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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
COUNTY DEFENDANTS' EVIDENCE
IN SUPPORT OF COUNTY'S
OPPOSITION TO MOTION FOR A
PRELIMINARY INJUNCTION**

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

1 Mikesha Martinez, et al. hereby assert the following objections to the evidence submitted by
 2 Defendants County of Fresno and Fresno County In-Home Supportive Services Public Authority
 3 (collectively, “the County”).

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 **Request for Judicial Notice (Doc. 88)**

Paragraph/ Exhibit	Grounds for Objection
Ex. A to Defendants’ Request for Judicial Notice (SEIU, “UHW Fresno Election Backgrounder”)	<u>Irrelevant under Fed. R. Evid. 401, 402.</u> Process for IHSS workers' selection of bargaining representative is not relevant to any factual or legal issue here.

19 **Catherine Basham Declaration (Doc. 89)**

Paragraph/ Exhibit	Grounds for Objection
¶¶ 2-3, Exs. A (“Memorandum of Understanding between SEIU-UHW West United Healthcare Workers Union and Fresno County IHSS Public Authority”) & B (Correspondence between the County and SEIU-UHW regarding a “Contingency Article” in the “Memorandum of Understanding”)	<u>Irrelevant under Fed. R. Evid. 401, 402.</u> Contents of private MOU between union representing IHSS workers and Fresno County IHSS Public Authority have no relevance to any factual or legal issue here.

<p>¶ 4, Ex. C (“Fact-Finding Pursuant To Collective Bargaining Agreement”)</p>	<p><u>Irrelevant under Fed. R. Evid. 401, 402.</u> Mediator’s evaluation of wage cuts under private MOU has no relevance to any factual or legal issues here.</p> <p><u>Inadmissible hearsay under Fed. R. Evid. 801, 802.</u> Mediator’s findings in Ex. C are offered for the truth of the matters asserted (Defs.’ Mem. in Opp. 4), and are thus inadmissible hearsay.</p>
<p>¶ 9, Ex. H (“Realignment Shortfall Impacting IHSS Provider Wages and Benefits”)</p>	<p><u>Irrelevant under Fed. R. Evid. 401, 402.</u> Justification for, rather than consequences of, proposed wage reduction has no relevance to any factual or legal issue here.</p> <p><u>Inadmissible hearsay under Fed. R. Evid. 801, 802.</u> County’s rationale in Ex. H for proposal are offered for the truth of the matters asserted (Defs.’ Mem. in Opp. 5), and are thus inadmissible hearsay.</p>

Sanja Kovacevic Declaration (Doc. 90)

<u>Paragraph/ Exhibit</u>	<u>Grounds for Objection</u>
<p>¶ 6 (“Fresno County’s wages and benefits were negotiated through an agreement with an assumption that the State maximum wages and benefits would remain at \$12.10.”)</p>	<p><u>Not sufficiently supported under Fed. R. Evid. 602, 701.</u> No basis is provided for Ms. Kovacevic’s assertion; she fails to establish what “assumption[s]” she is talking about or how she knows them, and she fails to establish that she was party to the “negotait[i]ons.” Even if she was present at negotiations, she could only offer an opinion as to her own assumptions, not the County’s, and certainly not the union’s.</p>
<p>¶¶ 6 (“If Fresno County remains at the wage/benefit cost of \$11.10, while the State maximum is reduced to \$10.10, the County would incur an additional \$5,947,265 in costs on an annual basis”), 7 (“[T]he county would still realize increased costs of \$2,081,543 annually”), 8 (“\$5,356,632 is a loss that is attributed to the IHSS program.”), 9 (“Of this discretionary portion, approximately 66% is used for IHSS program costs”), 10 (“[I]n order to transfer money . . . to pay for the cost of maintaining IHSS provider wages, the County must make a finding that a transfer of funds from these programs to Social Services would constitute the most cost-effective use of available resources to maximize client outcomes. This is not reasonably likely.”), 11 (“The largest portion of the Health Realignment</p>	<p><u>Not sufficiently supported under Fed. R. Evid. 602, 701.</u> Data and methodology leading to results or speculation about budgetary calculations are not established, so foundation for personal knowledge of these results is not established.</p>

1 allocation is expended in largely non-
 2 discretionary areas”), 12 (“Mental
 3 Health Realignment funds are utilized to
 4 meet four basic State mandates”), 13
 5 (“If such a plan is not achieved, several
 6 hundred additional county positions and
 7 corresponding critical services would
 8 have to be eliminated in order to balance
 9 expenses and revenues.”), 14 (“[T]he
 10 Governor’s May 14th budget proposal
 11 would reduce services to elderly, children
 12 and needy families in Fresno County by
 13 approximately \$25.8 Million beyond any
 14 reductions that Fresno County has already
 15 included in its budget.”)

16 **Steve Sanchez Declaration (Doc. 91)**

Paragraph/ Exhibit	Grounds for Objection
¶ 5	<p>17 <u>Not sufficiently supported under Fed. R. Evid. 602, 701;</u> 18 <u>irrelevant under Fed. R. Evid. 401, 402.</u> Mr. Sanchez 19 states a conclusion that certain providers on the Registry 20 “are either not working at all or are underemployed” 21 without establishing how he knows this; data showing 22 the portion of providers working fewer than 30 23 hours/week does not establish that they are 24 “underemployed” rather than, e.g., employed elsewhere, 25 and whether their other jobs pay more than \$9.50/hour. 26 Further, Mr. Sanchez asserts that there are 450 “active 27 providers” on the Registry; but he fails to establish how 28 he knows that those who are not working are “active.” Absent such a basis connecting these facts to facts and legal issues here, the data provided are irrelevant.</p>

Dated: June 19, 2009

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By: /s/ Stacey M. Leyton
 Stacey M. Leyton
 Attorneys for Plaintiffs