UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

WALTER BARRY by his next friend ELAINE BARRY, HEATHER WOODWARD, DONITHA COPELAND, and KENNETH L. ANDERSON, on behalf of themselves and all others similarly situated, and WESTSIDE MOTHERS,

Plaintiffs,

v.

MAURA CORRIGAN, in her capacity as Director, Michigan Department of Human Services,

Defendant.

Case No. 2:13-cv-13185 BAF-PJK
Hon. Bernard A. Friedman
U.S. District Judge

Hon. Paul J. Komives
U.S. Magistrate Judge

____/

(PROPOSED) SECOND AMENDED CLASS ACTION COMPLAINT

PRELIMINARY STATEMENT

Denial of Due Process Under Federal Constitution and Law –

Counts I and II

1. This action challenges the inadequate and unlawful "criminal justice disqualification" notices issued by Defendant's Michigan Department of Human Services (DHS) to applicants for, or recipients of, needs-based benefits under DHS-administered public assistance programs, whose benefits have been or will be

denied, terminated, or reduced based on an alleged criminal justice disqualification.

2. The public assistance benefits at issue are intended to prevent hunger; to ensure a minimum level of economic security for families with children, refugees and the disabled; and to support self-sufficiency and employment by providing safe childcare for low-income parents engaged in employment or education and training activities. These programs are critically important to the wellbeing of the named plaintiffs, class members, and their families.

3. Defendant's notices merely state:

> "You or a member of your group is not eligible for assistance due to a criminal justice disqualification. Please have the disqualified member of your group contact a law enforcement agency – such as a police department, sheriff's department, or the Michigan State Police – to resolve. The law enforcement agency will require you to provide picture identification."

Prior to about July 14, 2013, Defendant's notices merely stated:

> "You or a member of your group is not eligible for assistance due to a criminal justice disqualification. Please contact your local law enforcement agency to resolve."

Thus, the notices fail to provide any specific information about the reasons for or nature of the criminal justice disqualification. Affected individuals have no way to know why their access to assistance is being denied, reduced, or terminated; for how long they are being cut off from assistance; whether they dispute any of Defendant's factual findings that support the action; or what steps they could potentially take to have benefits reinstated.

4. Defendant has violated Plaintiffs' and proposed class members' rights to adequate notice, and a meaningful opportunity to be heard, as a matter of both constitutional due process (Count I) and federal Supplemental Nutrition Assistance Program (SNAP) law, 7 U.S.C. 2020(e)(10) (Count II), which are enforceable under 42 U.S.C. 1983.

Denial of Food Assistance for Which Plaintiffs and Others Similarly Situated Are Eligible Under Federal Standards – Counts III and IV

5. Plaintiffs also challenge Defendant's "fugitive felon" policy and practice, and the state law on which it is based, which disqualify people from Food Assistance based on the mere existence of an outstanding felony warrant for the person's arrest, as identified through a computerized "match;" without requiring Defendant to first find both that the person is actively sought by law enforcement for a felony, and also is intentionally evading arrest or prosecution.

6. Under federal law disqualifying **fleeing** felons, an individual with an outstanding felony warrant can be disqualified from Food Assistance, but only if Defendant makes a finding that law enforcement officials are actively seeking the individual, and that the individual knows his or her apprehension is sought and is intentionally fleeing from justice. 7 U.S.C. 2015(k).

7. Defendant's **fugitive** felon policy and practice, and the state law on which it is based, M.C.L. 400.10b, impose eligibility requirements for receiving Food

Assistance that are not established by federal law, and thus violate the rights of Plaintiffs and proposed subclass members to receive Food Assistance when they are eligible under federally-established standards, 7 U.S.C. 2014(a) and (b) and 2020(e)(5), which are enforceable under 42 U.S.C. 1983. (Count III.)

8. Defendant's fugitive felon policy and practice, and the state law on which it is based, M.C.L. 400.10b, also are preempted by federal law under 7 U.S.C. 2014(b) and 2020(e)(5) (prohibiting states from imposing their own eligibility standards), 7 U.S.C. 2015(k) (establishing federal standards for fleeing felon disqualifications), and the Supremacy Clause of the United States Constitution, Article VI, Clause 2, because Congress has established comprehensive federal standards and requirements for Food Assistance eligibility (including standards related to felony warrants), and because M.C.L. 400.10b and Defendant's fugitive felon policy impose additional eligibility standards not set forth in federal law, conflict with federal law, and frustrate the achievement of Congress's full objectives. (Count IV.)

Federal Remedies

9. Plaintiffs seek relief for themselves and on behalf of a Due Process Class (for Counts I and II) and an Automatic Food Assistance Disqualification Subclass (for Counts III and IV).

10. Plaintiffs seek injunctive and declaratory relief to enforce the United States Constitution and federal law, and to ensure that they and others similarly situated receive due process, as well as the Food Assistance for which they are eligible, pursuant to 42 U.S.C. 1983 or, alternatively, pursuant to the Supremacy Clause of the U.S. Constitution.

11. Plaintiffs also seek an order requiring Defendant to issue notice relief, pursuant to Fed. R. Civ. P. 23, and to calculate and issue corrective payments of Food Assistance withheld from Plaintiffs and class members in violation of federal law, pursuant to 7 U.S.C. 2020(b), 2020(e)(11), and 2023(b), and pursuant to Defendant's policy in Bridges Administrative Manual (BAM) 406 of retroactively correcting under-issuances of benefits.

JURISDICTION AND VENUE

12. The Court has jurisdiction under 28 U.S.C. 1331 and 1343. Plaintiffs are pursuing injunctive and declaratory relief to enforce federal rights under 42 U.S.C. 1983, or, in the alternative, the Supremacy Clause, and reasonable costs and attorney's fees under 42 U.S.C. 1988.

13. This Court has jurisdiction to issue declaratory relief and injunctive relief under 28 U.S.C. 2201 and 2202.

14. Venue is proper in the Eastern District, Southern Division pursuant to 28 U.S.C. 1391(b).

PARTIES

Named Plaintiff Walter Barry

15. Walter Barry is a 42-year-old citizen of the United States and resident of the City of Detroit, Wayne County, Michigan.

16. Plaintiff Barry has developmental disabilities, including an intellectual disability that interferes with his ability to function independently. Because of his intellectual disability, Plaintiff Barry has the mental abilities of a young child and is unable to read or to write, except that he can print his name.

17. Plaintiff Barry was in special education throughout his schooling. He was classified as trainably mentally impaired and received a certificate of completion from the John Lee Training Center when he was 25 years old.

18. Plaintiff Barry tried to work through Michigan Rehabilitation Services in the 1990s, but he has never successfully held a job.

19. Plaintiff Barry's only income is a Supplemental Security Income (SSI) disability check of $710 per month.

20. Plaintiff Barry lives with his mother and Next Friend, Elaine Barry, who handles his affairs, and is his authorized representative with DHS and his Representative Payee for the Social Security Administration.

21. In 2012, Plaintiff Barry received $186 per month in Food Assistance.

22. Plaintiff Barry's Food Assistance made it possible to meet his basic

nutritional needs.

December 2012 Criminal Justice Disqualification

23. In January 2013, Plaintiff Barry and his mother, Elaine Barry, received a notice from DHS dated December 31, 2012, which told Walter Barry he was disqualified from receiving Food Assistance Program benefits effective February 2013 because: "You or a member of your group is not eligible for assistance due to a criminal justice disqualification." The notice also said: "Please contact your local law enforcement to resolve."

24. Exhibit A is an accurate copy of the Notice, dated December 31, 2012, Defendant sent to Plaintiff Barry.

25. When Plaintiff Barry and Elaine Barry received the notice from DHS in January 2013 that Plaintiff Barry's Food Assistance was going to be cut off because of a "criminal justice disqualification," Elaine Barry asked for a hearing to contest the decision.

26. Ms. Barry also tried to figure out what the "criminal disqualification" was about and how to prove it did not apply to Plaintiff Barry.

27. Elaine Barry was certain Plaintiff had never had anything to do with the criminal justice system or law enforcement, because of his disabilities and her close supervision of him.

28. In January 2013, Elaine Barry took Plaintiff Barry to the City of Detroit

Police Department (their local law enforcement agency), where she showed the police the December 31, 2012 notice and asked for police help in getting Walter Barry's criminal justice disqualification straightened out.

29. When Plaintiff Barry and Elaine Barry went to the Detroit Police for help in resolving the criminal justice disqualification in January 2013, the police fingerprinted Plaintiff Barry.

30. Ronaldo L. Turner, a police officer with the Detroit Police Department, submitted a letter stating that "investigation per fingerprint comparison disclosed" that Plaintiff Barry had "no criminal history with the Detroit Police Department."

31. Exhibit B is an accurate copy of the statement from the Detroit Police Department.

32. When Plaintiff Barry and Elaine Barry were at the police station in January 2013, the City of Detroit Police Department did not take any action to arrest Plaintiff Barry, or to jail him or take him to court.

33. Because Ms. Barry was unsure how to prove that Plaintiff Barry did not have a "criminal justice disqualification," she also took Plaintiff Barry to his doctor to get a statement about his disabilities.

34. Exhibit C is an accurate copy of the statement Elaine Barry got from Walter Barry's doctor to submit to DHS.

35. Elaine Barry, as authorized representative for her Plaintiff son, gave the

statements from Plaintiff Barry's doctor and from the Detroit Police Department to the administrative law judge at the Food Assistance hearing in January 2013.

36. Defendant's administrative law judge, Suzanne Sonneborn, issued a decision that DHS had been wrong in deciding that Plaintiff Barry should be cut off Food Assistance, and she ordered DHS to reinstate his Food Assistance.

37. Exhibit D is an accurate copy of the February 1, 2013 Hearing Decision in Plaintiff Barry's case (the "Hearing Decision").

38. Plaintiff Barry did not miss any months of Food Assistance following the December 31, 2013 termination notice, because the Hearing Decision was issued very quickly.

May and June 2013 Criminal Justice Disqualifications

39. After the Hearing Decision ordered DHS to reinstate Plaintiff Barry's Food Assistance, DHS sent another notice to Plaintiff Barry saying that he was going to be cut off Food Assistance because of a criminal justice disqualification.

40. The second DHS notice, dated May 16, 2013, said Mr. Barry was disqualified from receiving Food Assistance Program benefits effective June 1, 2013 because: "You or a member of your group is not eligible for assistance due to a criminal justice disqualification." The notice again stated: "Please contact your local law enforcement to resolve."

41. The notice did not tell Plaintiff Barry what he had done to be disqualified

from Food Assistance.

42. Exhibit E is an accurate copy of the Notice dated May 16, 2013 that Defendant sent to Plaintiff Barry.

43. Plaintiff Barry had already contacted his local law enforcement to resolve the second criminal justice disqualification, and the notice from DHS did not tell him what else he would need to do to stop DHS from repeatedly terminating his Food Assistance based on an outstanding felony warrant for the arrest of someone else who used his identity.

44. Elaine Barry, as authorized representative for Plaintiff Barry, filed another hearing request with the Department of Human Services on May 18, 2013, appealing the decision to terminate Plaintiff Barry's Food Assistance.

45. Plaintiff Barry has had no encounters with law enforcement since he went to the City of Detroit Police station in January 2013.

46. In response to the Hearing Request in Plaintiff Barry's case, Defendant's employee, Rachel McMaster, the caseworker who handles Plaintiff Barry's Food Assistance case at DHS, issued a Hearing Summary that states "the worker had to follow procedure and close the case again," based on information from Defendant's Office of Inspector General (OIG), "that there was still an outstanding warrant for this client as of 5/13/13".

47. Exhibit F is an accurate copy of the May 22, 2013 Hearing Summary in

Plaintiff Barry's case.

48. Robin Thomas, the Law Enforcement Information Network (LEIN) Terminal Agency Coordinator (TAC) for the DHS OIG, issued a statement dated May 16, 2013 that said Walter Barry was "subject to an arrest under an outstanding warrant arising from a felony charge" issued by the Detroit Police Department on September 2, 1989 (23 years ago). She stated that Walter met the "outstanding felony warrant criteria as of May 13, 2013."

49. Exhibit G in accurate copy of Ms. Thomas's May 16, 2013 statement.

50. Plaintiff Barry initially was told by DHS that his Food Assistance would continue until a hearing was held on his criminal justice disqualification.

51. In June 2013, Plaintiff Barry received a third DHS notice, dated June 14, 2013, that he was disqualified effective July 1, 2013 from receiving Food Assistance Program benefits because: "You or a member of your group is not eligible for assistance due to a criminal justice disqualification." The notice again stated: "Please contact your local law enforcement to resolve."

52. The notice did not tell Plaintiff Barry what he had done to be disqualified from Food Assistance.

53. Exhibit H is an accurate copy of the Notice dated June 14, 2013 that Defendant sent to Plaintiff Barry.

54. In the 1980s Plaintiff Barry's older brother, Darryl L. Barry, got into

trouble with law enforcement.

55. Darryl L. Barry used Walter Barry's identity as an alias when he was in trouble with law enforcement.

56. Elaine Barry intervened at the time to ensure that her son Darryl would go to court under his own name, and she thought she had resolved any issues surrounding Darryl's use of Plaintiff Barry's identity during the 1980s.

57. In January 2013, when Elaine and Walter Barry sought assistance at the City of Detroit Police station, the Detroit Police did not indicate that there was any connection between Darryl Barry's criminal problems in the 1980s and the criminal justice disqualification notice Walter Barry received from DHS.

58. A hearing has not yet been held on Defendant's May 2013 decision to terminate Plaintiff Barry's Food Assistance based on a criminal justice disqualification.

59. In spite of his timely hearing request, Plaintiff Barry did not receive Food Assistance for July 2013 until he filed the original Complaint in this case and his attorneys in the case notified the Attorney General's office and Defendant's Office of Legal Services.

60. Without Food Assistance, Plaintiff Barry does not have enough money to pay for both his food and his share of household expenses.

July - August 2013

61. On July 25, 2013, Plaintiff Barry filed his Complaint in this case, through his next friend and mother, Elaine Barry.

62. On July 25, 2013, Defendant's attorneys in the Attorney General's office advised Plaintiff Barry's attorneys that his July Food Assistance benefit would be deposited on his Bridge (electronic benefits transfer or EBT) card that night, but they did not concur in the injunctive and classwide relief sought in this case.

63. Around July 26, 2013, DHS put Walter's Food Assistance for July on his Bridge Card.

64. Around August 1, 2013, Elaine and Walter Barry received a notice dated July 26, 2013, stating that Walter would receive $186 in Food Assistance "7-1-13 – Ongoing".

65. Exhibit I is an accurate copy of the July 26, 2013 notice regarding Walter Barry's Food Assistance.

66. On the morning of August 5, 2013, Defendant's attorney, Assistant Attorney General Kristin Heyse, sent an email to Caroline Jomaa, the Legal Aid attorney representing Plaintiff Barry in connection with his request for an administrative hearing, providing that attorney with a Register of Action in Case No. 89-011157-01 in the Third Circuit Court – a criminal case in which a felony warrant had been issued in Plaintiff Barry's name and with his birthdate.

67. The August 5, 2013 email advised Ms. Jomaa that Mr. Barry should appear at the Criminal Division at the Frank Murphy Hall of Justice where he would be fingerprinted "for a comparison of the records" and also advising that: The Department [of Human Services] is in contact with the MSP to see if there is anything else that can be done. But until the warrant is lifted, the Department is required to deny benefits.

68. Exhibit J is an accurate copy of the August 5, 2013, 11:04 A.M. email and attached Register of Action from Assistant Attorney General Heyse to the attorney representing Plaintiff Barry in his administrative hearing.

69. In the afternoon of August 5, 2013, Assistant Attorney General Heyse again emailed Ms. Jomaa, this time advising her that Mr. Barry should go to the Detroit Police Department office at 7310 Woodward Avenue (rather than to the Frank Murphy Hall of Justice) to be fingerprinted and to bring his fingerprints to Office Turner in the Identification Unit.

70. The August 5, 2013 afternoon email from Assistant Attorney General Heyse also indicated it was necessary to contact Sergeant Spencer in the Narcotics unit of the Detroit Police Department, and to bring a photo ID card when going to 7310 Woodward Avenue.

71. The August 5, 2013 further indicated that Mr. Barry could be given a password "that he can provide in case he is stopped on this warrant in the future."

The email thus suggested that even if Mr. Barry provided the warrant did not belong to him, the warrant itself would continue to exist in his name.

72. Exhibit K is an accurate copy of the August 5, 2013, 1:03 p.m. email from Assistant Attorney General Heyse to the attorney representing Plaintiff Barry in his administrative appeal.

73. Plaintiff Barry had already gone to the Detroit Police Department at 7310 Woodward Avenue to be fingerprinted, and to obtain help from Officer Turner in clearing his name, as set forth in paragraphs 28-31, above.

74. After receiving the emails from attorney Heyse, Plaintiff Barry's attorneys contacted Plaintiff Barry's mother and next friend, Elaine Barry, who expressed great concern and fear about again exposing Plaintiff Barry to the criminal justice system, given Plaintiff Barry's cognitive impairments.

75. Plaintiff Barry's attorneys attempted to contact Office Turner and Sergeant Spencer to determine whether it was necessary for Plaintiff Barry to again visit Officer Turner and be re-fingerprinted, given that he had already been fingerprinted and cleared in January 2013.

76. On August 7, 2013, without contacting Plaintiff Barry's attorneys, and before she had received the Register of Actions, Elaine Barry took Plaintiff Barry to see Officer Turner again and presented Plaintiff Barry's photo ID.

77. On August 7, 2013, Officer Turner issued a second written statement

regarding Plaintiff Barry's lack of a criminal history with the Detroit Police Department.

78. Exhibit L is an accurate copy of Officer Turner's August 7, 2013 statement.

79. On August 8, 2013, Plaintiff Barry's attorney finally reached Officer Turner and explained that DHS's concerns were with regard to, Case # 89-011157-01 in the Third Circuit Court, and that Plaintiff Barry needed a statement specifically regarding that Circuit Court case.

80. Plaintiff Barry's attorneys gave Officer Turner the phone number and name for Sergeant Spencer and asked that Officer Turner contact him.

81. On August 8, 2013, Officer Turner compared the relevant fingerprints, determined that Plaintiff Barry was not the person with the felony warrant in Case No. 89-011157-01, and issued a statement to that effect.

82. Exhibit M is an accurate copy of Officer Turner's August 8, 2013 statement.

83. Plaintiff Barry's Food Assistance has been reinstated by Defendant because he is awaiting a hearing in his case.

84. Under Defendant's policy and practice, Plaintiff Barry will remain disqualified from receiving Food Assistance as long as there is an outstanding felony warrant in existence with his name and birthdate.

85. Although fingerprint comparison shows that Plaintiff Walter Barry is not associated with Case No. 89-011157-01 in the Third Circuit Court, upon information and belief there continues to be an open felony warrant in that case with his name and birthdate.

Plaintiff Heather Woodward

86. Plaintiff Heather Woodward is a 32-year-old citizen of the United States and resident of Canton, Wayne County, Michigan.

87. Plaintiff Woodward is unable to work, due to depression requiring treatment with medication, as well as medical problems resulting from a 2002 car accident.

88. Plaintiff Woodward is pursuing a claim for disability benefits through the Social Security Administration, but has no income at this time.

89. Plaintiff Woodward and her two daughters (D.G. and C.W., ages 13 and 9, respectively) received food and cash assistance from DHS until around April 2013, when their assistance stopped because they went to live with Plaintiff Woodward's mother in Ohio.

90. Around April or May 2013, Plaintiff Woodward returned to Michigan to seek treatment for substance abuse stemming from her reliance on pain medications following a serious car accident.

91. Plaintiff Woodward has completed intensive, residential substance abuse

treatment and currently lives in transitional housing while she continues to participate in substance abuse treatment, parenting classes, and other efforts to improve her life.

92. In transitional housing, Plaintiff Woodward does not have to pay rent for the apartment that she shares with other young women, but does not receive any assistance with food, clothing, transportation, or other necessities.

93. Plaintiff Woodward currently relies on donations of food or meals from her church, the Salvation Army and other charitable organizations.

94. At the end of August 2013, Plaintiff Woodward will no longer be eligible for transitional housing and will have to pay rent to stay where she is or find another place to live.

95. When she decided to enter substance abuse treatment, Plaintiff Woodward temporarily gave physical custody of her daughter D.G. to Plaintiff's mother and physical custody of C.W. to her Plaintiff's father, so that Plaintiff could obtain the treatment she needed. Plaintiff Woodward hopes to regain physical custody of her daughters before the beginning of the school year, but that will be impossible if she is disqualified from receiving Food Assistance and Family Independence Program (FIP) cash assistance.

May 2013 Criminal Justice Disqualification

96. Around May 23, 2013, Plaintiff Woodward applied for Food Assistance

and cash assistance and was denied.

97. Ms. Woodward's DHS caseworker told her she was denied because she had a felony warrant.

98. Ms. Woodward told her caseworker that she had a misdemeanor case but no felony warrants and asked the caseworker for additional information about the basis for her disqualification.

99. The caseworker told Ms. Woodward she had no further information.

100. Plaintiff Woodward contacted the District Court in Taylor, Michigan where she knew she had pleaded no contest to a misdemeanor in that court after receiving a ticket for shoplifting in 2011, and that was the only place she could think of where there might be a warrant.

101. The District Court in Taylor informed Plaintiff Woodward that there was a bench warrant in the **misdemeanor** case because she had not paid her $500 fine as promised.

102. When Plaintiff Woodward inquired why DHS said she had a felony warrant, the court told her she had contact the Taylor Police Department about that.

103. Exhibit N is an accurate copy of the citation Plaintiff Woodward received when she was charged with shoplifting in June 2011.

104. Plaintiff Woodward contacted the Taylor Police Department and they told her she had to come in to get any information.

105. Plaintiff Woodward does not own a vehicle and has no income or savings.

106. Neither the court nor the police department have explained to Plaintiff Woodward why a felony warrant apparently appears on MSP records, nor did they explain what she could do to correct the apparent mistake on her record so that the entry would correctly show a misdemeanor warrant, not a felony warrant.

July 2013 Criminal Justice Disqualification

107. Around July 2013, after verifying that the case against her in Taylor was a misdemeanor case and being unable to find any information about any other criminal case against her, Plaintiff Woodward again applied for Food Assistance, as well as cash assistance and relocation assistance.

108. On August 1, 2013, Plaintiff Woodward was denied Food Assistance and cash assistance because: "You or a member of your group is not eligible for assistance due to a criminal justice disqualification."" The notice also said: "Please have the disqualified member of your group contact a law enforcement agency – such as a police department, sheriff's department, or the Michigan State Police – to resolve. The law enforcement agency will require you to provide picture identification."

109. The August 2013 notice did not tell Plaintiff Woodward what she had done to be disqualified from Food Assistance.

110. Based on her prior conversation with the Taylor Court, Plaintiff Woodward knows there is an outstanding warrant in her **misdemeanor** case.

111. Plaintiff Woodward is not aware of any other pending criminal cases or warrants for her arrest, and Defendant has not provided her with any information about any other pending criminal cases or warrants that she should seek to resolve.

112. Plaintiff's counsel obtained and reviewed records from Plaintiff Woodward's misdemeanor shoplifting case, and determined that although Ms. Woodward was prosecuted under the City of Taylor misdemeanor ordinance 19.141 (general larceny), the case is labeled with Prosecuting Attorneys Coordinating Council Code (PAAC code) "750356-B". PAAC Code "750356-B" refers to M.C.L. § 750.356b, the felony state-law offense of breaking and entering a coin-operated telephone.

113. Upon information and belief, due to the PAAC code entry on the City of Taylor court records, Ms. Woodward's ***misdemeanor*** warrant for nonpayment of fines and costs on her shoplifting conviction incorrectly shows as a ***felony*** warrant in the MSP-DHS data-matching system.

114. Exhibit O is an accurate copy of the Michigan State Police Internet Criminal History Access Tool (ICHAT) report on Plaintiff Woodward, showing that the charges against her in 23rd District Court in Taylor, Michigan, Case No. 11-1717-OM, were for a misdemeanor ordinance violation for simple larceny of

$100 or less.

115. Exhibit P is an accurate copy of the Register of Actions in 23rd District Court Case No. 11-1717-OM, showing that Plaintiff Woodward pled no contest to the misdemeanor ordinance violation charge of larceny of less than $100.00 and that a bench warrant was issued on the simple larceny charge because she failed to appear for a show cause hearing after failing to pay her fine.

116. Exhibit Q is an accurate copy of the Notice dated August 1, 2013, that Defendant sent to Plaintiff Woodward.

Named Plaintiff Donitha Copeland

117. Plaintiff Donitha Copeland is a 35-year-old citizen of the United States and resident of Wayne County, Michigan.

118. Plaintiff Donitha Copeland is a member of Westside Mothers, a voluntary membership organization that advocates on behalf of low income individuals, particularly with respect to governmental benefits like the Food Assistance program.

119. Ms. Copeland was a student at Oakland Community College in the summer of 2013, and plans to re-enroll in the winter semester.

120. Ms. Copeland is unemployed and has no regular source of income.

121. When she has the opportunity, Plaintiff Copeland delivers hand bills, for which she earns approximately $25 a day.

122. Plaintiff Copeland does not own a vehicle and has no savings or other assets.

123. In the spring or summer 2012, Plaintiff Copeland temporarily lost her wallet, which contained her Social Security card and other vital information, but Ms. Copeland later found the wallet. She now suspects this incident is related to the theft of her identity.

124. In about August 2012, Plaintiff Copeland received a notice from DHS asking for verification of employment with a company she had never heard of, which was based in West Michigan.

125. Plaintiff Copeland was not working at the time, and therefore, could not provide verification of employment.

126. DHS closed Plaintiff Copeland's Food Assistance case in August 2012 for failure to provide requested verification.

127. Later in 2012, some months after her wallet had gone missing, Plaintiff Copeland began to receive bills for services that she had neither received nor requested, and realized that someone was using her identity. These services included bills from Sprint Wireless and Consumers Energy.

128. In late 2012 or early 2013, Plaintiff began efforts to get bills that she did not owe taken off her credit report. These efforts included filing complaints with some of the creditors with whom she had not done business, and filing an incident

report for fraud and impersonation with the Detroit Police Department.

129. Exhibit R is an accurate copy of the Detroit Police Department record of Plaintiff Copeland's identity theft report on November 13, 2012.

130. On November 14, 2012, Plaintiff Copeland named Ronesha Williams as a suspect in the theft of her identity.

131. Ronesha Williams, who is a former friend of Ms. Copeland, is from Muskegon, Michigan.

132. Exhibit S is an accurate copy of the Detroit Police Department's record of Plaintiff Copeland's report that Ronesha Williams was a suspect in the theft of Plaintiff Copeland's identity.

133. Plaintiff Copeland has lived in southeast Michigan and the Detroit metropolitan area for her entire life.

134. Ms. Copeland has been homeless at times, including several months in 2012 and 2013, and has moved around between the homes of friends and relatives in southeast Michigan.

135. During the last few years, Ms. Copeland has not had a fixed address for much of the time, and has used mailing addresses in Ferndale and Lake Orion in Oakland County, Michigan, as well as addresses in Detroit, Michigan, all of which have been places where she has stayed for some period of time.

136. Ms. Copeland has never lived in western Michigan.

137. In September 2012, Plaintiff Copeland reapplied for Food Assistance using the Lake Orion, Oakland County address where she stayed sometimes.

138. In September 2012, DHS approved Plaintiff Copeland's application and began issuing approximately $200 per month in Food Assistance benefits to her Electronic Benefits Transfer (EBT) account, which she could access using her DHS-issued "Bridge card".

December 2012 Criminal Justice Disqualification

139. On or around December 31, 2012, Defendant issued a computer-generated Notice of Case Action to Plaintiff Copeland, stating that her Food Assistance would be terminated on February 1, 2013, because "you or a member of your group is not eligible for assistance due to a criminal disqualification. Please contact your local law enforcement agency to resolve."

140. The December 31, 2012 notice was sent to Plaintiff Copeland at the Lake Orion, Oakland County mailing address she had used.

141. Exhibit T is an accurate copy of the notice, dated December 31, 2012, which Defendant sent to Plaintiff Copeland.

February 2013 Criminal Justice Disqualification

142. On about February 8, 2013, Plaintiff Copeland reapplied for Food Assistance using her new address in Wayne County.

143. On about February 12, 2013, Defendant sent Plaintiff Copeland a

computer-generated notice telling her that her application for Food Assistance was denied because "you or a member of your group is not eligible for assistance due to a criminal disqualification. Please contact your local law enforcement agency to resolve."

144. Exhibit U is an accurate copy of the Notice – dated February 12, 2013 – that Defendant sent to Plaintiff Copeland.

145. Plaintiff Copeland was unaware of any reason why she would have a "criminal justice disqualification".

146. After receiving the February 2013 notice, Plaintiff Copeland contacted the Oakland County Sheriff's Office, which told her that there was a warrant against her for writing bad checks in Kalamazoo.

147. Plaintiff Copeland contacted the Sherriff's office in Kalamazoo and told them she had never been in Kalamazoo and that she believed someone had stolen her identity, based on bills she received for services she had never requested.

148. Plaintiff Copeland explained that she had no way to travel to Kalamazoo because she has no income and no money.

149. Plaintiff Copeland asked the Kalamazoo Sherriff's office if she could turn herself in to the City of Detroit police, and the Kalamazoo Sherriff's office advised her that turning herself in to the City of Detroit Police Department was not a good idea because there was no way of knowing how soon she would be transported to

Kalamazoo and how long she would end up sitting in jail in Detroit.

150. At the time DHS sent the December 2012 and February 2013 notices to Plaintiff Copeland, law enforcement officials and court officials had not notified Plaintiff Copeland about any outstanding felony warrants against her.

151. Plaintiff Copeland has not received duplicate FIP or FAP.

152. Plaintiff Copeland has not been convicted of any drug-related felonies on or after August 22, 1996.

153. Plaintiff Copeland has not been convicted of food stamp trafficking.

154. Plaintiff Copeland has not been found guilty of welfare fraud or an intentional program violation.

155. Upon information and belief, Defendant's automated computer "match" with the Michigan State Police resulted in a determination by Defendant that there was a felony warrant for Plaintiff Copeland's arrest, even though Plaintiff Copeland had not been arrested and had not been notified by law enforcement or court officials that she has been charged with a felony.

156. Upon information and belief, Defendant terminated benefits to Plaintiff Copeland because of Defendant's policy of disqualifying individuals defined as "fugitive felons" under Defendant's Bridges Eligibility Policy (BEM).

157. Under Defendant's policy of automatically disqualifying individuals from food assistance based on the existence of an outstanding felony warrant in the

person's name, Plaintiff Copeland will remain disqualified so long as there is a warrant in her name, even if the felonies at issue were committed by someone who stole her identity.

158. Since being terminated from food assistance, Plaintiff Copeland has had to rely on the generosity of friends, food pantries, and soup kitchens in order to sustain herself.

159. Plaintiff Copeland suffers from sickle cell anemia. Maintaining a healthy diet is essential for people with sickle cell anemia. A poor diet can increase the likelihood that people with sickle cell anemia will suffer from painful complications.

Named Plaintiff Kenneth L. Anderson

160. Kenneth L. Anderson is a 54-year-old citizen of the United States and a resident of the city of Flint, Genesee County, Michigan.

161. Plaintiff Anderson has disabilities including Chronic Obstructive Pulmonary Disease (COPD) and back problems.

162. Plaintiff Anderson's COPD requires his use of oxygen 24 hours a day, and his physician has informed him that he needs a double lung replacement.

163. Plaintiff Anderson is unable to walk unassisted because of his respiratory and back impairments. He uses a wheelchair or cane.

164. Plaintiff Anderson has received Social Security disability benefits for

several years, which is his only source of income.

165. Plaintiff Anderson currently receives a little less than $800 per month in Social Security disability payments, putting him well below the poverty line and making him eligible for needs-based Medicaid coverage.

166. Because of his medical problems, Plaintiff Anderson is unable to take care of his own personal needs, such as bathing himself, and household chores like cooking, cleaning, and shopping. A Home Help provider, paid by the DHS-administered Medicaid program, assists him with those tasks.

167. Plaintiff Anderson received about $200 per month in Food Assistance benefits until mid-2012, when his case was closed because he did not provide paperwork required by DHS.

168. In late December 2012, Plaintiff Anderson reapplied for Food Assistance and Medicaid.

169. DHS reinstated Mr. Anderson's Medicaid, and approved his application for Food Assistance for part of December and for January, but stopped his Food Assistance effective February 1, 2013.

January 2013 Criminal Justice Disqualification

170. On about January 10, 2013, DHS sent Plaintiff Anderson a notice telling him that he was eligible for $25 in food assistance for December 2012 and $188 in food assistance for January 2013, but that he was denied food assistance

for February 2013 "ongoing" because, "You or a member of your group is not eligible for assistance due to a criminal justice disqualification." The notice also said: "Please contact your local law enforcement to resolve."

171. Exhibit V is an accurate copy of the January 10, 2013 Notice, dated June 10, 2013, which Defendant sent to Plaintiff Anderson.

March 2013 Criminal Justice Disqualification

172. In March 2013, Plaintiff Anderson reapplied for Food Assistance.

173. On about March18, 2013, Defendant sent Plaintiff Anderson a computer generated notice telling him that his application for Food Assistance was denied because "you or a member of your group is not eligible for assistance due to a criminal disqualification. Please contact your local law enforcement agency to resolve."

174. Exhibit W is an accurate copy of the notice, dated March 18, 2013, which Defendant sent to Plaintiff Anderson.

175. Plaintiff Anderson was unaware of any reason why he would have a "criminal justice disqualification".

176. Law enforcement officials and court officials have not contacted Plaintiff Anderson about any outstanding felony warrants against him.

177. Law enforcement officials and court officials have not notified Plaintiff Anderson about any extradition warrants issued against him.

178. Plaintiff Anderson has not received duplicate FIP or FAP.

179. Plaintiff Anderson has not been convicted of any drug-related felonies on or after August 22, 1996.

180. Plaintiff Anderson has not been convicted of food stamp trafficking.

181. Plaintiff Anderson has not been found guilty of welfare fraud or an intentional program violation.

182. Upon information and belief, Defendant's automated computer "match" with the Michigan State Police resulted in a determination by Defendant that there was a felony warrant for Plaintiff Anderson's arrest even though Plaintiff Anderson had not been arrested and had not been notified by law enforcement or court officials that he has been charged with a felony.

183. Upon information and belief, Defendant terminated and denied benefits to Plaintiff Anderson because of Defendant's policy of disqualifying individuals defined as "fugitive felons" under Defendant's Bridges Eligibility Policy (BEM).

184. After his Marsh 2013 application was denied, Plaintiff Anderson spoke with his DHS caseworker who told him he was disqualified because of an outstanding felony warrant and he should contact the police.

185. Plaintiff Anderson contacted the police, who refused to give him any information over the telephone.

186. After receiving the March 2013 notice, Plaintiff Anderson contacted Legal

Services of Eastern Michigan (LSEM) for help with his eligibility for Food Assistance.

187. LSEM contacted the Michigan State Police (MSP), and LSEM reported to Plaintiff Anderson that MSP's Flint Area Narcotics Group (FANG) told them a felony warrant was issued for Mr. Anderson in January 2013, for possession of heroin in 2009.

188. Plaintiff Anderson's nephew Christopher had a drug problem and the police found heroin belonging to him in Plaintiff Anderson's home a few years back.

189. Plaintiff Anderson was not arrested or charged with felony heroin possession at the time the police came to his home and found Christopher's drugs.

190. Plaintiff Anderson has not been arrested or notified by law enforcement about any current felony warrant for his arrest.

191. Without Food Assistance, in about June 2013, Plaintiff Anderson was forced to move from the mobile home he had been renting because he could no longer afford the $575 per month rent.

192. If Plaintiff Anderson pays all of his basic housing and utility bills in his current home and prescription copayments, he does not have enough money left over to purchase adequate food.

193. Without food assistance, Plaintiff Anderson is struggling to pay his bills

and have adequate food to eat.

Plaintiff Westside Mothers

194. Westside Mothers is a not-for-profit membership organization with between 450 and 500 dues paying members, which advocates for the interests of public assistance applicants and recipients, particularly in connection with public assistance programs administered by the Michigan Department of Human Services and the Social Security Administration.

195. Membership in Westside Mothers is open to both men and women of all ages, regardless of whether they have children or are parenting.

196. Many Westside Mothers members apply for or receive benefits under public assistance programs administered by the Michigan Department of Human Services (DHS), including Food Assistance, cash assistance, refugee assistance, and child care assistance programs affected by the notices and procedures challenged in this case.

197. Donitha Copeland and other Westside Mothers members have been or will be harmed by the Defendant's notices, policies, and practices challenged in this case.

198. Westside Mothers educates its members and the public about government benefits, including DHS-administered programs. Its educational efforts include information on what to do if assistance is denied, curtailed, or in dispute.

199. In carrying out its mission, Westside Mothers furnishes advocacy services to its members who are in need of help in obtaining public assistance, including representation at administrative hearings and in litigation such as the present case.

200. Members of Westside Mothers pay dues, but many members have difficulty paying dues if they are disqualified from public assistance benefits.

201. The challenged policies of the Defendant impact the ability of Westside Mothers' members to pay dues. The inability of both current and prospective members of Westside Mothers to pay dues due to being disqualified from public assistance under Defendant's challenged programs and policies, restricts the growth and functioning of the organization.

202. Westside Mothers brings this action both on behalf of its members and on its own behalf.

The Plaintiff Due Process Class

203. Walter Barry, Heather Woodward, Donitha Copeland, and Kenneth Anderson ("the individual named Plaintiffs") bring this action on their own behalf and, pursuant to Fed. R. Civ. P. 23(b)(2), on behalf of all others similarly situated.

204. The individual named Plaintiffs seek to represent a class consisting of

all past, present, and future applicants for, or recipients of, Michigan's

- Food Assistance Program (FAP),
- Family Independence Program (FIP),
- State Disability Assistance Program (SDA),
- Child Day Care (CDC), and
- Refugee Assistance Program (RAP),

("public assistance") programs who have suffered or will suffer actual or threatened denial, reduction, or termination of benefits based on the Michigan Department of Human Services' (DHS') determination that the applicant or recipient, or a member of the applicant or recipient's household, is ineligible based on a criminal justice disqualification, and who do not receive a written notice, at the time of denial and at least 10 days prior to an actual or threatened reduction or termination, that details:

a) the nature and duration of the intended agency action,

b) the specific actions the individual can take to lift the disqualification and fully access benefits, and

c) the factual and legal reasons for the action including:

i) which of the five types of criminal justice disqualifications is at issue,

ii) the name of the person whose alleged conduct has resulted in the disqualification,

iii) the date, place and nature of the alleged crime and the resulting conviction or warrant,

iv) the jurisdiction where the conviction occurred or the warrant was issued,

v) the name of the specific person or entity with knowledge of the basis for the disqualification whom the individual can contact for additional information,

vi) where applicable, the basis for concluding that the disqualified individual is aware that he or she is being sought by law enforcement and is fleeing to avoid prosecution, arrest, or confinement for a felony, and

vii) where applicable, the basis for concluding that law enforcement is actively seeking the individual.

205. The class is so numerous that joinder of all members is impracticable. Fed. R. Civ. P. 23(a)(1).

206. Upon information and belief, at least hundreds and likely thousands of people throughout the State of Michigan are members of the proposed class.

207. The exact size of the class and the names and contact information of the class members are in Defendant's control.

208. The questions of law and fact at issue here – whether Defendant has violated the U.S. Constitution, federal statutes, and the implementing federal regulations by denying, reducing, or terminating public assistance to Plaintiffs and class members without providing written notice detailing the reasons for the denial, reduction, or termination – are common to all class members. These common questions of law and fact predominate over any questions affecting only individual class members.

209. The claims and defenses of the individual named Plaintiffs are typical of the claims and defenses of the class.

210. The individual named Plaintiffs' claims arise from Defendant's practice of issuing the same inadequate, computer-generated notices to all class members.

211. The claims of the individual named Plaintiffs arise from the same conduct by Defendant that has been or will be applied to all class members.

212. The individual named Plaintiffs will fairly and adequately represent the interests of the class.

213. There is no foreseeable antagonism or conflict of interest within the class.

214. The individual named Plaintiffs' attorneys are competent and experienced in the areas of law raised in this litigation.

215. The requested relief is appropriate for this class because Defendant has sent or will in the future send legally insufficient notices to all members of the class, thus denying them both adequate notice and a meaningful opportunity to be heard.

The Plaintiff Automatic Food Assistance Disqualification Subclass

216. The individual named Plaintiffs seek to represent a subclass consisting of all past, present, and future applicants for, or recipients of, Michigan's Food Assistance Program benefits, who have suffered or will suffer actual or threatened denial, reduction, or termination of Food Assistance Program benefits based on

DHS' policy of disqualifying individuals as fugitive felons, without finding that the individual is intentionally fleeing from justice to avoid prosecution, or custody or confinement after conviction, and without finding that the individual is actively sought by law enforcement for a crime that is a felony.

217. The subclass is so numerous that joinder of all members is impracticable.

218. Upon information and belief, the subclass contains at least hundreds and perhaps thousands of people throughout the State of Michigan.

219. The exact size of the class and the names and contact information of the subclass members are in Defendant's control.

220. The questions in this Complaint – whether Defendant's disqualification of individuals from receiving Food Assistance based on the "fugitive felon" definition in her written policy, and the state law upon which it is based, are in violation of individuals' rights under federal Supplemental Nutrition Assistance Program (SNAP) law, or are preempted by that law – are common to all subclass members.

221. The individual named Plaintiffs' claims arise from Defendant's practice of actual or threatened denial, termination, or reduction of Food Assistance to households that contain individuals identified by Defendant as fugitive felons.

222. The claims and defenses of the individual named Plaintiffs are typical of the claims and defenses of the subclass.

223. The claims of the individual named Plaintiffs arise from the same conduct by Defendant that has been or will be applied to all subclass members.

224. The individual named Plaintiffs will fairly and adequately represent the interests of the subclass.

225. There is no foreseeable antagonism or conflict of interest within the subclass.

226. The individual named Plaintiffs' attorneys are competent and experienced in the areas of law raised in this litigation.

227. The requested relief is appropriate for this subclass because Defendant has denied, reduced, or terminated Food Assistance to all members of the subclass (or will in the future), based on the challenged fugitive felon policy and practices.

Defendant

228. MAURA CORRIGAN is Director of the Michigan Department of Human Services (DHS).

229. DHS is the state agency responsible for administering the Supplemental Nutritional Assistance Program (SNAP), known in Michigan as FAP (Food Assistance Program), as well as the Temporary Assistance to Needy Families (TANF) program known in Michigan as FIP (Family Independence

Program), and the State Disability Assistance (SDA), Child Development and Care (CDC) and Refugee Assistance (RAP) programs.

230. As Director of DHS, Defendant is responsible for administering all of the DHS-administered public assistance programs in compliance with the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution.

231. As Director of DHS, Defendant is responsible for administering the Food Assistance Program in compliance with the U.S. Constitution and federal SNAP law.

232. Defendant is sued in her official capacity.

FACTS

Relevant Public Assistance Programs

The Food Assistance Program: SNAP and FAP

233. The United States Congress created the Supplemental Nutrition Assistance Program (SNAP) (formerly known as the "Food Stamp Program") as a means to alleviate hunger and malnutrition in low-income households.

234. Under SNAP, eligible households receive Food Assistance benefits deposited on an electronic card account, which can only be used to buy food, or plants or seeds to grow food, at participating stores or markets. 7 U.S.C. 2012(k)(2), 2016(b), 2026(j)(3)(B).

235. Federal law defines and determines both eligibility for and the amount

of SNAP benefits, based on household size, income, certain expenses, and resources or assets, as well as nonfinancial factors such as employment status, age or disability, citizenship or immigration status, etc..

236. State agencies, including DHS in Michigan, administer SNAP by processing applications, certifying eligible households, and issuing approved Food Assistance benefits.

237. The federal government pays for all SNAP Food Assistance benefits and shares the administrative expenses of operating SNAP with the states. 7 U.S.C. 2020(a), (d), (e).

238. Michigan calls its SNAP program the Food Assistance Program (FAP), a needs-based, state-administered government assistance program that provides Food Assistance benefits to all individuals who meet published eligibility criteria and requirements for the program.

The Cash Assistance Programs: FIP, SDA and RAP

239. The Family Independence Program (FIP) is Michigan's needs-based cash assistance program for low-income families with minor children. M.C.L. 400.57 *et seq*.

240. The family cash assistance program is paid for and administered using both federal Temporary Assistance for Needy Families (TANF) block grant funding and state funds.

241. Under federal TANF law, Defendant must have objective criteria for determining FIP eligibility and delivering FIP benefits, as well as for the equitable treatment of FIP applicants and recipients. 42 USC 602(a)(1)(B)(iii).

242. The Michigan Social Welfare Act, M.C.L. 400.57 *et seq.,* Michigan Administrative Code, Mich. Admin. Code R. 400.3101 *et seq.,* and implementing DHS policies set forth the eligibility criteria and requirements for FIP benefits.

243. Individuals are eligible to receive FIP in Michigan if they meet the FIP eligibility standards and requirements – including work requirements, M.C.L. 400.57d - 400.57g, and time limits, *id.* at 400.57a(4) and 400.57r – set forth in the Michigan Social Welfare Act, Michigan Administrative Code, and implementing policies. M.C.L. 400.57d(4); BEM 209 p. 1, available online at www.mfia.state.mi.us/olmweb/ex/bem/209.pdf.

244. DHS provides small monthly cash assistance payments to very low-income individuals with disabilities under the State Disability Assistance (SDA) program, which is a need-based governmental assistance program funded with state general fund dollars.

245. SDA provides benefits to all individuals who meet the eligibility standards and requirements set forth in the annual Appropriations Act for DHS (currently 2012 P.A. 200 sec. 604), state administrative rules (Mich. Admin. Code. R. 400.3151 *et seq*.), and implementing policies.

246. The Refugee Assistance Program (RAP) is a needs-based, federally-funded program providing both cash and medical assistance, which is designed to help refugees become self-sufficient after their arrival in the United States. 8 U.S.C. 1522(e)

247. Refugees who meet eligibility requirements can receive cash or medical assistance for a temporary period of time after their entry to the United States. *See* 45 C.F.R. 400.40 *et seq.* and BEM 630.

Child Care Benefits

248. Michigan's Child Development and Care (CDC) program is a needs-based public assistance program that pays subsidies to help low-income families pay for child care provided by enrolled or licensed providers, in order for children to have care and supervision while their parents attend work; high school or other approved education/training; or employment-related activities required as a condition of eligibility for FIP or FAP.

249. Childcare benefits support the efforts of low-income parents – including those trying to transition from welfare to work – to qualify for, find, and keep employment.

250. Childcare benefits are paid for by a mixture of state and federal funds, which varies from year to year.

251. Federal funds for childcare benefits include the TANF block grant

discussed above and the Child Care and Development Fund block grant.

252. Defendant determines the family's eligibility for childcare benefits and sets upper income limits, the hourly rates payable to the providers (based on family income, provider type and credentials, and number of children), and the number of hours for which care will be subsidized.

253. Defendant is authorized to adjust the income limit for childcare assistance eligibility and the number of hours for which care will be paid in order to prevent waiting lists in the childcare assistance program when appropriations would not otherwise be sufficient to provide childcare assistance to all eligible families. Mich. Admin. Code R. 400.5002, 400.5009, 400.5013.

254. Michigan provides childcare assistance to all families who – together with their child care providers – meet the eligibility criteria and requirements set forth in federal and state law, including Mich. Admin. Code R. 400.5001 *et seq.,* and implementing policies, without any waiting list for the program. *Child Care and Development Fund (CCDF) Plan for Michigan FFY 0212-2013*, section 2.3.7 (page 50 of pdf file), available online at http://www.michigan.gov/documents/dhs/2012-2013_State_Plan-_Final_365274_7.pdf.

Notice and Hearing Requirements

Constitutional Due Process Requirements

255. Under the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution, individuals have the right to meaningful notice and an opportunity to be heard when the state denies, reduces, or terminates public assistance that is available to all eligible individuals who meet criteria set forth in federal or state statutes, rules, or policies.

256. When needs-based public assistance is reduced or terminated, the right to due process includes the right to timely notice, and a meaningful opportunity for a pre-reduction or pre-termination hearing, because of the extreme harm that may befall those who depend on needs-based assistance programs to meet their basic needs if the assistance for which they are, in fact, eligible is erroneously reduced or terminated.

257. The right to due process under the Fourteenth Amendment includes the right to notice detailing the specific, individualized reasons for the adverse action when the state denies, reduces, or terminates needs-based public assistance.

258. The right to due process under the Fourteenth Amendment includes the right to a meaningful opportunity to be heard regarding whether the state properly denied, reduced, or terminated needs-based public assistance.

259. In order for the notice and opportunity to be heard to be meaningful,

the notice must provide information that is specific, detailed, and individualized enough for the individual to be able to determine both the basis for the state's action and whether, or how, to contest it.

260. In order for the notice and opportunity to be heard to be meaningful, the notice must inform individuals about what they must do to fully receive the benefits to which they are entitled.

261. Individual named Plaintiffs, members of Plaintiff Westside Mothers, and members of the Due Process Class are entitled to all of the protections of the Due Process Clause of the Fourteenth Amendment of the U.S. Constitution when Defendant denies, reduces, or terminates their eligibility or benefits under the Food Assistance Program, Family Independence Program, State Disability Assistance Program, Child Development and Care Program, and/or Refugee Assistance Program.

Federal Food Assistance Notice and Hearing Requirements

262. As the state agency responsible for administering SNAP, DHS must provide an opportunity for a "fair hearing and a prompt determination thereafter" for any person aggrieved by action taken by DHS in administering FAP, including the denial, reduction, or termination of Food Assistance. 7 U.S.C. 2020(e)(10).

263. The Food and Nutrition Service of the United States Department of Agriculture has issued regulations to implement the statutory fair hearing

requirement of 7 U.S.C. 2020(e)(10), including 7 C.F.R. 273.10(g)(ii) and 273.13(a).

264. When Food Assistance is denied, DHS must "provide the household with written notice explaining the basis for the denial, the household's right to request a fair hearing, the telephone number of the food stamp office… and, if possible, the name of the person to contact for additional information." 7 C.F.R. 273.10(g)(ii).

265. When FAP benefits are reduced or terminated, DHS must "provide the household timely and adequate advance notice before the adverse action is taken." 7 C.F.R. 273.13(a). The notice must "explain[ ] in easily understandable language: The proposed action; the reason for the proposed action; the household's right to request a fair hearing; the telephone number of the food stamp office… and, if possible, the name of the person to contact for additional information…." 7 C.F.R. 273.13(a)(2).

266. 7 U.S.C. 2020(e)(10), as implemented by 7 C.F.R. 273.10(g) and 273.13(a), not only serves to implement the Due Process Clause of the Fourteenth Amendment, but also provides an independent federal law requirement for adequate due process when Food Assistance is denied, reduced, or terminated.

Defendant's Notice and Hearing Practices When Denying, Reducing, or Terminating Public Assistance Benefits Based on Criminal Justice Disqualifications

267. Beginning around July 14, 2013, the notices from Defendant to members of the Due Process Class, denying, reducing, or terminating their public assistance benefits based on a criminal justice disqualification ("criminal justice disqualification notices") give as the sole "reason for intended action" the boilerplate statement that "You or a member of your group is not eligible for assistance due to a criminal justice disqualification. Please have the disqualified member of your group contact a law enforcement agency – such as a police department, sheriff's department, or the Michigan State Police – to resolve. The law enforcement agency will require you to provide picture identification. Manual Item(s): BEM 204, ERM 202"

268. From about January or February 2013 until about July 14, 2013, the notices from Defendant to Plaintiffs and members of the Due Process Class, denying, reducing, or terminating their public assistance benefits based on a criminal justice disqualification ("criminal justice disqualification notices") give as the sole "reason for intended action" the boilerplate statement that "[y]ou or a member of your group is not eligible for assistance due to a criminal justice disqualification. Please contact your local law enforcement agency to resolve. Manual Item(s): BEM 203, ERM 202."

269. Prior to January or February 2013, when Defendant imposed a disqualification based on alleged fugitive felon status, she sent notices that gave as the reason for the disqualification, "You or a member of your group have been identified as a fugitive felon. Fugitive felons are not eligible for assistance."

270. In or around January or February 2013, Defendant changed the content of the notice sent to individuals who were being disqualified based on alleged fugitive felon status, so that the individuals received the "criminal justice disqualification" message contained in the notices to Plaintiffs, instead of the "fugitive felon" message set forth in the paragraph 183, above.

271. Exhibit X is an accurate copy of minutes from a July 6, 2011 meeting attended by DHS representatives, released under the Michigan Freedom of Information Act, which included discussion of the decision to create notices that would no longer tell alleged fugitive felons that they were being disqualified because of alleged fugitive felon status.

272. Exhibit Y is an accurate copy of specifications approved by DHS and issued in or around July 2010 for information technology changes to replace notices that referred to fugitive felon status with notices that referred to criminal justice disqualifications. Exhibit Y was released by Defendant under the Michigan Freedom of Information Act.

273. From at least October 1, 2012 through May 31, 2013, Defendant's

policy of disqualifying “fugitive felons” based on computer “matches” was contained in Bridges Eligibility Manual (BEM) 203, which has the title “Criminal Justice Disqualifications”.

274. Exhibit Z is an accurate copy of BEM 203 in effect from October 1, 2012 –May 31, 2013.

275. Exhibit AA is an accurate copy of BEM 203 in effect from May 1–May 31, 2013.

276. Effective June 1, 2013, Defendant’s policy regarding disqualification of “fugitive felons” was moved from BEM 203 (Criminal Justice Disqualifications) to a new policy item designated as BEM 204, with the title “Fugitive Felons”.

277. Exhibit BB is an accurate copy of BEM 203 in effect June 1, 2013.

278. Exhibit CC is an accurate copy of BEM 204 in effect June 1, 2013.

279. In February 1, 2013, Defendant published policies describing the DHS/the Michigan State Police data match and the automatic disqualification of “fugitive felons”, in BAM 800 and 811.

280. Exhibit DD is an accurate copy of the portion of Defendant’s Bridges Policy Bulletin 2013-003 announcing the “new automated match with the Michigan State Police” and the changes in BAM.

281. Exhibit EE is an accurate copy of BAM 811 issued effective February

1, 2013 – April 30, 2013.

282. Exhibit FF is an accurate copy of BAM 811 effective May 1, 2013.

283. Exhibit GG is an accurate copy of BAM 800 effective February 1, 2013- May 31, 2013.

284. Exhibit HH is an accurate copy of BAM 800 effective June 1, 2013.

The Five Types of Criminal Justice Disqualifications

285. Under Defendant's Criminal Justice Disqualification policy in BEM 203 in effect from February 1 – May 31, 2013, there were five separate and distinct reasons for criminal justice disqualifications: (1) duplicate receipt of assistance, (2) probation or parole violation, (3) drug-related felonies, (4) Food Assistance trafficking and (5) fugitive felons.

286. The five categories of criminal justice disqualifications derive from different legal sources, including several different federal and state laws and regulations.

287. The type of benefits to which the disqualification applies, the criteria for disqualification, the duration of disqualification, and the possibility of reinstatement of benefits vary between the five categories of criminal justice disqualifications.

288. The criminal justice disqualification for "duplicate receipt of assistance" creates a 10-year bar on receipt of Food Assistance and the receipt of

family cash assistance, which runs from the date of the adjudication or acknowledgement of Guilt.

289. The criminal justice disqualification of "probation and parole violators" creates a temporary bar on receipt of Food Assistance and the receipt of family cash assistance until the individual establishes his or her compliance with conditions of probation or parole.

290. The criminal justice disqualification for "drug-related felonies" is a lifetime bar on the receipt of Food Assistance and the receipt of family cash assistance for individuals who have been convicted in two or more cases after August 22, 1996, of felonies for the use, possession, or distribution of a controlled substance. An individual with one drug-related felony conviction is eligible for Food Assistance (provided that he or she is not violating probation or parole), but the individual's Food Assistance benefits must be issued to an authorized representative. An individual with one drug-related felony conviction is also eligible for family cash assistance (provided that he or she is not violating probation or parole), but the individual's family cash assistance benefits must be issued in restricted form.

291. The criminal justice disqualification for "FAP trafficking" disqualifies a person from receiving Food Assistance if he or she is found guilty in court, through administrative hearing, or by signing a repayment and disqualification

agreement, of trafficking in Food Assistance benefits. The length of disqualification from Food Assistance for trafficking varies depending on the nature of the trafficking offense and, for some types of trafficking offenses, the number of times the person has been found guilty.

292. The criminal justice disqualification of "fugitive felons" creates a temporary bar on receipt of Food Assistance, child care benefits, and cash assistance for families, people with disabilities, and refugees based on the existence of an outstanding felony warrant, the existence of an outstanding extradition warrant, or the individual's admission to being a fugitive felon.

293. When a fugitive felon disqualification has been imposed, an individual is no longer disqualified from assistance as soon as the individual has addressed the issues related to the outstanding warrant.

Defendant's Failure to Provide Adequate Notice and Meaningful Opportunity for a Fair Hearing

294. Defendant's criminal justice disqualification notices fail to detail the alleged underlying circumstances or action that gave rise to the unspecified type of criminal justice disqualification.

295. Information that is missing from Defendant's criminal justice disqualification notices includes: what allegedly occurred, where it occurred, when it occurred, which member of the "group" was involved in the occurrence, the length of the disqualification being imposed, and/or how it can be lifted.

296. Disqualified recipients cannot determine whether they were improperly disqualified from benefits, or contest an improper disqualification, without knowing what underlying facts are alleged.

297. Defendant's criminal justice disqualification do not even tell Plaintiffs and Due Process Class members which of the five categories of "criminal justice disqualifications" originally listed in BEM 203 (and later divided between BEM 203 and BEM 204) allegedly applies to the individual being disqualified.

298. Because the different types of disqualifications originally listed in BEM 203 (and later divided between BEM 203 and BEM 204) are based on different criteria, apply to different benefit programs, are of varying duration, and have different options for reinstatement, disqualified recipients cannot determine whether they were improperly disqualified from benefits, or effectively contest an improper disqualification, without knowing which type of criminal justice disqualification is at issue in their case.

299. Defendant's notices to individuals being disqualified as fugitive felons do not state what basis the Defendant has to believe that the individual is aware that he or she is being sought by law enforcement, and is fleeing to avoid prosecution, arrest, or confinement in connection with a crime that is a felony.

300. Defendant's criminal justice disqualification notices do not explain what "Manual Reference(s): BEM 203 [or 204], ERM 202" refers to or where the

manuals can be accessed.

301. For "fugitive felon" disqualifications occurring between June 1, 2013 and July 14, 2013, Defendant's notices failed to specify the Bridges Eligibility Manual (BEM) item that is the legal basis for Defendant's actions, i.e. BEM 204, instead citing BEM 203, which, effective June 1, 2013, no longer contains the fugitive Felon disqualification policy.

302. Defendant's criminal justice disqualification notices do not specify which page(s) of the cited manual items apply to the individual's disqualification.

303. DHS has or could obtain access to information regarding the type of criminal justice disqualification and underlying basis for the disqualification that is not included in the notice of denial, reduction, or termination of public assistance benefits.

304. The DHS computer eligibility system (known as "Bridges") is programmed to show which of the five criminal justice disqualifications are applicable to an individual whose benefits have been denied, reduced, or terminated. However, that information is not included in the criminal justice disqualification notice.

305. Exhibit II is an accurate copy of some of the information available to DHS caseworkers on Bridges regarding the basis for an individual's criminal justice disqualification.

306. DHS, through its computer interface with the Law Enforcement Information Network or other criminal justice databases, has information on the underlying basis for the disqualification, but does not provide that information in its notices. See Exhibit Y, p. 12-13.

307. For disqualifications based on a felony warrant for the person's arrest, DHS does not disclose information that is available to DHS about the felony warrant when issuing the notice of denial, reduction, or termination of public assistance. For example, after this case was filed, DHS provided information to Plaintiff Barry about the alleged warrant and the procedure to resolve that warrant. None of that information was contained on any of the notices DHS sent to Plaintiff Barry.

308. In cases involving fugitive felons, DHS has instructed its employees not to provide information about the basis for the disqualification, other than the information that appears in the notice sent to the household.

309. In December 2012, Defendant's Field Operations Administration issued a Memorandum instructing local DHS offices **not** to disclose "'fugitive felon' status information" to individuals who are disqualified from receiving public assistance based on DHS' decision that the individual is a fugitive felon.

310. Exhibit JJ is an accurate copy of the December 2012 DHS Field

Operations Administration Memorandum, FOA-2012-50, regarding the Fugitive Felon Match, released under the Michigan Freedom of Information Act.

311. DHS has provided DHS staff with training and a Job Aid that specifically directs DHS specialists (caseworkers) "NOT to inform a client of their fugitive felon status." (Emphasis in original.)

312. Exhibit KK is an accurate copy of the Job Aid/training material provided to DHS staff regarding implementation of the fugitive felon computer match between DHS and Michigan State Police, released under the Michigan Freedom of Information Act.

313. When Plaintiffs and members of the Due Process Class contact their caseworkers for further information, DHS caseworkers are prohibited from providing information that would enable individuals to determine why their public assistance benefits have been denied, reduced, or terminated.

314. DHS's prohibition against disclosure of basic information about the underlying bases for criminal justice disqualifications makes it more difficult – if not impossible – for individuals to address and resolve any underlying problems or to follow up to determine whether the information is accurate or not.

315. Defendant's criminal justice disqualification notices refer individuals to local law enforcement to resolve their criminal justice disqualification, but do not explain what the individual should ask law enforcement to do.

316. Defendant's criminal justice disqualifications do not explain whether or how any action by local law enforcement will "resolve" the person's eligibility for public assistance.

317. Some types of criminal justice disqualifications – such as those for drug related felonies – cannot be "resolved" by law enforcement, as there is no action that law enforcement can take that would affect the disqualification. In other cases, criminal justice agencies may be able to address an underlying criminal justice issue, but the appropriate agency to contact is not local police, but rather probation or parole, police in another jurisdiction, or the Michigan State Police (whose involvement may, for example, be required to correct erroneous entries in LEIN).

318. Law enforcement officials cannot reverse DHS disqualifications or reinstate benefits to disqualified individuals.

319. Defendant's computer interface is updated on a daily basis to identify individuals who no longer are identified by the Michigan State Police as meeting Defendant's definition of a "fugitive felon."

320. When a person who has been disqualified from receiving assistance as part of a household that is still receiving (reduced) assistance under the specific program from which the individual was disqualified, and when that person again becomes eligible, Defendant's Bridges eligibility system is programmed to send a

"task and reminder" communication to the DHS caseworker, telling the caseworker about the person's updated status and instructing the caseworker to re-determine eligibility and benefits for the household. See Ex. JJ, p. 1.

321. Defendant's Job Aid/training materials instruct caseworkers to update eligibility and reinstate benefits for a person automatically disqualified from assistance as a fugitive felon once that person no longer has an outstanding warrant for his or her arrest (by running an Eligibility Determination and Benefits calculation through Bridges and certifying or approving the results), but only if the disqualified person is living in a household that still receives assistance under the specific program(s) from which the individual was disqualified. See Ex. KK.

322. If the disqualified individual is not part of a household still receiving assistance, Defendant's Bridges eligibility system, training materials, and policy do not instruct DHS employees to take any action once an individual who was disqualified no longer has an outstanding warrant.

323. Defendant's criminal justice disqualification notices fail to inform individuals that resolving any outstanding warrants with law enforcement will not result in automatic reinstatement of public assistance if the individual does not live in a household that continues receiving public assistance for other household members during the time that the individual was disqualified from that assistance.

324. The notices do not tell individuals what they must do to regain public

assistance in that situation.

Defendant's Denial of Food Assistance to Individuals Who Are Eligible for Food Assistance Under Federal Law

Federal Mandate to Provide Food Assistance to All Eligible Households and to Use National Standards for Food Assistance Eligibility

325. DHS must provide Food Assistance to individuals and households in Michigan that apply for Food Assistance and meet the eligibility criteria and requirements set forth in federal SNAP law. 7 U.S.C. 2014(a).

326. Congress has mandated uniform national standards of eligibility for participation in SNAP. 7 U.S.C. 2014(b).

327. As a condition for participating in SNAP, state agencies responsible for implementing SNAP, including DHS, are prohibited from imposing any standards of eligibility other than those set by the federal government. 7 U.S.C. 2014(b) and 2020(e)(5).

328. DHS must determine eligibility for FAP, which uses federal SNAP funding, in accordance with eligibility standards and requirements set forth in the federal SNAP statute and its implementing regulations.

Federal Eligibility Standards Related to Disqualification of Fleeing Felons

329. Under federal SNAP law, individuals are ineligible to receive Food Assistance for any period in which they are "fleeing to avoid prosecution, or custody or confinement after conviction, under the law of the place from which

they are fleeing, for a crime, or attempt to commit a crime, that is a felony..." 7 U.S.C. 2015(k).

330. Federal courts consistently have held that the mere existence of an outstanding warrant is insufficient to establish that an individual is fleeing to avoid prosecution, or custody or confinement after conviction, since the term "fleeing" is understood to mean the intentional evasion of arrest or prosecution, custody, or confinement.

331. Under federal SNAP law, the Secretary of Agriculture is required to define the terms "fleeing" and "actively seeking" for purposes of 7 U.S.C. 2015(k) to ensure that consistent procedures are used by state agencies throughout the United States, and to ensure that state agencies only disqualify "individuals whom law enforcement authorities are actively seeking for the purpose of holding criminal proceedings against the individual."

332. While the United States Department of Agriculture has yet to issue final regulations on this issue, there are proposed regulations that are consistent with the judicial interpretation of the term "fleeing."

333. The proposed federal regulations authorize the state agency, here DHS, to disqualify an individual from Food Assistance as a fleeing felon only if either:

a) the state agency verifies that an outstanding felony warrant has been issued for one of three specified escape- or flight-related felonies (escape, flight to avoid prosecution or confinement, or flight-escape, as identified by the Uniform Offense Classification Codes 4901, 4902, and 4999, respectively), and a law enforcement officer has presented the outstanding warrant to the state agency; or

b) the state agency, in the absence of an outstanding felony warrant for escape or flight, verifies and has documented evidence that four other specific factors exist: (i) the existence of an outstanding felony warrant for the individual; (ii) the person is aware of, or should reasonably have been able to expect that, a warrant has or would have been issued; (iii) the individual has taken some action to avoid being arrested or jailed; and (iv) a law enforcement agency is actively seeking the person. 76 Fed. Reg. 51913 (proposed 7 C.F.R. 273.11(n)).

334. Under the proposed regulations, the state agency may verify that law enforcement is actively seeking the person by means of either:

a) a law enforcement agency statement that it intends to enforce an outstanding felony warrant against the person within 20 days of submitting a request for location or other information about the specific person; or

b) a law enforcement agency statement that it intends to enforce an outstanding felony warrant against the individual within 30 days of a request for information about the warrant from the state agency, together with confirmation by the law enforcement agency that it has taken action to execute, or attempt to execute, the warrant within that 30 day period.

335. Under the proposed regulations, when a felony warrant for escape or flight is presented to the state agency for purposes of locating the person, no further evidence that law enforcement is actively seeking the person is required.

336. Under the proposed regulations, unless there is a felony warrant for escape or flight, "the mere existence of a warrant naming an individual who is a SNAP recipient or applicant does not provide sufficient information to determine that the individual is actually a fleeing felon who is being actively sought by a law enforcement agency." 76 Fed. Reg. 51913 at *6. Before denying, reducing, or terminating Food Assistance, the state agency must verify that the four other factors exist.

State Law Automatic Disqualification of Alleged Fugitive Felons

337. Michigan passed legislation, effective October 18, 2011, providing that DHS shall not grant public assistance to any individual who is subject to arrest under an outstanding arrest warrant arising from a felony charge against that individual in any jurisdiction. 2011 P.A. 198, codified as M.C.L. 400.10b.

338. Under state law, DHS and the Michigan State Police (MSP) are required to develop an automated program to compare data and identify public

assistance recipients who have an outstanding warrant arising from a crime designated as a felony or punishable by imprisonment for more than one year, or an extradition warrant arising from a criminal charge against the individual in another jurisdiction. M.C.L. 400.10c, as amended by 2011 P.A. 198.

339. The automated computer program ("fugitive felon interface") to disqualify public assistance applicants and recipients based on the existence of outstanding warrants became operational in January 2013.

340. Pursuant to federal law, the fugitive felon interface also automatically provides current address information for recipients of DHS-administered programs, including Food Assistance, to be released to the MSP, for purposes of assisting law enforcement officials in locating and arresting individuals with outstanding felony warrants, or probation or parole violations. DHS information on applicants not currently receiving assistance is not released to law enforcement through the interface.

Defendant's Denial of Food Assistance to Individuals Entitled to Food Assistance Under Federal Eligibility Standards, Who Are Not Fleeing from Justice and Are Not Actively Being Sought by Law Enforcement

341. Michigan has failed to follow federal law that specifies which individuals may be disqualified as "fleeing felons," 7 U.S.C. 2015(k), instead setting its own standards for identifying a "fugitive felon."

342. Defendant's standards for identifying fugitive felons disqualify

individuals from receiving FAP benefits even when they qualify for Food Assistance under all federal standards and requirements.

343. Defendant, in violation of 7 U.S.C. 2014(a) and (b) and 2020(e)(5), has imposed additional eligibility requirements for Food Assistance beyond those established under federal law, thereby denying Food Assistance to individuals who legally are eligible to receive it.

344. Defendant's policy on disqualification of alleged felons, operationalized through the fugitive felon interface and Bridges eligibility system, provides for disqualification from Food Assistance if the individual: (1) is subject to arrest under an outstanding warrant arising from a felony charge against the individual, (2) is subject to arrest under an outstanding warrant for extradition arising from a criminal charge in the jurisdiction that issued the warrant, or (3) admits to being a fugitive felon. BEM 203, p. 1-2.

345. Under state law and Defendant's policy, individuals will be disqualified from receiving FAP and other benefits as fugitive felons without any finding that they are actively being sought by law enforcement and that they are actually fleeing.

346. Defendant's computer matches with the MSP automatically result in Defendant's Bridges eligibility system printing and mailing computer-generated criminal justice disqualification notices to individuals who are identified as being

subject to arrest on a felony warrant, without any effort to determine:

a) whether the individual has received notice or is aware that a warrant has been issued;

b) whether the individual is intentionally seeking to evade prosecution, arrest, or confinement in connection with a felony; or

c) whether the jurisdiction in which the warrant allegedly was issued is actively seeking the individual for the purpose of holding criminal proceedings against the individual, or for the purpose of jailing or imprisoning the individual, for a felony.

347. When Defendant's Bridges computer system generates and mails a criminal justice disqualification notice, it also automatically schedules the reduction or termination of Food Assistance benefits that Defendant has been providing to the disqualified individual and other members (if any) of the disqualified individual's household.

348. As a result of Defendant's criminal justice disqualification policy and practices, Defendant is disqualifying individuals from Food Assistance and denying or terminating Food Assistance to those individuals in situations in which:

a) the warrant has been issued in the individual's name, but does not actually apply to the individual;

b) the individual has not been notified about the existence of the warrant or charges from which the individual allegedly is fleeing;

c) there has been no finding that the individual has taken flight for purposes of intentionally evading prosecution, arrest, or confinement in connection with a felony crime; and d) law enforcement officials are not actively seeking the person for arrest, prosecution, or incarceration in connection with a felony, or for extradition.

349. Under written instructions issued by Defendant's Field Operations Administration, DHS local offices are required to contact the DHS Office of Inspector General (OIG) if an individual who has been disqualified as a fugitive felon comes to the DHS office. See Ex. JJ.

350. Under written instructions issued by Defendant's OIG, when OIG agents are contacted by local offices because a fugitive felon is at the local DHS office, the OIG agents will contact law enforcement to determine whether the fugitive felon will be arrested.

351. Under written instructions issued by Defendant's OIG, when OIG agents are informed by law enforcement that a "fugitive felon" who has appeared at the DHS office will not be arrested, the individuals nevertheless remain disqualified from receiving assistance and the OIG agents must tell the disqualified fugitive felon to surrender to local law enforcement.

352. Exhibit LL is an accurate copy of the written instructions issued by

Defendant's OIG, released under the Michigan Freedom of Information Act.

353. Under Defendant's policies, DHS will not contact law enforcement officials in an effort to verify the individual's fugitive felon status unless and until the individual requests a hearing, at which time only the existence of an outstanding warrant is verified.

354. Exhibit MM is an accurate copy of emails, released under the Michigan Freedom of Information Act, regarding the verification of information at the time an individual requests a hearing regarding a criminal justice disqualification.

355. Defendant's criminal justice disqualification practices are not authorized by 7 U.S.C. 2015(k) or proposed regulations, and therefore constitute the imposition of an additional eligibility requirement for the receipt of Food Assistance in violation of 7 U.S.C. 2014(b) and 2020(e)(5).

356. Denying, reducing or terminating Food Assistance based on the mere existence of a warrant, without a determination that the recipient is fleeing from justice, results in disqualification of individuals who are eligible for Food Assistance under federal SNAP law and thus violate the rights under 7 U.S.C. 2014(a) of Plaintiffs and members of the Automatic FAP Disqualification Subclass.

357. The SNAP law provisions that prohibit state agencies from imposing

any standards of eligibility other than those set by the federal government – 7 U.S.C. 2014(b) and 2020(e)(5) – are preemption provisions pursuant to the Supremacy Clause.

358. When state laws or policies regarding FAP conflict with federal laws governing SNAP, the federal laws take precedence over the state laws or policies, pursuant to the Supremacy Clause.

359. When state laws or policies regarding FAP pose an obstacle to the execution of the full purposes and objectives of Congress in enacting legislation, the federal laws take precedence over the state laws or policies, pursuant to the Supremacy Clause.

360. Because federal SNAP law preempts M.C.L. 400.10b and Defendant's fugitive felon policy, Defendant may not deny, reduce or terminate Food Assistance to Plaintiffs or member of the Automatic FAP Disqualification Subclass based on the mere existence of a warrant, without a determination that the recipient is "fleeing" from justice as that term is defined under federal law.

Irreparable Harm

361. Plaintiffs and members of the Due Process Class and Automatic FAP Disqualification Subclass are, by definition, indigent individuals who, due to unemployment, disability, family circumstances, or other factors, depend on public

assistance, including Food Assistance, to meet their subsistence needs, and to avoid hunger and obtain basic nutrition.

362. Plaintiffs and members of the Due Process Class and Automatic FAP Disqualification Subclass have suffered or are at imminent risk of suffering the loss of benefits under needs-based public assistance programs, including Food Assistance, which they require to meet their subsistence needs, and to avoid hunger and obtain basic nutrition.

363. The denial of due process in this case is irreparable harm per se.

CAUSES OF ACTION

Count I – Violation of the Due Process Clause of the United States Constitution (Named Plaintiffs and Due Process Class)

364. Defendant is violating Plaintiffs' and Due Process Class members' rights under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution by denying, reducing, or terminating needs-based public assistance benefits using criminal justice disqualification notices that fail to detail (a) the nature and duration of the intended action; (b) the factual and legal bases for the denial, reduction, or termination; and (c) exactly what individuals must do to lift the disqualification, to restore public assistance eligibility and to have benefits reinstated.

365. Plaintiffs' and class members' rights to due process under the

Fourteenth Amendment to the U.S. Constitution are enforceable under 42 U.S.C. 1983.

Count II – Violation of Federal SNAP Law Requiring Due Process in Notice and Hearing Procedures Before Denying, Reducing, or Terminating Food Assistance (Named Plaintiffs and Due Process Class)

366. Defendant is violating the individual named Plaintiffs', Westside Mothers members', and Due Process Class members' rights under federal SNAP law, including 7 U.S.C. 2020(e)(10), as implemented by 7 C.F.R. 273.10(g) and 273.13(a), by denying, reducing, or terminating Food Assistance benefits, using criminal justice disqualification notices that fail to detail (a) the nature and duration of the intended action; (b) the factual and legal bases for the denial, reduction, or termination; and (c) exactly what individuals must do to lift the disqualification, to restore public assistance eligibility and to have benefits reinstated.

367. Plaintiffs' and class members' rights to meaningful due process as required by federal SNAP law, including 7 U.S.C. 2020(e)(10), as implemented by 7 C.F.R. 273.10(g) and 273.13(a), are enforceable under 42 U.S.C. 1983.

Count III – Michigan State Law and Defendant's Policy of Automatically Disqualifying People Who Have Outstanding Felony Warrants Violates Federal SNAP Law (Named Plaintiffs and Automatic FAP Disqualification Subclass)

368. M.C.L. 400.10b and Defendant's implementing fugitive felon policy

(previously found in BEM 203 and now published in BEM 204) disqualify people from Food Assistance based on the mere existence of an outstanding felony warrant for the person's arrest, as identified through a computerized "match," without any finding that the person is actively sought by law enforcement or is consciously evading arrest or prosecution, and therefore impose requirements for Food Assistance eligibility that are not contained in federal law.

369. 7 U.S.C. 2014 (b) and 2020(e)(5) prohibit states from imposing eligibility requirements for receiving Food Assistance that are not established by federal law, and thus explicitly prohibit additional state eligibility requirements, including the requirement found in M.C.L. 400.10b and Defendant's fugitive felon policy that individuals not have an outstanding felony warrant, regardless of whether they are intentionally evading arrest, confinement or prosecution and regardless if whether they are actively sought by law enforcement.

370. Under federal law disqualifying **fleeing** felons, an individual with an outstanding felony warrant can be disqualified from Food Assistance, but only if there has been a finding that law enforcement officials are actively seeking the individual, and that the individual knows his or her apprehension is sought and is intentionally fleeing from justice. 7 U.S.C. 2015(k).

371. 7 U.S.C. 2014(a) gives Plaintiffs and subclass members the right to receive Food Assistance, provided they have applied for the assistance and are

eligible under the national standards required by 7 U.S.C. 2014(b); 2020(e)(5); 2015(k); and 7 C.F.R. 273.11(n).

372. Defendant's fugitive felon policies and practices, which implement M.C.L. 400.10b, violate Plaintiffs' and subclass members' right to receive Food Assistance under 7 U.S.C. 2014(a), which is enforceable under 42 U.S.C. 1983.

Count IV – Preemption: Defendant's Policy Automatically Disqualifying People Who Have Outstanding Felony Warrants Violates the Supremacy Clause Because Federal SNAP Law Preempts Both M.C.L. 400.10b and Defendant's "Fugitive Felon" Policy (Named Plaintiffs and Automatic FAP Disqualification Subclass)

373. M.C.L. 400.10b and Defendant's implementing fugitive felon policy (previously found in BEM 203 and now published in BEM 204) conflict with the federal SNAP act because the Michigan law and Defendant's policy disqualify people from Food Assistance based on the mere existence of an outstanding felony warrant for the person's arrest, as identified through a computerized "match," without any finding that the person is actively sought by law enforcement or is consciously evading arrest or prosecution.

374. The SNAP act, through 7 U.S.C. 2014 (b) and 2020(e)(5), clearly provides that states may not impose eligibility requirements for receiving Food Assistance that are not established by federal law, and thus explicitly preempts additional state eligibility requirements, including M.C.L. 400.10b and Defendant's fugitive felon policy (BEM 204) requiring that individuals not have an

outstanding felony warrant, regardless of whether they are intentionally evading arrest, confinement or prosecution and regardless of whether they are actively sought by law enforcement.

375. Under federal law disqualifying **fleeing** felons, an individual with an outstanding felony warrant can be disqualified from Food Assistance, but only if there has been a finding that law enforcement officials are actively seeking the individual, and that the individual knows his or her apprehension is sought and is intentionally fleeing from justice. 7 U.S.C. 2015(k).

376. Accordingly, M.C.L. 400.10b and Defendant's "fugitive felon" policy (BEM 204) are preempted by federal law under 7 U.S.C. 2014(b) and 2020(e)(5) prohibiting states from imposing their own eligibility standards), 7 U.S.C. 2015(k) (establishing federal standards for fleeing felon disqualifications), and the Supremacy Clause of the United States Constitution, Article VI, Clause 2, because Congress has established comprehensive federal standards and requirements for Food Assistance eligibility (including standards related to felony warrants), and because M.C.L. 400.10b and Defendant's "fugitive felon" policy impose additional eligibility standards not set forth in federal law, conflict with federal law, and frustrate the achievement of Congress's full objectives.

REQUEST FOR RELIEF

377. Plaintiffs respectfully requests that this Honorable Court:

A. Certify this case as a class action on behalf of the Due Process Class and as a class action on behalf of the Automatic Food Assistance Disqualification Subclass described in this Complaint, pursuant to Fed. R. Civ. P. 23(b)(2), and name Plaintiffs Walter Barry, Heather Woodward, Donitha Copeland, and Kenneth Anderson as class representatives;

B. Declare that Defendant's criminal justice disqualification notices and hearing procedures violate the rights of the individual named Plaintiffs, members of Westside Mothers and Due Process Class members to meaningful notice and an opportunity to be heard under the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution;

C. Declare that Defendant's criminal justice disqualification notices and hearing procedures violate federal SNAP law, including 7 U.S.C. 2020(e)(10), as implemented by 7 C.F.R. 273.10(g) and 273.13(a), which both implements the federal constitutional due process requirements and provides an independent legal basis for requiring procedural protections;

D. Preliminarily and permanently enjoin Defendant from continuing to deny, reduce, or terminate public assistance benefits to the individual named Plaintiffs, members of Westside Mothers and Due Process Class members based on criminal justice disqualifications without providing notices that detail: (1) which of the five types of criminal justice disqualifications is at issue; (2) the name of the household member whose alleged conduct has resulted in the disqualification; (3) the date, place, and nature of both the alleged crime and the resulting conviction or warrant; (4) the jurisdiction where the conviction occurred or the warrant was issued; (5) the name of a specific person or entity with knowledge of the basis for the disqualification whom the individual can contact for further information; (6) where applicable, the basis for concluding that the disqualified individual is aware that he or she is being sought by law enforcement, and is fleeing to avoid prosecution, arrest, or confinement in connection with a crime that is a felony; and (7) where applicable, the basis for concluding that law enforcement is actively seeking the individual;

E. Preliminarily and permanently enjoin Defendant from continuing to deny, reduce, or terminate public assistance benefits to individual named Plaintiffs, members of Westside Mothers and Due Process Class members based on criminal justice disqualifications without providing notices that inform them about the length of the disqualification period, whether benefits can be reinstated, and, if so, what steps the disqualified individual must take to obtain reinstatement.

F. Order Defendant to:

a. prospectively reinstate assistance or benefits to individual named Plaintiffs, members of Westside Mothers and Due Process Class members whose needs-based public assistance benefits have been unlawfully reduced or terminated without due process of law; and

b. resume processing the applications of individual named Plaintiffs, members of Westside Mothers, and Due Process Class members whose applications were unlawfully denied without due process of law;

G. Declare that Defendant's policy and practice of disqualifying individuals from receiving Food Assistance based on the mere existence of a felony warrant, without a finding that the individual is a fleeing felon under 7 U.S.C. 2015(k) who is intentionally evading prosecution, arrest, custody, or confinement in connection with a crime that is a felony, and for which the person is actively sought by law enforcement, violates the rights of individual named Plaintiffs, members of Westside Mothers and subclass members' rights to Food Assistance under 7 U.S.C. 2014(a) and (b), and 2020(e)(5);

H. Declare that Defendant's policy and practice of disqualifying individuals from receiving Food Assistance based on the mere existence of a warrant, without a finding that the individual is a fleeing felon under 7

U.S.C. 2015(k) who is intentionally evading prosecution, arrest, custody, or confinement in connection with a crime that is a felony, and for which the person is actively sought by law enforcement, is preempted by federal SNAP law and the Supremacy Clause of the United States Constitution;

I. Preliminarily and permanently enjoin Defendant from denying, reducing, or terminating Food Assistance to named Plaintiffs, members of Westside Mothers, and members of the Automatic FAP Disqualification Subclass based on the mere existence of an outstanding felony or extradition warrant without a finding that the individual is a "fleeing felon," as that term is defined under federal law, who is intentionally evading prosecution, arrest, custody, or confinement in connection with a crime that is a felony and for which the individual is being actively sought by law enforcement under 7 U.S.C. 2015(k) and implementing regulations;

J. Order Defendant to:

a. prospectively reinstate assistance or benefits to individual named Plaintiffs, members of Westside Mothers and Automatic FAP Disqualification Subclass members whose Food Assistance has been unlawfully reduced or terminated based on Defendant's fugitive felon policy; and

b. resume processing the applications of individual named

Plaintiffs, members of Westside Mothers, and Automatic FAP disqualification Subclass members whose applications were unlawfully denied based on Defendant's fugitive felon policy;

K. Order Defendant to restore, pursuant to 7 U.S.C. 2020(b), 2020(e)(11), and 2023(b), and pursuant to Defendant's policy in BEM 406 of retroactively correcting under-issuances of benefits, all Food Assistance benefits unlawfully withheld from individual named Plaintiffs, members of Westside Mothers, and members of both the Due Process Class and Automatic FAP Disqualification Subclass, up to 12 months prior to the filing of this lawsuit, as a result of the criminal justice disqualification notices and fugitive felon policy and practice enjoined by the Court;

L. Order Defendant to provide notice to all class and subclass members, pursuant to Fed. R. Civ. P. 23(d), of any relief granted by the Court in this case and of any additional rights or administrative remedies for obtaining benefits or assistance wrongfully denied, reduced, or terminated without due process of law or in violation the United States Constitution or federal SNAP law, including but not limited to the right to restoration of Food Assistance benefits under 7 U.S.C. 2020(b), 2020(e)(11), and 2023(b), and BEM 406;

M. Award Plaintiffs their costs and reasonable attorney's fees under

42 U.S.C. 1988; and

N. Grant such other relief as may be just and proper.

Dated: October 28, 2013

Respectfully submitted,

/s/ Jacqueline Doig
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CERTIFICATE OF SERVICE

I hereby certify that on October 28, 2013, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system, which will send notification of such filing to the following: Counsel for Defendant, William R. Morris, Joshua S. Smith, and Kristin M. Heyse.

/s/Elan S. Nichols

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DONITHA COPELAND'S VERIFICATION OF FACTS

Pursuant to 28 U.S.C. § 1746, I state under penalty of perjury that the factual statements about me and my case in the forgoing complaint are true and correct to the best of my knowledge, information, and belief, and if called upon to testify I would testify consistently with those statements.

DONITHA COPELAND

Dated: October 22, 2013

KENNETH L. ANDERSON'S VERIFICATION OF FACTS

Pursuant to 28 U.S.C. § 1746, I state under penalty of perjury that the factual statements about me and my case in the forgoing complaint are true and correct to the best of my knowledge, information, and belief, and if called upon to testify I would testify consistently with those statements.

Ken Anderson

Kenneth L. Anderson

Dated: October 23, 2013

WESTSIDE MOTHERS' VERIFICATION OF FACTS

Pursuant to 28 U.S.C. § 1746, I state under penalty of perjury that:

1. I act as the Coordinator of Westside Mothers' day-to-day operations.

2. I was a founding member of Westside Mothers have been an active volunteer worker with the organization for the past 47 years.

3. The factual statements about Westside Mothers in the forgoing complaint are true and correct to the best of my knowledge, information, and belief, and if called upon to testify I would testify consistently with those statements.

Selma Goode

Selma Goode

Dated: October 28, 2013