

KEVIN G. CLARKSON
ATTORNEY GENERAL

Alexander J. Hildebrand (Alaska Bar No. 0612104)
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Attorney for Defendants State of Alaska

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JENNIFER SPENCER, individually and)	
on behalf of all those similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	
)	
ADAM CRUM, in his official capacity as)	
Commissioner of the Alaska Department)	
of Health and Social Services, and)	
SHAWNDA O'BRIEN, in her official)	
capacity as Director of the Alaska)	
Division of Public Assistance,)	
)	
Defendants.)	Case No.
)	

DEFENDANTS' NOTICE OF REMOVAL

Defendants Adam Crum, in his official capacity as Commissioner of the Alaska Department of Health and Social Services, and Shawnda O'Brien, in her official capacity as the Director of the Alaska Division of Public Assistance, hereby provide notice of

Defendant's Notice of Removal
Spencer v. Crum and O'Brien

Case No. _____
Page 1 of 4

removal of case number 3AN-19-05386CI from the Superior Court for the State of Alaska, Third Judicial District at Anchorage, to the United States District Court, District of Alaska, pursuant to 28 U.S.C. §§ 1331, 1441, and 1446, and as grounds for removal state:

STATEMENT OF THE CASE

1. On February 27, 2019, Plaintiff Jennifer Spencer filed a complaint styled “Jennifer Spencer, individually and on behalf of all other similarly situated” case number 3AN-19-005386CI (the “State Court action”). A copy of the Complaint and Summons is attached.

2. Defendants are unsure when service was completed, but it was not sooner than February 28, 2019, when the Complaint was received by the Alaska Attorney General’s Office as shown by the received date stamped on the attached Complaint and Summons.

3. The two causes of action stated in the Complaint are violations of: 42 U.S.C. §1983, based on 42 U.S.C. § 1396(a)(8) and 7 AAC 100.018.

4. The relief sought is a certification of the class; a declaration that the defendants violated 42 U.S.C. § 1396a(a)(8) and 7 AAC 100.018; a preliminary and permanent injunction requiring defendants to make final eligibility determinations and to begin providing Medicaid coverage to all eligible individuals within 30 days after receiving their Medicaid applications or 90 days if a disability determination is required; the award of costs and expenses of litigation; the award of full reasonable attorney’s fees

under 42 U.S.C. § 1988; and such other and further compensatory or equitable relief as this Court may deem just under the circumstances

JURISDICTION UNDER 28 U.S.C. § 1331, § 1367 AND § 1441

5. This Court has jurisdiction under 28 U.S.C. § 1331, § 1367, and § 1441 because this is a civil action in which the primary cause of action alleged in the State Court action Complaint is a violation of a federal law related to Medicaid which arises under the laws of the United States. The other cause of action is based on a violation of a State of Alaska regulation implementing the federal law and is related such that it forms part of the same case and controversy.

PROCEDURAL REQUIREMENTS FOR REMOVAL HAVE BEEN SATISFIED

6. This Notice of Removal has been filed within 30 days of the date service was accomplished, which was at the earliest February 28, 2019. Removal is timely. 28 U.S.C. § 1446(b).

7. All of the defendants consent to removal under 28 U.S.C. § 1446(b)(1).

8. A true and correct copy of all pleadings and documents filed in the State Court action are being filed with this Notice of Removal.

9. Written notice of the filing of this Notice will promptly be given to all adverse parties.

10. A Notice to State Court of Removal will be filed in the Superior Court for the State of Alaska, Third Judicial District at Anchorage, case number 3AN-19-05386CI, on behalf of defendants.

11. Venue is proper because the United States District Court, District of Alaska, is the corresponding federal judicial district for the Superior Court of the State of Alaska, Third Judicial District at Anchorage, where the State Court action was filed.

DATED: March 29, 2019.

KEVIN G. CLARKSON
ATTORNEY GENERAL

By: /s/Alexander J. Hildebrand
Alexander J. Hildebrand
Assistant Attorney General
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Attorney for Defendants)
State of Alaska

Certificate of Service

I certify that on March 29, 2018 the foregoing *Defendants' Notice of Removal* and *Exhibits 1-2* was served on the following via USPS, First Class Mail and electronically on:

James J Davis, Jr. and Goriune Dudukgian
Northern Justice Project, LLC
310 K Street, Suite 200
Anchorage, AK 99501
Email: jdavis@njp-law.com
Email: gdudukgian@njp-law.com

/s/Rebecca N. Garcia

Rebecca N. Garcia, Law Office Assistant

Defendant's Notice of Removal
Spencer v. Crum and O'Brien

Case No. _____
Page 4 of 4

IN THE DISTRICT/SUPERIOR COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

JENNIFER SPENCER, individually and on
behalf of all those similiarly situated,

Plaintiff(s),

vs.

ADAM CRUM, in his official capacity as
Commissioner of the Alaska Department of
Health and Social Services, and SHAWNDA
O'BRIEN, in her official capacity as Director
of the Alaska Division of Public Assistance

Defendant(s).

State of Alaska
HSS/DPA

FEB 28 2019

Received

CASE NO. 3AN-19-5306 CI

**SUMMONS
AND
NOTICE TO BOTH PARTIES
OF JUDICIAL ASSIGNMENT**

To Defendant: DIVISION OF PUBLIC ASSISTANCE c/o Shawnda O'brien

You are hereby summoned and required to file with the court a written answer to the complaint which accompanies this summons. Your answer must be filed with the court at (address): 825 WEST 4TH STREET, ANCHORAGE, AK 99501 within 20 days* after the day you receive this summons.

In addition, a copy of your answer must be sent to:

Plaintiff's attorney or plaintiff (if unrepresented): James J. Davis, Jr.

Address: Northern Justice Project, LLC, 310 K Street, Suite 200, Anchorage, AK 99501

If you fail to file your answer within the required time, a default judgment may be entered against you for the relief demanded in the complaint.

If you are not represented by an attorney, you must inform the court and all other parties in this case, in writing, of your current mailing address and any future changes to your mailing address and telephone number. You may use court form *Notice of Change of Address / Telephone Number* (TF-955), available at the clerk's office or on the court system's website at www.state.ak.us/courts/forms.htm, to inform the court.

-OR-

If you have an attorney, the attorney must comply with Alaska R. Civ. P. 5(i).

NOTICE OF JUDICIAL ASSIGNMENT

To: Plaintiff and Defendant

You are hereby given notice that this case has been assigned to Judge Crosby

(SEAL)
CIV-100 (2/06)(st.3)
SUMMONS

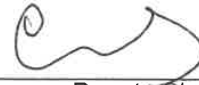
CLERK OF COURT

Civil Rules 4, 5, 12, 42(c), 55

2/27/19

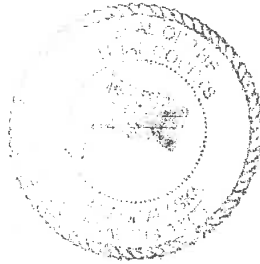
Date

By:



Deputy Clerk

* The state or a state officer or agency named as a defendant has 40 days to file its answer. If you have been served with this summons outside the United States, you also have 40 days to file your answer.



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A Private Civil Rights Firm
310 K Street, Suite 200
Anchorage, AK 99501

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Email: jdavis@njp-law.com
Attorneys for Plaintiffs

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

JENNIFER SPENCER, individually and on)
behalf of all others similarly situated,)
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Plaintiffs,)
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v.)
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ADAM CRUM, in his official capacity as)
Commissioner of the Alaska Department of)
Health and Social Services, and SHAWNDA)
O'BRIEN, in her official capacity as Director)
of the Alaska Division of Public Assistance,)
)
Defendants.)
)
)
)
)
)

Case No. _____

CLASS ACTION COMPLAINT

PRELIMINARY STATEMENT

1. This putative class action lawsuit challenges the defendants' systemic failure to provide Medicaid coverage to eligible applicants with reasonable promptness. This action is brought pursuant to 42 U.S.C. § 1983 to redress the deprivation of federal statutory rights by state officials under color of state law.

2. Defendants' systemic and unlawful delays – from processing Medicaid applications to providing Medicaid benefits to eligible applicants – have deprived and

continue to deprive *thousands* of vulnerable Alaskans of desperately-needed healthcare coverage.

3. Defendants' own data indicates that, as of February 2019, there was a backlog of more than 15,000 Medicaid applications awaiting eligibility determinations in Alaska; more than 10,000 of these individuals had applied in 2018 and were *still* waiting for defendants to provide them with Medicaid coverage.

4. Defendants' delays in processing Medicaid applications and providing Medicaid coverage to eligible applicants are a longstanding phenomenon. Defendants' data indicates that, for the 2018 state fiscal year, it failed to process 19,631 Medicaid applications within the federal timeframes, which was 46.3% of the total applications submitted. Meanwhile, defendants' historical data shows that they failed to timely process 33.6% of Medicaid applications in the 2014 state fiscal year, 62.2% in the 2015 state fiscal year, 57.4% in the 2016 state fiscal year, and 48.6% in the 2017 state fiscal year.

5. Defendants' delays are hurting communities across the state. No single district office of the Alaska Division of Public Assistance ("DPA") is timely processing more than 66% of Medicaid applications received.

6. Plaintiff, on behalf of herself and similarly situated Alaskans, seeks preliminary and permanent injunctive relief requiring the defendants to provide Medicaid coverage to eligible applicants with reasonable promptness, as required by federal law.

JURISDICTION

7. This Court has jurisdiction pursuant to AS 22.10.020(c) and (g).

8. Venue is proper under AS 22.10.030 and Alaska Civil Rule 3(c).

PARTIES

9. Plaintiff Jennifer Spencer resides in Anchorage, Alaska.

10. Defendant Adam Crum is the Commissioner of and oversees the Alaska Department of Health and Social Services (“DHSS”), which is the state agency that is responsible for, among other things, administering Alaska’s Medicaid program in accordance with federal and state statutes and regulations. Commissioner Crum is sued in his official capacity.

11. Defendant Shawnda O’Brien is the Director of and oversees the Division of Public Assistance (“DPA”), which is the division within DHSS that is responsible for, among other things, accepting and processing Medicaid applications and making eligibility determinations in accord with state and federal law. Director O’Brien is sued in her official capacity.

CLASS ALLEGATIONS

12. Plaintiff Jennifer Spencer brings this action on her own behalf and on behalf of all persons who are similarly situated, pursuant to Rule 23 of the Alaska Rules of Civil Procedure.

13. The class is defined as follows: All individuals who applied for Alaska Medicaid within two years before the filing of this lawsuit, and all future applicants, who did not or do not receive a final eligibility determination *and* Medicaid coverage from the defendants within 30 days after submitting their Medicaid applications, or within 90 days if a disability determination was or is required.

14. All requirements for class certification under Rule 23(a) are met in this case. Specifically,

a. The class is so numerous that joinder of all members is impracticable.

The number of individuals in the above-defined class, although presently unknown, is believed to number in the thousands.

b. There are questions of law or fact common to the class, including but not limited to: Are the defendants violating 42 U.S.C. § 1396a(a)(8) and/or 7 Alaska Administrative Code (AAC) 100.018(b) by failing to provide Medicaid coverage to eligible individuals with “reasonable promptness” after receiving their complete applications?

c. The claims of the representative party are typical of those of the putative class members.

d. The representative party will fairly and adequately represent the class. Neither the representative plaintiff nor her counsel have interests which might cause them not to vigorously pursue this action.

15. Certification of a class under Alaska R. Civ. P. 23(b)(2) is appropriate because the defendants at all times have acted and/or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief and corresponding declaratory relief with respect to the class as a whole.

STATUTORY AND REGULATORY SCHEME

Overview

16. Congress created the Medicaid program in 1965 as a joint federal-state endeavor to provide medical assistance to eligible low-income individuals whose resources and income are insufficient to afford necessary medical services.

17. Through Medicaid, the federal government subsidizes a substantial portion of a participating state’s expenditures in providing covered medical care.

18. Although state participation in Medicaid is optional, participating states, such as Alaska, must comply with the federal requirements of the Medicaid program.

Federal Timely Processing Requirements for Medicaid Applications

19. The Medicaid Act mandates that state Medicaid plans must provide “that all individuals wishing to make application for medical assistance under the plan shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals.” 42 U.S.C. § 1396a(a)(8).

20. Federal regulations implementing the Medicaid program similarly require states to make Medicaid eligibility determinations “promptly and without undue delay.” 42 C.F.R. § 435.912(b). The implementing regulations set two explicit caps on the length of time that states have to determine the eligibility of an applicant. First, per 42 C.F.R. § 435.912(c)(3)(i), for any applicant applying for Medicaid on the basis of a disability, an eligibility determination must be made within 90 days. Second, per 42 C.F.R. § 435.912(c)(3)(ii), for all other Medicaid applicants, an eligibility determination must be made within 45 days.

21. Per 42 C.F.R. § 435.912(e), these 45 and 90 day time limits apply unless unusual circumstances exist, such as an emergency beyond an agency’s control. By contrast, “any delay caused by the agency’s administrative procedures” is not excused under federal law. *See* 42 C.F.R. § 435.930(a).

The State of Alaska’s Administration of the Medicaid Program

22. The State of Alaska participates in the Medicaid program. DHSS is the “single state agency” administering Alaska’s Medicaid state plan.

23. DHSS has promulgated regulations for the processing of Medicaid applications. Per 7 AAC 100.018(b), DHSS must mail eligible applicants a notice, within 30 days after a Medicaid application is received or 90 days if a disability determination is required, which states the date on which Medicaid coverage will begin.

FACTUAL ALLEGATIONS

Facts Common to the Class

24. During all relevant times, defendants have failed to provide Medicaid coverage to eligible applicants with “reasonable promptness,” as that term is defined under federal and state law.

25. Defendants’ own data shows an ongoing and longstanding pattern of violating state and federal timeframes with regard to the processing of Medicaid applications and the provision of Medicaid benefits to eligible applicants.

26. For instance, a February 4, 2019 DHSS report indicates that, from July 2018 through January 2019, Alaskans submitted 25,825 initial applications for Medicaid, yet DHSS only timely processed 12,763 of those applications.

27. Similarly, a July 5, 2018 DHSS report indicates that, from July 2017 through June 2018, Alaskans submitted 42,370 initial applications for Medicaid, yet DHSS only timely processed 22,739 of those applications.

28. The aforementioned February 4, 2019 DHSS report also indicates that processing delays pervade every district office throughout the entire state. No single DPA district office in Alaska – from Bethel to Kenai, and from Mat-Su to Nome – is timely processing greater than 66% of Medicaid initial applications. Many branches are failing to timely process more than half of all initial applications received.

29. DHSS's acknowledgment of its failures to provide Medicaid coverage with reasonable promptness comports with the May 7, 2018 report of the Alaska State Ombudsman following its systemic investigation of "a steady flow of complaints about delays in processing applications for and payment of public assistance benefits [including Medicaid], as well as complaints about the lack of a meaningful way to contact or receive a response from the Division of Public Assistance (DPA) about the status of applications."

30. The Ombudsman's report states that from 2016-2017, it received more than 400 complaints about DPA, and that the second most frequent complaint related to processing delays for Food Stamp and Medicaid applications.

31. The Ombudsman's report concluded that, even with efforts to address processing backlogs, "DPA does not consistently meet the statutorily mandated timelines for processing applications for Medicaid, Food Stamps, and other public assistance programs."

Facts of Individual Named Plaintiff

32. Jennifer Spencer applied for Medicaid through the Health Insurance Marketplace on healthcare.gov on December 21, 2018. Ms. Spencer's application for Medicaid is *not* based on disability.

33. On that same date, the Health Insurance Marketplace website informed Ms. Spencer that, because her monthly income was sufficiently low, she was eligible for Medicaid or the Children's Health Insurance Program. The Health Insurance Marketplace website further informed Ms. Spencer that she would be getting information about how to access her benefits from the Alaska Division of Public Assistance.

34. As of the date of this filing, Ms. Spencer still has not begun receiving Medicaid benefits. Nor has Ms. Spencer received any notice from the defendants stating the date on which her coverage will begin.

STATEMENT OF CLAIMS

COUNT I – VIOLATION OF 42 U.S.C. § 1983

35. Plaintiff repeats and incorporates by reference the allegations in each of the preceding paragraphs.

36. Defendants are “persons” subject to liability under 42 U.S.C. § 1983.

37. Defendants’ failure to provide to provide Medicaid coverage to plaintiff Spencer and the putative class members with “reasonable promptness” violates the Medicaid Act, namely 42 U.S.C. § 1396a(a)(8).

38. Defendants have thereby, under color of state law, deprived plaintiff Spencer and the putative class members of the rights, privileges or immunities secured by federal law.

COUNT II – VIOLATION OF 7 AAC 100.018

39. Plaintiff repeats and incorporates by reference the allegations in each of the preceding paragraphs.

40. Defendants violated 7 AAC 100.018 by failing to provide plaintiff Spencer and the putative class members with a notice, within 30 days after receiving their Medicaid application or 90 days if a disability determination was required, stating the date on which their Medicaid coverage would begin.

PRAYER FOR RELIEF

Northern Justice Project, LLC

A Private Civil Rights Firm
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Anchorage, AK 99501

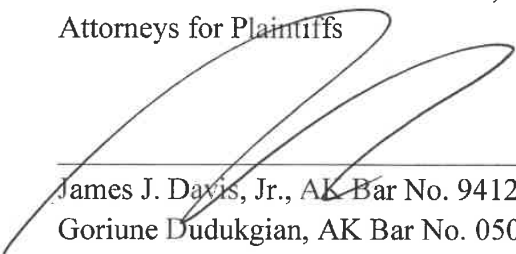
Phone: (907) 264-6634 • Fax: (866) 813-8645

WHEREFORE, the plaintiff respectfully asks that this Court award the following relief:

- i. Certification of the above-defined class;
- ii. A declaration that the defendants violated 42 U.S.C. § 1396a(a)(8) and 7 AAC 100.018 by failing to provide Medicaid coverage to plaintiff Spencer and the putative class members with “reasonable promptness” after receiving their applications.
- iii. A preliminary and permanent injunction requiring defendants to make a final eligibility determination and to begin providing Medicaid coverage to all eligible individuals within 30 days after receiving their Medicaid applications or 90 days if a disability determination is required.
- iv. The costs and expenses of litigation.
- v. Full reasonable attorney's fees under 42 U.S.C. § 1988.
- vi. For such other and further compensatory or equitable relief as this Court may deem just under the circumstances.

DATED this 27 day of February, 2019 at Anchorage, Alaska.

NORTHERN JUSTICE PROJECT, LLC
Attorneys for Plaintiffs



James J. Davis, Jr., AK Bar No. 9412140
Goriune Dudukgian, AK Bar No. 0506051

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 Email: jdavis@njp-law.com
 Attorneys for Plaintiffs

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 THIRD JUDICIAL DISTRICT AT ANCHORAGE

JENNIFER SPENCER, individually and)
 on behalf of all others similarly situated,)
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 Plaintiff,)

v.)

Case No. 3AN-19-05386 CI

ADAM CRUM, in his official capacity as)
 Commissioner of the Alaska Department)
 of Health and Social Services, and)
 SHAWNDA O'BRIEN, in her official)
 capacity as Director of the Alaska Division)
 of Public Assistance,)
)
)
 Defendants.)


MOTION FOR CLASS CERTIFICATION

Pursuant to Alaska Civil Rule 23, plaintiff Jennifer Spencer, by and through counsel, the Northern Justice Project, LLC, hereby moves this Court for certification of the above-entitled lawsuit as a class action. Plaintiff seeks to represent a class comprised of: all individuals who applied for Alaska Medicaid within two years before the filing of this lawsuit, and all future applicants, who did not or do not receive a final eligibility

determination *and* Medicaid coverage from the defendants within 30 days after submitting their Medicaid applications, or within 90 days if a disability determination was or is required. This motion is supported by the accompanying memorandum of law, Affidavit of James J. Davis, Jr., Affidavit of Jennifer Spencer, and is filed with a proposed Order.

DATED: 3/1/19

NORTHERN JUSTICE PROJECT, LLC
Attorneys for the Plaintiffs


James J. Davis, Jr., AK Bar No. 9412140
Goriune Dudukgian, AK Bar No. 0506051

CERTIFICATE OF SERVICE

I hereby certify that on this date a true and correct copy of the foregoing document was served via FIRST CLASS MAIL on:

Alaska Department of Health and Social Services
Adam Crum, Commissioner
3601 C Street, Suite 902
Anchorage, AK 99503

Division of Public Assistance
Shawnda O'Brien, Director
PO Box 110640
Juneau, AK 99811-0640

Alaska Department of Law
Joanne Grace, Civil division Chief
1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501-1994

Alaska Department of Law
c/o Kevin Clarkson
PO Box 110300
Juneau, AK 9811-0300

 3/1/19
Signature Date

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 Email: jdavis@njp-law.com
 Attorneys for Plaintiffs

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 THIRD JUDICIAL DISTRICT AT ANCHORAGE

JENNIFER SPENCER, individually and)	
on behalf of all others similarly situated,)	
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Plaintiff,)	
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v.)	Case No. 3AN-19-05386 CI
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ADAM CRUM, in his official capacity as)	
Commissioner of the Alaska Department)	
of Health and Social Services, and)	
SHAWNDA O'BRIEN, in her official)	
capacity as Director of the Alaska Division)	
of Public Assistance,)	
)	
)	
Defendants.)	

AFFIDAVIT OF JAMES J. DAVIS, JR. IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

I, James J. Davis, Jr., after being first duly sworn, upon oath depose and state:

1. I am one of the founding partners of the Northern Justice Project, LLC (NJP), and counsel for plaintiff Jennifer Spencer in the above-entitled action.

2. Since NJP was founded in 2005, its primary mission has been representing low-income Alaskans in complex civil rights and consumer class action lawsuits. NJP has

AFFIDAVIT OF JAMES J. DAVIS, JR. IN SUPPORT OF MOTION FOR CLASS CERTIFICATION
Jennifer Spencer, et al. v. Adam Crum, et al.

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Anchorage, AK 99501

Phone: (907) 264-6634 • Fax: (866) 813-8645

successfully represented thousands of Alaskans in more than a dozen certified class actions. NJP has an impeccable track record in these cases. In every single one of these certified class actions – which were litigated against the biggest and best law firms in Alaska, including the Attorney General’s Office – NJP obtained either a final judgment in favor of the class or a court-approved settlement agreement on terms very favorable to the class members. These cases include: *Denise Okuley, et al. v. State of Alaska, et al.*, Case No. 3AN-05-10788 CI (certified class action concerning the Interim Assistance benefits of more than 300 disabled Alaskans; final judgment entered in favor of the class in the amount of \$1,081,585); *Dorothy Krone, et al. v. State of Alaska, et al.*, Case No. 3AN-05-10283 CI (certified class action concerning the Medicaid benefits of approximately 2,450 elderly and disabled Alaskans; final judgment entered granting class members injunctive relief valued by the State at approximately \$8.9 million for fiscal years 2006-2007); *Annette Moore, et al. v. Weidner Investment Services Inc.*, Case No. 3AN-06-09690 CI (certified class action on behalf of more than 1,600 tenants challenging the late fee charged by Alaska’s largest private landlord; settlement agreement approved by court which resulted in the creation of a settlement fund in excess of \$500,000); *Karl Carl, Jr., et al. v. Wynn’s Extended Care, Inc.*, Case No. 3AN-07-6398 CI (certified class action on behalf of approximately 1,800 Alaskan consumers against one of the nation’s largest auto warranty distributors; settlement agreement approved by court in January 2009 in which defendant stipulated to an injunction prohibiting it from enforcing its arbitration clause against Alaskan consumers); *Heitz v. State*, 215 P.3d 302 (Alaska 2009) (holding that class of approximately 750 licensed foster parents have a due process protected property interest in their foster care subsidies); *Baker v. State*, 191 P.3d 1005 (Alaska 2008) (holding that class of approximately 1,000 Medicaid recipients were denied due process by

AFFIDAVIT OF JAMES J. DAVIS, JR. IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

Jennifer Spencer, et al. v. Adam Crum, et al.

Page 2 of 5

Defendant's Exhibit 2 - Page 4 of 27

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the State of Alaska when the State attempted to reduce their personal care assistance benefits); *Jennifer Heesch, et al. v. Cornerstone Credit Services, LLC, et al.*, Case No. 3AN-10-7825 CI (certified class action on behalf of approximately 2,100 individuals challenging the debt collection practices of one of Alaska's largest debt collectors; settlement agreement approved by court which resulted in the creation of a settlement fund of \$900,000); *Michael Avery, et al. v. Weidner Investment Services, Inc.*, Case No. 3AN-09-9947 CI (certified class action on behalf of more than 7,000 tenants challenging the security deposit refunding practices of Alaska's largest private landlord; negotiated settlement agreement approved by court which resulted in the creation of a settlement fund exceeding \$450,000); *Laura Mulgrew, et al. v. State of Alaska, et al.*, Case No. 3AN-10-6273 CI (certified class action on behalf of more than 1,300 licensed foster parents and adoptive parents; negotiated settlement agreement approved by court which, among other things, resulted in the creation of a settlement fund of \$1,155,196.65); *Alaska General Credit Co. v. Kerry Leander Jones*, Case No. 3AN-06-11662 CI (certified class action on behalf of more than 150 consumers whose vehicles were repossessed by Alaska General Credit Co.; negotiated settlement agreement, approved by court, which resulted in the creation of a settlement fund of \$540,000).

3. NJP has also obtained favorable, class-wide settlements in several putative class action lawsuits before a class was ever certified. These cases include: *Carey McAlpine v. Alaska Housing Finance Corporation*, Case No. 3AN-06-13039 CI (settlement agreement approved in April 2009 wherein AHFC agreed to revise its form notices and hearing procedures for participants of the Section 8 Housing Choice Voucher Program so as to comply with requirements of due process); *Yelka Sanchez v. Galen Hospital Alaska, Inc.*, Case No. 3AN-06-10676 CI (settlement agreement approved in January 2008 resulting in

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refunds issued to more than 300 uninsured patients of Alaska Regional Hospital); *Karl Carl, Jr., et al. v. Vito's Auto Sales*, Case No. 3AN-08-8642 CI (settlement agreement approved in October 2009 resulting in the creation of a settlement fund of \$90,000 for 282 class members); *Kiana Putnam v. Anchorage School District*, Case No. 3AN-15-07003 CI (settlement agreement reached in November 2015 whereby the Anchorage School District revised its suspension notices so that parents are now provided with an explanation of the factual reasons for a student's suspension).

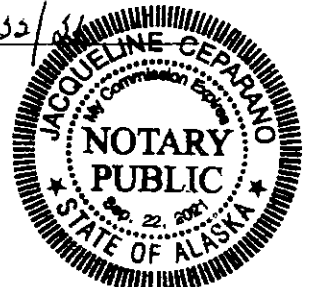
4. NJP is devoted to committing the resources necessary to litigate this case to a similarly favorable resolution. NJP has the experience and ability to zealously and competently pursue this litigation on a class wide basis. NJP's interests are aligned with the interests of the entire class and are in no way antagonistic to individual class members.

///
///
///

3/1/19 JAMES J. DAVIS, JR.

SUBSCRIBED AND SWORN to before me this 1 day of February, 2019
at Anchorage, Alaska.

Jacqueline Ceparano
Notary Public, State of Alaska
My Commission Expires: 9/22/21



Northern Justice Project, LLC

A Private Civil Rights Firm

310 K Street, Suite 200

Anchorage, AK 99501

Phone: (907) 264-6634 • Fax: (866) 813-8645

CERTIFICATE OF SERVICE

I hereby certify that on this date a true and correct copy of the foregoing document was served via FIRST CLASS MAIL on:

Alaska Department of Health and Social Services
Adam Crum, Commissioner
3601 C Street, Suite 902
Anchorage, AK 99503

Division of Public Assistance
Shawnda O'brien, Director
PO Box 110640
Juneau, AK 99811-0640

Alaska Department of Law
Joanne Grace, Civil division Chief
1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501-1994

Alaska Department of Law
c/o Kevin Clarkson
PO Box 110300
Juneau, AK 9811-0300


Signature

2/6/19
Date

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 Email: jdavis@njp-law.com
 Attorneys for Plaintiffs

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 THIRD JUDICIAL DISTRICT AT ANCHORAGE

JENNIFER SPENCER, individually and)
 on behalf of all others similarly situated,)
)
)
 Plaintiff,)
)
 v.)
)
 ADAM CRUM, in his official capacity as)
 Commissioner of the Alaska Department)
 of Health and Social Services, and)
 SHAWNDA O'BRIEN, in her official)
 capacity as Director of the Alaska Division)
 of Public Assistance,)
)
)
 Defendants.)
)

Case No. 3AN-19-05386 CI

AFFIDAVIT OF JENNIFER SPENCER IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

I, Jennifer Spencer, after being first duly sworn, upon oath depose and state:

1. I am a resident of Alaska.
2. On December 21, 2018, I applied for Medicaid through the Health Insurance Marketplace on healthcare.gov.

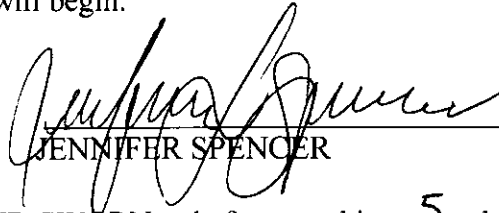
3. My Medicaid application was not based on disability.

4. On December 21, 2018, the Health Insurance Marketplace website informed me that, based on my monthly household income, I was eligible for Medicaid or the Children's Health Insurance Program.

5. On December 21, 2018, the Health Insurance Marketplace website also informed me that I would receive information about how to access my benefits from the Alaska Division of Public Assistance.

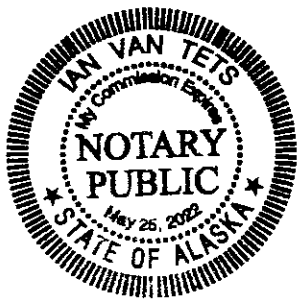
6. As of the date of this affidavit, I have not begun receiving any Medicaid benefits.

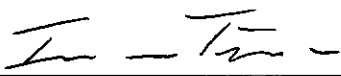
7. As of the date of this affidavit, I have not received any notice stating the date on which my Medicaid coverage will begin.



JENNIFER SPENCER

SUBSCRIBED AND SWORN to before me this 5 day of March, 2019 at Anchorage, Alaska.





Notary Public, State of Alaska
My Commission Expires: May 5, 2022

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CERTIFICATE OF SERVICE

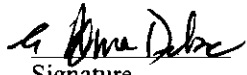
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 3/6/19
Signature Date

AFFIDAVIT OF JENNIFER SPENCER IN SUPPORT
OF MOTION FOR CLASS CERTIFICATION

Jennifer Spencer, et al. v. Adam Crum, et al.

Page 3 of 3

Defendant's Exhibit 2 - Page 10 of 27

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 Attorneys for Plaintiffs

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 THIRD JUDICIAL DISTRICT AT ANCHORAGE

JENNIFER SPENCER, individually and)
 on behalf of all others similarly situated,)
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 Plaintiff,)
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 v.)
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 ADAM CRUM, in his official capacity as)
 Commissioner of the Alaska Department)
 of Health and Social Services, and)
 SHAWNDA O'BRIEN, in her official)
 capacity as Director of the Alaska Division)
 of Public Assistance,)
)
)
 Defendants.)
)

Case No. 3AN-19-05386 CI

**MEMORANDUM OF LAW
 IN SUPPORT OF MOTION
 FOR CLASS CERTIFICATION**

I. PRELIMINARY STATEMENT

This lawsuit challenges the defendants' systemic and long-standing failure to provide Medicaid coverage to eligible applicants with reasonable promptness, as required by state and federal law. Plaintiff Jennifer Spencer seeks to represent a large class of similarly situated Alaskans who were deprived of healthcare coverage as a result of the defendants' delays in

processing Medicaid applications.¹ Because all of the requirements of Alaska Civil Rule 23 are satisfied, as detailed below, this Court should now certify the proposed class.

II. RELEVANT BACKGROUND

In Alaska, the Department of Health and Human Services (“DHSS”) administers the Medicaid program.² The Division of Public Assistance (“DPA”), which is a division of DHSS, is responsible for accepting and processing Medicaid applications for the State.³ By virtue of participating in the Medicaid program and accepting federal funds, the State must comply with all federal requirements of the Medicaid program.⁴

The federal Medicaid Act requires DHSS to furnish Medicaid benefits with “reasonable promptness to all eligible individuals.”⁵ Federal implementing regulations similarly require DHSS to make Medicaid eligibility determinations “promptly and without undue delay.”⁶ For anyone applying for Medicaid on the basis of a disability, DHSS must

¹ The class is defined as follows: All individuals who applied for Alaska Medicaid within two years before the filing of this lawsuit, and all future applicants, who did not or do not receive a final eligibility determination *and* Medicaid coverage from the defendants within 30 days after submitting their Medicaid applications, or within 90 days if a disability determination was or is required.

² AS 47.07.030.

³ See generally Alaska Aged, Disabled and Long Term Care Medicaid Eligibility Manual § 500, available at: <http://dpaweb.hss.state.ak.us/manuals/adltc/adltc.htm>; Alaska Family Medicaid Eligibility Manual § 5000, available at: <http://dpaweb.hss.state.ak.us/manuals/fam-med/fmem.htm>

⁴ See generally *Armstrong v. Exceptional Child Ctr., Inc.*, 135 U.S. 1378, 1382 (2014); *Harris v. McRae*, 488 U.S. 297, 301 (1980).

⁵ 42 U.S.C. § 1396a(a)(8).

⁶ 42 C.F.R. § 435.912(b).

make an eligibility determination within 90 days.⁷ For all other applicants, DHSS must make an eligibility determination within 45 days.⁸

Alaska's state law timeframes for processing Medicaid applications and providing coverage to eligible applicants are shorter than the requirements imposed by federal statutes law. Per 7 AAC 100.018(b), DHSS must mail eligible applicants a notice, within 30 days after a Medicaid application is received or 90 days if a disability determination is required, which states the date on which Medicaid coverage will begin.

DHSS **admits** that it is not currently in compliance with these timeframes, nor has it been for at least the last five years.⁹ DHSS's delays in processing Medicaid applications are harming thousands of Alaskans. In February 2019, DHSS publicly admitted that it had a backlog of 15,639 Medicaid applications, including 10,200 applications filed in 2018.¹⁰ DHSS's own data shows that in the 2018 state fiscal year, DHSS failed to timely process 19,631 initial Medicaid applications.¹¹ DHSS failed to timely process 33.6% of Medicaid applications in the 2014 state fiscal year, 62.2% in the 2015 state fiscal year, 57.4% in the

⁷ 42 C.F.R. § 435.912(c)(3)(i).

⁸ 42 C.F.R. § 435.912(c)(3)(ii).

⁹ Alaska Department of Health & Social Services – Division of Public Assistance, Internal Performance Measures: Year-to-Date Performance, prepared January 23, 2019. available at: http://dpaweb.hss.state.ak.us/files/reports/DPA_All_Measures_YTD.pdf, at page 2.

¹⁰ Elizabeth Ellis, State Wrestles with Sizeable Backlog of Medicaid Applications, Alaska Journal of Commerce, February 6, 2019. Available at: <http://www.alaskajournal.com/2019-02-06/state-wrestles-sizeable-backlog-medicaid-applications#.XGoOmehKiUk>

¹¹ Alaska Department of Health & Social Services – Division of Public Assistance, Application Timeliness by District Office, SFY18 YTD through June 2018, prepared July 5, 2018. available at: http://dpaweb.hss.state.ak.us/files/reports/AppTimeliness_History.pdf, at page 3.

2016 state fiscal year, and 48.6% in the 2017 state fiscal year.¹² No DHSS district office in Alaska is timely processing more than 66% of Medicaid applications.¹³ DHSS's systemic and unlawful delays – from processing Medicaid applications to providing Medicaid benefits – have deprived and continue to deprive thousands of vulnerable Alaskans of healthcare coverage while their applications languish.

The named plaintiff, Jennifer Spencer, applied for Medicaid through the Health Insurance Marketplace on healthcare.gov on December 21, 2018.¹⁴ Her application is not based on disability.¹⁵ On the same date, the Health Insurance Marketplace website informed Ms. Spencer that she was eligible for Medicaid or the Children's Health Insurance Program because her income was sufficiently low.¹⁶ The Health Insurance Marketplace website further informed her that she would receive information about how to access her benefits from the Alaska Division of Public Assistance.¹⁷ As of the date of this motion, Ms. Spencer still has

¹² Alaska Department of Health & Social Services – Division of Public Assistance, Internal Performance Measures: Year-to-Date Performance, prepared January 23, 2019, available at: http://dpaweb.hss.state.ak.us/files/reports/DPA_All_Measures_YTD.pdf, at page 2.

¹³ Alaska Department of Health & Social Services – Division of Public Assistance, Application Timeliness by District Office, SFY19 YTD through January 2019, prepared February 4, 2019, available at: <http://dpaweb.hss.state.ak.us/files/reports/AppTimeliness.pdf>, at page 3.

¹⁴ See Aff. of Jennifer Spencer in Supp. of Motion for Class Certification at ¶2.

¹⁵ See *id.* at ¶3.

¹⁶ See *id.* at ¶4.

¹⁷ See *id.* at ¶5.

not begun receiving Medicaid benefits.¹⁸ Nor has Ms. Spencer received any notice from the defendants stating the date on which her coverage will begin.¹⁹

III. ARGUMENT AND AUTHORITIES

A. Standards Governing Class Certification

The class action device is a procedural mechanism designed to conserve the resources of both the courts and litigants by permitting an issue potentially affecting numerous individuals to be litigated and resolved in an economical fashion. “Class action suits, in which the result for one becomes the result for many in the same legal predicament, are necessary to avoid a multiplicity of duplicative lawsuits.”²⁰ As the leading treatise on class actions explains:

If hundreds . . . of injuries have resulted, justice to victims may be delayed or denied if courts cling to the concept that each case must be subjected independently to discovery, trial, and appeal. The interests of justice are not furthered by the needless, time-consuming repetition of evidence and repeated litigation of issues in individual trials on a one-by-one basis which are common to the claims of all affected.²¹

In order for a lawsuit to be maintained as a class action, the class representative must first satisfy the four threshold requirements of Alaska Civil Rule 23(a): numerosity, commonality, typicality, and adequacy of representation.²² In addition to these prerequisites, a class action must serve certain policy interests.²³ Under Rule 23(b), a class action may be

¹⁸ See *id.* at ¶6.

¹⁹ See *id.* at ¶7.

²⁰ *State v. Carlson*, 65 P.3d 851, 872 (Alaska 2003).

²¹ Herbert Newberg & Alba Conte, *Newberg on Class Actions* § 17.01 (3d ed. 1992).

²² See also *State v. Andrade*, 23 P.3d 58, 67 (Alaska 2001).

²³ See *International Seafoods of Alaska, Inc. v. Bissonette*, 146 P.3d 561, 567 (Alaska

certified only if (1) it alleviates the risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; (2) the party opposing the class has acted or refuses to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or (3) common legal or factual questions predominate, making a class action a superior method for the fair and efficient adjudication of the controversy.

Alaska's state courts have routinely certified classes of public benefit applicants and recipients who sought to challenge the State's policies or practices concerning the administration of benefits. This has included challenges to Interim Assistance denials,²⁴ the recoupment of foster care maintenance payments,²⁵ and multiple Medicaid issues.²⁶

Federal courts, whose decisions are "especially persuasive" in interpreting Alaska Civil Rule 23,²⁷ also routinely certify classes of public benefit recipients and applicants.²⁸

2006).

²⁴ *State, Dep't of Health & Soc. Servs. v. Okuley*, 214 P.3d 247, 250 (Alaska 2009) (lower court certified two different classes of people challenging denials of Interim Assistance benefits by the State of Alaska).

²⁵ *Heitz v. State*, 215 P.3d 302, 304 (Alaska 2009) (lower court certified a class of foster parents challenging the recoupment of foster care payments by the State of Alaska).

²⁶ *Krone v. State*, 222 P.3d 250 (Alaska 2009) (class of Medicaid recipients was certified in lower court decision); *Baker v. State* 191 P.3d 1005 (Alaska 2008) (same).

²⁷ *Bartek v. State*, 31 P.3d 100, 102 (Alaska 2001) (citing *Nolan v. Sea Airmotive, Inc.*, 627 P.2d 1035, 1041 (Alaska 1981)); *see also Shook v. Alyeska Pipeline Serv. Co.*, 51 P.3d 935, 937 n.12 (Alaska 2002).

²⁸ *See e.g., Robidoux v. Celani*, 987 F.2d 931, 933, 937 (2d Cir. 1993) (concluding district court should have certified class of persons in Vermont who suffered delays concerning applications for food stamps and public assistance); *Banks v. Trainor*, 525 F.2d 837 (3d Cir. 1975) (certifying class of Food Stamp recipients); *Like v. Carter*, 448 F.2d 798,

This includes certifications in very similar statewide cases concerning delays in Medicaid eligibility determinations and delays in the provision of Medicaid coverage.²⁹

B. The Proposed Class Meets the Threshold Certification Requirements of Alaska Civil Rule 23(a).

1. Numerosity

The numerosity requirement under Rule 23(a)(1) is satisfied when “the class is so numerous that joinder of all of its members is impracticable.” While there is “no magic number” that satisfies numerosity, the Alaska Supreme Court has held that a class of more than 40 members presumptively meets the requirement.³⁰ Even where the exact size of the class is unknown, the numerosity requirement is satisfied if “general knowledge and common sense indicate that it is large.”³¹

802 (8th Cir. 1971) (holding district court abused discretion in refusing to certify class of public assistance applicants); *Briggs v. Bremby*, 2013 U.S. Dist. LEXIS 67571 (D. Conn. May 13, 2013) (certifying class of Connecticut residents whose Food Stamp applications were not timely processed); *Van Febus v. Gallant*, 866 F. Supp. 45, 46 (D. Mass. 1994) (certifying class of benefit recipients, including food stamp recipients, sent a certain unlawful notice); *Estey v. Comm’r, Maine Dept. of Human Servs.*, 814 F. Supp. 152, 154 (D. Me. 1993) (noting court had certified class of Food Stamp applicants), reversed on other grounds, *Estey v. Comm’r, Me. Dep’t of Human Servs.*, 21 F.3d 1198 (1st Cir. 1994); *Robertson v. Jackson*, 766 F. Supp. 470 (E.D. Va. 1991) (noting court had certified class of eligible Food Stamp applicants to address the timely operation of the Food Stamp program in Virginia); aff’d 972 F.2d 529 (4th Cir. 1992); *Ortiz v. Eichler*, 616 F. Supp. 1046 (D. Del. 1985), aff’d 794 F.2d 889 (3d Cir. 1986) (certifying class of applicants and recipients of Food Stamp, Medicaid, and cash public assistance).

²⁹ *Wilson v. Gordon*, 2014 U.S. Dist. Lexis 122004 (M.D. Tenn. Sept 2, 2014); see also *Koss v. Norwood*, 305 F. Supp. 3d 897, 917 (N.D. Ill. 2018).

³⁰ *Int’l Seafoods*, 146 P.3d at 567 (citing *Cox v. Am. Case Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986)).

³¹ *Allen v. Similasan Corp.*, 306 F.R.D. 635, 644 (S.D. Cal. 2015); see also *Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473 (2d Cir. 1995) (“Courts have not required evidence of exact class size or identity of class members to satisfy the numerosity requirement.”).

This case *easily* satisfies the numerosity requirement. The State’s own data shows that there was a backlog of more than 15,000 Medicaid applicants as of February 2019 whose applications for Medicaid benefits were not even processed by the defendants in a timely fashion.³² Beyond scale, the aggrieved class is also geographically diffuse, which the Alaska Supreme Court has recognized can make joinder impracticable.³³ Here, DHSS’s data shows that its processing failures pervade every DPA district office in the state.³⁴ No single DPA district office in Alaska – from Bethel to Kenai, and from Mat-Su to Nome – is timely processing greater than 66% of Medicaid initial applications.³⁵ And many branches are failing to timely process more than half of all initial applications.³⁶

Beyond scale and geography, class members also face difficulties in accessing the legal system, which courts have held makes joinder impracticable.³⁷ Here, by virtue of applying for Medicaid, class members will necessarily include “families with dependent children and of aged, blind, or disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services.”³⁸ Such individuals are highly

³² See *supra* n.10

³³ See *Int’l Seafoods*, 146 P.3d at 567.

³⁴ Alaska Department of Health & Social Services – Division of Public Assistance, Application Timeliness by District Office, SFY19 YTD through January 2019, prepared February 4, 2019. available at: <http://dpaweb.hss.state.ak.us/files/reports/AppTimeliness.pdf>, at page 3.

³⁵ See *id.*

³⁶ See *id.*

³⁷ See *Robidoux*, 987 F.2d at 936 (recognizing the difficulty posed by pursuing a lawsuit and retaining counsel for low income individuals); *McDonald v. Heckler*, 612 F. Supp. 293, 300 (D. Mass. 1985) (court held it was impracticable for low-income persons with disabilities to bring individual lawsuits).

³⁸ See 42 U.S.C. § 1396-1.

unlikely to bring individual lawsuits against the defendants, who are backed by the resources of the State of Alaska.

2. Commonality

Rule 23(a)(2) requires that there be “questions of law or fact common to the class.” The commonality requirement is satisfied if the claims at issue in the lawsuit depend on a “common contention . . . of such a nature that it is capable of classwide resolution — which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.”³⁹ “What matters to class certification . . . is not the raising of common ‘questions’ — even in droves — but, rather the capacity of a classwide proceeding to generate common answers apt to drive the resolution of the litigation.”⁴⁰

Of course, the claims of each individual need not be identical,⁴¹ and factual disparities between class members do not defeat commonality.⁴² To the contrary, commonality “is assumed where the plaintiff seeks declaratory relief as opposed to individual relief.”⁴³ Commonality is also inherent in any lawsuit, such as the present one, challenging the systemic violations of the law by a public agency.⁴⁴

³⁹ *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011); *see also Int'l Seafoods*, 146 P.3d at 567 (holding that “commonality requirement will be satisfied if the named plaintiffs share at least one question of fact or law with the grievances of the prospective class.”).

⁴⁰ *Wal-Mart Stores*, 564 U.S. at 350 (citation omitted).

⁴¹ *Johnson v. Nextel Communications*, 780 F.3d 128, 137–38 (2d Cir. 2015).

⁴² *Reynolds v. Giuliani*, 118 F. Supp. 2d 353, 389–90 (S.D.N.Y. 2000).

⁴³ *Cortigiano v. Oceanview Manor Home for Adults*, 227 F.R.D. 194, 205 (2005).

⁴⁴ *See, e.g., Califano v. Yamaski*, 442 U.S. 682, 701 (1979) (involving challenge to method of distribution for Social Security Disability benefits); *Marcus v. Heckler*, 620 F.

Here, common factual and legal questions abound, which can be resolved by this Court “in one stroke.” These include whether the defendants are failing to process Medicaid applications within applicable time limits, whether the defendants are providing Medicaid coverage to eligible applicants with “reasonable promptness” after receiving their complete applications, and whether the defendants have adequate policies and procedures in place to ensure that Medicaid benefits are timely provided to eligible applicants. All members of the proposed class have applied, or will apply for Medicaid benefits in Alaska. All class members have been or will be subject to the same delays in application processing and the provision of benefits. Finally, the harms suffered by the class members will also be the same, including the delay in receiving healthcare coverage. All of these issues arise and stem from the very same course of factual events: the defendants’ failures to timely process Medicaid applications and provide benefits. Thus, the commonality requirement is met.

3. Typicality

The typicality requirement under Rule 23(a)(3) is satisfied when “the claims or defenses of the representative parties are typical of the claims or defenses of the class.”⁴⁵ The requirement is satisfied “when each class member’s claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant’s

Supp. 1218, 1223 (N.D. Ill. 1985) (involving challenge to evaluation process for federal SSI program); *Hodecker v. Blum*, 525 F. Supp. 867, 870 (N.D.N.Y. 1981) (challenging computation method for Medicaid assistance); *Massachusetts Ass’n of Older Americans v. Spirito*, 92 F.R.D. 129, 131 (D. Mass. 1981) (challenging delays in processing Medicaid applications and automatic termination of Medicaid benefits).

⁴⁵ Alaska R. Civ. P. 23(a)(3); see also *International Seafoods of Alaska, Inc. v. Bissonette*, 146 P.3d 561 (Alaska 2006).

liability.”⁴⁶ The standard for typicality is “permissive” and the requirement is met if the plaintiff’s claims are “reasonably co-extensive with those of absent class members; they need not be substantially identical.”⁴⁷ In short, typicality is satisfied if the named plaintiff’s claim “stems from the same event, practice, or course of conduct that forms the basis of the class claims and is based upon the same legal or remedial theory.”⁴⁸

The typicality requirement ensures that the “maintenance of a class action is so economical and [that] the named plaintiff’s claims and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence.”⁴⁹ However, as with commonality, typicality does not require the representative party’s claims to be identical to those of all class members, especially in actions challenging governmental practices.⁵⁰

Here, the named plaintiff, Ms. Spencer, applied for Medicaid, and was even determined eligible, yet the defendants failed to provide her with Medicaid coverage with

⁴⁶ *International Seafoods of Alaska*, 146 P.3d at 567 (quoting *Marisol A. v. Giuliani*, 126 F.3d 372, 376 (2d Cir. 1997)).

⁴⁷ *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998).

⁴⁸ *Jordan v. County of Los Angeles*, 669 F.2d 1311, 1321 (9th Cir. 1982).

⁴⁹ See *Marisol A.*, 126 F.3d at 376 (internal citation omitted) (finding that plaintiff’s claims challenging different aspects of child welfare system, when aggregated, did not violate typicality).

⁵⁰ James Wm. Moore et al., *Moore’s Federal Practice*, §23.23[8][g] (3d ed. 1997) (“If all class members are subject to the same governmental practice, minor factual differences between the claims of the class representative and the other class members do not defeat typicality.”) (citations omitted); see also *Robidoux*, 987 F.2d at 937; *Cortigiano*, 227 F.R.D. at 206 (“[S]light variations in how defendants treated different plaintiffs . . . [do] not render the claims atypical”).

reasonable promptness.⁵¹ Ms. Spencer's harms and claims are the same as those of the proposed class members. Furthermore, those harms and claims stem from the same common source, i.e., the defendants' admitted backlog of Medicaid applications. Both Ms. Spencer and the class members have suffered the same illegal delays when seeking essential healthcare benefits. As such, the typicality requirement is satisfied.

4. Adequacy of Representation

Finally, Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class."⁵² "For representation to be adequate, the plaintiff's attorney must be qualified, and there must be no conflict of interest between the named plaintiff and the other members of the class."⁵³ The defendants have the burden to demonstrate that the representation is inadequate.⁵⁴

Here, there are no conflicts of interest between Ms. Spencer and the putative class members as to the desired outcome, the proof necessary to succeed on the merits, or the relief sought. Ms. Spencer has suffered from the same harms as the class members. In turn, Ms. Spencer and the class members all collectively seek the same declaratory and injunctive relief: for the defendants to remedy their ongoing failures to comply with the law as to the processing of Medicaid applications and providing benefits with reasonable promptness. Such a remedy would ensure that the defendants uniformly cure harms as to the class as a whole.⁵⁵

⁵¹ See Aff. of Jennifer Spencer in Supp. of Motion for Class Certification.

⁵² Alaska R. Civ. P. 23(a)(4); see also *State v. Alex*, 646 P.2d 203 (Alaska 1982).

⁵³ *Int'l Seafoods*, 146 P.3d at 567 (citing *Marisol A.*, 126 F.3d at 378).

⁵⁴ See, e.g., *Johns v. Rozet*, 141 F.R.D. 211, 217 (D.D.C. 1992).

⁵⁵ Cf. *Alex*, 646 P.2d at 214-15 (holding that there are no inherent conflicts among class members in a suit challenging the constitutionality of a statute).

The class is also represented by qualified attorneys. Ms. Spencer and the proposed class are represented by the Northern Justice Project, LLC, whose attorneys are experienced in class action and public benefits litigation, and will adequately represent the class.⁵⁶

C. The Proposed Class Meets the Further Requirements of Rule 23(b)(2).

After meeting the prerequisites of Civil Rule 23(a), the class must also meet the requirements for one of the three possible types of class actions set forth in Rule 23(b). Here, the class meets the requirements of Rule 23(b)(2) because the defendants have “acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.” Indeed, Rule 23(b)(2) class actions are especially appropriate where, as here, a plaintiff class seeks declaratory and injunctive relief from unlawful policies and practices in government benefit programs.⁵⁷

IV. CONCLUSION

For the foregoing reasons, the plaintiff respectfully requests that this Court certify the proposed class, pursuant to Alaska Civil Rule 23.

DATED this 1 day of February, 2019 at Anchorage, Alaska.

⁵⁶ See Aff. of James J. Davis, Jr. in Supp. of Motion for Class Certification.

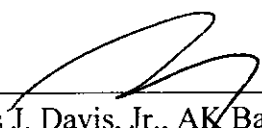
⁵⁷ See, e.g., *Ortiz v. Eichler*, 616 F. Supp. 1046, 1058-59 (D. Del. 1985) (challenge to state practices in government benefit programs satisfied 23(b)(2)); *Tugg v. Towney*, 864 F. Supp. 1201, 1204 (S.D. Fla. 1994) (failure to provide mental health counseling services to deaf clients by therapists fluent in sign language); see generally 7A Wright, Miller & Kane, Fed. Prac. & Proc. Civil 2d. § 1775 at 484-492 (1986 and Supp. 2003) (“Rule 23(b)(2) has been used extensively to challenge the enforcement and application of complex statutory schemes, such as suits questioning the method of distributing benefits under the Social Security Act, actions on behalf of person seeking benefits under the Food Stamp Program, and suits testing the eligibility criteria for persons receiving Aid to Families with Dependent Children.”).

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NORTHERN JUSTICE PROJECT, LLC
Attorneys for the Plaintiffs


James J. Davis, Jr., AK Bar No. 9412140
Goriune Dudukgian, AK Bar No. 0506051

CERTIFICATE OF SERVICE

I hereby certify that on this date a true
and correct copy of the foregoing document
was served via FIRST CLASS MAIL on:

Alaska Department of Health and Social Services
Adam Crum, Commissioner
3601 C Street, Suite 902
Anchorage, AK 99503

Division of Public Assistance
Shawnda O'brien, Director
PO Box 110640
Juneau, AK 99811-0640

Alaska Department of Law
Joanne Grace, Civil division Chief
1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501-1994

Alaska Department of Law
c/o Kevin Clarkson
PO Box 110300
Juneau, AK 9811-0300

 
Signature Date

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR CLASS CERTIFICATION

Jennifer Spencer, et al. v. Adam Crum, et al.

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Defendant's Exhibit 2 - Page 24 of 27

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 Attorneys for Plaintiffs

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
 THIRD JUDICIAL DISTRICT AT ANCHORAGE

JENNIFER SPENCER, individually and)
 on behalf of all others similarly situated,)

Plaintiff,)

v.)

Case No. 3AN-19-05386 CI

ADAM CRUM, in his official capacity as)
 Commissioner of the Alaska Department)
 of Health and Social Services, and)
 SHAWNDA O'BRIEN, in her official)
 capacity as Director of the Alaska Division)
 of Public Assistance,)

Defendants.)

ORDER RE: MOTION FOR CLASS CERTIFICATION

Plaintiff Jennifer Spencer has moved this Court for certification of the above-entitled case as a class action. Plaintiff seeks to represent a class comprised of: all individuals who applied for Alaska Medicaid within two years before the filing of this lawsuit, and all future applicants, who did not or do not receive a final eligibility determination *and* Medicaid

ORDER RE: MOTION FOR CLASS CERTIFICATION

Jennifer Spencer, et al. v. Adam Crum, et al.

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coverage from the defendants within 30 days after submitting their Medicaid applications, or within 90 days if a disability determination was or is required.

This Court, being fully advised in the premises, hereby FINDS that plaintiff has satisfied all of the requirements for class certification under Alaska Civil Rule 23(a) and (b)(2). Therefore, plaintiff's motion for class certification is GRANTED.

ENTERED this ____ day of _____, 2019 at Anchorage, Alaska.

Superior Court Judge

ORDER RE: MOTION FOR CLASS CERTIFICATION

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c/o Kevin Clarkson
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Signature

3/6/19
Date

ORDER RE: MOTION FOR CLASS CERTIFICATION

Jennifer Spencer, et al. v. Adam Crum, et al.

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ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Seeks to Address Processing Delays for Medicaid Applications in Alaska](#)
