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

MIKESHA MARTINEZ, by and through her husband and next friend Carlos Martinez, LYDIA DOMINGUEZ, ALEX BROWN, by and through his mother and next friend Lisa Brown, DONNA BROWN, CHLOE LIPTON, by and through her conservator and next friend Julie Weissman-Steinbaugh, HERBERT M. MEYER, LESLIE GORDON, CHARLENE AYERS, WILLIE BEATRICE SHEPPARD, and ANDY MARTINEZ, on behalf of themselves and a class of those similarly situated; SERVICE EMPLOYEES INTERNATIONAL UNION UNITED HEALTHCARE WORKERS WEST; SERVICE EMPLOYEES INTERNATIONAL UNION UNITED LONG-TERM CARE WORKERS; SERVICE EMPLOYEES INTERNATIONAL UNION LOCAL 521; and SERVICE EMPLOYEES INTERNATIONAL UNION CALIFORNIA STATE COUNCIL,

Plaintiffs,

v.

ARNOLD SCHWARZENEGGER, Governor of the State of California; JOHN A. WAGNER, Director of the California Department of Social Services; DAVID MAXWELL-JOLLY, Director of the California Department of Health Care Services; JOHN CHIANG, California State Controller; FRESNO COUNTY; and FRESNO COUNTY IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY,

Defendants.

Case No. C 09-02306 CW

CLASS ACTION

**ADMINISTRATIVE
MOTION TO CONSIDER
WHETHER CASE
SHOULD BE RELATED
TO *V.L. v. WAGNER*, CASE
NO. C 09-04668 JCS**

Expedited Review Requested

1 Plaintiffs respectfully submit this administrative motion pursuant to Northern District Civil
2 Local Rule 3-12 to consider whether this case should be related to *V.L. v. Wagner*, Case No. C 09-
3 04668 JCS, filed October 1, 2009.

4 *V.L. v. Wagner* is related to the present case within the meaning of Local Rule 3-12(a).
5 First, the actions concern substantially the same parties. *See* Local Rule 3-12(a)(1). David
6 Maxwell-Jolly and John A. Wagner, sued in their official capacities as directors of the California
7 Department of Health Care Services and the California Department of Social Services, are
8 defendants in both cases. Furthermore, the plaintiffs in both cases are substantially the same. Both
9 cases are brought by two groups of plaintiffs: (a) low-income elderly and/or disabled individuals
10 who receive Medi-Cal In-Home Support Services (“IHSS”), who are bringing suit on behalf of
11 themselves and those similarly situated, and (b) labor organizations that represent IHSS providers
12 and are bringing suit on behalf of their members and/or affiliated labor organizations. Individual
13 named plaintiff Willie Beatrice Sheppard is a named plaintiff in both cases, as are plaintiff labor
14 organizations Service Employees International Union United Healthcare West; Service Employees
15 International Union United Long-Term Care Workers; Service Employees International Local 521;
16 and Service Employees International Union California State Council.

17 Second, it appears likely that there will be an unduly burdensome duplication of labor and
18 expense or conflicting results if *Martinez* and *V.L. v. Wagner* are conducted before different
19 Judges. *See* Local Rule 3-12(a)(2). *Martinez* and *V.L. v. Wagner* both challenge recent state action
20 to change the terms of the IHSS program. Although *Martinez* focuses on changes to the
21 compensation of IHSS workers and *V.L. v. Wagner* focuses on a changes to the eligibility
22 requirements for the IHSS program, the two cases will involve highly overlapping factual and legal
23 questions because the changes at issue in both cases would have the same effect: a substantial
24 reduction or elimination of services for thousands of IHSS participants.

25 For example, both the *Martinez* plaintiffs and the plaintiffs in *V.L. v. Wagner* allege that the
26 cuts at issue will result in the unjustified institutionalization of IHSS consumers, in violation of the
27 Americans with Disabilities Act and the Rehabilitation Act. Thus both cases will require a detailed
28 examination of the options available to IHSS consumers who lose services and whether, in fact, the

1 loss of services will result in unjustified institutionalization. In both cases, the State Defendants
2 can be expected to raise essentially identical “fundamental alteration” defenses to these claims.

3 Further, in *Martinez*, plaintiffs have alleged that reductions in IHSS providers’
4 compensation violate the federal Medicaid Act’s requirements that IHSS participants receive care
5 that is high quality, and have the same level of access to in-home care as those who can afford to
6 pay privately for such services. This claim will require detailed evidence about the needs of IHSS
7 participants, how IHSS has historically met those needs, the availability of alternatives to IHSS,
8 and the impact of a reduction of IHSS services on consumers’ health and safety. *V.L. v. Wagner*
9 will require extremely similar evidence. For example, the *V.L. v. Wagner* plaintiffs allege, among
10 other things, that the reductions in IHSS services violates the Medicaid Act’s guarantee that
11 individuals with equal needs receive equal services, and that they receive services sufficient to
12 satisfy the program’s objectives. As with the Medicaid Act claims in *Martinez*, these claims will
13 require a thorough analysis of IHSS participants’ needs, how IHSS meets those needs, alternatives
14 to IHSS, and the effect of reduction or elimination of IHSS services on consumers.

15 Additionally, in the context of the preliminary injunction briefing in *Martinez*, the Court
16 has already considered the harm to IHSS consumers that results from the loss of services. The
17 identical issue is raised in *V.L. v. Wagner*, because, as in *Martinez*, plaintiffs in that case are
18 seeking preliminary injunctive relief to prevent the irreparable harm that will result from loss of
19 IHSS services.

20 Because the cuts to IHSS services challenged in the *V.L. v. Wagner* case are scheduled for
21 implementation on November 1, 2009, and the notices to IHSS consumers informing them of their
22 loss of eligibility for IHSS services will be sent at least ten days prior, plaintiffs in that case will be
23 filing a motion for a preliminary injunction in short order. Accordingly, plaintiffs hereby
24 respectfully request that the Court expedite its review of this related case motion.

25 For the foregoing reasons, this case should be related to *V.L. v. Wagner*, Case No. Case No.
26 C 09-04668 JCS, filed on October 1, 2009.

1 Dated: October 1, 2009

Respectfully submitted,

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8 Attorneys for Plaintiffs
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