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 10 **IN THE UNITED STATES DISTRICT COURT FOR**
 11 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

12 **LESLIE NAPPER, et al.,**
 13 **Plaintiffs,**

14 **vs.**

15 **COUNTY OF SACRAMENTO, et al.,**
 16 **Defendants.**

Case No. 2:10-CV-01119-JAM-EFB

**MEMORANDUM IN OPPOSITION TO
 PLAINTIFFS' MOTION FOR CLASS
 CERTIFICATION**

Date: July 21, 2010
Time: 9:30 am
Place: Courtroom 6, 14th Floor
Judge; Hon. John A. Mendez

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20 **I.**

21 **INTRODUCTION**

22 Plaintiffs seek to certify a class consisting of "all current and future recipients of
 23 MediCal funded mental health services in the County of Sacramento;" 2) approval of the
 24 five named Plaintiffs as class representatives; and 3) appointment of Plaintiffs' counsel to
 25 serve as class counsel. However, Plaintiffs' request for class certification is unnecessary.

26 If the Court ultimately determines that the County's redesign of the Adult
 27 Outpatient Mental Health Services system is unlawful, a single injunction, issued on
 28

1 behalf of the individual Plaintiffs, will have the same impact on the County's system as it
2 would have in a class action or 100 lawsuits – namely, it will stop the implementation of
3 the County's new system. Additionally, Plaintiffs motion for class certification is
4 premature pending a decision on the merits of the case. Finally, Plaintiffs' proposed class
5 definition is overbroad and overinclusive so that any success will have no impact or
6 effect on many individuals described by the class. As such, this Court should deny
7 Plaintiffs' request to certify the requested class action.

8 **II.**

9 **STATEMENT OF FACTS**

10 In the interest of brevity, Defendants refer the Court to the Statement of Facts
11 outlined in Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction.
12 Defendants assert, and incorporate herein, all of the arguments made in such Opposition.

13 **III.**

14 **ARGUMENT**

15 **A. Class Certification Is Unnecessary**

16 Courts have found that the justifications for or objectives of class actions are: (1)
17 judicial economy and efficiency; (2) protection of defendants from inconsistent
18 obligations; (3) protection of the interests of the absentees; (4) access to judicial relief for
19 small claimants; and (5) enhanced means for private attorney general suits to enforce
20 laws and deter wrongdoing. *See, U.S. Parole Commission v. Geraghty*, 445 U.S. 388,
21 402 (1980); *Deposit Guaranty Nat. Bank, Jackson, Miss. V. Roper*, 445 U.S. 326, 339
22 (1980); *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240 (1975); 3
23 Newberg on Class Actions § 1:6 (4th ed.) The historical objective behind class actions
24 has been to advance the efficiency and economy of litigation. *General Telephone Co. of*
25 *Southwest v. Falcon*, 457 U.S. 147, 159 (1982).

26 A class action in the *case* at bar does not advance any of the objectives articulated
27 above. Because Plaintiffs seek declaratory and injunctive relief preventing
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1 implementation of the County's redesigned Adult Outpatient Mental Health Services
2 system (Hybrid Model) as a whole, any success on behalf of the named individual
3 Plaintiffs will necessarily have system-wide effect for all consumers receiving services in
4 the outpatient system. Any success by the named Plaintiffs will have the exact same
5 effect, regardless of whether the suit was brought by a single individual or as a class
6 action, or by hundreds of individuals.

7 For this reason, the certification of a class is unnecessary. Judicial economy will
8 not be served any better if relief is issued on behalf of a class, rather than individual
9 plaintiffs. Moreover, because any success by the named Plaintiffs will result in a system-
10 wide impact for all consumers of outpatient mental health services, Defendants will also
11 not be subjected to inconsistent obligations to those receiving services. Potential
12 plaintiffs who are absent from the lawsuit will not suffer any loss of protection. Plaintiffs
13 do not seek damages as a remedy, so access to judicial relief for small claimants is not
14 applicable to the case at bar. Finally, a class action does not create any greater means for
15 a general suit to enforce the law -- the success of one plaintiff will cause the County to
16 equally enforce the law as it applies to the provision of MediCal services for all
17 beneficiaries receiving outpatient mental health services.

18 **B. Plaintiffs' Request For Class Certification Is Premature**

19 Rule 23(c) requires a class ruling "as soon as practicable" after the commencement
20 of an action. F.R.C.P. 23(c). This requirement ensures that the rights of absent class
21 members will be protected, and correspondingly that such members will be bound by any
22 final judgment, in an action that was properly certified. As such, the certification of a
23 class should occur before a decision on the merits is reached. However, in order for the
24 court to determine whether certification of the class, as defined, is appropriate, parties
25 should be given an opportunity to pursue discovery to determine whether the
26 prerequisites of Rule 23 are satisfied. *Philip Morris Inc. v. Nat'l Asbestos Workers Med.*
27 *Fund*, 214 F.3d 132, 135 (2d Cir. 2000); *Sirota v. Solitron Devices, Inc.* 673 F.2d 566,
28

1 571 (2nd Cir. 1982).

2 Without the benefit of a productive discovery process to determine the extent of
3 Plaintiffs' claims, especially those relating to the existence of irreparable harm, any
4 determination by the Court that the requirements of Rule 23 have been met is premature.

5 **C. Plaintiffs' Proposed Definition of the Class is Overbroad**

6 Assuming, *arguendo*, that the Court finds class certification and timing is
7 appropriate, Plaintiffs' proposed class ("all current and future recipients of MediCal
8 funded mental health services in the County of Sacramento") is overbroad. That
9 definition has the effect of including individuals who are not using or never will use
10 outpatient mental health services provided by Sacramento County.

11 The gist of Plaintiffs' Complaint is that the County's transition from a contractor-
12 operated to a County-operated adult mental health system violates a litany of federal laws
13 and regulations. The restructured service delivery system is the Adult Outpatient Mental
14 Health Services system, not any other portion of the County's Mental Health Services
15 system.

16
17 However, Plaintiffs' proposed class reaches and sweeps in all Medi-Cal recipients,
18 both current and future, who receive services in the County's Mental Health Services
19 system. The proposed class includes recipients of services who are minors, as well as
20 recipients who never enter the outpatient system. In fact, as demonstrated by the
21 Declaration of Dorian Kitrell in Opposition to the Motion for Preliminary Injunction,
22 approximately 46.2% of all inpatient clients are not linked to contracted outpatient
23 services and providers. In addition, the Hybrid Model did not impact recipients of
24 services from the County's Full Service Partnerships (FSPs), but under the proposed
25 class, those consumers would be included within the class definition. Thus, the class is
26 overbroad because it sweeps in recipients who will not at any time be impacted by the
27 challenged restructure of the Adult Outpatient Mental Health Services system.
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1 The overinclusive nature of Plaintiffs' proposed class fails to satisfy the
2 "commonality" prerequisite of class certification. Plaintiffs' contend that the County's
3 Wellness Centers will not treat the same number of clients and will not provide the same
4 level of services as the contractor system; they further challenge the adequacy of the
5 transition plan to a County-operated system. However, those questions of fact are not
6 common to the proposed class.

7 The number of clients, level of services, and transition to a new provider are only
8 relevant issues for those MediCal beneficiaries currently receiving outpatient services
9 through the RST model, not to those beneficiaries who receive mental health services
10 through another program or model. The purported common issues of fact are not an issue
11 for those who, for instance, are minors, adults who require a higher level of mental health
12 services than the RSTs provide, or in another system such as the FSPs.

13 Likewise, Plaintiffs' essential questions of law - whether the Hybrid Plan violates
14 the American's With Disabilities Act, Section 504 of the Rehabilitation Act, California
15 Government Code § 11135, the Medicaid Act, and Plaintiffs' due process rights - are
16 irrelevant to a number of MediCal recipients of mental health services under the
17 Plaintiffs' proposed class. Assuming *arguendo* that the Plaintiffs can prove that the
18 County's Hybrid Plan is unlawful, the violation causes no injury to individuals who do
19 not receive outpatient mental health services under the contractor-operated model. As a
20 result, no relief to those plaintiffs need be granted because there was no injury-in-fact.

21 **D. The Named Plaintiffs Do Not Adequately Represent the Class**

22 A plaintiff seeking to maintain a class action must be a member of the class that he
23 claims to represent. *General Tel. Co. of Southwest v. Falcon*, supra, 457 U.S. at 156. In
24 addition, the named plaintiffs must also allege and show that "they *personally* have been
25 injured" or will suffer injury. *Lieboe v. State Farm Mut. Auto. Ins. Co.*, 350 F.3d 1018,
26 1022 (9th Cir. 2003) [without a valid claim, plaintiffs lack of standing and class action
27 must be dismissed].
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1 If a plaintiff fails to establish standing, he may not seek relief on behalf of himself
2 or any other member of the class. *Nelson v. King Co.* 895 F.2d 1248, 1250 (9th Cir.
3 1990), quoting *O'Shea v. Littleton* 414 U.S. 488, 494 (1974). Standing must exist prior
4 to class certification. *Lee v. Orego* 107 F.3d 1382, 1390 (9th Cir.1997), cert den. 522 U.S.
5 927. Individual standing requirements constitute a threshold issue.
6

7 As argued extensively in their Opposition to the Motion for Preliminary
8 Injunction, Defendants contend that the named Plaintiffs have not suffered, nor are at
9 imminent risk of suffering, harm by virtue of implementation of the Hybrid Model.
10 Plaintiffs only express abstract fears and anxiety regarding the redesign. However, such
11 fears and anxiety do not suffice to meet the requirement that representative plaintiffs
12 must show that they personally have been injured or are at substantial risk of injury. No
13 such injury or risk of injury has been shown. No evidence of a credible threat of injury
14 has been established. They assert only speculative contingencies, based on a hypothetical
15 and unadopted system redesign. Therefore, the named plaintiffs lack standing and are
16 inadequate to represent any class.
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19 **E. Certification of the Class under Rule 23(b)(2) Is Not Warranted**

20 A class action is proper under Rule 23(b)(2) only where the party against whom
21 relief is sought has acted, or refused to act, on grounds generally applicable to a class of
22 persons, making declaratory or injunctive relief appropriate to the class as a whole.
23 While not every class member must have been injured or aggrieved, there must be a
24 pattern of activity that is *likely* to be the same as to *all* members of the class. *Baby Neal*
25 *for & by Kanter v. Casey*, 43 F.3d 48, 52 (3rd Cir. 1994)..
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1 Given the overbroad nature of Plaintiffs' proposed class, not every class member
2 will have been injured or aggrieved. Those who will never see the services provided by
3 either the RSTs or the County-operated Wellness Centers will never be affected by the
4 restructure system. However, in order to be certified as a class under Rule 23(b)(2), there
5 must be a pattern of activity that is likely to be the same to all members of the class.
6

7 That finding does not exist, given the scope of the proposed class. According to
8 Plaintiffs' motion, "members of the class are all threatened with imminent across-the-
9 board reduction in outpatient mental health services." Plaintiffs' Motion to Certify Class,
10 p. 12. Even if true and reductions in outpatient mental health services were to occur, it
11 can not be said that an injunction on behalf of all members of the proposed class is
12 appropriate – those who do not or will not receive adult outpatient services have no
13 standing to seek such an injunction. Therefore, there is not an adopted pattern of activity
14 applicable to all members of the class and Rule 23(b)(2) is not satisfied.
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17 **IV.**

18 **CONCLUSION**

19 For the foregoing reasons, the Court should deny Plaintiffs' request to certify the
20 proposed class and to approve Plaintiffs Leslie Napper, Jan Fischer, Jacquie Eichhorn-
21 Smith, Ted Yannello, and Lynda Mangio as class representatives.
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23 DATED: July 7, 2010

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