

- 1 2. When children must be removed from the custody of their parents because of abuse,
2 neglect, or abandonment, state and federal law require child welfare agencies to consider
3 placement with relatives who are willing and able to care for them before looking for
4 alternative placements with caregivers who are strangers. Child welfare agencies in
5 California have long relied on relatives for foster care placements. Currently, 46% of
6 children in foster care in California are placed with relatives. In order to ensure that
7 children placed with relatives are safe, both state and federal law require that relative
8 placements meet basic health and safety standards established for licensing foster
9 families. In order to receive federal foster care funds, Respondent/Defendants must
10 certify to the federal government that the homes of all federally funded relative foster
11 parents have either been licensed or approved as meeting these licensing standards.
- 12 3. Respondent/Defendants have not established an effective system to evaluate and approve
13 the homes of relatives and to assist relatives in meeting licensing standards. They have
14 claimed federal reimbursement for the costs of relative placements, and so, certified to
15 the federal government that these placements meet licensing standards. However, there is
16 no system in place to determine that these homes may not meet these standards. They
17 have not taken actions necessary to determine whether relative homes meet these
18 standards or to assist families in complying with licensing requirements. As a result of
19 this, foster children may be subjected to dangerous and unhealthful conditions and may
20 be deprived of placement with relatives who are willing and able to care for them. In
21 addition, the 46% of California foster children who are placed with relatives are in danger
22 of losing their monthly foster care benefits, and California stands to lose substantial
23 federal funding.

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25 II. PARTIES

- 26 4. Petitioner/Plaintiff REVEREND FRANK HIGGINS ("Reverend Higgins") is a taxpayer
27 residing in the State of California. He has worked extensively to keep families involved
28 in the child welfare system together. In addition, as pastor of a church in Pasadena, he

1 ministers to families that care for or have children in the foster care system. Reverend
2 Higgins is assessed to pay, and within one year of this lawsuit has paid, taxes to the State
3 of California.

4 5. Defendant CALIFORNIA DEPARTMENT OF SOCIAL SERVICES (“CDSS”) is
5 responsible for establishing and supporting a public system of state-wide child welfare
6 services, supervising the administration of state public social services, including child
7 welfare services, and securing full compliance with applicable provisions of state and
8 federal law. Welfare & Institutions Code Section 10600. CDSS is required to adopt and
9 enforce regulations governing facilities that care for abused and neglected children, to
10 monitor conditions and practices in these placements, and to ensure the well being of
11 children by enforcing licensing requirements. Health & Safety Code Sections 1500, *et*
12 *seq.* CDSS is also required to provide technical assistance to county placement agencies
13 to encourage and facilitate the evaluation and development of needed placement
14 resources and programs. Welfare and Institutions Code §16001(a).

15 6. Respondent/Defendant RITA SAENZ (“Saenz”), Director of California Department of
16 Social Services, is responsible for administering the laws relating to child welfare
17 services; promulgating regulations and standards; and supervising the administration of
18 public social services, including child welfare services. Welfare & Institutions Code
19 Sections 10553, 10554. Under Welfare & Institutions Code Section 10605, she has the
20 authority to enforce state and federal statutes and regulations.

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22 III. FACTUAL ALLEGATIONS

23 7. Counties operate their child welfare systems using a blend of state, county and federal
24 funds. Counties are required to comply with regulations issued by the CDSS as well as
25 their own policies. Counties are also required to comply with state and federal laws and
26 regulations.

- 1 8. The CDSS develops, implements, and enforces regulations that govern the operation of
2 child welfare services, including foster care. These regulations incorporate the
3 requirements of state and federal law.
- 4 9. In order to receive federal funds for the operation of the foster care system, CDSS
5 submits a plan (IV-E plan) to the U.S. Department of Health and Human Services. This
6 plan provides assurances to the federal government that California is, and will be, in
7 compliance with all federal requirements for receipt of these funds. In addition, in
8 submitting claims to the federal government, CDSS certifies that all expenses claimed are
9 valid and comply with the requirements of federal law.
- 10 10. Although states have some discretion in the design of child welfare services, federal law
11 requires states to administer and supervise the services, use proper and efficient methods
12 to operate them, and arrange for periodic independent audits. 42 U.S.C. §§ 629b(a)(1) &
13 (6), 671(a)(7) & (13). Federal law also requires the state child welfare services plan to be
14 in effect in all political subdivisions of the state and, if administered by those
15 subdivisions, to be mandatory upon them. 42 U.S.C. § 671(3).
- 16 11. For many years, CDSS and the counties have relied on relatives to provide homes for
17 children in the foster care system. State law gives a clear preference to placement with
18 relatives. Federal law also requires states to give priority in placement with relatives. In
19 California, not all of these relatives have been required to be licensed or meet licensing
20 standards. In fact, until the late 1990s, some relatives' homes were not investigated in
21 any way prior to placement of a child with a relative. These relatives were and are paid
22 for the care of these children with federal foster care funds.
- 23 12. California provides foster care maintenance payments for the care of all children who
24 qualify under Title IV-E and for all children living with non-related foster parents. Foster
25 children who are not IV-E eligible and who are placed with relative caregivers are not
26 eligible for foster care maintenance payments in California.
- 27 13. Approximately 46% of foster children in California have been placed in the homes of
28 relatives. The vast majority of these relatives receive foster care payments to meet the

1 child's basic expenses. All of these relative foster parents were informed that the
2 children in their care were eligible for foster care payments when the child first came to
3 live with them. If children lose eligibility for these payments, their quality of life will be
4 substantially reduced or the relative foster parents will be unable to care for them at all.

5 14. In 1999, HHS promulgated new regulations clarifying the requirement of 42 U.S.C.
6 672(c) that children on whose behalf federally reimbursable foster care payments are
7 made must be placed in homes that are licensed or approved as meeting licensing
8 standards. 65 Fed. Reg. 4032-4033, HHS Child Welfare Policy Manual, 8.3A.8c.

9 15. As a result of these regulations and California's policy and practice concerning relative
10 placements, children placed with relatives may no longer be eligible for federal
11 reimbursement under Title IV-E of the Social Security Act. Because California does not
12 provide foster care maintenance benefits for children living with relatives who are not
13 IV-E eligible, these children would no longer be eligible for foster care payments at all.

14 16. The federal regulations took effect on March 27, 2000. As of that date, all relative homes
15 were to be licensed or approved as meeting licensing standards. States were given a six-
16 month grace period until September 28, 2000, to license or approve existing homes to
17 avoid disruption to children and to give relatives time to meet standards. This grace
18 period would enable states to comply with the federal preference for placement with
19 relatives and with federal policy against multiple moves for children in foster care.

20 17. CDSS has not complied with these regulations. CDSS remains out of total compliance
21 with federal regulations and children placed with relatives remain ineligible for federal
22 reimbursement under Title IV-E.

23 18. Throughout this period, CDSS continued to certify to the federal government that it was
24 in compliance with applicable regulations and to claim federal reimbursement for
25 payments that may be ineligible for reimbursement.

26 19. In March, 2001, CDSS informed HHS that compliance with the relative approval
27 requirements would require a change in state laws and regulations and provided HHS
28 with information about its plans to comply.

- 1 20. In 2001, the California State Legislature enacted a law modifying licensing requirements
2 and requiring that relative foster parents be approved as meeting the new licensing
3 standards. Assembly Bill No. 1695 (stats. 2001 ch. 653).
- 4 21. In response to the new law, CDSS sent out an all county letter informing counties that as
5 of January 1, 2002, relatives' homes must be approved. CDSS also promulgated draft
6 regulations requiring that relatives' homes be approved.
- 7 22. CDSS did not establish uniform procedures, guidelines, or training for approving
8 relatives. CDSS did not ensure that standards for approving relatives were uniform
9 throughout the State.
- 10 23. CDSS has not developed a system for determining whether counties have complied with
11 the requirement that relative foster parents be approved. CDSS has not required that
12 counties submit plans for compliance.
- 13 24. This contrasts with licensing requirements for foster homes. CDSS directly or indirectly
14 controls licensing. There are clear procedures and protocols for licensing workers to
15 follow. Licensing is done by an independent unit that is not responsible for placement.
16 Licensing has a comprehensive due process appeals procedure for licensees and a formal
17 process for granting waivers and exceptions that do not endanger the health and safety of
18 children. Licensing revisits a home each year to determine whether it remains in
19 compliance. Licensing has a comprehensive complaints procedure to protect the rights of
20 children. Licensing workers are specifically trained on licensing requirements.
- 21 25. CDSS has not ensured that the approval procedures for relative placements are not
22 comparable to the licensing procedures for foster homes. Relative foster parents and the
23 children in their care are not afforded all of the procedures, protocols and protections that
24 are afforded to non-relative foster parents in the licensing process. As a result, approval
25 of a relative foster home under current policy and practice does not assure that the home
26 meets all licensing standards and there is no adequate and uniform process for ensuring
27 that denials are correct.
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- 1 26. The failure of current policy and practice is born out by a study conducted of 200
2 randomly selected relative foster homes in Los Angeles County in the first months of
3 2002. None had been through the approval process. The study assessed these relatives on
4 whether they met licensing or approval standards. One hundred and ninety eight of these
5 homes did not meet licensing requirements. Many had not had criminal records
6 clearances. Some had no beds for children; some did not meet fire safety. Most homes
7 had violations that were dangerous or unhealthful, but could be easily remedied with
8 assistance by the placing or licensing agency. Because they had not been approved or
9 licensed and did not meet approval or licensing standards, all of these homes were
10 ineligible for federal reimbursement and, therefore, ineligible for foster care payments.
- 11 27. CDSS continues to claim reimbursement for these homes and others in similar situations.
- 12 28. In June, July and August of this year, HHS concluded that CDSS was submitting
13 inadequately substantiated claims for reimbursement and withheld 37.4 million dollars.
14 HHS intends to continue to withhold at least \$18.7 million per quarter until the relative
15 approval issue is resolved.
- 16 29. Despite ongoing communication with HHS, CDSS has not fully complied with federal
17 law.
- 18 30. Because Respondent/Defendants' did not fully comply with this clearly mandated duty,
19 children may be living in potentially unhealthful and dangerous conditions. For example,
20 in Los Angeles County in 2001, a young child died of neglect while in the home of a
21 grandparent. The child had no bed, the home was unsanitary and overcrowded, and the
22 grandparent was known to have serious problems supervising the child. Nevertheless, the
23 child was allowed to stay in the home and the grandparent received foster care payments.
- 24 31. Further, children living with relatives in homes that are safe are in danger of losing Title
25 IV-E foster care payments because their placements do not meet federal criteria. This
26 may result in children leaving homes of relatives because these relatives cannot afford to
27 care for them or a reduction in the child's standard of living if they remain.
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32. California could comply with federal law by developing a protocol for assessing the homes of relatives that is the same as the protocol for licensing, including the ability to grant waivers to certain licensing requirements. A requirement that those homes that fail to meet standards be provided with assistance in complying will eliminate unnecessary disruptions.

33. If the State does not comply with federal law, thousands of foster children are in danger of losing foster care benefits. A substantial number of children placed with relatives face the possibility of unnecessary dislocation. Children entering the system will be deprived of their right to live with relatives as mandated by state and federal law.

34. Many counties in California have existing agencies that could assist in ensuring that kinship homes meet basic standards. Los Angeles County, for example, has a system of family preservation networks that provide support to families in danger of losing their children. This support includes improving the family's physical living situation, among other things. The California Kinship Support Center provides similar services to some relatives living in certain counties. California's network of family support centers performs a similar function. All could provide services necessary to ensure compliance with federal law requiring enforcement of standards for homes of kin at substantially less than the cost of losing federal reimbursement for these placements.

35. Defendant has not developed clear policies for compliance with federal and state mandates concerning relative placements for children in foster care causes children irreparable harm by subjecting them to substandard conditions, placement changes and impermanence, deprivation of basic support in the form of foster care maintenance payments, and interference with the relationships children have with relatives.

1 IV. CAUSES OF ACTION

2 FIRST CAUSE OF ACTION

3 Violation of Welfare and Institutions Code
4 Writ of Mandate
5 Code of Civil Procedure Section 1085

6 36. The Respondent has not ensured that relative foster homes meet standards applicable to
7 licensed foster homes, thereby violating Welfare and Institutions Code Sections 309 &
8 362.7.

9 37. This violation constitutes a waste of public funds within the meaning of Code of Civil
10 Procedure Section 526a.

11 38. Respondent has a clear, present and ministerial duty to ensure that relative foster homes
12 meet the same licensing standards as licensed foster homes. Petitioner has a beneficial
13 interest in the Respondent' performance of that duty. Respondent has, at all relevant
14 times, had the ability to comply with this duty, but has not done so. Petitioner has no
15 plain, speedy, adequate remedy at law. Unless the court issues the requested writ,
16 Respondent will continue to violate their clear legal duties.
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19 SECOND CAUSE OF ACTION

20 Violation of Social Security Act -- Standards

21 39. CDSS has not ensured that relative foster homes on whose behalf federal funds have
22 been, are being, or will be claimed are approved as meeting and do in fact meet standards
23 applicable to licensed foster homes violates the Adoption Assistance and Child Welfare
24 Act. 42 U.S.C. 671(a)(10)& (11). California is at risk of losing substantial federal
25 funding if found to violate federal law.
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40. This violation constitutes a waste of public funds within the meaning of Code of Civil Procedure Section 526a.

THIRD CAUSE OF ACTION

Violation of Social Security Act - Statewideness

41. CDSS has not ensured that a plan for approval of relative foster homes on whose behalf federal funds have been, are being, or will be claimed, as meeting standards applicable to licensed foster homes and for ensuring that these standards are, in fact met, is in effect statewide violates the "statewideness" provisions of the Adoption Assistance and Child Welfare Act, 42 U.S.C. Section 671(a)(2). California is at risk of losing substantial Federal funding if found to violate federal law.

42. This violation constitutes a waste of public funds within the meaning of Code of Civil Procedure Section 526a.

FOURTH CAUSE OF ACTION

Violation of Due Process

43. The Respondent/Defendant has not ensured that all relative foster homes on whose behalf Federal funds have been, are being, or will be claimed, are approved as meeting and do in fact meet standards applicable to licensed foster homes. This jeopardizes children's health and safety and increases the likelihood that children may experience increased changes in placement, thereby violating the children's right to due process of law under the 14th Amendment of the United States Constitution and Article I, Section 6 of the California Constitution.

44. These failures constitute a waste of public funds within the meaning of Code of Civil Procedure Section 526a.

1 V. PRAYER FOR RELIEF

2 45. Issue a writ of mandate pursuant to California Code of Civil Procedure Section 1085.85
3 requiring Defendant California Department of Social Services:

4 a. To develop and implement a plan for ensuring that all kinship caregivers presently
5 receiving foster care payments and all kinship caregivers who will receive such
6 payments in the future:

7 i. are assessed to determine whether they meet all licensing/approval
8 requirements, including the use of waivers when appropriate, by a process
9 equivalent to that used for licensed unrelated caregivers, including specially
10 trained assessors who are not involved with the case;

11 ii. do, in fact, meet those requirements; and

12 iii. are provided with assistance in meeting those requirements in order to avoid
13 disrupting existing placements or violating the statutory requirements for
14 placement of children in the homes of relatives, except when necessary to
15 protect the safety of the child.

16 b. In its capacity as the single state agency and to comply with the statewideness
17 requirement, ensure that this plan is implemented consistently in all counties by:

18 i. requiring compliance by all counties;

19 ii. regularly monitoring to ensure that all counties are in compliance with those
20 requirements; and

21 iii. taking action to ensure compliance by those counties that fail or refuse to
22 comply with this plan.

23 46. Issue injunctive relief ordering Respondent/Defendants to:

24 a. To develop and implement a plan for ensuring that all kinship caregivers presently
25 receiving foster care payments and all kinship caregivers who will receive such
26 payments in the future:

27 i. are assessed to determine whether they meet all licensing/approval
28 requirements, including the use of waivers when appropriate, by a process

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equivalent to that used for licensed unrelated caregivers, including specially trained assessors who are not involved with the case;

- ii. do, in fact, meet those requirements; and
- iii. are provided with assistance in meeting those requirements in order to avoid disrupting existing placements or violating the statutory requirements for placement of children in the homes of relatives, except when necessary to protect the safety of the child.

b. In its capacity as the single State agency and to comply with the statewideness requirement, ensure that this plan is implemented consistently in all counties by:

- i. requiring compliance by all counties;
- ii. regularly monitoring to ensure that all counties are in compliance with those requirements; and
- iii. taking action to ensure compliance by those counties that fail or refuse to comply with this plan.

47. Issue declaratory relief that:

- a. Respondent's/Defendants' current practice of not ensuring that inspection or monitoring homes for compliance with licensing standards takes place, and of not taking reasonable steps to ensure that these placements do comply with licensing standards violates state and federal law.
- b. Respondent's/Defendants' current practice of not ensuring the existence of a uniform system for approval of relatives violates the "statewideness" requirement of the Adoption Assistance and Child Welfare Act and the Adoption and Safe Families Act.

48. Award Petitioner/Plaintiff reasonable cost and attorneys' fees.

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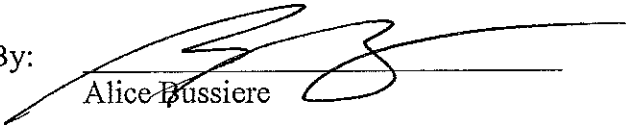
49. Issue such other and further relief as this court shall deem necessary and is necessary to avoid removal of a child or placement of a child in an unrelated home.

Dated: October 23, 2002 at San Francisco, California.

Respectfully submitted,

MARIA F. RAMIU
ALICE BUSSIERE
CAROLE B. SHAUFFER
YOUTH LAW CENTER

Attorneys for Petitioner

By: 
Alice Bussiere

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VERIFICATION

I, ALICE BUSSIERE, declare:

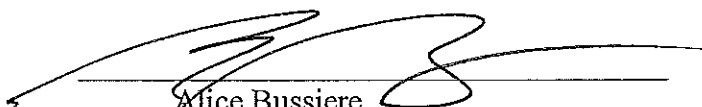
I am an attorney at law duly admitted and licensed to practice before all courts of this State and I have my professional office at 417 Montgomery Street, Suite 900, San Francisco, San Francisco County, California.

I am one of the attorneys of record for Petitioner/Plaintiff in the above-entitled action.

The Petitioner/Plaintiff is absent from the county in which I have my office. For that reason, I am making this verification on his behalf.

I have read the foregoing Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief and know the contents thereof. I am informed and believe that the matters in it are true and on that ground allege that they are true.

Dated: October 23, 2002



Alice Bussiere
Attorney for Plaintiff/Petitioner