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9 Attorneys for Plaintiffs

10 UNITED STATES DISTRICT COURT

11 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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

22 Plaintiffs, )

23 v. )

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

Defendants. )

Case No. \_\_\_\_\_

**COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF**

**CLASS ACTION**

1 **INTRODUCTION**

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

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

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

1 reduced wage rate. Many consumers would be unable to hire IHSS providers and would either be  
2 deprived of critical IHSS services or be forced into nursing homes.

3 4. Plaintiffs have filed this action because Section 12306.1(d)(6) is preempted by the federal  
4 Medicaid Act, 42 U.S.C. §1396a(a)(30)(A). Prior to enacting Section 12306.1(d)(6), the State failed to  
5 give the required consideration to the impact of the statute on the efficiency, economy, and quality of  
6 care of Medi-Cal services, and on access to Medi-Cal services.

7 5. In addition, Section 12306.1(d)(6) is preempted by the federal Medicaid Act, 42 U.S.C.  
8 §1396a(a)(30)(A), because the reduced IHSS provider wages and benefits that would result from its  
9 implementation would produce Medi-Cal services that are not consistent with the required standards of  
10 efficiency, economy, and quality of care, and would not provide sufficient access to Medi-Cal services.

11 6. Finally, implementation of Section 12306.1(d)(6) would violate the anti-discrimination  
12 provisions of the Americans with Disabilities Act (“ADA”), 42 U.S.C. §12132, and Section 504 of the  
13 Rehabilitation Act, 29 U.S.C. §794(a), by forcing many IHSS consumers to enter nursing homes or other  
14 institutions, despite their desire and ability to remain in their homes. This action also specifically  
15 challenges the reduction of the IHSS provider wage and benefit rates in Fresno County following the  
16 adoption of Section 12306.1(d)(6) as violating these anti-discrimination provisions.

17 **JURISDICTION**

18 7. This action arises under:

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

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

25 9. This Court is empowered to issue a declaratory judgment pursuant to 28 U.S.C. §§2201  
26 and 2202.

27 **VENUE**



1 assistance, Plaintiff Dominguez could not live on her own, and would be forced into a nursing home. If  
2 the IHSS wages and benefits are reduced below their current level, Plaintiff Dominguez's provider will  
3 be forced to look for another job. Plaintiff Dominguez will not be able to find another provider to work  
4 for less than this amount, and will be forced into a nursing home.

5 14. Plaintiff Alex Brown, a 16-year-old resident of Fresno County, appears in this action  
6 through his mother and next friend, Lisa Brown. Plaintiff Alex Brown has Down Syndrome, and  
7 requires protective supervision and assistance with tasks of daily living (including bathing, grooming,  
8 dressing, and eating) in order to remain in his home. Plaintiff Alex Brown is not able to appear on his  
9 own behalf to litigate this action because his developmental disability prevents him from understanding  
10 the nature of the action or communicating about it with others. Lisa Brown, Plaintiff Alex Brown's next  
11 friend and mother, is Plaintiff Alex Brown's sole parent and his IHSS provider. Ms. Brown formerly  
12 worked as a food scientist but has been caring for her son full-time since 1998, and began being paid for  
13 his care through IHSS in 2002. Ms. Brown receives \$10.25 per hour for 195 hours per month of care for  
14 her son through the IHSS program, and her personal savings are limited to a few hundred dollars. Out of  
15 concern that, if Fresno County reduces its wages to \$9.50 per hour effective July 1, 2009, as it presently  
16 intends to do, she would be unable to afford her monthly mortgage payment and so would lose her home,  
17 Ms. Brown has begun working a second, part-time, temporary job. She does not know how long this job  
18 will last, and because her son will be out of school in a few weeks and requires round-the-clock  
19 supervision to keep him safe, her job possibilities are very limited. Plaintiff Alex Brown does not have  
20 any other relatives who could assume responsibility for his care or take him into their home. If Ms.  
21 Brown loses her home, she will be forced to live in her car because she has no alternative housing. If  
22 that happens, Ms. Brown will be forced to put her son in a community care facility or developmental  
23 center. Ms. Brown is concerned about that possibility because it will limit her son's freedom and contact  
24 with family members, and because there has been abuse in such facilities and her son is unable to  
25 express himself if he is harmed.

26 15. Plaintiff Donna Brown, a 45-year-old resident of Solano County, has multiple sclerosis  
27 and is paralyzed from the neck down. Plaintiff Brown is unable to perform basic tasks such as eating or  
28 showering without assistance, and is authorized to receive 283 hours in IHSS services per month. Four

1 IHSS providers assist Plaintiff Brown with meal preparation, eating, getting out of bed, basic hygiene,  
2 giving her medication, bathing, dressing, emptying her catheter, and taking her to doctor's appointments  
3 and exercises. Plaintiff Brown could not live independently without their assistance. At least some of  
4 Plaintiff Brown's IHSS providers would be unable to continue working for her if the IHSS wages and  
5 benefits were reduced below their current level, and Plaintiff Brown believes it would be difficult for her  
6 to find new IHSS providers at less than that wage rate. The quality of Plaintiff Brown's care would  
7 suffer, and she worries that she might be forced into a nursing home which would deprive her of her  
8 current freedom, independence, and community involvement.

9 16. Plaintiff Chloe Lipton, a 37-year-old resident of Alameda County, appears in this action  
10 through her conservator and next friend, Julie Weissman-Steinbaugh. Plaintiff Lipton has multiple  
11 disabilities, including cerebral palsy, visual impairment, mental retardation, and anxiety disorder. She  
12 requires round-the-clock assistance to live on her own, and is authorized to receive the maximum  
13 number of IHSS hours per month pursuant to Medi-Cal as well as services from a state regional center  
14 for individuals with developmental disabilities. Plaintiff Lipton is not able to appear on her own behalf  
15 to litigate this action because her developmental disability prevents her from understanding the nature of  
16 the action or communicating about it with others. Plaintiff Lipton has had trouble finding IHSS  
17 providers, and if Alameda County reduces the IHSS wages and benefits, Plaintiff Lipton's current IHSS  
18 providers may leave their jobs and Plaintiff Lipton may be unable to find IHSS providers who would  
19 work for her. Weissman-Steinbaugh and her husband have served as conservators of Plaintiff Lipton's  
20 person and estate since Plaintiff Lipton's mother died in 2002, because Plaintiff Lipton's relatives were  
21 not willing to assume responsibility for her care. Both Weissman-Steinbaugh and her husband are  
22 disabled, and so cannot provide Plaintiff Lipton with the care she needs in order to remain in her home.  
23 If Plaintiff Lipton is unable to find IHSS providers, she may be forced to enter a nursing home, where  
24 her freedom to go out in the community will be greatly restricted. This would be disastrous for Plaintiff  
25 Lipton's quality of life.

26 17. Plaintiff Herbert M. Meyer is a 78-year-old resident of Marin County. Plaintiff Meyer is  
27 quadriplegic and so requires assistance with getting in and out of bed, bathing, dressing and undressing,  
28 getting into his wheelchair, preparation of his meals, bowel and bladder care, cleaning his apartment, and

1 transportation to appointments. Without this assistance, Plaintiff Meyer could not live independently.  
2 Plaintiff Meyer is currently authorized to receive 272 hours of IHSS services per month pursuant to  
3 Medi-Cal for assistance with these tasks. Plaintiff Meyer was cared for by the same IHSS provider for  
4 more than twelve years, until she died from cancer earlier in 2009. Currently Plaintiff Meyer's son is  
5 serving as his IHSS provider, but this is a temporary solution and Plaintiff Meyer's son will be unable to  
6 provide that care indefinitely. If Marin County were to reduce the wages and benefits of IHSS providers  
7 below their current rate, Plaintiff Meyer does not believe that he will be able to find an IHSS provider.  
8 If that happens, Plaintiff Meyer will be forced to enter a skilled nursing facility, which will require him  
9 to surrender his freedom and control over his transportation, money, and community activities. Plaintiff  
10 Meyer does not believe he will receive a high quality of health care in a skilled nursing facility and  
11 would be devastated if he has to enter one.

12 18. Plaintiff Leslie Gordon is a resident of Alameda County and a recipient of IHSS services.  
13 Plaintiff Gordon has cerebral palsy and needs a caregiver to be present between the hours of 11 p.m. and  
14 8 a.m. in case she needs to get out of bed during an emergency. She is authorized to receive 283 hours  
15 of IHSS services under the Medi-Cal program, and has five IHSS providers who provide such overnight  
16 care. Plaintiff Gordon is concerned that, if Alameda County cuts the IHSS wages and benefits, her IHSS  
17 providers will have to quit and she will be unable to find replacements for her IHSS providers. If this  
18 happens, Plaintiff Gordon may be forced into a nursing home.

19 19. Plaintiff Charlene Ayers is a 64-year-old resident of Alameda County. She has been  
20 legally blind since 1972, and her vision deteriorated significantly in January 2008. She has other health  
21 issues such as diabetes and agoraphobia. Plaintiff Ayers has received IHSS services for over a year and  
22 is authorized for 108 hours of IHSS services per month. These services include cooking, cleaning,  
23 personal care, shopping, laundry, and assistance going out into the community. Plaintiff Ayers' IHSS  
24 provider will have to look for other work if Alameda County reduces the IHSS wages and benefits below  
25 the current rate, and Plaintiff Ayers does not believe that she will be able to find a suitable replacement  
26 for less than the current wage of \$11.50 per hour. If Plaintiff Ayers cannot find a suitable IHSS  
27 provider, she will be unable to cook, clean effectively, or go out into the community the way she is able  
28 to now. She will also have difficulty administering her medication.

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

12           21. Plaintiff Andy Martinez is a 76-year-old resident of Fresno County. He suffers from  
13 diabetes, and has very limited mobility due to a knee injury. As a result, he can hardly walk, and needs  
14 assistance with cooking, cleaning, bathing, shopping, and personal care. Plaintiff Martinez is authorized  
15 for 169 hours of IHSS services per month, which are performed by his wife. If Plaintiff Martinez’s  
16 wife’s IHSS provider wages and benefits are reduced, they will not be able to make ends meet. As it is,  
17 they are barely able to pay their bills. Plaintiff Martinez believes that they would have to move to a  
18 cheaper apartment, but this would be extremely difficult because he can hardly move and his wife would  
19 not be able to move them both. Plaintiff Martinez has been in rest homes before, and believes that they  
20 do not provide a good quality of care. For this reason, he does not want to go to a nursing facility.

21           22. Plaintiff Service Employees International Union United Healthcare Workers West  
22 (“UHW”) is an unincorporated association whose members include approximately 55,000 IHSS workers  
23 in 11 counties. Plaintiff UHW is an affiliate of the Service Employees International Union (“SEIU”).  
24 UHW was established to improve the wages, benefits, and working conditions of service employees,  
25 including IHSS providers, throughout California. UHW has for years been an advocate for IHSS  
26 consumers and quality of care. Some of UHW’s IHSS worker members currently earn wages of more  
27 than \$9.50 per hour, including those in Calaveras (\$9.75 per hour), Contra Costa and Sonoma (\$11.50  
28 per hour), Fresno (\$10.25 per hour), Marin (\$11.55 per hour), Sacramento (\$10.40 per hour), and Yolo

1 (\$10.50 per hour) counties. In addition, some of UHW’s IHSS worker members currently earn benefits  
2 of more than \$.60 per hour. If Section 12306.1(d)(6) takes effect, the wages of members in Fresno  
3 County will be reduced to \$9.50 per hour and their benefits will be reduced from \$.85 per hour to \$.60  
4 per hour, the wages of members in Contra Costa County will be reduced to \$10.32 per hour, and the  
5 wages and benefits of members in other counties may also be reduced. UHW’s members would be  
6 irreparably harmed by this reduction in wages and benefits. UHW brings this suit on behalf of its  
7 members, who would have standing to sue in their own right and whose personal participation in this  
8 litigation is not necessary, in order to enjoin Defendants from implementing Section 12306.1(d)(6) and  
9 reducing IHSS wages and benefits.

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

26 24. Plaintiff Service Employees International Union Local 521 (“Local 521”) is an  
27 unincorporated association whose members include approximately 15,000 IHSS workers in Santa Clara  
28 County and San Mateo County. Local 521 is an affiliate of SEIU. Local 521 was established to improve

1 the wages, benefits, and working conditions of service employees, including IHSS providers, in Central  
2 Northern California. Local 521, through its predecessor unions, has long been an advocate for IHSS  
3 consumers and quality of care. All of Local 521's IHSS worker members currently earn wages of more  
4 than \$9.50 per hour and at least some of UHW's IHSS worker members currently earn benefits of more  
5 than \$.60 per hour. Members in Santa Clara County currently earn wages of \$12.35 per hour, and  
6 members in San Mateo County currently earn wages of \$11.50 per hour. If Section 12306.1(d)(6) takes  
7 effect, these members' wages and benefits stand to be reduced to below current amounts. Local 521's  
8 members will be irreparably harmed by this reduction in wages and benefits. Local 521 brings this suit  
9 on 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 Section  
11 12306.1(d)(6) and reducing IHSS wages and benefits.

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

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

24 27. Defendant John A. Wagner is the Director of the California Department of Social  
25 Services and, as such, is responsible for administering the IHSS program. Defendant Wagner is sued in  
26 his official capacity.



1 wages and benefits, up to a statutorily determined cap, and the county pays the remainder. *Id.*  
2 §§12306(b)-(c), 12306.1(c)-(d).

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

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

9 40. In some counties, collective bargaining agreements determine the level of wages and  
10 benefits to IHSS workers in the county. These collective bargaining agreements are renegotiated every  
11 two to three years.

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

15 42. Consistent with this direction, California's Medicaid State Plan provides that wage and  
16 benefit rates established through collective bargaining are the "rates recommended by the Department."  
17 California State Plan Amendment 92-11, Attachment 4.19B, pp. 31-33.

18 43. When a county agrees to a wage increase, it must submit that increase for approval by the  
19 Department of Health Care Services, which is authorized to grant conditional approval subject to  
20 available funding. Cal. Welf. & Inst. Code §12306.1(a)-(b).

21 Section 12306.1(d)(6)

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

25 Notwithstanding [other provisions of §12306.1(d)], the state shall participate [in paying  
26 the wages of IHSS providers] in a total cost of wages up to nine dollars and fifty cents  
27 (\$9.50) per hour and in individual health benefits up to sixty cents (\$0.60) per hour. This  
28 paragraph shall become operative on July 1, 2009.

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

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

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

14           48.     On May 1, 2009, the Department of Social Services issued a new All-County Information  
15 Notice directing all counties paying wages above \$9.50 per hour and/or benefits above \$.60 per hour to  
16 submit a rate change request, and moved the applicable deadline to June 1, 2009.

17 Effect of Section 12306.1(d)(6) on IHSS Provider Wage Rates.

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

22           50.     In many of these counties, the wages are established by collective bargaining agreements  
23 with UHW, ULTCW, or Local 521.

24           51.     The Fresno County Board of Supervisors, sitting as itself and as the In-Home Supportive  
25 Services Public Authority Governing Board, has approved a notice to the Department of Social Services  
26 that Fresno County will reduce the wages and benefits of IHSS providers by \$1.00 per hour – wages will  
27 be reduced from \$10.25 per hour to \$9.50 per hour, and benefits will be reduced from \$.85 per hour to  
28 \$.60 per hour – effective July 1, 2009.

1           52.     The Human Resources Department of Contra Costa County has informed UHW that  
2 Contra Costa County will reduce the wages of IHSS providers by \$1.18 per hour, from \$11.50 per hour  
3 to \$10.32 per hour, effective July 1, 2009.

4           53.     The In-Home Supportive Services Public Authority of Napa County has approved a  
5 notice that Napa County will reduce the wages of IHSS providers from \$11.50 per hour to \$10.20 per  
6 hour, effective July 1, 2009.

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

9           55.     Other counties have informed Plaintiffs that they intend to reduce the wages of IHSS  
10 providers effective July 1, 2009.

11          56.     In the counties in which wages and/or benefits will be reduced, all IHSS providers will be  
12 harmed by the reduction in their wages and/or benefits.

13          57.     Additionally, in all counties, IHSS provider members of UHW, ULTCW, Local 521, and  
14 the California State Council will be harmed because their unions will face greater difficulty bargaining  
15 for increased wages and/or benefits. Within the next year, UHW, ULTCW, and Local 521 will be  
16 negotiating collective bargaining agreements for IHSS providers currently earning wages of \$9.50 per  
17 hour or less and/or benefits of \$.60 per hour or less. Prior to the enactment of Section 12306.1(d)(6),  
18 UHW, ULTCW, and Local 521 intended to bargain for increasing these wages above \$9.50 per hour and  
19 benefits above \$.60 per hour.

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

21          58.     In the counties in which wages will be reduced, many IHSS providers will be forced to  
22 leave IHSS employment to seek higher paying jobs. Not all the vacancies created by IHSS providers  
23 leaving their employment will be filled with new IHSS providers.

24          59.     As a result of these vacancies, many IHSS consumers in these counties will be unable to  
25 find providers for any or all of their authorized IHSS hours. These consumers will either have to make  
26 do with reduced or eliminated IHSS services, or be forced to enter nursing homes or other residential  
27 institutions.



- 1           b.       Whether the IHSS provider wages and benefits that will result from the  
2                   implementation of Section 12306.1(d)(6) will be inconsistent with Medicaid’s  
3                   mandated quality of care, and will not be sufficient to enlist enough IHSS  
4                   providers so that care and services under Medi-Cal are available at least to the  
5                   extent that such care and services are available to the general population in the  
6                   geographic area, in violation of the federal Medicaid Act, 42 U.S.C.  
7                   §1396a(a)(30)(A);
- 8           c.       Whether the implementation of Section 12306.1(d)(6) will violate the rights of  
9                   Plaintiffs Mikesha Martinez, Dominguez, Alex Brown, Donna Brown, Lipton,  
10                  Meyer, Gordon, Ayers, Sheppard, and Andy Martinez, and class members to be  
11                  free from discrimination on the basis of their disability under the ADA, 42 U.S.C.  
12                  §12132, by forcing disabled individuals who could otherwise remain in their  
13                  homes to enter nursing homes or other residential institutions.
- 14           d.       Whether the implementation of Section 12306.1(d)(6) will violate the rights of  
15                   Plaintiffs Mikesha Martinez, Dominguez, Alex Brown, Donna Brown, Lipton,  
16                   Meyer, Gordon, Ayers, Sheppard, and Andy Martinez, and class members to be  
17                   free from discrimination on the basis of their disability under Section 504 of the  
18                   Rehabilitation Act, 29 U.S.C. §794(a), by forcing disabled individuals who could  
19                   otherwise remain in their homes to enter nursing homes or other residential  
20                   institutions.

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

27           67.       Plaintiffs Mikesha Martinez, Dominguez, Alex Brown, Donna Brown, Lipton, Meyer,  
28           Gordon, Ayers, Sheppard, and Andy Martinez’s claims are typical of class members’ claims. Like other

1 class members, they are currently receiving IHSS services and their IHSS providers' wages and benefits  
2 may be reduced as a result of Section 12306.1(d)(6). Like other class members, they face a substantial  
3 risk of irreparable harm as a result of State Defendants' conduct.

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

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

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

19 Allegations Related to Claims Against Fresno County Defendants

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

24 All IHSS consumers residing in Fresno County.

25 72. Plaintiffs Mikesha Martinez, Alex Brown, and Andy Martinez are members of the  
26 Plaintiff Class on whose behalf the Third and Fourth Claims for Relief are brought against Fresno  
27 County Defendants.

28

1           73.     The Plaintiff Class consists of thousands of individuals and is therefore so numerous that  
2 joinder of all members is impracticable.

3           74.     Common questions of law and fact predominate over any questions affecting individual  
4 class members. Questions of law and fact common to members of the Plaintiff Class as a whole include,  
5 but are not limited to, the following:

6           a.     Whether the reduction of the IHSS wage from \$10.25 per hour to \$9.50 per hour  
7                 and the IHSS benefits rate from \$.85 per hour to \$.60 per hour will violate the  
8                 rights of Plaintiffs Mikesha Martinez, Alex Brown, and Andy Martinez, and class  
9                 members to be free from discrimination on the basis of their disability under the  
10                ADA, 42 U.S.C. §12132, by forcing disabled individuals who could otherwise  
11                remain in their homes to enter nursing homes or other residential institutions.

12           d.     Whether the reduction of the IHSS wage from \$10.25 per hour to \$9.50 per hour  
13                 and the IHSS benefits rate from \$.85 per hour to \$.60 per hour will violate the  
14                 rights of Plaintiffs Mikesha Martinez, Alex Brown, and Andy Martinez, and class  
15                 members to be free from discrimination on the basis of their disability under  
16                 Section 504 of the Rehabilitation Act, 29 U.S.C. §794(a), by forcing disabled  
17                 individuals who could otherwise remain in their homes to enter nursing homes or  
18                 other residential institutions.

19           75.     Plaintiffs Mikesha Martinez, Alex Brown, and Andy Martinez will fairly and adequately  
20 represent and protect the interests of the Plaintiff Class. Plaintiffs have retained counsel competent and  
21 experienced in complex class actions and federal civil rights litigation. Plaintiffs Mikesha Martinez,  
22 Alex Brown, and Andy Martinez's interests are co-extensive with those of class members, and are not  
23 antagonistic to them.

24           76.     Plaintiffs Mikesha Martinez, Alex Brown, and Andy Martinez's claims are typical of  
25 class members' claims. Like other class members, they are currently receiving IHSS services and their  
26 IHSS providers' wages and benefits may be reduced as a result of Section 12306.1(d)(6). Like other  
27 class members, they face a substantial risk of irreparable harm as a result of Fresno County Defendants'  
28 conduct.



1 before making changes in those payments. *See Orthopaedic Hospital v. Belshe*, 103 F.3d 1491, 1496  
2 (9th Cir. 1997) (in setting rates states must consider effect upon efficiency, economy, quality of care, and  
3 access, including through reliance on “cost studies . . . that provide reliable data”).

4 83. In enacting Section 12306.1(d)(6), the California Legislature did not give the required  
5 consideration to or conduct the required analysis of the effect of Section 12306.1(d)(6) on efficiency,  
6 economy, quality of care, and access to services prior to its enactment. Instead, Section 12306.1(d)(6)  
7 was enacted solely for budgetary reasons.

8 84. Section 12306.1(d)(6) therefore conflicts with, and is preempted by, 42 U.S.C.  
9 §1396a(a)(30)(A).

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

12 **SECOND CLAIM FOR RELIEF**

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

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

18 87. The federal Medicaid Act, 42 U.S.C. §1396a(a)(30)(A), requires that states’ provider  
19 payments be “consistent with efficiency, economy, and quality of care and . . . sufficient to enlist enough  
20 providers so that care and services are available under the plan at least to the extent that such care and  
21 services are available to the general population in the geographic area.”

22 88. The IHSS provider wages and benefits that would result from the implementation of  
23 Section 12306.1(d)(6) would not be consistent with Medicaid’s mandated quality of care.

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



1 that would permit Plaintiffs Mikesha Martinez, Dominguez, Alex Brown, Donna Brown, Lipton, Meyer,  
2 Gordon, Ayers, Sheppard, and Andy Martinez to remain in their homes.

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

7 99. Section 12306.1(d)(6) and the Fresno County wage and benefit rate reduction therefore  
8 conflict with, and are preempted by, 42 U.S.C. §12132.

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

12 **FOURTH CLAIM FOR RELIEF**

13 (Violation of 29 U.S.C. §794(a)/42 U.S.C. §1983/Supremacy Clause,  
14 Brought By Plaintiffs Mikesha Martinez, Dominguez, Alex Brown, Donna Brown, Lipton, Meyer,  
15 Gordon, Ayers, Sheppard, And Andy Martinez On Behalf Of Themselves And On Behalf Of The Class,  
16 Against State Defendants And Fresno County Defendants)

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

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

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

24 104. Plaintiffs Mikesha Martinez, Dominguez, Alex Brown, Donna Brown, Lipton, Meyer,  
25 Gordon, Ayers, Sheppard, and Andy Martinez are qualified individuals with disabilities within the  
26 meaning of the Rehabilitation Act, and are recipients of IHSS services pursuant to a program receiving  
27 federal financial assistance.

28 105. Section 12306.1(d)(6) and the Fresno County Defendants’ reduction of wages and  
benefits for IHSS providers in Fresno County, if implemented, will violate 29 U.S.C. §794(a) by creating

1 a substantial risk that Plaintiffs Mikesha Martinez, Dominguez, Alex Brown, Donna Brown, Lipton,  
2 Meyer, Gordon, Ayers, Sheppard, and Andy Martinez will be unable to find IHSS providers and will, as  
3 a result, be forced to enter nursing homes or other institutional facilities, despite their desire and ability  
4 to remain in their homes.

5 106. It would cost the Medi-Cal program more money to provide care for Plaintiffs Mikesha  
6 Martinez, Dominguez, Alex Brown, Donna Brown, Lipton, Meyer, Gordon, Ayers, Sheppard, and Andy  
7 Martinez in nursing homes or other institutional facilities than it would cost to provide IHSS services  
8 that would permit Plaintiffs Mikesha Martinez, Dominguez, Alex Brown, Donna Brown, Lipton, Meyer,  
9 Gordon, Ayers, Sheppard, and Andy Martinez to remain in their homes.

10 107. Implementation of Section 12306.1(d)(6) and the reduction of wages and benefits for  
11 IHSS providers, including in Fresno County, would deprive Plaintiffs Mikesha Martinez, Dominguez,  
12 Alex Brown, Donna Brown, Lipton, Meyer, Gordon, Ayers, Sheppard, and Andy Martinez of their rights  
13 under 29 U.S.C. §794(a) to be free from discrimination based on their disability.

14 108. Section 12306.1(d)(6) and the Fresno County wage and benefit rate reduction therefore  
15 conflict with, and are preempted by, 29 U.S.C. §794(a).

16 109. Implementation of Section 12306.1(d)(6) and the reduction of wages and benefits for  
17 IHSS providers, including in Fresno County, would cause irreparable injury to Plaintiffs and the Plaintiff  
18 Class.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, all Plaintiffs on behalf of themselves, and Plaintiffs Mikesha Martinez,  
21 Dominguez, Alex Brown, Donna Brown, Lipton, Meyer, Gordon, Ayers, Sheppard, and Andy Martinez  
22 on behalf of all members of the Plaintiff Class, pray that the Court:

- 23 1) Enter a preliminary injunction, pending a decision on the merits, that (1) enjoins the State  
24 Defendants from taking any action (a) to implement Section 12306.1(d)(6) by reducing  
25 the maximum wage of IHSS providers that the State will help fund to \$9.50 per hour and  
26 the maximum benefit rate of IHSS providers that the State will help fund to \$.60 per  
27 hour, or (b) to approve or implement any county IHSS rate decreases adopted pursuant to  
28 Section 12306.1(d)(6), and (2) enjoins the Fresno County Defendants from taking any

1 action to implement a wage and benefit reduction for Fresno County IHSS providers, and  
2 conditionally certify the proposed classes for the purpose of such relief;

- 3 2) Certify this action as a class action on behalf of the proposed Plaintiff Classes;
- 4 3) Designate Plaintiffs Mikesha Martinez, Dominguez, Alex Brown, Donna Brown, Lipton,  
5 Meyer, Gordon, Ayers, Sheppard, and Andy Martinez as Representatives of the Plaintiff  
6 Classes;
- 7 4) Designate Plaintiffs' counsel as Counsel for the Plaintiff Classes;
- 8 5) Enter a declaratory judgment that the enactment and implementation of Section  
9 12306.1(d)(6) is preempted by the Medicaid Act, 42 U.S.C. §1396a(a)(30)(A), the ADA,  
10 42 U.S.C. §12132, and the Rehabilitation Act, 29 U.S.C. §794(a);
- 11 6) Enter a declaratory judgment that the enactment and implementation of Section  
12 12306.1(d)(6), including the reduction of wages and benefits for IHSS providers in  
13 Fresno County, will deprive Plaintiffs Mikesha Martinez, Dominguez, Alex Brown,  
14 Donna Brown, Lipton, Meyer, Gordon, Ayers, Sheppard, and Andy Martinez of their  
15 rights under the ADA, 42 U.S.C. §12132, and the Rehabilitation Act, 29 U.S.C. §794(a),  
16 to be free from discrimination based on their disability;
- 17 7) Issue a permanent injunction prohibiting the State Defendants from implementing Section  
18 12306.1(d)(6) including by approving any county rate decreases, and prohibiting the  
19 Fresno County Defendants from implementing a wage and benefit reduction for Fresno  
20 County IHSS providers;
- 21 8) Award Plaintiffs their costs and expenses, including reasonable attorney's fees, expert  
22 witness fees, and costs of suit; and
- 23 9) Award such other further and additional relief as the Court may deem just and proper.

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1 Dated: May 26, 2009

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