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**DEPARTMENT OF JUSTICE**



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February 26, 2010

The Honorable Marilyn H. Patel  
United States District Judge  
Phillip Burton United States Courthouse  
450 Golden Gate Avenue, 18th Floor  
San Francisco, CA 94102-3434

Re: California Alliance of Child, etc. v. Allenby, et al.  
United States District Court, Northern District of California, Case No. C 06-4095 MHP

Dear Judge Patel:

This letter regards the Judgment signed by you on February 23, 2010 and filed on February 24, 2010 (electronic docket Document 92) in the above-entitled action. For the reasons set forth below, defendants submit that an amended Judgment should be filed, superseding the existing Judgment, in order to address and correct two misstatements in that Judgment.

1. Non-Federally Eligible Children.

First, with respect to paragraph 4. c. of the February 24, 2010 Judgment, the inclusion of "non-federally children" is inappropriate because this provision exceeds the authority of the federal court. The complaint alleged that the California Department of Social Services was in violation of the Child Welfare Act in that the RCL system did not cover the cost of federally mandated items set forth in 42 U.S.C. section 675(4)(A) as "foster care maintenance payments." However, the foster care payments for non-federally eligible children are made with State and county monies only; there are *no* federal funds in the payments for these children and the provisions of the CWA are inapplicable to them. Therefore, this part of the Judgment goes beyond the Ninth Circuit's decision in *California Alliance of Child and Family Services v. Allenby*, 589 F.3d 1017 (9th Cir. 2009), which is based solely on the federal Child Welfare Act.

Although we understand that the Court's Judgment on this issue relies upon the Court's December 18, 2009 Order Re: Scope of Preliminary Injunction in *California Alliance of Child and Family Services v. John Wagner, et al.*, Case No. C 09-4398 MHP (electronic docket Document 67), expanding the scope of the preliminary injunction entered in that case on November 18, 2009 (electronic docket Document 57), defendants have filed notices of appeal on each of those orders. Thus, pending resolution of those appeals, the Judgment in the instant matter should not apply to non-federally eligible children as this Court's inclusion of them in its order in the companion case remains at issue on appeal.

2. Cost Increases Required by State Law Alone.

The second misstatement in the February 24, 2010 Judgment is found at paragraph 4.d. There, the Judgment references a "list" that the CDSS submits to the Legislature on an annual basis pursuant to Welfare and Institutions Code section 11462(m). The list is comprised "of any new departmental requirements established during the previous fiscal year concerning the operation of group homes and of any unusual, industrywide increase in costs associated with the provision of group care that may have significant fiscal impact on providers of group homes care." (*Id.*) The Joint Legislative Budget Committee *may* "use the list to determine whether an appropriation for rate adjustments is needed in the subsequent fiscal year." (*Id.*)

This Welfare and Institutions Code provision is not a part of the RCL rate-setting methodology, and was never intended to be tied to the RCL. Further, it was never intended to supplement the CNI adjustment factor of the RCL system, but rather was created as a means to keep the State's Legislature informed of *other* costs impacting the group home industry, which are costs *not* related to federally mandated "foster care maintenance payments" costs as defined in the Child Welfare Act at 42 U.S.C. section 675(4)(A). Therefore, this provision of the Judgment is also beyond the scope of Ninth Circuit's decision, and is not properly included in this Judgment.

3. Request for Stay.

In the event that this Court does not amend the Judgment as set forth above, CDSS respectfully requests that this Court stay this action and enforcement of the Judgment during the anticipated appeal to the Ninth Circuit concerning these provisions of the Judgment.

4. Conclusion.

For the reasons above, defendants respectfully submit that the Judgment filed February 24, 2010 be vacated and an amended Judgment reflecting the correction of the above-described misstatements be entered in its stead or, in the alternative, that this Court issue a stay.

Sincerely,



GEORGE PRINCE  
Deputy Attorney General

For EDMUND G. BROWN JR.  
Attorney General

cc: Williams Abrams (via e-mail)