

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CODY FLACK,
SARA ANN MAKENZIE,
MARIE KELLY, and
COURTNEY SHERWIN,

Plaintiffs,

v.

Case No. 18-CV-0309

WISCONSIN DEPARTMENT OF
HEALTH SERVICES and
LINDA SEEMEYER, in her official
capacity as Secretary of the Wisconsin
Department of Health Services,

Defendants.

**DEFENDANTS' ANSWER AND DEFENSES TO PLAINTIFFS'
AMENDED COMPLAINT WITH CLASS ACTION ALLEGATIONS**

Defendants Wisconsin Department of Health Services (DHS) and Linda Seemeyer, in her official capacity as DHS Secretary (collectively "Defendants"), pursuant to Federal Rules of Civil Procedure 7(a)(2) and 15(a)(3), hereby answer Plaintiffs' Amended Complaint with Class Action Allegations ("Complaint") as follows:

INTRODUCTION

1. As to paragraph 1, Defendants lack knowledge or information sufficient to form a belief as to the specific meaning of the allegations that

Plaintiffs are “transgender.” As to the remaining allegations in the first sentence of paragraph 1, Defendants ADMIT. As to the second sentence, Defendants lack knowledge or information sufficient to form a belief that Plaintiffs Kelly and Sherwin and the putative class member Medicaid beneficiaries are being denied the same treatment under the Challenged Exclusion, and DENY the remaining allegations.

2. As to paragraph 2, Defendants ADMIT that Plaintiffs file a Complaint against them alleging violations of Section 1557 of the Patient Protection and Affordable Care Act (ACA), the comparability and availability requirements of the federal Medicaid Act, and the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution, and DENY the remaining allegations.

3. As to paragraph 3, Defendants ADMIT that Defendants enforce Wis. Admin. Code § DHS 107.03(23)–(24) (the “Challenged Exclusion”), that this state regulation was promulgated in 1997, DENY that Plaintiffs have been denied Medicaid coverage for medically necessary treatments and services based on the Challenged Exclusion, DENY that Wis. Admin. Code § DHS 107.03(23)–(24) are complete representations of the laws cited, DENY the stated definition of “gender dysphoria” is complete and correct, and lack knowledge or information sufficient to form a belief as to the meaning of remaining allegations.

4. As to paragraph 4, Defendants DENY the allegations.

5. As to paragraph 5, Defendants DENY that Plaintiffs and the putative class are entitled to a declaratory judgment, preliminary and permanent injunctions, attorneys' fees and costs, or any other of the relief they seek.

6. As to paragraph 6, Defendants DENY that Plaintiffs are entitled to compensatory damages.

BACKGROUND

7. As to paragraph 7, Defendants ADMIT that Plaintiffs are and have been enrolled in Wisconsin Medicaid and DENY the remaining allegations.

8. As to paragraph 8, Defendants ADMIT the allegations.

9. As to paragraph 9, Defendants ADMIT that the Plaintiffs Flack and Makenzie have been prevented from obtaining medical assistance for certain medical procedures and treatment from Wisconsin Medicaid based on the Challenged Exclusion, and DENY the remaining allegations.

10. As to the first sentence of paragraph 10, Defendants lack knowledge or information sufficient to form a belief as to the allegations. As to the second sentence, Defendants ADMIT that Plaintiffs Flack and Makenzie are low-income individuals and are eligible for and received Wisconsin Medicaid, and lack knowledge or information sufficient to form a belief as to

the remaining allegations. As to the third sentence, Defendants ADMIT the allegations.

11. As to the first sentence of paragraph 11, Defendants ADMIT that Plaintiffs Flack and Makenzie have been diagnosed with gender dysphoria, and lack knowledge or information sufficient to form a belief as to the remaining allegations. As to the second sentence, Defendants DENY the definition of “gender dysphoria” is complete and correct. As to the remaining sentences, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

12. As to the first sentence of paragraph 12, Defendants ADMIT that Flack’s and Makenzie’s medical and mental health providers have recommended they obtain surgical treatments to treat their gender dysphoria, and lack knowledge or information sufficient to form a belief as to the remaining allegations. As to the second and third sentences, Defendants lack knowledge or information sufficient to form a belief as to the allegations. As to the last sentence, Defendants DENY the allegations.

13. As to paragraph 13, Defendants DENY the allegations.

14. As to paragraph 14, Defendants ADMIT that Plaintiffs seek the relief stated but DENY that they are entitled to it.

PARTIES

15. As to paragraph 15, Defendants ADMIT that Flack is an adult resident of Green Bay, Brown County, Wisconsin, that he has been eligible for and enrolled in Wisconsin Medicaid, that he is considered “male” and a “transgender man” by DHS, and lack knowledge or information sufficient to form a belief as to the remaining allegations.

16. As to paragraph 16, Defendants ADMIT that Makenzie is an adult resident of Baraboo, Sauk County, Wisconsin, that she has been eligible for and enrolled in Wisconsin Medicaid, that she is considered “female” and a “transgender woman” by DHS, and lack knowledge or information sufficient to form a belief as to the remaining allegations.

17. As to paragraph 17, Defendants ADMIT that Kelly is an adult resident of Milwaukee, Milwaukee County, Wisconsin, that she is considered “female” by DHS, that she has been eligible for and enrolled in Wisconsin Medicaid, and lack knowledge or information sufficient to form a belief as to the remaining allegations.

18. As to paragraph 18, Defendants ADMIT that Sherwin is an adult resident of Janesville, Rock County, Wisconsin, that she is considered “female” by DHS, that she has been eligible for and enrolled in Wisconsin Medicaid, and lack knowledge or information sufficient to form a belief as to the remaining allegations, including footnote no. 2.

19. As to paragraph 19, Defendants ADMIT that DHS is the Wisconsin state agency charged with the administration of Medicaid, its principal offices are located at 1 West Wilson Street, Madison, Dane County, it receives federal funds from the U.S. Department of Health and Human Services, including Medicaid funding, and DENY the remaining allegations.

20. As to paragraph 20, Defendants ADMIT the allegations.

21. As to paragraph 21, Defendants ADMIT Seemeyer acts under color of state law, and DENY the remaining allegations.

JURISDICTION AND VENUE

22. As to paragraph 22, Defendants DENY the allegations.

23. As to paragraph 23, Defendants DENY the allegations.

24. As to paragraph 24, Defendants DENY the allegations.

FACTS

Gender Identity and Gender Dysphoria

25. As to the first, second, third, and fourth sentences, Defendants lack knowledge or information sufficient to form a belief as to the allegations. As to fifth and sixth sentences, Defendants DENY the allegations.

26. As to the first sentence, and second sentence which includes footnote 3, of paragraph 26, Defendants ADMIT the allegations. As to the remaining sentences, Defendants DENY that the allegations are complete representations of the documents cited.

27. As to the second sentence of paragraph 27, Defendants ADMIT the allegations. As to the remaining sentences, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

28. As to paragraph 28, Defendants DENY the allegations. As to the first and second sentences of footnote 4, Defendants lack knowledge or information sufficient to form a belief as to the allegations. As to the third sentence of the footnote, Defendants ADMIT that “sex reassignment surgery” and “sex change surgery” are not used in the body of the Complaint but DENY the remaining allegations.

Federal Medicaid Program

29. As to paragraph 29, Defendants ADMIT the allegations.

30. As to paragraph 30, Defendants ADMIT the allegations.

31. As to paragraph 31, Defendants ADMIT the allegations.

32. As to paragraph 32, Defendants ADMIT that 42 U.S.C. § 1396a concerns state plans for medical assistance and DENY that the allegations fully describe the requirements of a plan.

33. As to paragraph 33, Defendants lack knowledge or information sufficient to form a belief as to the use of the term “substantial” in the allegations and ADMIT the remaining allegations.

34. As to paragraph 34, Defendants ADMIT that 42 U.S.C. § 1396a(a)(10) concerns state plans for medical assistance and the care and

services required and DENY that the allegations fully describe the requirements of a plan.

35. As to paragraph 35, Defendants DENY the allegations are complete representations of the law cited.

36. As to paragraph 36, Defendants DENY the allegations are complete representations of the law cited.

37. As to paragraph 37, Defendants DENY the allegations are complete representations of the law cited.

Wisconsin Medicaid

38. As to paragraph 38, Defendants ADMIT the allegations.

39. As to paragraph 39, Defendants ADMIT the allegations.

40. As to paragraph 40, Defendants ADMIT the allegations.

41. As to paragraph 41, Defendants ADMIT the allegations.

42. As to the first sentence of paragraph 42, Defendants ADMIT the allegations. As to the second and third sentences, Defendants DENY the allegations are complete representations of the law. As to the last sentence, Defendants DENY the allegations.

Wisconsin Medicaid's Categorical Exclusion on Transition-Related Health Care for Transgender Medicaid Enrollees

43. As to paragraph 43, Defendants ADMIT that DHS denies coverage based on the Challenged Exclusion in DHS's medical assistance regulations and DENY the remaining allegations.

44. As to the first and second sentences of paragraph 44, Defendants DENY the allegations are complete representations of the law cited. As to the last sentence, Defendants DENY.

45. As to paragraph 45, Defendants ADMIT the allegations.

46. As to the first sentence of paragraph 46, Defendants ADMIT the allegations. As to the last sentence, Defendants DENY the allegations.

47. As to paragraph 47, Defendants DENY that DHFS issued a "bulletin" and DENY the remaining allegations are complete representations of the Jan. 6, 1995, document cited.

48. As to the first sentence of paragraph 48, Defendants DENY the allegations. As to the remaining sentences, Defendants DENY the allegations are complete representations of the documents cited.

49. As to paragraph 49, Defendants DENY the allegations.

50. As to paragraph 50, Defendants ADMIT that under the WPATH standard of care guidelines for gender dysphoria, gender-confirming medical procedures or treatments are considered medically-necessary for certain transgender patients, DENY that the allegations contain complete

representations of the WPATH Standards of Care, and lack knowledge or information sufficient to form a belief as to the remaining allegations.

51. As to paragraph 51, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

52. As to paragraph 52, Defendants ADMIT that they follow the Challenged Exclusion, they have not taken action to remove the Challenged Exclusion from the Wisconsin's medical assistance regulations and that Plaintiffs are eligible for medical assistance coverage, DENY that they enforce the Challenged Exclusion as applied to Flack and Makenzie, lack knowledge or information sufficient to form a belief as to whether Plaintiffs Kelly and Sherwin are in medical need of care to treat gender dysphoria, and DENY the remaining allegations.

53. As to paragraph 53, Defendants DENY Wisconsin maintains explicitly discriminatory prohibitions on Medicaid coverage and lack knowledge or information sufficient to form a belief as to the remaining allegations.

54. As to the first sentence of paragraph 54, Defendants DENY the allegations. As to the remaining sentence and footnote no. 5, Defendants DENY the allegations are complete representations of the website cited.

55. As to paragraph 55, Defendants DENY the allegations.

56. As to paragraph 56, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

57. As to paragraph 57, Defendants ADMIT that Medicaid may cover services as medically necessary when not excluded by law and DENY all remaining allegations.

Plaintiff Cody Flack

58. As to paragraph 58, Defendants ADMIT that Flack is 30 years old and resides in Green Bay, Wisconsin, and lack knowledge or information sufficient to form a belief as to the remaining allegations.

59. As to paragraph 59, Defendants ADMIT that Flack receives SSI and has Wisconsin Medicaid and lack knowledge or information sufficient to form a belief as to the remaining allegations.

60. As to paragraph 60, Defendants ADMIT that DHS considers Flack “male” and a transgender man, that he was born of the female sex, and lack knowledge or information sufficient to form a belief as to the remaining allegations.

61. As to paragraph 61, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

62. As to paragraph 62, Defendants ADMIT.

63. As to paragraph 63, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

64. As to paragraph 64, Defendants ADMIT that Flack was granted a legal name change to Cody Jason Flack and lack knowledge or information sufficient to form a belief as to the remaining allegations.

65. As to paragraph 65, Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations.

66. As to the first three sentences of paragraph 66, Defendants ADMIT the allegations. As to the last two sentences of paragraph 66, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

67. As to the first sentence of paragraph 67, Defendants ADMIT the allegations. As to the last sentence, Defendants lack knowledge or information sufficient to form a belief as to the remaining allegations.

68. As to the first and second sentences of paragraph 68, Defendants ADMIT the allegations. As to the last sentence, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

69. As to paragraph 69, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

70. As to paragraph 70, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

71. As to paragraph 71, Defendants ADMIT that Flack sought to obtain a mastectomy and breast reconstruction services, DENY that “top surgery” or “upper surgery” are effective surgical treatments for treating

gender dysphoria in transgender men, and lack knowledge or information sufficient to form a belief as to the remaining allegations.

72. As to paragraph 72, Defendants ADMIT the allegations.

73. As to paragraph 73, Defendants ADMIT the allegations.

74. As to paragraph 74, Defendants ADMIT that Dr. King determined that Flack met the criteria for obtaining chest reconstruction under the applicable standard of care, and lack knowledge or information sufficient to form a belief as to the remaining allegations.

75. As to paragraph 75, Defendants ADMIT the allegations.

76. As to the first sentence of paragraph 76, Defendants ADMIT the allegations. As to the remaining sentence, Defendants DENY the allegations are complete representations of the document cited.

77. As to paragraph 77, Defendants DENY the use of the term “immediately” and ADMIT the remaining allegations.

78. As to the first sentence of paragraph 78, Defendants ADMIT that DHS denied preauthorization based on the Challenged Exclusion and DENY the remaining allegations. As to the second sentence, Defendants ADMIT that DHS did not consider the medical necessity of the services requested for Flack in reaching its decision and DENY the remaining allegations. As to the last sentence, Defendants DENY the allegations are complete representations of the document cited.

79. As to paragraph 79, Defendants ADMIT the allegations.

80. As to paragraph 80, Defendants DENY the allegations are complete representations of the document cited.

81. As to paragraph 81, Defendants ADMIT the allegations.

82. As to paragraph 82, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

83. As to paragraph 83, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

84. As to the first sentence of paragraph 84, Defendants lack knowledge or information sufficient to form a belief as to the allegations. As to the remaining sentence, Defendants DENY the allegations.

Plaintiff Sara Ann Makenzie

85. As to paragraph 85, Defendants ADMIT that Makenzie is 42 years old, resides in Baraboo, Wisconsin, was born in Wisconsin, and lack knowledge or information sufficient to form a belief as to the allegations.

86. As to paragraph 86, Defendants ADMIT that Makenzie receives SSI and Wisconsin Medicaid and lack knowledge or information sufficient to form a belief as to the remaining allegations.

87. As to paragraph 87, Defendants lack knowledge or information sufficient to form a belief as to the specific meaning of “transgender woman,” Defendants ADMIT that Makenzie was born of the male sex and that she is

considered “female” and a “transgender woman” by DHS, and lack knowledge or information sufficient to form a belief as to the remaining allegations.

88. As to paragraph 88, Defendants ADMIT the allegations.

89. As to paragraph 89, Defendants ADMIT that DHS received a court order to change name and sex on the birth certificate for Makenzie and lack knowledge or information sufficient to form a belief as to the remaining allegations.

90. As to the first and second sentences of paragraph 90, Defendants lack knowledge or information sufficient to form a belief as to the allegations. As to the third sentence, Defendants ADMIT that Makenzie’s hormone treatments are currently paid for by Wisconsin Medicaid and lack knowledge or information sufficient to form a belief as to the remaining allegations.

91. As to paragraph 91, Defendants ADMIT that Makenzie consulted with her doctor and sought Wisconsin Medicaid coverage for genital reconstruction, and lack knowledge or information sufficient to form a belief as to the remaining allegations.

92. As to paragraph 92, Defendants ADMIT that Makenzie sought to obtain chest reconstruction surgery in the form of breast augmentation in consultation with medical providers, and lack knowledge or information sufficient to form a belief as to the remaining allegations.

93. As to paragraph 93, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

94. As to paragraph 94, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

95. As to paragraph 95, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

96. As to paragraph 96, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

97. As to the first and second sentences of paragraph 97, Defendants lack knowledge or information sufficient to form a belief as to the allegations. As to the third sentence, Defendants ADMIT the allegations. As to the fourth sentence, Defendants ADMIT that the procedures result in the creation of female-appearing external genitalia and lack knowledge or information sufficient to form a belief as to the remaining allegations. As to the fifth and sixth sentences, Defendants lack knowledge or information sufficient to form a belief as to the allegations. As to the seventh sentence, Defendants ADMIT the allegations.

98. As to paragraph 98, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

99. As to paragraph 99, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

100. As to the first sentence of paragraph 100, Defendants DENY the allegations. As to the second and third sentences, Defendants lack knowledge or information sufficient to form a belief as to the allegations. As to the fourth sentence, Defendants DENY the allegations.

Plaintiff Marie Kelly

101. As to paragraph 101, Defendants ADMIT that Kelly is 38 years old and a resident of Milwaukee, Wisconsin and lack knowledge or information sufficient to form a belief as to the remaining allegations.

102. As to paragraph 102, Defendants ADMIT that Kelly is a low-income individual, she is enrolled in Wisconsin Medicaid through BadgerCare Plus, and lack knowledge or information sufficient to form a belief as to the remaining allegations.

103. As to paragraph 103, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

104. As to paragraph 104, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

105. As to paragraph 105, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

106. As to paragraph 106, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

107. As to paragraph 107, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

108. As to paragraph 108, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

109. As to paragraph 109, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

110. As to paragraph 110, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

111. As to paragraph 111, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

112. As to paragraph 112, Defendants DENY the allegations.

Plaintiff Courtney Sherwin

113. As to paragraph 113, Defendants ADMIT that Sherwin is 35 years old, resides in Janesville, Wisconsin, and lack knowledge or information sufficient to form a belief as to the remaining allegations.

114. As to paragraph 114, Defendants ADMIT the allegations.

115. As to paragraph 115, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

116. As to paragraph 116, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

117. As to paragraph 117, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

118. As to paragraph 118, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

119. As to paragraph 119, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

120. As to paragraph 120, Defendants ADMIT that Wisconsin Medicaid covers spironolactone, DENY that Wisconsin Medicaid does not cover estrogen and progesterone prescriptions, and lack knowledge or information sufficient to form a belief as to the remaining allegations

121. As to paragraph 121, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

122. As to paragraph 122, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

123. As to paragraph 123, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

124. As to paragraph 124, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

125. As to paragraph 125, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

126. As to paragraph 126, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

127. As to paragraph 127, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

128. As to paragraph 128, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

129. As to paragraph 129, Defendants ADMIT that Sherwin contacted DHS to submit a member grievance, lack knowledge as to what is meant by “ombudsperson,” and lack knowledge or information sufficient to form a belief as to the remaining allegations.

130. As to paragraph 130, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

131. As to paragraph 131, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

132. As to paragraph 132, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

133. As to paragraph 133, Defendants DENY the allegations.

INJURIES TO PLAINTIFFS

134. As to paragraph 134, Defendants DENY the allegations.

135. As to paragraph 135, Defendants DENY the allegations.

136. As to paragraph 136, Defendants DENY the allegations.

137. As to paragraph 137, Defendants DENY the allegations.

138. As to paragraph 138, Defendants DENY the allegations.

139. As to paragraph 139, Defendants DENY the allegations.

140. As to paragraph 140, Defendants DENY the allegations.

CLASS ACTION ALLEGATIONS

141. As to paragraph 141, Defendants DENY that Plaintiffs and the putative class are entitled to the relief they seek.

142. As to paragraph 142, Defendants DENY that the Proposed Class should be certified.

143. As to the first sentence of paragraph 143, Defendants DENY the allegations. As to the second sentence, Defendants lack knowledge or information sufficient to form a belief as to the allegations.

144. As to paragraph 144, Defendants DENY the allegations.

145. As to paragraph 145, Defendants DENY the allegations.

146. As to paragraph 146, Defendants DENY the allegations.

147. As to paragraph 147, Defendants DENY the allegations.

148. As to paragraph 148, Defendants DENY the allegations.

149. As to paragraph 149, Defendants DENY the allegations.

FIRST CAUSE OF ACTION

**Unlawful Discrimination on the Basis of Sex in Violation of
Section 1557 of the Patient Protection and Affordable Care Act,
42 U.S.C. § 18116**

Against Defendant Wisconsin Department of Health Services (for declaratory relief and injunctive relief for Plaintiffs and all similarly situated individuals, and for compensatory damages for Plaintiffs only) and Defendant Seemeyer (for declaratory and injunctive relief for Plaintiffs and all similarly situated individuals)

Defendants DENY the allegations in the above heading.

150. Defendants reassert and incorporate by reference their responses to paragraphs 1 to 149 of this Answer as though fully set forth herein.

151. As to paragraph 151, Defendants DENY the allegations are complete representations of the law cited.

152. As to paragraph 152, Defendants DENY the allegations.

153. As to paragraph 153, Defendants DENY the allegations.

154. As to paragraph 154, Defendants DENY the allegations.

SECOND CAUSE OF ACTION

**Violation of the Medicaid Act's Availability Requirements,
42 U.S.C. § 1396a(a)(10)(A)**

Against Defendant Seemeyer (for declaratory and injunctive relief for Plaintiffs and all similarly situated individuals)

Defendants DENY the allegations in the above heading.

155. Defendants reassert and incorporate by reference their responses to paragraphs 1 to 154 of this Answer as though fully set forth herein.

156. As to paragraph 156, Defendants DENY the allegations.

THIRD CAUSE OF ACTION

**Violation of the Medicaid Act's Comparability Requirements,
42 U.S.C. § 1396a(a)(10)(B)**

Against Defendant Seemeyer (for declaratory and injunctive relief)

Defendants DENY the allegations in the above heading.

157. Defendants reassert and incorporate by reference their responses to paragraphs 1 to 156 of this Answer as though fully set forth herein.

158. As to paragraph 158, Defendants DENY the allegations.

FOURTH CAUSE OF ACTION

**Violation of 42 U.S.C. § 1983 Based on the Deprivation of
Plaintiffs' Rights Under the Equal Protection Clause of the
Fourteenth Amendment**

***Against Defendant Seemeyer (for declaratory and injunctive relief for
Plaintiffs and all similarly situated individuals)***

Defendants DENY the allegations in the above heading.

159. Defendants reassert and incorporate by reference their responses to paragraphs 1 to 158 of this Answer as though fully set forth herein.

160. As to paragraph 160, Defendants DENY the allegations.

161. As to paragraph 161, Defendants DENY the allegations.

162. As to paragraph 162, Defendants DENY the allegations.

REQUEST FOR RELIEF

Defendants DENY that Plaintiffs are entitled to any of the relief they seek.

DEFENSES

1. The plaintiffs' putative class does not satisfy the requirements of Rule 23 of the Federal Rules of Civil Procedure.
2. One or more of the plaintiffs lack standing.
3. One or more of the plaintiffs' claims is unripe or moot.
4. One or more of the plaintiffs have failed to exhaust administrative remedies as to one or more claims.
5. One or more of the plaintiffs' claims are not enforceable through a 42 U.S.C. § 1983 action, for lack of a private right of action, or otherwise.
6. One or more of the plaintiffs' claims in the Complaint fails to state a claim upon which relief can be granted.
7. One or more of the plaintiffs' claims in the Complaint is barred by the Eleventh Amendment to the U.S. Constitution.
8. The plaintiffs have failed to mitigate their alleged damages.

JURY TRIAL DEMAND

Pursuant to Federal Rule of Civil Procedure 38, Defendants demand a trial by jury.

WHEREFORE, Defendants respectfully request that judgment be entered in their favor dismissing this action with prejudice, denying all of the relief requested, and granting them such further relief as the Court deems appropriate.

Dated this 16th day of October, 2018.

Respectfully submitted,

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