

1 MARK E. REAGAN (State Bar No. 143438)  
E-Mail: mreagan@health-law.com  
2 JORDAN B. KEVILLE (State Bar No. 217868)  
E-Mail: jkeville@health-law.com  
3 **HOOPER, LUNDY & BOOKMAN, P.C.**  
1875 Century Park East, Suite 1600  
4 Los Angeles, California 90067  
Telephone: (310) 551-8111  
5 Facsimile: (310) 551-8181

6 Attorneys for Plaintiffs

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

10 CALIFORNIA ASSOCIATION OF  
HEALTH FACILITIES,  
11 DEVELOPMENTAL SERVICES  
NETWORK; UNITED CEREBRAL  
12 PALSY/SPASTIC CHILDREN'S  
FOUNDATION OF LOS ANGELES  
13 AND VENTURA COUNTIES,

14 Plaintiffs,

15 vs.

16 TOBY DOUGLAS, Director of the  
State Department of Health Care  
17 Services, State of California;<sup>1</sup>  
KATHLEEN SEBELIUS, Secretary of  
18 the United States Department of Health  
and Human Services,  
19

20 Defendants.  
21

Consolidated Cases:

Case No. CV 10-03259  
Case No. CV 10-03284

**AMENDED COMPLAINT FOR  
INJUNCTIVE AND  
DECLARATORY RELIEF**

22 ///

23 ///

24 \_\_\_\_\_  
25

26 <sup>1</sup> Toby Douglas is the current director of the California Department of Health Care  
27 Services and has, therefore, been substituted for his predecessor, David Maxwell-  
28 Jolly. *See* Fed. R. Civ. Proc. 25(d)

HOOPER, LUNDY & BOOKMAN, INC.  
1875 CENTURY PARK EAST, SUITE 1600  
LOS ANGELES, CALIFORNIA 90067-2517  
TEL: (310) 551-8111 • FAX: (310) 551-8181

**JURISDICTION AND VENUE**

1  
2 1. Plaintiffs California Association of Health Facilities (“CAHF”),  
3 Developmental Services Network (“DSN”) and United Cerebral Palsy/Spastic  
4 Children’s Foundation of Los Angeles and Ventura Counties (“UCP”) (collectively  
5 “Plaintiffs”) bring this complaint pursuant to 28 United States Code (“U.S.C.”)  
6 § 1331, the Supremacy Clause, 42 United States Code (“U.S.C.”) § 1983 (*Shaw v.*  
7 *Delta Air Lines, Inc.*, 463 U.S. 85, 96 n. 14 (1983)) and the Administrative  
8 Procedure Act (“APA”), as codified at 5 U.S.C. § 706, *et seq.* This court further  
9 may compel Defendants Toby Douglas, Director of the California Department of  
10 Health Care Services (the “Director”) and Kathleen Sebelius, Secretary of the  
11 United States Department of Health and Human Services (“Secretary”), to comply  
12 with the mandatory provisions of the federal Medicaid law and the APA pursuant to  
13 28 U.S.C. § 1361.

14 2. Venue lies in this judicial district under 28 U.S.C. § 1391, in that the  
15 Director has offices within this judicial district and is thus deemed to reside within  
16 this judicial district and also in that Plaintiffs and/or their members are located and  
17 reside within this judicial district and the consequences of Defendants’  
18 unauthorized, unlawful and arbitrary activities are occurring within this judicial  
19 district.

**INTRODUCTION**

22 3. The State of California continues to disregard the mandates of federal  
23 law when making decisions that impact the rates of reimbursement afforded to  
24 health care providers under California’s Medicaid program, Medi-Cal. On two  
25 separate occasions in 2008, as part of the enactment of the State budget, the  
26 California Legislature passed statutes that called for flat percentage reductions in the  
27 payment rates for various classes of services covered under Medi-Cal. The majority  
28 of these payment rate reductions were enjoined by federal courts because they were

HOOPER, LUNDY & BOOKMAN, INC.  
1875 CENTURY PARK EAST, SUITE 1600  
LOS ANGELES, CALIFORNIA 90067-2517  
TEL: (310) 551-8111 • FAX: (310) 551-8181

HOOPER, LUNDY & BOOKMAN, INC.  
1875 CENTURY PARK EAST, SUITE 1600  
LOS ANGELES, CALIFORNIA 90067-2517  
TEL: (310) 551-8111 • FAX: (310) 551-8181

1 not enacted or implemented in a manner consistent with the federal Medicaid Act,  
2 which requires that states consider certain factors and take certain procedural steps  
3 before altering the rates paid to health care providers. Indeed, these rate reductions  
4 resulted in three, published decisions from the Ninth Circuit Court of Appeals  
5 establishing clearly that, to the extent it undertakes the task of setting Medi-Cal  
6 payment rates, the Legislature must comply with the mandates of federal law and, if  
7 it does not, the offending State statutes will be preempted.

8 4. The Legislature’s effort to balance California’s budget for the  
9 2009-2010 fiscal year resulted in legislation that again reduced Medi-Cal payment  
10 rates solely in the name of financial savings and without adherence to the  
11 requirements of the Medicaid Act. Although the form of the 2009-2010 rate  
12 reductions may have differed slightly from the flat percentage reductions that were  
13 enjoined previously, the process through which those limitations were enacted was  
14 virtually identical to the process that led to the enjoined cuts. The State should not  
15 be permitted to continue to violate established federal law when setting Medi-Cal  
16 payment rates.

17 5. By this action, organizations representing the interests of California  
18 Intermediate Care Facilities For The Mentally Retarded (“ICF/MR facilities”)  
19 and/or Freestanding Pediatric Subacute facilities (“FPS facilities”), as well as an  
20 entity that operates providers of ICF/MR services, seeks an injunction to invalidate  
21 and stop the continued application of the Medi-Cal rate limitation, which went into  
22 effect on August 1, 2009, that applies to payment rates for services rendered by  
23 ICF/MR facilities and FPS facilities. This payment limitation has and will continue  
24 to improperly deprive Medi-Cal participating ICF/MR facilities and FPS facilities,  
25 including a large number of small facilities, of reimbursement to which they  
26 otherwise are lawfully entitled.

27 6. The payment limitation is illegal because, as it has multiple times  
28 before, the California Legislature failed to fulfill its legal mandate to consider

HOOPER, LUNDY & BOOKMAN, INC.  
1875 CENTURY PARK EAST, SUITE 1600  
LOS ANGELES, CALIFORNIA 90067-2517  
TEL: (310) 551-8111 • FAX: (310) 551-8181

1 whether the resulting reimbursement rates are consistent with efficiency, economy  
2 and quality of care, reasonably related to provider costs, and sufficient to enlist  
3 enough providers so that Medi-Cal beneficiaries have access to the impacted  
4 services to the extent such services are available to the general public. The payment  
5 limitation also is unlawful because the rates resulting therefrom are not, in fact,  
6 reasonably related to costs or consistent with efficiency, economy and quality of  
7 care. The State further violated federal law, like it has done before, by enacting the  
8 reimbursement limitation without the proper public process required for payment  
9 rate adjustments.

10 7. Notwithstanding the legal infirmities described above, the federal  
11 agency charged with administering the Medicaid program, the Centers for Medicare  
12 and Medicaid Services ("CMS"), has found that the rate reduction is consistent with  
13 Medicaid Act requirements. CMS' decision is inconsistent not only with governing  
14 case law concerning what the Medicaid Act requires, but also the evidence that was  
15 before it concerning the rate cut. CMS' decision therefore was arbitrary, capricious,  
16 an abuse of discretion and contrary to law and should be overturned under the APA.

17 8. Moreover, the imposition of the rate limitation has caused, and will  
18 continue to cause, irreparable harm to California ICF/MR facilities and FPS  
19 facilities in the form of improperly reduced payments that cannot be recovered in  
20 federal court through an action at law. These unlawful payment reductions are  
21 taking their toll on impacted providers and now are pushing many close to the point  
22 that they will have to scale back services, modify admissions policies or shutdown  
23 outright if the rate reduction remains in place.

24 9. Accordingly, by this action, Plaintiffs CAHF and DSN, on behalf of  
25 their respective members, and Plaintiff UCP, seek declaratory and injunctive relief  
26 to stop the continued application of the rate limitation to ICF/MR facilities and FPS  
27 facilities and to set aside CMS' improper approval of that rate limitation.  
28

HOOPER, LUNDY & BOOKMAN, INC.  
1875 CENTURY PARK EAST, SUITE 1600  
LOS ANGELES, CALIFORNIA 90067-2517  
TEL: (310) 551-8111 • FAX: (310) 551-8181

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**FEDERAL MEDICAID LAW**

10. Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 *et seq.*, the Medicaid Act, authorizes federal financial support to states for medical assistance to low-income persons who are aged, blind, disabled, or members of families with dependent children. The program is jointly financed by the federal and state governments and administered by the states. The states, in accordance with federal law, decide eligible beneficiary groups, types and ranges of services, payment level for services, and administrative and operative procedures. Payment for services is made directly by states to the individuals or entities that furnish the services.

42 Code of Federal Regulations (“C.F.R.”) § 430.0.

11. In order to receive matching federal financial participation, states must agree to comply with the applicable federal Medicaid law and regulations, 42 U.S.C. §§ 1396 *et seq.* Once a state has decided to participate in the Medicaid program, compliance with the federal Medicaid law and regulations is mandatory.

12. At the state level, the Medicaid program is administered by a single state agency, which is charged with the responsibility of establishing and complying with a state Medicaid plan (the “State Plan”) that, in turn, must comply with the provisions of applicable federal Medicaid law. 42 U.S.C. § 1396a(a)(5) and 42 C.F.R. §§ 430.10 and 431.10. The State Plan must be submitted to the Secretary of the United States Department of Health and Human Services (the “Secretary”) for approval and must describe the policies and methods to be used to set payment rates for each type of service included in the state Medicaid plan. 42 C.F.R. §§ 430.10 and 447.201(b). Changes to the State Plan may not be implemented by the state prior to being approved by the Secretary.

13. The Secretary's review and approval of any Medicaid state plan amendment as satisfying the requirements of the Medicaid Act is reviewable under the APA, 5 U.S.C. § 706, *et seq.* Under the APA, agency action may be set aside where it is found to be arbitrary and capricious, an abuse of discretion or otherwise

HOOPER, LUNDY & BOOKMAN, INC.  
1875 CENTURY PARK EAST, SUITE 1600  
LOS ANGELES, CALIFORNIA 90067-2517  
TEL: (310) 551-8111 • FAX: (310) 551-8181

1 unsupported by substantial evidence. Among other things, an agency acts arbitrarily  
2 and capriciously when it fails to follow governing law with respect to a particular  
3 decision or action. Further, to comply with the APA, the Secretary must develop a  
4 record demonstrating adequate consideration of the relevant factors and a rational  
5 basis for her decision on the relevant SPA.

6 14. For ICF/MR facilities, FPS facilities, and certain other institutional  
7 providers, states must establish rates through a public process that includes:  
8 (a) publication of proposed rates, the methodologies underlying the establishment of  
9 such rates, and justifications for the rates; (b) a reasonable opportunity for comment  
10 on the proposed rates, methodologies and justifications by providers, beneficiaries  
11 and their representatives, and other concerned State residents; and (c) publication of  
12 the final rates, the methodologies underlying the establishment of such rates, and  
13 justifications for such final rates. *See* 42 U.S.C. § 1396a(a)(13)(A) (hereinafter  
14 “Section 13(A)”); 42 C.F.R. § 447.205.

15 15. Each state's Medicaid plan must "provide such methods and  
16 procedures . . . relating to the utilization of, and the payment for, care and services  
17 available under the plan which may be necessary . . . *to assure that payments are*  
18 *consistent with efficiency, economy, and quality of care and are sufficient to enlist*  
19 *enough providers so that care and services are available under the plan at least to*  
20 *the extent that such care and services are available to the general public in the*  
21 *geographic area . . . ."* 42 U.S.C. § 1396a(a)(30)(A) (hereinafter "Section 30(A)")  
22 (emphasis added); 42 C.F.R. § 447.204. Section 30(A) has been interpreted by the  
23 Ninth Circuit Court of Appeals to require state Medicaid agencies to consider  
24 provider costs, based on “reasonable cost” studies, when setting Medi-Cal payment  
25 rates, and that that payment rates must actually bear a reasonable relationship to  
26 provider costs, and to preclude states from basing Medicaid rate setting decisions  
27 solely on budgetary factors.

28

**CALIFORNIA’S MEDI-CAL PROGRAM**

1  
2 16. The State of California has elected to participate in the Medicaid  
3 program. California has named its program “Medi-Cal.” *See* Cal. Welf. & Inst.  
4 Code §§ 14000 *et seq.*; 22 Cal. Code of Regs. §§ 50000 *et seq.*

5 17. The Medi-Cal program covers services provided to persons with  
6 developmental disabilities whose health and well-being are compromised to the  
7 point that they need to reside in ICF/MR facilities. The term ICF/MR facilities is  
8 used to refer to intermediate care facilities for the mentally retarded as defined in  
9 42 U.S.C. § 1396d(c), including those facilities known in the State of California  
10 (and defined in Title 22, Cal. Code Regs. §§ 51164-51165.2 and 51243-51243.2) as  
11 Intermediate Care Facilities/Developmentally Disabled (“ICF/DD”), Intermediate  
12 Care Facilities/Developmentally Disabled-Habilitative (“ICF/DD-H), and  
13 Intermediate Care Facilities/Developmentally Disabled-Nursing (“ICF/DD-N”) that  
14 serve this dependent population.

15 18. The Medi-Cal program also covers pediatric subacute services for  
16 children who need highly intensive specialized services in order to rehabilitate  
17 and/or survive. Subacute services are more intensive than skilled nursing care, but  
18 slightly less intensive than care provided in an acute, inpatient setting. Medi-Cal  
19 coverage extends to subacute services provided by both hospital-based and  
20 freestanding providers. The term FPS facilities is used to refer to freestanding  
21 subacute facilities licensed as skilled nursing facilities or congregate living facilities  
22 that provide services to this dependent population, as defined in Title 22, Cal. Code  
23 Regs. §§ 51124.6, 51215.6, 51215.8-51215.11 and 51335.6.

24 19. The vast majority of funding provided to ICF/MR facilities and FPS  
25 facilities comes from the Medi-Cal program. As a result, these facilities are  
26 completely dependent on the Medi-Cal program for their funding and financial  
27 survival.

28

HOOPER, LUNDY & BOOKMAN, INC.  
1875 CENTURY PARK EAST, SUITE 1600  
LOS ANGELES, CALIFORNIA 90067-2517  
TEL: (310) 551-8111 • FAX: (310) 551-8181

**MEDI-CAL PAYMENTS TO ICF/MR AND FPS FACILITIES**

20. Payments from the Medi-Cal fee for service program for various categories of services are governed by various statutes, regulations, the State Plan, and in some instances, informal handbooks, manuals or bulletins.

21. Payments for services provided by ICF/MR facilities are governed by Title 22, Cal Code Regs. §§ 51510.1-51510.3 and Attachment 4.19-D to the State Plan. Reimbursement is established at a per diem rate calculated at the 65<sup>th</sup> percentile of audited costs incurred by each of the categories of ICF/MR facilities referred to in paragraph 14, separated by bed size. Payments for services provided by FPS facilities are governed by Title 22, Cal. Code Regs. § 51511.6 and Attachment 4.19-D to the State Plan. FPS facilities are reimbursed pursuant to either of two predetermined flat rates, one for patients who are ventilator dependent and one for patients who are not. The rates that FPS facilities are paid are based on a model that projects the costs FPS facilities will incur in treating Medi-Cal patients. Under the State Plan, the Department is required to re-evaluate Medi-Cal payment rates for ICF/MR facility and FPS facility services on a yearly basis. The Department generally is required to make updates to payment rates each year to account for certain economic conditions in the industry, which reflect an assumption that provider costs will generally increase every year due to, at minimum, inflation.

22. For the Medi-Cal rates years from and including the 2009-2010 rate year (beginning on August 1, 2009 and ending on July 31, 2010) to the 2011-2012 rate year (beginning on August 1, 2011 and ending on July 31, 2012), based on the Department's own calculations, the average Medi-Cal rates determined by the Department to be paid under the State Plan generally would have increased for ICF/MR and FPS facilities, but for the applicability of the rate limitation being challenged here.

HOOPER, LUNDY & BOOKMAN, INC.  
1875 CENTURY PARK EAST, SUITE 1600  
LOS ANGELES, CALIFORNIA 90067-2517  
TEL: (310) 551-8111 • FAX: (310) 551-8181



**THE AB 5 RATE REDUCTIONS OF 2009**

1  
2 23. On July 28, 2009, after four extra legislative sessions, Governor  
3 Schwarzenegger signed into law Assembly Bill X4 5 ("2009 AB 5"), the budget  
4 trailer bill for California fiscal year 2009 – 2010. Although, unlike the prior two  
5 California budget trailer bills, 2009 AB 5 did not make any flat percentage  
6 reductions to Medi-Cal payment rates, the bill enacted or amended multiple statutes  
7 in order to limit Medi-Cal reimbursement for several classes of health care services.

8 24. Among other things, 2009 AB 5 amended Welfare and Institutions  
9 Code § 14105.191 to effectively "freeze" the Medi-Cal payment rates for, among  
10 other things, ICF/MR and FPS facility services at 2008 – 2009 levels. Specifically,  
11 the statute provides that, for the designated services, "reimbursement rates . . . for  
12 services rendered during the 2009 – 10 rate year and each rate year thereafter, shall  
13 not exceed the reimbursement rates that were applicable to those classes of  
14 providers in the 2008-09 rate year." In effect, the amended version of the statute  
15 indefinitely suspends the annual payment updates for these classes of services that  
16 are otherwise required by the State Plan.

17 25. The reimbursement limitation described in paragraphs 32 above and  
18 established by the amendment to Welfare and Institutions Code § 14105.191, as  
19 enacted by 2009 AB 5, is hereinafter referred to as the "2009 AB 5 Reimbursement  
20 Freeze."

21 26. Plaintiffs are informed and believe and thereon allege that 2009 AB 5,  
22 which included the 2009 AB 5 Reimbursement Freeze, did not go through the public  
23 process that is normally characteristic of legislation and was instead the product of  
24 mostly behind-closed-doors budget negotiations. 2009 AB 5 was first introduced as  
25 a spot budget trailer bill on July 2, 2009, had no substantive content at the time, and  
26 was intended to provide a vehicle to enact budget related items that were under  
27 negotiation. The substantive provisions of the bill, including the 2009 AB 5  
28 Reimbursement Freeze, were added to the bill on July 23, 2009. It was passed by

HOOPER, LUNDY & BOOKMAN, INC.  
1875 CENTURY PARK EAST, SUITE 1600  
LOS ANGELES, CALIFORNIA 90067-2517  
TEL: (310) 551-8111 • FAX: (310) 551-8181

HOOPER, LUNDY & BOOKMAN, INC.  
1875 CENTURY PARK EAST, SUITE 1600  
LOS ANGELES, CALIFORNIA 90067-2517  
TEL: (310) 551-8111 • FAX: (310) 551-8181

1 both the Senate and Assembly that same day and then forwarded on to the Governor  
2 for signature the next day, July 24, 2009. The bill was signed into law by the  
3 Governor on July 28, 2009. The bill was enacted as urgency legislation to become  
4 effective immediately. In enacting 2009 AB 5, both the Senate and Assembly  
5 suspended rules that otherwise limit how quickly a bill can be passed after  
6 amendment.

7 27. Plaintiffs are informed and believe and thereon allege that, prior to  
8 enacting 2009 AB 5, neither the Legislature nor the Director engaged in any type of  
9 public notice and comment process related to the payment rates that would result  
10 from the 2009 AB 5 Reimbursement Freeze.

11 28. Plaintiffs are is further informed and believe and thereon allege that,  
12 prior to enacting or implementing 2009 AB 5, no studies or other analyses were  
13 conducted by the Legislature or by the Director to determine whether the Medi-Cal  
14 payment rates resulting from the 2009 AB 5 Reimbursement Freeze would be  
15 consistent with efficiency, economy and quality of care or reasonably related to the  
16 costs of providing the services affected by the rate reduction.

17 29. Plaintiffs are informed and believe and thereon allege that prior to  
18 enacting or implementing 2009 AB 5, no studies or other analyses were conducted  
19 by the Legislature or by the Director to determine the impact the 2009 AB 5  
20 Reimbursement Freeze would have on the ability of Medi-Cal beneficiaries to have  
21 access to the impacted ICF/MR facility and FPS facility services to the same extent  
22 as the general public.

23

24 **FEDERAL APPROVAL OF THE 2009 AB 5 REIMBURSEMENT FREEZE**

25 30. As required by federal law, in or around September 2009, DHCS  
26 submitted a proposed State Plan Amendment or “SPA” to CMS that sought federal  
27 approval of the 2009 AB 5 Reimbursement Freeze and incorporation of that rate  
28 limitation into California’s Medi-Cal State Plan.

HOOPER, LUNDY & BOOKMAN, INC.  
1875 CENTURY PARK EAST, SUITE 1600  
LOS ANGELES, CALIFORNIA 90067-2517  
TEL: (310) 551-8111 • FAX: (310) 551-8181

1           31.     According to information available to Plaintiffs, at the time the SPA  
2 concerning the 2009 AB 5 Reimbursement Freeze, designated by DHCS as SPA 09-  
3 019, was submitted to CMS, it was not accompanied by any materials purporting to  
4 evaluate whether the proposed rate reduction was consistent with the requirements  
5 of the Medicaid Act.

6           32.     While the SPA was pending with CMS in October and November  
7 2009, respectively, both DSN and CAHF submitted letters to CMS explaining why  
8 SPA 09-019 should not be approved and noting specifically that the State did not  
9 satisfy the requirements imposed by Section 30(A) when adopting and  
10 implementing the 2009 AB 5 Reimbursement Freeze. In particular, these letters  
11 explained that the reimbursement freeze was developed and enacted by the State for  
12 purely budgetary reasons, without the State ever engaging in a reasonable cost study  
13 to determine the probable impact of the rate reduction on quality of care or  
14 beneficiary access to services. Moreover, DSN's letter noted that the rate limitation,  
15 if approved, likely would have an adverse impact on ICF/MR provider participation  
16 in Medi-Cal.

17           33.     On December 4, 2009, CMS issued a letter to DHCS, which responded  
18 to SPA 09-019 by asking DHCS to submit additional information concerning the  
19 proposed reimbursement freeze. This Request for Additional Information ("RAI")  
20 was fairly extensive and included a list of numerous inquiries that CMS felt DHCS  
21 needed to address in order to allow CMS to appropriately assess whether the rate  
22 limitation called for in the SPA 09-019 would be consistent with the Medicaid Act.

23           34.     In February and March 2010, while CMS was still considering SPA 09-  
24 019, DSN and other impacted providers provided additional information to CMS  
25 concerning the invalidity of the 2009 AB 5 Reimbursement Freeze. Among other  
26 things, DSN noted that DHCS' own "rate studies," based on provider cost data,  
27 showed that, but for application of the reimbursement freeze, ICF providers  
28 generally would be entitled to significant rate increases. The letters also explained

HOOPER, LUNDY & BOOKMAN, INC.  
1875 CENTURY PARK EAST, SUITE 1600  
LOS ANGELES, CALIFORNIA 90067-2517  
TEL: (310) 551-8111 • FAX: (310) 551-8181

1 that many of the cost increases that impacted providers were experiencing were the  
2 result of efforts to comply with State regulatory mandates concerning such things as  
3 staffing ratios.

4 35. Plaintiffs are informed and believe and thereon allege that there was  
5 little or no activity at the CMS level related to SPA 09-019 between the RAI that  
6 was issued in December 2009 and March 24, 2011. On March 24, 2011, apparently  
7 in conjunction with discussions between CMS and DHCS concerning various  
8 pending SPAs, CMS asked DHCS to address “access questions” related to the  
9 pending SPAs, including SPA 09-019, and as part of its response, to specifically  
10 deal with concerns raised in the letters submitted by CAHF, DSN and ICF providers  
11 to CMS regarding SPA 09-019. Plaintiffs are informed and believe and thereon  
12 allege that CMS’ was not requesting DHCS to address potential issues arising from  
13 SPA 09-019 other than access concerns.

14 36. Plaintiffs are informed and believe and thereon allege that CMS never  
15 rendered a decision as to whether to approve SPA 09-019. However, on October 27,  
16 2011, CMS issued a letter to DHCS concerning various other pending SPAs, some  
17 of which had been previously disapproved by CMS. The letter indicated that, based  
18 on information CMS submitted initially on March 25, 2011, CMS was approving the  
19 SPAs because “the State was able to provide metrics that adequately demonstrated  
20 beneficiary access.” Those "metrics" included information about "total numbers of  
21 providers by type and geographic location" participating in Medi-Cal, "total number  
22 of Medi-Cal beneficiaries by eligibility type," and "utilization of services over  
23 time." CMS also indicated that it accepted DHCS' plan to monitor access to services  
24 going forward. There is no reference in the October 27, 2011 letter from CMS  
25 approving the SPAs to any considerations of the impact of the various rate  
26 limitations on quality of care or efficiency.

27 37. Although the October 27, 2011 letter from CMS did not reference SPA  
28 09-019 specifically, attached to the letter were “approved plan pages,” several of

1 which set forth the rate freeze for ICF/MR and FPS facilities called for 2009 AB 5.  
2 Accordingly, Plaintiffs are informed and believe and thereon allege that CMS never  
3 formally ruled on SPA 09-019, but effectively merged that SPA with another SPA  
4 that was specifically approved through the October 27, 2011 letter. The October 27,  
5 2011 CMS letter indicated that its approval of the 2009 AB 5 Reimbursement  
6 Freeze was effective retrospectively to August 1, 2009.

7  
8 **THE ILLEGALITY OF 2009 AB 5**

9 38. The State has violated, and continues to violate federal Medicaid  
10 statutes, federal Medicaid regulations and the State Plan by failing to analyze  
11 Medi-Cal reimbursement rates for the services affected by the 2009 AB 5  
12 Reimbursement Freeze in order to ensure that those rates are consistent with  
13 efficiency, economy and quality of care, reasonably related to provider costs, and  
14 sufficient to ensure that beneficiaries of the Medi-Cal program have access to  
15 services to the same extent as the general public.

16 39. Violation of Federal Statute: The 2009 AB 5 Reimbursement Freeze is  
17 invalid and may not lawfully be implemented because it violates federal Medicaid  
18 law, and is therefore preempted by the Supremacy Clause, because:

19 (a) The 2009 AB 5 Reimbursement Freeze violates Section 30(A) in  
20 the following ways:

21 (i) Neither the Director nor the Legislature considered the  
22 factors of efficiency, economy, quality of care, and access to services prior to  
23 enacting and/or implementing the 2009 AB 5 Reimbursement Freeze;

24 (ii) Neither the Director nor the Legislature demonstrated a  
25 reasonable connection between rates resulting from the 2009 AB 5 Reimbursement  
26 Freeze and the efficient and economical provision of quality care, or ensuring access  
27 to services, prior to enacting and/or implementing the 2009 AB 5 Reimbursement  
28 Freeze;

HOOPER, LUNDY & BOOKMAN, INC.  
1875 CENTURY PARK EAST, SUITE 1600  
LOS ANGELES, CALIFORNIA 90067-2517  
TEL: (310) 551-8111 • FAX: (310) 551-8181

1 (iii) Neither the Legislature nor the Director considered the  
2 costs of providing quality care or demonstrated a reasonable connection between  
3 Medi-Cal rates resulting from the 2009 AB 5 Reimbursement Freeze and provider  
4 costs prior to enacting and/or implementing the 2009 AB 5 Reimbursement Freeze;

5 (iv) Plaintiffs are informed and believe and thereon allege that  
6 the rates resulting from the 2009 AB 5 Reimbursement Freeze are not consistent  
7 with efficiency, economy, and quality of care, reasonably related to provider costs,  
8 or sufficient to ensure that Medi-Cal beneficiaries have access to the impacted  
9 ICF/MR facility and FPS facility services to the same extent as the general  
10 population.

11 (b) The 2009 AB 5 Reimbursement Freeze violates Section 13(A) as  
12 to the impacted ICF/MR facility and FPS facility services because it was not  
13 adopted through the public process required by this provision. In addition to a claim  
14 of preemption under the Supremacy Clause, the State's failure to comply with  
15 Section 13(A) gives rise to a private right of action under 42 U.S.C. § 1983, as  
16 violation of the civil rights of CAHF's members.

17 40. Violation of Federal Regulations: The 2009 AB 5 Reimbursement  
18 Freeze is invalid and may not lawfully be implemented because it violates federal  
19 Medicaid regulations, and is therefore preempted by the Supremacy Clause, in that  
20 public notice of the reimbursement limitation as to the impacted ICF/MR facility  
21 and FPS facility services was not given in accordance with the terms of 42 C.F.R.  
22 § 447.205.

23  
24 **THE SECRETARY'S APPROVAL**  
25 **OF THE 2009 AB 5 REIMBURSEMENT FREEZE**

26 41. Consistent with the foregoing, the Secretary's approval of the 2009 AB  
27 5 Reimbursement Freeze, as set forth originally in SPAs 09-019, is invalid because  
28 it is arbitrary, capricious, an abuse of discretion and inconsistent with governing law

HOOPER, LUNDY & BOOKMAN, INC.  
1875 CENTURY PARK EAST, SUITE 1600  
LOS ANGELES, CALIFORNIA 90067-2517  
TEL: (310) 551-8111 • FAX: (310) 551-8181

1 for the following reasons:

2 (a) Because California is within the jurisdiction of the Ninth Circuit  
3 Court of Appeals, the Secretary is bound to apply the Ninth Circuit's interpretation  
4 of the Medicaid Act, including Section 30(A), when evaluating California SPAs for  
5 compliance with the Medicaid Act. The Ninth Circuit has held that Section 30(A)  
6 requires that Medicaid payment rates must be based on credible cost studies and  
7 must bear a reasonable relationship to provider costs in order to be consistent with  
8 quality of care and sufficient to ensure that beneficiaries have equal access to  
9 services. Plaintiffs are informed and believe, and on that basis allege, that the  
10 Secretary has not applied the Ninth Circuit's interpretation of Section 30(A) in  
11 reviewing and approving the relevant SPA, but purported to consider only whether  
12 the rates may actually cause a reduction in beneficiary access to services. The  
13 Secretary has thus failed to follow and apply the applicable law.

14 (b) The question of whether Medi-Cal payment rates for ICF/MR  
15 and FPS services are reasonably related to facility costs is a relevant factor in the  
16 determination of whether the rates comply with Section 30(A). Plaintiffs are  
17 informed and believe, and based thereon allege, that the Secretary did not consider  
18 whether the Medi-Cal payment rates for ICF/MR and FPS facilities after the  
19 implementation of the 2009 AB 5 Reimbursement Freeze would bear a reasonable  
20 relationship to hospital costs in deciding to approve the relevant SPA.

21 (c) Plaintiffs are informed and believe and thereon allege that  
22 payment rates resulting from the 2009 AB 5 Reimbursement Freeze would generally  
23 reimburse ICF/MR and FPS less than their costs. Accordingly, the Secretary could  
24 not have reasonably concluded that the rates resulting from the 2009 AB 5  
25 Reimbursement Freeze bear a reasonable relationship to costs. It was therefore  
26 arbitrary, capricious and an abuse of discretion for the Secretary to approve the  
27 relevant SPA.

28

HOOPER, LUNDY & BOOKMAN, INC.  
1875 CENTURY PARK EAST, SUITE 1600  
LOS ANGELES, CALIFORNIA 90067-2517  
TEL: (310) 551-8111 • FAX: (310) 551-8181

1 (d) Plaintiffs are informed and believe and thereon allege that the  
2 Secretary did not consider other relevant factors in evaluating California's SPA  
3 related to the 2009 AB 5 Reimbursement Freeze in that the Secretary did not  
4 adequately consider, among other things, the impact of the rate reduction on the  
5 quality of ICF/MR and FPS care, whether the payment reductions would impact the  
6 promptness with which Medicaid beneficiaries are able to obtain ICF/MR and FPS  
7 services and whether the reduction would impact the efficiency with which Medi-  
8 Cal services are delivered.

9 (e) The Secretary's review and approval of the 2009 AB 5  
10 Reimbursement Freeze also is arbitrary and capricious because it occurred in  
11 manner that was inconsistent with the Secretary's own regulations, as well as public  
12 statements concerning the need for "transparency" in the SPA approval process. As  
13 mentioned, inconsistent with governing regulations, the Secretary never formally  
14 reached a decision on the SPA that originally sought to incorporate the 2009 AB 5  
15 Reimbursement Freeze into California's State Plan, but instead approved the rate  
16 limitation in conjunction with a different SPA. Further, interested parties, including  
17 CAHF and DSN, were not afforded meaningful access to the information that was  
18 being exchanged between CMS and DHCS concerning the SPA. By reaching a  
19 decision on the relevant SPA without affording interested parties an adequate  
20 opportunity to review the information DHCS submitted in response to CMS' RAI,  
21 the Secretary effectively rendered meaningless any public participation it had  
22 allowed in the process before that.

23  
24 **THE PARTIES**

25 42. Defendant TOBY DOUGLAS is the Director of the Department of  
26 Health Care Services and, as such, has the responsibility to administer the Medi-Cal  
27 program consistent with the Medicaid Act. The Director is sued in his official  
28 capacity. The Department is the single state agency charged with the administration

HOOPER, LUNDY & BOOKMAN, INC.  
1875 CENTURY PARK EAST, SUITE 1600  
LOS ANGELES, CALIFORNIA 90067-2517  
TEL: (310) 551-8111 • FAX: (310) 551-8181



1 of California's Medicaid program, known as Medi-Cal. *See* California Welf. & Inst.  
2 Code §§ 14000 *et seq.* The Director has an office in the County of Los Angeles.

3 43. Defendant KATHLEEN SEBELIUS, the Secretary of the United States  
4 Department of Health and Human Services, is the federal officer responsible for  
5 administering the Medicaid program at the federal level. The Secretary, through her  
6 designated agent, CMS, is responsible for reviewing and approving policy changes  
7 that states make to their Medicaid program. The Secretary has approved the policy  
8 changes that California has made to Medi-Cal, which Plaintiffs are challenging  
9 herein.

10 44. Plaintiff CAHF is, and at all times mentioned herein was, a non-profit  
11 association representing, among other long-term care providers, 519 licensed  
12 ICF/MR facilities and FPS facilities in the State of California, a number of which  
13 are located within the Central District of California, Western Division. These  
14 members are affected by the State's failure to pay for services provided to Medi-Cal  
15 beneficiaries at the rates required by federal law and the State Plan. The protection  
16 of these interests are germane to CAHF's purpose. CAHF is bringing this action on  
17 its own behalf and as the "representative" of its member ICF/MR facilities and FPS  
18 facilities. The individual participation of CAHF's members is not required for the  
19 claims asserted or the relief requested.

20 45. Plaintiff DSN is a statewide non-profit trade association in California  
21 that represents approximately 250 small intermediate care facilities for people with  
22 developmental disabilities. DSN is headquartered in Sacramento, California. The  
23 members of DSN are companies operating facilities licensed as either ICF/DD-N  
24 pursuant to California Health & Safety Code section 1250(h) or ICF/DD-H  
25 pursuant to California Health & Safety Code section 1250(e). DSN is informed  
26 and believes that all of its members are Medi-Cal providers. DSN is bringing this  
27 action on its own behalf and as the "representative" of its member ICF/MR  
28 facilities. The individual participation of DSN's members is not required for the

HOOPER, LUNDY & BOOKMAN, INC.  
1875 CENTURY PARK EAST, SUITE 1600  
LOS ANGELES, CALIFORNIA 90067-2517  
TEL: (310) 551-8111 • FAX: (310) 551-8181

HOOPER, LUNDY & BOOKMAN, INC.  
1875 CENTURY PARK EAST, SUITE 1600  
LOS ANGELES, CALIFORNIA 90067-2517  
TEL: (310) 551-8111 • FAX: (310) 551-8181

1 claims asserted or the relief requested.

2 46. Plaintiff UCP is a 501(c)(3) non-profit public benefit association  
3 founded in 1945 by a small group of parents who wanted to create community-based  
4 services for their children with disabilities. UCP is headquartered in Woodland  
5 Hills, California. Today, UCP operates more than 40 program sites throughout five  
6 counties in Southern California and has extended its mission to serve all people with  
7 disabilities. UCP provides services to more than 1,000 children and adults with  
8 developmental disabilities daily. UCP is also an affiliate of the national United  
9 Cerebral Palsy, a nationwide network of over 100 independent, state and local non-  
10 profit affiliates, with a central national organization located in Washington, D.C.  
11 UCP operates 12 ICF/DD-H homes and 9 ICF/DD-N homes. Over 99% of the ICF  
12 patients served by UCP are Medi-Cal eligible and the facilities receive their  
13 reimbursement for the care from Medi-Cal.

14  
15 **CAHF AND DSN HAVE ASSOCIATIONAL STANDING**

16 47. All of CAHF’s ICF/MR facility and FPS facility members are  
17 Medi-Cal providers, as are all of DSN’s members. These Medi-Cal providers will  
18 suffer, and have suffered, a concrete economic injury in the form of reduced  
19 payments for services by the unlawful implementation of the 2009 AB 5  
20 Reimbursement Freeze.

21 48. CAHF and DSN, as associations representing the interests of California  
22 ICF/MR facilities and/or FPS facilities that participate in the Medi-Cal program and  
23 as parties seeking to compel the Secretary and Director to comply with the law and  
24 their respective public duties as defined by federal law, have a right and an  
25 enforceable interest to maintain this action to: (1) enjoin Defendants’ continuing  
26 violation of federal law; and (2) compel Defendants to comply with the provisions  
27 of applicable federal laws.

28

1 49. Moreover, CAHF and DSN have a right and an enforceable interest to  
2 maintain this action against the Director and Secretary under the Supremacy Clause  
3 of the United States Constitution, the Civil Rights Act, 42 U.S.C. § 1983, and the  
4 APA to enjoin the Director's continuing violation of the federal Medicaid law and to  
5 compel the Director to comply with the provisions of the applicable federal  
6 Medicaid law, as well as to challenge the Secretary's decision to approve the  
7 Director's implementation of the unlawful rate limitation.

8 50. Under 28 U.S.C. § 2201, CAHF and DSN are entitled to a declaration  
9 of their rights, their members' rights, under the United States Constitution, federal  
10 Medicaid law and the APA

11  
12 **FIRST CAUSE OF ACTION**

13 **(VIOLATION OF 42 U.S.C. § 1396a(a)(30)(A)/SUPREMACY CLAUSE)**

14 **(Against Defendant Director)**

15 51. Plaintiffs hereby incorporate by reference paragraphs 1 through 50,  
16 inclusive, as though fully set forth herein.

17 52. The 2009 AB 5 Reimbursement Freeze violates Section 30(A) of the  
18 Medicaid Act because:

19 (a) Neither the Director nor the Legislature considered the factors of  
20 efficiency, economy, quality of care, and access to services prior to enacting and/or  
21 implementing the 2009 AB 5 Reimbursement Freeze;

22 (b) Neither the Director nor the Legislature demonstrated a  
23 reasonable connection between the payment rates resulting from 2009 AB 5  
24 Reimbursement Freeze and the provision of quality care in an efficient and  
25 economic manner, or ensuring access to services, prior to enacting and/or  
26 implementing the 2009 AB 5 Reimbursement Freeze;

27 (c) Neither the Legislature nor the Director considered the costs of  
28 providing quality care or demonstrated that the Medi-Cal payment rates resulting

HOOPER, LUNDY & BOOKMAN, INC.  
1875 CENTURY PARK EAST, SUITE 1600  
LOS ANGELES, CALIFORNIA 90067-2517  
TEL: (310) 551-8111 • FAX: (310) 551-8181

1 from the 2009 AB 5 Reimbursement Freeze are reasonably related to provider costs  
2 prior to enacting and/or implementing the 2009 AB 5 Reimbursement Freeze; and

3 (d) Plaintiffs are informed and believe and thereon allege that the  
4 rates resulting from the 2009 AB 5 Reimbursement Freeze are not consistent with  
5 efficiency, economy, and quality of care, nor are they reasonably related to provider  
6 costs, and also are not sufficient to enlist enough providers so that Medi-Cal  
7 beneficiaries have access to the impacted ICF/MR facility and FPS facility services  
8 at least to the extent that such services are available to the general population.  
9

10 **SECOND CAUSE OF ACTION**

11 **(VIOLATION OF 42 U.S.C. § 1396a(a)(13)(A)/SUPREMACY  
12 CLAUSE/42 U.S.C. § 1983)**

13 (Against Defendant Director)

14 53. Plaintiffs hereby incorporate by reference paragraphs 1 through 50,  
15 inclusive, as though fully set forth herein.

16 54. The 2009 AB 5 Reimbursement Freeze violates Section 13(A) as to the  
17 impacted ICF/MR facility and FPS facility services because it was not adopted  
18 through a public process as required by this provision.

19 55. The 2009 AB 5 Reimbursement Freeze is thus preempted by the  
20 Supremacy Clause of the United States Constitution, art. IV. and violates the civil  
21 rights of CAHF’s members, which are enforceable through 42 U.S.C. § 1983.

22 **THIRD CAUSE OF ACTION**

23 **(VIOLATION OF 42 C.F.R. § 447.205/SUPREMACY CLAUSE)**

24 (Against Defendant Director)

25 56. Plaintiffs hereby incorporate by reference paragraphs 1 through 50,  
26 inclusive, as though fully set forth herein.  
27  
28

HOOPER, LUNDY & BOOKMAN, INC.  
1875 CENTURY PARK EAST, SUITE 1600  
LOS ANGELES, CALIFORNIA 90067-2517  
TEL: (310) 551-8111 • FAX: (310) 551-8181

1 57. The 2009 AB 5 Reimbursement Freeze is invalid and may not lawfully  
2 be implemented because it violates 42 C.F.R. § 447.205 as to the impacted ICF/MR  
3 facility and FPS facility services, and is therefore preempted by the Supremacy  
4 Clause, in that public notice of the reimbursement limitation was not given in  
5 accordance with the terms of 42 C.F.R. § 447.205.

6  
7 **FOURTH CAUSE OF ACTION**  
8 **(VIOLATION OF TAKINGS CLAUSE /**  
9 **SUPREMACY CLAUSE 42 U.S.C. § 1983)**

10 (Against Defendant Director)

11 58. Plaintiffs hereby incorporate by reference paragraphs 1 through 50  
12 inclusive, as though fully set forth herein.

13 59. California law places restrictions on the ability of certain categories of  
14 facilities, including ICF/MR and FPS facilities, to both withdraw from Medi-Cal  
15 and cease operations. *See, e.g.* Cal. Health & Safety Code § 1336.2 and Cal. Welf.  
16 & Inst. Code § 14022.4. Such facilities are not permitted to immediately stop  
17 treating patients, but rather must take extensive steps to ensure that their patients are  
18 transferred to other patient facilities. However, in some instances, this class of  
19 facilities may be required, by statute, to continue treating particular patients who  
20 refuse transfer to other facilities. Along these lines, impacted facilities, including  
21 ICF/MR and FPS facilities, may only effectively withdraw from the Medi-Cal  
22 program when all Medi-Cal patients have left the care of the facility. California law  
23 therefore compels certain facilities, including ICF/MR and FPS facilities, to furnish  
24 services to Medi-Cal beneficiaries, which constitutes an appropriation of these  
25 facilities and taking of their property by the State of California. Due to the low rates  
26 at which the Medi-Cal program is compensating ICF/MR and FPS facilities through  
27 application of the 2009 AB 5 Reimbursement Freeze, Plaintiff CAHF and DSN's  
28 members that operate ICF/MR or FPS facilities, as well as Plaintiff UCP, will not be

HOOPER, LUNDY & BOOKMAN, INC.  
1875 CENTURY PARK EAST, SUITE 1600  
LOS ANGELES, CALIFORNIA 90067-2517  
TEL: (310) 551-8111 • FAX: (310) 551-8181

HOOPER, LUNDY & BOOKMAN, INC.  
1875 CENTURY PARK EAST, SUITE 1600  
LOS ANGELES, CALIFORNIA 90067-2517  
TEL: (310) 551-8111 • FAX: (310) 551-8181

1 justly compensated by the State for their property in violation of the Fifth and  
2 Fourteenth Amendments of the United States Constitution.

3 60. The 2009 AB 5 Reimbursement Freeze has been enacted by the  
4 California Legislature, and implemented by the Department, under color of State  
5 law. CAHF and DSN represents the interests of facilities, and UCP operates  
6 facilities, that have been improperly deprived of their privately enforceable right to  
7 be free of government imposed takings of private property without just  
8 compensation that is guaranteed under the United States Constitution. Accordingly,  
9 the Director has violated 42 U.S.C. § 1983 with respect to the enactment and  
10 implementation of the 2009 AB 5 Reimbursement Freeze.

11 61. Also, the 2009 AB 5 Reimbursement Freeze is preempted by the  
12 Supremacy Clause of the United States Constitution, art. IV because the Director  
13 cannot simultaneously comply with the provisions of California law requiring the  
14 implementation of the rate reduction and the Constitutional prohibition on taking  
15 private property without adequate compensation.

16  
17 **FIFTH CAUSE OF ACTION**

18 **(VIOLATION OF**

19 **ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. §§ 701-706)**

20 **(Against Defendant Secretary)**

21 62. Plaintiffs hereby incorporate by reference paragraphs 1 through 50,  
22 inclusive, as though fully set forth herein.

23 63. Under the APA, 5 U.S.C. §§ 701-706, courts must overturn agency  
24 action that is arbitrary, capricious, an abuse of discretion or not otherwise in  
25 accordance with the law.

26 64. The Secretary’s approval of the 2009 AB 5 Reimbursement Freeze is  
27 the act of an administrative agency and subject to review under the APA. The  
28 Secretary's approval of the relevant SPA is invalid under the APA because it is

HOOPER, LUNDY & BOOKMAN, INC.  
1875 CENTURY PARK EAST, SUITE 1600  
LOS ANGELES, CALIFORNIA 90067-2517  
TEL: (310) 551-8111 • FAX: (310) 551-8181

1 arbitrary, capricious and an abuse of discretion, and otherwise inconsistent with  
2 governing law, for the following reasons:

3 (a) Because California is within the jurisdiction of the Ninth Circuit  
4 Court of Appeals, the Secretary is bound to apply the Ninth Circuit's interpretation  
5 of the Medicaid Act, including Section 30(A), when evaluating California SPAs for  
6 compliance with the Medicaid Act. The Ninth Circuit has held that Section 30(A)  
7 requires that Medicaid payment rates must be based on credible cost studies and  
8 must bear a reasonable relationship to provider costs in order to be consistent with  
9 quality of care and sufficient to ensure that beneficiaries have equal access to  
10 services. Plaintiffs are informed and believe, and on that basis allege, that the  
11 Secretary has not applied the Ninth Circuit's interpretation of Section 30(A) in  
12 reviewing and approving the relevant SPA, but purported to consider only whether  
13 the rates may actually cause a reduction in beneficiary access to services. The  
14 Secretary has thus failed to follow and apply the applicable law.

15 (b) The question of whether Medi-Cal payment rates for ICF/MR  
16 and FPS services are reasonably related to facility costs is a relevant factor in the  
17 determination of whether the rates comply with Section 30(A). Plaintiffs are  
18 informed and believe, and based thereon allege, that the Secretary did not consider  
19 whether the Medi-Cal payment rates for ICF/MR and FPS facilities after the  
20 implementation of the 2009 AB 5 Reimbursement Freeze would bear a reasonable  
21 relationship to hospital costs in deciding to approve the relevant SPA.

22 (c) Plaintiffs are informed and believe and thereon allege that  
23 payment rates resulting from the 2009 AB 5 Reimbursement Freeze would generally  
24 reimburse ICF/MR and FPS less than their costs. Accordingly, the Secretary could  
25 not have reasonably concluded that the rates resulting from the 2009 AB 5  
26 Reimbursement Freeze bear a reasonable relationship to costs. It was therefore  
27 arbitrary, capricious and an abuse of discretion for the Secretary to approve the  
28 relevant SPA.

1 (d) Plaintiffs are informed and believe and thereon allege that the  
2 Secretary did not consider other relevant factors in evaluating California's SPA  
3 related to the 2009 AB 5 Reimbursement Freeze in that the Secretary did not  
4 adequately consider, among other things, the impact of the rate reduction on the  
5 quality of ICF/MR and FPS care, whether the payment reductions would impact the  
6 promptness with which Medicaid beneficiaries are able to obtain ICF/MR and FPS  
7 services and whether the reduction would impact the efficiency with which Medi-  
8 Cal services are delivered.

9 (e) The Secretary's review and approval of the 2009 AB 5  
10 Reimbursement Freeze also is arbitrary and capricious because it occurred in  
11 manner that was inconsistent with the Secretary's own regulations, as well as public  
12 statements concerning the need for "transparency" in the SPA approval process. As  
13 mentioned, inconsistent with governing regulations, the Secretary never formally  
14 reached a decision on the SPA that originally sought to incorporate the 2009 AB 5  
15 Reimbursement Freeze into California's State Plan, but instead approved the rate  
16 limitation in conjunction with a different SPA. Further, interested parties, including  
17 CAHF and DSN, were not afforded meaningful access to the information that was  
18 being exchanged between CMS and DHCS concerning the SPA. By reaching a  
19 decision on the relevant SPA without affording interested parties an adequate  
20 opportunity to review the information DHCS submitted in response to CMS' RAI,  
21 the Secretary effectively rendered meaningless any public participation it had  
22 allowed in the process before that.

23  
24 **SIXTH CAUSE OF ACTION**

25 **(DECLARATORY RELIEF)**

26 (Against All Defendants)

27 65. Plaintiffs hereby incorporate by reference paragraphs 1 through 50,  
28 inclusive, as though fully set forth herein.

HOOPER, LUNDY & BOOKMAN, INC.  
1875 CENTURY PARK EAST, SUITE 1600  
LOS ANGELES, CALIFORNIA 90067-2517  
TEL: (310) 551-8111 • FAX: (310) 551-8181



HOOPER, LUNDY & BOOKMAN, INC.  
1875 CENTURY PARK EAST, SUITE 1600  
LOS ANGELES, CALIFORNIA 90067-2517  
TEL: (310) 551-8111 • FAX: (310) 551-8181

1           66.    An actual and justiciable controversy exists between Plaintiffs and  
2 Director regarding the validity of the 2009 AB 5 Reimbursement Freeze. Plaintiffs  
3 CAHF and DSN, on behalf of their respective members, and Plaintiff UCP, contend  
4 that the reimbursement limitation is invalid and unlawful in violation of federal  
5 statute, federal regulations, and the State Plan, while the Director contends that the  
6 reimbursement limitation is valid in all respects.

7           67.    An actual and justiciable controversy exists between Plaintiffs and  
8 Defendant Secretary regarding whether the SPA setting forth the 2009 AB 5  
9 Reimbursement Freeze, to the extent any such SPA was actually approved,  
10 complied with the requirements of the federal Medicaid Act. Plaintiffs contend that  
11 the Secretary's approval of the relevant SPA was arbitrary, capricious, an abuse of  
12 discretion and not in accordance with applicable law, while the Secretary contends  
13 that she properly approved the SPA as in compliance with the Medicaid Act and  
14 APA.

15           68.    Accordingly, pursuant to 28 U.S.C. § 2201, Plaintiffs request this Court  
16 to declare that the 2009 AB 5 Reimbursement Freeze is invalid, unlawful and  
17 preempted by federal Medicaid law and that the Secretary's approval of that rate  
18 limitation was arbitrary, capricious an abuse of discretion and not in accordance  
19 with applicable law.

20           69.    No administrative appeal process or other administrative remedy is  
21 available to Plaintiffs and/or their members, as applicable, to challenge the 2009  
22 AB 5 Reimbursement Freeze.

23           70.    All of the said injuries are great, immediate, and irreparable, for which  
24 damages at law are inadequate, and for which Plaintiffs, and/or their members, as  
25 applicable, have no plain, adequate or speedy relief at law or otherwise.

26 ///

27 ///

28 ///

