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6 **Attorneys for Plaintiff**

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8 **UNITED STATES DISTRICT COURT**  
9 **DISTRICT OF NEVADA**  
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11 NEVADA DISABILITY ADVOCACY AND)  
12 LAW CENTER, INC.,the State of Nevada's)  
Protection and Advocacy Agency, a Nevada)  
13 Non-Profit Corporation, )

14 **Plaintiff,** )

15 vs. )

16 MICHAEL J. WILLDEN, in his official)  
capacity as Director of the Department of)  
17 Human Resources; CARLOS)  
BRANDENBURG, in his official capacity as)  
18 Administrator of the Division of Mental Health)  
and Developmental Services; JONNA)  
19 TRIGGS, in her official capacity as Director of)  
Southern Nevada Adult Mental Health)  
20 Services; HAROLD COOK, in his official)  
capacity as Director of Northern Nevada Adult)  
21 Mental Health Services; STANLEE DODD, in)  
his official capacity as Director of Desert)  
22 Regional Center; and DAVID LUKE, in his)  
official capacity as Director of Sierra Regional)  
23 Center, )

24 **Defendants.** )

CIVIL ACTION NO:

CV-S-05-0757-PMP-PAL

COMPLAINT

25  
26 COMES NOW the Plaintiff Nevada Disability Advocacy & Law Center (hereinafter  
27 "NDALC") by though the undersigned attorneys and for its Complaint alleges and states the  
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I.

**INTRODUCTION**

1. Plaintiff NDALC is the designated protection and advocacy system in Nevada, and it brings this action to challenge Defendants refusal to provide documents related to incidents involving injuries and/or denial of rights to persons with disabilities. Defendants have refused to provide Plaintiff with internal investigation reports and have failed to provide Plaintiff with serious incident reports related to the injury and/or denial of rights to persons with disabilities by alleging that the documents sought by NDALC are peer review, quality assurance materials or work product as well as maintain policies against providing such documents to NDALC. Plaintiff is seeking these records pursuant to its investigative mandate under federal law.

2. Specifically, NDALC is seeking a declarative judgment pursuant to 28 U.S.C. §2201 to declare the rights of the parties to documents pursuant to the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (hereinafter the "DD Act"), 42 U.S.C. §15041-§15045, and the Protection and Advocacy for Individuals with Mental Illness Act of 1986 (hereinafter the "PAIMI Act"), 42 U.S.C. §10801, et seq. NDALC also states a claim pursuant to 42 U.S.C. §1983 based on Defendants failure to grant NDALC prompt access to documents related to serious incident reports and death reports authorized by the DD Act and the PAIMI Act and their implementing regulations. In addition, NDALC seeks injunctive relief against Defendants to order Defendants to promptly produce all incident reports and death reports requested and to prohibit Defendants from implementing any policy that denies access to such documents. NDALC seeks a permanent injunction to prohibit Defendants and their successors from future acts which would deny NDALC access to such documents in the future. Finally, NDALC is seeking reasonable attorney fees and costs pursuant to 42 U.S.C. §1988.

II.

**JURISDICTION AND VENUE**

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2 3. This court has jurisdiction pursuant to 28 U.S.C. §1331 as a civil action arising under the  
3 laws of the United States, i.e. 42 U.S.C. §10801, et seq., 42 U.S.C §15041-15045, 42 U.S.C.  
4 §1983 and for a declaratory judgment pursuant to 28 U.S.C. §2201.

5 4. Venue is appropriate in this district pursuant to 28 U.S.C. §1391(b) as all named Defendants  
6 reside in the District of Nevada and the acts or omissions giving rise to Plaintiff's cause of  
7 action occurred within this judicial district.

8 **III.**

9 **PARTIES**

10 5. NDALC is a non-profit Nevada corporation designated by Governor Bob Miller in March,  
11 1995 to be the protection and advocacy system for Nevada pursuant to the DD Act and the  
12 PAIMI Act. NDALC's mandate is to protect the rights of persons with disabilities in  
13 Nevada. NDALC expends significant time and resources advocating to protect the rights of  
14 individuals with disabilities who receive services, care and treatment from the State of  
15 Nevada.

16 6. Defendant Michael J. Willden is the Director of the Department of Human Resources  
17 (hereinafter "Department" or "DHR"). The Department provides services, care and treatment  
18 to individuals with disabilities in Nevada. He is responsible for the policies of the  
19 Department and for the administration, operation and control of the functions, programs and  
20 affairs of DHR. Director Willden's duties also include ensuring that the Department and its  
21 policies are in compliance with federal laws and regulations including the DD Act, the  
22 PAIMI Act and their implementing regulations. He is being sued in his official capacity as  
23 Director of the Department.

24 7. Defendant Carlos Brandenburg is the Administrator of the Division of Mental Health and  
25 Developmental Services (hereinafter "Division") of DHR. The Division provides services,  
26 care, and treatment to individuals with mental illness and developmental disabilities. He is  
27 responsible for the policies of the Division and for the administration, operation and control  
28 of the functions, programs, and affairs of the Division. Administrator Brandenburg duties

1 also include ensuring that the Division and its policies are in compliance with federal law  
2 and regulations including the DD Act, the PAIMI Act and their implementing regulations.  
3 He is being sued in his official capacity as Administrator of the Division.

4 8. Defendant Jonna Triggs is the Director of the Southern Nevada Adult Mental Health Services  
5 (hereinafter "SNAMHS"). SNAMHS is a facility of the Division which provides mental  
6 health services. She is responsible for the policies of SNAMHS and for the administration,  
7 operation and control of the functions, programs and affairs of SNAMHS. She is being sued  
8 in her official capacity as Director of SNAMHS.

9 9. Defendant Harold Cook is the Director of the Northern Nevada Adult Mental Health Services  
10 (hereinafter "NNAMHS"). NNMHS is a facility of the Division which provides mental  
11 health services. He is responsible for the policies of NNAMHS and for the administration,  
12 operation and control of the functions, programs, and affairs of NNAMHS. He is being sued  
13 in his official capacity as Director of NNAMHS.

14 10. Defendant StanLee Dodd is the Director of the Desert Regional Center (hereinafter "DRC").  
15 DRC is a facility of the Division which provides services to individuals with mental  
16 retardation and related conditions. He is responsible for the policies of DRC and for the  
17 administration, operation and control of the functions, programs and affairs of DRC. He is  
18 being sued in his official capacity as Director of DRC.

19 11. Defendant David Luke is the Director of the Sierra Regional Center (hereinafter "SRC").  
20 SRC is a facility of the Division which provides services to individuals with mental  
21 retardation and related conditions. He is responsible for the policies of SRC and for the  
22 administration, operation and control of the functions, programs and affairs of SRC. He is  
23 being sued in his official capacity as Director of SRC.

24 **IV.**

25 **FACTS**

26 12. Upon information and belief, on or about April 19, 2005, a woman with a mental illness  
27 hereinafter referred to as "TD" died while receiving inpatient care and treatment at  
28 SNAMHS in Clark County, Nevada.

- 1 13. After obtaining knowledge of TD's death while she was in custody of SNAMHS, NDALC  
2 initiated an investigation of her death to determine whether or not her death was a result of  
3 abuse and/or neglect by SNAMHS staff. Based on information and belief, a serious incident  
4 report and a death review report have been or will be completed regarding TD's death by  
5 SNMAHS pursuant to Division policy.
- 6 14. On April 20, 2005, NDALC requested in writing that the Division's counsel provide  
7 NDALC with all records and information related to TD's death while at SNAMHS including  
8 serious incident reports and internal investigations related to TD's death.
- 9 15. Defendants have not provided the records requested by NDALC related to TD's care and  
10 treatment or and have refused to provide internal investigative records related to her death.  
11 As a result, NDALC is unable to conduct its statutorily authorized investigation into TD's  
12 death.
- 13 16. On or about November 21, 2002 a man with developmental disabilities hereinafter referred  
14 to as "AM," received severe burns from scalding water while residing in a group home in  
15 Clark County, Nevada.
- 16 17. AM was a client of DRC. DRC provided AM case management services and funded AM's  
17 community based services.
- 18 18. NDALC has probable cause to believe that AM's injuries were a result of abuse and/or  
19 neglect. Based on information and belief, a serious incident report and internal investigation  
20 was initiated and completed by DRC pursuant to the Division's policies.
- 21 19. In March, 2003, NDALC verbally requested a copy of any and all internal investigation  
22 reports completed by DRC regarding the incident which severely injured AM.
- 23 20. In August, 2003, NDALC made a written request to Defendant Stan Lee Dodd for any  
24 internal investigation report completed by DRC regarding the incident which injured AM,  
25 and NDALC provided Defendant Dodd with a copy of a release of information executed by  
26 AM's guardian.
- 27 21. After consultation with Division staff, Defendant Stan Lee Dodd denied NDALC's request  
28 for any investigation report completed by DRC regarding the incident that injured AM.

- 1 22. In September, 2003, NDALC made a written request for any investigation report completed  
2 by DRC regarding AM's injuries to the Office for Attorney General who was representing  
3 the Division.
- 4 23. In October, 2003, the Office for Attorney General denied NDALC's request citing  
5 confidentiality, work product and quality assurance reasons.
- 6 24. Despite NDALC's numerous verbal and written requests for any internal DRC investigation  
7 report pertaining to the incident which caused AM's severe injuries. Defendants have refused  
8 to provide NDALC with these reports.
- 9 25. As a result of the denial of this investigation report document, NDALC is unable to  
10 complete its statutorily authorized investigation into the incident which caused AM's  
11 injuries, and NDALC is unable to determine if DRC, the Division, and Defendants have  
12 required the private group home provider or any other entity to take corrective measures in  
13 response to this incident in order to protect individuals with developmental disabilities.
- 14 26. On or about May 3, 2004, SRC staff administered the wrong medication to a man with  
15 developmental disabilities hereinafter referred to as JM who resided in a SRC facility in  
16 Washoe County, Nevada.
- 17 27. As a result of this medication administration error, JM was hospitalized in intensive care at  
18 Washoe County Medical Center.
- 19 28. NDALC has probable cause to believe that JM's hospitalization was due to abuse and/or  
20 neglect by SRC staff. Based on information and belief, a serious incident report and  
21 investigation report was completed by SRC pursuant to the Division's policies.
- 22 29. JM's father and legal guardian signed a release of information authorizing NDALC to obtain  
23 JM's SRC file.
- 24 30. On or about September 9, 2004, NDALC made a written request to Defendant David Luke  
25 to provide, among other documents, any and all incident reports for May 3, 2004, prepared  
26 by SRC staff involving JM as well as any and all internal investigation reports involving the  
27 May 3, 2004, incident related to JM.
- 28 31. NDALC's request for any incident report prepared by SRC staff and any internal

1 investigation report involving the May 3, 2004, incident related to JM was denied by  
2 Defendants. These documents are essential for NDALC's statutorily authorized investigation  
3 into the facts surrounding JM's injury.

4 32. Based on information and belief, on or about April 2005 a man with a mental illness  
5 hereinafter referred to as JL committed suicide while hospitalized at SNAMHS. On April  
6 28, 2005, NDALC requested in writing that the Division's counsel provide NDALC with  
7 all records and information related to JL's death while at SNAMHS including serious  
8 incident reports and internal investigations related to JL's death.

9 33. Defendants have not provided the records requested by NDALC related to JL's care and  
10 treatment and have refused to provide internal investigative records related to his death. As  
11 a result, NDALC is unable to conduct its statutorily authorized investigation into JL's death.

12 34. The Division's Policy #4.022(6)(B)(3) states: "Reports prepared for purposes of performance  
13 improvement (i.e., root cause analyses, corrective action plans, denials of rights and incident  
14 reports) shall not be available to NDALC staff."

15 35. The Division's Policy #4.022(6)(B)(3) unduly restricts NDALC from obtaining information  
16 and documents it is entitled to receive under federal law, and the policy impairs, limits and  
17 impedes NDALC's ability to conduct statutorily authorized investigations.

18 36. Defendants Michael Willden and Carlos Brandenburg are responsible for continuing to  
19 implement the Division policy of denying NDALC access to serious incident reports and  
20 other internal investigations, despite numerous oral and written requests by NDALC to  
21 Defendants Willden and Brandenburg to allow NDALC access to such records and  
22 documents. Defendants continued conduct regarding these incident reports unduly limits,  
23 impairs and impedes NDALC's ability to conduct statutorily authorized investigations  
24 regarding abuse and/or neglect allegations involving individuals with disabilities receiving  
25 care and/or treatment from the Division.

26 37. Defendants Jonna Triggs, Harold Cook, Stan Lee Dodd, and David Luke continue to  
27 implement Division policies at the Division entities they are responsible for administering  
28 which deny NDALC access to serious incident reports and other internal investigation

1 documents which unduly limit NDALC's ability to conduct statutorily authorized  
2 investigations regarding abuse and/or neglect allegations involving individuals with  
3 disabilities receiving care and/or treatment from the Division.

4 **VI.**

5 **CAUSES OF ACTION**

6 **A. VIOLATION OF THE PAIMI ACT**

7 38. Plaintiff NDALC restates each and every allegation contained in Paragraphs 1 through 37  
8 as though fully set forth herein.

9 39. At all times alleged, NDALC has been operating under authority granted by the PAIMI  
10 Act and its implementing regulations, 42 C.F.R. Part 51 et seq. as Nevada's protection  
11 and advocacy system.

12 40. 42 U.S.C §10805 (a)(1)(a) authorizes NDALC, as the protection and advocacy system  
13 for Nevada, to investigate incidents of abuse and/or neglect when such incidents are  
14 reported to NDALC, or NDALC has probable cause to believe that such incidents have  
15 occurred.

16 41. 42 U.S.C. §10805(a)(4)(A) authorizes NDALC to have access to the records of any  
17 individual who is a client and who has authorized access to their records. 42 C.F.R.  
18 §51.41(a) states that access to records shall be extended promptly to agencies such as  
19 NDALC.

20 42. 42 U.S.C. §10805(a)(4)(B) authorizes NDALC to have access to records of any  
21 individual who has died or who may be unable to authorize access due to a physical or  
22 mental condition, and NDALC has probable cause to believe the individual has been  
23 subject to abuse and/or neglect.

24 43. 42 U.S.C. §10806(b)(3)(A) defines records to include "reports prepared by staff of a  
25 facility rendering care and treatment or reports prepared by an agency charged with  
26 investigating reports of incidents of abuse, neglect and injury occurring at such a facility  
27 that describe incidents of abuse, neglect, and injury occurring at such a facility and the  
28 steps taken to investigate such incidents and discharge planning records." 42 C.F.R



1 §51.41(c)(1)-(5) describes the records that a protection and advocacy agency such as  
2 NDALC shall be authorized to access.

3 44. 42 U.S.C. §10806(b)(3)(B) states that an authorized system such as NDALC shall have  
4 access to records as described in 42 U.S.C. §10806(b)(3)(A).

5 45. Plaintiff NDALC's records request for records or investigational information pertaining  
6 to TD and JL including any serious incident reports and/or death review reports falls  
7 within the broad description of records and investigational information set forth in 42  
8 U.S.C. §10806(b)(3)(A) and 42 C.F.R. §51.41(c)(1)-(5).

9 46. Defendants, through their legal counsel at the Nevada Department of Justice, have denied  
10 NDALC access to serious incident reports and/or death review reports pertaining to  
11 incidents involving TD and JL's death.

12 47. The Division's policy #4.022(6)(B)(3) violates 42 U.S.C §10806(b)(3)(A), (B) and 42  
13 C.F.R. §51.41(c)(1)-(5) by prohibiting NDALC access to information and reports  
14 prepared by an agency or a facility that: describe abuse, neglect or injury occurring at the  
15 facility; steps taken to investigate the incidents; reports and records prepared or  
16 maintained by the facility in connection with such incidents of abuse, neglect or injury;  
17 and supporting information relied upon including all information and records used or  
18 reviewed in preparing reports of abuse, neglect or injury.

19 48. As a result of Defendants continued implementation of Division policies and the failure  
20 to voluntarily provide serious incident and/or death review reports in the incident  
21 involving TD and JL, Defendants are violating the PAIMI Act and its implementing  
22 regulations.

23 **B. VIOLATION OF THE DD ACT**

24 49. Plaintiff NDALC restates each and every allegation in Paragraphs 1 through 37 as though  
25 fully set forth herein.

26 50. At all times alleged, NDALC has been operating under authority granted by the DD Act  
27 and its implementing regulations, 45 C.F.R. Part 1386 et seq. as Nevada's protection and  
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- 1 advocacy system.
- 2 51. The DD Act at 42 U.S.C. §15043(a)(2)(B) authorizes NDALC as the protection and  
3 advocacy system for Nevada to investigate incidents of abuse and neglect of individuals  
4 with developmental disabilities whenever those incidents are reported to NDALC or  
5 when NDALC has probable cause to believe that incidents of abuse and/or neglect have  
6 occurred.
- 7 52. 42 U.S.C. §15043(a)(2)(I)-(J) authorizes NDALC to have access to the records of any  
8 individual who is a client and who has authorized access to records or when investigating  
9 incidents of abuse and/or neglect. Records must be provided within 3 working days of a  
10 written request by NDALC.
- 11 53. 45 C.F.R. §1386.22(b) specifies that NDALC is authorized to have access to records  
12 prepared by an agency charged with investigating incidents of abuse or neglect, injury, or  
13 death at a facility when such records describe any or all of the follow: abuse, neglect,  
14 injury, or death; steps taken to investigate the incidents; reports and records, including  
15 personnel records prepared or maintained by the facility in connection with such reports  
16 of incidents; or supporting information relied upon in creating a report including records  
17 describing who were interviewed, physical or documentary evidence reviewed and related  
18 investigative findings.
- 19 54. NDALC's request for records or investigational information pertaining to AM and JM,  
20 including any serious incident reports, falls within the broad description of records and  
21 investigational information contained in 42 U.S.C. §15043(a)(2)(I)-(J) and 45  
22 C.F.R. §1386.22(a)-(b).
- 23 55. Defendants failed to make the serious incident reports or other relevant investigational  
24 records pertaining to AM and JM available to NDALC within three business days as  
25 required under 42 U.S.C. §15043(a)(2)(J). Defendants, through their legal counsel at the  
26 Nevada Department of Justice, continue to deny NDALC access to these serious incident  
27 reports.
- 28 56. The Division's policy #4.022(6)(B)(3) violates 42 U.S.C. §15043(a)(2)(I)-(J) and 45

1 C.F.R §1386.22(b)(2) by prohibiting NDALC access to information and reports prepared  
2 by an agency or facility that: describe abuse, neglect, injury or death; steps taken to  
3 investigate the incidents; records and reports prepared or maintained in connection with  
4 such incidents of abuse, neglect, injury or death; and supporting information relied upon  
5 in preparing such reports.

6 57. In addition, the Division's policy and practice does not provide for NDALC to have  
7 access to client records, including serious incident reports within three business days.

8 58. As a result of Defendants continued implementation of Division policies and the failure  
9 to voluntarily provide serious incident reports in the incidents involving AMand JM  
10 within the statutory time frame, Defendants are violating the DD Act and its  
11 implementing regulations.

12 C.

13 **DEPRIVATION OF RIGHTS UNDER 42 U.S.C. §1983**

14 59. Plaintiff NDALC restates each and every allegation contained in Paragraphs 1  
15 through 37 as though fully set forth herein.

16 60. At all times alleged, Defendants administered a policy of not releasing serious incident  
17 reports, death review reports and other investigational records to NDALC which the  
18 Defendants, through legal counsel, have regarded as work product, peer review or quality  
19 assurance records.

20 61. The PAIMI Act and its implementing regulations and the DD act and its implementing  
21 regulations authorizes Plaintiff NDALC to conduct abuse and neglect investigations and  
22 to otherwise perform its statutory mandate to protect individuals with developmental  
23 disabilities and mental illness from abuse and neglect.

24 62. In order to perform these investigatory functions as provided under federal laws and  
25 regulations, NDALC must have full access to records such as serious incident reports,  
26 death review records and other investigative records and in particular access to serious  
27 incident reports or death review reports pertaining to incidents involving TD, JL, AM and  
28 JM.

- 1 63. Defendants administration of Division policies and their practices under color of law,  
2 custom and usage of the State of Nevada deny NDALC full access to investigational  
3 materials and information required by: 42 U.S.C. §§10805 and 10806 and the  
4 implementing regulations 42 C.F.R. §51.41(c)(1) through (5); 42 U.S.C. §15043(a)(2)(I)-  
5 (J) and the implementing regulations 45 C.F.R. §1386.22(a)-(e); thus, depriving Plaintiff  
6 NDALC of its federal rights in violation of 42 U.S.C. §1983.
- 7 64. Plaintiff has no other legal or administrative remedy by which to obtain the  
8 investigational materials in question and to prevent Defendants' ongoing, future  
9 violations of the PAIMI Act and DD Act and their implementing regulations.
- 10 65. Plaintiff NDALC has no adequate remedy at law and will suffer irreparable harm to its  
11 federal rights absent injunctive relief being granted by this Court.
- 12 66. Only review by this Court of Defendants' ongoing violations of federal law and the  
13 issuance of injunctive relief will compel Defendants to provide records to the Plaintiff, in  
14 order for Plaintiff to fulfill and perform its statutory mandate of protection and advocacy  
15 for individuals with developmental disabilities and mental illness.

16 **PRAYER FOR RELIEF**

- 17 67. WHEREFORE, Plaintiff NDALC respectfully requests that:
- 18 A. This Court grant a declaratory judgment to Plaintiff declaring that Defendants  
19 policies and practices are in violation of the PAIMI Act and DD Act and their  
20 implement regulations for refusing Plaintiff prompt access to all requested records  
21 relating to TD, JL, AM and JM.
- 22 B. This Court grant a declaratory judgment to Plaintiff declaring that  
23 Division Policy #4.022(6)(B)(3) violates the PAIMI Act and the DD Act and their  
24 implementing regulations.
- 25 C. This Court issue an injunction requiring Defendants to promptly produce any  
26 serious incident report, death review report or other internal investigational  
27 materials pertaining to TD, JL, AM and JM, so that Plaintiff NDALC may review  
28 and copy the same.

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- D. This Court issue a permanent injunction against Defendants and their successors to prevent Defendants and their successors from engaging in the conduct complained of herein regarding all future records requests by Plaintiff NDALC in accordance with the PAIMI Act, DD Act and their implementing regulations for production of serious incident reports, death review reports and other investigational materials in a timely manner.
- E. This Court award of reasonable attorney fees to Plaintiff NDALC and costs pursuant to 42 U.S.C. §1988.
- F. This Court award Plaintiff any other relief that the Court deems just and and equitable.

Dated this 17<sup>th</sup> day of June, 2005.

Respectfully Submitted,

**NEVADA DISABILITY ADVOCACY & LAW CENTER, INC.**

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