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CALIFORNIA ALLIANCE OF CHILD AND FAMILY
12 SERVICES

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN FRANCISCO DIVISION
16

17 CALIFORNIA ALLIANCE OF CHILD AND
FAMILY SERVICES,

18 Plaintiff,

19 v.

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

23 Defendants.
24

CASE NO. CV 06-4095 MHP
Related to Case No. CV 09-04398 MHP

**REPLY TO DEFENDANTS'
RESPONSE AND OBJECTIONS TO
PROPOSED JUDGMENT**

Date: February 22, 2010
Time: 2:00 p.m.
Ctrm: 15

1 **I. INTRODUCTION**

2 The State's Response and Objections to the Alliance's Proposed Judgment (Docket
3 No. 88) asserts that complying with the Child Welfare Act requires "something more nuanced
4 than simply ordering defendants to adjust the current rate schedule." The State makes no
5 proposal for the required judgment, and only suggests that it "be allowed the discretion to
6 implement [the Ninth Circuit's] decision in accord with their expertise in and responsibility for
7 the oversight of foster care group home programs in California." The Ninth Circuit provided no
8 such discretion, and the State's "discretion" in not funding the costs of foster group homes is the
9 reason for nearly four years of litigation.

10 The children who are in dire need of immediate compliance cannot wait four months, let
11 alone four more years, for the State to develop "something more nuanced" to stop violating the
12 Child Welfare Act. These children need the funding now. "Nuance" might be suitable for a
13 sommelier or film critic, but it is terribly inappropriate for children who have enormous needs
14 and who are receiving less than 80% of funds to which they are entitled to provide them basics
15 like food, shelter and clothing. The State should not be provided with any "discretion" to
16 continue its violation of the Child Welfare Act.

17 The State admits that that the funding levels of the Rate Classification Level (RCL)
18 system violate the Child Welfare Act, that the Alliance is entitled to judgment as a matter of law
19 on its claims for declaratory and injunctive relief, which includes an order requiring the State to
20 implement a payment system that complies with the Child Welfare Act, and that increasing RCL
21 payment rates to the levels set forth in the Alliance's Proposed Judgment would bring California
22 into compliance with federal law. The State's Response and Objections acknowledges that the
23 Alliance's Proposed Judgment "would be one means . . . of bringing the RCL into compliance
24 with the CWA," but it fails to present the Court with any alternative. (Opp. at 4.)

25 Essentially, the State asks this Court to refrain from enforcing the Ninth Circuit's Order
26 and sanction the State's ongoing violation of federal law and continued deprivation of the rights
27 of California's most vulnerable children. This Court must reject the State's attempt to delay its
28 compliance with the Child Welfare Act while the State "reflects" further on these issues.

1 The Ninth Circuit held that California’s foster care payment system violates the Child
 2 Welfare Act because it fails to cover the costs of certain items including food, shelter and
 3 clothing. To cover such costs, the Ninth Circuit found that the State “must pay the cost of the
 4 listed items.” *California Alliance of Child and Family Services v. Allenby*, 589 F.3d 1017, 1023
 5 (9th Cir. 2009). The Ninth Circuit directed that the State “must make yearly CNI adjustments . .
 6 . to account for the rise (or fall) in its standardized schedule of rates.” *Id.* Consistent with the
 7 Ninth Circuit’s Order, the Alliance’s Proposed Judgment includes this specific directive.
 8 Accordingly, the Alliance’s Proposed Judgment should be entered in its entirety because it
 9 satisfies the clear directive of the Ninth Circuit and brings the State’s RCL system immediately
 10 into compliance with federal law. The time to do this is now.

11 **II. THIS COURT SHOULD ADOPT THE ALLIANCE’S PROPOSED**
 12 **JUDGMENT IN ITS ENTIRETY**

13 **A. Increasing California’s RCL Payment Rates Brings California**
 14 **Into Compliance with the Child Welfare Act**

15 The Ninth Circuit held that California’s RCL payment rates violate the Child Welfare Act
 16 by failing to cover the required costs. *California Alliance*, 589 F.3d at 1023. The Alliance’s
 17 Proposed Judgment would bring the State into compliance with the Child Welfare Act by
 18 increasing RCL payment rates to levels that would cover such costs. The State does not deny
 19 that adjusting the RCL payment rates, as the Alliance proposes, would comply with the Child
 20 Welfare Act. Indeed, the State admits that adopting the Alliance’s Proposed Judgment would
 21 bring California into compliance with the Act: “plaintiff’s proposed order would be one means .
 22 . . of bringing the RCL into compliance with the CWA.” (Opp. at 4.)

23 **B. The State Fails to Propose Any Alternative Means of**
 24 **Complying with the Child Welfare Act**

25 The State also argues that this Court should not adopt the Proposed Judgment because
 26 complying with the Child Welfare Act requires “something more nuanced than simply ordering
 27 defendants to adjust the current rate schedule.” (Opp. at 2). Even if this was true, which it is
 28 not, the State fails to specify what this “more nuanced” approach would entail. The undisputed

1 fact is that that Ninth Circuit simply requires the State to “pay for the cost of the listed items [in
2 the CWA].” *California Alliance*, 589 F.3d at 1022. That is precisely what the Alliance’s
3 Proposed Order accomplishes.

4 Additionally, the State’s citation to the decision in the *California State Foster Parents*
5 *Association v. Wagner*, C 07-05086 WHA for the proposition that the State should not be
6 required “to act in any specific manner toward remediation” is misleading and inapposite. (Opp.
7 at 5.) Judge Alsup’s Order came a year before the Ninth Circuit’s decision in this case. He
8 found that the State was “in violation of the Act by setting rates without consideration of the
9 Act’s mandatory cost factors” but refused to “further broach the vexing question of what
10 precisely ‘substantial compliance’ entails in this context. . . .” (Order re Cross Motions for
11 Summary Judgment, filed October 21, 2008 (Electronic Docket for Case 3:07-cv-05086-WHA,
12 Document 98, at 11:5-11). The State’s citation in its Response relates to the State’s process for
13 determining the rates it pays -- not to any discretion the State has with respect to covering the
14 costs. Judge Alsup’s denial of the motion for summary judgment “insofar as plaintiffs assert that
15 defendants must be in exact compliance with its particular measure of child welfare maintenance
16 payments,” is superseded by the Ninth Circuit. The Ninth Circuit specifically held that since the
17 State used the RCL system, it was required to fully comply with its rate setting structure. Both
18 decisions held that the State was required to “cover” the costs of items enumerated in the Act.
19 Presently, the only way to do so is by increasing the RCL payment rates to those that do “cover”
20 these costs as they have been determined by the State.

21 As noted above, despite admitting in its Response that the Alliance’s Proposed Judgment
22 “would be one means - but certainly not the sole means - of bringing the RCL into compliance
23 with the CWA” the State failed to present a single alternative means of compliance. (Opp. at 4.)
24 Instead, the State argues that there is “no specific, established system that must be used to meet
25 the requirements of the CWA” and “nothing in the CWA requires the Department to use, or
26 retain, the RCL system itself.” (Opp. at 3.) The RCL system, however, is the system that the
27 State has chosen and continues to use. The Ninth Circuit acknowledged that while alternative
28 systems may exist, the State is failing to cover the required costs with the system that it chose:

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1 “the State is not paying the amount the State itself treats as costs -- that is, the RCL as adjusted
2 each year in accordance with the CNI -- and this is what falls short of complying with the
3 CWA.” *California Alliance*, 589 F.3d at 1022. California’s foster children should not be made
4 to wait while the State ponders the use of a new system. The State can do so after it comes into
5 compliance with the Child Welfare Act.

6 The State argues in its Response that “plaintiff’s proposed order seeks to simply lock the
7 State into continuing the RCL system without review or reflection.” (Opp. at 3.) That is untrue.
8 The Proposed Judgment is very narrow in its scope. It would not impose upon the State any
9 structural changes in its current RCL system. It would merely require the State, to bring its RCL
10 system into compliance with the Child Welfare Act, to update the standardized schedule of rates
11 so that it covers the current costs of care, as measured by the CNI inflation measure that the State
12 built into its RCL system. It would also require the State to make CNI and other appropriate
13 adjustments to the standardized schedule of rates in future years to ensure that it continues to
14 cover the changing costs of care for as long as the State chooses to use the RCL system. The
15 Proposed Judgment would not require the State to continue to use the RCL system in the future,
16 nor in any way limit the State’s discretion in the future to take as much time, or as little time, as
17 it needs to review and reflect upon its current RCL system, and to make major or minor
18 modifications to that system, or to adopt an entirely new rate-setting system. The Proposed
19 Judgment would only require the State to bring its current RCL system into compliance with the
20 Child Welfare Act so that the thousands of foster children currently placed in group homes by
21 the State’s child welfare and probation systems can immediately begin to receive the care and
22 supervision to which they are entitled and which they have been denied by the State for many
23 years.

24 Moreover, the State’s Response does not offer any alternative solution to remedy its
25 violation of federal law. Rather, it merely attempts to delay the enforcement of the Ninth
26 Circuit’s order while it “reviews” and “reflects” indefinitely on the “variety” of alternative
27 systems it could implement to comply with the Ninth Circuit’s order and the Child Welfare Act,
28 despite acknowledging the Alliance has already proposed one means of compliance. Further

1 delay cannot be allowed -- children in dire need of the funding, services and support at stake
2 cannot wait any longer while the State “reflects” on this issue.

3 **C. The Alliance’s Original Complaint Prayed for the**
4 **Implementation of a Payment System that Complies with the**
5 **Child Welfare Act**

6 The Ninth Circuit ordered this Court to grant the Alliance’s motion for summary
7 judgment and reverse the Court’s judgment in favor of the State. *California Alliance*, 589 F.3d
8 at 1023. The State contends that the Alliance’s Proposed Judgment seeks relief not sought in the
9 Alliance’s original complaint. This is incorrect. In paragraph 4 of its “Prayer For Relief,” the
10 Alliance requested “[t]hat Defendants, and each of them, prepare **and implement a payment**
11 **system that complies with the Child Welfare Act.**” (Compl. at 8; Docket No. 1) (emphasis
12 added).

13 The Ninth Circuit recognized that the Alliance “accepts the State’s system for calculating
14 costs to be covered, but takes issue with the State’s underfunding of foster care maintenance
15 payments as a result of having failed to adjust the standardized schedule of rates by an amount
16 equal to the CNI since 2001.” *California Alliance*, 589 F.3d at 1019. The Ninth Circuit also
17 recognized that the Child Welfare Act “requires California to cover the cost of certain items and
18 California has developed a formula to determine what those items cost, but is only partially
19 covering the costs of those items.” *Id.* at 1021. The relief the Alliance included in its Proposed
20 Judgment is identical to what it originally sought in its Complaint: implementation of a payment
21 system that complies with the Child Welfare Act. According to the Ninth Circuit, “to do so,
22 under the system the State chose to follow, [the State] must make yearly CNI adjustments . . . to
23 account for the rise (or fall) in its standardized schedule of rates.” *Id.* at 1022. The Alliance’s
24 Proposed Judgment asks the Court to do just that-- adjust the State’s RCL payment rates to
25 include the required CNI increases. The Alliance’s Proposed Judgment, therefore, is entirely
26 consistent with its original Complaint and accomplishes the directive of the Ninth Circuit. It
27 should be adopted in full.
28

1 **III. CONCLUSION**

2 For all of the foregoing reasons, the Alliance respectfully requests that this Court enter
3 the Proposed Judgment in its entirety and end the State's failure to meet its obligations to its
4 foster children under the Child Welfare Act.

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6 DATED: February 5, 2010

Bingham McCutchen LLP

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8 By: /s/ William F. Abrams

9 William F. Abrams

10 Attorneys for Plaintiff

11 CALIFORNIA ALLIANCE OF CHILD AND
12 FAMILY SERVICES
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