

1 STEPHEN P. BERZON (SBN 46540)  
SCOTT A. KRONLAND (SBN 171693)  
2 STACEY M. LEYTON (SBN 203827)  
PEDER J. THOREEN (SBN 217081)  
3 Altshuler Berzon LLP  
177 Post Street, Suite 300  
4 San Francisco, California 94108  
Telephone: (415) 421-7151  
5 Facsimile: (415) 362-8064  
sberzon@altshulerberzon.com  
6 skronland@altshulerberzon.com  
sleyton@altshulerberzon.com  
7 pthoreen@altshulerberzon.com  
[Additional Counsel on Signature Page]

8 Attorneys for Plaintiffs

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

11 LYDIA DOMINGUEZ, PATSY MILLER, ALEX )  
12 BROWN, by and through his mother and next friend )  
Lisa Brown, DONNA BROWN, CHLOE LIPTON, by )  
13 and through her conservator and next friend Julie )  
Weissman-Steinbaugh, HERBERT M. MEYER, )  
14 LESLIE GORDON, CHARLENE AYERS, WILLIE )  
BEATRICE SHEPPARD, ANDY MARTINEZ, and )  
15 CAROLYN STEWART, on behalf of themselves and a )  
class of those similarly situated; SERVICE )  
16 EMPLOYEES INTERNATIONAL UNION UNITED )  
HEALTHCARE WORKERS WEST; SERVICE )  
17 EMPLOYEES INTERNATIONAL UNION UNITED )  
LONG-TERM CARE WORKERS; SERVICE )  
18 EMPLOYEES INTERNATIONAL UNION LOCAL )  
521; SERVICE EMPLOYEES INTERNATIONAL )  
19 UNION CALIFORNIA STATE COUNCIL; UNITED )  
DOMESTIC WORKERS OF AMERICA, AFSCME, )  
20 LOCAL 3930, AFL-CIO; and CALIFORNIA UNITED )  
HOMECARE WORKERS, )

21 Plaintiffs, )

22 v. )

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

28 Defendants. )

) Case No. C 09-02306 CW

) **SECOND AMENDED COMPLAINT**  
) **FOR DECLARATORY AND**  
) **INJUNCTIVE RELIEF**

## INTRODUCTION

1  
2 1. This case challenges California Welfare and Institutions Code Section 12306.1(d)(6)  
3 (“Section 12306.1(d)(6)”), which provides for the reduction of the wages and benefits of In-Home  
4 Supportive Services (“IHSS”) providers, as well as the State’s approval and implementation of certain  
5 county-proposed IHSS rate decreases.

6 2. Under Section 12306.1(d)(6), the maximum hourly wage and benefit rate that the State  
7 will help fund would be reduced by two dollars per hour, effective July 1, 2009. Plaintiffs seek a  
8 declaratory judgment that Section 12306.1(d)(6) is unlawful and an injunction to prevent Defendants  
9 from implementing this provision. Section 12306.1(d)(6) would cause severe and irreparable harm to  
10 tens of thousands of Californians, pushing already low-wage IHSS providers into poverty and forcing  
11 the institutionalization of, or otherwise harming, some IHSS recipients who will be unable to obtain  
12 in-home care.

13 3. The IHSS program presently provides critical assistance to hundreds of thousands of  
14 low-income seniors and persons with disabilities, primarily as part of the state’s Medicaid program  
15 (“Medi-Cal”). Elderly and/or disabled individuals who are unable to perform certain basic tasks of  
16 daily living – for example, bathing, dressing, feeding themselves, or taking necessary medications – are  
17 provided with in-home assistance that permits them to remain out of institutional care. With the help  
18 of IHSS providers, these IHSS consumers are able to remain safely in their homes, at a cost to the State  
19 of far less than the cost of institutional care.

20 4. IHSS providers’ wages and benefits are funded through a combination of federal, state,  
21 and county funds. The State contributes a percentage of wages and benefits up to a maximum amount  
22 established by state law. In enacting Section 12306.1(d)(6), the California Legislature reduced the  
23 maximum amount of the wages and benefits of IHSS providers for which the State will share costs by  
24 over 15%, to \$9.50 per hour in wages and \$.60 per hour in benefits, effective July 1, 2009. The State  
25 then notified counties to submit notices of their plans to reduce wages and benefits to these levels for  
26 the reduction to take effect by that date. In many counties that currently pay wages and/or benefits  
27 above the newly reduced maximum amount, Section 12306.1(d)(6) would cause IHSS providers’  
28 wages and benefits to drop significantly from their current levels. The consequences for many IHSS

1 consumers in these counties would be dire, because their providers would be unable or unwilling to  
2 continue working at the reduced wage rate. Many consumers would be unable to hire IHSS providers  
3 and would either be deprived of critical IHSS services or be forced into nursing homes.

4 5. IHSS wages and benefits are set through a process, established by state statute, that  
5 involves the state legislature establishing the maximum amount of wages and benefits the State will  
6 help fund, county proposals of wage and benefit amounts, and state agency approval of  
7 county-proposed rates. In May 2010, Fresno County submitted a rate change request to the State,  
8 seeking reduction of the IHSS hourly provider wage from \$10.25 to \$8.00 and the hourly provider  
9 health care contribution from \$0.85 to \$0.60. On information and belief, in June 2010, the State  
10 approved or will approve that rate reduction request with an effective date of July 1, 2010.

11 6. Plaintiffs have filed this action because Section 12306.1(d)(6) and the State's approval  
12 of material county rate decreases are preempted by the federal Medicaid Act, 42 U.S.C.  
13 §1396a(a)(30)(A). Prior to enacting Section 12306.1(d)(6), the State failed to give the required  
14 consideration to the impact of the statute on the efficiency, economy, and quality of care of Medi-Cal  
15 services, and on access to Medi-Cal services. On information and belief, prior to approving Fresno  
16 County's rate decrease request, the State failed to give the required consideration to these factors, and,  
17 absent injunctive relief, the State will continue to fail to give this required consideration prior to  
18 approving other counties' material rate decrease requests in the future.

19 7. In addition, Section 12306.1(d)(6) and the State's approval of the Fresno County rate  
20 decrease are preempted by the federal Medicaid Act, 42 U.S.C. §1396a(a)(30)(A), because the reduced  
21 IHSS provider wages and benefits that would result from implementation of Section 12306.1(d)(6) and  
22 the Fresno County rate decrease would produce Medi-Cal services that are not consistent with the  
23 required standards of efficiency, economy, and quality of care, and would not provide sufficient access  
24 to Medi-Cal services.

25 8. Finally, implementation of Section 12306.1(d)(6) and/or the Fresno County rate  
26 decrease would violate the anti-discrimination provisions of the Americans with Disabilities Act  
27 ("ADA"), 42 U.S.C. §12132, and Section 504 of the Rehabilitation Act, 29 U.S.C. §794(a), by forcing  
28 many IHSS consumers to enter nursing homes or other institutions, despite their desire and ability to

1 remain in their homes.

2 **JURISDICTION**

3 9. This action arises under:

- 4 (a) Title XIX of the Social Security Act, 42 U.S.C. §1396a(a)(30)(A);
- 5 (b) The Americans with Disabilities Act, 42 U.S.C. §12132;
- 6 (c) The Rehabilitation Act, 29 U.S.C. §794(a);
- 7 (d) The Supremacy Clause, U.S. Const., Art. VI, cl. 2; and
- 8 (e) 42 U.S.C. §1983.

9 10. This Court has subject matter jurisdiction under 28 U.S.C. §§1331 and 1343.

10 11. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§2201  
11 and 2202.

12 **VENUE**

13 12. Venue is proper under 28 U.S.C. §1391(b) because all Defendants reside in California  
14 and at least one Defendant resides in the Northern District of California, and because a substantial part  
15 of the events or omissions giving rise to the claims occurred or will occur in the Northern District of  
16 California, where many Plaintiffs or their members live and work.

17 **INTRADISTRICT ASSIGNMENT**

18 13. Pursuant to Local Rule 3-2(c)-(d), intra-district assignment to the San Francisco or  
19 Oakland Division is proper because at least one Defendant resides in San Francisco County, and  
20 because a substantial part of the events or omissions giving rise to the claims occurred or will occur in  
21 Alameda, Contra Costa, Marin, Mendocino, Napa, San Francisco, San Mateo and Sonoma counties.

22 **PARTIES**

23 14. Plaintiff Patsy Miller is a 72-year-old resident of Fresno County. Plaintiff suffers from  
24 multiple disabilities, including fibromyalgia, rheumatoid arthritis, diabetic neuropathy, irritable bowel  
25 syndrome, and clinical depression. Plaintiff Miller has been receiving IHSS services for about 15  
26 years, but has had the same provider for more than eight years. Plaintiff Miller receives about 80 hours  
27 of IHSS services per month. Plaintiff Miller requires assistance with cleaning, shopping, cooking,  
28 transportation, and personal care. If her provider's wages were cut, Plaintiff Miller knows that it would

1 be very difficult for her provider to continue working with her. Plaintiff Miller fears it would be hard  
2 to find anyone who could replace her provider. Plaintiff Miller does not have anyone else to rely on.  
3 Without her provider, Plaintiff Miller worries she may be forced into a nursing home where her quality  
4 of life will be seriously diminished.

5 15. Plaintiff Lydia Dominguez is an 81-year-old resident of Alameda County. She suffers  
6 from osteoporosis and has problems with her eyes and with her right arm. As a result of her condition,  
7 Plaintiff Dominguez has had multiple operations and at least ten significant accidents. In addition, she  
8 is mostly unable to walk and she depends heavily on a walker and assistance from others. Plaintiff  
9 Dominguez is authorized to receive 24 hours of IHSS services per week pursuant to the Medi-Cal  
10 program for assistance with bathing, cooking, laundry, cleaning, and paying her bills. Without this  
11 assistance, Plaintiff Dominguez could not live on her own, and would be forced into a nursing home.  
12 If the IHSS wages and benefits are reduced below their current level, Plaintiff Dominguez's provider  
13 will be forced to look for another job. Plaintiff Dominguez will not be able to find another provider to  
14 work for less than this amount, and will be forced into a nursing home.

15 16. Plaintiff Alex Brown, a 17-year-old resident of Fresno County, appears in this action  
16 through his mother and next friend, Lisa Brown. Plaintiff Alex Brown has Down Syndrome, and  
17 requires protective supervision and assistance with tasks of daily living (including bathing, grooming,  
18 dressing, and eating) in order to remain in his home. Plaintiff Alex Brown is not able to appear on his  
19 own behalf to litigate this action because his developmental disability prevents him from understanding  
20 the nature of the action or communicating about it with others. Lisa Brown, Plaintiff Alex Brown's  
21 next friend and mother, is Plaintiff Alex Brown's sole parent and his IHSS provider. Ms. Brown  
22 formerly worked as a food scientist but has been caring for her son full-time since 1998, and began  
23 being paid for his care through IHSS in 2002. Ms. Brown receives \$10.25 per hour for 195 hours per  
24 month of care for her son through the IHSS program, and her personal savings are limited to a few  
25 hundred dollars. Ms. Brown is concerned that, if Fresno County reduces its wages, she would be  
26 unable to afford her monthly mortgage payment and so would lose her home. Plaintiff Alex Brown  
27 does not have any other relatives who could assume responsibility for his care or take him into their  
28 home. If Ms. Brown loses her home, she will be forced to live in her car because she has no alternative

1 housing. If that happens, Ms. Brown will be forced to put her son in a community care facility or  
2 developmental center. Ms. Brown is concerned about that possibility because it will limit her son's  
3 freedom and contact with family members, and because there has been abuse in such facilities and her  
4 son is unable to express himself if he is harmed.

5 17. Plaintiff Donna Brown, a 45-year-old resident of Solano County, has multiple sclerosis  
6 and is paralyzed from the neck down. Plaintiff Brown is unable to perform basic tasks such as eating  
7 or showering without assistance, and is authorized to receive 283 hours in IHSS services per month.  
8 Four IHSS providers assist Plaintiff Brown with meal preparation, eating, getting out of bed, basic  
9 hygiene, giving her medication, bathing, dressing, emptying her catheter, and taking her to doctor's  
10 appointments and exercises. Plaintiff Brown could not live independently without their assistance. At  
11 least some of Plaintiff Brown's IHSS providers would be unable to continue working for her if the  
12 IHSS wages and benefits were reduced below their current level, and Plaintiff Brown believes it would  
13 be difficult for her to find new IHSS providers at less than that wage rate. The quality of Plaintiff  
14 Brown's care would suffer, and she worries that she might be forced into a nursing home which would  
15 deprive her of her current freedom, independence, and community involvement.

16 18. Plaintiff Chloe Lipton, a 37-year-old resident of Alameda County, appears in this action  
17 through her conservator and next friend, Julie Weissman-Steinbaugh. Plaintiff Lipton has multiple  
18 disabilities, including cerebral palsy, visual impairment, mental retardation, and anxiety disorder. She  
19 requires round-the-clock assistance to live on her own, and is authorized to receive the maximum  
20 number of IHSS hours per month pursuant to Medi-Cal as well as services from a state regional center  
21 for individuals with developmental disabilities. Plaintiff Lipton is not able to appear on her own behalf  
22 to litigate this action because her developmental disability prevents her from understanding the nature  
23 of the action or communicating about it with others. Plaintiff Lipton has had trouble finding IHSS  
24 providers, and if Alameda County reduces the IHSS wages and benefits, Plaintiff Lipton's current  
25 IHSS providers may leave their jobs and Plaintiff Lipton may be unable to find IHSS providers who  
26 would work for her. Weissman-Steinbaugh and her husband have served as conservators of Plaintiff  
27 Lipton's person and estate since Plaintiff Lipton's mother died in 2002, because Plaintiff Lipton's  
28 relatives were not willing to assume responsibility for her care. Both Weissman-Steinbaugh and her

1 husband are disabled, and so cannot provide Plaintiff Lipton with the care she needs in order to remain  
2 in her home. If Plaintiff Lipton is unable to find IHSS providers, she may be forced to enter a nursing  
3 home, where her freedom to go out in the community will be greatly restricted. This would be  
4 disastrous for Plaintiff Lipton's quality of life.

5 19. Plaintiff Herbert M. Meyer is a 78-year-old resident of Marin County. Plaintiff Meyer is  
6 quadriplegic and so requires assistance with getting in and out of bed, bathing, dressing and undressing,  
7 getting into his wheelchair, preparation of his meals, bowel and bladder care, cleaning his apartment,  
8 and transportation to appointments. Without this assistance, Plaintiff Meyer could not live  
9 independently. Plaintiff Meyer is currently authorized to receive 272 hours of IHSS services per month  
10 pursuant to Medi-Cal for assistance with these tasks. Plaintiff Meyer was cared for by the same IHSS  
11 provider for more than twelve years, until she died from cancer earlier in 2009, and then temporarily by  
12 his son, but is now cared for by non-relative providers. If Marin County were to reduce the wages and  
13 benefits of IHSS providers below their current rate, Plaintiff Meyer does not believe that he will be  
14 able to find an IHSS provider. If that happens, Plaintiff Meyer will be forced to enter a skilled nursing  
15 facility, which will require him to surrender his freedom and control over his transportation, money,  
16 and community activities. Plaintiff Meyer does not believe he will receive a high quality of health care  
17 in a skilled nursing facility and would be devastated if he has to enter one.

18 20. Plaintiff Leslie Gordon is a resident of Alameda County and a recipient of IHSS  
19 services. Plaintiff Gordon has cerebral palsy and needs a caregiver to be present between the hours of  
20 11 p.m. and 8 a.m. in case she needs to get out of bed during an emergency. She is authorized to  
21 receive 283 hours of IHSS services under the Medi-Cal program, and has five IHSS providers who  
22 provide such overnight care. Plaintiff Gordon is concerned that, if Alameda County cuts the IHSS  
23 wages and benefits, her IHSS providers will have to quit and she will be unable to find replacements  
24 for her IHSS providers. If this happens, Plaintiff Gordon may be forced into a nursing home.

25 21. Plaintiff Charlene Ayers is a 64-year-old resident of Alameda County. She has been  
26 legally blind since 1972, and her vision deteriorated significantly in January 2008. She has other health  
27 issues such as diabetes and agoraphobia. Plaintiff Ayers has received IHSS services for over a year and  
28 is authorized for 108 hours of IHSS services per month. These services include cooking, cleaning,

1 personal care, shopping, laundry, and assistance going out into the community. Plaintiff Ayers' IHSS  
2 provider will have to look for other work if Alameda County reduces the IHSS wages and benefits  
3 below the current rate, and Plaintiff Ayers does not believe that she will be able to find a suitable  
4 replacement for less than the current wage of \$11.50 per hour. If Plaintiff Ayers cannot find a suitable  
5 IHSS provider, she will be unable to cook, clean effectively, or go out into the community the way she  
6 is able to now. She will also have difficulty administering her medication.

7 22. Plaintiff Willie Beatrice Sheppard is a 81-year-old resident of Alameda County. She  
8 suffers from arthritis and has had a stroke. As a result, she cannot walk very well and needs assistance  
9 to go out in the community. Although she can perform light tasks around her house, she cannot do  
10 anything difficult. Plaintiff Sheppard is authorized for 41.7 hours of IHSS services per month,  
11 including cooking, cleaning, bathing, shopping, and mobility assistance. Plaintiff Sheppard's IHSS  
12 provider will have to look for other work if her wages fall below \$11.50 per hour. If Plaintiff  
13 Sheppard's IHSS provider leaves, Plaintiff Sheppard does not believe she will be able to find someone  
14 to replace her. It would be very difficult to Plaintiff Sheppard to live on her own without help, and she  
15 is afraid that she would be forced to enter a nursing home. Plaintiff Sheppard used to work in a nursing  
16 home, and does not believe she would receive a high quality of care if she entered one. For this reason,  
17 she wants to live in her home as long as possible.

18 23. Plaintiff Andy Martinez is a 77-year-old resident of Fresno County. He suffers from  
19 diabetes, and has very limited mobility due to a knee injury. As a result, he can hardly walk, and needs  
20 assistance with cooking, cleaning, bathing, shopping, and personal care. Plaintiff Martinez is  
21 authorized for 180 hours of IHSS services per month, which are performed by his wife. If Plaintiff  
22 Martinez's wife's IHSS provider wages and benefits are reduced, they will not be able to make ends  
23 meet. As it is, they are barely able to pay their bills. Plaintiff Martinez believes that they would have  
24 to move to a cheaper apartment, but this would be extremely difficult because he can hardly move and  
25 his wife would not be able to move them both. Plaintiff Martinez has been in rest homes before, and  
26 believes that they do not provide a good quality of care. For this reason, he does not want to go to a  
27 nursing facility.

28 24. Plaintiff Carolyn Stewart is a 65-year-old resident of Fresno County. She suffers from



1 diabetes, high blood pressure, and heart trouble. As the result of an accident and, later, a stroke, she  
2 experiences extreme pain and stiffness in her back and right side, and she cannot use her right hand  
3 most of the time. Due to pain in her legs, Plaintiff Stewart uses a walker and a wheelchair. Plaintiff  
4 Stewart needs assistance with all of her daily tasks, including food preparation, laundry, grocery  
5 shopping, bathing, toilet assistance, and transportation to doctor's appointments. Plaintiff Stewart is  
6 authorized for approximately 109-118 hours of IHSS services per month. Plaintiff Stewart's IHSS  
7 provider will have to reduce her hours or quit if her wages are reduced to \$8.00 per hour. Plaintiff  
8 Stewart is worried that she will not be able to find another provider if her current IHSS provider quits;  
9 she has had difficulty finding reliable IHSS providers in the past. Plaintiff Stewart believes she will  
10 likely have to go into a nursing home if she is unable to find an IHSS provider. She has no family  
11 members who could assist her if she were unable to find an IHSS provider.

12 25. Plaintiff Service Employees International Union United Healthcare Workers West  
13 ("UHW") is an unincorporated association whose members include approximately 55,000 IHSS  
14 workers in 11 counties. Some members provide services for their minor children. Plaintiff UHW is an  
15 affiliate of the Service Employees International Union ("SEIU"). UHW was established to improve the  
16 wages, benefits, and working conditions of service employees, including IHSS providers, throughout  
17 California. UHW has for years been an advocate for IHSS consumers and quality of care. Some of  
18 UHW's IHSS worker members currently earn wages of more than \$9.50 per hour, including those in  
19 Calaveras (\$9.75 per hour), Contra Costa and Sonoma (\$11.50 per hour), Fresno (\$10.25 per hour),  
20 Marin (\$11.55 per hour), Sacramento (\$10.40 per hour), and Yolo (\$10.50 per hour) counties. In  
21 addition, some of UHW's IHSS worker members currently earn benefits of more than \$.60 per hour. If  
22 Section 12306.1(d)(6) took effect, the wages of members in Contra Costa County would be reduced to  
23 \$10.32 per hour, and the wages and benefits of members in other counties would also be reduced.  
24 UHW's members would be irreparably harmed by these reductions in IHSS wages and/or benefits.  
25 UHW members also would be harmed by the State's approval and implementation of the Fresno  
26 County-proposed reduction in IHSS rates from \$11.10 to \$8.60 in hourly wages and benefits, or of any  
27 other county-proposed reductions in IHSS rates in counties where UHW represents IHSS providers.  
28 UHW brings this suit on behalf of its members, who would have standing to sue in their own right and

1 whose personal participation in this litigation is not necessary, in order to enjoin Defendants from  
2 implementing Section 12306.1(d)(6) or otherwise reducing IHSS wages and benefits unlawfully.

3         26. Plaintiff Service Employees International Union United Long-Term Care Workers  
4 (“ULTCW”) is an unincorporated association whose members include approximately 175,000 IHSS  
5 workers in 10 counties. Some members provide services for their minor children. Plaintiff ULTCW is  
6 an affiliate of SEIU. ULTCW was established to improve the wages, benefits, and working conditions  
7 of service employees, including IHSS providers, throughout California. ULTCW has for years been an  
8 advocate for IHSS consumers and quality of care. Some of ULTCW’s IHSS worker members currently  
9 earn wages of more than \$9.50 per hour, including those in Alameda, Monterey, Napa, Santa Cruz, and  
10 Solano counties, who all earn \$11.50 per hour; Mendocino County, who earn \$9.90 per hour; and San  
11 Benito County, who earn \$10.50 per hour. In addition, some of ULTCW’s IHSS worker members  
12 currently earn benefits of more than \$.60 per hour. If Section 12306.1(d)(6) took effect, the wages of  
13 members in Napa County would be reduced to \$10.20 per hour, the wages of members in Mendocino  
14 County would be reduced to \$9.64 per hour, and the wages and benefits of members in other counties  
15 may also be reduced. ULTCW’s members would be irreparably harmed by these reductions in IHSS  
16 wages and benefits. ULTCW members also would be harmed by the State’s approval and  
17 implementation of other county-proposed reductions in IHSS rates in counties where ULTCW  
18 represents IHSS providers. ULTCW brings this suit on behalf of its members, who would have  
19 standing to sue in their own right and whose personal participation in this litigation is not necessary, in  
20 order to enjoin Defendants from implementing Section 12306.1(d)(6) or otherwise reducing IHSS  
21 wages and benefits unlawfully.

22         27. Plaintiff Service Employees International Union Local 521 (“Local 521”) is an  
23 unincorporated association whose members include approximately 15,000 IHSS workers in Santa Clara  
24 County and San Mateo County. Some members provide services for their minor children. Local 521 is  
25 an affiliate of SEIU. Local 521 was established to improve the wages, benefits, and working  
26 conditions of service employees, including IHSS providers, in Central Northern California. Local 521,  
27 through its predecessor unions, has long been an advocate for IHSS consumers and quality of care. All  
28 of Local 521’s IHSS worker members currently earn wages of more than \$9.50 per hour and at least

1 some of UHW's IHSS worker members currently earn benefits of more than \$.60 per hour. Members  
2 in Santa Clara County currently earn wages of \$12.20 per hour, and members in San Mateo County  
3 currently earn wages of \$11.50 per hour. If Section 12306.1(d)(6) took effect, these members' wages  
4 and benefits would be reduced to below current amounts. Local 521's members would be irreparably  
5 harmed by these reductions in IHSS wages and benefits. Local 521 members also would be harmed by  
6 the State's approval and implementation of other county-proposed reductions in IHSS rates in counties  
7 where Local 521 represents IHSS providers. Local 521 brings this suit on behalf of its members, who  
8 would have standing to sue in their own right and whose personal participation in this litigation is not  
9 necessary, in order to enjoin Defendants from implementing Section 12306.1(d)(6) or otherwise  
10 reducing IHSS wages and benefits unlawfully.

11 28. Plaintiff Service Employees International Union California State Council ("California  
12 State Council") is a state-wide affiliate of SEIU. More than 20 local unions representing over 700,000  
13 workers and retirees belong to the California State Council. Some members provide services for their  
14 minor children. Some retiree members receive IHSS services. Over 87,000 of the State Council's  
15 members are IHSS providers earning wages of greater than \$9.50 per hour, some of whom also earn  
16 benefits of greater than \$.60 per hour. Some of these members are retirees who receive IHSS services.  
17 The California State Council advocates for the interests of its affiliated local unions and their members  
18 before legislative bodies, regulatory agencies, and the courts. The California State Council has long  
19 been an advocate for IHSS consumers and quality of care. The California State Council brings this suit  
20 on behalf of its affiliate local unions and the members of its affiliates, who would have standing to sue  
21 in their own right and whose personal participation in this litigation is not necessary, in order to enjoin  
22 Defendants from implementing Section 12306.1(d)(6) or otherwise reducing IHSS wages and benefits  
23 unlawfully.

24 29. Plaintiff United Domestic Workers of America, AFSCME, Local 3930, AFL-CIO  
25 ("UDW"), is an unincorporated association whose members include approximately 55,000 IHSS  
26 workers in 11 counties. Some members provide services for their minor children. Plaintiff UDW is an  
27 affiliate of the American Federation of State, County and Municipal Employees ("AFSCME"). UDW  
28 was established to improve the wages, benefits, and working conditions of IHSS providers throughout

1 California. UDW has for years been an advocate for IHSS consumers and quality of care. Some of  
2 UDW's members currently earn wages of more than \$9.50 per hour, including those in Placer (\$10.00  
3 per hour), Riverside (\$10.25 per hour), San Luis Obispo (\$10.00 per hour), and Santa Barbara (\$10.00  
4 per hour). In addition, some of UDW's IHSS worker members currently earn benefits of more than  
5 \$.60 per hour. If Section 12306.1(d)(6) took effect, the wages of UDW's members would be reduced.  
6 UDW's members would be irreparably harmed by these reductions in IHSS wages and benefits. UDW  
7 members also would be harmed by the State's approval and implementation of other county-proposed  
8 reductions in IHSS rates in counties where UDW represents IHSS providers. UDW brings this suit on  
9 behalf of its members, who would have standing to sue in their own right and whose personal  
10 participation in this litigation is not necessary, in order to enjoin Defendants from implementing  
11 Section 12306.1(d)(6) or otherwise reducing IHSS wages and benefits unlawfully.

12 30. Plaintiff California United Homecare Workers ("CUHW"), is an unincorporated  
13 association whose members include approximately 18,000 IHSS workers in 18 counties. Some  
14 members provide services for their minor children. Plaintiff CUHW is jointly affiliated with SEIU and  
15 AFSCME, and is a member of the California State Council. Through the California State Council,  
16 CUHW has been an advocate for increased access to and quality of IHSS services. Some of CUHW's  
17 members currently earn wages of more than \$9.50 per hour, including those in Madera County (\$9.75  
18 per hour). If Section 12306.1(d)(6) took effect, the wages of CUHW's members would be reduced.  
19 CUHW's members would be irreparably harmed by these reductions in IHSS wages and benefits.  
20 CUHW members also would be harmed by the State's approval and implementation of other  
21 county-proposed reductions in IHSS rates in counties where CUHW represents IHSS providers.  
22 CUHW brings this suit on behalf of its members, who would have standing to sue in their own right  
23 and whose personal participation in this litigation is not necessary, in order to enjoin Defendants from  
24 implementing Section 12306.1(d)(6) or otherwise reducing IHSS wages and benefits unlawfully.

25 31. Defendant Arnold Schwarzenegger is the Governor of the State of California.  
26 Defendant Schwarzenegger is sued in his official capacity.

27 32. Defendant John A. Wagner is the Director of the California Department of Social  
28 Services and, as such, is responsible for administering the IHSS program. Defendant Wagner is sued

1 in his official capacity.

2 33. Defendant David Maxwell-Jolly is the Director of the California Department of Health  
3 Care Services and, as such, is responsible for administering Medi-Cal. The Department of Health Care  
4 Services is the “single State agency” responsible for administration of the State Medi-Cal Plan.  
5 Defendant Maxwell-Jolly is sued in his official capacity.

6 34. Defendant John Chiang is the California State Controller and, as such, is responsible for  
7 issuing payments to IHSS providers. Defendant Chiang is sued in his official capacity.

8 35. Defendant Fresno County provides the funding for the county’s share of the costs of the  
9 IHSS program in Fresno County, and the Fresno County Board of Supervisors sits as the Governing  
10 Board of the Fresno County In-Home Supportive Services Public Authority.

11 36. Defendant Fresno County In-Home Supportive Services Public Authority (“Fresno  
12 County IHSS Public Authority”) administers the IHSS program in Fresno County and is responsible for  
13 determining the wages and benefits of Fresno County’s IHSS providers.

14 **FACTUAL ALLEGATIONS**

15 **California’s IHSS Program**

16 37. California’s IHSS program is designed to provide services to elderly or disabled persons  
17 who are unable to remain safely in their homes without such services. Cal. Welf. & Inst. Code  
18 §12300(a).

19 38. These services may include assistance with bathing, dressing, feeding, movement,  
20 taking necessary medications, and travel to medical appointments. *Id.* §12300(b)-(c).

21 39. The IHSS program provides in-home assistance with these tasks of everyday living to  
22 hundreds of thousands of Californians.

23 40. An IHSS consumer is assessed, pursuant to statewide guidelines, to determine his or her  
24 need for supportive services. Based on that assessment, the consumer is authorized to receive a certain  
25 number of hours of IHSS services for specific service tasks. *See id.* §12301.2.

26 41. In many cases, IHSS providers are related to the person they are assisting. Sometimes  
27 this relative has left a higher-paying job to provide this critical assistance to his or her loved one.

28 42. The wages and benefits of IHSS providers are paid for with a combination of federal,

1 state, and county funds. The State pays 65 percent of the approved nonfederal cost of IHSS providers’  
2 wages and benefits, up to a statutorily determined cap, and the county pays the remainder. *Id.*  
3 §§12306(b)-(c), 12306.1(c)-(d).

4 43. In fiscal year 2008-09, the State contributed 65 percent of the nonfederal share of IHSS  
5 providers’ wages and benefits, up to a total maximum wage and benefit package (including all sources  
6 of funding) of \$12.10 per hour. *See id.* §12306.1(d)(5).

7 44. As relevant here, in most counties, the wages and benefits of IHSS providers are set, in  
8 part, by county-established public agencies (called “public authorities”), through a process that may  
9 include collective bargaining. *Id.* §12301.6(a)(2), (c)(1).

10 45. In some counties, collective bargaining agreements play a role in determining the level  
11 of wages and benefits to IHSS workers in the county. These collective bargaining agreements are  
12 renegotiated every two to three years.

13 46. The California Department of Health Care Services is required by state law to “establish  
14 a provider reimbursement rate methodology to determine payment rates” for IHSS providers. *Id.*  
15 §14132.95(j)(2)(A)(I).

16 47. When a county seeks to increase or decrease wages, it must submit a rate change request  
17 for approval by the California Department of Social Services and the California Department of Health  
18 Care Services, which are authorized to grant conditional approval subject to available funding. Cal.  
19 Welf. & Inst. Code §12306.1(a)-(b).

20 48. On information and belief, the Department of Social Services and Department of Health  
21 Care Services review rate change requests only for compliance with state procedural requirements and  
22 to make sure the approved wage is equal to or greater than the state and federal minimum wage  
23 amounts.

24 Section 12306.1(d)(6)

25 49. In February 2009, the California Legislature, during the Third Extraordinary Legislative  
26 Session Legislative session, passed Senate Bill No. 6 as part of an emergency budget compromise.  
27 That bill included Section 12306.1(d)(6), which provides:

28 Notwithstanding [other provisions of §12306.1(d)], the state shall participate [in paying  
the wages of IHSS providers] in a total cost of wages up to nine dollars and fifty cents

1 (\$9.50) per hour and in individual health benefits up to sixty cents (\$0.60) per hour.  
2 This paragraph shall become operative on July 1, 2009.

3 50. The California Department of Health Care Services has represented to the federal  
4 government that the effect of Section 12306.1(d)(6) was to rescind the approval of all county wage  
5 rates above \$9.50 per hour and benefit rates above \$.60 per hour.

6 51. Prior to Section 12306.1(d)(6)'s enactment, the Legislature did not properly consider the  
7 effect of this statute on Medi-Cal's efficiency, economy, and quality of care, and the effect of this  
8 statute on access to Medi-Cal services.

9 52. On April 2, 2009, the California Department of Social Services issued an All-County  
10 Letter informing counties how Section 12306.1(d)(6) would be implemented. That letter directed  
11 counties to "submit a PA Rate Request to reduce the wages and health benefits to the \$10.10 level"  
12 (\$9.50 per hour in wages and \$.60 per hour in benefits) by May 1, 2009, in order for the new rate to  
13 take effect on July 1, 2009. The letter also stated that if the county wage remained above \$9.50 the  
14 State would no longer share in the cost of the amount above \$9.50, and if the county benefit rate  
15 remained above \$.60 the State would no longer share in the cost of the amount above \$.60.

16 53. On May 1, 2009, the Department of Social Services issued a new All-County  
17 Information Notice directing all counties paying wages above \$9.50 per hour and/or benefits above  
18 \$.60 per hour to submit a rate change request, and moved the applicable deadline to June 1, 2009.  
19 Effect of Section 12306.1(d)(6) on IHSS Provider Wage Rates.

20 54. Twenty-two California counties currently pay IHSS providers wages greater than \$9.50  
21 per hour. These counties are Alameda, Calaveras, Contra Costa, Fresno, Madera, Marin, Mendocino,  
22 Monterey, Napa, Placer, Riverside, Sacramento, San Benito, San Francisco, San Luis Obispo, San  
23 Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, and Yolo.

24 55. In many of these counties, the wages are established, in part, by collective bargaining  
25 agreements with UHW, ULTCW, Local 521, UDW, or CUHW.

26 56. In response to the enactment of Section 12306.1(d)(6), a number of counties planned to  
27 reduce the wages and/or benefits of IHSS providers, effective July 1, 2009.

28 57. The Fresno County Board of Supervisors, sitting as itself and as the In-Home

1 Supportive Services Public Authority Governing Board, approved a notice to the Department of Social  
2 Services that Fresno County would reduce the wages and benefits of IHSS providers by \$1.00 per hour  
3 – wages would be reduced from \$10.25 per hour to \$9.50 per hour, and benefits would be reduced from  
4 \$.85 per hour to \$.60 per hour – effective July 1, 2009.

5 58. The Human Resources Department of Contra Costa County informed UHW that Contra  
6 Costa County would reduce the wages of IHSS providers by \$1.18 per hour, from \$11.50 per hour to  
7 \$10.32 per hour, effective July 1, 2009.

8 59. The In-Home Supportive Services Public Authority of Napa County approved a notice  
9 that Napa County would reduce the wages of IHSS providers from \$11.50 per hour to \$10.20 per hour,  
10 effective July 1, 2009.

11 60. The IHSS Public Authority Governing Board of Mendocino County approved a notice  
12 of reduction of the IHSS wage from \$9.90 per hour to \$9.64 per hour, effective July 1, 2009.

13 61. Other counties informed Plaintiffs that they intended to reduce the wages of IHSS  
14 providers effective July 1, 2009.

15 62. The Department of Social Services and the Department of Health Care Services  
16 approved all county requests to reduce wages and benefits in implementation of Section 12306.1(d)(6).

17 63. In the counties in which wages and/or benefits would be reduced, all IHSS providers  
18 would be harmed by the reduction in their wages and/or benefits.

19 64. Additionally, in all counties, IHSS provider members of UHW, ULTCW, Local 521, the  
20 California State Council, UDW, and CUHW would be harmed because their unions would face greater  
21 difficulty bargaining for increased wages and/or benefits. Within the next year, UHW, ULTCW, Local  
22 521, UDW, and CUHW will be negotiating collective bargaining agreements for IHSS providers  
23 currently earning wages of \$9.50 per hour or less and/or benefits of \$.60 per hour or less, and intend to  
24 bargain for increasing these wages above \$9.50 per hour and benefits above \$.60 per hour.

25 Effect of Section 12306.1(d)(6) on IHSS Consumers

26 65. In the counties in which wages would be reduced, many IHSS providers would be  
27 forced to leave IHSS employment to seek higher paying jobs. Not all the vacancies created by IHSS  
28 providers leaving their employment would be filled with new IHSS providers.



1           66.     As a result of these vacancies, many IHSS consumers in these counties would be unable  
2 to find providers for any or all of their authorized IHSS hours. These consumers would either have to  
3 make do with reduced or eliminated IHSS services, or be forced to enter nursing homes or other  
4 residential institutions.

5           67.     The level of provider payments set by Section 12306.1(d)(6) would not be adequate to  
6 enlist enough IHSS providers so that the care and services are available to Medi-Cal recipients to the  
7 same extent they are available to the general population in the same geographic areas.

8           68.     The level of provider payments set by Section 12306.1(d)(6) would also force disabled  
9 individuals into nursing homes who could remain in their homes with the help of supportive services  
10 and who wish to remain in their homes.

11 Fresno County Wage Reduction

12           69.     The memorandum of understanding between UHW and Fresno County expired in late  
13 2009, and the parties to that agreement have been engaged in contract negotiations. On April 14, 2010,  
14 Fresno County announced its intention to declare a bargaining impasse and implement, unilaterally, an  
15 \$8.00 per hour wage rate, effective July 1, 2010.

16           70.     On May 25, 2010, the Fresno County Board of Supervisors voted to submit a rate  
17 reduction request to the State seeking to reduce IHSS provider wages to \$8.00 and benefits to \$0.60.

18           71.     On May 26, 2010, Fresno County submitted a rate change request reflecting this  
19 decrease to the Department of Social Services.

20           72.     On information and belief, in June 2010, the Department of Social Services and the  
21 Department of Health Care Services approved or will approve Fresno County's rate change request, to  
22 take effect on July 1, 2010. Neither Department considered the effect of the decrease on Medi-Cal's  
23 efficiency, economy, and quality of care, or upon access to Medi-Cal services prior to approving this  
24 rate decrease.

25           73.     The reduction of IHSS provider hourly wages in Fresno County from \$10.25 to \$8.00,  
26 and of benefits from \$0.85 to \$0.60, will have a significantly detrimental effect upon the quality of care  
27 and access to care of IHSS recipients, and will cause many IHSS recipients to be unnecessarily  
28 institutionalized.

1 74. On information and belief, absent injunctive relief, other counties may propose  
2 material reductions in IHSS provider rates and State Defendants will approve those reductions without  
3 considering the effect of the decrease on Medi-Cal’s efficiency, economy, and quality of care, or its  
4 effect on access to Medi-Cal services.

5 **CLASS ACTION ALLEGATIONS**

6 Allegations Related to Claims Against State Defendants

7 75. Plaintiffs Miller, Dominguez, Alex Brown, Donna Brown, Lipton, Meyer, Gordon,  
8 Ayers, Sheppard, Martinez, and Stewart bring the First, Second, Third, and Fourth Claims for Relief as  
9 a class action, pursuant to Fed. R. Civ. P. 23(a), (b)(1), and/or (b)(2), on behalf of themselves and the  
10 following Plaintiff Class, against Defendants Schwarzenegger, Wagner, Maxwell-Jolly, and Chiang  
11 (hereinafter “State Defendants”):

12 All IHSS consumers residing in Alameda, Calaveras, Contra Costa, Fresno, Madera,  
13 Marin, Mendocino, Monterey, Napa, Placer, Riverside, Sacramento, San Benito, San  
14 Francisco, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz,  
Solano, Sonoma, and Yolo counties.

15 76. Plaintiffs Miller, Dominguez, Alex Brown, Donna Brown, Lipton, Meyer, Gordon,  
16 Ayers, Sheppard, Martinez, and Stewart are members of the Plaintiff Class on whose behalf the First,  
17 Second, Third, and Fourth Claims for Relief are brought against State Defendants.

18 77. The Plaintiff Class consists of tens of thousands of individuals and is therefore so  
19 numerous that joinder of all members is impracticable.

20 78. Common questions of law and fact predominate over any questions affecting individual  
21 class members. Questions of law and fact common to members of the Plaintiff Class as a whole  
22 include, but are not limited to, the following:

- 23 a. Whether the State failed to give the required consideration to the factors of  
24 efficiency, economy, quality of care, and access to services prior to the  
25 enactment of Section 12306.1(d)(6), in violation of the federal Medicaid Act, 42  
26 U.S.C. §1396a(a)(30)(A);
- 27 b. Whether the IHSS provider wages and benefits that will result from the  
28 implementation of Section 12306.1(d)(6) will be inconsistent with Medicaid’s

1 mandated quality of care, and will not be sufficient to enlist enough IHSS  
2 providers so that care and services under Medi-Cal are available at least to the  
3 extent that such care and services are available to the general population in the  
4 geographic area, in violation of the federal Medicaid Act, 42 U.S.C.  
5 §1396a(a)(30)(A);

6 c. Whether the implementation of Section 12306.1(d)(6) will violate the rights of  
7 Plaintiffs Miller, Dominguez, Alex Brown, Donna Brown, Lipton, Meyer,  
8 Gordon, Ayers, Sheppard, Martinez, Stewart, and class members to be free from  
9 discrimination on the basis of their disability under the ADA, 42 U.S.C. §12132,  
10 by forcing disabled individuals who could otherwise remain in their homes to  
11 enter nursing homes or other residential institutions.

12 d. Whether the implementation of Section 12306.1(d)(6) will violate the rights of  
13 Plaintiffs Miller, Dominguez, Alex Brown, Donna Brown, Lipton, Meyer,  
14 Gordon, Ayers, Sheppard, Martinez, Stewart, and class members to be free from  
15 discrimination on the basis of their disability under Section 504 of the  
16 Rehabilitation Act, 29 U.S.C. §794(a), by forcing disabled individuals who  
17 could otherwise remain in their homes to enter nursing homes or other  
18 residential institutions.

19 79. Plaintiffs Miller, Dominguez, Alex Brown, Donna Brown, Lipton, Meyer, Gordon,  
20 Ayers, Sheppard, Martinez, and Stewart will fairly and adequately represent and protect the interests of  
21 the Plaintiff Class. Plaintiffs have retained counsel competent and experienced in complex class  
22 actions and federal civil rights litigation. Plaintiffs Miller, Dominguez, Alex Brown, Donna Brown,  
23 Lipton, Meyer, Gordon, Ayers, Sheppard, Martinez, and Stewart's interests are co-extensive with those  
24 of class members, and are not antagonistic to them.

25 80. Plaintiffs Miller, Dominguez, Alex Brown, Donna Brown, Lipton, Meyer, Gordon,  
26 Ayers, Sheppard, Martinez, and Stewart's claims are typical of class members' claims. Like other class  
27 members, they are currently receiving IHSS services and their IHSS providers' wages and benefits may  
28 be reduced as a result of Section 12306.1(d)(6). Like other class members, they face a substantial risk

1 of irreparable harm as a result of State Defendants' conduct.

2 81. Class certification of the First, Second, Third, and Fourth Claims for Relief against State  
3 Defendants is appropriate pursuant to Fed. R. Civ. P. 23(b)(1)(A) because the prosecution of separate  
4 actions by individual class members would create a risk of inconsistent or varying adjudications with  
5 respect to individual class members that would establish incompatible standards of conduct for the  
6 party opposing the class.

7 82. Class certification of the First, Second, Third, and Fourth Claims for Relief against State  
8 Defendants is appropriate pursuant to Fed. R. Civ. P. 23(b)(1)(B) because the prosecution of separate  
9 actions by individual class members would create a risk of adjudications with respect to individual  
10 class members that would, as a practical matter, be dispositive of the interests of the other members not  
11 parties to the adjudications.

12 83. Class certification of the First, Second, Third, and Fourth Claims for Relief is  
13 appropriate pursuant to Fed. R. Civ. P. 23(b)(2) because State Defendants have acted or refused to act  
14 on grounds generally applicable to the Class, making appropriate declaratory and injunctive relief with  
15 respect to Plaintiffs Miller, Dominguez, Alex Brown, Donna Brown, Lipton, Meyer, Gordon, Ayers,  
16 Sheppard, Martinez, Stewart, and the Plaintiff Class as a whole.

17 Allegations Related to Claims Against Fresno County Defendants

18 84. Plaintiffs Miller, Alex Brown, Martinez, and Stewart bring the Third and Fourth Claims  
19 for Relief as a class action, pursuant to Fed. R. Civ. P. 23(a), (b)(1), and/or (b)(2), on behalf of  
20 themselves and the following Plaintiff Class, against Defendants Fresno County and Fresno County  
21 In-Home Supportive Services Public Authority (hereinafter "Fresno County Defendants"):

22 All IHSS consumers residing in Fresno County.

23 85. Plaintiffs Miller, Alex Brown, Martinez, and Stewart are members of the Plaintiff Class  
24 on whose behalf the Third and Fourth Claims for Relief are brought against Fresno County Defendants.

25 86. The Plaintiff Class consists of thousands of individuals and is therefore so numerous  
26 that joinder of all members is impracticable.

27 87. Common questions of law and fact predominate over any questions affecting individual  
28 class members. Questions of law and fact common to members of the Plaintiff Class as a whole

1 include, but are not limited to, the following:

- 2 a. Whether the reduction of IHSS wages and/or benefits will violate the rights of  
3 Plaintiffs Miller, Alex Brown, Martinez, Stewart, and class members to be free  
4 from discrimination on the basis of their disability under the ADA, 42 U.S.C.  
5 §12132, by forcing disabled individuals who could otherwise remain in their  
6 homes to enter nursing homes or other residential institutions.
- 7 b. Whether the reduction of IHSS wages and/or benefits will violate the rights of  
8 Plaintiffs Miller, Alex Brown, Martinez, Stewart, and class members to be free  
9 from discrimination on the basis of their disability under Section 504 of the  
10 Rehabilitation Act, 29 U.S.C. §794(a), by forcing disabled individuals who  
11 could otherwise remain in their homes to enter nursing homes or other  
12 residential institutions.

13 88. Plaintiffs Miller, Alex Brown, Martinez, and Stewart will fairly and adequately  
14 represent and protect the interests of the Plaintiff Class. Plaintiffs have retained counsel competent and  
15 experienced in complex class actions and federal civil rights litigation. Plaintiffs Miller, Alex Brown,  
16 Martinez, and Stewart's interests are co-extensive with those of class members, and are not  
17 antagonistic to them.

18 89. Plaintiffs Miller, Alex Brown, Martinez, and Stewart's claims are typical of class  
19 members' claims. Like other class members, they are currently receiving IHSS services and their IHSS  
20 providers' wages and benefits may be reduced as a result of Section 12306.1(d)(6) and/or actions by  
21 Fresno County Defendants. Like other class members, they face a substantial risk of irreparable harm  
22 as a result of Fresno County Defendants' conduct.

23 90. Class certification of the Third and Fourth Claims for Relief against Fresno County  
24 Defendants is appropriate pursuant to Fed. R. Civ. P. 23(b)(1)(A) because the prosecution of separate  
25 actions by individual class members would create a risk of inconsistent or varying adjudications with  
26 respect to individual class members that would establish incompatible standards of conduct for the  
27 party opposing the class.

28 91. Class certification of the Third and Fourth Claims for Relief against Fresno County

1 Defendants is appropriate pursuant to Fed. R. Civ. P. 23(b)(1)(B) because the prosecution of separate  
 2 actions by individual class members would create a risk of adjudications with respect to individual  
 3 class members that would, as a practical matter, be dispositive of the interests of the other members not  
 4 parties to the adjudications.

5 92. Class certification of the Third and Fourth Claims for Relief is appropriate pursuant to  
 6 Fed. R. Civ. P. 23(b)(2) because Fresno County Defendants have acted or refused to act on grounds  
 7 generally applicable to the Class, making appropriate declaratory and injunctive relief with respect to  
 8 Plaintiffs Patsy Miller, Alex Brown, Martinez, and Stewart, and the Plaintiff Class as a whole.

9 **FIRST CLAIM FOR RELIEF**

10 (Violation of 42 U.S.C. §1396a(a)(30)(A)/Supremacy Clause,  
 11 Brought By Plaintiffs UHW, ULTCW, Local 521, California State Council, UDW,  
 12 and CUHW On Behalf Of Themselves And By Plaintiffs Miller, Dominguez,  
 Alex Brown, Donna Brown, Lipton, Meyer, Gordon, Ayers, Sheppard, Martinez, and Stewart  
 On Behalf Of Themselves And On Behalf Of The Class, Against State Defendants)

13 93. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set  
 14 forth herein.

15 94. The federal Medicaid Act, 42 U.S.C. §1396a(a)(30)(A), requires, in relevant part, that a  
 16 state Medicaid plan:

17 provide such methods and procedures relating to the utilization of, and the payment for,  
 18 care and services available under the plan . . . as may be necessary . . . to assure that  
 19 payments are consistent with efficiency, economy, and quality of care and are sufficient  
 20 to enlist enough providers so that care and services are available under the plan at least  
 to the extent that such care and services are available to the general population in the  
 geographic area . . . .

21 95. 42 U.S.C. §1396a(a)(30)(A) mandates that states consider the effect of any proposed  
 22 changes to provider payments upon the efficiency, economy, quality of care, and access to services  
 23 before making changes in those payments. *See Orthopaedic Hospital v. Belshe*, 103 F.3d 1491, 1496  
 24 (9th Cir. 1997) (in setting rates states must consider effect upon efficiency, economy, quality of care,  
 25 and access, including through reliance on “cost studies . . . that provide reliable data”).

26 96. In enacting Section 12306.1(d)(6), the California Legislature did not give the required  
 27 consideration to or conduct the required analysis of the effect of Section 12306.1(d)(6) on efficiency,  
 28 economy, quality of care, and access to services prior to its enactment. Instead, Section 12306.1(d)(6)

1 was enacted solely for budgetary reasons.

2 97. Section 12306.1(d)(6) therefore conflicts with, and is preempted by, 42 U.S.C.  
3 §1396a(a)(30)(A).

4 98. If the State Defendants implement Section 12306.1(d)(6), their conduct will cause  
5 irreparable injury to Plaintiffs and the Plaintiff Class.

6 **SECOND CLAIM FOR RELIEF**

7 (Violation of 42 U.S.C. §1396a(a)(30)(A)/Supremacy Clause,  
8 Brought By Plaintiffs UHW, ULTCW, Local 521, California State Council, UDW, and CUHW On  
9 Behalf Of Themselves and By Plaintiffs Miller, Dominguez, Alex Brown, Donna Brown, Lipton,  
Meyer, Gordon, Ayers, Sheppard, Martinez, and Stewart On Behalf Of Themselves And On Behalf Of  
The Class, Against State Defendants)

10 99. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set  
11 forth herein.

12 100. The federal Medicaid Act, 42 U.S.C. §1396a(a)(30)(A), requires that states' provider  
13 payments be "consistent with efficiency, economy, and quality of care and . . . sufficient to enlist  
14 enough providers so that care and services are available under the plan at least to the extent that such  
15 care and services are available to the general population in the geographic area."

16 101. The IHSS provider wages and benefits that would result from the implementation of  
17 Section 12306.1(d)(6) would not be consistent with Medicaid's mandated quality of care.

18 102. The IHSS provider wages and benefits that would result from the implementation of  
19 Section 12306.1(d)(6) would not be sufficient to enlist enough IHSS providers so that care and services  
20 under Medi-Cal were available at least to the extent that such care and services were available to the  
21 general population in the geographic area.

22 103. Section 12306.1(d)(6) therefore conflicts with, and is preempted by, 42 U.S.C.  
23 §1396a(a)(30)(A).

24 104. If the State Defendants implement Section 12306.1(d)(6), their conduct will cause  
25 irreparable injury to Plaintiffs and the Plaintiff Class.

26 **THIRD CLAIM FOR RELIEF**

27 (Violation of 42 U.S.C. §12132/42 U.S.C. §1983/Supremacy Clause,  
28 Brought By Plaintiffs UHW, ULTCW, Local 521, California State Council, UDW, and CUHW On  
Behalf of Themselves, and By Plaintiffs Miller, Dominguez, Alex Brown, Donna Brown, Lipton,  
Meyer, Gordon, Ayers, Sheppard, Martinez, and Stewart On Behalf Of Themselves And On Behalf Of

1 The Class, Against State Defendants And Fresno County Defendants)

2 105. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set  
3 forth herein.

4 106. The Americans with Disabilities Act (“ADA”), 42 U.S.C. §12132, provides that “no  
5 qualified individual with a disability shall, by reason of such disability, be excluded from participation  
6 in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to  
7 discrimination by any such entity.”

8 107. The unjustified isolation of persons with disabilities in institutions constitutes a form of  
9 discrimination prohibited by 42 U.S.C. §12132.

10 108. Plaintiffs Miller, Dominguez, Alex Brown, Donna Brown, Lipton, Meyer, Gordon,  
11 Ayers, Sheppard, Martinez, Stewart, and other members of the Plaintiff Class are qualified individuals  
12 with disabilities within the meaning of the ADA, and are recipients of IHSS services from a public  
13 entity.

14 109. The implementation of Section 12306.1(d)(6) and the resulting reduction of wages and  
15 benefits for IHSS providers, including in Fresno County, would violate 42 U.S.C. §12132 by creating a  
16 substantial risk that Plaintiffs Miller, Dominguez, Alex Brown, Donna Brown, Lipton, Meyer, Gordon,  
17 Ayers, Sheppard, Martinez, Stewart and other members of the Plaintiff Class will be unable to find  
18 IHSS providers and will, as a result, be forced to enter nursing homes or other institutional facilities,  
19 despite their desire and ability to remain in their homes.

20 110. The approval and implementation of the rate change request submitted by Fresno  
21 County in May 2010 would violate 42 U.S.C. §12132 by creating a substantial risk that Plaintiffs  
22 Miller, Alex Brown, Martinez, Stewart, and other members of the Fresno Subclass will be unable to  
23 find IHSS providers and will, as a result, be forced to enter nursing homes or other institutional  
24 facilities, despite their desire and ability to remain in their homes.

25 111. It would cost the Medi-Cal program more money to provide care for Plaintiffs Miller,  
26 Dominguez, Alex Brown, Donna Brown, Lipton, Meyer, Gordon, Ayers, Sheppard, Martinez, Stewart,  
27 and other members of the Plaintiff Class in nursing homes or other institutional facilities than it would  
28 cost to provide IHSS services that would permit Plaintiffs Miller, Dominguez, Alex Brown, Donna



1 Brown, Lipton, Meyer, Gordon, Ayers, Sheppard, Martinez, Stewart, and other members of the  
2 Plaintiff Class to remain in their homes.

3 112. The implementation of Section 12306.1(d)(6) and the resulting reduction of wages and  
4 benefits for IHSS providers, including in Fresno County, would deprive Plaintiffs Miller, Dominguez,  
5 Alex Brown, Donna Brown, Lipton, Meyer, Gordon, Ayers, Sheppard, Martinez, Stewart, and other  
6 members of the Plaintiff Class of their rights under 42 U.S.C. §12132 to be free from discrimination  
7 based on their disability.

8 113. Section 12306.1(d)(6) and the resulting Fresno County wage and benefit rate reduction  
9 therefore violate 42 U.S.C. §12132.

10 114. The implementation of Section 12306.1(d)(6) and the resulting reduction of wages and  
11 benefits for IHSS providers, including in Fresno County, would cause irreparable injury to Plaintiffs  
12 and the Plaintiff Class.

13 115. The reduction of wages and benefits for IHSS providers in Fresno County would  
14 deprive Plaintiffs Miller, Alex Brown, Martinez, Stewart, and other members of the Fresno Subclass of  
15 their rights under 42 U.S.C. §12132 to be free from discrimination based on their disability.

16 116. The Fresno County rate reduction request submitted in May 2010, and the State's  
17 approval and implementation of that rate reduction, therefore violate 42 U.S.C. §12132.

18 117. The approval and implementation of this rate decrease would cause irreparable injury to  
19 Plaintiffs Miller, Alex Brown, Martinez, Stewart, and other members of the Fresno Subclass.

20 **FOURTH CLAIM FOR RELIEF**

21 (Violation of 29 U.S.C. §794(a)/42 U.S.C. §1983/Supremacy Clause,  
22 Brought By Plaintiffs UHW, ULTCW, Local 521, California State Council, UDW, and CUHW On  
23 Behalf of Themselves, and By Plaintiffs Miller, Dominguez, Alex Brown, Donna Brown, Lipton,  
Meyer, Gordon, Ayers, Sheppard, Martinez, and Stewart On Behalf Of Themselves And On Behalf Of  
The Class, Against State Defendants And Fresno County Defendants)

24 118. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set  
25 forth herein.

26 119. Section 504 of the Rehabilitation Act, 29 U.S.C. §794(a), provides that “[n]o otherwise  
27 qualified individual with a disability . . . shall, solely by reason of her or his disability, . . . be subjected  
28 to discrimination under any program or activity receiving Federal financial assistance.”

1           120.    The unjustified isolation of persons with disabilities in institutions constitutes a form of  
2 discrimination prohibited by 29 U.S.C. §794(a).

3           121.    Plaintiffs Miller, Dominguez, Alex Brown, Donna Brown, Lipton, Meyer, Gordon,  
4 Ayers, Sheppard, Martinez, Stewart, and other members of the Plaintiff Class are qualified individuals  
5 with disabilities within the meaning of the Rehabilitation Act, and are recipients of IHSS services  
6 pursuant to a program receiving federal financial assistance.

7           122.    The implementation of Section 12306.1(d)(6) and the resulting reduction of wages and  
8 benefits for IHSS providers, including in Fresno County, would violate 29 U.S.C. §794(a) by creating a  
9 substantial risk that Plaintiffs Miller, Dominguez, Alex Brown, Donna Brown, Lipton, Meyer, Gordon,  
10 Ayers, Sheppard, Martinez, Stewart, and other members of the Plaintiff Class will be unable to find  
11 IHSS providers and will, as a result, be forced to enter nursing homes or other institutional facilities,  
12 despite their desire and ability to remain in their homes.

13           123.    The approval and implementation of the rate change request submitted by Fresno  
14 County in May 2010 would violate 29 U.S.C. §794(a) by creating a substantial risk that Plaintiffs  
15 Miller, Dominguez, Alex Brown, Donna Brown, Lipton, Meyer, Gordon, Ayers, Sheppard, Martinez,  
16 Stewart, and other members of the Plaintiff Class will be unable to find IHSS providers and will, as a  
17 result, be forced to enter nursing homes or other institutional facilities, despite their desire and ability  
18 to remain in their homes.

19           124.    It would cost the Medi-Cal program more money to provide care for Plaintiffs Miller,  
20 Dominguez, Alex Brown, Donna Brown, Lipton, Meyer, Gordon, Ayers, Sheppard, Martinez, Stewart,  
21 and other members of the Plaintiff Class in nursing homes or other institutional facilities than it would  
22 cost to provide IHSS services that would permit Plaintiffs Miller, Dominguez, Alex Brown, Donna  
23 Brown, Lipton, Meyer, Gordon, Ayers, Sheppard, Martinez, Stewart, and other members of the  
24 Plaintiff Class to remain in their homes.

25           125.    Implementation of Section 12306.1(d)(6) and the resulting reduction of wages and  
26 benefits for IHSS providers, including in Fresno County, would deprive Plaintiffs Miller, Dominguez,  
27 Alex Brown, Donna Brown, Lipton, Meyer, Gordon, Ayers, Sheppard, Martinez, Stewart, and other  
28 members of the Plaintiff Class of their rights under 29 US.C. §794(a) to be free from discrimination

1 based on their disability.

2 126. Section 12306.1(d)(6) and the resulting Fresno County wage and benefit rate reduction  
3 therefore violate 29 U.S.C. §794(a).

4 127. Implementation of Section 12306.1(d)(6) and the resulting reduction of wages and  
5 benefits for IHSS providers, including in Fresno County, would cause irreparable injury to Plaintiffs  
6 and the Plaintiff Class.

7 128. The reduction of wages and benefits for IHSS providers in Fresno County would  
8 deprive Plaintiffs Miller, Alex Brown, Martinez, Stewart, and other members of the Fresno Subclass of  
9 their rights under 29 U.S.C. §794(a) to be free from discrimination based on disability.

10 129. The Fresno County rate reduction request submitted in May 2010, and the State's  
11 approval and implementation of that rate reduction, therefore violate 29 US.C. §794(a).

12 130. The approval and implementation of this rate decrease would cause irreparable injury to  
13 Plaintiffs Miller, Alex Brown, Martinez, Stewart, and other members of the Fresno Subclass.

14 **FIFTH CLAIM FOR RELIEF**

15 (Violation of 42 U.S.C. § 1396a(a)(30)(A)/Supremacy Clause,  
16 Brought By Plaintiffs UHW, ULTCW, Local 521, California State Council, UDW, and CUHW On  
Behalf Of Themselves, Against State Defendants)

17 131. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set  
18 forth herein.

19 132. The federal Medicaid Act, 42 US.C. §1396a(a)(30)(A), requires, in relevant part, that a  
20 state Medicaid plan:

21 such methods and procedures relating to the utilization of, and the payment for, care and  
22 services available under the plan . . . as may be necessary . . . to assure that payments are  
23 consistent with efficiency, economy, and quality of care and are sufficient to enlist  
24 enough providers so that care and services are available under the plan at least to the  
extent that such care and services are available to the general population in the  
geographic area . . . .

25 133. 42 U.S.C. §1396a(a)(30)(A) mandates that states consider the effect of any proposed  
26 changes to provider payments upon the efficiency, economy, quality of care, and access to services  
27 before making changes in those payments.

28 134. In approving county rate decreases, including the rate change request submitted by

1 Fresno County in May 2010, the Department of Social Services and the Department of Health Care  
2 Services do not give the required consideration to or conduct the required analysis of the effect of such  
3 rate decreases on efficiency, economy, quality of care, and access to services prior to such approvals.

4 135. The statutory authorization that permits the Department of Social Services and the  
5 Department of Health Care Services to approve county rate reductions without giving the required  
6 consideration to or conducting the required analysis of the effect of such rate decreases on efficiency,  
7 economy, quality of care, and access to services prior to such approvals is preempted by 42 U.S.C.  
8 §1396a(a)(30)(A), which requires such consideration.

9 136. The practice of approving material rate decreases without such consideration conflicts  
10 with, and is preempted by, 42 U.S.C. §1396a(a)(30)(A).

11 137. If the State Defendants approve such material rate decreases, their conduct will cause  
12 irreparable injury to Plaintiffs.

13 **SIXTH CLAIM FOR RELIEF**

14 (Violation of 42 U.S.C. §1396a(a)(30)(A)/Supremacy Clause,  
15 Brought By Plaintiffs UHW, ULTCW, Local 521, California State Council, UDW,  
and CUHW On Behalf Of Themselves, Against State Defendants)

16 138. Plaintiffs reallege and incorporate by reference all preceding paragraphs as if fully set  
17 forth herein.

18 139. The federal Medicaid Act, 42 U.S.C. §1396a(a)(30)(A), requires, in relevant part, that a  
19 state Medicaid plan:

20 provide such methods and procedures relating to the utilization of, and the payment for,  
21 care and services available under the plan . . . as may be necessary . . . to assure that  
22 payments are consistent with efficiency, economy, and quality of care and are sufficient  
23 to enlist enough providers so that care and services are available under the plan at least  
to the extent that such care and services are available to the general population in the  
geographic area . . . .

24 140. The federal Medicaid Act, 42 U.S.C. §1396a(a)(30)(A), requires that states' provider  
25 payments be "consistent with efficiency, economy, and quality of care and . . . sufficient to enlist  
26 enough providers so that care and services are available under the plan at least to the extent that such  
27 care and services are available to the general population in the geographic area."

28 141. The IHSS provider wages and benefits that would result from the State's approval and

1 implementation of the rate decrease request submitted by Fresno County in May 2010, would not be  
2 consistent with Medicaid's mandated quality of care.

3 142. The IHSS provider wages and benefits that would result from the State's approval and  
4 implementation of the rate decrease request submitted by Fresno County in May 2010, would not be  
5 sufficient to enlist enough IHSS providers so that care and services under Medi-Cal were available at  
6 least to the extent that such care and services were available to the general population in the geographic  
7 area.

8 143. The State's approval and/or implementation of the rate decrease request submitted by  
9 Fresno County in May 2010, therefore conflicts with, and is preempted by, 42 U.S.C.  
10 §1396a(a)(30)(A).

11 144. The statutory authorization that permits the Department of Social Services and  
12 Department of Health Care Services to approve county rate reductions that are inconsistent with quality  
13 care and insufficient to enlist adequate numbers of providers is preempted by 42 U.S.C.  
14 §1396a(a)(30)(A).

15 145. If the State Defendants approve such material rate decreases, their conduct will cause  
16 irreparable injury to Plaintiffs.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, all Plaintiffs on behalf of themselves, and Plaintiffs Miller, Dominguez, Alex  
19 Brown, Donna Brown, Lipton, Meyer, Gordon, Ayers, Sheppard, Martinez, and Stewart on behalf of all  
20 members of the Plaintiff Class, pray that the Court:

- 21 1) Enter a preliminary injunction, pending a decision on the merits, that (1) enjoins the  
22 State Defendants from taking any action (a) to implement Section 12306.1(d)(6) by  
23 reducing the maximum wage of IHSS providers that the State will help fund to \$9.50  
24 per hour and the maximum benefit rate of IHSS providers that the State will help fund  
25 to \$.60 per hour; (b) to approve or implement any county IHSS rate decreases adopted  
26 pursuant to Section 12306.1(d)(6); (c) to approve or implement any material county  
27 IHSS rate decreases, including the rate decrease proposed by Fresno County in May  
28 2010, without consideration of the impact on access to and quality of care; or (d) to

1 approve or implement the rate decrease proposed by Fresno County in May 2010, and  
2 (2) enjoins the Fresno County Defendants from taking any action to implement a wage  
3 and benefit reduction for Fresno County IHSS providers, and conditionally certify the  
4 proposed classes for the purpose of such relief;

- 5 2) Certify this action as a class action on behalf of the proposed Plaintiff Classes;
- 6 3) Designate Plaintiffs Miller, Dominguez, Alex Brown, Donna Brown, Lipton, Meyer,  
7 Gordon, Ayers, Sheppard, Martinez, and Stewart as Representatives of the Plaintiff  
8 Classes;
- 9 4) Designate Plaintiffs' counsel as Counsel for the Plaintiff Classes;
- 10 5) Enter a declaratory judgment that the enactment and implementation of Section  
11 12306.1(d)(6) and the State's approval of material county rate decreases, including the  
12 rate decrease proposed by Fresno County in May 2010, are preempted by the Medicaid  
13 Act, 42 U.S.C. §1396a(a)(30)(A), and violate the ADA, 42 U.S.C. §12132, and the  
14 Rehabilitation Act, 29 U.S.C. §794(a);
- 15 6) Enter a declaratory judgment that the enactment and implementation of Section  
16 12306.1(d)(6) and the State's approval of the rate reduction proposed by Fresno County  
17 in May 2010, will deprive Plaintiffs Miller, Dominguez, Alex Brown, Donna Brown,  
18 Lipton, Meyer, Gordon, Ayers, Sheppard, Martinez, Stewart, and other members of the  
19 Plaintiff Class of their rights under the ADA, 42 U.S.C. §12132, and the Rehabilitation  
20 Act, 29 U.S.C. §794(a), to be free from discrimination based on their disability;
- 21 7) Issue a permanent injunction prohibiting the State Defendants from implementing  
22 Section 12306.1(d)(6) including by approving any county rate decreases submitted in  
23 implementation of that statute, from approving any material county rate decreases  
24 without consideration of the effect on access to and quality of care, and from approving  
25 or implementing the rate reduction request submitted by Fresno County in May 2010,  
26 and prohibiting the Fresno County Defendants from implementing a wage and benefit  
27 reduction for Fresno County IHSS providers;
- 28 8) Award Plaintiffs their costs and expenses, including reasonable attorney's fees, expert

1 witness fees, and costs of suit; and

2 9) Award such other further and additional relief as the Court may deem just and proper.

3  
4 Dated: August 31, 2010

Respectfully submitted,

5 STEPHEN P. BERZON  
6 SCOTT A. KRONLAND  
7 STACEY M. LEYTON  
8 PEDER J. THOREEN  
9 ANNE N. ARKUSH  
10 EMILY B. WHITE  
11 CAROLINE P. CINCOTTA

12 By: /s/ Stacey M. Leyton  
13 Stacey M. Leyton

14 Attorneys for Plaintiffs