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.
_____/

SECRETARY WEIDA AND HARRIS' RESPONSE TO PLAINTIFFS' AMENDED MOTION FOR CLASS CERTIFICATION

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INTRODUCTION

Plaintiffs ask this Court to certify two subclasses of individuals whose Medicaid coverage has been or will be terminated. Plaintiffs seek a prospective injunction chiefly in reliance on their contention that the "reason codes" contained in the notices provided to class members do not sufficiently disclose the reasons for the termination of coverage. Much of Plaintiffs' motion, however, recites case-specific complaints that do not affect the entire class, while their subclass definitions are unclear and include many members who are uninjured or whose dissimilar circumstances impede a classwide resolution of claims. Plaintiffs' subclass definitions do not even include any Plaintiff with a live claim.

Dissimilarities within the subclasses prevent the generation of common answers and defeat both commonality and typicality. Whether notice complies with due process depends on the totality of circumstances—not merely a reason code viewed in isolation. Class members received information through diverse channels, including parts of the notice besides the reason code, other written notices, and oral communications. Reason codes differ, as does the actual knowledge of class members. Many recipients have successfully sought fair hearings, a process that includes in-depth exchanges of information. Plaintiffs' attempt to litigate many different reason codes and many different purported grievances that do not span the entire class also undermine commonality and typicality.

Because this case is ill-suited to class treatment, and because Plaintiffs' proposed subclass definitions are riddled with fatal defects, Plaintiffs' Amended Motion for Class Certification should be denied.

LEGAL STANDARD

Rule 23 is not a "mere pleading standard." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). A plaintiff must "affirmatively demonstrate" compliance with Rule 23. *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013). Class certification is appropriate only if a "rigorous analysis" confirms that all prerequisites are satisfied. *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 161 (1982). This "rigorous analysis" often overlaps with the merits. *Wal-Mart*, 564 U.S. at 350 (quoting *Falcon*, 457 U.S. at 160). At the class-certification stage, a plaintiff's allegations are not deemed true, nor are doubts resolved in the plaintiff's favor. *Brown v. Electrolux Home Prods., Inc.*, 817 F.3d 1225, 1233–34 (11th Cir. 2016).

ARGUMENT

I. PLAINTIFFS' DUE-PROCESS CLAIM IS UNSUITED TO CLASSWIDE RESOLUTION.

Commonality. Plaintiffs' claim that class members were deprived of due process ignores dissimilarities and case-specific variations that defeat any attempt to adjudicate the rights of all class members at once. It incorrectly assumes that the Court need only assess in isolation standard passages in the notices to determine whether DCF denied due process to every class member. Because individualized facts are relevant, the rights of class members cannot be litigated as though they are not. Because Plaintiffs identify no common question that will drive a classwide resolution, the motion should be denied.

To establish commonality, Plaintiffs must identify a question that is common to all subclass members. But not any common question will do: any competently drafted

complaint can raise common questions in droves. *Wal-Mart*, 564 U.S. at 349–50. A common question will suffice only if it generates common answers—and not any common answers, but answers likely to "drive the resolution of the litigation." *Id*. at 350. Stated differently, the claims of class members must depend on a common contention that will resolve in one stroke an issue "central to the validity" of each class member's claims. *Id*. "Dissimilarities within the proposed class . . . have the potential to impede the generation of common answers" and defeat class commonalities. *Id*. (quoting Richard A. Nagareda, *Class Certification in the Age of Aggregate Proof*, 84 N.Y.U. L. Rev. 97, 132 (2009)).

Here, the circumstances of class members are dissimilar in material ways. The question is whether notice is "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 v. Benefits Rev. Bd. of U.S. Dep't of Labor*, 876 F.2d 1455, 1459 (11th Cir. 1989) (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950)) (emphasis added); *see also Arrington v. Helms*, 438 F.3d 1336, 1350 (11th Cir. 2006) (explaining that "myriad forms of notice" satisfy due process and evaluating all sources of available information). The totality of circumstances differs from notice to notice and person to person. While Plaintiffs focus on reason codes, due process is not so myopic. It considers *all* circumstances to determine whether the State provided adequate notice.

Reason codes are not the only communication that recipients receive and cannot be considered in isolation. While some elements of the State's communications with recipients are standard, others are not. The frequency and substance of communications surrounding the termination of Medicaid benefits vary from person to person. ECF No.

39-4 ¶ 20. Medicaid recipients receive a range of communications: some communications are provided to some recipients but not all, while others (such as communications by phone) are provided person by person. *Id*. ¶¶ 26, 28. Due process does not limit itself to consideration of standard elements of classwide communications, but considers the entire corpus of information provided to an individual: standardized and individualized.

1. Sometimes, the notice contains relevant information separate and apart from the reason code. ECF No. 39-5 ¶¶ 10–11. This was true in A.V.'s case. Her notice stated that her Medicaid benefits would terminate, but also that she would be enrolled in the Medically Needy program. ECF No. 2-5 at 9, 12. While the reason code did not refer to an eligibility factor, the notice clearly explained that "[i]ndividuals enrolled in the Medically Needy Program have income or assets that exceed the limits for regular Medicaid." *Id*. at 10. It went on: "We have reviewed your eligibility for full Medicaid benefits and have determined you are not eligible because your income exceeds the limit for Medicaid." *Id*. at 9. Thus, while the reason code did not reference an eligibility factor, other parts of the notice did. The notice made clear why A.V. was determined ineligible.

Due process is not concerned with reason codes per se, but with notice. A blinkered review of reason codes in a vacuum cannot generate a common, classwide answer.

2. Class members receive information through written communications outside the four corners of the challenged notices. ECF No. 39-4 ¶ 29. While the reason codes in the notices might not have referenced eligibility factors, many recipients knew, from other communications, why their coverage ended. Those recipients had notice of the reason for the action even if that reason was not repeated within the four corners of the

challenged notice. "Due process does not require 'reasonably calculated' notice to come in just one letter, as opposed to two." *Rosen v. Goetz*, 410 F.3d 919, 931 (6th Cir. 2005).

3. Other class members received information through oral communications. ECF No. 39-4 ¶¶ 25, 28. Chianne spoke with DCF representatives at length. ECF No. 38 at 7–9. In those phone conversations, DCF's representatives informed Chianne that she was ineligible because of her household's income. *Id*. She was told the precise amount of income on which DCF relied and was offered a fair hearing, which she accepted. *Id*. Oral communications—like written ones—are part of the totality of circumstances that due process considers. *Lehner v. United States*, 685 F.2d 1187, 1190–91 (9th Cir. 1982) (refusing to "elevate form over substance" and concluding that oral notice satisfied due process). They are relevant and individualized, and insusceptible to classwide treatment.

4. Class members are also differentiated by different degrees of actual knowledge of their rights. At least some class members understood their rights and requested fair hearings. DCF provides each applicant for Medicaid coverage with a document entitled "Rights and Responsibilities," which outlines the fair-hearing rights of Medicaid recipients. ECF No. 39-1 ¶ 4. The same document is then presented and acknowledged electronically each time Medicaid recipients provide information to DCF through their secure online accounts. *Id*. ¶ 5. DCF's public website also explains what fair hearings are and how recipients can request them. *Id*. ¶ 16. DCF representatives tell recipients (like Chianne) about fair hearings and file hearing requests on their behalf. *Id*. ¶ 8. Since April 2023, recipients have requested 8,933 fair hearings regarding Medicaid eligibility. Ex. A.

When individuals have actual knowledge of their rights—no matter the source of

their knowledge—the State does not violate due process: "the Due Process Clause does not require notice where those claiming an entitlement to notice already knew the matters of which they might be notified." *Moreau v. FERC*, 982 F.2d 556, 569 (D.C. Cir. 1983); *accord 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."); *Rogerson v. Sec'y of Health & Hum. Servs.*, 872 F.2d 24, 28–29 (3d Cir. 1989) ("Rogerson had personal familiarity and experience with the options available . . . . In these circumstances, the degree of detail in the denial notice was adequate to protect her due process rights."). Thus, in *Jordan*, in rejecting a claim of insufficient notice, the court explained that the plaintiff had "shown that he is familiar with the administrative procedures for seeking black lung benefits," having pursued a similar claim to a hearing before. 876 F.2d at 1460. Because the proposed subclasses here include members who had knowledge of their rights, Plaintiffs' proposed classwide questions will not generate common answers.

5. Further, individuals who request fair hearings are provided with individualized information beyond that contained in the challenged notices. ECF No. 39-1 ¶ 9. Any person who requests a fair hearing is invited to participate in a prehearing conferral at which the parties discuss the challenged decision—and the grounds for that decision—and attempt to resolve the dispute. *Id.* ¶¶ 10–11; Fla. Admin. Code r. 65-2.049(2). The prehearing conferral affords the recipient an opportunity to ask questions and learn more about DCF's determination before the fair hearing even takes place. ECF No. 39-1 ¶¶ 10–11. This procedure mirrors a two-step process endorsed by the Supreme Court. *See Goldberg v. Kelly*, 397 U.S. 254, 268 (1970) ("New York employs both a letter and a

personal conference with a caseworker to inform a recipient of the precise questions raised about his continued eligibility. . . . This combination is probably the most effective method of communicating with recipients."); *see also Hames v. City of Miami*, 479 F. Supp. 2d 1276, 1289 (S.D. Fla. 2007) ("As such, the results of this preliminary hearing gave him the specific notice of the board's basis for seeking forfeiture in the later full hearing."). This avenue of communication also differentiates class members from each other.

A plaintiff fails to establish commonality when the plaintiff alleges that an entire class received inadequate notice, but class members received information through various channels. In *Pop's Pancakes, Inc. v. NuCO2, Inc.*, 251 F.R.D. 677 (S.D. Fla. 2008), two restaurants alleged that an equipment supplier's invoices contained an undisclosed fee. *Id.* at 679. The defendant, however, had directed its sales representatives to disclose the fee to customers through oral communications. *Id.* at 682. Because the defendant's disclosures might have differed from customer to customer, the circumstances of disclosure "could vary greatly." *Id.* at 683. The plaintiffs therefore failed to establish commonality.

In *O'Neill v. The Home Depot U.S.A., Inc.*, 243 F.R.D. 469 (S.D. Fla. 2006), the plaintiff alleged that the defendant, a hardware store, failed to disclose to customers who rent equipment that a particular charge was optional. *Id.* at 471. The defendants showed, however, that customers are informed of the optional nature of the charge through signs and sales representatives. *Id.* at 478. The "individual experiences" and "varied circumstances" of customers who received notice through different channels defeated any assertion that common answers could drive the resolution of the litigation. *Id.* at 478–79.

In *Marko v. Benjamin & Brothers, LLC*, No. 6:17-cv-001725, 2018 WL 3650117

(M.D. Fla. May 11, 2018) (Kelly, Mag.), the plaintiffs alleged that a hotel reservation service failed to disclose a non-refundable fee to its customers. *Id*. at *1. But some customers made reservations by phone, rather than online, and call-center agents sometimes disclosed the fee. *Id*. at *3. That was enough to defeat commonality. Because class members "used different methods" to reserve rooms, "they received different disclosures." *Id*. at *6. A resolution of the class claims thus presented "significant individual issues." *Id*.

Here too, DCF communicates with recipients through many channels. A reason code by itself cannot prove that all class members uniformly received inadequate notice.

Plaintiffs' proposed questions fall short of the standard that *Wal-Mart* established. Most are variations on bottom-line liability questions: whether the notices violate due process. Those are precisely the questions that, under *Wal-Mart*, are always at hand, but never sufficient. In *every* case, a plaintiff could ask whether the challenged action violates a law. But a mere claim that all class members suffered a violation of the same law does not establish that the question will generate common answers or that all class members' claims can be litigated together. *Wal-Mart*, 564 U.S. at 350 ("[T]he mere claim . . . that [class members] have suffered a Title VII injury . . . gives no cause to believe that all their claims can be productively litigated at once."); *Howard v. Cook Cnty. Sheriff's Off.*, 989 F.3d 587, 598 (7th Cir. 2021) ("Superficial common questions like whether each class member 'suffered a violation of the same provision of law' do not suffice." (quoting *Wal-Mart*, 564 U.S. at 350)); *Jamie S. v. Milwaukee Pub. Sch.*, 668 F.3d 481, 497 (7th Cir. 2012) (explaining that a mere "bottom-line liability question" cannot establish commonality).

Plaintiffs' proposed questions are also too abstract to drive the resolution of this litigation. Thus, Plaintiffs ask whether notices "create an unacceptable risk of confusion that denies recipients their ability to appeal an adverse action." ECF No. 77 at 10. Questions framed at a stratospheric level of generality are not well-defined and practically useful and ignore differences among class members. *Sprague v. Gen. Motors Corp.*, 133 F.3d 388, 397 (6th Cir. 1998) ("[A]t a sufficiently abstract level of generalization, almost any set of claims can be said to display commonality."); *Stewart v. Winter*, 669 F.2d 328, 337 (5th Cir. 1982); *Football Ass'n Premier League Ltd. v. YouTube, Inc.*, 297 F.R.D. 64, 66 (S.D.N.Y. 2013). Whether the challenged notices create an "unacceptable risk of confusion" is exactly such an abstract question, and whether that confusion "denies recipients their ability to appeal" is a case-specific question—quite the opposite of a common one.

Plaintiffs' proposed questions ignore material differences among class members, are bottom-line liability questions, or are too abstract to drive the resolution of all class members' due-process claims. Because Plaintiffs have failed to identify a common question as *Wal-Mart* demands, their motion should be denied as to their due-process claim.

Typicality. For similar reasons, Plaintiffs have not proven that their due-process claims are typical of those of class members. Because evidence of Plaintiffs' due-process claims would not prove the claims of class members, Plaintiffs have not shown typicality.

The typicality inquiry asks whether the proposed class representatives have "the same interest and suffer the same injury as the class members." *Murray v. Auslander*, 244 F.3d 807, 811 (11th Cir. 2001). The claims of proposed class representatives are atypical if the evidence that establishes their claims would not necessarily establish the claims of

other class members. *Brooks v. S. Bell Tel. & Tel. Co.*, 133 F.R.D. 54, 58 (S.D. Fla. 1990).

Thus, in *Pop's Pancakes*, *O'Neill*, and *Marko*, the plaintiffs failed to show typicality because different class members received different disclosures through different means. *See Marko*, 2018 WL 3650117, at *7; *Pop's Pancakes*, 251 F.R.D. at 683–84; *O'Neill*, 243 F.R.D. at 478–79. There, information was provided to some class members by phone or through signs. Evidence that the class representatives were not provided with adequate information did not prove that other class members were denied the same information.

In *Colomar v. Mercy Hospital, Inc.*, 242 F.R.D. 671, 677–78 (S.D. Fla. 2007), the plaintiff, who sought to represent a class of patients in a challenge to the reasonableness of a hospital's rates, failed to prove typicality because the reasonableness of those rates differed over time and across patients and services. *See also DWFII Corp. v. State Farm Mut. Auto. Ins. Co.*, 271 F.R.D. 676, 687–88 (S.D. Fla. 2010) (concluding that the plaintiff, who challenged an insurer's reimbursement limits, did not prove typicality because the plaintiff's entitlement to reimbursement did not prove each class member's entitlement).

The evidence here shows diversity, not typicality. Whether notice to one recipient was "reasonable under all the circumstances," *Arrington*, 438 F.3d at 1350, entails an inclusive consideration of case-specific circumstances, including all information known to the recipient—not merely one reason code in a single notice. *See supra* Part I. Because proof of Plaintiffs' claims would not establish the claims of all class members, Plaintiffs have not shown that their due-process claims are typical of those of other class members.

II. SUBCLASS A'S DEFINITION IS UNCLEAR.

Plaintiffs' definition of Subclass A is unclear. Rather than identify specific reason

codes that come within the subclass, the subclass definition tries to circuitously describe the reason codes that it includes or excludes. But the description is vague, perplexed, and uncertain in application and leaves the scope of Subclass A and its membership in doubt.

A "plaintiff seeking to represent a proposed class must establish that the proposed class is 'adequately defined and clearly ascertainable.'" *Little v. T-Mobile USA, Inc.*, 691 F.3d 1302, 1304 (11th Cir. 2012) (quoting *DeBremaecker v. Short*, 433 F.2d 733, 734 (5th Cir. 1970)). Here, Subclass A is not adequately defined and is not clearly ascertainable.

Subclass A's definition purports to cover reason codes that do not reference any of twelve "eligibility factors" loosely described in the subclass definition. ECF No. 85 at 1. It is unclear which of DCF's many reason codes come within that definition. Even Plaintiffs seem confused. They claim to have "identified in yellow highlighting the existing reason codes that fall within Subclass A." *Id.* at 16 n.3 (citing ECF No. 47-3). The list provided by Plaintiffs, however, contains many reason codes that are *not* highlighted, but that come within the subclass definition nonetheless, such as: (1) "WE RECEIVED INFORMATION THAT A MEMBER OF YOUR HOUSEHOLD DIED AND WILL NO LONGER BE COVERED BY THIS PROGRAM"; (2) "NOT ELIGIBLE BECAUSE CHILD SUPPORT ENFORCEMENT HAS REPORTED YOU FAILED TO COOPERATE WITH THEM"; and (3) "WE RECEIVED YOUR WRITTEN REQUEST TO REMOVE AN INDIVIDUAL FROM THIS PROGRAM." *See* ECF No. 47-3. Simply put, Plaintiffs' list does not match the plain text of the subclass definition.

The confusion is also illustrated by the fact that, according to the highlighted list, Subclass A's proposed representatives are not members of Subclass A. *See infra* Part IV.

At the hearing on December 13, 2023, this Court advised Plaintiffs that Subclass A's definition is unclear, and Plaintiffs offered to limit Subclass A to three reason codes reflected in five exhibits. *See* ECF No. 75 at 98:17–99:1, 115:24–116:17. This narrowed definition later appeared in Plaintiffs' proposed injunction. ECF No. 69 at 4. But when Plaintiffs amended their complaint and their class-certification motion, they reverted to their original, unclear, sprawling subclass definition. ECF No. 77 at 1; ECF No. 85 at 1.

At a minimum, to prevent uncertainty over the scope of Subclass A, this Court should limit the subclass to the three reason codes that Plaintiffs identified at the hearing when the Court noted the vagueness of the subclass definition. *See* ECF No. 69 at 4. But the Court has no duty to rewrite the subclass definition, especially after Plaintiffs, alerted to the Court's concerns, refused to do so. *Varnes v. Home Depot USA*, No. 3:12-CV-00622-J-39JBT, 2015 WL 5190648, at *3 n.11 (M.D. Fla. Sept. 4, 2015) (declining to revise, and thus cure, plaintiffs' chosen class definition). It should decline to certify Subclass A.

III. BECAUSE THE SUBCLASS DEFINITIONS INCLUDE MANY UNINJURED MEMBERS, THEY ARE OVERBROAD.

Plaintiffs' subclass definitions are overbroad because the subclasses include many members who suffered no injury. While a plaintiff need not prove, at this stage, that all class members have Article III standing, a class definition is overbroad if a significant number of class members were not injured. Because Plaintiffs have not established that their proposed subclass definitions are not overbroad, but are appropriately tailored to a class of injured Medicaid recipients, this Court should decline to certify the subclasses.

To be sure, a "plaintiff need not prove that every member of the proposed class

has Article III standing prior to certification." *Cordoba v. DIRECTV, LLC*, 942 F.3d 1259, 1277 (11th Cir. 2019). "But there is a meaningful difference between a class with a few members who might not have suffered an injury traceable to the defendants and a class with potentially many more, even a majority, who do not have Article III standing." *Id.*; *accord id.* at 1273 (explaining that whether "many or most putative class members" were uninjured "is assuredly a relevant factor that a district court must consider" at the class-certification stage); *Perez v. Metabolife Int'l, Inc.*, 218 F.R.D. 262, 269 (S.D. Fla. 2003) ("A court should deny class certification where the class definitions are overly broad . . . .").

A class that "contains a great many persons who have suffered no injury at the hands of the defendant" is "overbroad." *Cordoba*, 942 F.3d at 1276 (quoting *Kohen v. Pac. Inv. Mgmt. Co. LLC*, 571 F.3d 672, 677–78 (7th Cir. 2009)). Because class actions threaten tremendous liability, overbroad class definitions exert improper settlement pressure on defendants, regardless of the merits of the claims. *Id.* (citing *Kohen*, 571 F.3d at 677–78).

For example, in *Simmons v. Ford Motor Co.*, 592 F. Supp. 3d 1262 (S.D. Fla. 2022), the plaintiffs sought certification of a class of 800,000 members who purchased vehicles with an alleged design defect that could cause corrosion. *Id.* at 1271. Because the class included an untold number of purchasers whose vehicles, though defective, had not suffered corrosion, the class included many uninjured members and was overbroad. *Id.* at 1285; *see also Walewski v. Zenimax Media, Inc.*, 502 F. App'x 857, 861 (11th Cir. 2012) (affirming a court's refusal to certify a class of video-game purchasers where unknown numbers of class members never experienced the video game's animation design defect).

As Defendants explained in their motion to dismiss Chianne's and C.D.'s claims, a bare procedural violation (such as inadequate notice) is not, without more, a concrete injury. ECF No. 87 at 4–5; *see also*, *e.g.*, *Rector v. City & County of Denver*, 348 F.3d 935, 943–44 (10th Cir. 2003) (concluding that misleading language on a traffic citation that discouraged recipients from pursuing appeals did not injure recipients who had no basis to challenge their citations). Inadequate notice inflicts no concrete, real-world harm on recipients absent some basis to contest the government's decision. ECF No. 87 at 4–5.

Plaintiffs have not established that the challenged notices caused any appreciable number of class members to suffer a concrete injury. From March 2020 to March 2023, federal law prohibited disenrollment of Medicaid recipients who had become ineligible. *See* Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, § 5131(a)(2)(C)(iv), 136 Stat. 4459, 5949 (2022); Families First Coronavirus Response Act, Pub. L. No. 116-127, § 6008(a), 131 Stat. 178, 208 (2020). Many class members became ineligible over this three-year period as their situations changed—and were reviewed automatically (not at their prompting) once Congress lifted the freeze on disenrollments. Many class members might now have access to employer-provided health coverage and have no interest at all in continued Medicaid enrollment. Nor have Plaintiffs established DCF's error rate or otherwise shown that a sizeable percentage of class members have reason to dispute DCF's termination decisions. Plaintiffs offer no evidence that the language of the challenged notices impacted more than a fraction of class members in any meaningful way.

Similarly, many class members have reestablished their Medicaid eligibility since the termination of their coverage and have been reenrolled in Medicaid. Of the 873,123

members of the subclasses (as defined and narrowed in Plaintiffs' proposed injunction), 56 percent had been reenrolled in Medicaid by December 2023. ECF No. 76-1 ¶¶ 2–4.

While Plaintiffs need not prove at this stage that all class members have standing, they must prove that their proposed subclass definitions do not include many individuals who have suffered no concrete harm fairly traceable to the disputed notices. They have not done so. Because the notice language did not harm many members of the proposed subclasses, the subclass definitions are overbroad and not amenable to class certification.

IV. NO PLAINTIFF WITH A LIVE CLAIM IS A MEMBER OF EITHER SUBCLASS.

Subclass A. Plaintiffs assert that the "existing reason codes that fall within Subclass A" are "identified in yellow highlighting" on a list provided by Plaintiffs. ECF No. 85 at 16 n.3 (citing ECF No. 47-3). But none of the representatives of Subclass A (A.V., Kimber Taylor, and K.H.) received a Medicaid termination notice that contains any of the yellow-highlighted reason codes. If Plaintiffs' list is used to define Subclass A, then none of the Plaintiffs is a subclass member—and none can be a subclass representative.

A.V., Kimber Taylor, and K.H. received the following reason code: "YOU OR A MEMBER(S) OF YOUR HOUSEHOLD REMAIN ELIGIBLE FOR MEDICAID UNDER A DIFFERENT MEDICAID COVERAGE GROUP." ECF No. 2-5 at 12; ECF No. 2-7 at 5. But that reason code is not among the highlighted reason codes on Plaintiffs' reason-code list. *See* ECF No. 47-3. According to Plaintiffs' highlighted list of reason codes, therefore, A.V., Kimber Taylor, and K.H. are not members of Subclass A.

Plaintiffs claim that A.V., Kimber Taylor, and K.H. also received the following reason code: "YOU ARE RECEIVING THE SAME TYPE OF ASSISTANCE FROM

ANOTHER PROGRAM." ECF No. 85 at 8, 14. But they did not receive that reason code on a *Medicaid termination notice*, which is what this case is about. A.V. received that reason code to explain a two-month denial of Medically Needy coverage, not Medicaid termination. ECF No. 2-5 at 11. Kimber Taylor and K.H. received that reason code to explain a one-month *denial*, not a *termination*, of Medicaid coverage. ECF No. 85-5 at 3.

This case concerns terminations from Medicaid—not denials and not Medically Needy coverage. ECF No. 77 ¶¶ 1, 8. It challenges "termination notices." *Id.* ¶¶ 79, 81, 83. Federal regulations recognize that denials and terminations are distinct actions, *see*, *e.g.*, 42 C.F.R. § 431.917, while Plaintiffs have recognized that Medicaid and Medically Needy are distinct programs, *see* ECF No. 77 ¶ 49 ("Florida also operates a 'medically needy' program for otherwise eligible individuals whose incomes are too high to qualify for Medicaid."). Plaintiffs must honor their pleadings and cannot expand this case now, at this late stage, to include programs besides Medicaid and actions besides terminations.

If Plaintiffs' list of highlighted reason codes defines Subclass A, then no Plaintiff belongs to, or can represent, Subclass A. Without a subclass representative, Subclass A cannot be certified.

Subclass B. The only Plaintiffs who belong to Subclass B—Chianne and C.D.—do not have justiciable claims. The Court should therefore decline to certify Subclass B.

"In a class action, the claim of the named plaintiff . . . must be live both at the time he brings suit and when the district court determines whether to certify the putative class." *Tucker v. Phyfer*, 819 F.2d 1030, 1033 (11th Cir. 1987). A class cannot be certified unless at least one putative class representative maintains a live claim when the class is

certified. *Id.*; *Prado-Steiman ex rel. Prado v. Bush*, 221 F.3d 1266, 1279–80 (11th Cir. 2000).

Chianne and C.D. do not present live claims. *First*, as explained in Defendants' motion to dismiss, ECF No. 87, Chianne and C.D. are no longer enrolled in or eligible for Medicaid. They therefore suffer no harm that a prospective injunction could redress.

Second, as explained in Part I.B. of Defendants' response to Plaintiffs' first motion for class certification, ECF No. 38 at 7–10, DCF representatives directly and repeatedly told Chianne precisely why she and C.D. were determined ineligible. Chianne requested but later withdrew a request for a fair hearing. Any injury that they claim to have suffered is traceable to Chianne's decision to forego the hearing—not to deficiencies in a notice.

Plaintiffs incorrectly claim that A.V. belongs to Subclass B. While Plaintiffs point to the reason code in A.V.'s notice dated January 18, 2024, ECF No. 85 at 9, that notice was not a Medicaid termination notice, and indeed contained no "Medicaid" section at all. *See* ECF No. 85-2 at 5. The notice simply informed A.V.—who was enrolled in the Medically Needy program—that her "share of cost" will increase. *Id.* In fact, Plaintiffs concede that "A.V. was not enrolled in Medicaid at the time," ECF No. 85 at 9—which means that the notice was not a Medicaid termination notice. As explained above, the subject of this litigation is Medicaid terminations—not other actions or other programs.

A plaintiff (like A.V.) who is not a member of a class may not represent the class. *See* Fed. R. Civ. P. 23(a) ("One or more members of a class may sue . . . as representative parties on behalf of all members . . . ."); *E. Tex. Motor Freight Sys., Inc. v. Rodriguez*, 431 U.S. 395, 403 (1977) (noting that a "class representative must be part of the class" and that plaintiffs "were not members of the class . . . they purported to represent"). Because

no Plaintiff with justiciable claims belongs to Subclass B, Subclass B cannot be certified.

V. A SUBCLASS THAT ENCOMPASSES DIFFERENT REASON CODES—MOST OF WHICH THE NAMED PLAINTIFFS NEVER RECEIVED—FAILS SEVERAL CLASS-CERTIFICATION PREREQUISITES.

Commonality. Plaintiffs lump multiple, different reason codes together into two subclasses and ask the Court to determine the sufficiency of all of these reason codes in one stroke. But each reason code is different. Reason codes differ from notice to notice and person to person; different class members received different reason codes. DCF uses 86 different reason codes to explain its Medicaid ineligibility determinations, ECF No. 39-5 ¶ 3, and the named Plaintiffs received only *three* of those reason codes in their Medicaid termination notices, ECF No. 2-5 at 12; ECF No. 2-6 at 19, 25; ECF No. 2-7 at 5.

Because the reason codes differ from each other, this Court might reach different conclusions about different reason codes. The sufficiency or insufficiency of one reason code does not demonstrate the sufficiency or insufficiency of the next reason code. It is therefore "impossible to say that examination of all the class members' claims for relief will produce a common answer" to a common contention. *Wal-Mart*, 564 U.S. at 352. Plaintiffs offer no reason to believe that all reason codes in one subclass will necessarily be found *all sufficient* or *all insufficient*. Plaintiffs have not therefore demonstrated that all class members' claims are "capable of classwide resolution" and can be resolved "in one stroke." *Id*. These material dissimilarities among subclass members defeat commonality.

Standing and Typicality. To the extent the class representatives ask this Court to determine the sufficiency of reason codes they never received, and which only the absent class members received, they lack standing, and their claims are not typical of the claims

of absent class members. Plaintiffs received only three of the 86 reason codes that DCF uses to explain its determinations of Medicaid ineligibility. *See supra* p. 18. Each of these 86 reason codes is different. A Plaintiff who did not receive a specific reason code was not injured by that reason code and can receive no redress from—and has no "personal stake" in—a determination of its sufficiency. *See Keister v. Bell*, 29 F.4th 1239, 1249 (11th Cir. 2022). Nor can that Plaintiff satisfy typicality: the Plaintiff does not have "the same interest" or "suffer the same injury" as class members who actually received the reason code. *Murray*, 244 F.3d at 811. And "proof of the [class] representatives' claims would not necessarily prove all the proposed class members' claims." *Brooks*, 133 F.R.D. at 58.

VI. PLAINTIFFS' HODGEPODGE OF PURPORTED GRIEVANCES DOES NOT SATISFY COMMONALITY.

Not only do Plaintiffs ask the Court to address the sufficiency of many different reason codes at once, but they also advance a hodgepodge of different grievances. Rather than streamline their case as trial approaches, Plaintiffs have added to their scattershot complaints. Because many of the issues that Plaintiffs now raise are not common to the class and cannot be resolved on a classwide basis, it is vitally important that this Court, if it certifies a class, carefully delineate the specific issues that will be tried as class issues.

Unable to focus on the core issues in this case, Plaintiffs attempt to pack into this litigation every possible grievance—even grievances that are clearly not common to the class. For example, Chianne implies that DCF did not notify her that her termination notice was available in her secure online account, ECF No. 2-6 ¶ 9, but no other Plaintiff suggests that DCF fails to send email notifications. A.V. claims that DCF erroneously

determined that her income exceeded applicable income limits, ECF No. 2-5 ¶ 16, while C.D. concedes that DCF correctly determined that her income renders her ineligible for Medicaid, ECF No. 87-2 at 7. Kimber Taylor claims that the notice language regarding DCF's recoupment of benefits deterred her from requesting a fair hearing, ECF No. 3-12 ¶ 17, but no other Plaintiff claims that that language affected her decision. Case-specific grievances are not common to the class and should not be accorded class treatment.

In any action, some issues might be appropriate and others inappropriate for class certification. *Simpson v. Dart*, 23 F.4th 706, 713 (7th Cir. 2022). Rule 23(c)(1)(B) therefore directs district courts to "define the class and the class claims, issues, or defenses." This rule requires a class-certification order to set forth a "readily discernible, clear, and complete list of the claims, issues, or defenses to be treated on a class basis." *Wachtel ex rel. Jesse v. Guardian Life Ins. Co. of Am.*, 453 F.3d 179, 187–88 (3d Cir. 2006). "[B]etter comprehension and explanation of the class and the class claims helps district courts, appellate courts, attorneys, and parties all proceed with more information and mutual understanding." *In re Pharm. Indus. Average Wholesale Price Litig.*, 588 F.3d 24, 40 (1st Cir. 2009).

If it certifies a class, then this Court should clearly delineate the issues to be tried as class issues. Plaintiffs have advanced a mosaic of purported grievances that are not uniformly capable of classwide resolution. This Court's identification of the class issues will streamline the trial, weed out issues unsuited to classwide resolution, and provide clarity and certainty regarding the issues to be presented for classwide resolution at trial.

CONCLUSION

For these reasons, the Amended Motion for Class Certification should be denied.

Dated March 12, 2024.

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