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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ESTHER DARLING; RONALD BELL by his
guardian ad litem Rozene Dilworth; GILDA
GARCIA; WENDY HELFRICH by her
guardian ad litem Dennis Arnett; JESSIE
JONES; RAIF NASYROV by his guardian ad
litem Sofiya Nasyrova; ALLIE JO
WOODARD, by her guardian ad litem Linda
Gaspard-Berry; individually and on behalf of
all others similarly situated,

Plaintiffs,

vs.

TOBY DOUGLAS, Director of the
Department of Health Care Services, State of
California, DEPARTMENT OF HEALTH
CARE SERVICES,

Defendants.

Case No.: C09-03798 SBA

CLASS ACTION

SECOND SUPPLEMENTAL
DECLARATION OF CATHERINE DAVIS
IN SUPPORT OF PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION

Hearing Date: November 8, 2011
Time: 1:00 P.M.
Judge: Hon. Sandra B. Armstrong
Address: 1301 Clay Street
Oakland, CA 94612
Courtroom: 1, 4th Floor

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1 **SECOND SUPPLEMENTAL DECLARATION OF CATHERINE DAVIS**

2 I, CATHERINE DAVIS, do hereby declare:

3 1. I make this second supplemental declaration in support of Plaintiffs' Motion for a
4 Preliminary Injunction in *Darling v. Douglas*, C:09-03798 SBA. The facts set forth herein are true of
5 my own personal knowledge, and if called upon to testify thereto, I could and would competently do so
6 under oath.

7 2. I am a resident of California. I currently reside in El Sobrante, California.

8 3. I am the Executive Director of the Bayview Hunter's Point Adult Day Health Care
9 Program. The Bayview Hunters Point Adult Day Health program is located at 1250 LaSalle, San
10 Francisco, CA 94124.

11 4. My personal background and experience, as well as a description of the Bayview
12 Hunter's Point Adult Day Health Care Program, are more fully described in my previous declarations
13 (ECF No. 232 and ECF No. 324).

14 5. I have reviewed the Defendants' October 26, 2011 reply in opposition to Plaintiffs'
15 Motion for Preliminary Injunction and supporting declarations.

16 **Allie Jo Woodard**

17 6. Defendants state that "in anticipation of the elimination of the ADHC benefit, the social
18 worker has arranged for the IHSS contractor provided by the county to provide services during the day
19 when Ms. Woodard would have been at the ADHC center, and her son and daughter will continue to
20 stay with her at night and on weekends as they have been. Thus it appears that Ms. Woodard's care
21 needs are being addressed by this caregiver adjustment." Defendants' Reply, ECF No. 360, page 8,
22 lines 20-27.

23 7. I find this statement outrageous, and misleading, implying that somehow Ms. Woodard
24 would have an increase in IHSS hours, when in fact they have been reduced. Declaration of Debra
25 Ferreria, Exhibit G, ECF No. 364-7 page 2 (stating that Ms. Woodard's current IHSS is 272.89 per
26 month, and was previously 283 hours per month). Moreover, this statement cavalierly shifts additional
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28

1 caregiving (approximately 125 hours per month that ADHC would have provided) to Ms. Woodard's
2 daughter and son, who are already overtasked caring for their mother.

3 8. In addition to this misleading information about IHSS, Defendants list "possibilities" that
4 would somehow replace Ms. Woodard's needs, and propose replacing her skilled services, five days a
5 week, with "caregiver tasks" and IHSS. As I have previously stated, IHSS cannot replace skilled
6 services. Defendants' assertion that IHSS would provide assistance with monitoring "whereabouts and
7 conserve energy, changes in behavior and give sedation as needed (participant displays psychotic
8 symptoms at times), observe for cardiac problems" is untenable. Supplemental Declaration of Debra
9 Ferreria, Exhibit G, ECF No. 364-7 page 3.

10 9. Finally, Defendants acknowledge that ADHC provides Ms. Woodard with a social
11 structure that has helped maintain her mental health, yet offer no alternatives for this social structure.

12 *Id.*

13 **IHO Waiver**

14 10. As I stated in my declaration of October 14, 2011, the Bayview ADHC submitted 69 two
15 page waiver applications which we believed were for the IHO waiver, for participants we believed were
16 eligible, and met the NF-B level of care, on September 20, 2011. ECF No. 324, ¶¶ 16-19.

17 11. As of October 28, 2011, I have had no communication from DHCS about the status of
18 these applications.

19 12. I understand Defendants have reviewed the sixteen page level of care assessment we
20 completed for Allie Jo Woodard, attached as Exhibit C to my declaration of October 14, 2011 however,
21 we have had no communication from DHCS regarding the assessment I submitted.

22 13. We have also not had any further communication from DHCS regarding the DHCS list of
23 participants "who might meet the IHO Waiver NF-B level of care" referenced in my October 14, 2011
24 declaration. ECF No. 324 ¶ 18.

25 **APS, Inc.**

26 14. I am aware that for those participants who chose not to enroll in managed care, APS Inc.,
27 is going to contact them to do an assessment. As far as I am aware, only one participant has been
28

1 contacted, however, it was unclear to the participant's caregiver if the contact was from APS or from
2 IHSS.

3 I declare under penalty of perjury under the laws of the State of California that the foregoing is
4 true and correct.

5 Executed on October 29, 2011 at San Francisco, CA

6
7 By: _____/s/_____
Catherine Davis

8 I hereby attest that I have on file all holograph signatures for any signatures indicated by a
9 "conformed" signature (/S/) within this efiled document.

10 By: _____/s/_____
11 Elissa Gershon
Attorneys for Plaintiffs