



Lawsuits on IHSS Provisions of the State Budget

Status as of February 23, 2011

* New information is highlighted.

Color Coding of Cases
Dominguez v. Schwarzenegger: regarding IHSS wages
V.L. et al v. Wagner: regarding Functional Index Score/Rank cuts
Ellis v. Wagner: regarding disqualifying crimes for IHSS providers and applicants
Northern California ADAPT v. Wagner: regarding Share of Cost Buy-out
Putz v. Schwarzenegger re: Public Authority funding reduction
St. John's Well Child and Family Center v. Schwarzenegger: re: Governor's line-item vetoes

Plaintiff(s) & Defendant(s)	Court	Case Number	Summary & Relief Sought	Status												
<p><i>Dominguez et al v. Schwarzenegger et al</i></p> <p>(regarding state financial participation in IHSS provider wages)</p> <p>* This case was originally called "Martinez v. Schwarzenegger" – then renamed "Yang v. Schwarzenegger" – then renamed "Dominguez v. Schwarzenegger"</p>	<p>U.S. District Court California Northern District (Oakland)</p>	<p>4:09-cv-02306-CW</p>	<p>Enter a preliminary injunction, pending a decision on the merits, that (1) enjoins the State Defendants from taking any action (a) to implement Section 12306.1(d)(6) by reducing the maximum wage of IHSS providers that the State will help fund to \$9.50 per hour and the maximum benefit rate of IHSS providers that the State will help fund to \$.60 per hour, or (b) to approve or implement any county IHSS rate decreases adopted pursuant to Section 12306.1(d)(6), and (2) enjoins the Fresno County Defendants from taking any action to implement a wage and benefit reduction for Fresno County IHSS providers, and conditionally certify the proposed classes for the purpose of such relief.</p>	<p>Date Filed: May 26, 2009</p> <p>Preliminary Injunction Order on July 26, 2009 (and further clarifying injunctions) have been issued that require the state to pay IHSS providers, in all counties where the State has rescinded its approval of Rate Change Requests that proposed rate decreases to take effect July 1, 2009, at the correct, pre-July 1 rates in their regular paychecks for the pay period ending July 31, 2009. State Defendants must also pay all IHSS providers the correct amount owed for the pay period ending July 15, 2009 in a check or checks that issue no later than ten days after the provider submits his or her timesheet for that pay period, or seven business days from the date of this order, whichever is later.</p> <p>Court deadlines as follows:</p> <table border="1"> <tr> <td>Completion of Fact Discovery</td> <td>3/14/11</td> </tr> <tr> <td>Disclosure of identities and reports of expert witnesses</td> <td></td> </tr> <tr> <td> • Initial</td> <td>4/4/11</td> </tr> <tr> <td> • Rebuttal</td> <td>5/5/11</td> </tr> <tr> <td>Completion of Expert Discovery</td> <td>6/6/11</td> </tr> <tr> <td>Case Management Conference</td> <td>8/25/2011</td> </tr> </table>	Completion of Fact Discovery	3/14/11	Disclosure of identities and reports of expert witnesses		• Initial	4/4/11	• Rebuttal	5/5/11	Completion of Expert Discovery	6/6/11	Case Management Conference	8/25/2011
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<p><i>Dominguez et al v. Schwarzenegger et al</i></p> <p>Renamed from “Martinez” and “Yang”</p> <p>(regarding IHSS provider wages)</p>	<p>U.S. Court of Appeals, Ninth Circuit</p>	<p>09-16359</p>	<p>Requests the Appeals Court to reverse the district court and vacate the preliminary injunction.</p>	<p>State Defendant’s brief was filed on August 7, 2009. This is a preliminary injunction appeal.</p> <p>The Ninth Circuit Court affirmed the lower court ruling on March 3, 2010. The decision states (in part), “<i>The district court properly determined that Section 30(A) of the [federal] Medicaid Act applies to the State’s enactment of California Welfare & Institutions Code Section 12306.1(d)(6). The district court correctly held that Plaintiffs demonstrated a likelihood of success on the merits of their Supremacy Clause claim, and did not abuse its discretion in holding that the balance of hardships tips sharply in Plaintiffs’ favor. Accordingly, we affirm the district court’s order granting the motion for a preliminary injunction</i>”</p>						
<p><i>Dominguez et al v. Schwarzenegger et al</i></p> <p>Renamed from “Martinez” and “Yang”</p> <p>(regarding IHSS provider wages)</p>	<p>U.S. Supreme Court</p>	<p>09-1158</p>	<p>Defendant’s (State) petitioned the U.S. Supreme Court: petition for certiorari, which is a document which a losing party files with the Supreme Court asking the Supreme Court to review the decision of a lower court. It includes a list of the parties, a statement of the facts of the case, the legal questions presented for review, and arguments as to why the Court should grant the writ.</p>	<p>U.S. Supreme Court issued docket number on March 24, 2010 – which ties this case to David Maxwell-Jolly, Director, California Department of Health Care Services v. California Pharmacists Association, et al.</p> <p>The petition for a writ of certiorari granted on January 18, 2011.</p> <p>The time to file the joint appendix and petitioners’ briefs on the merits is extended to and including April 14, 2011.</p> <p>The time to file respondents’ briefs on the merits is extended to and including June 24, 2011.</p>						
<p><i>Oster et al v. Wagner</i></p>	<p>U.S. District Court</p>	<p>4:09-cv-04668-</p>	<p>The class action lawsuit is filed on behalf of four low-income Californians who need</p>	<p>Date Filed: October 1, 2009</p>						

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(regarding Functional Index Score/Rank cuts) * This case was originally called V.L. et al v. Wagner.	California Northern District (Oakland)	CW	<p>IHSS to remain safely at home. The plaintiffs include two children with disabilities who need special care, an 81 year old senior who needs IHSS to remain in her apartment, and a young man with autism and bi-polar disorder whose IHSS provider assists him with basic tasks.</p> <p>The cuts in IHSS services are scheduled to take effect November 1, 2009. At least 40,000 people will lose services entirely and an additional 97,000 will have their services cut sharply. Among the services to be cut are help with cooking, food shopping, cleaning and assistance to medical appointments - cost-effective services which frail seniors and those with disabilities depend on to avoid more costly placement in institutions such as nursing homes.</p> <p>The plaintiffs in the lawsuit asked the federal court to issue an injunction to stop these IHSS cuts.</p>	<p>Judge Claudia Wilken issued an order on October 19, 2009 that stopped the State from moving forward on implementing cuts to eligibility and services that were scheduled to go into effect November 1st. Wilken ruled that the plaintiffs were likely to show at trial that the cuts to services, enacted in the recent state budget, violate federal law. The State said it will appeal the decision.</p> <p>Plaintiffs filed a motion for Civil Contempt Sanctions on November 10, 2009. The motion was heard on November 19, 2009 and Judge Wilken ruled in favor of the plaintiffs.</p> <ul style="list-style-type: none"> • Case Management Conference scheduled April 12 at 2:00 pm.
<i>Oster et al v. Wagner</i> (regarding Functional Index Score/Rank cuts)	U.S. Court of Appeals, Ninth Circuit	09-17581	Requests the Appeals Court to reverse the district court and vacate the preliminary injunction.	<p>State filed the motion to appeal on November 18, 2009. This is a preliminary injunction appeal. The State (Appellant's) filed their Opening Brief on December 29, 2009; the Appellant's answering brief was filed March 3, 2010. On April 9, 2010 the State requested that the hearing for oral arguments be expedited.</p> <p>Appellate Judges are Diarmuid F. O'scannlain, A. Wallace Tashima And Carlos T. Bea</p> <p>Case argued before these judges on June 15, 2010. Audio of the hearing is online at http://www.ca9.uscourts.gov/media/view_subpage.php?pk_id=0000005720</p> <p>Submission of this case is withdrawn and the</p>

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				<p>case is deferred pending the United States Supreme Court's decision in the consolidated appeals of Maxwell-Jolly v. Indep. Living Ctr., 572 F.3d 644 (9th Cir. 2009); Maxwell-Jolly v. Calif. Pharmacists Ass'n, 2010 WL 737650 (9th Cir. Mar. 3, 2010); Maxwell-Jolly v. Santa Rosa Mem. Hosp., 2010 WL 2124276 (9th Cir. May 27, 2010); certiorari granted, 2011 WL 134272 (U.S., No. 09-958, Jan. 18, 2011), or until further order of the court. [7628455] (KKW)</p>
<p><i>Beckwith v. Wagner</i></p> <p>(regarding criminal background checks and felony crimes that are disqualifying offenses)</p> <p>[Renamed from Ellis v. Wagner)</p>	<p>Alameda Superior Court</p>	<p>RG09484 051</p>	<p>Requests a writ commanding respondents (CDSS) to rescind and set aside policy reflected in ACL 09-52 that all persons convicted of a felony at any time are ineligible to become or remain IHSS providers and immediately issue a new notice to counties, providers and recipients informing them of this change in policy and that the mandatory conviction disqualification provisions for IHSS providers are limited to the convictions in Welfare & Institutions Code 12301.6. Further, any actions taken on the basis of the policy in ACL 09-52 are null and void and must be set aside.</p>	<p>Alameda Superior Court Judge David Hunter issued an Alternative Writ on February 9, 2010. The order confirms that the state is not allowed to use all felonies and specified misdemeanors to disqualify individuals from being paid by the IHSS program. The order also says the petitioners must submit a proposed Writ of Mandate for the court's signature.</p> <p>Order re Writ of Mandate Filed March 26, 2010 requires defendants to:</p> <ol style="list-style-type: none"> (1) rescind & refrain from enforcing the policy in ACL 09-52 that said any person who has ever been convicted if a felony or specified misdemeanors is ineligible to be an IHSS provider; (2) refrain from disqualifying applicants or finding persons ineligible to be an IHSS provider on the basis of criminal conviction, other than finding persons ineligible for 10 years following a conviction pursuant to Welfare & Institutions Code 12305.81 (a); (3) notify all individuals previously denied IHSS provider status pursuant to the policy in ACP 09-52 that the policy has been rescinded; that previously disqualified persons may re-apply; and that the standards for disqualification are specified in Welfare & Institutions Code 12305.81 (a) (4) CDSS to post a notice of this order on its

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				<p>website.</p> <p>CDSS filed an appeal on May 24, 2010 and the court automatically stayed the effect of the court's order pending a decision by a court of appeal – which means that the earlier court order with the limit of three disqualifying crimes was suspended.</p> <p>On August 11, 2010 CDSS issued a draft ACL to counties, Public Authorities and IHSS stakeholders which states, "As a result of the stay, CDSS is reinstating the policy established before the court order was issued by the Alameda County Superior Court." The draft ACL established the state's intent to immediately implement the policy for counties and Public Authorities to use all-felonies & specified misdemeanor to disqualify current and prospective providers.</p> <p>On August 24, 2010, Judge David Hunter issued an order which states, "Respondents have recently prepared a draft notice to all County Welfare Directors instructing them that this Court's rulings in this case are stayed pending disposition of their appeal.....The court hereby orders that the cross-appeals in this case do not operate as a stay of Writ of Mandate issued on March 26, 2010....The Court is satisfied with the showing by one or more Petitioners that they (and/or those individuals to whom they are providing in-home care) will suffer irreparable damage if the Writ of Mandate is stayed pending the appeal."</p> <p>On October 29, 2010, Judge Hunter issued an order that states, "The Court orders that The Respondents' appeal in this case does not operate as a stay of the Writ of Mandate issued on march 26, 2010. Petitioners have made an adequate showing that they, other similiarly</p>

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				situated in-home service providers, and/or the individual to whom they are providing in-home care will suffer irreparable damage if the Writ of Mandate is stayed pending the appeal."
<p><i>Northern California ADAPT (Bay Area) ET AL v. Wagner</i></p> <p>(regarding the Share of Cost Buy-Out)</p>	<p>San Francisco Superior Court</p>	<p>CPF-09-509912</p>	<p>Motion for preliminary injunction to enjoin the elimination of IHSS buy-out pending timely and adequate notice to affected IHSS beneficiaries.</p>	<p>Filed Oct 19, 2009. The Preliminary injunction hearing was Nov. 30, 2009. The court adopted its tentative ruling as follows: plaintiffs Ramon Avina, Margaret Belton and California Department Of Health Care services' motion for preliminary injunction is denied. The court finds that the injunction is not an appropriate vehicle because the thrust of the complaint is the issue on notice not the elimination of the subsidy by the state.</p> <p>On September 15, 2010: Dismissal without prejudice of 2nd amended complaint fourth cause of action for violation of substantive due process.</p> <p>On October 29, 2010: Order sustaining in part, and overruling in part, demurrer to second amended petition and complaint for declaratory and injunctive relief.</p>
<p>Putz et al v. Schwarzenegger et al</p> <p>(regarding the reduction in funding for Public Authority operations)</p>	<p>U.S. Court of Appeals, Ninth Circuit</p>	<p>4:10-cv-00344</p>	<p>Plaintiffs seek a declaratory judgment that reductions in funding for Public Authority operations embodied in AB X4 1 are unlawful and seek temporary and permanent injunctive relief to prevent Defendants from continuing to implement these provisions.</p>	<p>Filed January 25, 2010. Case assigned to Judge Claudia Wilken on February 2, 2010.</p> <p>Hearing held April 15, 2010 at 2:00 pm.</p> <p>ORDER by Judge Claudia Wilken Denying Motion for Preliminary Injunction; Granting in Part and Denying in Part Motion to Dismiss Filed on 5/5/2010)</p> <ul style="list-style-type: none"> • Further Case Management Conference & Motion hearing set for 11/10/2011 2:00 PM. • Pretrial Conference set for 2/28/2012 2:00 PM. • Bench Trial (10 day) set for 3/12/2012 8:30

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<p><i>St. John's Well Child and Family Center et al. v. Schwarzenegger et al.</i></p> <p>(regarding line-item vetoes to IHSS and other budget areas)</p>	<p>California Court of Appeal – First District</p>	A125750	<p>Requests this Court issue an order declaring that the Governor's vetoes are null and void in their entirety, and that the provisions of A.B. 1 are not items of appropriation, but instead reductions to previously appropriated sums not subject to the Governor's partial veto power under Article IV, Section 10, Subsection (e) of the California Constitution.</p>	<p>The State is required to file their letter in opposition by September 1, 2009. Response from plaintiff St. John then due by September 17, 2009.</p> <p>Darrell Steinberg and Karen Bass's Motion To Intervene filed August 26, 2009.</p> <p>Application filed August 26, 2009 to file amicus on behalf of Children Now, Valley Community Clinic, Eisner Pediatric & Family Medical Center, The Saban Free Clinic, YWCA Monterey County, Westside Family Health Center, Community Clinic Association of Los Angeles County, and The Legal Aid Association of California.</p> <p>Former Governors George Deukmejian, Pete Wilson, and Gray Davis filed on Schwarzenegger's side on October 14, 2009.</p> <p>Oral arguments presented on December 15, 2009.</p> <p>Petition for Writ of Mandate denied on March 2, 2010.</p>
<p><i>St. John's Well Child and Family Center et al. v. Schwarzenegger et al.</i></p> <p>(regarding line-item vetoes to IHSS and other budget areas)</p>	<p>California Supreme Court</p>	S181760	<p>Plaintiffs petitioned the Supreme Court asking it to review a recent Court of Appeal ruling. The ruling denied the coalition's petition against Governor Schwarzenegger and upheld the Governor's July 2009 line item vetoes that severely impacted state funding to the sick, disabled and victims of domestic violence.</p>	<p>Case argued and submitted September 8, 2010.</p> <p>October 4, 2010: The judgment rendered by the Court of Appeal, denying the petition for writ of mandate, is affirmed.</p>