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November 23, 2007

Through: James M. Emery
Kathleen S. Morris
City Attorney's Office
1390 Market Street, 6th Floor
San Francisco, CA 94102

To: U.S. District Court for the Northern District of California

Re: Rebuttal to First Amended Complaint for Declaratory and Injunctive Relief
Case Number C06-06346 WHA

Dear Mr. Emery:

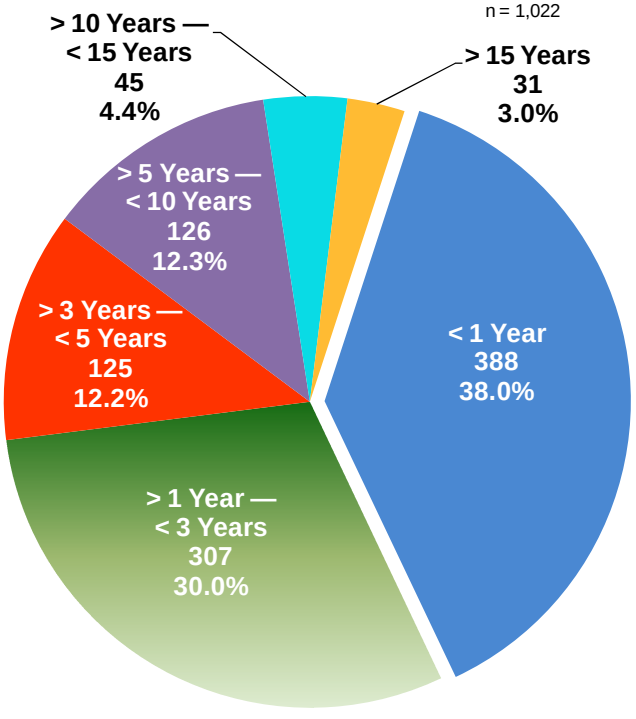
As a person who has had friends placed at Laguna Honda Hospital and Rehabilitation Center for skilled nursing care, I believe that there are extensive factual inaccuracies contained in the *Chambers* lawsuit against the City and County of San Francisco that deserve to be heard by the Court. There's a bittersweet irony for me that on the same day that I completed the first draft of this Rebuttal on October 14, my friend Robert Neil passed away at Laguna Honda Hospital, before I could share this with him. I ask that you share this document with the Court.

Moreover, friends of mine who have had their family members placed at Laguna Honda Hospital have asked me to submit the following information on their behalf, given my public accountability efforts regarding LHH's rebuild.

Of long-term care residents, only 7.5% — just 76 people — have resided at Laguna Honda longer than 10 years; they aren't representative of, and don't speak for, the majority of residents.

Contrary to the *Chambers* organizational plaintiff's — Protection and Advocacy, Inc. — assertion in its *First Amended Complaint for Declaratory and Injunctive Relief* that residents are being improperly institutionalized at Laguna Honda Hospital, on October 31, 2007 fully 38% of Laguna Honda's residents have lived there less than one year, 68% have been residents for less than three years, and ***fully 80.2% have been short-stay residents for less than five years*** — probably due to the length of stay necessary for individualized courses of rehabilitation. Of long-term care residents, only 7.5% — just 76 people — have resided at Laguna Honda longer than 10 years; they aren't representative of, and don't speak for, the majority of residents.

Laguna Honda Hospital and Rehabilitation Center
Snapshot of Length of Stay on October 31, 2007
(Length of Stay in Years, Raw Number of Patients, Percentage of Patients)
n = 1,022



Length of Stay	#	% Mix
< 1 Year	388	38.0%
> 1 Year — < 2 Years	179	17.5%
> 2 Years — < 3 Years	128	12.5%
> 3 Years — < 4 Years	75	7.3%
> 4 Years — < 5 Years	50	4.9%
> 5 Years — < 6 Years	34	3.3%
> 6 Years — < 7 Years	40	3.9%
> 7 Years — < 8 Years	27	2.6%
> 8 Years — < 9 Years	15	1.5%
> 9 Years — < 10 Years	10	1.0%
> 10 Years — < 15 Years	45	4.4%
> 15 Years	31	3.0%
Total	**1,022**	

Graphic by Patrick Monette-Shaw from public records data provided by the San Francisco Department of Public Health.

As shown on page 1, fully 80% of Laguna Honda's current population are short-stay residents. Laguna Honda is unique among San Francisco skilled nursing facilities (SNF's), in that it serves a combination of short- and long-term care residents. Many of San Francisco's SNF's ***only*** accept short-stay patients, leaving few other locations for people in need of long-term care, particularly if they are Medi-Cal recipients, since few of the City's SNF's accept Medi-Cal.

One friend of mine whom I periodically visit in the community had been a resident at Laguna Honda for four-and-a-half years. She is a quadriplegic with renal problems; during her stay at Laguna Honda she had changes in her condition requiring more than five discharges to acute-care facilities, with return to Laguna Honda. She was determined to be discharged to San Francisco residency, and eventually was. But the seriousness of her conditions required more than four years to complete her recovery to enable her return to the community.

The Court has an ethical responsibility to ascertain whether the Plaintiffs in the *Chambers* case cognitively understand the implications of how access to medical care may be diminished for others seeking it.

It is not known whether the Plaintiffs in the *Chambers* case understand cognitively that — however inadvertently — their allegations may significantly alter the ability of Medi-Cal clients to receive adequate and needed medical and rehabilitative care, since this is not just a case involving civil rights, but also a case involving access to medical care for those who need it. The Court has an ethical responsibility to ascertain whether the Plaintiffs in the *Chambers* case cognitively understand the implications of how access to medical care may be diminished for others seeking it.

Public records show that approximately 95% of LHH's residents are Medi-Cal recipients; the Court should note there are few other SNF's available to safety-net San Franciscans other than at LHH.

You can't have a class of 70% of people preferring community placement, if fully 49% of the respondents have expressed a preference for nursing home placement

The *Chambers* Plaintiffs assert 50% to 70% of ***potential*** class members prefer return to the community; assessments performed by the Targeted Case Management (TCM) program show ***49% of 1,626 LHH residents assessed stated a preference for nursing home placement***. You can't have a class of 70% of people preferring community placement, if fully 49% of the respondents have expressed a preference for nursing home placement.

If it will please the Court, before presenting data, facts, and analysis to refute misinformation presented in the *Chambers* First Amended Complaint, this rebuttal offers some preliminary information to place important issues into context.

Section A: Sheer Volumes: Public Records Regarding Admissions and Discharges to Laguna Honda Illustrate the City Isn't Institutionalizing San Franciscans

A variety of public records requests I have placed in the recent past reveals that Laguna Honda is ***not*** unnecessarily "institutionalizing" San Franciscans. As Table A shows below, there were a total of 3,199 "new" (unique) admissions between 2002 and the first nine months in 2007. There can't have been 3,199 admissions to a 1,060-bed facility over a five-year-and-nine-month period without frequent turnover, suggesting institutionalization is not occurring, given the massive number of patients served at LHH. Obviously, LHH is meeting a huge part of the demand for SNF level of care.

As shown in Table A, fully 77.3% of LHH admissions come from acute care hospitals, 15.4% from community referrals (home, etc.), and 7.3% from distinct-part SNF's affiliated with acute-care hospitals. That over 84.6% of admissions come from acute-care and hospital-based skilled nursing facilities illustrates a severe need to discharge patients to a lower, appropriate level of care to free up hospital beds for people in need of acute care.

Table A: Snapshot of Sources of Admissions to LHH 2002–2007

Source of Admission	2002*	2003*	2004*	2005**	2006**	2007***	Total	% Mix
Subtotal Acute Sources	331	402	544	468	415	312	2,472	77.3%
Subtotal Community Referral Sources	107	96	74	92	74	50	493	15.4%
Subtotal SNF Sources	118	62	7	20	24	3	234	7.3%
Total	**556**	**560**	**625**	**580**	**513**	**365**	**3,199**	**100.0%**

* Excluding admissions from Unit M7
** Excluding internal transfers
*** January through September 2007

As Table B shows below, there were a total of 4,304 "external" discharges from LHH between 2002 and September 2007. One reason that the number of LHH's discharges exceeded the number of admissions by 1,105 patients is due to declines in patient's medical status/change of medical condition. This may involve "bed holds," in which patients are transferred to acute care hospitals to treat an acute exacerbation, and then are returned to LHH, or, alternatively, are discharged to their homes, to another level of care, or they expire at an acute care facility.

Table B: Snapshot of Discharges From LHH 2002–2007

Discharge Location	2002	2003*	2004	2005	2006	2007**	Total	% Mix External Discharges	% Mix Total Discharges
Subtotal Acute Discharges	350	353	430	469	429	318	2,349	54.6%	33.0%
Subtotal Community Discharges	272	264	315	342	296	181	1,670	38.8%	23.5%
Subtotal Unknown Discharges	40	38	68	67	39	33	285	6.6%	4.0%
Subtotal External Discharges	**662**	**655**	**813**	**878**	**764**	**532**	**4,304**	**100.0%**	**60.5%**
Expired In House	308	316	279	278	206	183	1,570		**22.1%**
Subtotal Internal Discharges	211	223	206	252	208	139	1,239		**17.4%**
Total External + Internal + Deaths	**1,181**	**1,194**	**1,298**	**1,408**	**1,178**	**854**	**7,113**		**100.0%**

* No projections
** January through September 2007

As Table B shows, of the 4,300 "external discharges," fully 54.6%, or 2,349 discharges, were to acute care hospitals (again, revolving around declines in medical conditions); 38.8% were discharged to the community; and 6.6% left either against medical advice (AMA) or went absent without leave (AWOL).

The Court should also note that fully 17.4% of people "discharged" from Laguna Honda was because they expired in-house, demonstrating that 1,239 people were gravely ill and needed skilled nursing care before they expired. The Court might want to inquire into the average length of stay for LHH patients who expired at LHH, as it may be another indicator of how just how sick they may have been, and in need of medical care, prior to death.

Of the 15.4% community-based admissions to LHH shown in Table A above, Table C below shows that fully 10.1% are listed as direct-from-home admissions, illustrating, in part, that direct-from-home admits lessen the burden on acute care hospitals by not having to first admit patients from home to an acute hospital, only to then have to transfer patients to a more appropriate level of care in a skilled nursing facility.

The Court should also note that fully 17.4% of people "discharged" from Laguna Honda was because they expired in-house, demonstrating that 1,239 people were gravely ill and needed skilled nursing care before they expired.

Table C: More Detail on Sources of Admissions From the Community to LHH 2002–2007

Source of Admission	2002*	2003*	2004*	2005**	2006**	2007***	Total	% Mix
Board and Care	22	11	3	5	13	10	64	2.0%
Home	65	63	54	65	49	27	323	10.1%
Home Health	0	1	0	0	0	0	1	0.0%
Other	20	21	16	14	12	13	96	3.0%
Out of County***			1	8	0	0	9	0.3%
Subtotal Community Referral Sources	**107**	**96**	**74**	**92**	**74**	**50**	**493**	**15.4%**

* Excluding admissions from Unit M7
** Excluding internal transfers
*** January through September 2007

Table D, below, provides more detail available from public records about discharge patterns at Laguna Honda Hospital.

Table D: More Detail on Discharges From LHH 2002–2007

Discharge Location	2002	2003*	2004	2005	2006	2007**	Total	% Mix External Discharges
Board and Care	17	16	11	19	26	23	112	2.6%
Home	242	235	286	306	263	155	1,487	34.5%
None	3						3	0.1%
Other Misc	10	13	17	17	7	3	67	1.6%
Out of County***			1				1	0.0%
Subtotal Community Discharges	**272**	**264**	**315**	**342**	**296**	**181**	**1,670**	**38.8%**

* No projections
** January through September 2007

The Court might also take note that although the 323 admissions from home in Table C represented only 10.1% of admissions, fully 34.5% of the 4,304 external discharges, or 1,487 people, were returned to home, illustrating that LHH may be doing everything it can to return people to the community. Contrary to organizational plaintiff Protection and Advocacy, Inc.'s assertion of unnecessary institutionalization, discharges ***to*** home are 4.5 times higher than the 323 people admitted ***from*** home. LHH is returning more people to the community than it had admitted directly from the community. LHH is clearly needed as a "step-down" facility to transition people from acute hospitals who can't be discharged directly to home without a temporary short-stay at LHH.

Contrary to organizational plaintiff Protection and Advocacy, Inc.'s assertion of unnecessary institutionalization, discharges to home are 4.5 times higher than the people admitted *from* home.

Section B: Demand for Skilled Nursing Care Exceeds Supply, Due to the Skilled Nursing Bed Deficit

On November 13, 2007, the San Francisco Health Commission passed Resolution 14-05[1] regarding the planned closure of St. Francis Memorial Hospital's 34-bed short-stay skilled nursing unit. Among other findings, the Resolution found:

> "WHEREAS, the demand for skilled nursing facility beds in San Francisco currently exceeds supply, particularly in the area of long-term care skilled nursing facility beds; now, therefore, be it …
>
> FURTHER RESOLVED, that the closure of the skilled nursing unit at Saint Francis Memorial Hospital will have a detrimental impact on the health care service of the community because it decreases the number of skilled nursing beds in San Francisco; …"

This critical shortage of short- and long-term skilled nursing beds is depriving the rights of San Franciscans to choose to receive skilled nursing services in their home communities. Nursing homes that have gone out of business in San Francisco have all too frequently dumped patients to out-of-county facilities. San Francisco's Long-term Care Ombudsman, Benson Nadell, who is a State of California employee, presented testimony on the loss of skilled nursing beds to the San Francisco Health Commission on November 6, 2007. His written public testimony indicated:

- "Mission Villa closed in 1992. It had 49 beds, all of which were certified for Medi-Cal. Almost all the residents were placed in San Mateo County SNF's.
- In 2007, San Francisco Community Convalescent Hospital closed, with a loss of a maximum of 116 Medi-Cal beds. At the time of closure, about 75% of the 103 residents residing in this long-term care SNF had to be placed in San Mateo County."

[1] "Determining That the Closure of Saint Francis Memorial Hospital's Skilled Nursing Unit Will Have a Detrimental Impact on the Health Care Service of The Community," San Francisco Health Commission Resolution 14-05, November 13, 2007, Enclosure A.

Mr. Nadell also testified on November 6:

- "The total loss of Medi-Cal [skilled nursing] beds through 2007 is 438.
- [The] projected loss of Distinct-Part SNF beds [at St. Francis and St. Luke's hospitals] is 113 beds.
- In San Francisco, the total [remaining] Distinct-Part SNF beds would be 199 beds.
- [If the] LHH [Replacement Project does not rebuild the remaining 420 skilled nursing beds] there will be a loss of [an additional] 434 beds, all Medi-Cal. San Francisco will have lost a total number of 872 beds certified for Medi-Cal."

Notably, a 1997 report[2] prepared by the Hospital Council of Northern and Central California noted that — at the time — there was a total of 450 hospital-based Distinct Part SNF beds serving San Francisco. If both St. Francis and St. Luke's hospitals close their SNF units, leaving only 199 remaining hospital-based SNF beds, San Francisco's hospital-based SNF capacity will have shrunk by 251 beds within a decade, with no guarantee that more of the remaining 199 beds will ***not*** also close in the future.

Surely, the *Olmstead* decision did not intend to disenfranchise San Franciscans of their residency by forcing them out-of-county to receive skilled nursing care.

If the Laguna Honda replacement project does not build the additional 420 beds, San Francisco will have lost 858 skilled nursing beds when the demand for those beds already exceeds supply.

The hemorrhagic loss of skilled nursing beds is affecting the ability of San Franciscans to choose nursing home level of care in their home community, and is having a drastically detrimental effect on healthcare services provided to the community. Surely, the *Olmstead* decision did not intend to disenfranchise San Franciscans of their residency by forcing them out-of-county to receive skilled nursing care.

Again, the Court has an ethical responsibility to ascertain whether the six individual Plaintiffs understand cognitively that a potential unintended consequence of the *Chambers* case may result in further erosion of skilled nursing beds for people who choose to receive that level of care.

The Court has an ethical responsibility to ascertain whether the six individual Plaintiffs understand cognitively that a potential unintended consequence of the *Chambers* case may result in further erosion of skilled nursing beds for people who choose to receive that level of care.

It has been a decade since the report about San Francisco's skilled nursing facilities was published by the Hospital Council of Northern and Central California. At the time the report was written in 1997, there were a total of 3,625 nursing facility beds in San Francisco. Since, then, the loss of SNF bed capacity in San Francisco during the past decade has been dramatic. A review of the Center of Medicare and Medicaid Services (CMS) on its NursingHome Compare web site in November 2007 reveals:

Table E: Licensed SNF Capacity Change in San Francisco

Facility Name	Licensed # Beds 1997*	Licensed # Beds 2007**	Variance
Laguna Honda Hospital and Rehab Center	1,214	1,214	0
Jewish Home (Distinct part rate)	437	478	41
Hospital-Based DP/SNF	450	278	(172)
Freestanding Nursing Facilitites	1,404	1,280	(124)
VA Nursing Home	120		(120)
Total Current Licensed SNF Capacity	**3,625**	**3,250**	**(375)**

* *San Francisco Nursing Facility Bed Study* , San Francisco Section of the West Bay Hospital Conference, Hospital Council of Northern and Central California, May 1997.

****** Downloaded from Centers for Medicare and Medicaid Services, *NursingHome Compare* web site at www.medicare.gov/NHCompare/ on November 12, 2007.

[2] *San Francisco Nursing Facility Bed Study*, San Francisco Section of the West Bay Hospital Conference, Hospital Council of Northern and Central California, May 1997, Enclosure B.

As shown in Table E above, since the VA Nursing Home tends only to admit residents from within the VA system, it is not accessible to the majority of referring facilities in San Francisco. This loss of 275 licensed beds is a disturbing trend. Even if the VA's 120 beds were included, San Francisco has lost, at minimum, 155 SNF licensed beds in the past decade.

But Table E shows only the variance in the number of ***licensed*** beds between 1997 and 2007. Just as St. Francis Memorial Hospital was only operating 20 of its 34 skilled nursing beds, other skilled nursing facilities are also not operating at licensed capacity. The Court should take note that it is ***not*** the number of licensed beds, but the actual number of capacity of operating beds, that should guide public policy. Table F below illustrates a larger problem, even ***before*** the planned closure of both St. Francis and St. Luke's skilled nursing units:

Table F: SNF Operating Capacity Change in San Francisco

Facility Name	Licensed # Beds 1997*	2007 Operating Capacity Last Inspection**	Capacity Gap
Laguna Honda Hospital and Rehab Center	1,214	1,015	(199)
Jewish Home (Distinct part rate)***	437	416	(21)
Hospital-Based DP/SNF	450	189	(261)
Freestanding Nursing Facilitites	1,404	1,056	(348)
VA Nursing Home	120	0	(120)
Total Current SNF Operating Capacity	**3,625**	**2,676**	**(949)**
Capacity Gap as Percentage of 1997 Licensed Beds			**26.2%**

* *San Francisco Nursing Facility Bed Study* , San Francisco Section of the West Bay Hospital Conference, Hospital Council of Northern and Central California, May 1997.

** Downloaded from Centers for Medicare and Medicaid Services, *NursingHome Compare* web site at www.medicare.gov/NHCompare/ on November 12, 2007.

*** Despite an increase in licensed beds at the Jewish Home to 478, its operating census remains below the number of licensed beds in 1997.

As shown in Table F above, based on the reduced operating capacity at Laguna Honda (in part because the Department of Justice has prohibited LHH from operating 1,200 beds in its aging physical plant) combined with the significant closure of other skilled nursing facilities since 1992 — including Mission Villa Convalescent, Sunnyside Hacienda Convalescent, Park Pacific (the old Broderick House), and the San Francisco Community Convalescent Hospital — the 949-bed capacity gap represents a shortage of fully 26% of the licensed SNF beds available in 1997.

Given the potential loss of SNF beds at LHH, St. Francis, and St. Luke's hospitals, Table G, below, illustrates the capacity gap will ***worsen***, to an operating shortage of 1,255 beds, one-third fewer than the "licensed" beds claimed in 1997.

Table G: Probable Future SNF Operating Capacity in San Francisco

Facility Name	Licensed # Beds 1997*	Future Operating Capacity**	Capacity Gap
Laguna Honda Hospital and Rehab Center	1,214	780	(434)
Jewish Home (Distinct part rate)***	437	416	(21)
Hospital-Based DP/SNF	450	118	(332)
Freestanding Nursing Facilitites	1,404	1,056	(348)
VA Nursing Home	120	0	(120)
Total Future SNF Operating Capacity	**3,625**	**2,370**	**(1,255)**
Capacity Gap as Percentage of 1997 Licensed Beds			**34.6%**

* *San Francisco Nursing Facility Bed Study* , San Francisco Section of the West Bay Hospital Conference, Hospital Council of Northern and Central California, May 1997.

** Includes data based of last inspections downloaded from Centers for Medicare and Medicaid Services, *NursingHome Compare* web site at www.medicare.gov/NHCompare/ on November 12, 2007, and the potential loss of 434 licensed SNF capacity at Laguna Honda Hospital, and the potential loss of the 71 beds being operated in St. Luke's 79-bed D/P SNF.

*** Despite an increase in licensed beds at the Jewish Home to 478, its operating census remains below the number of licensed beds in 1997.

In the first table on page 11 of the 1997 *San Francisco Nursing Facility Bed Study*, Scenario 2 (utilizing 33 NF beds per 1,000 persons over 65) indicated that San Francisco might have a ***deficit*** of 2,294 beds between the years 2011 to 2020; that table *assumed* **two** "surplus" 350-bed acute hospitals would be converted to SNF use. To my knowledge there are currently no plans to convert 700 acute beds in San Francisco (or elsewhere) to SNF usage, so the 2,294-bed deficit climbs to a deficit of at least 2,994 SNF beds.

Add to the 2,994 deficit the 1,255 capacity gap shown in Table G above, and San Francisco may be rapidly headed towards a total SNF bed deficit of 4,069 SNF beds under Scenario 2 (utilizing 33 NF beds per 1,000 persons over 65) in just 13 short years from now, or sooner, as shown in Table H below. And this is not taking into account people younger than 65, such as those with traumatic brain injuries, spinal cord injuries, Multiple Sclerosis, and other progressive diseases who may eventually need SNF-level of care, since the 1997 *San Francisco Nursing Facility Bed Study* scenarios only focused on those over the age of 65, and since there is clearly a need for skilled nursing care for those younger than 65.

Table H: San Francisco's Projected SNF-Bed Deficit in Year 2020

Projected Deficit	Discussion
(2,294)	1997 *Nursing Facility Bed* Estimated "Deficit" in Year 2020
(1,255)	Capacity Gap Between Licensed vs. Operational Beds
(3,549)	**Subtotal**
(700)	So-Called "Surplus" Acute Beds ***Not*** Converted to SNF Usage*
180	Variance Between 600-Bed Laguna Honda and 780-Bed LHH**
(4,069)	**Skilled Nursing Bed Deficit in Year 2020**

* *San Francisco Nursing Facility Bed Study* , San Francisco Section of the West Bay Hospital Conference, Hospital Council of Northern and Central California, May 1997, projected that two 350-bed acute care hospitals would willingly convert to SNF-bed usage by the year 2020, and that Laguna Honda Hospital would only be rebuilt with 600, not 780, beds. To date, there are no plans on the horizon to convert ***any*** acute-care hospital beds to SNF usage, let alone 700 beds.

** To date (November 2007), only 780 of Laguna Honda's planned 1,200-bed replacement project have been authorized to be rebuilt.

A deficit of over 4,000 skilled nursing beds in San Francisco will have a very detrimental effect on the community's health, and healthcare, and their rights to access healthcare in their home community.

However much the individual Plaintiffs in the *Chambers* case want to return to community living, they do not speak for the thousands of residents who have been served at LHH during the past decade, nor do they represent the thousands who will be served at Laguna Honda in future decades.

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Section C: Rebuttal of Potentially Factual Errors in Plaintiff's First Amended Complaint

If it will please the Court, please now consider the following data, facts, and analysis to refute misinformation presented in the *Cambers* case.

Page	Line(s)	Chamber's Lawsuit Claims	Rebuttal Data, Facts, and Analysis
1	5-6	PAI claims that "… needed services must be provided in a manner that enables people with disabilities to ***remain in or return to their home communities*** if they so choose," rather than being "isolated" in nursing homes [emphasis added].	Staff from the Targeted Case Management (TCM) program implemented under the *Davis* settlement, announced during a meeting of San Francisco's Long-Term Care Coordinating Council that the TCM program has entered into an agreement with three other counties (Salano, Alameda, and Sacramento counties) to place San Francisco residents into out-of-county facilities. This runs counter to PAI's claim that Laguna Honda residents will be returned to their "home communities" in San Francisco, alienating them from family and friends by discharging them out-of-county. The Court should require that the TCM program provide data on how many out-of-county discharges have been made. By discharging San Franciscans to out-of-county facilities, long-time residents are disenfranchised of their citizenship, further isolating them from their home communities; their families are then burdened having to travel out-of-county to visit their relatives. The Court should prohibit dumping of San Franciscans into out-of-county placements, precisely because they are not discharged to their ***home communities***, something Plaintiffs claim they are seeking to obtain. The Court should investigate and consider why PAI has ***not*** objected to the out-of-counting placements if client Plaintiffs' goal is to return residents to their home communities close to family and friends.
2	18–20	PAI states that "According to the Defendant's City Controller, the City has effectively institutionalized more of its population, across a wider spectrum of needs, than anywhere in the country … approximately one out of every 700 San Franciscans is living at Laguna Honda Hospital."	What PAI did ***not*** tell the Court is that this statement attributed to the City Controller was contained in a "transmittal letter" in which the Controller transmitted a report written by a contractor — Health Management Associates (HMA) — hired as a consultant to the Department of Public Health. PAI did not inform the Court that what HMA had actually written it its report was that one in ***760*** San Franciscans reside at LHH, the Controller's transmittal letter reduced that figure to one in ***700*** San Franciscans, a statistically significant error reported by the Controller off by nearly 8%. Instead, PAI continues to publicize the one-in-700 error. Neither the Controller nor HMA factored in how many of Laguna Honda's residents are officially considered homeless, nor did either stratify how many of the homeless residents at Laguna Honda are recent transplants from other jurisdictions (vs. long-term residents of the City) who are drawn to San Francisco by its lucrative array of services unavailable elsewhere.

Page	Line(s)	Chamber's Lawsuit Claims	Rebuttal Data, Facts, and Analysis
			Possibly, it could be that it is only one in **900** San Franciscans (or more) who are served at Laguna Honda Hospital, if the number of homeless people from other jurisdictions living at Laguna Honda is accurately factored in to the mix. Later in this Rebuttal, information is presented describing the demographics of Laguna Honda residents by the level of care they are receiving in LHH's various healthcare specialty clusters, illustrating the number of people with chronic and progressive medical conditions served at Laguna Honda.
11	2	The Plaintiffs in this case assert they are bringing "this action on behalf of a class consisting of ***all*** adult Medi-Cal beneficiaries … [emphasis added]"	The six individual Plaintiff's and PAI, the organizational Plaintiff, should not be permitted to speak on behalf of "**all**" people who are, or may become, residents of Laguna Honda Hospital and Rehabilitation Center (LHHRC). Because there are people who have willingly exercised their choice to reside at Laguna Honda, and because three-quarters of LHH residents assessed by the Targeted Case Management (TCM) program have declined to participate in the TCM program by expressing their preference to remain at Laguna Honda, the Plaintiffs do ***not*** speak for everyone with a single voice. Therefore, the Notice of Class Action that stipulates: • "If you are an adult Medi-Cal beneficiary, and you are now a LHH resident, or were a LHH resident within the last two years, or eligible for admission to LHH or on a wait list for admission, then you are a member of the class and this Lawsuit will affect your rights." • "If you are a member of the class, you will be legally bound by future orders and rulings from the Court." Those who have preferred placement at LHHRC believe that their interests will not be adequately represented by Plaintiffs' counsel, particularly not PAI. Many also believe that the Court Should ***not*** make them members of a Class Action that violates their rights to choose placement, and they also believe that the Court should not apply future orders and rulings to ***all*** individuals, including those who have freely chosen to receive skilled nursing care, or long-term care, services at Laguna Honda because that would further violate their rights to exercise choice to remain at Laguna Honda. Under *Olmstead*, individuals are permitted to ***oppose*** community placement if their preference is to receive care at Laguna Honda, or if the Defendant has determined that community-based treatment is an

Page	Line(s)	Chamber's Lawsuit Claims	Rebuttal Data, Facts, and Analysis
			inappropriate level of care for a particular person.
15	21	Plaintiffs assert that "TCM uses an assessment and discharge planning instrument that was developed specifically for use with Laguna Honda residents."	While the "Individualized Service/Discharge Plan" discharge planning instrument may have been developed specifically for residents of Laguna Honda, the ***assessment*** instrument may **not** have been specifically developed to be used for residents of Laguna Honda. Notably, the TCM Monthly Report for August 2007 specifically states that the Individualized Service/Discharge Plan is derived using data from the MDS-HC[3], but the Plaintiffs fail to note that MDS-HC stands for "Minimum Data Set–***Home Care***"; the Plaintiff's also fail to note that the MDS-HC assessment instrument has ***not*** been validated for use in nursing facilities. It is, rather, a tool developed for use in community-based settings. This tool was not developed in San Francisco, and it is ***not*** a tool developed ***specifically*** for residents of Laguna Honda, as the District Court was misinformed.
2	13–15	The Plaintiffs claim that "Defendant's own assessments have determined" that "home-and community-based long-term care services" are the preferred alternatives to "institutionalization" at Laguna Honda.	First, the Plaintiffs claim "LHH's own professionals" have determined that the vast majority of LHH residents are capable of living in the community may be false. Those assessments were ***not*** conducted by staff of LHH, as PAI knows, but were assessments made by the TCM staff, who are not permitted to be LHH employees. Some LHH staff are reported to have reservations about whether TCM staff are qualified to determine whether a resident's medical condition indicates the resident is capable of community living. The monthly TCM reports have never reported how residents were assessed to be capable of, or appropriate for, living in the community. Just because someone may "prefer" an alternative does not make them ***capable*** of doing so. An analysis of TCM's monthly reports for the first eight months 2007 indicates that, on average, 60% of 308 LHH residents assessed (using the MDS-HC assessment that is ***not*** validated for use in skilled nursing facilities) met the TCM criteria (See Table 1A). By TCM's own assessments, between January and August 2007 well over one-third of LHH residents did not even meet TCM's screening criteria for program eligibility. While 60% of residents may have been eligible during screening in 2007, given 40% did ***not*** meet eligibility approaches nearly half of all residents screened in 2007, so the use of "vast majority" is hyperbole, particularly given that during May and June only a simple majority
15	25	The Plaintiffs infer assessments by LHH's own professionals "unequivocally show that the ***vast majority*** of Laguna Honda's more than 1,000 residents are ***capable of*** living, and prefer to live, in a more integrated setting" [emphasis added]. The Plaintiffs assert that "According to TCM assessments, the vast majority of the over 1,000 Laguna Honda residents could live at home or in the community if housing and appropriate services were provided to them."	

[3] Targeted Case Management Monthly Report for August 2007, San Francisco Department of Public Health, Enclosure 1. **Note**: This report is an abbreviated format provided monthly to the Laguna Honda Hospital-Joint Conference Committee (LHH-JCC).

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of just 53% and 52%, respectively, was barely achieved for those who met the criteria.

Table 1A: TCM Screening January—August 2007

	Screening Data				
	# Screened	Met Criteria		Did Not Met Crtiteria	
Jan 2007	37	26	70%	11	30%
Feb 2007	28	16	57%	12	43%
Mar 2007	54	33	61%	21	39%
Apr 2007	38	21	55%	17	45%
May 2007	38	20	53%	18	47%
Jun 2007	21	11	52%	10	48%
Jul 2007	42	25	60%	17	40%
Aug 2007	50	33	66%	17	34%
Total	**308**	**185**	**60%**	**123**	**40%**

Notably, for the five-month period between April and August 2007, just 58% of those assessed met the criteria to enter the TCM program. As Laguna Honda admits sicker people with complex co-morbidities, the number of residents who will meet the TCM criteria will fall even lower; in the future, even a simple majority of those meeting the criteria will not be achieved, so the Court should not issue orders or future rulings based on the faulty claim that a "vast majority" are capable of community placement if the majority of residents do not even meet screening eligibility requirements.

Table 1B: TCM Screening April—August 2007

	Screening Data				
	# Screened	Met Criteria		Did Not Met Crtiteria	
Apr 2007	38	21	55%	17	45%
May 2007	38	20	53%	18	47%
Jun 2007	21	11	52%	10	48%
Jul 2007	42	25	60%	17	40%
Aug 2007	50	33	66%	17	34%
Total	**189**	**110**	**58%**	**79**	**42%**

This is one of many reasons why the Plaintiffs cannot presume to speak as a "class" for all residents of Laguna Honda: Since 42% (close to half) of residents screened between April and August 2007 did ***not*** meet the TCM criteria, the Court should ***not*** require that ***all*** residents of Laguna Honda be bound by any future orders or rulings from the Court.

The full MDS system (which is distinct from the MDS-HC system), ***is*** a system validated for use in skilled nursing facilities, and is a system used by the Center for

<table>
<tr><th>Page</th><th>Line(s)</th><th>Chamber's Lawsuit Claims</th><th>Rebuttal Data, Facts, and Analysis</th></tr>
<tr><td></td><td></td><td></td><td>Medicare and Medicaid Services to determine state and federal reimbursement. A report[4] (Enclosure 2) obtained from the San Francisco Department of Public Health under a public records request, reveals that between January and June 2007 fully 73.3% of LHH residents were coded in the full MDS system as having "no discharge potential."

This is in stark contrast to comparable nursing facilities at the state and federal level. Those with no discharge potential averaged 53.9% at the state level and 62.5% at the national level. The Court should note that the unique patient population served at Laguna Honda Hospital, given San Francisco's demographics, have a statistically-significant higher percentage than either state or national averages. During the same time frame, only 4.5% of Laguna Honda residents had a discharge potential of either 30 days or 30–90 days, compared to 19.9% and 18.4% of state and federal averages, respectively, again a statistically-significant difference.

If 73.3% of residents have no discharge potential, how can TCM claim its assessments indicate a "vast majority" could live at home?</td></tr>
<tr><td>15 – 16</td><td>28 – 2</td><td>The Plaintiff's claim that "TCM assessments also show that, at the time of assessment, half of all class members have stated they would prefer to live in the community," and that "during discharge planning, 70 percent have indicated a preference to return to the community."</td><td>An analysis of TCM's monthly reports for the first eight months in 2007 indicates that, only 66% (not 70%) of 88 LHH residents preferred return to the community.

Table 2: TCM Clients Preferring Discharge to Community During 2007

<table>
<tr><th></th><th colspan="5">TCM Clients Preferring Return to Community at Time of D/C Planning</th></tr>
<tr><th></th><th>n =</th><th># Yes</th><th>% Y</th><th># No</th><th>% N</th></tr>
<tr><td>Jan 2007</td><td>15</td><td>9</td><td>60%</td><td>6</td><td>40%</td></tr>
<tr><td>Feb 2007</td><td>9</td><td>6</td><td>67%</td><td>3</td><td>33%</td></tr>
<tr><td>Mar 2007</td><td>22</td><td>17</td><td>77%</td><td>5</td><td>23%</td></tr>
<tr><td>Apr 2007</td><td>13</td><td>7</td><td>54%</td><td>6</td><td>46%</td></tr>
<tr><td>May 2007</td><td>3</td><td>3</td><td>100%</td><td>0</td><td>0%</td></tr>
<tr><td>Jun 2007</td><td>22</td><td>14</td><td>64%</td><td>7</td><td>32%</td></tr>
<tr><td>Jul 2007</td><td>3</td><td>1</td><td>33%</td><td>2</td><td>67%</td></tr>
<tr><td>Aug 2007</td><td>1</td><td>1</td><td>100%</td><td>0</td><td>0%</td></tr>
<tr><td>Total</td><td>88</td><td>58</td><td>66%</td><td>29</td><td>33%</td></tr>
</table>

Note: There was one ""N/A" answer in June.

This is another reason why the Plaintiffs cannot presume to speak as a "class" for <u>all</u> residents of Laguna Honda: If fully 33% of residents between January and August 2007 did not prefer return to the community, the Court</td></tr>
</table>

[4] "Facility Characteristics Report" for Laguna Honda Hospital 1/1/07 through 6/30/07, prepared by the Centers for Health Services Research and Analysis, University of Wisconsin–Madison, dated July 2, 2007, Enclosure 2.

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			should not require that all residents of Laguna Honda be bound by any orders forthcoming from the Court. As well, the Court should not presume to know better than the preferences of families of LHH residents. **Table 3: TCM Clients With Supportive Families During 2007** **Family Suportive at Time of Discharge Planning** **n = / # Yes / % Y / # No / % N** Jan 2007: 19 / 9 / 47% / 10 / 53% Feb 2007: 9 / 5 / 56% / 4 / 44% Mar 2007: 30 / 13 / 43% / 17 / 57% Apr 2007: 21 / 8 / 38% / 13 / 62% May 2007: 3 / 3 / 100% / 0 / 0% Jun 2007: 22 / 5 / 23% / 17 / 77% Jul 2007: 3 / 1 / 33% / 2 / 67% Aug 2007: 1 / 1 / 100% / 0 / 0% **Total: 108 / 45 / 42% / 63 / 58%** Indeed, while 66% of 88 LHH residents during the first eight months of 2007 may prefer community living (Table 2), fully 58% — a clear majority — of 108 families are ***not*** supportive of discharge to the community at the time of discharge planning, as shown in Table 3 above. The Court should take administrative note of the discrepancy during 2007 between the numbers of responses to both questions, and inquire why there are 20 fewer responses from 88 TCM clients preferring return to the community compared to 108 responses from family members. The Court should seek an explanation from TCM staff why the number of surveys administered contained missing responses. The TCM monthly reports do not indicate the cognitive status of residents who may state a preference to live in the community; how many of the residents who state they prefer community placement have cognitive limitations making it unsafe for them to do so? Nor do the TCM reports stratify whether families who are ***not*** supportive of community placement have concerns about the safety awareness of LHH residents and concerns whether about adequate safety supervision in the community will be provided or readily available? Both issues are valid concerns. Why don't TCM reports report cognitive ability and safety awareness details? Indeed, the Court has an ethical responsibility to determine whether the families of the six individual Plaintiffs are supportive of discharge to the community;

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			the Court might also want to inquire into whether the six individual Plaintiffs have cognitive limitations or safety awareness deficits that might affect their safety. Many community placement alternatives have eligibility requirements that restrict admission to community-based services. For instance, eligibility rules for Programs of All-inclusive Care for of the Elderly (PACE) slots may prevent many of LHH's residents from qualifying. For instance, the eligibility guidelines for On Lok's PACE program ***excludes*** people who: • Are on dialysis. • Have a psychiatric disorder requiring intensive intervention • Are presently homeless • Actively abuse substances • Lives in an unsafe place (for themselves and/or the providers) • Have dangerous behavior(s) Nobody — least of all not even organizational Plaintiff PAI — has claimed that On-Lok's eligibility criteria are discriminatory or violate *Olmstead*. As well, most board-and-care facilities (most likely to limit their risk, under risk-management programs), carefully screen referrals, and only accept those who require minimal assistance. Many board-and-care facilities will not accept resident's who are incontinent, and people who have physical limitations are precluded from residing in many board-and-care facilities, in part because they are not staffed to provide that level of care, and in part because of risk management concerns. Again, nobody (including organizational Plaintiff PAI) has claimed the board-and-care facilities eligibility criteria are discriminatory or violate *Olmstead.* The Court might also examine whether the six individual Plaintiffs' medical conditions might affect their eligibility for admission to community-based alternative facilities.
15 – 16	28 – 2	To repeat: Plaintiffs claim that "TCM assessments also show that, at the time of assessment, half of all class members have stated they would prefer to live in the community," and that "during discharge planning, 70 percent have indicated a preference to return to the community."	In addition to the analysis of TCM's monthly reports for the first eight months in 2007, new data elements that suddenly surfaced in *TCM's May 2007* ***Aggregate*** *Monthly Report* — obtained unexpectedly and inadvertently on September 28, 2007 in response to a public records request — illustrates other reasons why the claim half of all members prefer living in the community, or 70% of TCM clients have expressed a desire to return to the community, may simply be false.

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			Notably, the May 2007 report is titled an Aggregate Report, whereas previous public records presented to the Laguna Honda Hospital Joint Conference Committee have not included the word "aggregate" in report titles. In addition, the public record provided electronically in September 2007 was an Excel spreadsheet, with a filename titled "TCM PAI May 2007.xls." ***It appears to be a special analysis provided to PAI monthly, as part of the LHH* Davis *case Settlement Agreement.***
1	22	The Plaintiffs also claim that "Defendant's own assessments have determined" that "home-and community-based long-term care services" are the preferred alternatives to "institutionalization" at Laguna Honda.	For instance, according to the May 2007[5] **Aggregate** Monthly Report, while 46% of patients preferred return to the community at the time of initial TCM screening, the number of residents who express a desire to return to the community dropped by nearly 200 residents, for only 42%, at the time of a formal, full assessment. But more telling, is that of 1,626 residents assessed for their preferred living location[6] fully: • 49% preferred living in a nursing home. • 39% expressed a desire to live in a private home/ apartment with or without home care services. • 12% either preferred living in a board-and-care facility, an assisted living facility, a group home, or some other modality. You can't have 70% of people preferring return to the community if fully 49% have expressed a desire for nursing facility level of care. ***Notably, three months after its May 2007 Aggregate report claimed 70% of LHH residents preferred return to community, TCM's August Aggregate report[7] lowers the 70% rate to 68%.*** A separate TCM question regarded what type of setting residents preferred; 58% of the people assessed indicated that they prefer to live in a group setting with non-relatives. And in response to yet another question about the goals of their healthcare, only 53% — not 70% — stated that their goal was for community

[5] Targeted Case Management Monthly Report for May 2007, *Aggregate Data Report* for the **Laguna Honda Settlement Agreement**, San Francisco Department of Public Health, Enclosure 3, page 4.

[6] Targeted Case Management Monthly Report for May 2007, *Aggregate Data Report* for the **Laguna Honda Settlement Agreement**, San Francisco Department of Public Health, Enclosure 3, page 4, *Preferred Living Arrangement and Location* table.

[7] Targeted Case Management Monthly Report for August 2007 *Aggregate Data Report* for the **Laguna Honda Settlement Agreement**, San Francisco Department of Public Health, page 4, *Preference to the Community At Time of ... Discharge Planning (Program to Date)* table [report not enclosed]. Unless otherwise noted, throughout this Rebuttal, all other references to the *TCM Aggregate* report refers to the May 2007 report. More notably, when the August *Aggregate Data Report* was compiled three months later, an additional 89 discharge planning assessments were conducted, but only 52 additional people stated their preference was to return to the community, suggesting that only 58.4% of the additional 89 people assessed — not 68%, nor 70% — stated such a preference.

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			reintegration. Again, the Court should inquire into why TCM is reporting preferred living location data for only 1,623 people assessed if potentially 1,854 assessments were conducted. Why was the preferred living location not collected for approximately 231 people completing this so-called assessment? How many of the missing 231 responses might have indicated a preference to remain in a skilled nursing facility, if only the assessments were complete and did not contain missing data? Would a higher percentage of the missing responses also have preferred living in a skilled nursing facility?
16	3	The Plaintiffs state that "TCM has identified numerous barriers to timely discharge from Laguna Honda."	Long before the TCM program was implemented in 2004, staff at Laguna Honda were reportedly acutely aware that the single largest barrier to discharge from LHH was the lack of affordable, and ADA-accessible, housing. Reportedly, Laguna Honda was aware of many of the numerous barriers to discharge and did not need the TCM program to identify them. The Court should know that San Francisco has a dearth of affordable housing for everyone, including the elderly and people with disabilities. But that is not the fault of the City, since the City cannot control market forces. Indeed, many providers of supportive housing and board-and-care facilities have gone out of business for a broad array of reasons, including the high cost of housing that has forced many operators of board-and-care facilities out of the city when they can no longer afford their ***own*** housing. This problem plagues many San Francisco families, not just residents of Laguna Honda Hospital, as the Court must surely know. The Court should also look into the history of discharge planning at Laguna Honda, since by report it is believed that discharge plans prepared by Laguna Honda medical social workers have historically made referrals to community-based services long before the TCM program was implemented. Many barriers to discharge were identified long before the TCM program was implemented under the *Davis* settlement.
16	16	The Plaintiff's assert "an inadequate database of housing stock further impedes the ability of TCM case managers to discharge Laguna Honda residents in a timely manner."	San Francisco's Department of Public Health provided a document prepared in December 2006 that has begun to track available housing stock for placement of individuals, and has begun developing a real-time database to track vacancies in available housing, so PAI's and the Plaintiff's claim that TCM managers are impeded is moot.

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LHH social workers have reportedly noted that TCM case managers have connections to housing options — and the strings to access the housing — unavailable to LHH's staff; TCM case managers reportedly have more options at their disposal, not less, than do LHH staff.

According to a matrix in this report — Current Levels of DPH Community Placement [Options] for Single Adult's[8] — obtained under a public records request and data obtained from the Mayor's Office of Housing, the Department of Public Health has available (or will have available in the near future when housing units in the pipeline are completed), a total of 10,103 placement locations in community-based settings.

Table 4: Community-based Placement Locations vs. Skilled Nursing Beds
<table>
<tr><th>Dept.</th><th>Type of Placement</th><th># of Units</th><th></th><th>Mix</th></tr>
<tr><td>DPH</td><td>Unsupported residential</td><td>1,415</td><td></td><td></td></tr>
<tr><td>DPH</td><td>Supportive residential</td><td>5,961</td><td></td><td></td></tr>
<tr><td>DPH</td><td>Residential mental health</td><td>883</td><td></td><td></td></tr>
<tr><td></td><td></td><td>8,259</td><td>8,259</td><td></td></tr>
<tr><td>MOH</td><td>New Construction Completed</td><td>849</td><td></td><td></td></tr>
<tr><td>MOH</td><td>New Units Under Construction</td><td>231</td><td></td><td></td></tr>
<tr><td>MOH</td><td>New Units in Pre-Construction Planning</td><td>764</td><td></td><td></td></tr>
<tr><td></td><td></td><td>1,844</td><td>1,844</td><td></td></tr>
<tr><td></td><td>Subtotal Community Alternative Placements</td><td></td><td>10,103</td><td>92%</td></tr>
<tr><td>DPH</td><td>Skilled Nursing Care "Institutional" Placements</td><td>863</td><td>863</td><td>8%</td></tr>
<tr><td></td><td>Total</td><td></td><td>10,966</td><td></td></tr>
</table>

Board of Supervisors resolution #336-99, authored by then Supervisors Sue Bierman and Mark Leno, was adopted on March 3, 1999, acknowledging San Francisco's commitment to "developing <u>sufficient institutional care</u>, in addition to developing [community-based] alternatives to institutional care for seniors and people with disabilities" [emphasis added].

As shown in Table 4, community-based alternatives available represent approximately 92% of options available, whereas if the 420 beds at Laguna Honda are not built as planned, DPH will only have only 883 nursing home slots available, for just 8% of placement options. This is not the "sufficient" stock of institutional placements that the Board of Supervisors had envisioned; in fact, it is an insufficient amount of skilled nursing beds to meet current and future needs.
</td></tr>
<tr><td>16</td><td>22–26</td><td>Plaintiffs assert the "Due to Defendant's failure to make housing and community-based services available in a timely way, medically</td><td>The Court should note that the waiting lists for Section 8 subsidized housing — a federally administered housing program — has been closed to San Franciscans for at least three years and is no longer even accepting new</td></tr>
</table>

[8] "Current Levels of DPH Community Placement [Options] for Single Adult's matrix," Placement Task Fork, Department of Public Health, dated November 30, 2006, Enclosure 4.

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		stable class members who could otherwise be discharged within 180 days are denied TCM [services] because the housing and services they would need to be discharged are not available in that time period (e.g., wait lists for subsidized housing and other needed services often exceed 180 days)."	applicants to be placed on the waiting list. This is not the fault of Defendant — the City and County of San Francisco. If there is any "illegal failure" involved, as Plaintiffs assert, the illegal failure to provide sufficient resources for subsidized housing is the fault of the federal government, not the fault of the Defendant City and County of San Francisco, and not the fault of the San Francisco Department of Public Health or Laguna Honda Hospital.
17	7–9	Plaintiffs assert that approximately 75 Laguna Honda residents capable of being discharged within 180 days do not have a TCM case manager available and continue to "languish" at LHH.	The Court should bear in mind that the *Davis* settlement explicitly provided that TCM case managers should have no more than 15 active clients. This flies in the face of reason, since a public records request shows that of the budgeted 18.5 medical social worker positions at Laguna Honda Hospital only 15.5 of those positions appears to be currently filled; by extrapolation, LHH's 15.5 social workers appear to have an average caseload of 66 residents each (by dividing LHH's census by the number of LHH Social Workers), and facilitate many discharges. Given that there are eight case managers in the TCM program, if they each increased their caseloads by nine residents (for a caseload of 24 residents), there would ***not*** be a backlog of 75 residents who do not have a TCM case manager, and the TCM case managers would still have a caseload of far less than half the case load of LHH's social workers.
17	10–11	Plaintiff's assert that results "of Defendant's failures are that TCM has discharged only a fraction of class members whom it has determined to be eligible for community placement …"	Plaintiff's here are being disingenuous with the Court, since there are many reasons the TCM program has discharged only a fraction of residents that are ***not*** failures of the Defendant, but are due to other factors. ***An analysis of data about the small number of discharges is presented below, but due to gaps in available information,*** **the Court should require additional data be provided by the TCM program** ***before issuing a ruling or further Court orders to determine whether the few discharges are due to the Defendant, as wrongly alleged, or are due to other factors beyond the control of either the Defendant or LHHRC for the reasons presented below.*** Since it was implemented in March 2004 under terms of the *Davis* settlement, the TCM program was to have begun screening, assessing, and developing discharge plans for Laguna Honda residents. Two years later, as of

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			the *May 2007 Aggregate Data Report*, the TCM program has discharged only 131 residents[9] or just 6.3% of the 2,074 residents screened to date. Of 2,074, residents screened as of May 2007 by the TCM screening tool, only 1,724, or 83%, were found to be eligible for further assessment by TCM. Despite this, TCM has performed at least 1,854 assessments[10], or 130 more assessments than the 1,724 were found to be eligible, perhaps indicating that either some residents were assessed more than once, or that ineligible residents were assessed despite not being eligible. But of the 1,815 people assessed, only 758[11], or 42%, indicated that they preferred return to the community at the time of assessment; an overwhelming 58% (1,057) majority of the 1,815 did ***not*** prefer community return. Of the 758 who preferred return, 501 discharge plans appear to have been prepared, despite the fact that only424 people[12] were accepted into the TCM program and 73 cases remain open. Of the 424 residents accepted into the TCM program, only 131, or just 31%, have been discharged to the community by TCM staff. And of the 424 residents accepted into the TCM program, 292, or 69%, of the cases have been closed[13]. **Table 5: Status of Clients Accepted into TCM** **TCM Case Status May 2007** **# %** Total Residents Accepted into TCM 424 TCM Cases Closed 292 69% Active TCM Cases End of Period 73 17% Unknown TCM Case Disposition 59 14% **Total 424 424 100%** The Court should inquire into why fully 14% of the 424 people accepted into the TCM program have an unstated disposition and why the TCM program may not be reporting the outcome of these residents. Of the 292 cases closed, only 131 residents, or 45%, have been discharged to the community.

9 Targeted Case Management Monthly Report for May 2007, ***Aggregate Data Report for the Laguna Honda Settlement Agreement***, San Francisco Department of Public Health, Enclosure 3, page 3, *Reason for Closing* table.

10 Ibid., page 3, *Ethnicity* table.

11 Ibid., page 4, *Preference to Return to the Community at time of …* table.

12 Ibid., page 6, *TCM Program Participation* table.

13 Ibid., page 9, *Reason for TCM Closing* table.

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Table 6: Outcomes of Closed TCM Cases

	TCM Closed Cases May 2007		
		#	%
TCM Cases Closed	292		
LHH Residents Dischaged by TCM		131	45%
Resident Changed Mind About TCM, or Family/Conservator Refused TCM Services, or Resident Left LHH Without TCM Services (AWOL/AMA)		110	38%
Resident Died or Had a Serious Decline in Medical Condition		45	15%
Not Medi-Cal Eligible		6	2%
Total	**292**	**292**	**100%**

This should further highlight to the Court that although 351 residents may have expressed a desire to return to the community at the ***start*** of discharge planning (the so-called 70% of 501 residents that PAI asserts), at the ***end*** of discharge planning only 26% (131 of 501) were actually discharged, not 70%:

Alternatively, of the 424 people accepted into the TCM program, only 31% — less than one-third — were actually discharged.

Table 7: Outcomes of Residents Accepted to TCM

	Client Outcome		
		#	%
Clients Accepted Into TCM Program	424		
LHH Residents Discharged by TCM		131	31%
Resident Changed Mind About TCM, or Family/Conservator Refused TCM Services, or Resident Left LHH Without TCM Services (AWOL/AMA) During Discharge Planning		110	26%
Resident Died or Had a Serious Decline in Medical Condition		45	11%
Active Cases		73	17%
Unknown Case Dispostion		59	14%
Not Medi-Cal Eligible		6	1%
Total When TCM Case Closed	**424**	**424**	**100%**

The Court should take administrative note that fully 38% of residents (shown in Table 6) who may have indicated a preference to return to the community at the ***start*** of discharge planning had changed their minds, or their family/conservator had refused TCM services, by the ***end*** of discharge planning … and another 15% had either died, had a serious decline in their health condition, or were not Medi-Cal eligible.

The Court should also note that, ***less than one-third of LHH's residents accepted into the TCM program were actually discharged***, as shown in Table 7.

The Court should either order an injunction to prevent PAI from continuing to claim 70% of residents preferred

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			return to the community, or the Court should, at minimum, order PAI to at least include in their program literature, various analyses, and press announcements that because 38% of the residents had changed their minds at the end of discharge planning or no longer had family supportive of the discharge, that the more accurate number of residents preferring community return would have only been 32% (70% minus 38%) at the ***end*** of discharge planning. The Court should order PAI to include information that the so-called 70 percent is 70% of 501, not 70% of the nearly 2,000 residents admitted to LHH since 2004, and not 70% of the nearly 4,000 patients served at LHH since 2001 (see Table 12). Alternatively, the Court should consider ordering PAI to acknowledge it its literature that the 351 who preferred community return (the so-called 70%) represents just 17% of 2,074 people screened, and only 20% of the 1,724 people found to be eligible for the TCM program as of May 2007. Without one or more of these remedies, the Court will be permitting PAI a green light to continue misrepresenting to the public that 70% of ***all*** of LHH's residents prefer return to the community, when that is clearly not the case. Moreover the Court should require that the TCM program provide the Court with more robust data. For instance: • Why were 1,724 people found eligible, yet only 424 people were accepted into the TCM program? What happened to the other 1,300 people found eligible but not admitted to the TCM program? – Did they die or did they have a serious decline in their medical condition making them ineligible? – Were they discharged by LHH staff, not by TCM staff? If so, were they actually returned to the community, and not left "languishing" at LHH due to imaginary faults of the Defendant, as PAI may possibly be wrongly asserting? – How many of the 1,300 who did not die or were not discharged to the community from LHH were transferred to acute medical facilities due to serious declines in medical conditions, and never returned to LHH? How many were transferred to other levels of care that did not result in return to the community? – Did they decline to participate in the TCM program completely? If so, the Defendant can

Page	Line(s)	Chamber's Lawsuit Claims	Rebuttal Data, Facts, and Analysis
			hardly be blamed for something that a resident freely chose. Nowhere in the TCM monthly "summary" reports provided to the LHH-JCC, nor in the more detailed "TCM Monthly Aggregate for the Laguna Honda Settlement" detailed report at Enclosure 3 prepared for PAI and the Court is there any mention or analysis of why 1,300 people were not accepted into the TCM program. • Why were 501 Discharge Plans/Linkage Plans developed if only 424 people were accepted into the TCM program? – Were 77 of the 501 discharge plans duplicates for the 424 accepted into the TCM program, and if so, was the so-called 70% figure preferring return to the community obtained by double-counting these 77 people? – Were some of the Discharge/Linkage plans entered into the *SF GetCare* database by LHH social workers, and wrongly included in the TCM monthly aggregate reports as having been developed by TCM staff? Is the TCM program potentially including data in its monthly and aggregate reports that are not the result of TCM staff efforts? – If only 424 people were accepted into the TCM program during a three-year period ending in May 2007 and only 131 were discharged to the community, ***are an average of only 43 discharges per year by the TCM staff an acceptable utilization of resources*** devoted to the TCM program? – How many of the 131 TCM discharges would have been planned and accomplished by LHH staff without the need for the TCM program? Until these, and other, questions are answered, the Court should not accept PAI's claim that the limited number of discharges were the result of actions or inactions by the Defendant. Attrition from LHH — including an annual death rate of approximately 30%, discharges to the community made by LHH staff, and transfers of residents to other levels of care — and resident's decisions not to participate in the TCM program may be significant factors affecting the limited number of TCM discharges, and should not be blamed on the Defendant as "inaction." Other extenuating factors that neither PAI nor TCM seem to be analyzing or fully informing the Court about should be explored by the Court.
17	17	The Plaintiff's assert that there are "as many as 37 residents sleeping in close	This is patently untrue; no ward at Laguna Honda has a census of 37 residents. The vast majority of wards at

<table>
<tr><th>Page</th><th>Line(s)</th><th>Chamber's Lawsuit Claims</th><th>Rebuttal Data, Facts, and Analysis</th></tr>
<tr><td></td><td></td><td>quarters" at LHH, separated only by hospital curtains.</td><td>LHH contain far fewer than 30 beds each, and some have less than 20 beds. Moreover, the majority of beds at Laguna Honda are separated by wardrobe closets, not curtains, as PAI wrongly asserts, as part of a previous agreement with the U.S. Department of Justice.

Organizational plaintiff PAI also fails to note to the Court that there are a significant number or private and semi-private rooms in the current Laguna Honda facility. A public records request has confirmed the number of private and semi-private rooms; nearly 26 percent of Laguna Honda residents do <u>not</u> live in open wards, as PAI failed noting to the Court.

Table 8: Private and Semi-Private Rooms at Current Laguna Honda Hospital

<table>
<tr><th></th><th></th><th></th><th colspan="2">Semi-Private Roms</th><th></th><th></th></tr>
<tr><th></th><th>Capacity</th><th>Private Room</th><th>Rooms</th><th>Beds</th><th>Total Private Beds</th><th>% Private Beds</th></tr>
<tr><td>Clarendon Hall</td><td>115</td><td>9</td><td>47</td><td>94</td><td>103</td><td></td></tr>
<tr><td>Main Building</td><td>933</td><td>75</td><td>39</td><td>78</td><td>153</td><td></td></tr>
<tr><td>L4A and M7A</td><td></td><td></td><td></td><td></td><td>14</td><td></td></tr>
<tr><td></td><td>1,048</td><td>84</td><td>86</td><td>172</td><td>270</td><td>25.8%</td></tr>
</table>

The Court should also take note that as of this writing, construction on the replacement facility for Laguna Honda is well over 50% completed; it will be just two years from now when there will be no open wards at all. Therefore, the Court should disregard this issue as moot.</td></tr>
<tr><td>17–18</td><td>24–28 and 1–6</td><td>The Plaintiffs provide demographic data, citing Laguna Honda residents in comparison to San Francisco County:

• "… are disproportionately low-income and African-American …"

• " …. 25 percent are African-American" whereas the overall population of San Francisco is "7.6 percent African-American."

• "At least 95 percent of residents are Medi-Cal eligible or indigent, while only 12 percent of the overall population are San Francisco lives below the poverty level."</td><td>The Plaintiff's fail to note to the Court that the reason LHH has such a disproportionate percentage of African-American's is precisely because there are few facilities in San Francisco that will take clients on either Medi-Cal or SSI, or diabetic or bariatric clients. Without Laguna Honda, African-American residents would disproportionately be denied access to quality skilled nursing care, which access the Court should not deny.

Again, few facilities in San Francisco take clients on either Medi-Cal or SSI; many accept only private-pay clients Any potential rulings or orders from the Court should not unfairly discriminate against Medi-Cal eligible, indigent, or impoverished residents relying on access to LHH for their health care.</td></tr>
</table>

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<tr><th>Page</th><th>Line(s)</th><th>Chamber's Lawsuit Claims</th><th>Rebuttal Data, Facts, and Analysis</th></tr>
<tr><td></td><td></td><td>• "Almost 50 percent … are below 70 years of age; 13 percent are younger than 50 years."</td><td>Plaintiffs appear to be selectively shopping for, and interpreting data for the Court. The July 12, 2007 quarterly report provided by LHH to the Board of Supervisors per Board Resolution #050396 provides a bar chart that illustrates as of the first half of 2007:

• Fully 32% of LHH residents are over the age of 80.
• Another 37% are between the ages of 60–79; therefore, well over two thirds (69%) of Laguna Honda Residents are older than age 60.
• Another 18% are between the ages of 50–59, illustrating that only 12% are below the age of 50.

So Plaintiffs assertion that 50% of LHH's patients are younger than 70 years old may be data that is cherry-picked from a selective time period, since in July 2007 69% of LHH's residents were above age 60.

One reason, among others, that Laguna Honda serves patients younger than age 50 is the number of residents admitted to Laguna Honda's short-stay units, such as its Rehabilitation unit, where many gunshot wound victims, pedestrians vs. automobile accidents, traumatic brain injury, and other orthopeadic patients receive physical and occupational therapy before being discharged and returned back to the community. As well, many AIDS patients younger than age 50 are stabilized from acute-care episodes and returned to the community, or are retained in LHH's AIDS dementia unit precisely because there are no other AIDS dementia units in San Francisco since the closure of St. Mary's AIDS dementia unit well over five years ago.</td></tr>
<tr><td></td><td></td><td>• "Over 40 percent … have only physical functioning needs, requiring primarily unskilled personal care services; only three percent have 'extensive special care' needs."</td><td>Where Plaintiff's obtained data regarding the level of care needs in not known. However, a public records request has revealed that as of March 2007, LHH's wards are arranged by "nursing clusters," based on the acuity and level of care of residents:

Table 9: Number of Beds Per Nursing Cluster
<table>
<tr><th></th><th># of Beds</th><th>% Mix</th><th></th><th></th></tr>
<tr><td>• Dementia Residents</td><td>292</td><td>25.4%</td><td>25.4%</td><td></td></tr>
<tr><td>• Complex Medical/Co-Morbidities</td><td>253</td><td>22.0%</td><td>22.0%</td><td></td></tr>
<tr><td>• Chronic Care/High Support (a.k.a. "Total Care")</td><td>188</td><td>16.4%</td><td>16.4%</td><td></td></tr>
<tr><td></td><td></td><td></td><td>63.8%</td><td></td></tr>
<tr><td>• Psychosocial</td><td>92</td><td>8.0%</td><td>8.0%</td><td></td></tr>
<tr><td>• Asian Focus</td><td>57</td><td>5.0%</td><td>5.0%</td><td></td></tr>
<tr><td>• Acute Medical Care</td><td>30</td><td>2.6%</td><td>2.6%</td><td></td></tr>
<tr><td>• AIDS</td><td>60</td><td>5.2%</td><td>5.2%</td><td></td></tr>
<tr><td>• Rehab Center (Physical Rehabilitation)</td><td>60</td><td>5.2%</td><td>20.8%</td><td></td></tr>
<tr><td>• Hospice</td><td>30</td><td>2.6%</td><td></td><td>84.6%</td></tr>
<tr><td>• Admitting</td><td>30</td><td>2.6%</td><td></td><td></td></tr>
<tr><td>• Waiting List for Admission</td><td>30</td><td>2.6%</td><td></td><td></td></tr>
<tr><td>• Intellectually/Developmentally Delayed</td><td>27</td><td>2.3%</td><td></td><td></td></tr>
<tr><td></td><td>1,149</td><td>100.0%</td><td></td><td></td></tr>
</table></td></tr>
</table>

Page	Line(s)	Chamber's Lawsuit Claims	Rebuttal Data, Facts, and Analysis
		... 46.2% of LHH's residents have "extensive, special care, or complex care" needs, compared to the statewide average of 35.5%, and 35.9%, of LHH's residents have "reduced physical function," compared to the statewide average of 28.7%, disproving Plaintiffs' *ridiculous* claim that only 3% of LHH residents have extensive special care needs.	This data should illustrate to the Court that at minimum, 16.4% of LHH residents reside on "total care" units, not the 3% PAI and the Plaintiff's falsely assert have "extensive special care" needs. In addition, according to the type of care provided (see definitions below), the skilled nursing services provided to dementia residents and complex medical/co-morbidity residents indicates that approximately 64% of LHH residents need a higher level of care than the questionable data provided by Plaintiff's. Moreover, as shown in Table 9, adding to this level of care provided is the Asian Focus, Acute Care, Psychosocial Care, and AIDS units illustrates that fully 85% of the people served at LHH have a need for services based on their acuity level that are largely unavailable in other skilled nursing facilities in San Francisco that accept Medi-Cal clients. In addition, the nursing home comparison feature at "California Nursing Home Search," a partnership with the California Healthcare Foundation (a UCSF program), notes that (as of 10/7/07), 46.2% of LHH's residents have "extensive, special care, or complex care" needs, compared to the statewide average of 35.5%, and 35.9% of LHH's residents have "reduced physical function," compared to the statewide average of 28.7%, disproving Plaintiffs' *ridiculous* claim that only 3% of LHH residents have extensive special care needs.
			In addition to the demographics above, the Court should consider the demographics of ***medical needs*** of Laguna Honda residents, something neither the Plaintiffs nor PAI included in its First Amended Complaint. First, LHH serves some core populations: **Table 10: Dedicated Beds in the LHH Replacement Facility** # of Beds Approved for Construction as of March 2007 — 780 Beds Dedicated to Specific Patient Populations: • Rehab Center (Physical Rehabilitation) — 60 • Hospice — 30 • Admitting — 30 • Acute Medical Care — 30 • AIDS — 60 **210** — **210** **Beds Remaining for Other Patients — 570** Then, Laguna Honda serves a multiplicity of other patients unique to San Francisco's demographics. The Court should note that LHH uses various "nursing clusters" to tailor the level of patient care to the medical

Page	Line(s)	Chamber's Lawsuit Claims	Rebuttal Data, Facts, and Analysis
			needs of LHH residents. In another document obtained as a public record from Laguna Honda, the various patient populations served at the facility are described:

Table 11: Remaining Patient Populations Served at LHH as of March 2007

Beds Remaining for Other Patients:		570
March 2007 Capacity by Level of Skilled Nursing Care:		
• Dementia Residents	292	
• Chronic Care/High Support	188	
• Complex Medical/Co-Morbidities	253	
• Psychosocial	92	
• Asian Focus	57	
• Intellectually/Developmentally Delayed	27	
• Waiting List for Admission	30	
	939	**939**
Bed Shortage / Residents to Be Displaced		**(369)**

Another public record provided by the San Francisco Department of Public Health defines the various nursing clusters at Laguna Honda:

Dementia Residents: "Unable to manage self-care at home or in community settings due to dementia or other cognitive impairments. Safety and security are of primary concern for this population, who are expected to remain at Laguna Honda indefinitely. Typical clinical presentations include: Alzheimer's disease, multi-infarct dementia, short-term memory impairments, judgment impairment due to perception, and impulse control (such as wandering)." Goals include safety and security.

Complex Medical/Co-Morbidities: "Have multiple medical problems with concomitant psychosocial issues. While experiencing complications from their conditions or disease, they are for the most part alert, oriented, and able to communicate." Clinical presentations include: Spinal cord injury, cerebral vascular accidents (CVA's), wound care, continuous dialysis, cardiovascular disease, and diabetes. Goals include orientation to place, behavior control, range of security issues (such as protecting frail residents from psychosocial residents), and behavior control.

Chronic Care: "Commonly referred to as 'total care,' 50% of chronic care residents are non-ambulatory and non-alert, but the focus for all chronic care residents is high-level maintenance without rehabilitation. This palliative care requires vigilant physical care." Clinical presentations include: Severe CVA's, severe retardation, tracheostomy care, and contracture prevention.

Page	Line(s)	Chamber's Lawsuit Claims	Rebuttal Data, Facts, and Analysis
			High Support: "Represents a diverse population, all requiring high support according to their care needs." **Psychosocial:** "Require a therapeutic environment due to a primary medical diagnosis with concomitant complex psychosocial problems." Typical clinical presentations include: Spinal cord injury, multiple sclerosis, judgment impairment or impulse control due to behavioral problems, and delusional presentations. Goals include reduction of specific target behaviors impacting resident's ability to interact safely and socially in another environment. **Asian Focus:** The two current Asian-focus wards at Laguna Honda serve various patient populations described above, in a culturally-sensitive setting tailored to their cultural needs. [**Note**: LHH also has at least one Spanish Focus unit, which was not described in the public records document cited above.] Based on the projected skilled nursing bed shortage in San Francisco and at LHH, the Court should not issue rulings or orders that would further restrict access to healthcare that these patient populations cannot access elsewhere in San Francisco; to do so would violate their rights to access the very healthcare services needed for their various medical conditions.
18	8–11	Plaintiff's complain that in 2005, 580 individuals were admitted to Laguna Honda, up from 529 in 2001." They also complain that Defendant City and County of San Francisco "has not reduced the census at Laguna Honda from approximately 1,030–1,040 residents, despite continually escalating costs to operate the facility." They further complain Defendant actively works to maintain Laguna Honda at its maximum capacity."	Plaintiffs are clearly attempting to throw sand in the eyes of the Court, apparently to obfuscate the real issues. First, Plaintiffs neglect to inform the Court that in 2001, Laguna Honda increased its so-called "short stay" programming in an attempt to improve its Community Reintegration program. By admitting more short-stay clients in need of rehabilitation and return to the community, the hospital has continued to serve an increasing number of San Franciscans. The increase in short-stay programming explains for the Court why the volume of admissions has increased since 2001. Indeed, Plaintiffs neglect to inform the Court of the total number of patients served during the past six-and-a-half years: According to the quarterly report provided to the Board of Supervisors in July 2007:

Page	Line(s)	Chamber's Lawsuit Claims	Rebuttal Data, Facts, and Analysis

Table 12:LHH Residents Served 2001 — 2007

Calendar Year	# of Admissions	Patients Served	% Mix
2001	529		
2002	556		
2003	560		
2004	625		
2005	580		
2006	513		
2007*	250		
	3,613	**3,613**	
Residents Residing > 5 Years**		244	**6.3%**
Total Served		**3,857**	
Approximate Current Census		1,030	**20.4%** ***
San Franciscans Served, and Then Discharged to Community, Died In-House, or Transferred to Another Level of Care		**2,827**	**73.3%**
			100.0%

* January — June 2007
** Per TCM Aggregate Report May 2007; 21% of 1,160 Residents Assessed
*** Percentage excludes number of residents residing > 5 years

By the end of 2007, LHH is projected to have served over 4,000 patients since 2001.

Second, the issue is ***not*** about "continually escalating costs to operate the facility." The relevant issue is the number of people LHH serves (approximately 1,600 to 1,800 people) annually. By the end of 2010, LHH will probably have served nearly 6,000 San Franciscans during a decade-long period.

Third, Plaintiffs wrongly allege LHH is "actively working" to maintain is census at full capacity. As I testified in the published minutes of the July 23, 2007 meeting of the Laguna Honda Hospital-Joint Conference Committee (comprised of two of the City's Health Commissioners and LHH's senior administrators):

> "If I heard correctly, Mr. Kanaley just stated during his Executive Administrator's report to the LHH-JCC that Laguna Honda Hospital's current census stands at 1,022 patients, not because the Hospital is intentionally or aggressively attempting to increase its census, but because there's such high demand for skilled nursing care throughout the city of San Francisco."

The issue is not whether Defendant is actively maintaining a census just for the hell of it; it's a matter of San Francisco attempting to meet the demand for City healthcare services, as PAI and the Plaintiffs must surely know.

Considering that nearly 4,000 people have been served during the past seven years, and only 21% of residents as of May 2007 have resided at Laguna Honda for greater than five years(see Page 4, Enclosure 3), the Court should take note that people served at LHH are

Page	Line(s)	Chamber's Lawsuit Claims	Rebuttal Data, Facts, and Analysis
			not being improperly "institutionalized" as Plaintiffs wrongly assert. LHH is simply meeting the demand for its healthcare services. Between the *Davis* case and the *Chambers* case, a total of 11 of Laguna Honda's residents appear to have possibly been "cherry-picked" by Organizational Plaintiff PAI to wrongly allege institutionalization is improperly occurring. It is not known how many of these 11 Plaintiffs are cognitively aware that they are attempting to speak for over 4,000 people who have been served, many of them successfully, and discharged back to the community. These 11 individual Plaintiffs across the two cases appear to be asking the Court to approve that they speak for the nearly 4,000 residents who have been served at LHH during the past seven years. The Court should take administrative note that of 4,000 people served at LHH, 11 Plaintiffs across the *Davis* and *Chambers* cases represent far less than 1% — indeed, only 0.275%, or just over one-quarter of one percent — of nearly 4,000 patients served since 2001. The six Individual Plaintiffs in the instant *Chambers* case cannot presume to speak as a "class" for the other 3,994 patients served by Laguna Honda since the year 2001. To assert that these six Plaintiffs presume to speak for 4,000 people is absurdity to the *nth* degree. Therefore, the Court should ***not*** certify these Plaintiffs as a class; instead, ***restrict*** them to individual Plaintiffs.
20	15	Plaintiffs argue that the Defendant City and County of San Francisco has caused Plaintiffs to become institutionalized.	As noted above, these six Plaintiffs represent a small fraction of the 4,000 people served by LHH during the past seven years. If just 21 percent of nearly 4,000 patients have resided at Laguna Honda for more than five years (as shown on Page 4 of Enclosure 3, assuming the *TCM-PAI Aggregate Report for May 2007* is accurate), Plaintiffs cannot assert that Laguna Honda intentionally seeks to "institutionalize" its residents. In addition, there's a discrepancy between data prepared by the TCM program and data available using the UCSF Nursing Home Search on-line search feature.[14]

[14] California Nursing Home Search. *"Nursing Home Profile for Laguna Honda Hospital and Rehabilitation Center."* California Nursing Home Search is a partnership between the University of California-San Francisco and the California Healthcare Foundation. *Length of Residency* (as of 2004) table. Downloaded on October 8, 2007 from http://www.calnhs.org/profiles/index.cfm?facID=220000512&profile=20.

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<tr><th>Page</th><th>Line(s)</th><th>Chamber's Lawsuit Claims</th><th>Rebuttal Data, Facts, and Analysis</th></tr>
<tr><td></td><td></td><td></td><td>
Table 13: Length of Stay at LHH
<table>
<tr><th></th><th>UCSF Nursing Home Search</th><th>TCM*</th></tr>
<tr><td>Less than 3 Months</td><td>60%</td><td>10%</td></tr>
<tr><td>3 Months to 2 Years</td><td>29%</td><td>43%</td></tr>
<tr><td>More than 2 Years</td><td>12%</td><td>47%</td></tr>
<tr><td></td><td>101%</td><td>100%</td></tr>
</table>
* TCM May 2007 Aggregate Report; of 1,160 assessments

The Court should note that if fully 89% of Laguna Honda residents stay at LHH less than two years, and only 12% stay longer than two years according to the Nursing Home Search/UCSF, the claim of unnecessary institutionalization is inaccurate. UCSF's Nursing Home Search data obtained in 2004 must contain errors regarding length of stay.

The Court should closely examine the wild disparity between TCM's aggregate data and that of UCSF's to see if the data being reported by TCM is accurate, or if an algorithm in TCM's database needs to be corrected, since TCM's data is wildly inverted from data reported by UCSF.

Notably, data provided by San Francisco's Department of Public Health in November 2007 (see page 1 of this Rebuttal) supports TCM's data sets.
</td></tr>
<tr><td>20</td><td>9–11</td><td>PAI claims that remedial issues ordered by the U.S. Department of Justice "have not been implemented," to create and maintain "an inventory of housing options … to be utilized by Laguna Honda residents."</td><td>As discussed above, the City and County of San Francisco has developed, and is currently using, an inventory of housing placement options that the Defendant uses to guide placements. Approximately 92% of the City's placement options are in the community, and only 8% are skilled nursing beds operated by the City. Plaintiffs claim an inventory has not been created is a red herring, and should be ignored by the Court.</td></tr>
<tr><td>20</td><td>19–20</td><td>PAI asserts that LHH "continues to institutionalize individuals whom it has assessed as not needing to remain at Laguna Honda."</td><td>As shown on page 1 of this report, only 20% of LHH's residents have remained for long-term skilled nursing care longer than five years. Close to 3,000 of nearly 4,000 people once served by LHH no longer reside there. LHH is not institutionalizing patients; this is hyperbole, not fact.</td></tr>
<tr><td>20</td><td>21–24</td><td>Defendants claim that in 1999, San Francisco's Board of Supervisors passed a resolution that found "…. Long-term care services [are] primarily focused on institutional care …"</td><td>What Plaintiffs are not telling the Court is that the Board of Supervisors resolution #336-99, authored by then Supervisors Sue Bierman and Mark Leno adopted on March 3, 1999, acknowledged San Francisco's commitment to "developing <u>sufficient</u> institutional care, in addition to developing [community-based]</td></tr>
</table>

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<tr><th>Page</th><th>Line(s)</th><th>Chamber's Lawsuit Claims</th><th>Rebuttal Data, Facts, and Analysis</th></tr>
<tr><td></td><td></td><td></td><td>alternatives to institutional care for seniors and people with disabilities" [emphasis added].

The Court should note that if LHH is not rebuilt to its full 1,200-bed capacity, an <u>insufficient</u> number of options from which safety-net clients can choose for long-term care needs will be lost. The Court should not forget that 92% of current placement options are in settings other than institutional-based settings.</td></tr>
<tr><td>2</td><td>2–3</td><td>Plaintiffs allege that "The Controller's Report found that for each $2 million not spent at Laguna Honda, 100 people could be served in the community."</td><td>This is not quite accurate; the City Controller's May 10, 2005 report cited an enclosure to his report that was an <u>estimate</u> prepared by the Mayor's Office of Disability, which "extract" contained many flawed assumptions; it is inaccurate that the City Controller's report determined this data using staff from the Controller's Office, since the data came from the Mayor's Office of Disability, which (to my knowledge) does not employ Certified Public Accountants.</td></tr>
<tr><td>22</td><td>8–10</td><td>Plaintiffs allege "Defendant has not taken any action to redirect funds or provide community supports … nor has it conducted any assessment to justify the need for even a 780-bed institution."</td><td>This is also patently untrue. Defendant City and County created a Community Living Fund (in FY 2006–2007, and to comply with the Davis settlement, established the Targeted Case Management Program.
Table 14: Program Funding to Date
<table>
<tr><th>Program</th><th>Fiscal Year</th><th>Budget</th><th></th></tr>
<tr><td>Community Lviing Fund*</td><td>06–07</td><td>$3,032,739</td><td></td></tr>
<tr><td></td><td>07–08</td><td>3,136,363</td><td></td></tr>
<tr><td></td><td></td><td>$6,169,102</td><td>$6,169,102</td></tr>
<tr><td>Targeted Case Management</td><td>04-05</td><td>$1,188,806</td><td></td></tr>
<tr><td></td><td>05-06</td><td>1,252,358</td><td></td></tr>
<tr><td></td><td>06-07</td><td>2,501,839</td><td></td></tr>
<tr><td></td><td>07-08</td><td>2,514,418</td><td></td></tr>
<tr><td></td><td></td><td>$7,457,421</td><td>$7,457,421</td></tr>
<tr><td></td><td></td><td></td><td>$13,626,523</td></tr>
</table>
* Includes interest earned, gifts and bequests.

Defendant City and County of San Francisco's commitment of $13.6 million over the past four years is <u>not</u> an insignificant commitment of resources, as organizational Plaintiff PAI must surely understand.

Of the $7.5 million budgeted for the TCM program, a reasonable conclusion can be drawn that for the 131 discharges the TCM program has accomplished since its inception, it has cost $56,927 per person discharged simply to "case manage" and plan the discharge.

As well, Plaintiffs claim that Defendant City and County have not conducted any assessment to justify the need for a 780-bed skilled nursing facility is nonsense, at best. During a 19-year period between 1980 and 1999, the City and County planned for the LHH replacement project, including multiple assessments of</td></tr>
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Page	Line(s)	Chamber's Lawsuit Claims	Rebuttal Data, Facts, and Analysis
			the need for building 1,200 beds. In 1998 the Department of Public Health released a White Paper indicating the severe shortage of skilled nursing beds the City would face ***even if*** all 1,200 of the proposed beds at Laguna Honda were built. The 1998 White Paper ***clearly*** documented the need for 1,200 beds at Laguna Honda Hospital. In addition, the 1997 *San Francisco Nursing Facility Bed Study* (at Enclosure B), commissioned by the San Francisco Section of the West Bay Hospital Conference, ***definitively*** documented the skilled nursing bed shortage in San Francisco, which has since worsened given the loss of skilled nursing beds at the Community Convalescent Hospital (a nursing facility), the loss of skilled nursing beds at San Francisco General Hospital, and the closure of other private-sector skilled nursing beds in San Francisco since 1997, including recent news that St. Francis Hospital may be closing its 34-bed skilled nursing unit and St. Luke's Hospital plans to close its 79- SNF unit.
24–28		In its First Claim for Relief, Second Claim for Relief, and Third Claim for Relief, Plaintiffs assert that the Defendant has failed to provide services in the most integrated setting appropriate, in violation of the Americans with Disability Act, Section 504 of the Rehabilitation Act, and California Government Code sections 11135 and 11139. In each of the three Claims for Relief, Plaintiffs assert that:	
		• "Defendant has assessed Plaintiffs and class members and has determined them to be capable of receiving supports and services in their homes and communities rather than at Laguna Honda."	As noted in Enclosure 2 and discussed elsewhere in this Rebuttal, the full MDS system has documented that fully 73.3% of Laguna Honda residents assessed do not have a potential for discharge.
		• "Defendant has also determined that Plaintiffs and the majority of class members would prefer to live in the community."	As noted elsewhere in this Rebuttal, fully 49% of 1,623 people assessed indicated their preference was to living in a nursing facility. Fully 58% of people assessed indicated that their preference was to live in a group setting. And of 1,205 people assessed for their goals of care, only 53% indicated that their goals included community reintegration in contrast to 63% who expressed a goal of not being a burden on others..

Page	Line(s)	Chamber's Lawsuit Claims	Rebuttal Data, Facts, and Analysis
		• "Defendant has denied Plaintiffs and class members' access to the array of home and community-based services they need, and instead has offered them services only if they are confined in an unnecessarily segregated environment."	As noted in Table 4 in this Rebuttal and in Enclosure 4, the Defendant maintains a list of housing options available for single adults, and fully 92% of placement options available to the Defendant are in community-based settings. Moreover, discharge plans developed by non-TCM social workers at Laguna Honda have for a very long time linked residents being discharged with an array of community-based services. The claim that residents are offered services only if they are "confined" at LHH is a complete myth contradicted by facts. Moreover, as shown in pie chart on page 1 of this Rebuttal, if fully 80% of LHH residents spend less than five years at LHH receiving short-stay, rehabilitative, hospice, AIDS, or long-term care services, Plaintiffs claims of unnecessary institutionalization should be rejected by the Court.
28 – 29	27 and 1 – 8	Plaintiffs repeatedly ask the Court to declare that Defendant's practices violate Plaintiffs' rights.	Given the data, facts, and analysis presented in this Rebuttal, the Court is asked to ***not*** rule that the Defendant has violated Plaintiffs' rights. There is sufficient evidence to suggest that the City and County of San Francisco is doing everything it can to comply with *Olmstead*, while at the same time attempting to provide a ***sufficient*** level of skilled nursing care to those who wish to exercise their rights to choose skilled nursing level of care at Laguna Honda Hospital.
29	9 – 14	Plaintiffs ask the court to "Enjoin Defendant, its officers, agents, employees, successors and ***all other persons in active concert or participation with any of them***, from further violations of Plaintiffs' and class members' rights under the Americans with Disabilities Act and require Defendant to offer and provide, as appropriate, Plaintiffs and class members with long-term care services in their homes and communities, rather than in an unnecessarily segregated institutional facility" [emphasis added].	This "remedy" is overly-broad, and the Court should reject this request. "All other persons in active concert" could be easily misconstrued and misinterpreted to enjoin, by prohibiting, any resident of Laguna Honda Hospital who chooses to receive their healthcare at LHH, any family member of an LHH resident, state officials, the San Francisco Long-Term Care Ombudsman, elected City and State officials, medical clinicians and other employees at LHH (who have an ethical mandate to be advocates for their patients), and ordinary citizens of San Francisco from advocating for the provision of institutional-based long-term care services. To enjoin any of the people listed above from being able to advocate that the Defendant provide, as appropriate, long-term care services in an institutional setting, rather than only in home- and community-based settings, would not only violate their First Amendment rights to free speech, it would criminalize any and all attempts to advocate for institutional-based healthcare options. Moreover, this proposed remedy ignores the fact that the Defendant is already currently attempting to provide

Page	Line(s)	Chamber's Lawsuit Claims	Rebuttal Data, Facts, and Analysis
			both community-based, and institutional-based long-term care services at the appropriate level of care. The District Court should not order this remedy simply because the six initial individual *Chambers* Plaintiffs believe their civil rights have been violated. The rights of these six individuals under the ADA should not abridge and usurp the free speech rights of hundreds, if not thousands, of other citizens to advocate for institutional-based services, if that is their chosen preference. Beyond free-speech rights, the First Amendment also protects the right of the people to peaceably assemble, and to petition the government for a redress of grievances. To enjoin "***all other persons***," as Plaintiffs request, from advocating for institutional-based long-term care services would affect the rights of others to assemble to petition the government to provide long-term care services in a skilled nursing facility setting. Therefore, the Court should also not certify as a class potential additional signatories to the *Chambers* case as a class identical to the class certified in the *Davis* case.

Little bang for the buck has been accomplished by the TCM program. As of May 2007, four years and $7.5 million dollars later, the TCM program ordered by the *Davis* settlement yielded just 131 discharges (with an unknown number of re-admissions or recividism), some of which discharges appear to have been accomplished not by the TCM staff, but by LHH's medical social workers.

The Court has a special obligation to ascertain the post-discharge status of the 131 TCM discharges to learn the outcomes of their care …

As shown in Table 15 below[15], during the same time frame the TCM program has been operational (2004 – 2007), of its external discharges, Laguna Honda has discharged ten times as many people — 1,134 residents, including some TCM clients — in comparison to the 131 discharges arranged by TCM staff. The Court has a special obligation to ascertain the post-discharge status of the 131 TCM discharges to learn the outcomes of their care, including re-admission to acute facilities, re-admission to long-term care facilities, deaths, etc.

Table 15: Subset of Discharges From LHH 2004–2007

Discharge Location	2004	2005	2006	2007*	Total	% Mix External Discharges
Board and Care	11	19	26	23	79	7.0%
Home	286	306	263	155	1,010	89.1%
None					0	0.0%
Other Misc	17	17	7	3	44	3.9%
Out of County**	1				1	0.1%
Subtotal Community Discharges	**315**	**342**	**296**	**181**	**1,134**	**100.0%**

* January through September 2007
** Out-of-county count begins in October 2004

[15] Table 15 is a subset of Table D on page 4 of this report; Table 15 excludes: External discharges to acute facilities, internal discharges within Laguna Honda, unknown discharge location, and people who expired in-house at Laguna Honda.

At nearly $57,000 per discharge, the TCM program has accomplished little in the way of community reintegration that was not already occurring at LHH, and little in the way of improving the rights of people under the ADA and *Olmstead*.

The Department of Public Health is reportedly now working in conjunction with the City's Department of Aging and Adult Services to conduct yet ***another*** survey of Laguna Honda's residents to determine their living preferences. Just how many times will LHH residents have to endure being "surveyed," and re-surveyed? Until the "survey says" what Plaintiffs and PAI wants the survey results to say? The Court should be extremely skeptical about the repeated use, and scientific reliability, of these survey instruments.

The Court should also consider requiring additional post-discharge outcomes data be provided by the TCM program to assess the program's efficacy.

The Court might consider disbanding the TCM program entirely, by ruling that the resources dedicated to the TCM program should be budgeted to LHH's Medical Social Services Department, instead. If those resources had been made available to LHH staff, might they have done a better job effectuating discharges to the community, given that only five of the TCM's current 19-member budgeted staff are social workers? The Court should also consider requiring additional post-discharge outcomes data be provided by the TCM program to assess the program's efficacy.

Finally, the Court should not rule on whether the Defendant may or may not build more than 780 skilled nursing beds on the Laguna Honda campus. Judge Warren ruled that the City and County of San Francisco is not required to build a specific number of beds, and also ruled that the City is not limited on where it is permitted to build skilled nursing beds; therefore, if the City chooses to build more than 780 beds and chooses to do so at Laguna Honda, that is a policy matter for our local jurisdiction to determine, not the role of the federal government. After all, Judge Warren ***did not*** rule that San Francisco was ***prohibited*** from building 1,200 beds on the Laguna Honda site.

If, as projected in the Department of Public Health's 1998 White Paper, it would cost an additional $100 million to $150 million (in 1998 dollars) for the City to acquire additional land on which to build smaller skilled nursing facilities — and that land acquisition estimate might now be far higher in the year 2007 — wouldn't saving those additional hundreds of millions be better spent building the needed skilled nursing beds on land already owned, and then dedicating using the savings (from not having to acquire additional land) to build other community-based long-term care alternatives in order to expand ***both*** institutional-based and community-based care facilities as options from which San Franciscans could choose from a full spectrum of choices? If "true choice" is one goal of the *Chambers* lawsuit, doesn't that imply that institutional-based skilled nursing facilities should be among the choices offered? If so, the District Court should not restrict options that our local jurisdiction may want to consider — including more skilled nursing facilities on land San Francisco already owns — given unique demographics San Francisco faces.

If "true choice" is one goal of the *Chambers* lawsuit, doesn't that imply that institutional-based skilled nursing facilities should be among the choices offered?

For all of the reasons presented in this Rebuttal, the Court should ***NOT*** rule that:

- If you are an adult Medi-Cal beneficiary, and you are now a LHH resident, or were a LHH resident within the last two years, or eligible for admission to LHH or on a wait list for admission, then you are a member of the class and this Lawsuit will affect your rights."
- "If you are a member of the class, you will be legally bound by future orders and rulings from the Court."

To do so might involve turning a judicial blind eye to data readily available in the public realm that refutes ***disinformation*** presented in the Plaintiffs' *First Amended Complaint for Declaratory and Injunctive Relief.*

Respectfully submitted,

Patrick Monette-Shaw

Enclosures:

A. San Francisco Health Commission Resolution 14-05, November 13, 2007.

B. *San Francisco Nursing Facility Bed Study*, San Francisco Section of the West Bay Hospital Conference, Hospital Council of Northern and Central California, May 1997.

1. Targeted Case Management Monthly (Summary) Report for August 2007, San Francisco Department of Public Health.
2. "Facility Characteristics Report" for Laguna Honda Hospital 1/1/07 through 6/30/07, prepared by the Centers for Health Services Research and Analysis, University of Wisconsin–Madison, dated July 2, 2007.
3. Targeted Case Management Monthly Report for May 2007, *Aggregate Data Report for the Laguna Honda Settlement Agreement*, San Francisco Department of Public Health.
4. "Current Levels of DPH Community Placement [Options] for Single Adult's matrix," Placement Task Fork, Department of Public Health, dated November 30, 2006.

Dedication

This Rebuttal is dedicated to our friend, Robert "Bobby N" Neil, who believed Laguna Honda Hospital and Rehabilitation Center should be fully re-built. He would have appreciated the number of public records requests placed to obtain information presented to counter the disinformation in the *Chambers* "First Amended Complaint for Declaratory and Injunctive Relief" filing.

Robert F. Neil

June 6, 1934 – October 14, 2007

Photo by Patrick Monette-Shaw

"I am not a painter with M/S, but a M/S person who paints."

— bobby n.

At City Hall, Spring 2006

Full Disclosure

As a skilled nursing bed advocate, I have used my First Amendment Rights to express opinions presented in this document. While I am an employee at Laguna Honda Hospital and Rehabilitation Center, my free speech views expressed in this document are my own opinions, not those of my employer. The information provided in this document are the result of after-hours analysis of information obtained from placing numerous after-hours public records requests. The hours of research into these public records, and writing this Rebuttal, have been spent in an attempt to help thousands of people like my friend Bob Neil exercise their rights — protected under the *Olmstead* decision — to choose to receive skilled nursing care at facilities like Laguna Honda Hospital and Rehabilitation Center when that is their preference.

— Patrick Monette-Shaw
November 23, 2007