

1 MELINDA BIRD (SBN 102236)
2 DEBORAH DORFMAN (CRLSA No. 801060)
3 DISABILITY RIGHTS CALIFORNIA
4 3580 Wilshire Blvd., Ste. 902
5 Los Angeles, CA 90010
6 Telephone: (213) 427-8747
7 Facsimile: (213) 427-8767
8 Melinda.bird@disabilityrightsca.org

9 *Attorneys for Named Plaintiffs and the Proposed Class*
10 *Additional Attorneys for Named Plaintiffs and the*
11 *Proposed Class on Signature Page*

12 STEPHEN P. BERZON (SBN 46540)
13 EVE H. CERVANTEZ (SBN 164709)
14 STACEY M. LEYTON (SBN 203827)
15 Altshuler Berzon LLP
16 177 Post Street, Suite 300
17 San Francisco, California 94108
18 Telephone: (415) 421-7151
19 Facsimile: (415) 362-8064
20 sleyton@altshulerberzon.com

21 *Attorneys for Plaintiffs SEIU-UHW, SEIU-ULTCW, SEIU*
22 *Local 521, SEIU California State Council, UDW, and CUHW*

23 UNITED STATES DISTRICT COURT
24 FOR THE NORTHERN DISTRICT OF CALIFORNIA
25 SAN FRANCISCO/OAKLAND DIVISION

26 V.L. by and through his *guardian ad litem* Nancy V
27 Lagahid; DAVID OSTER; WILLIE BEATRICE
28 SHEPPARD; and C.R. by and through his *guardian*
ad litem Michelle Rivera, on behalf of themselves
and a class of those similarly situated; SERVICE
EMPLOYEES INTERNATIONAL UNION
("SEIU")-UNITED HEALTHCARE WORKERS
WEST; SEIU-UNITED LONG-TERM CARE
WORKERS; SEIU LOCAL 521; SEIU
CALIFORNIA STATE COUNCIL; UNITED
DOMESTIC WORKERS OF AMERICA, AFSCME,
LOCAL 3930, AFL-CIO; and CALIFORNIA
UNITED HOMECARE WORKERS,

Plaintiffs,

v.

JOHN A. WAGNER, Director of the California
Department of Social Services; DAVID
MAXWELL-JOLLY, Director of the California
Department of Health Care Services; CALIFORNIA
DEPARTMENT OF HEALTH CARE SERVICES;
and CALIFORNIA DEPARTMENT OF SOCIAL
SERVICES

Defendants.

ORIGINAL
FILED
OCT - 1 2009
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

E-filing

JCS

09-4668

CLASS ACTION COMPLAINT FOR
INJUNCTIVE AND DECLARATORY
RELIEF

1 **INTRODUCTION**

2 1. This civil rights class action seeks declaratory and injunctive relief to prevent over
3 one hundred thousand low-income seniors and individuals with disabilities from losing critical
4 services that enable them to remain safely in their homes.

5 2. California’s In-Home Supportive Services (“IHSS”) program presently provides
6 crucial in-home assistance with certain basic tasks of daily living – for example, bathing, dressing,
7 meal preparation and clean up, eating, bowel and bladder care, and taking necessary medications –
8 so that elderly individuals and persons with disabilities can avoid unnecessary and costly
9 institutionalization. IHSS recipients qualify for these services because it has been determined that
10 they cannot safely remain in their homes without them.

11 3. However, ABX4 4, which was passed on an emergency basis for purely budgetary
12 reasons, would render tens of thousands of current IHSS recipients ineligible for all IHSS services
13 based on a “Functional Index Score,” first devised in 1988, that was not designed to measure
14 individual need or to determine eligibility, has never been used for such purposes, and is not a
15 reasonable measure of need or eligibility. ABX4 4 (Stats. 2009, c. 4, §§ 29, 30) (Part II)
16 (amending Cal. Welf. & Inst. Code §§ 12309 & 12309.2). ABX4 4 would also deprive tens of
17 thousands of additional IHSS recipients of critical IHSS domestic and related services that have
18 previously been found necessary to permit these individuals to remain safely in their homes based
19 on a numerical “rank” that was not designed to determine eligibility, has never been used for such
20 purpose, and is not a reasonable measure of need or eligibility. These statutory changes are
21 scheduled to go into effect on November 1, 2009.

22 4. Unless enjoined, these provisions of ABX4 4 will cause immediate and irreparable
23 harm by depriving members of the plaintiff class of services that are essential to their ability to
24 remain safely in their own homes. This will place members of the plaintiff class at imminent and
25 serious risk of harm to their health and safety, as well as of unnecessary and unwanted out-of-home
26 placement, including institutionalization.

27 5. The statutory provisions at issue contravene federal law in a number of ways.
28 Initially, ABX4 4’s changes to state law violate the Americans with Disabilities Act of 1990, 42

1 U.S.C. § 12312 (“ADA”), and Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794
2 (“Section 504”), by placing IHSS recipients at imminent risk of unnecessary and unwanted out-of-
3 home and out-of-community placement, including in institutions such as nursing homes, and by
4 discriminating on the basis of type of disability.

5 6. ABX4 4 also violates the requirements of Title XIX of the Social Security Act, 42
6 U.S.C. § 1396a (“the Medicaid Act”): that States provide (1) comparable Medicaid services to
7 individuals with similar needs; (2) services that are sufficient in amount, duration, and scope to
8 reasonably achieve their purposes; (3) services according to reasonable standards; and (4)
9 necessary services to correct or ameliorate children’s conditions. ABX4 4 further violates the
10 requirement imposed by the Medicaid Maintenance of Effort Clause of the American Recovery and
11 Reinvestment Act (“ARRA”) by restricting IHSS eligibility standards.

12 7. Finally, Defendants’ failure to provide adequate notice and opportunity for hearing
13 prior to depriving members of the plaintiff class of critical IHSS services violates the federal
14 constitutional guarantee of procedural due process and the Medicaid Act’s notice and hearing
15 provisions.

16 JURISDICTION

17 8. This action for declaratory and injunctive relief arises under the Due Process Clause
18 of the Fourteenth Amendment to the U.S. Constitution; Title XIX of the Social Security Act, 42
19 U.S.C. § 1396a *et seq.* (“the Medicaid Act”); Title II of the Americans With Disabilities Act of
20 1990, 42 U.S.C. § 12132 (“ADA”); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794
21 (“Section 504”); 42 U.S.C. § 1983; and the Supremacy Clause, U.S. Const., Art. VI, cl. 2.

22 9. Jurisdiction is based on 28 U.S.C. §§ 1331 and 1343. Plaintiffs’ claims for
23 declaratory and injunctive relief are authorized under 28 U.S.C. §§ 2201 and 2202. At all times
24 relevant to this action, Defendants have acted under color of state law.

25 VENUE

26 10. Venue is proper in the Northern District of California pursuant to 28 U.S.C.
27 § 1391(b), because the Defendants operate and perform their official duties therein and thus reside
28 therein for purposes of venue, and because a substantial part of the events and omissions giving

1 rise to the claims herein occurred in the Northern District of California. Individual named plaintiff
2 V.L. lives and receives services in San Francisco, which is in the Northern District of California.
3 Individual named plaintiff Willie Beatrice Sheppard lives and receives services in Emeryville,
4 which is in Alameda County, in the Northern District of California. Individual named plaintiff
5 C.R. lives and receives services in Gilroy, which is in Santa Clara County, in the Northern District
6 of California. Members of the plaintiff class reside and receive IHSS services in the Northern
7 District of California. Organizational Plaintiff Service Employees International Union-United
8 Healthcare Workers West (“UHW”) members provide IHSS services in Marin and Contra Costa
9 Counties, in the Northern District of California. Organizational Plaintiff SEIU United Long-Term
10 Care Workers (“ULTCW”) members provide IHSS services in Mendocino, Sonoma, Napa,
11 Alameda, Santa Cruz, and Monterey Counties, in the Northern District of California.
12 Organizational Plaintiff SEIU Local 521 (“Local 521”) members provide IHSS services in Santa
13 Clara and San Mateo County, in the Northern District of California. Organizational plaintiff
14 California United Homecare Workers (“CUHW”) members provide IHSS services in Del Norte,
15 Humboldt, and Lake Counties, in the Northern District of California.

16 INTRADISTRICT ASSIGNMENT

17 11. Pursuant to Civil L. R. 3-2(c) this action should be assigned to the San Francisco or
18 Oakland Division of the Northern District of California, because a substantial part of the events and
19 omissions giving rise to the claims herein occurred in counties in the San Francisco/Oakland
20 Division. Individual named plaintiff V.L. lives in San Francisco. Individual named plaintiff Willie
21 Beatrice Sheppard lives in Emeryville, which is located in Alameda County. Many members of the
22 plaintiff class are residents of Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin,
23 Mendocino, Napa, San Francisco, San Mateo, and Sonoma Counties. Organizational Plaintiff
24 UHW members provide IHSS services in Marin and Contra Costa Counties. Organizational
25 Plaintiff ULTCW members provide IHSS services in Alameda, Mendocino, Sonoma, and Napa
26 Counties. Organizational Plaintiff Local 521 members provide IHSS services in San Mateo
27 County. Organizational Plaintiff CUHW members provide IHSS services in Del Norte, Humboldt,
28 and Lake Counties.

1 **PARTIES**

2 **Individual Plaintiffs**

3 12. Named Plaintiff V.L., represented here by his *guardian ad litem* Nancy Lagahid, is a
4 14-year-old boy who has Charcot-Marie-Tooth Disease, a form of muscular dystrophy. Because of
5 his disabilities and medical condition, plaintiff V.L. is eligible for California's Medicaid program
6 ("Medi-Cal") and receives IHSS services. Pursuant to ABX4 4, V.L. will lose eligibility for all
7 IHSS services because his Functional Index Score is under 2.0.

8 13. Named Plaintiff David Oster is a 33-year-old man who has autism and bi-polar
9 disorder. Because of his disabilities and medical conditions, Mr. Oster is Medi-Cal eligible and
10 receives IHSS services. Pursuant to ABX4 4, Mr. Oster will lose eligibility for all IHSS services
11 because his Functional Index Score is under 2.0.

12 14. Named Plaintiff Willie Beatrice Sheppard is an 81-year-old woman whose mobility
13 is impaired as result of a stroke and arthritis. Because of her disabilities, medical conditions, and
14 age, Ms. Sheppard is Medi-Cal eligible and receives IHSS. Ms. Sheppard has never been informed
15 what her Functional Index Score is and has also never been informed what her functional ranks are
16 for domestic and related services. She is concerned that she may lose eligibility for IHSS
17 altogether if her Functional Index score is too low (below 2.0) or that she may lose some of her
18 domestic and related services if her functional ranks for these services are below 4.

19 15. Named plaintiff C.R., represented here by his *guardian ad litem* Michelle Rivera, is
20 a five-year-old boy who has a developmental disability due to chromosome deletion. Because of
21 his disabilities and medical condition, C.R. is Medi-Cal eligible and receives IHSS services.
22 Pursuant to ABX 4 4, C.R. will lose eligibility for all IHSS services because his Functional Index
23 Score is under 2.0.

24 **Organizational Plaintiffs**

25 16. Plaintiff UHW is an unincorporated association with members that include
26 approximately 55,000 IHSS providers in 11 counties. Some members provide services for their
27 minor children. Plaintiff UHW is an affiliate of the Service Employees International Union
28 ("SEIU") and for years has been an advocate for increased access to and quality of IHSS services.

1 UHW brings this suit on behalf of its members who will be injured if IHSS recipients (including
2 minor children of members) lose eligibility and services, who would have standing to sue in their
3 own right, and whose personal participation in this litigation is not necessary.

4 17. Plaintiff ULTCW is an unincorporated association with members that include
5 approximately 175,000 IHSS providers in 10 counties. Some members provide services for their
6 minor children. ULTCW has long been an advocate for increased access to and quality of IHSS
7 services. ULTCW brings this suit on behalf of its members who will be injured if IHSS recipients
8 (including minor children of members) lose eligibility and services, who would have standing to
9 sue in their own right, and whose personal participation in this litigation is not necessary.

10 18. Plaintiff Local 521 is an unincorporated association with members that include
11 approximately 15,000 IHSS providers. Some members provide services for their minor children.
12 Local 521, through its predecessor unions, has long been an advocate for increased access to and
13 quality of IHSS services. Local 521 brings this suit on behalf of its members who will be injured if
14 IHSS recipients (including minor children of members) lose eligibility and services, who would
15 have standing to sue in their own right, and whose personal participation in this litigation is not
16 necessary.

17 19. Plaintiff SEIU California State Council (“SEIU State Council”) is a state-wide
18 affiliate of SEIU. More than 20 local unions representing over 700,000 workers and retirees
19 belong to the SEIU State Council. The SEIU State Council advocates for the interests of its
20 affiliated local unions and their members before legislative bodies, regulatory agencies, and the
21 courts, including by advocating for increased access to and quality of IHSS services. The SEIU
22 State Council brings this suit on behalf of its affiliate local unions and the members of its affiliates,
23 who would have standing to sue in their own right and whose personal participation in this
24 litigation is not necessary.

25 20. United Domestic Workers of America, AFSCME, Local 3930, AFL-CIO (“UDW”)
26 is a local union affiliated with the American Federation of State, County and Municipal Employees
27 (“AFSCME”). UDW represents approximately 55,000 IHSS providers in 11 counties throughout
28 California. Some of these members provide services for their minor children. UDW has for years

1 been an advocate for increased access to and quality of IHSS services. UDW brings this suit on
2 behalf of its members who will be injured if IHSS recipients (including minor children of
3 members) lose eligibility and services, who would have standing to sue in their own right, and
4 whose personal participation in this litigation is not necessary.

5 21. Plaintiff CUHW is an unincorporated association with members that include
6 approximately 18,000 IHSS providers in 18 counties. Some members provide services to their
7 minor children. CUHW is jointly affiliated with SEIU and AFSCME, and is a member of the
8 SEIU State Council. Through the SEIU State Council, CUHW has been an advocate for increased
9 access to and quality of IHSS services. CUHW brings this suit on behalf of its members who will
10 be injured if IHSS recipients (including minor children of members) lose eligibility and services,
11 who would have standing to sue in their own right, and whose personal participation in this
12 litigation is not necessary.

13 Defendants

14 22. Defendant California Department of Health Care Services (“DHCS”) is a state
15 agency that receives federal funds and is the single state agency responsible for administering the
16 federal Medicaid program in California (“Medi-Cal”). Defendant DHCS is sued under the Third
17 Claim for Relief (ADA) and the Fourth Claim for Relief (Section 504).

18 23. Defendant David Maxwell-Jolly is the Director of DHCS, a state agency that
19 receives federal funds. Defendant Maxwell-Jolly is a public agency director responsible for
20 operation of a public entity, pursuant to 42 U.S.C. §§ 12131(1)(A) & (B). As the Director of
21 DHCS, Defendant Maxwell-Jolly is responsible for oversight, supervision and control of the
22 functions and programs vested in the DHCS, including the Medi-Cal program, and has the
23 responsibility for ensuring that the Medi-Cal program is implemented and administered consistent
24 with the requirements of federal Medicaid law. Defendant Maxwell-Jolly is sued in his official
25 capacity under the First Claim for Relief (Fourteenth Amendment to the United States
26 Constitution- Procedural Due Process), Second Claim for Relief (Medicaid- Right to Fair Hearing),
27 Fifth Claim for Relief (Medicaid-Comparability Requirement), Sixth Claim for Relief (Medicaid-
28 Sufficiency Requirement), Seventh Claim for Relief (Medicaid-Reasonable Standards

1 Requirement), Eighth Claim for Relief (Medicaid-Early and Periodic Screening, Diagnostic and
2 Treatment Services), and Ninth Claim for Relief (Medicaid-ARRA).

3 24. Defendant California Department of Social Services (“CDSS”) is a state agency that
4 receives federal funds and is responsible for the overall implementation and supervision of the
5 administration of the IHSS programs by the counties. Defendant CDSS is sued under the Third
6 Claim for Relief (ADA) and the Fourth Claim for Relief (Section 504).

7 25. Defendant John Wagner is the Director of CDSS, a state agency that receives
8 federal funds. Defendant Wagner is a public agency director responsible for the operation of a
9 public entity pursuant to 42 U.S.C. §§ 12131(1)(A) & (B). Defendant Wagner is sued in his
10 official capacity under the First Claim for Relief (Fourteenth Amendment to the United States
11 Constitution-Procedural Due Process), Second Claim for Relief (Medicaid-Right to Fair Hearing),
12 Fifth Claim for Relief (Medicaid-Comparability Requirement), Sixth Claim for Relief (Medicaid-
13 Sufficiency Requirement), Seventh Claim for Relief (Medicaid-Reasonable Standards
14 Requirement), Eighth Claim for Relief (Medicaid-Early & Periodic Screening, Diagnostic and
15 Treatment Services), and Ninth Claim for Relief (Medicaid-ARRA).

16 FACTUAL ALLEGATIONS

17 A. Medi-Cal and the California IHSS Program

18 26. The purpose of the IHSS program is “to enable the aged, blind or disabled poor to
19 avoid institutionalization by remaining in their homes with proper supportive services.” Cal. Welf.
20 & Inst. Code § 12300(a).

21 27. Persons eligible for this program must be aged (65 or over), blind, or disabled, and
22 must also be poor under standards of the federal Supplemental Security Income or State
23 Supplemental Payment Program. Cal. Welf. & Inst. Code §§ 12051, 12052, 14051; CDSS Manual
24 of Policies and Procedures (“Manual” or “MPP”) §§ 30-755.111-.114.

25 28. The IHSS program provides assistance with the following: (1) domestic services;
26 (2) related services (meal preparation and clean-up, restaurant meal allowance, laundry, food and
27 other shopping); (3) personal care services (bowel and bladder care, respiration, feeding, routine
28 bed baths, bathing, oral hygiene and grooming, dressing, repositioning and rubbing skin including

