

**IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS**

**THE EVANGELICAL LUTHERAN GOOD  
SAMARITAN SOCIETY, as Authorized  
Representative of:**

**JOSEPH BERGER, DARYLE BOOKOUT,  
VENITA COMBS, DOROTHEA DANNEMAN,  
LARRY FIKAN, GARY FORSBERG, MARY  
FREEMAN, LORENE HERRON, DONNA KELSO,  
WILLARD LAMBERT, MARTHA MCKAY,  
MARGARET MCKENNA, LEROY MILES,  
RUSSELL PENSON, BEATRICE RAU, ROBERT  
SEYMOUR, VERLIE STOUT, LESLIE  
SUTHERLAND, DARRELL THELEMAN,  
NORMA WADE, AND ELEANOR WHITENER<sup>1</sup>,**

**PLAINTIFFS,**

**Judge:**

**v.**

**MICHAEL RANDOL, in his official  
capacity as the Director of the Kansas  
Department of Health and Environment,**

**Case No.**

**900 SW Jackson, Suite 900 N  
Topeka, Kansas 66612-1220**

**DEFENDANT.**

**COMPLAINT FOR DECLARATORY JUDGMENT**

**I. PRELIMINARY STATEMENT**

As a condition of receiving federal funds, the State of Kansas is required to operate the Medicaid program in compliance with the Social Security Act and implementing regulations, pursuant to 42 U.S.C. § 1396(c). This case concerns the failure of Defendant, Michael Randal

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<sup>1</sup> Federal law requires state agencies to permit applicants and beneficiaries to designate an individual or organization to act responsibly on their behalf in assisting with the individual's application and renewal of eligibility and other ongoing communications with the state agency responsible for issuing determinations on Medicaid eligibility. *See* 42 C.F.R. §435.923.

(“Defendant”), the Director of the Kansas Department of Health and Environment (“DHCF”) to comply his obligation to afford Medicaid benefits to residents in long-term care facilities in compliance with the federal rules and regulations of the United States. The Defendant is directly responsible for policies necessary for the implementation of a system for determination of payment for Medicaid that complies, in all aspects, with federal law. The failures by the Defendant to grant Medicaid benefits to residents of skilled nursing facilities constitute violations of the Federal Medicaid Act and implementing regulations at 42 USC § 1396u-2, 42 CFR § 438.10, and 42 USC § 1396(a), Section 1902(a)(37)(a)

## **II. JURISDICTION AND VENUE**

This action arises under the Federal Medicaid Act and implementing regulations at 42 USC § 1396u-2, 42 CFR § 438.10, and 42 USC § 1396(a), Section 1902(a)(37)(a). Declaratory relief is sought pursuant to 28 U.S.C. §§ 2201 and 2202. The jurisdiction of this court is invoked pursuant to 28 U.S.C. §§1331, 1343(k) and 28 U.S.C. §§2201 and 2202. This is a suit authorized and instituted pursuant to the Federal Medicaid Act and implementing regulations. Additionally, the jurisdiction of this court is invoked to secure protection to redress the deprivation under color of state law, statute, custom and/or usage of a right, privilege and/or immunity secured to Plaintiff by the Fourteenth Amendment to the Constitution of the United States and by 42 U.S.C. §1983 and other state tort claims. Venue lies in this forum pursuant to 28 U.S.C. § 1391(e).

## **III. PARTIES**

1. The Evangelical Lutheran Good Samaritan Society (“Good Samaritan”) is headquartered in Sioux Falls, South Dakota. Good Samaritan owns and operates twenty-four hour skilled nursing home facility located in the State of Kansas.

2. Joseph Berger was admitted to Good Samaritan's skilled nursing facility on April 28, 2015 ("Berger" or "Plaintiff"). Berger suffers from dementia and seizures among other severe medical conditions. He requires twenty-four hour skilled nursing care at Good Samaritan. Berger's current outstanding balance at Good Samaritan is thirty-three-thousand-five-hundred-eight-seven dollars and twenty-seven cents (\$33,587.27).

3. Daryle Bookout was admitted to Good Samaritan's skilled nursing facility on February 18, 2016 ("Bookout" or "Plaintiff"). Bookout suffers from dementia and diabetes among other severe medical conditions. He requires twenty-four hour skilled nursing care at Good Samaritan. Bookout's current outstanding balance at Good Samaritan is forty-thousand-two-hundred-sixty-four dollars and fifteen cents (\$40,264.15).

4. Venita Combs was admitted to Good Samaritan's skilled nursing facility on March 17, 2014 ("Combs" or "Plaintiff"). Combs suffers from heart failure and severe shortness of breath among other severe medical conditions. She requires twenty-four hour skilled nursing care at Good Samaritan. Combs' current outstanding balance at Good Samaritan is thirty-thousand-six-hundred-forty-six dollars and ninety-five cents (\$30,646.95).

5. Dorothea Danneman was admitted to Good Samaritan's skilled nursing facility on March 21, 2016 ("Danneman" or "Plaintiff"). Danneman suffers from blindness and chronic kidney disease among other severe medical conditions. She requires twenty-four hour skilled nursing care at Good Samaritan. Danneman's current outstanding balance at Good Samaritan is twenty-five-thousand-two-hundred-thirty-seven dollars and seventy-seven cents (\$25,237.77).

6. Larry Fikan was admitted to Good Samaritan's skilled nursing facility on July 18, 2013 ("Fikan" or "Plaintiff"). Fikan suffers from severe medical conditions. He requires twenty-four hour

skilled nursing care at Good Samaritan. Fikan's current outstanding balance at Good Samaritan is thirty-thousand-one-hundred-fifty-four dollars and three cents (\$30,154.03).

7. Gary Forsberg was admitted to Good Samaritan's skilled nursing facility on August 8, 2013 ("Forsberg" or "Plaintiff"). Forsberg suffers from dementia and seizures mental health problems among other severe medical conditions. He requires twenty-four hour skilled nursing care at Good Samaritan. Forsberg's current outstanding balance at Good Samaritan is forty-nine-thousand-three-hundred-thirty-seven dollars and sixty-one cents (\$49,337.61).

8. Mary Freeman was admitted to Good Samaritan's skilled nursing facility on December 8, 2015 ("Freeman" or "Plaintiff"). Freeman suffers from blindness and chronic kidney disease among other severe medical conditions. She requires twenty-four hour skilled nursing care at Good Samaritan. Freeman's current outstanding balance at Good Samaritan is twenty-four-thousand-five-hundred-sixty-two dollars and fifty-nine cents (\$24,562.59).

9. Lorene Herron was admitted to Good Samaritan's skilled nursing facility on July 20, 2012 ("Herron" or "Plaintiff"). Herron suffers from dementia and heart disease among other severe medical conditions. She requires twenty-four hour skilled nursing care at Good Samaritan. Herron's current outstanding balance at Good Samaritan is fifty-one-thousand-sixty-four dollars and nineteen cents (\$51,064.19).

10. Donna Kelso was admitted to Good Samaritan's skilled nursing facility on July 24, 2011 ("Kelso" or "Plaintiff"). Kelso suffers from dementia among other severe medical conditions. She requires twenty-four hour skilled nursing care at Good Samaritan. Kelso's current outstanding balance at Good Samaritan is thirty-two-thousand-two-hundred-ninety-five dollars and twenty-seven cents (\$32,295.27).

11. Willard Lambert was admitted to Good Samaritan's skilled nursing facility on June 15, 2015 ("Lambert" or "Plaintiff"). Lambert suffers from dementia and Alzheimer's disease among other severe medical conditions. He requires twenty-four hour skilled nursing care at Good Samaritan. Lambert's current outstanding balance at Good Samaritan is forty-five-thousand-five-hundred-forty-two dollars and six cents (\$45,542.06).

12. Martha McKay was admitted to Good Samaritan's skilled nursing facility on January 11, 2016 ("McKay" or "Plaintiff"). McKay suffers from multiple fractures and osteoarthritis among other severe medical conditions. She requires twenty-four hour skilled nursing care at Good Samaritan. McKay's current outstanding balance at Good Samaritan is thirty-six-thousand-seven-hundred-ninety-five dollars and thirty cents (\$36,795.30).

13. Margaret McKenna was admitted to Good Samaritan's skilled nursing facility on February 2, 2016 ("McKenna" or "Plaintiff"). McKenna suffers from Parkinson's and asthma among other severe medical conditions. She requires twenty-four hour skilled nursing care at Good Samaritan. McKenna's current outstanding balance at Good Samaritan is twenty-nine-thousand-sixteen dollars and fifteen cents (\$29,016.15).

14. Leroy Miles was admitted to Good Samaritan's skilled nursing facility on March 1, 2016 ("Miles" or "Plaintiff"). Miles suffers from diabetes among other severe medical conditions. He requires twenty-four hour skilled nursing care at Good Samaritan. Miles' current outstanding balance at Good Samaritan is thirty-one-thousand-eight-hundred-nineteen dollars and sixty-eight cents (\$31,819.68).

15. Russell Penson was admitted to Good Samaritan's skilled nursing facility on March 1, 2016 ("Penson" or "Plaintiff"). Penson suffers from dementia and Alzheimer's among other severe medical conditions. He requires twenty-four hour skilled nursing care at Good Samaritan. Penson's

current outstanding balance at Good Samaritan is thirty-nine-thousand-five-hundred-fifty-nine dollars and sixteen cents (\$39,559.16).

16. Beatrice Rau was admitted to Good Samaritan's skilled nursing facility on December 14, 2015 ("Rau" or "Plaintiff"). Rau suffers from heart disease among other severe medical conditions. She requires twenty-four hour skilled nursing care at Good Samaritan. Rau's current outstanding balance at Good Samaritan is thirty-two-thousand-two-hundred-forty dollars and eighty-six cents (\$32,240.86).

17. Robert Seymour was admitted to Good Samaritan's skilled nursing facility on October 5, 2015 ("Seymour" or "Plaintiff"). Seymour suffers from diabetes and epilepsy among other severe medical conditions. He requires twenty-four hour skilled nursing care at Good Samaritan. Seymour's current outstanding balance at Good Samaritan is sixty-three-thousand-three-hundred-eight-seven dollars and fifty-six cents (\$63,387.56).

18. Verlie Stout was admitted to Good Samaritan's skilled heart disease and diabetes among other severe medical conditions. She requires twenty-four hour skilled nursing care at Good Samaritan. Stout's current outstanding balance at Good Samaritan is eighty-four-thousand-one-hundred-thirty-three dollars and forty-seven cents (\$84,133.47).

19. Leslie Sutherland was admitted to Good Samaritan's skilled nursing facility on January 21, 2016 ("Sutherland" or "Plaintiff"). Sutherland suffers from diabetes and heart disease among other severe medical conditions. He requires twenty-four hour skilled nursing care at Good Samaritan. Sutherland's current outstanding balance at Good Samaritan is thirty-one-thousand-five-hundred-fifty-seven dollars and ninety-four cents (\$31,557.94).

20. Darrell Theleman was admitted to Good Samaritan's skilled nursing facility on January 20 2016 ("Theleman" or "Plaintiff"). Theleman suffers from heart failure and diabetes among other

severe medical conditions. He requires twenty-four-hour skilled nursing care at Good Samaritan. Theleman's current outstanding balance at Good Samaritan is forty-thousand-sixty-four dollars and fourteen cents (\$40,064.14).

21. Norma Wade was admitted to Good Samaritan's skilled nursing facility on January 20, 2016 ("Wade" or "Plaintiff"). Wade suffers from severe medical conditions. She requires twenty-four-hour skilled nursing care at Good Samaritan. Wade's current outstanding balance at Good Samaritan is twenty-four-thousand-five-hundred-seventy-one dollars and three cents (\$24,571.03).

22. Eleanor Whitener was admitted to Good Samaritan's skilled nursing facility on October 21, 2015 ("Whitener" or "Plaintiff"). Whitener suffers from Alzheimer's among other severe medical conditions. She requires twenty-four-hour skilled nursing care at Good Samaritan. Whitener's current outstanding balance at Good Samaritan is sixty-two-thousand-seven-hundred-eighteen dollars and zero cents (\$62,718.00).

23. The Kansas Department of Health and Environment ("DHCF" or "Defendant") is a Kansas state agency that provides Medicaid services to enrollees in Kansas. DHCF is the sole state agency administering Medicaid in the State of Kansas.

24. The Michael Randol, is the Director of DHCF ("Randol" or "Defendant"), and at all times material to this Complaint acted under color of state law in administering the regulations, customs, policies, and practices material herein. He is sued in his official capacity only.

### **STATEMENT OF FACTS**

1. The Kansas State Medicaid Plan operates under the statutory authority of Title XIX of the Social Security Act Medical Assistance Program.

2. As a condition of receiving federal funds, DHCF is required to administer the Medicaid program in the state of Kansas in compliance with the Federal Medicaid Act, 42 U.S.C. § 1396a (a) (8), and implementing regulations.

3. Federal law requires that the Defendant make an eligibility determination on a Medicaid application within forty-five days. *See* 42 C.F.R. . §435.912.

4. Pursuant to 42 CFR §431.220, applicant has a right to file an appeal (“Inaction Appeal”) when the state Medicaid agency [Defendant] has failed to timely process an individual’s Medicaid application or request and obtain interim benefits for automatic approval.

**42 CFR §431.220 When a hearing is required.**

(a) The State agency must grant an opportunity for a hearing to the following:

(1) Any applicant who requests it because his claim for services is denied or is not acted upon with reasonable promptness.

(2) Any beneficiary who requests it because he or she believes the agency has taken an action erroneously.

(3) Any resident who requests it because he or she believes a skilled nursing facility or nursing facility has erroneously determined that he or she must be transferred or discharged.

(4) Any individual who requests it because he or she believes the State has made an erroneous determination with regard to the preadmission and annual resident review requirements of section 1919(e)(7) of the Act.

(5) Any MCO, PIHP, or PAHP enrollee who is entitled to a hearing under subpart F of part 438 of this chapter.

(6) Any enrollee in a non-emergency medical transportation PAHP (as that term is defined in §438.9 of this chapter) who has an action as stated in this subpart.

(7) Any enrollee who is entitled to a hearing under subpart B of part 438 of this chapter.

5. In *Doe 1-13 by and Through Doe Sr. 1-13 v. Chiles*, 136 F.3d 709 (1998) the court found that an action brought by disabled individuals will prevail when the action is brought against state officials, who failed to provide Medicaid services with reasonable promptness. Additionally, the *Doe* court found that failing to furnish Medicaid assistance with reasonable promptness to disabled individuals should not exceed 90 days. The action was brought pursuant to 42 U.S.C. § 1983 against officials, alleging unreasonable delays in providing certain services under the state Medicare program. Additionally, in *Brown v. Luna*, 735 F.Supp. 762 (M.D. Tenn., 1990) the Court held that “[a]ll applications pending more than 90 days without an eligibility decision [were to] be awarded interim Medicaid benefits unless [the Agency had] documented that the application has been delayed for good cause.”

6. In 2008, Congress passed legislation requiring all states to implement electronic asset verification programs (“AVP”) to obtain information regarding the financial resources of Medicaid applicants, including those seeking Medicaid coverage for long-term care. 42 U.S.C. §1396w. This requirement has been codified in the federal Medicaid regulations. 42 CFR §435.945(j).

7. Federal law imposes on Medicaid agencies an affirmative duty to obtain information regarding a Medicaid applicant’s eligibility. This duty exists independent of the actions of the Medicaid applicant and is consequently not dependent on the extent of an applicant’s efforts to obtain eligibility information, or on an applicant’s request for assistance. 42

CFR § 435.952. Furthermore, Medicaid agencies are not permitted to ask applicants to produce information unless that information is unavailable electronically. 42 C.F.R. § 435.952(c).

8. The Defendant did not seek to obtain any of the Plaintiffs' information electronically via AVP. Nor did the Defendant try to obtain Plaintiffs' information from secondary sources. Instead, the Defendant placed the burden of providing information entirely on the Plaintiffs. These actions violate federal law, which requires agencies to obtain and use items of information relating to Medicaid applicants and beneficiaries to "prevent ineligibility and incorrect payments." 42 CFR 435.953(a). No steps are taken by the Defendant to prevent the ineligibility of the Plaintiffs.

9. In light of the Defendant's failure to comply with federal and state Medicaid laws, the Plaintiffs have been unable to pay for their room, board, care and services at Good Samaritan during her period of Medicaid ineligibility in the amounts stated above.

10. Such inaction by the Defendant places the Plaintiffs at risk of being discharged from Good Samaritan and jeopardizes their health safety, and well-being.

11. Federal law requires the Defendant to issue a determination on an individual's Medicaid application, and requires that every applicant be timely afforded such notice and a right to appeal such decision.

12. As a direct result of the Defendant's failure to timely process their Medicaid applications, the Plaintiffs have failed to receive public assistance to which they are entitled pursuant to federal law.

13. The Defendant has failed to provide a system which ensures that medical assistance will be available, including at least the care and services listed in paragraphs (1) through (5) of

42 U.S.C. § 1396d(a), to all individuals meeting specified financial eligibility standards, as required under 42 U.S.C. § 1396a(a)(10).

14. All of the Plaintiffs are “qualified individuals with a disability,” as defined under the ADA, 42 U.S.C. § 12132 *et. seq.* and 28 C.F.R. § 35.130 *et. seq.*

15. The Defendant’s failure to afford the Plaintiffs public benefits and services, to which they are entitled under federal law, and failure to grant the Residents Medicaid benefits as a reasonable accommodation, constitutes actual or predictable discrimination in violation of the ADA, 42 U.S.C. § 12132 *et seq.* and 28 C.F.R. § 35.130 *et seq.*

16. By failing to pay for services rendered to Medicaid approved patients, the Defendant has failed to comply with federal law, as preempted by the Supremacy Clause of the United States Constitution, Article VI. The burden placed on the Defendant, should the Court grant the relief requested in this action, is that Defendant will be required to comply with federal Medicaid laws and pay for medical services already rendered to Plaintiffs. The Defendant stand to suffer diminutive, if any, burden by the timely rendering of payment of Plaintiffs’ Medicaid claims to the skilled nursing facilities in which they reside.

## **VI. CAUSES OF ACTION**

### **COUNT ONE - DECLARATORY JUDGMENT RELIEF**

17. Plaintiffs incorporate all paragraphs set out above as if fully set out herein.

18. Pursuant to 28 U.S.C. § 2201, and Rule 57 of the Federal Rules of Civil Procedure, Plaintiffs seek a declaration by this Court.

19. It is well settled that the district court’s exercise of discretion in a declaratory judgment action should be informed by a number of prudential factors, including: (1) considerations of practicality and efficient judicial administration; (2) the functions and limitations

of the federal judicial power; (3) traditional principles of equity, comity, and federalism; (4) Eleventh Amendment and other constitutional concerns; and (5) the public interest. *Smith & Usaha*, [supra note 2](#), at 116, *citing* . *Wilton v. Seven Falls Company*, 515 U.S. 288 (1995); [Green v. Mansour](#), 474 U.S. 64, 72-74 (1985); *Rickover*, 369 U.S. 111 at 112-13; [Public Service Commission of Utah v. Wycoff Company](#), 344 U.S. 237, 243-47 (1952). Perhaps the most important factors are whether a declaratory judgment will serve a useful purpose and resolve the controversy between the parties. *Smith & Usaha*, *supra note 2*, at 116 (collecting cases); *Wilton*, 515 U.S. at 288; *Green v. Mansour*, 474 U.S. 64, 74 (1985); *Rickover*, 369 U.S. 111 at 112-13G; *Wycoff*, 344 U.S. at 244.

20. The Kansas State Medicaid Plan operates under the statutory authority of Title XIX of the Social Security Act Medical Assistance Program.

21. As a condition of receiving federal funds, DHCF is required to administer the Medicaid program in the state of Kansas in compliance with the Federal Medicaid Act, 42 U.S.C. § 1396a (a) (8), and implementing regulations.

22. Federal law requires that the Defendant make an eligibility determination on a Medicaid application within forty-five days. *See* 42 C.F.R . §435.912. Pursuant to 42 CFR §431.220, applicant has a right to file an Inaction Appeal when the state Medicaid agency [Defendant] has failed to timely process an individual's Medicaid application or request and obtain interim benefits for automatic approval.

23. In *Doe 1-13 by and Through Doe Sr. 1-13 v. Chiles*, 136 F.3d 709 (1998) the court found that an action brought by disabled individuals will prevail when the action is brought against state officials, who failed to provide Medicaid services with reasonable promptness. Additionally, the *Doe* court found that failing to furnish Medicaid assistance with reasonable promptness to

disabled individuals should not exceed 90 days. The action was brought pursuant to 42 U.S.C. §1983 against officials, alleging unreasonable delays in providing certain services under the state Medicare program.

24. In light of the Defendant's failure to comply with federal and state Medicaid laws, the Plaintiffs have been unable to pay for their room, board, care and services at Good Samaritan during their period of Medicaid ineligibility in the amounts stated above.

25. Such inaction places the Plaintiffs at risk of being discharged from Good Samaritan and jeopardizes their health safety, and well-being.

26. Federal law requires the Defendant to issue a determination on an individual's Medicaid application, and requires that every applicant be timely afforded such notice and a right to appeal such decision.

27. As a direct result of the Defendant's failure to timely process their Medicaid applications, the Plaintiffs have failed to receive public assistance to which they are entitled pursuant to federal law.

28. The Defendant has failed to provide a system which ensures that medical assistance will be available, including at least the care and services listed in paragraphs (1) through (5) of 42 U.S.C. § 1396d(a), to all individuals meeting specified financial eligibility standards, as required under 42 U.S.C. § 1396a(a)(10).

29. By failing to pay for services rendered to Medicaid approved patients, the Defendant has failed to comply with federal law, as preempted by the Supremacy Clause of the United States Constitution, Article VI. The burden placed on the Defendant, should the Court grant the relief requested in this action, is that Defendant will be required to comply with federal Medicaid laws and pay for medical services already rendered to Plaintiffs. The Defendant stand to

suffer diminutive, if any, burden by the timely rendering of payment of Plaintiffs' Medicaid claims to the skilled nursing facilities in which they reside.

WHEREFORE, PREMISES CONSIDERED, the Plaintiffs pray that this Court order the following equitable and declaratory relief:

a. Assume jurisdiction over this action and maintain continuing jurisdiction until are in full compliance with every Order of this Court;

b. Issue an Order requiring the Defendant automatically approving the Plaintiffs' Medicaid benefits; and

c. To take other such actions as are proper and necessary to remedy the Defendant's violations and order such equitable relief as will make Plaintiffs whole for Defendant's unlawful conduct.

**COUNT TWO – VIOLATION OF THE “AMERICANS WITH DISABILITIES  
ACT” (“ADA”), 42 U.S.C. §12132**

30. The Plaintiffs incorporate all paragraphs set out above as if fully set out herein.

31. The Defendant Randol has failed to provide a system which ensures that medical assistance will be available, including at least the care and services listed in paragraphs (1) through (5) of 42 U.S.C. § 1396d(a), to all individuals meeting specified financial eligibility standards, as required under 42 U.S.C. § 1396a(a)(10).

32. All of the Plaintiffs are “qualified individuals with a disability,” as defined under the ADA, 42 U.S.C. § 12132 *et. seq.* and 28 C.F.R. § 35.130 *et. seq.*

33. The Defendant's failure to afford the Plaintiffs public benefits and services, to which they are entitled under federal law, and failure to grant the Residents Medicaid benefits as

a reasonable accommodation, constitutes actual or predictable discrimination in violation of the ADA, 42 U.S.C. § 12132 *et seq.* and 28 C.F.R. § 35.130 *et seq.*

34. As a consequence of Defendant's actions as described herein, Plaintiffs have suffered damages, including compensatory, mental anguish and other damages.

WHEREFORE, PREMISES CONSIDERED, the Plaintiffs pray that this Court order the following equitable and declaratory relief:

a. Assume jurisdiction over this action and maintain continuing jurisdiction until are in full compliance with every Order of this Court;

b. Issue an Order requiring the Defendant automatically approving the Plaintiffs' Medicaid benefits; and

c. To take other such actions as are proper and necessary to remedy the Defendant's violations and order such equitable relief as will make Plaintiffs whole for Defendant's unlawful conduct.

**COUNT THREE – VIOLATION OF DUE PROCESS AND EQUAL PROTECTION**

**(42 U.S.C. §1983)**

35. The Plaintiffs incorporate all paragraphs set out above as if fully set out herein

36. Equal protection doctrine ensures that all similarly situated persons are treated similarly under the law. If a statute classifies people, the classification must be based on criteria related to the statute's objective. *Disabled Am. Veterans v. United States Dep't of Veterans Affairs*, 962 F.2d 136, 141 (2d Cir. 1992).

37. The above acts were committed under color of state law by the Defendant. Said acts were committed by the Defendant by and through representatives of the Defendant acting in their official capacities pursuant to the statutes, ordinances, laws and policies of the Defendant.

38. The Defendant acted wilfully, knowingly, and purposefully with the specific intent to deprive Plaintiffs of their rights, privileges, or immunities secured by the Constitution and laws by the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States and by 42 U.S.C. §1983.

39. As a consequence of the Defendant's actions as described herein, the Plaintiffs have suffered damages including compensatory, mental anguish and other damages.

WHEREFORE, PREMISES CONSIDERED, the Plaintiffs pray that this Court order the following equitable and declaratory relief:

a. Assume jurisdiction over this action and maintain continuing jurisdiction until are in full compliance with every Order of this Court;

b. Issue an Order requiring the Defendant automatically approving the Plaintiffs' Medicaid benefits; and

c. To take other such actions as are proper and necessary to remedy the Defendant's violations and order such equitable relief as will make Plaintiffs whole for Defendant's unlawful conduct.

**COUNT FOUR – TEMPORARY AND PERMANENT INJUNCTION**

40. The Plaintiffs incorporate all paragraphs set out above as if fully set out herein.

41. The above acts were committed under color of state law by the Defendant. Said acts were committed by the Defendant by and through representatives of the Defendant acting in their official capacities pursuant to the statutes, ordinances, laws and policies of the Defendant.

42. The Plaintiffs demand temporary and permanent injunctive relief requiring that the Defendant make an eligibility determination on their Medicaid applications within forty-five days

and to permit the Plaintiffs right to file an Inaction Appeal due to the Defendant's failure to timely process their Medicaid applications or request interim benefits.

43. Issue an Order requiring the Defendant to automatically approve the Plaintiffs' Medicaid benefits.

WHEREFORE, PREMISES CONSIDERED, the Plaintiffs pray that this Court order the following equitable and declaratory relief:

a. Assume jurisdiction over this action and maintain continuing jurisdiction until are in full compliance with every Order of this Court;

b. Issue an Order requiring the Defendant automatically approving the Plaintiffs' Medicaid benefits; and

c. To take other such actions as are proper and necessary to remedy the Defendant's violations and order such equitable relief as will make Plaintiffs whole for Defendant's unlawful conduct.

PLAINTIFFS HEREBY DEMAND A TRIAL BY A STRUCK JURY.

Respectfully submitted,

/s/ Donald Snook  
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