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CLERK, U.S. DISTRICT COURT  
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

VRV

16  09 - 4398

17 CALIFORNIA ALLIANCE OF CHILD AND  
18 FAMILY SERVICES,

No.

19 Plaintiff,

**DECLARATION OF WILLIAM F. ABRAMS IN SUPPORT OF PLAINTIFF CALIFORNIA ALLIANCE OF CHILD AND FAMILY SERVICES' EX PARTE APPLICATION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE REGARDING PRELIMINARY INJUNCTION**

20 v.

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

24 Defendants.

1 I, WILLIAM F. ABRAMS, declare as follows:

2 1. I am a member of the State Bar of California and admitted to practice before this  
3 Court. I am a partner with Bingham McCutchen LLP, counsel of record for Plaintiff California  
4 Alliance of Child and Family Services (the "Alliance"). I have personal knowledge of the  
5 matters set forth in this declaration, and if called as a witness, I could and would testify  
6 competently to them.

7 2. On September 15, 16 and 17, 2009, I exchanged voicemail messages and spoke  
8 briefly with Defendants' counsel, George Prince. I informed Mr. Prince that Plaintiff would be  
9 filing a Complaint for Declaratory and Injunctive Relief and an *Ex Parte* Application for a  
10 Temporary Restraining Order and an Order to Show Cause Regarding Preliminary Injunction in  
11 this matter on September 18, 2009.

12 3. As a courtesy, we also provided Mr. Prince a copy of the Complaint and the  
13 Memorandum of Points and Authorities in Support of the *Ex Parte* Application for a Temporary  
14 Restraining Order and an Order to Show Cause Regarding Preliminary Injunction on September  
15 17, 2009.

16 4. Concurrent with the filing of this *Ex Parte* Application for a Temporary  
17 Restraining Order and an Order to Show Cause Regarding Preliminary Injunction, the Alliance is  
18 filing a Complaint for Declaratory and Injunctive Relief. Attached hereto as Exhibit A is a true  
19 and correct copy of the Complaint.  
20

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

23 Executed on September 18, 2009, at East Palo Alto, California.

24 

25 \_\_\_\_\_  
26 William F. Abrams  
27

**EXHIBIT A**

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11 Attorneys for Plaintiff  
CALIFORNIA ALLIANCE OF CHILD AND FAMILY  
12 SERVICES

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

16  
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           3.       This current action is necessitated by the State's recent enactment of a new budget  
2 for fiscal year 2009-10 that cuts payments to foster care group homes by ten-percent (10%),  
3 effective October 1, 2009 -- a decision based solely on budgetary considerations. The State;  
4 therefore, is not in compliance or even substantial compliance with the mandates of the Child  
5 Welfare Act. This 10% rate cut will irreparably harm the Alliance's members and the children  
6 for whom they care and must be enjoined. Furthermore, because the State's most recent budget  
7 impermissibly conflicts with the mandates of the Child Welfare Act, it is preempted by the  
8 Supremacy Clause and, accordingly, its implementation must be enjoined.

9                     In support thereof, the Alliance alleges as follows:

10                                     **PARTIES**

11           4.       The Alliance is a California corporation with its principal place of business at  
12 2201 K Street, Sacramento, California 95816. The Alliance is a private non-profit membership  
13 organization that, among other things, represents the interests of group homes and the foster  
14 children for whom they provide care and supervision as described below.

15                     a.       The Alliance represents California non-profit agencies offering an array of  
16 services to vulnerable children and their families, including group home programs. Group  
17 homes provide care and supervision for foster children who are placed with them by county child  
18 welfare and/or probation departments and who have significant emotional or behavioral  
19 problems and who cannot live safely in their own homes or in another family setting, and who  
20 require more restrictive out-of-home placement environments. DSS licenses, audits, and  
21 establishes monthly payment rates for group homes serving foster children. DSS provides  
22 federal and State reimbursement to counties for the costs of making payments, using the DSS-  
23 established rates, to group homes on behalf of foster children who are eligible under the Aid to  
24 Families with Dependent Children-Foster Care ("AFDC-FC") program.

25                     b.       The Alliance's membership includes approximately 115 private, non-  
26 profit member agencies that provide adoption, foster care, group home, mental health treatment,  
27 family preservation and support, wrap-around, educational, and other services. Based on the  
28

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.



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 Index<sup>1</sup>  
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.<sup>2</sup>

22  
23 <sup>1</sup> 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  
25 average of increases in various necessary costs of living for low-income consumers, including  
26 food, clothing, fuel, utilities, rent, and transportation. (Cal. Wel. & Inst. Code § 11453.)

26 <sup>2</sup> The CNI underestimates actual increases in costs. For example, the CNI does not reflect  
27 substantial increases over the last few years in the cost of workers' compensation insurance,  
28 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.

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

1           9.     That this Court award the Alliance such other relief as is warranted by the facts  
2                     and the law as is just under the circumstances.  
3  
4  
5

6                                     **DEMAND FOR JURY TRIAL**

7                     Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and Local Rule 3-  
8 6(a), the Alliance hereby demands a trial by jury for all issues that are so triable.  
9

10 DATED: September 18, 2009

Bingham McCutchen LLP

11  
12  
13 By: 

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