District Court City and County of Denver State of Colorado 1437 Bannock St. Denver, CO 80202	⇧ **COURT USE ONLY** ⇧
Plaintiffs: ANN ROSSART, MATTHEW RICE, through his mother and next friend Kathy Rice, and ROBERT SWIFT, through his parent and guardian, Mark Swift, for themselves and all others similarly situated, v. Defendants: DEVELOPMENTAL PATHWAYS, INC.; JOHN MEEKER, in his official capacity as Executive Director, Developmental Pathways, Inc.; COLORADO DEPARTMENT OF HUMAN SERVICES; KAREN L. BEYE in her official capacity as Executive Director, Colorado Department of Human Services; COLORADO DEPARTMENT OF HEALTH CARE POLICY AND FINANCING; and JOAN HENNEBERRY, in her official capacity as Executive Director, Colorado Department of Health Care Policy and Financing. _____ Attorneys for Plaintiffs: Andrea E. Faley, #32025 Elizabeth Cooper Fuselier, #23974 The Legal Center for People with Disabilities and Older People 455 Sherman St., Ste. 130 Denver, CO 80203-4403 303-722-0300 office 303-722-0720 fax afaley@thelegalcenter.org fuselier@thelegalcenter.org Timothy P. Fox, #25889 Ari Krichiver, #37780 Fox & Robertson, PC 910 16th St. Ste. 610 Denver, CO 80202 303-595-9700 office 303-595-9705 fax tfox@foxrob.com akrichiver@foxrob.com	Case Number: 06CV4479 Division: 23
PLAINTIFFS' MOTION FOR CERTIFICATION OF A CLASS AND SUBCLASS	

Pursuant to Rule 23 of the Colorado Rules of Civil Procedure ("CRCP"), Plaintiffs move for certification of a class and subclass as to Defendants Karen L. Beye ("Beye"), and Joan Henneberry ("Henneberry") (collectively "State Defendants").[1] Through this Motion, Plaintiffs Ann Rossart, Matthew Rice and Robert Swift ("Named Plaintiffs") seek certification under Rule 23(b)(2) of: (1) a Class, defined in detail below, generally consisting of individuals whose Medicaid eligibility has been denied or terminated without proper notice or opportunity for a *de novo* state-level evidentiary hearing ("Applicants"); and (2) a Subclass, defined in detail below, generally consisting of individuals who were initially found to be eligible for Medicaid benefits but whose eligibility was subsequently terminated without proper notice or opportunity for a *de novo* state-level evidentiary hearing ("Recipients").

Background

1. Colorado provides a variety of public benefit programs for individuals with developmental disabilities. Among them, Colorado has chosen to participate in the federal Medicaid program, which is jointly funded by state and federal funds. Colo. Rev. Stat. § 25.5-4-102 ("It is the purpose of the 'Colorado Medical Assistance Act' to . . . [provide], in cooperation with the federal government, medical and remedial care and services for individuals . . . as contemplated by the provisions of Title XIX of the social security act.") Specifically, Colorado established "[a] program to provide home- and community-based services to persons with

[1] Pursuant to Rule 25(d)(1), Karen L. Beye and Joan Henneberry are substituted as parties for Marva Livingston Hammons and Stephen P. Tool, as the new executive directors of Defendants Colorado Department of Human Services and Colorado Department of Health Care Policy and Financing, respectively. In addition, Plaintiffs have reached a Proposed Settlement Agreement with Defendants Developmental Pathways, Inc. and John Meeker and will be seeking approval of this agreement with the Court.

developmental disabilities . . . pursuant to the federal 'Social Security Act' . . .." Colo. Rev. Stat. § 25.5-6-409(1). The Home- and Community-Based Services ("HCBS") waiver includes the Supported Living Services Medicaid waiver, the Comprehensive Services Medicaid waiver, and the Children's Extensive Support Medicaid waiver.

2. Colorado uses community centered boards ("CCBs") to administer home- and community-based services for persons with developmental disabilities. There are 20 CCBs in Colorado, and their responsibilities include, among others, "determin[ing] eligibility of such persons [with developmental disabilities] within a specified geographical area . . .." Colo. Rev. Stat. § 27-10.5-102(3).

3. Defendant Beye, as Executive Director of the Colorado Department of Human Services, is charged with promulgating rules "as are necessary to fulfill the obligations of the state department as the single state agency to administer medical assistance programs in accordance with Title XIX of the federal 'Social Security Act'. . .." Colo. Rev. Stat. § 25.5-6-404(4). Defendant Beye is responsible for promulgating rules and regulations governing the appeal rights of Applicants and Recipients whose eligibility for Medicaid benefits was denied or terminated. See Colo. Rev. Stat. §§ 27-10.5-103(2)(d), 107(3). She is also required to review each CCB program to ensure that it complies with appeal rights and other regulations. See Colo. Rev. Stat. § 27-10.5-105(3).

4. Defendant Henneberry, as Executive Director of the Colorado Department of Health Care Policy and Financing, is charged with promulgating rules and regulations governing "medicaid eligibility, and appeal rights associated with" home- and community-based services for persons with developmental disabilities. Colo. Rev. Stat. § 25.5-6-404(4).

5. Individuals whose applications to a CCB for Medicaid developmental disabilities services are denied can appeal that denial, and the appeal is governed by 2 Colo. Code Regs. 503-1 § 16.322 ("Section 16.322"). (See Mem. Directive ("Directive") of April 4, 2007 (attached as ex. 1) (memorandum from the Medicaid Program Director instructing CCBs that the "only" method for Applicants to appeal eligibility denials is through Section 16.322.))

6. Under Section 16.322, the initial proceedings on administrative appeal are conducted at a local level by CCBs through a "dispute resolution process." See Section 16.322(A) - (H). Although Applicants may make a written appeal of the CCB's decision to Defendant Beye, Applicants are not entitled to a *de novo* evidentiary hearing. See Section 16.322(I).

7. Because Applicants did not have the right to request a *de novo* evidentiary hearing, they were not notified that they had such a right.

8. The procedures employed by Developmental Pathways ("DP"), a CCB, demonstrates the application by CCBs of Section 16.322.

9. According to Georgia Edson, Director of Quality Assurance at DP since November 1, 2005, DP denied Medicaid eligibility to 156 Applicants during the period from July 10, 2004, through May 31, 2007. (See Aff. of Georgia Edson at ¶ 5 (hereinafter "Edson Aff.") (attached as ex. 2).)

10. The notice of dispute resolution procedures provided to these Applicants, consistent with Section 16.322, did not notify them of their right to a *de novo* evidentiary hearing. (See Edson Aff. at ¶ 6, exs. B-F).

11. One of these Applicants was Plaintiff Ann Rossart. Her application for Medicaid developmental disability benefits was denied by DP. Ms. Rossart was not provided with, or informed of her right to, an opportunity for a *de novo* state-level evidentiary hearing. (See Ex. 3, Various Letters to A. Rossart.)

12. After DP denied Christopher Strange's application for Medicaid developmental disability benefits, he requested a *de novo* state-level eligibility hearing through the Office of Administrative Courts. The appeal was set to be heard through a *de novo* state-level hearing before an Administrative Law Judge on March 30, 2007. (See Notice of the Dep't of Human Serv. to Dimiss and Vacate Hr'g ("ALJ Mot.") (Attached as ex. 4).)

13. On March 26, 2007, Defendant Department of Human Services filed a Motion to Dismiss and Vacate Hearing, arguing that the proper appeals process "provides for negotiation and hearing at the CCB level, followed by, on request, a record review and final agency decision. . .." (Id. at ¶ 4.) The process does not allow for any state-level evidentiary hearing.

14. Recipients -- individuals who were previously approved for Medicaid developmental disability benefits, but whose eligibility was terminated -- have not been provided with an opportunity for a *de novo* state-level evidentiary hearing, and have not been notified of their right to such a hearing.

15. For example, between July 10, 2004 and May 31, 2007, DP notified 199 Recipients that their eligibility for Medicaid developmental disability benefits was being terminated, but the dispute resolution procedures provided to these Recipients did not mention the right to appeal through a *de novo* state-level hearing. (See Edson Aff. ¶¶ 9-10, Exs. G-H.)

16. In addition, Plaintiff Matthew Rice ("Rice") was approved for Medicaid benefits, and was placed on a wait list to receive benefits. As the result of a subsequent redetermination of eligibility, Plaintiff Rice was deemed to be ineligible for Medicaid benefits, and was removed from the wait list. (See Letter from DP to Matthew Rice of April 15, 2004 at 1 ("Rice Notice") (Attached as ex. 5).) The Rice Notice included a document titled "Developmental Pathways Dispute Resolution Procedures." (Id at 2.) To challenge the decision from the local-level review, this document informed Plaintiff Rice to "ask the Executive Director to review the problem." (Id. (emphasis added).) The document did not notify Plaintiff Rice of his right to request a *de novo* state-level evidentiary hearing. (Id.)

17. Likewise, Plaintiff Robert Swift ("Swift") was notified that the Medicaid benefits he had been receiving would be terminated. Plaintiff Swift's notice contained no information regarding the opportunity for a *de novo* state-level evidentiary hearing, or the procedure for obtaining a hearing. (See Letter from DP to Robert Swift of March 14, 2006 at 2 ("Swift Notice") (Attached as ex. 6).) The Swift Notice included a document also titled "Developmental Pathways Dispute Resolution Process," but a different version from the one included in the Rice Notice. (Id. at 3-4.) This document stated that Plaintiff Swift could "ask, in writing, for a review of your dispute . . . Your resource coordinator can help make the arrangement." (Id. at 4.) Again, there is no mention of the availability of a *de novo* state-level evidentiary hearing (Id.)

18. Simultaneous with the filing of this Motion, Plaintiffs have filed a Motion for Partial Summary Judgment against the State Defendants. (See Pl.'s Mot. For Partial Summ. J. (July 3, 2007).) In the Motion for Partial Summary Judgment, Plaintiffs argue that the State

Defendants have violated 42 U.S.C. § 1983 by failing to comply with the Due Process Clause and Medicaid regulations requiring that they provide Applicants and Recipients with an opportunity for a *de novo* state-level evidentiary hearing, and notice of their right to request such a hearing. (See generally id.)

19. Plaintiffs seek only declaratory and injunctive relief on behalf of the proposed Class and Subclass. (See Am. Class Action Compl., at ¶ 31 (filed July 10, 2006).)

20. Plaintiffs request this Court to certify the Applicants Class as follows:

> All persons whose eligibility for Colorado's developmental disabilities Medicaid programs, including the Supported Living Services HCBS Medicaid waiver, the Comprehensive Services HCBS Medicaid waiver, and the Children's Extensive Support HCBS Medicaid waiver, has been denied or terminated, at any time on or after July 10, 2004,[2] without being provided notice and the opportunity to appeal through a *de novo* state-level evidentiary hearing.

21. In addition, Plaintiffs request this Court to certify the Recipients Subclass as follows:

> All persons in the Class who have already been found eligible for Colorado's developmental disabilities Medicaid programs, but whose eligibility for such programs has been terminated, at any time on or after July 10, 2004, without being provided notice and the opportunity to appeal through a *de novo* state-level evidentiary hearing.

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[2] This is two years before the filing date of the Amended Class Action Complaint, in which a class action was alleged. Section 1983 does not contain a statute of limitations itself. See Riel v. Reed, 760 F. Supp. 852, 854-55 (D. Colo. 1991). The U.S. Supreme Court has directed that in the absence of an explicit statute of limitations, courts should adopt an analogous state limitation period so long as it is not inconsistent with federal law or policy. Wilson v. Garcia, 471 U.S. 261, 266-67 (1985). In Colorado, section 1983 actions are governed by the residual statute of limitations, 5 Colo. Rev. Stat., § 13-80-102(1)(i) (2003), with a time period of two years. Riel, 760 F. Supp. at 854. Civil Serv. Comm'n v. Carney, 97 P.3d 961, 965 (Colo. 2004).

ARGUMENT

I. Introduction

The proposed classes should be certified if they satisfy the four prerequisites of Rule 23(a), as well as one of the three subsections of Rule 23(b). Medina v. Conseco Annuity Assur. Co., 121 P.3d 345, 347 (Colo. App. 2005). Named Plaintiffs seek certification pursuant to Rule 23(b)(2) because 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." C.R.C.P. 23(b)(2).

Named Plaintiffs will analyze each of the requirements of Rule 23(a) and Rule 23(b)(2) separately below. As an overview, however, numerous courts have certified classes consisting of applicants for, and recipients of, Medicaid benefits who were provided inadequate notice or opportunity for a fair hearing when their eligibility was denied or terminated. These include, for example:

- Hernandez v. Medows, 209 F.R.D. 665 (S.D. Fla. 2002), in which Medicaid recipients sued a state official based on termination of their Medicaid benefits without adequate notice or opportunity for a fair hearing. Id. at 670. The court certified the class as follows:

  > All current and future Florida Medicaid recipients who have, or will have their prescription drug coverage denied, delayed, terminated, or reduced without adequate notice and the opportunity for a fair hearing.

  Id. at 666-67.[3]

[3] There is not a significant amount of binding authority interpreting C.R.C.P. 23. However, this Court may look to federal law interpreting Fed. R. Civ. P. 23 to inform its interpretation of C.R.C.P. Rule 23. See, e.g., Toothman v. Freeborn & Peters, 80 P.3d 804, 809

- Catanzano v. Dowling, 847 F. Supp. 1070, 1079 (W.D.N.Y. 1994), in which the court redefined a previously certified class of Medicaid recipients to include recipients and applicants whose benefits were denied or terminated without adequate notice or opportunity for a fair hearing in violation of 42 C.F.R. § 431.200-50.
- Febus v. Gallant, 866 F. Supp. 45, 46 (D. Mass. 1994), in which the court certified a class of all recipients of state or federal financial assistance benefits, including Medicaid benefits, whose eligibility was denied or terminated without adequate notice.
- Ortiz v. Eichler, 616 F. Supp. 1046, 1053 (D. Del. 1985), in which the court certified a class in an action challenging the adequacy of the notice and hearing provided by the defendant in connection with the reduction or termination of public assistance benefits.
- Jones v. Blinziner, 536 F. Supp. 1181, 1189 (N.D. Ind. 1982), in which the court certified a class that included Medicaid recipients who challenged, among other things, the notice provided by defendants in connection with the denial or termination of benefits.

(Colo. App. 2003) ("[b]ecause C.R.C.P. 23 is virtually identical to Fed. R. Civ. P. 23, we look to case law regarding the federal rule for guidance"); Jahn v. ORCR, Inc., 92 P.3d 984, 987 (Colo. 2004) ("[w]e note that when reviewing issues involving class actions, the similarities between C.R.C.P. 23 and Fed. R. Civ. P. 23 allow us to look to federal cases interpreting the federal rule to inform our interpretation of the Colorado rule").

II. The Proposed Class Meets the Requirements of Rule 23(a).

A. The Proposed Class is so Numerous That Joinder is Impracticable.

Rule 23(a)(1) requires that a class be so numerous that joinder of all members is impracticable. Although class size is the most important factor, there are a number of additional factors that are relevant to whether joinder is impracticable, including the geographic diversity of class members, the financial resources of class members and the ability of class members to institute individual lawsuits, and requests for prospective and injunctive relief that could affect future class members. Neiberger v. Hawkins, 208 F.R.D. 301, 313 (D. Colo. 2002); Colo. Cross-Disability Coalition v. Taco Bell Corp., 184 F.R.D. 354, 357 (D. Colo. 1999); see also 1 Alba Conte & Herbert B. Newberg, Newberg on Class Actions § 3.06 at 249-60 (4th ed. 2002) (hereinafter "Newberg") (and cases cited therein). Each of these factors show that joinder is impracticable in the case at hand.

The Class is large. In determining class size, the exact number of potential members need not be shown. See, e.g., Joseph v. Gen. Motors Corp., 109 F.R.D. 635, 639 (D. Colo. 1986). Rather the court may make "common sense assumptions" to support a finding that joinder would be impracticable. Neiberger, 208 F.R.D. at 313 (quoting Civic Ass'n of the Deaf of New York City, Inc. v. Giuliani, 915 F. Supp. 622, 632 (S.D.N.Y. 1996).) However, "[g]enerally, 'less than twenty-one is inadequate, more than forty adequate.'" Hernandez, 209 F.R.D. at 669 (citing Cox v. Am. Cast Iron Pipe Co., 784 F.2d 1546, 1553 (11th Cir. 1986).)

Here, the numerosity requirement is met simply by the number of Applicants and Recipients whose benefits were denied or terminated by DP, which is just one of twenty CCBs in Colorado. DP denied the applications of 156 Applicants without adequate notice, and terminated

the benefits of 199 Recipients without adequate notice. (Edson Aff. at ¶¶ 5-6, 9-10.) As a matter of common sense, these numbers are much larger for all twenty CCBs combined, and thus the numerosity requirement is satisfied by dint of the size of the class alone.

Other factors also support a finding of numerosity. For example, the proposed Class and Subclass cover all of Colorado and are thus geographically diverse.[4] Further, the financial resources of the Class Subclass are inherently limited, affecting class members' ability to institute individual lawsuits.[5] Finally, the fact that Plaintiffs seek injunctive relief that will affect future Class and Subclass members supports a finding of numerosity.[6]

For these reasons, the Class and Subclass are so numerous that joinder is impracticable and thus satisfy Rule 23(a)(1).

B. The Class Members Share Common Questions of Law and Fact.

Rule 23(a)(2) requires that there be questions of law or fact common to the class which predominate over questions peculiar to individual members of the class. This does not mean that every issue must be common to the class so long as the claims of the plaintiffs and other class members are based on the same legal or remedial theory. Joseph v. Gen. Motors Corp., 109 F.R.D. 635, 639-40 (D. Colo. 1986).

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[4] See Taco Bell, 184 F.R.D. at 358 ("The fact that a class is dispersed over several counties weighs in favor of a finding of numerosity." (Citation omitted.)).

[5] See M.A.C. v. Betit, 284 F. Supp. 2d 1298, 1303 (D. Utah 2003) (Holding that the numerosity requirement was satisfied where, "[b]ecause each of the proposed class members qualify for Medicaid-reimbursable institutional services, they by definition lack the financial resources on their own.").

[6] See Neiberger, 208 F.R.D. at 313-14.

In a Medicaid context, the court in Hernandez found the commonality requirement satisfied where class members had common questions of fact, including whether class members received adequate notice and opportunity for a fair hearing before their Medicaid benefits were denied or terminated. 209 F.R.D. at 669. The court went on to find common questions of law, including whether the defendants violated the Medicaid Act by failing to provide adequate notice and opportunity for a fair hearing before class members' benefits were denied or terminated. Id.; see also Ortiz, 616 F. Supp. at 1054 (Finding commonality requirement met by common questions as to "whether defendants' notices and final decision letters comport with the applicable regulations. . ..").

There are numerous questions of law and fact common to the Class and Subclass, including:

- whether federal statutes and regulations require Defendants to provide notice to the Class and Subclass before their Medicaid benefits are denied or terminated;
- whether federal statutes and regulations require Defendants to provide opportunity for a fair hearing;
- whether Defendants have failed to provide adequate notice to the Class and Subclass before their Medicaid benefits were denied or terminated; and
- whether Defendants have failed to provide a fair hearing to the Class and Subclass.

Thus the Class and Subclass meet the requirements of Rule 23(a)(2).

C. The Claims of Named Plaintiffs Are Typical of the Claims of the Class.

Rule 23(a)(3) requires that the claims asserted by the representative plaintiff be typical of the claims of the class. According to the Colorado Court of Appeals,

> [t]ypicality requires that the class representative claims be typical of the class and that the class claims are encompassed by the named plaintiffs' claims. This requirement is usually met when it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented . . . irrespective of varying fact patterns which underlie individual claims.

Ammons v. Am. Mut. Family Ins. Co., 897 P.2d 860, 863 (Colo. App. 1995) (internal citations omitted).

Furthermore, "[s]o long as there is a nexus between the class representatives' claims or defenses and the common questions of fact or law which unite the class, the typicality requirement is satisfied." Neiberger, 208 F.R.D. at 315. "'[T]he typicality requirement is ordinarily not argued . . . there may be varying fact situations among individual members of the class and this is all right so long as the claims of the plaintiffs and the other class members are based on the same legal or remedial theory.'" Id. at 316 (citing Penn v. San Juan Hosp., Inc., 528 F.2d 1181, 1189 (10th Cir. 1975)).

The court in Hernandez found that the class satisfied the typicality requirement where class members "all have been denied their alleged right to adequate written notice and fair hearings when [Medicaid] . . . is denied, delayed, terminated, or reduced . . .." 209 F.R.D. at 672. Furthermore, the court in Ortiz noted that the typicality requirement was satisfied even where all of the named plaintiffs were recipients, but the proposed class included recipients and applicants. 616 F. Supp. at 1056. The court stated that "while no applicant is a named plaintiff,

one is not needed -- the hearing procedures that allegedly harm recipients are the same procedures that allegedly harm applicants." Id. at 1057.

Here, all of the Named Plaintiffs, like members of the Applicants Class, had their eligibility for Medicaid developmental disability services denied or terminated without being provided with notice and the opportunity to appeal through a *de novo* state-level evidentiary hearing. In addition, Named Plaintiffs Rice and Swift, like members of the Recipients Subclass, had previously been found to be eligible for Colorado's Medicaid developmental disabilities programs, but whose eligibility for such programs was subsequently terminated without being provided notice and the opportunity to appeal through a *de novo* state-level evidentiary hearing. The Named Plaintiffs, Class and Subclass members assert claims under 42 U.S.C. § 1983 for violations of Medicaid regulations and the Due Process Clause. Because their claims are based on the same legal theory, and arise from the same fact pattern, the typicality requirement is met.

D. Named Plaintiffs Will Fairly and Adequately Protect the Interests of the Class.

The final requirement of Rule 23(a), adequate representation, requires that the representative plaintiffs have common interests with the class members and that the representative plaintiffs vigorously prosecute the interests of the class through qualified counsel. Cook v. Rockwell Int'l Corp., 151 F.R.D. 378, 386 (D. Colo. 1993) (citation omitted). Adequate representation is usually presumed in the absence of contrary evidence. Id. (quoting 2 Newberg § 7.24).

The Named Plaintiffs in this case have common interests with members of the proposed Class and Subclass. All Named Plaintiffs are members of the proposed Class, and Named

Plaintiffs Swift and Rice are members of the proposed Subclass. The Named Plaintiffs seek to remedy the allegedly illegal notice and hearing procedures employed by the State Defendants.

In addition, Plaintiffs' counsel are qualified to represent the Class and Subclass. Mr. Fox and Ms. Faley have successfully represented numerous plaintiff classes of individuals with disabilities in prior litigation. (Decl. of Timothy Fox (attached as ex. 7); Decl. of Andrea Faley (attached as ex. 8).) In addition, Ms. Faley and Ms. Fuselier are thoroughly familiar with state and federal regulations related to persons with disabilities. (Decl. of Andrea Faley; Decl. of Elizabeth Fuselier (attached as ex. 9).) Therefore, the Class and Subclass meet the requirements of Rule 23(a)(4).

III. The Proposed Class is Proper under Rule 23(b)(2).

A class is proper under Rule 23(b)(2) if the party opposing the class "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 . . ." and the representatives are seeking "final injunctive relief or corresponding declaratory relief." "Civil rights cases against parties charged with unlawful, class-based discrimination are prime examples" of Rule 23(b)(2) classes. Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 614 (1997) (quoting Adv. Comm. Notes, 28 U.S.C. App., at 697).

The court in Hernandez found this requirement satisfied where, as here, the plaintiffs alleged that the defendant failed to provide the notice and hearing opportunities required by Medicaid regulations when benefits are denied or terminated. 209 F.R.D. at 673; see also Ortiz, 616 F. Supp. at 1058 (Certifying under Rule 23(b)(2) a class challenging the adequacy of the

notice and hearing provided by the defendant in connection with the reduction or termination of public assistance benefits).

Here, the Defendants' alleged wrongful actions -- failing to comply with Medicaid regulations governing notice and hearings after benefits are denied or terminated -- are "generally applicable to the" proposed Class and Subclass. In addition, the Class and Subclass seek only declaratory and injunctive relief. Therefore, the Class should be certified pursuant to Rule 23(b)(2).

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request this Court GRANT their Motion for Class Certification, and certify the proposed Class and Subclass under Rule 23(b)(2).

Dated: July 10, 2007.

Certification of Compliance with C.R.C.P. 121 § 1-15(8).

The undersigned certifies that Plaintiffs' counsel has conferred with Defendants' counsel regarding this motion, who has indicated that the State Defendants are opposed to the Court's grant of this motion.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Motion for Certification of a Class and Subclass was filed via Lexis Nexis File & Serve, who will serve the pleading either electronically or via U.S. Mail, first class postage prepaid, this 10th day of July 2007, to the following:

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