medicaid. CSI continues to work with the family and the individual to educate them as to the necessity of applying for SSI.

#1625 was denied by the COLTs agency contracted by the State of New Mexico to determine eligibility. The decision was based on the information provided by the individual's physician. The CSI visitation report documents all attempts to locate this individual.

2. # 2618 CSI has met frequently with this individual to assist in the application process. Individual and family are inconsistent in their attention to the necessary follow up.

Subsection E.

1. Unable to locate: In the April 2, 2012, letter (attached as Exhibit B) Defendants provided the information below on the seven individuals listed by Plaintiffs' counsel.

1. 1625 Last contact 5/3/11 by telephone, individual would not give current address. Attempts to contact since that time have been unsuccessful. Six attempted phone contacts; messages left each time. CSI contact information left at son's home. Most recent telephone contact attempt on 3/6/2012; message left with CSI contact information. Individual receives SSI with son's mailing address.
2. 2416 Multiple attempts to contact; no one will answer the door. CSI contact information has been left multiple times. Receives PCO and SSI.
3. 3018 Individual was seen by CSI in March 2012; re-referred to Columbus for assessment.
4. 4666 CSI has not been able to contact this individual. Attempts by RCI to locate have been unsuccessful.

5. 4689 Attempts by CSI to contact individual at last known address unsuccessful throughout 2011; phone contacts and letter sent 6/2011. CSI made face-to-face contact with individual in October 2011 and again in January 2012.
6. 6209 Multiple attempts to contact; no one will answer the door; CSI contact information left at the door, attempt on 8/24/2011 mailbox labeled vacant.
7. 7784 During attempted home visit on January 21, 2011, the home was boarded up and vacant. On January 28, 2011, RCI located individual. All attempts by CSI to contact have been unsuccessful. CSI contact information left at the home. Referred again to RCI to locate. Individual signed DNC; received by RCI.

Of the seven individuals listed above, three were assessed by Columbus, one was referred to Columbus for assessment, but Columbus was unable to make contact with the individual, and one individual refused the assessment. The Department recognizes that an individual's life is not static, and for that reason the CSI workers continue to attempt to make contact with individuals for whom they have contact information, even though attempts at contact have been unsuccessful. The Department continues to respect an individual's right to accept or decline a service or assistance, until the individual has been formally declared to lack capacity.

2. In the April 2, 2012, letter (attached as Exhibit B, p. 9 of 13) Defendants provided the information below on the 25 individuals listed by Plaintiffs' counsel, including who signed the declination and who received the information for the State.

Plaintiffs' counsel asks "for 25 individuals, Do Not Contact" information. This appears to be the same list submitted by Plaintiffs' counsel under "Affidavit" supra.

For each individual on the January 24, 2012 CSI Visitation Compliance Report identified as "Do Not Contact" (DNC) the updated CSI visitation report for the month of March 2012, indicates the date on which the individual (or the guardian if appropriate) signed the DNC form. If any refusals were made by the individual's guardian, a list of those individuals was sent to Disability Rights of New Mexico in accordance with paragraph 3(f) of the Settlement Outline. The Department continues to respect an individual's right to accept or decline a service or assistance, until the individual has been formally declared to lack capacity. In response to your questions based upon the January 24, 2012 CSI Visitation Compliance Report, information regarding each individual follows:

1. 210 Family has requested that CSI not initiate contact, but will contact CSI if and when they need assistance.
2. 1153 Individual signed DNC on 1/19/2011 received by CSI worker.
3. 1723 Individual signed DNC on 3/7/2011 received by CSI.
4. 2474 Individual and family states he does not want contact from CSI.

5. 2842 Individual signed DNC on 3/1/2011 received by CSI.
6. 3115 Individual signed DNC on 6/28/2011 received by CSI.
7. 3160 Individual signed DNC on 3/30/2011 received by CSI.
8. 3509 Individual verbally requested DNC on 6/27/2011.
9. 3666 Guardian signed DNC 3/21/2011 received by CSI.
10. 4426 Individual verbally requested DNC received 5/26/2011 by RCI.
11. 4739 Guardian signed DNC 4/4/2011, received by CSI.
12. 4772 Individual signed DNC on 2/24/2011 received by CSI.
13. 5599 Guardian signed DNC on 2/28/2011 received by CSI.
14. 6132 Individual signed DNC on 11/26/2010 received by CSI.
15. 6407 Individual signed DNC on 3/22/2011.
16. 6533 Individual signed DNC on 2/28/2011 received by CSI.
17. 6598 Individual verbally requested DNC on 3/16/2011 to CSI.
18. 6626 Individual signed DNC on 3/23/2011.
19. 6655 Individual signed DNC 2/24/2011 received by CSI.
20. 7495 Individual signed DNC 3/14/2011 received by CSI.
21. 7882 Individual signed DNC 10/24/2011 received by CSI.
22. 8000 Individual and proposed guardian signed DNC 3/22/2011.
23. 8249 Individual signed DNC on 3/30/2011 received by CSI.
24. 8860 Individual signed DNC on 6/7/2011 received by RCI.
25. 9926 Individual signed DNC on 2/18/2011 received by CSI worker."

Defendants will not release the confidential information sought by Plaintiffs' counsel without a current valid Release of Information.

3. In April 2012, Defendants provided the following information in response to Plaintiffs' counsel's statement that seven individuals did not receive the same level of support as other individuals. Also See Exhibit B, page 10 of 13.

Plaintiffs' counsel alleges that seven (7) individuals did not receive the level of CSI visitation required by the Agreement.

The Department respects the rights of individuals and families to decline visitation or request specific scheduling of visits. This information is included in the monthly Service Status Reports.

For seven (7) individuals, the following information is in response to your request for explanation in greater detail why these individuals have not received quarterly visitation by CSI:

1. 2212 (family does not want quarterly visits, and wishes to contact CSI if they need something)
2. 2398 (family requested one visit per year)
3. 3366 (Individual stated over the phone that he wants no contact with the State; DNC mailed to individual, but no response)
4. 4427 (Individual requested two visits per year; seen 9/15/11; scheduled to be seen in March, 2012; phone contact made 3/19/2012, individual requested the visit be made at a later date)
5. 6719 (Seen 9/09/11; individual requests CSI visit one time per year)
6. 8012 (family requests email contact only)
7. 8093 (Seen 3/9/12; individual is inconsistent with permitting CSI to assist; CSI has contact with caregiver)

Plaintiffs' counsel's request for an order setting a deadline for completing all PCO and Waiver applications does not take into account the obstacles that have delayed the completion of the application process, which is frequently due to the refusal of the individual or guardian to complete the necessary paperwork. It also does not take into account those individuals who have recently requested a referral, the complexity of arranging a TEASC evaluation through the University of New Mexico or other factors which contribute to delays. Defendants will make each CSI worker available to provide the details of the remaining open DDW referrals and the case by case explanation of the delay.

V. INADEQUACY OF CSI SUPPORTS

1. The PCO program was administered by ALTSD at the time of the Settlement Agreement. In 2011, the administration of the PCO program was moved to the Human Services Department. While CSI workers are not authorized to attempt to interfere with the eligibility determinations of a separate state agency, defense counsel did meet with HSD counsel. HSD Assistant General Counsel Rachelle Klump offered to review every person on PCO, and, on a case by case basis, review the determinations for possible restoration of any recent decrease in PCO benefit.

Defendants have no information that any individual has had difficulty maintaining their publicly funded DD Waiver or D&E waiver. Every individual who was allocated to the waiver is still receiving waiver services.

2. CSI workers engaged in extensive efforts to locate the necessary paperwork to provide to the Eligibility Unit. These efforts could take many months and necessarily involved family members who did not always follow up in a timely manner. When it became evident that no historical paperwork could be located, the CSI workers sought some other means of establishing eligibility. This led to the collaboration with TEASC and the University of New Mexico. The CSI workers will be available to provide the details of each individual still waiting for a TEASC neuropsychiatric evaluation, however, the document search for some was the source of the delay, and referrals to TEASC have not been pending for two years. The dates of the DDW referral and the date referred to TEASC are reported on the DDW monthly report.

3. Defendants have no information that "people needing assistance from CSI regarding their pubic benefits (i.e. Medicaid, food stamps, low income heating) sometimes not getting assistance in a timely manner, if at all." Defendants have provided personalized, dedicated assistance for every request and will testify as to the extent of their efforts.

4. Defendants have no information that "one person without a guardian who is being financially exploited is getting no assistance from CSI with this problem although it threatens him with homelessness." Defendants request that Plaintiffs' counsel provide the name of this individual and the CSI worker responsible for contacts and assistance will provide testimony as to their efforts to assist.

5. Defendants have no information that individuals are "stuck in nursing homes where they don't want to be". Defendants request that Plaintiffs' counsel provide the name of the individuals who are stuck in nursing homes and the CSI worker responsible for contacts and assistance will provide testimony.

6. There is absolutely no language in the Settlement Agreement that resulted from the mediated settlement conference that CSI workers were to provide people with the functional equivalent of DD Waiver case management services. DD Waiver case managers are independent contracted providers who are required to allocate a complex budget for the administration of a state and federal program. CSI workers perform as agreed in the Settlement Agreement, to visit individuals who are not on a waiver, at least quarterly, to assist in the processing of applications for state programs, and have provided other assistance beyond the scope of the Settlement Agreement, but they were not intended to perform the same functions of formal DD Waiver case managers. CSI workers will be available to testify as to the extent of the services they have performed.

Plaintiffs' counsel's request for an order establishing independent oversight of CSI's activities by a neutral party acceptable to Plaintiffs' counsel, and periodic reporting regarding CSI to Plaintiffs' counsel by the neutral party is an absolute impermissible expansion and totally outside the scope and plain language of the Agreement reached by the parties on January 8, 2010. The information provided to Plaintiffs' counsel on a monthly basis, the detailed response to Plaintiffs' questions dated April 2, 2012, and November 2, 2011, is evidence enough that the CSI workers continue to complete the obligations of the Agreement even when confronted with bureaucratic processes and families and individuals who are reluctant or resistant to complete the necessary follow up.

VI. Names of 101 Individuals

Plaintiffs' counsel's request for a Qualified Protective Order directing Defendants to disclose to Plaintiffs the names and correlating unique identifying numbers of all people is a direct violation of the Settlement Agreement. Plaintiffs have no legal relationship to the former residents, there is no class and Plaintiffs' counsel do not represent more than a handful of former residents. Plaintiffs' counsel specifically bargained away the opportunity to have the court certify a class, to engage in monitoring and to receive attorney fees when they entered into the Agreement in January 2010. Plaintiffs' counsel now attempt to breach the terms of the Agreement to which they stipulated.

In the Settlement, Plaintiffs' counsel agreed that DOH would perform the tasks set forth in Exhibit A of the Settlement Agreement. See Signed Agreement and Release, at Exhibit B attached as Exhibit E. There is no language that considers providing Plaintiffs' counsel with the confidential information of individual former residents nor would Defendants have agreed to such terms. Defendants have provided the Arbitrator and Plaintiffs' counsel with ongoing information on the progress of completion of the Defendants' obligations.

"Releasors agree and acknowledge that this Settlement and Release Agreement, together with Exhibits A and B represent the entire agreement between the parties, and that the terms of this Settlement and Release are contractual and not mere recital." See Signed Agreement and Release, P. 8 attached as Exhibit E.

Further, Plaintiffs' counsel's request for an order "requiring DOH to compensate Plaintiffs for their reasonable and necessary legal work" misrepresents the Defendants actual performance and is similarly outside the explicit Agreement reached by the Parties. Plaintiffs' counsel accepted a fee of $ 1,100,000.00. See Signed Agreement and Release at Exhibit B, attached as Exhibit E. In the only decision made by the Court on the class certification issue, the

Court declined to certify a class. Also pending at the time of settlement were dispositive motions, which if granted, would have ended the litigation in defendants' favor. All these factors were in play at the time of the settlement conference. It is reprehensible that Plaintiffs' counsel now attempt to obtain the relief that they bargained away at the settlement conference. There are multiple references to the Parties agreement that the single award above would release the Defendants from any further obligations as to attorney fees. "It is the intent of Releasors that this indemnity agreement shall include indemnification to the Releasees for any and all judgments, awards, settlements, costs, attorney fees, or expenses, of whatever nature. See Signed Agreement and Release, P. 5 attached as Exhibit E. Further, the Settlement Agreement specifically states that the parties will bear their own attorney fees regarding the Arbitration proceedings. See Exhibit F, Arbitration Procedures Section V. See also Signed Agreement and Release at Exhibit A, paragraph 8, attached as Exhibit E.

Defendants affirmatively assert that they have met the terms of the Settlement Agreement and will testify as to their efforts to meet those contractual obligations, and will strongly oppose any attempt to impose monitoring or the award of any additional attorney fees.

Sincerely,

WALZ AND ASSOCIATES

/s/ Jerry A. Walz

Jerry A. Walz
Kathyleen M. Kunkel
Anne T. Alexander

JAW/ATA/KMK/sch
Attachments(s): As stated.

cc via email only with attachments:
Peter Cubra, Esq.
John Hall, Esq.
Charles Peifer, Esq.
Nancy Simmons, Esq.
Rachel Higgins, Esq.
Peggy Jeffers, ALTSD Acting General Counsel
Norm Weiss, Esq.
Gabrielle Sanchez-Sandoval, DOH Acting General Counsel
Cathy Stevenson, Director DDSD

Exhibit #9

Mr. A

Service Plan

[redacted]

ID: [redacted]

Other

The status of [redacted] PASRR evaluations should be reviewed. As federally mandated under Olmstead, [redacted] should have been identified as having developmental disabilities manifested prior to the age of 22 that resulted in life long impairments in functioning impacting independent living and self-sufficiency. Further evaluation, identification of specialized services (as appropriate), and consideration of less restrictive living alternatives should be incorporated into that process

1 Closed

Columbus recommendations were received on 11/4/2010. During the on-site visit of 11/16/2010, CSI worker, Doug Baker, spoke with the Director of Nursing, and the Case Manager. Apparently, [redacted] is in extremely poor health (elevated ammonia levels, receives Oxygen at night, and has a seizure disorder (receives Depakote and Lamictal). The Columbus recommendations were shared with both the DON and the Case Mgr. They also said they reviewed his PASSR evaluations as scheduled. Based on this information, this recommendation by Columbus is closed.

Other

[redacted] could benefit from support from an advocate independent of his family in voicing his preferences regarding his living situation and in reviewing his due process options.

1 Closed

Recommendation provided to the [redacted] Health Care and Rehabilitation Center on 11/16/2010. The Columbus recommendations were also shared with both the DON and the Case Mgr. It was their opinion that [redacted] would have great difficulty living in the community due to his significant health problems. Based on this information, this recommendation by Columbus is closed.

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Ms. B

Service Plan

[redacted] ID: [redacted]

Other — Assist [redacted] in obtaining Medicaid benefits for health coverage and food stamps as soon as possible

1 Closed — CSI worker, Doug Baker, referred the family who cares for [redacted] to the ISD office in [redacted] for temporary health coverage and food stamps, and to the Social Security Office to re-start Medicaid benefits. Based on this information this recommendation/concern by Columbus is closed.

PCO — Expedite obtaining PCO Services, if possible.

1 Pending — On the home visit of 8/19/10 CSI worker, Doug Baker, provided the family with PCO application form. The process to apply for PCO services was also explained to the family during this home visit. There is currently a waiting list and PCO services cannot be expedited. As of 9/12/11 the decision to pursue PCO services will be left up to the newly appointed guardian.

2 Pending — On 11/16/2011 CSI delivered the PCO application form to the family and provided instructions for getting the form completed.

3 Closed — CSI called guardian and requested he take over processing the PCO application. CSI gave him the name of the person at Molina and the fax number to complete sending them the additional form. CSI also explained to guardian that CSI had already completed and faxed to Molina the MAD 379 form. CSI told guardian that he would mail him the original MAD 379 form for his records. Guardian agreed to complete the PCO process. Recommendation closed

Other — Follow up with [redacted] caregiver to ensure that a new doctor is identified and an annual physical is scheduled, as well as health screenings and a referral for a swallow study is made, if indicated.

1 Closed — The family has taken [redacted] to doctors in [redacted] for several years and is currently satisfied with medical services. A doctor in the same medical office, filled out papers for PCO application. CSI worker, Doug Baker, contacted caregivers by phone, on 10/15/10, and was told that [redacted] has no difficulty eating and she is unaware of any swallowing problems. Based on this information this recommendation/concern by Columbus is closed.

Other — Follow up with [redacted] caregiver to ensure that NM ID card is obtained and bank account is opened for [redacted].

1 Closed — [redacted] does not have a birth certificate and one cannot be found for her due to lack of information. Cargiver is pursuing getting a bank account established for her. The family is currently cashing her check at the local Wal-Mart. During the home visit of 1/6/11 it was learned that the new rep/payee (established in November 2010). Phone calls on 2/5/11 and home visit of 1/6/11 provided information that rep payee is planning on establishing a checking account, but is procrastinating. She has been advised, and will continue to be advised to pursue this. **Phone conversation with caregiver on 3/3/11 in which she stated that a checking account has been established for [redacted] and the rep/payee. Based on this information this recommendation/concern by Columbus is closed.

Other — Periodically visit the home to see that it remains rodent free

1 Closed — During a phone conversation on 10/15/10 caregiver stated the family does not have a rodent problem. The house was closed up while the family went on a brief vacation last year and a few mice got in, but they have since been eradicated. CSI worker, Doug Baker, has noted that, during his home visits, the home is always clean and neat. Based on this information this recommendation/concern by Columbus is closed

Other — Discuss with [redacted] any interest in exploring the whereabouts of her children and assist and support her in whatever decision she makes.

1 Closed — On 10/15/10 phone call caregiver stated that [redacted] will sometimes state she has a daughter, when asked, but never talks about a daughter at any other time. The family has no idea how to find a daughter, if she even has one, and has no interest in pursuing the whereabouts of a possible sibling. [redacted] is limited in her ability to provide any information on this subject. Based on this information this recommendation/concern by Columbus is closed.

DDW — DDW application was submitted for processing.

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1	Pending	A DD Waiver application was submitted for [redacted] by the Columbus representative. The family was contacted by CSI worker Doug Baker on 2/24/11. During that phone conversation caregiver said she would like to continue with the DD Waiver application. Additional phone conversation with caregiver on 4/25/11 in which she stated the family is no longer interested in pursuing the DD waiver application. Service declination form will be taken to the home on the next scheduled visit. Service declination form signed on 5/2/11.
2	Pending	New guardian requested that CSI assist [redacted] and the family to pursue the DDW. CSI has provided the form to the guardian.
3	Pending	In an attempt to determine if TEASC has scheduled [redacted] for an evaluation, CSI sent an email to Pat Beery at the TEASC office. TEASC replied on 5/7/2012 that it would be several months before an evaluation would be scheduled.
Guardianship		Guardianship application was submitted for processing.
1	Closed	Quality of Life appointed guardian on 10/4/2011

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