BARBARA A. JONES, CA Bar No. 88448
bjones@aarp.org
AARP FOUNDATION LITIGATION
601 E STREET, NW
WASHINGTON, DC 20049-0001
TELEPHONE: (323) 215-6124

LORI A. RUBIN (*pro hac vice* application pending)
larubin@foley.com
FOLEY & LARDNER LLLP
3000 K STREET, N.W. SUITE 600
WASHINGTON, D.C. 20007-5109
TEL: 202.672.5300 FAX: 202.672.5399

ADAM J. HEPWORTH, CA Bar No. 296027
ahepworth@foley.com
DANIEL R. STURM, CA Bar No. 314689
dsturm@foley.com
FOLEY & LARDNER LLP
555 SOUTH FLOWER STREET, SUITE 3300
LOS ANGELES, CA 90071-2411
TEL: 213.972.4500 FAX: 213.486.0065

Attorneys for Plaintiffs DIANE BROWN, JUDY BOOTHBY, DENISE COZZA, DEBORAH HAGEY, and MELISSA HALL

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

DIANE BROWN, JUDY BOOTHBY, DENISE COZZA, DEBORAH HAGEY, and MELISSA HALL,

Plaintiffs,

vs.

ALEX AZAR, in his official capacity as Secretary of the United States Department of Health and Human Services,

Defendant.

Case No. 2:21-cv-00511

COMPLAINT FOR:

(1) Violation of Administrative Procedure Act, 5 U.S.C. §§ 701-706;

(2) Declaratory Relief

INTRODUCTION

1. On September 4, 2018, Defendant Secretary of the United States Department of Health and Human Services (the "Secretary" of "HHS"), through HHS's Centers for Medicare and Medicaid Services ("CMS"), approved changes to California's State Medicaid Plan. Those changes include draconian rate cuts to Medicaid (called "Medi-Cal" in California) providers of periodontal maintenance, a necessary treatment for chronic gum disease.

2. The dental care rate cuts approved by HHS reduced Medi-Cal Dental provider reimbursement by a highly consequential, service-devastating 58%.[1] HHS also approved unnecessary, unsafe, and expensive prior authorization hurdles that further undermine dental services for indigent residents of Skilled Nursing Facilities ("SNF") and Intermediate Care Facilities ("ICF"), as well as other Medi-Cal Dental beneficiaries who suffer from periodontal disease.

3. Plaintiffs, California Medi-Cal Dental providers, bring this action pursuant to the Administrative Procedure Act ("APA"), codified at 5 U.S.C. § 701 *et seq.*, to set aside HHS's arbitrary and capricious approval of changes to California's State Medicaid Plan.

4. Plaintiffs challenge HHS's arbitrary approval of unwarranted and onerous procedural hurdles, which have eviscerated their ability to provide periodontal care to patients. Those hurdles include a mandatory requirement for X-rays or photographs of patients' teeth even when the patients are physically incapable of having X-rays or dental photographs taken. They also include a requirement to obtain treatment authorization requests ("TARs") prior to performing scaling and root planing, which is a deep cleaning designed to reduce inflammation and infection that must be performed before a patient receives essential periodontal maintenance treatment (also referred to by its Current Dental Terminology code of D4910).

[1] Medi-Cal's dental program is now called "Medi-Cal Dental" but was previously known as "Denti-Cal."

5. These new requirements reverse California's 2001 policy that allowed Registered Dental Hygienists in Alternative Practice ("RDHAPs") to treat institutionalized patients diagnosed with periodontal disease without obtaining prior authorization. *See*, Ex. A at 30 (Kirsten Roling, DDS, *Written Testimony on Denti-Cal to the Little Hoover Commission* (2015)).

6. The mandatory X-ray and TAR requirements have resulted in the complete denial of periodontal maintenance to thousands of Medi-Cal Dental beneficiaries who reside in SNFs and ICFs.

7. Plaintiffs are RDHAPs who travel to remote rural facilities to provide necessary mobile dental oral hygiene care to medically compromised patients who are unable to travel to a dentist's office. Many of these patients suffer from respiratory failure or involuntary head movements. They include patients in subacute facilities who need ventilators or a tracheotomy, and developmentally disabled patients with head and brain trauma.

8. HHS arbitrarily approved these policy changes despite serious known physical limitations of institutionalized periodontal patients, and without regard to issues of expense, safety, and necessity.

9. Medi-Cal Dental beneficiaries who need periodontal services have been left without care due to the withdrawal of RDHAPs from the field. This departure is due both to the severity of the rate cuts approved by HHS, which left many providers unable to cover their costs, and the new TAR requirement approved by HHS. The result of HHS' actions is that Medi-Cal Dental providers must adhere to burdensome new procedural requirements at the same time they are faced with an enormous rate cut. This combination unsurprisingly reduces care for many vulnerable patients.

10. The Secretary, through CMS, approved California's State Plan Amendment ("SPA") 18-0025 without adequately considering how the 58% provider rate cut and the new procedural hurdles—the X-ray and TAR requirements—would affect Medi-Cal beneficiaries' access to periodontal care. *See*, Ex. B, CMS Approval of SPA 18-0025.

11. For example, the Secretary never evaluated whether reduced provider rates would result in Medi-Cal care and services no longer being available to the extent the same services are available to the general population, even though the federal Medicaid statute requires such a review. *See* 42 U.S.C. § 1396a(a)(30)(A). The Secretary also never evaluated whether brand new X-ray and TAR requirements were necessary to safeguard against unnecessary utilization, as also required by federal law. *See id*.

12. Because of the rate reduction approved by the Secretary, few Medi-Cal Dental providers can afford to travel to facilities to provide periodontal maintenance. This has directly undermined the availability of care for thousands of Medi-Cal beneficiaries and institutionalized patients.

13. Plaintiffs seek an order reversing HHS's approval of SPA 18-0025.

JURISDICTION AND VENUE

14. This case is a request for judicial review of a final agency action under the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 *et seq.* This Court has jurisdiction under 28 U.S.C. § 1331.

15. Venue lies in this Court pursuant to 28 U.S.C. § 1391(b) and (e). Plaintiffs COZZA and HALL reside and work within this judicial district. Further, the violations are occurring in this district, and a substantial part of the events or omissions giving rise to the claims have occurred in this district due to the consequences of the Secretary's unauthorized and arbitrary activities that are occurring within this judicial district.

THE PARTIES

16. Plaintiff DIANE BROWN is a licensed RDHAP (RDHAP License No. 96) who lives and resides in San Diego County. Plaintiff BROWN has provided periodontal maintenance to Medi-Cal Dental beneficiaries with developmental disabilities until the rates were cut in 2018 and HHS approved California's new TAR and X-ray requirements. After SPA 18-0025 was approved, Plaintiff BROWN can no longer afford to provide the service. Additionally, the new X-ray and TAR requirements make providing care to many

of BROWN's patients impossible because they are unable to hold their head still or bite on an X-ray bite block.

17. Plaintiff JUDY BOOTHBY is a licensed RDHAP (RDHAP License No. 1) who lives and resides in Sacramento County. She has provided dental services to elderly and disabled Medi-Cal beneficiaries since 1987. BOOTHBY was part of the pilot program studies of dental hygiene known as the Health Manpower Pilot Projects numbers 139 and 155, which were demonstration projects undertaken by the State of California Regents to determine how to deliver oral hygiene to Medi-Cal Dental patients. By virtue of BOOTHBY's pioneering efforts and those of other Plaintiffs herein, the State of California saved and improved the lives of countless seniors and persons with developmental disabilities residing in SNFs and ICFs. However, at the drastically reduced rates recently approved by HHS, Plaintiff BOOTHBY can no longer afford to provide periodontal maintenance to Medi-Cal Dental patients.

18. Plaintiff S. DENISE COZZA is a licensed RDHAP (RDHAP License No. 189) who lives and resides in San Luis Obispo County. Plaintiff COZZA has provided dental services to Medi-Cal Dental patients in Ventura, Santa Barbara, Tulare and San Luis Obispo Counties since 2007. Plaintiff COZZA can no longer afford to provide periodontal maintenance to these patients for the reduced rate that the Secretary approved. Additionally, the new X-ray and TAR requirements make providing care to COZZA's patients with severe disabilities impossible.

19. Plaintiff DEBORAH HAGEY is a licensed RDHAP (RDHAP License No. 68). Plaintiff HAGEY lives and resides in Shasta County where she cares for elderly and disabled Medi-Cal patients. HAGEY is a founding member of California Oral Health Coalition of the Aging & Developmentally Disabled. She stopped providing periodontal care to patients in 2018 after the rates were cut and new X-ray and TAR requirements were imposed.

20. Plaintiff MELISSA HALL is a licensed RDHAP (RDHAP License No. 262) who lives and resides in Los Angeles County. Prior to the approval of SPA 18-0025,

HALL provided dental oral services to over 500 beneficiaries of the Medi-Cal Dental program who were residents in over 30 SNFs throughout Los Angeles County. She stopped providing periodontal care to patients in 2018 after the rates were cut and new X-ray and TAR requirements were imposed. HALL is a hospital trained and credentialed RDHAP with multiple years' experience treating complex, compromised, and vulnerable patients, many of whom are elderly or have developmental disabilities. HALL has taught periodontal instrumentation at UCLA Dental Hygiene School and has years of clinical practice in dental offices. HALL is also a founding member of California Oral Health Coalition of the Aging & Developmentally Disabled.

21. Currently, Medi-Cal Dental pays $77 for periodontal maintenance (D4910), which does not cover Plaintiffs' costs to provide care. Moreover, Medi-Cal Dental's current rate includes a tobacco tax supplement that is scheduled to expire in July 2021, at which time the rate will drop to $55. Because Medi-Cal Dental rates are so low, Plaintiffs cannot afford to participate, and Medi-Cal Dental beneficiaries therefore do not have the same access to dental care as other patients not dependent on Medi-Cal Dental.

22. Defendant ALEX AZAR is the Secretary of HHS and is the highest-ranking official in HHS. This action is brought against Secretary Azar in his official capacity. The Secretary is responsible for implementing the Medicaid program, Title XIX of the Social Security Act, as amended, 42 U.S.C. 1396, *et seq*. The Secretary administers the Medicaid program through CMS.

FEDERAL MEDICAID LAW

23. Title XIX of the Social Security Act, 42 U.S.C. § 1396 *et seq*., the statute establishing the Medicaid program, authorizes federal financial support to states for medical assistance to low-income persons. The Medicaid program is jointly financed by the federal and state governments, and administered by the states. The states, in accordance with federal law, decide eligible beneficiary groups, types and ranges of services, payment levels for services, and administrative and operative procedures.

Payment for services is made directly by states to the individuals or entities that furnish the services. *See* 42 C.F.R. § 430.0.

24. In order to receive matching federal financial participation, states must agree to comply with the applicable federal Medicaid law and regulations. *See* 42 U.S.C. § 1396 *et seq*.

25. Federal law requires each state's Medicaid program to be administered by a single state agency, which is charged with the responsibility of establishing and implementing a State Medicaid Plan ("State Plan") that complies with the provisions of applicable federal Medicaid law. *See* 42 U.S.C. § 1396a(a)(5); 42 C.F.R. § 431.10 (2013). Each State Plan must describe the services provided, which may include dental services. *See* 42 U.S.C. §§ 1396a(a)(10)(A) and 1396d(a)(10).

26. States must comply with federal conditions that govern payment for any service offered under a State Plan. Pursuant to 42 U.S.C. § 1396a(a)(30)(A) ("Section 30"), each State Plan must:

> [P]rovide such methods and procedures relating to the utilization of and the payment for, care and services available under the plan . . . as may be necessary . . . *to assure that payments are consistent with efficiency, economy, and quality of care and are sufficient to enlist enough providers so that care and services are available under the plan at least to the extent that such care and services are available to the general public in the geographic area.*

(Emphasis added.)

27. Federal regulations require in pertinent part that each State Plan "must provide that it will be amended whenever necessary to reflect . . . . Material changes in State law, organization or policy, or in the State's operation of the Medicaid program." 42 C.F.R. § 430.12(c)(1).

28. Further, under federal Medicaid regulations, a participating state "must provide public notice of any significant proposed change in its methods and standards for setting payment rates for services." 42 C.F.R. § 447.205(a) (2015).

29. The Secretary, through CMS, is responsible for reviewing State Plans and amendments to State Plans. *See* 42 C.F.R. § 430.14. The Secretary shall approve a State Plan or SPA only when it meets all federal requirements, including Section 30 requirements. *See* 42 U.S.C. § 1396a(b); 42 C.F.R. § 430.15.

MEDI-CAL — CALIFORNIA'S MEDICAID PROGRAM

30. The State of California has elected to participate in the Medicaid program. California has named its program Medi-Cal and its dental program Medi-Cal Dental. *See* Cal. Welf. & Inst. Code §§ 14000, 14000.4, 14059; Cal. Code Regs. Tit. 22 § 51303(a). The Department of Health Care Services ("DHCS") is the single state agency in California that is responsible for administrating California's Medicaid program, including implementing the State Plan.

31. Periodontal treatment has been a covered benefit under the Medi-Cal Dental program since at least July 1, 1995. *See* Cal. Welf. & Inst. Code § § 14132(h)(2)(A) and (3).

32. Each State Plan must provide that medical assistance will be furnished with reasonable promptness to all eligible individuals. 42 U.S.C. § 1396a(a)(8).

33. Payments to Medi-Cal providers must be sufficient to enlist enough providers so that services under the plan are available to beneficiaries at least to the extent that those services are available to the general population. 42 U.S.C. § 1396a(a)(30); 42 C.F.R. § 447.204(a) (2015).

34. Before a state can cut or reduce a Medicaid provider's rates, longstanding federal regulations require states to issue public notice of proposed changes in provider rates and submit stakeholder feedback to CMS. *See* 42 C.F.R. § 447.205 (2015).

FACTS & PROCEDURAL HISTORY

35. Access to dental care has been a continuing problem in California. As far back as 1990, a federal district court found that Medi-Cal's low dental reimbursement rates impeded beneficiary access to care in violation of federal law. *See Clark v. Kizer*, 758 F. Supp. 572, 578 (E.D. Cal. 1990), *aff'd in relevant part sub nom.*, *Clark v. Coye*, 967 F.2d 585 (9th Cir. 1992). Specifically, the District Court in *Clark* found that reimbursement rates for dental providers were "woefully inadequate," strongly indicating that beneficiaries access to dental care was not available to the extent those services were available to the general population. *Clark*, 758 F. Supp. at 577.

State Oversight Bodies Conclude that California's Dental Rates Reduce Access

36. More recently, an independent state oversight committee report ("Little Hoover Report") concluded that California's Denti-Cal program was "unable to deliver the quality of dental care most other Californians enjoy," due in large part to "dreadful reimbursement rates" and "slow, outdated paper-based administrative and billing processes." *See*, Ex. G at 158, Little Hoover Commission, *Fixing Denti-Cal Report* #230 (Apr. 1, 2016), *available at* https://lhc.ca.gov/sites/lhc.ca.gov/files/Reports/230/Report230.pdf. According to the report, most California dentists "want nothing to do with Denti-Cal" (now called "Medi-Cal Dental") because of low reimbursement rates. *Id*. The Secretary was aware of, but ignored, the findings of the Little Hoover Report.

37. Similarly, the California State Auditor found that as many as five California counties lacked active Medi-Cal Dental providers, eleven counties had no providers willing to accept new Medi-Cal Dental patients, and sixteen other counties appeared to have an insufficient number of providers willing to treat Medi-Cal Dental patients. See, Ex. F at 71, California State Auditor Report 2013-125, *available at* https://www.auditor.ca.gov/pdfs/reports/2013-125.pdf.

Testimony to Little Hoover Commission Showed X-Rays Not Necessary

38. The Little Hoover Commission also heard testimony reflecting California's then-current policy that submission of dental radiographs (X-rays) and periodontal

charting were *not* required from RDHAPs prior to performing scaling and root planing on patients resident in SNFs. *See,* Ex. A at 30. The testimony explained that California's existing policy not to require X-rays was supported by the weight of the evidence in the dental literature, which does not support a full mouth set of dental radiographs before performing scaling and root planing in aging populations. *See, id.* at 34. The testimony further concluded that imposing a new X-ray requirement would be a "throwback health policy" that would "undo all the progress that has been made in the last fourteen years, and reinstate disparate oral health barriers that plague California's institutionalized and homebound geriatric residents, increasing California's health care costs and denying underserved and at risk patients access to care." *Id.*

DHCS Cuts Rates, Commenters Strenuously Object; the Secretary Approves

39. Three months after the Little Hoover Commission issued its 2016 report, and without federal approval, DHCS cut the already below-market $130 Medi-Cal Dental periodontal rate by 58% to $55. Delta Dental—a typical commercial payer—offered $161 for periodontal maintenance (CDT Code D4910) at that time, almost three times the $55 rate established by DHCS. Today, a typical commercial rate is $190—almost three and a half times the Denti-Cal rate. *See* Delta Dental Patient Direct, Schedule 19, http://bit.ly/2zXy0r8. The Secretary subsequently approved the 58% rate cut despite the fact that DHCS informed the Secretary that at that time the American Dental Association's most current commercial fee study listed the Pacific Division commercial rate for periodontal maintenance, inclusive of California, at $157.54. *See,* Ex. C at 54, DHCS CMS Informal Questions on Proposed SPA 18-0025 (July 17, 2018).

40. On May 15, 2018, DHCS published a public notice of proposed changes in provider rates. Multiple organizations and Medi-Cal providers submitted comments to DHCS noting that the proposed rates and new prior authorization requirements would decrease access to care.

41. On June 29, 2018, DHCS sent its proposed amendment to California's State Plan (SPA 18-0025) to the Secretary requesting that the Secretary approve the 58% rate

cut and the change in policy requiring a TAR for scaling and root planing. *DHCS State Plan Amendment (SPA) 18-0025 Package*, https://www.dhcs.ca.gov/formsandpubs/laws/Documents/SPA%2018-0025package.pdf.

42. Although DHCS did not forward the multiple comments it received to the Secretary, a number of concerned organizations sent comments directly to the Secretary noting that approval of SPA 18-0025 would very significantly decrease access to care.

43. Notwithstanding the comments DHCS itself received that are referenced above, DHCS erroneously advised the Secretary that no public comment indicated that the cut would decrease quality of care for Medicaid beneficiaries. *See*, Ex. C at 53. Yet, CMS was notified directly by letters on behalf of 26 organizations that the cut would in fact decrease access to care. *See*, Ex. D, Coalition Comment Letter; *see also*, Ex. E, Western Center on Law & Poverty Comment Letter.

44. DHCS itself advised CMS that during 2018 "the most current commercial fee studies available" listed the Pacific Division commercial rate, which is inclusive of California, at $157.54. Ex. C at 54. DHCS' admission further demonstrated the inadequacy of the $55 rate adopted by DHCS and later approved by HHS.

45. The comments and supporting documents sent to DHCS clearly indicated that access to care would be reduced, and in many cases eliminated, if the cuts and prior authorization requirements (including the new X-ray and TAR requirements) in SPA 18-0025 were implemented. The California State Auditor's Report, attached to the Western Center's comments and sent to both DHCS and CMS, concludes that DHCS has "failed to adequately monitor the [Denti-Cal] program" and that DHCS should revise its "dental procedures that require radiographs or photographs." Ex. F at 108, 145.

46. The Secretary's public guidance emphasizes the need to consider input from beneficiaries, providers, and other stakeholders on the impact that proposed payment changes will have on access to services. *See* CMS Informational Bulletin re "Federal public notice and public process requirements for changes to Medicaid payment rates" (June 24, 2016), *available at* https://www.medicaid.gov/sites/default/files/federal-policy-

guidance/downloads/cib062416.pdf. DHCS presented an extremely misleading summary of stakeholder feedback that mischaracterized comments and ignored significant concerns about how the payment cut would devastate access to services. The Secretary was on notice of this oversight because he received some stakeholder comments directly, yet he did not require DHCS to revise its summary and adequately respond to the access concerns that had been raised. This lapse contradicts the Secretary's official position that states must analyze information and concerns about access expressed in input from affected stakeholders.

47. Without considering the impact these changes would have on Medi-Cal beneficiaries' access to care on September 4, 2018, the Secretary approved SPA 18-0025.

48. As a result of the Secretary's actions, including actions by and through CMS:

a. Medicaid providers are harmed by the rate cuts and new policy regarding X-rays and advance treatment authorization requests;

b. Medicaid providers can no longer afford to provide periodontal maintenance (D4910) to treat thousands of Denti-Cal beneficiaries who do not reside in facilities;

c. Nursing home residents in 850 facilities are not receiving equal access to care. *See,* Ex. A at 26.

FIRST CLAIM FOR RELIEF

Violation of the Administrative Procedure Act ("APA")

49. Plaintiffs hereby incorporate by reference the prior paragraphs of this Complaint, as though fully set forth herein.

50. The APA requires this Court to hold unlawful and set aside any agency action that is "arbitrary, capricious, an abuse of discretion . . . or otherwise not in accordance with law," 5 U.S.C. § 706(2)(A), or "in excess of statutory jurisdiction, authority or limitations, or short of statutory right," 5 U.S.C. § 706(2)(C).

51. Agency action that is not the product of reasoned decision-making is arbitrary and capricious. *Motor Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983). An agency that "entirely fail[s] to consider an important aspect of the problem" before it has acted has acted in an arbitrary and capricious manner. *Id.*

52. The Secretary's approval of SPA 18-0025 is a final agency action subject to review under the APA. The Secretary's approval of the SPA insofar as it pertains to Denti-Cal rates is invalid under the APA because it is arbitrary, capricious, an abuse of discretion, and otherwise inconsistent with governing law. Among other problems, the data before the Secretary did not adequately address statutorily required elements and did not support the approval of the SPA. For example, the evidence before the Secretary did not support the conclusion that the dental rates proposed were sufficient to assure that Medi-Cal beneficiaries would have the same access to dental care as the public in the same geographic area. There was further no analysis—much less sufficient analysis—by the Secretary of whether the proposed rates were consistent with efficiency, economy and quality of care, and reasonably related to the costs incurred by efficient economical providers.

53. There further was no analysis by the Secretary of the impact an X-ray and TAR requirement would have on access to care, including access for beneficiaries in SNFs and ICFs. This oversight is significant because many residents of these facilities are unable to take X-rays for medical reasons, including involuntary head movements. Moreover, there was no analysis by the Secretary of whether the new TAR or X-ray requirement was necessary to safeguard against unnecessary utilization of dental care. These failures too were arbitrary and capricious.

54. The Secretary also failed to require DHCS to remedy its inaccurate and inadequate summaries of input from beneficiaries, providers, and other stakeholders on the impact that proposed payment changes will have on access to services. This oversight contributed to the arbitrary and capricious nature of the Secretary's decision making.

SECOND CLAIM FOR RELIEF

(DECLARATORY RELIEF)

55. Plaintiffs hereby incorporate by reference the prior paragraphs of this Complaint, as though fully set forth herein.

56. An actual and justiciable controversy exists between Plaintiffs and the Secretary regarding whether the rate cuts for periodontal maintenance and the changes in State policy regarding X-rays and TARs set forth in SPA 18-0025 complied with the requirements of the Federal Medicaid Act. Plaintiffs contend that the Secretary's approval of the SPA was arbitrary, capricious, an abuse of discretion and not in accordance with applicable law.

57. Accordingly, pursuant to 28 U.S.C. § 2201, Plaintiffs request this Court to declare that the rate reductions for periodontal maintenance D4910, the TAR requirement prior to scaling and root planing, and the X-ray requirement are unlawful under federal law.

58. No administrative appeal process or other administrative remedy is available to Plaintiffs to challenge the approval of SPA 18-0025, including its provider rate cut, TAR requirement, and X-ray requirement.

PRAYER

WHEREFORE, Plaintiffs pray for judgment as follows:

1. For an Order declaring that it was arbitrary, capricious, an abuse of discretion and not in accordance with applicable law for the Secretary to approve the SPA purporting to incorporate the rate reductions for dental services and TAR and radiograph (X-ray) requirements into California's State Plan.

2. For an Order setting aside the Secretary's approval of SPA 18-0025, including: (a) its rate reductions for dental services; and (b) its new TAR and radiograph (X-ray) requirement for patients who need periodontal maintenance services.

3. For a Declaration that the Secretary's approval of SPA 18-0025 was contrary to law and violated the APA and the Medicaid Act.

4. For the costs of suit, including reasonable attorneys' fees incurred by Plaintiffs, as permitted under 28 U.S.C. § 2412 or otherwise, and

5. Such other and further relief as may be just and proper.

DATED: January 19, 2021

AARP FOUNDATION LITIGATION
BARBARA A. JONES

FOLEY & LARDNER LLP
LORI A. RUBIN
ADAM J. HEPWORTH
DANIEL R. STURM

/s/ Daniel R. Sturm
Daniel R. Sturm
Attorneys for Plaintiffs DIANE BROWN, JUDY BOOTHBY, DENISE COZZA, DEBORAH HAGEY, and MELISSA HALL