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U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIF.

Attorneys for Plaintiff
CALIFORNIA ALLIANCE OF CHILD AND FAMILY
SERVICES

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CALIFORNIA ALLIANCE OF CHILD AND
FAMILY SERVICES,

Plaintiff,

v.

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

Defendants.

C No. **06 4095**

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

DEMAND FOR JURY TRIAL

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

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

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

6 In support thereof, the Alliance alleges as follows:

7 PARTIES

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

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

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

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

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

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

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

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

17 **JURISDICTION AND VENUE**

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

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

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

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

INTRADISTRICT ASSIGNMENT

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

GENERAL ALLEGATIONS

The Child Welfare Act

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

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

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

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

C.F.R. §§ 233.110, 1355.21, 1356.20, 1356.21.

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

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

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

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

18 California’s Approved Child-Care Institution Program

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

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

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

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

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

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

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

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

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

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

COUNT I

Declaratory Relief

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

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

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

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

COUNT II

Permanent Injunctive Relief

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

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

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

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

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

4 **PRAYER FOR RELIEF**

5 Wherefore, the Alliance requests relief as follows:

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

DEMAND FOR JURY TRIAL

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

DATED: June 30, 2006

Bingham McCutchen LLP

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CALIFORNIA ALLIANCE OF CHILD AND
FAMILY SERVICES