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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

Plaintiffs B and S, on behalf of themselves and all others similarly situated, Plaintiffs, v. XXXXXXXXXX, Director of the Arizona Department of Economic Security, Defendant.	Cause No. CIV FIRST AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF
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PRELIMINARY STATEMENT

On August 17, 2004, Plaintiff B filed the initial Complaint for Injunctive and Declaratory Relief. Plaintiffs repeat all the allegations from the initial Complaint as correct and true as of August 17, 2004. Plaintiffs file this First Amended Complaint to add Plaintiff S as a named Plaintiff.

1. This case is brought on behalf of Plaintiffs and a class of low income Arizona residents who have applied for food stamps through the Food Stamp Program but have not received a timely determination of eligibility and issuance of assistance to which they are entitled.

2. In Arizona, the Arizona Department of Economic Security is responsible for processing applications for the food stamp program. The program has specific time frames in which applications must be processed and determinations on eligibility must be made under federal law.

3. Plaintiffs challenge the Defendant's failure to provide Food Stamps to those eligible within 30 days of initial application as required by federal law; expedited Food Stamps to those eligible within 7 days of application as required by federal law; and recertifications prior to the expiration of the recertification period as required by federal law.

4. As a result of Defendant's delays in processing applications and recertifications and providing benefits, poor individuals and families are going without

desperately needed benefits. Without these benefits, eligible persons may go hungry, are at risk of homelessness and their health and safety may be put at risk.

5. The number of persons seeking and qualifying for food stamps assistance has substantially increased over the last twenty-four months. However, Defendant has failed to keep pace with the increase in applications and, as a result, increasing number of eligible individuals and families are faced with substantial delays in obtaining assistance and are forced to go without necessary assistance.

6. Plaintiffs seek declaratory and injunctive relief to enjoin Defendant from failing to make food stamp eligibility determinations and to provide food stamps, including expedited food stamps, to eligible applicants within the time frames mandated by federal law.

JURISDICTION AND VENUE

7. This action arises under the federal Food Stamp Act and 42 U.S.C. § 1983. The Court has jurisdiction pursuant to the following statutes:

- a. 28 U.S.C. § 1331, which gives district courts original jurisdiction over all civil actions arising under the Constitution, laws, or treaties of the United States.
- b. 28 U.S.C. §§ 1343(a)(4), which give district courts original jurisdiction over suits to redress the deprivation under state law of any rights, privileges, or immunities guaranteed by the Constitution or by acts of Congress.

8. Plaintiffs' action for declaratory, injunctive, and other appropriate relief is authorized by 28 U.S.C. §§ 1651, 2201, and 2202.

9. Venue is proper under 28 U.S.C. §§ 1391(b) and 1391(e).

PARTIES

10. Plaintiff B is a 31 year-old female living in Tucson, Arizona, who with her three children has received food stamps for at least the last two years.

11. Plaintiff S is a 52 year-old female living in Phoenix, Arizona, who applied for food stamps on June 4, 2004.

12. Defendant XXXXXX is the Director of the Arizona Department of Economic Security and, as such, has the responsibility to administer the Food Stamp Program consistent with the federal Food Stamp Act.

CLASS ALLEGATIONS

13. Plaintiffs bring this suit both individually and on behalf of a statewide class of persons similarly situated pursuant to Fed. R. Civ. P. 23(a) and (b)(2). The class is composed of all residents of Arizona who have or will submit an application for food stamps, including expedited food stamps and recertifications, and whose application has not been or will not be processed timely by Defendant.

14. The prerequisites of Fed. R. Civ. P. 23(a) are met in that:

- a. The class is so numerous that joining all members is impracticable. The exact size of the class is unknown but includes thousands of persons residing in Arizona. The class members are geographically dispersed, have limited financial resources, and are unlikely to institute individual actions;

- b. There are issues of fact and law as to the adequacy of the Defendant's policies and laws that are common to all members of the class;
- a. The claims of the named Plaintiffs are typical of the claims of the class she represents; and
- a. Plaintiffs and their counsel will fairly and adequately protect the interests of the class.

15. The requisites of Fed. R. Civ. P. 23(b) are met in that the Defendant has acted or refused to act on grounds generally applicable to all members of the class, making final declaratory and injunctive relief appropriate with respect to the class as a whole.

STATUTORY AND REGULATORY FRAMEWORK

The Food Stamp Program

Structure of the Program

16. Congress established the federally funded, state-administered Food Stamp program in 1964 in order to "safeguard the health and well-being of the nation's populations by raising levels of nutrition among low-income households." 7 U.S.C. § 2011, 7 C.F.R. § 271.1.

17. States participating in the Food Stamp program share in the cost of administration and designate a single state agency responsible for administering the

program and complying with federal Food Stamp requirements. 7 U.S.C. § 2020 (a), (d), and (e).

18. Arizona participates in the Food Stamp Program. The Department of Economic Security (“DES”) serves as the single state agency responsible for administering the Food Stamp Program in Arizona. Arizona Administrative Code (“Ariz. Admin. Code”) R6-14-101 *et seq.*

19. To be eligible for food stamps, a household’s net income must be below the federal poverty level, and its available resources may not exceed \$2,000 (or, where a household includes a member 60 years of age or older, \$3,000). 7 U.S.C. § 2014(c), (g).

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Application Processing

20. Under the federal Food Stamp Act, households must be permitted to file an application on the first day that they contact the state agency office. 7 U.S.C. § 2020 (e)(2)(b)(iii), 7 C.F.R. § 273.2 (c)(1), 2(i).

21. An initial application by an individual or household seeking to apply for food stamps need only include the applicant’s name, address, and signature. 7 C.F.R. § 273.2 (c)(2).

22. The State agency must act promptly on all applications for food stamps and give applicants an opportunity to participate in the Food Stamp program. 7 U.S.C. § 2020 (e)(3), 7 C.F.R. § 273.2 (a), (g)(1).

23. The State agency must provide food stamps to eligible applicants no later than 30 days after application. 7 U.S.C. § 2020(e)(3); 7 C.F.R. § 273.2 (a), (g)(1).

24. DES uses a multi-program application for food stamps, cash assistance and medical assistance.

25. If an individual or household seeks to apply jointly for cash assistance and food stamps, any delays in the processing of the application for cash assistance may not result in any delay in the processing of the food stamps application. 7 U.S.C. §§ 2014(b); 2020(e)(1)(B)(i), e(3); 7 C.F.R. § 273.2 (g)(1).

26. If the cash assistance application is denied or withdrawn, the applicant cannot be required to submit a new application for food stamps. 7 U.S.C. §§ 2014(b); 7 C.F.R. § 273.2 (b)(3).

Expedited Food Stamps

27. The State agency must provide expedited food stamps to: (1) households with \$100 or less in liquid resources (cash) and less than \$150 in gross monthly income; (2) households with shelter costs that are more than the total gross income and liquid resources; and (3) certain migrant and seasonal work households. 7 U.S.C. § 2020(e)(9); 7 C.F.R. § 273.2(i)(1).

28. The federal regulation which implements 7 U.S.C. § 2020(e)(9), requires a state to affirmatively “identify households eligible for expedited service at the time the household requests assistance. For example, a receptionist, volunteer, or other employee

shall be responsible for screening applications as they are filed *or as individuals come in to apply.*” 7 C.F.R. § 273.2(i)(2) (emphasis added).

29. Under federal law, expedited food stamps service must be provided to eligible households no later than the seventh calendar day following the date an application is filed. 7 U.S.C. § 2020(e)(9); 7 C.F.R. § 273.2(i)(3)(i).

Recertification Process

30. The Food Stamp Act requires that state agencies certify households for a specified period of time. 7 U.S.C. § 2020(e)(4); 7 C.F.R. § 273.10(f). The state agency must establish procedures to notify households of expiration dates, provide applications, schedule interviews and “recertify eligible households prior to the expiration of the certification periods.” 7 C.F.R. § 273.14(a) (emphasis added).

31. DES may recertify that a person or household remains eligible for food stamps as often as every three to six months. 7 C.F.R. § 273.10(f)(3)(i)-(iii).

Due Process Requirements

32. The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits the state from denying Food Stamps to eligible individuals by failing to act on applications within the time frames mandated by federal law. U.S. Const. Amend. XIV; *Goldberg v. Kelly*, 397 U.S. 254 (1970).

33. The Food Stamp Act requires the state to grant “a fair hearing and a prompt determination . . . to any household aggrieved by the action of the State agency . . . as it

affects the participation of such household in the food stamp program.” 7 U.S.C. § 2020(e)(10); 7 C.F.R. § 273.15(a).

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FACTUAL ALLEGATIONS

34. The failure by Defendant XXXX to process applications for food stamps and make a determination on eligibility, within the federal requirements means that eligible individuals and families are going or may go without the food they need to maintain their health and welfare.

35. Plaintiff B lives with her three children in Tucson. One child has severe medical conditions, including chronic asthma, ecenophyllic granuloma and gastro-intestinitis. He is often sick and Plaintiff B must take time off work to care for him. He requires a special diet. Another child is lactose intolerant and also requires special foods.

36. Plaintiff B has received food stamps for at least two years. She last received \$478 in food stamps in July 2004. She received a notice in June 2004 that she needed to recertify for food stamps. Plaintiff B believes she submitted her application in June 2004. As of the filing of this lawsuit, Defendant XXXXX has not made a decision on her application. DES did not send Plaintiff B any food stamps in August and this has caused her and her family great stress. Plaintiff B only makes \$8.20 per hour and often only works approximately 20 hours per week because of her son’s illnesses and lack of work from her employer. Her net income is approximately \$150-200 per week. The

foods stamps represent almost 40% of her family's income, not counting the rental and utility bills a relative has paid for her because the father of two of her children stopped paying child support. Without the needed food stamps, Plaintiff B and her children are running out of food and have started to eat rice for dinner every night.

37. Even though Defendant XXXX has not provided Plaintiff B with a determination on her food stamp application, he has failed to provide her with a notice of her appeal rights so she could grieve the delay.

38. Plaintiff S is a 52 year-old woman living in Phoenix, Arizona. She has received Social Security Disability Benefits since October 2003. She has severe obstructive lung disease, asthma, diabetes and suffers from chronic infections. She must use oxygen and four different types of inhalers to help her breathe. Because of her medical conditions, she rarely leaves the house.

39. Plaintiff S applied for food stamps on June 4, 2004. She was bedridden and too sick to go to the DES office for her appointment on June 30, 2004. Although Plaintiff S asked her caseworker for an in-home appointment, her caseworker told Plaintiff S she had come into the office. Subsequently, DES informed Plaintiff S that she needed to supply additional documentation and that she needed to have the finger print imaging done. Plaintiff S provided DES with the additional documentation and on July 28, 2004, her DES caseworker told Plaintiff S she was approved as of that day. Plaintiff S still has not received any food stamps.

40. Plaintiff S receives \$884 per month from Social Security and has to pay over \$400 per month for her medications. Some months, when her medical conditions are most severe, her medications cost over \$600. She does not have enough money to pay for her food and a local church has given her food so she could eat in July and August. Even with the church's donations, Plaintiff S is unable to purchase nutritious foods required for her diabetes and has had to skip meals. She is under significant stress because she needs the food stamps and she has felt frustrated that she was not getting any help. This stress and frustration over her food stamp application has caused her to have asthma attacks.

41. DES maintains records of the time it takes to process applications for food stamps. It records the numbers and percentages of applications on which it made timely and untimely determinations.

42. Since at least October 2002, DES has failed to process all applications for food stamps, including expedited food stamps and recertifications, within the time frames required by federal law.

43. For the months April, May and June 2004, Defendant failed to determine eligibility within the time frames required by federal law for over 20% of the households that applied for food stamps.

44. For May 2004, DES failed to act on over 11,000 food stamp applications, or over 21% of the household applications, within the time frames required by federal law.

45. For June 2004, DES failed to act on almost 12,000 food stamp applications, or almost 21% of the household applications, within the time frames required by federal law.

46 For April 2004, more than 80 percent of the untimely determinations on initial applications were untimely by more than three days.

47. For March 2004, more than 82 percent of the untimely determinations on initial applications were untimely by more than three days.

48. For April and March 2004, DES was untimely in the processing of over 15 percent of the expedited food stamp applications and over 71 percent of those applications in each month were untimely by more than three days.

49. On information and belief Defendant XXXXX counts as timely, an application where DES attributes, correctly or incorrectly, the delay in processing to the applicant. Thus, many more applications are processed untimely by Defendant, but administratively are considered timely.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

(Defendant's Violation of the Food Stamp Act)

50. Plaintiffs restate and incorporate by reference each of the allegations contained in paragraphs 1 through 49, above.

51. Defendant XXXX actions in failing to process applications and make eligibility determinations for food stamps, including expedited food stamps and recertifications, within the time frames required by the federal Food Stamp Act and implementing regulations violate 7 U.S.C. § 2020(e)(3) and (9) and 7 C.F.R. § 273.2(a)(2), (g)(1), and (i)(1).

52. Defendant XXXXX actions, as described herein, are enforceable by Plaintiffs in this Court pursuant to 28 U.S.C. § 1331 and pursuant to 42 U.S.C. § 1983.

53. Plaintiff s are suffering or are in danger of suffering irreparable harm. Plaintiffs have no adequate remedy at law.

SECOND CLAIM FOR RELIEF

(Defendant's Violation of U.S. Constitution, Food Stamp Act)

54. Plaintiffs restate and incorporate by reference each of the allegations contained in paragraphs 1 through 53, above.

55 Defendant XXXXX failure to process applications and make eligibility determinations for food stamps, including expedited food stamps and recertifications, within the time periods required by federal law operates to deny assistance to eligible persons without due process of law in violation of the Due Process Clause of the U.S. Constitution, U.S. Const. Amend. XIV, which is enforceable by Plaintiffs in this Court pursuant to 28 U.S.C. § 1331 and pursuant to 42 U.S.C. § 1983.

56. Plaintiffs are suffering or are in danger of suffering irreparable harm. Plaintiffs have no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully ask that this Court:

- A. Certify this case as a class action.
- B. Issue a declaratory judgment holding that Defendant XXXXX has violated and continues to violate the Food Stamp Act, 7 U.S.C. § 2020(e)(3), (4) and (9) and implementing regulations, 7 C.F.R. § 273.2(a)(2), (g)(1), (i)(1), § 273.14.
- C. Grant preliminary and permanent injunctions that prohibit Defendant XXXXX from failing to process food stamp applications and make eligibility determinations, including expedited applications and recertifications for food stamps, within the time frames required by the federal Food Stamp Act and implementing regulations.
- D. Order Defendant XXXXX to develop and implement a corrective action plan to bring himself into compliance with the federal law and constitution.
- E. Order Defendant XXXX to institute and carry out policies and practices, including training, which bring DES into compliance with the federal law and constitution.
- F. Enter an order authorizing Plaintiffs to monitor Defendant's compliance with any court orders.

G. Award Plaintiffs their reasonable attorneys' fees and costs against Defendant pursuant to 42 U.S.C. § 1988, including any costs to monitor Defendant XXX compliance with any court orders..

H. Grant such other and further relief as may be just and proper.

Respectfully submitted this 2nd day of September, 2004.

WELFARE LAW CENTER, INC.

ORGANIZATION

By

Name

Organization

Address

City, State ZIP

Attorneys for Plaintiffs