

1 LLOYD A. BOOKMAN (State Bar No. 89251)
 E-Mail: lbookman@health-law.com
 2 JORDAN B. KEVILLE (State Bar No. 217868)
 E-Mail: jkeville@health-law.com
 3 **HOOPER, LUNDY & BOOKMAN, INC.**
 1875 Century Park East, Suite 1600
 4 Los Angeles, California 90067-2517
 Telephone: (310) 551-8103
 5 Facsimile: (310) 551-8181

6 Attorneys for CALIFORNIA HOSPITAL
 ASSOCIATION
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 CLERK U.S. DISTRICT COURT
 CENTRAL DIST. OF CALIF
 LOS ANGELES

FILED

8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

10 CV09 08642

11 CALIFORNIA HOSPITAL
 ASSOCIATION,

CASE NO.

12 Plaintiff,

COMPLAINT FOR INJUNCTIVE
 AND DECLARATORY RELIEF

13 vs.

14 DAVID MAXWELL-JOLLY,
 15 DIRECTOR OF THE STATE
 DEPARTMENT OF HEALTH CARE
 16 SERVICES, STATE OF
 CALIFORNIA,

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

JURISDICTION AND VENUE

1
2 1. Plaintiff California Hospital Association (“CHA”) brings this
3 complaint pursuant to 28 United States Code (“U.S.C.”) § 1331, the Supremacy
4 Clause and 42 U.S.C. § 1983. *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 96 n. 14
5 (1983). This court further may compel Defendant David Maxwell-Jolly, Director of
6 the California Department of Health Care Services (the “Director”) to comply with
7 the mandatory provisions of the federal Medicaid law pursuant to 28 U.S.C. § 1361.

8 2. Venue lies in this judicial district under 28 U.S.C. § 1391, in that the
9 Director has offices within this judicial district and is thus deemed to reside within
10 this judicial district.

INTRODUCTION

11
12
13 3. The State of California continues to disregard the mandates of federal
14 law when making decisions that impact the rates of reimbursement afforded to
15 health care providers under California’s Medicaid program, Medi-Cal. On two
16 separate occasions in 2008, as part of the enactment of the State budget, the
17 California Legislature passed statutes that called for flat percentage reductions in the
18 payment rates for various classes of services covered under Medi-Cal. The majority
19 of these payment rate reductions were enjoined by federal courts because they were
20 not enacted or implemented in a manner consistent with the federal Medicaid Act,
21 which requires that states consider certain factors and take certain procedural steps
22 before altering the rates paid to health care providers. Indeed, these rate reductions
23 resulted in two, published decisions from the Ninth Circuit Court of Appeals
24 establishing clearly that, to the extent it undertakes the task of setting Medi-Cal
25 payment rates, the Legislature must comply with the mandates of federal law and, if
26 it does not, the offending State statutes will be preempted.

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1 4. The Legislature’s effort to balance California’s budget for the 2009 –
2 2010 fiscal year has resulted in legislation that once again reduces Medi-Cal
3 payment rates solely in the name of financial savings and without adherence to the
4 requirements of the Medicaid Act. Although the form of the most recent rate
5 reductions may differ slightly from the flat percentage reductions that were enjoined
6 previously, the process through which the latest limitations were enacted was
7 virtually identical to the process that led to the now enjoined cuts. The State should
8 not be permitted to continue to ignore federal law when setting Medi-Cal payment
9 rates.

10 5. By this action, an organization representing the interests of California
11 hospitals seeks an injunction to invalidate and stop the implementation of these
12 latest Medi-Cal rate limitations, which went into effect either on July 1 or August 1,
13 2009, as they apply to payment rates for multiple categories of hospital services.
14 These new payment limitations will improperly deprive Medi-Cal participating
15 hospitals, including some small and rural facilities, of reimbursement to which they
16 otherwise are lawfully entitled. Moreover, these payment reductions, combined
17 with those that have become before them, are threatening the ability of many
18 hospitals to continue to provide certain services and thereby potentially creating
19 gaps in access to such services for Medi-Cal beneficiaries.

20 6. The newly enacted payment limitations are illegal because, as it has
21 multiple times before, California failed to fulfill its legal mandate to consider
22 whether the resulting reimbursement rates are consistent with efficiency, economy
23 and quality of care, reasonably related to provider costs, and sufficient to enlist
24 enough providers so that Medi-Cal beneficiaries have access to the impacted
25 services to the extent such services are available to the general public. The State
26 further violated federal law, like it has done before, by enacting the reimbursement
27 limitations without the proper public process required for payment rate adjustments.
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1 7. For these and other reasons, these latest Medi-Cal rate limitations for
2 hospitals violate federal law. The imposition of these rate limitations has caused,
3 and will continue to cause, irreparable harm to California hospitals in the form of
4 improperly reduced payments that cannot be recovered in federal court through an
5 action at law. Accordingly, Plaintiff seeks declaratory and injunctive relief to
6 prevent the rate limitations from taking effect and, to the extent the limitations
7 already are in operation, to stop them from being applied any further.

8
9 **FEDERAL MEDICAID LAW**

10 8. Title XIX of the Social Security Act, 42 U.S.C. §§ 1396 *et seq.*, the
11 Medicaid Act, authorizes federal financial support to states for medical assistance to
12 low-income persons who are aged, blind, disabled, or members of families with
13 dependent children. The program is jointly financed by the federal and state
14 governments and administered by the states. The states, in accordance with federal
15 law, decide eligible beneficiary groups, types and ranges of services, payment level
16 for services, and administrative and operative procedures. Payment for services is
17 made directly by states to the individuals or entities that furnish the services. 42
18 Code of Federal Regulations (“C.F.R.”) § 430.0.

19 9. In order to receive matching federal financial participation, states must
20 agree to comply with the applicable federal Medicaid law and regulations, 42 U.S.C.
21 §§ 1396 *et seq.* Once a state has decided to participate in the Medicaid program,
22 compliance with the federal Medicaid law and regulations is mandatory.

23 10. At the state level, the Medicaid program is administered by a single
24 state agency, which is charged with the responsibility of establishing and complying
25 with a state Medicaid plan (the “State Plan”) that, in turn, must comply with the
26 provisions of applicable federal Medicaid law. 42 U.S.C. § 1396a(a)(5) and 42
27 C.F.R. §§ 430.10 and 431.10. The State Plan must be submitted to the Secretary of
28 the United States Department of Health and Human Services (the “Secretary”) for

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1 approval and must describe the policies and methods to be used to set payment rates
2 for each type of service included in the state Medicaid plan. 42 C.F.R. §§ 430.10
3 and 447.201(b). Changes to the State Plan may not be implemented by the state
4 prior to being approved by the Secretary.

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

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

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CALIFORNIA'S MEDI-CAL PROGRAM

13. The State of California has elected to participate in the Medicaid program. California has named its program "Medi-Cal." See Cal. Welf. & Inst. Code §§ 14000 *et seq.*; 22 Cal. Code of Regs. §§ 50000 *et seq.*

14. Medi-Cal healthcare payments are disbursed in two ways. The first is a "fee for service" process whereby the Department of Health Care Services (the "Department") determines whether the healthcare services were covered and furnished to an eligible beneficiary, and, if so, pays the service providers directly. Alternatively, the Department administers Medi-Cal through various managed care models operated by public and private entities under contract.

15. In 1982, the California Legislature authorized the Department to enter into contracts with selected hospitals to furnish inpatient services in accordance with the terms set forth in those contracts. The system is known as the selective provider contracting program ("SPCP"). See Cal. Welf. and Inst. Code § 14081 *et seq.* The hospitals contracting pursuant to the SPCP are often referred to as "contract hospitals" and generally are paid based on negotiated per diem rates for inpatient services furnished by the hospital. Hospitals that do not have SPCP contracts are referred to herein as "noncontract hospitals" and are paid directly by the Department for inpatient services using the payment formula discussed below.

MEDI-CAL PAYMENTS TO HOSPITALS

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

17. Payments for inpatient hospital services to noncontract hospitals are governed by 22 California Code of Regulations ("C.C.R.") §§ 51545-51556 and Attachment 4.19-A to the State Plan. Hospitals are reimbursed the lowest of (1) their reasonable costs determined using Medicare reasonable cost principles, (2) an

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1 all-inclusive rate per discharge based on cumulative annual adjustments to a base
2 rate, (3) the 60th percentile rate per discharge of hospitals in the same peer group, or
3 (4) customary charges. Hospitals receive interim payments throughout each year
4 which are an estimate of the final reimbursement due the hospital. Final
5 reimbursement is determined based on a cost report submitted by the hospital after
6 the close of its fiscal year.

7 18. Payments for outpatient hospital services are addressed at 22 C.C.R.
8 § 51509. In general, specific rates are established for the use of hospital facilities
9 and hospitals are paid for other services, such as laboratory or radiology services, at
10 the rates that are payable to non-hospital providers. Payments provided in certain
11 hospital outpatient departments are governed by Welfare and Institutions Code §
12 14105.24.

13 19. Payments for services provided by nursing facilities that are part of
14 hospitals (Distinct Part/Nursing Facilities, or "DP/NFs") are governed by 22 C.C.R.
15 § 51511 and Attachment 4.19-D to the State Plan. Reimbursement is the lower of
16 (1) a per diem rate based on a particular hospital's projected costs of providing
17 DP/NF services or (2) a statewide per diem rate computed by the Department.
18 Payments for subacute and pediatric subacute services are governed by 22 C.C.R. §§
19 51511.5 and 51511.6, as well as Attachment 4.19-D to the State Plan. In general,
20 such payments are the lower of (1) a per diem rate based on a particular hospital's
21 projected costs of providing subacute services or (2) a statewide per diem rate
22 computed by the Department. Under the State Plan, the Department is required to
23 re-evaluate Medi-Cal payment rates for both DP/NF and subacute services on a
24 yearly basis. The Department generally is required to make updates to payment
25 rates each year to account for certain economic conditions in the industry, which
26 reflect an assumption that provider costs will generally increase every year due to, at
27 minimum, inflation.
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LOS ANGELES, CALIFORNIA 90067-2517
TEL: (310) 551-8111 • FAX: (310) 551-8181

THE AB 5 RATE REDUCTIONS OF 2008

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2 20. On February 16, 2008, the California Legislature enacted Assembly
3 Bill X3 5 ("2008 AB 5") in special session. Section 14 of said bill added Section
4 14105.19 to the Welfare and Institutions Code. Pursuant to paragraph (b)(1) of
5 Welfare and Institutions Code § 14105.19, payments under the Medi-Cal fee for
6 service program for various classes services were reduced by ten percent beginning
7 with services provided on or after July 1, 2008.

8 21. The Legislature also enacted Welfare and Institutions Code §
9 14166.245, which reduced payments to noncontract hospitals for inpatient services
10 furnished on or after July 1, 2008, by ten percent. This is accomplished by reducing
11 interim payments for inpatient hospital services furnished by noncontract hospitals
12 on or after July 1, 2008, by ten percent, and by limiting the final reimbursement for
13 each patient day of inpatient hospital services furnished on or after July 1, 2008, to
14 90 percent of the hospital's audited allowable cost per day.

15 22. The rate and payment reductions set forth in Welfare and Institutions
16 Code §§ 14105.19(b)(1) and 14166.245 as enacted by 2008 AB 5 are referred to
17 herein as "the 2008 AB 5 Rate Reductions."

18 23. On April 22, 2008, Independent Living Center of Southern California
19 ("ILCSC") and other plaintiffs filed a lawsuit in Los Angeles Superior Court against
20 the Director to challenge the 2008 AB 5 Rate Reductions. The essence of the
21 complaint was that the 2008 AB 5 Rate Reductions violated Section 30(A) of the
22 federal Medicaid Act. The State removed this action to federal court.

23 24. On June 25, 2008, Judge Christina A. Snyder of the United States
24 District Court for the Central District of California denied ILCSC a preliminary
25 injunction on the grounds that it had not established a likelihood of success on its
26 legal claims. ILCSC immediately appealed the denial of the preliminary injunction
27 to the Ninth Circuit Court of Appeals.
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1 25. By order dated July 16, 2008, the Ninth Circuit reversed the district
2 court's denial of the injunction, holding that the Supremacy Clause provides a
3 vehicle for prospective enforcement of federal laws such as Section 30(A). On
4 September 17, 2008, the Ninth Circuit issued its Opinion on its July 16, 2008 Order.
5 *Indep. Living Ctr. Of S. Cal. v. Shewry*, 543 F.3d 1050 (9th Cir. 2008) [hereinafter
6 "*ILC I*"].

7 26. Upon remand, the district court on August 18, 2008, issued a
8 preliminary injunction ordering the State to refrain from implementing the 2008 AB
9 5 Rate Reductions for certain services. *Indep. Living Ctr. of S. Cal. v. Shewry* 2008
10 WL 3891211 (C.D.Cal. 2008). The district court found that ILCSC established a
11 likelihood of success on the merits because the Department did not offer sufficient
12 evidence that it "made the [inquiries required by Section 30(A)] in deciding to enact
13 the ten percent reduction." The district further determined that the 2008 AB 5 Rate
14 Reductions as applied to pharmacies, physicians, dentists and ADHCs had a
15 likelihood of irreparably harming Medi-Cal beneficiaries by limiting access to the
16 healthcare services provided by these classes of providers.

17 27. Both ILCSC and the Director appealed aspects of the district court's
18 preliminary injunction order to the Ninth Circuit. A hearing was held with respect
19 to these appeals on February 18, 2009.

20 28. On July 9, 2009, the Ninth Circuit issued a published decision
21 regarding the appeals of the district court's injunction of the 2008 AB 5 Rate
22 Reductions. *See Indep. Living Ctr. Of S. Cal., Inc. v. Maxwell-Jolly*, 572 F.3d 644
23 (9th Cir. 2009) [hereinafter "*ILC II*"]. The Ninth Circuit affirmed the district court's
24 determination that ILCSC was likely to prevail on its claim that 2008 AB 5 was not
25 enacted in accordance with, and therefore is preempted by, Section 30(A). The
26 Ninth Circuit also concluded that the district court did not abuse its discretion in
27 determining that ILCSC adequately demonstrated the likelihood that irreparable
28 harm would result if the 2008 AB 5 Rate Reductions were not enjoined.

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

THE AB 1183 RATE REDUCTIONS OF 2008

1
2 29. On September 18, 2008, after a protracted budget stalemate, Governor
3 Schwarzenegger signed Assembly Bill 1183 (“AB 1183”), the budget trailer bill for
4 fiscal year 2008-09. AB 1183 amended Welfare and Institutions Code § 14105.19,
5 making most aspects of the 2008 AB 5 Rate Reductions effective only through
6 February 29, 2009, including rate cuts for hospital outpatient, subacute and DP/NF
7 services. AB 1183 made the 2008 AB 5 Rate Reductions of Welfare and
8 Institutions Code § 14105.19 applicable to small and rural hospitals until October
9 31, 2008. That meant, beginning on November 1, 2008, “small and rural” hospitals,
10 as defined in the California Health and Safety Code, were exempt from the ten
11 percent rate reduction.

12 30. AB 1183 also enacted the following modified rate reductions, subject to
13 certain exemptions, effective March 1, 2009, by implementing Welfare and
14 Institutions Code § 14105.191:

15 (a) A five percent rate reduction for Medi-Cal fee-for-services
16 benefits paid to, among other facilities, DP/NFs, rural swing-bed facilities, subacute
17 care units that are, or are parts of, distinct parts of general acute care hospitals, and
18 pediatric subacute care units that are, or are parts of, distinct parts of general acute
19 care hospitals; and

20 (b) A one percent rate reduction for all other Medi-Cal fee-for-
21 service benefits, including hospital outpatient services.

22 31. AB 1183 also imposed additional reductions on reimbursement from
23 the Medi-Cal program to noncontract hospitals for inpatient hospital services by
24 amending Welfare and Institutions Code § 14166.245 to result in the following
25 payment rates, effective March 1, 2009:

26 (a) For most noncontract hospitals, interim payments for inpatient
27 hospital services are the lesser of 90% of the interim rate or 95% of an “average
28 regional per diem contract rate.” Final reimbursement is limited to the lesser of

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1 90% of the hospital's audited allowable cost per day or 95% of an "average regional
2 per diem contract rate."

3 (b) "Small and rural hospitals" are exempted from these limitations.

4 (c) Certain hospitals in open health facility planning areas are
5 subject only to the 10% rate reductions and not the "average regional per diem
6 contract rate" limitations.

7 32. The reductions set forth in Welfare and Institutions Code §§ 14105.191
8 and 14166.245, as enacted by AB 1183, are hereinafter referred to as the "AB 1183
9 Rate Reductions."

10 33. On January 29, 2009, a coalition of Medi-Cal providers and provider
11 organizations, including CHA, filed a complaint in district court against the Director
12 challenging the AB 1183 Rate Reductions as to pharmacy, adult day health care
13 center ("ADHC") and hospital services on the grounds that AB 1183 was not
14 enacted in accordance with the requirements of the Medicaid Act, including those
15 set forth in Section 30(A). On February 11, 2009, CHA and other individual
16 hospital plaintiffs filed a motion in the district court seeking preliminary injunction
17 of the AB 1183 rate cuts for hospital services. The other, non-hospital plaintiffs
18 filed a separate motion to enjoin the rate reductions as to pharmacy and ADHC
19 services.

20 34. On March 9, 2009 the district court issued orders on both preliminary
21 injunction motions concerning the AB 1183 Rate Reductions. The district court
22 concluded, with respect to both motions, that the plaintiffs demonstrated a
23 substantial likelihood of prevailing on their claims that the AB 1183 Rate
24 Reductions conflicted with, and therefore are preempted by, Section 30(A).
25 Notwithstanding this finding, the district court declined to enjoin the AB 1183 Rate
26 Reductions for hospital services on the grounds that the hospital plaintiffs had not
27 demonstrated that they would be irreparably harmed by the reduced payment rates
28 because they did not show that beneficiary access to hospital services would be

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1 reduced as a result of the rate reductions. In reaching this decision, the district court
2 rejected an argument by CHA and the other hospital plaintiffs that hospitals
3 necessarily were irreparably harmed by the AB 1183 rate reductions because they
4 are precluded by the Eleventh Amendment from obtaining retroactive compensation
5 from the State in federal court for any under-reimbursement.

6 35. CHA and the other hospital plaintiffs appealed the district court's order
7 on March 11, 2009. The next day, they filed an emergency motion with the Ninth
8 Circuit seeking a temporary stay of the AB 1183 Rate Reductions for hospitals on
9 the grounds that the district court committed legal error by not finding that hospitals
10 were faced with irreparable harm by virtue of reduced Medi-Cal payment rates.

11 36. The emergency motion was granted in a published decision from the
12 Ninth Circuit. *See California Pharmacists Ass'n v. Maxwell-Jolly*, 563 F.3d 847 (9th
13 Cir. 2009). In *Cal. Pharm.*, the Ninth Circuit concluded that the plaintiffs showed
14 that AB 1183 likely was preempted by Section 30(A) because the statute, and the
15 Medi-Cal rate cuts called for thereby, were enacted without consideration of
16 efficiency, economy, quality of care and impact on beneficiary access to services.
17 *Id.* at 851. *Cal. Pharm.* also establishes that, for preliminary injunction purposes,
18 unlawfully reduced Medi-Cal reimbursement constitutes an injury to the providers
19 subject to the decreased rates and that such an injury is irreparable when, due to
20 sovereign immunity, the reimbursement differential cannot be recovered in federal
21 court through a suit for money damages. *Id.* at 851 - 853.

22 37. Based on the aforementioned findings, the *Cal. Pharm.* court stayed the
23 AB 1183 Rate Reductions impacting hospitals. However, the Ninth Circuit's stay
24 order did not extend to the ten percent reduction for rates paid to non-contract
25 hospitals for inpatient services because that cut was originally enacted by AB 5 and
26 not by AB 1183.

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1875 CENTURY PARK EAST, SUITE 1600
LOS ANGELES, CALIFORNIA 90067-2517
TEL: (310) 551-8111 • FAX: (310) 551-8181

THE AB 5 RATE REDUCTIONS OF 2009

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

8 39. 2009 AB 5 amended Welfare and Institutions Code § 14105.191, which
9 was originally enacted by AB 1183, to effectively "freeze" the Medi-Cal payment
10 rates for, among other things, DP/NF, subacute and pediatric subacute services at
11 2008 – 2009 levels. Specifically, the statute now provides that, for the designated
12 services, "reimbursement rates . . . for services rendered during the 2009 – 10 rate
13 year and each rate year thereafter, shall not exceed the reimbursement rates that
14 were applicable to those classes of providers in the 2008-09 rate year." In effect, the
15 amended version of the statute indefinitely suspends the annual payment updates for
16 these classes of services that are otherwise required by the State Plan.

17 40. 2009 AB 5 also amended Welfare and Institutions Code § 14166.245,
18 which is the statute that governs reimbursement for hospital inpatient services
19 provided by noncontract hospitals. Through the amendment, the Legislature
20 eliminated the exemption for small and rural hospitals from the ten percent
21 reduction originally enacted by 2008 AB 5. Effective July 1, 2009, small and rural
22 hospitals again became subject to the 10 percent reimbursement reduction, but
23 remain exempted from application of the "regional average" limitation enacted
24 through AB 1183.

25 41. The reimbursement limitations described in paragraphs 39 and 40
26 above and established by the amendments to Welfare and Institutions Code §
27 14105.191 and 14166.245, as enacted by 2009 AB 5, are hereinafter referred to as
28 the "2009 AB 5 Reimbursement Limitations."

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1 42. Plaintiff is informed and believes and thereon alleges that 2009 AB 5,
 2 which included the 2009 AB 5 Reimbursement Limitations, did not go through the
 3 public process that is normally characteristic of legislation and was instead the
 4 product of mostly behind-closed-doors budget negotiations. 2009 AB 5 was first
 5 introduced as a spot budget trailer bill on July 2, 2009, had no substantive content at
 6 the time, and was intended to provide a vehicle to enact budget related items that
 7 were under negotiation. The substantive provisions of the bill, including the 2009
 8 AB 5 Reimbursement Limitations, were added to the bill on July 23, 2009. It was
 9 passed by both the Senate and Assembly that same day and then forwarded on to the
 10 Governor for signature the next day, July 24, 2009. The bill was signed into law by
 11 the Governor on July 28, 2009. The bill was enacted as urgency legislation to
 12 become effective immediately. In enacting 2009 AB 5, both the Senate and
 13 Assembly suspended rules that otherwise limit how quickly a bill can be passed
 14 after amendment.

15 43. Plaintiff is informed and believes and thereon alleges that, prior to
 16 enacting 2009 AB 5, neither the Legislature nor the Director engaged in any type of
 17 public notice and comment process related to the payment rates that would result
 18 from the 2009 AB 5 Reimbursement Limitations.

19 44. Plaintiff is further informed and believes and thereon alleges that, like
 20 the State's failures that prompted the injunctions at issue in *ILC II* and *Cal. Pharm.*,
 21 prior to enacting or implementing 2009 AB 5, no studies or other analyses were
 22 conducted by the Legislature or by the Director to determine whether the Medi-Cal
 23 payment rates resulting from the 2009 AB 5 Reimbursement Limitations would be
 24 consistent with efficiency, economy and quality of care or reasonably related to the
 25 costs of providing the services affected by the rate reduction.

26 45. Plaintiff is informed and believes and thereon alleges that prior to
 27 enacting or implementing 2009 AB 5, no studies or other analyses were conducted
 28 by the Legislature or by the Director to determine the impact the 2009 AB 5

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1 Reimbursement Limitations would have on the ability of Medi-Cal beneficiaries to
2 have access to the impacted hospital services to the same extent as the general
3 public.

4
5 **THE ILLEGALITY OF 2009 AB 5**

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

13 47. Violation of Federal Statute: The 2009 AB 5 Reimbursement
14 Limitations are invalid and may not lawfully be implemented because they violate
15 federal Medicaid law, and are therefore preempted by the Supremacy Clause,
16 because:

17 (a) The 2009 AB 5 Reimbursement Limitations violate Section
18 30(A) because:

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

22 (ii) Neither the Director nor the Legislature demonstrated a
23 reasonable connection between the 2009 AB 5 Reimbursement Limitations and the
24 efficient and economical provision of quality care, or ensuring access to services,
25 prior to enacting the 2009 AB 5 Reimbursement Limitations;

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1 (iii) Neither the Legislature nor the Director considered the
2 costs of providing quality care or demonstrated a reasonable connection between
3 Medi-Cal rates as affected by the 2009 AB 5 Reimbursement Limitations and
4 provider costs;

5 (iv) Plaintiff is informed and believes and thereon alleges that
6 the rates resulting from the 2009 AB 5 Reimbursement Limitations are not
7 consistent with efficiency, economy, and quality of care, reasonably related to
8 provider costs, or sufficient to ensure that Medi-Cal beneficiaries have access to the
9 impacted hospital services to the same extent as the general population.

10 (b) The 2009 AB 5 Reimbursement Limitations violate Section
11 13(A) as to the impacted hospital services (including subacute and DP/NF services)
12 because they were not adopted through the public process required by this provision.
13 In addition to a claim of preemption under the Supremacy Clause, the State's failure
14 to comply with Section 13(A) gives rise to a private right of action under 42 U.S.C.
15 § 1983, as violation of the civil rights of CHA's members.

16 48. Violation of Federal Regulations: The 2009 AB 5 Reimbursement
17 Limitations are invalid and may not lawfully be implemented because they violate
18 federal Medicaid regulations, and are therefore preempted by the Supremacy Clause,
19 in that public notice of the reimbursement limitations as to the impacted hospital
20 services (including subacute and DP/NF services) was not given in accordance with
21 the terms of 42 C.F.R. § 447.205.

22 49. Violation of the State Plan: As mentioned above, the Director must
23 follow the State Plan as a Federal requirement for participation in the Medicaid
24 program. The 2009 AB 5 Reimbursement Limitations are invalid and may not
25 lawfully be implemented as they violate the State Plan, and accordingly, Federal
26 law, and are therefore preempted by the Supremacy Clause, because they
27 indefinitely suspend the annual payment update for DP/NF, subacute and pediatric
28 subacute services otherwise required by the State Plan.

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1 systems throughout California, including general acute care hospitals both small and
2 large, children’s hospitals, rural hospitals, psychiatric hospitals, academic medical
3 centers, county hospitals, investor-owned hospitals, and multi-hospital health
4 systems. These hospitals furnish vital health care services to millions of our states’
5 citizens. CHA also represents more than 150 Executive, Associate and Personal
6 members. CHA brings this action on its own behalf and in its representative
7 capacity on behalf of its members, many of which are providers under California’s
8 Medi-Cal program and will be directly and adversely affected by the challenged rate
9 limitations, and on behalf of its members’ patients.

10
11 **CHA’S STANDING AS AN ASSOCIATION**

12 53. Many of CHA’s members are Medi-Cal providers. These Medi-Cal
13 providers will suffer a concrete economic injury in the form of reduced payments
14 for services by the unlawful implementation of the 2009 AB 5 Reimbursement
15 Limitations.

16 54. CHA, as an association representing the interests of California hospitals
17 that participate in the Medi-Cal program and as party seeking to compel the Director
18 to comply with his public duties as defined by federal law, has a right and an
19 enforceable interest to maintain this action to: (1) enjoin Defendant’s continuing
20 violation of federal Medicaid law; and (2) compel Defendant to comply with the
21 provisions of the applicable federal laws.

22 55. Moreover, CHA has a right and an enforceable interest to maintain this
23 action against the Director under the Supremacy Clause of the United States
24 Constitution and under the Civil Rights Act, 42 U.S.C. § 1983, to enjoin the
25 Director’s continuing violation of the federal Medicaid law and to compel the
26 Director to comply with the provisions of the applicable federal Medicaid law.

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1 56. Under 28 U.S.C. § 2201, CHA is entitled to a declaration of its rights,
2 its members' rights, and/or its members' patients' rights under federal Medicaid
3 law.

4
5 **FIRST CAUSE OF ACTION**

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

7 57. Plaintiff hereby incorporates by reference paragraphs 1 through 56,
8 inclusive, as though fully set forth herein.

9 58. The 2009 AB 5 Reimbursement Limitations violate Section 30(A) of
10 the Medicaid Act because:

11 (a) Neither the Director nor the Legislature considered the factors of
12 efficiency, economy, quality of care, and access to services prior to enacting the
13 2009 AB 5 Reimbursement Limitations;

14 (b) Neither the Director nor the Legislature demonstrated a
15 reasonable connection between the payment rates resulting from 2009 AB 5
16 Reimbursement Limitations and the provision of quality care in an efficient and
17 economic manner, or ensuring access to services, prior to enacting the 2009 AB 5
18 Reimbursement Limitations;

19 (c) Neither the Legislature nor the Director considered the costs of
20 providing quality care or demonstrated that the Medi-Cal payment rates resulting
21 from the 2009 AB 5 Reimbursement Limitations are reasonably related to provider
22 costs; and

23 (d) Plaintiff is informed and believes and thereon alleges that the
24 rates resulting from the 2009 AB 5 Reimbursement Limitations are not consistent
25 with efficiency, economy, and quality of care, nor are they reasonably related to
26 provider costs, and also are not sufficient to enlist enough providers so that Medi-
27 Cal beneficiaries have access to the impacted hospital services at least to the extent
28 that such services are available to the general population.

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SECOND CAUSE OF ACTION

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

59. Plaintiff hereby incorporates by reference paragraphs 1 through 56, inclusive, as though fully set forth herein.

60. The 2009 AB 5 Reimbursement Limitations violate Section 13(A) as to the impacted hospital services (including DP/NF and subacute services) because they were not adopted through a public process as required by this provision.

61. The 2009 AB 5 Reimbursement Limitations are thus preempted by the Supremacy Clause of the United States Constitution, art. IV. and violate the civil rights of CHA’s members, which are enforceable through 42 U.S.C. § 1983.

THIRD CAUSE OF ACTION

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

62. Plaintiff hereby incorporates by reference paragraphs 1 through 56, inclusive, as though fully set forth herein.

63. The 2009 AB 5 Reimbursement Limitations are invalid and may not lawfully be implemented because they violate 42 C.F.R. § 447.205 as to the impacted hospital services (including subacute and DP/NF services), and are therefore preempted by the Supremacy Clause, in that public notice of the reimbursement limitations was not given in accordance with the terms of 42 C.F.R. § 447.205.

FOURTH CAUSE OF ACTION

(VIOLATION OF STATE PLAN/FAILURE TO AMEND STATE PLAN/SUPREMACY CLAUSE)

64. Plaintiff hereby incorporates by reference paragraphs 1 through 56, inclusive, as though fully set forth herein.

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1 65. The 2009 AB 5 Reimbursement Limitations are invalid and may not
2 lawfully be implemented as they violate the State Plan, including but not limited to,
3 Attachment 4.19-D as to DP/NF and subacute services, and accordingly, federal
4 law, and are therefore preempted by the Supremacy Clause, because they
5 indefinitely suspend the annual updates to Medi-Cal payment rates for DP/NF,
6 subacute and pediatric subacute services otherwise required by the State Plan.

7 66. The Director may not lawfully implement the 2009 AB 5
8 Reimbursement Limitations unless and until it obtains federal approval of the
9 necessary amendments to the State Plan from the federal government.

10

11

FIFTH CAUSE OF ACTION
(DECLARATORY RELIEF)

12

13

14 67. Plaintiff hereby incorporates by reference paragraphs 1 through 56,
15 inclusive, as though fully set forth herein.

16

17

18 68. An actual and justiciable controversy exists between Plaintiff and
19 Director regarding the validity of the 2009 AB 5 Reimbursement Limitations.
20 Plaintiff, on behalf of its members, contends that the reimbursement limitations are
21 invalid and unlawful in violation of federal statute, federal regulations, and the State
22 Plan, while the Director contends that the reimbursement limitations are valid in all
23 respects.

24

25

26 69. Accordingly, pursuant to 28 U.S.C. § 2201, Plaintiff requests this Court
27 to declare that the 2009 AB 5 Reimbursement Limitations are invalid, unlawful and
28 preempted by federal Medicaid law.

29

30

31 70. No administrative appeal process or other administrative remedy is
32 available to Plaintiff or its members to challenge the 2009 AB 5 Reimbursement
33 Limitations.

34

35

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1 71. All of the said injuries are great, immediate, and irreparable, for which
2 damages at law are inadequate, and for which Plaintiff, or its members, have no
3 plain, adequate or speedy relief at law or otherwise.

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WHEREFORE, Plaintiff prays for judgment as follows:

1. For an Order declaring that the 2009 AB 5 Reimbursement Limitations violate 42 U.S.C. §§ 1396a(a)(30)(A) and 1396a(a)(13), 42 C.F.R. § 447.205, and the California State Plan and are thus invalid and preempted by the Supremacy Clause of the United States Constitution, art. IV;

2. For an Order declaring that the 2009 AB 5 Reimbursement Limitations represent a *de facto* amendment to the State Plan and therefore said rate reductions cannot be imposed without federal approval;

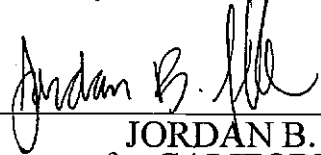
3. For an Order preliminarily and permanently enjoining the Director from effectuating the 2009 AB 5 Reimbursement Limitations or reducing to any degree the Medi-Cal rates for services rendered by hospitals that are affected by Welfare and Institutions Code §§ 14105.191 and 14166.245, as amended by 2009 AB 5; and

4. For the costs of suit, including reasonable attorneys' fees incurred by Plaintiffs, as permitted under 42 U.S.C. § 1988 or otherwise, and

5. Such other and further relief as may be just and proper.

DATED: November 23, 2009

HOOPER, LUNDY & BOOKMAN, INC.

By: 
JORDAN B. KEVILLE
Attorneys for CALIFORNIA HOSPITAL ASSOCIATION

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

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Consuelo B. Marshall and the assigned discovery Magistrate Judge is Margaret A. Nagle.

The case number on all documents filed with the Court should read as follows:

CV09 - 8642 CBM (MANx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

AO 440 (Rev. 02/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT
for the
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

CALIFORNIA HOSPITAL ASSOCIATION,
Plaintiff
v.
DAVID MAXWELL-JOLLY, DIRECTOR OF THE
STATE DEPARTMENT OF HEALTH CARE
SERVICES, STATE OF CALIFORNIA,
Defendant

)
)
) Civil Action No.
) **CV09 08642** CBF (MAN)

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

David Maxwell-Jolly, Director
Department of Health Care Services
State of California
1501 Capitol Avenue
Suite 6001
Sacramento, CA 95814

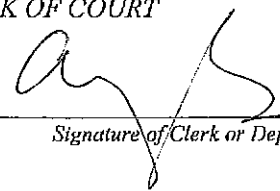
A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Lloyd A. Bookman, Esq.
Jordan B. Keville, Esq.
HOOPER, LUNDY & BOOKMAN, INC.
1875 Century Park East
Suite 1600
Los Angeles, CA 90067
Tel: (310) 551-8103
Fax: (310) 551-8181
lbookman@health-law.com
jkeville@health-law.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT



Signature of Clerk or Deputy Clerk

Date: NOV 24 2009

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) CALIFORNIA HOSPITAL ASSOCIATION	DEFENDANTS DAVID MAXWELL-JOLLY, DIRECTOR OF THE DEPARTMENT OF HEALTH CARE SERVICES, STATE OF CALIFORNIA
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Lloyd A. Bookman, Jordan B. Keville, Hooper, Lundy & Bookman, Inc., 1875 Century Park East, Suite 1600, Los Angeles, CA 90067; (310) 551-8181	Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:33%;">Citizen of This State</td> <td style="width:10%;">PTF <input type="checkbox"/> 1</td> <td style="width:10%;">DEF <input type="checkbox"/> 1</td> <td style="width:33%;">Incorporated or Principal Place of Business in this State</td> <td style="width:10%;">PTF <input type="checkbox"/> 4</td> <td style="width:10%;">DEF <input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td>PTF <input type="checkbox"/> 2</td> <td>DEF <input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td>PTF <input type="checkbox"/> 5</td> <td>DEF <input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td>PTF <input type="checkbox"/> 3</td> <td>DEF <input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td>PTF <input type="checkbox"/> 6</td> <td>DEF <input type="checkbox"/> 6</td> </tr> </table>	Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4	Citizen of Another State	PTF <input type="checkbox"/> 2	DEF <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	PTF <input type="checkbox"/> 5	DEF <input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3	DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6	DEF <input type="checkbox"/> 6
Citizen of This State	PTF <input type="checkbox"/> 1	DEF <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	PTF <input type="checkbox"/> 4	DEF <input type="checkbox"/> 4														
Citizen of Another State	PTF <input type="checkbox"/> 2	DEF <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	PTF <input type="checkbox"/> 5	DEF <input type="checkbox"/> 5														
Citizen or Subject of a Foreign Country	PTF <input type="checkbox"/> 3	DEF <input type="checkbox"/> 3	Foreign Nation	PTF <input type="checkbox"/> 6	DEF <input type="checkbox"/> 6														

IV. ORIGIN (Place an X in one box only.)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify):
 6 Multi-District Litigation
 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: **JURY DEMAND:** Yes No (Check "Yes" only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No **MONEY DEMANDED IN COMPLAINT:** \$ _____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 Claim under Supremacy Clause that State statutes limiting Medicaid payments violate the federal Medicaid Act, incl. 42 U.S.C. sec. 1396a(a)(13)(A), and are preempted

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input checked="" type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Red. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 BIA (1395II) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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FOR OFFICE USE ONLY: Case Number: **CV09 08642**

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). **IDENTICAL CASES:** Has this action been previously filed in this court and dismissed, remanded or closed? No Yes
If yes, list case number(s): _____

VIII(b). **RELATED CASES:** Have any cases been previously filed in this court that are related to the present case? No Yes
If yes, list case number(s): 2:08-cv-03315; 2:09-cv-0382; 2:09-cv-00722; 3:08-cv-5173

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	CALIFORNIA HOSPITAL ASSOCIATION - Sacramento County

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
DAVID MAXWELL-JOLLY, DIRECTOR OF THE STATE DEPARTMENT OF HEALTH CARE SERVICES, STATE OF CALIFORNIA	Offices in Sacramento and Los Angeles Counties

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
 Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Each of the claims in the complaint arose, in among other places, Sacramento County

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties
 Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): Jordan B. Jolly Date 11/23/09

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))