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UNITED CEREBRAL PALSY/SPASTIC
CHILDREN'S FOUNDATION OF LOS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DEVELOPMENTAL SERVICES
NETWORK, et al.,

Plaintiffs,

v.

DAVID MAXWELL-JOLLY, et al.,

Defendants.

Case No. CV10-03284

**AMENDED COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

ASSIGNED FOR ALL PURPOSES TO
HON. CHRISTINA A. SNYDER

ACTION FILED: 4/30/10

I.
JURISDICTION AND VENUE

1. This Court is vested with jurisdiction under 28 U.S.C. section 1331
because this action arises under the laws of the United States, including the

1 Supremacy Clause of the United States Constitution (U.S. Const., art. VI, cl.2),
 2 federal Medicaid law (Title XIX of the Social Security Act, 42 U.S.C. § 1396 *et*
 3 *seq.* (the “Medicaid Act”), and the Civil Rights Act, 42 U.S.C. §1983. (*See Shaw v.*
 4 *Delta Air Lines, Inc.* (1983) 463 U.S. 85, 96 n.14 [103 S.Ct. 2890, 2899 n.14, 77
 5 L.Ed.2d 490].)

6 2. Venue is proper in this Court, the Central District of California,
 7 pursuant to 28 U.S.C. section 1391(b) because defendants have an office located in
 8 this district and the Attorney General has an office in this district, and because the
 9 impact of the defendants actions were felt in this district, including by the plaintiffs
 10 in this action whose facilities are located in this district. (*See Cal. Code of Civ.*
 11 *Proc.* § 401(1).)

12 II. 13 PARTIES

14 3. Plaintiff Developmental Services Network (“DSN”) is a statewide
 15 non-profit trade association in California that represents approximately 250 small
 16 intermediate care facilities for people with developmental disabilities. DSN is
 17 headquartered in Sacramento, California. The members of DSN are companies
 18 operating facilities licensed as either “intermediate care facility/developmentally
 19 disabled-nursing” (“ICF/DD-N”) pursuant to California Health & Safety Code
 20 section 1250(h) or “intermediate care facility/developmentally disabled-
 21 habilitative” (“ICF/DD-H”) pursuant to California Health & Safety Code section
 22 1250(e). DSN is informed and believes that all of its members are Medi-Cal
 23 providers. DSN also has standing, and a right and enforceable interest to maintain
 24 this action against defendant Director of defendant Department of Health Care
 25 Services under the Supremacy Clause and under the Civil Rights Act, 42 U.S.C. §
 26 1983, to enjoin the Director’s continuing violation of the federal Medicaid law and
 27 to compel the Director to comply with the provisions of the applicable federal
 28 Medicaid law.

4. Plaintiff United Cerebral Palsy/Spastic Children's Foundation of Los Angeles and Ventura Counties, dba United Cerebral Palsy of Los Angeles, Ventura and Santa Barbara Counties ("UCP") is a 501(c)(3) non-profit public benefit association founded in 1945 by a small group of parents who wanted to create community-based services for their children with disabilities. UCP is headquartered in Woodland Hills, California. Today, UCP operates more than 40 program sites throughout five counties in Southern California and has extended its mission to serve all people with disabilities. UCP provides services to more than 1,000 children and adults with developmental disabilities daily. UCP is also an affiliate of the national United Cerebral Palsy, a nationwide network of over 100 independent, state and local non-profit affiliates, with a central national organization located in Washington, D.C. UCP operates 12 ICF/DD-H homes and 9 ICF/DD-N homes. Over 99% of the ICF patients served by UCP are Medi-Cal eligible and the facilities receive their reimbursement for the care from Medi-Cal. UCP also has standing, and a right and enforceable interest to maintain this action against defendant Director of defendant Department of Health Care Services under the Supremacy Clause and under the Civil Rights Act, 42 U.S.C. § 1983, to enjoin the Director's continuing violation of the federal Medicaid law and to compel the Director to comply with the provisions of the applicable federal Medicaid law.

5. Defendant David Maxwell-Jolly is the Director of the Department of Health Care Services for the State of California ("DHCS"), and, in that capacity, is responsible for the overall administration of the Medi-Cal program. (Cal. Welf. & Inst. Code § 14100.1; 22 Cal. Code of Regs., § 50004.)

6. Defendant DHCS is, and at all times mentioned herein was, an agency of the State of California. DHCS is the single State agency charged with the administration of the Medi-Cal program. (*See* Cal. Welf. & Inst. Code §§ 10720, *et seq.*, 14000 *et seq.*; 22 Cal. Code of Regs., §§ 50000 *et seq.*)

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III. INTRODUCTION

7. Plaintiffs bring this lawsuit to challenge the State of California's imposition of a permanent "freeze" on the Medi-Cal reimbursement rates paid to intermediate care facilities for the developmentally disabled licensed pursuant to subdivision (e) or (h) of Section 1250 of the California Health and Safety Code.

8. The rate freeze was signed into law by California Governor Arnold Schwarzenegger on July 28, 2009, after the California Legislature adopted Assembly Bill 5 of the 2009-10 Fourth Extraordinary Session ("AB 5"), the budget trailer bill for California fiscal year 2009-10, which, among other things, added subdivision (f)(2)(A) to Section 14105.191 of the California Welfare and Institutions Code.

9. Section 14105.191(f)(2)(A) freezes the Medi-Cal reimbursement rates for services provided certain classes of intermediate care facilities for the developmentally disabled "rendered during the 2009-2010 rate year and each rate year thereafter" at 2008-09 levels. Plaintiff UCP operates and plaintiff DSN represents members who operate the classes of intermediate care facilities for the developmentally disabled that are directly injured, by loss of gross income, as a result of the rate freeze. This injury is directly traceable to the defendants' implementation of AB 5 and would be redressed by a favorable decision enjoining the rate freeze. Accordingly, plaintiffs have Article III standing to bring this action. (*See Independent Living Center v. Shewry* (9th Cir. 2008) 543 F.3d 1050, 1065.)

10. Plaintiffs allege that AB 5 is preempted by section 30(A) of the Medicaid Act, 42 U.S.C. § 1396a(a)(30)(A) ("§ 30(A)") because neither the defendants nor the California Legislature considered the "quality of care" or "equal access" provisions of § 30(A), or whether the frozen reimbursement rates are reasonably related to provider costs, before its implementation. Plaintiffs also allege that the rate provisions of AB 5 were implemented in violation of (1) the

1 public process provisions of 42 U.S.C. § 1396a(a)(13)(A) (“§ 13(A)”); (2) the
 2 public notice provisions of 42 C.F.R. § 447.205 (“§ 447.205”); and (3) the
 3 requirements of the Medi-Cal State Plan (the “State Plan”).

4 11. Plaintiffs seek declaratory and injunctive relief to restrain the
 5 implementation and enforcement of the rate freeze provisions of AB 5 at issue in
 6 this case because these State provisions are in violation of federal law and are
 7 preempted under the Supremacy Clause of the United States Constitution.

8 9 **IV.** **BACKGROUND**

10 **A. Federal Medicaid Law**

11 12. In 1965, Congress enacted Title XIX of the Social Security Act,
 12 generally referred to as The Medicaid Act, to provide States with funding to furnish
 13 medical assistance to individuals “whose income and resources are insufficient to
 14 meet the costs of necessary medical services.” (42 U.S.C. §§ 1396 et. seq.; *Wilder*
 15 *v. Va. Hosp. Ass’n* (1990) 496 U.S. 498, 502 [110 S.Ct. 2510, 2513, 110 L.Ed.2d
 16 455].) The Medicaid program authorizes federal financial support to States for
 17 medical assistance to low income persons who are aged, blind, disabled, or
 18 members of families with dependent children. The program is jointly financed by
 19 the federal and State governments and administered by the States, with the federal
 20 financial participation level currently ranging between approximately 50 and 83
 21 percent. The States, in accordance with federal law, determine eligibility of
 22 particular types of beneficiaries, types and ranges of services, payment levels, and
 23 administrative and operative procedures. Payment for services is made directly by
 24 States to the individuals or entities that furnish the services. (42 C.F.R. § 430.0.)

25 13. A State’s participation in Medicaid is voluntary, but a State that
 26 chooses to participate must comply with the provisions of the Medicaid Act and its
 27 implementing regulations. (*Alaska Dept. of Health and Social Servs. v. Centers for*
 28

1 *Medicare and Medicaid Servs.* (9th Cir. 2005) 424 F.3d 931, 935.) Each State
 2 administers its Medicaid program through a single State agency, which is charged
 3 with the responsibility of establishing and complying with a State Medicaid plan
 4 that, in turn, must comply with the applicable provisions of federal Medicaid law,
 5 including the requirements set forth in 42 U.S.C. § 1396a(a)(1)-(70). (42 U.S.C. §
 6 1396a(a)(5); 42 C.F.R. §§ 430.10 & 431.10.) In California, defendant DHCS is the
 7 single State agency charged with administration of the California Medicaid
 8 program, which is referred to as “Medi-Cal”.

9 14. In accordance with the requirements of 42 U.S.C. § 1396a(a)(1)-(70),
 10 California must provide “methods and procedures” for the payment of care and
 11 services that (1) are “consistent with efficiency, economy, and quality of care,” and
 12 (2) ensure their availability to the Medicaid population to the same “extent as they
 13 are available to the general population in the geographic area.” (42 U.S.C. §
 14 1396a(a)(30)(A).) These requirements are known, respectively, as the “quality of
 15 care” and “equal access” provisions of § 30(A) of the Medicaid Act.

16 15. In *Orthopedic Hospital v. Belshe* (9th Cir. 1997), 103 F.3d 1491, 1496,
 17 the Court of Appeals for the Ninth Circuit interpreted § 30(A) to require defendants
 18 to set reimbursement rates that “bear a reasonable relationship to efficient and
 19 economical hospitals’ costs of providing quality services, unless the Department
 20 shows some justification for rates that substantially deviate from such costs.” (*See*
 21 *also Independent Living Center of So. Cal. v. Maxwell-Jolly* (9th Cir. 2009) 572
 22 F.3d 644, 651-52.) To meet this statutory requirement, the Ninth Circuit held that
 23 the State “must rely on responsible cost studies, its own or others’, that provide
 24 reliable data as a basis for its rate setting.” (*Orthopedic Hospital*, 103 F.3d at
 25 1496.)

26 16. In addition, for certain providers, including intermediate care facilities
 27 such as plaintiffs and their members, California must establish rates through a
 28 public process that includes publication of the proposed rates and their underlying

1 methodologies, such that providers are “given a reasonable opportunity for review
2 and comment.” (42 U.S.C. § 1396a(a)(13)(A) (“§ 13(A)”)).

3 17. In addition, CMS implementing regulations require that public notice
4 be provided of “any significant proposed change” in the State’s setting of payment
5 rates for services, with exceptions not relevant here. (42 C.F.R. § 447.205 (“§
6 447.205”)).)

7 **B. The Establishment Of Intermediate Care Facilities Under Federal**
8 **and State Law**

9 18. Prior to 1971, facilities for the developmentally disabled were financed
10 solely by state, local and private funding. In the Act of December 14, 1971 (Public
11 Law 92-223), Congress enacted legislation that allowed states to cover services in
12 intermediate care facilities for the developmentally disabled (referred to as
13 “intermediate care facilities for the mentally retarded” in the federal legislation).

14 19. Under federal law, “intermediate care facility for mentally retarded” is
15 defined as follows:

16 The term “intermediate care facility for the mentally
17 retarded” means an institution (or distinct part thereof) for
18 the mentally retarded or persons with related conditions if

19 (1) the primary purpose of such institution (or distinct
20 part thereof) is to provide health or rehabilitative services
21 for mentally retarded individuals and the institution meets
22 such standards as may be prescribed by the Secretary;

23 (2) the mentally retarded individual with respect to
24 whom a request for payment is made under a plan
25 approved under this subchapter is receiving active
26 treatment under such a program; and

27 (3) in the case of a public institution, the State or
28 political subdivision responsible for the operation of such

1 institution has agreed that the non-Federal expenditures in
 2 any calendar quarter prior to January 1, 1975, with respect
 3 to services furnished to patients in such institution (or
 4 distinct part thereof) in the State will not, because of
 5 payments made under this subchapter, be reduced below
 6 the average amount expended for such services in such
 7 institution in the four quarters immediately preceding the
 8 quarter in which the State in which such institution is
 9 located elected to make such services available under its
 10 plan approved under this subchapter.

11 (42 U.S.C. § 1396d(d).)

12 20. The State of California Department of Public Health, in turn, issues
 13 licenses to intermediate care facilities that fall into one of four categories: (1)
 14 intermediate care facility; (2) intermediate care facility/developmentally disabled
 15 habilitative (“ICF/DD-H”); (3) intermediate care facility/developmentally disabled;
 16 and (4) intermediate care facility/developmentally disabled-nursing (“ICF/DD-N”).
 17 (Cal. Health & Safety Code §§ 1250(d), (e), (g) and (h), respectively.)

18 21. Plaintiffs own and operate or represent ICF/DD-H and ICF/DD-N
 19 facilities only.

20 22. An ICF/DD-H facility is defined as “a facility with a capacity of 4 to
 21 15 beds that provides 24-hour personal care, habilitation, developmental, and
 22 supportive health services to 15 or fewer persons with developmental disabilities
 23 who have intermittent recurring needs for nursing services, but have been certified
 24 by a physician and surgeon as not requiring availability of continuous skilled
 25 nursing care.” (Cal. Health & Safety Code § 1250(e).)

26 23. An ICF/DD-N facility is defined as “a facility with a capacity of 4 to
 27 15 beds that provides 24-hour personal care, developmental services, and nursing
 28 supervision for persons with developmental disabilities who have intermittent

1 recurring needs for skilled nursing care but have been certified by a physician and
 2 surgeon as not requiring continuous skilled nursing care. The facility shall serve
 3 medically fragile persons with developmental disabilities or who demonstrate
 4 significant developmental delay that may lead to a developmental disability if not
 5 treated.” (Cal. Health & Safety Code § 1250(h).)

6 **C. The Reimbursement System For Intermediate Care Facilities For**
 7 **The Developmentally Disabled – Habilitative and Nursing**

8 24. The California State Plan establishes the principles of the State of
 9 California’s reimbursement system for providers of long-term care services to
 10 assure compliance with the requirements of Title XIX of the Federal Social
 11 Security Act and the Code of Federal Regulations and describes the procedures to
 12 be followed by DHCS in determining long-term care reimbursement rates. (See
 13 introduction to Attachment 4.19-D of the State Plan (effective August 1, 2005),
 14 p.1.)

15 25. These procedures provide for the establishment of reimbursement
 16 rates. Rates are set for four classes of ICF/DD-Hs and ICF/DD-Ns: ICF/DD-Hs
 17 that are 4-6 bed facilities, ICF/DD-Hs that are 7-15 bed facilities; ICF/DD-Ns that
 18 are 4-6 bed facilities; and ICF/DD-Ns that are 7-15 bed facilities. (Attachment
 19 4.19-D, § I(I)(3)(j) & (k), p.5 (effective August 1, 2004).)

20 26. Reimbursement rates for ICFs are required to be recalculated annually.
 21 Prospective rates for each class are developed based on cost reports submitted by
 22 the ICFs, as adjusted by random audits of a minimum of 15% of the cost reports.
 23 (Attachment 4.19-D, §§ III(A), p.9 & IV(A)(1)(f) & (g), p.10 (effective August 1,
 24 2004).) Providers have the right to appeal findings which result in an adjustment to
 25 program reimbursement or reimbursement rates. (Attachment 4.19-D, § III(D), p.9
 26 (effective August 1, 2002).)

27 27. The reimbursement rate per patient day is set at the 65th percentile of
 28 projected costs for the class. (Attachment 4.19-D, § IV(F)(9), p.15 (effective

1 August 1, 2005).) This is a higher reimbursement rate than other classes of long-
 2 term facilities in recognition of the fact that they serve a disproportionate share of
 3 low income patients with special needs. (*Id.*) Plaintiffs are informed and believe
 4 that Medi-Cal pays for over 99% of the ICF/MR services provided in California.

5 28. As long as there is a projected net increase in the California Consumer
 6 Price Index during the State's fiscal year previous to the new rate year, no
 7 prospective rate of reimbursement shall be decreased solely because the class
 8 median projected cost is less than the existing rate of reimbursement. (Attachment
 9 4.19-D, § IV(F)(5), p.14 (effective August 1, 2002).)

10 29. In addition, since 2003, the State has made a supplemental Medi-Cal
 11 reimbursement payment on a per diem basis to ICFs over and above the
 12 reimbursement rate established through the cost report/audit procedures described
 13 above to support the facilities' quality improvement efforts. (Cal. Health & Safety
 14 Code § 1324.10.) These payments are currently set at 8.99% of the reimbursement
 15 rate.

16 30. Since 2003, ICFs are required to remit to the State a quality assurance
 17 fee ("QAF") on the entire gross receipts of the ICFs. (Cal. Health & Safety Code §
 18 1324.2(a).) The QAF rate is currently 5.5%. The QAF is deposited in the State
 19 General Fund. (*Id.*, § 1324.8.)

20 31. California also represents in the State Plan that it has in place a public
 21 process that complies with the requirements of Section 1902(a)(13)(A) of the Social
 22 Security Act. (Attachment 4.19-D, p.22 (effective August 1, 2001).)

23 **D. The Passage Of Assembly Bill 5, Which Freezes ICF Payments At**
 24 **2008-09 Rates**

25 32. On July 2, 2009, Assembly Bill 5 ("AB 5") was introduced during the
 26 2009-10 Fourth Extraordinary Session to address the California state budget as a
 27 placeholder bill to enact statutory changes relating to the Budget Act of 2009.

28 33. AB 5 was amended on July 2, 2009, to make numerous changes to the

1 Financial, Health & Safety, Insurance and Welfare & Institutions Codes.

2 34. One of the changes contained in the amended AB 5 was to amend
3 Welfare & Institutions Code section 14105.191 to add subdivision (f)(2), which
4 reads, in pertinent part, as follows:

5 (f)(2) ... Medi-Cal reimbursement rates applicable to the
6 following classes of facilities for services rendered during
7 the 2009-10 rate year; and each rate year thereafter, shall
8 not exceed the reimbursement rates that were applicable to
9 those facilities and services in the 2008-09 rate year:

10 (A) Facilities identified in paragraph (5) of
11 subdivision (d).

12 35. Paragraph (5) of subdivision (d) identifies, in pertinent part, the
13 following facilities: "Intermediate care facilities for the developmentally disabled
14 licensed pursuant to subdivision (e), (g), or (h) of Section 1250 of the Health and
15 Safety Code"

16 36. As noted in paragraphs 23 and 24, above, subdivisions (e) and (h) of
17 Section 1250 of the Health and Safety Code define ICF/DD-Hs and ICF/DD-Ns.

18 37. AB 5 was passed by the California State Senate and Assembly on July
19 23, 2009, and was approved by the Governor on July 28, 2009. The bill was
20 enacted as an urgency statute and became effective immediately. Defendants
21 immediately implemented the rate freeze and have paid the 2008-09 rate for
22 services provided on and after August 1, 2009.

23 38. The legislative history does not contain any evidence that either the
24 defendants or the California Legislature considered the "quality of care" or "equal
25 access" provisions of § 30(A), or whether reimbursement rates are reasonably
26 related to provider costs, before its implemented the rate freeze imposed by Section
27 14105.191(f)(2).

28 39. Plaintiffs are informed and believe and thereon allege that no

1 responsible cost studies as required by § 30(A) were relied upon by the California
2 Legislature or defendants in adopting and implementing Section
3 14105.191(f)(2)(A).

4 40. Plaintiffs are further informed and believe and thereon allege that no
5 public process as required by § 13(A) and § 447.205 was followed in connection
6 with the adoption and implementation of Section 14105.191(f)(2)(A)

7 41. Plaintiffs are further informed and believe and thereon allege that the
8 State Plan has not been amended to conform to Section 14105.191(f)(2)(A) that
9 payment at the 2008-09 rates is in violation of defendants' reimbursement
10 obligations under the State Plan. Plaintiffs allege that defendants are prohibited
11 under federal Medicaid law from implementing the Section 14105.191(f)(2)(A) rate
12 freeze in the absence of federal approval of a State Plan amendment adopting the
13 freeze.

14 **E. DHCS Calculation Of Long Term Care Reimbursement Rates**
15 **Effective From August 1, 2009**

16 42. Notwithstanding the enactment of Section 14105.191(f)(2) of the
17 California Welfare & Institutions Code, DHCS collected the rate reports and
18 conducted its audit process as required by the State Plan for the rate year beginning
19 August 1, 2009.

20 43. DHCS' calculations for the four classes of small ICF/DDs for the rates
21 effective August 1, 2008 and August 1, 2009 are as follows:

Facility Group	Rate effective 8/1/2008*	Rate effective 8/1/2009*	Percent change in rates
ICF/DD-Habilitative			
4-6 Beds	\$185.50	\$197.45	6.44%
7-15 Beds	\$201.77	\$201.95	0.09%
Weighted ICF/DD-H Rate	\$186.63	\$197.72	6.03%

ICF/DD-Nursing			
4-6 Beds	\$211.63	\$230.74	9.03%
7-15 Beds	\$219.79	\$232.28	5.68%
Weighted ICF/DD-N Rate	\$212.00	\$230.81	8.87%

* Includes supplemental payment for quality improvement efforts.

44. The rate study conducted by DHCS demonstrates that were the freeze not in place, rates would have been increased on August 1, 2009, by an average of 6.03% for ICF/DD-H providers and by 8.87% for ICF/DD-N providers.

45. Since all ICF/DD-Hs and all ICF/DD-Ns would have been reimbursed on a per diem-per bed basis based on the higher rates effective August 1, 2009, all ICF/DD-Hs and ICF/DD-Ns, including plaintiff UCP and the members of DSN are suffering irreparable injury every day they are reimbursed at the 2008 rate as a result of the rate freeze.

F. A Preliminary Injunction Has Already Issued Enjoining Defendants From Implementing The Section 14105.191(f) Rate Freeze With Respect To Other Providers

46. On November 24, 2009, the California Hospital Association filed a lawsuit against defendant Maxwell-Jolly, challenging, among other provisions, the Section 14105.191(f) rate freeze as applied to nursing facilities that are part of hospitals (distinct part/nursing facilities or “DP/NFs”) and subacute pediatric subacute care units that are part of hospitals. (*California Hospital Association v. Maxwell-Jolly*, United States District Court, Central District of California, Western Division, Case No. CV 09-8642 CAS (hereafter referred to as “the *CHA* action”).)

47. In the *CHA* action, as here, the plaintiff alleged that the Section 14105.191(f) rate freeze violated § 30(A) of the Medicaid Act and was therefore invalid under the Supremacy Clause of the United States Constitution because neither the Director nor the California Legislature considered the “quality of care” and “equal access” provisions of § 30(A), or whether reimbursement rates were

1 reasonably related to provider costs, before its implementation. As here, plaintiff
2 alleged that the Director failed to comply with § 13(A), § 447.205, and the State
3 Plan requirements.

4 48. On February 24, 2010, this Court granted the *CHA* plaintiff's motion
5 for a preliminary injunction, on the grounds, in part, that the plaintiff had
6 demonstrated a likelihood of success on the merits of its § 30(A) claim and had
7 sufficiently demonstrated that there was a likelihood that CHA member hospitals
8 will suffer monetary losses as a result of the rate freeze implemented by AB 5.

9
10 **V.**
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

11 **COUNT ONE: DECLARATORY RELIEF**

12 49. Plaintiffs reallege and incorporate by reference each of the previous
13 allegations set forth in this complaint.

14 50. An actual and justiciable controversy has arisen and now exists
15 between the parties relating to the issue of whether the rate freeze is a violation of
16 federal law. Plaintiff DSN, on behalf of its members, and plaintiff UCP contend
17 that the rate freeze is invalid and unlawful in violation of federal statute, federal
18 regulations, and the California State Plan, while defendants continue to implement
19 and enforce the rate freeze.

20 51. The Federal Declaratory Judgment Act, 28 U.S.C. § 2201 empowers
21 federal courts to declare the rights and other legal relations of any interested party
22 seeking such declaration, and also provides authority for further necessary and
23 appropriate relief based on its declaratory judgments.

24 52. Rule 57 of the Federal Rules of Civil Procedure provides that the
25 existence of another adequate remedy does not preclude a judgment for declaratory
26 relief in cases where it is appropriate. In addition, the court may order a speedy
27 hearing of an action for a declaratory judgment and may advance it on the calendar.

28 53. A declaratory judgment is necessary in that plaintiffs contend, and the

rate freeze imposed by defendants pursuant to California Welfare and Institutions Code section 14105.191(f)(2)(A) is preempted by application of the Supremacy Clause with respect to the services provided by the ICFs, as described above in this Complaint.

54. The members of plaintiff DSN and plaintiff UCP have provided and continue to provide intermediate care to developmentally disabled patients and are ready, willing and able to provide these services. The members of plaintiff DSN and plaintiff UCP are suffering severe adverse financial impact by reimbursement for these services at the 2008-09 rates, since the defendants' own cost studies demonstrate that ICF/DD-Hs and ICF/DD-Ns, including the members of plaintiff DSN and plaintiff UCP, would be paid at a higher rate using the rate-setting methodology prescribed by the State Plan approved by CMS. Therefore, the controversy between plaintiffs and the defendants regarding reimbursement for these services is imminent and ongoing, there is an ongoing adverse economic impact to plaintiffs from the defendants' imposition of the rate freeze, and a declaratory judgment is necessary to resolve the rights and duties of the parties.

55. Plaintiffs have no administrative remedy, or any plain, speedy, or adequate remedy at law and, unless relief is granted as prayed, defendants will continue to reimburse plaintiffs pursuant to the rate freeze imposed by California Welfare and Institutions Code section 14105.191.

WHEREFORE, plaintiffs pray for relief as follows:

COUNT TWO: INJUNCTIVE RELIEF

56. Plaintiffs reallege and incorporate by reference each of the previous allegations set forth in this complaint.

57. An actual controversy has arisen and now exists between the parties relating to whether the rate freeze imposed by defendants pursuant to California Welfare and Institutions Code section 14105.191(f)(2)(1) is a violation of federal law.

58. The members of plaintiff DSN and plaintiff UCP have provided and continue to provide intermediate care to developmentally disabled patients and are ready, willing and able to provide these services. The members of plaintiff DSN and plaintiff UCP are suffering severe adverse financial impact by reimbursement for these services at the 2008-09 rates, since the cost studies demonstrate that they would be paid at a higher rate using the rate-setting methodology prescribed by State regulation. Therefore, the controversy between plaintiffs and the defendants regarding reimbursement for these services is imminent and ongoing, there is an ongoing adverse economic impact to the members of plaintiff DSN and plaintiff UCP from the defendants' imposition of the rate freeze, and a mandatory injunction is necessary to resolve the rights and duties of the parties.

59. Plaintiffs seek a mandatory injunction that enjoins defendants from implementing or continuing to implement or enforce the rate freeze with respect to ICF/DD-Habilitative and ICF/DD-Nursing facilities and requiring defendants to reimburse the members of plaintiff DSN and plaintiff UCP at the unfrozen ICF/DD-Habilitative and ICF/DD-Nursing reimbursement rates calculated by DHCS to be effective August 1, 2009, for the 2009-10 fiscal year.

60. Plaintiffs have no administrative remedy, or any plain, speedy, or adequate remedy at law and, unless relief is granted as prayed, defendants will continue to impose the rate freeze.

WHEREFORE, plaintiffs pray for relief as follows:

COUNT THREE: VIOLATION OF 42 U.S.C. § 1983
[AGAINST DEFENDANT MAXWELL-JOLLY IN HIS OFFICIAL
CAPACITY]

61. Plaintiffs reallege and incorporate by reference each of the previous allegations set forth in this complaint.

62. Defendant Maxwell-Jolly is a state actor and his conduct in his official capacity is subject to 42 U.S.C. sections 1983 and 1988.

63. The members of plaintiff DSN and plaintiff UCP were and remain entitled to the statutorily mandated benefits and protections of 42 U.S.C. sections 1396a and 1396d.

64. Defendant Maxwell-Jolly has proximately caused the violation of the federal rights of the members of plaintiff DSN and plaintiff UCP created by 42 U.S.C. sections 1396a and 1396d by acting under color of State law, specifically, California Welfare & Institutions Code section 14105.191(f)(2) to freeze reimbursement rates paid to the members of plaintiff DSN and plaintiff UCP.

65. The members of plaintiff DSN and plaintiff UCP are entitled to prospective injunctive relief, as well as attorneys' fees and costs, requiring defendant Maxwell-Jolly, in his official capacity, to take all necessary action to comply prospectively and with the clearly established meaning, intent, and terms of 42 U.S.C. sections 1396a and 1396d and other provisions of the federal Medicaid Act, and to reimburse the members of plaintiff DSN and plaintiff UCP at the unfrozen rates calculated by defendants.

WHEREFORE, plaintiffs pray for relief as follows:

VI. PRAYER FOR RELIEF

For the reasons stated above, plaintiffs respectfully request that the Court grant the following relief:

1. That a declaration issue declaring that the rate freeze established by Section 14105.191(f)(2) of the California Welfare & Institutions Code is invalid and unenforceable as to the members of plaintiff DSN and plaintiff UCP because the rate freeze violates 42 U.S.C. §§ 1396a(a)(30)(A) and 1396a(a)(13), 42 C.F.R. § 447.205, and the California State Plan, and is thus invalid and preempted by the Supremacy Clause of the United States Constitution, article IV, clause 2.

2. That a declaration issue declaring that it is a violation of the Supremacy Clause of the United States Constitution for defendants to fail or refuse

1 to reimburse the members of plaintiff DSN and plaintiff UCP at the unfrozen
 2 ICF/DD-Habilitative and ICF/DD-Nursing reimbursement rates calculated by
 3 DHCS to be effective August 1, 2009, for the 2009-10 fiscal year.

4 3. That mandatory preliminary and permanent injunctions issue enjoining
 5 defendants from implementing or continuing to implement or enforce the rate
 6 freeze with respect to ICF/DD-Habilitative and ICF/DD-Nursing facilities and
 7 requiring defendants to reimburse the members of plaintiff DSN and plaintiff UCP
 8 at the unfrozen ICF/DD-Habilitative and ICF/DD-Nursing reimbursement rates
 9 calculated by DHCS to be effective August 1, 2009, for the 2009-10 fiscal year.

10 4. That plaintiffs be awarded their costs of litigation, including
 11 reasonable attorneys' fees, as permitted under 42 U.S.C. § 1988 or otherwise; and

12 5. That the Court grant plaintiffs such further and additional relief as the
 13 Court may deem just and proper.

14
 15 Dated: May 27, 2010

Murphy Austin Adams Schoenfeld LLP

17 By: Kathryn D.

18 KATHRYN DOI
 JENNY MAE PHILLIPS

19 Dated: May 27, 2010

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