

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

Civil Case No.: 5:17-cv-00581-FL

ALICIA FRANKLIN and REINA)
GUZMAN, on behalf of herself and minor)
child E.L., on behalf of themselves and all)
others similarly situated,)

Plaintiffs,)

v.)

KODY KINSLEY, in his official capacity as)
Secretary of the North Carolina Department)
of Health and Human Services,)

Defendant.)
_____)

**PLAINTIFFS' SECOND MOTION TO
ENFORCE SETTLEMENT
AGREEMENT**

NOW COME the named Plaintiffs, on behalf of themselves and all others similarly situated ("Plaintiffs"), by and through undersigned counsel, pursuant to Section V.C of the Settlement Agreement in this matter, and move the Court for an Order to enforce the Settlement Agreement. The reasons for this motion are set forth more fully in the Memorandum of Law and evidence filed herewith and incorporated herein but include the following:

1. Defendant is and has been in substantial noncompliance with Sections III.A, III.B, III.D, III.E, III.G, III.I, III.J, III.M, III.N, and III.P of the Settlement Agreement.
2. Plaintiffs have repeatedly presented evidence of substantial noncompliance and requested corrective action.
3. Defendant's response to same has been insufficient, both in failure to take adequate action to prevent continued noncompliance by county Departments of Social Services (DSSs) on most issues and in refusing to reinstate coverage for class members whose Medicaid was improperly terminated or reduced.

4. The violations establishing substantial noncompliance with the Settlement Agreement are listed below:

- a. Termination or reduction of Medicaid where Medicaid should have been renewed *ex parte* based on information available to Defendant, in substantial noncompliance with Sections III.E and III.I of the Settlement Agreement;
- b. Termination or reduction of Medicaid without considering eligibility under all Medicaid categories, in substantial noncompliance with Sections III.A, III. E, and III.I of the Settlement Agreement;
- c. Termination or reduction of Medicaid without first contacting the beneficiary, in substantial noncompliance with Sections III.E and III.I of the Settlement Agreement;
- d. Termination of Medicaid for failure to provide information where insufficient time was allowed for the beneficiary to return the information, in substantial noncompliance with Sections III.E and III.I of the Settlement Agreement;
- e. Termination of Medicaid for failure to provide information or take action where DSSs required from the beneficiary documents, information, or actions not needed to renew Medicaid eligibility, in substantial noncompliance with Sections III.E and III.I of the Settlement Agreement;
- f. Termination or reduction of Medicaid for beneficiaries who are not provided reasonable telephone access to DSSs, in substantial noncompliance with Section III.G of the Settlement Agreement;
- g. Termination or reduction of Medicaid for beneficiaries who are not provided sufficient online access to DSSs, in substantial noncompliance with Section III.J of the Settlement Agreement;
- h. Termination or reduction of Medicaid for beneficiaries who have limited English proficiency and who received communications in English without taglines or who could not communicate in their language with the DSSs, in

substantial noncompliance with Section III.E of the Settlement Agreement;

- i. Termination or reduction of Medicaid for beneficiaries who have authorized representatives who are not copied on important communications from the Medicaid agency, in substantial noncompliance with Sections III.B, III. D, III.E, III.I, and III.P of the Settlement Agreement;
- j. Termination or reduction of Medicaid beneficiaries who were denied the required amount of time to file an appeal of the adverse action, in substantial noncompliance with Sections III.D and III.I of the Settlement Agreement; and
- k. Termination or reduction of Medicaid by workers at DSSs who had not been trained on the requirements of the Settlement Agreement, in substantial noncompliance with Section III.M of the Settlement Agreement.

WHEREFORE, Plaintiffs move the Court to:

- A. Order Defendant and his successors, agents, officers, servants, employees, attorneys and representatives, and all persons acting in concert or participating with him, to take all necessary steps to bring the state Medicaid agency and its agents, county DSSs, into substantial compliance with the Settlement Agreement.
- B. Order Defendant to identify and then reinstate Medicaid for all class members whose benefits were reduced or terminated in noncompliance with the Settlement Agreement as specified in paragraph 4, above, and to maintain that coverage until a redetermination, as required by Section III of the Settlement Agreement, has occurred.
- C. Require Defendant to provide regular reports to class counsel and the Court on the actions taken in response to the Court's order, that (1) show the number of class members reinstated to Medicaid whose Medicaid was terminated or reduced, by month and county, and (2) provide random samples, from each county, of DSS/NCFAS files for beneficiaries whose Medicaid was terminated or reduced whom Defendant or its agents have determined need not be reinstated to Medicaid

coverage.

D. Schedule for as soon as practicable a hearing on this motion.

Dated: February 22, 2024.

Respectfully submitted,

ATTORNEYS FOR PLAINTIFFS

/s/ Douglas S. Sea

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CERTIFICATE OF SERVICE

I certify that on this day, I served a true copy of the Plaintiffs' Second Motion for Enforcement upon the Defendant's attorneys via electronic means through the CM/ECF system to:

Tom Campbell
Special Deputy Attorney General
N.C. Department of Justice

Rajeev K. Premakumar
Associate General Counsel
N.C. Department of Health and Human Services

Katherine McCraw
Special Deputy Attorney General
N.C. Department of Justice

This the 23rd day of February, 2024.

/s/ Douglas Stuart Sea