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ORIGINAL  
FILED  
AUG 18 2009  
RICHARD W. WIERING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

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18 IN THE UNITED STATES DISTRICT COURT  
19 FOR THE NORTHERN DISTRICT OF CALIFORNIA

ADR  
MEJ

20 LILLIE BRANTLEY, by her guardian ad  
21 litem Chauncey McLorin, GILDA GARCIA  
22 ALLIE JO WOODARD, by her guardian ad  
23 litem Linda Gaspard-Berry, , individually and  
24 on behalf of all others similarly situated

Case No.: **C09-03798**

**COMPLAINT FOR INJUNCTIVE AND  
DECLARATORY RELIEF**

25 Plaintiffs,

CLASS ACTION

26 vs.

27 DAVID MAXWELL-JOLLY, Director of the  
28 Department of Health Care Services, State of  
California, DEPARTMENT OF HEALTH  
CARE SERVICES,

Defendant.

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## I. INTRODUCTION

1. Plaintiffs, who are elderly persons and adults with disabilities, bring this class action suit against the California Department of Health Care Services and its Director (Defendants) to stop devastating cuts to Adult Day Health Care (ADHC) services which, if implemented, will place Plaintiffs and Class Members at imminent risk of institutionalization, hospitalization, injury or death. ADHC is a Medi-Cal funded community-based program for low income seniors and younger disabled adults, the purpose of which is to provide “a viable alternative to institutionalization for those elderly persons and adults with disabilities who are capable of living at home with the aid of appropriate health care or rehabilitative services.” Cal. Health & Safety Code §1570.2(b) (West 2003). Adult Day Health Care (ADHC) services are generally provided at centers located in communities throughout California. Individuals who live at home or in licensed residential care facilities participate in ADHC from one to five days per week, depending on their assessed needs. Services include professional nursing services, personal care services, social and therapeutic services, case management, medication management, meals, physical therapy, occupational therapy, speech therapy and transportation to and from the ADHC center.

2. ABX4 5 (Chapter 5, Statutes of 2009), one of a number of bills passed in response to California’s budget crisis – is scheduled to go into effect on August 27, 2009. It cuts the ADHC benefit based solely on economic considerations, from a maximum of five to three days per week for all Medi-Cal beneficiaries, with no exceptions, and regardless of existing treatment authorizations and the health condition of the individual. In addition to the reduction in days of service, new restrictions limiting receipt of ADHC services will go into effect if and when the Director of the California Department of Health Care Services (DHCS) provides a written declaration that the new restrictions are ready to be implemented. This declaration will return the number of days allowable under the program to five per week, but the new restrictions will also be triggered, resulting in permanent termination of all services for many current beneficiaries who have been assessed to need those services and who currently receive them.

3. Without needed community-based ADHC services, or in the alternative, provision of

1 replacement services otherwise available to Plaintiffs and Class Members under California's Medi-  
2 Cal program, without interruption, Plaintiffs will experience immediate and irreparable harm.  
3 Plaintiffs and other Class Members are at risk of deterioration in health and functioning, and will be  
4 forced into hospitals and nursing facilities due to Defendants' actions and inactions in violation of  
5 the Americans with Disabilities Act of 1990 (ADA ), (42 U.S.C. §§ 12101-12213 (West 2008)),  
6 Section 504 of the Rehabilitation Act of 1973 (Section 504), (29 U.S.C. §§ 794-794a (West 2007)),  
7 Title XIX of the Social Security Act (Medicaid Act), (42 U.S.C.. § 1396a (West 2009)), and  
8 California Government Code section 11135 (Cal. Gov't Code § 11135 (West 2007)).

## 9 **II. JURISDICTION**

10 4. This is an action for declaratory and injunctive relief for violation of the Due Process  
11 Clause of the Fourteenth Amendment to the U.S. Constitution; Title XIX of the Social Security Act,  
12 (the Medicaid Act), (42 U.S.C. § 1396a *et seq.*) under 42 U.S.C. § 1983; Title II of the Americans  
13 With Disabilities Act of 1990 (ADA), 42 U.S.C. § 12132; and Section 504 of the Rehabilitation Act  
14 of 1973 (Section 504), (29 U.S.C. § 794).

15 5. Jurisdiction is based 28 U.S.C. §§ 1331 and 1342 for a violation of 42 U.S.C. § 1983;  
16 Title II of the ADA, and Section 504. Plaintiffs' claims for declaratory and injunctive relief are  
17 authorized under 28 U.S.C. §§ 2201 - 2202. At all times relevant to this action, Defendants have  
18 acted under color of state law.

19 6. The Court has Supplemental Jurisdiction over Plaintiffs' state claim pursuant to  
20 28 U.S.C. § 1367 and California Government Code Section 11139.

## 21 **III. VENUE**

22 7. Venue is proper in the Northern District of California pursuant to 28 U.S.C.  
23 § 1391(b), because the Defendants operate and perform their official duties therein and thus reside  
24 therein for purposes of venue, and because a substantial part of the events and omissions giving rise  
25 to the claims herein occur in counties that are part of the Northern District of California.

## 26 **IV. INTRADISTRICT ASSIGNMENT**

27 8. Pursuant to Civil Local Rule 3-2(c) this action should be assigned to the San  
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1 Francisco or Oakland Division of the Northern District of California, because a substantial part of  
2 the events and omissions giving rise to the claims herein occur in counties in the Northern District of  
3 California and Plaintiffs are residents of the City and County of San Francisco.

#### 4 V. PARTIES

##### 5 Plaintiffs

###### 6 Lillie Brantley

7 9. Named Plaintiff Lillie Brantley is an 84-year-old woman who has severe Alzheimer's  
8 disease, hyperlipidemia, a seizure disorder, atrial fibrillation, has had a stroke, and is very frail. She  
9 receives Medi-Cal, and currently attends ADHC five days a week.

10 10. Ms. Brantley needs supervision with feeding and transferring; assistance with  
11 ambulation, bathing, dressing, and toileting; and is totally dependent on others for housework,  
12 hygiene, laundry, shopping, transportation, medication management, money management, accessing  
13 resources, and meal preparation.

14 11. Because of her cognitive impairments, Ms. Brantley can never be left alone. She is at  
15 high risk for falls. She requires regular nursing services five times per week to monitor her medical  
16 conditions.

17 12. Ms. Brantley is proceeding in this litigation through her *Guardian Ad Litem*  
18 Chauncey McLorin, as Ms. Brantley is not able to proceed on her own behalf. Ms. McLorin, who is  
19 Ms. Brantley's niece, has agreed to act as her *Guardian Ad Litem*, and is qualified to do so. She will  
20 competently proceed on Ms. Brantley's behalf. An application to appoint Ms. McLorin to act as a  
21 *Guardian Ad Litem* in this action has been filed with this court.

22 13. Ms. Brantley and her family wish for her to remain in her family home with her  
23 current level of ADHC services, and she is at imminent risk of institutionalization in a nursing  
24 facility if these services are cut.

###### 25 Gilda Garcia

26 14. Named Plaintiff Gilda Garcia is a 77-year-old woman with unstable diabetes,  
27 hypertension, Bells' Palsy, and kidney problems. She is Medi-Cal eligible and currently receives  
28

1 five days a week of ADHC.

2 15. Ms. Garcia needs supervision with ambulation, dressing, toileting, and transferring.  
3 She needs assistance with bathing, accessing resources, hygiene, meal preparation, shopping, and  
4 transportation. She is dependent on others for housework and laundry. She uses a cane for  
5 ambulation.

6 16. In order to remain in her own home in the community, Ms. Garcia requires the  
7 frequent daily medical monitoring she receives with her current level of ADHC services, and she is  
8 at imminent risk of hospitalization due to her unstable diabetes if her services are cut.

9 Allie Jo Woodard

10 17. Plaintiff Allie Jo Woodard is a 79-year-old woman who is diagnosed with bipolar  
11 affective disorder, depression, diabetes, glaucoma, hypertension, and osteoarthritis. Ms. Woodard  
12 receives Medi-Cal and is currently attending ADHC five days per week.

13 18. Ms. Woodard needs supervision with ambulation, toileting, and transferring,  
14 assistance with bathing and dressing, and is totally dependent on others for housework, hygiene,  
15 laundry, shopping, transportation, medication management, money management, accessing  
16 resources, and meal preparation.

17 19. Ms. Woodard is proceeding in this litigation by her *Guardian Ad Litem* Linda  
18 Gaspard-Berry as she is not able to proceed on her own behalf. Ms. Gaspard-Berry, who is Ms.  
19 Woodard's daughter, has agreed to act as her *Guardian Ad Litem*, and is qualified to do so. She will  
20 competently proceed on Ms. Woodard's behalf. An application to appoint Ms. Gaspard Berry to act  
21 as a *Guardian Ad Litem* in this action has been filed with this court.

22 20. Ms. Woodard and her family want her to remain in her own home with her current  
23 level of ADHC services, and she is at imminent risk of institutionalization if these services are cut.

24 **Defendants**

25 21. Defendant California Department of Health Care Services (DHCS) is a state agency  
26 which receives federal funds and is responsible for administering the federal Medicaid program,  
27 entitled, "Medi-Cal" in California. Defendant DHCS is sued only under the Second Claim for Relief  
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1 (Section 504 of the Rehabilitation Act) and the Sixth Claim for Relief (Cal. Gov't Code § 11135).

2 22. Defendant David Maxwell-Jolly is the Director of the California Department of Health  
3 Care Services, a state agency which receives federal funds. Defendant Maxwell-Jolly is a public  
4 agency director responsible for operation of a public entity, pursuant to 42 U.S.C. §§ 12131(1)(A) &  
5 (B). Defendant Maxwell-Jolly is sued in his official capacity.

## 6 VI. STATUTORY AND REGULATORY FRAMEWORK

### 7 Anti-Discrimination Laws

8 23. In enacting the Americans With Disabilities Act, Congress found that “[individuals  
9 with disabilities continually encounter various forms of discrimination, including...segregation...”  
10 42 U.S.C. § 12101(a)(5). Title II of the Americans with Disabilities Act provides that “no qualified  
11 individual with a disability shall, by reason of disability, be excluded from participation in or be  
12 denied the benefits of services, programs, or activities of a public entity or be subjected to  
13 discrimination by such entity.” 42 U.S.C. § 12132.

14 24. Regulations implementing Title II of the ADA provide: “A public entity shall  
15 administer services, programs, and activities in the most integrated setting appropriate to the needs  
16 of qualified individuals with disabilities.” 28 C.F.R. § 35.130(d) (1991).

17 25. Regulations implementing Title II of the ADA provide: “A public entity may not,  
18 directly or through contractual or other arrangements, utilize criteria or other methods of  
19 administration: (i) that have the effect of subjecting qualified individuals with disabilities to  
20 discrimination on the basis of disability; [or] (ii) that have the purpose or effect of defeating or  
21 substantially impairing accomplishment of the objectives of the entity’s program with respect to  
22 individuals with disabilities. . . .” 28 C.F.R. § 35.130(b)(3).

23 26. The United States Supreme Court in *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581  
24 (1999), held that the unnecessary institutionalization of individuals with disabilities is a form of  
25 discrimination under Title II of the ADA. In doing so, the high Court interpreted the ADA’s  
26 “integration mandate” as requiring persons with disabilities to be served in the community when:  
27 (1) the state determines that community-based treatment is appropriate; (2) the individual does not  
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1 oppose community placement; and, (3) community placement can be reasonably accommodated.  
2 527 U.S. at 607.

3 27. Section 504 of the Rehabilitation Act of 1973, on which the ADA is modeled, sets  
4 forth similar protections against discrimination by recipients of federal funds, such as Defendant  
5 herein. 29 U.S.C. §§ 794-794a. These protections include the prohibition against unnecessary  
6 segregation. Regulations implementing Section 504 require that a public entity administer its  
7 services, programs and activities in “the most integrated setting appropriate” to the needs of  
8 qualified individuals with disabilities. 28 C.F.R. § 41.51(d).

9 28. Section 504’s regulations prohibit recipients of federal financial assistance from  
10 utiliz[ing] criteria or methods of administration ... (i) [t]hat have the effect of subjecting qualified  
11 handicapped persons to discrimination on the basis of handicap [or] (ii) that have the purpose or  
12 effect of defeating or substantially impairing accomplishment of the objectives of the recipient’s  
13 program with respect to handicapped persons. 28 C.F.R. § 41.51(b)(3)(I); 45 C.F.R. § 84.4(b)(4).

14 29. Likewise, California’s non-discrimination statute prohibits discriminatory actions by  
15 the state and state-funded agencies or departments, similar to the ADA, and provides civil  
16 enforcement rights for violations. Cal. Gov’t Code §§ 11135-11139 (West 2007).

### 17 **Medicaid and Medi-Cal Programs**

18 30. Medicaid is a cooperative, jointly-funded program between the federal and state  
19 governments that provides medical assistance to, inter alia, low-income individuals with disabilities.  
20 42 U.S.C. §§ 1396-1396v. The purpose of Medicaid is to furnish, as far as practicable, “medical  
21 assistance on behalf of ...aged, blind or disabled individuals, whose income and resources are  
22 insufficient to meet the costs of necessary medical services” and “to help such families and  
23 individuals to attain or retain capability for independence or self-care...” 42 U.S.C. § 1396-1.

24 31. On the federal level, Medicaid is administered by the Centers for Medicare and  
25 Medicaid Services (CMS), an agency within the United States Department of Health and Human  
26 Services (DHHS).

27 32. States participate in Medicaid by submitting a State Medicaid Plan to CMS for  
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1 approval. 42 U.S.C. § 1396; 42 C.F.R. § 430.12 (1995). States can make changes to their Medicaid  
2 programs by submitting state plan amendments to CMS for approval. *Id.* Coverage of certain  
3 services is mandatory under Medicaid. States that elect to participate in the Medicaid program must  
4 cover nursing facility services for individuals over 21 years of age. 42 U.S.C. § 1396d(a)(4)(A).  
5 States must also offer home health agency services, including skilled nursing services, physical  
6 therapy, occupational therapy, speech pathology and other rehabilitative services. 42 U.S.C.  
7 § 1396d(a)(7); 42 C.F.R. § 440.70 (1997).

8 33. California has elected to participate in Medicaid, and, therefore, must comply with  
9 the requirements of the federal Medicaid Act, its implementing regulations, the United States  
10 Constitution, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973.  
11 42 U.S.C. § 1396, *et seq.* California's Medicaid program under the federal Medicaid statute is  
12 known as Medi-Cal, and is set forth in the Welfare and Institutions Code. Cal. Welf. & Inst. Code  
13 §§ 14000-14685 (West 2006). The California Department of Health Care Services (DHCS)  
14 administers the California Medicaid program.

15 34. Under federal Medicaid requirements, states must provide comparable benefits, *i.e.*,  
16 benefits that are equal in "amount, duration and scope," to all categorically needy Medicaid  
17 beneficiaries. 42 U.S.C. § 1396a(a)(10)(B)(i); 42 C.F.R. §§ 440.240(a), (b)(1) (1981). Categorically  
18 needy Medicaid beneficiaries are beneficiaries who, in most cases, receive cash public assistance to  
19 meet basic needs. States must also provide comparable benefits to all medically needy Medicaid  
20 beneficiaries. Medically needy Medicaid beneficiaries are beneficiaries who do not receive cash  
21 public assistance because they have income or resources in excess of the requirements for receipt of  
22 such assistance, but who, nevertheless meet categorical requirements for such assistance, *e.g.*, they  
23 are over age 65, blind, or disabled. States can provide benefits to the medically needy that are less in  
24 amount, duration and scope than benefits to the categorically needy, but California has not elected to  
25 do so. Therefore (with certain exceptions for some groups such as pregnant women, certain aliens  
26 and services provided pursuant to waiver of federal requirements) California must provide benefits  
27 under its Medicaid program that are equal in amount, duration and scope to all eligible needy  
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1 beneficiaries.

2 35. Under the Medicaid program recipients and applicants for Medicaid services have  
3 rights to written notice and a fair hearing. 42 C.F.R. § 431.200 *et seq.* Medicaid recipients have a  
4 right to written notice and a pretermination fair hearing if the benefits they are receiving are reduced,  
5 suspended or terminated. *Id.*

6 36. California Medi-Cal State Plan services are available to persons with disabilities in  
7 the community as an entitlement: if individuals meet the eligibility criteria for receipt of the services,  
8 including the requirement that the services be medically necessary, then they have a right to receive  
9 them with reasonable promptness. 42 U.S.C. § 1396a(a)(8).

10 37. California's Medi-Cal plan provides payments for a variety of services, including but  
11 not limited to, Adult Day Health Care, personal care services, home health agency services, skilled  
12 nursing facility services, hospital services, specialty mental health services, targeted case  
13 management, and medical and non-medical transportation.

14 38. Under Medi-Cal, each adult day health center shall provide, directly on the premises,  
15 at least the following services: 1) rehabilitation services, including physical therapy, occupational  
16 therapy, and speech therapy; 2) medical services supervised by either the participant's personal  
17 physician or a staff physician or both; 3) nursing services, including:(a) skilled nursing care rendered  
18 by a professional nursing staff, who evaluate the particular nursing needs of each participant and  
19 provide the care and treatment indicated, and (b) self-care training and services oriented toward  
20 activities of daily living and personal hygiene, such as toileting, bathing and grooming; 4) nutrition  
21 services, including (a) a minimum of one meal per day and (b) dietary counseling and nutrition  
22 education for participants and their families; 5) psychiatric and psychological services  
23 including:(a) consultation, (b) individual assessment, (c) supervision of treatment by a psychiatrist,  
24 psychologist, psychiatric social worker or psychiatric nurse, when indicated; 6) medical social  
25 services to participants and their families to help with personal, family and adjustment problems that  
26 interfere with the effectiveness of treatment; 7) recreational and social activities suited to the needs  
27 of the participants and designed to encourage physical exercise to prevent deterioration and to  
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1 stimulate social interaction; and 8) non-medical and medical transportation service for participants,  
2 only if necessary, to and from their homes, including the use of specially equipped vehicles when  
3 medically necessary to accommodate participants with severe physical disabilities that limit  
4 mobility. Cal. Code Regs. tit. 22 (2009) § 54309(a); Cal. Welf. & Inst. Code § 14520, *et seq.* (West  
5 2006); Cal. Health & Safety Code § 1570, *et seq.* (West 2006).

6 39. Under the Medi-Cal program, the following personal care services are available in the  
7 community through the In-Home Supportive Services program: meal preparation and cleanup,  
8 feeding, transportation to and from medical appointments, ambulation, bowel and bladder care,  
9 paramedical services, protective supervision, and other personal care services. Cal. Welf. & Inst.  
10 Code §§ 12300, 14132.95, 14132.951.

11 40. Under Medi-Cal, the following home health agency services are available in the  
12 community when needed: part-time or intermittent skilled nursing services by licensed nursing  
13 personnel; in-home medical care services as defined in California Welfare and Institutions Code  
14 section 14132(s); physical, occupational or speech therapy; medical social services; home health  
15 aide services, which include assisting with personal care, bathroom needs and ambulation, and  
16 performing medically necessary household services to facilitate self-care such as changing the bed  
17 and light cleaning; medical supplies other than drugs and biologicals; and the use of medical  
18 appliances, provided for under an approved treatment plan. Cal. Code. Regs. tit. 22 §§ 51003,  
19 51125, 51129, 51146, 51217, 51337, 51455, 51523; Cal. Health & Safety Code §§ 1725 *et seq.*  
20 (West 2006); Chapter 9.1., Medi-Cal Manual of Criteria R-15-98E.

21 41. Under Medi-Cal, skilled nursing facility services are available to provide skilled  
22 nursing care and supportive care to individuals. Cal. Health & Safety Code § 1250(c).

23 42. Under Medi-Cal, hospital services are available to provide 24-hour inpatient care,  
24 including the following basic services: medical, nursing, surgical, anesthesia, laboratory, radiology,  
25 pharmacy, and dietary services. Cal. Health & Safety Code § 1250(a).

26 43. Under Medi-Cal, Specialty Mental Health services are available in the community,  
27 and include rehabilitation services and medication management. Cal. Welf. & Inst. Code §§  
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1 14021(a), 14021.4, 14681, 14683, 14684; Cal. Code Regs. tit. 9 §§ 1810.100; 1810.247.

2 44. Under Medi-Cal, Targeted Case Management (TCM) is available to assist Medi-Cal  
3 recipients in gaining access to needed medical, social, educational and other services, including  
4 assistance in obtaining services covered under the Medi-Cal State Plan, assessment, service/support  
5 planning, and monitoring services and supports to ensure they are meeting a beneficiary's needs.  
6 Cal. Welf. & Inst. Code § 14132.44.

7 45. Under Medi-Cal, medical and non-medical transportation are available. 42 C.F.R.  
8 § 431.53; Cal. Welf. & Inst. Code §§ 14132(i), 14133.6, 14133.65, 14136 *et seq.* Cal. Code Regs  
9 tit. 22 §§ 51151.7, 51151 *et seq.*

10 46. Medi-Cal recipients are entitled to notice of their right to a fair hearing when there is  
11 any action by the Department to terminate or reduce any medical service. Cal. Code Regs. tit. 22  
12 § 51014.1(a).

13 **2009 Legislation Affecting ADHC – ABX4 5 (Chapter 5, Statutes of 2009)**

14 47. ABx4 5 is scheduled to go into effect on August 27, 2009. The new law reduces the  
15 ADHC benefit to three days per week for all Medi-Cal beneficiaries, with no exceptions. Cal. Welf.  
16 & Inst. § 14132(p)(2) effective August 27, 2009.

17 48. In addition to this cut, new restrictions limiting who is eligible to receive ADHC  
18 services will go into effect if and when the Director of DHCS provides a written declaration that new  
19 restrictions are ready to be implemented. Welf. & Inst. Code § 14521.1, effective August 27, 2009.  
20 These new restrictions will terminate or deny ADHC services to individuals based on degree of  
21 functional limitation and need for a certain level of care.

22 49. The statute provides that at the time of the declaration of new restrictions by the  
23 Director, the ADHC benefit will revert back to a maximum of five days per week for the individuals  
24 who remain eligible.

25 50. The new restrictions provide new and ambiguous standards, *e.g.*, that participants will  
26 remain eligible only if they need “substantial human assistance” a new term defined as direct hands-  
27 on assistance provided by a “qualified” caregiver which entails physically helping the participant  
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1 perform the essential elements of the activities of daily living (ADLs), will be terminated or barred  
2 from receiving any ADHC services unless they have a condition or type of disability entitled to an  
3 exception of this requirement. Cal. Welf. & Inst. Code §§ 14525.1, 14522.4(a)(10), effective August  
4 27, 2009.

## 5 VII. FACTUAL ALLEGATIONS

### 6 **Background of the ADHC Program**

7 51. Adult Day Health Care is a community-based day program for low income seniors  
8 and younger disabled adults. Adult Day Health Care programs provide comprehensive health and  
9 social services centered on a multi-disciplinary team approach with skilled professionals providing  
10 individualized care, treatments and services to frail elderly and disabled persons, in order to  
11 maintain their ability to reside in the community.

12 52. The California legislature specifically intended ADHC as an alternative to  
13 institutional care. Cal. Health & Safety Code § 1570.2. The ADHC program includes as an  
14 eligibility criteria for receipt of services that: *“A high potential exists for the deterioration of the*  
15 *participant’s medical, cognitive, or mental health condition or conditions in a manner likely to*  
16 *result in emergency department visits, hospitalization, or other institutionalization if adult day*  
17 *health care services are not provided.”* Cal. Welf. & Inst. Code § 14526.1(d)(4). The goal of the  
18 ADHC program is to prevent avoidable hospitalizations, emergency department use and nursing  
19 facility placement by improving and stabilizing an individual’s daily functioning, medical  
20 conditions and mental status.

21 53. Adult Day Health Care services are generally provided at a community based center.  
22 Participants live at home or in assisted living, and are transported to and from the program center on  
23 a daily basis.

24 54. For one daily all-inclusive Medi-Cal reimbursement rate of \$76.22, ADHCs are  
25 required to provide skilled nursing, skilled social work, therapeutic activities, dietician and  
26 nutritionally customized meal services, skilled physical therapy, skilled occupational therapy,  
27 skilled speech and language pathology services, skilled mental health services and non-emergency  
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1 transportation to and from the center. Individuals can participate in ADHC from one to five days  
2 per week, depending on their needs and medical authorizations.

3 55. Statewide, approximately 90% of the 37,235 individuals projected to be served in  
4 ADHC centers within Fiscal Year 2009-10 rely on Medi-Cal. ADHCs serve a disproportionate  
5 number of Medi-Cal beneficiaries because the program was designed, as a matter of public policy,  
6 to be a community-based alternative to nursing homes for low-income adults with disabling  
7 physical, mental, or cognitive conditions.

8 56. Based on the most recent available information provided by the California  
9 Department of Aging, fifty-eight percent (58%) of those served in ADHC are 75 years of age or  
10 older. Of that group, fourteen percent (14%) are over the age of 85, the most rapidly growing  
11 segment of California's population. There are few options comparable to ADHC services for those  
12 older adults who choose to live out their lives with dignity and independence in their own homes or  
13 in community-based settings.

14 57. While the majority of persons served are elderly and frail, ADHCs also serve non-  
15 elderly adults with chronic disabling mental health, cognitive or physical conditions: for example,  
16 chronic schizophrenia, Parkinson's disease, Alzheimer's disease, stroke, or head injury.

17 58. Individuals wishing to receive ADHC services must have a physician submit history  
18 and physical information and participate in a three day assessment performed by a multi-  
19 disciplinary team of clinicians including a registered nurse, social worker, and therapist, at  
20 minimum. An Individual Plan of Care (IPC) is designed and submitted to Medi-Cal along with the  
21 Treatment Authorization Request (TAR). All individuals with Medi-Cal insurance must be prior-  
22 authorized by the DHCS through a local field office to attend the ADHC center for a certain number  
23 of days per week.

24 59. This approval to receive services is re-authorized every six months. The state  
25 adjudicates the number of days of attendance based on the documented need of each beneficiary.  
26 Prior to the passage of ABX4 5 in late July 2009, there was no cap on the number of days per week  
27 that a beneficiary could access ADHC.

28

1           60.     The State of California pays significantly more to institutionalize disabled individuals  
2 in nursing homes or other institutional facilities than it does to cover their care in community-based  
3 settings, *e.g.*, ADHC services. The average daily rate for nursing facility services is approximately  
4 \$161.81, or \$4,854.30 per month.

5           61.     The ADHC Program helps prevent costly and unnecessary institutionalization, saving  
6 the State significant funds, and, at the same time, improving the quality of life for the individuals  
7 served.

8     **Cuts in Days of Service**

9           62.     The Governor signed ABx4 5 on July 28, 2009. The bill provides that effective 30  
10 days after the law is signed by the Governor, the maximum number of days that any ADHC  
11 participant may be authorized for Medi-Cal funding to attend ADHC is cut from five to three,  
12 regardless of current authorizations or the health condition of the individual. Cal. Welf. & Inst.  
13 Code § 14132 (p), effective August 27, 2009.

14           63.     Defendants have estimated that the reduction in the ADHC benefit from four or five  
15 days to three days will affect approximately 8,000 individuals.

16           64.     Upon information and belief, Defendants have not arranged for provision of  
17 alternative, community-based Medi-Cal services to be provided to Plaintiffs.

18           65.     This group of individuals are members of the “Limitation of Benefits Subclass”  
19 discussed below.

20     **New ADHC Restrictions**

21           66.     New restrictions limiting who is eligible for receipt of ADHC services will go into  
22 effect when the Director of DHCS provides a written declaration that the new restrictions are ready  
23 to be implemented. This declaration will trigger reinstatement of the maximum number of days  
24 allowable under the ADHC program to five per week, but the new restrictions will also be triggered,  
25 resulting in termination of all services for many current beneficiaries who need and receive them.  
26 Cal. Welf. & Inst. Code § 14525.1, effective August 27, 2009.

27           67.     These new restrictions will require that in order to receive ADHC services,  
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1 individuals must meet *all* of the following criteria: (1) be 18 years of age or older and have one or  
2 more chronic or post-acute medical, cognitive, or mental health conditions, and a physician, nurse  
3 practitioner, or other health care provider has, within his or her scope of practice, requested adult day  
4 health care services for the person; (2) meet the skilled nursing facility level of care set forth in Cal.  
5 Code of Regs. tit. 22 § 51124; and (3) have two or more functional impairments involving  
6 ambulation, bathing, dressing, self-feeding, toileting, transferring, medication management, and  
7 hygiene and require substantial human assistance in performing these activities. Cal. Welf. & Inst.  
8 Code § 14525.1, effective August 27, 2009.

9         68.     “Substantial human assistance” is defined as direct, hands-on assistance provided by a  
10 qualified caregiver, which entails physically helping the participant perform the essential elements of  
11 the activities of daily living (ADLs) and instrumental activities of daily living (IADLs). It entails  
12 more than cueing, supervision, or stand-by assistance to perform the ADLs and IADLs. It also  
13 includes the performance of the entire ADL or IADL for participants totally dependent on human  
14 assistance. Cal. Welf. & Inst. Code § 14522.4(a)(10), effective August 27, 2009.

15         69.     The restrictions contain exceptions for individuals who are residents of an  
16 Intermediate Care Facility for Persons with Developmental Disabilities (ICF-DD H), and have  
17 disabilities and a level of functioning that are of such a nature that, without supplemental  
18 intervention through Adult Day Health Care, placement to a more costly institutional level of care  
19 would be likely to occur; and individuals with chronic mental illness or moderate to severe  
20 Alzheimer's disease or other cognitive impairments. These individuals will not be required to meet  
21 Skilled Nursing Facility (SNF) level of care, or to need “substantial human assistance” in completing  
22 activities, but will be required to need only “assistance” in performing these activities.

23         70.     Upon information and belief, the triggering conditions for such a declaration are  
24 based on purely fiscal considerations, as the new restrictions, although nominally restoring ADHC to  
25 five days per week, will serve to reduce the eligible population by imposing arbitrarily heightened  
26 requirements, *e.g.* that participants need “substantial human assistance” defined as direct hands-on  
27 assistance provided by a “qualified” caregiver which entails physically helping the participant  
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1 perform ADL's. Cal. Welf. & Inst. Code § 14525.1., effective August 27, 2009.

2 71. Individuals not meeting the new restrictions will have their services terminated.  
3 Upon information and belief, those individuals most likely to be affected by the new restrictions will  
4 include those with unstable diabetes or other unstable medical conditions, and medically frail elders  
5 who do not meet the test of requiring "substantial human assistance" in performing activities of daily  
6 living because they are ambulatory and can move their limbs, but are dependent on the medical  
7 monitoring, nursing treatments, medication monitoring, structured environment and social work to  
8 maintain stability. In addition, individuals harmed by the new eligibility restrictions are likely to be  
9 those with cognitive impairments such as mild Alzheimer's disease who are physically able to care  
10 for themselves but who may forget to take medications or eat when alone, and require the structure,  
11 stability, socialization, frequent assessment, and medication management offered at ADHC.

12 72. This group of individuals are members of the "Termination of Benefits Subclass",  
13 discussed below.

14 **Facts Related to Plaintiff Lillie Brantley**

15 73. Lillie Brantley attends the Bayview Hunter's Point ADHC program in San Francisco  
16 California. She has been attending the program for three years. She is authorized to receive and  
17 does receive Medi-Cal funded ADHC services five days a week. Her most current Individual Plan  
18 of Care (IPC) is approved through August 31, 2009.

19 74. In accordance with her most recent IPC at the Bayview Hunter's Point ADHC  
20 program, Mrs. Brantley receives: professional nursing services every day to monitor her  
21 hypertension, monitor and control her seizures, and monitor her for weight loss; personal care  
22 services every day to help her with feeding, toileting, and ambulation, as well as monitoring her  
23 whereabouts; social services every day to improve her mood and behaviors, which are deteriorating  
24 due to her increasing dementia; therapeutic activities to increase her interactions with others and  
25 reduce her isolation; physical therapy maintenance program twice per week to reduce her risk for  
26 falls and maintain current functioning; occupational therapy services for maintaining her functional  
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1 strength; and nutritional monitoring because of her diagnosis of hypertension and her recent weight  
2 loss.

3 75. Ms. Brantley's most recent IPC documents that she is at high risk of  
4 institutionalization if she does not receive ADHC services five days per week, due to her  
5 inappropriate behavior and affect, two or more chronic medical conditions, poor judgment,  
6 medication mismanagement, frailty, isolation, risk for falls, including forgetting to use her cane and  
7 being unsafe in transfers, self neglect, and dementia-related behavioral problems.

8 76. Ms. Brantley can never be alone due to her cognitive and health impairments; in  
9 addition to five days of attending and receiving services at the ADHC program, she receives the  
10 maximum number of In-Home Supportive Services (IHSS) through the Medi-Cal program, 283  
11 hours.

12 77. Ms. Brantley lives with her niece Chauncey McLorin and Ms. McLorin's 15-year old  
13 daughter. Ms. Brantley's family will be forced to institutionalize her if she is not able to go to the  
14 ADHC program five days a week, as Ms. McLorin cannot afford to quit her job, and Ms. Brantley is  
15 already receiving the maximum amount of IHSS available.

16 78. Plaintiff Lillie Brantley would be irreparable harmed by a reduction in ADHC  
17 services to three days per week. Although Ms. Brantley is severely impaired by Alzheimer's  
18 disease, ADHC services five days per week enable her to live in a familiar environment with family  
19 members who care for her and whom she recognizes and can interact with. She can go out to eat  
20 with family, and attend church. However, because she is unable to be left alone for any period of  
21 time, she would be at risk of serious injury if she were home alone during the time that ADHC is no  
22 longer available. Given her family's inability to stay at home with her for the days she would no  
23 longer be able to go to ADHC, she would need to be placed in a nursing facility. Given her  
24 cognitive condition, she would likely deteriorate rapidly in an unfamiliar environment such as a  
25 nursing facility. Placement in an institution would be devastating to her, and to her family.

1 **Facts Related to Plaintiff Allie Jo Woodard**

2 79. Allie Jo Woodard attends the Bayview Hunter's Point ADHC program in San  
3 Francisco California. She has been attending the program for nine years. She is authorized to  
4 receive and does receive Medi-Cal funded ADHC services five days a week. Her most current IPC  
5 is approved through December 31, 2009.

6 80. In accordance with her most recent IPC at the Bayview Hunter's Point ADHC  
7 program, Ms. Woodard receives: professional nursing services every day to monitor her for fall risk,  
8 for her hypertension, and for her pain and mobility related to her arthritis; personal care services  
9 daily to monitor her exertion level to prevent cardiac compromise; social services intended to  
10 prevent psychiatric hospitalization in the form of group activities, weekly psychological counseling,  
11 and daily check in with the program social worker to reorient her to reality; therapeutic activities to  
12 decrease her feelings of isolation, and improve her interactions with peers; occupational therapy  
13 services for maintaining functional strength two days per week.

14 81. Mrs. Woodard's current IPC states that she is at a high risk of institutionalization if  
15 she does not receive ADHC services five days per week, based on her two or more chronic medical  
16 conditions, poor judgment, medication mismanagement, frailty, isolation, risk for falls, and  
17 dementia-related behavioral problems.

18 82. Ms. Woodard lives alone, however she is never able to actually be alone because she  
19 is at risk of wandering. A few years ago she was missing for two full days.

20 83. Ms. Woodard has the maximum hours of IHSS available, 283 hours. In addition, her  
21 daughter and son rotate spending the night with her. On the weekends her daughter Linda Gaspard-  
22 Berry brings her to Ms. Gaspard-Berry's home in Fremont.

23 84. Ms. Woodard's disability causes her to be very fragile emotionally, and she has had  
24 frequent psychiatric hospitalizations as a result. She is also at risk of falling, and sometimes needs  
25 constant physical and verbal cueing to use her walker.

26 85. Her daughter believes that Ms. Woodard's attendance and services at the ADHC five  
27 days per week are essential to support her, and that without the program's services, Ms. Woodard  
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1 would have been hospitalized more frequently than she has been.

2 86. Both Ms. Gaspard-Berry and her brother work full-time and cannot afford to quit  
3 their jobs to care for their mother. If her ADHC services are cut she will not be safe alone, and her  
4 children will have to place her in an institution.

5 87. Plaintiff Allie Jo Woodard would be irreparably harmed by a reduction in ADHC to  
6 three days per week. Ms. Woodward lives in her own home with family alternating caring for her,  
7 and she receives the maximum amount of attendant care through the IHSS program. Given her  
8 complex medical and mental health conditions, she cannot be left alone safely and there would be no  
9 one to care for her on the days that she would no longer be able to attend ADHC. Ms. Woodward  
10 relies on ADHC services for pain and medication management, and the socialization provided at  
11 ADHC assists her mental health condition. Without five days per week of ADHC, Ms. Woodward  
12 would need to be placed in a nursing facility. Most likely, she would deteriorate physically and  
13 mentally if that were to occur.

14 **Facts Related to Plaintiff Gilda Garcia**

15 88. Gilda Garcia attends the Institute on Aging ADHC program in San Francisco  
16 California. She has been attending the program since 2005. She is authorized to receive and does  
17 receive Medi-Cal funded ADHC services five days a week. Her most current IPC is approved  
18 through October 31, 2009.

19 89. In accordance with her current IPC at the Institute on Aging ADHC program, Ms.  
20 Garcia receives: professional nursing services five times a week to monitor her for hypoglycemic  
21 reactions, and monitoring for joint and back pain; personal care services five times a week to  
22 supervise her ambulation and prevent falls due to her poor vision and impulse control; social  
23 services five times a week to increase her opportunities for socialization and on an as needed basis  
24 help her coordinate her IHSS and other social services; therapeutic activities five times a week to  
25 increase her physical activity, leisure and cognitive opportunities, physical therapy maintenance  
26 program three days per week to maintain her endurance and physical strength; occupational therapy

1 maintenance program two days per week to maintain her current levels of functioning; and registered  
2 dietician services to ensure she understands the importance of maintaining a diabetic diet.

3 90. Ms. Garcia's most recent IPC states that she is at a high risk of institutionalization if  
4 she does not receive ADHC services five days per week, based on her two or more chronic medical  
5 conditions, frailty, hyper/hypoglycemia, inappropriate affect/appearance or behavior, poor judgment,  
6 risk for falls, and medication mismanagement.

7 91. Ms. Garcia lives alone, and receives limited IHSS services.

8 92. Ms. Garcia fears she will face hospitalization due to her unstable diabetes, and the  
9 risks that this condition poses, including a heightened risk of falls.

10 93. Ms. Garcia is also highly dependent on the socialization that the ADHC program  
11 offers her.

12 94. Ms. Garcia would be irreparably harmed by a reduction in ADHC to three days per  
13 week. Ms. Garcia has unstable diabetes such that the frequent medical monitoring by ADHC  
14 nursing cannot be replicated by primary care. Ms. Garcia relies on ADHC for medical stabilization.

15 95. Without five days per week of ADHC, she is at high risk for acute hospitalization  
16 and/or institutionalization. In addition, Ms. Garcia is protected from isolation and depression by  
17 attending ADHC five days per week. If she were to remain at home for the majority of the week,  
18 she would likely see a rapid decrease in her mental state and thus, her physical state, which would  
19 likely result in acute hospitalization and institutionalization.

20 96. Upon information and belief, Ms. Garcia will be terminated from the program by the  
21 new restrictions in California Welfare and Institutions Code section 14521.1, as she is not in an  
22 exception category, and she does not need "substantial human assistance" in two or more functional  
23 impairments involving ambulation, bathing, dressing, self-feeding, toileting, transferring, medication  
24 management, and hygiene.

25 **Failure to Provide Adequate Notice and Hearing.**

26 97. Plaintiffs have all been found eligible for and currently receive ADHC services on an  
27 individualized basis as set forth in their Individual Plans of Care. As part of their ADHC Individual  
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1 Plan of Care (IPC), Plaintiffs have each been found eligible for specific ADHC services five days  
2 per week. Plaintiff Lillie Brantley has a Medi-Cal approved IPC through August 31, 2009 for five  
3 days a week of services through ADHC. Plaintiff Allie Jo Woodard has a Medi-Cal approved IPC  
4 through December 31, 2009 for five days a week of services through ADHC. Plaintiff Gilda Garcia  
5 has a Medi-Cal approved IPC through October 31, 2009 for five days a week of services through  
6 ADHC.

7 98. On July 30, 2009, Defendant informed providers of the ADHC program that  
8 “Effective August 27, 2009. . . .and until the State law is amended or becomes  
9 inoperative, Medi-Cal will no longer approve or pay for a beneficiary to attend an  
10 ADHC center for more than three days per week. If your ADHC center currently has  
11 participants attending the ADHC center more than three days per week pursuant to a  
12 currently approved Treatment Authorization Request (TAR), DHCS will send those  
13 beneficiaries a notice informing them that their authorized ADHC services will be  
14 reduced to a maximum of three days of ADHC per week, effective 30 days after  
15 signing of the Trailer Bill. In addition, DHCS will notify all Medi-Cal beneficiaries  
16 who receive ADHC services of the reduction to this ADHC benefit. Copies of all  
17 notices released regarding ADHC benefit changes will be provided on the DHCS  
18 website at [www.dhcs.ca.gov](http://www.dhcs.ca.gov) and on the Medi-Cal website at [www.medi-cal.ca.gov](http://www.medi-cal.ca.gov).  
19 Please feel free to print, post, and/or distribute these notices for your ADHC  
20 participants.”

21 99. Following this provision of notice to providers, Defendant posted a notice on the  
22 DHCS website informing all ADHC recipients that the “ADHC benefit is reduced to a maximum of  
23 three days of ADHC per week” and further informing Plaintiffs and Class Members in the  
24 “Limitations of Benefits subclass”, set forth *infra*, that:

25 “Dear Medi-Cal Beneficiary:

26 This is to notify you that a recent change in California law will reduce the Adult Day  
27 Health Care benefit to a maximum of three days per week for any beneficiary. This  
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1 change will occur 30 days after signing of the law that accompanies the State Fiscal  
2 Year 2009-2010 Budget. The Department of Health Care Services records show that  
3 you are currently authorized to receive four or more days per week of Adult Day  
4 Health Care. Effective August 27, 2009, Medi-Cal will only authorize and pay for a  
5 maximum of three days per week of Adult Day Health Care. Due to this change of  
6 State law, carry-over days and make-up days will not be allowed. If you have any  
7 questions, please contact the Medi-Cal beneficiary Services line at 1-888-284-0623 or  
8 speak with your ADHC provider.”

9 100. Upon information and belief, Plaintiffs Lillie Brantley, Gilda Garcia, and Allie Jo  
10 Woodard have not received individualized notice of the cuts to their services providing them with  
11 statutorily required hearing rights.

12 101. Defendant’s notice posted on its website states that ADHC benefits are being reduced  
13 to a maximum of three days per week. This notice violates both federal and state law in that it states  
14 that Plaintiffs and Class Members are no longer entitled to ADHC services for four or five days per  
15 week, when, in fact, Plaintiffs continue to be entitled to the services under other Medi-Cal state plan  
16 services. This notice fails to advise Plaintiffs of their right to a fair hearing if they are dissatisfied  
17 with the reductions or terminations in services, the manner in which they can request a hearing, their  
18 right to continuation of benefits pending a hearing, and other rights.

19 102. The Plaintiffs are representative of the broader population of ADHC participants  
20 throughout the state who would be affected by the cuts contained in ABX4 5 and who have not  
21 received required notice and hearing rights.

22 **Facts Related to Medi-Cal ADHC Participants Generally**

23 103. All ADHC participants have been authorized to receive and do receive Medi-Cal  
24 funded ADHC services in accordance with physician recommendations and an Individual Plan of  
25 Care (IPC) submitted to and approved by Defendants.

26 104. Upon information and belief, virtually all ADHC participants are receiving services  
27 between one and five days per week and have approved treatment authorizations approved by Medi-  
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1 Cal which extend beyond the proposed termination date of August 27, 2009.

2 105. Upon information and belief, ADHC participants have not received individualized  
3 notification of the cuts or changes in services providing them with statutorily required hearing rights,  
4 nor have they been provided with replacement services available under the Medi-Cal State Plan.

5 106. Cuts to ADHC will cause Class Members to suffer decline in physical functioning,  
6 will lead to increased preventable emergency room visits, and will lead to institutionalization.

7 107. Significantly, for many participants, such as people whose physical or cognitive  
8 impairments are such that they cannot be left alone, or whose health conditions are extremely  
9 unstable, or those whose families rely on the individual being out of home in order to work, sleep, or  
10 care for other family members, the loss of one or two days of ADHC will mean immediate out-of-  
11 home placement in a nursing facility.

12 108. To the extent there are any applicable administrative remedies, exhaustion on the part  
13 of Plaintiffs would be futile. On August 10, 2009, Plaintiffs sent a demand letter to Defendants  
14 requesting that the reduction, elimination or termination of services be halted until Defendants  
15 provided Plaintiffs with due process, continued services and/or replacement services needed to  
16 maintain them in the community in accordance with the law. On August 13, 2009, Defendants  
17 responded by letter, refusing to do so

#### 18 **VIII. CLASS DEFINITION AND ALLEGATIONS.**

19 109. Pursuant to Rule 23(a) and Rule (b)(2) of the Federal Rules of Civil Procedure, the  
20 Plaintiffs Brantley, Woodard and Garcia bring this action on behalf of themselves and all other  
21 persons similarly situated. Plaintiffs bring this action on behalf of a class consisting of “all  
22 recipients of Medi-Cal in the State of California who receive Adult Day Health Care Services whose  
23 Adult Day Health Care Benefits will be limited, cut, or terminated under the provisions of ABx4 5  
24 (hereinafter the “Class”). Fed. R. Civ. P. 23(a), (b)(2).

25 110. Plaintiffs Brantley, Woodard and Garcia also plead a subclass of individuals as  
26 follows:

27 a. **“Limitation of Benefits Subclass”** to be defined as “all Medi-Cal  
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1 beneficiaries who, as of August 26, 2009, have been authorized to receive four  
2 or five days of Adult Day Health Care Services by DHCS, and whose services  
3 will be reduced to a maximum of three days under the provisions of ABx4 5.”  
4 Plaintiffs Brantley, Garcia, and Woodard are typical of this subclass.

5 b. **“Termination of Benefits Subclass”** to be defined as “all present and future  
6 Medi-Cal beneficiaries who have been authorized to receive any Adult Health  
7 Care services, and whose ADHC services will be terminated under the  
8 provisions of ABx4 5 at the time DHCS issues new classification standards  
9 pursuant to that statute for receipt of ADHC services.” Plaintiff Garcia is  
10 typical of this subclass.

11 111. Numerosity: The Plaintiff class is so numerous that joinder of all its members is  
12 impracticable. Upon information and belief, there are in excess of 37,000 persons in the class.  
13 Upon information and belief, the “Limitation of Benefits subclass” consists of more than 8,000  
14 people. Upon information and belief the “Termination of Benefits subclass” will consist of  
15 thousands of individuals. Joinder of individuals in the subclasses is also impracticable because of  
16 the size of the subclasses, and because Class Members lack the knowledge and financial means to  
17 maintain individual actions and are geographically dispersed throughout the state.

18 112. Commonality: Common questions of law and fact predominate over questions  
19 affecting individual Class Members. Questions of law and fact common to members of the class  
20 include, but are not limited to: the fact that all Plaintiffs and Class Members receive Medi-Cal  
21 funded ADHC services that will be limited or reduced due to the common policies and actions of  
22 Defendants that apply to all of the Class Members; the determination of whether Defendants’  
23 policies and actions violate federal and/or state law; and the determination of whether defendants  
24 have failed to give adequate notice to all Class Members. The prosecution of separate actions by  
25 individual members of the class would create a risk of inconsistent or varying adjudication,  
26 establishing incompatible rules of law for the provision of services to people with disabilities served  
27 by the ADHC program.

1           113. Typicality: The claims of the Plaintiffs are typical of the claims of the class as a  
2 whole and are typical of the claims of the subclasses in that the Plaintiffs and Class members  
3 currently are Medi-Cal eligible ADHC participants and qualified individuals with disabilities, who  
4 face imminent risk of institutionalization, hospitalization, or other risk of irreparable harm to their  
5 health, when subjected to the cuts in ADHC and Defendants' policies and practices. The claims  
6 arise from the same unlawful and discriminatory policies and practices of Defendants.

7           114. Adequate representation: The Plaintiffs will fairly represent and adequately protect  
8 the interests of members of the class as a whole. The Plaintiffs do not have any interests  
9 antagonistic to those of other Class Members. By filing this action, the Plaintiffs have displayed an  
10 interest in vindicating their rights, as well as the claims of others who are similarly situated. The  
11 relief sought by the Plaintiffs will inure to the benefit of members of the class generally. The  
12 Plaintiffs are represented by counsel who are skilled and knowledgeable about civil rights litigation,  
13 disability discrimination, Medicaid law, practice and procedure in the federal courts and the  
14 prosecution and management of class action litigation.

15           115. Defendants have acted, refused to act, or will act on grounds generally applicable to  
16 the class, thereby making final injunctive and declaratory relief appropriate with respect to the class  
17 as a whole under Rule 23(b)(2) of the Federal Rules of Civil Procedure. Class Members share a  
18 common need for ADHC services and/or replacement services and Defendants' policies and actions  
19 in limiting or termination ADHC services are applicable to the entire class. A class action is  
20 superior to individual lawsuits for resolving this controversy.

21           116. Defendant's actions, as alleged herein, have resulted in, and will continue to result in  
22 irreparable injury to Plaintiffs and Class Members for which they have no plain, speedy, or adequate  
23 remedy at law. Plaintiffs and Class Members will suffer irreparable injury in that they will be placed  
24 at imminent risk of institutionalization and/or harm to their health.

25           117. An actual controversy exists between Plaintiffs and Class Members and Defendants  
26 in that Defendants are seeking to implement reductions and terminations in Medi-Cal services to  
27 which Plaintiffs and Class Members are entitled, and which, if implemented will place Plaintiffs and  
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1 Class Members at risk of unnecessary institutionalization and that such denial will violate the rights  
2 of Plaintiffs and Class Members under the Due Process Clause of the Fourteenth Amendment to the  
3 United States Constitution, the Americans With Disabilities Act, Section 504, and various provisions  
4 of the Medicaid Act, and California Government Code section 11136. Plaintiffs and Class Members  
5 therefore seek a declaration as to their rights and Defendants' corresponding duties with respect to  
6 the matters alleged herein.

7 **IX. LEGAL CLAIMS**

8 **FIRST CLAIM FOR RELIEF**

9 **Violation of the Americans with Disabilities Act, 42 U.S.C. § 12131 *et seq.***

10 118. Plaintiffs reallege and incorporate herein by reference each and every allegation and  
11 paragraph set forth previously.

12 119. Each named Plaintiff and Class Member is a "qualified individual with a disability"  
13 within the meaning of the ADA in that they (1) have a physical impairment that substantially limits  
14 one or more major life activities; and (2) meet the essential eligibility requirements for community-  
15 based long-term care under California's Medicaid program.

16 120. Defendant has required that ADHC services to Plaintiffs and Class Members  
17 arbitrarily be reduced from five days per week to no more than three days per week without  
18 reassessment of need or the provision of replacement services, thereby placing Plaintiffs and Class  
19 Members at imminent risk of institutionalization in violation of the ADA's integration mandate.

20 121. Defendant has utilized criteria and methods of administration that subject Plaintiffs  
21 and Class Members to discrimination on the basis of disability, including risk of unnecessary  
22 institutionalization, by including but not limited to the following: (1) failing to properly assess for  
23 replacement services and supports that would enable Plaintiffs and Class Members to remain in the  
24 community; (2) failing to provide ADHC or replacement services needed to enable Plaintiffs and  
25 Class Members to remain in the community; (3) basing their decision on levels of service solely on  
26 economic considerations not taking into account the assessed needs of the participants; and  
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1 (4) allocating resources for institutional versus community long-term care contrary to the desires and  
2 needs of people with disabilities.

3 122. Defendant's actions are in violation of Title II of the ADA.

4 **SECOND CLAIM FOR RELIEF**

5 **(Defendants DHCS and Director Maxwell-Jolly)**

6 **Section 504 of the Rehabilitation Act, 29 U.S.C. § 794 et seq.**

7 123. Plaintiffs reallege and incorporate herein by reference each and every allegation and  
8 paragraph set forth previously.

9 124. Each Plaintiff and Class Member is a "qualified person with a disability" within the  
10 meaning of Section 504, because they (1) have physical and/or mental impairments that substantially  
11 limit one or more major life activities; and (2) meet the essential eligibility requirements for  
12 community-based services under California's Medicaid programs."

13 125. Defendants' actions have placed Plaintiffs and Class Members at risk of unnecessary  
14 confinement in institutions, *i.e.*, nursing facilities, rather than the community, in order to obtain long-  
15 term care services, in violation of Section 504's integration mandate.

16 126. Defendants have utilized criteria and methods of administration that subject Plaintiffs  
17 and Class Members to discrimination on the basis of disability, including risk of unnecessary  
18 institutionalization, by (1) failing to properly assess for replacement services and supports that would  
19 enable Plaintiffs and Class Members to live in the community, (2) failing to base service decisions  
20 on individualized needs assessments instead of purely economic concerns; and (3) allocating  
21 resources for institutional versus long-term care contrary to the desires and needs of people with  
22 disabilities.

1 **THIRD CLAIM FOR RELIEF**  
2 **(Defendant Director Maxwell-Jolly)**

3 **Claim under 42 U.S.C. § 1983, Deprivation of Federal Constitutional Rights -**  
4 **Procedural Due Process**

5 127. Plaintiffs reallege and incorporate herein by reference each and every allegation and  
6 paragraph set forth previously.

7 128. Plaintiffs are entitled under federal and state law to adequate notice and opportunity  
8 for a pre-termination or pre-reduction hearing on any termination or reduction in medical care and  
9 services. *See Goldberg v. Kelly*, 397 U.S. 254 (1970) (holding that due process requires that welfare  
10 beneficiaries be given effective notice and a right to a hearing); Cal. Code Regs. tit. 22  
11 § 51014.1(a)(2) (providing Medi-Cal recipients with rights to notice and fair hearing).

12 129. Plaintiffs receive ADHC services which are being cut to three days per week.  
13 Plaintiffs have not received notice informing them of their rights to a pre-termination or pre-  
14 reduction hearing.

15 130. Defendant has attempted to reduce or terminate services provided at adult day health  
16 centers that continue to be Medi-Cal covered services and continue to be available in the community  
17 under the Medi-Cal program, including home health agency services, IHSS, rehabilitation services,  
18 specialty mental health services, targeted case management, and transportation to these services,  
19 thereby depriving Plaintiffs and other Class Members of their right to an opportunity for fair hearing  
20 before reduction or termination of benefits.

21 131. Defendants have violated the Due Process clause of the Fourteenth Amendment to the  
22 U.S. Constitution, by, among other things, denying the Plaintiffs and Plaintiff class meaningful  
23 notice and opportunity for a fair hearing; and advance notice and the opportunity for a fair hearing  
24 prior to suspension or termination of services previously authorized by the State.

25 132. In all of this, Defendants have, under color of state law, deprived Plaintiffs and Class  
26 Members of rights, privileges or immunities secured to them by the Constitution of the United  
27 States, in violation of 42 U.S.C. § 1983.

1 **FOURTH CLAIM FOR RELIEF**

2 **(Defendant Director Maxwell-Jolly)**

3 **Violation of Medicaid Act, Deprivation of Right to a Fair Hearing**

4 133. Plaintiffs reallege and incorporate herein by reference each and every allegation and  
5 paragraph set forth previously.

6 134. Pursuant to the Medicaid Act, the state of California has established a procedure to  
7 provide a pre-termination fair hearing to any Medi-Cal beneficiary whose services are denied,  
8 reduced, or terminated. In reducing or terminating services to Plaintiffs and Class Members as set  
9 forth above, Defendant has deprived Plaintiffs and Class Members of an opportunity to a fair hearing  
10 in violation of 42 U.S.C. § 1396a(a)(3).

11 135. Defendant has under color of state law, deprived Plaintiffs and Class members of  
12 rights or privileges and immunities secured to them by the Constitution and laws of the United States  
13 in violation of 42 U.S.C. § 1983.

14 **FIFTH CLAIM FOR RELIEF**

15 **(Defendant Director Maxwell-Jolly)**

16 **Violation of Medicaid Comparability Requirement Termination Subclass Only**

17 136. Plaintiffs reallege and incorporate herein by reference each and every allegation and  
18 paragraph set forth previously.

19 137. The California Legislature has enacted a statute that seeks to deprive eligible  
20 Medicaid beneficiaries who are in need of, and are qualified to receive, or are currently receiving  
21 ADHC services.

22 138. The statute seeks to deprive Plaintiffs and Class Members of medically necessary  
23 ADHC services based solely on their degree of functional limitation or the level of care that they  
24 need. Defendant, by creating one eligibility standard for individuals with certain conditions or types  
25 of disabilities while applying a separate standard for all other individuals, establishes Medi-Cal  
26 eligibility criteria in contravention of the comparability provisions of the Medicaid Act. 42 U.S.C.  
27 § 1396a(a)(10)(B).  
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1 **X. REQUEST FOR RELIEF**

2 WHEREFORE, Plaintiffs pray that the Court order the following relief and remedies on  
3 behalf of themselves and all others similarly situated:

4 a) Assume jurisdiction over this action and maintain continuing jurisdiction until  
5 defendants are in full compliance with every order of this court;

6 b) Certify this action as a class action;

7 c) As to all defendants, declare that defendants' policies, practices, acts and omissions  
8 as set forth above violate Plaintiffs' and Class Members' rights under the American with Disabilities  
9 Act, Section 504 of the Rehabilitation Act, the Medicaid Act, the United States Constitution,  
10 California Government Code 11135, and 42 U.S.C. § 1983, by, *inter alia*:

11 i. Denying Plaintiffs and Class Members their entitlement to services in the least  
12 restrictive environment;

13 ii. Discriminating against Plaintiffs and Class Members on the basis of disability,  
14 and on the basis of severity of disability, by utilizing methods of  
15 administration, adopting and applying policies, and engaging in practices that  
16 result in unnecessary segregation and institutionalization; and

17 iii. Failing to provide Medi-Cal covered services without interruption and without  
18 adequate notice or opportunity for a fair hearing.

19 d) Declare that Defendant Maxwell-Jolly's termination, reduction or suspension of  
20 Plaintiffs' and Class Members' rights to Medi-Cal-covered services to which they are entitled,  
21 without adequate notice or opportunity for a fair hearing, and failure to transition Plaintiffs and Class  
22 Members to adequate Medi-Cal-covered services to which they are entitled, without interruption of  
23 services, constitutes a denial of:

24 i. Plaintiffs' and Class Members' constitutionally protected right to due process  
25 of law guaranteed to them under the Fourteenth Amendment to the  
26 Constitution of the United States;

1           ii.     The Medicaid program, Title XIX of the Social Security Act, Title 42 U.S.C.  
2                     § 1396a, *et seq.*;

3           e)     Declare that Defendant’s heightened eligibility standards violate the comparability  
4 standards of federal Medicaid law. Title XIX of the Social Security Act, 42 U.S.C.  
5 § 1396a(a)(10)(B).

6           f)     Declare that Defendants’ elimination of Plaintiffs’ Medicaid skilled nursing and  
7 rehabilitation services provided through the ADHC program, without the provision of continuation  
8 services in community-based settings which are the most integrated setting appropriate to the needs  
9 of Plaintiffs and Class Members, and conditioning the receipt of medically necessary Medicaid  
10 services on segregation in an institutional or non-community setting, violate laws which prohibit  
11 discrimination on the basis of disability and unjustified institutionalization and which require  
12 Defendants to administer its services and programs in the most integrated setting appropriate to the  
13 needs of the individual with disabilities, including:

- 14           i.     The Americans with Disabilities Act (“ADA”), (42 U.S.C.A. §§ 12101-12213  
15                     (West 2005))
- 16           ii.    Section 504 of the Rehabilitation Act (“Section 504”), (29 U.S.C.A. §§ 794-  
17                     794a (West 2006)),
- 18           iii.   California Government Code section 11135. (Cal. Gov’t Code § 11135 (West  
19                     2006)).

20           g)     Grant a temporary restraining order, preliminary and permanent injunction enjoining  
21 Defendant, their officers, agents, employees, attorneys, and all persons who are in active concert or  
22 participation with them from violation of Plaintiff’s and Class Members’ rights under the American  
23 with Disabilities Act, Section 504 of the Rehabilitation Act, the Medicaid Act, the United States  
24 Constitution, California Government Code 11135, and 42 U.S.C. § 1983;

25           h)     Grant a temporary restraining order, preliminary and permanent injunction enjoining  
26 Defendants , their officers, agents, employees, attorneys, and all persons who are in active concert or  
27 participation with them from reducing ADHC program benefits from five or four days to a  
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1 maximum of three days to the Plaintiffs and Class Members and reinstate full ADHC program  
2 benefits until such time as Defendants offer Plaintiffs and Class Members the Medi-Cal skilled  
3 nursing, physical and occupational therapy, and other Medi-Cal-covered services Plaintiffs and Class  
4 Members are entitled to in the most integrated and least restrictive setting appropriate to their needs.

5 i) Grant a temporary restraining order, preliminary and permanent injunction enjoining  
6 Defendants, their officers, agents, employees, attorneys, and all persons who are in active concert or  
7 participation with them from terminating, reducing or suspending Plaintiffs' and Class Members'  
8 Medi-Cal skilled nursing, physical and occupational therapy, and other services to which they are  
9 entitled, until such time as alternative community-based services are provided by defendants for each  
10 Plaintiff and Class Member; and until Defendant provides Plaintiffs and Class Members full notice  
11 and due process appeal rights from any terminations, reductions or suspensions of their Medi-Cal  
12 benefits, as required under the U.S. Constitution and the Medicaid Act.

13 j) Grant a temporary restraining order, preliminary and permanent injunction  
14 compelling Defendants, their officers, agents, employees, attorneys, and all persons who are in  
15 active concert or participation with them to take all actions necessary within the scope of their  
16 authority to implement the above injunctions;

17 k) Maintain the injunctions above until such time as skilled nursing, physical and  
18 occupational rehabilitation therapy, and other services are provided to the extent required under  
19 federal law and so as to ensure each Plaintiff and Class Member receives the services which meet  
20 their needs in the most integrated setting appropriate to their needs.

21 l) Waive the requirement for the posting of a bond as security for the entry of  
22 preliminary relief, on the grounds of Plaintiffs' indigency.

23 m) Award the Plaintiffs the costs of this action and reasonable attorneys' fees pursuant to  
24 20 U.S.C. § 794a; 42 U.S.C. §§ 1988, 12133, 12205; California Government Code section 1021.5;  
25 and as otherwise may be allowed by law.

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1 n) All such other and further relief as the Court deems to be just and equitable.

2 Dated: August 18, 2009

Respectfully Submitted

3 DISABILITY RIGHTS CALIFORNIA  
4 NATIONAL SENIOR CITIZENS LAW CENTER  
5 AARP FOUNDATION LITIGATION

6  
7 By:   
8 Elizabeth Zirker

9 Attorneys for Plaintiffs

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