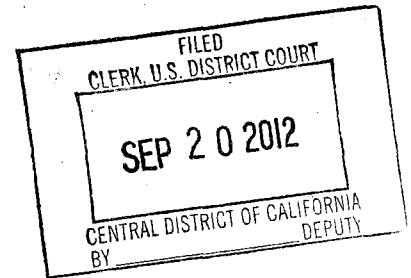


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THE UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA

SIERRA MEDICAL SERVICES
 ALLIANCE, CARE FLIGHT, RIGGS
 AMBULANCE SERVICE, INC.,
 SCHAEFER AMBULANCE SERVICE,
 INC., AMERICAN AMBULANCE OF
 VISALIA, DESERT AMBULANCE
 SERVICE, SAN LUIS AMBULANCE
 SERVICE, INC., FIRST RESPONDER
 EMERGENCY MEDICAL SERVICES-
 SACRAMENTO, INC., FIRST
 RESPONDER EMERGENCY MEDICAL
 SERVICES, INC., IMPERIAL
 AMBULANCE SERVICES, INC., EXETER
 DISTRICT AMBULANCE, SIERRA
 LIFESTAR, INC., d.b.a, LIFESTAR
 AMBULANCE, DEL NORTE
 AMBULANCE, INC., PINER'S
 AMBULANCE, INC., AMERICAN
 LEGION POST 108 AMBULANCE
 SERVICE, PROGRESSIVE AMBULANCE,
 INC., d.b.a., LIBERTY AMBULANCE,
 HALL AMBULANCE SERVICE, INC.,
 CITY AMBULANCE OF EUREKA, INC.,
 PATTERSON DISTRICT AMBULANCE,
 K.W.P.H. ENTERPIRSES, d.b.a.,
 AMERICAN AMBULANCE,
 COMMUNITY AMBULANCE SERVICES,
 INC., SIERRA AMBULANCE SERVICE,
 INC., CARE AMBULANCE SERVICE,
 INC., DELANO AMBULANCE SERVICE,
 INC., KERN EMERGENCY MEDICAL
 TRANSPORTATION CORPORATION,
 d.b.a.; KERN AMBULANCE, MANTECA
 DISTRICT VOLUNTEER AMBULANCE
 SERVICE, dba MANTECA DISTRICT

Case No. CV 10-04182 CAS
(MANx)

FIRST AMENDED COMPLAINT

1 AMBULANCE SERVICE, CALIFORNIA
2 AMBULANCE ASSOCIATION,
3 REGIONAL EMERGENCY MEDICAL
4 SERVICES AUTHORITY, METRO WEST
5 AMBULANCE SERVICE, INC.,
6 WESTMED ABULANCE, INC., d.b.a.,
7 MCCORMICK AMBULANCE,

8 Plaintiffs,

9 vs.

10 DAVID MAXWELL-JOLLY, former
11 Director of the Department of Health Care
12 Services of the State of California; TOBY
13 DOUGLAS, Director of the Department of
14 Health Care Services of the State of
15 California,

16 Defendants.

17 JURISDICTION

18 1. This action involves federal questions arising under the laws and
19 Constitution of the United States, including, but not limited to Article I, Sections 8
20 and 10 of the United States Constitution, 42 U.S.C. §1983 and the Fifth and
21 Fourteenth Amendments to the United States Constitution. This Court has subject
22 matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, 2201 and
23 2202.

24 2. Venue is proper in the Central District because a substantial part of the
25 events or omissions giving rise to the claim occurred in this District. In addition, all
26 Defendants reside in this State and Defendants have agreed that an action against them
27 may be commenced in any city in which the Attorney General of the state has an
28 office. The Attorney General has an office in this District.

INTRODUCTION

1
2 3. Plaintiffs provide medical transportation services to over 21 million
3 Californians in 31 of the State's 58 counties. Certain Plaintiffs also provide medical
4 transportation services outside California. Collectively, Plaintiffs safeguard the lives
5 of more than half of California's population by standing ready to assist these 20
6 million Californians in emergency situations seven days a week, 24 hours a day.
7 Plaintiffs also provide non-emergency ambulance services to those Californians who
8 have special needs and who do not have a reliable source of transportation to obtain
9 essential medical treatment. Plaintiffs provide over 100,000 medical transports of
10 Defendants' Medi-Cal clients each year. Defendants pay approximately 20% of
11 Plaintiffs' actual cost of each of these transports, which is on average, \$775.00.
12 Consequently, Defendants force Plaintiffs to subsidize Medi-Cal with over \$60
13 million of their private funds and physical property each year.

14 4. Because California law requires that medical transportation services to
15 Medi-Cal clients be reimbursed "at the lesser of usual charges or the limits specified
16 in the California Code of Regulations," and because Section 51527 of the Code of
17 Regulations was promulgated by Defendants in violation of Plaintiffs' Constitutional
18 rights, Plaintiffs seek prospective relief in the form of a permanent injunction
19 prohibiting Defendants from reimbursing Plaintiffs less than their "usual charges" for
20 the services they provide to Defendants' Medi-Cal clients.

PARTIES

21
22
23 5. Plaintiff Sierra Medical Services Alliance ("SEMSA") is a 501c(3) non-
24 profit organization. SEMSA is the exclusive provider of ambulance services for
25 emergency (911) and non-emergency calls in Lassen County, California. SEMSA's
26 franchise provider agreement was awarded through a competitive bid process in 2005
27 and its contract is effective through 2015, plus any additional earned extensions.
28 SEMSA's service rates are set and regulated by the County of Lassen.

1 6. Plaintiff Care Flight is a division of Regional Emergency Medical
2 Services Authority, a 501c(3) non-profit organization affiliated with SEMSA. Care
3 Flight provides emergency medical helicopter services in northern California and
4 northern Nevada. Care Flight operates through provider agreements with regional
5 emergency medical services agencies, including Sierra Sacramento Valley EMSA.

6 7. Plaintiff Riggs Ambulance Service, Inc., is the exclusive provider of
7 ambulance services for emergency (911) and non-emergency calls in Merced County.
8 Riggs Ambulance Service's franchise provider agreement was awarded through a
9 competitive bid process in 2003 and its contract is effective through 2012. Riggs
10 Ambulance Service rates are set and regulated through the County of Merced.

11 8. Plaintiff Schaefer Ambulance Service Inc. serves six of the most
12 populous counties in southern California including Los Angeles, Orange, San Diego,
13 San Bernardino, Riverside, and Imperial. Schaefer Ambulance has emergency (911)
14 contracts in Los Angeles and Imperial Counties. Schaefer provides a significant
15 amount of non-emergency medical transportation in Orange, San Diego, San
16 Bernardino and Riverside counties. Schaefer is engaged in a number of pilot
17 programs including critical care programs in Los Angeles County and neonatal infant
18 transportation programs in Los Angeles, Riverside, and San Bernardino counties.
19 Schaefer serves approximately 15 million people living in approximately 13,600
20 square miles of service area.

21 9. Plaintiff C.H.L. EMS, Incorporated, dba American Ambulance of
22 Visalia, provides emergency (911) and non-emergency medical transportation services
23 in a shared exclusive operating area. C.H.L. operates pursuant to an agreement with
24 the County of Tulare that runs from March 1, 2009 to June 30, 2014.

25 10. Plaintiff Desert Ambulance Service, Inc., is designated as an exclusive
26 provider of emergency (911) and non-emergency medical transportation services
27 pursuant to an agreement with San Bernardino County. Desert Ambulance's service
28

1 area is designated as an exclusive non-competitive area pursuant to Health and Safety
2 Code section 1797.224.

3 11. Plaintiff San Luis Ambulance Service, Inc., is the exclusive provider of
4 ambulance services for emergency (911) and non-emergency calls in three of the four
5 designated ambulance zones in San Luis Obispo County pursuant to a franchise
6 provider agreement that is effective into 2013.

7 12. Plaintiff First Responder Emergency Medical Services-Sacramento, Inc.
8 is a non-exclusive provider of ambulance services for emergency and non-emergency
9 calls within the Sacramento, Placer and Yolo Counties.

10 13. Plaintiff First Responder Emergency Medical Services, Inc. operates as
11 an exclusive provider of emergency (911) and non-emergency ambulance services in
12 Butte County. Responder's service area is designated as an exclusive non-competitive
13 area pursuant to Health and Safety Code section 1797.224.

14 14. Plaintiff Imperial Ambulance, Inc. provides emergency (911) and non-
15 emergency ambulance services in Tulare County pursuant to a contract with Tulare
16 County that is effective through June 30, 2014. Within Tulare County, Imperial
17 Ambulance, Inc. responds primarily in the City of Porterville and the City of Lindsay.
18 When called upon, Imperial provides service to all other city and rural areas within
19 Tulare County.

20 15. Plaintiff Exeter District Ambulance operates as an exclusive provider of
21 emergency (911) and non-emergency ambulance services in the north eastern region
22 of Tulare County.

23 16. Plaintiff Sierra LifeStar, Inc., d.b.a. Lifestar Ambulance, operates as an
24 exclusive provider of emergency (911) and non-emergency ambulance services in
25 Tulare County.

26 17. Plaintiff Del Norte Ambulance, Inc. operates as an exclusive provider of
27 emergency (911) and non-emergency ambulance services in Del Norte County.
28

1 18. Plaintiff Napa Ambulance Service, Inc., dba Piner's Ambulance, operates
2 as an exclusive provider of emergency (911) and non-emergency ambulance services
3 in Tulare County. Napa's exclusive provider agreement was awarded through a
4 competitive bid process in 2001 and it is effective through 2011.

5 19. Plaintiff American Legion Post 108 Ambulance Service ("ALA") is a
6 501c (19) non-profit corporation. ALA is the exclusive provider of ambulance
7 services for emergency (911) and non-emergency calls in Amador County pursuant to
8 a franchise provider agreement that is effective through 2013. ALA has been the sole
9 ambulance provider in Amador County since 1929. ALA is also the exclusive
10 provider of ambulance services for emergency (911) and non-emergency calls in
11 Calaveras County pursuant to a franchise provider agreement that is effective through
12 2014.

13 20. Plaintiff Progressive Ambulance, Inc, dba Liberty Ambulance, is the
14 exclusive provider for emergency (911) and non-emergency ambulance services in
15 Kern County's Operational Area #7. Liberty's franchise provider agreement was
16 awarded pursuant to Health and Safety Code section 1797.224 and is effective until
17 2019.

18 21. Plaintiff Hall Ambulance Service, Inc. is the exclusive provider for
19 emergency (911) and non-emergency ambulance services in Kern County Ambulance
20 Service Operational Areas 2, 4, 5, 8, 9 and 11. Operating Area(s) 2,4,5,8 & 9 were
21 awarded pursuant to Health and Safety Code section 1797.224. Operational Area 11
22 was awarded to Hall in 1994 through a competitive bid process.

23 22. Plaintiff City Ambulance of Eureka, Inc provides emergency (911) and
24 non-emergency ambulances in the County of Humboldt.

25 23. Plaintiff Patterson District Ambulance is the exclusive provider of
26 ambulance services for emergency (911) and non-emergency calls within Zone #5 of
27 Stanislaus County. The Patterson District Ambulance franchise provider agreement
28 was established in 1992 by the County pursuant to California Health and Safety Code

1 1797.224 and remains in effect. A performance contract, required with the County, is
2 effective through 2012.

3 24. Plaintiff K.W.P.H. Enterprises, d.b.a. American Ambulance, is the
4 exclusive provider of ambulance services for emergency (911) and non-emergency
5 calls in the Fresno County Exclusive Operating Area and the County of Kings. The
6 provider agreements for these service areas were awarded through competitive bid
7 processes.

8 25. Plaintiff Community Ambulance Services, Inc. dba CARE Ambulance is
9 the exclusive provider of ambulance services for emergency (911) and non-emergency
10 calls in Kern County Operating Area #6. CARE's franchise provider agreement was
11 awarded pursuant to Health and Safety Code section 1797.224.

12 26. Plaintiff Sierra Ambulance Service, Inc., is a 501c(3) non-profit
13 organization. Sierra Ambulance is the exclusive provider of ambulance services for
14 emergency (911) and non-emergency calls in eastern Madera County. Sierra has been
15 the exclusive 911 ambulance provider in eastern Madera County since 1965. It
16 operates under a California Health and Safety Code 1797.224 exclusive agreement
17 with the Central California EMS Agency.

18 27. Plaintiff Care Ambulance Service, Inc. is the exclusive 911 Emergency
19 Ambulance provider for the Orange County, California cities of Anaheim, Buena
20 Park, Costa Mesa, Cypress, Fountain Valley, Fullerton, Garden Grove, La Palma, Los
21 Alamitos, Seal Beach, and Stanton, as well as Exclusive Operating Area number six
22 (6) in Los Angeles County, California, which is comprised of the cities of Artesia,
23 Bell, Bell Gardens, Bellflower, Cerritos, Commerce, Cudahy, Hawaiian Gardens, La
24 Mirada, Lakewood, Huntington Park, Maywood, Montebello, Norwalk, Paramount,
25 Pico Rivera, Santa Fe Springs, Signal Hill, Whittier, and the unincorporated areas of
26 Florence-Graham and East Los Angeles. All franchise agreements were awarded
27 thorough a competitive bid process.
28

1 28. Plaintiff Delano Ambulance Service, Inc. is the exclusive provider of
2 ambulance services for all emergency (911) and non-emergency calls in Kern County
3 for the Exclusive Operating Area #3. Delano has an ongoing franchise agreement
4 with the County of Kern.

5 29. Plaintiff Kern Emergency Medical Transportation Corporation, dba Kern
6 Ambulance, is the exclusive provider for emergency (911) and non-emergency
7 ambulance services in Kern County's Operational Area #1. Kern Ambulance's
8 provider agreement was awarded pursuant to California Health and Safety Code
9 1797.224 and the contract is effective until 2019.

10 30. Plaintiff Manteca District Volunteer Ambulance Service, dba Manteca
11 District Ambulance Service, is a 501c(3) non-profit corporation and is the exclusive
12 provider for emergency (911) and non-emergency ambulance services in the City of
13 Manteca and surrounding areas including parts of Tuolumne County.

14 31. Plaintiff California Ambulance Association is a trade association that
15 represents the interests of emergency ambulance service providers who serve the
16 residents of nearly every county in California. Each of the CAA's members would
17 otherwise have standing to sue in their own right and the interests it seeks to protect
18 are germane to the organization's purpose. Moreover, neither the claims asserted nor
19 the relief requested herein requires the participation of the individual members in the
20 lawsuit.

21 32. Plaintiff Regional Emergency Medical Services Authority is a 501c(3)
22 non-profit organization in the state of Nevada. REMSA holds an exclusive franchise
23 to provide all ground ambulance services for the geographic area of Washoe County,
24 including the cities of Reno and Sparks. The total population covered by REMSA is
25 approximately 350,000, and REMSA responds to approximately 60,000 calls per year.
26 REMSA's performance-based franchise is governed by an appointed Board of
27 Directors and contractually reports to the Washoe County District Board of Health.
28 The franchise agreement requires REMSA to respond to, and to render aid to, all

1 individuals who require emergency or non-emergency ambulance services who
2 request assistance anywhere in the contract area.

3 33. Plaintiff Metro West Ambulance Service, Inc. is the exclusive provider of
4 ambulance services for all emergency and non-emergency calls in Washington
5 County, Oregon. Metro West has had an exclusive franchise agreement with the
6 County of Washington since 1997 and has provided the majority of the County's
7 emergency transportation services for the past 57 years.

8 34. Plaintiff Westmed Ambulance, Inc., d.b.a., McCormick Ambulance is a
9 provider of emergency (911) and non-emergency services in portions of Los Angeles
10 County. On March 14, 2006, the Los Angeles County Board of Supervisors
11 unanimously selected McCormick Ambulance to be one of four ambulance companies
12 to provide emergency 911 services throughout the county. McCormick serves
13 approximately 1.5 million people located in zones 4 and 7 in Los Angeles County and
14 responds to approximately 80,000 emergency calls each year.

15 35. Defendant David Maxwell-Jolly is the former Director of the Department
16 of Health Care Services of the State of California. Maxwell-Jolly acted under color of
17 state authority at all times mentioned herein. Because Maxwell-Jolly acted willfully,
18 maliciously and with reckless indifference to and in disregard of Plaintiffs' rights, in
19 excess of the authority granted to him by law, he is sued in his individual capacity.

20 36. Defendant Toby Douglas is the current Director of the Department of
21 Health Care Services of the State of California. Douglas has acted under color of state
22 authority at all times mentioned herein. Douglas is sued in his official capacity. In
23 addition, because Douglas acted willfully, maliciously and with reckless indifference
24 to and in disregard of Plaintiffs' rights, in excess of the authority granted to him by
25 law, he is sued in his individual capacity.

26
27
28

MEDICAID AND STATE COUNTERPARTS

37. Medicaid is a federal program that provides medical care to needy individuals by giving states funds to use to administer medical assistance programs. (42 U.S.C. 1396, et seq.)

38. Participation in the Medicaid program is voluntary. To participate, a state must submit, and have approved, a state plan for Medicaid assistance that complies with the federal Medicaid statutes and the regulations adopted by the Secretary of the United States Department of Health and Human Services. One of the Department's divisions, The Centers for Medicare and Medicaid Services, is responsible for approving or rejecting a state's plan.

39. A state plan specifies how a state will operate its medical assistance program in compliance with federal law and provides assurances that the state will administer its program "in conformity with the specific requirements of title XIX, the regulations in this Chapter IV, and other applicable official issuances of the Department [of Health and Human Services]." (42 C.F.R. 430.10.) To be approved, it must specify which groups of people are eligible, the types and ranges of services to be provided, the policy and methods to be used to establish payment rates for medical service providers such as Plaintiffs,¹ and other components of the state's proposed program that are required by federal law.

40. Once a state's plan is approved, The Centers for Medicare and Medicaid Services provide federal funds to the state for the operation of its program as described in its state plan.

41. California has chosen to participate in the Medicaid program. Medi-Cal is the State's Medicaid program that provides benefits to poor individuals who satisfy certain eligibility requirements. (California Welfare and Institutions Code, Section 14000, et seq.; California Code of Regulations, Title 22, Section 50000, et seq.)

¹ 42 C.F.R. 447.201

42. California's State Plan states that, "[a]s a condition for receipt of Federal funds under title XIX of the Social Security Act, the Department of Health Services (Single State Agency) submits the following State plan for the medical assistance program, and hereby agrees to administer the program in accordance with the provisions of this State plan, the requirements of titles XI and XIX of the Act, and all applicable Federal regulations and other official issuances of the Department." (California State Plan, Plan Submittal Statement, page 1.) California's State Plan was approved by The Centers for Medicare and Medicaid Services and California receives federal funds for its operation.

CALIFORNIA'S GUARANTEE

OF MEDICAL TRANSPORTATION SERVICES

43. 42 U.S.C., Section 1396a, et seq., and 42 C.F.R., Part 430 et seq., set forth the requirements a State Plan must satisfy in order to qualify for approval. Defendants certified that, "[t]he plan is in operation on a Statewide basis in accordance with all requirements of 42 CFR 431.50." (California State Plan, Section 1.3, page 8.)

44. Pursuant to federal requirements, a state plan must "[s]pecify that the Medicaid agency will ensure necessary transportation for recipients to and from providers" and "[d]escribe the methods that the agency will use to meet this requirement." (42 C.F.R. 431.53.)

45. California certified to the federal government that, "[u]nder California's Title XIX State Plan, transportation of eligible recipients to and from health care services is assured through a variety of methods . . . [including] the provision of medical transportation as a direct benefit of the Title XIX program . . . [consisting of] both emergency and nonemergency medical transportation." (California State Plan Under Title XIX, 3.1(c)(1) and Attachment 3.1-D.)

SETTING MEDICAL REIMBURSEMENT RATES FOR
MEDICAL TRANSPORTATION SERVICES

46. A state plan must “describe the policy and the methods to be used in setting payment rates for each type of service included in the State's Medicaid program.” (42 C.F.R. 447.201.) Medical transportation services are covered in Attachment 4.19-B, page 1, of the State Plan:

[t]he policy of the State Agency is that reimbursement for each of the other types of care or service listed in Section 1905(a)² of the Act that are included in the program under the plan will be at the lesser of usual charges or the limits specified in the California code of Regulations . . . [t]he methodology utilized by the State Agency in establishing payment rates will be as follows:

- (a) The development of an evidentiary base or rate study resulting in the determination of a proposed rate.
- (b) To the extent required by State or Federal law or regulations, the presentation of the proposed rate at public hearing to gather public input to the rate determination process.
- (c) The determination of a payment rate based on an evidentiary base, including pertinent input from the public.
- (d) The establishment of the payment rate through the State Agency's adoption of regulations specifying such rate in the CCR . . .

² Section 1905(a) is the former designation of 42 U.S.C. 1396d

1 47. Accordingly, pursuant to this rule, drafted by Defendants and approved
 2 by CMS, medical transportation services must be reimbursed at “the lesser of usual
 3 charges,” or at a statutory rate that is determined by the methodology described above
 4 and that is based upon credible evidence of the actual cost of providing the service or
 5 the prevailing rates for the service.

6
 7 **PUBLIC INPUT AND REGULATION ADOPTION PROCEDURES**
 8 **GUARANTEED BY THE STATE OF CALIFORNIA**

9 48. Pursuant to the Administrative Procedure Act, California Government
 10 Code, Sections 11346, et seq., the Legislature has established basic minimum
 11 procedural requirements for the adoption, amendment or repeal of administrative
 12 regulations.

13 49. Pursuant to Government Code, Section 11346.4, there must be a public
 14 comment period on all proposed regulations, with advance notice of at least 45 days of
 15 the close of that comment period. Section 11346.5 of the Code establishes the
 16 requirements for the notice of proposed regulations, which must include, inter alia, a
 17 statement of the time, place and nature of proceedings for the adoption, amendment or
 18 repeal of the regulation, reference to the authority under which the regulation is
 19 promulgated, and an informative digest containing a concise and clear summary of
 20 existing laws and regulations related directly to the proposed action and the effect of
 21 the proposed action.

22 50. Pursuant to Government Code, Section 11349.3, the Office of
 23 Administrative Law (“OAL”) must review all regulations after they have been
 24 subjected by the issuing agency to the notice and comment procedures, and make
 25 determinations using the following criteria: Necessity, authority, clarity, consistency,
 26 reference and non-duplication. The OAL may disapprove the regulations, in which
 27 case it shall return them to the adopting agency with a written statement of
 28

1 disapproval. If OAL approves the proposed regulations, then it shall forward them to
2 the Secretary for filing.

3 51. California law requires that, “[i]n order to increase public participation
4 and improve the quality of regulations, state agencies proposing to adopt regulations
5 shall, prior to publication of the notice required by Section 11346.5, involve parties
6 who would be subject to the proposed regulations in public discussions regarding
7 those proposed regulations, when the proposed regulations involve complex proposals
8 or a large number of proposals that cannot easily be reviewed during the comment
9 period” (California Government Code, Section 279.)

10
11 **DEFENDANTS REFUSE TO REIMBURSE PLAINTIFFS FOR THE**
12 **SERVICES THEY ARE REQUIRED BY LAW TO PROVIDE TO**
13 **DEFENDANTS’ MEDI-CAL CLIENTS**

14 52. To ensure an efficient and fully responsive emergency transportation
15 system for all Californians, local emergency medical services jurisdictions “shall plan,
16 implement, and evaluate an emergency medical services system . . . consisting of an
17 organized pattern of readiness and response services based on public and private
18 agreements and operational procedures.” (California Health and Safety Code, Section
19 1797.204.) Where local governments cannot provide emergency services, they must
20 allocate market rights to specific ambulance companies via competitive process or
21 assigned contract.³ (California Health and Safety Code, Section 1797.224.) California
22 law mandates that emergency medical transportation services are only provided
23 through this system and that no emergency services provider may operate without
24 government approval and an assignment of market rights. Emergency transportation
25 services providers are under an absolute legal duty to provide service on demand to all
26 requestors without discrimination. Moreover, they may not discontinue unprofitable
27

28 ³ Assignment is limited to statutorily proscribed circumstances when a provider has
been providing uninterrupted service since at least January 1, 1981.

1 services or redirect their efforts from unprofitable services to those that are profitable
2 or simply cover their costs, and they must expand their facilities and services to meet
3 demand even where rates do not fully compensate them for the cost of providing the
4 service.

5 53. Emergency transportation services providers must, and do, dedicate their
6 property to public service. They exist solely and exclusively to provide an essential
7 public service where local governments cannot. Every local jurisdiction in California
8 requires that designated service providers respond to every emergency call that is
9 received. Consequently, Plaintiffs cannot choose to decline to provide service to
10 Defendants' Medi-Cal clients. In fact, Plaintiffs cannot even identify Defendants'
11 Medi-Cal clients as such prior to or during their provision of service to them.

12 54. Nor can Plaintiffs withdraw from the provision of emergency
13 transportation services without government approval. To do so would place those
14 experiencing life-threatening emergencies in Plaintiffs' service areas at risk of death.
15 So important is continuity of emergency transportation services that Plaintiffs are
16 subject to strict government rules and regulations and non-cancellable contractual
17 provisions that allow supervising government entities to appropriate all of Plaintiffs'
18 equipment and facilities if Plaintiffs do not respond to every emergency call for
19 service in their assigned geographic areas.

20 55. In addition, every county in the state is required to follow California
21 Emergency Medical Services Authority ("EMSA") guidelines in designating the
22 required service levels for emergency medical transportation services. Local
23 Emergency Medical Services Agencies (LEMSAs) submit plans evidencing their
24 compliance with state EMSA guidelines to the State of California, which must
25 approve the plans.

26 56. Each jurisdiction mandates specific service level requirements. These
27 mandates include the requirement that the jurisdiction's service provider maintain an
28 "advanced life support" state of readiness and level of care for all emergency

1 transports. Consequently, every ambulance must be staffed with at least one
2 paramedic, one emergency medical technician and must carry equipment designed to
3 provide advanced life support to a patient.

4 57. Advanced life support is defined by California law as, “. . . special
5 services designed to provide definitive prehospital emergency medical care, including,
6 but not limited to, cardiopulmonary resuscitation, cardiac monitoring, cardiac
7 defibrillation, advanced airway management, intravenous therapy, administration of
8 specified drugs and other medicinal preparations, and other specified techniques and
9 procedures administered by authorized personnel under the direct supervision of a
10 base hospital as part of a local EMS system at the scene of an emergency, during
11 transport to an acute care hospital, during interfacility transfer, and while in the
12 emergency department of an acute care hospital until responsibility is assumed by the
13 emergency or other medical staff of that hospital.” (California Health and Safety
14 Code, Section 1797.52.)

15 58. Advanced life support services are significantly more expensive to
16 provide than basic life support services because they require more highly trained and
17 certified personnel, a larger quantity of, and more sophisticated equipment, and a
18 significantly higher level of supervision than basic life support service.

19 59. California Code of Regulations, Section 51527, which sets the Medi-Cal
20 reimbursement rates for medical transportation services, provides payment for “BLS”
21 or basic life support transports. Section 51527 does not allow reimbursement for
22 advanced life support service, the result of which is an unfunded mandate by the
23 Defendants that Plaintiffs provide advanced life support services at no cost to
24 Defendants.

25 60. Defendants have never developed an evidentiary base or rate study
26 concerning medical transportation services costs that resulted in the determination of a
27 proposed rate.
28

1 61. Defendants have never presented proposed rates regarding medical
2 transportation services at a public hearing to gather public input about rate
3 determination despite the complexity of the medical transportation services industry
4 and the costs associated with operating such services in a wide range of geographic
5 locations and under a wide range of conditions.

6 62. Defendants have never made a determination of payment rates for
7 medical transportation services based on an evidentiary base which included pertinent
8 input from the public. Instead, Defendants unilaterally set payment rates for medical
9 transportation services and codified those rates at Section 51527 of the California
10 Code of Regulations.

11 63. On multiple occasions, Plaintiffs requested, in person and in writing, that
12 Plaintiffs Maxwell-Jolly and Douglas comply with Attachment 4.19-B to the State
13 Plan. As directors of the Department of Health Care Services, each of them had a
14 legal obligation to follow the policies and procedures of the Department. Both
15 Maxwell-Jolly and Douglas refused to follow the policy and procedure set out by the
16 Department itself in Attachment 4.19-B, acts that exceeded their authority as Directors
17 of the Department. Because the requirements of Attachment 4.19-B are clear and
18 unambiguous, Maxwell-Jolly's and Douglas' duties were clear and direct. Neither
19 Maxwell-Jolly nor Douglas reasonably relied on existing law in their refusals to
20 follow the legal requirements of Attachment 4.19-B. Maxwell-Jolly's and Douglas'
21 refusals to comply with Attachment 4.19-B are serious misuses and abuses of their
22 authority as directors of the Department. Maxwell-Jolly and Douglas each ignored
23 their legal duties to obtain personal benefits, including, but not limited to, garnering
24 favor with their supervisors to obtain promotions within the state's government
25 bureaucracy and obtaining personal financial benefits. Because Maxwell-Jolly and
26 Douglas, in intentionally and willfully doing the acts described herein, far exceeded
27 the authority granted to them by California law, they have subjected themselves to
28 liability in their individual capacities for Plaintiffs' economic damages.

64. Defendants' actions violate Plaintiffs' Fifth and Fourteenth Amendment rights guaranteed by United States Constitution as well as Article I, Section 10, Clause 1 and Article I, Section 8, Clause 3 of the United States Constitution. Plaintiffs do not have an adequate legal remedy to redress their prospective Constitutional injuries, therefore, an injunction is necessary. Plaintiffs are currently suffering irreparable injury because they must, pursuant to California law, use their private funds and their private property to treat and transport Defendants' Medi-Cal clients without reimbursement of the funds or replacement of the property. Plaintiffs are required to accept payment rates illegally established by Defendants and cannot seek additional payments from Defendants' clients. On balance, the harm suffered by Plaintiffs substantially outweighs any harm that could befall Defendants by issuing the injunction Plaintiffs are seeking. Plaintiffs request only that Defendants be required to follow the law, which was enacted for the greater benefit of all Californians.

FIRST CLAIM FOR RELIEF

TAKING PRIVATE PROPERTY FOR PUBLIC USE WITHOUT JUST COMPENSATION FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION, 42 U.S.C. § 1983

65. Paragraphs 1 through 64 are incorporated by reference as if fully set forth herein.

66. The Fifth Amendment to the United States Constitution prohibits the government from taking private property for public use without just compensation.

67. "Every person who, under color [of law] ... subjects, or causes to be subjected, any citizen of the United States . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for

1 redress.” 42 U.S.C. 1983. This statute furnishes a cause of action for the violation of
2 federal rights created by the United States Constitution.

3 68. Medi-Cal is a purely public social welfare program. Defendants,
4 directors of the California Department of Health Care Services are state actors who
5 have administered, or do administer, the Medi-Cal program. The director makes all
6 decisions regarding the establishment of reimbursement policies and regulations, and
7 is responsible for gathering and analyzing the information and data that is necessary to
8 establish fair and equitable reimbursement rates for all providers, including providers
9 of emergency transportation services. Moreover, the director makes all decisions
10 regarding if, when and how the Department will follow its own regulations, California
11 law and federal law regarding the provision of services to its Medi-Cal clients and the
12 setting of provider reimbursement rates. Defendants are duly authorized by law to
13 administer the Medi-Cal program.

14 69. Plaintiffs are required by law to respond to all emergency calls and
15 provide emergency treatment and transportation to every Medi-Cal client that requests
16 emergency assistance, a fact known by Maxwell-Jolly and Douglas. Plaintiffs cannot
17 choose to decline to treat or transport Defendants’ Medi-Cal clients or even identify
18 them prior to treatment or transport to have the option of declining to treat or transport
19 them. Plaintiffs have dedicated their property to public service and they may not
20 withdraw from providing emergency transportation services to the general public or to
21 Defendants’ Medi-Cal clients without government approval.

22 70. Defendants effect a taking of Plaintiffs’ private property: “As a direct
23 benefit, California provides both emergency and nonemergency medical
24 transportation.” (Attachment 3.1-D.) Defendants do not possess, contract for or
25 otherwise provide emergency transportation services in the geographic areas served by
26 Plaintiffs.

27 71. Plaintiffs have not voluntarily elected to participate in Defendants’ Medi-
28 Cal program. Plaintiffs are compelled to use their private funds and private property,

1 which are protectable property interests, for a purely public purpose: To treat and
2 transport Defendants' Medi-Cal clients. Defendants reimburse Plaintiffs, on average;
3 20% of the value of the funds and property Plaintiffs must use to serve Medi-Cal
4 clients.

5 72. Defendants' refusal to reimburse Plaintiffs at a level that, at a minimum,
6 covers their cost to provide the service is a taking of Plaintiffs' private property for
7 public use. Defendants' actions do not advance any state interest as the actions are, on
8 their face, contrary to the stated state interests regarding emergency transportation
9 services providers set forth by Defendants in their policies, procedures and
10 regulations, and by the by the State of California and the federal government in their
11 laws and regulations.

12 73. In addition, Defendants limit Plaintiffs' payment for the treatment and
13 transportation of Medi-Cal clients to the amount that Defendants set. Plaintiffs may
14 not bill Defendants' clients for the difference between Defendants' rates and the actual
15 cost of providing the service. Defendants' payment is the maximum amount Plaintiffs
16 can recover for their services.

17 74. Because Defendants refuse to reimburse Plaintiffs for, at a minimum, the
18 amount of money and property Plaintiffs are compelled to use to treat and transport
19 clients of the purely public Medi-Cal program, knowing that Plaintiffs must use their
20 private funds and property, Defendants are taking Plaintiffs' private property for
21 public use without providing just compensation. Defendants have exceeded their legal
22 authority and have violated Plaintiffs' civil rights.

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SECOND CLAIM FOR RELIEF

**VIOLATION OF PROCEDURAL DUE PROCESS
FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES
CONSTITUTION,
42 U.S.C. § 1983**

75. Paragraphs 1 through 74 are incorporated by reference as if fully set forth herein.

76. The Fifth Amendment requires reasonable notice and opportunity to be heard before the government deprives a person of a property interest.

77. Plaintiffs have a significant and protectable property interest in the private funds they spend and the private property they are compelled to use to transport and treat Medi-Cal clients. Plaintiffs also have a protectable property interest in the contracts they hold with various cities, counties and special districts.

78. Defendants reimburse Plaintiffs only a small portion of the cost of providing these services to Medi-Cal clients and prohibit them from obtaining any additional reimbursement.

79. The California Government Code, Section 11346, et seq., requires that Defendants follow certain minimum procedures before enacting regulations such as Section 51527. Defendants have not complied with any procedural requirement of the Code.

80. The State Plan sets forth a specific procedure, drafted and implemented by Defendants, that Defendants must follow to set reimbursement rates for Plaintiffs. Specifically, "[t]he methodology utilized by the State Agency in establishing payment rates will be as follows: (a) The development of an evidentiary base or rate study resulting in the determination of a proposed rate; (b) To the extent required by State or Federal law or regulations, the presentation of the proposed rate at public hearing to gather public input to the rate determination process; (c) The determination of a payment rate based on an evidentiary base, including pertinent input from the public."

1 Defendants have not complied with these procedural requirements. Instead,
 2 Defendants unilaterally set the rates in Section 51527, without giving notice of a
 3 hearing or allowing input from any party that was to be affected by the rates.

4 81. Defendants have never given notice of their proposed rates or allowed
 5 input from Plaintiffs about the rate determination process. Defendants' actions are so
 6 arbitrary and unfair as to constitute a violation of Plaintiffs' due process rights.
 7 Without being provided notice or a hearing, Plaintiffs have been summarily denied
 8 their property interest in financial resources and physical property, which is used in
 9 transporting and treating Defendants' Medi-Cal clients at a financial loss, a violation
 10 of Plaintiffs' civil rights.

11 **THIRD CLAIM FOR RELIEF**

12 **VIOLATION OF EQUAL PROTECTION** 13 **FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION,** 14 **42 U.S.C. § 1983**

15 82. Paragraphs 1 through 81 are incorporated by reference as if fully set forth
 16 herein.

17 83. Defendants implement Welfare & Institutions Code, Section
 18 14105.94(b)(1)-(3), which allows "eligible providers" of ground emergency medical
 19 transportation services to receive additional reimbursements above the woefully low
 20 Medi-Cal reimbursement rate. Providers are "eligible" for the additional
 21 reimbursement if they (1) provide ground emergency medical transportation, (2) are
 22 enrolled as Medi-Cal providers, and (3) are owned and operated by a public fire
 23 protection district. "Eligible providers" receive 50% of the difference between
 24 Defendants' reimbursement amount and the actual cost of the service.
 25

26 84. Defendants claim that, "fire departments are an essential part of the
 27 health care safety net and are unique because of the mandate to respond, treat and
 28 transport all emergency patients without exception and without regard to a patient's

1 ability to pay.” (Legislative comments, Assembly Third Reading, AB 678 (Pan), as
2 amended May 27, 2011, p.2.)

3 85. In spite of Plaintiffs’ identical obligations, the law mandates unequal
4 treatment of them because they are not eligible to receive the same additional
5 reimbursements as fire departments for performing the same emergency medical
6 transports. Defendants’ conduct has caused a violation of Plaintiffs’ rights to be
7 treated equally under the law.

8 86. In addition, under the State Plan, a wide range of medical services are
9 provided to Medi-Cal beneficiaries. Medical transportation is assured under the State
10 Plan (State Plan, Section 3.1(c)(1) and Attachment 3.1-D) and the state plan must
11 “[d]escribe the policy and the methods to be used in setting payment rates for each
12 type of service included in the State’s Medicaid program.” (42 C.F.R. Section
13 447.201.)

14 87. The State Plan provides specific reimbursement methods to be used for
15 medical transportation services (State Plan, Attachment 4.19-B), and for other types of
16 services. For example, specific methodology for determining reimbursement rates is
17 provided for durable medical equipment (Attachment 4.19-B, page 3a), Targeted Case
18 Management Services (Attachment 4.19-B, page 5a), Federally Qualified Health
19 Centers and Rural Health Clinics (Attachment 4.19-B, page 6), Drug Medical services
20 (Attachment 4.19-B, page 38), and numerous other medical services (see Attachment
21 4.19-B).

22 88. Defendants have complied with California and federal laws when setting
23 Medi-Cal reimbursement rates for providers other than emergency medical
24 transportation services providers. For example, pursuant to the requirements of
25 Attachment 4.19-B, in 2003, 2004 and 2007, Defendants conducted rate studies
26 regarding the cost and market price of durable medical equipment and supplies that
27 resulted in reimbursement rates that are equal to “[t]he acquisition cost plus a 67%
28 markup” (Attachment 4.19-B, page 3e) or to “[t]he acquisition cost plus a 23%

1 markup” (Attachment 4.19-B, page 3f). In addition, in 2004, pursuant to the
2 requirements of Attachment 4.19-B, in 2004, Defendants established reimbursement
3 rates for case management services “on the basis of historical costs” (Attachment
4 4.19-B, page 5a). In fact, Defendants’ State Plan is replete with instances of their
5 compliance with their rate-setting policies and procedures for providers other than
6 emergency transportation services providers. Many of Defendants’ policies even
7 allow providers to negotiate reimbursement rates with Defendants.

8 89. There is no legitimate state end served by Defendants’ compliance with
9 the requirements of 42 C.F.R. 447.201 (requiring State plan to set forth policy and
10 methods used in setting payment rates) for certain services and their refusal to comply
11 with it for emergency medical transportation services, or with Defendants’ compliance
12 with some of their own rate-setting provisions, but not others. Non-emergency service
13 providers can negotiate payment rates with Defendants because they can choose not to
14 treat Defendants’ Medi-Cal clients. Defendants are aware that because of the
15 emergency nature of their work and the statutory provisions designed to assist all
16 persons in need of emergency assistance, Plaintiffs cannot choose to decline to
17 provide service to their clients. Consequently, by arbitrarily ignoring some provisions
18 of their policies, procedures and regulations, Defendants treat Plaintiffs differently
19 than other providers: Defendants reimburse Plaintiffs approximately 20% of their cost
20 to provide service to their Medi-Cal clients, but reimburse other providers, such as the
21 hospital to which Plaintiffs deliver a Medi-Cal client, or the specialist that treats the
22 Medi-Cal client, amounts that not only cover those providers’ costs, but that provide
23 them with a profit. The result is that Defendants’ actions cause economic injury to be
24 disproportionately concentrated on a few persons, in violation of their Constitutional
25 rights. Moreover, Plaintiffs’ investment backed expectations and subsequent business
26 and operational decisions have been, and continue to be, based on the policies,
27 procedures and regulations established by Defendants that guarantee Plaintiffs a
28

1 minimum reimbursement of their costs in exchange for providing services to
2 Defendants' Medi-Cal beneficiaries.

3 90. Defendants' refusal to comply with state or federal law, including
4 Defendants' own regulations, when setting reimbursement rates for emergency
5 medical transportation services providers does not rationally relate to any public
6 purpose. The refusal is contrary to 42 U.S.C. 1396 et seq., which requires Defendants
7 to provide medical transportation services to Medi-Cal recipients and to reimburse the
8 providers of those services pursuant to a fair process. Defendants' refusal is contrary
9 to its own policy and regulations as well as California law, which, on its face,
10 demonstrates that Defendant's actions serve no legitimate state end. In fact,
11 Defendants' refusal and failure to comply with their own policies and procedures as
12 well as state and federal law places all Californians at risk by weakening the medical
13 transportation services industry as a whole by forcing Plaintiffs to subsidize Medi-Cal
14 with their private funds. This causes service providers to cut back on personnel,
15 training, equipment and innovation to avoid going out of business. Defendants'
16 actions are reducing the overall quality of care that all Californians receive.

17 91. At a minimum, reimbursement rates must be determined by following the
18 four-step process set forth in Attachment 4.19-B to the State Plan. Defendants have
19 failed to follow these steps in determining reimbursement rates for Plaintiffs.
20 However, several types of medical services are afforded the required processes under
21 the State Plan for determination of their reimbursement rates. The distinctions drawn
22 in the Department's application of state and federal law bear no rational relationship to
23 any legitimate state end.

24 92. Consequently, Plaintiffs are not afforded the same or similar protection
25 under the law as other Medi-Cal service providers and public fire department
26 ambulance services, in violation of their civil rights.

FOURTH CLAIM FOR RELIEF

**VIOLATION OF SUBSTANTIVE DUE PROCESS
FOURTEENTH AMENDMENT TO THE U.S. CONSTITUTION,
42 U.S.C. § 1983**

93. Paragraphs 1 through 92 are incorporated by reference as if fully set forth herein.

94. Plaintiffs have a protected property interest in their private funds and property.

95. Defendants' actions of promulgating Section 51527 and its subsequent amendments are arbitrary and capricious conduct that shocks the conscience because Defendants refuse to comply with guarantees they made in exchange for receiving federal money that was intended by the federal government to be paid to Plaintiffs for the services they rendered to Medi-Cal beneficiaries; because Defendants use unilateral bargaining power to force Plaintiffs to use their private funds and property to provide services to Medi-Cal; because Defendants, in violation of federal and state law, unilaterally, without supporting evidence of what the provision of the services costs Plaintiffs, set the rates at which Plaintiffs are reimbursed at a ridiculously low level; because despite the fact that Defendants themselves developed and submitted their rate setting procedures to the federal government to obtain approval of their State Plan, Defendants have never, and continue to refuse to follow their own procedures to establish fair reimbursement rates for the services provided by Plaintiffs. Defendants have admitted to Plaintiffs that the rates in Section 51527 are ridiculously low, but because Plaintiffs are required by California law to transport their Medi-Cal clients regardless of the reimbursement Plaintiffs receive, they have no reason to establish fair rates for Plaintiffs.

96. Moreover, Defendants' conduct is arbitrary and capricious conduct that shocks the conscience because they have refused to follow their own policies and procedures--policies and procedures that they established and communicated to

1 Plaintiffs as the policies and procedures that would be used to set emergency medical
2 transportation service reimbursement rates. Specifically, Defendants have refused,
3 and continue to refuse, to follow the policies and procedures set out in Attachment
4 4.19-B to the State Plan. Defendants' refusal to follow Attachment 4.19-B has
5 resulted in a complete lack of relationship between the amounts Defendants reimburse
6 Plaintiffs to the costs incurred by Plaintiffs to provide the service. In fact, Defendants
7 reimburse Plaintiffs at a rate that is approximately 20% of the actual cost of providing
8 the service to Defendants' beneficiaries. The issue is not one of lost profits, but rather
9 it is cash out-of-pocket and the use of tangible property for each transport of
10 Defendant's Medi-Cal beneficiaries that is being compelled by Defendants.

11 97. Additionally, Defendants' conduct is arbitrary and capricious conduct
12 that shocks the conscience because Defendants are aware that Plaintiffs have no
13 bargaining power, in that Plaintiffs cannot decline to participate in Plaintiff's Medi-
14 Cal program because of the emergency nature of the work Plaintiffs perform.
15 Defendants use this unfair advantage to deprive Plaintiffs of their rights by forcing
16 them to subsidize their public assistance program.

17 98. Plaintiffs' constitutionally protected property and due process rights have
18 been, and continue to be adversely affected by Defendants' arbitrary, capricious and
19 shocking conduct.

20 99. There is no legitimate public interest served by Defendants' refusal to
21 follow the required procedures to determine reimbursement rates for medical
22 transportation services, particularly in light of the fact that Defendants themselves
23 developed the procedures as a way to provide a service to the public. Defendants'
24 failure to comply with their own procedures and federal law harms all Californians
25 because it weakens the entire medical transportation services industry by forcing
26 providers to shift funds away from innovation and improvements to subsidize
27 Defendants' program. Simply put, Defendants' actions have reduced the overall
28 quality of emergency medical transportation services that all Californians receive.

1 100. Consequently, Plaintiffs have been denied their right to substantive due
2 process, a violation of their civil rights.

3
4 **FIFTH CLAIM FOR RELIEF**

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6 **VIOLATION OF THE CONTRACT CLAUSE**
7 **ARTICLE 1, SECTION 10, CLAUSE 1 OF THE U.S. CONSTITUTION**

8 101. Paragraphs 1 through 100 are incorporated by reference as if fully set
9 forth herein.

10 102. Article 1, Section 10, Clause 1 of the United States Constitution states
11 that “[n]o State shall . . . pass any . . . Law impairing the Obligation of Contracts.”

12 103. Plaintiffs have entered into contracts with cities, counties and other
13 special districts for the provision of emergency medical transportation services.
14 Because of the serious nature of treating and transporting people whose lives are at
15 risk, no company may provide emergency transportation services in California
16 without the consent of the governing body in the jurisdiction in which the services are
17 being provided. That consent is given only in the form of a fully exclusive or semi-
18 exclusive contract for services. Consequently, the only way for Plaintiffs to conduct
19 their business is by and through contractual agreements that cover specific geographic
20 areas. With the exception of some publicly operated emergency transportation
21 services, without the existence of these contracts, no Californian would receive
22 emergency transportation services when requesting assistance from their local 9-1-1
23 service.

24 104. Plaintiffs obtained their service contracts by participating in a
25 governmental approval process specified and administered by the entities awarding
26 the contracts. Each awarding entity specifies the services that must be provided by the
27 organization selected to perform the contract. In addition, the awarding entity requires
28 that the provider meet or exceed specific standards of service in the performance of

1 the contract. Those standards include specifications for 9-1-1 dispatch facilities, 9-1-1
2 call response times, number and type of ambulance vehicles, ambulance response
3 times, level of care, ambulance personnel certification and experience levels, medical
4 supervision levels, ongoing personnel training and quality assurance and quality
5 improvement plans. Each awarding entity also requires that providers specify the
6 maximum price they will charge for an emergency transport.

7 105. Plaintiffs set their prices based on a careful evaluation of the resources
8 needed to meet each requirement set forth by the awarding entity. Plaintiffs expect, at
9 a minimum, that persons and entities such as Defendants will comply with California
10 and federal law related to the provision of their services. That expectation is factored
11 into Plaintiffs' prices. Consequently, pursuant to the existence of California's State
12 Plan, and Attachment 4.19-B in particular, Plaintiffs bid on service contracts with the
13 expectation that they will earn enough money to cover the basic operational costs
14 incurred transporting Defendants' Medi-Cal beneficiaries. After being awarded a
15 contract, Plaintiffs are required to meet or exceed every term of the contract. To
16 protect the safety of all Californians in emergency situations, if Plaintiffs do not meet
17 or exceed every contract term, their contracts are subject to revocation by the
18 awarding entity and Plaintiffs can be subject to regulatory and financial penalties.

19 106. Section 51527 of the California Code of Regulations and its subsequent
20 amendments, as promulgated by Defendants, have substantially impaired Plaintiffs'
21 existing contracts with various cities, counties and other special districts by forcing
22 Plaintiffs to use the funds earned through their performance of the contracts to
23 subsidize Defendants' Medi-Cal program. Plaintiffs' contracts are worth significantly
24 less than they were prior to Defendants' enactment of Section 51527 and its
25 subsequent amendments.

26 107. Section 51527 of the California Code of Regulations and its subsequent
27 amendments, as promulgated by Defendants, do not serve an important government
28 purpose. In fact, the legislation and its amendments are contrary to the law that

1 Defendants and their predecessors devised and drafted. Defendants state that their
2 “mission is to preserve and improve the health status of all Californians.”⁴
3 Defendants’ actions, however, endanger the health and safety of a significant portion
4 of the population of the State of California by stretching the state’s emergency
5 response system so thin that the quality of service provided to all Californians has
6 been decreased.

7 108. Section 51527 of the California Code of Regulations and its subsequent
8 amendments, as promulgated by Defendants, are not legitimate, are unreasonable and
9 are not necessary to serve any government purpose. The administrative record of the
10 legislation is devoid of any explanation or support for the rates contained in Section
11 51527. The rates were unilaterally set by Defendants, without explanation and
12 without a description of purpose.

13 109. In light of the surrounding circumstances, Section 51527 is not
14 reasonable. Defendants offer their clients several services under the Medi-Cal
15 program that are not required by federal law. At the same time, Defendants refuse to
16 promulgate Section 51527 in a manner that compensates Plaintiffs, at very least, for
17 the cost of the services they provide to Defendants’ clients. Defendants’ actions have
18 imposed a drastic impairment of Plaintiffs’ contracts by significantly diminishing their
19 economic value when Defendants could take a more moderate course that would serve
20 their purposes equally well. For example, Defendants can use a small portion of the
21 State’s Medi-Cal budget that is currently used for non-emergency transportation
22 services and other voluntary services to fund emergency transportation services at a
23 level that at least covers Plaintiff’s costs of providing the services. Emergency
24 transportation services are exponentially more important to the health and safety of all
25 Californians than are non-emergency services.

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⁴ <http://www.dhcs.ca.gov/Pages/AboutUs.aspx>

110. Defendants obtain a significant benefit from the illegal enactment of Section 51527 and its amendments. By underpaying Plaintiffs, Defendants are able to take tens of millions of dollars each year from Plaintiffs for their personal use.

SIXTH CLAIM FOR RELIEF

VIOLATION OF INTERSTATE COMMERCE CLAUSE ARTICLE I, SECTION 8, CLAUSE 3 OF THE U.S. CONSTITUTION

111. Paragraphs 1 through 110 are incorporated by reference as if fully set forth herein.

112. Pursuant to California and federal law, Medi-Cal recipients are medically insured throughout the United States. Additionally Plaintiffs are required by law to treat and transport individuals who are insured by Medi-Cal even if those services are rendered outside of California. Defendants' Medi-Cal clients regularly request assistance when traveling to, or living in, Nevada and Oregon. Plaintiffs are compelled to provide services to them. Instead of receiving adequate compensation for out-of-state emergency medical treatment and transportation of Medi-Cal recipients, Plaintiffs are only compensated approximately 20% of the cost of providing the service by the State of California. Thus, neighboring states and their residents, including Plaintiffs, are compelled to use resources to support California's Medi-Cal program. This forced subsidization is a substantial impairment of interstate commerce.

113. Article I, Section 8, Clause 3 of the United States Constitution vests Congress with the power to regulate commerce among the several states. The Interstate Commerce Clause was drafted to maintain a national economic union unfettered by state-imposed limitations on interstate commerce as well as to allow individual states to be autonomous within their boundaries. Moreover, the Interstate Commerce Clause protects against inconsistent legislation arising from the projection

1 of one state's regulatory regime into the jurisdiction of another state. Defendants'
2 unilateral decision to substantially underpay Plaintiffs treating Medi-Cal recipients
3 who seek care outside of California forces those states to submit to an invalid and
4 illegal California law.

5 114. Simply put, California is regulating the prices of out-of-state transactions
6 in clear violation of the Interstate Commerce Clause. First, this enactment applies to
7 commerce that takes place wholly outside the State of California, specifically
8 establishing a scale of prices for use in both Nevada and Oregon. Second, the
9 practical effect of this enactment directly controls conduct which is occurring wholly
10 outside the State of California. Third, if all fifty states enacted similar legislation,
11 emergency medical transportation services would be significantly harmed or
12 eliminated.

13 115. Section 51527 and its subsequent amendments, as promulgated by
14 Defendants, clearly discriminates in favor of California interests. Defendants'
15 motives for not paying Plaintiffs just compensation for treating and transporting their
16 Medi-Cal clients is economic protectionism. These enactments have the effect of
17 favoring in-state economic interests by reducing the cost of health care for poor and
18 indigent Californians over the economic interests of other states which are forced to
19 subsidize Medi-Cal.

20 116. Furthermore, less discriminatory alternatives exist to effectively care for
21 all California residents. For example, Defendants compensate non-emergency
22 transportation services at a substantially higher rate than Plaintiffs receive for
23 emergency transportation services. While it is perplexing as to why mandatory
24 emergency transportation is somehow less costly than voluntary non-emergency
25 transportation services, clearly funds from voluntary services could be used to
26 compensate Plaintiffs.

27 117. Paying Plaintiffs twenty cents on the dollar for each emergency
28 transportation service rendered does not promote the welfare and safety of the people

1 of California, in fact, such a cost-cutting measure hinders Plaintiffs ability to maintain
 2 its current emergency response capabilities. Furthermore, the burden that this
 3 enactment places on interstate commerce is clearly excessive in relation to its putative
 4 local benefits. By refusing to pay fair market value for services rendered, Plaintiffs
 5 are forced to charge a greater rate for its services to non Medi-Cal recipients. In sum,
 6 California's self-interested legislation is driving up the cost of health care throughout
 7 the United States.

8 PRAYER

9
 10 Plaintiffs pray for:

- 11 1. An order permanently enjoining Defendants from reimbursing Plaintiffs
- 12 less than their "usual charges" for the services they provide to Defendant's Medi-Cal
- 13 clients;
- 14 2. Declaratory relief consistent with the injunction;
- 15 3. Restitution;
- 16 4. For compensatory damages from Defendants in their personal capacities
- 17 in an amount according to proof at trial;
- 18 5. Attorney's fees as allowed by law;
- 19 6. Costs of suit and pre-judgment interest;
- 20 7. For punitive damages against the Defendants in their individual
- 21 capacities;
- 22 8. Any other relief the Court may deem proper and equitable.

23
 24 Dated: September 21, 2012

MICHELMAN & ROBINSON LLP

25
 26 By: 

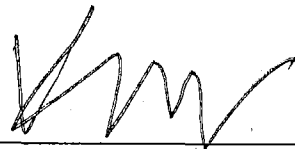
27 Andrew H. Selesnick
 28 Kevin R. Warren
 Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury.

Dated: September 20, 2012

MICHELMAN & ROBINSON LLP

By: 

Andrew H. Selesnick
Kevin R. Warren
Attorneys for Plaintiffs

PROOF OF SERVICE

Morris Berkowitz, et al. v. Nirav R. Shaw, M.D., M.P.H.
USDC, SDNY Case No. 12 CV 5227 (JSR)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 15760 Ventura Boulevard, 5th Floor, Encino, California 91436.

On September 20, 2012, I served the foregoing document(s) described as follows: **FIRST AMENDED COMPLAINT FOR INJUNCTIVE RELIEF, DECLARATORY RELIEF AND DAMAGES; JURY TRIAL DEMANDED**, on the interested parties in this action, by placing a true copy thereof enclosed in a sealed envelope(s) addressed to the following addressee(s):

Hadara Stanton
CAAG – Office of the Attorney General
California Department of Justice
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102

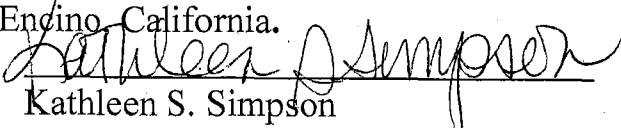
☐ **(BY MESSENGER SERVICE):** I served the documents by placing them in an envelope or package addressed to the person at the addresses listed above and providing them to a professional messenger service for service. (*See Declaration of Messenger below*).

☒ **BY FEDERAL EXPRESS/STANDARD OVERNIGHT MAIL:** I caused the above-described document to be served on the interested parties noted above by Federal Express/Standard Overnight Mail.

☒ **FEDERAL:** I hereby certify that I am employed in the office of a member of the Bar of this Court at whose direction the service was made.

I declare under penalty of perjury under the laws of the State of California, that the above is true and correct.

Executed on September 20, 2012, at Encino, California.


Kathleen S. Simpson