IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

ERIN BULL, et al., Plaintiffs, v. CLARENCE H. CARTER, in his official capacity as Commissioner of the Tennessee Department of Human Services, Defendant.	Civil Action No. 3:25-cv-00041 Class Action Chief Judge Campbell Magistrate Frensley

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

Plaintiffs move the Court pursuant to Rule 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure for certification of their claims in this matter on behalf of the following classes.

An **Application Delay Class**, consisting of:

> All Tennessee residents who since December 10, 2023 have applied, are applying, or will apply for SNAP benefits through an initial or recertification application and who have not or will not receive an eligibility determination from DHS within the legally required timeframes. This definition specifically excludes those whose applications are voluntarily withdrawn before the processing deadline.

Plaintiffs Tamika Davis and Candace Pegues will represent the Application Delay Class.

An **Appeal Delay Class**, consisting of:

> All Tennessee residents who since November 10, 2023 have filed an appeal, are filing an appeal, or will file an appeal for SNAP benefits through DHS's administrative process and have not or will not receive an eligibility determination within the legally required timeframes. This definition specifically excludes those who voluntarily withdrew an appeal within 60 days of filing an appeal, or who successfully sought a continuance of a fair hearing scheduled within 60 days of the filing of an appeal.

Plaintiffs Erin Bull, Kathryn Colbert, Missaes Desjardins, Emily Gugliemelli, Trista Hubbard, Rez'hana Maddox, Sheray Ominyi, and Brandi Tapia will represent the Appeal Delay Class.

A **Restoration of Lost Benefits Class**, consisting of:

> All Tennessee residents who since January 10, 2024, and within one year of an action by DHS adversely affecting their SNAP benefits, requested or will request restoration of SNAP benefits from DHS but were or will be denied a hearing because the request for restoration was or will be made more than 90 days after their loss of benefits.

Plaintiff Candice Jacques will represent the Restoration of Lost Benefits Class.

This Motion is based on the accompanying Memorandum in Support, accompanying declarations and exhibits to this Motion and the contemporaneously filed Preliminary Injunction Motion, the verified allegations in the Complaint, and other evidence that may be presented to the Court prior to its ruling on this motion.

The Declarations of E. Desmond Hogan (Hogan Lovells US LLP) (**Exhibit 1**), Whitney Cloud (DLA Piper US LLP) (**Exhibit 2**), Brant Harrell (Tennessee Justice Center) (**Exhibit 3**), and Gordon Bonnyman (Tennessee Justice Center) (**ECF No. 23-2**) are attached to this filing.

Plaintiffs move the Court to:

(1) Certify each of the above-referenced classes; and

(2) Issue any other relief that the Court deems just and proper.

Defendant has indicated through counsel that he opposes this motion.

January 24, 2025

Respectfully submitted,

/s Brant Harrell

Brant Harrell

TENNESSEE JUSTICE CENTER
Michele Johnson, TN BPR 16756
Gordon Bonnyman, Jr. TN BPR 2419
Brant Harrell, TN BPR 24470
TENNESSEE JUSTICE CENTER

HOGAN LOVELLS (US)
E. Desmond Hogan,* DC Bar 458044
Jennifer Fleury,* DC Bar 187503
Melissa Giangrande Jacobs,* DC Bar 1735486
Fleming Farrell,* DC Bar 90004877

155 Lafayette Street
Nashville, TN 37210
Phone: (615) 255-0331
Fax: (615) 255-0354
mjohnson@tnjustice.org
gbonnyman@tnjustice.org
bharrell@tnjustice.org

DLA PIPER (US)
Whitney C. Cloud,* PA Bar 331157
One Liberty Place
1650 Market Street, Suite 5000
Philadelphia, PA 19103
Phone: (215) 656-3300
whitney.cloud@us.dlapiper.com

Connor Rowinski,* NY Bar 6044036
1251 Avenue of the Americas, 27th Floor
New York, NY 10020-1104
Phone: (212) 335-4500
connor.rowinski@us.dlapiper.com

Allexanderia V. Bingham,* CA Bar 292672
2000 Avenue of the Stars
Suite 400, North Tower
Los Angeles, CA 90067-4735
Phone: (310) 595-3000
allexanderia.bingham@us.dlapiper.com

Katherine Valde,* DC Bar 90007448
Soojin Jeong,* DC Bar 90021021
HOGAN LOVELLS US LLP
555 Thirteenth Street, NW
Washington, DC 20004
Phone: (202) 637-5600
Fax: (202) 637-5910
desmond.hogan@hoganlovells.com
jennifer.fleury@hoganlovells.com
melissa.giangrande@hoganlovells.com
fleming.farrell@hoganlovells.com
katherine.valde@hoganlovells.com
soojin.jeong@hoganlovells.com

MAZON
Sarah Pratter,* CA Bar 318130
MAZON, INC.
15303 Ventura Blvd, Ste 1100
Sherman Oaks, CA 91403-6621
Phone: (310) 442-0020
Fax: (310) 442-0030
spratter@mazon.org

*Admitted *pro hac vice*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served via the Court's electronic filing system on this 24th day of January, 2025 on the following counsel of record for the Defendant:

Miranda H. Jones, Senior Assistant Attorney General
Ryan Henry, Assistant Attorney General
Matthew Dowty, Senior Assistant Attorney General
Office of the Tennessee Attorney General
P.O. Box 20207
Nashville, TN 37202-0207

/s Brant Harrell

Brant Harrell

EXHIBIT 1

DECLARATION OF E. DESMOND HOGAN

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

ERIN BULL, et al., Plaintiffs, v. CLARENCE H. CARTER, in his official capacity as Commissioner of the Tennessee Department of Human Services, Defendant.	Civil Action 3:25-cv-00041 Class Action Chief Judge Campbell Magistrate Frensley

DECLARATION OF E. DESMOND HOGAN IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

E. DESMOND HOGAN declares as follows:

1. I am a partner at Hogan Lovells US LLP ("Hogan Lovells" or the "Firm"), and a motion to admit me pro hac vice motion to allow me to appear in this Court to represent the Plaintiff Classes in the above-captioned case has been filed.
2. Hogan Lovells is one of the largest law firms in the world, with more than 2,500 attorneys practicing law in more than 40 offices worldwide. In 1970, Hogan Lovells (then Hogan & Hartson) was the first law firm to establish a freestanding pro bono practice. Over the past 50 years, Hogan Lovells has devoted more than 2 million pro bono hours to those in need. During the course of my career, I spent more than two years in the pro bono practice and have litigated and supervised dozens of pro bono cases.
3. I am the Head of Hogan Lovells' global Litigation, Arbitration, and Employment practice, leading approximately 800 lawyers across the world. I have been practicing law for more

than 28 years, with a focus for the past two decades plus on representing clients in complex civil litigation and class action matters. I received my J.D. from Howard University School of Law, *summa cum laude*, and my B.A. from Allegheny College.

4. I have extensive litigation experience in class actions and multidistrict litigation. For example, I have served as lead counsel or co-lead counsel in scores of class actions. These include the dozens of class actions comprising the following Multi-District Litigations: *In re Multiplan Health Insurance Provider Litigation* (MDL-3121); *In re Uber Technologies, Inc., Data Security Breach Litigation* (MDL-2826); *In re Anthem, Inc. Data Breach Litigation* (MDL-2617); *In Re Blue Cross Blue Shield Antitrust Litigation* (MDL-2406); and *In re Wellpoint, Inc*., *Out-Of-Network UCR Rates Litigation* (MDL-2074) No. 2:09-ml-02074 (C.D. Cal. 2016). In addition, I have served as lead Plaintiffs' counsel in numerous class actions and other pro bono matters, including for example *Moore v. Secretary of the Department of Homeland Security* (D.D.C., 00-cv-095) (settled in 2017 with payment of nearly $25,000,000 to class and comprehensive injunctive relief); *McCollum, et al. v. Roberson County, et al.* (E.D.N.C., 15-cv-451) (winning $75,000,000 trial verdict for two intellectually disabled, wrongfully convicted men who spent 31 years in prison, mostly on death row, for a crime they did not commit); and *Gartrell v. Ashcroft* (D.D.C. 01-cv-1895) (winning nationwide injunction to protect the religious freedom of class members).

5. Hogan Lovells has substantial experience litigating access to benefits cases and previously litigated a class action asserting claims very similar to those asserted in the current litigation. *See Shonice G. Garnett, et al. v. Laura Zeilinger*, No. 1:17-CV-01757-CRC

(D.D.C. 2018). As class counsel in *Zeilinger*, Hogan Lovells conducted an extensive investigation and engaged in thorough discovery and motions practice.

6. Hogan Lovells has committed the resources necessary to represent Plaintiffs in this litigation and will continue to work with other class counsel to competently investigate claims and issues as they arise in this case.

I declare, pursuant to 28 U.S.C. § 1746 and under the penalty of perjury, that the foregoing statements in this declaration are true and correct.

This the 20th day of January, 2025.

/s E. Desmond Hogan

E. Desmond Hogan

EXHIBIT 2

DECLARATION OF WHITNEY CLOUD

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

ERIN BULL, et al., Plaintiffs, v. CLARENCE H. CARTER, in his official capacity as Commissioner of the Tennessee Department of Human Services, Defendant.	Civil Action 3:25-cv-00041 Class Action Chief Judge Campbell Magistrate Frensley

DECLARATION OF WHITNEY CLOUD

I, Whitney Cloud, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am over the age of 18 years, am of sound mind, and am otherwise competent to make this declaration.

2. I am an attorney and partner at the law firm of DLA Piper US (LLP). DLA Piper represents the named plaintiffs in this matter.

3. I am a 2012 graduate of the University of Yale Law School, where I received my Juris Doctor degree. I was most recently admitted to the Pennsylvania Bar in 2022 after previously being admitted to other states. I was admitted to appear pro hac vice in this matter on January 15, 2025. ECF No. 20.

4. A substantial portion of my practice during the last five years has been devoted to the litigation of class action lawsuits. In addition to the above-captioned matter, I have acted as counsel in class actions and other mass litigation in federal and state courts across the United States, including: *In re Generic Pharmaceuticals Pricing Antitrust Litig.*, No. 2:16-md-02724-

CMR (E.D. Pa. 2016); *Abdelghany v. S. Cal. Edison Co.*, No. 30-2021-01195715-CU-MT-CXC (Cal. Sup. Ct. 2021); *In re Hotel TVPRA Litig.*, No. 2:22-cv-3845 (S.D. Ohio 2021); *A.W. v. Red Roof Inns, Inc., et al.*, 2:21-cv-4934 (S.D. Ohio 2021); and *Upsolve, Inc. v. Letitia James*, No. 1:22-cv-627-PAC (S.D.N.Y. 2022).

5. DLA Piper has substantial experience litigating access to benefits cases and previously litigated a class action asserting claims very similar to those asserted in the current litigation. *See Kamkoff v. Hedberg*, No. 3:23-cv-00044 (D. Ak.). As class counsel in *Kamkoff*, DLA Piper has assisted in substantially all aspects of the case including motions practice.

6. DLA Piper is a large global law firm that handles hundreds of class action cases annually. The firm features one of the premier class action practices in the United States, having handled class action lawsuits in virtually every U.S. jurisdiction. Well over 100 lawyers at the firm litigate class action cases, of virtually every variety.

7. DLA Piper began prosecuting this litigation on January 9, 2025. The firm has worked closely with a team of attorneys from the Tennessee Justice Center on all aspects of the case to date. I believe that our team possesses the appropriate and necessary expertise, experience, and commitment to continue to provide beneficial representation on behalf of the named plaintiffs and the unnamed plaintiff class members. DLA Piper is willing and able to devote the necessary resources to the representation of the plaintiff class and the various subclasses in this matter through the conclusion of this litigation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on January 20, 2025

/s Whitney Cloud

Whitney Cloud

EXHIBIT 3

DECLARATION OF BRANT HARRELL

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

BULL, et al., Plaintiffs, v. CLARENCE H. CARTER, in his official capacity as Commissioner of the Tennessee Department of Human Services, Defendant.	Civil Action 3:25-cv-00041 Class Action Chief Judge Campbell Magistrate Frensley

DECLARATION OF BRANT HARRELL
IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

I, Brant Harrell, pursuant to 28 U.S.C. § 1745, declare as follows:

1. This declaration is offered to support Plaintiffs' Motion for Class Certification. I am one of the attorneys who represent the named plaintiffs and who seek to represent the proposed classes in the above-captioned case.

2. I am a 2002 graduate of Vanderbilt University and a 2005 Juris Doctor graduate of the University of Texas School of Law. I have been licensed to practice in Tennessee since 2005. Before joining the Tennessee Justice Center in January 2022, I worked for over 16 years in the Consumer Protection Division of the Tennessee Attorney General's Office where I was primarily responsible for complex commercial litigation brought on behalf of the State as plaintiff under the Tennessee Consumer Protection Act. Before leaving in January 2022, I was a Senior Assistant Attorney General and served as lead litigation counsel on all opioid-related state enforcement actions, which included *State v. Purdue Pharma, L.P.*, 1-173-18 (Knox Cty. Cir. Ct.), *State v. Endo Health Solutions, Inc.*, 1-174-19 (Knox Cty. Cir. Ct), *State v. AmerisourceBergen Drug*

Corporation, 1-345-19 (Knox Cty. Cir. Ct), and *State v. Food City Supermarkets, LLC and K-VA-T Food Stores, Inc.*, 3-32-21 (Knox Cty Cir. Ct). I also served as co-counsel for the State in *State v. HRC Medical Centers, Inc*., 603 S.W.3d 1 (Tenn. Ct. App. 2018), which upheld a trial court award of permanent injunctive relief and $18,141,750 for consumer restitution. Aside from this, I have taught sessions on Motion Practice, Extraordinary Relief, and the Rules of Civil Procedure as part of the National Association of Attorneys General research and training arm known as NAGTRI and co-chaired the Class Action Fairness Act working group of State attorneys general, which oversaw and reviewed proposed class action settlements in federal court. I have also presented CLEs on Medicaid to legal services groups.

3. The Tennessee Justice Center (TJC) is a private, nonprofit tax-exempt Tennessee corporation which provides legal assistance in civil matters to indigent residents of Tennessee. TJC receives no state or federal funds and is funded primarily by charitable donations and foundation grants. Clients served by TJC are indigent and are therefore unable to pay any fees for the services rendered.

4. Since joining the Tennessee Justice Center in January 2022, I serve as the non-profit's Legal Director and help to oversee all of the Center's litigation.

5. I and my colleagues have extensive experience representing plaintiffs in complex cases involving public benefits. I served as lead counsel in *A.M.C. v. Smith*, 3:20-cv-240 (M.D. Tenn), a class action that was certified, which successfully brought claims under the Due Process Clause, Medicaid Act, and the Americans with Disabilities Act after a five day trial in November 2023. 2024 U.S. Dist. LEXIS 152563 (M.D. Tenn. Aug. 26, 2024).

6. Aside from this, I have also represented individuals in front of the Department of Human Services in administrative appeals related to SNAP benefits.

7. Other counsel from the Tennessee Justice Center are actively engaged in the representation of the named plaintiffs and will represent the proposed classes. They include Gordon Bonnyman, who has actively litigated complex class actions since being admitted to the bar of this Court in 1973. His class action experience has primarily involved health care, much of it focused on Medicaid. See, e.g., *Saville v. Treadway*, 404 F. Supp. 430 and 404 F. Supp. 433 (M.D. Tenn. 1974); *Newsom v. Vanderbilt University*, 453 F. Supp. 403 (M.D. Tenn. 1978), 653 F.2d 1100 (6th Cir. 1981); *Doe v. HCA Health Services of Tennessee, Inc., d/b/a HCA Donelson Hospital*, 46 S.W. 3d 191 (Tenn. 2001); *Jennings v. Alexander*, 517 F. Supp. 87 (M.D. Tenn. 1982), 715 F. 2d 1036, aff'd sub. nom. *Alexander v. Choate*, 469 U.S. 287; (1985); *Gibson v. Puett*, 630 F. Supp. 542 (M.D. Tenn. 1985); *Mrs. X b/n/f Anthony v. Commissioner*, No. 3-88-0516 (M.D. Tenn. 1988); *Doe v. Word,* No. 3-84-1260 (M.D. Tenn. 1987); *Clay County Manor, Inc. v. Tennessee*, 849 S.W.2d 755 (Tenn. 1993); *Linton v. Commissioner*, 779 F. Supp. 925 (M.D. Tenn. 1990), 65 F3d 508 (6th Cir. 1995), cert. den. sub. nom. *St. Peter Villa v. Linton*, 517 U.S 1155 (1996); *Brewster v. White*, 3-91-1066 (M.D. Tenn. 2005.); *Tenn. Assoc. of Health Maintenance Organizations, Inc. v. Grier*, 262 F.3d 559 (6th Cir. 2001); *Rosen v. Tenn. Comm'r of Fin. & Admin.*, 204 F. Supp. 2d 1061 (M.D. Tenn. 2001), 288 F.3d 918 (6th Cir. 2002); 204 F. Supp. 2d 1061 (M.D. Tenn. 2001), 280 F. Supp. 2d 743 (2002), 410 F.3d 919 (6th Cir. 2005); *John B. v. Menke*, 176 F. Supp. 2d 786 (M.D. Tenn. 2001), 626 F.3d 356 (6th Cir. Tenn., 2010), 852 F. Supp. 2d 944 (M.D. Tenn. 2012), 852 F. Supp. 2d 957 (M.D. Tenn. 2012), 710 F.3d 394 (6th Cir. 2013); *Wilson v. Gordon*, 822 F.3d 934 (6th Cir. 2016); *A.M.C. v. Smith,* No. 3:20-cv-00240 (M.D. Tenn., pending). His other class action experience includes, e.g., *Grubbs v. Bradley*, 552 F. Supp 1052 (M.D. Tenn. 1982), 870 F.2d 343 (6th Cir. 1989), 821 F. Supp. 496 (M.D. Tenn. 1993)(prison litigation). He is a Fellow of the American College of Trial Lawyers and formerly served on that organization's Federal Civil Procedure Committee.

I declare under penalty of perjury that the foregoing is true and correct. Executed at Nashville, Tennessee this 20th day of January 2025.

/s Brant Harrell

_____

Brant Harrell, TN BPR 24470
Legal Director
Tennessee Justice Center

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
AT NASHVILLE

ERIN BULL, et al.,

Plaintiffs,

v.

CLARENCE H. CARTER, in his official capacity as Commissioner of the Tennessee Department of Human Services,

Defendant.

Civil Action No. 3:25-cv-00041

Class Action

Chief Judge Campbell

Magistrate Frensley

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

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PRELIMINARY STATEMENT

This lawsuit challenges Tennessee's practice of systematically failing to administer the state's Supplemental Nutrition Assistance Program ("SNAP" f/k/a food stamps) program in a manner that ensures all eligible applicants receive their statutory benefits or an eligibility determination in a timely manner. The practice violates the Food and Nutrition Act of 2008 ("SNAP Act") and the Constitution of the United States and leads to Tennessee families going hungry and suffering other tangible harms and indignities.

Courts have long recognized that cases, like the present one, "alleging systemic failure of governmental bodies to properly fulfill statutory requirements, have been held to be appropriate for class certification under Rule 23(b)(2)." *Brooklyn Ctr. for Indep. of the Disabled v. Bloomberg*, 287 F.R.D. 240, 250 (S.D.N.Y. 2012), *superseded on other grounds*, 290 F.R.D. 409, 420-21 (S.D.N.Y. 2012). Similar SNAP eligibility determination delay class actions have been certified in Alaska,[1] Connecticut,[2] Georgia,[3] Hawaii,[4] Indiana,[5] Nebraska,[6] New York,[7] Pennsylvania,[8]

[1] *See Kamkoff v. Hedberg*, No. 3:23-cv-00044-SLG, 2024 WL 415359, at *4 (D. Alaska Feb. 5, 2024) (referencing "Untimely Eligibility Class").
[2] *See Briggs v. Bremby*, No. 3:12cv324(VLB), 2013 WL 1987237 (D. Conn. May 13, 2013); *see also*, *Briggs v. Bremby*, 792 F.3d 239, 240 (2d Cir. 2015).
[3] *Melanie K. v. Horton*, No. 1:14-cv-710-WSD, 2015 WL 1308368, at *15 (N.D. Ga. Mar. 23, 2015).
[4] *See Booth v. McManaman*, 830 F. Supp. 2d 1037, 1040 (D. Haw. 2011).
[5] *Haskins v. Stanton*, 621 F. Supp. 622 (D. Ind. 1985), *aff'd*, 794 F2d 1273 (7th Cir. 1986).
[6] *Leiting-Hall v. Winterer*, No. 4:14cv3155, 2015 U.S. Dist. LEXIS 41961, *8-18 (D. Neb. Feb. 11, 2015), adopted, 2015 U.S. Dist. LEXIS 41963 (Mar. 31, 2015).
[7] *Reynolds v. Giuliani*, 118 F. Supp. 2d 352, 392 (S.D.N.Y. 2000), *rev'd on other grounds* 506 F.3d 183 (2d Cir. 2007).
[8] *See Harley v. Lyng*, 653 F. Supp. 266, 277 (E.D. Pa. 1986).

Vermont,[9] Virginia,[10] and the District of Columbia.[11] The Sixth Circuit has upheld certification of a class involving violations of the SNAP Act's due process provision governing administrative appeals, *Barry v. Lyon*, 834 F.3d 706, 716-17 (6th Cir. 2016) (citing 7 U.S.C. § 2020(e)(10)), and other federal courts have certified Appeal Delay classes for SNAP administrative appeals specifically. *See Withrow v. Concannon*, 942 F.2d 1385, 1386 (9th Cir. 1991) (administrative appeal written decisions).

SNAP is designed to fight hunger and malnutrition among low-income households. 7 U.S.C. § 2011. The Department of Human Services ("DHS"), which administers the program in Tennessee, has consistently failed to ensure that households have the opportunity to participate in the program by failing to process both expedited and regular categories of SNAP applications on time. DHS has also failed to issue written eligibility decisions promptly (i.e. within 60 days of a request for a fair hearing). DHS also has additionally failed to hold fair hearings for individuals who have requested restoration of lost benefits after 90 days of an adverse action by DHS, but within one year.

As set forth in the Complaint, ECF No. 1, Plaintiffs, who have not or will not have their SNAP applications processed on time, did not or will not receive written eligibility decisions within 60 days of a request for a fair hearing, and were or will be denied appeals to obtain restoration of lost benefits, seek certification of three separate classes described below.

Plaintiffs seek preliminary and permanent injunctive and declaratory relief to remedy these harms for the thousands of individuals who: 1) have not had their benefits processed on time; 2) have not received prompt written eligibility decisions following a request for a fair hearing; and 3) whose timely requests for a hearing to obtain reinstatement of lost benefits are denied. The

[9] *Robidoux v. Celani*, 987 F.2d 931, 935 (2d Cir. 1993); *Robidoux v. Kitchel*, 876 F. Supp. 575, 576 (D. Vt. 1995).
[10] *See Robertson v. Jackson*, 766 F. Supp. 470, 476 (E.D. Va. 1991).
[11] *Garnett v. Zeilinger*, 301 F. Supp. 3d 199, 211-12 (D.D.C. 2018).

classes will continue to suffer so long as DHS's SNAP processes continue to unlawfully fail to make timely eligibility determinations or otherwise comply with Due Process or the SNAP Act. Because the requirements of Rule 23 are met and this relief will equally benefit all class members, class certification is appropriate and should be granted.

THE PROPOSED PLAINTIFF CLASSES

Plaintiffs seek certification of the following classes:

1. The **Application Delay Class**, consists of:

   > All Tennessee residents who since December 10, 2023 have applied, are applying, or will apply for SNAP benefits through an initial or recertification application and who have not or will not receive an eligibility determination from DHS within the legally required timeframes. This definition specifically excludes those whose applications are voluntarily withdrawn before the processing deadline.

Plaintiffs Davis and Pegues will represent the Application Delay Class. District courts in other jurisdictions have certified classes with almost identical definitions.[12]

2. The **Appeal Delay Class**, consists of:

   > All Tennessee residents who since November 10, 2023 have filed an appeal, are filing an appeal, or will file an appeal for SNAP benefits through DHS's administrative process and have not or will not receive an eligibility determination within the legally required timeframes. This definition specifically excludes those who voluntarily withdrew an appeal within 60 days of filing an appeal, or who successfully sought a continuance of a fair hearing scheduled within 60 days of the filing of an appeal.

[12] *See, e.g.*, *Garnett*, 301 F. Supp. at 199-213; *Melanie K.*, 2015 WL 1308368, at *6 (certifying class consisting of "All Georgia residents who, since January 1, 2013, have applied, are applying, or will apply for Food Stamps through a completed initial or renewal application and whose applications or renewals have not been or will not be timely processed in accordance with the requirements of the Food Stamp Act and its implementing regulations."); *Briggs v. Bremby*, No. 3:12cv324, 2013 WL 1987237, at *6 (D. Conn. May 13, 2013) (Defining class as "All persons in Connecticut who have applied, who are currently applying, or who will apply in the future and whose application was not timely processed for food stamps as required by 7 U.S.C. § 2020(e)(3) and (e)(9); 7 C.F.R. § 273.2.").

Plaintiffs Bull, Colbert, Desjardins, Gugliemelli, Hubbard, Maddox, Ominyi, and Tapia will represent the Appeal Delay Class.

3. The **Restoration of Lost Benefits Class**, consists of:

> All Tennessee residents who since January 10, 2024, and within one year of an action by DHS adversely affecting their SNAP benefits, requested or will request restoration of SNAP benefits from DHS but were or will be denied a hearing because the request for restoration was or will be made more than 90 days after their loss of benefits.

Plaintiff Jacques will represent the Restoration of Lost Benefits Class.

FACTUAL BACKGROUND

1. The Federal SNAP Program

SNAP is the largest nutrition assistance program in the United States and in Tennessee. The program, which is run as a federal-state partnership, is one of the main ways to fight hunger and malnutrition. Tennessee (like many other states) has elected to participate in the program and receives funding for 100% of benefits and 50% of administration costs from the federal government. 7 U.S.C. § 2013(a). In return, Tennessee is required to administer its program in accordance with federal constitutional, statutory, and regulatory requirements. *See* 7 U.S.C. § 2020(e); 7 C.F.R. § 273.2. Congress has expressly given the United States Department of Agriculture rulemaking authority under the SNAP Act as it deems necessary for the effective and efficient administration of the SNAP program. 7 U.S.C. § 2013(c); *see also*, 7 U.S.C. §§ 2014(b), 2020(e)(5).

Tennessee and other states must designate a single state agency responsible for administering SNAP and complying with federal statutory and regulatory requirements. 7 U.S.C. § 2020(a), (d), (c); 7 C.F.R. § 271.4(a). DHS is Tennessee's single state agency for the administration of SNAP benefits. Tenn. Code Ann. § 71-5-304.

2. DHS's Eligibility Determination Process

As the designated state agency, DHS is statutorily required to process applications for benefits—both initial applications and applications to recertify eligibility, known as "recertification applications"—within mandated timelines. 7 U.S.C. § 2020(a)(1), (e)(3), (e)(4), (e)(9); *see* Tenn. Code Ann. §71-5-304. DHS must provide ongoing SNAP benefits to eligible applicants no later than 30 days after the date of the application for most applicants. 7 U.S.C. § 2020(e)(3); 7 C.F.R. § 273.2(a), (g)(1); 7 C.F.R. § 274.2(b).

DHS is required to document the dates that applications are filed by recording the dates of receipt. The length of time the agency has to deliver SNAP benefits is calculated from the date an application is received. 7 C.F.R. § 273.2(c)(1).

Certain households qualify for expedited processing, including those with very low income and liquid resources, those whose housing costs exceed the sum of their income and liquid resources, and certain migrant and seasonal worker households. 7 U.S.C. § 2020(e)(9); 7 C.F.R. § 273.2(i)(1). DHS is required to affirmatively identify households eligible for expedited service at the time the household requests assistance. 7 U.S.C. § 2020(e)(9); 7 C.F.R. § 273.2(i)(2).

DHS is required to provide expedited issuance of SNAP benefits to these eligible households no later than the seventh day following the date an application is filed, following verification of the applicant's identity through a collateral contact or readily available documentary evidence, and after making reasonable efforts to verify certain other eligibility factors. *See* 7 U.S.C. § 2020(e)(9); 7 C.F.R. § 273.2(f)(1), (i)(1), (4). The applicant's identity must be verified, but the issuance of food stamps within the required seven days cannot be delayed solely due to a lack of verification of other eligibility factors, e.g. household residency, income, or liquid resources. 7 C.F.R. § 273.2(i)(4)(i).

Under the terms of the statute, it is not sufficient for DHS to process an application and find a household eligible within the relevant statutory deadline. The applicant must have an opportunity to participate no later than 30 calendar days following the date the application was filed for standard applications. 7 U.S.C. § 2020(e)(3); 7 C.F.R. § 274.2(b); Tenn. Comp. R. & Regs. § 1240-1-17.02. An opportunity to participate requires providing households with an active electronic benefits transfer ("EBT") card and PIN, and with benefits that have been posted to the household's EBT account and are available for spending. *See* 7 C.F.R. § 274.2(b); Tenn. Comp. R. and Regs. § 1240-1-17.04.

3. DHS's Notice and Appeal Obligations

If an application is delayed, DHS is required to send a written notice to applicants noting that the application has not been completed and is still being processed and informing them of their right to request a fair hearing if they are aggrieved. 7 C.F.R. § 273.10(g)(1)(iii); *see also* 7 U.S.C. § 2020(e)(10); 7 C.F.R. § 273.15(a). If the delay is the fault of DHS, the agency is required to inform the applicant that the application is pending by the 30th day after the application has been filed. 7 C.F.R. § 273.2(h)(3)(i).

Further, individuals who receive public benefits have the right to a fair hearing of any agency decision to terminate, reduce, or deny SNAP benefits. Due process as well as federal and state law guarantee an individual's right to a prompt decision after a fair hearing is requested. DHS is required to provide a written eligibility determination within 60 days of the request for a fair hearing. *See* 7 U.S.C. § 2020(e)(10); 7 C.F.R. § 273.15(c)(1).

DHS is required to grant fair hearings to individuals who have lost benefits and request restoration of their lost benefits within one year of the adverse action that caused their loss. *See* 7 C.F.R. § 273.15(j)(1); 7 C.F.R. § 273.17.

Experiences of Individual Class Members

DHS failed to meet its statutory obligation to process each individual Plaintiff's application or appeal or grant a fair hearing. And Plaintiffs have been harmed as a result. *See* P-Ex. 2A (ECF No. 23-4); P-Ex. 3A (ECF No. 23-5); P-Ex. 4A (ECF No. 23-6); P-Ex. 5A (ECF No. 23-7); P-Ex. 6A (ECF No. 23-8); P-Ex. 7A (ECF No. 23-9); P-Ex. 8A (ECF No. 23-10); P-Ex. 9A (ECF No. 23-11); P-Ex. 10A (ECF No. 23-12); P-Ex. 11A (ECF No. 23-13) (Declarations affirming allegations in Complaint).

Application Delay

DHS failed to process the applications of Plaintiffs Davis and Pegues, among others, on time. P-Ex. 3A (ECF No. 23-5); P-Ex. 10A (ECF No. 23-12). This failure caused harm. As a result of untimely processing, Ms. Pegues fell behind on rent, missed meals, and had to buy cheaper/more unhealthy food which inflamed her hyperthyroidism condition. P-Ex.10A (ECF No. 23-12); Compl. ¶¶ 225-26 (ECF No. 1). Already homeless, untimely processing of Ms. Davis' application exacerbated her housing insecurity. *See* P-Ex. 3A (ECF No. 23-5); Compl. ¶¶ 102-04 (ECF No. 1).

Appeal Delay

Kathryn Colbert, Emily Gugliemelli, Trista Hubbard, and Brandi Tapia all filed SNAP appeals asserting DHS processed their eligibility for benefits incorrectly, P-Ex. 2D (ECF No. 23-4); P-Ex. 5G (ECF No. 23-7); *see* P-Ex. 6D (ECF No. 23-8), P-Ex. 11D (ECF No. 23-13), had hearings that were first set well after DHS's statutory 60 day deadline for the issuance of written decisions, P-Ex. 2G (ECF No. 23-4); P-Ex. 5I (ECF No. 23-7); P-Ex. 6D (ECF No. 23-8); P-Ex. 11H (ECF No. 23-13), ultimately received back SNAP benefits from DHS, P-Ex. 2J (ECF No. 23-4); P-Ex. 5K (ECF No. 23-7); P-Ex. 6F (ECF No. 23-8); P-Ex. 11I (ECF No. 23-13), but nonetheless experienced serious harm from the delay. P-Ex. 2A (ECF No. 23-4); Compl. ¶¶ 98-99

(ECF No. 1); P-Ex. 5A (ECF No. 23-7); Compl. ¶ 135 (ECF No. 1); P-Ex. 6A (ECF No. 23-8); Compl. ¶¶ 152-54 (ECF No. 1); P-Ex. 11A (ECF No. 23-13); Compl. ¶¶ 243-44 (ECF No. 1). Delays in receiving SNAP benefits from DHS that were wrongfully withheld caused Plaintiffs to suffer bankruptcy, P-Ex. 6A (ECF No. 23-8); Compl. ¶¶ 151-52 (ECF No. 1), car repossession, P-Ex. 6A (ECF No. 23-8); Compl. ¶¶ 151-52 (ECF No. 1), utility shut off, P-Ex. 6A (ECF No. 23-8); Compl. ¶¶ 151-52 (ECF No. 1), exhaustion of TANF benefits to pay for food, P-Ex. 2A (ECF No. 23-4); Compl. ¶ 99 (ECF No. 1), meal skipping and hunger, P-Ex. 2A (ECF No. 23-4); Compl. ¶ 99 (ECF No. 1), eviction, P-Ex. 11A (ECF No. 23-13); Compl. ¶ 244 (ECF No. 1), homelessness, P-Ex. 2A (ECF No. 23-4); Compl. ¶ 99 (ECF No. 1), depletion of meager savings, P-Ex. 5A (ECF No. 23-7); Compl. ¶ 135 (ECF No. 1), and health ailments, P-Ex. 5A (ECF No. 23-7); Compl. ¶ 135 (ECF No. 1), among others. And the delay continues. At the time of the filing of this lawsuit, Plaintiff Desjardins had a live appeal from October 1, 2024 that was not set for hearing until January 17, 2025. P-Ex. 4D (ECF No. 23-6). Plaintiff Bull, likewise, has an unresolved appeal that has been delayed beyond 60 days. P-Ex. 1F (ECF No. 23-3). Still others have unresolved appeals that are currently in DHS's appeals systems. P-Ex. 5L (ECF No. 23-7); P-Ex. 8I (ECF No. 23-10); P-Ex. 9L (ECF No. 23-11).

Restoration of Lost Benefits

Ms. Jacques submitted an appeal for an under-issuance or denial of SNAP benefits after 90 days. P-Ex. 7L (ECF No. 23-9). Despite her timely request, *id*., she was denied a hearing on her lost benefits by DHS. P-Ex. 7N (ECF No. 23-9). Without SNAP benefits, Ms. Jacques was forced to forego payment on other bills and necessities to pay for food that would have otherwise been paid for with SNAP benefits. P-Ex. 7A (ECF No. 23-9); Compl. ¶ 176 (ECF No. 1). As a result, Ms. Jacques "could not pay her cell phone bill and lost service for several days, had to stop paying

her electric bills, and eventually had to move into low-income housing because of her financial instability and uncertainty around when and if she and her daughter were going to again receive SNAP benefits." Compl. ¶ 176 (ECF No. 1).

LEGAL STANDARD

The District Court may certify a class if Plaintiffs satisfy the requirements of Rule 23(a) and at least one of the three criteria for certification under Rule 23(b). Fed. R. Civ. P. 23; *Sprague v. Gen. Motors Corp.*, 133 F.3d 388, 397 (6th Cir. 1998); *In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1079 (6th Cir. 1996). While the party seeking class certification bears the burden of proof, *Beattie v. CenturyTel, Inc.*, 511 F.3d 554, 560 (6th Cir. 2007), the Sixth Circuit has cautioned that the class certification stage is not "a dress rehearsal for the trial on the merits," *In re Whirlpool Corp. Front-Loading Washer Prods. Liab. Litig.*, 722 F.3d 838, 851-52 (6th Cir. 2013) (citation omitted); *see also Rikos v. Procter & Gamble Co.*, 799 F.3d 497, 505 (6th Cir. 2015); *Castillo v. Envoy Corp.*, 206 F.R.D. 464, 468 (M.D. Tenn. 2002) ("[C]ourts cannot make a preliminary inquiry into the merits of the proposed class action."). Moreover, "[i]n ruling on a class action a judge may consider reasonable inferences drawn from facts before him at that stage of the proceedings." *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 541 (6th Cir. 2012) (quoting *Senter v. Gen. Motors Corp.*, 532 F.2d 511, 523 (6th Cir. 1976)).

ARGUMENT

I. The Proposed Plaintiff Classes Satisfy Rule 23(a).

Rule 23(a) provides that any member of a class may sue on behalf of all members if: "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a). For the reasons explained below, the proposed Plaintiff Classes satisfy all of these requirements.

A. Numerosity

There is "no strict numerical test for determining impracticability of joinder." *Am. Med. Sys., Inc.*, 75 F.3d at 1079. Rather, "substantial" numbers are satisfactory. *Daffin v. Ford Motor Co.*, 458 F.3d 549, 552 (6th Cir. 2006). Courts certify classes with "as few as 18 to 25 members," *Roman v. Korson*, 152 F.R.D. 101, 105 (W.D. Mich. 1993), and when the number of members reaches 40, there is a "presumption that joinder is impracticable." *City of Goodlettsville v. Priceline.com, Inc.*, 267 F.R.D. 523, 529 (M.D. Tenn. 2010); *see also Young*, 693 F.3d at 542 ("[T]his circuit had found a class of 35 to be sufficient to meet the numerosity requirement") (citing *In re Am. Med. Sys.*, 75 F.3d at 1076). The numerosity requirement is met even "[w]hen the exact size of the class is unknown, but 'general knowledge and common sense indicate that it is large.'" *Youngblood v. Linebarger Googan Blair & Sampson, LLP*, No. 10-2304, 2012 WL 4597990, at *5 (W.D. Tenn. Sept. 30, 2012). General knowledge and common sense as well as the State's own data show that the classes are numerous.

1. The Application Delay Class Is Numerous.

The Application Delay Class easily meets the numerosity requirement. The exact size of the class is unknown with precision by Plaintiffs, but publicly available information demonstrates that there are thousands of potential class members. Between July 1 and September 30, 2024, the most recent period for which data is publicly available, DHS had 8,576 overdue initial normal applications, 7,363 overdue initial expedited applications, and 4,351 overdue normal and expedited recertifications. P-Ex. 17A (ECF No. 23-19). These large numbers are nothing new. DHS's data for recent quarters and over the years show that there are regularly many thousands of people in Tennessee who have made applications on which DHS have failed to act in the statutorily-prescribed period. *See* P-Ex. 14A (ECF No. 23-16); P-Ex. 15A (ECF No. 23-17); P-Ex. 16A (ECF No. 23-18). Other district courts have certified classes and found numerosity satisfied with smaller or comparable numbers. *Briggs*, 2013 WL 1987237, at *5 (referencing delinquent regular cases

between 800 to 2,000 and expedited cases between 400 to 1,600); *see also Garnett*, 301 F. Supp. 3d at 206 (referencing 4,328 applications after the applicable time limit had passed, 367 initial applications and 3,961 recertification applications as sufficient for numerosity).

The class is therefore sufficiently numerous that joinder of them all individually would be impractical. *See, e.g.*, *Young*, 693 F.3d at 541-42 (certifying class "rang[ing] between 270 and 9,000"). "[G]eneral knowledge and common sense" may be used to assess the class size. *See Youngblood*, 2012 WL 4597990, at *5 (referring to disenrollments). Here, based on DHS's own data and the number of monthly initial and recertification applications the agency processes, the number of members in the class is large.

Other considerations regarding the numerous class weigh in favor of certification. "Apart from class size, other case-specific factors that courts should consider in determining whether joinder is impracticable include: the judicial economy, the geographical dispersion of class members, the ease of identifying putative class members, and the practicality with which individual putative class members could sue on their own." *Cannon v. GunnAllen Fin., Inc*., No. 3:06-0804, 2008 WL 4279858, at *11 (M.D. Tenn. Sept. 15, 2008) (citing Alba Conte & Herbert Newberg, 1 Newberg on Class Actions § 3:6 (4th ed. 2003)). The court "may make common sense assumptions in examining the numerosity requirement." *French v. Essentially Yours Indus., Inc.*, No. 1:07-CV-817, 2008 WL 2788511, at *3 (W.D. Mich. July 16, 2008). Here, the class spans the geographic scope of Tennessee, complicating joinder. Because both USDA and DHS track timeliness of application processing, identification of putative class members is relatively easy. Furthermore, class members are seeking SNAP coverage and injunctive relief because they have low incomes, making individual suits cost-prohibitive. *See Robidoux v. Celani*, 987 F.2d 931, 936 (2d Cir. 1993); *McDonald v. Heckler*, 612 F. Supp. 293, 300 (D. Mass. 1985), *modified on other grounds*, 795 F.2d 1118 (1st Cir. 1986) ("These individuals claim to be disabled and of low income. It is therefore impracticable for these persons to bring individual lawsuits challenging the

Secretary's policies").

2. The Appeals Delay Class Is Numerous.

The Appeals Delay Class also easily meets the numerosity requirement. The exact size of the class is unknown with precision by Plaintiffs, but publicly available information demonstrates that there are thousands of potential class members. From July 1 to September 30, 2024, the most recent period for which data is publicly available, DHS had 7,437 decisions from SNAP administrative appeals that were past the statutorily-prescribed timeframe and thus were overdue. P-Ex. 17A (ECF No. 23-19). During this same time, DHS received 9,495 SNAP appeals (1,476 of which were withdrawn) leaving 8,019 hearing requests, but held only 4,248 hearings. 332 of the 4,248 hearings held during this period resulted in the agency's decision being reversed. *Id.* Moreover, the problem is worsening, as evidenced by the wide gap between the number of appeals received and the number of hearings held during the quarter. Prior data confirms that delays in receiving written appeals on time have been a chronic problem. For example, from January to March 2024, DHS had 6,384 overdue decisions. P-Ex. 15A (ECF No. 23-17). This is more than enough to satisfy numerosity.

Further, like the Application Delay class, the case-specific factors show that joinder is impractical. These factors include: Appeal Delay class members are dispersed throughout the state, identification of class members is relatively easy because USDA and DHS track the time between appeals and the issuance of written decisions, and class members are unlikely to sue on their own, given their limited means, the sums at issue, and the costs of retaining an attorney.

3. The Restoration of Lost Benefits Class Is Numerous.

The Restoration of Lost Benefits Class also satisfies numerosity. The exact size of the class is unknown with precision by Plaintiffs, but publicly available information demonstrates that there are hundreds, and maybe thousands, of potential class members. DHS' own records confirms that the class meets the legal threshold. DHS closes appeals without hearings on a significant scale for

those seeking restoration of lost benefits—asserting that they are not timely or otherwise not accepted for fair hearing. Between June 1 and September 26, 2024 alone, DHS refused to accept 150 SNAP appeals because DHS deemed them "not timely." Decl. of Gordon Bonnyman, Jr. (hereinafter "Bonnyman Decl.") ¶ 8, ECF No. 23-2; P-Ex. 25A (ECF No. 23-27); P-Ex. 23A (ECF No. 23-25). Further, over the same time period, DHS otherwise told appellants that their appeal was "Not Accepted" 1,149 times and closed them without a fair hearing. P-Ex. 26A (ECF No. 23-28). Both figures are more than enough to establish numerosity. As with the other classes, the case-specific factors make joinder impractical for the same reasons.

B. Commonality

Commonality exists when there are "questions of fact or law common to the class," *Young*, 693 F.3d at 542, and can be satisfied by demonstrating "that the class members 'have suffered the same injury.' " *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). The class must thus share a "common contention," the truth or falsity of which will "resolve an issue that is central to the validity of each one of the claims in one stroke." *In re Whirlpool Corp.*, 722 F.3d at 852. "What we are looking for is a common issue the resolution of which will advance the litigation." *Sprague*, 133 F.3d at 397.

Commonality "is satisfied if there is a single factual *or* legal question common to the entire class." *Powers v. Hamilton Cnty. Pub. Def. Comm'n*, 501 F.3d 592, 619 (6th Cir. 2007) (emphasis added); *In re Whirlpool Corp.*, 722 F.3d at 853 (holding that a single common question will suffice). Nor are factual discrepancies fatal to a showing of commonality, particularly for classes to be certified under Rule 23 (b)(2), which does not require that common issues predominate over individual ones. *See Am. Med. Sys., Inc.*, 75 F.3d at 1080.

1. The Application Delay Class Satisfies Commonality.

Members of the Application Delay Class have suffered a common injury: They have not received a timely decision as to their eligibility for the SNAP program, and if eligible, they have

not received their benefits on time. In addition, the source of this injury is the same, namely DHS's failure to make timely eligibility determinations on SNAP applications and recertifications. Multiple federal district courts have certified class actions on this issue, found commonality satisfied, and held that such time limits may be enforced through 42 U.S.C. § 1983.[13]

Plaintiffs further satisfy commonality because they propose "common solutions" to their injuries. In *Young*, 693 F.3d at 543, the Sixth Circuit considered a class of individuals "who were charged local government taxes on their payment of premiums which were either not owed, or were at rates higher than permitted." *Id.* at 538. The Court of Appeals affirmed the commonality holding because the plaintiffs showed that the defendants could have prevented the misassignment by implementing a common solution—use of a geocoding software system. *Id.* Likewise, here, Plaintiffs have identified common solutions to expedite the eligibility determination process. For example, Plaintiffs request injunctive relief requiring DHS to notify class members, as required by federal regulations, when their applications are not processed timely. Such relief will facilitate class members' immediate pursuit of appeals to more quickly obtain their SNAP benefits, and it will motivate DHS to improve the processing of applications to avoid such appeals. Plaintiffs seek declaratory and injunctive relief in the form of requiring the State to timely determine SNAP eligibility and provide timely benefits to those who are eligible. Because the injuries sustained by the proposed classes – the wrongful delay in determining eligibility and providing eligible class members a timely opportunity to participate in the SNAP program – share common solutions, they satisfy the commonality requirement. *See id.* at 543.

Another court that has looked at this exact issue on nearly identical facts found that commonality exists. *Brown v. Giuliani*, 158 F.R.D. 251, 268 (E.D.N.Y. 1994) (finding commonality satisfied by whether defendants failed to timely process public assistance benefits

[13] *See, e.g.*, *Briggs*, 2013 WL 1987237, at *2; *Melanie K*, 2015 WL 1308368 at *14-15 (collecting cases).

and change of circumstance grant applications).

Plaintiffs' common questions of fact also support commonality here. For instance, a finding that DHS does not make eligibility determinations in a timely manner would substantially advance the Plaintiff class's claims that DHS violates the Food and Nutrition Act of 2008 by not strictly complying with its temporal requirements. Common questions of fact that implicate the Defendant's compliance with the timely application processing requirements include:

a. whether Defendant fails to timely process initial applications within the applicable legal time limits;

b. whether Defendant fails to timely provide Notices of Expiration and recertification applications;

c. whether Defendant fails to timely process recertification applications;

d. whether Defendant fails to call individuals for scheduled interviews;

e. whether Defendant fails to timely send, or to send at all, notice of a required Appointment or Interview to applicants;

f. whether Defendant fails to assess whether application delays are the fault of the agency or the household;

g. whether Defendant provides applicants with at least 10 days to return requested verifications;

h. whether classwide declaratory relief is appropriate to remedy Plaintiffs' injuries: and

i. whether classwide injunctive relief is appropriate to remedy Plaintiffs' injuries.

2. The Appeals Delay Class Satisfies Commonality.

Members of the Appeals Delay Class have suffered a common injury: They have not received timely written decisions concerning their SNAP appeals. As with the Application Delay Class, the source of the injury for the appeals class is the same, namely DHS's failure to hold hearings, process, and rule on SNAP appeals on time. Common questions of law abound. The SNAP Act "[r]equires a state plan of operation to provide notice, fair hearing, and a prompt

determination" to "any household aggrieved by the action of the State agency under any provision" of the state plan. *Barry v. Corrigan*, 79 F. Supp. 3d 712, 734 (E.D. Mich. 2015) (internal quotation marks and citation omitted).

Another legal question common to both classes is whether injunctive and declaratory relief are appropriate to remedy Plaintiffs' injuries. *See S.R., by & through Rosenbauer v. Pennsylvania Dep't of Human Servs.*, 325 F.R.D. 103, 109 (M.D. Pa. 2018) (the putative class seeks declaratory and injunctive relief to address systemic deficiencies); *Disability Rights Council of Greater Wash. v. Wash. Metro. Area Transit Auth.*, 239 F.R.D. 9, 26 (D.D.C. 2006) (noting class actions seeking injunctive or declaratory relief by their very nature present common questions of law and fact). Here, as with the first proposed class, the injury to the proposed class also shares common solutions.

Plaintiffs' questions of fact also support commonality here. These include:

a. whether Defendant fails to process appeals promptly and within 60 days;

b. whether Defendant fails to issue written decisions for individuals who request fair hearings within 60 days;

c. whether the failures in Defendant's administration of SNAP appeals delay members' access to benefits.

d. whether Defendant's appeals notice fails to inform class members of their right to a decision within 60 days;

e. whether Defendant's failure to timely process appeals harms unsuccessful appellants who request continuation of benefits by increasing their liability for repayment of benefits beyond the amount for which they would be liable if Defendant rendered a timely decision;

f. whether classwide declaratory relief is appropriate to remedy Plaintiffs' injuries; and

g. whether classwide injunctive relief is appropriate to remedy Plaintiffs' injuries.

3. The Restoration of Lost Benefits Class Satisfies Commonality.

Members of the Restoration of Lost Benefits Class suffer a common injury. When Class members seek restoration of lost benefits by appealing more than 90 days after the adverse action that caused the loss, they are denied a hearing and their request is summarily denied as untimely, despite the fact that federal law entitles them to a hearing if they request restoration within one year of the loss. However, DHS treats all class members similarly pursuant to DHS Policy 24.23: SNAP Appeals and Fair Hearings (effective July 15, 2021). That policy provides, under the heading, "Time Limits for Appeals:"

> 1. An individual shall be allowed to request a fair hearing on any action by TDHS staff, including loss of benefits, within ninety (90) days of the date of such action as established by the notice to the household of such action.
>
> 2. The Division of Appeals and Hearings will make the decision upon receipt of the Appeal for Fair Hearing as to whether the request will be accepted or denied. Appeals will be accepted only if they are filed within these time limits unless good cause can be shown as to why the appeal could not be filed within the prescribed limits.

P-Ex. 29A (ECF No. 23-31)at 1-2; Bonnyman Decl., ECF No. 23-2. The only exception to the 90-day limit is for good cause, and Policy 24.23's definition of good cause does not include requests for restoration of lost benefits.

Numerous questions of fact and law, any one of which is sufficient to establish commonality, apply commonly to all members of the Restoration of Lost Benefits Class. These include:

> a. whether Defendant treats untimely requests for hearings as requests for restoration of lost benefits;
>
> b. whether Defendant systematically denies fair hearings to individuals who submit an appeal 90 days after an adverse event;
>
> c. whether Defendant's denial of fair hearings to individuals who allege an underissuance or denial of SNAP benefits has harmed the individuals;

d. whether Defendant conducts inquiries as to whether the state agency is at fault for purposes of restoring lost benefits;

e. whether classwide declaratory relief is appropriate to remedy Plaintiffs' injuries; and

f. whether classwide injunctive relief is appropriate to remedy Plaintiffs' injuries.

C. Typicality

Typicality requires that a " 'sufficient relationship exists between the injury to the named plaintiff and the conduct affecting the class, so that the court may properly attribute a collective nature to the challenged conduct.' " *Stout v. J.D. Byrider*, 228 F.3d 709, 717 (6th Cir. 2000) (quoting *Sprague*, 133 F.3d at 399). "In government benefit class actions, the typicality requirement is generally satisfied when the representative plaintiff is subject to the same statute, regulation, or policy as class members." *Carr v. Wilson-Coker*, 203 F.R.D. 66, 75 (D. Conn. 2001) (quoting 5 *Newberg on Class Actions*, § 23.04 (3d ed. 1992)). Here, the class representatives are subject to the same SNAP statute, implementing regulations, and eligibility determination policies as class members.

Commonality and typicality "tend to merge," as both consider whether "maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence." *Wal-Mart*, 564 U.S. at 349 n.5 (quoting *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 157-58 (1982)).

1. Typicality Is Established for the Application Delay Class.

Typicality is satisfied for the Application Delay Class. The representative plaintiffs are subject to DHS's same application process and have the same rights to a timely eligibility determination under federal law.

Further, if the class establishes that DHS did not process applications consistent with the

timing and notice requirements of the SNAP Act and Due Process Clause, then the same finding will apply to all class members as well because the same timing provisions within the SNAP Act apply to DHS. *See Dozier v. Haveman*, No. 2:14-CV-12455, 2014 U.S. Dist. LEXIS 153395, at *53 (E.D. Mich. Oct. 29, 2014) (finding typicality where representative plaintiffs had been disenrolled from public benefit and received the challenged notice).

2. Typicality Is Established for the Appeals Delay Class.

Typicality is also satisfied for the Appeals Delay Class. The representative plaintiffs are subject to DHS's same appeals process and have the same fair hearing rights under federal law. And if the class establishes that DHS did not process appeals and issue a written decision on time, then the same finding will apply to all class members because the same DHS appeals timely provisions with the SNAP Act apply. *Id.*

3. Typicality Is Established for the Restoration of Lost Benefits Class.

The DHS policy denying requests for lost benefits filed beyond 90 days but within a year also satisfies typicality. The representative plaintiffs all experienced the same denial of a fair hearing and restoration of lost benefits and have the same rights to a hearing under federal law. Like the absent class members, class representative Candice Jacques submitted an appeal seeking restoration of lost SNAP benefits due to DHS's under-issuance or denial of benefits to which she was entitled. Despite the fact that she appealed within one year of the loss, her request for a fair hearing was summarily denied as untimely under a DHS policy compelling the same result for all other class members.

D. Adequacy of Representation

The named Plaintiffs will also "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). This inquiry searches for any conflict of interest between the plaintiffs and the members of the class (sometimes characterized as "the presence of common interests and injury"), and whether there is an adequate assurance of vigorous representation by counsel.

Rutherford v. City of Cleveland, 137 F.3d 905, 909 (6th Cir. 1998).

Here, the interests of Plaintiffs and the Plaintiff Classes they seek to represent are completely aligned. All members of the Plaintiff Class have a common interest in the declaratory and injunctive relief sought in this case because they all have had their SNAP eligibility decisions untimely delayed. There is no known conflict among the class members, nor is there any common fund or limitation on resources to rectify their injuries. Moreover, Plaintiffs recognize that this lawsuit involves injustices to persons throughout Tennessee, and although they are interested in having their own hardship relieved, they also desire to see a systemic solution that will spare others from having to endure the suffering they have experienced. The proposed class representatives are therefore adequate to represent the interests of absent members of the Plaintiff Class.

Plaintiffs are represented by attorneys from the Tennessee Justice Center, MAZON, Hogan Lovells US LLP, and DLA Piper LLP. Collectively, they have extensive experience in complex class action litigation involving public benefits and civil rights law and have been appointed class counsel in a number of cases. *See* Declarations of Brant Harrell (Exhibit 3), Gordon Bonnyman, Jr. (Exhibit 4), E. Desmond Hogan (Exhibit 1), and Whitney Cloud (Exhibit 2). Of specific note, the Tennessee Justice Center recently obtained a favorable liability ruling in a class action involving Tennessee's Medicaid eligibility process (*AMC v. Smith*, No. 3:20-cv-00240, 2024 WL 3956315 (M.D. Tenn. Aug. 30, 2024)), and DLA Piper just obtained a preliminary injunction in a SNAP application delay case very similar to this one. Order Regarding Mot. for Prelim. Inj., *Kamkoff v. Hedberg*, No. 3:32-cv-00044-SLG (D. Alaska Dec. 31, 2024), ECF No. 77. Hogan Lovells has substantial experience litigating access to benefits cases and previously litigated a class action asserting claims very similar to those asserted in the current litigation. *See Garnett v. Zeilinger*, No. 1:17-cv-01757-CRC (D.D.C. 2018).

Plaintiffs' counsel are advancing costs for this litigation and have sufficient funds available. Thus, the adequacy of counsel requirement is met.

II. The Proposed Plaintiff Classes Satisfy Rule 23 (b).

Plaintiffs seek to certify the Plaintiff Class under Rule 23(b)(2) because Defendant has "acted or refused to act on grounds that apply generally to the class[es], so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). Certification of a Rule 23(b)(2) class "is sufficient if class members complain of a pattern or practice that is generally applicable to the class as a whole. Even if some class members have not been injured by the challenged practice, a class may nevertheless be appropriate." *Gooch v. Life Invs. Ins. Co. of Am.*, 672 F.3d 402, 428 (6th Cir. 2012); *see also Senter*, 532 F.2d at 525 (explaining that cases where Defendants who are charged with "class-wide discrimination[,] are particularly well suited for 23(b)(2) treatment since the common claim is susceptible to a single proof and subject to a single injunctive remedy").[14]

As another district court observed in certifying a class and saying that Rule 23(b)(2) was satisfied in a similar case:

> The central focus of this litigation is Defendant's policies and practices that result in untimely processing and improper denial of applications, and inadequate notice of denials. These policies and practices are equally applicable to each class member, and injunctive or declaratory relief addressing the policy with respect to the class as a whole is appropriate.

Melanie K., 2015 WL 1308368, at *5.

Defendant's failure to provide a timely determination of SNAP benefits, timely written decisions from appeals, and fair hearings for individuals seeking lost restoration of benefits has

[14] Ascertainability is not a requirement for certification of a Rule 23(b)(2) class seeking only injunctive and declaratory relief. *Cole v. City of Memphis*, 839 F.3d 530, 542 (6th Cir. 2016). *See also Graham v. Parker*, No. 3-16-cv-01954, 2017 WL 1737871, at *2-3 (M.D. Tenn. May 4, 2017) (holding that a fluid class definition helps the court "insure against the danger of the action becoming moot"); *Dodson v. CoreCivic*, No. 3:17-cv-00048, 2018 WL 4776081, at *2, n.1 (M.D. Tenn. Oct. 3, 2018) (same). Nonetheless, it will be simple to identify members of the Plaintiff Classes because they are defined using "objective criteria" such as the time between application and an opportunity for benefits, appeal filing and written decision, and whether a person requested restoration of benefits within 1 year of an adverse action and was not granted a hearing.

affected thousands of Tennesseans who are eligible for benefits. Defendant's processes are common and consistent across each defined class. Because Plaintiffs' injuries may thus be remedied by a single injunction for each class, Rule 23(b)(2) is satisfied.

CONCLUSION

For the foregoing reasons, the Court should certify the Plaintiff Classes under Federal Rule of Civil Procedure 23(a) and 23(b)(2).

January 24, 2025

Respectfully submitted,

/s Brant Harrell

Brant Harrell

TENNESSEE JUSTICE CENTER
Michele Johnson, TN BPR 16756
Gordon Bonnyman, Jr. TN BPR 2419
Brant Harrell, TN BPR 24470
TENNESSEE JUSTICE CENTER
155 Lafayette Street
Nashville, TN 37210
Phone: (615) 255-0331
Fax: (615) 255-0354
mjohnson@tnjustice.org
gbonnyman@tnjustice.org
bharrell@tnjustice.org

DLA PIPER (US)
Whitney C. Cloud,* PA Bar 331157
One Liberty Place
1650 Market Street, Suite 5000
Philadelphia, PA 19103
Phone: (215) 656-3300
whitney.cloud@us.dlapiper.com

Connor Rowinski,* NY Bar 6044036
1251 Avenue of the Americas, 27th Floor
New York, NY 10020-1104
Phone: (212) 335-4500
connor.rowinski@us.dlapiper.com

HOGAN LOVELLS (US)
E. Desmond Hogan,* DC Bar 458044
Jennifer Fleury,* DC Bar 187503
Melissa Giangrande Jacobs,* DC Bar 1735486
Fleming Farrell,* DC Bar 90004877
Katherine Valde,* DC Bar 90007448
Soojin Jeong,* DC Bar 90021021
HOGAN LOVELLS US LLP
555 Thirteenth Street, NW
Washington, DC 20004
Phone: (202) 637-5600
Fax: (202) 637-5910
desmond.hogan@hoganlovells.com
jennifer.fleury@hoganlovells.com
melissa.giangrande@hoganlovells.com
fleming.farrell@hoganlovells.com
katherine.valde@hoganlovells.com
soojin.jeong@hoganlovells.com

MAZON
Sarah Pratter,* CA Bar 318130
MAZON, INC.
15303 Ventura Blvd, Ste 1100
Sherman Oaks, CA 91403-6621
Phone: (310) 442-0020

Allexanderia V. Bingham,* CA Bar 292672
2000 Avenue of the Stars
Suite 400, North Tower
Los Angeles, CA 90067-4735
Phone: (310) 595-3000
allexanderia.bingham@us.dlapiper.com

Fax: (310) 442-0030
spratter@mazon.org

*Admitted *pro hac vice*

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served via the Court's electronic filing system on this 24th day of January, 2025 on the following counsel of record for the Defendant:

Miranda H. Jones, Senior Assistant Attorney General
Ryan Henry, Assistant Attorney General
Matthew Dowty, Senior Assistant Attorney General
Office of the Tennessee Attorney General
P.O. Box 20207
Nashville, TN 37202-0207

/s Brant Harrell

Brant Harrell