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21 SUPERIOR COURT OF CALIFORNIA
22 COUNTY OF ALAMEDA

23 FRANCES RIVERA, MARK MULLIN,
24 EBONY PICKETT, GROTONI, and
25 MATERNAL AND CHILD HEALTH
26 ACCESS,

27 Plaintiffs,

28 v.

29 TOBY DOUGLAS, in his capacity as
30 Director, California Department of Health
31 Care Services, CALIFORNIA
32 DEPARTMENT OF HEALTH CARE
33 SERVICES, and DOES 1-20, inclusive,

34 Defendants.

35 ENDORSED
36 FILED
37 ALAMEDA COUNTY

38 SEP 17 2014

39 CLERK OF THE SUPERIOR COURT
40 By MARGARET J. DOWNIE
41 Deputy

42 CASE NO. *RG* 14740011
43 VERIFIED PETITION FOR WRIT OF
44 MANDATE

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I. INTRODUCTION

1. Hundreds of thousands of low-income people who are eligible for health care benefits have been waiting and suffering without desperately needed medical care for a decision on their Medi-Cal applications for months – some since the end of 2013. This is far longer than the 45-day time limit required by law for a decision. The affected individuals include low-income children, pregnant women, and adults with serious, even life-threatening health conditions requiring urgent or emergency medical care that they cannot access because they cannot afford to pay. Though these applicants have provided all the information that is necessary for Respondents to approve their Medi-Cal eligibility, Respondents still have not enrolled them in Medi-Cal. This backlog exists because Respondents fail to follow the laws governing the processing of Medi-Cal applications. Without the intervention of this Court, Respondents’ illegal and needless delays will continue, and applicants will continue to suffer without health care coverage during Respondents’ unlawful delays.

2. Respondents State Department of Health Care Services (DHCS) and its Director have long had ministerial duties under state law and regulations to act within 45 days to determine whether an applicant is eligible for Medi-Cal, notify applicants in writing of the decision, and inform them of their rights to a state fair hearing. Respondents are failing to comply with these ministerial duties. Instead, Respondents have placed hundreds of thousands of applicants in a backlog. In this backlog, applicants are forced to wait many months more than the 45-day timeline in which Respondents are required to make a Medi-Cal eligibility determination. Moreover, while applicants are waiting in the backlog, Respondents fail to notify them of their right to an administrative fair hearing to show their eligibility and begin receiving medical care and health coverage benefits.

3. Respondents are also required, under a state law that became operative January 1, 2014, to grant Medi-Cal without delay to otherwise eligible applicants awaiting income verification where the applicant has provided all of the necessary income information and documents. Respondents are failing in their ministerial duty under this new state law not to delay granting Medi-Cal benefits to such applicants until after the income verification process is

1 complete.

2 4. In sum, Respondents are violating their ministerial duties under the law in three ways.
3 First, by failing to make a decision in 45 days on Medi-Cal eligibility and issue the required
4 notice with information about an applicant's hearing rights. Second, by delaying Medi-Cal
5 benefits to otherwise eligible applicants who have provided all necessary income information
6 and documents until after income has been verified. Third, by failing to provide Medi-Cal
7 applicants who Respondents place in a backlog after 45 days written notice of the right to a fair
8 hearing so that they may prove their eligibility for Medi-Cal and begin receiving medical care
9 and benefits.

10 5. By definition, Medi-Cal applicants are among California's poorest residents and have
11 no alternate means to pay for treatment for urgent, critical health care needs. Many of the
12 applicants in this Medi-Cal backlog are sick or have serious chronic health conditions and
13 urgently need medical care or prescription medications. Many others are children who need
14 time-sensitive immunizations, check-ups to protect their physical and mental development, and
15 time-sensitive follow up care. Still others are pregnant women who need prenatal care and to
16 make necessary arrangements for hospital labor and delivery services.

17 6. Because Respondent DHCS is failing in its ministerial duties, many applicants are
18 stuck in the backlog without Medi-Cal benefits for many months. Applicants such as Petitioners
19 Mark Mullin and Groto Ni are forced to go without desperately needed medical care,
20 endangering their health and well-being, and endure painful medical conditions or pay out of
21 pocket for medicines and services they cannot postpone. Applicants such as Petitioners Ni and
22 Ebony Pickett experience serious depression and dangerous stress when having to incur large
23 medical debts for emergency or other medical needs. Respondents' failure to grant Medi-Cal to
24 otherwise eligible applicants while income is being verified and their failure to provide
25 uninsured backlogged applicants of notice of their hearing rights deprives applicants of the
26 medical benefits to which they are entitled and of the right to a timely hearing to demonstrate
27 their Medi-Cal eligibility and access medical care with insurance benefits. No one should have
28 to die still waiting many months after applying for their Medi-Cal to be granted, as Petitioner

1 Rivera's son did.

2 7. Petitioners seek a Writ of Mandate ordering Respondents to comply with their
3 ministerial duties to process Medi-Cal eligibility determinations within the required 45-day
4 timeline, not to delay granting Medi-Cal to otherwise eligible applicants until after income has
5 been verified, and to provide applicants with the legally required notice of hearing rights,
6 including all applicants who are placed in the backlog without an eligibility determination or
7 benefits in 45 days.

8 II. PARTIES

9 Petitioners

10 8. Petitioner Frances Rivera is a resident of Visalia in Tulare County. Her adult son,
11 employed part-time at a low-wage job, suffered for many years from heart and other health
12 conditions, including painful diverticulitis and gallstones. He was eligible for Medi-Cal and
13 submitted his complete application in early January 2014, but died of a pulmonary embolism on
14 April 6, 2014, still uninsured. While in the backlog without Medi-Cal, he was frequently in pain
15 and delayed or went without many of the medical services he needed for his serious chronic
16 health conditions; he also incurred bills for emergency and other medical care he could not do
17 without. He heard nothing from Respondents before he died. A notice from Respondents
18 granting his Medi-Cal benefits finally arrived at Petitioner Rivera's home in late June 2014,
19 nearly six months after her son had submitted his Medi-Cal application and over two months
20 after his death. Multiple additional notices arrived throughout July 2014, each one a painful
21 reminder to Petitioner of her son's passing and the injustice of Respondents' delay in granting
22 his Medi-Cal.

23 9. Petitioner Mark Mullin is a 37-year old resident of Los Angeles County. After several
24 jobs over more than a decade, Petitioner was laid off in June 2013. His unemployment insurance
25 benefits ran out in January 2014. In February 2014, he submitted an application for Medi-Cal,
26 for which he was eligible, indicating on the application that he had no income. In early July
27 2014, Petitioner experienced abdominal pain so severe he thought he might be dying. Even so,
28 he delayed going to a hospital emergency room until he could no longer bear the pain because he

1 was uninsured and flat broke. At the hospital, he was extremely worried about the cost for tests
2 and the eventual procedure, an appendectomy. He incurred large bills for that emergency
3 surgery. On discharge from the hospital, Petitioner's mother paid for antibiotics for him out of
4 her Social Security, and he went without other prescribed medications for pain and high
5 cholesterol because he could not afford them and he was still uninsured. He also missed out on
6 medical visits after leaving the hospital because he was still without Medi-Cal and could not
7 afford to pay when those visits should have occurred. Petitioner waited in the backlog for over
8 four months, until mid-July 2014, when his Medi-Cal benefits were finally granted only through
9 the intervention of legal advocates.

10 10. Petitioner Ebony Pickett is a resident of Los Angeles County who lost coverage
11 under her mother's health insurance when Petitioner turned 26 years old in November 2013. Her
12 first pregnancy, conceived in January 2014, was unplanned and very stressful. In February 2014,
13 Petitioner submitted an application for Medi-Cal. Although she is employed full time, her
14 income is so low that she qualifies for Medi-Cal. Petitioner contacted the Medi-Cal program
15 several times on her own during her pregnancy and after giving birth to try to get her benefits
16 approved, without success. Petitioner was hospitalized in April and again in June 2014 due to
17 complications with her pregnancy. Petitioner was billed for her hospitalizations and some of her
18 prenatal care. The frustration of not being able to get her Medi-Cal approved despite months of
19 trying and anxiety over large and mounting medical bills contributed to Petitioner's high level of
20 stress. Being low-income, being African-American, and experiencing stress all put Petitioner
21 Pickett at medical risk for a poor birth outcome. Petitioner's baby was born prematurely at very
22 low birthweight in late June 2014, at about 23 weeks of pregnancy. The baby has been in the
23 neonatal intensive care unit since birth and is not expected to be able to go home until October
24 2014. Petitioner Pickett did not get her Medi-Cal until July 2014, about five months after
25 applying, and even then, it was only through the intervention of an advocate with a home
26 visitation program for new mothers.

27 11. Petitioner Groto Ni is a resident of Oakland, California. He is 55 years old and
28 suffers from several serious chronic health conditions, including but not limited to Hepatitis B,

1 ulcers, cirrhosis of the liver, shortness of breath, and pain in his hands and knees. Unable to
2 work since December 2013, his income now is from state disability benefits. He and his wife
3 survive on about \$835 a month, plus food stamps. He is eligible for Medi-Cal and submitted his
4 complete application for Medi-Cal in January 2014 through a health clinic. In the following
5 months, he incurred bills of over \$12,000 for specialists visits and other medical services he
6 could not postpone for his medical problems. Between January and May, he was in a lot of pain
7 and experienced stress from receiving these charges. A primary care provider turned him away
8 because he could not pay. He became so depressed from the consequences of being uninsured
9 that he felt it would have been better to have died. After months of waiting and contacting the
10 county to get his Medi-Cal benefits, he was referred by a community agency to a legal advocacy
11 organization in April 2014, which requested a state hearing on his behalf to prove his Medi-Cal
12 eligibility. As a result of the hearing, his Medi-Cal was granted in late May, 2014, five months
13 after he applied. Petitioner Ni does not want anyone else to go through what he did, to be in
14 pain and needing medical help with no way to pay, waiting months for Medi-Cal with no
15 response at all.

16 12. Petitioner Maternal and Child Health Access (MCH Access) is a 501(c)(3) non-profit
17 organization based in Los Angeles, California. Petitioner's mission is to improve the health of
18 low-income women and families through education, training, advocacy and direct supportive
19 services. Petitioner helps individual women achieve healthy pregnancies and obtain quality
20 health care, including through the Medi-Cal program, for themselves and their families.
21 Petitioner's assistance includes help with applying for Medi-Cal and troubleshooting backlog
22 delays and other eligibility problems for clients. Petitioner MCH Access also has a home
23 visitation program for new mothers, such as Petitioner Pickett, who MCH Access helped get out
24 of the backlog and into Medi-Cal in July 2014. Petitioner also educates policymakers and the
25 general public about Medi-Cal and other support programs for low-income families, in order to
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1 improve such programs for the benefit of the entire community.

2
3 **Respondents**

4 13. Respondent DHCS is the single state agency charged by law with administering
5 California's Medi-Cal program. §14100.1.

6 14. Respondent Toby Douglas is the DHCS Director.

7 **III. LEGAL FRAMEWORK**

8 15. Medi-Cal is a joint federal and state program providing comprehensive health
9 coverage to low-income people. See, Welfare and Institutions Code¹ § 14000 *et seq.*

10 16. Respondents have a mandatory ministerial duty under § 11000 to administer
11 California's public social services programs, including its Medi-Cal program, fairly and equitably
12 so as to effect the stated objectives of the program.

13 17. The Legislature's intent in adopting the Medi-Cal program was to provide "...for the
14 health care for those aged and other persons, including family persons who lack sufficient annual
15 incomes to meet the costs of health care, and whose other assets are so limited that their
16 application toward the costs of such care would jeopardize the person or family's future
17 minimum self-maintenance and security" and "to afford qualifying individuals health care and
18 related remedial or preventative services..." § 14000.

19 18. As the single state agency for Medi-Cal, Respondent DHCS is responsible for making
20 Medi-Cal eligibility determinations and issuing all notices required by law to Medi-Cal
21 applicants. Respondent delegates these duties in part to the 58 county Medi-Cal offices, which
22 are subdivisions of the state. §§ 14100, 14001.11(b), and 14015.5(c); Title 22, California Code
23 of Regulations (C.C.R.), § 50004(c) ("The county welfare department in each county shall be the
24 agency responsible for local administration of the Medi-Cal program *under the direction* of the
25 Department" (emphasis added).)

26 19. Respondent DHCS launched a new eligibility and enrollment process for Medi-Cal in
27 the fall of 2103. This was done as part of California's implementation of the Patient Protection
28 and Affordable Care Act of 2010 (ACA) (Pub. L. No. 111-148, 124 Stat. 119), also known as

¹ All references are to the Welfare and Institutions Code unless otherwise indicated.

1 health care reform. Under the ACA, California also expanded Medi-Cal eligibility for low-
2 income adults, starting January 1, 2014. § 14005.60 . California also adopted a new federally
3 subsidized health insurance program, known as Covered California, for individuals with income
4 exceeding the limits for Medi-Cal or certain other federal programs. Government Code §§
5 100500 *et seq.* (creating the California Health Benefits Exchange); 10 C.C.R. § 6474. State
6 residents can now apply for both Medi-Cal and Covered California using a single application
7 available on-line, by telephoning a Service Center, or through Certified Enrollment Entities and
8 Agents, in addition to mailing in an application or going to a county Medi-Cal office to apply in
9 person. § 15926(b). The automated business rules engine that powers the new eligibility and
10 enrollment process for Medi-Cal and Covered California is called CalHEERS—the California
11 Health Eligibility, Enrollment and Retention System. CalHEERS is administered jointly by
12 Respondent DHCS and the California Health Benefits Exchange Board, which administers
13 Covered California. § 15925.

14 20. Several other Medi-Cal health care reform laws became operative on January 1, 2014.
15 These require major simplifications and streamlining for the Medi-Cal application process, for
16 the purpose of removing delays in receiving Medi-Cal benefits and to promote timely access to
17 medical care for the poor, regardless of where the application originates. §§ 15925 and 15926.

18 **Timeframe for Determining Medi-Cal Eligibility**

19 21. The Legislature has mandated that the Medi-Cal program be administered in such a
20 manner “so as to secure for every person the amount of aid to which he is entitled” (§ 10500) and
21 that Medi-Cal benefits be provided “promptly and humanely” (§ 10000).

22 22. Pursuant to DHCS’ regulation implementing the statutory promptness requirement,
23 applicants for Medi-Cal must receive a determination of eligibility “as quickly as possible”, but
24 not later than within 45 of applying, or within 90 days if the application is made based on
25 disability. 22 C.C.R. § 50177(a) (“Promptness Requirement”).

26 23. These time periods may be extended in only two situations: 1) when an applicant has
27 been unable, with good cause, to submit necessary forms or information to the county in time for
28 it to meet the 45-day deadline; or 2) where the applicant or the county has experienced a delay

1 beyond their control in obtaining information needed to determine eligibility. 22 C.C.R. §
2 50177(b). Neither of these situations applies to otherwise eligible applicants whose income has
3 not been verified nor do they apply to many of the other backlogged applicants here, where the
4 state has all information needed to make an eligibility determination.

5 **Granting Medi-Cal Benefits, Conditioned on Resolution of Income Verification Issues**

6 24. Under § 15926(f)(5), one of the eligibility and enrollment laws under health care
7 reform that became operative on January 1, 2014,

8 [t]he [Medi-Cal] eligibility of an applicant *shall not be delayed* beyond the [applicable]
9 timelines standards. . .or denied. . .unless the applicant is given a reasonable opportunity,
10 of at least the kind provided for under the Medi-Cal program pursuant to Section 14007.5
11 and paragraph (7) of subdivision (e) of Section 14011.2,² to resolve discrepancies
concerning any information provided by a verifying entity. (Emphasis added.)

12 As explained below, the process under § 15926(f)(5) prohibits Respondent DHCS from *delaying*
13 the granting of Medi-Cal benefits during the time it takes to resolve eligibility verification issues
14 when an applicant has timely provided information or documentation showing that he or she is
15 otherwise eligible for Medi-Cal. The § 15926(f)(5) process thus requires Respondents to *grant*
16 Medi-Cal benefits to otherwise eligible applicants, with continuation of benefits conditioned on
17 the resolution of verification issues, including with respect to income verification.

18 25. As § 15926(f)(5) expressly incorporates §§ 14007.5 and 14011.2, it also incorporates
19 the basic procedures required thereunder for applicants whose Medi-Cal income eligibility
20 verification issues are being resolved.

21 26. Section 14007.5 applies to applicants for whom verification of lawfully present
22 immigration status is necessary for Medi-Cal eligibility, and § 14011.2 applies to United States
23 citizen applicants. These state laws require that Respondent DHCS: (a) give applicants a
24 reasonable opportunity to submit information that can be used to electronically verify the status
25 the applicant attested to on the application , such as an Alien Registration Number for those
26 claiming lawful immigration status or a Social Security Number for those claiming to be United
27 States citizens, or documents proving that status, such as immigration papers or a birth

28 _____
² While § 14011.2 does not have a “paragraph 7 of subdivision (d)”, it does have a subdivision (e)(f)(5). Petitioners believe this was a drafting error in the legislation.

1 certificate; (b) neither delay nor deny Medi-Cal benefits during the eligibility review process for
2 otherwise eligible applicants who have timely submitted the necessary status information or
3 proof; and (c) continue the Medi-Cal benefits of such applicants until any status verification
4 issues have been resolved. If the status as attested to by the applicant on the application is
5 ultimately not verified, then his or her Medi-Cal benefits are discontinued after Respondent
6 DHCS provides the legally required notice of action with information about hearing rights.

7 27. Similarly, under the express incorporation of §§ 14005.7 and 14011.2 into §
8 15926(f)(5), Respondent DHCS may not delay granting Medi-Cal benefits to otherwise eligible
9 applicants until income verification issues have been resolved. Instead, Respondent must grant
10 benefits to such applicants while income verification issues are being resolved, with continuation
11 of benefits conditioned on completion of the income verification process.

12 28. The Medi-Cal application asks for household income. The application also asks
13 applicants to provide a Social Security Number (SSN) or an Individual Tax Identification
14 Number (ITIN) or similar numbers. Respondent DHCS verifies an applicant's household
15 income. Respondent is required to begin the income verification process first by using the SSN
16 or ITIN to query federal and state tax and other income databases. Only if an applicant's income
17 eligibility for Medi-Cal is not verified through this "e-verification" process may Respondent
18 require the applicant to provide other information about household income or its proof, such as
19 copies of pay stubs or Unemployment Insurance benefits receipts. § 15926(f)(3).

20 29. Section 15926(f)(5) prohibits the delay of Medi-Cal benefits until after the income
21 verification is complete in order to protect eligible applicants from the barriers to accessing
22 medical care that would otherwise occur if Medi-Cal coverage is delayed while income
23 verification issues are being resolved.

24 30. Under subdivision (j) of § 15926 (operative January 1, 2014), Respondent DHCS
25 "*shall*. . . [use] the least restrictive rules and requirements permitted by federal and state law. This
26 process *shall* include the consideration of . . . self-attestation and verification requirements"
27 .(Emphasis added.) Using self-attestation and post-eligibility verification for Medi-Cal
28 eligibility criteria, including income, is permitted by federal as well as state law; it is also less

1 restrictive than the rules and requirements Respondent DHCS is using to delay benefits until
2 after income has been verified.

3 31. Under subdivision (f)(6) of § 15926, also operative on January 1, 2014, “an applicant
4 *shall* be provided benefits in accordance with the [law] for which he or she otherwise qualifies
5 until a determination is made that he or she is not eligible and all applicable notices have been
6 provided.” (Emphasis added.)

7 32. The process that Respondents are mandated to follow by § 15926(f)(5) requires
8 granting Medi-Cal benefits based on self-attestation of income, conditioned on post-eligibility
9 verification of income and discontinuance from Medi-Cal if the applicant’s attested income is
10 ultimately not verified.

11 **Notice and Hearing Rights**

12 33. The Legislature has established a state administrative hearing process to provide
13 Medi-Cal applicants and recipients with a speedy and informal means by which to challenge any
14 action or inaction relating to Medi-Cal eligibility or benefits. § 10950; 22 C.C.R. § 50951(a).

15 34. Medi-Cal applicants are entitled to written notice of the right to contest at a state
16 hearing any action or inaction by or on behalf of Respondent DHCS that affects their Medi-Cal
17 eligibility or benefits. 22 C.C.R. § 50179(c)(4)(A)-(B).

18 35. As alleged above, it is the policy and practice of Respondent DHCS to delay Medi-
19 Cal benefits to otherwise eligible applicants by postponing benefits until after income
20 information has been verified. Implementing this policy and practice is an action by Respondent
21 or its agents that affects applicants’ Medi-Cal eligibility or benefits.

22 36. As alleged above, it is also the policy and practice of Respondent DHCS to place
23 Medi-Cal applicants in a backlog without benefits after 45 days, regardless of whether the
24 application is complete and all necessary information has been provided. Applicants remain in
25 the backlog without benefits for many months beyond the 45th day. Implementing this policy
26 and practice is an action by Respondent or its agents that affects applicants’ Medi-Cal eligibility
27 or benefits and is subject to notice of hearing rights.

28 37. Under state law, a “person may not be deprived of life, liberty, or property without
due process of law.” Cal. Const. Art. I, §§ 7, 15. Medi-Cal recipients have a strong statutory
interest in the lawful provision of Medi-Cal benefits that is protected by and subject to the
requirements of due process of law.

1 38. Due process of law requires that, where Respondents exceed the legally required 45-
2 day period for deciding a Medi-Cal application and place applicants in a backlog without
3 benefits, all affected applicants be informed in writing of their right to seek a state hearing where
4 they may obtain their Medi-Cal based on a showing of eligibility.

5 IV. FACTS

6 39. Respondents have a policy and practice of placing, without just cause, hundreds of
7 thousands of Medi-Cal applicants in a backlog 45 days after an individual has applied, without
8 making an eligibility determination or granting them benefits. Applicants remain in the backlog
9 for many months beyond the 45th day. This is contrary to the Promptness Requirement under §
10 10000 and 22 C.C.R. § 50179(a) for determining whether an applicant is eligible for Medi-Cal or
11 not.

12 40. Many of the individuals whom Respondents have placed in the backlog have
13 submitted complete applications, including all necessary information or documents about
14 household income. Sections 15926(f)(5)-(6) and (j) require Respondents not to delay granting
15 Medi-Cal benefits to such applicants until after income verification issues have been resolved.
16 Respondents instead have a policy and practice of postponing the eligibility determination for
17 such applicants until after income has been verified.

18 41. Respondents do not provide notice to any of the Medi-Cal applicants whom
19 Respondents place in the backlog after 45 days about whether they are eligible or not for Medi-
20 Cal, contrary to the notice requirements of 22 C.C.R. § 50179(c)(4)(A)-(B). Nor when placing
21 applicants in the backlog after 45 days do Respondents provide them with the notice required by
22 22 C.C.R. § 50179(c)(4)(A)-(B) about their right to a state hearing under § 10950 and 22 C.C.R.
23 § 50951(a).

24 42. As a result, applicants whom Respondents have placed in the backlog 45 days after
25 applying do not know of their right to a hearing to contest that state action and demonstrate their
26 eligibility for Medi-Cal so that they can receive medical care and benefits.

27 43. Hundreds of thousands of applicants who are eligible for Medi-Cal still remain in the
28 backlog today.

44. Respondent DHCS has adopted some policies to attempt to ease the backlog and
provide Medi-Cal benefits to some of the applicants who Respondents have placed there. None
of these measures cures Respondents' failure to comply with their duties set out herein as to the
hundreds of thousands of applicants remaining in the Medi-Cal backlog.

1 45. In sum, Respondents are violating their mandatory ministerial duties under the laws
2 set forth herein in the following ways. First, by failing without just cause as defined in
3 regulation, to make a decision on Medi-Cal eligibility and issue the required notices with
4 information about hearing rights in 45 days. Second, by delaying the granting of Medi-Cal
5 benefits to otherwise eligible applicants who have provided all necessary information or
6 documents about income until after income has been verified. Third, by failing to provide all
7 Medi-Cal applicants who Respondents place in the backlog 45 days after application without
8 benefits a written notice of the right to a state fair hearing so that they may prove their eligibility
9 for Medi-Cal and receive medical care and benefits.

10 **V. CAUSES OF ACTION**

11 **First Cause of Action**

12 **(Welf. & Inst. Code §§ 15926(f)(5)-(6) and (j), 10000, 10500):**

13 **Duty Not to Delay Granting Medi-Cal Benefits**

14 **Until Income Verification Issues Have Been Resolved**

15 46. Petitioners reallege and incorporate by reference each and every allegation contained
16 within paragraphs 1-45, inclusive.

17 47. Under subdivision (f)(5) of § 15926, Respondent DHCS “shall not” delay granting
18 Medi-Cal benefits to an otherwise eligible applicant until income verification issues have been
19 resolved.

20 48. Under subdivision (j) of § 15926, Respondent DHCS “*shall*. . . [use] the least
21 restrictive rules and requirements permitted,” and these “*shall include* . . . self-attestation and
22 verification requirements.” (Emphasis added.)

23 49. State law also requires that “an applicant *shall* be provided benefits in accordance
24 with the [law] for which he or she otherwise qualifies until a determination is made that he or she
25 is not eligible and all applicable notices have been provided.” § 15926(f)(6) (emphasis added).

26 50. Under § 10000, Respondent DHCS must ensure that Medi-Cal “*shall* be administered
27 and services provided *promptly* and humanely.” (Emphasis added.)

28 51. Under § 10500, Respondent DHCS “*shall* secure for every person the amount of
[Medi-Cal benefits] to which he is entitled.” (Emphasis added.)

1 52. Many otherwise eligible applicants whom Respondents have placed in the Medi-Cal
2 backlog have submitted all of the information and proof required for Medi-Cal eligibility,
3 including income eligibility, but Respondents have not granted them their benefits while income
4 verification issues for these applicants or other members of their households are being resolved.
5 Instead, Respondents *delay* granting Medi-Cal to such applicants until *after* the income
6 verification issue has been resolved. Respondents’ failure to grant such applicants’ Medi-Cal
7 benefits without delay, while income verification issues remain to be resolved, violates §
8 15926(f)(5).

9 53. Delaying granting Medi-Cal benefits to otherwise eligible applicants for whom
10 income verification issues remain to be resolved also violates the requirements that Respondents:

- 11 A) under subdivision (j) of § 15926, use the least restrictive eligibility and
12 enrollment rules permitted;
13 B) under subdivision (f)(6) of § 15926, provide an applicant with the Medi-Cal
14 benefits for which he or she “otherwise qualifies until a determination is made
15 that he or she is not eligible and all applicable notices have been provided”;
16 C) under § 10000, provide Medi-Cal services promptly and humanely; and
17 D) under § 10500, secure for every person the amount of Medi-Cal benefits to which
18 he or she is entitled.

19 **Second Cause of Action**

20 **(Violation of Welf. & Inst. Code § 10000; 22 C.C.R. § 50177(a)):**

21 **Failure to Determine Medi-Cal Eligibility In No More Than 45 Days**

22 54. Petitioners reallege and incorporate by reference each and every allegation contained
23 within paragraphs 1 – 53, inclusive.

24 55. Section 10000 requires Respondents to make eligibility determinations promptly, and
25 22 C.C.R. § 50177(a) requires Respondents to make Medi-Cal eligibility determinations as
26 quickly as possible but not later than within 45 days of the application date.

27 56. Since at least November 15, 2013, Respondents have continuously failed to comply
28 with the promptness requirements of § 10000 and 22 C.C.R. § 50177(a) to make Medi-Cal
eligibility determinations as quickly as possible but not later than 45 days.

1 57. Respondents failure to comply with these provisions of law is resulting in delays of
2 many months beyond the required 45-day timeline for Medi-Cal eligibility determinations to be
3 made, for eligible persons to begin receiving their health care benefits, and for persons
4 determined ineligible to appeal and demonstrate their eligibility.

5 58. Respondents have no just cause for failing to make Medi-Cal eligibility
6 determinations within the 45-day timeframe required by § 10000 and 22 C.C.R. § 50177.

7 59. Respondents' failure to make Medi-Cal eligibility determinations within 45 days
8 violates the promptness requirements of § 10000 and 22 C.C.R. § 50177(a).

9 **Third Cause of Action**

10 **(Violation of Welf. & Inst. Code § 10950;**
11 **22 C.C.R. §§ 50179(c)(4)(A)-(B), 50951(a));**

12 **Failure to Provide Notice and Hearing Rights**

13 60. Petitioners reallege and incorporate by reference each and every allegation contained
14 within paragraphs 1 – 59, inclusive.

15 61. Under § 10950 and 22 C.C.R. § 50951(a), a Medi-Cal applicant has the right to a state
16 hearing when his or her application is not acted upon within the “Promptness Requirement” of
17 22 C.C.R. § 50177(a) or when the applicant is dissatisfied with any action taken by or inaction
18 of the Department relating to the individual’s Medi-Cal eligibility or benefits. Under 22 C.C.R.
19 §§ 50179(c)(4)(A)-(B), Respondents must notify an applicant in writing of his or her right to an
20 administrative fair hearing to contest the actions or inactions by, of, or on behalf of Respondents
21 affecting the individual’s Medi-Cal. Applicants have a right to notice and a hearing under this
22 state statute and these state regulations.

23 62. Both Respondents’ inaction in failing to process Medi-Cal applications within the
24 required 45-day timeline as well as Respondents’ action in placing the application of an
25 individual in the backlog without Medi-Cal benefits affect an applicant’s Medi-Cal eligibility
26 and benefits. Applicants have a right under § 10950 and 22 C.C.R. §§ 50179(c)(4)(A)-(B) and
27 50951(a) to written notice and a hearing to contest such inactions and actions.

28 63. Notwithstanding § 10950 and 22 C.C.R. §§ 50179(c)(4)(A)-(B) and 50951(a),
Respondents do not provide written notice of the right to a fair hearing to Medi-Cal applicants

1 whom Respondents have placed in the backlog after 45 days without a Medi-Cal eligibility
2 determination or Medi-Cal benefits. In failing to provide the legally required notice,
3 Respondents also deny applicants their hearing rights.

4 64. Respondents' failure to provide written notice or hearing rights to Medi-Cal
5 applicants placed in the backlog after 45 days without a Medi-Cal eligibility determination or
6 Medi-Cal benefits violates their duties under § 10950 and 22 C.C.R. §§ 50179(c)(4)(A)-(B) and
7 50951(a).

8 65. Respondents' failure to comply with these provisions of law on notice and hearing
9 rights is resulting in delays of many months for eligible persons to begin receiving their health
10 care benefits.

11 **Fourth Cause of Action**

12 **(Violation of Cal. Const. Art. I, §§ 7, 15):**

13 **Failure to Provide Due Process**

14 66. Petitioners reallege and incorporate by reference each and every allegation contained
15 within paragraphs 1 – 65, inclusive.

16 67. Respondents have a legal duty to comply with the requirements of due process of law
17 under Article I, §§ 7 and 15 of the California Constitution in their administration of the Medi-Cal
18 program.

19 68. Petitioners have private, dignitary and statutory interests in receiving notice of their
20 right to a hearing regarding Respondents' actions or inaction with respect to their Medi-Cal.
21 These interests are affected by Respondents' failure to provide notice of the right to a hearing to
22 applicants whom Respondents place in the backlog without Medi-Cal benefits 45 days after
23 applying.

24 69. Erroneous deprivation of Petitioners' interests in obtaining a hearing to show Medi-
25 Cal eligibility and receive medical services and benefits is certain in the absence of notification of
26 such hearing rights.

27 70. There is no governmental interest in failing to provide Petitioners with notice and
28 Medi-Cal hearing rights as is required by law, let alone any interest that outweighs Petitioners'
private, dignitary and statutory interests in receiving such notice.

1 71. Respondents' failure to provide any notice and hearing rights to Medi-Cal applicants
2 placed in the backlog without benefits violates due process and is contrary to law.

3 **Fifth Cause of Action**
4 **(Code of Civil Procedure §1085):**

5 **Writ of Ordinary Mandate**

6 72. Petitioners reallege and incorporate by reference each and every allegation contained
7 within paragraphs 1-71, inclusive.

8 73. Petitioners are beneficially interested parties entitled to a peremptory writ to "compel
9 the performance of an act which the law specially enjoins." Code of Civ. Proc. (C.C.P.) § 1085.

10 74. Respondents have a clear and present ministerial duty to comply with the laws
11 governing Medi-Cal, as set forth herein.

12 75. Respondents are failing, as set forth herein, to comply with their ministerial legal
13 duties:

14 A) under § 10950 and 22 C.C.R. §§ 50179(c)(4)(B) and 50951(a), to decide Medi-
15 Cal applications and issue a written notice of action that explains the decision and
16 the right to a state hearing as quickly as possible and in no more than 45 days;

17 B) under § 15926(f)(5)-(6) and (j), not to delay providing Medi-Cal benefits until
18 after income has been verified to otherwise eligible applicants who have provided
19 all necessary information or documents about income; and

20 C) under § 10950, 22 C.C.R. §§ 50179(c)(4)(A)-(B) and 50951(a), and Article I, §§
21 7 and 15 of the California Constitution, to provide written notice to applicants
22 whose applications Respondents place in a backlog after 45 days of their legal right
23 to prove Medi-Cal eligibility at a state administrative fair hearing and to receive
benefits.

24 76. Respondents do not have the legal discretion to administer the Medi-Cal program in a
25 way that violates these ministerial duties.

26 77. Petitioners lack a plain, speedy and adequate remedy at law except by way of
27 peremptory writ of mandate pursuant to C.C.P. §1085.

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REQUEST FOR RELIEF

WHEREFORE, Petitioners request the following relief:

1. A peremptory writ of mandate prohibiting Respondents from:

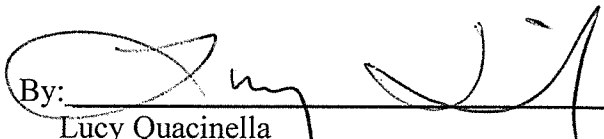
- A) failing to determine eligibility for Medi-Cal applicants who have submitted complete applications or failing to issue such applicants the legally required notice as quickly as possible but in no more than 45 days of the application date;
- B) delaying the granting of Medi-Cal benefits, including during the 45-day timeline for making eligibility determinations, until after income has been verified to otherwise eligible applicants who have provided all necessary information or documents about income; and
- C) failing to provide applicants with notice of their right to a state administrative fair hearing to show their Medi-Cal eligibility even before the final eligibility decision is made whenever Respondents do not meet the 45-day Promptness Requirement and instead place the applicant in the backlog without Medi-Cal benefits.

- 2. For an order for Respondents to pay for costs for this lawsuit;
- 3. For an order for Respondents to pay for attorney's fees as allowed by law; and
- 4. For such other and further relief that the Court deems just and necessary.

Dated: September 16, 2014

Respectfully submitted,

Bay Area Legal Aid
 Central California Legal Services
 Multiforum Advocacy Solutions
 National Health Law Program
 Neighborhood Legal Services of Los Angeles County
 Western Center on Law & Poverty

By: 

 Lucy Quacinella
 Attorneys for Plaintiffs

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VERIFICATION

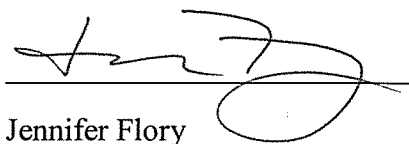
I, Jennifer Flory, state that:

1. I am an attorney licensed to practice law in California, and my only professional office is in Sacramento County.

2. I represent plaintiffs and petitioners who do not reside in and are absent from Sacramento County.

3. I have read the foregoing petition and know its contents. The facts alleged therein are true of my own personal knowledge, except as to the allegations in paragraph 8 pertaining to petitioner Frances Rivera, the allegations in paragraph 9 pertaining to the petitioner Mark Mullin, the allegations in paragraph 10 pertaining to petitioner Ebony Pickett, the allegations in paragraph 11 pertaining to Groto Ni, the allegations in paragraph 12 pertaining to petitioner Maternal Child Health Access, and except as to the matters stated as to information and belief, as to those matters, I believe them to be true. I have verified this petition in lieu of petitioner Francis Rivera because Ms. Rivera does not reside in the county in which I have my office.

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 15, 2014 in Sacramento, California.


Jennifer Flory

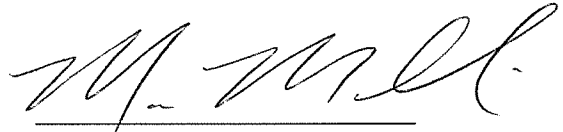
Verification of Mark Mullin

I, the undersigned, declare:

- 1) I am a petitioner in the above-entitled action.
- 2) I have read the Petition for Writ of Mandate and know the contents thereof.
- 3) I certify that the factual allegations contained therein are true to the best of my knowledge.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed on September 19, 2014 at El Monte, California.



Mark Mullin

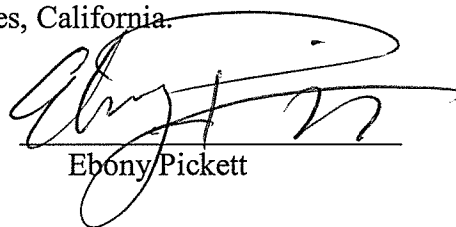
Verification of Ebony Pickett

I, the undersigned, declare:

- 1) I am a petitioner in the above-entitled action.
- 2) I have read the Petition for Writ of Mandate and know the contents thereof.
- 3) I certify that the factual allegations contained therein are true to the best of my knowledge.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed on September 15, 2014 at Los Angeles, California.



Handwritten signature of Ebony Pickett in black ink, written over a horizontal line.

Ebony Pickett

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Verification of Grotto Ni

I, the undersigned, declare:

That I am a petitioner in the above-entitled action; that I speak and read Burmese; that Nwe Oo of Community Health for Asian Americans has reviewed and explained the contents of the foregoing Petition For Writ of Mandate to me in Burmese language and that, as a result of this translation, I know the contents thereof; and that I certify that the factual allegations contained therein are true to the best of my knowledge.

I declare under penalty of perjury of the laws of the State of California that the foregoing is true and correct.

Executed on September 11, 2014 at Oakland, California.

Signature: _____

A handwritten signature in black ink, appearing to be 'Dh', written over a horizontal line.

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Declaration of Nwe Oo

1 I, Nwe Oo hereby declare:

- 2 1. I am employed as Community Wellness Advocate at Community Health for
3 Asian Americans.
4 2. As a regular part of my employment, I orally and in writing translate for clients
5 from Burmese to English.
6 3. On September 11, 2014, I orally interpreted the above document for the
7 petitioner, and ascertained that the declarant understood and agree with its
8 contents before signing.
9 4. I declare under the penalty of perjury that the foregoing is true and correct.

9 Executed in Oakland, California on September 11, 2014.

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11 Signature:

 9/11/14

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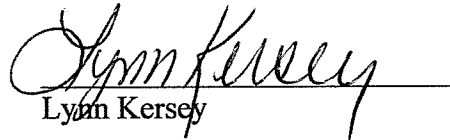
VERIFICATION

I, Lynn Kersey, state that:

1. I am the Executive Director of petitioner Maternal and Child Health Access.
2. I have read the foregoing Petition for Writ of Mandate and know its contents.
3. I certify that the factual allegations contained in the Petition related to petitioner

Maternal and Child Health Access are true of my own personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct. Executed on
September 15, 2014 in Los Angeles, California.


Lynn Kersey