IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
Civil Case No.: 5:17-cv-00581-FL

MARCIA ELENA QUINTEROS HAWKINS, ALICIA FRANKLIN, VANESSA LACHOWSKI, and KYANNA SHIPP, on behalf of themselves and all others similarly situated, Plaintiffs, v. MANDY COHEN, in her official capacity as Secretary of the North Carolina Department of Health and Human Services, Defendant.	**MEMORANDUM OF LAW IN SUPPORT OF MOTION TO RECONSIDER AND REVISE INTERLOCUTORY ORDER**

INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 54(b), Plaintiffs have moved the Court to reconsider part of its ruling and to revise its Order entered on August 9, 2018 (ECF No. 55) granting in part and denying in part Defendant's motion to dismiss and Plaintiffs' motions for class certification and for a preliminary injunction. An interlocutory order is subject to revision at any time prior to final judgment in the case. Fed. R. Civ. P. 54(b); *Fayetteville Investors v. Commercial Builders, Inc*., 936 F.2d 1462 (4th Cir. 1991).

ARGUMENT

Plaintiffs respectfully request the Court to reconsider or revise three different parts of its ruling because (1) dismissal of Plaintiffs' claims under the Americans with Disabilities Act is inconsistent with controlling legal authority and the facts alleged; (2) the Court's class definitions do not accurately reflect Plaintiffs' claims and allegations or include all persons needing relief; and (3) the language of the preliminary injunctions should be modified to achieve the Court's

purposes without requiring Defendant to violate federal regulations, to avoid conflicts about what is required of Defendant, and to be consistent with the proposed changes to the class definitions.

I. THE COURT SHOULD RECONSIDER ITS DISMISSAL OF THE ADA CLAIMS.

In its analysis of Plaintiffs' claims under the Americans with Disabilities Act (ADA), the Court suggested that Plaintiffs must allege that disability discrimination was the Defendant's explicit motive. *See Hawkins*, slip op. at 15 (DE 55). Because the Court's requirement for discriminatory intent is inconsistent with controlling legal authority and because the Court did not consider relevant allegations in the Amended Complaint, Plaintiffs respectfully ask the Court to reconsider this part of its ruling.[1]

The Court relied on a 2005 Fourth Circuit case, *Constantine v. Rectors & Visitors of George Mason Univ*., to dismiss the Plaintiffs' ADA claims, specifically holding that Plaintiffs failed to allege that discrimination on the basis of disability "played a motivating role in the adverse action." 411 F.3d 474, 498 n. 17 (4th Cir. 2005) (citation omitted); *Hawkins*, slip op. at 15. Plaintiffs ask the Court to reconsider its interpretation of the phrase "motivating role" because that interpretation requires Plaintiffs to establish that the Defendant acted intentionally, with some sort of distinct personal animus towards Plaintiffs' disabilities. *Hawkins,* slip op. at 15 ("Plaintiffs' allegations are missing the key element of disability 'motivating' defendant in the denial of benefits, e.g., that the DSS worker was motivated by Franklin's disability in causing the denial of her Medicaid benefits, and that the same motive can be imputed to defendant."); *Id*. at 16 ("Where defendant allegedly considered only age criteria in terminating Hawkins and Shipp, and defendant

[1] The Secretary did not file a reply brief and did not dispute the inferences drawn from the allegations in the Plaintiff's brief. *See* Pls.' Resp. at 7-10 (discussing ADA-related allegations and inferences as to Ms. Franklin, Ms. Quinteros Hawkins, and Ms. Shipp). The plaintiffs incorporate those allegations and inferences by reference here.

expressly did not consider other potential qualifying factors, such as disability, … that decision is not motivated by, or made 'by reason of,' such disability that it constitutes a violation of the ADA.").

In a more recent case, the Fourth Circuit held that that discrimination under the ADA does not require intentional discrimination or personal animus. *National Federation of the Blind v. Lamone* found that Maryland's absentee ballot system, which required a hand-marked ballot, violated the ADA because it discriminated against the blind on the basis of their disability. 813 F.3d 494, 505-07 (4th Cir. 2016). While citing *Constantine* in the opinion, *id.* at 503-04, the Court of Appeals did not apply the stringent standard used in this case. Rather, the court stated that, when enacting the ADA, "Congress explicitly found that discrimination was *not limited to 'outright intentional exclusion,*' but was also to be found in 'the failure to make modifications to existing facilities and practices.'" *Id.* at 505 (citing *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 675 (2001)) (emphasis added).

Moreover, *Constantine* itself did not apply the standard used by the Court here. The *Constantine* ADA claims survived the defendant's Rule12(b)(6) motion based on allegations that did not allege any intentional discrimination or animus. *See* 411 F.3d at 499 (plaintiff alleged that defendants "excluded her from meaningful participation" in a course because she was unable to take an exam because of her disability, and the defendants initially refused, and then later undermined, her efforts to re-take the exam).[2] The plaintiff in *Constantine*, like Plaintiffs here, made no allegation that anyone "was motivated by [plaintiff's] disability in causing" the harm alleged—yet the Fourth Circuit held that the claim survived a motion to dismiss. Order at 15.[3]

[2] As discussed below, the Complaint here makes similar claims.

[3] This application of the "motivating role" requirement by the *Constantine* Court is not surprising given that footnote 17 is making the point that the causation standard under the ADA is significantly less demanding than the Rehabilitation Act, which requires a plaintiff to prove that the defendants'

In light of the cases described above, the Court's contrast between the phrases "contributed and played a substantial role" versus "motivating role" is incorrect. *Hawkins*, slip op. at 15. In these circumstances, those terms are synonymous. *See* Plfs' Resp. to Mot. to Dismiss at 7. The "motivating factor" language was introduced by the Fourth Circuit in *Baird v. Rose*. 192 F.3d 462, 470 (4th Cir. 1999). *Baird* does not elaborate on the definition of motivating factor, but does cite a series of ADA cases in other circuits, from which we can infer that the Fourth Circuit intended "motivating role" to include a broader range of situations than described in the Court's Order. The first case cited, *Foster v. Arthur Andersen, LLP*, 168 F.3d 1029 (7th Cir. 1999), explains that a motivating factor "must be a substantial factor." *Id.* at 1033. After citing a case noting that the "words 'substantial' and 'motivating' are reasonably interchangeable or at least have considerable overlap," *Foster* holds that "[t]o be a motivating factor, then, the forbidden criterion must be a significant reason for the employer's action. It must make such a difference in the outcome of events that it can be fairly characterized as the catalyst." *Id.* at 1033-34. Other cases cited in *Baird* describe the motivating role standard as being met when the disability "played some part" in the adverse action, *Doane v. City of Omaha*, 115 F.3d 624, 629 (8th Cir. 1997), or the disability "triggered, in whole or in part," the adverse action, *Katz v. City Metal Co.*, 87 F.3d 26, 33 (1st Cir. 1996).

In light of this settled law, the Court incorrectly dismissed Ms. Franklin's ADA claim. Her claim does not require an allegation that any individual DSS worker or state agency official "was motivated by Franklin's disability." *Hawkins*, slip op. at 15. Rather, consistent with the appellate

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discriminatory conduct was "solely by reason" of the plaintiff's disability. *See e.g., Jarboe v. Maryland Dept. of Public Safety and Correctional Services*, No. ELH–12–572, 2013 WL 1010357 at *3 (D. Md. Mar. 13, 2013) (denying motion to dismiss plaintiffs' ADA claim based on failure to provide interpreter services, citing *Constantine* as holding that, under ADA Title II, a plaintiff need only prove discrimination "by reason of" disability, 42 U.S.C. § 12132, and distinguishing ADA from Rehabilitation Act claim which requires a showing of discrimination *"solely* by reason of" disability. 29 U.S.C. § 794(a)).

cases, Ms. Franklin alleged that DSS was aware of her intellectual disability, Am. Corrected Compl. ("Compl.") ¶¶ 100, 104, but nonetheless repeatedly sent her forms written in complex language she could not understand. *Id.* at ¶¶ 102-03, 107. Consistent with *National Federation of the Blind*, Ms. Franklin also alleged that DSS did not accommodate her intellectual disability in several other ways, including (1) failure to allow her more time to return requested information or the opportunity to request reopening of her case, *Id.* at ¶¶ 103, 109; (2) failure to provide assistance to her with getting the information needed, *Id.* at ¶¶ 104, 106; (3) failure to offer a different means of communication, *Id.* at ¶ 105; and (4) failure to verbally explain her rights or responsibilities to her in a manner she could understand. *Id.* at ¶¶ 104, 106, 110; *see also* Pls.' Mem. at 7-8. As a result, Ms. Hawkins' Medicaid was terminated although she remained eligible. *Id.* at ¶¶ 107.

Moreover, the discrimination against Ms. Franklin is specifically alleged to be systemic, part of a pattern and practice of discrimination against persons with disabilities demonstrated by Defendant's procedures, forms, and instructions to county DSS staff. Compl. ¶¶ 1, 14, 76, 146, 147. These alleged systemic practices include (1) standard notice forms that are not written in a manner understandable to beneficiaries with cognitive impairments, *Id.* at 33, 71; (2) no procedure for beneficiaries to elect to receive either termination notices or requests for information via electronic means, *Id.* at ¶¶ 27, 35, 74, 76c; (3) failure to include on any Medicaid notices the ability to obtain reopening of the termination by providing the missing information, *Id.* at ¶¶ 27, 75; (4) failure to provide reasonable access by telephone to the beneficiary's caseworker, *Id.* at ¶¶ 34, 76b; (5) failure to use a pre-populated renewal form for persons with disabilities while doing so for persons receiving Medicaid in non-disability categories, *Id.* at ¶¶ 36, 76d; and (6) failure to allow disabled persons the same 30 days to provide requested information that is allowed for persons receiving Medicaid in non-disability categories, *Id.* at ¶¶ 36, 76h. These forms and procedures are

alleged to be particularly harmful to persons with disabilities. Compl. ¶ 76. These allegations describing the Defendant's "failure[s] to make modifications to existing facilities and practices." *Nat'l Fed. of the Blind*, 813 F.3d at 505, should have been sufficient to withstand the Defendant's Rule 12(b)(6) motion.

The dismissal of the ADA claims of Ms. Quinteros Hawkins was similarly incorrect. The Order states that because the NCFAST system "'ignores by design' their disabilities," the Secretary "did not consider" Ms. Quinteros Hawkins' disability when terminating her Medicaid, and therefore her termination was "not motivated by, or made 'by reason of,' such disability." *Hawkins*, slip op. at 16. As stated above, this reasoning misapplies Fourth Circuit case law regarding the "motivating role" standard. *See National Federation of the Blind*, 813 F.3d at 505-07 (stating that "the failure to make modifications to existing facilities and practices" could constitute ADA discrimination).

Moreover, the Court's analysis of the Hawkins ADA claims misreads Plaintiffs' allegations. The Amended Complaint alleges that DHHS's written instructions to county DSS staff--not its computer system, NCFAST--are causing Plaintiff Hawkins and other individuals with disabilities to be terminated from Medicaid coverage because the instructions prohibit DSS staff from considering beneficiaries' alleged disabilities before terminating them from Medicaid that was approved in a category not requiring proof of disability. Compl. ¶¶ 67-69. The Court correctly stated that Ms. Hawkins was terminated automatically by NCFAST. *Hawkins*, slip op. at 15. After that termination, however, her Medicaid was reinstated and then terminated a second time due to this challenged written policy. Compl. ¶¶ 90-91. Her second termination thus was not an automatic termination by NCFAST, but rather caused by Defendant's express written instructions to the DSS worker to ignore her disability in redetermining her Medicaid eligibility. Compl. ¶¶ 67-

69, 90-91. These written instructions, which demonstrate on their face Defendant's intent to ignore alleged disabilities in this circumstance, directly resulted in the termination of Medicaid for Plaintiff Hawkins. *Id.* It is a reasonable inference from these allegations that Defendant knew when this written policy was issued that it would single out persons with disabilities for termination of Medicaid without considering their eligibility under all possible categories. Thus, the fact that the DHHS written instructions "ignore[] by design" the disabilities of the Plaintiffs does not allow the Defendant to escape liability; rather, it demonstrates that Plaintiff's disabilities are a contributing or "motivating" factor in their Medicaid terminations.

The Fourth Circuit recently emphasized the stance courts should take when reviewing allegations of discrimination at the Rule 12(b)(6) stage. *Woods v. City of Greensboro,* 855 F.3d 639, 646-53 (4th Cir. 2017). *Woods* involved race discrimination, but its guidance is applicable here. The Court of Appeals cautioned, "[D]iscrimination claims are particularly vulnerable to premature dismissal because civil rights plaintiffs often plead facts that are consistent with both legal and illegal behavior, and civil rights cases are more likely to suffer from information-asymmetry, pre-discovery." *Woods*, 855 F.3d at 652. "There is thus a real risk that legitimate discrimination claims … will be dismissed should a judge substitute his or her view of the likely reason for a particular action in place of the controlling plausibility standard." *Id.* In reversing the district court's dismissal, the Fourth Circuit highlighted the risk of dismissing a claim "without the benefit of a developed record" when that claim makes "numerous factual allegations beyond conclusory recitals of law." *Id.* at 652.

The Plaintiffs here merely ask the Court to allow them to proceed with the case and conduct discovery of DHHS to give them the opportunity to prove their case. Thus, they are asking the Court to reconsider its dismissal the ADA claims and to deny the motion to dismiss those claims.

II. THE CLASS DEFINITION SHOULD BE MODIFIED.

As the Court noted in its decision, the class definition may be changed at any time. *Hawkins*, slip op. at 25-26, 32. Plaintiffs believe that changes are needed to both class definitions to accurately reflect Plaintiffs' claims for relief and the facts of the case.

A. Minor Changes

Plaintiffs propose that the class definitions be modified in four ways, as clearly marked in Plaintiffs' motion. All but one of the changes are minor. The words "was, is, or will be" are proposed throughout to be consistent and to reflect that Plaintiffs seek relief for future Medicaid beneficiaries. Mot. Recons. and Revise Interloc. Order ¶¶ C, D [*hereinafter* Mot. to Recons.]; *see* Am. Compl. ¶ 12 (ECF No. 9). Plaintiffs' proposed addition of the language in subsection **(3)** of Class One clarifies that Plaintiffs challenge Defendant's failure to consider eligibility based on disability both before terminating Medicaid and at hearings challenging the terminations. Mot. to Recons. ¶ C; *see* Am. Compl. ¶¶ 67-69, 93, 141-42, 152-53; Pls.' Mem. Supp. Prelim. Inj. at 13-21 (ECF No. 49). The proposed addition to the Class Two definition of the words "making an individualized determination of continued Medicaid eligibility under all Medicaid categories and then" is to clarify that Plaintiffs challenge not only that automatic terminations of Medicaid by NC FAST are made without notice, but also that they occur without a redetermination of eligibility. Mot. to Recons. ¶ D; *see* Am. Compl. ¶¶ 25, 57, 141; Pls.' Mem. Supp. Prelim. Inj. at 11-12.

B. Class One Should Include Those Automatically Terminated by NC FAST.

Plaintiffs request that Class One be modified to add the words "**all Medicaid categories, including**" and the following language: **(2) without sending the beneficiary at least 10-day prior written notice of the termination of Medicaid that describes the specific reasons for the termination, the specific regulation supporting the termination, and the right to a pre-**

termination hearing. Mot. to Recons. ¶ C. These changes are proposed because Plaintiffs have specifically pled that two named Plaintiffs (Hawkins and Shipp) and thousands of class members were receiving Medicaid *in a non-disability category*, and then lost Medicaid without notice due to automatic termination by NC FAST without any redetermination of eligibility under *any* category, including *non-disability categories*. *See* Am. Compl. ¶¶ 25-26, 46-66, 85, 87, 90, 95, 137-38.[4] For example, Plaintiff Kyanna Shipp was terminated automatically by the computer system with no determination of whether she was still eligible under the *non-disability category* of Medicaid for Families (MAF) for medically needy children aged 19 or 20. Am. Compl. ¶¶ 137-38, Allison Decl. Ex. 5 (ECF No. 39-5); Sea Decl. Ex. 24 at 22 (ECF. No. 24-24); *see* 42 C.F.R. § 435.308. Class member Dequavius Bowman lost Medicaid due to an automatic termination even though he remained eligible in the MAF category. Hardee Decl. Ex. 1 (ECF No. 42-1). Class member Tarren Turrubiates and her children lost Medicaid due to automatic terminations by NC FAST on three different occasions even though they remained eligible in *non-disability* categories. Turrubiates Decl. ¶¶ 4, 7, 9, Exs. 1-3 (ECF No. 48).

Plaintiffs' claims for relief under the Medicaid Act and due process based on these uncontested facts are not limited to persons in non-disability categories who remained eligible based on a disability. Am. Compl. ¶¶ 141-42, 152-53. As the court noted, Defendant does not dispute its duty before terminating Medicaid to consider all categories of eligibility, not merely categories based on disability. *Hawkins*, slip op. at 35. Defendant's own reports show that automatic terminations by NC FAST with no redetermination of eligibility under *any* Medicaid

[4] The language in proposed subsection **(2)** of Class One is also needed to reflect Plaintiffs' allegations and proof that when notice of termination from a non-disability category is sent, it contains no information regarding Defendant's failure to consider an alleged disability or of the right to raise the issue of disability on appeal. *See* Am. Compl. ¶¶ 69, 93, 142, 152-53; Pls.' Mem. Supp. Prelim. Inj. at 17-19.

category are much more numerous in non-disability categories than in disability categories. *See* Pls.' Mem. Supp. Prelim. Inj. at 7-9. Plaintiffs also alleged and proved, contrary to the Court's assumption, *Hawkins*, slip op. at 30, that *all* Medicaid beneficiaries must have their eligibility timely redetermined at least once every year in order to avoid an automatic termination without notice. Am. Compl. ¶¶ 29, 52, 57-61; 42 C.F.R. § 435.916(a)(1), (b), (d); Dec. 21, 2017 Sea Decl. Exs. 3-16 (ECF Nos. 24-3-24-16); Feb. 9, 2018 Sea Decl. Exs. 3-6, 11-13 (ECF Nos. 38-3-38-6, 38-11-38-13).

This proposed change will not affect the commonality of Class One nor the ability to provide a unified remedy common to all class members. *Hawkins*, slip op. at 28. The factual allegations and legal claims are the same for all members of Class One: all lost Medicaid in a non-disability category due to Defendant's failure to redetermine eligibility under all Medicaid categories and then send adequate written notice prior to termination. The remedy sought is also the same for all members of Class One: that the Court order Defendant to redetermine eligibility under all categories and then send timely adequate notice before terminating Medicaid in a non-disability category. The facts alleged and remedy requested thus satisfy the "one stroke" requirement. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011).

While the Court is correct that NC FAST was programmed to prevent automatic terminations in most non-disability categories, *Hawkins*, slip op. at 31, that programming was removed in 2015. *See* Pls.' Mem. Supp. Prelim. Inj. at 7-9. Because this distinction between NC FAST programming for disability and non-disability categories ended over three years ago, the Court's expressed concern about divergent remedies should be minimal. *Hawkins*, slip op. at 31. The Court also expressed concern about the possibility raised by Defendant that some class members may no longer need relief. *Id.* This concern, however, may be easily addressed in the

Court's final order by requiring class members to respond to a notice verifying their need for reinstatement. Regardless, class members who have regained their Medicaid coverage in non-disability categories require protection from future automatic terminations.

The Court also expressed doubt that persons terminated from a non-disability category based on age face a recurring risk of automatic termination. *Id.* at 30. Plaintiffs, however, seek reinstatement of Medicaid benefits to persons who have been automatically terminated based on age *in the past*, after which their eligibility under all categories would be considered and advance notice of the right to appeal the termination would be sent to them, relief which would greatly benefit Plaintiffs Hawkins and Shipp and thousands of others. Am. Compl. IX ¶ 3. Moreover, the class as defined in Plaintiffs' motion includes thousands of persons who are at risk of automatic termination based on age *in the future*. These persons certainly need relief. For these reasons, Plaintiffs request that the class definitions be modified.

III. THE LANGUAGE OF THE INJUNCTIONS SHOULD BE MODIFIED.

In its Order, the Court invited the parties to propose alternate language for the preliminary injunctions being issued. *Hawkins*, slip op. at 45-46. Plaintiffs request several related changes to the Court's language.

A. Class One Injunction:

Plaintiffs request to modify subsection iv. of the Class One injunction to replace the words "review of" with "decision on." Mot. to Recons. ¶ E(iv). This change would clarify that, prior to termination, Defendant must make an *initial* decision on a timely-submitted disability-based application. Without this clarification, a dispute would likely arise as to what constitutes "review" of the disability application. Plaintiffs also propose adding language as a new subsection v. of the Class One injunction to clarify that if Defendant does approve a timely submitted Medicaid

application based on disability or finds the beneficiary eligible on a basis other than disability, Medicaid must continue. Mot. to Recons. ¶ E(v). Plaintiffs propose to eliminate the Court's subsection v. of the Class One injunction as unnecessary if the preceding two proposed changes are accepted.

Plaintiffs also propose to modify subsection ii. of the Class One injunction so that Defendants' initial notice to beneficiaries informs them only of the option to allege disability and their responsibility to report any other changes. This modification would mean that this first letter is not a notice of termination. Mot. to Recons. ¶ E(ii). Federal regulations require that Medicaid eligibility be redetermined based on current and reliable information before a notice of termination is sent. 42 C.F.R. § 435.916(a)(2), 435.603(h)(2). It would also be impractical for the agency and potentially harmful to beneficiaries or taxpayers to require that Defendant make a decision about continuing eligibility and then provide notice of termination 180 days or even 60 days in advance. As discussed above, even in cases where a change is known in advance (*i.e.*, turning age 18 or 19) the agency must determine eligibility on grounds *other than disability* before it can terminate benefits. The facts affecting eligibility under non-disability categories can change (*e.g.*, a new pregnancy, a change in who lives in the household, or a change in income or medical need affecting eligibility under the MAF category for 19 and 20-year-olds). Plaintiffs thus propose in subsection iv. and in new subsection vi. of the Class One injunction to delay the notice of termination to its usual time, no later than 10 days before the current certification period ends. Mot. to Recons. ¶ E(vi). Plaintiffs' proposed change serves the Court's goal of allowing the consideration of eligibility based on disability to commence well before the termination but avoids terminations without considering current, accurate information.

In addition, federal regulations require that Defendant allow beneficiaries 30 days to

respond to a request for information and that the beneficiary be permitted to provide the information through various means. 42 C.F.R. §§ 435.916(a)(3)(B), 435.907(a). Plaintiffs therefore propose to modify subsection iii. of the Class One injunction to lengthen the time for response to the notice to 30 days and to allow beneficiaries to provide a statement of alleged disability by telephone or electronic means (email or text). Mot. to Recons. ¶ E(iii). This change will not lengthen the process because Plaintiffs also propose to shorten the time period in subsection iv. to apply for disability benefits to thirty days. Mot. to Recons. ¶ E(iv).

Plaintiffs' proposed language in new subsection vi. of the Class One injunction also requires the opportunity for a *de novo* pre-termination hearing on the issue of disability if a timely submitted application for disability is initially denied by Defendant. Plaintiffs recognize that the Court questioned in its decision whether such a hearing is required. *Hawkins*, slip op. at 37. However, if the Court accepts the proposed language in subsection iv. discussed above, providing that the termination notice must await an initial decision on a timely submitted disability application, Defendant's determination that the beneficiary is not disabled at that point will become the *de facto* reason for the termination.

Finally, Plaintiffs propose to add to the initial paragraph and as a new Subsection vii. of the Class One injunction, language from the Class Two Injunction to halt automatic terminations of Medicaid in a non-disability category without an eligibility redetermination under all categories or without written notice. Mot. to Recons. ¶ E(vii). The reasons for these additions are set out in Section II above.

B. Class Two Injunction:

Plaintiffs also request changes to the injunction for Class Two. First, Plaintiffs propose adding language to clarify that Defendant must determine ineligibility under all Medicaid

categories before sending notice of termination. Mot. to Recons. ¶ F. For example, a beneficiary determined no longer disabled may still be eligible based on having a minor child or being pregnant. Second, Plaintiffs propose deleting some language in order to require that Defendant's instruction to avoid automatic terminations be issued to all counties. *Id.* This change is needed to avoid disputes about which counties are behind in processing reviews and to address individual worker failures in counties that are not behind. Third, Plaintiffs propose eliminating option (2) in the Court's language. *Id.* This change is needed to clarify that the DSS worker must redetermine eligibility *before* sending notice of termination and must override NC FAST if necessary to allow time to complete that process. Finally, Plaintiffs propose requiring Defendant, as the head of the single state Medicaid agency, to take all reasonable steps necessary to assure that her instructions to counties are obeyed. *Id.*; *see* Pls.' Mem. Supp. Prelim. Inj. at 4.

CONCLUSION

For the reasons stated herein, Plaintiffs request that the Court grant Plaintiffs' motion to reconsider and revise its order. Because of the complexity of the issues involved, Plaintiffs also request oral argument on this motion.

Dated: August 31, 2018.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this day, I served a true copy of the Plaintiffs' Motion to Revise Interlocutory Order upon the Defendant's attorneys via electronic means through the CM/ECF system to:

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This the 31st day of August, 2018.