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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

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

Plaintiffs,

vs.

Case No. 3:19-cv-00087-SLG

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

Defendants.

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

I. PRELIMINARY STATEMENT

This lawsuit challenges the defendants' systemic and long-standing failure to
provide Medicaid coverage to eligible applicants with reasonable promptness, as required
by federal and law. Plaintiff Jennifer Spencer seeks to represent a large class of similarly

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1 situated Alaskans who were deprived of healthcare coverage as a result of the defendants’
2 delays in processing Medicaid applications.¹ Because all of the requirements of Federal
3 Rule of Civil Procedure 23(a) and (b)(2) are satisfied, as shown below, this Court should
4 now certify the proposed class. This Court should also appoint Goriune Dudukgian and
5 James J. Davis, Jr. of the Northern Justice Project, LLC as class counsel in accordance
6 with Rule 23(g).
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9 II. RELEVANT BACKGROUND

10 In Alaska, the Department of Health and Human Services (“DHSS”) administers
11 the Medicaid program.² The Division of Public Assistance (“DPA”), which is an agency
12 within DHSS, is responsible for accepting and processing Medicaid applications for the
13 State.³ By virtue of participating in the Medicaid program and accepting federal funds,
14 the State must comply with all federal requirements of the Medicaid program,⁴ including
15 the mandatory federal timeframes for processing applications and providing benefits to
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20 ¹ The class is defined as: All individuals who applied for Alaska Medicaid within
21 two years before the filing of this lawsuit, and all future applicants, who did not or do not receive
22 a final eligibility determination *and* Medicaid coverage from the defendants within 30 days after
submitting their Medicaid applications, or within 90 days if a disability determination was or is
required.

23 ² AS 47.07.030.

24 ³ See generally Alaska Aged, Disabled and Long Term Care Medicaid Eligibility
25 Manual § 500, available at: <http://dpaweb.hss.state.ak.us/manuals/adltc/adltc.htm> (last visited
26 March 30, 2019); Alaska Family Medicaid Eligibility Manual § 5000, available at:
<http://dpaweb.hss.state.ak.us/manuals/fam-med/fmem.htm> (last visited March 30, 2019).

27 ⁴ See generally *Armstrong v. Exceptional Child Ctr., Inc.*, 135 U.S. 1378, 1382
28 (2014); *Harris v. McRae*, 488 U.S. 297, 301 (1980).

1 eligible applicants.

2 The Medicaid Act requires DHSS to furnish Medicaid benefits with “reasonable
3 promptness to all eligible individuals.”⁵ Federal implementing regulations similarly
4 require DHSS to make Medicaid eligibility determinations “promptly and without undue
5 delay.”⁶ For anyone applying for Medicaid on the basis of a disability, DHSS must make
6 an eligibility determination within 90 days.⁷ For all other applicants, DHSS must
7 determine eligibility within 45 days.⁸

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

16 DHSS **admits** that it is not currently in compliance with these timeframes, nor has
17 it been for at least the last five years.⁹ DHSS’s delays in processing Medicaid applications
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21 ⁵ 42 U.S.C. § 1396a(a)(8).

22 ⁶ 42 C.F.R. § 435.912(b).

23 ⁷ 42 C.F.R. § 435.912(c)(3)(i).

24 ⁸ 42 C.F.R. § 435.912(c)(3)(ii).

25 ⁹ Alaska Department of Health & Social Services – Division of Public Assistance,
26 Internal Performance Measures: Year-to-Date Performance, prepared January 23, 2019. available
27 at: http://dpaweb.hss.state.ak.us/files/reports/DPA_All_Measures_YTD.pdf (last visited March
28 30, 2019), at page 2.

1 are harming thousands of Alaskans in need of health care coverage. In February 2019,
2 DHSS publicly admitted that it had a backlog of 15,639 Medicaid applications, including
3 10,200 applications that were filed in 2018.¹⁰ DHSS's own data shows that in the 2018
4 state fiscal year, DHSS failed to timely process 19,631 initial Medicaid applications.¹¹
5 Likewise, DHSS failed to timely process 33.6% of Medicaid applications in the 2014
6 state fiscal year, 62.2% in the 2015 state fiscal year, 57.4% in the 2016 state fiscal year,
7 and 48.6% in the 2017 state fiscal year.¹² No DHSS district office in Alaska is timely
8 processing more than 66% of Medicaid applications.¹³ DHSS's systemic and unlawful
9 delays – from processing Medicaid applications to providing Medicaid benefits – have
10 deprived and continue to deprive thousands of vulnerable Alaskans of healthcare
11 coverage while their applications languish.
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17 ¹⁰ Elizabeth Ellis, State Wrestles with Sizeable Backlog of Medicaid Applications,
18 Alaska Journal of Commerce, February 6, 2019, available at:
19 [http://www.alaskajournal.com/2019-02-06/state-wrestles-sizeable-backlog-medicaid-](http://www.alaskajournal.com/2019-02-06/state-wrestles-sizeable-backlog-medicaid-applications#.XGoOmehKiUk)
20 [applications#.XGoOmehKiUk](http://www.alaskajournal.com/2019-02-06/state-wrestles-sizeable-backlog-medicaid-applications#.XGoOmehKiUk) (last visited March 30, 2019).

21 ¹¹ Alaska Department of Health & Social Services – Division of Public Assistance,
22 Application Timeliness by District Office, SFY18 YTD through June 2018, prepared July 5, 2018,
23 available at: http://dpaweb.hss.state.ak.us/files/reports/AppTimeliness_History.pdf (last visited
24 March 30, 2019), at page 3.

25 ¹² Alaska Department of Health & Social Services – Division of Public Assistance,
26 Internal Performance Measures: Year-to-Date Performance, prepared January 23, 2019, available
27 at: http://dpaweb.hss.state.ak.us/files/reports/DPA_All_Measures_YTD.pdf (last visited March
28 30, 2019), at page 2.

¹³ Alaska Department of Health & Social Services – Division of Public Assistance,
Application Timeliness by District Office, SFY19 YTD through January 2019, prepared
February 4, 2019, available at: <http://dpaweb.hss.state.ak.us/files/reports/AppTimeliness.pdf>
(last visited March 30, 2019), at page 3.

1 The named plaintiff, Jennifer Spencer, applied for Medicaid through the Health
2 Insurance Marketplace on healthcare.gov on December 21, 2018.¹⁴ Her application was
3 **not** based on disability.¹⁵ On the same date, the Health Insurance Marketplace website
4 informed Ms. Spencer that she was eligible for Medicaid or the Children’s Health
5 Insurance Program because her income was sufficiently low.¹⁶ The Health Insurance
6 Marketplace website further informed Ms. Spencer that she would receive additional
7 information about how to access her benefits from the Alaska Division of Public
8 Assistance.¹⁷ As of March 5, 2019, Ms. Spencer had not begun receiving Medicaid
9 benefits.¹⁸ Nor had Ms. Spencer received any notice from the defendants stating the date
10 on which her coverage would begin.¹⁹

14 **III. ARGUMENT AND AUTHORITIES**

15 **A. Standards Governing Class Certification**

16 The class action device is a procedural mechanism designed to conserve the
17 resources of both the courts and litigants by permitting an issue potentially affecting
18 numerous individuals to be litigated and resolved in an economical fashion. “Class action
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22 ¹⁴ See *Affidavit of Jennifer Spencer in Support of Motion for Class Certification*,
filed and served herewith, at ¶2.

23 ¹⁵ See *id.* at ¶3.

24 ¹⁶ See *id.* at ¶4.

25 ¹⁷ See *id.* at ¶5.

26 ¹⁸ See *id.* at ¶6.

27 ¹⁹ See *id.* at ¶7.

1 suits, in which the result for one becomes the result for many in the same legal
2 predicament, are necessary to avoid a multiplicity of duplicative lawsuits.”²⁰ As the
3 leading treatise on class actions explains:
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5 If hundreds . . . of injuries have resulted, justice to victims may be delayed
6 or denied if courts cling to the concept that each case must be subjected
7 independently to discovery, trial, and appeal. The interests of justice are
8 not furthered by the needless, time-consuming repetition of evidence and
9 repeated litigation of issues in individual trials on a one-by-one basis which
10 are common to the claims of all affected.²¹

11 In order for a lawsuit to be maintained as a class action, the class representative
12 must first satisfy the four threshold requirements of Rule 23(a): numerosity, commonality,
13 typicality, and adequacy of representation.²² In addition to these prerequisites, a class
14 action must serve certain policy interests.²³ Under Rule 23(b), a class action may only be
15 certified if (1) it alleviates the risk of inconsistent or varying adjudications with respect
16 to individual members of the class which would establish incompatible standards of
17 conduct for the party opposing the class or would, as a practical matter, be dispositive of
18 or substantially impair the interests of the non-party class members; (2) the party opposing
19 the class has acted or refuses to act on grounds generally applicable to the class, thereby
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23 ²⁰ *State v. Carlson*, 65 P.3d 851, 872 (Alaska 2003).

24 ²¹ Herbert Newberg & Alba Conte, *NEWBERG ON CLASS ACTIONS* § 17.01 (3d ed.
25 1992).

26 ²² Fed. R. Civ. P. 23(a).

27 ²³ *See, e.g., International Seafoods of Alaska, Inc. v. Bissonette*, 146 P.3d 561, 567
28 (Alaska 2006).

1 making appropriate final injunctive relief or corresponding declaratory relief with respect
2 to the class as a whole; or (3) common legal or factual questions predominate, making a
3 class action a superior method for the fair and efficient adjudication of the controversy.²⁴
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5 Alaska's state courts have routinely certified classes of public benefit applicants
6 and recipients who sought to challenge the State's policies or practices concerning the
7 administration of benefits. This has included challenges to Interim Assistance denials,²⁵
8 the recoupment of foster care maintenance payments,²⁶ and multiple Medicaid issues.²⁷
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10 Federal courts also routinely certify classes of public benefit recipients and
11 applicants.²⁸ This includes certifications in very similar statewide cases concerning delays
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14 ²⁴ Fed. R. Civ. P. 23(b).

15 ²⁵ *State, Dep't of Health & Soc. Servs. v. Okuley*, 214 P.3d 247, 250 (Alaska 2009)
16 (lower court certified two different classes of people challenging denials of Interim Assistance
benefits by the State of Alaska).

17 ²⁶ *Heitz v. State*, 215 P.3d 302, 304 (Alaska 2009) (lower court certified a class of
18 foster parents challenging the recoupment of foster care payments by the State of Alaska).

19 ²⁷ *Krone v. State*, 222 P.3d 250 (Alaska 2009) (class of Medicaid recipients was
certified in lower court decision); *Baker v. State* 191 P.3d 1005 (Alaska 2008) (same).

20 ²⁸ *See e.g., Robidoux v. Celani*, 987 F.2d 931, 933, 937 (2d Cir. 1993) (concluding
21 district court should have certified class of persons in Vermont who suffered delays concerning
22 applications for food stamps and public assistance); *Banks v. Trainor*, 525 F.2d 837 (3d Cir.
1975) (certifying class of Food Stamp recipients); *Like v. Carter*, 448 F.2d 798, 802 (8th Cir.
1971) (holding district court abused discretion in refusing to certify class of public assistance
23 applicants); *Briggs v. Bremby*, Case No. 3:12cv324(VLB), 2013 U.S. Dist. LEXIS 67571 (D.
24 Conn. May 13, 2013) (certifying class of Connecticut residents whose Food Stamp applications
25 were not timely processed); *Van Febus v. Gallant*, 866 F. Supp. 45, 46 (D. Mass. 1994)
(certifying class of benefit recipients, including food stamp recipients, sent a certain unlawful
notice); *Estey v. Comm'r, Maine Dept. of Human Servs.*, 814 F. Supp. 152, 154 (D. Me. 1993)
26 (noting court had certified class of Food Stamp applicants), reversed on other grounds, *Estey v.*
27 *Comm'r, Me. Dep't of Human Servs.*, 21 F.3d 1198 (1st Cir. 1994); *Robertson v. Jackson*, 766
28 F. Supp. 470 (E.D. Va. 1991) (noting court had certified class of eligible Food Stamp applicants
to address the timely operation of the Food Stamp program in Virginia); *aff'd* 972 F.2d 529 (4th

1 in Medicaid eligibility determinations and delays in the provision of Medicaid coverage.²⁹

2 **B. The Proposed Class Meets the Threshold Certification**
3 **Requirements of Rule 23(a).**

4 **1. Numerosity**

5 The numerosity requirement under Rule 23(a)(1) is satisfied when “the class is so
6 numerous that joinder of all of its members is impracticable.”³⁰ While there is “no magic
7 number” that satisfies numerosity, it is “generally accepted that ‘the numerosity factor is
8 satisfied if the class comprises 40 or more members and . . . not satisfied when the class
9 comprises 21 or fewer.’”³¹ Even if the exact size of the class is unknown, the numerosity
10 requirement is satisfied if “general knowledge and common sense indicate that it is
11 large.”³²

12 This case *easily* satisfies the numerosity requirement. The State’s own data shows
13 that there are *thousands* of individuals in the proposed class who did not receive Medicaid
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19 Cir. 1992); *Ortiz v. Eichler*, 616 F. Supp. 1046 (D. Del. 1985), *aff’d* 794 F.2d 889 (3d Cir. 1986)
20 (certifying class of applicants and recipients of Food Stamp, Medicaid, and cash public
assistance).

21 ²⁹ *Wilson v. Gordon*, Case No. 3-14-1492, 2014 U.S. Dist. Lexis 122004 (M.D.
22 Tenn. Sept 2, 2014); *see also Koss v. Norwood*, 305 F. Supp. 3d 897, 917 (N.D. Ill. 2018).

23 ³⁰ Fed. R. Civ. P. 23(a)(1).

24 ³¹ *Richey v. Matanuska-Susitna Borough*, Case No. 3:14-cv-00170-JWS, 2015 U.S.
25 Dist. LEXIS 45166, at *10 (D. Alaska April 7, 2015) (quoting *Californians for Disability Rights,*
Inc. v. California Dep’t of Transp., 249 F.R.D. 334, 346 (N.D. Cal. 2008)); *see also Int’l Seafoods,*
26 *146 P.3d at 567* (citing *Cox v. Am. Case Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986)).

27 ³² *Allen v. Similasan Corp.*, 306 F.R.D. 635, 644 (S.D. Cal. 2015); *see also Consol.*
Rail Corp. v. Town of Hyde Park, 47 F.3d 473 (2d Cir. 1995) (“Courts have not required evidence
28 of exact class size or identity of class members to satisfy the numerosity requirement.”).

benefits from the defendants within the timeframes required by state and federal law.³³ It can hardly be questioned that the joinder of all such individuals would be highly impracticable, if not literally impossible: “When class size reaches substantial proportions . . . the impracticability requirement is usually satisfied by the numbers alone.”³⁴

Beyond scale, the aggrieved class is also geographically dispersed throughout Alaska, which also makes joinder impracticable.³⁵ DHSS’s data shows that its processing failures pervade every DPA district office in the state.³⁶ In fact, no single DPA district office in Alaska – from Bethel to Kenai, and from Mat-Su to Nome – is timely processing greater than 66% of initial Medicaid applications.³⁷ Many branches are failing to timely process more than half of the initial applications received.³⁸

Beyond scale and geography, class members also face difficulties in accessing the

³³ See *supra* nn. 10-13.

³⁴ *Richey*, 2015 U.S. Dist. LEXIS 45166, at *10 (quoting *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1079 (6th Cir. 1996)).

³⁵ See, e.g., *Alaska v. Suburban Propane Gas Corp.*, Case No. A93-291 (JWS), 1995 U.S. Dist. LEXIS 18991, at * 15 (D. Alaska Jan. 12, 1995) (noting that the “geographical location of the class members” is relevant to the question of numerosity); see also *Int’l Seafoods*, 146 P.3d at 567.

³⁶ Alaska Department of Health & Social Services – Division of Public Assistance, Application Timeliness by District Office, SFY19 YTD through January 2019, prepared February 4, 2019. available at: <http://dpaweb.hss.state.ak.us/files/reports/AppTimeliness.pdf> (last visited March 30, 2019), at page 3.

³⁷ See *id.*

³⁸ See *id.*

1 legal system, which courts have held makes joinder impracticable.³⁹ Here, by virtue of
2 applying for Medicaid, class members will necessarily include “families with dependent
3 children and of aged, blind, or disabled individuals, whose income and resources are
4 insufficient to meet the costs of necessary medical services.”⁴⁰ Such individuals are
5 highly unlikely to bring individual lawsuits against the defendants, who are backed by the
6 resources of the State of Alaska.
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9 **2. Commonality**

10 Rule 23(a)(2) requires that there be “questions of law or fact common to the
11 class.”⁴¹ The commonality requirement is satisfied if the claims at issue in the lawsuit
12 depend on a “common contention . . . of such a nature that it is capable of classwide
13 resolution — which means that determination of its truth or falsity will resolve an issue
14 that is central to the validity of each one of the claims in one stroke.”⁴² “What matters to
15 class certification . . . is not the raising of common ‘questions’ — even in droves — but,
16 rather the capacity of a classwide proceeding to generate common answers apt to drive
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22 ³⁹ *See Robidoux*, 987 F.2d at 936 (recognizing the difficulty posed by pursuing a
23 lawsuit and retaining counsel for low income individuals); *McDonald v. Heckler*, 612 F. Supp.
24 293, 300 (D. Mass. 1985) (court held it was impracticable for low-income persons with
25 disabilities to bring individual lawsuits).

26 ⁴⁰ *See* 42 U.S.C. § 1396-1.

27 ⁴¹ Fed. R. Civ. P. 23(a)(2).

28 ⁴² *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011).

1 the resolution of the litigation.”⁴³

2 Of course, the claims of each individual need not be perfectly identical,⁴⁴ and
3 factual disparities between class members do not defeat commonality.⁴⁵ To the contrary,
4 commonality “is assumed where the plaintiff seeks declaratory relief as opposed to
5 individual relief.”⁴⁶ Commonality is also inherent in any lawsuit, such as the present one,
6 challenging the systemic violations of the law by a public agency.⁴⁷
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9 Here, common factual and legal questions abound, which can be resolved by this
10 Court “in one stroke.” These include whether the defendants are failing to process
11 Medicaid applications within applicable time limits, whether the defendants are providing
12 Medicaid coverage to eligible applicants with “reasonable promptness” after receiving
13 their complete applications, and whether the defendants have adequate policies and
14 procedures in place to ensure that Medicaid benefits are timely provided to eligible
15 applicants. All members of the proposed class have applied, or will apply, for Medicaid
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20 ⁴³ *Id.* (citation omitted).

21 ⁴⁴ *Johnson v. Nextel Communications*, 780 F.3d 128, 137–38 (2d Cir. 2015).

22 ⁴⁵ *Reynolds v. Giuliani*, 118 F. Supp. 2d 353, 389–90 (S.D.N.Y. 2000).

23 ⁴⁶ *Cortigiano v. Oceanview Manor Home for Adults*, 227 F.R.D. 194, 205 (2005).

24 ⁴⁷ *See, e.g., Califano v. Yamaski*, 442 U.S. 682, 701 (1979) (involving challenge to
25 method of distribution for Social Security Disability benefits); *Marcus v. Heckler*, 620 F. Supp.
26 1218, 1223 (N.D. Ill. 1985) (involving challenge to evaluation process for federal SSI program);
27 *Hodecker v. Blum*, 525 F. Supp. 867, 870 (N.D.N.Y. 1981) (challenging computation method for
28 Medicaid assistance); *Massachusetts Ass’n of Older Americans v. Spirito*, 92 F.R.D. 129, 131 (D.
Mass. 1981) (challenging delays in processing Medicaid applications and automatic termination
of Medicaid benefits).

benefits in Alaska. All class members have been or will be subject to the same delays in application processing and the provision of benefits. Finally, the harms suffered by the class members will also be the same, including the delay in receiving necessary healthcare coverage. All of these issues arise from the very same course of factual events: the defendants' failures to timely process Medicaid applications and provide benefits. This Court should therefore conclude that the commonality requirement is met.

3. Typicality

The typicality requirement under Rule 23(a)(3) is satisfied when “the claims or defenses of the representative parties are typical of the claims or defenses of the class.”⁴⁸ “The test of typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same course of conduct.”⁴⁹ The standard for typicality is “permissive” and the requirement is met if the plaintiff’s claims are “reasonably co-extensive with those of absent class members; they need not be substantially identical.”⁵⁰ In short, typicality is satisfied if the named plaintiff’s claim “stems from the same event, practice, or course of conduct that forms the basis of the

⁴⁸ Fed. R. Civ. P. 23(a)(3).

⁴⁹ *Wolin v. Jaguar Land Rover North Am., LLC*, 617 F.3d 1168, 1175 (9th Cir. 2010) (quoting *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992)).

⁵⁰ *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998).

1 class claims and is based upon the same legal or remedial theory.”⁵¹

2 The typicality requirement ensures that the “maintenance of a class action is so
3 economical and [that] the named plaintiff’s claims and the class claims are so interrelated
4 that the interests of the class members will be fairly and adequately protected in their
5 absence.”⁵² However, as with commonality, typicality does not require the representative
6 party’s claims to be identical to those of all class members, especially in actions
7 challenging governmental practices.⁵³

10 Here, the named plaintiff, Ms. Spencer, applied for Medicaid, and was even
11 determined to be financially eligible, yet the defendants failed to provide her with
12 Medicaid coverage with reasonable promptness.⁵⁴ Ms. Spencer’s claims and injuries are
13 the same as those of the proposed class members. Furthermore, those claims and injuries
14 stem from the same common source, i.e., the defendants’ admitted backlog of Medicaid
15 applications. Both Ms. Spencer and the class members have suffered the same illegal
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21 ⁵¹ *Jordan v. County of Los Angeles*, 669 F.2d 1311, 1321 (9th Cir. 1982).

22 ⁵² *Marisol A. v. Giuliani*, 126 F.3d 372, 376 (2d Cir. 1997) (citation omitted).

23 ⁵³ James Wm. Moore et al., *Moore’s Federal Practice*, §23.23[8][g] (3d ed. 1997)
24 (“If all class members are subject to the same governmental practice, minor factual differences
25 between the claims of the class representative and the other class members do not defeat
26 typicality.”) (citations omitted); *see also Robidoux*, 987 F.2d at 937; *Cortigiano*, 227 F.R.D. at
206 (“[S]light variations in how defendants treated different plaintiffs . . . [do] not render the
claims atypical”).

27 ⁵⁴ *See Affidavit of Jennifer Spencer in Support of Motion for Class Certification* at
28 ¶¶ 2-7.

1 delays when seeking essential healthcare benefits. As such, the typicality requirement is
2 satisfied.

3 4 **4. Adequacy of Representation**

5 Finally, Rule 23(a)(4) requires that “the representative parties will fairly and
6 adequately protect the interests of the class.”⁵⁵ “For representation to be adequate, the
7 plaintiff's attorney must be qualified, and there must be no conflict of interest between
8 the named plaintiff and the other members of the class.”⁵⁶ The defendants have the burden
9 to demonstrate that the representation is inadequate.⁵⁷

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11 Here, there are no conflicts of interest between Ms. Spencer and the putative class
12 members as to the desired outcome, the proof necessary to succeed on the merits, or the
13 relief sought. Ms. Spencer has suffered from the same harms as the class members. In
14 turn, Ms. Spencer and the class members all collectively seek the same declaratory and
15 injunctive relief: for the defendants to remedy their ongoing failures to comply with the
16 law as to the processing of Medicaid applications and providing benefits with reasonable
17 promptness. Such a remedy would ensure that the defendants uniformly cure harms as to
18 the class as a whole.⁵⁸

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24 ⁵⁵ Fed. R. Civ. P. 23(a)(4).

25 ⁵⁶ *Marisol A.*, 126 F.3d at 378.

26 ⁵⁷ *See Johns v. Rozet*, 141 F.R.D. 211, 217 (D.D.C. 1992).

27 ⁵⁸ *Cf. State v. Alex*, 646 P.2d 203, 214-15 (Alaska 1982) (holding that there are no
28 inherent conflicts among class members in a suit challenging the constitutionality of a statute).

1 The class is also represented by qualified attorneys – Goriune Dudukgian and
2 James J. Davis, Jr. of the Northern Justice Project, LLC – who are highly experienced and
3 have a stellar track record in class action litigation, including several prior class actions
4 involving the Alaska Medicaid program.⁵⁹ Pursuant to Federal Rule of Civil Procedure
5 23(g), this Court should appoint Mr. Dudukgian and Mr. Davis as class counsel.
6

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8 **C. The Proposed Class Meets the Further Requirements of Rule
9 23(b)(2).**

10 In addition to meeting the prerequisites for class certification under Rule 23(a), the
11 proposed class must also meet the requirements for one of the three possible types of class
12 actions set forth in Rule 23(b). Here, the class meets the requirements of Rule 23(b)(2)
13 because the defendants have “acted or refused to act on grounds generally applicable to
14 the class, thereby making appropriate final injunctive relief or corresponding declaratory
15 relief with respect to the class as a whole.” Indeed, Rule 23(b)(2) class actions are
16 especially appropriate where, as here, a plaintiff class seeks declaratory and injunctive
17 relief from unlawful policies and practices in the administration of a government benefit
18 programs.⁶⁰
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23 ⁵⁹ See generally *Declaration of Goriune Dudukgian in Support of Motion for Class
24 Certification*, filed and served herewith.

25 ⁶⁰ See, e.g., *Ortiz v. Eichler*, 616 F. Supp. 1046, 1058-59 (D. Del. 1985) (challenge
26 to state practices in government benefit programs satisfied 23(b)(2)); *Tugg v. Towney*, 864 F.
27 Supp. 1201, 1204 (S.D. Fla. 1994) (failure to provide mental health counseling services to deaf
28 clients by therapists fluent in sign language); see generally 7A Wright, Miller & Kane, Fed. Prac.
& Proc. Civil 2d. § 1775 at 484-492 (1986 and Supp. 2003)(“Rule 23(b)(2) has been used
extensively to challenge the enforcement and application of complex statutory schemes, such as
suits questioning the method of distributing benefits under the Social Security Act, actions on

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3 **IV. CONCLUSION**

4 For the foregoing reasons, this Court should now certify the proposed class and
5 should appoint Goriune Dudukgian and James J. Davis, Jr. of the Northern Justice Project,
6 LLC as class counsel.

7
8 DATED this 31st day of March, 2019.

9 NORTHERN JUSTICE PROJECT, LLC
10 Attorneys for Plaintiff

11 By: /s/ Goriune Dudukgian
12 Goriune Dudukgian, ABA No. 0506051
13 James J. Davis, Jr., ABA No. 9412140
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16 **CERTIFICATE OF SERVICE**

17 I certify that on March 31, 2019
18 I served the foregoing document
electronically via the ECF system on:

19 Alexander J. Hildebrand

20 By: /s/ Goriune Dudukgian
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27 behalf of person seeking benefits under the Food Stamp Program, and suits testing the eligibility
28 criteria for persons receiving Aid to Families with Dependent Children.”).

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