

# **Exhibit 1**

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**UNITED STATES DISTRICT COURT**

**DISTRICT OF OREGON**

**PORTLAND DIVISION**

**PAULA LANE, ANDRES PANIAGUA,  
ELIZABETH HARRAH, ANGELA  
KEHLER, GRETCHEN CASON, LORI  
ROBERTSON, SPARKLE GREEN, and  
ZAVIER KINVILLE, on behalf of  
themselves and all others similarly situated,**

Case No. 3:12-cv-00138-ST

**UNITED CEREBRAL PALSY OF  
OREGON AND SOUTHWEST  
WASHINGTON,**

Plaintiffs,

v.

**JOHN KITZHABER, Governor of the  
State of Oregon, ERINN KELLEY-SIEL,  
Director of the Oregon Department of  
Human Services, MIKE MALEY, Interim  
Administrator of the Oregon Office of  
Developmental Disability Services,  
STEPHAINE PARRISH TAYLOR,  
Administrator of the Oregon Office of  
Vocational Rehabilitation Services, all in  
their official capacities,**

Defendants.

**UNITED STATES OF AMERICA,**

Plaintiff-Intervenor,

v.

**COMPLAINT IN INTERVENTION OF  
THE UNITED STATES OF AMERICA**

**THE STATE OF OREGON,**

Defendant.

## INTRODUCTION

1. The United States alleges that Defendant, the State of Oregon (“State”), discriminates against individuals with intellectual or developmental disabilities (“I/DD”) by unnecessarily segregating them in sheltered workshops and by placing them at risk of such segregation, in violation of Title II of the Americans with Disabilities Act of 1990 (“ADA”), 42 U.S.C. §§ 12131-12134, and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 (“Rehabilitation Act”).

2. A sheltered workshop is a segregated facility that exclusively or primarily employs persons with I/DD. Sheltered workshops are usually large, institutional facilities in which persons with I/DD have little to no contact with non-disabled persons besides paid staff. Persons with I/DD typically earn wages that are well below minimum wage.

3. For example, one sheltered workshop in Oregon includes approximately 150 people with I/DD, where some individuals hand-sort and process hospital trash off a conveyor belt, and other individuals hand-sort and clean garbage bins. People are segregated within the workshop by the severity of their disabilities, with the most severely disabled working together. A handful of nondisabled staff members supervise the workspace, which is a large warehouse. No private spaces are provided for the workers. The site is located in a commercial area without easy access to retail businesses. The workers with I/DD on the Comprehensive Waiver earn an average of \$3.35 per hour, with some individuals earning as little as 44 cents per hour, and individuals often work at the workshop for decades at a time. Oregon’s system has so ingrained the expectation that all individuals with I/DD will work in such sheltered workshops, that students from local high schools receive scholarships/stipends to participate in the workshop

provider's programs while still in school. Some other high schools' "life skills" programs operate sheltered workshops in school or have students with I/DD perform workshop tasks.

4. Supported employment services, by contrast, allow persons with I/DD to work in integrated employment settings at competitive wages. Such services include job discovery, vocational assessment, job coaching, and job training that enable individuals to access jobs in typical work settings in the community where they interact with non-disabled coworkers, customers, and peers. For example, some individuals with I/DD receiving supported employment services in Oregon work in clerical positions performing tasks like scanning, copying, or shredding in a typical office setting, and receive occasional job coaching and job training from employment specialists. These individuals often have their own desks and workspaces, and regularly interact with nondisabled coworkers. Many of these individuals receive support in adjusting to ongoing workplace demands and in learning new skills on the job, for instance, through the training provided by job coaches. Such individuals earn competitive wages, sometimes receive retirement benefits and health insurance, and can often live independently in their own apartments.

5. Title II of the ADA prohibits the unnecessary segregation of persons with disabilities. 42 U.S.C. § 12132; *Olmstead v. L.C.*, 527 U.S. 581, 600 (1999). It requires states and other public entities to "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. § 35.130(d); *see also* 29 U.S.C. § 794(a); 28 C.F.R. § 41.51(d).

6. The State has discriminated against individuals with I/DD by planning, administering, and funding its employment service system in a manner that relies heavily upon segregated sheltered workshops. The State has correspondingly failed to provide persons with

I/DD with meaningful access to adequate and effective supported employment services that would allow them to work in integrated employment settings. Because the State does not make available adequate and effective supported employment services for people with I/DD who qualify for and do not oppose such services, such persons are at risk of entering into sheltered workshops and are required to remain in sheltered workshops in order to receive employment services. Oregon provides supported employment services to a limited number of persons with I/DD. For many of these persons, supported employment services have been successful in allowing them to work in integrated work settings, where they earn competitive wages and benefits that have allowed them a measure of economic self-sufficiency. Such persons, however, are far outnumbered by the thousands of individuals with I/DD who are unable to obtain supported employment services and are, accordingly, confined to segregated sheltered workshops.

7. The unnecessary segregation of people with I/DD in sheltered workshops contravenes one of the primary purposes of the ADA: to end the isolation and segregation of individuals with disabilities. As Congress stated in the findings and purpose section of the ADA: “[H]istorically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem.” 42 U.S.C. § 12101(a)(2).

8. On January 25, 2012, eight named Plaintiffs and one organizational Plaintiff filed a class action complaint on behalf of themselves and other individuals with I/DD who are in Oregon sheltered workshops “or who have been referred to[] sheltered workshops.” Compl. ¶ 32, ECF No. 1. The suit alleges violations of the ADA and the Rehabilitation Act and seeks declaratory and injunctive relief. Plaintiffs filed an amended complaint on May 29, 2012. Am.

Compl., ECF No. 43. The Court certified the Plaintiff class on August 6, 2012. *Lane v. Kitzhaber*, 283 F.R.D. 587, 602 (D. Or. 2012).

9. On June 29, 2012, the United States issued a findings letter to Oregon's Attorney General notifying the State that it was failing to comply with federal law by unnecessarily segregating individuals with I/DD in sheltered workshops and by placing other individuals with I/DD, including but not limited to youth in transition from Oregon secondary schools, at risk of segregation in sheltered workshops. The letter reported in detail the findings of the United States' nine-month investigation, provided the State notice of its failure to comply with the ADA and the Rehabilitation Act, and outlined the steps necessary for the State to meet its obligations pursuant to federal law.

10. The letter of findings identified numerous remedial measures the State could take to comply with federal law, and further advised the State that, in the event that a resolution could not be reached voluntarily, the United States Attorney General may initiate a lawsuit pursuant to the ADA.

11. Following the issuance of the letter of findings, the United States met multiple times with State officials, including staff from the Oregon Department of Justice, both by telephone and in person in Portland, Oregon, and, at the State's request, offered comprehensive, substantive proposals in an attempt to reach agreement on remedial measures to address the deficiencies identified in the United States' letter of findings and Plaintiffs' claims. Despite these good faith efforts, the United States determined that voluntary compliance with the ADA and the Rehabilitation Act could not be reached.

12. Through this intervention, the United States seeks to remedy the violations of law identified in the United States' letter of findings and to vindicate the rights of thousands of

individuals with I/DD in or at risk of placement in sheltered workshops so that they may receive employment services in the most integrated settings appropriate to their needs.

### **JURISDICTION AND VENUE**

13. This Court has jurisdiction of this action under Title II of the ADA, 42 U.S.C. §§ 12131-12133, Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a), and 28 U.S.C. §§ 1331 and 1345. The Court may grant the relief sought in this action pursuant to 28 U.S.C. §§ 2201(a) and 2202.

14. Venue is proper under 28 U.S.C. § 1391 because a substantial part of the acts and omissions giving rise to this action occurred in the District of Oregon. 28 U.S.C. § 1391(b).

### **PARTIES**

15. Plaintiff-Intervenor is the United States of America.

16. Plaintiffs Paula Lane, Andres Paniagua, Elizabeth Harrah, Angela Kehler, Gretchen Cason, Lori Robertson, Sparkle Green, and Zavier Kinville are individuals with disabilities within the meaning of the ADA and the Rehabilitation Act (specifically, I/DD), who are segregated in sheltered workshops or are at risk of such segregation. Each named Plaintiff wants to work in integrated supported employment and is capable of doing so. *See* Am. Compl. ¶¶ 112-176, ECF No. 43.

17. The individual Plaintiffs named above represent a class of “all individuals in Oregon with intellectual or developmental disabilities who are in, or who have been referred to, sheltered workshops [and] who are qualified for supported employment services.” 283 F.R.D. at 602.



18. Plaintiff United Cerebral Palsy of Oregon and Southwest Washington (“UCP”) is a statewide, nonprofit organization that serves adults, children, and families with cerebral palsy and I/DD. Am. Compl. ¶¶ 22-24, ECF No. 43.

19. Defendant State of Oregon is a public entity within the meaning of the ADA, 42 U.S.C. § 12131(1), and is therefore subject to Title II of the ADA, 42 U.S.C. § 12131 *et seq.*, and its implementing regulations, 28 C.F.R. Part 35.

20. Defendant State of Oregon is and has been a recipient of “[f]ederal financial assistance,” and is therefore subject to the Rehabilitation Act, 29 U.S.C. § 794.

21. Defendant funds, administers and delivers vocational, employment, and rehabilitation services for persons with I/DD in Oregon via various agencies and departments, described below.

### **PROCEDURAL HISTORY**

22. Plaintiffs filed this action on January 25, 2012.

23. On April 3, 2012, Defendants moved to dismiss this action, claiming, *inter alia*, that the ADA’s integration regulation did not extend to non-residential programs or activities. *See* Def.’s Mem. in Supp. Mot. to Dismiss 9-11, ECF No. 30. Plaintiffs opposed this motion. Pl.’s Opp’n to Def.’s Mot. to Dismiss, ECF No. 35. The United States also filed a Statement of Interest with the Court, which stated that Title II and its integration regulation applied to all services, programs, and activities provided by a public entity, including employment services. Statement of Interest of the United States in Supp. Pls. Regarding Def.’s Mot. to Dismiss, ECF No. 34.

24. On May 17, 2012, the Court ruled on Defendants’ Motion to Dismiss. The Court agreed with Plaintiffs and the United States that the ADA’s integration regulation extends to

employment services. *Lane v. Kitzhaber*, 841 F. Supp. 2d 1199, 1205-06 (D. Or. 2012).

However, the Court dismissed Plaintiffs' complaint with leave to re-file in order to revise certain language that suggested that Plaintiffs were asking the State to provide them with employment.

*Id.* at 1208.

25. On May 29, 2012, Plaintiffs filed their Amended Complaint. Am. Compl., ECF No. 43.

26. On August 6, 2012, following discovery, briefing, and a hearing, the Court granted Plaintiffs' motion for class certification. *Lane v. Kitzhaber*, 283 F.R.D. 587, 602 (D. Or. 2012). The United States also filed a Statement of Interest with regard to class certification. Statement of Interest of the United States in Supp. Pls.' Mot. Class Certification, ECF No. 60.

### **STATUTORY AND REGULATORY BACKGROUND**

#### **A. The Americans with Disabilities Act and the Rehabilitation Act**

27. The ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity." 42 U.S.C. § 12132. The Rehabilitation Act similarly prohibits discrimination against persons with disabilities by entities that receive federal financial assistance. 29 U.S.C. § 794(a).

28. Congress enacted the ADA in 1990 "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(1). Among the specific issues the ADA addresses are "segregation" and actions that prevent persons with disabilities from "fully participat[ing] in all aspects of society." *Id.* §§ 12101(a)(1), (5).

29. In enacting the ADA, Congress found that “historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem.” *Id.* § 12101(a)(2). Congress also found that “people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally; [and] the Nation’s proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living, and economic self-sufficiency for such individuals.” *Id.* §§ 12101(a)(6)-(7).

30. The ADA was also intended to enable individuals with disabilities to gain economic independence and to “move proudly into the economic mainstream of American life.” President George H.W. Bush, Remarks at the Signing of the Americans with Disabilities Act (July 26, 1990), *available at* [http://www.eeoc.gov/eeoc/history/35th/videos/ada\\_signing\\_text.html](http://www.eeoc.gov/eeoc/history/35th/videos/ada_signing_text.html).

31. Title II of the ADA prohibits discrimination on the basis of disability by public entities. 42 U.S.C. § 12132. A “public entity” is any State or local government and any department, agency, or other instrumentality of a State or local government, and covers all services, programs, and activities provided or made available by public entities, including through contractual, licensing, or other arrangements. *See id.* §§ 12131(1), 12132; 28 C.F.R. § 35.130. Accordingly, Title II’s coverage extends to the State of Oregon, its agencies, and its employment services system.

32. Congress directed the Attorney General to issue regulations implementing Title II of the ADA. 42 U.S.C. § 12134.

33. The Title II regulations require public entities to “administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d). The Rehabilitation Act contains a similar requirement. *Id.* § 41.51(d). “The most integrated setting” means a setting that “enables individuals with disabilities to interact with nondisabled persons to the fullest extent possible . . . .” *See id.* pt. 35, app. B at 673.

34. Title II’s regulations further prohibit public entities from utilizing “criteria or methods of administration” that have the effect of subjecting qualified individuals with disabilities to discrimination, including unnecessary segregation, or “that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity’s program with respect to individuals with disabilities . . . .” *Id.* § 35.130(b)(3); *see also* 45 C.F.R. § 84.4(b)(4) (Rehabilitation Act).

35. The Supreme Court has held that Title II prohibits the unjustified segregation of individuals with disabilities. *Olmstead v. L.C.*, 527 U.S. 581, 597 (1999).

36. The Supreme Court’s holding in *Olmstead* “reflects two evident judgments.” *Id.* at 600. “First, institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life.” *Id.* “Second, confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment.” *Id.* at 601.

37. Under *Olmstead*, public entities are required to provide community-based services when (a) such services are appropriate, (b) the affected persons do not oppose community-based

treatment, and (c) community-based services can be reasonably accommodated, taking into account the resources available to the entity and the needs of other persons with disabilities. *Id.* at 607.

B. *Other Statutes, Regulations, and Guidance Pertaining to Sheltered Employment*

38. Since *Olmstead*, numerous federal agencies that oversee employment, rehabilitation, and vocational services for persons with disabilities have advised states of their obligation to provide such services in the most integrated setting appropriate to the needs of persons with disabilities.

39. For example, on September 16, 2011, the Centers for Medicare and Medicaid Services (“CMS”), which oversees Medicaid, issued an Informational Bulletin entitled “Updates to the § 1915(c) Waiver Instructions and Technical Guide regarding employment and employment-related services,” which states that Medicaid community services funding:

is not available for the provision of vocational services delivered in facility based or sheltered work settings, where individuals are supervised for the primary purpose of producing goods or performing services. . . . Prevocational services should be designed to create a path to integrated community based employment for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. . . . Consistent with the *Olmstead* decision and with person centered planning principles, an individual’s plan of care regarding employment services should be constructed in a manner that reflects individual choice and goals relating to employment and ensures provision of services in the most integrated setting appropriate.

U.S. Department of Health & Human Services, Centers for Medicare & Medicaid Services, Informational Bulletin, *available at* <https://www.cms.gov/CMCSBulletins/downloads/CIB-9-16-11.pdf>.

40. Additionally, since January 22, 2001, the Rehabilitation Services Administration, which oversees federally-funded vocational rehabilitation services, has defined “employment

outcome” to exclude work in sheltered workshops and other segregated settings. Instead, vocational rehabilitation services must result in:

competitive employment . . . in the integrated labor market, supported employment, or any other type of employment in an integrated setting, including self-employment, telecommuting, or business ownership, that is consistent with an individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

34 C.F.R. § 361.5(b)(16); *see also* 29 U.S.C. §§ 720(a)(1), (a)(3)(B) (Title I of the Rehabilitation Act) (“Individuals with disabilities must be provided the opportunities to obtain gainful employment in integrated settings.”); U.S. Department of Education, Office of Special Education and Rehabilitative Services, Rehabilitation Services Administration, Technical Assistance Circular, 06-01 (Nov. 21, 2005), *available at* <http://www2.ed.gov/policy/speced/guid/rsa/tac-06-01.doc>.

41. Pursuant to the Least Restrictive Environment (“LRE”) provisions of Part B of the Individuals with Disabilities Education Act (“IDEA”), 20 U.S.C. § 1412(a)(5), both State Education Agencies (“SEAs”) and Local Education Agencies (“LEAs”) have obligations under the law and are eligible for federal assistance:

if the State submits a plan that provides assurances to the Secretary [of Education] that the State has in effect policies and procedures to ensure that the State meets each of the following conditions: [*inter alia*] To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

42. On June 22, 2012, the United States Department of Education, Office of Special Education and Rehabilitative Services (OSERS), issued guidance in a Policy Letter in which it stated that the Least Restrictive Environment requirements of Part B of the IDEA, *see* 34 CFR §§

300.114 - .118, apply to transition planning, and specifically to work placements for youth. The letter stated that, while the IDEA would not prohibit placement in a segregated employment setting, the LRE provisions of IDEA “would apply equally to the employment portion of the student’s program and placement.” Department of Education, OSERS, Letter to Spitzer-Resnick, Swedeen, and Pugh, *available at* <http://www2.ed.gov/policy/speced/guid/idea/memosdcltrs/062212workplacelre2q2012.pdf>. The letter explained that before a student could be placed in a segregated work setting, as part of their transition services, the Individualized Education Program (“IEP”) Team must consider whether “supplementary aids and services” could be provided that would enable an individual to work in an integrated work setting. *Id.*

### **FACTUAL ALLEGATIONS**

#### **A. Oregon’s System for Providing Employment, Rehabilitation, and Vocational Services to Persons with I/DD**

43. The State, through its Department of Human Services (“DHS”), plans, funds, and oversees all developmental disability services and vocational rehabilitation services for persons with I/DD in Oregon. It determines the amount and allocation of funding for these services, including the range of employment services, the licensing of employment providers, and the level of funding for sheltered workshops versus supported employment programs. DHS performs these duties via two divisions: the Office of Developmental Disabilities (“ODDS”) and the Office of Vocational Rehabilitation (“OVRs”). DHS is responsible for management of the State’s Medicaid program, which includes coverage of developmental disability services and other services to Medicaid-eligible individuals.

44. In addition, the State, through its Department of Education (“ODE”), ODDS, and OVRs, provides transition services for students with I/DD in secondary schools to prepare

students with I/DD to leave school and enter the workforce or postsecondary education.

Transition services are “designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the student to facilitate the student’s movement from school to post school activities, including postsecondary education, vocational education, integrated employment (including supported employment) . . . or community participation[.]” Or. Admin. R. 581-015-2000(39).

45. The State plans, administers, and manages the long-term service system for persons with I/DD, including supported employment services and sheltered workshops. Specifically, ODDS is responsible for developing, implementing, and overseeing the ongoing services and supports for persons with I/DD. ODDS also determines reimbursement rates for employment services and collects data with respect to the statewide employment service system.

46. ODDS oversees the development and implementation of Individual Support Plans (“ISPs”) for individuals with I/DD, which are used to assess individuals’ needs for employment services. *See, e.g.*, Or. Admin. R. 411-340-0020(47) & 411-341-1330 to 411-341-1340.

47. The State administers two home and community-based service Medicaid waiver programs, funded under Section 1915(c) of the Social Security Act. *See* 42 U.S.C. § 1396n(c)(1). A waiver allows a state to provide a variety of services, like employment services, with Medicaid funds, while being able to waive certain Medicaid statutory requirements. *Id.* §1396n(b). Oregon's Comprehensive Waiver and its Support Services Waiver both permit funding for employment services, including supported employment services.

48. The State has adopted an Employment First Policy, which states that “integrated employment is more valued than non-employment, segregated employment, facility-based employment, or day habilitation in terms of employment outcomes for individuals with



developmental disabilities,” and that through a person-centered planning process, people with I/DD can work in integrated employment. Under this policy, employment in an integrated setting should be the first and priority service option when planning employment for persons with I/DD. *See* Office of Developmental Disability Services, State Policy On: Employment for Working Age Individuals (2008), *available at* [http://www.dhs.state.or.us/dd/supp\\_emp/docs/policy.pdf](http://www.dhs.state.or.us/dd/supp_emp/docs/policy.pdf).

49. Nevertheless, the State has failed to implement effectively its Employment First Policy and to ensure the prioritization of integrated employment in employment planning for persons with I/DD. The State has also failed to provide sufficient supported employment services for individuals with I/DD across Oregon.

50. The State, through OVRs, is responsible for completing vocational assessments and determining the employment needs and potential of individuals with I/DD. Pursuant to the Rehabilitation Act, OVRs serve as the entry point to the State’s employment service system. A vocational assessment determines eligibility for services and is used by vocational rehabilitation counselors to formulate an Individual Plan for Employment (“IPE”) with identified goals for an individual’s vocational and employment services. Or. Admin. R. 582-001-0010(53). In addition to providing a vocational assessment, OVRs services include identifying jobs, contracting with employment agencies, and providing job training, job coaching, and employment services and support for up to eighteen months.

51. For many individuals with I/DD, OVRs has failed to serve as the point of entry into the employment service system, and specifically into integrated employment, because it administers a system of vocational assessments that is largely inappropriate for individuals with I/DD and is based on job readiness criteria—such as an individual’s ability verbally to express

his or her motivation to work—which has the effect of screening out many individuals with I/DD from eligibility for supported employment services.

52. OVRS frequently plans, funds, and/ or administers vocational assessments in segregated sheltered workshops, which often results in individuals' permanent placement at the workshop. Conversely, OVRS assessments are often not conducted in integrated employment settings, where OVRS could evaluate a person's ability to work in an integrated setting as well as determine the services such a person would need to work in an integrated setting.

53. The State has failed to establish the presence and availability of vocational rehabilitation counselors or other supports in Oregon's secondary school system necessary to assist youth in transition with the formulation of career-related goals that include integrated employment.

54. As a direct result of the actions and inactions of the State, the current employment service, education, and Medicaid systems are excessively and unnecessarily reliant on segregated sheltered workshops.

**B. Oregon Unnecessarily Serves Individuals with I/DD in Segregated Settings**

55. Oregon has an employment service system through which it delivers services, programs, and activities to persons with I/DD. The State plans, administers, funds, licenses, manages, and oversees the employment services system by, among other things, determining what employment services to provide, what rates are to be paid for services, who will provide them, in what settings to provide them, and how to allocate funds among various services and settings.

56. Oregon's employment services system for people with I/DD includes sheltered workshops, group employment, and individual supported employment.

57. A sheltered workshop is a facility-based employment setting that employs primarily people with disabilities in settings where such individuals have limited contact with non-disabled people, other than agency staff, and where individuals are often paid sub-minimum wages.

58. Group or “enclave” employment typically consists of up to eight individuals with I/DD who work as a group in the community and are supervised by staff from a service provider. Individuals in group employment may work in “crews” such as cleaning or janitorial crews for a local business or office. While such individuals’ work is physically located in the community, the individuals generally lack non-disabled co-workers, work only with other members of the group, are typically not employees of the businesses or entities where they work, and often earn below minimum wage.

59. Individual supported employment, by contrast, consists of individualized services and supports that allow persons with I/DD to work in jobs in the community, to work alongside and interact with non-disabled co-workers, to earn competitive wages, and to receive ongoing supports to maintain their jobs. Supported employment services include job development, job coaching, job shadowing, and benefits counseling.

60. In Oregon, approximately 2,600 persons with I/DD receive employment services in sheltered workshops. After placement, individuals with I/DD tend to remain in sheltered workshops for an average of between 11 and 12 years, according to data from ODDS, and some remain for as long as 30 years. Approximately 1,160 persons with I/DD receive employment services in group employment. Many of these persons are capable of working in individual supported employment and would be interested in doing so if offered a meaningful opportunity.

Only a small number of people work in individual supported employment in jobs that pay competitive wages.

61. Oregon provides some integrated and appropriate alternatives to sheltered workshops, though not in sufficient numbers to serve all those who qualify for and want such services. As a result, persons with I/DD are unnecessarily forced to obtain employment services in segregated sheltered workshops and group employment and are placed at risk of segregation in sheltered workshops, even though they could be appropriately served in integrated employment settings.

62. The vast majority of individuals in sheltered workshops are paid far below the minimum wage. According to ODDS, the average hourly wage for sheltered workshop participants is \$3.72. Over 52% of participants earn less than \$3.00 per hour, and some earn only a few cents per hour. The low wages paid to individuals with I/DD by sheltered workshops perpetuate the stereotype that individuals with I/DD are not capable of performing at the same level as their non-disabled peers.

63. As of March 2012, according to State data, of the individuals with I/DD receiving employment services from Oregon's employment service system, at least 61% received at least some of those services in segregated sheltered workshops, while only 16% received any services in individual supported employment.

64. Further, of the total number of hours that individuals with I/DD expended in various employment settings, 57% were in segregated sheltered workshops, while only 10% were spent receiving employment services in integrated employment settings.

65. According to statewide employment outcomes for adults covered under the Comprehensive and Support Services Waiver, the number of people in sheltered workshops in

Oregon has been rising from 2,546 in September 2011 to 2,591 in March 2012 and 2,619 in September 2012. *See* Oregon Department of Human Services, Statewide Oregon Employment Outcomes, *available at* <https://spdweb.hr.state.or.us/EOS/ORAll.aspx>.

66. The State has long been aware of the lack of supported employment services and the unnecessary and prolonged segregation of individuals in sheltered workshops in its employment service system. A 2005 report by the Oregon Council on Developmental Disabilities (“DD Council”) and ODDS noted a significant decline in the number of individuals with access to supported employment, as well as the loss of the State’s focus and training efforts on supported employment. The report noted a “renewed interest in, and demand for, supported employment services,” and found that “[t]o respond to this demand, the state must reestablish expectations and capacity for supported employment for persons with developmental disabilities.” Oregon Council on Developmental Disabilities, *Supported Employment for Oregonians with Developmental Disabilities: Recommendations for Action* at 2 (Nov. 2005), *available at* [http://www.oregon.gov/dhs/vr/cep/se\\_dd\\_stevely.doc](http://www.oregon.gov/dhs/vr/cep/se_dd_stevely.doc).

67. Similarly, a 2010 report commissioned by the State found that in 2008, “71% of Oregonians with disabilities were in facility-based programs, supporting the claim that a majority of working age adults with significant disabilities are supported today in programs that offer segregation and long-term dependency regardless of cost.” *See* Washington Initiative for Supported Employment, Community Leadership for Employment First in Oregon: A Call to Action 6 (2010), *available at* [http://www.dhs.state.or.us/dd/supp\\_emp/docs/wise.pdf](http://www.dhs.state.or.us/dd/supp_emp/docs/wise.pdf).

C. Individuals with I/DD in Sheltered Workshops or at Risk of Placement in Sheltered Workshops Are Qualified to Receive Services in More Integrated Settings and Would Not Object to Receiving Integrated Services

68. Individuals who are in or are at risk of placement in sheltered workshops are similar to individuals with I/DD who receive supported employment services in integrated employment settings. They have similar diagnoses and support needs as individuals who work successfully in integrated employment settings, with the types of services and supports that currently exist in Oregon's employment service system.

69. Numerous individuals have expressed their desire to receive the supported employment services that would allow them to work in integrated employment settings. Upon information and belief, thousands of individuals with I/DD in Oregon sheltered workshops would not oppose receiving supported employment services if such services were available and if these individuals had fully-informed choices and realistic opportunities to receive such services.

D. The State Places Individuals with I/DD at Risk of Unnecessary Segregation in Sheltered Workshops

70. The State has failed to ensure that students with I/DD are provided with meaningful choices and preparation for work in integrated settings as well as ensuring that such students are provided information and access to appropriate services and supports that would allow them to choose and work in integrated settings. As a direct consequence of these acts and omissions by the State, students with I/DD are at risk of unnecessary placement in segregated sheltered workshops.

71. Each year, hundreds of youth with I/DD are referred for admission to sheltered workshops, including students graduating or otherwise exiting Oregon secondary schools. Many

of these youth are able to work in integrated employment settings and are not opposed to doing so.

72. In Oregon, many youth with I/DD are not offered timely and adequate services to allow them to make informed choices about transitioning to work in integrated settings after graduating from or exiting secondary school. The State also frequently fails to ensure that transition-age youth with I/DD are informed of alternatives to working in segregated sheltered workshops.

73. Some Oregon students are placed in sheltered workshops for the purpose of employment planning. This often results in these individuals' *de facto* permanent placement in a sheltered workshop.

74. The State's failure to prepare youth with I/DD to make an informed choice about postsecondary work in integrated settings is exemplified by the fact that some schools directly operate sheltered workshops on school premises for students with I/DD or have students perform activities that are similar to those performed in sheltered workshops, instead of exposing them to, or preparing them for, typical jobs in the community. The State's failure to prepare students with I/DD for integrated employment results in these students' acculturation and training in segregated sheltered workshops, and often leads to permanent placement in segregated sheltered workshops.

75. Further, many adults and youth with I/DD are placed at risk of sheltered workshop placement as a result of the State's system of performing OVRs eligibility assessments, which tends to screen out persons with I/DD due to exclusionary standards and criteria.

E. *The State Can Provide Employment Services in Integrated Settings By Reasonably Modifying Its Employment Service System*

76. The State can, through reasonable modifications to its employment services system, provide services in integrated employment settings to individuals with I/DD who are currently in sheltered workshops and to individuals with I/DD at risk of entry to sheltered workshops.

77. The types of services needed to support individuals with I/DD in integrated employment settings, including services to prepare transition-age youth for integrated employment, already exist in Oregon's employment service system, including but not limited to discovery, vocational assessment, job coaching, job training, job oversight and supervision, and transportation. However, none of these services is currently provided in sufficient supply to meet the needs of individuals who are unnecessarily segregated in sheltered workshops. These supported employment services do exist for some individuals in Oregon's employment service system, and Oregon's employment service system has allowed those particular individuals to work in integrated employment settings. However, for thousands of other individuals with similar diagnoses and needs, Oregon's employment service system has left them with no choice but to enter sheltered workshops to receive employment services.

78. Individual supported employment is a cost-effective alternative to sheltered workshops. The Call to Action Report commissioned by the State found that "the cumulative costs generated by sheltered employees may be as much as three times higher than the cumulative costs generated by supported employees—\$19,388 versus \$6,618[.]" See A Call to Action Report, *supra* ¶ 67, at 10.

79. Furthermore, it is often less costly to transition persons with I/DD directly from secondary schools into supported employment than it is to transition persons from sheltered workshops to supported employment because youth who receive transition services in integrated



employment settings typically generate fewer costs. *See* Robert Evert Cimera, The Economics of Supported Employment: What New Data Tell Us, 37 J. Vocational Rehab. 109, 113 (2012) (citing two studies showing that students with disabilities who were placed in community-based transition programs while in high school generated 32.4% fewer costs and kept their jobs 3.4 months longer than supported employees with only in-school transition services).

80. The actions needed to remedy Oregon's employment service system could be achieved through the redirection, reallocation, expansion, and coordination of existing resources.

### **COUNT I**

#### **VIOLATION OF TITLE II OF THE AMERICANS WITH DISABILITIES ACT**

##### **42 U.S.C. §§ 12131 *et seq.***

81. Paragraphs 1 through 80 of this Complaint-in-Intervention are re-alleged and incorporated by reference.

82. Defendant State of Oregon is a public entity subject to Title II of the ADA, 42 U.S.C. § 12131(1).

83. Plaintiffs and the members of the Plaintiff class, as well as individuals with I/DD who are at risk of placement in sheltered workshops, are persons with a disability covered by Title II of the ADA, and qualify for receiving or participating in vocational, rehabilitation, and employment services, programs, or activities provided by Defendant. 42 U.S.C. §§ 12102, 12131(2).

84. Defendant has violated and continues to violate the ADA by (a) administering the State's employment, rehabilitation, vocational, and education service system in a manner that unnecessarily causes qualified individuals with disabilities to be denied the benefits of the State's vocational and employment services, programs, or activities in the most integrated setting

appropriate to their needs; and (b) failing reasonably to modify the State's employment service system to avoid discrimination against, and unnecessary segregation of, Plaintiffs. 42 U.S.C. § 12132.

85. The State's actions constitute discrimination in violation of Title II of the ADA, 42 U.S.C. § 12132, and its implementing regulations at 28 C.F.R. pt. 35.

86. Providing services to persons with I/DD who are in or are at risk of entering segregated employment settings can be reasonably accommodated.

## **COUNT II**

### **VIOLATION OF SECTION 504 OF THE REHABILITATION ACT**

#### **29 U.S.C. § 794**

87. Paragraphs 1 through 80 of this Complaint-in-Intervention are hereby re-alleged and incorporated by reference.

88. Defendant receives or administers entities that receive federal financial assistance and is accordingly subject to the Rehabilitation Act. 29 U.S.C. § 794.

89. Plaintiffs and the members of the Plaintiff class, as well as individuals with I/DD who are at risk of placement in sheltered workshops, are persons with a disability covered by the Rehabilitation Act and qualify for receiving or participating in vocational, rehabilitation, and employment services, programs, or activities provided by Defendant.

90. Defendant has violated and continues to violate the Rehabilitation Act by discriminating against qualified individuals with a disability within the meaning of the Rehabilitation Act by administering employment services, programs, and activities receiving federal financial assistance in a manner that denies these individuals the benefits of such programs or activities in the most integrated setting appropriate to their needs and by failing to

reasonably modify the State's employment service system to avoid discrimination against, and unnecessary segregation of, Plaintiffs. 29 U.S.C. § 794(a).

91. Defendant's actions constitute discrimination in violation of Section 504 of the Rehabilitation Act, 29 U.S.C. § 794, and its implementing regulations at 28 C.F.R. § 41.51(d); *see also* 45 C.F.R. § 84.4.

92. Providing services to the persons with I/DD who are in or are at risk of entering segregated employment settings can be reasonably accommodated.

### **PRAYER FOR RELIEF**

WHEREFORE, the United States of America prays that the Court:

- A. Grant judgment in favor of the United States on its Complaint-in-Intervention and declare that Defendant has violated Title II of the ADA, 42 U.S.C. §§ 12131 *et seq.*, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794;
- B. Enjoin Defendant to:
  1. provide appropriate, integrated community employment services, programs, or activities for Plaintiffs and the members of the Plaintiff class who are unnecessarily placed in segregated employment settings, as well as individuals with I/DD who are at risk of unnecessary placement in segregated employment settings, consistent with their individual needs; and
  2. cease discriminating against individuals with I/DD who are in or are at risk of placement in segregated employment settings by providing employment services, programs, or activities in the most integrated setting appropriate to their needs; and
  3. provide individuals with I/DD who are in or are at risk of placement in segregated employment settings with services, programs, or activities that are designed to allow

individuals with I/DD to secure, maintain, and succeed in integrated employment settings.

- C. Issue a declaratory judgment declaring that Defendant has violated Title II of the ADA and Section 504 of the Rehabilitation Act by failing to make reasonable modifications to services, programs, or activities for persons with I/DD to enable Plaintiffs and the members of the Plaintiff class, as well as individuals with I/DD who are at risk of placement in segregated employment settings, to obtain the services, programs, and activities they require to receive employment services in the most integrated setting appropriate to their needs; and
- D. Order such other appropriate relief as the interests of justice may require.

Dated: March 27, 2013

RESPECTFULLY SUBMITTED,

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