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UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

HARRY COTA; GILDA GARCIA; ALLIE
JO WOODARD, by her guardian ad litem
Linda Gaspard-Berry; HARRY COTA; SUMI
KONRAI by her guardian ad litem Casey
Konrai; RONALD BELL by his guardian ad
litem Rozene Dilworth, individually and on
behalf of all other similarly situated,

Plaintiffs,

vs.

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

Defendants.

Case No: C 09-3798 SBA

**ORDER GRANTING PLAINTIFFS’
MOTION FOR CLASS
CERTIFICATION**

Docket 122

Plaintiffs are elderly persons and adults with physical and mental disabilities who bring the instant class action, individually, and on behalf of those similarly situated, against Defendants California Department of Health Care Services (“DHCS”) and its Director, David Maxwell-Jolly (collectively, “Defendants”), to enjoin the termination and/or reduction of services in the Medi-Cal Adult Day Health Care (“ADHC”) program, as mandated by ABx4 5. The parties are presently before the Court on Plaintiffs’ Motion for Class Certification. Having read and considered the papers submitted and reviewed the record in this action, the Court hereby GRANTS Plaintiffs’ motion.¹

¹ Pursuant to Federal Rule of Civil Procedure 78(b), the Court adjudicates the instant motion without oral argument.

1 **I. BACKGROUND**

2 The parties are familiar with the facts of this case, which are summarized herein as
3 they are pertinent to the issues that currently are before this Court. Plaintiffs are
4 participants in the state’s ADHC program, which provides community-based services for
5 low income seniors and younger disabled adults. ADHC services are offered under the
6 California Medical Assistance Program (better known as Medi-Cal) and are dispensed
7 through community-based ADHC centers located throughout the state. At present, there
8 are approximately 328 approved ADHC centers located in 34 of California’s 58 counties.
9 For Fiscal Year 2009-2010, over 36,000 individual are projected to be served under the
10 program.

11 As a result of the state’s ongoing fiscal crisis, Governor Arnold Schwarzenegger
12 signed ABx4 5 into law on July 28, 2009. Among other things, ABX4 5 reduces the
13 maximum number of days that an ADHC participant may be authorized for services, from
14 five days to three days. See Cal. Welf. & Inst. Code § 14132(p)(2). In addition, ABx4 5
15 specifies the implementation of new medical necessity and eligibility criteria, effective
16 March 1, 2010. See id. §§ 14522.4, 14525.1 and 14526.2. Because the new criteria are
17 more restrictive, approximately 8,000 to 15,000 individuals allegedly will no longer be
18 eligible for ADHC services.

19 Plaintiffs filed the instant suit against Defendants on August 18, 2009, seeking
20 injunctive and declaratory relief relating to the provision of ADHC services, based
21 principally on claims under the Americans with Disabilities Act (“ADA”) and Section 504
22 of the Rehabilitation Act of 1973 (“Rehabilitation Act”). On September 10, 2009, the
23 Court granted Plaintiffs’ motion for preliminary injunction and enjoined Defendants from
24 reducing the maximum number of days that ADHC services could be provided. Docket 57.
25 Absent the injunction, approximately 8,000 individual would have experienced a reduction
26 in their ADHC benefits.

27 On February 24, 2010, the Court granted Plaintiffs’ second motion for preliminary
28 injunction, and enjoined Defendants from reducing, terminating, suspending, or denying

1 ADHC benefits to program participants based on new eligibility and medical necessity
2 criteria. Docket 171. Defendants' appeal from the Court's ruling remains pending. See
3 Ninth Cir. Case No. 10-15635.

4 Plaintiffs have now filed a motion for class certification, pursuant to Federal Rule of
5 Civil Procedure 23(a) and 23(b)(2). Docket 122. Specifically, they seek to certify a class
6 defined as: "all Medi-Cal beneficiaries in the State of California for whom Adult Day
7 Health Care benefits will be reduced, suspended, denied or terminated under the provisions
8 of ABx4 5[.]" Am. Compl. ¶ 171, Docket 74; Pls.' Mot. for Class Cert. at 1. Plaintiffs also
9 propose two subclasses, as follows:

10 **"Limitation of Benefits Subclass"** to be defined as "all Medi-
11 Cal beneficiaries who, as of August 26, 2009, have been
12 authorized to receive four or five days of Adult Day Health
Care Services by DHCS, and whose services will be reduced to
a maximum of three days under the provisions of ABx4 5.

13 **"Termination of Benefits Subclass"** to be defined as "all
14 present and future Medi-Cal beneficiaries who have been
15 authorized to receive any Adult Day Health Care services, and
16 whose ADHC services will be reduced, suspended, or
terminated, and otherwise qualified future ADHC applicants
who will be denied ADHC services, when the eligibility and
medical necessity requirements of ABx4 5 become operative.

17 Am. Compl. ¶ 172; Pls.' Mot. for Class Cert. at 1. In addition, Plaintiffs seeks to have their
18 counsel appointed as counsel for the class, and to dispense with notice to the class. Only
19 the Termination of Benefits Subclass remains at issue for purposes of class certification.²

20 Defendants oppose class certification on two grounds. First, Defendants argue that
21 the Class is not "ascertainable" within the meaning of Rule 23(a). Specifically, they assert
22 that it is impossible to determine which ADHC recipients' services will be terminated
23 under the new criteria because the Court's second preliminary injunction order prevented
24 the new criteria from taking effect. Second, Defendants contend that class certification is
25 unnecessary in order for Plaintiffs to obtain the relief that they seek. Id. at 1. Defendants

26 _____
27 ² The parties stipulated to the certification of the Limitation of Benefits Subclass
28 under Rule 23(a) and (b)(2), which the Court approved on May 14, 2010. Docket 190.
Thus, the instant motion is focused on certification of the class generally, and specifically
as to the Termination of Benefits Subclass.

1 do not address any of the other elements of Rule 23(a) or 23(b). Nor do Defendants contest
2 Plaintiffs' request for appointment of lead counsel or to dispense with notice to the class.

3 **II. LEGAL STANDARD**

4 To obtain class certification, plaintiff must demonstrate that each of the four
5 requirements of Rule 23(a) and at least one requirement of Rule 23(b) are met. Narouz v.
6 Charter Comm'n, LLC, 591 F.3d 1261, 1266 (9th Cir. 2010). "The four requirements of
7 Rule 23(a) are commonly referred to as 'numerosity,' 'commonality,' 'typicality,' and
8 'adequacy of representation' (or just 'adequacy'), respectively." United Steel, Paper &
9 Forestry, Rubber, Mfg. Energy, Allied Indus. & Serv. Workers Int'l Union, AFL-CIO v.
10 ConocoPhillips Co., 593 F.3d 802, 806 (9th Cir. 2010). Rule 23(b) requires that the
11 plaintiff establish that: (1) there is a risk of inconsistent adjudication, or adjudication of
12 individual class member's claims would substantially impair non-party members' ability to
13 protect their interests; (2) the defendant acted on grounds generally applicable to the class;
14 or (3) common questions of law or fact predominate and class resolution is superior to other
15 available methods. Fed.R.Civ.P. 23(b); Dukes v. Wal-Mart Stores, Inc., 603 F.3d 571, 580
16 (9th Cir. 2010) (en banc).

17 The district court has broad discretion in determining whether to certify a class.
18 Vinole v. Countrywide Home Loans, Inc., 571 F.3d 935, 942 (9th Cir. 2009). For purposes
19 of class certification, the court generally accepts the substantive allegations of the
20 complaint as true. In re Coordinated Pretrial Proceedings in Petroleum Prods. Antitrust
21 Litig., 691 F.2d 1335, 1342 (9th Cir. 1982). In conducting its review of a class certification
22 motion, "the trial court must conduct a 'rigorous analysis' to determine whether the party
23 seeking certification has met the prerequisites of Rule 23." Zinser v. Accufix Research
24 Inst., Inc., 253 F.3d 1180, 1186 (9th Cir.), amended, 273 F.3d 1266 (9th Cir. 2001) (citation
25 omitted); Gen. Tel. Co. of the S.W. v. Falcon, 457 U.S. 147, 161 (1982).

1 **III. DISCUSSION**

2 **A. ASCERTAINABLE CLASS**

3 “As a threshold matter, and apart from the explicit requirements of Rule 23(a), the
4 party seeking class certification must demonstrate that an identifiable and ascertainable
5 class exists.” Mazur v. eBay Inc., 257 F.R.D. 563, 567 (N.D. Cal. 2009) (Patel, J.). “A
6 class definition should be precise, objective, and presently ascertainable.” Id. (citing
7 O’Connor v. Boeing N. Am., Inc., 184 F.R.D. 311, 319 (C.D. Cal. 1998)). The class
8 definition must be “sufficiently definite” so that its members can be ascertained by
9 reference to objective criteria.” Whiteway v. FedEx Kinko’s Office and Print Servs., Inc.,
10 2006 WL 2642528, at *3 (N.D. Cal., Sept. 14, 2006) (Armstrong, J.). “[A] class will be
11 found to exist if the description of the class is definite enough so that it is administratively
12 feasible for the court to ascertain whether an individual is a member.” O’Connor, 184
13 F.R.D. at 319.

14 Plaintiffs define the proposed Termination of Benefits Subclass as:

15 [A]ll present and future Medi-Cal beneficiaries who have been
16 authorized to receive any Adult Day Health Care services, and
17 whose ADHC services will be reduced, suspended, or
18 terminated, and otherwise qualified future ADHC applicants
19 who will be denied ADHC services, when the eligibility and
20 medical necessity requirements of ABx4 5 become operative.

19 Pls.’ Mot. for Class Cert. at 1. Although the parameters defining the scope of the class are
20 clearly stated, Defendants argue that “it is impossible to determine which recipients would
21 have been denied ADHC services under the new criteria.” Defs.’ Opp’n at 4.

22 The Court finds Defendants’ position unpersuasive. Eligibility for ADHC services
23 under ABx4 5 is determined by the objective criteria in California Welfare and Institutions
24 Code sections 14522.4, 14525.1 and 14526.2. Notably, Defendants do not contend that
25 these code sections are subjective in their application. See Alliance to End Repression v.
26 Rochford, 565 F.2d 975, 978 (7th Cir. 1977) (class comprised of organizations harassed by
27 law enforcement officials was sufficiently ascertainable because the scope of a class was
28 defined by reference to the defendants’ conduct and not the state of mind of the plaintiffs or

1 the defendants). Moreover, the fact that the Court enjoined Defendants from actually
2 utilizing the new criteria does not ipso facto undermine the fact that objective criteria exists
3 to define the class. Under Defendants' logic, no class would ever be ascertainable, unless
4 its members were first injured by the very conduct sought to be enjoined in the lawsuit. No
5 authority has been presented, nor is the Court aware of any, that supports such a potentially
6 sweeping proposition of law.

7 In sum, the Court finds that the class is sufficiently definite so that it is
8 administratively feasible for the court to ascertain whether an individual is a member.
9 Having so concluded, the Court now turns to whether Plaintiffs satisfy the requirements of
10 Rule 23(a) and 23(b)(2).

11 **B. RULE 23(A)**

12 The only element of Rule 23(a) challenged by Defendants is the typicality
13 requirement. Although Defendants offer no argument as to the other three prongs, the
14 Court briefly considers each to determine the propriety of certifying the class.

15 **1. Numerosity**

16 A proposed class meets the numerosity requirement of Rule 23(a)(1) if "the class is
17 so large that joinder of all members is impracticable." Fed.R.Civ.P. 23(a)(1). In this case,
18 the class consists of tens of thousands of individuals. Am. Compl. ¶ 173; Missaelides Decl.
19 ¶ 47, Docket 133. Based on the number of class members involved, the Court finds that
20 Plaintiffs meet the numerosity requirement. See Dukes, 603 F.3d at 599.

21 **2. Commonality**

22 "Commonality focuses on the relationship of common facts and legal issues among
23 class members." Id. Rule 23(a)(2) should be construed permissively, meaning that "[a]ll
24 questions of fact and law need not be common to satisfy the rule. The existence of shared
25 legal issues with divergent factual predicates is sufficient, as is a common core of salient
26 facts coupled with disparate legal remedies within the class." Id. (quoting Hanlon v.
27 Chrysler Corp., 150 F.3d 1011, 1019 (9th Cir. 1998)). "[T]he commonality requirement is
28 interpreted to require very little." In re Paxil Litig., 212 F.R.D. 539, 549 (C.D. Cal. 2003).

1 A single issue common to the proposed class may suffice under Rule 23(a)(2). See
2 Cervantez v. Celestica Corp., 253 F.R.D. 562, 570 (C.D. Cal. 2008).

3 There is no dispute between the parties that the instant action involves numerous
4 questions of law and fact common to the class. Plaintiffs identify six common questions,
5 such as whether Defendants violated the integration mandate of the ADA and the
6 Rehabilitation Act by terminating, reducing or limiting access to community-based ADHC
7 services. Pls.’ Mot. for Class Cert. at 14. This and the other issues articulated by Plaintiffs
8 relate to the effect of ABx4 5 on members of the class. The Court finds that Plaintiffs’
9 uncontested showing is sufficient to satisfy their burden of establishing “commonality”
10 under Rule 23(a)(2).

11 3. Typicality

12 “Typicality” requires that “the claims or defenses of the representative parties are
13 typical of the claims or defenses of the class.” Fed.R.Civ.P. 23(a)(3). “The purpose of the
14 typicality requirement is to assure that the interest of the named representative aligns with
15 the interests of the class.” Hanon v. Dataprods. Corp., 976 F.2d 497, 508 (9th Cir. 1992).
16 “The test of typicality is whether other members have the same or similar injury, whether
17 the action is based on conduct which is not unique to the named plaintiffs, and whether
18 other class members have been injured by the same course of conduct.” Id. (internal
19 quotations omitted). “Under the rule’s permissive standards, representative claims are
20 ‘typical’ if they are reasonably co-extensive with those of absent class members; they need
21 not be substantially identical.” Hanlon, 150 F.3d at 1020.

22 Defendants argue, albeit briefly, that it “appears” that two of three the named
23 Termination of Benefits Subclass representatives (i.e., Konrai and Bell) will continue to
24 qualify for ADHC services, even under the new, more restrictive eligibility criteria. Defs.’
25 Opp’n at 6. Yet, Defendants offer no evidence to show that they, in fact, would be
26 ineligible. In contrast, Plaintiffs have proffered declarations from each of these Plaintiff’s
27 ADHC providers which confirm their intention to terminate services pursuant to ABx4 5.
28 See Toth Decl. ¶ 68, Docket 111; Burke Decl. ¶ 35, Docket 92 ; Nolcox Decl. ¶ 35, Docket

1 104.³ But even if Konrai and Bell are not members of the Termination of Benefits subclass,
2 Defendants acknowledge that Cota's ADHC benefits would have been terminated but for
3 the preliminary injunction. Defs.' Opp'n at 6. Based on the allegations of the Amended
4 Complaint and the record presented, the Court finds that the claims of the representative
5 Plaintiffs are typical of those of the class.⁴

6 4. Adequacy

7 The fourth and final requirement under Rule 23(a) is that the plaintiff "will fairly
8 and adequately protect the interests of the class." Fed.R.Civ.P. 23(a)(4). In this regard, the
9 Court considers: (1) whether the named plaintiffs and their counsel have any conflicts of
10 interest with the proposed class, and (2) whether the named plaintiffs and their counsel will
11 "prosecute the action vigorously on behalf of the class." Hanlon, 150 F.3d at 1020.
12 Plaintiffs and their counsel aver that they have no conflicts of interest with members of the
13 class and that they will continue to prosecute this action vigorously on behalf of the class as
14 a whole. Pls.' Mot. for Class Cert. at 17-18. As Defendants do not contend otherwise, the
15 Court concludes that Plaintiffs have met their burden under Rule 23(a)(4).

16 C. RULE 23(B)

17 As noted, in addition to the four requirements under Rule 23(a), a plaintiff seeking
18 class certification must meet one of the three criteria under Rule 23(b). Plaintiffs rely on
19 Rule 23(b)(2) which allows for certification if "the party opposing the class has acted or
20 refused to act on grounds generally applicable to the class, thereby making appropriate final
21 injunctive relief or corresponding declaratory relief with respect to the class as a whole."
22 Fed.R.Civ.P 23(b)(2). Here, Plaintiffs seek injunctive and declaratory relief to address
23

24 ³ In addition, Plaintiffs have expressly alleged in the Amended Complaint that
25 Konrai, Bell and Cota's ADHC respective providers have indicated that each will be
26 terminated from the ADHC program if the new eligibility criteria were to go into effect.
27 Am. Compl. ¶¶ 138, 145, 155. As noted, the Court generally accepts substantive
28 allegations in the complaint for purposes of class certification. See In re Coordinated
Pretrial Proceedings in Petroleum Prods. Antitrust Litig., 691 F.2d at 1342.

⁴ Subsequent to the close of briefing on the instant motion, Sumi Konrai
unfortunately passed away. Docket 197.

1 Defendants' allegedly discriminatory policies and practices under ABx4 5. As such, this
2 case falls within the purview of Rule 23(b)(2). Zinser, 253 F.3d at 1195 ("Class
3 certification under Rule 23(b)(2) is appropriate only where the primary relief sought is
4 declaratory or injunctive.").

5 **D. NEED FOR CLASS CERTIFICATION**

6 Finally, Defendants argue that class certification is unnecessary because Plaintiffs, to
7 the extent they prevail on the merits, will obtain the same relief irrespective of the class is
8 certified. Defs.' Opp'n at 6-7. However, this Court previously considered and rejected a
9 virtually identical argument in Californians for Disability Rights, Inc. v. California Dept. of
10 Transp., 249 F.R.D. 334 (N.D. Cal. 2008) ("CDR"). In that case, the defendants argued
11 that "the complexity and expense of a class action is not necessary in this case as the named
12 Plaintiffs may achieve by injunction all relief that would inure to similarly situated persons
13 without the necessity of class certification." Id. at 349. In rejecting this contention, the
14 Court reasoned that "there is no requirement that class certification must be 'necessary.'" Id.
15 "Indeed, such a requirement would effectively eviscerate Rule 23(b)(2), which was
16 specifically designed with the benefits of collective action in mind." Id. Nothing in
17 Defendants' opposition persuades the Court to reconsider its view as expressed in CDR.

18 **E. APPOINTMENT OF CLASS COUNSEL**

19 Plaintiffs request that their current counsel be appointed as class counsel, pursuant to
20 Rule 23(g)(1). In appointing class counsel, the court must consider (1) the work counsel
21 has done regarding the action; (2) counsel's experience with class actions and relevant
22 complex litigation; (3) counsel's understanding of relevant law; and (4) the resources
23 counsel will commit to representing the class. Fed R.Civ. P. 23(g)(1)(A). A certification
24 order must appoint class counsel. Id. 23(c)(1)(B).

25 Here, Plaintiffs' lead counsel, Disability Rights California ("DRC"), has pursued
26 this action since its inception. The record show that DRC has extensive experience in
27 lawsuits such as the present and that its attorneys are well versed in the laws pertaining to
28 the disabled. Zirker Decl. ¶¶ 3-8, Docket 150. Similarly, as evidenced by counsel's filings,

1 the Court is aware that DRC has committed extensive resources to prosecuting this case.
2 Given this showing, coupled with Defendants' lack of opposition, the Court grants
3 Plaintiffs' request to appoint DRC as counsel for the class.

4 In addition to DRC, Plaintiffs also seek to have the National Health Law Program
5 ("NHLP"), National Senior Citizens Law Center ("NSCLC"), AARP Foundation Litigation
6 ("AARP") and Howrey LLP ("Howrey") appointed as class counsel. Plaintiffs have
7 proffered sufficient, undisputed evidence regarding the qualifications of each of these
8 organizations and their respective suitability to serve as class counsel along with DRC. See
9 Jones Decl. ¶¶ 3-5, Docket 145 (AARP); Rich Decl. ¶¶ 3-6, Docket 147 (NSCLC); Somers
10 Decl. ¶¶ 3-8; Docket 148 (NHLP); Su Decl. ¶¶ 2-5, Docket 149 (Howrey). The Court
11 therefore grants Plaintiffs' request to appoint these attorneys as class counsel, as well.

12 F. PRECERTIFICATION CLASS NOTICE

13 Finally, Plaintiffs request that the Court dispense with notice to the class. Where a
14 class is certified under Rule 23(b)(2) class, notice is optional. Fed.R.Civ.P. 23(c)(2)(A);
15 see In re Allstate Ins. Co., 400 F.3d 505, 506 (7th Cir. 2005) ("A Rule 23(b)(2) class action
16 does not require giving class members notice of the suit and a chance to opt out of it and
17 bring their own, individual suits"). Here, Plaintiffs contend that no notice is necessary
18 because the claims of the named plaintiffs are typical of the class and they are represented
19 by experienced counsel. Elliott v. Weinberger, 564 F.2d 1219, 1229 (9th Cir. 1977) (noting
20 that notice to class would serve no purpose where absent members' interests are adequately
21 assured of being represented there is no serious question as to competency of counsel and
22 the class is represented by competent counsel), aff'd in part and rev'd on other grounds in
23 part sub nom. Califano v. Yamasaki, 442 U.S. 682 (1979). Defendants have expressed no
24 objection dispensing with notice to the class. Therefore, the Court grants Plaintiffs' request
25 to certify the class without notice.

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1 **IV. CONCLUSION**

2 For the reasons stated above,

3 IT IS HEREBY ORDERED THAT:

4 1. Plaintiffs’ Motion for Class Certification is GRANTED, as follows:

5 a) The Class is certified to include: “All Medi-Cal beneficiaries in the
6 State of California for whom Adult Day Health Care benefits will be reduced, suspended,
7 denied or terminated under the provisions of ABx4 5.”

8 b) The Subclass identified as the “Termination of Benefits” Subclass is
9 certified for the all Claims for Relief in Plaintiffs’ First Amended Complaint. The
10 “Termination of Benefits” Subclass is defined as: “All present and future Medi-Cal
11 beneficiaries who have been authorized to receive any ADHC services, and whose ADHC
12 services will be reduced, suspended, or terminated, and otherwise qualified future ADHC
13 applicants who will be denied ADHC services, when the eligibility and medical necessity
14 requirements of ABx4 5 become operative.”

15 c) Named Plaintiffs Harry Cota, Gilda Garcia, Allie Jo Woodard (by and
16 through her guardian ad litem Linda Gaspard-Berry) and Ronald Bell (by and through his
17 guardian ad litem Rozene Dilworth) are appointed as representatives of the Class defined
18 above.

19 d) Named Plaintiffs Harry Cota and Ronald Bell (by and through his
20 guardian ad litem Rozene Dilworth) are appointed as representatives of the Termination of
21 Benefits Subclass defined above.

22 e) Pursuant to Federal Rule of Civil Procedure 23(g)(1) and Rule
23 23(c)(1)(B), the law firms of Disability Rights California, National Health Law Program,
24 National Senior Citizens Law Center, AARP Foundation Litigation and Howrey LLP are
25 appointed as Class Counsel.

26 f) Plaintiffs are not required to give notice to absent Class members at
27 this stage of the litigation.

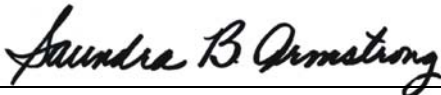
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1 2. The hearing on the motion for class certification, previously scheduled for
2 July 27, 2010, is VACATED.

3 3. This Order terminates Docket 122.

4 IT IS SO ORDERED.

5 Dated: August 10, 2010



SAUNDRA BROWN ARMSTRONG
United States District Judge

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