

Case No. B290534

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT, DIVISION P

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JUDY BOOTHBY, GITA AMINLOO, DENISE COZZA, DEBORAH  
HAGEY, MELISSA HALL, MAUREEN KAYE, INGRI SPARLING,  
AND DARCI TRILL,

*Plaintiffs, Respondents and Cross-Appellants,*

vs.

CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICE, *et al.*,  
*Defendants and Appellants.*

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*Appeal from the Superior Court for Los Angeles County, Case Number B290534  
Honorable Mary H. Strobel, Judge*

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PLAINTIFFS/RESPONDENTS' MOTION TO ENFORCE JUDGMENT  
GRANTING INJUNCTION & WRIT OF MANDATE (CCP § 1110b);  
MEMORANDUM OF POINTS & AUTHORITIES; PROPOSED ORDER

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**MOTION TO ENFORCE JUDGMENT GRANTING LIMITED  
PERMANENT INJUNCTION AND WRIT OF MANDATE**

**To the Honorable Elwood G. Liu, Administrative Presiding Justice and  
the Associate Justices of the Court of Appeal for the State of California,  
Second Appellate District:**

Plaintiffs and Respondents, Judy Boothby, *et al.*, move this Court for an order enforcing the trial court's writ of mandate and judgment pursuant to California Rule of Court, Rule 8.54 and Code of Civil Procedure section 1110b. The motion is made on the grounds that trial court's limited permanent injunction, and writ of mandate are prohibitory orders that are not stayed on appeal. Additionally, the Plaintiffs and Respondents' businesses and professions will be irreparable harmed if the trial court's orders are not enforced. Defendants/Appellants, Department of Health Care Services, et al., have taken the position that the filing of a notice of appeal stays all orders issued in the trial court. In light of the daily escalating harm to Plaintiffs/Respondents ("Plaintiffs") businesses, they are entitled to relief under Code of Civil Procedure § 1110b.

This motion is based on the declarations and exhibits filed concurrently with this motion, the attached memorandum of points and authorities, the trial court's judgment and on the papers and records on file herein.

## MEMORANDUM OF POINTS & AUTHORITIES

### INTRODUCTION

On May 29, 2018, the trial court issued a writ of mandate, limited permanent injunction, and judgment holding that the Department of Health Care Services and its Director (collectively, “DHCS”) violated federal law after they cut the Medi-Cal provider rates of dental hygienists who treat institutionalized patients who could not find treatment elsewhere<sup>1</sup> The reimbursement rates for periodontal maintenance was cut by more than one half and DHCS changed Denti-Cal policy requiring treatment authorization requests and radiographs (X-rays) for RDHAPs who treat patients in Skilled Nursing (SNF) and Intermediate Care (ICF) facilities. The trial court commanded DHCS to immediately restore the lawful preexisting Medi-Cal reimbursement rates for periodontal maintenance and to set aside its Bulletin announcing the adverse changes to its policy.<sup>2</sup>

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<sup>1</sup> The hygienists are Registered Dental Hygienist in Alternative Practice (RDHAPs). RDHAPs are dental hygienists with specialized training that hold a specific license to allow them to practice in settings outside of the traditional dental office. These settings include Skilled Nursing Facilities, hospitals, and Intermediate Care Facilities. RDHAPs provide patients the same type of professional preventive care they would receive in a dental office, but allows patients to receive this care where they reside. (California Dental Hygienist Association, *RDHAP*, <http://cdha.org/rdhap>.) RDHAPs have a dentist of record on file with the Dental Hygiene Committee of California for referral, consultation and emergency services. (Bus. & Prof. Code, §1930.) The RDHAPS provide care to indigent patients through California’s Denti-Cal program which is part of the State’s Medi-Cal program.

<sup>2</sup> A copy of the Judgment which incorporates the trial court’s February 8, 2018 Statement of Decision is filed with Plaintiffs’ Exhibits as Exhibit A. A copy of the Writ is filed as Exhibit B.

On June 29, 2018, DHCS filed a Return, informing the trial court that it was now in the process of seeking the required federal approval for the rate cut and its new Medi-Cal policy, but it need not further comply with the Court's Judgment and Writ, because they filed a Notice of Appeal.<sup>3</sup> DHCS is mistaken. Filing a notice of appeal, does not excuse DHCS compliance with federal law while the request to the federal government is pending, or excuse them from complying with the prohibitory writ and injunction issued in this case. Because of the daily escalating harm to Plaintiffs' businesses, caused by DHCS' refusal to comply with the trial court's order, this motion seeks an order from this Court mandating that DHCS immediately comply with these orders and with federal law.

Alternatively, should this Court find that the trial court's injunction and writ are mandatory orders that are otherwise stayed pending appeal, Plaintiffs, Judy Boothby, *et al.*, request that this Court issue an order pursuant to Code of Civil Procedure section 1110b lifting the stay.<sup>4</sup>

#### **SUMMARY OF ARGUMENT**

Longstanding federal regulations require states to issue public notice of proposed changes to Medicaid provider rates, submit stakeholder feedback to the Department of Health and Human Services, Centers for Medicare & Medicaid Services (CMS) and obtain federal approval before cutting those rates. (42 C.F.R. § 447.205; *Cal. Hosp. Assn. v. Maxwell-Jolly* (2010) 188 Cal.App.4th 559, 567; *Mission Hosp. Reg'l Med. Ctr. v. Shewry* (2008)168 Cal.App.4th 460, 469.)

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<sup>3</sup> A copy of the Return is included with Plaintiffs' Exhibits as Exhibit C.

<sup>4</sup> Unless otherwise noted, all statutory citations will be to the Code of Civil Procedure.

There is no automatic stay pending as a result of DHCS' appeal because the writ and permanent injunction are prohibitory orders which require DHCS to comply with federal laws and regulations before they implement a change in Medi-Cal policy and obtain federal approval for any rate cuts. The limited permanent injunction issued by the trial court directs DHCS to restore the provider rates and to rescind the x-ray requirements. (Judgment at 3.) In both form and character, the judgment and writ restore the parties to the status quo: "the last actual peaceable, uncontested status which preceded the pending controversy.'" (*United Railroads of San Francisco v. Superior Court* (1916) 172 Cal. 80, 87). The Plaintiffs seek an order from this Court declaring that the trial court's writ and injunction are prohibitory orders that are not stayed on appeal and requiring DHCS to comply immediately.

Alternatively, in the event this Court were to find that the limited permanent injunction and judgment requiring compliance with law is stayed upon appeal, the Court should lift that stay pending appeal pursuant to section 1110b because of the continued damage the reduced rates and pre-authorization requirements cause to Plaintiffs' businesses and professions.

As set forth below, Plaintiffs are on the verge of closing their businesses as a result of the drastic rate cuts the trial court found to be illegal. While the financial harm DHCS' July 2016 Bulletin has caused Plaintiffs and RDHAPs statewide is sufficient in and of itself to grant relief under section 1110b, the Court should also consider the harm to their patients as well. Their patients, nursing home and intermediate care residents, are at risk of escalating serious illnesses, and can and do die from the bacteria in untreated dental disease that Plaintiffs seek to treat. The

impact that DHCS' Bulletin has on institutionalized older adults was described by Kirsten Roling, DDS as follows:

...imposing an x-ray requirement prior to performing scaling and root planing (SRP) will subject institutionalized older adults to increased unnecessary risk of aspiration pneumonia and for many, certain death by delaying or denying their periodontal care.

(Plaintiffs' Ex. E, Decl. of Kirsten Roling, DDS ¶ 6)

In the absence of an enforcement order compelling DHCS to comply with the writ's prohibitory injunction, Plaintiffs, and other similarly situated RDHAPs, will not be able to provide essential periodontal services to California's most vulnerable patients.

### **PROCEDURAL HISTORY**

On July 21, 2016, the Plaintiffs filed a verified complaint for injunctive relief, declaratory relief, and writ of mandate. Plaintiffs are licensed RDHAPs and Medi-Cal providers who provide dental oral hygiene services to developmentally disabled and elderly residents of Skilled Nursing and Intermediate Care Facilities under California's Medi-Cal dental program (Denti-Cal). Respondents travel to remote facilities and provide treatment in-facility to patients who are unable to travel to dentists offices. (Plaintiffs' Exs. G –K.)

The complaint challenged DHCS' July 2016 Denti-Cal provider Bulletin, which cut the hygienists rates from \$130 to \$55 for periodontal maintenance (Dental Code D4910), a treatment for serious gum disease. The Plaintiffs also challenged DHCS' policy change regarding X-ray requirements imposed on RDHAPs who provide in-facility scaling and root planing (SRP) to their patients.

Plaintiffs testified in the trial court, as well as in their declarations submitted to this Court, that their medically compromised patients are not

able to take X-rays for a variety of reasons including, but not limited to, inability to hold their head still, inability to bite down on the X-ray sensor, or an inability to follow directions due to their medical conditions. (*Id.*)

On February 8, 2018, after a hearing, the trial court issued a Final Statement of Decision granting in part and denying, in part, Plaintiffs' petition for writ of mandate. (Ex.A.) The court concluded that DHCS did not comply with its ministerial duty under 42 C.F.R. § 447.205 to provide public notice of the proposed change in the reimbursement rate for periodontal maintenance. (Decision at 24.) The court also concluded that DHCS failed to comply with its duties under 42 C.F.R. § 430.12 to obtain federal approval for the reimbursement rate for periodontal maintenance, and the new radiograph and prior authorization policy applied to RDHAPs. (Decision at 24.)

The court on May 29, 2018 issued a judgment granting a limited permanent injunction that requires DHCS to: (1) *restore* the reimbursement rate for periodontal maintenance to the *prior* rate of \$130 and (2) *cease* requiring prior authorization via x-rays for scaling and root planing until DHCS obtains federal approval. (Judgment at 3.) The court also issued a writ of mandate that commanded DHCS to file a Return within 30 days indicating what it had done to comply with the judgment. (Ex. B, Writ of Mandate, issued May 29, 2018, at 1.) The trial court's order was prospective only. The court denied Plaintiffs' request that DHCS pay them the difference between the \$130 rate that the federal government previously approved for periodontal maintenance and the \$55 rate DHCS adopted without federal approval.<sup>5</sup>

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<sup>5</sup> Plaintiffs have also filed a cross-appeal seeking the disgorgement of pay wrongfully withheld from them. The cross-appeal is not the subject of this motion. Through this motion, Plaintiffs only seek compliance with the writ

On June 29, DHCS filed a Return, confirming its refusal to comply with the judgment and writ, arguing that the trial court's judgment and orders were automatically stayed by the notice of appeal. (Ex. C.)

### **STATEMENT OF FACTS**

Prior to the July 2016 Bulletin, Plaintiffs were able to provide their institutionalized patients scaling and root planing treatment, if needed. According to DHCS' fiscal intermediary's computer records, after DHCS issued its July, 2016 Bulletin mandating x-rays and pre-treatment authorization requests in SNFs and ICFs, none of the Plaintiffs, except for Deborah Hagey, had a single approved SRP claim during the period of July 15, 2016 to December 31, 2017. (*See*, Plaintiffs' Ex. F., Decl. of Nirmala Pradhu, DMD (hereafter "Pradhu Decl."), Pradhu's Exs. 2-10 (indicating that allowed or approved claims for scaling and root planing (dental codes CDT 4341 and 4342) dropped to zero (0) for all Plaintiffs except Deborah Hagey, in the approximate year and a half (7/15/16 – December 31, 2017) after DHCS issued its Bulletin and changed its X-Ray policies for RDHAPs who treat institutionalized patients. During that same period, Plaintiff Hagey's approved claims for SRP procedures were less than 10 percent than they were before DHCS adopted its change in x-ray requirements. (Plaintiffs' Ex. F, Pradhu's Ex. 6)

In the eighteen and a half months prior to the Bulletin initiating the changes (Jan. 1, 2015- July 15, 2016), RDHAPs throughout California who treated patients in SNFs and ICFs "submitted 116,873 claims for payment for rendering SRPs to beneficiaries (93,965 D4341 SRPs in addition to 22,908 D4342 SRPs.)" (Pradhu Decl. ¶ 22c.) After DHCS' unlawful Bulletin was issued, the number of SRP claims submitted statewide by

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of mandate, limited permanent injunction and judgment the trial court ordered on May 29, 2018.

RDHAPs dropped to only 15,973 claims (12,098 D4341 SRPs, in addition to 3,875 D4342 SRPs) (Pradhu Decl. ¶ 23c.)

Plaintiff Darci Trill's experience is reflective of the escalating harm to Plaintiffs' businesses. Trill explains:

I am the sole owner and operator of my small business and I have one assistant who travels with me. I work with (and need to pay) an assistant because the patients I travel to treat are extremely medically compromised and it takes two people to set up for and provide the proper care. I work with many patients who cannot open their mouths by themselves, or have difficulty doing so. Others have difficulty holding their head up due to weak neck muscles, or they have extreme difficulty in holding their head up. Many of my patients do not talk. Many lean over in their wheelchair, or their bed, while I adjust myself physically by leaning over them or bending on my knees to clean their teeth. Sometimes, my assistant has to hold their head still to avoid involuntary movements that my patient might make due to cerebral palsy or other medically compromised issues. Because of the severe health conditions and disabilities of my patients, it takes longer to provide them dental care, than it would to provide the same care to a patient who does not have mental or physical disabilities. RDHAPs do not receive any additional money, for the extra time we must spend with these patients.

I have very few patients who have the ability to sit still to take an x-ray. My patients are unable to bite down on a sensor (the x-ray), or hold still to take a successful (readable) x-ray. Due to DHCS' new policy of needing x-rays and pre-authorization to perform gum disease treatments, I have stopped seeing hundreds of patients and have lost thousands of dollars. As a result, these patients are not receiving necessary dental care.

DHCS' rate cut from \$130 to \$55.00 for periodontal maintenance (D4910) has had a disastrous impact on my business and does not allow me to continue to treat patients on Denti-Cal. Some days I travel over 100 miles a day, often making 4-6 stops, to see about 8-10 patients a day. This also does not cover all the added expenses of running a small business that includes liability insurance, workmen's compensation insurance, business licenses, payroll taxes for my assistant's wages, etc. I have spent \$1200 in the

last 30 days alone to pay for repairing broken equipment and buying supplies take care of my elderly and disabled patients.

The \$55.00 fee does not cover my assistant's pay, let alone my own wages for the time it takes to travel to a patient, set up 50 pounds of equipment, provide the care needed, break down the equipment, and then travel to the next location. After paying my assistant to travel and work with me, and paying my other business expenses, I am not able to make a profit, or even earn a decent wage on the \$55 rate.

(Ex. G., Decl. Darci Trill, ¶¶ 3-6.)

As detailed in five of the Plaintiffs' declarations, the impact of DHCS' Bulletin on the Plaintiffs has been catastrophic not only to their businesses, but also to their patients' access to care. (Exs. G-K.) Plaintiffs, are on the verge of closing their businesses because of the rate cuts and preauthorization requirements the Department imposed through its July 2016 Bulletin. (*Id.*, Decls. of Kaye ¶ 3, 5, 7, Trill ¶¶ 6-8 Aminloo ¶¶ 8-9; Cozza ¶¶ 8, 10; Hall Decl. ¶ ¶ 4,5.)

Plaintiff Aminloo, who had the highest total gross income in 2017 for treating Denti-Cal patients, dropped to \$79,646.00. (Ex. H, Aminloo Decl. ¶ 7.) Her 2017 payroll expenses alone for her assistant's wages (who travels with her to 97 facilities) equaled \$33,766.06. (*Id.*) After paying her other operating expenses, Aminloo, like the other Plaintiffs, has difficulty even breaking even and has been required to borrow money to make ends meet. (*Id.* ¶ 8; *see also*, Exs. G-)<sup>6</sup> Aminloo explains that she has, "already

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<sup>6</sup> In addition to payroll expenses, the common expenses RDHAPs incur to provide care to special needs population in SNFs and ICFs include: professional & general liability insurance, medical and disability insurance, transportation expenses, insurance and van maintenance, mandatory continuation education units (CEU's) required every two years, hotels, food and gas necessary when traveling to remote SNF and ICF facilities and traveling to obtain mandatory continuation education credits, periodic replacement of batteries (\$800) for Dental Loupes (headlamp and glasses), uniforms & shoes, reusable tips for ultrasonic portable dental unit \$100.00

borrowed \$10,000 from my extended family. I have rented out my home and moved my children to a small apartment all to save my business and provide care to my deserving patients. My older son works full-time so he can help me pay for his college, and my credit cards are charged to the maximum.” (*Id.*) The other Plaintiffs’ businesses are suffering similar harm. (Exs. G - I.)

### STANDARD OF REVIEW

This Court has discretion under section 1110b to direct that any appeal “shall not operate as a stay of execution if it is satisfied upon showing made by the petitioner that he will suffer irreparable damage in his business or profession if the execution is stayed.” (Code Civ. Proc. §1110b.)

The granting of declaratory and injunctive relief are discretionary trial court rulings subject to the abuse of discretion standard. (*Filarsky v. Superior Court* (2002) 28 Cal.4th 419, 433) (holding that the granting of declaratory relief is a discretionary trial court ruling subject to the abuse of discretion standard); *Horsford v. Bd. of Trustees* (2005) 132 Cal.App.4th 359, 390 (same in regard to the granting of injunctive relief.) The trial court's ruling is disturbed *only* upon the State's showing of a clear abuse of discretion *and* "a miscarriage of justice." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 331.)

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apiece, autoclave (sterilization unit) \$2,500.00, instruments that must be sterilized after each use hand instruments disposable supplies (used only once/per patient) air water syringe tips (used with dental unit), chlorohexidine rinse cups, disposable gowns and masks, floss, fluoride, gauze, gloves, patient bibs, plastic sleeves and chair covers, prophylaxis angles & polish (polishing teeth), sterilization pouches, stickers, suction tips (used with dental unit), toothbrushes (given to each patient). (Ex. H, Decl. of Denise Cozza.)

Appellate courts review legal questions, including questions of statutory construction, de novo. (*Haworth v. Superior Court* (2010) 50 Cal.4th 372, 384-385) The determination of whether a writ or injunction mandating that Appellants comply with federal law is prohibitory or mandatory, is a legal one. (*URS Corp. v. Atkinson/Walsh Joint Venture* (2017) 15 Cal.App.5th 872, 888-885.) “[T]he rule of automatic stay does not apply to a [writ of mandate] which is ‘prohibitory’ in nature, rather than ‘mandatory’” (*Hayworth v. City of Oakland* (1982) 129 Cal.App.3d 723, 727.)

## **ARGUMENT**

The judgment prohibiting DHCS from violating federal law and mandating compliance before cutting Medicaid (Denti-Cal) provider rates were prohibitory orders, as such there is no automatic stay in effect. In addition, pursuant to section 1110b, this Court should exercise its discretion and direct that the appeal should not operate as a stay because Plaintiffs will suffer irreparable damage to their businesses if the writ and judgment are stayed.

**I. Appellants’ appeal does not stay the judgment and writ since those orders prohibit DHCS’ continuous violation of law.**

DHCS has failed to take any step to comply with the trial court’s writ or judgment, thereby refusing to obey the trial court’s orders. DHCS has not issued a single notice or directive rescinding the relevant portions of the July 2016 Bulletin. Likewise, has not issued any provider bulletins, communications, or instructions indicating that the rates for periodontal maintenance have been restored to \$130 or that preauthorization x-rays are

no longer required for scaling and root planing procedures performed by RDHAPs.

DHCS argues that it has complied by posting public notice of its intent to seek federal approval for a state plan amendment instituting the enjoined provisions of the July 2016 Bulletin and argues that they are in the process of seeking approval. (Respondents' Return to Writ of Mandate.) The state plan amendment, however, has not yet been approved by the federal government, so any reduction in provider fees remains unlawful. Given DHCS' refusal to obey the writ and comply with the injunction, the court should exercise its full authority to issue all orders necessary to ensure full compliance with the writ and judgment.

Injunctions mandating that a defendant stop violating the law are prohibitory in nature. (*People v. Mobile Magic Sales, Inc.* (1979) 96 Cal.App.3d 1, 13.) In *People v. Mobile Magic Sales, Inc.*, mobile home dealers appealed an injunction enjoining them from intentionally misrepresenting the availability of mobile home park space within mobile home parks and requiring them to remove mobile homes displayed in violation of the Vehicle Code. (*Id.* at 5.) The Court of Appeals rejected the defendants' assertion that the injunction was mandatory in character, holding that "[w]hile the act of removal is an affirmative act, it is incidental to the injunction's prohibitive objective to restrain further violation of a valid statutory provision." (*Id.* at 13; *see also, Dry Cleaners & Dyers Inst. Of S.F. & Bay Ctys. v. Reiss* (1936) 5 Cal.2d 306, 309 (injunction prohibiting a business from continuing to charge an illegal rate was prohibitory, even though it required the business to change its rates or cease doing business); *Agricultural Labor Relations Bd. v. Tex-Cal Land Mgmt., Inc.* (1987) 43 Cal.3d 696, 709 (affirming that the portions of an injunction requiring defendant to "cease and desist" from violating labor laws were

prohibitory in nature.) An injunction is prohibitory if it restrains illegal conduct. In the case at hand, the injunction prevents the Department from continuing to violate federal law and is, therefore, prohibitory.

As the court noted in *People ex. rel Brown v. iMergent, Inc.* (2009) 170 Cal.App.4th 333, an injunction may be mandatory if it compels a party to surrender lawfully held rights. (*Id.* at 342.) Similar to the injunction in *iMergent*, the injunction at issue here “does not compel defendants to violate a contract, nor does it compel them to surrender any rights that were lawfully held when the injunction was issued.” (*Id.* at 343.) The purpose of mandatory relief is to compel the performance of a substantive act, while a prohibitive order seeks to restrain a party from a course of conduct or to halt a particular condition. (96 Cal.App.3d 1 at 13 (internal citations omitted).) “The character of prohibitory injunctive relief. . . is not changed to mandatory in nature merely because it incidentally requires performance of an affirmative act.” (*Id.*) An injunction that compels compliance by maintaining the status quo established in a prior action is prohibitory, not mandatory. (*iMergent*, 170 Cal.App.4th at 343.)

The injunction is not a mandatory command for the Department to surrender a lawfully held status or right because, as the Court held in its decision, the Department failed to go through the proper federal approval procedures to effectuate the rate cuts and pre-authorization requirements. (Decision at 17, 21, 24.) This Court’s orders here are designed to restrain illegal conduct, and are therefore prohibitory.

As the leading California Supreme Court case *United Railroads of San Francisco, supra*, illustrates, the permanent injunction here also preserves the status quo. (172 Cal. at 87.) In *United Railroads of San Francisco* a railroad company sued San Francisco, charging that a municipally owned streetcar company was illegally using the railroad’s

tracks.*(Id.)* The trial court issued a preliminary injunction, but San Francisco appealed and continued to use the tracks, arguing that the injunction was mandatory because it disturbed the status quo and was automatically stayed while the appeal was pending. The Supreme Court rejected San Francisco's argument, declaring that "there is no magic in the phrase 'maintaining the status quo' which transforms an injunction essentially prohibitive into an injunction essentially mandatory." (*Id.* at 87.) The Court defined status quo to "mean 'the last actual peaceable, uncontested status which preceded the pending controversy.'" (*Id.*)

Utilizing the definition of status quo enunciated by *United Railroads*, the last "actual peaceable, uncontested status which preceded the pending controversy," was when DHCS paid Plaintiffs \$130 per procedure and did not require pre-authorization x-rays. It was DHCS' previously unannounced July 2016 Bulletin, not the 2018 injunction, that disturbed that status quo. Just three days after that July 2016 Bulletin was posted on DHCS's website, Plaintiffs brought this action. (Decision at 3,5.) (Noting that the Bulletin's provisions went into effect on July 15, 2016 and Plaintiffs filed suit on July 21, 2016). As expressed in *United Railroads*, "it is not easy to perceive what more the [Plaintiffs] should have done in the assertion and maintenance of [their] rights." (*United Railroads of San Francisco*, 172 Cal. at 87.) The 2018 injunction is prohibitory because it restores the status quo.

**II. The Court should exercise its discretion under Section 1110b to deny a stay pending appeal to prevent irreparable damage to Plaintiffs' businesses and professions.**

The Court should also exercise its discretion under section 1110b to deny a stay pending appeal because Plaintiffs have suffered, and will continue to suffer, irreparable damage to their businesses and profession until DHCS complies with the court's writ and injunction. Section 1110b states that "[i]f an appeal be taken from an order or judgment granting a writ of mandate the court granting the writ *or the appellate court* may direct that the appeal shall not operate as a stay of execution if it is satisfied upon the showing made by the petitioner that he will suffer irreparable damage in his business or profession if the execution is stayed." (Emphasis added.)

In *Social Services Union v. County of San Diego* (1984) 58 Cal.App.3d 1126, the trial court issued a writ of mandate compelling the County to provide certain employees with paid holidays on, December 24 and 31, and ordered that the writ not be stayed pending appeal. On appeal, the Court affirmed, finding the trial court "had the power to stay execution (Code Civ. Proc., § 1110b), and properly did not do so because of irreparable damage to the employees who would have completely lost the benefits of the writ had it been stayed." (*Id.* at 1131.)

If the judgment in the instant case is stayed during the appeal, the Plaintiffs face far greater damage to their businesses and professions than two missed paid holidays. Under the July 2016 Bulletin, Plaintiffs compensation for their periodontal maintenance work was cut by more than half. In addition, their compensation for SRP work dropped to zero (0) due to the impossible to meet x-ray and pre-authorization requirements and fewer claims are being submitted because of these requirements. The

trial court held that a “reduction in the rate from \$130 to \$55 is significant” noting that the number of claims processed for periodontal maintenance (D4910) dropped from 70,671 to 38,915 after the July 2016 Bulletin was released. (Decision at 17.) Plaintiffs have already suffered significant harm, which will continue to worsen, to their business and profession since DHCS released the July 2016 Bulletin and the damage will only grow if a stay is granted pending appeal. Plaintiffs face the loss of their businesses, ever-increasing debt, and an inability to serve their vulnerable patients if the judgment is stayed. As they meet the section 1110b hardship criteria, the Court should issue an order directing DHCS and its Director to comply with the injunction and judgment while the appeal is pending.

### **CONCLUSION**

For all of the above-mentioned reasons, this Court should issue an order directing DHCS and its Director to comply with the injunction and judgment while the appeal is pending.

Dated: July 12, 2018

Respectfully submitted,

The Hall Law Corporation  
AARP Foundation Litigation  
Western Center on Law & Poverty

By: \_\_\_\_\_/S/\_\_\_\_\_  
Barbara Jones  
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Judy Boothby, et al.

# Case No. B290534

COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT, DIVISION P

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JUDY BOOTHBY, GITA AMINLOO, DENISE COZZA, DEBORAH  
HAGEY, MELISSA HALL, MAUREEN KAYE, INGRI SPARLING,  
AND DARCI TRILL,

*Plaintiffs, Respondents and Cross-Appellants,*

*vs.*

CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICE;  
JENNIFER KENT, DIRECTOR DEPT.OF HEALT CARE SERVICE

*Defendants and Appellants.*

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## ORDER

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Good Cause Appearing, the appeal taken in this action shall not operate as a stay of execution of the trial court's judgment. Appellants, Department of Health Care Services, and its Director, Jennifer Kent, are ordered to immediately comply with the trial court's judgment.

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Presiding Justice  
California Court of Appeal  
Second Appellate District

**PROOF OF SERVICE (Court of Appeal)**  
**Mail, Electronic Service or Personal Service**

Case Name: Boothby, et al v. California Department of Health Care Services  
 Court of Appeal Case Number: B290534  
 Superior Court Case Number: BC627948

1. At the time of service I was at least 18 years of age and **not a party to this legal action.**
2. My  residence  business address is (*specify*): 31078 Waterton Court  
 Murrieta, CA 92563

My electronic service address is: **Becky@LarryHallLaw.com**

3. I mailed, electronically served or personally delivered a copy of the as indicated below (*complete either a, b or c*):
- PLAINTIFFS/RESPONDENTS' MOTION TO ENFORCE  
 JUDGMENT GRANTING INJUNCTION & WRIT OF  
 WRIT OF MANDATE (CCP § 1110b); MEMORANDUM  
 OF POINTS & AUTHORITIES; PROPOSED ORDER**
- a.  **Mail.** I mailed a copy of the document identified above as follows:
- b.  **Electronic service.** I electronically served a copy of the document identified above as follows:
- c.  **Personal delivery.** I personally delivered a copy of the document identified above as follows:

Date mailed, electronically served or personally served: **Jul 13, 2018**

- (1) Name of Person served: **Tara L. Newman**

On behalf of (*name or names of parties represented, if person served is an attorney*):

**Department of Health Care Services**

- (a) Address: **Office of the Attorney General  
 300 S. Spring Street, Suite 1702  
 Los Angeles, CA 90013-1230**
- (b) E-Mail Address: **Tara.Newman@doj.ca.gov**

- (2) Name of Person served:

On behalf of (*name or names of parties represented, if person served is an attorney*):

(a) Address:

(b) E-Mail Address:

- (3) Name of Person served:

On behalf of (*name or names of parties represented, if person served is an attorney*):

(a) Address:

(b) E-Mail Address:

4. I am a resident of or employed in the county where the mailing occurred. The document was served from  
 (*city and state*): **Murrieta, California**

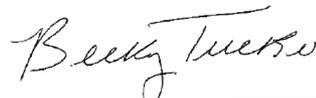
Additional persons served are listed on the attached page (*See page 3*).

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

Date: **Jul 13, 2018**

**Becky Tucker**

(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)



(SIGNATURE OF PERSON COMPLETING THIS FORM)