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2 UNITED STATES DISTRICT COURT  
3 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
4 OAKLAND DIVISION

5 ESTHER DARLING; RONALD BELL by  
6 His guardian ad litem Rozene Dilworth;  
7 GILDA GARCIA; WENDY HELFRICH by  
8 her guardian ad litem Dennis Arnett; JESSIE  
9 JONES; RAIF NASYROV by his guardian  
10 ad litem Sofiya Nasyrova; ALLIE JO  
11 WOODARD, by her guardian ad litem Linda  
12 Gaspard-Berry; individually and on behalf of  
13 all others similarly situated,

14 Plaintiffs,

15 vs.

16 TOBY DOUGLAS, Director of the  
17 Department of Health Care Services, State of  
18 California, DEPARTMENT OF HEALTH  
19 CARE SERVICES,

20 Defendants.

Case No: C 09-03798 SBA

**ORDER CONTINUING HEARING**

21 The parties are before the Court on Defendants' request to continue the hearing on  
22 Plaintiffs' motion for preliminary injunction, which presently is scheduled for July 26,  
23 2011. At the direction of the Court, the parties have submitted letter briefs which set forth  
24 their respective positions on whether the Court should continue the hearing date. Dkt. 299,  
25 301.

26 The July 26 hearing date is based on the fact that the State of California passed  
27 Assembly Bill ("AB") 97, which will entirely eliminate Adult Day Health Care ("ADHC")  
28 as an optional Medi-Cal benefit, effective September 1, 2011. While acknowledging that  
the State has a right to eliminate such services, Plaintiffs contend that it cannot legally do  
so without first ensuring that an adequate transition plan is in place. As such, Plaintiffs  
have filed a motion for preliminary injunction to enjoin the elimination of ADHC under AB  
97 "until Defendants demonstrate that recipients will receive adequate, appropriate and

1 uninterrupted replacement services necessary to prevent their institutionalization.” Dkt.  
2 225.

3 On July 22, 2011, Defendants notified the Court that they have obtained approval  
4 from the Centers for Medicare and Medicaid to maintain ADHC as a benefit until at least  
5 December 1, 2011. Dkt. 299. Based on that delay, Defendants posit that the adjudication  
6 of Plaintiffs’ motion would be premature, since the circumstances underlying said motion  
7 are likely to change in view of this delay. In particular, Defendants represent that the time  
8 extension will “allow the Department to further develop the transition program to ensure  
9 that there is a seamless transition of ADHC beneficiaries to alternative services.” Dkt. 299  
10 at 2. Plaintiffs oppose continuing the hearing date, claiming that Defendants have made no  
11 showing that their allegedly inadequate transition plan will improve prior to December 1,  
12 2011. Dkt. 301.

13 The Court is persuaded that the change in circumstances presents good cause for  
14 continuing the July 26 motion hearing date. Since Plaintiffs’ motion is based on the  
15 assumption that an adequate transition plan will not be in place by termination date of the  
16 ADHC benefit, it would be premature for the Court to proceed with Plaintiffs’ motion now  
17 that the termination date has been delayed until December 1, 2011. Plaintiffs’ assertion that  
18 Defendants will do nothing to improve their transition plan is speculative. Moreover, even  
19 if Defendants fail to change their transition plan, Plaintiffs will be not be prejudiced by the  
20 continuance, since their motion for preliminary injunction will be heard prior to December  
21 1, 2011.<sup>1</sup> Accordingly,

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26 <sup>1</sup> Plaintiffs have requested that, in the event the Court continues the motion, the  
27 Court authorize the parties to engage in limited discovery so that they will have current  
28 information concerning Defendants’ transition efforts. Plaintiffs are granted leave to  
conduct such limited discovery. Nonetheless, the Court encourages the parties to work  
cooperatively to provide relevant information to one another without resort to formal  
discovery, to the extent possible.

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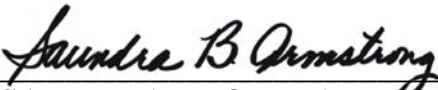
IT IS HEREBY ORDERED THAT:

1. Defendants' request to continue the hearing on Plaintiffs' motion for preliminary injunction is GRANTED. The hearing on Plaintiffs' motion is CONTINUED from July 26, 2011, to November 1, 2011 at 1:00 p.m.

2. By no later than October 14, 2011, Plaintiffs shall file a supplemental brief in support of their motion for preliminary injunction to incorporate factual developments regarding the Defendants' transition plan since the filing of the motion. Defendants shall file a responsive brief by October 21, 2011. Both briefs shall be limited to eight (8) pages.

IT IS SO ORDERED.

Dated: July 22, 2011

  
SAUNDRA BROWN ARMSTRONG  
United States District Judge