

UNITED STATES COURT OF APPEALS  
FOR THE NINTH CIRCUIT

**FILED**  
MAY 07 2010  
MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

NATIONAL ASSOCIATION OF  
CHAIN DRUG STORES and  
NATIONAL COMMUNITY  
PHARMACISTS ASSOCIATION,

Plaintiffs - Appellants,

v.

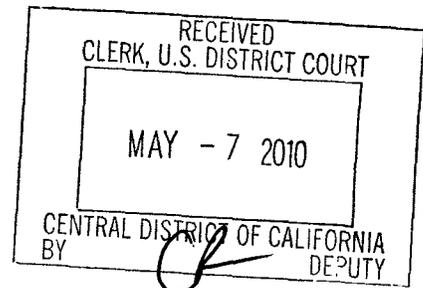
ARNOLD SCHWARZENEGGER, not  
individually, but solely in his official  
capacity as Governor of the State of  
California; et al.,

Defendants - Appellees.

No. 09-57051

D.C. No. 2:09-cv-07097-CAS-MAN  
U.S. District Court for Central  
California, Los Angeles

**MANDATE**



The judgment of this Court, entered April 15, 2010, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule  
41(a) of the Federal Rules of Appellate Procedure.

FOR THE COURT:

Molly C. Dwyer  
Clerk of Court  
/s/  
Theresa Benitez  
Deputy Clerk

**FILED**

APR 15 2010

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

NATIONAL ASSOCIATION OF CHAIN  
DRUG STORES, and the NATIONAL  
COMMUNITY PHARMACISTS  
ASSOCIATION,

Plaintiffs - Appellants,

v.

ARNOLD SCHWARZENEGGER, not  
individually, but solely in his official  
capacity as Governor of the State of  
California, KIM BELSHE, not  
individually, but solely in her official  
capacity as Secretary of the California  
Health and Human Services Agency,  
DAVID MAXWELL-JOLLY, not  
individually, but solely in his official  
capacity as Director of the California  
Department of Health Care Services, and  
THE CALIFORNIA DEPARTMENT OF  
HEALTH CARE SERVICES,

Defendants - Appellees.

No. 09-57051

D.C. No. 2:09-cv-07097-CAS-  
MAN

MEMORANDUM \*

Appeal from the United States District Court  
for the Central District of California  
Christina A. Snyder, District Judge, Presiding

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\* This disposition is not appropriate for publication and is not precedent  
except as provided by 9th Cir. R. 36-3.

Submitted April 5, 2010  
Pasadena, California

Before: KOZINSKI, Chief Judge, D.W. NELSON, Circuit Judge, and  
GERTNER,\*\* District Judge.

Appellants are not entitled to a preliminary injunction because the balance of equities and considerations of public interest weigh in the appellees' favor. The injunction that the appellants seek would require California to recalibrate its established reimbursement formula to counteract the effect of the reduction in AWP's. This, in turn, would compel California to bear the administrative burdens associated with amending its state Medicaid plan. *See* 42 C.F.R. §§ 430.12-.20. The state should not be required to take on such burdens before the district court has finally resolved the merits of the appellants' claims. Thus, regardless of the appellants' likelihood of success on the merits of their claims, they are not entitled to the preliminary injunction that they seek.<sup>1</sup> *Cf. Winter v. Natural Res. Def. Council, Inc.*, 129 S. Ct. 365, 376 (2008) (holding that a preliminary injunction that

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\*\* The Honorable Nancy Gertner, United States District Judge for the District of Massachusetts, sitting by designation.

<sup>1</sup> Whether the appellants are entitled to a permanent injunction that would require California to conduct a study to determine whether its reimbursement formula continues to accord with the factors set forth in 42 U.S.C. § 1396a(a)(30)(A) is a different question. *See Orthopaedic Hosp. v. Belshe*, 103 F.3d 1491 (9th Cir. 1997). We do not address this issue, leaving it to the district court to decide in the first instance.

interfered with the Navy's ability to conduct effective, realistic training exercises was an abuse of discretion regardless of the plaintiffs' showing of irreparable injury and likelihood of success on the merits).

**AFFIRMED.**

**United States Court of Appeals for the Ninth Circuit**

**Office of the Clerk**  
95 Seventh Street  
San Francisco, CA 94103

**Information Regarding Judgment and Post-Judgment Proceedings**  
(December 2009)

**Judgment**

- This Court has filed and entered the attached judgment in your case. Fed. R. App. P. 36. Please note the filed date on the attached decision because all of the dates described below run from that date, not from the date you receive this notice.

**Mandate (Fed. R. App. P. 41; 9th Cir. R. 41-1 & -2)**

- The mandate will issue 7 days after the expiration of the time for filing a petition for rehearing or 7 days from the denial of a petition for rehearing, unless the Court directs otherwise. To file a motion to stay the mandate, file it electronically via the appellate ECF system or, if you are a pro se litigant or an attorney with an exemption from using appellate ECF, file one original motion on paper.

**Petition for Panel Rehearing (Fed. R. App. P. 40; 9th Cir. R. 40-1)**

**Petition for Rehearing En Banc (Fed. R. App. P. 35; 9th Cir. R. 35-1 to -3)**

**(1) A. Purpose (Panel Rehearing):**

- A party should seek panel rehearing only if one or more of the following grounds exist:
  - ▶ A material point of fact or law was overlooked in the decision;
  - ▶ A change in the law occurred after the case was submitted which appears to have been overlooked by the panel; or
  - ▶ An apparent conflict with another decision of the Court was not addressed in the opinion.
- Do not file a petition for panel rehearing merely to reargue the case.

**B. Purpose (Rehearing En Banc)**

- A party should seek en banc rehearing only if one or more of the following grounds exist:

- ▶ Consideration by the full Court is necessary to secure or maintain uniformity of the Court's decisions; or
- ▶ The proceeding involves a question of exceptional importance; or
- ▶ The opinion directly conflicts with an existing opinion by another court of appeals or the Supreme Court and substantially affects a rule of national application in which there is an overriding need for national uniformity.

**(2) Deadlines for Filing:**

- A petition for rehearing may be filed within 14 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the United States or an agency or officer thereof is a party in a civil case, the time for filing a petition for rehearing is 45 days after entry of judgment. Fed. R. App. P. 40(a)(1).
- If the mandate has issued, the petition for rehearing should be accompanied by a motion to recall the mandate.
- See Advisory Note to 9th Cir. R. 40-1 (petitions must be received on the due date).
- An order to publish a previously unpublished memorandum disposition extends the time to file a petition for rehearing to 14 days after the date of the order of publication or, in all civil cases in which the United States or an agency or officer thereof is a party, 45 days after the date of the order of publication. 9th Cir. R. 40-2.

**(3) Statement of Counsel**

- A petition should contain an introduction stating that, in counsel's judgment, one or more of the situations described in the "purpose" section above exist. The points to be raised must be stated clearly.

**(4) Form & Number of Copies (9th Cir. R. 40-1; Fed. R. App. P. 32(c)(2))**

- The petition shall not exceed 15 pages unless it complies with the alternative length limitations of 4,200 words or 390 lines of text.
- The petition must be accompanied by a copy of the panel's decision being challenged.
- An answer, when ordered by the Court, shall comply with the same length limitations as the petition.
- If a pro se litigant elects to file a form brief pursuant to Circuit Rule 28-1, a petition for panel rehearing or for rehearing en banc need not comply with Fed. R. App. P. 32.

- The petition or answer must be accompanied by a Certificate of Compliance found at Form 11, available on our website at *under Forms*.
- You may file a petition electronically via the appellate ECF system. No paper copies are required unless the Court orders otherwise. If you are a pro se litigant or an attorney exempted from using the appellate ECF system, file one original petition on paper. No additional paper copies are required unless the Court orders otherwise.

#### **Bill of Costs (Fed. R. App. P. 39, 9th Cir. R. 39-1)**

- The Bill of Costs must be filed within 14 days after entry of judgment.
- See Form 10 for additional information, available on our website at *under Forms*.

#### **Attorneys Fees**

- Ninth Circuit Rule 39-1 describes the content and due dates for attorneys fees applications.
- All relevant forms are available on our website at *under Forms* or by telephoning (415) 355-7806.

#### **Petition for a Writ of Certiorari**

- Please refer to the Rules of the United States Supreme Court at

#### **Counsel Listing in Published Opinions**

- Please check counsel listing on the attached decision.
- If there are any errors in a published opinion, please send a letter in **writing within 10 days** to:
  - ▶ West Publishing Company; 610 Opperman Drive; PO Box 64526; St. Paul, MN 55164-0526 (Attn: Kathy Blesener, Senior Editor);
  - ▶ and electronically file a copy of the letter via the appellate ECF system by using “File Correspondence to Court,” or if you are an attorney exempted from using the appellate ECF system, mail the Court one copy of the letter.

Form 10. Bill of Costs .....(Rev. 12-1-09)

**United States Court of Appeals for the Ninth Circuit**

**BILL OF COSTS**

**Note:** If you wish to file a bill of costs, it **MUST** be submitted on this form and filed, with the clerk, with proof of service, within 14 days of the date of entry of judgment, and in accordance with 9th Circuit Rule 39-1. A late bill of costs must be accompanied by a motion showing good cause. Please refer to FRAP 39, 28 U.S.C. § 1920, and 9th Circuit Rule 39-1 when preparing your bill of costs.

\_\_\_\_\_ v. \_\_\_\_\_ 9th Cir. No. \_\_\_\_\_

The Clerk is requested to tax the following costs against: \_\_\_\_\_

Cost Taxable under FRAP 39, 28 U.S.C. § 1920, 9th Cir. R. 39-1	REQUESTED Each Column Must Be Completed				ALLOWED To Be Completed by the Clerk				
	No. of Docs.	Pages per Doc.	Cost per Page*	TOTAL COST	No. of Docs.	Pages per Doc.	Cost per Page*	TOTAL COST	
Excerpt of Record			\$	\$			\$	\$	
Opening Brief			\$	\$			\$	\$	
Answering Brief			\$	\$			\$	\$	
Reply Brief			\$	\$			\$	\$	
Other**			\$	\$			\$	\$	
<b>TOTAL:</b>				\$	<b>TOTAL:</b>				\$

\* Costs per page may not exceed .10 or actual cost, whichever is less. 9th Circuit Rule 39-1.

\*\* Other: Any other requests must be accompanied by a statement explaining why the item(s) should be taxed pursuant to 9th Circuit Rule 39-1. Additional items without such supporting statements will not be considered.

Attorneys' fees **cannot** be requested on this form.

*Continue to next page.*

**Form 10. Bill of Costs - Continued**

I, , swear under penalty of perjury that the services for which costs are taxed were actually and necessarily performed, and that the requested costs were actually expended as listed.

Signature

("s/" plus attorney's name if submitted electronically)

Date

Name of Counsel:

Attorney for:

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(To Be Completed by the Clerk)

Date

Costs are taxed in the amount of \$

Clerk of Court

By: , Deputy Clerk