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8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

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11 CALIFORNIA ASSOCIATION OF  
HEALTH FACILITIES,

12 Plaintiff,

13 vs.

14 DAVID MAXWELL-JOLLY,  
15 DIRECTOR OF THE STATE  
DEPARTMENT OF HEALTH  
16 SERVICES, STATE OF  
CALIFORNIA,

17 Defendant.

CASE NO. CV 10-03259 CAS (RZx)

**PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR  
PRELIMINARY INJUNCTION**

**[Points and Authorities, Declarations  
of Raymond, Nixon, Hayward,  
Keville and Exhibits Thereto in  
support of Motion; [Proposed]  
Order; and Request for Judicial  
Notice filed concurrently herewith]**

Date: June 14, 2010  
Time: 10:00 a.m.  
Place: Courtroom 5

Hon. Christina A. Snyder, Judge  
Presiding

Complaint filed: 04-30-10  
Trial Date: NA

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1           **TO DEFENDANT DAVID MAXWELL-JOLLY, DIRECTOR OF THE**  
2 **CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES, AND TO**  
3 **HIS ATTORNEYS OF RECORD: PLEASE TAKE NOTICE** that on June 14,  
4 2010, at 10:00 a.m., or as soon thereafter as counsel may be heard, in the Courtroom  
5 of the Honorable Christina A. Snyder, located at 312 N. Spring Street, Los Angeles,  
6 California, Plaintiffs California Association of Health Facilities ("Plaintiff" or  
7 "CAHF"), on behalf of its member facilities, makes application, pursuant to Federal  
8 Rule of Civil Procedure 65(a), for an Order for Preliminary Injunction restraining  
9 and enjoining Defendant David Maxwell-Jolly, Director of the Department of  
10 Health Care Services for the State of California ("Defendant" or "Director"), and his  
11 agents, employees, and all persons acting in concert with him, from violating federal  
12 law by implementing or otherwise applying the Medi-Cal reimbursement rate  
13 limitation for long-term care facilities, including intermediate care facilities for the  
14 mentally retarded ("ICF/MR") and freestanding pediatric subacute ("FPS") facilities,  
15 enacted as part of California Assembly Bill X4 5 of 2009 ("2009 AB 5") through  
16 amendments to California Welfare & Institutions Code Sections 14105.191. The  
17 Medi-Cal rate limitation set forth in the statute went into effect on August 1, 2009.

18           The grounds for this motion are that 2009 AB 5, and the Medi-Cal  
19 reimbursement rate limitation enacted thereby, is preempted under the Supremacy  
20 Clause of the United States constitution as inconsistent with, and violative of 42  
21 United States § 1396a(a)(30)(A), a provision of the federal Medicaid Act, and  
22 because the Director implemented the rate limitation without receiving prior  
23 approval of the United States Department of Health and Human Services, as  
24 required by federal law, and that, unless Defendant, his agents, employees, and  
25 others acting in concert with him, are immediately restrained from implementing or  
26 otherwise applying the unlawful provision of 2009 AB 5, Plaintiff's members and  
27 others will suffer irreparable and immediate injury, loss and damage.

28           This Motion is based on this Notice of Motion, the accompanying

1 Memorandum of Points and Authorities, the Declarations, Request for Judicial  
2 Notice and Exhibits submitted herewith, and all other pleadings on file in this  
3 matter.

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DATED: May 11, 2010

HOOPER, LUNDY & BOOKMAN, INC.

By: \_\_\_\_\_/s/\_\_\_\_\_  
JORDAN B. KEVILLE  
Attorneys for CALIFORNIA ASSOCIATION  
OF HEALTH FACILITIES