

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Claudia Wilken, Judge

V.L., et al.,	)	
	)	
Plaintiffs,	)	
	)	
VS.	)	NO. C 09-4668 CW
	)	
Wagner, et al.,	)	
	)	
Defendants.	)	
_____	)	

Oakland, California  
Thursday, November 19, 2009

**TRANSCRIPT OF PROCEEDINGS**

**APPEARANCES:**

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**(APPEARANCES CONTINUED ON FOLLOWING PAGE)**

REPORTED BY: Kelly L. Bryce, CSR No. 13476  
Court Reporter Pro Tem

1 **APPEARANCES:** (CONTINUED)

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BY: **GREGORY D. BROWN**  
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1 Thursday - November 19, 2009

3:13 p.m.

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3 **THE CLERK:** Calling the matter of V.L. versus  
4 Wagner, Civil Action Number C 09-4668.

5 Counsel, please come forward and state your  
6 appearances for the record.

7 **MS. LEYTON:** Good afternoon, Your Honor. Stacey  
8 Leyton here for the Union plaintiffs.

9 **MS. BIRD:** Melinda Bird, Disability Rights  
10 California, here for the IHSS recipients, and with me also is  
11 Fred Nisen from Disability Rights California.

12 **MR. BROWN:** Good afternoon, Your Honor. Gregory  
13 Brown, Deputy Attorney General, for defendants.

14 **THE COURT:** Good afternoon.

15 Well, I guess we have some new information in terms  
16 of progress on notifying people. I don't know what the current  
17 status is and whether there's anything new that I should know  
18 about.

19 **MS. LEYTON:** Your Honor, my understanding --

20 **THE COURT:** They filed something today. I presume  
21 you saw it.

22 **MS. LEYTON:** Yes. Yes, Your Honor. My  
23 understanding is that we have seen some new numbers as of  
24 today, which indicate that there's been some progress in terms  
25 of updating records over the past week. Although between

1 yesterday and today, for example, there were only 11 files that  
2 were updated and there are still over 900 files remaining.

3           There was also a declaration filed by the State  
4 stating that they were going to send the counties a list of the  
5 names of individuals whose records hadn't been updated, but  
6 there's no evidence that such a list has been transmitted; and  
7 in fact, a number of the counties that are remaining on the  
8 list are still telling us that they believe that they've  
9 updated all their records. And, so, we are particularly  
10 concerned about that.

11           In terms of the notice to the providers, there's --  
12 my understanding is that the State's position is that no notice  
13 is necessary or will be sent; and, so, we have filed some  
14 additional evidence today which -- and apologize for submitting  
15 it the morning of the hearing but it's information that has  
16 just come to our attention, concerning providers who have  
17 received notices that their hours have been reduced or  
18 terminated even though their consumers did not receive notices  
19 of action.

20           And in the case of one consumer, and that's  
21 Ms. Belzman, had to go through a number of hoops in order to  
22 determine that, in fact, her daughter and her grandson had been  
23 terminated because of the functional index cuts, that their  
24 records had not been restored by Riverside County, and that it  
25 took quite some effort on the part of Ms. Belzman to eventually

1 ascertain that information.

2 And I would just call Your Honor's attention to the  
3 exhibit to Ms. Belzman's declaration. To the extent there's  
4 any question that the timecards that were sent to these  
5 providers was a notice of termination, I think that exhibit  
6 makes it very clear.

7 Ms. Belzman received a timecard for her -- for one  
8 of her daughters and for her grandson that says, "Records  
9 indicate that your eligibility ended 10/31/09." And that is  
10 the notice that hundreds of providers have received about  
11 terminations and that thousands of providers have received  
12 concerning service reductions. And we feel very strongly that  
13 corrective notices need to be sent to these providers so they  
14 know that these notices were erroneous, and so that they know  
15 how they may correct their records, and that they should work  
16 the hours for those consumers that those consumers are  
17 authorized to receive.

18 **THE COURT:** What would be your suggestion as to how  
19 the providers should be notified?

20 **MS. LEYTON:** Our suggestion, Your Honor, is that the  
21 State should send those providers a notice. We've submitted a  
22 proposed text in the proposed order that we submitted with our  
23 reply brief setting forth that the timecards that they received  
24 may have been erroneous, that if it reflected --

25 **THE COURT:** I read that. But, I mean, what --

1 should they, like, mail them today, overnight mail, Saturday  
2 delivery? What?

3 **MS. LEYTON:** Your Honor, our proposed order suggests  
4 that the State begin to pay a fine if they're not mailed on  
5 Monday. And the reason that we've suggested that in particular  
6 is, with the Thanksgiving holiday coming up, if those notices  
7 are not mailed on Monday, they will not reach people until  
8 after the Thanksgiving holiday quite likely.

9 We don't believe that the State needs one week to  
10 send that notice out. We're talking about a few thousand  
11 notices here. We've already drafted a proposed text. It needs  
12 to be translated into three languages and stuffed in a few  
13 thousand envelopes.

14 We can't -- it's difficult to believe that the State  
15 could not accomplish that by Monday. All it is, is it's just a  
16 matter of person power and putting enough people on it to make  
17 sure that the translation happens quickly and that the notices  
18 get printed and stuffed in envelopes.

19 **THE COURT:** I wonder if we shouldn't just go to one  
20 of these claims administration firms that do that sort of thing  
21 as their job and just have someone just outsource it and have  
22 the State pay for it. Maybe that would be more likely to get  
23 it done. I don't know if it's going to get done.

24 What about phoning them? Do you suppose they have  
25 their phone numbers?

1           **MS. LEYTON:** Your Honor, we actually think that  
2 phoning would be a good idea in addition to sending a mailed  
3 notice. We think that a mailed notice does need to be sent to  
4 make sure that the exact message is conveyed; and also so that  
5 providers have something in hand that they can take to a social  
6 worker or to a payroll department and say, "Here, I have this  
7 from the State." So that somebody like Ms. Belzman is not  
8 told, "Oh, you must have missed a reassessment appointment and  
9 you're not going to be put back on for a few weeks."

10           But if the State were to call the providers, that  
11 could take place on a much faster time basis; or if the State  
12 could have counties call providers and pay for whatever the  
13 costs of that would be, we believe that that would be a good  
14 idea in addition to the written notice.

15           **THE COURT:** What do you think needs to be done in  
16 order to finish the files of these, I guess, 900 people who are  
17 still left? What's the best way to get that done?

18           **MS. LEYTON:** My understanding, I think the first  
19 thing is that the State does need to give a list to the  
20 counties of how many records they have yet to update and the  
21 names of those individuals.

22           The State also needs to be in contact with somebody  
23 from each county to talk to each county about why there are  
24 records that have yet to be updated and what needs to happen in  
25 order to make sure that those records updates take place,

1 because there appears to be a continued problem that counties  
2 believe they completed the record updates and those record  
3 updates haven't taken place.

4 My understanding is that the only communication that  
5 the State has sent out thus far have been the two generic  
6 notices, the electronic mail message that was sent last week  
7 after the contempt motion was filed, and the message that was  
8 sent last night which tells people that they need to complete  
9 updates by today, if at all possible, and that they will be  
10 getting a list.

11 But the State has not sent a list to my knowledge,  
12 and has also not made a commitment that it will be in  
13 communication with each county that has remaining records to  
14 ascertain what the source of the problem is and figure out how  
15 to get those records updated.

16 **THE COURT:** I had a question about something that  
17 the State wrote in a letter attached to the certification of  
18 compliance, the all-county letter that they sent. And it says,  
19 "Modifications restoring CMIPS," if that's how you say it, "to  
20 the functionality that existed October 8, 2009, has been  
21 completed."

22 Do you understand what that means?

23 **MR. BROWN:** I do, Your Honor. If I -- I'm speaking  
24 out of turn here; but the State, in order to even have the  
25 counties reenter the information, the State actually had to go



1 back in the CMIPS, and that was a quick fix they could do but  
2 they had to set it up before the counties could go back and  
3 reenter the information. And that's what they're referring to  
4 in the all-county letter, and that took about two or three days  
5 after October 19th.

6 **THE COURT:** Okay. You were originally saying it  
7 would take five weeks to reprogram the computers.

8 **MR. BROWN:** And that's an entirely separate  
9 reprogramming.

10 **THE COURT:** Right. But the five weeks are up on  
11 Monday. Are you just about done?

12 **MR. BROWN:** Correct, Your Honor. Well, because the  
13 counties are doing this, the State has not been reprogramming  
14 the computers because that actually would have -- that would  
15 have created a whole separate set of problems once that would  
16 have gone into place. That would erase everything that  
17 happened between October 9th and whenever that was actually  
18 implemented.

19 So because the counties were -- because the State  
20 decided to have the counties enter this information manually,  
21 because that was far and away the fastest way to do this, the  
22 State did not have EDS go and write that program.

23 **THE COURT:** So does that still have to be done  
24 someday or --

25 **MR. BROWN:** No, Your Honor. As soon as the counties

1 are done. And we're down to less than one percent remaining.  
2 I believe the count this morning was 927. And yesterday a  
3 notice was sent to the counties and I've been told, we can  
4 submit a declaration on this, that e-mail notices were sent to  
5 the counties of specific lists for each of those counties  
6 giving them the names of the people who needed to be updated.  
7 So that that's happening.

8 The counties now have all the information they need  
9 to complete it and it should be done very soon. Again, it's  
10 hard to put an exact date on it because the State can't control  
11 the counties, but we do believe that it will be done very soon.

12 **THE COURT:** Okay. So assuming that we don't go back  
13 to the cavus -- I know this could all -- this is preliminary,  
14 it could be reversed on appeal, and this and that; but assuming  
15 that that doesn't happen, you will be able to proceed with the  
16 program, with your -- I don't mean the computer program, I mean  
17 with the proper payment of these people without doing some sort  
18 of five-week reprogramming?

19 **MR. BROWN:** Correct. As soon as the counties have  
20 completed all 117,000 plus of these manual reentries,  
21 everything in the computer system will be set to --

22 **THE COURT:** Permanently?

23 **MR. BROWN:** Permanently, correct.

24 **THE COURT:** Could be done permanently?

25 **MR. BROWN:** Correct.

1           **THE COURT:** You're not going to come back to me at  
2 some future date and say, "Oh, remember that five weeks? Well,  
3 we still need it."

4           **MR. BROWN:** Correct, Your Honor.

5           **THE COURT:** That's not going to happen?

6           **MR. BROWN:** Assuming the counties can complete  
7 everything manually, this will be done. Everyone will be  
8 getting their benefits going forward. All providers will be  
9 getting their payments.

10           **THE COURT:** Okay. Well, so you're saying now that  
11 each county has been notified already of the names of each  
12 provider or of each recipient who has not yet been updated?

13           **MR. BROWN:** I've been told that that happened  
14 yesterday. I can confirm that, and we will submit a  
15 declaration on that so we can confirm that.

16           **THE COURT:** Well, you did submit a declaration today  
17 and it didn't say that.

18           **MR. BROWN:** I was not able to reach Ruben Romero  
19 this morning to get confirmation on that. I spoke with him  
20 yesterday. It was in process. I spoke with someone else at  
21 EDS later this morning. Their understanding was that that went  
22 out yesterday. I'll get ahold of Mr. Romero and we'll get a  
23 declaration in on that to confirm that; but --

24           **THE COURT:** So every single county in the state has  
25 received a specific list of all the names of the people you

1 show as not yet being updated?

2 **MR. BROWN:** That is my understanding.

3 **THE COURT:** Do you have any reason to disbelief  
4 that?

5 **MS. LEYTON:** Your Honor, I can say that we've spoken  
6 with some counties that have said that they have not received  
7 such a list. We spoke with them today.

8 My sense is that the State is not moving quickly on  
9 any of this and has not been moving quickly; and, so, the only  
10 way that this Court can ensure that the State will comply with  
11 this and give the counties what they need to comply with this  
12 in a timely way is to institute contempt sanctions if the  
13 lists -- I think in the proposed order we've made the deadline  
14 tomorrow for the counties to receive those lists and for the  
15 State to certify that, and Monday for these notices to go out  
16 to providers and for the State to submit evidence that all of  
17 the remaining 900 records have, in fact, been updated.

18 Without those contempt sanctions, I don't think we  
19 have any confidence that what needs to take place will take  
20 place in a timely way.

21 **MR. BROWN:** Your Honor, the record shows we've been  
22 working absolutely as fast as we can to implement this. Having  
23 the counties do this was the fastest way available. We  
24 obviously can't control the counties, we can't hold a gun to  
25 their head, but we've asked them to move forward. They've

1 been, for the most part, moving as fast as they can; and --

2 **THE COURT:** Up to a point they were, but things have  
3 kind of ground to a screeching halt at this point and there  
4 seems to be some problems with the remaining ones, and those  
5 are all real people. Even though there's 900 of them, there's  
6 still 900 real people out there.

7 **MR. BROWN:** Okay.

8 **THE COURT:** And I'm trying to figure out how we can  
9 get those people updated and make sure that they are.

10 You say you've sent e-mails to them. They say they  
11 haven't got them. I just -- I don't know how to deal with it.

12 Maybe you need to call each one of them and speak  
13 with human being to human being in each of the counties and  
14 confirm that they got it and ask if they've done it; and if  
15 they haven't done it, you're going to have to do it manually.

16 Like the Sonoma situation or the San Francisco  
17 situation, if they can't fix it for some glitch-type reason,  
18 then the State is just going to have to go in and do it  
19 manually without a computer. Just handwrite these people a  
20 letter if you have to and mail it to them.

21 So how are we going to deal with these last 900  
22 people?

23 **MR. BROWN:** I know things have been moving quickly  
24 in the last few days. My understanding is that they're being  
25 dealt with as we speak.

1           But, again, these lists were sent to each county or  
2 each of the counties that has people left received a list, I  
3 believe it was yesterday -- I'll confirm that and I'll submit a  
4 declaration on that -- was sent yesterday, that the counties  
5 have been asked to finish by today, that they've been moving  
6 forward.

7           **THE COURT:** But you're saying you can't make them do  
8 it. What if they don't or, more likely, what if they can't  
9 because there's some computer glitch? They try and it doesn't  
10 take and they call your help desk and it doesn't work, what are  
11 you going to do about that?

12           **MR. BROWN:** Again, my understanding is when -- I  
13 think they've been referring to an e-mail they sent about some  
14 computer glitches. Again, I spoke to my client. They're not  
15 seeing those glitches. They spoke with EDS. EDS was going to  
16 contact the three counties that said they've been having those  
17 glitches. They say they're not aware of those glitches, and  
18 their understanding was that they thought it was a county  
19 error.

20           I don't know what else to say except that we're  
21 monitoring it. We're on top of it. The counties have assured  
22 us they're going to be able to do this. Again, per your order,  
23 the State is going to pay the counties for their costs of  
24 implementing this. We haven't had any county show resistance  
25 and say, "We're not going to finish." The counties --

1           **THE COURT:** Well, apparently many of the counties  
2 think they have finished.

3           **MR. BROWN:** Correct. And, again, the notices that  
4 went out yesterday are going to give them the list that say,  
5 "These are the people you have not finished. This is what you  
6 need to do." So there's no reason to think that this is not  
7 going to get done and in a very short time.

8           **THE COURT:** Well, I do think we need to have notices  
9 go out to all the providers who got erroneous notices, and I  
10 would like it to reach them before Thanksgiving. So what's  
11 your proposal on that?

12           **MR. BROWN:** We would object to sending those notices  
13 for reasons stated in our papers; namely, the whole point of  
14 the notices --

15           **THE COURT:** They're going to be sent.

16           **MR. BROWN:** Okay.

17           **THE COURT:** So the question is: Will you send them;  
18 or shall I have the plaintiffs send them; or shall I have the  
19 plaintiffs hire a firm, one of these claims-administration-tech  
20 firms, to do it?

21           I want you to give the plaintiffs, as well as the  
22 counties, the contact information for all of the people who got  
23 those notices as well as for all of the people who haven't had  
24 their files updated yet.

25           **MR. BROWN:** And we object to that on the grounds

1 that that's confidential information.

2 **THE COURT:** Not anymore.

3 **MR. BROWN:** Okay.

4 **THE COURT:** I just ordered it.

5 **MR. BROWN:** Okay. Okay.

6 **THE COURT:** They're class members. They're union  
7 members. I'm ordering immediate discovery of that information  
8 with the order that they be used only for purposes of  
9 contacting them for this litigation to make sure that their  
10 records are updated, and not to give it to anyone else or to  
11 disclose any information about them to anyone else; and that  
12 whatever is sent to them needs to be worded carefully so that  
13 they don't feel like their privacy has been violated. But with  
14 that, yes, that information will be given.

15 So my only question really is, I'm thinking in terms  
16 of FedEx, overnight mail, Saturday delivery, something like  
17 that. And if you say -- it seems like some places you say you  
18 only have four employees. Maybe you're not able to do that  
19 sort of thing and we might have to have someone other than you  
20 do it unless you think you can do it.

21 **MR. BROWN:** Our preference would be certainly to do  
22 it ourselves. I think we can certainly pledge to do it as fast  
23 as possible. I don't know that we can put a specific timeline  
24 on that. We're going to have to get the notices translated,  
25 printed, and mailed.



1           **THE COURT:** Well, they could go untranslated first  
2 and then they could be sent again translated. Certainly  
3 English and Spanish could go out. If you have trouble with the  
4 others, you could send a second mailing if you had to, but I  
5 don't want to delay all of the mailings just to get some of  
6 them translated.

7           But if you don't know how long it will take, then  
8 that isn't really a good recommendation for your services. We  
9 might have to hire someone who does know how long it would  
10 take.

11           **MR. BROWN:** Well, based on Ruben Romero's  
12 declaration, he thinks approximately one week to get everything  
13 done.

14           **THE COURT:** Well, that's not good enough. So if  
15 that's the best you can do, then I guess we'll have to have --  
16 can you find a firm that could do it if you had the addresses?

17           **MS. LEYTON:** Yes, Your Honor. Yes, we could.

18           **THE COURT:** Don't you think that would make more  
19 sense?

20           **MS. CERVANTEZ:** I would imagine that we could get  
21 notices translated and have a firm get them out perhaps  
22 tomorrow, but certainly by Monday as we requested, and probably  
23 get -- I'm certain we could get Spanish translation. I'm not  
24 sure if it's as easy to find Armenian translation, for example.

25           **THE COURT:** Okay. Well, if a week is the best you

1 can do, then I think we better have a private firm do it and  
2 have the State pay for it.

3 **MR. BROWN:** Okay. And to clarify, Your Honor, these  
4 are to the providers who are remaining on --

5 **THE COURT:** No. To every provider who got a notice  
6 that they were being cut, all that was 2000 some odd people who  
7 you hadn't fixed by the date the timecards went out; and the  
8 date the timecards went out, they went out with notices that  
9 said, "For your next pay period you're cut off," or, "For your  
10 next pay period you get less," and that was wrong. That  
11 shouldn't have happened. And all those people who got those  
12 need to be told as quickly as possible that that was wrong and  
13 how to fix it.

14 So those people as well as the 900 people, which may  
15 just be a subset of those 2000 people, would also get a notice  
16 saying the same thing.

17 **MR. BROWN:** Okay. And the 900 would be a subset  
18 then?

19 **THE COURT:** Yeah.

20 **MR. BROWN:** Okay. And....

21 **MS. LEYTON:** So, Your Honor, in order to accomplish  
22 that, I think we would need the information from the State in  
23 electronic form of which providers did receive those incorrect  
24 timecards.

25 And we've also asked that there be a number that the

1 State gives out that providers can call if they're having any  
2 difficulty with -- any difficulty fixing the records  
3 essentially.

4 And we've asked also we would need to get from the  
5 State supplemental timecards that we can send to the providers.  
6 I think those could be blank time sheets; but, so, that the  
7 providers can fill those out if they did not submit the hours  
8 that they were entitled to submit in the earlier part of the  
9 month.

10 **MR. BROWN:** And, Your Honor, the supplemental  
11 timecards will be sent by the counties as well as supplemental  
12 payments for everyone once the files are corrected. So those  
13 are already going to be going out.

14 **THE COURT:** You want supplemental timecards to send  
15 in this mailing that we're going to do tomorrow or Monday?

16 **MS. LEYTON:** Yes, Your Honor. There's no indication  
17 from the counties that they plan to submit -- to send timecards  
18 automatically once the records are updated. The State has not  
19 instructed them to do that, and we would prefer that -- there's  
20 no reason why a blank timecard couldn't be included with the  
21 notice that tells them, "You can still work these hours and  
22 fill out those hours and put them on this time sheet."

23 **THE COURT:** So where do we get blank timecards?

24 **MS. LEYTON:** Well, it's normally the State that  
25 sends the timecards to the providers. It is true that when

1 there are problems, counties do sometimes send supplemental  
2 timecards; but the timecards that go out to providers normally  
3 go out with their paychecks, so I don't see any reason --

4 **THE COURT:** So you want just 2000 blank timecards?

5 **MS. LEYTON:** Or a timecard that is blank that we  
6 could copy and providers could fill out and that would be  
7 recognized as a legitimate timecard for them.

8 **THE COURT:** Well, what would be the best way to do  
9 that?

10 **MR. BROWN:** Assuming the plaintiffs are going to be  
11 sending this out, I think we could send them like a blank  
12 timecard, a .pdf copy, or something along those lines.

13 I would make one other request. If in the event  
14 that I talk to my clients and they say, "You know what, we can  
15 do this by Monday," I would request that the State be allowed  
16 to send these notices and that we not have to provide the  
17 provider list to plaintiffs.

18 **THE COURT:** You're going to provide the provider  
19 list no matter what; but in terms of sending out the notices, I  
20 just don't know how to feel confident.

21 **MR. BROWN:** Right. Right.

22 **THE COURT:** I mean, I want them to go out. I prefer  
23 them to go out more cheaply; and if the State can do it more  
24 cheaply, ideally that would be preferable, but I just don't  
25 know how to feel confident that that would happen.

1           **MR. BROWN:** Okay. So if we can --

2           **THE COURT:** I mean, I guess we could say if you  
3 actually -- well, I don't know. Because they have to arrange  
4 with someone. They can't wait around and see if you're going  
5 to do it. So it makes it sort of difficult logistically.

6           **MR. BROWN:** I can contact my clients --

7           **THE COURT:** Is there anything that would make you  
8 believe that they would do it? If we took a break and they  
9 phoned and said, "We promise to do it tomorrow," would you  
10 think that was reasonable?

11           **MS. LEYTON:** The only thing that would make me  
12 confident at this point is if this Court were to order that if  
13 the State does not complete the mailing by the date that  
14 they've said they would complete it by, that there would be  
15 contempt sanctions.

16           **THE COURT:** Well, I'm reluctant to order taxpayer  
17 money to be spent on sanctions. I'd much rather have it go to  
18 the recipients. So I really am quite reluctant to do that, and  
19 I'd rather have the things go out than have fines paid. So I'm  
20 really more interested in figuring out a way to make sure these  
21 notices go out.

22           **MS. LEYTON:** Your Honor, I certainly understand  
23 that. We haven't requested contempt sanctions in an effort to  
24 be punitive or to punish the State for any noncompliance prior  
25 to now.

1           Our position would be that if we are going to send  
2 these notices out in a timely way, we would need the electronic  
3 version of the addresses and names by tomorrow morning so that  
4 we could make arrangements.

5           And if the State says this afternoon that they can  
6 get these notices out tomorrow, we would like this Court to --  
7 if the State is saying that it can do it by a certain date,  
8 then I don't see any problem with the Court stating that if the  
9 State doesn't accomplish it by that date, it would then have to  
10 pay civil contempt sanctions in order to give the State an  
11 incentive to make sure that it completes the mailing on that  
12 date.

13           **THE COURT:** Well, maybe we'll take a break and you  
14 can call your people and ask them if they want to get it done  
15 tomorrow really; and then if they didn't, you could still do it  
16 on Saturday or Monday.

17           Maybe you should give them all the addresses and the  
18 timecard this afternoon, and you could at least talk to a firm  
19 that could do it right away. And then you can call your people  
20 right now and ask them if they'd rather do it themselves, and  
21 if they can commit to doing it tomorrow; and if they do, we'll  
22 give them a chance to do that.

23           **MR. BROWN:** If I commit to doing it, having them  
24 mailed out by Monday or mailed out tomorrow?

25           **THE COURT:** Mailed out tomorrow.

1           **MR. BROWN:** Mailed out tomorrow. I can --

2           **THE COURT:** Because if they don't do it, then I want  
3 to be able to have them go out on Monday.

4           **MR. BROWN:** Right. I can pretty much tell you here  
5 that getting them mailed by tomorrow is going to be next to  
6 impossible.

7           **THE COURT:** Okay. Well, then, we'll just go ahead  
8 and have the plaintiffs do it.

9           And I guess -- well, I guess we should take a break  
10 and have you call your person and see whether these e-mails  
11 actually went out to every county.

12           And then I guess what I'd like is to have somebody  
13 from the State call every county and actually ask them, "What  
14 have you done about this? Do you think you have updated all  
15 these? Are you having some computer problems?"

16           And let's just say that anybody whose file isn't  
17 updated by tomorrow, the State fixes it themselves. They can do  
18 that. It's going to be 900 at the most.

19           **MR. BROWN:** Right.

20           **THE COURT:** They can do that by hand. They can type  
21 up letters on a typewriter if they have to.

22           **MR. BROWN:** That is going to be a very slow and  
23 time-consuming process if the State does it itself because, as  
24 they said in their declarations, we have four people. They  
25 don't routinely do this.

1           **THE COURT:** They're not going to be doing it on the  
2 computer. They're just going to be writing out a letter,  
3 putting it in the mail saying whatever it is they have to do.

4           I mean, if there's computer glitches, it's going to  
5 have to be done manually.

6           **MR. BROWN:** Right. And that's -- well, I guess I'm  
7 not following. In terms of a manual letter going out to each  
8 recipient or provider or -- because we're --

9           **THE COURT:** Recipients and providers.

10          **MR. BROWN:** -- because we're going to be sending  
11 providers notices now. So you're talking about additional  
12 notices?

13          **THE COURT:** Whatever it is. I don't know exactly  
14 what you're having the computer do; but the computer, perhaps,  
15 isn't doing it in a few cases for some reason that no one  
16 understands. And if the computer can't be made to do it, then  
17 it's going to have to be done some other way.

18          **MR. BROWN:** The computer can be made to do it.  
19 What's happening is there were a hundred seventeen plus  
20 thousand files that each one by one had to be updated on the  
21 computer one by one, and that's the 927 of those files left to  
22 be updated on the computer.

23                 To my knowledge, there hasn't been any computer  
24 glitch preventing the remaining files from being updated.  
25 Where there have been glitches, it's been between the counties



1 knowing which files to update.

2 **THE COURT:** No. Because they're several counties  
3 that have said, "We've updated all of them"; and you say, "No,  
4 you haven't."

5 **MR. BROWN:** Correct. Our understanding is that  
6 that's where the counties did not have a complete list of the  
7 names or, perhaps, misentered the information so they need to  
8 go back and reenter it. So that's why we sent them the names,  
9 so they can go back to those people's specific computer files  
10 and update them.

11 **THE COURT:** Right. But how am I going to know  
12 that's going to happen? I mean, how am I going to fix it if it  
13 doesn't?

14 **MR. BROWN:** I mean, like I said, at some point the  
15 State can do this, but I just need to state on the record that  
16 that's going to be extremely time-consuming. The fastest way  
17 by far is going to be to have the counties continue to fix it,  
18 and it looks like they're going to be able to very quickly.

19 **THE COURT:** Okay. Shall we take a break and have  
20 you call the person and come back, and then you can come back  
21 tomorrow at 1:30 and report on how well it's gone?

22 **MR. BROWN:** Sure. I actually have another hearing  
23 tomorrow at 1:30, so I could --

24 **THE COURT:** Where is that?

25 **MR. BROWN:** It's in San Francisco. It's a

1 settlement conference. I could appear telephonically at a  
2 different time or see if someone else from my office is  
3 available.

4 **THE COURT:** Then what else do we have that needs to  
5 get done? I mean, I guess I should say, and maybe you want to  
6 address this, but it seems to me that the State is in violation  
7 of the order if only because, after being told not to cut off  
8 people, these notices went out to providers saying that their  
9 recipients were cut off. So that was number one, cutting  
10 people off when they weren't supposed to be cut off.

11 And, number two, that constituted a notice to the  
12 providers that their recipients were cut off. And while it  
13 shouldn't have been done at all, seeing as it was done, it was  
14 a notice that needed to be remedied and it should have been  
15 remedied as soon as it was realized that it was done and  
16 notices should have gone out to these people under the term of  
17 the preliminary injunction that said that anyone who gets a  
18 notice or directive that they're cut off needs to be notified  
19 that that was in error.

20 **MR. BROWN:** We respectfully disagree with that  
21 assessment. We believe we're in full compliance with the  
22 injunction. If we've misinterpreted it, I think it should be  
23 clarified to state exactly what we need to do.

24 **THE COURT:** I think it was clear, and I will clarify  
25 even further. And what I'm ordering you to do now is in part I

1 view as contempt sanctions and in part further preliminary  
2 injunction that has become necessitated by the fact that things  
3 didn't go well the first time around. So it's both of those  
4 things.

5 **MR. BROWN:** Okay. And I just reiterate what's in  
6 our briefs. There's no basis for contempt sanctions here, and  
7 we've been working absolutely as fast as possible to implement  
8 this. To the extent that not everything has been updated --

9 **THE COURT:** Well, you say two different things,  
10 which sort of lacks some credibility I have to say. On the one  
11 hand you say you're not in violation. On the other hand you  
12 say you've done the best you could but you couldn't really do  
13 it. So the latter --

14 **MR. BROWN:** And possibilities is a defense to  
15 contempt, Your Honor.

16 **THE COURT:** Oh, is that what -- oh, when you're  
17 saying you're not in contempt, it's because you couldn't  
18 comply --

19 **MR. BROWN:** First, we believe we have complied.

20 **THE COURT:** -- or are you saying you think you did  
21 comply?

22 **MR. BROWN:** What the injunction said is to take all  
23 steps to ensure that no recipients are denied their benefits,  
24 and there is no evidence that any recipient has been denied any  
25 benefits. There's no evidence that any provider has had a late

1 payment. Those are the key things in the injunction.

2 As far as what already happened prior to  
3 October 19th, we had to go back and undo that as fast as we  
4 can, and we've been doing that. And the injunction  
5 specifically authorized us to go back and do it in a method  
6 that would not have been completed until this coming Monday.

7 **THE COURT:** Well, that's another thing that I find  
8 quite disingenuous. What the injunction said was that you  
9 could require the counties to do it or you could restore the  
10 backup; and you're choosing to interpret that or claiming to  
11 interpret it as being an implicit statement that what you could  
12 really do was go this five-week, write a new program, EDS  
13 route, and that the Court was essentially saying, "It's okay  
14 with me if you don't do this for five weeks." That's not what  
15 "restore the backup" meant.

16 What I could never understand through all of your  
17 papers, until I got the implementation briefing, was if you  
18 made this big computer change that was going to take five weeks  
19 to fix, isn't there a backup tape; and finally in the  
20 implementation briefing it came out that, yes, there was a  
21 backup tape. There was a system backup that could be  
22 reinstalled.

23 It had a problem because any changes that had been  
24 made by counties since October 8th when the backup tape was  
25 made would have to be reentered, but that would have been 5,000

1 reentries instead of 117,000 reentries. So it occurred to me  
2 that that might have been a better way to go, and that was what  
3 was referred to in the notion of restoring the backup, not a  
4 five-week new reprogramming.

5 **MR. BROWN:** Your Honor, I think there was something  
6 lost in translation because that would have been the five-week  
7 process. Reimplementing the backup tape, that's what EDS said.  
8 They don't have a program. They cannot just flip a switch to  
9 put in the backup tape. That's where they would have to  
10 develop a whole new program, test it, and then put it in.

11 **THE COURT:** That's just not true. That's not what a  
12 backup program is. A backup is a backup. You back stuff up  
13 every day. They back it up every day and they could reinstall  
14 their backup from the 8th or from the 7th or from the 6th, or  
15 whatever.

16 What you said they wanted to do was write a new  
17 program. That's a different beast. Writing a new program is  
18 not the same as restoring a backup.

19 **MR. BROWN:** But restoring -- they don't have a  
20 program to restore the backup.

21 **THE COURT:** Of course they do. All computers have a  
22 program. It's not a program. You just restore the backup. If  
23 your computer crashes and everything's gone, you restore the  
24 backup.

25 **MR. BROWN:** I'm not a computer person, Your Honor --

1           **THE COURT:** Well, I am.

2           **MR. BROWN:** -- but I can only tell you what's in the  
3 declaration from EDS.

4           **THE COURT:** Yeah. I read it.

5           **MR. BROWN:** And they told us they could not --

6           **THE COURT:** Am I wrong?

7           **MR. BROWN:** -- do this in less than five weeks, or  
8 approximately five weeks.

9           **MS. LEYTON:** That's my understanding of what a  
10 backup means, yes, Your Honor.

11           **THE COURT:** Yeah. You need to talk to your computer  
12 people some more.

13           **MR. BROWN:** We talked to them extensively,  
14 Your Honor, and that's what they told us.

15           **THE COURT:** Well, maybe next time if you want to say  
16 something like this, you should bring one with you, because  
17 that just doesn't make any sense.

18           But, anyway, that's what I was referring to, that  
19 they could have restored the system backup as of October 8th;  
20 and had they done that, they would have had to only make 5,000  
21 changes instead of 117,000 changes. So I don't know quite what  
22 they did, but....

23           **MR. BROWN:** I would just reiterate, Your Honor,  
24 there's no date set in the order, and we have done this as fast  
25 as possible and I don't know what more we can do.

1 I believe we're, A, in compliance with the  
2 injunction; b, to the extent anyone believes we're not,  
3 certainly there's not any specific and definite provision in  
4 there that we're in violation of. And even if you thought we  
5 were in violation of that, impossibility would certainly be a  
6 complete defense to any contempt on that basis.

7 **MS. LEYTON:** Your Honor, we would just ask that if  
8 this Court is not inclined to institute contempt sanctions,  
9 that the best way to proceed would be to have specific  
10 deadlines and instructions as possible. For example, that the  
11 State would need to get us these addresses in electronic form  
12 as well as a blank time sheet no later than tomorrow morning,  
13 and that the State would need to do -- I believe it would be  
14 warranted to have us required to appear tomorrow and Monday so  
15 that this Court can verify that the records have been updated  
16 by the counties and to ascertain whether there are any  
17 remaining computer glitches or other glitches that are  
18 preventing the remaining 900 individuals from having their  
19 eligibility restored.

20 So I just think that that kind of specific order  
21 with daily reporting in person would make sense.

22 **THE COURT:** Okay. I don't know why they couldn't  
23 e-mail you the addresses today. Why wait until tomorrow?

24 **MS. LEYTON:** That's true.

25 **THE COURT:** It's 10 to 4:00.

1           **MR. BROWN:** We'll do it as fast as we can.

2           **THE COURT:** Well, as fast as you can isn't good.  
3 Let's do it by 5:00 o'clock today. And if you can't do that,  
4 then at 5:00 o'clock today file a detailed explanation saying  
5 why it's impossible for you to e-mail these names and addresses  
6 by 5:00 o'clock today.

7           **MR. BROWN:** Okay.

8           **THE COURT:** We don't have pay phones anymore, but  
9 I'm sure you have a cell phone. You can get on the phone and  
10 call someone and get that done. And the blank time sheet can  
11 be .pdf'd by 5:00 o'clock today.

12                   And, then, I also want a declaration filed today  
13 verifying your statement that the names and addresses of all  
14 the -- is it the 900 people --

15           **MS. LEYTON:** Your Honor --

16           **THE COURT:** -- that haven't been updated go to each  
17 of the counties?

18           **MS. LEYTON:** Oh, yes. Yes. The 900 people to the  
19 counties.

20           **THE COURT:** Okay. So a declaration as soon as you  
21 can get ahold of this gentleman; and if he's not at his office,  
22 get his home phone or his supervisor or his supervisor's  
23 supervisor and find out what happened.

24                   Then I'm thinking we should just have a phone call.  
25 If the counties can't reach someone at the State to find out



1 what's going on, maybe we should just have someone at the State  
2 call each county and have a realtime connection as to comparing  
3 the status of these people.

4 **MS. LEYTON:** Yes. We believe that's appropriate,  
5 Your Honor.

6 **THE COURT:** Okay. So tomorrow we should have  
7 someone from the State call -- do they know who to call?

8 **MS. LEYTON:** My understanding is that they would,  
9 yes.

10 **MR. BROWN:** I would assume so.

11 **THE COURT:** -- the appropriate person to call at  
12 each county and actually have a realtime conversation with  
13 them, "Did you get our e-mail of the 'X' number of people that  
14 we think aren't updated yet? Have you tried to update them?"  
15 And then you check your records and see if it took.

16 Is that how it works? They update it and then you  
17 have to look at it to see if it took? Is that how it works?

18 **MR. BROWN:** They update it and then we get reports  
19 from EDS off of the CMIP system telling us basically -- I think  
20 they can give us different types of reports. The ones we've  
21 been getting are showing just a list of how many have been  
22 updated and how many are left.

23 **THE COURT:** Where is EDS? How do you get those  
24 reports?

25 **MR. BROWN:** I believe that they're --

1           **THE COURT:** I mean, this is all done electronically.

2           **MR. BROWN:** I believe they're e-mailed to us.

3           **THE COURT:** So --

4           **MR. BROWN:** They're e-mailed to me.

5           **THE COURT:** Okay. So, then, tomorrow we'll have a  
6 realtime phone conversation between someone in the State and  
7 someone in each county who can confirm that that county did  
8 receive all of its names, that that county has or has not tried  
9 to update all of its names; and if for any reason that county  
10 hasn't succeeded in doing that, then the -- then you need to  
11 find out the names of the people that they were unable to  
12 update, and the State can update them themselves tomorrow  
13 afternoon.

14           There shouldn't be very many if what you're saying  
15 is correct. So it shouldn't be too burdensome.

16           And if the counties have already tried and weren't  
17 able to or won't do it, then you can just do the rest of those  
18 and those should be done by the end of the day tomorrow.

19           And then you all will have your addresses and you  
20 can send mailings out maybe tomorrow or Saturday, which should  
21 easily get there by Thanksgiving; and all you need is the  
22 addresses, the time sheet, and the letter that you've got.

23           **MS. LEYTON:** Yes. We would also like a number to  
24 give to providers to call.

25           **THE COURT:** Oh, the number, yeah.

1           Is there a phone number that they can put, an 800  
2 number, they can put in their letter where the people can call  
3 to the State if they have trouble?

4           **MR. BROWN:** I guess it depends what type of  
5 information would they be wanting at the other end of this 800  
6 number.

7           **MS. LEYTON:** Our concern is that, for example,  
8 Ms. Belzman, when she attempted to get her problem fixed, she  
9 contacted payroll and payroll sent her to the social worker.  
10 And, so, in each county it may be a different entity that needs  
11 to fix a problem when a provider didn't get paid for their  
12 hours or got an incorrect time sheet. So we would like a  
13 central number that they could call where somebody at the State  
14 could say, "You're from Riverside County, we'll report your  
15 problem to Riverside County," or help the person take care of  
16 it.

17           Because otherwise, you know, providers who speak  
18 different languages and may be, more or less, aware of the  
19 various issues or more or less persistent, may not be able to  
20 push through all the different mechanisms within their county  
21 to figure out how to get it corrected.

22           **THE COURT:** Would the State know how many hours they  
23 were supposed to get?

24           **MS. LEYTON:** The State should be able to look that  
25 up in the CMIP system, yes, once those records are corrected.

1           **THE COURT:** So it would be somebody in the State.  
2 Where does this happen, in Sacramento?

3           **MR. BROWN:** This is information that's typically  
4 going to be at the county level in terms of --

5           **THE COURT:** But you know it because it's in your  
6 CMIPS computer.

7           **MR. BROWN:** Well, we can ask EDS to call it up and  
8 get it for us, and that's process. So I don't think we can --

9           **THE COURT:** You e-mail them and they e-mail it back.

10           **MR. BROWN:** Yeah. And, so, to get it in realtime, I  
11 think if people contact the counties, they're going to get this  
12 information much, much faster because this is something the  
13 counties routinely handle is people calling and saying, "My  
14 benefits" --

15           **THE COURT:** But you tell me I can't rely on the  
16 counties, so I have to rely on you. I can't give them 94  
17 different numbers. I don't know how many counties they have.

18           **MR. BROWN:** Well, each recipient would already have  
19 the number for their county person.

20           **THE COURT:** We need a number in the State that they  
21 can call if they don't understand it, or they don't know how  
22 many hours they're supposed to get, or they don't get any help  
23 from the county.

24           **MR. BROWN:** I think that would honestly, Your Honor,  
25 just cause more confusion for the recipients and providers

1 because I don't see how this State number would really provide  
2 them with anything further than essentially referring them back  
3 to the county.

4 **THE COURT:** No. I want the State person to be able  
5 to send an e-mail to EDS and say, "What is John Doe's  
6 situation?" And get an e-mail back from EDS. Maybe you need  
7 to have somebody on call at EDS for a few days who can run  
8 those queries for you when the calls come in.

9 Do you have an 800 number up there?

10 **MR. BROWN:** I don't think we have one set up. We  
11 can certainly look into setting one up. I just don't know that  
12 this is going to be anything that's actually going to benefit  
13 anyone. I think it's going to be incredibly cumbersome on both  
14 the State and EDS, which I think is going to hinder the ability  
15 for the State to go back and enter any more information into  
16 CMIPS, which sounds like we might have to do after tomorrow if  
17 the counties aren't done.

18 So my real concern is sort of putting an impossible  
19 burden on the State that's not going to be helpful to  
20 recipients or providers and that the State is just not  
21 physically going to be able to comply with.

22 **THE COURT:** Well, let's give it a try. Maybe there  
23 won't be a lot of calls. I don't know how quickly they can get  
24 an 800 number. You want to put a number in there. If they  
25 don't have one, maybe we just ought to give them their regular

1 phone number.

2 **MS. BIRD:** Your Honor, when these cuts -- Melinda  
3 Bird here -- were being implemented, we set up 800 numbers for  
4 people to call us, Disability Rights California. You can have  
5 an 800 number set up in a matter of hours.

6 **THE COURT:** Oh, really?

7 **MR. BROWN:** And, Your Honor, I also believe tomorrow  
8 is a furlough day, so there might be some real difficulties  
9 with the State having people available tomorrow to, I just  
10 realized, to make these calls to the counties.

11 **THE COURT:** I thought the furlough days were  
12 Wednesdays.

13 **MR. BROWN:** Furlough days are Fridays, at least with  
14 the Department of Social Services. So I think that could  
15 present a real problem in terms of the things that are supposed  
16 to get done tomorrow. They might not be able to get done until  
17 Monday.

18 **THE COURT:** So you're saying the DSS is on furlough  
19 tomorrow --

20 **MR. BROWN:** Correct.

21 **THE COURT:** -- and nobody will be working?

22 **MR. BROWN:** Nobody expect -- yeah. I think the  
23 office is closed tomorrow. You can typically reach at least  
24 in-house counsel on his cell phone, but that's about the best  
25 contact I have. I think most people are not going to be at

1 work tomorrow.

2 **MS. LEYTON:** Your Honor, there's still one hour in  
3 the day where the State could try to reach all these counties  
4 and make sure they got their list and find out what the  
5 remaining --

6 **THE COURT:** What about supervisors? Is everybody  
7 furloughed?

8 **MR. BROWN:** My understanding is everybody is  
9 furloughed. My understanding is actually  
10 Governor Schwarzenegger effectively ordered them to basically  
11 close the office except under extraordinary circumstances.

12 **MS. LEYTON:** Your Honor, I believe a Federal Court  
13 order could be a circumstance that would justify having a few  
14 people. I believe that these are high-level officials who are  
15 putting in the calls to the counties because they're people who  
16 have the knowledge and the authority to be able to fix problems  
17 and work things out, and --

18 **THE COURT:** Yeah. Somebody's going to have to call.  
19 You know, if it's the Attorney General's staff, I guess you  
20 could do it. You could have a list of names and call the  
21 counties and read off names to them. EDS isn't furloughed, so  
22 you could e-mail to EDS.

23 **MR. BROWN:** I'll pass along to my client and we'll  
24 do what we can. I just want to warn the Court now that we  
25 might not have people available tomorrow.

1           **THE COURT:** Well, you're going to have to I'm  
2 afraid, because we need these things checked out tomorrow.

3           **MR. BROWN:** I'll ask my client to do what they can.

4           **THE COURT:** Okay. And we're going to see you at  
5 1:30.

6           **MR. BROWN:** As I said --

7           **THE COURT:** We're not going to see you.

8           **MR. BROWN:** I'm not available.

9           **THE COURT:** Who are you in front of?

10           **MR. BROWN:** It's a private mediator in  
11 San Francisco. I don't have his name in front of me. It's  
12 through the San Francisco Superior Court Early Settlement  
13 Program.

14           **THE COURT:** And you're lead counsel in that case?

15           **MR. BROWN:** Yes. The only counsel on that one at  
16 present.

17           **THE COURT:** Okay. Well, why don't you call and ask  
18 if you could be there at 2:30 instead of 1:30? You could come  
19 here at 1:30, get on BART, and be over there by 2:30. Or you  
20 want me to call them? Who is it? Oh, you said you didn't  
21 know.

22           **MR. BROWN:** I don't know if I brought his name.  
23 I'll see what I can do and I'll let you know, Your Honor.

24           **THE COURT:** Okay. Then if not, then I guess you'll  
25 have to send someone else in from your office. Are you in



1 Sacramento?

2 **MR. BROWN:** No. San Francisco.

3 **THE COURT:** You're in San Francisco.

4 Okay. Well --

5 **MS. LEYTON:** Your Honor, one other question is that  
6 you mentioned overnight mail, and I had a request that we be  
7 authorized to send these letters overnight mail. I just wanted  
8 to confirm that that was what Your Honor intended.

9 **THE COURT:** I guess so.

10 **MR. BROWN:** Your Honor, I believe that would be an  
11 unnecessary expense, particularly with the State's current  
12 budget crisis. Overnight mail is quite expensive. Regular  
13 mail within the state of California is usually going to get  
14 there the next day or two days later at the latest anyway. So  
15 I don't know that anything is gained and it's going to cost the  
16 State an extraordinary amount of money.

17 **THE COURT:** Well, why don't you check into it and  
18 see. Sometimes it's like \$40 to send overnight mail. I don't  
19 want to spend \$40 apiece.

20 Find out when it would get there if you didn't send  
21 it overnight, and make a conscientious decision as taxpayers  
22 whether it's really worth it depending on when you get the  
23 names and how long it takes.

24 I would like it to get there before -- on the  
25 Wednesday before Thanksgiving. So if you can get it there

1 without extraordinary expense, that would be better.

2 So is there anything else specific that you think we  
3 need to set dates and times for?

4 **MS. LEYTON:** My understanding is that the Court will  
5 contact us if the date and time changes; but, otherwise, we  
6 should prepare to be here at 1:30 tomorrow?

7 **THE COURT:** Well, I hate to make all of you come in.  
8 You could phone in. I mean, it's really the State we need to  
9 hear from. You can come if you want to.

10 I'm in trial and my trial ends at 1:30, so I'll have  
11 a reporter and it will be easy for me to have people come in  
12 and tell me what's going on; but I hate to have five people  
13 spend their hourly rates, which, by the way, I am going to  
14 order the State to pay for today's proceeding in terms of  
15 attorneys' fees. And in the future if more enforcement is  
16 necessary because of failures to comply, then the State will be  
17 paying those fees.

18 **MR. BROWN:** And we object to that, Your Honor.

19 **THE COURT:** Right.

20 So, yeah, we'll do something at 1:30. If you can go  
21 late to your other thing, that would be good. If absolutely  
22 necessary, you could call in and appear by phone. Sheilah can  
23 give you the CourtCall number. We could have a CourtCall, or  
24 you could send somebody else, and then on Monday at 1:30 as  
25 well.

1           And we better break so he can call and get those  
2 people's addresses e-mailed over.

3           **MR. BROWN:** And are we just taking a short break or  
4 are we done?

5           **THE COURT:** No. I guess we're done.

6           **MR. BROWN:** Okay, Your Honor.

7           **THE COURT:** I want you to file a declaration saying  
8 what actually has happened so far in terms of the e-mails going  
9 out to each of the counties. I want you to get the addresses  
10 to them, get the timecards to them by the end of the day.

11           And then I want the counties called and the people  
12 updated tomorrow, and I want a report at 1:30 as to how many  
13 counties have been called and how many people are still to be  
14 updated and how many have been updated.

15           And then we'll speak again on Monday by which time  
16 one can only hope that all of the counties will have been  
17 called and all of the 900 people will have been updated even if  
18 it has to be done manually, and that should bring us up to  
19 date, I guess.

20           **MS. LEYTON:** Yes. I believe that would, Your Honor.

21           **THE COURT:** And you can submit your attorneys' fees  
22 declarations. You're going to need to be efficient and lean on  
23 these attorneys' fees. I don't want to have the State paying  
24 five people to do everything.

25           **MS. LEYTON:** Understood.

1           **THE COURT:** And they can all come if they want to,  
2 but they can't all bill.

3           **MS. LEYTON:** Understood.

4           **THE COURT:** Okay.

5           **MS. LEYTON:** Thank you, Your Honor.

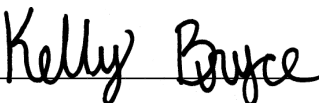
6           **MR. BROWN:** Thank you, Your Honor.

7                   (Proceedings adjourned at 4:03 p.m.)  
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**CERTIFICATE OF REPORTER**

I, KELLY BRYCE, Court Reporter for the United States Court, Northern District of California, hereby certify that the foregoing proceedings in CR 09-4668 CW, V.L., et al versus Wagner, et al., were reported by me, a shorthand reporter, and were thereafter transcribed under my direction into typewriting; that the foregoing is a full, complete and true record of said proceedings as bound by me at the time of filing.

The validity of the reporter's certification of said transcript may be void upon disassembly and/or removal from the court file.

A handwritten signature in cursive script that reads "Kelly Bryce". The signature is written over a horizontal line.

Kelly Bryce, Court Reporter

Friday, November 20, 2009