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4

5 UNITED STATES DISTRICT COURT
6 EASTERN DISTRICT OF WASHINGTON

7 DISABILITY RIGHTS WASHINGTON,

No. CV-09-024-JLQ

8 Plaintiff,

9 vs.

RESPONSE TO ORDER TO SHOW
CAUSE

10 PENRITH FARMS, JAMES BREWSTER
and SHERRY BREWSTER, and STEVEN
11 A. CARRERAS,

12 Defendants.

13 On March 20, 2009 this Court has asked that the parties “show cause in
14 writing on or before August 14, 2009, if there is any reason the case should not be
15 administratively closed and the claims therein dismissed without prejudice.”
16 Plaintiff, Disability Rights Washington, by and through its attorneys of record,
17 David Carlson and Zachary Burr, offer the following causes as to why the above-
18 captioned case should not be dismissed.
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1 The parties in this action have been unsuccessful in coming to an agreement
2 as to the applicability of the Protection and Advocacy Acts, and plaintiff seeks this
3 case warrants the continued attention of this Court.

4 On March 20, 2009 the court ordered the parties to schedule an opportunity
5 for Disability Rights Washington to visit Penrith Farms in order for Disability
6 Rights Washington to determine whether people with disabilities are served by
7 Defendants. This meeting took place on April 6, 2009. Declaration of Emily
8 Cooper Pura in Support of Plaintiff's Response to Show Cause ¶ 4. During the
9 court ordered preliminary investigation, Disability Rights Washington obtained
10 evidence that there are individuals with disabilities at Penrith Farms. Declaration
11 of Pura Cooper in Support of Plaintiff's Response to Show Cause ¶¶ 9, 11, 13, 14,
12 18 and Declaration of Awmiller in Support of Plaintiff's Response to Show Cause
13 ¶¶ 3, 4, 5. Since that visit, Disability Rights Washington has made numerous
14 attempts to engage Defendants in negotiations regarding further access to the
15 residents and facility. Declaration of Zachary Burr in Support of Plaintiff's
16 Response to Show Cause ¶¶ 2, 5. Despite the efforts of Disability Rights
17 Washington to resolve this matter without further involving the Court, these
18 discussions have not proved fruitful as Defendants continue in their refusal to
19 acknowledge the applicability of the access requirements described by the federal
20 mandates of the Protection and Advocacy Acts. *See Developmental Disabilities*

1 Assistance and Bill of Rights Act, 42 U.S.C. § 15041, *et seq.*, the Protection and
2 Advocacy for Individuals With Mental Illness Act, 42 U.S.C. § 10801, *et seq.*, and
3 the Protection and Advocacy for Individual Rights Act 29 U.S.C. § 794e.

4 Further involvement of the Court is warranted because, in order to fulfill its
5 federal mandates, a Protection and Advocacy System has the express authority to
6 “pursue legal, administrative, and other appropriate remedies” on its own behalf to
7 guarantee protection of, and advocacy for, the rights of individuals with
8 disabilities. *Hawai’i Disability Rights Center v. Cheung*, 513 F. Supp.2d 1185, at
9 1191. Furthermore, Protection and Advocacy Systems not only “may” but “must”
10 enforce the provisions of its enabling acts for receipt of federal funds. *Id.* at 1196.

11 In addition to this response to order to show cause, Disability Rights
12 Washington has filed a separate Motion for Summary Judgment. The Court’s
13 March 20, 2009 Order stated that Disability Rights Washington “shall file a report
14 with the court as to any further proceedings it wishes to pursue in this matter.”
15 Negotiations with Penrith Farms have been unsuccessful in resolving this matter.
16 Additional judicial proceedings are now necessary to resolve the outstanding legal
17 questions. Therefore, Disability Rights Washington provides the supporting
18 declarations and accompanying Motion for Summary Judgment for the court’s
19 consideration.

1 Due to the outstanding legal question that cannot be resolved between the
2 parties, Plaintiff respectfully requests that the Court continue to maintain
3 jurisdiction over this matter and consider Disability Right Washington's Motion
4 for Summary Judgment.

5 Dated this 14th day of August, 2009.

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7 s/David Carlson

8 DAVID R. CARLSON, WSBA #35767
9 Counsel for Plaintiff
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s/Mona Rennie
Legal Assistant
Disability Rights Washington