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UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA

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OAKLAND DIVISION

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14 ESTHER DARLING; RONALD BELL by his
 guardian ad litem Rozene Dilworth; GILDA
 15 GARCIA; WENDY HELFRICH by her guardian
 ad litem Dennis Arnett; JESSIE JONES; RAIF
 16 NASYROV by his guardian ad litem Sofiya
 Nasyrova; ALLIE JO WOODARD, by her
 17 guardian ad litem Linda Gaspard-Berry;
 individually and on behalf of all others similarly
 18 situated,

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Plaintiffs,

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vs.

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TOBY DOUGLAS, Director of the Department of
 Health Care Services, State of California,
 22 DEPARTMENT OF HEALTH CARE
 SERVICES,

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Defendants.

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Case No. C09-03798 SBA

**STIPULATION AND
~~PROPOSED~~ ORDER FOR
 PRELIMINARY INJUNCTION
 BRIEFING SCHEDULE AND
 HEARING DATE**

The Honorable Sandra Brown
 Armstrong

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1 This Stipulation is based on the following facts and circumstances:

2 1. On April 21, 2011, the parties stipulated to a partial lift of the stay of this action to
3 allow Plaintiffs to file a Motion for Leave to Supplement the First Amended Complaint, and if
4 such Motion was granted, to file a Motion for Preliminary Injunction against implementation of
5 AB 97, which eliminates Adult Day Health Care (ADHC) as a Medi-Cal optional benefit on the
6 first day of the first calendar month following 60 days after the receipt of federal approval. Cal.
7 Welf. & Inst. § 14589(d). . The parties further stipulated to briefing schedules for both Motions.
8 (Docket No. 204).

9 2. On April 25, 2011, the parties filed a Superseding Stipulation to modify the briefing
10 schedule for Plaintiffs' Motion for Leave to Supplement the First Amended Complaint. (Docket
11 No. 210).

12 3. On April 27, 2011, this Court granted the parties' request and the following briefing
13 schedule was set for the Plaintiffs' Motion for Preliminary Injunction: Hearing on June 28, 2011,
14 Motion to be filed on May 24, 2011, Opposition due on June 14, Reply due on June 21. (Docket
15 No. 211).

16 4. The Court granted Plaintiffs' Motion for Leave to Supplement the First Amended
17 Complaint on June 2, 2011. (Docket No. 217).

18 5. Plaintiffs' Second Amended Complaint was filed on June 2, 2011. (Docket No. 218).

19 6. Pursuant to AB 97, ADHC shall be discontinued as a Medi-Cal benefit on the first day
20 of the first calendar month following 60 days after the receipt of federal approval. Cal. Welf. &
21 Inst. § 14589(d). Federal approval of a State Plan Amendment to remove the ADHC benefit was
22 requested on May 12, 2011 and remains pending. The State has requested that approval be
23 awarded in time to allow implementation by September 1, 2011.

24 7. Plaintiffs have requested that the Motion for Preliminary Injunction be heard and
25 decided before the end of July 2011 based on plaintiffs' position that ADHC recipients and
26 ADHC providers need a minimum of 30 days notice in advance of the proposed September 1,
27 2011 implementation date as to whether or not AB 97 will be enjoined.

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1 8. The parties have agreed on a hearing date and briefing schedule, subject to the Court's
2 approval, as follows: Hearing July 26, Motion to be filed on June 9, 2011, Opposition to be filed
3 June 29, Reply due on July 12.

4 9. Plaintiffs are aware that defendants intend to seek a stay of district court proceedings
5 in this Court and, if they deem necessary, in the Ninth Circuit Court of Appeals, and that
6 defendants' stipulation to the above schedule is intended to be effective only to the extent that
7 defendants' request for a stay before either court remains pending or is denied.

8 THE PARTIES, by and through their respective counsel, HEREBY STIPULATE as
9 follows:

10 a) Pursuant to Civil Local Rules 6-1, 6-2, 7-2, and 7-3, and subject to Court approval,
11 Plaintiffs' motion for preliminary injunction may be scheduled for hearing on July 26, 2011,
12 subject to the Court's availability, and will be briefed under the following schedule: opening
13 brief to be filed and served by June 9, 2011; opposition brief to be filed and served by June 29,
14 2011, and any reply brief to be filed and served by July 12, 2011.

15 b) Defendants' stipulation to the above schedule is without prejudice to defendants' right
16 to seek a stay of the district court proceedings, and is intended to be effective only to the extent
17 that defendants' request for a stay of proceedings before this Court or the Ninth Circuit Court of
18 Appeals remains pending or is denied. In addition, this stipulation shall not be construed as an
19 acknowledgment or concession by Defendants that the filing of a motion for a preliminary
20 injunction is timely or appropriate, and is without prejudice to Defendants' rights to oppose the
21 motion preliminary injunction motion on any procedural and substantive ground.

22 Dated: June 7, 2011

KENNETH A. KUWAYTI
MORRISON & FOERSTER LLP

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25 By: /s/ Kenneth A. Kuwayti
KENNETH A. KUWAYTI

26 Attorneys for Plaintiffs
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Dated: June 7, 2011

KAMALA D. HARRIS
Attorney General of California
JOSHUA SONDEIMER
Supervising Deputy Attorney General

By: /s/ Joshua Sondheimer
JOSHUA SONDEIMER
Attorneys for Defendants

ORDER

PURSUANT TO THE PARTIES' STIPULATION, IT IS SO ORDERED. The hearing on Plaintiffs' motion for preliminary injunction shall be set for July 26, 2011 at 1:00 PM

Dated: June 21, 2011

Sandra B. Armstrong
Honorable Sandra Brown Armstrong
United States District Judge

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GENERAL ORDER 45 ATTESTATION

I, Kenneth A. Kuwayti, am the ECF User whose ID and password are being used to file this STIPULATION AND [PROPOSED] ORDER FOR PRELIMINARY INJUNCTION BRIEFING SCHEDULE AND HEARING DATE. In compliance with General Order 45, X.B., I hereby attest that JOSHUA SONDEIMER has concurred in this filing.

Dated: June 7, 2011

By: /s/ Kenneth A. Kuwayti
KENNETH A. KUWAYTI