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 12 UNITED CEREBRAL PALSY/SPASTIC
 CHILDREN'S FOUNDATION OF LOS
 13 ANGELES AND VENTURA COUNTIES

14 UNITED STATES DISTRICT COURT
 15 CENTRAL DISTRICT OF CALIFORNIA

17 DEVELOPMENTAL SERVICES
 18 NETWORK; and UNITED
 19 CEREBRAL PALSY/SPASTIC
 20 CHILDREN'S FOUNDATION OF
 LOS ANGELES AND VENTURA
 COUNTIES,

21 Plaintiffs,

22 v.

23 DAVID MAXWELL-JOLLY, Director
 24 of the Department of Health Care
 Services, State of California; and the
 25 CALIFORNIA DEPARTMENT OF
 HEALTH CARE SERVICES,

26 Defendants.

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 28 ///

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 CLERK U.S. DISTRICT COURT
 CENTRAL DISTRICT OF CALIF.
 LOS ANGELES

Case No.

CV 10-03284

**COMPLAINT FOR
 DECLARATORY AND
 INJUNCTIVE RELIEF**

ODW

(MANX)

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

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

II.
PARTIES

3. Plaintiff Developmental Services Network (“DSN”) is a statewide non-profit trade association in California that represents approximately 250 small intermediate care facilities for people with developmental disabilities. DSN is headquartered in Sacramento, California. The members of DSN are companies operating facilities licensed as either “intermediate care facility/developmentally disabled-nursing” (“ICF/DD-N”) pursuant to California Health & Safety Code section 1250(h) or “intermediate care facility/developmentally disabled-habilitative” (“ICF/DD-H”) pursuant to California Health & Safety Code section 1250(e). DSN is informed and believes that all of its members are Medi-Cal providers.

4. Plaintiff United Cerebral Palsy/Spastic Children’s Foundation of Los Angeles and Ventura Counties, dba United Cerebral Palsy of Los Angeles, Ventura

1 and Santa Barbara Counties (“UCP”) is a 501(c)(3) non-profit public benefit
 2 association founded in 1945 by a small group of parents who wanted to create
 3 community-based services for their children with disabilities. UCP is
 4 headquartered in Woodland Hills, California. Today, UCP operates more than 40
 5 program sites throughout five counties in Southern California and has extended its
 6 mission to serve all people with disabilities. UCP provides services to more than
 7 1,000 children and adults with developmental disabilities daily. UCP is also an
 8 affiliate of the national United Cerebral Palsy, a nationwide network of over 100
 9 independent, state and local non-profit affiliates, with a central national
 10 organization located in Washington, D.C. UCP operates 12 ICF/DD-H homes and
 11 9 ICF/DD-N homes. Over 99% of the ICF patients served by UCP are Medi-Cal
 12 eligible and the facilities receive their reimbursement for the care from Medi-Cal.

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

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

21 **III.** 22 **INTRODUCTION**

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

27 8. The rate freeze was signed into law by California Governor Arnold
 28 Schwarzenegger on July 28, 2009, after the California Legislature adopted

1 Assembly Bill 5 of the 2009-10 Fourth Extraordinary Session (“AB 5”), the budget
2 trailer bill for California fiscal year 2009-10, which, among other things, added
3 subdivision (f)(2)(A) to Section 14105.191 of the California Welfare and
4 Institutions Code.

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

15 10. Plaintiffs allege that AB 5 is preempted by section 30(A) of the
16 Medicaid Act, 42 U.S.C. § 1396a(a)(30)(A) (“§ 30(A)”) because neither the
17 defendants nor the California Legislature considered the “quality of care” or “equal
18 access” provisions of § 30(A), or whether the frozen reimbursement rates are
19 reasonably related to provider costs, before its implementation. Plaintiffs also
20 allege that the rate provisions of AB 5 were implemented in violation of (1) the
21 public process provisions of 42 U.S.C. § 1396a(a)(13)(A) (“§ 13(A)”); (2) the
22 public notice provisions of 42 C.F.R. § 447.205 (“§ 447.205”); and (3) the
23 requirements of the Medi-Cal State Plan (the “State Plan”).

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

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IV. BACKGROUND

A. Federal Medicaid Law

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

13. A State’s participation in Medicaid is voluntary, but a State that chooses to participate must comply with the provisions of the Medicaid Act and its implementing regulations. (*Alaska Dept. of Health and Social Servs. v. Centers for Medicare and Medicaid Servs.* (9th Cir. 2005) 424 F.3d 931, 935.) Each State administers its Medicaid program through a single State agency, which is charged with the responsibility of establishing and complying with a State Medicaid plan that, in turn, must comply with the applicable provisions of federal Medicaid law, including the requirements set forth in 42 U.S.C. § 1396a(a)(1)-(70). (42 U.S.C. § 1396a(a)(5); 42 C.F.R. §§ 430.10 & 431.10.) In California, defendant DHCS is the single State agency charged with administration of the California Medicaid program, which is referred to as “Medi-Cal”.

1 14. In accordance with the requirements of 42 U.S.C. § 1396a(a)(1)-(70),
 2 California must provide “methods and procedures” for the payment of care and
 3 services that (1) are “consistent with efficiency, economy, and quality of care,” and
 4 (2) ensure their availability to the Medicaid population to the same “extent as they
 5 are available to the general population in the geographic area.” (42 U.S.C. §
 6 1396a(a)(30)(A).) These requirements are known, respectively, as the “quality of
 7 care” and “equal access” provisions of § 30(A) of the Medicaid Act.

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

18 16. In addition, for certain providers, including intermediate care facilities
 19 such as plaintiffs and their members, California must establish rates through a
 20 public process that includes publication of the proposed rates and their underlying
 21 methodologies, such that providers are “given a reasonable opportunity for review
 22 and comment.” (42 U.S.C. § 1396a(a)(13)(A) (“§ 13(A)”)).

23 17. In addition, CMS implementing regulations require that public notice
 24 be provided of “any significant proposed change” in the State’s setting of payment
 25 rates for services, with exceptions not relevant here. (42 C.F.R. § 447.205 (“§
 26 447.205”)).)

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1 **B. The Establishment Of Intermediate Care Facilities Under Federal**
 2 **and State Law**

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

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

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

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

17 (2) the mentally retarded individual with respect to
 18 whom a request for payment is made under a plan
 19 approved under this subchapter is receiving active
 20 treatment under such a program; and

21 (3) in the case of a public institution, the State or
 22 political subdivision responsible for the operation of such
 23 institution has agreed that the non-Federal expenditures in
 24 any calendar quarter prior to January 1, 1975, with respect
 25 to services furnished to patients in such institution (or
 26 distinct part thereof) in the State will not, because of
 27
 28

1 payments made under this subchapter, be reduced below
 2 the average amount expended for such services in such
 3 institution in the four quarters immediately preceding the
 4 quarter in which the State in which such institution is
 5 located elected to make such services available under its
 6 plan approved under this subchapter.

7 (42 U.S.C. § 1396d(d).)

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

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

16 22. An ICF/DD-H facility is defined as “a facility with a capacity of 4 to
 17 15 beds that provides 24-hour personal care, habilitation, developmental, and
 18 supportive health services to 15 or fewer persons with developmental disabilities
 19 who have intermittent recurring needs for nursing services, but have been certified
 20 by a physician and surgeon as not requiring availability of continuous skilled
 21 nursing care.” (Cal. Health & Safety Code § 1250(e).)

22 23. An ICF/DD-N facility is defined as “a facility with a capacity of 4 to
 23 15 beds that provides 24-hour personal care, developmental services, and nursing
 24 supervision for persons with developmental disabilities who have intermittent
 25 recurring needs for skilled nursing care but have been certified by a physician and
 26 surgeon as not requiring continuous skilled nursing care. The facility shall serve
 27 medically fragile persons with developmental disabilities or who demonstrate
 28 significant developmental delay that may lead to a developmental disability if not

1 treated.” (Cal. Health & Safety Code § 1250(h).)

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

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

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

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

23 27. The reimbursement rate per patient day is set at the 65th percentile of
 24 projected costs for the class. (Attachment 4.19-D, § IV(F)(9), p.15 (effective
 25 August 1, 2005).) This is a higher reimbursement rate than other classes of long-
 26 term facilities in recognition of the fact that they serve a disproportionate share of
 27 low income patients with special needs. (*Id.*) Plaintiffs are informed and believe
 28 that Medi-Cal pays for over 99% of the ICF/MR services provided in California.

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

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

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

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

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

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

33. AB 5 was amended on July 2, 2009, to make numerous changes to the Financial, Health & Safety, Insurance and Welfare & Institutions Codes.

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

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

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

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

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

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

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

39. Plaintiffs are informed and believe and thereon allege that no responsible cost studies as required by § 30(A) were relied upon by the California Legislature or defendants in adopting and implementing Section 14105.191(f)(2)(A).

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

41. Plaintiffs are further informed and believe and thereon allege that the State Plan has not been amended to conform to Section 14105.191(f)(2)(A) that payment at the 2008-09 rates is in violation of defendants' reimbursement obligations under the State Plan.

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

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

43. DHCS' calculations for the four classes of small ICF/DDs for the rates 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 reasonably related to provider costs, before its implementation. As here, plaintiff alleged that the Director failed to comply with § 13(A), § 447.205, and the State Plan requirements.

48. On February 24, 2010, this Court granted the *CHA* plaintiff’s motion for a preliminary injunction, on the grounds, in part, that the plaintiff had demonstrated a likelihood of success on the merits of its § 30(A) claim and had

1 sufficiently demonstrated that there was a likelihood that CHA member hospitals
2 will suffer monetary losses as a result of the rate freeze implemented by AB 5.

3
4 **V.**
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

5 **COUNT ONE: DECLARATORY RELIEF**

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

8 2. An actual and justiciable controversy has arisen and now exists
9 between the parties relating to the issue of whether the rate freeze is a violation of
10 federal law. Plaintiff DSN, on behalf of its members, and plaintiff UCP contend
11 that the rate freeze is invalid and unlawful in violation of federal statute, federal
12 regulations, and the California State Plan, while defendants continue to implement
13 and enforce the rate freeze.

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

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

22 5. A declaratory judgment is necessary in that plaintiffs contend, and the
23 rate freeze imposed by defendants pursuant to California Welfare and Institutions
24 Code section 14105.191(f)(2)(A) is preempted by application of the Supremacy
25 Clause with respect to the services provided by the ICFs, as described above in this
26 Complaint.

27 6. The members of plaintiff DSN and plaintiff UCP have provided and
28 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.

7. 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

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

2. 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.

3. 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

1 State regulation. Therefore, the controversy between plaintiffs and the defendants
2 regarding reimbursement for these services is imminent and ongoing, there is an
3 ongoing adverse economic impact to the members of plaintiff DSN and plaintiff
4 UCP from the defendants' imposition of the rate freeze, and a mandatory injunction
5 is necessary to resolve the rights and duties of the parties.

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

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

15 WHEREFORE, plaintiffs pray for relief as follows:

16 **VI.**
17 **PRAYER FOR RELIEF**

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

20 1. That a declaration issue declaring that the rate freeze established by
21 Section 14105.191(f)(2) of the California Welfare & Institutions Code is invalid
22 and unenforceable as to the members of plaintiff DSN and plaintiff UCP because
23 the rate freeze violates 42 U.S.C. §§ 1396a(a)(30)(A) and 1396a(a)(13), 42 C.F.R. §
24 447.205, and the California State Plan, and is thus invalid and preempted by the
25 Supremacy Clause of the United States Constitution, article IV, clause 2.

26 2. That a declaration issue declaring that it is a violation of the
27 Supremacy Clause of the United States Constitution for defendants to fail or refuse
28 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.

3. That mandatory preliminary and permanent injunctions issue enjoining 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.

4. That plaintiffs be awarded their costs of litigation, including reasonable attorneys' fees, as permitted; and

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

Dated: April 30, 2010

Murphy Austin Adams Schoenfeld LLP

By: Kathryn D.
KATHRYN DOI
JENNY MAE PHILLIPS

Law Offices of Douglas S. Cumming

By: Douglas S.
DOUGLAS S. CUMMING

Attorney for Plaintiffs
DEVELOPMENTAL SERVICES
NETWORK; and UNITED
CEREBRAL PALSY/SPASTIC
CHILDREN'S FOUNDATION OF
LOS ANGELES AND VENTURA
COUNTIES

**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 Otis D. Wright II and the assigned discovery Magistrate Judge is Margaret A. Nagle.

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

CV10 - 3284 ODW (MANx)

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

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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. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Central District of California

DEVELOPMENTAL SERVICES NETWORK; and UNITED CEREBRAL
PALSY/SPASTIC CHILDREN'S FOUNDATION OF LOS ANGELES
AND VENTURA COUNTIES,

Plaintiff

v.

DAVID MAXWELL-JOLLY, Director of the Department of Health
Care Services, State of California; and the CALIFORNIA
DEPARTMENT OF HEALTH CARE SERVICES

Defendant

Civil Action No. **CV 10-03284 ODW**

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

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:

Kathryn Doi, SBN: 121979

Douglas S. Cumming, SBN: 88580

Jenny Mae Phillips, SBN: 255458

LAW OFFICES OF DOUGLAS S. CUMMING

MURPHY AUSTIN ADAMS SCHOENFELD LLP

542 5th Street

304 "S" Street

Lincoln, CA 95648

Sacramento, CA 95811

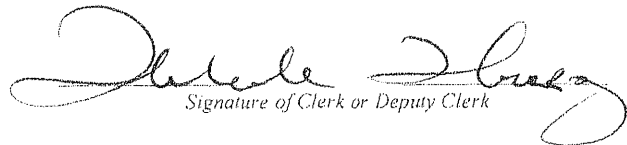
Tel: (916) 434-8719 Fax: (916) 645-2997

Tel: (916) 446-2300 Fax: (916) 503-4000

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 ☐ DEVELOPMENTAL SERVICES NETWORK; UNITED CEREBRAL PALSY/ SPASTIC CHILDREN'S FOUNDATION OF LOS ANGELES AND VENTURA COUNTIES	DEFENDANTS DAVID MAXWELL-JOLLY, Director of the Department of Health Care Services, State of California; and the CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Kathryn Doi, Jenny Mae Phillips, MURPHY AUSTIN ADAMS SCHOENFELD LLP, 304 "S" Street, Sacramento, CA 95811 (916) 446-2300	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.) ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party) ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:33%; border: none;">Citizen of This State</td> <td style="width:33%; border: none;">PTF DEF ☐ 1 ☐ 1</td> <td style="width:33%; border: none;">Incorporated or Principal Place of Business in this State</td> <td style="width:33%; border: none;">PTF DEF ☐ 4 ☐ 4</td> </tr> <tr> <td style="border: none;">Citizen of Another State</td> <td style="border: none;">☐ 2 ☐ 2</td> <td style="border: none;">Incorporated and Principal Place of Business in Another State</td> <td style="border: none;">☐ 5 ☐ 5</td> </tr> <tr> <td style="border: none;">Citizen or Subject of a Foreign Country</td> <td style="border: none;">☐ 3 ☐ 3</td> <td style="border: none;">Foreign Nation</td> <td style="border: none;">☐ 6 ☐ 6</td> </tr> </table>	Citizen of This State	PTF DEF ☐ 1 ☐ 1	Incorporated or Principal Place of Business in this State	PTF DEF ☐ 4 ☐ 4	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
Citizen of This State	PTF DEF ☐ 1 ☐ 1	Incorporated or Principal Place of Business in this State	PTF DEF ☐ 4 ☐ 4										
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
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V. REQUESTED IN COMPLAINT: JURY DEMAND: ☐ Yes ☒ No (Check 'Yes' only if demanded in complaint.) Preliminary Injunction

CLASS ACTION under F.R.C.P. 23: ☐ Yes ☒ No

☐ **MONEY DEMANDED IN COMPLAINT:** \$ _____

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.)
 Claim under Supremacy Clause that State statutes limiting Medicaid payments violate the federal Medicaid Act, Inc. 42 U.S.C. sec. 1396a(a)(1)(A) and are preempted

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 ☐ 4810 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 Torts 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 Detainee ☐ 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 ☐ 422 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 ☐ 530 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 ☐ 861 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
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CV 10-03284

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEETVIII(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-00722; 3:08-cv-5173; 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
Los Angeles County	Sacramento County San Diego 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

(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
All counties	All counties

* 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):



Date

April 30, 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.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))