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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO/OAKLAND DIVISION

V.L., *et al.*,

Plaintiffs

v.

WAGNER, *et al.*,

Defendants

) Case No.: CV 09-04668 CW

) **EMERGENCY EX PARTE**
) **APPLICATION FOR A TEMPORARY**
) **RESTRAINING ORDER**

) **IMMEDIATE HEARING REQUESTED**

EMERGENCY EX PARTE APPLICATION
FOR A TEMPORARY RESTRAINING ORDER

Plaintiffs have just discovered that Defendants intend to take action to implement the IHSS terminations and reductions that are the subject of a preliminary injunction hearing on October 19, 2009. This Court has ordered expedited briefing and scheduled that hearing for October 19 precisely so that plaintiffs' application can be heard *prior to* Defendants' mailing notices of action to 130,000 IHSS recipients informing them that their services are going to be reduced or eliminated on November 1, 2009 pursuant to ABX4 4. **At 2:34 p.m. today, counsel for State Defendants informed Plaintiffs that Defendants intend to begin mailing those notices tomorrow, October 15, 2009.** See Leyton Decl., Exhibit D.

In order to maintain the *status quo* pending adjudication of Plaintiffs' application for a preliminary injunction, Plaintiffs respectfully request an immediate telephonic hearing or, in the alternative, the immediate issuance of a temporary restraining order preventing Defendants from mailing these notices of action until after the hearing on October 19, 2009. Plaintiffs informed counsel for State Defendants at 2:46 p.m. today that they would be seeking immediate relief from the Court. Leyton Decl. ¶ 7.

Defendants are well aware that the basis for the expedited schedule in this matter was so that a preliminary injunction hearing could take place prior to the mailing of these notices of action. As Plaintiffs wrote in their application:

Plaintiffs seek an order shortening time for the hearing on a preliminary injunction or, in the alternative, request that the Court set a hearing on their request for a TRO, so that relief can be granted ***before October 19, 2009***, when Plaintiffs expect Defendants to send notices to over 130,000 low income elderly, blind, or disabled Californians telling them that crucial In-Home Supportive Services ("IHSS") that currently enable them to remain safely in their own homes will be terminated effective November 1, 2009.

Docket #19:4-9 (emphasis in original); see also Leyton Decl. ¶ 9.¹

¹ During a case management conference on October 6, 2009, in *Martinez v. Schwarzenegger*, C-09-2306, counsel for Defendants in this matter informed the Court that she would be opposing Plaintiffs' requested for an expedited schedule in this case. The Court suggested that Defendants "propose some sort of alternative . . . schedule, and . . . address whatever it is that's happening on October 19, and whether anything could be done to mitigate whatever harm plaintiffs are claiming." 10/6/09 Tr. at 6. Counsel for Defendants said she would communicate that to her co-

Despite multiple briefs and letters concerning the expedited schedule, Defendants have *never* informed the Court (or Plaintiffs) that they intended to mail notices of action prior to the hearing date set by the Court. Plaintiffs have repeatedly asked Defendants when they intended to mail these notices of action and have received no answer – until today. Leyton Decl. ¶¶ 2-6. As a matter of their duty of candor to the Court, State Defendants clearly had an obligation to inform the Court that they intended to mail notice prior to October 19. Instead, with less than 24 hours' notice, State Defendants intend to disrupt the *status quo* and cause the very harm that the expedited briefing/hearing schedule was intended to avoid.

CONCLUSION

For all the foregoing reasons, and based on the briefing in support of Plaintiffs' Application for a Temporary Restraining Order and Preliminary Injunction that have already been filed in this case, Plaintiffs request that this Court hold an immediate telephonic hearing or, in the alternative, immediately issue, without a hearing, an *ex parte* order enjoining Defendants from mailing notices of action that inform IHSS recipients that their IHSS services will be reduced or terminated pursuant to ABX4 4 until after this Court has the opportunity to rule on Plaintiffs' motion for a preliminary injunction following the hearing scheduled for October 19, 2009.

Dated: October 14, 2009

Respectfully Submitted,

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counsel in this case. But rather than propose an alternative schedule that would avoid the harm, Defendants now seek simply to sandbag plaintiffs – and the Court – by mailing the Notice of Action prior to the hearing on Plaintiffs' application.

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