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Attorneys for Plaintiffs  
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

**PLAINTIFFS' SCHEDULING  
CONFERENCE STATEMENT;  
CERTIFICATE OF SERVICE**

**Scheduling Conference:**

Date: 11/22/2010

Time: 9:00 a.m.

**Judge: Hon. Kevin Chang**

**PLAINTIFFS' SCHEDULING CONFERENCE STATEMENT**

Plaintiffs TONY KORAB, TOJIO CLANTON, and KEBEN  
ENOCH, individually and on behalf of all persons similarly situated  
("Plaintiffs"), by and through their counsel, hereby submit their  
Scheduling Conference Statement pursuant to Rule 16.2(b) of the

Local Rules of the United States District Court for the District of Hawai`i.

**I. NATURE OF THE CASE**

On August 23, 2010, 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 ("New Residents").

Plaintiffs are COFA Residents. From 1996 to the implementation of BHH on July 1, 2010, COFA Residents were eligible for and/or received State-funded health benefits through

existing medical assistance programs established under Title XIX of the Social Security Act, such as QUEST, QExA, QUEST-Net, QUEST-ACE, fee-for-service, and SHOTT ("Old Programs"). The Old Programs are jointly financed by the Federal and State governments and administered by the State. On July 1, 2010, DHS disenrolled COFA Residents who were not pregnant and who were age nineteen 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"), 42 U.S.C. § 12132, 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.

## **II. JURISDICTION AND VENUE**

This Court has federal question jurisdiction over this matter pursuant to 28 U.S.C. § 1331 because Plaintiffs allege violations of the U.S. Constitution and the ADA.

Venue is proper under 28 U.S.C. § 1391(b) because Defendants reside in and the events giving rise to this suit occurred in this district.

## **III. JURY TRIAL**

A jury trial has not been demanded.

## **IV. DISCLOSURES**

The parties have yet to confer pursuant to Fed. R. Civ. P. 26(f). However, the parties have been in regular communication regarding issues raised by the Honorable J. Michael Seabright at and following the hearing on the motions to dismiss and for the preliminary injunction.

## **V. STATUS OF DISCOVERY AND MOTIONS**

No discovery has occurred. The Court denied Defendants' motion to dismiss on November 10, 2010. Plaintiffs' motion for preliminary injunction is pending before the Court.

## **VI. SPECIAL PROCEDURES**

Plaintiffs do not perceive the need for any special procedures specified in Fed. R. Civ. P. 16(c) or Local Rule 16.2.

## **VII. RELATED CASES**

A previous case brought in this Court on behalf of COFA Residents and New Residents, *Sound, et al. v. Koller, et al.*, CV. No. 09-409 JMS-KSC, led to an injunction against Defendants' previous attempt to implement BHH. The *Sound* Plaintiffs were subsequently found to be the prevailing parties and awarded attorneys' fees pursuant to 42 U.S.C. § 1988.

In a simultaneously-filed suit in State court, *Sound, et al. v. Koller, et al.*, Civil No. 09-1-2022-08 GWBC, the court found that Defendants had violated the Hawai`i Administrative Procedures Act, Chapter 91, Hawai`i Revised Statutes, by failing to engage in administrative rule making prior to implementing BHH.

## **VIII. ADDITIONAL MATTERS**

None at this time.

DATED: Honolulu, Hawai`i, November 19, 2010.

/s/ J. Blaine Rogers

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