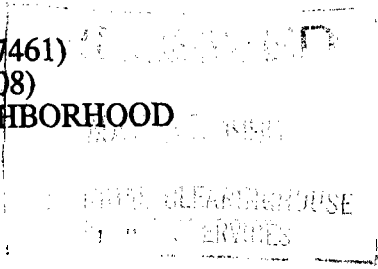


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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

<p>MARTI VILLERY; MARGUERITE BRAUNSTEIN; ALEX FLORES, by and through his Guardian ad Litem, MARIA PEREZ; MARY HAYES; NEIL DWORZACK, by and through his Guardian ad Litem, DIANE DWORZACK; EDUARDO ACEVES; EUNICE VIQUEZ; DIANA MOLINO; and JUDY MAGANA,</p> <p style="text-align: center;">Plaintiffs,</p> <p>vs.</p> <p>BOARD OF SUPERVISORS OF THE COUNTY OF LOS ANGELES, and ROBERT C. GATES, DIRECTOR OF THE LOS ANGELES COUNTY DEPARTMENT OF HEALTH SERVICES,</p> <p style="text-align: center;">Defendants.</p>	<p>Case No.: 95-5714 ABC</p> <p>Plaintiffs' Reply to Defendant's Opposition to Motion for Preliminary Injunction</p> <p>CLASS ACTION</p> <p>Date: September 28, 1995 Time: 9:00 a.m. Place: Courtroom 890</p>
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**TABLE OF CONTENTS**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
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22  
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24  
25  
26  
27  
28

I.	INTRODUCTION	1
II.	STATEMENT OF FACTS AND RELIEF <b>REQUESTED</b>	1
A.	INDMDUAL NOTICE AND HEARING	1
B.	THE COUNTY HAS FISCAL ALTERNATIVES, AND THE PROPOSED INJUNCTION WILL NOT RESULT IN THE COUNTY'S INSOLVENCY.	3
C.	SUPPLEMENTARY STATEMENT OF FACTS	4
III.	ARGUMENT	6
A.	THE STATUTORY AND CONSTITUTIONAL VIOLATIONS AT ISSUE HERE ARE NOT INSULATED FROM JUDICIAL REVIEW SIMPLY BECAUSE THEY HAVE BUDGETARY CONSEQUENCES.	6
1.	The County's Violation of <b>Statutory and Constitutional Protections</b> in its Admmistration of Its Health <b>Services</b> Program is Subject to Judicial Review.	6
2.	The County Has No Grounds To Assert The Defense Of Fiscal Impossibility.	9
B.	UNDER THE ADA AND SECTION 504, THE TERMINATION NOTICES PROVIDED TO COUNTY PATIENTS MUST INCLUDE CONSIDERATION OF PATIENTS' DISABILITY STATUS AND THE ACCESSIBILITY AND APPROPRIATENESS OF ANY ALTERNATIVE SERVICES.	12
C.	NOTICE AND HEARINGS ARE REQUIRED TO INSURE THE COUNTY COMPLIES WITH ITS DISCHARGE OBLIGATIONS.	15
D.	PLAINTIFFS ARE LIKELY TO PREVAIL ON THEIR CLAIM THAT THE COUNTY WILL SOON BE VIOLATING ITS CLEAR <b>OBLIGATIONS</b> TO PROVIDE NECESSARY MEDICAL AND DENTAL <b>CARE TO GENERAL</b> RELIEF RECIPIENTS AND OTHER MEMBERS OF THE PLAINTIFF CLASS WHO ARE UNABLE TO PAY FOR THEIR CARE.	16
1.	<b>The</b> County Will Shortly Be Violating Its Legal Obligations to Provide <b>Necessary</b> Medical and Dental Care to GR Recipients.	17
2.	The County Will Shortly Be Violating Its Legal Obligations to Provide <b>Necessary Medical</b> and Dental Care to ATP Participants and <b>Medi-Cal</b> Recipients.	18
E.	DUE PROCESS REQUIRES <b>INDIVIDUAL</b> NOTICE AND THE OPPORTUNITY FOR A HEARING BEFORE THE COUNTY MAY TERMINATE OR REDUCE INDIGENT HEALTH SERVICES.	22

1  
2  
3  
4  
5  
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24  
25  
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27  
28

- 1. Defendants Fail To Provide Due **process** Protections Even to GR Recipients, Whom They Concede Have A Property Interest in Continuing Care. 22
- 2. Medically Indigent County Patients in An **Ongoing** Doctor-Patient Relationship Are Entitled to Notice and Hearing. 22
- 3. The County Beilenson Notice And Hearing Does Not Satisfy The Requirements Of Due Process. 23
- F. THE BALANCE OF HARDSHIP TIPS IN PLAINTIFFS' FAVOR, AS PLAINTIFFS HAVE DEMONSTRATED THEY WILL SUFFER IRREPARABLEINJURY. 26
- G. **BECAUSE** PLAINTIFFS ARE INDIGENT, REQUIRING A BOND WILL DENY THEM EQUAL ACCESS TO THE COURTS. 27

CONCLUSION 28

**. TABLE OF AUTHORITIES**

**CASES**

Baker v. Carr, 369 U.S. 186, 82 S.Ct. 691,  
7 **L.Ed.2d** 663 (1962)) . . . . . 8

Bay General Community Hospital v. County of San Diego,  
156 **Cal.App.3d** 944, 203 **Cal.Rptr.** 184 (1984) . . . . . 24

Bernhardt v. Board of Supervisors, 58 **Cal.App.3d** 806,  
130 **Cal.Rptr.** 189 (1976) . . . . . 23

Board of Regents v. Roth, 408 U.S. 564,  
92 S.Ct. 2701, 33 **L.Ed.2d** 548 (1972) . . . . . 28, 29

Board of Supervisors v. McMahon,  
219 **Cal.App.3d** 286, 268 **Cal.Rptr.** 219 (1990) . . . . . 13 , 14

Board of Supervisors v. Superior Court,  
207 **Cal.App.3d** 552, 557-58, 254 **Cal.Rptr.** 905 (1989) . . . . . 25

Boehm I, 163 **Cal.App.3d** 447 at 451,  
209 **Cal.Rptr.** 530 (1985) . . . . . 12

Bradley v. Milliken. 540 **F.2d** 229,  
(6th Cir. 1976) . . . . . 9

Cabo Distributive Co., Inc. v. Brady,  
821 **F.Supp.** 601, (N.D. Cal. 1992) . . . . . 32

Chalk v. U.S. Dist. Ct., 840 **F.2d** 701,  
(9th Cir. 1988) . . . . . 10

City and County of San Francisco v. Superior Court  
57 **Cal.App.3d** 44, 128 **Cal.Rptr.** 712 (1976) . . . . . 12

City of Lomita v. County of Los Angeles,  
148 **Cal.App.3d** 671, 1% **Cal.Rptr.** 221 (1983) . . . . . 20

Cooke v. Superior Court, 213 **Cal.App.3d** 401,  
261 **Cal.Rptr** 706 (1989) . . . . . 12

<u>County of Alameda v. State Bd. of Control,</u> 14 Cal.App.4th 1096, 18 Cal.Rptr.2d 487 (1993) . . . . .	24
<u>County of Butte v. Superior Court,</u> 176 Cal.App.3d 693, 222 Cal. Rptr. 429 (1985) . . . . .	9
<u>County of San Diego v. Vilorio,</u> 276 Cal.App.2d 350, 352, 80 Cal.Rptr. 869 (1969) . . . . .	24
<u>Dowling v. Davis,</u> 840 F.Supp. 731, (E.D. Cal. 1992) . . . . .	9
<u>Goldberg v. Kelly,</u> 397 U.S. . . . .	32, 33
<u>Goodall v. Brite,</u> 11 Cal.App.2d 540, 54 P.2d 510 (1936) . . . . .	24
<u>Governing Council of Pinoleville Indian Community v. Mendocino County,</u> 684 F.Supp. 1042, (N.D. Cal. 1988) . . . . .	36
<u>Griffin v. Prince Edward County Schools,</u> 377 U.S. 218, 12 L.Ed.2d 256, 84 S.Ct. 1226 (1964) , . . . . .	11
<u>Hamilton v. Love,</u> 328 F.Supp. 1183 (D.Ark. 1971) . . . . .	11
<u>Helen L. v. Di Dario,</u> 46 F.3d 325 (3rd Cir. 1995) . . . . .	16
<u>Hurlev v. Toia,</u> 432 F.Supp. 1170, (1976) . . . . .	33
<u>Kinlaw v. State of California,</u> 54 Cal.3d 326, 285 Cal.Rptr. 66 (1991) . . . . .	24
<u>LeBaron v. U.S.,</u> 989 F.2d 425 (10th Cir. 1993) . . . . .	29
<u>Logan v. Zimmerman Brush Co.,</u> 455 U.S. 422, (1982) . . . . .	31
<u>Madera Community Hospital v. County of Madera,</u> 155 Cal.App.3d 136 201 Cal.Rptr. 530 (1985) . . . . .	12
<u>Madera Community Hospital v. Madera County,</u> 154 Cal.App.3d 136,201 Cal.Rptr. 768 (1984) . . . . .	25

<u>Marbury v. Madison</u> , 1 Cranch 137, 5 U.S 137, 2 L.Ed. 60 (1803) . . . . .	8
<u>Memphis Light Gas &amp; Water Div. v. Craft</u> , 436 U.S. 1, 98 S.Ct. 1554, 56 L.Ed.2d 30, (1978) . . . . .	30-32
<u>Mennonite Board of Missions v. Adams</u> , 462 U.S. 791, 103 S.Ct. 2706, 77 L.Ed.2d 180 (1983) . . . . .	: 30, 31
<u>Milliken v. Bradley</u> , 433 U.S. 267, 97 S.Ct. 2749, 53 L.Ed.2d 745 (1977) . . . . .	8
<u>Missouri v. Jenkins</u> , 495 U.S. 33, 109 S.Ct. 1651, (1990) . . . . .	11
<u>Mooney v. Pickett</u> , 4 Cal.3d 669, 94 Cal.Rptr. 530 (1985) . . . . .	12, 23
<u>Mullane v. Central Hanover Trust Co.</u> , 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed.2d 865 (1950) . . . . .	30
<u>Mustafa v. Clark County School Dist.</u> , 876 F.Supp. 1177 (D. Nev. 1995) . . . . .	9
<u>Orantes-Hernandez v. Smith</u> , 541 F.Supp. 351, (C.D. Cal. 1982) . . . . .	35
<u>People Ex Rel Van De Kamp v. Tahoe Regional Plan</u> , 766 F.2d 1319, (9th Cir. 1985) . . . . .	35
<u>Poverty Resistance Center v. Hart</u> , 213 Cal.App.3d 295, 271 Cal.Rptr. 214 (1989) . . . . .	12
<u>Robbins v. Superior Court</u> , 38 Cal.3d 199, . . . . .	14
<u>Stanley v. University of California</u> , 13 F.3d 1313, 1320 (9th Cir. 1994) . . . . .	9
<u>Sullivan v. Vallejo City Unified School Dist.</u> , 731 F.Supp. 947, (E.D.Cal. 1990) . . . . .	9

<u>Vitek v. Jones</u> , 445 U.S. 480, 100 S.Ct. 1254, 63 L.Ed.2d 552 (1980) . . . . .	30, 31
<u>Viverito v. Smith</u> , 421 F.Supp. 1305, (1976) . . . . .	33
<u>Walker v. Pierce</u> , 665 F.Supp. 831 (N.D. Cal. 1987) . . . . .	35
<u>Washington v. Board of Supervisors</u> , 18 Cal.App.4th 981, 22 Cal.Rptr.2d 852 (1993) . . . . .	23
<u>Watson v. Memphis</u> , 373 U.S. 526, 83 S.Ct. 1314 (1963) . . . . .	11
<u>Wellman v. Faulker</u> , 715 F.2d 269 (7th Cir. 1983) . . . . .	11
<u>Welsch v. Likins</u> , 550 F.2d 1122, (8th Cir. 1977) . . . . .	11
<u>Wilson v. Seiter</u> , 501 U.S. 294, 111 S.Ct. 2321, 115 L.Ed. 2d 271, (1991) . . . . .	11
 <b><u>FEDERAL REGULATIONS</u></b>	
28 C.F.R. § 35.107 . . . . .	15
28 C.F.R. § 130(b)(1)(i, iii) . . . . .	17
28 C.F.R. § 35.130(d) . . . . .	16
42 C.F.R. §482.21(b)(2) . . . . .	19
45 C.F.R § 84.7 (§504) . . . . .	15

**STATE STATUTES**

Health & Safety Code § 1442.5 . . . . . 23, 26, 27, 29

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WIC § 14052 . . . . . 23

WIC § 16804.1(a) . . . . . 24

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WIC § 17608.10 . . . . . 26

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**I. INTRODUCTION**

We are all required to obey the law, in good times and in bad times. Economic reversals do not excuse an individual from paying taxes, a business from paying its suppliers or a lawyer from performing his ethical duties owed a client. So, too, Los Angeles County’s fiscal woes do not excuse this local government from fulfilling its legal obligations.<sup>1</sup>

Contrary to defendants’ beliefs, this lawsuit does not attempt to control how the Board of Supervisors exercises its discretion over County government. Plaintiffs are seeking a preliminary injunction because, within a matter of days, the County will be violating federal laws and regulations, state laws, and the Due Process Clause of the Constitution. Financial problems do not allow the County to pick which legal obligations it will follow and which it will ignore. Inasmuch as the County continues to afford indigent criminal defendants their Constitutional right to a free attorney, why should the County be allowed to deny indigent patients their Constitutional right to Due Process notice and a hearing?

**II. STATEMENT OF FACTS AND RELIEF REQUESTED**

**A. INDIVIDUAL NOTICE AND HEARING**

The relief requested here essentially boils down to due process notice and hearing. If these are provided in a meaningful way, plaintiffs’ other substantive claims can be resolved in the context of factual hearings for particular individuals. The County itself acknowledges that harm depends upon individual facts and circumstances. Def. Opp. Br. at 6, Def. Opp. to Class Certification at 2,3.

This is not “all or nothing” relief and, if granted, will not halt all curtailments indefinitely, as the County claims. Because the curtailments are not total, the issue here is a process by which the County determines which patients continue and which will be turned away, transferred, or denied further services. Providing individual notice and hearings is the only way to ensure that

---

<sup>1</sup>Plaintiffs have just learned that the County, based on its anticipated receipt of federal funds, may take action that will make it unnecessary to move forward for preliminary relief at this time. Plaintiffs will immediately apprise the Court of any developments that effect further proceedings with respect to plaintiffs’ Motion for Preliminary Injunction.

1 this selection process is not arbitrary, complies with lawful mandates, and does not result in  
2 patient abandonment and malpractice. It is also the only way to ensure that the County complies  
3 with its ethical obligation to provide continuity of care. See Plaintiffs Br. in Support of  
4 Preliminary Inj. at 22 and notes accompanying text. (Physicians may discontinue relationships  
5 only after they provide individual notice, the patient approves transfer, adequate care is available  
6 elsewhere and the patient's health will not be jeopardized).

7 Implementing this relief will be straightforward. Preparing and delivering individual  
8 notices will take approximately a month; facilities must remain open during this process.  
9 Individualized patient notices must be based on an assessment of patient needs, disability and  
10 language status, the consequences if care is interrupted, the availability of alternative non-County  
11 providers, **payor** status and whether the patient is a GR recipient or other County **indigent**.<sup>2</sup> Once  
12 notices are issued, curtailments and closures can proceed. For those patients who actually file  
13 appeals, the County can make alternative arrangements to continue care pending a hearing.

14 Providing notice and hearing makes sense as "risk management" to avoid greater cost for  
15 malpractice and personal injury to patients left with no care. Absent an injunction, the County's  
16 hasty and haphazard closure process will force County doctors to abandon patients in violation of  
17 their professional responsibilities as medical providers. By analogy, a lawyer could not close his  
18 office without notifying every client whom he represents and whose **file** he maintains.

19 The individual notices must also inform patients that they have a right to appeal the  
20 County's decision and the basis for the decision. A small percentage of patients denied care will  
21 appeal and have a right to a hearing to resolve factual issues and disputes. The issues for hearing  
22 will include:

23 1. whether there are alternative, non-County providers who are appropriate, accessible  
24 and willing to accept the patient;

---

25  
26 <sup>2</sup>**At** present, the County has not made these individualized determinations or held hearing  
27 opportunities for patients. The County apparently plans to provide aftercare instructions to some  
28 segment of the existing plaintiff population, but these aftercare instructions, standing alone, do  
not meet the County's obligation to provide meaningful notice and hearing rights to patients.  
**AR3323-3326.**

1           2.       if the patient is being transferred to another County facility, whether the services  
2 offered there are appropriate, accessible and available;

3           3.       if care is being terminated and there are no alternative providers, whether the  
4 patient can qualify as a GR recipient or medical indigent for whom the County is nonetheless  
5 responsible;

6           4.       if care is being terminated and there are no alternative providers, whether the  
7 services involve an issue of follow-up care for a patient discharged from a County facility.

8           Some hearings will result in a finding that there is no basis to continue County services,  
9 and the County's decision will be upheld. Other hearings may result in a finding that care must  
10 continue and the County must make arrangements accordingly. Neither outcome necessarily  
11 requires that any particular facility will remain open.

12 **B.       THE COUNTY HAS FISCAL ALTERNATIVES, AND THE PROPOSED**  
13 **INJUNCTION WILL NOT RESULT IN THE COUNTY'S INSOLVENCY.**

14           Defendants repeatedly warn about how the proposed preliminary injunction will result in  
15 the County's insolvency. Def. Opp. Br. at 1, 12, 22 and 23. On closer inspection, the evidence  
16 does not support such apocalyptic predictions.

17           According to the County's Acting Director of Public Finance, there is the possibility of  
18 insolvency, but only "[i]f the County were enjoined against reducing expenditures in order to  
19 balance the budget, " and, even then, only "[i]f the County were unable to borrow money from  
20 outside sources to meet its cash needs." Maureen Sicotte Dec. at ¶¶ 5, 6. Neither of these  
21 contingencies is likely to occur. Plaintiffs are not seeking a preliminary injunction anywhere close  
22 to what worries Ms. Sicotte. On the contrary, the Board of Supervisors will remain perfectly free  
23 to make reductions in spending. Since the Board will retain its flexibility to balance the \$12  
24 billion annual budget, the County should not experience any problems in borrowing money from  
25 outside sources to meet its short term cash flow needs. Certainly, Ms. Sicotte never suggests that  
26 the County will have any problems borrowing money in these circumstances. Quite to the  
27 contrary, the Legislature has recently offered to allow the County to borrow \$100 million from  
28 the County's transportation fund, but the County has so far refused. Insolvency is a red herring.

1 According to the County's Chief Administrative Officer ("CAO"), the Board of Supervisors  
2 enjoys "some discretion" over \$2.4 billion in expenditures. Dec. of Sally Reed at ¶ 7. The CAO  
3 nonetheless insists that this discretion is "very limited," citing the GR program as an example of  
4 a program whose "legally specified funding levels" are "fully out of the control of the Board of  
5 Supervisors." Id. Significantly, the CAO fails to specify the full range of optional, discretionary  
6 programs that receive County funding, or to acknowledge that hundreds of millions of dollars are  
7 spent each year on discretionary activities that could be cut. AR3402.

8 **C. SUPPLEMENTARY STATEMENT OF FACTS**

9 Since the filing of plaintiffs' Motion for Preliminary Injunction, a number of developments  
10 have occurred with respect to the downsizing of the County health system:

11 • On August 25, 1995, the Department of Health Services estimated an "unmet service  
12 need" of approximately 1.4 million outpatient visits as a result of the planned outpatient  
13 curtailments. This confirms that hundreds of thousands of County patients, many suffering from  
14 cancer, heart disease, diabetes, hepatitis, cleft palate, severe burns, Downs Syndrome, AIDS, will  
15 be "dumped" out of the County health system and into our communities with no source of medical  
16 care. This estimate already assumes that the private sector will have absorbed an additional  
17 500,000 visits cut from County clinics. AR 3341.

18 • Although the Board's adopted budget called for reductions of 75 % of outpatient services  
19 at the County hospitals, there are no consistent plans for implementing these cutbacks. In mid-  
20 August, the plan at LAC/USC involved an 88 percent reduction in outpatient services, with an  
21 exemption for AIDS services and certain services for women and children. AR 3277. By the end  
22 of August, this plan was revised to include "reconfiguration" of 136 specialty clinics into 7 large  
23 clinic groups, with no detail on services included or exempted from cuts. AR 3338.

24 • Similar changes occurred at Harbor/UCLA (AR 3278, AR 3338) and Rancho Los  
25 Amigos (AR 3280). Olive View Medical Center has gone from planned reductions of 68 % to  
26 100% in some clinics, to a new plan to maintain all clinics but reduce visits by 20% to 30 % . AR  
27 **3377-3378.**

28 • The current "policy" of LAC/USC Medical Center is to continue to schedule

1 appointments for existing patients. However, because of misunderstandings associated with  
2 correspondence from the County health department, some patients are being denied appointments.  
3 According to one LAC\USC doctor, the staff is deeply confused regarding appointment  
4 scheduling. Dec. of Dr. Cynthia Stotts at ¶4, 5. **AR3403-3405.**

5 ● Harbor/UCLA is apparently not booking appointments for patients after October 1,  
6 1995. Id. One Harbor patient, Sharon Moody, had breast cancer in 1994, and had a mastectomy  
7 at Harbor. On September 19, 1995, she had an appointment at Harbor, and was told by the  
8 doctor that her cancer may have spread to her lungs, and that she needed to be seen by an  
9 oncologist. When she called the Harbor Oncology Department, she was told she could not have  
10 an appointment, because “they didn’t know what they were going to do. They said they don’t  
11 know which clinics which will be closed and which will be open. They told me to call back after  
12 October 1, and then they would know what was going on. They said that after October 1, they  
13 would probably be closed for at least a week or two, if not permanently, while they figured out  
14 what they were doing, and then they would know whether or not they could make an appointment  
15 for me. They did not know of any place else I could go. ” **AR3406-3407.**

16 ● Notices have been posted at various centers and clinics advising patients that the  
17 facilities will be closed effective October 1, 1995. The notices state that if a patient has an  
18 appointment before that date, she will be given information about her continuing care at that time.  
19 AR 3343. One caller was told by Olive View Medical Center to call an 800 number for referrals  
20 but instead of receiving a referral, the caller was routed back to Olive View where the an  
21 employee told the caller she didn’t have any referrals for him. Declaration of Humberto Lopez.  
22 Another caller was unable to reach anyone after repeated calls to Hudson Comprehensive Health  
23 Center; subsequently the caller was advised that Hudson was not making appointments, even  
24 assuming that the patient involved was diabetic, an existing Hudson patient, and needed  
25 mediations. Declaration of Tracy Jensen, AR 3447-3449. This caller was also told by the  
26 Humphrey Comprehensive Health Center that it was not making any appointments, “and that no  
27 other County facilities were either.” **AR3448.**

28 ● Some individuals are receiving “resource lists” of referral hospitals and clinics.

1 However, the lists are inaccurate and unreliable, and include phone listings which are incorrect,  
2 are private homes, or are never answered. Declaration of Marilyn Kleinheim, AR3415-3430.  
3 Some of the referrals are for clinics which do not accept indigent patients. Id. One list included  
4 the local YMCA, which is not a health clinic. Id. Other lists include hospitals which do not  
5 accept Medi-Cal. Declaration of Diane Dworzak, AR341 1-3414. No notices have been provided  
6 to individual patients, including General Relief recipients, as to whether and how their health care  
7 services will be terminated, where they will be referred, or whether they will actually be provided  
8 with care if they have been deemed a “high risk” patient. AR3055;AR3325;AR3378.

9 • Many existing County patients do not know where they will get any care, including  
10 diabetics who require eye surgery. See Declaration of Dr. Galen Grayson re patient survey;  
11 76.9% of her patients at LAC/USC do not know where to go; 20.6% would either not go  
12 anywhere or would try to get into a different County facility, which may not be possible.  
13 AR3444-3446.

14 • The cuts **made** by the Board of Supervisors affect emergency services and jeopardize  
15 the delivery of intensive care services. Following the issuance of layoff notices on September 15,  
16 the Board of Supervisors has been forced to request that Sally Reed, the CAO, rehire critical  
17 positions in emergency operating and intensive care. See September 18, 1995 Letter from Board  
18 of Supervisors to Sally Reed. AR3431-3440.

19 • The confusion as a result of the curtailments is affecting the control of infectious  
20 diseases. Dr. Shirley Fannin, Director of Infectious Disease Control for the County has advised  
21 the Board of Supervisors that the lack of effective planning has led to a “crippling” of disease  
22 control programs such as TB Control Program, due to unanticipated cuts in staffing. See Sept.  
23 15, 1995 letter from Dr. Fannin to each Supervisor. AR3441-3443.

### 24 III. ARGUMENT

25 A. **THE STATUTORY AND CONSTITUTIONAL VIOLATIONS AT ISSUE HERE ARE  
26 NOT INSULATED FROM JUDICIAL REVIEW SIMPLY BECAUSE THEY HAVE  
BUDGETARY CONSEQUENCES.**

27 1. **The County’s Violation of Statutory and Constitutional Protections in its  
28 Administration of Its Health Services Program is Subject to Judicial Review.**

1 Defendants claim that this suit concerns County budget determinations which are beyond  
2 judicial review and the reach of constitutional due process protections. Def. Opp. Br. at 3, 11,  
3 19, 20. Plaintiffs have already addressed defendants' claim that this is a non-justiciable political  
4 question and their repeated invocation of Marbury v. Madison, 1 **Cranch** 137, 5 U.S. 137, 2  
5 L.Ed. 60 (1803). Plaintiffs' Opposition to Defendants' Motion to Dismiss at 30 (discussing the  
6 test for **justiciability** and political question under Baker v. Carr, 369 U.S. 186, 82 S.Ct. 691, 7  
7 **L.Ed.2d** 663 (1962)).

8 More fundamentally, countless fully **justiciable** legal issues have direct or indirect financial  
9 consequences, but this does not transform them into budget cases. Here, plaintiffs raise serious  
10 legal questions whether the County is administering its indigent and public health services program  
11 in compliance with the ADA, the Medicaid statute, the Constitution and state law. The resolution  
12 of this legal challenge may affect the County's budget allocations, but this does not transform it  
13 into an unreviewable "legislative" act. Def. Opp. Br. at 11.

14 The County's argument is analogous to that made by the defendants in Milliken v. Bradley,  
15 433 U.S. 267, 289, 97 S.Ct. 2749, 2761, 53 **L.Ed.2d** 745 (1977). There, state officials argued  
16 that the Eleventh Amendment barred a federal court order from remedying unconstitutional racial  
17 discrimination in Detroit schools, since the "practical effect" would be a payment of state funds.  
18 The Supreme Court explained that suit was proper "to enjoin state officials to conform their  
19 conduct to requirements of federal law, notwithstanding a direct and substantial impact on the state  
20 treasury." **Id.** at 290, 97 S.Ct. at 2762.

21 The state and local defendants in Milliken also argued that the lower court's decree violated  
22 "general principles of federalism," akin to the Marbury v. Madison claims raised by the County  
23 here. **Id.**<sup>3</sup> The High Court responded that "the district Court has neither attempted to restructure

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24  
25 <sup>3</sup>**Indeed**, the local defendants in Milliken painted a picture of fiscal crisis virtually identical  
26 to that presented by defendants here, Detroit argued, without success, that it had "experienced  
27 severe financial crisis as a result of the loss of property tax revenues, " that "escalating" costs had  
28 forced it into a "'survival' budget . . . eliminating many crucial educational programs," that it had  
unsuccessfully sought aid bills from the state legislature and that it could not obtain voter  
approval for additional taxes. Bradley v. Milliken, 540 F .2d 229, 247-249 (6th Cir. 1976)  
(Appendix). The Detroit defendants argued that, as a result, "[i]t is virtually impossible for the

1 local governmental entities nor to mandate a particular method or structure of state or local  
2 financing.” Id. at 291, 97 S.Ct at 2763. Accord, Dowling v. Davis, 840 F.Supp. 731, 733-34  
3 (E.D.Cal. 1992) (rejecting defendant’s appeal to “principles of federalism” -- “There is no  
4 impediment to federal court review because the issues involved concern the state’s budgetary and  
5 political process. ”)

6 Similarly, in this case, a remedial order requiring the County to maintain services until  
7 constitutional protections are provided will not “restructure” the health department, or “mandate  
8 a particular method” of financing it. How the County may choose to reallocate its budget in the  
9 future in response to this litigation is a budget matter which is not before this Court.

10 This is the distinction between this case and County of Butte v. Superior Court, 176  
11 Cal.App.3d 693, 222 Cal. Rptr. 429 (1985) (cited in Def. Opp. Br. at 17). There, the plaintiffs  
12 sought “an order directing the adoption of a 1985-86 budget maintaining the law enforcement  
13 operation of the Sheriff’s Department at their 1984-85 level.” Id. at 700, 222 Cal.Rptr. at 432.  
14 Here, plaintiffs are seeking compliance with federal and state mandates and **requirements** for the  
15 provision of indigent health care -- not a particular budget allocation by the County.

16 This analysis also puts to rest defendants’ claim that the adoption of the County’s budget,  
17 as opposed to actual implementation of closures, determines the status quo in this case. Def. Opp.  
18 Br. at 5, 12.<sup>4</sup> Since plaintiffs are not challenging the County’s budget allocations per se, the

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19  
20 Detroit Board of Education to re-order its priorities when it is already operating on a woefully  
21 inadequate budget. ” Id. at 25 1.

22 <sup>4</sup>**Defendants** mistakenly argue that this lawsuit seeks a mandatory injunction that will disrupt  
23 the status quo. Def. Br. at 5-6. “A prohibitory injunction preserves the status quo. . .A  
24 mandatory injunction ‘goes well beyond simply maintaining the status quo pendente lite [and] is  
25 particularly disfavored. ’ ” Stanley v. University of California, 13 F.3d 1313, 1320 (9th Cir.  
1994) (citations omitted). “The status quo in this context is the ‘last uncontested status’ of the  
26 parties. ” Mustafa v. Clark County School Dist., 876 F.Supp. 1177, 1182 (D. Nev. 1995), citing  
27 Sullivan v. Valleio City Unified School Dist., 731 F.Supp. 947, 954 (E.D.Cal. 1990).

28 Here, “the last uncontested status of the parties” is that the challenged reductions in  
County medical and dental services have not yet occurred. That was the status quo when this  
lawsuit was filed in August and that is the status quo at the present time. Thus, plaintiffs’  
pending motion merely seeks to “fulfill the basic function of a preliminary injunction” - “to  
preserve the status quo pending a determination on the merits. ” See Chalk v . U.S. Dist . Ct., 840

1 timing of the budget's adoption is irrelevant. Instead, this lawsuit challenges the manner in which  
2 the County plans to terminate services to indigent patients and close its health care facilities --  
3 actions which have yet to occur.

4 Notwithstanding the foregoing, the existence of other fiscal alternatives for the County's  
5 budget is relevant to the County's claim of fiscal impossibility and the balance of hardship to each  
6 party from issuance of an injunction. Def. Opp. Br. at 1, 2, 18, 20. In fact, by arguing so  
7 vehemently that an injunction cannot issue because it has no fiscal alternatives, the County itself  
8 has put its budgetary alternatives at issue in this Court.

9 And there are alternatives. As recently as August, 1995, the County "found" an additional  
10 \$94.7 million in revenues and allocated the entire sum to other County departments such as Parks,  
11 the Sheriff, etc. Not one penny of this money was allocated to restore health services. AR 2503.  
12 The County could immediately reduce its allocation to the Sheriff, the museums, the County  
13 Administrative Officer, or any of the other host of programs that receive County funding, without  
14 violating any mandates. Declaration of Sally Reed, ¶ 7. As plaintiffs discuss in the next section,  
15 there is a significant difference between County functions which are subject to constitutional and  
16 statutory mandates, and those which, while local priorities, are not similarly mandated.

## 17 **2. The County Has No Grounds To Assert The Defense Of Fiscal Impossibility.**

18 The County claims that its reductions were prompted by financial hardship and that, as an  
19 equitable matter, it is fiscally impossible to comply with a limited injunction.

20 However, the federal courts have long held that fiscal hardship is no excuse for violating  
21 the Constitution. Watson v. Memphis, 373 U.S. 526, 537, 83 S.Ct. 1314 (1963) (regarding  
22 integrated playground facilities: "[V]"**indication** of constitutional rights cannot be made dependent  
23 on any theory that it is less expensive to deny than to afford them. "); Welsch v. Likins, 550 F. 2d  
24 1122, 1132 (8th Cir. 1977)( "If Minnesota chooses to operate hospitals for the mentally retarded,  
25 the operation must meet minimal constitutional standards, and that obligation may not be permitted  
26 to yield to financial considerations."); Hamilton v. Love, 328 F.Supp. 1183\2, 1194 (D. Ark.

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F.2d 701, 704 (9th Cir. 1988).

1 971) ("Inadequate resources can never be an adequate justification for the State's depriving any  
2 person of his constitutional rights. ")<sup>5</sup>

3 In addition, the state courts have consistently found that fiscal hardship cannot excuse the  
4 County's refusal to provide necessary health care services to the indigent. As to the plaintiffs'  
5 state law claim, every appellate court which has considered a county's defense of budget  
6 difficulties has concluded that it is not sufficient to overcome the mandate of WIC § 17000:

7 In considering this question [the obligation to provide dental care to indigents] we  
8 are keenly aware of the fiscal plight of many counties within our jurisdiction.

9 Counties have experienced severe economic hardships in the wake of Proposition  
10 13. The effects of those hardships are well known . . . [nonetheless], A lack of  
11 funds is no defense to a county's obligation to provide statutorily required benefits.

12 Cooke v. Superior Court, 213 Cal.App.3d 401 at 414, 261 Cal.Rptr 706 (1989) citing Mooney  
13 v. Pickett, 4 Cal.3d 669 at 680, 94 Cal.Rptr. 530 (1985); Poverty Resistance Center v. Hart, 213  
14 Cal.App.3d 295 at 303, 271 Cal.Rptr. 214 (1989); Boehm v. County of Merced, 163 Cal.App.3d  
15 447 at 451, 209 Cal.Rptr. 530 (1985); Madera Community Hospital v. County of Madera, 155  
16 Cal.App.3d 136 at 151, 201 Cal.Rptr. 530 (1985); City and County of San Francisco v. Superior  
17 Court 57 Cal.App.3d 44, 47, 128 Cal.Rptr. 712 (1976).

18 The County claims that it faces bankruptcy and that compliance with a preliminary  
19 injunction will be impossible. Fiscal impossibility was rejected as a defense to a statutory mandate  
20 in a state case involving very similar facts. Board of Supervisors v. McMahon, 219 Cal.App. 3d

21  
22 <sup>5</sup>The federal courts have also rejected budgetary limitations as a defense in a long line of  
23 cases involving unconstitutional prison conditions. Wilson v. Seiter, 501 U.S. 294, 111 S.Ct.  
24 2321, 115 L.Ed. 2d 271, 287 n. 2 (1991) ("Among the lower courts, '[i]t is well-established that  
25 inadequate funding will not excuse the perpetuation of unconstitutional conditions of  
26 confinement."); Wellman v. Faulker, 715 F.2d 269, 274 (7th Cir. 1983) (despite "lack of funds,"  
27 as a matter of constitutional law, a certain minimum level of medical service must be maintained  
28 to avoid the imposition of cruel and unusual punishment. ").

29 Where local defendants have pleaded lack of funds as a defense to remedial orders in  
30 school desegregation cases, the federal courts have even ordered local officials to levy taxes in  
31 order to comply, and have set aside any limits in state law limiting such as tax increase.  
32 Missouri v. Jenkins, 495 U.S. 33, 57, 110 S.Ct. 1651, 104 L.Ed. 2d 402 (1990); Griffin v.  
33 Prince Edward County Schools, 377 U.S. 218, 84 S.Ct. 1226, 12 L.Ed. 2d 256 (1964).

1 286, 268 Cal.Rptr. 219 (1990). In McMahon, Butte County refused to pay its mandated share  
2 of expenses for the Aid to Families With Dependent Children program ("AFDC"). The County  
3 sought equitable relief, asserting that Butte County did not have sufficient funds to pay its  
4 mandated share of AFDC Costs.

5 The Court of Appeal rejected the County's defense, finding that Butte County had not  
6 shown that compliance with its statutory obligations was impossible. Id. at 300- 302. In the trial  
7 court, Butte County had presented evidence of fiscal difficulties which closely resemble those  
8 advanced by the County here.<sup>6</sup>

9 Initially, the McMahon court noted that Butte County was seeking complete rejection of  
10 its statutory mandate, not of "some onerous detail." Id. at 300. Similarly, Los Angeles County  
11 seeks to excuse its breach of a fundamental obligation under Section 17000. Denying medical care  
12 to thousands of needy patients is not an "onerous detail. "

13 Board v. McMahon holds further that a county cannot establish a fiscal impossibility  
14 defense to a state mandate on the grounds its revenues are insufficient to fund local programs.

15 To the extent that the dispute involves a conflict between statewide and local  
16 priorities, the statewide priorities must prevail. As the state's agents, counties must  
17 comply with statutes; relief from state mandates must come from the Legislature  
18 and not from the courts.

19 Id. at 300-301. Among the "state mandates" which the County must fund, the court included  
20 public benefit programs under WIC § 17000. Id. at 299 (citing Robbins v. Superior Court, 38  
21 Cal.3d 199, 211-212 n.18). "Local priorities" which are not state mandated included police and  
22 fire protection, road maintenance and libraries. Id. at 293.

23 While Los Angeles County, like Butte County, may believe that many non-state mandated  
24 expenditures are very important and should be funded instead of state-mandated expenses such as

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26 <sup>6</sup>The testimony established that Butte County had a limited tax base because of Proposition  
27 13; that the costs of state mandated programs such as welfare had increased dramatically; that  
28 those increased costs had forced cuts in local services such as police and fire protection, road  
maintenance and libraries; and that the County would soon run out of money to fund local  
programs and services. Board of Supervisors v. McMahon, 219 Cal.App. 3d at 293.

1 medical care for the indigent, that belief does not meet the “fiscal impossibility” test. In August,  
2 1995, the County “found” an additional \$94.7 million in its budget, which it committed to parks,  
3 the Sheriff, and other non-health departments. While a commitment to recreation is  
4 commendable, County residents who have the misfortune to be both poor and sick cannot be made  
5 to suffer so that the board may spend its money on leisure activities.<sup>7</sup>

6 To summarize, under McMahon, to make a prima facie claim of fiscal impossibility, a  
7 County must demonstrate (1) that the statutory provision it seeks to excuse is minor and (2) that  
8 it lacks discretionary funds entirely; it cannot base its claim on an inability to fund non-state  
9 mandated programs. Los Angeles County cannot meet these tests. There is no dispute that the  
10 County suffers from budget difficulties but this does not constitute fiscal impossibility, particularly  
11 when the County continues to fund local discretionary programs.

12 **B. UNDER THE ADA AND SECTION 504, THE TERMINATION NOTICES**  
13 **PROVIDED TO COUNTY PATIENTS MUST INCLUDE CONSIDERATION OF**  
14 **PATIENTS’ DISABILITY STATUS AND THE ACCESSIBILITY AND**  
15 **APPROPRIATENESS OF ANY ALTERNATIVE SERVICES.**

16 One aspect of plaintiffs’ ADA claim concerns access to services at **Rancho** Los Amigos  
17 Medical Center. Declarations submitted by the Administrator at **Rancho** indicates that the hospital  
18 will not be closed or immediately divested, and stated further that “it will be feasible to implement  
19 our plan . . . without any discontinuance of service to our indigent patient population. ” Declaration  
20 of Connie Diaz in Support of Defendants’ Ex Parte Application for an Extension of Time, ¶ 4,  
21 although “some core rehabilitation services may have to be reduced.. . ” 2nd Diaz Declaration, ¶  
22 3. In view of this new information, injunctive relief under the ADA to prevent the closure or

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23 <sup>7</sup>**Defendants** claim that plaintiffs are “self-interested” in their insistence that their health care  
24 continue in compliance with the County’s statutory and Constitutional obligations, at the  
25 “expense” of funding for other County programs. Def. Opp. Br at 8. In fact, it is the state  
26 Legislature and Congress who have determined these priorities by enacting the statutes which  
27 plaintiffs seek to enforce and which the County should have honored on its own.

28 More generally, it is not up to indigent welfare recipients to “unselfishly” give up their  
statutory benefits in order to solve the County’s budget woes. As the court explained in Board  
v. McMahon “in providing important local services, the level of service decision ultimately  
belongs with the County electorate. If sufficient Butte County voters feel that the sheriff,  
libraries, the roads and other programs merit additional county revenues, then they will vote  
accordingly. ” 219 **Cal.App.3d** at 302.

1 divestiture of **Rancho** Los Amigos does not appear necessary at present.

2           However, the second part of plaintiffs' ADA claim is entwined with the right to a due  
3 **process** notice and hearing regarding closures and curtailments at all County facilities, including  
4 the 20% reduction in outpatient services and possible core rehabilitation service reductions that  
5 Connie Diaz represents will be the extent of the outpatient reductions at **Rancho** (Id., at ¶ 3).  
6 This portion of plaintiffs' ADA claim is still very much at issue. As discussed below, every  
7 County patient is entitled to notice if there is determination to terminate or reduce services or  
8 transfer care to another provider or facility. This determination must be based on a rational  
9 selection process which includes consideration of the patient's disability status.

10           Further, both the ADA and Section 504 require that the County have in place a notice,  
11 grievance and appeal process to resolve discrimination complaints. 45 C.F.R. § 84.7 (§504); 28  
12 C.F.R. §35.107 (ADA). The requested relief will also satisfy the County's independent obligation  
13 under these provisions, since the individual notices and hearings will include issues of  
14 discrimination based on disability.

15           For some patients with disabilities, the closures may mean that they only have access to  
16 emergency room services leading to acute hospitalization, rather than access to the outpatient  
17 treatment which will enable them to remain in their homes in the community, a prima facie  
18 violation of the integration mandate of the ADA. 28 C.F.R. § 35.130(d). Because it is an  
19 individual question as to what is appropriate for a particular patient, this issue is properly raised  
20 in the context of individual notice and due process hearings.

21           The County makes a sweeping claim, unsupported by evidence, that no patients will be  
22 institutionalized as a result of the closures.<sup>8</sup> This ignores and fails to refute definitive statements  
23 in the record to the contrary. The record is very one-sided on this point, and it is all in plaintiffs'  
24 favor, especially the County's own Closure/Contingency plans.

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<sup>8</sup>The County attempts to distinguish Helen L., 46 F.3d 325 (3rd Cir. 1995), the lead case on  
the integration mandate, on its facts, claiming that this is not a nursing home case. **Def. Opp.**  
Br. at 24. Helen L. was not a nursing home or IHSS case either: it was an ADA case, just as  
this case is.

1 having access to an emergency room that defendants argue strenuously is only obligated to provide  
2 emergency care.

3 C. NOTICE AND HEARINGS ARE REQUIRED TO INSURE THE COUNTY  
4 COMPLIES WITH ITS DISCHARGE OBLIGATIONS.

5 The County attempts to show that it is in compliance with the Medicaid discharge planning  
6 requirements by pointing to the follow-up care which “can be provided by non-County Medicare  
7 or Medicaid providers, which are numerous. . . . There is no evidence that such other resources  
8 are not available.” Def. Opp. Br. at 28-29.

9 The County’s discharge obligations extend to all patients, not just its Medicaid/Medicare  
10 patients. So, even if it were true that sufficient Medi-Cal providers exist within the community,  
11 this fact is totally irrelevant as to whether the County is meeting its obligation owed to non-Medi-  
12 Cal discharged patients. Moreover, there is abundant evidence that “other resources are not  
13 available” to discharged patients, including those with Medi-Cal and Medicare. This evidence  
14 includes patient and doctor declarations submitted by plaintiffs, but most tellingly, this evidence  
15 is found in the County’s own surveys and reports.

16 For example, in a June 20, 1995 Memorandum to the Board, the County Department of  
17 Health Services reported that no private providers were willing to accept occupational therapy  
18 patients from MLK/Drew or High Desert Medical Centers, not even the roughly 30% of these  
19 patients who have Medi-Cal coverage.<sup>10</sup> Similarly, no private providers were willing to accept  
20 either indigent or Medi-Cal patients from Olive View’s ENT, orthopedics, neurology,  
21 neurosurgery or hematology clinics.

22 At present, patients who are newly discharged from Olive View or **MLK/Drew** or High  
23 Desert and who need follow-up care can obtain it in County outpatient clinics, so the refusal of

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25 <sup>10</sup>LA County Department of Health Services Service Reduction Impact and Contingency Plan  
26 Summary, Pl. Excerpts of Record at 326, 331-3. Of the 1889 patients in the MLK/Drew  
27 outpatient Occupational Therapy clinic, 1337, or 70%, are county indigents. Of the remaining  
28 30%, 486 have Medi-Cal, 57 have Medicare and 9 have insurance. No providers were willing  
to take patients, regardless of **payor** status. At High Desert, of the 3168 patients in the  
Occupational therapy clinic, 30%, or 959 are County indigents, with 1967 on **Medi-Cal**. Again,  
no providers were willing to absorb these patients.

1 private providers to accept County patients does not affect their care. While the County is correct  
2 that the law does not require that the County itself provide the follow-up care, the County must  
3 make appropriate transfers and referrals "as needed" for care. 42 C.F.R. §482.21(b)(2). As the  
4 County's own survey demonstrated, private providers shun even the patients funded by Medi-Cal,  
5 let alone the 70% or more without Medi-Cal coverage whom the County itself identifies as  
6 "indigent." While this unfortunate reality is not the County's fault, it does not excuse the County  
7 from its discharge requirements.

8 The County also complains that plaintiffs' reading of these requirements means that "the  
9 County may never discontinue public outpatient services." Def. Opp. Br. at 7-8. This is untrue.  
10 Plaintiffs only claim that as long as the County accepts the relatively generous federal  
11 Medicaid/Medicare funds for inpatient hospital care, it must be willing to pay the price:  
12 compliance with Medicaid/Medicare hospital discharge planning requirements. Consistent with  
13 its ethical obligation to not abandon patients, the County must maintain enough of an outpatient  
14 system to ensure that the patients for whom it has collected federal reimbursement for  
15 hospitalization are not left without continuity of care. Because the transfer and referral needs vary  
16 patient to patient, an individual notice and hearing opportunity is essential to insure the County's  
17 service reductions will not cause the County to violate its discharge obligations owed to each and  
18 every inpatient.

19 **D. PLAINTIFFS ARE LIKELY TO PREVAIL ON THEIR CLAIM THAT THE**  
20 **COUNTY WILL SOON BE VIOLATING ITS CLEAR OBLIGATIONS TO**  
21 **PROVIDE NECESSARY MEDICAL AND DENTAL CARE TO GENERAL**  
22 **RELIEF RECIPIENTS AND OTHER MEMBERS OF THE PLAINTIFF CLASS**  
23 **WHO ARE UNABLE TO PAY FOR THEIR CARE.**

24 Over a decade ago in another case involving Los Angeles County, the court declared:  
25 "It is now established that it is the statutory duty of a County to provide hospital and medical  
26 services to all indigent County residents." City of Lomita v. County of Los Angeles, 148  
27 Cal.App.3d 671, 673, 196 Cal.Rptr. 221 (1983) (emphasis added). Contrary to this statutory  
28 duty, the County will soon be denying necessary outpatient medical care and non-emergency  
dental care to thousands of impoverished local residents.

In defense of these clear, sweeping violations of state law, defendants glibly assume

1 that next month 95,000 General Relief ("GR") recipients will somehow be able to obtain their  
2 necessary outpatient medical care at several, still unidentified, 'locations within the County.  
3 Dec. of Maureen Williams at ¶¶ 3-6. No competent evidence has been submitted to  
4 substantiate such wildly optimistic assumptions. Meanwhile, it is undisputed that the  
5 impending massive cutbacks will have appalling consequences for the health of other indigent  
6 County patients. As to these patients, defendants' only rejoinder is to repeat their erroneous  
7 legal argument about how the County is only obligated to furnish medical care to GR  
8 recipients. In short, plaintiffs are likely to prevail on the merits of this claim.

9 **1. The County Will Shortly Be Violating Its Legal Obligations to Provide**  
10 **Necessary Medical and Dental Care to GR Recipients.**

11 Despite the parties' numerous disagreements, both sides at least agree that state law  
12 requires the County to provide medical and dental care to persons eligible for GR. Def. Opp.  
13 Br. at 7, 9, 10, 31. Pursuant to Health and Safety Code ("HSC") § 1442.5, the County can  
14 provide such care "either directly through county facilities or indirectly through alternative  
15 means." Defendants maintain that after September 30 the "County will continue to comply  
16 with its obligations to GR recipients" as these recipients are supposedly "being transitioned"  
17 from the County Health Care System where they have been provided medical care to "private  
18 contractors in each of the fourteen County welfare districts." Def. Opp. Br. at 10, 31. These  
19 assurances about the future rest exclusively upon the flimsiest of declarations by one County  
20 official, Maureen Williams.

21 Missing from this key declaration are all the critical facts. Although County facilities  
22 are scheduled to close in a matter of days, Ms. Williams cannot state if and when the County  
23 will supposedly enter into agreements with any of these "private contractors" to assume the  
24 care for GR recipients. This County official does not even supply the name and address of a  
25 single one of these "private contractors." Nor does she mention what medical services will  
26 theoretically be provided or whether any of them has agreed to furnish non-emergency dental  
27 care. By now, all the arrangements should be at or near completion, yet this County official is  
28 unable to submit an agreement with any of these 14 contractors.

1 If Ms. Williams' declaration offers any indication of the state of affairs after September  
2 30, then GR recipients will no longer be able to obtain non-emergency medical and dental care  
3 at County facilities but will have no other place to go for such care either. Let us, however,  
4 assume for argument's sake that the County eventually enters into these promised agreements  
5 with the outside contractors. One still cannot transfer the care of 95,000 GR recipients  
6 overnight. Patient records have to be moved; staff may be asked to transfer to the new  
7 locations; recipients have to be notified of the changes. At this late date in the planning  
8 process, defendants cannot even tell the Court where the named plaintiffs who are GR  
9 recipients are supposed to go for their future care.

10 2. **The County Will Shortly Be Violating Its Legal Obligations to Provide**  
11 **Necessary Medical and Dental Care to ATP Participants and Medi-Cal**  
**Recipients.**

12 As bad as the situation will soon be for GR recipients, the imminent cutbacks in the  
13 County Health Care System will unquestionably prove disastrous for other members of the  
14 plaintiff class, in particular, Ability-to-Pay participants and Medi-Cal recipients who are unable  
15 to obtain care from outside providers. Defendants make no pretense that the County will  
16 provide health care to these class members after September 30. Instead, defendants have  
17 created a **strawman** that this lawsuit is trying to make the County "pay for out-patient services  
18 for all residents who seek them. . . ." Def. Opp. Br. at 8 (emphasis in original). Plaintiffs do  
19 not seek such far-reaching relief, not now with the preliminary injunction motion and not at  
20 any later time. All the County is asked to do is fulfill its duties under state law.

21 Welfare and Institutions Code ("WIC") § 17000 expressly requires the counties to  
22 "relieve and support all incompetent, poor, indigent persons" who are not supported by their  
23 own means (emphasis added). HSC § 1442.5 likewise refers to the County's duty "to provide  
24 care to all indigent people" (emphasis added).

25 The courts have repeatedly struck down County policies that ignore the plain meaning  
26 of WIC § 17000 and impose artificial limitations on who is eligible for benefits under this  
27 statute. See, e.g., Mooney v. Pickett, 4 Cal.3d 669, 94 Cal.Rptr. 279 (1971) (County cannot  
28 deny GR benefits to employable recipients); Bemhardt v. Board of Supervisors, 58 Cal. App. 3d

1 \$06, 130 **Cal.Rptr.** 189 (1976) (County cannot deny GR benefits to adults under age 21). As  
2 **he** court stated in Washington v. Board of Supervisors, 18 **Cal.App.4th** 981, 985, 22  
3 **Cal.Rptr.2d** 852 (1993): “Again and again our courts have voided county ordinances which  
4 **have** attempted to redefine eligibility standards set by state statute.”

5 Ignoring the plain language of WIC § 17000 and HSC § 1442.5, defendants nonetheless  
6 insist that the County only has to furnish medical care to GR recipients. Def. Opp. Br. at 7-  
7 10, 19-21, 30-31. As authority for this dubious proposition, defendants once again rely  
8 heavily upon the trial court’s decision in Tailfeather even though that case is now on appeal.  
9 Plaintiffs will not repeat here the extensive discussion of Tailfeather in their opposition to the  
10 motion to dismiss (at 3-7, 26-28). Suffice’it to say, there is no final judgment in Tailfeather  
11 that binds the parties in the instant case and, for that matter, defendants should not even be  
12 citing an unpublished decision by a superior court judge. For more than fifty years,  
13 California appellate courts have held that individuals, oftentimes called the “medically  
14 indigent,” are entitled to medical services from the counties when they cannot pay for the cost  
15 of their medical care even though they can meet their other subsistence needs. County of San  
16 Diego v. Vilorio, 276 **Cal.App.2d** 350, 352, 80 **Cal.Rptr.** 869 (1969); Goodall v. Brite, 11  
17 **Cal.App.2d** 540, 550-51, 54 **P.2d** 510 (1936). More recently, the California Supreme Court  
18 declared that Medically Indigent Adults<sup>11</sup> “are not without a remedy if the county fails to  
19 provide adequate health care. . . They may enforce the obligations imposed on the county by  
20 Welfare and Institutions Code sections 17000 and 17001, and by judicial action.” Kinlaw v.  
21 State of California, 54 **Cal.3d** 326, 336 n.8, 285 **Cal.Rptr.** 66 (1991); see also County of  
22 Alameda v. State Bd. of Control, 14 **Cal.App.4th** 1096, 1100-01, 18 **Cal.Rptr.2d** 487 (1993)

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26 “The former WIC § 14052 defined a “Medically indigent person” as a “person who could  
27 not qualify as a public assistance recipient, a medically needy person, or a medically needy  
28 family person, for reasons other than income or resources but whose income and resources are  
insufficient to provide for the costs of health care. . . .” Stats. 1982, ch. 328, § 16 (emphasis  
added).

1 (describing County's duty to provide medical care to ability to pay patients).<sup>12</sup>

2 In the face of all these decisions, defendants cite just one appellate opinion, Bay  
3 General Community Hospital v. County of San Diego, 156 Cal.App.3d 944, 203 Cal.Rptr.  
4 184 (1984), as supposedly permitting a county to deny medical care to the "working poor." .  
5 Def. Opp. Br. at 30. However, the precise issue in Bay General was whether private hospitals  
6 should be reimbursed for care provided to individuals whose income exceeded the financial  
7 eligibility standards for the Medi-Cal program. 156 Cal.App.3d at 958. In finding that the  
8 "County has not acted fraudulently, arbitrarily, or capriciously," the Bay General court  
9 emphasized the fact that the county had defined "indigency in the same way as the state." Id.  
10 at 960.

11 Bay General does not support defendants' position in this case. Here, in contrast, the  
12 County intends to deny necessary medical care to indigent residents whose income ranges from  
13 much less than the financial eligibility standards for the Medi-Cal program to, at most, equal  
14 to these standards. E.g., Dec. Marti Villery AR 3059, Dec. Keith Crosswhite AR 3076, Dec.  
15 Richard Daggett AR 3033. Patients must fall below a certain income level to qualify for ATP.  
16 Patients must be poor and fit into specified categories (over 65, disabled, etc.) to qualify for  
17 Medi-Cal. Notably, the County itself has admitted on other occasions its obligation to provide  
18 medical care at least to Medically Indigent Adults. See Memorandum in County of Los  
19 Angeles. et al. v. State of California. et al., Los Angeles Superior Court No. C73 1033, Pl.  
20 Ex. 9 at 104 (filed in opposition to defendants' motion to dismiss).

21 Given the County's clear duty to provide medical care to members of the plaintiff class  
22

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23 <sup>12</sup> **While defendants** may insist that the only persons eligible for GR are entitled to medical  
24 care (at no cost) from the counties, the Legislature has clearly taken a broader view of who is  
25 eligible for care, albeit with some charge, from the counties. WIC § 16804.1(a) prohibits a  
26 county from requiring any "fee or charge" before rendering "medically necessary services to  
27 persons entitled to services pursuant to Section 17000." WIC § 16804.(b), in turn, states that this  
28 prohibition is "declaratory of existing law" and "shall not be interpreted to effect a county's  
authority to implement a reasonable sliding fee schedule based on ability to pay." See also WIC  
§ 16818(a) ("Each facility treating persons pursuant to Section 17000 shall provide, at the time  
treatment is sought, individual notice of the availability of reduced cost health care").

1 besides GR recipients<sup>13</sup>, defendants alternatively argue that the County's overall obligations to  
2 provide medical care is capped by WIC § 17608.10. Def. Br. at 31. WIC § 17608.10  
3 governs how much money a county shall deposit into its local health account to receive funds  
4 from the State pursuant to Realignment. Section 17608.10(a) provides, in pertinent part, that:

5 As a condition of deposit of funds from the Sales Tax Account of the Local  
6 Revenue Fund into a county's or city's local health and welfare trust fund  
7 account, a county or city shall deposit county or city general purpose revenues  
8 into the health account each month equal to one-twelfth of the amounts set forth  
9 in the following schedule. . . .

10 (Emphasis added). This statute merely sets forth a minimum amount of County expenditures  
11 to qualify to receive State funding, and does not expressly or implicitly impose any type of  
12 overall maximum.

13 Undaunted, defendants also argue that the Legislature amended HSC § 1442.5 in 1992  
14 so that "no county could be required to provide any level of indigent health services above the  
15 amounts specified by the Legislature in the Realignment statutes." Def. Br. at 31. Neither the  
16 language of Assembly Bill No. 719 (Stats. 1992, ch. 719) nor the accompanying legislative  
17 counsel's digest state in any way that the purpose of the 1992 amendments of HSC § 1442.5 is  
18 that now ascribed to them by defendants.<sup>14</sup>

19 When a county, like Los Angeles, closes a health care facility or reduces the level of  
20 services, HSC § 1442.5 still requires the County to fulfill "its duty to provide care to all  
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22 <sup>13</sup>While no California appellate court has directly ruled upon the question whether a county  
23 has the residual obligation under state law to provide medical care to Medi-Cal recipients who  
24 are unable to find care from other local providers, two appellate courts have declared that the  
25 Medi-Cal program was not "intended to supplant the obligations imposed" on the counties to  
26 provide medical care pursuant to WIC § 17000 *et seq.* and that "the county bear an obligation  
27 to its poor and indigent residents, to be satisfied from county funds, notwithstanding federal and  
28 state funds which exist concurrently with County's obligation. . . ." Madera Community Hospital  
v. Madera County, 154 Cal.App.3d 136, 150-51, 201 Cal.Rptr. 768 (1984); and Board of  
Supervisors v. Superior Court, 207 Cal.App.3d 552, 557-58, 254 Cal.Rptr. 905 (1989).

<sup>14</sup> The text of this bill was previously submitted by defendants as Exhibit M (284-297) in  
their request for judicial notice in support of the motion to dismiss.

1 indigent people, either directly through county facilities or indirectly through alternative  
2 means." It is this very duty that the County will soon be breaching as to members of the  
3 plaintiff class. With regard to the eighth claim for relief, the proposed preliminary injunction  
4 asks that defendants be temporarily enjoined from making the cutbacks in outpatient services  
5 until arrangements have been made for members of the plaintiff class to receive their care at  
6 other facilities. The law requires no less of the County.

7 E. DUE PROCESS REQUIRES INDIVIDUAL NOTICE AND THE OPPORTUNITY  
8 FOR A HEARING BEFORE THE COUNTY MAY TERMINATE OR REDUCE  
INDIGENT HEALTH SERVICES.

9 1. **Defendants Fail To Provide Due process Protections Even to GR Recipients,  
10 Whom They Concede Have A Property Interest in Continuing Care.**

11 "Except for GR recipients," defendants deny that members of the plaintiff class have a  
12 protected statutory entitlement to receive health care from the County. " Def. Opp. Br. at 34.  
13 Defendants thus treat GR recipients differently from all other members of the plaintiff class  
14 and concede that for Due Process purposes GR recipients have a protected interest in the  
15 continued receipt of medical care from the County. Def. Br. at 34.

16 However, even GR recipients have been denied notice of the impending closures. The  
17 only explanation for not giving any written notice to them of the impending termination and/or  
18 suspension of their medical care is that their "medical benefits are not being curtailed." Id.  
19 As the preceding argument demonstrated, the facts do not bear out these unsubstantiated  
20 promises by defendants.

21 Effective October 1 the County will terminate GR recipients' participation in the  
22 Community Health Plan with no clear replacement in sight. Dec. of Maureen Williams. Even  
23 assuming, arguendo, that the County is miraculously able in the next few days to reach  
24 agreement with those 14 unidentified "private contractors" to assume the care for 95,000 GR  
25 recipients, the County must give notice to recipients of the transfer of their care to other  
26 locations and other providers.

27 2. **Medically Indigent County Patients in An Ongoing Doctor-Patient  
28 Relationship Are Entitled to Notice and Hearing.**

Turning to all the other members of the plaintiff class, defendants do not dispute that

1 ,a) their ongoing medical and dental services with the County will soon be terminated and (b)  
2 **hey** will not be receiving any written notice of the termination of their services. Defendants'  
3 **only** explanation for not giving notice to these class members is that they have no protected  
4 statutory entitlement to receive medical care from the County. Def. Br. at 34. Once again,  
5 **the** Court should refer to plaintiffs' preceding argument concerning the clear statutory  
6 **entitlement** of "all indigent persons" - which includes ATP participants and some Medi-Cal  
7 recipients - to receive health care from the County.

8 More generally, all patients receiving ongoing medical care from County providers  
9 have a property interest based on the mutual expectation of doctor and patient that care would  
10 continue to be provided consistent with the physicians' professional and ethical  
11 responsibilities.<sup>15</sup> As the Supreme Court noted in Board of Regents v. Roth, 408 U.S. 564,  
12 577, 92 S.Ct. 2701, 2709, 33 **L.Ed.2d** 548 (1972), a protected property interest may arise  
13 from "those claims upon which people rely in their daily lives. " In LeBaron v. U.S., 989  
14 **F.2d** 425 (10th Cir. 1993), the court found that "[o]nce [medical] assistance has been  
15 extended, a court considering the nature of the recipients rights may consider that individual's  
16 interest in 'uninterrupted assistance'. " (Quoting Board of Regents v. Roth, supra.) This  
17 property interest exists independent of any statutory entitlement under WIC § 17000. Although  
18 the County has the right to terminate patients who hold this property interest but lack any  
19 statutory claim to services, due process requires that it provide minimal procedural protections  
2c in doing so.

21 3. **The County Beilenson Notice And Hearing Does Not Satisfy The**  
22 **Requirements Of Due Process.**

23 The convening of a so-called "Beilenson hearing" pursuant to California Health and  
24 Safety Code §1442.5<sup>16</sup> does not satisfy the Board's constitutional duty to guarantee due process

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25 <sup>15</sup>See Plaintiffs' Memorandum in Support of Preliminary Injunction at 22, n. 37 (discussing  
26 doctors professional and ethical obligations to terminate services only after "notifying the patient"  
2: and if "the patient's health is not jeopardized in the process. ")

21 <sup>16</sup>Section 1442.5 states in pertinent part: "Prior to closing a county facility, eliminating or  
reducing the level of medical services provided, or prior to the leasing, selling, or transfer of

1 protections. Def. **Op.** Br. at 14. The Supreme Court has repeatedly recognized that "[a]n  
2 elementary and fundamental requirement of due process in any proceeding which is to be  
3 accorded finality is notice reasonably calculated, under all the circumstances, to apprise  
4 interested parties of the **pendency** of the action and afford them an opportunity to present their  
5 objections." Memphis Light, Gas & Water Div. v. Craft, 436 U.S. 1, 13, 98 S.Ct. 1554, 56  
6 **L.Ed.2d** 30, 56 **L.Ed** 2d 30 (1978) (quoting Mullane v. Central Hanover Trust Co., 339 U.S.  
7 306, 314, 70 S.Ct. 652, 94 **L.Ed.2d** 865 (1950)). Section 1442.5 makes no pretense of  
8 supplying individual patients adversely affected by closure of health facilities notice or  
9 meaningful opportunity to be heard regarding the lawfulness of such Board action.

10 Notice is of course basic in order that each patient receive "an opportunity to challenge  
11 the contemplated action and to understand the nature of what is happening to him." Vitek v.  
12 Jones, 445 U.S. 480, 496, 100 S.Ct. 1254, 63 **L.Ed.2d** 552 (1980). In Mennonite Board of  
13 Missions v. Adams, 462 U.S. 791, 103 S.Ct. 2706, 77 **L.Ed.2d** 180 (1983), therefore, the  
14 Court held that notice by publication and posting provided to a mortgagee of real property to  
15 inform him of the sale of the mortgaged property failed to meet the requirements of the Due  
16 Process Clause. It required, instead, actual notice to be "mailed to the mortgagee's last known  
17 available address, or by personal service." Id. at 798. "[U]nless the mortgagee is not  
18 reasonably identifiable, constructive notice alone does not satisfy the mandate of Mullane."  
19 Id. The Court in the Mennonite Board of Missions case stated that

20 [t]he county's use of these less reliable forms of notice is not reasonable where,  
21 as here, "an inexpensive and efficient mechanism such as mail service is  
22 available. "Notice by mail or other means as certain to ensure actual notice is a  
23 minimum constitutional precondition to a proceeding which will adversely affect  
24 the liberty or property interests of any party, whether unlettered or well-versed .

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26  
27 management, the board shall provide public notice, including notice posted at the entrance to all  
28 county health care facilities, of public hearings to be held by the board prior to their decision to  
proceed. . . . The notice shall include the amount and type of each proposed change, the expected  
savings, and the number of persons affected. "

1 . . . , if . . . name and address are reasonably ascertainable.

2 462 U.S. at 799-800 (citation omitted, emphasis in original).

3 Here, although the Board through the Department of Health Services obviously  
4 possesses access to patients' addresses, no mailing was undertaken to notify them about the  
5 closures. Patients receiving care and treatment at the affected facilities would not necessarily  
6 be scheduled for services during the period of the posting concerning the Beilenson hearing.  
7 Moreover, patients at these facilities, unlike, say, the "sophisticated creditors" in Mennonite  
8 Board of Missions with "means at their disposal to discover whether property taxes have not  
9 been paid and whether tax sale proceedings are therefore likely to be initiated" (id. at 799),<sup>17</sup>  
10 will typically lack other access to information about the hearing. Consequently, since "[i]t is  
11 true that particularly extensive efforts to provide notice may often be required when the State  
12 is aware of a party's inexperience or incompetence" (id.), the Board should surely have  
13 furnished actual notice as a minimal predicate to a constitutionally-suitable hearing.

14 "The essence of procedural due process is a fair hearing." Vitek, 445 U.S. at 500  
15 (Powell, J., concurring); Logan v. Zimmerman Brush Co., 455 U.S. 422, 433 (1982) ("As  
16 our decisions have emphasized time and again, the Due Process Clause grants the aggrieved  
17 party the opportunity to present his case and have its merits fairly judged. "). "At an absolute  
18 minimum, due process requires that an agency give a person adequate notice that a decision is  
19 being considered and give that person an opportunity for a hearing." Cabo Distributing Co.,  
20 Inc. v. Brady, 821 F.Supp. 601, 609 (N.D. Cal. 1992).

21 Even more fundamentally, then, the Beilenson hearing was no hearing at all for  
22 plaintiff patients. The statute allows for no challenge by individual patients to effectively  
23 contest the denial to them of their physician relationship, or the lessening of services available  
24 to them: there is no adjudication, no provision for findings and the taking of evidence, nor  
25 even an officer to consider presentation of evidence and enter a ruling. There exists,

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26  
27 <sup>17</sup>**The Court** noted, however, that "it does not follow that the State may forgo even the  
28 relatively modest administrative burden of providing notice by mail to parties who are particularly  
resourceful." 462 U.S. at 799-800.

1 consequently, no “administrative procedure of entertaining . . . complaints . . . [as] is required  
2 to reasonable assurance against erroneous or arbitrary withholding of essential services” in the  
3 case of any patient. See Memphis Light, Gas & Water Div., 436 U.S. at 18; Goldberg v.  
4 Kelly, 397 U.S. at 268-70.

5 Whether individual patients will suffer loss or reduction of their entitlement was legally  
6 immaterial to the Beilenson process or, ultimately, to the fate of any individual patient  
7 presently receiving care and treatment at a facility to be closed down: indeed, remarkably, the  
8 well-founded understanding at the hearing on the impending closures is that large numbers of  
9 patients, all still eligible for and requiring services, unquestionably will so suffer. These  
10 patients have no notice and hearing procedures available to them by which they can reverse as  
11 unlawful the closure of a facility, or otherwise secure continuity of professionally-adequate  
12 care at a different facility, upon a showing that the closure will result in the reduction of their  
13 necessary care and treatment below professional standards. The officials’ conclusion as to the  
14 resulting hardships thus only underscores the unconstitutionality of the Board’s action.

15 F. THE BALANCE OF HARDSHIP TIPS IN PLAINTIFFS’ FAVOR, AS  
16 PLAINTIFFS HAVE DEMONSTRATED THEY WILL SUFFER IRREPARABLE  
INJURY.

17 Granting plaintiffs injunctive relief is consistent with the traditional equitable  
18 requirement that this court weigh the public interest. Chalk v. U.S. Dist. Court Cent. Dist. of  
19 California, 840 F.2d 701, 711 (9th Cir. 1988).

20 The County’s own Closure/Contingency Plans are irrefutable evidence of what the  
21 impact of curtailments will be. AR 1447-2498. For example, at LAC/USC Medical Center,  
22 the Orthopedic Clinic sees over 2000 patients per month (AR 381), 76 % of whom are  
23 indigent, and 20% with Medi-Cal. Ar 1528. The Closure Plan notes that this clinic  
24 provides highly specialized care . . . No public alternative to care. Due to the  
25 extraordinarily high volume of patients utilizing this clinic, a major portion will  
26 be unable to find alternative care. . . . Lack of access to timely and adequate  
27 specialized services will result in an increase in complications, and  
28 ultimately increases in mortality and morbidity.

1 AR 1528 (emphasis in original).<sup>18</sup>

2 **G. BECAUSE PLAINTIFFS ARE INDIGENT, REQUIRING A BOND WILL DENY**  
3 **THEM EQUAL ACCESS TO THE COURTS.**

4 Preliminary injunctive relief may be granted without any security when the action is  
5 brought by an impoverished class of plaintiffs. Orantes-Hernandez v. Smith, 541 F. Supp.  
6 35 1, 385 (C.D. Cal. 1982). While Rule 65(c) of the Federal Rules of Civil Procedure  
7 requires the posting of security in a sum the Court deems proper, the Court has discretion to  
8 dispense with it where giving security would effectively deny access to judicial review. People  
9 Ex Rel Van De Kamn v. Tahoe Regional Plan, 766 F.2d 1319, 1325 (9th Cir. 1985).

10 Courts in this Circuit have realized the importance of allowing poor plaintiffs to have  
11 equal access to justice and have therefore waived the posting of a bond. See, Walker v.  
12 Pierce, 665 F.Supp. 83 1, 843 (N.D. Cal. 1987) (Class action brought by indigent tenants  
13 against secretary of HUD, no bond required); Governing Council of Pinoleville Indian  
14 Community v. Mendocino County, 684 F.Supp. 1042, 1047 (N.D. Cal. 1988) (Action brought  
15 by Indian Council which provided documentation neither Council or its members had the  
16 financial capacity to post bond, Court did not require a bond).

17 Plaintiffs in this action are indigent residents of Los Angeles County, some of whom  
18 are barely able to afford the bus fare to commute to their local clinic or hospital, let alone  
19 come up with the money to post a bond in this action. Contrary to defendants' assertion,

20  
21 <sup>18</sup>The comments in the Closure plan regarding the closure of the LAC/USC dental clinic are  
22 even more disturbing. 80% of the patients are identified as County indigent, with 15 % covered  
23 by Medi-Cal. AR 1542. The impact of closure includes the

24 loss of dental care for high risk adults and children with severe mental retardation.  
25 No public or private alternative available. . . . Due to the high volume of indigent  
26 patients with high acuity index, and high risk dental care requirements, a major  
27 portion will be unable to find alternative care at public or private facilities. Loss  
28 of specialized service to medically compromised indigent patients with AIDS,  
cancer, heart disease, renal disease will no longer receive dental care required to  
prevent medical deterioration which leads to death. Only public-private referral  
source for this high risk population.

AR 1542 (emphasis in original). The County's preliminary survey confirmed that of the 13,000  
visits provided by this clinics annually, none would be absorbed by private sector providers, even  
patients covered by Medi-Cal, Medicare or private insurance. AR 327.

1 plaintiffs are indigent residents who are either receiving General Relief from the County of  
2 Los Angeles, uninsured persons who qualify for the County's Ability-to-Pay plan, or those  
3 who receive Medi-Cal coverage.<sup>19</sup>

4 To require these plaintiffs to post a bond of \$930,000 a day flies in the face of justice,  
5 especially since plaintiffs would not be able to afford even the most minimal bond. For  
6 example, plaintiff **Marti** Villery is unemployed due to her illness and cannot afford even to pay  
7 for her cancer medication. Other named plaintiffs live with relatives and rely on them for the  
8 most basic necessities such as food and shelter. Plaintiffs' **indigency** is not to be taken lightly  
9 as defendants do in their opposition.\*' No bond should be required.

10 CONCLUSION

11 For all the foregoing reasons, this Court should grant Plaintiffs' request for issuance of  
12 a preliminary injunction.

13  
14 Dated: RESPECTFULLY SUBMITTED,  
15 PROTECTION AND ADVOCACY, INC.  
16 CALIFORNIA WOMEN'S LAW CENTER  
17 NATIONAL HEALTH LAW PROGRAM  
18 ACLU FOUNDATION OF SOUTHERN CALIFORNIA  
19 LEGAL AID FOUNDATION OF LOS ANGELES  
20 LOYOLA LAW SCHOOL  
21

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22 <sup>19</sup>The fact that not every member of the proposed class is a General Relief recipient does not  
23 negate the fact that class members are poor residents of L.A. County without any alternatives for  
24 health care but the County health system.

25 Named plaintiffs prepared In Forma **Pauperis** motions documenting their indigent status,  
26 but plaintiffs elected to instead pay the filing fee in order to expedite filing. In these documents  
27 it is plain to see that plaintiffs barely have money for day-to-day living.

28 \*'Defendants' suggestion that this Court require plaintiffs' legal counsel to post the bond can  
only be seen as an attempt to create a chilling effect on public interest litigation. Nowhere in  
Rule 65(c) does it state that if the applicant for a preliminary injunction cannot post bond, his or  
her attorneys must do so.

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LEGAL SERVICES PROGRAM FOR PASADENA  
AND SAN GABRIEL - POMONA VALLEY

WESTERN CENTER ON LAW & POVERTY, INC.

SAN FERNANDO VALLEY  
NEIGHBORHOOD LEGAL SERVICES, INC.

By: \_\_\_\_\_  
Melinda Bird  
Attorneys for Plaintiffs