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ASSOCIATION OF HEALTH
7 FACILITIES

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

10
11 CALIFORNIA ASSOCIATION OF
HEALTH FACILITIES,

12 Plaintiff,

13 vs.

14 DAVID MAXWELL-JOLLY,
15 DIRECTOR OF THE DEPARTMENT
OF HEALTH CARE SERVICES,
16 STATE OF CALIFORNIA,

17 Defendant.

CASE NO. **CV 10-03259 CAS**
COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF
(RZX)

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JURISDICTION AND VENUE

1. Plaintiff California Association of Health Facilities ("CAHF" or "Plaintiff") brings this complaint pursuant to 28 United States Code ("U.S.C.") § 1331, the Supremacy Clause and 42 U.S.C. § 1983. *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 96 n. 14 (1983). This court further may compel Defendant David Maxwell-Jolly, Director of the California Department of Health Care Services (the "Director" or "Defendant") to comply with the mandatory provisions of the federal Medicaid law pursuant to 28 U.S.C. § 1361.

2. Venue lies in this judicial district under 28 U.S.C. § 1391, in that the Director has offices within this judicial district and is thus deemed to reside within this judicial district.

INTRODUCTION

3. The State of California continues to disregard the mandates of federal law when making decisions that impact the rates of reimbursement afforded to health care providers under California's Medicaid program, Medi-Cal. On two separate occasions in 2008, as part of the enactment of the State budget, the California Legislature passed statutes that called for flat percentage reductions in the payment rates for various classes of services covered under Medi-Cal. The majority of these payment rate reductions were enjoined by federal courts because they were not enacted or implemented in a manner consistent with the federal Medicaid Act, which requires that states consider certain factors and take certain procedural steps before altering the rates paid to health care providers. Indeed, these rate reductions resulted in three, published decisions from the Ninth Circuit Court of Appeals establishing clearly that, to the extent it undertakes the task of setting Medi-Cal payment rates, the Legislature must comply with the mandates of federal law and, if it does not, the offending State statutes will be preempted.

4. The Legislature's effort to balance California's budget for the 2009-2010 fiscal year has resulted in legislation that once again reduces Medi-Cal

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1 payment rates solely in the name of financial savings and without adherence to the
 2 requirements of the Medicaid Act. Although the form of the most recent rate
 3 reductions may differ slightly from the flat percentage reductions that were enjoined
 4 previously, the process through which the latest limitations were enacted was
 5 virtually identical to the process that led to the now enjoined cuts. The State should
 6 not be permitted to continue to ignore federal law when setting Medi-Cal payment
 7 rates.

8 5. By this action, an organization representing the interests of California
 9 Intermediate Care Facilities For The Mentally Retarded ("ICF/MR facilities") and
 10 Freestanding Pediatric Subacute facilities ("FPS facilities") seeks an injunction to
 11 invalidate and stop the implementation of the Medi-Cal rate limitation, which went
 12 into effect on August 1, 2009, that applies to payment rates for services rendered by
 13 ICF/MR facilities and FPS facilities. This new payment limitation has and will
 14 continue to improperly deprive Medi-Cal participating ICF/MR facilities and FPS
 15 facilities, including a large number of small facilities, of reimbursement to which
 16 they otherwise are lawfully entitled.

17 6. The payment limitation is illegal because, as it has multiple times
 18 before, the California Legislature failed to fulfill its legal mandate to consider
 19 whether the resulting reimbursement rates are consistent with efficiency, economy
 20 and quality of care, reasonably related to provider costs, and sufficient to enlist
 21 enough providers so that Medi-Cal beneficiaries have access to the impacted
 22 services to the extent such services are available to the general public. The State
 23 further violated federal law, like it has done before, by enacting the reimbursement
 24 limitation without the proper public process required for payment rate adjustments.

25 7. For these and other reasons, the Medi-Cal rate limitation impacting
 26 ICF/MR facilities and FPS facilities violates federal law. The imposition of the rate
 27 limitation has caused, and will continue to cause, irreparable harm to California
 28 ICF/MR facilities and FPS facilities in the form of improperly reduced payments

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1 that cannot be recovered in federal court through an action at law. Indeed, a federal
 2 district court already has preliminary enjoined implementation of this rate limit as it
 3 applies to certain hospital services based on findings that it likely violates the
 4 Medicaid Act and was causing irreparable harm to California hospitals.
 5 Accordingly, Plaintiff, on behalf of its members, seeks declaratory and injunctive
 6 relief to prevent the rate limitation from taking effect and, to the extent the
 7 limitation already is in operation, to stop it from being applied any further to
 8 ICF/MR facilities and FPS facilities.

9 FEDERAL MEDICAID LAW

10 8. Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 *et seq.*, the
 11 Medicaid Act, authorizes federal financial support to states for medical assistance to
 12 low-income persons who are aged, blind, disabled, or members of families with
 13 dependent children. The program is jointly financed by the federal and state
 14 governments and administered by the states. The states, in accordance with federal
 15 law, decide eligible beneficiary groups, types and ranges of services, payment level
 16 for services, and administrative and operative procedures. Payment for services is
 17 made directly by states to the individuals or entities that furnish the services.
 18 42 Code of Federal Regulations (“C.F.R.”) § 430.0.

19 9. In order to receive matching federal financial participation, states must
 20 agree to comply with the applicable federal Medicaid law and regulations, 42 U.S.C.
 21 §§ 1396 *et seq.* Once a state has decided to participate in the Medicaid program,
 22 compliance with the federal Medicaid law and regulations is mandatory.

23 10. At the state level, the Medicaid program is administered by a single
 24 state agency, which is charged with the responsibility of establishing and complying
 25 with a state Medicaid plan (the “State Plan”) that, in turn, must comply with the
 26 provisions of applicable federal Medicaid law. 42 U.S.C. § 1396a(a)(5) and
 27 42 C.F.R. §§ 430.10 and 431.10. The State Plan must be submitted to the Secretary
 28 of the United States Department of Health and Human Services (the “Secretary”) for

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1 approval and must describe the policies and methods to be used to set payment rates
 2 for each type of service included in the state Medicaid plan. 42 C.F.R. §§ 430.10
 3 and 447.201(b). Changes to the State Plan may not be implemented by the state
 4 prior to being approved by the Secretary.

5 11. For ICF/MR facilities, FPS facilities, and certain other institutional
 6 providers, states must establish rates through a public process that includes:
 7 (a) publication of proposed rates, the methodologies underlying the establishment of
 8 such rates, and justifications for the rates; (b) a reasonable opportunity for comment
 9 on the proposed rates, methodologies and justifications by providers, beneficiaries
 10 and their representatives, and other concerned State residents; and (c) publication of
 11 the final rates, the methodologies underlying the establishment of such rates, and
 12 justifications for such final rates. *See* 42 U.S.C. § 1396a(a)(13)(A) (hereinafter
 13 "Section 13(A)"); 42 C.F.R. § 447.205.

14 12. Each state's Medicaid plan must "provide such methods and
 15 procedures . . . relating to the utilization of, and the payment for, care and services
 16 available under the plan which may be necessary . . . *to assure that payments are*
 17 *consistent with efficiency, economy, and quality of care and are sufficient to enlist*
 18 *enough providers so that care and services are available under the plan at least to*
 19 *the extent that such care and services are available to the general public in the*
 20 *geographic area"* 42 U.S.C. § 1396a(a)(30)(A) (hereinafter "Section 30(A)")
 21 (emphasis added); 42 C.F.R. § 447.204. Section 30(A) has been interpreted by the
 22 Ninth Circuit Court of Appeals to require state Medicaid agencies to consider
 23 provider costs, based on "reasonable cost" studies, when setting Medi-Cal payment
 24 rates and to preclude states from basing Medicaid rate setting decisions solely on
 25 budgetary factors.

26 CALIFORNIA'S MEDI-CAL PROGRAM

27 13. The State of California has elected to participate in the Medicaid
 28 program. California has named its program "Medi-Cal." *See* Cal. Welf. & Inst.

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1 Code §§ 14000 *et seq.*; 22 Cal. Code of Regs. §§ 50000 *et seq.*

2 14. The Medi-Cal program covers services provided to persons with
3 developmental disabilities whose health and well-being are compromised to the
4 point that they need to reside in ICF/MR facilities. The term ICF/MR facilities is
5 used to refer to intermediate care facilities for the mentally retarded as defined in
6 42 U.S.C. § 1396d(c), including those facilities known in the State of California
7 (and defined in Title 22, Cal. Code Regs. §§ 51164-51165.2 and 51243-51243.2) as
8 Intermediate Care Facilities/Developmentally Disabled ("ICF/DD"), Intermediate
9 Care Facilities/Developmentally Disabled-Habilitative ("ICF/DD-H), and
10 Intermediate Care Facilities/Developmentally Disabled-Nursing ("ICF/DD-N") that
11 serve this dependent population.

12 15. The Medi-Cal program also covers pediatric subacute services for
13 children who need highly intensive specialized services in order to rehabilitate
14 and/or survive. Subacute services are more intensive than skilled nursing care, but
15 slightly less intensive than care provided in an acute, inpatient setting. Medi-Cal
16 coverage extends to subacute services provided by both hospital-based and
17 freestanding providers. The term FPS facilities is used to refer to freestanding
18 subacute facilities licensed as skilled nursing facilities or congregate living facilities
19 that provide services to this dependent population, as defined in Title 22, Cal. Code
20 Regs. §§ 51124.6, 51215.6, 51215.8-51215.11 and 51335.6.

21 16. The vast majority of funding provided to ICF/MR facilities and FPS
22 facilities comes from the Medi-Cal program. As a result, these facilities are
23 completely dependent on the Medi-Cal program for their funding and financial
24 survival.

25 **MEDI-CAL PAYMENTS TO ICF/MR AND FPS FACILITIES**

26 17. Payments from the Medi-Cal fee for service program for various
27 categories of services are governed by various statutes, regulations, the State Plan,
28 and in some instances, informal handbooks, manuals or bulletins.

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18. Payments for services provided by ICF/MR facilities are governed by Title 22, Cal Code Regs. §§ 51510.1-51510.3 and Attachment 4.19-D to the State Plan. Reimbursement is established at a per diem rate calculated at the 65th percentile of audited costs incurred by each of the categories of ICF/MR facilities referred to in paragraph 14, separated by bed size. Payments for services provided by FPS facilities are governed by Title 22, Cal. Code Regs. § 51511.6 and Attachment 4.19-D to the State Plan. FPS facilities are reimbursed pursuant to either of two predetermined flat rates, one for patients who are ventilator dependent and one for patients who are not. The rates that FPS facilities are paid are based on a model that projects the costs FPS facilities will incur in treating Medi-Cal patients. Under the State Plan, the Department is required to re-evaluate Medi-Cal payment rates for ICF/MR facility and FPS facility services on a yearly basis. The Department generally is required to make updates to payment rates each year to account for certain economic conditions in the industry, which reflect an assumption that provider costs will generally increase every year due to, at minimum, inflation.

19. For the 2009-2010 rate year (beginning on August 1, 2009 and ending on July 31, 2010), the average Medi-Cal rates determined by the Department to be paid under the State Plan would have increased by 1.1% for ICF/DD facilities, 6.03% for ICF/DD-H facilities, 8.87% for ICF/DD-N facilities and at least 6% for FPS facilities, but for the applicability of the rate limitation being challenged here.

THE INDEPENDENT LIVING CENTER DECISION

20. On February 16, 2008, the California Legislature enacted Assembly Bill X3 5 ("2008 AB 5") in special session. Section 14 of said bill added Section 14105.19 to the Welfare and Institutions Code. Pursuant to paragraph (b)(1) of Welfare and Institutions Code § 14105.19, payments under the Medi-Cal fee for service program for various classes services were reduced by ten percent beginning with services provided on or after July 1, 2008. The Legislature also enacted Welfare and Institutions Code § 14166.245, which reduced by ten percent payments

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1 to hospitals that do not have a contract with the Department for inpatient services
 2 furnished on or after July 1. The rate and payment reductions set forth in Welfare
 3 and Institutions Code §§ 14105.19(b)(1) and 14166.245, as enacted by 2008 AB 5,
 4 are referred to herein as "the 2008 AB 5 Rate Reductions." The rates paid by the
 5 Medi-Cal program for ICF/MR facility and FPS facility services were not directly
 6 impacted by the 2008 AB 5 Rate Reductions.

7 21. On April 22, 2008, Independent Living Center of Southern California
 8 ("ILCSC") and other plaintiffs filed a lawsuit in Los Angeles Superior Court against
 9 the Director to challenge the 2008 AB 5 Rate Reductions. The essence of the
 10 complaint was that the 2008 AB 5 Rate Reductions violated Section 30(A). The
 11 State removed the action to federal court.

12 22. On August 18, 2008, the United States District Court for the Central
 13 District of California issued a preliminary injunction ordering the State to refrain
 14 from implementing the 2008 AB 5 Rate Reductions for certain services. *Indep.*
 15 *Living Ctr. of S. Cal. v. Shewry*, 2008 WL 3891211 (C.D.Cal. 2008). The district
 16 court found that ILCSC established a likelihood of success on the merits because the
 17 Department did not offer sufficient evidence that it "made the [inquiries required by
 18 Section 30(A)] in deciding to enact the ten percent reduction." The district court
 19 further determined that the 2008 AB 5 Rate Reductions as applied to pharmacies,
 20 physicians, dentists and adult day health care centers ("ADHCs") had a likelihood of
 21 causing irreparable harm. Both ILCSC and the Director appealed aspects of the
 22 district court's preliminary injunction order to the Ninth Circuit.

23 23. On July 9, 2009, the Ninth Circuit issued a published decision
 24 regarding the appeals of the district court's injunction of the 2008 AB 5 Rate
 25 Reductions. *See Indep. Living Ctr. Of S. Cal., Inc. v. Maxwell-Jolly*, 572 F.3d 644
 26 (9th Cir. 2009) [hereinafter "*ILC IP*"]. The Ninth Circuit affirmed the district court's
 27 determination that ILCSC was likely to prevail on its claim that 2008 AB 5 was not
 28 enacted in accordance with, and therefore is preempted by, Section 30(A). The

1 Ninth Circuit also concluded that the district court did not abuse its discretion in
 2 determining that ILCSC adequately demonstrated the likelihood that irreparable
 3 harm would result if the 2008 AB 5 Rate Reductions were not enjoined.

4 **THE CALIFORNIA PHARMACIST ASS'N DECISIONS**

5 24. On September 18, 2008, after a protracted budget stalemate, Governor
 6 Schwarzenegger signed Assembly Bill 1183 ("AB 1183"), the budget trailer bill for
 7 fiscal year 2008-09. AB 1183 amended Welfare and Institutions Code § 14105.19,
 8 making most aspects of the 2008 AB 5 Rate Reductions effective only through
 9 February 28, 2009.

10 25. AB 1183 also enacted modified rate reductions for several classes of
 11 providers, subject to certain exemptions, effective March 1, 2009, by implementing
 12 Welfare and Institutions Code § 14105.191. AB 1183 also imposed additional
 13 reductions on reimbursement from the Medi-Cal program to hospitals for inpatient
 14 services by amending Welfare and Institutions Code § 14166.245. The reductions
 15 set forth in Welfare and Institutions Code §§ 14105.191 and 14166.245, as enacted
 16 or amended by AB 1183, are hereinafter referred to as the "AB 1183 Rate
 17 Reductions." The rates paid under the Medi-Cal program for ICF/MR facility and
 18 FPS facility services were not directly impacted by the AB 1183 Rate Reductions.

19 26. On January 29, 2009, a coalition of Medi-Cal providers and provider
 20 organizations filed a complaint in district court against the Director challenging the
 21 AB 1183 Rate Reductions as to pharmacy, ADHC and hospital services on the
 22 grounds that AB 1183 was not enacted in accordance with the requirements of the
 23 Medicaid Act, including those set forth in Section 30(A). On February 11, 2009,
 24 several hospital plaintiffs filed a motion in the district court seeking preliminary
 25 injunction of the AB 1183 rate cuts for hospital services. The other, non-hospital
 26 plaintiffs filed a separate motion to enjoin the rate reductions as to pharmacy and
 27 ADHC services.

28 27. On March 9, 2009 the district court issued orders on both preliminary

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1 injunction motions concerning the AB 1183 Rate Reductions. The district court
 2 concluded, with respect to both motions, that the plaintiffs demonstrated a
 3 substantial likelihood of prevailing on their claims that the AB 1183 Rate
 4 Reductions conflicted with, and therefore are preempted by, Section 30(A).
 5 Notwithstanding this finding, the district court declined to enjoin the AB 1183 Rate
 6 Reductions for hospital services on the grounds that the hospital plaintiffs had not
 7 demonstrated that they would be irreparably harmed by the reduced payment rates
 8 because they did not show that beneficiary access to hospital services would be
 9 reduced as a result of the rate reductions.

10 28. The hospital plaintiffs appealed the district court's order on March 11,
 11 2009. The next day, they filed an emergency motion with the Ninth Circuit seeking
 12 a temporary stay of the AB 1183 Rate Reductions for hospitals on the grounds that
 13 the district court committed legal error by not finding that hospitals were faced with
 14 irreparable harm by virtue of reduced Medi-Cal payment rates.

15 29. The emergency motion was granted in a published decision from the
 16 Ninth Circuit. *See California Pharmacists Ass'n v. Maxwell-Jolly*, 563 F.3d 847
 17 (9th Cir. 2009) ("*Cal. Pharm. I*"). In *Cal. Pharm. I*, the Ninth Circuit concluded
 18 that the plaintiffs showed that AB 1183 likely was preempted by Section 30(A)
 19 because the statute, and the Medi-Cal rate cuts called for thereby, were enacted
 20 without consideration of efficiency, economy, quality of care and impact on
 21 beneficiary access to services. *Id.* at 851. *Cal. Pharm. I* also establishes that, for
 22 preliminary injunction purposes, unlawfully reduced Medi-Cal reimbursement
 23 constitutes an injury to the providers subject to the decreased rates and that such an
 24 injury is irreparable when, due to sovereign immunity, the reimbursement
 25 differential cannot be recovered in federal court through a suit for money damages.
 26 *Id.* at 851 - 853. Based on the aforementioned findings, the *Cal. Pharm. I* court
 27 stayed the AB 1183 Rate Reductions impacting hospitals.

28 30. In March 2010, the Ninth Circuit issued its decision on the State's

1 appeal of the district court's preliminary injunction of the AB 1183 Rate Reductions
 2 as applied to ADHCs. In *California Pharmacists Ass'n v. Maxwell-Jolly*, 596 F.3d
 3 1098 (9th Cir. 2010) ("*Cal. Pharm. II*"), the court affirmed the injunction order,
 4 finding that the district court correctly concluded that AB 1183 was likely
 5 preempted because it was not enacted in accordance with Section 30(A). In this
 6 decision, the Ninth Circuit made clear that when it is the Legislature that sets Medi-
 7 Cal payment rates, the Legislature is responsible for considering the factors
 8 enumerated in Section 30(A) prior to making any rate changes. *Id.* at 1107. The
 9 court also found that the plaintiffs in the case had adequately demonstrated
 10 irreparable harm resulting from the rate reductions. *Id.* at 1115 – 1114.

11 THE AB 5 RATE REDUCTIONS OF 2009

12 31. On July 28, 2009, after four extra legislative sessions, Governor
 13 Schwarzenegger signed into law Assembly Bill X4 5 ("2009 AB 5"), the budget
 14 trailer bill for California fiscal year 2009 – 2010. Although, unlike the last two
 15 California budget trailer bills, 2009 AB 5 did not make any flat percentage
 16 reductions to Medi-Cal payment rates, the bill enacted or amended multiple statutes
 17 in order to limit Medi-Cal reimbursement for several classes of health care services.

18 32. Among other things, 2009 AB 5 amended Welfare and Institutions
 19 Code § 14105.191, which originally was enacted by AB 1183, to effectively
 20 "freeze" the Medi-Cal payment rates for, among other things, ICF/MR and FPS
 21 facility services at 2008 – 2009 levels. Specifically, the statute now provides that,
 22 for the designated services, "reimbursement rates . . . for services rendered during
 23 the 2009 – 10 rate year and each rate year thereafter, shall not exceed the
 24 reimbursement rates that were applicable to those classes of providers in the 2008-
 25 09 rate year." In effect, the amended version of the statute indefinitely suspends the
 26 annual payment updates for these classes of services that are otherwise required by
 27 the State Plan.

28 33. The reimbursement limitation described in paragraphs 32 above and

1 established by the amendment to Welfare and Institutions Code § 14105.191, as
 2 enacted by 2009 AB 5, is hereinafter referred to as the “2009 AB 5 Reimbursement
 3 Freeze.”

4 34. Plaintiff is informed and believes and thereon alleges that 2009 AB 5,
 5 which included the 2009 AB 5 Reimbursement Freeze, did not go through the public
 6 process that is normally characteristic of legislation and was instead the product of
 7 mostly behind-closed-doors budget negotiations. 2009 AB 5 was first introduced as
 8 a spot budget trailer bill on July 2, 2009, had no substantive content at the time, and
 9 was intended to provide a vehicle to enact budget related items that were under
 10 negotiation. The substantive provisions of the bill, including the 2009 AB 5
 11 Reimbursement Freeze, were added to the bill on July 23, 2009. It was passed by
 12 both the Senate and Assembly that same day and then forwarded on to the Governor
 13 for signature the next day, July 24, 2009. The bill was signed into law by the
 14 Governor on July 28, 2009. The bill was enacted as urgency legislation to become
 15 effective immediately. In enacting 2009 AB 5, both the Senate and Assembly
 16 suspended rules that otherwise limit how quickly a bill can be passed after
 17 amendment.

18 35. Plaintiff is informed and believes and thereon alleges that, prior to
 19 enacting 2009 AB 5, neither the Legislature nor the Director engaged in any type of
 20 public notice and comment process related to the payment rates that would result
 21 from the 2009 AB 5 Reimbursement Freeze.

22 36. Plaintiff is further informed and believes and thereon alleges that, like
 23 the State’s failures that prompted the injunctions at issue in *ILC II*, *Cal. Pharm. I*,
 24 and *Cal. Pharm. II*, prior to enacting or implementing 2009 AB 5, no studies or
 25 other analyses were conducted by the Legislature or by the Director to determine
 26 whether the Medi-Cal payment rates resulting from the 2009 AB 5 Reimbursement
 27 Freeze would be consistent with efficiency, economy and quality of care or
 28 reasonably related to the costs of providing the services affected by the rate

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1 reduction.

2 37. Plaintiff is informed and believes and thereon alleges that prior to
3 enacting or implementing 2009 AB 5, no studies or other analyses were conducted
4 by the Legislature or by the Director to determine the impact the 2009 AB 5
5 Reimbursement Freeze would have on the ability of Medi-Cal beneficiaries to have
6 access to the impacted ICF/MR facility and FPS facility services to the same extent
7 as the general public.

8 38. As mentioned above, a federal district court already has preliminarily
9 enjoined the 2009 AB 5 Reimbursement Freeze as it applied to certain categories of
10 hospital services. In *California Hospital Association v. Maxwell-Jolly*, Case No. 09-
11 08642, by order dated February 24, 2010, the United States District Court for the
12 Central District of California preliminarily enjoined the Director from applying or
13 otherwise enforcing the 2009 AB 5 Reimbursement Freeze with respect to hospital
14 based skilled nursing and subacute services (including pediatric subacute services)
15 based on findings that 2009 AB 5 was enacted by the Legislature without adherence
16 to the requirements of Section 30(A) and that hospitals were being irreparably
17 harmed by the decreased Medi-Cal reimbursement resulting from the limitation,
18 which could not be recovered in an action for damages due to the State's Eleventh
19 Amendment immunity.

20 THE ILLEGALITY OF 2009 AB 5

21 39. The State has violated, and continues to violate federal Medicaid
22 statutes, federal Medicaid regulations and the State Plan by failing to analyze
23 Medi-Cal reimbursement rates for the services affected by the 2009 AB 5
24 Reimbursement Freeze in order to ensure that those rates are consistent with
25 efficiency, economy and quality of care, reasonably related to provider costs, and
26 sufficient to ensure that beneficiaries of the Medi-Cal program have access to
27 services to the same extent as the general public.

28 40. Violation of Federal Statute: The 2009 AB 5 Reimbursement Freeze is

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1 invalid and may not lawfully be implemented because it violates federal Medicaid
2 law, and is therefore preempted by the Supremacy Clause, because:

3 (a) The 2009 AB 5 Reimbursement Freeze violates Section 30(A) in
4 the following ways:

5 (i) Neither the Director nor the Legislature considered the
6 factors of efficiency, economy, quality of care, and access to services prior to
7 enacting the 2009 AB 5 Reimbursement Freeze;

8 (ii) Neither the Director nor the Legislature demonstrated a
9 reasonable connection between rates resulting from the 2009 AB 5 Reimbursement
10 Freeze and the efficient and economical provision of quality care, or ensuring access
11 to services, prior to enacting the 2009 AB 5 Reimbursement Freeze;

12 (iii) Neither the Legislature nor the Director considered the
13 costs of providing quality care or demonstrated a reasonable connection between
14 Medi-Cal rates resulting from the 2009 AB 5 Reimbursement Freeze and provider
15 costs;

16 (iv) Plaintiff is informed and believes and thereon alleges that
17 the rates resulting from the 2009 AB 5 Reimbursement Freeze are not consistent
18 with efficiency, economy, and quality of care, reasonably related to provider costs,
19 or sufficient to ensure that Medi-Cal beneficiaries have access to the impacted
20 ICF/MR facility and FPS facility services to the same extent as the general
21 population.

22 (b) The 2009 AB 5 Reimbursement Freeze violates Section 13(A) as
23 to the impacted ICF/MR facility and FPS facility services because it was not
24 adopted through the public process required by this provision. In addition to a claim
25 of preemption under the Supremacy Clause, the State's failure to comply with
26 Section 13(A) gives rise to a private right of action under 42 U.S.C. § 1983, as
27 violation of the civil rights of CAHF's members.

28 41. Violation of Federal Regulations: The 2009 AB 5 Reimbursement

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Freeze is invalid and may not lawfully be implemented because it violates federal Medicaid regulations, and is therefore preempted by the Supremacy Clause, in that public notice of the reimbursement limitation as to the impacted ICF/MR facility and FPS facility services was not given in accordance with the terms of 42 C.F.R. § 447.205.

42. Violation of the State Plan: As mentioned above, the Director must follow the State Plan as a Federal requirement for participation in the Medicaid program. The 2009 AB 5 Reimbursement Freeze is invalid and may not lawfully be implemented as it violates the State Plan, and accordingly, Federal law, and is therefore preempted by the Supremacy Clause, because it indefinitely suspends the annual payment update for ICF/MR facility and FPS facility services otherwise required by the State Plan.

43. No State Plan Amendment: The 2009 AB 5 Reimbursement Freeze is invalid and may not lawfully be implemented because it is inconsistent with and violates the State Plan, including, but not limited to, Attachment 4.19-D as to ICF/MR facility and FPS facility services. The 2009 AB 5 Reimbursement Freeze therefore is preempted by the Supremacy Clause. The Director may not lawfully implement the 2009 AB 5 Reimbursement Freeze unless and until he obtains federal approval of the necessary amendments to the State Plan from the federal government. Plaintiff is informed and believes, and thereon alleges, that the Director has not obtained federal approval for the 2009 AB 5 Reimbursement Freeze.

THE PARTIES

44. Defendant DAVID MAXWELL-JOLLY is the Director of the Department of Health Care Services and, as such, has the responsibility to administer the Medi-Cal program consistent with the Medicaid Act. The Director is sued in his official capacity. The Department is the single state agency charged with the administration of California's Medicaid program, known as Medi-Cal. *See*

1 California Welf. & Inst. Code §§ 14000 *et seq.* The Director has an office in the
2 County of Los Angeles.

3 45. Plaintiff CALIFORNIA ASSOCIATION OF HEALTH FACILITIES
4 is, and at all times mentioned herein was, a non-profit association representing,
5 among other long-term care providers, 519 licensed ICF/MR facilities and FPS
6 facilities in the State of California, a number of which are located within the Central
7 District of California, Western Division. These members are affected by the State's
8 failure to pay for services provided to Medi-Cal beneficiaries at the rates required by
9 federal law and the State Plan. The protection of these interests are germane to
10 CAHF's purpose. CAHF is bringing this action on its own behalf and as the
11 "representative" of its member ICF/MR facilities and FPS facilities. The individual
12 participation of CAHF's members is not required for the claims asserted or the relief
13 requested.

14 CAHF'S STANDING AS AN ASSOCIATION

15 46. All of CAHF's ICF/MR facility and FPS facility members are
16 Medi-Cal providers. These Medi-Cal providers will suffer (and have suffered) a
17 concrete economic injury in the form of reduced payments for services by the
18 unlawful implementation of the 2009 AB 5 Reimbursement Freeze.

19 47. CAHF, as an association representing the interests of California
20 ICF/MR facilities and FPS facilities that participate in the Medi-Cal program and as
21 a party seeking to compel the Director to comply with his public duties as defined
22 by federal law, has a right and an enforceable interest to maintain this action to: (1)
23 enjoin Defendant's continuing violation of federal Medicaid law; and (2) compel
24 Defendant to comply with the provisions of the applicable federal laws.

25 48. Moreover, CAHF has a right and an enforceable interest to maintain
26 this action against the Director under the Supremacy Clause of the United States
27 Constitution and under the Civil Rights Act, 42 U.S.C. § 1983, to enjoin the
28 Director's continuing violation of the federal Medicaid law and to compel the

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1 Director to comply with the provisions of the applicable federal Medicaid law.

2 49. Under 28 U.S.C. § 2201, CAHF is entitled to a declaration of its rights,
3 its members' rights, and/or its members' patients' rights under federal Medicaid
4 law.

5 **FIRST CAUSE OF ACTION**

6 **(VIOLATION OF 42 U.S.C. § 1396a(a)(30)(A)/SUPREMACY CLAUSE)**

7 50. Plaintiff hereby incorporates by reference paragraphs 1 through 49,
8 inclusive, as though fully set forth herein.

9 51. The 2009 AB 5 Reimbursement Freeze violates Section 30(A) of the
10 Medicaid Act because:

11 (a) Neither the Director nor the Legislature considered the factors of
12 efficiency, economy, quality of care, and access to services prior to enacting the
13 2009 AB 5 Reimbursement Freeze;

14 (b) Neither the Director nor the Legislature demonstrated a
15 reasonable connection between the payment rates resulting from 2009 AB 5
16 Reimbursement Freeze and the provision of quality care in an efficient and
17 economic manner, or ensuring access to services, prior to enacting the 2009 AB 5
18 Reimbursement Freeze;

19 (c) Neither the Legislature nor the Director considered the costs of
20 providing quality care or demonstrated that the Medi-Cal payment rates resulting
21 from the 2009 AB 5 Reimbursement Freeze are reasonably related to provider costs;
22 and

23 (d) Plaintiff is informed and believes and thereon alleges that the
24 rates resulting from the 2009 AB 5 Reimbursement Freeze are not consistent with
25 efficiency, economy, and quality of care, nor are they reasonably related to provider
26 costs, and also are not sufficient to enlist enough providers so that Medi-Cal
27 beneficiaries have access to the impacted ICF/MR facility and FPS facility services
28 at least to the extent that such services are available to the general population.

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SECOND CAUSE OF ACTION

**(VIOLATION OF 42 U.S.C. § 1396a(a)(13)(A)/SUPREMACY
CLAUSE/42 U.S.C. § 1983)**

52. Plaintiff hereby incorporates by reference paragraphs 1 through 49, inclusive, as though fully set forth herein.

53. The 2009 AB 5 Reimbursement Freeze violates Section 13(A) as to the impacted ICF/MR facility and FPS facility services because it was not adopted through a public process as required by this provision.

54. The 2009 AB 5 Reimbursement Freeze is thus preempted by the Supremacy Clause of the United States Constitution, art. IV. and violates the civil rights of CAHF's members, which are enforceable through 42 U.S.C. § 1983.

THIRD CAUSE OF ACTION

(VIOLATION OF 42 C.F.R. § 447.205/SUPREMACY CLAUSE)

55. Plaintiff hereby incorporates by reference paragraphs 1 through 49, inclusive, as though fully set forth herein.

56. The 2009 AB 5 Reimbursement Freeze is invalid and may not lawfully be implemented because it violates 42 C.F.R. § 447.205 as to the impacted ICF/MR facility and FPS facility services, and is therefore preempted by the Supremacy Clause, in that public notice of the reimbursement limitation was not given in accordance with the terms of 42 C.F.R. § 447.205.

FOURTH CAUSE OF ACTION

**(VIOLATION OF STATE PLAN/FAILURE TO AMEND STATE
PLAN/SUPREMACY CLAUSE)**

57. Plaintiff hereby incorporates by reference paragraphs 1 through 49 inclusive, as though fully set forth herein.

58. The 2009 AB 5 Reimbursement Freeze is invalid and may not lawfully be implemented as it violates the State Plan, including but not limited to, Attachment 4.19-D as to ICF/MR facility and FPS facility services, and accordingly, federal law, and is therefore preempted by the Supremacy Clause, because it

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1 indefinitely suspends the annual updates to Medi-Cal payment rates for ICF/MR
2 facility and FPS facility services otherwise required by the State Plan.

3 59. The Director may not lawfully implement the 2009 AB 5
4 Reimbursement Freeze unless and until it obtains federal approval of the necessary
5 amendments to the State Plan from the federal government.

6 **FIFTH CAUSE OF ACTION**

7 **(DECLARATORY RELIEF)**

8 60. Plaintiff hereby incorporates by reference paragraphs 1 through 49
9 inclusive, as though fully set forth herein.

10 61. An actual and justiciable controversy exists between Plaintiff and
11 Director regarding the validity of the 2009 AB 5 Reimbursement Freeze. Plaintiff,
12 on behalf of its members, contends that the reimbursement limitation is invalid and
13 unlawful in violation of federal statute, federal regulations, and the State Plan, while
14 the Director contends that the reimbursement limitation is valid in all respects.

15 62. Accordingly, pursuant to 28 U.S.C. § 2201, Plaintiff requests this Court
16 to declare that the 2009 AB 5 Reimbursement Freeze is invalid, unlawful and
17 preempted by federal Medicaid law.

18 63. No administrative appeal process or other administrative remedy is
19 available to Plaintiff or its members to challenge the 2009 AB 5 Reimbursement
20 Freeze.

21 64. All of the said injuries are great, immediate, and irreparable, for which
22 damages at law are inadequate, and for which Plaintiff, or its members, have no
23 plain, adequate or speedy relief at law or otherwise.

24 **WHEREFORE**, Plaintiff prays for judgment as follows:

25 1. For an Order declaring that the 2009 AB 5 Reimbursement Freeze
26 violates 42 U.S.C. §§ 1396a(a)(30)(A) and 1396a(a)(13), 42 C.F.R. § 447.205, and
27 the California State Plan and is thus invalid and preempted by the Supremacy
28 Clause of the United States Constitution, art. IV;

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1 2. For an Order declaring that the 2009 AB 5 Reimbursement Freeze
2 represents a de facto amendment to the State Plan and therefore said rate reduction
3 cannot be imposed without federal approval;

4 3. For an Order preliminarily and permanently enjoining the Director
5 from effectuating or otherwise applying the 2009 AB 5 Reimbursement Freeze or
6 reducing to any degree the Medi-Cal rates for services rendered by ICF/MR
7 facilities and FPS facilities that are affected by Welfare and Institutions Code
8 §§ 14105.191, as amended by 2009 AB 5; and

9 4. For the costs of suit, including reasonable attorneys' fees incurred by
10 Plaintiffs, as permitted under 42 U.S.C. § 1988 or otherwise, and

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

12 DATED: April 30, 2010

HOOPER, LUNDY & BOOKMAN, INC.

13
14 By: 
15 JORDAN B. KEVILLE
16 Attorneys for Plaintiff CALIFORNIA
17 ASSOCIATION OF HEALTH FACILITIES
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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Christina A. Snyder and the assigned discovery Magistrate Judge is Ralph Zarefsky.

The case number on all documents filed with the Court should read as follows:

CV10- 3259 CAS (RZx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====;
NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

AO 440 (Rev. 02/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

CALIFORNIA ASSOCIATION OF HEALTH
FACILITIES,

Plaintiff

v.

DAVID MAXWELL-JOLLY, DIRECTOR OF THE
DEPARTMENT OF HEALTH CARE
SERVICES, STATE OF CALIFORNIA,

Defendant

Civil Action No.

CV 10-03259

CAS (RZX)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

David Maxwell-Jolly, Director
Department of Health Care Services
State of California
1501 Capitol Avenue
Suite 6001
Sacramento, CA 95814

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

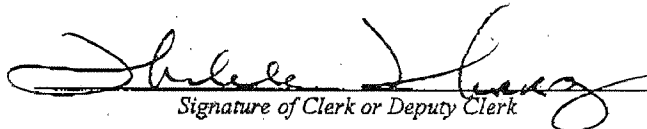
Mark E. Regan, Esq.
Jordan B. Keville, Esq.
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1875 Century Park East
Suite 1600
Los Angeles, CA 90067
Tel: (310) 551-8103
Fax: (310) 551-8181
mregan@health-law.com
jkeville@health-law.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date:

30 APR 2010


Signature of Clerk or Deputy Clerk

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA CIVIL COVER SHEET					
I (a) PLAINTIFFS (Check box if you are representing yourself ☐) CALIFORNIA ASSOCIATION OF HEALTH FACILITIES			DEFENDANTS DAVID MAXWELL-JOLLY, DIRECTOR OF THE CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES		
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Mark E. Reagan and Jordan B. Keville Hooper, Lundy & Bookman, Inc., 1875 Century Park East, Suite 1600 Los Angeles, CA 90067 (310) 551-8103			Attorneys (If Known)		
II. BASIS OF JURISDICTION (Place an X in one box only.)		III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)			
☐ 1 U.S. Government Plaintiff	☒ 3 Federal Question (U.S. Government Not a Party)	Citizen of This State	PTF DEF ☐ 1 ☐ 1	Incorporated or Principal Place of Business in this State	PTF DEF ☐ 4 ☐ 4
☐ 2 U.S. Government Defendant	☐ 4 Diversity (Indicate Citizenship of Parties in Item III)	Citizen of Another State	☐ 2 ☐ 2	Incorporated and Principal Place of Business in Another State	☐ 5 ☐ 5
		Citizen or Subject of a Foreign Country	☐ 3 ☐ 3	Foreign Nation	☐ 6 ☐ 6
IV. ORIGIN (Place an X in one box only.)					
☒ 1 Original Proceeding	☐ 2 Removed from State Court	☐ 3 Remanded from Appellate Court	☐ 4 Reinstated or Reopened	☐ 5 Transferred from another district (specify):	☐ 6 Multi-District Litigation
☐ 7 Appeal to District Judge from Magistrate Judge					
V. REQUESTED IN COMPLAINT: JURY DEMAND: ☐ Yes ☒ No (Check 'Yes' only if demanded in complaint.)					
CLASS ACTION under F.R.C.P. 23: ☐ Yes ☒ No MONEY DEMANDED IN COMPLAINT: \$ 0.00					
VI. CAUSE OF ACTION (Cite the U. S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) Plaintiff claims that Defendant's Non-Contracted Hospital Rates violate the federal Medicaid Act, 42 U.S.C. ss. 1396a(a)(30)(A), 1396a(a)(13)(A) and 42 C.F.R. ss. 447.205 and 438.114, the U.S. Constitution's Supremacy Clause.					
VII. NATURE OF SUIT (Place an X in one box only.)					
OTHER STATUTES ☐ 400 State Reapportionment ☐ 410 Antitrust ☐ 430 Banks and Banking ☐ 450 Commerce/ICC Rates/etc. ☐ 460 Deportation ☐ 470 Racketeer Influenced and Corrupt Organizations ☐ 480 Consumer Credit ☐ 490 Cable/Sat TV ☐ 810 Selective Service ☐ 850 Securities/Commodities/Exchange ☐ 875 Customer Challenge 12 USC 3410 ☐ 890 Other Statutory Actions ☐ 891 Agricultural Act ☐ 892 Economic Stabilization Act ☐ 893 Environmental Matters ☐ 894 Energy Allocation Act ☐ 895 Freedom of Info. Act ☐ 900 Appeal of Fee Determination Under Equal Access to Justice ☒ 950 Constitutionality of State Statutes	CONTRACT ☐ 110 Insurance ☐ 120 Marine ☐ 130 Miller Act ☐ 140 Negotiable Instrument ☐ 150 Recovery of Overpayment & Enforcement of Judgment ☐ 151 Medicare Act ☐ 152 Recovery of Defaulted Student Loan (Excl. Veterans) ☐ 153 Recovery of Overpayment of Veteran's Benefits ☐ 160 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability ☐ 196 Franchise REAL PROPERTY ☐ 210 Land Condemnation ☐ 220 Foreclosure ☐ 230 Rent Lease & Ejectment ☐ 240 Tort to Land ☐ 245 Tort Product Liability ☐ 290 All Other Real Property	TORTS PERSONAL INJURY ☐ 310 Airplane ☐ 315 Airplane Product Liability ☐ 320 Assault, Libel & Slander ☐ 330 Fed. Employers' Liability ☐ 340 Marine ☐ 345 Marine Product Liability ☐ 350 Motor Vehicle ☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury ☐ 362 Personal Injury-Med Malpractice ☐ 365 Personal Injury-Product Liability ☐ 368 Asbestos Personal Injury Product Liability IMMIGRATION ☐ 462 Naturalization Application ☐ 463 Habeas Corpus-Alien Detainees ☐ 465 Other Immigration Actions	TORTS PERSONAL PROPERTY ☐ 370 Other Fraud ☐ 371 Truth in Lending ☐ 380 Other Personal Property Damage ☐ 385 Property Damage Product Liability BANKRUPTCY ☐ 22 Appeal 28 USC 158 ☐ 423 Withdrawal 28 USC 157 CIVIL RIGHTS ☐ 441 Voting ☐ 442 Employment ☐ 443 Housing/Accommodations ☐ 444 Welfare ☐ 445 American with Disabilities - Employment ☐ 446 American with Disabilities - Other ☐ 440 Other Civil Rights	PRISONER PETITIONS ☐ 510 Motions to Vacate Sentence Habeas Corpus ☐ 530 General ☐ 535 Death Penalty ☐ 540 Mandamus/Other ☐ 550 Civil Rights ☐ 555 Prison Condition FORFEITURE/PENALTY ☐ 610 Agriculture ☐ 620 Other Food & Drug ☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 630 Liquor Laws ☐ 640 R.R. & Truck ☐ 650 Airline Regs ☐ 660 Occupational Safety/Health ☐ 690 Other	LABOR ☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 730 Labor/Mgmt. Reporting & Disclosure Act ☐ 740 Railway Labor Act ☐ 790 Other Labor Litigation ☐ 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS ☐ 820 Copyrights ☐ 830 Patent ☐ 840 Trademark SOCIAL SECURITY ☐ 61 HIA(1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW 405(g) ☐ 864 SSID Title XVI ☐ 865 RSI(405(g)) FEDERAL TAX SUITS ☐ 870 Taxes (U.S. Plaintiff or Defendant) ☐ 871 IRS-Third Party 26 USC 7609
FOR OFFICE USE ONLY: Case Number: _____					

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s):

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☐ No ☒ Yes

If yes, list case number(s): 2:08-cv-03315; 2:09-cv-0382; 2:09-cv-0722; 2:09-cv-08642

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☒ A. Arise from the same or closely related transactions, happenings, or events; or
☒ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☒ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*

California County outside of this District; State, if other than California; or Foreign Country

CALIFORNIA ASSOCIATION OF HEALTH FACILITIES -
Sacramento County

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*

California County outside of this District; State, if other than California; or Foreign Country

DAVID MAXWELL-JOLLY, DIRECTOR OF THE
CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES -
located in Sacramento County but has offices in Los Angeles
County

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*

California County outside of this District; State, if other than California; or Foreign Country

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved.

X. SIGNATURE OF ATTORNEY (OR PRO PER):

Jordan B. Keville

Date April 20, 2010

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)