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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

CALIFORNIA ALLIANCE OF CHILD AND FAMILY SERVICES, Plaintiff, **v.** **CLIFF ALLENBY, Interim Director of the California Department of Social Services, in his official capacity; MARY AULT, Deputy Director of the Children and Family Services Division of the California Department of Social Services, in her official capacity,** Defendants.	C 06-4095 MHP **DEFENDANTS' RESPONSE AND OBJECTIONS TO PLAINTIFF'S PROPOSED JUDGMENT** Hearing Date: February 22, 2010 Hearing Time: 2:00 p.m. Courtroom: 15 Judge The Hon. Marilyn H. Patel Action Filed: June 30, 2006

INTRODUCTION

In the minute order stemming from the January 11, 2010 case management conference in the 2009 case (*California Alliance of Child and Family Services v. John Wagoner, et al.*, case no. C 09-04398 MHP) that essentially builds upon the foundation of the above-entitled action, this Court directed the parties to submit by January 15, 2010 a proposed schedule of

compliance with the Ninth Circuit Court of Appeals decision in *California Alliance of Child and Family Services v. Allenby*, 589 F.3d 1017 (9th Cir. 2009).[1]

In accord with the proceedings at the case management conference, on January 15, 2010, plaintiff submitted its "[Proposed] Judgment for Plaintiff California Alliance of Child and Family Services" (Electronic Docket Document 87). Defendants hereby respond and object to plaintiff's proposed order.

I. FORM OF PLAINTIFF'S PROPOSED ORDER

Defendants object, generally, to the form of plaintiff's proposed order in that it purports to precisely dictate the manner in which the Department of Social Services is to implement the general directive of the Ninth Circuit, which is that this Court is determine the proper scope of declaratory and injunctive relief. Defendants will comply with the decision of the Ninth Circuit, but respectfully request that they be allowed the discretion to implement that decision in accord with their expertise in and responsibility for the oversight of foster care group home programs in California.

II. SUBSTANCE OF PLAINTIFF'S PROPOSED ORDER

More problematic than the form of the proposed order is its underlying substance, which goes well beyond what the Ninth Circuit Court of Appeals' decision supports. Rather than directing that the District Court enter an order directing specific compliance with the decision on appeal or any part of it, the Ninth Circuit's decision stated: "We remand to the district court to determine the proper scope of declaratory and injunctive relief." Defendants submit that determining the proper scope of relief in compliance with the Ninth Circuit's directive requires something more nuanced than simply ordering defendants to adjust the current rate schedule. The Ninth Circuit's decision supports a more detailed and reflective remedy than adoption of a mere arithmetical adjustment to the existing RCL payments matrix.

Accordingly, plaintiff's proposed order must be rejected.

[1] Despite the wording of the post-hearing minute order, the clear directive of the Court at the hearing was that plaintiff would submit a proposed order by Friday, January 15, 2010 – four days after the case management conference – and that defendants would have until January 29, 2010, to respond to the proposed order.

A. The Ninth Circuit's Decision and the Plaintiff's Original Complaint

In its December 14, 2009 decision, after discussing the procedural and statutory background of the case, the Ninth Circuit stated as to the cost factor of the Child Welfare Act: "The question then becomes one of measuring the cost of those enumerated items. While the CWA identifies the types of items that must be covered, it does not prescribe any particular metric to measure the cost of those items. Each state develops its own plan." *California Alliance of Child and Family Services v. Allenby,* 589 F.3d at 1021.

More precisely, that Court made clear that there is no specific, established system that must be used to meet the requirements of the CWA, and that the system that California established in creating its State Plan some 20 years ago was not mandated by the CWA: "In sum, the CWA does not set rates or tell states how they are supposed to cover costs. It does not require states to apply an index such as the CNI, or to adopt any particular system for arriving at the amount to be reimbursed."[2] *Id.*, at 1022.

Further, even with the record before it of the RCL system that California adopted in 1990 to partake in the receipt of CWA monies, the State was not necessarily bound to using the the CNI as the index that is currently incorporated within that RCL system so long as some method for inflationary adjustment is used: "In our judgment those [CWA] conditions are clear – the State must pay for the cost of listed items. 42 U.S.C. § 675(4(A). And to do so, under the system the State chose to follow, it must make yearly CNI adjustments (or some other inflationary adjustment) to account for the rise (or fall) in its standardized schedule of rates." *Id.* Moreover, as is reflected by the Ninth Circuit's reference to "the system the State chose to follow," nothing in the CWA requires the Department to use, or retain, the RCL system itself.

Nevertheless, plaintiff's proposed order seeks to simply lock the State into continuing the RCL system without review or reflection. Such a result is not dictated by the Ninth Circuit's order, nor was it even what plaintiff sought in its complaint; indeed, at that time, plaintiff prayed (1) that defendants "be temporarily and permanently enjoined from currently and continually

[2] California Necessities Index, California Welfare & Institutions Code sec. 11453(a).

using the RCL system to establish foster care maintenance payments to group homes" (Complaint for Declaratory and Injunctive Relief, filed June 30, 2006 (Electronic Docket Document 1) at p. 8:13-15) and, further, (2) that defendants "prepare and implement a payment system that complies with the Child Welfare Act[.]" (*Id*., lines 16-17.)

In short, the proposed order submitted by plaintiff is far from the only means of following the directive of the Ninth Circuit, and is not even consistent with the relief that plaintiff originally asked this Court to grant. It should not be adopted by this Court.

B. Defendants' Proposed Means of Addressing the Case on Remand

Defendants do not dispute the directive given to the District Court to create a remedial order here: there is no question that the Ninth Circuit's decision requires that this Court issue an order finding that the existing RCL system violates the CWA by not covering the cost of foster care maintenance payments and that declaratory and injunctive relief to remedy this situation must be crafted. However, rather than adopting the lock-step approach suggested by plaintiff's proposed order, defendants submit that the process of determining the proper scope of declaratory and injunctive relief should be and must be more detailed than a simple arithmetic exercise.

First, as the Ninth Circuit's decision makes clear, there is no required means of determining costs nor even a required index or system to be used for making that determination. If California were to continue the use of its RCL system as it now exists, plaintiff's proposed order would be one means – but certainly not the sole means – of bringing the RCL into compliance with the CWA. However, the Department of Social Services has already begun the use of alternative programs to the RCL system and is exploring the use of other alternative programs as well. The Department is employing and exploring a variety of means designed to reduce entrance into group home care, reduce the length of stays in group home care, increase effective and efficient use of short-term group home care, and reduce costs of foster care generally and group home care specifically.

Second, the proper scope of declaratory and injunctive relief can most effectively be determined though a cooperative process by which the parties work in concert with the Court to

allow for efficient and effective changes to the existing system to be made. In line with the alternative programs discussed above that have already been adopted or are being considered, the Department should and must be allowed to exercise its discretion and expertise in working with stakeholders and other interested groups and individuals in crafting a system that meets the requirements for covering costs while at the same time allows for the operation of State government in which the Department of Social Services is but one player.

C. The Department is Entitled to Deference in the Crafting a Compliant System

Finally, defendants submit that the result in a recent federal case not dissimilar to the one at bar is instructive here. In the case *California State Foster Parents Association v. John Wagner, et al.*, C 07-05086 WHA – an action essentially tracking the allegations of the insufficiency of foster care payments, though in the context of foster care parents, rather than foster care group homes, Judge Alsup of this Court found that the defendants' system of setting foster care maintenance payments to foster care parents was not in compliance with the Child Welfare Act. However, Judge Alsup refrained from directing the Department to act in any specific manner toward remediation, and denied plaintiffs' motion for summary judgment "insofar as plaintiffs assert that defendants must be in exact compliance with [the Child Welfare Act's] particular measure of child welfare maintenance payments." (Order re Cross Motions for Summary Judgment, filed October 21, 2008 (Electronic Docket for Case 3:07-cv-05086-WHA, Document 98, at p. 11:7-8.) By declining to enter an order dictating the precise or even general means by which the Department was to remedy the situation – notwithstanding the urging of plaintiffs there that a specific remedy be ordered – Judge Alsup tacitly recognized that that Department should be given the deference to create a proper remedy. A similar form of deference is equally appropriate in the instant case.

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CONCLUSION

For the reasons set forth above, defendants submit that plaintiff's proposed order should be rejected as a means of implementing the Ninth's Circuit order remanding the case to the district court to determine the scope of declaratory and injunctive relief. Rather, a more detailed and cooperative process of determining the proper remedy here should be crafted by the parties, in concert with stakeholders and others interested in the outcome and able to help bring about that outcome.

Dated: January 29, 2010

Respectfully submitted,

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