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CHULA VISTA MEDICAL CENTER,
14 and SHARP CORONADO HOSPITAL
AND HEALTHCARE CENTER

16 UNITED STATES DISTRICT COURT

17 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

18
19
20 INDEPENDENT LIVING CENTER
OF SOUTHERN CALIFORNIA, et al.,

21 Petitioners,

22
23 DAVID MAXWELL-JOLLY, Director
of the Department of Health Care
24 Services of the State of California, et
al.,

25 Respondents.

26 SACRAMENTO FAMILY MEDICAL
27 CLINICS, INC., et al.,

28 Intervenors.

FILED
CLERK, U.S. DISTRICT COURT
MAR 26 2010
CENTRAL DISTRICT OF CALIFORNIA
BY 8 DEPUTY

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DISTRICT COURT
CLERK, U.S. DISTRICT OF CALIF.
LOS ANGELES

CASE NO. CV 08-3315 CAS (MANx)
COMPLAINT IN INTERVENTION

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2 CALIFORNIA ASSOCIATION OF
3 MEDICAL PRODUCT SUPPLIERS;
4 CATHOLIC HEALTHCARE WEST;
5 SHARP MEMORIAL HOSPITAL;
6 GROSSMONT HOSPITAL
7 CORPORATION; SHARP CHULA
8 VISTA MEDICAL CENTER, and
9 SHARP CORONADO HOSPITAL
10 AND HEALTHCARE CENTER,
11
12 Intervenor,
13

14 By leave of court, Intervenor CALIFORNIA ASSOCIATION OF
15 MEDICAL PRODUCT SUPPLIERS ("CAMPS"), CALIFORNIA HOSPITAL
16 ASSOCIATION ("CHA"), SHARP MEMORIAL HOSPITAL ("SMH"),
17 GROSSMONT HOSPITAL CORPORATION, SHARP CHULA VISTA
18 MEDICAL CENTER, and SHARP CORONADO HOSPITAL AND
19 HEALTHCARE CENTER ("SCHHC") (collectively, "Intervenor") file this
20 complaint and thereby intervene in this action. Intervenor join with Petitioners
21 Independent Living Center of Southern California, *et al.* (collectively, "Petitioners")
22 in challenging the validity of an across-the-board ten percent reduction in
23 reimbursement rates for health care services provided to beneficiaries of California's
24 Medicaid program, Medi-Cal, which Respondent David Maxwell-Jolly, Director of
25 the California Department of Health Care Services is responsible for implementing,
26 alleging as follows:

INTRODUCTION

27 1. Medi-Cal is a major component of the "safety net" that ensures the
28 State's poor have access to health care services. Unfortunately for those who
depend on it to access basic healthcare services, the low rates at which the State
currently pays providers to care for Medi-Cal patients have created a gaping hole in
that net. Health care providers of virtually every type have been steadily leaving the
Medi-Cal program or scaling back services because the rates they are being paid are

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1 not even sufficient to cover the costs they incur in providing services. The exodus
2 of providers from the program is leaving massive numbers of Californians without
3 access to critical services or is forcing them to obtain care in the already over-
4 crowded and increasingly scarce emergency departments of hospitals throughout the
5 state. Despite this disturbing state of affairs, California has decided to reduce Medi-
6 Cal rates again, without regard to the impact of these reductions.

7 2. On January 10, 2008, California Governor Arnold Schwarzenegger
8 issued a Fiscal Emergency Proclamation pursuant to Section 10(f) of Article IV of
9 the Constitution of the State of California, at the same time he proposed his budget
10 for fiscal year 2008-09. The Governor determined that the General Fund revenues
11 for fiscal Year 2007-08 will decline substantially below the estimate of General
12 Fund revenues upon which the 2007 Budget Bill was based. Accordingly, the
13 Governor declared a fiscal emergency based on the projected budget imbalance and
14 insufficient cash reserves for Fiscal Year 2007-08 and the projected insufficient cash
15 reserves and potential budgetary and cash deficit in Fiscal Year 2008-09. The
16 Governor caused the Legislature to assemble in special session to address the fiscal
17 emergency.

18 3. On February 16, 2008, the California Legislature enacted Assembly
19 Bill X3 5 ("AB 5") in special session. Section 14 of said Act added Section
20 14105.19 to the Welfare and Institutions Code, which provides in relevant part, as
21 follows:

22 (a) Notwithstanding any other provision of law, in order to
23 implement changes in the level of funding for health care services, the
director shall reduce provider payments as specified in this section.

24 (b)(1) Except as provided in subdivision (c), payments shall be reduced
25 by 10 percent for Medi-Cal fee for service benefits for dates of service
on or after July 1, 2008

26

27 (e) Notwithstanding Chapter 3.5 (commencing with section 11340)
28 of Part 1 of Division 3 of Title 2 of the Government Code, the
department may implement this section by means of provider bulletin,

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1 or similar instruction, without taking regulatory action.

2

3 (g) The department shall promptly seek any necessary federal
4 approvals for the implementation of this section.

5 4. Pursuant to paragraph (b)(1) of Welfare and Institutions Code §
6 14105.19, payments under the Medi-Cal fee for service program for physicians,
7 dentists, pharmacies, ADHCs, clinics, health systems, DME providers, and other
8 providers are reduced by ten percent for services provided on or after July 1, 2008.
9 The rate reduction also impacts inpatient services furnished by noncontract
10 hospitals, outpatient services furnished by all hospitals, sub-acute services furnished
11 by hospitals (as Respondents have implemented Section 14105.19(b)(1)), and
12 skilled nursing services provided in distinct part units of hospitals [hereinafter
13 "DP/NF services"].

14 5. Pursuant to section 15 of AB 5, the Legislature also enacted Welfare
15 and Institutions Code § 14166.245, which reduces payments to noncontract hospitals
16 for inpatient services furnished on or after July 1, 2008, by ten percent. This is
17 accomplished by reducing interim payments for inpatient hospital services furnished
18 by noncontract hospitals on or after July 1, 2008, by ten percent, and by limiting the
19 final reimbursement for each patient day of inpatient hospital services furnished on
20 or after July 1, 2008, to 90% of the hospital's audited allowable cost per day.

21 6. The rate and payment reductions set forth in Welfare and Institutions
22 Code sections 14105.19(b)(1) and 14166.245, as enacted by AB 5, are referred to
23 herein as "the Ten Percent Rate Reduction."

24 7. . On September 18, 2008, after a protracted budget stalemate, Governor
25 Schwarzenegger signed Assembly Bill 1183 ("AB 1183"), the budget trailer bill for
26 fiscal year 2008-09. AB 1183 amended Welfare and Institutions Code section
27 14105.19, making the ten percent rate reduction imposed by that section applicable
28 to small and rural hospitals until October 31, 2008, and applicable to other affected.

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1 providers through February 29, 2009.

2 8. AB 1183 enacted modified rate reductions impacting Medi-Cal
3 providers on and after March 1, 2009, by adding Welfare and Institutions Code §
4 14105.191. This statute effectively replaced the Ten Percent Rate Reduction for
5 most classes of services with smaller rate reductions. Most pertinent for the present
6 Motion, DME provider and hospital outpatient rates were reduced under AB 1183
7 by one percent, while rates for hospital-based distinct part nursing and subacute
8 services were reduced by five percent.

9 9. AB 1183 also modified the reduction on reimbursement for hospitals
10 that do not operate under a contract with the Department of Health Care Services for
11 inpatient hospital services. AB 1183 carried forward the ten percent reduction for
12 non-contract hospital services was originally enacted through AB 5. The statute
13 also enacted an additional limitation on such services by amending Welfare and
14 Institutions Code section 14166.245 effective November 1, 2008. This additional
15 limit capped reimbursement for impacted hospitals at the lower of a hospital's costs,
16 reduced by 10 percent, or a "regional average" rate..

17 10. Intervenors challenge in this complaint the ten percent rate reductions
18 within the scope of the above-captioned case as originally filed, namely, the
19 reductions in Welfare and Institutions Code sections 14105.19 and 14166.245(b)(1)
20 and 14166.245(c)(3)(A). Intervenors do not waive, and expressly reserve, their
21 rights to challenge the new payment reductions contained in AB 1183 or elsewhere.

22 **PROCEDURAL BACKGROUND**

23 11. On April 22, 2008, Petitioners in the above-entitled action filed a
24 Verified Petition for Writ of Mandamus ("Petition") in the Superior Court of the
25 County of Los Angeles against the Respondents to challenge the validity of the Ten
26 Percent Rate Reduction.

27 12. The Petition alleges in pertinent part that the Ten Percent Rate
28 Reduction violates the Supremacy Clause of the United States Constitution because

1 it conflicts with 42 United States Code ("U.S.C.") § 1396a(a)(30)(A), which is part
2 of the federal Medicaid Act, and the Americans with Disabilities Act ("ADA"). The
3 Petition also alleges a separate claim under the ADA, independent of the Supremacy
4 Clause.

5 13. The Petition seeks an injunction preventing from Respondents from
6 implementing the Ten Percent Rate Reduction, attorneys' fees and costs.

7 14. Respondents removed Petitioners' action from state to federal court on
8 May 19, 2008. Petitioners did not seek to have the case remanded to state court.

9 15. On May 30, 2008, Petitioners filed a notice of motion and motion for a
10 preliminary injunction to prevent the Respondents from implementing the Ten
11 Percent Rate Reduction on July 1, 2008 on the grounds that Petitioners had a
12 substantial likelihood of prevailing on their legal claims that the Ten Percent Rate
13 Reduction conflicts with Section 30(A) and that, if not enjoined, the Ten Percent
14 Rate Reduction would result in irreparable harm to the Petitioners, other Medi-Cal
15 providers and Medi-Cal beneficiaries.

16 16. On June 25, 2008, this Court issued an order denying Petitioners'
17 motion for a preliminary injunction on the grounds that Petitioners did not establish
18 a likelihood of prevailing on its legal claims. Relying on the case of *Sanchez v.*
19 *Johnson*, 416 F.3d 1051 (9th Cir. 2005), the Court concluded that Section 30(A) is
20 not privately enforceable in federal court through the Supremacy Clause or any
21 other procedural vehicle. The Court did not reach the issue of whether the
22 Petitioners had adequately shown that the Ten Percent Rate Reduction would cause
23 irreparable harm.

24 17. Petitioners immediately appealed the Court's ruling on the motion for
25 preliminary injunction to the Court of Appeals for the Ninth Circuit. By order dated
26 July 16, 2008, the Ninth Circuit reversed the Court's decision, holding that the
27 Supremacy Clause does provide a vehicle for enforcement of federal laws such as
28 Section 30(A) and remanded the matter back to the this Court for further

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1 proceedings. The Opinion in that appeal was issued on September 17, 2008

2 18. Upon remand, Petitioners' motion for preliminary injunction again
3 came before the Court on August 1, 2008. The Court entertained argument from
4 both Petitioners and Respondents and thereafter took the matter under submission.

5 19. On August 18, 2008, the Court issued an order granting in part the
6 Petitioners' motion for preliminary injunction. The Court ordered the Respondents
7 to refrain from enforcing and otherwise implementing the Ten Percent Rate
8 Reduction authorized pursuant to California Welfare and Institutions Code section
9 14105.19(b)(1) with respect to Medi-Cal payments for services provided on or after
10 July 1, 2008. The Court specifically declined to grant any relief from the Ten
11 Percent Rate Reduction authorized pursuant to California Welfare and Institutions
12 Code section 14166.245(c) with respect to Medi-Cal payments for acute inpatient
13 services provided by "non-contract" acute care hospitals.

14 20. On August 22, 2008, Petitioners filed an Ex Parte Application for Order
15 to Show Cause re: Contempt against Respondents for failure to comply with this
16 court's preliminary injunction. On August 25, 2008, this court scheduled a hearing
17 on that Application on August 28, 2008. On August 28, 2008, this court scheduled
18 an additional hearing on the issue of contempt on September 5, 2008.

19 21. On August 25, 2008, Respondents filed a Motion to Stay the Court's
20 August 18, 2008 Order Pending Appeal. On August 26, 2008, Respondents filed a
21 Notice of Appeal on the preliminary injunction to the Ninth Circuit.

22 22. On August 27, 2008, Respondents filed a Motion to Alter or Amend,
23 and Clarify Order Granting In Part Petitioners' Motion for Preliminary Injunction.
24 The hearing on that Motion was held on August 15, 2008.

25 23. On September 15, 2008, this court denied Respondents' motion to stay
26 the preliminary injunction pending appeal. The court also on that date amended its
27 preliminary injunction to clarify the application to pharmacies and the reference to
28 "health systems, or other providers." The court otherwise denied Respondents'

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1 Motion to Alter or Amend as a motion for reconsideration. The preliminary
2 injunction as amended by the court does not apply to items or services furnished by
3 hospitals or DME providers.

4 24. On August 29, 2008, Proposed Intervenor Sacramento Family Medical
5 Clinics, Inc., Theodore M. Mazer, M.D., Eastern Plumas Health Care District,
6 Pioneers Memorial Health Care District, Kaweah Delta Health Care District, Ronald
7 B. Mead, D.D.S., and Acacia Adult Day Services moved this court for leave to
8 intervene. On September 15, 2008, this court granted leave to intervene to
9 Sacramento Family Medical Clinics, Inc., Theodore M. Mazer, M.D., Ronald B.
10 Mead, D.D.S. and Acacia Adult Day Services, denying leave to intervene to the
11 three hospital districts on the basis that they lacked standing to intervene as public
12 hospital districts.

13 25. On September 18, 2008, Petitioners appealed this court's order on the
14 Motion to Amend or Appeal to the Ninth Circuit.

15 26. On September 29, 2008, while the appeals arising from the preliminary
16 injunction order still were pending, Proposed Intervenor CAMPS, SMH, Grossmont
17 Hospital Corporation, Sharp Chula Vista Medical Center and SCHHC filed a motion
18 with this Court, pursuant to FRCP 24, to intervene in the case. Respondents
19 opposed the motion.

20 27. By Order dated October 20, 2008, the Court denied the motion to
21 intervene without prejudice. The Court concluded that intervention as a matter of
22 right under FRCP 24(a) was not appropriate because the, at the time, there was
23 reason to believe that the Proposed Intervenor's interests in the case would be
24 adequately represented by the Petitioners and original Intervenor's. The Court also
25 declined to grant permissive intervention under FRCP 24(b) on the grounds that the
26 intervention motion was not timely. The Court's conclusion regarding timeliness of
27 intervention was based entirely on a finding that Respondents would be prejudiced
28 by the Proposed Intervenor's involvement in the case because it would increase the

1 briefing burden in the appeal proceedings.

2 28. On July 9, 2009, the Ninth Circuit issued a published decision
3 regarding the various appeals concerning of this Court's injunction of the Ten
4 Percent Rate Reduction. *See Independent Living Center of Southern California, Inc.*
5 *v. Maxwell-Jolly*, 572 F.3d 644 (9th Cir. 2009). The Ninth Circuit affirmed the
6 Court's determination that Petitioners were likely to prevail on their claim that AB 5
7 was not enacted in accordance with, and therefore is preempted by, Section 30(A).
8 The Ninth Circuit also concluded that this Court did not abuse its discretion in
9 determining that Petitioners adequately demonstrated a likelihood of irreparable
10 harm if the Ten Percent Reduction was not enjoined.

11 29. The Ninth Circuit ruled that the effective date of the preliminary
12 injunction should have been July 1, 2008, notwithstanding the fact that the Court's
13 order was issued on August 18, 2008. *See ILC*, 572 F.3d at 661 – 663. The
14 appellate court concluded that the State would not be immune from a retroactive
15 order were the case to be litigated in state court and that Respondent waived any
16 Eleventh Amendment immunity by removing the case from state to federal court.
17 *Id.* at 663. Accordingly, the Ninth Circuit reasoned that there was nothing
18 precluding this Court from making the effective date of the injunction retroactive to
19 the date that the Ten Percent Rate Reduction became effective – July 1, 2008. *Id.*
20 The Ninth Circuit remanded the case back to this Court for further proceedings.

21 30. In January 2009, the AB 1183 Medi-Cal cuts were challenged by a
22 coalition of impacted providers or provider organizations, including Proposed
23 Intervenor CHA, on the grounds that AB 1183 was preempted by Section 30(A).
24 The lawsuit eventually resulted in a published decision from the Ninth Circuit
25 staying the AB 1183 rate cuts that impacted hospitals. *See California Pharmacists*
26 *Ass'n v. Maxwell-Jolly*, 563 F.3d 847 (9th Cir. 2009).

27 31. In *Cal. Pharm.*, the Ninth Circuit concluded that the plaintiffs showed
28 that AB 1183 likely was preempted by Section 30(A) because the statute, and the

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1 Medi-Cal rate cuts called for thereby, was enacted without considerations of
2 efficiency, economy, quality of care and impact on beneficiary access to services.
3 *Id.* at 850. *Cal. Pharm.* also establishes that unlawfully reduced Medi-Cal
4 reimbursement constitutes an injury to the providers subject to the decreased rates
5 and that such an injury can be irreparable when, due to sovereign immunity, the
6 reimbursement differential cannot be recovered in a suit for money damages. *Id.* at
7 851 – 853.

8 32. Based on the findings described in paragraph 29, the *Cal. Pharm.* court
9 stayed the AB 1183 rate cuts impacting hospitals. However, the Ninth Circuit made
10 clear that the stay order did not extend to the ten percent reduction for rates paid to
11 non-contract hospitals for inpatient services because that cut was originally enacted
12 by AB 5 and not by AB 1183. That component of the Ten Percent Rate Reduction
13 has never been enjoined and remains in effect as of today.

14 **INTERVENORS AND THEIR INTEREST IN THIS LITIGATION**

15 33. Intervenor CAMPS is a nonprofit, statewide trade association
16 representing the California durable medical equipment ("DME") industry. CAMPS
17 is headquartered in Sacramento representing approximately 150 DME providers
18 with over 200 branches in California. The mission of CAMPS is to deliver to its
19 members services and products that enable the members to excel in the provision of
20 service to their patients. The services offered by CAMPS include, "government
21 relations and advocacy, educational programs and resource materials, liaison
22 between members and claims payors, and advocacy for users of home medical
23 equipment." Pursuant to CAMPS' mission, it brings this action in its representative
24 capacity on behalf of its members, many of whom are providers under California's
25 Medi-Cal program and have been and will continue to be directly and adversely
26 affected by the ten percent rate reductions, and on behalf of its members' patients.

27 34. Proposed Intervenor CALIFORNIA HOSPITAL ASSOCIATION
28 ("CHA") is a trade association representing the interests of hospitals in the State of

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1 California. CHA is incorporated in the State of California with its principal office in
2 Sacramento, California. CHA's member hospitals provide both inpatient and
3 outpatient hospital services. In addition, many of CHA's members operate special
4 units, such as emergency departments or distinct part nursing units ("DP/NFs") that
5 provide skilled nursing care. CHA represents nearly 450 hospitals and health
6 systems throughout California, including general acute care hospitals, children's
7 hospitals, rural hospitals, psychiatric hospitals, academic medical centers, county
8 hospitals, investor-owned hospitals, and multi-hospital health systems. These
9 hospitals furnish vital health care services to millions of our states' citizens CHA
10 also represents more than 150 Executive, Associate and Personal members. CHA
11 brings this action on its own behalf and in its representative capacity on behalf of its
12 members, many of which are providers under California's Medi-Cal program and
13 will be directly and adversely affected by the threatened rate reduction, and on
14 behalf of its members' patients.

15 35. Intervenor SMH is a California non-profit public benefit corporation.
16 SMH operates five hospital facilities, including Sharp Memorial Hospital, Sharp
17 Cabrillo Hospital, Sharp Mary Birch Hospital for Women and Children, and Sharp
18 Mesa Vista Hospital, all in San Diego, California. Through these facilities, SMH
19 participates in the Medi-Cal program and is reimbursed directly by the Medi-Cal
20 program for services provided to Medi-Cal beneficiaries, including outpatient
21 hospital services and distinct part nursing services. Accordingly, SMH is directly
22 impacted by the ten percent rate reduction.

23 36. Intervenor SHARP CHULA VISTA MEDICAL CENTER is a
24 California nonprofit public benefit corporation. SHARP CHULA VISTA
25 MEDICAL CENTER operates a hospital named Sharp Chula Vista Medical Center
26 in Chula Vista, CA, which includes the Birch-Patrick Skilled Nursing Facility.
27 SHARP CHULA VISTA MEDICAL CENTER participates in the Medi-Cal
28 program and is reimbursed directly by the Medi-Cal program for services provided

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1 to Medi-Cal beneficiaries, including outpatient hospital services and distinct part
2 nursing services. Accordingly, SHARP CHULA VISTA MEDICAL CENTER is
3 directly impacted by the ten percent rate reduction.

4 37. Intervenor GROSSMONT HOSPITAL CORPORATION is a
5 California nonprofit public benefit corporation. GROSSMONT HOSPITAL
6 CORPORATION operates under a single license a hospital named Grossmont
7 Hospital and the Briar Patch Skilled Nursing Facility. GROSSMONT HOSPITAL
8 CORPORATION participates in the Medi-Cal program and is reimbursed directly
9 by the Medi-Cal program for services provided to Medi-Cal beneficiaries, including
10 outpatient hospital services and distinct part nursing services. Accordingly,
11 GROSSMONT HOSPITAL CORPORATION is directly impacted by the ten
12 percent rate reduction.

13 38. Intervenor SHARP CORONADO HOSPITAL AND HEALTH
14 CENTER ("SCHHC") is a California nonprofit public benefit corporation. SCHHC
15 operates under one license a hospital named Sharp Coronado Hospital and
16 Healthcare Center and the Villa Coronado Skilled Nursing Facility, which provides
17 distinct part nursing services and subacute services under the Medi-Cal program, in
18 La Mesa, CA. SCHHC participates in the Medi-Cal program and is reimbursed
19 directly by the Medi-Cal program for outpatient hospital services, distinct part
20 nursing services, and sub-acute services provided to Medi-Cal beneficiaries.
21 Accordingly, SCHHC is directly impacted by the ten percent rate reduction.

22 39. Intervenors may, with leave of Court, intervene as of right or,
23 alternatively, permissively in this matter pursuant to Federal Rule of Civil Procedure
24 ("F.R.C.P.") 24(a) & (b).

25 40. Intervenors have a right to intervene in this action because they have a
26 "significantly protectable" interest in this litigation as health care providers that
27 participate in the Medi-Cal program who otherwise will be impacted by the Ten
28 Percent Rate Reduction. Each of the Intervenors participates in the Medi-Cal

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1 program and provides services that are subject to the Ten Percent Rate Reduction.
2 Each Intervenor has a direct interest in this litigation as they have been, and in some
3 cases will continue to be, pecuniarily be impacted by the outcome of this litigation.

4 41. Adjudication of the Petitioners' claims without the participation of the
5 Intervenor would impede the ability of the Intervenor to protect their interest in
6 adequate Medi-Cal reimbursement rates. If this Court ultimately finds that the Ten
7 Percent Rate Reduction are lawful, or finds that the Ten Percent Rate Reduction is
8 lawful with respect to some categories of providers, but not others, or finds that,
9 notwithstanding the invalidity of the Ten Percent Rate Reduction, relief from the
10 rate cuts is not available to some categories from providers, Intervenor will be
11 unable to protect their interests in adequate Medi-Cal reimbursement for the services
12 they provide.

13 42. The Intervenor's interests are not adequately represented by the parties
14 to this litigation. The current Petitioners and original Intervenor in this litigation
15 are Medi-Cal beneficiaries, beneficiary groups, pharmacists, physicians, dentists,
16 and adult day health centers, and do not include DME providers or hospitals. These
17 classes of providers already have been afforded significant relief from the Ten
18 Percent Rate Reduction through the preliminary injunction issued in this case. In
19 contrast, the classes of providers represented by Intervenor have been afforded no
20 relief from the Ten Percent Rate Reduction to date. As such, Intervenor have a
21 greater stake in the outcome of the litigation than to any of the current parties.
22 Further, the Petitioners and original Intervenor are unlikely to have access to
23 evidence relating to the harm caused by the lowered Medi-Cal reimbursement rates
24 to DME providers or hospitals, which will need to be considered in determining the
25 remedy from the Ten Percent Rate Reduction available for these classes of
26 providers. Intervenor, on the other hand, have access to such information.

27 43. In the alternative, as demonstrated above, Intervenor should be
28 permitted to permissively intervene. Intervenor's involvement will not expand the

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1 issues in this case as Intervenorers are challenging the lawfulness of the Ten Percent
2 Rate Reduction on grounds raised by the Petitioners. Intervenorers' claims are
3 identical to the Petitioners' claims and therefore, raise all the same questions of law
4 (e.g., whether AB 5 is preempted by 42 U.S.C. § 1396a(a)(30)(A)) and many
5 overlapping questions of fact (e.g., whether the Respondents relied on responsible
6 cost studies as a basis for its rate setting).

7 44. Adjudication of the Intervenorers' interests will not delay or prejudice the
8 adjudication of the rights of the original parties to this action. Now that the appeal
9 proceedings in the case have been completed and the matter has been remanded
10 back to the District Court, this phase of the case action is in the early stages. No
11 dispositive motions on the merits have been filed, no discovery has been conducted
12 and no settlements have yet been made. The participation of the Intervenorers will
13 benefit this court by giving the court this supplemental briefing and evidence for its
14 consideration.

15 CLAIMS AND DEFENSES

16 45. Intervenorers join in the First Cause of Action set forth in Petitioners
17 Independent Living Centers of Southern California, et al.'s Petition for Writ of
18 Mandamus, which is for preemption by the Supremacy Clause of the Ten Percent
19 Rate Reduction for violation of Section 30(A).

20

21 WHEREFORE, Intervenorers pray for judgment as follows:

22 1. For an Order permanently enjoining Respondent from effectuating the
23 ten percent Medi-Cal rate reduction imposed by Welfare and Institutions Code §§
24 14105.19 and 14166.245 or reducing to any degree the Medi-Cal rates for health
25 care services that are affected by Welfare and Institutions Code §§ 14105.19 and
26 14166.245(b)(1) and 14166.245(c)(3)(A), effective July 1, 2008;

27 2. For an Order requiring Respondent to disgorge any Medi-Cal
28 reimbursement unlawfully withheld from impacted Medi-Cal providers as a result of

1 the application of the Ten Percent Rate Reduction from any time between July 1,
2 2008 and the present;

3 3. For the costs of suit, including reasonable attorneys' fees; and

4 4. Such other and further relief that the court deems just and proper.

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6 DATED: October 5, 2009

HOOPER, LUNDY & BOOKMAN, INC.

7
8 By: 

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17 CORONADO HOSPITAL AND
18 HEALTHCARE CENTER
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