

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:

For Plaintiff Service Employees International Union United Health Care Workers West:

ALTSHULER BERZON LLP
177 Post Street - Suite 300
San Francisco, California 94108

BY: **STACEY LEYTON**
EVE H. CERVANTEZ
STEPHEN P. BERZON
ATTORNEYS AT LAW

(APPEARANCES CONTINUED ON FOLLOWING PAGE)

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

1 **APPEARANCES:** (CONTINUED)

2 For Plaintiffs IHSS Recipients:

3 DISABILITY RIGHTS CALIFORNIA
4 Los Angeles Regional Office
3580 Wilshire Blvd. - Suite 902
Los Angeles, California 90010

5 BY: **MELINDA BIRD**
ATTORNEY AT LAW

6
7 DISABILITY RIGHTS CALIFORNIA
8 Bay Area Regional Office
1330 Boradway - Suite 500
Oakland, California 94612

9 BY: **FRED NISEN**
ATTORNEY AT LAW

10 For Defendants:

11 OFFICE OF THE ATTORNEY GENERAL
12 State of California
455 Golden Gate Avenue - Room 11000
San Francisco, California 94102

13 BY: **GREGORY D. BROWN**
DEPUTY ATTORNEY GENERAL

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1 Thursday - November 19, 2009

3:13 p.m.

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

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

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

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

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

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THE COURT: Good afternoon.

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

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MS. LEYTON: Your Honor, my understanding --

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

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MS. LEYTON: Yes. Yes, Your Honor. My understanding is that we have seen some new numbers as of today, which indicate that there's been some progress in terms 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.

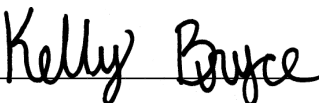
6 **MR. BROWN:** Thank you, Your Honor.

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