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14 UNITED STATES DISTRICT COURT
15 DISTRICT OF ARIZONA

16 Aita Darjee on her own behalf and on
17 behalf of her minor child N. D.; and Alma
Sanchez Haro on behalf of themselves and
18 all others similarly situated,

19 Plaintiffs,

20 v.

21 Thomas Betlach, Director of the Arizona
Health Care Cost Containment System, in
22 his official capacity,

23 Defendant.
24

No. CV 16-00489 TUC-RM (DTF)

**PLAINTIFFS' REPLY IN FURTHER
SUPPORT OF MOTION FOR CLASS
CERTIFICATION**

25 Plaintiffs submit this Reply in Further Support of their Motion for Class
26 Certification. As fully discussed in Plaintiffs' Memorandum in Support of Motion for
27 Class Certifications, certified classes are common in Medicaid cases and one person is
28 sufficient to bring a class case. Much of Defendant's Response is taken from his Motion

1 to Dismiss and is repeated in his Response to Plaintiffs' Motion for Preliminary
2 Injunction. Plaintiffs incorporate their Response to the Motion to Dismiss, Docket No.
3 38, as well as their Reply in Further Support of the Motion for Preliminary Injunction
4 ("Plaintiff's Reply PI Memo.") into this Reply.

5 **I. Plaintiffs Have Standing**

6 The first part of Defendant's Response is a repeat of his claim in his Motion to
7 Dismiss that Plaintiffs do not have standing. Plaintiffs in their Response to the Motion to
8 Dismiss at 11-14, Docket No. 38, explain how both Plaintiffs easily satisfy the three part
9 standing requirements outlined in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61
10 (1992). Plaintiffs incorporate their factual and legal analysis into this Reply.

11 The only thing new is Defendant produces the declaration of Tara Lockner to
12 support his claims. As Plaintiffs will explain in this Reply, and also do in their Plaintiffs'
13 Reply PI Memo., her declaration is based on hearsay, is vague, conflicts with the
14 evidence in the record and is not credible.

15 Defendant gets both Ms. Sanchez Haro's facts and the law wrong. He now claims
16 that there was conflicting evidence in the case file and that is the reason her medical
17 benefits were reduced. Declaration of Tara Lockner ("Lockner Decl."), ¶ 31. Despite
18 what the Arizona Cost Containment Care System ("AHCCCS") now claims are
19 conflicting immigration status information in prior years (2010, 2012, 2014 and 2015) by
20 Plaintiff Sanchez Haro, she was repeatedly found eligible for and received full-scope
21 AHCCCS during each of those years and was found eligible for food stamps in each prior
22 year and again in 2016. Declaration of Alma Sanchez Haro ("Sanchez Haro Decl."), ¶¶
23 1-5 and 9, Docket No. 11. AHCCCS appears to be going back into her case file to search
24 for any inconsistencies that, if they occurred, no one found significant at the time but that
25 it now tries to use to justify its improper reduction in benefits. There was no new
26 information or documents for Ms. Sanchez Haro to produce in 2016. Years earlier, Ms.
27 Sanchez Haro's immigration attorney had produced numerous documents that Ms.
28 Sanchez Haro entered the U.S. before 1996 and had continued to live in the U.S. that

1 were in her case file. Second Declaration of Ellen Sue Katz (“Katz Decl.”) ¶ 5, Exh. D,
2 at 2-3. Nor was there a need for a “hand written verification of when her battered alien
3 status was granted” because AHCCCS had a copy of the approval notice in its case file.
4 *Id.* at 1. Moreover, she became a legal permanent resident (“LPR”) prior to her
5 recertification in 2015. Nothing new happened in 2016. Had AHCCCS utilized the *ex*
6 *parte* process it would have been able to see she was an LPR, with prior battered woman
7 status and had entered the U.S. before 1996. This information was in the AHCCCS case
8 file, was in her food stamp file and she continued to be found eligible for food stamps.
9 Compl. ¶¶ 72-77; Sanchez Haro Decl. ¶ 9.

10 Because AHCCCS reduced her medical benefits to emergency only, Ms. Sanchez
11 Haro suffered emotional and physical harm cause by the reduction of her medical
12 benefits and inability to see doctor and get her prescriptions. *Id.* ¶¶ 10-22. After the
13 Complaint was filed, her pharmacy refused to fill her prescriptions without payment and
14 she ran out of her medications and became very sick. Second Declaration of Alma
15 Sanchez Haro (“Second Sanchez Haro Decl.”) ¶ 9-11, Docket No. 33. Now she worries
16 that she like others will have her medical benefits reduced again. *Id.* ¶ 13.¹

17 Defendant fails to cite one case where beneficiaries in a public benefits program
18 when the Complaint was filed and who continued to be beneficiaries/participants at the
19 class certification stage did not have standing. Instead, he again cites *Slayman v. FedEx*
20 *Ground Package System, Inc.*, 765 F.3d 1033 (9th Cir. 2014). In *Slayman*, the court
21 looked to see if any plaintiffs worked for the employer when the case was filed to
22 determine standing to seek injunctive and declaratory relief and to see if any employee
23 continued to work for the employer after the case was filed to seek prospective relief. *Id.*
24 at 1047-48. In this case, both Plaintiffs received AHCCCS when the Complaint was filed
25 and continue to receive AHCCCS today. That should be the end of the inquiry.
26 Moreover, Plaintiffs addressed the exception to mootness for matters that are capable of

27 ¹ Plaintiffs’ Reply PI Memo. at 9 addresses the inconsistencies of Ms. Lockner’s
28 statement for Plaintiff Darjee and Class Member Nyirandekeyaho and is incorporated
into this Reply.

1 repetition yet evading review in their Response to Defendant’s Motion to Dismiss at 15-
2 17, Docket No. 38, and incorporate their factual and legal argument into this Reply.

3 Without any legal authority Defendant repeats his suggestion that victims of his
4 unlawful recertifications and defective notice have an adequate remedy by filing an
5 appeal. The Ninth Circuit has rejected such a claim in a similar public benefits class
6 case. *K.W. v. Armstrong*, 789 F.3d 962, 973-74 (9th Cir. 2015) (“It would be illogical if
7 the availability of a hearing deprived the Plaintiffs of their right to receive the notice they
8 need to challenge benefits reductions at the hearing.”).

9 Defendant repeats his suggestion that his current review process after the
10 improper reductions have occurred is sufficient even if the Court is not informed about
11 any of the particulars; and that Ms. Sanchez Haro’s benefits were restored because of his
12 “on-going review.” First, AHCCCS has failed to explain what its review process entails
13 and how it is sufficient. Second, Ms. Sanchez Haro’s case shows that the purported
14 review process is not working. AHCCCS informed her in a notice dated April 12, 2016,
15 that her medical benefits would be reduced. Lockner Decl., Exh. C. This litigation was
16 filed on July 22, and Defendant was served on July 27, 15 weeks after her benefits were
17 reduced. Docket No. 21. During this time period, either AHCCCS did not review her
18 case at all, or reviewed it and concluded she was not eligible. Either fact pattern supports
19 the need for class certification in this case. Ms. Lockner’s declaration does not give dates
20 and is vague concerning any review AHCCCS conducted of Ms. Sanchez Haro’s 2016
21 recertification. Lockner Decl. ¶ 31. As shown above, Ms. Sanchez Haro’s case was not
22 complicated and AHCCCS had all the information it needed in its files to properly
23 recertify her benefits.

24 **II. The Class Definition is Not Vague, Indefinite, Overbroad and Would Not**
25 **Make the Class Unmanageable**

26 Plaintiffs seek the following class definition:

27 All immigrant residents of Arizona eligible for full-scope
28 AHCCCS benefits who, on or after January 1, 2015, have
been or will be required to recertify their eligibility for

1 AHCCCS and whose benefits have been or will be
2 improperly reduced from full-scope AHCCCS to emergency-
3 only AHCCCS

4 For Defendant's vagueness challenge, he claims with no support that "improperly
5 reduced" could mean a reduction without merit or a reduction without proper notice.
6 This is not vague because the 2 groups are the same. Defendant claims he sent the
7 defective notice to all immigrants whose medical benefits were reduced to emergency-
8 only benefits. Lockner Decl. ¶¶ 30-32, Exhs. B, C, and D.

9 He also claims the class definition will encompass persons who had their benefits
10 restored and those whose cases Defendant claims to have reviewed and found ineligible.
11 For the first group, they continue to be subject to both future recertifications and the
12 defective eligibility notice. For the second group, Defendant has never explained to
13 Plaintiffs' counsel or to this Court what the review process entails; what he looks for and
14 what he thought warranted or did not warrant reinstatement. Certainly, Ms. Lockner's
15 declaration provides no specifics beyond the bare statement that the cases were reviewed.
16 Lockner Decl., ¶¶ 16, 19.

17 In addition, AHCCCS in an October 20, 2015, news flash concerning the improper
18 reductions of immigrant benefits, admitted that: "It is very rare for a customer to change
19 from full AHCCCS Medical Assistance to FES [emergency only services]." Lockner
20 Decl, Exh. E.² Plaintiffs' immigration statuses had not changed in the prior year yet
21 AHCCCS improperly reduced their benefits. Compl. ¶¶ 56-57, 72-73. In the October 20,
22 2015, news flash, AHCCCS admitted that staff may need to look at older applications to
23 determine immigration status and that if a "customer has declared a different status (like
24 "other") than on a previous application, the customer may be incorrectly screening for
25 [emergency services]."

26
27 ² Ms. Lockner's declaration references several documents. For the news broadcasts,
28 AHCCCS fails to provide a website where these documents are located and available to
the public or any explanation of how these documents were disseminated to DES staff.

1 Defendant does not cite to any Medicaid or public benefits case where class
2 certification was denied because the class definition was unmanageable. He cites two
3 cases in support of his claim that Plaintiffs' proposed class definition is unmanageable
4 but neither is helpful nor relevant to the Court's decision. *Bledsoe v. Combs*, 2000 WL
5 681094 (S.D. Ind. 2000), was a Rule 23(b)(3) case for damages for unconstitutional strip
6 searches in a county jail. In order to conduct a lawful strip search the jail personnel
7 needed reasonable suspicion. The court concluded that to determine if there was
8 reasonable suspicion that the person had some hidden weapon, drugs or other contraband
9 could only be determined by having a hearing on each person's arrest and detention. at 5.
10 In this case, because Plaintiffs and the putative class previously were found eligible for
11 full-scope AHCCCS, it will be very easy to identify the class and no hearing is needed.

12 In *Jamie S. v. Milwaukee Public Schools*, 668 F.3d 481 (7th Cir. 2012), the court
13 reversed class certification that was comprised of students eligible for special education
14 services who "were not identified as potentially eligible for services, not timely referred
15 for evaluation after identification, not timely evaluated after referral, not evaluated in a
16 properly constituted IEP meeting, or whose parents did not (for whatever reason) attend
17 an otherwise proper IEP meeting." *Id.* at 494. Unlike in *Jamie S.* where there were so
18 many factual variations and variables on how a student could be a class member, in this
19 case, the class can be easily identified by simply looking to see if the person was an
20 immigrant and previously on full AHCCCS and reduced to emergency-only AHCCCS.
21 The above cases have absolutely nothing in common with this case.

22 The proposed class in this case is very discrete. AHCCCS can easily find all the
23 immigrant class members who were found eligible for full-scope medical benefits and
24 reduced to emergency only. As he conceded months before this litigation was filed, "It is
25 very rare for a customer to change from full AHCCCS Medical Assistance to FES
26 [emergency only services]." Lockner Decl., Exh. E.

27 Defendant objects to the class certification of immigrants who received the
28 defective notice and claims this is a "wider swath." As Plaintiffs understand Defendant's

1 practices, he claims he sent the defective notice concerning eligibility for emergency-only
2 services to each immigrant reduced to emergency-only medical services. Thus, the 2
3 groups are the same.

4 Defendant is correct that Plaintiffs request that the Court order Defendant to
5 reinstate to full-scope medical benefits those persons who received the defective notice.
6 The Ninth Circuit recently granted this type of injunctive relief in a similar public
7 benefits case. *K.W.*, 789 F.3d at 798. Defendant can review those cases under some
8 judicially sanctioned process.

9 In addition, Defendant claims Plaintiffs have not alleged that anyone whose case
10 AHCCCS examined and found ineligible should have been found eligible. Defendant has
11 never articulated its process for the review, Second Katz Decl. ¶ 4, and Ms. Lockner
12 provides no specifics. Lockner Decl., ¶¶ 16, 26. Neither this Court nor Plaintiffs know
13 how AHCCCS conducted its case reviews.

14 **III. Plaintiffs Meet Numerosity**

15 Plaintiffs claim numerosity requirement is determined both by the numbers of
16 persons affected and the impracticability of joinder because of geography, inability to sue,
17 request for injunction and declaratory relief, and characteristics of the class such as low
18 income. Plaintiffs' Reply PI Memo. at 3-5. Defendant claims that Plaintiffs have only
19 named three persons harmed. Only one harmed person is required to seek class
20 certification. Rule 23(a) of the Federal Rules of Civil Procedure. Defendant concedes
21 thousands of person have had their medical benefits improperly reduced. He does not
22 dispute that the number of persons improperly reduced is about 60 per month,
23 Defendant's Response to Motion for Preliminary Injunction at 8, and he does not dispute
24 that the persons harmed are low income, have language and cultural barriers and are
25 geographically dispersed throughout the state.

26 With no legal support, Defendant repeats again that if he reviews cases after the
27 improper reductions in benefits occur and then corrects the improper reductions in the
28 future after the persons have not had medical care for weeks if not months, than these

1 persons are not class members. They certainly are. They have been harmed by
2 Defendant's policies and practices and without class certification and an injunction may
3 be harmed in the future. Defendant fails to comprehend that Plaintiffs are entitled to and
4 seek a remedy that stops these improper reductions and defective notices. Plaintiffs claim
5 it is Defendant's obligation to process the recertifications pursuant to the reasonable
6 promptness standard and use lawful notices.

7 **IV. Plaintiffs Establish Commonality**

8 **A. Defendant's Recertification Process**

9 Plaintiffs have shown that Plaintiffs and the class have suffered the same injury,
10 deprivation of medical benefits and receipt of a defective notice. Defendant claims there
11 may be commonality at the time AHCCCS determined there was a computer error. His
12 restricted notion of reasonable promptness is unsupported. He again resorts to claims that
13 some errors are caused by incorrect information from recipients, conflicting evidence and
14 human errors by caseworkers. Def. Resp at 9. Defendant makes the unsupported and
15 self-serving factual claim that only he knows the "reasons for the errors that have
16 occurred in Plaintiffs' case, and they have nothing to do with an unlawful policy or
17 practice." *Id.* at 10.

18 He relies on *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 978 (9th Cir. 2011), to
19 claim that there is no commonality in this case. *Ellis* was a nationwide class case
20 challenging the failure to promote women to general manager positions as sex
21 discrimination. The court concluded at the class certification stage the court was not
22 required to resolve factual disputes concerning discrimination but was required to
23 determine if there was a claimed common pattern or practice in evaluating commonality.
24 *Id.* at 982. Defendant then makes the unsupported leap that the errors in the challenged
25 immigration recertification process do not have a common cause and that an injunction
26 would not prevent the erroneous determinations. Def. Resp. at 10. Defendant is wrong.

27 Plaintiffs and the putative class previously were found to be eligible for full-scope
28 medical benefits and they continued to be eligible for medical benefits and food stamps

1 but only received food stamps that are worked in a different computer system, AZTECS,
2 by DES caseworkers. Thus, Plaintiffs claim that AHCCCS is not making recertification
3 decisions in accordance with the reasonable promptness requirements and utilizing the *ex*
4 *parte* process as required by the Medicaid Act to reduce or eliminate errors.

5 Defendant's argument is these errors cannot be prevented in the first instance, he
6 may correct them at some point in the future, the harmed immigrants who often have
7 language or cultural barriers to maneuvering the AHCCCS system can file appeals, and if
8 their case is fixed in the future, that makes everything fine. It does not.

9 Ms. Lockner's Declaration is vague. She never states AHCCCS is reviewing
10 every case. *Compare* Lockner Decl. ¶ 16 with ¶ 19. She never states when the reviews
11 on the cases changed from full-scope to emergency only medical benefits after January
12 2016 began and occurred. Plaintiffs claim Defendant does not use the *ex parte* process.
13 Ms. Lockner does not say AHCCCS does. She says nothing about the *ex parte*
14 requirement. Plaintiffs claim repeat applications are not required. Ms. Lockner admits
15 AHCCCS requires repeat applications. *See* Lockner Decl. ¶ 31, noting all the
16 applications plaintiff Sanchez Haro had to fill out. Plaintiffs state AHCCCS has the
17 person's immigration status information and immigration number yet asks for this
18 information repeatedly. Ms. Lockner claims policy does not allow the caseworker to ask
19 about immigration status and the immigration number when the information is in the file.
20 *Id.* ¶ 26. But that is not what the April 19, 2016, AHCCCS news flash states. Lockner
21 Decl., Exh. F. The process starts with an interview and a request for immigration
22 information. Both Plaintiffs state they provided their alien number and their immigration
23 status had not changed. Declaration of Aita Darjee ("Darjee Decl."), ¶ 5, Docket No. 12;
24 Declaration of Alma Sanchez Haro ("Sanchez Haro Decl.") ¶ 2, Docket No. 11. Finally,
25 Plaintiffs claim they continued to be eligible for food stamps. Ms. Lockner does not deny
26 this and does not explain why food stamp cases worked in the older AZTECS system find
27 the immigrants eligible for food stamps but they are not found eligible in HEAPlus for
28 medical coverage. As explained in section I, page 4, what happened to Plaintiff Sanchez

1 Haro shows the inadequacy of Defendant's current practices. Plaintiffs have established
2 commonality for this claim.

3 **B. Defendant's Eligibility Notices**

4 Plaintiffs in their Reply PI Memo. at 14-18 and their Response to the Motion to
5 Dismiss at 8-11, in detail explain the factual and legal deficiencies in the Notices.
6 Defendant without any factual or legal support ignores each issue and instead focuses on
7 whether each Plaintiff states she received the notice. While AHCCCS continues to claim
8 the notice is not defective, Ms. Lockner concedes Defendant is attempting to make the
9 changes Plaintiffs requests to remedy the defects. Lockner Decl. ¶ 27.³ Defendant claims
10 he sent each notice to the Plaintiffs and putative class members and this satisfies
11 commonality. Plaintiffs seek an order that Defendant cannot use the defective eligibility
12 notice. The issues in this case are Defendant's conduct. Defendant has not ceased the
13 improper processing of immigrant recertifications or using the defective notices of
14 eligibility. Plaintiffs have established commonality for this claim.

15 Finally, Defendant asserts that Plaintiffs have not identified anyone whose case
16 was reviewed who was eligible for full-scope benefits but Defendant found them
17 ineligible. These persons are part of the class. Defendant has not informed Plaintiffs'
18 counsel or this Court what steps he took in the case review.

19 **V. Plaintiffs Meet Typicality**

20 Plaintiffs have establish the requisite facts for typicality on both their claims.
21 Defendant repeats his claims concerning commonality in his objection to typicality.
22 Plaintiffs relies on her comments above as well. Certainly, Plaintiffs have shown the
23 similar injuries caused by Defendant's conduct from both the reasonable promptness and
24 the defective notice claims and that an injunction will provide them relief.

25
26 ³ Ms. Lockner makes incorrect assertions about Title VI of the Civil Rights Act of
27 1964 requirements for the translation of eligibility notices. Lockner Decl. ¶ 28. Federal
28 guidance looks at either the number of individuals or the percentage of individuals that
speak a language other than English, whichever is less. LEP Guidance for HHS
Recipients. 68 FR 153, pages 47311-47323 (Aug. 8, 2003) found at www.lep.gov.

1 **VI. Plaintiffs Meet Adequacy of Representation**

2 Defendant concedes Plaintiffs' counsel are competent. While the Ninth Circuit
3 "does not favor denial of class certification based on speculative conflicts." *Cummings v.*
4 *Connell*, 316 F.3d 886, 896 (9th Cir. 2003), with no legal authority, he speculates they
5 have a conflict with the class because AHCCCS would fix any case brought to its
6 attention. What he omits is that few victims find their way to an attorney. He apparently
7 wants this Court to sanction his current process where vulnerable immigrants are
8 improperly reduced to emergency-only medical services and then have to wait for months
9 to have their cases reviewed in the hopes that AHCCCS will agree an error was made.
10 He also speculates counsel has a conflict with those class members who have had their
11 full medical benefits restored. There is no conflict and Plaintiffs seek to enjoin
12 Defendant's recertifications until he has a fully compliant process in place and is using a
13 lawful eligibility notice.

14 Finally, Defendant's repeats his incorrect claim there is no injury to the named
15 Plaintiffs and they are not adequate representatives. He again relies on *Ellis*, 657 F.3d at
16 978, but as he concedes, the plaintiffs in that case were no longer employed by the
17 employer, unlike Plaintiffs who continue to be recipients of AHCCCS and continue to be
18 subject to the challenged policies and defective eligibility notice.

19 **VII. Plaintiffs Meet the Requirements of Rule 23(b)(2)**

20 Defendant's claims in this section of his Response are repeats of the claims he
21 makes elsewhere and Plaintiffs incorporate their factual and legal analysis in this section.

22 **Conclusion**

23 For all the reasons above, those stated in the Motion and Memorandum, as well as
24 those incorporated into this Reply, this Court should certify the class as requested and
25 appoint Plaintiffs' attorneys as class counsel.

26 Respectfully submitted this 19th day of September 2016.

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NATIONAL HEALTH LAW PROGRAM
WILLIAM E. MORRIS INSTITUTE FOR
JUSTICE

By /s/ Ellen Sue Katz
Ellen Sue Katz

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of September 2016, I caused the foregoing document to be electronically transmitted to the Clerk's Office using the CM/ECF System for filing and transmittal to the following CM/ECF Registrants:

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