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25 UNITED STATES DISTRICT COURT
26 DISTRICT OF ARIZONA

27 D.H., by and through his mother, Janice
28 Hennessy-Waller; and John Doe, by his
guardian and next friend, Susan Doe, on
behalf of themselves and all others
similarly situated,

Plaintiffs,

vs.

Jami Snyder, Director of the Arizona
Health Care Cost Containment System,
in her official capacity,

Defendant.

No. 4:20-cv-00335-TUC-SHR

**PLAINTIFFS' UNOPPOSED
MOTION TO WITHDRAW
MOTION FOR CLASS
CERTIFICATION**

1 Plaintiffs D.H and John Doe (“Plaintiffs”) hereby move the Court to withdraw the Motion
2 for Class Certification (the “Motion”) they filed on January 11, 2021 [Dkt. 40]. In support of
3 their request to withdraw the Motion, Plaintiffs state as follows:

4 1. Plaintiffs are young men who are unable to obtain the male chest reconstruction
5 necessary for treating their gender dysphoria because of a coverage exclusion enforced by
6 Defendant Jami Snyder, Director of the Arizona Health Care Cost Containment System
7 (“AHCCCS”). *See* Dkt. 1 (“Compl.”) ¶¶ 4, 9, 14-17; Dkt. 4-1 ¶ 18; Dkt. 5-1 ¶¶ 13, 15–16. The
8 coverage exclusion, codified at Ariz. Admin. Code R9-22-205-B(4)(a) (the “Challenged
9 Exclusion”), expressly prohibits Medicaid coverage for “gender reassignment surgeries.” It thus
10 prevents Plaintiffs and all transgender Medicaid beneficiaries in Arizona from having an equal
11 opportunity to demonstrate that their transition-related surgical care is medically necessary and
12 thus entitled to coverage by AHCCCS.

13 2. On August 6, 2019, Plaintiffs initiated this litigation, asserting that the Challenged
14 Exclusion facially violates the Medicaid Act, the Patient Protection and Affordable Care Act, and
15 the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. *See*
16 *Compl.* ¶¶ 115–126, p. 26. Plaintiffs’ Complaint asserts claims on behalf of themselves and:

17 [a]ll transgender individuals under age 21 who are or will be enrolled
18 in AHCCCS, have or will have a diagnosis of gender dysphoria, and
19 are seeking or will seek coverage for male chest reconstruction
20 surgery following a determination by their respective health care
21 providers that the procedure is necessary to treat their gender
22 dysphoria.

22 *Id.* ¶ 106 (the “Proposed Class”).

23 3. At a status conference held on December 11, 2020, the Court directed Plaintiffs to
24 file any motion for class certification within 30 days. *See* Dkt. 38.

25 4. Plaintiffs filed the Motion on January 11, 2021. *See* Dkt. 40. On January 25, 2021,
26 Defendant responded to the Motion by moving the Court for 90 days to conduct class discovery
27 after which time Defendant would substantively respond to the Motion. *See* Dkt. 45. On
28 February 1, 2021, Plaintiffs filed a reply brief in support of the Motion and in opposition to
Defendant’s motion for time to conduct class discovery. *See* Dkt. 46.

1 5. On May 4, 2021 the Court held a status conference on discovery issues. *See* Dkt.
2 76. During the conference, the Court questioned Plaintiffs’ counsel as to why class certification
3 was strictly necessary in this matter given that any ruling from the Court on the legality of the
4 Challenged Exclusion would be “the law of application” for any member of the Proposed Class
5 who later sought medically-necessary male chest reconstruction surgery regardless of whether
6 this litigation is pursued as a class action. *See* 05/04/2021 H’rg Tr. at 6:15-25, 8:6-16. Following
7 the status conference, the Court granted in part and denied in part Defendant’s motion for time
8 to conduct class discovery. Dkt. 74 at 2. “The Court direct[ed] the parties to conduct discovery
9 on both class certification and the merits of Plaintiffs’ claims concurrently. The Court also
10 direct[ed] the parties to focus first on discovery related to class certification.” *Id.* at 1.

11 6. Pursuant to that order, over the course of spring and summer 2021 the parties have
12 worked cooperatively to conduct both class and merits-related discovery in an efficient and
13 productive manner.

14 7. Plaintiffs have come to believe that this litigation can be most efficiently pursued
15 as an individual action rather than as a class action and that the withdrawal of their Motion would
16 serve to promote judicial economy.

17 8. Plaintiffs have met and conferred with Defendant regarding the withdrawal of the
18 Motion, and Defendant has indicated she does not oppose this withdrawal. *See* Dkt. 106 at 1.
19 Defendant will not be prejudiced by the withdrawal of the Motion as the majority of the discovery
20 conducted to date goes to both class certification issues and merits issues.

21 THEREFORE, Plaintiffs respectfully request that the Court grant Plaintiffs’ Unopposed
22 Motion to Withdraw Motion for Class Certification and deem Plaintiffs’ Motion for Class
23 Certification [Dkt. 40] as withdrawn and moot.

1 DATED: AUGUST 25, 2021

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2 /s/ Janet M. Howe

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CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2021, I electronically transmitted the attached documents to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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UNITED STATES DISTRICT COURT
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No. CV-20-00335-TUC-SHR

**PROPOSED ORDER GRANTING
PLAINTIFFS' UNOPPOSED
MOTION FOR CLASS
CERTIFICATION**

The Court, having considered Plaintiffs' Unopposed Motion to Withdraw Motion
for Class Certification and having found good cause in support thereof, **IT IS
ORDERED** that Plaintiffs' Unopposed Motion to Withdraw Motion for Class
Certification is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiffs' Motion for Class Certification
[Dkt. 40] is deemed **WITHDRAWN** and is **MOOT**.