

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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HARRY DAVIS; RITA-MARIE GEARY;  
PATTY POOLE; and ROBERTA  
WALLACH, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

-vs-

**ANSWER**  
**JURY TRIAL DEMANDED**

12-CV-6134 CJS

NIRAV SHAH, individually and in his official  
capacity as Commissioner of the  
New York State Department of Health,

Defendant.

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Defendant, NIRAV SHAH, individually and in his official capacity as  
Commissioner of the New York State Department of Health (hereinafter  
"Commissioner") by his attorney, Eric T. Schneiderman, Attorney General of the  
State of New York, J. Richard Benitez, Assistant Attorney General, of counsel,  
for an answer to the Complaint, herein alleges:

1. Denies the allegations of the complaint which allege in any  
manner that the action(s) or inaction(s) of the defendant resulted in a deprivation  
of the plaintiff's constitutional rights.
2. Denies the commission or awareness of, or responsibility for,  
any acts of omission or commission relative to plaintiff's allegations constituting a  
violation of any rule, regulation, directive, policy, or statute of the State of New  
York, or the United States, or the Constitution of either, which would confer  
jurisdiction upon this Court pursuant to 28 U.S.C. §1343.
3. Denies plaintiff has alleged facts, actions, occurrences, or  
omissions sufficient to establish a claim for equitable or monetary relief, or a

cause of action against the defendant pursuant to 42 U.S.C. §1983.

4. Denies each and every other allegation of the complaint not herein admitted, denied, or otherwise controverted.

**AS TO "PRELIMINARY STATEMENT"**

5. Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13 are statements of Plaintiff's claim and argument, as such, requires no response. To the extent that a response is required, Defendant Commissioner denies that he deprived Plaintiffs of any rights or that Plaintiffs are entitled to any relief based on the allegations of their complaint.

**AS TO "JURISDICTION AND VENUE"**

6. Paragraphs 14, 15, and 16, are statements purporting to invoke the jurisdiction of this Court and, as such, require no response. To the extent that a response is required, Defendant Commissioner denies that he engaged in any conduct that would invoke the jurisdiction of this Court or entitle Plaintiffs to any relief based on the allegations of the complaint.

**AS TO "PARTIES"**

7. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraphs 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, and 27; this shall have the same effect as a denial pursuant to Rule 8(b)(5).

**AS TO "STATUTORY AND REGULATORY FRAMEWORK"**

8. Denies the characterization of the allegations contained in paragraphs number 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, and 57 of the complaint, insofar as the legal references and statutory/regulatory enactments are of public record and speak for themselves, and denies any other allegation beyond the public record.

**AS TO "STATEMENT OF FACTS"**

9. Denies the characterization of the allegations contained in paragraphs number 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, and 70 of the complaint, insofar as the legal references and statutory/regulatory enactments are public information and speak for themselves, and denies any other allegation beyond the public record.

10. Denies knowledge or information sufficient to form a belief as to the truth or falsity of the allegations contained in paragraphs 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, and 150; this shall have the same effect as a denial pursuant to Rule 8(b)(5).

**AS TO "CLAIMS FOR RELIEF"**

11. Paragraphs 151, 152, 153, 154, 155, 156, 157, 158, 159,

160, 161, 162, 163, 164, 165, 166, 167, 168, and 169 are statements purporting to support relief from the Court based on legal argument and, as such, require no response. To the extent that a response is required, Defendant Commissioner denies that he engaged in any conduct that would invoke the jurisdiction of this Court or entitle Plaintiff to any relief based on the allegations of the complaint.

**AS TO "REQUEST FOR RELIEF"**

12. Paragraphs A, B, C (including subparts), D, E, F and G are statements purporting to support relief from the Court and, as such, require no response. To the extent that a response is required, Defendant Commissioner denies that he engaged in any conduct that would invoke the jurisdiction of this Court or entitle Plaintiff to any relief based on the allegations of the complaint.

**AS AND FOR A FIRST, SEPARATE AND COMPLETE AFFIRMATIVE DEFENSE, DEFENDANT ALLEGES:**

Upon information and belief, the complaint fails, in whole or in part, to state a claim upon which relief can be granted.

Cited Medicaid provisions do not provide for a right of action pursuant to either § 1983 or the "supremacy clause" of the U.S. Constitution. See, *inter alia*, Douglas v. Independent Living Center of Southern California, Inc., 132 S.Ct. 1204, 1212, 2012 WL 555204, 8 (U.S.) (U.S.,2012) (Dissent) ("Indeed, to say that there is a federal statutory right enforceable under the Supremacy Clause, when there is no such right under the pertinent statute itself, would effect a complete end-run around this Court's implied right of action and 42 U.S.C. § 1983 jurisprudence.")

**AS AND FOR A SECOND, SEPARATE AND  
COMPLETE AFFIRMATIVE DEFENSE,  
DEFENDANT ALLEGES:**

Upon information and belief, this action is barred, in whole or in part, by qualified immunity, sovereign immunity and/or absolute immunity.

**AS AND FOR A THIRD, SEPARATE AND  
COMPLETE AFFIRMATIVE DEFENSE,  
DEFENDANT ALLEGES:**

Upon information and belief, this action is barred, in whole or in part, by the applicable statutes of limitation.

**AS AND FOR A FOURTH, SEPARATE AND  
COMPLETE AFFIRMATIVE DEFENSE,  
DEFENDANT ALLEGES:**

Upon information and belief, there can be no procedural due process violation when state law provides adequate procedural remedies and the plaintiffs have not availed themselves of those remedies.

**AS AND FOR A FIFTH, SEPARATE AND  
COMPLETE AFFIRMATIVE DEFENSE,  
DEFENDANT ALLEGES:**

Upon information and belief, the Court lacks subject matter jurisdiction, in whole or in part, over this matter.

**AS AND FOR A SIXTH, SEPARATE AND  
COMPLETE AFFIRMATIVE DEFENSE,  
DEFENDANT ALLEGES:**

Upon information and belief, no personal jurisdiction has been acquired over the defendant.

**AS AND FOR A SEVENTH, SEPARATE AND  
COMPLETE AFFIRMATIVE DEFENSE,  
DEFENDANT ALLEGES:**

Upon information and belief, the accommodations requested by the proposed class of plaintiffs would impose an undue hardship on the public fisc.

WHEREFORE, defendant prays that judgment be entered dismissing the complaint in all respects and that defendant be awarded reasonable costs and attorneys' fees and for such other and further relief as may be just, proper, and equitable.

Dated: April 19, 2012  
Rochester, New York

ERIC T. SCHNEIDERMAN  
Attorney General of the State of New York  
*Attorney for Defendant Commissioner Shah*

/s/ J. Richard Benitez  
J. RICHARD BENITEZ  
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CERTIFICATE OF SERVICE

I certify that on April 19, 2012, I electronically filed the foregoing Answer, with the Clerk of the District Court using CM/ECF system, which sent notification of such filing to the following:

1. Bryan D. Hetherington: bhetherington@empirejustice.org
2. Geoffrey A. Hale: ghale@empirejustice.org
3. Jonathan Feldman: jfeldman@empirejustice.org

And, I hereby certify that I have mailed, by the United States Postal Service, the document to the following non-CM/ECF participant(s):

1. NA

ERIC T. SCHNEIDERMAN  
Attorney General of the State of New York  
*Attorney for Defendant Commissioner Shah*

/s/ J. Richard Benitez  
J. RICHARD BENITEZ  
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