SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

ANALILIA JIMINEZ PEREA, et al, Plaintiffs, v. DIANA DOOLEY, et al, Defendants.	No. RG17-867262 [TENTATIVE] ORDER GRANTING IN PART MOTION OF DHCS FOR JUDGMENT ON THE PLEADINGS Date: 2/16/22 Time: 10:00 A.M. Dept.: 21

The motion of Defendants Department of Health Care Services et al (collectively "DHCS") for judgment on the pleadings on the Third Amended Complaint came on for hearing on 2/16/22, in Department 21 of this Court, the Honorable Evelio Grillo presiding. Counsel appeared on behalf of Plaintiffs and on behalf of Defendants. After consideration of the points and authorities and the evidence, as well as the oral argument of counsel, IT IS ORDERED: The motion of DHCS for judgment on the pleadings on the Third Amended Complaint is GRANTED regarding the disparate impact claims and DENIED regarding the other claims.

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PROCEDURE

On 7/12/17, Plaintiffs filed this case alleging generally that the State of California discriminated against Latinos in the state's provision of Medi-Cal.

On 4/12/18, the court sustained the demurrer to the Original Complaint with leave to amend as to all causes of action.

On 9/21/18, the court sustained the demurrer to the First Amended Complaint without leave to amended as to Causes of Action 1, 2, 5, and 6 [discrimination based on disparity between Medi-Cal and private insurance] and with leave to amend as to causes of action 3, 4, 7, and 8 [discrimination based on decrease is services over time], and 9 [substantive due process].

On 2/1/19, the court sustained the demurrer to the Second Amended Complaint with leave to amend.

On 3/8/19, petitioners filed the Third Amended Complaint ("3AC"). On 6/21/19, the court overruled the demurrer of the DHCS to the 3AC.

On 11/19/21, the DHCS filed this motion for judgment on the pleadings.

BACKGROUND

The 3AC alleges that DHCS's "methods of administration" of Medi-Cal since the late 1970s have reduced participants' access to care as the Medi-Cal had become increasingly Latino. (3AC ¶¶ 2-4.) The 3AC summarizes the three categories of DHCS action or inaction: (1) proposing, recommending, setting, or otherwise approving inadequate financial reimbursement rates; (2) failing to monitor and enforce the minimum standards for the quality of the services provided; and (3) creating and permitting administrative burdens that impair the quality of the services provided. (3AC, para 175-181.) (3AC Order of 6/21/19 at 2).

The 3AC alleges that DHCS's "methods of administration" of Medi-Cal disproportionately impact Latinos compared to two groups: (1) "past" Medi-Cal participants, and (2) Medi-Cal beneficiaries receiving long-term care. (3AC para 148-167; 3AC Order of 6/21/19 at 6.)

The claims in the 3AC concern the DHCS's administrative action or inaction. The claims are not challenges to statutes or regulations on a facial or as applied basis. The claims are not asserted against the State based on legislation or the legislature's funding decisions. (2AC order of 2/1/19 at 2-4; 3AC Order of 6/21/19 at 2:18-19.)

The 3AC order of 6/21/19 overruled the demurer to the 3AC.

The remaining third, fourth, seventh, and eighth causes of action assert claims for discrimination under Govt Code 11135 and for violation of constitutional equal protection. These claims are based on all three categories of DHCS action or inaction.

The remaining ninth cause of action asserts a violation of constitutional substantive due process. (Cal Const., Art I, sec. 7(a).) This claim is similarly based on all three categories of DHCS action or inaction. (3AC, para 245, 246.)

The remaining tenth and eleventh causes of action are a taxpayer claim and a claim for writ of mandate.

JUDICIAL NOTICE

The court GRANTS the request of the state to take judicial notice of the trial court opinion in *Deuschel v. California Health and Human Services Agency,* Los Angeles Superior Court, Case No. BS171070. The court can consider other trial court opinions for their persuasive value. (*Brown v. Franchise Tax Bd.* (1987) 197 Cal. App. 3d 300, 306 n6.) The court does not

take judicial notice of any factual findings in the decisions of other courts. (*Kilroy v. State* (2004) 119 Cal.App.4th 140, 148 ["factual findings in a prior judicial opinion are not a proper subject of judicial notice"].)

The court GRANTS the request of the DHCS and plaintiffs to take judicial notice of documents that are legislative history. (*Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal.App.4th 26.)

The court DENIES the request of the DHCS and plaintiffs to take judicial notice of documents that support the claims or defenses in the case. "[A] court cannot by means of judicial notice convert a demurrer into an incomplete evidentiary hearing in which the demurring party can present documentary evidence and the opposing party is bound by what that evidence appears to show." (*Fremont Indem. Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 115.)

DISPARATE IMPACT CLAIMS - MATERIAL CHANGE IN STATUTE OR CASE LAW

The court finds that the DHCS's motion for judgment on the pleadings on disparate impact is proper. CCP 438(g) states that a party may make a motion for judgement on the pleadings even though: "The moving party has already demurred to the complaint or answer, as the case may be, on the same grounds as is the basis for the motion provided for in this section and the demurrer has been overruled, provided that there has been a material change in applicable case law or statute since the ruling on the demurrer."

The DHCS asserts that there are two new appellate cases that set out a material change in the law: (1) *County Inmate Telephone Service Cases* (2020) 48 Cal.App.5th 354 and (2) *Villafana v. County of San Diego* (2020) 57 Cal.App.5th 1012. The appellate cases apply the law

to complaints that make similar allegations as those in this case. They are not "a material change in applicable case law, but they are very instructive because they apply the law to claims similar to those in this case. The DHCS also identifies a new trial court opinion. The court will err on the side of revisiting the disparate impact claims in light of the new case law.

In *County Inmate Telephone Service Cases* (2020) 48 Cal.App.5th 354, county jail inmates brought actions protesting allegedly exorbitant commissions paid by telecommunications companies to the nine counties under contracts giving the telecommunications companies the exclusive right to provide telephone service for the inmates. Plaintiffs asserted that the jail population is disproportionately composed of African-Americans and Latinos compared to the overall population of the respective counties and that as a result the telephone charges violate Govt Code 11135 because they have a disparate impact on African-Americans and Latinos.

The *County Inmate* decision found the discrimination claim had no merit because the charges were assessed on all inmates. The court stated " the only appropriate inquiry is an analysis of the impact on minorities "in the population base 'affected' " …, and that is the inmate population. There is no other relevant group. And African-American and Latino inmates are treated exactly the same as any other inmates."

The *County Inmate* decision states that the comparator group was not "the general population, which accesses telephone usage without having to pay an illegal tax." This court followed that analysis in the 1AC order of 9/21/18 when it concluded that the plaintiffs in this case cannot not state a claim under Govt Code 11135 by alleging that Medi-Cal is not equivalent to private insurance or Medicare.

In *Villafana v. County of San Diego* (2020) 57 Cal.App.5th 1012, the plaintiffs alleged that under the County's regulations (Project 100% or P100), all applicants for CalWORKS benefits are required to participate in a face-to-face interview before aid will be granted even though state regulations require a home visit only if factors affecting eligibility, including living arrangements, cannot be satisfactorily determined. The Plaintiffs allege that P100 disproportionately impacted people of color and women.

The *Villafana* decision found the discrimination claim had no merit because "all CalWORKs applicants are harmed the same by home visits." The *Villafana* decision fund no merit to the argument that the "psychological harms of the P100 program falls disproportionately on classes protected by section 11135 when comparing CalWORKs applicants subject to home visits with the general population of the County." (57 Cal.App.5th at 1018.)

The *Villafana* decision states that the comparator group was not the general population. *Villafana* concluded: "comparing CalWORKs applicants and the general population of the county ignores the basic principal that comparators be similarly situated, … Because all applicants are subject to the home visits, and plaintiffs allege these visits cause a dignitary harm, there is no viable disparate impact claim…" (57 Cal.App.5th at 1020.) This court followed that analysis in the 1AC order of 9/21/18.

The *Villafana* decision is arguably distinguishable because it concerned a challenge to a County regulation whereas in the 3AC the plaintiffs are clear that the claims are based on administrative action or inaction and are not challenges to statutes or regulations on a facial or as applied basis.

In *Deuschel v. California Health and Human Services Agency*, Los Angeles Superior Court, Case No. BS171070, the plaintiff alleged that Medi-Cal discriminated against persons

with disabilities because it failed to provide benefits equivalent to private insurance or Medicare. The trial court dismissed the claim because the discrimination claim relied on comparison with the wrong group. This court followed that analysis in the 1AC order of 9/21/18.

DISPARATE TREATMENT (INTENTIONAL DISCRIMINATION) AND DISPARATE IMPACT CLAIMS

The court's review of *County Inmate* and *Villafana* leads it to conclude that the order of 9/21/18 confused the concepts of disparate treatment and disparate impact. The 3AC Order's discussion regarding the disparate impact claim erroneously considered whether other persons in other programs are similarly situated to Latinos in the Medi-Cal program. (3AC Order of 6/21/19 at 6-7)

A claim for disparate treatment is a claim that an employer or other defendant intentionally treats a person or group less favorably than a similarly situated person or group because of a relevant characteristic. (*Mahler v. Judicial Council of California* (2021) 67 Cal.App.5th 82, 112; *Mixon v. Fair Employment & Housing Com.* (1987) 192 Cal.App.3d 1306, 1317.) (See also CACI 2500; *Arlington Heights v. Metropolitan Housing Corp.* (1977) 429 U.S. 252, 266.)

A claim for disparate impact is a claim that an employer or other defendant has a facially neutral policy or practice adopted without a deliberately discriminatory motive that nevertheless has such significant adverse effects on protected *groups* that they are in operation ... functionally equivalent to intentional discrimination." (*Jumaane v. City of Los Angeles* (2015) 241 Cal.App.4th 1390, 1404-1404.) (See also CACI 2502.) *County Inmate* and *Villafana* repeated and applied the law on disparate impact.

DISPARATE IMPACT CLAIMS – SIMILARLY SITUATED COMPARATOR GROUPS SUBJECT TO THE SAME POLICY

The DHCS argues that the disparate impact claims have no merit at the pleading stage because the 3AC does not identify appropriate comparator groups that are subject to the same policy.

The proper disparate impact analysis starts with single neutral policy and asks whether that policy has a disparate impact on groups subject to that same neutral policy. *Villafana*, 57 Cal.App.5th at 1018, states, "[T]he appropriate inquiry is into the impact on the total group to which a policy or decision applies." *County Inmate*, 48 Cal.App.5th at 368, states: "The basis for a successful disparate impact claim involves a comparison between two groups — those affected and those unaffected by the facially neutral policy. … [W]e must analyze the impact of the plan on minorities in the population base 'affected ... by the facially neutral policy. … [T]he appropriate inquiry is into the impact on the total group to which a policy or decision applies."

The issue of whether the plaintiff or plaintiff group is treated differently than similarly situated persons not subject to the policy or procedure is central to the disparate impact analysis.

In discussing disparate impact, the 3AC order of 6/21/19 at 6-7 states: "The 3AC … identifies two comparators: (1) Medi-Cal long term care beneficiaries and (2) Medi-Cal participants in the past. (3AC, para 148-167.) This was a mistake. In the disparate impact claim, the appropriate inquiry is whether DHCS has policies or practices in administering Medi-Cal that have a disparate impact on the Latinos in the Medi-Cal program when compared to non-Latinos in the Medi-Cal program.

The 3AC does not allege facts suggesting that the DHCS has policies or practices in administering Medi-Cal that have a disparate impact on the Latinos in the Medi-Cal program when compared to non-Latinos in the Medi-Cal program.

MEDI-CAL LONG TERM CARE PLAN

At the hearing on 2/16/22, plaintiffs stressed that the DHCS administered both the Medi--Cal program and Medi-Cal program for long term care and argued that the court can compare the two because DHCS administers both plans. The court is not persuaded. They are two different plans.

California's Medi-Cal program implements the federal Medicaid Act. (*Morris v. Williams* (1967) 67 Cal.2d 733, 739-740; *Santa Rosa Memorial Hospital, Inc. v. Kent* (2018) 25 Cal.App.5th 811, 815.) The Medi-Cal Program is in The Medi-Cal program is located in the Welfare and Institutions Code in Division 9, part 3, chapters 7-9. The Medi-Cal regulations are at 22 CCR 50000 et seq.

The Medi-Cal Long Term Reimbursement Act is part of the Medi-Cal Program. It is in Welfare and Institutions Code Division 9, part 3, chapter 7.

The Medi-Cal Long Term Reimbursement Act is, however, a statutorily distinct part of the Medi-Cal Program. The 3AC alleges generally that the long term care reimbursements are separate and distinct form the Medi-Cal basic health reimbursements. (3AC para 164.) The court has looked at the statute. The Long Term Reimbursement Act was added in 2004, is in article 3.8 and is at W&I 14126 et seq. The Long Term Reimbursement Act has financial provisions that are specific to that plan. W&I 14126.02(b) states "The department shall implement a facility-specific ratesetting system, subject to federal approval and the availability of federal funds, that reflects the costs and staffing levels associated with quality of care for residents in nursing facilities, as defined in H&S 1250(c)]." The Long Term Reimbursement Act needed separate federal approval. (W&I 14126.025; 14126.33(c)(11) and (h).) Regarding

funding, long term care has separate funding. The statute states "General Fund moneys appropriated for purposes of this article pursuant to Section 6 of the act adding this section shall be used for …" (W&I 14126.033(c)(1).) The California regulations have sections that are specific to long term care reimbursement methodology. (22 CCR 52000 et seq; 22 CCR 52500 [" Facilities subject to the reimbursement methodology, as described in Sections 52500 through 52516, and as authorized by [W&I 14126]…".)

In light of the separate statutory and regulatory schemes, the court finds that even taking all inferences in favor of plaintiffs on demurrer, that Medi-Cal basic health and Medi-Cal long term care are not part of the same neutral policy or procedure. As a result, the results of the two programs cannot be compared under a disparate impact analysis.

MEDI-CAL PLAN ADMINISTRATION IN THE PAST

There have been statutory changes to the Medi-Cal program over the past decades. (DHCD opening at 6:11-24) In light of the legislative changes in the Medi-Cal program over the past decades, the court finds that even taking all inferences in favor of plaintiffs on demurrer, that the former Medi-Cal basic health plan and the current Medi-Cal basic health cannot be compared are not part of the same neutral policy or procedure.

The motion for judgment on the pleadings on the disparate impact claims is GRANTED. Consistent with *County Inmate* and *Villafana*, the court does not grant leave to amend.

DISPARATE IMPACT CLAIMS –STATISTICAL EVIDENCE OF DISPARITY

The DHCS argues that the disparate impact claims have no merit at the pleading stage because the 3AC does not allege statistical evidence of a disparity. The court does not reach this issue because the court grants the motion for judgment on the pleadings based on the court's correction of its disparate impact analysis.

DISPARATE IMPACT CLAIMS – IDENTIFICATION OF SPECIFIC POLICY OR PRACTICE

The DHCS argues that the disparate impact claims have no merit at the pleading stage because the 3AC does not identify a specific policy or practice. The court does not reach this issue because the court grants the motion for judgment on the pleadings based on the court's correction of its disparate impact analysis. The court also does not need to reach this argument because the new case law (*County Inmates* and *Villafana*) do not concern uncertain claims. The DHCS does not identify new case law on uncertain claims. The 3AC Order of 6/21/19 at pp 2-3 already addressed this argument. The 3AC identifies the relevant methods of administration. (3AC, para 175-179.)

DISPARATE IMPACT CLAIMS – EVIDENCE OF CAUSATION

The DHCS argues that the disparate impact claims have no merit at the pleading stage because the 3AC does not make adequate allegations to support an inference of causation. The court does not reach this issue because the court grants the motion for judgment on the pleadings based on the court's correction of its disparate impact analysis.

The court notes that DHCS's argument is based on *Southwest Fair Housing Council, Inc. v. Maricopa Domestic Water Improvement District* (9th Cir., 2021) 17 F.4th 950, which was decided at summary judgment. *Southwest* states: "Of course, at the summary judgment stage the plaintiff need adduce only evidence that would allow this ultimate finding." (17 F.4th at 967 fn 7.) This case is at the pleading stage and the court would take all factual inferences in favor of plaintiffs, including these could support a finding of causation.

INTENTIONAL DISCRIMINATION CLAIMS - MATERIAL CHANGE IN STATUTE OR CASE LAW

The court finds that the DHCS's motion for judgment on the pleadings on intentional discrimination is proper. The DHCS asserts that there are two new appellate cases that set out a material change in the law: (1) *Department of Homeland Security v. Regents of the University of California* (2020) 140 S.Ct. 1891 ("*Regents*") and (2) *Ramos v. Wolf* (9th Cir., 2020) 975 F.3d 872. The court will err on the side of revisiting the disparate impact claims in light of the new case law.

In *Regents*, the plaintiffs challenged the rescission of Deferred Action for Childhood Arrivals (DACA) program. The Court held that the complaint did not allege facts that raised a plausible inference that an "invidious discriminatory purpose was a motivating factor." (*Arlington Heights v. Metropolitan Housing Corp.* (1977) 429 U.S. 252, 266.) The complaint alleged no statements by the persons directly responsible for the decision. The Court found that President Trump's "critical statements about Latinos [were] remote in time and made in unrelated contexts [and] do not qualify as "contemporary statements" probative of the decision at issue." This is the application of the *Arlington* standard to the complaint in that case.

In *Ramos*, plaintiffs from Sudan, Nicaragua, Haiti, and El Salvador challenged the termination of their temporary protected status (TPS) by the acting Secretary of Homeland Security. At preliminary injunction, plaintiffs presented evidence of the President's "animus against non-white, non-European immigrants." The court held that plaintiffs had not met their burden of showing a likelihood of success "due to the glaring lack of evidence tying the President's alleged discriminatory intent to the specific TPS terminations—such as evidence that the President personally sought to influence the TPS terminations, or that any administration

officials involved in the TPS decision-making process were themselves motivated by animus against "non-white, non-European" countries." (975 F.3d at 897.) This is the application of the *Arlington* standard to the motion for preliminary injunction in that case.

INTENTIONAL DISCRIMINATION CLAIMS – INTENT TO DISCRIMINATE

The 3AC Order of 6/21/19 at pp10-11 applied the *Arlington* standard and found that the 3AC stated a claim.

Under *Arlington Heights v. Metropolitan Housing Corp.* (1977) 429 U.S. 252, 266-268, a court analyzes whether the defendant's actions were motivated by a discriminatory purpose by examining (1) statistics demonstrating a "clear pattern unexplainable on grounds other than" discriminatory ones, (2) "[t]he historical background of the decision," (3) "[t]he specific sequence of events leading up to the challenged decision," (4) the defendant's departures from its normal procedures or substantive conclusions, and (5) relevant "legislative or administrative history." (*Pacific Shores Properties, LLC v. City of Newport Beach* (9th Cir., 2013) 730 F.3d 1142, 1156-1157.)

The 3AC Order of 6/21/19 at 10-11 considered the allegations in the 3AC regarding statistics, historical background, the sequence of events. A proper part of the disparate treatment analysis is whether the current and increasingly Latino Medi-Cal participants are similarly situated to Medi-Cal participants in the past and, if so, whether DHCS had or has basis for different treatment of the similarly situated persons or groups. Both *Whitfield v. Oliver* (M.D. Ala., 1975) 399 F.Supp. 348, and *Committee Concerning Community Improvement v. City of Modesto* (9th Cir. 2009) 583 F.3d 690, were intentional discrimination claims and considered as evidence the historical background of public agency action as it related to demographic changes.

Considering the analysis in *Whitfield* and *Modesto* and taking all inferences in favor of plaintiffs, the court decides that Medi-Cal participants in the past are a plausible comparator to current Medi-Cal participants for purposes of the intentional discrimination claim. For the disparate impact claim the issue is whether the past and current administration of the plan are part of "the same" neutral policy or procedure whereas for the intentional discrimination claim the issue is whether the past and current participants in the Medi-Cal plan are "similarly situated." This was apparent in *Whitfield*, where the intentional discrimination case compared the AFDC program and the old-age assistance program. The standard for disparate impact and disparate treatment is different, so the court's conclusion is different.

At the hearing on 2/16/22, the DHCS argued that the 3AC does not identify an appropriate comparator group. That is not necessary. The court's order of 9/21/18 at 12-13 stated, "A person can prove a claim of discrimination without identifying a similarly situated person who was treated differently. For example, a woman can prove that she was denied a promotion because of her gender if the employer elected to leave the position vacant. ... There is no bright line rule that there must be a similarly situated person or group." (See *Heard v. Lockheed Missiles & Space Co.* (1996) 44 Cal.App.4th 1735, 1775-1776 [race discrimination]; *Olmstead v. L.C. ex rel. Zimring* (1999) 527 U.S. 581, 598 [disability discrimination].)" (See also 3AC Order of 6/21/19 at 7-8).

The 3AC Order of 6/21/19 at 10-11 considered the allegations that DHCS departed from the required procedures by failing to conduct rate reviews and revisions as required by W&I 14079 (3AC, para 149(b) and 152.)

The 3AC Order of 6/21/19 at 10-11 considered additional relevant history in the form of comments allegedly made by DHCS personnel. (3AC para 169, 170, 173.)

In contrast to *Regents* and *Ramos*, the 3AC Order of 6/21/19 on the claim for intentional discrimination was based on all the *Arlington* factors and not just "comments allegedly made by DHCS personnel. (3AC para 169, 170, 173.)

INTENTIONAL DISCRIMINATION CLAIMS – ADVERSE ACTION

The 3AC adequately alleges that the alleged unlawful discrimination resulted in adverse action. If the DHCS has through its administrative actions been decreasing the availability or quality of health care based on the race or national origin of the Medi-Cal population, then the decrease in health care could be an adverse action.

The 3AC alleges: "current Medi-Cal participants, who are enrolled in a program associated with a Latino population, are adversely affected by current low reimbursement rates compared to past Medi-Cal participants. When Latinos were not such a large proportion of participants, reimbursement rates were higher and more reflective of the costs of providing care, and participants had much better access to health care." (3AC, para 157.)

The adverse action analysis does not concern whether the State has a statutory obligation to provide health care at any particular level or a constitutional obligation to provide health care at all. The adverse action analysis concerns whether the DHCS's allegedly discriminatory action or inaction in its methods of administration caused the increasingly Latino current Medi-Cal participants to receive worse Medi-Cal services than Medi-Cal participants in the past.

SUBSTANTIVE DUE PROCESS

The DHCS argues that the substantive due process claim has no merit at the pleading stage because the 3AC does not allege a protected interest or egregious conduct.

The substantive due process claim concerns DHCS's methods of administration. "[T]he determination of when a substantive due process violation occurs is contextual. … Only a substantial infringement of state law prompted by personal or group animus, or a deliberate flouting of the law that trammels significant personal or property rights, qualifies for relief. … Inadvertent errors, honest mistakes, agency confusion, even negligence in the performance of official duties, do not warrant redress [for a substantive due process violation]." (*Galland v. City of Clovis* (2001) 24 Cal.4th 1003, 1032-1034.)

"To determine whether a person's ... interest for purposes of substantive due process has been violated, the court must balance his or her ... interest against the relevant state interests. [Citation.] Where the state infringes on a fundamental constitutional right, strict scrutiny applies; otherwise, the rational basis test applies." (*Love v. State Dept. of Education* (2018) 29 Cal.App.5th 980, 989.)

The court does not need to reach this argument because the new case law (*County Inmates, Villafana, Regents*, and *Ramos*) do not concern substantive due process claims. The DHCS does not identify new case law on substantive due process claims.

The 3AC's substantive due process claim is based on the alleged "substantial infringement of state law prompted by personal or group animus." (3AC, para 243-246; 3AC Order at 14:5-8.) In this aspect, the substantive due process claim is derivative of the intentional discrimination claim. This is adequate.

The 3AC's substantive due process claim is also based on the alleged "deliberate flouting of the law." (3AC, para 247-250; 3AC Order at 14:9-17.) This is adequate.

The DHCS's argument that the plaintiffs cannot prove "deliberate flouting of the law" because plaintiffs have no property right to timely or adequate care is only the first level of a

multi-level argument. The full argument is that the interest in health care is not a constitutional right, that any right to care is defined by statute, that the court will therefore apply a rational basis test to the statute, and that under the rational basis test the claim will fail. (American Coatings Assn., Inc. v. State Air Resources Bd. (2021) 62 Cal.App.5th 1111, 1132.)

At the hearing on 2/16/22, the DHCS argued that the court had misconstrued the argument and that the argument was not that the plaintiffs could not prove a substantive due process claim by proving deliberate flouting but rather that plaintiffs could not prove a substantive due process claim to denial of health care. The DHCS referred to *Benn v. County of Los Angeles* (2007) 150 Cal.App.4th 478, 489 for the proposition that "A threshold requirement to a substantive or procedural due process claim is the plaintiff's showing of a liberty or property interest protected by the Constitution." As the court reads the 3AC, the claim is not that the DHCS denied the plaintiffs a constitutional right to health care but rather that the California legislature provided certain health care in the Medi-Cal plan and that the DHCS has deliberately flouted the legislative direction and has thereby significantly interfered with the significant statutory personal or property rights to the health care that was to be provided under the statute.

The substantive due process claim in the 3AC alleges, among other things, that the DHCS has departed from the required procedures by failing to conduct rate reviews and revisions as required by W&I 14079 (3AC, para 149(b) and 152.) This is a demurrer, the court takes all inferences in favor of plaintiffs that this was "deliberate flouting of the law," and the court finds that the allegations are adequate. At summary judgment or trial the DHCS can argue that the court should review the claim for "rational basis," and then present evidence supporting the rational basis for its actions or that any lapses were due to "Inadvertent errors, honest

mistakes, agency confusion, [or] even negligence in the performance of official duties." (*Galland v. City of Clovis* (2001) 24 Cal.4th 1003, 1032-1034.)

TAXPAYER CLAIM AND CLAIM FOR WRIT OF MANDATE

The taxpayer claim and the claim for writ of mandate are both derivative claims.

ABILITY OF COURT TO AWARD RELIEF

At the hearing on 2/16/22, the DHCS argued that the 3AC is seeking relief that the court cannot provide. The focus on this motion is whether the 3AC states a claim. The court will not address whether, assuming plaintiffs prove a claim, the court can provide any relief based on whatever evidence is presented.

As a general principle, the court could award whatever lawful relief might be appropriate. (CCP 580(a)["the court may grant the plaintiff any relief consistent with the case made by the complaint and embraced within the issue"]; Civil Code 3523 ["For every wrong there is a remedy"].) Addressing the ability of the court to award relief, *Superior Motels, Inc. v. Rinn Motor Hotels, Inc.* (1987) 195 Cal.App.3d 1032, 1067, states, "The court was in any event within its power at the conclusion of the contested trial to award a species of relief not expressly included in the complaint, Superior's request in its prayer for "such other and further relief as the court deems just" being sufficient for this purpose. " (See also *Lawrence v. Shutt* (1969) 269 Cal.App.2d 749, 767.)

CONCLUSION

The motion of DHCS for judgment on the pleadings on the Third Amended Complaint is GRANTED regarding the disparate impact claims and DENIED regarding the other claims.

Dated: March 9, 2022

Evelio Grillo
Judge of the Superior Court