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 APR 21 2000
 CLERK U.S. DISTRICT COURT
 DISTRICT OF ARIZONA
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UNITED STATES DISTRICT COURT
 DISTRICT OF ARIZONA

18 PEG BALL, CREE JAMES, a minor person by)
 19 and through her grandfather and guardian BENNIE)
 20 JAMES, and JEANNE SPINKA, as individuals)
 21 and as representatives of a class of persons)
 22 similarly situated,)

Plaintiffs,

23 VENNETTA GRAHAM, COLLIN PHELAN, a)
 24 minor person by and through his mother KIM)
 25 BOWMAN, PEGGY WILLIAMS, LARRY)
 26 WILLIAMS, GRACE COLLIER, JUDETH)
 27 HWTON, and VIRGINIA HASKELL, as)
 28 individuals and as representatives of a class of)
 persons similarly situated,

Intervener-plaintiffs

v.

29 PHYLLIS BIEDESS, Director of the Arizona Health)
 30 Care Cost Containment System, THE ARIZONA)
 31 HEALTH CARE COST CONTAINMENT)
 32 SYSTEM ADMINISTRATION, and the STATE)
 33 OF ARIZONA,

Defendants.

No. CIV 00 - 67 TUC ACM
 INTERVENERS' COMPLAINT
 CLASS ACTION

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PRELIMINARY STATEMENT

1. This action commenced on January 27, 2000 when the original plaintiffs filed a class action lawsuit against the Director of the Arizona Health Care Cost Containment System [AHCCCS], AHCCCSA itself, and the State of Arizona. The suit seeks to compel the defendants to provide adequate home care services to recipients of Home and Community Based Services [HCBS] under the Arizona Long Term Care System [ALTCS].

2. Intervener-plaintiffs are seven individuals with serious disabilities that require them to receive medical and health-related personal care services on an ongoing basis, and are eligible for HCBS because they have been found to be at risk of institutionalization. A key component of HCBS services are the less skilled services that assist disabled individuals with the activities of daily life such as dressing, bathing, toileting, eating, housework, shopping and the like. These services are known as attendant care, personal care, housekeeper, and respite care services, but in this lawsuit they will be all be referred to as “home care” services.

3. Intervener-plaintiffs have been denied home care services prescribed in their care plans because the HCBS program does not provide sufficient workers to meet beneficiaries’ needs. If the shortfall in home care services is not corrected, intervener-plaintiffs and other HCBS beneficiaries will be unable to continue living in their homes and will be forced to move into nursing facilities. Intervener-plaintiffs and other beneficiaries have no remedy under the ALTCS appeal process because the defendants do not give them written denial notices when they fail to provide workers to implement their care plans.

JURISDICTION AND VENUE

4. The Court has jurisdiction pursuant to the following statutes:

a. 28 U.S.C. § 133 1, which gives district courts original jurisdiction over civil actions arising under the Constitution, laws or treaties of the United States;

b. 28 U.S.C. § 1343(a)(3) and (4), which gives district courts jurisdiction over actions to secure civil rights extended by the United States government;

c. 28 U.S.C. § 1367, which gives district courts supplemental jurisdiction over

1 state law claims.

2 5. Venue is proper in the District of Arizona pursuant to 28 U.S.C. § 139 1 (bj) because
3 the events that gave rise to this Complaint occurred in this district.

4 6. Intervener-plaintiffs' claims for declaratory and injunctive relief are authorized by
5 28 U.S.C. §2201 and 2202.

6 **PARTIES**

7 7. Intervener-plaintiffs are seven disabled Arizona residents who are eligible for
8 ALTCS and are receiving HCBS services from defendant AHCCCS based on their limited financial
9 resources and the severity of their medical needs, which places them at risk of institutionalization.
10 Each of the intervener-plaintiffs has been determined by AHCCCS, through its local contractors, to
11 need home care services in prescribed amounts and times to enable them to continue living
12 independently in their homes. Nevertheless, defendants' contractors have failed to provide
13 intervener-plaintiffs with the home care services prescribed for them, claiming that they are unable
14 to find sufficient workers at their wage levels and other employment conditions. If intervener-
15 plaintiffs' medical needs for home care services in their homes are not met, they will be at risk of
16 bodily harm or be forced to live in nursing homes.

17 8. Defendant Phyllis Biedess is the Director of the Arizona Health Care Cost
18 Containment System, known as AHCCCS. Defendant Biedess is sued in her official capacity as
19 Director of the AHCCCS program. As such, she has a duty to insure that the AHCCCS and ALTCS
20 programs are administered in accordance with federal and state law.

21 9. Defendant AHCCCS Administration is the single state agency responsible for the
22 administration of the Medicaid program, Title XIX of the Social Security Act, in Arizona. The
23 Arizona Long Term Care System, [ALTCS], including Home and Community Based Services
24 [HCBS] is part of the AHCCCS program. AHCCCS and ALTCS are programs and/or activities
25 receiving Federal financial assistance within the meaning of Section 504 of the Rehabilitation Act
26 of 1973, as amended, at 29 U.S.C. § 794.

27 **CLASS ALLEGATIONS**

28 10. Pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure, intervener-

1 plaintiffs bring this suit both individually and on behalf of a statewide class of persons similarly
2 situated. The class consists of persons who have been or will be eligible for ALTCS home care
3 services but are not provided with the full amount of such services prescribed in their care plans.

4 a. This class is so numerous that joinder of all members is impractical;

5 b. There are questions of law and fact as to the adequacy of the defendants' policies
6 and practices with respect to providing attendant care services to HCBS beneficiaries that are
7 common to all members of the class;

8 c. Each of the intervener-plaintiffs has claims that are typical of the claims of the
9 class members;

10 d. The intervener-plaintiffs will fairly and adequately protect the interests of the
11 class members; and,

12 e. The defendants have acted or refused to act on grounds generally applicable to
13 the class, thereby making final injunctive and declarative relief appropriate with respect to the class
14 as a whole.

15 STATUTORY AND REGULATORY FRAMEWORK

16 11. The federal Medicaid statute, Title XIX of the Social Security Act, is codified at 42
17 U.S.C. § 1396 et seq. It authorizes the establishment by states of medical assistance programs for
18 low income individuals who meet certain eligibility requirements. These medical assistance
19 programs are jointly funded by the federal and state governments, and are designed by the states
20 within a framework of options and requirements established under the Medicaid statute.

21 12. Pursuant to the federal statutory scheme, when an application for Medicaid benefits
22 is filed with the single state agency responsible for administering the program, "such assistance shall
23 be furnished with reasonable promptness to all eligible individuals." 42 U.S.C. § 1396a(a)(8). Once
24 individuals have been determined eligible, the state agency must continue to furnish Medicaid
25 services until the recipient is found to be ineligible. 42 C.F.R. § 435.930(b).

26 13. The federal Medicaid statute, as well as the Arizona State Plan approved by the
27 federal Medicaid agency, lists services that must be provided to eligible persons. Such services
28 include HCBS services for persons who would otherwise require institutional care. 42 U.S.C. §

1 1396a(a)(10)(A)(ii)(VI) and Arizona State Plan Section 3.1(a)(1)(vi).

2 14. The federal Medicaid statute further requires that the payment rates for services be
3 “sufficient to enlist enough providers so that care and services are available under the [Medicaid
4 state] plan to the same extent that such care and services are available to the general population in
5 the geographic area.” 42 U.S.C. § 1396a(a)(30)(A).

6 15. The federal Medicaid statute further requires that an individual eligible for HCBS
7 services be able to freely choose such services provided in her home as an alternative to institutional
8 services. 42 U.S.C. § 1396n(c)(2)(C) and (d)(2)(C).

9 16. Arizona has adopted a plan for medical assistance under the federal Medicaid statute
10 through the waiver program known as AHCCCS. It is authorized at A.R.S. §§ 36-2901 et seq.
11 AHCCCS covers long term care services through its ALTCS program, authorized at A.R.S. §§ 36-
12 293 1 et seq. ALTCS services may be provided in either an institution or, to persons who have been
13 determined to be at risk of institutionalization, in their homes.

14 17. The ALTCS statute requires that HCBS should include attendant care
15 services. The general category of attendant care services as used in this Complaint includes those
16 set out in the AHCCCS statute as home health aide services, homemaker services, personal care
17 services, habilitation services and respite care services A.R.S. § 39-2939(B)(2)(b), (c), (d), (f) and
18 (g), and A.R.S. § 39-2939(C)(2), (3), (4), (6)and (7).

19 18. The ALTCS statute further requires the administration to include payments terms in
20 its agreements with HCBS contractors as necessary to ensure adequate performance. A.R.S. § 36-
21 2942(6).

22 19. Title II of the federal Americans with Disabilities Act [ADA], found at 42 U.S.C. §§
23 12 13 1- 12 134, extends to state and local governments the non-discrimination provisions of Section
24 504 of the Rehabilitation Act of 1973, at 29 U.S.C. § 794. It requires that their services, programs
25 and activities of state and local governments be administered in “the most integrated setting
26 appropriate to the needs of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d).

27 20. The Due Process Clause of the United States Constitution prohibits the AHCCCS
28 program from denying a beneficiary health services without adequate notice and opportunity for a

fair hearing.

21. The federal Medicaid statute and regulations require AHCCCS to provide notice and hearing rights to any person whose claims for medical assistance under the plan are denied or are not acted upon with reasonable promptness. 42 U.S.C. § 1396a(a)(3), and 42 C.F.R. § 431.200 e seq.

22. The AHCCCS statute and regulations also provide for notice to the beneficiary, with grievance and hearing rights, when AHCCCS benefits such as ALTCS HCBS are denied or discontinued. A.R.S. § 36-2903.01, and A.A.C. R9-22-3 16.

STATEMENT OF FACTS

Intervener-Plaintiff Vennetta Graham

23. Intervener-plaintiff Vennetta Graham is 65 years of age and resides in Tucson, Arizona with her 43 year old son Gregory, who is mentally disabled.

24. Ms. Graham suffered a traumatic brain injury in 1982, which caused her permanent head and back injuries including grand mal seizures. She has had numerous surgeries to try to correct a problem with loss of brain fluid, and she also experiences chronic respiratory disorders. She has a visual impairment (no sight in her right eye) resulting from her third brain surgery, in 1998. In 1996 intervener-plaintiff Graham had a stroke, which together with the brain surgery has caused tremors and paralysis in her left hand.

25. As a result of her condition, intervener-plaintiff Graham walks with a cane and uses seeing eye dog to get about. She has limited use of her left hand, and has been ordered by her doctors to restrict her activities in order to control the leak of brain fluid.

26. Intervener-plaintiff was determined eligible for ALTCS and chose home and community based services on or about October, 1998. Her care plan called for her to receive 4 hours of attendant services per week, but she has almost never received that amount of service. Attendant care workers quit because they thought the work was too hard, because Ms. Graham complained about theft, and for other reasons. When she complained to Pima Health System, her case worker appeared to be angry with her, and although the worker apologized, intervener-plaintiff has received very little service since then.

1 27. Pima Health System has never given Ms. Graham a written notice of denial or of her
2 right to appeal when they failed to provide attendant care workers to carry out her care plan.

3 28. Intervener-plaintiff struggles to continue to live independently and care for her son
4 at home, but her health-particularly the brain fluid leak-- is endangered by the fact that she must
5 perform household tasks without the assistance of the promised HCBS attendant care services.

6 Intervener-Plaintiff Collin Phelan

7 29. Collin Phelan is a 3 year old boy who resides in Scottsdale, Arizona with his mother,
8 Kimberly A. Bowman.

9 30. When Collin was born he suffered a brain injury that left him with quadriplegia, a
10 seizure disorder, and psycho-motor delays.

11 31. Intervener-plaintiff Collin requires total care because of his disability, including one-
12 to-one assistance with all activities of daily living, promoting independent interaction and play.

13 32. Collin is a recipient of AHCCCS' ALTCS benefits, and receives services through the
14 DES Division of Developmental Disabilities. During the first year and a half of Collin's life,
15 ALTCS authorized 720 hours a year of in-home respite nursing care for him. After this service was
16 terminated, in approximately July of 1998, ALTCS authorized 720 hours per year of Certified
17 Respite Care and 740 hours per year of Personal Attendant/Habilitation Care. Although these
18 services were authorized, they have not been provided to Collin by ALTCS. Only recently Collin's
19 DDD case manager gave his mother a list of possible providers, and during the month of February
20 defendants paid for an attendant/habilitation worker for 25 hours a week.

21 33. Defendants have never given intervener-plaintiffs mother an explanation as to why
22 Collin was not receiving the services they found him eligible for and authorized for him. She has
23 never received a written denial notice or an explanation of grievance and appeal rights.

24 Intervener-Plaintiff Peggy Williams

25 34. Intervener-plaintiff Peggy Williams is 52 years old and resides in Tucson, Arizona
26 with her husband, Larry Williams.

27 35. Ms. Williams was determined by the Social Security Administration to be disabled
28 n 1994. Her husband is also disabled and is also an intervener-plaintiff in this lawsuit.

1 36. Ms. Williams was diagnosed with diabetes in 1977. In 1993 she experienced a
2 ruptured bowel that required emergency abdominal surgery. Eventually she underwent 14 surgeries
3 related to the bowel rupture and she has had 4 colostomies. As a result, the front of her abdomen
4 is surgical mesh. Shortly after her ruptured bowel, Ms. Williams had a fall resulting from her
5 condition and injured both knees. Last year she experienced pulmonary edema on two different
6 occasions, and the peripheral nerve damage from her diabetes became noticeably worse.

7 37. Because of her disabilities, Ms. Williams' activities of daily living are restricted.
8 She uses a cane to walk at times. She must change positions, from standing to sitting, to lying down,
9 at least once every 15 minutes. She is unable to lift, and cannot do housework such as scouring,
10 vacuuming and mopping.

11 38. Ms. Williams was determined eligible for ALTCS home and community based
12 services in September, 1996. Her HCBS care plan calls for 2 hours per week of housekeeping
13 services. The attendant care workers started out alright, but then they began to quit constantly. The
14 Williams' home is in the Picture Rocks section of Tucson, and the attendant care workers said that
15 it was too far for them to drive. The Williams would go for weeks or months only 1 hour rather than
16 4 hours per week, or with no services at all.

17 39. Approximately two months ago the Williams lost their housekeeper again and for 2
18 weeks no one came to help them. Jewish Family Services, who is their provider through Pima
19 Health System, warned them that it might be months before a worker could be found. At that point
20 Ms. Williams complained to the Pima County Supervisors and a new housekeeper who provides a
21 total of 3 hours a week was immediately assigned to them.

22 40. Ms. Williams never received a written notice of appeal rights when Pima Health
23 System did not fill her HCBS care plan.

24 Intervener-Plaintiff Larry Williams

25 41. Intervener-plaintiff Larry Williams is 58 years old and resides in Tucson, Arizona
26 with his wife, Peggy Williams.

27 42. Mr. Williams has been determined by the Social Security Administration to be
28 permanently disabled. His wife is also disabled and is an intervener-plaintiff in this lawsuit as well.

1 43. Larry Williams was seriously injured in an automobile accident while working in
2 November, 1977. As a result, he developed spinal rnachnitis, which is an inflammation of the spinal
3 cord. In February, 1998 he had a massive coronary, which left him hospitalized and breathing on
4 a respirator. Since then he has undergone open heart surgery and several angiograms. His heart
5 currently works at only 30% of capacity, and he must take nitroglycerin and use oxygen daily.

6 44. Intervener-plaintiff Williams' doctors have ordered him to restrict his activities to
7 puttering in his home shop.

8 45. Mr. Williams has been determined eligible for ALTCS home and community based
9 services. His HCBS care plan prescribes 2 hours per week of housekeeping services, in addition to
10 the 2 hours prescribed for his wife. Their problems are described above. The housekeeping workers
11 sent by ALTCS quit on a regular basis, stating that they lived too far out. The Williams would go
12 for weeks or months with little or no services.

13 46. Approximately one month ago they lost their housekeeper again and for 2 weeks no
14 one came to help. Their provider through Pima Health System said it might be months before they
15 could find someone to fill their position. At that point Mrs. Williams complained to the Pima
16 County Supervisors and a new housekeeper was immediately assigned to provide a total of 3 hours
17 a week

18 47. Mr. Williams has never received a written notice of appeal rights when Pima Health
19 System failed to fill their HCBS care plan.

20 48. When the Williams do not receive housekeeping services, their health is threatened
21 by the dust that accumulates in the house, aggravating Mr. Williams' oxygen and breathing
22 problems.

23 Intervener-Plaintiff Grace Collier

24 49. Intervener-plaintiff Grace Collier is 77 years old, and resides in Tucson, Arizona

25 50. Ms. Collier has post-polio syndrome, osteoarthritis, osteoporosis, kypho-scoliosis,
26 chronic obstructive pulmonary disease, and a chronic condition that involves her ribs sinking into
27 her abdomen.

2 8 51. Intervener-plaintiff Collier uses a wheelchair for mobility because she is unable to

1 walk. She is also unable to do the following activities by herself turn in bed. transfer from bed to
7 wheelchair, bathe. toilet, change her diaper. dress, and transfer from wheelchair to bed. She uses a
3 bed pan for urination and bowel movements. She is unable to shop, cook, vacuum, dust, wash
4 dishes, or do laundry. Thus, she needs assistance with all of these activities. To transfer from bed
5 to wheelchair, an attendant must lift her with a Hoyer lift.

6 52. Intervener-plaintiff Collier lives in her own home.

7 53. Ms. Collier enrolled in the Home and Community Based Services (HCBS) program
8 under ALTCS in January 1998. Initially, her HCBS care plan prescribed 17.5 hours per week of
9 attendant care services. Subsequently, the number of hours of attendant care services was increased
10 to 27.5 hours per week. About 1½ years ago, the number of hours of attendant care services was
11 increased to 3 1.5 hours per week. However, intervener-plaintiff is currently receiving only 30 hours
12 per week of attendant care services.

13 54. Throughout the period of her enrollment in the HCBS program, Ms. Collier has
14 experienced problems receiving attendant care services. Pima Health System, the ALTCS
15 contractor, has failed to provide an attendant for periods of time. During several of these periods,
16 she spent her own money to hire nurses' assistants or attendant care workers. When she did not
17 receive attendant care services, employees of Pima Health System have told her that no attendants
18 were available.

19 55. Additionally, intervener-plaintiff has been left alone on numerous occasions because
20 attendants failed to show up for work. On these occasions, she was stranded in bed, sometimes for
21 more than 12 hours; she could not turn in bed, could not eat any meals, and could not use the bedpan.
22 Since intervener-plaintiff could not use the bedpan, she had to urinate and defecate in her diaper.

23 56. Ms. Collier has never been given written notice of the denial of services or written
24 notice of appeal rights with respect to the failure of ALTCS and Pima Health System to provide the
25 HCBS attendant care services required by her HCBS care plan.

26 Intervener-Plaintiff Judeth Hinton

27 57. Intervener-plaintiff Judeth Hinton is 42 years old, and resides alone in an apartment
28 in Tucson, Arizona.

1 58. Ms. Hinton has systemic lupus, which has caused atrophy other cerebellum. She also
2 has a seizure disorder, muscular dystrophy, and a third-degree heart block, for which she has a
3 pacemaker. She had a brain stem stroke in 1996, which left her with a respiratory disorder and a
4 speech impairment.

5 59. Intervener-plaintiff Hinton uses a wheelchair for mobility because she is unable to
6 walk. She is unable to do the following activities by herself get out of bed, transfer from
7 wheelchair to the toilet seat and from the toilet seat to wheelchair, bathe, dress, change her catheter
8 bags, and get into bed. She is unable to vacuum her apartment, dust, wash dishes, or do laundry.
9 Thus, she needs assistance with all of these activities, and also with shopping and cooking.

10 60. Intervener-plaintiff requested Home and Community Based Services (HCBS) under
11 the ALTCS program in May 1999. At the time she applied, she was an inpatient at HealthSouth
12 Rehabilitation Center of Tucson. She was scheduled to be discharged from HealthSouth in June
13 1999, and needed the HCBS services to begin when she returned home.

14 61. ALTCS approved the application for HCBS services. In May or June 1999, a case
15 worker for Pima Health System informed Ms. Hinton that she was eligible for 35 hours per week of
16 n-home attendant care services.

17 62. Subsequently, however, the case worker, Kathy Pillow, informed her that Pima Health
18 System did not have any attendants available. Ms. Pillow asked intervener-plaintiff if she had any
19 Friends or family members who would want to apply for the job as her attendant care worker.
20 intervener-plaintiff Hinton said no, and Ms. Pillow then said that her only option was to enter a
21 nursing home until Pima Health System found an attendant. She refused to enter a nursing home.

22 63. Pima Health System then contracted with an agency to provide Ms. Hinton with
23 services. But when she returned home from HealthSouth Rehabilitation Center in June 1999, she
24 did not receive the 35 hours per week of attendant care services that was prescribed in her HCBS
25 care plan. Instead, she was given only 21 hours per week of attendant care services as follows: 7
26 days per week, for 3 hours each day (2 hours in the morning and 1 hour at night). Ms. Pillow told
27 intervener-plaintiff that 21 hours per week of attendant care services was the maximum number of
28 hours that Pima Health System would pay to be provided by an outside agency.

1 64. About two or three weeks after Ms. Hinton was discharged from HealthSouth
2 Rehabilitation Center, she began receiving shopping services through ALTCS. These services were
3 provided 2 times per month.

4 65. She did not receive any housekeeping services. A friend did her laundry,

5 66. Because intervener-plaintiff received only 3 hours per day of attendant care services,
6 she would sometimes be left in her wheelchair for more than 12 hours at a time. This was very
7 uncomfortable, and she still has numbness in her left leg because of pressure on a nerve.

8 67. On about 10 occasions, the attendant failed to return in the evening. On these
9 occasions? intervener-plaintiff Hinton had to remain in her wheelchair all night; and thus she was in
10 her wheelchair for more than 24 hours. When the attendant finally returned in the mornings, she
11 would help intervener-plaintiff to shower; but she would get back into her wheelchair rather than into
12 the bed because she did not want to be in bed all day until the attendant returned in the evening.
13 Additionally, on one or two occasions, the attendant failed to come at all in the morning.

14 68. In or about August 1999, intervener-plaintiff was told that Nursing Services, Inc.
15 could no longer provide services because they did not have enough attendants. This happened only
16 two days before the services were to end. Ms. Pillow told intervener-plaintiff that her only
17 alternative was to go into a nursing home until Pima Health System could find an attendant.
18 Intervener-plaintiff again refused to enter a nursing home.

19 69. After Nursing Services, Inc. stopped providing services, Intervener-plaintiff had no
20 attendant care services for two days. A friend helped her during those two days, and then she again
21 began receiving 2 1 hours per week of attendant care services. These services were provided by Pima
22 Home Health and Handmaker Jewish Services.

23 70. In November 1999, while hospitalized to have a new pacemaker implanted,-Ms.
24 Hinton re-tore ligaments in her left shoulder. As a result of the tear, she lost the ability to-use a
25 female urinal while sitting in her wheelchair. She transferred from the hospital to HealthSouth
26 Rehabilitation Center, and then returned home on or about December 10, 1999. Because she could
27 no longer urinate independently while the attendant was gone, she would drink only about 10 ounces
28 of fluid during the day. As a result, she became dehydrated and had a seizure on or about December

1 20, 1999. She was taken to the hospital, where she remained until December 24, 1999. In the
2 hospital, a catheter was implanted to provide urination.

3 71. In December 1999, a friend, Kelly Johnson, applied with Pima Health System to be
4 Ms. Hinton's attendant. She was hired and began working on or about January 6, 2000. Initially,
5 she worked 35 hours per week.

6 72. In March, 2000, Kelly Johnson notified Pima Health System that she was sick. Ms.
7 Johnson believed she had a strep throat. A woman from Pima Health System then called intervener-
8 plaintiff and asked whether she had any appointments that day and whether she had anyone who
9 could help her get out of bed. The woman said that Pima Health System would try to find someone
10 to help, but she never heard back from that woman or anyone else at Pima Health System. Even
11 though she was sick, Ms. Johnson eventually came to the apartment and got intervener-plaintiff out
12 of bed. If Ms. Johnson had not come to help, intervener-plaintiff would have remained in bed all
13 day, would not have eaten, and would not have been able to get to some of her medications.

14 73. Intervener-plaintiff has never been given written notice of the denial of services or
15 written notice of her appeal rights with respect to the failure of ALTCS and Pima Health System to
16 provide the HCBS home care services required by her HCBS care plan.

17 Intervener-Plaintiff Virginia Haskell

18 74. Intervener-plaintiff Haskell is 76 years old and resides in Scottsdale, Arizona.

19 75. Ms. Haskell lives with her daughter, Lisa Haskell, who provides for 80% of her
20 person care needs. Her daughter works and therefore someone is needed to provide care when Lisa
21 Haskell is not at home.

22 76. Intervener-plaintiff Haskell has been diagnosed with hydrocephalus, which is fluid
23 on her brain, possibly caused by a serious bout of the flu. A shunt has been inserted to drain the fluid
24 from her brain. She also has osteoporosis.

25 77. As a result of her disabilities, Ms. Haskell is not able to walk, to get on and off of the
26 toilet without assistance, to prepare her meals, to get in and out of bed, or to enter or leave the house.
27 She uses a wheelchair to get around in her house and in the community.

28 78. Ms. Haskell's daughter takes her out of the house to movies and to restaurants on

1 occasions.

2 79. Intervener-plaintiffs care needs include assistance with activities of daily living,
3 including dressing, bathing, cooking toileting and moving from chair to bed and back.

4 80. Ms. Haskell has been eligible for the XLTCS program since approximately 1995.
5 She receives HCBS services from ALTCS and has a care plan that specifies she should receive 10
6 hours of home care services per week.

7 81. For five years intervener-plaintiff Haskell had a Certified Nursing Assistant named
8 Mary provided through Lutheran Health Care. Sometime in January, 2000, Lutheran Health Care
9 stopped contracting with Maricopa County to provide HCBS. Ms. Haskell's case manager told her
10 that they were looking for someone to replace Mary, but that Mary would continue until they found
11 a new attendant. However, that same month the Haskell family found a note on their door from
12 Mary stating that she was told she could not come back again. No replacement was provided and
13 intervener-plaintiff was without assistance for three weeks. Her daughter was in the process of
14 changing jobs at that time and stayed home to care for her.

15 82. The first week of April a new care giver came out. She is not a Certified Nursing
16 Assistant like Mary. Intervener-plaintiff's casemanager had decided that intevener-plaintiff could
17 get along with an attendant, although she has less ability to handle her medical emergencies.

18 83. The new attendant came once on Monday, April 3, 2000, and was supposed to return
19 on Friday, April 7, 2000. However, she called and left a message that she could not come on Friday.
20 Ms. Haskell's daughter called the agency and was told that the new attendant could not handle Ms.
21 Haskell's needs. The agency did not have anyone to send out for Monday, April 10, 2000 when Ms.
22 Haskell's daughter was scheduled to start a new job.

23 84. Intervener-plaintiff Haskell was never given notice that her services would be
24 suspended, or that she had a right to appeal, when the certified nursing assistant services were
25 terminated by the ALTCS contractor.

26 85. Without HCBS services, intervener-plaintiff will have to move into an institution
27 unless her daughter stops working altogether

28

1 FIRST CLAIM FOR RELIEF:
2 VIOLATION OF THE MEDICAID STATUTE AND REGULATIONS

3 86. The failure of defendant AHCCCS to provide plaintiffs with the home care services
4 prescribed in their HCBS care plans violates provisions of the federal Medicaid statute and
5 regulations, including the following:

6 a. The requirement of 42 U.S.C. § 1396a(a)(8) that Medicaid assistance be
7 furnished with reasonable promptness to eligible individuals.

8 b. The requirement of 42 C.F.R. § 435.930(b) that once an individual has been
9 found eligible for Medicaid services, the state agency must continue to provide such services until
10 the recipient is found ineligible.

11 c. The requirement of 42 U.S.C. § 1396a(a)(10)(A)(ii)(VI) that HCBS services
12 be made available to persons who would otherwise be eligible for institutional care.

13 d. The requirement under U.S.C. § 1396a(a)(30)A that state payment rates for
14 Medicaid services be sufficient to make providers available to Medicaid beneficiaries to the same
15 extent that they are available to the general population.

16 e. The requirement in 42 U.S.C. § 1396n(c)(2)(C) and (d)(2)(C) that an HCBS
17 eligible beneficiary be able to freely choose to receive medical assistance at home as an alternative
18 to receiving institutional care.

19 SECOND CLAIM FOR RELIEF:
20 VIOLATION OF THE ARIZONA AHCCCS STATE PLAN,
21 THE AHCCCS STATUTE AND REGULATIONS

22 87. The failure of defendant AHCCCS to provide plaintiffs with the home care
23 services prescribed in their HCBS care plans violates provisions of Arizona state law, including the
24 following:

25 a. The requirement of A.R.S. § 36-2931 et seq. that long term care services at
26 home be made available to persons at risk of institutionalization who choose them as an alternative
27 to nursing facility services.

28 b. The agreement in the Arizona State Plan that HCBS services be provided to
eligible persons.

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**THIRD CLAIM FOR RELIEF:
VIOLATION OF THE AMERICANS WITH DISABILITIES ACT**

88. The failure of defendant AHCCCS to provide plaintiffs with the home care services prescribed in their HCBS care plans violates the provision of the Americans with Disabilities Act [ADA] at 42 U.S.C. §§ 12131-12134, and its implementing regulations, which require AHCCCS services to be made available in the community rather than in institutions where to do so will meet the needs of qualified individuals with disabilities.

**FOURTH CLAIM FOR RELIEF:
VIOLATION OF THE FEDERAL CIVIL RIGHTS ACT**

89. The failure of defendant AHCCCS to provide plaintiffs with the home care services prescribed in their HCBS care plans violates 42 U.S.C. § 1983 [known as the Federal Civil Rights Act].

**FIFTH CLAIM FOR RELIEF:
VIOLATIONS OF SECTION 504 OF THE REHABILITATION ACT**

90. The failure of defendant AHCCCS Administration to provide plaintiffs with the home care services prescribed in the HCBS plans violates Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, and its implementing regulations. The regulations violate include, but are not limited to, 28 C.F.R. § 41.51(d) and 45 C.F.R. § 84.4(b)(1)(iii) and (b)(2).

**SIXTH CLAIM FOR RELIEF:
VIOLATION OF NOTICE AND APPEAL REQUIREMENTS**

91. The failure of defendant AHCCCS to give denial notices with information about appeal procedures to HCBS beneficiaries when sufficient workers are not provided by AHCCCS to meet their prescribed home care needs violates the following:

- a. The notice and hearing requirements of the Due Process Clause of the Fourteenth Amendment to the United States Constitution.
- b. The notice and fair hearing requirements of the federal Medicaid statute at 42 U.S.C. § 1396a(a)(3), and the federal Medicaid regulations at 42 C.F.R. § 431.200 et seq.
- c. § 1983 of the Federal Civil Rights Act.
- d. The notice, grievance and hearing requirements of the state AHCCCS statute at A.A.R.S. § 36-2903.01, and the state AHCCCS regulations at A.A.C. R9-22-316.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs respectfully ask that this Court:

1. Certify that this action is maintainable as a statewide class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

2. Issue a declaratory judgment holding that:

a. The failure of defendants to provide HCBS beneficiaries with sufficient home care services to meet their care plan needs in their homes violates the Medicaid statute and regulations, the ADA statute and regulations, §1983 of the Federal Civil Rights Act, § 504 of the Rehabilitation Act, and the Arizona AHCCCS statute and regulations; and,

b. The failure of defendants to give HCBS beneficiaries notice and appeal right when they do not provide HCBS beneficiaries with sufficient home care services to meet their care plan needs in their homes violates the Due Process Clause of the Fourteenth Amendment, the requirements of the Medicaid statute and regulations, § 1983 of the Federal Civil Rights Act, and the requirements of the Arizona AHCCCS statute and regulations.

3. Issue an injunction prohibiting the defendants from:

a. Failing to provide HCBS beneficiaries with sufficient home care services to meet their care plan needs in their homes; and,

b. Failing to give HCBS beneficiaries notice and appeal rights when defendant does not provide them with sufficient home care services to meet their care plan needs in their homes.

4. Granting mandatory relief ordering the defendants to:

a. Devise a specific plan to modify their policies and practices so as to ensure that HCBS beneficiaries receive sufficient home care services to meet their care plan needs in their homes;

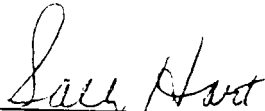
b. Devise a specific plan to give notice and appeal rights to HCBS beneficiaries who are not receiving all of the home care services prescribed in their care

plans:

5. Award plaintiffs reasonable attorneys' fees and costs.
6. Grant such other and further relief as may be just and proper

DATED: April 20, 3000.

ARIZONA CENTER FOR DISABILITY LAW
DNA PEOPLES LEGAL SERVICES
AARP LITIGATION



by Sally Hart
Attorneys for Plaintiffs


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CERTIFICATE OF SERVICE

This is to certify that the foregoing Interveners' Complaint was sent by first-class mail, postage prepaid, on April 20, 2000, to the following counsel of record:

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