

1 EDMUND G. BROWN JR.
 Attorney General of California
 2 KARIN S. SCHWARTZ
 SUSAN M. CARSON
 3 Supervising Deputy Attorneys General
 JOSHUA N. SONDEIMER
 4 GREGORY D. BROWN (State Bar No. 219209)
 MICHAEL A. ZWIBELMAN
 5 Deputy Attorneys General
 455 Golden Gate Avenue, Suite 11000
 6 San Francisco, CA 94102-7004
 Telephone: (415) 703-5461
 7 Fax: (415) 703-5480
 E-mail: Gregory.Brown@doj.ca.gov
 8 *Attorneys for Defendants*

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 10 IN THE UNITED STATES DISTRICT COURT
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 12 OAKLAND DIVISION

13
 14 **V.L., et al.,**

15 Plaintiffs,

16 v.

17 **JOHN A. WAGNER, et al.,**

18 Defendants.
 19

CV 09-4668 CW

**DEFENDANTS' RESPONSE RE:
 IMPLEMENTATION ISSUES**

1 Defendants' sole concern is with implementing the preliminary injunction as quickly as
 2 possible to ensure compliance with the court's order that recipients of In-Home Supportive
 3 Services (IHSS) not experience any disruption in benefits. Accordingly, defendants submit this
 4 brief to further explain to the court and plaintiffs what options are available for implementing the
 5 injunction, and also to correct the inaccuracies and misrepresentations in Plaintiffs' Additional
 6 Response Re: Implementation Issues (Docket No. 183).

7 Defendants have two options available to implement the injunction. First, defendants can
 8 have the counties implement the necessary changes to the Case Management Information and
 9 Payrolling System (CMIPS) by re-entering the information into CMIPS for each recipient who
 10 would have been impacted by ABX4 4. This is far and away the fastest option available, and is
 11 the only option that will give defendants any reasonable likelihood of implementing the
 12 injunction prior to November 1, 2009. Lopez Decl., ¶ 4. Accordingly, defendants recommend
 13 that they be permitted to pursue this option, as it will ensure that recipients continue to receive
 14 their benefits with minimal, if any, disruptions. *Id.*

15 In the alternative, defendants can have their outside vendor, EDS, make the changes
 16 necessary to CMIPS to undo the implementation of ABX4 4. This process will require EDS to
 17 develop a new program, which could take approximately five weeks to implement even with EDS
 18 working as fast as possible. Quichocho Decl., ¶¶ 10-11. Under this option, the changes cannot
 19 possibly be made by November 1, 2009, and there is a significant possibility that they cannot be
 20 completed by mid-November, when providers are scheduled to be paid.¹ This option also will
 21 require extensive work by the counties, as the EDS reprogramming of CMIPS would delete any
 22 information that has been entered into CMIPS since October 9, 2009, and thus the counties would
 23 have to manually re-enter all changes and updates to recipients' CMIPS case files that have been
 24 made since October 9, 2009.² Lopez Decl., ¶ 4. Accordingly, defendants recommend that they

25 ¹ Plaintiffs' and the counties' assertion that there will be no problem as long as EDS
 26 reprograms CMIPS by November 15, 2009 is incorrect. First, there is no guarantee that EDS can
 27 complete the reprogramming of CMIPS by that date. Quichocho Decl., ¶ 10. Second, providers
 can and do turn in timesheets at any time of month, and thus many providers are likely to turn in
 their timesheets prior to November 15, 2009. *See* Collins Decl., ¶ 9 (Docket No. 185).

28 ² Approximately 6,000 cases that were to be impacted by ABX4 4 have been modified

(continued...)

1 not be required to pursue this option. In the event that the court orders defendants to pursue this
2 option, defendants will work as expeditiously as possible to implement the changes, but the court
3 and plaintiffs must recognize that the changes cannot be made within a short time frame and may
4 take up to 5 weeks to complete.

5 Plaintiffs' Additional Response contains numerous inaccuracies and misrepresentations
6 that defendants are obligated to correct. First, plaintiffs falsely state that the problems regarding
7 timely implementation of the preliminary injunction were "created" by defendants. Plaintiffs'
8 Additional Response at 1. Nothing could be further from the truth. The fact that the injunction
9 must be implemented at the last minute is entirely the result of plaintiffs' unreasonable delay in
10 bringing their motion for a preliminary injunction. Plaintiffs waited until 69 days after the
11 enactment of ABX4 4 to seek a preliminary injunction in order to try to gain a tactical advantage
12 in this litigation by shortening defendants' time to respond; having done so, plaintiffs cannot now
13 contend with a straight face that defendants are in any way responsible for the difficulties
14 involved in reversing the changes to CMIPS at the last minute. Plaintiffs' counsel are more than
15 familiar with the complexities of the CMIPS system from their work in *Martinez v.*
16 *Schwarzenegger*, Civ. No. 09-2306. Further, they were notified on August 19, 2009 that the
17 implementation of ABX4 4 would require extensive changes to the CMIPS system. *See* Lopez
18 Decl., Exh. A (August 19, 2009 email to IHSS Stakeholders, including Deborah Doctor of
19 Disability Rights California, stating that the IHSS changes under ABX4 4 will not be
20 implemented on September 1 and will require the outside vendor to make changes to CMIPS).
21 Moreover, as plaintiffs are well aware, defendants were required by state law to take all
22 reasonable steps to implement ABX4 4 prior to the court's order granting the preliminary
23 injunction on October 19, 2009, and thus defendants could not legally take any steps to hinder,
24 stop or reverse the implementation of ABX4 4 prior to the issuance of the preliminary injunction.
25 *See* Cal. Welf. & Inst. Code §§ 12309(e) & 12309.2; Lopez Decl., ¶ 8.

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28 (...continued)

since October 9, 2009. Lopez Decl., ¶ 4; Quichocho Decl., ¶ 6.

1 Second, plaintiffs' claims that defendants' outside vendor, EDS, can implement the
2 necessary changes in the CMIPS system in less than five weeks is simply incorrect. Indeed,
3 plaintiffs admit as much, acknowledging that "Plaintiffs are not privy to the internal workings of
4 the CMIPS computer system, or the time it might take EDS to develop an automated program to
5 restore proper eligibility." Plaintiffs' Additional Response at 2; *see also* Quichocho Decl., ¶¶ 10-
6 11 (explaining why the implementation will take up to five weeks). Plaintiffs' remaining claims
7 regarding changes to the CMIPS system are based upon plaintiffs' pure speculation and are
8 factually incorrect. For example, plaintiffs' declarant Leland Collins contends that the State
9 should manually input the data, but Mr. Collins is misinformed. Collins Decl., ¶¶ 11-12 (Docket
10 No. 185). The State cannot manually input this information both because it does not have the
11 staff trained to do this, and also because the counties are the keepers of the relevant information
12 to input – the State does not have that information. Lopez Decl., ¶¶ 6-7. Plaintiffs also
13 incorrectly presume that it would be easier to reconstruct the system in place prior to October 9
14 than it was to program the original changes. The changes developed and implemented on
15 October 9 were based on a functionality already present in CMIPS, and CMIPS merely had to be
16 adapted to meet the specific requirements of ABX4 4. Quichocho Decl., ¶ 8. No similar
17 functionality exists today in CMIPS that could be leveraged and adapted for this purpose, and
18 accordingly EDS will have to create, design, and test a new functionality to reverse the changes
19 that already have been made. *Id.*, ¶¶ 8, 10. EDS has never made these types of changes in the
20 25+ years that EDS has supported CMIPS, and the magnitude of this type of change would
21 require extensive work and analysis by EDS to develop a solution. *Id.*, ¶ 10.

22 Third, the court should deny plaintiffs' request to have the State send notices to providers
23 as well as recipients. The State never sends notices of action or other notices to providers, and
24 sending notices of the court's injunction to providers will at best be unnecessary, expensive, and
25 redundant, and could potentially cause confusion among the providers, most of whom likely had
26 no knowledge that any reductions were set to take place. Lopez Decl., ¶ 9. Additionally, the
27 recipient is the employer of the provider, and accordingly the recipient has always been
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1 responsible for communicating relevant information to his or her IHSS provider; the State has
2 never had this role. *Id.*

3 Finally, plaintiffs' request that the State, rather than the counties, be responsible for
4 entering any manual changes into CMIPS should be denied. The counties are the only ones who
5 can physically enter this information in a timely fashion. Lopez Decl., ¶¶ 3-4. CDSS has only
6 four employees who have experience working with CMIPS, and their experience is limited and
7 they are not trained to input case assessment information into CMIPS because that process is
8 handled by the counties at the local level. *Id.*, ¶ 3. Indeed, the State does not keep the
9 information that would need to be input, as that information is maintained at the local county
10 level. *Id.*, ¶¶ 6-7. Finally, it is highly inappropriate for plaintiffs to seek to micromanage the
11 implementation process between the State and the counties, or to interfere with which set of
12 taxpayer funds will be used to pay for implementing the preliminary injunction. For each of these
13 reasons, defendants respectfully request that the court not issue plaintiffs' revised proposed
14 preliminary injunction order, and instead simply allow defendants to manage compliance with the
15 preliminary injunction as expeditiously as possible.

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17 Dated: October 21, 2009

Respectfully submitted,

18 EDMUND G. BROWN JR.
19 Attorney General of California
20 KARIN S. SCHWARTZ
21 SUSAN M. CARSON
22 Supervising Deputy Attorneys General

/s/ Gregory D. Brown

23 JOSHUA N. SONDEIMER
24 GREGORY D. BROWN
25 MICHAEL A. ZWIBELMAN
26 Deputy Attorneys General
27 *Attorneys for Defendants*

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