

DAVID M. LOUIE 2162  
Attorney General of Hawaii

HEIDI M. RIAN 3473  
JOHN F. MOLAY 4994  
LEE-ANN BREWER 5583  
Deputy Attorneys General  
Department of the Attorney  
General, State of Hawai'i  
465 South King Street, Room 200  
Honolulu, Hawaii 96813  
Telephone: (808) 587-3050  
Facsimile: (808) 587-3077  
E-Mail: John.F.Molay@hawaii.gov

Attorneys for Defendants  
PATRICIA MCMANAMAN and KENNETH FINK

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF HAWAI'I

TONY KORAB, TOJIO CLANTON  
and KEBEN ENOCH, each  
individually and on behalf of those  
persons similarly situated,  
  
Plaintiffs,

vs.

PATRICIA MCMANAMAN in her  
official capacity as Director of the  
State of Hawaii Department of Human  
Services; and KENNETH FINK in his  
official capacity as State of Hawai'i,  
Department of Human Services, Med-  
QUEST Division Administrator,  
  
Defendants.

CIVIL NO. 10-00483 JMS KSC

**DEFENDANTS PATRICIA  
MCMANAMAN AND KENNETH  
FINK'S ANSWER TO PLAINTIFFS'  
FIRST AMENDED COMPLAINT**

**DEFENDANTS PATRICIA MCMANAMAN AND KENNETH FINK'S  
ANSWER TO PLAINTIFFS' FIRST AMENDED COMPLAINT**

Come now Defendants Patricia Mcmanaman and Kenneth Fink (hereinafter "Defendants") by their attorneys, David M. Louie, Attorney General of Hawaii, Heidi M. Rian, John F. Molay and Lee-Ann N.M. Brewer, Deputy Attorneys General, and hereby answer Plaintiffs' First Amended Complaint.<sup>1</sup>

Defendants note that the First Amended Complaint repeated paragraph numbers 17 through 43. Accordingly, references to the second occurrence of paragraph numbers 17 through 43 have the notation "(2<sup>nd</sup>)" following the paragraph number.

**FIRST DEFENSE**

The First Amended Complaint fails to state a claim against the Defendants upon which relief can be granted.

**SECOND DEFENSE**

1. Answering Paragraphs 2, 3, 4, 22, 18(2<sup>nd</sup>), 19(2<sup>nd</sup>), , 24(2<sup>nd</sup>), 25(2<sup>nd</sup>), 26(2<sup>nd</sup>)<sup>2</sup>, 27(2<sup>nd</sup>), 28(2<sup>nd</sup>)<sup>3</sup>, 31(2<sup>nd</sup>), 32(2<sup>nd</sup>), 33(2<sup>nd</sup>), 34(2<sup>nd</sup>),, 36(2<sup>nd</sup>),, 41(2<sup>nd</sup>), 47<sup>4</sup>,

---

<sup>1</sup> Responses regarding medical conditions, hospitalizations, etc. are based on a review of admission and discharge notes provided by the particular hospitals.

<sup>2</sup> Based on information and belief.

<sup>3</sup> The actual date of the hearing was January 25, 2010.

<sup>4</sup> Defendants are admitting this is what the First Amended Complaint states as to class allegations. They are not admitting to the correctness of those allegations.

48, 55<sup>5</sup>, 58<sup>3</sup>, 59, 60 and 71<sup>3</sup> of the First Amended Complaint, the Defendants admit the allegations.

2. Defendants deny the allegations contained in Paragraphs 43, 20(2<sup>nd</sup>), 21(2<sup>nd</sup>), 22(2<sup>nd</sup>), 23(2<sup>nd</sup>), 29 (2<sup>nd</sup>), 30(2<sup>nd</sup>), 35(2d), 46, 54, 56, 57, 62, 63, 64, 65 and 73 of the First Amended Complaint.

3. Answering Paragraphs 8, 12, 16, 23, 26, 28, 29, 31, 33, 34, 35, 37, 38, 39, 40, 41, 42, 43(2<sup>nd</sup>), 44(2<sup>nd</sup>), 49, 50, 51, 52, 53, and 61 of the First Amended Complaint, the Defendants are without knowledge or information at this time sufficient to form a belief as to the truth or falsity of the allegations contained in said Paragraphs of the First Amended Complaint and therefore denies them.

4. Answering Paragraph 1 of the First Amended Complaint, Defendants admit that on July 1, 2010, the State of Hawaii, Department of Human Services ("DHS") implemented a new state-funded medical assistance program called Basic Health Hawaii ("BHH") for non-pregnant Association ("COFA") with the United States who are lawfully residing in Hawaii ("COFA Residents") and non-pregnant immigrants, age nineteen or older, who have been United States residents for less than five years ("New Residents"). The remainder of the allegations are denied.

5. As to Paragraph 5 of the First Amended Complaint, Defendants admit Plaintiff Tony Korab (KORAB) is a citizen of the Republic of the Marshall Islands, a

---

<sup>5</sup> Defendants are admitting this is what the First Amended Complaint states. They are not admitting to the correctness of those allegations.

country with a COFA with the United States and needs regular dialysis treatment.

Defendants are without knowledge or information at this time sufficient to form a belief as to the truth or falsity of the remainder of the allegations and therefore deny them.

6. As to Paragraph 6 of the First Amended Complaint, Defendants admit KORAB was receiving state-funded medical assistance through the QUEST Expanded Access (QExA) Medicaid managed care program for the aged, blind, and disabled, administered by DHS' Med-QUEST Division and that KORAB's benefits under QExA included dialysis treatment, transportation to and from medical appointments, and all medically necessary doctor's visits and prescription drugs with no set limitation. Any allegation inconsistent with this admission is denied.

7. As to Paragraph 7 of the First Amended Complaint, Defendants admit that KORAB was disenrolled from state-funded medical assistance that KORAB was receiving through QExA and enrolled in Basic Health Hawaii (BHH) effective July 1, 2010; that BHH provides fewer benefits than QExA; that under new DHS rules KORAB is no longer eligible for certain QExA benefits; and that KORAB was disenrolled from SHOTT effective May 31, 2010 for reasons unrelated to his enrollment in BHH.") The remainder of the allegations are denied.

8. As to Paragraph 9 of the First Amended Complaint, Defendants admit Plaintiff TOJIO CLANTON ("CLANTON") is a citizen of the Republic of the Marshall Islands, a country with a COFA with the United States. Defendants are without knowledge or information at this time sufficient to form a belief as to the truth or falsity of the remainder of the allegations and therefore deny them.

9. As to Paragraph 10 of the First Amended Complaint, Defendants admit CLANTON had a kidney transplant. Defendants deny that CLANTON's health care was covered by QExA from 2002-2006. Defendants are without knowledge or information at this time sufficient to form a belief as to the truth or falsity of the remainder of the remainder of the allegations and therefore deny them.

10. As to Paragraph 11 of the First Amended Complaint, Defendants admit CLANTON was disenrolled from state-funded medical assistance that CLANTON received through QExA and enrolled into BHH effective July 1, 2010. Defendants are without knowledge or information at this time sufficient to form a belief as to the truth or falsity of the remainder of the allegations and therefore deny them.

11. As to Paragraph 13 of the First Amended Complaint, Defendants admit Plaintiff KEBEN ENOCH ("ENOCH") is a citizen of the Republic of the Marshall Islands, a country with a COFA with the United States. Defendants are

without knowledge or information at this time sufficient to form a belief as to the truth or falsity of the remainder of the allegations and therefore deny them.

12. As to Paragraph 14 of the First Amended Complaint, Defendants admit that ENOCH was receiving medical benefits through a program administered by DHS' Med-QUEST Division before 2009. Defendants deny that DHS terminated ENOCH's benefits in December 2009. Defendants are without knowledge or information at this time sufficient to form a belief as to the truth or falsity of the remainder of the allegations and therefore deny them.

13. As to Paragraph 15 of the First Amended Complaint, Defendants admit that in June 2010, ENOCH and his wife applied to DHS for health care benefits and in a letter dated June 28, 2010, DHS denied their application. Defendants are without knowledge or information at this time sufficient to form a belief as to the truth or falsity of the remainder of the allegations and therefore deny them.

14. As to Paragraph 17 of the First Amended Complaint, Defendants admit that AGUSTIN appears to be a lawful permanent resident of the United States, whose country of birth is the Philippines. Defendants are without knowledge or information at this time sufficient to form a belief as to the truth or falsity of the remainder of the allegations and therefore deny them.

15. As to Paragraph 18 of the First Amended Complaint, Defendants admit AGUSTIN was admitted to the emergency room at Hawaii Medical Center West on February 10, 2010. Defendants are without knowledge or information at this time sufficient to form a belief as to the truth or falsity of the remainder of the allegations and therefore deny them.

16. As to Paragraph 19 of the First Amended Complaint, Defendants admit that AGUSTIN was admitted to emergency room at Kapiolani Medical Center for Women and Children (“Kapiolani Hospital”) on February 12, 2010 and that an application for emergency coverage was submitted on behalf of AGUSTIN to the Med-QUEST Division. Defendants are without knowledge or information at this time sufficient to form a belief as to the truth or falsity of the remainder of the allegations and therefore deny them.

17. As to Paragraph 20 of the First Amended Complaint, Defendants admit that AGUSTIN had pneumonia on admission to Kapiolani Hospital, and that she had surgery on February 16, 2010. Defendants are without knowledge or information at this time sufficient to form a belief as to the truth or falsity of the remainder of the allegations and therefore deny them.

18. As to Paragraph 21 of the First Amended Complaint, Defendants admit AGUSTIN discharged from Kapiolani Hospital on February 18, 2010. Defendants are without knowledge or information at this time sufficient to form a

belief as to the truth or falsity of the remainder of the allegations and therefore deny them.

19. As to Paragraph 24 of the First Amended Complaint, Defendants admit that IBANA's place of birth is Vintar, Ilocos Norte, Philippines, and that he reported that his date of entry was August 5, 2010. Defendants are without knowledge or information at this time sufficient to form a belief as to the truth or falsity of the remainder of the allegations and therefore deny them.

20. As to Paragraph 25 of the First Amended Complaint, Defendants admit IBANA is diabetic and has problems with his eyes. Defendants are without knowledge or information at this time sufficient to form a belief as to the truth or falsity of the remainder of the allegations and therefore deny them.

21. As to Paragraph 27 of the First Amended Complaint, Defendants admit that IBANA went to Kokua Kalihi Valley community health clinic in early September, and that the doctor who saw IBANA submitted paperwork to Med-QUEST requesting emergency coverage. Defendants are without knowledge or information at this time sufficient to form a belief as to the truth or falsity of the remainder of the allegations and therefore deny them.

22. As to Paragraph 30 of the First Amended Complaint, Defendants admit that R. MATTEO appears to be a lawful permanent resident of the U.S., whose country of birth is the Phillipines and whose date of entry on his permanent



resident card is September 28, 2006. Defendants are without knowledge or information at this time sufficient to form a belief as to the truth or falsity of the remainder of the allegations and therefore deny them.

23. As to Paragraphs 32 and 36 of the First Amended Complaint, Defendants admit that R. MATTEO has a history of surgery in 2007 and 2009. Defendants are without knowledge or information at this time sufficient to form a belief as to the truth or falsity of the remainder of the allegations and therefore deny them.

24. As to the second Paragraph 17 of the First Amended Complaint, Defendants admit that Patricia McManaman is the Director of Human Services.

25. As to Paragraph 37(2nd) Defendants admit the first and last sentences. Defendants are without knowledge or information at this time sufficient to form a belief as to the truth or falsity of the remainder of the allegations and therefore deny them.

26. As to Paragraph 38(2<sup>nd</sup>) of the First Amended Complaint, Defendants admit that BHH does not provide a comprehensive program for cancer treatments. Defendants are without knowledge or information at this time sufficient to form a belief as to the truth or falsity of the remainder of the allegations and therefore deny them.

27. As to Paragraph 39(2<sup>nd</sup>) of the First Amended Complaint, Defendants admit that QUEST and QExA provide comprehensive medical and behavioral health and all necessary prescription drugs and that the QExA program delivers medical and behavioral health services to certain individuals who are aged, blind, or disabled. The remainder of the allegations are denied. Defendants further admit that QUEST and QExA provide significantly greater benefits than BHH.

28. As to Paragraph 40(2<sup>nd</sup>) of the First Amended Complaint, Defendants admit that COFA Residents who needed dialysis were able to get all necessary medications covered under QExA. Defendants are without knowledge or information at this time sufficient to form a belief as to the truth or falsity of the the allegations that now they cannot obtain all necessary dialysis medications and therefore deny them. The remainder of the allegations are denied.

29. As to Paragraph 42(2<sup>nd</sup>) of the First Amended Complaint, Defendants deny the first sentence and admit the second sentence. Defendants further note that Plaintiffs' citation is incorrect.

30. As to Paragraph 45(2<sup>nd</sup>) of the First Amended Complaint, Defendants admit that Medical Assistance to Aliens and Refugees provides coverage as set forth in Hawaii Administrative Rules chapter 17-1723. The remainder of the allegations are denied.

31. As to Paragraph 72 of the First Amended Complaint, Defendants admit that an actual and immediate controversy has arisen and now exists between Plaintiffs and Defendants, which parties have genuine and opposing interests and which interests are direct and substantial. The remainder of the allegations are denied.

### **THIRD DEFENSE**

The Answering Defendants are entitled to qualified immunity on the grounds that they did not violate a clearly established constitutional right of the Plaintiffs, which a reasonable public official would have known.

### **FOURTH DEFENSE**

Plaintiffs are not entitled to 42 U.S.C. § 1988 attorney fees.

### **FIFTH DEFENSE**

The Answering Defendants are not liable to Plaintiffs because at all times relevant, the Answering Defendants acted in good faith and without malice.

### **SIXTH DEFENSE**

The Answering Defendants are not liable to Plaintiff for any claims based upon their failure to enforce, or the adequacy of their enforcement, of statutes, ordinances, rules and regulations.

**SEVENTH DEFENSE**

The Answering Defendants cannot be held liable on any claim based on acts or omissions in performing or failing to perform a discretionary function or duty and/or acting in good faith.

**EIGHTH DEFENSE**

The Answering Defendants had no control over the acts or omissions of other individuals as relevant to the Complaint.

**NINTH DEFENSE**

The Answering Defendants give notice that they intend to rely on the defense that Plaintiffs have not suffered injury or damage and/or failed to mitigate their damages, if any.

**TENTH DEFENSE**

The Answering Defendants give notice that they intend to rely upon the defense that they were acting lawfully pursuant to their official duties and/or obligations and did not act outside and/or beyond the scope of their authority.

**ELEVENTH DEFENSE**

Plaintiff's claims are barred because Plaintiffs have failed to exhaust their administrative remedies.

**TWELFTH DEFENSE**

The acts complained of do not rise to the level of a deprivation of federal constitutional rights.

**THIRTEENTH DEFENSE**

This Court lacks subject matter jurisdiction, in that no federal question is involved and that there is no diversity of citizenship.

**FOURTEENTH DEFENSE**

The Answering Defendants had no personal involvement in the deprivation alleged to have suffered by the Plaintiffs.

**FIFTEENTH DEFENSE**

This action is barred by chapters 661, 662 and 663, Hawaii Revised Statutes.

**SIXTEENTH DEFENSE**

The alleged negligence of the Answering Defendants was not the proximate cause of Plaintiffs' injuries, as it was not a substantial factor in bringing about their alleged damages.

**SEVENTEENTH DEFENSE**

The Answering Defendants states that if Plaintiffs were injured and/or damaged as alleged in the Complaint, Plaintiffs' own negligence was the sole proximate cause of or contributed to such injuries and/or damages to such an extent that Plaintiff's negligence was far greater than that of the Defendants and Plaintiffs cannot recover against the Defendant therefore.

**EIGHTEENTH DEFENSE**

Plaintiffs acted with poor judgment and a lack of due care at the time of the incident which resulted in their injuries and therefore they cannot recover from the Answering Defendants.

**NINETEENTH DEFENSE**

The Answering Defendants owed no duty to Plaintiffs. If, however, the Answering Defendants owed a duty to Plaintiffs, said alleged injuries and/or damages were not the result of a breach of any duty of care owed to Plaintiffs.

**TWENTIETH DEFENSE**

The Answering Defendants are not liable under the theory of *respondeat superior* as such theory is inapplicable to actions brought under 42 U.S.C. §1983 and any allegedly improper actions of an individual cannot be attributed to them.

**TWENTY-FIRST DEFENSE**

The Answering Defendants are not responsible to Plaintiffs under any theory of imputed or vicarious liability.

**TWENTY-SECOND DEFENSE**

The Answering Defendants had probable cause to take the actions they undertook as part of their official duties with the Department of Human Services, State of Hawaii.

**TWENTY-THIRD DEFENSE**

Any and all alleged acts were done on the basis of legitimate, non-discriminatory justifications and reasons. Any and all alleged acts were done on the basis of legitimate, non-discriminatory justifications and reasons.

**TWENTY-FOURTH DEFENSE**

The conduct of the Answering Defendants was at all times lawful, reasonable and proper.

**TWENTY-FIFTH DEFENSE**

This Court lacks subject matter jurisdiction, as the State of Hawaii has not waived its sovereign immunity for suit to be brought against it in this Court for the acts complained of.

**TWENTY-SIXTH DEFENSE**

The action has been rendered moot by events occurring after the Complaint was filed.

**TWENTY-SEVENTH DEFENSE**

The Answering Defendants reserve all rights to assert any affirmative defenses or to rely on any other matter constituting an avoidance pursuant to Rule 8(c) of the Federal/Hawaii Rules of Civil Procedure and to seek leave to amend his Answer to allege any such defenses and to assert any other defenses, claims and counterclaims as discovery and the evidence may merit. The Answering

Defendants reserve the right to assert any affirmative or other defense, which may be disclosed during discovery. The Answering Defendants reserve the right to identify any affirmative or other defenses that become available to them as discovery progresses.

DATED: Honolulu, Hawaii, April 11, 2011.

/s/ John F. Molay .  
JOHN F. MOLAY  
Deputy Attorney General  
Attorney for Defendants

PATRICIA MCMANAMAN and  
KENNETH FINK