IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. **1:17-cv-01744-RBJ**

RUBEN ARAGON, *et al.*,
Plaintiff(s),

v.

RICK RAEMISCH, *et al.*,
Defendants.

PLAINTIFFS' MOTION FOR CERTIFICATION OF CLASS, APPROVAL OF CLASS REPRESENTATIVES AND APPROVAL AND APPOINTMENT OF CLASS COUNSEL

Plaintiffs and Putative Class Representatives Ruben Aragon, John Spring, Robert Wieghard, David Poole, James Bratt, Aaron Miller, George Miller, and Edward Kaneta ("Plaintiffs"), through undersigned counsel, respectfully move for certification of this case as a class action under Federal Rule of Civil Procedure 23.

Specifically, Plaintiffs move for an order:

A. Certifying a class defined as:

> All current and future prisoners in the custody of the Colorado Department of Corrections who have been or who will be diagnosed with chronic Hepatitis C virus, who have at least 24 weeks or more remaining on their sentences and a life expectancy of more than one year, with the exception of prisoners who are already receiving or who have already completed treatment with Direct Acting Anti-Viral medications.

B. Approving Plaintiffs as the class representatives;

C. Approving current Plaintiffs' counsel as counsel for the class; and

D. Proceeding as a class action pursuant to Fed. R. Civ. P. 23(a) & 23(b)(2).

In support of the Motion, Plaintiffs respectfully state as follows:

CERTIFICATION OF CONFERRAL WITH COUNSEL

Pursuant to D.C.COLO.LCivR 7.1(a), on February 2, 2018, Plaintiffs' counsel conferred with Defendants'[1] counsel regarding this motion. Defendants oppose the relief requested herein.

I. INTRODUCTION

Plaintiffs are Colorado Department of Corrections ("CDOC") prisoners diagnosed with chronic infection of the Hepatitis-C virus ("HCV"), a widespread contagious disease of the liver, placing Plaintiffs at substantial risk of severe illness and death. Beginning in 2014, the Food and Drug Administration ("FDA") approved a series of breakthrough direct-acting anti-viral ("DAA") medications that provide a cure for HCV with no significant adverse side effects. The community standard of care now requires treating all chronic HCV patients (such as Plaintiffs) with DAAs. However, CDOC is knowingly denying these lifesaving cures to thousands of CDOC prisoners, including Plaintiffs, without medical justification.

By this Motion, Plaintiffs seek certification of a class, as has been approved in similar cases involving prisoners in Missouri, Tennessee, and Florida, to prevent CDOC from withholding medically necessary treatment to current and future prisoners chronically infected with HCV. As detailed below, this relief is proper under the Fed. R. Civ. P. 23(a) and (b)(2).

II. FACTUAL BACKGROUND

The background regarding HCV and its treatment are set forth in detail in Plaintiffs' Amended Complaint ("Am. Compl.") (Doc. No. 25) and the Expert Report of Dr. Richard Moseley ("Moseley Rep.") (attached as Exhibit III to the accompanying Declaration of

[1] "Defendants" herein refers to Rick Raemisch, Rishi Ariola-Tirella, Renae Jordan, in their official capacities with the Colorado Department of Corrections ("CDOC").

Christopher P. Beall ("Beall Decl.")). Plaintiffs incorporate the facts therein by reference.

A. Direct Acting Anti-Viral Treatment Is Medically Necessary

i. The Disease

HCV is the most common blood-borne viral infection in the United States. Approximately 3.2 million people in the country have chronic HCV. In 2013, HCV led to more deaths than 60 other infectious diseases combined. Am. Compl. ¶ 19; Moseley Rep. at 2. Chronic HCV causes liver inflammation, which, if left untreated, can lead to diminished liver function, liver failure, and liver cancer, requiring consideration for a transplant. Am. Compl. ¶ 20. The severity of liver damage due to HCV is often described by the Metavir fibrosis score ("MFS"), which assigns a number from 0 to 4 corresponding to the degree of liver scarring caused by HCV, ranging from no liver scarring (F0), minimal liver scarring (F1), intermediate fibrosis (F2), severe fibrosis (F3), and cirrhosis (F3). *Id.* ¶ 22; Moseley Rep. at 8. At all stages of liver damage, HCV is associated with adverse health effects, including increased risk of heart disease, diabetes, B cell lymphoma, other cancers, Parkinson's disease, and kidney disease. Chronic HCV also causes extrahepatic conditions including fatigue, depression, and arthritis, and each day without treatment increases these risks. Am. Compl. ¶ 23; Moseley Rep. at 2-3, 7-8.

ii. The Cure

In 2013 and 2014, the treatment of HCV changed dramatically with the advent of DAA therapy. DAAs were designated as "breakthrough therapies" by the FDA, indicating they give substantial improvement over prior therapies. DAAs reduce treatment length to 8 to 12 weeks, reduce side effects, and have well over 90% success rate in curing HCV. *Id.* ¶¶ 26-27; Moseley Rep. at 6.

iii. The Standard of Care

According to expert guidelines published by the American Association for the Study of Liver Diseases and the Infectious Diseases Society of America ("AASLD/IDSA Guidelines"), DAAs are "recommended for all patients with chronic HCV infection," except for patients "with short life expectancies that cannot be remedied by treating HCV, by transplantation or by other directed therapy." Am. Compl. ¶ 28; Moseley Rep. at 4. The AASLD/IDSA Guidelines urge DAA treatment in the early stages of the disease, regardless of fibrosis score, and they repudiate the idea that DAAs should be reserved for cases with significant liver damage. The AASLD/IDSA Guidelines are the professionally-accepted standard of care for treatment of HCV in the United States and Colorado. Medicare, Colorado Medicaid, the U.S. Department of Veteran Affairs and major health insurance providers all follow the AASLD/IDSA Guidelines and provide DAAs to all persons infected with chronic HCV regardless of fibrosis score, except those with short life expectancies. *Id.* ¶¶ 28-29; Moseley Rep. at 4-6, 9.

iv. CDOC's Failure to Provide DAAs

During discovery, CDOC reported that 2,347 prisoners have chronic HCV. *See* Beall Decl. ¶ 13; Am. Compl. ¶¶ 31-32. CDOC treats only a portion of these prisoners with chronic HCV. Instead, CDOC deliberately delays and denies DAAs to the overwhelming majority of prisoners with chronic HCV, like Plaintiffs, without medical justification, despite the accepted community standard of care. Am. Compl. ¶ 33. During discovery in this case, CDOC produced its FY 2018-19 budget request which indicated that the reason for not treating prisoners whom CDOC's own guidelines deem to be eligible for DAA treatment is a lack of "available funding," indicating that the CDOC has been aware of the need for treatment but is not providing such

treatment solely because of budgetary reasons. Beall Decl. ¶ 15 & Ex. II.

As a first step in screening prisoners for "treatment eligibility," CDOC uses a blood test to find the extent of liver damage. The test gives an "APRI" score by comparing the prisoner's level of aspartate aminotransferase ("AST"), an enzyme in the blood, with the usual amount of AST in a healthy person's blood and the prisoner's platelet count. *Id.* ¶ 35. The CDOC's guidelines bar prisoners with APRI scores below 0.7 (roughly equivalent to a fibrosis score of F2) from receiving treatment. *Id.* ¶ 36. However, "APRI scores . . . are not reflective of the degree of underlying fibrosis. Reliance on an APRI score alone . . . is not clinically justifiable." *Id.* ¶ 37; Moseley Rep. at 8-10. Even an APRI score of 0.7 or more, which evidences significant fibrotic liver damage, only makes a prisoner eligible for referral to the CDOC Infectious Disease Committee ("Committee") for "consideration" for treatment. Am. Compl. ¶ 38.

There is no guarantee that a prisoner who is "eligible," or even one "considered" for treatment, will receive DAAs, and indeed, discovery in this case indicates that only about 150 prisoners to date, out of at least 2,500 prisoners with chronic HCV, have completed such treatment. Beall Decl., ¶ 14. Rather, under CDOC's policies, a prisoner with chronic HCV can comply with every precondition for treatment and still be denied DAA therapy, without medical justification. Am. Compl. ¶ 38.

v. The Harm Caused by CDOC's Failure to Treat Chronic HCV

HCV was a contributing factor to six prisoner deaths in fiscal year 2013-14, five prisoner deaths in 2014-15, and seven prisoner deaths in 2015-16. *Id.* at ¶ 44. Despite this and the significant risks for HCV-related adverse health conditions, CDOC continues to deny lifesaving DAA medications to more than a thousand prisoners. Using CDOC's minimum APRI score of

0.7, CDOC estimates that at least 784 prisoners are "candidates" for treatment, but current funding will provide treatment for only some 150 of those "candidates." Beall Decl. Ex. II. Thus, by leaving more than 630 prisoners without DAA treatment, in the absence of "available funding," CDOC has elected to allow years of prolonged exposure to HCV. Moreover, the CDOC's guidelines deny treatment altogether for more than 1,500 prisoners whose APRI scores do not reach the arbitrary threshold of a 0.7 APRI score, despite the inconsistency of that threshold with the standard of care for treatment of HCV. *Id*. at ¶ 48. In sum, CDOC refuses to meet the community standard of care, and rather, CDOC deliberately adopted a budget that fails to provide DAAs to the overwhelming majority of prisoners with chronic HCV. *See, e.g.*, Moseley Rep. at 11 (CDOC's policy on treatment of chronic HCV "is restrictive, arbitrary, and inconsistently applied, does not meet the standard of care in the community.")

B. Plaintiffs Have Been Denied Treatment for Chronic HCV Infection

Plaintiff Ruben Aragon is 58 years old and was diagnosed with HCV in 1998. He entered CDOC in 2011 and is serving a 70-year sentence. Am. Compl. ¶¶ 51-56. Plaintiff John Spring is 61 years old and was diagnosed with HCV in 2004. He entered CDOC in 1979 and is serving a life sentence. *Id*. ¶¶ 57-68. Plaintiff Robert Wieghard is 61 years old and was diagnosed with HCV in the mid-1990s. He entered CDOC in 1982 and is serving a life sentence. *Id*. ¶¶ 69-78. Plaintiff David Poole is 52 years old and was diagnosed with HCV more than twenty years ago. Mr. Poole most recently entered CDOC in 2015, serving a 4-year sentence.[2] *Id*. ¶¶ 79-86. Plaintiff James Bratt is 42 years old and discovered his HCV infection in 2010 or

[2] The Amended Complaint mistakenly lists the dates of Mr. Poole's incarceration. In fact, he was released on parole in 2013, but he was sentenced in 2015 on a new case to a further 4-year incarceration, which is his current sentence.

2011 and believes that he contracted HCV while in CT Correctional Facility in 2009. Mr. Bratt entered CDOC again in 2013 and is serving a 27-year sentence. *Id*. ¶¶ 87-90. Plaintiff Aaron Miller is 43 years old and has had HCV for 23 years. His mother and step-father are terminally ill with HCV and his father died from HCV. *Id*. ¶¶ 91-93. Plaintiff George Miller is 60 years old and is serving a 43-year sentence. He was diagnosed with HCV in 2007. *Id*. ¶¶ 94-97. Plaintiff Edward Kaneta is 66 years old and is serving a 20-year sentence. He was diagnosed with HCV in 1986. *Id*. ¶¶ 98-100. CDOC repeatedly denied each of Plaintiffs' requests for treatment of their chronic HCV infection, and each Plaintiff exhausted all available administrative remedies. *Id*. ¶¶ 51-100.

III. LEGAL ARGUMENT

As discussed below, Plaintiffs have met the requirements for certification of the proposed class, appointment as class representatives and appointment of class counsel. In similar class actions by prisoners seeking treatment of HCV, courts across the country have granted class certification, and such relief is also warranted here. *See e.g.*, *Postawko v. Missouri Dep't of Corrections*, No. 16-cv-04219-NKL, 2017 WL 3185155 (W.D. Mo. Jul. 26, 2017) (Eighth Amendment challenge of Missouri Department of Corrections' failure to treat prisoners with HCV); *Graham v. Parker*, No. 3:16-cv-01954, 2017 WL 1737871 (M.D. Tenn. May 4, 2017) (same, Tennessee Department of Corrections); *Hoffer v. Jones*, No. 4:17cv214-MW/CAS, 2017 WL 5586877 (N.D. Fla. Nov. 17, 2017) (same, Florida Department of Corrections).[3]

[3] As reflected in the *Hoffer* ruling in Florida, which was submitted in this case as supplemental authority in opposition to Defendants' motion to dismiss, *see* Doc. No. 51, the federal court in Florida has already preliminary enjoined the Florida Department of Corrections to provide exactly the kind of DAA treatment that Plaintiffs seek here. *See Hoffer*, 2017 WL 5586877 at *10-*11.

A. Legal Standard

"Federal Rule of Civil Procedure 23(a) governs class certification. A district court has broad discretion in determining whether a suit should proceed as a class action." *Clay v. Pelle*, No. 10-cv-01840-WYD-BNB, 2011 WL 843920, *1 (D. Colo. Mar. 8, 2011). "[A]t the class certification stage a district court must generally accept the substantive, non-conclusory allegations of the complaint as true." *Id.*; *Decoteau v. Raemisch*, 304 F.R.D. 683, 686 (D. Colo. 2014) (same). Finally, "in deciding whether certification is appropriate, doubts should be resolved in favor of certification." *Clay*, 2011 WL 843920, *1.

Under Rule 23, a court may certify a class when: "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a). Further, Plaintiffs must also satisfy Rule 23(b). Plaintiffs seek class certification under Rule 23(b)(2), which applies where the defendant "acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2).

B. Plaintiffs Satisfy Rule 23(a)

As detailed below, Plaintiffs satisfy each of the requirements of Rule 23(a).

i. Numerosity is Satisfied

Rule 23(a)(1) requires that the proposed class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "'Impracticable' does not mean 'impossible' … plaintiff[s] only need establish the difficulty or inconvenience of joining all

members of the class." *Pliego v. Los Arcos Mexican Rest., Inc.*, 313 F.R.D. 117, 125-26 (D. Colo. 2016) (internal quotation omitted). "There is no minimum numerical threshold which must be exceeded to satisfy this requirement. Rather, the nature of the particular case, and the nature of the proposed class, are key considerations in determining whether joinder of all parties is not practical." *Id*. (finding class of 177 sufficiently numerous); *Murphy v. LenderLive Net., Inc.*, No. 13-cv-03135-RBJ, 2014 WL 5396165 at *3 (D. Colo. Oct. 22, 2014) (finding class of 120 sufficiently numerous, explaining "The Tenth Circuit has never prescribed a minimum number of potential class members necessary to satisfy numerosity.").

Here, the numerosity requirement is easily satisfied. During discovery, CDOC reported that 2,347 prisoners have been identified as having chronic HCV. *See* Beall Decl. ¶ 13; Am. Compl. ¶ 104. This is likely low because CDOC has not yet tested incoming prisoners for the presence of HCV, especially where the class includes future prisoners. *Id*. The inclusion of future prisoners – who are impossible to identify now – makes it impracticable to join all class members. The CDOC's budget director testified that approximately 700 prisoners enter *and* 700 prisoners exit the CDOC system each month. *See* Beall Decl. ¶ 14. Given such constant and significant changes in the prison population, it is impossible to identify and join all class members impacted by CDOC's HCV treatment policies. Much like in *Clay v. Pelle*, where this Court found that a class of just 400 prisoners subject to a prison policy satisfied the numerosity requirement, the proposed class here is also so numerous as to make joinder impracticable. *Clay*, 2011 WL 843920 at *3; *see also Decoteau,* 304 F.R.D. at 687 (numerosity satisfied for a class of 500 inmates, noting "Courts have found far smaller class sizes than this to be sufficiently numerous…."); *Postawko*, 2017 WL 3185155 at *6 (same, class of 1,000 members).

ii. There are Questions of Law or Fact Common to the Class

The "commonality" requirement of Rule 23(a)(2) "requires only a single question of law or fact common to the entire class." *DG ex rel. Stricklin v. Devaughn,* 594 F.3d 1188, 1195 (10th Cir. 2010); *see also Ryan v. Birch*, 17-cv-00904-KLM, Doc. No. 59 at 5 (D. Colo. Sept. 21, 2017) ("Class members do not need to share both common questions of law *and* common questions of fact."). "[T]he common question must be able to be resolved classwide, meaning that the 'determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Ryan*, 17-cv-00904-KLM, Doc. No. 59 at 5 (considering class certification in case challenging Medicaid restrictions on treatment of HCV).

In this case, Plaintiffs and the putative class members seek adjudication of the same legal questions, including, but not limited to (*see* Am. Compl. ¶ 105):

i. Whether chronic infection with HCV represents a serious medical need;

ii. Whether the community standard of care requires treatment with DAAs for all persons diagnosed with chronic HCV, except persons with a life expectancy of less than one year;

iii. Whether Defendants have knowingly employed policies and practices that unjustifiably delay or deny treatment for chronic HCV;

iv. Whether Defendants' failure to provide treatment to Plaintiffs and other members of the class in accordance with the prevailing standard of care has put Plaintiffs and members of the class at risk of serious harm;

v. Whether Defendants are deliberately indifferent to class members' serious medical needs; and

vi. Whether Defendants' policies and practices with regard to HCV treatment violate class members' rights under the Eighth Amendment.

Although Defendants may claim that there are factual differences in symptoms and treatment decisions for each prisoner with HCV, the class members are ***all*** affected by CDOC's policies for treatment of HCV, including CDOC's withholding of DAAs.[4] *Ryan*, 17-cv-00904-KLM, Doc. No. 59 at 6 ("Although there may be individualized disparities among Plaintiffs' medical circumstances, this has no effect on the common question of law that is applicable to all putative class members"); *Pliego,* 313 F.R.D. at 126 ("Commonality still exists if class members differ factually but challenge the application of a commonly-applied policy."); *Murphy*, 2014 WL 5396165 at *4 (commonality satisfied despite "minor" factual differences among class).

Accordingly, as in *Postawko*, where commonality was satisfied because "all class members share the common question of whether the Defendants' policy or custom of withholding treatment with DAA drugs from individuals who have been or will be diagnosed with chronic HCV constitutes deliberate indifference to a serious medical need," the Court here should find the commonality requirement satisfied. *Postawko*, 2017 WL 3185155 at *7.

iii. Typicality is Satisfied

The "typicality" element of Rule 23(a)(2) requires that the claims or defenses of the representative plaintiffs are typical of the claims/defenses of the class members. Fed. R. Civ. P. 23(a)(3); *Devaughn*, 594 F.3d at 1198-99 (typicality exists where "all class members are at risk of being subjected to the same harmful practices, regardless of any class member's individual

[4] Plaintiffs reserve the right to seek discovery regarding class-wide practices with respect to denial of treatment of HCV, including that CDOC does not make individualized decisions regarding whether to treat chronic HCV based on its reliance on its APRI threshold of 0.7.

differences."). Typicality is "fairly easily met so long as other class members have claims similar to the named plaintiff." *Postawko*, 2017 WL 3185155 at *10 (citation omitted).

Here, Plaintiffs claims are typical of the class because Plaintiffs and the class were injured by the same CDOC policies. Typicality is satisfied here because "Named Plaintiffs' claims and the claims of the remainder of the putative class arise from the same course of conduct: Defendants' policies surrounding their treatment of inmates with chronic HCV" and because "[l]ike the remainder of the class, they are HCV-positive inmates to which the alleged policy has been applied and who have not been treated with DAA drugs." *Postawko*, 2017 WL 3185155 at *11; *Hoffner*, 2017 WL 5586877 at *3 (typicality met where both plaintiffs' and class's claims "arise from [Florida Department of Corrections] policies … for treating HCV."); *see also Pliego,* 313 F.R.D. at 126 (typicality satisfied because plaintiffs' and class's claims challenged the same course of conduct and utilized the same legal theories).

iv. Plaintiffs, as Class Representatives, will Fairly and Adequately Protect the Interests of the Class

The Tenth Circuit has identified two questions to determine if the proposed class representatives will fairly and adequately represent the class: (1) whether plaintiffs and their counsel have any conflicts of interest with class members; and (2) whether plaintiffs and their counsel will vigorously prosecute the action on behalf of the class. *Murphy*, 2014 WL 5396165 at *4 (citing *Rutter v. Wilbanks Corp. v. Shell Oil Co.,* 314 F.3d 1180, 1187-88 (10th Cir. 2002)).

Here, none of the named Plaintiffs, nor class counsel, have any conflicts of interest with the class members. To the contrary, the interests of the class and the representatives are aligned in regard to the aim to eliminate Defendants' harmful practices that fail to provide necessary medical treatment. Accordingly, the Court should find the fair and adequate representation

element satisfied. *Ryan*, 17-cv-00904-KLM, Doc. No. 59 at 10 ("Absent evidence to the contrary, a presumption of adequate representation is invoked."); *Graham*, 2017 WL 1737871 at *5 (adequacy of representation met where "Plaintiffs, being inmates with Hepatitis C, … seeking to change all policies for all inmates with Hepatitis C, and the injunctive relief they seek, if obtained, would benefit all such inmates.").

In addition, Plaintiffs and the putative class are represented by competent counsel. The ACLU Foundation of Colorado and Fox Rothschild LLP have expertise and experience with complex civil litigation, class actions and/or litigating on behalf of vulnerable populations. Counsel are providing representation on a pro bono basis. *See* Beall Decl. ¶¶ 1-12; Declaration of Mark Silverstein, ¶¶ 1-9.

Accordingly, Plaintiffs have satisfied Rule 23(a).

C. Plaintiffs Satisfy Rule 23(b)(2)

Plaintiffs also meet the requirements of Rule 23(b), which mandates that the defendant "acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). Under Rule 23(b)(2), the class must be "'sufficiently cohesive that any classwide injunctive relief satisfies Rule 65(d)'s requirement that every injunction state its terms specifically; and describe in reasonable detail … the act or acts restrained or required." *Ryan*, 17-cv-00904-KLM, Doc. No. 59 at 10 (quoting *Devaughn*, 594 F.3d. at 1199-200). "The requirements of Rule 23(b)(2) are almost automatically satisfied in actions primarily seeking injunctive relief." *Graham*, 2017 WL 1737871 at *6 (citation omitted).

Here, Defendants' actions and inactions (CDOC's treatment guidelines and the resulting denial of DAAs to prisoners with chronic HCV) are based on grounds generally applicable to all class members. The requested injunction applies equally to all class members and renders class treatment warranted here. The Middle District of Tennessee recently found Rule 23(b)(2) satisfied where "Plaintiffs have shown that [Tennessee Department of Corrections] has acted or refused to act on grounds that apply generally to the class of inmates with Hepatitis C, and Plaintiffs seek only final declaratory and injunctive relief that would apply to the class as a whole." *Graham*, 2017 WL 1737871 at *6; *see also Hoffner*, 2017 WL 5586877 at *3 (Rule 23(b)(2) met in Florida prisoner HCV case because a single injunction or declaratory judgment would provide relief to each class member).

Rule 23(b)(2) requires "cohesiveness among the class members with respect to their injuries," which in turn requires satisfaction of Rule 65(d) and that the class members' injuries be "sufficiently similar" such that they can be remedied in a single injunction. *Devaughn*, 594 F.3d at 1199-200. Here, Plaintiffs seek injunctive relief that is appropriate for the entire class and that meets Rule 65(d). *See* Am. Compl., at Prayer for Relief. Among other relief, Plaintiffs seek a declaration that Defendants' policies violate the Eighth Amendment and an injunction preventing Defendants from subjecting Plaintiffs and the class to the unconstitutional policies described in the Amended Complaint. Plaintiffs also request that the Court order Defendants to develop and implement a plan for adequate treatment of HCV in accordance with the community standard of care, including treatment with DAAs. As in *Ryan v. Birch*, Plaintiffs' requested relief "uniformly applies to all of the class members" and "at this early stage in the litigation provides an adequate description such that 'both the defendant and the court can determine if the former is

complying.'" *Ryan*, 17-cv-00904-KLM, Doc. No. 59 at 11-12 (granting certification of class of Colorado Medicaid enrollees diagnosed with HCV and prescribed DAAs but denied coverage due to fibrosis score threshold).

Accordingly, Plaintiffs satisfied Rule 23(b)(2) and class certification should be granted.

IV. CONCLUSION

As detailed above, Plaintiffs have satisfied the requirements for class certification under Federal Rule of Civil Procedure 23(a) and 23(b)(2). Accordingly, Plaintiffs respectfully request that the Court certify the proposed class, appoint Plaintiffs as class representatives, and appoint the ACLU Foundation of Colorado and Fox Rothschild LLP as class counsel.

(A proposed order is attached.)

Dated: February 7, 2018

FOX ROTHSCHILD LLP
/s/ Christopher P. Beall
Christopher P. Beall

CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2018, I electronically filed the foregoing **MOTION FOR CERTIFICATION OF CLASS, APPROVAL OF CLASS REPRESENTATIVES AND APPROVAL AND APPOINTMENT OF CLASS COUNSEL** with the Clerk of the Court using the CM/ECF system, which will send electronic notification of such filing via the ECF-CM system to all counsel of record.

/s Christopher P. Beall