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 9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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 13 **CALIFORNIA ALLIANCE OF CHILD**
 14 **AND FAMILY SERVICES,**
 15 Plaintiff,
 16 v.
 17 **JOHN WAGNER, Director of the California**
 18 **Department of Social Services, in his official**
 19 **capacity; GREGORY ROSE, Deputy**
 20 **Director of the Children and Family**
 21 **Services Division of the California**
 22 **Department of Social Services, in his official**
 23 **capacity,**
 24 Defendants.

CV 09-4398 MHP

**SUPPLEMENTAL DECLARATION OF
CORAL L. DIXON IN RESPONSE TO
DECLARATION OF DOUG JOHNSON
RE: PLAINTIFF'S EX PARTE
APPLICATION FOR A TEMPORARY
RESTRAINING ORDER, ETC.**

I, Cora L. Dixon, declare as follows:

24 1. I am employed by the California Department of Social Services (CDSS). My current
 25 position is Bureau Chief, Program and Financial Audits Bureau, in the Foster Care Audits and
 26 Rates Branch. I have held this position since May 2000. Prior to that, I held a variety of positions
 27 within the Foster Care Audits and Rates Branch of CDSS, such as the Unit Chief of the Rates
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1 Policy Unit and Unit Chief of the Rate setting Unit. My responsibilities in this position, and
2 background information of the role of CDSS in the provision of child welfare services in line with
3 the federal Child Welfare Act and the State of California's system for administering those
4 services were set forth in detail at paragraphs 2-5 of my previous declaration, filed on October 5,
5 2009, in response to plaintiff's application. That declaration is part of the case record as
6 Document 29.
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8 2. I have reviewed Mr. Johnson's Supplemental Declaration in Support of plaintiff's Ex
9 Parte Application for a Temporary Restraining Order, etc., filed October 9, 2009 (Supplemental
10 Johnson Declaration).

11 3. Paragraph 5 of Mr. Johnson's Supplemental Declaration misstates CDSS's position.
12 Mr. Johnson states that CDSS made an erroneous statement (Supplemental Johnson Declaration,
13 p. 2:6). However, the statement he refers to was an unclear statement; it was not supported by the
14 declarations, and was cleared up later in the Opposition. The point CDSS was making was that
15 Senate Bill (SB) 597 -- which was last week still-pending but on October 11, 2009, became law --
16 would amend (and now has amended) Welfare and Institution Code section 11462(f)(30(A) to
17 afford group homes fiscal flexibility to operate their programs at a lower RCL point range and
18 continue to receive the rate for which they are paid while generating points at a lower RCL.
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20 4. Paragraphs 6, 7 and 8 of Mr. Johnson's Supplemental Declaration add nothing of
21 substance to the discussion, as they merely restate the funding ratios for rates paid among the
22 federal, state, and county governments; the application of the 10% reduction to the sharing ratio
23 to an RCL 12 example; and finally pointing out how the savings are applied to the participating
24 governmental bodies that share the payment. The obvious statement being made is
25 mathematically sound: since the payment is shared among three entities, each of their "savings" is
26 less than the whole reduction.
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1 5. However, Mr. Johnson's declaration at paragraph 9 mischaracterizes the Court's
2 determination in *California Alliance of Child and Family Services v. Allenby*, No. C 06-04095 MHP
3 (*Alliance I*). Mr. Johnson states, beginning at page 3, line 28 and continuing through page 4, line 2,
4 that "the court found[] the purchasing power for group homes was 80 percent of the 1990-91 rates
5 taking into account the CNI increases." In fact the court stated the following, "Currently, the RCL
6 system provides payments at 127% of its 1990-91 levels, whereas the CNI is at 159% of its 1990-91
7 levels. As discussed above, the initial RCL reflected the costs faced by foster care providers.
8 Therefore, today [March 12, 2008] the RCL provides for at least 80% of the costs associated with the
9 items enumerated in the CWA. Consequently, the process for determining foster care payment rates is
10 still substantially compliant with the statutory criteria outlined in the CWA." (Memorandum and Order
11 re: Cross Motions for Summary Judgment, at p.6:26-7:4.) Subsequent to the *Alliance I* decision, as
12 set forth in Debra Williams' declaration of October 5, 2009, the Legislature provided an increase
13 to the wages and benefits for group home providers in SB 84, Chapter 177, Statutes of 2007. This
14 legislation increased wages for staff by five percent and increased payroll taxes and other
15 employer paid benefits from 20.325 percent to 24 percent.

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18 6. Mr. Johnson's assertion in paragraph 9 is also misleading in that it does not recognize that
19 even as the Court made its finding that the 80% level was substantially compliant with the CWA, the
20 RCLs at the time the decision issued were in fact five percent higher than the figures the Court used
21 as a basis for its analysis, having been raised by five percent in January 2008 by Senate Bill (SB) 84
22 (Chapter 177, Statutes of 2007), as was explained in Debra Williams' declaration filed on October 5,
23 2009, in response to plaintiff's application. CDSS has not disputed the fact that, over time, payments
24 to foster care group homes have not remained in lock step with the CNI. However, as the Court's
25 decision recognized, CDSS was not obligated to do so.

26
27 7. In paragraph 10 of Mr. Johnson's Supplemental Declaration, and with the chart labeled
28 Exhibit B, Mr. Johnson seeks to track the history of RCL rates established from 1990 through the

1 passing of the October 1, 2009, 10 percent reduction, as well as to note the point ranges necessary
2 for each RCL and point range now necessary under SB 597. Although CDSS has not verified all
3 of this information, for purposes of clarity CDSS will use the figures as stated in Mr. Johnson's
4 Exhibit B. While Mr. Johnson chooses to illustrate the decrease in the RCL rate for an RCL 14
5 from \$6,694.00 per child per month to \$6,025.00 per child per month, he does not also point out
6 that his own chart illustrates the rate relief afforded to the group home. Using his RCL 14
7 example, the rate relief afforded under SB 597 would allow that same RCL 14 to be paid at
8 \$6,025.00 per child per month, while generating points at an RCL 11, which would otherwise
9 allow a payment of only \$4,941.00 per child per month. This is not an insignificant fiscal benefit.
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12 8. In the first part of Mr. Johnson's Supplemental Declaration at paragraph 11 he attempts
13 to explain why the five percent increase effective January 1, 2008, was not in effect a five percent
14 increase. In fact, he cites a range at the low RCL 1 at 2.20% to the highest RCL 14 at 5.07%.
15 Overall, Mr. Johnson stated that the five percent resulted in an average "overall increase" of
16 "approximately 4.95 percent. However, Mr. Johnson, in his Exhibit B, calculated the percentage
17 increase for each RCL rather than using the average. The second half of Mr. Johnson's
18 Supplemental Declaration at paragraph 11 asserts that CNI increases that have not been afforded
19 group homes since the finding in the *Alliance I* court decision, which was based on the 2006-07
20 data. Mr. Johnson reiterates in paragraph 11 his assertion in his paragraph 9 that CDSS's 80%
21 compliance ("at least 80%" per the decision) had dropped to 77% effective with the October 1,
22 2009, reductions (Supplemental Johnson Declaration, p. 4:1-6). While I have not verified these
23 figures, I will show in the next paragraphs how any asserted rate reduction has been offset by the
24 SB 597 rate relief.
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27 9. Mr. Johnson speaks of SB 597 in his Supplemental Declaration at paragraph 12. This
28 legislation became law on October 11, 2009. This legislation was worked on cooperatively by

1 plaintiff and CDSS. In Mr. Johnson's Supplemental Declaration at paragraph 12 he refers to it as
2 an "emergency stop-gap measure". In that paragraph Mr. Johnson admits that he and the Alliance
3 worked diligently to get this "emergency stop-gap measure" put into law and that they were
4 successful. What was initially characterized as a "good" thing -- that is, legislation that "would
5 make a further reduction in the RCL point ranges to reflect the 10 percent rate reduction" -- is
6 now being repainted by one of its co-authors as a "'bad alternative,' but the 'least bad'
7 alternative.'" (Supplemental Johnson Declaration, p. 5:18-19.) In the midst of this paragraph are
8 also admissions that the adjusted rate schedule will allow group home providers to reduce costs. I
9 will illustrate later in this declaration examples that will show that the effect of the rate relief, in
10 offsetting the 10% reduction, if fully utilized will provide a group home with up to 18% or more
11 in reduced program costs.
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14 10. In Mr. Johnson's Supplemental Declaration at paragraph 13 he repeats, from his
15 paragraph 5, an earlier unclear statement and reasserts that CDSS is mischaracterizing the rate
16 relief (in the form of point adjustment) as an increase in funding. CDSS does not want to dwell
17 on an unclear statement made in its October 5th filings, but would direct the court to the correctly
18 characterized statement in the same October 5th Opposition cited by Mr. Johnson. In that
19 Opposition it more clearly states, at page 4, lines 26-28, that "the adjusted rate schedule allows
20 providers to more easily meet their RCL points by allowing them flexibility to make a
21 proportionate adjustment to their staff expenses."
22

23 11. In Mr. Johnson's Supplemental Declaration at paragraph 14 he cites a chart at
24 Exhibit C that purports to explain how the rate relief impacts particular group home providers.
25 However, it includes information that cannot be verified and is not in existent law. Therefore, we
26 will continue to refer to Mr. Johnson's Exhibit B to address his assertions. Mr. Johnson
27 downplays the benefit of SB 597, for which he diligently fought for on behalf of his members,
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1 and which he admits was for the purpose of offsetting the ten percent reduction. In fact his
2 statement that rate relief of 10 percent was intended to offset the 10 percent reduction (Johnson
3 Supplemental Declaration, p. 5:9-10) is a significant understatement because any average
4 provider (for example, one providing services in the RCL10-12 range) that takes full advantage of
5 SB 597 rate relief will benefit by an average of 18 percent.
6

7 12. Mr. Johnson himself admits in his Supplemental Declaration, at page 6, line 20, that
8 group homes using the rate relief of SB 597 will experience a fiscal benefit in its operations.
9 Specifically, Mr Johnson used the example that the “ point ranges in SB 597 will mean that an
10 existing group home program classified at RCL 14 could be providing a staffing pattern
11 equivalent to RCL 11... .” In other words, looking at Mr. Johnson’s own Exhibit B chart, a
12 provider being paid as an RCL 14 can actually be generating points as an RCL 11 while still
13 being paid as an RCL 14, a fiscal benefit that could reduce the expense of the group home by
14 17.14 percent. What this equates to, according to Mr. Johnson’s Exhibit B, is that an RCL 14
15 provider would be paid \$6,025.00 per child per month while generating points as an RCL 11 that
16 would otherwise entitle the provider to be paid \$4,941.00 per child per month. Another example
17 along the lines of that given by Mr. Johnson is that a group home RLC 12 would only need to
18 generate the points for an RCL 9 group home. Again, according to Mr. Johnson’s Exhibit B, the
19 RCL 12 provider would be paid \$5,302.00 per child per month while generating points otherwise
20 suitable for an RCL 9, which would otherwise entitle it to \$4,221.00 per child per month. This
21 results in a fiscal benefit of 17.78 percent. A final example is an RCL 10 group home that would
22 be paid \$4,583.00 per child per month while generating points for an RCL 8 that would otherwise
23 entitle the provider to \$3,862.00 per child per month, for an 18.33 % fiscal benefit to the provider.
24 These and other similar examples are set forth in the following chart.
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	Paid RCL	Minimum Points	Fiscal Benefit	Operating RCL	Paid/operating RCL
SB 597 Adjusted RCL WIC 11462(f)(3)(A)	10	245	-18.33%	RCL 8	\$ 4583/3862
	11	271	-17.88%	RCL 9	4941/4221
	12	296	-17.78%	RCL 9	5302/4221
	13	322	-17.44%	RCL 10	5665/4589
	14	348	-17.14%	RCL 11	6025/4941

13. Indeed, it is important to note that not only does the SB 597-adjusted rate schedule offset the 10 percent rate reduction, as Mr. Johnson concedes in his Supplemental Declaration, but, if it is fully utilized by providers, the fiscal flexibility for the provider can translate into a benefit of between 10 percent to more than 18 percent. Based on this, CDSS vigorously asserts that it is therefore still very much in substantial compliance with its obligations under the Child Welfare Act.

14. This declaration is based on personal knowledge. If called to testify in this action, I could and would competently testify to the matters set forth herein.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed, electronically, at my request, on October 16, 2009, while I was in Sacramento, California.

/s/ Cora L. Dixon
Cora L. Dixon

GENERAL ORDER 45 ATTESTATION

I, George Prince, am the ECF user whose ID and password are being used to file this request for an order. In compliance with General Order 45, X.B., I hereby attest that declarant Cora Dixon has concurred in the filing of this document with her electronic signature.

Dated: October 16, 2009

/s/ George Prince
George Prince