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9 Attorneys for Plaintiffs

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

12 MIKESHA MARTINEZ, by and through her )  
husband and next friend Carlos Martinez, LYDIA )  
13 DOMINGUEZ, ALEX BROWN, by and through )  
his mother and next friend Lisa Brown, DONNA )  
14 BROWN, CHLOE LIPTON, by and through her )  
conservator and next friend Julie Weissman- )  
15 Steinbaugh, HERBERT M. MEYER, LESLIE )  
GORDON, CHARLENE AYERS, WILLIE )  
16 BEATRICE SHEPPARD, and ANDY )  
MARTINEZ, on behalf of themselves and a class )  
17 of those similarly situated; SERVICE )  
EMPLOYEES INTERNATIONAL UNION )  
18 UNITED HEALTHCARE WORKERS WEST; )  
SERVICE EMPLOYEES INTERNATIONAL )  
19 UNION UNITED LONG-TERM CARE )  
WORKERS; SERVICE EMPLOYEES )  
20 INTERNATIONAL UNION LOCAL 521; and )  
SERVICE EMPLOYEES INTERNATIONAL )  
21 UNION CALIFORNIA STATE COUNCIL, )

22 Plaintiffs, )

23 v. )

24 ARNOLD SCHWARZENEGGER, Governor of )  
the State of California; JOHN A. WAGNER, )  
25 Director of the California Department of Social )  
Services; DAVID MAXWELL-JOLLY, Director )  
26 of the California Department of Health Care )  
Services; JOHN CHIANG, California State )  
27 Controller; FRESNO COUNTY; and FRESNO )  
COUNTY IN-HOME SUPPORTIVE SERVICES )  
28 PUBLIC AUTHORITY, )

Defendants. )

Case No. C 09-02306 CW

**PLAINTIFFS' OBJECTIONS TO STATE  
DEFENDANTS' EVIDENCE IN  
SUPPORT OF OPPOSITION TO  
MOTION FOR A PRELIMINARY  
INJUNCTION**

DATE: June 25, 2009  
TIME: 2:00 PM  
COURTROOM: No. 2

1 Plaintiffs Mikesha Martinez, et al. hereby assert the following objections to the evidence  
 2 submitted by Defendants Arnold, John A. Wagner, and David Maxwell-Jolly (collectively “State  
 3 Defendants”).

4 Plaintiffs acknowledge that “[t]he exigencies of preliminary relief often prevent the movant from  
 5 procuring supporting evidence in a form that would meet Rule 56(e)’s requirement of evidence  
 6 admissible at trial,” that such exigencies may also constrain a party opposing such a motion, and that  
 7 “[s]uch evidence may yet be considered by the court, which has discretion to weight the evidence as  
 8 required to reflect its reliability.” *Dr. Seuss Enterprises v. Penguin Books USA, Inc.*, 924 F. Supp. 1559,  
 9 1562 (S.D. Cal. 1996). But evidence that is *irrelevant*, as opposed to merely unreliable, should not  
 10 factor into the Court’s consideration at all, even on a motion for a preliminary injunction. Further,  
 11 testimony about matters that are not within the witness’s personal knowledge or competence, and so  
 12 where the witness has no reliable testimony to offer, should also be excluded. Plaintiffs’ objections thus  
 13 go to both the admissibility and the weight that should be afforded the following evidence based on  
 14 whether it would be relevant or reliable at trial.

15 **Eileen Carroll Declaration (Doc. 97)**

Paragraph/ Exhibit	Grounds for Objection
Entirety	<p>17 <u>Not sufficiently supported under Fed. R. Evid. 602, 701;</u>            18 <u>inadmissible hearsay under Fed. R. Evid. 801, 802.</u> In            19 Paragraph 17, Ms. Carroll states that her declaration is            20 based, at least in part, on “information obtained by CDSS            21 staff, which I am informed and therefore believe to be            22 true.” Ms. Carroll does not establish what information            23 that is, why she believes it to be true, and whether that            24 information would be independently admissible if it were            properly authenticated (which it is not). Ms. Carroll fails            to describe which portions of her declaration rely upon            such information. Therefore, her entire declaration is            inadmissible because it is based on materials (a) that            constitute inadmissible hearsay, (b) about which Ms.            Carroll has provided no foundation, and (c) regarding            which she lacks personal knowledge.</p>

<p>¶11 (“As of June 30, 2007, there were in excess of 14,500 active persons in the registry.”)</p>	<p><u>Not sufficiently supported under Fed. R. Evid. 602, 701; irrelevant under Fed. R. Evid. 401, 402.</u> Ms. Carroll does not establish the foundation for her conclusion that there are over 14,500 “active persons” in the registry; nor does she explain her understanding of the term “active” in this context. Without additional explanation, her statement in this regard is overly vague, irrelevant, and without foundation.</p>
<p>¶14 (“CDSS believes that the supply of providers will remain fairly constant . . . .”; “California’s Employment Development Department projects significant growth in the Personal and Home Care Aides profession, and estimates that this field will increase by more than 27% over the next seven years, adding some 12,500 positions annually. EDD also projects that with [<i>sic</i>] the aging of the ‘baby boom’ population of persons over 65 years of age will nearly double by the year 2020, thus providing a growing population of recipients to match the increasing number of potential service providers. Although the near-11% unemployment rate from which California now suffers is distressing, EDD has suggested that the supply of current and potential service providers will remain fairly high.”)</p>	<p><u>Not sufficiently supported under Fed. R. Evid. 602, 701, 702; inadmissible hearsay under Fed. R. Evid. 801, 802; absence of original under Fed. R. Evid. 1002.</u> Ms. Carroll provide no foundation for her ability to state the beliefs of CDSS, a state agency, nor does she establish her personal knowledge of the agency’s beliefs (even if it could have “beliefs” in any meaningful way). Ms. Carroll has not established that she is qualified to give an expert opinion forecasting the supply of providers.</p> <p>Ms. Carroll provides no foundation for her representation regarding, and lacks personal knowledge of, the EDD forecasts contained in her declaration. Ms. Carroll has not established that she is qualified to give expert testimony regarding such matters.</p> <p>Ms. Carroll’s testimony regarding EDD forecasts is irrelevant and she has not produced the EDD forecasts or pointed to where they may be found. Even assuming that she is reporting the EDD forecasts accurately, her characterization makes it impossible to tell whether the increase in “this field” refers to increases in providers or jobs. (Plaintiffs submit that their review of publicly available EDD data suggests it is the latter.)</p>
<p>¶16 (“Neither Medicare nor any private insurer provide for all these services, nor do they provide for up to 283 per month per recipient for the services they do provide. With the exception of a few waiver programs, the IHSS program provides the broadest range and amount of services to the elderly and disabled in California: there is nothing available to the general population of the state through Medicare or private insurance that compares in quality and quantity to what recipients of IHSS services receive.”)</p>	<p><u>Not sufficiently supported under Fed. R. Evid. 602, 701, 702; irrelevant under Fed. R. Evid. 401, 402.</u> Ms. Carroll provides absolutely no foundation for her broad statements regarding access to in-home services through Medicare or private insurance. Ms. Carroll’s declaration does not purport to (nor does it) establish her qualifications as an expert in this area.</p> <p>These statements are irrelevant for the additional reason that, with respect to Plaintiffs’ substantive Medicaid claim in this litigation, the relevant comparison is between the access to IHSS services <i>after the wage cap in Section 12306.1(d)(6) is implemented</i> and what is available to the general population in the geographic area. Access <i>currently</i> available under IHSS does not bear on this analysis. Moreover, the relevant comparison is not between the IHSS services that might theoretically be available under the program (which is as much as Ms. Carroll’s declaration establishes), but which IHSS services are available as a practical matter.</p>

**Toby Douglas Declaration (Doc. 98)**

<b><u>Paragraph/ Exhibit</u></b>	<b><u>Grounds for Objection</u></b>
¶5 (“Another option would be for the Legislature to eliminate Medi-Cal coverage of option services that California currently provides, but that federal law does not require.”)	Not sufficiently supported under Fed. R. Evid. 602, 701, 702. Mr. Douglas has not established his personal knowledge regarding what federal law requires, nor has he established his qualifications as an expert in this regard.

**Timothy T. Brown Declaration (Doc. 96)**

<b><u>Paragraph/ Exhibit</u></b>	<b><u>Grounds for Objection</u></b>
Entirety	<u>Improper or irrelevant expert testimony under Fed. R. Evid. 702.</u> See Supplemental Declaration of Dr. Candace Howes.

Dated: June 19, 2009

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