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16

17 UNITED STATES DISTRICT COURT
18 NORTHERN DISTRICT OF CALIFORNIA
19 SAN FRANCISCO DIVISION
20

21 CALIFORNIA ALLIANCE OF CHILD AND
FAMILY SERVICES,

22 Plaintiff,

23 v.

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

27 Defendants.
28

No. C 06-4095 MHP

**PLAINTIFF CALIFORNIA
ALLIANCE OF CHILD AND
FAMILY SERVICES'S MOTION
FOR SUMMARY JUDGMENT**

Date: August 27, 2007
Time: 2:00 p.m.
Place: Ctrm. 15, 18th Floor
Judge: The Hon. Marilyn H. Patel

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 This action was filed by the California Alliance of Child and Family Services (the
4 “Alliance”) to obtain declaratory and injunctive relief to enforce the foster care maintenance
5 payments required under the Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. §§
6 670 – 679b (the “Child Welfare Act”). The Alliance is a non-profit association of approximately
7 130 private, non-profit agencies that provide adoption, foster care, group home, mental health
8 treatment, family preservation and support, wrap-around, educational, and other services.
9 Approximately 100 of these agencies operate one or more group home programs, with a total
10 licensed capacity for approximately 5,000 children and youth.

11 The Alliance brought this action because defendants the California Department of Social
12 Services and its Division of Children and Family Services (collectively referred to as the “DSS”
13 or “the State”) have violated and continue to violate the Child Welfare Act and enabling
14 regulations that require states receiving federal aid to make foster care maintenance payments to
15 child care institutions that, *inter alia*, provide foster care for a child when a court has determined
16 that it is necessary under applicable law that the child be removed from his or her home and
17 placed in out-of-home care. The DSS has failed to make foster care maintenance payments that
18 meet the Child Welfare Act’s specific requirements.

19 This case is brought on behalf of non-profit charitable organizations that care for children
20 who have been removed from their homes and for whom the State of California has failed to
21 provide adequate funding as required by the federal Child Welfare Act. This action seeks to
22 prevent further violation of law by the State of California and obtain proper payment to the non-
23 profit organizations sufficient to provide these children the appropriate care and shelter to which
24 they are entitled and which the Child Welfare Act requires. Without the State’s compliance, the
25 non-profit agencies will be forced to choose between providing inadequate care or eliminating
26 services and eventually ceasing operations, to the great detriment of the affected children. The
27 Alliance brings this action as authorized by its members, who are injured by the DSS’s unlawful
28 non-compliance with the Child Welfare Act.

1 Congress intended to confer a federal right on foster care institutions and group homes in
2 enacting the Child Welfare Act. The Child Welfare Act clearly declares that payments on behalf
3 of eligible children must be paid to child-care institutions, including group homes, such as the
4 group homes which comprise the members of the Alliance. By specifically conferring monetary
5 entitlements on group homes so that they would have adequate financial resources to provide
6 appropriate care and supervision to eligible foster children, Congress intended to benefit group
7 homes. There is no practical way for Congress to ensure that eligible foster children, placed in
8 group homes and other types of child care institutions by child welfare agencies, receive the care
9 and supervision which they need and to which they are entitled without also ensuring that States
10 provide such child care institutions with adequate financial support in the form of foster care
11 maintenance payments which cover the costs of care and supervision. The Child Welfare Act
12 clearly defines what foster care maintenance costs should be paid to group homes. The language
13 of the Child Welfare Act is mandatory — it requires that these payments *shall* be made to group
14 homes.

15 The State's Rate Classification Level¹ ("RCL") system, however, fails to meet this
16 requirement. Because the crux of this case involves the interpretation of a state and a federal
17 law, both of which are undisputed facts, there is no triable issue of material fact, and summary
18 judgment is appropriate. Accordingly, the Alliance moves this Court for an Order that declares
19 the RCL system is not in compliance with the Child Welfare Act and that the Alliance is entitled
20 to declaratory and injunctive relief as a matter of law.

21
22 ¹ The RCL system has two major components: the RCL classification methodology and the
23 standardized schedule of rates. The RCL classification methodology uses a point system to
24 classify all group home programs into one of 14 levels based on the number of "paid-awake"
25 hours worked by their child care and social work staff, weighted to take into consideration the
26 training, education, and experience of the child care staff and the professional qualifications of
27 the social work staff. The RCL point system also gives limited consideration to the amount of
28 mental health treatment services received by the children placed in each group home program.
All group homes in the same Rate Classification Level are paid the same rate using a
standardized schedule of rates. The only exceptions are two group home programs with
"grandfathered" rates above the standard rate for their RCL which were established prior to the
implementation of the RCL system in 1990. See California Welfare and Institutions Code §§
11462(h)(1); see also JSUF ¶¶ 10-11.

1 **II. STATEMENT OF ISSUES TO BE DECIDED**

2 1. When a state statute deprives a plaintiff of a federal right, that plaintiff is entitled to
3 relief pursuant to 42 U.S.C. §1983.

4 2. The Child Welfare Act has conferred a federal right on the Alliance's members.

5 3. As a matter of law, the state of California's Rate Classification Level system is in
6 violation of the Child Welfare Act.

7 **III. STATEMENT OF UNDISPUTED FACTS**

8 The Alliance has brought this action for declaratory and injunctive relief as a
9 representative action on behalf of its members, who provide foster care to California's children
10 in various group homes. Approximately 5,000 of California's children and youth are cared for in
11 these homes. Complaint for Declaratory and Injunctive Relief ("Complaint"), ¶ 1.b. Congress
12 enacted the Child Welfare Act in 1980 to address the need for providing funds to take care of
13 children who are dependants or wards of the state. Joint Statement of Undisputed Facts
14 ("JSUF"), ¶ 1. The Child Welfare Act establishes a cooperative federal-state program that assists
15 states in meeting the costs of providing foster care to these children. Under this program, federal
16 and state governments share the cost of providing funds for licensed third parties that care for
17 these children (such as the group homes that the Alliance is representing). JSUF, ¶ 2. To
18 become eligible to receive federal funding, a state must agree to administer its foster care
19 program pursuant to the Child Welfare Act and provide "foster care maintenance payments" on
20 behalf of eligible children to group homes. JSUF, ¶¶ 4-7; 42 U.S.C. §§ 671(a)-(b), 675(4).

21 The State of California has received and continues to receive federal funding intended to
22 cover a portion of the foster care maintenance payments. JSUF, ¶ 9. The State has developed
23 the RCL system to determine how much to pay group homes. The RCL system classifies group
24 homes based on the qualifications of the staff and the number of hours worked per child. Cal.
25 Wel. & Inst. Code §§ 11229, 11460(a), 11462; *see also* JSUF, ¶ 11. The standardized schedule
26 of rates used to make payments to group homes under California's RCL system is inadequate,
27 fails to comply with the Child Welfare Act, and is the subject of the case.

28 The standardized schedule of rates used to make payments to group homes under

1 California's RCL system does not consider the current actual foster care maintenance costs
2 required by the Child Welfare Act. In addition, under the RCL system, the amount paid to foster
3 care institutions may be adjusted from year to year, pursuant to the California Necessities Index
4 ("CNI"), but is "subject to the availability of funds" — not based on the percentage by which
5 costs have actually increased. Cal. Wel. & Inst. Code § 11462(g)(2); JSUF, ¶ 13. Thus, not only
6 does the RCL system undercut the amount of funding that the Child Welfare Act requires the
7 State to pay to group homes, but this substandard amount may not be (and in the past, has not
8 been) regularly increased in accordance with inflation and the cost of living. Indeed, from State
9 fiscal year 1990-91 to 2006-07, the CNI has increased by over 59%, whereas the rates which
10 comprise the RCL standardized schedule of rates have increased by an average of less than 27%.
11 JSUF, ¶¶ 13-16.

12 The Alliance has brought this action because the ability of its members to continue to
13 provide for approximately 5,000 dependent children is seriously jeopardized due to the State's
14 noncompliance with the Child Welfare Act. The members of the Alliance, and more importantly
15 the children placed under the supervision of the members, are seriously and adversely impacted
16 by the lack of adequate funding. This case is not about technical compliance with bureaucratic
17 regulations, but about real, practical issues that imperil foster care services to the children of this
18 State who are in dire need.

19 **IV. ARGUMENT**

20 **A. Legal Standard For Summary Judgment.**

21 "Summary judgment is proper if there are no genuine issues of material fact and the
22 moving party is entitled to judgment under the legal principles that govern the case at issue."
23 *Moreland v. Las Vegas Metro. Police Dept.*, 159 F.3d 365, 369 (9th Cir. 1998); *see also* Fed. R.
24 Civ. P. 56(c) (summary judgment is proper when the pleadings, discovery and affidavits show
25 that there is "no genuine issue as to any material fact and that the moving party is entitled to
26 judgment as a matter of law."). An issue is "material" only if the disputed fact may "affect the
27 outcome of the suit under the governing law...." *Anderson v. Liberty Lobby*, 477 U.S. 242, 248,
28 106 S.Ct. 2505, 2510, 91 L. Ed. 2d 202, 211 (1986).

1 The issue before this Court in this Motion is whether a state statute violates a federal
2 statute: specifically, whether the amounts of the foster care maintenance payments now being
3 paid by California's RCL system violate the Child Welfare Act. This is purely a legal issue that
4 is ripe for judgment--there are no facts in dispute as the statutes speak for themselves.

5 **B. When A State Statute Does Not Comply With A Federal Right,
6 The State Statute Must Fail As A Matter of Law.**

7 The Ninth Circuit is clear that when a plaintiff brings a claim regarding a state law or
8 regulation, the Court is concerned with "whether the state law and regulations are consistent with
9 federal law. Neither the district court nor [the Ninth Circuit] defer to the state to answer that
10 question." *Orthopaedic Hospital v. Belshe*, 103 F.3d 1491, 1495-96, 1500 (9th Cir. 1997)
11 (holding that California's Department of Health's arbitrary and capricious Medicaid
12 reimbursement rates were "contrary to law").²

13 The Supreme Court has rejected arguments by states that state statutes that set rates that
14 are unreasonable and inadequate under the corresponding federal statutes are valid. In fact, the
15 Court has deemed that such state enacted statutes would render the federal statute "entirely
16 meaningless" and "a dead letter." For example, in *Wilder v. Virginia Hospital Ass'n*, the Court
17 affirmed the denial of Virginia's motion for summary judgment and held that an amendment to
18 the Medicaid Act created a federal right to have states adopt "reasonable and adequate rates to
19 meet the costs of an efficient and economical health care provider." 496 U.S. 498, 513-14; 110
20 S.Ct. 2510, 2519-20; 110 L.Ed.2d 455, 470 (1990). *See also Rosado v. Wyman*, 397 U.S. 397,
21 421; 90 S.Ct. 1207, 1222; 25 L.Ed.2d 442, 460 (1970) (holding that welfare recipients were
22 entitled to declaratory and injunctive relief under New York statute that did not comply with
23 federal statute, stating that "federal funds are being allocated and paid in a manner contrary to
24 that intended by Congress").

25 Similarly, courts have held that the Child Welfare Act requires that "a State must

26 _____
27 ² The Ninth Circuit also held that "a state agency's interpretation of federal statutes is not
28 entitled to the deference afforded a federal agency's interpretation of its own statutes." *Id.*

1 consider certain factors and implies that a methodology that does not consider these factors is
2 invalid.” *Missouri Child Care Ass’n v. Martin, et al.*, 241 F.Supp.2d 1032, 1043, 1046 (W.D.
3 Missouri 2003) (holding that “the Defendants need a methodology that considers the required
4 factors”). The *Missouri Child Care Association* court set out the factors that must be taken into
5 account in a state statute under the Child Welfare Act: “1) the cost of certain items, 2) the cost of
6 providing certain items, and 3) the reasonable costs of administration for institutional providers.”
7 *Id.* at 1044.

8 As shown below, the Child Welfare Act does confer a federal right under 42 U.S.C.
9 § 1983. Because the RCL system conflicts with the Child Welfare Act, the RCL system deprives
10 the Alliance’s members of their federal rights. As such, as a matter of law, the State statute that
11 effectuates the RCL system should be held invalid under the Child Welfare Act and the Alliance
12 should be granted declaratory and injunctive relief. The Alliance requests that this Court enter a
13 declaratory judgment that the standard rates currently paid under the RCL system violate federal
14 law, and that this Court grant interim injunctive relief whereby the standard rates paid under the
15 RCL system are increased so that they comply with the cumulative increases in CNI since 1990-
16 91 to the present, and any CNI increases during future years during which the State has not yet
17 implemented a system which complies with federal law. In the meantime, the Alliance
18 respectfully asks that this Court set a status conference to discuss further proceedings on
19 developing and implementing a State system that complies with federal law and that this Court
20 retain jurisdiction over this matter until the State has developed and implemented such a system.

21 **C. The Child Welfare Act Confers A Federal Right Under**
22 **42 U.S.C. §1983.**

23 The Alliance has already established that it is entitled to relief under Section 1983. This
24 Court previously held that the Child Welfare Act “confers an individual right on [the Alliance’s]
25 members for enforcement of the foster care maintenance payments.” Memorandum and Order
26 dated Oct. 26, 2006, 8: 4-5.

27 A plaintiff seeking Section 1983 redress must assert the violation of a federal right. The
28 courts look to three factors, often referred to as the “Blessing factors,” in deciding whether a

