UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

O

CIVIL MINUTES - GENERAL

Case No.	CV 10-3259 CAS (MANx) CV 10-3284 CAS (MANx)	Date	May 24, 2011
Title	CALIFORNIA ASSOCIATION OF HEALTH FACILITIES v. DAVID MAXWELL-JOLLY; ET AL.; AND DEVELOPMENTAL SERVICES NETWORK; ET AL. v. DAVID MAXWELL-JOLLY; ET AL.		

Present: The Honorable	CHRISTINA A. SNYDER	
CATHERINE JEANG	Not Present	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:	
Not Present	Not Present	

Proceedings: **(In Chambers:)**

DEFENDANTS' *EX PARTE* APPLICATION FOR RECONSIDERATION OF ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION OR, IN THE ALTERNATIVE, FOR A STAY OF SAID ORDER PENDING APPEAL (filed 05/18/11)

ORDER ALTERING OR AMENDING PRELIMINARY INJUNCTION ORDER

I. INTRODUCTION

On April 30, 2010, plaintiffs Developmental Services Network and United Cerebral Palsy/Spastic Children's Foundation of Los Angeles and Ventura Counties, in CV 10-3284 CAS (MANx), and California Association of Health Facilities, in CV 10-3259 CAS (RZx), filed the instant actions against David Maxwell-Jolly, Director of the California Department of Health Care Services (the "Director") and the California Department of Health Care Services (the "Department").[1] The Department is a California agency charged with the administration of California's Medicaid program, Medi-Cal.

[1] On June 15, 2010, the Court ordered the two matters consolidated for all purposes.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 10-3259 CAS (MANx) CV 10-3284 CAS (MANx)	Date	May 24, 2011
Title	CALIFORNIA ASSOCIATION OF HEALTH FACILITIES v. DAVID MAXWELL-JOLLY; ET AL.; AND DEVELOPMENTAL SERVICES NETWORK; ET AL. v. DAVID MAXWELL-JOLLY; ET AL.		

Plaintiffs are entities that represent certain Medi-Cal providers, specifically intermediate care facilities for the developmentally disabled and the mentally retarded (respectively, "ICF/DD facilities" and "ICF/MR facilities"), and freestanding pediatric subacute facilities ("FSP facilities").

On July 28, 2009, California Governor Arnold Schwarzenegger signed into law Assembly Bill X4 5 ("AB 5"), the budget trailer bill for California fiscal year 2009-2010. AB 5 amends Cal. Welf. & Inst. Code § 14105.191, in part, and effectively "freezes" the Medi-Cal reimbursement rates for certain designated services rendered during the 2009-2010 rate year and each rate year thereafter at 2008-2009 levels. Cal. Welf. & Inst. Code § 14105.191(f). Among the designated services, are services provided by ICF/DD facilities, ICF/MR facilities, and FSP facilities.

On May 6, 2011, the Court preliminarily enjoined the Director from implementing AB 5 on the grounds that plaintiffs are likely to succeed on their claim that the Director's implementation of the rate freeze in advance of federal approval is unlawful and that absent an injunction, plaintiffs would be irreparably harmed. See Dkt. 49 ("Preliminary Injunction Order"). The Court also denied the Director's request for a stay of the injunction pending an appeal to the Ninth Circuit. Id.

On May 18, 2011, the Director filed the instant *ex parte* application for reconsideration of the Court's Preliminary Injunction Order or, in the alternative, for a stay of said order pending appeal. Plaintiffs filed an opposition to the Director's application on May 19, 2011.

II. LEGAL STANDARD

Local Rule 7-18 sets forth the bases upon which this Court may reconsider "the decision on any motion:"

> A motion for reconsideration of the decision on any motion may be made only on the grounds of: (a) a material difference in fact or law from that

> presented to the Court before such decision that in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of such decision, or (b) the emergence of new material facts or a change of law occurring after the time of such decision, or (c) a manifest showing of a failure to consider material facts presented to the Court before such decision. No motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion.

L.R. 7-18.

III. DISCUSSION

After carefully considering the arguments set forth by both parties, the Court finds that the Director has not met his burden under Local Rule 7-18 to justify reconsideration of the Court's Preliminary Injunction Order. See L.R. 7-18. The Director contends that reconsideration is warranted because the Court erred by finding that plaintiffs are likely to succeed on the merits of their State Plan Amendment claim, see Dir.'s App. at 3–12, and new facts warrant reconsideration of the Court's irreparable harm finding, see id. at 13–16. Yet, the Director's *ex parte* application merely rehashes arguments that this Court has already rejected.

Specifically, the Court has already considered and rejected the Director's contention that plaintiffs did not adequately plead their State Plan Amendment claim under 42 U.S.C. § 1983. See Preliminary Injunction Order at 11–12, 12 n.6. The Court's conclusion was not contrary to law or the facts, and the Director has presented no basis for reconsideration.

Furthermore, the Director's argument that he was somehow caught off guard by plaintiffs' decision to seek a preliminary injunction on the State Plan Amendment claim under section 1983 is disingenuous at best. See Dir.'s App. at 10–12. As discussed in the Preliminary Injunction Order, before plaintiffs' motions for preliminary injunction

were heard, the Court granted plaintiffs' request that a stay in this matter be lifted. See Preliminary Injunction Order at 5–6. In that request, plaintiffs stated specifically that the stay should be lifted because recent case law developments showed that plaintiffs could enforce their State Plan Amendment claim through a "vehicle other than the Supremacy Clause." See Pl.'s Ex Parte App. to Lift Stay (Dkt. 39) at 8. The case plaintiffs cited to support this point, Cal. Hospital Ass'n v. Maxwell-Jolly, Civ No. 10-3465 FCD/EFB, 2011 WL 836706, at *16–18 (E.D. Cal. Mar. 4, 2011) ("CHA II"), specifically held that a State Plan Amendment claim is enforceable through section 1983. Therefore, it should have been evident to the Director that once the stay was lifted, plaintiffs intended to seek a preliminary injunction on this ground. After the Court lifted the stay, the Director was granted an extra brief and oral argument to address the issue and, in fact, did address it in his supplemental memorandum filed before the preliminary injunction hearing. See Dir.'s Supp. Mem. (Dkt. 46) at 6. Accordingly, the Director's argument that he did not have a "fair and meaningful opportunity to oppose [plaintiffs'] motion for preliminary injunction" is baseless.[2] Dir.'s App. at 11.

Similarly, the Court has already considered and rejected the Director's contention that plaintiffs' members will not be irreparably harmed because they will be reimbursed if the rate freeze is disapproved by the Centers for Medicare and Medicaid Services ("CMS") and the State unsuccessfully exhausts all of its appeals.[3] See Preliminary Injunction Order at 14–15. In his application, the Director suggests that he has "new" evidence in the form of a declaration from the Director of the California Department of Health Care Services, promising to retroactively reimburse plaintiffs' members if CMS

[2] The Director's argument is all the more disingenuous in light of the fact that he was a party to the CHA II case, and the plaintiff in that case is represented by the same legal counsel as plaintiffs in this case.

[3] Likewise, the Court already considered and rejected the Director's arguments that the injunction will irreparably injure the State because it will interfere with CMS approval of the State Plan Amendment, see Dir.'s App. at 14–15, and will exacerbate the State's fiscal crisis, see id. at 15–16. See Preliminary Injunction Order at 15.

disapproves of the pending State Plan Amendment. Dir.'s App. at 14 (citing Declaration of Toby Douglas at 3–4). This declaration is not new evidence, but additional support for a representation that the Director has already made. The Court resolved the issue against the Director not for a lack of evidence, but because the Court may consider only prospective remedies in federal court when evaluating irreparable harm. See Preliminary Injunction Order at 15 (quoting Cal. Pharms. Ass'n v. Maxwell-Jolly, 563 F.3d 847, 852 n.2 (9th Cir. 2009)).

Finally, the Court declines to reconsider its denial of the Director's motion to stay the preliminary injunction pending an emergency appeal. See Preliminary Injunction Order at 16–17. Irrespective of the Director's arguments, the Court is not convinced that the Director will be irreparably harmed absent a stay. See Dir.'s App. at 16–18.

In sum, the Court concludes that the Director has failed to establish any grounds warranting reconsideration of the Preliminary Injunction Order.

IV. MOTION TO AMEND OR ALTER PRELIMINARY INJUNCTION ORDER

As part of his *ex parte* application for reconsideration, the Director seeks to alter or amend the Preliminary Injunction Order on the grounds that it is overbroad and violates the Eleventh Amendment.[4] Dir.'s App. at 12–13. First, the Director argues that the language in the Preliminary Injunction Order violates the Eleventh Amendment bar against retroactive relief because it requires the Director to adjust rates upward for services rendered prior to the date of the injunction. Id. (citing Preliminary Injunction Order at 16:6–9 (enjoining the Director from freezing at 2008–2009 levels Medi-Cal reimbursement rates for services provided by intermediate care facilities for the developmentally disabled and the mentally retarded, and freestanding pediatric subacute

[4] Although contained in the Director's *ex parte* application for reconsideration, the Director's arguments are properly characterized as a motion to amend or alter the Preliminary Injunction Order.

facilities "during the 2009–2010 rate year and each rate year thereafter.")). The Court clarifies that it did not intend to permit retroactive injunctive relief. As such, the Court hereby corrects the Preliminary Injunction Order to clarify that it only applies to services provided by intermediate care facilities for the developmentally disabled and the mentally retarded, and freestanding pediatric subacute facilities on or after May 6, 2011, the date of the Preliminary Injunction Order.[5] See Indep. Living Ctr. of S. Cal. v. Maxwell-Jolly, 572 F.3d 644, 660–61 (9th Cir. 2009).

The Director further asserts that the Court should amend its Preliminary Injunction Order because it could be construed as prohibiting the Director from implementing the rate freeze even after CMS approves the rate freeze. Dir.'s App. at 13. The Court finds that this is not a ground to amend or clarify the Preliminary Injunction Order. If CMS approves SPA 09-019, the Director may file a motion to dissolve the preliminary injunction.

Finally, the Director argues that the Preliminary Injunction Order should be modified to apply only to the named plaintiffs. Id. The Court disagrees. Plaintiffs are trade associations that have brought this action in a representational capacity. Accordingly, the preliminary injunction shall extend to all of plaintiffs' members impacted by the rate freeze, as well as to the named plaintiffs.

V. CONCLUSION

In accordance with the foregoing, the Court hereby DENIES the Director's *ex parte* application for reconsideration of the Court's Preliminary Injunction Order or, in the alternative, for a stay of said order pending appeal.

[5] Although plaintiffs never read the Preliminary Injunction Order as applying retroactively, they do not object to the Court modifying the Preliminary Injunction Order to "be more precise in terms of the effective date." Opp'n at 6–7.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

O

CIVIL MINUTES - GENERAL

Case No.	CV 10-3259 CAS (MANx) CV 10-3284 CAS (MANx)	Date	May 24, 2011
Title	CALIFORNIA ASSOCIATION OF HEALTH FACILITIES v. DAVID MAXWELL-JOLLY; ET AL.; AND DEVELOPMENTAL SERVICES NETWORK; ET AL. v. DAVID MAXWELL-JOLLY; ET AL.		

The Court hereby corrects the Preliminary Injunction Order to clarify that the Director, his agents, servants, employees, attorneys, successors, and all those working in concert with him are ordered to refrain from enforcing Cal. Welf. & Inst. Code § 14105.191(f), including refraining from effectively freezing at 2008–2009 levels the Medi-Cal reimbursement rates for services provided by intermediate care facilities for the developmentally disabled and the mentally retarded, and freestanding pediatric subacute facilities on or after May 6, 2011, the date of the Preliminary Injunction Order.

IT IS SO ORDERED.

00 : 00

Initials of Preparer CMJ