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9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION

12 **CALIFORNIA ALLIANCE OF CHILD AND**  
13 **FAMILY SERVICES,**  
14 Plaintiff,  
15 v.  
16 **JOHN WAGNER, Director of the California**  
17 **Department of Social Services, in his official**  
18 **capacity; MARY AULT, Deputy Director of the**  
19 **Children and Family Services Division of the**  
20 **California Department of Social Services, in her**  
Defendants.

C 06-4095 MHP  
**DEFENDANTS' NOTICE OF**  
**MOTION AND CROSS**  
**MOTION FOR SUMMARY**  
**JUDGMENT;**  
**MEMORANDUM OF POINTS**  
**AND AUTHORITIES**  
Hearing: August 27, 2007  
Time: 2:00 p.m.  
Courtroom: 15, 18<sup>th</sup> floor  
Judge: The Hon. Marilyn H. Patel

21 TO PLAINTIFF CALIFORNIA ALLIANCE OF CHILD AND FAMILY SERVICES AND ITS  
22 ATTORNEYS OF RECORD:

23 PLEASE TAKE NOTICE THAT John Wagner and Mary Ault, defendants in their  
24 official capacities in this action, will move the Court, on August 27, 2007, at 2:00 p.m. or as  
25 soon thereafter as the matter may be heard, in Courtroom 15, the Honorable Marilyn Hall Patel,  
26 presiding, in the United States District Courthouse at 450 Golden Gate Avenue, San Francisco,  
27 California, for an order granting summary judgment in their behalf under Rule 56 of the Federal  
28 Rules of Civil Procedure.

1 By this motion defendants seek to have the Court grant judgment in their favor and  
2 against plaintiff on all grounds of the complaint, and thereafter dismiss plaintiff's complaint,  
3 because defendants are entitled to judgment as a matter of law in this action.<sup>4/</sup>

4 Defendants' motion to dismiss is made on the ground that plaintiff's complaint cannot  
5 be sustained against defendants because neither defendants' policies nor their actions violate the  
6 Child Welfare Act (Title IV-E of the Social Security Act, 42 U.S.C. §§ 670-679b), as contended  
7 by plaintiff or otherwise.

8 This motion is based on this notice of motion and motion, the supporting memorandum  
9 of points and authorities in support thereof, the declarations in support of the motion, the  
10 attached exhibits, the Court's file in this action, any other matters properly before this Court, on  
11 argument to be presented at the hearing on the motion, and on the proposed order, a copy of  
12 which is submitted with this notice of motion and motion.

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14 **MEMORANDUM OF POINTS AND AUTHORITIES**

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**STATEMENT OF THE CASE**

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17 This is a civil-rights lawsuit filed June 30, 2006, based on 42 U.S.C. section 1983.  
18 Plaintiff seeks a declaratory judgment, pursuant to 28 U.S.C. section 2201, that the Rate  
19 Classification Level (RCL) system employed by the California Department of Social Services  
20 (CDSS) to set rates of payment to foster care group homes for the provision of care to children in  
21 those group homes. According to plaintiff, the RCL violates the Child Welfare Act (Title IV-E  
22 of the Social Security Act, 42 U.S.C. sections 670-679b) and its implementing regulations.  
23 Plaintiff further seeks permanent injunctive relief to prospectively prohibit defendants from  
24 using the RCL to set payment rates for foster care group homes. (Complaint for Declaratory and  
25 Injunctive Relief (Complaint), p. 3:18-24.)

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27 Contrary to plaintiff's contention, the RCL system does not violate the Child Welfare  
28 Act or any of its regulations or other provisions. Accordingly, judgment should be entered for

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1. By direction of the Court, the parties are to file cross motions for summary judgment.

1 defendants and this matter dismissed.

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#### STATEMENT OF ISSUES

5 1. Does the Child Welfare Act and/or its implementing regulations dictate the manner  
6 in which States are to set rates for foster care group home maintenance payments?

7 2. If so, does the RCL system used by California fail to comply with the Child  
8 Welfare Act's dictates on setting rates for foster care group home maintenance payments?

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#### STATEMENT OF AGREED FACTS NOT IN DISPUTE

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11 In conformity with Local Rule 56-2 of the Local Rules for the United States District  
12 Court of the Northern District of California and paragraph 7 of the Standing Order of this Court,  
13 the parties will submit a joint statement of undisputed facts at the time they file their respective  
14 oppositions to the cross motions.

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#### DEFENDANTS' STATEMENT OF FACTS NOT REASONABLY IN DISPUTE

16  
17 Prior to 1990, there had been negotiations and advisory discussions and meetings with  
18 stakeholder groups made up of CDSS employees, counties, and provider groups, which studied  
19 options for a new rate setting system. Legislation was proposed in the form of Senate Bill (SB)  
20 747, which did not pass. A later bill, SB 370 (Chapter 1294, Statutes of 1989) established the  
21 Foster Care Group Home Rate structure and was the authority for that initial promulgation of  
22 regulations for rate setting for group home programs. (Declaration of Sheilah Dupuy in Support  
23 of Defendants' Cross Motion for Summary Judgment (Dupuy Decl.), paragraph 7.)<sup>2</sup>

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25 2. Sheilah Dupuy is currently the Chief of the Foster Care Rates Bureau (FCRB), which is  
26 within the Children and Family Services Division of the California Department of Social Services  
27 (CDSS). Her duties as Chief of the FCRB include supervising the implementation of federal and  
28 state laws relating to the setting of AFDC-FC rates paid to eligible group home and foster family  
home programs; formulating state regulations and setting administrative policies for the payment  
of AFDC-FC rates on behalf of those individuals meeting the eligibility requirements set forth in  
Title IV-E of the Social Security Act (codified at 42 U.S.C. section 670 et. seq.). Her Bureau is

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1 In 1990 Sheilah Dupuy was part of a group of CDSS employees with the Foster Care  
 2 Branch that worked on the drafting of regulations pursuant to Senate Bill 370 that were  
 3 implemented July 1, 1990. Subsequent to the implementation, Ms. Dupuy worked on various  
 4 policy interpretations, and policy letters in support of the implementation of the program. Her  
 5 Bureau provided training to CDSS staff as well as to group home and foster family agency  
 6 providers. SB 370 established both a standard rate for each of the 14 Residential Care Levels  
 7 (RCLs) and a rate floor. In fiscal year 1990-1991, each provider submitted data on rate, costs,  
 8 and staffing levels from the prior fiscal year that substantiated the RCL at which its program  
 9 would enter the flat rate system. The standard rates were to be phased in over a three-year period  
 10 beginning July 1, 1990, with a rate floor for each of the three years. The implementing

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 12 responsible for overseeing statewide policies related to applicable Adoption Assistance and Child  
 13 Welfare Act of 1980 (P.L. 96-272) and Title IV-E eligibility provisions, revisions, and maintenance  
 14 of California's State Plan under Title IV-E, and providing technical assistance and oversight of  
 15 eligibility and funding aspects of the foster care program administration in all 58 California counties.  
 16 (Dupuy Decl., paragraphs 1-2.)

17 Ms. Dupuy first became employed by the CDSS in 1990 as an analyst in the Foster Care  
 18 Rates Policy Unit. There her responsibilities included performing analytical assignments necessary  
 19 to implement the group home rate-setting system. Additionally, she provided regulation  
 20 development, issue papers, and technical assistance to county staff and group home and foster family  
 21 agency providers. Specifically, her duties included the implementation of the rates provisions Senate  
 22 Bill 370. SB 370 was responsible for ensuring that children placed into foster care in group homes  
 23 receive the services for which providers are being paid; that provider payment levels were  
 24 established appropriately; that overpayments were minimized; and that federal, State, and county  
 25 payment and funding systems were appropriately administered. In 1993 she was a general policy  
 26 analyst at the CDSS for the Foster Care Eligibility Unit. There she was a general policy analyst with  
 27 an emphasis on foster care eligibility issues, which included eligibility for either Title IV-E (federal  
 28 foster care) funding, or state-only foster care funding. In 1996, Ms. Dupuy became a Staff Services  
 Manager I with CDSS's foster care branch. There she supervised a group of individuals who were  
 responsible for implementing and providing technical assistance to counties on our emergency  
 assistance program, a program that was available under Title IV-A to fund emergency foster care  
 placements. (Dupuy Decl., paragraphs 3-5.)

In 1997 Ms. Dupuy became a Staff Services Manager I in the rates policy unit of the foster  
 care branch, where she supervised a group of individuals who were responsible for performing  
 analytical assignments associated with rate setting policy issues under the foster care program. In  
 2001 she began in her current position as a staff services manager II in CDSS, where she serves as  
 the Foster Care Rates Bureau Chief, supervising a group on individuals responsible for setting rates  
 for group homes and foster family agencies in California under the foster care program. Over the  
 last two or three years her duties have expanded to include supervision of analytical staff in the areas  
 of foster care eligibility and foster care rate setting policies. (Dupuy Decl., paragraph 6.)

1 legislation required CDSS to raise the standard rate for each RCL based on information from the  
2 California Necessities Index (CNI) for fiscal years 1991-1992 and 1992-1993. Thereafter, annual  
3 CNI-based rate increases for group homes would become a discretionary item in the State budget  
4 process. (Dupuy Decl., paragraph 8.)

5 The RCL point system measures the number of "paid/awake" hours worked per month  
6 by a program's child care and social work staff and their first-line supervisors. The point system  
7 also counts the number of hours of mental health treatment services received by the children in  
8 the program, although these services do not have to be paid for by the provider. These hours are  
9 then weighted to reflect the experience, formal education, and ongoing training of the child care  
10 staff and the qualifications of the social work and mental health professionals. These "weighted  
11 hours" are then divided by 90% of the program's licensed capacity to compute the program's  
12 RCL points, which are used in the determination of the amount of payments the program  
13 receives. (Dupuy Decl., paragraph 9.)

14 For foster children who meet federal eligibility requirements, the State receives  
15 approximately 50% reimbursement for federally allowable foster care activities under Title IV-E.  
16 The state's counties pay 60 percent, and the state pays 40 percent ,of the non-federal share of  
17 cost. (Dupuy Decl., paragraph 10.)

18 Federal reimbursement funding to states is conditional upon states meeting the  
19 requirements of Title IV-E. The federal government does not prescribe a particular system for  
20 payment for children placed in group homes, nor does in set any particular method for  
21 determining how costs are to be measured, set, or calculated. However, the state is required to  
22 submit a plan that identifies the state law that meets the federal requirements. The plan is  
23 submitted with a certificate of compliance, which ensures compliance with federal requirements,  
24 to the appropriate federal regional office. (Dupuy Decl., paragraph 11.)

25 California's Title IV-E State Plan consists of a compilation of California statutes,  
26 regulations, All County Letters (ACLs), All County Information Notices (ACINs), County Fiscal  
27 Letters (CFLs), and other documents that implement federal requirements and instructions for  
28 the federal foster care program, which must be followed in order for the State to claim Federal

1 Financial Participation (FFP) in payments made under the program. CDSS amends California's  
2 state plan when the federal Department of Health and Human Services (DHHS) issues new  
3 federal requirements, changes existing federal regulations, or when a new state requirement as  
4 the result of law or court order substantially affects the state's foster care program. Updates to  
5 the state plan that are submitted to DHHS in response to such requirements or instructions  
6 include any new statutes, regulations, and ACLs that came into effect since the previous update.  
7 Any changes to the state plan must be approved by Region IX of DHHS, the regional division of  
8 DHHS that oversees the agencies activities in California and several other states. (Dupuy Decl.,  
9 paragraph 12.)

10 Common practice in preparing ACLs that substantially change the way California  
11 claims FFP in the foster care program is that CDSS provides drafts to, and consults informally  
12 with, Region IX DHHS staff about the contents of the proposed ACL. The purpose of the  
13 consultation is to ensure that the ACL will ultimately be approved by DHHS as an amendment to  
14 California's Title IV-E State Plan. If Region IX indicates disagreement with the contents of the  
15 ACL, attempts are made to address its concerns by changing the contents of the ACL. (Dupuy  
16 Decl., paragraph 13.)

17 Subsequent to the establishment of the state's RCL system for group home payment  
18 rates, the most recent substantial state plan amendment was submitted in 2003. There have been  
19 no denials of any state plan relating to the setting of rates for foster care group homes by DHHS  
20 at any time in which the RCL system has been in place. Indeed, in recent in-depth discussions  
21 with DHHS regarding the recoupment of overpayment of foster care funds involved review of  
22 rates and audit regulations, no suggestion was ever made by the federal officials that California's  
23 RCL system was not an appropriate means of meeting the federal requirements under Title IV-E.  
24 (Dupuy Decl., paragraph 14.)

## 26 ARGUMENT

### 27 I. THE CHILD WELFARE ACT CONTAINS NO DIRECTIVE TO THE STATES AS 28 TO HOW THE STATES ARE TO SET RATES FOR FOSTER CARE GROUP HOME MAINTENANCE PAYMENTS.

1 Plaintiff's simple contention in this case is that the RCL system employed by CDSS to  
2 set rates of payment for foster care group homes violates the Child Welfare Act. The proffered  
3 reason for this alleged violation is that the payments to foster care group home providers under  
4 the RCL system have not kept pace with the actual costs faced by the group home operators for  
5 the provision of care to the foster children in their homes. Although defendants recognize that a  
6 discrepancy exists between the increases in governmental payments to foster care group home  
7 providers and the increases in various operating costs faced by those providers, it does not follow  
8 that this means California has violated the Child Welfare Act because the RCL system has not  
9 provided payment increases to group home providers in step with the actual operating costs  
10 faced by those providers.

11 The Child Welfare Act dictates that states participating in the program to receive  
12 federal assistance provide "foster care maintenance payments" for eligible children who may  
13 reside, among other places, in group homes. 42 U.S.C. sections 671(a)(2), 672(b)(2); 675(4).  
14 The term "foster care maintenance payments" as detailed in the Child Welfare Act "means  
15 payments to cover the of (and the cost of providing) food, clothing, shelter, daily supervision,  
16 school supplies, a child's personal incidentals, liability insurance with respect to a child, and  
17 reasonable travel to the child's home for visitation. 42 U.S.C. section 675(4)(A). For  
18 institutional care, the maintenance also "shall include the reasonable costs of administration and  
19 operation of such institution as are necessarily required to provide the items described in the  
20 preceding sentence. *Id.*

21 Nowhere in the Child Welfare Act or in the regulations implementing does the federal  
22 government dictate what type of system a state must use to meet its obligations under the Act;  
23 the Act merely requires a participating state to submit a plan for financial assistance to the  
24 Secretary of the DHHS for approval. 42 U.S.C. section 671(a), (b). The federal government  
25 does not prescribe a particular system for payment for children placed in group homes, nor does  
26 in set any particular method for determining how costs are to be measured, set, or calculated.  
27 California submits, as it is required, a plan that identifies the state law that meets the federal  
28 requirements. The plan is submitted with a certificate of compliance, which ensures compliance

1 with federal requirements, to the appropriate federal regional office. (Dupuy Decl., paragraph  
2 11.)

3 California has submitted its state plan required by the Child Welfare Act -- along with  
4 various revisions, amendments, and other changes -- to the appropriate federal officials at DHHS  
5 over the years since inception of the RCL. (Dupuy Decl., paragraphs 12-13.) There have been  
6 no denials of any state plan relating to the setting of rates for foster care group homes by DHHS  
7 at any time in which the RCL system has been in place. (Dupuy Decl., paragraph 14.)

8 Although California's RCL system attempts to provide costs increases to group home  
9 operators in step with the CNI, the statutory authority for this recognizes the realities of the state  
10 budget: in certain times there are simply insufficient funds to provide the funding increases that  
11 might otherwise be granted. The state law controlling the rate adjustments under the RCL  
12 system clearly recognizes this reality, and includes a provision stating in no uncertain terms that  
13 rate increases are "subject to the availability of funds." Welfare and Institutions Code section  
14 11642 (g)(2).<sup>3/</sup>

15  
16 3. Welfare and Institutions Code section 11642 states in pertinent part:

17 (g)(1)(A) For the 1999-2000 fiscal year, the standardized rate for each RCL shall be adjusted by an  
18 amount equal to the California Necessities Index computed pursuant to the methodology described  
19 in Section 11453. The resultant amounts shall constitute the new standardized schedule of rates,  
subject to further adjustment pursuant to subparagraph (B).

20 (B) In addition to the adjustment in subparagraph (A), commencing January 1, 2000, the  
21 standardized rate for each RCL shall be increased by 2.36 percent, rounded to the nearest dollar. The  
resultant amounts shall constitute the new standardized schedule of rates.

22 (2) Beginning with the 2000-01 fiscal year, the standardized schedule of rates shall be adjusted  
23 annually by an amount equal to the CNI computed pursuant to Section 11453, subject to the  
24 availability of funds. The resultant amounts shall constitute the new standardized schedule of rates.

25 (3) Effective January 1, 2001, the amount included in the standard rate for each Rate  
26 Classification Level (RCL) for the salaries, wages, and benefits for staff providing child care and  
27 supervision or performing social work activities, or both, shall be increased by 10 percent. This  
28 additional funding shall be used by group home programs solely to supplement staffing, salaries,  
wages, and benefit levels of staff specified in this paragraph. The standard rate for each RCL shall  
be recomputed using this adjusted amount and the resultant rates shall constitute the new  
standardized schedule of rates. The department may require a group home receiving this additional

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1 **II. DEFENDANTS ARE ENTITLED TO SUMMARY JUDGMENT BECAUSE THERE IS**  
2 **NO GENUINE ISSUE AS TO ANY MATERIAL FACT AS CALIFORNIA'S RCL DOES**  
3 **NOT VIOLATE THE CHILD WELFARE ACT.**

4 Plaintiff's case rests in its entirety on its bald contention that the RCL system violates the  
5 Child Welfare Act. This contention is misguided, and plaintiff can make no showing to support the  
6 contention. Accordingly, judgment must be entered on behalf of defendants.

7 Rule 56 of the Federal Rules of Civil Procedure provides that a summary judgment motion  
8 shall be granted when there is no genuine issue as to any material fact, and if the moving party is  
9 entitled to judgment as a matter of law. In *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986), the  
10 Supreme Court stated that:

11 In our view, the plain language of Rule 56(c) mandates the entry of summary  
12 judgment, after adequate time for discovery and upon motion, against a party  
13 who fails to make a showing sufficient to establish the existence of an  
14 element essential to that party's case, and on which that party will bear the  
15 burden of proof at trial.

16 *Id.* at 322. The non-moving party's failure of proof on an essential element of its claim renders all  
17 other facts immaterial. *Id.*

18 Neither the Child Welfare Act nor its implementing regulations dictate the manner in  
19 which States are to set rates for foster care group home maintenance payments plaintiff .  
20 California's RCL system has been in place for more than 17 years, and has not been found by the  
21 federal agency and officials under whose authority the system has operated to be out of compliance  
22 with the Child Welfare Act. Accordingly, there is no showing plaintiff can make to prevail in this  
23 matter.  
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28 funding to certify that the funding was utilized in accordance with the provisions of this section.

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**CONCLUSION**

In this case there is no valid basis to plaintiff's contention that the RCL violates the Child Welfare Act. For the reasons set forth above -- and contrary to plaintiff's contention -- the RCL system does not violate the Child Welfare Act or any of its regulations or other provisions. Thus, defendants are entitled to an order 1) granting summary judgment in their favor and against plaintiff in this case and 2) dismissing the action.

Dated: July 17, 2007

Respectfully submitted,  
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/s/

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