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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Peg Ball; Cree James, a minor person by) and through her grandfather and guardian) Bennie James; Jeanne Spinka; Vennetta Graham; Collin Phelan, a minor person by) and through his mother Kim Bowman;) Judeth Hinton; and Virginia Haskell, as) individuals and as representatives of a) class of person similarly situated,

Plaintiffs,

vs.

Anthony D. Rodgers, Director of the) Arizona Health Care Cost Containment) System; The Arizona Health Care Cost) Containment System Administration; and) the State of Arizona,

Defendants.

No. CV 00-67-TUC-EHC

**ORDER**

On June 1, 2006, the Court held a Status Conference to discuss, among other things, further modifications to the Injunction, extending the Court’s jurisdiction, and Defendants’ monthly gap reports. (See Dkts. 394 & 413.) At the Status Conference, the Court clarified that the Injunction is a permanent injunction, directed Defendants to continue filing monthly gap reports, and ordered Plaintiffs to file a Reply in support of their Motion to Extend and Modify Injunction within twenty days.

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1 **I. Clarification Regarding Injunction**

2 The Parties dispute whether the Court's Injunction is permanent. On May 28, 2009,  
3 Plaintiffs filed a Notice of Errata, noting that Plaintiffs mistakenly stated in their Motion to  
4 Extend and Modify Injunction that the Injunction was set to expire June 30, 2009. (Dkt.  
5 409.) Plaintiffs explained that "[w]hile the Court's oversight jurisdiction, and the  
6 Defendants' reporting requirements, are set to expire on June 30, 2009 (absent any extension  
7 by the Court), Plaintiffs believe that the other terms of the Injunction will remain in place  
8 past any expiration of the Court's oversight jurisdiction." (Dkt. 409 at 2.) On May 29, 2009,

9 Defendants filed a Response to Notice of Errata, objecting to Plaintiff's position that  
10 the Injunction is permanent. (Dkt. 410.) Defendants' notice of appeal is titled "Preliminary  
11 Injunction Appeal." (Dkt. 399.) Defendants argue that Plaintiffs have reversed their prior  
12 position for strategic purposes and should be judicially estopped from changing positions.  
13 (Dkt. 410 at 2, 4.) Defendants also argue that this Court has "agreed the Injunction is  
14 time-limited." (*Id.* at 3.)

15 Although the Court never explicitly stated that its prior injunctive orders are  
16 permanent, the nature of the injunctive relief is clearly permanent. The Court ordered  
17 Defendants to, among other things, "provide each qualified individual with critical services  
18 without gaps in those services," and "provide a rate of pay to health care workers so as to  
19 deliver those critical services." (Dkt. 248 at 1-3.) If the granted relief is not permanent then  
20 it would defeat the purpose of the Injunction, which is to ensure that Plaintiffs receive the  
21 critical services that they are entitled to receive. In other words, Defendants cannot return  
22 to their prior practices after this Court's jurisdiction expires.

23 In addition, none of the Court's Orders refer to the Injunction as a preliminary  
24 injunction. The Ninth Circuit also understood that the Injunction is a permanent injunction.  
25 See Ball v. Rodgers, 492 F.3d 1094, 1097 (9th Cir. 2007) (Defendants "also appeal[ ] the  
26 district court's decision to grant the Medicaid beneficiaries permanent injunctive relief.").

27 The Court's June 28, 2005 Order stated that "the Court retain[s] jurisdiction of this  
28 case through December 31, 2008." (Dkt. 248 at 4.) The Court's December 23, 2008 Order

1 stated that “the Injunction... is extended from its present expiration date of December 31,  
2 2008.” (Dkt. 389 at 2.) The Court further stated that “the Court retains jurisdiction of this  
3 case through resolution of the issues on remand or until June 30, 2009.” (Dkt. 389 at 2.) The  
4 purpose of retaining jurisdiction through a certain date was to ensure that Defendants  
5 complied with the Court’s Injunction and direct Defendants to file monthly gap reports and  
6 annual reports.

7 Although the Court’s jurisdiction or oversight, requiring the filing of monthly and  
8 annual reports, may expire, the granted injunctive relief will not expire. The Court will  
9 extend its jurisdiction beyond June 30, 2009 for whatever period is necessary for  
10 enforcement purposes. Therefore, the Court will not set a date for its jurisdiction to expire  
11 until the Court finds that oversight is no longer necessary. Defendants shall continue to file  
12 monthly gap reports and annual reports until the Court determines that these reports are no  
13 longer necessary. In addition, Plaintiffs shall file Objections, if necessary, to Defendants’  
14 monthly gap reports and annual reports within ten (10) days after Defendants file the reports.

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16 **II. Additional Modifications to the Injunction**

17 On May 19, 2009, Plaintiffs filed a Motion to Extend and Modify Injunction and  
18 Appoint Master, requesting additional modifications to the Injunction. (Dkt. 403 & 404.)  
19 On May 22, 2009, Defendants filed a Response, opposing Plaintiff’s Motion to Extend and  
20 Modify Injunction and Appoint Master. (Dkt. 407.) The Court will allow Plaintiffs twenty  
21 days from the date of this Order to file a Reply in Support of their Motion.

22 Accordingly,

23 **IT IS ORDERED** that the Court’s Injunction (Dkts. 212, 248, 389, & 394) is a  
24 permanent injunction.

25 **IT IS FURTHER ORDERED** that the Court’s jurisdiction will not expire on June  
26 30, 2009. The Court’s jurisdiction will continue for whatever period is necessary for  
27 enforcement purposes.

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