

09-16359

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

**MIKESHA MARTINEZ, by and through
her husband and next friend Carlos
Martinez, et al.,**

Plaintiffs and Appellees,

v.

**ARNOLD SCHWARZENEGGER,
Governor of the State of California, et al.,**

Defendants and Appellants.

On Appeal from the United States District Court
for the Northern District of California
No. CV 09-2306 CW
The Honorable Claudia Wilken, Judge

**REQUEST TO SET ORAL ARGUMENT
(9TH CIR. RULES 3-3 & 34-3)**

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Pursuant to Ninth Circuit Rule 34-3, State Defendants request this Court set oral argument as soon as practicable in the following cases that have been fully briefed: *Martinez v. Schwarzenegger*, Case No. 09-16359; *Managed Care Pharmacy v. Maxwell-Jolly*, Case No. 09-55692; *California Pharmacists v. Maxwell-Jolly*, Case No. 09-55365; and *California Pharmacists v. Maxwell-Jolly*, Case No. 09-55532.

Each of these cases is an expedited preliminary injunction appeal. *See* 9th Cir. R. 3-3, 34-3. Each case involves a preemption challenge to a state statute that is designed to create cost savings for the State's Medicaid program. As set forth in the table below, the injunctions entered in each of these cases are costing the State over \$25 million per month, totaling over \$150 million in total lost savings to date.

Case	Date Injunction Issued	Date Appeal Fully Briefed	Cost of Injunction per Month	Total Cost of Injunction to State
<i>Martinez v. Schwarzenegger</i> (09-16359)	6/26/09	9/14/09	\$6.5 million	+\$ 25.3 million
<i>Managed Care Pharmacy v. Maxwell-Jolly</i> (09-55692)	2/27/09	8/18/09	\$11.54 million	\$92.32 million
<i>California Pharmacists v. Maxwell-Jolly</i> (09-55365, 09-55532)	4/6/09	6/16/09 (09-55365) 7/30/09 (09-5532)	\$7-8 million (combined)	+\$50 million (combined)

The lost savings come at a time that the State is grappling with a financial crisis of unprecedented dimensions. Further, the uncertainty in the law created by the as-yet unreviewed decisions has made it difficult for the State to budget for the future. The State needs the guidance that the Court's anticipated decisions will provide if it is to be in a position to address its budget crisis without running afoul of standards that may yet to be announced or clarified. Therefore, State Defendants request that oral argument be set as soon as practicable.¹

Dated: November 19, 2009 Respectfully submitted,

EDMUND G. BROWN JR.
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DOUGLAS M. PRESS
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/s/ SUSAN M. CARSON
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¹ Please note that due to preplanned vacations and the holidays, counsel for State Defendants are not available from December 18 through 31, 2009.

CERTIFICATE OF SERVICE

Case Name: **Mikeshha Martinez, et al. v.** No. **09-16359**
Schwarzenegger, et al.

I hereby certify that on November 19, 2009, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

REQUEST TO SET ORAL ARGUMENT (9th Cir. RuleS 3-3 & 34-3)

Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

I further certify that some of the participants in the case are not registered CM/ECF users. On November 19, 2009, I have mailed the foregoing document(s) by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days to the following non-CM/ECF participants:

Clerk to Honorable Claudia Wilken
United States District Court-
Northern District
1301 Clay Street, Suite 400 S
Oakland, CA 94612

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 19, 2009, at San Francisco, California.

Nancy Quach
Declarant

/s/ Nancy Quach
Signature