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GOUGH, SHAKANAN,  
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*Angie Shirley*

**MONTANA FIRST JUDICIAL DISTRICT COURT  
LEWIS AND CLARK COUNTY**

S.L., L.M., G.A., J.S., G.M., L.W.,  
L.R., D.H., and MONTANA  
ASSOCIATION FOR  
INDEPENDENT DISABILITY,  
SERVICES INC.,

Plaintiffs,

v.

JOAN MILES, in her official capacity  
as Director of the Montana  
Department of Public Health and  
Human Services; and JOE  
MATHEWS, in his official capacity as  
the Administrator of the Montana  
Department of Public Health and  
Human Services,

Defendants.

Cause No. BDV-2002-558

**ORDER PRELIMINARILY  
APPROVING THE CLASS  
ACTION SETTLEMENT, THE  
NOTICE OF CLASS ACTION  
SETTLEMENT, SETTING A  
FAIRNESS HEARING AND  
DIRECTING SERVICE OF THE  
NOTICE OF CLASS ACTION  
SETTLEMENT**

INDEXED

The Court having read and considered the Joint Motion of the Parties, S.L. et al. and Montana Association for Independent Disability Services, Inc., (now called Montana Association of Community Disability Services), hereinafter, MAIDS, to Approve Class Action Settlement Agreement and Fairness Hearing,

IT IS HEREBY ORDERED:

1. The Court preliminarily approves the Class Action Settlement Agreement including its Attachments A, B and C;

ORDER PRELIMINARILY APPROVING CLASS ACTION SETTLEMENT, THE NOTICE OF CLASS ACTION SETTLEMENT, SETTING A FAIRNESS HEARING AND DIRECTING SERVICE OF THE NOTICE

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2. The Court will conduct a fairness hearing pursuant to Mont. R. Civ. P. 23(e) on 5/7, 200<sup>8</sup>, at 2:00pm., for the purpose of determining whether the settlement proposed by the Parties is fair, reasonable, and adequate and whether the proposed Class Action Settlement Agreement should be finally approved and adopted as an order of the Court;

3. The Court approves the proposed Notice of Class Action Settlement and Fairness Hearing attached as Attachment B to the Class Action Settlement Agreement. The Court directs the Clerk of Court to issue the Notice in the form contained in Attachment B to the Class Action Settlement Agreement and annexed to this Order, and to serve it on counsel of record for service on the Plaintiff Class as provided below;

4. The Notice of Class Action Settlement shall be served on the Plaintiff Class as follows:

(i) The Defendants will generate a list of information upon the input of the Plaintiff's, MAIDS, which includes the following information possessed by State employees and contractor provider organizations: the names and last known addresses of each class member, the legal guardian for each class member and if there is no guardian, a family member, if known, for each class member. Not less than forty-five (45) days before the Fairness Hearing, the Defendants shall serve the Notice on each member of the Plaintiff Class, and to each such class members' guardian, or if there is no guardian, to a family member, if known, of each such class member. Such service shall be by U.S. Mail to the last known address of each member of the Plaintiff Class and the legal guardian for each class

1 member, or if there is no legal guardian, a family member, if  
2 known, of each class member. The Defendants shall maintain a  
3 list of each member of the Plaintiff Class so served (Service  
4 List);

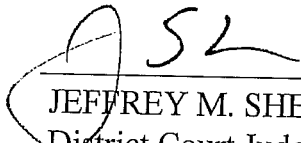
5 (ii) not less than thirty (30) days before the date set by the Court  
6 for the Fairness Hearing, the Defendants shall file and serve a  
7 complete copy of the Service List and certify that the Notice  
8 has been sent to all persons on the list;

9 (iii) Defendants shall serve the Notice on the Plaintiff Class by  
10 publication at least once a week for three consecutive weeks in  
11 the following Montana newspapers: the *Billings Gazette*, the  
12 *Missoulian*, the *Great Falls Tribune*, and the *Bozeman Daily*  
13 *Chronicle*, such service by publication to be completed not less  
14 than forty-five (45) days before the date set by the Court for the  
15 Fairness Hearing;

16 (iv) Defendants shall publish the Notice and the Settlement  
17 Agreement including the Attachments on the Montana  
18 Department of Public Health and Human Services' website, for  
19 at least two consecutive weeks, such publication to be  
20 completed not less than forty-five (45) days before the date set  
21 by the Court for the Fairness Hearing. Plaintiffs' Counsel of  
22 Record shall publish the Notice and the Settlement Agreement  
23 including the Attachments on the MAIDS website, if  
24 operational, for at least two consecutive weeks, such  
25 publication to be completed not less than forty-five (45) days  
26 before the date set by the Court for the Fairness Hearing; and  
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(v) the Plaintiffs shall pay to the Defendants the first \$2000.00 of the costs of the service of the Notice on the Plaintiff Class members and the Defendants shall pay the remaining costs.

DATED this 14 day of Jan, 2008.

  
JEFFREY M. SHERLOCK  
District Court Judge

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**ATTACHMENT B**

**ATTACHMENT B**

**S. L. et.al v. Joan Miles (Cause No. BDV 2002-558)**

**NOTICE OF PROPOSED CLASS ACTION SETTLEMENT  
AND FAIRNESS HEARING**

**TO: ALL THOSE INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES  
WHO ARE PRESENTLY, HAVE BEEN, OR ARE PERSONS WITH A  
DEVELOPMENTAL DISABILITY AS DESCRIBED HEREIN BEGINNING  
SEPTEMBER 22, 2002, AND ENDING ON \_\_\_\_\_  
*[INSERT HERE THE DATE OF THE COURT'S PRELIMINARY APPROVAL  
OF SETTLEMENT AGREEMENT]*. MORE SPECIFCALLY, THESE ARE  
THE FOLLOWING CLASSES OF PEOPLE:**

- 1) ALL PERSONS WITH A DEVELOPMENTAL DISABILITY, AS  
THAT TERM IS DEFINED IN SECTION 53-20-202, MCA, WHO  
RECEIVE COMMUNITY-BASED SERVICES BUT ARE AT RISK OF  
BEING INSTITUTIONALIZED BECAUSE OF THE CLOSURE,  
REDUCTION OR TERMINATION OF SUCH (COMMUNITY  
BASED) SERVICES;**
- 2) ALL PERSONS WITH A DEVELOPMENTAL DISABILITY, AS  
THAT TERM IS DEFINED IN SECTION 53-20-202, MCA, WHO THE**

MONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES (DPHHS) HAS QUALIFIED AS CAPABLE OF SUCCESSFULLY LIVING IN A COMMUNITY-BASED FACILITY BUT REMAIN INSTITUTIONALIZED IN MONTANA'S STATE-RUN INSTITUTIONS.

- 3) ALL PERSONS WITH A DEVELOPMENTAL DISABILITY, AS THAT TERM IS DEFINED IN SECTION 53-20-202, MCA, WHO LIVE IN PRIVATE RESIDENCES AND RECEIVE ASSISTED LIVING SUPPORT FROM COMMUNITY-BASED FACILITIES BUT ARE AT RISK OF BEING FORCED TO BE PLACED IN A COMMUNITY-BASED FACILITY OR INSTITUTION.

FROM: THE CLERK OF THE COURT OF THE FIRST JUDICIAL DISTRICT,  
LEWIS AND CLARK COUNTY, MONTANA

RE: PROPOSED SETTLEMENT OF LITIGATION SEEKING FROM THE MONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES PLACEMENT OF PERSONS WITH A DEVELOPMENTAL DISABILITY IN COMMUNITY SETTINGS WHEREVER POSSIBLE.

**PLEASE READ THIS NOTICE IN FULL. IT CONTAINS IMPORTANT INFORMATION ABOUT LEGAL RIGHTS.**

**I. BACKGROUND**

This notice is to advise you that a proposed settlement agreement has been reached in this case: S.L., et al. v. Joan Miles, et al., Cause No. BDV 2002-558, First Judicial

District Court, Lewis and Clark County, Montana. If you meet the requirements stated in the first paragraph of this notice, your legal rights may be affected by this settlement agreement.

On or about September 22, 2002, a number of developmentally-disabled Montana citizens and the Montana Association for Independent Disability Services, Inc., now called Montana Association of Community Disability Services (the Plaintiffs) filed a class action lawsuit in state district court in Montana. The amended class action complaint (the Complaint) alleges that Joan Miles, Director Department of Health and Human Services and Joe Mathews, Administrator of the Disability Services Division, (the Defendants) had violated and were violating the rights of the Plaintiffs under various federal and state provisions referenced in the proceedings including Mont. Code Ann. §§ 53-2-201, 53-6-113, Mont. Code Ann. Title 53, chapter 6 Part 6 and the Montana Constitution, Article II, § 3 Article II § 4 (human dignity, equal protection) and Article XII § 3.

The Complaint generally challenged the disparity in wages and benefits as between employees of community services providers providing services to persons with developmental disabilities and state employees at state institutions such as the Montana Developmental Center (MDC). This disparity, the Plaintiffs contended, made it difficult for community service providers to provide support services to persons with a developmental disability in a community setting. Plaintiffs further alleged that this disparity also threatened persons with a developmental disability living with a community service provider, funded at least in part by the State of Montana, or living in a private home and

receiving services funded in part from the State of Montana, with the possibility of institutionalization at MDC or another institutional setting.

The Defendants have asserted various defenses to the Plaintiffs' allegations and claims for relief in the Complaint, and do not admit any liability.

## **II. PROPOSED SETTLEMENT**

The Plaintiffs have entered into a settlement agreement with the Defendants, and the settlement agreement has been submitted to the First Judicial District Court in Lewis and Clark County for approval by the Court. The Court has ruled that this case may be maintained as a class action. The class includes those persons described in the first portion of this Notice, Items (1)-(3), who will be referred to in this Notice as "class members."

In considering whether to approve the settlement, the Court must decide whether the settlement is fair, reasonable, and adequate. This Notice has attached to it the Class Action Settlement Agreement, including Attachments A, B, and C. This Notice also presents the options of individuals who may be affected by the settlement, and directs where to get more information on the settlement. If you are one of the persons described in the first paragraph of this Notice, the settlement confers specific benefits upon you.

The proposed settlement, if finally approved by the Court, will result in the Complaint being dismissed with prejudice, which means that all of the claims of the Plaintiffs which are based upon, or which could be based upon or could arise from, any of the conduct or violations alleged in the Complaint are finally extinguished and can no longer be pursued by the Plaintiffs or class members.

In addition, if the Court approves the proposed settlement, the Defendants will be released from liability for any of the Covered Claims, whether asserted or unasserted, known or unknown, foreseen or unforeseen. A complete description of the Covered Claims is set forth in the attached copy of the Class Action Settlement Agreement, at Paragraph 2.5, Page \_\_\_\_.

### **III. FURTHER INFORMATION**

If you would like more information about the proposed settlement, please write, fax, or call the Plaintiffs' lawyer:

Mr. Ron Waterman  
Ms. Julie Johnson  
Gough, Shannahan, Johnson & Waterman  
33 S. Last Chance Gulch  
P.O. Box 1715  
Helena, MT 59624

You can also view the settlement agreement on the Montana Department of Public Health and Human Services website, "[www.dphhs.state.mt.us](http://www.dphhs.state.mt.us)", or on the website of the Montana Association for Independent Disability Services, Inc., now called Montana Association of Community Disability Services, if operational, at \_\_\_\_\_.

### **IV. HEARING ON THE PROPOSED SETTLEMENT**

District Court Judge Jeffery Sherlock will hold a hearing on the proposed settlement on \_\_\_\_\_ [date, time] in \_\_\_\_\_ [Courtroom No., full address]. The purpose of this hearing is to decide if the proposed settlement is fair and reasonable and if the class members have been adequately represented by the Plaintiffs and their attorneys. Any class member who wishes to appear at the hearing or to object to

the proposed settlement may do so in the manner set forth in the next section of this Notice, "Your Options."

**V. YOUR OPTIONS**

If you meet the qualifications stated in the first paragraph of this Notice, you may appear in this action through your own attorney or Mr. Waterman, although retention of an attorney is not required for you to participate in the settlement. If you chose to appear in this action through your own attorney other than Mr. Waterman, **your attorney must file a written notice of entry of appearance not less than 20 days before \_\_\_\_\_ [insert the date of the hearing] with the Clerk of District Court of Montana, and must also mail a copy of the written notice to the attorneys of record for the Plaintiffs and Defendants.** The addresses for the Clerk of Court and for the attorneys of record are listed at the end of this Notice.

If you meet the qualifications stated in the first paragraph of this Notice, and you have objections to the proposed settlement, you may object to the proposed settlement only as follows:

1. You must file your objections and comments in writing by mailing them to each of the addresses listed below. Your objections and comments must contain the title and docket number of the case as follows: Sandy L. et. al v. Joan Miles, Cause No. BDV 2002-558.

Clerk of Court  
First Judicial District  
Lewis and Clark County  
228 Broadway Street  
Helena, MT 59601-4263

Mr. Ronald F. Waterman  
Counsel of Record for the Plaintiffs  
Gough, Shannahan, Johnson & Waterman  
33 S. Last Chance Gulch  
P.O. Box 1715  
Helena, MT 59624

Ms. Katherine J. Orr  
Assistant Attorney General  
Counsel of Record for Defendants  
1712 Ninth Avenue  
P.O. Box 201440  
Helena, MT 59620-1440

2. Your written comments must include a statement of why you believe the settlement applies to you and why you object to the settlement.

3. **Your written objections and comments must be received by the Clerk of Court not later than 20 days before \_\_\_\_\_ [insert the date of the hearing].**

If you file written objections on time, you or your attorney may also appear at the hearing to object to the settlement. Your written objections will be considered by the parties and the Court even if you are not present at the hearing.

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CLERK OF COURT  
First Judicial District of Montana  
Lewis and Clark County

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DATE