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**ENDORSED
 FILED
 ALAMEDA COUNTY**

FEB 05 2001

**CLERK OF THE SUPERIOR COURT
 By Dorothy Duckett, Deputy**

12 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 13
 14 **FOR THE COUNTY OF ALAMEDA**

15	CHRISTA DONALDSON and)	Case No. 835661-9
16	YVETTE DRAUGHTY)	
)	
17	Petitioners/Plaintiffs,)	PETITION FOR WRIT OF
)	MANDATE AND COMPLAINT
18	v.)	FOR INJUNCTIVE RELIEF
)	
19	KATHY ARCHULETA in her capacity as)	
20	Acting Director of the Alameda County)	
	Social Services Agency and ALAMEDA)	
21	COUNTY SOCIAL SERVICES AGENCY)	
)	
22	Respondent/Defendants.)	
23)	

24 **INTRODUCTION**

25
 26 1. This is a Petition for Writ of Mandate and Complaint for injunctive relief seeking to require
 27 the Alameda County Social Service Agency to comply with state and federal protections for
 28 foster children. Petitioners/Plaintiffs are citizen taxpayers of Alameda County and allege that

1 Respondent/Defendants have continuously violated state child welfare regulations designed
2 to protect the health, safety, and wellbeing of the abused and neglected children whose care
3 has been entrusted to them. Among other things, Respondent/Defendants fail to maintain
4 regular contact with these children, to provide them with adequate medical and dental care, to
5 provide caregivers with basic information about their medical and educational needs, and to
6 make long term plans that ensure their safety. Unless this court orders Respondent/
7 Defendants to perform their legal duties, innocent children will continue to suffer irreparable
8 harm and the County of Alameda is at risk of losing substantial state and federal funding.

10 PARTIES

11 2. Petitioner/Plaintiff CHRISTA DONALDSON, a licensed clinical psychologist, is a citizen
12 and taxpayer in Alameda County. Petitioner/Plaintiff Donaldson has been assessed and has
13 paid taxes to the County of Alameda, within one year prior to the commencement of this
14 lawsuit. Petitioner/Plaintiff Donaldson brings this action pursuant to California Code of
15 Civil Procedure § 526a to enjoin the illegal and wasteful policies and practices of
16 Respondents/Defendants.

18 3. Petitioner/Plaintiff YVETTE DRAUGHTY is a citizen and taxpayer in Alameda County.
19 Petitioner/Plaintiff is a former employee of a foster care provider in Alameda County.
20 During the course of her employment, Petitioner/Plaintiff witnessed first hand Respondent/
21 Defendants failure to comply with state and federal protections for foster children. Petitioner
22 Draughty brings this action pursuant to California Code of Civil Procedure § 526a to enjoin
23 the illegal and wasteful policies and practices of Defendants/Respondents.

25 4. Defendant ALAMEDA COUNTY is a local government duly authorized and formed under
26 the laws of the State of California. Pursuant to Welfare and Institutions Code §16500
27 Alameda County maintains a specialized organizational entity responsible for its child
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1 welfare services program.

2 5. Respondent/Defendant KATHY ARCHULETA is the Acting Director of the Alameda
3 County Social Services Agency and is responsible for the administration of child welfare
4 services in Alameda County. She is sued in her official capacity.

5 STATUTORY AND REGULATORY FRAMEWORK

6 A. Federal Statutory Scheme

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8 6. Child welfare services are public social services directed at protecting and promoting the
9 welfare of children in California. A primary goal of the California child welfare system is to
10 protect children from harm.

11 7. The child welfare services program is a joint federal-state program, governed by Title IV-B
12 and IV-E of the Social Security Act. 42 U.S.C.A. §§ 621 et seq. and 671 et seq. While state
13 participation in these programs is not mandatory, states that choose to participate must
14 comply with federal requirements. The federal government provides substantial funding to
15 the states to provide child welfare services. In order to receive these funds, the states must
16 operate their child welfare services programs in compliance with enumerated federal
17 requirements under a detailed state plan.

18
19 8. Federal law requires that child welfare agencies: (1) develop a case plan for each child that
20 assures the child receives safe and proper care and that he or she will return home or to
21 another permanent placement as soon as possible and that the child, his or her parents, and
22 the child's foster parents receive appropriate services; (2) develop an independent living plan
23 for children 16 years and older so that they will be able to be self supporting on leaving care;
24 and (3) provide the child's current health and education records to the foster parent or foster
25 care provider at the time of placement. 42 U.S.C. §§ 622(b)(10)(B)(ii), 675(1), (5)(D).

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27 9. Although states have some discretion in the design of child welfare services, federal law
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1 requires states to administer and supervise the services, use proper and efficient methods to
2 operate them, and arrange for periodic independent audits. 42 U.S.C. §§ 629b(a)(1) & (6),
3 671(a)(2), & 671(a)(13). Federal law also requires the state child welfare services plan to be
4 in effect in all political subdivisions of the state and, if administered by those subdivisions, to
5 be mandatory upon them. 42 U.S.C. § 671(3).

6
7 10. To insure compliance with federal requirements, the federal government conducts periodic
8 conformity reviews to determine program adherence to federal standards and the state plan.
9 State failure to comply can result in reduced federal funding for the state program. The
10 penalties can be significant. For example, in 1991, California was notified that it failed a
11 federal audit and was asked to return nearly \$13 million in federal funds. California was able
12 to avoid this fiscal penalty only by providing additional evidence demonstrating compliance
13 with certain federal requirements. However California was not able to resolve this issue until
14 April 1996.
15

16 B. State Statutory and Regulatory Scheme

17 11. State law designates the California Department of Social Services (CDSS) as the single state
18 agency responsible for administration of child welfare services on a statewide basis in
19 accordance with federal law. Welfare & Institutions Code §10600. To ensure compliance
20 with federal law including the child welfare services plan requirement, CDSS has developed
21 a system of regulations with which counties must comply.
22

23 12. In each county in California, a County Child Welfare Agency is charged by law with
24 providing child welfare services to children who are dependents of the court in order to
25 ensure that these children are kept safe and provided with services necessary to their health,
26 protection, and welfare. Each County Child Welfare Agency is responsible for the well
27 being of children who are in their own homes under protective supervision as well as
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1 children who have been removed from home and placed in substitute care by the court.
2 Pursuant to Welfare and Institutions Code §§ 16501(c) & 16502, counties must operate child
3 welfare services in accordance with the standards and regulations established by CDSS.

4 13. Children who have suffered or are at risk of suffering serious harm because of abuse or
5 neglect are taken into custody and placed in foster care in the care, custody, and control of
6 the County Child Welfare Agency.

7
8 14. CDSS has promulgated Division 31 of the CDSS Manual of Policies and Procedures (MPP)
9 to govern child welfare services in California. The requirements of Division 31 include, *inter*
10 *alia*:

11 a. A case plan to ensure that the child receives protection and proper case
12 management and that services are provided to the child and parents, or other caretakers, as
13 appropriate.

14 b. Regular contact between the social worker and the child, including contact during
15 the emergency removal process to assess risk and ensure the continued protection of the
16 child, and regular contact thereafter to monitor the child's safety and well-being, monitor the
17 child's progress and assess the effectiveness of services, provide continuity and a stability
18 point for the child, and communicate with the child regarding plans for the future.

19 c. Provision of information about the child's background, including health and
20 education history, to the current caregiver.

21 d. Periodic medical exams in accordance with the Child Health and Disability
22 Prevention (CHDP) periodicity schedule.

23 e. Annual dental exams for children over the age of three.

24 f. An Independent Living Program plan to assist children over the age of 16 with
25 obtaining training, job skills, employment and housing to prepare for his or her
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1 emancipation.

2 15. Prior to the establishment of Division 31, child welfare requirements were promulgated as
3 Division 30 of the MPP.

4 16. CDSS has developed a program audit procedure to monitor and conduct periodic program
5 reviews of County Child Welfare Agency activities related to child welfare and foster care
6 services. These audits are designed to ensure that the State is in compliance with federal and
7 state requirements and that the County Child Welfare Agencies are providing services that
8 effectively protect the safety and well being of all children receiving child welfare services in
9 compliance with state and federal law.
10

11 17. Audits of County Child Welfare Agencies consist of an on site review of a randomly selected
12 sample of files to determine documented compliance with state and federal law. The
13 audit protocol examines performance in areas governed by the Division 31 regulations.
14

15 FACTUAL ALLEGATIONS

16 18. For more than 15 years, Alameda County has routinely violated State Child Welfare
17 Regulations. In every state audit conducted since 1986, CDSS has found Alameda County to
18 be out of compliance with Division 31 and its predecessor, Division 30. Despite the
19 development of corrective action plans, Alameda County has failed to come into and remain
20 in compliance with basic health and safety requirements designed to protect children in state
21 care.
22

23 19. In April 1992, CDSS audited Alameda County for the month of February, 1992, and found
24 the county out of compliance with state child welfare regulations in five of the thirty-seven
25 areas reviewed:

- 26 a. Timely face to face contact with the child;
27 b. Timely contact with the parent or guardian;
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- c. Timely contact with the foster parent;
- d. Signature of the parent or guardian on the case plan; and
- e. Current medical and dental examination.

20. Alameda County submitted several corrective action plans, which CDSS determined were not complete. After revisions to conform the corrective action plan to Division 31 regulations that became effective on July 1, 1993, Alameda County submitted a corrective action plan on May 9, 1994. However, the County did not submit progress reports and failed to come into compliance with all requirements.

21. In 1997, CDSS conducted a review and found the county out of compliance in all twelve areas reviewed. The County did not submit progress reports and failed to come into compliance with all requirements.

22. In October 1999, CDSS conducted a review of September 1999 cases in Alameda County. The review focused on nine areas of service provision and found the county out of compliance in all nine areas reviewed. These violations include:

- a. Failure to conduct in-person investigations of child abuse reports within the time frames required by law;
- b. Failure to see children regularly during the first 30 days after a child abuse report is first investigated;
- c. Failure of social workers to visit children under their supervision in accordance with state requirements;
- d. Failure to provide children with physical health examination in accordance with required schedules and to provide required health care;
- e. Failure to provide children with dental exams and dental care;
- f. Failure to provide basic information about children's health and educational

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histories to out-of-home care provider;

- g. Failure to develop Independent Living Plans for youth over the age of 16;
- h. Failure to complete case plans in a timely manner; and
- i. Failure to obtain parent's signature on the case plan.

23. As a result of this audit, the County was required to develop a corrective action plan.

24. In October of 2000, CDSS conducted a statistically valid audit of the County. The County continued to be in violation in all nine areas.

25. These failures were egregious. For example, of the cases reviewed, Respondent/Defendants failed to timely investigate over a quarter of child abuse complaints reported. Social workers had missed visits with 20 to 50 percent of the children whose cases were reviewed. Fewer than 12% of foster caregivers had received health or educational information about the child. Forty percent of children temporarily in foster care had not received necessary physical exams. A third of all children had not received dental exams. Independent Living Plans were developed for only 4% of the children who required them.

26. As is obvious from the nature of these violations, the County's failure to comply with these regulations endangers the children in its care, decreases the likelihood that they will return home or find other permanent families, and increases the likelihood that they will become indigent and homeless when they leave the system.

27. The failure of the Respondent/Defendants to fulfill their mandatory duties constitutes a waste of public funds within the meaning of California Code of Civil Procedure § 526a.

FIRST CAUSE OF ACTION

WRIT OF MANDATE – COUNTY RESPONDENT

28. The failure of Respondent Archuleta to comply with CDSS standards and regulations violates Welfare and Institutions Code §§ 16501(c) & 16502 and the federal Adoption

1 Assistance and Child Welfare Act, 42 U.S.C. §§ 620-629, 670-679. As a result, children are
2 denied effective child welfare services and placed at unnecessary risk of ongoing and
3 irreparable harm, and the State of California is at risk of losing substantial federal funding.

4 29. Respondent has a clear legal duty to comply with federal and state child welfare statutes and
5 regulations. Respondent has at all relevant times had the ability to comply with this duty but
6 has failed and refused to do so. Unless the court issues the requested writ, Respondent will
7 continue to violate her clear legal duties.
8

9 30. This constitutes a waste of public funds within the meaning of Code of Civil Procedure §
10 526a.

11 SECOND CAUSE OF ACTION

12 INJUNCTIVE RELIEF – COUNTY DEFENDANTS

13 31. The failure of Respondent/Defendants Archuleta and ALAMEDA COUNTY, to comply
14 with CDSS standards and regulations violate Welfare and Institutions Code §§ 16501(c) &
15 16502 and the federal Adoption Assistance and Child Welfare Act, 42 U.S.C. §§ 620-629,
16 670-679. As a result, children are denied effective child welfare services and placed at
17 unnecessary risk of ongoing and irreparable harm, and the State of California is at risk of
18 losing substantial federal funding.
19

20 32. This constitutes a waste of public funds within the meaning of Code of Civil Procedure §
21 526a.
22

23 PRAYER FOR RELIEF

24 Petitioners request that this Court:

- 25 1. Issue a writ of mandate pursuant to Code of Civil Procedure § 1085 commanding
26 Respondent Archuleta to come into compliance with state and federal statutes and regulations
27 immediately.
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2. Issue a permanent injunction requiring Respondent/Defendants Archuleta and Alameda County, to come into compliance with state and federal statutes and regulations immediately and to take all actions necessary to ensure the health and safety of children in their care.

3. Award Petitioners/Plaintiffs attorneys' fees and costs as allowed by law.

4. Grant such other and further relief as the Court finds just and proper.

Dated: February 5, 2001

Respectfully submitted,

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ALICE BUSSIÈRE
CAROLE B. SHAUFFER
YOUTH LAW CENTER

By: /s/
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MELISSA FRYDMAN
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Melissa Frydman
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Yvette Draughty

VERIFICATION

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I, the undersigned, declare:

I am a Petitioner in this action. I have read the above Petition for Writ of Mandate/Complaint and know its contents. All facts alleged in therein are true of my own personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on February 5, 2001 in Alameda County, California.

/s/
CHRISTA DONALDSON

VERIFICATION

I, the undersigned, declare:

I am a Petitioner in this action. I have read the above Petition for Writ of Mandate/Complaint and know its contents. All facts alleged in therein are true of my own personal knowledge.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on February 5, 2001 in Alameda County, California.

/s/

YVETTE DRAUGHTY

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