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 9 David Maxwell-Jolly, Director of Department
 of Health Care Services of the State of
 10 California

11 IN THE UNITED STATES DISTRICT COURT
 12 FOR THE CENTRAL DISTRICT OF CALIFORNIA
 13 WESTERN DIVISION

14 MANAGED PHARMACY CARE, a
 15 California corporation; INDEPENDENT
 LIVING CENTER OF SOUTHERN
 16 CALIFORNIA, INC., a California
 corporation; GERALD SHAPIRO,
 17 Pharm.D., doing business as Uptown
 Pharmacy & Gift Shoppe; SHARON
 18 STEEN, doing business as Central
 Pharmacy; and TRAN PHARMACY,
 19 INC., a California corporation,

20 Plaintiffs,

21 v.

22 DAVID MAXWELL-JOLLY, Director of
 Department of Health Care Services of the
 23 State of California,

24 Defendant.

CV09-0382-CAS (MANx)

**DEFENDANT'S ANSWER TO
 COMPLAINT**

Courtroom: 5
 Judge: The Honorable
 Christina A. Snyder
 Trial Date: TBA
 Action Filed: 1/16/2009

26 COMES NOW, Defendant David Maxwell-Jolly, Director of the Department of
 27 Health Care Services (the Department), and in responding to the Complaint in the above-
 28 captioned action, admits, denies, and alleges as follows:

1 1. In response to the allegations contained in paragraph 1 of the
2 Complaint, the Department admits the allegations.

3 2. In response to the allegations contained in paragraph 2 of the
4 Complaint regarding 28 U.S.C. § 1331, the Department admits the allegations. In
5 response to the allegations contained in paragraph 2 regarding *Shaw v. Delta Air*
6 *Lines Inc.*, 463 U.S. 85, 96 n.4 (1983), the Department denies the allegations.

7 3. In response to the allegations contained in the first sentence of
8 paragraph 3 of the Complaint, the Defendant admits that the 5% reduction under
9 Assembly Bill (AB) 1183 in reimbursement rates to providers of pharmacy
10 services would apply to providers in all parts of the state of California, including
11 the County of Los Angeles. In response to the remaining allegations contained in
12 the first, second, and third sentences of paragraph 3, the Department denies
13 Plaintiffs have been, or will be injured. In response to the allegations contained in
14 the final sentence of paragraph 3, the Department admits that it has an office in
15 Los Angeles.

16 4. In response to the allegations contained in paragraph 4 of the
17 Complaint, the Department lacks sufficient information or belief to enable it to
18 admit or deny the allegations contained therein, and on that basis, denies generally
19 and specifically said allegations.

20 5. In response to the allegations contained in paragraph 5(a) of the
21 Complaint, the Department lacks sufficient information or belief to enable it to
22 admit or deny the allegations contained therein, and on that basis, denies generally
23 and specifically said allegations. In response to the allegations contained in
24 paragraph 5(b), the Department lacks sufficient information or belief to enable it
25 to admit or deny the allegations contained therein, and on that basis, denies
26 generally and specifically said allegations.

27 6. In response to the allegations contained in paragraph 6(a) of the
28 Complaint, the Department lacks sufficient information or belief to enable it to

1 admit or deny the allegations contained therein, and on that basis, denies generally
2 and specifically said allegations. In response to the allegations contained in
3 paragraph 6(b), the Department admits the allegations contained therein.

4 7. In response to the allegations contained in paragraph 7(a) of the
5 Complaint, the Department lacks sufficient information or belief to enable it to
6 admit or deny the allegations contained therein, and on that basis, denies generally
7 and specifically said allegations. In response to the allegations contained in
8 paragraph 7(b), the Department admits the allegations contained therein.

9 8. In response to the allegations contained in paragraph 8(a) of the
10 Complaint, the Department lacks sufficient information or belief to enable it to
11 admit or deny the allegations contained therein, and on that basis, denies generally
12 and specifically said allegations. In response to the allegations contained in
13 paragraph 8(b), the Department admits the allegations contained therein.

14 9. In response to the allegations contained in paragraph 9(a) of the
15 Complaint, the Department admits the allegations contained therein. In response
16 to the allegations contained in the first, third, and fourth sentences in paragraph
17 9(b), the Department admits the allegations contained therein. In response to the
18 second sentence of paragraph 9(b) regarding Welfare and Institutions Code
19 sections 14100.1 and 14105, the statutes speak for themselves and therefore, the
20 allegations regarding them do not require admission or denial. To the extent a
21 response is required, the Department denies each and every allegation.

22 10. In response to the allegations contained in paragraph 10 of the
23 Complaint, the Department denies each and every allegation.

24 11. In response to the allegations contained in paragraph 11 of the
25 Complaint, the Department denies each and every allegation.

26 12. In response to the allegations contained in paragraph 12 of the
27 Complaint, the Department denies each and every allegation.

28 13. In response to the allegations contained in paragraph 13 of the

1 Complaint, the Department admits that the intent of the Medi-Cal program is to
2 provide, to the extent practicable, health care for those persons who are eligible for
3 benefits under the statutes and regulations governing the Medi-Cal program. In
4 response to the remaining allegations contained in paragraph 13, except as
5 expressly admitted, the Department denies the allegations contained therein.

6 14. In response to the allegations contained in paragraph 14 of the
7 Complaint, Defendant refers to and incorporates each of the responses in the
8 preceding paragraphs of this Answer as if fully set forth herein.

9 15. In response to the allegations contained in paragraph 15 of the
10 Complaint regarding AB 1183, the Department asserts that AB 1183 speaks for
11 itself and therefore, the allegations regarding it do not require admission or denial.
12 To the extent a response is required, the Department denies each and every
13 allegation.

14 16. In response to the allegations contained in paragraph 16 of the
15 Complaint regarding AB 1183, the Department asserts that AB 1183 and its
16 legislative history speak for themselves and therefore, the allegations regarding
17 them do not require admission or denial. To the extent a response is required, the
18 Department denies each and every allegation.

19 17. In response to the allegations contained in paragraph 17 of the
20 Complaint regarding the legislative history, the Department asserts that AB 1183
21 and its legislative history speak for themselves and therefore, the allegations
22 regarding them do not require admission or denial. To the extent a response is
23 required, the Department denies each and every allegation.

24 18. In response to the allegations contained in paragraph 18 of the
25 Complaint, the Department denies each and every allegation.

26 19. In response to the allegations contained in paragraph 19 of the
27 Complaint, the Department denies each and every allegation.

28 20. In response to the allegations contained in paragraph 20 of the

1 Complaint, the Department denies each and every allegation.

2 21. In response to the allegations contained in paragraph 21 of the
3 Complaint, the Department denies each and every allegation.

4 22. In response to the allegations contained in paragraph 22 of the
5 Complaint, the Department denies each and every allegation.

6 23. In response to the allegations contained in paragraph 23 of the
7 Complaint, Defendant refers to and incorporates each of the responses in the
8 preceding paragraphs of this Answer as if fully set forth herein.

9 24. In response to the allegations contained in paragraph 24 of the
10 Complaint, the Department denies each and every allegation.

11 25. In response to the allegations contained in paragraph 25 of the
12 Complaint, the Department denies each and every allegation.

13 26. In response to the allegations contained in paragraph 26 of the
14 Complaint, the Department denies each and every allegation.

15 27. In response to the allegations contained in paragraph 27 of the
16 Complaint, the Department denies each and every allegation.

17 28. In response to the allegations contained in paragraph 28 of the
18 Complaint, the Department denies each and every allegation.

19 **AFFIRMATIVE DEFENSES**

20 **FIRST AFFIRMATIVE DEFENSE**

21 As a first affirmative defense, Defendant asserts that Plaintiffs have failed
22 to state a claim upon which relief may be granted.

23 **SECOND AFFIRMATIVE DEFENSE**

24 As a second affirmative defense, Defendant asserts that the Complaint
25 fails to state a claim of relief under 42 U.S.C. § 1396a.

26 **THIRD AFFIRMATIVE DEFENSE**

27 As a third affirmative defense, because the Complaint is couched in
28 conclusory terms, the Department cannot anticipate fully all affirmative defenses

1 that may be applicable to this matter. Accordingly, the Department hereby
2 reserves the right to assert additional affirmative defenses, if and to the extent such
3 affirmative defenses are applicable.

4 **FOURTH AFFIRMATIVE DEFENSE**

5 As a fourth affirmative defense, Defendant asserts that this action is
6 barred by Defendant's Sovereign Immunity from suit.

7 **FIFTH AFFIRMATIVE DEFENSE**

8 As a fifth affirmative defense, Defendant asserts that this action is barred
9 by the Eleventh Amendment to the United States Constitution.

10 **SIXTH AFFIRMATIVE DEFENSE**

11 As a sixth affirmative defense, Defendant asserts that they did not deprive
12 Plaintiffs of any right, privilege, or immunity guaranteed by the United States
13 Constitution or laws of the United States.

14 **SEVENTH AFFIRMATIVE DEFENSE**

15 As a seventh affirmative defense, Defendant asserts that they did not
16 deprive Plaintiffs of any right, privilege, or immunity guaranteed by the California
17 Constitution or laws of the State of California.

18 **EIGHTH AFFIRMATIVE DEFENSE**

19 As an eighth affirmative defense, Defendant asserts that all causes of
20 action in the Complaint are barred by the doctrine of absolute immunity.

21 **NINTH AFFIRMATIVE DEFENSE**

22 As a ninth affirmative defense, Defendant asserts that this action is barred
23 by the doctrine of Separation of Powers.

24 **TENTH AFFIRMATIVE DEFENSE**

25 As a tenth affirmative defense, Defendant asserts that Plaintiffs lack
26 standing to bring this Complaint.

27 **ELEVENTH AFFIRMATIVE DEFENSE**

28 As an eleventh affirmative defense, Defendant asserts that Plaintiffs lack

1 standing to bring this Complaint on behalf of third parties or unnamed parties.

2 **TWELFTH AFFIRMATIVE DEFENSE**

3 As a twelfth affirmative defense, Defendant asserts that the Legislature
4 has no duty to study rates under 42 U.S.C. § 1396a(a)(30)(A).

5 **THIRTEENTH AFFIRMATIVE DEFENSE**

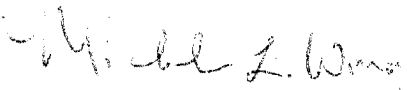
6 As a thirteenth affirmative defense, Defendant asserts that Plaintiffs lack
7 the right to file a Supremacy Clause action without a federal right.

8 WHEREFORE, Defendant prays for judgment as follows:

- 9 1. That judgment issue in favor of Defendant and against Plaintiffs;
- 10 2. That Plaintiffs take nothing by this action;
- 11 3. That Defendant be awarded his costs of suit; and
- 12 4. That Defendant be awarded such other and further relief that the
13 Court deems just and proper.

14 Dated: February 19, 2009

15 Respectfully submitted,
 16 EDMUND G. BROWN JR.
 Attorney General of the State of
 17 California
 RICHARD T. WALDOW
 18 JENNIFER M. KIM
 Supervising Deputy Attorneys General
 19 JESSE A. CARDENAS
 MICHELE WONG
 20 ERIC D. BATES
 Deputy Attorneys General

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 23 MICHELE WONG
 Deputy Attorney General

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25 Attorneys for Defendant

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DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **Managed Pharmacy Care, et al. v. Maxwell-Jolly, D., et al.**

USDC Case No.: **2:09-CV-00382-CAS-MAN**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

On February 19, 2009, I served the attached **DEFENDANT'S ANSWER TO COMPLAINT** by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Los Angeles, California, addressed as follows:

Lynn S. Carman, Esq.
Medicaid Defense Fund
28 Newport Landing Dr.
Novato, CA 94949-8214

Stanley L. Friedman, Esq.
445 S. Figueroa St. 27th Floor
Los Angeles, CA 90071-1631

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on February 19, 2009, at Los Angeles, California.

M. Chacon

Declarant



Signature