C.A. NO. 10-15593

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CALIFORNIA ALLIANCE OF CHILD AND FAMILY SERVICES, Plaintiff/Appellee, 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/Appellants.	USDC Case No. 3:06-cv-04095-MHP

On Appeal From the United States District Court
for the Northern District of California
Honorable Judge Marilyn Hall Patel

APPELLEE'S ANSWERING BRIEF

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CORPORATE DISCLOSURE STATEMENT

PURSUANT TO FRAP 26.1

Pursuant to Rule 26.1(a) of the Federal Rules of Appellate Procedure, Plaintiff-Appellant California Alliance of Child and Family Services ("the Alliance") states the following: the Alliance has no parent companies, and no publicly-held corporation owns 10% or more of its stock.

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I. STATEMENT REQUESTING ORAL ARGUMENT

Counsel for Plaintiff-Appellee California Alliance of Child and Family Services ("the Alliance") respectfully requests twenty minutes of oral argument to assist the Court in evaluating the issues presented herein.

II. STATEMENT OF JURISDICTION

A. District Court's Jurisdiction

The district court had subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) because the Alliance's Complaint against the California Department of Social Services ("the State" or "CDSS") raised claims under Title IV-E of the Social Security Act, 42 U.S.C. §§ 670-679b (hereafter, "the Child Welfare Act" or "the Act"), and its implementing regulations.

B. Court of Appeals' Jurisdiction

This Court has jurisdiction pursuant to 28 U.S.C. § 1291 based on the district court's May 4, 2010 entry of the amended judgment. (ER 1; CR 112.)[1] The State's appeal is from a final judgment disposing of all claims in this case.

[1] "CR" refers to the Clerk's Record in *Alliance I* and is followed by pertinent docket number(s), and "AIICR" refers to the Clerk's Record in *Alliance II* and is followed by pertinent docket number(s). "ER" refers to Appellant the State's Excerpt of Record and is followed by the relevant page number(s). "SER" refers to Appellee California Alliance of Child and Family Services' Supplemental Excerpt of Record and is followed by the relevant page number(s).

C. Timeliness of Appeal

The district court entered judgment on February 24, 2010. (ER 11; CR 92.) The State subsequently sent the district court a letter on February 26, 2010, which purported to assert objections to the judgment that were not included in its objections to the Proposed Judgment. (CR 93.) On March 18, 2010, the State filed its Notice of Appeal on the Judgment. On May 4, 2010, the district court entered an amended judgment. (ER 1; CR 112.) The State did not file a notice of appeal relating to the Amended Judgment.

III. ISSUES PRESENTED ON APPEAL

Did the district court's judgment requiring the State to increase funding rates for all foster care group home residents in California under the Child Welfare Act (Title IV of the Social Security Act, 42 United States Code §§ 670-679b), exceed the scope of the pleadings in the original complaint, the district court's jurisdiction, and the scope of this Court's decision in *Allenby* because not all residents of foster care group homes in California are "federally eligible" under the Act?

IV. STATEMENT OF FACTS

The State of California's appeal to this Court continues the State's effort to illegally balance the budget in violation of Federal law by depriving California's most vulnerable foster care children of funds sufficient to cover life's basic necessities, including food, shelter and clothing. The children in California's

group homes are among the most at risk people in the state. Many suffer from behavioral and emotional problems and have become a part of the group home system as a last resort. If they cannot receive the care that they need and are entitled to at a group home, they will deteriorate further and have even more significant problems or, worse, will be doomed to a cycle of institutionalization in California's prisons and mental hospitals. Unlike most citizens lobbying for California's scarce resources, the collective voices of these children are little more than a whisper, which the State has ignored for years.

This Court's decision in *California Alliance of Child and Family Services v. Allenby*, 589 F.3d 1017 (9th Cir. 2009) changed things. For the first time, the State was held accountable to these children and was forced to comply with the Child Welfare Act. The district court's Amended Judgment puts this Court's Order into effect. Thus, for the first time in almost twenty years, California's foster care providers will finally receive enough money to actually cover the costs of caring for their children.

Unfortunately, the State is again attempting to underfund California's foster care children by arguing that it is only required to provide an increase in funding to only some of California's foster care children -- the "federally eligible" ones. Through this appeal, the State is fighting to continue its underfunding of California's foster care children. The State's ideal treatment of its foster care

children is not only "draconian," as the State admits, it is impractical.[2] As the district court found, because California does not distinguish between federally and non-federally eligible children when placing them, the underfunding for one segment of the children will undoubtedly result in underfunding for *all* children (both federally and non-federally eligible).[3] As a practical matter, foster care providers will not feed one child three meals a day and feed the other child only two meals, simply because the State pays the foster care provider different amounts for each child. The foster care provider will treat both children the same by splitting the funds received for both equally between the two; thus spending less on the federally eligible child than what this Court and the Child Welfare Act require. Therefore, should the State prevail on this appeal, California will once again fall out of compliance with the Child Welfare Act, and California's foster care children

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[2] (Opening Brief at 17-18.)

[3] The Amended Judgment set the rate for an RCL 14 group home program at $8,974 per month, effective July 1, 2010, for both federally-eligible and non-federally eligible children. If the State is successful in this appeal, the rate paid for non-federally eligible children placed in RCL 14 programs would drop to $6,025 per month, or 67% of the amount paid for a federally-eligible child placed in the same program. Assuming that the mix of children in an RCL 14 program is 59% federally-eligible and 41% non-federally eligible, the average weighted payment for each child would be $7,765 per month, thus covering only 86.5% of the costs of care required to be paid by the Child Welfare Act.

will once again be forced to endure the suffering that California's deliberate underfunding causes.

A. The Child Welfare Act

The Child Welfare Act, 42 U.S.C. §§ 670-679b, was enacted in 1980 to address the need to provide an appropriate setting for children who California and other states have made dependents or wards of the state. Recognizing the importance of helping these children, Congress created a cooperative program in which the federal government provides federal funding to assist the states in meeting the costs of providing the basic necessities enumerated in the Act. To become eligible for federal funding, a state must submit a plan for financial assistance to the Secretary of the United States Department of Health and Human Services ("DHHS") for approval. 42 U.S.C. § 671(a). As a prerequisite to DHHS's 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. 42 U.S.C. § 671(a), (b). A state must also designate a state agency to administer or supervise the administration of the state plan and amend its approved plan by appropriate submission to DHHS whenever necessary to comply with alterations to the Child Welfare Act and/or federal regulations or policies. 42 U.S.C. § 671(a)(2); 45 C.F.R. § 1356.20(d)(1). Furthermore, to ensure the funds actually reach the intended beneficiaries, each participating state's

plan must "provide for foster care maintenance payments in accordance with [42 U.S.C. § 672] and for adoption assistance in accordance with [42 U.S.C. § 673]." 42 U.S.C. § 671(a)(1).

The Child Welfare Act also sets forth specific requirements that each participating state must follow when implementing its plan. Among these requirements, the Child Welfare Act commands that "[e]ach State with a plan approved . . . shall make foster care maintenance payments on behalf of each child who has been removed from the home of a relative . . . ." 42 U.S.C. § 672(a)(1) (emphasis added). The Child Welfare Act defines "foster care maintenance payments" as

> payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence.

42 U.S.C. § 675(A)(4) (emphasis added).

B. California's Plan Under The Child Welfare Act

Following the enactment of the Child Welfare Act, California, like most states, attempted to create a statutory scheme that complies with the Act's express requirements. California designated the California Department of Social Services

("CDSS") as the state agency responsible for submitting California's plan to DHHS for approval. Cal. Welf. & Inst. Code §§ 11229, 11460(a), 11462(a).

California law provides that "[f]oster care providers shall be paid a per child per month rate in return for the care and supervision of the AFDC-FC child placed with them." Cal. Welf. & Inst. Code § 11460(a). The phrase "care and supervision" is defined as "food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation." Cal. Welf. & Inst. Code § 11460(b).

To determine the amount of foster care maintenance payments for foster care group homes, California uses the Rate Classification Level System ("RCL"). Cal. Welf. & Inst. Code § 11462. Under the RCL, a group home is assigned to one of fourteen levels based on the group home's number of "points." Cal. Welf. & Inst. Code §§ 11462(b), (e). The number of points assigned to a group home is based largely on (1) the number of "paid/awake" hours worked per child, per month, and (2) the qualifications of the staff. Cal. Welf. & Inst. Code § 11462(e). All of the group homes in the same RCL receive the same AFDC-FC payment rate based on the standardized schedule of rates. Cal. Welf. & Inst. Code § 11462(f). CDSS determines the RCL for each group home, and its AFDC-FC payment rate, using

information submitted by each group home in a rate application. Cal. Welf. & Inst. Code § 11462(e).

California law further requires that "the standardized schedule of rates shall be adjusted annually by an amount equal to the [California Necessity Index] CNI computed pursuant to section 11453, subject to the availability of funds." Cal. Welf. & Inst. Code § 11462(g)(2). The CNI is a weighted average of increases in various costs of living for low-income consumers, including food, clothing, fuel, utilities, rent and transportation. *See, e.g.,* Cal. Welf. & Inst. Code § 11453.

Importantly, California law also provides for care for foster care children that might not be federally eligible under the Child Welfare Act. Indeed, California law does not distinguish between federally eligible children and non-federally eligible children, and federally eligible and non-federally eligible children are inextricably mixed within California's foster care group homes because placements are made based on location and needs of the specific foster care children -- not on their federal eligibility status. (*See* Preliminary Injunction Order at 14; SER 23; AIICR 57.)

C. The Alliance Sues The State For Failure To Comply With The Child Welfare Act

The Alliance is a non-profit association of private, non-profit agencies that provide adoption, foster care, group home and other services. At the time the

lawsuit was originally filed in 2006, the Alliance had approximately 150 member agencies, with approximately 130 of these agencies operating one or more group home programs, which had a total licensed capacity of approximately 5,700 children and youth. (Compl., at ¶ 4(b); ER 53; CR 1.) These agencies rely on California's foster care maintenance payments required under the Child Welfare Act to pay their operating costs and provide basic necessities to the children in their group homes. (Compl., at ¶ 21; ER 57; CR 1.)

On June 30, 2006, the Alliance filed this action under 42 U.S.C. § 1983 against CDSS in the Northern District of California because the State of California has violated and continues to violate the commands of the Child Welfare Act. (ER 51; CR 1.) From State fiscal year 1990-1991 to 2005-2006 the costs of providing the basic necessities enumerated in the Child Welfare Act increased by approximately 53%, yet California's foster care payments increased only 27%. (Compl., at ¶ 19; ER 57; CR 1.) As a result, there was a substantial gap between the costs that foster care providers must incur to provide basic care to California's children and the payments these providers receive from the State under its system.

California's deliberate underfunding of foster care maintenance payments has had catastrophic effects on foster care providers in California. Several members of the Alliance ceased operating their group homes or reduced the capacity of their group home programs. (Compl., at ¶ 21; ER 57; CR 1.) To

prevent the closure of more homes and to protect the rights of the innocent children, the Alliance initiated this lawsuit, seeking declaratory and injunctive relief against the State of California to force it to comply with the Child Welfare Act's requirements. (Compl., at ¶¶ 23-30; ER 59-61; CR 1.)

On July 16, 2007, the Alliance filed its Motion for Summary Judgment. (CR 34.) On July 17, 2007, the State filed its Motion for Summary Judgment. (CR 37.) The Alliance asserted, among other things, that California violated, and continues to violate, federal law by failing to the cover the cost of (and the cost of providing) the enumerated items set forth in the Child Welfare Act. (CR 34.) In its cross-motion, the State acknowledged that it fails to do so. The State argued, nonetheless, that California is compliant with the Child Welfare Act because the Act does not require states to pay the actual costs of providing the enumerated items. (Def.'s Mot. Summ. J. at p. 7; CR 37.) The State also argued that the Child Welfare Act permits states to take budgetary considerations into account in determining the amount of foster care maintenance payments. (Def.'s Mot. Summ. J. at p. 8; CR 37.)

The district court heard oral arguments on September 24, 2007, and on March 11, 2008 issued an order granting the State's Motion for Summary Judgment and denying the Alliance's Motion for Summary Judgment. (ER 90; CR 57.) The district court entered judgment on March 12, 2008. (CR 58.)

Following the issuance of the district court's March 12, 2008 order, the Alliance appealed to this Court, which, as set forth below, was reversed.

D. The State Attempts To Implement An Additional 10% Rate Cut And The Alliance Initiates A Separate Action And Obtains A Preliminary Injunction

While the Alliance's appeal was pending in *Alliance I*, the State initiated an additional 10% cut to the already deficient rates paid to foster care group homes as part of its 2010 budget. This additional rate cut significantly threatened the closure of foster care group homes across California as they would no longer have enough funding to provide the most basic care to California's most vulnerable children.

In response to the State's 10% cut, the Alliance initiated a separate action in the United States District Court for the Northern District of California on September 18, 2009. (AIICR 1.) The Alliance's lawsuit in *Alliance II* sought to enjoin the State of California from implementing the 10% cut to the already deficient RCL rates. (*Id.*) To that end, the Alliance moved to preliminarily enjoin the State's rate cuts from taking effect. (*Id.*)

On November 13, 2009, the district court held its hearing on the Alliance's Motion for Preliminary Injunction. On November 18, 2009, the district court issued its Order granting the Alliance's Motion for Preliminary Injunction. (AIICR 57.)

In its preliminary injunction order, the district court ordered that the "injunction prohibits implementation of the reduction only with respect to payments made in connection with children subject to the CWA. Execution of the injunction SHALL NOT be carried out in a manner that will reduce in any amount the full entitlement to such federally eligible children under this order." (SER 23; AIICR 57) (emphasis added). The district court also noted that "[c]ounsel for the parties agreed at oral argument that the RCL system and group homes do not distinguish between federally eligible and non-federally eligible children in the rates set or the services provided." (SER 23; AIICR 57) (emphasis added). The district court then explained: "This raises the question [of] whether any funding scheme for foster care maintenance payments that discriminates among federally eligible and non-federally eligible children can be carried out under California's system." (SER 23; AIICR 57.) The district court then asked the State to inform it how the State planned to determine the amount of foster care maintenance payments that will satisfy the order. (SER 23; AIICR 57.)

In response to the district court's request, the State merely submitted a plan with two different tables of rates -- one for federally eligible children and one for non-federally eligible children. (SER 3; AIICR 63.) The federally-eligible children's rates were those that were in effect prior to the 10% rate reduction implemented by the State on October 1, 2009. The non-federally eligible

children's rates were those which reflected the 10% rate reduction. (SER 7-8; AIICR 63.) The Alliance objected to the State's plan on the grounds that "it does not specify how group homes are supposed to implement it in such a way as to ensure that federally eligible children are not subject to additional reductions in foster care maintenance payments, as mandated by the court's preliminary injunction order." (ER 47; AIICR 67.)

On December 18, 2009, the district court issued its Order in *Alliance II*, and enjoined the State from implementing rate cuts rates for federally eligible and non-federally eligible children. The district court explained: "[a]t the preliminary injunction hearing, plaintiff represented to the court that group homes are required to provide the same basic level of care to all children placed with the home, regardless whether the children are federally eligible. The State did not dispute this characterization." (ER 47; AIICR 67) (internal citations omitted). The district court also noted that "nothing in the State's submission contests or even addresses the preliminary injunction order's finding that 'group homes do not distinguish between federally eligible and non-federally eligible children in . . . the services provided.'" (ER 47-48; AIICR 67.) The district court then concluded:

> Because group homes do not so distinguish, it is inevitable that simply reimbursing group homes differently for federally eligible and non-federally eligible children will result in the dilution of funds to federally eligible children. For instance, a group home operating at an RCL 14 level would receive $6,694 per month for each federally eligible child and $6,025 per month for each non-federally eligible

> child. According to the State, approximately 59% of children statewide are federally eligible whereas 41% are non-federally eligible. A group home whose population reflected this breakdown would receive an average of $6,419.71 per child. For a federally eligible child, this amounts to a funding level of 95.9% of that to which the child is entitled. In other words, because group homes do not -- and likely would not, as a matter of ethics as well as policy -- give non-federally eligible children less food, clothing, shelter, or less of any of the other items enumerated in the CWA, *see* 42 U.S.C. § 675(A)(4), the effect of the State's current plan is to cut the benefits to federally eligible children by 4.1%, in contravention of the court's preliminary injunction order.

(ER 48, AIICR 67) (emphasis added). The district court then held that "[i]mplementation of such reduction is enjoined both in relation to federally eligible children and non-federally eligible children." (ER 48, AIICR 67.)

E. This Court Reverses The District Court's Summary Judgment Order In *Alliance I* And Remands With Instructions To Enter Judgment For The Alliance And Determine The Proper Scope Of Injunctive Relief

After hearing oral argument on October 7, 2009, this Court issued its Opinion in *Alliance I* on December 14, 2009. *See California Alliance of Child and Family Services v. Allenby*, 589 F.3d 1017 (9th Cir. 2009) (ER 74; CR 84.) In reversing the district court's order denying the Alliance's motion for summary judgment and granting summary judgment in favor of the State, the Court agreed with the Alliance's interpretation of the Child Welfare Act.

This Court's Opinion in *Alliance I* made clear that the State was not in compliance with the Child Welfare Act because it did not "cover" the costs of

providing the enumerated items to the federally eligible children. *Allenby*, 589 F.3d at 1021. The Court explained: "It is undisputed that the State is no longer paying this amount -- rather, it is paying somewhere in the neighborhood of 80 percent of the amount. In other words, the CWA requires California to cover the cost of certain items and California has developed a formula to determine what those items cost, but is now only partially covering the cost of those items. This runs afoul of the CWA's mandate." *Id.* (emphasis added). The Court held that the State "must make yearly CNI adjustments (or some other inflationary adjustment) to account for the rise (or fall) in its standardized schedule of rates." *Allenby*, 589 F.3d at 1023.

The Court concluded that "[b]ecause the State is not covering the costs required by the CWA, we reverse the district court's order granting summary judgment to the State and denying summary judgment to the Alliance." *Id.* at 1023. The Court further directed the district court to enter judgment for the Alliance and to determine the proper scope of declaratory and injunctive relief. *Id.*

F. The District Court Issues Judgment For The Alliance And Grants Permanent Injunctive Relief

On January 15, 2010, the Alliance submitted a proposed judgment to the district court in light of this Court's December 14, 2009 Order in *Alliance I*. (ER 41; CR 87.) The Alliance's Proposed Judgment included rate increases in

accordance with the CNI for both federally eligible and non-federally eligible children based on the district court's conclusion in *Alliance II* that (1) California's RCL System does not distinguish between federally and non-federally eligible children, and (2) without increasing rates for both federally and non-federally eligible children, the enumerated costs under the Child Welfare Act would not be covered for federally eligible children. (*Id.*)

On January 29, 2010, the State submitted its Response and Objections to Plaintiff's Proposed Judgment. (ER 35; CR 88.) The State neither objected to nor even mentioned the inclusion of rate increases for non-federally eligible children in the Proposed Judgment. (*Id.*)

The district court entered Judgment on February 23, 2010. (ER 11; CR 92.) The district court's Judgment included rate increases for both federally eligible and non-federally eligible children. (ER 15; CR 92.) The district court explained: "The injunction extends to non-federally eligible children for the reasons set forth in this court's order of December 18, 2009, entered in the related *California Alliance v. Wagner* action." (Judgment at 5 n.2; ER 15; CR 92.) The State filed its Notice of Appeal of the district court's Judgment on February 22, 2010.

Following the district court's entry of judgment, on February 26, 2010, the State submitted a procedurally improper letter to the district court asserting new objections to the Judgment that were not made (and therefore waived) before it was

entered on February 23, 2010. (CR 93.) Specifically, the State objected to (1) the inclusion of rate increases for non-federally eligible children, and (2) the inclusion of a reference to a "list" that the CDSS submits to the Legislature on an annual basis under Welfare and Institutions Code section 11462(m). (CR 93.)

On March 12, 2010, the district court issued an order requiring additional briefing from the parties relating to the State's February 26, 2010 letter to the district court requesting amended judgment. (SER 1; CR 98.) However, the district court's Order did not mention the inclusion of non-federally eligible children, but only requested additional briefing on the issue regarding the State's assertion that Welfare and Institutions Code section 11462(m) is not part of the RCL rate-setting methodology." (*Id.*)

On May 5, 2010, the district court issued an order granting the State's request for an amended judgment. (ER 8; CR 111.) The district court stated that it treated the State's February 26, 2010 letter "as a motion to amend the judgment under Federal Rule of Civil Procedure 59(e)." (ER 8; CR 111.) The district court modified the Judgment so that "Paragraph 4(d) of the judgment entered on February 24, 2010 is stricken." (ER 10; CR 111.) The district court did not mention or address the State's belated objection to the inclusion of rate increases for non-federally eligible children. That same day, the district court issued its

Amended Judgment, which did not modify the portion of the Judgment regarding the inclusion of rate increases for non-federally eligible children. (ER 1; CR 111.)

V. SUMMARY OF THE ARGUMENT

The State of California's appeal comes on the heels of the district court's entry of judgment and permanent injunctive relief in favor of the Alliance following this Court's holding that the State was out of compliance with the Child Welfare Act in *California Alliance of Child and Family Services v. Allenby*, 589 F.3d 1017 (9th Cir. 2009) (ER 74; CR 84). In response to this Court's Order, the district court ordered the State to provide the requisite rate increases to federally and non-federally eligible children under California's Rate Classification System to ensure that the State's foster care maintenance payments "cover" the costs of providing the enumerated items set forth in the Child Welfare Act.

In this appeal, the State concedes that federally eligible children "are entitled to the increased rates ordered by the District Court." (Opening Brief at 14.) However, the State asserts that the district court erred in requiring that "the group home rates be increased for *all* residents, including the 41 percent who are *not* federally eligible . . . ." (*Id.*) The State's argument is meritless for several reasons, including the State's clear and intentional waiver on this issue, and the fact that the district court did not abuse its discretion in tailoring the injunctive relief to provide

rate increases to both federally eligible and non-federally eligible children to ensure that the cost of caring for the federally eligible children is covered. [4]

As a threshold matter, the Court need not address the merits of this appeal to affirm the district court's Amended Judgment. Rate increases for both federally eligible *and* non-federally eligible children were included in the Alliance's Proposed Judgment. The State failed to object to the inclusion of rate increases for non-federally eligible children before the Judgment was entered, and therefore waived the issue. Furthermore, the State's belated, procedurally improper letter to the district court after the Judgment was entered -- which was treated as a Federal Rule of Civil Procedure 59(e) motion -- is insufficient to preserve this issue on appeal as this Court has long-held that objections made for the first time in post-judgment motions are not preserved.

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[4] The State admits in its brief that what it is attempting to accomplish through its appeal is "draconian." The State is attempting to treat federally and non-federally eligible children differently. Federal eligibility is only relevant for determining whether the federal government provides funding for the specific child and whether the child falls under the Child Welfare Act. While California removes both federally and non-federally eligible children from their homes and places them into foster care group homes without providing them any choice, California has deliberately chosen not to provide sufficient funding for their care. Although the Court's Order in *Alliance I* alleviated this concern for federally eligible children, the State is now attempting to continue to underfund the care for *both* federally and non-federally eligible children by underfunding the cost to care for the non-federally eligible children.

Even if this Court turns to the merits, the State fares no better. The State misapprehends the appropriate standard of review on this appeal. The State asks the Court to apply a *de novo* standard on the grounds that the Amended Judgment is void. However, the State never moved for relief under Federal Rule of Civil Procedure 60(b), and therefore the State's assertion that the Amended Judgment is void is not properly before this Court. The issue regarding the inclusion of rate increases for non-federally eligible children was only presented (if at all) in the State's Rule 59(e) motion, which is reviewed for an abuse of discretion.

Turning to the substance, the entirety of the State's argument is predicated on the State's incorrect assertion that the district court found that non-federally eligible children are entitled to rate increases under the federal Child Welfare Act. The district court found no such thing. Rather, the district court concluded that, under California's current RCL system, the State must raise rates for federally eligible *and* non-federally eligible children because (1) the RCL System does not distinguish between federally and non-federally eligible children, which are grouped together in foster care group homes, and (2) "it is inevitable that simply reimbursing group homes differently for federally eligible and non-federally

eligible children will result in the dilution of funds to federally eligible children."[5] (ER 47-48; AIICR 67). The State does not argue that either of these findings is erroneous.

Relying entirely on the incorrect premise that the district court concluded that non-federally eligible children are entitled to rate increases under the Child Welfare Act, the State makes several arguments in support of its position that the Amended Judgment is "void." Each argument fails.

The State argues that the district court exceeded its jurisdiction because the Child Welfare Act only applies to federally eligible children. However, the district court did not provide relief under state law, and it did not expand its own jurisdiction. Rather, the district court tailored the relief consistent with this Court's Order in *Alliance I* to ensure that California's system *covers* the costs for the federally eligible children. The district court only found that even if the State raises rates for the federally eligible children, unless rates are also increased for the non-federally eligible children, the result is that the average rate per child (federally eligible and non-federally eligible) is below the amount necessary to cover the costs of providing the enumerated items in the Child Welfare Act.

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[5] The district court made clear that the State is free to develop a new system that distinguishes between federally eligible and non-federally eligible children. (ER 18.) To date, the State has declined to create a new system.

In addition, while the State does not dispute that the Amended Judgment, as it relates to federally eligible children, does not violate the Eleventh Amendment, it argues that the inclusion of non-federally eligible children pushes it over the threshold into impermissibility. (Opening Brief at 28.) But again, the Amended Judgment does not require the State to increase spending on foster care group homes beyond the amount the Child Welfare Act supports. It only requires that rates be increased for both federally eligible *and* non-federally eligible children to ensure that the rates for the federally eligible children comply with the Child Welfare Act and are consistent with this Court's Order in *Alliance I*. (ER 4; CR 112.)

Accordingly, based on the foregoing reasons, the Alliance respectfully requests that the district court's Amended Judgment be affirmed.

VI. ARGUMENT

A. The District Court Correctly Entered Judgment And Tailored Injunctive Relief In Favor Of The Alliance

1. Standard of Review

The Court reviews an order denying a Federal Rule of Civil Procedure 59(e) motion to amend the judgment under the abuse of discretion standard. *Duarte v. Bardales*, 526 F.3d 563, 567 (9th Cir. 2008). Furthermore, the Court reviews an injunction order for "an abuse of discretion or an erroneous application of legal

principles." *United States v. AMC Entertainment, Inc*., 549 F.3d 760, 768 (9th Cir. 2008).

The State argues that the standard of review is *de novo* because it asserts that the Amended Judgment is "void." (Opening Brief at 18.) However, the State's only objection to the Court's inclusion of non-federally eligible children was presented to the district court in a procedurally defective post-judgment letter that the district court treated as a motion under Federal Rule of Civil Procedure 59(e). (CR 93.) The State never moved for relief under Federal Rule of Civil Procedure 60(b) on the grounds that the Amended Judgment is void, and therefore the State's assertion that the Amended Judgment is void is not properly before this Court.

As explained below, the district court did not abuse its discretion in (1) denying the State's motion under Federal Rule of Civil Procedure 59(e), and (2) fashioning the appropriate injunctive relief in response to this Court's order in *Alliance I*.

2. The State Waived Its Objections To The Judgment's Inclusion Of Rate Increases For Non-Federally Eligible Children

The State improperly seeks relief from this Court that it never sought from the district court. The State asks this Court to vacate or amend the district court's judgment because the district court's judgment applies to non-federally eligible

foster children,[6] which the State argues exceeds the scope of the original pleadings, the district court's jurisdiction and this Court's decision in *Alliance I*. (Opening Brief at 14, 16.) This Court should deny the State's requests to vacate or amend the judgment because the State (1) never moved to vacate the judgment in the district court, and (2) never objected to the district court's inclusion of non-federally eligible children in the judgment before its entry.

a. The State Waived Any Argument That The Judgment Is Void And Should Be Vacated

The State asks this Court to vacate the district court's judgment on the grounds that it is void. (Opening Brief at 18.) The State, however, waived this issue because it never raised it with the district court. "It is the general rule, of course, that a federal appellate court does not consider an issue not passed upon below." *Singleton v. Wulff*, 428 U.S. 106, 120 (1976); *see also Gieg v. DDR, Inc.*, 407 F.3d 1038, 1046 n.10 (9th Cir. 2005) ("An appellate court will not consider arguments not first raised before the district court unless there are exceptional circumstances."); *Whittaker Corp. v. Execuair Corp.*, 953 F.2d 510, 515 (9th Cir. 1992) ("As a general rule, an appellate court will not hear an issue raised for the

[6] The State concedes that "[a]s to those federally eligible residents there is no issue in this appeal that they are entitled to the increased rates ordered by the District Court." (Opening Brief at 14.)

first time on appeal.").[7] Indeed, this Court and other circuit courts have consistently held that where a party fails to seek relief from a judgment in the district court, "it is waived and [appellate courts] decline to consider it." *See Idaho Watersheds Project v. Hahn*, 307 F.3d 815, 830 (9th Cir. 2002); *see also Palmer v. U.S. Internal Revenue Serv.*, 116 F.3d 1309, 1312-13 (9th Cir. 1997) (Holding that an issue not raised in the district court is waived on appeal)); *Chicago Downs Ass'n, Inc. v. Chase*, 944 F.2d 366, 370-71 (7th Cir. 1991) (Holding that a party's failure to file a Rule 60(b) motion with the district court waived the issue for purposes of appeal.).

Because the State did not file a motion to vacate the judgment under Rule 60(b) in the district court, it cannot now raise the issue for the first time on appeal. Therefore, the issue is waived and the district court's Amended Judgment should be affirmed.

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[7] The longstanding prohibition against considering issues raised for the first time on appeal exists "to ensure that legal arguments are considered with the benefit of a fully developed factual record, offers appellate courts the benefit of the district court's prior analysis, and prevents parties from sandbagging their opponents with new arguments on appeal." *Dream Palace v. City of Maricopa*, 384 F.3d 990, 1005 (9th Cir. 2004). Entertaining the State's request to vacate deprives this Court of a complete factual record and the district court's analysis, and deprives the Alliance of an opportunity to offer a complete defense thereto.

b. The State Waived Any Objection To The Judgment's Inclusion of Federally Ineligible Children

Although the State does not directly appeal the district court's denial of its Rule 59(e) motion to amend, it does ask this Court to amend the district court's judgment because, as the State alleges, it improperly applies to "federally ineligible" children.[8] (Opening Brief at 17.) The State's request that this Court amend the Judgment is improper because, despite ample opportunity to raise the issue in a timely manner, the State did not argue that it would be improper for the Judgment to impact federally ineligible children until *after* the Judgment was entered.

The Alliance filed its Proposed Judgment, which included rate increases for both federally eligible *and* non-federally eligible children on January 15, 2010. (ER 41; CR 87.) In its Response and Objections filed two-weeks later, the State did not object to (*or even mention*) the inclusion of federally ineligible children in the Proposed Order. (CR 88; ER 35.) Nor did the State object in open court during the February 22, 2010 hearing on the proposed order, despite the district court explicitly noting that it would "add a footnote -- at Subparagraph C of

[8] Since the federally ineligible children issue was presented to the district court for the first time in the State's Rule 59(e) motion, the district court's refusal to amend the Judgment based on the State's Rule 59(e) motion presumably provides the State's platform for attempting to raise this issue on appeal.

Paragraph 4, relating to the . . . non[-]federally eligible children . . . ." (ER 25.) The district court entered judgment on February 24, 2010. (ER 11; CR 92.) The State immediately appealed. (ER 5; CR 99.)

Two days after the judgment was entered, and the day after it filed its notice of appeal, the State, in a procedurally improper letter to the district court, objected for the first time to the judgment's inclusion of federally ineligible children. (CR 93.)[9] The district court considered the letter a Rule 59(e) motion. (ER 8; CR 111.) On May 4, 2010, the district court amended the Judgment with respect to an issue not on appeal, but left undisturbed the judgment's application to non-federally eligible children.[10] The State did not amend its notice of appeal or file a new one.

The State asks this Court to consider arguments that were not raised in the district court prior to the entry of judgment. The State argues that because the judgment includes rate increases for non-federally eligible children, it exceeds (1) district court's jurisdiction; (2) the scope of the pleadings and; (3) this Court's

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[9] Specifically, the State objected to the inclusion of (1) rate increases for non-federally eligible children, and (2) a reference to a "list" that the CDSS submits to the Legislature on an annual basis under Welfare and Institutions Code section 11462(m). (CR 93.)

[10] The district court's only modification to the judgment was to strike "Paragraph 4(d) of the judgment entered on February 24, 2010 . . .." (ER 10; CR 111).

decision in *Alliance I.* (Opening Brief at 15.) However, by failing to make these arguments in the district court before judgment was entered, the State failed to preserve them on appeal. *See e.g., Janes v. Wal-Mart Stores, Inc.*, 279 F.3d 883, 887 (9th Cir. 2002) ("Issues raised for the first time on appeal usually are not considered.").

Moreover, the State's eventual inclusion of these arguments in its post-judgment letter to the district court does not preserve them for appeal either. *See, e.g., Beech Aircraft Corp. v. United States*, 51 F.3d 834, 841 (9th Cir. 1995) ("That Plaintiffs raised the issue in a post-judgment motion does not save this issue for appeal for the Plaintiffs."); *see also Sharp Structural, Inc. v. Franklin Mfg.*, 283 Fed. Appx. 585, 588 (9th Cir. 2008) ("A Rule 59(e) motion may not be used to raise arguments . . . for the first time when they could reasonably have been raised earlier in the litigation."); *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003) (same).

Accordingly, the State waived these arguments by failing to make them in the district court before the judgment was entered. *See Idaho Watersheds Project*, 307 F.3d at 830 ("Because the [Appellants] did not raise this argument below . . . it is waived and we decline to consider it.") The State's arguments that the district court erred in failing to amend the judgment are, therefore, waived. The Court should decline to consider them and should affirm the Judgment.

3. The District Court Did Not Abuse Its Discretion In Ordering The State To Increase Funding To Federally Eligible And Non-Federally Eligible Children

Even assuming that the State properly preserved its arguments for appeal -- which it did not -- the district court did not abuse its discretion in ordering the State to increase funding to both federally and non-federally eligible children. The State concedes in its appeal that federally eligible children "are entitled to the increased rates ordered by the District Court." (Opening Brief at 14.) However, the State asserts that the district court erred in requiring that "the group home rates be increased for *all* residents, including the 41 percent who are *not* federally eligible . . . ." (Opening Brief at 14.) The State's argument is meritless. The district court acknowledged and the Alliance concedes for purposes of this appeal that non-federally eligible children are not subject to the contours of the Child Welfare Act. However, the district court did not abuse its discretion in concluding that under the State's current RCL system the State of California must also increase funding for federally *and* non-federally eligible children to ensure that the State of California covers "the cost of (and the cost of providing)" the enumerated

items set forth in Section 675 of the Child Welfare Act to the federally eligible children.[11]

It is well established that "[t]he district court has substantial discretion in defining the terms of an injunction and appellate review is correspondingly narrow." *Coca-Cola Co. v. Overland, Inc*., 692 F.2d 1250, 1256 n.16 (9th Cir. 1982) (citing *Lemon v. Kurtzman*, 411 U.S. 192, 200 (1973) ("In shaping equity decrees, the trial court is vested with broad discretionary power; appellate review is correspondingly narrow")); *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 558 (9th Cir. 1990) ("Once plaintiffs establish they are entitled to injunctive relief, the district court has broad discretion in fashioning a remedy."); *United States v. AMC Entertainment, Inc*., 549 F.3d at 768 ("A district court has considerable discretion in granting injunctive relief and in tailoring its injunctive relief.").

The district court did not abuse its discretion in tailoring the appropriate injunctive relief in response to this Court's Order in *Alliance I*, as demonstrated by its sound reasoning for requiring the State to increase rates for federally eligible *and* non-federally eligible children to ensure the federally eligible children get the full amount of funds to which they are entitled under federal law. Noticeably

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[11] The district court made clear that the State is free to develop a new system that distinguishes between federally eligible and non-federally eligible children. (ER 18.)

absent from the State's brief is any substantive discussion of the district court's reasoning for requiring the State to increase rates for federally eligible *and* non-federally eligible children to ensure the federally eligible children get the full amount of funds to which federal law entitles them. The State buries the district court's reasoning for including non-federally eligible children at page 26 of its Opening Brief, with much of it left out entirely. Furthermore, although the State quotes the district court's reasoning, the State never addresses it (therefore conceding it is correct) other than to note that "[t]he State defendants are mindful of the District Court's concerns" but that such concerns "are not sufficient to extend the District Court's jurisdiction beyond what the complaint before it defined . . . ." (Opening Brief at 27.) The State's jurisdictional argument is both misplaced and specious.

The Alliance's lawsuit was premised on allegations that the State of California failed to comply with the Child Welfare Act because it failed to make "foster care maintenance payments" for qualifying children (i.e., federally eligible children) that "cover the cost of (and the cost of providing)" the basic necessities set forth in Section 675. Based on the undisputed facts, this Court agreed: "It is undisputed that the State is no longer paying this amount -- rather, it is paying somewhere in neighborhood of 80 percent of the amount. In other words, the CWA requires California to cover the cost of certain items and California has

developed a formula to determine what those items cost, but is now only partially covering the cost of those items. This runs afoul of the CWA's mandate." *Allenby*, 589 F.3d at 1021 (emphasis added). Thus, this Court in *Alliance I* directed the district court to enter judgment for the Alliance and to determine the proper scope of declaratory and injunctive relief. *Id.* at 1023.

Following this Court's Opinion, the district court entered judgment for the Alliance, which required the State to make the requisite CNI rate increases to federally eligible and non-federally eligible children. (ER 11; CR 92.) In ordering the State to raise rates for the non-federally eligible children, the district court incorporated its analysis from *Alliance II*, where the issue was extensively briefed in connection with the district court's Order enjoining the State from implementing further cuts to the already deficient rates that were in effect at that time. (*Id.*)

In *Alliance II*, the district court enjoined the State of California's 10% rate cut to foster care group home rates on the grounds that it rendered the rates out of compliance with the requirements of the federal Child Welfare Act. In analyzing the proper scope of the injunctive relief, the district court recognized that the State of California has set up a foster care system (*i.e.,* the RCL System) that does not distinguish between federally eligible and non-federally eligible children. The Court invited the State in *Alliance II* to present a plan for implementing the rate cuts to the non-federally eligible children under the State's current RCL system

that would not also result in a rate cut to the federally eligible children. (SER 23; CR 57). In response, the State only presented a chart setting forth different foster care rates to federally eligible and non-federally eligible children, but without offering any explanation of how such different rates were to be applied. (SER 3; CR 63).

The district court in *Alliance II* correctly concluded that merely providing different rates was insufficient to protect the federally eligible children. (ER 48; AIICR 67). The district court explained: "At the preliminary injunction hearing, plaintiff represented to the court that group homes are required to provide the same basic level of care to all children placed with the home, regardless whether the children are federally eligible. The State did not dispute this characterization." (ER 47; AIICR 67) (internal citations omitted). The district court also noted that "nothing in the State's submission contests or even addresses the preliminary injunction order's finding that 'group homes do not distinguish between federally eligible and non-federally eligible children in . . . the services provided.'" (ER 47; AIICR 67.) The district court then concluded:

> Because group homes do not so distinguish, it is inevitable that simply reimbursing group homes differently for federally eligible and non-federally eligible children will result in the dilution of funds to federally eligible children. For instance, a group home operating at an RCL 14 level would receive $6,694 per month for each federally eligible child and $6,025 per month for each non-federally eligible child. According to the State, approximately 59% of children statewide are federally eligible whereas 41% are non-federally

> eligible. A group home whose population reflected this breakdown would receive an average of $6,419.71 per child. For a federally eligible child, this amounts to a funding level of 95.9% of that to which the child is entitled. In other words, because group homes do not -- and likely would not, as a matter of ethics as well as policy -- give non-federally eligible children less food, clothing, shelter, or less of any of the other items enumerated in the CWA, *see* 42 U.S.C. § 675(A)(4), the effect of the State's current plan is to cut the benefits to federally eligible children by 4.1%, in contravention of the court's preliminary injunction order.[12]

(ER 48, AIICR 67.) The district court then ordered that "[i]mplementation of such reduction is enjoined both in relation to federally eligible and non-federally eligible children." (ER 48, AIICR 67.)

The district court correctly incorporated its analysis from *Alliance II* in entering judgment in favor of the Alliance in *Alliance I*. This Court's Opinion in *Alliance I* made clear that the State was not in compliance with the Child Welfare

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[12] As a result of the implementation of the Amended Judgment, the rate for an RCL 14 group home program became $8,974 per month, effective July 1, 2010, for both federally-eligible and non-federally eligible children. If the State is successful in this appeal, the rate it would pay for non-federally eligible children placed in RCL 14 programs would be only $6,025 per month, taking into account the 10% rate reduction which the State attempted to implement effective October 1, 2009. This would mean that the amount paid for a non-federally eligible child placed in an RCL 14 program would be only 67% of the amount paid for a federally-eligible child placed in the same program. Assuming that the mix of children in an RCL 14 program is 59% federally-eligible and 41% non-federally eligible, the average weighted payment would be $7,765 per month, which would cover only 86.5% of the costs of care to which federally-eligible children are entitled and which would provide substantial federal Title IV-E funding to illegally subsidize the State for the care of non-federally eligible children.

Act because it did not "cover" the costs of providing the enumerated items for the federally eligible children. *Allenby*, 589 F.3d at 1023. The Court held that the State "must make yearly CNI adjustments (or some other inflationary adjustment) to account for the rise (or fall) in its standardized schedule of rates." *Id.* However, as the district court concluded, given the fact that the State does not distinguish between federally eligible and non-federally eligible children, "simply reimbursing group homes differently for federally eligible and non-federally eligible children will result in the dilution of funds to federally eligible children." (ER 48; AIICR 67). In other words, because California does not distinguish between federally eligible and non-federally eligible children, providing a rate increase to only federally eligible children will render the funding to federally eligible children insufficient to "cover" the costs of providing the enumerated items since those funds will also be used to care for the non-federally eligible children.

The State did not disagree with the district court's analysis and conclusion that in order to be in compliance with the Child Welfare Act and "cover" the costs enumerated therein under the State's current system, the State must provide CNI rate increases to federally eligible and non-federally eligible children. Instead, the State mischaracterizes the district court's conclusion and presents several arguments that are meritless.

First, the State argues that the district court exceeded its jurisdiction. (Opening Brief 18-27.) The Alliance agrees that it sought relief under only federal law, and that the Court's Opinion in *Allenby* did not expand the district court's jurisdiction. However, the district court did not provide relief under state law, and it did not expand its own jurisdiction. Rather, the district court tailored the relief consistent with this Court's Order in *Alliance I* to ensure that California's system *covers* the costs for the federally eligible children.

Second, the State argues that the Child Welfare Act only applies to the federally eligible children, and therefore including the non-federally eligible children renders the Judgment extra-jurisdictional. (Opening Brief at 23.) But, yet again, the State mischaracterizes and never addresses the district court's reasoning for including the non-federally eligible children. The district court did not find that the Child Welfare Act requires California and other states to make foster care maintenance payments to cover the costs for children that are not federally eligible. Rather, the district court found that under the current system that California has created, federally eligible children and non-federally eligible children are, among other things, mixed together, housed together and fed together. Thus, even if the State raises rates for the federally eligible children, unless rates are also increased for the non-federally eligible children, the result is that the average rate per federally eligible child will fall below the amount necessary to "cover" the costs

required by the Child Welfare Act. Consequently, California will continue to deprive federally eligible children of the full amount of money mandated by the Child Welfare Act. The State created the RCL system, and it decided to treat federally eligible and non-federally eligible children the same. While the State certainly has the ability to create a new system, it cannot operate the current system in a way that deprives federally eligible children of the full funding required by the Child Welfare Act.

Third, while the State devotes approximately four pages to the district court's orders in *Alliance II*, which provides the basis for the district court's inclusion of non-federally eligible children, the State never explains how the district court's reasoning is flawed or incorrect. Instead, the State merely asserts that the State is "mindful of the District Court's concerns . . . ." (Opening Brief at 27.) The State then asserts, in conclusory fashion, that "those concerns are not sufficient to extend the District Court's jurisdiction beyond what the complaint before it defined . . . that, in a case based on the federal Child Welfare Act, the District Court's jurisdiction cannot extend beyond the federal law it is empowered to enforce." (Opening Brief at 27.) However, again, the district court did not extend its jurisdiction or federal law beyond the Child Welfare Act. The district court entered relief to ensure that California is in compliance with the Child Welfare Act for federally eligible children.

Finally, the State asserts that "[t]o the extent that [the Amended Judgment] purports to require the State to increase spending on foster care group homes beyond the amount supported by the Child Welfare Act . . . , the Judgment violates principles of sovereign immunity reflected in the Eleventh Amendment." (Opening Brief at 28.) In other words, the State does not argue that the Amended Judgment as it relates to federally eligible children violates the Eleventh Amendment, but merely suggests that the inclusion of non-federally eligible children pushes it over the threshold into impermissibility. The State both misinterprets and mischaracterizes the district court's reasoning. The Amended judgment *does not* require the State to increase spending on foster care group homes beyond the amount the Child Welfare Act supports. Rather, the district court held that, under the State's current RCL system, rates must be increased for both federally eligible *and* non-federally eligible children to ensure that the rates for the federally eligible children comply with the Child Welfare Act and are consistent with this Court's Order in *Alliance I*. This is entirely consistent with the *Ex Parte Young* exception to the Eleventh Amendment.[13]

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[13] *See Ex Parte Young*, 209 U.S. 123, 155-56 (1908). The *Ex Parte Young* doctrine is an exception to the general principle of Eleventh Amendment sovereign immunity. *Western Mohegan Tribe and Nation v. Orange County*, 395 F.3d 18, 22 (2d Cir. 2004). It allows a suit for injunctive or declaratory relief challenging the constitutionality of a state official's actions where the complaint alleges an ongoing violation of federal law and seeks only prospective relief. *Id.*

In sum, while the State makes several arguments in its Opening Brief, it never addresses the district court's reasoning for requiring the State to raise rates for federally eligible and non-federally eligible children. The district court did not find any right to rate increases for the non-federally eligible children or any basis in state law, but rather determined that under the State's current system rates must be raised for all children in foster care homes in order for California to ensure federally eligible children receive the full amount of funds required by the Child Welfare Act. This was not an abuse of discretion.

VII. CONCLUSION

Based on the foregoing, the Alliance respectfully requests that the Court affirm the district court's Amended Judgment.

DATED: August 19, 2010 Bingham McCutchen LLP

By: s/ William F. Abrams
William F. Abrams
Attorneys for Appellee
CALIFORNIA ALLIANCE OF CHILD AND FAMILY SERVICES

STATEMENT OF RELATED CASES

To the knowledge of counsel, the following cases are related to this case:

(1) *California Alliance of Child and Family Services v. Allenby et al.*, Case No. 08-16267, an earlier appeal in from the same district court case, wherein this Court reversed district court order granting summary judgment in favor of defendants and directed the district court to enter an order granting summary judgment in favor of plaintiff;

(2) *California Alliance of Child and Family Services v. Wagner et al.*, Case No. 09-17649 (Alliance II), an emergency request for a stay of the preliminary injunction issued by the district court in a related case filed after California imposed additional cuts to funding for group homes. Alliance II raises questions under the Child Welfare Act that are similar to those at issue in this case.

CERTIFICATE OF COMPLIANCE PURSUANT

TO FRAP 32(A)(7)(C) & CIRCUIT RULE 32-1

I certify that:

☑ 1. Pursuant to Fed. R. App. P. 32 (a)(7)(C) and Ninth Circuit Rule 32-1, the attached opening brief is

☑ Proportionately spaced, has a typeface of 14 points or more and contains 8,545 words (opening, answering, and the second and third briefs filed in cross-appeals must not exceed 14,000 words; reply briefs must not exceed 7,000 words),

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☐ 2. The attached brief is not subject to the type-volume limitations of Fed. R. App. P. 32(a)(7)(B) because

☐ This brief complies with Fed. R. App. P. 32(a)(1)-(7) and is a principal brief of no more than 30 pages or a reply brief of no more than 15 pages;

☐ This brief complies with a page or size-volume limitation established by separate court order dated _____ and is

☐ Proportionately spaced, has a typeface of 14 points or more and contains _____ words,

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☐ Monospaced, has 10.5 or fewer characters per inch and contains _____pages or_____ words or _____ lines of text.

DATED: August 19, 2010 Bingham McCutchen LLP

By: s/ William F. Abrams
William F. Abrams
Attorneys for Appellee
CALIFORNIA ALLIANCE OF CHILD AND FAMILY SERVICES

9th Circuit Case Number(s) C.A. NO. 10-15593

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July 26, 2010

Via E-Mail and U.S. Mail

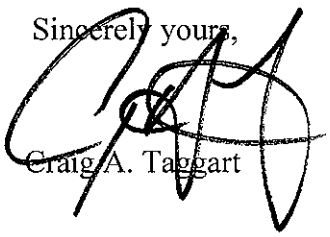
George Prince, Esq.
Deputy Attorney General
455 Golden Gate Ave., Suite 11000
San Francisco, CA 94102-7004

Re: California Alliance of Child and Family Services v. Allenby, et al.
C.A. No. 10-15593

Dear Mr. Prince:

Pursuant to Ninth Circuit Rule 31-2.2, California Alliance of Child and Family Services ("Alliance") obtained an extension of 14 days to file its Answering Brief in the above-referenced matter. Please be advised that Alliance's Answering Brief is now due on August 19, 2010, and the State's optional Reply Brief is due 14 days later. Please do not hesitate to contact me if you have any questions regarding this matter.

Sincerely yours,



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