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15 Attorneys for Defendants and Respondents
16 THE STATE OF CALIFORNIA, THE DEPARTMENT OF HEALTH CARE SERVICES,
and DAVID MAXWELL-JOLLY

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA

18 COUNTY OF SAN FRANCISCO -- UNLIMITED JURISDICTION

19 SAN FRANCISCO UNIFIED SCHOOL
20 DISTRICT,

21 Plaintiff,

22 vs.

23 THE STATE OF CALIFORNIA, THE
CALIFORNIA DEPARTMENT OF
24 HEALTH CARE SERVICES, DAVID
MAXWELL-JOLLY, in his official
25 capacity as Director, California
Department of Health Care Services, and
26 DOES 1 to 10,

27 Defendants.
28

ENDORSED
FILED
Superior Court of California
County of San Francisco

JUN 06 2012

CLERK OF THE COURT
WESLEY RAMIREZ

Deputy Clerk

Case No. CPF-09-509499

TENTH JOINT STATUS REPORT

Date: June 14, 2012
Time: 9:30 a.m.
Dept: 302
Judge: The Honorable Harold E. Kahn

Trial Date: Not set
Action Filed: May 21, 2009

1 In advance of the status conference scheduled for June 14, 2012, at 9:30 a.m., petitioner San
2 Francisco Unified School District ("the District" or "SFUSD") and respondents Department of
3 Health Care Services ("DHCS") and DHCS director Toby Douglas¹ jointly submit the following
4 Tenth Joint Status Report.

5 This case concerns whether the State is required to reimburse SFUSD for medical services
6 (known as Local Educational Agency ("LEA") services) provided to Medi-Cal eligible children in
7 the district when those services are also available to others without charge. Under California
8 Welfare & Institutions Code section 14132.06, SFUSD is entitled to reimbursement for those
9 medical services if federal financial participation ("FFP") is "available." DHCS has maintained that
10 FFP is not available because the federal Centers for Medicare and Medicaid Services ("CMS"),
11 which administers the Medicaid program, has refused under its "Free Care Principle" to provide
12 FFP for services provided to Medicaid eligible individuals if those same services were also
13 available to others without charge. Providing services "without charge" for purposes of Medicaid
14 means that no individual or family is charged for the medical care and reimbursement is not sought
15 from potentially responsible insurers or other third parties. SFUSD contends that controlling
16 opinions from the Departmental Appeals Board ("DAB") of the United States Department of Health
17 and Human Services prohibit CMS from denying claims for LEA services based on the Free Care
18 Principle, and that FFP therefore is "available."

19 On October 8, 2009, the Court ordered that FFP is available for purposes of California
20 Welfare & Institutions Code section 14123.06, but stayed that ruling to give the State time to seek
21 FFP from CMS. Respondent DHCS determined that it would seek FFP from CMS for LEA claims
22 submitted by the District, otherwise reimbursable under federal law, that do not meet the
23 requirements of the "Free Care Principle." DHCS advised the District that it intended to pursue FFP
24 by: (1) requesting FFP from CMS for claims submitted by the District for such LEA services; and
25 (2) if FFP is disallowed, challenging the disallowance before the DAB.

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27 ¹ Toby Douglas is the successor to named defendant David Maxwell-Jolly as Director of
28 DHCS.

1 After the last status report, CMS issued a positive grant award for the LEA claims submitted
2 by the District. Thus, DHCS will be able to obtain FFP for those claims, and the parties agree that
3 court's stay of its October 8, 2009 order, and the stay of this action entered January 15, 2010
4 pursuant to the parties' stipulation, may be lifted. The parties are concurrently submitting a
5 stipulation and proposed order to lift the stays.

6 The two remaining issues in this litigation are whether the District is entitled to a refund of
7 the over \$300,000 the State withheld from the District in 2006 based on the free care principle, and
8 attorneys' fees. Since DHCS and the District received notice of CMS' positive grant award, DHCS
9 and the District have engaged in settlement discussions concerning those issues. Those settlement
10 discussions concluded unsuccessfully at the end of May.

11 Accordingly, the parties respectfully request that the Court lift the stay of the October 8,
12 2009 order and stay of this action entered January 15, 2010 pursuant to the attached stipulation.

13

14 Dated: June 5, 2012

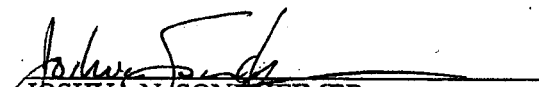
KAMALA D. HARRIS
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KARIN S. SCHWARTZ
Supervising Deputy Attorney General

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JOSHUA N. SONDHEIMER
Deputy Attorney General
Attorneys for Defendants and Respondents

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22 Dated: June 6, 2012

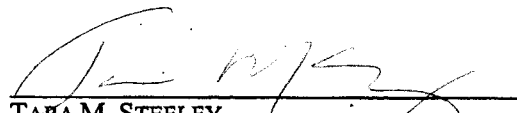
DENNIS J. HERRERA
City Attorney

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TARA M. STEELEY
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Attorneys for Plaintiff and Petitioner

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1 **PROOF OF SERVICE**

2 I, HOLLY CHIN, declare as follows:

3 I am a citizen of the United States, over the age of eighteen years and not a party to the
4 above-entitled action. I am employed at the City Attorney's Office of San Francisco, City Hall, 1
Dr. Carlton B. Goodlett Place, Room 234, San Francisco, CA 94102.

5 On June 6, 2012, I served the following document(s):

6 **TENTH JOINT STATUS REPORT**

7 on the following persons at the locations specified:

8 Kamala D. Harris
9 Attorney General of California
10 Joshua N. Sondheimer
11 Deputy Attorney General
12 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5615
Facsimile: (415) 703-5480
E-mail: Joshua.Sondheimer@doj.ca.gov

13 in the manner indicated below:

14 **BY UNITED STATES MAIL:** Following ordinary business practices, I sealed true and correct copies
15 of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing
16 with the United States Postal Service. I am readily familiar with the practices of the San Francisco City
Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s)
that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that
same day.

17 **BY PERSONAL SERVICE:** I sealed true and correct copies of the above documents in addressed
18 envelope(s) and caused such envelope(s) to be delivered by hand at the above locations by a professional
messenger service. **A declaration from the messenger who made the delivery** **is attached** or **will**
19 **be filed separately with the court.**

20 **BY FACSIMILE:** Based on a written agreement of the parties to accept service by fax, I transmitted true
21 and correct copies of the above document(s) via a facsimile machine at telephone number Fax #415-554-4699
22 to the persons and the fax numbers listed above. The fax transmission was reported as complete and without
error. The transmission report was properly issued by the transmitting facsimile machine, and **a copy of the**
transmission report **is attached** or **will be filed separately with the court.**

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

24 Executed June 6, 2012 at San Francisco, California.

25 
26 _____
27 HOLLY CHIN
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