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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

BS170976

BRENDON ROBBINS, by and through his Guardian ad Litem, Lisa Robbins, INNA KANTOR, and AL-MUZZAMIL LODIN

Petitioners,

v.

JENNIFER KENT, in her capacity as Director, California Department of Health Care Services, CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES.

Respondents.

Case No. Dept 86

VERIFIED PETITION FOR WRIT OF MANDAMUS (CODE CIV. PROC. § 1085) AND COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF (CODE CIV. PROC. § 526A)

By Fax

INTRODUCTION

1. The right to notice and an opportunity to be heard is fundamental to due process. A Medi-Cal beneficiary's due process rights are protected by the U.S. and California constitutions, and by federal and state statute and regulation.

2. This lawsuit concerns Medi-Cal beneficiaries who have been denied full and fair administrative hearings. Petitioners and other Medi-Cal beneficiaries with complex medical conditions have submitted medical exemption requests (MERs) to be exempt from involuntary enrollment in a Medi-Cal managed care plan so that they can remain with their existing health care providers. These beneficiaries have timely appealed the denial of their MERs by Respondent California Department of Health Care Services (DHCS).

3. Petitioners are three low-income Medi-Cal beneficiaries who live in Los Angeles County, California. Each Petitioner has a rare medical condition—Nicolaides-Baraitser Syndrome, juvenile rheumatoid arthritis, or L-2-hydroxyglutaric aciduria—that is worsening over time. Petitioners have been receiving care from the same doctors for many years. They are at risk of losing access to this care. Their doctors accept fee-for-service Medi-Cal but do not contract with Medi-Cal managed care plans.

4. Petitioners must apply for MERs to request that DHCS allow them to remain exempt from having to enroll into a Medi-Cal managed care plan and remain in the care of their long-term providers. DHCS denied Petitioners' MERs and Petitioners sought review of their denials in the administrative fair hearing process.

5. In the administrative hearing process challenging DHCS' denial of MERs, Respondents have routinely failed to conduct pre-hearing informal resolution, submitted legally inadequate statements of position, communicated *ex parte* with the administrative law judge (ALJ) to submit additional evidence without informing Petitioners or giving Petitioners an opportunity to respond, and not allowed Petitioners access to their case file or all of the evidence relied on in the hearing decision.

6. Petitioners seek a writ of mandate under Code of Civil Procedure § 1085 to

enforce DHCS' ministerial duty to conduct fair hearings for appeals of MER denials in accordance with state hearing laws and regulations and with the due process provisions of the California Constitution, art. 1, §§ 7, 15. Petitioners Inna Kantor and Al-Muzzamil Lodin additionally sue as taxpayers under Code of Civil Procedure § 526a for injunctive and declaratory relief as to these same violations of the law by DHCS and its Director.

PARTIES

7. Petitioner Brendon Robbins is a Medi-Cal beneficiary who resides in Los Angeles County. He is 17 years old and under the care of his mother, Lisa Robbins. Brendon is one of fewer than 150 individuals in the world with a documented case of Nicolaides-Baraitser Syndrome, which has resulted in profound intellectual disability and, most recently, rapidly progressing ocular disease. The prognosis for his conditions remains largely unknown. Pediatric specialists at the Wright Foundation Pediatric Ophthalmology Clinic and UCLA Health, none of whom are a part of a Medi-Cal managed care plan, administer his care. In October 2016, Brendon sought an exemption from enrollment in a Medi-Cal managed care plan. Brendon appealed the initial denial of his MER in an administrative hearing held on January 11, 2017. In his case, DHCS neglected to contact him for pre-hearing informal resolution, failed to address specific medical facts in its hearing statement of position, and submitted an additional hearing statement after the hearing concluded without informing him or giving him an opportunity to respond. DHCS upheld the MER denial in a hearing decision on March 2 but granted him an exemption in May 2017 upon receiving a demand letter from Brendon's attorney. Brendon's MER will expire on May 31, 2018. Brendon has a direct beneficial interest in Respondents' performance of their legal duties alleged below. Brendon also has a beneficial interest as a citizen since this lawsuit involves question of public right and seeks to enforce public duties.

8. Petitioner Inna Kantor resides in Los Angeles County. She is 63 years old. Her only income is Supplemental Security Income (SSI). As an SSI recipient, she automatically receives Medi-Cal. Ms. Kantor has an aggressive form of juvenile rheumatoid arthritis and

osteoporosis and, consequently, advanced disease of her joints. She has been receiving treatment for these conditions and multiple co-morbidities at Cedars-Sinai Medical Center for the past 25 years. Ms. Kantor applied for a MER in October 2016 to stay in the care of her doctors of the past 25 years who do not contract with a managed care plan. Ms. Kantor appealed the initial MER denial in an administrative hearing held on January 12, 2017. In her case, DHCS neglected to contact her for pre-hearing informal resolution, failed to address specific medical facts in its hearing statement of position, and submitted an additional hearing statement after the hearing concluded without informing her or giving her an opportunity to respond. DHCS upheld the MER denial in a hearing decision on March 2, but granted her an exemption in May 2017 upon receiving a demand letter from Ms. Kantor's attorney. Ms. Kantor's MER will expire on May 31, 2018. Ms. Kantor has a direct beneficial interest in Respondents' performance of their legal duties alleged below. Ms. Kantor also has a beneficial interest as a citizen since this lawsuit involves question of public right and seeks to enforce public duties.

9. Petitioner Al-Muzzamil Lodin is a Medi-Cal beneficiary. He is 33 years old. His only income is SSI. As an SSI recipient, he automatically receives Medi-Cal. Mr. Lodin has a rare genetic disease, autosomal recessive L-2-hydroxyglutaric aciduria, that has advanced to date to cause dystonia or involuntary muscle contractions throughout the left side of his body. While there is no known cure to the disease, Mr. Lodin's physicians at UCLA Health and Cedars-Sinai Medical Center are attempting to treat the symptoms of the disease and prevent the progression of the disease. Both UCLA Health and Cedars-Sinai are not part of a Medi-Cal managed care plan. In July 2016, Mr. Lodin sought an exemption from enrollment in a Medi-Cal plan. Mr. Lodin appealed the denial of his MER in an administrative hearing held on August 31, 2016. DHCS upheld the denial in a hearing decision on September 21. Mr. Lodin requested a rehearing and DHCS denied the request on October 13. In his case, DHCS neglected to contact him for pre-hearing informal resolution, failed to address specific medical facts in its hearing statement of position, submitted an additional statement of position after the

hearing concluded without informing him or giving him an opportunity to respond, and denied his rehearing request without explaining the reasons and legal basis for the decision. Upon receiving a demand letter from Mr. Lodin's attorney, DHCS granted the MER in August 2017. His MER will expire on August 31, 2018. Mr. Lodin has a direct beneficial interest in Respondents' performance of their legal duties alleged below. Mr. Lodin also has a beneficial interest as a citizen since this lawsuit involves question of public right and seeks to enforce public duties.

10. Respondent DHCS is the single state agency responsible for administering the Medi-Cal program in California and ensuring that the Medi-Cal program is operated in conformity with all state and federal laws.

11. Respondent Jennifer Kent is the current Director of DHCS and is sued only in her official capacity. Director Kent is responsible for the lawful administration of the Medi-Cal program.

JURISDICTION AND VENUE

12. Venue is proper in this Court because Petitioners reside in Los Angeles County, where they have been injured by DHCS' actions. Code Civil Proc. (C.C.P.) § 393(b).

13. Petitioners have a clear, present, and beneficial right to DHCS' accurate review of their MERs and the lawful administration of their Medi-Cal benefits.

14. Petitioners have no plain, speedy, and adequate remedy at law.

15. Petitioners are entitled to seek judicial review of Respondents' actions and omissions in breach of their ministerial duties, as alleged in this petition, under section 1085 of the Code of Civil Procedure.

STATUTORY AND REGULATORY FRAMEWORK

Overview of Medi-Cal Statutes and Regulations

16. Medicaid is a cooperative federal and state program designed to furnish health care to the poor. 42 U.S.C. §§ 1396 *et seq.* California's Medicaid program is known as Medi-Cal. Welf. & Inst. §§ 14000 *et seq.*

17. Respondent DHCS is the single state agency responsible for ensuring Medi-Cal complies with all relevant laws and regulations. 42 U.S.C. § 1396a(a)(5); 42 C.F.R. § 431.10; Welf. & Inst. Code § 14100.1.

18. DHCS must provide Medi-Cal beneficiaries with medically necessary services covered by Medicaid and any services California agreed to cover in its state plan. 42 C.F.R. § 440.210–.230; Welf. & Inst.Code § 14100.1. All Medi-Cal beneficiaries are entitled to receive certain mandatory services, including physician services, prescription drugs, and more. 42 U.S.C. § 1396d(a); Welf. & Inst. Code §§ 14131 *et seq*.

19. Medi-Cal benefits, like all public social services, must be provided promptly and humanely such that each beneficiary is able to access all of the aid to which she is entitled. Welf. & Inst. Code §§ 10000, 10500.

Enrollment in Medi-Cal Managed Care

20. The Medi-Cal program provides health care to beneficiaries either on a "fee-for-service" or a managed care basis.

21. With fee-for-service Medi-Cal, the beneficiary seeks care from any provider who is participating in the Medi-Cal program, willing to treat the beneficiary, and willing to accept reimbursement at a set amount from DHCS for the medical services provided. *See, e.g.*, Welf. & Inst. Code § 14016.5 (explaining the requirements and availability of Medi-Cal treatment services in managed care health plans and fee-for-service providers).

22. With managed care Medi-Cal, DHCS contracts with health plans to provide health care coverage to Medi-Cal beneficiaries within a managed care system. In an attempt to control costs, DHCS gives the managed care plans a per capita reimbursement based on the number of Medi-Cal beneficiaries enrolled in that plan, regardless of the cost of medical services the plan actually provides to a person. *See* Welf. & Inst. Code §§ 14087.3, 14089.

23. Over time, DHCS has required mandatory enrollment in managed care plans for more and more categories of Medi-Cal beneficiaries. *See, e.g.*, Welf. & Inst. § 14087.3 (allowing DHCS to enter into contracts for the provision of care to Medi-Cal beneficiaries);

Welf. & Inst. Code § 14182 (requiring Seniors and Persons with Disabilities to enroll in managed care).

Medical Exemption Requests (MERs)

24. The managed care system cannot provide adequate care for all Medi-Cal beneficiaries. Recognizing the limitations of managed care, DHCS allows for exemptions from mandatory enrollment in managed care for qualifying beneficiaries. *See* 22 C.C.R. §§ 53887, 53923.5. To obtain such an exemption, a beneficiary's treating physician must submit to DHCS a request for the beneficiary to retain fee-for-service Medi-Cal. *Id.* §§ 53887(a), 53923.5(b). The request is made through the completion of HCO Form 7101, which includes instructions on suggested medical documentation and information to submit in support of the MER. *Id.* § 53887(b). The Medi-Cal beneficiary or the provider submitting the request may attach medical evidence to support granting the MER.

25. Before evaluating a Medi-Cal beneficiary's medical entitlement to a MER, DHCS determines whether the treating physician who submitted the beneficiary's MER is affiliated with a Medi-Cal managed care plan in the beneficiary's county. 22 C.C.R. § 53887(a)(2)(B); *see id.* §§ 53923.5(b)(1)(C), (b)(2)(A). DHCS will deny a MER submitted by a physician who contracts with any Medi-Cal managed care plan in the beneficiary's county of residence. *See id.* § 53887(a)(2)(B).

26. Once this threshold issue is determined, DHCS must then evaluate the beneficiary's medical conditions. *Id.* § 53887(a)(2). The beneficiary is entitled to exemption from managed care enrollment if she has a complex medical condition for which she is undergoing treatment. 22 C.C.R. §§ 53887, 53923.5(b)(2). A complex medical condition includes "a complex and/or progressive disorder . . . that requires ongoing medical supervision and/or has been approved for or is receiving complex medical treatment for the disorder, the administration which cannot be interrupted." *Id.* § 53887(a)(2)(A)(7).

27. A beneficiary whose MER has been granted will remain in fee-for-service Medi-Cal for up to 12 months at a time and until "the medical condition has stabilized to a

level that would enable the individual to change physicians and begin receiving care from a plan provider without deleterious medical effects." *Id.* § 53887(a)(3).

28. Regulation requires that stability is "determined by the applicant's *treating physician* in the Medi-Cal fee-for-service program." *Id.* § 53887(a)(3) (emphasis added).

Notice and Hearing Requirements

29. Under the California Constitution, a "person may not be deprived of life, liberty, or property without due process of law." Cal. Const. art. I, §§ 7, 15.

30. Medi-Cal beneficiaries must "be accorded an opportunity for a state hearing" when they are "dissatisfied" with "any action" relating to their "receipt of public social services." Welf. & Inst. Code § 10950; 22 C.C.R. § 50951.

31. Medi-Cal fair hearings "must meet the due process standards set forth in *Goldberg v. Kelly*, 397 U.S. 254 (1970)." 42 C.F.R. § 431.205(d).

32. Beneficiaries are entitled to a notice and fair hearing when DHCS denies their MERs. 42 C.F.R. § 438.56(f); 22 C.C.R. §§ 53889(d), 53926 (e). The notice of action to beneficiaries must state, at a minimum, the action to be taken, the reasons for the action, the regulations supporting the action, and an explanation of the circumstances under which aid is continued if a hearing is requested. 42 C.F.R. § 431.210; 22 C.C.R. §§ 50179, 51014.1(c).

33. DHCS has delegated the administration of Medi-Cal fair hearings to the California Department of Social Services. Welf & Inst. Code §§ 10966, 10950(f); 22 C.C.R. § 50953(c). Decisions rendered by the ALJs must "be treated, for all purposes, as the decision of the [DHCS] director." Welf & Inst. Code § 10966(b).

34. Prior to the hearing, DHCS must review the case to determine the issues, including the existing evidence in the case file and the relevant statutes, regulations and policies. Department of Social Services Manual of Policies and Procedures (MPP) § 22-073.22.

35. Issues at the hearing are limited to those that are reasonably related to the hearing request or issues mutually agreed upon by the parties. MPP § 22-049.5; *see also id.*

§ 22-050.11 (a judge "shall identify the issues" before taking evidence at a hearing). If the rights of either party will be prejudiced by the consideration of a reasonably related issue raised at the hearing, the hearing must be continued or the record held open so that the party may prepare his case. MPP § 22-049.51

36. Prior to the fair hearing, DHCS must contact the beneficiary to clarify the issues on appeal and resolve any disagreements and misunderstandings. MPP §22-073.23. Through this process, known as pre-hearing "informal resolution," the DHCS representative must attempt to resolve the case "at the lowest possible administrative level, thereby avoiding unnecessary hearing." MPP §§ 22-073.23 -.231; *see also* Gov't Code § 100506.4(g)(8).

37. If the DHCS representative cannot resolve the case through informal resolution, she must prepare a written statement of position that summarizes the facts of the case and set forth the regulatory justification of the Department's action. MPP § 22-073.251.

38. DHCS must provide the statement of position to a beneficiary at least two working days before the hearing. Welf. & Inst. Code § 10952.5(a); *see also* New Law: Providing Statements of Position to Claimants Before a State Hearing, All County Letter No. 17-21 (Feb. 16, 2017) (explaining passage of A.B. 2346, effective January 1, 2017, requiring DHCS to provide a statement of position prior to a hearing and amending the MPP that previously excluded DHCS from this requirement).

39. At the hearing, the DHCS representative must assume full responsibility for presenting the Department's case, including summarizing the Department's position, having the case record available at the hearing, and responding to questions from the beneficiary or the ALJ. MPP § 22-073.3 – .37.

Evidence in the Administrative Hearing

40. When defending a MER denial, DHCS has "the burden of going forward in the hearing to support its determination" of why the MER should be denied. MPP § 22-073.36. DHCS may verify whether a MER applicant's treating physician participates in a Medi-Cal managed care plan. 22 C.C.R. § 53887(c). DHCS may also verify the "complexity, validity,

and status of the [MER applicant's] medical condition and treatment plan." *Id.*

41. Both before and during the hearing process, a Medi-Cal beneficiary must be allowed to examine the content of her case file, electronic account, and all documents and records to be used by the state at the hearing. 42 C.F.R. § 431.242(a); *see* MPP § 22-049.75. A Medi-Cal beneficiary must also be given the opportunity to "[q]uestion or refute any testimony or evidence including opportunity to confront and cross-examine adverse witnesses." 42 C.F.R. § 431.242(e); MPP §§ 22-049.71-72, 22-049.76, 22-049.78 (claimant has the right to examine parties and witnesses, question opposing witness and parties, and rebut the state's evidence).

42. On or around May 16, 2017, DHCS began informing beneficiaries whose MERs have been denied how to receive copies of their "MER documentation." These instructions direct beneficiaries to visit one of two online links to download and complete a general form to access their entire MER file: http://www.dhcs.ca.gov/formsandpubs/forms/Forms/privacyoffice/DHCS_6236.pdf or http://www.dhcs.ca.gov/formsandpubs/forms/Forms/privacyoffice/DHCS_6237.pdf. DHCS instructs beneficiaries to turn in the form by emailing MCQMDStateFairHearings@dhcs.ca.gov or by mailing it to the "address listed on the form." The instructions do not describe the contents of the "MER documentation" or how they may assist beneficiaries in preparing their arguments for hearing. DHCS does not provide any other way besides these website links to obtain this information and gives no option for persons who do not have internet access. Prior to May 16, DHCS did not inform beneficiaries how to access their case files and records at all.

43. The administrative hearing decision must be based "exclusively on the evidence and other material introduced at the hearing . . . and shall specify the reasons for the decisions and identify the supporting evidence and regulations." MPP § 22-061.5. If the evidence necessary to determine the case is not available at the hearing, the ALJ can continue the hearing or hold the record open. MPP § 22-053.21. The ALJ can also continue the hearing or hold the record open if considering a reasonably related issue would prejudice the parties.

MPP § 22-049.51. The ALJ can reopen a closed hearing record for additional information if all parties are notified of the reason for the reopening. MPP § 22-059.12. ALJs must make satisfactory evidentiary findings and assess the probative value of admitted evidence. MPP § 22-050.3.

44. While the hearing is pending, there must be no *ex parte* communication between DHCS and the ALJ "without notice and opportunity for all parties to participate in the communication." Gov't Code § 11430.10(a). "All documents submitted by either the claimant or the county shall be made available to both parties." MPP § 22-049.81. If an ALJ receives an *ex parte* communication from DHCS, the ALJ must make that communication part of the hearing record, notify all parties of that addition to the record, and allow the parties to respond within 10 days after receipt of the communication. Gov't Code § 11430.50.

Rehearing

45. A Medi-Cal beneficiary may request a rehearing to contest an administrative order. Welf. & Inst. Code. § 10960. A rehearing should be granted when any of the grounds under Welfare and Institutions Code § 10960(b) are met, including when "[t]he adopted decision does not address all of the claims or issues raised by the parties" or "[f]or any other reason necessary to prevent the abuse of discretion or an error of law, or for any other reason consistent with § 1094.5 of the Code of Civil Procedure." Welf. & Inst. Code § 10960(b)(4), (8).

46. DHCS must "explain the reasons and legal basis for granting or denying the request for rehearing." Welf. & Inst. Code § 10960(c).

STATEMENT OF FACTS

47. Petitioners file this writ to challenge DHCS' systemic violation of beneficiaries' due process rights in the adjudication of hearings to reconsider MER denials.

48. Respondents are conducting a fair hearing process in MER cases that violates beneficiaries' rights to due process.

49. Respondents do not contact beneficiaries prior to the MER hearing to engage in

informal resolution as required by the MPP. Petitioners are unable to examine their own case file and cannot review the notes or evidence Respondents used in reviewing and denying their MERs .

50. Respondents submit a statement of position in advance of the MER fair hearings drafted with the same standard boilerplate language, with no reference to beneficiaries' particular medical conditions and with no factual analysis of why their complex, chronic conditions do not qualify for exemptions. For example, the statements of position Respondents submitted in Petitioners Brendon Robbins, Inna Kantor, and Al-Muzzamil Lodin's respective cases are identical, word-for-word, except for one sentence that was omitted in Ms. Kantor's case. The Facts, Position, and Conclusion Sections of DHCS' statements of positions—where DHCS should have discussed and analyzed the evidence about each Petitioner's individual medical conditions and evidence—are the same for all three Petitioners and make no mention of any individual identifying facts, evidence, or evaluation.

51. In each of Petitioner's cases, DHCS claimed "[t]he Medical Monitoring Unit had no medical documentation to verify the complexity, validity, and status of the medical condition and treatment plan in order to determine that the medical condition is unstable and that there would be deleterious medical effects if the individual was to begin receiving care under a plan provider." At no point in the statements of position does DHCS name or describe the medical conditions that Petitioners have or describe the treatment plans laid out in their medical records and physician letters. At the end of the above-mentioned statements of position, DHCS requested an opportunity to make a new determination of the claimant's case: "If additional medical information is provided at or before the hearing the DHCS requests the hearing be held open so additional medical information can be reviewed and make a determination regarding the exemption from plan enrollment."

52. In statements of positions for other Medi-Cal beneficiaries, DHCS has requested that it be allowed to make a new determination on a claimant's case but that the claimant should be prohibited from submitting additional information after the hearing:

> If additional medical information is provided **AT OR BEFORE** the hearing the DHCS requests the hearing by held open so additional medical information can be reviewed and a new determination made regarding the exemption from plan enrollment. **The record should NOT be held open for additional information to be submitted after the hearing.**

(Emphasis in the original.)

53. Respondents generally do not appear in person at the MER fair hearings. Petitioners allege on information and belief that DHCS has appeared in person at only one hearing during the last two years when one of its physician reviewers testified at a hearing on July 27, 2017, upon request by the beneficiary. Because DHCS does not appear in person to represent the Department's findings and position at these hearings, beneficiaries are deprived the opportunity to confront and cross-examine Respondents about the reasons for the denial of their MERs.

54. When a Medi-Cal beneficiary submits additional evidence before or at the MER hearing, DHCS then submits an "addendum" to their original statement of position to the ALJ after the hearing has concluded. This addendum often presents additional facts or analysis not contained in DHCS' original statement of position. In many cases, the post-hearing addendum is the first time in the case that DHCS presents its medical reviewer's factual findings and analysis.

55. Because Medi-Cal beneficiaries do not see the addendum until after the hearing, if at all, this practice operates as a second hearing conducted outside the presence of the beneficiaries, without the opportunity to be heard.

56. At no point during the hearing process does DHCS provide the identity or qualifications of the medical reviewers or why that reviewer's medical opinion should outweigh that of the beneficiary's treating physician.

57. On information and belief, Petitioners allege that DHCS engages in *ex parte* communications by submitting the addendum, as neither DHCS nor the ALJ notifies the

beneficiary of the existence of the addendum or its contents. As a result, the affected beneficiaries have no opportunity to examine DHCS about its final position or to respond to the addendum.

58. Following unfavorable hearing decisions, beneficiaries have requested rehearings on the grounds enumerated in Welfare and Institutions Code § 10960(b). Respondents deny such rehearing requests with the following standard response:

> "We have determined that your request for rehearing does not meet any of the regulatory criteria in order to approve a rehearing and must be denied in accordance with the California Welfare and Institution[s] Code Section 10960 (a) (b). The adopted decision is consistent with the law, is supported by the evidence in the record, is supported by the findings, addresses all of the claims and issues supported by the hearing record, and the information provided in the request could not change the adopted decision of the original hearing."

Respondents fail to offer any reasons for the denial of their hearing requests as applied to beneficiaries' individualized facts.

59. Despite Respondents' failure to reveal evidence to beneficiaries throughout the hearing process, Respondents are denying beneficiaries' MERs in the majority of state fair hearing cases. In a similar practice, Respondents are denying beneficiaries' requests for rehearings.

60. Respondents have set an adjudicatory system that is partial to DHCS' own interests and in which beneficiaries are bound to fail. On information and belief, Respondents' MER fair hearings violations are a systemic policy and practice and are not limited to Petitioners' individual cases.

Petitioner Brendon Robbins

61. Petitioner Brendon Robbins is a Medi-Cal beneficiary. He has Nicolaides-Baraitser Syndrome, an extremely rare genetic condition. There are fewer than 150 cases documented in the world.

62. At 17 years old, Brendon has the mental capacity of a four-year-old child. He has profound intellectual disability, expressive language impairments limiting his vocalizations to chirp-like sounds, inconsistent toileting skills, constipation, and recurring emotional outbursts and tantrums including biting his arms. He has a history of seizures and has had recent eye fluttering and seizure-like movements, which are of special concern because his genetic condition predisposes him to seizures.

63. Brendon's most critical medical need is treatment of rapidly progressing ocular disease. Because Brendon is unable to communicate verbally, he uses visual cues to receive information and to communicate. Losing his eyesight would be catastrophic as it would not only deprive him of to his ability to communicate his needs but of his ability to communicate altogether.

64. Brendon's behavioral problems tied to Nicolaides-Baraitser syndrome require his eye examinations to be conducted under general anesthesia. In September 2013, Dr. Luke Deitz, a pediatric ophthalmologist specializing in retinal conditions, undertook Brendon's care after Brendon's prior ophthalmologist determined he could no longer care for Brendon because of his behavior during examination and the rapid progression of his eye condition.

65. In November 2015, Brendon's neurologist at UCLA Health recommended he be treated at the university's Child and Adult Neurodevelopmental Clinic ("the Clinic") "[g]iven his complex etiology, risk of epilepsy, and behavioral issues." The Clinic, as part of a research university, specializes in treating youth and young adults with autism, rare genetic conditions, and developmental delay. It provides multidisciplinary care teams targeted at children and adolescents. Brendon's care team there includes a neurologist, geneticist, and psychiatrist.

66. Brendon is the only known case of Nicolaides-Baraitser syndrome in Los Angeles County. The only known physicians in Los Angeles County experienced with treating someone with Nicolaides-Baraitser syndrome are the ones treating him now, including the physicians at UCLA Health and Dr. Deitz, his ophthalmologist.

67. Both Dr. Deitz and the Clinic treat Medi-Cal patients only on a fee-for-service basis.

68. Dr. Dietz submitted a MER for Brendon on or around October 6, 2016, along with notes from Brendon's last four appointments that noted his vision "has been getting worse" and he is "completely resistant to in-office examination, with evidence of worsening activity."

69. DHCS denied the MER on grounds that his "condition(s) appear(s) to be stable." (Parentheses in the original.) Brendon timely appealed the denial and had a hearing on January 11, 2017.

70. No representative of DHCS contacted Brendon's mother or his authorized representative about pre-hearing informal resolution of his case.

71. Brendon appeared in person at the hearing with his mother and authorized representative. DHCS did not appear in person and instead only submitted a written statement of position that made no mention of his condition, symptoms, or treating physician's assessments of his stability.

72. DHCS' statement of position was the only basis of their decision that it disclosed to Brendon prior to the hearing. DHCS did not inform Brendon of the right to examine his MER file, which would have included DHCS' medical review upon which it relied to deny the MER.

73. DHCS included as an attachment to its statement of position the medical evidence Brendon's doctor had submitted with his original MER application. DHCS did not, however, address any of that evidence in the facts, position, or conclusion of its statement of position. Instead, DHCS claimed in its statement of position that Brendon's "provider failed to return an HCO-7101 documenting any high risk of complex medical condition that has not been stabilized" and "[t]herefore , there is no deleterious health affects [sic] to the beneficiary if they begin receiving care from a plan provider."

74. At the hearing, Brendon submitted a statement of position along with additional medical records from Dr. Deitz, the Clinic, and UCLA Health as well as a letter from his high school teacher and research articles explaining the rarity and complexity of Nicolaides-Baraitser Syndrome. Brendon's mother testified at the hearing, too.

75. According to the hearing decision, 30 days after the hearing, on February 10, 2017, DHCS submitted a supplemental statement ("Addendum") to refute the evidence Brendon submitted at the hearing. The Addendum was substantially different from the original statement of position. For the first time, DHCS presented its medical consultant's opinions. The medical consultant asserted that Brendon was stable based on the following: "According to the most recent notes, the patient had been off seizure medications since 2008, with no seizures since, and the decrease in his vision was similarly noted in 2015, where it was treated with a changed [sic] in his glasses prescription. Since it was present in 2015, it doesn't appear his decrease in vision is particularly unstable. He appears stable for transfer to MCP . . . ."

76. Neither Brendon nor his authorized representative received notice or a copy of the Addendum and thus did not have an opportunity to respond. Without verifying that DHCS shared a copy of the Addendum with Brendon or his authorized representative, the ALJ stated in her hearing decision that "[t]he record was left open until February 21, 2017, for the Claimant's attorney to provide any updated medical records after receiving the DHCS response; however, no additional response was received from the claimant's attorney."

77. Because Respondents did not appear at the hearing, and instead presented a supplemental statement after the hearing without disclosing the identities of its medical reviewers, Brendon did not have a meaningful opportunity to review or challenge the qualifications, opinions, or bases of opinion of the DHCS reviewer who denied his MER.

78. On March 2, 2017, DHCS issued its final decision in Brendon's case upholding the denial of Brendon's MER. After additional analysis, DHCS admitted that Brendon's condition was "complex" as required for an exemption. However, DHCS insisted, and the ALJ concurred, that his conditions were "stable" and required plan enrollment.

79. The final decision did not provide an analysis of the competing evidence contained in the record that supported Brendon's claim of instability and deleterious medical effects.

80. DHCS' statement of position and final decision also failed to disclose the identity or qualifications, including areas of specialty care, practice, or expertise, of the medical consultant who recommended the MER denial. The decision, statement of position, and quoted section of the Addendum all failed to address or even refer to the requirement in 22 C.C.R. § 53887(a)(3), which provides that a MER should be granted until the beneficiary's "medical condition has stabilized" to a level that would allow him to switch to a plan provider "without deleterious medical effects, as determined by a beneficiary's treating physician in the Medi-Cal fee-for-service program."

81. Brendon sought a reversal of the final hearing decision in a demand letter sent by his attorney to Director Kent on May 11, 2017. Upon reviewing the letter, DHCS granted Brendon's MER for 12 months until May 31, 2018.

82. Near the expiration of his MER, Brendon must apply for another MER to continue care with Dr. Deitz and the CAN Clinic. Based on his prior denial and hearing experience, Brendon believes DHCS will deny the MER on the same grounds and conduct the hearing in the same manner without due process.

Petitioner Inna Kantor

83. Petitioner Inna Kantor is a Medi-Cal beneficiary who is permanently disabled. She has lifelong disabilities from aggressive juvenile rheumatoid arthritis and osteoporosis and, consequently, advanced disease of her joints and limited mobility. She also has hip and knee replacements, glaucoma and cataract formation in both eyes, hepatitis B, spinal compression fracture, hypothyroidism, fibromyalgia, and depression. Additionally, Ms. Kantor has chronic atrophic gastritis, pernicious anemia, and iron deficiency. She received cataract surgery in her left eye on March 16, 2017, cataract surgery in her right eye on April 24, 2017, and a left hip total arthroplasty revision on May 17, 2017.

84. Ms. Kantor has established a coordinated care team at Cedars-Sinai Medical Center, where she has received all major medical care and surgical procedures for the past 25 years. In 2016 alone, she attended appointments with specialists in endocrinology, rheumatology, hepatology, hematology, orthopedic surgery, internal medicine, ophthalmology, and laboratory testing and scanning.

85. Cedars-Sinai treats Medi-Cal patients only on a fee-for-service basis.

86. Ms. Kantor's primary care physician, Dr. Peggy Miles, submitted a MER on or around October 5, 2016. The MER application included four physicians' letters—three from her physicians at Cedars-Sinai and one letter from her ophthalmologist in private practice—and records from her last seven appointments. Ms. Kantor's rheumatologist noted "[i]nterruption of this close relationship [with her physicians at Cedars-Sinai] could negatively impact her care and negatively [a]ffect her psychologically. Concern is that if she does not have this coordinated complex care, her disease processes will continue to progress leaving the patient with even less functional capacity than she already has. She already has progressive pain and loss of functionality over the years and has had to increase the hours of her home attendants to complete her activities of daily living. It is for these reasons that I strongly encourage you to continue providing Inna Kantor reasonable accommodation at Cedars-Sinai and allow her to keep regular Medi-Cal at yearly intervals."

87. DHCS denied the MER on grounds that her "condition(s) appear(s) to be stable." (Parentheses in original.) Ms. Kantor timely appealed the denial and had a hearing on January 12, 2017.

88. No representative of DHCS contacted Ms. Kantor or her authorized representative about pre-hearing informal resolution of her case.

89. Ms. Kantor appeared in person at the hearing with a friend and her authorized representative. DHCS did not appear and instead only submitted a written statement of position that made no mention of her condition, symptoms, or treating physician's assessments of her stability.

90. DHCS' statement of position was the only basis of their decision that it disclosed to Ms. Kantor prior to the hearing. DHCS did not inform Ms. Kantor of the right to examine her MER file, which would have included DHCS' medical review upon which it relied to deny the MER.

91. DHCS did not acknowledge or evaluate the physician letters or medical records that Ms. Kantor had already summited with her original MER application. Instead DHCS stated that Ms. Kantor's "provider failed to return an HCO-7101 documenting any high risk of complex medical condition that has not been stabilized" and "[t]herefore, there is no deleterious health affects [sic] to the beneficiary if they begin receiving care from a plan provider."

92. At the hearing, Ms. Kantor provided a statement of position along with medical records of visits to Cedars-Sinai from January 2016 to November 2016 and, again, the four physician letters. At the hearing, Ms. Kantor and her friend also both testified about her daily difficulties and declining health.

93. Eighteen days after the hearing was held, on January 30, DHCS submitted a supplemental statement ("Addendum"). Although Ms. Kantor had submitted much of her documentation well before the hearing, the post-hearing Addendum sought to refute Ms. Kantor's evidence for the first time. The Addendum contained the DHCS medical consultant's review based on the medical records from January 2016 to September 2016. The medical consultant described Ms. Kantor as stable because the consultant claimed not to have observed changes in Ms. Kantor's conditions: "her most recent notes are similar to the rest of the notes from the year."

94. Neither Ms. Kantor nor her authorized representative received any notice or a copy of the Addendum and thus did not have an opportunity to respond. Without verification that DHCS shared a copy of the Addendum with Ms. Kantor or her authorized representative, the ALJ's decision stated that "[t]he record was left open until February 10, 2017, for the

Claimant's attorney to provide any updated medical records after receiving the DHCS response; however, no additional response was received from the Claimant's attorney."

95. Because Respondents did not appear at the hearing, and instead presented a supplemental statement after the hearing without disclosing the identities of its medical reviewers, Ms. Kantor did not have a meaningful opportunity to review or challenge the qualifications, opinions, or bases of opinion of the DHCS reviewer who denied her MER.

96. DHCS issued the final hearing decision on March 2, 2016 upholding the denial of Ms. Kantor's MER. From DHCS' post-hearing analysis of Ms. Kantor's medical evidence, the ALJ and DHCS determined Ms. Kantor's juvenile rheumatoid arthritis and osteoporosis were "as stable as medications can provide." DHCS made a determination on only two of Ms. Kantor's 12 medical conditions.

97. Neither the addendum nor the decision addressed the medical evaluations provided by her physicians. In particular, DHCS did not refute the medical opinion of Ms. Kantor's rheumatologists that "her disease processes will continue to progress leaving the patient with even less functional capacity than she already has."

98. DHCS' statement of position and final decision also failed to disclose the identity or qualifications, including areas of specialty care, practice, or expertise, of the medical consultant who recommended the MER denial. The decision, statement of position, and quoted section of the Addendum all failed to reference or even refer to the requirement in 22 C.C.R. § 53887(a)(3), which provides that a MER should be granted until the beneficiary's "medical condition has stabilized" to a level that would allow her to switch to a plan provider "without deleterious medical effects, as determined by a beneficiary's treating physician in the Medi-Cal fee-for-service program."

99. Ms. Kantor sought a reversal of the final hearing decision in a demand letter sent by her attorney to Director Kent on May 11, 2017. Upon reviewing the letter, DHCS granted Ms. Kantor a MER for 12 months until May 31, 2018.

100. Near the expiration of her MER, Ms. Kantor must apply for another MER to continue care at Cedars Sinai. Based on her prior denial and hearing experience, Ms. Braddock believes DHCS will deny the MER on the same grounds and conduct the hearing in the same manner without due process.

Petitioner Al-Muzzamil Lodin

101. Petitioner Al-Muzzamil Lodin is a Medi-Cal beneficiary. He has advanced autosomal recessive L-2-hydroxyglutaric aciduria, an extremely rare genetic disease that is associated with progressive brain damage. As a result of this condition, Mr. Lodin has involuntary spasms and abnormal posture of the neck and arms, following many years of restlessness and excessive movements of the body. These conditions include blepharospasm (involuntary blinking or spasm of the eyelids), muscle spasticity, orofacial dyskinesia (involuntary repetitive movements of the mouth and face), and torticollis of the neck. He also has seizure disorder, developmental delay, difficulty swallowing, a chronic cough, and constipation. Today, Mr. Lodin's most active problem is worsening dystonia, a movement disorder in which his muscles contract uncontrollably. The dystonia is expressed as a severe neck distortion to his left side with his left hand rotated and wrist flexed upward. Mr. Lodin's posture now leans permanently to the left.

102. There is no known cure to Mr. Lodin's disease. He has been under the care of UCLA specialists for about 20 years. He came under the care of other neurologists at Cedars-Sinai Medical Center in 2013 to receive Botox treatment, which UCLA could not provide.

103. UCLA Health and Cedars-Sinai treat Medi-Cal patients on only a fee-for-service basis.

104. Mr. Lodin's physician at Cedars-Sinai submitted a MER on or around July 7, 2016. The MER application included medical records from his last five visits to Cedars-Sinai. The medical records showed Mr. Lodin was under active treatment for his dystonia, which had been refractory to medications but his physicians were still adjusting the dosages and type of Botox he was receiving to attempt control of the dystonia.

105. DHCS denied the MER on grounds that his "condition(s) appear(s) to be stable." (Parentheses in original.) Mr. Lodin timely appealed the denial and had a hearing on August 31, 2016.

106. No representative of DHCS contacted Mr. Lodin or his authorized representative about pre-hearing informal resolution of his case.

107. Mr. Lodin appeared in person at the hearing with his mother as his authorized representative. DHCS did not appear in person and instead submitted a written statement of position.

108. DHCS did not mail a statement of position to Mr. Lodin prior to his hearing. Mr. Lodin learned of DHCS' arguments for the first time when the ALJ read DHCS' statement at the hearing.

109. DHCS did not inform Mr. Lodin on the right to examine his MER file, which would have included DHCS' medical review upon which it relied to deny the MER.

110. DHCS claimed in its statement of position that Mr. Lodin's "provider failed to return an HCO-7101 documenting any high risk of complex medical condition that has not been stabilized" and "[t]herefore, there is no deleterious health affects [sic] to the beneficiary if they begin receiving care from a plan provider." Although Mr. Lodin submitted medical evidence along with his original MER application, the DHCS statement of position made no mention of the contents of the records or even his medical conditions.

111. At the hearing, Mr. Lodin submitted a statement of position along with medical records from April 2015 to August 2016. Mr. Lodin's mother testified about her son's deteriorating medical conditions and how he would suffer if he lost care at UCLA Health and Cedars-Sinai. Mr. Lodin, himself, also appeared at the hearing in front of the ALJ in an apparent state of physical distress from dystonia and involuntary muscle movements.

112. At the hearing, Mr. Lodin also provided a letter from his neurologist at Cedars-Sinai. The physician noted: "If Mr. Lodin is not treated in a setting with a group of experts, it is likely he would deteriorate to a level of functionality unmanageable for his caretakers. I am

strongly recommending that you allow this patient to continue with our Neurology Clinic at Cedars-Sinai Medical Center, in order to continue the workup, initiate appropriate care, and monitor response to treatment and disease progression. It is imperative for him to continue follow-up care to maintain continuity of care. Continuity of care will help to limit disease progression and disease related complications."

113. Fifteen days after the hearing, on September 15, 2016, DHCS submitted a supplemental statement ("Addendum") to refute both Mr. Lodin's provided statement of position and evidence at the hearing and evidence that had already been provided with the MER. The medical reviewer found that "[a]lthough his condition is complex and certainly progressive, requiring treatment by specialists, there is no evidence that his disease is currently acutely unstable such that it would be dangerous to transfer him to a managed care plan where he could be treated by similar specialists." DHCS does not address his treating physician's August 29, 2016 letter, which stated that Mr. Lodin's condition would deteriorate if he did not remain with his clinical providers. DHCS also did not mention the severity of Mr. Lodin's dystonia and, instead, characterized it merely as a "movement disorder."

114. Neither Mr. Lodin nor his authorized representative received the Addendum. DHCS' final decision did not include any indication or determination whether DHCS shared a copy of the Addendum with Mr. Lodin and his authorized representative or gave him an opportunity to respond.

115. Because Respondents did not appear at the hearing, and instead presented a supplemental statement after the hearing without disclosing the identities of its medical reviewers, Mr. Lodin did not have a meaningful opportunity to review or challenge the qualifications, opinions, or bases of opinion of the DHCS reviewer who denied his MER.

116. DHCS issued the final decision of the hearing on September 21, 2016, upholding the denial of Mr. Lodins' MER. From DHCS' post-hearing analysis of Mr. Lodin's medical evidence in the record, the ALJ and DHCS determined Mr. Lodin's genetic disorder, though complex, was stable.

117. The final decision did not provide an analysis of Mr. Lodin's statement of position or testimony from his authorized representative. It also did not provide an analysis of competing interpretations of his medical conditions and medical records. Rather, the decision omitted significant portions of Mr. Lodin's physicians' letters. Additionally, the decision did not make findings on Mr. Lodin's dystonia, the most debilitating symptom of his disease. The decision referenced the dystonia, not by name, but merely as a "movement disorder" or "other complication" of his primary disease.

118. DHCS' statement of position and final decision also failed to disclose the identity or qualifications, including or areas of specialty care, practice, or expertise, including or areas of specialty care, practice, or expertise, of the medical consultant who recommended the MER denial. The decision, statement of position, and quoted section of the Addendum all failed to address or even refer to the requirement in 22 C.C.R. § 53887(a)(3), which provides that a MER should be granted until the beneficiary's "medical condition has stabilized" to a level that would allow him to switch to a plan provider "without deleterious medical effects, as determined by a beneficiary's treating physician in the Medi-Cal fee-for-service program."

119. Mr. Lodin requested a rehearing by writing on or around September 29, 2016, on grounds that DHCS improperly evaluated his evidence and improperly applied the MER standard under 22 C.C.R. § 53887. He explained he has a rare, complex condition that is deteriorating over time and his health is worsening. Mr. Lodin also explained he was undergoing treatment at UCLA Health and Cedars-Sinai, which were providing him with Botox injections and evaluations for sinus surgery and deep brain stimulation surgery.

120. DHCS denied the rehearing in a letter dated October 13, 2016, which read: "The adopted decision is consistent with the law, is supported by the evidence in the record, is supported by the findings, addresses all of the claims and issues supported by the hearing record, and the information provided in the request could not change the adopted decision of the original hearing." DHCS did not provide any other explanation about its decision to deny the rehearing request and did not address any reasons specific to Mr. Lodin's case.

121. DHCS enrolled Mr. Lodin into a Medi-Cal managed care plan on December 1, 2016. For nine months thereafter, the community neurologists available to Mr. Lodin through his managed care plan were unable to provide Mr. Lodin with the care necessary for his conditions. Mr. Lodin sought appointments with three plan neurologists. The first two neurologists declined to accept Mr. Lodin as a patient. One of these two neurologists admitted to being unfamiliar with his condition, having never treated a patient with L-2-hydroxyglutaric aciduria. Mr. Lodin stopped receiving Botox treatment for his dystonia as soon as he transferred to plan neurologists. Left untreated with these providers, Mr. Lodin's dystonia rapidly worsened during the time he was in managed care, leaving him incapacitated in bed for many hours during the day and unable to move around freely on his own as he used to be able to do. The third neurologist, the only plan physician willing to treat Mr. Lodin, wanted to just monitor his symptoms rather than treat them or prevent further deterioration.

122. Mr. Lodin sought a reversal of the final hearing decision in a demand letter sent by his attorney to Director Kent on August 8, 2017. Upon reviewing the letter, DHCS granted Brendon's MER for 12 months until August 21, 2018.

123. Near the expiration of his MER, Mr. Lodin must apply for another one to continue his treatment and care with his physicians. Based on his prior denial and hearing, Mr. Lodin believes DHCS will deny the MER on the same grounds and conduct the hearing in the same manner without due process.

CAUSES OF ACTION

First Cause of Action

Writ of Mandate Under Code Civil Proc. § 1085 Against All Respondents

(Violation of Fair Hearing Laws & Regulations)

124. Petitioners reallege and incorporate by reference each and every allegation contained in the above paragraphs as though fully set forth herein.

125. Respondents have a ministerial duty to provide Petitioners and other Medi-Cal beneficiaries an opportunity for a fair and impartial hearing concerning their requests for exemption from managed care pursuant to 22 C.C.R. §§ 50179, 51014.1(c).

126. Respondents' conduct in Petitioners' cases and other Medi-Cal beneficiaries' cases deprive beneficiaries of a fair hearing. Namely, Respondents have improperly administered MER hearings in violation of Welfare & Institutions Code § 10950 *et seq.*, Government Code §§ 11430.10 and 11430.50, and the regulations on state fair hearings (MPP) by:

(a) failing to conduct a pre-hearing review of the evidence and engage in informal resolution prior to the hearing;

(b) failing to adequately inform Petitioners and Medi-Cal beneficiaries how to access their case files and records, thereby preventing them from fully accessing their case files and records;

(c) submitting statements of position that fail to present any of the individual beneficiary's facts or summarize Respondents' position specific to those facts;

(d) appearing at the hearing only by statements of position, thereby denying beneficiaries and the administrative law judges the opportunity to question Respondents, challenge their evidence, and assess the probative value of Respondents' evidence;

(e) failing to disclose the identities and qualifications of their medical reviewers who direct the denial of MERs, thereby forcing final decisions that fail to assess the probative value of medical evidence submitted by Petitioners and other Medi-Cal beneficiaries;

(f) denying Petitioners and other Medi-Cal beneficiaries the opportunity to review and respond to the evidence against them, specifically

DHCS' medical assessment of their eligibility for a MER and additional statements transmitted to ALJs after a hearing is conducted;

(g) engaging in *ex parte* communications which include, but is not limited to, communicating with the ALJ after the hearing but before the decision without notifying Petitioners or other Medi-Cal beneficiaries of the communication or its content; and

(h) issuing final hearing decisions improperly relying on DHCS' conclusory and unsubstantiated statements about Petitioners' and other Medi-Cal beneficiaries' medical conditions.

127. Petitioners are beneficially interested in the outcome of this proceeding and has no other plain, speedy, or adequate remedy at law except by way of this a writ of mandate.

128. An actual controversy has arisen and now exists between Petitioners and Respondents concerning their respective rights and duties under state law on how MER hearings should be conducted. Petitioners desire a judicial determination of the rights and duties of the parties and a declaration as to whether Respondents' practices as alleged herein violate state law. A judicial declaration is necessary and appropriate at this time so that all parties may ascertain their rights and duties under state law.

Second Cause of Action

Writ of Mandate Under Code Civil Proc. § 1085 Against All Respondents

(Denial of Due Process of Law)

129. Petitioners reallege and incorporate by reference each and every allegation contained in the above paragraphs as though fully set forth herein.

130. Respondents have a ministerial duty to afford Petitioners and other Medi-Cal beneficiaries seeking exemption from managed care due process of law in the administration of their MER appeal hearings. Respondents have improperly administered MER hearings in violation of the Due Process Cause of the California Constitution Article I, §§ 7 and 15, by conducting the hearing process in such a way that Respondents prevent Petitioners and other

Medi-Cal beneficiaries from having a meaningful opportunity to examine and challenge the evidence against their MER claim. Respondents also violate due process through post-hearing conduct and communications with the ALJ after the hearing and outside of the presence of the beneficiary, without adequate notice and an opportunity to respond.

131. Petitioners are beneficially interested in the outcome of this proceeding and have no other plain, speedy, or adequate remedy at law except by way of this writ of mandate.

132. An actual controversy has arisen and now exists between Petitioners and Respondents concerning their respective rights and duties under the California Constitution. Petitioners desire a judicial determination of the rights and duties of the parties and a declaration as to whether Respondents' practices as alleged herein violate the California Constitution. A judicial declaration is necessary and appropriate at this time so that all parties may ascertain their rights and duties under the California Constitution.

Third Cause of Action

Writ of Mandate Under Code Civil Proc. § 1085 Against All Respondents

(Violation of Welf. & Inst. Code § 14182 and 22 C.C.R. §§ 53887, 53923.5)

133. Petitioners reallege and incorporate by reference each and every allegation contained in the above paragraphs as though fully set forth herein.

134. Respondents must provide a process by which Petitioners and other Medi-Cal beneficiaries with complex medical conditions can be exempted from mandatory managed care enrollment. Welf. & Inst. Code § 14182. The standard to grant a MER depends on whether the beneficiary's complex medical condition is not stable enough to transfer to a managed care physician without deleterious medical effects. 22 C.C.R. §§ 53887(a)(3), 53923.5(b)(2)(B) & (c). Per regulation, risk of deleterious medical effects is based on the beneficiary's treating physician's determination. 22 C.C.R. § 53887(a)(3).

135. Respondents breached their ministerial duty in Petitioners' cases because Respondents failed to use the correct standard required by 22 C.C.R. § 53887(a)(3), which relies on Petitioners' treating physicians' determination of medical stability.

136. Petitioners are beneficially interested in the outcome of this proceeding and have no other plain, speedy, or adequate remedy at law except by way of this writ of mandate.

137. An actual controversy has arisen and now exists between Petitioners and Respondents concerning their respective rights and duties under state law governing MERs. Petitioners desire a judicial determination of the rights and duties of the parties and a declaration as to whether Respondents' practices as alleged herein violate state law. A judicial declaration is necessary and appropriate at this time so that all parties may ascertain their rights and duties under state law.

Fourth Cause of Action

Writ of Mandate Under Code Civil Proc. § 1085 Against All Respondents

(Failure to Humanely Administer Benefits to Which Beneficiaries Are Entitled)

138. Petitioners reallege and incorporate by reference each and every allegation contained in the above paragraphs as though fully set forth herein.

139. Respondents have failed to administer the Medi-Cal program promptly and humanely in a way that complies with the law. Welf. & Inst. Code § 10000. Their administration of the Medi-Cal program has deprived Petitioners and other Medi-Cal beneficiaries "the amount of aid to which [they are] entitled . . . . " *Id*. § 10500.

140. Petitioners are beneficially interested in the outcome of this proceeding and have no other plain, speedy, or adequate remedy at law except by way of this writ of mandate.

141. An actual controversy has arisen and now exists between Petitioners and Respondents concerning their respective rights and duties under state law governing the Medi-Cal program. Petitioners desire a judicial determination of the rights and duties of the parties and a declaration as to whether Respondents' practices as alleged herein violate state law. A judicial declaration is necessary and appropriate at this time so that all parties may ascertain their rights and duties under state law.

Fifth Cause of Action

Writ of Mandate Under Code Civil Proc. § 1085 Against All Respondents

(Denial of Rehearing)

142. Petitioners reallege and incorporates by reference each and every allegation contained in the above paragraphs as though fully set forth herein.

143. When a social services applicant or recipient requests a rehearing to contest an administrative order, Respondents have a ministerial duty under Welfare & Institutions Code **§** 10960(c) to either grant or deny the request on a lawful ground and to explain the reasons and legal basis for the decision.

144. Respondents have failed to fulfill this duty because they denied Petitioner Lodin and other Medi-Cal beneficiaries' rehearing requests without adequately explaining the reasons and legal basis for the decision. Respondents continue to use only boilerplate language to explain their reasons for denial. Respondents ignore their own due process violations, including *ex parte* contacts with the ALJs, and procedural violations that occurred during the hearing process in denying these rehearing requests.

145. Petitioners are beneficially interested in the outcome of this proceeding and have no other plain, speedy, or adequate remedy at law except by way of this writ of mandate.

146. An actual controversy has arisen and now exists between Petitioners and Respondents concerning their respective rights and duties under state law governing rehearing requests. Petitioners desire a judicial determination of the rights and duties of the parties and a declaration as to whether Respondents' practices as alleged herein violate state law. A judicial declaration is necessary and appropriate at this time so that all parties may ascertain their rights and duties under state law.

Sixth Cause of Action

Petitioners Kantor and Lodin Against All Respondents

Relief from Illegal Expenditure of Public Funds

(Violation of C.C.P. § 526(a))

147. Petitioners reallege and incorporate by reference each and every allegation contained in the above paragraphs as though fully set forth herein.

148. Petitioners Kantor and Lodin have paid a tax within and to the State of California within one year before commencement of this action.

149. Respondents have expended public funds in the promulgation and implementation of the unlawful policies and practice alleged in this petition and complaint.

150. Unless and until enjoined by this court, Respondents' unlawful conduct will cause great and irreparable injury to petitioners in that respondents will continue to make illegal expenditures.

151. An actual controversy has arisen and now exists between Petitioners and Respondents concerning their respective rights and duties under state law prohibiting the expenditure of public funds on unlawful policies and practices. Petitioners desire a judicial determination of the rights and duties of the parties and a declaration as to whether Respondents' practices as alleged herein violate state law. A judicial declaration is necessary and appropriate at this time so that all parties may ascertain their rights and duties under state law.

REQUEST FOR RELIEF

WHEREFORE, Petitioners request the following relief:

1. A peremptory writ of mandate prohibiting Respondents with regard to appeals of MERS denials from:

(a) Proceeding to hearing without conducting a pre-hearing evaluation of the appeal and contacting the Medi-Cal beneficiary to attempt informal resolution of the case;

(b) Preventing Medi-Cal beneficiaries from adequately accessing their case files and records;

(c) Submitting written statements at the hearing that do not include facts and a summary of Respondents' position specific to each individual case on appeal;

(d) Appearing at the hearing only by statement of position and not in person;

(e) Withholding the identities and qualifications of the medical reviewers who recommend the denial of Medi-Cal beneficiaries' MERs;

(f) Conducting MER fair hearings without allowing Medi-Cal beneficiaries to review all of the evidence Respondents relied on to support DHCS' statements of position and addenda, including the names of the DHCS medical reviewers as well as their qualifications, opinions, and bases of their opinions;

(g) Submitting evidence, supplemental statements of position, or addenda without giving the Medi-Cal beneficiary timely notice of the submission and a reasonable opportunity to respond;

(h) Conducting MER fair hearings without using the correct standard to evaluate medical evidence according to the standard set forth in 22 C.C.R. § 53887 as to the determination by the Medi-Cal beneficiary's treating physician;

(i) Upholding MER denials at fair hearings when any of the unlawful actions in the subsections (a)–(h) occur;

(j) Issuing final hearing decisions that improperly rely on conclusory and unsubstantiated statements about Medi-Cal beneficiaries' medical conditions; and

(k) Denying rehearing requests without adequately explaining the reasons for denial.

2. Issue a preliminary and permanent injunction prohibiting Respondents with regard to appeals of MER denials from:

(a) Proceeding to hearing without conducting a pre-hearing evaluation of the appeal and contacting the Medi-Cal beneficiary to attempt informal resolution of the case;

(b) Preventing Medi-Cal beneficiaries from adequately accessing their case files and records;

(c) Submitting written statements at the hearing that do not include facts and a summary of Respondents' position specific to each individual case on appeal;

(d) Appearing at the hearing only by statement of position and not in person;

(e) Withholding the identities and qualifications of the medical reviewers who recommend the denial of Medi-Cal beneficiaries' MERs;

(f) Conducting MER fair hearings without allowing Medi-Cal beneficiaries to review all of the evidence Respondents relied on to support DHCS' statements of position and addenda, including the names of the DHCS medical reviewers as well as their qualifications, opinions, and bases of their opinions;

(g) Submitting evidence, supplemental statements of position, or addenda without giving the Medi-Cal beneficiary timely notice of the submission and a reasonable opportunity to respond;

(h) Conducting MER fair hearings without using the correct standard to evaluate medical evidence according to the standard set forth in 22 C.C.R. § 53887 as to the determination by the Medi-Cal beneficiary's treating physician;

(i) Upholding MER denials at fair hearings when any of the unlawful

actions in the subsections (a)–(h) occur;

(j) Issuing final hearing decisions that improperly rely on conclusory and unsubstantiated statements about Medi-Cal beneficiaries' medical conditions; and

(k) Denying rehearing requests without adequately explaining the reasons for denial.

3. Declare that the following actions by Respondents violate state law and regulation with regard to appeals of MER denials:

(a) Proceeding to hearing without conducting a pre-hearing evaluation of the appeal and contacting the Medi-Cal beneficiary to attempt informal resolution of the case;

(b) Preventing Medi-Cal beneficiaries from adequately accessing their case files and records;

(c) Submitting written statements at the hearing that do not include facts and a summary of Respondents' position specific to each individual case on appeal;

(d) Appearing at the hearing only by statement of position and not in person;

(e) Withholding the identities and qualifications of the medical reviewers who recommend the denial of Medi-Cal beneficiaries' MERs;

(f) Conducting MER fair hearings without allowing Medi-Cal beneficiaries to review all of the evidence Respondents relied on to support DHCS' statements of position and addenda, including the names of the DHCS medical reviewers as well as their qualifications, opinions, and bases of their opinions;

(g) Submitting evidence, supplemental statements of position, or addenda without giving the Medi-Cal beneficiary timely notice of the submission

and a reasonable opportunity to respond;

(h) Conducting MER fair hearings without using the correct standard to evaluate medical evidence according to the standard set forth in 22 C.C.R. § 53887 as to the determination by the Medi-Cal beneficiary's treating physician;

(i) Upholding MER denials at fair hearings when any of the unlawful actions in the subsections (a)–(h) occur;

(j) Issuing final hearing decisions that improperly rely on conclusory and unsubstantiated statements about Medi-Cal beneficiaries' medical conditions; and

(k) Denying rehearing requests without adequately explaining the reasons for denial.

4. Reasonable costs of suit.

5. An award of attorneys' fees payable to petitioners' counsel.

6. Such other relief as this Court may deem just and proper.

DATED: September 19, 2017

Respectfully submitted,

By: Helen Tran for
NEIGHBORHOOD LEGAL SERVICES OF LOS ANGELES COUNTY
WESTERN CENTER ON LAW & POVERTY
Attorneys for Petitioners

VERIFICATION

I am the parent and Guardian ad Litem of Petitioner Brendon Robbins, a minor, in this action. I have read the foregoing Petition for Writ of Mandate and know the contents thereof.

I declare under penalty of perjury under the laws of the State of California that the same is true of my knowledge.

Executed at Valencia, California this 15 day of September, 2017.

Lisa Robbins

VERIFICATION

I am the petitioner in this action. I have read the foregoing Petition for Writ of Mandate and know the contents thereof.

I declare under penalty of perjury under the laws of the State of California that the same is true of my knowledge.

Executed at West Hollywood, California this 15 day of September, 2017.

Inna Kantor

VERIFICATION

I am the petitioner in this action. I have read the foregoing Petition for Writ of Mandate and know the contents thereof.

I declare under penalty of perjury under the laws of the State of California that the same is true of my knowledge.

Executed at Reseda, California this 14 day of September, 2017.

Al-Muzzamil Lodin