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May 2, 2007

Executive Director for the Office of Public Disclosure  
Social Security Administration  
Office of Public Disclosure  
3-A-6 Operations Building  
6401 Security Boulevard  
Baltimore, Maryland, 21235

**FREEDOM OF INFORMATION ACT APPEAL**

Re: S9H: PT8324 (further regarding *Martinez et al v. Colorado Dept. of Human Services, et al* District Court, City and County of Denver, No. 02CV1066)

Dear Director:

This appeal is filed pursuant to 20 C.F.R. § 402.200 and responsive to a letter from Willie Polk, FOIA officer, dated April 6, 2007 (attached hereto as Exhibit 1), in which Mr. Polk denied the subject Freedom of Information Act (Exhibit 2) described above on the basis that releasing the requested information would constitute "clearly unwarranted invasion of personal privacy" and therefore exempt under the provisions of 5 U.S.C. § 552(b)(6).

**Summary of Information Requested**

The subject request pursuant to the Freedom of Information Act sought information from the Social Security Administration in order to facilitate a precise and efficient method of determining the identity and damages due to the members of the action certified as a class action in the District Court for the City and County of Denver, before the Honorable Lawrence Manzanares, District Court Judge. (Order granting Class Certification attached as Exhibit 3). The SSA information requested pertains to those records maintained by the SSA regarding Colorado Supplemental Security Income (SSI) claims where Interim Assistance Reimbursement (IAR) payments were made by SSA to the State of Colorado, and those claimants were represented by counsel or other authorized representative in pursuing their SSI claims and where SSA approved or (since February 28, 2005) paid the fee charged by the attorney or other representative. Specifically, the request sought that SSA correlate the below-described information to a list of SSN's provided by way of an Excel worksheet on a CD-ROM disc produced with the request:

1. Scope: All persons who received AND benefits from State of Colorado during a pending application for SSI benefits whose SSI claims were denied and who retained and paid counsel or a non attorney representative to appeal such denial and were successful in their appeal, and the State Defendants then obtained reimbursement of the AND benefits paid from the past due SSI benefits on or after February 5, 1999;

2. Data Elements: List by claimant of all IAR payments made or approved by the SSA to the State of Colorado including:

- a. Amount of the IAR payment
- b. Date of the IAR payment
- c. Amount of attorneys' fees paid by the SSA to the attorney or authorized representative of the claimant
  - i. If amount of attorneys' fees is not available, indicate whether the SSA approved attorneys' fees for the claim
  - ii. Amount of attorneys' fees approved
- d. Social security number of the claimant, if the claimant is not already listed in the attached file
- e. Additional fields that would be useful in documenting our calculation of damages are:
  - i. Date of SSI Application
  - ii. Date of SSI favorable decision
  - iii. Date of initial SSI payment to claimant
  - iv. Amount of initial SSI payment to claimant

3. Number of Records: If multiple records need to be entered for an individual claimant, please add rows to the attached file, and enter the social security number for the claimant in each row entered for that claimant.

(Letter dated January 4, 2007, from Robert Bardwell, Ph.D., Bardwell Consulting, LTD, attached as Exhibit 4 to FOIA Request, (Ex. 2))

### **Argument Supporting Disclosure of Requested Information**

SSA's denial comes despite the fact that the data request prepared by Dr. Bardwell is narrowly tailored to seek only relevant data limited to the issues presented in this class action case; notably, Dr. Bardwell's request **does not seek any personally identifiable data**. Rather, because this identifying information has already been provided by the Colorado Department of Human Services, pursuant to the class certification order, and the identities of the class members in the class action are already known, all that is requested from SSA is certain types of recorded data present in its files that do not in any way identify the members of the class.

Given the importance of the requested data, the purpose of this appeal, therefore, is to request that Office of Public Disclosure, Social Security Administration overturn the initial decision of the FOIA officer, and provide the data requested in the January 4, 2007, request, so that the claims of the members of the certified class can be efficiently processed as contemplated by the Denver District Court's class certification order of October 5, 2006.

Although the denial of the FOIA request cites to 5 U.S.C. § 552(b)(6) (protecting against disclosures that would be "a clearly unwarranted invasion of personal privacy"), this exemption "should only be employed when the privacy interest at stake outweighs the public interest in disclosure. Therefore, the agency must "balance the individual's right of privacy against the basic policy of opening agency action to the light of public scrutiny." [citations omitted]. In performing this analysis, courts (including administrative law courts) ... are to "tilt the balance

(of disclosure interests against privacy interests) in favor of disclosure.” *Billington v. U.S. Dept. of Justice*, 245 F. Supp. 2d 79, 85 (D.D.C. 2003).

Here, because the names and addresses of the class members are already known to the Denver District Court and class counsel, because the trial court has already entered a Stipulated Qualified Protective Order dated October 5, 2006 (Exhibit 4) governing information related to class members, because the class members have been notified of the purpose of this action, and because the additional data sought from the SSA is merely the numerical details which will enable this matter to proceed as contemplated by the Denver District Court’s class certification order, release of the requested information could not constitute an unwarranted invasion of personal privacy.

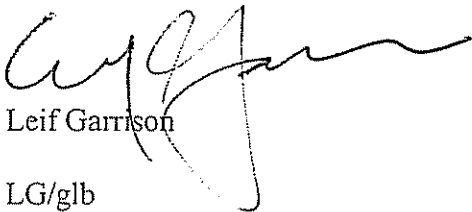
This is especially true in this case, where the requested information and the parties seeking the information are subject to a Stipulated Qualified Protective Order. On the other hand, the class members in this action will benefit from the release of this requested information, as it will enable class members to more efficiently pursue their rights. Under these circumstances, the balance weighs in favor of disclosure, and the release of the affected information, in conjunction with the protections already provided by the Stipulated Qualified Protective Order, will not invade the personal privacy of the members of the class, but rather will assist the members of the class in pursuing their rights in the class action litigation.

WHEREFORE, Appellant respectfully requests that the Office of Public Disclosure, Social Security Administration reconsider its April 6, 2007, denial and disclose the information sought in the January 4, 2007, Freedom of Information Act Request.

If there are any questions regarding this matter, please call, or feel free to e-mail me at [lgarrison@careylaw.com](mailto:lgarrison@careylaw.com).

Sincerely,

**THE CAREY LAW FIRM**



Leif Garrison

LG/glb

Enclosures



## SOCIAL SECURITY

Refer to:  
S9H: PT8324

April 6, 2007

Mr. Leif Garrison  
The Carey Law Firm  
2301 East Pikes Peak  
Colorado Springs, CO 80909

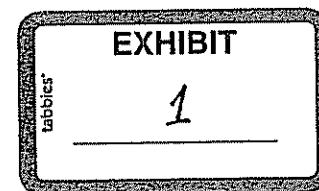
Dear Mr. Garrison:

I am responding to your Freedom of Information Act (FOIA) request of January 4, 2007, on behalf of Robert Bardwell, Ph.D., for information about class members in a class action suit filed in the District Court for the City and County of Denver, Martinez et al v. Colorado Department of Human Services et al, No. 02 CV 1066.

Specifically, you are requesting information from our records about Supplemental Security Income recipients as described in Exhibit 4 of your letter (see attached). However, we cannot release this information to you. The information you requested is protected by the Privacy Act of 1974 (5 U.S.C. § 552a). We can disclose such information only as that Act permits. To disclose this information to a member of the public, we need the written consent of the individuals whose records are requested. The information requested is exempt from disclosure under the Freedom of Information Act (FOIA) (5 U.S.C. § 552). The FOIA does not require agencies to disclose information that would be a clearly unwarranted invasion of personal privacy (5 U.S.C. § 552(b)(6)). In considering whether this exemption applies to records, agencies must balance the public interest in disclosure against the privacy interest of the individual(s) whose records are requested. The Supreme Court set out certain guiding principles for such determinations in Department of Justice v. Reporters Committee for Freedom of the Press, 489 U.S. 749 (1989).

First, we must determine whether disclosure would affect a personal privacy interest. There is clearly a substantial personal privacy interest in the personal details furnished to the Government.

According to the Supreme Court case cited above, the only public interest that agencies should consider is whether disclosure of the records would shed light on the way an agency performs its statutory duties. We may not consider the identity of the requester or the purpose for which the information is requested. While there clearly is a public interest in knowing how the Social Security Administration administers the Social Security Act, disclosure of records containing personal information about named individuals would not shed light on how the agency

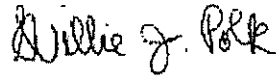


performs its statutory duties. Therefore, disclosure of such personal information would be a clearly unwarranted invasion of personal privacy, and the FOIA exempts the records from disclosure.

Since we cannot process your request, I am returning your \$250 check and the CD ROM that you provided.

If you disagree with this decision, you may request a review. Mail your appeal within 30 days after you receive this letter to the Executive Director for the Office of Public Disclosure, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235. Mark the envelope "Freedom of Information Appeal."

Sincerely,



Willie J. Polk  
Freedom of Information Officer



January 4, 2007

Mr. Willie Polk  
Freedom of Information Officer  
3-A-6 Operations Bldg.  
6401 Security Boulevard  
Baltimore, MD 21235

Re: S9H: PL4234

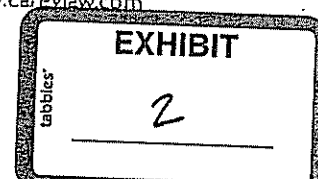
Dear Mr. Polk:

The purpose of this letter is to follow up on the above-captioned Freedom of Information Act (FOIA) request, and specifically your letter responsive to this request dated August 10, 2006. As you will recall, this FOIA request concerns a class action suit filed in the District Court for the City and County of Denver, *Martinez et al v. Colorado Department of Human Services et al*, No. 02 CV 1066.

Your August 10, 2006 letter described the existence of certain data maintained by the Social Security Administration (SSA) with respect to the issues in this case, and on October 5, 2006, Judge Manzanares issued an Order ruling certifying this case as a class action and appointing this firm as class counsel. A copy of your letter is enclosed for your convenience as Exhibit 1, Judge Manzanares' Class Certification Order is enclosed herewith as Exhibit 2, and the class notice recently approved by Judge Manzanares is enclosed as Exhibit 3. This firm therefore represents all class members in this case as described in Exhibits 2 and 3, and this follow up request is made on behalf of these members of the class certified by Judge Manzanares.

As noted in your letter, the SSA information needed in this case pertains to those records maintained by the SSA regarding Colorado Supplemental Security Income (SSI) claims where Interim Assistance Reimbursement (IAR) payments were made by SSA to the State of Colorado, and those claimants were represented by counsel or other authorized representative in pursuing their SSI claims and where SSA approved or (since February 28, 2005) paid the fee charged by the attorney or other representative.

In order to obtain a more complete assessment of the entitlement of each class member to any damages which may be awarded in this case, certain narrowly defined data is needed, as described more fully by the statistical expert witness who testified at the class certification hearing, Dr. Robert Bardwell. Dr. Bardwell's letter describing the information needed for this purpose is enclosed herewith as Exhibit 4. Enclosed with these materials as an attachment to Dr. Bardwell's letter is a CD ROM containing a list of



unique Social Security Numbers belonging to the class members, which Dr. Bardwell has compiled.

Also enclosed is this firm's check in the amount of \$250, pursuant to the instructions in your letter and the FOIA fee schedule enclosed with it. If this amount is insufficient to cover the cost of obtaining the data requested by Dr. Bardwell, please let me know, and we will provide the required amount. In addition, please do not hesitate to contact Dr. Bardwell or myself with respect to any technical issues that may arise; it is our desire, on behalf of the certified class, to make the process of obtaining the necessary data as easy and inexpensive as possible.

Thank you for your attention to this matter. I will look forward to hearing from you.

Sincerely,

THE CAREY LAW FIRM

  
Leif Garrison

LG/glb

Enclosures



## SOCIAL SECURITY

Refer to:  
S9H: PL4234

August 10, 2006

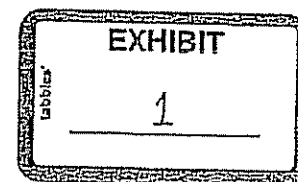
The Carey Law Firm  
Mr. Leif Garrison  
2301 East Pikes Peak  
Colorado Springs, CO 80909

Dear Mr. Garrison:

I am responding to your Freedom of Information Act (FOIA) request for information about the records the Social Security Administration (SSA) maintains that could help identify members of a class action suit filed in the District Court for the City and County of Denver RE: Martinez et al v. Colorado Department of Human Services, et al.

At this time, you seek only information describing the SSA's records that are relevant to identifying the members of the class you seek to represent. You are only concerned about those records maintained by the SSA regarding Colorado Supplemental Security Income (SSI) claims where Interim Assistance Reimbursement (IAR) payments were made to SSI claimants who were represented by counsel or other authorized representative in pursuing their SSI claims and where SSA approved the fee charged by the attorney or representative. You refer to Exhibit 2 of the attached deposition as the detailed information you are seeking. We have identified item 5 (b), (c) and (d) of the exhibit as relevant to your request. We are providing the following responses to this item:

- (b) SSA maintains data regarding reimbursement of IAR benefits to or for the State of Colorado and/or Colorado counties from January 1, 1997, through the present—This is correct.
- (c) SSA maintains data regarding SSI recipients, specifically Colorado resident SSI recipients, including data regarding the back SSI benefits awarded at the time the recipient has obtained a favorable decision and SSI benefits are first initiated and paid, from January 1, 1997, through the present—This is possible, however, please note that this information may be difficult to obtain and data may be incomplete.
- (d) SSA maintains data regarding SSI claimants (specifically Colorado resident claimants) who are represented by an attorney or other authorized representative, from January 1,





1997, through the present—Data that we could gather related to this item would be incomplete. For instance:

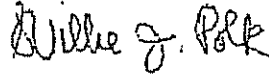
- 1) Our records contain authorized representative data; however, we do not know when the claimant appointed the representative for cases prior to March 2005. It is also possible that someone was not represented at the time of an IAR payment but currently is and therefore there would be authorized representative data on our records but the individual would not rightly belong in this class since he or she technically was not represented at the time of the IAR payment.
- 2) We cannot verify whether the claimant was a Colorado resident at the time the claimant appointed the representative.
- 3) When the representative's relationship with a recipient ends (as it frequently does following claim adjudication and attorney fee settlement), the authorized representative data is deleted from SSA records. Therefore, authorized representative data for claimants who were represented at the time of an IAR payment but subsequently ended their relationship with the representative would not be recorded on SSA records, particularly when we are going back many years.

If you decide to proceed with your request, I wanted to inform you about our fees for processing FOIA requests. The SSA Availability of Information and Records to the Public Regulation (20 C.F.R. Part 402) has established fees to cover the cost of search, review and reproduction of documents. The regulation allows us to charge a fee for three categories of requests: (a) Commercial use request; (b) Educational and scientific institutions and news media requests; and (c) Other requesters which are not described in either (a) or (b). We have determined that you are a "commercial" requester and, thus should be charged the cost of search, review and duplication. In addition, according to our regulations at 20 C.F.R. § 402.175(e), we may charge a fee, whether or not the records we find must be disclosed, or even if we do not find any records at all that are responsive to your request. Please note that any information we locate will have to be reviewed for release under the FOIA. We would not release information about individual claimants unless we have their written consent. For your convenience, I am enclosing a copy of our FOIA fee schedule.

If you would like to narrow the scope of your request and/or set a limit on the amount you are willing to spend, please let us know. You may pay by check or money order payable to the SSA or by credit card (Master Card, Visa, Discover, American Express or Diner's Club). To pay by credit card, complete and sign the enclosed form. Be sure to include your credit card number and expiration date. Send your payment to my attention at 3-A-6 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235.

If you disagree with this decision, you may request a review. Mail your appeal within 30 days after you receive this letter to the Executive Director for the Office of Public Disclosure, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235. Mark the envelope "Freedom of Information Appeal."

Sincerely,



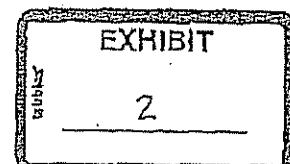
Willie J. Polk  
Freedom of Information Officer

Enclosures

|  |  |                         |
|--|--|-------------------------|
| DISTRICT COURT, COUNTY OF DENVER<br>STATE OF COLORADO  |  | ▲ COURT USE ONLY ▲      |
| Court Address: 1437 Bannock Street, Room 256<br>Denver, CO 80202                                 |  |                         |
| Plaintiffs: CHAD MARTINEZ and LARRY KING, on behalf of themselves and others similarly situated, |  |                         |
| Defendants: COLORADO DEPARTMENT OF HUMAN SERVICES and OTERO COUNTY DEPARTMENT OF SOCIAL SERVICES |  | Case Number: 2002CV1066 |
| Attorney Name: Robert B. Carey, #17177.<br>Leif Garrison, #14394<br>THE CAREY LAW FIRM           |  | Courtroom: 1            |
| Address: 2301 East Pikes Peak Avenue<br>Colorado Springs, CO 80909                               |  |                         |
| Phone No: (719) 635-0377   |  |                         |
| Fax No: (719) 635-2920   |  |                         |
| E-mail: <a href="mailto:lgarrison@careylaw.com">lgarrison@careylaw.com</a>                       |  |                         |
| NOTICE OF RULE 30(b)(6) DEPOSITION   |  |                         |
| TO: DEFENDANTS AND DEFENDANTS' COUNSEL   |  |                         |

Robert Douglas, Esq.  
 Jennifer Weaver, Esq.  
 Office of the Attorney General  
 1525 Sherman Street, 5<sup>th</sup> Floor  
 Denver, CO 80203

1. Pursuant to C.R.C.P. Rule 30(b)(6), the Plaintiffs give notice of the oral deposition of:  
 Social Security Administration
2. The deposition will commence on Wednesday, January 11, 2006, at the hour of 9:30 a.m. at the offices of the Attorney General, State of Colorado, 1525 Sherman Street, 5<sup>th</sup> Floor (check



in on 7<sup>th</sup> floor), Denver, CO 80203. The deposition will continue from day to day until completed, unless recessed by agreement of the parties.

3. The deposition will be taken before an officer authorized to administer oaths pursuant to C.R.C.P. Rule 28.

4. The testimony of the Social Security Administration will be recorded by stenographic means.

5. Consistent with C.R.C.P. 30(b)(6), the Social Security Administration will be examined with regard to the following matters, facts and issues:

(a) The information attributed to "the Social Security Administration" contained in response 2 (a) in Defendants' supplemental response to plaintiffs' first set of pattern and non-pattern interrogatories to defendants (attached hereto as Exhibit 1).

(b) The data maintained by the Social Security Administration regarding reimbursement of interim assistance benefits to or for the state of Colorado and/or Colorado counties from January 1, 1997 through the present.

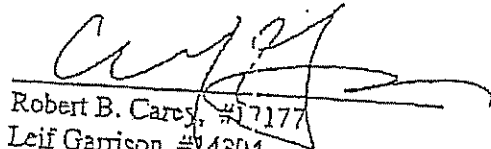
(c) The data maintained by the Social Security Administration regarding SSI recipients, specifically Colorado resident SSI recipients, including data regarding the back SSI benefits awarded at the time the recipient has obtained a favorable decision and SSI benefits are first initiated and paid, from January 1, 1997 through the present.

(d) The data maintained by the Social Security Administration regarding SSI claimants (specifically Colorado resident claimants) who are represented by an attorney or other authorized representative, from January 1, 1997 through the present.

6. Pursuant to C.R.C.P. Rule 30(b)(6) the Social Security Administration shall designate one or more employees, officers, directors, or managing agents or such person or persons who consent to testify on behalf of the Social Security Administration. If more than one person is designated to testify on behalf of the Social Security Administration, Plaintiffs request that the Social Security Administration set forth, for each person so designated, the matters on which each individual will testify.

Respectfully submitted this December 16, 2005.

THE CAREY LAW FIRM



Robert B. Carey, #17177  
Leif Garrison, #14394  
2301 East Pikes Peak Avenue

Colorado Springs, CO 80909  
Phone: (719) 635-0377  
Fax: (719) 635-2920  
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this December 16, 2005, a true and correct copy of the foregoing was served via facsimile and U.S. Mail upon the following:

Robert Douglas, Esq.  
Jennifer Weaver, Esq.  
Office of the Attorney General  
1525 Sherman Street, 5<sup>th</sup> Floor  
Denver, CO 80203

Fax: (303) 866-5091



Gordon Beck, Paralegal



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EXHIBIT  
3



## SOCIAL SECURITY

### FOIA FEE SCHEDULE EFFECTIVE JULY 1, 2001

#### CATEGORIES OF REQUESTERS-CHARGEABLE FEE ITEMS

##### Commercial Requesters

- search
- review
- duplication

##### Educational & Scientific Institutions & News Media Requesters

- duplication

##### Other Requesters

- search
- duplication

#### FEE AMOUNTS

##### Search & Review

- GS-01 TO GS-08 \$16 PER HOUR
- GS-09 TO GS-14 \$33 PER HOUR
- GS-15 AND ABOVE \$59 PER HOUR

##### Computer Search & Printing

- actual computer operating costs
- time spent by operator at the above rates

##### Duplication

- first 100 pages free
- 10 cents per page for standard size pages
- actual cost for odd size pages

Certifications - \$10 per document

Special Mail Methods - actual cost

Special Services - actual cost

SOCIAL SECURITY ADMINISTRATION

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Note: Please read Privacy Act Notice

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American Express \_\_\_\_\_ Diners Card \_\_\_\_\_

Credit Card Holder's Name \_\_\_\_\_ > \_\_\_\_\_  
Print First, Middle Initial, Last Name

Credit Card Holder's Address \_\_\_\_\_ > \_\_\_\_\_  
Number & Street  
City, State, Zip Code

Daytime Telephone Number \_\_\_\_\_ > \_\_\_\_\_  
Area Code Telephone Number

Amount Charged \$ \_\_\_\_\_ > \_\_\_\_\_  
Credit Card Number

Credit Card Expiration Date \_\_\_\_\_  
Month Year

Credit Card Holder's Signature \_\_\_\_\_ > \_\_\_\_\_  
Authorization

**DO NOT WRITE IN THIS SPACE**

OFFICE USE ONLY \_\_\_\_\_ > \_\_\_\_\_  
Name Date

**PRIVACY ACT STATEMENT**

The Social Security Administration (SSA) has authority to collect the information requested on this form under § 205 of the Social Security Act. Giving us this information is voluntary. You do not have to do it. We will need this information only if you choose to make payment by credit card. You do not need to fill out this form if you choose another means of payment (for example, by check or money order).

If you choose the credit card payment option, we will provide the information you give us to the banks handling your credit card account and SSA's account. We may also provide this information to another person or government agency to comply with federal laws requiring the release of information from our records. You can find these and other routine uses of information provided to SSA listed in the Federal Register. If you want more information about this, you may call or write any Social Security Office.





**GRANTED**

Movant shall serve copies of this ORDER on any pro se parties, pursuant to CRCP 5, and file a certificate of service with the Court within 10 days.

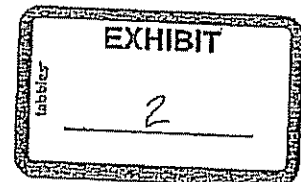
Lawrence A. Manzanares  
District Court Judge

DATE OF ORDER INDICATED ON ATTACHMENT

|  |  |   |
|--|--|---|
| DISTRICT COURT, COUNTY OF DENVER<br>STATE OF COLORADO            |  | A COURT USE ONLY A<br><br><br><br><br><br><br><br><br><br>Case Number: 2002CV1066<br><br>Courtroom: 1 |
| Court Address: 1437 Bannock Street, Room 256<br>Denver, CO 80202 |  |   |
| Plaintiffs:  | CHAD MARTINEZ and<br>LARRY KING, on behalf of<br>themselves and other similarly<br>situated,     |   |
| Defendants:  | COLORADO DEPARTMENT<br>OF HUMAN SERVICES and<br>OTERO COUNTY<br>DEPARTMENT OF SOCIAL<br>SERVICES |   |
| <b>ORDER GRANTING PLAINTIFFS' MOTION FOR CLASS CERTIFICATION</b> |  |   |

1. This matter came before the Court upon Plaintiffs' motion for class certification. The Court having considered the motion and all other briefing and papers filed concerning that motion, and having the benefit of evidence and oral argument received at a class certification hearing on August 17, 2006, and a further hearing held on September 15, 2006 to address the applicable statute of limitations period for commencement of the class and whether to allow tolling based on a prior class action lawsuit,
2. NOW, therefore, it is hereby ORDERED and ADJUDGED:  
Plaintiffs' motion for class certification is hereby granted.
3. The following class is hereby certified pursuant to Rule 23(b)(3) of the Colorado Rules of Civil Procedure:

All persons who received AND benefits from State of Colorado during a pending application for SSI benefits whose SSI claims were denied and who retained and paid counsel or a non-attorney representative to appeal such denial and were successful in their appeal, and the State Defendants then obtained reimbursement of the AND benefits paid from the past-due SSI benefits on or after February 5, 1999.



The Court will not certify the subclass identified by Plaintiffs at this time, as the Court is not convinced that Defendants' adoption of its Regulation 3.450.43(G) on or about April 5, 2002, materially affects the analysis of the claims of those class members from whom an Interim Assistance recovery was obtained after the regulation was adopted. If, as the case progresses, a subclass becomes necessary, either party should bring this to the Court's attention and the matter will be revisited.

4. The Court certifies plaintiffs Chad Martinez and Larry King as Class Representatives. The Court appoints the following attorneys as class counsel: Robert B. Carey and Leif Garrison of The Carey Law Firm. In doing so the Court has considered the appropriate factors under Rule 23, including the adequacy and vigorous prosecution of this matter by the class representatives, and counsel's experience in class actions, counsel's knowledge of the applicable law and the commitment of counsel to represent the interests of the Class, the latter being evidenced by the prosecution of the case and work product to date.

5. This Court bases this certification order on the following findings, each of which are amply supported by Plaintiffs' well-pleaded allegations and evidence presented by Plaintiffs, Defendants' own documents, and expert testimony:

(a) Numerosity. Plaintiffs have demonstrated that "the class is so numerous that joinder of all members is impracticable" within the meaning of C.R.C.P. 23(a)(1).

(b) Commonality. C.R.C.P. 23(a)(2) requires that there be "questions of law or fact common to the class." Plaintiffs have satisfied the commonality requirement here with, inter alia, allegations backed by expert opinion that raise common questions, including whether (i) Defendants received a benefit at the expense of class members; (ii) Defendants have been unjustly enriched where the attorneys who represented the individual class members in pursuing their SSI claims were paid by the class members and the Defendants were reimbursed from the SSI benefits recovered as a result of the successful efforts of these attorneys; (iii) whether

Defendants' acts and omissions in the Interim Assistance recoupment process breached the duty of good faith and fair dealing; and (iv) the appropriate measure of damages for the Class.

Accordingly, commonality is satisfied here.

(c) Typicality. Pursuant to C.R.C.P. 23(a)(3), Plaintiffs must also show that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Typicality requires that the class representative claims be typical of the class and that the class claims are encompassed by the named plaintiffs' claims. This requirement is met when it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, irrespective of varying fact patterns which underlie individual claims. *See Animons v. American Family Mut. Ins. Co.*, 897 P.2d 860, 863 (Colo. App. 1995). Plaintiffs have satisfied the typicality requirement here because they have shown that the same allegedly unlawful conduct was directed at Plaintiffs and all other class members, and any individual facts that may exist are not significant. And, as many courts have recognized, the requirements for typicality tend to merge with the requirements for commonality—the same common questions identified above also serve to satisfy Plaintiffs' burden on typicality. The Court accordingly finds that typicality is met here because Plaintiffs and class members seek the same remedies for identical harms under the same legal theories.

(d) Adequacy. Pursuant to C.R.C.P. 23(a)(4), the Court finds that the representative parties will fairly and adequately represent the Class. The interests of the Plaintiffs are fully aligned with those of the Class, and the Court finds that the proposed counsel are experienced in the area and fully capable of effectively prosecuting this litigation.

(e) The Court further finds that certification is proper under Rule 23(b)(3). Under the rule, "[w]hen one or more of the central issues in the action are common to the class and can be said to predominate, the action is proper under 23(b)(3)." *Villa Sierra Condominium Assn v. Field Corp.*, 787 P.2d 661, 665 (Colo. App. 1990). Here, the common questions identified above

predominate over any individualized issues that may exist. I further find that a class action is superior to a series of individual suits. Even if it were feasible for individual class members to bring suit, it would not be feasible to re-litigate the numerous common questions in case after case given the number of individuals affected by these claims. Moreover, although there are some issues regarding whether the class members can adequately be identified, based upon the expert testimony regarding statistical analysis received at the hearing and the Court's review of the evidence concerning Defendants' records and the likely contents of the records of the Social Security Administration, the Court finds there is a reasonable probability that Plaintiffs can obtain the information necessary to identify the members of the class, and therefore foresees no manageability problems that would forestall class certification. Under Rule 23(c)(4), the Court retains the ability to reconsider the manageability of this case if the necessary information cannot be obtained within a reasonable time and the Plaintiffs are otherwise unable to identify the class members.

6. The Court finds that this case is analogous to a contract action and therefore finds that a three-year statute of limitations period shall apply for the purposes of determining the date for commencement of the class. Further, although the Court has considered the tolling principal in *American Pipe & Constr. Co. v. Utah*, 414 U.S. 538 (1974), the Court finds that it is not appropriate to toll the statute of limitations in this matter based on the *Gonzales* matter, a previously-filed class action. Any putative plaintiffs in that action would not have been justified in relying on an administrative action because the administrative action could not afford class action relief.

7. Counsel for Plaintiffs shall prepare and submit within 30 days from the date of this Order a proposed form of notice to be sent to members of the Class. Defendants may file any comments to the notice within 15 days and Plaintiffs may reply 15 days after.

8. To the extent the electronic data systems in the State's possession contains such information, defendants shall prepare and submit to counsel for the Plaintiffs within 30 days from the date of this Order a list of the names, last known addresses, telephone numbers, SSN numbers, and any other information that could reasonably allow plaintiffs to identify individuals who received AND benefits from the State of Colorado and for whom the State obtained reimbursement of the AND benefits paid from the past-due SSI benefits on or after February 5, 1999. The information to be provided includes the amount of IAR recovered from each such person. To facilitate this process, the Court will adopt and enter the parties' stipulated protective order concerning restrictions upon the disclosure of Protected Health Information.

SO ORDERED THIS \_\_\_\_ day of \_\_\_\_\_, 2006.

BY THE COURT:

\_\_\_\_\_  
DISTRICT COURT JUDGE

Approved as to form:

s/ Leif Garrison  
Leif Garrison, Esq.

s/ Jennifer Weaver  
Jennifer Weaver, Esq.

Court: CO Denver County District Court 2nd JD

Judge: Manzanares, Lawrence A

File & Serve reviewed Transaction ID: 12498174

Current date: 10/5/2006

Case number: 2002CV1056

Case name: MARTINEZ, CHAD et al vs. COLO DEPT OF HUMAN SERV et al

/s/ Judge Lawrence A Manzanares



**APPROVED**

Movant shall serve copies of this ORDER on any pro se parties, pursuant to CRCP 5, and file a certificate of service with the Court within 10 days.

Lawrence A. Manzanares

~~Public Document Judge~~  
 Clerk of the District Court  
 Filing Date: Dec 12 2006 10:44AM MST  
 Filing ID: 13168190  
 Review Clerk: Rebecca Archuleta

|  |  |  |
|--|--|--|
| DISTRICT COURT, COUNTY OF DENVER<br>STATE OF COLORADO            |  | A COURT USE ONLY A                       |
| Court Address: 1437 Bannock Street, Room 256<br>Denver, CO 80202 |  |  |
| Plaintiffs:  | CHAD MARTINEZ and<br>LARRY KING, on behalf of<br>themselves and other similarly<br>situated,     | Case Number: 02CV1066<br><br>Courtroom 1 |
| Defendants:  | COLORADO DEPARTMENT<br>OF HUMAN SERVICES and<br>OTERO COUNTY<br>DEPARTMENT OF SOCIAL<br>SERVICES |  |
| NOTICE OF PENDENCY OF CLASS ACTION LAWSUIT                       |  |  |

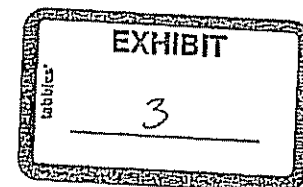
**PLEASE READ THIS ENTIRE NOTICE CAREFULLY. A COLORADO COURT AUTHORIZED THIS NOTICE. THIS IS NOT A SOLICITATION FROM A LAWYER. YOUR RIGHTS MAY BE AFFECTED BY THE LAWSUIT PENDING IN THIS COURT.**

**I. Introduction**

The District Court for the City and County of Denver, State of Colorado, Hon. Lawrence A. Manzanares presiding, has approved a class action lawsuit, involving the individuals to whom this notice is addressed. This lawsuit is about the right of recipients of Aid to the Needy Disabled benefits ("AND") to seek a contribution from the Colorado Department of Human Services ("DHS") toward the legal expenses related to the successful appeal of Supplemental Security Income ("SSI") benefits. A class action lawsuit provides that certain individuals called "class representatives" act on behalf of and represent the interests of many people. The purpose of this Notice is to inform you that you may be a member of the Class in this lawsuit against the DHS, to advise you of how your rights may be affected by this class action lawsuit, and to inform you about the ways in which you may elect to participate in this class action lawsuit or how you may elect to exclude yourself from this class action lawsuit.

**II. Description of the Lawsuit**

Plaintiffs Chad Martinez and Larry King filed this lawsuit, on behalf of themselves and other AND recipients who received AND benefits from the DHS while their application for SSI



benefits was pending. In such cases, an AND recipient is required to reimburse the DHS for all AND benefits received if the SSI claim is ultimately approved. However, the SSI claims of many AND recipients are initially denied by the Social Security Administration, and in order to pursue the denial of their SSI claims, many AND recipients hire a lawyer or other authorized representative, and incur legal expenses. If these AND recipients are successful, the DHS collects back all its money without contributing to the legal expenses incurred by the AND recipient. The Plaintiffs in this case are challenging the right of the DHS to collect back all the AND benefits without contributing its fair share of the legal expenses. The Plaintiffs seek to represent all persons who (1) reimbursed the DHS for AND benefits out of a recovery of SSI benefits and (2) who paid an attorney or non-attorney representative authorized by the Social Security Administration for representation in the SSI appeal.

Plaintiffs, on behalf of the members of this class of persons, allege that:

(1) the DHS has been unjustly enriched by its failure to share in the legal expenses paid by Plaintiffs and Class members in winning the SSI claims from which the DHS reaps the rewards; and

(2) the DHS breached the implied covenant of good faith and fair dealing when it failed or refused to share in the attorneys fees incurred by Plaintiffs and Class members.

On behalf of themselves and the Class defined above, Plaintiffs seek to recover the fair share of the attorney/non-attorney representative fees and expenses which they and Class members paid and from which the DHS received the benefit.

The DHS contends that it is not required to contribute to the legal expenses incurred by Class members, and that it has not been unjustly enriched by declining to do so.

### III. The Court's Class Action Ruling

The Court has ruled that this action may be maintained as a class action by the Class representatives, Chad Martinez and Larry King, and that their attorneys, THE CAREY LAW FIRM, may act as the lawyers for the Class. This ruling by the Court does not constitute any conclusion about the merits of the claims or defenses in this class action lawsuit or a finding that any money will be obtained for the members of the class because these are all contested issues that have not been decided. Rather, the ruling means that any outcome of the class action lawsuit – whether favorable to the Plaintiffs or to the DHS – will apply in a like manner to every Class member who does not elect to be excluded from the class action lawsuit. Trial in this matter is scheduled to begin on August 13, 2007.

### IV. Who is Included in the Class

Judge Manzanara has issued an Order defining the Class as follows:



All persons who received AND benefits from the State of Colorado [DHS] during a pending application for SSI benefits whose SSI claims were denied and who retained and paid counsel or a non-attorney representative to appeal such denial and were successful in their appeal, and the [DHS] then obtained reimbursement of the AND benefits paid from the past-due SSI benefits on or after February 5, 1999.

#### V. Your Rights and Options

If you are a member of the Class, as defined above, you will be included in the class action lawsuit unless you request to be excluded from the class action lawsuit. Your options are described below. Please read your options carefully. Each option will have its consequences, which you should understand them before making your decision.

A. You can choose to remain a member of the class action lawsuit and be represented by Class representatives Chad Martinez and Larry King and their counsel. You do not need to do anything at this time if you want to be included in the class action lawsuit. If you are a member of the Class, as defined above, you will automatically be included in the lawsuit unless you elect to exclude yourself by following the procedures set forth below. If you remain in the lawsuit, any result positive or negative will be binding on you. If you stay in the lawsuit and the Class is awarded money or benefits, either because of trial or settlement, you will be notified of how to apply for a share.

By remaining in this lawsuit, you designate the named Plaintiffs as your representatives, and, to the fullest extent possible under applicable laws, to make decisions on your behalf concerning the litigation, the method and manner of conducting this litigation, and all other matters pertaining to this lawsuit. These decisions and any agreements made and entered into by the representative Plaintiffs will be binding on you if you remain a member of the Class. If you remain a member of the Class, you will not be responsible for costs of the lawsuit or attorney fees. However, if there is a recovery in this lawsuit, Class counsel may receive attorneys' fees and costs as determined by the Court. An award of attorney fees and costs to Class counsel may reduce the amount of any settlement obtained or money judgment entered in favor of the Class members, or may be paid separately by the DHS.

B. You may also choose to remain in the Class and retain an attorney at your own expense and appear in the case with your own attorney. If you choose to retain an attorney at your own expense, your attorney must enter the case on your behalf with the Court. If you choose to participate in the class action lawsuit through your own attorney, you will be responsible for the fees and costs of your attorney, any result, positive or negative, will be binding on you.

C. You may also choose to exclude yourself from the class action. If you wish to exclude yourself from this lawsuit, you must notify the Court in writing no later than \_\_\_\_\_ [date to be inserted: 90 days from date of mailing].

Your request to be excluded must include (1) the name of this lawsuit; (2) your full name and current address; (3) a clear statement of intention to exclude yourself such as "I wish to be excluded from the Class"; and (4) your signature.

Requests for exclusion must be postmarked no later than \_\_\_\_\_ [date to be inserted: 90 days from date of mailing] and sent to:

*Martinez v. Colorado DHS*  
Attn: Gordon Beck  
The Carey Law Firm  
2301 East Pikes Peak Avenue  
Colorado Springs, CO 80909

If you choose to exclude yourself from the lawsuit, you will not share in any money or compensation received by the Class through either settlement or judgment. However, you may then be able to sue the DHS separately for the claims that are the subject of this lawsuit. In addition, you will not be affected by any negative results or a negative judgment entered against the Class in the action.

**IMPORTANT:** Just because you have received this notice does not mean that you are or will be determined to be an appropriate member of this class action. If you believe that you meet the criteria described in Section IV ("Who is included in this Class") you could be required to provide adequate proof that you retained an attorney or non-attorney representative to assist with a SSI appeal and proof of the amount that you paid your attorney or non-attorney representative. You should not destroy any records currently in your possession proving that you retained an attorney or non-attorney representative to assist with a SSI appeal.

#### VI. Further Information

If the case is not resolved by a settlement or otherwise, Class counsel will have to prove the claims at trial. The trial is set to begin on August 13, 2007 in the District Court for the City and County of Denver, Colorado. You do not need to attend the trial. Class counsel will present the case for the members of the Class, and the DHS will present its defenses. You are welcome to attend (at your own expense). If you wish to participate in the trial, you should contact Class counsel.

The entire court file in this case may be inspected at the Denver County District Court, 1437 Bannock Street, Room 256, Denver, Colorado 80202.

If you have any questions concerning any matter described in this notice, or wish to provide your current name or address, please visit the website or contact Class counsel, The Carey Law Firm, at:

The Carey Law Firm  
Attn: Leif Garrison  
2301 East Pikes Peak Avenue  
Colorado Springs, CO 80909  
Telephone: 1-800-888-0088  
[www.careylaw.com](http://www.careylaw.com)

Copies of significant pleadings and court orders can also be accessed on the internet by going to the following link: [www.careylaw.com](http://www.careylaw.com).

**PLEASE DO NOT CALL OR WRITE TO THE COURT  
FOR INFORMATION OR ADVICE**

BY ORDER OF THE DISTRICT COURT FOR THE CITY AND COUNTY OF DENVER,  
STATE OF COLORADO

Dated: November \_\_, 2006.

BY THE COURT

\_\_\_\_\_  
Hon. Lawrence A. Manzanares  
District Court Judge

Court: CO Denver County District Court 2nd JD

Judge: Manzanares, Lawrence A

File & Serve reviewed Transaction ID: 13010652

Current date: 12/12/2006

Case number: 2002CV1066

Case name: MARTINEZ, CHAD et al vs. COLO DEPT OF HUMAN SERV et al

/s/ Judge Lawrence A Manzanares

BARDWELL CONSULTING.

Robert A. Bardwell, Ph.D.  
President  
4881 W. Yale Ave.  
Denver, CO 80218  
Voice: 303.934.3851  
Fax: 303.975.8513  
  
www.bardwellconsulting.com

January 4, 2007

Leif Garrison  
The Carey Law Firm  
2301 East Pikes Peak  
Colorado Springs CO 80909

Re: Chad Martinez and Larry King v. Colorado Department of Human Services and Otero County Department of Human Services, Case No.: 02 CV 1066

Dear Leif Garrison:

Per your request, this letter specifies the data required from the Social Security Administration (SSA) to compute an accurate estimate of damages in the above referenced litigation.

**SSA Maintains Data Required for Estimation of Damages**

Plaintiffs in this action are Supplemental Security Income (SSI) recipients who seek to recover for themselves and other class members the legal fees and costs paid by plaintiffs and class members attributable to the Interim Assistance Reimbursement (IAR) amount recovered by the CDHS and county departments. Critical data required for the calculation of damages in this case are the amount of legal fees paid by class members, or sufficient data to estimate that amount.

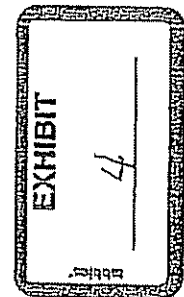
Based on information provided to me during this case, I understand that the SSA started paying attorneys' fees directly in March, 2005 or earlier. The data request below therefore specifies two types of responses re attorneys' fees: (1) the amount of attorneys' fees paid by the SSA for periods when the SSA paid attorneys' fees; and (2) whether attorneys' fees were approved, and the amount of fees approved, for periods when the SSA did not pay attorneys' fees directly.

**Specific Data Elements Required**

To compute an estimate of damages in the above referenced litigation, I need the assistance of the SSA in providing the following required information. For clarity, the format for the required information is indicated in the attached spreadsheet (IAR-SSN.xls, attached as a CD), though any equivalent database format would suffice:

1. Scope: All persons who received AND benefits from State of Colorado during a pending application for SSI benefits, and the State Defendants then obtained reimbursement of the AND benefits paid from the past-due SSI benefits on or after February 5, 1999;
2. Data Elements: List by claimant of all IAR payments made or approved by the SSA to the State of Colorado including:
  - a. Amount of the IAR payment
  - b. Date of the IAR payment

• Litigation Support  
• Expert Testimony  
• Consulting  
• Research



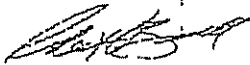
- c. Amount of attorneys' fees paid by the SSA to the attorney or authorized representative of the claimant
    - i. If amount of attorneys' fees is not available, indicate whether the SSA approved attorneys' fees for the claim
    - ii. Amount of attorneys' fees approved
  - d. Social security number of the claimant, if the claimant is not already listed in the attached file
  - e. Additional fields that would be useful in documenting our calculation of damages are:
    - i. Date of SSI Application
    - ii. Date of SSI favorable decision
    - iii. Date of initial SSI payment to claimant
    - iv. Amount of initial SSI payment to claimant
3. Number of Records: If multiple records need to be entered for an individual claimant, please add rows to the attached file, and enter the social security number for the claimant in each row entered for that claimant.

**List of Known IAR Claimants Provided**

Attached to this request (in the spreadsheet IAR-SSN.xls, on the attached CD) is a list of 11,282 social security numbers for IAR claimants from February 5, 1999 through September 29, 2006, produced by the State of Colorado. In researching your records for the information requested above, please provide the individual claimant data requested for each of the claimants on the attached list. In addition, please provide the same data for any additional claimants who meet the criteria listed in Scope, that are not on the attached list, and identify these additional claimants.

The SSA should contact me if any additional clarification is required.

Sincerely,



Robert Bardwell, Ph. D.





**GRANTED**

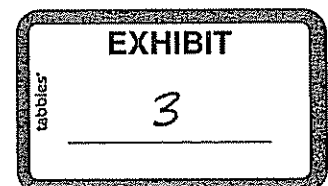
Movant shall serve copies of this ORDER on any pro se parties, pursuant to CRCP 5, and file a certificate of service with the Court within 10 days.

**Lawrence A. Manzanares**  
**District Court Judge**

|  |  |   |
|--|--|---|
| DISTRICT COURT, COUNTY OF DENVER<br>STATE OF COLORADO            |  | DATE OF ORDER INDICATED ON ATTACHMENT       |
| Court Address: 1437 Bannock Street, Room 256<br>Denver, CO 80202 |  | ▲ COURT USE ONLY ▲                          |
| <b>Plaintiffs:</b>   | CHAD MARTINEZ and<br>LARRY KING, on behalf of<br>themselves and other similarly<br>situated,     |   |
| <b>Defendants:</b>   | COLORADO DEPARTMENT<br>OF HUMAN SERVICES and<br>OTERO COUNTY<br>DEPARTMENT OF SOCIAL<br>SERVICES | Case Number: 2002CV1066<br><br>Courtroom: 1 |
| <b>ORDER GRANTING PLAINTIFFS' MOTION FOR CLASS CERTIFICATION</b> |  |   |

1. This matter came before the Court upon Plaintiffs' motion for class certification. The Court having considered the motion and all other briefing and papers filed concerning that motion, and having the benefit of evidence and oral argument received at a class certification hearing on August 17, 2006, and a further hearing held on September 15, 2006 to address the applicable statute of limitations period for commencement of the class and whether to allow tolling based on a prior class action lawsuit,
2. NOW, therefore, it is hereby ORDERED and ADJUDGED:  
 Plaintiffs' motion for class certification is hereby granted.
3. The following class is hereby certified pursuant to Rule 23(b)(3) of the Colorado Rules of Civil Procedure:

All persons who received AND benefits from State of Colorado during a pending application for SSI benefits whose SSI claims were denied and who retained and paid counsel or a non-attorney representative to appeal such denial and were successful in their appeal, and the State Defendants then obtained reimbursement of the AND benefits paid from the past-due SSI benefits on or after February 5, 1999.





The Court will not certify the subclass identified by Plaintiffs at this time, as the Court is not convinced that Defendants' adoption of its Regulation 3.450.43(G) on or about April 5, 2002, materially affects the analysis of the claims of those class members from whom an Interim Assistance recovery was obtained after the regulation was adopted. If, as the case progresses, a subclass becomes necessary, either party should bring this to the Court's attention and the matter will be revisited.

4. The Court certifies plaintiffs Chad Martinez and Larry King as Class Representatives. The Court appoints the following attorneys as class counsel: Robert B. Carey and Leif Garrison of The Carey Law Firm. In doing so the Court has considered the appropriate factors under Rule 23, including the adequacy and vigorous prosecution of this matter by the class representatives, and counsel's experience in class actions, counsel's knowledge of the applicable law and the commitment of counsel to represent the interests of the Class, the latter being evidenced by the prosecution of the case and work product to date.

5. This Court bases this certification order on the following findings, each of which are amply supported by Plaintiffs' well-pleaded allegations and evidence presented by Plaintiffs, Defendants' own documents, and expert testimony:

(a) Numerosity. Plaintiffs have demonstrated that "the class is so numerous that joinder of all members is impracticable" within the meaning of C.R.C.P. 23(a)(1).

(b) Commonality. C.R.C.P. 23(a)(2) requires that there be "questions of law or fact common to the class." Plaintiffs have satisfied the commonality requirement here with, *inter alia*, allegations backed by expert opinion that raise common questions, including whether (i) Defendants received a benefit at the expense of class members; (ii) Defendants have been unjustly enriched where the attorneys who represented the individual class members in pursuing their SSI claims were paid by the class members and the Defendants were reimbursed from the SSI benefits recovered as a result of the successful efforts of these attorneys; (iii) whether

Defendants' acts and omissions in the Interim Assistance recoupment process breached the duty of good faith and fair dealing; and (iv) the appropriate measure of damages for the Class. Accordingly, commonality is satisfied here.

(c) Typicality. Pursuant to C.R.C.P. 23(a)(3), Plaintiffs must also show that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Typicality requires that the class representative claims be typical of the class and that the class claims are encompassed by the named plaintiffs' claims. This requirement is met when it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, irrespective of varying fact patterns which underlie individual claims. *See Ammons v. American Family Mut. Ins. Co.*, 897 P.2d 860, 863 (Colo. App. 1995). Plaintiffs have satisfied the typicality requirement here because they have shown that the same allegedly unlawful conduct was directed at Plaintiffs and all other class members, and any individual facts that may exist are not significant. And, as many courts have recognized, the requirements for typicality tend to merge with the requirements for commonality—the same common questions identified above also serve to satisfy Plaintiffs' burden on typicality. The Court accordingly finds that typicality is met here because Plaintiffs and class members seek the same remedies for identical harms under the same legal theories.

(d) Adequacy. Pursuant to C.R.C.P. 23(a)(4), the Court finds that the representative parties will fairly and adequately represent the Class. The interests of the Plaintiffs are fully aligned with those of the Class, and the Court finds that the proposed counsel are experienced in the area and fully capable of effectively prosecuting this litigation.

(e) The Court further finds that certification is proper under Rule 23(b)(3). Under the rule, "[w]hen one or more of the central issues in the action are common to the class and can be said to predominate, the action is proper under 23(b)(3)." *Villa Sierra Condominium Assn v. Field Corp.*, 787 P.2d 661, 665 (Colo. App. 1990). Here, the common questions identified above

predominate over any individualized issues that may exist. I further find that a class action is superior to a series of individual suits. Even if it were feasible for individual class members to bring suit, it would not be feasible to re-litigate the numerous common questions in case after case given the number of individuals affected by these claims. Moreover, although there are some issues regarding whether the class members can adequately be identified, based upon the expert testimony regarding statistical analysis received at the hearing and the Court's review of the evidence concerning Defendants' records and the likely contents of the records of the Social Security Administration, the Court finds there is a reasonable probability that Plaintiffs can obtain the information necessary to identify the members of the class, and therefore foresees no manageability problems that would forestall class certification. Under Rule 23(c)(4), the Court retains the ability to reconsider the manageability of this case if the necessary information cannot be obtained within a reasonable time and the Plaintiffs are otherwise unable to identify the class members.

6. The Court finds that this case is analogous to a contract action and therefore finds that a three-year statute of limitations period shall apply for the purposes of determining the date for commencement of the class. Further, although the Court has considered the tolling principal in *American Pipe & Constr. Co. v. Utah*, 414 U.S. 538 (1974), the Court finds that it is not appropriate to toll the statute of limitations in this matter based on the *Gonzales* matter, a previously-filed class action. Any putative plaintiffs in that action would not have been justified in relying on an administrative action because the administrative action could not afford class action relief.

7. Counsel for Plaintiffs shall prepare and submit within 30 days from the date of this Order a proposed form of notice to be sent to members of the Class. Defendants may file any comments to the notice within 15 days and Plaintiffs may reply 15 days after.

8. To the extent the electronic data systems in the State's possession contains such information, defendants shall prepare and submit to counsel for the Plaintiffs within 30 days from the date of this Order a list of the names, last known addresses, telephone numbers, SSN numbers, and any other information that could reasonably allow plaintiffs to identify individuals who received AND benefits from the State of Colorado and for whom the State obtained reimbursement of the AND benefits paid from the past-due SSI benefits on or after February 5, 1999. The information to be provided includes the amount of IAR recovered from each such person. To facilitate this process, the Court will adopt and enter the parties' stipulated protective order concerning restrictions upon the disclosure of Protected Health Information.

SO ORDERED THIS \_\_\_\_ day of \_\_\_\_\_, 2006.

BY THE COURT:

\_\_\_\_\_  
DISTRICT COURT JUDGE

Approved as to form:

*s/ Leif Garrison*  
Leif Garrison, Esq.

*s/ Jennifer Weaver*  
Jennifer Weaver, Esq.

Court: CO Denver County District Court 2nd JD

Judge: Manzanares, Lawrence A

File & Serve reviewed Transaction ID: 12498174

Current date: 10/5/2006

Case number: 2002CV1066

Case name: MARTINEZ, CHAD et al vs. COLO DEPT OF HUMAN SERV et al

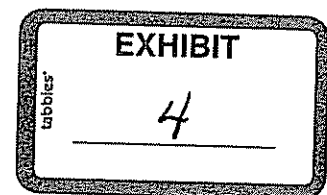
/s/ Judge Lawrence A Manzanares

|  |                                      |
|--|--------------------------------------|
| DISTRICT COURT, CITY AND COUNTY OF<br>DENVER, COLORADO<br>1437 Bannock Street<br>Denver, CO 80202  |                                      |
| CHAD MARTINEZ and LARRY KING, on behalf of<br>themselves and others similarly situated,<br>Plaintiffs,<br><br>v.<br><br>COLORADO DEPARTMENT OF HUMAN<br>SERVICES AND OTERO COUNTY DEPARTMENT<br>OF SOCIAL SERVICES,<br>Defendants. | ▲ COURT USE ONLY ▲                   |
|  | Case No.: 02 CV 1066<br><br>Ctrm.: 1 |
| <b>STIPULATED QUALIFIED PROTECTIVE ORDER FOR PROTECTED HEALTH INFORMATION</b>  |                                      |

The parties have stipulated to entry of a Qualified Protective Order pursuant to 45 C.F.R. § 164.512(e) with regard to disclosure in this case by Defendants, Colorado Department of Human Services and Otero County Department of Social Services (“Department”) which is a covered entity under the Health Insurance Portability and Accountability Act, 42 U.S.C. § 1320d-1, of certain protected health information under 45 C.F.R. § 164.501 (“Protected Health Information”).

WHEREFORE, IT IS HEREBY ORDERED:

1. The Protected Health Information described in the attached District Court order dated October 5, 2006 shall be produced by the Department.
2. The Protected Health Information shall only be used for purposes of this litigation, including appeals.
3. The Protected Health Information shall be disclosed by the receiving party only to the following persons, after such persons (except for the judge and jury) are given a copy of this Qualified Protective Order:



- (a) Counsel for the parties including their associates, clerks, secretarial and clerical personnel;
- (b) Qualified persons taking testimony involving such information and necessary stenographic and clerical personnel;
- (c) Experts and their staff who are consulted by counsel for the receiving party;
- (d) Parties to the litigation; and
- (e) The Judge, including appropriate member's of the Judge's staff as necessary or appropriate, and Jury.
- (f) Fact witnesses who require access to Protected Health Information to testify.
- (g) Arbitrator(s) or mediator(s) if the case proceeds to alternative dispute resolution.

4. If Protected Health Information is disclosed to any person other than in the manner authorized by this Qualified Protective Order, the party responsible for the disclosure shall, as soon as possible, bring such disclosure to the attention of the Court, the Department and, where possible, to the individual(s) whose Protected Health Information was disclosed. Without prejudice to other rights and remedies of the Department or the individual(s), the disclosing party shall make every effort to prevent further disclosure on its own part or on the part of the person who was the recipient of such information.

5. In the event any document which is subject to this Qualified Protective Order must be filed with the Court prior to trial, it shall be filed in a sealed envelope at the expense of the filing party and marked on the outside with the title of this action, and identification of each document within. Such identification shall not reveal any Protected Health Information. The outside of the envelope shall incorporate a statement substantially in the following form:

**CONFIDENTIAL – SUBJECT TO QUALIFIED PROTECTIVE ORDER**  
“This envelope contains Protected Health Information filed by the Colorado Department of Health Care Policy and Financing and is not to be opened nor the contents thereof displayed or revealed except as provided for in the Qualified Protective Order dated October 5, 2006, or by court order.”

6. Documents or things which are subject to this order may be marked and used as trial exhibits by either party, subject to terms and conditions as imposed by the Court upon

application by the Department or pursuant to the Court's previous resolution of a timely request filed by the individual(s) who are the subject(s) of the Protected Health Information.

7. Within 30 days of the conclusion of this lawsuit, including appeals, all documents subject to this order will either be:

a. Returned to the Department. The receiving party shall assemble and return all items, including all copies, but not including copies in any Court file or containing notes or attorney's work product that may have been placed on it. All copies containing notes or attorneys work product shall be destroyed and the attorney shall advise the Department in writing that all such copies have been destroyed.

b. Destroyed. The receiving party agrees that all copies will be destroyed in a manner that will protect the confidentiality of the Protected Health Information. The requesting attorney shall advise the Department in writing that all copies have been destroyed.

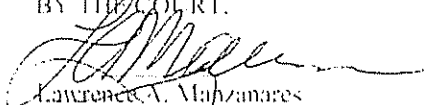
Court copies shall be subject to any protective order issued by that court.

8. The entry of this Qualified Protective Order, or any conduct pursuant to this Order, shall not be interpreted as a general waiver of privacy or confidentiality of the Protected Health Information produced in this case, any privilege that may attach or relate to such information, or otherwise permit the disclosure of Protected Health Information.

9. Additional Terms: None.

DATED AND SIGNED this 5th day of October, 2006.

BY THE COURT.

  
Lawrence A. Mapzhanes  
District Court Judge