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

14 LILLIE BRANTLEY, by her guardian ad) **Case No.: C09-03798 SBA**
litem Chauncey McLorin; GILDA GARCIA;)
15 ALLIE JO WOODARD, by her guardian ad) **CLASS ACTION**
litem Linda Gaspard-Berry; HARRY COTA;)
16 SUMI KONRAI by her guardian ad litem) **FIRST AMENDED COMPLAINT FOR**
Casey Konrai; RONALD BELL by his) **INJUNCTIVE AND DECLARATORY**
17 guardian ad litem Rozene Dilworth,) **RELIEF**
individually and on behalf of all others)
18 similarly situated,)

19 Plaintiffs,)

20 vs.)

21 DAVID MAXWELL-JOLLY, Director of the)
Department of Health Care Services, State of)
22 California, DEPARTMENT OF HEALTH)
CARE SERVICES,)

23 Defendants.
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25
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27
28

TABLE OF CONTENTS

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

I. INTRODUCTION..... 1

II. JURISDICTION 2

III. VENUE..... 2

IV. INTRADISTRICT ASSIGNMENT 3

V. PARTIES 3

 Plaintiffs 3

 Lillie Brantley—Limitation of Benefits Subclass Representative..... 3

 Gilda Garcia—Limitation and Termination of Benefits Subclasses Representative..... 4

 Allie Jo Woodard-- Limitation of Benefits Subclass Representative 4

 Harry Cota – Termination and Limitation of Benefits Subclasses Representative 5

 Sumi Konrai --Termination and Limitation of Benefits Subclasses Representative 5

 Ronald Bell – Termination of Benefits Subclass Representative 6

 Defendants 7

VI. STATUTORY AND REGULATORY FRAMEWORK 7

 Federal and State Anti-Discrimination Laws..... 7

 Medicaid and Medi-Cal Programs 9

 Medicaid Due Process Requirements 11

 Medi-Cal Covered Services 12

 2009 Legislation Affecting ADHC – ABx4 5 (Chapter 5, Statutes of 2009) 14

VII. FACTUAL ALLEGATIONS..... 15

 Background of the ADHC Program..... 15

 Cuts in Days of Service from a Maximum of Five to No More than Three 17

 New, Restrictive ADHC Eligibility Requirements 18

 Facts Related to Plaintiff Lillie Brantley-- Limitation of Benefits Subclass Representative..... 22

 Facts Related to Plaintiff Allie Jo Woodard-- Limitation of Benefits Subclass Representative..... 24

1 Facts Related to Plaintiff Gilda Garcia—Limitation and Termination of Benefits
 Subclasses Representative 25

2

3 Facts Related to Plaintiff Harry Cota – Termination and Limitation of Benefits
 Subclasses Representative 27

4

5 Facts Related to Plaintiff Sumi Konrai – Termination and Limitation of Benefits
 Subclasses Representative 29

6

7 Facts Related to Plaintiff Ronald Bell – Termination of Benefits Subclass
 Representative..... 31

8

9 Failure to Provide Adequate Notice and Pre-Termination Hearing: Limitation of
 Benefits Subclass. 33

10

11 Failure to Provide Adequate Notice and Pre-Termination Hearing: Termination of
 Benefits Subclass. 35

12

13 Facts Related to Medi-Cal ADHC Participants Generally 35

14

15 **VIII. CLASS DEFINITION AND ALLEGATIONS. 36**

16

17 **IX. LEGAL CLAIMS..... 39**

18

19 Violation of Title II of the Americans with Disabilities Act 39

20

21 Violation of Section 504 of the Rehabilitation Act 41

22

23 Violation of Procedural Due Process Rights 42

24

25 Violation of Medicaid Act, Failure to provide Opportunity for Hearing 43

26

27 Violation of Medicaid Comparability Requirement 44

28

29 Violation of Medicaid Reasonable Standards Requirement 44

30

31 Violation of Government Code Sections 11135 and 11139 45

32

33 **X. REQUEST FOR RELIEF 46**

I. INTRODUCTION

1
2 1. Plaintiffs, who are elderly persons and adults with disabilities, brought this class
3 action suit against the California Department of Health Care Services and its Director (Defendants)
4 to stop devastating cuts to Adult Day Health Care (ADHC) services. If implemented, these cuts will
5 place named Plaintiffs and Class Members at imminent risk of harm, including institutionalization,
6 hospitalization, injury and/or death.

7 2. ADHC is a Medi-Cal funded community-based program for low-income seniors and
8 disabled adults, which provides “a viable alternative to institutionalization for those elderly persons
9 and adults with disabilities who are capable of living at home with the aid of appropriate health care
10 or rehabilitative services.” Cal. Health & Safety Code §1570.2(b) (West 2003). ADHC services are
11 provided at centers located in communities throughout California. ADHC participants live at home
12 or in licensed residential care facilities, and participate in ADHC from one to five days per week,
13 depending on their assessed needs. ADHC services include professional nursing services, personal
14 care services, social and therapeutic services, case management, medication management, meals,
15 physical therapy, occupational therapy, speech therapy and transportation to and from the ADHC
16 center.

17 3. ABx4 5 (Chapter 5, Statutes of 2009), one of a number of bills passed in response to
18 California’s budgetary difficulties, imposed two cutbacks on the ADHC program, each of which was
19 based solely on reducing State expenditures, with little or no consideration of the harm to vulnerable
20 elderly and disabled persons. The first cutback reduced the maximum weekly ADHC services from
21 five to three days per week for all Medi-Cal funded program participants, with no exceptions, and
22 regardless of existing treatment authorizations and the participant’s health condition. This cutback
23 has been enjoined by this Court through a preliminary injunction issued on September 10, 2009.

24 4. The second cutback establishes new and restrictive eligibility requirements for
25 participation in an ADHC program. This cutback will go into effect when the Director of the
26 California Department of Health Care Services (DHCS) provides a written declaration that the
27 restrictive eligibility requirements are ready to be implemented. This declaration will return the
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1 maximum number of days allowable under the program to five per week, but will cause termination
2 of all ADHC services for an estimated 15,000 current participants who have been assessed to need
3 those services and who currently receive them, and denial of services to otherwise qualified future
4 ADHC applicants. Defendants have targeted March 1, 2010 for the second cutback to go into effect.

5 5. Without vital community-based ADHC services, or in the alternative, provision of
6 alternative services to which Plaintiffs and Class Members are entitled, without interruption, under
7 California's Medi-Cal program, Plaintiffs will experience immediate and irreparable harm.
8 Plaintiffs and other Class Members are at risk of physical and/or mental deterioration in health and
9 functioning, and will be forced into hospitals and nursing facilities due to Defendants' actions and
10 inactions in violation of the Americans with Disabilities Act of 1990 (ADA), (42 U.S.C. §§ 12101-
11 12213 (West 2008)), Section 504 of the Rehabilitation Act of 1973 (Section 504), (29 U.S.C.
12 §§ 794-794a (West 2007)), Title XIX of the Social Security Act (Medicaid Act), (42 U.S.C. § 1396a
13 – 1396v (West 2009)), and California Government Code section 11135 (Cal. Gov't. Code § 11135
14 (West 2007)).

15 II. JURISDICTION

16 6. This is an action for declaratory and injunctive relief for violation of the Due Process
17 Clause of the Fourteenth Amendment to the U.S. Constitution; Title XIX of the Social Security Act,
18 (the Medicaid Act), (42 U.S.C. §§ 1396a-1396v); Title II of the Americans With Disabilities Act of
19 1990 (ADA), (42 U.S.C. § 12132); and Section 504 of the Rehabilitation Act of 1973 (Section 504),
20 (29 U.S.C. § 794).

21 7. Jurisdiction is based 28 U.S.C. §§ 1331 and 1343; Title II of the ADA, and Section
22 504. Plaintiffs' claims for declaratory and injunctive relief are authorized under 28 U.S.C. §§ 2201 -
23 2202. At all times relevant to this action, Defendants have acted under color of state law.

24 8. The Court has Supplemental Jurisdiction over Plaintiffs' state claim pursuant to
25 28 U.S.C. § 1367 and California Government Code section 11139.

26 III. VENUE

27 9. Venue is proper in the Northern District of California pursuant to 28 U.S.C.
28

1 § 1391(b), because the Defendants operate and perform their official duties therein and thus reside
2 therein for purposes of venue, and because a substantial part of the events and omissions giving rise
3 to the claims herein occur in counties that are part of the Northern District of California.

4 **IV. INTRADISTRICT ASSIGNMENT**

5 10. Pursuant to Civil Local Rule 3-2(c) this action should be assigned to the San
6 Francisco or Oakland Division of the Northern District of California, because a substantial part of
7 the events and omissions giving rise to the claims herein occur in counties in the Northern District of
8 California and certain Plaintiffs are residents of the City and County of San Francisco.

9 **V. PARTIES**

10 **Plaintiffs**

11 Lillie Brantley—Limitation of Benefits Subclass Representative

12 11. Named Plaintiff Lillie Brantley is an 84-year-old woman who has severe Alzheimer’s
13 disease, hyperlipidemia, a seizure disorder, and arterial fibrillation. She has had a stroke, and is very
14 frail. She receives Medi-Cal, and currently attends ADHC five days a week.

15 12. Ms. Brantley needs supervision with feeding and transferring; and assistance with
16 ambulation, bathing, dressing, and toileting. She is totally dependent on others for housework,
17 hygiene, laundry, shopping, transportation, medication management, money management, accessing
18 resources, and meal preparation.

19 13. Because of her cognitive impairments, Ms. Brantley can never be left alone. She is at
20 high risk for falls. She requires regular nursing services five times per week to monitor her medical
21 conditions.

22 14. Ms. Brantley is proceeding in this litigation through her *Guardian ad Litem* Chauncey
23 McLorin, as Ms. Brantley is not able to proceed on her own behalf. Ms. McLorin, who is Ms.
24 Brantley’s niece, has agreed to act as her *Guardian ad Litem*, and is qualified to do so. She will
25 competently proceed on Ms. Brantley’s behalf. An application to appoint Ms. McLorin to act as a
26 *Guardian ad Litem* in this action has been granted by this court.

27 15. Ms. Brantley and her family wish for her to remain in her family home with her
28

1 current level of ADHC services, and she is at imminent risk of institutionalization in a nursing
2 facility if these services are reduced to three days per week.

3 Gilda Garcia—Limitation and Termination of Benefits Subclasses Representative

4 16. Named Plaintiff Gilda Garcia is a 77-year-old woman with unstable diabetes,
5 hypertension, Bells' Palsy, and kidney problems. She is Medi-Cal eligible and currently receives
6 five days a week of ADHC.

7 17. Ms. Garcia needs supervision with ambulation, dressing, toileting, and transferring.
8 She needs assistance with bathing, accessing resources, hygiene, meal preparation, shopping, and
9 transportation. She is dependent on others for housework and laundry. She uses a cane for
10 ambulation.

11 18. In order to remain in her own home in the community, Ms. Garcia requires the
12 frequent daily medical monitoring she receives with her current level of ADHC services, and she is
13 at imminent risk of hospitalization due to her unstable diabetes if her services are reduced or
14 terminated. According to her ADHC provider, Ms. Garcia will no longer be eligible for ADHC once
15 the new, restrictive eligibility requirements are imposed.

16 Allie Jo Woodard-- Limitation of Benefits Subclass Representative

17 19. Plaintiff Allie Jo Woodard is a 79-year-old woman who is diagnosed with bipolar
18 affective disorder, depression, diabetes, glaucoma, hypertension, and osteoarthritis. Ms. Woodard
19 receives Medi-Cal and is currently attending ADHC five days per week.

20 20. Ms. Woodard needs supervision with ambulation, toileting, and transferring; and
21 assistance with bathing and dressing. She is totally dependent on others for housework, hygiene,
22 laundry, shopping, transportation, medication management, money management, accessing
23 resources, and meal preparation.

24 21. Ms. Woodard is proceeding in this litigation through her *Guardian ad Litem* Linda
25 Gaspard-Berry as she is not able to proceed on her own behalf. Ms. Gaspard-Berry, who is Ms.
26 Woodard's daughter, has agreed to act as her *Guardian ad Litem*, and is qualified to do so. She will
27
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1 competently proceed on Ms. Woodard's behalf. An application to appoint Ms. Gaspard Berry to act
2 as a *Guardian ad Litem* in this action has been granted by this court.

3 22. Ms. Woodard and her family want her to remain in her own home with her current
4 level of ADHC services, and she is at imminent risk of institutionalization if these services are
5 reduced to three days per week.

6 Harry Cota – Termination and Limitation of Benefits Subclasses Representative

7 23. Named Plaintiff Harry Cota is a 60-year-old man with a left-sided hemiparesis from a
8 stroke, hypertension, insulin dependent diabetes, a spinal cord injury following an automobile
9 accident, arthritis, a peptic ulcer, a seizure disorder and obstructive sleep apnea. He is Medi-Cal
10 eligible. Mr. Cota lives alone in Hayward California, and attends the Lifelong Medical Center
11 ADHC program in Oakland five days a week.

12 24. Mr. Cota needs supervision with ambulation, and assistance with accessing resources,
13 housework, meal preparation, shopping, and transportation. He is dependent on others for laundry.
14 He primarily uses a wheelchair for ambulation, though sometimes also uses a walker.

15 25. In order to maintain his health and safety, and remain living in his own home, Mr.
16 Cota relies on the five days per week of skilled care, medical monitoring, physical therapy, and
17 social support he receives through ADHC. He is at high risk for falls and would be at risk of
18 hospitalization and eventual nursing home placements without ADHC.

19 Sumi Konrai --Termination and Limitation of Benefits Subclasses Representative

20 26. Named Plaintiff Sumi Konrai is an 87-year-old woman with dementia, arthritis,
21 hypertension, and a history of depression. Ms. Konrai is Medi-Cal eligible and receives ADHC
22 services five days a week. Ms. Konrai lives alone in Walnut Creek California and attends the Mt.
23 Diablo Adult Day Health Care Center in Pleasant Hill California.

24 27. Ms. Konrai needs supervision with bathing, dressing, and hygiene, and assistance
25 with housework. She is totally dependent on others for medication management, accessing
26 resources, laundry, meal preparation, shopping, and transportation. She can feed herself, but she
27 needs to have her food portions prepared specially.

1 28. In order to remain in her own home in the community, Ms. Konrai relies upon the
2 daily skilled care and medical monitoring she receives with her current level of ADHC services, and
3 she is at risk of nursing facility placement due to her dementia and frailty if she loses ADHC
4 services.

5 29. Ms. Konrai is proceeding in this litigation through her *Guardian ad Litem* Casey
6 Konrai, as she is not able to proceed on her own behalf. Casey Konrai, who is Ms. Konrai's
7 daughter-in-law, has agreed to act as her *Guardian ad Litem* and is qualified to do so. She will
8 competently proceed on Ms. Konrai's behalf. An application to appoint Casey Konrai as Sumi
9 Konrai's *Guardian ad Litem* in this action has been filed with this court.

10 Ronald Bell – Termination of Benefits Subclass Representative

11 30. Named Plaintiff Ronald Bell is a 45-year-old man with unstable diabetes, a seizure
12 disorder, organic brain syndrome, hypertension, arthritis, hyperlipidemia, and a cataract in one eye.
13 He is Medi-Cal eligible and has been approved by Medi-Cal for and receives ADHC services three
14 days per week at the Graceful Senescence Adult Day Health Care Program in Los Angeles,
15 California

16 31. Mr. Bell lives with his 78-year-old grandmother and caretaker Rozene Dilworth, who
17 also has diabetes. Because Mr. Bell is subject to seizures at any time, and because of his cognitive
18 impairments, his grandmother can never leave him alone.

19 32. Due to his cognitive impairments, Mr. Bell needs assistance with accessing resources,
20 housework, laundry, meal preparation, money management, and shopping, and is totally dependent
21 on others for transportation and medication management.

22 33. In order to remain in his own home, Mr. Bell relies upon the skilled care and medical
23 monitoring he receives with his current level of ADHC services, and he is at risk of emergency room
24 visits and hospitalizations, and eventual out-of-home placement due to his unstable diabetes, his
25 seizure disorder, and his cognitive impairments.

26 34. Ronald Bell is proceeding in this litigation through his *Guardian ad Litem* Rozene
27 Dilworth, as he is not able to proceed on his own behalf. Ms. Dilworth has agreed to act as his
28

1 *Guardian ad Litem* and is qualified to do so. She will competently proceed on Mr. Bell's behalf. An
2 application to appoint Rozene Dilworth as Ronald Bell's *Guardian ad Litem* in this action has been
3 filed with this court.

4 **Defendants**

5 35. Defendant California Department of Health Care Services (DHCS) is a state agency
6 which receives federal funds and is responsible for administering the federal Medicaid program,
7 entitled, "Medi-Cal" in California. Defendant DHCS is sued only under the Second Claim for Relief
8 (Section 504 of the Rehabilitation Act) and the Seventh Claim for Relief (Cal. Gov't. Code
9 § 11135).

10 36. Defendant David Maxwell-Jolly is the Director of the California Department of Health
11 Care Services, a state agency which receives federal funds. Defendant Maxwell-Jolly is a public
12 agency director responsible for operation of a public entity, pursuant to 42 U.S.C. §§ 12131(1)(A)
13 and (B). Defendant Maxwell-Jolly is sued in his official capacity.

14 **STATUTORY AND REGULATORY FRAMEWORK**

15 **Federal and State Anti-Discrimination Laws**

16 37. In enacting the Americans With Disabilities Act, Congress found that "[i]ndividuals
17 with disabilities continually encounter various forms of discrimination, including...segregation..."
18 42 U.S.C. § 12101(a)(5). Title II of the Americans with Disabilities Act provides that "no qualified
19 individual with a disability shall, by reason of disability, be excluded from participation in or be
20 denied the benefits of services, programs, or activities of a public entity or be subjected to
21 discrimination by such entity." 42 U.S.C. § 12132.

22 38. Regulations implementing Title II of the ADA provide: "A public entity shall
23 administer services, programs, and activities in the most integrated setting appropriate to the needs
24 of qualified individuals with disabilities." 28 C.F.R. § 35.130(d) (1991).

25 39. Section 504 of the Rehabilitation Act of 1973, on which the ADA is modeled, sets
26 forth similar protections against discrimination by recipients of federal funds, such as Defendant
27 herein. 29 U.S.C. §§ 794-794a. These protections include the prohibition against unnecessary
28

1 segregation. Regulations implementing Section 504 require that a public entity administer its
2 services, programs and activities in “the most integrated setting appropriate” to the needs of
3 qualified individuals with disabilities. 28 C.F.R. § 41.51(d).

4 40. Regulations implementing Title II of the ADA and Section 504 also provide: “A
5 public entity may not, directly or through contractual or other arrangements, utilize criteria or other
6 methods of administration: (i) that have the effect of subjecting qualified individuals with
7 disabilities to discrimination on the basis of disability; [or] (ii) that have the purpose or effect of
8 defeating or substantially impairing accomplishment of the objectives of the entity’s program with
9 respect to individuals with disabilities. . . .” 28 C.F.R. § 35.130(b)(3); 28 C.F.R. § 41.51(b)(3)(I); 45
10 C.F.R. § 84.4(b)(4).

11 41. ADA regulations further provide: “A public entity shall not impose or apply
12 eligibility criteria that screen out or tend to screen out an individual with a disability or any class of
13 individuals with disabilities from fully and equally enjoying any service, program, or activity, unless
14 such criteria can be shown to be necessary for the provision of the service, program, or activity being
15 offered.” 28 C.F.R. § 35.130(b)(8); *see also* parallel Section 504 regulations, 45 C.F.R.
16 § 84.4(b)(1)(iv).

17 42. ADA regulations further provide: “A public entity shall make reasonable
18 modifications in policies, practices, or procedures when the modifications are necessary to avoid
19 discrimination on the basis of disability, unless the public entity can demonstrate that making the
20 modifications would fundamentally alter the nature of the service, program, or activity.” 28 C.F.R.
21 § 35.130(b)(7).

22 43. The United States Supreme Court in *Olmstead v. L.C. ex rel. Zimring*, 527 U.S. 581
23 (1999), held that the unnecessary institutionalization of individuals with disabilities is a form of
24 discrimination under Title II of the ADA. In doing so, the Court interpreted the ADA’s “integration
25 mandate” as requiring persons with disabilities to be served in the community when: (1) the state
26 determines that community-based treatment is appropriate; (2) the individual does not oppose
27 community placement; and, (3) community placement can be reasonably accommodated. 527 U.S.

1 at 607.

2 44. Similar to the ADA, California’s anti-discrimination statute prohibits discriminatory
3 actions by the state and state-funded agencies or departments, and provides civil enforcement rights
4 for violations. Cal. Gov’t. Code §§ 11135-11139 (West 2007).

5 **Medicaid and Medi-Cal Programs**

6 45. Medicaid is a cooperative, jointly-funded program between the federal and state
7 governments that provides medical assistance to, *inter alia*, low-income elderly persons and persons
8 with disabilities. 42 U.S.C. §§ 1396-1396v. The purpose of Medicaid is to furnish, as far as
9 practicable, “medical assistance on behalf of ...aged, blind or disabled individuals, whose income
10 and resources are insufficient to meet the costs of necessary medical services” and “to help such
11 families and individuals to attain or retain capability for independence or self-care...” 42 U.S.C.
12 § 1396-1.

13 46. On the federal level, Medicaid is administered by the Centers for Medicare and
14 Medicaid Services (CMS), an agency within the United States Department of Health and Human
15 Services (DHHS).

16 47. California has elected to participate in Medicaid, and, therefore, must comply with
17 the requirements of the federal Medicaid Act, and its implementing regulations. 42 U.S.C. § 1396-
18 1396v. California’s Medicaid program is known as “Medi-Cal”, and is set forth in the Welfare and
19 Institutions Code. Cal. Welf. & Inst. Code §§ 14000-14685 (West 2006).

20 48. States participating in Medicaid must designate a “single State agency” to administer
21 or supervise the administration of the plan. The California Department of Health Care Services
22 (DHCS) is the single state agency and administers the California Medicaid program.

23 49. States participate in Medicaid by submitting a State Medicaid Plan to CMS for
24 approval. 42 U.S.C. § 1396; 42 C.F.R. § 430.12 (2009). States can make changes to their Medicaid
25 programs by submitting state plan amendments to CMS for approval. *Id.* Coverage of certain
26 services is mandatory under Medicaid. For one, States that elect to participate in the Medicaid
27 program must cover nursing facility services for individuals over 21 years of age. 42 U.S.C.

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1 § 1396d(a)(4)(A). States must also offer: home health agency services, including skilled nursing
2 services; other rehabilitative services; and, at state option, physical therapy, occupational therapy,
3 and speech pathology. 42 U.S.C. § 1396d(a)(7); 42 C.F.R. § 440.70 (2009). California offers
4 physical and occupational therapy and speech pathology as part of its home health agency service.
5 22 C.C.R. § 51337(a)(3).

6 50. California's Medi-Cal plan provides payments for a variety of services, including but
7 not limited to: Adult Day Health Care, personal care services, home health agency services, skilled
8 nursing facility services, hospital services, specialty mental health services, targeted case
9 management, and medical and non-medical transportation.

10 51. "Categorically needy" Medicaid beneficiaries are beneficiaries who, in most cases,
11 receive cash public assistance to meet basic needs or who qualify under other categories set forth in
12 federal and state law. "Medically needy" Medicaid beneficiaries are beneficiaries who do not
13 receive cash public assistance because they have income or resources in excess of the requirements
14 for receipt of such assistance, but who, nevertheless meet categorical requirements for such
15 assistance, *e.g.*, they are over age 65, blind, or disabled, and have medical expenses which are high
16 enough to reduce their available monthly income to a specified low level.

17 52. Under federal Medicaid requirements, states must provide comparable benefits, *i.e.*,
18 benefits that are equal in "amount, duration and scope," to all categorically needy Medicaid
19 beneficiaries. 42 U.S.C. § 1396a(a)(10)(B)(i); 42 C.F.R. §§ 440.240(a), (b)(1) (1981). States must
20 also provide comparable benefits to all medically needy Medicaid beneficiaries. States can provide
21 benefits to the medically needy that are less in amount, duration and scope than benefits to the
22 categorically needy, but California has not elected to do so. Therefore (with certain exceptions for
23 some groups such as pregnant women, certain aliens and services provided pursuant to waiver of
24 federal requirements) California must provide benefits under its Medicaid program that are equal in
25 amount, duration and scope to all eligible beneficiaries.

26 53. A State Medicaid program must use "reasonable standards (which shall be
27 comparable for all groups ...) for determining eligibility for and the extent of medical assistance
28

1 under the plan which ... are consistent with the objectives” of the program. 42 U.S.C.
2 § 1396a(a)(17).

3 54. The federal Medicaid Act requires that states provide individuals with the opportunity
4 to make application for medical assistance and that such assistance shall be furnished, as an
5 entitlement, with reasonable promptness to all eligible individuals. 42 U.S.C. § 1396a(a)(8).

6 **Medicaid Due Process Requirements**

7 55. Recipients and applicants for Medicaid services have rights to written notice and an
8 opportunity for a hearing before coverage of services can be denied, suspended, reduced or
9 terminated. *Goldberg v. Kelly*, 397 U.S. 254 (1970); 42 U.S.C. § 1396a(a)(3); 42 C.F.R.
10 §§ 431.200-250.

11 56. At least ten days before termination, suspension, or reduction of Medicaid eligibility
12 or covered services, written notice must be mailed to Medicaid beneficiaries. 42 C.F.R. §§ 431. 201,
13 .206(b), .211.

14 57. Such notice must include:

- 15 (a) a statement of the action the State intends to take;
16 (b) the reasons for the intended action;
17 (c) the specific regulations that support, or the change in federal or state law that
18 requires, the action;
19 (d) an explanation of the individual’s right to request an evidentiary hearing or a
20 state agency hearing;
21 (e) in cases of an action based on a change in law, the circumstances under which
22 a hearing will be granted; and
23 (f) an explanation of the circumstances under which Medicaid is continued if a
24 hearing is requested. 42 C.F.R. § 431.210.

25 58. The state agency must grant an opportunity for a hearing when a recipient requests it
26 because he or she believes that services have been denied, reduced, suspended, or terminated
27 erroneously. The agency need not grant a hearing if the *sole issue* is a Federal or State law requiring
28

1 an automatic change adversely affecting some or all recipients. 42 C.F.R. §§ 431.220(a)(2), (b)
2 (emphasis added).

3 59. If, after notice of reduction, suspension, or termination of covered services is
4 provided, a recipient requests a hearing before the action takes place, services must be continued at
5 the same level until a decision is rendered after the hearing. 42 C.F.R. § 431.230.

6 60. Medi-Cal recipients are entitled to notice of their right to a fair hearing when there is
7 any action by the Department to deny, terminate, defer, or reduce any medical service. Cal. Code
8 Regs. tit. 22 § 51014.1(a).

9 **Medi-Cal Covered Services**

10 61. ADHC: Under Medi-Cal, each adult day health care center shall provide, directly on
11 the premises, at least the following services: 1) rehabilitation services, including physical therapy,
12 occupational therapy, and speech therapy; 2) medical services supervised by either the participant's
13 personal physician or a staff physician or both; 3) nursing services, including: (a) skilled nursing
14 care rendered by professional nursing staff, who evaluate the particular nursing needs of each
15 participant and provide the care and treatment indicated, and (b) self-care training and services
16 oriented toward activities of daily living and personal hygiene, such as toileting, bathing and
17 grooming; 4) nutrition services, including (a) a minimum of one meal per day and (b) dietary
18 counseling and nutrition education for participants and their families; 5) psychiatric and
19 psychological services including:(a) consultation, (b) individual assessment, (c) supervision of
20 treatment by a psychiatrist, psychologist, psychiatric social worker or psychiatric nurse, when
21 indicated; 6) medical social services to participants and their families to help with personal, family
22 and adjustment problems that interfere with the effectiveness of treatment; 7) recreational and social
23 activities suited to the needs of the participants and designed to encourage physical exercise to
24 prevent deterioration and to stimulate social interaction; and 8) non-medical and medical
25 transportation service for participants, if necessary, to and from their homes, including the use of
26 specially equipped vehicles when medically necessary to accommodate participants with severe
27 physical disabilities that limit mobility. Cal. Code Regs. tit. 22 (2009) § 54309(a); Cal. Welf. & Inst.

1 Code § 14520, *et seq.* (West 2006); Cal. Health & Safety Code § 1570, *et seq.* (West 2006).

2 62. IHSS: Under Medi-Cal, Plaintiffs and class members are entitled to the following
3 personal care services in their own homes through the In-Home Supportive Services (IHSS)
4 program, depending on individual need: meal preparation and cleanup, feeding, transportation to
5 and from medical appointments, ambulation, bowel and bladder care, paramedical services,
6 protective supervision, and other personal care services. Cal. Welf. & Inst. Code §§ 12300,
7 14132.95, 14132.951.

8 63. Home Health: Under Medi-Cal, Plaintiffs and class members are entitled to the
9 following home health agency services depending on individual need and when prescribed by a
10 physician: part-time or intermittent skilled nursing services by licensed nursing personnel; in-home
11 medical care services as defined in California Welfare and Institutions Code section 14132(s);
12 physical, occupational or speech therapy; medical social services; home health aide services, which
13 include assisting with personal care, bathroom needs and ambulation, and performing medically
14 necessary household services to facilitate self-care such as changing the bed and light cleaning;
15 medical supplies other than drugs and biologicals; and the use of medical appliances, provided for
16 under an approved treatment plan. Cal. Code. Regs. tit. 22 §§ 51003, 51125, 51129, 51146, 51217,
17 51337, 51455, 51523; Cal. Health & Safety Code §§ 1725 *et seq.* (West 2006); Chapter 9.1., Medi-
18 Cal Manual of Criteria R-15-98E.

19 64. Nursing Facilities: Under Medi-Cal, Plaintiffs and class members are entitled to
20 skilled nursing facility services to provide skilled nursing care and supportive care to individuals,
21 depending on individual need. Cal. Health & Safety Code § 1250(c).

22 65. Acute Hospitals: Under Medi-Cal, Plaintiffs and class members are entitled to 24-
23 hour inpatient acute hospital care, including the following basic services: medical, nursing, surgical,
24 anesthesia, laboratory, radiology, pharmacy, and dietary services, depending on individual need.
25 Cal. Health & Safety Code § 1250(a).

26 66. Speciality Mental Health: Under Medi-Cal, Plaintiffs and Class members are entitled
27 to receive Specialty Mental Health services in the community, which include rehabilitation services
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1 and medication management, depending on individual need. Cal. Welf. & Inst. Code §§ 14021(a),
2 14021.4, 14681, 14683, 14684; Cal. Code Regs. tit. 9 §§ 1810.100; 1810.247.

3 67. Targeted Case Management: Under Medi-Cal, Plaintiffs and Class members are
4 entitled to receive Targeted Case Management (TCM) to assist them, depending on individual need,
5 in gaining access to needed medical, social, educational and other services, including assistance in
6 obtaining services covered under the Medi-Cal State Plan, assessment, service/support planning, and
7 monitoring services and supports to ensure their needs are met. Cal. Welf. & Inst. Code § 14132.44.

8 68. Transportation: Under Medi-Cal, Plaintiffs and Class members are entitled to receive
9 medical and non-medical transportation, depending on individual need. 42 C.F.R. § 431.53; Cal.
10 Welf. & Inst. Code §§ 14132(i), 14133.6, 14133.65, 14136 *et seq.*; Cal. Code Regs tit. 22
11 §§ 51151.7, 51151 *et seq.*

12 **2009 Legislation Affecting ADHC – ABx4 5 (Chapter 5, Statutes of 2009)**

13 69. ABx4 5 was passed by the Legislature on July 28, 2009 and was scheduled to go into
14 effect on August 27, 2009. The new law makes two significant cutbacks to the ADHC program.

15 70. First, effective August 27, 2009, ABx4 5 would have reduced Medi-Cal funding for
16 ADHC to a maximum of three days per week for all Medi-Cal beneficiaries, with no exceptions.
17 Cal. Welf. & Inst. § 14132(p)(2). This provision of ABx4 5 was enjoined by this Court on
18 September 10, 2009.

19 71. In addition to this cut, new arbitrary and restrictive eligibility requirements limiting
20 who will receive ADHC services will go into effect when the Director of DHCS provides a written
21 declaration that the restrictive eligibility requirements are ready to be implemented. Welf. & Inst.
22 Code § 14521.1. These restrictive eligibility requirements will terminate or deny ADHC services to
23 individuals based on their need for assistance with eight specified activities of daily living and need
24 for a certain institutional level of care. Defendants have targeted March 1, 2010 as the date that the
25 restrictive eligibility requirements will go into effect.

26 72. The statute provides that upon the declaration by the Director, Medi-Cal will once
27 again cover the ADHC benefit up to a maximum of five days per week for the participants who
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1 76. Adult Day Health Care services are typically provided at a community based center.
2 Participants live at home or in a residential care facility, and are transported to and from the
3 program center on a daily basis. In order to attend ADHC, each participant's conditions must
4 "require adult day health care services ... on each day of attendance, that are individualized and
5 designed to maintain the ability of the participant to remain in the community and avoid emergency
6 department visits, hospitalizations, or other institutionalization." Cal. Welf. & Inst. Code
7 § 14526.1(d)(5).

8 77. For one daily all-inclusive Medi-Cal reimbursement rate of \$76.22, ADHCs are
9 required to provide skilled nursing, skilled social work, therapeutic activities, dietician and
10 nutritionally customized meal services, skilled physical therapy, skilled occupational therapy,
11 skilled speech and language pathology services, skilled mental health services and non-emergency
12 transportation to and from the center. The number of days of service per week are based on the
13 participant's needs and Medi-Cal authorizations.

14 78. Statewide, participants funded through Medi-Cal comprise approximately 90% of
15 the 37,235 individuals projected to be served in ADHC centers within Fiscal Year 2009-10.
16 ADHCs serve a disproportionate number of Medi-Cal beneficiaries because the program was
17 designed, as a matter of public policy, to be a community-based alternative to nursing facilities for
18 low-income adults with disabling physical, mental, or cognitive conditions.

19 79. Based on the most recent available information provided by the California
20 Department of Aging, fifty-eight percent (58%) of those served in ADHC are 75 years of age or
21 older. Of that group, fourteen percent (14%) are over the age of 85, the most rapidly growing
22 segment of California's population. There are few options comparable to ADHC services for those
23 older adults who choose to live out their lives with dignity and independence in their own homes or
24 in community-based settings.

25 80. While many persons served are elderly and physically frail, ADHCs also serve
26 elderly and younger adults with chronic and disabling mental health, cognitive or physical
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1 conditions: for example, chronic schizophrenia, mental retardation, Parkinson's disease,
2 Alzheimer's disease, stroke, or head injury.

3 81. Individuals wishing to receive ADHC services must have a physician submit
4 historical and physical information and participate in a three-day assessment performed by a multi-
5 disciplinary team of clinicians including a registered nurse, social worker, and therapist, at a
6 minimum. An Individual Plan of Care (IPC) is designed and submitted to Medi-Cal along with the
7 Treatment Authorization Request (TAR). All individuals with Medi-Cal insurance must be prior-
8 authorized by the DHCS through a local Medi-Cal field office to attend the ADHC center for a
9 certain number of days per week.

10 82. This approval to receive services is re-authorized every six months. The State
11 adjudicates the number of days of attendance based on the documented need of each beneficiary.
12 Prior to the passage of ABx4 5 in late July 2009, Medi-Cal funded up to five days per week of
13 attendance, depending on the individual need of the participant.

14 83. The State of California pays significantly more to institutionalize disabled individuals
15 in nursing facilities or other institutions than it does to cover their care in community-based settings,
16 e.g., ADHC services. The average daily rate for nursing facility services is approximately \$161.81,
17 or \$4,854.30 per month.

18 84. The ADHC Program helps prevent costly and unnecessary institutionalization, saving
19 the State significant funds, and, at the same time, improving the quality of life for the individuals
20 served.

21 **Cuts in Days of Service from a Maximum of Five to No More than Three**

22 85. The Governor signed ABx4 5 on July 28, 2009. The bill provides that, effective 30
23 days after the law is signed by the Governor, the maximum number of days that any ADHC
24 participant may be authorized for Medi-Cal funding to attend ADHC is cut from five to three,
25 regardless of current authorizations or the health condition of the individual. Cal. Welf. & Inst.
26 Code § 14132 (p)(2),. These cuts were preliminarily enjoined by this Court on September 10, 2009
27 and have not taken effect.

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1 86. Defendants have estimated that the reduction in the ADHC benefit from four or five
2 days to three days would affect approximately 8,000 individuals.

3 87. Upon information and belief, Defendants have not arranged for provision of
4 alternative, community-based Medi-Cal services to be provided to affected ADHC participants.
5 Defendants have represented that they do not intend to secure the alternative services that, pursuant
6 to this Court's Preliminary Injunction Order, would allow them to cut ADHC to no more than three
7 days per week and thus, Welfare and Institutions Code section 14132(p)(2) has not been
8 implemented.

9 88. The group of individuals affected by the five-to-three day cut are members of the
10 "Limitation of Benefits Subclass" discussed below.

11 **New, Restrictive ADHC Eligibility Requirements**

12 89. New, restrictive eligibility requirements limiting who will receive ADHC services
13 will go into effect when the Director of DHCS provides a written declaration that the requirements
14 are ready to be implemented. The State has targeted March 1, 2010 as the date that these restrictive
15 eligibility requirements will go into effect. This declaration will trigger reinstatement of the
16 maximum number of days allowable under the ADHC program to five per week, but the new
17 eligibility restrictions will also be triggered, resulting in termination of all services for many current
18 beneficiaries who need and receive them, and denial of eligibility for otherwise qualified future
19 applicants to ADHC. There is no exception process for individuals who are determined to be at risk
20 of institutionalization without ADHC services or for whom adequate alternatives are not available.
21 Cal. Welf. & Inst. Code § 14525.1.

22 90. The new and restrictive eligibility criteria will require that in order to receive ADHC
23 services, individuals without any cognitive impairment must: (1) meet the Nursing Facility- level A
24 (Intermediate Care Facility) level of care set forth in Cal. Code of Regs. tit. 22 § 51120; and (2) due
25 to functional impairments, require "substantial human assistance" to perform two or more specified
26 activities: ambulation, bathing, dressing, self-feeding, toileting, transferring, medication
27 management, and hygiene. Cal. Welf. & Inst. Code § 14525.1.

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1 91. The new requirements define “substantial human assistance” as direct, hands-on
2 assistance provided by a qualified caregiver, which entails physically helping the participant perform
3 the activity. It entails more than cueing, supervision, or stand-by assistance and includes the
4 performance of the entire activity for participants totally dependent on human assistance. Cal. Welf.
5 & Inst. Code § 14522.4(a)(10).

6 92. The new level of care criteria that individuals without cognitive impairments must
7 meet, contained in title 22 of the California Code of Regulations, section 51120, state that
8 individuals must require “intermediate care services” which means that they, *inter alia*, “require
9 protective and supportive care, because of mental or physical conditions or both, *above the level of*
10 *board and care.*” (emphasis added). While “board and care” is not a term of art, and not defined by
11 ABx4 5 or the Defendants, the term loosely refers to licensed residential care facilities whose
12 services vary widely — some offer simply meals and housing, while others offer supportive services.
13 Upon information and belief, many current recipients will be terminated from, and otherwise
14 qualified future applicants will be denied access to, ADHC simply because of their living
15 arrangement.

16 93. Different eligibility requirements apply for certain individuals with cognitive
17 impairments – specifically, those individuals who: (1) are residents of an Intermediate Care Facility
18 for Persons with Developmental Disabilities (ICF-DD H), and have disabilities and a level of
19 functioning that are of such a nature that, without supplemental intervention through Adult Day
20 Health Care, placement to a more costly institutional level of care would be likely to occur; (2) have
21 chronic mental illness; (3) have moderate to severe Alzheimer's disease; or (4) have other “cognitive
22 impairments.” These individuals will be required to show a need for “assistance” with the eight
23 specified activities: ambulation, bathing, dressing, self-feeding, toileting, transferring, medication
24 management, and hygiene.

25 94. The new requirements define “assistance” as “verbal or physical prompting or aid,
26 including cueing, supervision, stand-by assistance, or hands-on support to complete the task
27 correctly.” Cal. Welf. & Inst. Code § 14522.4(a)(9).

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1 95. The new requirements define “cognitive impairment” as “the loss or deterioration of
2 intellectual capacity characterized by impairments in short- or long-term memory, language,
3 concentration and attention, orientation to people, place or time, visual-spatial abilities or executive
4 functions, or both, including, but not limited to, judgment, reasoning, or the ability to inhibit
5 behaviors that interfere with social, occupational, or everyday functioning due to conditions,
6 including, but not limited to, mild cognitive impairment, Alzheimer’s disease or other form of
7 dementia, or brain injury.” Cal. Welf. & Inst. Code § 14522.4(a)(11).

8 96. Upon information and belief, the definition of “cognitive impairment” does not
9 include people with mental retardation or other developmental disabilities who have not experienced
10 a “loss or deterioration of intellectual capacity” but rather, who were born with such impairments.
11 This means that such individuals, unless they reside in an ICF-DD H facility, will be subject to the
12 same stringent criteria as individuals without any cognitive impairment, rather than the less
13 restrictive requirements that apply to others with cognitive impairments or mental illness.

14 97. Upon information and belief, Defendants have interpreted eligibility requirements as
15 requiring that individuals demonstrate that they require assistance or substantial human assistance
16 with the eight specified activities **at the ADHC center**. Since participants do not typically bathe,
17 dress, or maintain hygiene at the center, individuals who require assistance or substantial human
18 assistance with those activities will not be allowed to count a need for such assistance towards
19 ADHC eligibility.

20 98. The new ADHC eligibility requirements are not a reasonable measure of need for
21 ADHC services. The new ADHC eligibility requirements are a particularly poor measure of need
22 for certain groups of ADHC recipients, such as those who are medically fragile or those who have a
23 high level of need in one area but not others, or those with cognitive impairments that affect their
24 judgment but not their ability to perform the eight specified activities.

25 99. Individuals not meeting the new eligibility requirements will have their services
26 terminated, and future, otherwise-qualified applicants will be denied ADHC services. Upon
27 information and belief, those individuals most likely to be affected by the new, restrictive eligibility
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1 requirements will include those with unstable diabetes or other unstable medical conditions, and
2 medically frail elders who do not meet the test of requiring “substantial human assistance” in
3 performing two of eight activities of daily living because they are ambulatory and can move their
4 limbs, but are dependent on the medical monitoring, nursing treatments, medication management,
5 structured environment and social work to maintain stability, and avoid hospitalization,
6 deterioration, or nursing facility placement. In addition, individuals harmed by the new eligibility
7 requirements are likely to be those with cognitive impairments such as mild Alzheimer’s disease,
8 mental illness, developmental disabilities or brain injury who are physically able to care for
9 themselves but who may forget to take medications or eat when alone, and require the structure,
10 stability, socialization, frequent assessment, and medication management offered by ADHC.

11 100. The group of individuals who will be terminated from or denied ADHC based on the
12 new, restrictive eligibility requirements are members of the “Termination of Benefits Subclass”,
13 discussed below.

14 **Implementation of New, Restrictive Eligibility Requirements**

15 101. ABx4 5 requires that prior to issuing the declaration that will implement the new,
16 restrictive eligibility requirements, Defendants shall meet and confer with stakeholders for
17 determining the methods and procedures necessary to implement the new requirements. Welf.
18 & Inst. Code § 14525.1(f) and (g). Defendants held two two-hour meetings, on November 17, 2009
19 and December 1, 2009, during which they reviewed the new eligibility requirements and draft
20 participant plan of care with attendees.

21 102. The ADHC providers in attendance at these meetings raised significant issues with
22 respect to definition and interpretation of terms; asked questions about the State’s expectation of the
23 role of ADHC providers — including provision of notice, hearings, and obligation to secure
24 alternative services; and requested training on the implementation of the new requirements. The
25 California Association of Adult Day Services (CAADS), provided a written list of questions and
26 concerns to the State.

27 103. Defendants have failed, and upon information and belief, will fail, to provide
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1 clarification as to essential definitional and procedural aspects of implementation of the new
2 eligibility requirements, and have declined to offer training to the ADHC providers who will be
3 required to conduct assessments and make eligibility determinations, despite repeated requests by
4 providers. Upon information and belief, Defendants have not responded adequately to the questions
5 raised by CAADS. Thus, there is a virtual certainty of overly broad, improper and inconsistent
6 application of the new requirements.

7 104. Defendants have failed to arrange for or provide information about securing
8 alternative community services, steps to take to avoid institutionalization, or procedures for
9 requesting reasonable accommodations.

10 **Facts Related to Plaintiff Lillie Brantley-- Limitation of Benefits Subclass Representative**

11 105. Lillie Brantley attends the Bayview Hunter's Point ADHC program in San Francisco
12 California. She has been attending the program for three years. She is authorized to receive and
13 does receive Medi-Cal funded ADHC services five days a week. Her most current Individual Plan
14 of Care (IPC) is approved through February 28, 2010.

15 106. In accordance with her most recent IPC at the Bayview Hunter's Point ADHC
16 program, Mrs. Brantley receives:

- 17 a) professional nursing services every day to monitor her hypertension, monitor and
18 control her seizures, and monitor her for weight loss;
- 19 b) personal care services every day to help her with feeding, toileting, and ambulation,
20 as well as monitoring her whereabouts;
- 21 c) social services every day to improve her mood and behaviors, which are
22 deteriorating due to her increasing dementia;
- 23 d) therapeutic activities to increase her interactions with others and reduce her
24 isolation;
- 25 e) physical therapy maintenance program twice per week to reduce her risk for falls and
26 maintain current functioning;
- 27 f) occupational therapy services for maintaining her functional strength; and

1 g) nutritional monitoring because of her diagnosis of hypertension and her recent
2 weight loss.

3 107. Ms. Brantley's most recent IPC documents that she is at high risk of
4 institutionalization if she does not receive ADHC services five days per week, due to her
5 inappropriate behavior and affect, two or more chronic medical conditions, poor judgment,
6 medication mismanagement, frailty, isolation, risk for falls, including forgetting to use her cane and
7 being unsafe in transfers, self neglect, and dementia-related behavioral problems.

8 108. Ms. Brantley can never be alone due to her cognitive and health impairments; in
9 addition to five days of attending and receiving services at the ADHC program, she receives the
10 maximum number of In-Home Supportive Services (IHSS) through the Medi-Cal program, 283
11 hours per month.

12 109. Ms. Brantley lives with her niece Chauncey McLorin and Ms. McLorin's 15-year
13 old daughter. Ms. Brantley's family will be forced to institutionalize her if she is not able to go to
14 the ADHC program five days a week, as Ms. McLorin cannot afford to quit her job, and Ms.
15 Brantley is already receiving the maximum amount of IHSS allowable by State law.

16 110. Plaintiff Lillie Brantley would be irreparably harmed by a reduction in ADHC
17 services to three days per week. Although Ms. Brantley is severely impaired by Alzheimer's
18 disease, ADHC services five days per week enable her to live in a familiar environment with family
19 members who care for her and whom she recognizes and can interact with. She can go out to eat
20 with family, and attend church. However, because she is unable to be left alone for any period of
21 time, she would be at risk of serious injury if she were home alone during the time that ADHC is no
22 longer available. Given her family's inability to stay at home with her for the days she would no
23 longer be able to go to ADHC, she would need to be placed in a nursing facility. Given her
24 cognitive condition, she would likely deteriorate rapidly in an unfamiliar environment such as a
25 nursing facility. Placement in an institution would be devastating to her, and to her family.

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1 **Facts Related to Plaintiff Allie Jo Woodard-- Limitation of Benefits Subclass Representative**

2 111. Allie Jo Woodard attends the Bayview Hunter's Point ADHC program in San
3 Francisco California. She has been attending the program for nine years. She is authorized to
4 receive and does receive Medi-Cal funded ADHC services five days a week. Her most current IPC
5 is approved through December 31, 2009.

6 112. In accordance with her most recent IPC at the Bayview Hunter's Point ADHC
7 program, Ms. Woodard receives:

- 8 a) professional nursing services every day to monitor her for fall risk, for her
9 hypertension, and for her pain and mobility related to her arthritis;
- 10 b) personal care services daily to monitor her exertion level to prevent cardiac
11 compromise;
- 12 c) social services intended to prevent psychiatric hospitalization in the form of group
13 activities, weekly psychological counseling, and daily check in with the program
14 social worker to reorient her to reality;
- 15 d) therapeutic activities to decrease her feelings of isolation, and improve her
16 interactions with peers; and
- 17 e) occupational therapy services for maintaining functional strength two days per week.

18 113. Mrs. Woodard's current IPC states that she is at a high risk of institutionalization if
19 she does not receive ADHC services five days per week, based on her two or more chronic medical
20 conditions, poor judgment, medication mismanagement, frailty, isolation, risk for falls, and
21 dementia-related behavioral problems.

22 114. Ms. Woodard lives alone, however she is never able to actually be alone because she
23 is at risk of wandering. A few years ago she was missing for two full days.

24 115. Ms. Woodard has the maximum hours of IHSS allowable, 283 hours. In addition,
25 her daughter and son rotate spending the night with her. On the weekends her daughter Linda
26 Gaspard-Berry brings her to Ms. Gaspard-Berry's home in Fremont.

1 116. Ms. Woodard's disability causes her to be very fragile emotionally, and she has had
2 frequent psychiatric hospitalizations as a result. She is also at risk of falling, and sometimes needs
3 constant physical and verbal cueing to use her walker.

4 117. Her daughter believes that Ms. Woodard's attendance and services at the ADHC five
5 days per week are essential to support her, and that without the program's services, Ms. Woodard
6 would have been hospitalized more frequently than she has been.

7 118. Both Ms. Gaspard-Berry and her brother work full-time and cannot afford to quit
8 their jobs to care for their mother. If her ADHC services are cut she will not be safe alone, and her
9 children will have to place her in an institution.

10 119. Plaintiff Allie Jo Woodard would be irreparably harmed by a reduction in ADHC to
11 three days per week. Ms. Woodward lives in her own home with family alternating caring for her,
12 and she receives the maximum amount of attendant care through the IHSS program. Given her
13 complex medical and mental health conditions, she cannot be left alone safely and there would be
14 no one to care for her on the days that she would no longer be able to attend ADHC. Ms. Woodard
15 relies on ADHC services for pain and medication management, and the socialization provided at
16 ADHC assists her mental health condition. Without five days per week of ADHC, Ms. Woodard
17 would need to be placed in a nursing facility. Most likely, she would deteriorate physically and
18 mentally if that were to occur.

19 **Facts Related to Plaintiff Gilda Garcia—Limitation and Termination of Benefits Subclasses**
20 **Representative**

21 120. Gilda Garcia attends the Institute on Aging ADHC program in San Francisco
22 California. She has been attending the program since 2005. She is authorized to receive and does
23 receive Medi-Cal funded ADHC services five days a week. Her most current IPC is approved
24 through April 30, 2010.

25 121. In accordance with her current IPC at the Institute on Aging ADHC program, Ms.
26 Garcia receives:

- 1 a) professional nursing services five times a week to monitor her for hypoglycemic
- 2 reactions, and monitoring for joint and back pain;
- 3 b) personal care services five times a week to supervise her ambulation and prevent falls
- 4 due to her poor vision and impulse control;
- 5 c) social services five times a week to increase her opportunities for socialization and on
- 6 an as needed basis help her coordinate her IHSS and other social services;
- 7 d) therapeutic activities five times a week to increase her physical activity, leisure and
- 8 cognitive opportunities,
- 9 e) physical therapy three days per week to maintain her endurance and physical strength;
- 10 f) occupational therapy maintenance program two days per week to maintain her current
- 11 levels of functioning; and
- 12 g) registered dietician services to ensure she understands the importance of maintaining
- 13 a diabetic diet.

14 122. Ms. Garcia's most recent IPC states that she is at a high risk of institutionalization if
15 she does not receive ADHC services five days per week, based on her two or more chronic medical
16 conditions, frailty, hyper/hypoglycemia, inappropriate affect/appearance or behavior, poor
17 judgment, risk for falls, and medication mismanagement.

18 123. Ms. Garcia lives alone, and receives limited IHSS services.

19 124. Ms. Garcia fears she will face hospitalization due to her unstable diabetes, and the
20 risks that this condition poses, including a heightened risk of falls.

21 125. Ms. Garcia is also highly dependent on the socialization that the ADHC program
22 offers her.

23 126. Ms. Garcia would be irreparably harmed by termination of her ADHC services, or
24 reduction in ADHC to three days per week. Ms. Garcia has unstable diabetes such that the frequent
25 medical monitoring by ADHC nursing cannot be replicated by periodic primary care visits. Ms.
26 Garcia relies on ADHC for medical stabilization.

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1 127. Without five days per week of ADHC, she is at high risk for acute hospitalization
2 and/or institutionalization. In addition, Ms. Garcia is protected from isolation and depression by
3 attending ADHC five days per week. If she were to remain at home every day she would likely see
4 a rapid decrease in her mental state and thus, her physical state, which would likely result in acute
5 hospitalization and institutionalization.

6 128. Upon information and belief, Ms. Garcia will be terminated completely from the
7 program by the new, restrictive eligibility requirements in California Welfare and Institutions Code
8 section 14521.1, as she does not have a cognitive impairment as defined by ABx4 5, and she does
9 not require “substantial human assistance” in two or more of the eight specified activities.

10 129. Ms. Garcia's need for ADHC services, particularly the skilled monitoring and
11 assessment of her diabetic condition, is as high or higher than the needs of others who, under the
12 new eligibility requirements, will not be terminated from or denied ADHC.

13 **Facts Related to Plaintiff Harry Cota – Termination and Limitation of Benefits Subclasses**
14 **Representative**

15 130. Harry Cota attends the Lifelong Medical Care ADHC program in Oakland
16 California. He has been attending the program since 2004. He is authorized to receive and does
17 receive Medi-Cal funded ADHC services five days a week. His most current IPC is approved
18 through April 30, 2010.

19 131. In accordance with his current IPC at the Lifelong Medical Care ADHC program,
20 Mr. Cota receives:

- 21 a) professional nursing services five times a week to monitor: for seizures; his low
22 salt/low calorie diet; his chronic pain related to carpal tunnel syndrome, myelopathy,
23 osteoarthritis, and spasticity;
- 24 b) professional nursing services on a weekly basis to monitor: his blood pressure; his
25 hypo/hyperglycemia; and his weight, including monitoring for edema;
- 26 c) professional nursing services on a monthly basis to monitor recurrent skin breakdown
27 due to venous insufficiency and occasional venous stasis dermatitis;
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- 1 d) personal care services five days a week to prevent incontinence related to use of Lasix
- 2 for edema;
- 3 e) social services five days a week to monitor depressive feelings;
- 4 f) therapeutic activities five days a week to provide social interaction and improve
- 5 personal friendships with peers, including bible study, a group which Mr. Cota leads
- 6 at the center;
- 7 g) physical therapy five times a week for his chronic pain and muscle spasms due to
- 8 stroke and spinal cord injury;
- 9 h) occupational therapy five times a week, including fine motor skill therapies three
- 10 times per week to maintain his fine motor skills; hot/cold therapies two times per
- 11 week to maintain and improve his fine motor coordination, range of motion, strength,
- 12 and to decrease pain; and paraffin treatments for his hands; and
- 13 i) registered dietician counseling services as needed to support his compliance with a
- 14 diabetic diet

15 132. Mr. Cota's most recent IPC states that he is at a high risk of institutionalization if he
16 does not receive ADHC services five days per week, based on his two or more chronic medical
17 conditions, isolation, and risk for falls.

18 133. Mr. Cota lives alone, and receives 134.4 hours per month of IHSS services. He gets
19 up at 4:00 A.M. every morning in order to take his diuretic medication, and give himself enough
20 time before he arrives at the ADHC to ensure that when he is at the center he will not have episodes
21 of incontinence. Mr. Cota takes 13 prescribed medications and lives in constant pain as a result of
22 his stroke and spinal cord injury, as well as from diabetic neuropathy.

23 134. Mr. Cota fears he will face hospitalization without ADHC due to his multiple
24 medical conditions, and his risk for falls.

25 135. Mr. Cota relies on his attendance at the ADHC center for social and emotional
26 support. He is terrified at the idea he will no longer be able to attend the program because of what
27 it will mean for his emotional and physical health.

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1 136. Mr. Cota would be irreparably harmed by the loss of ADHC services. Mr. Cota's
2 complex medical and physical needs are currently met by the daily skilled care and medical
3 monitoring through ADHC nursing and daily physical therapy services.

4 137. Without ADHC, he is at high risk for acute hospitalization and/or
5 institutionalization. In addition, Mr. Cota's depression and isolation are alleviated by attending
6 ADHC five days per week. If he were to lose the services of the ADHC program, he would remain
7 at home alone for the majority of the time, and would likely see a rapid decrease in his mobility and
8 worsening of physical strength as well as his chronic pain due to the lack of physical and
9 occupational therapy. He would be at an increased risk for falls, skin ulcers related to diabetes, and
10 he would face severe isolation, all of which would likely result in acute hospitalization and
11 institutionalization.

12 138. According to Lifelong Medical Care ADHC, Mr. Cota will be terminated from the
13 program by the new, restrictive eligibility requirements in California Welfare and Institutions Code
14 section 14521.1, as he does not have a cognitive impairment as defined by ABx4 5, and does not
15 require "substantial human assistance" in two or more of the eight specified activities.

16 139. Mr. Cota's need for skilled medical and therapeutic ADHC services is as high or
17 higher than the needs of others who, under the new eligibility criteria, will not be terminated from
18 or denied ADHC.

19 **Facts Related to Plaintiff Sumi Konrai – Termination and Limitation of Benefits Subclasses**
20 **Representative**

21 140. Sumi Konrai has been attending the Mt. Diablo Center for Adult Day Health Care
22 for three years. She is authorized to receive and does receive Medi-Cal funded ADHC services five
23 days a week. Her most current IPC is approved through December 31, 2009.

24 141. In accordance with her current IPC at the Mt. Diablo Center for Adult Day Health
25 Care program, Ms. Konrai receives:
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- 1 a) professional nursing services five days a week to monitor her for: altered
- 2 cardiovascular status related to her hypertension; adverse effects of psychotropic
- 3 medication; and for discomfort related to her migraines, as needed;
- 4 b) personal care services five days a week to: respond to her memory loss due to
- 5 dementia; support her maintenance of a healthy weight; and prevent falls through
- 6 verbal cueing;
- 7 c) social services five days a week to address her isolation and provide a structured
- 8 routine;
- 9 d) physical therapy five days a week to maintain her strength and mobility;
- 10 e) occupational therapy five days a week to maintain her range of motion in her upper
- 11 body.
- 12 f) registered dietician services on a daily and monthly basis to address her history of
- 13 weight loss and failure to thrive.

14 142. Ms. Konrai's most recent IPC states that she is at a high risk of institutionalization if
15 she does not receive ADHC services five days per week, based on her poor judgment, medication
16 mismanagement, self-neglect, dementia-related behavioral problems, two or more chronic medical
17 conditions, isolation, frailty, and risk for falls.

18 143. Ms. Konrai lives alone, and receives 88.5 hours per month of IHSS services,
19 provided to her by her daughter-in-law and *Guardian ad Litem* Casey Konrai.

20 144. Ms. Konrai's family believes that ADHC services are critical for her to continue to
21 be able to remain in the community. Before she began attending the ADHC program, she had
22 multiple hospitalizations for weight loss and dehydration caused by severe depression. With the
23 services of the center she is able to maintain her weight, and her depression has been lessened.

24 145. Ms. Konrai would be irreparably harmed by the loss of ADHC services. If Ms.
25 Konrai were to lose ADHC services, her family would have to institutionalize her, which would be
26 devastating for Ms. Konrai, who currently is able to interact with her family and community, and
27 maintain her functioning through the skilled services of ADHC.

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1 146. According to the Mount Diablo Center for Adult Day Health Care, they believe that
2 Ms. Konrai will be terminated from the program by the new, restrictive eligibility requirements in
3 California Welfare and Institutions Code section 14521.1, because although she has dementia, she
4 only needs “assistance” at the ADHC center with one of the eight specified activities, medication
5 management. Since Defendants have interpreted the eligibility requirements as meaning that
6 participants must show a need for services at the ADHC center, the fact that Ms. Konrai requires
7 assistance with bathing, dressing and hygiene doesn’t count towards eligibility for ADHC.
8 Moreover, although she needs to have her food portions specially prepared to encourage sufficient
9 food intake, she can eat independently. She thus does not qualify as requiring assistance with self-
10 feeding, according to the ADHC provider’s understanding of that term. Defendants have not
11 provided any clarification of the scope of “self-feeding” for purposes of ADHC eligibility.

12 147. Ms. Konrai's need for skilled medical and therapeutic ADHC services is as high or
13 higher than the needs of others who, under the new eligibility criteria, will not be terminated or
14 denied from ADHC.

15 **Facts Related to Plaintiff Ronald Bell – Termination of Benefits Subclass Representative**

16 148. Ronald Bell has been attending the Graceful Senescence ADHC program since
17 January 2009. He lives with his grandmother and Guardian ad Litem, Rozene Dilworth, who raised
18 him, and who provides him with 47.6 hours per month of IHSS services. He is authorized to
19 receive and does receive Medi-Cal funded ADHC services three days a week. His most current IPC
20 is approved through January 31, 2010.

21 149. In accordance with his current IPC at the Graceful Senescence ADHC program, Mr.
22 Bell receives:

- 23 a) professional nursing services three days a week to monitor: his diabetes, including
24 pain and numbness due to diabetic neuropathy; any changes in cognitive or visual
25 status; for seizures; his diabetic diet; his cognitive status; and his blood pressure;
26 b) personal care services three days a week to observe for changes with his self-care
27 abilities and promote self-care, as well as to monitor him for falls due to seizures;
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- 1 c) social services on an as needed basis to maintain cognitive functioning, and support
- 2 his remaining in the community, including group counseling twice per week.
- 3 d) therapeutic activities three days a week to assist with his interactions with peers;
- 4 e) physical therapy services three days a week to maintain and/or increase his functional
- 5 mobility, strength, and endurance, and prevent physical decline;
- 6 f) occupational therapy services three days a week to maintain or improve his strength,
- 7 endurance, and range of motion;
- 8 g) registered dietician services to support compliance with a modified diet related to his
- 9 diabetes and high cholesterol, including through providing him a modified diabetic
- 10 diet for both breakfast and lunch three days a week;
- 11 h) mental health services, on a one-on-one basis, twice a month and as needed to assist
- 12 him with coping skills and decrease his depression and social isolation;

13 150. Mr. Bell's most current IPC states that he is at risk of institutionalization due to his
14 poor judgment, medication mismanagement, two or more chronic conditions, and isolation.

15 151. Prior to receiving ADHC services, Mr. Bell's blood sugar levels fluctuated wildly,
16 and he was taken to the emergency room on average more than once per month.

17 152. Mr. Bell began receiving ADHC services in January 2009, and since then his blood
18 sugar levels have stabilized and his trips to the emergency room have been reduced significantly.

19 153. Mr. Bell's grandmother believes that ADHC services are critical for Mr. Bell to
20 continue to be able to remain in the community in part due to his difficulty complying with a
21 diabetic diet, as well as his inability to administer his own insulin. The ADHC arranged for a lock
22 box at the house so that Mr. Bell cannot access the insulin, and his blood sugar levels, though still
23 elevated, are now generally under control. Mr. Bell has not needed emergency services since May
24 2009.

25 154. Mr. Bell would be irreparably harmed by the loss of ADHC services. If Mr. Bell
26 were to lose ADHC services, he would use increased emergency services, require more
27 hospitalizations, and would face out-of-home placement.

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1 155. According to Graceful Senescence, Mr. Bell will be terminated from the program by
2 the new, restrictive eligibility requirements in California Welfare and Institutions Code section
3 14521.1, because although he has a cognitive impairment, he only needs “assistance” with one of
4 the eight specified activities, medication management.

5 156. Mr. Bell’s need for skilled medical and therapeutic ADHC services is as high or
6 higher than the needs of others who, under the new eligibility criteria, will not be terminated from
7 or denied ADHC.

8 **Failure to Provide Adequate Notice and Pre-Termination Hearing**

9 157. Plaintiffs have all been found eligible for and currently receive ADHC services on
10 an individualized basis as set forth in their Individual Plans of Care. As part of their ADHC
11 Individual Plan of Care (IPC), Plaintiffs have each been found eligible for specific ADHC services
12 on each day of attendance authorized by Medi-Cal. Plaintiff Lillie Brantley has a Medi-Cal
13 approved IPC through February 28, 2010 for five days a week of services through ADHC. Plaintiff
14 Allie Jo Woodard has a Medi-Cal approved IPC through December 31, 2009 for five days a week
15 of services through ADHC. Plaintiff Gilda Garcia has a Medi-Cal approved IPC through April 30,
16 2010 for five days a week of services through ADHC. Plaintiff Harry Cota has a Medi-Cal
17 approved IPC through April 30, 2010 for five days a week of services through ADHC. Sumi
18 Konrai has a Medi-Cal approved IPC through December 31, 2009 for five days a week of services
19 through ADHC. Ronald Bell has a Medi-Cal approved IPC through January 31, 2010 for three days
20 a week of services through ADHC.

21 **Limitations of Benefits Subclass**

22 158. On July 30, 2009, Defendant sent a fax to ADHC providers, stating that:

23 “Effective August 27, 2009. . . .and until the State law is amended or
24 becomes inoperative, Medi-Cal will no longer approve or pay for a
25 beneficiary to attend an ADHC center for more than three days per week. If
26 your ADHC center currently has participants attending the ADHC center more
27 than three days per week pursuant to a currently approved Treatment
28 Authorization Request (TAR), DHCS will send those beneficiaries a notice
informing them that their authorized ADHC services will be reduced to a
maximum of three days of ADHC per week, effective 30 days after signing of
the Trailer Bill. In addition, DHCS will notify all Medi-Cal beneficiaries who
receive ADHC services of the reduction to this ADHC benefit. Copies of all

1 notices released regarding ADHC benefit changes will be provided on the
2 DHCS website at www.dhcs.ca.gov and on the Medi-Cal website at
3 www.medi-cal.ca.gov. Please feel free to print, post, and/or distribute these
4 notices for your ADHC participants.”

5 159. Following this communication, Defendant posted a two-page notice on the DHCS
6 website. The first page, addressed to Medi-Cal beneficiaries, states that the “ADHC benefit is
7 reduced to a maximum of three days of ADHC per week.” The second page is directed at ADHC
8 participants affected by the cut and states:

9 “Dear Medi-Cal Beneficiary:

10 This is to notify you that a recent change in California law will reduce the
11 Adult Day Health Care benefit to a maximum of three days per week for any
12 beneficiary. This change will occur 30 days after signing of the law that
13 accompanies the State Fiscal Year 2009-2010 Budget. The Department of
14 Health Care Services records show that you are currently authorized to receive
15 four or more days per week of Adult Day Health Care. Effective August 27,
16 2009, Medi-Cal will only authorize and pay for a maximum of three days per
17 week of Adult Day Health Care. Due to this change of State law, carry-over
18 days and make-up days will not be allowed. If you have any questions, please
19 contact the Medi-Cal beneficiary Services line at 1-888-284-0623 or speak
20 with your ADHC provider.”

21 160. Upon information and belief, Plaintiffs Lillie Brantley, Gilda Garcia, Allie Jo
22 Woodard, Harry Cota and Sumi Konrai have not received individualized written notice of the cuts
23 to their services nor have they been informed of their right to hearing before services are denied,
24 suspended, reduced or terminated, nor about whether and how to assert their rights to alternative
25 services offered through Medi-Cal.

26 161. The above-described notice to Medi-Cal beneficiaries does not comply with federal
27 and state requirements governing notice and hearing because, among other reasons, it was not
28 mailed to beneficiaries and, moreover, fails to advise Plaintiffs of (a) their right to a fair hearing if
they are disagree with the reductions or terminations in services, (b) the manner in which they can
request a hearing, (c) their right to continuation of benefits pending a hearing.

162. Plaintiffs Brantley, Woodard, Garcia, and new Plaintiffs Harry Cota, Sumi Konrai
and Ronald Bell are representative of the broader population of ADHC participants throughout the

1 state who would be affected by the cuts contained in ABx4 5 and who have not received required
2 notice and hearing rights.

3 Termination of Benefits Subclass

4 163. With respect to the Termination of Benefits subclass, upon information and belief,
5 Defendant does not intend to issue notice to the vast majority of potentially affected individuals.
6 Rather, individuals who are assessed by their ADHC provider and determined not to meet the new
7 eligibility requirements are supposed to receive a termination or denial notice from the ADHC
8 provider. For current participants, such notice will not offer them a pre-termination Medi-Cal
9 hearing nor will they be entitled to continuation of benefits pending the hearing. For the small
10 number of individuals whose ADHC provider determines meet the new eligibility requirements, the
11 ADHC provider will submit a Treatment Authorization Request (TAR) to the Medi-Cal field office
12 for approval. If the field office determines that the individual does not meet the new requirements,
13 then the field office will issue a Medi-Cal notice, offer a pre-termination hearing, and the
14 opportunity to have services continued pending the hearing.

15 164. Plaintiffs Garcia, Cota, Konrai, and Bell are representative of the broader population
16 of ADHC participants throughout the state who would be affected by the cuts contained in ABx4 5
17 and who have not received required notice and hearing rights.

18 **Facts Related to Medi-Cal ADHC Participants Generally**

19 165. All ADHC participants have been authorized to receive and do receive Medi-Cal
20 funded ADHC services in accordance with physician recommendations and an Individual Plan of
21 Care (IPC) submitted to and approved by Defendants.

22 166. Upon information and belief, virtually all ADHC participants are receiving services
23 between one and five days per week and have approved treatment authorizations approved by
24 Medi-Cal. Upon information and belief, ADHC participants have not received individualized
25 notification of the cuts or changes in services, nor has Defendant ensured that they are informed of
26 the availability of alternative services available under the Medi-Cal State Plan, such as home health
27 agency services, IHSS, rehabilitation services, specialty mental health services, targeted case
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1 management, and transportation, nor have Defendants ensured that they have access to these
2 alternative services.

3 167. Upon information and belief, Defendant does not intend to provide such information
4 or secure alternative services for affected ADHC participants.

5 168. Denials, suspensions or termination of, or reductions to ADHC services will cause
6 Class Members to suffer decline in physical functioning, will lead to increased preventable
7 emergency room visits, and will lead to institutionalization.

8 169. Significantly, for many participants, such as people whose physical or cognitive
9 impairments are such that they cannot be left alone, or whose health conditions are extremely
10 unstable, or those whose families rely on the individual being out of home in order to work, sleep,
11 or care for other family members, the loss of one or two days, or complete termination of ADHC,
12 will mean imminent and irreparable harm, including hospitalization, out-of-home placement in a
13 nursing facility, or physical and/or mental deterioration resulting in hospitalization or
14 institutionalization.

15 170. To the extent there are any applicable administrative remedies, exhaustion on the
16 part of Plaintiffs would be futile. On August 10, 2009, Plaintiffs sent a demand letter to Defendants
17 requesting that the reduction, elimination or termination of services be halted until Defendants
18 provided Plaintiffs with due process, continued services and/or replacement services needed to
19 maintain them in the community in accordance with the law. On August 13, 2009, Defendants
20 responded by letter, refusing to do so.

21 **VIII. CLASS DEFINITION AND ALLEGATIONS.**

22 171. Pursuant to Rule 23(a) and Rule (b)(2) of the Federal Rules of Civil Procedure,
23 Plaintiffs Brantley, Woodard, Garcia, Cota, Konrai, and Bell bring this action on behalf of
24 themselves and all other persons similarly situated. Plaintiffs bring this action on behalf of a class
25 consisting of "all Medi-Cal beneficiaries in the State of California for whom Adult Day Health
26 Care benefits will be reduced, suspended, denied or terminated under the provisions of ABx4 5
27 (hereinafter the "Class"). Fed. R. Civ. P. 23(a), (b)(2).

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1 172. Plaintiffs Brantley, Woodard, Garcia, Cota, Konrai, and Bell also plead a subclass of
2 individuals as follows:

- 3 a. **“Limitation of Benefits Subclass”** to be defined as “all Medi-Cal
4 beneficiaries who, as of August 26, 2009, have been authorized to receive four
5 or five days of Adult Day Health Care Services by DHCS, and whose services
6 will be reduced to a maximum of three days under the provisions of ABx4 5.”
7 Plaintiffs Brantley, Garcia, Woodard, Cota, and Konrai are typical of this
8 subclass.
- 9 b. **“Termination of Benefits Subclass”** to be defined as “all present and future
10 Medi-Cal beneficiaries who have been authorized to receive any Adult Day
11 Health Care services, and whose ADHC services will be reduced, suspended,
12 or terminated, and otherwise qualified future ADHC applicants who will be
13 denied ADHC services, when the eligibility and medical necessity
14 requirements of ABx4 5 become operative.” Plaintiffs Garcia, Cota, Konrai,
15 and Bell are typical of this subclass.

16 173. Numerosity: The Plaintiff class is so numerous that joinder of all its members is
17 impracticable. Upon information and belief, there are in excess of 37,000 persons in the class.
18 Upon information and belief, the “Limitation of Benefits subclass” consists of more than 8,000
19 people. Upon information and belief the “Termination of Benefits subclass” will consist of
20 approximately 15,000 people who will be terminated from ADHC. Joinder of individuals in the
21 subclasses is also impracticable because of the size of the subclasses, and because Class Members
22 lack the knowledge and financial means to maintain individual actions and are geographically
23 disbursed throughout the state.

24 174. Commonality: Common questions of law and fact predominate over questions
25 affecting individual Class Members. Questions of law and fact common to members of the class
26 include, but are not limited to: the fact that all Plaintiffs and Class Members have been determined
27 by Defendants to have a high potential for, and to need the ADHC services they receive on each day
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1 of attendance in order to avoid, emergency room visits, hospitalization or other institutionalization
2 (Cal. Welf. & Inst. Code §§ 14526.1(d)(4) and (5)); the fact that Plaintiffs and Class Members have
3 been determined to need Medi-Cal funded ADHC services that will be suspended, reduced, or
4 terminated, or they will otherwise be denied access to ADHC services, due to the common policies
5 and actions of Defendants that apply to all of the Class Members; the determination of whether
6 Defendants' policies and actions violate federal and/or state law; the determination of whether
7 Defendant's new, restrictive eligibility requirements are reasonable; and the determination of
8 whether Defendants have failed to give adequate notice and the opportunity for a pre-termination
9 hearing to all affected Class Members. The prosecution of separate actions by individual members
10 of the class would create a risk of inconsistent or varying adjudication, establishing incompatible
11 rules of law for the provision of services to people with disabilities served by the ADHC program.

12 175. Typicality: The claims of the Plaintiffs are typical of the claims of the class as a
13 whole and are typical of the claims of the subclasses in that the Plaintiffs and Class members
14 currently are Medi-Cal eligible ADHC participants and qualified individuals with disabilities, who
15 face the risk of institutionalization, hospitalization, and/or mental or physical deterioration resulting
16 in hospitalization and/or institutionalization, when subjected to the termination, suspension,
17 reduction or denial of ADHC services. The claims arise from the same unlawful and discriminatory
18 policies and practices of Defendants.

19 176. Adequate representation: The Plaintiffs will fairly represent and adequately protect
20 the interests of members of the class as a whole. The Plaintiffs do not have any interests
21 antagonistic to those of other Class Members. By filing this action, the Plaintiffs have displayed an
22 interest in vindicating their rights, as well as the claims of others who are similarly situated. The
23 relief sought by the Plaintiffs will inure to the benefit of members of the class generally. The
24 Plaintiffs are represented by counsel who are skilled and knowledgeable about civil rights litigation,
25 disability discrimination, Medicaid law, practice and procedure in the federal courts and the
26 prosecution and management of class action litigation.

1 177. Defendants have acted, refused to act, or will act on grounds generally applicable to
2 the class, thereby making final injunctive and declaratory relief appropriate with respect to the class
3 as a whole under Rule 23(b)(2) of the Federal Rules of Civil Procedure. Class Members share a
4 common need for ADHC services and/or replacement services and Defendants' policies and actions
5 in reducing, suspending, denying or terminating ADHC services are applicable to the entire class.
6 A class action is superior to individual lawsuits for resolving this controversy.

7 178. Defendants' actions, as alleged herein, have resulted in, and will continue to result in
8 irreparable injury to Plaintiffs and Class Members for which they have no plain, speedy, or
9 adequate remedy at law. Plaintiffs and Class Members will suffer irreparable injury in that they
10 will be placed at risk of institutionalization, hospitalization, or deterioration resulting in
11 hospitalization and/or institutionalization.

12 179. An actual controversy exists between Plaintiffs and Class Members and Defendants
13 in that Defendants are seeking to implement denials, suspensions, reductions and terminations of
14 Medi-Cal services to which Plaintiffs and Class Members are entitled, and which, if implemented
15 will place Plaintiffs and Class Members at risk of unnecessary institutionalization and that such
16 denial will violate the rights of Plaintiffs and Class Members under the Due Process Clause of the
17 Fourteenth Amendment to the United States Constitution, the Americans With Disabilities Act,
18 Section 504, the Medicaid Act, and California Government Code section 11135. Plaintiffs and
19 Class Members therefore seek a declaration as to their rights and Defendants' corresponding duties
20 with respect to the matters alleged herein.

21 **IX. LEGAL CLAIMS**

22 **FIRST CLAIM FOR RELIEF**

23 **(Defendant Director Maxwell-Jolly)**

24 **(Claim by both Limitation and Termination of Benefits Subclasses)**

25 **Violation of Title II of the Americans with Disabilities Act**

26 180. Plaintiffs reallege and incorporate herein by reference each and every allegation and
27 paragraph set forth previously.

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1 181. Each named Plaintiff and Class Member is a “qualified individual with a disability”
2 within the meaning of the ADA in that they (1) have a physical impairment that substantially limits
3 one or more major life activities; and (2) meet the essential eligibility requirements for community-
4 based long-term care under California’s Medicaid program.

5 182. As to the Limitations of Benefits Subclass, Defendant has required that ADHC
6 services to Plaintiffs and Class Members arbitrarily be reduced from five days per week to no more
7 than three days per week without reassessment of need or the provision of alternative services they
8 need to avoid institutionalization, thereby placing Plaintiffs and Class Members at risk of
9 institutionalization in violation of the ADA’s integration mandate.

10 183. As to the Termination of Benefits Subclass, Defendant has imposed new, restrictive
11 eligibility requirements on Plaintiffs and Class Members which will result in complete termination
12 or denial of ADHC services regardless of their need for ADHC to remain safely in their own homes
13 or in community settings, and without securing alternative services they need to avoid unnecessary
14 institutionalization, thereby placing Plaintiffs and Class Members at risk of institutionalization in
15 violation of the ADA’s integration mandate.

16 184. As to the Termination of Benefits Subclass, Defendant has imposed arbitrary
17 eligibility requirements which unlawfully screen out or tend to screen out equally needy and
18 qualified classes of individuals with disabilities from fully and equally enjoying ADHC services,
19 based on their need for assistance with activities of daily living and/or level of care.

20 185. Defendant has discriminated against all Plaintiffs and Class Members in ways that
21 include, but are not limited to failing to provide reasonable modifications to programs and services.

22 186. Defendant has utilized criteria and methods of administration that subject Plaintiffs
23 and Class Members to discrimination on the basis of disability, including risk of unnecessary
24 institutionalization, by, including but not limited to the following: (1) failing to properly assess for
25 replacement services and supports that would enable Plaintiffs and Class Members to remain in the
26 community; (2) failing to provide ADHC or replacement services needed to enable Plaintiffs and
27 Class Members to remain in the community; (3) basing their decision on levels of service solely on
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1 economic considerations not taking into account the assessed needs of the participants; and
2 (4) allocating resources for institutional versus community long-term care contrary to the desires
3 and needs of people with disabilities.

4 187. Defendant's actions are in violation of Title II of the ADA.

5 **SECOND CLAIM FOR RELIEF**

6 **(Defendants DHCS and Director Maxwell-Jolly)**

7 **(Claim by both Limitation and Termination of Benefits Subclasses)**

8 **Violation of Section 504 of the Rehabilitation Act**

9 188. Plaintiffs reallege and incorporate herein by reference each and every allegation and
10 paragraph set forth previously.

11 189. Each Plaintiff and Class Member is a "qualified person with a disability" within the
12 meaning of Section 504, because they (1) have physical and/or mental impairments that
13 substantially limit one or more major life activities; and (2) meet the essential eligibility
14 requirements for community-based services under California's Medicaid programs.

15 190. As to the Limitations of Benefits Subclass, Defendants have required that ADHC
16 services to Plaintiffs and Class Members arbitrarily be reduced from five days per week to no more
17 than three days per week without reassessment of need or the provision of alternative services they
18 need to avoid institutionalization, thereby placing Plaintiffs and Class Members at risk of
19 institutionalization in violation of Section 504's integration mandate.

20 191. As to the Termination of Benefits Subclass, Defendants have imposed new,
21 restrictive eligibility requirements on Plaintiffs and Class Members which will result in complete
22 termination or denial of ADHC services regardless of their need for ADHC to remain safely in their
23 own homes or in community settings, and without securing alternative services they need to avoid
24 unnecessary institutionalization, thereby placing Plaintiffs and Class Members at risk of
25 institutionalization in violation of Section 504's integration mandate.

26 192. As to the Termination of Benefits Subclass, Defendants have imposed arbitrary
27 eligibility requirements which unlawfully screen out or tend to screen out equally needy and
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1 qualified classes of individuals with disabilities from fully and equally enjoying ADHC services,
2 based on their need for assistance with activities of daily living and/or level of care.

3 193. Defendants have discriminated against all Plaintiffs and Class Members in ways that
4 include, but are not limited to, failing to provide reasonable modifications to programs and services.

5 194. Defendants have utilized criteria and methods of administration that subject all
6 Plaintiffs and Class Members to discrimination on the basis of disability, including risk of
7 unnecessary institutionalization, by, including but not limited to the following: (1) failing to
8 properly assess for replacement services and supports that would enable Plaintiffs and Class
9 Members to remain in the community; (2) failing to provide ADHC or replacement services needed
10 to enable Plaintiffs and Class Members to remain in the community; (3) basing their decision on
11 levels of service solely on economic considerations not taking into account the assessed needs of
12 the participants; and (4) allocating resources for institutional versus community long-term care
13 contrary to the desires and needs of people with disabilities.

14 195. Defendants' actions are in violation of Section 504 of the Rehabilitation Act.

15 **THIRD CLAIM FOR RELIEF**

16 **(Defendant Director Maxwell-Jolly)**

17 **(Claim by both Limitation and Termination of Benefits Subclasses)**

18 **Claim under 42 U.S.C. § 1983, Deprivation of Federal Constitutional Rights –**

19 **Violation of Procedural Due Process Rights**

20 196. Plaintiffs reallege and incorporate herein by reference each and every allegation and
21 paragraph set forth previously.

22 197. Defendant Maxwell-Jolly, as the Director of the Medicaid single state agency, is
23 ultimately responsible for administration of the Medi-Cal program, including ensuring the provision
24 of adequate notice and pre-termination hearing rights.

25 198. Plaintiffs receive ADHC services which are being cut to three days per week and/or
26 are being terminated by application of new eligibility and medical necessity criteria. Plaintiffs have
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1 not received notice informing them of their rights to a pre-termination or pre-reduction hearing or
2 been informed of their right to alternative services available through Medi-Cal.

3 199. Defendant's practices and procedures alleged herein violate the Due Process clause
4 of the Fourteenth Amendment to the U.S. Constitution by, among other things, denying Plaintiffs
5 and Class Members adequate notice and the opportunity for a fair hearing prior to reduction,
6 suspension or termination of services previously authorized by the State.

7 200. In all of this, Defendant has, under color of state law, deprived Plaintiffs and Class
8 Members of rights, privileges or immunities secured to them by the Constitution of the United
9 States, in violation of 42 U.S.C. § 1983.

10 **FOURTH CLAIM FOR RELIEF**

11 **(Defendant Director Maxwell-Jolly)**

12 **(Claim by both Limitation and Termination of Benefits Subclasses)**

13 **Violation of Medicaid Act, Failure to provide Opportunity for Hearing**

14 201. Plaintiffs reallege and incorporate herein by reference each and every allegation and
15 paragraph set forth previously.

16 202. Defendant Maxwell-Jolly, as the Director of the Medicaid single state agency, is
17 ultimately responsible for administration of the Medi-Cal program, including ensuring the provision
18 of adequate notice and pre-termination hearing rights.

19 203. Pursuant to the Medicaid Act, the state of California has established a procedure to
20 provide a fair hearing to any Medi-Cal beneficiary whose services are denied, reduced, suspended,
21 or terminated. In denying, reducing, suspending, or terminating services to Plaintiffs and Class
22 Members as set forth above, Defendant has deprived Plaintiffs and Class Members of an
23 opportunity for a fair hearing in violation of 42 U.S.C. § 1396a(a)(3).

24 204. Defendant's practices and procedures alleged herein violate 42 U.S.C § 1396a(a)(3)
25 by among other things, failing to ensure that individuals whose ADHC services will be denied,
26 suspended, terminated or reduced have access to a fair hearing.

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1 210. Federal Medicaid law requires participating states to establish reasonable standards,
2 consistent with the objectives of the Medicaid Act, for determining the extent of covered services.
3 42 U.S.C. § 1396a(a)(17).

4 211. Pursuant to ABx4 5 and subsequent amendments, Defendant will provide ADHC
5 services for some Medi-Cal recipients, while denying the same services to other ADHC recipients
6 who have comparable needs, and will use eligibility criteria that do not provide a reasonable
7 measure of need for ADHC services.

8 212. ABx4 5 is inconsistent and in conflict with the reasonable standards requirements of
9 the federal Medicaid Act, 42 U.S.C. § 1396a(a)(17), and interpretive federal guidelines, and is thus
10 preempted by the Supremacy Clause of the United States Constitution, art. IV.

11 **SEVENTH CLAIM FOR RELIEF**

12 **(Defendants DHCS and Director Maxwell-Jolly)**

13 **(Claim by both Limitation and Termination of Benefits Subclasses)**

14 **Violation of Government Code Sections 11135 and 11139**

15 213. Plaintiffs reallege and incorporate herein by reference each and every allegation and
16 paragraph set forth previously.

17 214. Plaintiffs and Class Members are persons with disabilities within the meaning of
18 California Government Code section 11135(c) *et seq.* and its implementing regulations.

19 215. Plaintiffs and Class Members meet the essential eligibility requirements for Medi-
20 Cal services, including services necessary to maintain them in their homes in the community.

21 216. Defendants DHCS and Director Maxwell-Jolly conduct, operate or administer the
22 state Medicaid program, entitled Medi-Cal, which is directly funded, in part, by state financial
23 assistance within the meaning of California Government Code section 11135(a) and implementing
24 regulations.

25 217. Defendants' actions, in denying, reducing, suspending or terminating community-
26 based Medi-Cal services and not assessing for or providing replacement services and placing
27 plaintiffs and Class Members at risk of institutionalization have discriminated against Plaintiffs and
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1 Class Members, thereby excluding them from participation in, denying them the benefits of, and
2 otherwise subjecting them to discrimination in violation of California Government Code section
3 11135 *et seq.* and implementing regulations.

4 218. Plaintiffs and Class Members further allege that violations of their rights under the
5 Americans with Disabilities Act and implementing regulations contained in the First Claim for
6 Relief are incorporated herein and constitute a violation of California Government Code section
7 11135 *et seq.* as well, as set forth in section 11135(b).

8 **X. REQUEST FOR RELIEF**

9 WHEREFORE, Plaintiffs pray that the Court order the following relief and remedies
10 on behalf of themselves and all others similarly situated:

11 A. Assume jurisdiction over this action and maintain continuing jurisdiction until
12 Defendants are in full compliance with every order of this court;

13 B. Certify this action as a class action;

14 C. As to all Defendants, declare that Defendants' policies, practices, acts and omissions,
15 in implementing and enforcing ABx4 5, as set forth above, violate Plaintiffs' and Class Members'
16 rights under the American with Disabilities Act, Section 504 of the Rehabilitation Act, the Medicaid
17 Act, the United States Constitution, and California Government Code section 11135 by, *inter alia*:

- 18 i. Denying Plaintiffs and Class Members their entitlement to services in the
19 most integrated setting;
- 20 ii. Discriminating against Plaintiffs and Class Members on the basis of disability,
21 and on the basis of severity of disability, by utilizing methods of
22 administration, adopting and applying policies, failing to make reasonable
23 modifications to programs and policies, and engaging in practices that result
24 in unnecessary segregation and institutionalization; and
- 25 iii. Failing to provide Medi-Cal covered services without interruption and without
26 adequate notice or opportunity for a fair hearing.
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1 D. Declare that Defendant Maxwell-Jolly's denial, termination, reduction or suspension
2 of Plaintiffs' and Class Members' Medi-Cal-covered services to which they are entitled, without
3 adequate notice or opportunity for a fair hearing, and failure to provide adequate Medi-Cal-covered
4 alternative services to which they are entitled, without interruption of services, constitutes a denial of
5 due process of law guaranteed to them under:

- 6 i. The Fourteenth Amendment to the Constitution of the United States;
7 ii. The Medicaid program, Title XIX of the Social Security Act, Title 42 U.S.C.
8 § 1396a – 1369v.

9 E. Declare that Defendants' elimination of Plaintiffs' Medicaid skilled nursing and
10 rehabilitation services provided through the ADHC program, without the provision of alternative
11 services in community-based settings which are the most integrated setting appropriate to the needs
12 of Plaintiffs and Class Members, and conditioning the receipt of medically necessary Medicaid
13 services on segregation in an institutional or non-community setting, violate laws which prohibit
14 discrimination on the basis of disability and unjustified institutionalization and which require
15 Defendants to administer their services and programs in the most integrated setting appropriate to the
16 needs of the individuals with disabilities, including:

- 17 i. The Americans with Disabilities Act ("ADA"), (42 U.S.C.A. §§ 12101-12213
18 (West 2005))
19 ii. Section 504 of the Rehabilitation Act ("Section 504"), (29 U.S.C.A. §§ 794-
20 794a (West 2006)),
21 iii. California Government Code section 11135. (Cal. Gov't. Code § 11135
22 (West 2006)).

23 F. Grant a preliminary and permanent injunction enjoining Defendants, their officers,
24 agents, employees, attorneys, and all persons who are in active concert or participation with them
25 from implementing or enforcing ABx4 5 in violation of Plaintiffs' and Class Members' rights under
26 the American with Disabilities Act, Section 504 of the Rehabilitation Act, the Medicaid Act, the
27 United States Constitution, and California Government Code section 11135.
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1 **For the “Limitation of Benefits Subclass” only:**

2 G. Certify this action as a class action as to the Limitation of Benefits Subclass;

3 H. As to all Defendants, declare that Defendants’ policies, practices, acts and omissions,
4 in implementing and enforcing ABx4 5, as set forth above, violate Plaintiffs’ and Class Members’
5 rights under the American with Disabilities Act, Section 504 of the Rehabilitation Act, the Medicaid
6 Act, the United States Constitution, and California Government Code section 11135 by, *inter alia*:

7 i. Denying Plaintiffs and Class Members their entitlement to services in the most
8 integrated setting;

9 ii. Discriminating against Plaintiffs and Class Members on the basis of disability, and on
10 the basis of severity of disability, by utilizing methods of administration, adopting
11 and applying policies, failing to make reasonable modifications to programs and
12 policies, and engaging in practices that result in unnecessary segregation and
13 institutionalization; and

14 iii. Failing to provide Medi-Cal covered services without interruption and without
15 adequate notice or opportunity for a fair hearing.

16 I. Declare that Defendant Maxwell-Jolly’s denial, termination, reduction or suspension
17 of Plaintiffs’ and Class Members’ Medi-Cal-covered services to which they are entitled, without
18 adequate notice or opportunity for a fair hearing, and failure to provide adequate Medi-Cal-covered
19 alternative services to which they are entitled, without interruption of services, constitutes a denial of
20 due process of law guaranteed to them under:

21 i. The Fourteenth Amendment to the Constitution of the United States;

22 ii. The Medicaid program, Title XIX of the Social Security Act, Title 42 U.S.C.
23 § 1396a – 1369v.

24 J. Declare that Defendants’ elimination of Plaintiffs’ Medicaid skilled nursing and
25 rehabilitation services provided through the ADHC program, without the provision of alternative
26 services in community-based settings which are the most integrated setting appropriate to the needs
27 of Plaintiffs and Class Members, and conditioning the receipt of medically necessary Medicaid
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1 services on segregation in an institutional or non-community setting, violate laws which prohibit
2 discrimination on the basis of disability and unjustified institutionalization and which require
3 Defendants to administer their services and programs in the most integrated setting appropriate to the
4 needs of the individuals with disabilities, including:

- 5 i. The Americans with Disabilities Act (“ADA”), (42 U.S.C.A. §§ 12101-12213
6 (West 2005))
- 7 ii. Section 504 of the Rehabilitation Act (“Section 504”), (29 U.S.C.A. §§ 794-
8 794a (West 2006)),
- 9 iii. California Government Code section 11135. (Cal. Gov’t. Code § 11135
10 (West 2006)).

11 K. Grant a preliminary and permanent injunction enjoining Defendants, their officers,
12 agents, employees, attorneys, and all persons who are in active concert or participation with them
13 from implementing or enforcing ABx4 5 in violation of Plaintiffs’ and Class Members’ rights under
14 the American with Disabilities Act, Section 504 of the Rehabilitation Act, the Medicaid Act, the
15 United States Constitution, and California Government Code section 11135;

16 L. Grant a preliminary and permanent injunction enjoining Defendants, their officers,
17 agents, employees, attorneys, and all persons who are in active concert or participation with them
18 from reducing ADHC program benefits from five or four days to a maximum of three days to the
19 Plaintiffs and Class Members and reinstate full ADHC program benefits until such time as
20 Defendants provide Plaintiffs and Class Members the Medi-Cal skilled nursing, physical and
21 occupational therapy, and other Medi-Cal-covered alternative services Plaintiffs and Class Members
22 are entitled to in the most integrated and least restrictive setting appropriate to their needs.

23 M. Grant a preliminary and permanent injunction enjoining Defendant Maxwell-Jolly,
24 his officers, agents, employees, attorneys, and all persons who are in active concert or participation
25 with him from denying, terminating, reducing or suspending Plaintiffs’ and Class Members’ Medi-
26 Cal skilled nursing, physical and occupational therapy, and other services to which they are entitled,
27 until such time as alternative community-based services are provided by Defendant for each Plaintiff

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1 and Class Member; and until Defendant provides Plaintiffs and Class Members full notice and due
2 process appeal rights from any denials, terminations, reductions or suspensions of their Medi-Cal
3 benefits, as required under the U.S. Constitution and the Medicaid Act.

4 N. Maintain the injunctions above until such time as skilled nursing, physical and
5 occupational rehabilitation therapy, and other services are provided to the extent required under
6 federal law and so as to ensure each Plaintiff and Class Member receives the services which meet
7 their needs in the most integrated setting appropriate to their needs.

8 **For the “Termination of Benefits Subclass” only:**

9 O. Certify this action as a class action as to the Termination of Benefits Subclass;

10 P. As to all Defendants, declare that Defendants’ policies, practices, acts and omissions,
11 in implementing and enforcing ABx4 5, as set forth above, violate Plaintiffs’ and Class Members’
12 rights under the American with Disabilities Act, Section 504 of the Rehabilitation Act, the Medicaid
13 Act, the United States Constitution, and California Government Code section 11135, by, *inter alia*:

- 14 i. Denying Plaintiffs and Class Members their entitlement to services in the
15 most integrated setting;
- 16 ii. Discriminating against Plaintiffs and Class Members on the basis of disability,
17 and on the basis of severity of disability, by utilizing methods of
18 administration, adopting and applying policies, failing to make reasonable
19 modifications in programs and policies, imposing arbitrary and illegal
20 eligibility criteria, and engaging in practices that result in unnecessary
21 segregation and institutionalization; and
- 22 iii. Failing to provide Medi-Cal covered services without interruption and without
23 adequate notice or opportunity for a fair hearing.

24 Q. Declare that Defendant Maxwell-Jolly’s denial, termination, reduction or suspension
25 of Plaintiffs’ and Class Members’ Medi-Cal-covered services to which they are entitled, without
26 adequate notice or opportunity for a fair hearing, and failure to provide Plaintiffs and Class Members

1 to adequate Medi-Cal-covered alternative services to which they are entitled, without interruption of
2 services, constitutes a denial of due process of law guaranteed under:

- 3 i. The Fourteenth Amendment to the Constitution of the United States;
- 4 ii. The Medicaid program, Title XIX of the Social Security Act, Title 42 U.S.C.
5 § 1396a – 1396v.

6 R. Declare that Defendants’ elimination of Plaintiffs’ Medicaid skilled nursing and
7 rehabilitation services provided through the ADHC program, without the provision of alternative
8 services in community-based settings which are the most integrated setting appropriate to the needs
9 of Plaintiffs and Class Members, and conditioning the receipt of medically necessary Medicaid
10 services on segregation in an institutional or non-community setting, violate laws which prohibit
11 discrimination on the basis of disability and unjustified institutionalization and which require
12 Defendants to administer their services and programs in the most integrated setting appropriate to the
13 needs of the individuals with disabilities, including:

- 14 i. The Americans with Disabilities Act (“ADA”), (42 U.S.C.A. §§ 12101-12213
15 (West 2005))
- 16 ii. Section 504 of the Rehabilitation Act (“Section 504”), (29 U.S.C.A. §§ 794-
17 794a (West 2006)),
- 18 iii. California Government Code section 11135. (Cal. Gov’t. Code § 11135
19 (West 2006)).

20 S. As to Defendant Maxwell-Jolly, declare that Defendant’s new, restrictive eligibility
21 requirements violate the comparability and reasonable standards requirements of the Medicaid Act,
22 Title XIX of the Social Security Act, 42 U.S.C. §§ 1396a(a)(10)(B) and (17) and are preempted by
23 the Supremacy Clause;

24 T. Grant a preliminary and permanent injunction enjoining Defendants, their officers,
25 agents, employees, attorneys, and all persons who are in active concert or participation with them
26 from implementing or enforcing ABx4 5 in violation of Plaintiffs’ and Class Members’ rights under
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1 the American with Disabilities Act, Section 504 of the Rehabilitation Act, the Medicaid Act, the
2 United States Constitution, and California Government Code section 11135.

3 U. Grant a preliminary and permanent injunction enjoining Defendants, their officers,
4 agents, employees, attorneys, and all persons who are in active concert or participation with them
5 from denying, terminating, reducing, or suspending ADHC program benefits to Plaintiffs and Class
6 Members and reinstate full ADHC program benefits until such time as Defendants provide Plaintiffs
7 and Class Members the Medi-Cal skilled nursing, physical and occupational therapy, and other
8 Medi-Cal-covered alternative services Plaintiffs and Class Members are entitled to in the most
9 integrated and least restrictive setting appropriate to their needs.

10 V. Grant a preliminary and permanent injunction enjoining Defendant Maxwell-Jolly,
11 his officers, agents, employees, attorneys, and all persons who are in active concert or participation
12 with him from denying, terminating, reducing or suspending Plaintiffs' and Class Members' Medi-
13 Cal skilled nursing, physical and occupational therapy, and other services to which they are entitled,
14 until such time as alternative community-based services are provided by Defendant for each Plaintiff
15 and Class Member; and until Defendant provides Plaintiffs and Class Members full notice and due
16 process appeal rights from any denials, terminations, reductions or suspensions of their Medi-Cal
17 benefits, as required under the U.S. Constitution and the Medicaid Act.

18 W. Grant a preliminary and permanent injunction enjoining Defendants, their officers,
19 agents, employees, attorneys, and all persons who are in active concert or participation with them
20 from implementing the restrictive eligibility requirements on ADHC participants provided for in
21 ABx4 5.

22 X. Maintain the injunctions above until such time as skilled nursing, physical and
23 occupational rehabilitation therapy, and other services are provided to the extent required under
24 federal law and so as to ensure each Plaintiff and Class Member receives the services which meet
25 their needs in the most integrated setting appropriate to their needs.

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