

INT \_\_\_\_\_

EO \_\_\_\_\_

NOA 155

MICHAEL K. JEANES  
Clerk of the Superior Court  
By Sean Donahoe, Deputy  
Date 07/27/2011 Time 16:52:20

Description	Amount
CASE# CV2011-055280	
CIVIL NEW COMPLAINT	301.00
TOTAL AMOUNT	301.00
Receipt# 21529201	

1 Larry E. Coben (SBN 015673)  
 Jo Ann Niemi (SBN 020873)  
 2 **ANAPOL SCHWARTZ LAW FIRM**  
 8700 E. Vista Bonita Drive, Suite 228  
 3 Scottsdale, Arizona 85255  
 Phone (480) 515-4745  
 4 Fax (480) 515-4744  
 Minute Entries: [ME@anapolschwartz.com](mailto:ME@anapolschwartz.com)

5  
6 *Attorneys for Plaintiffs*

7 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**

8 **COUNTY OF MARICOPA**

9 CV2011-055280

10 ASHLEIGH TURNER-JUSTICE, JESSICA )  
 M. VARELAS, and ROBERT DOSS, )  
 individually and on behalf of all others )  
 11 similarly situated, )

Case No. \_\_\_\_\_

12 Plaintiffs, )

13 v. )

**COMPLAINT**

14 ARIZONA HEALTH CARE COST )  
 CONTAINMENT SYSTEM )  
 15 ADMINISTRATION, an agency of the )  
 State of Arizona; DOES 1 through 100, )  
 16 inclusive, )

JURY TRIAL DEMANDED

17 Defendants. )

18  
19 **CLASS ACTION COMPLAINT**

20 Plaintiffs Ashleigh Turner-Justice, Jessica M. Varelas, and Robert Doss individually,  
 21 and on behalf of all others similarly situated, sue the Defendant Arizona Health Care Cost  
 22 Containment System Administration (referred to herein as AHCCCS) , and state as follows:

23 **NATURE OF THE ACTION**

24 1. This is an action which seeks declaratory and injunctive relief, as well as the  
 25 recovery of monies paid under duress, fraud or mistake. The defendant has also been unjustly

1 enriched because monies were acquired in violation of federal and state law. The Plaintiffs  
2 assert claims pursuant to Arizona state and common law, and in accordance with 42 U.S.C. §  
3 1983 as a result of the violation of federal law.

4       2.       In Arizona, the defendant, the Arizona Health Care Cost Containment System  
5 (referred to herein as "AHCCCS"), administers Medicaid services. During the past several  
6 years, AHCCCS has had enrollment membership ranging from about one million to one and a  
7 half million recipients of Medicaid benefits, of which a significant number of recipients are  
8 citizens who receive acute and continuing medical care.

9       3.       Each year, a large number of these Medicaid recipients, including the named  
10 Plaintiffs, seek financial recovery for the injuries and losses suffered via the judicial system  
11 and against third-parties.

12       4.       Defendant AHCCCS is permitted by both federal and state law, and has at all  
13 relevant times, established procedures by which it can obtain reimbursement for monies it has  
14 paid for a recipient's medical treatment. Under applicable federal law, AHCCCS is limited to  
15 a recovery of monies paid for medical assistance based upon a discrete formula applied to a  
16 discrete portion of the funds a recipient may obtain from a third-party tortfeasor. The  
17 defendant's statutory right of limited recovery can only be asserted against the third-party that  
18 may have caused the harm giving rise to the payment of medical treatment.

19       5.       In accordance with applicable and controlling federal law, the defendant,  
20 acting by and through its authorized agents, is only entitled to assert a lien and pursue  
21 recovery of funds it paid on the recipient's behalf against third-parties, and only from a  
22 portion of the monies a third party is or may be liable to pay for medical care costs. Federal  
23 law precludes the defendant from asserting, filing or pursuing recovery against the plaintiff  
24 recipient—this law is referenced herein as the "anti-lien provisions of the Medicaid Act".

25       6.       In contradiction of applicable federal law, including but not limited to 42

1 U.S.C. § 1396a(a) and 1396p and the “anti-lien provisions of the Medicaid Act”, the State of  
2 Arizona and its agency, AHCCCS, has promulgated and/or sought to enforce statutes and  
3 regulations (see generally, ARS 36-2915 and 36-2956) which permit the issuance of a lien,  
4 the recording of a lien, and the pursuit of collection of a lien against the plaintiffs who are  
5 recipients of medical care benefits. These Arizona statutes and any regulations promulgated  
6 pursuant to these statutes are inconsistent with and preempted by the Medicaid Act, including  
7 but not limited to 42 U.S.C. § 1396a(a) and 1396p, which preclude the assertion, claim or  
8 enforcement of a lien against the individual recipient including the named plaintiffs and all  
9 other class members.

10 7. The Plaintiffs seek a declaratory judgment that the aforesaid Arizona statutes  
11 and regulations promulgated thereto constitute a means to unconstitutionally deprive them of  
12 their property. Further, these statutes and regulations should be deemed illegal and  
13 unconstitutional in their application to the recipient plaintiffs because their promulgation and  
14 enforcement is preempted by applicable federal statutes. Under these circumstances and  
15 findings, the Plaintiffs seek injunctive relief precluding any action by the defendant which is  
16 in violation of applicable federal law.

17 8. At all times relevant to this cause of action, the defendant AHCCCS, both  
18 directly and by and through its authorized agents, has made erroneous, false, mistaken and/or  
19 fraudulent statements and representations of fact and law to the plaintiffs and others similarly  
20 situated about the defendant’s rights to recover monies it has paid out pursuant to the federal  
21 Medicaid statutes.

22 9. At all times relevant to this cause of action, the defendant AHCCCS has made  
23 erroneous, false, mistaken and/or fraudulent statements and representations of fact and law to  
24 the plaintiffs and others similarly situated, including but not limited that it is entitled to assert  
25 a lien and collect monies from all funds a recipient recovers against a third-party, without any

1 limitations or restrictions.

2 10. At all times relevant to this cause of action, the defendant AHCCCS has made  
3 erroneous, false, mistaken and/or fraudulent statements and representations to the plaintiffs  
4 and others similarly situated that it was and is entitled to a portion of all sums a recipient has  
5 collected or may collect from a third-party tortfeasor, without any limitations or restrictions.

6 11. At all times relevant to this cause of action, the defendant AHCCCS has made  
7 erroneous, false and mistaken assumptions, calculations and representations regarding the  
8 amount of money it is entitled to recover from recipients because AHCCCS has not followed  
9 the applicable law and ascertained the true value/interest it is entitled to recover in  
10 accordance with the applicable statutes.

11 12. At all times relevant hereto, the defendant has obtained and retained money  
12 that should have been paid over to the plaintiffs.

13 13. At all times relevant to this cause of action, the defendant AHCCCS has  
14 asserted, claimed, represented and/or collected from recipients a percentage of a recipient's  
15 third-party recovery without drawing any mathematical distinction between the sums  
16 recovered for past medical expenses and sums recovered for all other losses. This method of  
17 recovery of its lien has been in the past and continues to this day to be in violation of the law.

18 14. Each of the plaintiffs, at all times relevant to this lawsuit, did not know, nor  
19 could they have learned, that the defendant AHCCCS had breached its duty to them and that  
20 funds had been wrongfully obtained by the defendant.

21 15. The defendant concealed the facts giving rise to these causes of action in the  
22 past, and it continues to do so presently, by making representations that it is entitled to assert  
23 a lien against sums of money recovered by the plaintiffs from third-parties to which it is not  
24 entitled to make a claim. This action on the part of the defendant AHCCCS constitutes  
25 fraudulent constructive fraud.



1 times relevant hereto she has lived in Maricopa County. Plaintiff Turner suffered  
2 catastrophic spinal cord injury resulting in her becoming paraplegic. Ms. Turner received  
3 extensive medical treatment and some of her medical bills were paid by the defendant  
4 AHCCCS. In June, 2005, the defendant was informed that Ms. Turner had obtained a  
5 financial settlement from a third-party and it requested full payment of its lien for the amount  
6 it paid for medical treatment. The defendant made a demand upon Ms. Turner to reimburse it  
7 the full amount of money it paid for medical expenses to date. The defendant made this  
8 claim without regard for the fact that under federal and state law it was not entitled to full  
9 reimbursement under the circumstances. The Plaintiff paid the defendant the sum of  
10 \$127,188.73, which constituted the entire lien without regard for the settlement, the amount  
11 attributable to past medical expenses or the amount of the expenses incurred in litigating this  
12 case. In accordance with applicable statutes and the common law, the defendant was not  
13 entitled to any reimbursement because of the nature of the third-party settlement obtained.

14 22. Plaintiff Turner brings this action on behalf of a sub-class of Plaintiffs who  
15 have suffered similar harm based upon the misconduct of the defendant as described herein.

16 The sub-class of plaintiffs includes all Arizona Medicaid recipients who have:

- 17 a. Recovered funds from a third party tortfeasor for injuries and losses which  
18 resulted in Medicaid making payments to medical providers for treatment;
- 19 b. Fully reimbursed the defendant for the total amount of its asserted lien  
20 without any appropriate and necessary reductions in accordance with  
21 applicable statutes and the common law of Arizona; and
- 22 c. Made full reimbursement to the defendant despite the fact that the  
23 applicable statutes and common law required that the defendant only seek  
24 recovery from that portion of the third-party recovery that related to past  
25 medical expenses and without further reducing the reimbursement by

1 deducting a portion of the litigation expenses.

2 23. Plaintiff Jessica M. Varelas is a citizen of the State of Arizona and at all times  
3 relevant hereto she has lived in Pima County. Plaintiff Varelas suffered catastrophic spinal  
4 cord injury resulting in her becoming quadriplegic. In 2006, the defendant was informed that  
5 Ms. Varelas had obtained a financial settlement from a third-party and it requested full  
6 payment of its lien for the amount it paid for medical treatment. The defendant AHCCCS  
7 refused to compromise its lien in the amount of \$216,674.99. Because of the representations  
8 made by the defendant, the Plaintiff paid the entire lien to the defendant.

9 24. Plaintiff Varelas brings this action on behalf of a sub-class of Plaintiffs who  
10 have suffered similar harm based upon the misconduct of the defendant as described herein.

11 The sub-class of plaintiffs includes all Arizona Medicaid recipients who have:

- 12 a. Recovered funds from a third party tortfeasor for injuries and losses which  
13 resulted in Medicaid making payments to medical providers for treatment;
- 14 b. Fully reimbursed the defendant for the total amount of its asserted lien  
15 without any appropriate and necessary reductions in accordance with  
16 applicable statutes and the common law of Arizona; and
- 17 c. Made full reimbursement to the defendant despite the fact that the  
18 applicable statutes and common law required that the defendant only seek  
19 recovery from that portion of the third-party recovery that related to past  
20 medical expenses and without further reducing the reimbursement by  
21 deducting a portion of the litigation expenses.

22 25. Plaintiff Robert Doss currently resides with his son, Shaun Doss, in the State  
23 of Michigan. He and Shaun were, at all times relevant hereto, citizens of the State of Arizona  
24 and they resided in Maricopa County. Plaintiff's son Shaun suffered catastrophic spinal cord  
25 injury resulting in him becoming paraplegic. Shaun Doss received extensive medical

1 treatment and some of his medical bills were paid by the defendant AHCCCS. In December  
2 2008, the defendant was informed that Mr. Doss had obtained a financial settlement from a  
3 third-party. The defendant made a demand upon Mr. Doss to reimburse it an amount of  
4 money representing a portion of the lien amount it claimed was then due. The Plaintiff paid  
5 the defendant the sum of \$6,000.00. In accordance with applicable statutes and the common  
6 law, the defendant was not entitled to any reimbursement because of the nature of the third-  
7 party settlement obtained.

8           26. Plaintiff Doss brings this action on his behalf and on behalf of a sub-class of  
9 Plaintiffs who have suffered similar harm based upon the misconduct of the defendant as  
10 described herein. The sub-class of plaintiffs includes all Arizona Medicaid recipients who  
11 have:

- 12           a. Recovered funds from a third party tortfeasor for injuries and losses which  
13           resulted in Medicaid making payments to medical providers for treatment;
- 14           b. Paid the defendant a portion of the asserted lien amount without  
15           appropriate and necessary reductions in accordance with applicable  
16           statutes and the common law of Arizona; and
- 17           c. Made reimbursement to the defendant despite the fact that the applicable  
18           statutes and common law required that the defendant receive no recovery  
19           from the portion of the third-party recovery that related to past medical  
20           expenses.

21           27. Plaintiff Doss has, in addition to the improper payment made in 2008, a  
22 current dispute with the defendant regarding a demand that the Plaintiff pay the defendant  
23 additional monies recovered in a separate third-party action. The defendant continues to  
24 claim entitlement to an amount well in excess of what is permitted in accordance with federal  
25 and state law.





1 All residents of the State of Arizona who have been, during the  
2 times relevant hereto, recipients of Medicaid benefits paid to  
3 health care providers and who have in the past or will in the  
4 future recover monies from a third-party in a lawsuit or  
settlement related to the injuries for which medical treatment  
was obtained and paid by the defendant.

5 The Classes of Plaintiffs are further divided as follows:

- 6 a. Those persons living on the date the judgment is entered in this action;  
7 b. Those persons who do not have a pending action against the named defendant  
8 on the date of the Court's certification Order, any individual action in which  
9 recovery is sought based in whole or in part on the type of claims asserted  
herein;

10 i. "Sub-Class A" includes

- 11 a. persons who have recovered funds from a third party tortfeasor for  
12 injuries and losses which resulted in Medicaid making payments to  
13 medical providers for treatment;  
14 b. Fully reimbursed the defendant for the total amount of its asserted  
15 lien without any appropriate and necessary reductions in  
16 accordance with applicable statutes and the common law of  
17 Arizona; and,  
18 c. Made full reimbursement to the defendant despite the fact that the  
19 applicable statutes and common law required that the defendant  
20 only seek recovery from that portion of the third-party recovery  
21 that related to past medical expenses and without further reducing  
the reimbursement by deducting a portion of the litigation  
expenses.

22 ii. "Sub-Class B" includes:

- 23 a. Persons who have recovered funds from a third party tortfeasor for  
24 injuries and losses which resulted in Medicaid making payments to  
25 medical providers for treatment;  
b. Paid the defendant a portion of the asserted lien amount without

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

appropriate and necessary reductions in accordance with applicable statutes and the common law of Arizona; and,

c. Made reimbursement to the defendant despite the fact that the applicable statutes and common law required that the defendant receive no recovery from the portion of the third-party recovery that related to past medical expenses.

iii. "Sub-Class C" includes:

- a. Persons who have recovered funds from a third party tortfeasor for injuries and losses which resulted in Medicaid making payments to medical providers for treatment; and,
- b. Paid the defendant a portion of the asserted lien amount without appropriate and necessary reductions in accordance with applicable statutes and the common law of Arizona;
- c. Made reimbursement to the defendant despite the fact that the applicable statutes and common law required that the defendant receive no recovery from the portion of the third-party recovery that related to past medical expenses; and,
- d. Persons who currently reside outside of Arizona.

iv. "Sub-Class D" includes:

- a. Persons who have recovered funds or who will in the future recover funds from a third party tortfeasor for injuries and losses which resulted in Medicaid making payments to medical providers for treatment; and,
- b. Persons who have been notified or will in the future be notified of an asserted lien by the defendant to a portion of third-party settlement proceeds without appropriate and necessary reductions in accordance with applicable statutes and the common law of Arizona.

32. Rule 23(a) and Rule 23(b), Ariz. R. Civ. P., requirements are met because:

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

- a. Plaintiffs estimate that the proposed classes consist of not less than several thousand members throughout the State of Arizona, and joinder of all members in this action is impracticable;
- b. There are questions of law and fact common to the classes;
- c. The common questions predominate over any questions affecting only individual members;
- d. The named Plaintiffs are each an adequate representative of the sub-classes described. The claims of the Plaintiffs as class representatives are typical of those of the class members in that they were subjected to the same unlawful treatment and suffered the same type of harm as suffered by other members of the classes. The class representatives will vigorously pursue the claims on behalf of the classes, and will fairly and adequately protect the interests of the classes. Plaintiffs' counsel is experienced and professionally able to properly represent the classes;
- e. The claims of the representative parties are typical of the claims of each member of the class, and are based on or arise out of similar facts constituting the wrongful conduct of the defendant;
- f. A class action is far superior to any other available method for the fair and efficient adjudication of this controversy.

33. Prerequisites to a Class Action. Ariz. R. Civ. P. 23(a). The prerequisites to maintaining this action as a Class action are satisfied in this case as alleged below.

- a. Numerosity. On information and belief, there are thousands of Medicaid recipients who every year have some of their medical expenses paid by the defendant and then are required to reimburse the defendant out of third-party recoveries obtained by settlement or verdict. All of these recipients have in the past and will in the future provide reimbursements of asserted liens in excess of what the defendant is entitled to recover under the applicable law. Although the exact number of such persons is unknown to the Plaintiff at this time, the Defendant's records should contain

1 information on the identities and location of all such parties. Because  
2 Defendant has exclusive control of such information, Plaintiffs reserve  
3 their right to amend the allegations following completion of discovery.  
4 Given the scope of the Defendant's practices in Arizona, it is clear that the  
5 members of the Class are so numerous that joinder is impracticable and  
6 the disposition of their claims in a Class action will provide substantial  
7 benefits to both the parties and this Court.

- 8 b. Commonality. Since the Plaintiffs and other members of the Class were  
9 parties to a standardized pattern of behavior/conduct seeking  
10 reimbursements of medical costs paid in excess of what the defendant was  
11 entitled to recover under the law, which Defendant has invoked to commit  
12 fraud by omission, there are questions of law and fact common to the  
13 Class. Such common questions of law and fact predominate over any  
14 individual questions affecting Class members.
- 15 c. Typicality. Named Plaintiffs have the same interests in this matter as all  
16 the other members of the Classes, and their claims are typical of all  
17 members of the Class and sub-classes. The named Plaintiffs' claims are  
18 typical of the claims of all class members because: the claims originate  
19 from the same practices on the part of the defendant and its acts in  
20 furtherance thereof and the named plaintiffs and all Class members have  
21 sustained similar damages caused by this same pattern of conduct.
- 22 d. Adequacy of Representation. Plaintiffs' claims are aligned with the  
23 interests of the absent members of the Classes such that the Class claims  
24 will be prosecuted with diligence and care by Plaintiffs as representatives  
25 of the Classes and sub-classes. Plaintiffs are committed to pursuing this  
action and have retained competent counsel experienced in the prosecution  
and successful resolution of Class litigation. Plaintiffs will fairly and  
adequately represent the interests of the Classes and do not have interests  
adverse to the Classes. Plaintiffs' interests are antagonistic to the interests

1 of the Defendant and Plaintiffs will vigorously pursue the claims of the  
2 Classes.

3 e. Class Actions Maintainable. Ariz. R. Civ. P. 23(b)(3). Class action status  
4 is also appropriate because the common question of law and fact identified  
5 above predominate over questions affecting only individual members. A  
6 Class action is superior to other available methods for the fair and efficient  
7 adjudication of this litigation. Plaintiffs and their counsel do not anticipate  
8 encountering any unique difficulties in the management of this action as a  
9 Class action.

### 10 **COUNT I**

11 34. The Plaintiffs incorporate by reference herein all prior paragraphs of this  
12 Complaint as if fully set forth herein.

13 35. As previously described herein, the defendant committed fraud by omission  
14 and/or by affirmation.

15 36. The representations and/or misrepresentations were made with knowledge and  
16 intent that they would be assumed to be true and accurate and were made negligently or  
17 incorrectly with disregard for their truthfulness.

18 37. As a proximate result of the fraud committed by the defendant, the Plaintiffs  
19 and the sub-classes of plaintiffs were caused to suffer damages and/or they will in the future  
20 suffer damages.

21 WHEREFORE, the Plaintiffs hereby demand compensatory damages from the  
22 defendant in an amount to be determined at trial, plus interest, costs and attorneys' fees.

### 23 **COUNT II**

24 38. The Plaintiffs incorporate by reference herein all prior paragraphs of this  
25 Complaint as if fully set forth herein.

39. As described in detail above, the defendant has taken, received, collected,  
converted unauthorized funds and obtained unjust enrichment based upon representations and  
assertions that were and continue to be improper and illegal.

40. The Plaintiffs and members of the Classes have been deprived of the money

1 and the use of the money that AHCCCS has taken, converted, used and received under its  
2 false claim of right, and have suffered or will in the future suffer damages as a result.

3 41. Such wrongful actions and conduct are ongoing and continuing. Unless the  
4 defendant is required to disgorge these funds, members of the sub-class of current recipients  
5 will suffer damages.

6 42. As a result of Defendant's unlawful acts and conduct, Plaintiffs and Class  
7 were deprived of the use of their money that was unlawfully converted by Defendant, and are  
8 therefore entitled to restoration of their money, along with interest thereon from the date the  
9 money was converted by Defendant to the date of judgment, compensatory damages and  
10 attorneys' fees.

### 11 COUNT III

12 43. Plaintiffs re-allege all prior paragraphs of the Complaint as if fully set forth  
13 herein.

14 44. Defendant's success in extracting monies from Plaintiffs and Class members  
15 without their authorization amounts to unjust enrichment.

16 45. Defendant's actions resulted in a windfall to the Defendant.

17 46. Defendant was unjustly enriched at the expense of the Plaintiffs and Class by  
18 their collection of monies from the erroneous, false and/or fraudulent asserts that it was  
19 entitled to funds recovered from third-parties in the improper/illegal fashion described above,  
20 and it would be unjust to permit the Defendant to retain the proceeds of its ill begotten gains.

### 21 COUNT IV

22 47. The Plaintiffs incorporate by reference the paragraphs set forth above as fully  
23 as if they were stated herein.

24 48. In accordance with applicable law, the Plaintiffs both individually and in their  
25 class representative capacity seek both Declaratory and Injunctive Relief, seeking a ruling  
that the defendant's practices and the funds it has recovered in the past and seek to recover  
now and in the future can only be obtained in accordance with Arizona law and the  
applicable federal statutes as those laws have been written and construed by controlling case  
law.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

**PRAYER FOR RELIEF**

WHEREFORE, the Plaintiffs individually and on behalf of the proposed Classes, pray for judgment as follows:

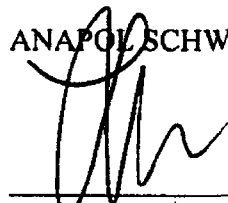
- A. Certification of the proposed Classes pursuant to Arizona Rule of Civil Procedure 23(a), (b)(2), and (b)(3).
- B. Designation of Plaintiffs as representative of the proposed Classes and designation of Plaintiffs' counsel as Class counsel;
- C. An award of compensatory damages, the amount of which is to be determined at trial;
- D. An award to the Plaintiffs and Class of prejudgment interest, costs and attorneys' fees;
- E. An award to the Plaintiffs and Class of such other and further relief as this Court deems just and proper, including but not limited to Declaratory and Injunctive Relief.

**JURY TRIAL DEMANDED**

The Plaintiffs hereby demand a trial by jury.

DATED this 27<sup>th</sup> day of July, 2011.

ANAPOL SCHWARTZ LAW FIRM



\_\_\_\_\_  
Larry E. Coben  
Jo Ann Niemi  
*Attorneys for Plaintiffs*