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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
EUGENE DIVISION

C.S. ex rel. K.C.; K.C. ex rel L.C.; T.B. ex rel.  
C.B.; B.B. ex rel C.B.; T.C. ex rel L.C., on  
their own behalf and on the behalf of all those  
similarly situated,

Plaintiff,

v.

FARIBORZ PAKSERESHT, in his official  
capacity as Director of Department of Human  
Services, State of Oregon; and LILIA  
TENINTY, in her official capacity as the  
Director of the Office of Developmental  
Disabilities Services, Oregon Department of  
Human Services,

Defendants.<sup>1</sup>

Case No. 6:17-cv-00564-MC

JOINT STATUS REPORT AND JOINT  
MOTION TO CONTINUE STAY

<sup>1</sup> Caption modified from *C.S. v. Saiki* by operation of Fed. Civ. P. 25(d). See eDoc. 18.

This Court stayed proceedings in this matter on April 18, 2017 (eDoc. 10) and, the following day, issued a preliminary injunction (eDoc. 11). The parties updated the Court on December 5, 2017 (eDoc 17), June 5, 2018 (eDoc 19), and December 10, 2018 (eDoc 22). The Court continued the stay and ordered the parties to further update the Court by June 10, 2019. (eDoc. 23).

### **Current Status**

Defendants previously reported that they engaged Human Services Research Institute (HSRI) to develop service group and hours allotments for the new assessment tool, the Oregon Needs Assessment (ONA). In May 2018, HSRI began consumer record reviews with Defendants and stakeholders to develop and evaluate proposed service groups. HSRI found through the records review process that the ONA had some limitations in identifying individuals with extraordinary behavioral needs and assigning them to the appropriate service group. As a result, HSRI proposed some changes to criteria to address this issue.

HSRI also determined that more ONA assessment data is needed before completing hours allotments for service groups. HSRI had initially planned to conduct a second records review in July 2018 to develop and evaluate in-home hour ranges for each service group. This second records review has not taken place yet, but is currently planned for the summer of 2019.

Defendants have been using the ONA since July 2018 as a functional needs assessment for service planning purposes. Defendants have been targeting January 1, 2020 as the tentative date they will be prepared to use ONA to set service groups. However, it is now likely that Defendants will need to move the target date to summer 2020.

At the same time they are developing an assessment tool, Defendants are developing an exceptions process. Defendants have developed initial drafts of administrative rules for determining exceptional support hours. The parties have conferred about this draft. Defendants plan to hold a Rule Advisory Committee (RAC) on the draft rules in the summer of 2019.

Defendants are currently targeting September 1, 2019 to complete the RAC process and January 1, 2020 as the tentative effective date for the revised exceptions rules.

### **Impact on this Case**

Well in advance of the anticipated target date for use of the ONA to set service levels, the Defendants intend to file a motion to vacate the preliminary injunction. In the June 2018 report, the Defendants projected that they would make such a motion in early 2019. In the December 2018 report, the Defendants projected that they will file a motion to vacate in August or September 2019. If Defendants move the target date for use of the ONA to summer 2020, Defendant project that they will file a motion to vacate in late winter or spring 2020. Defendants may also file a motion to dismiss on mootness grounds at that time as well.

However, Defendants may move to vacate and/or dismiss earlier and even before the expiration of the stay, if an extension of the stay is granted as the parties request below. The parties will meet and confer about any motion to vacate the preliminary injunction and any motion to dismiss and to set a briefing schedule for the motion(s) prior to filing. Plaintiffs do not waive their right to oppose any motion to vacate the preliminary injunction or motion to dismiss, nor do the Defendants waive their right to file a motion to vacate the preliminary injunction or motion to dismiss by agreeing to a stay of proceedings.

### **Motion**

Based upon the ongoing cooperation between the parties, the parties move this Court to continue the stay for an additional six months, subject to the Defendants' right to file a motion to vacate the preliminary injunction and/or motion to dismiss as described above. Neither the answer nor a response to Plaintiffs' motion for class certification need be filed during that time. However, the parties each reserve the right, upon 30 days' written notice, to reinstate litigation on this case prior to the end of that six-month period should they deem it necessary. The parties agree that the filing of a motion to vacate the preliminary injunction and/or motion to dismiss, by

themselves, will not reinstate the litigation such that an answer and response to Plaintiffs' motion for class certification would be required to be filed before the expiration of the stay.

DATED June 10, 2019.

Respectfully submitted,

ELLEN F. ROSENBLUM  
Attorney General

*s/ Christina L. Beatty-Walters*

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