SETTLEMENT AGREEMENT

I. INTRODUCTION

1. This Settlement Agreement (Agreement) globally resolves the following two class-action lawsuits: *Oster v. Lightbourne*, N.D. Cal., Case No. CV 09-04668 CW, U.S. Court of Appeals for the Ninth Circuit, Case No. 12-15366 (*Oster*); and *Dominguez v. Brown*, N.D. Cal., Case No. CV 09-02306 CW, U.S. Court of Appeals for the Ninth Circuit, Case No. 09-16359 (*Dominguez*). It is the intent of the Parties that this Agreement will fully and finally resolve the *Oster* and *Dominguez* cases. This Agreement represents substantial compromises among all the Parties, and addresses the long term stability of the programs at issue in these cases for the benefit of recipients, providers, and the State of California.

II. PARTIES

2. The Individual Named Plaintiffs in *Oster* are David Oster; Willie Beatrice Sheppard; C.R., by and through his *guardian ad litem*, M.R.; Dottie Jones; Andrea Hylton; Helen Polly Stern; Charles Thurman; and L.C., by and through her *guardian ad litem*, M.G. The Organizational Plaintiffs in *Oster* are Service Employees International Union-United Healthcare Workers West; Service Employees International Union-United Long Term Care Workers; Service Employees International Union Local 521; Service Employees International Union State Council; United Domestic Workers of America, AFSCME Local 3930, AFL-CIO; and California United Healthcare Workers. Defendants in *Oster* are Will Lightbourne, Director of the California Department of Social Services (CDSS); Toby Douglas, Director of the California Department of Health Care Services (DHCS); CDSS; and DHCS.

3. The Individual Named Plaintiffs in *Dominguez* are Patsy Miller; Alex Brown, by and through his mother and next friend Lisa Brown; Donna Brown; Chloe Lipton, by and

through her conservator and next friend Julie Weissman-Steinbaugh; Herbert M. Meyer; Charlene Ayers; Leslie Gordon; Willie Beatrice Sheppard; Andy Martinez; and Carolyn Stewart, on behalf of themselves and a class of those similarly situated. The Organizational Plaintiffs in *Dominguez* are Service Employees International Union-United Healthcare Workers West; Service Employees International Union-United Long Term Care Workers; Service Employees International Union Local 521; Service Employees International Union California State Council; United Domestic Workers of America, AFSCME Local 3930, AFL-CIO; and California United Homecare Workers. State Defendants in *Dominguez* are Will Lightbourne, Director of CDSS, and Toby Douglas, Director of DHCS.[1]

4. The term "Plaintiffs" in this Agreement refers to all individual and organizational plaintiffs as well as the Classes for *Oster* and the amended class for *Dominguez*.

5. The term "State Defendants" in this Agreement refers to the state officer and state entity defendants in both *Oster* and *Dominguez*.

6. The term "Parties" in this Agreement refers to Plaintiffs and State Defendants.

7. The term "IHSS recipients" in this Agreement refers to all recipients in the State of California who receive services through the In-Home Supportive Services (IHSS), IHSS Plus Option, Personal Care Services, or Community First Choice Option programs.

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[1] By operation of law, named defendant John A. Wagner is replaced by his successor, Will Lightbourne; and named defendant David Maxwell-Jolly is replaced by his successor, Toby Douglas. Governor Edmund G. Brown Jr., Controller John Chiang, Fresno County, and Fresno County In-Supportive Services Public Authority are currently named defendants in *Dominguez* but are not parties to this settlement agreement. Plaintiffs have agreed to dismiss with prejudice Brown and Chiang, with all parties to bear their own fees and costs. Plaintiffs have also agreed to dismiss Fresno County and Fresno County IHSS Public Authority without prejudice, with all parties to bear their own fees and costs. Plaintiffs are not releasing any claims against Fresno County or Fresno County IHSS Public Authority arising from this county's request for or implementation of a future reduction in IHSS wages.

III. JURISDICTION

8. The United States District Court has jurisdiction over the claims against all defendants pursuant to 28 U.S.C. §§ 1331, 1343, and 1367. Venue is proper in the Northern District of California pursuant to 28 U.S.C. § 1392(b).

IV. CLASS DEFINITIONS

9. The district court has previously certified the *Oster* Classes as set forth below and appointed as Class Representatives the Individual Named Plaintiffs listed in paragraph 2 of the Agreement:

> Class A: All IHSS recipients in the State of California whose IHSS services will be limited, cut, or terminated under the provisions of ABX4 4, and all applicants to IHSS in the State of California who would have been eligible for IHSS services but who are either not eligible, or are eligible for fewer services, as a result of ABX4 4.
>
> Class B: All IHSS recipients in the State of California who have received or will receive notices of action that include a reduction of IHSS hours based on SB 73 or Defendants' implementation of SB 73, including future applicants for IHSS services whose notice of action will reflect reduced IHSS hours as a result of SB 73 or Defendants' implementation of SB 73.

10. The district court has previously certified a Class in *Dominguez* and appointed as Class Representatives the Individual Named Plaintiffs listed in paragraph 3 of this Agreement. The Parties agree that, due to changes in factual circumstances, the Class definition should be amended by adding five counties (Los Angeles, Madera, Mariposa, San Joaquin, and Yuba). Accordingly, in connection with preliminary approval of the Settlement Agreement, Plaintiffs will ask the district court to amend the class definition to the following:

> All IHSS recipients who reside in Alameda, Calaveras, Contra Costa, Fresno, Los Angeles, Madera, Marin, Mariposa, Mendocino, Monterey, Napa, Placer, Riverside, Sacramento, San Benito, San Francisco, San Joaquin, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, Yolo, and Yuba counties.

11. If the district court does not approve this Agreement, the Parties agree that State Defendants will not be prejudiced or bound by anything in this Agreement, and instead, State Defendants will have whatever rights they would have had before they entered into this Agreement to contest that the Plaintiffs are appropriate class representatives, and/or to contest that the *Oster* and *Dominguez* classes meet the requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(2).

V. REDUCTION IN NUMBER OF AUTHORIZED HOURS

12. Contingent upon enactment of the state legislation described in Exhibit A of this Agreement, State Defendants will implement an 8 percent across-the-board reduction in authorized service hours that shall run for 12 consecutive months. It is the intent of the Parties that this reduction be implemented on July 1, 2013.

13. Effective 12 months after implementation of the 8 percent reduction set forth in the preceding paragraph, and contingent upon enactment of the state legislation described in Exhibit A of this Agreement, State Defendants will replace the 8 percent reduction with, and will implement, an ongoing 7 percent across-the-board reduction in authorized service hours.

14. The reductions identified in paragraphs 12 and 13 shall not be in addition to the current 3.6 percent across-the-board reduction of authorized service hours. The current reduction of 3.6 percent terminates by operation of law on July 1, 2013. It is the intent of the Parties to avoid any time period during which the 3.6 percent reduction has expired but the 8 percent reduction has not yet been implemented.

15. The reductions identified in paragraphs 12 and 13 will be the result of a change in state law and therefore are not subject to appeal by state fair hearing, administrative hearing, trial court, or otherwise. Any such appeal can be administratively denied, and the recipient will not

have "aid-paid-pending" rights in such an appeal. No further legislative authority, beyond that provided in Exhibit A, shall be necessary to implement the reductions described in paragraphs 12 and 13.

16. Recipients shall retain their right to request a reassessment based on a change in circumstances consistent with California Welfare and Institutions Code section 12301.1(d) (as of 2013). In accordance with applicable law, recipients shall not be required to provide a physician's note or medical certification of a change in their medical condition in order to obtain a reassessment. An IHSS recipient may appeal the denial of a request for a reassessment, and CDSS will instruct the counties to notify recipients subject to a denial of that right to appeal. A recipient who appeals the denial of a reassessment will not have "aid-paid-pending" rights in such an appeal. A request for reassessment based solely on the reductions of authorized service hours identified in paragraphs 12 and 13 can be administratively denied, but is still subject to the right to appeal described above.

17. CDSS agrees to provide the information in the preceding paragraph to the counties through the provision of an All-County Letter (ACL). Plaintiffs will have the opportunity to review and comment on a draft of the ACL prior to finalization and distribution to the counties. CDSS also agrees to provide the information regarding reassessment and appeals in the preceding paragraph to recipients in the Notice of Action (NOA) regarding the 8 percent reduction in paragraph 12. Plaintiffs will have the opportunity to review and comment on a draft of the NOA prior to finalization and distribution to recipients.

VI. STATE LEGISLATION REGARDING AN ASSESSMENT

18. The Parties agree to jointly discuss, and State Defendants will submit to the Legislature, proposed legislation authorizing an assessment on home care services, including but not limited to, home health care and IHSS (Assessment).

19. If the Assessment is passed by the Legislature, then State Defendants shall submit a request by October 1, 2014, to the federal Centers for Medicare and Medicaid Services (CMS) for authorization to implement the Assessment and shall work with Plaintiffs in good faith to obtain CMS approval of this Assessment.

20. The Parties' counsel shall meet and confer, in person or telephonically, regarding the status of the Assessment in October 2013, March or April 2014, and August or September 2014. If the Assessment is not submitted to CMS by October 1, 2014, the Parties will discuss next steps, and if a resolution is not reached, either Party may submit the dispute to the district court for resolution and for fashioning appropriate remedies needed to facilitate the submission of the Assessment to CMS for approval.

21. If the Assessment is approved by CMS, the general fund savings generated by the Assessment revenues will offset the reduction in authorized service hours set forth in paragraph 13, up to 7 percent, as set forth Section 12YYY attached hereto as part of Exhibit A.

22. State Defendants will pursue retroactive implementation of the Assessment. If CMS approves retroactive implementation of the Assessment, the one-time savings from that retroactive implementation, as determined by the director of the Department of Finance, shall be reinvested for the benefit of recipients. The Parties shall discuss how this reinvestment should occur; however, the implementation of this reinvestment shall be subject to applicable legislative approval.

VII. OTHER STATE LEGISLATION

23. The Parties agree to jointly support passage by the Legislature of the legislation attached in Exhibit A hereto (which includes the repeal of Cal. Welf. & Inst. Code §§ 12301.07, 12306.1(d)(6) & (d)(7), 12309(e)-(i), & 12309.2) as soon as possible, but no later than May 24, 2013. If this legislation is not enacted by June 1, 2013, or is enacted with substantive alteration (e.g., different percentage reductions than set forth in this Agreement), the Parties shall meet and confer to discuss next steps. If this legislation is not passed by the Legislature or is passed with substantive alteration, or is not delivered to the Governor by November 1, 2013, then the Parties shall meet and confer to determine whether they can agree upon a mutually acceptable solution. If the Parties cannot reach such agreement, at that time, any Party may declare the Agreement null and void.

24. The Parties agree to jointly support passage by the Legislature of legislation that would authorize the creation of an assessment such as described in Section VI.

VIII. JOINT REQUEST FOR FEDERAL APPROVALS IF NECESSARY

25. The Parties agree to jointly support federal approvals, if any are necessary, to implement this Agreement.

IX. DISTRICT COURT APPROVAL AND ENFORCEMENT OF SETTLEMENT

26. The Class Representatives agree to file on behalf of the certified classes in *Oster* and the amended class in *Dominguez*, and all other Parties agree to support, a motion with the district court to request a fairness hearing pursuant to Federal Rule of Civil Procedure 23(e) and to seek the district court's preliminary and final approvals of this Agreement in *Oster* and *Dominguez*. The Parties will cooperate in presenting this Agreement to the district court at the fairness hearings and will take all steps necessary to seek and obtain the district court's approval.

If the district court withholds its approval of this Agreement or the settlement for any reason, the Parties shall meet and confer to determine whether this Agreement can be amended or modified in a manner so as to secure the district court's approval. If this is not attained, this Agreement shall be null and void.

27. If the district court approves the Agreement but an appeal is filed, the Parties shall meet and confer to discuss opposing that appeal. If an appeal results in the district court's approval of the Agreement being overturned, the parties shall meet and confer to discuss next steps.

28. The Parties agree to stipulate and request district court approval for a proposed schedule, attached as Exhibit B and incorporated into this agreement as if fully set forth herein. The proposed schedule assumes that the district court will not require individually mailed notice. The Parties agree to meet and confer to discuss alternate dates in the event that any portion of the proposed schedule becomes impracticable or is not approved by the district court.

29. The Class Representatives, on behalf of the certified classes in *Oster* and the amended class in *Dominguez*, will propose to the district court, and all Parties agree to support, that the Classes be notified of the proposed settlement as set forth in the Class Notice Plan contained in Exhibit C to this Agreement.

30. Following enactment of the legislative language referenced in Exhibit A, without substantive alteration, and final approval of the Settlement Agreement by the district court, the Parties agree to jointly move to dismiss all appeals in *Oster* and *Dominguez* within 30 days after enactment of the legislation set forth in Exhibit A.

31. Within 30 days of the date that the appeals have been dismissed and the legislation enacted, the Parties agree to ask the district court to enter final judgment dismissing

the *Oster* and *Dominguez* actions as to State Defendants, ordering the Parties to comply with the Agreement, and retaining jurisdiction to enforce the provisions of the Agreement and fashion remedies in the event that a Party violates the Agreement. The district court shall retain jurisdiction for 30 months after the date of CMS approval or disapproval of the Assessment. A copy of each of the Final Judgments, that the Parties agree to ask the district court to enter, is attached hereto as Exhibit D.

X. ATTORNEYS' FEES AND COSTS

32. Each Party will bear its own attorneys' fees and costs, and no attorneys' fees or costs against any Party shall be awarded in *Oster, Dominguez*, or any appeals therefrom, or any action to enforce the terms of this Agreement.

XI. SCOPE OF AGREEMENT

33. Upon final approval of this Agreement pursuant to Federal Rule of Civil Procedure 23(e), Plaintiffs hereby release any and all claims, damages, liabilities, rights, and complaints against State Defendants asserted in *Oster* and/or *Dominguez*, except for any claims for enforcement of this Agreement. Plaintiffs agree not to bring or support any lawsuit challenging any provisions of this Agreement. Plaintiffs reserve and are not waiving the right to challenge, on any ground including those previously asserted in *Oster* and *Dominguez*, any of the following acts that may occur after this Agreement is signed: any state reductions in participation in IHSS wages and/or state approval of wage reductions in IHSS wages; any state reductions of IHSS hours, services, or eligibility other that those set forth in this Agreement; and any due process challenge to State Defendants' notices of action or provision of hearing rights in relation to IHSS services, assessments, or reassessments other than those required by this Agreement.

XII. NO ADMISSION OF LIABILITY OR WAIVER OF RIGHTS

34. State Defendants expressly deny each and all of the claims and contentions alleged against them in these actions. Plaintiffs expressly contend that all claims for relief in these actions are meritorious. This Agreement, anything contained herein, and any negotiations or proceedings hereunder shall not be construed as or deemed to be an admission, presumption, evidence of, or concession by any State Defendant of the truth of any fact alleged or the validity of any claim which has or could have been asserted in this action, or of the deficiency of any defense which has or could have been asserted in this action or of any wrongdoing or liability whatsoever.

35. This Agreement, the fact of its existence, and any term thereof shall not be construed as an admission by any State Defendant, or used as evidence against any State Defendant, in any civil, criminal, or administrative action or proceeding except to the extent necessary to enforce claims for a breach of this Agreement.

XIII. EFFECTIVE DATE OF SETTLEMENT AGREEMENT

36. The effective date of this Agreement shall be 30 days from entry of final approval of this Agreement pursuant to Federal Rule of Civil Procedure 23(e) in *Oster* and *Dominguez*.

XIV. ADDITIONAL PROVISIONS

37. This Agreement contains all of the terms and conditions agreed upon by the Parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Agreement regarding the subject matter of this Agreement shall be deemed to exist, or to bind the Parties hereto, or to vary the terms and conditions contained herein.

38. This Agreement may only be amended, modified, or supplemented by an agreement in writing signed by all Parties and approved by the court specifying its intent to modify this Agreement.

39. The Parties agree to use their best efforts to carry out the terms of the Agreement. At no time shall any of the Parties seek to solicit or encourage members of the Settlement Class to submit objections to the Agreement or to appeal from the order giving final approval to the Agreement.

40. All Parties to this Agreement, through their respective counsel, have participated in its drafting and, consequently, any ambiguity shall not be construed for or against any party.

41. This Agreement shall inure to the benefit of and be binding upon the legal representatives and any successor of any party hereto.

42. Each of the undersigned attorneys represents that he or she has been duly authorized to enter into this Agreement.

43. Each signatory to this Agreement represents and warrants that he/she is authorized to sign this Agreement and bind the party on behalf of whom he/she signs.

44. This Agreement may be executed in counterparts, each of which will be deemed to be an original and all of which taken together shall constitute a single instrument. This Agreement may be executed by signature via facsimile transmission or electronic mail, which shall be deemed to be the same as an original signature.

XV. SIGNATURES

For the Individual Named Plaintiffs and Class Representatives in *Oster*:

Date: March 27, 2013

Melinda Bird, Esq.
Disability Rights California
Attorneys for Individual Named Plaintiffs and the Certified Class in Oster

For the Organizational Plaintiffs in *Oster* and all Plaintiffs, including all Class Representatives, in *Dominguez*:

Date: March ___, 2013

Stacey M. Leyton, Esq.
Altshuler Berzon LLP
Attorneys for Organizational Plaintiffs in Oster and all Plaintiffs and the Certified Class in Dominguez

For State Defendants, Approved as to Form:

Date: March 27, 2013

Susan M. Carson
Supervising Deputy Attorney General
Office of the Attorney General
Attorneys for State Defendants

For State Defendants:

Date: March ___, 2013

Will Lightbourne
Director
California Department of Social Services

Date: March ___, 2013

Toby Douglas
Director
California Department of Health Care Services

XV. SIGNATURES

For the Individual Named Plaintiffs and Class Representatives in *Oster*:

Date: March ___, 2013

_____
Melinda Bird, Esq.
Disability Rights California
Attorneys for Individual Named Plaintiffs and the Certified Class in Oster

For the Organizational Plaintiffs in *Oster* and all Plaintiffs, including all Class Representatives, in *Dominguez*:

Date: March 21, 2013

_____
Stacey M. Leyton, Esq.
Altshuler Berzon LLP
Attorneys for Organizational Plaintiffs in Oster and all Plaintiffs and the Certified Class in Dominguez

For State Defendants, Approved as to Form:

Date: March ___, 2013

_____
Susan M. Carson
Supervising Deputy Attorney General
Office of the Attorney General
Attorneys for State Defendants

For State Defendants:

Date: March ___, 2013

_____
Will Lightbourne
Director
California Department of Social Services

Date: March ___, 2013

_____
Toby Douglas
Director
California Department of Health Care Services

XV. SIGNATURES

For the Individual Named Plaintiffs and Class Representatives in *Oster*:

Date: March ___, 2013

_____
Melinda Bird, Esq.
Disability Rights California
Attorneys for Individual Named Plaintiffs and the Certified Class in Oster

For the Organizational Plaintiffs in *Oster* and all Plaintiffs, including all Class Representatives, in *Dominguez*:

Date: March ___, 2013

_____
Stacey M. Leyton, Esq.
Altshuler Berzon LLP
Attorneys for Organizational Plaintiffs in Oster and all Plaintiffs and the Certified Class in Dominguez

For State Defendants, Approved as to Form:

Date: March ___, 2013

_____
Susan M. Carson
Supervising Deputy Attorney General
Office of the Attorney General
Attorneys for State Defendants

For State Defendants:

Date: March 27, 2013

Will Lightbourne
Director
California Department of Social Services

Date: March ___, 2013

_____
Toby Douglas
Director
California Department of Health Care Services

XV. SIGNATURES

For the Individual Named Plaintiffs and Class Representatives in *Oster*:

Date: March ___, 2013

_____
Melinda Bird, Esq.
Disability Rights California
Attorneys for Individual Named Plaintiffs and the Certified Class in Oster

For the Organizational Plaintiffs in *Oster* and all Plaintiffs, including all Class Representatives, in *Dominguez*:

Date: March ___, 2013

_____
Stacey M. Leyton, Esq.
Altshuler Berzon LLP
Attorneys for Organizational Plaintiffs in Oster and all Plaintiffs and the Certified Class in Dominguez

For State Defendants, Approved as to Form:

Date: March ___, 2013

_____
Susan M. Carson
Supervising Deputy Attorney General
Office of the Attorney General
Attorneys for State Defendants

For State Defendants:

Date: March ___, 2013

_____
Will Lightbourne
Director
California Department of Social Services

Date: March 27, 2013

_____
Toby Douglas
Director
California Department of Health Care Services

Date: March 27, 2013

Douglas Press
Chief Counsel
California Department of Health Care Services

Exhibit A – Proposed Legislation
Exhibit B – Proposed Schedule
Exhibit C – Proposed Class Notices and Class Notice Plan
Exhibit D – Proposed Final Judgments

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Dominguez Class Counsel and Oster Class Counsel

Dominguez Class Counsel	**Oster Class Counsel**
Stephen P. Berzon Altshuler Berzon LLP Scott A. Kronland Altshuler Berzon LLP Stacey M. Leyton Altshuler Berzon LLP Peder J. Thoreen Altshuler Berzon LLP Anne N. Arkush Altshuler Berzon LLP	Melinda Bird Disability Rights California Marilyn Holle Disability Rights California Sujatha Jagadeesh Branch Disability Rights California Dara L. Schur Disability Rights California Frederick P. Nisen Disability Rights California Jung Pham Disability Rights California Ann E. Menasche Disability Rights California Anna Rich National Senior Citizen Law Center Paula Pearlman Disability Rights Legal Center Charles Wolfinger Law Office of Charles Wolfinger Jane Perkins National Health Law Program

EXHIBIT A

SEC. 1. Section 12301.01 is added to the Welfare and Institutions Code, to read:

12301.01. (a) (1) Notwithstanding any other provision of law, except as provided in subdivision (d), the department shall implement an eight (8) percent reduction in hours of service to each recipient of services under this article, which shall be applied to the recipient's hours as authorized pursuant to the most recent assessment. This reduction shall become effective July 1, 2013. This reduction shall be effective for 12 months. The reduction required by this section shall not preclude any reassessment to which a recipient would otherwise be entitled. However, hours authorized pursuant to a reassessment shall be subject to the 8 percent reduction required by this section.

(2) A request for reassessment based on the reduction required in paragraph (1) can be administratively denied by the county.

(3) A recipient of services under this article may direct the manner in which the reduction of hours is applied to the recipient's previously authorized services.

(4) For those individuals who have a documented unmet need, excluding protective supervision because of the limitations on authorized hours under Section 12303.4, the reduction shall be taken first from the documented unmet need.

(b) The reduction in hours of service pursuant to paragraph (1) of subdivision (a) shall cease to be implemented 12 months after the reduction takes effect.

(c) The notice of action informing the recipient of the reduction pursuant to subdivision (a) shall be mailed at least 10 days prior to the reduction going into effect. The notice of action shall be understandable to the recipient and translated into all languages spoken by a substantial number of the public served by the In-Home Supportive Services program, in accordance with Section 7295.2 of the Government Code. The notice shall not contain any recipient financial or confidential identifying information other than the recipient's name, address, and Case Management Information and Payroll System (CMIPS) client identification number, and shall include, but not be limited to, all of the following information:

(1) The aggregate number of authorized hours before the reduction pursuant to subdivision (a) and the aggregate number of authorized hours after the reduction.

(2) That the recipient may direct the manner in which the reduction of authorized hours is applied to the recipient's previously authorized services.

(3) A county shall assess a recipient's need for supportive service any time that the recipient notifies the county of a need to adjust the supportive services hours authorized, or when there are other indications or expectations of a change in circumstances affecting the recipient's need for supportive services. Counties shall not require recipients to submit a medical certification form or a doctor’s note to show evidence of a change in the recipient’s circumstances.

(d) A recipient shall have all appeal rights otherwise provided for under Chapter 7 (commencing with Section 10950) of Part 2.

SEC. 2. Section 12301.02 is added to the Welfare and Institutions Code, to read:

12301.02. (a) (1) Notwithstanding any other provision of law, except as provided in subdivision (c), the department shall implement a seven (7) percent reduction in hours of service to each recipient of services under this article, which shall be applied to the recipient's hours as authorized pursuant to the most recent assessment. This reduction shall become effective 12 months after the implementation of the reduction set forth in Section 12301.01. The reduction required by this section shall not preclude any reassessment to which a recipient would otherwise be entitled. However, hours authorized pursuant to a reassessment shall be subject to the 7 percent reduction required by this section.

(2) A request for reassessment based on the reduction required in paragraph (1) can be administratively denied by the county.

(3) A recipient of services under this article may direct the manner in which the reduction of hours is applied to the recipient's previously authorized services.

(4) For those individuals who have a documented unmet need, excluding protective supervision because of the limitations on authorized hours under Section 12303.4, the reduction shall be taken first from the documented unmet need.

(b) The notice of action informing the recipient of the reduction pursuant to subdivision (a) shall be mailed at least 20 days prior to the reduction going into effect. The notice of action shall be understandable to the recipient and translated into all languages spoken by a substantial number of the public served by the In-Home Supportive Services program, in accordance with Section 7295.2 of the Government Code. The notice shall not contain any recipient financial or confidential identifying information other than the recipient's name, address, and Case Management Information and Payroll System (CMIPS) client identification number, and shall include, but not be limited to, all of the following information:

(1) The aggregate number of authorized hours before the reduction pursuant to subdivision (a) and the aggregate number of authorized hours after the reduction.

(2) That the recipient may direct the manner in which the reduction of authorized hours is applied to the recipient's previously authorized services.

(3) A county shall assess a recipient's need for supportive service any time that the recipient notifies the county of a need to adjust the supportive services hours authorized, or when there are other indications or expectations of a change in circumstances affecting the recipient's need for supportive services. Counties shall not require recipients to submit a medical certification form or a doctor's note to show evidence of a change in the recipient's circumstances.

(c) A recipient shall have all appeal rights otherwise provided for under Chapter 7 (commencing with Section 10950) of Part 2.

(d) The reduction specified in paragraph (1) of subdivision (a) shall be ongoing and may be adjusted pursuant to Section 12YYY.

SEC. 3. Section 12YYY is added to the Welfare and Institutions Code, to read:

12YYY. (a) It is the intent of this Section to offset the reductions described in Section 12301.02 to the extent that an assessment as described in Section 12XXX provides General Fund savings. This section shall become operative only upon the certification by the Department of Health Care Services as described in of Section 12XXX.

(b) Within 30 days after receipt of the certification described in 12XXX, the Director of Finance shall perform the obligations described in this subdivision for the fiscal year in which the certification is received and for the following fiscal year. Specifically, the Director of Finance shall:

(1) Estimate the total amount of additional funding, less refunds, that will be derived from the assessment for the next fiscal year.

(2) Estimate the amount of the total revenues, if any, that are attributable to any permitted retroactive implementation of the assessment.

(3) Estimate the amount of the total General Fund savings generated by the assessment revenues that remain after taking into account reductions such as the revenues attributable to any retroactive application of the assessment that will be allocated pursuant to section 12ZZZ, and any General Fund costs associated with establishment and administration of the assessment.

(4) Calculate, as a percentage, the amount by which the reduction described in section 12301.02 is offset by General Fund savings. In making this calculation the Director of Finance shall estimate the amount of the reduction that may be partially or completely offset. If the estimated General Fund savings from the assessment are less than the amount required to fully offset the reduction pursuant to Section 12301.02, then the percentage offset shall be proportionate to the level of General Fund savings. At no point may the reduction pursuant to Section 12301.02 become negative or go below zero.

(5) Notify the Joint Legislative Budget Committee of the determinations made in paragraphs (1)-(4).

(c) On or before May 14, prior to the third fiscal year after the certification described in 14XXX is received, the Director of Finance shall perform the activities described in paragraphs (1)-(5) of subdivision (b).

(d) Within 10 days of the effective date of any federal change or action that prevents or reduces the amount of General Fund savings received from the assessment, the Director of Health Care Services shall provide a notification to the Joint Legislative Budget Committee and the Director

of Finance of such a change. Within 30 days of the receipt of this notification, the Director of Finance shall perform the activities described in paragraphs (1)-(5) of subdivision (b).

(e) Notwithstanding any provision of Section 12301.02, the reduction of services required by Section 12301.02 shall be mitigated by the percentage offset determined by the Director of Finance in paragraph (4) of subdivision (b) of this Section.

(f)(1) Any change in the percentage reduction of services as provided in Section 12301.02 shall occur on the first day of the first full month occurring 30 days after the determination provided for in subdivision (b) is made by the Director of Finance.

(2) Any change in the percentage reduction of services as provided in Section 12301.02 due to a determination of the Director of Finance required by subdivision (c) shall occur on July 1 of the fiscal year immediately following the determination.

(3) If a change in the percentage reduction of services as provided in Section 12301.02 is triggered based on a determination of the Director of Finance required by subdivision (d), that change in hours of service shall occur on July 1 after the notification referenced in subdivision (d) from the Director of Health Care Services is received, if the notification is received between the preceding September 30 and January 2. If the notification is received on any other date, then a change in hours shall occur on the first of the month that is nine months after the notification is received.

(g) In preparation of every Governor's Budget and for every May Revision the Director of Finance shall perform the obligation described in paragraph (1)-(3) of subdivision (b).

SEC. 4 Section 12ZZZ is added to the Welfare and Institutions Code, to read:

12ZZZ. (a) There is hereby created in the State Treasury an In-Home Supportive Services Reinvestment Fund ("Fund"), which shall receive monies to the extent that an assessment described in Section 12XXX is implemented retroactively.

(b) The Fund shall be used to provide goods or services for one-time direct reinvestments benefiting IHSS recipients.

(c) The Fund shall be used in a manner that does not create ongoing General Fund obligations.

(d) Pursuant to 12YYY, the Director of the Department of Finance shall estimate the amount of retroactive fee due to the Fund. In each fiscal year for which there are estimated retroactive revenues, the Director of Finance shall provide the State Controller a schedule of what portion of the fee shall be deposited in the Fund.

(e) Notwithstanding Government Code Section 13340, the Fund is continuously appropriated to the Department of Social Services to be reinvested, following consultation with plaintiffs in the lawsuits identified below, for the benefit of IHSS recipients in compliance with the requirements in this section and those in the settlement agreement pertaining to *Oster v. Lightbourne*, N.D.

Cal., Case No. CV 09-04668 CW, U.S. Court of Appeals for the Ninth Circuit, Case No. 12-15366; *and Dominguez v. Brown*, N.D. Cal., Case No. CV 09-02306 CW, U.S. Court of Appeals for the Ninth Circuit, Case No. 09-16359. At least thirty days prior to allocating any funds pursuant to this section, the Department of Social Services shall provide an expenditure plan to the Joint Legislative Budget Committee.

SEC. 5. Section 12301.07 of the Welfare and Institutions Code is repealed.

~~12301.07. (a) (1) Notwithstanding any other provision of law, if subdivision (b) of Section 3.94 of the Budget Act of 2011 is operative, the department shall implement a 20-percent reduction in authorized hours of service to each in-home supportive services recipient as specified in this section, effective January 1, 2012, which shall be applied to the recipient's hours as authorized pursuant to his or her most recent assessment.~~

~~(2) The reduction required by this section shall not preclude any reassessment to which a recipient would otherwise be entitled. However, hours authorized pursuant to a reassessment shall be subject to the reduction required by this section.~~

~~(3) For those recipients who have a documented unmet need, excluding protective supervision, because of the limitations contained in Section 12303.4, this reduction shall be applied first to the unmet need before being applied to the authorized hours. If the recipient believes he or she will be at serious risk of out-of-home placement as a consequence of the reduction, the recipient may apply for a restoration of the reduction of authorized service hours, pursuant to subdivision (f).~~

~~(4) A recipient of services under this article may direct the manner in which the reduction of hours is applied to the recipient's previously authorized services.~~

~~(5) The reduction in service hours made pursuant to paragraph (1) shall not apply to in-home supportive services recipients who also receive services under Section 9560, subdivision (t) of Section 14132, and Section 14132.99.~~

~~(b) The department shall work with the counties to develop a process to allow for counties to preapprove IHSS Care Supplements described in subdivision (f), to the extent that the process is permissible under federal law. The preapproval process shall be subject to the following conditions:~~

~~(1) The preapproval process shall rely on the criteria for assessing IHSS Care Supplement applications, developed pursuant to subdivision (f).~~

~~(2) Preapproval shall be granted only to individuals who would otherwise be granted a full restoration of their hours pursuant to~~

~~subdivision (f).~~

~~(3) With respect to existing recipients as of the effective date of this section, all efforts shall be made to ensure that counties complete the process on or before a specific date, as determined by the department, in consultation with counties in order to allow for the production, printing, and mailing of notices to be issued to remaining recipients who are not granted preapproval and who thereby are subject to the reduction pursuant to this section.~~

~~(4) The department shall work with counties to determine how to apply a preapproval process with respect to new applicants to the IHSS program who apply after the effective date of this section.~~

~~(c) The notice of action informing each recipient who is not preapproved for an IHSS Care Supplement pursuant to subdivision (b) shall be mailed at least 15 days prior to the reduction going into effect. The notice of action shall be understandable to the recipient and translated into all languages spoken by a substantial number of the public served by the In-Home Supportive Services program, in accordance with Section 7295.2 of the Government Code. The notice shall not contain any recipient financial or confidential identifying information other than the recipient's name, address, and Case Management Information and Payroll System (CMIPS) client identification number, and shall include, but not be limited to, all of the following information:~~

~~(1) The aggregate number of authorized hours before the reduction pursuant to paragraph (1) of subdivision (a) and the aggregate number of authorized hours after the reduction.~~

~~(2) That the recipient may direct the manner in which the reduction of authorized hours is applied to the recipient's previously authorized services.~~

~~(3) How all or part of the reduction may be restored, as set forth in subdivision (f), if the recipient believes he or she will be at serious risk of out-of-home placement as a consequence of the reduction.~~

~~(d) The department shall inform providers of any reduction to recipient hours through a statement on provider timesheets, after consultation with counties.~~

~~(e) The IHSS Care Supplement application process described in subdivision (f) shall be completed before a request for a state hearing is submitted. If the IHSS Care Supplement application is filed within 15 days of the notice of action required by subdivision (c), or before the effective date of the reduction, the recipient shall be eligible for aid paid pending. A revised notice of action shall be issued by the county following evaluation of the IHSS Care Supplement application.~~

~~(f) (1) Any aged, blind, or disabled individual who is eligible for services under this article who receives a notice of action~~

~~indicating that his or her services will be reduced under subdivision (a) but who believes he or she is at serious risk of out-of-home placement unless all or part of the reduction is restored may submit an IHSS Care Supplement application. When a recipient submits an IHSS Care Supplement application within 15 days of receiving the reduction notice or prior to the implementation of the reduction, the recipient's in-home supportive services shall continue at the level authorized by the most recent assessment, prior to any reduction, until the county finds that the recipient does or does not require restoration of any hours through the IHSS Care Supplement. If the recipient disagrees with the county's determination concerning the need for the IHSS Care Supplement, the recipient may request a hearing on that determination.~~

~~(2) The department shall develop an assessment tool, in consultation with stakeholders, to be used by the counties to determine if a recipient is at serious risk of out-of-home placement as a consequence of the reduction of services pursuant to this section. The assessment tool shall be developed utilizing standard of care criteria for relevant out-of-home placements that serve individuals who are aged, blind, or who have disabilities and who would qualify for IHSS if living at home, including, but not limited to, criteria set forth in Chapter 7.0 of the Manual of Criteria for Medi-Cal Authorization published by the State Department of Health Care Services, as amended April 15, 2004, and the IHSS uniform assessment guidelines.~~

~~(3) Counties shall give a high priority to prompt screening of persons specified in this section to determine their need for an IHSS Care Supplement.~~

~~(g) (1) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the department may implement and administer this section through all-county letters or similar instruction from the department until regulations are adopted. The department shall adopt emergency regulations implementing this section no later than March 1, 2013. The department may readopt any emergency regulation authorized by this section that is the same as or substantially equivalent to an emergency regulation previously adopted under this section.~~

~~(2) The initial adoption of emergency regulations implementing this section and one readoption of emergency regulations authorized by this subdivision shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. Initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be exempt from review by the Office of Administrative Law. The initial emergency regulations and the one readoption of emergency regulations~~

~~authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and each shall remain in effect for no more than 180 days, by which time final regulations may be adopted.~~

~~(h) If the Director of Health Care Services determines that federal approval is necessary to implement this section, this section shall be implemented only after any state plan amendments required pursuant to Section 14132.95 are approved.~~

Operative if CCI is Operative

SEC. 6. Section 12306.1 of the Welfare and Institutions Code is amended to read:

12306.1. (a) When any increase in provider wages or benefits is negotiated or agreed to by a public authority or nonprofit consortium under Section 12301.6, then the county shall use county-only funds to fund both the county share and the state share, including employment taxes, of any increase in the cost of the program, unless otherwise provided for in the annual Budget Act or appropriated by statute. No increase in wages or benefits negotiated or agreed to pursuant to this section shall take effect unless and until, prior to its implementation, the department has obtained the approval of the State Department of Health Care Services for the increase pursuant to a determination that it is consistent with federal law and to ensure federal financial participation for the services under Title XIX of the federal Social Security Act, and unless and until all of the following conditions have been met:

(1) Each county has provided the department with documentation of the approval of the county board of supervisors of the proposed public authority or nonprofit consortium rate, including wages and related expenditures. The documentation shall be received by the department before the department and the State Department of Health Care Services may approve the increase.

(2) Each county has met department guidelines and regulatory requirements as a condition of receiving state participation in the rate.

(b) Any rate approved pursuant to subdivision (a) shall take effect commencing on the first day of the month subsequent to the month in which final approval is received from the department. The department may grant approval on a conditional basis, subject to the availability of funding.

(c) The state shall pay 65 percent, and each county shall pay 35 percent, of the nonfederal share of wage and benefit increases negotiated by a public authority or nonprofit consortium pursuant to Section 12301.6 and associated employment taxes, only in accordance with subdivisions (d) to (f), inclusive.

(d) (1) The state shall participate as provided in subdivision (c) in wages up to seven dollars and fifty cents ($7.50) per hour and individual health benefits up to sixty cents ($0.60) per hour for all public authority or nonprofit consortium providers. This paragraph shall be operative for the 2000-01 fiscal year and each year thereafter unless otherwise provided in paragraphs (2), (3), (4), and (5), and without regard to when the wage and benefit increase becomes effective.

(2) The state shall participate as provided in subdivision (c) in

a total of wages and individual health benefits up to nine dollars and ten cents ($9.10) per hour, if wages have reached at least seven dollars and fifty cents ($7.50) per hour. Counties shall determine, pursuant to the collective bargaining process provided for in subdivision (c) of Section 12301.6, what portion of the nine dollars and ten cents ($9.10) per hour shall be used to fund wage increases above seven dollars and fifty cents ($7.50) per hour or individual health benefit increases, or both. This paragraph shall be operative for the 2001-02 fiscal year and each fiscal year thereafter, unless otherwise provided in paragraphs (3), (4), and (5).

(3) The state shall participate as provided in subdivision (c) in a total of wages and individual health benefits up to ten dollars and ten cents ($10.10) per hour, if wages have reached at least seven dollars and fifty cents ($7.50) per hour. Counties shall determine, pursuant to the collective bargaining process provided for in subdivision (c) of Section 12301.6, what portion of the ten dollars and ten cents ($10.10) per hour shall be used to fund wage increases above seven dollars and fifty cents ($7.50) per hour or individual health benefit increases, or both. This paragraph shall be operative commencing with the next state fiscal year for which the May Revision forecast of General Fund revenue, excluding transfers, exceeds by at least 5 percent, the most current estimate of revenue, excluding transfers, for the year in which paragraph (2) became operative.

(4) The state shall participate as provided in subdivision (c) in a total of wages and individual health benefits up to eleven dollars and ten cents ($11.10) per hour, if wages have reached at least seven dollars and fifty cents ($7.50) per hour. Counties shall determine, pursuant to the collective bargaining process provided for in subdivision (c) of Section 12301.6, what portion of the eleven dollars and ten cents ($11.10) per hour shall be used to fund wage increases or individual health benefits, or both. This paragraph shall be operative commencing with the next state fiscal year for which the May Revision forecast of General Fund revenue, excluding transfers, exceeds by at least 5 percent, the most current estimate of revenues, excluding transfers, for the year in which paragraph (3) became operative.

(5) The state shall participate as provided in subdivision (c) in a total cost of wages and individual health benefits up to twelve dollars and ten cents ($12.10) per hour, if wages have reached at least seven dollars and fifty cents ($7.50) per hour. Counties shall determine, pursuant to the collective bargaining process provided for in subdivision (c) of Section 12301.6, what portion of the twelve dollars and ten cents ($12.10) per hour shall be used to fund wage increases above seven dollars and fifty cents ($7.50) per hour or individual health benefit increases, or both. This paragraph shall be operative commencing with the next state fiscal year for which the

May Revision forecast of General Fund revenue, excluding transfers, exceeds by at least 5 percent, the most current estimate of revenues, excluding transfers, for the year in which paragraph (4) became operative.

~~(6) Notwithstanding paragraphs (2) to (5), inclusive, the state shall participate as provided in subdivision (c) in a total cost of wages up to nine dollars and fifty cents ($9.50) per hour and in individual health benefits up to sixty cents ($0.60) per hour. This paragraph shall become operative on July 1, 2009.~~

~~(7) (A) The Legislature finds and declares that injunctions issued by the courts have prevented the state from implementing the changes described in paragraph (6) during the pendency of litigation. To avoid confusion for providers, recipients, and other stakeholders, it is therefore the intent of the Legislature to temporarily suspend the reductions described in that paragraph until July 1, 2012, to allow the litigation to reach a final result.~~

~~(B) Paragraph (6) shall not be implemented until July 1, 2012, and as of that date shall only be implemented if a court of competent jurisdiction has issued an order, that is not subject to appeal or for which the time to appeal has expired, upholding its validity.~~

(e) (1) On or before May 14 immediately prior to the fiscal year for which state participation is provided under paragraphs (2) to (5), inclusive, of subdivision (d), the Director of Finance shall certify to the Governor, the appropriate committees of the Legislature, and the department that the condition for each subdivision to become operative has been met.

(2) For purposes of certifications under paragraph (1), the General Fund revenue forecast, excluding transfers, that is used for the relevant fiscal year shall be calculated in a manner that is consistent with the definition of General Fund revenues, excluding transfers, that was used by the Department of Finance in the 2000-01 Governor's Budget revenue forecast as reflected on Schedule 8 of the Governor's Budget.

(f) Any increase in overall state participation in wage and benefit increases under paragraphs (2) to (5), inclusive, of subdivision (d), shall be limited to a wage and benefit increase of one dollar ($1) per hour with respect to any fiscal year. With respect to actual changes in specific wages and health benefits negotiated through the collective bargaining process, the state shall participate in the costs, as approved in subdivision (c), up to the maximum levels as provided under paragraphs (2) to (5)~~(6)~~, inclusive, of subdivision (d).

(g) For the period during which Section 12306.15 is operative, each county's share of the costs of negotiated wage and benefit increases specified in subdivision (c) shall remain, but the County IHSS Maintenance of Effort pursuant to Section 12306.15 shall be in

lieu of that share.

(h) This section shall become inoperative only if Chapter 45 of the Statutes of 2012 is deemed inoperative pursuant to Section 15 of that chapter.

Operative if CCI is Inoperative

SEC. 7. Section 12306.1 of the Welfare and Institutions Code is amended to read:

12306.1. (a) When any increase in provider wages or benefits is negotiated or agreed to by a public authority or nonprofit consortium under Section 12301.6, then the county shall use county-only funds to fund both the county share and the state share, including employment taxes, of any increase in the cost of the program, unless otherwise provided for in the annual Budget Act or appropriated by statute. No increase in wages or benefits negotiated or agreed to pursuant to this section shall take effect unless and until, prior to its implementation, the department has obtained the approval of the State Department of Health Care Services for the increase pursuant to a determination that it is consistent with federal law and to ensure federal financial participation for the services under Title XIX of the federal Social Security Act, and unless and until all of the following conditions have been met:

(1) Each county has provided the department with documentation of the approval of the county board of supervisors of the proposed public authority or nonprofit consortium rate, including wages and related expenditures. The documentation shall be received by the department before the department and the State Department of Health Care Services may approve the increase.

(2) Each county has met department guidelines and regulatory requirements as a condition of receiving state participation in the rate.

(b) Any rate approved pursuant to subdivision (a) shall take effect commencing on the first day of the month subsequent to the month in which final approval is received from the department. The department may grant approval on a conditional basis, subject to the availability of funding.

(c) The state shall pay 65 percent, and each county shall pay 35 percent, of the nonfederal share of wage and benefit increases negotiated by a public authority or nonprofit consortium pursuant to Section 12301.6 and associated employment taxes, only in accordance with subdivisions (d) to (f), inclusive.

(d) (1) The state shall participate as provided in subdivision (c) in wages up to seven dollars and fifty cents ($7.50) per hour and individual health benefits up to sixty cents ($0.60) per hour for all public authority or nonprofit consortium providers. This paragraph shall be operative for the 2000-01 fiscal year and each year thereafter unless otherwise provided in paragraphs (2), (3), (4), and (5), and without regard to when the wage and benefit increase becomes effective.

(2) The state shall participate as provided in subdivision (c) in

a total of wages and individual health benefits up to nine dollars and ten cents ($9.10) per hour, if wages have reached at least seven dollars and fifty cents ($7.50) per hour. Counties shall determine, pursuant to the collective bargaining process provided for in subdivision (c) of Section 12301.6, what portion of the nine dollars and ten cents ($9.10) per hour shall be used to fund wage increases above seven dollars and fifty cents ($7.50) per hour or individual health benefit increases, or both. This paragraph shall be operative for the 2001-02 fiscal year and each fiscal year thereafter, unless otherwise provided in paragraphs (3), (4), and (5).

(3) The state shall participate as provided in subdivision (c) in a total of wages and individual health benefits up to ten dollars and ten cents ($10.10) per hour, if wages have reached at least seven dollars and fifty cents ($7.50) per hour. Counties shall determine, pursuant to the collective bargaining process provided for in subdivision (c) of Section 12301.6, what portion of the ten dollars and ten cents ($10.10) per hour shall be used to fund wage increases above seven dollars and fifty cents ($7.50) per hour or individual health benefit increases, or both. This paragraph shall be operative commencing with the next state fiscal year for which the May Revision forecast of General Fund revenue, excluding transfers, exceeds by at least 5 percent, the most current estimate of revenue, excluding transfers, for the year in which paragraph (2) became operative.

(4) The state shall participate as provided in subdivision (c) in a total of wages and individual health benefits up to eleven dollars and ten cents ($11.10) per hour, if wages have reached at least seven dollars and fifty cents ($7.50) per hour. Counties shall determine, pursuant to the collective bargaining process provided for in subdivision (c) of Section 12301.6, what portion of the eleven dollars and ten cents ($11.10) per hour shall be used to fund wage increases or individual health benefits, or both. This paragraph shall be operative commencing with the next state fiscal year for which the May Revision forecast of General Fund revenue, excluding transfers, exceeds by at least 5 percent, the most current estimate of revenues, excluding transfers, for the year in which paragraph (3) became operative.

(5) The state shall participate as provided in subdivision (c) in a total cost of wages and individual health benefits up to twelve dollars and ten cents ($12.10) per hour, if wages have reached at least seven dollars and fifty cents ($7.50) per hour. Counties shall determine, pursuant to the collective bargaining process provided for in subdivision (c) of Section 12301.6, what portion of the twelve dollars and ten cents ($12.10) per hour shall be used to fund wage increases above seven dollars and fifty cents ($7.50) per hour or individual health benefit increases, or both. This paragraph shall be operative commencing with the next state fiscal year for which the

May Revision forecast of General Fund revenue, excluding transfers, exceeds by at least 5 percent, the most current estimate of revenues, excluding transfers, for the year in which paragraph (4) became operative.

~~(6) Notwithstanding paragraphs (2) to (5), inclusive, the state shall participate as provided in subdivision (c) in a total cost of wages up to nine dollars and fifty cents ($9.50) per hour and in individual health benefits up to sixty cents ($0.60) per hour. This paragraph shall become operative on July 1, 2009.~~

~~(7) (A) The Legislature finds and declares that injunctions issued by the courts have prevented the state from implementing the changes described in paragraph (6) during the pendency of litigation. To avoid confusion for providers, recipients, and other stakeholders, it is therefore the intent of the Legislature to temporarily suspend the reductions described in that paragraph until July 1, 2012, to allow the litigation to reach a final result.~~

~~(B) Paragraph (6) shall not be implemented until July 1, 2012, and as of that date shall only be implemented if a court of competent jurisdiction has issued an order, that is not subject to appeal or for which the time to appeal has expired, upholding its validity.~~

(e) (1) On or before May 14 immediately prior to the fiscal year for which state participation is provided under paragraphs (2) to (5), inclusive, of subdivision (d), the Director of Finance shall certify to the Governor, the appropriate committees of the Legislature, and the department that the condition for each subdivision to become operative has been met.

(2) For purposes of certifications under paragraph (1), the General Fund revenue forecast, excluding transfers, that is used for the relevant fiscal year shall be calculated in a manner that is consistent with the definition of General Fund revenues, excluding transfers, that was used by the Department of Finance in the 2000-01 Governor's Budget revenue forecast as reflected on Schedule 8 of the Governor's Budget.

(f) Any increase in overall state participation in wage and benefit increases under paragraphs (2) to (5), inclusive, of subdivision (d), shall be limited to a wage and benefit increase of one dollar ($1) per hour with respect to any fiscal year. With respect to actual changes in specific wages and health benefits negotiated through the collective bargaining process, the state shall participate in the costs, as approved in subdivision (c), up to the maximum levels as provided under paragraphs (2) to (5)~~(6)~~, inclusive, of subdivision (d).

(g) This section shall become operative only if Chapter 45 of the Statutes of 2012 is deemed inoperative pursuant to Section 15 of that chapter.

SEC.8. Section 12309 of the Welfare and Institutions Code is amended to read:

12309. (a) In order to assure that in-home supportive services are delivered in all counties in a uniform manner, the department shall develop a uniform needs assessment tool.

(b) (1) Each county shall, in administering this article, use the uniform needs assessment tool developed pursuant to subdivision (a) in collecting and evaluating information.

(2) For purposes of paragraph (1), "information" includes, but is not limited to, all of the following:

(A) The recipient's living environment.

(B) Alternative resources.

(C) The recipient's functional abilities.

(c) (1) The uniform needs assessment tool developed pursuant to subdivision (a) shall evaluate the recipient's functioning in activities of daily living and instrumental activities of daily living.

(2) The recipient's functioning shall be quantified, using the general hierarchical five-point scale for ranking each function, as specified in subdivision (d).

(d) The recipient's functioning ranks shall be as follows:

(1) Rank one. A recipient's functioning shall be classified as rank one if his or her functioning is independent, and he or she is able to perform the function without human assistance, although the recipient may have difficulty in performing the function, but the completion of the function, with or without a device or mobility aid, poses no substantial risk to his or her safety.

(2) Rank two. A recipient's functioning shall be classified as rank two if he or she is able to perform a function, but needs verbal assistance, such as reminding, guidance, or encouragement.

(3) Rank three. A recipient's functioning shall be classified as rank three if he or she can perform the function with some human assistance, including, but not limited to, direct physical assistance from a provider.

(4) Rank four. A recipient's functioning shall be classified as rank four if he or she can perform a function, but only with substantial human assistance.

(5) Rank five. A recipient's functioning shall be classified as rank five if he or she cannot perform the function, with or without human assistance.

~~(e) (1) Notwithstanding any other law, and effective September 1, 2009, individuals shall be eligible for each domestic or related service only if assessed at a rank four or five, as defined in subdivision (d), in the activity of daily living relating to that service. The activities of daily living that relate to domestic and related services are defined in regulations and include housework,~~

~~laundry, shopping and errands, meal preparation, and meal cleanup. The rank for each domestic and related service shall be determined based on an assessment of need for supportive services by the county, in accordance with this section and the hourly task guidelines as defined by Section 12301.2. This paragraph does not apply to individuals meeting one of the conditions specified in paragraph (2).~~

~~(2) Paragraph (1) shall not apply to individuals authorized to receive either protective supervision pursuant to subdivision (b) of Section 12300 and Section 12301.21 or paramedical services pursuant to Section 12300.1, or to individuals authorized to receive over 120 hours of services per month.~~

~~(3) To the extent necessary to maintain federal financial participation, the director may waive any or all of the provisions of paragraph (2), after consultation with the State Department of Health Care Services.~~

~~(f) A recipient shall be assigned a functional index score. The functional index score for a recipient shall be a weighted average based on the individual functional index rankings, as described in subdivision (d), to provide a single measure of a recipient's relative dependence on human assistance for performance of activities of daily living that are used in the assessment of services provided pursuant to this article.~~

~~(g) (1) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) the department may implement and administer this section through all-county letters or similar instruction from the department until regulations are adopted. The department shall adopt emergency regulations implementing this section no later than July 1, 2010. The department may readopt any emergency regulation authorized by this section that is the same as or substantially equivalent to an emergency regulation previously adopted under this section.~~

~~(2) The initial adoption of emergency regulations implementing this section and one readoption of emergency regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. Initial emergency regulations and the one readoption of emergency regulations authorized by this subdivision shall be exempt from review and approval by the Office of Administrative Law. The initial emergency regulations and the one readoption of emergency regulations authorized by this subdivision shall be submitted to the Office of Administrative Law for filing with the Secretary of State and each shall remain in effect for no more than 180 days, by which time final regulations may be adopted.~~

~~(h) Subdivisions (e), (f), and (g) shall become operative on September 1, 2009.~~

~~(i) (1) The Legislature finds and declares that injunctions issued by the courts have prevented the state from implementing the changes described in subdivisions (e), (f), and (g) during the pendency of litigation. To avoid confusion for providers, recipients, and other stakeholders, it is therefore the intent of the Legislature to temporarily suspend the reductions described in those subdivisions until July 1, 2012, to allow the litigation to reach a final result.~~

~~(2) Notwithstanding subdivision (h) or any other provision of law, subdivisions (e), (f), and (g) shall not be implemented until July 1, 2012, and as by that date shall only be implemented if a court of competent jurisdiction has issued an order, that is not subject to appeal or for which the time to appeal has expired, upholding their validity.~~

SEC. 9. Section 12309.2 of the Welfare and Institutions Code is repealed:

~~12309.2. (a) Notwithstanding any other law, except as provided in subdivision (b), and pursuant to subdivision (e) of Section 12309, and effective September 1, 2009, eligibility for in-home supportive services provided pursuant to Article 7 (commencing with Section 12300) of Chapter 3 shall also include functional index scores calculated pursuant to subdivision (f) of Section 12309, as follows:~~

~~(1) Individuals with a functional index score of 2.0 and above shall be eligible to receive all appropriate in-home supportive services provided pursuant to this article.~~

~~(2) Individuals with a functional index score below 2.0 shall not be eligible for any in-home supportive services provided pursuant to this article.~~

~~(3) Paragraph (2) shall not apply to individuals authorized to receive protective supervision pursuant to subdivision (b) of Section 12300 and Section 12301.21 or paramedical services pursuant to Section 12300.1, or to individuals authorized to receive over 120 hours of services per month pursuant to Section 12301.2.~~

~~(4) To the extent necessary to maintain federal financial participation, the director may waive any or all of the provisions of paragraph (3), after consultation with the State Department of Health Care Services.~~

~~(b) The department shall modify the notice of action forms to inform individuals whose hours are reduced or for whom eligibility is eliminated by the changes made to Section 12309 or this section by the act adding this section of their functional rank and functional index score. The form shall be modified no later than September 1, 2009.~~

~~(c) (1) Notwithstanding the rulemaking provisions of the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement and administer this section through all-county letters or similar instruction from the department until regulations are adopted. The department shall adopt emergency regulations implementing this section no later than July 1, 2010. The department may readopt any emergency regulation authorized by this section that is the same as or substantially equivalent to an emergency regulation previously adopted under this section.~~

~~(2) The initial adoption of emergency regulations implementing this section and the one readoption of emergency regulations authorized by this subdivision shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. Initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be exempt from review and approval by the Office of~~

~~Administrative Law. The initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and each shall remain in effect for no more than 180 days, by which time final regulations may be adopted.~~

~~(d) This section shall become operative on September 1, 2009.~~

~~(e) (1) The Legislature finds and declares that injunctions issued by the courts have prevented the state from implementing the changes described in this section during the pendency of litigation. To avoid confusion for providers, recipients, and other stakeholders, it is therefore the intent of the Legislature to temporarily suspend the reductions described in this section until July 1, 2012, to allow the litigation to reach a final result.~~

~~(2) Notwithstanding subdivision (d) or any other provision of law, this section shall not be implemented until July 1, 2012, and as of that date shall only be implemented if a court of competent jurisdiction has issued an order, that is not subject to appeal or for which the time to appeal has expired, upholding its validity.~~

SEC. 10. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the Department of Health Care Services and the Department of Social Services, without taking any further regulatory action, shall implement, interpret, or make specific this act by means of all-county letters, plan letters, plan or provider bulletins, or similar instructions.

EXHIBIT B

Proposed Schedule re Court Approval of Settlement and Implementation of 8% Reduction[1]

July 1	Implementation of 8% reduction
June 10	Notices (NOA) to IHSS Recipients re 8% reduction begin to roll out May 23 Hearing re Final Approval of Settlement (sooner if court will agree)
May 10	Parties to respond to objections; Plaintiffs to file Motion for Final Approval
May 9	Deadline for finalizing NOA [Draft NOA to be circulated to plaintiffs sometime in April]
May 9	Deadline for finalizing ACL
May 24	Legislation re 8% reduction from July 1, 2013-June 30, 2014; 7% reduction July 1, 2014-ongoing subject to trigger (necessary to provide recipients with notice by June 20); repeal of challenged statutes
May 3	Objections due
April 5	Notice to Class
April 4	Hearing re Motion for Preliminary Approval
March 28	File Motion for Preliminary Approval

[1] Presuming not individual notice.

EXHIBIT C

Exhibit C-1
Class Notice

NOTICE OF IHSS CLASS ACTION SETTLEMENTS

This notice is about the proposed settlements of two class action lawsuits. It is about In-Home Supportive Services (IHSS).

ABOUT THE LAWSUITS

In 2009, the State of California passed a law to stop all IHSS services to about 30,000 people. The law would have cut hours for help with meals, house cleaning and other home care to another 100,000 people. In 2011, the state passed another law to cut IHSS hours by 20% for many more people. (Some recipients might have been able to get their hours back if they could prove they were at serious risk of out of home placement.)

David Oster and other IHSS recipients, as well as labor unions for IHSS workers, filed a lawsuit about these cuts in IHSS hours. The defendants are state officials. The lawsuit is called *Oster*.

In 2009, the State also passed a law to cut funding when an IHSS worker makes more than $9.50 per hour.

IHSS recipients and labor unions for IHSS workers filed a lawsuit about the wage cuts. The defendants are state officials. The lawsuit is called *Dominguez*.

A court in Oakland temporarily stopped the cuts in both cases in 2009 and 2011. The State asked higher courts to let it go ahead with the IHSS cuts. No one can tell how the higher courts might rule. No one can tell if the court in Oakland would stop the cuts forever.

ABOUT THE SETTLEMENTS

The state has agreed to get rid of the IHSS cuts from 2009 and 2011. These cuts will never go into effect.

- There will be no 20% cut in IHSS hours. There will be a one-year cut of 8% starting around July 1, 2013. This is a cut of 4.4% below current hours because there is already a cut of 3.6% that is not part of these lawsuits. (3.6% + 4.4% = 8%).

- Around July 2014 the cut in IHSS hours go down to 7%. This is a cut of 3.4% on top of the 3.6% current cut.
- You can ask the county for extra hours if your circumstances change.
- There will be no cuts in State funding for IHSS wages.

The State agreed to ask the federal government for extra money for the IHSS program from a new assessment. The State could end the 7% cut as early as 2015 if this is allowed.

These are class action lawsuits. You are a class member in the *Oster* case if you would have gotten a notice of action about IHSS cuts in 2009 or 2011. You are a class member in the *Dominguez* case if you get IHSS and live in any of these counties:

Alameda.	Calaveras.	Contra Costa.	Fresno.
Los Angeles.	Madera.	Marin.	Mariposa.
Mendocino.	Monterey.	Napa.	Placer.
Riverside.	Sacramento.	San Benito.	San Francisco.
San Joaquin.	San Luis Obispo.	San Mateo.	Santa Barbara.
Santa Clara.	Santa Cruz.	Solano.	Sonoma.
Yolo.	Yuba.		

As part of the settlements, class members in the two cases cannot file a lawsuit about the 8% or 7% cuts.

IF YOU WANT MORE DETAILS:

There are different sets of lawyers representing IHSS class members in the *Oster* case and in the *Dominguez* case. Together they are called the **IHSS Settlement Lawyers.** You can get a list of these lawyers, a copy of the settlement agreement and more details about the settlements from your county welfare office. You can also get details from your county public authority. You can also get details from these websites: www.disabilityrightsca.org, www.altshulerberzon.com, www.DHCS.gov, and www.CDSS.gov.

To ask questions about the settlements or this notice, you can:

(1) Leave a message for the **IHSS Settlement Lawyers** at 1-800-XXXXXXX.

(2) Send a letter to the **IHSS Settlement Lawyers** at P.O. Box XXX, City of XXXXX, CA 900XX.

(3) Send an email to: **IHSSsettlement@gmail.com.**

IF YOU DO NOT OBJECT TO THE SETTLEMENTS:

You do not have to do anything.

IF YOU OBJECT TO THE SETTLEMENTS:

You must mail a statement about why you object to the settlements. The deadline is May 3, 2013. Mail your objection to both:

1. Gregory Brown, Office of the Attorney General, 455 Golden Gate Avenue 11th Floor, San Francisco, California 94102

2. IHSS Settlement Lawyers, PO Box XXX, City of XXXXX, CA 900XX.

You must mail your objection by the deadline. You cannot object to these settlements later.

The court in Oakland will also hold a hearing about the settlements at XXX pm on May 24, 2013. The address for the court is

U.S. Federal District Court, Courtroom 2
1301 Clay Street, 4th Floor
Oakland California 94612

You can get more details about the hearing from the places listed above.

Exhibit C-2
Flyer

NOTICE ABOUT IN-HOME SUPPORTIVE SERVICES (IHSS)

Settlement of IHSS lawsuits

In 2009, the State of California tried to cut IHSS domestic and related hours. In 2011, the State tried to cut IHSS hours by 20%. In 2009, the State tried to cut funds for IHSS workers who make more than $9.50 an hour.

IHSS recipients and labor unions filed lawsuits. They won temporary orders stopping the cuts. The State appealed the lawsuits. No one knows if the courts would allow the cuts or not. Now there is a settlement. If the court approves the settlement:

- There will be no 20% cut in IHSS hours. There will be a one-year cut of 8% starting around July 1, 2013. This is 4.4% below current hours because there is already a cut of 3.6% that is not part of these lawsuits. (3.6% + 4.4% = 8%).
- Around July 2014, the cut in IHSS hours will go down to 7%. (3.4% on top of the 3.6% current cut).
- There will be no cuts in State funding for IHSS wages.
- You can ask the county for extra hours if your circumstances change.

TO GET MORE DETAILS OR FILE AN OBJECTION WITH THE COURT: You can get a copy of the class notice and the settlement agreement from your county welfare office or public authority. Also, you can get details at these websites: www.disabilityrightsca.org, www.altshulerberzon.com, www.DHCS.gov, and www.CDSS.gov.

You can also leave a message for the lawyers representing IHSS recipients at 1-800-XXXXXXX.

THE DEADLINE TO OBJECT TO THE SETTLEMENT IS MAY 3, 2013.

You don't have to do anything if you do not object to the settlement.

Exhibit C-3
Plan for Class Notice

OSTER/DOMINGUEZ SETTLEMENT

PLAN FOR CLASS NOTICE AND TO RESPOND TO OBJECTIONS

A. PLAN FOR CLASS NOTICE

1. The parties have agreed that three documents will be available to inform IHSS recipients, their family members and those who work with and assist them. These documents, collectively referred to as "settlement materials," are:
    a. One page flyer/poster
    b. Class notice – 3 pages
        1. The one page flyer and three page class notice will be available in English and 12 other languages. To expedite the translation process, one of the Union Plaintiffs, SEIU-UTLCW, will arrange translations within two days of approval, subject to reimbursement from state defendants.
        2. The class notice and other settlement materials will be available in alternative formats for IHSS recipients with visual impairments, per Paragraph 3 below.
    c. Settlement Agreement with all exhibits

2. CDSS and CDHCS will post all settlement materials in English within 24 hours of entry of the Order re Preliminary Approval of Class Settlement in a prominent area of their respective websites. The class notice and flyer will be posted in remaining languages as soon as these are translated and available.

3. Disability Rights California will post the settlement materials on its web site in a format that is accessible to recipients with visual impairments or who are blind who use screen readers, and upon request, will provide the notice in alternative formats, such as audio tapes, compact disks, and large print. Disability Rights California and at least some other class counsel will also post all of the settlement materials on their respective web sites.

4. Union Plaintiffs SEIU State Council, SEIU-ULTCW, SEIU - United Health Workers West and United Domestic Workers, AFSCME, will post information regarding the settlement and the settlement materials (or a link to them) on their respective websites.

5. CDSS will distribute the settlement materials (or a link to them) to each county welfare department and will request that:
    a. The flyer and notice be displayed in prominent locations in each county welfare office waiting room and public area in English and Spanish;
    b. The flyer and notice be displayed in prominent locations in additional primary languages prevalent in the regional area (if such languages are among the 12 languages in which the flyer and notice are translated);
    c. The settlement agreement and class notice in the remainder of languages be available upon request from the office receptionist.

6. CDSS will distribute the settlement materials (or a link to them) to state employees in the State Hearing Division with instructions that the flyer and notice be displayed in prominent locations in each State Hearing Division office and waiting room.

7. CDSS or CDHCS will distribute the settlement materials (or a link to them) to the following organizations with a request to (a) post the flyer and notice on their website, if they have one, (b) post the flyer and notice in prominent locations in the organization's common area or waiting room, (c) provide the notice individually to any participant whom they have reason to believe may be receiving IHSS:
    a. Providers of Community-Based Adult Services ("CBAS"),
    b. IHSS Public Authorities,
    c. County IHSS Advisory Committees,
    d. County Adult Protective Services programs

8. CDSS shall make a request to the following state boards, committees and councils, requesting that these state organizations (a) post the flyer and class notice on the state organization's web page and at its offices, and (b) email the notice (or a link to it) to its distribution or membership list, if any.
    a. California State Independent Living Organization, http://www.calsilc.org/
    b. California Olmstead Advisory Committee, http://www.chhs.ca.gov/initiatives/Olmstead/
    c. State Council on Developmental Disabilities, http://www.scdd.ca.gov/

9. Class counsel will make a request to the California Council for the Blind, to (a) post the flyer and 3 page notice at prominent locations at its annual statewide conference and convention in Sacramento on April 11-13, 2013, (b) email the notice (or a link to it) to its distribution list; and (c) post the notice and flyer on the organization's website.

10. Class counsel will arrange to post the notice and flyer on the Benchmark Institute's list serve in California, which includes more than 300 legal services attorneys, paralegals and other advocates for public benefits recipients, including recipients of IHSS.

11. Class counsel will arrange to post the notice and flyer on the Health Consumer Action list serve in California, which includes more than 400 attorneys and health advocates, including those assisting recipients of IHSS.

12. Class counsel will arrange to post the notice and flyer on the National Senior Citizens Law Center's California Health Network list serve, which includes more than 1,000 legal services attorneys, health and IHSS advocates, private attorneys, health care providers, aging services providers, community based organizations serving limited English proficient individuals, and other interested individuals and organizations.

13. Class counsel has made arrangements to distribute information about the class notice through the California Disability Community Action Network ("CDCAN"). CDCAN's email reports go out to over 65,000 people with disabilities, mental health needs, seniors, people with traumatic brain and other injuries, people with MS, Alzheimer's and other disorders, veterans with disabilities and mental health needs, families, workers, community organizations, facilities and advocacy groups including those in the Asian/Pacific Islander, Latino, American Indian, Indian, African-American communities; policymakers, and others across the State.

14. Class counsel will make arrangements to publicize the class settlement with the following organizations, including requesting them to post the notice and flyer on their website and to distribute these materials to their list serves, and also requesting opportunities to speak to their membership on any scheduled conference call or meeting:
    a. California IHSS Consumer Alliance (CICA) (statewide collaboration of IHSS Public Authority Advisory Committee and Governing Board members); http://www.cicaihss.org
    b. California Association of Public Authorities (CAPA), http://www.capaihss.org
    c. California Collaborative for Long Term Services and Supports, which has more than 40 member organizations and is a project of the Government Action and Communication Institute , http://www.gacinstitute.org/ccltss-members.php
    d. IHSS Coalition, http://www.ihsscoalition.org/
    e. California Foundation of Independent Living Centers, http://www.cfilc.org
    f. People First of California, http://www.peoplefirstca.org/
    g. California Network of Mental Health Clients
    h. Alzheimer's Association, California Council, http://caalz.org/
    i. California Association for Health Services at Home
    j. California Association of Social Rehabilitation Agencies (CASRA)
    k. The ARC of California
    l. AARP

m. Legal Aid Association of California – Senior Legal Services Provider Section
n. California Association of Area Agencies on Aging
o. California Health Advocates - Health Insurance Counseling and Advocacy Programs (HICAP)

B. PLAN FOR RESPONSE TO OBJECTIONS AND REQUESTS FOR INFORMATION

1. Class counsel will set up (a) a toll-free telephone number to accept messages, (b) a post office box (or other mailing address) to which letters from IHSS recipients may be sent and (c) an email address for IHSS recipients to make inquires and request additional information about the settlement. These options for communicating with Class counsel will be described in the Class notice and available during the period for submitting objections and for one week after the date of the fairness hearing. Class counsel will review and log all communications from IHSS recipients.

2. In responding to communications from IHSS recipients, Class counsel will first identify objections, which will be logged and shared with counsel for Defendants. At the close of the objection period, the parties will confer, categorize the objections and provide the Court with a joint report summarizing all objections. Counsel will also respond to objections after the deadline by informing them that the time period has ended but providing additional information if requested.

3. Class counsel will next identify requests for additional information. These will also be logged and provided with an appropriate response, which might be to provide a copy of the notice in alternative languages or formats, to mail the settlement agreement, or to answer any specific questions that are not addressed in the Settlement materials. Class counsel will maintain a log of these inquiries and the

response provided and will be prepared to provide this to the court *in camera* if requested.

4. Class counsel will next identify complaints and questions that are unrelated to the settlement. If these relate to areas in which Class counsel can provide assistance, the inquiry will be referred to intake staff for the respective program. If it is not an area in which class counsel can assist, the individual will be sent a communication (telephone call, letter or email), stating that Class counsel cannot assist and, if possible, offering a referral to other assistance such as the county bar association or the local legal aid program. Class counsel will maintain a log of these inquiries and the response provided and will be prepared to provide this to the court *in camera* if requested.

EXHIBIT D

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO/OAKLAND DIVISION

DAVID OSTER, *et al.*, Plaintiffs v. WILL LIGHTBOURNE, Director of the California Department of Social Services; TOBY DOUGLAS, Director of the California Department of Health Care Services; CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES; and CALIFORNIA DEPARTMENT OF SOCIAL SERVICES, Defendants	Case No.: CV 09-04668 CW **[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS SETTLEMENT** Date: Time: Courtroom:

Plaintiffs DAVID OSTER, WILLIE BEATRICE SHEPPARD, C.R. by and through his guardian ad litem M.R., DOTTIE JONES, ANDREA HYLTON, HELEN POLLY STERN, CHARLES THURMAN, and L.C. by and through her guardian ad litem M.G. (collectively "Named Plaintiffs") have filed, and all parties support, a Motion for Final Approval of Class Settlement ("Motion for Final Approval"). The Class Settlement Agreement, entered into by Named Plaintiffs, Union Plaintiffs (Service Employees International Union-United Healthcare Workers, Service Employees International Union-United Long Term Care Workers, Service

Employees International Union Local 521, Service Employees International Union California State Council, United Domestic Workers of America, AFSCME Local 3930, AFL-CIO, and California United Homecare Workers), and Defendants, is attached to this order as Exhibit 1.

Classes and subclasses in this case have previously been certified under Federal Rule of Civil Procedure 23(b)(2) and need not be amended for purposes of settlement. On _____, 2013, this Court granted preliminary approval to the Class Settlement Agreement and directed notice of the settlement, its terms, and the applicable procedures and schedules. A Fairness Hearing was held on _____, 2013 to determine whether the Class Settlement Agreement should be granted final approval pursuant to Federal Rule of Civil Procedure 23(e) as fair, adequate, and reasonable. Class members were given an opportunity to comment on and object to the Class Settlement Agreement in writing and at that Fairness Hearing.

Based on consideration of Plaintiffs' moving papers, the arguments of counsel, the objections of class members, and the proceedings in this action to date, the Court hereby finds and concludes that:

1. The Class Notice distributed to Class Members, pursuant to this Court's prior order, was accomplished in all material respects and fully met the requirements of Federal Rule of Civil Procedure 23, due process, and any other applicable laws.
2. The Class Settlement Agreement is fair, reasonable, and adequate in all respects. The Class Settlement Agreement is reasonably related to the strength of Plaintiffs' and class members' claims given the risk, expense, complexity, and duration of further litigation. The Class Settlement Agreement is the result of arms-length negotiations between experienced counsel representing the interests of the Plaintiff Class and Defendants, after thorough factual and legal investigation.
3. The Court has reviewed and considered the objections of class members and finds that they do not raise concerns that warrant rejecting the Class Settlement Agreement.

IT IS HEREBY ORDERED that:

1. The Court has jurisdiction over the subject matter of this litigation and all matters relating thereto, and over the Plaintiffs and Defendants. Venue is proper in the Northern District of California.
2. Pursuant to Federal Rule of Civil Procedure 23(e), this Court grants final approval to the Class Settlement Agreement, incorporates the terms of the Class Settlement Agreement into this order as though fully set forth, and orders all parties to perform all of their obligations thereunder.
3. This order and the Class Settlement Agreement are binding against the parties, their successors in office, and their respective officers, agents, and employees, and all others acting in concert with them.
4. Plaintiffs are bound by the Class Settlement Agreement not to bring or support any lawsuit challenging any provisions of the Class Settlement Agreement. The Class Settlement Agreement reserves, and does not waive, Plaintiffs' right to challenge, on any ground including those previously asserted in this case, any of the following acts that may occur after this Agreement is signed: any state reductions in participation in IHSS wages and/or state approval of wage reductions in IHSS wages; any state reductions of IHSS hours, services, or eligibility other than those set forth in the Agreement; and any due process challenge to notices of action or provision of hearing rights in relation to IHSS service reductions, assessments, or reassessments other than those required by this Agreement.
5. The Court retains exclusive and continuing jurisdiction over this case, the Named Plaintiffs, the Plaintiff Classes and Subclasses, and Defendants for purposes of supervising and resolving issues relating to administration, implementation, and enforcement of the Class Settlement Agreement; resolving any disputes that may arise regarding the Class Settlement Agreement, its terms, or the enforcement thereof; and fashioning appropriate remedies for any violation of that Class Settlement Agreement. The Court's jurisdiction shall expire 30 months after the Centers for Medicare and

Medicaid Services (CMS) acts on the request for approval of the Assessment described in Section VI of the Agreement.

6. As set forth in Paragraph 30 of the Class Settlement Agreement, within 30 days of the date that the appeal in this case has been dismissed and the legislation attached as Exhibit A to the Agreement has been enacted, the parties shall file a Joint Notice and Request for Dismissal. At that time, this Court shall dismiss this case and enter final judgment with prejudice pursuant to the terms of the Class Settlement Agreement, while retaining jurisdiction to enforce the Agreement as set forth above.

IT IS SO ORDERED:

DATED: May __, 2013

_____
The Honorable Claudia Wilken
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO/OAKLAND DIVISION

LYDIA DOMINGUEZ, et al., Plaintiffs, v. WILL LIGHTBOURNE, et al.,	Case No.: C 09-02306 CW **[PROPOSED] ORDER GRANTING FINAL APPROVAL OF CLASS SETTLEMENT** Date: Time: Courtroom:

Plaintiffs PATSY MILLER, ALEX BROWN, by and through his mother and next friend Lisa Brown, DONNA BROWN, CHLOE LIPTON, by and through her conservator and next friend Julie Weissman-Steinbaugh, HERBERT M. MEYER, LESLIE GORDON, CHARLENE AYERS, WILLER BEATRICE SHEPPARD, ANDY MARTINEZ, and CAROLYN STWEART (collectively "Named Plaintiffs") have filed, and State Defendants (Will Lightbourne and Toby Douglas) support, a Motion for Final Approval of Class Settlement ("Motion for Final Approval"). The Class Settlement Agreement, entered into by Named Plaintiffs, Union Plaintiffs (Service Employees International Union-United Healthcare Workers, Service Employees International Union-United Long Term Care Workers, Service Employees International Union Local 521, Service Employees International Union California State Council, United Domestic Workers of

America, AFSCME Local 3930, AFL-CIO, and California United Homecare Workers), and State Defendants, is attached to this order as Exhibit 1.

Classes and subclasses in this case have previously been certified under Federal Rule of Civil Procedure 23(b)(2) and were amended in the order granting preliminary approval because of changed factual circumstances. On _____, 2013, this Court granted preliminary approval to the Class Settlement Agreement and directed notice of the settlement, its terms, and the applicable procedures and schedules. A Fairness Hearing was held on _____, 2013 to determine whether the Class Settlement Agreement should be granted final approval pursuant to Federal Rule of Civil Procedure 23(e) as fair, adequate, and reasonable. Class members were given an opportunity to comment on and object to the Class Settlement Agreement in writing and at that Fairness Hearing.

Based on consideration of Plaintiffs' moving papers, the arguments of counsel, the objections of class members, and the proceedings in this action to date, the Court hereby finds and concludes that:

1. The Class Notice distributed to Class Members, pursuant to this Court's prior order, was accomplished in all material respects and fully met the requirements of Federal Rule of Civil Procedure 23, due process, and any other applicable laws.
2. The Class Settlement Agreement is fair, reasonable, and adequate in all respects. The Class Settlement Agreement is reasonably related to the strength of Plaintiffs' and class members' claims given the risk, expense, complexity, and duration of further litigation. The Class Settlement Agreement is the result of arms-length negotiations between experienced counsel representing the interests of the Plaintiff Class and State Defendants, after thorough factual and legal investigation.
3. The Court has reviewed and considered the objections of class members and finds that they do not raise concerns that warrant rejecting the Class Settlement Agreement.

IT IS HEREBY ORDERED that:

1. The Court has jurisdiction over the subject matter of this litigation and all matters relating thereto, and over the Plaintiffs and Defendants. Venue is proper in the Northern District of California.
2. Pursuant to Federal Rule of Civil Procedure 23(e), this Court grants final approval to the Class Settlement Agreement, incorporates the terms of the Class Settlement Agreement into this order as though fully set forth, and orders all parties to that Agreement ("Parties") to perform all of their obligations thereunder.
3. This order and the Class Settlement Agreement are binding against the Parties, their successors in office, and their respective officers, agents, and employees, and all others acting in concert with them.
4. Plaintiffs are bound by the Class Settlement Agreement not to bring or support any lawsuit challenging any provisions of the Class Settlement Agreement. The Class Settlement Agreement reserves, and does not waive, Plaintiffs' right to challenge, on any ground including those previously asserted in this case, any of the following acts that may occur after this Agreement is signed: any state reductions in participation in IHSS wages and/or state approval of wage reductions in IHSS wages; any state reductions of IHSS hours, services, or eligibility other than those set forth in the Agreement; and any due process challenge to notices of action or provision of hearing rights in relation to IHSS service reductions, assessments, or reassessments other than those required by this Agreement.
5. The Court retains exclusive and continuing jurisdiction over this case, the Named Plaintiffs, the Plaintiff Classes and Subclasses, and State Defendants for purposes of supervising and resolving issues relating to administration, implementation, and enforcement of the Class Settlement Agreement; resolving any disputes that may arise regarding the Class Settlement Agreement, its terms, or the enforcement thereof; and fashioning appropriate remedies for any violation of that Class Settlement Agreement. The Court's jurisdiction shall expire 30 months after the Centers for Medicare and

Medicaid Services (CMS) acts on the request for approval of the "Assessment" described in Section VI of the Agreement.

6. As set forth in Paragraph 30 of the Class Settlement Agreement, within 30 days of the date that the appeal in this case has been dismissed and the legislation attached as Exhibit A to the Agreement has been enacted, the parties shall file a Joint Notice and Request for Dismissal. At that time, this Court shall dismiss this case and enter final judgment with prejudice as to State Defendants, pursuant to the terms of the Class Settlement Agreement, while retaining jurisdiction to enforce the Agreement as set forth above.

IT IS SO ORDERED:

DATED: May __, 2013

The Honorable Claudia Wilken
United States District Judge