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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

THE ARC OF CALIFORNIA;  
UNITED CEREBRAL PALSY  
ASSOCIATION OF SAN DIEGO,

No. 2:11-cv-02545-MCE-CKD

Plaintiffs,

v.

**ORDER LIFTING STAY**

TOBY DOUBLAS, in his official  
capacity as Director of the  
California Department of  
Health Care Services;  
CALIFORNIA DEPARTMENT OF  
HEALTH CARE SERVICE; TERRI  
DELGADILLO, in her official  
capacity as Director of the  
CALIFORNIA DEPARTMENT OF  
DEVELOPMENTAL SERVICES; and  
DOES 1-100, inclusive,

Defendants.

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By Order filed December 15, 2011, this Court stayed the instant proceedings given an impending decision from the United States Supreme Court. Defendants argued the decision in that case would determine whether Plaintiffs had standing to pursue this lawsuit, which seeks to enjoin and prohibit the implementation of several payment reductions to providers of services for persons with developmental disabilities in California.

1 In addition to the expected Supreme Court decision, Defendants  
2 further argued that the Centers for Medicare and Medicaid ("CMS")  
3 were expected to finalize new regulations, literally within a  
4 matter of weeks, that could substantially resolve many of the  
5 issues presented by this litigation.

6 On February 22, 2012, the Supreme Court's anticipated  
7 decision in Douglas v. Independent Living Center of Southern  
8 California, 132 S. Ct. 1204 (2012) was issued. According to  
9 Plaintiffs, that decision did not provide the expected guidance  
10 with respect to this litigation. Plaintiffs also argue that new  
11 CMS regulations, which had initially been expected in December of  
12 2011, have still not been promulgated. Plaintiffs consequently  
13 filed the present ex parte application to lift the Court's stay  
14 of this matter on February 28, 2012. Briefing was completed on  
15 April 10, 2012, and as of the present date there is still no  
16 indication that the CMS regulations have been finalized. The  
17 Court consequently believes that a ruling on Plaintiff's request  
18 that the stay be lifted should be made at this time.

19 Although the question of whether to stay an action, and how  
20 long to maintain a stay if one is granted, is generally within a  
21 court's discretion, the Court must nonetheless weight the length  
22 of the stay against the justification for its continued effect,  
23 and a greater showing supporting an ongoing stay is indicated if  
24 the stay is especially long or indeterminate. Hoeun Yong v. INS,  
25 208 F.3d 1116, 1119 (9<sup>th</sup> Cir. 2000).

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1 Review of the Supreme Court's Douglas decision indicates  
2 that it does not resolve the question of whether Plaintiffs  
3 herein can enforce Section 30(A) of the Medicaid Act, 42 U.S.C. §  
4 1396a(30)(A), pursuant to a challenge brought under the Supremacy  
5 Clause of the United States Constitution. Citing changed  
6 circumstances by virtue of the fact that CMS had approved several  
7 of the cuts challenged by the consolidated lawsuits in Douglas,  
8 the Supreme Court remanded the litigation back to the Ninth  
9 Circuit "[t]o decide whether these cases may proceed directly  
10 under the Supremacy Clause now that the agency has acted."  
11 Douglas, 132 S.Ct. at 1211. The Supreme Court went on to  
12 specifically recognize that "[i]n the present posture of these  
13 cases, we do not address whether the Ninth Circuit properly  
14 recognized a Supremacy Clause action to enforce this federal  
15 statute before the agency took final action." Id. (emphasis  
16 added).

17 In the present case, according to Plaintiffs, Defendant have  
18 not even submitted proposed State Plan Amendments ("SPAs")  
19 seeking approval of the challenged cuts, let alone received  
20 approval from CMS for those cuts. Plaintiffs contend that even  
21 if the Ninth Circuit decides on remand that a Supremacy Clause  
22 action is unavailable once the CMS has acted, that would not  
23 necessarily answer the question presented by this Court; namely,  
24 whether such an action is available before the agency has taken  
25 action. Indeed, the Court in the course of its opinion appears  
26 to recognize the limited nature of the issue. See id. at 1210

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1 ("to allow a Supremacy Clause action to proceed once the agency  
2 has reached a decision threatens potential inconsistency or  
3 confusion"; see also id. at 1211 (questioning whether the case  
4 should proceed under the Supremacy Clause or pursuant to the  
5 Administrative Procedure Act "once the agency has taken final  
6 action").

7 The Supreme Court's Douglas decision is therefore not  
8 dispositive with respect to the issue before this Court.  
9 Moreover, given the apparently limited nature of the remand back  
10 to the Ninth Circuit, it is by no means certain that the Ninth  
11 Circuit's renewed decision, whenever that occurs, will provide  
12 guidance in the present circumstances, either. Finally, as  
13 indicated above, new CMS regulations have not been forthcoming  
14 and there is no indication as to when (or even if) those new  
15 regulations will be forthcoming.

16 This Court finds that continuing the stay under these  
17 circumstances is not appropriate. As Plaintiffs assert, even  
18 absent the elusive CMS regulations, the prospect of further, and  
19 possibly protracted litigation, that may do nothing than answer a  
20 different question than that involved here, does not serve as a  
21 basis for a further stay to these proceedings. That conclusion  
22 is further compelled by Plaintiff's claim that the cuts being  
23 challenged present a potentially ongoing threat to thousands of  
24 people with developmental disabilities here in California.

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1 Plaintiffs' Application to Lift Stay Order Staying  
2 Proceedings (ECF No. 35) is therefore GRANTED.<sup>1</sup> Plaintiffs have  
3 also requested leave of court to conduct limited discovery,  
4 including the deposition of a knowledgeable representative of  
5 Defendants, with respect to the previously filed Motion for  
6 Preliminary Injunction, which was denied On December 13, 2011,  
7 without prejudice to being refiled once the stay on this matter  
8 was lifted. That request is also GRANTED. Plaintiffs may take  
9 not more than three depositions of Defendants' personnel, and  
10 Defendants shall make the appropriate individuals available for  
11 deposition within forty-five (45) days following the date this  
12 Order is electronically filed.

13 IT IS SO ORDERED.

14 Dated: August 21, 2012

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17 MORRISON C. ENGLAND, JR.  
18 UNITED STATES DISTRICT JUDGE  
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27 <sup>1</sup>Given the fact that the Court has granted Plaintiffs' ex  
28 parte application, their subsequently filed Motion seeking the  
same relief (ECF No. 44) is DENIED as moot.