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NORTHERN DISTRICT OF CALIFORNIA

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CALIFORNIA ALLIANCE OF CHILD AND FAMILY
12 SERVICES

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION

CV 09

4398

17 CALIFORNIA ALLIANCE OF CHILD AND
FAMILY SERVICES,

18 Plaintiff,

19 v.

20 JOHN WAGNER, Interim Director of the
California Department of Social Services, in his
21 official capacity; GREGORY ROSE, Deputy
Director of the Children and Family Services
22 Division of the California Department of Social
Services, in his official capacity,

23 Defendants.
24

Case No.

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

DEMAND FOR JURY TRIAL

25
26 Plaintiff California Alliance of Child and Family Services (“the Alliance”) files
27 this Complaint against John Wagner (“Wagner”), in his official capacity as Director of the
28 California Department of Social Services (“DSS”), and Gregory Rose (“Rose”), in his official

1 capacity as Deputy Director of the Children and Family Services Division of DSS (“CFS”), for
2 Declaratory Judgment and Injunctive Relief.

3 **SUMMARY**

4 1. This case is brought on behalf of non-profit charitable organizations that care for
5 children who have been removed from their homes and for whom the State of California has
6 failed to provide adequate funding required by the Child Welfare Act, 42 U.S.C. §§ 670-679b.
7 This action seeks to prevent the State of California from violating federal law by reducing sums
8 paid to group homes for the care of foster children under the Child Welfare Act, and to obtain
9 payment amounts required by the Child Welfare Act sufficient to provide these children the
10 appropriate care and shelter to which they are entitled. California’s past, present and future
11 violation of federal law has caused and will continue to cause these non-profit agencies to cease
12 operating or to dramatically reduce vital programs and staff, irreparably harming California’s
13 foster children.

14 2. The Alliance previously filed an action against the State in the Northern District
15 of California for violations of the Child Welfare Act. *See California Alliance of Child and*
16 *Family Services v. Allenby*, No. C 06-04095 MHP (N.D. Cal. June 30, 2006) (“*California*
17 *Alliance I*”). The district court held that the State’s payment of 80% of foster care group homes’
18 costs “substantially complied” with the Child Welfare Act and that the State was permitted to
19 take into account budgetary considerations in setting its foster care maintenance payment rates,
20 although this could not be the only factor. *California Alliance I*, 2008 WL 686860 (N.D. Cal.
21 Mar. 12, 2008). The court also stated that: “The court is aware that over time, given a multitude
22 of years with budgetary constraints, the standard rate schedule could become greatly out of synch
23 with the costs of items enumerated in the CWA. In that case, the rate may well fall to a level that
24 does not satisfy the State’s obligation to ‘have a process for determining rates that takes into
25 account the statutory criteria mandated by the CWA’.” *Id.* *California Alliance I* is currently on
26 appeal and is set for hearing before the Ninth Circuit Court of Appeal on October 7, 2009.
27 *California Alliance of Child and Family Services v. Allenby*, C.A. NO. 08-16267.

1 June 4, 2009 review of the DSS' Group Home Rates Listing, the Alliance's member agencies
2 operate 87 group home programs, with a licensed capacity of 3,720 beds.

3 c. The Alliance advocates on behalf of foster children and the non-profit
4 agencies that provide care and services for them. This advocacy includes promoting and
5 encouraging the continual improvement of services and outcomes for children and families.

6 d. The Alliance represents the interests of its members relating to the State of
7 California and DSS' administration of the AFDC-FC program.

8 e. The Alliance is authorized to file this action on behalf of its members, who
9 are and will continue to be irreparably harmed by the unlawful actions of Defendants, and each
10 of them, alleged herein. Through this Complaint, the Alliance seeks to protect interests that are
11 germane to its purpose and affiliation with member group homes. The Alliance and each group
12 home that is a member of the Alliance has independent standing to bring this action. *California*
13 *Alliance of Child and Family Services v. Allenby*, 459 F.Supp.2d 919, 925 (N.D. Cal. 2006).
14 Nevertheless, the Alliance asserts the claims alleged in this Complaint without the participation
15 of an individual member of the Alliance. Should it be deemed necessary for a group home to
16 participate in this action, the Alliance will seek leave to amend this Complaint to name specific
17 group homes as parties-in-interest.

18 5. DSS is the State agency responsible for the administration in California of foster
19 care, independent living, and adoption assistance under Title IV-E of the federal Social Security
20 Act. As the Director of DDS, Wagner is responsible in his official capacity for the
21 administration of the Child Welfare Act, 42 U.S.C. §§ 670-679b, and the programs related to that
22 Act in California. Further, Wagner is responsible for implementing the policies contained in the
23 approved state plans and assuring DSS' compliance with state and federal law. Wagner is sued
24 only in his official capacity.

25 6. Rose is responsible in his official capacity for implementing the policies
26 contained in the approved state plans. Rose is sued only in his official capacity.

JURISDICTION AND VENUE

1
2 7. The Alliance brings this civil action under 42 U.S.C. § 1983 and Article VI
3 Paragraph 2 of the United States Constitution (hereafter, “Supremacy Clause”) and seeks a
4 declaratory judgment, pursuant to 28 U.S.C. § 2201, that the Rate Classification Level (“RCL”)
5 system implemented and applied by Defendants, and each of the them, which establishes the
6 rates of payment to group homes on behalf of foster children, and the 10% rate cut to foster care
7 group homes in the State’s 2009/2010 budget, as described in Assembly Bill 4 of the Fourth
8 Extraordinary Session (ABX4 4) (Evans, Chapter 4, Statutes of 2009), violate Title IV-E of the
9 Social Security Act, 42 U.S.C. §§ 670-679b (“Child Welfare Act”) and its implementing
10 regulations. Further, the Alliance seeks provisional and permanent injunctive relief prohibiting
11 and enjoining Defendants from (1) implementing the 10% rate cut to foster care group homes in
12 the 2009/2010 budget, and (2) from using the RCL to establish payment rates. This Court has
13 subject matter jurisdiction pursuant to 28 U.S.C. § 1343(a)(3).

14 8. The Alliance is informed and believes and on that basis alleges that Wagner in his
15 official capacity is a resident of California and works in California.

16 9. The Alliance is informed and believes and on that basis alleges that Rose in his
17 official capacity is a resident of California and works in California.

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

INTRADISTRICT ASSIGNMENT

21
22 11. This Complaint arises in the County of San Francisco, among other places.
23 Consequently, this action is assigned to either the San Francisco Division or the Oakland
24 Division. Civil Local Rule 3-2 (c)-(d).

GENERAL ALLEGATIONS

The Child Welfare Act

25
26
27 12. In 1980, Congress enacted the Child Welfare Act to address the need for
28 providing an appropriate setting for children who are dependents or wards of the state.

1 13. The Child Welfare Act establishes a cooperative federal-state program that assists
2 states in meeting the costs of providing foster care to children who are dependents and/or wards
3 of the state. Pursuant to this cooperative program, the federal government and the state
4 government share the cost of providing funds for licensed third parties (e.g., group homes) that
5 care for these children. Under California law, the State government is responsible for paying for
6 40% of the non-federal share of AFDC-FC payments and the counties are responsible for paying
7 the other 60% of the non-federal share of AFDC-FC payments..

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

12 15. To become eligible for federal funding, a state must submit a plan for financial
13 assistance to the Secretary of the U.S. Department of Health and Human Services (“DHHS”) for
14 approval. As a prerequisite for DHHS approval, the submitting state must agree, among other
15 conditions, to administer its foster care program pursuant to the Child Welfare Act, related
16 regulations, and policies promulgated by the Secretary of DHHS. 42 U.S.C. § 671(a), (b); 45
17 C.F.R. §§ 233.110, 1355.21, 1356.20, 1356.21. A state must amend its approved plan by
18 appropriate submission to the Secretary of DHHS whenever, among other instances, necessary to
19 comply with alterations to the Child Welfare Act and/or federal regulations or policies. 45
20 C.F.R. § 1356.20(e)(1).

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

23 17. The Child Welfare Act requires that states participating in the cooperative
24 program provide “foster care maintenance payments” on behalf of eligible children to child-care
25 institutions, including group homes. 42 U.S.C. §§ 671(a)(2), 672(b)(2); 675(4); 45 C.F.R. §
26 1356.21(a).

27 18. “Foster care maintenance payments” must “**cover the cost of (and the cost of**
28 **providing** food, clothing, shelter, daily supervision, school supplies, a child’s personal

1 incidentals, liability insurance with respect to a child, reasonable travel to the child's home for
2 visitation and reasonable travel for the child to remain in the school in which the child is enrolled at
3 the time of placement. In the case of institutional care, [foster care maintenance payments] shall
4 include the reasonable costs of administration and operation of such institution as are necessarily
5 required to provide the items described in the proceeding sentence." 42 U.S.C. § 675(4)(A)
6 (emphasis added).

7 19. Further, federal law requires participating states to conduct "periodic reviews" of
8 "amounts paid as foster care maintenance payments and adoption assistance to ensure their
9 continuing appropriateness." 42 U.S.C. §§ 671(a)(11). On information and belief, the 10% RCL
10 payment rate reduction is being enacted solely on the basis that California is experiencing
11 budgetary shortfalls and the 10% RCL rate reduction is one of many measures the State has
12 undertaken to reduce future State General Fund expenditures. The rate reduction action is being
13 taken without any reference whatsoever to (1) the costs being reported by individual group
14 home providers to DSS Foster Care rates on an annual basis as part of its rate-setting and
15 auditing protocols; (2) the estimated costs of group homes as a whole as measured by increases
16 in the CNI; or (3) an analysis of the costs of providing the various items which compose the
17 federal definition of foster care maintenance payments. The State's failure to conduct a
18 "periodic review" to determine whether or not a 10% rate reduction would ensure that the
19 "amounts paid as foster care maintenance payments" would continue to be "appropriate" violates
20 the Child Welfare Act. *See* 42 U.S.C. §§ 671(a)(11).

21 *California's Approved Child-Care Institution Program*

22 20. For all periods relevant to this Complaint, DSS has been the state agency
23 responsible for submitting the California state plan to the Secretary of DHHS for approval.
24 Subsequent to receiving DHHS approval, DSS received federal funds specifically intended to
25 cover a portion of the foster care maintenance payment made to group homes on behalf of
26 eligible children. Cal. Wel. & Inst. Code §§ 11229, 11460(a), 11462(a).

27 21. DSS uses the RCL system to establish payment rates for foster care group homes.
28 *See* Cal. Wel. & Inst. Code § 11462. A group home is assigned to one of fourteen Rate

1 Classification Levels (RCLs) based on the group home's number of "points." The number of
2 points assigned to a group home is based largely on (1) the number of "paid/awake" hours
3 worked per child, per month, and (2) the qualifications of the staff. All of the group homes in the
4 same RCL receive the same AFDC-FC payment rate based on the standardized schedule of rates
5 in state law. *See* Cal. Wel. & Inst. Code § 11462(f). When California implemented the RCL on
6 July 1, 1990, the DSS contended that the initial standardized schedule of rates was "adequate for
7 a typical group home program to cover the legitimate and reasonable costs of providing the level
8 of care and services associated with its RCL."

9 22. For all periods of time relevant to this Complaint, DSS, through CFS, has
10 established payment rate levels for foster care providers, including group homes. The RCL
11 system payments are made by the county that placed the child with the group home or other
12 foster care provider. Each group home that participates in California's foster care program
13 executes an agreement with the county placement agency for each child to provide and be
14 compensated for care and supervision.

15 *California's RCL System Violates the Child Welfare Act*

16 23. California's RCL system was implemented by state statute during the 1990-1991
17 state fiscal year. (1989 Cal. Stat. Ch. 1294.) Since that time, the RCL standardized schedule of
18 rates has increased only 33%. By contrast, increases in actual costs that group homes incur to
19 care for and supervise children greatly exceed 33%. Indeed, the California Necessity Index¹
20 ("CNI"), a proxy for the cost of living, has increased by approximately 76% from fiscal year
21 1990-91 to fiscal year 2008-2009.²

22
23 ¹ California law establishes the CNI as the index to be used for determining the size of
24 annual cost-of-living adjustments. (Cal. Wel. & Inst. Code § 11462.) The CNI is a weighted
average of increases in various necessary costs of living for low-income consumers, including
food, clothing, fuel, utilities, rent, and transportation. (Cal. Wel. & Inst. Code § 11453.)

25 ² The CNI underestimates actual increases in costs. For example, the CNI does not reflect
26 substantial increases over the last few years in the cost of workers' compensation insurance,
27 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,
28 administrator certification, licensing fees, independent financial audits, record-keeping, and other
new requirements.

1 24. The disparity between the costs of, and costs of providing, foster care to
2 California's children and the payments that DSS makes to "cover" such costs is due primarily to
3 (1) increases in the actual costs associated with the compensable items under the Child Welfare
4 Act, and (2) "new" costs that group homes must incur to satisfy added state and county
5 requirements.

6 25. As a result of California's unlawful RCL system, foster care maintenance
7 payments made to group home foster care providers during the 2008-2009 fiscal year covered
8 only 77% of the costs of, and costs of providing, foster care to children.

9 26. California's failure to make payments that cover the costs, and costs of providing,
10 the basic necessities enumerated in the Child Welfare Act has caused numerous Alliance
11 members to cease operating their group home programs. Indeed, the Alliance is informed and
12 believes that since fiscal year 2004, approximately 12 Alliance members have ceased operating
13 primarily due to inadequate funding. Many other Alliance members have been forced to
14 significantly reduce their group home programs, including reducing capacity and cutting staff,
15 due, in substantial part, to the increasing costs that were not covered by payments established by
16 the RCL system.

17 27. On or about July 28, 2009, California revised its budget for fiscal year 2009-10
18 ("2009 Budget"). The 2009 Budget will reduce group home rates by ten-percent (10%),
19 effective October 1, 2009, as set forth in Assembly Bill 4 of the Fourth Extraordinary Session
20 (ABX4 4), Section 21 (adding paragraphs (5) and (6) to subdivision (g) of California Welfare &
21 Institutions Code, Section 11462). (Evans, Chapter 4, Statutes of 2009). The Alliance is
22 informed and believes and on that basis alleges that the ten-percent group home rate reduction
23 was based solely on budgetary considerations, in violation of the Child Welfare Act.

24 28. Furthermore, California's 2009 Budget does not provide a 1.53% CNI-based Cost
25 of Living Adjustment ("COLA") for 2009-10, forcing group homes to absorb, once again, the
26 operating cost increases without additional AFDC-FC funding. The 10% RCL payment rate cut,
27 combined with the absence of a CNI-based COLA for 2009-10, means that the purchasing power
28

1 of the RCL standardized schedule of rates will fall to only 68% of the level it had in 1990, when
2 the RCL system was implemented.

3 29. The Alliance is informed and believes and on that basis alleges that the 10% rate
4 reduction, when applied to the current already inadequate RCL standardized schedule of rates,
5 will cause additional group home members to shutter their operations. The group homes that are
6 able to survive, will be forced to significantly cut essential programs and additional staff.

7 30. Group home closures, program cuts and lay-offs of essential group home
8 employees, precipitated by California's failure to comply with the Child Welfare Act's mandate
9 to make foster care maintenance payments sufficient to cover the costs, and cost of providing,
10 basic necessities to foster care children, will irreparably harm California's most vulnerable
11 children.

12 31. There is no administrative process or remedy available for the Alliance or its
13 members to challenge the propriety of the RCL system, including the current 10% rate reduction
14 set forth in the 2009 Budget.

15 **COUNT I**

16 *Declaratory Relief*

17 32. The Alliance incorporates Paragraphs 1-31 as though fully set forth herein.

18 33. There is currently an actual controversy between the Alliance and Defendants,
19 and each of them, which is ripe for adjudication as to whether the RCL system, which sets foster
20 care maintenance payment rates, and the State's 2009 Budget that cuts RCL payment rates by
21 10%, violates federal law.

22 34. The RCL system implemented and applied by Defendants, and each of the them,
23 that establishes payment rates to group homes for the care and supervision of foster children,
24 violates Title IV-E of the Social Security Act, 42 U.S.C. §§ 670-679b and its implementing
25 regulations.

26 35. The failure of Defendants, and each of them, to substantially comply with the
27 Child Welfare Act's mandated factors in setting rates for foster care maintenance payments
28

1 deprives the Alliance's member group homes of their federal rights, privileges and immunities
2 under color of state law in violation of 42 U.S.C. § 1983.

3 36. The 10% cuts in RCL system payment rates for group homes, mandated by the
4 2009 Budget, violates the Child Welfare Act's requirement that participating states make "foster
5 care maintenance payments" that "cover" the costs of providing the essential items set forth in
6 Section 675(4)(A) and is, consequently, preempted by the requirements of the Child Welfare Act
7 under the Supremacy Clause.

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

10 **COUNT II**

11 *Permanent Injunctive Relief*

12 38. The Alliance incorporates Paragraphs 1-37 as though fully set forth herein.

13 39. The Alliance is informed and believes and on that basis alleges that Defendants,
14 and each of them, will continue to establish, and counties will continue to use, foster care
15 maintenance payment rates that fail to comply, or even substantially comply, with the Child
16 Welfare Act.

17 40. The Alliance and its member group homes have suffered injury that is irreparable
18 in nature as the proximate result of the failure of Defendants, and each of them, to make foster
19 care maintenance payments in a manner that required by the Child Welfare Act. The Alliance
20 and its member group homes are without adequate remedy at law.

21 41. The Alliance and its member group homes will suffer injury that is irreparable in
22 nature as the proximate result of the ten-percent (10%) reduction in RCL payment rates required
23 by the State's 2009-10 Budget.

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

26 **PRAYER FOR RELIEF**

27 Wherefore, the Alliance requests relief as follows:

28 1. That Defendants, and each of them, be permanently enjoined from enacting the

1 ten-percent (10%) payment rate reduction for group homes mandated by the
2 State's 2009 Budget, which violates the Child Welfare Act's requirement that
3 participating states make "foster care maintenance payments" that "cover" the
4 costs of providing the essential items set forth in Section 675(4)(A);

5 2. That the Court declare that Defendants, and each of them, violated, continue to
6 violate, and/or will violate the Child Welfare Act by failing to establish a payment
7 system adequate to cover the costs incurred by group homes that provide care and
8 supervision in accordance with federal and state laws; and

9 3. That the Court declare that Defendants' current and continued use of the RCL
10 system violated, continues to violate, and/or will violate the group homes' federal
11 rights, privileges and immunities under color of state law;

12 4. That the Court declare that Defendants' current and continued use of the RCL
13 system is preempted by the Supremacy Clause of the United States Constitution
14 because it violates the Child Welfare Act's requirement that participating states
15 make "foster care maintenance payments" that "cover" the costs of providing the
16 essential items set forth in Section 675(4)(A);

17 5. That Defendants, and each of them, be permanently enjoined from currently and
18 continually using the RCL system to establish foster care maintenance payment
19 rates to group homes;

20 6. That Defendants, and each of them, prepare and implement a payment system that
21 complies with the Child Welfare Act;

22 7. That Defendants be required to increase RCL payment rates in an amount
23 sufficient to correspond to the cumulative increase in the CNI since 1990 made
24 between the time that (1) the Court grants provisional relief in favor of the
25 Alliance, and (2) Defendants, and each of them, prepare and implement a
26 payment system that complies with the Child Welfare Act;

27 8. That the Alliance be awarded its reasonable costs of suit and attorney's fees
28 included herein; and

