

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Johnny Timpson, by and through his Conservator,  
Sandra Timpson, and Sandra Timpson, in her  
individual capacity,

Plaintiff(s)

vs.

Nikki Haley, Governor of the State of South  
Carolina, et al,

Defendant(s)

(Please Print)

Submitted By: Robert C. Childs, III  
Address: 2100 Poinsett Hwy, Suite D  
Greenville, SC 29609

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

RECEIVED - 23-9097

MAR 24 2016

SCDHHS

Office of General Counsel

SC Bar #: 1218

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Fax #: 864-242-9914

Other:

E-mail: Robert@LawyerChilds.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.  
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- |  |  |   |   |
|--|--|---|---|
| <b>Contracts</b><br><input type="checkbox"/> Constructions (100)<br><input type="checkbox"/> Debt Collection (110)<br><input type="checkbox"/> Employment (120)<br><input type="checkbox"/> General (130)<br><input type="checkbox"/> Breach of Contract (140)<br><input type="checkbox"/> Other (199) | <b>Torts - Professional Malpractice</b><br><input type="checkbox"/> Dental Malpractice (200)<br><input type="checkbox"/> Legal Malpractice (210)<br><input type="checkbox"/> Medical Malpractice (220)<br>Previous Notice of Intent Case #<br>20____-CP-_____<br><input type="checkbox"/> Notice/ File Med Mai (230)<br><input type="checkbox"/> Other (299)   | <b>Torts - Personal Injury</b><br><input type="checkbox"/> Assault/Slander/Libel (300)<br><input type="checkbox"/> Conversion (310)<br><input type="checkbox"/> Motor Vehicle Accident (320)<br><input type="checkbox"/> Premises Liability (330)<br><input type="checkbox"/> Products Liability (340)<br><input type="checkbox"/> Personal Injury (350)<br><input type="checkbox"/> Wrongful Death (360)<br><input type="checkbox"/> Other (399) | <b>Real Property</b><br><input type="checkbox"/> Claim & Delivery (400)<br><input type="checkbox"/> Condemnation (410)<br><input type="checkbox"/> Foreclosure (420)<br><input type="checkbox"/> Mechanic's Lien (430)<br><input type="checkbox"/> Partition (440)<br><input type="checkbox"/> Possession (450)<br><input type="checkbox"/> Building Code Violation (460)<br><input type="checkbox"/> Other (499)   |
| <b>Inmate Petitions</b><br><input type="checkbox"/> PCR (500)<br><input type="checkbox"/> Mandamus (520)<br><input type="checkbox"/> Habeas Corpus (530)<br><input type="checkbox"/> Other (599)   | <b>Judgments/Settlements</b><br><input type="checkbox"/> Death Settlement (700)<br><input type="checkbox"/> Foreign Judgment (710)<br><input type="checkbox"/> Magistrate's Judgment (720)<br><input type="checkbox"/> Minor Settlement (730)<br><input type="checkbox"/> Transcript Judgment (740)<br><input type="checkbox"/> Lis Pendens (750)<br><input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)<br><input type="checkbox"/> Other (799) | <b>Administrative Law/Relief</b><br><input type="checkbox"/> Reinstate Driver's License (800)<br><input type="checkbox"/> Judicial Review (810)<br><input type="checkbox"/> Relief (820)<br><input type="checkbox"/> Permanent Injunction (830)<br><input type="checkbox"/> Forfeiture-Petition (840)<br><input type="checkbox"/> Forfeiture-Consent Order (850)<br><input type="checkbox"/> Other (899)  | <b>Appeals</b><br><input type="checkbox"/> Arbitration (900)<br><input type="checkbox"/> Magistrate-Civil (910)<br><input type="checkbox"/> Magistrate-Criminal (920)<br><input type="checkbox"/> Municipal (930)<br><input type="checkbox"/> Probate Court (940)<br><input type="checkbox"/> SCDOT (950)<br><input type="checkbox"/> Worker's Comp (960)<br><input type="checkbox"/> Zoning Board (970)<br><input type="checkbox"/> Public Service Commission (990)<br><input type="checkbox"/> Employment Security Comm (991)<br><input type="checkbox"/> Other (999) |
| <b>Special/Complex/Other</b><br><input type="checkbox"/> Environmental (600)<br><input type="checkbox"/> Automobile Arb. (610)<br><input checked="" type="checkbox"/> Medical (620)<br><input checked="" type="checkbox"/> Other (699)   | <input type="checkbox"/> Pharmaceuticals (630)<br><input type="checkbox"/> Unfair Trade Practices (640)<br><input type="checkbox"/> Out-of State Depositions (650)<br><input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660)<br><input type="checkbox"/> Sexual Predator (510)   |   |   |

Submitting Party Signature:

Date:

2/19/16

**Note:** Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

**FOR MANDATED ADR COUNTIES ONLY**

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

**You are required to take the following action(s):**

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note:** You must comply with the Supreme Court Rules regarding ADR.  
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA )  
)  
COUNTY OF GREENVILLE )

Johnny Timpson, by and through his )  
Conservator, Sandra Timpson, and Sandra )  
Timpson, in her individual capacity, )

Plaintiffs, )

v. )

Nikki Haley, Governor of the State of )  
South Carolina, the Anderson County )  
Disabilities and Special Needs Board, )  
Horace Padgett, Chairman of the Anderson )  
County Disabilities and Special Needs Board )  
Dale Thompson, former executive )  
director of the Anderson Disabilities and )  
Special Needs Board, John King, current )  
director of the Anderson Disabilities and )  
Special Needs Board, and The South )  
Carolina Department of Disabilities and )  
Special Needs, William Danielson, )  
Chairman DDSN) Commission, Beverly )  
Buscemi, Director of The South Carolina )  
Department of Disabilities and Special )  
Needs, the South Carolina Department of )  
Health and Human Services, Christian )  
Souza, Director of the South Carolina )  
Department of Health and Human Services, )  
the Greenville county Disabilities and )  
Special Needs Board, and Unknown Actors )  
at the Anderson Disabilities and Special )  
Needs Board, and Unknown Actors at the )  
Greenville County Disabilities and Special )  
Needs Board )

Defendants. )

IN THE COURT OF COMMON PLEAS

C. A. No.: 2016-CP-23-01097

**SUMMONS  
(JURY TRIAL REQUESTED)**

**RECEIVED**

MAR 24 2016

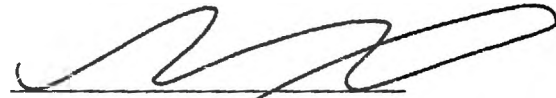
SCDHHS  
Office of General Counsel

FILED - CLERK OF COURT  
GREENVILLE, S.C.  
2016 FEB 23 PM 10 13

TO: DEFENDANTS IN THE ABOVE CAPTIONED CASE:

YOU ARE HEREBY SUMMONED and required to appear and defend by answering the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer on the subscribers at their offices, 2100 Poinsett Highway, Suite D, Greenville, SC 29609,

within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to do so, judgment by default will be rendered against you for the relief demanded in the complaint.



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Columbia, SC 29205  
(803) 256-2017

Greenville, South Carolina

Date: 2/19/16

STATE OF SOUTH CAROLINA )

COUNTY OF GREENVILLE )

Johnny Timpson, by and through his )  
Conservator, Sandra Timpson, and )  
Sandra Timpson, in her individual )  
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Greenville County Disabilities and Special )  
Needs Board )

Defendants. )

IN THE COURT OF COMMON PLEAS  
THIRTEENTH JUDICIAL CIRCUIT

C. A. No.: 2015-CP-23- 01097

**COMPLAINT**  
**(Jury Trial Requested)**

FILED - CLERK OF COURT  
GREENVILLE COUNTY  
MAR 23 2016

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MAR 24 2016

SCDHHS  
Office of General Counsel

The Plaintiffs, complaining of the Defendants above named, would respectfully show unto the Court as follows:

1. Plaintiffs are citizens and residents of Greenville County.

2. Sandra Timpson ("Sandra") is the sister and duly appointed conservator of Johnny Timpson ("Johnny"), who is an incapacitated person due to intellectual disabilities that preclude his understanding of the nature or effects of his acts. Sandra was appointed conservator over Johnny on or about April 16, 2014 by the Greenville County Probate Court in case numbered 2014-GC-23-0010.
3. The Anderson County Disabilities and Special Needs Board (ACDSNB) is a corporate body and political subdivision of the State of South Carolina directed by S.C. Code §44-20-385(s) to "direct delivery of services or contract with those service vendors necessary to carry out the county mental intellectual disability, related disabilities, head injuries and spinal cord injuries services program."
4. Horrace Padgett is chairman of ACDSNB
5. Members of the Anderson County Disabilities and Special Needs Board (ACDSNB) are appointed and may be removed by the Governor.
6. Nikki Haley is the Governor of the State of South Carolina.
7. At the time of the physical injuries described herein, Dale Thompson was the director of the ACDSNB and Nikki Haley was Governor of the State of South Carolina.
8. John King is the current Director of the ACDSNB.
9. Pursuant to Anderson County Code Sec. 2-439 ACDSN acts "as an administrative body for the mentally retarded and developmentally disabled" in Anderson County.
10. The Defendant South Carolina Department of Disabilities and Special Needs (DDSN) is a political subdivision of the State of South Carolina pursuant to S.C. Code Ann § 44-20-240 with authority over all of the state's services and programs for the treatment and

training of persons with intellectual disability, related disabilities, head injuries, and spinal cord injuries.

11. The members of the Governing Board of DDSN are appointed, and may be removed, by the Governor.
12. Beverly Buscemi has been the director of DDSN since 2009.
13. The South Carolina Department of Health and Human Services (DHHS) is a political sub-division of the State and the State Medicaid Agency that is responsible for assuring the health, welfare and safety of disabled persons who participate in Medicaid home and community based waiver services and the financial accountability for all Medicaid funds paid to the State of South Carolina.
14. The director of DHHS is appointed, and may be removed by the Governor.
15. Christian Soura is the Director of DHHS.
16. DDSN has provided residential and other services to Johnny during most of his lifetime through a Medicaid-funded program called the Intellectual Disabilities/Related Disabilities Medicaid home and community based waiver program ("ID/RD Medicaid waiver"), a program designed to provide services to severely disabled persons who would otherwise require care in an institution at government expense.
17. The Greenville County Disabilities and Special Needs Board (GCDSNB) is a corporate body and political subdivision of the State of South Carolina directed by S.C. Code §44-20-385(s) to "direct delivery of services or contract with those service vendors necessary to carry out the county mental intellectual disability, related disabilities, head injuries and spinal cord injuries services program."



18. Unknown actors at ACDSNB & GCDSNB are named for unknown persons whom personally committed some of the acts alleged herein.
19. This suit alleges that Defendants have violated the South Carolina Torts Claims Act, the Americans with Disabilities Act (hereinafter referred to as the "ADA"), Section 504 of the Rehabilitation Act (hereinafter referred to as "Section 504"), the Civil Rights Act (42 U.S.C. 1983), the Medicaid Act, the Administrative Procedures Act of the State of South Carolina and the South Carolina Constitution.
20. Each year, Defendants have assessed Johnny and have determined that his condition is so severe that he meets level of care requirements to receive services in an institution.
21. Johnny requires around-the-clock supervision and he is at risk of institutionalization, because he is unable to manage his affairs or to understand and protect his rights, or to independently function in society.
22. While residing in a facility operated by the ACDSNB, Johnny was subjected to abuse, neglect and financial exploitation and Sandra was never informed of feasible alternatives which would allow him to live in a less restrictive setting.
23. Prior to the incidents giving rise to this lawsuit, the Governor, DHHS, DDSN, ACDSNB and GCDSNB were repeatedly informed of the systemic abuse, neglect and exploitation of clients like Johnny who received ID/RD Medicaid waiver services through audits and investigations conducted by state, federal and other authorities, but they failed to take reasonable actions to protect clients including Johnny from harm.
24. The ID/RD Medicaid waiver program discriminates against persons including Johnny who wish to live outside of an institutional setting by placing caps on home-based

services, and the Defendants have administered the program using arbitrary and unreasonable standards which have not been promulgated as regulations, and failed to inform families including Sandra of feasible alternatives in order to keep their beds and congregate workshops full.

### **Statutory and Regulatory Framework**

25. Participation in Medicaid waiver programs is optional, but once a state elects to participate, it must comply with all federal rules, regulations and statutes. *Doe v. Kidd*, 501 F.3d 348 (4th Cir. 2007), cert. denied, 128 S. Ct. 1483 (2008).
26. Congress set forth its clear intent in the Medicaid Act that States must meet all of the requirements of the Medicaid Act (42 U.S.C. § 1396a(a) et. seq.), the ADA and Section 504 as *quid pro quo* to receive federal matching Medicaid funds.
27. In 2009, and since 2009, the Defendants have repeatedly falsely informed the public that home-based services were being reduced due to budget reductions and that placing caps on services effective January 1, 2010 was unavoidable due to lack of funding, but the cost of the ID/RD Medicaid waiver program actually increased once these caps were instituted and needed therapies were eliminated from the waiver program.
28. The Defendants failed to perform a cost analysis before reducing home-based services and they failed to give notice of their plan to the General Assembly, which had adjourned when Defendants announced the plan to reduce home based services.
29. In 2010, when services were allegedly reduced due to lack of funding, DHHS allowed more than \$225 million to “lapse” and it was later discovered that DHHS overpaid one provider by more than \$10.5 million.

30. Since caps have been placed on home-waiver services, DDSN has received millions of dollars for services allocated by the General Assembly for the purpose of providing home and community based services, but millions of dollars of these funds have instead been used for other purposes that were not authorized by the General Assembly, in violation of the Separation of Powers mandate of the Constitution of the State of South Carolina.
31. As a result of the misuse of these funds, tens of millions of federal matching dollars have been lost, misspent or not properly allocated.
32. In one recent year, DHHS failed to spend \$280 million that had been allocated by the General Assembly to provide services to keep clients in the least restrictive setting.
33. Investigations conducted by the United States Department of Health and Human Services Office of Inspector General have found that, in recent years, DDSN and DHHS have overbilled Medicaid, requiring the State of South Carolina to repay the federal government more than \$14 million.
34. Repayment of these funds has resulted in the State of South Carolina losing more than \$40 million that would have been available to provide services to disabled persons had those funds been properly spent.
35. When DDSN fails to spend funds as allocated by the General Assembly and carries the funds over to the next year, the agency spends those funds without direction from the General Assembly.

#### **Violation of Separation of Powers**

36. The Separation of Powers mandate stems from “the desirability of spreading out the authority for the operation of the government to prevent the concentration of power in the

hands of too few, and it is intended to provide a system of checks and balances. *State ex rel. McLeod v. McInnis*, 278 S.C. 307, 312, 295 S.E.2d 633, 636 (1982).

37. Under the South Carolina Constitution, “[t]he legislative department makes the laws; the executive department carries the laws into effect, and the judicial department interprets and declares the laws.” *State ex rel. McLeod v. Yonce*, 274 S.C. 81, 84, 261 S.E.2d 303, 305 (1979).
38. The General Assembly has plenary power over all legislative matters unless those powers are limited by some constitutional provision. *Clarke v. S.C. Pub. Serv. Auth.*, 177 S.C. 427, 438–39, 181 S.E. 481, 486 (1935).
39. Included within the legislative power is the sole prerogative to make policy decisions and to exercise discretion as to what the law will be. *State v. Moorer*, 152 S.C. 455, 479, 150 S.E. 269, 277 (1929), *Sutton v. Catawba Power Co.*, 101 S.C. 154, 157, 85 S.E. 409, 410 (1915).
40. It is the duty of the Executive Branch of government to ensure “that the laws be faithfully executed” and it may only exercise discretion that is granted by the General Assembly. S.C. Const. art. IV, § 15. *See Moorer*, 152 S.C. at 478, 150 S.E. at 277.
41. Non-legislative bodies may make policy determinations when properly delegated such power by the legislature, but, “absent such a delegation, policymaking is an intrusion upon the legislative power.” *Hampton v. Haley*, 403 S.C. 395, 743 S.E.2d 258, 262 (2013).
42. Defendants have retaliated against persons who have reported the misuse of funds and who have advocated for persons who report abuse, neglect and exploitation of clients.

43. The Plaintiffs and other similarly situated persons have a constitutionally protected property right to goods, compensation and services that the Defendants are required to provide.

#### **Violation of ADA and Rehabilitation Act**

44. In enacting the Americans with Disabilities Act (ADA), Congress found that “individuals with disabilities continually encounter various forms of discrimination, including ...segregation...” 42 U.S.C. § 12101(a)(5).
45. Title II of the Americans with Disabilities Act provides that “no qualified individual with a disability shall, but reason of disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity or be subjected to discrimination by such entity.” 42 U.S.C. § 12132.
46. Regulations implementing Title II of the ADA make clear that the ADA requires that “A public policy shall administer services, programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d).
47. The United States Supreme Court in *Olmstead v. L.C.*, 527 U.S. 581 1999 S. Ct. 2176 (1999), held that the unnecessary institutionalization of individuals with disabilities is a form of discrimination under Title II of the ADA.
48. In *Olmstead*, the Supreme Court interpreted the ADA’s “integration mandate” to require that persons with disabilities be served in the community when: (1) community-based treatment is appropriate; (2) the individual does not oppose community placement; and (3) community placement can be reasonably accommodated. *Id.* at 607.

49. The system the Defendants have employed to provide home-based services is inherently discriminatory, because the Defendants have established a system wherein greater funding is provided to persons who receive services in congregate settings operated by DDSN and its local boards and significantly less funding for persons who live in their own home or who want to live in their home like Johnny.
50. Johnny's physician has determined that without around the clock supervision and care, he is at risk of institutionalization.
51. Impositions of caps on home-based services for persons who, like Johnny, are at risk of institutionalization violates the ADA and the South Carolina Court of Appeals has determined that those caps are not enforceable, but Defendants have disregarded that ruling. *Stogsdill v. DHHS*, 410 S.C. 213, 763 S.E.2 638(S.C. Ct. App. 2014).
52. Defendants have pressured DDSN clients into "sheltered workshops" where they are segregated from non-disabled persons and the State profits from the labors of intellectually disabled persons.
53. Even after the centers for Medicare and Medicaid Services (the federal Medicaid Agency) and the United States Department of Justice have determined in other states that these sheltered workshops discriminate against waiver participants and violate the integration mandate of the ADA, Defendants have continued to spend millions of dollars building, buying and expanding more workshops, while failing to provide meaningful employment opportunities for waiver participants like Johnny who could or do live at home.

54. The anti-retaliation provision of the ADA prohibits retaliation or reprisals against persons who have disabilities or their advocates.
55. Section 504 of the Rehabilitation Act of 1973, on which the ADA was modeled, sets forth similar protections against discrimination by recipients of federal funds. These protections include prohibitions against unnecessary segregation of people who have disabilities. Regulations implementing Section 504 require that a public entity administer its services, programs and activities in "the most integrated setting appropriate" to the needs of qualified individuals with disabilities. 28 C.F.R. § 41.51(d).
56. Section 504's regulations prohibit recipients of federal financial assistance from utilizing criteria or methods of administration that (i) have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap or to (ii) have the purpose of effect of defeating or substantially impairing accomplishment of the objectives of the recipients' program with respect to handicapped persons. 28 C.F.R. § 41.51(b)(3)(1); 45 C.F.R. § 84.4(b)(4).
57. The Plaintiffs are informed and believe the Defendants have violated and are in violation of the ADA and Rehabilitation Act.

#### **Violation of Medicaid Act**

58. The Medicaid Act contains clear and unambiguous requirements for providing notice and evidentiary hearings to waiver participants when services are reduced, denied, terminated or are not provided with reasonable promptness, but Defendants have violated these requirements and Johnny's due process rights established by the United States

Constitution, 42 U.S.C. 1396a(a)(3), 42 C.F.R. 431.200 et. seq. and *Goldberg v. Kelly*, 397 U.S. 254, 90 S. Ct. 1011; 25L. Ed 7d 287.

59. Medicaid regulations require State Medicaid agencies to inform applicants of feasible and recipients of notice of their the right to request a hearing containing all information described in 42 C.F.R. 431.210, and to require a final administrative decision within 90 days, with services provided with reasonable promptness.
60. The Medicaid Act requires states to provide services in the amount, duration and scope necessary to meet the needs of waiver participants (42 U.S.C. 1396a(a)(17) and requires states to base allocations of services on reasonable standards. (42 U.S.C. 1396a(a)(10)).
61. As a condition of receiving federal Medicaid funding for the ID/RD Medicaid waiver program from CMS, DHHS must assure the federal government that it will protect the health and welfare of Medicaid waiver participants and that it will assure the financial accountability for federal funds paid to provide waiver services.
62. The Plaintiffs are informed and believe the Defendants have violated and are in violation of the Medicaid Act.

#### **Violations of the South Carolina Administrative Procedures Act**

63. The Defendants have violated the South Carolina Administrative Procedures Act by imposing binding norms which limit Medicaid waiver services without promulgating regulations.
64. The last time DDSN promulgated a regulation was in 1986.



65. The Defendants imposed caps on services which violate the clear and unambiguous directives of the United States Supreme Court and the South Carolina General Assembly to provide services in the least restrictive setting.
66. The Defendants waited until the South Carolina General Assembly adjourned in 2009 to submit an application to CMS to institute caps on home-based services after the General Assembly had allocated sufficient funding to provide services in the least restrictive setting without imposing caps.
67. The Defendants again failed to solicit meaningful public participation by proposing amendments which do not comply with the ADA, the Rehabilitation Act, the Medicaid Act or the CMS “final rule.”
68. The Plaintiffs are informed and believe the Defendants have been in violation and are in violation of the Administrative Procedures Act.

#### **Facts Specific to the Plaintiffs**

69. The Defendants undertook to render services to “Johnny” which they recognized as necessary for the protection of Johnny’s person and well-being.
70. The Defendants placed Johnny at the Tiny Greer Community Training Home which is owned and operated by ACDSN and under the authority and oversight of DDSN and DHHS.
71. The Defendants had, and the state agency actors and Governor continue to have, a special relationship with Johnny because he is a client with special needs and disabilities admitted for care and treatment through the Medicaid home and community based waiver program.

72. Defendants have voluntarily accepted the responsibility of providing care, treatment and services to Johnny, accepted federal and state funds to pay for that care and had a duty to exercise reasonable care in supervising and providing appropriate care and treatment of Johnny.
73. During the years when Johnny was receiving residential services provided by the Defendants, he has been assaulted and injured on numerous occasions, psychologically abused and financially exploited.
74. In 2013, Johnny was assaulted by the staff and/or other residents on more than two occasions and suffered severe burns to his body.
75. On or about April of 2013, Johnny was burned when unknown actors held him against his will and burned both of his arms.
76. In July of 2013, Johnny was assaulted by unknown actors injuring his right eye.
77. Throughout the course of his care and treatment by the Defendants, Johnny has suffered from physical and mental abuse and the Defendants failed to cause these injuries to be properly investigated, and they have failed to take necessary steps to protect him from further injury, neglect and exploitation.
78. Defendants have failed to inform Sandra of the incidents, feasible alternatives and to provide sufficient services in the home so that she can return to work and so that her brother can avoid institutionalization.
79. Johnny was overcharged for room and board by the ACDSNB and he was financially exploited.

80. Defendants have been aware of the systemic abuse, neglect and exploitation of DDSN clients including Johnny, but have failed to protect the victims and have retaliated against persons who challenge their wrongful behavior or complain.
81. DDSN and DHHS were aware that Johnny and other clients were being financially exploited and they failed to take immediate action to protect them from exploitation or to require immediate repayment of funds improperly taken from DDSN clients.
82. In order to remove Johnny from unsafe and unconstitutional conditions and to protect her brother from further abuse, neglect and exploitation, Sandra took Johnny into her home and has provided care for him there since August of 2013.
83. Sandra repeatedly complained about Defendants conduct towards Johnny. In retaliation for those complaints the defendants withheld and delayed services to Johnny for Sandra when she took him into her home.
84. Defendants have operated the home and community based waiver programs so as to provide inadequate services in the home, so as to force families to place disabled persons like Johnny into more expensive congregate settings, where they are segregated and isolated and subjected to abuse, neglect and exploitation.
85. By limiting services available to ID/RD waiver clients in the home, DDSN and DHHS have profited from the labors of intellectually disabled persons including Johnny.
86. Defendants joined together to impose restrictions on the hours and types of services available in the home by falsely informing CMS, DDSN clients and families including Johnny and Sandra that services were being reduced due to budget reductions.

87. Instead of using funds allocated by the General Assembly to provide services in the least restrictive setting, ACDSNB, GCDSNB, DDSN and DHHS used allocated funds for purposes not approved by the General Assembly their chairman executive director and/or supervisors and they have failed to comply with applicable federal and state funding requirements.
88. Plaintiffs are informed and believe that their conduct has violated their protected property, liberty, civil, statutory, regulatory and decisional rights.

### **COUNT ONE**

#### **Tort Claims Act**

89. Plaintiffs refer to and reallege each and every fact and allegation in the preceding Paragraphs as if fully set forth herein.
90. This count is brought pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-210 (2015) to recover damages for personal injuries to Johnny sustained as a direct and proximate result of the Defendants' wrongful acts, including, but not limited to the failure to properly supervise him in violation of their duty of care.
91. As a direct and proximate result of the wrongful actions of Defendants, Johnny has suffered from mental anguish, pain and suffering, medical injuries and treatment, permanent disfigurement, and a decline in his functional capacity.
92. The Defendants, their agents and employees were willful, wanton, reckless, grossly negligent, careless and negligent in the following and other particulars:
- a. Failing to follow rules in supervising patients and in reporting injuries and abuse;

- b. Failing to exercise sufficient control over Johnny to protect him;
- c. Failing to supervise employees who physically and mentally abused Johnny and failing to promptly report injuries to family members;
- d. Failing to formulate policies, procedures and regulations to govern staff and personnel to provide a safe environment for clients;
- e. Failing to supervise and to protect Johnny from other patients who physically and mentally abused Johnny;
- f. Failing to use due care in hiring, supervising, training and monitoring and/or conducting reviews of staff and personnel;
- g. Failing to provide services to DDSN clients that are necessary to ensure that they do not harm themselves or others;
- h. Failing to provide adequate medical care and notice to family members;
- i. Failing to use allocated funds for the benefit of the Plaintiffs
- j. Allowing Johnny to be assaulted, mistreated and injured and financially exploited;
- k. In committing the acts or failing to act at alleged herein.
- l. In doing or failing to do such other and further things that a reasonably responsible Defendant would have done under the circumstances then and there existing.

93. But for the negligence, gross negligence, needlessness, recklessness, willfulness of Defendants, Johnny's injuries would not have occurred if reasonable care had been used under the circumstances.

94. As a direct and proximate result of the aforesaid carelessness, needlessness, recklessness, willfulness, wantonness, negligence and gross negligence of Defendants, their agents, employees and/or servants, Johnny has suffered and will continue to suffer in the future, severe and permanent injuries, including without limitation, physical injuries, pain and suffering, emotional distress, mental shock and anguish, wounded feelings, grief and sorrow, trauma, discomfort, anxiety, embarrassment, fatigue, loss of sleep, financial loss and loss of enjoyment of life.
95. As a direct and proximate result thereof Sandra has lost time from her employment, lost value of services that should have been rendered and personally witnessed the pain and suffering of Johnny, the outrageous acts of the Defendants and Sandra suffered sorrow, trauma, discomfort, anxiety, embarrassment, fatigue, loss of sleep, financial loss and loss of enjoyment of life.
96. The Plaintiffs are informed and believes Johnny is entitled to an award of damages for his injuries in an amount to be determined by a jury.

## **COUNT TWO**

### **Violation of the Americans with Disabilities Act**

97. Plaintiffs refer to and reallege each and every fact and allegation in the preceding Paragraphs as if fully set forth herein.
98. Johnny is a qualified individual with disabilities who has physical and mental impairments that substantially limit one or more major life activities, including, but not limited to, thinking, walking, communicating, learning, working, caring for himself and concentrating. See 42 U.S.C. § 12102.

99. The State of South Carolina is required by federal law to make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, except where the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity. 28 CFR § 35.130(b)(7) (1998).
100. Medicaid provides financial resources that are available to South Carolina to pay for services necessary to comply with the ADA, but the State's obligation to comply with the ADA is not limited to services available under the State's Medicaid programs.
101. The State's treating professionals have determined that community-based treatment is appropriate for Johnny, he does not oppose community placement and his needs can be reasonably accommodated without fundamentally altering the nature of how the State delivers services.
102. Under the "integration mandate" of Title II Of the ADA and Section 504 of the Rehabilitation Act, Defendants must administer long-term care services in a manner that provides services to individuals who have disabilities in the most integrated setting appropriate to their needs.
103. The actions taken by Defendants which are complained of in this complaint discriminate against persons including Johnny with the greatest needs who have remained or returned to the community in good faith reliance on promises of services and supports provided by the State; thereby forcing them to spend their days in workshops or congregate residential settings where they have been exploited and placed at risk of harm and isolated from the

community, their families and friends. Such harm includes but are not limited to the physical injuries, neglect and mental suffering by Johnny and Sandra alleged herein.

104. The isolation and segregation of individuals with disabilities including Johnny is a serious and pervasive form of discrimination in South Carolina and the State's unjustified placement of these persons in institutional workshops and residential congregate programs severely limits their exposure to the outside community, constituting a form of discrimination based on disability which is prohibited by Title II, 42 U.S.C. § 12101(a)(2), (5).
105. The State's unjustified placement of persons including Johnny and Sandra who oppose congregate settings in institutional day and residential congregate programs severely limits their exposure to the outside community, constitutes a form of discrimination based on disability which is prohibited by Title II, 42 U.S.C. § 12101(a)(2), (5).
106. Institutional placement of persons including Johnny who benefit from being integrated into the community perpetuates unwarranted assumptions that the persons including Johnny so isolated are incapable or unworthy of participating in community life and it severely diminishes individuals' everyday life activities, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment
107. The ADA and its implementing regulations found at 28 C.F.R § 35.130(d) require the States to administer services, programs and activities in "the most integrated setting appropriate" to the needs of qualified individuals with disabilities. This integration



mandate is not limited to residential programs, but covers all services and programs where persons with disabilities and discriminated against because of their disability.

108. Because of reductions and caps on waiver services and the failure to provide services and to comply with court decisions and federal directives with reasonable promptness, Johnny has suffered the physical and emotional injuries alleged herein, and has been forced, because of his disabilities, to relinquish his right to fully participate in community life, which he could enjoy given reasonable accommodations, at less cost than the congregate services Defendants attempt to impose upon DDSN waiver participants.
109. Reductions and denials of requests for home and community based services by the Defendants constitute discrimination against persons including Johnny who have disabilities, who, unlike persons who have less severe disabilities, are unable to have their needs met in their homes and communities under the arbitrary limitations established or authorized by the Defendants.
110. The services Plaintiffs request herein and that should have been offered are not unreasonable, given the demands on the State's health care budget and the resources available to pay for these services.
111. The United States Supreme Court in *Olmstead v. L.C. ex rel. Zimrig*, 527 U.S. 581 (1999), held that unnecessary institutionalization of individuals with disabilities is a form of discrimination under Title II of the ADA.
112. Providing the services Johnny and Sandra request and that should have been offered do not place an unreasonable burden on the State nor do they force the state to fundamentally alter the nature of its programs.

113. Providing the services Johnny and Sandra need to remain at home can be provided without undue burden to the state, taking into consideration its obligation to provide health care and services with an "even hand."
114. The Defendants have failed to make reasonable modifications to the home and community based waiver programs operated under contract with DHHS, which are necessary for Johnny to remain in the least restrictive setting and for Sandra to obtain these necessary services.
115. The failure to maintain services to allow Plaintiff to remain in the most integrated home and community based settings constitutes unlawful discrimination in violation of Title II of the ADA and its implementing regulations at 28 C.F.R. § 35.130(d).
116. The Defendants have failed to exercise their discretion in a non-discriminatory manner, denying Plaintiffs necessary funds used to provide home and community based services Johnny needs to remain in the least restrictive setting.
117. The ADA's retaliation provision provides that "[n]o person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this chapter or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under that chapter.
118. Defendants have retaliated against persons including Johnny and Sandra who have advocated for waiver participants and employees who have reported abuse, neglect and exploitation have experienced reprisals, and these wrongful acts by Defendants have resulted in injury to Johnny and Sandra

119. Plaintiff requests an order finding that Defendants are in violation of the Americans with Disabilities Act because they have operated DDSN Medicaid waiver programs in such a way as to maintain segregated congregate facilities, so as to promote the economic health of the local Boards, state agencies and private investors, rather than protecting waiver participants.
120. Plaintiffs request an order requiring Defendants to provide all services Johnny's physicians determine to be necessary and appropriate for him to live in the least restrictive setting.
121. Plaintiffs request an order prohibiting Defendants from retaliating against them, their providers and their witnesses in any way.
122. Plaintiffs request an order finding that they are prevailing parties and for an award of fees, costs and expenses and such other relief as this Court shall determine to be just.

### **COUNT THREE**

#### **VIOLATIONS OF SECTION 504 OF THE REHABILITATION ACT**

123. Plaintiffs refer to and reallege each and every fact and allegation in the preceding Paragraphs as if fully set forth herein.
124. Section 504 of the Rehabilitation Act of 1973 provides, "no otherwise qualified individual with a disability in the United States...shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance, 29 U.S.C. § 794(a).

125. "Program or activity" includes a department, agency, special purpose district, or other instrumentality of a State or local Government. 29 U.S.C. § 794(b)(1)(A).
126. "Recipient" of federal financial assistance also includes any public or private agency or other entity to which Federal financial assistance is extended directly or through another recipient. 28 C.F.R. § 41.3(d).
127. Regulations implementing Section 504 require a recipient of federal financial assistance to administer its services, programs, and activities in the "most integrated setting appropriate" to the needs of qualified individuals with disabilities. 28 C.F.R. § 41.51(d).
128. Defendants receive federal financial assistance under Section 504 and its implementing regulations. Federal Medicaid funds account for nearly 70% of the cost of the home and community based waiver programs administered by SCDDSN.
129. Defendants and their contracting agencies and organizations are recipients of Federal financial assistance under Section 504 and its implementing regulations.
130. Johnny is a "qualified person with disabilities" within the meaning of Section 504 because he has physical and mental impairments that substantially limit one or more major life activities, and he meets the essential eligibility requirements for the home and community based waiver programs administered by SCDDSN. See 29 U.S.C. § 705(9).
131. The Defendants have failed to make funds available, thereby preventing Plaintiffs access to services Johnny he needs to remain out of congregate facilities such as workshops and segregated residential homes funded by Defendants.

132. The Defendants have failed to make reasonable modifications to home and community based waiver programs to allow Plaintiff to utilize waiver services so that he can successfully maintain placement in the least restrictive setting appropriate to his needs.
133. The Defendants' actions have stigmatized Johnny and jeopardized his ability to remain integrated into the communities in his own home.
134. Failure to provide services in the least restrictive setting appropriate to the needs of waiver participants constitutes unlawful segregation in violation of Section 504 of the Rehabilitation Act and its implementing regulations at 28 C.F.R. 42.51(d).
135. The Defendants have also utilized criteria and methods of administration that have and continue to subject Plaintiff to discrimination on the basis of disability, including risk of unnecessary institutionalization, by (1) failing to assess properly the services and supports that would enable Plaintiff to remain in the community, (2) failing to ensure that Plaintiff has access to Medicaid-covered services that will meet his needs in the community, and (3) compelling health care providers to reduce recommended levels of in home nursing and community based services, thereby violating Section 504 and its implementing regulations.
136. The Plaintiffs are informed and believe they are entitled to an order finding the Defendants are in violation of the Rehabilitation Act.
137. Plaintiffs requests an order finding that they are the prevailing party and award him services determined by his physicians to be necessary and appropriate for him to live in the least restrictive setting, and for attorney's fees, costs and expenses and such other relief as this Court shall determine to be just.

## COUNT FOUR

### **Violation of the South Carolina Administrative Procedures Act and Separation of Powers**

138. Plaintiff refers to and reallege each and every fact and allegation in the preceding Paragraphs as if fully set forth herein.
139. The Defendants have, under color of state law, established illegal binding norms in the administration and operation of Medicaid programs in South Carolina that have been imposed on Plaintiffs and other clients which have placed them at at risk of institutionalization in violation of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, the Medicaid Act, and 42 U.S.C. 1983, and these practices have violated his constitutional rights to due process and liberty.
140. The Defendants have violated the Separation of Powers mandate by failing to use funds allocated by the General Assembly to provide services necessary for Johnny and others to live in the least restrictive setting and by using those funds to purchase real estate and for other unauthorized purposes.
141. The Defendants have refused to promulgate regulations for the administration of Medicaid programs administered through DDSN and have illegally restricted access to medically necessary services through written and unwritten policies and procedures which violate federal and state laws that they are bound to enforce.
142. Defendants and their agents have established binding norms without promulgating regulations in violation of the South Carolina Administrative Procedure Act and they have allowed their subcontractors, DDSN and the local DSN Boards, to establish binding norms which violate the South Carolina Administrative Procedure Act (the "SCAPA"),

the ADA, the South Carolina Custodian Rehabilitation Act, the Medicaid Act and the protected property, Statutory, civil regulatory and decisional rights of the Plaintiffs.

143. The State Defendants have arbitrarily limited or reduced access to services by implementing unwritten policies, such as limiting the number o hours per days, week and month that a care giver can provide services for a waiver participant at the same time, denying the existence of the increased difficulty of care rate for respite workers and requiring families to serve as employers of record for respite workers, without promulgating regulations.
144. Plaintiffs request an order requiring DHHS to promulgate regulations for the administration of the ID/RD and ICF/MR waiver programs pursuant to the SCAPA and the ADA Rehabilitation Act and the Medicaid Act's requirement that the State adopt reasonable standards.
145. Plaintiffs request that this Court order the Defendants to restore all services that have been reduced, terminated or otherwise altered as a result of the establishment of binding norms not promulgated as regulations and that the Defendants be required to provide the services, supplies and equipment determined by Johnny's licensed physicians and professionals to be necessary and reasonable.
146. The Plaintiffs request the court find that the State Defendants have no reasonable basis to oppose this action and that the State Defendants pay Plaintiffs' legal fees, costs and expenses.

#### **COUNT FIVE**

#### **Violation of 42 U.S.C. § 1983**

147. Plaintiffs refer to and reallege each and every fact and allegation in the preceding Paragraphs as if fully set forth herein.
148. Experience of other Medicaid waiver participants have demonstrated that seeking a remedy through the Medicaid “fair hearing” process is futile and plaintiffs suing under the Civil Rights Act are not required to exhaust administrative remedies. *Patsy v. Board of Regents*, 457 U.S. 496, 102 S. Ct. 2557, 73 L.Ed. 172 (1982)
149. The Defendants have violated fundamental due process rights of the Plaintiffs and statutory rights contained at 42 U.S.C. 1396a(a)(3) by failing to operate a “fair hearing” system meeting the requirements of the United States Constitution, the Medicaid Act and *Goldberg v. Kelly*, *supra*.
150. The “fair hearing” system operated by DHHS and the Executive Branch is a futile process intentionally designed to discourage waiver participants including the Plaintiffs from enforcing their rights and to prevent Defendants from having to account for misuse of funds and violation of waiver participants’ statutory and Constitutional rights.
151. The Defendants have failed to inform waiver participants including the Plaintiffs in writing of the law or regulation relied upon in notices of termination, reductions of services or other adverse actions, which is specifically required by federal regulations.
152. The Defendants’ practices and procedures alleged herein violate the notice and hearings requirements of the Medicaid Act by requiring impoverished Medicaid participants to provide extensive written responses to a hearing officer’s “interlocutory” orders designed to require participants to lay out, in writing, their cases to the agency before a fair hearing



is granted, in violation of the ruling of the United States Supreme Court in *Goldberg v. Kelly, supra*.

153. The Defendants have violated waiver participants' due process right to receive a final administrative order that is appealable to the Judicial Branch, within ninety days of the participant's request for a fair hearing.
154. The Accountability Report of the South Carolina Administrative Law Court, an administrative agency within the Executive Branch of state government, reports that the average number of days to decide a Medicaid appeal is nearly 300 days. Well over the objective of 180 days. SCALE Fiscal Year 2014-15 – Accountability Report
155. The Defendants have forced waiver participants to engage in endless litigation lasting for years because of their unreasonable and illegal efforts to deny due process rights and they have blatantly disregarded rulings of the courts and their own hearing officers.
156. The Defendants have taken conflicting positions in state and federal forums, tremendously increasing the costs of legal services to waiver participants and effectively playing "hide the ball" with severely disabled waiver participants.
157. The Defendants have failed to provide written notices meeting the clear requirements of 42 C.F.R 431.210, leaving the participant to question the reason for the adverse action or denial, or worse, finding out at the "fair hearing" that the agency has adopted a totally different justification for its action.
158. Defendants' practices and procedures alleged herein which affect the Plaintiffs violate the Due Process clause of the Fourteenth Amendment to the United States Constitution and Article 1, Section 3 of the South Carolina Constitution by failing to establish and operate

a system that provides a prompt fair hearing and timely final decision in a fair in a non-arbitrary forum.

159. These violations are ongoing and they have been repeated in violation of 42 U.S.C. 1396a(a)(3), 42 U.S.C. 1983 and the Due Process Clause of the United States Constitution.
160. Defendants have, under color of state law, deprived Plaintiffs and/or other similarly situated persons of rights, privileges and immunities that are secured by the Constitution of the United States by the undermining of family relationships through reductions in home-based Medicaid services that were based on false claims of lack of funding in order to force Medicaid waiver program participants into congregate profit centers.
161. The Defendants have failed to provide services in the amount, duration and scope necessary to allow waiver participants to participate fully in the community
162. Medicaid waiver program participants throughout the State have been systemically segregated, isolated and exploited in congregate programs for the financial gain of Defendants and their agents in violation of the CMS final rule and the Medicaid Act, thereby denying waiver Plaintiffs' fundamental and clearly established constitutional rights of freedom of association with non-disabled persons in the community and their right to live together as a family.
163. The Defendants' wrongful acts have been conducted with deliberate indifference to the fundamental and clearly established constitutional rights of due process and the familial rights of the Plaintiffs and other similarly situated persons.

164. Defendants' violation of Plaintiff's protected property, liberty and due process rights under 42 U.S.C. § 1983 is evidenced by the policies and practices of the Defendants, which are "widespread" and arbitrary and are not authorized by written law.
165. These practices are "so permanent and well settled as to constitute custom or usage with the force of law" and the Defendants Haley, Danielson, Buscemi and Soura are persons who have "final policymaking authority." *City of St. Louis v. Praprotnik*, 485 U.S. 112, 123, 127 (1988); see also *Pembaur v. City of Cincinnati*, 475 U.S. 469, 481-83 (1986).
166. Through the acts described in this Complaint, the Defendants have violated the Medicaid Act and 42 U.S.C. 1983 by:
- (a) failing to provide Medicaid services with reasonable promptness as required by 42 U.S.C. 1396a(a)(8).
  - (b) failing to inform participants about feasible alternatives under the State Medicaid Plan 42 C.F.R. 441.302(d).
  - ( c) failing to provide Medicaid services in the amount, duration and scope necessary to achieve the purposes of the program, as required by 42 U.S.C. 1396a(a)(10)(B) of the Medicaid Act .
  - (d) violating 42 C.F.R. 440.240 and 440.250 by failing to make services available to Plaintiff in an equal amount, duration and scope as provided to other waiver participants who have previously filed federal lawsuits and have been determined by this Court not to be subject to caps on services.
  - (e) violating Plaintiff's due process rights by refusing to comply with notice and hearing requirements contained in 42 C.F.R. 431.200 et. seq. and violating the

fundamental due process requirements of the Constitutions of the United States and South Carolina.

(f) violating Plaintiffs's due process rights and the Separation of Powers Doctrine of the South Carolina Constitution by failing to spend funds as intended by the General Assembly, obstructing his right to judicial review and illegally exercising powers reserved to the legislative branch without promulgating regulations for the operation of the Medicaid program and by operating the program based on binding norms established by agency staff.

(g) failing to inform Sandra of her right to compensation for the care she has provided and to pay a reasonable hourly rate for those services that are necessary to protect his health and safety outside of an institutional setting and

(h) in depriving the Plaintiffs of their protected property rights as set forth herein

167. The Defendants have acted with conscious disregard for the rights and the health and wellbeing of Plaintiff and other DDSN clients in the operation of the Medicaid program, and these violations are subject to repetition, yet they have evaded review.
168. The Defendants have reduced or restricted access to necessary services, including but not limited to physical therapy, occupational therapy and speech and language services, even though these services would be provided to them at government expense if they subjected themselves to admission into an ICF/MR facility.
169. The Defendants' illegal policies and practices have caused and will continue to cause irreparable harm to the Plaintiffs and other similarly situated DDSN clients.

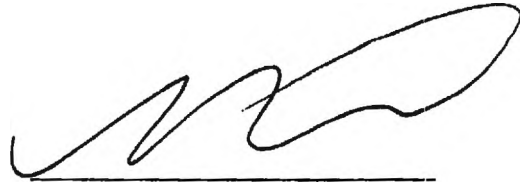
170. Defendants have illegally shifted the cost and burden of providing care for disabled adult family members to persons including Sandra who have no legal responsibility for the cost of their care.
171. By pressuring and coercing family members including Sandra to become the “employer of record” for direct care workers, and without advising families of the associated risks, Defendants have required families to make the draconian choice between placing their family member in an institution at government expense, risking liability for worker’s compensation or other claims brought by injured workers, because Defendants and their agents insist that caregivers are employees of the parents of adult waiver participants.
172. As a direct and proximate result thereof the Plaintiffs have suffered the damages set forth herein.
173. Plaintiffs are informed and believe they are entitled to judgement against the Defendants for actual and punitive damages plus attorney’s fees and costs at this action.

WHEREFORE, having fully plead, Plaintiffs pray for the following:

174. For judgment against Defendants for damages described above in an amount to be determined by a jury, including punitive damages.
175. A jury trial on all issues so triable.
176. Compensation of Sandra for services she has provided to Johnny to protect him from further abuse, neglect and exploitation.
177. An order determining that Defendants have violated the integration mandate and Johnny’s rights under the ADA and Section 504 of the Rehabilitation Act and enjoining Defendants from further violations.

178. An order prohibiting Defendants from retaliating against Plaintiffs, persons named as witnesses or their advocates.
179. For a declaratory judgment ordering Defendants to promulgate regulations for the operation of the DDSN waiver programs, enjoining Defendants from applying waiver caps to Johnny and requiring Defendants to pay for services necessary for Johnny.
180. An order prohibiting DHHS from submitting the proposed amended waivers without meaningful public input and requiring compliance with the final rule and controlling decisions of the courts.
181. For an order finding that Defendants have violated the Medicaid Act by failing to provide a fair hearing system meeting the requirements of the United States Constitution, the Medicaid Act and *Goldberg v. Kelly, supra*, failing to establish reasonable standards for the operation of the Medicaid program, failing to provide services with reasonable promptness, failing to provide meaningful employment services, failing to provide services in the amount, duration and scope necessary, failing to protect the health and welfare of waiver participants and failing to provide accountability for the expenditure of Medicaid funds.
182. A determination that providing Johnny with around-the-clock care at home will not fundamentally alter the State's budget or system for providing services.
183. For Attorney's Fees and costs of this action.
184. For such other and further relief as the court deems just and proper.

Respectfully submitted,



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