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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

1 I.N., a minor, by and through her mother
2 and Guardian ad Litem, Zarinah F., and
3 J.B., a minor, by and through his mother
4 and Guardian ad Litem, Alisa B.,

5 Plaintiffs,

6 v.

7 JENNIFER KENT, Director of the
8 Department of Health Care Services, and
9 STATE OF CALIFORNIA DEPARTMENT
10 OF HEALTH CARE SERVICES,

11 Defendants.

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CLASS ACTION

3:18-cv-03099 WHA

SETTLEMENT AGREEMENT

Judge: The Hon. William Alsup

Action Filed: May 24, 2018

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1 This Settlement Agreement fully and finally resolves all claims in *I.N. et al., v. Kent, et al.*,
2 Northern District Case No. 3:18-cv-03099 WHA. This Settlement Agreement is made by and
3 among Plaintiffs I.N., a minor, by and through her mother and Guardian ad Litem, Zarinah F., and
4 J.B., a minor, by and through his mother and Guardian ad Litem, Alisa B., and Defendants
5 Jennifer Kent, in her official capacity as Director of the Department of Health Care Services
6 (DHCS), and DHCS (collectively "Parties").

7 I. DEFINITIONS

8 For purposes of this Settlement Agreement only, the following terms are defined as follows:

9 1. "Case Management Services" means those services furnished to assist individuals
10 eligible under the Medi-Cal State plan who reside in a community setting or are transitioning to a
11 community setting, in gaining access to needed medical, social, education, and other services in
12 accordance with 42 Code of Federal Regulations (CFR) sections 441.18 and 440.169. The
13 assistance that case managers provide in assisting eligible individuals is set forth in 42 CFR
14 section 440.169(d) and (e), and 22 California Code of Regulations (CCR) section 51184(d), (g)
15 and (h).

16 2. "EPSDT services" means Early and Periodic Screening, Diagnostic and Treatment
17 services, a benefit of the State's Medi-Cal program that provides comprehensive, preventative,
18 diagnostic, and treatment services to eligible children under the age of 21, as specified in section
19 1905(r) of the Social Security Act. (42 U.S.C. §§ 1396a(a)(10)(A), 1396a(a)(43), 1396d(a)(4)(B),
20 1396d(r).)

21 3. "Private Duty Nursing" means nursing services provided in a class member's
22 home by a registered nurse or a licensed practical nurse, under the direction of a class member's
23 physician, to a class member who requires more individual and continuous care than is available
24 from a visiting nurse. (42 CFR. § 440.80.)

25 4. "Waiver Agency" means an agency contracted with DHCS to provide
26 administrative and Comprehensive Care Management services pursuant to and as defined by the
27 Home and Community-Based Alternatives (HCBA) Waiver under 42 U.S.C. section 1396n(c).
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1 5. “Managed Care Plan” means a health plan that contracts with DHCS to provide an
2 organized network of providers to class members participating in Medi-Cal Managed Care.

3 6. “California Children’s Services” (CCS) refers to a program offered in every
4 county in California that provides services to children under the age of 21 with diseases or health
5 problems enumerated in California Code of Regulations, Title 22 sections 41515.1 through
6 41518.9, who meet all the CCS program requirements for eligibility.

7 7. “Date of Execution” means the date this Settlement Agreement is fully executed
8 by all parties.

9 8. “Effective Date of Settlement” means 31 days following final approval of the
10 Settlement Agreement pursuant to Federal Rule of Civil Procedure, Rule 23(e).

11 9. “Whole Child Model Program” means the program authorized by California
12 Welfare and Institutions Code section 14094.5, which authorizes DHCS to incorporate CCS
13 covered services for Medi-Cal eligible CCS children and youth into Medi-Cal Managed Care Plan
14 contracts.

15 10. “Home Health Agency” as defined in Health and Safety Code section 1727(a) and
16 used herein, means a public or private organization licensed by the State which provides skilled
17 nursing services as defined in Health and Safety Code section 1727(b), to persons in their place of
18 residence.

19 11. “Individual Nurse Provider” or “INP” means a Medi-Cal enrolled Licensed
20 Vocational Nurse or Registered Nurse who independently provides Private Duty Nursing services
21 in the home to Medi-Cal beneficiaries.

22 12. “Home and Community Based Alternatives Waiver” or “HCBA Waiver”
23 (formerly known as the Nursing Facility / Acute Hospital Waiver) refers to one of California’s
24 Medicaid Home and Community-Based Services Waiver programs authorized under 42 U.S.C.
25 section 1396n(c). The HCBA Waiver provides case management services and authorization of
26 home-based Waiver services to persons at risk for nursing home or other institutional placement.
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II. RECITALS

13. Plaintiffs I.N. and J.B. are children under the age of 21 residing in California who are EPSDT eligible beneficiaries of Medi-Cal, and for whom Private Duty Nursing services under Medi-Cal have been approved.

14. For purposes of this Settlement Agreement only, Defendants agree that Plaintiffs I.N. and J.B. are adequate representatives of the class defined in Paragraph 20 below.

15. Defendants are Jennifer Kent, sued in her official capacity as Director of DHCS, and DHCS, a department within the California Health and Human Services Agency that finances and administers a number of individual health care service delivery programs, including the State's Medicaid program, Medi-Cal.

16. On May 24, 2018, Plaintiffs filed their Complaint for Injunctive and Declaratory Relief (ECF No. 1). On August 8, 2018, Plaintiffs filed a First Amended Complaint for Injunctive and Declaratory Relief (ECF No. 45), which is the operative complaint in this action.

17. Plaintiffs' action seeks declaratory and injunctive relief to enforce Plaintiffs' and class members' rights under the EPSDT and reasonable promptness mandate of Title XIX of the Social Security Act (Medicaid Act); the Americans with Disabilities Act (ADA), 42 U.S.C. section 12132; and Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. section 794(a).

18. The Parties recognize the inherent uncertainty in litigation, and the time and resources necessary to litigate the issues raised in this case and other similar cases. The Parties desire to fully and finally resolve and settle this case.

19. The Parties have engaged in extensive settlement negotiations supervised by Magistrate Judge Jacqueline Corley, including settlement conferences held on November 2, 2018, November 30, 2018, December 21, 2018, and January 22, 2019.

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III. TERMS OF SETTLEMENT

20. The Class Definition

The parties agree that the class will consist of:

All Medi-Cal beneficiaries who are EPSDT eligible and for whom Medi-Cal Private Duty Nursing services have been approved.

21. Managed Care Plan All Plan Letters

a. Within 90 days of the Effective Date of Settlement, Defendants shall publish for public comment an All Plan Letter to all Managed Care Plans. Within 90 days of the conclusion of final comment period, Defendants shall issue the All Plan Letter to all Managed Care Plans. The All Plan Letter shall include:

- i. A statement that Managed Care Plans are required to provide Case Management Services as set forth in their respective Medi-Cal contracts to all class members enrolled in their Plans, including, upon a class member's request, Case Management Services to arrange for all approved Private Duty Nursing services desired by the class member, even when the Plan is not financially responsible for paying for the approved Private Duty Nursing services.
- ii. A statement that, in meeting the obligations set forth above in Paragraph 21.a.i, Managed Care Plans shall use one or more Home Health Agencies, Individual Nurse Providers, or any combination thereof.
- iii. A statement that the Managed Care Plan's obligations to enrolled class members who request Case Management Services for their approved Private Duty Nursing services include, but are not limited to:
 - A. providing class members with information about the number of Private Duty Nursing hours that they are approved to receive;
 - B. contacting enrolled Home Health Agencies and enrolled Individual Nurse Providers to seek approved Private Duty Nursing services on the class member's behalf;

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- C. identifying and assisting potentially eligible Home Health Agencies and Individual Nurse Providers with navigating the process of enrolling to be a Medi-Cal provider;
- D. working with Home Health Agencies and enrolled Individual Nurse Providers to jointly provide Private Duty Nursing services to a class member as needed.

- iv. A requirement that the Managed Care Plan issue new or revised policies and procedures that comply with the All Plan Letter, and provide copies of such policies and procedures to DHCS for review and approval.
- v. A requirement that Managed Care Plans issue a notice to enrolled class members for whom the Plan has approved Private Duty Nursing services that explains that the Plan has primary responsibility for Case Management of Private Duty Nursing services. The notice shall include a description of the Case Management Services available to class members as set forth in this Settlement Agreement and an explanation of how to access those services. The notice shall include a statement that class members may utilize a Managed Care Plan's existing grievance procedures to address difficulties in receiving Private Duty Nursing services or their dissatisfaction with their Case Management Services, or file a Medi-Cal fair hearing as provided by law, or email DHCS directly at EPSDT@dhcs.ca.gov. The notice shall also include a statement that if class members have questions about their legal rights regarding Private Duty Nursing services, they may contact Disability Rights California at (888) 852-9241.

- b. Compliance with the requirement to provide Case Management Services as described in this Settlement Agreement will be part of DHCS's auditing of Managed Care Plans beginning the next audit cycle after the All Plan Letter is released, as determined by

1 DHCS. A Plan's failure to comply may result in a corrective action plan and/or monetary
2 penalties as provided for under the terms of the Managed Care Plan's contract and any applicable
3 state or federal statutes and regulations, including but not limited to 22 C.C.R. sections 53350,
4 53352, and 53860.

5 22. CCS Numbered Letters

6 a. Within 90 days of the date of the Effective Date of Settlement, Defendants
7 will publish a CCS "Numbered Letter" for public comment. Within 90 days of the conclusion of
8 the final comment period, Defendants will issue the Numbered Letter to all County CCS (CCS)
9 Administrators. The Numbered Letter shall include:

- 10 i. A statement that, in addition to existing obligations, all county CCS
11 programs are required to provide, upon a CCS eligible class member's
12 request, Case Management Services to arrange for all approved Private
13 Duty Nursing services desired by the class member.
- 14 ii. A statement that, in meeting the obligations set forth above in Paragraph
15 22.a.i, county CCS programs shall use one or more Home Health
16 Agencies, Individual Nurse Providers, or any combination thereof.
- 17 iii. A statement that the Case Management Services include, but are not
18 limited to:
 - 19 A. providing class members with information about the number of
20 Private Duty Nursing hours that they are approved to receive;
 - 21 B. contacting enrolled Home Health Agencies and/or enrolled
22 Individual Nurse Providers to seek approved Private Duty Nursing
23 services on the class member's behalf;
 - 24 C. identifying and assisting potentially eligible Home Health
25 Agencies and Individual Nurse Providers with navigating the
26 process of enrolling to be a Medi-Cal provider;

1 D. working with Home Health Agencies and enrolled Individual
2 Nurse Providers to jointly provide Private Duty Nursing services to
3 a class member as needed.

- 4 iv. A requirement that the County promulgate new or revised policies and
5 procedures to comply with the CCS Numbered Letter, and provide copies
6 of such policies and procedures to DHCS for review and approval.
- 7 v. A requirement that the County issue a notice to class members whose
8 Private Duty Nursing services are being approved by CCS explaining that
9 the County has primary responsibility for Case Management of Private
10 Duty Nursing services. The notice shall include a description of the Case
11 Management Services available to class members as set forth in this
12 Settlement Agreement and an explanation of how to access those services.
13 The notice shall also explain that if a class member is also enrolled in a
14 Managed Care Plan, that class member may also request Case
15 Management Services from the Plan. The notice shall include a statement
16 that class members may file grievances with their CCS County Programs
17 to address difficulties in receiving Private Duty Nursing services or their
18 dissatisfaction with Case Management Services or Private Duty Nursing
19 services, or file a Medi-Cal fair hearing as provided by law, or email
20 DHCS directly at EPSDT@dhcs.ca.gov. The notice shall also include a
21 statement that if class members have questions about their legal rights
22 regarding Private Duty Nursing services, they may contact Disability
23 Rights California at (888) 852-9241.

24 23. Notice to Waiver Agencies

- 25 a. Within 90 days of the Effective Date of Settlement, Defendants shall issue
26 a notice to all Waiver Agencies. The notice shall:
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- i. Identify the clause within Waiver Agency contracts that obligates Waiver Agencies to provide Comprehensive Care Management Services, as defined in the HCBA Waiver, including, upon the class member's request, arranging for all approved Private Duty nursing services desired by the class member.
- ii. Include a statement that, in meeting the obligations set forth above in Paragraph 23.a.i, Waiver Agencies shall use one or more Home Health Agencies, Individual Nurse Providers, or any combination thereof.
- iii. Provide a statement that Comprehensive Care Management Services include, but are not limited to:
 - A. requesting from DHCS and, upon receipt, providing class members with information about the number of Private Duty Nursing hours that they are approved to receive;
 - B. contacting enrolled Home Health Agencies and enrolled Individual Nurse Providers to seek Private Duty Nursing services on the class member's behalf, if the class member has been approved to receive Private Duty Nursing services as an EPSDT benefit;
 - C. identifying and assisting potentially eligible Home Health Agencies and Individual Nurse Providers with navigating the process of enrolling to be a Medi-Cal provider;
 - D. working with Home Health Agencies and enrolled Individual Nurse Providers to jointly provide Private Duty Nursing services to a class member as needed.
- iv. Require that the Waiver Agency promulgate new or revised policies and procedures that result from this notice, and provide copies of such policies and procedures to DHCS for review and approval.

- 1 v. Require that the Waiver Agency issue a notice to class members who are
2 participants in the HCBA Waiver, and who are not enrolled in CCS or a
3 Managed Care Plan, fully explaining their rights regarding receipt of
4 Comprehensive Care Management Services through the Waiver Agency,
5 including a description of the Comprehensive Care Management Services
6 available to class members as set forth in this Settlement Agreement and
7 explanation of how to access those services. The notice shall include a
8 statement that class members may file grievances with their Waiver
9 Agency to address their dissatisfaction with Comprehensive Care
10 Management Services, or file a Medi-Cal fair hearing as provided by law,
11 or email DHCS directly at EPSDT@dhcs.ca.gov. The notice shall also
12 include a statement that if class members have questions about their legal
13 rights regarding Private Duty Nursing services, they may contact
14 Disability Rights California at (888) 852-9241.

15 24. Designation of Primary Case Management Entity for Approved Private Duty
16 Nursing Services

- 17 a. For a class member enrolled in a Managed Care Plan, including a Whole
18 Child Model Program, where the Managed Care Plan has approved the class
19 member's Private Duty Nursing services, the Managed Care Plan has
20 primary responsibility to provide Case Management for approved Private
21 Duty Nursing services.
- 22 b. For a class member for whom CCS has approved Private Duty Nursing
23 Services for treatment of a CCS condition, the CCS Program has primary
24 responsibility to provide Case Management for approved Private Duty
25 Nursing services.
- 26 c. For a class member who receives Private Duty Nursing services not
27 approved by a Managed Care Plan or CCS, and who is also a recipient of
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1 Medi-Cal benefits through the Home and Community Based Alternatives
2 Waiver, the Waiver Agency has primary responsibility to provide Case
3 Management Services for approved Private Duty Nursing services.

- 4 d. For a class member who receives Private Duty Nursing through Medi-Cal
5 on a fee-for-service basis, but is not a participant in CCS, a Managed Care
6 Plan or the HCBA Waiver, providers shall be permitted to bill Medi-Cal for
7 case management for approved Private Duty Nursing services. Within 180
8 days of the Effective Date of Settlement, Defendants will publish a Provider
9 News Flash (bulletin) advising providers that they are permitted to bill
10 Medi-Cal for case management for approved Private Duty Nursing for a
11 class member who receives Medi-Cal through the Fee-For-Service Medi-
12 Cal delivery model.

13 25. Regardless of which Medi-Cal program entity has primary responsibility for
14 providing Case Management for the approved Private Duty Nursing services, the class member
15 and/or the class member's personal representative may contact any Medi-Cal program entity that
16 the class member is enrolled in (which may be a Managed Care Plan, CCS, or the Home and
17 Community Based Alternatives Waiver Agency) to request Case Management for Private Duty
18 Nursing services. The contacted Medi-Cal program entity must then provide Case Management
19 Services to the class member as set forth in this Settlement Agreement and work collaboratively
20 with the Medi-Cal program entity primarily responsible for Case Management, except where a
21 class member has opted to self-direct his or her own care by choosing the non-CCS, non-Waiver
22 fee-for-service Medi-Cal delivery model.

23 26. Seeking Assistance from DHCS

24 The DHCS point of contact for questions or concerns regarding the Case Management of
25 Private Duty Nursing services, regardless of service delivery model, will be
26 EPSDT@dhcs.ca.gov. Within five business days of receipt of an email, DHCS shall:

- 27 a. Forward the message to the appropriate delivery system program;

1 b. Respond to the sender, acknowledge receipt of the message, provide the
2 contact information for the appropriate delivery system program, describe any action taken in
3 response to the inquiry, and notify the sender that, if the issue is not resolved, that the sender
4 should notify DHCS. If the sender notifies DHCS that the issue is not resolved, DHCS shall take
5 other actions DHCS deems appropriate to assist the sender to resolve the issue.

6 27. Providing Information to Plaintiffs

7 a. DHCS shall provide Plaintiffs' counsel with drafts of the All Plan Letters
8 to Managed Care Plans and CCS Numbered Letters, identified in Paragraphs 21 and 22 above, for
9 review prior to release for public comment. Plaintiffs' counsel shall have 10 days from the date
10 of receipt to provide comments to DHCS. DHCS shall consider Plaintiffs' counsel's comments in
11 finalizing the Letters.

12 b. DHCS shall provide Plaintiffs' counsel with a draft of the Notice to all
13 Waiver Agencies, as identified in Paragraph 23 above, for review and comment prior to issuance
14 of the final document. Plaintiffs' counsel shall have 10 days from the date of receipt to provide
15 input to DHCS. DHCS shall consider Plaintiffs' counsel's comments in finalizing the Letters.

16 c. DHCS shall provide Plaintiffs' counsel with copies of all new or revised
17 Managed Care Plan, CCS, and Waiver Agency policies and procedures that DHCS approved in
18 response to the All Plan Letters, Numbered Letters and Notice to Waiver Agencies described
19 above in Paragraphs 21, 22 and 23.

20 d. Pursuant to this Settlement Agreement, DHCS shall:

- 21 i. Make publicly available the results of DHCS audits of
22 Managed Care Plans for compliance with the Case
23 Management Services provisions in the Settlement Agreement
24 pursuant to Paragraph 21.b of the Settlement Agreement,
25 including Closed Corrective Action Plans;
26 ii. On a quarterly basis for the 12 months following final approval
27 of the Settlement Agreement, provide Plaintiffs' counsel with
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1 aggregate data regarding email communications to
2 EPSDT@dhcs.ca.gov that concern Private Duty Nursing
3 services for EPSDT beneficiaries, including the number of
4 inquiries received, the number of class members those inquiries
5 concern, an assessment of the nature of the inquiries by
6 categories to be developed by DHCS, and the delivery systems
7 the inquiries are referred to;

8 iii. Meet with class counsel, as designated in Paragraph 33.a of the
9 Settlement Agreement by telephone, once following the second
10 quarterly report required by Paragraph 27.d.ii, and once
11 following the third quarterly report required by Paragraph
12 27.d.ii. In addition, Plaintiffs' counsel may contact
13 Defendants' counsel at the Office of the Attorney General if
14 questions or concerns regarding implementation of the
15 Settlement Agreement arise.

16 28. Specific Relief for Named Plaintiffs

17 DHCS shall expedite the assumption of responsibility by named Plaintiffs' respective
18 delivery systems for Case Management of their approved Private Duty Nursing services. Until
19 the appropriate entity assumes responsibility pursuant to this Paragraph, Kevin Donohue, Senior
20 Assistant Chief Counsel, or his designee, shall serve as a point of contact, who will be responsible
21 for working with named Plaintiffs to resolve issues and questions related to the authorization
22 and/or staffing of their Private Duty Nursing Services. The DHCS point of contact shall respond
23 to issues or questions from Plaintiffs within 5 business days of a request for assistance.

24 29. Attorneys' Fees and Costs

25 Plaintiffs will seek, and Defendants agree not to oppose, Plaintiffs' request to the Court
26 for \$435,000 for attorneys' fees and costs incurred by Plaintiffs in litigating this lawsuit. Upon
27 service of an order awarding fees, Defendants agree to seek an appropriation and budget authority
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1 for the \$435,000 amount during the next available budget cycle, within the Governor's Proposed
2 Budget Process for the applicable State Fiscal Year. After DHCS obtains an appropriation or
3 budget authority, as applicable, and once the funds are available to be processed, DHCS agrees to
4 submit payment in the amount of \$435,000 to Disability Rights California. Plaintiffs have
5 requested that Defendants shall make payment by check payable to Disability Rights
6 California. Within 15 days of the Court's order granting fees and costs, Plaintiffs' counsel will
7 complete and return to Defendants the form entitled "Payee Data Record" (standard form
8 204), that gives the name, address, and tax identification number of Disability Rights California
9 for tax reporting purposes. If payment is not made within 90 days of the effective date of the
10 appropriation or budget authority obtained by DHCS, whichever is sooner, DHCS shall be
11 responsible to pay interest on the payment, pursuant to Civil Code section 3287, subdivision
12 (c), from 90 days after the effective date of the appropriation or budget authority obtained by
13 DHCS, as applicable, until the date payment is rendered in full. Plaintiffs agree that any payment
14 pursuant to this paragraph is contingent upon DHCS obtaining the necessary appropriation and
15 budget authority. Plaintiffs agree that the payment of the amount ordered by the Court shall
16 constitute full and complete satisfaction of all attorneys' fees and costs arising out of this lawsuit,
17 and upon receipt of this payment, Plaintiffs release Defendants from any further liability for
18 Plaintiffs' attorneys' fees and costs.

19 IV. RELEASE

20 30. Upon final approval of this Settlement Agreement, pursuant to Federal Rule of
21 Civil Procedure 23(e), individual named Plaintiffs I.N. and J.B. hereby forever and fully release
22 any and all claims, damages, liabilities, rights, and complaints as set forth or asserted in the
23 Notice of Intent to Sue dated November 9, 2017, the Complaint, and the First Amended
24 Complaint, against Defendants Jennifer Kent, in her official capacity as director of DHCS, and
25 DHCS, up to and including the execution date of this Settlement Agreement. Further, upon final
26 approval of this Settlement Agreement pursuant to Federal Rule of Civil Procedure 23(e), class
27 members, forever and fully release any and all claims, either in law or equity, set forth in the
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1 Complaint and First Amended Complaint, against Defendants Jennifer Kent, in her official
2 capacity as director of DHCS, and DHCS, up to and including the execution date of this
3 Settlement Agreement.

4 31. The terms in this Settlement Agreement that do not explicitly state an expiration
5 date or event are intended to continue unless and until new law provides otherwise.

6 32. Upon final approval of this Settlement Agreement, individual Named Plaintiffs I.N.
7 and J.B. and class members agree not to file or prosecute any legal action or proceeding based on,
8 or arising out of, any of the claims released by Paragraph 30. The Settlement Agreement shall not
9 limit or broaden the entitlement to services, including Individual Named Plaintiff I.N. and J.B.'s
10 right, or the rights of the members of the Class, as defined in Paragraph 20 of this Settlement
11 Agreement, to request a Medi-Cal fair hearing based on the denial or modification of services,
12 including Private Duty Nursing services, or restructure the provision of services to individuals
13 under Medi-Cal, the Medicaid Act, the Medicaid State Plan, or any other provision of state or
14 federal law.

15 V. SETTLEMENT PROCEDURES

16 33. Joint Application for Preliminary Approval

17 a. Solely for the purpose of effectuating this Settlement Agreement, and
18 subject to Court approval, the Parties hereby stipulate to the Settlement Class as defined in
19 Paragraph 20 of the Settlement Agreement, and to the appointment by the Court of class counsel
20 for purposes of implementing and monitoring this Agreement.

21 b. The parties will jointly prepare an application for Preliminary Approval
22 with the Court and take all other steps necessary to request a fairness hearing pursuant to Rule
23 23(e) of the Federal Rules of Civil Procedure, and to seek the Court's preliminary approval of the
24 Settlement Agreement.

25 c. If the Court withholds its preliminary approval of this Settlement
26 Agreement or the settlement for any reason, or if any motions or appeals are filed by third parties
27 prior to court approval, the Parties shall meet and confer to determine whether this Settlement
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1 Agreement can be amended or modified in a manner so as to secure the Court's approval. If this
2 is not attainable, this Settlement Agreement shall be null and void.

3 34. Notice to Class

4 Upon the Court's granting of preliminary approval of the settlement and the Settlement
5 Agreement, the Parties will provide notice to the Settlement Class in a manner agreed upon by the
6 Parties and ordered by the Court pursuant to Federal Rule of Civil Procedure 23(e) and the
7 Northern District's "Procedural Guidance for Class Action Settlement" updated November 1,
8 2018 and December 5, 2018. Pursuant to this Rule and Guidance, the notice to the Settlement
9 Class shall describe the Settlement Agreement, the process for filing written objections, and shall
10 include the date for the fairness hearing. The notice shall be sent by Defendants, who shall
11 consult with Plaintiffs' counsel prior to distribution of the notice to the Settlement Class.

12 Additionally:

13 a. All notices will be in plain language, and will be available in the threshold
14 and concentration standard languages identified by DHCS pursuant to subdivision (b) of section
15 14029.91 of the California Welfare and Institutions Code.

16 b. The notice of proposed settlement will be available in alternative formats
17 upon request, including large print, audio, and Braille, as feasible.

18 c. DHCS and Disability Rights California will post the notice of proposed
19 settlement on their respective websites.

20 35. Joint Application for Final Approval

21 The parties will jointly prepare an application for Final Approval with the Court pursuant to
22 Rule 23(e) of the Federal Rules of Civil Procedure, and seek the Court's final approval of the
23 Settlement Agreement.

24 36. Dismissal & Continued Jurisdiction

25 Within 30 days of the Effective Date of the Settlement Agreement, the parties shall jointly
26 ask the Court to dismiss this action and to retain jurisdiction over this matter for the purpose of
27 ensuring compliance with the terms of the Settlement Agreement. The parties agree to request
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1 that the Court retain jurisdiction until 9 months after the date on which the All Plan Letter
2 required by Paragraph 21.a, the CCS Numbered Letter required by Paragraph 22.a, and the Notice
3 to all Waiver Agencies required by Paragraph 23.a, have all been issued by the Defendants, after
4 which time the Court's jurisdiction will expire. However, nothing shall prevent the Parties from
5 agreeing to, or the Court ordering, continued performance by Defendants beyond this date if
6 Defendants have failed to perform as required prior to that date.

7 37. Dispute Resolution Process

8 Before filing any motion or lawsuit to enforce the terms of this Settlement Agreement, the
9 Party seeking relief shall contact counsel for the opposing party to discuss thoroughly, preferably
10 in person, the substance of the contemplated motion and any potential resolution. If either party
11 determines that the dispute cannot be resolved informally, the parties shall complete at least one
12 conference with Magistrate Judge Jacqueline Corley, her designee, or another mutually agreeable
13 mediator. If the conference is not successful, then any motion to enforce shall not be filed until
14 thirty (30) days after the conference. Notwithstanding the above, if either party believes that
15 irreparable harm will occur to it by pursuing the process set forth above, the party must contact
16 Magistrate Judge Corley and confer with her or her designee before filing any motion or lawsuit
17 to enforce the terms of this Settlement Agreement. This dispute resolution process is separate
18 from and in addition to due process grievance and hearing procedures, available for resolution of
19 individual disputes regarding eligibility and/or appropriateness of services and benefits based on
20 need.

21 Notice required in the paragraph above shall be given by delivering it, in person or by
22 United States certified first class mail, and via electronic mail, to the parties' counsel of record in
23 this litigation, as follows:

24 For Defendants Department of Health Care Services and Jennifer Kent:

25 Carolyn O. Tsai
26 ATTORNEY GENERAL'S OFFICE
27 455 Golden Gate Avenue, Suite 11000
28 San Francisco, CA 94102-7004
 Attorneys for Defendants
 Carolyn.Tsai@doj.ca.gov

1
2 For Plaintiffs:

3 William Leiner
4 DISABILITY RIGHTS CALIFORNIA
5 1330 Broadway, Suite 500
6 Oakland, CA 94612
7 Attorneys for Plaintiffs
8 william.leiner@disabilityrightsca.org

9
10
11 **VI. ADDITIONAL PROVISIONS**

12 38. This is a settlement of disputed claims, and the Parties agree that, in entering into
13 this Settlement Agreement, neither concedes its position. Nothing in this Settlement Agreement
14 shall be interpreted or construed by a court as an admission by any party. This Settlement
15 Agreement does not constitute an adjudication or finding on the merits of the claims alleged in
16 the Plaintiffs' pleadings.

17 39. The interpretation and enforcement of this Settlement Agreement is governed by
18 federal law.

19 40. It is further agreed by and between and among the Parties that this document
20 constitutes the sole, entire, and complete agreement between the parties to resolve the claims set
21 forth in this action. The terms set forth in this Settlement Agreement constitute the entire
22 Settlement Agreement and are not subject to modification or waiver except by a writing signed by
23 all of the Parties through their respective counsel.

24 41. This Settlement Agreement may be executed through the use of two or more
25 counterparts, each of which will be deemed an original, and together shall constitute one written
26 instrument. Photographic or facsimile copies of signed counterparts may be used in lieu of the
27 originals for any purpose and shall have the same force and effect as an original ink signature.

28 42. This Settlement Agreement shall be signed by each of the Parties and their
counsel. The undersigned represent that they have the full power and authority to execute this
Settlement Agreement and to bind the parties.

1 43. The Parties represent that they had the opportunity to consult and rely upon the
2 legal advice of their choice, and that the terms of this Settlement Agreement have been read and
3 the consequences (including risks, complications, and costs) have been completely understood by
4 each party and explained by their respective counsel. The parties further acknowledge that, in
5 executing this Settlement Agreement, they have not relied on any inducements, promises or
6 representations other than those stated in the Settlement Agreement.

7 44. This Settlement Agreement encompass the entire agreement of the Parties, and
8 supersedes all previous understandings and agreements between the Parties, whether oral or
9 written. No prior versions of this Settlement Agreement, or written proposals of any party, are
10 admissible in any courts or for any purpose, including, but not limited to, use to interpret the
11 meaning of this Settlement Agreement.

12 45. Should any provision of this Settlement Agreement be held invalid or illegal, such
13 illegality shall not invalidate the whole of this Settlement Agreement, but the Settlement
14 Agreement shall be construed as if it did not contain the illegal party, and the rights and
15 obligations of the parties shall be construed and enforced accordingly.

16 46. None of the Parties shall be considered to be the drafter of this Settlement
17 Agreement for the purpose of any statute, case law, or rule of interpretation or construction that
18 would or might cause any provision to be construed against the drafter. This Settlement
19 Agreement was drafted with substantial input by all Parties and their counsel, and no reliance was
20 placed on any representations other than those contained herein.

21 47. To the extent the applicable law, legal requirements, or circumstances change,
22 such that any settlement term is rendered void or unenforceable, the law shall control over the
23 settlement terms.

24 48. Nothing in this Settlement Agreement shall affect the rights of class members with
25 respect to other Medi-Cal benefits to which they may be entitled.

26
27 **IT IS SO STIPULATED AND AGREED.**
28

1 DATED: _____

DATED: _____


2
3 ALISA B., Guardian ad Litem for
Plaintiff J.B.

ZARINAH F., Guardian ad Litem
for Plaintiff I.N.

5
6 DATED: 2/28/19
7 Jared Goldman for

DATED: 2/28/19

8 
Defendant JENNIFER KENT
9 Director of the California Department of
Health Care Services

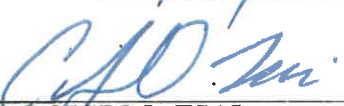

Defendant CALIFORNIA
DEPARTMENT OF
HEALTH CARE SERVICES

10 DATED: _____

11
12 WILLIAM LEINER
13 Attorney for Plaintiffs

14 APPROVED AS TO FORM:

15
16 DATED: 2/28/19

17 
18 CAROLYN O. TSAI
19 Attorney for Defendants

1 DATED: 2/28/19

2 

3 ALISA B., Guardian ad Litem for
4 Plaintiff J.B.

DATED: _____

ZARINAH F, Guardian ad Litem
for Plaintiff I.N.

6 DATED: _____

DATED: _____

8 Defendant JENNIFER KENT
9 Director of the California Department of
Health Care Services

Defendant CALIFORNIA
DEPARTMENT OF
HEALTH CARE SERVICES

10 DATED: 2/24/19

11 

12 WILLIAM LEINER
13 Attorney for Plaintiffs

14 APPROVED AS TO FORM:


15 DATED: _____

18 CAROLYN O. TSAI
19 Attorney for Defendants

1 DATED: _____

DATED: 2/28/2019

2 ALISA B., Guardian ad Litem for
3 Plaintiff J.B.


ZARINAH F, Guardian ad Litem
for Plaintiff I.N.

4
5 DATED: _____

DATED: _____

7
8 Defendant JENNIFER KENT
9 Director of the California Department of
Health Care Services

Defendant CALIFORNIA
DEPARTMENT OF
HEALTH CARE SERVICES

10 DATED: _____

11
12 WILLIAM LEINER
13 Attorney for Plaintiffs

14 **APPROVED AS TO FORM:**

15 DATED: _____

17
18 CAROLYN O. TSAI
Attorney for Defendants