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TONY KORAB, TOJIO
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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

TONY KORAB, TOJIO CLANTON
and KEBEN ENOCH,
individually and on behalf of all
persons similarly situated,

Plaintiffs,

vs.

LILLIAN B. KOLLER, in her
official capacity as Director of
the State of Hawai`i,
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

**STIPULATION AND ORDER
REGARDING CLASS
CERTIFICATION**

IT IS HEREBY STIPULATED, by and between all Parties to this action and through their respective counsel, and HEREBY ORDERED by the Court, that this action be certified and maintained as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure ("FRCP") as set forth below.

On August 23, 2010, Plaintiffs TONY KORAB, TOJIO CLANTON and KEBEN ENOCH ("Plaintiffs") filed a Complaint (Doc. 1) against Defendants LILLIAN B. KOLLER, in her official capacity as Director of the State of Hawai`i ("State" or "Hawai`i"), Department of Human Services ("DHS"), and KENNETH FINK, in his official capacity as State of Hawai`i, DHS, Med-QUEST Division Administrator (together, "Defendants"). The Complaint asserts claims against Defendants based on DHS's implementation of a new health care benefits program, Basic Health Hawai`i ("BHH"), which Defendants created for non-pregnant citizens, age nineteen or older, of countries with Compacts of Free Association ("COFA") with the United States who are lawfully residing in Hawai`i ("COFA Residents"), and non-pregnant immigrants, age nineteen or older, who have been United States residents for less than five years.

Plaintiffs are COFA Residents. Prior to August 22, 1996, COFA Residents were eligible for and received health benefits through existing medical assistance programs established under Title XIX of the Social Security Act. From August 22, 1996 to the implementation of BHH on July 1, 2010, COFA Residents continued to receive medical assistance benefits through the State's Title XIX

programs (including QUEST, QExA, QUEST-Net, QUEST-ACE, fee-for-service, and SHOTT, collectively "Old Programs"), using exclusively State funds. As of July 1, 2010, DHS disenrolled COFA Residents who were not pregnant and who were age nineteen years or older from the Old Programs and enrolled them in BHH.

Plaintiffs allege, among other things, that BHH violates (1) the Equal Protection Clause of the Fourteenth Amendment because it provides less health benefits than the Old Programs offered to citizens and certain qualified aliens, and (2) the Americans with Disabilities Act ("ADA") because BHH is not administered in the most integrated setting appropriate to meet their medical needs. Cmpl. ¶ 2. Plaintiffs bring this action on behalf of themselves and all other similarly-situated COFA Residents whose State-funded health benefits were limited or eliminated by BHH. *Id.* ¶1. Plaintiffs seek declaratory and injunctive relief.

The Parties stipulate that the following "Class" and definition be certified in this class action, pursuant to FRCP 23(a) and (b)(2) with Plaintiffs as the "Class Representatives":

All non-pregnant adults residing in Hawai`i under a Compact of Free Association with the U.S. who are ineligible for the same health benefits as other Hawai`i residents (the "Class").

Pursuant to FRCP 23(a), the Parties further stipulate as follows:

a. The proposed Class is so numerous that joinder of all members is impracticable;

b. There are questions of law and fact common to the Class;

c. The claims and defenses of the Class Representatives are typical of the claims and defenses of the Class; and

d. The proposed Class Representatives will fairly and adequately protect the interests of the Class.

Additionally, pursuant to FRCP 23(b)(2), the Parties stipulate that Defendants have "acted or refused to act on grounds that apply generally to the class," and that common questions of law and fact predominate over the individual issues in this case and that if declaratory or injunctive relief is appropriate, it should be effective for the entire class. Lastly, the Parties stipulate that the

proposed Class Representatives and their counsel, Alston Hunt Floyd & Ing; Bronster Hoshibata, and Lawyers for Equal Justice, will fairly and adequately protect the interests of the class.

Nothing in this stipulation shall be deemed to preclude certification of any additional class or subclass, if appropriate.

DATED: Honolulu, Hawai`i, November 23, 2010.

 /s/ J. Blaine Rogers
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LILLIAN B. KOLLER and
KENNETH FINK

APPROVED AND SO ORDERED:

DATED: Honolulu, Hawaii, November 24, 2010.



/s/ J. Michael Seabright

J. Michael Seabright
United States District Judge

**STIPULATION AND ORDER REGARDING CLASS
CERTIFICATION;** *Korab, et al. v. Koller, et al.*, Civil No. 10-00483
JMS KSC