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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
16

17 CALIFORNIA ALLIANCE OF CHILD AND
18 FAMILY SERVICES,

19 Plaintiff,

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
California Department of Social Services, in his
23 official capacity,

24 Defendants.
25
26
27
28

Case No. 3:09-cv-04398-MHP

**PLAINTIFF CALIFORNIA
ALLIANCE OF CHILD AND
FAMILY SERVICES'
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR PRELIMINARY
INJUNCTION**

Date: November 13, 2009
Time: 10:00 a.m.
Courtroom: 15

Complaint filed: September 18, 2009

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1 **I. INTRODUCTION**

2 Recognizing that foster children and foster care group homes in California will be
3 irreparably harmed by the implementation of the ten percent rate cut in the State’s newly enacted
4 budget, this Court granted Plaintiff California Alliance of Child and Family Services’ (the
5 “Alliance”) *Ex Parte* Application for a Temporary Restraining Order on November 4, 2009.
6 (Docket No. 45 (“TRO)). The Alliance now seeks a preliminary injunction preventing the State
7 from reducing the already deficient payments to foster care group homes in violation of the
8 federal Child Welfare Act (the “Act”).

9 The Act requires foster care maintenance payments to be made so that foster children can
10 be provided with basic necessities of life. The Alliance has submitted numerous declarations
11 establishing that, as a result of the most recent budget cuts, many foster care group homes will be
12 forced to reduce the number of children they care for or to close, and many others will be forced
13 to significantly reduce staff, reduce or eliminate essential programs and cut staff benefits and
14 pay. Children placed in foster care group homes do not request these services. They have no
15 choice once the State determines that they can no longer remain in their home and that
16 alternative services are not an available or appropriate remedy. These vulnerable children must
17 be protected from having services they desperately need cut off because the State has failed to
18 comply with the Act.

19 This Court has held that the Act requires the State to make “foster care maintenance
20 payments,” which are defined as “payments to cover the cost of (and the cost of providing)”
21 certain items enumerated in the Act, including food, clothing, shelter and supervision. (TRO at
22 1-2.) This Court also held that the State’s budget cut has now resulted in payments to group
23 homes that cover only approximately 68% of the costs of providing the items listed in the Act
24 and rejected the State’s argument that SB 597 results in a net benefit to group homes:
25 “Defendants’ contention . . . appears to have little merit” because the “adjustment appears to help
26 a group home’s financial posture by allowing the group home to cut ‘costs’ . . .” (*Id.*) SB 597
27 does not increase payments to foster care group homes. It is merely a measure designed to stave
28 off a death sentence for the foster care group homes that would otherwise go out of business

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1 because the State is refusing to cover the costs of providing services to foster children. The
2 group homes are now forced to choose between cutting essential services or going out of
3 business, leaving foster children without appropriate services for their individual needs.

4 The four factors that Courts consider in deciding whether to grant a motion for
5 preliminary injunction weigh heavily in favor of granting the requested relief:

6 1. **Immediate and irreparable injury will result to the Alliance if this relief is not**
7 **granted.** This Court held that the “implementation of California’s ten percent budget cut may be
8 expected to result in decreases in care, housing, services, staffing numbers and staff
9 qualifications” which will undoubtedly cause irreparable harm to California’s foster children.
10 (TRO, at 2.) Without the requested relief, by the time there is a trial on the merits in this action
11 California’s foster children and the group homes that provide them essential services will suffer
12 irreparable injury. The private nonprofit agencies that are forced to close or reduce the size of
13 their group home programs will, among other things, sell or terminate their leases; give up their
14 Community Care licenses and local use permits; and dismiss their dedicated and experienced
15 child care and social work staff. The group homes that remain open, but are forced to reduce the
16 pay and/or benefits for their staff, will lose many of their most highly educated and experienced
17 employees. Unless Defendants’ conduct is enjoined, the Alliance, its members and California’s
18 foster children will suffer irreparable and immeasurable injury.

19 2. **The Alliance is likely to prevail on its claims against Defendants.** This Court
20 held in the Temporary Restraining Order that “plaintiff has raised serious questions going to the
21 merits of this action” because “[t]here are serious questions whether California’s funding scheme
22 for 2009-10 substantially complies with the Act.” (TRO, at 2.) The payments made to the foster
23 care group homes cover only approximately 68% of their costs, despite the requirement that the
24 State “cover” these costs. The impact of the budget cuts are not offset by SB 597 because it
25 merely “help[s] a group home’s financial posture by allowing the group home to cut ‘costs,’ i.e.,
26 the services provided to each child, without losing additional funding.” (*Id.*) This does not come
27 close to covering the costs of the enumerated items required by the Child Welfare Act.
28

1 3. **The balance of hardships tips strongly in the Alliance's favor and an injunction**
2 **is in the public interest.** This Court held in the Temporary Restraining Order that that “the
3 balance of hardships tips sharply in [the Alliance’s] favor and that the entry of a Temporary
4 Restraining Order is in the public interest” because the irreparable harm likely to be suffered by
5 California’s foster children is significantly outweighed by the fiscal impact on the State. (TRO
6 at 2.) The Alliance, its members and the foster children for whom they provide services will
7 suffer damages far beyond those that could be remedied monetarily at trial. It would be tragic
8 for California’s foster children to be wrongfully deprived of essential benefits if homes close or
9 otherwise have reduced services and populations. Any hardship to the State is from fulfilling its
10 duties under the Act and can be made up by restoring budget cuts if the State prevails on the
11 merits. Additionally, the public interest weighs heavily in favor of granting relief to the Alliance
12 and the foster children they serve. The State takes the initiative to remove a child from the
13 custody of his/her parents, placing them into foster care for their own protection and “in their
14 best interest.” The State has a unique obligation to provide adequate financial support for the
15 children’s care and supervision, even in difficult budgetary situations. Thus, the public interest
16 is served in protecting their interests.

17 For all the foregoing reasons, the Alliance respectfully requests that the Court issue a
18 preliminary injunction enjoining Defendants from reducing the foster care maintenance
19 payments made to foster care providers under the 2009 Budget.

20 **II. STATEMENT OF FACTS**

21 **A. The Alliance**

22 The Alliance is a non-profit organization that represents the interests of group homes that
23 provide care and supervision for foster children with significant emotional or behavioral
24 problems who cannot live safely in their own homes or in another family setting, and who
25 require more restrictive out-of-home placement environments. (Declaration of Doug Johnson in
26 Support of *Ex Parte* Application for a Temporary Restraining Order [“Johnson Decl.”] (Docket
27 No. 11), ¶ 2.) The Alliance’s member agencies operate 87 group home programs, with a licensed
28 capacity of 3,720 beds. (*Id.*) The California Department of Social Services (“DSS”) licenses,

1 audits, and provides funding to these group homes through the Aid to Families with Dependent
 2 Children - Foster Care (“AFDC-FC”) program. Health and Safety Code §§ 1500, et seq.; Welf.
 3 & Inst. Code §§ 11450(d), 15200(c)(1).

4 The Alliance’s members receive foster care maintenance payments pursuant to the Child
 5 Welfare Act, 42 U.S.C. §§ 670-679b. (Johnson Decl., ¶ 5.) The Child Welfare Act requires that
 6 each participating state must “*shall* make foster care maintenance payments on behalf of each
 7 child who has been removed from the home of a relative” 42 U.S.C. § 672(a)(1) (emphasis
 8 added). The Act defines “foster care maintenance payments” as “payments to cover the cost of
 9 (and the cost of providing)” the enumerated items including “food, clothing, shelter, daily
 10 supervision, school supplies, a child’s personal incidentals, liability insurance with respect to a
 11 child, and reasonable travel to the child’s home for visitation. . . .” 42 U.S.C. § 675 (4)(A). The
 12 Act also requires states to conduct a “periodic review” of “amounts paid as foster care
 13 maintenance payments . . . to ensure their continuing appropriateness.” 42 U.S.C. § 671(a)(11).

14 California enacted a Rate Classification Level System (“RCL”) to determine the amount
 15 of foster care maintenance payments to make to each foster care group home.¹ (Johnson Decl.,
 16 ¶¶ 6-7.) The original standardized schedule of rates was developed using the average actual and
 17 reasonable costs of a sample of group home programs for 1985, adjusted to take into account the
 18 increase in the California Necessities Index (“CNI”) between 1985 and 1990. (*Id.*, ¶ 8.) The
 19 CNI is a weighted average of increases in various costs of living for low-income consumers,
 20 including food, clothing, fuel, utilities, rent and transportation. *See, e.g.*, Cal. Welf. & Inst. Code
 21 § 11453. Subsequent to its implementation, California law requires that “the standardized
 22
 23

24 ¹ The RCL process uses a point system to measure the level or intensity of care and supervision
 25 provided by each group home. Points are based on the number of “paid-awake” hours per child
 26 per month of services provided in the following three components: (1) Child Care and
 27 Supervision; (2) Social Work Activities; and (3) Mental Health Treatment Services. Additional
 28 points are provided based upon the experience and training of the group home’s staff. *See*
 California Department of Social Services, Foster Care Rates Bureau, Overview of the Group
 Home Rate Classification Levels attached as Exhibit A to the Supplemental Declaration of Debra
 Williams (Docket. No. 41).

1 schedule of rates shall be adjusted annually by an amount equal to the [CNI] computed pursuant
2 to section 11453, subject to the availability of funds.” Cal. Welf. & Inst. Code § 11462(g)(2).

3 Although California law requires foster care maintenance payments to be adjusted
4 annually to correspond with the CNI, “subject to the availability of funds,” the RCL standard
5 rates for group homes in effect on July 1, 2009 increased by an average of only 33% from their
6 original 1990-91 level, whereas the CNI has increased by more than 76% during that time
7 period. (Johnson Decl., ¶ 9.) As a result, the RCL standard rates covered less than 76% of the
8 costs of providing care and supervision for children placed in group homes. (*Id.*)

9 **B. Unless Its Implementation Is Enjoined, The State’s New Budget Will Cause**
10 **Irreparable Harm to The State’s Most Vulnerable Children**

11 In July 2009, the State passed a revision to its budget for fiscal year 2009-10 that reduced
12 the standardized schedule of rates for group homes by ten percent, effective October 1, 2009.
13 (Johnson Decl., ¶ 10, Ex. A, pg. 39 (“The new standardized schedule of rates as provided for in
14 paragraph (4) [of Cal. Welf. & Inst. Code § 11462] shall be reduced by 10 percent, effective
15 October 1, 2009. . . .”)) As a result, the current RCL standard rates for group homes will have
16 increased by less than 20% from their 1990-91 levels, whereas the CNI will have increased by
17 more than 76%. (*Id.*, ¶ 10.) Thus, as this Court found, the new RCL standard rates for group
18 homes will cover only 68% of the costs of providing care and supervision.

19 Implementation of the 2009 Budget will cause irreparable harm to the foster care group
20 homes that are part of the Alliance and the foster children for whom these group homes provide
21 services. The majority of foster care group homes’ funding comes from the DSS, which makes
22 foster care maintenance payments as required under the Act and California’s Welfare and
23 Institutions Code. (Declaration of Charles Rich in Support of *Ex Parte* Application for a
24 Temporary Restraining Order [“Rich Decl.”] (Docket No. 15), ¶ 4) The foster care maintenance
25 payments are used to provide the most basic necessities to foster children, including food,
26 shelter, daily supervision, school supplies and many other essential items. (*Id.*, ¶ 5.) Group
27 homes were still required to pay for items the prices of which were beyond their control, such as
28 food, clothing, rent, utilities and transportation costs. (Johnson Decl., ¶ 15.) After paying for

1 these other operating costs, group homes were left with little money to pay for the wages and
2 benefits of child care staff, their first-level supervisors and social workers. (*Id.*)

3 If the rate reductions are not preliminarily enjoined, several Alliance members will be
4 forced to close their group home programs completely. (Johnson Decl., ¶ 23.) Others will likely
5 be forced to reduce the size of their programs. (*Id.*) Those agencies that are able to stay in
6 business have already eliminated all non-essential aspects of care and supervision, reduced
7 staffing and have reduced staff pay and benefits. (*Id.*) They will now be forced to further reduce
8 the number of child workers, social workers and support staff even further. (*Id.*) These homes
9 will also have to significantly reduce the level of support provided to the children, reduce or
10 eliminate staff who have the skills needed to provide tutoring to children and to work with the
11 schools to avoid suspensions and expulsions. (*Id.*)

12 For example, David & Margaret Youth and Family Services (“David & Margaret”),
13 which was founded in 1910, has already reduced its services and will be forced to make
14 additional cuts. (Rich Decl., ¶ 3.) David & Margaret now has beds for 50 girls, a significant
15 reduction from the 100 beds it previously provided. (*Id.*, ¶ 7.) Furthermore, the facility has been
16 forced to lay-off four social workers, three case managers and four child care workers. (*Id.*, ¶ 6.)
17 This staff reduction has, in turn, caused it to reduce the services offered to its residents to the
18 bare minimum. (*Id.*, ¶ 6.) David & Margaret was also forced to phase out a special program for
19 children with learning disabilities and was forced to freeze staff wages and benefits making it
20 difficult to attract and retain qualified staff with the education, training and experience to
21 understand the emotional and behavioral issues confronting the children. (*Id.*, ¶¶ 8-9.) Unless
22 implementation of the 2009 Budget is enjoined, David & Margaret will be forced to eliminate its
23 staff pension match program and will likely be forced to institute a staff pay-cut and make
24 further reductions in the size of its staff. (*Id.*, ¶¶ 11-12.)

25 Additionally, if the rate reduction is not enjoined, Martin’s Achievement Place, which
26 operates eight residential group homes for teenage boys that have been involved in inappropriate
27 sexual behavior, will be forced to cut essential services for the foster children it houses,
28 including reductions to its programs or institute pay-cuts for its staff despite the fact that the

1 children under its care require specialized care and supervision. (Declaration of Jim Martin in
2 Support of Plaintiff’s Request for a Temporary Restraining Order [“Martin Decl.”] (Docket No.
3 13), ¶¶ 4, 8.)

4 The Family Life Center (“Family Life”), which operates a private school and a group
5 home that serves children who have severe mental health issues will be unable to afford to hire
6 the additional staff it needs, including three full-time child care workers and one full-time
7 administration/office position, if the rate reduction goes into effect. (Declaration of Susan
8 Lemieux in Support of *Ex Parte* Application for a Temporary Restraining Order [“Lemieux
9 Decl.”] (Docket No. 12), ¶¶ 3, 8.) The rate reductions will mean that the children will have less
10 supervision, which effects Family Life’s ability to proactively work with children in order to
11 prevent crisis situations. (*Id.*, ¶ 8.) Furthermore, its staff is often overly-stressed, increasing the
12 potential for errors and the lack of an administration/office position leads to delays in obtaining
13 crucial information from past service providers. (*Id.*, ¶ 9.)

14 Lincoln Child Center, a licensed group home operating since 1883 that provides services
15 to children aged 6 to 14 that are classified as severely emotionally disturbed, will have to cut
16 essential programs if the ten percent reduction goes into effect. (Declaration of Chris Stoner-
17 Mertz in Support of Plaintiff’s Application for a Temporary Restraining Order [“Stoner-Mertz
18 Decl.”] (Docket No. 16), ¶ 3.) Unless the counties it serves are able to fill the gap between its
19 costs and the foster care maintenance payments with county funds, it will be forced to close.
20 (*Id.*, ¶ 8.)

21 Additionally, Aviva Family and Children’s Services (“Aviva”), an organization founded
22 in 1913, will likely be forced to close its facility if the rate cuts are not enjoined. (Declaration of
23 Andrew Diamond in Support of Plaintiff’s Application for a Temporary Restraining Order
24 [“Diamond Decl.”] (Docket No. 10), ¶ 3.) The girls who are served are referred through the Los
25 Angeles County Department of Probation and the Department of Child and Family Services and
26 have serious emotional problems and severe learning problems. (*Id.*) They all require intensive
27 supervision, therapy and many require special education services. (*Id.*) Aviva cannot lay-off
28

1 staff or reduce the services it provides without compromising the quality of its residential
2 program. (*Id.*, ¶ 9.)

3 Hathaway-Sycamores Child & Family Services (“Hathaway-Sycamores”), Los Angeles
4 County’s largest children’s mental health and welfare agency formed through a merger of two
5 organizations that were opened in 1902 and 1919, has already had to reduce 118 beds and will
6 likely have to reduce its program even further if the rate cuts are implemented. (Declaration of
7 William P. Martone in Support of Plaintiff’s *Ex Parte* Application for a Temporary Restraining
8 Order [“Martone Decl.”] (Docket No. 14), ¶¶ 3, 7, 11.) If the rate cut goes into effect, it will
9 eliminate staff, an administrative position and reduce social worker supervision time, the size of
10 its nursing staff and its crisis intervention staff. (*Id.*, ¶ 12.)

11 Even before the rate reductions took effect on October 1, 2009, several Alliance members
12 were forced to close their group homes or to make significant reductions in the size of their
13 programs because the gap between the costs of providing quality care and services to foster
14 children and the level of funding provided by the standardized schedule of rates became larger
15 than what could be covered by private charitable contributions. (Johnson Decl., ¶ 11, Ex. B.)

16 For example, until June 1, 2009, Aviva operated a group home for teenage girls which
17 provided services for over twenty years, first as a run-away shelter and then as a licensed
18 residential facility. (Diamond Decl., ¶ 7.) The decision to close the facility was a direct result of
19 inadequate DSS reimbursement rates. (*Id.*) Even if the facility had been filled to capacity, it
20 would have been operating at a loss. (*Id.*)

21 Similarly, Long Beach Youth Home, a group home for boys that began operating in 1970
22 and had the capacity to provide services for forty boys, was forced to close in 2007 because of
23 the failure of the foster care maintenance payments to cover its costs. (Declaration of Robert Di
24 Stefano [“Di Stefano Decl.”] (Docket No. 9), ¶¶ 3, 6.) At the time of its closure, the facility was
25 projected to have a deficit of \$750,000 annually which was due exclusively to unreimbursed
26 inflation-related expenses from 1990 to 2007. (*Id.*, ¶ 7.)

27 Hathaway-Sycamores was also forced to close several group homes as a result of the
28 failure of the foster care maintenance payments to cover it costs. (Martone Decl., ¶ 7.) In 2005

1 and 2006, it was forced to close three community-based homes that provided 18 beds and in
2 2007, it was forced to close a 100 bed co-ed residential facility. (*Id.*, ¶ 7.) Financial concerns
3 resulting from DSS's inadequate reimbursement rates were a substantial factor in these closures.
4 (*Id.*) It now operates one forty-bed home for eight to eighteen-year-old boys. (*Id.*, ¶ 4.) This
5 facility once accommodated sixty children but Hathaway-Sycamores was forced to reduce its
6 size. (*Id.*, ¶ 8.) It has also been forced to reduce the size of its on-site nursing staff, hire less
7 experienced and less educated staff and decrease the number of management staff. (*Id.*, ¶ 9.)

8 Closures and the reduction in size of group home programs harm foster children because
9 they decrease the placement options open to social workers and probation officers seeking
10 placements for children who have emotional and/or behavioral problems and require a structured
11 living environment and 24-hour supervision. (Johnson Decl., ¶ 12.) As a result, social workers
12 and probation officers may be forced to place a child in a group home program that is outside of
13 the county or state or in a group home program that is not designed to meet that child's specific
14 needs. (*Id.*, ¶¶ 12, 13.) This will reduce the chance of achieving a positive outcome for the child
15 and is likely to result in multiple failed foster care placements and a longer stays in out-of-home
16 care. (*Id.*, ¶ 13.) In the absence of another alternative, a delinquent foster youth may be placed
17 in a more restrictive, locked detention settings, such as a county juvenile hall, camp or ranch,
18 even though the youth may not pose a threat to public safety. (*Id.*)

19 It is also increasingly difficult for group homes to retain qualified staff and have
20 experienced high turn-over rates in the range of 50% to 75% annually. (Johnson Decl., ¶ 16.)
21 The single most important contribution that a group home program can make towards the
22 achievement of positive outcomes for a child is facilitating the development of a stable and
23 supportive relationship between the child and a skilled and dedicated caregiver. (*Id.*) With this
24 high level of turn-over, it is difficult for a child to develop a stable relationship with the
25 caregivers, reducing the effectiveness of the group home treatment program. (*Id.*) If the ten
26 percent rate reduction is not enjoined, the amount for an entry level child care worker would
27 drop to \$7.40 per hour -- more than 7% **below** California's current minimum wage. (*Id.*, ¶ 24.)
28

1 Some group homes were forced to reduce the level and/or frequency of support provided
2 to the children. (Johnson Decl., ¶ 21.) For example, some have eliminated the child care staff
3 who provided tutoring to children to assist them with their homework and who worked with
4 schools to avoid suspensions and expulsions which is inevitable with children placed in group
5 care with significant emotional and/or behavioral problems. (*Id.*) Other homes have eliminated
6 staff that provided transportation for, and supervision of, visits with family members working
7 towards reunification. (*Id.*) Staffing reductions of this kind have a clear and direct negative
8 impact on the educational outcomes for children and for their reunification. (*Id.*)

9 If the ten percent rate reduction is not enjoined, group care in California will become a
10 place where foster children with emotional and/or behavioral problems can, at best, only be
11 contained, because group homes' staff will not have the skill, experience or time needed to help
12 these children resolve their underlying problems and return, if possible, to a family environment.
13 (*Id.*)

14 Although the State is seeking to save money by cutting foster care maintenance payments
15 to group homes, the impact on these group homes is many times greater than the savings realized
16 by the State. For example, before the implementation of the 2009 Budget, the standard rate for a
17 child in an RCL 12 group home program was \$5,891. (Supplemental Declaration of Doug
18 Johnson ["Johnson Supp. Decl."] (Docket No. 31) , ¶ 6.) The "federally allowable" portion of
19 the payment was \$5,377. (*Id.*) Since the Child Welfare Act only reimburses states for the
20 "federally allowable" costs, when California seeks reimbursement from the federal government
21 for the foster care maintenance payments that it makes, it seeks 50% of the \$5,377 federally
22 allowable amount, which equals \$2,689. The counties and the State then divide the remaining
23 \$3,202 (the total amount paid to RCL 12 homes (\$5,891) minus the 50% of the federally
24 allowable portion paid by the federal government (\$2,689)). The counties then pay 60% of the
25 \$3,202, which equals \$1,921. The State pays the remaining 40% of \$3,202 -- or \$1,281.
26 (Johnson Supp. Decl., ¶ 6.) Thus, when the rate cuts in the 2009 Budget were implemented,
27 RCL 12 group homes' rates were cut by ten percent (\$589) from \$5,891 to \$5,302. (*Id.*, ¶ 7.)
28 The rate cuts cost RCL 12 group homes \$589 per child per month, while the State saved only

1 \$144 (*Id.*, ¶ 8.) The charts attached to the Johnson Supp. Decl. show the significance of the
2 recent rate cuts on top of several years in which the State failed to provide a CNI-based COLA to
3 the standardized schedule of rates for group homes. (Johnson Supp. Decl., Exs. A-C.)

4 **C. *California Alliance I***

5 On June 30, 2006, the Alliance filed an action under 42 U.S.C. § 1983 in the Northern
6 District of California against the State of California for violations of the Child Welfare Act. *See*
7 *California Alliance I*, No. C 06-04095 MHP (N.D. Cal. June 30, 2006). At the time, California's
8 foster care maintenance payments were 80% of foster care group homes' costs. The Court issued
9 an order granting the State's Motion for Summary Judgment and denying the Alliance's Motion
10 for Summary Judgment. *See California Alliance I*, No. C 06-04095 MHP, 2008 WL 686860
11 (N.D. Cal. Mar. 12, 2008). The Court held that the State was permitted to substantially comply
12 with the requirements of the Child Welfare Act, that reimbursement of 80% of the costs of
13 providing foster care was substantial compliance and that the State could take into account
14 budgetary considerations in setting its foster care maintenance payment rates. *California*
15 *Alliance I* is currently on appeal. The hearing before the Ninth Circuit Court of Appeal occurred
16 on October 7, 2009.

17 Defendants have argued that the *California Alliance I* opinion was based on the rates in
18 effect as of June 30, 2006 and that the State subsequently provided a 5% increase in the wages
19 and benefits for group home providers that became effective January 1, 2008. While the State
20 did increase the amount included in the standardized schedule of rates, it did not grant a CNI-
21 based COLA for group home rates for 2007-08. Welf. & Inst. Code § 11462 (g)(4). Despite this
22 increase in 2007-08, the costs of care continued to increase after 2006-07. As measured by the
23 CNI, the costs of care increased by 3.70% for 2007-08, 5.26% for 2008-09, and 1.53% for 2009-
24 10, according to data provided by the State Department of Finance. When the impact of the 5%
25 rate increase on January 1, 2008, the ten percent rate reduction on October 1, 2009 and the CNI
26 increases are taken into account, the cumulative increase in the standardized schedule of rates
27 from 1990-91 to 2009-10 has been approximately 19.79% while the increase in the CNI for that
28

1 same period is 76.25%. Therefore, the current rates, even *after* the ten percent rate reduction,
 2 cover only 68% of the current costs of care.

3 **D. SB 597**

4 On October 11, 2009, Senate Bill 597 was signed into law by Governor Schwarzenegger.
 5 SB 597 makes a reduction in the RCL point ranges to reflect the ten percent rate reduction that
 6 took effect on October 1, 2009. SB 597, however, does not increase RCL payment rates, does
 7 not appropriate any extra funding, or reduce the RCL point ranges to reflect the continuing
 8 increase in the costs of care and the lack of group home rate increases from 2003-04 to 2006-07
 9 and from 2008-09 to 2009-10. (Johnson Supp. Decl., ¶ 12.) This proposal is simply an
 10 emergency stop-gap measure because the State has reduced the already inadequate level of
 11 funding for the care of foster children placed into group homes, while the costs of care continue
 12 to increase. Reducing the RCL point ranges through SB 597 will merely allow group homes to
 13 cut staff and other administrative costs in order to continue as a going concern. (*Id.*) Some
 14 group homes, however, will not be able to reduce their staff to take advantage of the adjusted
 15 RCL point ranges in SB 597. (*Id.*) Reducing the RCL point ranges does not reduce the needs of
 16 the foster youth being placed into group homes. (*Id.*) Given the needs for intensive care,
 17 supervision, and structure by qualified caregivers, many group homes do not believe that they
 18 can provide even minimally adequate care and supervision with fewer staff or with staff with
 19 lower qualifications. (*Id.*)

20 The TRO at page 2, lines 15 to 21 accurately described SB 597:

21 Defendants' contention that the effects of the budget cut are offset
 22 by the provision of Senate Bill 597 that adjusted the respective
 23 RCL point ranges appears to have little merit: this adjustment
 24 appears to help a group home's financial posture by allowing the
 25 group home to cut "costs," i.e., the services provided to each child,
 26 without losing additional funding. The concern of the Act is the
 actual provision of foster care to children, not simply the balance
 sheets of the service provider. There are serious questions whether
 California's funding scheme for 2009-10 substantially complies
 with the Act.

27 Nothing in SB 597 provides any funding increases for group homes. (*Id.*, ¶ 13.) In fact,
 28 Section 14 of SB 597 states: "No appropriation pursuant to Section 15200 of the Welfare and

1 Institutions Code shall be made for the purposes of implementing this act.” (*Id.*) Exhibit C to
 2 the Johnson Supp. Decl. compares the adjusted RCL point ranges with the original RCL point
 3 ranges (which continue to apply to new group home programs with “provisional rates”). (*Id.*,
 4 Ex. C.) This table shows that the implementation of the reduced RCL point ranges in SB 597
 5 will mean that an existing group home program classified at RCL 14 could be providing a
 6 staffing pattern equivalent to RCL 11 (as measured by the original RLC point ranges) but will be
 7 receiving an AFDC-Foster Care rate equivalent to RCL 8 (as measured by increases in the CNI).
 8 (*Id.*, ¶ 14, Ex. C.)

9 For example, under current RCL rates, if a home is at an RCL level 14, it would receive
 10 \$6,025. Had the RCL rates kept pace with the CNI, the home would receive \$8,835. Even if the
 11 home reduces its number of points based on SB 597 to the lowest amount permitted in order to
 12 stay in RCL level 14 (348 points), it will still only receive \$6,025 -- less than what an RCL 9
 13 would receive if the homes were given increases consistent with the CNI. Put another way, if the
 14 RCL had kept pace with the CNI, a group home with 348 points would be an RCL 11 and
 15 receive \$7,274 -- an amount significantly greater than the \$6,025 it is receiving now. (*See*
 16 Johnson Supp. Decl., Ex. C.) This system is forcing homes to go out of business or to make such
 17 drastic cuts that there will be no group homes permitted to continue to operate. This is result that
 18 the Child Welfare Act certainly does not anticipate or permit.

19 **III. THE COURT SHOULD ISSUE A PRELIMINARY INJUNCTION ENJOINING**
 20 **THE TEN PERCENT RATE CUTS IN FOSTER CARE MAINTENANCE**
 21 **PAYMENTS**

22 “The decision of whether to grant or deny a motion for preliminary injunction is a matter
 23 of the district court’s discretion.” *Am. Trucking Ass’ns v. City of L.A.*, 559 F.3d 1046, 1052 (9th
 24 Cir. 2009). “A plaintiff seeking a preliminary injunction must establish that he is likely to
 25 succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary
 26 relief, that the balance of equities tips in his favor, and that an injunction is in the public
 27 interest.” *Winter v. Natural Res. Def. Council*, --- U.S. ---, 129 S. Ct. 365, 374 (2008); *see also*
 28 *Am. Trucking Ass’ns*, 559 F.3d at 1052. “In each case, courts ‘must balance the competing
 claims of injury and must consider the effect on each party of the granting or withholding of the

1 requested relief.” *Winter*, 129 S. Ct. at 376 (quoting *Amoco Prod. Co. v. Vill. of Gambell,*
2 *Alaska*, 480 U.S. 531, 542 (1987)).

3 The issuance of a preliminary injunction is appropriate to prevent a state from taking an
4 action that is alleged to be preempted by federal law. *See, e.g., Doran v. Salem Inn*, 422 U.S.
5 922, 931-34 (1975) (holding that the district court did not abuse its discretion in enjoining a town
6 from enforcing an ordinance that allegedly violated the First and Fourteenth Amendments);
7 *Wells Fargo Bank N.A. v. Demetrios*, 419 F.3d 949, 964 (9th Cir. 2005) (upholding an injunction
8 prohibiting the California Corporations Commissioner from ordering regulatory audits of a
9 national bank that allegedly violated 12 U.S.C. § 484(A)); *Bernhardt v. Los Angeles County*, 339
10 F.3d 920, 925-32 (9th Cir. 2003) (determining that the district court erred in refusing to enjoin
11 the County of Los Angeles from applying a lump sum settlement policy in civil rights cases that
12 allegedly violated 42 U.S.C. § 1988). Further, under the doctrine of *Ex parte Young*, 209 U.S.
13 123 (1908), “it is appropriate for a party to move for a preliminary injunction in federal court
14 against state officers ‘who threaten and are about to commence proceedings, either of a civil or
15 criminal nature, to enforce against parties affected an unconstitutional act, violating the Federal
16 Constitution.’”

17 Each of these factors weighs heavily in favor of issuing the requested preliminary
18 injunction.

19 **A. Foster Children Will Suffer Immediate and Irreparable Harm if the State is**
20 **Not Enjoined From Implementing the 2009 Budget**

21 It is well established and self-evident that withholding benefits and reducing payments
22 for vital services like those provided by members of the Alliance would cause irreparable harm.
23 Indeed, the Ninth Circuit recently held that a ten percent reduction in Medi-Cal benefits in
24 California would cause irreparable harm if not enjoined. *Independent Living Center, of So. Cal.,*
25 *Inc. v. Maxwell-Jolly*, 572 F.3d 644, 663 (9th Cir. 2009). The court held that irreparable harm
26 was shown because enforcement of the ten percent reduction “may deny [Medi-Cal recipients]
27 needed medical care.” *Id.* at 659 (quoting *Beltran v. Myers*, 677 F.2d 1317, 1322 (9th Cir.
28 1982)); *see also LaForest v. Former Clean Air Holding Co., Inc.*, 376 F.3d 48, 55-56 (2d Cir.

1 2004) (affirming preliminary injunction prohibiting reduction of retiree health benefits, including
2 increased cost of prescription medications, because would pose “substantial risk to plaintiffs’
3 health”); *Beltran*, 677 F.2d at 1322 (finding sufficient risk of irreparable injury when plaintiffs
4 showed that absent injunction would be denied “needed medical care”).

5 Following *Independent Living* and its brethren, other courts within the Northern District
6 of California have recently enjoined the State of California from implementing budget cuts to
7 social programs in violation of federal law. For instance, in *Brantley v. Maxwell-Jolly*, No. C
8 09-3798 SBA, --- F. Supp. 2d ----, 2009 WL 2941519, at *14-15 (N.D. Cal. Sept. 10, 2009),
9 Judge Armstrong enjoined the State from implementing the 2009 Budget’s reduction in benefits
10 provided to Medi-Cal Adult Day Health Care (“ADHC”) Members. The plaintiffs in *Brantley*
11 argued that the implementation of the 2009 Budget would force many of the individuals
12 receiving day care services paid for by the State to be institutionalized in violation of the
13 Americans with Disabilities Act (“ADA”). The court held that the harm to this vulnerable
14 population “is particularly irreparable and imminent” because “[e]ach of the Plaintiffs suffers
15 from debilitating physical and/or mental conditions for which the availability of ADHC services
16 is critical to ensuring that their tenuous physical and mental conditions remain stable, enabling
17 them to remain in the community.” *Id.* at *12-13.

18 Similarly, in *V. L. v. Wagner*, No. C 09-04668 CW, 2009 WL 3486708, at * (N.D. Cal.
19 Oct. 23, 2009), Judge Wilken issued a preliminary injunction enjoining the State from making
20 changes to California’s In-Home Supportive Services (IHHS), “which would reduce or terminate
21 services” to the elderly and disabled in California. Like the RCL system established under by
22 California pursuant to the Child Welfare Act, IHHS is a state system created pursuant the federal
23 Medicaid Act and also “funded with a combination of state, county, and federal . . . monies.” *Id.*
24 at *1. Judge Wilken found that, despite the state’s claim that the “budget crisis requires such
25 cuts, . . . the increase in more expensive hospitalization and institutionalization of needy disabled
26 and elderly people will likely outweigh the short-term savings.” *Id.* at *1. Judge Wilken held
27 that “the human suffering that will be caused by the change in the law justifies the Court’s
28 preliminary injunction against the implementation of this change.” *Id.*

1 Similar to the Medi-Cal recipients in *Independent Living Center, Brantley and V.L.*, the
2 Alliance's members and California's foster care children will suffer immediate and irreparable
3 harm if the rate cuts are implemented. This Court held in the TRO that "[t]he implementation of
4 California's ten percent budget cut may be expected to result in decreases in care, housing,
5 services, staffing numbers and staff qualifications" which will undoubtedly cause irreparable
6 harm to the foster children cared for by the Alliance's members. (Doc. 45, at 2.) Children who
7 are eligible for foster care maintenance payments are in dire need of assistance from the State
8 and Federal government. These children rely on the State's obligation to provide for their basic
9 necessities. Unlike the recipients of nearly all other public assistance programs, neither the
10 foster children nor their parents request foster care services. On the contrary, the State
11 intervenes in the lives of these children to protect them from abuse or neglect and places them
12 into foster care under a court order. Unless the Court issues a preliminary injunction, the ten
13 percent reduction in the foster care maintenance payments made will cause severe and
14 irreparable harm to members of the Alliance and the foster children they serve.

15 Additionally, the reduction in the foster care maintenance payments will cause many
16 foster care providers to reduce their staff or to close their group homes entirely; many foster
17 children will be unable to find satisfactory care at another facility, especially since many of these
18 group homes are the only homes in the area that provide services to the specific groups of high-
19 risk foster children; and other group homes that are able to stay in business will be forced to
20 dramatically cut necessary programs that benefit these foster children. These foster care
21 providers have already drastically reduced staff and the services and programs they offer the
22 foster children they serve. With the additional rate reduction, they will be forced to make even
23 more cuts, to the detriment of California's foster children.

24 As described in Section II(B) *supra*, David & Margaret will be forced to freeze staff
25 wages and benefits, eliminate its staff pension match program and institute a staff pay-cut and
26 make further reductions in the size of its staff. (Rich Decl., ¶¶ 9, 11.) Martin's Achievement
27 Place will have to make reductions to its programs or institute pay-cuts for its staff in addition to
28 the cuts it has already made. (Martin Decl., ¶ 8.) Family Life will have to reduce the amount of

1 supervision it can provide which will impact Family Life’s ability to provide adequate care to the
 2 children it serves. (Lemieux Decl., ¶ 9.) Lincoln Child Center will have to cut essential
 3 programs if the ten percent reduction goes into effect. (Stoner-Mertz Decl., ¶ 8.) Likewise,
 4 Aviva will suffer irreparable harm as well as the children with serious emotional problems and
 5 severe learning problems that it serves because the reduction in reimbursement rates may force
 6 Aviva to consider the viability of continuing to operate the Annenberg Center. (Diamond Decl.,
 7 ¶ 9.) Finally, Hathaway-Sycamores will also likely have to reduce its program even further if the
 8 rate cuts are implemented and will close entirely if it cannot maintain the quality of care that the
 9 children deserve due to the reduction of staff or other programs for the foster children it serves. .
 10 (Martone Decl., ¶ 11.)

11 In sum, the ten percent rate cut in the 2009 Budget will have a dramatic and tangible
 12 effect on the level and quality of care provided to California’s foster children and will eliminate
 13 appropriate foster care placements and services to high-risk segments of this vulnerable
 14 population. As a result, foster children’s quality of life and opportunities to achieve will be
 15 greatly diminished, causing them irreparable harm.

16 **B. The Alliance Has an Overwhelming Likelihood of Success on the Merits**

17 **1. The 2009 Budget Conflicts With The Child Welfare Act And Is**
 18 **Preempted And Invalid Under The Supremacy Clause**

19 **a. The Child Welfare Act Requires Full Compliance**

20 The budget cuts in the 2009 Budget violate the Child Welfare Act. The Act requires that
 21 “[e]ach State with a plan approved . . . *shall* make foster care maintenance payments on behalf of
 22 each child who has been removed from the home of a relative” 42 U.S.C. § 672(a)(1)
 23 (emphasis added).² The Act defines “foster care maintenance payments” as “payments to *cover*

24 _____
 25 ² There is no question that the Act gives foster care group homes the right to receive foster care
 26 maintenance payments -- an enforceable right under 42 U.S.C. § 1983. *California Alliance I*,
 27 459 F. Supp. 2d 919, 925 (N.D. Cal. 2006) (holding that the “CWA confers an individual right
 28 on plaintiff’s members for enforcement of the foster care maintenance payments pursuant to
 section 675(4)(A)”); *California State Foster Parent Ass’n v. Wagner*, No. C 07-05086 WHA,
 2008 WL 191283, at * 1 (N.D. Cal. Jan. 22, 2008) (holding that a private action pursuant to the

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1 *the cost of (and the cost of providing)*” the enumerated items in the Act, including food,
2 clothing, shelter and supervision. 42 U.S.C. § 675(A)(4) (emphasis added). Because the 2009
3 Budget fails to cover these costs, it is invalid and preempted under the Supremacy Clause of the
4 United States Constitution. *See Independent Living Center*, 572 F.3d 644 (issuing a preliminary
5 injunction preventing the implementation of a ten percent rate reduction in Medi-Cal payments
6 in California because the plaintiff would likely prevail on the merits of its claim that the rate
7 reduction was preempted by Title XIX of the federal Social Security Act and is therefore invalid
8 under the Supremacy Clause).

9 The Supremacy Clause permits Congress to preempt any state law that conflicts with the
10 exercise of federal power. Conflict preemption arises “when compliance with both federal and
11 state regulations is a physical impossibility, or where state law stands as an obstacle to the
12 accomplishment and execution of the full purposes and objectives of Congress.” *PG&E Co. v.*
13 *State Energy Res. Conservation & Dev. Comm’n*, 461 U.S. 190, 204 (1983) (internal quotation
14 marks and citations omitted); *see also Ting v. AT&T*, 319 F.3d 1126, 1136 (9th Cir. 2003).
15 Under this so-called “obstruction” preemption, “an aberrant or hostile state rule is preempted to
16 the extent it actually interferes with the ‘methods by which the federal statute was designed to
17 reach [its] goal.’” *Id.* at 1137 (quoting *Int’l Paper Co. v. Ouellette*, 479 U.S. 481, 494 (1987))
18 (alteration in original). “Thus, obstruction preemption focuses on both the objective of the
19 federal law and the method chosen by Congress to effectuate that objective, taking into account
20 the law’s text, application, history, and interpretation.” *Id.*

21 The plain language and purposes of the Child Welfare Act require that “foster care
22 maintenance payments” must “cover” the costs of providing the essential items set forth in
23 Section 675(4)(A), not just some percentage of those costs. Canons of statutory interpretation

24 _____
25 (Footnote Continued from Previous Page.)

26 Child Welfare Act can proceed pursuant to § 1983). See also discussion of this issue in
27 Plaintiff’s Memorandum of Points and Authorities in Support of Ex Parte Application for
28 Temporary Restraining Order and Order to Show Cause Regarding Preliminary Injunction
(Docket No. 7), Section III(B)(1), incorporated herein by reference.

1 require this result: “In interpreting a statute [the Court] first look[s] to the plain meaning of its
2 text.” *Paul Revere Ins. Group v. U.S.*, 500 F.3d 957, 962 (9th Cir. 2007) (citing *Molski v. M.J.*
3 *Cable, Inc.*, 481 F.3d 724, 732 (9th Cir. 2007) (“Statutory interpretation begins with the plain
4 meaning of the statute’s language.”)). Furthermore, ““unless otherwise defined, words will be
5 interpreted as taking their ordinary, contemporary, common meaning.”” *Wilderness Soc’y v. U.S.*
6 *Fish & Wildlife Serv.*, 353 F.3d 1051, 1060 (9th Cir. 2003) (en banc) (quoting *Perrin v. United*
7 *States*, 444 U.S. 37, 42, 100 S. Ct. 311, 62 L.Ed.2d 199 (1979)). “It is also a fundamental canon
8 that the words of a statute must be read in their context and with a view to their place in the
9 overall statutory scheme.” *Paul Revere Ins. Group*, 500 F.3d at 962 (internal quotations
10 omitted); *see also Boise Cascade Corp. v. U.S. E.P.A.*, 942 F.2d 1427, 1432 (9th Cir. 1991).

11 The definition of “foster care maintenance payments” is not ambiguous. The Act defines
12 the term as “payments to cover the cost of (and the cost of providing)” the essential items set
13 forth in the statute. 42 U.S.C. § 675. The plain meaning of this phrase is that states must make
14 payments that **cover** all of the costs of providing the enumerated items that are necessary and
15 reasonable for that purpose, not just a portion of those costs.

16 The common, ordinary definition of “cover” in the context of money payments or costs is
17 an amount “enough to pay” or “sufficient to defray, meet or offset the cost.” *See Concise Oxford*
18 *English Dictionary* 330 (Catherine Soanes & Angus Stevenson, eds., 11th ed., Oxford Univ.
19 Press 2004). There is no evidence that Congress intended anything other than the common,
20 ordinary meaning of this term. *Sherman v. U.S. Parole Com’n*, 502 F.3d 869, 874 (9th Cir.
21 2007) (“when Congress uses a term of art, such as ‘warrant,’ unless Congress affirmatively
22 indicates otherwise, we presume Congress intended to incorporate the common definition of that
23 term.”) (citations and quotations omitted). Thus, the plain language compels the conclusion that
24 Congress intended to require states to make “foster care maintenance payments” that cover the
25 necessary and reasonable costs of providing the basic necessities enumerated in Section
26 675(4)(A), including the reasonable costs of administration and operation. *See Connecticut Nat.*
27 *Bank v. Germain*, 503 U.S. 249, 254 (1992) (“When the words of a statute are unambiguous,
28 then, this first canon is also the last: judicial inquiry is complete.”) (quotations omitted).

1 Based on the plain language of the Child Welfare Act, foster care maintenance payments
 2 must be enough to *cover* the *costs* of providing the enumerated items. However, California fails
 3 to do so and has made the situation more dire through the passage of the 2009 Budget. Although
 4 foster care rates have increased by only 33% from the 1990-1991 fiscal year to the 2009-10 fiscal
 5 year, the increase in average costs of providing care and supervision for children far exceeds
 6 33%. By 2008-09, California only covered approximately 77% of the costs of providing the
 7 basic necessities enumerated in the Child Welfare Act. Now that the 2009 Budget has been
 8 enacted, California's payments did not receive a CNI-based cost-of-living increase at the
 9 beginning of the fiscal year on July 1 and will be reduced by ten percent on October 1, 2009. As
 10 measured by the increase in the CNI, the foster care maintenance payments will cover only
 11 approximately 68% of costs of providing the items enumerated in the Act. (Johnson Decl., ¶ 10.)
 12 In sum, California's foster care maintenance payments do not come close to covering "the cost of
 13 (and the cost of providing)" the items enumerated in the Child Welfare Act. Thus, the 2009
 14 Budget violates the Child Welfare Act and is void under the Supremacy Clause.

15 **b. The 2009 Budget Does Not Even Substantially Comply With**
 16 **The Requirements of The Child Welfare Act**

17 Although it is the Alliance's position that the Child Welfare Act requires full compliance
 18 and not mere "substantial compliance," the State has failed to even substantially comply with the
 19 requirements of the Act. In *California Alliance I*, this Court held that the Act permitted
 20 "substantial compliance," but cautioned that "given a multitude of years with budgetary
 21 constraints, the standard rate schedule could become greatly out of synch with the costs of items
 22 enumerated in the CWA. In that case, the rate may very well fall to a level that does not satisfy
 23 the State's obligation to 'have a process for determining rates that takes into account the
 24 statutory criteria mandated by the CWA.'" 2008 WL 686860, *4 (citing *Missouri Child Care*
 25 *Ass'n v. Martin*, 241 F. Supp. 2d 1032, 1045 (W.D. Mo. 2003).³ At the time this Court rendered
 26 _____

27 ³ The Alliance has appealed the Court's order arguing, among other things, that the Child
 28 Welfare Act requires full compliance based upon applicable case law in the Eighth Circuit as

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1 its decision in *California Alliance I*, foster care maintenance payments were 80% of foster care
 2 group homes' costs. If the additional ten percent rate reduction is implemented, decreasing rates
 3 to approximately 68%, there is no question that the rate has become "greatly out of synch" with
 4 the costs of items enumerated in the Child Welfare Act. Since the 2009 Budget does not even
 5 substantially comply with the requirements of the Child Welfare Act, it is void under the
 6 Supremacy Clause.

7 The State's reliance on SB 597 is misplaced. Defendants argue (in their Opposition to
 8 the Ex Parte Application for a Temporary Restraining Order (Docket No. 22)) that this stop-gap
 9 measure somehow results in a net benefit to group homes. While SB 597 allows these cuts to be
 10 implemented without a reduction in the amount of the foster care maintenance payments, the
 11 implementing legislation for SB 597 requires that group homes continue to provide a level of
 12 staffing *necessary to ensure the health and safety of the children placed with them* by county
 13 child welfare and probation departments. *See* Cal. Welf. & Inst. Code § 11462 (f)(3)(B) (as
 14 amended by SB 597). Numerous foster care group home programs have not been able to take
 15 advantage of the reduced RCL Point Ranges provided for in SB 597 because they need all the
 16 staff they have to provide adequate and safe care to the children placed with them. (Johnson
 17 Supp. Decl., ¶ 12.) The central problem with drastically cutting staff to levels **permitted** by SB
 18 597 is that doing so would either put vulnerable children at risk or violate the group homes' legal
 19 staffing requirements. (*Id.*) For the limited few homes able to take full advantage of the reduced
 20 RCL Point Ranges, the children will not receive the level of care and supervision that the social
 21

22 (Footnote Continued from Previous Page.)

23 well as case law requiring full compliance with the Aid to Families with Dependent Children
 24 ("AFDC"), the Food Stamp Act and Medicaid programs. *See Missouri Child Care Ass'n v.*
 25 *Cross*, 294 F.3d 1034, 1042 (8th Cir. 2002) (holding that the Act "requires the state to reimburse
 26 providers for specified expenses [and] **does not grant** Missouri officials **any discretion to deny**
 27 **providers these payments**: 'Each State with a plan approved under this part *shall* make foster
 28 care maintenance payments" (first emphasis added)); *Gorrie v. Bowen*, 809 F.2d 508, 520
 (8th Cir. 1987); *Withrow v. Concannon*, 942 F.2d 1385, 1387 (9th Cir. 1991); *Haskins v.*
Stanton, 794 F.2d 1273, 1277 (7th Cir. 1986); *Southside Welfare Rights Organization v.*
Stangler, 156 F.R.D. 187, 195 (W.D. Mo. 1993); *Robertson v. Jackson*, 766 F. Supp. 470, 473-
 474 (E.D. Va. 1991).

1 workers and probation officers placing them believe they need. (*Id.*) The needs of foster care
 2 children are not reduced by ten percent merely because the State reduced group home rates by
 3 ten percent.

4 This Court agreed, stating: “The implementation of the ten percent reduction provided in
 5 [the 2009 Budget], coupled with the cumulative effect of uncompensated cost of living increases,
 6 would reduce foster care maintenance payments to a level covering only 68-70% of the costs of
 7 the items enumerated by the Act.” (TRO, at 2.) This Court also rejected the argument that
 8 budget cut are offset by SB 597 stating that the argument “appears to have little merit” because
 9 the adjustment merely allows group homes to cut costs, “i.e., the services provided to each child,
 10 without losing additional funding. The concern of the Act is the actual provision of foster care to
 11 children, not simply the balance sheets of the service provider. There are serious questions
 12 whether California’s funding scheme for 2009-10 substantially complies with the Act.” (*Id.*) For
 13 all of these reasons, the State fails to comply with the specific requirements of the Act.

14 **c. The State’s Reliance Solely On Budgetary Considerations in**
 15 **Setting It Foster Care Maintenance Payment Rates Is A**
 16 **Violation Of The Child Welfare Act**

17 The 2009 Budget is also void under the Supremacy Clause because the State
 18 impermissibly relied solely on budgetary considerations when determining the reduced foster
 19 care maintenance payment rates. This court in *California Alliance I* held that the “availability of
 20 funds **cannot be the only consideration** when setting reimbursement methodology” 2008
 21 WL 686860, at *5 (emphasis added). Furthermore, the Ninth Circuit recently held, in
 22 *Independent Living Center*, that state Medicaid rate reductions may not be based solely on state
 23 budgetary concerns. *Independent Living Center*, 572 F.3d at 655. In that case, the record
 24 reflected that “the only reason for imposing the cuts was California’s current fiscal emergency.”
 25 *Id.* The legislation was passed in an emergency session called to “address[] the fiscal
 26 emergency declared by the Governor.” *Id.* “Thus, . . . the State’s decision to reduce Medi-Cal
 27 reimbursement rates based solely on state budgetary concerns violated federal law.” *Id.* at 656
 28 (citing *Rite Aid v. Houston*, 171 F.3d 842, 856 (3d Cir. 1999) (“[B]udgetary considerations may

1 not be the sole basis for a rate revision”); *Beno v. Shalala*, 30 F.3d 1057, 1069 n. 30 (9th Cir.
2 1994); *Amisub (PSL), Inc. v. Colo. Dep’t of Soc. Servs.*, 879 F.2d 789, 800-01 (10th Cir. 1989)).

3 The 2009 Budget’s ten percent reduction in foster care maintenance payments was
4 undisputedly based solely on the availability of funds and on budgetary considerations. The
5 State was in a fiscal emergency, requiring drastic cuts. These cuts had nothing to do with costs
6 associated with providing care to the State’s foster children. Therefore, California’s most recent
7 rate reduction violates the Child Welfare Act and is void under the Supremacy Clause.

8 **C. The Balance Of Hardships Tips Strongly In The Alliance’s Favor And An**
9 **Injunction Is In The Public’s Interest**

10 In its Temporary Restraining Order, this Court held that “the balance of hardships tips
11 sharply in its favor and that the entry of a Temporary Restraining Order is in the public interest”
12 because the harm imposed on group homes of the 2009 Budget is not enjoined far outweighs the
13 temporary fiscal impact imposed on the State. (TRO, at 2-3.) In contrast to the harm likely to
14 befall the Alliance and its members -- decreased care, decreased housing, decreased services, pay
15 cuts to their staff, turnover of staff, etc. -- Defendants’ sole injury would be, at most, temporary
16 financial costs associated with making foster care maintenance payments at 76% of the cost of
17 care, instead of 68%, for the modest period of time until this case can be heard on the merits.
18 This financial impact does not outweigh the hardship that the Alliance, its members and the
19 foster children they serve would suffer absent an injunction: “[T]he physical and emotional
20 suffering shown by plaintiffs . . . is far more compelling than the possibility of some
21 administrative inconvenience or monetary loss to the government Faced with such a
22 conflict between financial concerns and preventable human suffering, we have little difficulty
23 concluding that the balance of hardships tips decidedly in plaintiffs’ favor. *Lopez v. Heckler*,
24 713 F.2d 1432, 1437 (9th Cir. 1983); *see also Golden Gate Restaurant Ass’n v. City & County*
25 *of San Francisco*, 512 F.3d 1112, 1126 (9th Cir. 2008) (“While the City’s and Association’s
26 injuries are entirely economic, the Intervenors’ injuries include preventable human suffering.
27 Therefore, the balance of hardships tips sharply in favor of the parties seeking relief.”)

1 The Ninth Circuit held in *Independent Living Center* that although the “state may suffer
2 an abstract form of harm whenever one of its acts is enjoined[,] . . . [this is] outweighed by the
3 hardships likely to be suffered by Medi-Cal beneficiaries, who would be forced to go without
4 medical care.” 572 F.3d at 657. The court specifically rejected the State’s “suggestion that,
5 merely by enjoining a state legislative act, we create a per se harm trumping all other harms.” *Id.*
6 at 658.

7 The public interest weighs heavily in favor of granting relief to the Alliance. “Our
8 society as a whole suffers when we neglect the poor, the hungry, the disabled” *Lopez*, 713
9 F.2d at 1437. It would be catastrophic, not only from the standpoint of the individuals involved
10 but also from the standpoint of society, were California’s foster children to be wrongfully
11 deprived of essential benefits for any period of time.

12 **IV. THE COURT SHOULD DISPENSE WITH ANY REQUIREMENT FOR FILING**
13 **A BOND**

14 Federal Rule of Civil Procedure 65(c) provides that no preliminary injunction should
15 issue without the posting of security but invests the district court with discretion as to the amount
16 of security required, if any. *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003). In
17 determining the amount of the bond, the court may consider the applicant’s resources and
18 likelihood of success on the merits. The court should not impose a bond in an amount so high
19 that it “would risk denying . . . access to judicial review.” *See GoTo.com, Inc. v. Walt Disney*
20 *Co.*, 202 F.3d 1199, 1211 (9th Cir. 2000). In addition, a strong likelihood of success on the
21 merits may favor “a minimal bond or no bond at all.” *See Cal. ex rel. Van De Kamp v. Tahoe*
22 *Reg’l Planning Agency*, 766 F.2d 1319, 1326 (9th Cir. 1985) (holding that the district court’s
23 decision to allow plaintiff to proceed without posting a bond was proper because: (1) plaintiff
24 was a non-profit that could not afford a substantial bond; (2) the case was brought under a statute
25 creating a private right of action; and (3) plaintiff’s likelihood of success on the merits was high).
26 *See also National Resource Defense Council, Inc. v. Morton*, 337 F. Supp. 167, 168 (D.C. 1976)
27 (setting bond at \$100 for non-profit plaintiff); *Save Strawberry Canyon v. DOE*, 613 F. Supp. 2d
28 1177, 1190-91 (N.D. Cal. 2009) (requiring no bond because plaintiff was a small non-profit);

1 *Brantley*, 2009 WL 2941519, at *14 (holding that plaintiffs are not required to post a bond); *V.*
2 *L.*, 2009 WL 3486708, at *14 (“The Court waives the bond requirement for Plaintiffs because
3 they are indigent and to ensure their ability to access the courts on behalf of themselves and other
4 class members.”)

5 The Alliance is a non-profit organization that represents the interests of foster care group
6 homes. This motion seeks to prevent the State from reducing the amount of foster care
7 maintenance payments made to the Alliance’s members because the foster care group homes and
8 the children they serve will be financially devastated if the rate cut is imposed. Therefore, this
9 Court should waive any requirement that the Alliance post a bond in this case.

10 **V. CONCLUSION**

11 Based on the foregoing, the Alliance respectfully requests that this Court issue a
12 preliminary injunction prohibiting Defendants, as well as their agents, representatives, and
13 employees, from reducing the foster care maintenance payments made to foster care group
14 homes pursuant to the 2009 Budget and taking any other act calculated to or likely to reduce the
15 foster care maintenance payments to foster care group homes.

16 DATED: November 4, 2009

Bingham McCutchen LLP

18 By: /s/ William F. Abrams

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