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

FILED

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8 UNITED STATES DISTRICT COURT

9 CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

11 CALIFORNIA HOSPITAL  
ASSOCIATION,

12 Plaintiff,

13 vs.

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

17 Defendant.

CASE NO. CV09-3694  
COMPLAINT

DEP  
(JCx)

19 JURISDICTION AND VENUE

20 1. Plaintiff California Hospital Association ("CHA") brings this  
21 complaint pursuant to 28 U.S.C. sections 1331, 1343, 1367, and the Supremacy  
22 Clause. *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 96 n. 14 (1983).

23 2. Venue lies in this judicial district under 28 U.S.C. section 1391, in that  
24 Defendant David Maxwell-Jolly, Director of the California Department of Health  
25 Care Services (the "Director") has offices within this judicial district and is thus  
26 deemed to reside within this judicial district.

27 ///

28 ///

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## 1 INTRODUCTION

2       3. The fabric of the health care safety net is quickly deteriorating. For  
 3 countless Californians, including an increasing number of uninsured and Medi-Cal  
 4 beneficiaries, emergency departments are the difference between life and death and  
 5 are the most important component of our State's health care "safety net." *See Bell v.*  
 6 *Blue Cross of California*, 131 Cal.App.4th 121, 222 (2005). As fewer physicians  
 7 participate in Medi-Cal due to the deficient reimbursement rates, more Medi-Cal  
 8 beneficiaries seek care from emergency service providers as their only source of  
 9 health care. *See Independent Living Centers of Southern California v. Shewry*, 2008  
 10 WL 3891211, \*9 (C.D. Cal. 2008). Emergency departments, in turn, are legally  
 11 obligated to provide medical services to evaluate or stabilize emergency medical  
 12 conditions. *See Bell*, 131 Cal.App.4th at p. 211. "The prompt and appropriate  
 13 reimbursement of emergency providers ensures the continued financial viability of  
 14 California's health care delivery system." *Id.* at 218.

15       4. Hospital care in California is at a cross-roads. During the past 13 years,  
 16 90 California hospitals have permanently closed, resulting in the loss of thousands  
 17 of acute care beds and 41 emergency rooms. Hospitals frequently cite inadequate  
 18 reimbursement, including Medi-Cal reimbursement, as a key reason for the closures.

19       5. The deterioration of the California safety net is perhaps most evident in  
 20 Los Angeles County, where, in some areas, the healthcare system is now in crisis.  
 21 Emergency room and hospital closures in Los Angeles County make Los Angeles  
 22 County especially vulnerable to reductions in Medi-Cal payments. As other  
 23 providers limit their participation in the Medi-Cal program, increasing numbers of  
 24 patients will seek care at Los Angeles County's remaining emergency rooms, which  
 25 struggle operationally and financially to care for them.

26       6. By this action, hospitals seek an injunction to invalidate and stop the  
 27 implementation of mandated payment rates from Medi-Cal managed care plans for  
 28 emergency and poststabilization services provided by hospitals that do not contract

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1 with those plans ("Non-Contracted Hospitals"). The Director has established  
 2 payment rates to Non-Contracted Hospitals for inpatient emergency services ("Non-  
 3 Contracted Hospital Emergency Rates") at an average of the rates paid to certain  
 4 hospitals under Medi-Cal pursuant to contracts with the State. The Director has  
 5 established payment rates to Non-Contracted Hospitals for services provided once  
 6 an emergency patient is stabilized ("Non-Contracted Hospital Poststabilization  
 7 Rates") for most hospitals as the lesser of 90% of a hospital's interim rate (as  
 8 described below) and 95% of the average of the rates paid to certain hospitals  
 9 pursuant to Medi-Cal contracts with the State. This is the precise methodology of  
 10 payment that has recently been enjoined by the Ninth Circuit in *California*  
 11 *Pharmacists Association v. Shewry* (9th Cir. 2009) \_\_\_ F. 3d. \_\_\_, 2009 WL 975458.

12 7. These mandated payment rates (collectively, "Non-Contracted Hospital  
 13 Rates") will drastically impair payments to hospitals for emergency and  
 14 poststabilization services, falling far below the costs incurred by many of these  
 15 hospitals for these services. These Non-Contracted Hospital Rates, by virtue of  
 16 being based in part or in whole on statewide average rates, are unreasonable by  
 17 making payments without taking into account the nature of services provided, e.g.,  
 18 regardless of whether the patient was a gunshot victim (which incurs a lot of  
 19 services and costs) or mistook indigestion for a heart attack (which often simply  
 20 involves monitoring the patient at minimal costs). In many cases, these amounts  
 21 will result in payments less than the amounts hospitals would receive from the  
 22 Department for the exact same services. This disparity will undoubtedly cause some  
 23 hospitals to consider closing emergency rooms in the struggle to remain financially  
 24 viable.

25 8. The Non-Contracted Hospital Rates are illegal because California  
 26 failed to fulfill its legal mandate under federal law to ensure that those rates are  
 27 consistent with efficiency, economy, quality of care and sufficiency of access. 42  
 28 U.S.C. § 1396a(a)(30)(A) ("Section 30(A)"). The State further violated federal law

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1 by mandating these rates without the proper public process required to establish  
 2 payment rates to hospitals. 42 U.S.C. § 1396a(a)(13)(A) ("Section 13(A)"); 42  
 3 C.F.R. § 447.205. Indeed, these Non-Contracted Hospital Rates require an  
 4 amendment to the California Medi-Cal State Plan, which may not be implemented  
 5 prior to federal approval.

6 9. The Non-Contracted Hospital Rates are further unlawful as an  
 7 unconstitutional taking because they take property from Non-Contracted Hospitals  
 8 to give to Medi-Cal managed care plans without any public use or public purpose.

9 10. The Non-Contracted Hospital Emergency Rates also violate and are  
 10 preempted by 42 U.S.C. section 1396u-2(b)(2)(D), because they do not include  
 11 supplemental payments to hospitals under their Medi-Cal contracts in the average  
 12 rates and are computed as straight, unweighted average. The Non-Contracted  
 13 Hospital Emergency Rates therefore are not an accurate average of the rates  
 14 received by hospitals under their Medi-Cal contracts, and are not a reasonable  
 15 computation of the amounts the Non-Contracted Hospitals would receive for  
 16 services under the Medi-Cal fee-for-service program for emergency services.

17 11. The Non-Contracted Hospital Poststabilization Rates are also illegal  
 18 because they establish a new standard of payment that does not comport with the  
 19 requirements of 42 U.S.C. section 1396u-2(b)(2)(A)(ii), 42 C.F.R. section 438.114  
 20 or California Welfare and Institutions Code section 14091.3(c)(3) that incorporates  
 21 by reference 42 C.F.R. section 438.114.

22 12. The Non-Contracted Hospital Rates are unlawful because they were  
 23 implemented as underground regulations in violation of the California  
 24 Administrative Procedure Act through the issuance of informal "All Plan Letters,"  
 25 and not formal rulemaking.

26 13. Lastly, the Non-Contracted Hospital Rates are unlawful because they  
 27 attempt to establish rates that are lower than: (1) the "reasonable charges" rate of  
 28 payment required for emergency services set forth in California Health and Safety

1 Code section 1317.2a(d); (2) the "charges" rate of payment for poststabilization  
 2 services set forth in California Health and Safety Code section 1268.2; and the  
 3 "reasonable and customary value" of services rate of payment required for all  
 4 healthcare services provided by non-contracted providers required set forth in Title  
 5 28, California Code of Regulations section 1300.71(a)(3).

6 14. For these reasons and the reasons set forth below, the Non-Contracted  
 7 Hospital Rates violate federal law, the federal and state constitutions and California  
 8 law. Accordingly, Plaintiff seeks declaratory and injunctive relief to invalidate the  
 9 Non-Contracted Hospital Rates and to ensure that Non-Contracted Hospitals are not  
 10 forced to provide services at a loss, to the financial benefit of managed care plans.

# 11

## 12 THE PARTIES

13 15. Defendant DAVID MAXWELL-JOLLY is the Director of the  
 14 Department of Health Care Services and, as such, has the responsibility to  
 15 administer the Medi-Cal program consistent with the Medicaid Act. The Director is  
 16 sued in his official capacity. The Department is the single state agency charged with  
 17 the administration of California's Medicaid program, known as Medi-Cal. See  
 18 California Welf. & Inst. Code §§ 14000 *et seq.* The Director has an office in the  
 19 County of Los Angeles.

20 16. Plaintiff CALIFORNIA HOSPITAL ASSOCIATION ("CHA") is a  
 21 trade association representing the interests of hospitals in the State of California.  
 22 CHA is incorporated in the State of California as a non-profit public benefit  
 23 corporation with its principal office in Sacramento, California. CHA represents  
 24 nearly 450 hospitals and health systems throughout California, including general  
 25 acute care hospitals, children's hospitals, rural hospitals, psychiatric hospitals,  
 26 academic medical centers, county and other public hospitals, investor-owned  
 27 hospitals, and multi-hospital health systems. These hospitals furnish vital health  
 28 care services to millions of our states' citizens. CHA also represents more than 150

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1 Executive, Associate and Personal members. CHA brings this action on its own  
 2 behalf and in its representative capacity on behalf of its members, many of which  
 3 provide emergency and poststabilization services to Medi-Cal beneficiaries enrolled  
 4 in managed care plans with which the member hospitals do not contract and have  
 5 been and will continue to be directly and adversely affected by the implementation  
 6 of the Non-Contracted Hospital Rates, and on behalf of its members' patients.

7 17. CHA also has associational standing to bring its claims on behalf of its  
 8 members and Medi-Cal beneficiaries. The members of CHA are hospitals, many of  
 9 which provide emergency and poststabilization services to Medi-Cal beneficiaries  
 10 enrolled in managed care plans with which the hospitals do not contract. These  
 11 hospital providers have suffered and will continue to suffer a concrete economic  
 12 injury in the form of reduced payment for emergency and poststabilization services  
 13 by the unlawful implementation of the Non-Contracted Hospital Rates. In addition,  
 14 CHA member hospitals have been and will continue to be adversely affected by the  
 15 implementation of the Non-Contracted Hospital Rates because of the impact that  
 16 such rates have on contract negotiations between hospitals and Medi-Cal managed  
 17 care plans. Medi-Cal managed care plans are frequently unwilling to pay a hospital  
 18 more than the Non-Contracted Hospital Rates under a contract with the hospital  
 19 because they would not have to pay more than such rates to the hospital without a  
 20 contract. As a result, hospitals are forced either to go without a contract and obtain  
 21 the deficient and unlawful Non-Contracted Hospital Rates, or enter into contract for  
 22 these same below market rates.

23 18. Hospitals, as medical providers, are in a unique position to advance the  
 24 interests of Medi-Cal beneficiaries. CHA's hospital members have an extremely  
 25 close relationship with their Medi-Cal beneficiary patients who seek care from them.  
 26 A Medi-Cal beneficiary cannot secure medical services without his/her health care  
 27 providers, and without reimbursement by Medi-Cal for those services. Hospitals are  
 28 better positioned and informed as to the impact of a reimbursement rate cut on the

1 services they intend to, and in many instances, are required to, provide.

2 19. Furthermore, Medi-Cal beneficiaries face economic hindrances to their  
3 ability to assert their own rights in this case.

4  
5 **FEDERAL MEDICAID LAW**

6 20. Title XIX of the Social Security Act, 42 U.S.C. sections 1396 *et seq.*,  
7 the Medicaid Act, authorizes federal financial support to states for medical  
8 assistance to low-income persons who are aged, blind, disabled, or members of  
9 families with dependent children.<sup>1</sup> The program is jointly financed by the federal  
10 and state governments and administered by the states. The states, in accordance  
11 with federal law, decide eligible beneficiary groups, types and ranges of covered  
12 services, payment levels for services, and administrative and operative procedures.  
13 Payment for services is made directly by states to the individuals or entities that  
14 furnish the services. 42 C.F.R. § 430.0.

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

19 22. At the state level, the Medicaid program is administered by a single  
20 state agency, which is charged with the responsibility of establishing and complying  
21 with a state Medicaid plan (the "State Plan") that, in turn, must comply with the  
22

23 <sup>1</sup> The Medicaid Act is distinguishable from the Medicare Act, Title XVIII of the  
24 Social Security Act, 42 U.S.C. §§ 1395 *et seq.* The Medicare Program is a federal  
25 health insurance program for the aged, blind and disabled under which qualified  
26 health care providers, including hospitals, are reimbursed directly by the federal  
27 government for the treatment and care they provide to Medicare Program  
28 beneficiaries. The Medicare program directly contracts with certain managed care  
plans to pay providers for services provided to Medicare beneficiaries.

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1 provisions of the applicable federal Medicaid law. 42 U.S.C. § 1396a(a)(5) and 42  
 2 C.F.R. §§ 430.10 and 431.10. The State Plan must be submitted to the Secretary of  
 3 the United States Department of Health and Human Services (the "Secretary") for  
 4 approval and must describe the policies and methods to be used to set payment rates  
 5 for each type of service included in the state Medicaid plan. 42 C.F.R. §§ 430.10  
 6 and 447.201(b). Changes to the State Plan may not be implemented by the state  
 7 prior to being approved by the Secretary.

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

16 24. Each state's Medicaid plan must "provide such methods and  
 17 procedures . . . relating to the utilization of, and the payment for, care and services  
 18 available under the plan which may be necessary . . . to assure that payments are  
 19 consistent with efficiency, economy, and quality of care and are sufficient to enlist  
 20 enough providers so that care and services are available under the plan at least to the  
 21 extent that such care and services are available to the general public in the  
 22 geographic area . . . ." Section 30(A); 42 C.F.R. § 447.204.

23 25. Historically, services under state Medicaid programs have been  
 24 provided on a "fee-for-service" basis under which the state reimburses health care  
 25 providers directly for covered services to Medicaid beneficiaries.

26 26. States may also choose to contract with managed care organizations  
 27 ("MCOs"), such as health maintenance organizations, to provide or arrange for  
 28 services. See 42 U.S.C. §1396u-2; 42, C.F.R. Part 438. In general, through these



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1 contracts, an MCO is paid a fixed, prospective, monthly payment for each  
 2 beneficiary (or "member") enrolled with the entity for health coverage. Medicaid  
 3 Managed Care, 67 Fed. Reg. 40989 (June 14, 2002) (to be codified at 42 C.F.R. pt.  
 4 438). The capitated payment typically is payment in full for all services listed in the  
 5 contract between the state agency and the MCO, regardless of the level of services  
 6 used by each beneficiary. In turn, the MCO assumes the financial risk of its  
 7 members' care and pays health service providers directly.

8 27. Prior to 2002, states may mandate enrollment in a Medicaid MCO only  
 9 by establishing a mandatory managed care program through a federal "waiver" or  
 10 "demonstration" program established pursuant to section 1115 or section 1915(b) of  
 11 the Social Security Act (42 U.S.C. §§ 1315, 1396n.). The passage of 42 U.S.C.  
 12 section 1396u-2 gave states the flexibility to establish mandatory managed care  
 13 programs for defined populations, without having to obtain specific waivers from  
 14 the U.S. Department of Health and Human Services, Centers for Medicare and  
 15 Medicaid Services ("CMS") for 42 U.S.C. sections 1396a(a)(1) [requiring that a  
 16 State Plan be in effect in all political subdivisions of the State], 1396a(a)(10)(B)  
 17 [requiring comparability of medical assistance among Medicaid beneficiaries and  
 18 between Medicaid beneficiaries and non-Medicaid beneficiaries], and  
 19 1396a(a)(23)(A) [freedom of choice].

20 28. There has been a proliferation of mandatory Medicaid managed care  
 21 programs across the country in recent years.

22 29. To deliver covered services, most MCOs contract with and establish a  
 23 "network" of physicians, hospitals and other in-plan medical service providers.  
 24 With the exception of emergency and poststabilization services, Medicaid  
 25 beneficiaries enrolled in a MCO are generally restricted to using in-plan, network  
 26 providers.

27 30. Providers, such as hospitals, are not obligated to contract with MCOs,  
 28 nor are MCOs obligated to enter into contracts with any particular provider. When

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1 MCOs do contract with providers of health care services, the rates generally are set  
 2 through arms'-length negotiations, based on market factors.

3 31. When a hospital enters into a written contract with a health plan, it  
 4 agrees to accept reimbursement that is discounted from the hospital's total billed  
 5 charges in exchange for the benefits of being a "contracted provider" (*i.e.*, a  
 6 provider with a written contract with the plan). These benefits typically include an  
 7 increased volume of business because the health plan identifies to its members that  
 8 the contracted provider is "in-network," which means that the member is able to  
 9 obtain services from the contracted provider. Conversely, when a hospital does not  
 10 have a written contract with a health plan, the hospital typically receives less  
 11 business from the plan, but the hospital's expectation of payment is no longer  
 12 constrained by any contract.

13 32. Medicaid MCOs are required to pay for emergency services provided  
 14 to Medicaid beneficiaries enrolled in the relevant MCO, regardless of whether the  
 15 MCO has a written contract with the emergency service provider. 42 U.S.C. §  
 16 1396u-2(b)(2)(A).

### 18 CALIFORNIA MEDI-CAL PROGRAM

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

22 34. Medi-Cal healthcare payments are disbursed in two ways. The first is a  
 23 "fee-for-service" process whereby the Department of Health Care Services (the  
 24 "Department") determines whether the healthcare services are covered and  
 25 furnished to an eligible beneficiary, and, if so, pays the service providers directly.

26 35. The second is a managed care model under which the Department  
 27 contracts with MCOs which are responsible for the provision of care to Medi-Cal  
 28 beneficiaries enrolled with the MCO, and which pays healthcare providers for

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1 services furnished to their members.

2  
 3 The Fee-For-Service Program for Inpatient Hospital Service

4 36. Hospitals are reimbursed under the Medi-Cal fee-for-service program  
 5 for inpatient services in one of two ways. Hospitals which have not entered into  
 6 contracts to provide inpatient hospital services under the Selective Provider  
 7 Contracting Program ("SPCP") are reimbursed under a cost-based reimbursement  
 8 system. Under this system, hospitals are reimbursed the lowest of their reasonable  
 9 costs determined in accordance with Medicare cost reimbursement principles, an all-  
 10 inclusive rate per discharge limitation which is determined by establishing a base  
 11 cost per discharge for each hospital and adjusting the resulting rate annually to  
 12 reflect inflation and other factors, a peer group limitation which is the sixtieth  
 13 percentile rate per discharge of the peer group to which the hospital has been  
 14 assigned, or their customary charges. 22 C.C.R. §§ 51545 *et seq.*

15 37. Under the cost-based reimbursement system, hospitals receive interim  
 16 payments from the Department throughout the year which are intended to be an  
 17 estimate of final reimbursement. These interim payments are calculated as a  
 18 percentage of their charges. Final reimbursement for a hospital's fiscal year is  
 19 determined well after the close of the fiscal year, after a Medi-Cal cost report is  
 20 submitted by the hospital and audited by the Department. The interim payments are  
 21 then reconciled with the amount of the final reimbursement.

22 38. Both interim and final payments to hospitals under the cost-based  
 23 reimbursement system were reduced pursuant to California Assembly Bill 5 ("AB  
 24 5") and Assembly Bill 1183 ("AB 1183"), passed in 2008. AB 5 added sections  
 25 14105.19 and 14166.245 to the Welfare and Institutions Code. Effective July 1,  
 26 2008, these provisions reduced interim payments by ten percent and limited final  
 27 payments to 90% of reasonable costs.

28 39. AB 1183 amended Welfare and Institutions Code section 14166.245 to

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1 retain the limitation on reimbursement to 90% of reasonable cost and, effective  
 2 October 1, 2008, added a limitation on reimbursement to 95% of the average  
 3 contract rates under SPCP contracts, as discussed in greater detail below. AB 1183  
 4 further amended Welfare and Institution Code section 14105.19 to make it  
 5 inoperative to services provided after February 28, 2009 and added Welfare and  
 6 Institutions Code section 14105.191 which, *inter alia*, modified the AB 5 reductions  
 7 for certain services.

8 40. The second way hospitals are reimbursed for inpatient services under  
 9 the Medi-Cal fee-for-service program is through the SPCP. In 1982, the California  
 10 Legislature authorized the Department to enter into contracts with selected hospitals  
 11 to furnish inpatient services under Medi-Cal, in accordance with the terms set forth  
 12 in those contracts, by enacting the SPCP. See Cal. Welf. and Inst. Code § 14081 *et*  
 13 *seq.* SPCP contracts are negotiated by the California Medical Assistance  
 14 Commission ("CMAC") on behalf of the Department. The State selectively  
 15 contracts, on a competitive basis, with those hospitals in California that agree to be  
 16 reimbursed under the terms of an SPCP contract for inpatient hospital services  
 17 provided to Medi-Cal beneficiaries. (This complaint will refer to hospitals that  
 18 contract with the Department pursuant to the SPCP as "SPCP Hospitals" and  
 19 hospitals that do not have SPCP contracts as "Non-SPCP Hospitals.") SPCP  
 20 Hospitals are generally paid based on negotiated per diem rates for inpatient services  
 21 furnished by the hospital.

22 41. A fundamental goal of the SPCP is to negotiate contract rates which  
 23 result in a savings to the Medi-Cal program as compared to the cost-based  
 24 reimbursement system, while maintaining access for Medi-Cal beneficiaries to  
 25 hospital services. As a result, CMAC does not negotiate SPCP contracts to  
 26 reimburse a hospital's costs, regardless of how efficiently and economically  
 27 incurred. Instead, CMAC negotiates rates on a market driven basis to obtain the  
 28 lowest rates possible for inpatient hospital services. Payments to hospitals under

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1 SPCP contracts are generally a negotiated amount per patient day. Some hospitals  
2 have separate per diem rates for certain services, such as neonatal intensive care  
3 services.

4 42. In addition to the per diem payments, many hospitals receive  
5 significant additional funding under their SPCP contracts, in the form of  
6 "supplemental payments" from, *inter alia*, the Private Hospital Supplemental Fund  
7 and the Distressed Hospital Fund, and under the Construction Renovation and  
8 Repair Program. *See* Cal. Welf. & Inst. Code §§ 14166.12, 14166.23, and 14085.5.  
9 This additional funding is an integral and vital part of the payment made to eligible  
10 hospitals.

11 43. The SPCP operates in certain "closed" Health Facility Planning Areas  
12 ("HFPAs") of the state where SPCP contracts have been signed and Medi-Cal  
13 beneficiaries are required to receive inpatient hospital care at a contract hospital,  
14 except in emergencies and other enumerated exceptions. The SPCP does not  
15 operate in "open" HFPAs. These are primarily rural areas with few hospitals where  
16 the principles of competitive contracting do not apply.

17 44. The rates of payment to SPCP Hospitals remain confidential from the  
18 public for three years pursuant to California Government Code section 6254(q).

19 45. As of December 1, 2007, 203 out of the State's approximately 450  
20 hospitals operated under a SPCP contract with the Department, a decrease of 7  
21 hospitals since December 1, 2006. Twenty-one of these 203 hospitals are  
22 designated public hospitals which are reimbursed on the basis of their certified  
23 public expenditures for inpatient hospital services. The hospitals that do not  
24 participate in the SPCP continue to be paid under the cost-based reimbursement  
25 system for Medi-Cal inpatient hospital services.

26 46. The rates paid to hospitals under the SPCP result from individual  
27 negotiations and may vary widely from hospital to hospital. Many factors  
28 contribute to the different varying per diem rates under the SPCP. These factors

1 include, but are not limited to, the number of hospitals in the area, the population  
2 each hospital serves, the services each hospital provides, and bed availability.

#### 4 Medi-Cal Managed Care

5 47. The Department operates several managed care models under Medi-Cal  
6 to provide or arrange for the provision of health care services to Medi-Cal  
7 beneficiaries. The three primary Medi-Cal managed care models are the Two-Plan  
8 Model, County Organized Health Systems ("COHS"), and Geographic Managed  
9 Care ("GMC") plans. One Prepaid Health Plan ("PHP") also exists. Each model is  
10 operated pursuant to and governed by specific statutes, regulations, and contract  
11 provisions.

12 48. Generally, each of these Medi-Cal managed care plans must be licensed  
13 as a health care service plan under the Knox-Keene Health Care Service Plan Act  
14 (the "Knox-Keene Act") and comply with the requirements of that licensure. Cal.  
15 Health & Saf. Code §§ 1340 *et seq.*, 22 C.C.R. §§ 53200, 53840, 53910. However,  
16 California Welfare and Institutions Code section 14087.95 exempts COHS from the  
17 provisions of the Knox-Keene Act for the purpose of carrying out its Medi-Cal  
18 contracts with DHCS.

19 49. The State of California has received waivers from certain requirements  
20 of the Medicaid Act pursuant to 42 U.S.C. section 1315 in order to conduct its  
21 Medi-Cal managed care programs. These waivers have included waivers of the  
22 following requirements: Freedom of Choice, Statewideness, Single State Agency,  
23 Comparability, Utilization Control, Contracts, and Redeterminations. None of these  
24 waivers have included waivers of Sections 30(A) or 13(A).

#### 26 LEGAL REQUIREMENTS TO PROVIDE EMERGENCY SERVICES

27 50. The Emergency Medical Treatment and Active Labor Act  
28 ("EMTALA"), 42 U.S.C. section 1395dd, obligates hospitals with dedicated

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1 emergency departments, as a condition of Medicare participation, to provide  
2 emergency medical services without delay, to any and all patients who present with  
3 an emergency medical condition, and to inquire about or seek payment only after the  
4 patient has been stabilized. EMTALA thus prohibits members of CHA from  
5 denying emergency medical services based on the inadequacy of what will be paid  
6 for emergency medical services.

7 51. Under federal law, emergency medical conditions are defined broadly  
8 and liberally under a "prudent layperson" standard.

9 52. Under EMTALA, hospitals with dedicated emergency departments also  
10 are required to treat any and all patients for treatment who present in active labor.

11 53. CMS recently adopted a rule further requiring hospitals with  
12 specialized capabilities, but lacking dedicated emergency departments, to provide  
13 services to medically unstable patients transferred from other hospitals that lack the  
14 capacity to provide the services required.

15 54. Almost every general hospital in the United States participates in the  
16 Medicare program including almost every CHA member hospital.

17 55. Moreover, California state law independently requires that, as a  
18 condition of licensure, "[e]mergency services and care ... be provided to any person  
19 requesting the services or care, or for whom services or care is requested, for any  
20 condition in which the person is in danger of loss or life, or serious injury or illness,  
21 at any [hospital] that maintains and operates an emergency department . . . ." Cal.  
22 Health & Saf. Code § 1317(a). Emergency services and care must be provided  
23 without consideration for the patient's ability to pay for medical services and must  
24 be rendered without first questioning the patient as to his or her ability to pay for  
25 services. Cal. Health & Saf. Code § 1317(b), (d).

26 56. Services to a patient cease to be "emergency" services when the patient  
27 is stable for transfer to a facility contracted with the MCO. *See, e.g.*, 42 U.S.C. §§  
28 1395dd(b)(1)(A), 1395dd(e)(3); 1396u-2(b)(2)(B).

57. "Post stabilization care services" is defined by federal law as "covered services, related to an emergency medical condition that are provided after an enrollee is stabilized in order to maintain the stabilized condition, or . . . to improve or resolve the enrollee's condition." 42 C.F.R. § 438.114. "The attending emergency physician, or the provider actually treating the enrollee, is responsible for determining when that enrollee is sufficiently stabilized for transfer or discharge, and that determination is binding" on Medi-Cal managed care entities. 42 C.F.R. § 438.114(d)(3).

#### **FEDERAL LAWS GOVERNING PAYMENT FOR EMERGENCY AND POSTSTABILIZATION SERVICES**

58. Section 6085 of the Deficit Reduction Act ("DRA") of 2005 provides as follows:

##### **SEC. 6085. EMERGENCY SERVICES FURNISHED BY NON-CONTRACT PROVIDERS FOR MEDICAID MANAGED CARE ENROLLEES.**

(a) In General – Section 1932(b)(2) of the Social Security Act (42 U.S.C. 1396u-(b)(2)) is amended by adding at the end of the following new subparagraph:

(D) EMERGENCY SERVICES FURNISHED BY NON-CONTRACT PROVIDERS – Any provider of emergency services that does not have in effect a contract with a Medicaid managed care entity that establishes payment amounts for services furnished to a beneficiary enrolled in the entity's Medicaid managed care plan must accept as payment in full the amounts (less any payments for indirect costs of medical education and direct costs of graduate medical education) that it could collect if the beneficiary received medical assistance under this title other than through enrollment in such an entity. In a state where rates paid to hospitals under the state plan are negotiated by contract and not publicly released, the payment amount applicable under this subparagraph shall be the average contract rate that would apply under the state plan for general acute care hospitals or the average contract rate that would apply under such plan for tertiary hospitals.

(b) Effective Date – The amendment made by subsection (a) shall take effect on January 1, 2007.

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1 59. On information and belief, section 6085 of the DRA was proposed by  
 2 lobbyists engaged by Medicaid MCO(s). On information and belief, Medicaid  
 3 MCO(s) engineered the adoption of section 6085 for their financial advantage in  
 4 order to avoid greater liability to Non-Contracted Hospitals.

5 60. Federal law does not mandate any specific payment rate from Medicaid  
 6 MCOs to Non-Contracted Hospitals for poststabilization services. 42 U.S.C. §  
 7 1396u-2(b)(2)(A)(ii) requires that a MCO comply with guidelines for Medicare  
 8 managed care plans "with regard to the coordination of post-stabilization care" "in  
 9 the same manner as such guidelines apply to Medicare+Choice plans" offered under  
 10 the Medicare Act.<sup>2</sup> (Emphasis added.)

11 61. 42 C.F.R. section 438.114 accordingly requires that Medicaid managed  
 12 care plans cover and pay for poststabilization care "in accordance with provisions  
 13 set forth at [42 C.F.R.] Sec. 422.113(c). . . . In applying those provisions, reference  
 14 to 'M+C organization' must be read as reference to the entities responsible for  
 15 Medicaid payment. . . ."

16 62. 42 C.F.R. section 422.113(c) does not establish any specific rate of  
 17 payment for poststabilization services. 42 C.F.R. section 422.113(c)(2) requires that  
 18 a Medicare managed care plan maintains financial responsibility for the following  
 19 poststabilization care: (1) poststabilization services that have been pre-approved by  
 20 a plan provider or other plan representative consistent with 42 C.F.R. section  
 21 422.214, (2) poststabilization services that are not pre-approved but are administered  
 22 to maintain the patient's stabilized condition within 1 hour of a request to the  
 23 Medicare managed care plan for pre-approval of further poststabilization services,  
 24

25 <sup>2</sup> "Medicare+Choice" or "M+C organization" is a reference to the predecessor to  
 26 "Medicare Advantage," the program through which the federal Medicare program  
 27 currently contracts with managed care plans to pay providers for services provided  
 28 to Medicare enrollees.

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1 or (3) poststabilization services that are not pre-approved but administered to  
 2 maintain, improve, or resolve the patient's condition if (A) the plan does not  
 3 respond to a request for pre-approval within 1 hour, (B) the plan cannot be contacted  
 4 or (C) the plan representative and the treating physician cannot reach an agreement  
 5 concerning the enrollee's care and a plan physician is not available for consultation.  
 6 The Medicare managed care plan's responsibility to pay for poststabilization  
 7 services that have not been pre-approved ends when: (1) a plan physician with  
 8 privileges at the treating hospital assumes responsibility for the care of the patient,  
 9 (2) a plan physician assumes responsibility for the patient by initiating transfer of  
 10 the patient, (3) the plan and the treating physician reach an agreement concerning  
 11 the patient's care or (4) the patient is discharged.

12 63. 42 C.F.R. section 422.214 establishes that, in general, payments from  
 13 Medicare managed care plans to non-contracted providers must be made at the  
 14 amounts that would be made in full for a fee-for-service Medicare enrollee, less any  
 15 pass-through payments made for managed care enrollees. In other words, Medicare  
 16 managed care plans are required to pay Non-Contracted Hospitals for pre-authorized  
 17 services the amounts those providers would be paid by the Medicare fee-for-service  
 18 program. This payment standard is inapplicable to poststabilization services  
 19 provided within 1 hour of the hospital notifying a Medicare managed care plan of  
 20 stabilization or if (A) the plan does not respond to a request for pre-approval within  
 21 1 hour, (B) the plan cannot be contacted or (C) the plan representative and the  
 22 treating physician cannot reach an agreement concerning the enrollee's care and a  
 23 plan physician is not available for consultation.

24 64. The requirement in 42 C.F.R. section 438.114 that Medicaid MCOs  
 25 cover and pay for poststabilization care "in accordance with" 42 C.F.R. section  
 26 422.113(c) establishes the scope of a Medicaid managed care plan's financial  
 27 responsibility to pay for poststabilization care, *i.e.*, the situations in which the  
 28 Medicaid managed care plan becomes financially liable for poststabilization care

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1 and the events which terminate the plan's financial liability for poststabilization  
 2 care. 42 C.F.R. section 438.114's reference to 42 C.F.R. section 422.113(c) does  
 3 not mandate any specific payment rate.

4 65. On information and belief, no court has interpreted federal law to  
 5 establish any specific payment rate for Medicaid managed care plans to non-  
 6 contracted providers of poststabilization services following an inpatient emergency  
 7 stay. Further, on information and belief, CMS also does not interpret its own  
 8 regulations to establish any specific payment rate for Medicaid managed care plans  
 9 to non-contracted providers of poststabilization services following an inpatient  
 10 emergency stay.

11 66. If 42 C.F.R. section 438.114's reference to 42 C.F.R. section  
 12 422.113(c) was intended to establish any specific payment rate from Medicaid  
 13 managed care plans to providers for pre-approved poststabilization services, that  
 14 rate would be the Medicare fee-for-service rate. 42 U.S.C. section 1396u-  
 15 2(b)(2)(A)(ii); *see also* Medicaid Managed Care, 67 Fed. Reg. 40989 (June 14,  
 16 2002) (to be codified at 42 C.F.R. pt. 438) ("the [poststabilization] services that  
 17 must be covered are those that must be covered under Medicare rules . . . in the  
 18 same manner as these rules apply to [Medicare] plans. . .").

19  
 20 **CALIFORNIA STATUTES GOVERNING PAYMENT FOR NON-**  
 21 **CONTRACTED SERVICES BY HEALTH CARE SERVICE PLANS**

22 67. Most Medi-Cal managed care plans are also governed by the Knox-  
 23 Keene Act, which is administered by the California Department of Managed Health  
 24 Care ("DMHC").

25 68. DMHC regulations require that a health care service plan pay a non-  
 26 contracted provider "the reasonable and customary value for the health care services  
 27 rendered based upon statistically credible information that is updated at least  
 28 annually and takes into consideration: (i) the provider's training, qualifications, and

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length of time in practice; (ii) the nature of the services provided; (iii) the fees usually charged by the provider; (iv) prevailing provider rates charged in the general geographic area in which the services were rendered; (v) other aspects of the economics of the medical provider's practice that are relevant; and (vi) any unusual circumstances in the case...." Tit. 28, Cal. Code Regs., § 1300.71(a)(3). This standard applies to any services provided by a non-contracted provider, regardless of whether the services are classified as "emergency services" or not.

69. This standard matches the requirement in Health and Safety Code section 1317.2a(d), which requires that third-party payors, including health care service plans, be liable for the "reasonable charges" to a transferring hospital for emergency services.

70. California law also requires most Medi-Cal managed care plans to take responsibility for initiating transfer of patients who arrive through emergency rooms at non-contracted hospital as soon as possible after stabilization. Cal. Health and Safety Code § 1371.4; Title 28, C.C.R. §§1300.71.4(b)(3), (c). In situations in which the managed care plan fails to transfer the patient, hospitals provide poststabilization services in order to improve or resolve the patient's condition.

**CALIFORNIA'S INVALID ATTEMPTS TO REGULATE PAYMENTS  
FROM MEDI-CAL MANAGED CARE PLANS TO NON-CONTRACTED  
PROVIDERS OF EMERGENCY AND POSTSTABILIZATION SERVICES**

71. On March 16, 2007, the Department issued All Plan Letter 07-003 ("APL 07-003"). APL 07-003 announced that in California, the applicable rates under section 6085 of the DRA were as follows:

For out-of-plan/network general acute care hospitals, the applicable payment amount for emergency inpatient services is the average Selective Provider Contracting Program (SPCP) contract rate for general acute care hospitals. For out-of-plan/network tertiary care hospitals, the applicable payment amount for emergency inpatient

1 services is the average SPCP contract rate for tertiary  
2 hospitals.

3 However, because the Department determined that it would need further  
4 clarification from CMS before "develop[ing]" rates of payment pursuant to section  
5 6085, it "encourage[d]" Medi-Cal managed care plans to pay Non-Contracted  
6 Hospitals for emergency services according to average SPCP rates published in an  
7 Annual Report to the Legislature prepared by CMAC. The Department announced  
8 that "[o]nce the final rates are published, the managed care plans may be required to  
9 do a reconciliation process to ensure that all out-of-plan/network providers of  
10 emergency services, who were paid on a transition basis the [published rate in the  
11 CMAC Annual Report to the Legislature], have been reimbursed in accordance  
12 with" the rates set by the Department. Due to the issuance of this letter, neither  
13 Medi-Cal managed care plans nor Non-Contracted Hospitals could reasonably have  
14 expected the then-published average SPCP to be the final payment rates.

15 72. On September 18, 2008, after a protracted budget stalemate, Governor  
16 Schwarzenegger signed Assembly Bill 1183 ("AB 1183"), the budget trailer bill for  
17 fiscal year 2008-09. A true and correct copy of pertinent sections of AB 1183 is  
18 attached hereto and incorporated herein as Exhibit A.

19 73. AB 1183 was introduced originally in February 2007 as a bill  
20 concerning hazardous materials. In September 2008, the Senate Committee on  
21 Budget took over AB 1183 and amended it by eliminating the provisions concerning  
22 hazardous materials and replacing them with budget trailer bill language, including  
23 the Non-Contracted Hospital Rates at issue in this case. Prior to these amendments  
24 passed in committee on September 15, 2008, the general public had never seen these  
25 proposed rates. The amended version of the bill was passed the very next day,  
26 September 16, 2008, by both the Senate and the Assembly. The bill went to the  
27 Governor's office for signature just four days later and ultimately was executed on  
28 September 30, 2008.

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1 74. AB 1183 amended Welfare and Institutions Code section 14166.245.  
2 Section 14166.245 as amended by AB 1183 limits Medi-Cal payments to Non-  
3 SPCP Hospitals for inpatient hospital services as follows effective October 1, 2008:

4 a. For most Non-SPCP Hospitals, interim payments for inpatient hospital  
5 services are the lesser of 90% of the interim rate or 95% of an "average regional per  
6 diem contract rate." Final reimbursement is limited to the lesser of 90% of the  
7 hospital's audited allowable cost per day or 95% of an "average regional per diem  
8 contract rate."

9 b. "Small and rural hospitals" are exempted from these limitations  
10 altogether, except that they are subject to the 10% reduction to their interim rates  
11 and to their final reimbursement until November 1, 2008.

12 c. Certain hospitals in open HEPAs are subject only to the 10% rate  
13 reductions and not the "average regional per diem contract rate" limitations.

14 75. Welfare and Institutions Code section 14166.245 mandated that the  
15 "average regional per diem contract rates" be calculated as follows:

16 (C)(i) For purposes of this subdivision and subdivision (c),  
17 the average regional per diem contract rates shall be  
18 derived from unweighted average contract per diem rates  
19 that are publicly available on June 1 of each year, trended  
20 forward based on the trends in the California Medical  
21 Assistance Commission's Annual Report to the  
22 Legislature. For tertiary hospitals, and for all other  
23 hospitals, the regional average per diem contract rates  
24 shall be based on the geographic regions in the California  
25 Medical Assistance Commission's Annual Report to the  
26 Legislature. The applicable average regional per diem  
27 contract rates for tertiary hospitals and for all other  
28 hospitals shall be published by the department on or before  
October 1, 2008, and these rates shall be updated annually  
for each state fiscal year and shall become effective each  
July 1, thereafter. Supplemental payments shall not be  
included in this calculation.

(ii) For purposes of clause (i), both the federal and  
nonfederal share of the designated public hospital cost-  
based rates shall be included in the determination of the  
average contract rates by multiplying the hospital's interim  
rate, established pursuant to Section 14166.4 and that is in  
effect on June 1 of each year, by two.

(iii) For the purposes of this section, a tertiary hospital is a children's hospital specified in Section 10727, or a hospital that has been designated as a Level I or Level II trauma center by the Emergency Medical Services Authority established pursuant to Section 1797.1 of the Health and Safety Code.

76. On April 6, 2009, the Ninth Circuit Court of Appeal, in *California Pharmacists Association v. Maxwell-Jolly*, \_\_ F.3d \_\_, 2009 WL 975458 (9th Cir. 2009), stayed the application of various hospital reimbursement reductions enacted by AB 1183, including the reimbursement reductions in Welfare and Institutions Code section 14166.245, pending the appeal of the trial court's denial of a preliminary injunction. The Ninth Circuit concluded that the plaintiff hospitals and CHA had demonstrated a likelihood of success on the merits of their challenge to the AB 1183 rate reductions on the basis that the rate reductions were preempted by Section 30(A) and that the plaintiffs had established a likelihood of irreparable harm in the form of reduced payments that could not later be recovered in federal court due to the Eleventh Amendment.

77. AB 1183 also enacted California Welfare and Institutions Code section 14091.3, which states, in relevant part:

(c) Any hospital that does not have in effect a contract with a Medi-Cal managed care health plan. . . shall accept as payment in full, from all these plans, the following amounts:

(1) For outpatient services, the Medi-Cal Fee-For-Service (FFS) payment amounts.

(2) For emergency inpatient services, the average per diem contract rate specified in paragraph (2) of subdivision (b) of Section 14166.245, except that the payment amount shall not be reduced by 5 percent. For the purposes of this paragraph, this payment amount shall apply to all hospitals, including hospitals that contract with the department under the Medi-Cal Selective Provider Contracting Program described in Article 2.7 (commencing with Section 14081), and small and rural hospitals specified in Section 124840 of the Health and Safety Code.

(3) For poststabilization services following an emergency admission, payment amounts shall be consistent with

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subdivision (e) of Section 438.114 of Title 42 of the Code of Federal Regulations. This paragraph shall only be implemented to the extent that contract amendment language providing for these payments is approved by CMS. For purposes of this paragraph, this payment amount shall apply to all hospitals, including hospitals that contract with the department under the Medi-Cal Selective Provider Contracting Program pursuant to Article 2.6 (commencing with Section 14081).

78. On October 2, 2008, the Department issued another All Plan Letter ("APL 08-008") regarding "Reimbursement for Non-Contracted Hospital Emergency Inpatient Services." APL 08-008 announced the applicable two sets of "average regional per diem contract rates," one for January 1, 2007 to June 30, 2008 and one for July 1, 2008 to June 30, 2009. A true and correct copy of APL 08-008 is attached hereto and incorporated herein as Exhibit B.

79. On November 10, 2008, the Department issued a third All Plan Letter ("APL 08-010") regarding "Hospital Payment for Medi-Cal Post-Stabilization Services." In that letter, the Department announced that California Welfare and Institutions Code section 14091.3(c)(3) requires that non-contracted providers of poststabilization services "accept as payment in full for post-stabilization services the hospital's Medi-Cal Fee-For-Service (FFS) payment amounts for general acute care inpatient service set forth in W&I Code Section 14166.245." (Emphasis removed.) These are the payment rates that were enjoined by the Ninth Circuit in *California Pharmacists Association v. Maxwell-Jolly*. A true and correct copy of APL 08-010 is attached hereto and incorporated herein as Exhibit C.

80. Plaintiffs are informed and believe and thereon allege that, like the Director's failures enjoined in *Independent Living Centers of Southern California, et al. v. Shewry*, 543 F.3d 1050 (9th Cir. 2008) and *California Pharmacists Association v. Maxwell-Jolly*, prior to enacting the Non-Contracted Hospital Rates in AB 1183, or implementing these rates pursuant to APL 08-008 and APL 08-010, no studies or other analyses were conducted by the Legislature or by the Director to determine whether the Non-Contracted Hospital Rates would be consistent with

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1 efficiency, economy and quality of care or with the costs of providing the services to  
2 which these rates apply.

3  
4 **CALIFORNIA LEGISLATURE'S REGULATION OF**  
5 **POSTSTABILIZATION SERVICES AFTER AB 1183**

6 81. On September 30, 2008, the Legislature enacted Assembly Bill 1203  
7 ("AB 1203"). AB 1203 enacted significant changes to the responsibilities of health  
8 plans licensed pursuant to the Knox-Keene Act and Non-Contracted Hospitals with  
9 regard to post-stabilization care.

10 82. AB 1203 amended California Health and Safety Code section 1262.8 to  
11 require that if a hospital is able to obtain the name and contact information of a  
12 patient's health care service plan (after seeking to do so as required by the section),  
13 the hospital must contact the plan or the plan's contracting medical provider for  
14 authorization to provide poststabilization care. Cal. Health & Saf. Code §  
15 1262.8(b).

16 83. The plan must within thirty minutes either approve the post-  
17 stabilization services or decide to transfer the patient. Cal. Health & Saf. Code §  
18 1371.4(j).

19 84. If the plan does not notify the hospital of its decision to either approve  
20 post-stabilization services or transfer the patient, Health and Safety Code section  
21 1268.2(d)(2) requires that the plan "shall pay charges for the care...." (Emphasis  
22 added.) Likewise, if a plan decides to transfer a patient but fails to transfer the  
23 patient "within a reasonable time[.]" the plan is liable to pay "charges" for the care.  
24 Cal. Health & Saf. Code § 1268.2(d)(3) (emphasis added).

25 85. Nothing in AB 1203 exempts Medi-Cal managed care plans licensed by  
26 the Department of Managed Health Care from its requirements.

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1 **DEFENDANT'S VIOLATIONS OF LAW**

2 86. Violation of Federal Statute: The Non-Contracted Hospital Rates are  
3 invalid and may not lawfully be implemented because they violate federal Medicaid  
4 law, and are therefore preempted by the Supremacy Clause, because:

5 a. The Non-Contracted Hospital Rates violate Section 30(A) because:

6 i. Neither the Director nor the Legislature considered the factors of  
7 efficiency, economy, quality of care, and access to services prior to enacting the AB  
8 1183 Non-Contracted Hospital Rates;

9 ii. Neither the Director nor the Legislature demonstrated a  
10 reasonable connection between Non-Contracted Hospital Rates and the efficient and  
11 economical provision of quality care, or ensuring access to services, prior to  
12 enacting the Non-Contracted Hospital Rates;

13 iii. Neither the Legislature nor the Director considered the costs of  
14 providing quality care, relied on credible cost studies in enacting the Non-  
15 Contracted Hospital Rates, or demonstrated a reasonable connection between Medi-  
16 Cal rates as affected by the Non-Contracted Hospital Rates and provider costs;

17 iv. The Non-Contracted Hospital Rates are not consistent with  
18 efficiency, economy, and quality of care, and do not ensure that Medi-Cal  
19 beneficiaries have equal access to services; and/or

20 v. The Non-Contracted Hospital Rates are not reasonably related to  
21 hospital costs of providing the services subject to these rates. The SPCP contract  
22 rates from which the Non-Contracted Hospital Rates were derived are not based on  
23 hospital costs, were not intended to cover the costs of efficient and economical  
24 hospitals and were intended to be and are less than hospital costs so that the  
25 California Medical Assistance Commission could show annually that the SPCP  
26 saved the Medi-Cal program money as compared to the reimbursement that would  
27 have been paid under the Medi-Cal program's reasonable cost reimbursement  
28 methodology. The use of statewide average SPCP contract rates to determine the

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1 Non-Contracted Hospital Rates is not consistent with efficiency, economy and  
2 quality of care, and results in rates that are not reasonably related to hospital costs  
3 because, inter alia, the rates do not take into account various factors that affect  
4 hospital costs, such as differences among hospitals in the types of cases (or case  
5 mix) they treat; differences among hospitals in the types of patients (or patient mix)  
6 they treat; differences between the average cost of treating patients under SPCP  
7 contracts and the patients treated on out-of-network bases under Medi-Cal managed  
8 care, which include primarily patients initially seen on an emergency basis; and  
9 regional variances in salaries and other cost inputs.

10 b. The Non-Contracted Hospital Rates violate Section 13(A) because they  
11 were not adopted through a public process as required by this provision. For  
12 example:

13 i. The proposed Non-Contract Hospital Rates, the methodologies  
14 underlying the establishment of these rates and the justifications for the rates were  
15 never published;

16 ii. Providers, beneficiaries, and their representatives and other  
17 concerned residents of the State of California were never given a reasonable  
18 opportunity to review and comment on the proposed rates, methodologies and  
19 justifications;

20 iii. The final Non-Contract Hospital Rates, the methodologies  
21 underlying the establishment of these rates and the justifications for the rates were  
22 never published; and/or

23 iv. The Non-Contract Hospital Rates do not take into account the  
24 situation of hospitals which serve a disproportionate number of low-income patients  
25 with special needs;

26 c. The Non-Contracted Hospital Emergency Rates violate 42 U.S.C.  
27 section 1396u-2(b) because:

28 i. 42 U.S.C. section 1396u-2(b)(2)(D) requires payment from

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1 Medi-Cal managed care plans at an "average contract rate," which encompasses all  
 2 payments from California to a hospital under the hospital's SPCP contract. The  
 3 Director did not include certain payments made to hospitals for inpatient services  
 4 under the hospitals' SPCP contracts in computing the Non-Contracted Hospital  
 5 Emergency Rates, including supplemental payments paid to hospitals as part of their  
 6 SPCP contracts; and/or

7           ii. 42 U.S.C. section 1396u-2(b)(2)(D) is intended to require  
 8 payments to Non-Contract Hospitals for emergency services to approximate the  
 9 amounts that hospitals would have been paid under the fee-for-service program.  
 10 The Non-Contracted Hospital Emergency Rates fail to accurately reflect the  
 11 payments under the fee-for-service program because the Director calculated the  
 12 Non-Contracted Hospital Emergency Rates without taking into account the  
 13 differences in Medi-Cal volume between facilities with SPCP contracts. In other  
 14 words, the Non-Contracted Hospital Emergency Rates are preempted by 42 U.S.C.  
 15 section 1396u-2(b)(2)(D) because they are calculated as an "unweighted" or  
 16 "straight" average of SPCP contract rates, rather than an average weighted based on  
 17 the volume of Medi-Cal inpatient services furnished by each SPCP contracted  
 18 hospital; and/or

19           iii. The Non-Contracted Hospital Poststabilization Rates violate 42  
 20 U.S.C. section 1396u-2(b)(2)(A)(ii) because inasmuch as they attempt to establish  
 21 poststabilization rates in compliance with federal law, they do not require that Medi-  
 22 Cal managed care plans comply with guidelines for Medicare managed care plans  
 23 with regard to poststabilization care "in the same manner as such guidelines apply"  
 24 to Medicare managed care plans.

25           87. Violation of Federal Regulations: The Non-Contracted Hospital Rates  
 26 are invalid and may not lawfully be implemented because they violate federal  
 27 Medicaid regulations, and are therefore preempted by the Supremacy Clause,  
 28 because:

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1 a. The Non-Contracted Hospital Rates violate 42 C.F.R. section 447.205  
2 because the Department failed to give public notice as required by this provision as  
3 follows:

4 i. Public notice is required because the Non-Contracted Hospital  
5 Rates are a significant change in the Department's methods and standard for setting  
6 payment rates for Non-Contracted Hospital services;

7 ii. The Department failed to provide public notice describing the  
8 proposed change in method and standards, giving an estimate of of any increase or  
9 decrease in annual aggregate expenditures, explaining why the agency was changing  
10 its methods and standards, identifying a local agency in each county where copies of  
11 the proposed changes were available for review, giving an address where written  
12 comments may be sent and reviewed by the public, and giving the location, date and  
13 time of any public hearings; and

14 iii. No prior notice was ever published as a public announcement in  
15 a suitable publication as defined in 42 C.F.R. § 447.205(d)(2); and/or

16 b. The Non-Contracted Hospital Poststabilization Rates violate 42 C.F.R.  
17 section 438.114 because, if and to the extent this regulation establishes any rate of  
18 payment to Non-Contracted Hospitals for poststabilization services, it requires  
19 payment for poststabilization services at the Medicare fee-for-service rates, and the  
20 Non-Contracted Hospital Poststabilization Rates are generally lower than the  
21 Medicare fee-for-service rates.

22 88. No State Plan Amendment: The Non-Contracted Hospital Rates are  
23 invalid and may not lawfully be implemented because they are inconsistent with and  
24 violate the State Plan, including, but not limited to, Attachment 4.19-A of the State  
25 Plan as to hospital inpatient services. The Non-Contracted Hospital Rates are  
26 therefore preempted by the Supremacy Clause. The Director may not lawfully  
27 implement the AB 1183 Rate Reductions unless and until he obtains federal  
28 approval of the necessary amendments to the State Plan from the federal

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1 government. Plaintiffs are informed and believe, and thereon allege, that the  
2 Director has not obtained federal approval of a State Plan Amendment for the Non-  
3 Contracted Hospital Rates.

4 89. Violation of U.S. and California Constitution: The Non-Contracted  
5 Hospital Rates violate the Fifth Amendment of the U.S. Constitution and Article I,  
6 section 19 of the California Constitution by effectuating a taking of the property of  
7 hospitals to Medi-Cal managed care plans without any public use or purpose. In this  
8 regard:

9 a. The Non-Contracted Hospital Rates force Plaintiff and its members to  
10 absorb losses and thereby directly subsidize privately owned and operated Medi-Cal  
11 managed care plans;

12 b. Given the prevailing capitation payment arrangements with the  
13 Department, the Medi-Cal managed care plans are the sole, direct and substantial  
14 beneficiaries of the Non-Contracted Hospital Rates;

15 c. No public purpose for the Non-Contracted Hospital Rates was  
16 enunciated in section 6085 of the Deficit Reduction Act, Assembly Bill 1183 or any  
17 of the Department's All Plan Letters;

18 d. Any public benefit that might result from plaintiff's members accepting  
19 the Non-Contracted Hospital Rates is, at best, indirect, incidental, and attenuated;  
20 and/or

21 e. The Non-Contracted Hospital Rates were enacted at the instance and  
22 for the pecuniary benefit of the managed care industry as a means of enhancing the  
23 profitability of private managed care plans; any intended or alleged public benefit is  
24 pretextual.

25 90. Violation of State Law:

26 a. The Non-Contracted Hospital Poststabilization Rates violate Welfare  
27 and Institutions Code section 14091.3(c)(3) because the Non-Contracted Hospital  
28 Poststabilization Rates are not consistent with 42 C.F.R. section 438.114(e) as

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1 required by section 14091.3(c)(3). To the extent 42 C.F.R. section 438.114(e)  
 2 specifies a payment rate, it specifies a payment rate equal to the amount that would  
 3 have been paid on a fee-for-service basis under the Medicare program through its  
 4 references to various Medicare regulations. The Non-Contracted Hospital  
 5 Poststabilization Rates are generally lower than the Medicare fee-for-service rates;

6 b. To the extent that 42 C.F.R. section 438.114(e) does not specify a rate  
 7 of payment, the Non-Contracted Hospital Poststabilization Rates are invalid because  
 8 they result from an invalid delegation of legislative authority to the Department and  
 9 the Director pursuant to Welfare and Institutions Code section 14091.3(c), as the  
 10 Department and the Director are provided no standards whatsoever by the  
 11 legislature for the development of Non-Contracted Hospital Poststabilization Rates.  
 12 This delegation without standards violates the California Constitution by  
 13 impermissibly authorizing the executive branch of state government to assume  
 14 legislative functions which are the exclusive province of the state legislature;

15 c. The Non-Contracted Hospital Rates are invalid as underground  
 16 rulemaking without compliance with the procedural requirements of the California  
 17 Administrative Procedure Act, Government Code sections 11340, *et seq.* The Non-  
 18 Contracted Hospital Rates constitute regulations under California law because they  
 19 are rules of general application. However, they were implemented pursuant to APL  
 20 08-008 and APL 08-010, neither of which was adopted in accordance with the  
 21 California Administrative Procedure Act;

22 d. The Non-Contracted Hospital Rates are invalid because they conflict  
 23 with the "reasonable and customary" payment standard of Title 28, California Code  
 24 of Regulations, section 1300.71(a)(3);

25 e. The Non-Contracted Hospital Poststabilization Rates are invalid  
 26 because they attempt to establish a lower rate of payment for poststabilization  
 27 services that is almost always lower than hospital charges in direct contradiction of  
 28 the statutory requirement in AB 1203 that a plan pay charges for care if it does not

1 notify the hospital of its decision to either approve post-stabilization services or  
2 transfer the patient or if a plan decides to transfer a patient but fails to transfer the  
3 patient "within a reasonable time;"

4 f. The Non-Contracted Hospital Rates are invalid because they attempt to  
5 establish a lower rate of payment for emergency services than those required by  
6 California Health and Safety Code section 1317.2a(d); and/or

7 g. The Non-Contracted Hospital Rates are invalid because they violate  
8 Title 22, California Code of Regulations, section 50004, by establishing rates that  
9 are inconsistent with and violate the State Plan which currently does not include the  
10 Non-Contractual Hospital Rates.

11  
12 **FIRST CAUSE OF ACTION**

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

14 91. Plaintiff hereby incorporates by reference paragraphs 1 through 90,  
15 inclusive, as though fully set forth herein.

16 92. The Non-Contracted Hospital Rates violate Section 30(A) of the  
17 Medicaid Act because:

18 a. Neither the Director nor the Legislature considered the factors of  
19 efficiency, economy, quality of care, and access to services prior to enacting the  
20 Non-Contracted Hospital Rates;

21 b. Neither the Director nor the Legislature demonstrated a reasonable  
22 connection between the Non-Contracted Hospital Rates and the provision of quality  
23 care in an efficient and economic manner, or ensuring access to services, prior to  
24 enacting the Non-Contracted Hospital Rates; and

25 c. Neither the Legislature nor the Director considered the costs of  
26 providing quality care or demonstrated a reasonable connection between Medi-Cal  
27 rates as affected by the Non-Contracted Hospital Rates and provider costs.

28 d. The Non-Contracted Hospital Rates are not consistent with efficiency,

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1 economy, and quality of care, and do not ensure that Medi-Cal beneficiaries have  
2 equal access to services; and/or

3 e. The Non-Contracted Hospital Rates are not reasonably related to  
4 hospital costs of providing the services subject to these rates.

5 93. The Non-Contracted Hospital Rates and the provisions of California  
6 law pursuant to which they have been implemented are thus preempted by the  
7 Supremacy Clause of the United States Constitution, art. IV, because the mandated  
8 rates, enacted solely for the benefit of Medi-Cal managed care plans in disregard of  
9 the Section 30(A) statutory factors, stand as an obstacle to the accomplishment and  
10 execution of the full purposes and objectives of Congress in the enactment of said  
11 Section. Moreover, the Non-Contracted Hospital rates are preempted under the  
12 Supremacy Clause because the Director cannot simultaneously comply with the  
13 provisions of California law requiring the implementation of the Non-Contracted  
14 Hospital Rates and Section 30(A).

15  
16 **SECOND CAUSE OF ACTION**

17 **(VIOLATION OF 42 U.S.C. § 1396a(a)(13)(A))**

18 **SUPREMACY CLAUSE/42 U.S.C. § 1983)**

19 94. Plaintiff hereby incorporates by reference paragraphs 1 through 93,  
20 inclusive, as though fully set forth herein.

21 95. The Non-Contracted Hospital Rates violate Section 13(A) because they  
22 were not adopted through a public process as required by this provision.

23 96. Specifically, the Non-Contracted Hospital Rates were not enacted in  
24 accordance with Section 13(A) because:

25 a. The proposed Non-Contract Hospital Rates, the methodologies  
26 underlying the establishment of these rates and the justifications for the rates were  
27 never published;

28 b. Providers, beneficiaries, and their representatives and other concerned

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1 residents of the State of California were never given a reasonable opportunity to  
2 review and comment on the proposed rates, methodologies and justifications;

3 c. The final Non-Contract Hospital Rates, the methodologies underlying  
4 the establishment of these rates and the justifications for the rates were never  
5 published; and/or

6 d. The Non-Contract Hospital Rates do not take into account the situation  
7 of hospitals which serve a disproportionate number of low-income patients with  
8 special needs; and/or

9 97. The Non-Contracted Hospital Rates have been adopted by the  
10 Department under color of state law. CHA represents the interests of hospitals that  
11 have been deprived of their privately enforceable rights conferred by 42 U.S.C.  
12 section 1396a(a)(13)(A). Accordingly, the Director has violated 42 U.S.C. section  
13 1983 by adopting the Non-Contracted Hospital Rates.

14 98. The Non-Contracted Hospital Rates are also preempted by the  
15 Supremacy Clause of the United States Constitution, art. IV. Moreover, the Non-  
16 Contracted Hospital rates are preempted under the Supremacy Clause because the  
17 Director cannot simultaneously comply with the provisions of California law  
18 requiring the implementation of the Non-Contracted Hospital Rates and Section  
19 13(A).

20  
21 **THIRD CAUSE OF ACTION**

22 **(VIOLATION OF 42 U.S.C. § 1396u-2(b))**

23 **SUPREMACY CLAUSE/42 U.S.C. § 1983)**

24 99. Plaintiff hereby incorporates by reference paragraphs 1 through 99,  
25 inclusive, as though fully set forth herein.

26 100. The Non-Contracted Hospital Emergency Rates violate 42 U.S.C.  
27 section 1396u-2(b)(2)(D) because they fail to include all the payments to hospitals  
28 pursuant to their SPCP contracts by excluding supplemental payments to hospitals.

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101. The Non-Contracted Hospital Emergency Rates further violate 42 U.S.C. section 1396u-2(b)(2)(D) because they fail to accurately reflect the amounts hospitals would have been paid from the Medi-Cal fee-for-service program by calculating the average contract amounts as a straight, unweighted average.

102. The Non-Contracted Hospital Poststabilization Rates violate 42 U.S.C. section 1396u-2(b)(2)(A)(ii) because inasmuch as they attempt to establish poststabilization rates in compliance with federal law, they do not require that Medi-Cal managed care plans comply with guidelines for Medicare managed care plans with regard to poststabilization care "in the same manner as such guidelines apply" to Medicare managed care plans.

103. The Non-Contracted Hospital Rates have been adopted by the Department under color of state law. CHA represents the interests of hospitals that have been deprived of their privately enforceable rights conferred by 42 U.S.C. section 1396u-2(b)(2). Accordingly, the Director has violated 42 U.S.C. section 1983 by adopting the Non-Contracted Hospital Rates.

104. The Non-Contracted Hospital Rates are also preempted by the Supremacy Clause of the United States Constitution, art. IV. Moreover, the Non-Contracted rates are preempted under the Supremacy Clause because the Director cannot simultaneously comply with the provisions of California law requiring the implementation of the Non-Contracted Hospital Rates and 42 U.S.C. sections 1396u-2(b)(2)(D) and 1396u-2(b)(2)(A)(ii).

#### **FOURTH CAUSE OF ACTION**

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

105. Plaintiff hereby incorporates by reference paragraphs 1 through 105, inclusive, as though fully set forth herein.

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1 106. The Non-Contracted Hospital Rates violate 42 C.F.R. section 447.205  
2 because the Department failed to give public notice as required by this provision as  
3 follows:

4 a. Public notice is required because the Non-Contracted Hospital Rates  
5 are a significant change in the Department's methods and standard for setting  
6 payment rates for Non-Contracted Hospital services;

7 b. The Department failed to provide public notice describing the proposed  
8 change in method and standards, giving an estimate of of any increase or decrease in  
9 annual aggregate expenditures, explaining why the agency was changing its  
10 methods and standards, identifying a local agency in each county where copies of  
11 the proposed changes were available for review, giving an address where written  
12 comments may be sent and reviewed by the public, and giving the location, date and  
13 time of any public hearings; and

14 c. No prior notice was ever published as a public announcement in a  
15 suitable publication as defined in 42 C.F.R. §447.205(d)(2).

16  
17 **FIFTH CAUSE OF ACTION**

18 **(VIOLATION OF 42 C.F.R. § 438.114/SUPREMACY CLAUSE)**

19 107. Plaintiff hereby incorporates by reference paragraphs 1 through 106,  
20 inclusive, as though fully set forth herein.

21 108. The Non-Contracted Hospital Poststabilization Rates are invalid and  
22 may not lawfully be implemented because they are inconsistent with 42 C.F.R.  
23 section 438.114 because if that regulation establishes any rate of payment for pre-  
24 approved poststabilization services, that rate would be equal to the Medicare fee-for-  
25 service rate.

26 109. The Non-Contracted Hospital Poststabilization Rates are thus  
27 preempted by the Supremacy Clause of the United States Constitution, art. IV.  
28 Moreover, the Non-Contracted Hospital Poststabilization Rates are preempted under

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1 the Supremacy Clause because the Director cannot simultaneously comply with the  
2 provisions of California law requiring the implementation of the Non-Contracted  
3 Hospital Emergency Rates and 42 C.F.R. section 438.114.

4  
5 **SIXTH CAUSE OF ACTION**

6 **(FAILURE TO AMEND STATE PLAN/SUPREMACY CLAUSE)**

7 110. Plaintiff hereby incorporates by reference paragraphs 1 through 109,  
8 inclusive, as though fully set forth herein.

9 111. The Director may not lawfully implement the Non-Contracted Hospital  
10 Rates because they are inconsistent with and violate the State Plan unless and until it  
11 obtains federal approval of the necessary amendments to the State Plan to the  
12 federal government.

13 112. The Non-Contracted Hospital Rates are thus preempted by the  
14 Supremacy Clause of the United States Constitution, art. IV. Moreover, the Non-  
15 Contracted Hospital rates are preempted under the Supremacy Clause because the  
16 Director cannot simultaneously comply with the provisions of California law  
17 requiring the implementation of the Non-Contracted Hospital Rates and the State  
18 Plan.

19  
20 **SEVENTH CAUSE OF ACTION**

21 **(VIOLATION OF U.S. CONSTITUTION TAKINGS CLAUSE**

22 **SUPREMACY CLAUSE/42 U.S.C. § 1983)**

23 113. Plaintiff hereby incorporates by reference paragraphs 1 through 112,  
24 inclusive, as though fully set forth herein.

25 114. The takings clause of the Fifth Amendment to the U.S. Constitution  
26 prohibits the taking of "private property" by the government "without just  
27 compensation."

28 115. Takings are not limited to outright seizures or condemnations of

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1 physical property, but may include the forced diminution in the value of private  
2 property resulting from governmental regulation of the use of private business or  
3 property.

4 116. The "public use" clause of the Fifth Amendment permits any taking of  
5 private property only for a public purpose.

6 117. The takings affected by the Non-Contracted Hospital Rates are not for a  
7 public purpose. In this regard:

8 a. The Non-Contracted Hospital Rates force Plaintiff and its members to  
9 absorb losses and thereby directly subsidize privately owned and operated Medi-Cal  
10 managed care plans;

11 b. Given the prevailing capitation payment arrangements with the  
12 Department, the Medi-Cal managed care plans are the sole, direct and substantial  
13 beneficiaries of the Non-Contracted Hospital Rates;

14 c. No public purpose for the Non-Contracted Hospital Rates was  
15 enunciated in section 6085 of the Deficit Reduction Act, Assembly Bill 1183 or any  
16 of the Department's All Plan Letters;

17 d. Any public benefit that might result from plaintiff's members accepting  
18 the Non-Contracted Hospital Rates is, at best, indirect, incidental, and attenuated;

19 e. The Non-Contracted Hospital Rates were enacted at the instance and  
20 for the pecuniary benefit of the managed care industry as a means of enhancing the  
21 profitability of private managed care plans; any intended or alleged public benefit is  
22 pretextual.

23 118. Accordingly, the takings effectuated by the Non-Contracted Hospital  
24 Rates are *per se* unconstitutional takings.

25 119. The Non-Contracted Hospital Rates have been adopted by the  
26 Department under color of state law. CHA represents the interests of hospitals that  
27 have been deprived of their privately enforceable right to be free of unlawful takings  
28 guaranteed under the U.S. Constitution. Accordingly, the Director has violated 42

1 U.S.C. section 1983 by adopting the Non-Contracted Hospital Rates.

2 120. Also, the Non-Contracted Hospital Rates are preempted by the  
3 Supremacy Clause of the United States Constitution, art. IV. Moreover, the Non-  
4 Contracted Hospital rates are preempted under the Supremacy Clause because the  
5 Director cannot simultaneously comply with the provisions of California law  
6 requiring the implementation of the Non-Contracted Hospital Rates and the  
7 Constitutional prohibition of takings without a public use.

8

9

10 **EIGHTH CAUSE OF ACTION**

11 **(PETITION FOR WRIT OF MANDATE**

12 **CALIFORNIA CODE OF CIVIL PROCEDURE § 1085)**

13 121. Plaintiff hereby incorporates by reference paragraphs 1 through 120,  
14 inclusive, as though fully set forth herein.

15 122. Plaintiff has a beneficial interest that rates established for non-contract  
16 hospitals comply with the requirements of the California Constitution and other  
17 California statutes.

18 123. The Director has a duty to comply with the federal laws, the U.S. and  
19 California Constitutions and other California statutes, but has violated this duty, by  
20 adopting the Non-Contracted Hospital Rates in violation of 42 U.S.C. sections  
21 1396a(a)(30)(A), 1396a(a)(13)(A), 1396u-2(b)(2)(D) and 1396u-2(b)(2)(A)(ii), 42  
22 C.F.R. sections 447.205 and 438.114, the State Plan, the Fifth Amendment of the  
23 U.S. Constitution, section 19 of Article I of the California Constitution, California  
24 Welfare and Institutions Code sections 14091.3(c)(3), California Health and Safety  
25 Code sections 1268.2 and 1317.2a(d), the California Administrative Procedure Act,  
26 California Government Code section 11340, *et seq.*, Title 22, California Code of  
27 Regulations, section 50004 and Title 28, California Code of Regulations, section  
28 1300.71(a)(3).

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1 124. Specifically, the Non-Contracted Hospital Rates violate the California  
2 Constitution and California statutes as follows:

3 125. Section 19 of Article I of the California Constitution permits the taking  
4 of "private property" by the government only when the taking is "for a public use  
5 and only when just compensation . . . has first been paid to, or into court for, the  
6 owner."

7 126. Takings are not limited to outright seizures or condemnations of  
8 physical property, but may include the forced diminution in the value of private  
9 property resulting from governmental regulation of the use of private business or  
10 property.

11 127. The "public use" clause of the section 19 of Article I of the California  
12 Constitution permits any taking of private property only for a public purpose.

13 128. The takings affected by the Non-Contracted Hospital Rates are not for a  
14 public purpose. In this regard:

15 a. The Non-Contracted Hospital Rates force Plaintiff and its members to  
16 absorb losses and thereby directly subsidize privately owned and operated Medi-Cal  
17 managed care plans;

18 b. Given the prevailing capitation payment arrangements with the  
19 Department, the Medi-Cal managed care plans are the sole, direct and substantial  
20 beneficiaries of the Non-Contracted Hospital Rates;

21 c. No public purpose for the Non-Contracted Hospital Rates was  
22 enunciated in Assembly Bill 1183 or any of the Department's All Plan Letters;

23 d. Any public benefit that might result from plaintiff's members accepting  
24 the Non-Contracted Hospital Rates is, at best, indirect, incidental, and attenuated;

25 e. The Non-Contracted Hospital Rates were enacted at the instance and  
26 for the pecuniary benefit of the managed care industry in California as a means of  
27 enhancing the profitability of private managed care plans; any intended or alleged  
28 public benefit is pretextual.



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1 129. Accordingly, the takings effectuated by the Non-Contracted Hospital  
2 Rates are *per se* unconstitutional pursuant to the California Constitution.

3 130. The Non-Contracted Hospital Poststabilization Rates violate Welfare  
4 and Institutions Code section 14091.3(c)(3) because the Non-Contracted Hospital  
5 Poststabilization Rates are not consistent with 42 C.F.R. section 438.114(e) as  
6 required by section 14091.3(c)(3). To the extent 42 C.F.R. section 438.114(e)  
7 specifies a payment rate, it specifies a payment rate equal to the amount that would  
8 have been paid on a fee-for-service basis under the Medicare program through its  
9 references to various Medicare regulations. Non-Contracted Hospital  
10 Poststabilization Rates are generally lower than the Medicare fee-for-service rates.

11 131. To the extent that 42 C.F.R. section 438.114(e) does not specify a rate  
12 of payment, the Non-Contracted Hospital Poststabilization Rates are invalid because  
13 they result from an invalid delegation of legislative authority to the Department and  
14 the Director pursuant to Welfare and Institutions Code section 14091.3(c), as the  
15 Department and the Director are provided no standards whatsoever by the  
16 legislature for the development of Non-Contracted Hospital Poststabilization Rates.  
17 This delegation without standards violates the California Constitution by  
18 impermissibly authorizing the executive branch of state government to assume  
19 legislative functions which are the exclusive province of the state legislature.

20 132. The Non-Contracted Hospital Rates are invalid as underground  
21 rulemaking without compliance with the procedural requirements of the California  
22 Administrative Procedure Act, Government Code sections 11340, *et seq.* The Non-  
23 Contracted Hospital Rates constitute regulations under California law because they  
24 are rules of general applications. However, they were implemented pursuant to APL  
25 08-008 and APL 08-010, neither of which was adopted in accordance with the  
26 California Administrative Procedure Act.

27 133. The Non-Contracted Hospital Rates are invalid because they conflict  
28 with the "reasonable and customary" payment standard of Title 28, California Code

1 of Regulations, section 1300.71(a)(3).

2 134. The Non-Contracted Hospital Poststabilization Rates are invalid  
3 because they attempt to establish a lower rate of payment for poststabilization  
4 services in direct contradiction of the statutory requirement in AB 1203 that a plan  
5 pay charges for care if it does not notify the hospital of its decision to either approve  
6 post-stabilization services or transfer the patient or if a plan decides to transfer a  
7 patient but fails to transfer the patient "within a reasonable time."

8 135. The Non-Contracted Hospital Rates are invalid because they attempt to  
9 establish a lower rate of payment for emergency services than those required by  
10 California Health and Safety Code section 1317.2a(d).

11 136. The Non-Contracted Hospital Rates are invalid because they violate  
12 Title 22, California Code of Regulations, section 50004, by establishing rates that  
13 are inconsistent with and violate the State Plan.

14 137. Plaintiff has performed all conditions precedent to the filing of the  
15 petition for mandamus. No other adequate remedies exist under statute, regulation  
16 or other provision of law. The existence of declaratory relief and injunctive relief  
17 does not prevent the use of mandate. (*County of Los Angeles v. State Department of*  
18 *Public Health* (1958) 158 Cal.App.2d 425, 446.)

19  
20 **NINTH CAUSE OF ACTION**

21 **(DECLARATORY RELIEF)**

22 138. Plaintiff hereby incorporates by reference paragraphs 1 through 137,  
23 inclusive, as though fully set forth herein.

24 139. An actual and justiciable controversy exists between Plaintiff and the  
25 Director regarding the validity of the Non-Contracted Hospital Rates. Plaintiff  
26 contends that the Non-Contracted Hospital Rates are invalid and unlawful in  
27 violation of federal statute, federal regulations, the State Plan, the U.S. and  
28 California Constitutions, and California laws, while the Director contends that the

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1 Non-Contracted Hospital Rates are valid in all respects.

2 140. Accordingly, pursuant to 28 U.S.C. section 2201, Plaintiff requests this  
3 Court to declare that the Non-Contracted Hospital Rates are invalid and unlawful.

4 141. No administrative appeal process or other administrative remedy is  
5 available to Plaintiffs to challenge the AB 1183 Rate Reductions.

6 142. All of the said injuries are great and immediate, for which damages at  
7 law are inadequate, and for which plaintiffs have no plain, adequate or speedy relief  
8 at law or otherwise.

9

10 **WHEREFORE**, Plaintiff prays for judgment as follows:

11 1. For an Order declaring that the Non-Contracted Hospital Rates violate  
12 42 U.S.C. sections 1396a(a)(30)(A), 1396a(a)(13) and 1396u-2(b)(2), 42 C.F.R.  
13 section 447.205, and the Fifth Amendment of the United States Constitution and are  
14 thus invalid and/or preempted by the Supremacy Clause of the United States  
15 Constitution, art. IV;

16 2. For an Order declaring that the Non-Contracted Hospital  
17 Poststabilization Rates violate 42 C.F.R. section 438.114 and are thus invalid and/or  
18 preempted by the Supremacy Clause of the United States Constitution, art. IV;

19 3. For an Order declaring that the Non-Contracted Hospital Rates  
20 represent a *de facto* amendment to the State Plan and therefore said rate reductions  
21 cannot be imposed without federal approval;

22 4. For an Order declaring that the Non-Contracted Hospital Rates violate  
23 section 19 of Article I (takings clause) and section 3 of Article III (separation of  
24 powers) of the California Constitution, the California Administrative Procedure Act,  
25 California Government Code section 11340, *et seq.*, Title 22, California Code of  
26 Regulations, section 50004, and Title 28, California Code of Regulations  
27 1300.71(a)(3), and are thus invalid;

28 5. For an Order declaring that the Non-Contracted Hospital Emergency

HOOPER, LUNDY & BOOKMAN, INC.  
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1 Rates violate California Health and Safety Code section 1317.2a(d), and are thus  
2 invalid;

3 6. For an Order declaring that the Non-Contracted Hospital  
4 Poststabilization Rates violate California Health and Safety Code section 1268.2,  
5 and Welfare and Institutions Code section 14091.3(c)(3), and are thus invalid;

6 7. For an Order declaring that, when setting Non-Contracted Hospital  
7 Rates in the future, the Department must consider whether the rates have a  
8 reasonable relationship to the costs of providing services to Medi-Cal beneficiaries  
9 to comply with federal Medicaid requirements and so as to prevent a taking for the  
10 sole, primary benefit of a private party;

11 8. For a Writ of Mandate invalidating the Non-Contracted Hospital Rates  
12 because they violate 42 U.S.C. sections 1396a(a)(30)(A), 1396a(a)(13) and 1396u-  
13 2(b)(2), 42 C.F.R. section 447.205, the Fifth Amendment of the United States  
14 Constitution, section 19 of Article I (takings clause) and section 3 of Article III  
15 (separation of powers) of the California Constitution, the California Administrative  
16 Procedure Act, California Government Code section 11340, *et seq.*, Title 22,  
17 California Code of Regulations, section 50004, and Title 28, California Code of  
18 Regulations 1300.71(a)(3), and ordering the Director not to implement the Non-  
19 Contracted Hospital Rates;

20 9. For a Writ of Mandate invalidating the Non-Contracted Hospital  
21 Emergency Rates because they violate California Health and Safety Code section  
22 1317.2a(d), and ordering the Director not to implement the Non-Contracted Hospital  
23 Emergency Rates;

24 10. For a Writ of Mandate invalidating the Non-Contracted Hospital  
25 Poststabilization Rates because they violate 42 C.F.R. section 438.114, California  
26 Health and Safety Code section 1268.2, and California Welfare and Institutions  
27 Code section 14091.3(c)(3) and ordering the Director not to implement the Non-  
28 Contracted Hospital Poststabilization Rates;

1 11. For an Order preliminarily and permanently enjoining Director from  
2 effectuating the Non-Contracted Hospital Rates;

3 12. For the costs of suit, including reasonable attorneys' fees incurred by  
4 Plaintiff pursuant to 42 U.S.C. § 1988 or as may otherwise be authorized by law;  
5 and

6 13. Such other and further relief as may be just and proper.  
7

8 DATED: May 22, 2009

HOOPER, LUNDY & BOOKMAN, INC.

9  
10 By: 

LLOYD A. BOOKMAN

Attorneys for Plaintiff  
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**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 Dean D. Pregerson and the assigned discovery Magistrate Judge is Jacqueline Chooljian.

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

**CV09- 3694 DDP (JCx)**

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.

Lloyd A. Bookman, SBN 89251  
Felicia Y. Sze, SBN 233441  
HOOPER, LUNDY & BOOKMAN, INC.  
1875 Century Park East, Suite 1600  
Los Angeles, California 90067-2517  
(310) 551-8111

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

CALIFORNIA HOSPITAL ASSOCIATION

PLAINTIFF(S)

v.

DAVID MAXWELL-JOLLY, DIRECTOR OF THE  
CALIFORNIA DEPARTMENT OF HEALTH CARE  
SERVICES

DEFENDANT(S)

CASE NUMBER

CV09-3694 DDP (Gx)

SUMMONS

TO: DEFENDANT(S): DAVID MAXWELL-JOLLY

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Lloyd A. Bookman, whose address is 1875 Century Park East, Suite 1600, Los Angeles, California 90067-2517. If you fail to do so, 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, U.S. District Court

Dated: May 22, 2009

By: Natalie Gonzalez

Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

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

<b>I (a) PLAINTIFFS</b> (Check box if you are representing yourself <input type="checkbox"/> ) CALIFORNIA HOSPITAL ASSOCIATION		<b>DEFENDANTS</b> DAVID MAXWELL-JOLLY, DIRECTOR OF THE CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES	
<b>(b) Attorneys</b> (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Lloyd A. Bookman and Felicia Y Sze Hooper, Lundy & Bookman, Inc., 1875 Century Park East, Suite 1600 Los Angeles, CA 90067 (310) 551-8111		Attorneys (If Known)	

  

<b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)		<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%;"> <tr> <td style="width:50%;">           Citizen of This State  <input type="checkbox"/> 1            Citizen of Another State  <input type="checkbox"/> 2            Citizen or Subject of a Foreign Country  <input type="checkbox"/> 3         </td> <td style="width:50%;"> <table style="width:100%;"> <tr> <td style="text-align: center;">PTF DEF</td> <td style="text-align: center;">PTF DEF</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/> 1 <input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 4 <input type="checkbox"/> 4</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/> 2 <input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 5 <input type="checkbox"/> 5</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/> 3 <input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 6 <input type="checkbox"/> 6</td> </tr> </table> </td> </tr> </table>		Citizen of This State <input type="checkbox"/> 1 Citizen of Another State <input type="checkbox"/> 2 Citizen or Subject of a Foreign Country <input type="checkbox"/> 3	<table style="width:100%;"> <tr> <td style="text-align: center;">PTF DEF</td> <td style="text-align: center;">PTF DEF</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/> 1 <input type="checkbox"/> 1</td> <td style="text-align: center;"><input type="checkbox"/> 4 <input type="checkbox"/> 4</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/> 2 <input type="checkbox"/> 2</td> <td style="text-align: center;"><input type="checkbox"/> 5 <input type="checkbox"/> 5</td> </tr> <tr> <td style="text-align: center;"><input type="checkbox"/> 3 <input type="checkbox"/> 3</td> <td style="text-align: center;"><input type="checkbox"/> 6 <input type="checkbox"/> 6</td> </tr> </table>	PTF DEF	PTF DEF	<input type="checkbox"/> 1 <input type="checkbox"/> 1	<input type="checkbox"/> 4 <input type="checkbox"/> 4	<input type="checkbox"/> 2 <input type="checkbox"/> 2	<input type="checkbox"/> 5 <input type="checkbox"/> 5	<input type="checkbox"/> 3 <input type="checkbox"/> 3	<input type="checkbox"/> 6 <input type="checkbox"/> 6
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<b>IV. ORIGIN</b> (Place an X in one box only.) <input checked="" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify): <input type="checkbox"/> 6 Multi-District Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge							
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<b>V. REQUESTED IN COMPLAINT: JURY DEMAND:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (Check 'Yes' only if demanded in complaint)		<b>MONEY DEMANDED IN COMPLAINT:</b> \$ 0.00	
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**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.)  
 Plaintiff claims that Defendant's Non-Contracted Hospital Rates violate the federal Medicaid Act, 42 U.S.C. ss. 1396a(a)(3)(A), 1395a(a)(13)(A) and 1396v-2(y)(2), 42 C.F.R. ss. 447.205 and 438.114, the U.S. and California Constitutions' takings clauses, and state laws.

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

<b>OTHER STATUTES</b> <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	<b>CONTRACT</b> <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 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 <b>REAL PROPERTY</b> <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	<b>TORTS</b> <b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. 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 <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<b>TORTS</b> <b>PERSONAL PROPERTY</b> <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 <b>BANKRUPTCY</b> <input type="checkbox"/> 22 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>CIVIL RIGHTS</b> <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	<b>PRISONER PETITIONS</b> <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 <b>FORFEITURE PENALTY</b> <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	<b>LABOR</b> <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 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 61 HIA(1395ff) <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)) <b>FEDERAL TAX SUITS</b> <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.

CIVIL COVER SHEET

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Page 1 of 2



UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEETVIII(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-0722

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 CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES - located in Sacramento County but has offices in Los Angeles County	

(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
Los Angeles	

\* 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):


  
Lloyd A. Bookman

Date May 22, 2009

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.)