

EXHIBIT A

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13
 14 UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 15 SAN FRANCISCO/OAKLAND DIVISION

16 DAVID OSTER, WILLIE BEATRICE SHEPPARD, C.R.
 by and through his *guardian ad litem* M.R., DOTTIE
 17 JONES, ANDREA HYLTON, HELEN POLLY STERN,
 CHARLES THURMAN, and L.C. by and through her
 18 *guardian ad litem* M.G., on behalf of themselves and a
 class of those similarly situated; SERVICE EMPLOYEES
 19 INTERNATIONAL UNION – UNITED HEALTHCARE
 WORKERS WEST, SERVICE EMPLOYEES
 20 INTERNATIONAL UNION – UNITED LONG-TERM
 CARE WORKERS, SERVICE EMPLOYEES
 21 INTERNATIONAL UNION LOCAL 521, SERVICE
 EMPLOYEES INTERNATIONAL UNION STATE
 22 COUNCIL, UNITED DOMESTIC WORKERS OF
 AMERICA, AFSCME, LOCAL 3930, AFL-CIO, and
 23 CALIFORNIA UNITED HEALTHCARE WORKERS,

24 Plaintiffs,

v.

25 WILL LIGHTBOURNE, Director of the California
 Department of Social Services; TOBY DOUGLAS,
 26 Director of the California Department of Health Care
 Services; CALIFORNIA DEPARTMENT OF HEALTH
 27 CARE SERVICES; and CALIFORNIA DEPARTMENT
 OF SOCIAL SERVICES,
 28

Defendants.

Case No. CV 09-04668 CW

**THIRD AMENDED CLASS
 ACTION COMPLAINT FOR
 INJUNCTIVE AND
 DECLARATORY RELIEF**

1 **INTRODUCTION**

2 1. This civil rights class action seeks declaratory and injunctive relief to prevent over
3 one hundred thousand low-income seniors and individuals with disabilities from losing critical
4 services that enable them to remain safely in their homes.

5 2. California’s In-Home Supportive Services (“IHSS”) program presently provides
6 crucial in-home assistance with certain basic tasks of daily living – for example, bathing, dressing,
7 meal preparation and clean up, eating, bowel and bladder care, and taking necessary medications –
8 so that elderly individuals and persons with disabilities can avoid unnecessary and costly
9 institutionalization. IHSS recipients qualify for these services because it has been determined that
10 they cannot safely remain in their homes without them.

11 3. However, ABX4 4, which was passed on an emergency basis for purely budgetary
12 reasons, would render tens of thousands of current IHSS recipients ineligible for all IHSS services
13 based on a “Functional Index Score,” first devised in 1988, that was not designed to measure
14 individual need or to determine eligibility, has never been used for such purposes, and is not a
15 reasonable measure of need or eligibility. ABX4 4 (Stats. 2009, c. 4, §§ 29, 30) (Part II)
16 (amending Cal. Welf. & Inst. Code §§ 12309 & 12309.2). ABX4 4 would also deprive tens of
17 thousands of additional IHSS recipients of critical IHSS domestic and related services that have
18 previously been found necessary to permit these individuals to remain safely in their homes based
19 on a numerical “rank” that was not designed to determine eligibility, has never been used for such
20 purpose, and is not a reasonable measure of need or eligibility. These statutory changes were
21 scheduled to go into effect on November 1, 2009.

22 4. Similarly, SB 73 was passed on an emergency basis for purely budgetary reasons,
23 and will dramatically reduce previously authorized IHSS hours for most IHSS recipients. SB 73
24 (Stats. 2011, c. 34, §§1-3) (adding Cal. Welf. & Inst. Code §§ 4792, 12301.07, and 14105.09). SB
25 73 reduces hours previously found necessary to allow recipients to remain safely at home by 20
26 percent, on top of a 3.6 percent reduction earlier in 2011. While SB 73 authorizes individuals at
27 serious risk of out-of-home placement to apply for hours restorations, Defendants are
28 implementing SB 73 in a manner that limits eligibility for those hours restorations based on the

1 same numerical ranks used by ABX4 4, which are not reasonable measures of need, and cannot be
2 used to determine risk of out-of-home placement. These statutory changes are scheduled to go into
3 effect on January 1, 2012, with Notices of Action (“NOAs”) to inform recipients of the hours
4 reductions set to be mailed on or before December 15, 2011.

5 5. Unless enjoined, these provisions of ABX4 4 and SB 73 will cause immediate and
6 irreparable harm by depriving members of the plaintiff classes of services that are essential to their
7 ability to remain safely in their own homes. This will place members of the plaintiff classes at
8 imminent and serious risk of harm to their health and safety, as well as of unnecessary and
9 unwanted out-of-home placement, including institutionalization.

10 6. The statutory provisions at issue contravene federal law in a number of ways.
11 Initially, ABX4 4’s and SB 73’s changes to state law violate the Americans with Disabilities Act of
12 1990, 42 U.S.C. § 12132 (“ADA”), and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C.
13 § 794 (“Section 504”), by placing IHSS recipients at imminent risk of unnecessary and unwanted
14 out-of-home and out-of-community placement, including in institutions such as nursing homes, and
15 by discriminating on the basis of type of disability.

16 7. ABX4 4 and SB 73 also violate the requirements of Title XIX of the Social Security
17 Act, 42 U.S.C. § 1396a (“the Medicaid Act”): that States provide (1) comparable Medicaid services
18 to individuals with similar needs; (2) services that are sufficient in amount, duration, and scope to
19 reasonably achieve their purposes; (3) services according to reasonable standards; and (4)
20 necessary services to correct or ameliorate children’s conditions.

21 8. Finally, Defendants’ failure to provide adequate notice and opportunity for hearing
22 prior to depriving members of the plaintiff classes of critical IHSS services violates the federal
23 constitutional guarantee of procedural due process and the Medicaid Act’s notice and hearing
24 provisions. Defendants’ failure to make the notices and related applications accessible to recipients
25 with vision impairments also violates Section 504 and the ADA.

26 JURISDICTION

27 9. This action for declaratory and injunctive relief arises under the Due Process Clause
28 of the Fourteenth Amendment to the U.S. Constitution; Title XIX of the Social Security Act, 42

1 U.S.C. § 1396a *et seq.* (“the Medicaid Act”); Title II of the Americans With Disabilities Act of
2 1990, 42 U.S.C. § 12132 (“ADA”); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794
3 (“Section 504”); 42 U.S.C. § 1983; and the Supremacy Clause, U.S. Const., Art. VI, cl. 2.

4 10. Jurisdiction is based on 28 U.S.C. §§ 1331 and 1343. Plaintiffs’ claims for
5 declaratory and injunctive relief are authorized under 28 U.S.C. §§ 2201 and 2202. At all times
6 relevant to this action, Defendants have acted under color of state law.

7 **VENUE**

8 11. Venue is proper in the Northern District of California pursuant to 28 U.S.C.
9 § 1391(b), because the Defendants operate and perform their official duties therein and thus reside
10 therein for purposes of venue, and because a substantial part of the events and omissions giving
11 rise to the claims herein occurred in the Northern District of California. Individual named plaintiff
12 Willie Beatrice Sheppard lives and receives services in Emeryville, which is in Alameda County, in
13 the Northern District of California. Individual named plaintiff C.R. lives and receives services in
14 Gilroy, which is in Santa Clara County, in the Northern District of California. Members of the
15 plaintiff classes reside and receive IHSS services in the Northern District of California.
16 Organizational Plaintiff Service Employees International Union-United Healthcare Workers West
17 (“UHW”) members provide IHSS services in Marin and Contra Costa Counties, in the Northern
18 District of California. Organizational Plaintiff SEIU United Long-Term Care Workers
19 (“ULTCW”) members provide IHSS services in Mendocino, Sonoma, Napa, Alameda, Santa Cruz,
20 and Monterey Counties, in the Northern District of California. Organizational Plaintiff SEIU Local
21 521 (“Local 521”) members provide IHSS services in Santa Clara and San Mateo County, in the
22 Northern District of California. Organizational plaintiff California United Homecare Workers
23 (“CUHW”) members provide IHSS services in Del Norte, Humboldt, and Lake Counties, in the
24 Northern District of California.

25 **INTRADISTRICT ASSIGNMENT**

26 12. Pursuant to Civil L. R. 3-2(c) this action should be assigned to the San Francisco or
27 Oakland Division of the Northern District of California, because a substantial part of the events and
28 omissions giving rise to the claims herein occurred in counties in the San Francisco/Oakland

1 Division. Individual named plaintiff Willie Beatrice Sheppard lives in Emeryville, which is
 2 located in Alameda County. Many members of the plaintiff classes are residents of Alameda,
 3 Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Napa, San Francisco, San Mateo,
 4 and Sonoma Counties. Organizational Plaintiff UHW members provide IHSS services in Marin
 5 and Contra Costa Counties. Organizational Plaintiff ULTCW members provide IHSS services in
 6 Alameda, Mendocino, Sonoma, and Napa Counties. Organizational Plaintiff Local 521 members
 7 provide IHSS services in San Mateo County. Organizational Plaintiff CUHW members provide
 8 IHSS services in Del Norte, Humboldt, and Lake Counties.

9 **PARTIES**

10 **Individual Plaintiffs**

11 13. Named Plaintiff David Oster is a 36-year-old man who has autism and bi-polar
 12 disorder. Because of his disabilities and medical conditions, Mr. Oster is Medi-Cal eligible and
 13 receives IHSS services. Pursuant to ABX4 4, Mr. Oster will lose eligibility for all IHSS services
 14 because his Functional Index Score is under 2.0. Mr. Oster should be exempt from having his
 15 IHSS hours cut by 20 percent pursuant to SB 73, because he receives services under the
 16 Developmental Disabilities Waiver. However, Mr. Oster is concerned that, if Defendants
 17 mistakenly determine that he is subject to SB 73, he will be unable to understand from the notice of
 18 action how to contest this mistake, and/or will face interruption of his IHSS services if he misses
 19 the deadline to request continuation of IHSS pending appeal.

20 14. Named Plaintiff Willie Beatrice Sheppard is an 83-year-old woman whose mobility
 21 is impaired as result of a stroke and arthritis. Because of her disabilities, medical conditions, and
 22 age, Ms. Sheppard is Medi-Cal eligible and receives IHSS. Pursuant to ABX4 4, Ms. Sheppard
 23 will lose IHSS services for shopping and errands. Pursuant to SB 73, Ms. Sheppard's IHSS hours
 24 will be cut by 20 percent. Ms. Sheppard will not be eligible to have any of these hours restored,
 25 according to Defendants' criteria for hours restorations.

26 15. Named Plaintiff C.R., represented here by his *guardian ad litem* M.R., is a seven-
 27 year-old boy who has a developmental disability due to chromosome deletion. Because of his
 28 disabilities and medical condition, C.R. is Medi-Cal eligible and receives IHSS services. Pursuant

1 to ABX4 4, C.R. will lose eligibility for all IHSS services because his Functional Index Score is
2 under 2.0. C.R. should be exempt from having his hours cut by 20 percent pursuant to SB 73,
3 because he receives services under the Developmental Disabilities Waiver. However, if
4 Defendants mistakenly determine that C.R. is subject to SB 73, his guardian may be unable to
5 understand from the notice of action how to contest this mistake, and/or he may face interruption of
6 C.R.'s IHSS services if she misses the deadline to request continuation of IHSS pending appeal.

7 16. Named Plaintiff Dottie Jones is a 53-year-old woman who has AIDS and
8 neuropathy. Because of her disabilities and medical condition, Ms. Jones is Medi-Cal eligible and
9 receives IHSS services. Pursuant to ABX4 4, Ms. Jones will lose IHSS services for meal
10 preparation and clean-up and for housekeeping. Pursuant to SB 73, Ms. Jones' IHSS hours will be
11 cut by 20 percent. Ms. Jones will not be eligible to have any of these hours restored, according to
12 Defendants' criteria for hours restorations.

13 17. Named Plaintiff Andrea Hylton is a 65-year-old woman with multiple disabilities
14 including emphysema, arthritis, nerve damage, and bipolar disorder. Because of her disabilities
15 and medical condition, Ms. Hylton is Medi-Cal eligible and receives IHSS services. Pursuant to
16 SB 73, Ms. Hylton's IHSS hours will be cut by 20 percent. Ms. Hylton will not be eligible to have
17 any of these hours restored, according to Defendants' criteria for hours restorations.

18 18. Named Plaintiff Helen Polly Stern is an 86-year-old woman whose mobility is
19 severely impaired due to bilateral hip dysplasia (deformation of the hip joints) and other bone and
20 joint disorders, and who suffers from additional physical disabilities. Because of her disabilities
21 and medical condition, Ms. Stern is Medi-Cal eligible and receives IHSS services. Pursuant to SB
22 73, Ms. Stern's IHSS hours will be cut by 20 percent. Ms. Stern will not be eligible to have any of
23 these hours restored, according to Defendants' criteria for hours restorations.

24 19. Named Plaintiff L.C., represented here by her *guardian ad litem* M.G., is a six-year-
25 old girl with a rare metabolic disorder that prevents her body from processing protein. Because of
26 her disabilities and medical condition, L.C. is Medi-Cal eligible and receives IHSS services.
27 Pursuant to ABX4 4, L.C. will lose eligibility for all IHSS services because her Functional Index
28 Score is under 2.0. Pursuant to SB 73, L.C.'s IHSS hours will be cut by 20 percent. L.C. will not

1 agency that receives federal funds and is the single state agency responsible for administering the
2 federal Medicaid program in California (“Medi-Cal”). Defendant DHCS is sued under the Fourth
3 Claim for Relief (Section 504).

4 28. Defendant Toby Douglas is the Director of DHCS, a state agency that receives
5 federal funds. Defendant Douglas is a public agency director responsible for operation of a public
6 entity, pursuant to 42 U.S.C. §§ 12131(1)(A) & (B). As the Director of DHCS, Defendant Douglas
7 is responsible for oversight, supervision and control of the functions and programs vested in the
8 DHCS, including the Medi-Cal program, and has the responsibility for ensuring that the Medi-Cal
9 program is implemented and administered consistent with the requirements of federal Medicaid
10 law. Defendant Douglas is sued in his official capacity under the First Claim for Relief
11 (Fourteenth Amendment to the United States Constitution-Procedural Due Process), Second Claim
12 for Relief (Medicaid-Right to Fair Hearing), Third Claim for Relief (ADA), Fifth Claim for Relief
13 (Medicaid-Comparability Requirement), Sixth Claim for Relief (Medicaid-Sufficiency
14 Requirement), Seventh Claim for Relief (Medicaid-Reasonable Standards Requirement), and
15 Eighth Claim for Relief (Medicaid-Early and Periodic Screening, Diagnostic and Treatment
16 Services).

17 29. Defendant California Department of Social Services (“CDSS”) is a state agency that
18 receives federal funds and is responsible for the overall implementation and supervision of the
19 administration of the IHSS programs by the counties. Defendant CDSS is sued under the Fourth
20 Claim for Relief (Section 504).

21 30. Defendant Will Lightbourne is the Director of CDSS, a state agency that receives
22 federal funds. Defendant Lightbourne is a public agency director responsible for the operation of a
23 public entity pursuant to 42 U.S.C. §§ 12131(1)(A) & (B). Defendant Lightbourne is sued in his
24 official capacity under the First Claim for Relief (Fourteenth Amendment to the United States
25 Constitution-Procedural Due Process), Second Claim for Relief (Medicaid-Right to Fair Hearing),
26 Third Claim for Relief (ADA), Fifth Claim for Relief (Medicaid-Comparability Requirement),
27 Sixth Claim for Relief (Medicaid-Sufficiency Requirement), Seventh Claim for Relief (Medicaid-

28

1 Reasonable Standards Requirement), and Eighth Claim for Relief (Medicaid-Early & Periodic
2 Screening, Diagnostic and Treatment Services).

3 **FACTUAL ALLEGATIONS**

4 **A. Medi-Cal and the California IHSS Program**

5 31. The purpose of the IHSS program is “to enable the aged, blind or disabled poor to
6 avoid institutionalization by remaining in their homes with proper supportive services.” Cal. Welf.
7 & Inst. Code § 12300(a).

8 32. Persons eligible for this program must be aged (65 or over), blind, or disabled, and
9 must also be poor under standards of the federal Supplemental Security Income or State
10 Supplemental Payment Program. Cal. Welf. & Inst. Code §§ 12051, 12052, 14051; CDSS Manual
11 of Policies and Procedures (“Manual” or “MPP”) §§ 30-755.111-.114.

12 33. The IHSS program provides assistance with the following: (1) domestic services;
13 (2) related services (meal preparation and clean-up, restaurant meal allowance, laundry, food and
14 other shopping); (3) personal care services (bowel and bladder care, respiration, feeding, routine
15 bed baths, bathing, oral hygiene and grooming, dressing, repositioning and rubbing skin including
16 range of motion exercises, transfers, care and assistance with prosthetic devices and self-
17 administration of medication, routine menstrual care, skin care, and ambulation); (4) travel to
18 medical appointments; (5) yard hazard abatement; (6) protective supervision (monitoring of
19 individuals with mental impairments to ensure their safety); (7) teaching and demonstration
20 services; and (8) paramedical services (services that are prescribed by a doctor and require training,
21 such as injections, colostomy irrigation, catheter insertion/care, suctioning, G and NG tube feeding,
22 and ventilator and oxygen care). Cal. Welf. & Inst. Code §§ 12300(b) & (c); 14132.95(d)(1), (2);
23 14132.951(c).

24 34. Most IHSS services are provided through California’s Medicaid program (“Medi-
25 Cal”). Medicaid is a joint federal and state medical assistance program for certain groups of low-
26 income people, including children. *See* 42 U.S.C. §§ 1396-1396v. California has elected to
27 participate in the Medicaid program, and so must comply with the requirements of the federal
28 Medicaid Act and its implementing regulations.

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

5 36. Participating States must designate a “single state agency” to administer the
6 Medicaid program. 42 U.S.C. § 1396a(a)(5). In California, the single state agency is DHCS.

7 37. Participating States are reimbursed by the federal government for a portion of the
8 cost of providing Medicaid benefits. *See* 42 U.S.C. § 1396b. The remaining funding for the IHSS
9 program comes from the State and from counties.

10 **1. Eligibility for IHSS Services**

11 38. Counties, under the direction of Defendant CDSS, determine recipients’ eligibility
12 for IHSS services and the number of hours authorized for any services based on statewide statutes
13 and regulations. Cal. Welf. & Inst. Code §§ 12300(g), 14132.95(f), 14132.951(b) & (e).

14 39. Individuals are eligible for IHSS services only if they are “unable to perform the
15 services themselves and . . . cannot safely remain in their homes. . . unless these services are
16 provided.” Cal. Welf. & Inst. Code § 12300(a); MPP §§ 30-761.13, 30-763.112.

17 40. The assessment of eligibility for IHSS services begins with county social workers
18 “collecting and evaluating information . . . [which] includes but is not limited to, all of the
19 following: (A) The recipient’s living environment. (B) Alternative resources. (C) The recipient’s
20 functional abilities.” Cal. Welf. & Inst. Code § 12309(b).

21 41. Social workers assess recipients’ level of need through a variety of methods,
22 including observing the recipient and the recipient’s living environment, asking the client
23 questions, and reviewing documentation, including diagnosis and functional indications from the
24 recipient’s physician. MPP § 30-761.26.

25 42. Based on this information, social workers determine the tasks that recipients are
26 unable to safely perform by themselves, and the minimum number of hours necessary for an IHSS
27 provider to assist or to undertake those tasks for them. MPP § 30-763.2.

28 43. Social workers are trained that providers should not do things for recipients that the

1 recipients could do for themselves, because this results in further loss of independence for the
2 recipient and may actually further mental or physical deterioration.

3 44. When a new recipient begins receiving IHSS services, the recipient receives a
4 Notice of Action (“NOA”) setting forth the hours authorized for each service on a weekly or
5 monthly basis. Cal. Welf. & Inst. Code § 12300.2; MPP § 30-763.81.

6 45. Recipients are reassessed for eligibility for IHSS services on an annual basis
7 through in-person social worker reassessment. Recipients are notified of any change in hours
8 authorized in an NOA. Cal. Welf. & Inst. Code § 12300.2; MPP §§ 30-761.212, 30-763.81.

9 46. Counties are also required to reassess recipients any time the recipient notifies the
10 county of a need to adjust the supportive services hours authorized, or when there are other
11 indications or expectations of a change in circumstances affecting the recipient’s need for
12 supportive services. Cal. Welf. & Inst. Code § 12301.1(d).

13 47. As of the date this complaint is being filed, if a recipient disagrees with the number
14 of authorized hours set forth in the NOA, he or she may file an administrative appeal. Cal. Welf. &
15 Inst. Code § 12301.5.

16 2. Assignment of Functional Ranks

17 48. As one part of their overall assessment, social workers assign a functional rank to
18 each of fourteen “activities of daily living and instrumental activities of daily living” (“ADLs”) by
19 evaluating the combined “effect of the recipient’s physical, cognitive, and emotional impairment”
20 on the recipient’s performance of the tasks associated with those ADLs. Cal. Welf. & Inst. Code §
21 12309(c); MPP § 30-756.1.

22 49. Recipients are ranked on eleven physical tasks and three mental functions. The
23 physical tasks are: housework; laundry; shopping and errands; meal preparation and cleanup;
24 mobility inside; bathing and grooming; dressing; bowel, bladder, and menstrual care; transfer;
25 eating; and respiration. Of these, housework, laundry, shopping and errands, and meal preparation
26 and cleanup correspond to so-called domestic or related services, and the remainder are referred to
27 in state regulations as “personal care” services. MPP § 30-756.2(a)-(k). Social workers also rank
28 three mental functions of recipients: memory, orientation, and judgment. MPP § 30-756.372.

1 50. The IHSS ranking scale includes:

2 (1) Rank one. A recipient's functioning shall be classified as rank one if his or her
3 functioning is independent, and he or she is able to perform the function without
4 human assistance, although the recipient may have difficulty in performing the
5 function, but the completion of the function, with or without a device or mobility
6 aid, poses no substantial risk to his or her safety.

7 (2) Rank two. A recipient's functioning shall be classified as rank two if he or she is
8 able to perform a function, but needs verbal assistance, such as reminding, guidance,
9 or encouragement.

10 (3) Rank three. A recipient's functioning shall be classified as rank three if he or she
11 can perform the function with some human assistance, including, but not limited to,
12 direct physical assistance from a provider.

13 (4) Rank four. A recipient's functioning shall be classified as rank four if he or she
14 can perform a function, but only with substantial human assistance.

15 (5) Rank five. A recipient's functioning shall be classified as rank five if he or she
16 cannot perform the function, with or without human assistance.

17 Cal. Welf. & Inst. Code § 12309(d)(1)-(5).

18 51. These ranks are further defined and explained, with specific descriptions, examples,
19 and sample observations for what constitutes a rank of 1, 2, 3, 4, or 5, for each of the 14 ADLs, in
20 the Annotated Assessment Criteria, revised Attachment B to All-County Letter (“ACL”) 06-34
21 (April 27, 2007).

22 52. Although social workers rank most ADLs on a scale of 1-5, there are certain
23 exceptions: laundry is ranked only 1, 4, or 5; shopping is ranked only 1, 3, or 5; respiration is
24 ranked only 1 or 5; and the three categories of mental functioning (memory, orientation, and
25 judgment) are ranked either 1, 2, or 5.

26 53. There are no functional ranks assigned to certain tasks for which IHSS hours may be
27 authorized, such as repositioning and rubbing skin, care and assistance with prosthetic devices,
28 accompaniment to medical appointments, and assistance with self-administration of medication.
29 MPP § 30-757.14(g)(i).

30 54. A recipient must have a functional rank of at least 2 with respect to any ADL to be
31 eligible for the corresponding IHSS service. MPP § 30-763.1. Otherwise, before the enactment of

1 ABX4 4, the functional ranks have not had any relationship to eligibility for IHSS.

2 **3. Hourly Task Guidelines**

3 55. CDSS has established “statewide hourly task guidelines and instructions to provide
4 counties with a standard tool for consistently and accurately assessing service needs and
5 authorizing service hours to meet those needs.” Cal. Welf. & Inst. Code § 12301.2(a)(1).

6 56. The applicable regulations specify the standard time ranges required for each IHSS
7 task and set forth criteria that are relevant to when an individual’s needs would fall outside this
8 range. Cal. Welf. & Inst. Code § 12301.2(a)(2); MPP § 30-757.

9 57. Counties are required to deviate from the hourly task guideline amount if a
10 recipient’s needs fall outside this standard range, and in such cases counties must document the
11 need for that service level. Cal. Welf. & Inst. Code § 12301.2(c). There are multiple reasons why
12 a recipient’s need for and authorization for IHSS hours might differ from the hourly task
13 guidelines, as set forth in the Manual. MPP § 30-757.1.

14 58. For every service with hourly task guidelines, the standard time range is so broad
15 that it overlaps for functional ranks 2 through 5. For example, in meal preparation, the standard
16 time range for functional rank 2 is 3.02-7.00 hours per week, rank 3 is 3.5-7.00 hours per week,
17 rank 4 is 5.25-7.00 hours per week, and rank 5 is 7 hours per week. MPP § 30-757.131(a). A
18 recipient may thus rank either 2, 3, or 4 in meal preparation and still receive 5-7 hours per week for
19 this service without deviating from the standard hourly task guideline.

20 59. Some services have limitations in hours that are not related to functional rank at all:
21 domestic services are limited to six hours per month; laundry services are limited to one hour per
22 week (or 1.5 hours per week if laundry facilities are not available on the premises), and shopping
23 and other errands are limited to 1.5 hours per week. MPP § 30-757.11(k)(1), .134(c) & (d),
24 .135(b)(i).

25 60. Social workers do not use the functional ranks or the hourly task guidelines to
26 determine in the first instance whether a recipient is eligible for IHSS services, or the number of
27 hours to authorize for each service. Instead, social workers use the functional ranks and hourly
28 task guidelines to double check their individualized assessment of services needed, and then

1 document any case in which authorized services do not match the hourly task guidelines.

2 61. If a social worker finds that an individual needs more than the standard amount of
3 hours for a service, that does not affect the functional rank.

4 62. After a county determines the number of hours required for each needed service, it
5 must adjust those hours downward if the recipient shares the need with someone else in the
6 household or if some other agency or person provides the service without charge. MPP §§ 30-
7 763.3, .4, .6. The number of hours authorized for each needed IHSS service is the result of that
8 adjustment process. MPP § 30-763.7.

9 63. The maximum amount of IHSS services that a recipient is allowed to receive is 283
10 hours per month if the person is “severely disabled” or 195 hours per month if the person is not
11 severely disabled. Welf. & Inst. Code §§ 12303.4(a) & (b), 14132.95(g), 14132.951(b).

12 64. Social workers are required to document recipients’ “unmet need” on their
13 assessments. MPP 30-761.27. However, on information and belief, many social workers do not so
14 document unmet need.

15 **B. ABX4 4**

16 65. On July 28, 2009, the Governor of California signed into law ABX4 4, which was
17 enacted as part of the Fourth Extraordinary Legislative Session. ABX4 4 amended California
18 Welfare and Institutions Code Sections 12309(e) and 12309.2 (“Sections 12309(e) and 12309.2”)
19 to eliminate crucial IHSS services to over one hundred thousand recipients.

20 **1. Loss of Eligibility For All IHSS Services**

21 66. Under Section 12309.2 as amended by ABX4 4, IHSS recipients with composite
22 functional index scores (“FI Scores”) of below 2.0 are no longer eligible for any IHSS services.

23 67. The FI Score was originally designed in the mid-1980’s as part of a “uniformity
24 system” for quality control and comparison purposes among counties (not among individuals).
25 ACL 88-118 (Sept. 6, 1988), Question 14.

26 68. CDSS has tested the FI Score, and determined that it is not meaningful.

27 69. Before the enactment of ABX4 4, the counties administering the IHSS program did
28 not utilize the FI Score for any purpose, including quality control. Before the enactment of ABX4

1 4, most county social workers were not even aware of the FI Scores of individual IHSS recipients.

2 70. The FI Score was not designed, and has never been used in the past, to determine
3 eligibility or need. The FI Score was not designed, and has never been used in the past, to predict
4 the service hours that any individual recipient should receive. ACL 88-118, Question 13.

5 71. Before the enactment of ABX4 4, IHSS recipients were not notified of their FI
6 Score. The FI Score did not appear on the NOAs that recipients receive upon assessment or
7 reassessment.

8 72. The FI Score is a number between 1.00 and 5.00 calculated by the Case
9 Management and Payrolling System (“CMIPS”) for each IHSS recipient. ACL 88-118, Question
10 7. The formula for calculating the FI Score, which has not changed since 1988, involves
11 calculating a weighted average of the functional rankings for each of the 11 physical task ADLs.
12 ACL 88-118, Questions 9, 10; Draft ACL at 2. In general, these weights were determined by
13 taking the average (mean) number of hours assigned for these tasks by counties in 1988 and
14 determining the proportion of time each task represented with respect to the total aggregate hours
15 allocated for IHSS services. ACL 88-118, Question 10.

16 73. The composite FI Score is not an accurate or reliable measure of need for IHSS
17 services because it was not designed to, and does not, provide information about the likelihood that
18 any individual IHSS recipient is at risk of physical or mental injury, and/or out-of-home placement
19 or institutionalization, in the absence of IHSS services.

20 74. The FI Score is a poor measure of need because it does not allow for individual
21 assessment of need based on individual circumstances, as set forth in the succeeding paragraphs.

22 75. The FI Score measures the weighted average of 11 functional ranks, and does not
23 measure whether any particular services are critical to any particular individual. Thus, the FI
24 Scores of recipients who only need a few of the 11 services measured will be low, even if the need
25 for those few services is critical.

26 76. The FI Score measures the average of 11 functional ranks, weighted based on the
27 number of hours authorized by counties to those tasks in 1988. Counties’ assessment of hours may
28 not have been uniform or accurate in 1988. The population of individuals receiving IHSS services

1 has changed since 1988.

2 77. The FI Score does not include the functional ranks for mental functioning (memory,
3 orientation, judgment). Only the eleven functional ranks for physical ADLs are considered in
4 calculating the FI Score. ACL 88-118, Questions 7, 10.

5 78. Recipients with cognitive or psychiatric disabilities are more likely to receive
6 functional ranks of 2 for the 11 ADL tasks that are used to calculate the FI Score, because they may
7 require verbal rather than physical assistance.

8 79. The FI Score does not include functional ranks for certain IHSS services for which
9 no functional rank is calculated, including repositioning and rubbing skin, care and assistance with
10 prosthetic devices, assistance with self-administration of medications, and travel to medical
11 appointments.

12 80. Because children under a certain age receive automatic ranks of 1 for four or more
13 of the eleven tasks (depending on age), their FI Scores tend to be lower than those of adults. *See*
14 MPP § 30-763.451-462.

15 81. Because recipients of paramedical services receive automatic ranks of 6 for certain
16 tasks, which are then converted to 1's in calculating the FI Score, their FI Scores tend to be lower
17 than they would be otherwise. *See* MPP § 30-756.41-42.

18 82. Although the FI Score is not a rational measure of need for any individual, the
19 above-described factors cause FI Scores to be a particularly poor measure for certain groups of
20 IHSS recipients, including children, individuals with impairments in mental functioning,
21 individuals whose need is greatest in areas where not very many hours are allocated on a statewide
22 basis, individuals who have high need in a few areas, individuals who receive paramedical
23 services, and individuals whose greatest need is for medication reminders and travel to medical
24 appointments.

25 83. ABX4 4 established exemptions to the eligibility restriction for IHSS recipients
26 authorized for paramedical services, protective supervision, or 120 or more hours of IHSS per
27 month. The bill also gave authority to the Director of CDSS to waive these exemptions if
28 necessary to maintain federal financial participation, and the Governor's veto message indicated

1 the Governor's intent to waive all three of these exemptions.

2 84. In a draft All County Letter released on September 18, 2009 ('Draft ACL'), and a
3 final All County Letter released on October 1, 2009 (ACL 09-56), CDSS stated that the exemptions
4 for paramedical services and protective supervision were being retained for the time being, but that
5 the Director had waived the exemption for recipients who are authorized to receive at least 120
6 hours of IHSS services per month. ACL 09-56 stated that it was possible that the exemptions for
7 protective supervision and paramedical services would be waived, based on guidance from the
8 federal government. Accordingly, Plaintiffs still do not know whether recipients who are
9 authorized for paramedical services or protective supervision will be subject to the eligibility
10 restrictions.

11 2. Reductions in Domestic and Related Services

12 85. Under Section 12309(e) as amended by ABX4 4, even IHSS recipients who remain
13 eligible for IHSS services will no longer receive domestic and related services (meal preparation
14 and clean up, laundry, shopping and errands) if their functional rank is below 4 for that particular
15 service.

16 86. Other than the functional rank of 1, the functional ranks were not designed as
17 measures of eligibility for assistance for a particular task. Before the enactment of ABX4 4, the
18 functional ranks 2, 3, 4, or 5 were never used to determine eligibility for services.

19 87. All IHSS recipients with functional ranks of 2, 3, 4, or 5 have been individually
20 assessed by a social worker to need authorized services for a specified number of hours to live
21 safely in their homes. Recipients with a functional rank of 2 or 3 have as great a need for domestic
22 and related services as recipients with a rank of 4 or 5; they cannot perform those functions safely
23 without assistance.

24 88. Individuals with cognitive or psychiatric, as opposed to physical, disabilities often
25 receive a 2 rank for many ADLs, because they need verbal as opposed to physical assistance.
26 Because, by definition, they cannot perform the given activity without this verbal assistance, their
27 need for this verbal assistance is as great as the need of recipients who need physical assistance to
28 perform the same activity.

1 89. It is often difficult for social workers to distinguish between the ranks of 3 (need
2 “some human assistance”) and 4 (need “substantial human assistance”), especially when a
3 recipient’s functioning may vary from day to day.

4 90. Prior to the enactment of ABX4 4, IHSS recipients were not notified of their
5 functional ranks. These functional ranks did not appear on the NOAs that recipients receive upon
6 their assessment and reassessment.

7 91. On information and belief, DSS will not require the reassessment or review of the
8 impact that elimination of domestic and related services may have on IHSS recipients’ assessed
9 needs in relation to other activities.

10 92. ABX4 4 established exemptions to the elimination of domestic and related services
11 for IHSS recipients authorized for paramedical services, protective supervision, or 120 or more
12 hours of IHSS services per month. The bill also gave authority to the Director of the Department
13 of Social Services to waive these exemptions if necessary to maintain federal financial
14 participation, and the Governor’s veto message indicated the Governor’s intent to waive all three of
15 these exemptions.

16 93. In the Draft ACL released September 18, 2009, and final ACL released October 1,
17 2009 (ACL 90-56), CDSS stated that the exemptions for protective supervision and paramedical
18 services were being retained for the time being, but that the Director had waived the exemption for
19 recipients who are authorized to receive at least 120 hours of IHSS services per month. ACL 90-56
20 stated that it was possible that the exemptions for protective supervision and paramedical services
21 would also be waived, based on guidance from the federal government. Accordingly, Plaintiffs
22 still do not know whether recipients who are authorized for protective supervision or paramedical
23 services will be subject to the cuts in domestic and related services.

24 **3. Notice to Recipients and Fair Hearing Rights**

25 94. IHSS recipients have not heretofore been informed of the possibility that they will
26 lose eligibility for IHSS services based on their FI Score or the possibility that they will lose
27 eligibility for domestic and related services based upon their functional ranks for those services.

28 95. Many IHSS recipients who have requested their FI Scores and/or their individual

1 functional ranks from their social workers and/or counties have been unable to obtain them.

2 96. On September 18, 2009, CDSS issued a draft All-County Letter (“Draft ACL”)
3 stating that the IHSS eligibility restrictions and service cuts would be implemented on November
4 1, 2009. On October 1, 2009, CDSS issued a final All-County Letter (ACL 09-56), stating that
5 IHSS eligibility restrictions and service cuts would be implemented on November 1, 2009, and
6 providing counties with instructions for implementation of the eligibility restrictions and service
7 cuts.

8 97. A copy of the notice that will be sent to IHSS recipients who are losing some or all
9 of their services is attached to ACL 09-56. IHSS recipients will be notified of their FI Scores and
10 all of their functional rankings if they are losing eligibility for IHSS services, and of their
11 functional ranks for domestic or related services if they are losing one or more of those services.

12 98. The notice also includes a 22 page “stuffer” that includes the complex mathematical
13 formula for calculating the FI Score. This complex mathematical formula is not used by county
14 social workers, because the FI Score is calculated automatically by the state’s computer system.

15 99. The 22-page “stuffer” consists of the detailed agency procedures given to county
16 social workers for determining functional rank for each ADL. The language is lifted verbatim from
17 official policies and procedures issued by CDSS to counties for use by social workers, who have
18 years of training and experience in using documents such as this. The language in which the 22-
19 page stuffer is written is not comprehensible to typical IHSS recipients, who are all aged, blind, or
20 disabled, and who have not received the training provided to county social workers. The language
21 may be particularly incomprehensible to the large number of IHSS recipients who have cognitive
22 or other mental disabilities.

23 100. ACL 09-56 also states that the notices will be sent “no less than the required 10-day
24 notice.” On information and belief, Defendants will notify recipients that their IHSS services have
25 been cut or reduced only ten days before the implementation date of November 1, 2009.

26 101. The timing of the notice to IHSS recipients of the eligibility restrictions and
27 elimination of authorized hours will not provide adequate time for recipients to make alternative
28 arrangements for assistance, to the extent such arrangements are possible.

1 102. According to ACL 09-56, recipients will be able to request state hearings regarding
2 disputes over their FI Scores or functional ranks, and to request aid paid pending appeal if they file
3 their hearing requests prior to the effective date of the notice of action.

4 103. Defendants operate the state administrative hearing system through a series of
5 regional hearing offices. Recipients and applicants who appeal denials or reductions of Medi-Cal,
6 IHSS, Cal-Works, Food Stamps, Adoption Assistance and other public benefits must file a timely
7 request for hearing with the hearing office or the local welfare office. On information and belief,
8 these hearing offices are presently unable to respond in a timely manner to all the claimants who
9 request administrative hearings, so that the state hearing officers recently decided to no longer
10 consider requests for reconsideration of an adverse hearing decision.

11 104. On information and belief, as many as 100,000 class members may request an
12 administrative hearing to appeal the reduction or termination of their IHSS benefits pursuant to
13 ABX4 4. Because Defendants have failed to allocate the staff and resources to respond to this
14 number of expected hearing requests, Plaintiffs will be unable to obtain a timely hearing regarding
15 their appeals.

16 105. IHSS recipients have not been, and will not be, notified of the availability of
17 replacement services available under the Medi-Cal State Plan, to the extent any other services are
18 available. Nor have the State or counties arranged for such replacement services, to the extent any
19 services are available.

20 **C. SB 73**

21 **1. Legislation**

22 106. On June 30, 2011, the Governor of California signed into law SB 73. SB 73
23 amended the California Welfare and Institutions Code by adding Sections 4792, 12301.07, and
24 14105, which will reduce crucial IHSS services for hundreds of thousands of recipients.

25 107. Under Section 12301.07, if certain revenue targets are not met (a determination that
26 will be made by December 15, 2011), the hours of most IHSS recipients will be cut by 20 percent,
27 effective January 1, 2012.

28 108. This 20 percent reduction will be in addition to a 3.6 percent reduction in hours for

1 most IHSS recipients that was enacted by AB 1612 and effective February 1, 2011. Thus, together,
2 IHSS recipients' hours will be reduced almost 25 percent below their authorized need.

3 109. Individuals who receive IHSS services under certain specified Medi-Cal Home and
4 Community Based Waiver programs are exempt from the 20 percent reduction.

5 110. The 20 percent reduction must be applied first to any documented unmet need.

6 111. Recipients who believe themselves to be at serious risk of out-of-home placement
7 may apply for restoration of the reduced hours. This restoration is called an "IHSS Care
8 Supplement."

9 112. SB 73 directs DSS to develop an assessment tool for counties to use in determining
10 who will be at serious risk of out-of-home placement due to the hours reductions. That tool is to be
11 developed using standard of care criteria for relevant out-of-home placements including but not
12 limited to the IHSS uniform assessment guidelines and the criteria for nursing home admission.

13 113. SB 73 directs Defendant DSS to work with counties to develop a process for
14 preapproval of IHSS Care Supplements in cases in which the recipient would be entitled to a full
15 hours restoration.

16 114. Recipients who are not preapproved for IHSS Care Supplements will receive NOAs
17 that must be mailed at least 15 days before the effective date of the reduction. If recipients apply
18 for IHSS Care Supplements within 15 days of the NOA, or before the effective date of the
19 reduction, their IHSS services will continue at the prior level until the county rules on their IHSS
20 Care Supplement application.

21 115. If a recipient disagrees with the county's disposition of an IHSS Care Supplement
22 application, the recipient may file a state appeal.

23 116. Recipients may not appeal the 20 percent reduction through the normal state fair
24 hearing procedure, but may only apply for a Care Supplement.

25 117. SB 73 authorizes DSS to implement the 20 percent reduction using all-county letters
26 or similar instructions until regulations are adopted.

27 **2. All-County Letter and NOA**

28 118. On November 1, 2011, DSS issued a draft All-County Letter ("draft ACL"). On

1 November 29, 2011, DSS issued All County Letter No. 11-81 (“ACL”). That ACL states that the
 2 following categories of IHSS recipients will be preapproved for IHSS Care Supplements:
 3 individuals with functional ranks of 5 for four specified personal care services (mobility inside,
 4 bowel/bladder/menstrual, transfer, and eating); individuals assessed for 283 hours; and individuals
 5 assessed for protective supervision. Counties do not have discretion to preapprove individuals who
 6 are outside these categories.

7 119. The ACL further outlines a screening tool to be used by counties to determine
 8 whether recipients are at serious risk of out-of-home placement due to the 20 percent hours
 9 reduction. This screening tool specifies that, in order to be eligible for consideration for an IHSS
 10 Care Supplement, a recipient must “meet[] the criteria as specified in either A or B below:

11 A. Any three or more of the following conditions are met:

- 12 1. Paramedical Services have been authorized to monitor medical
condition and/or give injections;
- 13 2. His/her functional rank for Mobility Inside is either 4 or 5;
- 14 3. His/her functional ranking for Bathing and Grooming is either 4 or 5;
- 15 4. His/her functional ranking for Dressing is either 4 or 5;
- 16 5. His/her functional ranking for Bowel, Bladder and Menstrual is 3, 4
or 5, or Paramedical Services have been authorized for catheter or
colostomy care;
- 17 6. His/her functional ranking for Transfer is either 4 or 5, or
Paramedical Services have been authorized for bed sore care;
- 18 7. His/her functional ranking for Eating is either 3, 4 or 5; or
- 19 8. His/her functional ranking for Respiration is 5.

20 B. The sum of his/her functional rankings for Memory, Orientation and
Judgment is equal to 7 or greater.”

21 120. If a recipient does not meet the criteria for eligibility for an IHSS Care Supplement,
 22 a county does not have discretion to grant a full or partial restoration of hours to that recipient.

23 121. If a recipient does meet the criteria for eligibility for an IHSS Care Supplement, a
 24 county social worker shall determine whether the serious risk of out-of-home placement can be
 25 eliminated through any of the following ways, in order: the worker assisting the recipient in
 26 changing how authorized hours are used, the worker arranging for services from an alternative
 27 resource, partial hours restoration, or a full hours restoration.

28 122. Recipients must request IHSS Care Supplements no later than March 1, 2012. If the
 request is made within 15 days of receipt of the NOA or postmarked by January 3, 2012, the

1 county shall reinstate the hours pending the disposition of the request. Otherwise, the hours
2 reduction shall go into effect while the request is processed by the county. Counties will have up
3 to 90 days to decide eligibility for the Care Supplement.

4 123. The NOA to inform recipients of the 20 percent reduction and the procedure to
5 apply for the IHSS Care Supplement does not inform recipients of the eligibility requirements for
6 IHSS Care Supplements or contain information about recipients' functional ranks. IHSS recipients
7 have not previously received information about their functional ranks.

8 124. The NOA to inform recipients of the 20 percent reduction does not specify the
9 groups that are exempted from the reduction (namely, recipients on certain waiver programs and
10 recipients with unmet need that exceeds the reduction).

11 125. The NOA to inform recipients of the 20 percent reduction does not specify the
12 eligibility requirements for pre-approval for IHSS Care Supplements.

13 126. The NOA to inform recipients of the twenty percent reduction tells recipients that
14 state hearing requests that are solely to dispute the 20 percent service reduction will be dismissed.

15 127. The NOA informing recipients that the county has denied their IHSS Care
16 Supplement does not specify an effective date of the service reduction or inform individuals
17 whether they will receive aid paid pending if they appeal to the State.

18 128. The NOA informing recipients that the county has denied their IHSS Care
19 Supplement does not inform recipients that their application has been denied based on their
20 functional ranks, or contain information about their functional ranks.

21 129. If a recipient requests reassessment during the 90 days following issuance of the
22 NOA, counties may request additional information to document the change in circumstances
23 requiring reassessment and may deny the request for reassessment if the county determines it is in
24 response to the 20 percent reduction rather than a change in circumstances.

25 130. IHSS providers will be notified of the 20 percent reduction on their timesheets only.

26 **3. Problems with 20 Percent Reduction**

27 131. The 20 percent reduction will eliminate hours of service that social workers have
28 previously determined IHSS recipients need in order to remain safely at home.

1 132. As a result, IHSS recipients will be at serious risk of injury, adverse health
2 consequences, deterioration, and out-of-home placement. Some will face an immediate risk, and
3 others will face a risk that increases over time.

4 133. The statute allows IHSS Care Supplements only based on a serious risk of out-of-
5 home placement, and not based on risk of injuries or adverse health consequences.

6 134. Defendants' implementation of the IHSS Care Supplements will exclude individuals
7 who are at serious risk of out-of-home placement.

8 135. Many individuals who are eligible for IHSS Care Supplements will be unable to
9 read, understand, and respond to the NOA in a timely manner, and will miss the March 1, 2012
10 deadline for returning the IHSS Care Supplement application. Others will return the application by
11 March 1, 2012, but after January 3, 2012, and so their hours will be reduced for as many as 90 days
12 while the county determines whether to grant a Care Supplement.

13 136. For the reasons discussed in paragraphs 48 through 62 and 86 through 90 of this
14 complaint, functional ranks are not reasonable measures of need for IHSS services, and cannot
15 reasonably be used to determine whether the loss of IHSS services places recipients at serious risk
16 of injury, adverse health consequences, or out-of-home placement. Recipients with a functional
17 rank of 2 or 3 have as great a need for the IHSS services that have been authorized as recipients
18 with a rank of 4 or 5; they cannot perform those functions safely without assistance.

19 137. Individuals with cognitive or psychiatric, as opposed to physical, disabilities often
20 receive a 2 rank for many ADLs, because they need verbal as opposed to physical assistance.
21 Because, by definition, they cannot perform the given activity without this verbal assistance, their
22 need for this verbal assistance is as great as the need of recipients who need physical assistance to
23 perform the same activity.

24 138. Although functional ranks are not reasonable measures of need for any individual,
25 they are particularly poor measures of need for children and for individuals with cognitive or
26 psychiatric disabilities.

27 **D. Impact upon Recipients**

28 139. The loss of eligibility for all IHSS services, the loss of domestic and related

1 services, or the loss of 20 percent of authorized IHSS hours is likely to cause members of the
2 plaintiff classes to suffer declines in physical functioning, increased medical complications, and
3 additional preventable accidents resulting in physical injury. This will expose them to a serious
4 risk of harm to their health and safety and cause a serious risk of unwanted out-of-home placement,
5 including unwanted institutionalization.

6 140. The loss of eligibility for all IHSS services, the loss of domestic and related
7 services, or the loss of 20 percent of authorized IHSS hours is likely to cause members of the
8 plaintiff classes to suffer declines in mental functioning. This will expose them to a serious risk of
9 harm to their health and safety and cause a serious risk of out-of-home placement, including
10 unwanted institutionalization.

11 141. Individuals whose physical or cognitive impairments are such that they cannot be
12 left alone or whose health conditions are extremely unstable are likely to face immediate out-of-
13 home placement in an institution.

14 142. Other individuals will lose physical and mental functioning as a result of the loss of
15 or reduction in their IHSS services. For example, individuals with psychiatric disabilities may stop
16 taking their medications and become delusional, suicidal, or otherwise present a danger to
17 themselves and others. Individuals deprived of shopping, meal preparation and/or eating assistance
18 may become malnourished or ill because they eat foods contraindicated by medical conditions or
19 necessary medications, or fail to eat at all. Individuals deprived of domestic services may suffer
20 falls or other injuries if they attempt to perform cleaning and other household tasks. Other
21 individuals will live in unsanitary and potentially hazardous situations that can lead to falls, illness,
22 and/or eviction and homelessness. The mental or physical functioning of these individuals is likely
23 to deteriorate to the point that they also face out-of home placement, including unwanted and
24 preventable institutionalization.

25 143. Out-of-home placement in an institution can often further destabilize already
26 compromised mental or physical functioning. Once placed in an institution, it is extremely difficult
27 for individuals to move out of institutions and back into the community.

28

1 144. It costs far more to institutionalize elderly and disabled individuals in nursing homes
2 or other institutions than it does to provide IHSS services that allow them to live in community-
3 based settings.

4 145. The IHSS Program helps prevent costly and unnecessary institutionalization, saving
5 the State significant funds, and, at the same time, improving the quality of life for the individuals
6 served.

7 **E. Facts Related to Individual Plaintiffs**

8 **1. David Oster**

9 146. David Oster is a 36-year-old man who is a qualified person with disabilities,
10 including autism and bi-polar disorder. He lives by himself in an apartment in Los Angeles
11 County.

12 147. Because of his disabilities, Mr. Oster is unable to remember to take his medications
13 (consisting of some 20 pills, including medications necessary to control his bi-polar disorder) and
14 is unable to go shopping, cook, or clean up after himself. For example, he cannot concentrate and
15 follow directions to cook a nutritionally balanced meal following the diet prescribed by his doctor,
16 and forgets to put food away before it spoils. Mr. Oster is also unable to get to medical
17 appointments himself, as he cannot drive and becomes confused if he tries to take public
18 transportation.

19 148. Before he began receiving IHSS services, Mr. Oster's apartment was in great
20 disarray. Trash, clutter, and rotten food were strewn about his apartment, which was infested with
21 cockroaches. Mr. Oster had to pick his way among makeshift pathways between the debris. All
22 the food in his refrigerator was spoiled. His clothes were dirty, and he rarely bathed. He was at risk
23 of serious health consequences from the unsanitary conditions and inadequate meals, and was also
24 in serious danger of eviction from his apartment because of the unsanitary conditions in which he
25 was living.

26 149. Mr. Oster began receiving IHSS services approximately two years ago and currently
27 receives 63.2 hours per month of IHSS services. Without these services, he would not be able to
28 live independently in the community.

1 150. Mr. Oster's IHSS provider performs the following services: cooks meals following
2 the diet that has been medically prescribed by Mr. Oster's doctor; sets out medications and reminds
3 Mr. Oster to take them; takes Mr. Oster to doctor's appointments; reminds Mr. Oster to bathe; does
4 Mr. Oster's laundry; and cleans the apartment and changes bed linens.

5 151. Mr. Oster's social worker has told Mr. Oster that his FI Score is 1.9. Because his FI
6 Score is below 2.0, Mr. Oster will lose eligibility for all IHSS services. Although Mr. Oster has
7 functional ranks of 5 for housework, laundry, and shopping, and a functional rank of 3 for meal
8 preparation, his composite FI Score is under 2.0 because he is ranked a 1 for many other ADLs that
9 he can perform himself, such as eating, bowel/bladder care, mobility, transfer, and respiration.

10 152. When Mr. Oster learned that his IHSS services would be cut pursuant to ABX4 4,
11 he was so terrified about losing services that he had a nervous breakdown and had to be
12 hospitalized for two weeks for inpatient psychiatric services. Upon discharge, he then had to
13 continue in a psychiatric outpatient program for several weeks more.

14 153. Mr. Oster does not want to lose his apartment or his independence and does not
15 want to live in a group home or board and care facility where his independence and freedom would
16 be restricted. He is sure that he will not be able to maintain his independence without IHSS
17 services. Without IHSS services, Mr. Oster is at serious risk of increased psychiatric problems,
18 including hospitalization and institutionalization, because he cannot take his medications, cook his
19 medically necessary diet, or maintain sanitary conditions necessary to maintain an independent
20 apartment.

21 154. Prior to his recent conversation with his social worker, Mr. Oster had never been
22 informed of his functional ranks or FI Score.

23 155. Mr. Oster should be exempt from SB 73 because he receives services under the
24 Home and Community Based Services Waiver for people with developmental disabilities.
25 However, if Defendants mistakenly determine that Mr. Oster is subject to the 20 percent hours
26 reduction pursuant to SB 73, Mr. Oster is concerned that he will be unable to understand from the
27 notice of action how to contest this mistake, and will be unable to reach the county IHSS office for
28 assistance. In addition, Mr. Oster will be away around the Christmas holiday and might therefore

1 miss the deadline to request continuation of his IHSS services while he attempts to contest such a
2 mistake, subjecting him to a potential interruption in his IHSS services.

3 **3. Willie Beatrice Sheppard**

4 156. Named Plaintiff Willie Beatrice Sheppard is 83 years old and is a qualified person
5 with disabilities, including arthritis and the effects of a stroke. She lives by herself in an apartment
6 in Emeryville, California.

7 157. Ms. Sheppard uses a cane or electric wheelchair for mobility and cannot stand for
8 any length of time. She cannot get in and out of the bathtub without assistance. Sometimes Ms.
9 Sheppard cannot use her hands or the entire right side of her body because of her stroke and cannot
10 pick up any heavy object. Ms. Sheppard is also easily fatigued.

11 158. Ms. Sheppard has been receiving IHSS services since 2003.

12 159. Ms. Sheppard's IHSS provider comes to her home twice a week to help her bathe, to
13 clean the house, and to prepare meals (in sufficient quantities that Ms. Sheppard can microwave the
14 leftovers on days that her provider is not working).

15 160. Meal preparation is essential to Ms. Sheppard's health and well being, as she does
16 not have sufficient strength in her hands, or the stamina to stand, to cook meals. Ms. Sheppard's
17 physician has advised her that she cannot eat foods that are high in sodium because of her stroke
18 risk. For that reason, Ms. Sheppard must avoid eating prepared processed foods.

19 161. Ms. Sheppard is only able to bathe two days a week, on those days when her
20 provider is there. Were it not for her provider, Ms. Sheppard would be unable to bathe at all.

21 162. Ms. Sheppard's provider performs all heavy housecleaning for her, as Ms. Sheppard
22 is unable to push around a vacuum or mop while walking with a cane, and is unable to scrub the
23 bathroom. If she attempted these tasks, she might fall and further injure herself. She has had
24 several previous falls. Because Ms. Sheppard is 83 years old, she is more susceptible to illnesses,
25 and thus a clean house is important to her health and well-being.

26 163. Because of her mobility impairments, it is very difficult for Ms. Sheppard to travel
27 outside her home. Accordingly, her provider must shop for groceries and pick up her prescription
28 medications.

1 164. Ms. Sheppard lives alone and is dependent upon IHSS services. Most of her
2 children do not live in the area, and her one daughter who does live nearby has a disabled son who
3 requires her full time attention.

4 165. Pursuant to ABX4 4, Ms. Sheppard will lose IHSS services for shopping and
5 errands, because her functional rank for that service is 3. She currently receives 1.5 hours per week
6 for this service. Ms. Sheppard does not know how she would pick up groceries or her prescription
7 medications without this service.

8 166. Under SB 73, Ms. Sheppard will lose 20 percent of her authorized IHSS hours. Ms.
9 Sheppard will not be eligible for a Care Supplement because her functional ranks do not meet
10 Defendants' criteria. Ms. Sheppard needs all of her authorized IHSS hours to remain safely in her
11 home, and a 20 percent reduction will expose her to a risk of harm to her health and safety, and to a
12 risk of unwanted institutionalization. For example, if her IHSS provider spends fewer hours on
13 cleaning or meal preparation, Ms. Sheppard will not have adequate meals or sanitation, resulting in
14 a serious risk that her medical condition will deteriorate or she will fall and injure herself and then
15 will require placement in a nursing home. Ms. Sheppard used to work in a nursing home and
16 knows that nursing home staff are often overworked and unable to provide quality care to each
17 resident. Thus, she wants to avoid having to be placed in a nursing home.

18 **4. Named Plaintiff C.R.**

19 167. C.R. is a seven-year-old boy and is a qualified person with a disability, specifically,
20 developmental disability caused by chromosome deletion. He lives with his family in Gilroy,
21 California. His mother and *guardian ad litem* here, M.R., is his provider.

22 168. C.R. has a developmental disability because he is missing the chromosome known
23 as 3P25, which causes a disconnect between his brain and his body parts. C.R. has global delays
24 across all spectrums: He cannot walk, talk, or chew food. He uses a manual wheelchair, because
25 he does not have the mental capacity to use a motor or power chair. He has to be repositioned
26 regularly, because he can only sit up for twenty minutes at a time. He also has hearing loss and
27 vision loss.

28 169. Because of his disabilities, C.R. cannot eat or drink by himself. His mother helps

1 him drink by placing a sippy cup firmly in his hands, wrapping his hands around the cup, and then
2 putting the cup to his mouth. He can then suck on the sippy cup. Because he cannot chew food, all
3 of his food must be pureed. His mother must place food into his mouth, spoonful by spoonful,
4 until he swallows it. It takes about twenty minutes to feed C.R. each meal. C.R. does not receive
5 IHSS services for eating/feeding. On information and belief, C.R. does not receive IHSS services
6 for feeding because the county has determined he is too young to receive IHSS services for
7 feeding.

8 170. C.R. wears diapers because he cannot control his bowels, but does not receive IHSS
9 services for toileting and dressing. On information and belief, C.R. does not receive IHSS services
10 for toileting or dressing because the county has determined he is too young to receive IHSS
11 services for toileting and dressing.

12 171. C.R. is authorized for 55 hours of IHSS services per month for transportation to
13 medical appointments (40 miles away), moving in and out of bed or a vehicle (a special school bus
14 that picks him up to attend preschool for children with disabilities), rubbing skin, and
15 repositioning.

16 172. C.R.'s mother has been told that, pursuant to ABX4 4, C.R. will lose eligibility for
17 IHSS services because his FI Score is 1.97.

18 173. Although C.R. only receives 55 hours of IHSS services per month, those IHSS
19 service hours are critical. His mother works as his provider and uses the money she earns to
20 purchase C.R.'s special, medically necessary foods and gas to take him to his many medical
21 appointments.

22 174. C.R. needs to stay at home with his mother as his provider. In order to fully
23 maximize his potential, he needs one-on-one care on a constant basis to encourage each small step
24 of being able to control his body himself. Although doctors are unable to predict the prognosis for
25 a child with C.R.'s type of disability, they do know that if there is to be any hope for C.R. to learn
26 to walk, talk, or chew on his own, he needs continued one-on-one care to encourage him to do
27 everything that he can learn to do.

28

1 175. If the only way for C.R. to stay at home would be for his family to hire an outside
2 provider, rather than his mother, they would do that. However, they do not believe they will be
3 able to find anyone capable of caring for him; they looked before but were unable to find anyone.

4 176. C.R. should be exempt from having his hours cut by 20 percent pursuant to SB 73,
5 because he receives services under the Developmental Disabilities Waiver. However, if
6 Defendants mistakenly determine that C.R. is subject to the 20 percent reduction, C.R.'s mother
7 may be unable to understand from the notice of action how to contest this mistake, and/or may miss
8 the deadline to contest it.

9 **5. Named Plaintiff Dottie Jones**

10 177. Named Plaintiff Dottie Jones is 53 years old, and is a qualified person with
11 disabilities, including AIDS and neuropathy. She lives alone in Grass Valley, in Nevada County.

12 178. As a result of Ms. Jones' neuropathy, it is nearly impossible for her to walk or to use
13 her hands. Her limbs are numb and painful. She cannot grab objects without dropping them. The
14 neuropathy also affects her balance and coordination. As a result of AIDS, Ms. Jones has
15 diminished appetite and sores in her mouth, which make eating difficult and painful.

16 179. Ms. Jones has been receiving IHSS services since 1994. Her IHSS provider assists
17 her with many tasks of daily living, including meal preparation and clean up, and housecleaning.

18 180. Ms. Jones cannot cook for herself, because she is unable to lift pots and pans or hold
19 or chop food items. In addition to cooking for her, Ms. Jones' provider spends time urging Ms.
20 Jones to eat, which is very important because of Ms. Jones' diminished appetite. Because of Ms.
21 Jones weakened immune system, it is critical for her to maintain her weight and to eat nutritious
22 meals.

23 181. Ms. Jones cannot clean the house herself, because she cannot maneuver or hold a
24 broom or vacuum, or even pick up items off the floor. Before Ms. Jones began receiving IHSS
25 services her apartment was very cluttered because she was unable to move things or clean, and her
26 neuropathy is much worse now that it was when she began to receive IHSS services. It is very
27 important for Ms. Jones' apartment to remain clean and sanitary, because she is extremely
28 susceptible to bronchial infections and pneumonia due to her compromised immune system.

1 182. Because Ms. Jones' Functional Index Score is 2.28, she remains eligible for IHSS
2 services under ABX4 4, and will continue to receive some services, such as assistance with laundry
3 and shopping. However, because Ms. Jones functional rankings for meal preparation and clean up
4 and for housekeeping are 3, she will lose those services.

5 183. Ms. Jones does not have any living family members who can assist her. Without
6 her IHSS provider cooking meals, cleaning up after meals, and cleaning her apartment, Ms. Jones
7 will not have nutritious meals, and will not be able to maintain her apartment in a clean and
8 sanitary condition. Particularly in light of her AIDS-compromised immune system and lack of
9 appetite, Ms. Jones is likely to become malnourished, lose weight, and come down with
10 pneumonia, bronchial infections, or other illnesses. This is likely to result in increased trips to the
11 emergency room, increased hospitalization, and potentially early death.

12 184. Under SB 73, Ms. Jones will lose 20 percent of her authorized IHSS hours, leaving
13 her with only 37 hours per month. Ms. Jones will not be eligible for a Care Supplement because
14 her functional ranks do not meet Defendants' criteria.

15 185. Without all of the IHSS services currently performed by her provider, Ms. Jones
16 would be at serious risk of harm to her health, such as an infection from a lack of hygiene or
17 household cleanliness, or inability to obtain her medications.

18 186. Ms. Jones is concerned that a 20 percent reduction in her IHSS hours would put her
19 at risk of hospitalization. From her experience with past hospitalizations, she does not want to end
20 up in an institution.

21 187. Ms. Jones is concerned that she will be unable to understand the notice of action
22 from IHSS, or that she will be unable to concentrate adequately to meet the applicable deadlines.

23 **6. Named Plaintiff Andrea Hylton**

24 188. Named Plaintiff Andrea Hylton is a 65-year-old woman who is a qualified person
25 with disabilities, including chronic obsessive pulmonary disease (COPD or emphysema), nerve
26 damage, and bipolar disorder. She lives by herself in Santa Barbara County.

27 189. Because of her disabilities, Ms. Hylton cannot easily walk around, bend down or do
28 any basic chores around the house. She gets short of breath from even light physical exertion.

1 When she stands, she is unsteady and at risk of falling. She suffers from severe osteoporosis and
2 can end up with broken bones from even a minor fall. Because she suffers from panic attacks, she
3 is reluctant to leave her home without her provider.

4 190. Ms. Hylton currently is authorized for approximately 45.3 hours of IHSS services
5 each month, reduced from 47.1 pursuant to the recent 3.6 percent hours reduction. Under SB 73,
6 Ms. Hylton will lose 20 percent of her authorized IHSS hours, leaving her with only 36.3 hours per
7 month. Ms. Hylton will not be eligible for a Care Supplement because her functional ranks do not
8 meet Defendants' criteria.

9 191. Ms. Hylton needs each hour of IHSS services that she currently receives. For
10 example, she is authorized to receive 6 hours of domestic services per month. Because of Ms.
11 Hylton's disabilities, she is unable to perform even light housework herself. If her house were not
12 properly cleaned by her provider, her emphysema would be worsened by the dust and dirt. In
13 addition, Ms. Hylton could be evicted from her Section 8 housing if she fails one of the multiple
14 inspections per year because her apartment is too dirty.

15 192. Ms. Hylton also receives authorized hours for bathing, rubbing skin and
16 repositioning, accompaniment to doctors' appointments, meal preparation, meal cleanup, laundry,
17 food shopping, and other shopping and errands.

18 193. Ms. Hylton is unable to perform these tasks without assistance. A 20 percent
19 reduction will place her at risk of harm to her health, including less nutritious meals, increased risk
20 of falling, and risk of mental health relapse if she is unable to go to her psychiatrist.

21 194. Ms. Hylton is dependent on IHSS services to remain in her home. She lives alone
22 and does not have family members nearby who could help. Ms. Hylton does not want to enter a
23 nursing home.

24 **7. Named Plaintiff Helen Polly Stern**

25 195. Named Plaintiff Helen Polly Stern is an 86-year-old woman who is a qualified
26 person with disabilities including bilateral hip dysplasia, osteoporosis, skin problems, and
27 cardiovascular issues. She lives by herself in Shasta County.
28

1 196. Because of her disabilities, Ms. Stern has very limited mobility and cannot walk
2 without assistance, bend, or lift anything heavier than a dinner plate. She also is subject to skin
3 outbreaks resulting in open wounds and sores on her legs, which have required skin grafts in the
4 past and must be properly cared for to avoid outbreaks in the future.

5 197. Ms. Stern is currently authorized for 121.6 hours of IHSS care per month, reduced
6 from 126.1 pursuant to the recent 3.6 percent cuts. Under SB 73, Ms. Stern will lose 20 percent of
7 her authorized IHSS hours, leaving her with only 97.3 hours per month. Ms. Stern will not be
8 eligible for a Care Supplement because her functional ranks do not meet Defendants' criteria.

9 198. Ms. Stern needs each hour of IHSS services that she receives. For example, she is
10 currently receiving 2.68 hours of bathing, oral hygiene, and grooming services per week. Her
11 provider helps her get into the shower and shower chair, wash and dry her body, get out of the
12 shower, and cut her fingernails. Because of her physical disabilities, Ms. Stern would be unable to
13 bathe or groom herself without her provider's assistance. It is crucial that Ms. Stern shower every
14 day to properly manage her skin and avoid outbreaks.

15 199. Ms. Stern also receives assistance with dressing, ambulation, rubbing skin and
16 repositioning, help on and off seats, assistance in and out of vehicles, meal preparation, meal clean-
17 up, medical accompaniment, food shopping, additional shopping, laundry, and domestic services.

18 200. Ms. Stern's provider already spends more than these authorized hours performing
19 IHSS services for Ms. Stern. If Ms. Stern's hours are reduced, her provider almost certainly will
20 be unable to continue this unpaid work.

21 201. A 20 percent cut in her IHSS hours would place Ms. Stern at risk of medical harm,
22 including an increased risk of open skin wounds resulting from reduced personal hygiene, lack of
23 healthy and nutritious meals, and an inability to travel to medical appointments and to dress and
24 care for herself.

25 202. Ms. Stern is dependent on IHSS to remain in her home. She does not have any
26 family members or friends who would be able to help out. She has lived in her home, which she
27 owns, for almost 10 years, and does not want to enter an institution.

28

1 203. Ms. Stern has never before seen or had access to her functional ranks. Having now
2 been informed of her functional ranks, she believes that they may be incorrect. However, she has
3 not had an opportunity to challenge these ranks and increase them. With higher functional ranks,
4 she might qualify for the IHSS Care Supplement and avoid a reduction in her hours.

5 **8. Named Plaintiff L.C.**

6 204. Named Plaintiff L.C. is a 6-year-old girl, and is a qualified person with a
7 disability—specifically, a rare metabolic disorder that leaves her body unable to break down
8 protein. She lives with her family in San Joaquin County and attends a local elementary school.
9 Her mother is her IHSS provider.

10 205. Because of her disabilities, L.C. cannot eat most foods and has to be fed medication
11 and a special formula through a tube in her stomach. If her condition is not carefully monitored,
12 she could suffer brain damage, fall into a coma, or even die. She also has asthma and a weak
13 immune system that leaves her vulnerable to infections.

14 206. L.C. is authorized to receive 58.61 hours of IHSS services per month, reduced from
15 60.8 hours pursuant to the recent 3.6 percent cuts.

16 207. Her mother prepares food for her, feeds her through the tube in her stomach,
17 monitors her feeding machine, accompanies her to medical appointments, and also provides
18 assistance with dressing and bowel and bladder care.

19 208. L.C.'s authorized hours are already insufficient for the amount of care she needs.
20 For example, she is authorized for 10.73 hours per week of paramedical services. Her mother
21 feeds her through a device that is permanently placed into her stomach and looks like a button on
22 her skin. Her mother feeds her three times per day on weekdays and four times per day on
23 weekends. L.C. is connected to a feeding machine for two to three hours each time her mother
24 feeds her. During this time, her mother has to troubleshoot the machine if something is not right,
25 help L.C. go to the bathroom as needed, and clean her up if the "button" leaks. Her mother also
26 must clean the "button" three times per day to prevent blockage. These tube feedings and
27 maintenance take far longer than the allotted 10.73 hours per week.

28 209. L.C.'s FI Score is below 2.0. Therefore, L.C. will lose eligibility for all IHSS

1 services pursuant to ABX4 4.

2 210. A 20 percent cut in hours pursuant to SB 73 will reduce L.C.'s hours by 11.72
3 hours.

4 211. Either a termination or a reduction in L.C.'s IHSS hours would be harmful to L.C.'s
5 health. L.C.'s father works in the fields and does not earn enough on his own to cover the
6 household's expenses. If L.C.'s IHSS hours are reduced to less than 47 hours, her mother will
7 have to look for other work and would no longer be able to be L.C.'s provider.

8 212. If L.C.'s mother were no longer L.C.'s provider, L.C. would be at risk of harm to
9 her health. L.C.'s provider must operate and monitor her feeding machine, be familiar with food
10 products to identify dangerous items, be extra vigilant to prevent L.C. from having something she
11 should not have, and must find a way to make her eat the foods she needs to be healthy. In the
12 past, when L.C.'s mother has left L.C. with a relative, L.C. has contracted infections or L.C.'s
13 mother has returned to find L.C.'s feeding pump turned off. L.C.'s doctor has warned L.C.'s
14 mother that leaving L.C. in the care of others presents great risk to L.C.'s health.

15 **9. Named Plaintiff Charles Thurman**

16 213. Named Plaintiff Charles Thurman is 71 years old, and is a qualified person with
17 disabilities, including partial blindness, diabetes, damaged vertebrae, chronic obstructive
18 pulmonary disease, and neuropathy in his hands. He lives with his wife, Allie Mae Thurman, in
19 Shasta County.

20 214. As a result of Mr. Thurman's disabilities, his mobility is greatly limited. He has
21 difficulty reaching, grasping, lifting, standing for prolonged periods, and bending. He is also at
22 risk of falling.

23 215. Ms. Thurman is also an IHSS consumer. She has serious heart problems and cannot
24 lift anything heavier than five pounds. She also has chronic obstructive pulmonary disease and
25 uses an oxygen machine 24 hours per day. She has additional physical disabilities resulting in
26 limited mobility.

27 216. Mr. Thurman is authorized to receive 31.2 hours of IHSS care per month, and
28 Ms. Thurman is authorized to receive 39.8 hours per month. They share a single IHSS provider

1 who helps them with many tasks of daily living, including housecleaning and meal preparation.
2 Both use a power wheelchair when they are outside their home, but cannot use their wheelchairs
3 inside their mobile home because of the steps at the entrance.

4 217. Because Mr. Thurman's FI Score is above 2.0, he will not lose eligibility for all
5 IHSS services pursuant to ABX4 4. However, because his functional ranking for shopping and
6 errands is 3, he will lose that service.

7 218. Under SB 73, Mr. Thurman will lose 20 percent of his authorized IHSS hours. He
8 has been authorized to receive 32.4 hours per month, but the reductions will leave him with only
9 24.8 hours per month. His wife's hours will also be cut by 20 percent, leaving her with 31.6 hours
10 per month. Neither Mr. nor Ms. Thurman will be eligible for a Care Supplement because their
11 functional ranks do not meet Defendants' criteria.

12 219. Each of the IHSS hours Mr. Thurman currently receives is critical, and the
13 authorized hours are already not sufficient to perform all of the required tasks. A twenty percent
14 reduction will mean that their IHSS provider will come for four days per week instead of five days
15 as she does now. The Thurmans are already at great risk of falls when they enter or leave their
16 home, and when they bathe and dress on the weekends. Their provider already does not have
17 enough time to assist them, and any reduction in their hours will expose them to additional risk.
18 Both are at risk of burns and falls if they try to cook, and of falls if they try to clean, but a reduction
19 in their hours will leave them no choice.

20 220. Mr. and Ms. Thurman depend on IHSS services to live safely and independently in
21 their home. They have been married for 36 years and enjoy living independently. If they are
22 unable to maintain themselves at home, Mr. Thurman will likely end up in a veterans' home, while
23 his wife will likely have to be placed in a different facility, a separation that would be horrifying to
24 them after so many years of close companionship.

25 221. Mr. Thurman has never before seen or had access to his functional ranks or those of
26 his wife. Having now been informed of his wife's functional ranks, he believes that they may be
27 incorrect. However, neither he nor his wife has had an opportunity to challenge these ranks and
28

1 increase them. With higher functional ranks, Mr. Thurman and his wife might qualify for the IHSS
2 Care Supplement and avoid a reduction in their hours.

3 222. Mr. Thurman is partially blind, and Mrs. Thurman has severe dyslexia and cannot
4 read. Neither Mr. Thurman nor his wife will be able to read the notice of reductions that
5 Defendants plan to send regarding the 20 percent reductions, since it will not be sent in an
6 accessible format, such as large print or on tape. Mr. Thurman is concerned that he will not
7 understand what to do in response to the notice, and that they will be unable to appeal the reduction
8 in their IHSS hours, or apply for the Care Supplement.

9 CLASS DEFINITION AND ALLEGATIONS

10 223. Pursuant to Rule 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure,
11 Individual Named Plaintiffs David Oster, Willie Beatrice Sheppard, C.R., Dottie Jones, Andrea
12 Hylton, Helen Polly Stern, L.C., and Charles Thurman bring this action on behalf of themselves
13 and all other persons similarly situated.

14 224. For Part A of the First, Second, Third, Fourth, Fifth, and Seventh claims for relief,
15 Plaintiffs David Oster, Willie Beatrice Sheppard, C.R., Dottie Jones, L.C., and Charles Thurman
16 bring this action on behalf of a class consisting of “all recipients of IHSS in the State of California
17 whose IHSS services will be limited, cut, or terminated under the provisions of ABX4 4, and all
18 applicants to IHSS in the State of California who would have been eligible for IHSS services but
19 who are either not eligible, or are eligible for fewer services, as a result of ABX 4 4 (hereinafter
20 “Class A”).”

21 225. For Part B of the First, Second, Third, Fourth, Fifth, Sixth, and Seventh claims for
22 relief, Plaintiffs David Oster, Willie Beatrice Sheppard, C.R., Dottie Jones, Andrea Hylton, Helen
23 Polly Stern, L.C., and Charles Thurman bring this action on behalf of a class consisting of “all
24 recipients of IHSS in the State of California who have received or will receive notices of action
25 that include a reduction of IHSS hours based on SB 73 or Defendants’ implementation of SB 73,
26 including future applicants for IHSS services whose notice of action will reflect reduced IHSS
27 hours as a result of SB 73 or Defendants’ implementation of SB 73 (hereinafter “Class B”).”
28

1 226. Plaintiffs David Oster, Willie Beatrice Sheppard, C.R., Dottie Jones, Andrea
2 Hylton, Helen Polly Stern, L.C., and Charles Thurman, and others similarly situated also plead
3 subclasses of individuals as follows:

4 a. For Part A of the Sixth claim for relief: “Loss of Domestic and
5 Related Services Subclass A” to be defined as “all present and future IHSS
6 recipients and applicants who have been or would have been authorized to
7 receive domestic and/or related IHSS, and whose IHSS will be reduced to
8 eliminate some or all of their domestic and/or related services under the
9 provisions of ABX4 4.” Plaintiffs Dottie Jones, Willie Beatrice Sheppard,
10 and Charles Thurman are typical of this subclass.

11 b. For Part A of the Eighth claim for relief: “Children Subclass A” to be
12 defined as “all present or future IHSS recipients who are under the age of 21,
13 who qualify for full-scope Medi-Cal with federal financial participation, and
14 who therefore are entitled to the protections of the Early Periodic Screening
15 Diagnosis and Treatment provisions of the federal Medicaid Act, 42 U.S.C.
16 § 1396a(a), who have been or would have been authorized to receive IHSS,
17 and whose IHSS services will be reduced or terminated under the provisions
18 of ABX4 4.” Plaintiffs C.R. and L.C. are typical of this subclass.

19 c. For Part B of the Eighth claim for relief: “Children Subclass B” to be
20 defined as “all present or future IHSS recipients who are under the age of 21,
21 who qualify for full-scope Medi-Cal with federal financial participation, and
22 who therefore are entitled to the protections of the Early Periodic Screening
23 Diagnosis and Treatment provisions of the federal Medicaid Act, 42 U.S.C.
24 § 1396a(a), who have received or will receive notices of action that include a
25 reduction of IHSS hours based on SB 73 or Defendants’ implementation of
26 SB 73, including future applicants for IHSS services whose notice of action
27 will reflect reduced IHSS hours as a result of SB 73 or Defendants’
28 implementation of SB 73.” Plaintiffs C.R and L.C. are typical of this

1 subclass.

2 227. **Numerosity:** The Plaintiff Classes are so numerous that joinder of all their
3 members is impracticable. There are more than 130,000 persons in Class A, and over 300,000 in
4 Class B. Upon information and belief, the “Loss of Domestic and Related Services Subclass”
5 consists of approximately 97,000 people. Upon information and belief the “Children Subclass A”
6 and “Children Subclass B” each consist of over one thousand children. Joinder of individuals in
7 the Classes and subclasses is also impracticable because of the size of the Classes and subclasses,
8 and because members of the Plaintiff Classes lack the knowledge and financial means to maintain
9 individual actions and are geographically dispersed throughout the state.

10 228. **Commonality:** Common questions of law and fact predominate over questions
11 affecting individual Class members. Questions of law and fact common to members of Class A
12 include but are not limited to whether ABX4 4 violates provisions of the Medicaid Act, the ADA,
13 and Section 504, and whether the implementation of ABX4 4 fails to meet the requirements of
14 procedural due process established by the U.S. Constitution. Questions of law and fact common to
15 members of Class B include but are not limited to whether SB 73 violates provisions of the
16 Medicaid Act, the ADA, and Section 504, and whether the implementation of SB 73 violates
17 provisions of the Medicaid Act, the ADA, and Section 504, and fails to meet the requirements of
18 procedural due process established by the U.S. Constitution.

19 229. **Typicality:** The claims of the Individual Named Plaintiffs are typical of the claims
20 of the Classes as a whole and are typical of the claims of the subclasses in that the Individual
21 Named Plaintiffs and members of the Plaintiff Classes are eligible IHSS participants and qualified
22 individuals with disabilities who will be affected similarly by the IHSS eligibility and services
23 changes enacted by ABX4 4, SB 73, and Defendants’ policies and practices. The claims arise from
24 the same unlawful and discriminatory laws and policies and practices of Defendants.

25 230. **Adequate representation:** The Individual Named Plaintiffs will fairly represent
26 and adequately protect the interests of members of the classes and subclasses. The Individual
27 Named Plaintiffs do not have any interests antagonistic to those of other members of the Plaintiff
28 Classes. By filing this action, the Individual Named Plaintiffs have displayed an interest in

1 vindicating their rights, as well as the claims of others who are similarly situated. The relief sought
2 by the Individual Named Plaintiffs will inure to the benefit of members of the Plaintiff Classes and
3 subclasses generally. Plaintiffs are represented by counsel who are experienced, skilled, and
4 knowledgeable about civil rights litigation, disability discrimination, Medicaid law, practice and
5 procedure in the federal courts and the prosecution and management of class action litigation.

6 231. Class certification is appropriate pursuant to Federal Rules of Civil Procedure
7 23(b)(2) because Defendants have acted, refused to act, or will act on grounds generally applicable
8 to the Classes and subclasses, thereby making final injunctive and declaratory relief appropriate
9 with respect to the Classes as a whole.

10 232. Members of the plaintiff classes share a common need for IHSS services and
11 Defendants' policies and actions in limiting or terminating IHSS services, and the provisions of
12 ABX 4 4 and SB 73, are applicable to all the classes.

13 **LEGAL CLAIMS**

14 233. Defendants' actions, as alleged herein, have resulted in, and will continue to result
15 in, irreparable injury to members of the Plaintiff Classes for which they have no plain, speedy, or
16 adequate remedy at law. Members of the Plaintiff Classes will suffer irreparable injury in that they
17 will be deprived of critical health-related services and subjected to imminent risk of out-of-home
18 placement, institutionalization and/or harm to their health and safety.

19 234. IHSS provider members of the organizational plaintiffs who provide IHSS services
20 for members of the Plaintiff Classes will also be subject to irreparable injury, for they will lose
21 employment and hours of work for which they will be unable to recover monetary damages and
22 which will lead to harm to their health and deprivation of life necessities. Some members of these
23 organizational plaintiffs and their minor children for whom they provide services are at risk of
24 losing their children's IHSS services and will suffer irreparable injury as a result. Additionally, the
25 organizational plaintiffs' members include retirees who receive IHSS services themselves and are
26 at risk of losing services under ABX4 4 and SB 73.

27 235. An actual controversy exists between Plaintiffs and Defendants in that Defendants
28 are seeking to implement reductions and terminations in IHSS services to which members of the

1 Plaintiff Classes are entitled, and which, if implemented, will place members of the Plaintiff
2 Classes at risk of unnecessary out-of-home placement, institutionalization and harm to their
3 physical and mental health. Further, these reductions and terminations violate the Due Process
4 Clause of the Fourteenth Amendment to the United States Constitution, the ADA, Section 504, and
5 various provisions of the Medicaid Act. Plaintiffs therefore seek a declaration as to their rights and
6 Defendants' corresponding duties with respect to the matters alleged herein.

7 236. The balance of harms favors entering an injunction because the harm suffered by
8 individuals deprived of crucial and needed IHSS outweighs any monetary loss to Defendants.

9 237. It is in the public interest that the Court grant an injunction to ensure that Plaintiffs
10 and other similarly situated individuals receive medically necessary medical benefits to which they
11 are entitled.

12 238. In taking the relevant actions, Defendants have acted under color of state law.

13 **FIRST CLAIM FOR RELIEF**
14 **(Defendants Director Lightbourne and Director Douglas)**
15 **Constitutional Due Process**
16 **Brought by Organizational Provider Plaintiffs, Class A, and Class B**

17 239. Plaintiffs reallege and incorporate herein by reference each and every allegation and
18 paragraph set forth previously.

19 240. Plaintiffs and members of the Plaintiff Classes are entitled to adequate notice of and
20 opportunity for a pre-termination or pre-reduction hearing on any termination or reduction in
21 medical care and services. *See Goldberg v. Kelly*, 397 U.S. 254 (1970).

22 241. The notices Defendants propose to send are not adequate or effective, because they
23 are incomprehensible to Plaintiffs and members of the Plaintiff Classes. They do not provide
24 Plaintiffs and class members with meaningful information necessary to determine whether the
25 agency has made a mistake in terminating or reducing their benefits and how they can contest those
26 mistakes at the hearing to stop the termination or reduction.

27 242. The notices Defendants propose to send are not adequate or effective, because ten or
28 fifteen days is not sufficient time for IHSS recipients, many of whom have cognitive or psychiatric
disabilities, to appeal the decision to reduce or terminate their services, or to apply for the new
Care Supplement in time to avoid an interruption in their services.

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A

258. In reducing or terminating services pursuant to ABX4 4, Defendants have deprived Plaintiffs and members of Class A of their opportunity to notice and a fair pre-termination hearing in violation of 42 U.S.C. § 1396a(a)(3).

259. Defendants’ actions in implementing ABX4 4 deprive Plaintiffs and members of Class A of rights, privileges or immunities secured to them by the Constitution of the United States, in violation of 42 U.S.C. § 1983, and are preempted by the Supremacy Clause of the United States Constitution, Article IV.

B

260. In reducing services pursuant to SB 73 as set forth above, Defendants have deprived Plaintiffs and members of Class B of their opportunity to notice and a fair pre-termination hearing in violation of 42 U.S.C. § 1396a(a)(3).

261. Defendants’ actions in implementing SB 73 deprive Plaintiffs and members of Class B of rights, privileges or immunities secured to them by the Constitution of the United States, in violation of 42 U.S.C. § 1983, and are preempted by the Supremacy Clause of the United States Constitution, Article IV.

**THIRD CLAIM FOR RELIEF
(Defendants Director Lightbourne and Director Douglas)
Americans with Disabilities Act, 42 U.S.C. § 12134-35 et seq.
Brought by Organizational Provider Plaintiffs, Class A, and Class B**

262. Plaintiffs reallege and incorporate herein by reference each and every allegation and paragraph set forth previously.

263. Title II of the ADA provides that “no qualified individual with a disability shall, by reason of disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a public entity or be subjected to discrimination by such entity.” 42 U.S.C. § 12132.

264. In enacting the ADA, Congress found that “[i]ndividuals with disabilities continually encounter various forms of discrimination, including . . . segregation” 42 U.S.C. § 12101(a)(5).

265. Regulations implementing Title II of the ADA provide: “A public entity shall

1 administer services, programs, and activities in the most integrated setting appropriate to the needs
2 of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d).

3 266. Defendants Director Lightbourne and Director Douglas are the directors of CDSS
4 and CDHCS, respectively, which are public entities within the meaning of Title II of the ADA.

5 267. Regulations implementing Title II of the ADA provide: “A public entity may not,
6 directly or through contractual or other arrangements, utilize criteria or other methods of
7 administration: (i) that have the effect of subjecting qualified individuals with disabilities to
8 discrimination on the basis of disability; [or] (ii) that have the purpose or effect of defeating or
9 substantially impairing accomplishment of the objectives of the entity’s program with respect to
10 individuals with disabilities. . . .” 28 C.F.R. § 35.130(b)(3).

11 268. The United States Supreme Court in *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581
12 (1999), held that the unnecessary institutionalization of individuals with disabilities is a form of
13 discrimination under Title II of the ADA. In doing so, the Supreme Court interpreted the ADA’s
14 “integration mandate” as requiring persons with disabilities to be served in the community when:
15 (1) the state determines that community-based treatment is appropriate; (2) the individual does not
16 oppose community placement; and, (3) community placement can be reasonably accommodated.
17 *Id.* 527 U.S. at 607.

18 269. The ADA prohibits discrimination based on type of disability.

19 270. The ADA’s regulations further provide that “[a] public entity shall not impose or
20 apply eligibility criteria that screen out or tend to screen out an individual with a disability or any
21 class of individuals with disabilities from fully and equally enjoying any service, program, or
22 activity, unless such criteria can be shown to be necessary for the provision of the service,
23 program, or activity being offered.” 28 C.F.R. § 35.130(b)(8).

24 271. Pursuant to the ADA, public entities are required to provide meaningful access to
25 their programs, services and activities, and provide any accommodations or modifications
26 necessary for people with disabilities to access those services.

27 272. Each Individual Named Plaintiff and member of the Plaintiff Classes is a “qualified
28 individual with a disability” within the meaning of the ADA in that they (1) have physical and/or

1 mental impairments that substantially limit one or more major life activities; and meet the essential
2 eligibility requirements in that they (2) are capable of living independently in their own homes
3 and/or in the most integrated community setting possible, with assistance; and (3) meet the Medi-
4 Cal income eligibility requirements.

5 273. Defendants' actions have placed members of the Plaintiff Classes at imminent risk
6 of unnecessary confinement in institutions, including nursing facilities, or other out-of home
7 placements that are not the most integrated community placements possible, in violation of the
8 ADA's integration mandate.

9 274. Defendants discriminate against Plaintiffs and Classes members in ways that
10 include, but are not limited to, failing to provide reasonable modifications to programs and
11 services.

12 275. Defendants have utilized eligibility criteria and methods of administration that
13 subject Individual Named Plaintiffs and members of the Plaintiff Classes to discrimination on the
14 basis of disability, in violation of 28 C.F.R. § 35.130(b)(3) &(8), and otherwise denied meaningful
15 access to their programs, services and activities.

16 276. Defendants' actions discriminate against individuals with cognitive and psychiatric
17 disabilities, based on their type of disability, because the functional rankings and FI Scores for such
18 individuals are lower than the functional rankings and FI Scores of individuals with physical
19 disabilities who have the same level of need for IHSS services, and will result in the deprivation of
20 services to individuals with mental disabilities, even if they have the same level of need as
21 individuals with physical disabilities who are not deprived of IHSS services.

22 **A**

23 277. Defendants' actions in relation to the service terminations and reductions mandated
24 by ABX4 4 violate Title II of the ADA.

25 278. Pursuant to 42 U.S.C. § 12133, Plaintiffs are entitled to declaratory and injunctive
26 relief as well as reasonable attorneys' fees and costs incurred in bringing this action.

27 **B**

28

1 286. Section 504 of the Rehabilitation Act of 1973, on which the ADA is modeled, sets
2 forth similar protections against discrimination by recipients of federal funds, such as Defendants
3 herein. 29 U.S.C. §§ 794-794a. These protections include the prohibition against unnecessary
4 segregation. Regulations implementing Section 504 require that a public entity administer its
5 services, programs and activities in “the most integrated setting appropriate” to the needs of
6 qualified individuals with disabilities. 28 C.F.R. § 41.51(d).

7 287. Section 504 prohibits discrimination based on type of disability.

8 288. Section 504’s regulations prohibit recipients of federal financial assistance from
9 utiliz[ing] criteria or methods of administration . . . (i) [t]hat have the effect of subjecting qualified
10 handicapped persons to discrimination on the basis of handicap [or] (ii) that have the purpose or
11 effect of defeating or substantially impairing accomplishment of the objectives of the recipient’s
12 program with respect to handicapped persons. 28 C.F.R. § 41.51(b)(3)(i); 45 C.F.R. § 84.4(b)(4).

13 289. Each Individual Named Plaintiff and member of the Plaintiff Classes is a “qualified
14 individual with a disability” within the meaning of Section 504 in that they (1) have physical
15 and/or mental impairments that substantially limits one or more major life activities; and meet the
16 essential eligibility requirements in that they (2) are capable of living independently in their own
17 homes and/or in the most integrated community setting possible, with assistance; and (3) meet the
18 Medi-Cal income eligibility requirements.

19 290. Defendants’ actions have placed members of the Plaintiff Classes at risk of
20 unnecessary confinement in institutions, including nursing facilities, or other out-of-home
21 placements that are not the most integrated community placements possible, in violation of Section
22 504’s integration mandate.

23 291. Defendants discriminate against Plaintiffs and Class members in ways that include,
24 but are not limited to, failing to provide reasonable modifications to programs and services.

25 292. Defendants have utilized eligibility criteria and methods of administration that
26 subject Plaintiffs and members of the Plaintiff Classes to discrimination on the basis of disability in
27 violation of 28 C.F.R. § 41.51(b)(3)(i) and 45 C.F.R. § 84.4(b)(4), and otherwise denied
28 meaningful access to their programs, services and activities.

1 1396a(a)(10)(B)(i).

2 308. Defendants' actions deprive Plaintiffs and members of Class A of rights, privileges
3 or immunities secured to them by the Constitution of the United States, in violation of 42 U.S.C. §
4 1983, and are preempted by the Supremacy Clause of the U.S. CONST., art. IV.

5 **B**

6 309. Federal law prohibits unreasonable reductions in services based on diagnosis, type
7 of illness, or condition. 42 C.F.R. § 440.230(c).

8 310. Pursuant to SB 73, Defendants will permit some IHSS recipients to receive IHSS
9 Care Supplements to maintain currently authorized hours while mandating that other recipients'
10 services be reduced by 20 percent, thus treating comparable recipients differently.

11 311. Pursuant to Defendants' plan to implement SB 73, Defendants will determine
12 eligibility for maintenance of currently authorized hours through IHSS Care Supplements based on
13 functional ranks that are not rational measures of need, thus treating comparable recipients
14 differently.

15 312. Pursuant to Defendants' plan to implement SB 73, Defendants will permit some
16 IHSS recipients to receive IHSS Care Supplements to maintain currently authorized hours while
17 mandating that other recipients' services be reduced by 20 percent based on date of application,
18 thus treating comparable recipients differently based on an arbitrary deadline.

19 313. Defendants are exempting IHSS recipients who receive services under certain
20 Medicaid Home- and Community-Based Services ("HCBS") programs from the 20 percent
21 reductions. Defendants are exempting these recipients while subjecting similarly situated
22 recipients who are not on the HCBS programs, including individuals who qualify for but are on
23 waiting lists for such HCBS programs, to the 20 percent reduction, thus treating comparable
24 recipients differently.

25 314. Therefore, SB 73 and Defendants' implementation thereof violate Medicaid's
26 comparability requirement, 42 U.S.C. § 1396a(a)(10)(B)(i), and interpretive federal guidelines.

27 315. Defendants' actions deprive Plaintiffs and members of Class B of rights, privileges
28 or immunities secured to them by the Constitution of the United States, in violation of 42 U.S.C. §

1 1983, and are preempted by the Supremacy Clause of the U.S. CONST., art. IV.

2 **SIXTH CLAIM FOR RELIEF**
3 **(Defendants Director Lightbourne and Director Douglas)**
4 **Medicaid Act Sufficiency Requirement**
5 **Brought by Organizational Provider Plaintiffs, Class B,**
6 **and Loss of Domestic and Related Services Subclass A**

7 316. Plaintiffs reallege and incorporate herein by reference each and every allegation and
8 paragraph set forth previously.

9 317. Under federal Medicaid requirements, states must provide “sufficient” benefits.
10 That is, “[e]ach service must be sufficient in amount, duration, and scope to reasonably achieve its
11 purpose.” 42 C.F.R. § 440.230(b).

12 **A**

13 318. By terminating or reducing IHSS domestic and related services to individuals for
14 whom such services have been deemed necessary pursuant to an individual service plan approved
15 by the state, ABX4 4 will result in insufficient services to fulfill the purpose of the IHSS benefit.

16 319. ABX4 4 is inconsistent with the federal law and preempted by the Supremacy
17 Clause of the U.S. CONST., art. IV.

18 **B**

19 320. By reducing by 20 percent IHSS services to individuals for whom such services
20 have been deemed necessary pursuant to an individual service plan approved by the state, SB 73
21 will result in insufficient services to fulfill the purpose of the IHSS benefit.

22 321. The Care Supplement process will not solve this sufficiency problem because IHSS
23 recipients have all been assessed to need these hours; Care Supplements may be granted only based
24 on serious risk of out-of-home placement and not based on risk of harm to health and safety;
25 Defendants are requiring recipients to apply for Care Supplements by specified deadlines rather
26 than conducting individualized reviews; and Defendants will use functional ranks that do not
27 measure need to exclude recipients from eligibility for Care Supplements.

28 322. SB 73 deprives Plaintiffs and members of Class B of rights, privileges or
immunities secured to them by the Constitution and laws of the United States, in violation of 42
U.S.C. § 1983.

1 323. SB 73 is inconsistent with federal law and preempted by the Supremacy Clause of
2 the U.S. CONST., art. IV.

3
4 **SEVENTH CLAIM FOR RELIEF**
5 **(Defendants Director Lightbourne and Director Douglas)**
6 **Medicaid Reasonable Standards Requirement**
7 **Brought by Organizational Provider Plaintiffs, Class A, and Class B**

8 324. Plaintiffs reallege and incorporate herein by reference each and every allegation and
9 paragraph set forth previously.

10 325. Federal Medicaid law requires participating states to establish reasonable standards,
11 consistent with the objectives of the Medicaid Act, for determining the extent of covered services.
12 *See* 42 U.S.C. § 1396a(a)(17).

13 **A**

14 326. Pursuant to ABX4 4, Defendants will cover IHSS services for some Medicaid
15 recipients, while denying the same services to other IHSS recipients who have comparable needs,
16 and will utilize FI Scores and/or functional ranks that do not provide a fair or reasonable measure
17 of need for services.

18 327. ABX4 4 is inconsistent and in conflict with the reasonable standards requirements
19 of the federal Medicaid Act, 42 U.S.C. §1396a(a)(17), and interpretive federal guidelines, and is
20 thus preempted by the Supremacy Clause of the United States Constitution, art. IV.

21 **B**

22 328. Federal law prohibits unreasonable reductions in services based on diagnosis, type
23 of illness, or condition. 42 C.F.R. § 440.230(c).

24 329. Pursuant to SB 73, Defendants will reduce IHSS services to levels below those that
25 recipients have been assessed to need, based on arbitrary budgetary goals rather than reasonable
26 needs assessments.

27 330. Pursuant to Defendants' implementation of SB 73, Defendants will maintain current
28 levels of IHSS services, which are authorized based on a determination that recipients need those
services in order to remain safely at home, for some Medicaid recipients, while denying the same

1 services to other IHSS recipients who have comparable needs, on the basis of functional ranks that
2 do not provide a fair or reasonable measure of need for services.

3 331. Pursuant to Defendants' implementation of SB 73, Defendants will reduce services
4 to some recipients based on their diagnosis, type of illness, or condition, because of the relationship
5 between functional ranks and the nature of recipients' disabilities, diagnoses, types of illnesses, or
6 conditions.

7 332. Defendants' implementation of SB 73 is inconsistent and in conflict with the
8 reasonable standards requirements of the federal Medicaid Act, 42 U.S.C. §1396a(a)(17), and
9 interpretive federal guidelines, and is thus preempted by the Supremacy Clause of the United States
10 Constitution, art. IV.

11 **EIGHTH CLAIM FOR RELIEF**
12 **(Defendants Director Lightbourne and Director Douglas)**
13 **Medicaid Act, Early and Periodic Screening, Diagnostic and Treatment**
14 **(EPSDT) Services, 42 U.S.C. § 1396 .**
15 **Brought by Organizational Provider Plaintiffs, Children Subclass A, and Children Subclass**
16 **B**

17 333. Plaintiffs reallege and incorporate herein by reference each and every allegation and
18 paragraph set forth previously.

19 334. Early and Periodic Screening, Diagnostic and Treatment ("EPSDT") for children
20 and youth under age 21 is a mandatory Medicaid service. *See* 42 U.S.C. §§ 1396a(a)(10)(A),
21 1396a(a)(43), 1396d(a)(4)(B), 1396d(r).

22 335. Thousands of IHSS recipients in California are under the age of 21. They receive
23 Medicaid covered personal care services under California's Medicaid plan. Children who receive
24 IHSS from providers who are not legally responsible relatives are covered by the Medi-Cal
25 Personal Care Services program. Children whose providers are parents or other responsible
26 relatives are covered by California Medicaid State Plan Amendment 09-006, effective September
27 9, 2009. Both groups of children are protected by the EPSDT mandate. EPSDT requires the State
28 to provide them with the services that are medically necessary to ameliorate their conditions.

336. Under EPSDT, States must provide or arrange for periodic medical screens that
include a comprehensive health and developmental/mental health history and assessment,

1 unclothed physical examination, immunizations, laboratory testing, and health education. 42
2 U.S.C. §§ 1396a(a)(43), 1396d(r)(1).

3 337. States must provide for “arranging for (directly or through referral to appropriate
4 agencies, organizations or individuals) corrective treatment the need for which is disclosed by” a
5 periodic or inter-periodic screen. 42 U.S.C. § 1396a(a)(43)(C).

6 338. EPSDT treatment must include vision, dental and hearing services and “other
7 necessary health care, diagnostic services, treatment, and other measures described in subsection
8 (a) of this section [42 U.S.C. § 1396d(a)] to correct or ameliorate defects and physical and mental
9 illnesses and conditions discovered by the screening services whether or not such services are
10 covered under the State plan.” 42 U.S.C. § 1396d(r)(5).

11 339. Under EPSDT, States must inform all Medi-Cal eligible persons in the State who
12 are under age 21 of the availability of early and periodic screening “and treatment services as
13 described in section 1396d(r). . . .” 42 U.S.C. § 1396a(a)(43)(A).

14 **A**

15 340. For each child under age 21 who has been approved for IHSS services, the State has
16 previously made an individualized determination that the current level of personal care services are
17 necessary to ameliorate the child’s condition. The reductions and terminations required by ABX4
18 4 have not been made on the basis of an individualized determination that these services are no
19 longer necessary, but for purely budgetary reasons. As a result, Defendants have failed to ensure
20 that Children Subclass A members will actually receive the medically necessary personal care
21 services to which they are entitled.

22 341. Defendants’ actions, as described above, fail to ensure that Medi-Cal recipients
23 under the age of 21 receive medically necessary personal care services as required by the EPSDT
24 provisions of the Medicaid Act. 42 U.S.C. §§ 1396a(a)(10)(A), 1396a(a)(43)(A), (C),
25 1396d(a)(4)(B), 1396d(r)(5), enforceable by Plaintiffs pursuant to 42 U.S.C. § 1983.

26 **B**

27 342. For each child under age 21 who has been approved for IHSS services, the State has
28 previously made an individualized determination that the current level of personal care services are

1 necessary to ameliorate the child's condition. The reductions and terminations required by SB 73
2 have not been made on the basis of an individualized determination that these services are no
3 longer necessary, but for purely budgetary reasons.

4 343. The existence of the Care Supplement program does not cure this legal violation.
5 The Care Supplement requires submission of an application that, for reasons beyond their control,
6 some parents and guardians may fail to make on a timely basis. Eligibility for the Care
7 Supplement is not based on medical necessity, but ostensibly on the likelihood that the child will
8 be placed in a different, out of home placement, and actually on functional ranks that are not a
9 reasonable measure of need. As a result, Defendants have failed to ensure that all child and youth
10 class members will actually receive the medically necessary personal care services to which they
11 are entitled.

12 344. Defendants' actions, as described above, fail to ensure that Medi-Cal recipients
13 under the age of 21 receive medically necessary personal care services as required by the EPSDT
14 provisions of the Medicaid Act. 42 U.S.C. §§ 1396a(a)(10)(A), 1396a(a)(43)(A), (C),
15 1396d(a)(4)(B), 1396d(r)(5), enforceable by Plaintiffs pursuant to 42 U.S.C. § 1983.

16 **REQUEST FOR RELIEF**

17 WHEREFORE, Plaintiffs pray that the Court order the following relief and remedies on
18 behalf of themselves and all others similarly situated:

- 19 a) Assume jurisdiction over this action and maintain continuing jurisdiction until
20 Defendants are in full compliance with every order of this Court;
- 21 b) Certify this action as a class action and appoint the individual named Plaintiffs as
22 Class representatives;
- 23 c) Declare that ABX4 4, SB 73, and the policies, practices, acts and omissions of
24 DHCS and CDSS, as set forth above, violate the American with Disabilities Act and Section 504 of
25 the Rehabilitation Act;
- 26 d) Declare that ABX4 4, SB 73, and Defendants Lightbourne and Douglas's policies,
27 practices, acts and omissions as set forth above violate the Medicaid Act (comparability,
28

1 sufficiency, reasonable standards, fair hearing, and EPSDT provisions), the Due Process Clause of
2 the United States Constitution, and 42 U.S.C. § 1983, and are preempted by the Supremacy Clause;

3 e) Grant a temporary restraining order, preliminary and permanent injunction enjoining
4 Defendants, their officers, agents, employees, attorneys, and all persons who are in active concert
5 or participation with them from implementing the provisions of ABX4 4 that amended Sections
6 12309(e) and 12309.2 of the Welfare and Institutions Code to make ineligible for IHSS services
7 recipients with FI Scores of less than 2.0 and to make ineligible for domestic and related services
8 individuals with functional ranks of less than 4 for those services;

9 f) Grant a temporary restraining order, preliminary and permanent injunction enjoining
10 Defendants, their officers, agents, employees, attorneys, and all persons who are in active concert
11 or participation with them from implementing the provisions of SB 73 that added Section 12301.07
12 of the Welfare and Institutions Code to reduce authorized hours by 20 percent for most IHSS
13 recipients, and from using functional ranks to exclude certain recipients from eligibility for IHSS
14 Care Supplements;

15 g) Award the Plaintiffs the costs of this action and reasonable attorneys' fees pursuant
16 to 20 U.S.C. § 794a; 42 U.S.C. §§ 1988, 12133, 12205; and as otherwise may be allowed by law;
17 and

18 h) All such other and further relief as the Court deems to be just and equitable.

19
20 Dated: December 1, 2011

Respectfully Submitted,

21
22 By:

/s/ Melinda Bird

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