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

DAVID OSTER, *et al.*,

Plaintiffs

v.

WILL LIGHTBOURNE, Director of the
California Department of Social Services;
TOBY DOUGLAS, Director of the California
Department of Health Care Services;
CALIFORNIA DEPARTMENT OF HEALTH
CARE SERVICES; and CALIFORNIA
DEPARTMENT OF SOCIAL SERVICES,

Defendants

) Case No.: CV 09-04668 CW

) **NOTICE OF MOTION AND MOTION**
) **FOR PRELIMINARY APPROVAL OF**
) **CLASS SETTLEMENT AGREEMENT,**
) **AND FOR AN ORDER DIRECTING**
) **NOTICE TO THE CLASS AND**
) **SCHEDULING A FAIRNESS HEARING;**
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT OF**
) **MOTION**

) **Hearing Date:** April 4, 2013
) **Time:** 2:00 P.M.
) **Judge:** Hon. Claudia Wilken
) **Address:** 1301 Clay Street
) Oakland, CA 94102
) **Courtroom:** 2, 4th Floor

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1 **NOTICE OF MOTION AND MOTION**

2 PLEASE TAKE NOTICE THAT on April 4, 2013 at 2:00 p.m.¹ or on such date and time
3 as may be set by the Court, Plaintiffs will move for preliminary approval of a proposed settlement
4 reached between Plaintiffs and Defendants. This motion is based on this notice, the Memorandum
5 of Points and Authorities and all documents and arguments submitted in support thereof, the
6 record in this action, and whatever oral argument the Court may entertain.

7 **RELIEF SOUGHT:** Plaintiffs hereby request the following relief:

- 8 1. Preliminary approval of the Class Action Settlement Agreement;
9 2. Approval of the proposed form of Notice to the Class; and an order directing provision of
10 Settlement Notice to the Class in accord with the Plan for Class Notice; and
11 3. An order setting a schedule for distribution of the Class Notice and for the Fairness
12 Hearing.

13
14 Dated: March 28, 2013

Respectfully submitted,

15
16 By: /s/ Melinda Bird

MELINDA BIRD

Attorneys for Named Plaintiffs and the Class

17
18 DISABILITY RIGHTS CALIFORNIA
19 DISABILITY RIGHTS LEGAL CENTER
20 LAW OFFICE OF CHARLES WOLFINGER
21 NATIONAL HEALTH LAW PROGRAM
22 NATIONAL SENIOR CITIZENS LAW CENTER

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28 ¹ Plaintiffs are filing herewith an *ex parte* application for an order shortening time.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION AND SUMMARY OF SETTLEMENT**

3 As this Court previously found, “Plaintiffs are disabled and elderly Californians who need
4 in-home assistance, ...in order to live safely at home without risk of injury or harm.” Order, Dkt.
5 No. 198 at 1. Plaintiffs brought this class action to ensure their continued access to In-Home
6 Supportive Services (“IHSS”), without which they “will be unable to care for themselves, suffer
7 injuries and be relegated to emergency rooms, hospitals, and other institutions.” *Id.* at 2.
8 Plaintiffs challenged two statutes, one of which would have made some recipients totally
9 ineligible for IHSS while reducing domestic and related services for others, and one of which
10 would have reduced IHSS hours by twenty percent (with certain very limited exceptions).

11 After over three years of hard-fought litigation regarding proposed cuts to the IHSS
12 program, including temporary and preliminary injunctive relief, stay motions, and appeals,
13 Plaintiffs and Defendants have finally reached a mutually agreeable settlement that will end this
14 protracted case. Settlement Agreement, Attachment 1 to Declaration of Melinda Bird (“Bird
15 Dec.”). The proposed resolution, which if approved by the Court will terminate both this case and
16 the related IHSS case *Dominguez v. Brown*, Case No. 09-02306 CW (N.D. Cal.) (“*Dominguez*”),
17 was reached only after months of difficult discussions between the parties. The result is the
18 product of arms-length negotiation and is, in the view of Class Counsel, in the best interests of the
19 class.

20 In exchange for the repeal of the statutes at issue here, Plaintiffs have agreed to a relatively
21 modest, and most likely temporary, reduction in hours provided to IHSS recipients. Under the
22 settlement, the State would be permitted to reduce service hours by 8% for the period of one year,
23 beginning July 1, 2013. This would effectively be a 4.4% reduction below current hours, given
24 that a 3.6% reduction is currently in effect. After twelve months, the cut in hours will be reduced
25 to 7%. Most importantly, the State has committed itself to seek additional revenues for the IHSS
26 program that, if approved by the federal government, would be used to restore the reduction in
27 IHSS hours. While Plaintiffs do not want to see *any* reductions in the IHSS program, the
28 reductions permitted under the settlement pale in comparison with the potential impacts of the

1 statutes they replace and are reasonable in light of the risks of litigation.

2 For all of these reasons, the proposed settlement easily satisfies the minimal standards
3 necessary for preliminary approval. The Court should grant such approval, direct that notice be
4 provided to the Class as provided for in the Plan for Class notice, which is Exhibit C to the
5 Settlement Agreement, and set a schedule for a fairness hearing and final settlement approval.

6 II. PROCEDURAL HISTORY

7 Plaintiffs filed this lawsuit on October 1, 2009 on behalf of four individual IHSS recipients
8 representing a class of IHSS recipients and six unions that represent IHSS providers. Complaint,
9 Dkt. No. 1. Plaintiffs asserted challenges to ABX4 4, which added California Welfare and
10 Institutions Code §§ 12309(e) & 12309.2. Those statutes would have terminated all IHSS
11 eligibility for 30,000 recipients and reduced IHSS hours for an additional 100,000 recipients,
12 based on their “Functional Index” ranks and scores. Plaintiffs raised claims under, *inter alia*, the
13 Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, the Medicaid Act,
14 and the Due Process and Supremacy Clauses of the U.S. Constitution.

15 On October 23, 2009, this Court issued a Preliminary Injunction enjoining Defendants
16 from implementing any of the challenged statutes. Order, Dkt. No. 198. Defendants appealed that
17 Order to the Ninth Circuit Court of Appeal. While the appeal was pending, the California
18 Legislature enacted Cal. Welf. & Inst. Code §§12309(i) and 12309.2(e) to temporarily suspend
19 ABX4 4 until final judgment was rendered in this case (relevant provisions of ABX4 4 “shall only
20 be implemented if a court of competent jurisdiction has issued an order, that is not subject to
21 appeal or for which the time to appeal has expired, upholding its validity”). On the basis of these
22 suspension statutes, the Ninth Circuit dismissed the appeal as moot and vacated the order granting
23 a preliminary injunction.

24 In addition, in 2011, the California Legislature enacted Senate Bill (SB) 73, which required
25 the California Department of Social Services (“CDSS”) to “implement a 20-percent reduction in
26 authorized hours of service” for most IHSS recipients if (as occurred) California experienced mid-

27
28

1 year revenue shortfalls. Cal. Welf. & Inst. Code § 12301.07.² On December 1, 2011, Plaintiffs
 2 filed an amended complaint that added challenges to implementation of SB 73, also based *inter*
 3 *alia*, on the Americans with Disabilities Act, Section 504 of the Rehabilitation Act of 1973, the
 4 Medicaid Act, and the Due Process and Supremacy Clauses of the U.S. Constitution. Dkt. No. 17.
 5 Plaintiffs requested an *ex parte* Application for a Temporary Restraining Order and Preliminary
 6 Injunction, which this Court granted on December 1, 2011. Dkt. No. 417. This Court subsequently
 7 issued a preliminary injunction against implementation of SB 73 on January 19, 2012 (Dkt. No.
 8 494) and issued a written Order granting the Preliminary Injunction on March 2, 2012. Dkt. No.
 9 506.

10 Plaintiffs initially filed a motion for class certification in 2009, (Dkt. No. 20), and renewed
 11 this motion on December 1, 2011. Dkt. No. 356. This Court certified a class on March 2, 2012
 12 (Dkt. No. 505), with the following subclasses:

13 Class A: All recipients of IHSS in the State of California whose IHSS
 14 services will be limited, cut, or terminated under the provisions of ABX4 4, and all
 15 applicants to IHSS in the State of California who would have been eligible for
 16 IHSS services but who are either not eligible, or are eligible for fewer services, as a
 17 result of ABX4 4.

18 Class B: All recipients of IHSS in the State of California who have received
 19 or will receive notices of action that include a reduction of IHSS hours based on SB
 20 73 or Defendants' implementation of SB 73, including future applicants for IHSS
 21 services whose notice of action will reflect reduced IHSS hours as a result of SB 73
 22 or Defendants' implementation of SB 73.

23 Defendants filed timely appeals from this Court's 2012 orders. Dkt. No. 509. While this
 24 appeal was pending, the Parties began serious discussions regarding a potential settlement
 25 agreement. Bird Decl., ¶ 8. At the request of the parties, the 9th Circuit ordered both appeals

26 ² A very narrow category of IHSS recipients was exempt from the twenty-percent reduction, and
 27 another group of IHSS recipients with sufficiently high functional rank scores could have clawed
 28 their way back onto the program if they managed to file a request for Supplemental Care on a
 short time frame.

1 placed in the 9th Circuit mediation program on May 30, 2012. *Id.* However, settlement
2 negotiations were unsuccessful and the appeals were released from the mediation program on June
3 19, 2012. *Id.* The appeals were fully briefed and set for oral argument on March 21, 2013.

4 In late February 2013, the parties began a new round of settlement negotiations that were
5 ultimately successful. Bird Decl., ¶ 9. On March 13, the parties signed a term sheet and filed a
6 joint notice to the Ninth Circuit regarding their settlement and seeking a 120 day continuance of
7 the oral argument. *Id.*, ¶ 10. This request was granted on March 14, 2013. A settlement
8 agreement based upon the term sheet was signed yesterday. Attachment 1 to Bird Decl.

9 III. DESCRIPTION OF SETTLEMENT PROVISIONS

10 The Settlement Agreement has four key features.

11 **First**, the statutes mandating the functional index cuts of 2009 and the 20% cuts in 2011
12 will be repealed. Settlement Agreement, ¶ 23, Ex. A to Settlement Agreement (proposed
13 legislation). As Defendants have stated, this repeal “creates stability and certainty to allow this
14 vulnerable population to remain active in the communities in which they live.” CDSS And DHCS
15 Press Release issued March 19, 2013, Attachment 2 to Bird Declaration.

16 **Second**, instead of cuts of 20% or more, Class members will be subject to a temporary
17 reduction in hours of 8%, beginning July 1, 2013. Settlement Agreement, ¶ 12. The practical
18 effect will be a reduction of 4.4% below current hours because a cut of 3.6%, unrelated to this
19 litigation, is already in effect. This 3.6% reduction sunsets on July 1, 2013, so the 8% cut will
20 replace, and not be in addition to, the 3.6% cut. *Id.*, ¶ 14. IHSS recipients receive, on average,
21 fewer than 100 hours of assistance per month. Decl. of Eileen Carroll, Dkt. No. 446. A reduction
22 of 4.4% will thus mean a loss of approximately 4½ hours per month, or one hour per week, for the
23 average IHSS recipient.

24 This reduction will decrease to 7% after twelve months, that is, by July 1, 2014.
25 Settlement Agreement, ¶ 13. This 7% reduction will be ongoing, except that State Defendants are
26 required by the settlement agreement to seek the additional revenues described in the next
27 paragraph and to use those revenues to offset the reduction.

28 **Third**, State Defendants have agreed to pursue additional revenues for the IHSS program

1 in the form of an assessment on home care services, including but not limited to IHSS and home
2 health care. *Id.*, ¶¶ 18-22, 24. If that assessment is approved by the federal government, the
3 savings generated must be used to restore the 7% reduction. Agreement, ¶¶ 13, 21 and Ex. A to
4 Agreement (legislation re: process for restoring hours). Defendants have also committed to seek
5 retroactive implementation of the new assessment and if approved, to use the one-time saving for
6 the benefit of IHSS recipients. Agreement, ¶ 22.

7 **Fourth**, Defendants have agreed to clarify the process for seeking a reassessment of IHSS
8 hours so that reassessments will be easier to obtain. *Id.*, ¶ 16. Reassessment of need is available
9 for any change of circumstances, including non-medical reasons, such as the loss of alternative or
10 volunteer assistance. However, many counties have adopted a practice of refusing to grant a
11 reassessment without a doctor's note that the recipient's medical condition has changed. Bird
12 Decl., ¶ 11. Defendants agreed to issue a directive to counties reiterating that a physician's note is
13 not required, and that IHSS recipients must be informed of their right to appeal if a request for a
14 reassessment is denied. Agreement, ¶ 17. Most importantly, Defendants agreed to explain the
15 right to request reassessment and to appeal the denial of a reassessment in the notice of action that
16 will be issued regarding the 8% cut. *Id.*, ¶17.

17 The Settlement Agreement also contains release and waiver terms that represent fair
18 compromises between the parties. As part of the settlement, Class Members will waive their right
19 to file litigation challenging the 8% and 7% cuts in hours. Agreement, ¶33. However, class
20 members will retain their right to challenge any other reductions in IHSS eligibility, services,
21 hours, or wages that take place after the Settlement Agreement was signed. *Id.*

22 **IV. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE UNDER**
23 **FED. RULE OF CIV. PROC. 23(e)**

24 Federal Rule of Civil Procedure 23(e) requires that any proposed settlement or
25 compromise in a class action suit be approved by the court, subject to a determination that it is
26 "fair, reasonable, and adequate." The court may approve the settlement preliminarily, establishing
27 an initial presumption of fairness. *In re General Motors Corp Pick-Up Truck Fuel Tank Products*
28 *Liability Litigation* 55 F.3d 768 (3rd Cir.1995); *Hanlon v. Chrysler Corp*, .150 F.3d 1011, 1026

1 (9th Cir. 1998). Where a “proposed settlement appears to be the product of serious, informed,
 2 non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential
 3 treatment to class representative or segments of the class and falls within the reasonable range of
 4 approval, preliminary approval is granted.” *Bourlas v. Davis Law Associates*, 237 F.R.D. 345
 5 (E.D.N.Y.2006). *Id* at 355 (internal citations omitted).

6 The standard by which a proposed settlement is to be evaluated is whether the settlement is
 7 fundamentally fair, adequate and reasonable. FRCP 23(e); *Officers for Justice v. Civil Service*
 8 *Commission of the City and County of San Francisco*, 688 F.2d 615, 625 (9th Cir. 1982). This
 9 determination involves a balancing of factors which may include: “the strength of plaintiffs' case;
 10 the risk, expense, complexity, and likely duration of further litigation; the risk of maintaining class
 11 action status throughout the trial; the amount offered in settlement; the extent of discovery
 12 completed, and the stage of the proceedings; the experience and views of counsel; the presence of
 13 a governmental participant; and the reaction of the Class Members to the proposed settlement.
 14 The relative degree of importance to be attached to any particular factor will depend upon and be
 15 dictated by the nature of the claim(s) advanced, the type(s) of relief sought, and the unique facts
 16 and circumstances presented by each individual case.” *Id.* at 625 (internal citations omitted).

17 **A. The Settlement is the Product of Serious, Informed, Non-collusive**
 18 **Negotiations Conducted by Experienced Counsel**

19 This case has been aggressively and effectively litigated by the parties, as set forth in more
 20 detail in the Procedural History, Section II, *supra*. The parties litigated vigorously through two
 21 motions for preliminary relief, a motion to dismiss and a motion for class certification. Bird Decl.,
 22 ¶ 7. Class counsel include non-profit law firms with national scope and reputation, disability
 23 rights law firms from California and experienced private counsel. *Id.*, ¶ 4. Class counsel
 24 collectively possess decades of experience in the prosecution and settlement of class actions,
 25 claims under the ADA and the Medicaid Act, and the rights of people who are elderly or disabled.
 26 *Id.* Defendants were represented by experienced attorneys general with the California Department
 27 of Justice. In addition, the Chief Counsel of DHCS and other senior lawyers with other executive
 28 agencies participated throughout the settlement negotiations. *Id.*, ¶ 9.

1 In February 2013, on the eve of oral argument, the parties began a new round of
2 negotiations. In addition to numerous telephone calls and email exchanges, the parties met in
3 person on multiple occasions and exchanged written drafts and proposals. Discussions included
4 direct participation of high-level staff and directors from the DHCS, CDSS, the Department of
5 Finance and other state agencies. *Id.*, ¶ 9. The result of these discussions was a term sheet signed
6 on March 17, 2013. Based on this term sheet, counsel for the parties then negotiated the more
7 detailed provisions and attachments to the Settlement Agreement, which was signed on March 27,
8 2013. *Id.* ¶ 10.

9 Throughout this process, virtually every element and phrase in the agreement has been
10 extensively discussed. The parties considered alternative proposals, consulted clients and
11 knowledgeable associates on a daily basis. *Id.* In sum, the settlement is the result of arms-length,
12 informed and non-collusive negotiations.³

13 **B. The Settlement Fairly and Adequately Addresses the Concerns**
14 **Underlying the Litigation and Provides Similar Benefits to All Similarly**
15 **Situated Class Members**

16 Determination of adequacy of a settlement includes assessment of the degree to which the
17 primary concern of plaintiffs in filing the suit is addressed by the proposed agreement. *Officers*
18 *for Justice*, 688 F.2d at 628. The Settlement addresses the concerns that were the basis of
19 Plaintiffs' claims, providing significant relief to the Class, and disposes of all claims filed against
20 Defendants. Plaintiffs brought this suit to challenge drastic reductions in the IHSS program,
21 alleging that these changes would place Class Members at risk of unnecessary institutionalization
22 and violate the ADA and Medicaid Act. The Settlement eliminates the threat of the most severe
23 cuts, replacing this with smaller reductions that, while difficult, are incremental in magnitude and
24 most likely temporary.

25 From Plaintiffs' perspective, a crucial element of the Settlement is State Defendants'

26
27 ³ Significantly, under the proposed settlement, both sides will bear their own fees and costs. Bird
28 Decl., ¶ 12. This eliminates entirely an issue – the question of class counsel's remuneration – that
might otherwise raise the possibility of an improperly collusive settlement.

1 obligation to pursue new revenue sources for the IHSS program through a new assessment on
2 home care services. If approved by the federal government, the savings generated by this new
3 assessment will most likely restore all cuts to the program and allay Class Members' concerns
4 regarding repeated attempts to reduce IHSS benefits to solve state budget shortfalls.

5 The proposed Settlement is also fair in that named plaintiffs and unnamed class members
6 are being treated equally. No plaintiffs – whether named plaintiffs or Class Members – will
7 receive service payments or any money damages. Consequently, in an action such as this for
8 declaratory and injunctive relief, the relief afforded to named plaintiffs is no greater than that
9 afforded to class members as a whole.

10 **C. The Settlement is Reasonable in Light of the Risks of Further**
11 **Litigation and Other Factors**

12 Significant in evaluating the reasonableness of a proposed settlement are the risks at trial
13 for both sides, the costs of continuing the litigation, and the delay and/or preclusion in achieving
14 the favorable results for Class Members that continued litigation, including appeals, would entail.
15 *Officers for Justice*, 688 F.2d at 625. On appeal, Defendants had raised difficult issues regarding
16 standing, ripeness and the 10th Amendment. Had the Court of Appeals concluded that these
17 required a reversal of this Court's preliminary injunction against the 20% cut in IHSS hours,
18 Class Members would have faced devastating reductions and chaotic attempts to navigate through
19 the challenging process for obtaining Supplemental hours under SB 73.

20 As to the Functional Index cuts mandated by ABX4 4, the remand of the state's appeal also
21 posed definite risks to the Class Members. Plaintiffs faced the prospect of extensive discovery
22 directed in part at the circumstances of fragile class representatives and the possibility of a lengthy
23 trial. An adverse decision from the 9th Circuit regarding the appeal of the 20% cuts, depending on
24 the breadth and basis, could potentially have disposed of Plaintiffs' claims regarding ABX4 4 as
25 well. This left open the possibility that both the functional index cuts and the 20% reduction could
26 have been implemented at the same time, resulting in cuts of 50% or more in recipient hours. The
27 settlement completely removes these threats to the health and well-being of class members, and
28 holds the promise for full restoration of all hourly reductions. Consequently, the Settlement is

1 reasonable in light of the magnitude of the risk and the potential consequences for Class members
2 from continued litigation.

3 **V. THE PROPOSED CLASS NOTICE AND PROCEDURE FOR APPROVAL**
4 **ARE APPROPRIATE UNDER FED. RULE OF CIV. PROC. 23(e)(1).**

5 **A. The Proposed Class Notice and Settlement Materials Provides**
6 **Appropriate Information to Class Members in Easily Understandable**
7 **Language.**

8 Rule 23(e)(1) of the Federal Rules of Civil Procedure requires that prior to final approval
9 of a class settlement, “[t]he court must direct notice in a reasonable manner to all class members
10 who would be bound by the proposal.” Generally, notices to class members must be “clearly and
11 concisely state[d] in plain, easily understood language.” Rule 23(c)(2)(B). “Notice is satisfactory
12 if it ‘generally describes the terms of the settlement in sufficient detail to alert those with adverse
13 viewpoints to investigate and to come forward and be heard.’” *Churchill Vill., LLC v. Gen. Elec.*,
14 361 F.3d 566, 575 (9th Cir. 2004) (quoting *Mendoza v. Tucson Sch. Dist. No. 1*, 623 F.2d 1338,
15 1352 (9th Cir. 1980)).

16 The proposed combined class notice for the *Oster* and *Dominguez* classes accomplishes
17 this. See Ex. C-1 to Settlement Agreement. The notice provides a brief description of the case and
18 settlement, and a description of the classes in *Oster* and *Dominguez*. The headings are in bold and
19 plainly describe the different topics covered by the notice. The notice explains how Class
20 Members can obtain a list of Class counsel and a copy of the Settlement Agreement, including a
21 listing of websites on which this information is posted. It provides a toll-free phone number, a
22 P.O. Box and an email for Class Members to contact Class counsel to ask questions or obtain
23 additional information. Finally, the notice also explains how Class Members can exercise their
24 right to object, the deadline for objections and the date, time, and location of the fairness hearing.
25 Moreover, the proposed Class Notice provides this information while remaining with reasonable
26 parameters for readability. As measured by the most commonly-used readability scale, the Flesch-
27 Kincaid grade-level scale, the readability rating for the class notice is 6.2, which is the first quarter
28 of sixth grade. Bird Decl. ¶17.

1 In addition, the Class Notice will be translated into the 13 Medi-Cal threshold languages.
2 Notice Plan, Ex. C-3 to Settlement Agreement. For individuals who need accommodations due to
3 their disabilities, Class counsel will provide the Notice in alternative formats, such as electronic
4 versions, tapes and large print. *Id.*

5 **B. The Process for Distribution of Class Notice is Reasonably Calculated**
6 **to Reach Class Members.**

7 Rule 23(e) provides that, if a court grants preliminary approval, “[t]he court must direct
8 notice in a reasonable manner to all class members who would be bound by the proposal. Fed. R.
9 Civ. P. 23(e)(1). The parties have developed a Plan for Class Notice for both the Oster and
10 Dominguez classes. Ex. C-3 to Settlement Agreement. The Plan for Notice has three
11 components.

12 First, the three-page class notice will be posted to a number of public and non-profit
13 websites that will serve as “portals” to distribute information to IHSS recipients and the larger
14 disability and senior community of which they are a part. Ex. C-3 to Settlement Agreement.
15 Specifically, within 24 hours of Court approval of the form of the notice, CDSS, DHCS and
16 Disability Rights California will post the Class Notice and on their respective websites.
17 Disability Rights California alone receives more than 300,000 “hits” to its website per year, so this
18 alone will ensure broad distribution. Bird Decl., ¶ 21. Other class counsel and a number of union
19 plaintiffs will also post the settlement materials on their respective websites.

20 Second, the settlement materials include a one page flyer or poster suitable for display in a
21 waiting room or other public area. Ex. C-2 to Settlement Agreement. Defendant CDSS will
22 request that county welfare departments and other county agencies as well as state hearing division
23 offices post this flyer in their public areas and make the class notice and Settlement agreement
24 available upon request. Ex. C-3 to Settlement Agreement. DHCS will send a “fax-blast” with the
25 flyer and settlement materials to all Community Based Adult Services (“CBAS”) centers, with a
26 similar request to post the flyer in their common areas. *Id.*

27 Third, the parties have developed an extensive outreach and notice campaign designed to
28 reach virtually every organization involved with elderly and disabled individuals. Through a

1 combination of email distributions, public speaking and presentations, tele-town halls and other
2 means of communication, the parties will enlist more than 25 state and non-profit organizations in
3 distributing the settlement materials. In fact, Class counsel have already begun these outreach
4 presentations and have received advance commitments from several groups to assist with this
5 notice plan. Bird Decl., ¶ 23.

6 In addition to these three means of providing notice, the coordination of the settlements in
7 both *Oster* and *Dominguez* provides an additional avenue for reaching class members. As set
8 forth in the Declaration of Stacey Leyton in Support of Preliminary Approval of Class Settlement
9 in the *Dominguez* case, the labor unions that are organizational plaintiffs in *Dominguez* and *Oster*
10 are preparing for even more robust measures for informing their members about the combined
11 settlement through outreach and mailings which will supplement the plan for notice described
12 above. Most of these members are related to the IHSS recipients for whom they provide services,
13 and those who are not related often enjoy close relationships with recipients, and can facilitate
14 communication regarding the class settlement.

15 **C. Individual Mailed Notice Should Not be Required.**

16 In light of the robust notice scheme described above and given that this case involves a
17 Rule 23(b)(2) class, individualized notice of the proposed settlement to all class members should
18 not be required. Moreover, any negligible benefit gained by providing such notice would be
19 outweighed by the cost and delay that would be incurred.

20 For Rule 23(b)(3) classes, the Rules specifically require individualized notice “to all
21 members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B). This
22 individualized notice is necessary so that class members can exercise their right to opt out. In
23 contrast, for (b)(1) and (b)(2) classes, as to which there is no right to opt out, Rule 23 provides
24 only that “the court may direct appropriate notice to the class.” Fed. R. Civ. P. 23(c)(2)(A). The
25 reason for the different treatment

26 derives from the nature of the relief sought in these actions. Rule 23(b)(1) and
27 (b)(2) classes are cohesive in nature. Because of this cohesiveness, an adequate
28 class representative can, as a matter of due process, bind all absent class members

1 by a judgment. . . . Rule 23(b)(3) classes are less cohesive, and must abide by
2 more stringent due process constraints.

3 *Walsh v. Great Atl. & Pac. Tea Co., Inc.*, 726 F.2d 956, 963 & n.1 (3d Cir. 1983) (citations
4 omitted).

5 Accordingly, “the form of notice of settlement of a Rule 23(b)(1) or (b)(2) class action
6 need only be such as *to bring the proposed settlement to the attention of representative class*
7 *members who may alert the court to inadequacies in representation, or conflicts in interest among*
8 *subclasses*, which might bear upon the fairness of the settlement.” *Id.* at 963 (emphasis added);
9 *see also Handschu v. Special Servs. Div.*, 787 F.2d 828, 833 (2d Cir. 1986) (“Because of the
10 common interests of all its members, a Rule 23(b)(2) class seeking declaratory and injunctive
11 relief is cohesive by nature, and *notice to a representative class membership may be considered*
12 *sufficient.*” (emphasis added; citation omitted)).

13 Courts have thus approved notice of proposed settlements in (b)(1) and (b)(2) cases by
14 means of “publication over a period of weeks in several metropolitan New York newspapers”
15 (*Handschu*, 787 F.2d at 833) and publication in two newspapers and posting in prisons in which
16 potential class members were incarcerated. *Hawker v. Consovoy*, 198 F.R.D. 619, 621 & n.5
17 (D.N.J. 2001).

18 In cases involving public benefits recipients such as this, notice is typically provided by
19 posting on appropriate government websites and dissemination through a community-based and
20 non-profit organizations which work with potential class members. Bird Decl, ¶¶ 26-28
21 (discussing cases). Following the settlement of *Martinez v. Astrue*, a class action lawsuit against
22 the Social Security Administration (“SSA”), this Court approved a plan for class notice that
23 involved extensive outreach to community and public interest advocates as well as posting on
24 SSA’s website, the websites of class counsel and on the websites of many other agencies that
25 assist SSA recipients. Bird Decl., ¶ 27. A similar plan was approved in *Kaplan v. Chertoff*, No.
26 Civ. 06-5304, 2008 WL 200108, at *13 (E.D. Pa. Jan. 24, 2008) (class of SSI recipients adversely
27 affected by immigration processing backlogs). In another California class action involving Medi-
28 Cal recipients, a federal court approved a notice plan that required CDSS and DHCS – which are

1 also defendants here - to post the class notice on their website, distribute it to county social
2 services offices, and provide the notice to non-profit agencies that worked with class members.
3 Bird Decl. ¶ 26 (discussing notice in 2011 settlement in *Katie A. v. Bontá*, No. CV-02-05662
4 AHM (SHx)(C.D. Cal., 2002)).

5 The proposed notice plan here, like the plans approved in the above cases, is designed to
6 reach a substantial number of class members and will amply ensure awareness of the settlement by
7 “representative class members” who will be able to inform the Court of any perceived deficiencies
8 in the settlement—the very purpose of notice in a (b)(2) case.

9 Not only is individualized notice not required, it would be unnecessarily burdensome in
10 this case. First, the cost of providing individualized notice to the hundreds of thousands of class
11 members would be substantial. Bird Decl., ¶ 25. Defendants have consistently claimed severe
12 financial hardship in this case, and the parties agree that the State’s limited resources would be
13 better spent elsewhere (for example, for IHSS recipients). Second, individualized notice would
14 delay the settlement approval process. State Defendants have informed Plaintiffs that it would
15 take approximately thirty days to send out individualized notices. *Id.* In contrast, the proposed
16 notice plan would post notice the day after preliminary approval is granted. Because
17 implementation of the proposed settlement must be coordinated with the rapidly-approaching
18 timelines of the State’s budget process, and the July 1 deadline for implementation of the 8% cut
19 provided for in the Settlement Agreement, this thirty-day delay in the settlement approval process
20 could impede the settlement. Therefore, the cost and delay involved in providing individualized
21 notice weigh strongly in favor of the proposed notice plan. *See Kaplan*, 2008 WL 200108, at *13
22 (approving notice plan without individualized notice in part because the delay required by
23 individualized notice would be contrary to “the time-sensitive nature of this case”).

24 In sum, individualized notice of the proposed settlement to all class members should not be
25 required.

26 **D. The Settlement Approval Process Provides Adequate Opportunity for**
27 **Class Members to Raise Objections or Comment on the Settlement.**

28 The Class Notice describes the process for raising objections and provides the addresses to

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