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(SPACE BELOW FOR FILING STAMP ONLY)

6 Attorneys for Defendants COUNTY OF FRESNO and
7 FRESNO COUNTY IN-HOME SUPPORTIVE
8 SERVICES PUBLIC AUTHORITY

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO/OAKLAND DIVISION

12 SIA CHUE YANG, et al.,
13 Plaintiffs,

14 v.

15 ARNOLD SCHWARZENEGGER,
16 Governor of the State of California; JOHN
17 A. WAGNER, Director of the California
18 Department of Social Services; DAVID
19 MAXWELL-JOLLY, Director of the
20 California Department of Health Care
21 Services; JOHN CHIANG, California State
22 Controller; FRESNO COUNTY; and
23 FRESNO COUNTY IN-HOME
24 SUPPORTIVE SERVICES PUBLIC
25 AUTHORITY,

26 Defendants.

Case No. C 09-02306 CW

**ANSWER OF FRESNO COUNTY AND
FRESNO COUNTY IN-HOME
SUPPORTIVE SERVICES PUBLIC
AUTHORITY TO PLAINTIFFS' FIRST
AMENDED COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF AND DEMAND FOR JURY
TRIAL**

23 Come now, Defendants FRESNO COUNTY and FRESNO COUNTY IN-HOME
24 SUPPORTIVE SERVICES PUBLIC AUTHORITY (hereinafter "Fresno County"), and
25 responding to Complaint for Declaratory and Injunctive Relief (hereinafter referred to as
26 "Complaint") in the above-captioned action, admit, deny, and allege as follows:

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28 ///

INTRODUCTION

1
2 1. In answer to Paragraph 1 of Plaintiffs' Complaint, to the extent it contains legal
3 conclusions, no admission or denial is required. Except as so limited, Fresno County lacks
4 sufficient knowledge or information to form a belief as to the truth of the allegations contained
5 therein and, on that basis, denies them.

6 2. In response to paragraph 2, Fresno County lacks sufficient knowledge or
7 information to form a belief as to the truth of the allegations contained therein and, on that basis,
8 denies them.

9 3. In response to paragraph 3, Fresno County responds that Welfare and Institutions
10 Code section 12306.1(d)(6) speaks for itself, but to the extent that it would be possible to respond
11 to the allegations stated or implied therein, Fresno County denies them.

12 4. In answer to Paragraph 4 of Plaintiffs' Complaint, to the extent it contains legal
13 conclusions, no admission or denial is required. Except as so limited, Fresno County lacks
14 sufficient knowledge or information to form a belief as to the truth of the allegations contained
15 therein and, on that basis, denies them.

16 5. In answer to Paragraph 5 of Plaintiffs' Complaint, to the extent it contains legal
17 conclusions, no admission or denial is required. Except as so limited, Fresno County lacks
18 sufficient knowledge or information to form a belief as to the truth of the allegations contained
19 therein and, on that basis, denies them.

20 6. In answer to Paragraph 6 of Plaintiffs' Complaint, to the extent it contains legal
21 conclusions, no admission or denial is required. Except as so limited, Fresno County lacks
22 sufficient knowledge or information to form a belief as to the truth of the allegations contained
23 therein and, on that basis, denies them.

JURISDICTION

24
25 7. In response to paragraph 7, Fresno County admits that Plaintiffs have filed this
26 action under the listed provisions of law.

27 8. In response to paragraph 8, Fresno County admits that this Court has subject
28 matter jurisdiction under the mentioned statutes.

1 9. In answer to Paragraph 9 of Plaintiffs' Complaint, to the extent it contains legal
2 conclusions, no admission or denial is required.

3 **VENUE**

4 10. In answer to Paragraph 10 of Plaintiffs' Complaint, to the extent it contains legal
5 conclusions, no admission or denial is required. Except as so limited, Fresno County lacks
6 sufficient knowledge or information to form a belief as to the truth of the allegations contained
7 therein and, on that basis, denies them. Further, Fresno County contends that venue is proper, as
8 to the claims asserted against it, in the Eastern District of California.

9 **INTRADISTRICT ASSIGNMENT**

10 11. In answer to Paragraph 11 of Plaintiffs' Complaint, to the extent it contains legal
11 conclusions, no admission or denial is required. Except as so limited, Fresno County lacks
12 sufficient knowledge or information to form a belief as to the truth of the allegations contained
13 therein and, on that basis, denies them. Further, Fresno County contends that venue is proper, as
14 to the claims asserted against it, in the Eastern District of California.

15 12. In response to Paragraph 12, Fresno County lacks sufficient information or belief
16 to enable it to admit or deny the allegations contained therein, and on that basis, denIES generally
17 and specifically the allegations.

18 13. In response to Paragraph 13, Fresno County lacks sufficient information or belief
19 to enable it to admit or deny the allegations contained therein, and on that basis, denies generally
20 and specifically the allegations.

21 14. In response to Paragraph 14, Fresno County lacks sufficient information or belief
22 to enable it to admit or deny the allegations contained therein, and on that basis, denies generally
23 and specifically the allegations.

24 15. In response to Paragraph 15, Fresno County lacks sufficient information or belief
25 to enable it to admit or deny the allegations contained therein, and on that basis, denies generally
26 and specifically the allegations.

27 16. In response to Paragraph 16, Fresno County lacks sufficient information or belief
28 to enable it to admit or deny the allegations contained therein, and on that basis, denies generally

1 and specifically the allegations.

2 17. In response to Paragraph 17, Fresno County lacks sufficient information or belief
3 to enable it to admit or deny the allegations contained therein, and on that basis, denies generally
4 and specifically the allegations.

5 18. In response to Paragraph 18, Fresno County lacks sufficient information or belief
6 to enable it to admit or deny the allegations contained therein, and on that basis, denies generally
7 and specifically the allegations.

8 19. In response to Paragraph 19, Fresno County lacks sufficient information or belief
9 to enable it to admit or deny the allegations contained therein, and on that basis, denies generally
10 and specifically the allegations.

11 20. In response to Paragraph 20, Fresno County lacks sufficient information or belief
12 to enable it to admit or deny the allegations contained therein, and on that basis, denies generally
13 and specifically the allegations.

14 21. In response to Paragraph 21, Fresno County lacks sufficient information or belief
15 to enable it to admit or deny the allegations contained therein, and on that basis, denies generally
16 and specifically the allegations.

17 22. In response to Paragraph 22, Fresno County lacks sufficient information or belief
18 to enable it to admit or deny the allegations contained therein, and on that basis, denies generally
19 and specifically the allegations.

20 23. In response to Paragraph 23, Fresno County lacks sufficient information or belief
21 to enable it to admit or deny the allegations contained therein, and on that basis, denies generally
22 and specifically the allegations.

23 24. In response to Paragraph 24, Fresno County lacks sufficient information or belief
24 to enable it to admit or deny the allegations contained therein, and on that basis, denies generally
25 and specifically the allegations.

26 25. In response to Paragraph 25, Fresno County lacks sufficient information or belief
27 to enable it to admit or deny the allegations contained therein, and on that basis, denies generally
28 and specifically the allegations.

1 26. In response to Paragraph 26, Fresno County admits that some IHSS providers earn
2 wages greater than \$9.50 per hour and benefits greater than \$.60 per hour. Fresno County lacks
3 sufficient information or belief to enable it to admit or deny the remaining allegations.

4 27. In response to paragraph 27, Fresno County admits that Arnold Schwarzenegger is
5 the Governor of the State of California.

6 28. In response to Paragraph 28, Fresno County admits that John Wagner is the
7 Director of the California Department of Social Services (DSS). Fresno County lacks sufficient
8 information or belief to enable it to admit or deny the remaining allegations contained therein,
9 and on that basis, denies them.

10 29. In response to Paragraph 29, Fresno County admits that Defendant David
11 Maxwell-Jolly is the Director of the California Department of Health Care Services (DHCS).
12 Fresno County lacks sufficient information or belief to enable it to admit or deny the remaining
13 allegations contained therein, and on that basis, denies them.

14 30. In response to Paragraph 30, Fresno County admits that Defendant John Chiang is
15 the California State Controller. Fresno County lacks sufficient information or belief to enable it
16 to admit or deny the remaining allegations contained therein and on that basis denies them.

17 31. In response to paragraph 31, Fresno County admits the allegations contained
18 therein.

19 32. In response to paragraph 32, Fresno County admits that Fresno County In-Home
20 Supportive Services Public Authority administers the IHSS program in Fresno county, but denies
21 that it is solely responsible for determining the wages and benefits of Fresno County's IHSS
22 providers.

23 **FACTUAL ALLEGATIONS**

24 33. In response to paragraph 33, Fresno County responds that Welfare and Institutions
25 Code section 12300(a) speaks for itself, and to the extent it contains legal conclusions, no
26 admission or denial is required. Except as so limited, Fresno County lacks sufficient knowledge
27 or information to form a belief as to the truth of the allegations contained therein and, on that
28 basis, denies them.

1 34. In response to paragraph 34, Fresno County responds that Welfare and Institutions
2 Code section 12300(b)-(c) speaks for itself, and to the extent it contains legal conclusions, no
3 admission or denial is required. Except as so limited, Fresno County lacks sufficient knowledge
4 or information to form a belief as to the truth of the allegations contained therein and, on that
5 basis, denies them.

6 35. In response to paragraph 35, Fresno County admits the allegations contained
7 therein.

8 36. In response to paragraph 36, Fresno County responds that Welfare and Institutions
9 Code section 12301.2 speaks for itself, and to the extent it contains legal conclusions, no
10 admission or denial is required. Except as so limited, Fresno County lacks sufficient knowledge
11 or information to form a belief as to the truth of the allegations contained therein and, on that
12 basis, denies them.

13 37. In response to paragraph 37, Fresno County admits that the majority of IHSS
14 providers are related to the person they serve. With regard to the remaining allegations, Fresno
15 County lacks sufficient information to admit or deny these allegations, and on that basis generally
16 and specifically denies them.

17 38. In response to paragraph 38, Fresno County responds that Welfare and Institutions
18 Code sections 12306(b)-(c) and 12306.1(c)-(d) speak for themselves, and to the extent it contains
19 legal conclusions, no admission or denial is required.

20 39. In response to paragraph 39, Fresno County responds that Welfare and Institutions
21 Code section 12306.1(d)(5) speaks for itself, and to the extent it contains legal conclusions, no
22 admission or denial is required.

23 40. In response to paragraph 40, Fresno County responds that Welfare and Institutions
24 Code section 12301.6(a)(2), (c)(1) speaks for itself, and to the extent it contains legal conclusions,
25 no admission or denial is required. Except as so limited, Fresno County lacks sufficient
26 knowledge or information to form a belief as to the truth of the allegations contained therein and,
27 on that basis, denies them.

28 41. In response to paragraph 41, Fresno County admits the Collective Bargaining

1 Agreements may determine the level of wages and benefits to IHSS workers in some counties and
2 that some Collective Bargaining Agreements are renegotiated every two or three years. Fresno
3 County lacks sufficient information to admit or deny the remaining allegations contained therein
4 and on that basis denies them.

5 42. In response to paragraph 42, Fresno County responds that Welfare and Institutions
6 Code section 4132.95(j)(2)(A)(i) speaks for itself, and to the extent it contains legal conclusions,
7 no admission or denial is required. Except as so limited, Fresno County lacks sufficient
8 knowledge or information to form a belief as to the truth of the allegations contained therein and,
9 on that basis, denies them.

10 43. In response to paragraph 43, Fresno County responds that the document speaks for
11 itself, but to the extent that it would be possible to respond to the allegations stated or implied in
12 paragraph 43, Fresno County denies them.

13 44. In response to paragraph 44, Fresno County responds that Welfare and Institutions
14 Code section 12306.1(a)(b) speaks for itself, and to the extent it contains legal conclusions, no
15 admission or denial is required. Except as so limited, Fresno County lacks sufficient knowledge
16 or information to form a belief as to the truth of the allegations contained therein and, on that
17 basis, denies them.

18 45. In response to paragraph 45, Fresno County admits that the California Legislature
19 enacted Welfare and Institutions Code section 12306.1(d)(6). However, as to the remaining
20 allegations, the Senate Bill speaks for itself, but to the extent that it would be possible to respond
21 to the allegations stated or implied in paragraph 45, Fresno County denies them.

22 46. In response to paragraph 46, Fresno County lacks sufficient information to admit
23 or deny this allegation, and on that basis denies it.

24 47. In response to paragraph 47, Fresno County lacks sufficient information to admit
25 or deny this allegation, and on that basis denies it.

26 48. In response to paragraph 48, Fresno County admits that DSS issued an All-County
27 Letter on or about April 2, 2009 which speaks for itself, but to the extent that it would be possible
28 to respond to the allegations stated or implied in paragraph 47, Fresno County denies them.

1 49. In response to paragraph 49, Fresno County states that the letter speaks for itself
2 and admits that the letter was issued, but to the extent that it would be possible to respond to the
3 allegations stated or implied in paragraph 49, Fresno County denies them.

4 50. In response to paragraph 50, Fresno County lacks sufficient information to admit
5 or deny these allegations, and on that basis denies them.

6 51. In response to paragraph 51, Fresno County lacks sufficient information to admit
7 or deny these allegations, and on that basis denies them.

8 52. In response to paragraph 52, Fresno County admits the allegations contained
9 therein but has since taken steps consistent with the Court's Order to rescind the requested rate
10 reduction.

11 53. In response to paragraph 53, Fresno County lacks sufficient information to admit
12 or deny these allegations, and on that basis denies them.

13 54. In response to paragraph 54, Fresno County lacks sufficient information to admit
14 or deny these allegations, and on that basis denies them.

15 55. In response to paragraph 55, Fresno County lacks sufficient information to admit
16 or deny these allegations, and on that basis denies them.

17 56. In response to paragraph 56, Fresno County lacks sufficient information to admit
18 or deny these allegations, and on that basis denies them.

19 57. In response to paragraph 57, Fresno County lacks sufficient information to admit
20 or deny these allegations, and on that basis denies them.

21 58. In response to paragraph 58, Fresno County lacks sufficient information to admit
22 or deny these allegations, and on that basis denies them.

23 59. In response to paragraph 59, Fresno County lacks sufficient information to admit
24 or deny these allegations, and on that basis denies them.

25 60. In response to paragraph 60, Fresno County lacks sufficient information to admit
26 or deny these allegations, and on that basis denies them.

27 61. In response to paragraph 61, Fresno County lacks sufficient information to admit
28 or deny these allegations, and on that basis denies them.

1 62. In response to paragraph 62, Fresno County lacks sufficient information to admit
2 or deny these allegations, and on that basis denies them.

3 **CLASS ACTION ALLEGATIONS**

4 63. In response to paragraph 63, Fresno County responds that the allegation contains
5 legal conclusions, so that no admission or denial is required. Except as so limited, Fresno County
6 lacks sufficient knowledge or information to form a belief as to the truth of the allegations
7 contained therein and, on that basis, denies them.

8 64. In response to paragraph 64, Fresno County lacks sufficient information to admit
9 or deny this allegation, and on that basis generally and specifically denies it.

10 65. In response to paragraph 65, Fresno County lacks sufficient information to admit
11 or deny this allegation, and on that basis generally and specifically denies it.

12 66. In response to paragraph 66 and its subparts, Fresno County responds that the
13 allegations contain legal conclusions, so that no admission or denial is required. Except as so
14 limited, Fresno County lacks sufficient knowledge or information to form a belief as to the truth
15 of the allegations contained therein and, on that basis, denies them.

16 67. In response to paragraph 67, Fresno County lacks sufficient information to admit
17 or deny these allegations, and on that basis denies them.

18 68. In response to paragraph 68, Fresno County lacks sufficient information to admit
19 or deny these allegations, and on that basis denies them.

20 69. In response to paragraph 69, Fresno County responds that the allegation contains
21 legal conclusions, so that no admission or denial is required. Except as so limited, Fresno County
22 lacks sufficient knowledge or information to form a belief as to the truth of the allegations
23 contained therein and, on that basis, denies them.

24 70. In response to paragraph 70, Fresno County responds that the allegation contains
25 legal conclusions, so that no admission or denial is required. Except as so limited, Fresno County
26 lacks sufficient knowledge or information to form a belief as to the truth of the allegations
27 contained therein and, on that basis, denies them.

28 71. In response to paragraph 71, Fresno County responds that the allegation contains

1 legal conclusions, so that no admission or denial is required. Except as so limited, Fresno County
2 lacks sufficient knowledge or information to form a belief as to the truth of the allegations
3 contained therein and, on that basis, denies them.

4 72. In response to paragraph 72, Fresno County responds that the allegation contains
5 legal conclusions, so that no admission or denial is required. Except as so limited, Fresno County
6 lacks sufficient knowledge or information to form a belief as to the truth of the allegations
7 contained therein and, on that basis, denies them.

8 73. In response to paragraph 73, Fresno County lacks sufficient information to admit
9 or deny these allegations, and on that basis denies them.

10 74. In response to paragraph 74, Fresno County lacks sufficient information to admit
11 or deny these allegations, and on that basis denies them.

12 75. In response to paragraph 75, Fresno County lacks sufficient information to admit
13 or deny these allegations, and on that basis denies them.

14 76. In response to paragraph 76, Fresno County lacks sufficient information to admit
15 or deny these allegations, and on that basis denies them.

16 77. In response to paragraph 77, Fresno County lacks sufficient information to admit
17 or deny these allegations, and on that basis denies them.

18 78. In response to paragraph 78, Fresno County responds that the allegation contains
19 legal conclusions, so that no admission or denial is required. Except as so limited, Fresno County
20 lacks sufficient knowledge or information to form a belief as to the truth of the allegations
21 contained therein and, on that basis, denies them.

22 79. In response to paragraph 79, Fresno County responds that the allegation contains
23 legal conclusions, so that no admission or denial is required. Except as so limited, Fresno County
24 lacks sufficient knowledge or information to form a belief as to the truth of the allegations
25 contained therein and, on that basis, denies them.

26 80. In response to paragraph 80, Fresno County responds that the allegation contains
27 legal conclusions, so that no admission or denial is required. Except as so limited, Fresno County
28 lacks sufficient knowledge or information to form a belief as to the truth of the allegations

1 contained therein and, on that basis, denies them.

2 **FIRST CLAIM FOR RELIEF**

3 81. In response to paragraphs 81 through 86, Fresno County states that it is not
4 required to respond to these allegations because the claim is not asserted against it. To the extent
5 that such response is deemed necessary, Fresno County lacks sufficient knowledge or information
6 to form a belief as to the truth of the allegations contained therein and, on that basis, denies them.

7 **SECOND CLAIM FOR RELIEF**

8 82. In response to paragraphs 87 through 92, Fresno County states that it is not
9 required to respond to these allegations because the claim is not asserted against it. To the extent
10 that such response is deemed necessary, Fresno County lacks sufficient knowledge or information
11 to form a belief as to the truth of the allegations contained therein and, on that basis, denies them.

12 **THIRD CLAIM FOR RELIEF**

13 83. In response to paragraph 93, Fresno County incorporates by reference as if fully
14 set forth therein, each and every admission, denial and allegation in Paragraphs 1 through 92
15 inclusive.

16 84. In response to paragraph 94, Fresno County responds that the Americans With
17 Disabilities Act, 42 U.S.C. §12132, speaks for itself. To the extent this allegation contains legal
18 conclusions, no admission or denial is required.

19 85. In response to paragraph 95, Fresno County responds that the allegation contains
20 legal conclusions, so that no admission or denial is required.

21 86. In response to paragraph 96, Fresno County responds it lacks sufficient
22 information to admit or deny the allegations, and on that basis denies them.

23 87. In response to paragraph 97, Fresno County responds that the allegation contains
24 legal conclusions, so that no admission or denial is required. Except as so limited, Fresno County
25 lacks sufficient knowledge or information to form a belief as to the truth of the allegations
26 contained therein and, on that basis, denies them.

27 88. In response to paragraph 98, Fresno County lacks sufficient information to admit
28 or deny the allegations, and on that basis denies them.

1 89. In response to paragraph 99, Fresno County responds that the allegations contain
2 legal conclusions, so that no admission or denial is required. Except as so limited, Fresno County
3 denies the allegations contained therein insofar as they address IHSS providers and recipients of
4 IHSS care in Fresno County. Fresno County lacks sufficient knowledge or information to form a
5 belief as to the truth of the remaining allegations contained therein and on that basis denies them.

6 90. In response to paragraph 100, Fresno County responds that the allegation contains
7 legal conclusions, so that no admission or denial is required. Except as so limited, Fresno County
8 denies the allegations contained therein.

9 91. In response to paragraph 101, Fresno County responds that the allegation contains
10 legal conclusions, so that no admission or denial is required. Except as so limited, Fresno County
11 denies the allegations contained therein.

12 **FOURTH CLAIM FOR RELIEF**

13 92. In response to paragraph 102, Fresno County incorporates by reference as if fully
14 set forth herein, each and every admission, denial and allegation in Paragraphs 1 through 101,
15 inclusive.

16 93. In response to paragraph 103, Fresno County responds that Section 504 of the
17 Rehabilitation Act, 29 U.S.C. §794(a) speaks for itself.

18 94. In response to paragraph 104, Fresno County responds that the allegation contains
19 legal conclusions, so that no admission or denial is required.

20 95. In response to paragraph 105, Fresno County lacks sufficient information to admit
21 or deny the allegations contained therein and on that basis denies them.

22 96. In response to paragraph 106, Fresno County denies, generally and specifically,
23 the allegations contained therein.

24 97. In response to paragraph 107, Fresno County lacks sufficient information to admit
25 or deny the allegations contained therein and on that basis denies them.

26 98. In response to paragraph 108, Fresno County responds that the allegation contains
27 legal conclusions, so that no admission or denial is required. Except as so limited, Fresno County
28 denies the allegations contained therein and, on that basis, denies them.

1 99. In response to paragraph 109, Fresno County responds that the allegation contains
2 legal conclusions, so that no admission or denial is required. Except as so limited, Fresno County
3 denies the allegations contained therein.

4 100. In response to paragraph 110, Fresno County responds that the allegation contains
5 legal conclusions, so that no admission or denial is required. Except as so limited, Fresno County
6 denies the allegations contained therein.

7 **AFFIRMATIVE DEFENSES**

8 **FIRST AFFIRMATIVE DEFENSE**

9 As a First Affirmative Defense, Fresno County asserts that Plaintiffs have failed to state a
10 claim upon which relief may be granted.

11 **SECOND AFFIRMATIVE DEFENSE**

12 As a Second Affirmative Defense, Fresno County asserts that Plaintiffs lack standing to
13 bring this action.

14 **THIRD SEPARATE AND AFFIRMATIVE DEFENSE**

15 As and for a Third Affirmative Defense, Fresno County asserts that any attempt to restrict
16 Fresno County from reducing the wages paid to IHSS providers as provided for in the Collective
17 Bargaining Agreement lawfully negotiated and entered into by Fresno County and SEIU-UH-
18 West violates due process protections accorded to Fresno County and would violate California
19 Welfare & Institution Code Section 12302 which permits local governments to contract with
20 private individuals and entities to implement IHSS programs at the County level.

21 **FOURTH SEPARATE AND AFFIRMATIVE DEFENSE**

22 As and for a Fourth Affirmative Defense, Fresno County asserts that any attempts by
23 Plaintiffs to prevent Fresno County from reducing wages to IHSS providers in accordance with
24 the terms of the Memorandum of Understanding between Fresno County and SEIU-UHW-West,
25 violates the doctrine of Home Rule.

26 **FIFTH SEPARATE AND AFFIRMATIVE DEFENSE**

27 As and for a Fifth Affirmative Defense, Fresno County asserts that at all times mentioned
28 herein, Fresno County acted in good faith and with a reasonable belief as to the legalities of the

1 things and matters attributed to Fresno County and that as a consequence thereof, no liability
2 should be imposed on Fresno County.

3 **SIXTH SEPARATE AND AFFIRMATIVE DEFENSE**

4 As and for a Sixth Affirmative Defense, Fresno County asserts that Fresno County has an
5 independent basis on which to reduce wages to IHSS providers as provided for in the
6 Memorandum of Understanding between Fresno County In-Home Supportive Services Public
7 Authority and SEIU-UHW-West.

8 **SEVENTH SEPARATE AND AFFIRMATIVE DEFENSE**

9 As and for a Seventh Affirmative Defense, Fresno County asserts that Plaintiffs'
10 Complaint is barred to the extent it attempts to interfere with the Memorandum of Understanding
11 between Fresno County In-Home Supportive Services Public Authority and SEIU-UHW-West.

12 **EIGHTH SEPARATE AND AFFIRMATIVE DEFENSE**

13 As and for a Eighth Affirmative Defense, Fresno County asserts that any wage reduction it
14 may implement is substantially justified.

15 **NINTH AFFIRMATIVE DEFENSE**

16 As and for an Ninth affirmative defense, Fresno County asserts that Plaintiffs' claims are
17 barred by Plaintiffs' failure to exhaust the grievance procedure set forth in the Memorandum of
18 Understanding between Fresno County In-Home Supportive Services Public Authority and SEIU-
19 UHW-West.

20 **PRAYER**

21 WHEREFORE, Fresno County prays judgment as follows:

- 22 1. That the Complaint of Plaintiffs against Fresno County herein be
- 23 dismissed;
- 24 2. That Plaintiffs take nothing by reason of the Complaint;
- 25 3. That Plaintiffs be granted no relief in this action;
- 26 4. That Fresno County has judgment against Plaintiffs;
- 27 5. That Fresno County recovers costs of suit incurred herein;
- 28 6. That Fresno County recovers reasonable attorneys' fees pursuant to State

1 and Federal law; and,

2 7. For such other relief as the court may deem just and proper.

3 **DEMAND FOR JURY TRIAL**

4 Defendants FRESNO COUNTY and FRESNO COUNTY IN-HOME
5 SUPPORTIVE SERVICES PUBLIC AUTHORITY hereby reaffirms its demand for a trial by
6 jury in the aforementioned action.

7

8 Dated: November 30, 2009

McCORMICK, BARSTOW, SHEPPARD,
WAYTE & CARRUTH LLP

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By: /s/ Michael G. Woods
Michael G. Woods
Timothy J. Buchanan
Attorneys for Defendant
COUNTY OF FRESNO and FRESNO
COUNTY IN-HOME SUPPORTIVE
SERVICES PUBLIC AUTHORITY

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