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

16 CALIFORNIA ALLIANCE OF CHILD AND
17 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
25
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27
28

Case No. C 06-4095 MHP

**PLAINTIFF CALIFORNIA
ALLIANCE OF CHILD AND
FAMILY SERVICES'S NOTICE OF
MOTION AND MOTION FOR
RECONSIDERATION AND RELIEF
FROM JUDGMENT**

FRCP 59(e) AND 60(b)

Date: May 5, 2008
Time: 2:00 p.m.
Place: Ctrm. 15, 18th Floor
Judge: The Hon. Marilyn H. Patel

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**NOTICE OF MOTION AND MOTION FOR
RECONSIDERATION AND RELIEF FROM JUDGMENT**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on May 5, 2008 at 2:00 p.m. or as soon thereafter as the matter may be heard, in the Courtroom of the Honorable Marilyn H. Patel, located at Courtroom 15 of the United States District Court, Northern District of California, 450 Golden Gate Ave., San Francisco, CA 94102, plaintiff California Alliance of Child and Family Services (“California Alliance”) will, and hereby does, move this Court for an Order granting its Motion to Reconsider the Court’s Order denying California Alliance’s Motion for Summary Judgment and granting defendant’s Motion for Summary Judgment, and for Relief From Judgment.

This motion is made pursuant to Federal Rules of Civil Procedure 59(e) and 60(b). This motion is based on this Notice of Motion and Motion, the accompanying Points and Authorities, the Declarations of Michael D. Mortenson, Douglas Johnson, Walter Grubbs, Beverly Boone, George Siler, Christine Stoner-Mertz, Ivelise Markovits, John Neuber, John L. Peel, and David Darrah and the Exhibits thereto, and all other papers filed in this action and oral testimony or other information introduced at the hearing on this motion.

Local Rule 7-9, which requires parties to seek leave of the Court before filing motions for reconsideration prior to entry of judgment adjudicating all claims, does not apply to this Motion. Local Rule 7-9 applies only to interlocutory orders, and not to final judgments, as here. Nidec Corp., v. Victor Co. of Japan, Ltd., 2007 U.S. Dist. LEXIS 86414, *8 (N.D. Cal. 2007) (“As is clear from the plain language of the rule, Local Rule 7-9 applies to interlocutory orders, and does not apply to final judgments.”), citing Pacific Coast Fed’n of Fisherman’s Ass’ns v. U.S. Bureau of Reclamation, 2006 U.S. Dist. LEXIS 36894 (N.D. Cal. 2006).

1 DATED: March 21, 2008

Bingham McCutchen LLP

2
3 By: _____ /s/

4 William F. Abrams
5 Attorneys for Plaintiff
6 CALIFORNIA ALLIANCE OF CHILD AND
7 FAMILY SERVICES

8 Pursuant to General Order No. 45, Section X, I attest that concurrence in the filing of this
9 document has been obtained from Mr. Abrams.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Pursuant to Federal Rules of Civil Procedure 59(e) and 60(b), California Alliance respectfully asks this Court to reconsider its March 12, 2008 Order denying California Alliance's motion for summary judgment and granting the motion of defendant California Department of Social Services' ("DSS") for summary judgment, and Judgment. (Memorandum and Order Re: Cross-Motions for Summary Judgment, Document No. 57 ("Order"), and Judgment, Document No. 58.) Reconsideration and relief from the judgment are justified because after the matter was briefed and submitted to this Court, and only a few weeks before the Order was issued, the Governor of California promulgated a proposed budget for fiscal years 2008-09, effective June 1, 2008, that slashes payment rates for those who care for California's neediest children by \$6,800,000 for the remainder of fiscal year 2007-2008¹ and by \$81,500,000 for fiscal year 2008-2009. This evidence is material and was not available to California Alliance nor presented to the Court before the matter was submitted after the hearing on the parties' cross-motions for summary judgment on September 24, 2007.

The significance of this new evidence is substantial and directly impacts and changes the facts on which the Court based its Order. The Court found that California provides for at least 80% of the costs that it is required to pay under the Child Welfare Act ("CWA"). (Order, p. 7, Ins. 1-2.) The Court cautioned, however, that "without further increases over time, the California system may well be in violation of federal law." (Order p. 8, Ins. 22-24.) If the Governor's proposed budget is enacted, the State will provide for no more than 70% of the costs the Child Welfare Act requires it to pay during the 2008-09 fiscal year. This drastic reduction in funding places in dire peril our State's most vulnerable children and the individuals and organizations dedicated to caring for them. Thus, based on this new evidence, the Court is justified in granting California Alliance's Motion to Reconsider the Court's Order and for Relief from Judgment.

¹ The California Legislature has yet to enact the Governor's proposed budget reductions for the Fiscal Year 2007-08 year.

1 **II. FACTUAL AND PROCEDURAL BACKGROUND**

2 California Alliance filed its complaint against Cliff Allenby, Interim Director of DSS on
 3 June 30, 2006. (Mortenson Decl., ¶ 2, Ex. 1, Document No. 1.) Relevant factual and evidentiary
 4 matters were fully briefed by both parties in their respective cross-motions for summary
 5 judgment. (Mortenson Decl., ¶ 3, Ex 2 and Ex. 3, Document Nos. 34 and No. 37.) Oppositions
 6 to both parties' respective cross motions for summary judgment were filed on September 4,
 7 2007. (Mortenson Decl., ¶ 4, Ex 4 and Ex. 5, Document Nos. 38 and 39.) On or about
 8 September 12, 2007, the parties jointly filed the Amended Joint Statement of Undisputed Facts
 9 Regarding Parties' Cross Motions for Summary Judgment. (Mortenson Decl., ¶ 5, Ex. 6,
 10 Document No. 41.) The Court heard oral arguments on September 24, 2007, thereafter taking
 11 the matter under submission. (Mortenson Decl., ¶ 6.) On December 10, 2007 the Court ordered
 12 DSS to submit evidence of its annual review performed pursuant to California Welfare and
 13 Institutions Code section 11462(g)(2), which DSS filed with the Court on January 24, 2008.
 14 (Mortenson Decl., ¶ 7, Ex. 7 and Ex. 8, Document Nos. 55 and 56.) On March 12, 2008, the
 15 Court entered an Order and Judgment denying California Alliance's motion for summary
 16 judgment and granting DSS' motion for summary judgment. (Mortenson Decl., ¶ 8, Ex. 9 and
 17 Ex. 10, Document Nos. 57 and 58.)

18 On January 10, 2008, the Governor of California published and submitted the
 19 "Governor's Budget Summary 2008-09" to the California Legislature.² (Johnson Decl., ¶ 4, Ex.
 20 A.) The Governor's Budget proposed a 10% across the board funding cut to nearly all General
 21 Fund programs, including cuts totaling \$6.8 million in 2007-08 and \$81.5 million in 2008-09 for
 22 foster care, adoptions, and kinship-guardianship assistance programs. (Johnson Decl., ¶ 4, Ex.
 23 A, at 130.) Specifically, the Governor's proposed budget cuts payment for "Foster Family
 24 Agencies, foster family homes, group homes, Adoption Assistance, and Kin-GAP recipients."
 25 (Id.)

26 _____
 27 ² The Governor's Budget is submitted to the Legislature pursuant to Article IV, Section 12 of the
 28 California Constitution.

1 The Legislative Analysts' Office ("LAO"), which prepares detailed analysis of the
2 proposed Governor's Budget each fiscal year for use by California legislators in their budget
3 deliberations, published its analysis on February 20, 2008. (Johnson Decl., ¶ 5 Ex. B.) LAO's
4 analysis determined that the Governor's proposed budget reduces foster care rates by 10%.
5 (Johnson Decl., ¶ 5 Ex. B, at C-129.) "The Governor's budget proposes to reduce basic care,
6 SCI (special care increment), clothing allowance, and SED (seriously emotionally disturbed)
7 rates for children in FFHs (foster family homes) and GHs (group homes) by 10 percent." (*Id.*, at
8 C-131.) On January 10, 2008, the DSS published the "2008-09 Local Assistance Estimates" in
9 which the DSS estimated the proposed Governor's Budget would result in payment cuts totaling
10 \$15.9 million for State Fiscal Year 2007-08 (with a reduction of \$4.1 million in federal
11 expenditures, \$6.8 million in State General Fund expenditures, \$5.0 million in County
12 expenditures) and in payment cuts totaling \$190.3 million for State Fiscal Year 2008-09 (with a
13 reduction of \$49.3 million in federal expenditures, \$81.5 million in State General Fund
14 expenditures, \$59.5 million in County expenditures) (Johnson Decl., ¶ 6, Ex. C.) If the
15 Governor's proposed 10% reduction is made to the Rate Classification Level ("RCL") standard
16 rates for group homes in fiscal year 2008-09, the cumulative average increase in the RCL
17 standard rates since 1990-91 will be reduced to 120% of their original level, whereas the
18 California Necessities Index will have increased to 172% of its 1990-91 level. The new RCL
19 standard rates would provide for less than 70% of average group home costs. (Johnson Decl., ¶
20 7.) The Governor's proposed budget was not known to California Alliance before January 10,
21 2008, and not part of the record provided by the parties for the Court to consider.

22 Enactment of the Governor's proposed budget will force group home providers to make
23 significant cuts in the amount of money they spend on operation of group home programs,
24 including costs of food, clothing, rent, utilities, school supplies, and transportation, among
25 others. (Grubbs Decl., ¶ 3; Boone Decl., ¶ 3; Siler Decl., ¶ 3; Stoner-Mertz Decl. ¶ 3; Markovits
26 Decl. ¶ 3; Neiuiber Decl. ¶ 3; Peel Decl. ¶ 3; Darrah Decl. ¶ 3.) Foster care group home providers
27 are unwilling to operate group home programs that cannot provide minimally adequate quality
28 care and services needed for the safety and well-being of the foster children. (Grubbs Decl., ¶ 4;

Boone Decl., ¶ 4; Siler Decl., ¶ 4; Stoner-Mertz Decl. ¶ 4; Markovits Decl. ¶ 4; Neiber Decl. ¶ 4; Peel Decl. ¶ 4; Darrah Decl. ¶ 4.) If the Governor’s proposed budget is enacted, foster care group home providers would be unable to provide even minimally adequate care to their children with the reduced level of AFDC-Foster Care funding, and would be forced to consider whether to close their group home programs. (Grubbs Decl., ¶ 4; Boone Decl., ¶ 4; Siler Decl., ¶ 4; Stoner-Mertz Decl. ¶ 4; Markovits Decl. ¶ 4; Neiber Decl. ¶ 4; Peel Decl. ¶ 4; Darrah Decl. ¶ 4)

III. ARGUMENT

A. Reconsideration Of California Alliance’s Motion For Summary Judgment Is Appropriate Under Rule 59(e)

Motions for reconsideration of summary judgments are proper under Federal Rule of Civil Procedure 59(e) if filed within 10 days after the entry of the judgment.³ Backlund v. Barnhart, 778 F.2d 1386, 1388 (9th Cir. 1985); see also Fed. R. Civ. Proc. 59(e). The Court entered judgment on March 12, 2008. (Judgment, Document No. 58.) California Alliance’s Motion to Reconsider is thus filed within 10 days of the Court’s entry of judgment, therefore satisfying the threshold requirement of Rule 59(e).

Motions for reconsideration brought under Rule 59(e) are appropriate where “the district court is presented with newly-discovered evidence or committed clear error; the initial decision was manifestly unjust; or if there is an intervening change in controlling law.” United States v. Westlands Water District, 134 F. Supp. 2d 1111, 1130 (E.D. Cal. 2001), citing 389 Orange St. Partners v. Arnold, 179 F.3d 656, 665 (9th Cir. 1999). After the summary judgment motions were submitted, the Governor proposed to cut payment rates to foster care group homes by an additional 10 %, as well as denying group homes a 4.25% Cost of Living Adjustment (“COLA”)

³ Local Rule 7-9, which requires parties to seek leave of the Court before filing motions for reconsideration, applies only to interlocutory orders, and does not apply to final judgments. Nidec Corp., v. Victor Co. of Japan, Ltd., 2007 U.S. Dist. LEXIS 86414, *8 (N.D. Cal. 2007)(“As is clear from the plain language of the rule, Local Rule 7-9 applies to interlocutory orders, and does not apply to final judgments.”), citing Pacific Coast Fed’n of Fisherman’s Ass’ns v. U.S. Bureau of Reclamation, 2006 U.S. Dist. LEXIS 36894 (N.D. Cal. 2006).

1 for fiscal year 2008-09. The Court did not have the benefit of this new evidence in making its
2 decision in this case. This new evidence did not exist until after January 10, 2008, more than
3 three months after the Court heard oral arguments and the matter was submitted on September
4 24, 2007. Furthermore, because the State did not inform California Alliance or the Court about
5 its proposed reduction in payment rates before January 10, 2008, the parties could not brief the
6 Court on the effect of these cuts. Therefore, California Alliance's Motion for Reconsideration
7 should be granted to consider whether the reduction in foster care payment rates would remain
8 substantially compliant with federal law.

9 **B. Reconsideration Of California Alliance's Motion For**
10 **Summary Judgment Is Appropriate Under Rule 60(b)**

11 Motions for reconsideration are also proper under Federal Rule of Civil Procedure 60(b)
12 in certain circumstances. Backlund v. Barnhart, 778 F.2d at 1388, see also Fuller v. M.G.
13 Jewelry, 950 F.2d 1437, 1442 (9th Cir. 1991). Motions for reconsideration pursuant to Rule
14 60(b) are "generally appropriate in three instances: 1) where there has been an intervening
15 change of controlling law, 2) new evidence has come to light, or 3) when necessary to correct a
16 clear error or prevent manifest injustice." United States v. Westlands Water District, 134 F.
17 Supp. 2d 1111, 1130 (E.D. Cal. 2001), citing Sch. Dist. No. 1J, Multnomah County, Or. v.
18 ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir.).

19 Relief based on Rule 60(b)(2) on the grounds of newly discovered evidence is warranted
20 if "(1) the moving party can show evidence relied on in fact constitutes 'newly discovered
21 evidence' within the meaning of Rule 60(b); (2) the moving party exercised due diligence to
22 discover this evidence; and (3) the newly discovered evidence must be of 'such magnitude that
23 production of it earlier would have been likely to change the disposition of the case.'" Feature
24 Realty, Inc., v. City of Spokane, 331 F.3d 1082, 1093 (9th Cir. 2003), quoting Coastal Transfer
25 Co. v. Toyota Motor Sales, U.S.A., Inc., 833 F.2d 208, 211 (9th Cir. 1987). Evidence is "newly
26 discovered" under Rule 60(b) where, as here, it was neither in the moving party's possession at
27 the time of the trial nor discoverable with reasonable diligence. Coastal Transfer Co. v. Toyota
28 Motor Sales, U.S.A., Inc., 833 F.2d at 212.

1 The Governor of California promulgated a new proposed State Budget on January 10,
 2 2008, after this matter was submitted to the Court, in which the State would cut payment rates to
 3 foster care group homes by 10% , for the 2008-09 fiscal year. (Johnson Decl., ¶ 4, Ex. 1.)
 4 California Alliance, using due diligence, could not discover the contents of the Governor's
 5 proposed budget before filing its Motion for Summary Judgment on July 17, 2007, filing its
 6 Opposition to defendant's Motion for Summary Judgment on September 4, 2007, or appearing
 7 before the Court for oral argument on September 24, 2007.

8 Because the State's foster care payment rates reduction was not disclosed by the
 9 California Department of Finance until January 10, 2008, this evidence could not be presented to
 10 or considered by the Court. Moreover, there was no opportunity to brief or argue the legal
 11 significance of these cuts, including providing the Court evidence of the impact of the cuts on
 12 foster care providers. The evidence of California's proposed 10% foster care payment rate
 13 reduction combined with the State's failure to grant a 4.25% CNI based COLA, is of such
 14 magnitude that the Court could reasonably find that California does not substantially comply
 15 with the CWA and thus violates federal law. Therefore, California Alliance's Motion for
 16 Reconsideration should be granted to consider whether the reduction in foster care payment rates
 17 would remain substantially compliant with federal law, and the Order and judgment should
 18 therefore be vacated or modified.

19 **C. California's Proposed Budget Cuts Do Not Substantially**
 20 **Comply With The Requirements Of The Child Welfare Act.**

21 California "does not increase the maintenance payments with cost of living increases
 22 when funds for the same are not available." (Order p. 5, Ins. 18-19.) From fiscal years 1990-91
 23 to 2006-07, standard RCL payment rates have increased 127%, whereas California Necessities
 24 Index, a proxy for cost of living, has increased 159%. The State's failure, before the new cuts
 25 that the Court did not consider, to increase payments to coincide with cost of living increases
 26 created an approximate 32% difference between costs expended by foster care group homes and
 27 payments received. (Order p. 5, Ins. 18-19.) The Court's Order calculated, based on the
 28 evidence then available, that "today, the RCL provides for at least 80% of the costs associated

1 with the items enumerated in the CWA.” (Order p. 7, Ins. 1-2.) Nevertheless, the Court held,
2 “the process for determining foster care payment rates is still substantially compliant with the
3 statutory criteria outlined in the CWA.” (Id., Ins. 18-19.) The Court added “[t]his is further
4 buttressed by the fact that plaintiff has not presented any evidence that group homes are going
5 out of business.” (Order p. 10, n.5, Ins. 12-13.)

6 The January 2008 proposed budget cuts make the situation quite different from what the
7 Court considered. The Court concluded that by paying approximately 80% of the costs of foster
8 care, the State was in substantial compliance with the CWA. (Order at 7, Ins. 1-2.) However,
9 under the proposed budget, the State will further reduce payments to foster care group homes by
10 10%. The Governor’s proposed budget states, in unequivocal terms, “\$6.8 million in 2007-08
11 and \$81.5 million in 2008-09 for foster care and adoptions programs.” (Johnson Decl., ¶ 4, Ex.
12 1, at 130.) As shown above, the LAO concludes, “[t]he Governor’s budget proposes to reduce...
13 rates for children in FFHs (foster family homes) and GHs (group homes) by 10 percent.”
14 (Johnson Decl., ¶ 5, Ex. 2, at C-131.). Therefore, the State would only pay 70%, not 80%, of the
15 costs.

16 In its Order the Court cautioned, “it is worth repeating, that without further increases over
17 time, the California system may well be in violation of federal law.” (Order at 8, Ins. 22-24.)
18 We are now at that point with the new evidence. The Court recognized that “over time, given the
19 multitude of years with budgetary constraints, the standard rate schedule could become greatly
20 out of synch with the costs of items enumerated in the CWA,” in which case, “the rate may very
21 well fall to a level that does satisfy the State’s obligation.” (Order at 6, Ins. 22-24.). The new
22 evidence of further cuts establishes that “further increases” will not occur either in fiscal year
23 2007-2008 or in fiscal year 2008-2009, and that a 10% decrease may occur. The question
24 becomes, at what point is the RCL “greatly out of synch” with the CWA? Covering less than
25 70% of the costs of items enumerated under the CWA crosses the line, and violates federal law.

26 At the very least, the Court should vacate its Order and judgment and permit the parties
27 to brief the applicable law given the new evidence and California’s new economic reality.

28 Without an opportunity to adequately brief the impact of this new evidence, the legal

1 significance of the State falling further out of synch with the actual costs faced by the State's
2 foster care providers will remain unknown. What is known, however, is that the proposed 10%
3 payment reduction and the denial of the 4.25% CNI-based COLA would render foster care group
4 home providers unable to provide even minimally adequate care to their children and would
5 force them to consider closing their group home programs. (Grubbs Decl., ¶ 4; Boone Decl., ¶ 4;
6 Siler Decl., ¶ 4; Stoner-Mertz Decl. ¶ 4; Markovits Decl. ¶ 4; Neiuber Decl. ¶ 4; Peel Decl. ¶ 4;
7 Darrah Decl. ¶ 4.)

8 Although there is no doubt the State's Budget cuts would save money, there is similarly
9 no doubt that it places in peril thousands of children by jeopardizing the ability of their
10 caregivers to continue providing for them. The United States Supreme Court has held that "[i]t
11 is... peculiarly part of the duty of [federal courts]. . . to resolve disputes as to whether federal
12 funds allocated to the States are being expended in consonance with the conditions that Congress
13 has attached to their use. As Mr. Cardozo stated... 'When [federal] money is spent to promote
14 the general welfare, the concept of welfare or the opposite is shaped by Congress not the states.'
15 Rosado v. Wyman, 397 U.S. 397, 423, 90 S. Ct. 1207, 25 L. Ed. 2d 442 (1970) (holding that
16 New York State method of determining standard of need for welfare payments that reduced
17 payments under federal AFDC welfare violated federal statute). The new evidence supports a
18 finding that the State no longer is substantially compliant with the CWA, and the Court has the
19 authority, and according to the Supreme Court, a duty, to ensure funds allocated under the CWA
20 are spent in consonance with its requirements and purpose.

1 **IV. CONCLUSION**

2 For the foregoing reasons, California Alliance respectfully requests that the Court grant
3 this Motion for Reconsideration and Relief from Judgment, order additional briefing on whether
4 the State's RCL remains substantially compliant with the Child Welfare Act, order additional
5 briefing on the impact the State's payment reductions will have California foster care providers,
6 and permit oral arguments on all issues.

7
8 DATED: March 21, 2008

Bingham McCutchen LLP

9
10 By: _____/s/

11 William F. Abrams
12 Attorneys for Plaintiff
13 CALIFORNIA ALLIANCE OF CHILD AND
14 FAMILY SERVICES

15 Pursuant to General Order No. 45, Section X, I attest that concurrence in the filing of this
16 document has been obtained from Mr. Abrams.