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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF CALIFORNIA
12

13 **THE ARC OF CALIFORNIA; UNITED**
14 **CEREBRAL PALSY ASSOCIATION OF**
SAN DIEGO,

15 Plaintiffs,

16 v.

17 **TOBY DOUGLAS, in his official capacity as**
18 **Director of the California Department of**
19 **Health Care Services; CALIFORNIA**
20 **DEPARTMENT OF HEALTH CARE**
21 **SERVICE; TERRI DELGADILLO, in her**
22 **official capacity as Director of the California**
Department of Developmental Services;
CALIFORNIA DEPARTMENT OF
DEVELOPMENTAL SERVICES; and
DOES 1-100, inclusive,

23 Defendants.
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2:11-cv-02545-MCE-CKD

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANTS' MOTION TO VACATE
PARTIAL SUMMARY JUDGMENT AND
PERMANENT INJUNCTION, AND
DISMISS MEDICAID ACT CLAIM

Date: May 14, 2015
Time: 2 p.m.
Courtroom: 7
Judge: Hon. Morrison C. England, Jr.
Action Filed: September 28, 2011
Trial Date: August 17, 2015

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I. INTRODUCTION

On February 13, 2015, this Court granted Plaintiffs' motion for partial summary judgment on their Medicaid Act claim and issued a permanent injunction prohibiting Defendants from enforcing the uniform holiday schedule and half-day billing rule. On March 31, 2015, the Supreme Court held in *Armstrong v. Exceptional Child Ctr., Inc.*, No. 14-15, 2015 U.S. LEXIS 2329 (U.S. March 31, 2015), that the Supremacy Clause does not confer a private right of action to compel compliance with 42 U.S.C. § 1396a(a)(30)(A) of the Medicaid Act (hereafter, "30(A)", and federal courts lack jurisdiction to issue such an injunction. In light of the *Armstrong* decision, Defendants move to vacate the partial summary judgment and permanent injunction under Federal Rule of Civil Procedure 60(b)(5) and (6), and move to dismiss Plaintiffs' Medicaid Act claim under Federal Rule of Civil Procedure 12(b)(1).

Since the imposition of the February 13, 2015 injunction which invalidated the uniform holiday schedule, the 21 regional centers throughout California have been in the process of amending billing authorizations and changing transportation schedules for approximately 80,000 Californians with developmental disabilities that attend day programs, a type of service provided by entities such as the plaintiffs in this case. The regional centers are now unsure about how to proceed given the *Armstrong* decision. Additionally, the regional centers are uncertain whether providers who provide less than half-day services to persons with developmental disabilities may still bill for the full day because of the injunction's invalidation of the half-day billing rule. Accordingly, Defendants respectfully request that the Court rule on this motion, if possible, before the next uniform holiday on May 25, 2015, to eliminate the significant confusion among regional centers about the status and enforceability of the two state statutes.

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II. ARGUMENT

A. The Partial Summary Judgment and Permanent Injunction Should Be Vacated Because They Are Not Based on Good Law.

Under Federal Rule of Civil Procedure 60(b)(5) and (6), a court must vacate a partial summary judgment and permanent injunction if they are not based on good law. *Agostini v. Felton*, 521 U.S. 203, 209, 215, 217-18, 235, 237-38 (1997). A trial court abuses its discretion if it upholds orders which rest on an unsustainable legal principle. *Id.* at 238. Such is the situation here.

This Court had initially granted partial summary judgment and a permanent injunction prohibiting Defendants from enforcing the uniform holiday schedule and half-day billing rule because Ninth Circuit precedent allowed a private party to bring suit under the Supremacy Clause to enjoin state statutes for alleged violations of federal law, including § 30(A). (ECF No. 185, Mem. and Order Granting Partial Summ. J. and Perm. Inj., 10:26-11:9, citing *Arc of California v. Douglas*, 757 F.3d 975, 984, n. 3 (9th Cir. 2014), and *Independent Living Center of Southern California*, 543 F.3d 1050, 1065 (9th Cir. 2008) (“ILC I”).) However, the Supreme Court’s decision in *Armstrong v. Exceptional Child Ctr., Inc.*, No. 14-15, 2015 U.S. LEXIS 2329 (March 31, 2015) overturned these Ninth Circuit cases. The Supreme Court in *Armstrong* held that the Supremacy Clause is not the source of any federal rights and certainly does not create a private right of action to enjoin § 30(A). *Armstrong v. Exceptional Child Ctr., Inc.*, No. 14-15, 2015 U.S. LEXIS 2329, at **6, 10 (U.S. March 31, 2015).

The Supreme Court also held that equitable relief is foreclosed by the express administrative remedy of withholding Medicaid funds under 42 U.S.C. § 1396(c), and the “judicially unadministrative nature of § 30(A)’s text.” *Armstrong v. Exceptional Child Ctr., Inc.*, No. 14-15, 2015 U.S. LEXIS 2329, at **11-12 (U.S. March 31, 2015). “It is difficult to imagine a requirement broader and less specific than § 30(A)’s mandate that state plans provide for payments that are “consistent with efficiency, economy, and quality of care,” all the while “safeguard[ing] against unnecessary utilization of . . . care and services.” *Id.* at *11. “The sheer complexity associated with enforcing § 30(A), coupled with the express provision of an

1 administrative remedy, § 1396c, shows that the Medicaid Act precludes private enforcement of §
2 30(A) in the courts.” *Id.* at *12.

3 Because the Supreme Court has held that there is no private right of action to enforce §
4 30(A) and federal courts lack jurisdiction to issue such an injunction, this Court should vacate
5 the partial summary judgment and permanent injunction.

6 **B. The Medicaid Act Claim Should Also Be Dismissed.**

7 Federal Rule of Civil Procedure 12(b)(1) authorizes a motion to dismiss for lack of
8 subject matter jurisdiction. Lack of subject matter jurisdiction may be raised at any time.
9 *Henderson ex rel. Henderson v. Shinseki*, 131 S. Ct. 1192, 1202 (2011). In addition, “federal
10 courts have an independent obligation to ensure that they do not exceed the scope of their
11 jurisdiction, and therefore must raise and decide jurisdictional questions that the parties either
12 overlook or elect not to press.” *Id.*

13 Since Plaintiffs do not have a private right of action to enforce § 30(A) and this Court
14 lacks jurisdiction to issue such an injunction, Plaintiffs’ Medicaid Act claim should be
15 dismissed.

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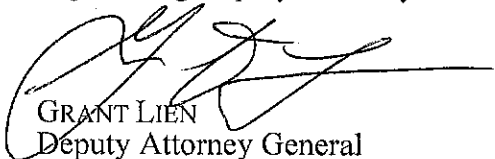
III. CONCLUSION

The Supreme Court has held that there is no private right of action to enforce § 30(A) and federal courts lack jurisdiction to issue such an injunction. This Court should therefore vacate the partial summary judgment and permanent injunction, and dismiss Plaintiffs' Medicaid Act claim. Defendants request that the Court rule on this motion, if possible, before the next uniform holiday on May 25, 2015. Doing so will eliminate unnecessary confusion about the status of the two state statutes.

Dated: April 15, 2015

Respectfully submitted,

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