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7

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION**

10

11 EVELYN PUTZ; CATHERINE
KENNEBREW; RICHARD PATTERSON;
12 HERB MEYER, on behalf of themselves and a
class of those similarly situation;
13 CALIFORNIA ASSOCIATION OF PUBLIC
AUTHORITIES, a non-profit entity; and
14 CALIFORNIA IN-HOME SUPPORTIVE
SERVICES CONSUMER ALLIANCE, a
15 non-profit entity,

16 Plaintiffs,

17 vs.

18 ARNOLD SCHWARZENEGGER, Governor
of California; JOHN A. WAGNER, Director
19 of the California Department of Social
Services; DAVID MAXWELL-JOLLY,
20 Director of the California Department of
Health Care Services,
21

22 Defendants.

CASE NO.

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

CLASS ACTION

23

24 **INTRODUCTION**

25 1. This case challenges certain provisions of Assembly Bill X4 1 (“AB X4 1”), which
26 provide for a fifty-seven percent (57%) overall cut in the funding for the operations and services
27 provided by In-Home Supportive Services (“IHSS”) “public authorities” in 56 counties. Public
28 authorities are corporate public bodies established by county ordinance and state law that are

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1 responsible for delivering critical care and services under California’s IHSS program. By virtue of
2 the Legislature’s passage of AB X4 1 and the Governor’s approval and subsequent cuts by way of
3 “line item” veto, the public authorities’ ability to provide services to elderly and disabled IHSS
4 recipients has been decimated. While the funding of the IHSS program is a combination of state
5 and county monies and matched federal dollars, this cut was driven by a significant reduction in
6 the funding provided by California’s Medicaid program (“Medi-Cal”), which was done
7 exclusively for budgetary reasons without any consideration of the impact of these cuts on
8 efficiency, economy, quality of care or access to such services.

9 2. Public Authorities are corporate public bodies, established by county ordinance and
10 state law, that have “all powers necessary or convenient to carry out the delivery of in-home
11 supportive services.” Cal. Welf. & Inst. Code, § 12301.6(a). As such, public authorities function
12 as an essential link between Independent Provider Home Care Workers (“Individual Providers” or
13 “IPs”) and the low income seniors and persons with disabilities that receive IHSS services (“IHSS
14 Consumers” or “IHSS Recipients”). Public authorities provide the following services to IHSS
15 Consumers:

- 16 a. Establish and maintain a registry of available IHSS Independent Providers in the
- 17 County;
- 18 b. Operate urgent back up care programs for IHSS Consumers whose providers
- 19 become ill or otherwise unavailable;
- 20 c. Match IHSS Consumers with properly trained and otherwise appropriate IPs;
- 21 d. Provide orientation and training for IPs;
- 22 e. Provide lists of screened IPs for IHSS Consumers to interview;
- 23 f. Provide post-match support services;
- 24 g. Assist IHSS Consumers in hiring and supervising IPs;
- 25 h. Mediate disputes between IHSS Consumers and IPs;
- 26 i. Conduct home visits for IHSS Consumers who require assistance in hiring IPs;
- 27 j. Provide case management services for at-risk IHSS Consumers;
- 28 k. Enroll IHSS IPs;

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- 1 1. Administer benefits for IPs;
- 2 m. Act as employee of record of IPs for collective bargaining purposes;
- 3 n. Investigate the qualifications and background of potential IHSS providers,
- 4 including criminal background checks.

5 See Cal. Welf. & Inst. Code, §§ 12301.6(e), 12301.24

6 3. Under AB X4 1, IHSS public authorities have been and will continue to be
7 rendered incapable of providing critical services to IHSS Recipients. Plaintiffs seek a declaratory
8 judgment that these reductions embodied in AB X4 1 (by the actions of the Legislature and the
9 Governor) are unlawful and seek temporary and permanent injunctive relief to prevent Defendants
10 from continuing to implement these provisions. These reductions in AB X4 1, implemented by
11 the California Department of Social Services on October 1, 2009, already have caused irreparable
12 harm, and if not enjoined will continue to cause severe and irreparable harm to thousands of IHSS
13 Recipients, force the institutionalization of many such recipients and create insurmountable
14 barriers to future IHSS Recipients from accessing these services.

15 4. The IHSS program provides critical assistance to hundreds of thousands of low-
16 income seniors and persons with disabilities, primarily as part of the state’s Medicaid program
17 (“Medi-Cal”), through the Medicaid Personal Care Option (“PCO”). While PCO is an “optional”
18 service under the federal Medicaid Act, California elected to seek PCO funding for its IHSS
19 program. PCO was first implemented in California in April 1993 and remains in place. Elderly
20 and/or disabled individuals who are unable to perform certain basic tasks of daily living – for
21 example, getting in or out of bed, bathing, dressing, feeding themselves, or taking necessary
22 medications – are provided with up to 283 hours per month of in-home and personal assistance
23 that permits them to remain out of institutional care. With the help of IPs, these IHSS recipients
24 are able to remain safely in their homes, at a cost to the State that is far less than the cost of
25 institutional nursing care.

26 5. The cut to public authorities’ funding for operations and services has not occurred
27 in a vacuum. Throughout fiscal year 2009-10 budget process (including AB X4 1 and the
28 Governor’s use of his “line item” veto), there has been an assault on virtually every aspect of the

1 IHSS program, all of which have been enjoined by the Courts.

2 6. First, there was the cut to the State’s contribution towards IP wages by \$2.00 per
3 hour. In many counties, this would have meant that an IP’s hourly wage would be established and
4 set at the minimum wage. Historically, low IP wages made it difficult, if not impossible, for IHSS
5 beneficiaries to hire and retain someone willing to work for such a low wage and virtually no
6 benefits. This cut was enjoined. *Martinez v. Schwarzenegger*, No. C. 09-02306 CW (N.D. Cal.
7 June 26, 2009).

8 7. Second, the State attempted to reduce or eliminate services to certain IHSS
9 recipients by using a scoring system (also known as a “Functional Index”) that had little to do with
10 a beneficiary’s level of need, as asserted by the State, and which proposed changes had not been
11 studied for their impact. This was enjoined too. *V.L. v. Wagner*, No. CV 09-04668 (N.D. Cal.
12 Oct. 14, 2009).

13 8. Third, in proposing changes to the enrollment process for IPs related to criminal
14 background checks to be done through the Department of Justice, the State sought to significantly
15 expand the types and ages of criminal convictions which could exclude a person, including a
16 family member, from being paid by the IHSS program for the home care work that they provided.
17 This too was enjoined. *Ellis v. Wagner*, Super. Ct. Alameda County, RG 09-484051 Nov. 23,
18 2009).

19 9. With this background and history, Plaintiffs have filed this action because the
20 reductions contained in AB X4 1 as to public authorities’ funding of operations and services are
21 preempted by the federal Medicaid Act, 42 U.S.C. § 1396a(a)(30)(A). Prior to the enactment of
22 AB X4 1, the Defendants failed to give the required consideration to the impact of the funding
23 reductions on the efficiency, economy, and quality of care of IHSS services, and on access to such
24 services.

25 10. In addition, these provisions of AB X4 1 are preempted by the federal Medicaid
26 Act, 42 U.S.C. § 1396a(a)(30)(A), because the reduced funding to public authorities that result
27 from its implementation has created a situation where IHSS care and services provided by them
28 are not consistent with the required standards of efficiency, economy, and quality of care, and will

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1 not provide sufficient access to such services.

2 11. Finally, implementation of the cuts to public authorities AB X4 1 violate the
3 anti-discrimination provisions of the Americans with Disabilities Act (“ADA”), 42 U.S.C.
4 § 12132, and Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a), by threatening to force
5 and actually forcing many IHSS recipients and other qualifying consumers to seek unnecessary
6 emergency treatment in acute care hospitals and/or admissions to skilled nursing facilities or other
7 institutions, despite their desire and ability to remain in their homes.

8 12. This action arises under:

- 9 a. Title XIX of the Social Security Act, 42 U.S.C. § 1396a(a)(30)(A);
- 10 b. The Americans with Disabilities Act, 42 U.S.C. § 12132;
- 11 c. The Rehabilitation Act, 29 U.S.C. § 794(a);
- 12 d. The Supremacy Clause, U.S. Const., Art. VI, cl. 2; and
- 13 e. 42 U.S.C. § 1983.

14 13. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1343.

15 14. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C.
16 §§ 2201 and 2202.

17 **VENUE**

18 15. Venue is proper under 28 U.S.C. § 1391(b) because all Defendants reside in
19 California and at least one Defendant resides in the Northern District of California, and because a
20 substantial part of the events or omissions giving rise to the claims occurred or will occur in the
21 Northern District of California, where many Plaintiffs or their members reside, live and work.

22 **INTRADISTRICT ASSIGNMENT**

23 16. Pursuant to Local Rule 3-2(c)-(d), intra-district assignment to the San Francisco or
24 Oakland Division is proper because at least one Defendant resides in San Francisco County, and
25 because a substantial part of the events or omissions giving rise to the claims occurred or will
26 occur in Alameda, Contra Costa, Marin, Mendocino, Napa, San Francisco, San Mateo and
27 Sonoma counties.

28

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PARTIES

1

2 17. Plaintiff Evelyn Putz, a 95-year-old resident of San Bernardino County, has

3 debilitating emphysema, is in the early stages of dementia and has been essentially confined to her

4 bed for the last three years. She also has receptive aphasia and has difficulty communicating for

5 this reason. She is authorized to receive 177.4 hours per month of IHSS services. Her IP provides

6 her assistance with transfers in position, bathing, dressing, bowel and bladder care (including a

7 catheter), the preparation of meals, eating, transportation to the doctor and preventing and caring

8 for bed sores. Without the services of the San Bernardino County Public Authority, Ms. Putz

9 would be unable to obtain the services of a trained caretaker. Without a well-trained IP to meet

10 her needs, plaintiff Putz’s health and well-being will be jeopardized and she faces the risk of

11 serious injury, death or institutionalization in an acute hospital or nursing home.

12 18. Plaintiff Catherine Kennebrew, a 60-year-old resident of San Bernardino County,

13 has a series of severe medical conditions, including multiple sclerosis (MS) and is virtually

14 paralyzed from the neck down, requiring the use of a Hoyer lift in order for her to transfer into or

15 out of bed. She is authorized to receive 244 hours per month of IHSS services. Her IP provides

16 her assistance with transfers, bathing, dressing, bowel and bladder care, the preparation of meals,

17 eating and transportation to the doctor. Without the services of the San Bernardino County public

18 authority, Ms. Kennebrew would not be able to find a trained IP. Without a well-trained IP to

19 meet her needs, and particularly the ability to use a Hoyer lift, plaintiff Kennebrew’s health and

20 well-being will be jeopardized and she faces the risk of serious injury, death or institutionalization

21 in an acute hospital or nursing home.

22 19. Plaintiff Richard Patterson, a 47-year-old resident of Santa Clara County, has been

23 a C5-6 quadriplegic since 1982 when he suffered a severe spinal cord injury. He is incontinent

24 and requires assistance for bowel and bladder care, clean-up, setting up the bathroom so he can

25 shower, brush his teeth, shave, comb his hair. He needs to have his body positioned, needs help

26 preparing meals and assistance with range of motion exercises. He is authorized to receive 270

27 hour per month of IHSS services, near the statutory maximum of 283 hours per month. The

28 assistance that Mr. Patterson receives allows him to work as a coordinator for persons with

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1 traumatic brain injury and spinal cord injuries at Santa Clara Valley Medical Center. Without the
2 services of the Santa Clara County public authority, Mr. Patterson would be unable to find trained
3 IPs and would not be able to access on-call services, causing unnecessary trips to acute care
4 hospital emergency rooms and admission to a skilled nursing facility. Without a well-trained IP to
5 meet his needs, plaintiff Patterson’s health and well-being will be jeopardized and he faces the risk
6 of serious injury, death or institutionalization in an acute hospital or nursing home.

7 20. Plaintiff Herb Meyer, a 78-year-old resident of Marin County, is a quadriplegic and
8 requires help getting in and out of bed, bathing, dressing, and undressing, getting into a
9 wheelchair, preparing his meals, bowel and bladder care, cleaning his apartment, and providing
10 transportation to appointments. He is authorized to receive 277 hours per month of IHSS services,
11 near the statutory maximum of 283 hours per month. Without the services of the Marin County
12 public authority, Mr. Meyer would be unable to find trained IPs and would not be able to access
13 on-call services causing unnecessary trips to acute care hospital emergency rooms and admission
14 to a skilled nursing facility. Without well-trained IPs to meet his needs, plaintiff Meyer’s health
15 and well-being will be jeopardized and he faces the risk of serious injury, death or
16 institutionalization in an acute hospital or nursing home.

17 21. Plaintiff California Association of Public Authorities for IHSS (“CAPA”) is a
18 non-profit association representing the public authorities responsible for providing critical IHSS
19 programs in individual counties throughout California. In the Northern District of California,
20 CAPA’s members include public authorities from Alameda, Contra Costa, Marin, Mendocino,
21 Napa, San Francisco, San Mateo, Santa Clara, and Sonoma counties. CAPA brings this action in
22 its representative capacity.

23 22. Plaintiff California IHSS Consumer Alliance (“CICA”) is a non-profit association
24 of County IHSS Advisory Committees and independent Public Authority Governing Boards,
25 which provide advice and recommendations to public authorities, county welfare departments, and
26 boards of supervisors in all matters relating to IHSS. In the Northern District of California,
27 CICA’s County members include Alameda, Contra Costa, Santa Clara, Humboldt, Marin and San
28 Francisco. In addition, CICA has members within the Northern District who are IHSS

1 beneficiaries and serve on County IHSS Advisory Committees and/or independent Public
2 Authority Governing Boards, including but not limited to, Herb Meyer, a plaintiff in this action.
3 CICA brings this action in its representative capacity.

4 23. Defendant Arnold Schwarzenegger is the Governor of California and, as such, was
5 and is responsible for the operations of California state government, including certain action with
6 respect to AB X4 1. Defendant Schwarzenegger is sued in his official capacity.

7 24. Defendant John A. Wagner is the Director of the California Department of Social
8 Services and, as such, was and is responsible for administering the IHSS program. Defendant
9 Wagner is sued in his official capacity.

10 25. Defendant David Maxwell-Jolly is the Director of the California Department of
11 Health Care Services and, as such, was and is responsible for administering California’s Medicaid
12 program, known as Medi-Cal. Defendant Maxwell-Jolly is sued in his official capacity.

13 26. The identities and capacities of Defendants DOES 1 through 20 are presently
14 unknown to Plaintiff. Plaintiff is informed and believes and thereon alleges that each of the
15 defendants designated herein as a Doe is legally responsible in some manner for the events and
16 happenings hereafter referred to as cause for this action against defendants. Plaintiff will seek
17 leave to amend the complaint to allege the identity and capacity of any Doe upon obtaining said
18 information.

19 **FACTUAL ALLEGATIONS**

20 **Medi-Cal and the California IHSS Program**

21 27. The purpose of California’s IHSS Program is “to enable the aged, blind or disabled
22 poor to avoid institutionalization by remaining in their homes with proper supportive services.”
23 Cal. Welf. & Inst. Code § 12300(a).

24 28. Persons eligible for the IHSS program must be aged (65 and over), blind, or
25 disabled, and must also be virtually impoverished under standards of the federal Supplemental
26 Security Income or State Supplemental Payment Program. Cal. Welf. & Inst. Code §§ 12051,
27 12052, 14061; CDSS Manual of Policies and Procedures (“Manual” or “MPP”),
28 §§ 30-755.111-114.

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1 29. The IHSS Program provides assistance with the following: (1) domestic services;
2 (2) related services (meal preparation and clean-up, restaurant meal allowance, laundry, food and
3 other shopping); (3) personal care services (bowel and bladder care, respiration, feeding, routine
4 bed baths, bathing, oral hygiene and grooming, dressing, repositioning and rubbing skin including
5 range of motion exercises, transfers, care and assistance with prosthetic devices and
6 self-administration of medication, routine menstrual care, skin care, and ambulation); (4) travel to
7 medical appointments; (5) yard hazard abatement; (6) protective supervision (monitoring of
8 individuals with mental impairments to ensure their safety); (7) teaching and demonstration
9 services; and (8) paramedical services (services that are prescribed by a doctor and require
10 training, such as injections, colostomy irrigation, catheter insertion/care, suctioning, gastric and
11 naso-gastric tube feeding; and ventilator and oxygen care). Cal. Welf. & Inst. Code §§ 12300(b)
12 & (c); 14132.95(d)(1), (2); 14132.961(c).

13 30. IHSS services are provided under California’s Medicaid program through Medicaid
14 PCO funding. Medicaid is a joint federal and state medical assistance program for certain groups
15 of low-income people, including children. *See*, 42 U.S.C. §§ 1396-1396v. The Medicaid PCO
16 funding matches both state and county funding for the IHSS program.

17 31. The purpose of Medicaid is to furnish, as far as practicable, “medical assistance on
18 behalf of . . . aged, blind or disabled individuals, whose income and resources are insufficient to
19 meet the costs of necessary medical services” and “to help such families and individuals to attain
20 or retain capability for independence or self-care. . . .” 42 U.S.C. § 1396.

21 32. California has elected to participate in the Medicaid program and sought federal
22 funding for IHSS services through the Medicaid PCO. As a result, California must comply with
23 the requirements of the federal Medicaid Act and its implementing regulations. In order to do so,
24 California must submit and have approved by the federal government a Medicaid State Plan
25 (“State Plan”).

26 33. California’s State Plan covers IHSS services and the “care and services” provided
27 by IHSS public authorities (*e.g.*, maintaining a registry of available IHSS Independent Providers
28 in the County, operating urgent back up care programs for consumers whose providers become ill

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1 or otherwise unavailable, matching IHSS Consumers with properly trained and otherwise
2 appropriate IPs, and providing orientation and training for IPs). More specifically, for Medicaid
3 purposes, public authorities are “deemed to be Medi-Cal provider[s]” that deliver “personal care
4 services,” and public authorities’ funding for their operations and services of their IHSS programs
5 are included as “medical assistance” covered by the Medicaid Act. Though described as “public
6 authority administration,” by State Defendants, these operations and services constitute “care and
7 services” for the purposes of the State Plan and the Medicaid Act.

8 34. As set forth in Welfare & Institutions Code §§12301.6(j) and 12306, and the State
9 Plan, with minor exceptions the State contributes 35% of the funding for the IHSS program and
10 Counties contribute 15%. The State and County funding is then “matched” by the federal
11 government, representing 50% of the total IHSS funds. In order to obtain State and Federal funds,
12 public authorities submit quarterly claims to the California Department of Social Services. Under
13 AB X4 1 the State’s contribution is arbitrarily “capped,” resulting in significant reductions to the
14 State’s contribution to public authorities’ costs. The State’s reduction is compounded by reducing
15 the amount of funds eligible for a federal match.

16 35. Participating States must designate a “single state agency” to administer the
17 Medicaid program, including implementing the State Plan. 42 U.S.C. § 1396a(a)(5); Welfare and
18 Institutions Code § 14100.1. In California, the single state agency is the California Department of
19 Health Care Services (“DHCS”).

Assembly Bill X4 1

20
21 36. In July 2009, the California Legislature, during the Fourth Extraordinary
22 Legislative Session, passed AB X4 1 as part of an emergency budget compromise. AB X4 1
23 reduced funding for the IHSS program. After passage of AB X4 1, but prior to signing, Governor
24 Schwarzenegger made additional cuts to IHSS funding through the purported use of his “line
25 item” veto authority. As a result, AB X4 1, including the Governor’s “line item” veto, decreased
26 overall IHSS funding by \$333 million (21 percent) in 2009-10 compared to the revised 2008-09
27 spending levels. Cal. Legis. Analyst, 2009-10 California Spending Plan, (Oct. 2009) p. 51.

28 37. With specific reference to funding for public authorities, the Legislature reduced

1 general fund support for public authorities by \$4.7 million, or 21 percent. Subsequently, the
2 Governor used his “line item” veto to reduce public authority funding by an additional \$8.6
3 million, or 36 percent. In total, these reduction resulted in a \$13.3 million, or 57 percent,
4 reduction in state general fund contributions to the operations and services provided by public
5 authorities. *Id.* at 52.

6 38. AB X4 1 set forth its reductions to the IHSS program, including the cuts to the
7 public authority funding, in subsection (d) of Section 575 of the Act. Thereafter, the Governor
8 further reduced this funding through the use of his "line item" veto, and stated as follows:

9 SEC. 18.50—I am reducing the item of General Fund appropriation in subdivision
10 (d) of this section by \$37,555,000 as opposed to approving the item as presented
11 without reduction. Additionally, I reduce the item of General Fund appropriation
12 in subdivision (f) of this section by \$19,075,000 as opposed to approving the item
13 as presented without reduction. Thus, I am increasing the General Fund reduction
14 from \$1,167,507,000 to \$1,224,137,000. The effect of my action reflects a
15 reduction of \$37,555,000 to In-Home Supportive Services (IHSS, Program 25.15)
16 to reflect the following reductions:

- 17 • \$28,900,000 due to the determination that it is necessary to waive
18 exemptions included in paragraph (2) of subdivision (e) of Section 29 of X4 AB 4
19 to maintain federal financial participation. Due to this determination, more IHSS
20 recipients will be impacted by the reduction in services authorized in X4 AB 4.
- 21 • \$8,655,000 from reducing funding for IHSS Public Authority
22 administration. **This leaves \$10,000,000 General Fund available for the Public
23 Authorities to provide assistance to recipients in finding IHSS providers,
24 investigate qualifications of potential IHSS providers, and offer training to
25 IHSS providers.**

26 These reductions total \$37,555,000, which I am reducing from subdivision (d) of
27 this Control Section.

28 (Emphasis added.)

39. The impact of the \$13.3 million reduction to public authorities (\$4.7 million by the
Legislature and \$8.6 million by the Governor) is compounded by a loss of federal and county
funds. Indeed, the reductions reflect an overall cut of \$37,896,000 to public authorities, consisting
of a \$13,318,000 reduction in State General Funds, a \$7,162,000 reduction in County funds, and
\$17,416,000 in lost federal matching funds. This represents an across the board cut of fifty-six
percent (56%) for the costs of statutorily required IHSS public authority operations and services
from the amount originally proposed for 2009-2010 public authority funding. In making this

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1 drastic reduction, State Defendants have significantly impacted the public authorities’ ability to
2 operate and oversee the IHSS program and place IHSS beneficiaries at serious risk of irreparable
3 harm to their health, well-being, and very survival.

4 40. An additional consequence of the Governor’s "line item" veto is that the State
5 general fund contribution for public authorities’ operations and services is artificially and
6 arbitrarily capped at \$10 million, thereby dismantling the existing funding formula governing the
7 funding for these services, which historically considered IHSS hours or caseload increases in
8 determining public authority funding. The effect of this cut is that, even if IHSS hours increase
9 (usually meaning that there are more needy individuals and an increased caseload), a public
10 authority through its state approved hourly “claim rate” will be unable to provide its operations
11 and services unless its County agrees to fund at least 50% of its claimed hourly costs. In practice,
12 this will penalize public authorities that have increased caseloads and put them at risk of receiving
13 what amounts to an additional funding cut. Again, State Defendants did not take into account the
14 impact of this cut on efficiency, economy, quality of care and access to services.

15 41. However, over the last few years (and certainly as of July 2009) and continuing,
16 Counties throughout the State have been experiencing (and continue to experience) severe
17 economic stress due to the recession and have suffered from their own budget cuts at the hands of
18 the State. As a result, they have been and are likely to continue to be unable to “back-fill” any or
19 all of the cuts made by AB X4 1 to public authority operations and services.

20 42. Prior to AB X4 1’s enactment, there was not proper consideration of the effect of
21 this statute on Medi-Cal’s efficiency, economy, and quality of care, and the effect of this statute on
22 access to Medi-Cal services, as required by the Medicaid Act. Rather, the legislature and the
23 Governor (by his use of the “line item” veto authority and otherwise) took this action exclusively
24 for budgetary reasons.

25 **CLASS ACTION ALLEGATIONS**

26 **(Allegations Related to Claims Against State Defendants)**

27 43. Plaintiffs Putz, Kennebrew, Patterson and Meyer (“Beneficiary Plaintiffs”) bring
28 the First, Second, Third, Fourth and Fifth Claims for Relief as a class action, pursuant to Fed. R.

1 Civ. P. 23(a), (b)(1), and/or (b)(2), on behalf of themselves and the following Plaintiff Class,
2 against Defendants Schwarzenegger, Wagner and Maxwell-Jolly (“State Defendants”):

3 All IHSS consumers residing in Alameda, Calaveras, Contra Costa, Fresno, Marin,
4 Mendocino, Monterey, Napa, Placer, Riverside, Sacramento, San Benito, San
5 Francisco, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz,
6 Solano, Sonoma, and Yolo counties.

7 44. Beneficiary Plaintiffs are members of the Beneficiary Plaintiff Class on whose
8 behalf the First, Second, Third, Fourth and Fifth Claims for Relief are brought against State
9 Defendants.

10 45. The Beneficiary Plaintiff Class consists of tens of thousands of individuals and is
11 therefore so numerous that joinder of all members is impracticable.

12 46. Common questions of law and fact predominate over any questions affecting
13 individual class members. Questions of law and fact common to members of the Beneficiary
14 Plaintiff Class as a whole include, but are not limited to, the following:

- 15 a. Whether the State failed to give the required consideration to the factors of
- 16 efficiency, economy, quality of care, and access to services prior to the
- 17 Legislature’s enactment of AB X4 1 and the Governor’s subsequent "line
- 18 item" veto, as it relates to what the state has characterized as public
- 19 authorities “administration” in violation of the federal Medicaid Act, 42
- 20 U.S.C. § 1396a(a)(30)(A);
- 21 b. Whether the decreased funding for what the state has characterized as
- 22 public authorities “administration” resulting from AB X4 1 will be
- 23 inconsistent with Medicaid’s mandated quality of care, and will not be
- 24 sufficient to enlist enough IHSS providers so that care and services under
- 25 Medi-Cal are available at least to the extent that such care and services are
- 26 available to the general population in the geographic area, in violation of the
- 27 federal Medicaid Act, 42 U.S.C. § 1396a(a)(30)(A);
- 28 c. Whether the implementation of AB X4 1 relating to what the state has
- characterized as public authorities “administration” will violate the rights of

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Plaintiffs to be free from discrimination on the basis of their disability under the ADA, 42 U.S.C. § 12132, by forcing disabled individuals who could otherwise remain in their homes to enter nursing homes or other residential institutions;

d. Whether the implementation of AB X4 1 relating to what the state has characterized as public authorities “administration” will violate the rights of Plaintiffs and class members to be free from discrimination on the basis of their disability under Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a), by forcing disabled individuals who could otherwise remain in their homes to enter nursing homes or other residential institutions.

e. Whether the Governor exceeded his "line item" veto authority set forth in article IV, section 10(e) of the California Constitution by further reducing funding for IHSS public authorities beyond the amount determined by the Legislature.

47. Beneficiary Plaintiffs will fairly and adequately represent and protect the interests of the Plaintiff Class. Beneficiary Plaintiffs have retained counsel competent and experienced in complex class actions and federal civil rights litigation. Beneficiary Plaintiffs’ interests are co-extensive with those of class members, and are not antagonistic to them.

48. Beneficiary Plaintiffs’ claims are typical of class members’ claims. Like other class members, they are currently receiving IHSS services and their IHSS providers’ ability to serve them will be adversely impacted by AB X4 1. Like other class members, they face a substantial risk of irreparable harm as a result of State Defendants’ conduct.

49. Class certification of the First, Second, Third, Fourth and Fifth Claims for Relief against State Defendants is appropriate pursuant to Fed. R. Civ. P. 23(b)(1)(A) because the prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class.

50. Class certification of the First, Second, Third, Fourth, and Fifth Claims for Relief

1 against State Defendants is appropriate pursuant to Fed. R. Civ. P. 23(b)(1)(B) because the
2 prosecution of separate actions by individual class members would create a risk of adjudications
3 with respect to individual class members that would, as a practical matter, be dispositive of the
4 interests of the other members not parties to the adjudications.

5 51. Class certification of the First, Second, Third, Fourth, and Fifth Claims for Relief is
6 appropriate pursuant to Fed. R. Civ. P. 23(b)(2) because State Defendants have acted or refused to
7 act on grounds generally applicable to the Class, making appropriate declaratory and injunctive
8 relief with respect to Beneficiary Plaintiffs and the Beneficiary Plaintiff Class as a whole.

9 **FIRST CLAIM FOR RELIEF**

10 **(Violation of 42 U.S.C. § 1396a(a)(30)(A)/Supremacy Clause, Brought by All Plaintiffs)**

11 52. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully
12 set forth herein.

13 53. The federal Medicaid Act, 42 U.S.C. § 1396a(a)(30)(A), requires, in relevant part,
14 that a state Medicaid plan:

15 provide such methods and procedures relating to the utilization of, and the payment
16 for, care and services available under the plan . . . as may be necessary . . . to assure
17 that payments are consistent with efficiency, economy, and quality of care and are
18 sufficient to enlist enough providers so that care and services are available under
19 the plan at least to the extent that such care and services are available to the general
20 population in the geographic area

21 54. The public authorities' operations and services, as described herein, constitute "care
22 and services" for the purposes of the Medicaid Act and the State Plan.

23 55. 42 U.S.C. § 1396a(a)(30)(A) mandates that states consider the effect of any
24 proposed changes to provider payments upon the efficiency, economy, quality of care, and access
25 to services before making changes in those payments. *See California Pharmacists Assoc. v.*
26 *Maxwell-Jolley*, 563 F.3d 847, 850 (9th Cir. 2009); *Orthopaedic Hospital v. Belshe*, 103 F.3d
27 1491, 1496 (9th Cir. 1997) (in setting rates states must consider effect upon efficiency, economy,
28 quality of care, and access, including through reliance on “cost studies . . . that provide reliable
data”).

56. Neither the Legislature in reducing public authorities’ funding by \$4.7 million, nor

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1 the Governor in further reducing public authorities’ funding for operations and services by \$8.6
2 million, gave the required consideration to or conducted the required analysis of the effect of
3 AB X4 1 on efficiency, economy, quality of care, and access to services prior to its enactment.
4 Instead, AB X4 1 was enacted solely for budgetary reasons.

5 57. These provisions of AB X4 1 therefore conflict with, and are preempted by,
6 42 U.S.C. § 1396a(a)(30)(A).

7 58. If the State Defendants continue to implement these provisions of AB X4 1, their
8 conduct will cause irreparable injury to Plaintiffs and the Plaintiff Class.

9 **SECOND CLAIM FOR RELIEF**

10 **(Violation of 42 U.S.C. § 1396a(a)(30)(A)/Supremacy Clause, Brought By All Plaintiffs)**

11 59. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully
12 set forth herein.

13 60. The federal Medicaid Act, 42 U.S.C. § 1396a(a)(30)(A), requires, in relevant part,
14 that a state Medicaid plan:

15 provide such methods and procedures relating to the utilization of, and the payment
16 for, care and services available under the plan . . . as may be necessary . . . to assure
17 that payments are consistent with efficiency, economy, and quality of care and are
18 sufficient to enlist enough providers so that care and services are available under
19 the plan at least to the extent that such care and services are available to the general
20 population in the geographic area

21 61. 42 U.S.C. § 1396a(a)(30)(A) mandates that states’ provider payments be “consistent
22 with efficiency, economy, and quality of care and . . . sufficient to enlist enough providers so that
23 care and services are available under the plan at least to the extent that such care and services are
24 available to the general population in the geographic area.” *Orthopaedic Hosp. v. Belshe*, 103
25 F.3d 1491, 1496 (9th Cir. 1997)

26 62. The decreased IHSS programs offered by public authorities that would result from
27 the implementation of AB X4 1 (including the reductions caused by the Governor’s "line item"
28 veto) will not be consistent with the Medicaid Act’s mandated quality of care.

63. The IHSS programs offered by public authorities that would result from the
implementation of AB X4 1 will not be sufficient to enlist enough IHSS providers so that care and

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1 services under Medi-Cal is available at least to the extent that such care and services were
2 available to the general population in the geographic area.

3 64. AB X4 1 therefore conflicts with, and is preempted by, 42 U.S.C.
4 § 1396a(a)(30)(A).

5 65. If the State Defendants implement AB X4 1, their conduct will cause irreparable
6 injury to Plaintiffs and the Plaintiff Class.

7 **THIRD CLAIM FOR RELIEF**

8 **(Violation of 42 U.S.C. § 12132/42 U.S.C. § 1983/Supremacy Clause, Brought By Beneficiary
9 Plaintiffs)**

10 66. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully
11 set forth herein.

12 67. The Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12132, provides that
13 “no qualified individual with a disability shall, by reason of such disability, be excluded from
14 participation in or be denied the benefits of the services, programs, or activities of a public entity,
15 or be subjected to discrimination by any such entity.”

16 68. The unjustified isolation of persons with disabilities in institutions constitutes a
17 form of discrimination prohibited by 42 U.S.C. § 12132.

18 69. Plaintiffs are qualified individuals with disabilities within the meaning of the ADA,
19 and are recipients of IHSS services from a public entity.

20 70. The implementation of AB X4 1 (including the reductions caused by the
21 Governor’s "line item" veto) and its reduction of funding for public authorities’ operations and
22 services violates 42 U.S.C. § 12132 by creating a substantial risk that the Beneficiary Plaintiffs
23 will be unable to find IHSS providers and will, as a result, be forced to enter nursing homes or
24 other institutional facilities, despite their desire and ability to remain in their homes.

25 71. It would cost the Medi-Cal program more money to provide care for Plaintiffs in
26 nursing homes or other institutional facilities than it would cost to provide IHSS services that
27 would permit Plaintiffs to remain in their homes.

28 72. The implementation of AB X4 1 (including the reductions caused by the

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1 Governor’s "line item" veto) and the cuts to public authorities operations and services would
2 deprive Plaintiffs of their rights under 42 U.S.C. § 12132 to be free from discrimination based on
3 their disability.

4 73. AB X4 1 is therefore in conflict with, and is preempted by, 42 U.S.C. § 12132.

5 74. The implementation of AB X4 1 and its reduction of funding for public authorities’
6 operations and services for IHSS providers would cause irreparable injury to Plaintiffs and the
7 Plaintiff Class.

8 **FOURTH CLAIM FOR RELIEF**

9 **(Violation of 29 U.S.C. § 794(a)/42 U.S.C. § 1983/Supremacy Clause, Brought By Beneficiary
10 Plaintiffs)**

11 75. Beneficiary Plaintiffs reallege and incorporate by reference all preceding
12 paragraphs as if fully set forth herein.

13 76. Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a), provides that “[n]o
14 otherwise qualified individual with a disability . . . shall, solely by reason of her or his disability, .
15 . . be subjected to discrimination under any program or activity receiving Federal financial
16 assistance.”

17 77. The unjustified isolation of persons with disabilities in institutions constitutes a
18 form of discrimination prohibited by 29 U.S.C. § 794(a).

19 78. Beneficiary Plaintiffs are qualified individuals with disabilities within the meaning
20 of the Rehabilitation Act, and are recipients of IHSS services pursuant to a program receiving
21 federal financial assistance.

22 79. AB X4 1 (including the reductions caused by the Governor’s "line item" veto) will
23 violate 29 U.S.C. § 794(a) by creating a substantial risk that Plaintiffs will be unable to find IHSS
24 providers and will, as a result, be forced to enter nursing homes or other institutional facilities,
25 despite their desire and ability to remain in their homes.

26 80. It would cost the Medi-Cal program more money to provide care for Beneficiary
27 Plaintiffs in nursing homes or other institutional facilities than it would cost to provide IHSS
28 services that would permit Plaintiffs to remain in their homes.

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1 81. AB X4 1 will deprive Beneficiary Plaintiffs of their rights under 29 U.S.C. § 794(a)
2 to be free from discrimination based on their disability.

3 82. AB X4 1 therefore conflicts with, and is preempted by, 29 U.S.C. § 794(a).

4 83. Implementation of AB X4 1 would cause injury to Beneficiary Plaintiffs and the
5 Beneficiary Plaintiff Class.

6 **FIFTH CAUSE OF ACTION**

7 **(Violation of Article IV, section 10 of the California Constitution, Brought By All Plaintiffs)**

8 84. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully
9 set forth herein.

10 85. Article IV, section 10(e) of the California Constitution sets forth the Governor of
11 California’s “line item” veto authority, which authorizes the Governor to “reduce or eliminate one
12 or more items of appropriation while approving other portions of the bill.” The Governor’s veto
13 power, whether related to a bill or item of appropriation, is circumscribed and cannot be liberally
14 construed. *Harbor v. Deukmejian*, 43 Cal.3d 1078, 1084-87 (Cal. 1987).

15 86. The Governor’s "line item" veto authority extends only to “items of appropriation.”
16 Cal. Const., art. IV, section 10(e). “An appropriation is a legislative act setting aside ‘a certain
17 sum of money for a specific object in such a manner that the executive officers are authorized to
18 use that money and no more for such specified purposes.’” *California Assn. For Safety Education*
19 *v. Brown*, 30 Cal.App.4th 1264, 1282 (Cal.App. 1994) (citations omitted). A portion of a bill is
20 not an “item of appropriation” subject to the Governor’s "line item" veto merely because it is
21 within a bill that contains other appropriations or relates to an appropriation that was already made
22 in previous legislation. *Harbor*, 43 Cal.3d at 1089-91. The only items subject to the "line item"
23 veto are particular items that by themselves grant authority to spend a specified amount of public
24 money for a specific purpose. A bill that reduces the amount of an appropriation made in previous
25 legislation is not by itself an appropriation because it does not by itself grant authority to spend
26 money; the grant of authority was made by the previous legislation.

27 87. On February 20, 2009, Defendant Schwarzenegger signed into law the Budget Act
28 of 2009, Chapter 1 of the Third Extraordinary Session of 2009-10, which set forth various

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1 appropriations of state funds for the 2009-10 fiscal year, including funding for the IHSS program.

2 88. On July 23 and 24, 2009, the Legislature passed AB X4 1, which reduced the
3 amount of appropriated funding previously authorized by the Budget Act of 2009, including the
4 amount appropriated for the IHSS program. Specifically, Section 575 of AB X4 1 amended the
5 Budget Act of 2009 to include Control Section 18.50. As set forth above, Control Section 18.50
6 reduced funding for to the IHSS program in general and the public authorities in particular.

7 89. On July 28, 2009, Defendant Schwarzenegger purported to use the “line item” veto
8 authority provided by article IV, section 10(e) of the California Constitution in a way not intended
9 by the Constitution, namely, by further reducing the cuts made by AB X4 1 to a number of
10 programs, including IHSS.

11 90. In purporting to “line item” veto Control Section 18.50 to further reduce IHSS
12 funding, Defendant Schwarzenegger acted unconstitutionally, in excess of the limited veto power
13 granted him by the California Constitution.

14 91. Specifically, Defendant Schwarzenegger violated article IV, section 10(e) of the
15 California Constitution by attempting to reduce or eliminate portions of AB X4 1 that were not
16 items of appropriation within the meaning of article IV, section(e) of the California Constitution.
17 With regard to the IHSS program, Control Section 18.50 did not “set aside money for the payment
18 of any claim,” made “no appropriation from the public treasury,” and did not “add any additional
19 amount to funds already provided for.” *Harbor*, 43 Cal.3d at 1089. This is because the legal
20 effect of an item that solely makes a reduction of a previously appropriated amount does not grant
21 authority to a state officer to expend a specified sum, but actually lessens that authority.

22 92. The non-partisan Legislative Counsel Bureau has similarly concluded that
23 Defendant Schwarzenegger’s act of purporting to "line item" portions of AB X4 1 violated the
24 California Constitution. In an opinion dated August 5, 2009, Legislative Counsel concluded that
25 “in vetoing items of sections of A.B. 1. that proposed only reductions to existing appropriations
26 enacted by the Budget Act of 2009, the Governor exceeded his ‘line item’ veto authority.” Ops.
27 Cal. Legis. Counsel, No. 920903 (Aug. 5, 2009) p.1. Legislative Counsel continued: “We
28 conclude here that the items and sections of A.B. 1 that proposed only to make reductions in

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1 existing, previously enacted appropriations do not satisfy this requirement and, thus, do not
2 constitute items of appropriation that are subject to the Governor’s line-item veto power.” *Id.* at 3.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, all Plaintiffs on behalf of themselves, and on behalf of all members of the
5 Beneficiary Plaintiff Class, pray that the Court:

6 1. Enter preliminary injunctive relief, pending a decision on the merits, that enjoins
7 the State Defendants from continuing to implement AB X4 1 as it relates to public authorities’
8 operations and services;

9 2. Certify this action as a class action on behalf of the proposed Beneficiary Plaintiff
10 Classes;

11 3. Designate Beneficiary Plaintiffs as Representatives of the Beneficiary Plaintiff
12 Class;

13 4. Designate Plaintiffs’ counsel as Counsel for the Beneficiary Plaintiff Class;

14 5. Enter a declaratory judgment that the enactment and implementation of AB X4 1 as
15 it relates to funding for IHSS public authorities, including the reductions and arbitrary funding cap
16 caused by the Governor’s "line item" veto, is preempted by the Medicaid Act, 42 U.S.C.

17 § 1396a(a)(30)(A), the ADA, 42 U.S.C. § 12132, and the Rehabilitation Act, 29 U.S.C. § 794(a);

18 6. Enter a declaratory judgment that the enactment and implementation of AB X4 1,
19 including the cuts to public authorities administration, will deprive Beneficiary Plaintiffs of their
20 rights under the ADA, 42 U.S.C. § 12132, and the Rehabilitation Act, 29 U.S.C. § 794(a), to be
21 free from discrimination based on their disability;

22 7. Enter a declaratory judgment that the purported "line item" veto, issued by
23 Defendant Schwarzenegger on July 28, 2009, related to IHSS public authority funding violates
24 article IV, section 10(e) of the California Constitution and is thus null and void;

25 8. Issue a permanent injunction prohibiting the State Defendants from continuing to
26 implement AB X4 1 as to cuts of public authorities’ operations and services;

27 9. Award Plaintiffs their costs and expenses, including reasonable attorney’s fees,
28 expert witness fees, and costs of suit; and

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10. Award such other further and additional relief as the Court may deem just and proper.

DATED: January __, 2010

HOOPER, LUNDY & BOOKMAN, INC.

By: _____
CRAIG J. CANNIZZO
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