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7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA
10

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

19 Plaintiffs,

20 v.

21 **ARNOLD SCHWARZENEGGER,**
22 **Governor of the State of California; JOHN**
A. WAGNER, Director of the California
23 **Department of Social Services; DAVID**
24 **MAXWELL-JOLLY, Director of the**
California Department of Health Care
25 **Services; JOHN CHIANG, California State**
Controller; et al,

26 Defendants.
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CV 09-2306 (CW)

**STATE DEFENDANTS' OBJECTIONS TO
ADDITIONAL EVIDENCE FILED BY
PLAINTIFFS IN SUPPORT OF THEIR
REPLY MEMORANDUM RE MOTION
FOR PRELIMINARY INJUNCTION**

Date: June 25, 2009
Time: 2:00 p.m.
Dept: 2
Judge: The Honorable Claudia Wilken
Trial Date: N/A
Action Filed: 5/26/2009

INTRODUCTION

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2 State defendants Arnold Schwarzenegger, Governor of the State of California, John A.
3 Wagner, Director of the California Department of Social Services, and David Maxwell-Jolly,
4 Director of the California Department of Health Care Services, object to the additional and
5 supplemental declarations filed by plaintiffs in conjunction with their reply brief in support of
6 their motion for preliminary injunction. State defendants hereby reserve their right to make other
7 objections in the future in addition to those set forth below. Without waiving any further
8 objections they might assert in the future, State defendants make the following objections to the
9 declarations and exhibits based on, among other grounds, Federal Rules of Evidence 402
10 (irrelevance), 602 (lack of personal knowledge), 701 (improper lay opinion), 702 (improper
11 expert testimony), and 802 (hearsay).

GENERAL OBJECTIONS TO PLAINTIFFS' DECLARATIONS AND EXHIBITS**I. SUPPLEMENTAL AND ADDITIONAL DECLARATIONS BY IN-HOME SUPPORTIVE SERVICES (IHSS) CONSUMERS**

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15 State defendants generally object to the supplemental and additional declarations submitted
16 by IHSS consumers in support of plaintiffs' reply on numerous grounds. Specific objections to
17 the declarations submitted by individual IHSS consumers are set forth in the chart below.

18 State defendants object that portions of the IHSS consumer declarations are irrelevant,
19 particularly with respect to statements regarding registry lists and emergency back-up services,
20 Fed. R. Evid. 402, and speculative, particularly with respect to statements regarding what might
21 happen if proposed cuts in provider wages are implemented. In addition, portions of the
22 declarations are based on hearsay, Fed. R. Evid. 802, lack foundation, and include improper lay
23 opinion. Fed. R. Evid. 701.

II. DECLARATION BY ADDITIONAL IHSS PROVIDER

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25 State defendants generally object to the declaration and exhibit submitted by IHSS provider
26 Anthony Mesaris, Sr., in support of plaintiffs' reply. In general, portions of the declaration and
27 the exhibit are objectionable because they are irrelevant, Fed. R. Evid. 402, speculative, and
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1 based on hearsay. Fed. R. Evid. 802. Specific objections to the declaration and exhibit are set
2 forth in the chart below.

3 **III. DECLARATIONS BY FORMER COUNTY PUBLIC AUTHORITY EMPLOYEES**

4 State defendants generally object to the declarations submitted by former employees of the
5 Alameda County Public Authority and the Solano County Public Authority. State defendants
6 object that portions of the declarations regarding the counties' emergency back-up and registry
7 programs are irrelevant. Fed. R. Evid. 402. The declarations also lack foundation, assume facts
8 not in evidence, are conclusory, speculative, lack personal knowledge, and include improper lay
9 opinion. Fed. R. Evid. 701. Specific objections to these two declarations are set forth in the
10 chart below.

11 **IV. SUPPLEMENTAL DECLARATION SUBMITTED BY SERVICE EMPLOYEES 12 INTERNATIONAL UNION (SEIU) EMPLOYEE**

13 State defendants also generally object to the Supplemental Declaration submitted by SEIU
14 employee Dionne Jimenez. As set forth in the chart below, the portions of the declaration
15 focused on insurance coverage for homecare services are irrelevant. Fed. R. Evid. 402.

16 **V. DECLARATION BY CALIFORNIA HEALTH ADVOCATES EMPLOYEE DONNIE BURNS**

17 State defendants further generally object to the declaration submitted by California Health
18 Advocates Employee Donnie Burns. As set forth in the chart below, the declaration, which is
19 focused on long-term care insurance and other private insurance, is irrelevant. Fed. R. Evid. 402.

20 **VI. SUPPLEMENTAL DECLARATION BY PLAINTIFFS' EXPERT CANDACE HOWES**

21 State defendants generally object to the supplemental declaration which plaintiffs' expert,
22 Dr. Candace Howes, submitted in support of plaintiffs' reply memorandum, on the ground that
23 the statements and opinions in Dr. Howes' declaration do not meet the standards of Federal Rule
24 of Evidence 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 589-593
25 (1993). Federal Rule of Evidence 702 sets forth the requirements for expert testimony to be
26 admissible, including that the testimony be both relevant and reliable. Rule 702 was amended in
27 2000 in response to *Daubert*, 509 U.S. at 589-593, in which the Supreme Court ruled that trial
28 judges must act as gatekeepers to exclude unreliable and irrelevant expert scientific testimony,

1 and cases interpreting *Daubert*, such as *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 147-149
 2 (1999), which held that the *Daubert* rule applies to all expert testimony, not merely testimony
 3 based in science. *United States v. Dukagjini*, 326 F.3d 45, 52, n.2 (2nd Cir. 2003).

4 Dr. Howes' supplemental declaration purports to respond to the declaration submitted by
 5 State defendants' expert, Timothy T. Brown, Ph.D. However, the supplemental declaration fails
 6 to adequately rebut the points set forth in Dr. Brown's declaration, which explained that
 7 Dr. Howes' declaration is filled with methodological errors, and therefore the conclusions drawn
 8 from her analysis are invalid and unreliable. Declaration of Timothy T. Brown, Ph.D., ¶¶ 5, 7.
 9 Accordingly, Dr. Howes' declaration is not admissible. Fed. R. Evid. 702; *Daubert*, 509 U.S. at
 10 589-593. The declaration is also irrelevant, Fed. R. Evid. 402, speculative, lacks foundation, and
 11 assumes facts not in evidence. Specific objections to the declaration are set forth in the chart
 12 below.

13 SPECIFIC OBJECTIONS TO DECLARATIONS AND EXHIBITS

14 State defendants incorporate by reference the above general objections and further object as
 15 follows:

17 DECLARATION SUBMITTED BY PLAINTIFFS	18 PARAGRAPH & LINE NUMBER	19 GROUNDS FOR OBJECTION
20 IHSS CONSUMER DECLARATIONS		
21 Curt Austin	¶¶ 4-5	Irrelevant (Fed. R. Evid. 402)
	¶¶ 6-8	Speculative; hearsay (Fed. R. Evid. 802)
22 Carlos Martinez	¶¶ 3-5	Irrelevant (Fed. R. Evid. 402); hearsay (Fed. R. Evid. 802); lacks foundation
23 Carmen Rivera -Hendrickson	¶¶ 4-5	Irrelevant (Fed. R. Evid. 402); hearsay (Fed. R. Evid. 802); lacks foundation
24 Pamela Tiedt	¶¶ 2, 4, 5	Irrelevant (Fed. R. Evid. 402); lacks foundation; improper lay opinion (Fed. R. Evid. 701)

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2	IHSS PROVIDER DECLARATION		
3	Anthony Mesaris, Sr.	¶ 2, Exh. A	Speculative; Irrelevant (Fed. R. Evid. 402)
4		¶¶ 4-5	Irrelevant (Fed. R. Evid. 402); hearsay (Fed. R. Evid. 802)
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6	COUNTY PUBLIC AUTHORITY FORMER EMPLOYEE DECLARATIONS		
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9	Lauren Rolfe	¶¶ 2-5	Irrelevant (Fed. R. Evid. 402); lacks foundation; assumes facts not in evidence, conclusory; speculative
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11			
12	Richard Soohoo	¶ 2-6	Irrelevant (Fed. R. Evid. 402)
13		¶ 7	Speculative
14		¶ 8	Speculative; improper lay opinion (Fed. R. Evid. 701); lacks foundation; lacks personal knowledge
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16	SUPPLEMENTAL SEIU EMPLOYEE DECLARATION		
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18			
19	Dionne Jimenez	¶¶ 8-9	Irrelevant (Fed. R. Evid. 402)
20			
21	HEALTH ADVOCATES EMPLOYEE DECLARATION		
22	Donnie Burns	Entire Declaration	Irrelevant (Fed. R. Evid. 402)
23			
24	SUPPLEMENTAL EXPERT DECLARATION		
25	Candace Howes	Entire Declaration	Improper expert testimony (Fed. R. Evid. 702/ <i>Daubert v. Merrell Dow Pharmaceuticals, Inc.</i> , 509 U.S. 579 (1993)) (<i>see</i> Declaration of Timothy T. Brown, Ph.D., in Support of
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		Opposition to Motion for Preliminary Injunction); irrelevant (Fed. R. Evid. 402); speculative; lacks foundation; assumes facts not in evidence
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CONCLUSION

For the foregoing reasons, State defendants object to the admissibility of certain portions of the declarations and evidence submitted by plaintiffs in conjunction with their reply in support of the motion for preliminary injunction, and respectfully request that the above-referenced portions of the declarations be stricken.

Dated: June 24, 2009.

Respectfully Submitted,
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/s/ Susan M. Carson

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