
C.A. NO. 08-16267

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CALIFORNIA ALLIANCE OF
CHILD AND FAMILY SERVICES,

Appellant,

v.

CLIFF ALLENBY, Interim Director of
the California Department of Social
Services, in his official capacity;
MARY AULT, Deputy Director of the
Children and Family Services Division
of the California Department of Social
Services, in her official capacity,

Respondents.

USDC Case No. 3:06-cv-04095-MHP

On Appeal From the United States District Court
for the Northern District of California
Honorable Judge Marilyn Hall Patel

EXCERPTS OF RECORD
Volume 2 of 2

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INDEX TO APPELLANT'S EXCERPTS OF RECORD, VOL. 1

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FILED

08 APR 29 PM 3:07

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CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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18 UNITED STATES DISTRICT COURT

19 NORTHERN DISTRICT OF CALIFORNIA

20 SAN FRANCISCO DIVISION

21 CALIFORNIA ALLIANCE OF CHILD AND
22 FAMILY SERVICES,

23 Plaintiff,

24 v.

25 CLIFF ALLENBY, Interim Director of the
26 California Department of Social Services, in his
27 official capacity; MARY AULT, Deputy Director
28 of the Children and Family Services Division of
the California Department of Social Services, in
her official capacity,

Defendants.

Case No. C 06-4095 MHP

**PLAINTIFF CALIFORNIA
ALLIANCE OF CHILD AND
FAMILY SERVICES' NOTICE OF
APPEAL**

Judge: The Hon. Marilyn H. Patel

A/72499368.1

NOTICE OF APPEAL

CASE NO. C 06-4095 MHP

1 Pursuant to Fed. R. App. P. 3 and 28 U.S.C. § 1291, notice is hereby given that Plaintiff
2 California Alliance of Child and Family Services ("Plaintiff") appeals to the United States Court
3 of Appeals for the Ninth Circuit from the final judgment entered by this Court on March 12,
4 2008 (Dkt. 58), the Court's Order dated March 12, 2008, denying Plaintiff's Motion for
5 Summary Judgment (Dkt. 57), and the Court's Order of April 10, 2008 (Dkt. 74) effectively
6 denying Plaintiff's Motion for Reconsideration and Relief filed on March 21, 2008 under Federal
7 Rules of Civil Procedure 59(e) and 60(b) (Dkt. 60) by denying Plaintiff's Motion for Leave to
8 File a Motion for Reconsideration under Local Rule 7-9 filed on March 24, 2008 (Dkt. 72).

9
10 DATED: April 29, 2008

Bingham McCutchen LLP

11
12 By: 

13 William F. Abrams
14 Michael D. Mortenson
15 Attorneys for Plaintiff
16 CALIFORNIA ALLIANCE OF CHILD AND
17 FAMILY SERVICES
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A72499368.1

-1-

NOTICE OF APPEAL

CASE NO. C 06-4095 MHP

Court Name: U.S. District Court, NDC
Division: 3
Receipt Number: 34611018823
Cashier ID: buckles
Transaction Date: 04/29/2008
Payer Name: san francisco legal support

NOTICE OF APPEAL/DOCKETING FEE
For: ca alliance of child family sv
Case/Party: D-CAM-3-06-CV-004095-001
Amount: \$455.00

CHECK
Check/Money Order Num: 36523
Amt Tendered: \$455.00

Total Due: \$455.00
Total Tendered: \$455.00
Change Amt: \$0.00

mhp

Checks and drafts are accepted
subject to collections and full
credit will only be given when the
check or draft has been accepted by
the financial institution on which
it was drawn.

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19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA
21 SAN FRANCISCO DIVISION
22

23 CALIFORNIA ALLIANCE OF CHILD AND
24 FAMILY SERVICES,

25 Plaintiff,

26 v.

27 CLIFF ALLENBY, Interim Director of the
28 California Department of Social Services, in his
official capacity; MARY AULT, Deputy Director
of the Children and Family Services Division of
the California Department of Social Services, in
her official capacity,

Defendants.

Case No. C 06-4095 MHP

**DECLARATION OF DOUG
JOHNSON IN SUPPORT OF
PLAINTIFF CALIFORNIA
ALLIANCE OF CHILD AND
FAMILY SERVICES'S MOTION
FOR RECONSIDERATION AND
RELIEF FROM JUDGMENT**

Date: May 5, 2008
Time: 2:00 p.m.
Place: Ctrm. 15, 18th Floor
Judge: The Hon. Marilyn H. Patel

AJ72477178.1

DECLARATION OF DOUG JOHNSON

CASE NO. C 06-4095 MHP

1 I, Doug Johnson, declare as follows:

2 1. I am the Associate Executive Director of the California Alliance of Child and
3 Family Services (the "Alliance"), a statewide association of more than 130 private nonprofit
4 child and family serving agencies.

5 2. I started working at the Alliance in 1998 after nearly 20 years of State service,
6 spending 18 years with the California Department of Social Services ("DSS"). In particular, I
7 worked as a bureau chief in the Welfare Programs Division of DSS and oversaw the
8 development and implementation of California's rate-setting system for foster care group homes.
9 During my State service, I served as Chief of the Foster Care Policy Bureau, the Child Welfare
10 Services Policy Bureau, and the Emergency Assistance Program Bureau. Immediately before
11 joining the Alliance, I was DSS's Coordinator for Federal Legislation during welfare reform.

12 3. Given my background and present position at the Alliance, I have personal
13 knowledge of the following:

14 4. On or about January 10, 2008, the Governor of California published and
15 submitted the "Governor's Budget Summary 2008-09" to the California Legislature. I
16 downloaded a copy of this document from the internet website of the State of California
17 Department of Finance
18 [<http://www.ebudget.ca.gov/pdf/BudgetSummary/FullBudgetSummary.pdf>], a true and accurate
19 copy of which is attached hereto as Exhibit A. The Governor's Budget proposes a 10 % across
20 the board funding cut to nearly all State General Fund programs, including State General Fund
21 cuts totaling \$6.8 million in 2007-08 and \$81.5 million in 2008-09 for foster care, adoptions, and
22 kinship-guardianship assistance programs.

23 5. The Legislative Analysts' Office ("LAO") published its "Analysis of the 2008-09
24 Budget Bill" proposed by the Governor on or about February 20, 2008. I downloaded a copy of
25 the "Health and Human Services" chapter of this document from the LAO internet website
26 [http://www.lao.ca.gov/analysis_2008/health_ss/healthss_anl08.pdf]. A true and accurate copy
27 of the LAO analysis is attached hereto as Exhibit B. I am informed and believe that that LAO
28

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DECLARATION OF DOUG JOHNSON

CASE NO. C 06-4095 MHP

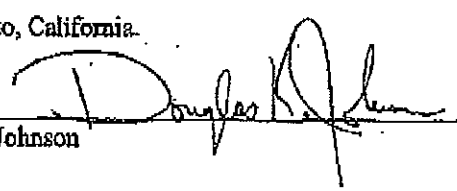
1 determined that the Governor's proposed budget reduces foster care rates for group homes by
2 10%.

3 6. On or about January 10, 2008, the DSS published the "2008-09 Local Assistance
4 Estimates." On that same day, I downloaded a copy of each of the six sections of this document
5 from the DSS internet website [<http://www.dss.cahwnet.gov/cdssweb/PG1424.htm>]. A true and
6 accurate copy of the fifth section, "Estimate Methodologies," is attached hereto as Exhibit C.
7 The DSS estimated that the "Ten Percent Reduction to the Basic Care, Specialized Care, and
8 Clothing Allowance Rates for Foster Care, Kinship Guardian Assistance Payment, Seriously
9 Emotionally Disturbed Children, and Adoption Assistance Programs" in the proposed
10 Governor's Budget would result in payment cuts totaling \$15.9 million for State Fiscal Year
11 2007-08 (with a reduction of \$4.1 million in federal expenditures, \$6.8 million in State General
12 Fund expenditures, \$5.0 million in County expenditures) and in payment cuts totaling \$190.3
13 million for State Fiscal Year 2008-09 (with a reduction of \$49.3 million in federal expenditures,
14 \$81.5 million in State General Fund expenditures, \$59.5 million in County expenditures).

15 7. If the Governor's proposed 10% reduction is made to the RCL standard rates for
16 group homes in 2008-09, the cumulative average increase in the RCL standard rates since 1990-
17 91 will be reduced to 120% of their original level, whereas the California Necessities Index
18 (CNI) will have increased to 172% of its 1990-91 level. The new RCL standard rates would
19 provide for less than 70% of average group home costs.

20 I declare under penalty of perjury under the laws of the United States of America that the
21 foregoing is true and correct.

22 Executed on March 21, 2008, at Sacramento, California.

23
24 
25 Doug Johnson
26
27
28

A72477178.1

- 2 -

DECLARATION OF DOUG JOHNSON

CASE NO. C 06-4095 MHP

EXHIBIT A



GOVERNOR'S BUDGET SUMMARY 2008-09



ARNOLD SCHWARZENEGGER, GOVERNOR
STATE OF CALIFORNIA

TO THE CALIFORNIA LEGISLATURE
REGULAR SESSION, 2007-08



GOVERNOR
ARNOLD SCHWARZENEGGER

January 10, 2008



To the Senate and Assembly of the Legislature of California:

In accordance with Article IV, Section 12 of the California Constitution, I submit to you the Governor's Budget for 2008-2009.

Two challenges require our immediate attention as we begin 2008. First, we must close a shortfall of \$3.3 billion in the current fiscal year, which will grow to \$14.5 billion next year without swift and decisive action. And second, we must take steps to avoid a potential shortfall in the state's cash reserves this July and August, and potentially in March.

These problems are not the result of a fundamental crisis in California's economy. Indeed, we remain a diverse and dynamic economic powerhouse that will continue to grow and lead the world in innovation. These problems are the result of a budget system where there continues to be no linkage between revenues and spending. If we are to avoid these kinds of fiscal crises in the future, and if we truly want to bring fiscal health to this state for the long term, we must resolve to fundamentally fix the budget system this year -- once and for all.

In order to close the gap, my budget proposes two options.

First, I propose to reduce spending by implementing a 10-percent across-the-board reduction to nearly every General Fund program, and to have those reductions take effect on March 1st. While these reductions are unquestionably difficult and challenging, this across-the-board reduction approach is designed to protect essential services by spreading reductions as evenly as possible, so that no individual program is singled out for severe reductions. I am today proclaiming a fiscal emergency and calling for a special session of the Legislature to begin early implementation of these necessary budget reductions.

Second, I am using the authority given to me under Proposition 58 to suspend next year's pre-payments for the Economic Recovery Bonds and to sell the remaining bonds to rebuild this year's budget reserve.

In order to ensure long-term balance, I am proposing a Constitutional Amendment to reform the state budget process. The Budget Stabilization Act will prevent over-budgeting based on extraordinary revenue gains, and give the state the tools it needs to quickly reduce spending when necessary to avoid a deficit.

The challenges we face are substantial, and the decisions we face are difficult. But if we fail to address them swiftly, the problem will only get larger and the consequences even more severe. If we can work together, we can solve our immediate budget problems. But more importantly, we can finally give California a budget system that is fiscally responsible and avoids future budget deficits.

Sincerely,

Arnold Schwarzenegger

STATE CAPITOL • SACRAMENTO, CALIFORNIA 95814 • (916) 445-2841



STATE CAPITOL ■ ROOM 1145 ■ SACRAMENTO, CA ■ 95814-4998 ■ WWW.DOF.CA.GOV

January 10, 2008

Dear Governor:

This budget proposes the difficult but necessary steps needed to bring the state's chronic structural deficit under control, not only for this fiscal year but permanently. This is accomplished by (1) imposing strict spending restraint in the current and budget years while protecting and preserving essential state services and (2) proposing a Constitutional Amendment to reform the budget process, so that state government has the tools to avoid spending more than it has in revenue in the future.

Since you signed the Budget Act of 2007, the budget situation has deteriorated significantly, resulting in a projected \$3.3 billion deficit in the current year that would grow to \$14.5 billion deficit in 2008-09 if left unchecked.

In order to close the \$14.5 billion budget gap, your budget proposes a 10-percent across-the-board reduction to most General Fund departments and programs, including the legislative and judicial branches, the Department of Finance and your own office.

In addition, today you are declaring a fiscal emergency and calling a special session of the Legislature to enact the necessary statutory changes to reduce spending immediately. At your direction, I will commence the process of selling the remaining \$3.3 billion in Economic Recovery Bonds to restore the reserve and avoid a potential cash shortfall.

Despite the necessity of closing the budget gap, the state must still continue to invest in its infrastructure to maintain and improve its quality of life and continue its economic growth. To accomplish that, the budget proposes to augment the existing Strategic Growth Plan with additional bond measures to be placed on the 2008 and 2010 general election ballots.

In the fall of 2007, California suffered one of its worst disasters in recent history when approximately 23 fires burned in southern California during October and November. This event highlighted the need to improve our fire prevention and suppression system, as indicated in the Governor's Blue Ribbon Fire Commission Report. Your budget proposes to establish the Wildland Firefighting Initiative to provide an additional \$100 million to fund firefighting efforts at the Department of Forestry and Fire Protection, Office of Emergency Services, and the California National Guard. This will be funded through a 1.25-percent surcharge on fire insurance policies.

Under your leadership, we can work with the Legislature to establish a responsible budget system that does not return the state to spending beyond its means. Please join me in expressing my sincere thanks to the women and men of the California Department of Finance and their families. Without our staff's dedication and hard work and the sacrifices of their families, this budget would not have been possible.

Sincerely,

Michael C. Gonsel
Director of Finance



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2008-09 BUDGET SUMMARY

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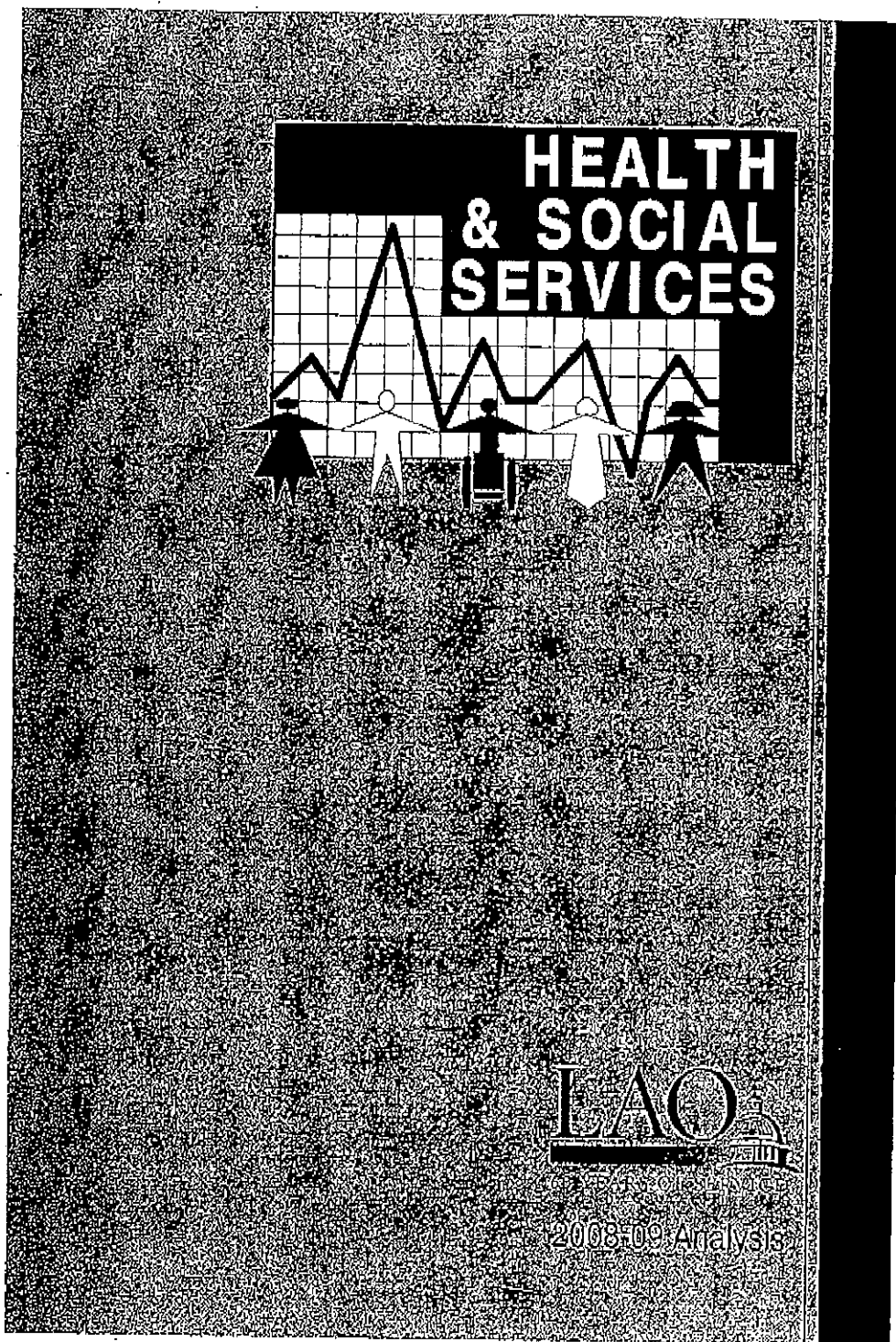
Glossary of Budget Terms

HEALTH AND HUMAN SERVICES

DEPARTMENT OF SOCIAL SERVICES

- \$73.7 million in 2007-08 and \$389.1 million in 2008-09 for the CalWORKs program. The savings would be achieved as part of a reform proposal intended to improve the state's work participation rate, as necessary to avoid federal sanctions. The proposal combines work incentives with sanctions for not meeting work requirements.
- \$83.7 million in 2008-09 in reduced Child Welfare Services allocations to counties. Counties will decide how to apportion the reduced allocation.
- \$6.8 million in 2007-08 and \$81.5 million in 2008-09 for foster care and adoptions programs. The proposal would reduce rates for Foster Family Agencies, foster family homes, group homes, Adoptions Assistance, and Kin-GAP recipients.
- \$23.3 million in 2007-08 and \$300.3 million in 2008-09 for the SSI/SSP program, achieved by suspending the June 2008 and June 2009 state COLAs. Recipients will still see increased benefit payments in both years due to provision of the federal COLAs.
- \$109.4 million in 2008-09 for the In-Home Supportive Services (IHSS) program by reducing the hours allocated to IHSS recipients for non-medical services.
- \$3.4 million in 2007-08 and \$44 million in 2008-09 by eliminating the Interim Statewide Automated Welfare System (ISAWS) Migration project. The current ISAWS system remains fully operational and eliminating the ISAWS Migration project prevents the need to make reductions and introduce significant risk in other critical projects.
- \$2.3 million in 2008-09 by reducing community care licensing random visits. Under this proposal, 14 percent of facilities would receive random inspections annually. No reduction will be made to follow-up inspection schedules for facilities that have previously been found to be out of compliance with licensing standards.

EXHIBIT B



MAJOR ISSUES

Health and Social Services



Alternative Approach to Increasing Work Participation in CalWORKS

- Failure to comply with federal work participation requirements could result in penalties in the hundreds of millions of dollars. The Governor proposes a graduated, full family sanction and a five-year time limit for children whose parents cannot or will not meet federal work participation requirements. These policies would address anticipated work participation shortfalls and result in savings of \$47.1 million. We present alternative approaches to increasing work participation that result in less budgetary savings and fewer children losing aid (see pages C-105 and C-113).



Child Welfare Services (CWS)

- The Governor proposes to reduce county allocations for CWS by \$84 million. We evaluate the potential impacts of this proposal on social worker caseloads and children and provide alternatives that more narrowly target reductions in CWS expenditures (see page C-118).
- The budget proposes to continue with the development of a new CWS computer system at a total cost of \$247 million. We recommend canceling the proposed new system and instead updating the existing CWS/CMS to provide required functionality, resulting in savings of \$184 million over the next seven years (see page C-124).



In-Home Supportive Services (IHSS) Wages

- Current law grants counties broad discretion to set wage levels and the conditions under which potential providers may list themselves as available to be employed by recipients. To

Legislative Analyst's Office

C-4 Health and Social Services

improve the IHSS labor force and the quality of services for recipients, we recommend enactment of legislation, prior to 2010-11, which ties state participation in wages to the level of training and tenure of IHSS providers (see page C-146).



Reforming Categorical Funding for Public Health Programs

The state's current process for administration and funding of over 30 public health programs at the local level is fragmented, inflexible, and fails to hold local health jurisdictions (LHJs) accountable for achieving results. We make several recommendations to improve the coordination and integration of these programs so that LHJs can focus on meeting the overall goal of improving the public's health (see page C-52).



Most Proposed Reductions to Provider Reimbursement Could Further Limit Access to Care

The Governor's budget proposes broad reductions to Medi-Cal health care provider rates and other reimbursements. We find that the majority of these proposed reductions could further limit program enrollees' ability to find providers who are willing to serve them. We recommend that the Legislature reject most of these proposed reductions. We further recommend that the state shift certain federal funds from hospital payments to other health care programs in order to reduce General Fund spending in those programs (see page C-34).



Pay-for-Performance Program Could Reduce Medi-Cal Costs and Improve Patient Care

We estimate the implementation of a pay-for-performance (P4P) program in Medi-Cal could eventually save the state tens of millions of dollars while improving patient care. We recommend the Department of Health Care Services (DHCS) take some steps towards implementing a statewide P4P program for all Medi-Cal providers by first implementing a P4P program for managed care plans and requiring the DHCS to report on how a P4P program could be implemented for fee-for-service providers (see page C-40).

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C-6 Health and Social Services

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2008-09 Analysis

FOSTER CARE

Foster Care is an entitlement program funded by federal, state, and local governments. Children are eligible for foster care grants if they are living with a foster care provider under a court order or a voluntary agreement between the child's parent and a county welfare department. The California Department of Social Services (DSS) provides oversight for the county-administered Foster Care system. County welfare departments make decisions regarding the health and safety of children and have the discretion to place children in one of the following: (1) a foster family home, (2) a foster family agency home, or (3) a group home. Seriously emotionally disturbed (SED) children are identified by the California Department of Education (CDE) and are typically placed in group homes to facilitate a greater degree of supervision and treatment.

The 2008-09 Governor's Budget provides a separate Foster Care General Fund appropriation (Item 5180-153-0001) for the two counties (Los Angeles and Alameda) participating in the Title IV-E Child Welfare Waiver Demonstration Capped Allocation Project. The remaining 56 counties are budgeted in Item 5180-101-0001. Including the waiver counties, the Governor's budget proposes expenditures of \$1.6 billion (\$425 million General Fund) for the Foster Care program in 2008-09. This represents an 8.6 percent decrease in General Fund expenditures from current-year estimated expenditures. Most of this decrease is attributable to the Governor's budget-balancing reduction proposal to reduce Foster Care, Adoption Assistance, and Kinship Guardianship Assistance Payment (Kin-GAP) payment rates by 10 percent.

BUDGET PROPOSES TO REDUCE FOSTER CARE RATES

The Governor's budget proposes to reduce most Foster Care, Adoption Assistance, and Kinship Guardianship Assistance Payment rates by 10 percent, effective June 1, 2008. This proposed reduction will save an estimated \$15.9 million in total funds (\$6.8 million General Fund) in the current year and \$190.3 million in total funds (\$81.5 million Gen-

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eral Fund) in 2008-09. We provide background information on existing rates and describe potential impacts of the proposed reductions on the supply of care providers. In addition, we present two alternatives to the Governor's proposal.

Background

Foster Care Placement Types. If there is reason to believe that an allegation of child abuse or neglect is true, county welfare departments can place a child in one of the following: (1) a foster family home (FFH), (2) a foster family agency (FFA) home, or (3) a group home (GH). The FFAs are nonprofit agencies licensed to recruit, certify, train, and support foster parents for hard-to-place children who would otherwise require GH care. The FFA rates are based on the FFH rate, plus a set increment for the special needs of the child and an increment for the support services offered by the FFA.

Children who are identified by the CDE as SED are usually placed in GHs with psychiatric peer group settings. However, some SED children are placed in FFHs and FFA homes.

Permanent Placement Types. The Kin-GAP program provides monthly cash grants for children who are permanently placed with a relative who assumes guardianship. The Adoption Assistance program (AAP) provides monthly cash grants to parents who adopt foster children. Both Kin-GAP and AAP grants are tied to the foster care payment the child would have received if the child remained in a foster care placement.

Existing Rates. Foster care basic grant rates for FFH, FFA, and GH (including SED children) were designed to fund the basic costs of raising a child. For some foster care payment recipients, as a supplement to the basic grant, a specialized care increment (SCI) may be paid for the additional care and supervision needs of a child with health and/or behavioral issues. This could include, for example, a wheelchair ramp for a disabled child. A clothing allowance may also be paid in addition to the basic grant.

For 2007-08, the Legislature approved a 5 percent increase to the basic and SCI rates for FFHs and Kin-GAP recipients, effective January 1, 2008. The 5 percent increase also applies to GHs, excluding the rates for SED children, and new AAP cases entering the program after January 1, 2008. The Legislature did not approve a rate increase for FFA recipients as the average FFA grant is currently significantly higher than the average FFH grant. In addition, there is some evidence that rather than becoming the lower-cost alternatives to GHs, FFA homes have instead become higher-cost alternatives to FFHs. The last foster care rate increase was provided in 2001-02.

Foster Care C-131

Governor's Proposal. The Governor's budget proposes to reduce the basic care, SCI, clothing allowance, and SED rates for children in FFHs and GHs by 10 percent. The proposal also reflects a corresponding 10 percent decrease for Kin-GAP and AAP recipients. In addition, the budget proposes to reduce FFA rates by 5 percent rather than 10 percent, as FFA recipients did not receive the recent 5 percent rate increase. The budget assumes enactment of legislation during the special session so that the rate reductions would go into effect June 1, 2008. This would save an estimated \$6.8 million General Fund in the current year and \$81.5 million General Fund in 2008-09. Figure 1 compares the average monthly foster care, Kin-GAP, and AAP payments prior to the 5 percent increase, after the rate increase, and with the Governor's proposed reduction.

Figure 1
Foster Care and Related Programs
Average Monthly Payments by Placement

	Prior Law (2007)	Current Law (January 2008)	Governor's Proposal (June 2008)	
			Amount	Percent Reduction
Foster Family Home	\$893	\$726	\$655	-9.9%
Foster Family Agency	1,850	1,850	1,758	-5.0
Group Home	5,058	5,311	4,780	-10.0
Seriously Emotionally Disturbed	5,614	5,614	5,053	-10.0
Adoption Assistance	785	824	706	-14.4
Kin-GAP	552	580	522	-10.0

^a Reflects 5 percent rate increase except for rates for foster family agency and seriously emotionally disturbed children which received no adjustment.

Potential Impacts of Rate Reductions

While the impact of the proposed reduction on existing and potential care providers is difficult to measure, one possible program impact is a decrease in the supply of care providers for both foster care and permanent placements. This change in the supply of care providers could ultimately lead to increased foster care expenditures depending on which types of placements experience the most significant supply effects. On the one hand, reduced foster care rates could result in a decrease in the number of FFH providers, which could then lead to increased placements in the

Legislative Analyst's Office

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more expensive FFA homes and GHs. On the other hand, a decrease in the number of GH providers could lead to increased placements in the less expensive FFHs and FFA homes.

In addition, reduced grants for Kin-GAP and AAP recipients could decrease the number of permanent placement providers, which could also lead to longer stays in foster care. This could raise Child Welfare Services costs as these cases remain open with social worker intervention. This could also increase Medi-Cal costs and utilization because recipients are eligible for these health services by virtue of their foster care status.

Alternatives to the Governor's Proposal

Below we present alternatives to the Governor's proposal which offer less budgetary savings, but reduce the financial impact on foster care, Kin-GAP, and AAP recipients.

Rescind Recent 5 Percent Rate Increase. One alternative to the Governor's proposal is to rescind the recent 5 percent rate increase for FFH, GH, Kin-GAP, and new AAP recipients in the budget year. This option would generate an estimated savings of \$17 million General Fund in 2008-09. By only rescinding the 5 percent rate increase, and not reducing rates by an additional 5 percent, foster care and permanent care providers would be no worse off financially than they were one year ago.

As part of this alternative, the Legislature should consider reducing the FFA rate by 5 percent in 2008-09, to keep the differential between the FFA rate and other foster care rates established by the Legislature. The Legislature did not provide the recent rate increase to FFAs in part because of a concern that FFA homes have become a higher-cost alternative to FFHs rather than a lower-cost alternative to GHs, which was the original intent of FFAs. The caseload trend for FFAs, which has been consistently increasing while other placement types have been decreasing or holding steady, supports this finding. Reducing FFA rates by 5 percent would generate an additional estimated savings of \$6.6 million General Fund in 2008-09.

Cap the SCI Rate in Certain Counties. Another alternative is reforming the current SCI rate structure. As Figure 2 shows, the SCIs range from zero in three small counties to over \$2,000 per month in other counties. The SCIs reflect historical rate structures which vary by county. One reform option for the SCI rate structure is to cap the maximum rate at \$1,000 beginning in 2008-09. This option could save an estimated \$1 million General Fund in the budget year. This cap would impact seven counties representing approximately 20 percent of the caseload. We note that currently 51 counties are able to serve children within this proposed cap.

Foster Care C-193

Figure 2

Foster Care**Distribution of Maximum Specialized Care Increments**

Maximum Increment	Number of Counties	Percentage of Cases
\$1,001 to \$2,097	7	19.5%
\$500 to \$1,000	28	74.3
\$1 to \$499	20	6.1
None	3	0.1

Conclusion

The Governor's proposal to reduce most foster care, Kin-GAP, and AAP rates by 10 percent results in General Fund savings of \$6.8 million in the current year and \$81.5 million in 2008-09. In deciding whether to adopt this proposal, the Legislature should weigh the budgetary savings against the potential for a decrease in foster and permanent care providers, which could lead to increased foster care expenditures as children may move into more expensive placements or remain in care for longer periods. Although the LAO alternatives to reduce foster care expenditures save considerably less than the Governor's proposal, these options would lessen the financial impact on foster care, Kin-GAP, and AAP recipients, and reduce the chance for placement shifts.

Legislative Analyst's Office

EXHIBIT C

California Department of Social Services
Administration Division

Estimates and Research Services Branch
Financial Management & Contract Branch
November 2007 Subvention

Ten Percent Reduction to the Basic Care, Specialized Care, and Clothing Allowance Rates for the Foster Care, Kinship Guardian Assistance Payment, Seriously Emotionally Disturbed Children, and Adoption Assistance Programs

DESCRIPTIONS:

This premise reflects the savings from reducing the Basic Care, Specialized Care, and Clothing Allowance Rates for Foster Care, Seriously Emotionally Disturbed Children, Kinship Guardian Assistance Payment, and Adoption Assistance Programs by 10 percent. This premise is necessitated by the budget balancing reductions.

Foster care rates for Foster Family Home (FFH), Foster Family Agency (FFA), Group Home (GH) and Kinship Guardian Assistance Payment (Kin-GAP) recipients support the care and supervision needs of children placed in out-of-home care by child welfare and probation agencies.

Kin-GAP recipients are children placed with relatives receiving a rate equal to the basic foster care rate plus specialized care (if eligible), to assist the relative in providing permanency and preventing the children from re-entering or staying in foster care.

The Adoption Assistance Program (AAP) provides benefits to adoptive parents to enable them to meet the care and supervision needs of children who are AAP-eligible.

The Specialized Care Rate (SCR) paid to a provider over and above the family home basic rate provides for the additional care and supervision needs of the child due to the severity of the child's health and/or behavior problems.

Emergency Assistance (EA) funds are available for use by the counties to assist in resolving the emergency of a "needy child" and to provide assistance on behalf of such a child or any other member of the household in which he/she is residing.

The California Department of Social Services (CDSS) currently funds maintenance payments from General Funds (GF) for approximately 1,664 seriously emotionally disturbed (SED) children. Most SED children are placed by the Department of Education in group home psychiatric peer group settings at rate classification levels 12 through 14. However, some SED children are placed in foster family homes and foster family agencies.

Under current law, FFHs, and Kin-GAP recipients will receive a five percent increase to the basic rate, specialized care rate, and clothing allowance effective January 1, 2008. A five percent increase also will apply to new AAP cases entered into after January 1, 2008. GH maintenance payments also will receive a five percent increase on that date. FFAs will not receive a five percent rate increase on January 1, 2008 under current law.

IMPLEMENTATION DATE:

These reductions assume a March 1, 2008, enactment of Legislation with a June 1, 2008, implementation date.

California Department of Social Services
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November 2007 Subvention

Ten Percent Reduction to the Basic Care, Specialized Care, and Clothing Allowance Rates for the Foster Care, Kinship Guardian Assistance Payment, Seriously Emotionally Disturbed Children, and Adoption Assistance Programs

KEY DATA/ASSUMPTIONS:

- The program reductions reflect savings based on the estimates for all 58 counties.
- Senate Bill 84 (Chapter 177, Statutes of 2007, 8/24/07), provides a five percent increase for FFHs, GHs, AAP, EA, Kin-GAP, and Specialized Care Increments (SCIs), commencing January 1, 2008.
- A 10 percent reduction is assumed for FFH, GH, Kin-GAP, AAP, and SED, including Clothing Allowance and Specialized Care Increment.
- SB 84 delinks FFAs from the 5 percent increase authorized for FFHs linked to the AAP. As a result, rates paid to FFA will receive a five percent reduction rather than the ten percent reduction.
- For the Title IV-E Waiver Counties, there will be no reduction in the federal or county foster care assistance shares due to the funding cap established within the waiver agreements.

METHODOLOGY:

The projected savings are the result of the reductions applied to the caseloads and corresponding average grants for the applicable programs.

FUNDING:

Foster Care

Federal funding is provided for by Title IV-E of the Social Security Act, with the amount of Federal Financial Participation (FFP) based on the FMAP for those cases meeting eligibility criteria. Funding for the nonfederal program and the nonfederal share of federal program costs is 40 General Fund (GF) and 60 percent county.

Adoption Assistance Program

Federal Funding is provided by Title IV-E of the Social Security Act for those cases meeting eligibility criteria, with the amount of FFP based on the FMAP rate. Federal case costs ineligible for FFP and the costs of the nonfederal program are shared 75 percent GF and 25 percent county.

California Department of Social Services
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Ten Percent Reduction to the Basic Care, Specialized Care, and Clothing Allowance Rates for the Foster Care, Kinship Guardian Assistance Payment, Seriously Emotionally Disturbed Children, and Adoption Assistance Programs

FUNDING (continued):

Kin-GAP Program

The Kin-GAP basic rate was paid utilizing the applicable regional per-child CalWORKS grant from federal funds received as part of the Temporary Assistance for Needy Families (TANF) block grant. This portion will now be funded with General Fund. The balance of the Kin-GAP basic and SCL rate is paid with 50 percent GF and 50 percent county. For State-Only Kin-GAP cases, grant and administrative costs are shared 50 percent GF and 50 percent county.

CHANGE FROM THE APPROPRIATION:

This is a new premise. One month of savings is reflected in current year estimates.

REASON FOR YEAR-TO-YEAR CHANGE:

The budget year reflects a full year of savings.

EXPENDITURES:

(in 000's)

Total

	2007-08	2008-09
Total	-\$15,857	-\$190,306
Federal	-4,109	-49,309
State	-6,788	-81,471
County	-4,960	-59,526
Reimbursements	0	0

Item 101 - Kin-GAP

	2007-08	2008-09
Total	-\$1,383	-\$16,600
Federal	0	0
State	-683	-8,200
County	-700	-8,400
Reimbursements	0	0

California Department of Social Services
Administration Division

Estimates and Research Services Branch
Financial Management & Contract Branch
November 2007 Subvention

Ten Percent Reduction to the Basic Care, Specialized Care, and Clothing Allowance Rates for the Foster Care, Kinship Guardian Assistance Payment, Seriously Emotionally Disturbed Children, and Adoption Assistance Programs

EXPENDITURES (continued):
(In 000's)

Item 101 - Foster Care/EA/SED

	2007-08	2008-09
Total	-\$7,765	-\$93,191
Federal	-1,772	-21,267
State	-2,545	-30,545
County	-3,448	-41,379
Reimbursements	0	0

Item 101 - AAP

	2007-08	2008-09
Total	-\$5,586	-\$67,038
Federal	-2,337	-28,042
State	-2,437	-26,249
County	-812	-9,747
Reimbursements	0	0

**Item 153 - Title IV-E Waiver
Foster Care 101**

	2007-08	2008-09
Total	-\$1,123	-\$13,477
Federal	0	0
State	-1,123	-13,477
County	0	0
Reimbursements	0	0

1 UNITED STATES DISTRICT COURT
2 NORTHERN DISTRICT OF CALIFORNIA
3 BEFORE THE HONORABLE JUDGE MARILYN HALL PATEL
4 CALIFORNIA ALLIANCE OF CHILD AND)
FAMILY SERVICES,)
5)
Plaintiff,)
6)
VS.) NO. CV 06-04095 MHP
7)
CLIFF ALLENBY, et al.)
8)San Francisco, CA
Defendants.)Monday, 9-24-07
9)2:42 p.m.

10
11 TRANSCRIPT OF PROCEEDINGS
12 APPEARANCES:
13 For Plaintiffs: BINGHAM, McCUTCHEN, LLP
1900 University Avenue
14 East Palo Alto, CA 94303
650-849-4400
15 BY: WILLIAM FEDERICK ABRAMS, ESQ.
ROXANNE TORABIAN-BASHARDOUST, ESQ.
16 MICHAEL MORTENSON ESQ.
17
18

For Defendants: California Department of Justice
19 455 Golden Gate Avenue
Ste. 11000
20 San Francisco, CA 94102
BY: GEORGE DAY PRINCE, ESQ.

21
22
23 Reported By: Margaret "Margo" Gurule, CSR 12976,
Pro Tem Reporter - US District Court
24
25

1 Monday, September 24, 2007

2 2:42 p.m.

3 THE CLERK: Calling Civil 06-4095, California

4 Alliance of Child and Family Services vs. Cliff Allenby, et al.

5 THE COURT: May I have your appearances?

6 MR. ABRAMS: Good afternoon, Your Honor. William

7 Abrams, Roxanne Torabian-Bashardoust, and Michael Mortenson for

8 the plaintiff, from Bingham, McCutchen.

9 THE COURT: Good afternoon.

10 MR. PRINCE: Good afternoon, Your Honor.

11 George Prince for the State defendants.

12 THE COURT: Good afternoon.

13 You know, Mr. Abrams, I'm puzzled, because I have
14 read through your opening brief, and it was dajevu all over
15 again. You know what I mean?

16 I went through the first part of it, and I said, "We
17 decided this already. We decided this already."

18 And it wasn't until maybe about -- I don't know.
19 Maybe I'm not accurate on the percentage, but in fraction --
20 when I got about two-thirds of the way through is finally when
21 I got to what the meat of, I think, this motion is about. And
22 then when we get there, you have to admit, there is not a lot
23 of case law.

24 MR. ABRAMS: That's right, Your Honor. I agree.

25 THE COURT: Is there anything in any case law

1 anywhere that gets close to supporting the notion that, for
2 example, DHHS would need to approve the language of a state
3 statute, for example? Where the state statute does not include
4 the cost of providing any type of language, for example?

5 Is there any authority for the proposition that
6 DHS -- this is really DHS's job to require that the state
7 include in their statute, implementing statute, that kind of
8 language so it's compatible with or commensurate with the
9 federal statute?

10 MR. ABRAMS: I understand, Your Honor, and I have
11 several responses. First of all, there is no case authority
12 that says that because the federal agency, quote, accepts,
13 close quote, a plan, that it has made a determination of
14 compliance.

15 In other contexts, for example, in Medicaid, with the
16 Orthopaedic Hospital Case and perhaps in the Blanco vs.
17 Anderson case, with regard to county welfare agencies staying
18 open during certain specified times for availability for food
19 stamps, just because a federal agency may be administering it
20 and they accept the way the state is doing it is not a formal
21 blessing that the state's approach is correct.

22 And in fact, our argument in this case is that an RCL
23 system, as a concept, is not, in and of itself, noncompliant;
24 it's the application of this RCL system. So we don't know what
25 DHHS has done, nor is there any authority that they are

1 providing any kind of precedential approval.

2 And in fact, they're not an Article III Court.

3 They're an administrative agency that is giving money to the
4 state under Title IV-E that is then to be passed on to the
5 foster care group homes. The problem with this case centers on
6 the way that this RCL system is being applied and implemented.

7 Again, our quarrel is not with a concept; it's with
8 the application. And the key number in this case is 32. It's
9 32 percent. And that is what the parties have agreed is the
10 difference between the cost of Necessities Index with regard to
11 what is being paid to the counties and the group homes, on the
12 one hand, and the amount of the increases during the last 17
13 years.

14 THE COURT: Is there anything in the federal statute
15 that requires that there be -- essentially that it be more
16 compatible or comparable than this great percentage
17 differential?

18 MR. ABRAMS: The federal statute is clear. It says
19 that the state shall cover the costs. It doesn't say it shall
20 substantially cover the costs or that it should get reasonably
21 close or it should get near. It says it shall cover the costs.

22 Now, we are not arguing that that necessarily
23 requires dollar-for-dollar reimbursement. It talks about
24 payment. And we would assert that there are a number of plans
25 that could be compliant to cover the costs.

1 This plan in application doesn't work because
2 32 percent difference between what the costs are and what they
3 have been paid isn't close. And even if there was a
4 reasonability factor, it's not reasonable. Even if there was a
5 substantiality factor, it's not substantial. 32 percent, in
6 anybody's book, can't come close.

7 So the relief that we're looking for is for the Court
8 to, one, determine that that doesn't work. Two, issue an
9 injunction, an interim injunction, that the CNI, the California
10 Necessities Index, which is a proxy for the amount of costs
11 that shall be covered.

12 And Section 475(4)(A) specifies those costs. It's
13 very direct. It talks about food. It talks about shelter. It
14 talks about insurance. It talks about administrative costs.
15 It talks about educational costs, that those be covered, and
16 then that the Court have the parties back, set a status
17 conference, to discuss continuing compliance and
18 implementation. So we are talking about that 32 percent.

19 THE COURT: Is there any kind of, you know,
20 requirement, that -- well, let me strike that.

21 Let me strike that.

22 This business about subject to the availability of
23 funds, that's in the California statute, right?

24 MR. ABRAMS: That's in the California statute, but --

25 THE COURT: And is there any reason why the Court

1 should overlook that or inquire into the availability of funds?

2 MR. ABRAMS: The Court -- that provision is not
3 enforceable because, under Title IV-E, under 475(4)(A), there
4 is no exclusion or exception or escape hatch for subject to
5 availability of funds. The state statute is fine until it gets
6 to that point.

7 But under case law, for example, under the Missouri
8 Child Care case, the Court there found that the budget
9 availability was an improper basis for the state not to provide
10 funding. It's the same thing here.

11 The state does not have an option to say, "If we
12 don't have the money, we're not going to pay it." Because it
13 could always do that. That's why it's a mandatory provision
14 under the Child Welfare Act.

15 THE COURT: And is there any authority to -- you
16 know, do we have any case authority -- I mean, this is pretty
17 much a case of first impression, in that respect, correct?

18 MR. ABRAMS: It is, Your Honor, with the exception of
19 the Missouri case, which is on point. This is a case of first
20 impression, certainly in this circuit.

21 THE COURT: Is that it?

22 MR. ABRAMS: Yes.

23 MR. PRINCE: Thank you, Your Honor.

24 THE COURT: What about all of those questions?

25 MR. PRINCE: Well, I have a couple of points. Number

1 one, Mr. Abrams referred to the fact that the federal
2 government, Director of Health and Human Services -- excuse
3 me -- Secretary had -- essentially didn't have a role here.

4 For more than 17 years, that secretary or his or her
5 predecessors has, in fact, endorsed by tasset approval of the
6 California system. So as we --

7 THE COURT: Well, is there any kind of like an
8 official endorsement? You say "by tasset." That means they
9 have sat by and not done anything, essentially, right?

10 MR. PRINCE: Well, they have -- as we pointed out in
11 the moving papers, the Department and Health and Human
12 Services has worked with the California Department of Health
13 Services -- excuse me -- Department of Social Services in very
14 close proximity, if you will, and has worked through this part,
15 has never found a problem with any of the budget provisions of
16 the California statute, and in fact, could have said, at any
17 point in those 17 years, "We reject this. It is not
18 sufficient."

19 The California plan is something on the order of 40
20 or 50 pages. It's very detailed. It gets updated and reviewed
21 as changes in the federal statute occur. And there has never
22 been a peep out of the federal government that there is
23 anything wrong with this.

24 And the federal government could say it in very
25 specific ways. The secretary could disapprove the program.

1 The statute could say -- other than just cover the costs, it
2 could say cover the actual costs, which is the argument
3 Mr. Abrams was trying to make, which, of course, would be an
4 invitation to, you know, what are the actual costs?

5 I think the plaintiff's agencies and group home
6 services will come up with all sorts of actual costs that went
7 beyond what the statute says.

8 I do want to point out, as well, that the Missouri
9 case that Mr. Abrams talked about does not say, in fact, what
10 he represents it to say. The only issue in that case was
11 whether or not that state's system was based on the statutory
12 factors set forth in 42 U.S.C. Section 675(4)(A). And the
13 Court said, you don't have to have a particular methodology, a
14 certain methodology; you just have something -- need to have
15 something that considers those required factors.

16 The California statute was put together with the
17 assistance of group home providers back in the 1990s. It was
18 an effort in concert, and there -- it can't be denied that it
19 was -- it took into effect all those factors of costs.

20 The statute very generously has, over the years,
21 added increases when possible. But it is a fact the budgetary
22 considerations, at some time -- and as that Missouri Court
23 mentioned -- and it was talking about Medicare cases because
24 there aren't any cases that are on point in this area. But it
25 said budget considerations could be taken into account in

1 setting a reimbursement methodology.

2 THE COURT: I was going to ask Mr. Abrams about that,
3 and I'll let him respond after I have heard from you.

4 But you're correct. I mean, essentially -- and I'll
5 quote it, "The State may take into consideration budget
6 considerations when setting its reimbursement methodology."

7 MR. PRINCE: Yes. And that Court never got to the
8 point of saying, you know, the system you have is inadequate
9 other than you have to go back and set it based on these
10 factors. California has been doing that for 17, going on 18
11 years, without any protests from the federal government. And I
12 think that speaks volumes.

13 THE COURT: Now, with respect to this language in the
14 statute, "Subject to the availability of funds," do other state
15 statutes have similar provisions?

16 MR. PRINCE: I do not know, Your Honor. I can't
17 answer that question. But I think other states -- well, I
18 think the power of the federal court to essentially sit as a
19 legislative body in California and mandate increased taxes or
20 the direction of state funds is something that is beyond the
21 power of the Court, certainly in this context.

22 THE COURT: Well, there are times, I guess, when it
23 has been done, right?

24 MR. PRINCE: And that may be. But this is not such a
25 time, Your Honor.

1 THE COURT: Well, let me ask Mr. Abrams. I mean,
2 what about that? I mean, it says, "The state may take into
3 consideration budget considerations when setting its
4 reimbursement methodology," right?

5 MR. ABRAMS: But that's only part of it, and it
6 relates to how it's going to cover the costs. The federal
7 statute is mandatory and it's clear: "Shall cover the costs of
8 food, shelter and alike."

9 And so, in the Missouri case, the Court is saying
10 that the state can certainly consider how it's going to pay for
11 it, what its own budgetary considerations are. But that's a
12 budgeting issue internally. It still has to pay for it.

13 THE COURT: Well, budgets are budgets, right? I
14 mean, that's just money, right?

15 MR. PRINCE: It's got to be paid. That's the state's
16 obligation. However --

17 THE COURT: There are lots of things that have to be
18 paid. Whose pocket is it taken out, then? Somebody, some
19 other social service is going to suffer if you take it out of
20 wherever you're going to take it out of. You've got to take it
21 out of the budget, right?

22 MR. PRINCE: Well, it doesn't have to be a social
23 service. It could be a lot of other things, or they could
24 raise money. It could be a lot of different things. The point
25 is, is that the federal statute is clear.

1 And it doesn't talk about anything except "it shall
2 cover the costs." So it doesn't say "it shall cover some of
3 the costs." It doesn't say "it shall cover 60 percent of the
4 costs." It says "it shall cover the costs."

5 In the Missouri case, the problem was that they
6 didn't adequately consider various factors. They didn't
7 consider elements of what those costs are.

8 Here, we're a step further along, which may make this
9 even more dyer. And that is that there is a mechanism called
10 CNI which considers these costs. But the state is saying, "We
11 are not going to pay attention to that CNI -- well, maybe part
12 of the time. But we're going to leave you over 30 percent shy
13 of that." And that's the problem there.

14 There is no dispute. 17 years ago, a lot of parties
15 worked extremely hard to come up with a structure. And if we
16 were still dealing in 1990 dollars or really 1985 dollars that
17 were subsequently increased for the '90-'91 fiscal year, we
18 probably wouldn't be here today, if all things were equal. But
19 they're not. Things cost more now than they did in 1990, and
20 the parties agree to that.

21 And so what's before Your Honor is whether or not
22 this 32 percent difference that the parties agree on is
23 something that the state has to pay. And again --

24 THE COURT: Well, you're suggesting that, after all
25 this time -- and the statute was adopted quite sometime ago --

1 that somehow the Court should essentially strike the
2 subject-to-the-availability-of-the-funds language?

3 MR. ABRAMS: Well, that was enacted in the year 2000,
4 I believe 2000, possibly 2001. But that is subsequent
5 legislation. And the subject-to-availability escape clause is
6 not permissible under the federal statute.

7 THE COURT: Well, how come somebody didn't challenge
8 that back in the year 2000 when it was adopted?

9 MR. ABRAMS: Well, we're here in court now because
10 efforts to reach resolution with our group and others have not
11 been truthful. And so that's one of the reasons we're here.

12 These group homes are operating on a bare margin.
13 Some have gone out of business. They are suffering, and the
14 children are suffering; 5,000 children in foster group homes.

15 And they need this money. They relied upon this
16 money. The state is compelled by the federal government to pay
17 the money.

18 And as I've said, Your Honor, cover --

19 THE COURT: What percentage does the federal
20 government pay?

21 MR. ABRAMS: Out of this amount?

22 THE COURT: Yes: I'm looking --

23 MR. ABRAMS: I've overlooked introducing my clients,
24 Your Honor, Carol Schroeder and Doug Johnson, and they may have
25 that exact number.

1 MR. JOHNSON: Overall, it's about 35 percent.

2 THE COURT: So they only pay a third of --
3 approximately a third of the total amount, is that correct, and
4 the rest of it comes out of the state budget?

5 MR. JOHNSON: Well, for a federally-eligible child,
6 they get 50 percent, but not all children in California are
7 federally eligible.

8 THE COURT: I see. Okay.

9 MR. ABRAMS: So it's a complex mixture, and it varies
10 from county to county. But that's the buy-in. If the State of
11 California wants to participate in this statutory scheme,
12 that's the deal that they struck. They struck the deal, but
13 they're not complying with the deal.

14 THE COURT: Okay. Anything further that you wanted
15 to add?

16 MR. PRINCE: Yes. Thank you, Your Honor, a few
17 things. Number one, the fact that there are group homes that
18 may be going out of business, there is no evidence that that's
19 before the Court right now. We don't know the basis of that.
20 There are other reasons aside from increased costs here.

21 I point out that the CNI that Mr. Abrams keeps
22 harping on is an index that was inserted in the California
23 statute, not in the federal statute. And it is a means by
24 which California can track costs in general. But they are not
25 congruent with the actual costs in the Federal Statute

1 675(4)(A) which talks about things that are very specific to a
2 child's education, shelter and other necessities. It is not
3 congruent and it is something California put in to, in fact,
4 try to help keep track of this.

5 California does have budget considerations that must
6 be taken into account here. And there is nothing in the
7 federal statute that says, You must tie your payment schedule
8 to some index. That was something California did. It's not in
9 the federal statute.

10 The federal statute does not have any such index nor
11 any such directive anywhere in it, nor in the implementing regs
12 that we could find that supports the position that Mr. Abrams
13 is taking that the state has to be forced to increase payments.

14 THE COURT: But having toned it to that index, it's
15 gone pretty far afield.

16 MR. PRINCE: Subject to the availability of funds.
17 As Your Honor pointed out, there are other programs that would
18 suffer from this.

19 There is a finite amount of state money out there.
20 There is an increase coming this coming January of 5 percent
21 for these group homes. But there simply isn't the amount of
22 money so that it marches in step with the CNI. And that's an
23 unfortunate fact.

24 But the State of California recognized that when it
25 put in the "subject to the availability of funds" wording in

1 that statute.

2 THE COURT: Okay. Is there anything further prior to
3 the matter being submitted?

4 MR. ABRAMS: Your Honor, just a word on the CNI:

5 We agree that it may not be a perfect or congruent
6 measurement. But it is an attempt to try to get parity for
7 what the costs are. It was part of what was negotiated.

8 The Alliance probably thinks that there may be some
9 other yardsticks to make the measurement. Buts we're willing
10 to stipulate that this was one that can be used. It was in the
11 legislation. And that, at that time, was a reasonable effort
12 to keep pace with what these costs are.

13 It's not required in the federal statute, per se.

14 But what is required is a structure that allows the costs to be
15 covered. And if that would just be something that would be
16 complied with, if they could keep pace with it, we have
17 compliance.

18 With regard to where does the money come from, that's
19 a state issue. We don't know that it would come from some
20 other program.

21 The state has to make decisions. Maybe they don't
22 build a new stadium. Maybe they don't do other things or maybe
23 they raise taxes, or maybe they reallocate other funds. There
24 is no evidence.

25 But the federal government, as part of this -- part

1 of the Child Welfare Act, requires them to comply, and that's
2 really the issue before this Court. It is a first impression,
3 Your Honor.

4 THE COURT: Well, the federal government hasn't
5 really stepped up to the plate more than 30 percent, have they,
6 25 percent? So, you know, these federal -- you know -- I mean,
7 poorly-funded, maybe one could say, or partially-funded
8 mandates do create problems for the state.

9 MR. ABRAMS: But the state bought into it. They
10 didn't have to.

11 THE COURT: I don't know where that goes. The
12 question is: Should federal courts be reallocating funds. And
13 you know, is that, in part, what we may be doing by doing this.
14 I mean, certainly there is very little precedent, if any.

15 MR. ABRAMS: Your Honor, reallocating funds, courts
16 do that all the time when they require, for example --

17 THE COURT: Well, I think federal courts have to be
18 cognizant of some degree of impact and responsibility in that
19 respect.

20 MR. ABRAMS: I understand --

21 THE COURT: I mean, we're not acting in a vacuum
22 here.

23 MR. ABRAMS: -- I understand.

24 MR. PRINCE: Your Honor, if I might add, to help get
25 rid of the vacuum, there is a standard here that the Court can

1 use. Most of these cases talk about the arbitrary capricious
2 standard when adjudicating this sort of a matter and whether or
3 not the state acted without any rational basis in what it has
4 done here.

5 And California obviously, from the history of this
6 case, worked very carefully with the providers to set up a
7 specific system. And even though these providers may not be
8 happy now with the rate at which they are reimbursed by the
9 state for their costs --

10 THE COURT: Well, probably the system anticipated
11 what they set up, the structure of the set up, anticipated more
12 return -- you know, more of a higher percentage return on the
13 cost of the Necessities Index, right?

14 MR. ABRAMS: Well --

15 MR. PRINCE: Well, I don't know what they
16 anticipated. The statute says what it says. There have
17 been -- I mean, the state doesn't deny that costs have
18 increased in certain ways. But the statute does -- the federal
19 statute doesn't have any specific reference to, "Okay, if
20 you've got additional costs here and there, you've got to roll
21 those in."

22 THE COURT: Well, does the state do any kind of an
23 audit or inventory, whatever you want to call it, on some
24 regular basis of what the costs of these -- the actual costs
25 are that are incurred by these homes?

1 MR. PRINCE: I think they do track that. I don't
2 know on the periodic basis of that. I do know that they are
3 empowered and do their best with very restrictive resources to
4 audit the costs that are actually spent by some of the group
5 homes. And they reviewed those and they sometimes take those
6 costs back because they find the homes have been making
7 payments and things that are not -- that don't fall under the
8 program.

9 THE COURT: And I guess your client was whispering
10 something in your ear. Is that correct, that there is a
11 regular kind of -- not so much of an audit to see whether
12 you're actually, you know, doing what you're supposed to be
13 doing and looking at your financial statements and records,
14 books and records and so forth.

15 But do they do sort of an inventory of what it costs,
16 you know, whether it be on an annual or a bi-annual basis or
17 something, what it costs as costs of everything increase?

18 MR. ABRAMS: There are reviews, Your Honor. And what
19 I asked my client was, if that's going to be the marker, then,
20 instead of CNI that is a periodic check to find out what it
21 costs and to bring it into compliance, we would probably be
22 satisfied with that. I mean, you know, we've talked about a
23 standard, and "arbitrary and capricious" was used.

24 The cases, Orthopaedic Hospital, Blanco vs. Anderson,
25 these are cases with Medicare/Medicaid, food stamps, they talk

1 about reasonableness and substantial compliance. And I would
2 argue: A 32 percent difference is neither reasonable, nor is
3 it substantial.

4 But if we were to go to arbitrary and capricious, I
5 think we're there. I think a third difference in what it
6 reasonably costs, on the one hand, and what's getting paid in
7 compliance with the federal legislation, is arbitrary and
8 capricious. That's not what the federal government requires.

9 THE COURT: Well, let me ask Mr. Prince the question
10 a little bit differently.

11 At what point, if any, does the disparity become so
12 great that it really does constitute an arbitrary, you know,
13 decision or abuse of discretion by the state in continuing to
14 fund at a reduced -- at a level significantly below the cost of
15 the Necessities Index?

16 MR. PRINCE: Actually, I don't think it ever can
17 reach that point, because the statute, the way it was set up,
18 took the factors into account at the outset. And they do
19 review it. And when funds are available, they fight to get
20 them for the homes.

21 THE COURT: What if they -- say there are no funds
22 available now, and we're going to have to reduce you to -- you
23 know, to essentially 25 percent, or 10 percent. Let's try that
24 one, 10 percent.

25 MR. PRINCE: But that's not happening. In fact, when

1 funds --

2 THE COURT: But what if? What if? Is that desperate
3 enough?

4 MR. PRINCE: Your Honor, when funds have been
5 lacking, they have, in fact, done -- taken other steps to
6 assist the homes, such as reducing the point system so a home
7 that might otherwise just be at the RCL 3 would be able to be
8 funded at the RCL 4.

9 Part of the Blanco case that the plaintiffs cite in
10 their papers is that lack of resources is no excuse. That's
11 half of a quote out of that case.

12 The judge they quote at the very end of that case --
13 and here's the case. I'll give you the page cite. It's 339 F
14 3d 969, 973. The Court says, "Lack of resources and bad
15 faith," on the part of the state regulators.

16 And I dare say there is no bad faith here that has
17 been demonstrated or could be demonstrated. These people do
18 everything they can to help these homes out. And it is
19 essentially insulting them by saying that they have either
20 ignored them or cut their funding. They haven't cut it. They
21 are doing their best to increase the funding, given the
22 resources that they've got.

23 THE COURT: Well, I don't think that we're looking at
24 intent here. That's not the question but whether there is
25 statutory compliance.

1 So if there is nothing further, then the matter will
2 be submitted.

3 MR. ABRAMS: Submitted, Your Honor.

4 THE COURT: Thank you.

5 MR. PRINCE: Thank you, Your Honor.

6 (Hearing concluded at 3:10 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, MARGARET "MARGO" GURULE, Pro Tem Court Reporter
3 for the United States Court, Northern District of California,
4 hereby certify that the foregoing proceedings in Case No.
5 C 06-04095, California Alliance of Child and Family Services v.
6 Allenby, et al., were reported by me, a Certified Shorthand
7 Reporter, and were thereafter transcribed under my direction
8 into typewriting; that the foregoing is a true record of said
9 proceedings as bound by me at the time of filing.

10 The validity of the reporter's certification of said
11 transcript may be void upon disassembly and/or removal from the
12 court file.

13

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16

MARGARET "MARGO" GURULE,

CSR No. 12976

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June 30, 2008

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CLIFF ALLENBY and MARY AULT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CALIFORNIA ALLIANCE OF CHILD AND
FAMILY SERVICES,

Plaintiff,
v.

CLIFF ALLENBY, Interim Director of the
California Department of Social Services, in his
official capacity; MARY AULT, Deputy Director
of the Children and Family Services Division of
the California Department of Social Services, in
her official capacity,

Defendants.

No. C 06-4095 MHP

**AMENDED JOINT STATEMENT OF
UNDISPUTED FACTS REGARDING
PARTIES' CROSS MOTIONS FOR
SUMMARY JUDGMENT**

Hearing: September 24, 2007
Time: 2:00 p.m.
Place: Ctrm. 15, 18th floor
Judge: The Hon. Marilyn H. Patel

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AMENDED JOINT STATEMENT OF UNDISPUTED FACTS REGARDING CROSS-MOTIONS FOR
SUMMARY JUDGMENT; C 06-4095 MHP

In accordance with Local Rule 56-2 of the Local Rules for the United States District Court of the Northern District of California and paragraph 7 of the Standing Order of this Court, Plaintiff California Alliance of Child and Family Services (the "Alliance") and Defendants Cliff Allenby and Mary Ault submit this joint statement of undisputed facts in connection with the parties' cross motions for summary judgment set for hearing on September 24, 2007.

The following is a list of material facts undisputed by the parties:

UNDISPUTED MATERIAL FACT	SUPPORTING EVIDENCE
1. Congress enacted the Adoption Assistance and Child Welfare Act ("Child Welfare Act") in 1980. The Child Welfare Act is codified at 42 U.S.C. §§ 670 - 679b.	42 U.S.C. §§ 670 - 679b.
2. The Child Welfare Act establishes a cooperative federal-state program that assists states in meeting the costs of providing foster care to children. Pursuant to this cooperative program, the federal government and the state governments share the cost of providing funds for licensed third parties (e.g., group homes) that care for these children.	42 U.S.C. §§ 670-679b.
3. The Child Welfare Act and related federal regulations require states receiving federal aid to provide foster care for a child when a court has determined that it is necessary under applicable law that the child be removed from his or her home and placed in out-of-home care.	See, e.g., 42 U.S.C. §§ 670-679b.
4. To become eligible for federal funding, a state must submit a plan for financial assistance to the Secretary of the U.S. Department of Health and Human Services ("DHHS") for approval. As a prerequisite for DHHS approval, the submitting state must agree, among other conditions, to administer its foster care program pursuant to the Child Welfare Act, related regulations, and policies promulgated by the Secretary of DHHS.	42 U.S.C. § 671(a), (b); 45 C.F.R. §§ 233.110, 1355.21, 1356.20, 1356.21.

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2	5. Pursuant to the Child Welfare Act, a state must designate a state agency to administer and/or supervise the administration of the approved state plan.	42 U.S.C. § 671(a)(2).
3		
4		
5	6. Pursuant to the Child Welfare Act, a state must amend its approved plan by appropriate submission to the Secretary of DHHS whenever, among other instances, necessary to comply with alterations to the Child Welfare Act and/or federal regulations or policies.	45 C.F.R. § 1356.20(e)(1).
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9	7. The Child Welfare Act requires that states participating in the cooperative program provide "foster care maintenance payments" on behalf of eligible children to child-care institutions, including group homes.	42 U.S.C. §§ 671(a)(2), 672(b)(2); 45 C.F.R. § 1356.21(a).
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13	8. "The term 'foster maintenance payments' means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence."	42 U.S.C. § 675(4)(A).
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20	9. For all periods relevant to this matter, the California Department of Social Services ("DSS") has been the state agency responsible for submitting the California state plan to the Secretary of DHHS for approval and, subsequent to receiving that approval, received federal funding that was intended to cover a portion of the foster care maintenance payment made to group homes on behalf of eligible children.	Cal. Wel. & Inst. Code §§ 11229, 11460(a), 11462(a).
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27	10. DSS uses a Rate Classification Level ("RCL") system to establish payment rates for foster care group home programs.	See Cal. Wel. & Inst. Code § 11462.
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2	11. A group home program is assigned to one of	See Cal. Wel. & Inst. Code § 11462(f);
3	fourteen levels (i.e., RCLs) based on the	parties stipulate to this fact.
4	group home program's number of "points"	
5	calculated. The number of points calculated	
6	for a group home program is based	
7	principally on (1) the number of	
8	"paid/awake" hours worked per month by	
9	child care and social work staff, (2) the	
10	qualifications of the staff, and (3) the hours	
11	of Mental Health Treatment services	
12	provided. The total number of points	
13	generated equates to a specific RCL and	
14	corresponding rate. With the exception of	
15	two group homes having grandfathered-in	
16	rates, all of the group home programs with	
17	the same RCL receive the same AFDC-FC	
18	payment rate based on the standardized	
19	schedule of rates in state law. DSS	
20	determines group home's RCL and,	
21	consequently, the AFDC-FC payment rate,	
22	based on information submitted by the group	
23	homes.	
24	12. For all periods of time relevant to this	Parties stipulate to this fact.
25	matter, DSS through the Children and	
26	Family Services Division of DSS ("CFSD"),	
27	sets payment levels for group home foster	
28	care providers. The payment levels	
	are established by statute and incorporated	
	into the Schedule of Standard Rates. The	
	rate for each group home program is one of	
	fourteen standard payment levels that	
	corresponds to the group home's level in the	
	rate classification level system (RCL).	
	Under this RCL system providers are paid	
	by the county that placed the child with the	
	group home or other foster care provider.	
	13. The RCL system was implemented by	Parties stipulate to this fact.
	statute, 1989 Cal. Stat. Ch. 1294, during the	
	1990-1991 state fiscal year, and codified at	
	Welfare & Institutions Code sections 11460	
	and 11462. The initial standardized	
	schedule of foster care rates for the 1990-	
	1991 fiscal year was developed using 1985	
	calendar year costs and adjusted to the costs	

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1	for each fiscal year by the amount of the	
2	California Necessity Index ("CNI"). Since	
3	this time, the standardized schedule of foster	
4	care rates established under the RCL system	
	has been increased by approximately 27	
	percent.	
5	14. The CNI is a weighted average of increases	See, e.g., Cal. Wel. & Inst. Code §§
6	in various necessary costs of living for low-	11453, 11462.
7	income consumers, including food, clothing,	
8	fuel, utilities, rent, and transportation.	
9	Various statutes require state entities to use	
	the CNI when calculating cost-of-living	
	adjustments.	
10	15. Since the 1990-1991 fiscal year, the increase	Parties stipulate to this fact.
11	in average actual costs that some group	
12	homes incur to care for and supervise	
	children exceeds 27 percent.	
13	16. The CNI has increased from the 1990-1991	Parties stipulate to this fact.
14	fiscal year by approximately 59 percent	
	through State fiscal year 2006-2007.	
15	17. The percentage of actual costs that group	Parties stipulate to this fact.
16	homes recoup through the RCL system has	
17	diminished over time due, in part, to (1) an	
18	increase in the actual costs associated with	
19	food, clothing, shelter, daily supervision,	
20	school supplies, a child's personal	
21	incidentals, liability insurance with respect	
22	to a child, and reasonable travel to the	
	child's home for visitation, and (2) "new"	
	costs that group homes must incur to satisfy	
	added federal, state, and county	
	requirements.	
23	18. The amounts comprising the standardized	Parties stipulate to this fact.
24	schedule of rates remained unchanged at	
25	their original 1990-91 levels in State fiscal	
26	years 1991-92, 1992-93, 1993-94, 1994-95,	
27	1995-96, 1996-97, and 1997-98. They were	
28	increased by 6% effective July 1, 1998, by	
	2.36% effective July 1, 1999, by 2.36%	
	effective January 1, 2000, and by 2.96%	
	effective July 1, 2000. They were increased	
	by an average of 5.70% on January 1, 2001	

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1	when the amount included in each of the	
2	standard rates for the wages and benefits of	
3	child care and social work staff was	
4	increased by 10%. They were increased by	
5	4.85% effective July 1, 2001. The	
6	standardized schedule of rates remained	
	unchanged at their 2001-02 levels in State	
	fiscal years 2002-03, 2003-04, 2004-05,	
	2005-06, and 2006-07."	
7	19. During the period covered by State Fiscal	Parties stipulate to this fact.
8	Years 1990-91 through 2006-07, the	
9	increases in the CNI were as follows:	
10	5.49% for 1991-92, 1.81% for 1992-93,	
11	2.37% for 1993-94, 1.69% for 1994-95,	
12	1.48% for 1995-96, 0.52% for 1996-97,	
13	2.60% for 1997-98, 2.84% for 1998-99,	
	2.36% for 1999-2000, 2.96% for 2000-01,	
	5.31% for 2001-02, 3.74% for 2002-03,	
	3.46% for 2003-04, 2.75% for 2004-05,	
	4.07% for 2005-06, and 3.75% for 2006-07.	
14	20. For purposes of exhaustion of administrative	Parties stipulate to this fact.
15	remedies before a party may bring a lawsuit,	
16	there is no administrative process or remedy	
	available for the Alliance or its members to	
	challenge the propriety of the RCL system.	

DATED: September 12, 2007

Bingham McCutchen LLP

By: _____ /s/
Michael D. Mortenson
Attorneys for Plaintiff
CALIFORNIA ALLIANCE OF CHILD AND
FAMILY SERVICES

Pursuant to General Order No. 45, Section X, I attest that concurrence in the filing of this document has been obtained from Mr. Mortenson.

A/72064715.5

1 DATED: September 12, 2007

Edmund G. Brown, Jr.
Attorney General of the State of California

2
3
4 By: _____ /s/
5 George Prince
6 Deputy Attorney General
7 Attorneys for Defendants
8 CLIFF ALLENBY AND MARY AULT

9 Pursuant to General Order No. 45, Section X, I attest that concurrence in the filing of this
10 document has been obtained from Mr. Prince.
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8
9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
11 SAN FRANCISCO DIVISION
12

13 CALIFORNIA ALLIANCE OF CHILD AND
FAMILY SERVICES,

14
15 Plaintiff,

16 v.

17 CLIFF ALLENBY, Interim Director of the
California Department of Social Services, in his
official capacity; MARY AULT, Deputy Director of
18 the Children and Family Services Division of the
California Department of Social Services, in her
official capacity,
19

20 Defendants.
21

C 06-4095 MHP

ANSWER TO COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF

Hearing: None set
Time: None set
Courtroom: 15
Judge: The Honorable
Marilyn H. Patel

22 Defendants Cliff Allenby, in his official capacity as interim Director of the California
23 Department of Social Services, and Mary Ault, in her official capacity as Deputy Director of the
24 Children and Family Services Division of the California Department of Social Services,
25 (collectively, Defendants), through their counsel, answer plaintiff's complaint as follows:

- 26 1. Defendants admit the contents of the first unnumbered paragraph of the
27 complaint.
28 2. Defendants deny the contents of the second unnumbered paragraph of the

Answer to Complaint

California Alliance of Child, etc. v. Allenby, et al.
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1 complaint.

2 3. Defendants have no present information or belief as to the truth of the matters
3 asserted in paragraph 1 of the complaint and its subparagraphs "a" through "e" therein, and on
4 that basis deny their contents.

5 3. Defendants admit the contents of paragraphs 2 and 3 of the complaint.

6 4. Defendants admit that plaintiffs seek the relief described in paragraph 4 of the
7 complaint, and that the court has subject matter jurisdiction as to the relief sought by plaintiff.

8 5. Defendants admit the contents of paragraph 5 of the complaint.

9 6. Defendants admit the contents of paragraph 6 of the complaint.

10 7. Defendants admit that plaintiff is informed and believes that venue is proper in
11 this district as alleged in paragraph 7 of the complaint.

12 8. Defendants admit the contents of paragraph 8 of the complaint.

13 9. Defendants generally admit the general allegations regarding the Child Welfare
14 Act set forth in paragraphs 9 through 16 of the complaint, but note that the provisions of the
15 Child Welfare Act speak for themselves and are not defined by plaintiff's characterization of
16 them.

17 10. Defendants generally admit the allegations set forth in paragraphs 17 and 18 of
18 the complaint, but note that the provisions of the State's foster care maintenance program under
19 the Welfare and Institutions Code and other provisions of law speak for themselves and are not
20 defined by plaintiff's characterization of them.

21 11. Defendants admit the contents of the first sentence of paragraph 19 of the
22 complaint, but have no present information or belief as to the truth of the other matters asserted
23 in paragraph 19 and on that basis deny the remainder of its contents.

24 12. Defendants have no present information or belief as to the truth of the matters
25 asserted in paragraph 20 and on that basis deny its contents.

26 13. Defendants have no present information or belief as to the truth of the matters
27 asserted in paragraph 21 and on that basis deny its contents.

28 14. Defendants deny the contents of paragraph 22 of the complaint.

Answer to Complaint

California Alliance of Child, etc. v. Allenby, et al.
C 06-4095 MHP

1 15. As to paragraphs 23 through 26 of the complaint, defendants incorporate by
2 reference their responses as set forth in paragraphs 1 through 14 of this answer, deny the
3 contents of paragraphs 23 and 24 of the complaint, deny that plaintiff has stated a valid cause of
4 action, specifically deny that plaintiff is entitled to any declaratory relief as requested therein or
5 otherwise, and specifically deny that plaintiff is entitled to recover any costs, attorneys' fees, or
6 other monies pursuant to 42 U.S.C. section 1988, as alleged in paragraph 26 of the complaint, or
7 otherwise under any other provision of law.

8 16. As to paragraphs 27 through 30 of the complaint, defendants incorporate by
9 reference their responses as set forth in paragraphs 1 through 15 of this answer, deny the
10 contents of paragraphs 28 and 29 of the complaint, deny that plaintiff has stated a valid cause of
11 action, specifically deny that plaintiff is entitled to any injunctive relief as requested therein or
12 otherwise, and specifically deny that plaintiff is entitled to recover any costs, attorneys' fees, or
13 other monies pursuant to 42 U.S.C. section 1988, as alleged in paragraph 30 of the complaint, or
14 otherwise under any other provision of law.

15 17. As to plaintiff's Prayer for Relief, and subparagraphs "1" through "7" therein,
16 defendants incorporate by reference their responses as set forth in paragraphs 1 through 16 of
17 this answer, and specifically deny that plaintiff is entitled to any relief as prayed for or otherwise.

18 **AFFIRMATIVE DEFENSES**

19 1. The complaint fails to state facts sufficient to constitute any claim upon which
20 relief can be granted against defendants.

21 2. Defendants did not deprive plaintiff of any right or privilege guaranteed by the
22 Constitution or laws of the United States.

23 3. The complaint does not present a case or controversy.

24 4. The complaint is not ripe for adjudication by this Court.

25 5. The Court should abstain from hearing and deciding this action.

26 6. The Complaint is moot.

27 7. The complaint is barred in that the relief sought substantially would require the
28 defendants to alter, fundamentally, substantial portions of California's services and programs.

Answer to Complaint

California Alliance of Child, etc. v. Allenby, et al.
C 06-4095 MHP

1 8. The complaint is barred in that the relief sought would place an undue burden or
2 hardship on the State and requires modifications to programs and services which are
3 unreasonable.

4 9. To the extent the Complaint seeks relief in excess of that allowed by federal law,
5 it is barred as inconsistent with federal law.

6 10. Plaintiff has failed to exhaust its administrative and other state remedies.

7 11. California has a comprehensive system or plan which is effectively providing
8 appropriate services to plaintiffs.

9 12. To the extent the complaint alleges entitlement to services or programs which are
10 not being provided, some or all plaintiffs or their representatives have themselves failed to
11 demonstrate eligibility or entitlement to such programs or services.

12 13. The relief requested in the complaint is barred based upon the separation of
13 powers doctrine.

14 14. Defendants, as officials of state departments acting solely in their official
15 capacities administering reasonably within the scope of their official duties and in good faith the
16 multitude of activities conducted by their agencies, are immune from suit under 42 U.S.C. §
17 1983.

18 15. To the extent the complaint alleges violations of law, those alleged violations are
19 not the result of the conduct or omissions of the defendants, nor can those alleged violations be
20 attributed to defendants.

21 16. The complaint is barred by the Tenth Amendment to the Constitution of the
22 United States.

23 17. The complaint is barred by the Eleventh Amendment to the Constitution of the
24 United States.

25 18. Defendants have not waived their sovereign immunity.

26 19. Defendants' investigation into the issues raised in the complaint is at the
27 preliminary stages, and therefore defendants reserve the right to amend their Answer to add
28 further affirmative defenses when they are discovered.

Answer to Complaint

California Alliance of Child, etc. v. Allenby, et al.
C 06-4095 MHP

1 20. The complaint is barred in that the relief sought would inappropriately mandate
2 the manner in which state officials allocate public funds in relation to existing programs and
3 services.

4 21. The complaint is barred in that the relief sought would inappropriately require
5 defendants to allocate resources, a political judgment, outside the purview of the court's
6 authority.

7 22. The complaint is barred since plaintiffs inappropriately seek to predicate their
8 claims on State Defendants' allegedly improper allocation of public funds.

9 WHEREFORE, defendants pray that:

- 10 1. Judgment be rendered in favor of defendants and against plaintiff;
11 2. Plaintiff take nothing by the complaint;
12 3. Defendants be awarded their costs of suit incurred herein; and
13 4. Defendants be awarded such other and further relief as the court may deem
14 necessary and proper.

15 Dated: November 6, 2006

16 Respectfully submitted,
17 BILL LOCKYER
18 Attorney General of the State of California

19 DOUGLAS M. PRESS
20 Supervising Deputy Attorney General

21 /s/

22 GEORGE PRINCE
23 Deputy Attorney General
24 Attorneys for Defendants
25

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27 SF2006401941

28 Answer to Complaint

California Alliance of Child, etc. v. Allenby, et al.
C 06-4095 MHP

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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 SAN FRANCISCO DIVISION

14 CALIFORNIA ALLIANCE OF CHILD AND
15 FAMILY SERVICES,

16 Plaintiff,

17 v.

18 CLIFF ALLENBY, Interim Director of the
19 California Department of Social Services, in his
20 official capacity; MARY AULT, Deputy Director
21 of the Children and Family Services Division of
22 the California Department of Social Services, in
23 her official capacity,

24 Defendants.

C No. 06 4095

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF
(42 U.S.C. § 1983)

DEMAND FOR JURY TRIAL

25 Plaintiff California Alliance of Child and Family Services ("the Alliance") files
26 this Complaint against Cliff Allenby ("Allenby"), in his official capacity as Interim Director of
27 the California Department of Social Services ("DSS"), and Mary Ault ("Ault"), in her official
28 capacity as Deputy Director of the Children and Family Services Division of DSS ("CFS"), for
Declaratory Judgment and Injunctive Relief, and Demand for Jury Trial.

This case is brought on behalf of non-profit charitable organizations that care for
children who have been removed from their homes and for whom the State of California has
failed to provide adequate funding required by the federal Child Welfare Act. This action seeks

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COMPLAINT FOR DECLARATORY JUDGMENT AND PERMANENT INJUNCTIVE RELIEF

1 to prevent further violation of law by the State of California and obtain proper payment to the
2 non-profit organizations sufficient to provide these children the appropriate care and shelter to
3 which they are entitled. Without the State compliance, the non-profit agencies will be forced to
4 choose between providing inadequate care or eliminating services and eventually ceasing
5 operations, to the great detriment of the affected children.

6 In support thereof, the Alliance alleges as follows:

7 **PARTIES**

8 1. The Alliance is a California corporation with its principal place of business at
9 2201 K Street, Sacramento, California 95816. The Alliance is a non-profit organization that,
10 among other pursuits, represents the interests of group homes that provide care and supervision
11 for foster children as described below.

12 a. The Alliance represents California non-profit agencies offering an array of
13 services to vulnerable children and their families. These services include group home programs.
14 Group homes provide care and supervision for foster children with significant emotional or
15 behavioral problems who cannot live safely in their own homes or in another family setting, and
16 who require more restrictive out-of-home placement environments. DSS licenses, audits, and
17 provides funding to these group homes through the Aid to Families with Dependent Children—
18 Foster Care ("AFDC-FC") program.

19 b. The Alliance's membership includes approximately 150 private, non-
20 profit agencies that provide adoption, foster care, group home, mental health treatment, family
21 preservation and support, wrap-around, educational, and other services.. Approximately 130 of
22 these agencies operate one or more group home programs, with a total licensed capacity for
23 approximately 5,700 children and youth.

24 c. The Alliance is committed to advocating on behalf of foster children and
25 the non-profit agencies that provide care and services for them. This advocacy includes fostering
26 and encouraging the continual improvement of services and outcomes for children and families.

27 d. The Alliance represents the interests of its members with respect to
28 matters relating to the State of California and DSS' administration of the AFDC-FC program.

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1 e. The Alliance is authorized to file this action on behalf of its accredited
2 members, who are and will continue to be affected adversely by the unlawful actions of
3 Defendants, and each of them, alleged herein. Through this Complaint, the Alliance seeks to
4 protect interests that are germane to its purpose and affiliation with member group homes. Each
5 group home that is a member of the Alliance has independent standing to bring an action.
6 Nevertheless, the Alliance asserts the claims alleged in this Complaint without the participation
7 of an individual member of the Alliance. Should it be deemed necessary for a group home to
8 participate in this action, the Alliance will seek leave to amend this Complaint to name specific
9 group homes as parties-in-interest.

10 2. Allenby is responsible in his official capacity for the administration of the Child
11 Welfare Act, 42 U.S.C. §§ 670-679b, and the programs related to that Act in California. Further,
12 Allenby is responsible for implementing the policies contained in the approved state plans and
13 assuring DSS' compliance with state and federal law. Allenby is sued only in his official
14 capacity.

15 3. Ault is responsible in her official capacity for implementing the policies contained
16 in the approved state plans. Ault is sued only in her official capacity.

17 **JURISDICTION AND VENUE**

18 4. The Alliance brings this civil action under 42 U.S.C. § 1983 and seeks a
19 declaratory judgment, pursuant to 28 U.S.C. § 2201, that the Rate Classification Level ("RCL")
20 system implemented and applied by Defendants, and each of the them, which establishes the
21 rates of payment to group homes on behalf of foster children, violates Title IV-E of the Social
22 Security Act, 42 U.S.C. §§ 670-679b ("Child Welfare Act"), and its implementing regulations.
23 Further, the Alliance seeks provisional and permanent injunctive relief prohibiting Defendants,
24 and each of them, in their official capacities from using the RCL to establish payment rates. This
25 Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1343(a)(3).

26 5. The Alliance is informed and believes and on that basis alleges that Allenby in his
27 official capacity is a resident of California and works in California.

1 6. The Alliance is informed and believes and on that basis alleges that Ault in her
2 official capacity is a resident of California and works in California.

3 7. The Alliance is informed and believes and on that basis alleges that venue is
4 proper in this district pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events
5 or omissions giving rise to the claims in this Complaint occurred in this district.

6 **INTRADISTRICT ASSIGNMENT**

7 8. This Complaint arises in the County of San Francisco, among other places.
8 Consequently, this action is assigned to either the San Francisco Division or the Oakland
9 Division. Civil Local Rule 3-2 (c)-(d).

10 **GENERAL ALLEGATIONS**

11 *The Child Welfare Act*

12 9. Congress enacted the Child Welfare Act in 1980 to address the need for providing
13 an appropriate setting for children who are dependents or wards of the state.

14 10. The Child Welfare Act establishes a cooperative federal-state program that assists
15 states in meeting the costs of providing foster care to children who are dependents and/or wards
16 of the state. Pursuant to this cooperative program, the federal government and the state
17 government share the cost of providing funds for licensed third parties (*e.g.*, group homes) that
18 care for these children.

19 11. The Child Welfare Act and related federal regulations require states receiving
20 federal aid to provide foster care and transitional independent living programs for a child when a
21 court has determined that it is necessary under applicable law that the child be removed from his
22 or her home and placed in out-of-home care.

23 12. To become eligible for federal funding, a state must submit a plan for financial
24 assistance to the Secretary of the U.S. Department of Health and Human Services ("DHHS") for
25 approval. As a prerequisite for DHHS approval, the submitting state must agree, among other
26 conditions, to administer its foster care program pursuant to the Child Welfare Act, related
27 regulations, and policies promulgated by the Secretary of DHHS. 42 U.S.C. § 671(a), (b); 45
28 C.F.R. §§ 233.110, 1355.21, 1356.20, 1356.21.

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1 13. Pursuant to the Child Welfare Act, a state must designate a state agency to
2 administer and/or supervise the administration of the approved state plan. 42 U.S.C. § 671(a)(2).

3 14. Pursuant to the Child Welfare Act, a state must amend its approved plan by
4 appropriate submission to the Secretary of DHHS whenever, among other instances, necessary to
5 comply with alterations to the Child Welfare Act and/or federal regulations or policies. 45
6 C.F.R. § 1356.20(e)(1).

7 15. The Child Welfare Act requires that states participating in the cooperative
8 program provide "foster care maintenance payments" on behalf of eligible children to child-care
9 institutions, including group homes. 42 U.S.C. §§ 671(a)(2), 672(b)(2); 675(4); 45 C.F.R. §
10 1356.21(a).

11 16. "The term 'foster care maintenance payments' means payments to cover the cost
12 of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's
13 personal incidentals, liability insurance with respect to a child, and reasonable travel to the
14 child's home for visitation. In the case of institutional care, [foster care maintenance payments]
15 shall include the reasonable costs of administration and operation of such institution as are
16 necessarily required to provide the items described in the proceeding sentence." 42 U.S.C. §
17 675(4)(A).

18 California's Approved Child-Care Institution Program

19 17. For all periods relevant to this Complaint, DSS has been the state agency
20 responsible for submitting the California state plan to the Secretary of DHHS for approval and,
21 subsequent to receiving that approval, received federal funding that was intended to cover a
22 portion of the foster care maintenance payment made to group homes on behalf of eligible
23 children. Cal. Wel. & Inst. Code §§ 11229, 11460(a), 11462(a). DSS uses the RCL system to
24 establish payment rates for foster care group homes. See Cal. Wel. & Inst. Code § 11462. A
25 group home is assigned to one of fourteen levels (i.e., RCLs) based on the group home's number
26 of "points." The number of points assigned to a group home is based largely on (1) the number
27 of "paid/awake" hours worked per child, per month, and (2) the qualifications of the staff. All of
28 the group homes in the same RCL receive the same AFDC-FC payment rate based on the

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1 standardized schedule of rates in state law. *See* Cal. Wel. & Inst. Code § 11462(f). DSS
2 calculates a group home's number of points.

3 18. For all periods of time relevant to this Complaint, DSS, through CFS, has
4 established payment levels for foster care providers, including group homes. The payments
5 established under the RCL system are paid by the county that placed the child with the group
6 home or other foster care provider. Each group home that participates in California's foster care
7 program executes an agreement with the county placement agency to provide and be
8 compensated for care, supervision, and social work services.

9 *The RCL System Does Not Comply with*
10 *the Child Welfare Act*

11 19. The RCL system was implemented by state statute, 1989 Cal. Stat. Ch. 1294,
12 during the 1990-1991 state fiscal year. Since that time, foster care rates established under the
13 RCL system have increased by approximately 26%. Since the 1990-1991 fiscal year, however,
14 the increase in actual costs that group homes incur to care for and supervise children greatly
15 exceeds 26%. For example, the California Necessity Index ("CNI")¹ has increased by
16 approximately 53% through state fiscal year 2005-2006.²

17 20. The percentage of actual costs that group homes recoup through the RCL system
18 has diminished substantially over time due primarily to (1) an increase in the actual costs
19 associated with factors identified as compensable under the Child Welfare Act (*i.e.*, increases not
20 due solely to inflationary pressures), and (2) "new" costs that group homes must incur to satisfy
21 added state and county requirements.

22
23 ¹ The CNI is a weighted average of increases in various necessary costs of living for low-
24 income consumers, including food, clothing, fuel, utilities, rent, and transportation. *See, e.g.*,
Cal. Wel. & Inst. Code § 11453.

25 ² The Alliance believes that the CNI underestimates the actual increases in costs. The CNI
26 does not reflect substantial increases over the last few years in the cost of workers' compensation
27 insurance, liability insurance, medical insurance, and utilities. Further, the CNI does not reflect
new costs that group homes must incur to satisfy state and county requirements concerning staff
training, administrator certification, licensing fees, independent financial audits, record-keeping,
and other new requirements.

21. Several members of the Alliance have ceased operating group homes, or reduced the capacity of their group home programs, due, in substantial part, to the increasing costs that were not covered by payments established by the RCL system. The ever-decreasing percentage of actual costs of care provided under the RCL system jeopardizes the financial viability of group homes and their ability to provide care to foster children.

22. There is no administrative process or remedy available for the Alliance or its members to challenge the propriety of the RCL system.

COUNT I

Declaratory Relief

23. The Alliance incorporates Paragraphs 1-22 as though fully set forth herein.

24. There is currently an actual controversy between the Alliance and Defendants, and each of them, that is ripe for adjudication as to whether the RCL system fails to comply with federal law in setting rates for foster care maintenance payments.

25. The failure of Defendants, and each of them, to comply with the Child Welfare Act's mandated factors in setting rates for foster care maintenance payments deprives the Alliance's member group homes of their federal rights, privileges and immunities under color of state law in violation of 42 U.S.C. § 1983.

26. The Alliance is entitled to recover the full costs of this action and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988.

COUNT II

Permanent Injunctive Relief

27. The Alliance incorporates Paragraphs 1-26 as though fully set forth herein.

28. The Alliance is informed and believes and on that basis alleges that Defendants, and each of them, will continue to provide foster care maintenance payments that fail to comply with the Child Welfare Act.

29. The Alliance and its member group homes have suffered injury that is irreparable in nature as the proximate result of the failure of Defendants, and each of them, to establish properly foster care maintenance payments in a manner that complies with the Child Welfare

1 Act. The Alliance and its member group homes are without adequate remedy at law.

2 30. The Alliance is entitled to recover the full costs of this action and reasonable
3 attorneys' fees pursuant to 42 U.S.C. § 1988.

4 **PRAYER FOR RELIEF**

5 Wherefore, the Alliance requests relief as follows:

- 6 1. That the Court declare that Defendants, and each of them, violated, continue to
7 violate, and/or will violate the Child Welfare Act by failing to establish a payment
8 system adequate to cover the costs incurred by group homes that provide services
9 in accordance with federal and state laws and regulations;
- 10 2. That the Court declare that Defendants' current and continued use of the RCL
11 system violated, continues to violate, and/or will violate the group homes' federal
12 rights, privileges and immunities under color of state law;
- 13 3. That Defendants, and each of them, be temporarily and permanently enjoined
14 from currently and continually using the RCL system to establish foster care
15 maintenance payments to group homes;
- 16 4. That Defendants, and each of them, prepare and implement a payment system that
17 complies with the Child Welfare Act;
- 18 5. That Defendants be required to adjust payments made between the time that (1)
19 the Court grants provisional relief in favor of the Alliance, and (2) Defendants,
20 and each of them, prepare and implement a payment system that complies with
21 the Child Welfare Act;
- 22 6. That the Alliance be awarded its reasonable costs of suit and attorney's fees
23 included herein; and
- 24 7. That this Court award the Alliance such other relief as is warranted by the facts
25 and the law as is just under the circumstances.
- 26
27
28

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and Local Rule 3-6(a), the Alliance hereby demands a trial by jury for all issues that are so triable.

DATED: June 30, 2006

Bingham McCutchen LLP

By: William F. Abrams
William F. Abrams
Attorneys for Plaintiff
CALIFORNIA ALLIANCE OF CHILD AND
FAMILY SERVICES

ADRMOP, APPEAL, E-Filing

**U.S. District Court
California Northern District (San Francisco)
CIVIL DOCKET FOR CASE #: 3:06-cv-04095-MHP**

California Alliance of Child and Family Services v. Allenby et al	Date Filed: 06/30/2006
Assigned to: Hon. Marilyn H. Patel	Date Terminated: 03/12/2008
Case in other court: 08-16267	Jury Demand: Plaintiff
Cause: 42:1983 Civil Rights Act	Nature of Suit: 444 Civil Rights: Welfare
	Jurisdiction: Federal Question

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V.

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Interested Party

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Date Filed	#	Docket Text
06/30/2006	<u>1</u>	COMPLAINT for Declaratory and Injunctive Relief; Demand for Jury Trial against Cliff Allenby, Mary Ault (Filing fee \$ 350.00, receipt number 3387292.). Filed by California Alliance of Child and Family Services. (gba, COURT STAFF) (Filed on 6/30/2006) Additional attachment(s) added on 10/16/2006 (gba, COURT STAFF). (Entered: 06/30/2006)
06/30/2006	2	ADR SCHEDULING ORDER: Case Management Statement due by 10/23/2006. Case Management Conference set for 10/30/2006 04:00 PM. (Attachments: # <u>1</u> Standing Order)(gba, COURT STAFF) (Filed on 6/30/2006) (Entered: 06/30/2006)
06/30/2006		Summons Issued as to Cliff Allenby, Mary Ault. (gba, COURT STAFF) (Filed on 6/30/2006) (Entered: 06/30/2006)
06/30/2006		CASE DESIGNATED for Electronic Filing. (gba, COURT STAFF) (Filed on 6/30/2006) (Entered: 06/30/2006)
07/19/2006	3	SUMMONS Returned Executed by California Alliance of Child and Family Services. Cliff Allenby served on 7/5/2006, answer due 7/25/2006. (gba,

		COURT STAFF) (Filed on 7/19/2006) (Entered: 07/19/2006)
07/19/2006	<u>4</u>	SUMMONS Returned Executed by California Alliance of Child and Family Services. Mary Ault served on 7/5/2006, answer due 7/25/2006. (gba, COURT STAFF) (Filed on 7/19/2006) (Entered: 07/19/2006)
07/25/2006	<u>5</u>	STIPULATION and [proposed] order by California Alliance of Child and Family Services, Cliff Allenby, Mary Ault. (Prince, George) (Filed on 7/25/2006) (Entered: 07/25/2006)
07/26/2006	<u>6</u>	STIPULATION AND ORDER extending time to and including 8/25/2006 for defendants to file responsive pleading; Signed by Judge Marilyn Hall Patel on 7/26/2006. (awb, COURT-STAFF) (Filed on 7/26/2006) (Entered: 07/26/2006)
08/25/2006	<u>7</u>	First MOTION to Dismiss filed by Cliff Allenby, Mary Ault. Motion Hearing set for 10/2/2006 02:00 PM in Courtroom 15, 18th Floor, San Francisco. (Prince, George) (Filed on 8/25/2006) (Entered: 08/25/2006)
08/25/2006	<u>8</u>	Proposed Order re <u>7</u> First MOTION to Dismiss by Mary Ault. (Prince, George) (Filed on 8/25/2006) (Entered: 08/25/2006)
08/25/2006	<u>9</u>	First MOTION for Leave to File <i>Motion to Dismiss in Advance of Initial Case Management Conference</i> filed by Cliff Allenby, Mary Ault. Motion Hearing set for 10/2/2006 02:00 PM in Courtroom 15, 18th Floor, San Francisco. (Prince, George) (Filed on 8/25/2006) (Entered: 08/25/2006)
08/25/2006	<u>10</u>	Proposed Order re <u>9</u> First MOTION for Leave to File <i>Motion to Dismiss in Advance of Initial Case Management Conference</i> by Cliff Allenby, Mary Ault. (Prince, George) (Filed on 8/25/2006) (Entered: 08/25/2006)
08/29/2006	<u>11</u>	ORDER by Judge Marilyn Hall Patel granting <u>9</u> defendants' Motion for Leave to File motion to dismiss prior to initial case management conference (awb, COURT-STAFF) (Filed on 8/29/2006) (Entered: 08/29/2006)
09/08/2006	<u>12</u>	STIPULATION TO CONTINUE HEARING DATE RE DEFENDANTS' MOTION TO DISMISS AND [PROPOSED] ORDER GRANTING CONTINUANCE by California Alliance of Child and Family Services. (Abrams, William) (Filed on 9/8/2006) (Entered: 09/08/2006)
09/11/2006	<u>13</u>	AMENDED DOCUMENT by California Alliance of Child and Family Services. Amendment to <u>12</u> Stipulation <i>AMENDED STIPULATION TO CONTINUE HEARING DATE RE: DEFENDANTS' MOTION TO DISMISS; AND, [PROPOSED] ORDER GRANTING CONTINUANCE.</i> (Abrams, William) (Filed on 9/11/2006) (Entered: 09/11/2006)
09/11/2006	<u>14</u>	Memorandum in Opposition re <u>7</u> First MOTION to Dismiss <i>Complaint</i> filed by California Alliance of Child and Family Services. (Lee, Hwannie) (Filed on 9/11/2006) (Entered: 09/11/2006)
09/19/2006	<u>15</u>	STIPULATION AND ORDER AMENDING BRIEFING SCHEDULES AND RESETTING Hearing on Motion <u>7</u> First MOTION to Dismiss; Motion Hearing reset for 10/23/2006 02:00 PM in Courtroom 15, 18th Floor, San Francisco; Signed by Judge Marilyn Hall Patel on 9/18/2006. (awb, COURT-STAFF) (Filed on 9/19/2006) (Entered: 09/19/2006)

10/09/2006	<u>16</u>	Reply to Opposition filed byCliff Allenby, Mary Ault. (Prince, George) (Filed on 10/9/2006) (Entered: 10/09/2006)
10/09/2006	<u>17</u>	ADR Certification (ADR L.R. 3-5b) of discussion of ADR options <i>By Parties and Counsel</i> (Torabian-Bashardoust, Roxanne) (Filed on 10/9/2006) (Entered: 10/09/2006)
10/09/2006	<u>18</u>	NOTICE of need for ADR Phone Conference (ADR L.R. 3-5 d) (Torabian-Bashardoust, Roxanne) (Filed on 10/9/2006) (Entered: 10/09/2006)
10/11/2006	<u>19</u>	CLERK'S NOTICE re: Failure to E-File and/or Failure to Register as an E-Filer re: #1 Complaint (gba, COURT STAFF) (Filed on 10/11/2006) (Entered: 10/11/2006)
10/16/2006	<u>20</u>	ADR Certification (ADR L.R. 3-5b) of discussion of ADR options <i>for CA Dept of Social Services</i> (Prince, George) (Filed on 10/16/2006) (Entered: 10/16/2006)
10/19/2006	<u>21</u>	MOTION to Appear by Telephone <i>[/Proposed] Order</i> filed by California Alliance of Child and Family Services. Motion Hearing set for 10/30/2006 04:00 PM in Courtroom 15, 18th Floor, San Francisco. (Torabian-Bashardoust, Roxanne) (Filed on 10/19/2006) (Entered: 10/19/2006)
10/20/2006	<u>22</u>	ADR Clerks Notice Setting ADR Phone Conference on 10/25/06 at 2:30 p.m. Please take note that plaintiff's counsel initiates the call to all parties. (tjs, COURT STAFF) (Filed on 10/20/2006) (Entered: 10/20/2006)
10/20/2006		ADR Remark: The ADR Phone Conference has been rescheduled to 10/25/06 at 2:30 p.m. (tjs, COURT STAFF) (Filed on 10/20/2006) (Entered: 10/20/2006)
10/24/2006	<u>23</u>	Minute Entry: Motion Hearing held on 10/23/2006 before Hon Marilyn Hall Patel (Date Filed: 10/24/2006) re <u>7</u> First MOTION to Dismiss; Case Management Conference reset for 11/13/2006 03:00 PM. (Court Reporter Juanita Gonzales.) (awb, COURT-STAFF) (Date Filed: 10/24/2006) (Entered: 10/24/2006)
10/27/2006	<u>24</u>	ORDER by Judge Marilyn H. Patel denying <u>7</u> Motion to Dismiss. Signed by Judge Marilyn H. Patel 10/26/06. (epb, COURT STAFF) (Filed on 10/27/2006) (Entered: 10/27/2006)
11/06/2006	<u>25</u>	CASE MANAGEMENT STATEMENT <i>AND PROPOSED ORDER</i> filed by California Alliance of Child and Family Services. (Torabian-Bashardoust, Roxanne) (Filed on 11/6/2006) (Entered: 11/06/2006)
11/06/2006	<u>26</u>	ANSWER to Complaint byCliff Allenby, Mary Ault. (Prince, George) (Filed on 11/6/2006) (Entered: 11/06/2006)
11/13/2006	<u>27</u>	Minute Entry: Status Conference before the Hon. Marilyn Hall Patel; (Date Filed: 11/13/2006)(Date Filed: 11/13/2006)Cross Motions for Summary Judgment to be filed by 4/2/2007; Responses due by 4/16/2007; Motion Hearing set for 5/7/2007 02:00 PM in Courtroom 15, 18th Floor, San Francisco. (Court Reporter Leo Mankiewicz.) (awb, COURT-STAFF) (Date Filed: 11/13/2006) (Entered: 11/13/2006)

12/12/2006	<u>28</u>	STATUS REPORT <i>Joint Report On Status Of Mediation</i> by California Alliance of Child and Family Services. (Abrams, William) (Filed on 12/12/2006) (Entered: 12/12/2006)
01/22/2007	<u>29</u>	NOTICE by California Alliance of Child and Family Services <i>Joint Report on Scheduling of Mediation</i> (Torabian-Bashardoust, Roxanne) (Filed on 1/22/2007) (Entered: 01/22/2007)
02/07/2007	<u>30</u>	STATUS REPORT <i>ON COMPLETION OF MEDIATION</i> by California Alliance of Child and Family Services. (Torabian-Bashardoust, Roxanne) (Filed on 2/7/2007) (Entered: 02/07/2007)
03/14/2007	<u>31</u>	STIPULATION <i>TO CONTINUE MOTION AND HEARING DATES RE: CROSS-MOTIONS FOR SUMMARY JUDGMENT; [PROPOSED] ORDER GRANTING CONTINUANCE</i> by California Alliance of Child and Family Services. (Torabian-Bashardoust, Roxanne) (Filed on 3/14/2007) (Entered: 03/14/2007)
03/16/2007	<u>32</u>	STIPULATION AND ORDER: Cross Motions to be filed by 7/16/2007; Oppositions to be filed 8/13/2007; No replies; Motion Hearing set for 8/27/2007 02:00 PM in Courtroom 15, 18th Floor, San Francisco; Signed by Judge Marilyn Hall Patel on 3/16/2007. (awb, COURT-STAFF) (Filed on 3/16/2007) (Entered: 03/16/2007)
07/11/2007	<u>33</u>	STIPULATION <i>to Further Continue Motion and Hearing Dates Re: Cross Motions for Summary Judgment; [Proposed] Order Granting Continuance</i> by California Alliance of Child and Family Services. (Torabian-Bashardoust, Roxanne) (Filed on 7/11/2007) (Entered: 07/11/2007)
07/16/2007	<u>34</u>	First MOTION for Summary Judgment filed by California Alliance of Child and Family Services. Motion Hearing set for 8/27/2007 02:00 PM in Courtroom 15, 18th Floor, San Francisco. (Attachments: # <u>1</u> Proposed Order CACFS's Proposed Order)(Smith, Stephen) (Filed on 7/16/2007) (Entered: 07/16/2007)
07/17/2007	<u>35</u>	STIPULATION AND ORDER CONTINUING CROSS MOTION BRIEFING DEADLINES; Motions for Summary Judgment to be heard 9/24/2007 at 2:00 pm; Signed by Judge Marilyn Hall Patel on 7/17/2007. (awb, COURT-STAFF) (Filed on 7/17/2007) (Entered: 07/17/2007)
07/17/2007	<u>36</u>	MOTION for Leave to File filed by Cliff Allenby, Mary Ault. Motion Hearing set for 8/27/2007 02:00 PM in Courtroom 15, 18th Floor, San Francisco. (Attachments: # <u>1</u> Proposed Order proposed order re late filing# <u>2</u> Affidavit decl in support of request for late filing)(Prince, George) (Filed on 7/17/2007) (Entered: 07/17/2007)
07/17/2007	<u>37</u>	MOTION for Summary Judgment filed by Cliff Allenby, Mary Ault. Motion Hearing set for 8/27/2007 02:00 PM in Courtroom 15, 18th Floor, San Francisco. (Attachments: # <u>1</u> Affidavit decl of Sheilah Dupuy in support of MSJ# <u>2</u> Proposed Order [proposed] order granting dfdnts' MSJ)(Prince, George) (Filed on 7/17/2007) (Entered: 07/17/2007)
09/04/2007	<u>38</u>	Memorandum in Opposition re <u>34</u> First MOTION for Summary Judgment filed by Cliff Allenby, Mary Ault. (Prince, George) (Filed on 9/4/2007) (Entered: 09/04/2007)

		09/04/2007)
09/04/2007	<u>39</u>	Memorandum in Opposition to <u>37</u> Defendants' Motion for Summary Judgment filed by California Alliance of Child and Family Services. (Mortenson, Michael) (Filed on 9/4/2007) Modified on 9/6/2007 (gba, COURT STAFF). (Entered: 09/04/2007)
09/04/2007	<u>40</u>	Joint Statement of Undisputed Facts Regarding Parties' Cross Motions for Summary Judgment by California Alliance of Child and Family Services. (Mortenson, Michael) (Filed on 9/4/2007) Modified on 9/6/2007 (gba, COURT STAFF). (Entered: 09/04/2007)
09/12/2007	<u>41</u>	AMENDED Joint Statement of Undisputed Facts Regarding Parties' Cross Motions for Summary Judgment re <u>39</u> Memorandum in Opposition, <u>38</u> Memorandum in Opposition filed by California Alliance of Child and Family Services, Cliff Allenby, Mary Ault. (Related document(s) <u>39</u> , <u>38</u>) (Prince, George) (Filed on 9/12/2007) Modified on 9/19/2007 (gba, COURT STAFF). (Entered: 09/12/2007)
09/26/2007	<u>42</u>	Minute Entry: Motion Hearing held on 9/24/2007 before Hon Marilyn Hall Patel (Date Filed: 9/26/2007) re <u>34</u> <u>37</u> motions for Summary Judgment (Court Reporter Margo Gurule.) (awb, COURT-STAFF) (Date Filed: 9/26/2007) (Entered: 09/26/2007)
10/12/2007	<u>43</u>	MOTION to Relate Case <i>Administrative Motion to Consider Whether Cases Should Be Related</i> filed by California State Foster Parent Association, California State Care Providers Association, Legal Advocates for Permanent Parenting. (Attachments: # <u>1</u> Proposed Order)(VanVoorhis, Kimberly) (Filed on 10/12/2007) (Entered: 10/12/2007)
10/12/2007	<u>44</u>	Declaration of Kimberly N. Van Voorhis in Support of <u>43</u> MOTION to Relate Case <i>Administrative Motion to Consider Whether Cases Should Be Related</i> filed by California State Foster Parent Association, California State Care Providers Association, Legal Advocates for Permanent Parenting. (Related document(s) <u>43</u>) (VanVoorhis, Kimberly) (Filed on 10/12/2007) (Entered: 10/12/2007)
10/12/2007	<u>45</u>	CERTIFICATE OF SERVICE by California State Foster Parent Association, California State Care Providers Association, Legal Advocates for Permanent Parenting re <u>43</u> MOTION to Relate Case <i>Administrative Motion to Consider Whether Cases Should Be Related</i> , <u>44</u> Declaration in Support, (VanVoorhis, Kimberly) (Filed on 10/12/2007) (Entered: 10/12/2007)
10/17/2007	<u>46</u>	Memorandum in Opposition to <u>43</u> Motion to Relate Case filed by Cliff Allenby, Mary Ault. (Prince, George) (Filed on 10/17/2007) Modified on 10/18/2007 (gba, COURT STAFF). (Entered: 10/17/2007)
10/17/2007	<u>47</u>	Memorandum in Opposition to <u>43</u> <i>Administrative Motion to Consider Whether Cases Should be Related</i> filed by California Alliance of Child and Family Services. (Mortenson, Michael) (Filed on 10/17/2007) Modified on 10/18/2007 (gba, COURT STAFF). (Entered: 10/17/2007)
10/17/2007	<u>48</u>	Declaration of Carroll Schroeder <i>In Support of</i> <u>47</u> Plaintiff's Opposition to

		<i>Administrative Motion to Consider Whether Cases Should Be Related</i> filed by California Alliance of Child and Family Services. (Mortenson, Michael) (Filed on 10/17/2007) Modified on 10/18/2007 (gba, COURT STAFF). (Entered: 10/17/2007)
10/17/2007	<u>49</u>	Declaration of Michael D. Mortenson <i>In Support of 47 Plaintiff's Opposition to Administrative Motion to Consider Whether Cases Should Be Related</i> filed by California Alliance of Child and Family Services. (Mortenson, Michael) (Filed on 10/17/2007) Modified on 10/18/2007 (gba, COURT STAFF). (Entered: 10/17/2007)
10/17/2007	<u>50</u>	CERTIFICATE OF SERVICE by California Alliance of Child and Family Services (Mortenson, Michael) (Filed on 10/17/2007) (Entered: 10/17/2007)
10/17/2007	<u>51</u>	Proposed Order <i>Denying Administrative Motion to Consider Whether Cases Should Be Related</i> by California Alliance of Child and Family Services. (Mortenson, Michael) (Filed on 10/17/2007) (Entered: 10/17/2007)
11/13/2007	<u>52</u>	SUPPLEMENTAL Memorandum Regarding Additional Evidence in Support of <u>43</u> <i>Administrative Motion to Consider Whether Cases Should Be Related</i> filed by California State Foster Parent Association, California State Care Providers Association, Legal Advocates for Permanent Parenting. (Attachments: # <u>1</u> Exhibit A)(VanVoorhis, Kimberly) (Filed on 11/13/2007) Modified on 11/16/2007 (gba, COURT STAFF). (Entered: 11/13/2007)
11/13/2007	<u>53</u>	CERTIFICATE OF SERVICE by California State Foster Parent Association, California State Care Providers Association, Legal Advocates for Permanent Parenting re <u>52</u> Memorandum in Support, (VanVoorhis, Kimberly) (Filed on 11/13/2007) (Entered: 11/13/2007)
12/11/2007	<u>54</u>	ORDER re <u>34</u> , <u>37</u> CROSS- MOTIONS for Summary Judgment. Signed by Judge Marilyn Hall Patel on 12/10/2007. (awb, COURT-STAFF) (Filed on 12/11/2007) (Entered: 12/11/2007)
01/14/2008	<u>55</u>	ORDER by Judge Marilyn Hall Patel denying <u>43</u> Motion to Relate Cases C 06-4095 MHP and C 07-5086 WHA (awb, COURT-STAFF) (Filed on 1/14/2008) (Entered: 01/14/2008)
01/24/2008	<u>56</u>	Declaration of Sheilah Dupuy re: <i>California Welfare and Institutions Code section 11462(g)(2)</i> filed by Cliff Allenby, Mary Ault. (Prince, George) (Filed on 1/24/2008) (Entered: 01/24/2008)
03/12/2008	<u>57</u>	MEMORANDUM AND ORDER by Judge Marilyn Hall Patel denying <u>34</u> Plaintiff's Motion for Summary Judgment and granting <u>37</u> defendants' Motion for Summary Judgment (awb, COURT-STAFF) (Filed on 3/12/2008) (Entered: 03/12/2008)
03/12/2008	<u>58</u>	CLERK'S JUDGMENT entered in favor of defendants Cliff Allenby, Mary Ault against plaintiff California Alliance of Child and Family Services (awb, COURT-STAFF) (Filed on 3/12/2008) (Entered: 03/12/2008)
03/12/2008	<u>59</u>	NOTICE by Cliff Allenby re <u>58</u> Clerk's Judgment <i>Notice of Entry of Judgment</i> (Prince, George) (Filed on 3/12/2008) (Entered: 03/12/2008)

03/21/2008	<u>60</u>	MOTION for Reconsideration re <u>57</u> Order on Motion for Summary Judgment, Order on Motion for Leave to File, <u>58</u> Clerk's Judgment filed by California Alliance of Child and Family Services. Motion Hearing set for 5/5/2008 02:00 PM in Courtroom 15, 18th Floor, San Francisco. (Mortenson, Michael) (Filed on 3/21/2008) (Entered: 03/21/2008)
03/21/2008	<u>61</u>	Declaration of Michael D. Mortenson in Support of <u>60</u> MOTION for Reconsideration re <u>57</u> Order on Motion for Summary Judgment, Order on Motion for Leave to File, <u>58</u> Clerk's Judgment MOTION for Reconsideration re <u>57</u> Order on Motion for Summary Judgment, Order on Motion for Leave to File, <u>58</u> Clerk's Judgment filed by California Alliance of Child and Family Services. (Related document(s) <u>60</u>) (Mortenson, Michael) (Filed on 3/21/2008) (Entered: 03/21/2008)
03/21/2008	<u>62</u>	Declaration of Doug Johnson in Support of <u>60</u> MOTION for Reconsideration re <u>57</u> Order on Motion for Summary Judgment, Order on Motion for Leave to File, <u>58</u> Clerk's Judgment MOTION for Reconsideration re <u>57</u> Order on Motion for Summary Judgment, Order on Motion for Leave to File, <u>58</u> Clerk's Judgment filed by California Alliance of Child and Family Services. (Related document(s) <u>60</u>) (Mortenson, Michael) (Filed on 3/21/2008) (Entered: 03/21/2008)
03/21/2008	<u>63</u>	Declaration of Walter Grubbs in Support of <u>60</u> MOTION for Reconsideration re <u>57</u> Order on Motion for Summary Judgment, Order on Motion for Leave to File, <u>58</u> Clerk's Judgment MOTION for Reconsideration re <u>57</u> Order on Motion for Summary Judgment, Order on Motion for Leave to File, <u>58</u> Clerk's Judgment filed by California Alliance of Child and Family Services. (Related document(s) <u>60</u>) (Mortenson, Michael) (Filed on 3/21/2008) (Entered: 03/21/2008)
03/21/2008	<u>64</u>	Declaration of Beverly Boone in Support of <u>60</u> MOTION for Reconsideration re <u>57</u> Order on Motion for Summary Judgment, Order on Motion for Leave to File, <u>58</u> Clerk's Judgment MOTION for Reconsideration re <u>57</u> Order on Motion for Summary Judgment, Order on Motion for Leave to File, <u>58</u> Clerk's Judgment filed by California Alliance of Child and Family Services. (Related document(s) <u>60</u>) (Mortenson, Michael) (Filed on 3/21/2008) (Entered: 03/21/2008)
03/21/2008	<u>65</u>	Declaration of George Silcr in Support of <u>60</u> MOTION for Reconsideration re <u>57</u> Order on Motion for Summary Judgment, Order on Motion for Leave to File, <u>58</u> Clerk's Judgment MOTION for Reconsideration re <u>57</u> Order on Motion for Summary Judgment, Order on Motion for Leave to File, <u>58</u> Clerk's Judgment filed by California Alliance of Child and Family Services. (Related document(s) <u>60</u>) (Mortenson, Michael) (Filed on 3/21/2008) (Entered: 03/21/2008)
03/21/2008	<u>66</u>	Declaration of Christine Stoner-Mertz in Support of <u>60</u> MOTION for Reconsideration re <u>57</u> Order on Motion for Summary Judgment, Order on Motion for Leave to File, <u>58</u> Clerk's Judgment MOTION for Reconsideration re <u>57</u> Order on Motion for Summary Judgment, Order on Motion for Leave to File, <u>58</u> Clerk's Judgment filed by California Alliance of Child and Family Services. (Related document(s) <u>60</u>) (Mortenson, Michael) (Filed on 3/21/2008)

		(Entered: 03/21/2008)
03/21/2008	<u>67</u>	Declaration of Ivelise Markovits in Support of <u>60</u> MOTION for Reconsideration re <u>57</u> Order on Motion for Summary Judgment, Order on Motion for Leave to File, <u>58</u> Clerk's Judgment MOTION for Reconsideration re <u>57</u> Order on Motion for Summary Judgment, Order on Motion for Leave to File, <u>58</u> Clerk's Judgment filed by California Alliance of Child and Family Services. (Related document(s) <u>60</u>) (Mortenson, Michael) (Filed on 3/21/2008) (Entered: 03/21/2008)
03/21/2008	<u>68</u>	Declaration of John Neiuber in Support of <u>60</u> MOTION for Reconsideration re <u>57</u> Order on Motion for Summary Judgment, Order on Motion for Leave to File, <u>58</u> Clerk's Judgment MOTION for Reconsideration re <u>57</u> Order on Motion for Summary Judgment, Order on Motion for Leave to File, <u>58</u> Clerk's Judgment filed by California Alliance of Child and Family Services. (Related document(s) <u>60</u>) (Mortenson, Michael) (Filed on 3/21/2008) (Entered: 03/21/2008)
03/21/2008	<u>69</u>	Declaration of John L. Peel in Support of <u>60</u> MOTION for Reconsideration re <u>57</u> Order on Motion for Summary Judgment, Order on Motion for Leave to File, <u>58</u> Clerk's Judgment MOTION for Reconsideration re <u>57</u> Order on Motion for Summary Judgment, Order on Motion for Leave to File, <u>58</u> Clerk's Judgment filed by California Alliance of Child and Family Services. (Related document(s) <u>60</u>) (Mortenson, Michael) (Filed on 3/21/2008) (Entered: 03/21/2008)
03/21/2008	<u>70</u>	Declaration of David Darrah in Support of <u>60</u> MOTION for Reconsideration re <u>57</u> Order on Motion for Summary Judgment, Order on Motion for Leave to File, <u>58</u> Clerk's Judgment MOTION for Reconsideration re <u>57</u> Order on Motion for Summary Judgment, Order on Motion for Leave to File, <u>58</u> Clerk's Judgment filed by California Alliance of Child and Family Services. (Related document(s) <u>60</u>) (Mortenson, Michael) (Filed on 3/21/2008) (Entered: 03/21/2008)
03/21/2008	<u>71</u>	Proposed Order re <u>60</u> MOTION for Reconsideration re <u>57</u> Order on Motion for Summary Judgment, Order on Motion for Leave to File, <u>58</u> Clerk's Judgment MOTION for Reconsideration re <u>57</u> Order on Motion for Summary Judgment, Order on Motion for Leave to File, <u>58</u> Clerk's Judgment by California Alliance of Child and Family Services. (Mortenson, Michael) (Filed on 3/21/2008) (Entered: 03/21/2008)
03/24/2008	<u>72</u>	MOTION for Leave to File <i>Motion For Reconsideration And Relief From Judgment</i> filed by California Alliance of Child and Family Services. (Mortenson, Michael) (Filed on 3/24/2008) (Entered: 03/24/2008)
03/24/2008	<u>73</u>	Proposed Order re <u>72</u> MOTION for Leave to File <i>Motion For Reconsideration And Relief From Judgment</i> by California Alliance of Child and Family Services. (Mortenson, Michael) (Filed on 3/24/2008) (Entered: 03/24/2008)
04/10/2008	<u>74</u>	MEMORANDUM AND ORDER by Judge Marilyn Hall Patel DENYING <u>72</u> plaintiff's Motion for Leave to File motion for reconsideration and relief from judgment (awb, COURT-STAFF) (Filed on 4/10/2008) (Entered: 04/10/2008)

04/29/2008	<u>75</u>	NOTICE OF APPEAL as to <u>74</u> Order on Motion for Reconsideration <u>57</u> Order on Motion for Summary Judgment <u>58</u> Clerk's Judgment by California Alliance of Child and Family Services. Filing fee \$ 455.00. Receipt Number 34611018623. (gba, COURT STAFF) (Filed on 4/29/2008) (Entered: 05/21/2008)
05/09/2008	<u>78</u>	TRANSCRIPT DESIGNATION and Ordering Form by California Alliance of Child and Family Services for proceedings held on 9/24/07 before Judge Marilyn H. Patel. (gba, COURT STAFF) (Filed on 5/9/2008) (Entered: 05/21/2008)
05/21/2008	<u>76</u>	Transmission of Notice of Appeal and Docket Sheet to US Court of Appeals re <u>75</u> Notice of Appeal. (gba, COURT STAFF) (Filed on 5/21/2008) (gba, COURT STAFF). (Additional attachment(s) added on 5/21/2008: # <u>1</u> Order Docket No. 57, # <u>2</u> Order Docket No. 58, # <u>3</u> Order Docket No. 74) (gba, COURT STAFF). (Additional attachment(s) added on 5/21/2008: # <u>4</u> Docket Sheet) (gba, COURT STAFF). (Additional attachment(s) added on 5/21/2008: # <u>5</u> Amended Docket Sheet) (gba, COURT STAFF). (Additional attachment(s) added on 5/21/2008: # <u>6</u> Notice of Appeal Notification Form) (gba, COURT STAFF). (Entered: 05/21/2008)
05/21/2008	<u>77</u>	Copy of Notice of Appeal and Docket sheet mailed to all counsel (gba, COURT STAFF) (Filed on 5/21/2008) (Additional attachment(s) added on 5/21/2008: # <u>1</u> Docket Sheet) (gba, COURT STAFF). (Additional attachment(s) added on 5/21/2008: # <u>2</u> Amended Docket Sheet) (gba, COURT STAFF). (Entered: 05/21/2008)
05/29/2008	<u>79</u>	USCA Case Number 08-16267 for <u>75</u> Notice of Appeal filed by California Alliance of Child and Family Services. (gba, COURT STAFF) (Filed on 5/29/2008) (Entered: 06/02/2008)
06/30/2008	<u>80</u>	Transcript of Proceedings held on 09/24/07, before Judge Marilyn H. Patel. Court Reporter/Transcriber Margaret "Margo" Gurule, Telephone number 415-504-4204. Per General Order No. 59 and Judicial Conference policy, this transcript may be viewed only at the Clerks Office public terminal or may be purchased through the Court Reporter/Transcriber until the deadline for the Release of Transcript Restriction. After that date it may be obtained through PACER. Any Notice of Intent to Request Redaction, if required, is due no later than 5 business days from date of this filing. Release of Transcript Restriction set for 9/25/2008. (mng, COURT STAFF) (Filed on 6/30/2008) (Entered: 06/30/2008)
07/02/2008	<u>81</u>	NOTICE of Appearance by Craig Allen Taggart (Taggart, Craig) (Filed on 7/2/2008) (Entered: 07/02/2008)

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CERTIFICATE OF SERVICE

I am over eighteen years of age, not a party in this action, and employed in Orange County, California at 600 Anton Boulevard, Costa Mesa, California 92626-1924. I am readily familiar with the practice of this office for collection and processing of correspondence for mail/fax/hand delivery/next business delivery, and they are deposited that same day in the ordinary course of business. On **August 28, 2008**, I served the attached:

EXCERPTS OF RECORD, VOLUME 2

- ☒ (BY MAIL) by causing a true and correct copy of the above to be placed in the United States Mail at Costa Mesa, California in sealed envelope(s) with postage prepaid, addressed as set forth below. I am readily familiar with this law firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence is deposited with the United States Postal Service the same day it is left for collection and processing in the ordinary course of business.

Attorneys for Respondents:

Edmund G. Brown, Jr., Attorney General of the State of California
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I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made and that this declaration was executed on **August 28, 2008**, at Costa Mesa, California.



Lan H. Ly

CERTIFICATE OF SERVICE

I am over eighteen years of age, not a party in this action, and employed in Orange County, California at 600 Anton Boulevard, Costa Mesa, California 92626-1924. I am readily familiar with the practice of this office for collection and processing of correspondence for mail/fax/hand delivery/next business delivery, and they are deposited that same day in the ordinary course of business. On **August 28, 2008**, I served the attached:

(5 copies) EXCERPTS OF RECORD, VOLUME 2

- ☒ by causing a true and correct copy of the above to be delivered by FedEx from Costa Mesa, California in sealed envelope(s) with all fees prepaid, addressed as follows:

Office of the Clerk
U.S. Court of Appeals
for the Ninth Circuit
95 Seventh Street
San Francisco, CA 94103-1518

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made and that this declaration was executed on **August 28, 2008**, at Costa Mesa, California.



Lan H. Ly