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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
AT TACOMA

7 DISABILITY RIGHTS WASHINGTON,

No. 12-cv-05004

8 Plaintiff,

MOTION AND MEMORANDUM OF
LAW IN SUPPORT OF PLAINTIFF'S
MOTION FOR A TEMPORARY
RESTRAINING ORDER/PRELIMINARY
INJUNCTION

9 vs.

10 LINDA ROLFE, in her official capacity as
Director of Division of Developmental
Disabilities, and WASHINGTON DIVISION OF
11 DEVELOPMENTAL DISABILITIES,

ORAL ARGUMENT REQUESTED

12 Defendants.

Noted on Motion Calendar for TRO:
To be set by Court

13
14 **I. MOTION**

15 Plaintiff, by and through its counsel of record, David Carlson, moves this honorable court
16 for immediate preliminarily injunctive relief directing Defendants to provide Plaintiff with a list
17 containing the name and contact information of individuals who:

- 18 1. have been denied Division of Developmental Disabilities (DDD) services under the
19 "other conditions" category because their condition was rejected for consideration of
20 eligibility by DDD's Other Condition Determination Committee;
- 21 2. have been terminated from DDD services under the "other conditions" category
22 because their condition was rejected for consideration of eligibility by DDD's Other
23 Condition Determination Committee;

1 information was made pursuant to the authority granted to Disability Rights Washington by
2 Congress through the Developmental Disabilities Assistance and Bill of Rights Act (“DD Act”),
3 42 U.S.C. § 15041, *et seq.*, the Protection and Advocacy for Individuals With Mental Illness Act
4 (“PAIMI Act”), 42 U.S.C. § 10801, *et seq.*, and the Protection and Advocacy for Individual
5 Rights Act (“PAIR Act”) 29 U.S.C. § 794e, and the regulations promulgated pursuant to the
6 above referenced Protection and Advocacy Acts (P&A Acts). Defendants’ refusal to abide by
7 the requirements of these federal laws irreparably harms Disability Rights Washington’s ability
8 to fulfill its federal mandate to protect and advocate for the rights of people with disabilities in
9 Washington.

10 **III. FACTS**

11 There are multiple ways one can show he or she is eligible for DDD services. Due to
12 reports Disability Rights Washington has received and information it has obtained, it has
13 probable cause to believe the eligibility category listed as “other conditions,” is now illusory for
14 a vast number of individuals who were previously eligible. DDD maintains a list of disabilities
15 which are categorically excluded from being considered under the “other conditions” eligibility
16 category. A true and correct copy is attached as Exhibit A. Such categorical exclusions do not
17 conform with federal anti-discrimination and Medicaid law.

18 In light of the potential for repeated and egregious violations of legal rights stemming
19 from Defendants’ discriminatory eligibility practices and the likelihood of extreme irreparable
20 harm experienced by applicants when Defendants withhold necessary services, Disability Rights
21 Washington determined it had probable cause to suspect possible abuse and neglect of
22 individuals with developmental disabilities affected by Defendants’ categorical exclusions.

1 On December 21, 2011, Disability Rights Washington requested the names and contact
2 information of individuals affected by Defendants' categorical exclusion based upon diagnosis.
3 Disability Rights Washington also requested the name and contact information of any guardians
4 for those individuals. This written request for access cited legal authority, including specific
5 support for the release of names and contact information for individuals with whom the
6 protection and advocacy system was not yet in direct contact, but who are affected by potentially
7 abusive or neglectful policies or practices. ECF No. 1, Exhibit E.

8 On December 23, 2011, Defendants wrote to indicate they were denying Disability
9 Rights Washington's request. ECF No. 1, Exhibit F. The denial of access provided three
10 rationales:

- 11 1) DDD asserts that the access agreement between Disability Rights Washington and
12 DDD prevents the department from disclosing the names of individuals who are not
13 current DDD clients.
- 14 2) DDD asserts that the access authority provided by the DD Acts is limited to
15 individuals with whom Disability Rights Washington has a relationship.
- 16 3) DDD asserts that it is not required to provide information about individuals who will
17 be terminated at their next review, because the department believes the likelihood for
18 termination is speculative and thus the request is premature.

19 On December 27, 2011, Disability Rights Washington provided a written reply to each of
20 DDD's reasons for not providing the requested names and contact information. ECF No. 1,
21 Exhibit G.

22 First, Disability Rights Washington pointed out to DDD that the agreement referenced in
23 DDD's letter is merely intended to operationalize the provisions of the DD Act. The agreement

1 itself acknowledges that it does not limit the authority and obligations generated by the Act in
2 any way. Access Agreement Between WPAS¹ and DDD § I.B. A true and correct copy is
3 attached as Exhibit B. Nowhere does federal law limit the duty of disclosure of information to
4 entities currently serving the individual.

5 Second, in both its December 21st and 27th letters, Disability Rights Washington
6 explained to DDD that its access authority is not limited to individuals with which it has
7 established a relationship. Disability Rights Washington provided DDD with recent Ninth
8 Circuit case law, directly on point, as well as federal regulatory guidance to support its request.
9 See ECF No. 1, Exhibits E and G, citing *Disability Law Center of Alaska, Inc. v. Anchorage*
10 *School Dist.*, 581 F.3d 936 (9th Cir. 2009) (holding P&A Acts authorize access to otherwise
11 confidential information indentifying people with disabilities and their guardians); 42 C.F.R. §
12 51.43; 45 C.F.R. § 1386.22(i). Defendants failed to provide any support for its narrow reading of
13 the P&A Acts, which they incorrectly assert limits protection and advocacy systems to
14 investigating abuse and neglect of only identified individuals.

15 Third, Disability Rights Washington does not consider the harm current DDD clients will
16 sufferer from termination of their necessary Medicaid services to be merely speculative. The
17 unfortunate reality is that due to DDD's categorical exclusion of certain diagnoses under the
18 "other conditions" criteria, there is nothing speculative about individuals being terminated as a
19 result of their particular diagnosis. Defendants maintain a list of diagnoses that are excluded
20 from consideration for the purposes of qualifying under the "other conditions" category. Exhibit
21 A. With respect to future terminations, Disability Rights Washington has requested the names

22 ¹ Disability Rights Washington was formerly known as Washington Protection and Advocacy System. This
23 agreement was entered into prior to that name change and therefore the agreement references Plaintiff under its old
acronym, WPAS.

1 and contact information of only those individuals who previously used one of the now
2 disqualified diagnoses to be found eligible in the past, as these individuals will be terminated the
3 next time they are reassessed. By operation of DDD's policy, each of these individuals would be
4 terminated during one of the periodic eligibility reassessments DDD conducts. Once again,
5 Defendants provided no legal authority for the limitation it has read into the P&A Acts.

6 On December 27th, Disability Rights Washington reiterated its request for the names and
7 contact information of individuals affected by the categorical exclusions. Despite the federal
8 statutes which provide Disability Rights Washington access to the requested information within
9 three business days from the initial written request, Disability Rights Washington granted
10 Defendants an additional three days to provide the information. Disability Rights Washington
11 then emailed a copy of the complaint it intended on filing if the information was not provided,
12 and granted Defendants an additional day to produce the information. A true and correct copy is
13 attached as Exhibit C. Defendants did not provide the requested names and contact information
14 or any legal authority for its continued denial of access to the information.

15 As a result of Defendants' refusal to follow federal law, DRW has been denied access to
16 conduct a full and meaningful investigation and has been unable to fulfill its federal mandate to
17 investigate possible abuse and neglect of individuals with developmental disabilities.

18 Defendants have been made aware of Disability Rights Washington's federal authority to obtain
19 a list of names and contact information for a group of individuals and their guardians when
20 Disability Rights Washington has determined there is probable cause to suspect possible abuse or
21 neglect of that group of individuals.

22 Defendants' acts frustrate the congressionally mandated functions and duties of the
23 protection and advocacy system. As described in the foregoing paragraphs, Plaintiff attempted,

1 on multiple occasions, to resolve its access issue with the Defendants. These attempts have
2 proven unsuccessful. Plaintiff has suffered and continues to suffer direct and irreparable injury
3 to its statutory interests in investigating abuse and neglect. Plaintiff has standing to bring this
4 action on its own behalf, because the refusal of access by defendants constitutes an injury in fact
5 to Plaintiff's legally-protected interests. This injury is concrete, particularized, actual, and
6 imminent. There is a causal relationship between the injury and Defendants' challenged
7 conduct, and a favorable decision by this Court will address the injury. Plaintiff has no adequate
8 remedy at law.

9 **IV. ARGUMENT**

10 **A. The Plaintiff meets the Requirements for a Preliminary Injunction**

11 In order for a preliminary injunction to issue, the Court must determine that (1) plaintiff
12 has exhibited a strong likelihood of success on the merits; (2) the possibility of irreparable injury
13 to plaintiff if preliminary relief is not granted; (3) such a balance of hardships favoring the
14 plaintiff; and (4) advancement of the public interest. *National Resources Defense Council, Inc v.*
15 *Winter*, 518 F.3d 658 (9th Cir. 2007). Plaintiff meets these requirements for a preliminary
16 injunction.

17 *1. DRW is Likely to Succeed on the Merits of its Claim that Defendants are Legally* 18 *Required to Provide the Requested Names and Contact Information.*

19 DRW, as the P&A System for Washington State, has a right to access contact information
20 it needs to conduct a full and meaningful investigation. In response to the inhumane and
21 despicable conditions at New York's Willowbrook State School and other similar facilities,
22 Congress enacted the Developmental Disabilities Assistance and Bill of Rights Act of 1975 (DD
23 Act) to protect the human and civil rights of this population. 42 U.S.C. § 6000 *et seq.* As an

1 integral component of this Act, P&A Systems were established to ensure that these protections
2 became a reality.

3 There are two other acts, the Protection and Advocacy for Individuals with Mental Illness
4 (PAIMI) Act and the Protection and Advocacy of Individual Rights (PAIR) Act which are to be
5 read coextensively with the DD Act. See S. Rep. 454, 100th Cong., 2d Sess. 10 (1988); S. Rep.
6 109, 99th Cong., 1st Sess. 3 (1986); S. Rep. 113, 100th Cong, 1st Sess. 24 (1987). The case law
7 and regulations interpreting the scope of one P&A program's access authority is equally
8 applicable with respect to the interpretation of the counterpart provisions in a sister program. *See*
9 *Robins v. Budke*, 739 F. Supp. 1479 (D. N.M. 1990) (Court deciding a PAIMI case relied on
10 another district court decision involving a DD Act case.) *See also* 42 C.F.R. § 51.31. Similar to
11 the DD Act, the PAIMI Act was passed following Congressional hearings and investigations,
12 which substantiated numerous reports of abuse and neglect of individuals with mental illness,
13 and the PAIR Act was created to provide the same access authority provided by the DD Act,
14 including access to records and otherwise confidential information, in order to serve persons with
15 disabilities who are not eligible under either the DD or PAIMI Acts. 29 U.S.C. § 794e(f)(2).

16 When Congress enacted the P&A Acts, it found that individuals with developmental
17 disabilities and mental illness were vulnerable to abuse and neglect and are often unserved or
18 under served. 42 U.S.C. §§ 10801, 15001. As an example, Congress found, that a "substantial
19 portion of individuals with developmental disabilities and their families do not have access to
20 appropriate supports", and even though "they often require lifelong community services,
21 individualized supports, and other forms of assistance" many people "are waiting for appropriate
22 services in their communities". 42 U.S.C. § 15001 (6), (7), (14). Each P&A system is mandated
23 under the P&A Acts, to investigate and remedy abuse and neglect of persons with mental,

1 developmental, sensory, and physical disabilities, and provide them with legal representation and
2 advocacy services. *See e.g.*, 42 U.S.C. § 15043(a)(2)(A)-(B).

3 Courts have uniformly held that each P&A System must operate effectively, and with
4 broad discretion and independence in gaining access to individuals, facilities, information, and
5 records for investigative purposes. *See, e.g. Center for Legal Advocacy v. Hammons*, 323 F.3d
6 1262 (10th Cir. 2003); *Pennsylvania Protection and Advocacy, Inc. v. Houstoun*, 228 F.3d 423
7 (3rd Cir. 2000); *Alabama Disabilities Advocacy Program v. J.S. Tarwater Developmental*
8 *Center*, 894 F. Supp. 424 (M.D. Ala. 1995), *aff'd* 97 F.3d 492 (11th Cir.1996); *Mississippi*
9 *Protection & Advocacy System, Inc. v. Cotten*, 1989 WL 224953 (S.D. Miss. 1989), *aff'd*, 929
10 F.2d 1054 (5th Cir 1991); *Robbins v. Budke* 739 F. Supp. 1479 (D.N.M. 1990); *Michigan*
11 *Protection & Advocacy Service, Inc. v. Miller*, 849 F. Supp. 1202 (W.D. Mi 1994); *Maryland*
12 *Disability Law Center, Inc. v. Mount Washington Pediatric Hospital, Inc.* 106 Md. App. 55, 664
13 A. 2d 16 (Md. Ct. of Special App. 1995).

14 When a P&A System's right to access information pursuant to one of the P&A Acts is
15 denied, the P&A System has an express private right of action in federal court to enforce the its
16 rights under the Acts. *Hawaii Disability Rights Center v. Cheung*, 513 F. Supp.2d 1185 (D.
17 Hawai'i, 2007) (holding the "plain language" of the DD Act and its supporting regulations
18 "suggest that Congress intended to grant P&A Systems a private right of action to enforce the
19 DD Act and pursue remedies in federal court, among other forums.)

20 Here, Disability Rights Washington was denied access to the names and contact
21 information of individuals, and their respective guardians where applicable, whom Disability
22 Rights Washington has probable cause to believe may be abused or neglected by Defendants
23 actions. Probable cause is "a reasonable ground for belief that an individual with a

1 developmental disability or mental illness has been, or may be, subject to abuse or neglect. 45
2 C.F.R. § 1386.19. 42 U.S.C. § 1080. The individual making such determination may base the
3 decision on reasonable inferences drawn from his or her experience or training regarding similar
4 incidents, conditions or problems that are usually associated with abuse or neglect. *Id.* The
5 P&A System, not the defendants, is “the final arbiter of probable cause for the purpose of
6 triggering its authority to access all records for an individual that may have been subject to abuse
7 or neglect.” *Arizona Center for Disability Law v. Allen*, 197 F.R.D. 689, 695.

8 When a P&A System has probable cause to believe a group of individuals is subject to
9 abuse or neglect, it must be given the name and contact information of all individuals, and their
10 guardians, whom are affected by the actions in question so that the P&A System may seek the
11 individuals’ consent to access records and additional confidential information in order to conduct
12 a full investigation. 45 C.F.R. § 1386.22(i) *see also*, *Disability Law Center of Alaska, Inc. v.*
13 *Anchorage School Dist.*, 581 F.3d 936, 939 (9th Cir. 2009); *Office of Protection and Advocacy v.*
14 *Hartford Transitional Learning Academy*, 355 F. Supp.2d 649 (D. Conn. 2005), *aff’d on other*
15 *grounds*, 464 F.3d 229 (2nd Cir. 2006); *Disability Rights Wisconsin, Inc. v. State of Wisconsin*
16 *Dept. of Public Instruction*, 463 F.3d 719 (7th Cir ,2006) *Georgia Advocacy Office v. Borison*,
17 520 S.E.2d 701 (1999). The DD Act regulations specifically state that:

18 If a system is denied access to facilities and its programs, individuals with
19 developmental disabilities, or records covered by the Act it shall be provided
20 promptly with a written statement of reasons, including in the case of a denial for
alleged lack of authorization, the name and address of the legal guardian,
conservator, or other legal representative of an individual with developmental
disabilities.

21 45 C.F.R. § 1386.22(i).

22 The Ninth Circuit has also ruled on this specific issue. *Disability Law Center of Alaska,*
23 *Inc. v. Anchorage School Dist.*, 581 F.3d 936 (9th Cir. 2009). There, the P&A system in Alaska

1 wanted to investigate possible abuse and neglect in a classroom in which students with
2 disabilities were taught. The P&A requested information regarding the class, its students, its
3 staff, and any relevant school district investigations. The school district provided most of the
4 requested information but refused to provide contact information for the students' guardians or
5 legal representatives. *Id* at 939. The Ninth Circuit rejected the school districts argument that it
6 did not need to produce the list of names where the school disagreed with the P&A over the
7 sufficiency of probable cause and federal education privacy laws. *Id*.

8 Similarly, in 2009 Disability Rights Washington requested the names and contact
9 information of all individuals, and their guardians, who receive service from a private residential
10 treatment setting in which Disability Rights Washington had probable cause to suspect possible
11 abuse or neglect of members of the group. The Honorable Judge Quackenbush granted a
12 permanent injunction which requires the provider and its owner and agents to,

13 follow the federal Protection and Advocacy Acts and their implementing
14 regulations. 42 U.S.C. § 15041, et seq.; 42 U.S.C. § 10801, et seq.; 29 U.S.C. §
15 794e. The Defendants are permanently enjoined from impeding Disability Rights
16 Washington's lawful, appropriate access and requests for access to provide
17 federally mandated protection and advocacy services which include investigations
18 of abuse or neglect, monitoring of resident conditions, provision of information
19 and referral services, and other advocacy services as authorized by the Protection
20 and Advocacy Acts."

21 *Disability Rights Washington v. Penrith Farms*, Slip Copy, 2009 WL 3245110 (E.D. Wash.
22 2009).

23 The authority for a P&A System to get a list of names and contact information is not a
new concept in the jurisprudence of P&A Acts. In 1999, the Georgia Court of Appeals ruled that
the P&A system had the right to access records of thousands of subjects of fraudulent drug
studies. *Georgia Advocacy Office v. Borison*, 520 S.E.2d 701 (1999). Although the P&A did not
have knowledge of the identity of any of the individuals in the drug study or even whether any

1 particular individual had a disability, the court ruled that the P&A System clearly had probable
2 cause to investigate further and was entitled to a list of the participants and their contact
3 information. *Id.* See also, *Office of Protection and Advocacy v. Hartford Transitional Learning*
4 *Academy*, 355 F. Supp.2d 649 (D. Conn. 2005), *aff'd on other grounds*, 464 F.3d 229 (2nd Cir.
5 2006) (granting P&A a list of students due to possible systemic abuse and neglect). *Disability*
6 *Rights Wisconsin, Inc. v. State of Wisconsin Dept. of Public Instruction*, 463 F.3d 719 (7th Cir.
7 2006) (holding P&A is not required to obtain authorization from students' guardians before it
8 could learn names of students placed in seclusion room).

9 There is clear legal authority providing P&A Systems access to lists of names of
10 individuals who may have been subject to abuse or neglect where such abuse or neglect is being
11 investigated by the P&A System. Disability Rights Washington, therefore, is likely to succeed
12 on the merits, and continued denial of access irreparably harms Disability Rights Washington.

13 2. *DRW and the individuals for whom DRW has probable cause are being abused or*
14 *neglected will continue to suffer irreparable harm if DRW does not receive the*
information.

15 Denying a P&A access to records constitutes irreparable harm because “the P&A is being
16 prevented from pursuing fully its right to access records...in pursuit of its duty to investigate
17 circumstances providing probable cause to believe abuse or neglect may be occurring.” *Iowa*
18 *Protection and Advocacy Services, Inc. v. Rasmussen*, 206 F.R.D. 630, 635 (S.D. Iowa, 2001);
19 *See also, Wisconsin Coalition for Advocacy, Inc. v. Czaplewski*, 131 F. Supp.2d 1039, 1051
20 (E.D. Wisc. 2001); *Advocacy Center v. Stalder*, 128 F. Supp.2d 358, 367-68 (M.D. La. 1999).
21 As a result of Defendants’ refusal to release the contact information requested, DRW’s federal a
22 P&A mandate is frustrated. If the information is not turned over, DRW cannot conduct a full
23 investigation. See *Wisconsin Coalition for Advocacy, Inc. v. Czaplewski*, 131 F. Supp.2d, 1051.

1 As noted in *Advocacy Inc. v. Tarrant County Hospital District*, 2001 WL 1297688, 4 (N.D. Tex,
2 2001) when access is denied or restricted,

3 the mandatory provisions relating to authority to investigate incidents of abuse
4 and neglect are rendered nugatory. *Mississippi Prot. & Advocacy Sys., Inc. v.*
5 *Cotton*, 929 F.2d 1054, 1059 (5th Cir. 1991). This not only hampers redress of
6 past and current abuse and neglect, but has a detrimental effect on the advocacy
7 agency's future performance of its statutory mandate. *Id.* ... Timely access to
8 records is essential for effective communication, *Robbins v. Budke*, 730 F. Supp.
9 1479 (D.N.M. 1990), and access to patient records is necessary for the P&A
10 system to serve its clients, evaluate client concerns, and determine whether a
11 client has a legal claim.

12 *Id.*

13 In addition to the harm DRW will suffer directly, individuals who are denied services or
14 lose the services they have received for years as a result of Defendants' categorical diagnosis
15 based exclusions may continue to be irreparably harmed by possible unchecked abuse and
16 neglect. The sooner Disability Rights Washington's the investigation can take place, the sooner
17 Disability Rights Washington can determine whether abuse and neglect is resulting from the
18 Defendants' practices, and advocate to end any abuse or neglect that may be substantiated.

19 3. *The Balance of Hardships Favors Disability Rights Washington*

20 As described above, the P&A Acts require disclosure of the names and contact
21 information. Moreover, denial or restriction of access prevents Disability Rights Washington
22 from being an effective P&A System and frustrates Congress's intended mandate that Disability
23 Rights Washington conduct full independent investigations. *See, e.g. Center for Legal Advocacy*
v. Hammons, 323 F.3d 1262 (10th Cir. 2003); *Pennsylvania Protection and Advocacy, Inc. v.*
Houstoun, 228 F.3d 423 (3rd Cir. 2000); *Alabama Disabilities Advocacy Program v. J.S.*
Tarwater Developmental Center, 894 F. Supp. 424 (M.D. Ala. 1995), *aff'd* 97 F.3d 492 (11th
Cir. 1996); *Mississippi Protection & Advocacy System, Inc. v. Cotton*, 1989 WL 224953 (S.D.

1 Miss. 1989), *aff'd*, 929 F.2d 1054 (5th Cir 1991); *Robbins v. Budke* 739 F. Supp. 1479 (D. N.M.
2 1990); *Michigan Protection & Advocacy Service, Inc. v. Miller*, 849 F. Supp. 1202 (W.D. Mi
3 1994); *Maryland Disability Law Center, Inc. v. Mount Washington Pediatric Hospital, Inc.* 106
4 Md. App. 55, 664 A. 2d 16 (Md. Ct. of Special App. 1995).

5 There is no argument to be made that the state would be harmed by complying with a
6 federal law which requires it provide the names and contact information of individuals to the
7 P&A System so that the P&A System may contact the individuals to inquire as to whether they
8 would like the P&A System to conduct a lawful investigation of possible abuse or neglect.

9 In correspondence with Disability Rights Washington, Defendants incorrectly claim they
10 cannot provide the information because they have a legal obligation under the Health Insurance
11 Portability and Accountability Act (HIPAA) to keep the information confidential. ECF No. 1,
12 Exhibit H. HIPAA itself provides that protected information may be disclosed when otherwise
13 required by law. 45 C.F.R. § 164.512(a). The United State Department of Health and Human
14 Services which oversees compliance with HIPAA as well as the DD and PAIMI Acts has given
15 further guidance which reaffirms the need of entities covered by HIPAA to cooperate with P&A
16 investigations and not use HIPAA “as a reason not to comply with its other legal obligations.”
17 <http://www.hhs.gov/hipaafaq/permitted/require/909.html>. A true and correct copy is attached as
18 Exhibit D. Additionally, federal courts have confirmed that P&A Systems are allowed access
19 under the “required by law” exception to HIPAA. *Ohio Legal Rights Service v. The Buckeye*
20 *Ranch, Inc. et al*, 365 F. Supp.2d 877 (S.D. Ohio 2005); *Protection and Advocacy System, Inc. v.*
21 *Freduenthal*, 412 F. Supp.2d 1211, 1218 (D. Wy. 2006). Therefore, Defendants are bound by
22 P&A Acts to provide the information when requested by the P&A system and there is no legal
23 hardship in disclosing the information.

1 4. *The Public Interest Will be Furthered, Not Harmed, by Granting DRW Access to*
2 *the Records and Contact Information.*

3 Congress drafted the P&A Acts because of concern it had over abuse and neglect of
4 individuals with disabilities. *See Supra* pp. 7-9. As the court noted in *Iowa Protection and*
5 *Advocacy v. Rasmussen*, “(t)o shield from independent review valuable records of this type of
6 appraisal would directly contradict the expressly stated public policy of Congress.” 206 F.R.D.
7 at 635. Therefore, Defendants’ denial of DRW’s request for names and contact information
8 undermines long established public interest which outweighs any potential harm to Defendants.

9 **V. CONCLUSION**

10 For the reasons stated above, Plaintiff respectfully requests this Court issue a preliminary
11 injunction requiring the Division of Developmental Disabilities and its director, Linda Rolfe, to
12 provide Disability Rights Washington with the names, addresses, and telephone numbers of
13 persons who have had their DDD services denied or terminated under the “other conditions”
14 category because their condition was rejected for consideration for eligibility by DDD’s Other
15 Condition Determination Committee or who are currently eligible for DDD services under the
16 “other conditions” category but will lose services upon their next eligibility review because their
17 condition has been rejected for consideration of eligibility by DDD’s Other Condition
18 Determination Committee. Plaintiffs asks for the names, addresses, and telephone numbers of
19 any guardians those individuals may have. Plaintiff also requests this that Court issue an
20 injunction forbidding Defendants from further impeding Disability Rights Washington’s
21 investigation as it develops.

22 //
23 //
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1 Dated this 5th day of January, 2012.

2 Respectfully Submitted,

3 DISABILITY RIGHTS WASHINGTON

4 s/David R. Carlson

5 David R. Carlson, WSBA #35767

6 Attorney for Plaintiff