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9 Plaintiffs Managed Pharmacy Care; Independent Living Center
of Southern California, Inc.; Gerald Shapiro, Pharm.D., dba
10 Uptown Pharmacy & Gift Shoppe; Sharon Steen, dba Central
Pharmacy; and Tran Pharmacy, Inc., dba Tran Pharmacy
11

12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION

15 MANAGED PHARMACY CARE, a
California corporation; INDEPENDENT LIVING
CENTER OF SOUTHERN CALIFORNIA, INC.,
16 a California corporation; GERALD SHAPIRO,
Pharm.D., doing business as Uptown Pharmacy &
17 Gift Shoppe; SHARON STEEN, doing business as
Central Pharmacy; and TRAN PHARMACY, INC.,
18 a California corporation,

19 Plaintiffs,

20 -vs.-

21 DAVID MAXWELL-JOLLY, Director of
Department of Health Care Services of the
22 State of California,

23 Defendant.

FILED
2009 JAN 16 PM 12:23
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

No.
CV09-0382 SIO
PIWk

1 The Plaintiffs complain of the defendant DAVID MAXWELL-JOLLY,
2 Director of Department of Health Care Services of the State of California, and for
3 claims for relief allege:

4 **INTRODUCTION**

5 1. Plaintiffs challenge the validity of the 5% reduction, under Assembly Bill
6 (“AB”) 1183, in reimbursement rates to providers of Pharmacy services to beneficiaries
7 of the Medi-Cal fee-for-service program, for services furnished on or after March 1,
8 2009, which Defendant David Maxwell-Jolly, Director of the California Department of
9 Health Care Services is responsible for implementing under AB 1183, and Welf. & Inst.
Code 14105.

10 **Jurisdiction and venue**

11 2. The Court has jurisdiction under 28 U.S.C. § 1331. *Shaw v. Delta Air*
12 *Lines, Inc.*, 463 U.S. 85, 96 n.4 (1983).

13 3. The actions of the Defendant complained were and will be done in all
14 parts of the state of California, including the County of Los Angeles. The injuries which
15 are inflicted and threatened which are complained of, to Plaintiffs, the members of
16 Managed Care Pharmacy, and their patients in the Medi-Cal fee-for-service program,
17 have occurred and are threatened to occur in all parts of the state of California, including
18 the County of Los Angeles. The Defendant and the California Attorney General has an
office in the County of Los Angeles.

19 **Parties**

20 4. The plaintiff MANAGED PHARMACY CARE (“MPC”) is a California
21 corporation, whose principal place of business is at Lake Arrowhead, California, and
22 does business throughout California, including the County of Los Angeles, California.
23 MPC has 284 pharmacy members throughout California, who are pharmacy providers in

1 the Medi-Cal fee-for-service program.

2 5. (a) The plaintiff INDEPENDENT LIVING CENTER OF SOUTHERN
3 CALIFORNIA, INC. ("ILCSCal") is a nonprofit California corporation which was duly
4 organized and incorporated in California on July 25, 1977 pursuant to the General
5 Nonprofit Corporation Law of the State of California.

6 (b) ILCSCal has its principal office and place of business in, and does
7 business in the County of Los Angeles, California.

8 6. (a) The plaintiff GERALD SHAPIRO, Pharm.D., is a duly licensed
9 registered pharmacist with License No. 24377, who owns and operates a duly licensed
10 retail pharmacy under the fictitious name of Uptown Pharmacy & Gift Shoppe, under
11 retail pharmacy license No. PHY 41615, in the City of Los Angeles, California.

12 (b) The plaintiff SHAPIRO's pharmacy participates in the Medi-Cal fee-
13 for-service program and also in Medi-Cal managed care plans, under Medi-Cal provider
14 identification No. PHA 416150.

15 7. (a) The plaintiff SHARON STEEN is an individual who is a copartner in a
16 copartnership which owns and operates a licensed retail pharmacy, under the fictitious
17 name Central Pharmacy, under retail pharmacy license No. PHY 38051, in the City of
18 Santa Monica, California.

19 (b) The plaintiff STEEN's pharmacy participates in the Medi-Cal fee-for-
20 service program and also in Medi-Cal managed care plans, under Medi-Cal provider
21 identification No. PHA 380510.

22 8. (a) The Plaintiff TRAN PHARMACY, INC. is California
23 corporation which owns and operates a duly licensed retail pharmacy under the fictitious
name of Tran Pharmacy, under retail pharmacy license No. PHY 43647, in Garden
Grove, California.

1 (b) The TRAN PHARMACY, INC.'s pharmacy participates in the Medi-
2 Cal fee-for-service program and also in Medi-Cal managed care plans, under Medi-Cal
3 provider identification No. PHA 436470.

4 9. (a) The Department of Health Care Services ("Department") is a
5 department of the State of California. The Department administers the Medi-Cal
6 program under § 14000 et seq. California Welfare and Institutions ("Welf. & Inst.")
7 Code.

8 (b) The defendant DAVID MAXWELL-JOLLY, ("Director"), is the
9 director of the Department. The Director is exclusively empowered by §§ 14100.1 and
10 14105 Welf. & Inst. Code to set all policies, rules and regulations in the Medi-Cal
11 program, including all rates payable to Medi-Cal providers. The Director has an office
12 in the County of Los Angeles. The Director is sued in his official capacity, only.

13 10. Plaintiffs are citizens and residents of the State of California, and sue
14 herein on their own behalf, in their own interest, and in the interest of the members of
15 MPC, and in the interests of the Medi-Cal patients of the Plaintiffs and the members of
16 MPC, as well as also on behalf of the public of the State of California, to procure the
17 performance of public duty by the defendant public official: namely the performance of
18 the mandatory public duty of the Director, under and pursuant to the Supremacy Clause,
19 not to injure Medi-Cal beneficiaries and their providers, including Pharmacy providers,
20 in the Medi-Cal FFS program, by implementing the federally preempted 5% Rate
21 Reduction of AB 1183, -- which aforesaid actions of the Director are preempted, under
22 the Supremacy Clause, in that the aforesaid actions violate and are hence contrary to 42
23 U.S.C. § 1396a(a)(30)(A), -- "Sec. 30A," -- including the quality and equal access
clauses of Sec. 30A.

11. Plaintiffs also sue in a prudential *jus tertii* capacity to assert their

1 interests as well as the interests of the Medi-Cal patients of the Plaintiffs and the
2 members of MPC, in the claims for relief, and Supremacy Clause preemption, which are
3 sued upon and sought in this within intervention complaint.

4 12. Plaintiffs, -- as well as the Pharmacy provider members of MPC, -- and
5 their Medi-Cal patients on behalf of whom Plaintiffs sue herein, -- also have standing
6 and a claim for relief against the Director inasmuch as each has suffered, will suffer, and
7 is threatened to suffer, concrete and irreparable injury, unless the Defendant Director is
8 restrained by an appropriate injunction from implementing the 5% Rate Reduction of
9 AB 1183, which actions are preempted under the Supremacy Clause by Sec. 30A.

10 INTRODUCTION

11 13. Medi-Cal is a major component of the "safety net" that ensures the State's
12 poor have access to health care services.

13 FIRST CLAIM FOR RELIEF

14 For injunctive relief to enjoin the Defendant to refrain from
15 implementing AB 1183 and the 5% Rate Reduction

16 14. Plaintiffs refer to and incorporate each of the allegations in the preceding
17 Paragraphs of this Complaint as if fully set forth herein.

18 LEGISLATIVE HISTORY OF ASSEMBLY BILL 1183

19 15. Assembly Bill ("AB") 1183, -- a health trailer bill to implement the budget
20 cutting decisions of the 2008-2009 Budget Bill, was enacted September 30, 2008 and
21 was chaptered as Chapter 758, Statutes 2008-2009.

22 AB 1183

23 16. AB 1183 was introduced Feb. 2, 2008 as a hazardous material bill and was
amended several times as solely a hazardous material bill. However, on September 15,
2008, the bill was amended in the Senate so as to be at once turned into a trailer bill, on
many different subjects, to enact all provisions necessary to implement the provisions of

1 the 2008-2009 Budget Bill; all without any public hearings or any hearing by any
2 committee of the Legislature; was passed shortly before midnight of the same day of
3 September 15, 2008 by the Senate; was sent to the Assembly, and was immediately
4 passed by the Assembly before 2:08 a.m. of September 16, 2008, -- all within the space
5 of a few hours, -- and was signed by the Governor and filed with the Secretary of State
6 on September 30, 2008.

6 17. By such legislative history, there were no committee hearings on AB
7 1183.

8 18. Further, there are hundreds of different health care subjects in AB 1183,
9 each of which required separate consideration by the Legislature if any reasoned
10 decision was to be made by any legislator in the Senate or the Assembly in deciding to
11 vote for or against particular provisions in the hundreds of different subjects contained
12 in the bill. AB 1183 was hence the pure product of pure logrolling, where, if any
13 member wished his or her health care provision in the multi-provisioned AB 1183 to be
14 enacted, that legislator had to accept blindly all the other provisions relating to the
15 hundreds of other subjects in the same bill.

15 19. It is a fact, and it is manifest from all the facts alleged in this First Claim
16 for Relief, that individual legislators who voted on AB 1183, and the Legislature as a
17 whole, could not and did not appropriately consider, and did not consider at all, whether
18 or not the reduced rates of the 5% Rate Reduction for pharmacy services, and the
19 reduced rates of the 5% Rate Reduction, were consistent with quality of services, or
20 consistent with equal access of beneficiaries to quality services, in the Medi-Cal FFS
21 program.

21 20. By each and all of the above facts, the action of the Legislature in
22 enacting, and the action of the Director to implement, the 5% Rate Reduction provisions
23

1 of AB 1183 were and are arbitrary, capricious, and contrary to law, (namely, contrary to
2 the quality and equal clauses of Sec. 30A, and contrary to the requirement of Sec. 30A
3 that a Medicaid rate setter consider the factors of quality and equal access of
4 beneficiaries in the course of setting new Medicaid rates for payment of providers); so
5 that the provisions of (new) Welf. & Inst. Code § 14105.191 which enacted the 5% Rate
6 Reduction in respect to Pharmacy services, effective March 1, 2009, violated and hence
7 are preempted, under the Supremacy Clause, by Sec. 30A.

8 21. Further, unless restrained by the Court by an appropriate injunction, the
9 defendant Director will implement the aforesaid 5% Rate Reduction in respect to
10 Pharmacy services providers (including members of MPC); which in turn will thereby
11 result in injury to the Plaintiffs; to the members of MPC; and to their Medi-Cal patients
12 -- which injury will foreseeably result in Pharmacy providers (including members of
13 MPC) not accepting new Medi-Cal patients, or stopping serving Medi-Cal patients at
14 all, or by reducing kinds, amounts, locations, and levels of services to Medi-Cal
15 beneficiaries, or by going out of business, so that thereby Medi-Cal beneficiaries are
16 and will be caused, and threatened to be caused, denial and reduction of access to life-
17 vital Pharmacy services and treatment in the Medi-Cal FFS program, resulting in great
18 physical suffering and injury to beneficiaries, including beneficiaries who are patients
19 of Plaintiffs and of the members of MPC; all to the irreparable injury, and threat of
20 irreparable injury, to thousands of Medi-Cal beneficiaries including the beneficiaries
21 served by Plaintiffs and the members of MPC.

22 22. Plaintiffs and the members of MPC, and their Medi-Cal patients, have no
23 administrative remedy, nor any plain, speedy, or adequate remedy whatsoever or at all,
except by this complaint in intervention for injunctive relief.

WHEREFORE, Plaintiffs pray for judgment and orders as shall hereinafter be

1 specified:

2 **SECOND CLAIM FOR RELIEF**

3 For injunctive relief to enjoin the Defendant to refrain from
4 implementing the 5% Rate Reduction of Sec. 45 of AB 1183.

5 23. Plaintiffs refer to and incorporate each of the allegations in the
6 preceding Paragraphs of this Petition as if fully set forth herein.

7 24. However, the enactment of the 5% Rate Reduction in respect to
8 Pharmacy services and providers in the Medi-Cal FFS program, of new Welf. & Inst.
9 Code § 14105.191, by Sec. 45 of AB 1183, by the Legislature was without any
10 consideration of quality and equal access as required by Sec. 30A,¹ and was without any
11 consideration of what it costs providers to perform the various services and procedures,
12 as required by Sec. 30A,² such that the State's sole purpose, and the conclusive factor,
13 in enacting the 5% Rate Reduction was to reduce the budget deficit.

14 25. Accordingly, under the standard of *Orthopaedic Hosp.*, 103 F.3d 1491, at
15 1500 (1997), the action of the Legislature to enact the aforesaid provisions of
16 §14105.191 Welf. & Inst. Code, including the 5% Rate Reduction in respect to
17 Pharmacy providers; and the policy and action of the Director to implement the 5%
18 Rate Reduction, was and is arbitrary and capricious, and contrary to and in violation of
19 the quality and access provisions of Sec. 30A.

20 26. Accordingly, by each and all of the foregoing facts alleged, new
21 § 14105.191 Welf. & Inst. Code, and the 5% Rate Reduction in respect to Pharmacy
22 providers, were and are contrary to and in violation of the quality and access provisions
23

21 ¹ *Othopaedic Hospital v. Belshe*, 103 F.3d 1491, 1500 (9th Cir.1997).

22 ²*Id.*, 103 F.3d at 1500; *Arkansas Medical Society, Inc. v. Reynolds*, 6 F.3d 519
23 (8th Cir. 1993).

1 of Sec. 30A, so as to be preempted, under the Supremacy Clause, by the quality and
2 access provisions of Sec. 30A, such that the Defendant Director is and will be acting in
3 excess of and without jurisdiction to implement § 14105.191 Welf. & Inst. Code,
4 including the 5% Rate Reduction, to Pharmacy providers, commencing March 1, 2009.

5 27. Further, unless restrained by the Court by an appropriate injunction, the
6 Defendant Director will implement the aforesaid § 14105.191 Welf. & Inst. Code, and
7 the 5% Rate Reduction in payments to Pharmacy providers, commencing March 1,
8 2009, and thereby will cause injury to Plaintiffs; the members of MPC, and their Medi-
9 Cal patients; which injury is irreparable, all, as has been hereinbefore set forth in detail
10 in the within complaint in intervention.

11 28. Plaintiffs, the members of MPC, and their Medi-Cal patients, have no
12 administrative remedy, nor any plain, speedy, or adequate remedy whatsoever or at all,
13 except by this complaint in intervention for injunctive and declaratory relief.

14 WHEREFORE, Plaintiffs prays for judgment and orders as follows:

15 A. That Plaintiffs have judgment against the Defendant DAVID
16 MAXWELL-JOLLY, Director of California Department of Health Services, (herein,
17 “Director”), and that Defendants take nothing.

18 B. That a preliminary and permanent injunction be issued to command the
19 Director DAVID MAXWELL-JOLLY to set aside his preempted policy to implement
20 § 14105.19 Welf. & Inst. Code, of AB 1183, and the 5% Rate Reduction, and, to
21 refrain from implementing the same; including but not limited to refraining from
22 reducing payments by 5 percent or by any other deduction, to pharmacy providers in the
23 Medi-Cal FFS program, for services furnished on and after March 1, 2009.

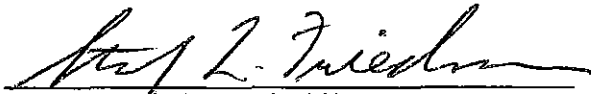
24 C. That Plaintiffs have costs of suit incurred, together with such other and

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further relief as may be just.

LYNN S. CARMAN
STANLEY L. FRIEDMAN

By: 
Attorneys for Plaintiffs