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17 UNITED STATES DISTRICT COURT  
18 NORTHERN DISTRICT OF CALIFORNIA  
19 SAN FRANCISCO DIVISION

20 CALIFORNIA ALLIANCE OF CHILD AND  
21 FAMILY SERVICES,

22 Plaintiff,

23 v.

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

27 Defendants.  
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No. C 06-4095 MHP

**JOINT STATEMENT OF  
UNDISPUTED FACTS REGARDING  
PARTIES' CROSS MOTIONS FOR  
SUMMARY JUDGMENT**

Hearing: September 24, 2007  
Time: 2:00 p.m.  
Place: Ctrm. 15, 18th floor  
Judge: The Hon. Marilyn H. Patel

1 In accordance with Local Rule 56-2 of the Local Rules for the United States  
 2 District Court of the Northern District of California and paragraph 7 of the Standing Order of this  
 3 Court, Plaintiff California Alliance of Child and Family Services (the "Alliance") and  
 4 Defendants Cliff Allenby and Mary Ault submit this joint statement of undisputed facts in  
 5 connection with the parties' cross motions for summary judgment set for hearing on September  
 6 24, 2007.

7 The following is a list of material facts undisputed by the parties:

<b>UNDISPUTED MATERIAL FACT</b>	<b>SUPPORTING EVIDENCE</b>
1. Congress enacted the Adoption Assistance and Child Welfare Act ("Child Welfare Act") in 1980. The Child Welfare Act is codified at 42 U.S.C. §§ 670 - 679b.	42 U.S.C. §§ 670 - 679b.
2. The Child Welfare Act establishes a cooperative federal-state program that assists states in meeting the costs of providing foster care to children. Pursuant to this cooperative program, the federal government and the state governments share the cost of providing funds for licensed third parties ( <i>e.g.</i> , group homes) that care for these children.	42 U.S.C. §§ 670-679b.
3. The Child Welfare Act and related federal regulations require states receiving federal aid to provide foster care for a child when a court has determined that it is necessary under applicable law that the child be removed from his or her home and placed in out-of-home care.	<i>See, e.g.</i> , 42 U.S.C. §§ 670-679b.
4. To become eligible for federal funding, a state must submit a plan for financial assistance to the Secretary of the U.S. Department of Health and Human Services ("DHHS") for approval. As a prerequisite for DHHS approval, the submitting state must agree, among other conditions, to administer its foster care program pursuant to the Child Welfare Act, related regulations, and policies promulgated by the Secretary of DHHS.	42 U.S.C. § 671(a), (b); 45 C.F.R. §§ 233.110, 1355.21, 1356.20, 1356.21.

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2	5. Pursuant to the Child Welfare Act, a state must designate a state agency to administer and/or supervise the administration of the approved state plan.	42 U.S.C. § 671(a)(2).
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5	6. Pursuant to the Child Welfare Act, a state must amend its approved plan by appropriate submission to the Secretary of DHHS whenever, among other instances, necessary to comply with alterations to the Child Welfare Act and/or federal regulations or policies.	45 C.F.R. § 1356.20(e)(1).
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9	7. The Child Welfare Act requires that states participating in the cooperative program provide “foster care maintenance payments” on behalf of eligible children to child-care institutions, including group homes.	42 U.S.C. §§ 671(a)(2), 672(b)(2); 45 C.F.R. § 1356.21(a).
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13	8. “The term ‘foster maintenance payments’ means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child’s personal incidentals, liability insurance with respect to a child, and reasonable travel to the child’s home for visitation. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence.”	42 U.S.C. § 675(4)(A).
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20	9. For all periods relevant to this matter, the California Department of Social Services (“DSS”) has been the state agency responsible for submitting the California state plan to the Secretary of DHHS for approval and, subsequent to receiving that approval, received federal funding that was intended to cover a portion of the foster care maintenance payment made to group homes on behalf of eligible children.	Cal. Wel. & Inst. Code §§ 11229, 11460(a), 11462(a).
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27	10. DSS uses a Rate Classification Level (“RCL”) system to establish payment rates for foster care group home programs.	See Cal. Wel. & Inst. Code § 11462.
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<p>11. A group home program is assigned to one of fourteen levels (<i>i.e.</i>, RCLs) based on the group home program's number of "points" calculated. The number of points calculated for a group home program is based principally on (1) the number of "paid/awake" hours worked per month by child care and social work staff, (2) the qualifications of the staff, and (3) the hours of Mental Health Treatment services provided. The total number of points generated equates to a specific RCL and corresponding rate. With the exception of two group homes having grandfathered-in rates, all of the group home programs with the same RCL receive the same AFDC-FC payment rate based on the standardized schedule of rates in state law. DSS determines group home's RCL and, consequently, the AFDC-FC payment rate, based on information submitted by the group homes.</p>	<p>See Cal. Wel. &amp; Inst. Code § 11462(f); parties stipulate to this fact.</p>
<p>12. For all periods of time relevant to this matter, DSS through the Children and Family Services Division of DSS ("CFSD"), established payment levels for group home foster care providers. The payment levels established under the RCL system are paid by the county that placed the child with the group home or other foster care provider. Each group home program that participates in California's foster care program executes an agreement with the county placement agency to provide and be compensated for care, supervision, and social work services.</p>	<p>Parties stipulate to this fact.</p>
<p>13. The RCL system was implemented by statute, 1989 Cal. Stat. Ch. 1294, during the 1990-1991 state fiscal year, and codified at Welfare &amp; Institutions Code sections 11460 and 11462. The initial standardized schedule of foster care rates for the 1990-1991 fiscal year was developed using 1985 calendar year costs and adjusted to the costs for each fiscal year by the amount of the</p>	<p>Parties stipulate to this fact.</p>

1	California Necessity Index ("CNI"). Since	
2	this time, the standardized schedule of foster	
3	care rates established under the RCL system	
4	has been increased by approximately 27	
	percent.	
5	14. The CNI is a weighted average of increases	<i>See, e.g.,</i> Cal. Wel. & Inst. Code §§
6	in various necessary costs of living for low-	11453, 11462.
7	income consumers, including food, clothing,	
8	fuel, utilities, rent, and transportation.	
9	Various statutes require state entities to use	
10	the CNI when calculating cost-of-living	
11	adjustments.	
12	15. Since the 1990-1991 fiscal year, the increase	Parties stipulate to this fact.
13	in average actual costs that some group	
14	homes incur to care for and supervise	
15	children exceeds 27 percent.	
16	16. The CNI has increased from the 1990-1991	Parties stipulate to this fact.
17	fiscal year by approximately 59 percent	
18	through State fiscal year 2006-2007.	
19	17. The percentage of actual costs that group	Parties stipulate to this fact.
20	homes recoup through the RCL system has	
21	diminished over time due, in part, to (1) an	
22	increase in the actual costs associated with	
23	food, clothing, shelter, daily supervision,	
24	school supplies, a child's personal	
25	incidentals, liability insurance with respect	
26	to a child, and reasonable travel to the	
27	child's home for visitation, and (2) "new"	
28	costs that group homes must incur to satisfy	
	added federal, state, and county	
	requirements.	
	18. The amounts comprising the standardized	Parties stipulate to this fact.
	schedule of rates remained unchanged at	
	their original 1990-91 levels in State fiscal	
	years 1991-92, 1992-93, 1993-94, 1994-95,	
	1995-96, 1996-97, and 1997-98. They were	
	increased by 6% effective July 1, 1998, by	
	2.36% effective July 1, 1999, by 2.36%	
	effective January 1, 2000, and by 2.96%	
	effective July 1, 2000. They were increased	
	by an average of 5.70% on January 1, 2001	
	when the amount included in each of the	

<p>1 standard rates for the wages and benefits of  2 child care and social work staff was  3 increased by 10%. They were increased by  4 4.85% effective July 1, 2001. The  5 standardized schedule of rates remained  6 unchanged at their 2001-02 levels in State  7 fiscal years 2002-03, 2003-04, 2004-05,  8 2005-06, and 2006-07.”</p>	
<p>6 19. During the period covered by State Fiscal  7 Years 1990-91 through 2006-07, the  8 increases in the CNI were as follows:  9 5.49% for 1991-92, 1.81% for 1992-93,  10 2.37% for 1993-94, 1.69% for 1994-95,  11 1.48% for 1995-96, 0.52% for 1996-97,  12 2.60% for 1997-98, 2.84% for 1998-99,  13 2.36% for 1999-2000, 2.96% for 2000-01,  14 5.31% for 2001-02, 3.74% for 2002-03,  15 3.46% for 2003-04, 2.75% for 2004-05,  16 4.07% for 2005-06, and 3.75% for 2006-07.</p>	<p>Parties stipulate to this fact.</p>
<p>13 20. For purposes of exhaustion of administrative  14 remedies before a party may bring a lawsuit,  15 there is no administrative process or remedy  16 available for the Alliance or its members to  17 challenge the propriety of the RCL system.</p>	<p>Parties stipulate to this fact.</p>

17 DATED: September 4, 2007

Bingham McCutchen LLP

19  
20 By: \_\_\_\_\_ /s/  
21 Michael D. Mortenson  
22 Attorneys for Plaintiff  
23 CALIFORNIA ALLIANCE OF CHILD AND  
24 FAMILY SERVICES

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

1 DATED: September 4, 2007

Edmund G. Brown, Jr.  
Attorney General of the State of California

2  
3  
4 By: \_\_\_\_\_ /s/  
5 George Prince  
6 Deputy Attorney General  
7 Attorneys for Defendants  
8 CLIFF ALLENBY AND MARY AULT

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