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**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Aita Darjee, et al.,  
Plaintiffs,  
v.  
Thomas Betlach,  
Defendant.

No. CV-16-00489-TUC-RM (DTF)  
**ORDER**

Pending before the Court is a Report and Recommendation issued by Magistrate Judge D. Thomas Ferraro. Doc. 72. Judge Ferraro recommends that this Court grant Defendant’s Motion to Dismiss (Doc. 35) and dismiss the Complaint with prejudice, and deny as moot Plaintiffs’ Motion for Class Certification (Doc. 5), Plaintiffs’ Motion for Preliminary Injunction (Doc. 15), and the related motions to strike (Docs. 59, 62, 65). Plaintiffs objected to a majority of the conclusions in Judge Ferraro’s recommendation.<sup>1</sup> Doc. 77. The Court reviews those conclusions de novo. 28 U.S.C. § 636(b)(1) (“A judge of the court shall make a de novo determination of those portions of the report . . . to which objection is made.”).

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<sup>1</sup> Defendant also filed an objection. Doc. 75. Defendant’s only objection concerns a clerical error which has no bearing on the motion to dismiss. *Id.* Plaintiffs did not respond to this objection.

1 **I. Background**

2 **A. The Complaint**

3 Plaintiffs filed this putative class action on behalf of low-income Arizona  
4 immigrant residents who qualify for Arizona’s Medicaid program, the Arizona Health  
5 Care Cost Containment System (“AHCCCS”). Compl. ¶ 1, Doc. 1. Plaintiffs allege that  
6 AHCCCS, under Defendant’s supervision, improperly reduced immigrant beneficiaries’  
7 full-scope AHCCCS benefits to emergency-only AHCCCS benefits.<sup>2</sup> *Id.* ¶¶ 2, 10.  
8 Plaintiffs claim that Defendant improperly transferred over 3,500 individuals, and further  
9 claim that such transfers continue today. *Id.* ¶¶ 40–41. Plaintiffs seek only declaratory  
10 relief affirming the unlawfulness of Defendant’s practices and injunctive relief enjoining  
11 further improper reductions.

12 **1. Medicaid Framework**

13 In 1965, Congress created the Medicaid program by adding Title XIX to the Social  
14 Security Act. 42 U.S.C. §§ 1396–1396w-5. The purpose of Medicaid is to enable each  
15 state “to furnish . . . medical assistance on behalf of families with dependent children and  
16 of aged, blind, or disabled individuals, whose income and resources are insufficient to  
17 meet the costs of necessary medical services.” *Id.* § 1396-1. To participate in Medicaid, a  
18 state must implement the program through a state plan which has been submitted to and  
19 approved by the Secretary of the U.S. Department of Health and Human Services. *Id.* §§  
20 1396-1, 1396a(b). Arizona participates in Medicaid through the AHCCCS program. Ariz.  
21 Rev. Stat. §§ 36-2901 *et seq.*

22 State plans must “provide that all individuals wishing to make application for  
23 medical assistance under the plan shall have opportunity to do so, and that such  
24 assistance shall be furnished with reasonable promptness to all eligible individuals.” 42  
25 U.S.C. § 1396a(a)(8). Regulations implementing state Medicaid plans, such as AHCCCS,

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26  
27 <sup>2</sup> Full-scope AHCCCS benefits provide medically necessary care. (Compl. ¶ 28  
28 (citing Ariz. Admin. Code § R9-22-202).) Emergency-only AHCCCS benefits are much  
more limited, providing care only for conditions which place a person’s health in serious  
jeopardy. (*Id.* ¶ 29 (citing Ariz. Admin. Code § R9-22-217).)

1 require that states “[c]ontinue to furnish Medicaid regularly to all eligible individuals  
2 until they are found to be ineligible.” 42 C.F.R. § 435.930(b).

3 The eligibility of a Medicaid beneficiary must be renewed every 12 months. *Id.* §  
4 435.916(a). Recertification is required to be done through an *ex parte* process, whereby a  
5 state makes the eligibility redetermination without requiring information from the  
6 beneficiary, if able to do so based upon reliable information already available to the state.  
7 *Id.* § 435.916(a)(2). If a state cannot make the eligibility redetermination based upon  
8 available data, it must send the beneficiary a “pre-populated renewal form” requesting  
9 only the information needed to renew eligibility. *Id.* § 435.916(a)(3).

10 Generally, immigrants who enter the United States after August 22, 1996 do not  
11 qualify for Medicaid unless they have been “qualified aliens” for 5 years, as that term is  
12 defined in the code. 8 U.S.C. § 1613(a). Certain immigrants are exempt from this  
13 requirement, including refugees and victims of domestic battery. *Id.* §§ 1613(a)–(b),  
14 1641(c).

## 15 **2. Defendant’s Alleged Practices**

16 Plaintiffs allege their counsel sent AHCCCS a letter in October 2015 concerning  
17 the improper reduction of immigrant beneficiaries’ Medicaid benefits. Compl. ¶ 9. In  
18 response, AHCCCS admitted that the errors were caused by its computer systems and  
19 worker errors.<sup>3</sup> *Id.* AHCCCS subsequently admitted that over 3,500 immigrants were  
20 improperly transferred to emergency-only benefits. *Id.* The improper transfers continue to  
21 the present, and some immigrant beneficiaries have had their benefits improperly reduced  
22 a second time. *Id.* ¶ 41.

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23 <sup>3</sup> For example, the computer system improperly applied the 5-year  
24 requirement to those who were exempt from it. Thus, a refugee who recently became a  
25 legal permanent resident would be processed as a qualified alien with less than the  
required 5 years, rather than as an exempt refugee. Compl. ¶ 45.

26 Plaintiffs also allege on information and belief that Medicaid redeterminations are  
27 processed through the Health-e Arizona Plus (“HEAPlus”) system, and food stamp  
eligibility determinations are processed through the AZTECS system. *Id.* ¶¶ 42–43.  
28 While thousands of immigrants were improperly transferred to emergency benefits under  
the HEAPlus system, they were properly found eligible for food stamps under the  
AZTECS system. *Id.* ¶ 44.

1           Plaintiffs allege that Defendant fails to process eligibility renewals consistent with  
2 the *ex parte* process mandated by federal law. *Id.* ¶¶ 32, 51. Specifically, federal law  
3 requires States to make the eligibility redeterminations without requiring information  
4 from the beneficiary, if able to do so based on reliable information already available to  
5 the States. *Id.* ¶ 32. If a State must obtain additional information, it must use a pre-  
6 populated form which seeks only the missing information. *Id.* The purpose of the *ex parte*  
7 process is to reduce errors that occur at recertification and lessen the burden on  
8 beneficiaries to submit duplicative or unchanging information. *Id.*

9           Arizona Administrative Code § R9-22-306(c) is Arizona’s method of  
10 implementing the *ex parte* process. *Id.* ¶ 46. This rule is not as comprehensive as the  
11 federal regulation. *Id.* Additionally, Defendant’s policy manual, which instructs workers  
12 how to process renewals, does not implement the *ex parte* process. *Id.* ¶¶ 47–48. The  
13 manual lists information that does not need to be obtained for benefit renewal  
14 determinations. *Id.* ¶ 48. Immigrant alien numbers, which are similar to social security  
15 numbers, are not included on this list. *Id.* Plaintiffs allege on information and belief that  
16 Defendant’s employees improperly request alien numbers at each recertification, which  
17 can lead to errors in the renewal decision. *Id.*

18           The manual lists “non-citizen status” as not needing to be verified at renewal  
19 unless there has been a change in immigration status. *Id.* ¶ 49. Plaintiffs allege on  
20 information and belief that Defendant’s employees routinely ask about immigration status  
21 at each recertification although such information is readily available in each beneficiary’s  
22 case file. *Id.* This too can lead to errors in the renewal decision. *Id.*

23           Plaintiffs also allege deficiencies in the notices Defendant sends to those who are  
24 transferred from full-scope benefits to emergency-only benefits. *Id.* ¶ 52. Federal law  
25 requires the notices to contain a statement of what action is being taken, “a clear  
26 statement of the specific reasons” for the action, the specific regulations or the change in  
27 law that requires the action, and an explanation of the hearing process for appeals. *Id.* ¶¶  
28 33–37 (citing 42 C.F.R. § 431.210).

1 According to Plaintiffs, the notices state that the beneficiary’s “Medical  
2 Assistance Changed,” the beneficiary’s “full medical services” will “stop,” and “Federal  
3 Emergency Services” will “start.” *Id.* ¶ 53. The reason for this action is “your  
4 immigration status does not let you get full medical services.” *Id.* The notices do not  
5 explain the difference between emergency and full-scope benefits or provide a  
6 meaningful explanation for the change in eligibility. *Id.* Recipients of the notice would  
7 not be able to tell whether Defendant made a mistake. *Id.* Additionally, the notices  
8 contain legal citations without explanation; they incorrectly inform the recipient that they  
9 can review portions of their case file; and information about “Options to Continue  
10 Benefits” is confusing. *Id.* ¶ 55.

### 11 3. Plaintiff Aita Darjee

12 Plaintiff Aita Darjee (“Darjee”) is a refugee from Nepal who lives in Tucson,  
13 Arizona. *Id.* ¶ 8. Prior to 2016, Darjee, her husband, and her minor child all received full-  
14 scope benefits without interruption. *Id.* Plaintiffs allege that the Darjees’ full-scope  
15 benefits have been improperly reduced to emergency-only benefits twice since 2015. *Id.*  
16 ¶¶ 58–59. Defendant restored the benefits after the first error, and restoration of her  
17 benefits from the second error is “imminent if not complete.” *Id.*

18 Darjee suffers from a cold approximately 4-5 times per month, and she goes to the  
19 doctor when her symptoms “get bad” so that she can be put on a machine that makes her  
20 feel better. *Id.* ¶ 64. She also suffers from a gastric problem for which she takes  
21 medication. *Id.* ¶ 65. Darjee’s husband suffers from diabetes, high blood pressure, high  
22 cholesterol, and asthma, and he takes several medications to treat these conditions. *Id.* ¶  
23 60. Darjee’s son must see a doctor before he starts school, and he also has an allergy for  
24 which a doctor prescribed a lotion. *Id.* ¶ 66.

25 Darjee learned about the second reduction in benefits after a doctor’s office called  
26 and canceled her husband’s appointment; she did not receive any notice explaining the  
27 reduction. *Id.* ¶ 62. The Darjees fear they will lose their benefits again and are worried  
28 about their health if they cannot see doctors and obtain medications. *Id.* ¶¶ 67, 69–70.

1                                   **4. Plaintiff Alma Sanchez Haro**

2           Plaintiff Alma Sanchez Haro (“Sanchez Haro”) is a resident of Tucson who  
3 received full-scope AHCCCS benefits based on her status as a battered immigrant who  
4 entered the United States prior to 1996. *Id.* ¶ 9. Sanchez Haro became a legal permanent  
5 resident in January 2015. *Id.* ¶ 73. In April 2016, Sanchez Haro received a notice that she  
6 was no longer eligible for full-scope benefits and would receive emergency-only benefits.  
7 *Id.* ¶¶ 75, 77. Sanchez Haro could not understand from the notice why she was no longer  
8 eligible, so she called the phone number printed on the notice to inquire about the change  
9 to her benefits. *Id.* ¶¶ 75–76.

10           Sanchez Haro was informed that she was ineligible because she had not been a  
11 legal permanent resident for 5 years. *Id.* ¶ 76. Although Sanchez Haro entered the United  
12 States prior to 1996 and was a victim of domestic battery, both of which exempt her from  
13 the 5-year requirement, she was further informed (incorrectly) that the law had changed  
14 in January 2016. *Id.* ¶¶ 24, 26–27, 76.

15           Sanchez Haro suffers from severe depression, anxiety, type II diabetes, high blood  
16 pressure, high cholesterol, and muscle cramps. *Id.* ¶¶ 78–79. She takes several  
17 medications for these conditions. *Id.* She sees a doctor once per month at La Frontera for  
18 her depression and anxiety issues, and she receives all other medical care from El Rio. *Id.*  
19 ¶¶ 78, 80.

20           Now that Sanchez Haro is no longer receiving full-scope benefits, she has not been  
21 able to see a doctor at El Rio, which now wants her to pay for her appointments, and she  
22 is not guaranteed future care at La Frontera, which is attempting to find an insurance  
23 company to pay for her care. *Id.* ¶¶ 81, 83. Although she is receiving her medication, she  
24 worries that the pharmacy will start making her pay for them, and she is stressed about  
25 her future health. *Id.* ¶¶ 81–85.

26                                   **5. Plaintiffs’ Claims**

27           Based on the foregoing, Plaintiffs assert two Counts. In Count 1, Plaintiffs allege  
28 that Defendant is violating § 1396a(a)(8)’s “reasonable promptness” requirement by

1 improperly reducing the benefits of eligible immigrant residents from full-scope to  
2 emergency-only. In Count 2, Plaintiffs allege Defendant is violating the Due Process  
3 Clause of the United States Constitution by sending deficient notices to immigrant  
4 residents who had their benefits reduced.

5 **B. Motion to Dismiss and Report and Recommendation**

6 Defendant moved to dismiss the Complaint on August 29, 2016. Def.'s Mot.  
7 Dismiss, Doc. 35. Defendants argued that (1) Plaintiffs failed to state a claim under 42  
8 U.S.C. § 1396a(a)(8) because the statute applies only to initial applications for Medicaid  
9 benefits and, therefore, does not provide a cause of action for errors caused on renewals;  
10 (2) Plaintiffs failed to state a due process claim because they allege no facts showing that  
11 Defendant failed to comply with the statutory notice requirements; and (3) Plaintiffs lack  
12 standing to pursue their claims or their claims are moot. *Id.*

13 Plaintiffs opposed. Pls.' Opp'n, Doc. 38. Plaintiffs argued the Complaint contains  
14 sufficient factual allegations to state a claim for statutory and due process violations. *Id.*  
15 They further argued that they do have standing and their claims are not moot. *Id.* Finally,  
16 Plaintiffs requested leave to file an amended complaint should the Court determine that  
17 any of Defendant's arguments have merit. *Id.* at 17.

18 On October 25, 2016, Judge Ferraro issued a Report and Recommendation  
19 recommending that this Court grant Defendant's motion and dismiss this action. R. & R.  
20 18, Doc. 72. Judge Ferraro found that Plaintiff Darjee did not have standing to bring her  
21 claims when this action was filed, and although Plaintiff Sanchez Haro had standing, her  
22 claims became moot once her full-scope benefits were restored.<sup>4</sup> *Id.* at 6–8.

23 Alternatively, Judge Ferraro recommended that the Complaint be dismissed  
24 because Plaintiffs failed to state a claim. *Id.* at 9. Regarding Count 1, Judge Ferraro  
25 agreed with Defendant and found that (1) the plain language of 42 U.S.C. § 1396a(a)(8)  
26 did not support a cause of action for benefit-renewal errors, and (2) Plaintiffs did not

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27  
28 <sup>4</sup> Sanchez Haro's full-scope benefits were restored on August 22, 2016,  
subsequent to the filing of the Complaint. *See* Doc. 33.

1 provide sufficient factual allegations linking Plaintiffs’ benefit reduction to an unlawful  
2 policy or practice. *Id.* at 13. Regarding Count 2, Judge Ferraro found that Darjee could  
3 not state a due process claim because she did not receive a benefit-reduction notice at all,  
4 and Sanchez Haro failed to state a claim because there are insufficient factual allegations  
5 explaining why the notice is insufficient. *Id.* at 16–17.

## 6 **II. Standing**

### 7 **A. Legal Principles**

8 “[A]ny person invoking the power of a federal court must demonstrate standing to  
9 do so. This requires the litigant to prove that he has suffered a concrete and particularized  
10 injury that is fairly traceable to the challenged conduct, and is likely to be redressed by a  
11 favorable judicial decision.” *Hollingsworth v. Perry*, 133 S. Ct. 2652, 2661 (2013) (citing  
12 *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992)). When evaluating whether  
13 a plaintiff has standing, courts look to the facts as they existed when the complaint was  
14 filed. *Slayman v. FedEx Ground Package Sys., Inc.*, 765 F.3d 1033, 1047 (9th Cir. 2014)  
15 (citing *Am. Civil Liberties Union of Nev. v. Lomax*, 471 F.3d 1010, 1015 (9th Cir. 2006)).

16 Standing relates to the Court’s subject matter jurisdiction. *White v. Lee*, 227 F.3d  
17 1214, 1242 (9th Cir. 2000). It is therefore proper to raise this issue in a motion to dismiss  
18 pursuant to Federal Rule of Civil Procedure 12(b)(1). *Id.* Depending on whether the  
19 attack on subject matter jurisdiction is “factual” or “facial,” courts may look beyond the  
20 allegations of the complaint in determining whether a plaintiff lacks standing. *Id.*

21 “A facial attack accepts the truth of the plaintiff’s allegations but asserts that they  
22 are insufficient on their face to invoke federal jurisdiction.” *NewGen, LLC v. Safe Cig,*  
23 *LLC*, 840 F.3d 606, 614 (9th Cir. 2016) (quoting *Leite v. Crane Co.*, 749 F.3d 1117, 1121  
24 (9th Cir. 2014)). “[A] facial attack is easily remedied by leave to amend jurisdictional  
25 allegations pursuant to 28 U.S.C. § 1653.” *Id.*

26 “By contrast, a factual attack contests the *truth* of the plaintiff’s factual  
27 allegations, usually by introducing evidence outside the pleadings.” *Id.* at 614 (emphasis  
28 in original). A factual attack imposes upon the plaintiff “an affirmative obligation to



1 support jurisdictional allegations with proof.” *Id.* Additionally, upon a factual attack,  
2 courts may consider “matters of public record without having to convert the motion into  
3 one for summary judgment” and “need not presume the truthfulness of the plaintiff’s  
4 allegations.” *White*, 227 F.3d at 1242 (citations omitted).

5 **B. Discussion**

6 **1. Plaintiff Darjee**

7 Defendant argued that Darjee lacks standing because, when the Complaint was  
8 filed, “restoration of the Darjees’ benefits was ‘imminent if not complete.’” Def.’s Mot.  
9 Dismiss 11 (quoting Compl. ¶ 59). Judge Ferraro accepted this argument and found that  
10 Darjee lacks standing for Count 1. R. & R. 7. Defendant’s argument is a facial attack on  
11 Darjee’s standing because it assumes the truthfulness of the Complaint’s allegations.

12 Plaintiffs objected to Judge Ferraro’s finding on two grounds. First, Plaintiffs  
13 argued they were not given the presumption of standing afforded those who are subjected  
14 to unlawful government action. Pls.’ Objs. 3, Doc. 77 (citing *L.A. Haven Hospice, Inc. v.*  
15 *Sebelius*, 638 F.3d 644, 655 (9th Cir. 2011)). Second, Plaintiffs argue that the  
16 Complaint’s allegations suffice to show Darjee has standing. *Id.* at 4–7.

17 The Supreme Court has stated:

18 When the suit is one challenging the legality of government action or  
19 inaction, the nature and extent of facts that must be averred (at the  
20 summary judgment stage) or proved (at the trial stage) in order to  
21 establish standing depends considerably upon whether the plaintiff is  
22 himself an object of the action (or forgone action) at issue. If he is,  
23 there is ordinarily little question that the action or inaction has  
caused him injury, and that a judgment preventing or requiring the  
action will redress it.

24 *Defenders of Wildlife*, 504 U.S. at 561–62. The Ninth Circuit described the foregoing  
25 passage as creating a “presumption” of standing for plaintiffs who “seek injunctive relief  
26 when [they are] the direct object of regulatory action challenged as unlawful[.]” *Sebelius*,  
27 638 F.3d at 655. Here, Darjee was subject to the governmental action challenged in her  
28 Complaint: Defendant’s allegedly unlawful policies or practices caused the improper

1 reduction of Darjee’s benefits on two occasions. Assuming the truthfulness of Plaintiffs’  
2 allegations, a favorable judgment would redress Darjee’s injury by requiring Defendant  
3 to comply with federal law, thereby preventing further reductions. This is sufficient to  
4 support Darjee’s claim of standing.

5 The Court is not convinced that Darjee lacks standing because Plaintiffs alleged  
6 that restoration of her benefits was imminent. It is true that a past injury by itself is  
7 generally insufficient to seek injunctive relief. *Steel Co. v. Citizens for a Better Env’t*, 523  
8 U.S. 83, 108 (1998) (holding that a generalized interest in deterrence is insufficient to  
9 confer standing). Plaintiffs who seek injunctive relief must allege a future injury that is  
10 “certainly impending”; allegations of a “possible” injury are insufficient. *Whitmore v.*  
11 *Arkansas*, 495 U.S. 149, 158 (1990). Here, Darjee fears that another improper reduction  
12 will occur. Compl. ¶ 70. Defendant allegedly conceded that some 3,500 immigrants had  
13 their benefits reduced, and errors allegedly continue despite Defendant’s assertion that  
14 the purported cause was corrected. *Id.* ¶¶ 40–41. Given that Darjee’s benefits were  
15 reduced twice within a single year, and the second reduction came months after  
16 Defendant acknowledged errors were occurring, Darjee has alleged a sufficient threat of  
17 impending injury. *See Doe v. U.S.*, 419 F.3d 1058, 1062 (9th Cir. 2005) (“[T]he court  
18 must construe the complaint in the light most favorable to plaintiff, taking all her  
19 allegations as true and drawing all reasonable inferences from the complaint in her  
20 favor.”).

21 Turning to Count 2, Judge Ferraro found that Darjee lacks standing to pursue the  
22 due process claim because she specifically pled that she did not receive a notice. R. & R.  
23 7. She thus could not have been injured by the notice. *Id.*

24 Plaintiffs’ due process claim is premised on the alleged substantive deficiency of  
25 the notices. Compl. ¶¶ 52–55; *see* Pls.’ Objs. 18 (“The heart of Plaintiffs’ due process  
26 claim is when Defendant reduced their benefits from full to emergency-only medical  
27 services, Defendant then sent a benefits notice that failed to provide adequate information  
28 for the reason for the action.”). Darjee did not receive a notice regarding the reduction of

1 her benefits. *Id.* ¶ 62. At first glance, it would seem incongruous to hold that Darjee lacks  
2 standing to pursue the due process claim when the notice would allegedly have been of  
3 no use to her anyway. This may seem especially unfair when one acknowledges that the  
4 absence of required notice is a violation of due process. *NewGen*, F.3d at 615 n.5 (“The  
5 essence of due process is the requirement of notice and an opportunity to respond.”  
6 (citing *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976))).

7 However, Plaintiffs chose to predicate their claim on the notices’ content. Darjee’s  
8 lack of exposure to that content necessarily precludes the existence of an injury from it.  
9 She thus lacks standing to pursue Count 2.<sup>5</sup>

## 10 **2. Plaintiff Sanchez Haro**

11 Judge Ferraro found that Sanchez Haro had standing to pursue both Counts when  
12 the Complaint was filed. R. & R. 7. Defendant did not object to this finding. *See* Doc. 75.  
13 After reviewing for clear error, *Joshua David Mellberg LLC v. Will*, 96 F. Supp. 3d 953,  
14 960 (D. Ariz. 2015), the Court agrees and accepts Judge Ferraro’s finding.

## 15 **III. Mootness**

### 16 **A. Legal Principles**

17 Like standing, mootness pertains to the Court’s subject matter jurisdiction and is  
18 properly raised in a Rule 12(b)(1) motion to dismiss. *White*, 227 F.3d at 1242. “To  
19 qualify as a case fit for federal-court adjudication, ‘an actual controversy must be extant  
20 at all stages of review, not merely at the time the complaint is filed.’” *Arizonans for*  
21 *Official English v. Arizona*, 520 U.S. 43, 67 (1997) (quoting *Preiser v. Newkirk*, 422 U.S.  
22 395, 401 (1975)). If the same personal interest required for standing does not continue  
23 throughout the action, the case is moot. *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs.*  
24 *(TOC), Inc.*, 528 U.S. 167, 189 (2000) (citing *Arizonans for Official English*, 520 U.S. at  
25 68 n.22).

26 . . . .

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27 <sup>5</sup> Because Darjee may be able to state a due process claim predicated on a  
28 theory of deprivation of any notice, her claim under Count 2 will be dismissed without  
prejudice.

1           **B. Discussion**

2                   **1. Plaintiff Darjee**

3           Judge Ferraro reasoned that the mootness doctrine was inapplicable to Darjee  
4 because she lacks standing. R. & R. 8 (citing *Friends of the Earth*, 528 U.S. at 191). The  
5 Court agrees with respect to Count 2. Because Darjee does not have standing to pursue  
6 Count 2, she cannot show an ongoing live controversy. *See Friends of the Earth*, 528  
7 U.S. at 191.

8           However, as discussed above, standing for injunctive relief requires a plaintiff to  
9 show a sufficient threat of future injury. *Whitmore*, 495 U.S. at 158. This Court’s finding  
10 that Darjee has standing to pursue injunctive relief on Count 1 necessarily means there is  
11 presently a live controversy. Accordingly, her claim under Count 1 is not moot.

12                   **2. Plaintiff Sanchez Haro**

13           Judge Ferraro found that Sanchez Haro’s claims were moot and did not fall under  
14 the “capable of repetition yet evading review” exception. R. & R. 8–9. Plaintiffs objected  
15 to these findings, arguing their claims were not moot, or, alternatively, fell within the  
16 aforementioned exception. Pls.’ Objs. 7–10.

17           The Court concludes that Sanchez Haro’s claims are not moot. Like Darjee,  
18 Sanchez Haro was allegedly injured by Defendant’s unlawful policies and practices.  
19 Although her benefits were reduced only once, she remains subject to the same risk of  
20 future reductions caused by the same policies and practices. Accordingly, a live  
21 controversy exists and her claim under Count 1 is not moot.

22           Turning to Count 2, Sanchez Haro alleges she was unable to understand from the  
23 notice why her benefits were reduced. Plaintiffs allege the boilerplate notices lack  
24 information required by statute. The notices are sent to all beneficiaries who are  
25 transferred from full-scope benefits to emergency benefits. At this point, it is reasonable  
26 to infer from the Complaint that Sanchez Haro, who is allegedly at risk of losing her  
27 benefits, is also at risk of receiving the notice again. Accordingly, Sanchez Haro’s claim  
28 under Count 2 is not moot.

1 **IV. Failure to State a Claim**

2 **A. Legal Standard**

3 The purpose of a motion to dismiss pursuant to Rule 12(b)(6) is to test the legal  
4 sufficiency of the complaint. *N. Star Int'l v. Ariz. Corp. Comm'n*, 720 F.2d 578, 581 (9th  
5 Cir. 1983). “Dismissal can be based on the lack of a cognizable legal theory or the  
6 absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica*  
7 *Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). A plaintiff is required to allege “enough  
8 facts to state a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*,  
9 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads  
10 factual content that allows the court to draw the reasonable inference that the defendant is  
11 liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

12 In determining whether a complaint states a claim on which relief may be granted,  
13 the court accepts as true the allegations in the complaint and construes the allegations in  
14 the light most favorable to the plaintiff. *Hishon v. King & Spalding*, 467 U.S. 69, 73  
15 (1984); *Love v. United States*, 915 F.2d 1242, 1245 (9th Cir. 1989). However, the court  
16 need not assume the truth of legal conclusions cast in the form of factual allegations.  
17 *United States ex rel. Chunie v. Ringrose*, 788 F.2d 638, 643 n.2 (9th Cir. 1986). While  
18 Rule 8(a) does not require detailed factual allegations, “it demands more than an  
19 unadorned, the defendant-unlawfully-harmed-me accusation.” *Iqbal*, 556 U.S. at 678. A  
20 pleading is insufficient if it offers mere “labels and conclusions” or “a formulaic  
21 recitation of the elements of a cause of action.” *Twombly*, 550 U.S. at 555; *see also Iqbal*,  
22 556 U.S. at 676 (“Threadbare recitals of the elements of a cause of action, supported by  
23 mere conclusory statements, do not suffice.”). Moreover, it is inappropriate to assume  
24 that the plaintiff “can prove facts which it has not alleged or that the defendants have  
25 violated the . . . laws in ways that have not been alleged.” *Associated Gen. Contractors of*  
26 *Cal., Inc. v. Cal. State Council of Carpenters*, 459 U.S. 519, 526 (1983).

27 In ruling on a motion to dismiss brought pursuant to Rule 12(b)(6), the court is  
28 permitted to consider material which is properly submitted as part of the complaint,

1 documents that are not physically attached to the complaint if their authenticity is not  
2 contested and the plaintiff's complaint necessarily relies on them, and matters of public  
3 record. *Lee v. City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001).

4 **B. Count 1 – Violation of 42 U.S.C. § 1396a(a)(8)**

5 **1. Plaintiffs' Claim is Cognizable Under § 1396a(a)(8)**

6 Section 1396a(a)(8) provides that state Medicaid plans must “provide that all  
7 individuals wishing to make application for medical assistance under the plan shall have  
8 opportunity to do so, and that such assistance shall be furnished with reasonable  
9 promptness to all eligible individuals[.]” After analyzing the cases cited by both parties,  
10 none of which he found on point, Judge Ferraro found that Plaintiffs’ claim is not  
11 cognizable under the plain language of 42 U.S.C. § 1396a(a)(8). R. & R. 13. Judge  
12 Ferraro agreed with Defendant and found that, because § 1396a(a)(8) was enacted to  
13 prevent waiting lists, it applies only to initial applications for Medicaid and not to  
14 subsequent renewal determinations. *Id.* (citing *Sobky v. Smoley*, 855 F. Supp. 1123 (D.  
15 Ariz. 1994)). Plaintiffs received full benefits for years and continued to receive benefits  
16 after the improper reduction, albeit in a reduced scope; thus, § 1396a(a)(8) does not apply  
17 to Plaintiffs’ claims. *Id.*

18 Plaintiffs objected to this finding. Pls.’ Objs. 10–18. They argue that cases  
19 examining § 1396a(a)(8) establish that the provision extends beyond initial applications  
20 and covers prompt access to medical care in general. *Id.* at 13 (citing *O.B. v. Norwood*,  
21 838 F.3d 837 (7th Cir. 2016); *Rosie D. v. Romney*, 410 F. Supp. 2d 18 (D. Mass. 2006)).  
22 Contrary to Judge Ferraro’s finding, Plaintiffs argue, a violation of the “reasonable  
23 promptness” provision occurs where the state fails to promptly provide *all* medical  
24 services for which the beneficiary is eligible. *Id.* Accordingly, the prompt provision of  
25 only *some* services—here, emergency benefits instead of full-scope benefits—does not  
26 save the state from violating § 1396a(a)(8). *Id.*

27 At the outset, the Court does not agree with Defendant that § 1396a(a)(8) “[o]n its  
28 face . . . applies [only] to initial applications, not renewals.” Def.’s Mot. Dismiss 4.

1 Nothing in the plain language limits the “reasonable promptness” requirement to the  
2 initial provision of medical assistance. Moreover, § 1396a(a)(8) must be read in  
3 conjunction with other Medicaid statutes and implementing regulations. *U.S. v. McIntosh*,  
4 833 F.3d 1163, 1176 (9th Cir. 2016) (“[T]he words of a statute must be read in their  
5 context and with a view to their place in the overall statutory scheme.” (citation and  
6 quotation marks omitted)). “Medical assistance” is defined as including payment for  
7 services and the services themselves. 42 U.S.C. § 1396d(a). Medical assistance must be  
8 “furnished” to eligible persons, which means both that services must be initially provided  
9 without delay—which Defendant asserts is all it means—and be provided continually  
10 until a person is found ineligible. 42 C.F.R. § 435.930(a)–(b). Therefore, “furnishing”  
11 “medical assistance” with reasonable promptness includes the prompt provision of  
12 medical services even *after* the initial eligibility determination and commencement of  
13 benefits.

14 Defendant argues that he provides medical assistance promptly, and the Complaint  
15 fails because “it alleges a failure to make determinations *correctly*, rather than a failure to  
16 complete them *promptly*.” Def.’s Mot. Dismiss 4 (emphasis in original). First, Defendant  
17 ignores the obvious inference arising from an incorrect eligibility determination:  
18 Defendant cannot promptly provide the services for which a beneficiary is eligible if he  
19 incorrectly determines the beneficiary is not eligible for those services. Second,  
20 Defendant provides no direct citation for his argument. This is not surprising; the  
21 assertion that inaccuracy is acceptable, so long as it is prompt, is an odd one.

22 Defendant relies on the *Sobky* court’s discussion regarding an analogous  
23 “reasonable promptness” provision contained elsewhere in the Social Security Act. 855  
24 F. Supp. at 1148 (citing *Jefferson v. Hackney*, 406 U.S. 535, 545 (1972)). However, while  
25 *Sobky* and *Jefferson* acknowledge that the “reasonable promptness” provision prohibits  
26 waiting lists, neither case holds that it exists *only* to prohibit waiting lists. Indeed, the  
27 Supreme Court’s explanation of the Social Security Act’s requirement indicates the  
28 purpose is broader: “The statute was intended to prevent the States from denying benefits

1 even temporarily, to a person who has been found fully qualified for aid.” *Jefferson*, 406  
2 U.S. at 544–45.

3 Further, case law supports Plaintiffs’ assertion that § 1396a(a)(8) extends beyond  
4 the initial processing of Medicaid applications. In *Norwood*, the state determined that the  
5 plaintiff, a minor who was already receiving Medicaid benefits, was eligible for  
6 subsidized home-nursing care. 838 F.3d at 839. However, the state offered no assistance  
7 to the plaintiff’s parents in finding nurses, which caused the plaintiff to remain in the  
8 hospital for almost a year before being sent home. *Id.* at 840. Both the district and circuit  
9 courts found a likelihood that plaintiff would prevail on his claim that the state failed to  
10 arrange, with reasonable promptness, the home nursing to which he was entitled. *Id.* at  
11 840–42.

12 The Fourth Circuit addressed a similar issue in an unpublished opinion. *Doe v.*  
13 *Kidd*, 419 Fed. Appx. 411 (4th Cir. 2011). *Kidd* involved a Medicaid waiver program  
14 which permitted the state to waive the requirement that persons with mental retardation  
15 live in an institution in order to receive Medicaid. *Id.* at 413. As part of the waiver  
16 program, the state determined which among three environments, each with varying  
17 degrees of restrictiveness, was most appropriate for the applicant. *Id.* at 351–53. The  
18 plaintiff, who was already receiving Medicaid benefits, applied and was found eligible  
19 for the program. *Id.* at 414. The state determined that a less restrictive environment was  
20 appropriate for plaintiff. *Id.* However, she spent multiple years in a more restrictive  
21 facility while awaiting placement in a less restrictive facility. *Id.*

22 The Fourth Circuit held as a matter of law that the state violated the Medicaid Act  
23 by failing to place plaintiff in an appropriate facility in a reasonably prompt manner. *Id.*  
24 at 415. The court disagreed that the state’s subsidization of plaintiff’s stay in the more  
25 restrictive facility precluded a violation of § 1396a(a)(8) because, as the state argued,  
26 plaintiff was being provided with *some* service in a prompt manner, albeit not the service  
27 for which she was eligible. *Id.* at 417. In other words, the state’s provision of a service  
28 other than the one for which plaintiff was eligible was “the same as a failure to provide



1 any services.” *Id.*

2 Although not binding, the foregoing authority persuades the Court that violations  
3 of the “reasonable promptness” provision are not limited to delays in processing initial  
4 Medicaid applications. Further, the fact Defendant provided *some* level of benefits (i.e.,  
5 emergency benefits) does not by itself preclude a violation of § 1396a(a)(8), since  
6 Plaintiffs allegedly were eligible at all times for full benefits. *See Kidd*, 419 Fed. Appx. at  
7 417. Plaintiffs’ claim for delay in medical services is thus cognizable under §  
8 1396a(a)(8).

## 9 2. Plaintiffs State a Claim

10 Judge Ferraro alternatively found that, even if Plaintiffs’ claims are cognizable  
11 under § 1396a(a)(8), Plaintiffs failed to sufficiently allege facts demonstrating they are  
12 entitled to relief. R. & R. 14. First, Plaintiffs alleged the improper reductions “were”  
13 caused by a computer programming error, the use of “were” indicating that the error was  
14 fixed and is not continuing. *Id.* Second, there are no factual allegations linking the two  
15 named Plaintiffs’ injuries to any of Defendant’s other alleged unlawful policies or  
16 practices. *Id.* at 15.

17 Plaintiffs argue they were not given the benefit of all favorable inferences. Pls.’  
18 Objs. 15–18. First, according to Plaintiffs, their use of the term “were” was taken out of  
19 context, and this Court should infer that the computer errors continue because Plaintiffs  
20 did not allege the errors were fixed. *Id.* at 15–16. Second, Plaintiffs allege they provide  
21 sufficient factual allegations to plausibly allege injury from Defendant’s conduct. *Id.* at  
22 16–17. Finally, Plaintiffs argue that, if their allegations are deficient, they must be  
23 allowed leave to amend. *Id.* at 17–18.

24 Viewing the allegations in the light most favorable to Plaintiffs, the Court does not  
25 find that Plaintiffs’ use of “were” is an admission that the computer error was fixed. In  
26 late 2015, Defendant informed Plaintiffs’ counsel that a computer error caused the  
27 eligibility problems. Compl. ¶ 40 (“AHCCCS admitted the eligibility errors were caused  
28 by its computer systems”). In Paragraph 40, Plaintiffs summarized Defendant’s

1 allegations without admitting their truthfulness. Beyond Paragraph 40, nothing in the  
2 Complaint indicates that Plaintiffs accept Defendant’s claim that the error has been  
3 fixed.<sup>6</sup>

4 To the contrary, the Complaint may plausibly be read as alleging that Plaintiffs’  
5 injuries were caused in part by a continuing computer error. In the very next paragraph,  
6 Plaintiffs allege that “[t]he improper reductions . . . continue.”<sup>7</sup> *Id.* ¶ 41. This is supported  
7 by the allegations that Darjee and Sanchez Haro’s benefits were improperly reduced in  
8 2016 – months after Defendant conceded a computer error contributed to the reductions.  
9 *Id.* ¶¶ 41, 59, 72. Further, Plaintiffs allege that the beneficiaries whose benefits were  
10 improperly reduced under the HEAPlus computer system were properly found eligible  
11 for food stamps under the AZTECS computer system, which may support the existence  
12 of a continuing problem in the former system. *Id.* ¶¶ 42–44.

13 Under a liberal construction, the foregoing allegations reasonably support an  
14 inference that the error has not been fixed and did contribute to Plaintiffs’ alleged  
15 reductions. Those reductions in benefits allegedly prevented Plaintiffs from accessing the  
16 medical care to which they were entitled, in violation of § 1396a(a)(8)’s “reasonable  
17 promptness” requirement. Therefore, Plaintiffs have sufficiently stated at least one  
18 ground to support their claims under Count 1, and the Court need not address whether  
19 Plaintiffs sufficiently alleged injury caused by Defendant’s failure to adhere to the *ex*  
20 *parte* renewal process.

21 **C. Count 2 – Violation of Due Process**

22 Judge Ferraro found that the Complaint lacks sufficient factual information to  
23 support Plaintiffs’ due process claim. R. & R. 16–17. He found that, while the Complaint  
24 detailed the various regulations dictating the notices’ content, Plaintiffs failed to allege

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25  
26 <sup>6</sup> The record indicates Plaintiffs do not accept Defendant’s claim. *See* Pls.’  
27 Objs. 15–16.

28 <sup>7</sup> Defendants argue the Complaint’s allegations are insufficient because  
Plaintiffs do not specifically allege that the computer error continues. Def.’s Resp. to  
Pls.’ Objs. 4, Doc. 78. The Court does not read the Complaint so narrowly.

1 that the notice received by Sanchez Haro lacked that information. *Id.* Further, Judge  
2 Ferraro dismissed as conclusory the allegations that the notice lacked a “meaningful  
3 explanation” regarding the reduction in benefits, and that certain language was  
4 “confusing.” *Id.* Plaintiffs objected to these findings, arguing that Judge Ferraro failed to  
5 consider all relevant factual allegations and draw all reasonable inferences in Plaintiffs’  
6 favor. Pls.’ Objs. 18.

7 States are prohibited from terminating a Medicaid recipient’s benefits without first  
8 providing adequate notice and a hearing. *See Goldberg v. Kelly*, 397 U.S. 254 (1970);  
9 *Perry v. Chen*, 985 F. Supp. 1197 (D. Ariz. 1996); 42 C.F.R. § 431.210. The Complaint  
10 details what information must be contained within the notices. Compl. ¶¶ 33–38 (citing  
11 various statutes and regulations). Among the various requirements is a “clear statement of  
12 the specific reasons supporting the intended action[.]” 42 C.F.R. § 431.210(b).

13 Judge Ferraro correctly recognized that Plaintiffs do not specifically allege that the  
14 disputed notices lack the required information. However, a liberal construction of the  
15 Complaint reasonably supports an inference that at least some of the required information  
16 is missing. Plaintiffs allege the notices provide that the beneficiary’s “full medical  
17 services” will “stop” and “Federal Emergency Services” will “start” because “your  
18 immigration status does not let you get full medical services.” Compl. ¶ 53. Sanchez  
19 Haro received this notice and did not understand why her benefits were changed. *Id.* ¶¶  
20 75–76. She had to call and ask someone why her benefits changed. *Id.* ¶ 76.

21 The foregoing allegations support an inference that “your immigration status does  
22 not let you get full medical services” is not a “clear statement of the specific reason” for  
23 reducing Sanchez Haro’s benefits. 42 C.F.R. § 431.210(b). As Plaintiffs point out, the  
24 proffered reason could have a number of meanings, e.g., Sanchez Haro’s immigration  
25 status changed unbeknownst to her, or Defendant changed which immigration statuses  
26 are eligible for full benefits. Sanchez Haro’s inability to understand the notice’s reason  
27 for the reduction supports an inference that the notice is “confusing” and is not in  
28

1 compliance with federal regulations and due process.<sup>8</sup>

2 A motion to dismiss may not properly be granted if the plaintiff states at least one  
3 cognizable ground for relief. *Hartford Fire Ins. Co. v. California*, 509 U.S. 764, 811  
4 (1993) (courts should only dismiss a complaint where “it appears beyond doubt that the  
5 plaintiff can prove no set of facts in support of his claim” (citations and internal quotation  
6 marks omitted)). Plaintiffs have stated at least one ground for both Counts. The motion  
7 must therefore be denied.<sup>9</sup>

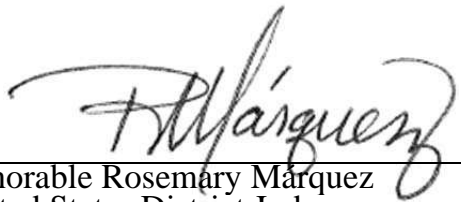
8 Accordingly,

9 **IT IS HEREBY ORDERED** that Judge Ferraro’s Report and Recommendation  
10 (Doc. 72) is **accepted and adopted in part** and **rejected in part**.

11 **IT IS FURTHER ORDERED** that Defendant’s Motion to Dismiss (Doc. 35) is  
12 **granted in part** and **denied in part** as follows:

- 13 1. Plaintiff Aita Darjee’s claim under Count 2 is dismissed without prejudice.
- 14 2. Defendant’s Motion is otherwise denied.

15 Dated this 31st day of March, 2017.

16  
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19 \_\_\_\_\_  
Honorable Rosemary Marquez  
United States District Judge

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25 <sup>8</sup> The Court is not convinced that a notice is sufficient if it causes the  
26 recipient to take action. At this juncture, the allegation that Sanchez Haro called the  
27 phone number on the notice for an explanation is equally supportive of an inference that  
the notices are legally defective.

28 <sup>9</sup> The pending motions to strike (Docs. 59, 62, 65), motion for preliminary  
injunction (Doc. 15), and motion for class certification (Doc. 5) will be addressed in a  
separate Order.