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9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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12
13 **CALIFORNIA ALLIANCE OF CHILD
14 AND FAMILY SERVICES,**

15 Plaintiff,

16 v.

17 **JOHN WAGNER, Director of the California
18 Department of Social Services, in his official
capacity; GREGORY ROSE, Deputy
19 Director of the Children and Family
Services Division of the California
20 Department of Social Services, in his official
capacity,**

21 Defendants.
22

CV 09-4398 MHP

**RESPONSE OF CALIFORNIA
DEPARTMENT OF SOCIAL SERVICES
TO SUPPLEMENTAL DECLARATION
OF DOUG JOHNSON IN SUPPORT OF
EX PARTE APPLICATION FOR
TEMPORARY RESTRAINING ORDER,
ETC.**

Hearing Date: October 29, 2009
Time: 2:30 p.m.
Courtroom: 15, 18th floor
Judge: The Hon. Marilyn Hall Patel

Action Filed: September 18, 2009

23
24 **INTRODUCTION**

25 Early in the morning hours of October 9, 2009, the date this Court set for the hearing on
26 plaintiff's *ex parte* application for a temporary restraining order, plaintiff filed electronically,
27 without leave of the Court, a document entitled "Supplemental Declaration of Doug Johnson in
28 Support of Plaintiff California Alliance of Child and Family Services' *Ex Parte* Application for

1 Temporary Restraining Order and Order to Show Cause Regarding Preliminary Injunction”
2 (Supplemental Johnson Declaration), which included five demonstrative exhibits as attachments.

3 At the hearing on plaintiff’s application later that day, defendants objected to the late filing,
4 and stated that at a minimum the Court allow the California Department of Social Services
5 (CDSS) the opportunity to respond to the late filing prior to any ruling on plaintiff’s application.
6 The Court granted CDSS until October 16, 2009, in which to file a response to plaintiff’s filing,
7 and continued the hearing on the application to October 29, 2009.

8 In line with the Court’s directive, CDSS submits the following response to plaintiff’s filing.

9
10 **CDSS’s RESPONSE TO DECLARATION OF DOUG JOHNSON**

11 Paragraph 5 of Mr. Johnson’s Supplemental Declaration misstates CDSS’s position. Mr.
12 Johnson states that CDSS made an erroneous statement (Supplemental Johnson Declaration, p.
13 2:6). However, the statement he refers to was an unclear statement; it was not supported by the
14 declarations, and was cleared up later in the Opposition.¹ The point CDSS was making was that
15 Senate Bill (SB) 597 -- which was last week still-pending but on October 11, 2009, became law --
16 would amend (and now has amended) Welfare and Institution Code section 11462(f)(30(A) to
17 afford group homes fiscal flexibility to operate their programs at a lower RCL point range and
18 continue to receive the rate for which they are paid while generating points at a lower RCL.
19 (Declaration of Cora L. Dixon in Response to Declaration of Doug Johnson Re: Plaintiff’s Ex
20 Parte Application for a Temporary Restraining Order, etc. (Dixon Decl.), ¶ 3.)²

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23 ¹ Defendants’ Opposition to Motion for a Temporary Restraining and Order to Show
Cause Re: Preliminary Injunction, Document 25 in the electronic docket in this case.

24 ² Cora L. Dixon is employed by CDSS; her current position is Bureau Chief, Program
25 and Financial Audits Bureau, in the Foster Care Audits and Rates Branch, a position she has held
26 since May 2000. Prior to that, she held a variety of positions within the Foster Care Audits and
27 Rates Branch of CDSS, such as the Unit Chief of the Rates Policy Unit and Unit Chief of the Rate
28 setting Unit. Her responsibilities in this position, and background information of the role of
CDSS in the provision of child welfare services in line with the federal Child Welfare Act and the
State of California’s system for administering those services, were set forth in detail at paragraphs
(continued...)

1 Paragraphs 6, 7 and 8 of Mr. Johnson's Supplemental Declaration add nothing of
2 substance to the discussion, as they merely restate the funding ratios for rates paid among the
3 federal, state, and county governments; the application of the 10% reduction to the sharing ratio
4 to an RCL 12 example; and finally pointing out how the savings are applied to the participating
5 governmental bodies that share the payment. The obvious statement being made is
6 mathematically sound: since the payment is shared among three entities, each of their "savings" is
7 less than the whole reduction. (Dixon Decl., ¶ 4.)
8

9 However, Mr. Johnson's declaration at paragraph 9 mischaracterizes the Court's determination
10 in *California Alliance of Child and Family Services v. Allenby*, No. C 06-04095 MHP (*Alliance I*).
11 Mr. Johnson states, beginning at page 3, line 28 and continuing through page 4, line 2, that "the court
12 found[] the purchasing power for group homes was 80 percent of the 1990-91 rates taking into
13 account the CNI increases." In fact, the court stated as follows: "Currently, the RCL system provides
14 payments at 127% of its 1990-91 levels, whereas the CNI is at 159% of its 1990-91 levels. As
15 discussed above, the initial RCL reflected the costs faced by foster care providers. Therefore, today
16 [March 12, 2008] the RCL provides for at least 80% of the costs associated with the items enumerated
17 in the CWA. Consequently, the process for determining foster care payment rates is still substantially
18 compliant with the statutory criteria outlined in the CWA." (Memorandum and Order re: Cross
19 Motions for Summary Judgment, at p.6:26-7:4.)³ Subsequent to the *Alliance I* decision, as set forth
20 in Debra Williams' declaration of October 5, 2009, the Legislature provided an increase to the
21 wages and benefits for group home providers in SB 84, Chapter 177, Statutes of 2007. This
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24 _____
25 (...continued)
26 2-5 of her previous declaration, filed on October 5, 2009, in response to plaintiff's application.
27 That declaration is part of the case record as Document 29. Ms. Dixon has reviewed Mr.
28 Johnson's Supplemental Declaration. (Dixon Decl., ¶¶ 1-2.)

³ The Court's Memorandum and Order re: Cross Motions for Summary Judgment is Document 57 in the electronic docket of this case.

1 legislation increased wages for staff by five percent and increased payroll taxes and other
2 employer paid benefits from 20.325 percent to 24 percent. (Dixon Decl., ¶ 5.)

3 Mr. Johnson's assertion is paragraph 9 is also misleading in that it does not recognize that
4 even as the Court made its finding that the 80% level was substantially compliant with the CWA, the
5 RCLs at the time the decision issued were in fact five percent higher than the figures the Court used
6 as a basis for its analysis, having been raised by five percent in January 2008 by Senate Bill (SB) 84
7 (Chapter 177, Statutes of 2007), as was explained in Debra Williams' declaration filed on October 5,
8 2009, in response to plaintiff's application. CDSS has not disputed the fact that, over time, payments
9 to foster care group homes have not remained in lock step with the CNI. However, as the Court's
10 decision recognized, CDSS was not obligated to do so. (Dixon Decl., ¶ 6.)

11
12 In paragraph 10 of Mr. Johnson's Supplemental Declaration, and with the chart labeled
13 Exhibit B, Mr. Johnson seeks to track the history of RCL rates established from 1990 through the
14 passing of the October 1, 2009, 10 percent reduction, as well as to note the point ranges necessary
15 for each RCL and point range now necessary under SB 597. Although CDSS has not verified all
16 of this information, for purposes of clarity CDSS will use the figures as stated in Mr. Johnson's
17 Exhibit B. While Mr. Johnson chooses to illustrate the decrease in the RCL rate for an RCL 14
18 from \$6,694.00 per child per month to \$6,025.00 per child per month, he does not also point out
19 that his own chart illustrates the rate relief afforded to the group home. Using his RCL 14
20 example, the rate relief afforded under SB 597 would allow that same RCL 14 to be paid at
21 \$6,025.00 per child per month, while generating points at an RCL 11, which would otherwise
22 allow a payment of only \$4,941.00 per child per month. This is not an insignificant fiscal benefit.
23 (Dixon Decl., ¶ 7.)

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26 In the first part of paragraph 11 of Mr. Johnson's Supplemental Declaration, he attempts to
27 explain why the five percent increase effective January 1, 2008, was not in effect a five percent
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1 increase. In fact, he cites a range at the low RCL 1 at 2.20% to the highest RCL 14 at 5.07%.
2 Overall, Mr. Johnson stated that the five percent resulted in an average “overall increase” of
3 “approximately 4.95 percent.” However, Mr. Johnson, in his Exhibit B, calculated the percentage
4 increase for each RCL rather than using the average. The second half of Mr. Johnson’s
5 Supplemental Declaration at paragraph 11 asserts that CNI increases that have not been afforded
6 group homes since the finding in the *Alliance I* court decision, which was based on the 2006-07
7 data. Mr. Johnson reiterates in paragraph 11 his assertion in his paragraph 9 that CDSS’s 80%
8 compliance (“at least 80%” per the decision) had dropped to 77% effective with the October 1,
9 2009, reductions (Supplemental Johnson Declaration, p. 4:1-6). While CDSS has not verified
10 these figures, in the next several paragraphs it will demonstrate how any asserted rate reduction
11 has been offset by the SB 597 rate relief. (Dixon Decl., ¶ 8.)

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14 Mr. Johnson speaks of SB 597 in his Supplemental Declaration at paragraph 12. This
15 legislation became law on October 11, 2009. This legislation was worked on cooperatively by
16 plaintiff [the California Alliance for Child and Family Services] and CDSS. In Mr. Johnson’s
17 Supplemental Declaration at paragraph 12 he refers to it as an “emergency stop-gap measure”. In
18 that paragraph Mr. Johnson admits that he and the Alliance worked diligently to get this
19 “emergency stop-gap measure” put into law and that they were successful. What was initially
20 characterized as a “good” thing -- that is, legislation that “would make a further reduction in the
21 RCL point ranges to reflect the 10 percent rate reduction” -- is now being repainted by one of its
22 co-authors as a “‘bad alternative,’ but the ‘least bad’ alternative.” (Supplemental Johnson
23 Declaration, p. 5:18-19.) In the midst of Mr. Johnson’s paragraph 12 are also admissions that the
24 adjusted rate schedule will allow group home providers to reduce costs. CDSS will set forth
25 below examples that will show that the effect of the rate relief, in offsetting the 10% reduction, if
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1 fully utilized, will provide a group home with up to 18% or more in reduced program costs.
2 (Dixon Decl., ¶ 9.)
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4 In Mr. Johnson's Supplemental Declaration at paragraph 13 he repeats, from his
5 paragraph 5, an earlier unclear statement and reasserts that CDSS is mischaracterizing the rate
6 relief (in the form of point adjustment) as an increase in funding. CDSS does not want to dwell
7 on an unclear statement made in its October 5th filings, but would direct the court to the correctly
8 characterized statement in the same October 5th Opposition cited by Mr. Johnson. In that
9 Opposition it more clearly states, at page 4, lines 26-28, that "the adjusted rate schedule allows
10 providers to more easily meet their RCL points by allowing them flexibility to make a
11 proportionate adjustment to their staff expenses." (Dixon Decl., ¶ 10.)
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13 At paragraph 14 of Mr. Johnson's Supplemental Declaration he cites a chart (at his
14 Exhibit C) that purports to explain how the rate relief impacts particular group home providers.
15 However, it includes information that cannot be verified and is not in existent law. Therefore,
16 CDSS will continue to refer to Mr. Johnson's Exhibit B to address his assertions. Mr. Johnson
17 downplays the benefit of SB 597, for which he diligently fought for on behalf of his members,
18 and which he admits was for the purpose of offsetting the ten percent reduction. In fact his
19 statement that rate relief of 10 percent was intended to offset the 10 percent reduction (Johnson
20 Supplemental Declaration, p. 5:9-10) is a significant understatement because any average
21 provider (for example, one providing services in the RCL10-12 range) that takes full advantage of
22 SB 597 rate relief will benefit by an average of 18 percent. (Dixon Decl., ¶ 11.)
23

24 Mr. Johnson himself admits in his Supplemental Declaration, at page 6, line 20, that group
25 homes using the rate relief of SB 597 will experience a fiscal benefit in its operations.
26 Specifically, Mr Johnson used the example that the " point ranges in SB 597 will mean that an
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1 existing group home program classified at RCL 14 could be providing a staffing pattern
 2 equivalent to RCL 11... ." In other words, looking at Mr. Johnson's own Exhibit B chart, a
 3 provider being paid as an RCL 14 can actually be generating points as an RCL 11 while still
 4 being paid as an RCL 14, a fiscal benefit that could reduce the expense of the group home by
 5 17.14 percent. What this equates to, according to Mr. Johnson's Exhibit B, is that an RCL 14
 6 provider would be paid \$6,025.00 per child per month while generating points as an RCL 11 that
 7 would otherwise entitle the provider to be paid \$4,941.00 per child per month. Another example
 8 along the lines of that given by Mr. Johnson is that a group home RLC 12 would only need to
 9 generate the points for an RCL 9 group home. Again, according to Mr. Johnson's Exhibit B, the
 10 RCL 12 provider would be paid \$5,302.00 per child per month while generating points otherwise
 11 suitable for an RCL 9, which would otherwise entitle it to \$4,221.00 per child per month. This
 12 results in a fiscal benefit of 17.78 percent. A final example is an RCL 10 group home that would
 13 be paid \$4,583.00 per child per month while generating points for an RCL 8 that would otherwise
 14 entitle the provider to \$3,862.00 per child per month, for an 18.33 % fiscal benefit to the provider.
 15 These and other similar examples are set forth in the following chart. (Dixon Decl., ¶ 12.)

	Paid RCL	Minimum Points	Fiscal Benefit	Operating RCL	Paid/operating RCL
20 SB 597 21 Adjusted RCL 22 WIC 23 11462(f)(3)(A)	10	245	-18.33%	RCL 8	\$ 4583/3862
	11	271	-17.88%	RCL 9	4941/4221
	12	296	-17.78%	RCL 9	5302/4221
	13	322	-17.44%	RCL 10	5665/4589
	14	348	-17.14%	RCL 11	6025/4941

25 Indeed, it is important to note that not only does the SB 597-adjusted rate schedule offset
 26 the 10 percent rate reduction, as Mr. Johnson concedes in his Supplemental Declaration, but, if it
 27 is fully utilized by providers, the fiscal flexibility for the provider can translate into a benefit of
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1 between 10 percent to more than 18 percent. Based on this, CDSS vigorously asserts that it is
2 therefore still very much in substantial compliance with its obligations under the Child Welfare
3 Act. (Dixon Decl., ¶ 13.)

4 Based on the foregoing, CDSS submits that it remains in substantial compliance with its
5 obligations under the Child Welfare Act and, accordingly, that plaintiff's application for a
6 temporary restraining order and order to show cause regarding a preliminary injunction should be
7 denied in its entirety.⁴

9 Dated: October 16, 2009

Respectfully submitted,

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12 SUSAN M. CARSON
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25 ⁴ CDSS also requests that the Court take judicial notice, pursuant to Federal Rules of
26 Evidence, Rule 201, of the October 2009 Summary Analysis: Statement of General Fund Cash
27 Receipts and Disbursements, and the Statement of General Fund Cash Receipts and
28 Disbursements, both issued by Controller John Chiang, California State Controller's Office, on or
about October 9, 2009, which are submitted as attachments to the declaration of George Prince
being filed concomitantly with this response.