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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

RATTIYA UNTHAKSINKUN, individually
and on behalf of a class of similarly situated
persons,

Plaintiff,

v.

DOUGLAS PORTER, in his official
capacity as Administrator of the Washington
State Health Care Authority,

Defendant.

No.

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

CLASS ACTION

I. PRELIMINARY STATEMENT

Plaintiff Rattiya Unthaksinkun is an indigent, legal immigrant who needs state-
subsidized health insurance under the Washington Basic Health Plan (BH) for treatment of
cancer and other medical needs. She received these benefits prior to March 1, 2011 when
she was disenrolled from the program. She brings this class action on behalf of herself and
others similarly situated against Douglas Porter, in his official capacity as Administrator of
the Washington State Health Care Authority (“HCA”), to reverse the State of Washington’s
disenrollment of individuals from Basic Health whom it disenrolled on March 1, 2011, and

1 to require HCA to reinstate Basic Health benefits to these individuals retroactive to
2 March 1, 2011.

3 Basic Health is a state-sponsored health program that provides subsidized health
4 insurance to low-income Washington residents. Their monthly premiums are based on
5 their income level. Until March 1, 2011, immigrants were not excluded from the program
6 based on their immigration status. However, on February 18, 2011, the Legislature passed
7 ESHB 1086 that restricted the program for fiscal reasons, requiring, inter alia, the prompt
8 disenrollment of all persons not meeting citizenship or certain immigrant status criteria. In
9 response to ESHB 1086, the HCA sent disenrollment notices that same day to
10 approximately 17,500 people, most of whom were members for whom it did not have
11 enough information to determine immigration status.

12 Ms. Unthaksinkun and approximately 16,000 people received such a notice. She
13 and other class members submitted additional documentation of their legal status but were
14 not reinstated because the eligibility rules had changed. The reason for the change was the
15 budget restriction that disqualified all immigrants for whom the state did not receive
16 federal Medicaid matching funds under a recent agreement with the federal government.
17 The matching funds are only available for immigrants who are in certain federally
18 "qualified" legal statuses and exclude even people in these statuses from federal benefits
19 for five years.

20 Ms. Unthaksinkun has ongoing medical needs such as follow-up care for her recent
21 breast cancer surgery. Given her family's limited resources, she canceled her March 2011
22 appointment upon learning of her disenrollment. She brings this lawsuit to challenge her
23 disenrollment and the disenrollment of other lawfully present immigrants from Basic
24 Health while Basic Health continues to provide benefits to similarly situated U.S. citizens
25 and certain legal immigrants.

1 This lawsuit is brought pursuant to 42 U.S.C. § 1983 on the grounds that the
2 Administrator of HCA, through his actions terminating Plaintiff's and other class
3 members' state-subsidized Basic Health benefits solely to save money, while continuing to
4 provide similar benefits to U.S. citizens and some aliens with similar incomes, paid for
5 with state and federal funds, has violated the Equal Protection Clause of the Fourteenth
6 Amendment to the United States Constitution.

7 **II. JURISDICTION AND VENUE**

8 1. This Court has jurisdiction under 28 U.S.C. § 1331, because this action arises under the
9 laws of the United States, and 28 U.S.C. § 1343(3) and (4), which confer on the federal
10 district courts original jurisdiction over all claims asserted under 42 U.S.C. § 1983 to
11 redress deprivations of rights, privileges, or immunities guaranteed by Acts of Congress
12 and the United States Constitution.

13 2. Plaintiff seeks declaratory, injunctive, and other appropriate relief pursuant to 28
14 U.S.C. §§ 2201 and 2202, 42 U.S.C. § 1983, and Fed. R. Civ. P. 23, 57, and 65.

15 3. Venue for this action lies in this District pursuant to 28 U.S.C. § 1391(b). A substantial
16 part of the events or omissions giving rise to Plaintiff's claims occurred in King County,
17 Washington, and Defendant may be found in the Western District of Washington.

18 **III. PARTIES**

19 4. *Plaintiff Rattiya Unthaksinkun*. Plaintiff Unthaksinkun is and has been a "qualified
20 alien," as defined in 8 U.S.C. § 1641(b), for approximately the past four years and ten
21 months, who would otherwise be eligible for Basic Health, but for the citizenship and alien
22 status requirements adopted in ESHB 1086. Ms. Unthaksinkun and her husband, a
23 member of her household, were enrolled in Basic Health as of February 28, 2011. She
24 received notice that HCA planned to terminate her Basic Health benefits on February 28,
25 2011. Ms. Unthaksinkun resides in Snohomish County, Washington.

1 5. *Defendant Douglas Porter.* Douglas Porter is the Director and Administrator of the
2 HCA, which is headquartered in Olympia, Washington. Mr. Porter is responsible for
3 ensuring that the Basic Health program is administered in a manner consistent with state
4 and federal law. Mr. Porter is sued in his official capacity only. He is responsible for all
5 acts taken by HCA. All actions by the Health Care Authority or Mr. Porter were taken
6 under color of state law.

7 **IV. CLASS ALLEGATIONS**

8 6. Plaintiff seeks to maintain this action as a class action under Fed. R. Civ. P 23(a) and
9 23(b)(2). She asks the Court to define the class as all Washington state residents who are
10 immigrants lawfully present in the U.S. (1) whose Basic Health benefits terminated
11 effective March 1, 2011 because of their immigration status and who have not been
12 reinstated; or (2) in the future would be eligible for Basic Health benefits, but for their
13 citizenship or immigration status.

14 7. Each of the prerequisites to a class action enumerated in Fed. R. Civ. P. 23(a) is
15 satisfied by the proposed class.

16 8. *Size of Class.* Approximately 17,500 persons were disenrolled from Basic Health
17 effective March 1, 2011. Approximately 16,000 of these individuals were disenrolled due
18 to immigration status and received a notice related to disenrollment for this reason. An
19 estimated 9,000 people appealed, of whom at least 7,000 would have appealed the
20 immigration notice, most likely by submitting documentation of immigrant status. As of
21 March 22, 2011, HCA had reinstated the Basic Health benefits of 3,942 of these
22 disenrollees, leaving at least 3,000 whose appeals were denied or whose appeals of
23 immigrant status denials are pending. Even if only 5% of these individuals are lawfully
24 present immigrants, there would be 150 class members. The number is likely to be far
25 higher.

1 9. **Joinder.** Joinder is impracticable given the size of the class, the indigence of class
2 members, the language and cultural barriers that class members face in seeking legal
3 representation and filing individual lawsuits, the geographic dispersion of class members,
4 and the fact that the class includes future, unknown class members.

5 10. **Common Questions of Law and Fact.** This action requires a determination of
6 questions of law and fact that are common to the class, including but not limited to whether
7 HCA's termination of Plaintiff's and other class members' Basic Health benefits while
8 continuing to provide Basic Health benefits to U.S. citizens and certain qualified aliens
9 who meet the requirements adopted in ESHB 1086 violates the Equal Protection Clause of
10 the Fourteenth Amendment to the United States Constitution; 2) whether Plaintiff class
11 members are entitled to declaratory relief under 42 U.S.C. § 1983; and 3) whether Plaintiff
12 and class members are entitled to temporary, preliminary, and permanent injunctive relief.

13 11. **Typicality and Adequacy of Class Representative.** The claims of Plaintiff
14 Unthaksinkun are typical of the claims of the class and will fairly and adequately represent
15 the interests of the class. Plaintiff alleged that the State of Washington's decision to
16 terminate Plaintiff's subsidized Basic Health enrollment, while continuing to allow and
17 provide enrollment in Basic Health to qualified aliens who meet the citizenship or
18 immigration status requirements adopted in ESHB1086, violates her and class members'
19 rights under the Equal Protection Clause of the Fourteenth Amendment to the United States
20 Constitution. Plaintiff seeks declaratory and injunctive relief that will inure to the benefit
21 of all class members. Plaintiff's claims are not subject to any unique defenses which
22 would prevent her from vigorously prosecuting this lawsuit or representing the interests of
23 the class.

24 12. **Defendant Has Acted on Grounds Generally Applicable to the Class.** Defendant, by
25 terminating Plaintiff Unthaksinkun's and class members' Basic Health benefits has acted
26 on grounds generally applicable to the class, rendering declaratory and injunctive relief

1 appropriate respecting the whole class. Certification of the class is therefore proper under
2 Fed. R. Civ. P. 23 (b)(2).

3 13. ***Class Counsel.*** Plaintiff has retained counsel experienced in federal court and in class
4 and other complex litigation to represent the class; counsel have the commitment and
5 resources necessary to vigorously represent the class.

6 **V. STATUTORY AND REGULATORY FRAMEWORK**

7 **A. The Basic Health Plan**

8 14. Since 1987, the State of Washington has administered Washington Basic Health, a
9 health insurance program that has enabled hundreds of thousands of low-income residents
10 of our state obtain health coverage. The program provides subsidized health insurance to
11 Washington residents who met certain eligibility requirements. The program is
12 administered by the State, but coverage is provided by private insurance carriers through
13 managed care organizations. Since 1993, Washington state law has allocated the powers,
14 duties and functions of Basic Health to the Washington State Health Care Authority
15 (“HCA”). State law also charges the HCA Administrator with administering Basic Health
16 and allocates all powers and duties of the Basic Health Administrator to the HCA
17 Administrator. RCW 70.47.005.

18 15. In order to be eligible to enroll in Basic Health, until March 1, 2011, an individual
19 generally had to be a Washington state resident who: (a) was not eligible for free or
20 purchased medicare; (b) was not receiving medical assistance from the department of
21 social and health services (DSHS); (c) was not enrolled in Washington Health Program [an
22 unsubsidized health insurance program administered by HCA]; (d) was not confined or
23 residing in a government-operated institution, unless he or she meets eligibility criteria
24 adopted by the administrator; (e) was not a full-time student who had received a temporary
25 visa to study in the United States; (f) resided in an area of the state served by a managed
26 health care system participating in the plan; (g) chose to obtain coverage from a particular

1 managed health care system; (h) paid or had paid on their behalf their portion of the costs
2 for participation in the plan; and (i) whose gross family income at the time of enrollment
3 met the definition of a subsidized enrollee. WAC 182-24-020(1).

4 16. Prior to March 1, 2011, in order to be eligible to receive state-subsidized coverage from
5 Basic Health, as a “subsidized enrollee,” an individual generally was required to have a
6 current gross family income that did not exceed twice the federal poverty level as adjusted
7 for family size and determined annually by the federal Department of Health and Human
8 Services (“FPL”). WAC 188-24-010(a); RCW 70.47.020(a)(9)(v)). Certain foster parents
9 whose adjusted family incomes do not exceed 300% of the FPL are eligible for state-
10 subsidized Basic Health coverage as well. WAC 188-34-010(b); RCW 70.47.020(b).

11 17. Basic Health subscribers are required to pay monthly premiums to receive health
12 insurance for their families through Basic Health. The amount of the premium subsidy
13 depends on family income.

14 18. Before March 1, 2011, an applicant’s citizenship or immigration status did not affect
15 her eligibility for enrolling in the Basic Health program, except for those with temporary
16 student visas. RCW 70.47.020(5) (definition of “unsubsidized enrollee”); RCW
17 70.47.020(9), WAC 182-24-010(a) (definition of “subsidized enrollee”), WAC 182-24-
18 020(1)(e).

19 19. Since 1998, the HCA Administrator has been given the authority to limit enrollment in
20 Basic Health if (s)he determines that acceptance of additional enrollment would exceed
21 limits established by the Legislature, would jeopardize the orderly development of Basic
22 Health , or would result in an overexpenditure of program funds. WAC 188-24-020.
23 RCW 70.47.060(6). Under this authority, the Administrator has closed enrollment in Basic
24 Health from time to time, most recently since 2009.

25 www.basicealth.hca.wa.gov/press_release/frequently-asked-questions-basic-health-wait-
26 [list.html](http://www.basicealth.hca.wa.gov/press_release/frequently-asked-questions-basic-health-wait-list.html).

1 **B. The Medicaid Program**

2 20. Medicaid is a cooperative, jointly funded program between the federal and state
3 governments that provides medical assistance to low-income individuals. 42 U.S.C. §
4 1396-1396v.

5 21. Washington has elected to participate in the Medicaid program and so must comply
6 with the requirements of the federal Medicaid Act and its implementing regulations, the
7 requirements of Medicaid waiver agreements to which it is a party, and relevant federal and
8 state law.

9 22. Through the Medicaid program, the Secretary of the United States Department of
10 Health and Human Services (“HHS”) reimburses each participating state for somewhere
11 between 50% and 60% of its costs for eligible healthcare and related services. Washington
12 State receives such matching funds for medical assistance services provided through its
13 State Medicaid program and Medicaid waiver agreements.

14 **C. Sec. 1115 Waivers and the “Bridge Waiver”**

15 23. Section 1115 of the Social Security Act affords the Secretary of HHS broad powers to
16 authorize States to implement demonstration projects likely to assist in promoting the
17 objectives of the Medicaid statute. 42 U.S.C. § 1315.

18 24. Such projects have included providing health care coverage to individuals not
19 otherwise eligible for Medicaid services under the standard Medicaid eligibility criteria.

20 25. States are entitled to receive federal funding at the federal Medicaid matching rate for
21 allowable services they provide and allowable expenses they incur on such projects. 42
22 U.S.C. § 1315(a).

23 26. In order to receive authority from the Secretary of HHS to operate such project, a State
24 must submit an application to one of the HHS divisions, the Centers for Medicare and
25 Medicaid Services (“CMS”), and then enter into a written agreement with CMS laying out
26 its terms and conditions.

1 27. Section 1115 gives the Secretary of HHS the authority to waive certain requirements of
2 federal Medicaid law from applying to States' provision of services under these
3 agreements. 42 U.S.C. § 1315(b).

4 28. Prior to January of 2011, Basic Health's costs were financed solely with state funds,
5 along with the premiums paid by subscribers. Prior to March 2011, the State of
6 Washington received no federal funding to operate the Basic Health program.

7 29. On January 3, 2011, the Department received CMS' approval to operate a § 1115
8 waiver project, referred to therein as the "Transitional Bridge" project. It was anticipated
9 that CMS' approval of the waiver program would enable the State to expand its receipt of
10 Medicaid federal matching payments to include funding for Basic Health services for
11 individuals who would be eligible to enroll in Medicaid in any event, in 2014, under the
12 Affordable Care Act. Bridge Waiver Special Terms and Conditions (hereinafter "Bridge
13 Waiver STC") at 3 Sec. II.

14 30. Specifically, under the Bridge Waiver, the State is entitled to receive federal funding
15 for qualified expenditures to provide coverage to "non-pregnant individuals ages 19
16 through 64 who have countable incomes up to and including 133 percent of the Federal
17 poverty level (FPL) who have not been determined to be eligible for Medicaid or the
18 Children's Health Insurance Program (CHIP), and who are currently enrolled, or become
19 newly enrolled, in the following [pre-existing] State programs: a. Basic Health; b.
20 Disability Lifeline; or c. Alcohol and Drug Addiction Treatment and Support." Such
21 individuals are referred to in the Bridge Waiver as "Transition Eligibles."

22 31. Disability Lifeline ("DL") and Alcohol and Drug Addiction Treatment and Support
23 ("ADATSA"), like Basic Health, are two state-administered public benefits programs
24 furnishing health care services to Washington residents. Like Basic Health, these programs
25 existed for some time before the State applied for and received authorization to obtain
26

1 federal funds under the Bridge Waiver. Like Basic Health, these programs were funded
2 exclusively with state funds, prior to the Bridge Waiver.

3 32. One purpose of the Bridge Waiver was to help the State continue coverage for
4 participants in Basic Health, Disability Lifeline (DL), and ADATSA who would not be
5 eligible for federal matching funds, by offsetting the total cost of the program with federal
6 matching funds for eligible participants. Bridge Waiver STC, Sec. II at 3.

7 33. The Bridge Waiver states that participants in Basic Health who meet the following
8 requirements shall fall within the "Transition Eligibles" population: "individuals ages 19
9 through 64 who are enrolled in the Basic Health program, and have countable household
10 income at or below 133 percent of the Federal poverty level (FPL); and are U.S.
11 citizens/qualified non-citizens and residents of Washington; and who either do not meet the
12 standards for Medicaid or CHIP eligibility, or who have not been determined to be
13 Medicaid eligible in the initial Basic Health certification or annual Basic Health
14 recertification (within established timeframes). This population does not include pregnant
15 women (including through the 60th day postpartum). There is no resource limit." Bridge
16 Waiver, Sec. IV(7)(a)(i) at 7.

17 **VI. FACTUAL BACKGROUND**

18 34. On February 18, 2011, the Washington Legislature passed and Governor Gregoire
19 signed into law ESHB 1086, an "Early Action Budget," which made changes to the
20 existing biennial budget through the end of the fiscal year (June 30, 2011) to conform the
21 budget to changes in State revenues and expenses which had become apparent since the
22 current biennial budget was previously passed and amended. Governor Gregoire partially
23 vetoed some provisions of the bill, which are not relevant to this case. ESHB 1086 has
24 been assigned the citation Chapter 5, Laws of 2011.

25 35. Through this bill, Section 213 of the budget was amended to add a subsection 8, which
26 reads as follows: "As soon as practicable after February 28, 2011, enrollment in the

1 subsidized basic health plan shall be limited to only include persons who qualify as
2 subsidized enrollees as defined in RCW 70.47.020 and who (a) qualify for services under
3 1115 Medicaid demonstration project number 11-W-00254/10 [the Bridge Waiver]; or
4 (b) are foster parents licensed under chapter 74.15.” ESHB 1086, Sec. 213(8).

5 Notwithstanding this budgetary clause, the Legislature did not at that time, nor has it since,
6 approved changes to the statutes laying out the criteria for a subsidized enrollee’s
7 participation in Basic Health. *See* RCW 70.47.020(9). Nor has HCA promulgated
8 emergency rules to change the regulations laying out the eligibility requirements for being a
9 subsidized enrollee in Basic Health. *See* WAC 182-24-010. Notably, those statutes and
10 regulations do not include a test for citizenship or immigration status as a condition for
11 eligibility for or enrollment in Basic Health, other than the exclusion of individuals with
12 student visas.

13 36. Responding to the passage and signing of ESHB 1086, and on the same day it was
14 passed, HCA sent letters dated February 18, 2011, to approximately 17,500 enrollees in
15 Basic Health informing them that they would be disenrolled from Basic Health on March 1,
16 2011. Slightly different notices were mailed to enrollees depending on whether HCA was
17 disenrolling them because of their citizenship and immigration status or their family
18 income, or age. HCA translated these notices into Spanish. Upon information and belief,
19 HCA mailed the Spanish-language versions to some enrollees. The remainder of these
20 disenrollment notices sent out by HCA were written in English.

21 37. Upon information and belief, the vast majority of those receiving the notice were
22 members for whom HCA did not have enough information to determine immigration
23 status. On or about February 8, 2011, Basic Health sent a letter to each household
24 containing members who were Basic Health enrollees requesting that the enrollees submit
25 their social security numbers to HCA so it could determine whether it could receive federal
26 matching funds for the enrolled family members’ Basic Health benefits. This letter did not

1 state that the enrollees' submission of social security numbers would affect the enrollees'
2 eligibility to continue to enroll in Basic Health. Aside from this letter, HCA never
3 requested immigration status information from Basic Health members.

4 38. Ms. Unthaksinkun is indigent. At the time this dispute arose, she and her husband, a
5 member of her household, had been enrolled in the Basic Health Plan since 2006. As of
6 February of this year, she was paying a premium of \$60/month for this coverage for
7 herself, and her husband paid the same amount in Basic Health premiums, amounting to a
8 total of \$120/month. At that time the highest subsidized premium for a household of her
9 size and age range was approximately \$400. Ms. Unthaksinkun paid \$120 for her and her
10 husband's Basic Health premiums for the month of March 2011.

11 39. Ms. Unthaksinkun was diagnosed with breast cancer in June of 2010 and has been
12 receiving medical treatment for that condition since then. This treatment included two
13 surgeries, a lumpectomy and mastectomy, in June and August of 2010, respectively. As a
14 result of these surgeries, Ms. Unthaksinkun lost significant arm strength. Until March of
15 2011, her breast cancer treatment was covered through her Basic Health coverage.

16 Ms. Unthaksinkun relied upon her Basic Health coverage to pay for this medically
17 necessary treatment, without which she is at risk of serious injury or death.

18 40. Ms. Unthaksinkun's doctor instructed her to schedule a medical appointment in March
19 of this year to have a qualified health care professional assess how her surgeries were
20 healing and determine what additional treatment she required. She felt compelled to
21 cancel this appointment, due to her disenrollment from Basic Health and her family's
22 limited resources. Ms. Unthaksinkun's doctor has also told her that it is medically
23 necessary for her to get a medical test in June of 2011 as part of her ongoing breast cancer
24 treatment. She does not know how she is going to be able to pay for this test if her Basic
25 Health benefits are not reinstated prior to that time.

1 41. On February 18, 2011, HCA sent notice to Ms. Unthaksinkun's household and
2 approximately 16,000 Basic Health enrollees who were receiving Basic Health, authorized
3 by RCW 74.07 and WAC 182-24. These notices stated that "Basic Health is unable to
4 verify the member(s) legally resides in the United States....Basic Health requires
5 individuals between ages 19-64 to legally reside in the United States to receive Basic
6 Health coverage." Plaintiff's notice listed her name alone as the household member to
7 whom the notice referred. The last sentence was followed by a footnote at the end of the
8 page: "Chapter 568, Laws of 2009." The act of the Washington State Legislature
9 identified by this citation does not condition Basic Health coverage on the subscriber being
10 between ages 19-64 or legally residing in the United States, nor does it condition coverage
11 on a subscriber's eligibility for federal matching funds under the Bridge Waiver or any
12 similar Medicaid waiver program.

13 42. This form notice failed to inform Ms. Unthaksinkun or class members of why HCA
14 found them ineligible. The notice's statement that "Basic Health requires individuals
15 between ages 19-64 to legally reside in the United States to receive Basic Health coverage"
16 is an incorrect statement of the legal requirements for Basic Health enrollment, even under
17 the terms of ESHB1086 and the Bridge Waiver. An individual may lawfully reside in the
18 United States and possess one of a number of different immigration statuses, which
19 nonetheless renders her ineligible to receive Basic Health. For example, HCA has upheld
20 the disenrollment of immigrants whom it understands are lawful permanent residents of the
21 United States. *See also* 8 U.S.C. § 1641(a) defining "qualified alien"; 8 U.S.C. §§ 1611 –
22 1613 defining which qualified aliens are eligible and ineligible for federal public benefits,
23 such as Medicaid.

24 43. Ms. Unthaksinkun legally resides in the United States. She is a lawful permanent
25 resident of this country, lived here with that status from 1992-1996, and reentered the
26 country on May 31, 2006. Her husband is a citizen, making her eligible to become a

1 naturalized citizen, but they have not had the funds to do so. She has continued to be a
2 lawful permanent resident of this country. Her immigration status apparently renders the
3 state ineligible for federal matching funds under the Bridge Waiver.

4 44. Additionally, the disenrollment notice HCA sent Ms. Unthaksinkun and class members
5 failed to provide any individualized explanation for HCA's determination that they did not
6 legally reside in the United States. The notice did not disclose the information relied upon
7 by HCA in concluding that it was unable to verify that they did not legally reside in the
8 United States. It did not disclose what immigration statuses would render one eligible to
9 continue enrollment in Basic Health, nor did it reference any legal authority enumerating or
10 describing those statuses.

11 45. The notices sent to Plaintiff Unthaksinkun along with all class members, stated the
12 following regarding enrollees' rights to appeal this disenrollment "If you believe the action
13 taken on your account is wrong, we must receive your appeal with 30 days of the date of
14 this letter. Send a written appeal to PO Box 42690, Olympia, WA 98504 with your name,
15 Basic Health ID number, mailing address, and daytime phone number. In your appeal, you
16 must explain the decision you disagree with, why you disagree, what you want to change,
17 and include any documents you have to support your request."

18 46. The notices did not inform Plaintiff and other class members being disenrolled of their
19 right to request and receive continued Basic Health benefits pending an appeal of their
20 disenrollment. WAC 182-22-320(8).

21 47. Ms. Unthaksinkun initiated a timely administrative appeal of her disenrollment from
22 Basic Health by HCA. She submitted copies of her "green card" and driver's license along
23 with her social security number in support of her administrative appeal.

24 48. As of March 21, 2011, HCA had received requests from 6,763 households to appeal the
25 disenrollments of approximately 8,927 household members who had been Basic Health
26 subscribers and who had been disenrolled in response to the passage of ESHB1086 (each

1 such request appealed the disenrollment of one or more Basic Health members who had
2 been disenrolled within that household). As of that date, HCA had ruled on approximately
3 69% of those appeals and had granted the requests to reinstate household members, whom
4 it had erroneously disenrolled from Basic Health, in approximately 64% of those appeals.
5 49. HCA sent written adverse appeal form decisions to those whose disenrollment appeals
6 it rejected, informing them of this fact. Concerning enrollees whose immigration status-
7 based disenrollments had been upheld by HCA, the decisions provided an inadequate
8 explanation of the reasons for concluding that appellants did not have an immigration
9 status that qualified for Basic Health eligibility.

10 50. For example, the decision sent to Ms. Unthaksinkun gave the following reason to
11 explain why HCA rejected her administrative appeal: "The information you provided
12 shows the individual(s) listed above entered the U.S. after August 22, 1996, and has not
13 met the five year wait period required under federal law." Ms. Unthaksinkun had lived in
14 the U.S. before 1996, although not continuously.

15 51. Like this notice, the notices sent to individuals who had been disenrolled due to
16 immigration status did not disclose what immigration statuses would render an enrollee
17 eligible to be reenrolled in Basic Health, nor did they reference any legal authority
18 enumerating or describing those statuses. The only legal authority referenced by these
19 notices was the citation to Chapter 568, Laws of 2009.

20 52. By terminating Plaintiff Unthaksinkun's and other class members' state-funded Basic
21 Health benefits, while continuing to provide Basic Health benefits paid for with state funds
22 to Basic Health enrollees who meet the citizenship and alien status requirements adopted in
23 ESHB 1086, the state is discriminating against them because of their status as aliens for the
24 sole purpose of saving money.

25 53. Ms. Unthaksinkun and members of the proposed class are suffering or will suffer
26 irreparable harm due to the termination of their Basic Health benefits. As a result of

1 HCA's actions, Plaintiff and class members are not able to purchase health insurance or
2 pay for medically necessary health care. Plaintiff and the class members she seeks to
3 represent have no plain, speedy, or adequate remedy at law except by this complaint for
4 injunctive relief.

5 **VII. CLAIMS FOR RELIEF**

6 54. Plaintiff re-alleges and incorporates herein by reference each and every allegation and
7 paragraph set forth previously.

8 55. HCA has terminated Plaintiff's and class members' Basic Health benefits authorized by
9 RCW 74.07 and WAC 182-24 solely to save money. At the same time, HCA is continuing
10 to spend state funds to provide Basic Health benefits to similarly situated U.S. citizens and
11 aliens who meet the alien status requirement of the Bridge Waiver.

12 56. In doing so, HCA is discriminating against Plaintiff and the class she seeks to represent
13 on the basis of their alien or immigration status even though they are legal immigrants,
14 lawfully present in the United States.

15 57. The state's actions in discriminating against Plaintiff and class members because of
16 their alienage are subject to strict scrutiny under the Equal Protection Clause of the
17 Fourteenth Amendment to the United States Constitution.

18 58. Saving money is not an adequate justification to discriminate against Plaintiff and class
19 members in violation of the Equal Protection Clause of the 14th Amendment of the United
20 States Constitution.

21 59. HCA's decision to terminate the Plaintiff's and other class members' Basic Health
22 benefits, while continuing to provide Basic Health benefits to similarly situated Basic
23 Health enrollees who meet the citizenship and alien status requirements adopted in ESHB
24 1086, discriminates against the Plaintiff and class members in violation of the Equal
25 Protection Clause of the 14th Amendment of the United States Constitution.

1 60. HCA's actions deprive Plaintiff and the class of rights, privileges, or immunities
2 secured to them by the Constitution in violation of 42 U.S.C. § 1983.

3 61. Irreparable harm has occurred as a result of HCA's actions. The balance of harms
4 favors entering temporary, preliminary, and permanent injunctive relief because the harm
5 suffered by Plaintiff and other class members outweighs any monetary loss to HCA.

6 62. It is in the public interest that the Court grant temporary, preliminary, and permanent
7 injunctive relief to ensure that Plaintiff and other similarly situated individuals resume
8 enrollment in the Basic Health program pending the outcome of this litigation.

9 **VIII. PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays for the following relief:

11 (a) That the Court determine that this action be maintained as a class action
12 under Fed. R. Civ. P. 23(a), and (b)(2), defining the class as proposed above, approving
13 Plaintiff as adequate class representative, and designating Riddell Williams and Northwest
14 Health Law Advocates as class counsel;

15 (b) For a declaration that State of Washington's and HCA's actions in
16 terminating of Plaintiff's and class members' Basic Health benefits because of the lack of
17 program funding violates the Equal Protection Clause of the Fourteenth Amendment to the
18 United States Constitution in violation of 42 U.S.C. § 1983.

19 (c) For entry of temporary, preliminary and permanent injunctive relief
20 enjoining HCA's termination of Plaintiff's and class members' Basic Health benefits, and
21 to order HCA to reinstate Plaintiff's and class members' enrollment as subsidized enrollees
22 in the Basic Health program.

23 (e) Waive the requirement for the posting of a bond as security for the entry of
24 temporary, preliminary, or permanent injunctive relief;

25 (e) Award the Plaintiff her costs of this action and reasonable attorney's fees
26 pursuant to 42 U.S.C. § 1988; and

1 (f) For such other relief as the Court may deem just and proper.

2 DATED this 7th day of April, 2011.

3 RIDDELL WILLIAMS P.S.

4
5 By /s/ Blake Marks-Dias

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