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10 Attorneys for Plaintiffs

11 UNITED STATES DISTRICT COURT
12 DISTRICT OF ARIZONA

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

15 Plaintiffs,

16 v.

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

19 Defendant.
20
21
22

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

**PLAINTIFFS' SUPPLEMENTAL
DOCUMENTS AND
EXPLANATION/ARGUMENT BASED
ON NEWLY PRODUCED
DOCUMENTS IN FURTHER
SUPPORT OF PLAINTIFFS'
RENEWED MOTION FOR CLASS
CERTIFICATION, OR IN THE
ALTERNATIVE, TO TAKE
PLAINTIFFS' MOTION UNDER
ADVISEMENT AND FOR CLASS
DISCOVERY**

23 Defendant recently produced new documents which demonstrate that Defendant
24 continues to identify, on a nearly daily basis, qualified immigrants whose benefits are
25 improperly reduced, and that Plaintiff Sanchez Haro is among that group. Moreover, the
26 new evidence shows that these errors persist despite Defendant's assertions that it fixed the
27 computer system and resolved the problem through quality controls. Accordingly, in
28 further support of their Renewed Motion for Class Certification, or in the Alternative, to

1 Take Plaintiffs’ Motion Under Advisement and for Class Discovery. Plaintiffs respectfully
2 submit the Fifth Declaration of Ellen Katz with attached exhibits described below, the
3 Third Declaration of Plaintiff Sanchez Haro and the explanation/argument below
4 concerning the documents to provide context for the Court.

5 **Sanchez Haro’s October 12, 2017 Benefit Reduction**

6 1. For the third time in 18 months, Defendant once again improperly reduced
7 Plaintiff Sanchez Haro’s medical benefits to emergency-only benefits on October 12, 2017,
8 following a renewal application. The first two redacted pages of the decision are attached
9 as Exh. 27 to Fifth Katz Declaration.¹ But, just as with the two prior improper medical
10 benefit reductions, her immigration status had not changed and there is no basis for the
11 change.

12 2. Defendant’s own review of her case confirms that neither the caseworker or
13 Ms. Sanchez Haro altered the prepopulated immigration information on the October 12,
14 2017 renewal application. *See* Exh. 28, Ticket 237750, AHC 3111, noting that immigration
15 status of “main contact” was autofilled from prior application as a battered noncitizen.

16 3. The source of the problem is that the immigration information that Defendant
17 entered into the HEAPlus computer system continues to generate an incorrect
18 determination because of the computer system’s own flaws and functions.

19 4. There is no dispute that Ms. Sanchez Haro is eligible for full Medicaid
20 benefits. But to understand the computer problem that has been demonstrated in the new
21 documents it is important to identify precisely why she is eligible.

22 5. Ms. Sanchez Haro first obtained “qualified immigrant” status in 2003, as a
23 battered non-citizen. *See* 8. U.S.C. § 1641(c); Complaint, ¶ 72; Doc. 1; Sanchez Haro
24 Declaration, ¶ 4, Doc. 11; USCIS form dated August 18, 2016 showing qualified status as
25

26 ¹ Although this decision is in English, Ms. Sanchez Haro speaks and read Spanish
27 and AHCCCS is required to send her any notices and decisions in Spanish. Plaintiffs also
28 submitted the redacted select pages of the decision with their Reply to the Motion to
Compel. Doc. 149-1.

1 of 2003, Doc. 117-1 at 112. A qualified immigrant typically has to hold that status for five
2 years before becoming eligible for full Medicaid benefits but there are exceptions to that
3 requirement. See AHCCCS policy [https://healtharizonaplus.gov/PolicyManual/
4 EligibilityPolicyManual/index.html#page/MA/MA500/MA0524.B_Other_Conditions_
5 for_LPRs_Parolees_and_Batter.html](https://healtharizonaplus.gov/PolicyManual/EligibilityPolicyManual/index.html#page/MA/MA500/MA0524.B_Other_Conditions_for_LPRs_Parolees_and_Batter.html).

6 6. One exception is that the immigrant entered the U.S. before 1996. Ms.
7 Sanchez Haro entered the U.S. before 1996, and therefore qualified for an exemption to the
8 five-year requirement. Sanchez Haro Decl. ¶ 4, Doc. 11. Her status as a qualified
9 immigrant combined with her presence in the U.S. since 1996 made her eligible for full-
10 Medicaid benefits, starting in 2003.

11 7. Moreover, since Ms. Sanchez Haro has held a qualified immigrant status
12 since 2003, even if she had not entered the U.S. prior to 1996, the fact that she has now
13 held a qualified status for more than five years also makes her eligible for full benefits.

14 8. Her eligibility for full Medicaid benefits was not changed by her obtaining
15 Legal Permanent Residence (“LPR”) status in January 2015. Sanchez Haro Decl. ¶3, Doc.
16 11; USCIS Form dated Aug 18, 2016, showing LPR status as of “1/13/2015.” Doc. 117-1
17 at 109. She remained exempt from the five-year requirement because she entered the U.S.
18 before 1996. Moreover, when she became an LPR, she already held another qualified
19 immigrant status, battered noncitizen, for more than five years and, therefore, she did not
20 need to meet the five-year requirement.

21 9. Accordingly, she remains eligible for full benefits for two distinct reasons:
22 (a) she is a qualified immigrant who entered the U.S. prior to 1996, so is exempt from the
23 five-year requirement, and (b) she has held a qualified immigrant status of either battered
24 immigrant or LPR since 2003, which is more than five years, so even if the five-year
25 requirement applied, it would be met.

26 8. On October 12, 2017, when the HEAPlus system automatically populated Ms.
27 Sanchez Haro’s immigration status in the renewal application, it correctly showed that she
28 is a “Battered Noncitizen,” but incorrectly showed (a) Ms. Sanchez Haro had *not* lived in

1 the U.S. since 1996; and (b) that Ms. Sanchez Haro's qualified immigration status began
2 in 2015, instead of in 2003. As a result, the computer's algorithm determined that Ms. Haro
3 was both subject to the five-year bar, and had not yet met it. Exh. 29 (Eligibility
4 Application Summary dated October 12, 2017, AHC 3037-48, 3051).

5 10. But accurate immigration information had previously been input into the
6 HEAPlus system, on multiple occasions, including by Tara Lockner herself. But this
7 information is not locked down and carried forward on a personal level and as a result,
8 incorrect immigration information was copied into Ms. Sanchez Haro's renewal
9 application.

10 11. As Plaintiffs have explained previously, in August 2016, Ms. Lockner herself
11 verified that Ms. Sanchez Haro had received battered immigrant status in 2003, by sending
12 a fax to USCIS. *See* Doc. 115 at 4 (citing Doc. 117-1 at 108-112). That information was
13 entered into the HEAPlus system, along with a copy of the scanned document to avoid any
14 further confusion. *Id.* According to Defendant, that should have fixed the problem.

15 12. Likewise, after AHCCCS improperly reduced Ms. Sanchez Haro's benefits
16 when she renewed her application in February 2017, Tara Lockner again went into the
17 HEAPlus system and corrected the information on April 20, 2017 to show that Ms. Sanchez
18 Haro had entered the U.S. prior to 1996, and had a change of status to LPR as of January
19 2015. Doc. 117-1 at 154, 158. The case notes also show that Ms. Sanchez Haro entered
20 the U.S. prior to 1996. *Id.* at 130.

21 13. Having corrected this information two times into the HEAPlus computer
22 system, if the computer system was fixed, this is the information that should have been
23 "autofilled" into the October 12, 2017 application.

24 14. Instead, the information generated by the HEAPlus computer system
25 incorrectly showed that (a) Ms. Sanchez Haro had *not* lived in the U.S. since 1996; and (b)
26 that Ms. Sanchez Haro's qualified immigration status began in 2015, instead of 2003.

27 15. According to the ticket notes, the HEAPlus system copied the immigration
28 information from a recent auto-renewal application of the grandchild and treated it as the

1 “most recent prior application.” *See* Exh. 28, Ticket 237750, AHC 3111 (noting that
2 information was “autofilled from” a “prior application” that also appears to have been an
3 autofill).²

4 16. That prior auto-renewal application, apparently, stated that Ms. Sanchez
5 Haro had not entered the U.S. prior to 1996.

6 17. Thus, the auto-renewal application appears to be the source of the inaccurate
7 information. But the ticket notes do not explain why that auto-renewal application
8 contained inaccurate immigration information—especially in light of the repeated
9 verifications of Ms. Sanchez Haro’s status discussed above (or, alternatively there was an
10 error in copying between the prior auto-renewal and the October 12, 2017 renewal
11 application.)

12 18. Furthermore, while the system did copy forward Ms. Sanchez Haro’s status
13 as a “Battered Noncitizen” from the prior auto-renewal application, it apparently did not
14 copy and carry forward the already-verified 2003 grant date when she initially became a
15 qualified immigrant. Exh. 28, Ticket 237750, AHC 3111.

16 19. In the absence of immigration information that Ms. Sanchez Haro entered
17 the U.S. before 1996 and had a verified qualified immigration status date of 2003 date, the
18 HEAPlus system apparently sent a new inquiry to the federal “VLP” database. *See* Exh.
19 28, Ticket 237750, AHC 3111 (noting a VLP inquiry for the “Main Contact”).

20 20. In response, the VLP database displayed Ms. Sanchez Haro’s more recent
21 Lawful Permanent Resident status, and its 2015 grant date, leading the system to conclude
22 that the five-year ban had not been met.

23 21. But there was no need to re-run a VLP, when the 2003 date was previously
24 verified. In fact, in the System Request (“SR”) 392 that has been prepared and pending for
25 the last year, Defendant and DES acknowledge that the HEAPlus system needs to be
26 changed to avoid sending the VLP inquiry in situations like this, where no change in
27 immigration status is reported. Doc. 117-1, Exh. 1 (SR 392 at 16 of 194) (noting that

28 _____
² Defendant has not produced this prior “application” numbered 2017139070108.

1 “SAVE or VLP should not run during report a change or reapplication when . . . no changes
2 to immigration status have been reported.). Those changes, however, have not been
3 implemented.

4 22. In summary, the prepopulated answers in Ms. Sanchez Haro’s renewal
5 application showed that she had *not* entered the U.S. prior to 1996 and had a grant date of
6 2015, instead of 2003.

7 23. Once the inaccurate immigration information was prepopulated by the
8 HEAPlus system, it was not changed by the caseworker who processed the application. *See*
9 Exh. 28, Ticket 237750, AHC 3111. This is because Ms. Sanchez Haro did not report any
10 change in her immigration status to the caseworker, and there was simply no need to re-
11 verify her immigration status. Third Sanchez Haro Decl., ¶ 10. In fact, the caseworker
12 who interviewed Ms. Sanchez Haro did not ask her any questions about her immigration
13 status at all, and told Ms. Sanchez Haro that there would be no changes in her eligibility.
14 *Id.* at ¶¶ 9 and 11.

15 24. As a result, both the October 12, 2017 submitted application summary, Exh.
16 30, and the eligibility application summary, Exh. 29, show that Ms. Sanchez Haro had not
17 entered the U.S. prior to 1996, that she was a battered immigrant with an LPR card and her
18 status date was 1-13-2015. For entry date to the U.S., both incorrectly state 1-13-15.

19 25. This evidence bolsters several points raised in Plaintiffs’ renewed motion for
20 class certification. First, it provides additional evidence that the errors are ongoing, despite
21 the various review processes and stopgap measures that DES has put in place. Second, it
22 sheds further light on ways that the errors in “carrying forward” information from prior
23 applications are at the root of these continuing terminations. Third, it demonstrates how,
24 even when caseworkers are involved in processing the application, the HEAPlus system
25 can lead to the wrong outcome—undermining Defendant’s continued assertion that
26 computer and caseworker errors are entirely distinct and unrelated.

27 **Continuing System-Wide Errors**

28 26. In addition to documents specific to Plaintiff Sanchez Haro, Defendant also

1 produced new evidence that demonstrates that Ms. Sanchez Haro's experience is not
2 unique and that qualified immigrants throughout the State continue to experience the same
3 incorrect benefit reductions.

4 27. A November 13, 2017 letter from AHCCCS to DES cites Ms. Sanchez
5 Haro's experience as one "example" of the continuing "instances of DES caseworkers
6 improperly determining refugee eligibility," which "DES quality controls did not catch . .
7 . before an improper notice [was] sent to the customer." Exh. 31, AHC 3079-3080. In other
8 words, AHCCCS itself recognizes that Ms. Sanchez Haro's experience is typical of and
9 common to the larger group of immigrants whose benefits are improperly reduced to
10 emergency-only.³

11 28. Moreover, as Defendant's letter reveals, despite the steps that Defendant has
12 taken in response to this litigation, the current process is simply not preventing incorrect
13 notices from being sent to beneficiaries. *Id.* In fact, contrary to Defendant's suggestions in
14 his response brief, the letter indicates that these errors are *not* quickly identified and
15 resolved. Rather, Defendant acknowledges that there are cases where "the error was not
16 identified or corrected prior to the effective date of improper transition." *Id.* In other words,
17 Defendant is aware that these ongoing errors are causing beneficiaries to lose access to full
18 benefits.

19 29. An October 27, 2017 e-mail from DES employee Brenda Rackley likewise
20 acknowledges that Defendant is aware of a group of "'frequent incorrect' transition cases,"
21 and discusses the need to develop an "action plan" to address the continuing errors. Exh.
22 32, AHC 3077.

23
24 ³ Plaintiffs have not had time to conduct any follow-up discovery concerning the
25 letter but note that it contains the self-serving statements about case worker errors that
26 Plaintiffs dispute. These self-serving statements are made knowing that this document will
27 have to the introduction of this document in other aspects of this litigation, Plaintiffs submit
28 this letter solely for the purpose of this motion and to show that Defendant has
misrepresented to the Court about the commonality of the reductions and to show that the
erroneous medical reductions are *not* caught before the decisions go out and are in effect
and the resulting harm that occurs from the improper decisions continues.

1 30. From August 21 through November 22, 2017, over 150 additional
2 immigrants had their medical benefits improperly reduced. Exh. 33, AHC 3103-08, listing
3 immigrant cases and “corrections needed.”

4 31. Finally, while Defendant continues to assert that the problem is not its
5 computer system, but DES caseworkers, newly produced internal communications directly
6 undermine that position. Defendant’s own letter to DES acknowledges that the recent errors
7 in processing qualified immigrant renewal applications are a continuation of the same
8 problems that Plaintiffs first identified in October 2015. Exh. 31, AHC 3079-3080.

9 32. Moreover, DES has consistently acknowledged that changes to the HEAPlus
10 system are necessary—indeed the “System Request (SR) 392” is still being requested by
11 DES as a solution to these problems. Exh. 32, e-mail from Brenda Rackley, AHC 3077. As
12 Plaintiffs explained in their renewed motion for class certification, the SR 392 proposes to
13 modify the HEAPlus system so that immigration information is tied to an *individual*, rather
14 than an *application*. As Ms. Sanchez Haro’s recent experience demonstrates, the reliance
15 on separate applications allows multiple, distinct, and inaccurate sets of immigration
16 information to be stored in the HEAPlus system, all of which are available to be
17 “autofilled” and prepopulated into a new renewal application. *See* Doc. 115 at 8-9; Doc.
18 117-1, Exhs. 1 (at 5-98 of 194), 14 (at 165-171 of 194).

19 33. The new evidence also shows that Defendant does not actually understand
20 the underlying cause of these continued errors. A recent e-mail from Samantha Smith, a
21 DES employee, explains that “Due to the continued errors on the Full to FES MA decision.
22 There [sic] will be a data gathering for the next two weeks. We are trying to identify why
23 this is still happening and how can we support the PSEs to make the accurate decisions.”
24 Exh. 34, AHC 3074. As a result, Defendant and DES agreed that DES would conduct a
25 “‘real-time’ analysis of errors for [a] two week period of time,” to be completed on
26 November 10, 2017.⁴ Exh. 32, AHC 3077.

27 _____
28 ⁴ Although Plaintiffs requested the analysis, Defendant has not yet produced the documents
claiming these documents are in the possession of DES. Plaintiffs renewed their request.

1 34. Defendant, therefore, has no basis for his bald assertions that all of the
2 remaining errors are isolated keying errors caused by the applicants or caseworkers when
3 entering information. While that may be Defendant’s claim, the evidence to-date does not
4 support that assertion. Instead, the evidence conclusively demonstrates that there is a
5 system-wide problem in the processing of qualified immigrant’s renewal applications,
6 which requires a systematic solution.

7 35. Accordingly, Plaintiffs respectfully request that the Court certify a class so
8 that Plaintiffs may represent the interests of the class and seek class-wide relief for these
9 ongoing improper decisions, or in the alternative, allow the class discovery.

10 Respectfully submitted this 4th day of December 2017.

11 NATIONAL HEALTH LAW PROGRAM
12 WILLIAM E. MORRIS INSTITUTE FOR
13 JUSTICE

14 By /s/ Ellen S. Katz

15 Attorneys for Plaintiffs

16
17
18 **CERTIFICATE OF SERVICE**

19 I hereby certify that on the 4th day of December 2017, I caused the foregoing
20 document to be electronically transmitted to the Clerk’s Office using the CM/ECF System
21 for filing and transmittal to the following CM/ECF Registrants:

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