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5
6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF ARIZONA**

8 PETER ALVAREZ, by and through his
9 guardian RAMONA MENDOZA, ELENA
10 RIVERA, by and through her guardian
11 VIOLA RIVERA, OSMAR VAZQUEZ, by
12 and through his guardians SANDRA and
13 AGUSTIN VAZQUEZ, JACOB SIMMS, by
14 and through his guardian and medical power
15 of attorney JOSEPH and PAMELA SIMMS,
16 EMILY ROWLEY, by and through her
17 guardian, SHELLEY SIRRINE, LAURA
18 LILLO, by and through her guardian,
19 BARBARA LILLO, KATRINA WALSH,
20 ADRIAN VILLANUEVA, by and through
his guardian MICHELLE VILLANUEVA,
TAMERON CALAMITY, by and through his
guardian LILLIE CALAMITY, RAMONA
MENDOZA, VIOLA RIVERA, SANDRA
and AGUSTIN VAZQUEZ, JOSEPH and
PAMELA SIMMS, SHELLEY SIRRINE,
BARBARA LILLO, MICHELLE
VILLANUEVA, and LILLIE CALAMITY,
as individuals and representatives of a class
of persons similarly situated,
Plaintiffs,

No.

COMPLAINT
CLASS ACTION

21 v.

22 ANTHONY D. RODGERS, Director of the
23 Arizona Health Care Cost Containment
24 System, in his official capacity, and the
ARIZONA HEALTH CARE COST
ADMINISTRATION,
25 Defendants.

26 **INTRODUCTION**

27 1. This is a class action lawsuit brought to compel the Arizona Health
28 Care Cost Containment System (AHCCCS), Arizona's Medicaid program, to

1 provide incontinence briefs and supplies (hereinafter “incontinence briefs”) for
2 Medicaid eligible adults age 21 and over who are incontinent as the result of their
3 disabilities. Each Plaintiffs’ doctor has prescribed incontinence briefs as medically
4 necessary to prevent skin breakdown and infection and to allow integration into the
5 community. However, Defendants’ policy is to only cover incontinence briefs for
6 adults with disabilities age 21 and over to treat skin breakdown and/or infection,
7 but not to prevent such skin breakdown and infection. Defendants provide
8 preventative incontinence briefs to adults with disabilities age 21 and over who
9 live in institutions, such as nursing homes, but not when these adults live in the
10 community.

11 2. Adults with disabilities or their guardians purchase incontinence
12 briefs with their own funds to prevent adverse medical conditions and to allow the
13 person with the disability to be fully integrated into the community. Plaintiffs live
14 on very limited incomes and spend hundreds of dollars a month on incontinence
15 briefs, often forcing them or their guardians to make difficult choices between
16 paying for their health care needs or other necessities. Without the incontinence
17 briefs, Plaintiffs with disabilities would be confined to their homes and unable to
18 participate in community, social, educational, and therapeutic activities, including
19 day treatment programs, which require attendees who are incontinent to wear
20 incontinence briefs. Plaintiffs should not have to enter nursing homes or other
21 institutions to receive medical supplies their doctors have determined to be
22 medically necessary.

23 3. On behalf of themselves and a class of similarly situated people with
24 disabilities and guardians, Plaintiffs seek a ruling that this cruel policy violates
25 federal Medicaid law, the Americans with Disabilities Act, and § 504 of the
26 Rehabilitation Act. Plaintiffs also seek reimbursement for funds expended on
27 incontinence briefs since their requests were denied.

28

1 well-being of the Plaintiffs with disabilities require that they use incontinence
2 briefs in order to avoid skin breakdown and infection, and to enable them to be
3 fully integrated into the community, Plaintiff guardians supply the Plaintiffs with
4 incontinence briefs at considerable personal cost, on average over \$100 per month.
5 Plaintiff Walsh also purchases incontinence briefs for herself.

6 9. Defendant Anthony D. Rodgers is the Director of the Arizona Health
7 Care Cost Containment System (AHCCCS), Arizona's Medicaid program.
8 Defendant Rodgers is sued in his official capacity as Director of the AHCCCS
9 program. As such, he has a duty to ensure that the AHCCCS program is
10 administered in accordance with federal and state law.

11 10. Defendant AHCCCS Administration (AHCCCSA) is the single state
12 agency responsible for ensuring that health services are provided to eligible
13 Arizona residents in compliance with federal Medicaid law, Title XIX of the
14 Social Security Act, 42 U.S.C. §§ 1396a-1396v, as well as state laws. Defendant
15 AHCCCSA contracts with acute care and long term care managed care
16 organizations throughout the state to deliver a specified package of AHCCCS
17 services in return for a monthly payment per beneficiary. AHCCCS is a program
18 and/or activity receiving federal financial assistance within the meaning of Section
19 504 of the Rehabilitation Act of 1973, as amended, at 29 U.S.C. § 794.

20 **CLASS ALLEGATIONS**

21 11. Pursuant to Rule 23(b)(2) and (3) of the Federal Rules of Civil
22 Procedure, Plaintiffs bring this suit on behalf of a statewide class of persons
23 similarly situated, as well as individually. The class consists of two subclasses.
24 First, a class of persons age 21 and over who are eligible for AHCCCS services
25 and who need incontinence briefs as the result of a disability. Second, a class of
26 guardians and people with disabilities who have purchased incontinence briefs at
27 personal cost.

28 a. This class is so numerous that joinder of all members is
impracticable;

1 b. Defendants have acted on grounds generally applicable to the
2 class;

3 c. There are questions of law as to the legality of Defendants’
4 policies and practices with respect to coverage of incontinence briefs for AHCCCS
5 beneficiaries that are common to all members of the class;

6 d. The Plaintiffs have claims that are typical of the claims
7 of the class members;

8 e. The Plaintiffs will fairly and adequately protect the
9 interests of the class members; and

10 f. Defendants have acted or refused to act on grounds generally
11 applicable to the class, thereby making final injunctive and declarative relief
12 appropriate with respect to the class as a whole.

13 **STATUTORY AND REGULATORY FRAMEWORK**

14 12. The federal Medicaid statute, Title XIX of the Social Security Act, is
15 codified at 42 U.S.C. §§ 1396a-1396v. It authorizes states to establish medical
16 assistance programs for low income and disabled individuals who meet certain
17 eligibility requirements. These medical assistance programs are jointly funded by
18 the federal and state governments, and are designed by the states within a
19 framework of options and requirements established under the Medicaid statute.
20 The objective of the Medicaid Act is to furnish “rehabilitation and other services to
21 help such families and individuals attain or retain capability for independence or
22 self-care.” 42 U.S.C. § 1396.

23 13. Participation in the Medicaid program is voluntary. However, once a
24 state elects to participate, it must comply with all the provisions of the Medicaid
25 Act and implementing regulations. *See* 42 U.S.C. § 1396a.

26 14. The Medicaid Act lists mandatory and optional Medicaid services.
27 Home health services are a mandatory service for any individual who is entitled to
28 nursing facility services. 42 U.S.C. § 1396a(a)(10)(D). *See also* 42 U.S.C. §
1396d(a)(7) (listing “home health care services” as medical assistance).

1 15. Regulations implementing the Medicaid Act home health provisions
2 require states to provide “[m]edical supplies, equipment, and appliances suitable
3 for use in the home.” 42 C.F.R. § 440.70(b)(3); 42 C.F.R. § 441.15(a)(3).
4 Incontinence briefs are a type of medical supply.

5 16. A State must establish reasonable standards, consistent with the
6 objectives of the Medicaid Act, for determining the extent of coverage of medical
7 supplies and other home health supplies. *See* 42 U.S.C. § 1396a(a)(17). In doing
8 so, a state must ensure that the amount, duration, and scope of coverage are
9 reasonably sufficient to achieve the purpose of the service. 42 C.F.R. §
10 440.230(b). Furthermore, a State may not impose arbitrary limitations on
11 mandatory services, such as home health services, based solely on diagnosis, type
12 of illness, or condition. 42 C.F.R. § 440.230(c).

13 17. Arizona participates in Medicaid. A.R.S. §§ 36-2901 to 36-2959.
14 The Arizona Medicaid program, AHCCCS, is run under a Section 1115 Waiver,
15 42 U.S.C. § 1315, from the federal government. A Section 1115 Waiver permits
16 states to waive otherwise mandatory requirements of the Medicaid Act. In
17 addition to its Section 1115 Waiver, Arizona also submits a Medicaid state plan to
18 the federal government, which describes the nature and scope of its Medicaid
19 program and gives assurances that it will be administered in conformity with the
20 specific requirements of the Medicaid Act and regulations.

21 18. AHCCCS provides both acute care services and long term care
22 services. Long term care services are delivered through the Arizona Long Term
23 Care System (ALTCS), a division of AHCCCS. A.R.S. § 2931-2959. To be
24 eligible for ALTCS services, the AHCCCS member must be at risk for
25 institutionalization. However, ALTCS services may be delivered in either an
26 institution or the member’s own home.

27 19. Arizona’s 1115 Waiver lists home health services and medical
28 supplies as covered services. Section 1115 Waiver at 11-12 and 15-16, available
at <http://www.azahcccs.gov/reporting/LawsRegulations/federal/waiver.aspx>

1 20. Arizona’s Medicaid state plan also lists home health services and
2 medical supplies as covered services. State Plan, §§ 3.1(a)(1)(vi), 3.1(b), and
3 Attachment 3.1-A, available at [http://www.azahcccs.gov/reporting/PoliciesPlans/
4 stateplan.aspx#State Plan for Medicaid](http://www.azahcccs.gov/reporting/PoliciesPlans/stateplan.aspx#State_Plan_for_Medicaid)

5 21. The AHCCCS statute lists specific items and services that
6 the program provides to eligible persons when medically necessary. Such items
7 and services include medical supplies. A.R.S. §§ 36-2907(A)(6), 36-2939(A)(5),
8 36-2939(B)(2)(a), and 36-2939(C)(1).

9 22. AHCCCS regulation defines “medically necessary” as “a covered
10 service provided by a physician or other licensed practitioner of the healing arts
11 within the scope of practice under state law to prevent disease, disability, or other
12 adverse health conditions or their progression, or prolong life.” A.A.C. R9-22-
13 101(B).

14 23. Medical supplies are defined in AHCCCS regulation and policy as
15 “consumable items that are designed specifically to meet a medical purpose.”
16 A.A.C. R9-22-201 and Policy 310-P, AHCCCS Medical Policy Manual; *see also*
17 A.A.C. R9-22-212(B) and A.A.C. R9-28-205(C)(3).

18 24. Incontinence briefs are a type of medical supply and are included in
19 the AHCCCS nursing home rate. Exhibit 1210-2, Policy 1210, AHCCCS Medical
20 Policy Manual.

21 25. AHCCCS Policy 310-P of the AHCCCS Medical Policy Manual
22 requires that the following criteria be used in determining coverage of medical
23 supplies:

- 24 a. Medical necessity in setting up and/or maintaining the
25 member in the most appropriate setting while maximizing the
26 member’s independence and functional level, both physically
27 and mentally, and
- 28 b. The most reasonable and cost effective alternative to provide
 medically necessary services in the most appropriate setting
 and maximizing the member’s independence.

1 26. It is AHCCCS policy to only cover incontinence briefs for those age
2 21 and over to treat skin breakdown and infection, but not to prevent skin
3 breakdown and infection. Defendants' coverage standard is articulated in both
4 regulation and policy:

5 a. A.A.C. R9-22-212(5) states that:

6 Except for incontinence briefs for persons over age 3 years
7 old and under 21 years old as provided in subsection (6),
8 personal care items including items for personal cleanliness,
9 body hygiene, and grooming are not covered unless needed to
10 treat a medical condition. Personal care items are not covered
11 services if used solely for preventative purposes.

12 b. A.A.C. R9-22-212(6) states, in relevant part, that:

13 Incontinence briefs, including pull-ups, are covered to prevent
14 skin breakdown and enable participation in social,
15 community, therapeutic and educational activities under the
16 following circumstances:

- 17 1. The member is over age 3 years old and under 21 years
18 old;
- 19 2. The member is incontinent due to a documented
20 disability that causes incontinence of bowel or bladder;
- 21 3. The PCP or attending physician has issued a
22 prescription ordering the incontinence briefs . . .

23 c. Policy 310-P of the AHCCCS Medical Policy Manual states that:

24 Personal care items are not covered unless needed to treat a
25 medical condition except for limited conditions described
26 herein. The AHCCCS program covers incontinence briefs for
27 members over age 3 and under age 21 as described in Chapter
28 400, Policy 430. Except for incontinence briefs as described
in Policy 430, personal care items are not covered solely for
preventative purposes. Personal care items include items of
personal cleanliness, hygiene and grooming....AHCCCS **does**
not cover the following: (1) Personal care items, unless
needed to treat a medical condition. Exception: AHCCCS
covers incontinence briefs for persons over age 3 and under
age 21 as described in Policy 430.

25 27. Title II of the Americans with Disabilities Act (ADA) and § 504 of
26 Rehabilitation Act of 1973 prohibits state and local governments from
27 discriminating against people with disabilities in the provision of public services,
28

1 programs, and activities. 42 U.S.C. §§ 12131-12134 (ADA); 29 U.S.C. § 794(a)
2 (§ 504).

3 28. Both acts also prohibit segregation of people with disabilities to
4 institutions and require services, programs and activities of state and local
5 governments to be administered in "the most integrated setting appropriate to the
6 needs of qualified individuals with disabilities." 28 C.F.R. § 35.130(d) (ADA); 28
7 C.F.R. § 41.51(d) (§ 504).

8 29. Both acts also require that reasonable modifications be made to
9 policies, practices, and procedures to avoid discrimination on the basis of
10 disability. 28 C.F.R. § 35.130(b)(7) (ADA); 29 U.S.C. § 794(a) (§ 504).

11 **STATEMENT OF FACTS**

12 **Plaintiffs Peter Alvarez and Ramona Mendoza**

13 30. Plaintiff Peter Alvarez is 27 years old and lives with his mother and
14 guardian Plaintiff Ramona Mendoza in Tucson, Arizona.

15 31. Peter is currently eligible for services from AHCCCS. His
16 AHCCCS acute care health plan is Arizona Physicians IPA (APIPA) and his
17 ALTCS plan is the Division of Developmental Disabilities (DDD).

18 32. Peter has had severe developmental disabilities from birth. He is
19 diagnosed with cerebral palsy and spastic quadraplegia. He has limited cognitive
20 ability and he cannot speak. He is only able to control the movements of his head
21 and face and he is transported in a wheelchair, although he is unable to move the
22 wheelchair himself. Peter needs assistance with all activities of daily living.

23 33. Due to his disabilities, Peter is completely incontinent of both
24 bladder and bowel. Peter is also unable to communicate to his caretakers that he
25 needs to or has moved his bowels or urinated.

26 34. Peter's medical condition did not improve upon turning age 21.

27 35. Peter needs incontinence briefs to prevent skin breakdown and
28 infection and to participate in his day treatment program, which requires attendees
who are incontinent to wear briefs.

1 36. In March 2008, Peter’s primary care physician prescribed
2 incontinence briefs for him to prevent the dermatitis and skin breakdown that
3 would result from sitting in wet and soiled undergarments.

4 37. On May 2, 2008 APIPA denied the request for incontinence
5 briefs, stating that “the service is not covered for adults 21 years or older.”

6 38. Ramona Mendoza appealed this denial and DDD upheld the denial
7 on October 7, 2008 on the basis that:

8 diapers are a covered benefit for persons aged 3 to 21 only, unless
9 there is evidence of skin breakdown and the use of diapers is part of
10 the treatment of skin breakdown. Mr. Alvarez is 27 years old and
 the records submitted for review do not show any indication that Mr.
 Alvarez has any skin breakdown.

11 39. Ramona Mendoza again appealed, and an administrative hearing was
12 held on December 4, 2008.

13 40. Peter did not have any skin breakdown at the time of the hearing, but
14 has had skin breakdown in the past.

15 41. On March 12, 2009, the administrative law judge issued a decision in
16 Peter’s favor. The ALJ rejected DDD’s argument that briefs do not prevent skin
17 breakdown, and found that:

18 Dr. Weiss [APIPA Medical Director] clarified that briefs can be an
19 important part of a skin care regimen to prevent skin breakdown in
20 the form of pressure sores. While briefs may not be the sole factor
21 or even the most important factor in the regimen, their proper use is a
22 preventable measure for skin breakdown. As such, the definition of
23 medical necessity is met. Here, Complainant is a severely disabled
24 person who cannot move his own body or tell others when he has to
25 urinate or defecate. It is important that his caregivers take measures
26 to prevent skin breakdown at the areas that are prone to skin
27 breakdown because of his condition. This includes incontinence
28 briefs.

29 42. On April 2, 2009, the AHCCCS Director modified the ALJ’s
30 decision and rejected the ALJ’s finding of medical necessity. The AHCCCS
31 Director held that incontinence briefs are only medically necessary for people age
32 21 and over when they are requested to treat a medical condition, and are not
33 medically necessary when needed to prevent skin breakdown.

1 43. Ramona Mendoza has purchased incontinence briefs for
2 Peter in order to prevent skin breakdown and infection and to allow Peter to
3 participate in meaningful social, community, and therapeutic activities, including
4 his day treatment program.

5 44. Peter's only income is \$674 per month from Social Security. The
6 incontinence briefs cost upwards of \$100 per month.

7 **Plaintiffs Elena Rivera and Viola Rivera**

8 45. Plaintiff Elena Rivera is 23 years old and lives with her parents,
9 including her mother and guardian, Plaintiff Viola Rivera, in Tucson, Arizona.

10 46. Elena is currently eligible for services from AHCCCS. Her
11 AHCCCS acute care health plan is APIPA and her ALTCS plan is DDD.

12 47. Elena has been severely disabled from birth and is diagnosed with
13 hydrocephalus, spastic quadriplegic cerebral palsy, seizure disorder, severe
14 developmental delays, dislocation and dysplasia of her hips, and scoliosis requiring
15 rods to be placed in her back. She also suffers from cortical blindness. She is non-
16 ambulatory, non-verbal, and is fed through a gastronomy tube. She requires
17 assistance in all activities of daily living.

18 48. Due to her disabilities, Elena is completely incontinent of both
19 bladder and bowel. She is also unable to communicate to her caretakers that she
20 needs to or has moved her bowels or urinated.

21 49. Elena needs incontinence briefs to prevent skin breakdown and
22 infection and to participate in meaningful social, community, and therapeutic
23 activities. Elena is currently on the waiting list for a day program for medically
24 fragile individuals. The program requires that attendees use disposable
25 incontinence briefs and she will not be able to attend the program if she is not
26 wearing briefs.

27 50. Prior to turning age 21, Elena's AHCCCS health plans paid for
28 incontinence briefs.

1 51. Elena’s medical condition did not improve upon turning age 21.

2 52. On December 4, 2008, Elena’s primary care physician prescribed
3 incontinence briefs for her. Her physician stated that:

4 Due to Elena’s chronic medical problems, especially immobility and
5 incontinence, it is critically important for Elena to be provided with
6 diapers. Appropriate incontinence supplies are medically necessary
7 to promote the health and integrity of her skin. Elena’s medical
8 problems will continue for the rest of her life. Appropriate
9 incontinence supplies are medically necessary to promote good skin
10 integrity. If appropriate supplies are not provided, severe skin
11 rashes, skin breakdown, and decubitus ulcers could result. These
12 complications of inadequate skin care are not only extremely
13 debilitating and dangerous for the patient, but also enormously costly
14 for the health care insurers. Skin injury often entails a very lengthy
15 recovery period with many interventions and significant expense.

16 53. Elena did not have any current skin breakdown or infections at the
17 time of this prescription.

18 54. On December 22, 2008, APIPA denied her doctor’s request for
19 incontinence briefs, stating that “Diapers to support daily living or prevent skin
20 breakdown are not a covered benefit. Also, the medical information received does
21 not show that the need for diapers is to treat a medical condition.”

22 55. Viola Rivera appealed this denial and DDD upheld the denial on
23 April 15, 2009 on the basis that “Briefs are not a covered benefit for members over
24 age 21. The Medical Director advises that Diapers/Incontinence Briefs are not
25 provided to promote the skin integrity of the member.”

26 56. Plaintiffs did not file an administrative appeal of the incontinence
27 briefs denial because an administrative appeal would be futile given AHCCCS’s
28 longstanding policy prohibiting coverage of incontinence briefs for preventative
purposes for those age 21 and over and Defendant Rodgers' practice of issuing
unfavorable decisions in all administrative appeals of such denials.

 57. Viola Rivera has purchased incontinence briefs for Elena in order to
prevent skin breakdown and infection and to allow Elena to participate in
meaningful social, community, and therapeutic activities, including day treatment.

1 58. Viola Rivera also relies on donations of briefs from friends and
2 Elena's DDD case manager, but such donations are not always available.

3 59. When donations are available, Viola Rivera spends about \$62 every
4 six weeks for briefs. When donations are not available, she must spend more on
5 the briefs.

6 60. Viola Rivera has had to cut other necessary expenses to ensure that
7 Elena has all the briefs she needs. In addition, Elena recently lost her dental
8 coverage and Viola Rivera must now pay for Elena's dental expenses out-of-
9 pocket. Viola Rivera is concerned that she will have to choose between paying for
10 Elena's necessary briefs and her necessary dental care.

11 61. Elena's only income is approximately \$700 per month from Social
12 Security.

13 **Plaintiffs Osmar Vazquez, Sandra Vazquez, and Agustin Vazquez**

14 62. Plaintiff Osmar Vazquez is 24 years old and lives with his parents
15 and legal guardians, Plaintiffs Sandra and Agustin Vazquez.

16 63. Osmar is currently eligible for services from AHCCCS. His
17 AHCCCS acute care plan is APIPA and his ALTCS plan DDD.

18 64. Osmar is diagnosed with severe Cerebral Palsy, intractable seizures,
19 and chronic lung disease. He also has osteoporosis, dislocated hips, and has rods
20 along his spine to correct scoliosis. He requires assistance in all activities of daily
21 living, including feeding as he is fed through a gastronomy tube. He is unable to
22 purposefully move any part of his body, including his head. He is non-ambulatory
23 and non-verbal. Although he uses a wheelchair, he is unable to move the
24 wheelchair himself.

25 65. Due to his disabilities, Osmar is completely incontinent of both
26 bladder and bowel. He is also unable to communicate to his caretakers that he
27 needs to or has moved his bowels or urinated.

28 66. Osmar's medical condition did not improve upon turning age 21.

1 67. Osmar needs incontinence briefs to prevent skin breakdown and
2 infection and to participate in his day treatment program, which requires attendees
3 who are incontinent to wear briefs.

4 68. Prior to age 21, APIPA/DDD provided Osmar with incontinence
5 briefs.

6 69. On November 29, 2006, APIPA denied Osmar's doctor's request for
7 incontinence briefs on the basis that he did not meet the rules for coverage because
8 he was 21 years old.

9 70. Plaintiff Sandra Vazquez appealed this denial and on February 26,
10 2007, DDD reversed the denial finding that:

11 The provider submitted a letter of medical necessity stating this
12 member's need for diapers is due to the member's bladder and bowel
13 incontinence with severe developmental delays. The provider has
14 stated that it is critically important for appropriate incontinence
15 supplies to be provided to this member to promote health and
16 integrity of his sensitive skin. If the appropriate supplies are not
17 provided, severe skin rashes, skin breakdown, and decubitus ulcers
18 could result. The provider also shows a concern that inadequate skin
19 care can cause extreme debilitating and dangerous skin conditions
20 that can be enormously costly for the health care insurers. Stating
21 that skin injury entails a very lengthy recovery period with many
22 interventions and significant expenses.

23 71. Osmar did not have skin breakdown or infections at the time of the
24 February 2007 approval.

25 72. APIPA again denied incontinence briefs for Osmar on January 8,
26 2008 on the basis that he was over age 21. Sandra Vazquez again appealed the
27 decision, but DDD upheld the denial on May 14, 2008. Osmar's medical condition
28 had not improved between the February 2007 and January 2008.

 73. On December 15, 2008, Osmar's primary care physician again
requested coverage of incontinence briefs from APIPA. The doctor stated the
following as the basis for his request:

 Due to Osmar's chronic medical problems, especially immobility
and incontinence, it is critically important for Osmar to be provided
with diapers. Appropriate incontinence supplies are medically
necessary to promote the integrity of his sensitive skin. If
appropriate supplies are not provided, severe skin rashes, skin

1 breakdown, and decubitus ulcers could result. Osmar was seen very
2 recently by the primary care doctor and a skin assessment was done.
3 Please see the attached documentation. Complications of inadequate
4 skin care are not only extremely debilitating and dangerous for the
5 patient, but also enormously costly for health care insurers. Skin
6 injury often entails a very lengthy recovery period with many
7 interventions and significant expense.

8 74. Over the past year, Osmar's skin has become more susceptible to
9 rashes and he develops redness that can take up to ten days to clear. At the time of
10 the December 15, 2008 prescription, he did not have skin breakdown or infection,
11 but without the briefs, he would be much more susceptible to such occurrences.

12 75. On March 10, 2009, APIPA denied Osmar's doctor's request for
13 incontinence briefs, stating that:

14 The AHCCCS program only covers incontinence briefs (diapers) for
15 individuals who are at least 3 years old and only until their 21st
16 birthday. Diapers to support daily living or prevent skin breakdown
17 are not a covered benefit. Also, the medical information received
18 does not show that the need for diapers is to treat a medical
19 condition.

20 76. Plaintiff Sandra Vazquez appealed this denial. On May 24, 2008,
21 DDD upheld the denial stating that "diapers are not a covered benefit for persons
22 over age 21 in the absence of a complicating medical conditions."

23 77. Plaintiffs did not file an administrative appeal of the incontinence
24 briefs denial because an administrative appeal would be futile given AHCCCS's
25 longstanding policy prohibiting coverage of incontinence briefs for preventative
26 purposes for those age 21 and over and Defendant Rodgers' practice of issuing
27 unfavorable decisions in all administrative appeals of such denials.

28 78. Sandra Vazquez purchases incontinence briefs for Osmar in order to
prevent skin breakdown and infection and to allow Osmar to participate in
meaningful social, community, and therapeutic activities, including day treatment.

79. Sandra Vazquez also relies on donations of briefs from
friends, relatives, and Osmar's DDD case manager, but such donations are not
always available.

1 80. Osmar’s only income is \$634 per month from Social Security. The
2 incontinence briefs cost upwards of \$100 per month.

3 **Plaintiffs Jacob Simms, Joseph Simms, and Pamela Simms**

4 81. Plaintiff Jacob Simms is 24 years old and lives with his father and
5 guardian, Plaintiff Joseph Simms, and his stepmother and power of attorney,
6 Plaintiff Pamela Simms, in Phoenix, Arizona.

7 82. Jacob is eligible for services from AHCCCS. His acute care health
8 plan is APIPA and his ALTCS plan DDD.

9 83. Jacob has had severe developmental disabilities from birth. He is
10 diagnosed with severe mental retardation, a seizure disorder, and scoliosis so
11 severe that it required placement of rods in his back. As a result of his disabilities,
12 he is non-verbal and uses a wheelchair for mobility, although he cannot
13 independently move the chair. He needs assistance with all activities of daily
14 living.

15 84. Due to Jacob’s disabilities, he is incontinent of both bladder and
16 bowel. He is also unable to communicate to his caretakers that he needs to or has
17 moved his bowels or urinated.

18 85. Jacob’s medical condition did not improve upon turning age 21.

19 86. Jacob needs incontinence briefs to prevent skin breakdown and
20 infection and to participate in meaningful social, community, and therapeutic
21 activities.

22 87. In 2007, APIPA denied coverage of incontinence briefs on the basis
23 that Jacob was over age 21. Pamela Simms appealed this denial, and on August
24 20, 2007, DDD reversed the denial. Jacob did not have any skin breakdown or
25 infection at the time of the denial or approval.

26 88. On February 19, 2009, APIPA again denied coverage of
27 incontinence briefs on the basis that “Diapers to support daily living or prevent
28 skin breakdown are not a covered benefit.”

1 89. Pamela Simms again appealed this denial and an administrative law
2 judge entered a decision in Jacob's favor on July 29, 2009. The ALJ found that

3 The weight of credible evidence at hearing established that
4 disposable briefs are medically necessary for the Complainant to aid
in the prevention of skin breakdown and to make it possible for him
to participate in social and community activities.

5 90. On September 3, 2009, the AHCCCS Director modified the ALJ's
6 decision and rejected the ALJ's finding of medical necessity. The AHCCCS
7 Director held that incontinence briefs are only medically necessary for people age
8 21 and over when they are requested to treat a medical condition, and are not
9 medically necessary when needed to prevent skin breakdown.

10 91. Jacob did not have any skin breakdown or infection at the time of the
11 denial or hearing, but had has skin breakdown and infections in the past.

12 92. Joseph and Pamela Simms have purchased incontinence
13 briefs for Jacob in order to prevent skin breakdown and infection and to allow
14 Jacob to participate in meaningful social, community, and therapeutic activities.

15 93. Jacob's only income is \$620 per month from Social Security. The
16 incontinence briefs cost upwards of \$300 per month.

17 94. The cost of Jacob's incontinence briefs makes it difficult for
18 Joseph and Pamela Simms to afford other necessary medical items that are not
19 covered by AHCCCS, such as gloves, wet wipes, ointments to prevent skin rash,
20 chux, and dental care, and leaves Jacob with very little to meet his other living
21 expenses.

21 Plaintiffs Emily Rowley and Shelley Serrine

22 95. Plaintiff Emily Rowley is 22 years old and lives with her mother and
23 guardian, Plaintiff Shelley Serrine, in Mesa, Arizona.

24 96. Emily is currently eligible for services from AHCCCS. Her
25 AHCCCS acute care plan is APIPA and her ALTCS plan is DDD.

26 97. Emily has had severe developmental disabilities since birth. She is
27 diagnosed with static encephalopathy, quadriplegic cerebral palsy, and severe
28

1 mental retardation. Because of her condition, Emily is fully dependent upon others
2 to help her dress, bathe, groom, feed, and toilet. She uses a wheelchair, but is
3 unable to move the wheelchair herself.

4 98. Due to her disabilities, Emily is completely incontinent of both
5 bladder and bowel. She is also unable to communicate to her caretakers that she
6 needs to or has moved her bowels or urinated.

7 99. Emily's medical condition did not improve upon turning age 21.

8 100. Emily needs incontinence briefs to prevent skin breakdown and
9 infection and to participate in her day treatment program, which requires attendees
10 who are incontinent to wear briefs.

11 101. Prior to age 21, APIPA and DDD provided incontinence briefs for
12 Emily.

13 102. On February 29, 2008, APIPA issued a notice denying incontinence
14 briefs on the basis that "APIPA does not pay for this service because it is not
15 covered for adults 21 years or older. You will turn 21 on 3/18/08."

16 103. Shelley Serrine appealed this denial and DDD upheld the
17 denial on April 22, 2008, stating that:

18 Arizona Physicians IPA correctly states in their denial that diapers
19 are not a covered benefit for persons over age 21. For the prevention
20 of decubitus ulcers, the use of 'Chux' or similar bed pads should
21 meet the clinical needs. However, should there be evidence of skin
22 breakdown, the family may request diapers as part of the medical
23 treatment of decubitus ulcers.

24 104. Shelley Serrine represented herself *pro se* at an administrative
25 hearing on August 11, 2008. On September 25, 2008, the AHCCCS Director
26 issued a decision upholding the denial.

27 105. Shelley Serrine requested a new hearing because Emily's doctor
28 was unable to attend and testify at the August 11, 2008 hearing.

106. The request for a new hearing was granted and Emily's primary care
physician testified at the new hearing that incontinence briefs are medically
necessary for Emily to prevent skin breakdown and infection.

1 107. Emily's doctor also stated that:

2 The briefs also allow Emily to participate in social, community,
3 therapeutic, and educational events. If she did not wear briefs, she
4 would not be able to leave her home. The incontinence briefs are an
5 essential medical supply to prevent the secondary adverse health
6 conditions—skin breakdown and infections—that will result from
7 Emily's incontinence if she does not use briefs. Although keeping
8 Emily clean and turning her are also important parts of preventing
9 the adverse health effects of incontinence, these are not enough
10 without the use of briefs. Briefs are essential to preventing skin
11 breakdown and infection because they wick the moisture away from
12 the skin. In my opinion, incontinence briefs used by adults with
13 disabilities who are incontinent are not a hygiene item, but a medical
14 supply because the briefs are used solely because the person has a
15 medical condition—incontinence.

16 108. Emily did not have any skin breakdown or infections at the time of
17 either hearing.

18 109. On May 15, 2009, the AHCCCS Director again upheld the denial on
19 the basis that “the evidence did not show that incontinence briefs were used to treat
20 a medical condition.”

21 110. Shelley Serrine purchases incontinence briefs for Emily in
22 order to prevent skin breakdown and infection and to allow Emily to participate in
23 meaningful social, community, and therapeutic activities, including day treatment.

24 111. Emily's only income is \$674 per month from Social Security. The
25 incontinence briefs cost upwards of \$125 per month

26 112. The cost of Emily's incontinence briefs makes it difficult for
27 Shelley Serrine to afford other necessary medical items that are not covered by
28 AHCCCS, such as gloves, wet wipes, ointments to prevent skin rash, and dental
care.

Plaintiffs Laura Lillo and Barbara Lillo

113. Plaintiff Laura Lillo is 25 years old and lives with her parents,
including her mother and guardian, Plaintiff Barbara Lillo, in Mesa, Arizona.

114. Laura is currently eligible for services from AHCCCS and ALTCS.
Her ALTCS plan is Evercare.

1 115. In 2001, when she was 18 years old, Laura suffered a severe
2 traumatic brain injury as the result of an accident. Due to that injury, she has
3 severe spastic quadraplegia, is non-verbal, and eats via a feeding tube. She uses a
4 wheelchair, but is unable to move the chair herself. She requires assistance for all
5 activities of daily living.

6 116. Due to her disabilities, Laura is incontinent of both bowel and
7 bladder. She is unable to communicate to her caretakers that she has or needs to
8 move her bowels or urinated.

9 117. Laura's medical condition did not improve upon turning age 21.

10 118. Laura needs incontinence briefs to prevent skin breakdown and
11 infection and to a participate in meaningful social, community, and therapeutic
12 activities.

13 119. On December 10, 2008, Laura's primary care physician prescribed
14 incontinence briefs and supplies as medically necessary to prevent skin breakdown
15 and infection. Laura did not have skin breakdown or infection at the time of her
16 doctor's request.

17 120. On February 18, 2009, Evercare denied the request for incontinence
18 briefs on the basis that "AHCCCS does not pay for briefs for members who are 21
19 years of age or older."

20 121. Plaintiffs did not file an administrative appeal of the incontinence
21 briefs denial because an administrative appeal would be futile given AHCCCS's
22 longstanding policy prohibiting coverage of incontinence briefs for preventative
23 purposes for those age 21 and over and Defendant Rodgers' practice of issuing
24 unfavorable decisions in all administrative appeals of such denials.

25 122. Barbara Lillo purchases incontinence briefs for Laura to prevent skin
26 breakdown and infection and to allow Laura to participate in meaningful social,
27 community activities. Without incontinence briefs, Laura would not be able to
28 leave her home.

1 123. Laura's only source of income is \$674 per month from Social
2 Security. Incontinence briefs cost upwards of \$300 per month. The cost of the
3 briefs limits and prevents the purchase of other necessary daily living items and
4 medical items, such as dental care and therapies, that are not covered by AHCCCS.

5 **Plaintiff Katrina Walsh**

6 124. Plaintiff Katrina Walsh is 24 years old and lives in Phoenix,
7 Arizona.

8 125. Katrina is eligible for services from AHCCCS and ALTCS. Her
9 ALTCS plan is Mercy Care Plan.

10 126. At 18 months old, Katrina had a cancerous tumor removed from her
11 spinal cord. She suffered neurological damage from the tumor and its removal and
12 was subsequently diagnosed with incomplete quadraplegia and a neurogenic
13 bladder. On April 2, 2007, Katrina underwent spinal decompression surgery,
14 which left her with complete quadraplegia and incontinent of both bowel and
15 bladder. As a result of her disabilities, she uses a wheelchair for mobility and
16 needs assistance with most activities of daily living. Due to her disabilities,
17 Katrina is susceptible to bladder infections.

18 127. As a result of her disabilities, Katrina is incontinent of both bladder
19 and bowel. She also has frequent bladder spasms which results in a near constant
20 flow of urine. She is also unable to feel and report any symptoms of skin
21 breakdown or infection.

22 128. Katrina's medical condition did not improve when she turned 21.

23 129. Katrina needs incontinence briefs to prevent skin breakdown and
24 infection and to a participate in meaningful social, community, and therapeutic
25 activities.

26 130. Katrina's ALTCS health plan provided her with incontinence briefs
27 for approximately six years when she was under the age of 21. However, in 2002,
28 her plan terminated coverage on the ground that the briefs were only covered if she
had current skin breakdown and infection, but not to prevent skin breakdown and

1 infection. Katrina appealed this denial and the administrative law judge found in
2 her favor. However, the AHCCCS Director overturned the decision on the basis
3 that briefs are only provided to treat, not prevent, a medical condition.

4 131. On January 6, 2008, Katrina's primary care physician again
5 requested coverage of incontinence briefs on the basis that:

6 Under AHCCCS's own definition of medical necessity, briefs should
7 be covered as a service, which prevent adverse health conditions
8 namely skin breakdown and infection or their progression. If briefs
9 were not provided, Katrina would constantly be sitting in her own
10 wet clothes or feces. This would be cruel and unsanitary if it would
11 lead to skin breakdown, rashes, sores, infections, and possibly even
12 death. Her low immunity system increases her chance of infections.
13 Without briefs, Katrina would be peeing and defecating all over, for
14 example on beds, furniture, and in cars. Obviously this would
15 destroy her health (mental and physical) and require someone to be
16 there constantly to clean her up.

17 132. Katrina did not have skin breakdown or infection at the time of her
18 doctor's request.

19 133. On March 17, 2009, Katrina received a Notice of Action from Mercy
20 Care Plan denying her doctor's request for incontinence briefs on the basis that
21 "Mercy Care Plan does not cover diapers for members over age 21."

22 134. Katrina did not file an administrative appeal of the incontinence
23 briefs denial because an administrative appeal would be futile given AHCCCS's
24 longstanding policy prohibiting coverage of incontinence briefs for preventative
25 purposes for those age 21 and over and Defendant Rodgers' practice of issuing
26 unfavorable decisions in all administrative appeals of such denials.

27 135. Katrina purchases incontinence briefs to prevent skin breakdown and
28 infection and to allow her to participate in meaningful social, community activities.
Without incontinence briefs, she would not be able to leave her home.

136. Katrina's only source of income is \$660 per month from Social
Security. She spends upwards of \$200 per month on briefs. The cost of the briefs
limits and prevents the purchase of other necessary daily living items and medical
items, such as dental care, that are not covered by AHCCCS.

1 **Plaintiffs Adrian Villanueva and Michelle Villanueva**

2 137. Plaintiff Adrian Villanueva is 34 years old and lives with his
3 mother and guardian, Plaintiff Michelle Villanueva, in San Tan Valley, Arizona.

4 138. Adrian is currently eligible for services from AHCCCS. His
5 AHCCCS acute care plan is APIPA and his ALTCS plan DDD.

6 139. Adrian suffered a traumatic brain injury as the result of an
7 automobile accident in 1991. His disabilities include spastic quadraplegia,
8 cognitive impairments, and a history of seizures. As a result of his injury, Adrian
9 cannot control any aspect of daily care. He is non-verbal and completely unable to
10 direct movement of his extremities. He has been deemed as "total-care" by all
11 medical personnel involved in his care. He is fed via a J-tube and uses a
12 wheelchair for mobility, although he is unable to move the wheelchair himself.

13 140. Adrian will never improve or recover from his injuries

14 141. Due to his disabilities, Adrian has complete bowel and bladder
15 incontinence. He is unable to communicate to his caretakers that he has or needs
16 to move his bowels or urinated.

17 142. Adrian needs incontinence briefs to prevent skin breakdown and
18 infection and to participate in meaningful social, community, and therapeutic
19 activities. Adrian currently attends a day treatment program, which requires
20 attendees with incontinence to wear incontinence briefs.

21 143. On January 9, 2008, Adrian's primary care physician wrote a letter
22 of medical necessity for incontinence briefs and other incontinence supplies and
23 submitted a prescription for the briefs to APIPA. Adrian's doctor stated that the
24 briefs and supplies were medically necessary to prevent skin breakdown and
25 infection, but Adrian did not have skin breakdown or infection at the time of the
26 prescription.

27 144. An APIPA employee verbally told Michelle Villanueva that briefs
28 are not a covered service. APIPA never provided Michelle Villanueva with a
written denial notice, despite several requests.

1 145. Plaintiffs did not file an administrative appeal of the incontinence
2 briefs denial because an administrative appeal would be futile given AHCCCS's
3 longstanding policy prohibiting coverage of incontinence briefs for preventative
4 purposes for those age 21 and over and Defendant Rodgers' practice of issuing
5 unfavorable decisions in all administrative appeals of such denials.

6 146. Michelle Villanueva has routinely purchased incontinence
7 briefs for Adrian to prevent skin breakdown and infection and to allow him to
8 participate in meaningful social, community, and therapeutic activities, including
9 his day treatment program.

10 147. Adrian received some assistance with the costs of his briefs from
11 state-only funds distributed by DDD. However, this funding stopped in 2003 and
12 has not been available since.

13 148. Adrian's only income is \$674 per month from Social Security. The
14 incontinence briefs cost upwards of \$100 per month. The cost of the briefs limits
15 and prevents the purchase of other necessary daily living items and medical items,
16 such as dental care, that are not covered by AHCCCS.

17 **Plaintiffs Tameron Calamity and Lillie Calamity**

18 149. Plaintiff Tameron Calamity is 24 years old and lives with his
19 parents, including his mother and guardian, Plaintiff Lillie Calamity, in Tonalea,
20 Arizona.

21 150. Tameron is eligible for services from AHCCCS. His acute care
22 health plan is Capstone and his ALTCS plan is DDD.

23 151. Tameron has had severe developmental disabilities from birth. He is
24 diagnosed with cerebral palsy, cognitive disability, and a grand mal seizure
25 disorder. As a result of his disabilities, Tameron is non-verbal and needs
26 assistance with all activities of daily living, including moving, dressing, eating,
27 and bathing. He uses a wheelchair, although he cannot move the wheelchair
28 himself.

1 152. Due to his disabilities, Tameron is completely incontinent of both
2 bladder and bowel. He is also unable to communicate to his caretakers that he
3 needs to or has moved his bowels or bladder.

4 153. Tameron's medical condition did not improve when he turned 21
5 years old.

6 154. On December 10, 2008, Tameron's primary care physician
7 prescribed incontinence briefs for him to prevent skin breakdown and infection.
8 Tameron did not have skin breakdown or infection at the time of this prescription.

9 155. This letter and prescription was submitted to DDD, but Lillie
10 Calamity has never received a written response or denial. Tameron's DDD case
11 manager has verbally told Lillie Calamity that incontinence briefs are not covered
12 for adults.

13 156. Plaintiffs did not file an administrative appeal of the incontinence
14 briefs denial because an administrative appeal would be futile given AHCCCS's
15 longstanding policy prohibiting coverage of incontinence briefs for preventative
16 purposes for those age 21 and over and Defendant Rodgers' practice of issuing
17 unfavorable decisions in all administrative appeals of such denials.

18 157. Lillie Calamity purchases incontinence briefs for Tameron
19 in order to prevent skin breakdown and infection and to allow Tameron to
20 participate in meaningful social, community, and therapeutic activities. Without
21 the briefs, Tameron would be unable to leave his home

22 158. Tameron's only income is \$685 per month from Social Security.
23 The briefs cost approximately \$140 per month. The cost of the briefs limits and
24 prevents the purchase of other necessary daily living items and medical items, such
25 as dental care, that are not covered by AHCCCS.

26 XXX

27 XXX

28 XXX

XXX

1 **CLAIMS FOR RELIEF**

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

4 159. Plaintiffs incorporate and re-allege by reference the allegations
5 of the previous paragraphs.

6 160. The Defendants' regulation, A.A.C. R9-22-212, policy, Policy 310-P
7 of the AHCCCS Medical Policy Manual, and practice of denying Plaintiffs
8 coverage of incontinence briefs to prevent skin breakdown and infection violates
9 the Medicaid Act requirement that home health services, including medical
10 supplies, be provided to Medicaid members. 42 U.S.C. § 1396a(10)(D); 42 U.S.C.
11 §1396d(a)(7).

12 161. This violation, which has been repeated and knowing, entitles
13 Plaintiffs to relief under the Federal Civil Rights Act, 42 U.S.C. § 1983.

14 **SECOND CLAIM FOR RELIEF:**
15 **VIOLATION OF THE MEDICAID STATUTE AND REGULATIONS**

16 162. Plaintiffs incorporate and re-allege by reference the allegations
17 of the previous paragraphs.

18 163. The Defendants' regulation, A.A.C. R9-22-212, and policy,
19 Policy 310-P of the AHCCCS Medical Policy Manual, which denies Plaintiffs
20 coverage of incontinence briefs to prevent skin breakdown and infection, is
21 contrary to the Medicaid Act requirement that home health services, including
22 medical supplies, be provided to Medicaid members, 42 U.S.C. § 1396a(10)(D)
23 and 42 U.S.C. §1396d(a)(7), and is thus preempted by the Supremacy Clause of
24 the United States Constitution, art. IV.

25 **THIRD CLAIM FOR RELIEF:**
26 **VIOLATION OF THE MEDICAID STATUTE AND REGULATIONS**

27 164. Plaintiffs incorporate and re-allege by reference the allegations
28 of the previous paragraphs.

165. The Defendants' regulation, A.A.C. R9-22-212, and policy, Policy
310-P of the AHCCCS Medical Policy Manual, which denies Plaintiffs coverage

1 of incontinence briefs to prevent skin breakdown and infection, is contrary to the
2 reasonable standards requirements of the Medicaid Act, 42 U.S.C. § 1396a(a)(17),
3 and interpretive federal regulations and guidelines, and is thus preempted by the
4 Supremacy Clause of the United States Constitution, art. IV.

5 **FOURTH CLAIM FOR RELIEF:**
6 **VIOLATION OF THE AMERICANS WITH DISABILITIES ACT**

6 166. Plaintiffs incorporate and re-allege by reference the allegations
7 of the previous paragraphs.

8 167. Defendants' policy of providing preventative incontinence briefs to
9 those living in nursing homes, but not to those living in the community, violates
10 the Americans with Disabilities Act, 42 U.S.C. §§ 12131-12134, and its
11 implementing regulations, which prohibits discrimination on the basis of disability,
12 requires that services be made available in the community, rather than in
13 institutions, where to do so meets the needs of qualified individuals with
14 disabilities, and requires that reasonable modifications be made to the program to
15 avoid discrimination on the basis of disability.

16 **FIFTH CLAIM FOR RELIEF:**
17 **VIOLATION OF § 504 OF THE REHABILITATION ACT**

17 168. Plaintiffs incorporate and re-allege by reference the allegations
18 of the previous paragraphs.

19 169. Defendants' policy of providing preventative incontinence briefs to
20 those living in nursing homes, but not to those living in the community, violates §
21 504 of the Rehabilitation Act, 29 U.S.C. § 794(a), and its implementing
22 regulations, which prohibits discrimination on the basis of disability, requires that
23 services be made available in the community, rather than in institutions, where to
24 do so meets the needs of qualified individuals with disabilities, and requires that
25 reasonable modifications be made to the program to avoid discrimination on the
26 basis of disability.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs respectfully ask that this Court:

3 1. Assume jurisdiction over this action.

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

6 3. Issue a declaratory judgment holding that Defendants' regulation,
7 A.A.C. R9-22-212, policy, Policy 310-P of the AHCCCS Medical Policy Manual,
8 and practice of denying Plaintiffs coverage of incontinence briefs prescribed by
9 their physicians as medically necessary to prevent skin breakdown and infection
10 and to permit integration into the community violates the Medicaid Act and its
11 regulations, the Americans with Disabilities Act and its regulations, and the
12 Rehabilitation Act and its regulations, and are thus invalid. 42 U.S.C.
13 § 1396a(10)(D); 42 U.S.C. § 1396d(a)(7); 42 U.S.C. § 1396a(a)(17); 42 U.S.C.
14 §§ 12131-12134; and 29 U.S.C. § 794(a).

15 4. Issue a permanent injunction prohibiting Defendants from denying
16 Plaintiffs coverage of incontinence briefs needed to prevent skin breakdown and
17 infection and necessary to allow Plaintiffs to be integrated into the community.

18 5. Issue an order requiring Defendant AHCCCS to reimburse Plaintiffs
19 for the cost of incontinence briefs purchased since AHCCCS denied their requests
20 for coverage of the briefs.

21 6. Award Plaintiffs reasonable attorneys' fees and costs.

22 7. Grant such other and further relief as may be just and proper.

23 Respectfully submitted this 30th day of September, 2009.

24 ARIZONA CENTER FOR DISABILITY LAW

25
26 s/Jennifer L. Nye
27 Jennifer L. Nye
28 Attorney for Plaintiffs