

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

WOLF PRADO-STEIMAN, by and through his mother and next friend, **LAURA PRADO**, and **M.C.**, by and through his mother and next friend, **O.M.**, on behalf of themselves and all other persons similarly situated, and the **ADVOCACY CENTER FOR PERSONS WITH DISABILITIES, INC.**,

98-6496
CIV-DAVIS

PLAINTIFFS,

-vs-


LAWTON CHILES in his official capacity as Governor and Chief Executive of the State of Florida, **EDWARD FEAVER**, in his official capacity as Secretary, Department of Children and Families, **CHARLES KIMBER**, in his official capacity as Deputy Secretary of the Department of Children and Families, **DONNA ALLEN**, in her official capacity as Assistant Deputy Secretary of the Department of Children and Families, **JOHN BROWN**, in his official capacity as Department of Children and Families District Administrator, District 10, **DOUG COOK**, Department of Children and Families, in his official capacity as Director of the Agency for Health Care Administration for the State of Florida, **RICHARD T. LUTZ**, in his official capacity as Director of Florida Medicaid for the Agency for Health Care Administration

DEFENDANTS.

PLAINTIFFS' CLASS ACTION COMPLAINT

PRELIMINARY STATEMENT

1. This is a statewide class action brought on behalf of the more than 20,000 individuals with developmental disabilities eligible for services under Florida's Medicaid Home and Community Based Services Waiver Program ("Home and Community Based Waiver"), who have been denied procedural due process and adequate services.

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As a result of the lack of services in the community, individuals are institutionalized.

2. Plaintiffs seek a declaration that denial of procedural due process and adequate services with reasonable promptness violates Title XIX of the Social Security Act, 42 U.S.C. § 1396a, 42 C.F.R § 431.200, *et seq.*, the Americans with Disabilities Act, the Due Process Clause of the Fourteenth Amendment to the United States Constitution, and 42 U.S.C. § 1983. Plaintiffs also seek injunctive relief to require defendants to comply with federal statutory and constitutional law.

JURISDICTION

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 & 1343(3) and (4), and 42 U.S.C. § 1983. This Court is authorized to order the requested relief by these statutes and by 28 U.S.C. §§ 2201 and 2202.

4. This action arises under 42 U.S.C. § 12131, *et seq.*, 29 U.S.C. § 794, and 42 U.S.C. § 1983.

VENUE

5. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b)(1) and (b)(2) because (i) all defendants reside in districts in Florida and defendant John Brown reside in the Southern District of Florida and (ii) the cause of action arises within the Southern District of Florida as to Plaintiffs Wolf Prado-Steiman and M.C.

PLAINTIFFS

6. WOLF PRADO-STEIMAN is a seven year old boy with autism

who presently lives at home with his parents and older sister. His mother applied for Medicaid Waiver Services on his behalf and was provided with respite in Martin County. When she moved to Broward County, she was provided with behavioral services to address his behavioral issues. In or about April 1997, his mother was informed that his behavioral services were going to be terminated. ~~She was~~ not provided with any notice of appeal rights and rights to continued benefits. WOLF needs behavioral services urgently because school will be closed for one month this summer, and his behavioral problems, including running away, have increased. His mother has been told that he will be put on a waiting list for services.

7. M.C. is an 18 year old man with cerebral palsy. He uses a wheelchair and an augmentative communication device. His mother, O.M. has applied for Medicaid Waiver services on his behalf. She has requested and been denied personal care and respite services. Because he has grown, it is very difficult for her to continue to provide him personal care without assistance. M.C. wants companion services so that he can socialize like other teen-age boys.

8. THE ADVOCACY CENTER FOR PERSONS WITH DISABILITIES, INC. (ADVOCACY CENTER) provides protection and advocacy services to people with developmental disabilities pursuant to the Developmental Disabilities Act, 42 U.S.C. § 6042. In order to fulfill its responsibility to protect and advocate for persons with developmental and mental disabilities, the ADVOCACY CENTER has the authority to pursue legal remedies.

DEFENDANTS

9. LAWTON CHILES is Governor of the State of Florida and is sued here in his official capacity. CHILES has the responsibility to ensure that the agencies of the Executive Branch of the State, including the Department for Children and Families (DCF) and the Agency for Health Care Administration (AHCA), act in full compliance with the Constitution and the laws of the United States.

10. EDWARD FEAVER is Secretary of DCF and has responsibility for the control and the administration of human services, including the Developmental Services Program and its related Medicaid Program in the State of Florida. He is sued here in his official capacity.

11. CHARLES KIMBER is a Deputy Secretary for DCF and has responsibility for the control and the administration of human services, including the Developmental Services Program and its related Medicaid Program in the State of Florida. He is sued here in his official capacity.

12. JOHN BROWN is the District Administrator for DCF District 10, which includes Broward County. He is sued here in official capacity.

13. Defendant DOUG COOK is the Director of the Agency for Health Care Administration. He is sued here in his official capacity. He is responsible for administering the Florida Medicaid program so that it complies with federal law.

14. Defendant RICHARD T. LUTZ is the Director of the Division of Medicaid of AHCA. He is sued here in his official capacity. He is responsible for the overall operation of Medicaid and is

required to ensure that it complies with federal law.

15. All defendants have at all relevant times acted under color of state law and knew of or should have known of the policies, practices, acts and conditions alleged.

CLASS ACTION ALLEGATIONS

16. The named plaintiffs bring this action on their own behalf and on behalf of all other similarly situated persons pursuant to Fed. R. Civ. P. 23(a), and (b)(2).

17. The proposed class consists of all current and future individuals with developmental disabilities who are receiving Home and Community Based Waiver Services or who are eligible to receive Home and Community Based Waiver Services.

18. The requirements of Fed.R.Civ.P. Rule 23(a) are satisfied in this case as follows:

a. Numerosity: The class is so numerous that joinder of all members is impracticable. Upon information and belief, the class consists of more than 20,000 individuals.

b. Commonality: There are questions of law or fact common to all named plaintiffs as well as to all members of the class, to wit: whether the defendants' have violated the Medicaid Act, 42 U.S.C. § 1983, and the Due Process and Equal Protection Clauses of the Constitution of the United States.

c. Typicality: The claims of the named plaintiffs are typical of the claims of the class as a whole.

d. Adequate representation: By filing this action, the named plaintiffs, individually and through their guardians and next

friends, have displayed an interest in vindicating their rights, as well as the claims of others who are similarly situated. The named plaintiffs will fairly and adequately protect and represent the interests of the class. Furthermore, the named plaintiffs are represented by legal counsel who are skilled and knowledgeable about the Medicaid Program, civil rights litigation, practice and procedure in the federal courts, and the prosecution and management of class action litigation. The relief sought by the named plaintiffs will inure to the benefit of members of the class generally.

19. The requirement of Fed.R.Civ.P. 23(b)(2) is also satisfied in this case. The defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate declaratory relief, with respect to the class as a whole. Although the disabilities of the class members vary, they share in common a need for services provided by the Home and Community Based Waiver Program.

STATUTORY AND CONSTITUTIONAL FRAMEWORK

20. The Medicaid program, established by Title XIX of the Social Security Act, 42 U.S.C. § 1396, et seq., is a cooperative federal-state program to enable the states to furnish medical assistance to families and individuals who are unable to meet the costs of necessary medical services. 42 U.S.C. § 1396. Costs of the program are shared by the federal and state governments, with the federal government contributing approximately 55 per cent of the cost of services in Florida.

21. A state is not obligated to participate in the Medicaid Program. If a state elects to participate, however, it must operate its program in compliance with federal statutory and regulatory requirements. 42 U.S.C. § 1396a. Florida has chosen to participate in the Medicaid program.

22. Medicaid is permitted to control the utilization of covered services through the application of a medical necessity test. When applying a medical necessity standard, the Florida Medicaid Program must ensure that recipients with the most severe disabilities or conditions are served before recipients with less severe disabilities. 42 C.F.R. § 440.230(d).

23. State plans must also provide an opportunity for a fair hearing to any individual whose claim for medical assistance under the plan is denied or is not acted upon with reasonable promptness. 42 U.S.C. § 1396a(3) and 42 C.F.R. § 431.200, *et seq.*

24. Defendants must mail and give advance notice at least ten (10) days before the date of termination of or reduction in Medicaid benefits. 45 C.F.R. § 431.211.¹ The purpose of the advance notice is to afford the recipient of the service an opportunity for a pre-termination hearing. 42 C.F.R. § 431.231(c).

VIII. THE HOME AND COMMUNITY-BASED WAIVER

25. Congress adopted the Home and Community-Based Waiver in order to allow individuals who would otherwise require care in a nursing home or ICF/DD to receive services in their own homes and

¹ There are limited exceptions to the advance notice requirement at 45 C.F.R §§431.213 and 431.214, which are not applicable here.

in home-like settings. See Senate Report No. 97-139 and House Conference Report No. 97-208, 1981 U.S. Code Cong. & Admin. News., at 396.

26. The regulations state that "Section 1915(c) of the Act permits states to offer, under a waiver of statutory requirements, an array of home and community-based services that an individual needs to avoid institutionalization." 42 C.F.R. § 441.300 (emphasis added).

27. Under the waiver provisions of the Act, states may include as "medical assistance" the cost of home or community based services which, if not provided, would require care to be provided in a nursing home or an Intermediate Care Facility for Persons with Mental Retardation (Developmental Disabilities) (ICF/DD). 42 U.S.C. §1396n(c); 42 C.F.R. § 435.217. 42 U.S.C. § 1396n(c)(1) states:

The Secretary may by waiver provide that a State plan approved under this subchapter may include as "medical assistance" under such plan payment for part or all of the cost of home or community-based services (other than room and board) approved by the Secretary which are provided pursuant to a written plan of care to individuals with respect to whom there has been a determination that but for the provision of such services the individuals would require the level of care provided in a hospital or nursing facility or intermediate care facility for the mentally retarded the cost of which could be reimbursed under the State plan. . . .

28. Federal law sets a ceiling for funds used under the Home and Community Based Waiver. 42 U.S.C. § 1396n(c)(2)(D) requires that "the average per capita expenditure estimated by the State in any fiscal year for medical assistance provided with respect to such individual does not exceed 100 percent of the average per

capita expenditure that the State reasonably estimates would have been made in that fiscal year . . . if the waiver had not been granted." Thus, federal law permits states to fund Home and Community-Based Waiver up to the same average rate as ICF/DDs.

29. Congress provided that a Home and Community-Based Waiver shall not be granted unless the State provides assurances that "necessary safeguards (including adequate standards for provider participation) have been taken to protect the health and welfare of individuals provided services under the waiver" 42 U.S.C. § 1396n(2)(A); 42 C.F.R. § 441.302 (a). Those safeguards must include "[a]dequate standards for all types of providers that provide services under the waiver." 42 C.F.R. § 441.302 (a)(1).

30. Congress also requires that individuals with developmental disabilities have the freedom of choice as to whether to receive services in an ICF/DD or under the Home and Community-Based Waiver. 42 U.S.C. § 1396n(2)(C) provides that individuals "who are determined to be likely to require the level of care provided in a hospital, nursing facility, or intermediate care facility for the mentally retarded are informed of the feasible alternatives, if available under the waiver, at the choice of such individuals, to the provision of inpatient hospital services, nursing facility services, or services in an intermediate care facility for the mentally retarded (developmentally disabled)."

31. Florida first obtained approval for a Home and Community-Based Waiver in 1982 for day treatment services. A subsequent request for a comprehensive amendment to Florida's Home and

Community-Based waiver was approved in 1992 that adopts the philosophy of avoiding institutional care and provides supports and services to individuals with developmental disabilities in their own homes or home-like settings.

VIII. DEFENDANTS' UNLAWFUL ACTIONS

32. Defendants have consistently denied individuals with developmental disabilities their rights to HCBW services and to due process.

33. As a matter of practice, defendants do not provide plaintiffs with procedural due process protections. Typically, defendants deny individuals services, stating that funds are not available. Defendants do not provide notice that the Medicaid statute provides for procedural protections, including the right to appeal adverse determinations.

34. Defendants routinely terminate individuals like Wolf Prado-Steiman and M.C. from services and never provide any notice of procedural protections, including the right to appeal adverse determinations and the right to continued benefits pending appeal.

35. Defendants fail to provide individuals with services in the most integrated setting, their homes and community. Instead, defendants make services available only in institutional setting. Families that care for their children at home do not even receive the most basic services. For example, individuals in institutions who are not continent receive diapers whereas individuals who live at home with their families are routinely denied diapers.

36. Defendants routinely deny individuals physical therapy,

occupational therapy, speech therapy, and assistive technology devices and services.

37. For many families, respite, personal care, and companion services are vital to keep their family members home. Without these services, many parents are forced to institutionalize their children.

38. Despite defendants' claims of lack of funds, the federal match (55%) is available for HCBW services. Nonetheless, defendants continue to serve many individuals eligible for HCBW services with general revenue dollars, failing to take advantage of the federal match.

CLAIMS FOR RELIEF

FIRST CAUSE OF ACTION

AMERICANS WITH DISABILITIES ACT

39. On July 12, 1990, Congress enacted the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*, (ADA), establishing the most important civil rights for persons with disabilities in our nation's history.

40. Congress stated in its findings that, "historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem." 42 U.S.C. § 12101(a)(2).

41. Congress found that "discrimination against individuals with disabilities persists in . . . institutionalization . . . and access to public services." 42 U.S.C. § 12101(a)(3).

42. Congress found that "individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion . . . , segregation, and relegation to lesser services, programs, activities, benefits, jobs, or other opportunities." 42 U.S.C. § 12101(a)(5).

43. Congress further found that:

individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment, and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society.

42 U.S.C. § 12101(a)(7).

44. A major purpose of the ADA is to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities, and to provide clear, strong, consistent and enforceable standards addressing discrimination against individuals with disabilities.

42 U.S.C. § 12101(b)1&2.

45. Each plaintiff and each class member is "a qualified individual with a disability" within the meaning of 42 U.S.C. § 12131(2).

46. The Home and Community-Based Waiver program are public services subject to Title II of the ADA, 42 U.S.C. §§ 12161-12165.

47. Defendants routinely deny individuals who live in their own homes or with their families or in community settings services such as physical therapy, occupational therapy, speech therapy, and

dental services that are available to individuals who are in ICF/DDs.

48. Defendants' denial of necessary services, while offering the option of more expensive, institutional services violates the ADA, and specifically the "Integration Mandate" implementing the ADA as found in 28 C.F.R. § 35.130(d) which requires that: "a public entity shall administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities."

49. The ADA also prohibits discrimination in access to covered services that are based on either severity of disability, or diagnosis.

50. DCF has engaged in diagnosis based decision making with their actions to deny or limit access to benefits, services and opportunities because the person has a particular disability, impairment or diagnosis.

SECOND CAUSE OF ACTION

SECTION 504 OF THE REHABILITATION ACT OF 1973

51. Defendants receive federal funds and are therefore subject to the requirements of Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. § 794.

52. Plaintiffs meet the definition of having a "handicap" within the meaning of 29 U.S.C. § 706(7) and are otherwise qualified individuals under Section 504.

53. Defendants' practices, policies and procedures described above, violate the rights of plaintiffs and class members that are

secured by Section 504 by discriminating against these individuals solely on the basis of disability.

THIRD CAUSE OF ACTION

PROCEDURAL DUE PROCESS AND SECTION 1983

54. Plaintiffs' eligibility for and receipt of Medicaid services creates a property right subject to due process protection under the Fourteenth Amendment to the Constitution of the United States.

55. Florida's Home and Community-Based Waiver specifically provides for a fair hearing, as required by 42 C.F.R. Part 431, subpart E, to Medicaid recipients who are denied the services(s) of their choice or the provider(s) of their choice.

56. Defendants have not provided any procedural protections for plaintiffs and class members.

57. By denying plaintiffs and class members the opportunity for a fair hearing to challenge the termination of Home and Community Based Waiver and for continued benefits, defendants have violated the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States, federal Medicaid law and regulations, and the terms of Florida's Home and Community-Based Waiver.

FOURTH CAUSE OF ACTION

42 U.S. C. § 1396a(8) and 42 U.S.C. § 1983

58. Defendants fail to provide HCBW services with reasonable promptness in violation of 42 U.S.C. § 1936a(8) and 42 U.S.C. § 1983.

FIFTH CAUSE OF ACTION

42 U.S.C. § 1396n and 42 U.S.C. § 1983.

59. Serving individuals in institutions is contrary to the letter and intent of 42 U.S.C. § 1396n.

60. Defendants fund institutional placements using the Home and Community-Based Waiver. Such a use of HCBW funds violates the exclusion of institutional programs from the Home and Community-Based Waiver program and therefore violates 42 U.S.C. § 1396n and 42 U.S.C. § 1983.

SIXTH CAUSE OF ACTION

42 U.S.C. § 1396n(2)(a) and 42 U.S.C. § 1983

61. Defendants are violating 42 U.S.C. § 1396n(2)(a) and 42 U.S.C. § 1983 by providing inadequate funds for the Home and Community-Based Waiver. Defendants do not provide sufficient resources to protect the health and welfare of individuals provide services under the waiver. 42 U.S.C. § 1396n(2)(A).

SEVENTH CAUSE OF ACTION

42 U.S.C. § 1396n(c)(2) and 42 U.S.C. § 1983

62. Defendants have violated 42 U.S.C. § 1396n(c)(2) by denying plaintiffs their freedom of choice of an appropriate Home and Community-Based Waiver program that meets their health and welfare needs.

63. Defendants provide only limited services to individuals to remain in their own homes, family homes or community homes.

64. By giving individuals a choice between the kinds of services at the same amount of funding, individuals have a true

choice.

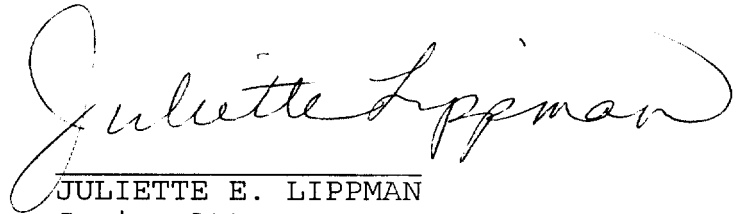
65. Defendants are therefore in violation of 42 U.S.C. § 1396n(c)(2) and 42 U.S.C. § 1983.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs pray that this Court:

- A. Assume jurisdiction of this action.
- B. Order that plaintiffs may maintain this action as a class action pursuant to Rule 23, Fed.R.Civ.P.
- C. Declare defendant's threatened termination of Home and Community Based Waiver Services under the Medicaid program without advance notice and an opportunity for a pre-termination hearing and continued benefits unlawful.
- D. Award plaintiffs their costs and reasonable attorneys' fees.
- E. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,



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CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I (a) PLAINTIFFS WOLF PRADO-STEIMAN, by and through his mother and next friend, LAURA PRADO, MC., OM., on behalf of themselves and the ADVOCACY CENTER FOR PERSONS WITH DISABILITIES, INC.

DEFENDANTS LAWTON CHILES, et al, EDWARD FEAVER, Secretary of Dept. of Children and Families, CHARLES KIMBER, DEPUTY SECRETARY of Dept. of Children and Families, JOHN BROWN, District Administrator, District 10, Dept. of Children and Families, DOUG COOK, RICHARD T. LUTZ

98-6496 CIV. DAVIS

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF BROWARD (EXCEPT IN U.S. PLAINTIFF CASES)

DEFENDANT (IN U.S. PLAINTIFF CASES ONLY)

CASA 0:98CV6496 DAVIS/LRS

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)
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ATTORNEYS (IF KNOWN)
Chesterfield Smith Jr. Esq.
Office of Attorney General
The Capitol-PL01/Tall. PL 32399-1050

(d) CIRCLE COUNTY WHERE ACTION AROSE:
DADE, MONROE, BROWARD, PALM BEACH, MARTIN, ST. LUCIE, INDIAN RIVER, OKEECHOBEE, HIGHLANDS

II. BASIS OF JURISDICTION
 (PLACE AN X ONE BOX ONLY)

1. U.S. Government Plaintiff

3. Federal Question (U.S. Government Not a Party)

2. U.S. Government Defendant

4. Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES
 (For Diversity Case Only)

Citizen of This State 1

Citizen of Another State 2

Citizen or Subject of a Foreign Country 3

Foreign Nation 6

PTF DEF

Incorporated of Principal Place of Business in This State 4

Incorporated and Principal Place of Business in Another State 5

Foreign Nation 6

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.) **42 U.S.C. § 1396, 42 USC § 12101, et seq., 29 USC § 794, 42 USC § 1983, Forteenth Amendment, plaintiffs seek declaratory and injunctive relief to require defendants to provide them with adequate home & community based services with due process**

IVa. 10 days estimated (for both sides) to try entire case and procedural protection.

V. NATURE OF SUIT (PLACE AN X IN ONE BOX ONLY)		A CONTACT		A TORTS		B FORFEITURE PENALTY		A BANKRUPTCY		A OTHER STATUS																																			
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl Veterans) B	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits B	<input type="checkbox"/> 160 Stockholder's Suits	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 368 Asbestos Personnel Injury Product Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 371 Truth in Lending B	<input type="checkbox"/> 380 Other Personnel Property Damage	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 States Reappointment	<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 450 Commerce/ICC Rates/etc. B	<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 875 Customer Challenge 12USC3410	<input type="checkbox"/> 891 Agricultural Acts	<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 895 Freedom of Information Act	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 890 Other Statutory Actions * * A or B
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 220 Foreclosure B	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 444 Welfare	<input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 530 General *	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 540 Mandamus & Other *	<input type="checkbox"/> 550 Civil Rights * A or B	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 720 Labor Management Relations B	<input type="checkbox"/> 730 Labor Management Reporting & Disclosure Act	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 791 Employee Ret. Inc. Security Act B	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609						
<input type="checkbox"/> 250 Real Property	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 444 Welfare	<input checked="" type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 530 General *	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 540 Mandamus & Other *	<input type="checkbox"/> 550 Civil Rights * A or B	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 630 Liquor Laws	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 660 Occupational Safety/Health	<input type="checkbox"/> 690 Other	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 720 Labor Management Relations B	<input type="checkbox"/> 730 Labor Management Reporting & Disclosure Act	<input type="checkbox"/> 740 Railway Labor Act	<input type="checkbox"/> 790 Other Labor Litigation	<input type="checkbox"/> 791 Employee Ret. Inc. Security Act B	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 861 HIA (1395ff)	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609											

VI. ORIGIN (PLACE AN X IN ONE BOX ONLY)

1. Original Proceeding

2. Removed From State Court

3. Remanded from Appellate Court

4. Refiled

5. Transferred from another district (Specify)

6. Multidistrict Litigation

7. Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT UNDER F.R.C.P. 23

CLASS ACTION **DEMAND \$** _____

JURY DEMAND: YES NO

VIII. RELATED CASE(S) IF ANY (See Instructions): _____

JUDGE **Ferguson** **DOCKET NUMBER** **96-6619-CIV**
92-589-CIV

DATE **5/13/98** **SIGNATURE OF ATTORNEY OF RECORD** *Ellen M Saideman*

UNITED STATES DISTRICT COURT **S/F 1-2** **REV. 9/94**

FOR OFFICE USE ONLY: Receipt No. **573648** **Amount:** **\$750.00**

Date Paid: **05-13-98** **M/ftp:** _____