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LODGED

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DATE: _____

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

MARK A., ZACHARY A., RICK B.,)
KRISTIE B., JOHN B., CHARLES D.,)
JIMMY C., BONITA and BARBARA G.)
through their Guardian Ad Litem, ALICE)
BUSSIÈRE, MEGAN F. through her)
Guardian Ad Litem, JOHN F., and)
NATHAN H., through his Guardian Ad)
Litem, SYLVIA G.,)

Plaintiffs,

vs.

Case No. Civ-S-98-0041LKKDAD

STIPULATED JUDGMENT

105

1 GRAY DAVIS, in his official capacity)
 as the Governor of the State of California;)
 2 RITA SAENZ, in her official capacity)
 as Director, California Department of)
 3 Social Services; and the CALIFORNIA)
 4 DEPARTMENT OF SOCIAL SERVICES,)
)
 5 Defendants and Third Party Plaintiffs,)
)
 6 DONNA E. SHALALA, Secretary of)
 7 Health and Human Services,)
)
 8 Third Party Defendant.)
)

10 INTRODUCTION

11 This Stipulation settles and resolves the issues in *Mark A. et al. v. Davis* (CIV-S-98-
 12 0041) United States District Court, Eastern District of California. The case is a federal civil
 13 rights action filed January 8, 1998, on behalf of the named plaintiffs who are foster and adopted
 14 children and similarly situated children who are eligible for California's Adoption Assistance
 15 Program. Plaintiffs' First Amended Complaint called for declaratory and injunctive relief from
 16 Defendants' policies, practices, acts and omissions in the administration of the Adoption
 17 Assistance Program pursuant to the Adoption Assistance and Child Welfare Act, 42 U.S.C.
 18 § 671, *et seq.*, that violate plaintiffs rights under federal law by:

- 21 a. using a means test, including requiring the use of the statewide median income to
- 22 determine payment amounts and requiring families to produce evidence of income
- 23 and expenses as a condition of receiving AAP benefits upon initial application or
- 24 as part of the recertification process;
- 25
- 26 b. arbitrarily and unilaterally reducing AAP payments based on adoptive parents'
- 27 income or for any reason other than the child's ineligibility because of age, the
- 28

1 parents no longer being legally responsible for, or providing support to, the child,
2 or the amount of the payment exceeding the amount which would have been paid
3 for the child in a foster family home; and

- 4 c. informing prospective adoptive families that eligibility for adoption assistance
5 payments is based on a means test.
6

7 The Defendants filed a third-party complaint against Donna E. Shalala, Secretary of the United
8 States Department of Health and Human Services.

9
10 RECITALS AND REPRESENTATIONS

- 11 i. The parties have reached mutual agreement that the terms of this
12 Stipulation constitute an appropriate and acceptable resolution of the
13 named plaintiffs' claims and the claims in the Third Party Complaint.
14 ii. The plaintiff class has not been certified. This Stipulation is entered into
15 by plaintiffs' counsel on behalf of the named plaintiffs, by and through
16 their guardians ad litem, and by counsel for the defendants.
17

18 NOW THEREFORE, the parties hereby stipulate that a judgment be entered which shall
19 incorporate the following terms and conditions:

20 JURISDICTION

- 21 iii. This Court has jurisdiction of the subject matter of this action (28 United
22 States Code §§ 1331, 1343(a)(3), 1343(a)(4), 2201, 2202, F.R.C.P., Rules
23 57, 65) and personal jurisdiction over all the defendants to this action. The
24 Court also has the authority to approve and grant all relief included in this
25 Stipulation.
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PARTIES

- iv. The named plaintiffs in this action are foster and adopted children, by and through their guardians ad litem, who were, or are now, eligible for California's Adoption Assistance Program, administered pursuant to 42 U.S.C. § 673 and the regulations promulgated thereunder (the "Plaintiffs").
- v. The defendants are Gray Davis, the Governor of the State of California, the California Department of Social Services ("CDSS") and its Director Rita Saenz (collectively the "State Defendants"). The Third-Party Defendant is Donna E. Shalala, Secretary of Health and Human Services.
- vi. This Stipulation shall be binding on all defendants, their successors, officers, agents, employees, and all other persons acting in concert or participation with them. It shall apply to the named plaintiffs.

DEFENDANTS' OBLIGATIONS

- vii. Defendants Saenz and CDSS agree to cease:
 - a. requiring the use of the statewide median income to determine AAP eligibility and payment amounts and requiring families to produce evidence of income and expenses as a condition of receiving AAP benefits upon initial application or as part of the recertification process;
 - b. reducing AAP payments without the agreement of the adoptive parents based on the adoptive parents' income or for any reason other than the child's ineligibility because of age, the parents no

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longer being legally responsible for, or providing support to, the child, or the AAP payment amount exceeding the amount which would have been paid for the child in a foster family home; and

c. informing prospective adoptive families that eligibility for adoption assistance is based on the income and financial resources of the adoptive parents.

viii. Defendants Saenz and the CDSS will within 30 days of entry of this Stipulated Judgment issue an all county letter and/or notice, which shall be approved by plaintiffs' counsel, to every county notifying each agency of the terms of this settlement and directing every agency to cease using the current AAP application and recertification procedures and to process AAP applications and all reassessments of AAP consistent with the following requirements:

a. There shall be no means test used to determine an adoptive family's benefits under the Adoption Assistance Program, including the use of the statewide median income to determine payment amounts. The amount of an adoption assistance cash benefit, if any, shall be a negotiated amount based upon the needs of the child and the circumstances of the family. "Circumstances of the family" means the family's ability to incorporate the child into the household in relation to the lifestyle, standard of living, and future plans and to the overall capacity to meet the immediate and future needs, including education, of the child.

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b. Once an AAP agreement has been signed, the adoptive parents will continue to receive benefits in the agreed upon amount unless one of the following occurs:

1. The department determines that the adoptive parents are no longer legally responsible for the support of the child.
2. The department determines that the child is no longer receiving support from the adoptive family.
3. The adoption assistance payment exceeds the amount that the child would have been eligible for in a foster family home.
4. The adoptive parents demonstrate a need for an increased payment.
5. The adoptive parents voluntarily reduce or terminate payments.
6. The adopted child has an extraordinary need that was not anticipated at the time the amount of the adoption assistance was originally negotiated.

c. All families will have the right to have their AAP benefits reassessed consistent with the requirements set forth above in subparagraphs (a) and (b) of this section.

ix. Defendants Saenz and CDSS will reverse the fair hearing decision upholding the recertification termination of Plaintiff Megan F.'s AAP benefits, notify Santa Clara County of the reversal and terms of this

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settlement, and direct Santa Clara County to rescind the AAP overpayment notice issued to her parents and to reassess plaintiff Megan F.'s AAP benefits consistent with the terms of this agreement.

- x. Defendants Saenz and CDSS will Notify Sacramento County of the terms of this settlement and direct the county to process a request for AAP payments made on behalf for Nathan H. consistent with the terms of this agreement. The intent of this provision is to place Nathan H. in the position he would have been in had the policies set forth in paragraph viii. above been in place at the time his parents initially applied for AAP.
- xi. Should an application for adoption and AAP benefits be made on behalf of plaintiff Jimmy C., Defendants Saenz and CDSS will process, and or direct Mendocino County to process, such AAP application consistent with the terms of this agreement.
- xii. If Assembly Bill 390 is passed by the Legislature and becomes law, Defendants Saenz and CDSS will submit to the Office of Administrative Law emergency regulations to implement AB 390.
- xiii. Defendants Saenz and CDSS will by December 31, 2000 develop and deliver training to all county adoption agencies on the changes in the administration of AAP made pursuant to this agreement and pursuant to AB390 should it become law.
- xiv. Defendants Saenz and CDSS will develop, and/or update, and distribute a statewide publication that describes AAP and incorporates the AAP requirements set forth in this settlement.

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xv. Defendants Saenz and CDSS will notify all families who have received a notice of action on an AAP application or recertification since January 1, 1998, of the AAP policy changes made pursuant to the terms of this settlement.

ATTORNEYS' FEES

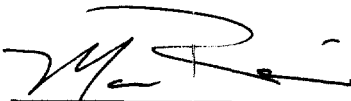
xvi. The State Defendants agree that Plaintiffs are the prevailing parties, are entitled to reasonable attorneys' fees and costs from the State Defendants, and may request from this Court an award if the State Defendants and Plaintiffs are unable to resolve the issue of the amount of such fees by agreement.

THIRD PARTY COMPLAINT

xvii. The State Defendants hereby dismiss their Third Party Complaint against the Third-Party Defendant with each party bearing its own fees and costs.

IT IS SO STIPULATED

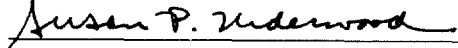
Dated: September 17, 1999



MARIA RAMIU
CAROLE SHAUFFER
SHANNAN WILBER
Youth Law Center

Attorneys for Plaintiffs

Dated: 9-28-99



SUSAN P. UNDERWOOD
BILL LOCKYER
FRANK S. FURTEK
Office of the Attorney General

Attorneys for Defendants

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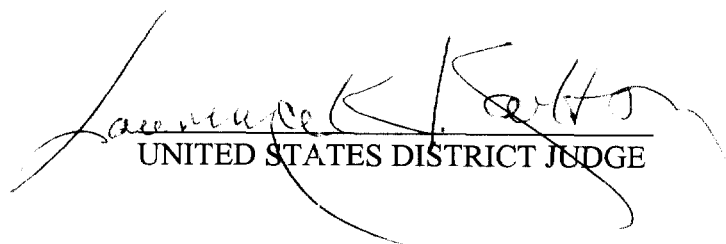


SHEILA M. LIEBER
CAROLE A. JEANDHEUR
Department of Justice, Civil Division

Attorneys for Third Party Defendant

IT IS SO ORDERED

Dated: 11/1/99


UNITED STATES DISTRICT JUDGE

United States District Court
for the
Eastern District of California
November 2, 1999

* * CERTIFICATE OF SERVICE * *

2:98-cv-00041

A

v.

Wilson

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Eastern District of California.

That on November 2, 1999, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office, or, pursuant to prior authorization by counsel, via facsimile.

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Jack L. Wagner, Clerk

BY: 
