

No. 09-17649

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

**CALIFORNIA ALLIANCE OF CHILD
AND FAMILY SERVICES,**

Plaintiff and Appellee,

v.

**JOHN WAGNER, Director of the
California Department of Social Services,
in his official capacity, and GREGORY
ROSE, Deputy Director of the California
Department of Social Services, in his
official capacity,**

Defendants and Appellants.

On Appeal from the United States District Court
for the Northern District of California

No. CV 09-4398 MHP
The Honorable Marilyn Hall Patel, Judge

**RENEWAL OF EMERGENCY MOTION
UNDER 9TH CIR. R. 27-3 FOR STAY OF
INJUNCTION PENDING APPEAL**

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CIRCUIT RULE 27-3 CERTIFICATE

I, George Prince, counsel for Appellants, certify as follows:

1. I am a Deputy Attorney General for the State of California, and am one of counsel of record for Defendants-Appellants in this matter. I submit this certification in support of Appellants' Emergency Motion to Stay Under Circuit Rule 27-3. I have personal knowledge of the matters set forth in this certification, except as to matters based on information and belief. As to those matters, I believe them to be true. If called upon to testify in this action, I could and would competently testify to the matters set forth below.

2. Counsel for the Plaintiff-Appellee may be reached as follows:

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3. The facts regarding the existence and nature of the emergency at issue are as follows:

a. On November 24, 2009, appellants in this action filed an Emergency Motion Under Ninth Circuit Rule 27-3 for Stay of Injunction Pending Appeal [and] Request for an Order Expediting Appeal.

b. On December 10, 2009, this Court denied that motion “without prejudice to renewing the motion within 7 calendar days after the resolution of *California State Foster Parent Ass’n v. Wagner*, No. 09-15025.”

(Electronic Docket Entry: 9.) The Court’s order also stayed appellate proceedings in the appeal pending further court order. *Id.*

c. On August 30, 2010, this Court issued its opinion in *California State Foster Parent Ass’n v. Wagner*, No. 09-15025 (Electronic Docket Entry: 34-1), thus paving the way for appellants to renew their motion for a stay of the injunction pending appeal.

d. Since December 10, 2009, and today, several additional and significant new decisions germane to the instant case have issued. On December 14, 2009, this Court issued its decision in *California Alliance of Child and Family Services v. Cliff Allenby, et al.*, 589 F.3d 1017 (9th Cir.

2009) (*Allenby II*).¹ In that decision, the Court opined that California was not in conformity with the Child Welfare Act (CWA) because the State was not following the requirements of its own, federally approved state plan as to funding of foster care group homes. This was so because the State's plan provided for a cost-indexing system to ensure that the State's payments to foster care group home operators "covered" the costs of providing services to group home residents, but the State had failed to keep up with the cost increases as measured by the cost-indexing system the State chose to use.

e. Additionally, and importantly, on December 18, 2009, the district court issued its "Order Re: Scope of Preliminary Injunction" in the instant case, which requires the State to pay foster care maintenance costs at the full amount required under the State's cost-indexing system for *all* residents of foster care group homes in California – up to as much as \$8,974 per child, per month at the highest care level – albeit only 59 percent of those residents are eligible for foster care under the CWA. The remaining 41 percent of residents are not "federally eligible" – that is, their foster care benefits are not tied to the CWA, but are based on California law.

¹ In this Court's August 30, 2010 opinion in *California State Foster Parent Ass'n v. Wagner*, this court referred to the District Court's October 27, 2006 decision in *California State Foster Parent Ass'n v. Wagner*, 459 F.Supp. 2d 919 (N.D.Cal. 2006) as *Allenby I*.

Nevertheless, the district court's order uses logic linking the payments for both federally eligible and non-federally eligible residents to the CWA.

f. In a separate appeal now pending before this Court, involving the judgment entered in the district court following the remand ordered by this Court in its December 14, 2009 decision in *Allenby II* – the pending appeal being in this Court's case No. 10-15593, *California Alliance of Child and Family Services v. Cliff Allenby, et al.*, regarding USDC Case No. 3:06-cv-04095 – the State challenges the district court's authority to use the CWA to, essentially, force California to pay the higher foster care group home maintenance costs required under the CWA following the decision in *Allenby II* for the 41 percent of group home residents in California who are not federally eligible beneficiaries of the CWA and thus not entitled to the federal monies that flow from the CWA to California. In short, the district court has ordered California to violate its own law – the Budget Act of 2009 – by ordering that the State pay federal-level benefits to group home residents who are not provided for under the federal CWA. The briefing in case No. 10-15593 is not yet completed – appellant's reply brief is scheduled for filing no later than September 20, 2010 – and there is no current indication as to when the matter will be set for oral argument, let alone when a decision will issue.

g. Accordingly, appellants now renew their emergency motion for a stay of the injunction pending appeal of the judgment in No. 10-15593.

h. Absent an immediate stay by this Court, I am informed and believe that Appellants will be irreparably harmed and such harm will not be correctable upon appeal from the final judgment in this case. The district court's preliminary injunction prohibits defendants from following a duly enacted state statute that reduces by 10 percent the per-child, per-month funding for children in foster care group homes under the rate-setting system established by California Welfare and Institutions Code section 11462. The reduction in the state's funding share has been enjoined for not only just the approximately 59 percent of the State's group home foster children who are eligible for federal funding under the CWA, and thus arguably are the *only* foster children subject to the federal injunction, but the State has been ordered to apply the proscriptions of the injunction to the other 41 percent of group home foster children, even though these children are not "federally eligible" and thus not entitled to receive federal benefits or federal monies under the CWA: the question of whether the District Court's order requiring that *all* foster care group home residents receive the higher level of benefits required by the CWA, albeit 41 percent of those residents are not "federally eligible" is the precise issue on appeal in case No. 10-15593.

i. In addition, I am further informed and believe that even if the injunction is subsequently vacated by this Court, the State and the 58 counties will have to seek adjustments for overpayments that resulted from non-reduced payments that occurred while the injunction was in effect. This will create an on-going administrative burden of huge proportions for the Department of Social Services and the 58 counties, but vacating the injunction will at least stem the flow of overpayments. This is important because, in instances where foster children have left the foster care group home in which they resided when the overpayments were made, there is no recoupment mechanism available for any of the maintenance payments for the children no longer residing in those homes, save for the administrative costs that relate to the group home itself. Thus, as to overpayments of the non-administrative maintenance payments, the State can seek the return of overpayments to group home providers only through a complex mechanism requiring a notice of action to the group home that received the overpayment, a mechanism that also allows for a notice of protest and right to a state administrative hearing, which can be a time-consuming and staff-intensive process. With thousands of children in foster care group homes, the large numbers of cases subject to this overpayments process and the review process that accompanies it will create immense financial and staff-

time burdens on the State and counties, let alone the administrative law system that would have to adjudicate claims arising from overpayment issues – all costs that will fall solely upon the State and the counties and which will further exacerbate the State’s fiscal and budget crises. If the injunction remains in place, these overpayment costs will continue to increase. And, although the monetary and staff resources recoupment costs associated with them will still exist, a stay will reduce the amount of funds that may not be easily recoverable, if at all recoverable.

j. I am further informed and believe that with the injunction in place, the additional cost to the State and the 58 counties of providing the higher payment rates to non-federally eligible group home residents over a 12-month period is approximately \$27,245,000.00, with \$10,896,000.00 of that total coming from the State and \$16,349,000.00 coming from the 58 counties. These increased costs work out to approximately \$74,644.00 per day, for a sum of roughly \$1,567,520.00 for a 21-day period.

4. Counsel for appellee was notified by e-mail on September 3, 2010, and by telephone on September 7, 2010, that appellants intended to renew their motion for a stay of the district court’s preliminary injunction order.

I declare under penalty of perjury that the foregoing is true and correct,
and this declaration was executed at San Francisco, California, on
September 7, 2010.

/s/ George Prince
George Prince
Attorney for Appellants

INTRODUCTION

The State defendants and appellants² hereby renew their request that this Court immediately enter a stay of a November 13, 2009 district court order – memorialized in the written “Memorandum & Order Re: Plaintiff’s Motion for a Preliminary Injunction” (Memorandum & Order) signed and filed on November 18, 2009 -- preliminarily enjoining implementation of a budget reduction enacted by State statute, California Welfare and Institutions Code § 11462 (g) (5), which took effect on October 1, 2009.

Crucial to the instant motion, the district court’s November 18, 2009 order was subsequently expanded by the district court on December 18, 2009, when it issued its “Order Re: Scope of Preliminary Injunction,” which requires the State to pay foster care maintenance costs at the full amount required under the State’s cost-indexing system for *all* residents of foster care group homes in California – up to as much as \$8,974 per child, per month at the highest care level – albeit only 59 percent of those residents are eligible for foster care under the CWA. The remaining 41 percent of residents are not “federally eligible” – that is, their foster care benefits are

² Defendants/Appellants are John A. Wagner, Director of the California Department of Social Services, and Gregory Rose, Deputy Director of the California Department of Social Services, in their official capacities.

not tied to the CWA, but are based on California law. Nevertheless, the district court's order uses logic linking the payments for both federally eligible and non-federally eligible residents to the CWA.

As the very issue of whether the district court has the authority to issue an order exceeding the confines of the CWA is on appeal in this Court (with the State's appeal of the district court's Judgment in the 2006 case involving the identical parties and essentially the identical issue), this Court should stay the injunction pending the result of the current appeal. As crafted now, the injunction directs the State to ignore state law regarding foster care group home residents *not* subject to the CWA, by means of reasoning that lacks any support in the CWA or other applicable law. Until the scope of the district court's authority to enter an order that goes beyond the reach of the CWA and its own jurisdiction can be determined, this wide-sweeping injunction should not be in effect.

If the stay does not issue, the State will suffer irreparable injury: as crafted, the injunction will cost the State and its 58 counties more than \$27 million over the next 12 months than cannot be easily recouped, if at all, and this in the midst of a budget crisis that becomes only worse with each passing day. Accordingly, this Court should stay the injunction pending

resolution in this Court of the district court's authority to issue such an overreaching injunction.

BACKGROUND

A. Statement of the Case

Appellee California Alliance of Child and Family Services, a trade association representing operators of foster care group homes, filed this action on September 18, 2009, contending that the newly enacted budget for fiscal year 2009-2010 that was to reduce by 10 percent, effective October 1st, the amount of payments under California's standardized schedule of rate payments to foster care group homes -- the 14-tier Rate Classification Level (RCL) system -- was unlawful. Specifically, appellee contends that California Welfare and Institutions Code §11462 (g) (5), the statute enacting the budget reductions, is preempted by the CWA (that is, the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272), 42 U.S.C. § 670-679b) under the Supremacy Clause of the United States Constitution.

This action basically re-crafts the originally unsuccessful action, later reversed and remanded on appeal, that appellee brought in 2006, *California Alliance of Child and Family Services v. Allenby*, No. C 06-04095 MHP, in which Judge Patel entered judgment for the State following cross-motions for summary judgment. As noted above, this Court reversed that decision.

The primary factual difference between the 2006 action and the 2009 version, the instant case, is that the State's levels of payments to foster care group homes under the RCL system were slated by the 2009-10 Budget Act for a 10 percent reduction, due to California's budget crisis.

B. California's Foster Care Group Homes Funding System

The details of California's foster care group home funding system were set forth in the emergency motion for a stay filed on November 24, 2009. For the sake of brevity, and because the instant motion does not turn precisely on that system, they will not be repeated here.

C. Proceedings Below

Again, for brevity's sake, the full details of the proceedings below will not be repeated here, but are included in the November 24, 2009 motion.

In short, however, on November 13, 2009, following briefing and several hearings, Judge Patel granted appellee's motion for a preliminary injunction in a ruling from the bench. On November 18, 2009, the district court issued its Memorandum & Order, which stated:

Pending final adjudication of the merits of the instant action, named defendants John Wagner and Gregory Rose, and their successors, agents, officers, servants, employees, attorneys and representatives, and all persons acting in active concert or participation with defendants in their respective official capacities as Director of the California Department of Social

Services or Deputy Director of the California Department of Social Services, are HEREBY ENJOINED AND PROHIBITED from implementing the ten percent reduction in the standardized schedule of rates for each RCL provided at California Welfare and Institutions Code § 11462(g)(5), such reduction having been approved in Assembly Bill ABX 44, filed with the Secretary of State on July 28, 2009, and Senate Bill 597, filed with the Secretary of State on October 11, 2009, as part of the Budget Act of 2009.

Appellants filed their notice of appeal with the district court on November 19, 2009.

JURISDICTION

The district court had jurisdiction over the action pursuant to 28 U.S.C. § 1331. This Court has jurisdiction over the appeal pursuant to 28 U.S.C. § 1292(a).

ARGUMENT

This Court should grant the stay because now on appeal with this Court is the threshold issue of whether the district court has the authority to issue an order, based on the CWA, requiring the State to make significant expenditures for foster care group home residents who are not eligible for benefits under the CWA.

Additionally, the balance of the equities strongly favors the State, which continues to suffer severe and irreparable financial injury while the injunction remains in effect.

I. THIS COURT SHOULD STAY THE DISTRICT COURT’S ORDER AND INJUNCTION PENDING APPEAL

In determining whether appellants’ stay request should be granted, the Court must engage in a balancing of the equities between the parties. Relevant factors are: 1) appellant’s likelihood of success on the merits; 2) whether appellant will be irreparably injured absent a stay; 3) whether a stay will substantially injure appellees; and 4) the public interest. *See e.g., Hilton v. Braunskill*, 481 U.S. 770, 776 (1987); *Los Angeles Mem. Coliseum Comm’n v. Nat’l Football League*, 634 F.2d 1197, 1200 (9th Cir. 1980). If appellees “show[] no chance of success on the merits,” the inquiry ends, and “the injunction should not issue.” *Arcasmuzi v. Continental Airlines, Inc.*, 819 F.2d 935, 937 (9th Cir. 1987); *see also Republic of the Philippines v. Marcos*, 818 F.2d 1473, 1490 (9th Cir. 1987).

A. Appellants Have a Strong Likelihood of Succeeding on the Merits Because the District Court Exceeded its Jurisdiction in Ordering the State to Make Foster Care Group Home Maintenance Payments, on the Basis of the Child Welfare Act, to Group Home Residents Who Are Not Eligible Beneficiaries Under the Child Welfare Act

1. Appellee's Pleading is Based Solely on Federal Law

The complaint at the basis of this action is based entirely on federal law, without any reliance on state law, “The presence or absence of federal-question jurisdiction is governed by the ‘well-pleaded complaint rule,’ which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff’s properly pleaded complaint.” *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). Nowhere in its complaint did appellee seek to have this matter adjudicated under California’s laws.

Further, in its specific allegations against the State defendants, appellee sought relief only under federal law. Moreover, in its prayers for relief, appellee sought relief *only* under federal law, specifically, the CWA. Finally, the complaint did not state a cause of action for the direct violation of any state law, and thus did not need to ask the district court to exercise supplemental jurisdiction under 28 U.S.C. § 1367 or by any other means.

2. The Pleadings Dictate District Court Jurisdiction

It is axiomatic that the district court’s jurisdiction necessarily depends on the pleadings of a party. The complaint, as noted above, is based on federal law. First, appellee sought relief pursuant to 28 U.S.C. § 2201, which by its own terms restricts remedies as to which a federal court can

issue declaratory relief to those “within its jurisdiction” (*id.*). Second, appellee based its claim of subject matter jurisdiction in the district court on 28 U.S.C. § 1343(a)(3), which states -- in concert with 28 U.S.C. § 1343(a) recitation that “district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person” -- that it applies to “any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress” (*Id.*) The CWA is undeniably an “Act of Congress.” 28 U.S.C. § 1343 itself does not extend a district court’s jurisdiction beyond federal law.

Thus, on the face of the pleadings before it, the district court’s jurisdiction was limited to provisions of the federal Child Welfare Act, and the district court’s power to issue relief was likewise limited to that it could issue on the basis of the provisions of the CWA, which do not extend to overcoming state law as to foster care beneficiaries not eligible for benefits under the CWA.

3. *Allenby* Did Not Expand District Court Jurisdiction

This Court’s decision in *California Alliance of Child and Family Services v. Allenby* had as its foundation the district court’s Memorandum and Order of March 12, 2008, which necessarily stemmed from the pleadings in appellee’s original complaint. As set forth above, there was

nothing in the complaint stating any cause of action under state law and, as follows, there was no state law cause of action for the district court to rule upon. Consequently, there was no state law cause of action before this Court in *Allenby*, and nothing in that opinion increased or expanded the jurisdiction of the district court as to the complaint or provided a basis for the district court to extend its *Allenby*-based judgment to matters outside the purview of the CWA upon which the complaint was based.

As Judge Rymer stated in the opinion, “The CWA, codified as 42 U.S.C. §§ 670-679b, was enacted in 1980 and creates an opt-in scheme whereby states can receive federal funding to assist in the costs associated with raising children who are dependents or wards of the state.” *Allenby*, 589 F.3d at 1018. She further explained that a state must first submit a plan to the Secretary of DHHS that, among other things, “must ‘provide[] for foster care maintenance payments in accordance with’ other provisions of the CWA[,]” and must also “designate a state agency to administer the plan once approved, and agree to amend its plan to comply with changes made to the CWA or other applicable federal law.” *Id.*

Judge Rymer then hit the note that sets the tone for the instant appeal: “The CWA further provides that any state with an approved plan ‘shall make foster care maintenance payments *on behalf of each’ qualifying child.*”

Allenby at 1018, emphasis added. This requirement – that for a child to *benefit* from federal funding under the Act, she or he must *qualify* for that funding – has always been fundamental to the federal funding participation for state foster care. *See*, for example, *Miller v. Youakim*, 440 U.S. 125 (1979), where Justice Marshall wrote -- in ruling that Illinois could not exclude from its AFDC-FC (foster care) program children who resided with relatives as compared to those residing with unrelated persons -- that “[a] participating State may not deny assistance to persons *who meet eligibility standards* defined in the Social Security Act unless Congress clearly has indicated that the standards are permissive.” *Id.* at 133, emphasis added. Thus, both the broad scope of federal foster care financial funding and the inclusiveness of potential beneficiaries begin with meeting the eligibility standards set by the federal government.

Here, while 59 percent of the group home residents meet those eligibility standards under the CWA – and *are* subject to this Court’s ruling in *Allenby* that under the system the State has chosen the State must also employ the cost-indexing mechanism built into the system to cover the rising costs of maintenance payments – the remaining 41 percent do *not* meet the standards and are *not* subject to *Allenby*. That California has chosen to support foster care services more expansively than required by the CWA is

laudable, but the federal courts cannot compel further expansiveness of the State's generosity on the basis of the federal Act.

No other part of the *Allenby* decision otherwise supports the district court's extra-jurisdictional judgment, either. Again, the basis for this Court's reversal of the district court's grant of summary judgment for the State defendants and remand for determination of the proper scope of declaratory and injunctive in *Allenby* was clear: "Because the State is not covering the costs required by the CWA" *Allenby*, 589 F.3d at 1023. The requirements of the Act do not and cannot extend to compelling the State defendants to disregard and violate valid state law as to group home residents who simply do not meet the Act's eligibility standards.

4. The District Court's Own Orders Do Not Self-Validate the Judgment

The district court's Judgment at p. 4, endnote 2, refers to the order filed December 18, 2009 in the instant case (that is, *California Alliance of Child and Family Services v. John Wagner, et al.*, USDC Case No. 3:09-cv-04398), as providing the basis for extending the judgment to cover both federally eligible and non-eligible group home residents, stating: "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. See Case No. C 09-4398 (N.D. Cal.) (Patel, J.), Docket No. 67 (Order Re: Scope of Preliminary Injunction).”

In the December 18, 2009 order,³ Judge Patel first quotes her own November 18, 2009 order entering a preliminary injunction against the State defendants in the instant case as to how it “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 such a manner that will reduce in any amount the full entitlement to such federally eligible children under this order.” The December 18, 2009 order then recites the November 18, 2009 order’s directive to the State to submit a plan as to how it would satisfy the order as to foster care group home maintenance payments in view of the federally eligible/non-eligible distinction. *Id.*

The December 18, 2009 order then discusses the All County Letter issued by State defendant CDSS Deputy Director Greg Rose that was

³ The argument here is virtually identical to that set forth in the State defendants’ Opening Brief in *California Alliance of Child and Family Services v. John Wagner, et al.*, USDC Case No. 3:09-cv-04398; thus the specific references to the Excerpt of Record (ER) in this argument refer to the record set forth in Appellants’ Excerpts of Record for that case. The State defendants hereby respectfully request this Court’s indulgence and will not submit additional copies of the documents referred to here with this motion.

submitted to the district court, “which provided instructions to counties pertaining to the funding of foster care group home programs in light of the preliminary injunction” and contained “two separate tables setting forth RCL schedules for group homes – one schedule for federally eligible children, i.e., those covered by the Child Welfare Act . . . and one schedule for the non-federally eligible children.” (ER 47, lines 3-8.) The district court then notes that “Plaintiff objects to the State’s ‘plan,’ noting 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.” *Id.*, lines 19-22. Along with these recitations, the district court noted that the State’s submission had not contested or addressed 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 47:27-48:2.)

Following these statements, the district court 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 a dilution of funds to federally eligible children.” (ER 48, lines 1-4.) After setting out a “for example” arithmetic expression of

how the dilution would work, the district court observed: “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(4)(A), the effect of the State’s current plan is to cut benefits to federally eligible children by 4.1%, in contravention of the court’s preliminary injunction order.” *Id.*, lines 9-13. The district court then declared: “Accordingly, the court HEREBY AMENDS AND SUPERSEDES the preliminary injunction order currently in effect.” *Id.*, lines 13-14. Directly after that declaration came the district court’s amended directive to the State defendants:

Pending final adjudication of the merits of the instant action, named defendants John Wagner and Gregory Rose, and their successors, agents, officers, servants, employees, attorneys and representatives, and all person acting in concert or participating with defendants in their respective official capacities as Director of the California Department of Social Services and Deputy Director of the Children and Family Services Division of the California Department of Social Services, are HEREBY ENJOINED AND PROHIBITED from implementing the ten percent reduction in the standardized schedule of rates for each RCL provided at California Welfare and Institutions Code § 11462(g)(5), such reduction having been approved in Assembly Bill ABX 4 4, filed with the Secretary of State on July 28, 2009, and Senate Bill 597, filed with the Secretary of State on October 11, 2009, as part of the Budget Act of 2009. *Implementation of such reduction is enjoined in relation to federally eligible children and non-federally eligible children.*

(ER 48, lines 15-25, emphasis added.)

The State defendants are mindful of the district court's concerns for group home residents and for the integrity of its preliminary injunction order. Nevertheless, those concerns are not sufficient to extend the district court's jurisdiction beyond what the complaint before it defined, and what this Court's opinion in *Allenby II* did not change: that, in a case based on the federal CWA, the district court's jurisdiction cannot extend beyond the federal law it is empowered to enforce.

B. The Balance of the Hardships Tilts in the State's Favor

The balance of the hardships in this matter tilts in the State's favor. If the injunction is not stayed, the State will continue suffer irreparable financial injury. By contrast, if the injunction *is* stayed, appellees will suffer only limited injury by means of a reduction in group home payments. Although neither side avoids harm, the larger perspective favors the State.

If the injunction is not stayed, the State will continue to suffer irreparable injury in several forms, both financial and in terms of its ability to address the growing fiscal crisis in the state. The additional cost to the State and the 58 counties of providing the higher payment rates to non-federally eligible group home residents over a 12-month period is approximately \$27,245,000.00, with \$10,896,000.00 of that total coming

from the State and \$16,349,000.00 coming from the 58 counties. These increased costs work out to approximately \$74,644.00 per day, for a sum of roughly \$1,567,520.00 for a 21-day period. Due to the limited ability of the State (and counties) to recoup overpayments from foster care group home providers, continuing overpayments might not be easily recovered, if they are recovered at all. And, while reduced payments to foster care group home providers are not painless, the state's budget crisis means has implications for all citizens, not just foster children, and thus the equities in the larger perspective favor the State.

C. The Public Interest Weights in Favor of a Stay

It is undisputed that California is facing the most severe budget crisis in the State's modern history. In order to balance the State's budget (which is constitutionally required), the Legislature has enacted budget cuts affecting almost every program operated or funded by the State. Given the severity of the State's fiscal crisis and the relatively smaller impact on foster care group home providers, the public interest is best served by this Court staying the preliminary injunction issued by the district court pending this Court's review of the district court's authority to have directed the broad relief it did in the Judgment that is now on appeal.

CONCLUSION

This Court should stay the district court's injunction of California Welfare and Institutions Code § 11462 (g)(5) pending resolution of the appeal now pending in this Court of the district court's authority to enter the broad relief it entered against the State defendants.

Dated: September 7, 2010 Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of California
SUSAN M. CARSON
Supervising Deputy Attorney General

/s/ GEORGE PRINCE

GEORGE PRINCE
Deputy Attorney General
Attorneys for Defendants and Appellants

No. 09-17649

IN THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**CALIFORNIA ALLIANCE OF CHILD
AND FAMILY SERVICES,**

Plaintiff,

v.

**JOHN WAGNER, Director of the
California Department of Social Services,
in his official capacity; GREGORY ROSE,
Deputy Director of the Children and
Family Services Division of the California
Department of Social Services, in his
official capacity,**

Defendants.

STATEMENT OF RELATED CASES

Appellee's appeal of the Judgment in *California Alliance of Child and Family Services v. Allenby*, No. C 06-04095 MHP , is before this Court as *California Alliance of Child and Family Services v. Allenby*, No. 10-15593.

Dated: September 7, 2010

Respectfully Submitted,

EDMUND G. BROWN JR.

Attorney General of California

SUSAN M. CARSON

Supervising Deputy Attorney General

/S/ GEORGE PRINCE

GEORGE PRINCE

Deputy Attorney General

Attorneys for Defendants and Appellants

**CERTIFICATE OF COMPLIANCE
PURSUANT TO FED.R.APP.P 32(a)(7)(C) AND CIRCUIT RULE 32-1
FOR CV 09-4398 MHP**

I certify that: (check (x) appropriate option(s))

1. Pursuant to Fed.R.App.P. 32(a)(7)(C) and Ninth Circuit Rule 32-1, the attached **EMERGENCY MOTION UNDER 9TH CIR. R. 27-3 FOR STAY OF INJUNCTION PENDING APPEAL; REQUEST FOR ORDER EXPEDITING APPEAL**

Proportionately spaced, has a typeface of 14 points or more and contains 3,648 words exclusive of Circuit Rule 27-3 Certificate (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

or is

Monospaced, has 10.5 or fewer characters per inch and contains ___ words or ___ lines of text (opening, answering, and the second and third briefs filed in cross-appeals must not exceed 14,000 words or 1,300 lines of text; reply briefs must not exceed 7,000 words or 650 lines of text).

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.

or

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,

or is

Monospaced, has 10.5 or fewer characters per inch and contains ___ pages or ___ words or ___ lines of text.

3. Briefs in **Capital Cases**.
This brief is being filed in a capital case pursuant to the type-volume limitations set forth at Circuit Rule 32-4 and is

Proportionately spaced, has a typeface of 14 points or more and contains _____ words (opening, answering and the second and third briefs filed in cross-appeals must not exceed 21,000 words; reply briefs must not exceed 9,800 words).

or is

Monospaced, has 10.5 or fewer characters per inch and contains ___ words or ___ lines of text (opening, answering, and the second and third briefs filed in cross-appeals must not exceed 75 pages or 1,950 lines of text; reply briefs must not exceed 35 pages or 910 lines of text).

4. **Amicus Briefs.**

Pursuant to Fed.R.App.P 29(d) and 9th Cir.R. 32-1, the attached amicus brief is proportionally spaced, has a typeface of 14 points or more and contains 7,000 words or less,

or is

Monospaced, has 10.5 or few characters per inch and contains not more than either 7,000 words or 650 lines of text,

or is

Not subject to the type-volume limitations because it is an amicus brief of no more than 15 pages and complies with Fed.R.App.P. 32 (a)(1)(5).

September 7, 2010

Dated

/s/ George Prince

George Prince
Deputy Attorney General

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