

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 08-3315 CAS (MANx)	Date	January 22, 2010
Title	INDEPENDENT LIVING CENTER OF SOUTHERN CALIFORNIA ET AL V. SANDRA SHEWRY		

Present: The Honorable	CHRISTINA A. SNYDER, U.S. DISTRICT JUDGE		
PAUL D. PIERSON	N/A	N/A	
Deputy Clerk	Court Reporter / Recorder	Tape No.	
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:		
N/A	N/A		

Proceedings: (In Chambers:) Order Amending this Court’s August 18, 2008 Order Pursuant to the Ninth Circuit Court of Appeals Mandate Issued December 21, 2009 (08-56422 & 08-56554)

The facts and procedural history of this action are known to the parties and summarized in this Court’s August 18, 2008 order granting in part and denying in part petitioners’ motion for preliminary injunction. In the August 18, 2008 order, this Court ordered respondents “to refrain from enforcing Cal. Welf. & Inst. Code § 14105.19(b)(1), including refraining from reducing by ten percent payments under the Medi-Cal fee-for-service program for physicians, dentists, pharmacies, adult day health care centers, clinics, health systems, and other providers for services provided on or after July 1, 2008.” On August 27, 2008, this Court issued an order modifying the injunction to apply only to payments for services provided on or after August 18, 2008.

On July 9, 2009, the Ninth Circuit affirmed in part and reversed in part this Court’s August 18, 2008 order. 572 F.3d 644, 662-63 (9th Cir. 2009). Specifically, the Ninth Circuit affirmed this Court’s order granting in part petitioners’ motion for preliminary injunction, but found that this Court’s “subsequent order modifying the injunction to apply only to payments for services provided on or after August 18 was based on an erroneous legal standard.” *Id.* at 663. Further, the Ninth Circuit found that

by basing its order on an erroneous legal standard, the district court erred in eliminating the injunction's retroactive effect. We hold that the district court's injunction should extend to all services covered by that injunction and provided on or after July 1, 2008.

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Id. Accordingly, the Ninth Circuit reversed the order modifying the injunction and remanded the case to this Court. Id. On December 21, 2009, the Ninth Circuit denied respondent's motion to vacate that opinion and ordered the mandate to reissue immediately. Nos. 08-56422, 08-56554, 2009 WL 4893657, at *4 (9th Cir. Dec. 21, 2009).

On January 4, 2010, a hearing was held and this Court ordered the spreading of the mandate.¹ Pursuant to the mandate from the Ninth Circuit, this Court hereby vacates the August 27, 2008 order modifying the injunction and amends the August 18, 2008 order to change the effective date to July 1, 2008. Accordingly, the Court hereby orders respondent Director, her agents, servants, employees, attorneys, successors, and all those working in concert with her to refrain from enforcing Cal. Welf. & Inst. Code § 14105.19(b)(1), including refraining from reducing by ten percent payments under the Medi-Cal fee-for-service program for physicians, dentists, pharmacies, adult day health care centers, clinics, health systems, and other providers for services provided on or after July 1, 2008.

¹ At the hearing, the Court indicated that it was prepared to amend the August 18, 2008 order in accordance with the Ninth Circuit mandate and inquired as to the parties' response to the proposed amendment. The Court allowed counsel to file their responses to this inquiry. On January 8, 2010, respondent filed their response, and then on January 13, 2010, intervenor Sacramento Family Medical Clinics, Inc, et al. ("intervenors"), filed their response.

Respondents request that any order amending the August 18, 2008 preliminary injunction must specifically indicate that it only applies to six providers and service categories — prescription drugs, physicians, dentists, optometrists, Adult Health Care Centers ("ADHCs"), and clinics — of which they contend the August 18, 2008 applied. The intervenors agree with respondents that the mandate requires amendment only of the Court's August 18, 2008 preliminary injunction order to change the effective date to July 1, 2008, and that this order only applies expressly to prescription drugs, physician, dentist, optometrist, ADHCs and clinic services. Both parties agree that the mandate does not require amendment of this Court's November 17, 2008 preliminary injunction which applies to non-emergency medical transportation and home health services.

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IT IS SO ORDERED.

cc: Ninth Circuit Court of Appeals

Initials of Preparer _____ : _____
PDP