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

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DOMINGUEZ, ALEX BROWN, by and through)
his mother and next friend Lisa Brown, DONNA)
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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

CLASS ACTION

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR CLASS
CERTIFICATION; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT**

Date: SUBMITTED ON THE PAPERS
Location: Courtroom 2, 4th Floor

NOTICE OF MOTION AND MOTION FOR CLASS CERTIFICATION

Please take notice that Plaintiffs hereby do move the Court for class certification. Pursuant to the Court's order of November 18, 2009, Plaintiffs' Motion for Class Certification will be submitted on the papers without a hearing. Dkt. 241. Plaintiffs seek certification of the Plaintiff Class composed of:

All In-Home Supportive Services consumers residing in Alameda, Calaveras, Contra Costa, Fresno, Marin, Mendocino, Monterey, Napa, Placer, Riverside, Sacramento, San Benito, San Francisco, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, and Yolo counties.

Plaintiffs also seek certification of a subclass (the "Fresno Subclass") composed of:

All In-Home Supportive Services consumers residing in Fresno County.

Plaintiffs further request that this Court appoint Named Plaintiffs' counsel to serve as class counsel.

This Motion is made pursuant to Rule 23 of the Federal Rules of Civil Procedure, on the ground that Plaintiffs meet the requirements for class certification under Rules 23(a) and 23(b)(2). This Motion is based on this Notice of Motion and Motion, the accompanying Memorandum of Points and Authorities in Support of Class Certification, declarations in support thereof, any oral argument that may be heard, the complete files and record of this action, and such other and further matters as the Court may properly consider.

Dated: January 4, 2010

Respectfully submitted,

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MISCELLANEOUS

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiffs, In-Home Supportive Services (“IHSS”) consumers and unions representing IHSS
3 providers, brought this suit to challenge the reduction of rates paid to IHSS providers in violation of
4 federal law. The Named Plaintiffs represent a prospective class of tens of thousands of low income
5 seniors and people with disabilities who receive services from IHSS providers through California’s
6 Medi-Cal program.

7 Through this suit, Plaintiffs seek declaratory and injunctive relief to enforce (1) the procedural
8 and substantive requirements of the Medicaid Act, 42 U.S.C. §1396a(a)(30)(A) and (2) the anti-
9 discrimination provisions of the Americans with Disabilities Act of 1990, 42 U.S.C. §12132 and Section
10 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794(a).

11 By this motion, for the First, Second, Third, and Fourth Claims of Relief, as asserted against
12 Defendants Arnold Schwarzenegger, John A. Wagner, David Maxwell-Jolly, and John Chiang (“State
13 Defendants”), Plaintiffs seek certification of the Plaintiff Class composed of:

14 All In-Home Supportive Services consumers residing in Alameda, Calaveras, Contra
15 Costa, Fresno, Marin, Mendocino, Monterey, Napa, Placer, Riverside, Sacramento, San
16 Benito, San Francisco, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa
Cruz, Solano, Sonoma, and Yolo counties.

17 For the Third and Fourth Claims of Relief, as asserted against Defendants Fresno County and
18 Fresno County In-Home Supportive Services Public Authority (“Fresno Defendants”), Plaintiffs seek
19 certification of a subclass (the “Fresno Subclass”) composed of:

20 All In-Home Supportive Services consumers residing in Fresno County.

21 Because all of the Named Plaintiffs have the same legal interest in this case and Plaintiffs seek
22 only equitable relief, this is exactly the type of lawsuit that should be certified as a class action pursuant
23 to Federal Rule of Civil Procedure 23(b)(2). We demonstrate below that the criteria for class
24 certification are met.

25 **BACKGROUND**

26 **I. California’s IHSS Program**

27 California established the IHSS program to provide assistance with the tasks of daily living to
28 low-income elderly and/or disabled persons “who cannot safely remain in their homes or abodes of their

1 own choosing unless these services are provided.” Cal. Welf. & Inst. Code §12300(a). The types of
2 services provided through the program include assistance with bathing, dressing, cooking, feeding,
3 bowel and bladder care, self-administration of medication, and cleaning. *Id.* §§12300(b), (c). The
4 program also authorizes, under some circumstances, protective supervision for mentally impaired
5 individuals and educational and paramedical services such as the administration of medication and
6 injections. *Id.* §§12300(b), 12300.1.

7 By preventing the unnecessary institutionalization of individuals who can, with assistance,
8 remain in their homes and in the community, the IHSS program conserves state resources. In addition,
9 elderly and disabled individuals who remain in community-based settings are able to maintain the
10 autonomy and quality of life that such settings offer. Prelim. Inj. Order at 10-11, Dkt. 131.

11 The IHSS program is administered by counties, which may establish public authorities to provide
12 for the delivery of IHSS services. Cal. Welf. & Inst. Code §12301.6(a). These public authorities are
13 considered employers of IHSS providers for some purposes, including bargaining about providers’
14 wages and benefits. *Id.* §12301.6(c)(1). However, individual consumers hire, fire, and supervise their
15 own IHSS providers. *Id.* Consumers may find IHSS providers through personal connections, registries
16 maintained by county public authorities, or any other method. *Id.* §§12301.6(e)(1), (h).

17 The rates paid to IHSS providers (*i.e.*, wages and benefits) affect the difficulty of finding
18 providers. Because the vast majority of IHSS consumers receive services as part of California’s
19 Medicaid program (“Medi-Cal”), the federal government pays a certain percentage of these costs. *See*
20 42 U.S.C. §1396d(b). Of the remaining cost, often referred to as the “non-federal share,” the county
21 pays 35 percent and the state pays 65 percent of wages up to the current statutory cap of \$12.10 per hour,
22 above which the State will not share the costs. Cal. Welf. & Inst. Code §§12306, 12306.1(c)-(d).

23 The rates paid to IHSS providers vary by county. IHSS providers in many counties are paid
24 wages that exceed \$9.50 per hour and/or a combination of wages and benefits that exceed \$10.10 per
25 hour. These counties include Alameda, Calaveras, Contra Costa, Fresno, Marin, Mendocino, Monterey,
26 Napa, Placer, Riverside, Sacramento, San Benito, San Francisco, San Luis Obispo, San Mateo, Santa

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1 Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, and Yolo counties. Golubock Decl., Ex. B (Dkt.
2 19).¹

3 **II. Enactment Of Section 12306.1(d)(6) To Cut IHSS Provider Rates**

4 In early 2009, the California Legislature held the Third Extraordinary Legislative Session to
5 adopt emergency budget measures. As part of this session, the Legislature enacted Senate Bill No. 6
6 (“SBX3 6”), §9, which amended Cal. Welf. & Inst. Code §12306.1(d) to add the following provision
7 (“Section 12306.1(d)(6)”):

8 (6) Notwithstanding [other provisions of §12306.1(d)], the state shall participate as
9 provided in subdivision (c) in a total cost of wages up to nine dollars and fifty cents
10 (\$9.50) per hour and in individual health benefits up to sixty cents (\$0.60) per hour. This
11 paragraph shall become operative on July 1, 2009.

12 The provision reduces the maximum IHSS provider rate in which the State will participate from
13 \$12.10 per hour to \$10.10 per hour (\$9.50 in wages; \$0.60 in benefits). The provision was to become
14 effective July 1, 2009.

15 In response to Section 12306.1(d)(6), at least 12 counties that paid wages greater than \$9.50 per
16 hour submitted Rate Change Requests to CDSS to reduce wages. McDevitt Decl. ¶¶2-4 & Ex. A; Nam
17 Decl. ¶¶2, 4-6, 9; Roth Decl. ¶¶4(b), 5(a), (b), (e), 6. Defendant Fresno County IHSS Public Authority
18 submitted a Rate Change Request that hourly wages be reduced from \$10.25 to \$9.50 and benefits from
19 \$.85 to \$.60. Pl. RJN, Ex. T. (Dkt. 53-21).² These reduced rates were to take effect July 1, 2009.

20 **III. Procedural Background**

21 On June 4, 2009, Plaintiffs, the individually named IHSS consumers and unions representing
22 IHSS providers, filed this action and moved for entry of a preliminary injunction prohibiting State
23 Defendants from implementing Section 12306.1(d)(6) pending a final decision on the merits. *See* Dkt.
24 5. Plaintiffs also sought to enjoin Fresno Defendants from implementing the rate reduction for IHSS
25 providers that was scheduled to take effect on July 1, 2009. *Id.*

26 ¹For the Court’s convenience, Plaintiffs are refileing with this motion those declarations filed in
27 conjunction with Plaintiffs’ Motion for Preliminary Injunction that also support the present application.

28 ²“Pl. RJN” refers to Plaintiffs’ Request for Judicial Notice, filed in conjunction with Plaintiffs’
Motion for Preliminary Injunction. For the Court’s convenience, Plaintiffs have refiled Ex. T of Pl. RJN
as Ex. D to the Declaration of Emily White filed in support of this motion.

1 On June 26, 2009, the Court enjoined State Defendants from implementing Section
2 12306.1(d)(6). Prelim. Inj., Dkt. 130. The Court found that Plaintiffs had demonstrated a strong
3 likelihood of success on their claim that State Defendants failed to consider the factors set forth in 42
4 U.S.C. §1396a(a)(30)(A) (“Section 30(A)”) before enacting Section 12306.1(d)(6), in violation of the
5 federal Medicaid Act. Order Granting Prelim. Inj. at 10, Dkt. 131. This Court further found that, absent
6 injunctive relief, both IHSS consumers and providers would suffer irreparable harm as a result of the
7 wage reductions caused by the implementation of Section 12306.1(d)(6) without first conducting the
8 analysis required by Section 30(A). Prelim. Inj. at 1, Dkt. 130. The Court reached only Plaintiffs’ claim
9 against State Defendants under Section 30(A) and did not enjoin Fresno Defendants.

10 Plaintiffs subsequently filed two motions requesting a more specific preliminary injunction
11 and/or contempt sanctions against State Defendants. These motions were prompted by State
12 Defendants’ conduct and sought to ensure compliance with the terms and intent of the Court’s
13 injunction. Plaintiffs filed the first of these motions after State Defendants made clear that, despite the
14 injunction, they intended to give effect to the rate reductions that had been submitted in implementation
15 of Section 12306.1(d)(6). Dkt. 144. On July 13, 2009, the Court issued an amended preliminary
16 injunction clarifying State Defendants’ obligation to “rescind the State’s approval of all county rate
17 reduction requests which were submitted after February 20, 2009, to be effective July 1, 2009, and
18 reinstate the State’s approval of the pre-July rates.” Dkt. 172.

19 Plaintiffs filed a second motion when, instead of rescinding approval of all rate requests
20 submitted during the relevant time period, State Defendants instead asked counties whether they wanted
21 to return to the pre-July 1 wage rate; for the two counties that said they did not (including Fresno
22 County), the State intended to implement the reduced rate effective, retroactively, to July 1. Dkt. 181.
23 On July 24, 2009, the Court issued a second order clarifying the preliminary injunction, reaffirming that
24 the State “must rescind its prior approval of” the Rate Change Requests that had been submitted in
25 implementation of Section 12306.1(d)(6) by the two counties that still wanted to reduce rates for other
26 reasons. Dkt. 203. The Court further ordered the State to pay all IHSS providers in the remaining
27 affected counties their full, pre-July 1 rate by a specified date. *Id.*

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1 State Defendants have filed an appeal with the United States Court of Appeals for Ninth Circuit
2 from the preliminary injunction as well as the subsequent orders clarifying the preliminary injunction.
3 Dkt. 138. Plaintiffs now seek certification of their class and subclass.

4 LEGAL STANDARD

5 “Class actions serve an important function in our system of civil justice.” *Gulf Oil Co. v.*
6 *Bernard*, 452 U.S. 89, 99 (1981). While the decision whether to certify a class is committed to the
7 district court’s discretion, *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1304 (9th
8 Cir. 1990), in a “doubtful case,” the court should err “in favor of allowing a class action,” *Eisenberg v.*
9 *Gagnon*, 766 F.2d 770, 785 (3d Cir. 1985) (internal quotation marks and citation omitted).

10 In assessing the propriety of certification, “[t]he court is bound to take the substantive allegations
11 of the complaint as true.” *Blackie v. Barrack*, 524 F.2d 891, 901 n.17 (9th Cir. 1975). “[I]t may be
12 necessary for the court to probe behind the pleadings before coming to rest on the certification question,”
13 *Gen. Tel. Co. of Southwest v. Falcon*, 457 U.S. 147, 160 (1982), but the court has no authority “to
14 conduct a preliminary inquiry into the merits of a suit in order to determine whether it may be
15 maintained as a class action,” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 177 (1974).

16 Class certification is proper if the four requirements of Federal Rule of Civil Procedure 23(a) and
17 the requirements of any one of the three prongs of Federal Rule of Civil Procedure 23(b) are satisfied.
18 *Gen. Tel.*, 457 U.S. at 161; 7A Wright, Miller & Kane, *Federal Practice and Procedure: Civil*, §1759
19 (3d ed. 2005).

20 ARGUMENT

21 I. Plaintiffs Meet The Standards For Certification Under Rule 23(a).

22 The threshold prerequisites for class certification set forth in Federal Rule of Civil Procedure
23 23(a) are that: “(1) the class is so numerous that joinder of all members is impracticable; (2) there are
24 questions of law or fact common to the class; (3) the claims or defenses of the representative parties are
25 typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately
26 protect the interests of the class.” Fed. R. Civ. P. 23(a). These elements, commonly termed the
27 numerosity, commonality, typicality, and adequacy requirements, *see Thomas & Thomas Rodmakers*,

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1 *Inc. v. Newport Adhesives & Composites, Inc.*, 209 F.R.D. 159, 163 (C.D. Cal. 2002), are all present
2 here.

3 **A. The Proposed Class Meets The Numerosity Requirement of Rule 23(a)(1).**

4 To satisfy the numerosity requirement, joinder of all class members need not be impossible, only
5 impracticable. *Harris v. Palm Springs Alpine Estates, Inc.*, 329 F.2d 909, 913-14 (9th Cir. 1964).

6 Impracticability addresses the expense and burden, to the parties and the court, of litigating each claim
7 individually, rendering the case difficult or inconvenient without joining all members of the class. *Id.*

8 Courts in the Ninth Circuit have found that classes of far fewer than 100 members are sufficiently
9 numerous to render joinder impracticable. *See Perez-Funez v. Dist. Dir.*, 611 F. Supp. 990, 995 (C.D.
10 Cal. 1984) (“Classes consisting of 25 members have been held large enough to justify certification.”).

11 The proposed Plaintiff Class comprises approximately tens of thousands of low income seniors and
12 people with disabilities who receive services from IHSS providers through California’s Medi-Cal
13 program. *See, e.g.*, State Opp. to Pl. Mot. for Contempt at 3 n.4 (Dkt. 195); White Decl. ¶2, Ex. A. The
14 Fresno Subclass comprises approximately 12,000 residents of Fresno County who receive services from
15 IHSS providers. White Decl. ¶¶2-3, Ex. A & Ex. B. The large size of the class and subclass thus clearly
16 makes joinder impracticable.

17 Additionally, many of the class members are elderly and suffer from serious health conditions,
18 making their participation as individual joined plaintiffs onerous or impossible. *See Darling v. Bowen*,
19 685 F. Supp. 1125, 1127 (W.D. Mo. 1988) (certification of class appropriate where class members were
20 “physically disabled” and “elderly”). Accordingly, this case is well-suited for class-based litigation.

21 **B. There Are Questions Of Law And Fact Common To The Class.**

22 “[C]ommonality is satisfied where the lawsuit challenges a system-wide practice or policy that
23 affects all of the putative class members.” *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001). A
24 class action is particularly appropriate when the common issues involved “turn on questions of law
25 applicable in the same manner to each member of the class.” *Gen. Tel.*, 457 U.S. at 155 (internal
26 quotation marks and citation omitted). The commonality requirement “has been construed permissively.
27 All questions of fact and law need not be common to satisfy the rule. The existence of shared legal
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1 issues with divergent factual predicates is sufficient” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011,
2 1019 (9th Cir. 1998).

3 In the civil rights context, the Ninth Circuit has held that, where the class challenges a system-
4 wide policy, “individual factual differences among the individual litigants or groups of litigants will not
5 preclude a finding of commonality.” *Armstrong*, 275 F.3d at 868. Here, while the ultimate effect of the
6 cut in wages on each individual class member may be different, “the legality of defendant’s practice or
7 policies . . . [is] . . . a question common to the class, and the existence of different factual questions with
8 respect to various [plaintiffs] will not defeat satisfaction of the commonality requirement.” *Jordan v.*
9 *County of Los Angeles*, 669 F.2d 1311, 1320 (9th Cir. 1982), *vacated and rem’d on other grounds*, 459
10 U.S. 810 (1982).

11 Moreover, in a Rule 23(b)(2) action, courts apply the commonality requirement more liberally
12 because a class action seeking declaratory or injunctive relief generally challenges policies and practices
13 affecting an identifiable group in the same way. *See, e.g., Von Colln v. County of Ventura*, 189 F.R.D.
14 583, 591 (C.D. Cal. 1999) (“[W]hen addressing commonality of class members proposed under Rule
15 23(b)(2), a court may employ a liberal definition of commonality.”).

16 Class actions are routinely certified in cases similar to this one, including those that allege
17 violation of the Medicaid Act, the ADA, or Section 504. *See, e.g., Park v. Ralph’s Grocery Co.*, 254
18 F.R.D. 112, 121 (C.D. Cal. 2008) (holding certification is appropriate where disabled individuals
19 challenged defendant’s common policy and practice under the ADA); *Kerrigan v. Philadelphia Bd. of*
20 *Election*, 248 F.R.D. 470, 477 (E.D. Pa. 2008) (certifying class of plaintiffs seeking injunctive relief who
21 challenged municipal policy under the ADA and Rehabilitation Act); *Long v. Benson*, 2008 WL
22 4571904, *1-*2 (N.D. Fla. Oct. 14, 2008) (certifying class where plaintiffs alleged that the State of
23 Florida operated its Medicaid program in violation of *Olmstead* principles); *Colbert v. Blagojevich*, 2008
24 WL 4442597, *4-*9 (N.D. Ill. Sept. 29, 2008) (certifying class where plaintiffs brought *Olmstead* claims
25 against Illinois officials); *Williams v. Blagojevich*, 2006 WL 3332844, *2-*3 (N.D. Ill. Nov. 13, 2006)
26 (same); *Lovely H. v. Eggleston*, 235 F.R.D. 248, 256-57 (S.D.N.Y. 2006) (certifying class of welfare
27 recipients with disabilities who alleged *Olmstead* segregation under the ADA and Rehabilitation Act);
28 *Cyrus v. Walker*, 233 F.R.D. 467, 471 (S.D. W.Va. 2005) (certifying class where plaintiffs alleged that

1 changes in Medicaid services eligibility determination led to termination of benefits in violation of due
 2 process); *Hernandez v. Medows*, 209 F.R.D. 665, 669 (S.D. Fla. 2002) (certifying class of Medicaid
 3 beneficiaries, noting that “factual differences between class members do not preclude a finding of
 4 commonality, as long as common questions of law exist”); *Risinger v. Concannon*, 201 F.R.D. 16, 20
 5 (D. Me. 2001) (finding commonality where plaintiffs alleged that defendant’s provision of services
 6 violated Medicaid requirements). In the present case, there are numerous common issues of fact and
 7 law.

8 The common issues of law and fact for the Plaintiff Class include the following:

- 9 • Whether the State failed to adequately consider the impact of Section 12306.1(d)(6) on
 10 efficiency, economy, quality of care, and access to services prior to the enactment of the
 11 statute, in violation of Section 30(A) of the federal Medicaid Act;
- 12 • Whether the IHSS provider wages and benefits that would result from the implementation
 13 of Section 12306.1(d)(6) would be inconsistent with Medicaid’s mandated quality of care,
 14 and would not be sufficient to enlist enough IHSS providers so that care and services are
 15 available at least to the extent that such care and services are available to the general
 16 population in the geographic area, in violation of Section 30(A) of the federal Medicaid
 17 Act;
- 18 • Whether the implementation of Section 12306.1(d)(6) would violate the rights of class
 19 members to be free from discrimination on the basis of their disability under the ADA, 42
 20 U.S.C. §12132, by forcing disabled individuals who could otherwise remain in their
 21 homes to enter nursing homes or other residential institutions;
- 22 • Whether the implementation of Section 12306.1(d)(6) would violate the rights of class
 23 members to be free from discrimination on the basis of their disability under Section 504
 24 of the Rehabilitation Act, 29 U.S.C. §794(a), by forcing disabled individuals who could
 25 otherwise remain in their homes to enter nursing homes or other residential institutions.

26 The following are common issues of law and fact regarding the Fresno Subclass:

- 27 • Whether the reduction of the IHSS wage from \$10.25 per hour to \$9.50 per hour and the
 28 IHSS benefits rate from \$.85 per hour to \$.60 per hour would violate the rights of

1 subclass members to be free from discrimination on the basis of their disability under the
 2 ADA, 42 U.S.C. §12132, by forcing disabled individuals who could otherwise remain in
 3 their homes to enter nursing homes or other residential institutions;

- 4 • Whether the reduction of the IHSS wage from \$10.25 per hour to \$9.50 per hour and the
 5 IHSS benefits rate from \$.85 per hour to \$.60 per hour would violate the rights of
 6 subclass members to be free from discrimination on the basis of their disability under
 7 Section 504 of the Rehabilitation Act, 29 U.S.C. §794(a), by forcing disabled individuals
 8 who could otherwise remain in their homes to enter nursing homes or other residential
 9 institutions.

10 The foregoing, numerous common questions of law and fact satisfy Rule 23(a)(2).

11 C. The Named Plaintiffs' Claims Are Typical Of The Claims Of The Class

12 A representative plaintiff's claims are typical of a class where "they are reasonably co-extensive
 13 with those of absent class members; they need not be substantially identical." *Hanlon*, 150 F.3d at 1020.
 14 The primary purpose of the typicality requirement is to ensure that the nature of the claims brought by
 15 the class representative are so interrelated that the interests of the class members will be fairly and
 16 adequately protected in their absence. *Gen. Tel.*, 457 U.S. at 157 n.13. "The commonality and typicality
 17 requirements of Rule 23(a) tend to merge. Both serve as guideposts for determining whether under the
 18 particular circumstances maintenance of a class action is economical and whether the named plaintiff's
 19 claim and the class claims are so interrelated that the interests of the class members will be fairly and
 20 adequately protected in their absence." *Id.*

21 The claims of Named Plaintiffs Yang, Miller, Dominguez, Alex Brown, Donna Brown, Lipton,
 22 Meyer, Gordon, Ayers, Sheppard, and Andy Martinez mirror the claims of the Plaintiff Class as a whole.
 23 Yang Decl. ¶¶4-9; Miller Decl. ¶¶3-8; Dominguez Decl. ¶¶3-7; L. Brown Decl. ¶¶5, 8-13; D. Brown
 24 Decl. ¶¶3-9; Weissman-Steinbaugh Decl. ¶¶4-8; Meyer Decl. ¶¶2, 6-9; Gordon Decl. ¶¶2-7; Ayers Decl.
 25 ¶¶3-9; Sheppard Decl. ¶¶3-9; A. Martinez Decl. ¶¶3-8; First Am. Comp. ¶68. Each of the Named
 26 Plaintiffs is a recipient of the IHSS services that allow him or her to remain safely at home. Yang Decl.
 27 ¶¶4, 5, 9; Miller Decl. ¶5; Dominguez Decl. ¶4; L. Brown Decl. ¶¶5, 8; D. Brown Decl. ¶5; Weissman-
 28 Steinbaugh Decl. ¶4; Meyer Decl. ¶¶4-6; Gordon Decl. ¶¶2-3; Ayers Decl. ¶7; Sheppard Decl. ¶¶5-6; A.

1 Martinez Decl. ¶¶5-8 . The Named Plaintiffs are threatened by the same risk of harm, as they face losing
 2 critical services and possible institutionalization on account of Defendants’ conduct. Yang Decl. ¶9;
 3 Miller Decl. ¶8; Dominguez Decl. ¶7; L. Brown Decl. ¶¶10-13; D. Brown Decl. ¶8; Weissman-
 4 Steinbaugh Decl. ¶7; Meyer Decl. ¶9; Gordon Decl. ¶7; Ayers Decl. ¶9; Sheppard Decl. ¶8; A. Martinez
 5 Decl. ¶¶5-7. The Named Plaintiffs, like the proposed Plaintiff Class as a whole, claim that State
 6 Defendants’ practices violate their rights under federal law. First Am. Comp. ¶¶81-110. Moreover, the
 7 Named Plaintiffs seek the same relief as all class members. First Am. Comp. ¶71.

8 Furthermore, the claims of Named Plaintiffs Yang, Miller, Alex Brown and Andy Martinez are
 9 identical to the claims of the Fresno Subclass as a whole. Yang Decl. ¶¶4-9; Miller Decl. ¶¶3-8; L.
 10 Brown Decl. ¶¶5, 8-13 A. Martinez Decl. ¶¶3-8; First Am. Comp. ¶77. The Named Plaintiffs in the
 11 Fresno Subclass all face the same risk of harm, as Fresno Defendants’ conduct threatens to cut services
 12 critical to the Named Plaintiffs and their ability to live independently. Yang Decl. ¶9; Miller Decl. ¶8; L.
 13 Brown Decl. ¶¶10-13 A. Martinez Decl. ¶¶5-7. Members of the Fresno Subclass all assert that Fresno
 14 Defendants’ wage reduction violates their rights under federal law. First Am. Comp. ¶¶93-110. The
 15 Named Plaintiffs seek the same relief as all subclass members. First Am. Comp. ¶80. Thus, the
 16 requirements of Rule 23(a)(3) are met for both the proposed class and the proposed subclass.

17 **D. The Named Plaintiffs And Their Attorneys Will Fairly And Adequately**
 18 **Protect The Interests Of The Class**

19 Rule 23(a)(4) requires that the Named Plaintiffs “fairly and adequately represent the interests of
 20 the class.” Fed. R. Civ. P. 23(a)(4). Courts have interpreted the Rule 23(a)(4) inquiry to encompass two
 21 questions: “(1) Do the representative plaintiffs and their counsel have any conflicts of interest with other
 22 class members, and (2) will the representative plaintiffs and their counsel prosecute the action vigorously
 23 on behalf of the class?” *Staton v. Boeing Co.*, 327 F.3d 938, 957 (9th Cir. 2003). Plaintiffs and their
 24 counsel satisfy these requirements.

25 **1. The Named Plaintiffs’ Interests Are Not Antagonistic To The Class**

26 The class representatives do not have any interests that are antagonistic to the interests of the
 27 class because they share the same interests and this lawsuit is not collusive. *See Lerwill v. Inflight*
 28 *Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978). Moreover, “the existence of minor conflicts

1 alone will not defeat a party's claim to class certification: the conflict must be a 'fundamental' one going
2 to the specific issues in controversy." *Valley Drug Co. v. Geneva Pharms., Inc.*, 350 F.3d 1181, 1189
3 (11th Cir. 2003); *see also* 1 Alba Conte & Herbert Newberg, *Newberg on Class Actions* §3.26 at 3-435
4 (4th ed. 2002). "A fundamental conflict exists where some party members claim to have been harmed
5 by the same conduct that benefitted other members of the class." *Valley Drug Co.*, 350 F.3d at 1189.
6 Here, there is no conflict whatsoever among Plaintiffs, let alone a conflict that is "fundamental" in
7 nature or that goes to the specific issues in controversy. *See id.* Additionally, no conflicts exist between
8 Plaintiffs' counsel and the proposed class members that would compromise their ability to represent this
9 class and subclass. All Plaintiffs and their counsel have the same, singular objective: to enjoin
10 implementation of Cal. Welf. & Inst. Code §12306.1(d) by State and Fresno Defendants.

11 The Named Plaintiffs' claims and their injuries are typical of the claims of the proposed class
12 members. The Named Plaintiffs do not stand to gain anything that would not accrue to the class as a
13 whole. To the contrary, the focus of this litigation is the grant of broad injunctive and declaratory relief
14 that will benefit the entire class. The Named Plaintiffs will fairly and adequately protect the interests of
15 the class.

16 **2. Plaintiffs' Counsel Will Vigorously Prosecute This Action**

17 Plaintiffs' counsel, Altshuler Berzon LLP, are experienced class action counsel with a strong
18 reputation in the legal community. Counsel have decades of experience in litigating major cases
19 throughout the country, including representation of classes at the trial and appellate levels. *See White*
20 *Decl.* ¶¶10-17, Ex. C. No conflicts exist that would hinder Counsel's ability to pursue the litigation
21 vigorously on behalf of the proposed class and subclass. It is presumed that class counsel are competent
22 to litigate the action; the burden is on Defendants to show otherwise. *See Wehner v. Syntex Corp.*, 117
23 *F.R.D.* 641, 644 (N.D. Cal. 1987). Defendants have not, and cannot, make such a showing here.

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1 **II. This Case Satisfies Rule 23(b)(2) Because Defendants Have Acted On Grounds**
 2 **Generally Applicable To The Class, Making Final Injunctive And Declaratory**
 3 **Relief With Respect To The Class As A Whole Appropriate**

4 In addition to the four requirements of Rule 23(a), the Named Plaintiffs also satisfy Rule
 5 23(b)(2).³ Rule 23(b)(2) provides for class certification where Defendants have “acted or refused to act
 6 on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory
 7 relief is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2). In interpreting this
 8 requirement, courts have held that where the primary purpose in bringing the action is to seek injunctive
 9 relief, the action is properly certifiable under Rule 23(b)(2). *Elliott v. Weinberger*, 564 F.2d 1219, 1228
 10 (9th Cir. 1977); *Baby Neal v. Casey*, 43 F.3d 48, 58-59 (3d Cir. 1994); *Stolz v. United Bd. of Carpenters*
 11 *and Joiners of Am.*, 620 F. Supp. 396, 407 (D. Nev. 1985).

12 Under Rule 23(b)(2), courts are not required “to examine the viability or bases of class members’
 13 claims for declaratory and injunctive relief, but only to look at whether class members seek uniform
 14 relief from a practice applicable to all of them.” *Rodriguez v. Hayes*, 578 F.3d 1032, 1051 (9th Cir.
 15 2009); *see also Cyrus v. Walker*, 233 F.R.D. 467 (S.D. W. Va. 2006) (certifying class in case alleging
 16 that changes in Medicaid home and community based eligibility determination processes led to
 17 termination of benefits in violation of due process); *M.A.C. v. Betit*, 284 F. Supp. 2d 1298 (D. Utah
 18 2003) (certifying class of disabled Medicaid recipients challenging the denial of Medicaid waiver
 19 services as a violation of federal law). Civil rights cases against parties charged with class-based
 20 discrimination are “prime examples” of actions under Rule 23(b)(2). *Amchem Prods. v. Windsor*, 521
 21 U.S. 591, 614 (1997).

22
 23 ³Plaintiffs also satisfy the requirements of Rule 23(b)(1) because the prosecution of separate
 24 actions by individual class members would create a risk of inconsistent or varying adjudications that
 25 would establish an incompatible standard of conduct for the party opposing the class. Fed. R. Civ. P.
 26 23(b)(1)(A). For instance, a determination by a court that any Plaintiff’s rights were violated under
 27 federal law would create a risk of an inconsistent determination in a lawsuit brought separately by other
 28 putative class members. There is also a risk that individual determinations would result in varying
 obligations for Defendants as to different IHSS consumers. In addition, the prosecution of separate
 actions by individual class members would create a risk of adjudications that would, as a practical
 matter, be dispositive of the interests of the other members not party to the adjudications. Fed. R. Civ.
 P. 23(b)(1)(B). Accordingly, the Court may consider certifying the class and subclass under Rule
 23(b)(1)(A) or Rule 23(b)(1)(B). However, certification under Rule 23(b)(2) is most appropriate
 because Plaintiffs seek only declaratory and injunctive relief.

1 This case is properly certified under Rule 23(b)(2). Defendants' violations of federal law have
 2 equal application to all class members, as all class members are people with disabilities who receive
 3 IHSS services and who are at risk of severe harm on account of Defendants' unlawful acts. Plaintiffs
 4 seek only declaratory and injunctive relief to prohibit future violations of federal law.

5 **III. The Court Should Designate Plaintiffs' Counsel As Class Counsel Pursuant To Rule**
 6 **23(g)(1).**

7 Under Rule 23(g)(1), the Court must appoint class counsel upon certifying a class. Fed. R. Civ.
 8 P. 23(g)(1). The Court considers four factors in appointing class counsel:

- 9 (i) the work counsel has done in identifying or investigating potential claims in the action;
 10 (ii) counsel's experience in handling class actions, other complex litigation, and the types
 of claims asserted in the action;
 11 (iii) counsel's knowledge of the applicable law; and
 (iv) the resources that counsel will commit to representing the class.

12 Fed. R. Civ. P. 23(g)(1)(A).

13 Plaintiffs' counsel are well-qualified for appointment in this case. As reflected in the First
 14 Amended Complaint, Plaintiffs' Motion for Preliminary Injunction, and the subsequent motions,
 15 Plaintiffs' counsel has committed extensive time and resources to identifying and investigating
 16 Plaintiffs' claims. *See White Decl.* ¶¶4-9. Counsel is experienced in handling class actions and complex
 17 litigation, and has extensive knowledge of discrimination law. *See White Decl.* ¶¶10-17, Ex. C. Thus,
 18 the Court should appoint Plaintiffs' counsel as class counsel.

19 **CONCLUSION**

20 For the reasons stated above, the Named Plaintiffs have satisfied all of the requirements of Rule
 21 23(a) and Rule 23(b)(2) with respect to the proposed defined class and subclass, and Rule 23(g)(1) as to
 22 appointment of class counsel. Plaintiffs respectfully request that this Court:

- 23 1) Certify this case as a Rule 23(b)(2) class action;
 24 2) For the First, Second, Third, and Fourth Claims for Relief, as asserted against State
 25 Defendants, define the Plaintiff Class as:

26 All In-Home Supportive Services consumers residing in Alameda, Calaveras,
 27 Contra Costa, Fresno, Marin, Mendocino, Monterey, Napa, Placer, Riverside,
 Sacramento, San Benito, San Francisco, San Luis Obispo, San Mateo, Santa
 28 Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, and Yolo counties.

- 1 3) For the Third and Fourth Claims for Relief, as asserted against Fresno Defendants, define
- 2 the Fresno Subclass as:
- 3 All In-Home Supportive Services consumers residing in Fresno County;
- 4 4) Appoint Plaintiffs’ counsel to serve as class counsel; and
- 5 5) Dispense with notice to absent class members, pursuant to Rule 23(c)(2)(A).

7 Dated: January 4, 2010

Respectfully submitted,

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