**IN THE UNITED STATES DISTRICT COURT**
**MIDDLE DISTRICT OF FLORIDA**
**JACKSONVILLE DIVISION**

CHIANNE D., *et al.*,

Plaintiffs,

Case No. 3:23-cv-00985-MMH-LLL

v.

JASON WEIDA, in his official capacity as Secretary for the Florida Agency for Health Care Administration, and SHEVAUN HARRIS, in her official capacity as Secretary for the Florida Department of Children and Families,

Defendants.
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**SECRETARY WEIDA AND SECRETARY HARRIS' RESPONSE TO PLAINTIFFS' MOTION FOR CLASSWIDE PRELIMINARY INJUNCTION**

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## INTRODUCTION

A classwide preliminary injunction is inappropriate when the only evidence this Court has to go on is a handful of reason codes, plucked from a handful of notices, that do not begin to tell the whole story about Plaintiffs—let alone about other, unidentified Medicaid recipients in Florida. Even if class certification were appropriate despite the vast diversity of circumstances between class members, Plaintiffs are not entitled to the drastic remedy of a classwide preliminary injunction that requires Florida suddenly to halt its federally mandated re-determination process and reinstate Medicaid coverage for an unknown number of recipients who have already been determined to be ineligible.

*First*, Plaintiffs are unlikely to succeed on the merits. The Eleventh Circuit has squarely rejected Plaintiffs' due-process arguments. Time and again, courts have held that standardized notices are sufficient; that due process is judged against the totality of available information, not a single notice (let alone a single "reason code" in a notice); that subjective confusion is irrelevant to the due-process analysis; that actual knowledge defeats a due-process claim; and that all recipients of notice carry a burden of inquiry and diligence. With their bedrock arguments off the table, Plaintiffs' due-process claim is destined to fail.

For similar reasons, Plaintiffs have not clearly established a substantial likelihood of success on the merits of their Medicaid Act claim. DCF's notices include ample information about fair hearings and other resources where recipients can learn more about their rights. And reason codes in a vacuum cannot establish a classwide Medicaid Act violation. This Court cannot assess DCF's compliance with regulatory requirements on

a classwide basis by looking at a list of 86 different reason codes, divorced from any context.

This context is critical to both of Plaintiffs' claims. But Plaintiffs did not disclose to this Court the entire universe of information and communications available to them, and certainly not as to other class members. The communications with and information provided to each Medicaid recipient differs widely on a case-by-case basis. *See* ECF No. 38 at 13–24. But even looking in isolation at what Plaintiffs characterize as "template" notices, Plaintiffs omit key information that contradicts their own claims. For example, the notices provide a post-office box; provide the call center phone number; provide the website at which recipients can find a listing of DCF office addresses; offer fair hearings and discloses Florida's generous 90-day period to request fair hearings; explain that benefits will continue if a fair hearing requested before the effective date of the proposed action; provide information about local community partner agencies that help recipients access services; provide information about other public-assistance programs; and even direct recipients to free legal services (and a call center phone number for that purpose).

*Second*, preliminary injunctive relief is improper because Plaintiffs have not clearly proven that the class, as a whole, will suffer irreparable injury in the absence of an injunction. The class is simply too diverse to make this showing. Plaintiffs offer no evidence of the number of class members who claim to be eligible for Medicaid, who do not have other health coverage, who have requested or would request a fair hearing, or whose injuries would be prevented by the injunction Plaintiffs demand. Plaintiffs' concession that they have been aware of the challenged codes for years, and their delay

of many months before filing suit, further weigh against a finding of irreparable injury.

*Third*, the requested injunction harms the public interest because it will require huge expenditures of taxpayer dollars to fund Medicaid services without regard for legal eligibility requirements, will impose a significant administrative burden on DCF that diverts resources from other worthy programs and populations, and would hurl Florida's federally-mandated Medicaid eligibility re-determination process into disarray.

Plaintiffs demand a preliminary injunction—including a disfavored mandatory injunction that does not preserve, but disturbs the status quo—on a classwide basis, and against a State agency. The burden associated with this drastic and extraordinary relief is a heavy one, and Plaintiffs have not come close to carrying it. This Court should deny Plaintiffs' motion.

## LEGAL STANDARD

The grant of a preliminary injunction "is the exception rather than the rule, and plaintiff must clearly carry the burden of persuasion." *United States v. Lambert*, 695 F.2d 536, 539 (11th Cir. 1983). To prevail on a motion for preliminary injunction, a plaintiff must clearly establish that: "(1) it has a substantial likelihood of success on the merits; (2) irreparable injury will be suffered unless the injunction issues; (3) the threatened injury to the movant outweighs whatever damage the proposed injunction may cause the opposing party; and (4) if issued, the injunction would not be adverse to the public interest." *Siegel v. LePore*, 234 F.3d 1163, 1176 (11th Cir. 2000) (en banc). "[W]here the government is the party opposing the preliminary injunction, its interest and harm merge with the public interest." *Swain v. Junior*, 958 F.3d 1081, 1091 (11th Cir. 2020).

## LEGAL ARGUMENT

### I. PLAINTIFFS ARE UNLIKELY TO SUCCEED ON THE MERITS.

#### a. Mandatory Injunctions Are Disfavored and Subject to a Heightened Burden of Proof.

Plaintiffs request two forms of classwide injunctive relief:[1] reinstatement of terminated benefits, and cessation of future redeterminations. ECF No. 3 at 22. The former alters the status quo by seeking to undo actions—eligibility redeterminations and benefits terminations—that have already occurred. But ordinarily, the purpose of a preliminary injunction is to maintain the status quo—not alter it. *Antoine ex rel. I.A. v. Sch. Bd. of Collier Cnty.*, 301 F. Supp. 3d 1195, 1202–03 (M.D. Fla. 2018); *accord Lambert*, 695 F.2d at 539–40 (court's inquiry is "confined to that which might occur in the interval between ruling on the preliminary injunction and trial on the merits"). Plaintiffs' demand to reinstate benefits regardless of eligibility, and to then re-notify those individuals, does not serve this purpose. By design, the requested injunction does not prevent anything from occurring in the interval between now and trial, but requires the unraveling of millions of actions already taken.

An injunction that requires a defendant to affirmatively act—and therefore alters the status quo—is a mandatory injunction, which imposes an even higher burden of

[1] Because Plaintiffs seek only a classwide injunction, certification of a class is a prerequisite to adjudicating Plaintiffs' motion for a classwide preliminary injunction. *E.g.*, *Colonel Fin. Mgmt. Officer v. Austin*, 622 F. Supp. 3d 1187 (M.D. Fla. 2022); *Tugg v. Towey*, 864 F. Supp. 1201 (S.D. Fla. 1994). Defendants oppose class certification for the reasons stated in their response to that motion, ECF No. 38, and incorporate those arguments here.

persuasion on the movant. *E.g.*, *Oscar Ins. Co. of Fla. v. Blue Cross & Blue Shield of Fla., Inc.*, 360 F. Supp. 3d 1278, 1284 (M.D. Fla. 2019); *Antoine*, 301 F. Supp. 3d at 1202–03; *FHR TB, LLC v. TB Isle Resort LP*, 865 F. Supp. 2d 1172, 1192 (S.D. Fla. 2011). A preliminary injunction that maintains the status quo is an extraordinary, drastic remedy that is inappropriate unless movant is "clearly" entitled to relief. *United States v. Jefferson Cnty.*, 720 F.2d 1511, 1519 (11th Cir. 1983). The standard for mandatory injunctions is even more demanding because they are particularly disfavored in this circuit. *Powers v. Sec'y, Fla. Dep't of Corr.*, 691 F. App'x 581, 583 (11th Cir. 2017); *Oscar Ins. Co.*, 360 F. Supp. 3d at 1284. Plaintiffs' burden is further heightened because they seek this extraordinary relief against a state agency in the dispatch of its most central functions. *Gayle v. Meade*, No. 20-21553, 2020 WL 1949737, at *22–23 (M.D. Fla. Apr. 22, 2020); *see also Rizzo v. Goode*, 423 U.S. 362, 378 (1976) (relying on "the principles of federalism which play such an important part in governing the relationship between federal courts and state governments" and reversing district court order that "injected itself by injunctive decree into the internal disciplinary affairs of [a] state agency").

Because it does not maintain the status quo, Plaintiffs' demand to reinstate benefits for already-terminated individuals seeks a disfavored mandatory injunction against the State, subject to a heavy burden of proof that Plaintiffs fail to carry.

**b. The Record Does Not Establish Plaintiffs' or Class Members' Article III Standing.**

Plaintiffs' simultaneous pursuit of class certification and preliminary injunctive relief heightens Plaintiffs' burden to establish the standing of absent class members. In

*Cordoba v. DIRECTV, LLC*, 942 F.3d 1259, 1264 (11th Cir. 2019), the Eleventh Circuit explained that "before any form of relief" can be granted to class members, "the court will have to sort out those plaintiffs who were actually injured from those who were not." While a plaintiff need not typically establish the standing of all absent class members at the class-certification stage, that rule does not apply here, since Plaintiffs are simultaneously seeking classwide injunctive relief. Thus, "the district court will have to determine whether each of the absent class members has standing before they could be granted any relief." *Id*. Under *Cordoba*, this Court must determine the standing of absent class members before *any* relief is granted. Plaintiffs have failed to clearly establish the standing of all putative class members.

As explained in Defendants' class-certification response, the named Plaintiffs lack standing. ECF No. 38 at 4–10. For similar reasons, the circumstances of the putative class members are so diverse and individualized that this Court cannot possibly evaluate their standing at this early juncture. Plaintiffs' cherry-picked, isolated notices do not provide this Court an evidentiary basis to determine whether absent class members are eligible for Medicaid, believe they are eligible for Medicaid, would contest DCF's determination of ineligibility, or even seek continued Medicaid coverage; whether they received multiple notices, or what information those notices contained; the extent to which individual class members received additional communications from DCF or had actual knowledge of their rights; which class members requested fair hearings; and myriad other questions critical to determining whether the notice language that Plaintiffs

challenged caused each and every class member an injury in fact that the proposed injunction would redress.[2] *Id.*

In *Soskin v. Reinertson*, 353 F.3d 1242, 1264 (10th Cir. 2004), the Tenth Circuit criticized analogous deficiencies in a plaintiff's demand for classwide preliminary injunctive relief based on the content of Medicaid notices:

> [T]he record before us does not reveal[] critical information regarding the notices, such as: (1) Which notice went to what people? (2) Under what circumstances was the notice sent? (3) What other information, if any, had previously been provided to the recipients? (4) Were notices other than the seven challenged by Plaintiffs sent to persons to be terminated? This information is essential to an assessment of whether language in a notice is likely to be misleading to those who actually receive it.
>
> This same lack of information also makes it impossible to determine who, if anyone, is likely to suffer injury in the absence of better notice. It would be inappropriate to issue an injunction with respect to all alien Medicaid recipients if only a fraction are receiving improper notice.

The same questions are unanswered in this case. Plaintiffs have not carried their heavy burden to establish, *before* this Court grants relief, which absent class members suffered a concrete injury, traceable to Defendants, and redressable by the injunction that Plaintiffs demand.

Plaintiffs lack standing for additional reasons. A preliminary injunction is not

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[2] Defendants tried to put this information before the Court, but Plaintiffs would not allow it. Plaintiffs refused to provide DCF with unredacted copies of the Notices they filed with their Motions—and that they ask this Court to rely on—so that DCF could investigate the circumstances of those individuals: for example, the content of additional notices, the information communicated to those individuals by phone or email, whether they requested a fair hearing, and so on. Using this information, DCF intended to present this Court with a more complete set of facts on which to base its decision. Instead, Plaintiffs refused DCF's request, choosing instead to hide the ball. *See* Ex. G (email correspondence between counsel).

necessary to redress an imminent, irreparable injury to Plaintiffs, because their Medicaid was already terminated, and they seek to undo that termination and reinstate benefits—hardly a preservation of the status quo. *Antoine*, 301 F. Supp. 3d at 1202 (denying motion mandatory preliminary injunction that would not "freeze the existing situation," but would do "[j]ust the opposite" by forcing defendants to "enroll [plaintiffs] in regular public high school, afford them testing, and provide services . . . while this case continues"). And none of the three named Plaintiffs has standing to obtain prospective injunctive relief halting the re-determination process, because their eligibility has already been re-determined. No Plaintiff faces imminent future re-determination, and therefore no Plaintiff has standing to obtain a classwide injunction stopping future re-determinations. *Prado-Steiman ex rel. Prado v. Bush*, 221 F.3d 1266, 1279–80 (11th Cir. 2000) (at least one named plaintiff must "ha[ve] Article III standing to raise each class subclaim. . . . each claim must be analyzed separately, and a claim cannot be asserted on behalf of a class unless at least one named plaintiff has suffered the injury that gives rise to that claim").

Finally, the proposed injunction extends even beyond members of the class. Plaintiffs ask the Court to halt *all* re-determinations; not merely re-determinations of class members. According to Plaintiffs, the class members are only those who (i) have received or will receive notices that do not use a reason code that references an eligibility factor (subclass A), or (ii) that include the income reason code (subclass B). ECF No. 1 at 6. At its broadest, any injunction must be limited to those class members. *Prado-Steiman*, 221 F.3d at 1279–80. The court cannot prohibit DCF from terminating non-class members—recipients who will receive notices with reason codes that place them

outside the two subclasses. Any extension of relief beyond the class members would defy Article III. *See Lewis v. Casey*, 518 U.S. 343, 349 (1996) (condemning systemwide relief in the absence of cognizable systemwide injuries, explaining that "the distinction between the [the political and judicial branches] would be obliterated if, to invoke intervention of the courts, no actual or imminent harm were needed, but merely the status of being subject to a governmental institution that was not organized or managed properly").

**c. Plaintiffs' Due Process Claim Fails Under Eleventh Circuit Precedent.**

i. Standardized notices satisfy due process.

Plaintiffs' insistence that individualized notices are required to comply with due process is incorrect. Courts have repeatedly rejected that precise argument, holding that standard, non-individualized notice language satisfies due process. In *Adams v. Harris*, 643 F.2d 995, 997 (11th Cir. 1981), the Eleventh Circuit approved notices of denial that used "stock paragraphs which provide standardized reasons for denial" and rejected the argument that due process or Social Security Act regulations required individualized reasons for denial. In *Jordan v. Benefits Review Board of U.S. Department of Labor*, 876 F.2d 1455, 1459 (11th Cir. 1989), the Eleventh Circuit again approved a standardized notice of denial that checked a box indicating which of three eligibility criteria a claimant failed to meet, referred the claimant to an enclosed guide for general information about eligibility, and summarily advised claimants of the right to submit evidence or request a hearing.

The Eleventh Circuit is not alone. In *LeBeau v. Spirito*, 703 F.2d 639, 641, 643 (1st Cir. 1983), the First Circuit denied preliminary injunctive relief in a challenge to notices the court described as "cursory in language and nearly identical." And in *Garrett v. Puett*, 707 F.2d 930, 931 (6th Cir. 1983), the court concluded that form notices informing individuals of a reduction or termination of benefits satisfied due process, rejecting the plaintiffs' argument that "the notices were defective because they did not include the mathematical calculations used by the Department in arriving at the amount" of benefits available to a recipient.

Plaintiffs have not cited a single case that supports their claim that notices of ineligibility must contain individualized information. Neither due process nor Medicaid regulations mandate the recitation of case-by-case, individualized information in notices provided to millions of people.

ii. Personal fair-hearing notice is not required.

Similarly, the Supreme Court and the Eleventh Circuit have repeatedly rejected Plaintiffs' argument that due process requires *any* notice of fair hearing rights. To be sure, DCF's notices plainly advise recipients of their fair-hearing rights. *E.g.*, ECF No. 3-2 at 14 (section titled "Fair Hearings," advising recipients of their right to a hearing, the timeline for requesting a hearing, and directing recipients to free legal services, as well as other resources); ECF No. 3-3 at 13 (same).[3] Plaintiffs' insistence that due process

[3] Plaintiff Chianne D. made the most of this notice by requesting a fair hearing upon receipt of her termination notice. Ex. A, Decl. of K. Sarmiento, ¶¶ 14–18.

requires more—when in fact it requires no personal notice of hearing rights at all—is contrary to binding precedent.

In *City of West Covina v. Perkins*, 525 U.S. 234, 240–42 (1999), the Court held that due process does not require notice of remedies and procedures when publicly-available sources communicate this information. When remedies "are established by published, generally available statue statutes and case law," due process is satisfied. *Id.* The Court found that an individual whose property had been seized was not entitled to personal notice informing him of administrative remedies, reasoning that "[o]nce the property owner is informed that his property has been seized, he can turn to these public sources to learn about the remedial procedures available to him. The [State] need not take other steps to inform him of his options." *Id.* at 241.[4]

The Eleventh Circuit reaffirmed *West Covina* again in *Arrington v. Helms*, 438 F.3d 1336, 1351–52 (11th Cir. 2006), and found notice of the right to and procedures for a hearing compliant with due process where "Alabama's statutes, regulations, and publicly available agency manuals provide custodial parents notice of their right to a hearing and the procedures for obtaining one."

[4] Plaintiffs' heavy reliance on *Memphis Light, Gas, & Water Div. v. Craft*, 436 U.S. 1 (1978), is misplaced for the reasons explained in *West Covina* and by the Eleventh Circuit in *Arrington*. *Memphis Light* stands for the proposition that "notice of procedures for protecting one's property interests may be required when those procedures are arcane and are not set forth in documents accessible to the public," but "it does not support a general rule that notice of remedies and procedures is required." *West Covina*, 525 U.S. at 242.

Here, the public sources are available to Plaintiffs and class members include Florida Statutes, administrative regulations, DCF's website, DCF's call centers, and recipients' personal online ACCESS Florida accounts. Ex. A ¶¶ 4–13; Ex. F, Decl. of T. Palmer, ¶ 2.[5] And of course, the face of the termination notices plainly advises recipients of their right to request a fair hearing in person, in writing, or by telephone. *E.g.*, ECF Nos. 3-2 at 14; 3-3 at 13; 3-4 at 8. Every notice provides the phone number for the call center and informs recipients where on DCF's public website they can find a list of DCF's offices. ECF No. 3-2, 3-3, 3-45; Ex. B., Decl. of A. Pridgeon, ¶¶ 11–15; Ex. C, Decl. of A. Leo, ¶ 2; Ex. D, Decl. of W. Roberts ¶ 31. These sources of fair-hearing information far exceed the requirements of due process under *West Covina* and *Arrington*, and easily satisfy the regulatory requirement to explain "[t]he individual's right to request a local evidentiary hearing if one is available, or a State agency hearing." 42 C.F.R. § 431.210(d)(1).

iii. Reasonable notice is evaluated in totality, not in isolation.

When evaluating a due-process claim, information made available to a plaintiff must be evaluated *in pari materia*—not in a vacuum, not based on a single notice, and certainly not based on a single reason code included in a single notice. Plaintiffs' myopic focus on reason codes cannot support a due-process claim. *See* ECF No. 38 at 13, 16.

[5] The public is very much aware of DCF's call center, which received 10,092,996 calls between April 1, 2023 and August 31, 2023 alone, Ex. F ¶ 2. *See Arrington*, 438 F.3d at 1351 n.15 (noting that a call center received "an average of 505,465 calls per month" when describing sources of information available to plaintiffs asserting a due process claim).

To satisfy due process, "notice must be 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Jordan*, 876 F.2d at 1459 (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950)); *Arrington*, 438 F.3d at 1349–50 (same). Thus, in *Rosen v. Goetz*, 410 F.3d 919, 931 (11th Cir. 2005), the Court evaluated Medicaid termination notices for compliance with due process and with 42 C.F.R. § 431.210—a Medicaid regulation that Plaintiffs also cite in their motion for preliminary injunction, ECF No. 3 at 6–7. The court rejected the plaintiffs' argument that a single notice must fulfill all requirements; rather, the totality of information provided was the relevant consideration. 410 F. 3d at 931 ("[T]he very facts that the plaintiffs claim are missing are supplied by the State through a second letter that follows the Termination Notice and that the Termination Notice itself references and brings to the attention of recipients. . . . Due process does not require 'reasonably calculated' notice to come in just one letter, as opposed to two.").

In *Arrington*, the Eleventh Circuit again affirmed that "myriad forms of notice" satisfy due process, and rejected plaintiffs' due-process claim that focused solely on the contents of a single notice regarding child support payment amounts. 438 F.3d at 1349–51. In finding that the notice afforded to plaintiffs satisfied due process, the court evaluated all sources of information available to the plaintiffs, including the challenged notice; court orders; a payment check stub advising parents of a toll-free, 24-hour telephone hotline and webpage with more information; the opportunity to speak with a child support worker; and the option to call, fax, write, email, or visit an office in-person to obtain

more information. *Id.* at 1350–51. Together with the notice, the court held that these sources "give . . . custodial parents ample information with which to determine whether they have received their full child support payments in a timely manner," and were "reasonably calculated to inform parents of the action . . . taken." *Id.* Thus, the due-process claim failed. *Id.*at 1351.

Critically, an *objective* standard determines whether notice is reasonable. In *Jordan*, the Eleventh Circuit made clear that "[t]he question is *not* whether a particular individual failed to understand the notice but whether the notice is reasonable calculated to apprise intended recipients, *as a whole*, of their rights." 876 F.2d at 1459 (emphases supplied); *Coleman v. Dir.*, *OWCP*, 345 F.3d 861, 865 (11th Cir. 2003) (same, quoting *Jordan*, 876 F.2d at 1459); *accord Arrington*, 438 F.3d at 1352 (quoting *West Covina*, 525 U.S. at 1240) ("[T]he sophistication of the affected individuals and the health and safety implications of the deprivation, standing alone, are not sufficient to impose an affirmative notice obligation on government officials." (cleaned up)). Plaintiffs emphasize their own subjective confusion over certain Medicaid notices, but their individual comprehension is irrelevant since reasonableness is measured by an objective standard.

DCF's communications with a Medicaid recipient are not limited to a single notice or reason code, and Plaintiffs' claims cannot succeed based on an isolated code or notice plucked from a larger universe of communications and information. The Eleventh Circuit rejected this approach in *Rosen* and in *Arrington*. Here, the frequency and substance of communications surrounding termination of Medicaid benefits can differ widely from person to person. Ex. D ¶ 20–31; Ex. E, Decl. of K. Zumaeta, ¶¶ 2–12 *See*

*also* Ex. A ¶¶ 9–13 (describing individualized pre-hearing conferences between DCF and recipients); Ex. C ¶2. Plaintiffs' own circumstances make this plain: their written and oral communications with DCF differed, the basis of their eligibility differed, and Chianne D. even requested a fair hearing. *See* ECF No. 38 at 7–10, 15–19. Moreover, in addition to each recipient's personalized online account, DCF maintains substantial publicly-available information online to apprise individuals of their rights and responsibilities, and to guide individuals to resources. Ex. A ¶¶ 5–7 (describing fair-hearing information available online and through ACCESS); Ex C. ¶¶ 2–3 (describing DCF website and ACCESS Florida system); Ex. D ¶ 31 (describing communications sent through ACCESS). The notice and process available to Medicaid recipients is easily as robust as that approved in *Rosen* and *Arrington*.

Because Plaintiffs' due process challenge is narrowly focused on reason codes, rather than on the totality of information provided and available to individuals whose benefits are terminated, Plaintiffs' claim conflicts with Eleventh Circuit precedent and will not succeed on the merits.

iv. Plaintiffs have a burden to inquire and inform themselves.

Consistent with *West Covina*'s recognition that publicly-available information can apprise individuals of their rights, the Eleventh Circuit has placed a burden of inquiry on individual benefit recipients. In *Jordan*, the court found that a plaintiff "who asserts a special problem of comprehension must take the next step to inquire and make his problem known," and refused to reopen the plaintiff's claim for benefits on due-process grounds when he "made no effort to inquire or otherwise make known his difficulty."

876 F.2d at 1460. In reaching this conclusion, the court cited the Second Circuit's decision in *Soberal-Perez v. Heckler*, 717 F.2d 36, 43 (2d Cir. 1983), which held that "placing a burden of diligence and further inquiry on the part of a non-English-speaking individual served in this country with a notice in English does not violate any principle of due process." Similarly, in *In re Alton*, 837 F.2d 457, 460–61 (11th Cir. 1988), the court found no due-process violation where the plaintiff, though notified of a bankruptcy proceeding, was not notified of the deadline to file a complaint to prevent the discharge of a debt owed to him. The court explained that, if the plaintiff "had made a minimal effort . . . , he would have realized the outside dates for the filing of his complaint." *Id.* at 461. But the plaintiff "made no such effort and cannot now properly complain of the consequences of his inaction." *Id.*; *see also In re Le Ctr. on Fourth, LLC*, No. 19-cv-62199, 2020 WL 12604348, at *3 (S.D. Fla. June 30, 2020), *aff'd*, 17 F.4th 1326 (11th Cir. 2021) ("Once served, the creditor is the one under a duty to inquire; no due process violation exists where the creditor could have protected himself and failed to do so." (emphasis omitted)). Thus, "notice of facts which would incite a person of reasonable prudence to an inquiry under similar circumstances is notice of all the facts which a reasonably diligent inquiry would develop." *Soberal-Perez v. Heckler*, 717 F.2d 36, 43 (2d Cir. 1983) (quoting *Commonwealth v. Olivo*, 337 N.E.2d 904, 909 (Mass. 1975)) (marks omitted).

The challenged notices gave Plaintiffs more than enough information to protect their rights, and their questions could be answered through modest diligence. Chianne D.'s inquiries to DCF resulted in her learning the precise basis for DCF's determination of her and C.D.'s ineligibility and filing a request for a fair hearing. Ex. D ¶¶ 8–19; ECF

No. 38 at 7–10. Plaintiffs' failure to show whether class members exercised their duty of diligent inquiry—and what information that inquiry would have revealed—defeats a classwide claim based on the subjective confusion of two individuals.

Plaintiffs cannot sit back passively, take no steps to inform themselves of their own rights, and then foist liability on the State. The "entire structure of our democratic government rests on the premise that the individual citizen is capable of informing himself about the particular policies that affect his destiny." *Atkins v. Parker*, 472 U.S. 115, 131 (1985). DCF's notices are more than sufficient to "prompt appropriate inquiry if . . . not fully understood," and are therefore compliant. *Id.*

v. Actual knowledge defeats a due process claim.

A plaintiff's actual knowledge of his or her rights defeats any due-process claim. *Jordan*, 876 F.2d at 1460 (noting recipient's actual knowledge of, and participation in, administrative procedures for seeking benefits, and finding no due-process violation). Thus, when an individual has actual knowledge of his or her right to a fair hearing, no due process claim can lie. *Oneida Indian Nation of N.Y. v. Madison Cnty.*, 665 F.3d 408, 436 (2d Cir. 2011) ("Process is not an end in itself, and due process is not offended by requiring a person with actual, timely knowledge of an event that may affect [the person's] right to exercise due diligence and take necessary steps to preserve that right." (internal marks and citations omitted)); *Moreau v. FERC*, 982 F.2d 556, 569 (D.C. Cir. 1993), *overruled on other grounds*, *Allegheny Def. Project v. FERC*, 964 F.3d 1 (D.C. Cir. 2020) ("[T]he Due Process Clause does not require notice where those claiming an entitlement to notice already knew the matters of which they might be notified."); *EEOC v. Pan Am.*

*World Airways, Inc.*, 897 F.2d 1499, 1508 (9th Cir. 1990) ("Actual knowledge of the pendency of an action removes any due process concerns about notice of the litigation."); *Kalme v. W. Va. Bd. of Regents*, 539 F.2d 1346, 1349 (4th Cir. 1976) ("Although the letter did not inform Kalme of his right to demand a hearing, this oversight was not prejudicial, for he already knew of this right and immediately exercised it.").

It is impossible to determine at this stage which putative class members had actual knowledge of the basis for the termination of benefits and the process for requesting a fair hearing. But those class members certainly exist: 4,027 individuals have requested fair hearings related to Medicaid ineligibility since April 2023, Ex. A ¶ 2, and they have no cognizable due-process claim. Indeed, Plaintiff Chianne D. had notice of the basis of DCF's termination of her benefits, Ex. D ¶¶ 2–19, and availed herself of the opportunity to contest DCF's determination through the fair-hearing process, Ex. A ¶¶ 14–18. Her due-process claim—and the claims of all class members like her—must fail as a result of her actual knowledge and her affirmative steps to avail herself and C.D. of available process. Chianne D.'s actual knowledge and invocation of the fair-hearing process demonstrates once again the highly individualized circumstances from recipient to recipient that render classwide injunctive relief inappropriate.

Plaintiffs failed to show that they are individually able to succeed on the merits of their due process claim, much less that the entire class would succeed on their claims. The circumstances of those individuals are not before this Court, and the Court has no evidence on which to base a finding that the entire class's due-process rights have been violated.

**d. Plaintiffs' Medicaid Act Claim is Unlikely to Succeed.**

Like their due process claim, Plaintiffs' Medicaid Act claim—which is founded on a small number of discrete Medicaid regulations—fails for multiple reasons: *first*, the regulations on which Plaintiffs' motion focuses are not actionable under section 1983; *second*, Plaintiffs have not proven that the entire class has sustained a cognizable injury separate and apart from a bare procedural violation; and *third*, even if Plaintiffs could maintain their classwide claim, DCF's notices are legally sufficient.

i. The Medicaid Regulations on Which Plaintiffs Rely Are Not Actionable Under Section 1983.

Plaintiffs argue that DCF's notices violate the Medicaid Act because they do not provide a "clear statement of the specific reasons supporting" the termination of benefits, "do not include an explanation of the right to a hearing, which benefits will continue pending the hearing, and the method for obtaining a hearing," ECF No. 3 at 6–7, including by not advising recipients "how to submit an appeal via online or email options," *id.* at 12. Setting aside the factual inaccuracy of Plaintiffs' position (for example, the plain language advising Plaintiffs of their right to a fair hearing, *e.g.*, ECF No. 3-2 at 14, and the reason for termination, like income, *see* ECF No. 38), the regulations on which Plaintiffs rely (namely, 42 C.F.R. §§ 431.205, 431.206, and 431.210, *see* ECF No. 3 at 6–7) are not enforceable under section 1983.

Administrative regulations are not automatically actionable under section 1983, but only when the regulation "merely fleshes out the content" of a right created by statute. *Kissimmee River Valley Sportsman Ass'n v. City of Lakeland*, 250 F.3d 1324, 1326–27

(11th Cir. 2001). A regulation that "imposes new and 'distinct obligations' not found in the statute itself . . . is too far removed from the Congressional intent to constitute a federal right enforceable under § 1983." *Id.* (marks omitted).

The Eleventh Circuit interprets this rule strictly. Congressional intent is the polestar: to find a regulation privately enforceable, "courts must find that Congress has *unambiguously* conferred federal rights on the plaintiff." *Harris v. James*, 127 F.3d 993, 1010 (11th Cir. 1997) (emphasis in original). When a statute does not dictate the "substance" of a written notice of decision, for example, but merely requires that a decision be in writing, a regulation that dictates the substance of the written decision is not actionable under section 1983. *Yarborough v. Decatur Hous. Auth.*, 931 F.3d 1322, 1325–27 (11th Cir. 2019) (en banc). Similarly, the Eleventh Circuit concluded that a regulation requiring States to provide Medicaid recipients with transportation to Medicaid services did not create a right enforceable under section 1983. *Harris*, 127 F.3d at 1010–12. The court explained that "transportation may be a reasonable means of *ensuring*" that services are provided with reasonable promptness, and that this link alone might sustain the validity of the regulation, but it was not sufficient to "support a conclusion that Congress has unambiguously conferred upon Medicaid recipients a federal right to transportation." *Id.* at 1012.

As in *Harris* and *Yarborough*, the Medicaid Act says nothing about notices, or about the particular information that States must include in their notices. 42 U.S.C. § 1396a(a)(3) requires States to "provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for medical assistance under the

plan is denied or is not acted upon with reasonable promptness."[6] This statute does not even mention notices, let alone dictate the substance of any fair-hearing notice. In fact, no federal statute requires DCF to issue written notices containing specific citations to state law, detailing the circumstances under which benefits continue or are discontinued, or advising recipients that they can submit fair-hearing requests online. These are distinct obligations created in Medicaid regulations—not rights that were "unambiguously conferred" by Congress in the federal Medicaid Act. *Harris*, 127 F. 3d at 1010, 1012.

Thus, the regulations on which Plaintiffs rely are too far removed from the congressional intent to constitute a federal right enforceable under section 1983. A contrary finding would create the absurd result in which DCF has complied with Congress's statutory mandate by fully apprising recipients, like Chianne D., of the opportunity for a fair hearing, but is nevertheless exposed to liability under section 1983 by not checking boxes found nowhere in the statute, *see Yarborough*, 931 F.3d at 1326 ("Ms. Yarborough's case was not a challenge to the Authority's failure to provide a written decision. . . . Thus, even accepting her allegation as true, the hearing officer violated the regulation but not the statute. Her case fails as a result."). The Eleventh Circuit has explicitly rejected this result. *Id.*

ii. Plaintiffs Failed to Establish a Classwide Article III Injury, and Instead Plead Only a Bare Procedural Violation.

Plaintiffs' Medicaid Act claim is also unlikely to succeed because Plaintiffs have

[6] Plaintiffs do not allege that Florida fails to provide an opportunity for fair hearings to individuals determined to be ineligible for Medicaid.

not established an injury-in-fact sufficient to satisfy Article III. In *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341–42 (2016), the Supreme Court held that "a bare procedural violation" is not a concrete harm sufficient to confer standing and that, to establish standing, a plaintiff must establish a cognizable injury traceable to the violation of a procedural requirement. *See also Doe v. Univ. of Mich*, 78 F.4th 929, 944 (6th Cir. 2023) ("The deprivation of process alone, without some concrete harm flowing from that deprivation, cannot constitute an injury that conveys standing.").

Here, Plaintiffs allege a bare procedural violation, untethered to any injury to themselves or class members. Even if Plaintiffs were correct that *some* of DCF's notices omit certain information—like a citation to a state regulation or statute, or an explanation of the circumstances under which benefits continue pending a hearing—no Plaintiff alleges that *these* omissions caused the termination of their Medicaid benefits. Plenty of procedural violations "may result in no harm" at all and thus fail to confer standing. *Spokeo*, 578 U.S. at 342. The present record does not tell this Court which class members received notices that do not comply with all technical aspects of Medicaid regulations; of those, which suffered a concrete injury because of the alleged omission of information specified in the regulations; or how many class members suffered *no* harm as a result of these alleged omissions, akin to the plaintiff in *Spokeo*.

Plaintiffs are a perfect example of this last category of class members who were not harmed by the technical deficiencies they assert. Chianne D. was apprised that her and C.D.'s Medicaid coverage was terminated due to household income and in fact requested a fair hearing. Ex. D ¶¶ 2–19; ECF No. 38 at 7–10. Jennifer V. was notified in

writing that A.V.'s Medicaid coverage was ending due to income, that A.V. was being enrolled in the Medically Needy program as a result, and that she was entitled to a fair hearing to contest DCF's eligibility determination, Ex. E ¶¶ 12–14; ECF No. 3-3 at 13; *see also* Ex. A ¶¶ 4–8. No Plaintiff claims that the alleged omission of any technical information required by Medicaid regulations is the *reason why* they do not have Medicaid coverage. Thus, no Plaintiffs claim that their injuries are traceable to the "bare procedural violations" they allege, and of course Plaintiffs offer no evidence demonstrating a causal link between any other class member's injury and an alleged violation of a procedural regulatory requirement. *Soskin*, 353 F.3d at 1264 (condemning lack of evidence establishing the circumstances surrounding Medicaid notices sent to class members; finding that "[i]t would be inappropriate to issue an injunction with respect to all alien Medicaid recipients if only a fraction are receiving improper notice"); *see also Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1253 (11th Cir. 2020) ("To satisfy the causation requirement of standing, a plaintiff's injury must be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." (internal marks omitted)).

Without evidence of traceability, Plaintiffs lack standing to obtain classwide relief. *Cordoba*, 342 F.3d at 1271–72 (finding a lack of traceability when there was "no causal chain linking the failure" of defendants to the injuries asserted on behalf of certain class members).

iii. DCF's Notices Comply with the Law.

Finally, DCF's notices satisfy the Medicaid regulations' requirements. As explained above, *see also* ECF No. 38, the fair-hearing language in the notices is a sufficient "explanation" for purposes of 42 C.F.R § 431.210. And as to the requisite "clear statement of the specific reasons supporting the intended action," this Court cannot make a classwide determination of whether that requirement is satisfied from a one-dimensional review of 86 different reason codes. Prior communications with recipients are also highly relevant to whether a statement is "clear." For example, a reason code might be "clear" to individuals who received a prior notice telling them that their coverage will be terminated if they do not provide certain information, while out of context, the same reason code might not be "clear."

Even if technical violations exist on a case-by-case basis, Plaintiffs cannot demonstrate that these technical violations cause a classwide risk harm justifying a preliminary injunction against the State. DCF sends multiple communications and notices to recipients regarding eligibility re-determinations and the termination of benefits. Ex. D ¶¶ 20–31; Ex C. ¶¶ 2–3; Ex. B ¶¶ 11–15. Those communications contain a host of information, from the reason for termination, to phone numbers and websites to access for more information, to apprising the recipient of hearing rights, to advising recipients where they can receive free legal advice, to identifying additional programs and services, and more. DCF maintains a robust website with information about benefits eligibility, fair hearing processes, and other available resources and programs. Ex. D ¶¶ 20–31; Ex. C ¶¶ 2–3; Ex. A ¶¶ 4–7. Recipients have an online account to access and manage their

own information and communications with DCF, and individualized assistance is available to all recipients by telephone. Ex. D ¶¶ 22–25, 28, 31; Ex. C ¶¶ 2–3; Ex. F ¶ 2 (noting that DCF's call center received more than 10 million calls in five months, between April 1, 2023 and August 31, 2023).

These notices and processes—which Plaintiffs and an untold number of class members availed themselves of—provide multiple avenues for recipients to pursue for more information and to assert their rights, and eliminate the need for a preliminary injunction to remedy scattershot technical violations. *See Rosen*, 410 F.3d at 931; *LeBeau*, 703 F.2d at 643 (affirming compliance with federal regulations when "the notices contained sufficient information concerning the appeal rights of the plaintiffs to support the finding that an administrative legal remedy was reasonable available"); *Adams*, 643 F.2d at 999 ("[A]lthough the reasons given [for denial of benefits] are not as specific as plaintiffs would like, they are consistent with the regulations.").

## II. PLAINTIFFS FAILED TO DEMONSTRATE A LIKELIHOOD OF IRREPARABLE HARM ABSENT AN INJUNCTION.

Plaintiffs generalize and speculate, but do not offer evidence showing that the entire class will suffer irreparable harm absent a preliminary injunction. For example, Plaintiffs offer no evidence of the number of class members who have even a colorable claim of Medicaid eligibility, who do not have access to other health coverage, or who have a present need for health coverage. Without this showing, this Court has no way to evaluate the likelihood of harm to absent class members; how many class members, if any, face such harm; and how many of those class members' injuries would be prevented

by the injunction Plaintiffs demand.

Similarly, Plaintiffs have not shown that the harm they assert is generalizable across the class. As explained throughout, Medicaid recipients, including those within the class definition, experience vastly different circumstances. *See also* ECF No. 38. Plaintiffs fail to account for those variations, and simply declare that every class member faces the identical risk of harm—even if they are ineligible, even if they do not contest ineligibility, even if they pursued a fair hearing already, even if they prevailed at a fair hearing, even if they are uninterested in disputing their eligibility determination in the future, and even if they have alternative healthcare coverage in place.

Moreover, the risk of irreparable harm is minimal because the notices contain enough information to enable class members to protect their rights. *See LeBeau*, 703 F.2d at 643 ("Although the statements of the intended action, the reasons therefor, and the specific change in law requiring the action are cursory in language and nearly identical in all the notices, the explanation of the appeals process . . . is presented in sufficient detail that the essential elements of notices are present."). Chianne D. is a perfect example: she received several notices, spoke with DCF on multiple occasions, and pursued—and later withdrew—a fair-hearing request. Ex. D ¶¶ 2–19; Ex. A ¶¶ 14–18.

Plaintiffs' delay also weighs against a finding of irreparable injury. *See Powers*, 691 F. App'x at 583–84 (a claim of irreparable injury is "undermined by [a plaintiff's] delay in seeking relief"). Plaintiffs concede that the reason codes on which their claims fixate have been used for many years. ECF No.1 at ¶¶ 5, 19(a)(iii). Plaintiffs themselves received notices, and had their coverage terminated, several months before filing suit. *Id.*

at ¶¶ 101–02, 109, 121–22. These delays are inconsistent with a claim of irreparable injury and a demand for emergency relief: "A delay in seeking a preliminary injunction of even only a few months—though not necessarily fatal—militates against a finding of irreparable harm." *Wreal, LLC v. Amazon.com, Inc.*, 840 F.3d 1244, 1248 (11th Cir. 2016).

## III. THE PUBLIC INTEREST WEIGHS AGAINST A CLASSWIDE INJUNCTION.

The harm to the State and the public interest weighs against granting classwide preliminary injunctive relief. *Swain*, 958 F.3d at 1091 ("[W]here the government is the party opposing the preliminary injunction, its interest and harm merge with the public interest."). First, the cost and administrative burden associated with Plaintiffs' extraordinarily broad relief is substantial. *Mathews v. Eldridge*, 424 U.S. 319, 347 (1976) (evaluating the "administrative burden and other societal costs" and noting that "the Government's interest, and hence that of the public, in conserving scare fiscal and administrative resources is a factor that must be weighed").

The scope of classwide relief that Plaintiffs demand is staggering. More than five million Floridians receive Medicaid, and DCF is charged with re-determining eligibility for all of them within 12 months. Since re-determinations resumed in April 2023—as required by the federal government—DCF has conducted nearly 2.5 million redeterminations. Ex. B ¶ 8. Of those, more than 1.7 million individuals were found eligible for Medicaid, nearly 830,000 were found ineligible for Medicaid. *Id.* ¶ 9. More than 4,000 individuals have requested a fair hearing related to Medicaid eligibility since April 2023. Ex. A ¶ 2. Eligibility re-determinations for more than 2 million recipients remain to be completed. Ex. B ¶ 10.

Plaintiffs' requested injunction upsets the apple cart with respect to millions of people: those who were found ineligible for full Medicaid whom Plaintiffs demand be reinstated, and those for whom eligibility re-determinations would be halted during the pendency of this litigation. Ex. B ¶¶ 6–10. DCF's administration of a multi-billion-dollar program cannot simply pivot overnight to accommodate chaos of that magnitude.

To put it mildly, the administrative burden associated with reinstatement and delayed re-determination is significant. *See generally* Ex. H, Decl. of L. Anderson. Medicaid eligibility determination is a massive operation. The Medicaid appropriation is the largest single component of Florida's annual statewide budget, and Florida Medicaid's annual budget is more than $38 billion. Ex. H ¶ 4. Compliance with Plaintiffs' requested injunction will require extensive changes, including changes to multiple systems that support the Economic Self Sufficiency's ("ESS") eligibility determinations and communications with recipients. *Id.* ¶ 5. Changing Notices of Case Action to reflect individualized information would require an estimated 28,000 hours of labor—nearly a year and a half of work for ten employees devoting 160 hours per week to the effort. *Id.* ¶¶ 6–7; *see also id.* ¶ 8 (estimating 550 hours of full-time work to implement new fair hearing language on notices, which are used for all ESS programs, not just Medicaid).[7]

Moreover, the cost of paying for Medicaid services, at taxpayer expense, for an

[7] DCF is currently in the process of modernizing its communications with recipients and overhauling systems to accomplish this goal. These efforts will delayed, and improvements prolonged, by forced compliance with Plaintiffs' requested injunction. Ex. H ¶ 9.

untold number of ineligible recipients who have been *determined to be ineligible* is an obvious fiscal burden on the State, to say nothing of the violation of federal law that paying benefits to ineligible recipients requires. Undoing ineligibility determinations and halting ongoing eligibility re-determinations also threatens Florida's compliance with federally-mandated timelines for re-determining Medicaid eligibility. *See* Consolidated Appropriations Act, 2023, Pub. L. 117-328, § 5131, 136 Stat. 4459, 5949 (2022). Congress required States to begin the process of unwinding continuous coverage and re-determining recipients' eligibility for Medicaid, *see id.*, and the federal Centers for Medicare and Medicaid Services thereafter approved Florida's Medicaid eligibility re-determination plan,[8] Ex. B ¶¶ 4–7. Plaintiffs' requested injunction would force Florida to abandon that re-determination plan and the federally-required timeline it implements. An injunction that forces the State to violate federal law is harmful to the public interest.

Finally, the resources DCF will be forced to divert to comply with Plaintiffs' requested injunction will starve other needy populations and critical programs of resources. DCF administers a broad range of programs to Florida families beyond the administration of public assistance benefits (which includes the Food Assistance Program, the Temporary Cash Assistance Program, and the Office of Homelessness). Ex.

[8] Florida's Medicaid Re-determination Plan is available online and provides the public with information about the timeline for redetermination, eligibility requirements, the eligibility determination process, communications recipients should expect to receive, the availability of fair hearings, and more: https://www.myflfamilies.com/sites/default/files/2023-04/Floridas-Plan-for-Medicaid-Redetermination.pdf.

H ¶¶ 2–3. Some of DCF's core functions outside these public assistance programs include licensing childcare facilities, investigating allegations of child abuse and neglect, providing a safe environment for children in the State's dependency system through oversight of the State's foster care program, and operating the Adult Protective Services Program and Office of Domestic Violence. *Id.* ¶ 2. Operating these programs requires substantial resources, and diverting those resources to Plaintiffs' pet injunction will be felt immediately. At a minimum, the following pending projects emanating from both the state and federal level will be negatively impacted: Federally Funded Hub upgrade, National Accuracy Clearinghouse upgrade, Pandemic Electronic Benefit Transfer (PEBT), SNAP E&T Change (50-59), Medicare Buy-In changes, Florida Healthy Kids Poverty Level changes, and Relative Care Enhancements. *Id.* ¶ 10.

DCF's resources are finite, and any funds applied to implementation of the proposed injunction "may in the end come out of the pockets of the deserving, since resources available for any particular program of social welfare are not unlimited." *Mathews*, 424 U.S. at 348. Florida has an important interest in maintaining "the discretion vested in [it] under state law to allocate scarce resources among" various programs and needy populations. *Swain*, 958 F.3d at 1090. Plaintiffs' interests are not entitled to priority simply because they decided to litigate. *See id*.

Defendants respectfully request that this Court deny Plaintiffs' Motion for a Classwide Preliminary Injunction.

Dated October 6, 2023.

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