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CIVIL DISTRICT COURT FOR THE PARISH OF ORLEANS
DISTRICT COURT
STATE OF LOUISIANA

NUMBER: 08-548

DIVISION: N. 8

Melvin LeBlanc, Naomi Faulkin, Lucille Moore, Ronald Newman, Delilah Hall, Marlene Dumas, and Betty Washington, Plaintiffs

Versus

Dwayne Thomas, Chief Executive Officer, Medical Center of Louisiana at New Orleans, Larry Hollier, Chancellor, LSU Health Sciences Center – New Orleans, LSU Health Sciences Center – New Orleans, Dr. Michael K. Butler, Acting Chief Executive Officer, LSU Health Care Services Division, Defendants.

Filed: _____ Deputy Clerk: _____

PETITION FOR INJUNCTIVE AND DECLARATORY RELIEF

NOW INTO COURT, through undersigned counsel, come Melvin LeBlanc, Naomi Faulkin, Lucille Moore, Ronald Newman, Delilah Hall, Marlene Dumas, and Betty Washington (“Plaintiffs”), who hereby claim and aver as follows:

I. INTRODUCTORY STATEMENT

1. Since 1926, the Louisiana Legislature has legally mandated health care for its low-income residents without regard to a patient’s ability to pay. To fulfill this mandate, the state government established a statewide network of hospitals known as the Charity Hospital System. The flagship hospital, referred to in the community as “Big Charity,” is located in New Orleans. Until August 2005, Big Charity, among other things, housed the second busiest emergency room in the United States, treated tens of thousands of patients each year, educated most of the medical professionals in Louisiana and, perhaps most importantly, was the safety net hospital for the people of New Orleans and surrounding parishes.

2. In 1997, the Legislature turned over operation of the Charity Hospital System to Louisiana State University (“LSU”), but the Legislative mandate – guaranteeing medical care for uninsured and low-income residents – remained the same. To ensure compliance, the Legislature prohibited closing any hospital within the Charity Hospital System without Legislative approval. *See e.g.*, L.R.S. § 17:1519.3(B).

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II. JURISDICTION AND VENUE

8. This Court, a court of general jurisdiction, has subject matter jurisdiction over this case. Jurisdiction is also proper under Article 1872 of the Louisiana Code of Civil Procedure.

9. This Court has personal jurisdiction over the parties because they are residents of Louisiana. The Plaintiffs are all residents of New Orleans, Louisiana. The individual Defendants are duly appointed Louisiana state officials or political subdivisions established by Louisiana law. Upon information and belief, Defendants Thomas and Hollier are also residents of New Orleans Louisiana.

10. Venue is proper in this Court under Louisiana Revised Statute 13:15104. The operative facts giving rise to this case all occurred in New Orleans, Louisiana, and Charity Hospital – the subject matter of this complaint – is located in New Orleans. Plaintiffs, moreover, are residents of New Orleans and have been denied health care in New Orleans. Plaintiffs are low-income and do not have the means to adjudicate this case in any other venue. In fact, many Plaintiffs have medical conditions that make traveling long distances extremely difficult, if not impossible. Likewise, Plaintiffs' attorneys are located in New Orleans and are handling this case on a *pro bono* basis.¹

III. PARTIES

A. Plaintiffs

Naomi Faulkin

11. Naomi Faulkin is a New Orleans resident. She was born at Charity and has lived in New Orleans her entire life.

12. Ms. Faulkin's income is less than 200% of the federal poverty limit, she has no health insurance, and therefore she is entitled to free care at Charity Hospital under Louisiana Revised Statute §1519.4(B). She suffers from numerous, life threatening conditions that require regular and ongoing medical supervision.

¹ There are non-New Orleans based attorneys that are assisting in this litigation. Those attorneys, all working pro bono, are based out-of-state and are using the offices and resources of the New Orleans based attorneys to assist in this litigation.

13. Ms. Faulkin's doctors have prescribed twenty prescriptions to treat her various ailments, and she requires daily visits from personal care assistants to help her with daily activities, and weekly visits from a registered nurse to monitor her multiple health problems.

14. In addition to her chronic medical conditions, Ms. Faulkin has experienced several acute episodes before and after Katrina.² Most notably, in 2003 she had a heart attack that required bypass surgery and a prolonged hospital stay at Charity Hospital. More recently, Ms. Faulkin suffered an epileptic seizure in September 2007. She was immediately taken to a private hospital for treatment. She remains financially responsible for the care she received at the private hospital. If Charity Hospital had not been unlawfully closed, Ms. Faulkin would have received free care.

15. Moreover, Ms. Faulkin's seizure, upon information and belief, could have been avoided through the use of prescription drugs, but she was unable to secure regular appointments with a physician to monitor her condition. Her inability to secure an appointment with a physician was a direct and proximate result of Charity's closure.

16. To compound matters, Ms. Faulkin has been diagnosed with mental health conditions that require psychiatric care and prescription drugs. Accordingly, she is currently under the care of a psychiatrist and takes several prescriptions to treat her conditions.

17. Prior to its closure, Ms. Faulkin relied on Charity Hospital to treat her various ailments. At Charity, she was assigned a primary care physician, and was sent to specialty clinics and doctors as needed.

18. Now that Charity is closed, Ms. Faulkin (when she can afford the transportation costs and/or co-pays) receives piecemeal treatment at various clinics, hospitals, and doctors' offices throughout Louisiana.

19. To the extent she can even find care, Ms. Faulkin is often sent to cities across the state. However, she lacks transportation and is on a fixed income. As such, she lacks the financial means to secure transportation to cities outside New Orleans.

² Any reference to the "Storm," "Katrina," or the "Hurricane" are obviously references to Hurricane Katrina, the storm that battered New Orleans and the Gulf Coast region in 2005.

20. Due to Charity's unlawful closure, there is no place in New Orleans where Ms. Faulkin can receive certain types and levels of care.

21. When Ms. Faulkin is lucky enough to find care within New Orleans, she is often charged a fee even though she is entitled to free care under state law. For example, she has been unable to obtain free, regular psychiatric care despite her best efforts.

22. And even when Ms. Faulkin can find free care within New Orleans, she is often unable to secure an appointment within a reasonable period of time.

23. If Charity were open, Ms. Faulkin would be able to receive the free care she is entitled to under state law. Furthermore, there are publicly funded transportation systems within New Orleans that allow residents to travel from their homes to Charity quickly and inexpensively. Ms. Faulkin would be able to use these public transportation systems to obtain the care she needs at Charity.

24. As a direct and proximate result of the unlawful closure of Charity Hospital, Ms. Faulkin's conditions continue to deteriorate and her acute and routine care requirements often go untreated. Accordingly, she and the class she represents are entitled to the relief requested in this Petition. Ms. Faulkin's allegations are supported by her affidavit attached as Exhibit 1.

Ronald Newman

25. Ronald Newman is 58 years old, and is a life-long resident of New Orleans, Louisiana. Before Katrina, Mr. Newman received treatment at Charity Hospital any time it was necessary.

26. Mr. Newman worked as a dishwasher before and after Katrina, but stopped being able to work after he had a stroke in February 2007.

27. Mr. Newman was treated at University Hospital on the day of his stroke. Unfortunately, he was not referred to physical therapy to alleviate the effects of the stroke until October 2007, and then only after a case manager at the Ozanam Center intervened. Because of this delay, it is unlikely Mr. Newman will ever fully recover from the stroke. He continues to have difficulty speaking and requires a cane to walk.

28. If Charity Hospital were open, Mr. Newman would have been able to immediately obtain physical therapy to alleviate the effects of his stroke and would have had better chances of a complete recovery. He also would have had a higher likelihood of returning to work. Because of Charity Hospital's closure, Mr. Newman cannot obtain regular care for his stroke or for his high blood pressure. Mr. Newman's allegations are supported by his affidavit attached as Exhibit 2.

Melvin LeBlanc

29. Melvin LeBlanc is a New Orleans resident. Although he was temporarily displaced to Kenner, Louisiana following Katrina, he is currently rebuilding his home in the Lower Ninth Ward and plans to return home soon.

30. Mr. LeBlanc is currently unemployed. He is uninsured for health care and therefore he is entitled to free care at Charity Hospital under Louisiana Revised Statute § 46:1 *et seq.*

31. Mr. LeBlanc was born at Charity in 1956, and for the last 51 years he has relied on Charity for his medical needs. For example, in 2003 Mr. LeBlanc was diagnosed with and began treatment for diabetes at Charity. The Charity doctors wrote all of Mr. LeBlanc's prescription to treat his disease. The treatment was free and the prescription required only a small co-pay. Later, Mr. LeBlanc periodically returned to Charity for scheduled check-ups to monitor his disease. During these check-ups, he received the medical care he required.

32. Since the closure of Charity, Mr. LeBlanc began receiving primary care at various private clinics in the metropolitan area. Unfortunately, the private clinic closest to Mr. LeBlanc refused to treat him unless he paid a \$75.00 fee.

33. Mr. LeBlanc paid the fee because he required medical treatment and was unable to obtain comparable, free care at any other location, primarily on account of his lack of adequate transportation.

34. Despite the fee, which was a serious financial burden for Mr. LeBlanc, the care at the private clinic was woefully inadequate. The clinical staff did little more than check his blood pressure and write a prescription for him.

35. To compound matters, Mr. LeBlanc was told that subsequent visits would only cost \$50.00, but when he returned he learned the exam fee was actually \$125.00. He could not afford to pay the fee.

36. Fortunately, Mr. LeBlanc was able to secure an appointment at the Lower Ninth Ward Health Clinic (the “Lower 9th Health Clinic”). The Lower 9th Health Clinic is a properly licensed health clinic that arose in the wake of Katrina. It provides care to qualified residents of New Orleans for free or reduced rates. In short, the Lower 9th Health Clinic attempts to fill one of the holes created by Charity’s closure – the unavailability of free primary care for those people who previously received care at Charity. Allegations regarding the Lower 9th Health Clinic are supported by the affidavits attached as Exhibits 8 and 9.

37. Mr. LeBlanc is very happy with the care he received at the Lower 9th Health Clinic, but it is overburdened with patients and it is sometimes difficult for Mr. LeBlanc to secure an appointment. Further, the Lower 9th Health Clinic is unable to provide certain specialty care that Mr. LeBlanc needs, such as recurring dental issues.

38. Prior to its closure, Mr. LeBlanc received dental care at Charity. In 2003, for example, he had a tooth pulled and received regular check-ups both prior to and following the extraction. When Mr. LeBlanc experienced extreme pain due to gum inflammation after Charity was closed, he was forced to seek treatment at Ochsner Hospital, a private institution. Mr. LeBlanc was forced to pay for this unexpected emergency hospital visit, despite the fact that he is qualified for free medical services in Louisiana. This created a severe financial hardship because Mr. LeBlanc was forced to pay for this unexpected hospital visit, despite the fact that he qualified for free care at Charity.

39. Furthermore, the Lower 9th Health Clinic is not equipped to provide a secondary level of care, nor is there a free or low-cost care secondary level of care alternative that is comparable to what Charity provided, where Mr. LeBlanc can secure an appointment in a reasonable time that is reasonably nearby.

40. Because Mr. LeBlanc lacks transportation and there is, at best, limited care, but in most cases no care available in the New Orleans area that is equivalent in cost or accessibility to the care Charity provided, Mr. LeBlanc is unable to reasonably obtain adequate care.

41. As a direct and proximate result of the closure of Charity, Mr. LeBlanc's conditions continue to deteriorate and his acute and routine care requirements often go untreated. Accordingly, he and the class he represents are entitled to the relief requested in this Petition. Mr. LeBlanc's allegations are supported by his affidavit attached as Exhibit 3.

Lucille Moore

42. Lucille Moore is a lifelong resident of New Orleans, Louisiana. She has been suffering from several health problems in the last five years, and currently has trouble seeing out of one eye due to blood accumulation behind the eye. She also suffers from thyroidism, high blood pressure, and an enlarged heart and takes medication for each condition.

43. Ms. Moore went to Charity Hospital for all her health needs before its closure. In April of 2007, she started having trouble seeing out of her left eye and saw lines. She experienced blurred vision and started to have trouble seeing at night.

44. Ms. Moore had to leave her job as a cashier because she had trouble seeing the cash register. The first doctor Ms. Moore went to see about her vision told her that the condition would clear up in about six months but it did not. Subsequently, she went to a second doctor, who told her that she had to have an operation due to blood behind her eye.

45. Because of the closure of Charity Hospital, the closest hospital where Ms. Moore can have the surgery she needs within the Charity system is in Bogalusa, Louisiana. There is no public transportation from Ms. Moore's house to the hospital in Bogalusa. Therefore, she will be required to pay someone to transport her to the hospital.

46. The hospital in Bogalusa also will not allow Ms. Moore to stay overnight. Therefore, she will be required to stay in a hotel for at least two days, because the surgery she needs occurs over three days. Ms. Moore will have to pay at least four hundred dollars to travel to and stay in Bogalusa for her eye surgery, not including the cost of attending the follow up check-ups that will occur in Baton Rouge.

47. Ms. Moore does not have the financial resources to pay for either the transportation or hotel fees she needs to have her eye surgery

48. Because of the distance and the cost of treatment, Ms. Moore has postponed the surgery twice despite the fact that she has severely limited vision in her left eye and is therefore unable to work.

49. Because Ms. Moore is having such trouble with her vision, she does not leave her house most days and has fallen down and injured herself several times.

50. If Charity Hospital were open, Ms. Moore would be able to get her eye surgery and the check-ups all at the same place and would not have to postpone the surgery. Ms. Moore's allegations are supported by her affidavit attached as Exhibit 4.

Delilah Hall

51. Delilah Hall is 50 years old. She is a lifelong resident of New Orleans, Louisiana. Although employed continually since graduating from high school, she has never had health insurance, either because her employer did not offer health insurance or, as is true at her current place of employment, University of New Orleans, insurance is offered, but she is unable to afford the cost of the employee premium. Ms. Hall's income is such that she is eligible to receive free care from Charity Hospital.

52. Prior to Hurricane Katrina, Ms. Hall received all her necessary medical care from Charity Hospital. She suffers chronic pain from spinal and neck conditions. Her condition forced her to walk with a cane. Her care at Charity Hospital in 2005 included prescription medications for pain, an MRI to diagnose the cause of pain, a diagnosis of spinal problems that caused a referral to the Charity spine clinic, a highly-specialized nerve study at the spine clinic, and two expensive steroid injections in February and April 2005.

53. Because Ms. Hall was uninsured and qualified for free care at Charity Hospital, there was no charge to her for the aforementioned treatments. The treatment she received at Charity Hospital substantially alleviated her pain.

54. During the summer of 2005, Ms. Hall was referred for physical therapy at Charity. She made an appointment for September 2005. Since the closure of Charity Hospital, Ms. Hall has not been able to find affordable physical therapy. In 2006 Ms. Hall suffered further debilitating pain, this time in her neck. Her pain forced her to seek emergency medical help at the Lord & Taylor temporary facility in September and October 2006. Since that time

Ms. Hall has been seen at the reopened Charity neurology clinic and received MRI's at the reopened University Hospital. Thus far, the tests given to Ms. Hall have not resulted in a clear diagnosis. She has been referred for a further nerve study at a facility in Bogalusa, Louisiana, which is a two hour drive from New Orleans. The results of this study were also not conclusive and to date Ms. Hall does not have a clear diagnosis. Ms. Hall continues to suffer chronic pain, in her neck and in her arms and hands, making both her work and her activities of daily living difficult and painful.

55. If Charity Hospital were open and the previous care available Ms. Hall would be able to receive therapy for her nerve problems and would not have to travel long distances for each medical appointment and nerve study. Ms. Hall's allegations are supported by her affidavit attached as Exhibit 5.

Marlene Dumas

56. Marlene Dumas is a resident of New Orleans, Louisiana and was born at Charity Hospital.

57. Following Katrina, she was evacuated to a shelter located in Braggs, Oklahoma called Camp Grouper. After a short time at Camp Grouper, she returned home to New Orleans.

58. Unfortunately, Ms. Dumas has experienced periods of homelessness since returning to New Orleans and expects to be homeless again by the time this complaint is filed.

59. From approximately 1990 until the Hospital closed, Ms. Dumas relied on Charity for virtually all her medical needs. During this time, Ms. Dumas qualified for free medical care at Charity and, upon information and belief, she still qualifies for free care.

60. If Charity was open, Ms. Dumas would use Charity Hospital to meet her medical needs. Because Charity is closed, Ms. Dumas has difficulty finding medical care that she needs.

61. For example, Ms. Dumas' son was taken by her husband to another state without her permission prior to Katrina. While at Camp Grouper, Ms. Dumas witnessed a kidnapping that brought back terrible memories of the incident. As a result, she sought treatment from the camp psychiatrist and was diagnosed with depression and was given an anti-depressant.

62. When she returned to New Orleans she had trouble finding mental health services and was unable to renew her prescription. Her depression, however, worsened as a result of the

kidnapping, her homelessness, and her inability to see her only child. If Charity was open, she would seek mental health services at Charity Hospital to treat her depression.

63. In addition to the difficulty in locating mental health services, Ms. Dumas also has had difficulty finding someone to treat her other medical conditions. On December 12, 2007, for example, Ms. Dumas went to the St. Anna Mobile Medical Center to obtain treatment for cysts on her scalp.

64. But instead of receiving treatment for her cysts, she was evaluated by the staff psychiatrist. The doctor determined that she was a threat to herself and others and ordered that she go to Tulane Medical Center for evaluation. She was involuntarily evaluated at Tulane Medical Center and released that same day without receiving treatment for her cysts or a prescription for her mental health condition.

65. To compound matters, she was later sent a bill for approximately \$1800.00 by the Tulane Medical Center for the evaluation even though she was there involuntarily, qualified for free care, and was released on the same day.

66. As a direct and proximate result of the unlawful closure of Charity Hospital, Ms. Dumas' conditions continue to deteriorate and her acute and routine care requirements often go untreated. Accordingly, she and the class she represents are entitled to the relief requested in this Petition. Mr. Dumas' allegations are supported by her affidavit attached as Exhibit 6.

Betty Washington

67. Betty Washington is a resident of New Orleans, Louisiana. She was born at Charity Hospital and has lived in New Orleans her entire life except for when she was displaced by Hurricane Katrina.

68. Prior to her retirement in 2004, Ms. Washington was a public school teacher for 25 years. When she was a teacher, Ms. Washington had private health insurance but would often go to Charity because of the high level of care they provided.

69. After her retirement, Ms. Washington was unable to afford to continue paying the premiums for her private health insurance. She did, however, qualify for free medical care at Charity Hospital and continues to qualify for free care.

70. As such, Ms. Washington relied on Charity for her medical needs until it was closed in 2005. If Charity was still open, she would continue to use Charity Hospital.

71. In addition to her general health care needs, Ms. Washington suffers from severe asthma that requires monitoring by medical professionals. Her doctors have prescribed several expensive medications to treat her condition.

72. Since the closure of Charity Hospital, Ms. Washington primarily receives healthcare at the Lower Ninth Ward Health Clinic ("Lower Ninth").

73. Ms. Washington is very happy with the care she receives at the Lower 9th Health Clinic. The Lower 9th, however, cannot provide the higher level of care that she sometimes needs.

74. For example, Ms. Washington was referred to University Hospital in 2007 for a biopsy by the medical staff at the Lower 9th. At first, she was not able to obtain an appointment to conduct the biopsy until almost a year later. The Lower 9th medical staff intervened and secured an appointment in one week. If not for the intervention, Ms. Washington would have waited almost a year to obtain a biopsy.

75. Unfortunately, there are long waits at every clinic Ms. Washington has been referred to and at times she cannot obtain care. To compound matters, she lacks adequate transportation. Her lack of transportation makes it difficult, and sometimes impossible, for her to get to appointments that are not located near her home. Mr. Dumas' allegations are supported by her affidavit attached as Exhibit 7.

9. Defendants

75. Defendant Dwayne Thomas, Chief Executive Officer of the Medical Center of Louisiana at New Orleans, Louisiana State University Hospitals, Health Care Services Division is sued in his official capacity. Mr. Thomas also resides in New Orleans.

76. Defendant Larry Hollier, Chancellor, LSU Health Sciences Center – New Orleans is sued in his official capacity. Mr. Hollier resides in New Orleans.

77. Defendant Michael K. Butler, Acting Chief Executive Officer, Louisiana State University Health Care Services Division is sued in his official capacity.

78. LSU Health Sciences Center – New Orleans (“LSU HSC-NO”) is responsible for the operation, programs, and facilities of Charity Hospital. LSU HSC-NO’s principal office is located in New Orleans.

IV. CLASS ALLEGATIONS

79. This matter is filed as a class action, pursuant to Articles 591 et seq. of the Louisiana Code of Civil Procedure.

80. This action may be properly maintained as a class action because the proposed class satisfies the numerosity, commonality, typicality, adequacy, and identification requirements of Louisiana Code of Civil Procedure 591(A), as well as the requirements of Articles 591(B)(2).

A. Class Definition

81. The class consists of:

All people with medical conditions in New Orleans, Plaquemines, St. Bernard, and Jefferson Parish who received care at Charity Hospital or would have received care at Charity Hospital if it had not been closed, and who under state law were entitled to free care at Charity Hospital, but as a result of Charity's closure have suffered loss of care.

B. Numerosity

82. While the exact number of class members cannot be determined at this time, the estimated class size is over 100,000, making joinder impracticable. The exact number of class members can readily be determined by documents through discovery and expert testimony.

C. Commonality

83. There are questions of law and material fact common to the class, including the following:

- a. Whether Charity Hospital is closed.
- b. Whether the services formerly provided by Charity Hospital have been, and continue to be, reduced by at least 35 percent.
- c. Whether Charity Hospital is reasonably capable of renovation, in whole or in part.
- d. Whether the Legislature has approved the closure of Charity Hospital.
- e. Whether Defendants violated Louisiana Revised Statute § 17:1519.3(B) by closing Charity Hospital without legislative approval.

- f. Whether class members were harmed by the unlawful closure of Charity Hospital.
- g. Whether Charity Hospital's closure makes it unreasonable or impossible for class members to obtain equivalent care.
- h. Whether class members are entitled to medical care under Louisiana law.
- i. Whether the closure of Charity Hospital violated class members' entitlement to care under Louisiana law.

C. Typicality

84. Plaintiffs' claims and defenses are typical of those of the rest of the class.

Plaintiffs' claims are coincident with, and not antagonistic to those of other class members they seek to represent. Plaintiffs and all class members have sustained damages arising out of Defendants' course of conduct as outlined in this complaint.

85. Defendants' actions are generally applicable to the class as a whole and Plaintiffs principally seek, among other things, equitable remedies with respect to the class as a whole.

D. Adequacy of Representation

86. The representative parties are committed to pursuing this action zealously and have retained competent counsel experienced in class action litigation. Plaintiffs will fairly and adequately protect the interests of the class as to their rights under Louisiana law. .

E. Identification

87. The class definition is objectively defined in terms and based on ascertainable criteria, such that the court may determine the constituency of the class for purposes of the conclusiveness of any judgment that may be rendered in this case.

F. Defendants Act or Refuse to Act on Grounds Generally Applicable to the Class as a Whole

88. Certification is appropriate because Defendants have acted or refused to act on grounds generally applicable to the class thereby making appropriate final injunctive relief with respect to the class as a whole.

V. STATEMENT OF FACTS

B. Charity Hospital and the Requirements of Louisiana Revised Statute §17:1519.

89. Charity Hospital has been continuously operating since 1736. The current facility is a 20-story Art Deco landmark built in 1939. The structure contains more than 700 licensed beds and housed the second largest Trauma 1 Center in the United States before it was closed in September 2005. Throughout its history, Charity Hospital has been recognized nationally as serving one of the largest populations of uninsured persons in the United States.

90. In fiscal year 2004, for example, approximately half its patients were uninsured and one-third were covered by Medicaid. In that same year, Charity Hospital had more than 25,000 inpatient admissions, 300,000 clinical visits, and 135,000 emergency visits.

91. In 1997, the Louisiana Legislature delegated management of Charity Hospital to the Louisiana State University Health Sciences Center – New Orleans (“LSU-HSC-NO”).

92. Defendant Larry Hollier, as the Chancellor of LSU HSC-NO, is responsible for administering Charity Hospital and securing legislative approval in the event the LSU HSC-NO chooses to close Charity Hospital.

93. The statute at issue, Louisiana Revised Statute 17:1519.3(B), states that “[n]o hospital nor any emergency room may be closed without legislative approval...” The statute further enumerates only two methods of approval, either by “concurrent resolution” or “appropriate action in the General Appropriations Act.”

94. The statute explicitly includes Charity Hospital among those covered by Louisiana Revised Statute 17:1519.3(B).

95. The New Orleans City Council, moreover, requested an opinion from the former Louisiana Attorney General, the Honorable Charles C. Foti, Jr., “...regarding the law applicable to the closure of a hospital by the LSU Health Sciences Center at New Orleans.” In response, the Attorney General opined that, “In the event LSU Health Sciences Center at New Orleans was to close Charity Hospital, it must do so in compliance with R.S. 17:1519(B).”

96. Despite the clear applicability of § 17:1519(B), the Legislature has never given approval to close Charity Hospital, nor have Defendants sought approval.

97. On the contrary, the Legislature adopted House Resolution 89 in 2006, urging the Governor, the Office of Facility Planning and Control of the Division of Administration, the Louisiana State University Board of Supervisors and the LSU HSC-NO “...to develop and implement a plan to use a portion of [Charity Hospital] to provide medical services to the New Orleans community and region on an interim basis while efforts continue towards construction of a new facility.”

98. The Legislature also called for “...an independent group [to] be assembled to assess the condition of the facility and evaluate its potential uses as a location from which medical services may be offered to the population of the greater New Orleans area . . .”

99. The assessment of Charity Hospital mandated by House Resolution 89 has not occurred.

100. Upon information and belief, despite House Resolution 89 and the statutory requirement that Charity Hospital remain open unless closure is approved by the Legislature, LSU HSC-NO, currently under the direction of Defendant Hollier, closed Charity Hospital on or about October 5, 2005.

C. Hurricane Katrina Batters Charity Hospital, but the Community Rebuilds

101. On or about August 29, 2005, floodwaters from breeched levees and floodwalls occasioned by Hurricane Katrina inundated the basement of Charity Hospital, curtailing most back-up generator power, water and sanitary systems.

102. On September 4, 2005, six days after Hurricane Katrina made landfall, the patients at Charity Hospital were evacuated.

103. Between September 5, 2005 and September 19, 2005, the Charity Hospital Emergency Department, LSU, Tulane University resident physicians, United States military personnel and others worked to ready the hospital for reopening. They drained floodwaters from Charity’s basement, reconnected its electrical power systems, cleared all its 20 floors and basement of perishable refuse, fully cleaned its first three floors (including the Emergency Department and psychiatric Crisis Intervention Unit), and restored its requisite operating and air conditioning systems.

D. Charity Hospital is Permanently Closed

104. On September 19, 2005, the medical staff and U.S. military units were ordered to leave Charity Hospital.

105. On October 5, 2005, Charity Hospital was permanently closed. Upon information and belief, Defendants continue to authorize the closure of Charity and the diminution of services.

106. Prior to that date, the United States Public Health Service and the United States Army Corps of Engineers had given their preliminary opinions that Charity Hospital could be made ready to reopen.

107. Defendants and their predecessors failed, from Charity Hospital's closure to the present, to provide alternative services equivalent to those provided at Charity Hospital. As a result of said failures, a medical emergency exists for Plaintiffs and the class members.

E. The Flawed Adams Management Corporation Report

108. In late September 2005, the Health Care Services Division distributed a report prepared by the consulting and engineering firm, Adams Management Corporation, declaring Charity Hospital and its affiliate University Hospital as 65% and 68% damaged respectively, thereby assessing both hospitals as unsalvageable.

109. Adams Management Corporation also completed an earlier report for the Health Care Services Division two months before Hurricane Katrina, supporting a new replacement facility for Charity Hospital.

110. A year after Adams Management Corporation declared University Hospital unsalvageable and estimated that the cost of repairing the hospital at more than \$150 million, University Hospital was reopened for approximately 10% of the Adams Management Corporation estimate.

111. Subsequent to the October 2005 closure, several individuals and organizations, including the Louisiana Legislature and New Orleans City Council, have called for an independent evaluation of the physical condition of Charity Hospital, and the cost and feasibility of reopening Charity Hospital, in whole or in part. Defendants have only allowed limited access to the facility to select groups, making an independent evaluation impossible.

112. In light of the obvious biases in the Adams Management Corporation Report, an unbiased and independent report is necessary to ascertain whether Charity can be reopened, in whole or in part, and under what conditions.

113. Upon information and belief, Charity Hospital, like University Hospital, can be reopened for a fraction of the cost estimated by the Adams Management Corporation.

F. The Unlawful Closure of Charity Hospital has Harmed Plaintiffs and Proposed Class Members

114. The closure of Charity Hospital has caused injury to Plaintiffs and the class they represent.

115. In November 2006, Defendants reopened University Hospital with a trauma unit and emergency room. University Hospital, however, only has 179 staffed beds, compared with the combined total of more than 700 beds at Charity Hospital and University Hospital prior to their closure by Defendants and their predecessors. Further, the 179 beds currently open at University Hospital serve a population of more than 100,000 residents without health insurance estimated to be living in New Orleans, Plaquemines, St. Bernard, and Jefferson Parish.

116. The state's Department of Health and Hospitals estimates that 176,000 uninsured people were living in those areas prior to Hurricane Katrina.

117. Further, on information and belief, Plaintiffs and the class they represent who cannot obtain care at University Hospital are referred to hospitals outside of New Orleans, where the waiting time for an appointment can be months long.

118. Not only are class members forced to seek care far from their homes, the small regional hospitals where they are referred to are not equipped to handle the large volume of patients occasioned by the closure of Charity Hospital.

G. The Mental Health Implications of Charity Hospital's Closure

119. The closure of Charity Hospital has had a devastating impact on mental health services in New Orleans. Charity Hospital had 100 psychiatric beds, all of which ceased serving patients when Charity closed. Until recently, Defendants provided no substitute facilities for the mentally ill, and their plans for replacement facilities, even when fully operational, will provide an inadequate fraction of the beds needed by class members.

120. Currently, there are fewer than 100 psychiatric beds in Orleans Parish. Prior to Katrina, there were 422 psychiatric beds, with 214 beds reserved for adults.

121. The loss of beds and related resources has had a significant impact on the New Orleans Police Department (“NOPD”). Officers are trained to recognize mentally ill people and the most effective ways to deal with them. Prior to the closure of Charity Hospital, the NOPD officers took people suspected of being mentally ill to Charity Hospital, which had an emergency room plus a Crisis Intervention Unit (“CIU”) with observational beds for 24-hour psychiatric evaluation. NOPD officers were able to leave the patients at Charity Hospital knowing they that would be treated and properly secured. Plaintiffs incorporate the affidavits from local law enforcement officials attached as Exhibits 10, 11, and 12 as though fully set forth herein.

122. There are now insufficient facilities for persons believed by NOPD officers to need mental health care. In fact, in June 2006, New Orleans Police Superintendent, Warren Riley and several coroners, wrote a letter to the state Department of Health and Hospitals explaining that as the number of beds was reduced, suicides increased, police recorded a record number of calls for psychiatric emergencies, and mentally ill persons were incarcerated at “unacceptable rates.” Superintendent Riley has called the lack of beds a “psychiatric crisis.”

123. Defendants’ efforts to address the mental health emergency created by the closure of Charity Hospital are inadequate. On information and belief, Defendants opened a psychiatric hospital in New Orleans on September 25, 2007, two years after closing Charity Hospital. The hospital opened with 10 beds, with a plan to expand to a maximum of 33 beds. Unlike Charity Hospital, however, the interim facility lacks an emergency room to address health care needs of mentally ill patients and is unsecured.

H. Heroic Grass Roots Efforts to Fill the Gap

124. The closure of Charity Hospital has spawned heroic and useful local efforts to provide health care to class members. Those efforts have given rise to a network of independent primary care health clinics and health centers for the uninsured and low income.

125. But those efforts have not been, and will not be, sufficient to provide the essential services provided by Charity Hospital prior to its closure including, without limitation, tertiary

care, specialty centers for the chronically ill, psychiatric beds for the severely mentally ill, and medically necessary emergency room care.

126. Further, the success and effectiveness of incorporating the emerging and existing primary health care clinics into a network depends upon the availability of backup, specialty medical services to uninsured and low income persons that were provided by Charity Hospital prior to the closure.

I. The Relief Requested is Feasible

127. The care and services terminated by the closure of Charity Hospital created a medical emergency that continues to this day. The relief requested focuses on the care the Legislature promised low-income and uninsured Louisiana residents. On information and belief, the reopening of Charity Hospital, at least in part, in combination with a major expansion of sites in surrounding areas where replacement care and services can feasibly be provided, is the most reasonable means in the foreseeable future to restore essential services,. Plaintiffs and the class they represent are entitled to such care and services under Louisiana law.

128. On information and belief, the relief requested is feasible. The action required under state law before a reduction in the care and services provided at Charity Hospital can be implemented, i.e., the approval of the Legislature, is specifically designed to permit the Legislature, rather than Defendants, to make the necessary policy decisions contemplated by statute.

129. The relief requested would permit, but not require, the integration of the newly established network of community clinics, with a reopened Charity Hospital, by substituting timely ambulatory care in place of the more costly use of the Charity Hospital Emergency Room as a primary care site, as was the case before Katrina.

VI. CAUSES OF ACTION

COUNT I (Violation of La. R.S. 17:1519.3(B))

130. Plaintiffs incorporate the allegations contained in the foregoing paragraphs as though fully set forth herein.

131. Louisiana Revised Statute 17:1519.3(B), *inter alia*, places the direction and control of Charity Hospital under Defendants, and provides that “[n]o hospital nor any emergency room may be closed without legislative approval. Such approval may be granted by the legislature either by concurrent resolution or by appropriate action in the General Appropriations Act.”

132. Defendants have neither sought nor received approval from the Louisiana Legislature to close Charity Hospital or its emergency room. Nonetheless, Defendants closed Charity Hospital, to include its emergency room, and have not reopened the facility.

133. The closure of Charity Hospital without Legislative approval was, and remains, *ultra vires*, of the statute.

134. The actions and inactions of Defendants, their agents and employees violate Section 17:1519.3(B).

135. As a direct and proximate result of Defendants’ failure to comply with Section 17:1519.3(B), Plaintiffs and the class have suffered, and continue to suffer, damage.

COUNT II
(Violation of La. R.S. 17:1519.3(C))

136. Plaintiffs incorporate the allegations contained in the foregoing paragraphs as though fully set forth herein.

137. Louisiana Revised Statute 17:1519.3(C), *inter alia*, prohibits Defendants from authorizing a hospital to reduce health care services provided by Charity Hospital in any manner which causes expenditures of any hospital to be reduced on an annualized basis by greater than thirty-five percent of the previous fiscal year actual spending level.

138. Further, “if any services are reduced by greater than fifteen percent in any one year, legislative approval must be obtained before reducing such services greater than fifteen percent in any year for the next three years.”

139. Upon information and belief, Defendants authorized the reduction of health care services in 2006 by greater than 35% of the previous fiscal year actual spending level. Plaintiffs submitted a public records request seeking information to confirm this allegation, but did not receive a timely response.

140. Defendants did not obtain Legislative approval for the reduction and therefore violated Louisiana Revised Statute 17:1519.3(C).

141. Plaintiffs reserve the right to amend this complaint in the event discovery or the public records request determines that Defendants reduced spending by less than 35%, but more than 15% in any year after 2005.

142. As a direct and proximate result of Defendants' failure to comply with Section 17:1519.3(B), Plaintiffs and the class have suffered, and continue to suffer, damage.

XII. RELIEF REQUESTED

143. Plaintiffs, on behalf of themselves and all other similarly situated, respectfully request from this Court:

A. For an Order certifying the class;

B. For an immediate Order directing Defendants, and such agents and employees as are necessary to carry out the order, to permit an independent, impartial, and competent evaluator, free of any conflict of interest or appearance thereof and approved by the Court, to enter Charity Hospital with the sole purpose of determining and reporting to the Court and the parties (1) the feasibility of reopening Charity Hospital, (2) the steps necessary to enable Charity to function, in whole or in part, as a hospital, (3) the estimate of cost required to achieve said reopening, and (4) such other information as the Court deems necessary and appropriate;

C. Determine and declare that Defendants' actions described in the this Petition violate Louisiana Revised Statute 17:1519.3(B) and 17:1519(C);

D. After a hearing of all parties in this matter, issue a mandatory injunction ordering Defendants and all their agents and employees to reopen Charity or, in the alternative, submit a plan promptly to the Court and subject to review by the Court and the Plaintiffs, detailing how and under what schedule, the Defendants, in a timely manner, will replace the care terminated by the closure of Charity -- particularly the dozens of specialty care clinics for chronically ill and mentally ill people -- whether at a partially reopened Charity Hospital or other sites, or a combination of both;

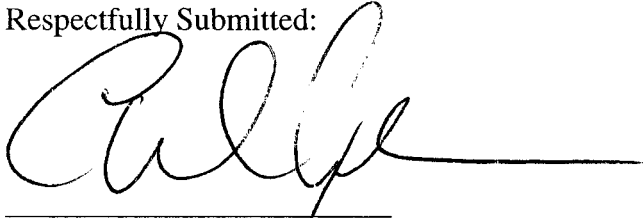
E. Order all other appropriate relief necessary in order to protect the rights of Plaintiffs and proposed class, to include ancillary monetary relief as the Court deems fair and just;

F. Because of the complexity of the relief requested, appoint an expert as a Court Monitor, to monitor implementation of its orders and to issue to this Court and the parties regular and periodic reports on the compliance with the Court's Orders;

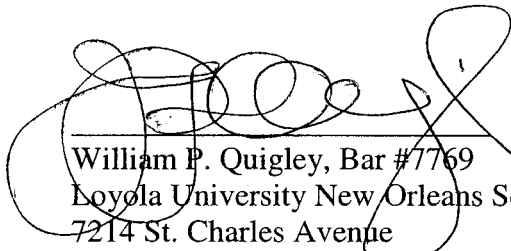
G. For costs of suit; and

H. For such other relief as the Court deems just and proper.

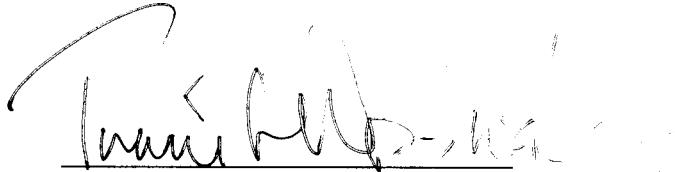
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3. In 2005, Defendants, in their official capacities as managers of Big Charity, ignored the Legislature's mandate and unilaterally and permanently closed Charity without obtaining Legislative approval and in violation of Louisiana Revised Statute § 17:1519.3. The hospital remains closed even though the federal government has offered funds to reopen the facility, the Legislature continues to fund the Charity System at pre-Katrina levels and, upon information and belief, the building is structurally intact.

4. Accordingly, this class action, brought by residents of New Orleans and surrounding parishes injured by Defendants' actions, seeks declaratory and injunctive relief to require Defendants to reopen Big Charity – officially known as the Avery C. Alexander Charity Hospital of New Orleans ("Charity Hospital," "Big Charity," "Charity," or the "Hospital") – unless and until they obtain explicit Legislative approval for the closure, or the Legislature takes other specific remedial action.

5. The unlawful closure of Big Charity has had a devastating impact on the greater New Orleans area. Among other things, thousands of residents lack basic healthcare, the chronically ill go untreated, and critical specialty care is either delayed or unavailable. This medical crisis is the direct result of LSU unlawfully closing Big Charity.

6. Prior to Charity Hospital's closure, Plaintiffs, and the class they represent, were statutorily entitled to receive medical care at Charity Hospital because they are uninsured and low-income. Further, each has a serious medical condition that would have caused them to go to Charity Hospital for care if it were not closed. The unlawful closure violated their entitlement to care, and they are unable to reasonably obtain equivalent care from any other source.

7. This action seeks a declaration from the Court that the unilateral closure of Charity Hospital violates state law and an injunction requiring Defendants, unless and until the Legislature determines otherwise, to replace the care terminated by Charity's closure, particularly the dozens of specialty care clinics for chronically ill and mentally ill patients -- whether at a partially reopened Charity Hospital or other sites, or a combination of both.