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18 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 19 **FOR THE COUNTY OF SAN FRANCISCO**

20 RENE M., MELISSA R., TANYA J.,)
 21 ARTHUR P.)
 22)
 23)
 24)
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Petitioners,

vs.

ELOISE ANDERSON, Director,
 California Department of Social
 Services, and CALIFORNIA
 DEPARTMENT OF SOCIAL
 SERVICES,

Respondents.

ENDORSED
 FILED
 San Francisco County Superior Court

MAR 30 1997

BY: ALAN CARLSON, Clerk
 CYNTHIA S. HERBERT
 Deputy Clerk

PRELIMINARY STATEMENT

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3 1 Petitioners are concerned citizens of California, young adults who were, until
4 they reached majority, dependent children of the Court pursuant to § 300 et seq of the
5 Welfare and Institutions Code. County Child Welfare Agencies (CWAs) operating under the
6 provisions of Welfare and Institutions Code §§ 16500 et seq. were responsible for their care
7 Because of the harm they suffered directly related to Respondents' failure to properly monitor
8 and supervise the operations of the County Child Welfare Agencies, petitioners have a special
9 interest as citizens in having that law properly executed by Respondents, who have a clear
10 legal duty to do so
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12 2. In each county in California, a County Child Welfare Agency is charged by law
13 with providing child welfare services to children who are dependents of the court in order to
14 ensure that these children are kept safe and provided with services necessary to their health,
15 protection and welfare. Each CWA is responsible for the well being of children who are in
16 their own homes under protective supervision as well as children who have been removed
17 from home and placed in substitute care by the court.
18

19 3. Respondent California Department of Social Services (CDSS) is charged by
20 law to administer, supervise and monitor the CWAs in their performance of duties under the
21 foster care program. In particular, CDSS must guarantee that County Child Welfare Agencies
22 meet the requirements of federal law
23

24 4. Respondents have consistently failed and refused to discharge this legal duty
25 Specifically, Respondents Anderson and CDSS have failed to conduct timely audits of County
26 Child Welfare Agencies' performance and to effectively monitor county performance of
27

1 mandatory duties. Twenty-three County Child Welfare Agencies have not been reviewed
2 since 1986. Of the 35 counties that have been reviewed since that time, only three are in
3 compliance with all relevant federal and State statutes and regulations. CDSS has made no
4 systematic effort to remedy violations or to determine whether CWAs have taken effective
5 action to correct them. CDSS has no basis for believing that the counties found out of
6 compliance since 1991 have made substantial improvements.
7

8 5. As a result of Respondents' dereliction of their mandatory duty under the law,
9 children in California's child welfare system have been subjected to inadequate supervision,
10 substandard conditions, and inadequate health care and education. Unless this court orders
11 Respondents to perform their legal duties, innocent children will continue to suffer irreparable
12 harm.
13

14 II
15 PARTIES

16 A Petitioners

17 6. Petitioner RENE M. is a citizen of the State of California. She was in foster
18 care in Contra Costa County from 1992 when she was 14 until 1996 when she turned 18. In
19 that time she lived in at least six different placements. Rene saw her social worker only four
20 times in two years. Despite the fact that Rene informed her social worker that she was being
21 abused in foster care, her social worker left her in the foster home for a year, visiting her only
22 twice. She was removed from the home only after the foster mother hit her with a belt and
23 she threatened to run away.
24

25 7. Petitioner MELISSA R. is a citizen of the State of California. She entered
26 foster care in San Joaquin County in 1993 when she was 15 and left care in 1996 when she
27

1 turned 18. During this time, she lived in eight different placements. For five years, prior to
2 her removal from home, her family was under the supervision of the County Child Welfare
3 Agency. Despite repeated reports of abuse to the County Child Welfare Agency she was not
4 removed from home until she told a counselor she was going to run away and the abuse was
5 reported to the police. For a period of six months while Melissa was in care, she was unable to
6 learn the name of the social worker assigned to her case. During the entire time she was in
7 care, she never saw a social worker regularly. While in care, Melissa suffered from a medical
8 condition that went untreated for several months.

10 8. Petitioner TANYA J. is a citizen of the State of California, She entered foster
11 care in San Francisco County in 1986 at the age of ten and left care in 1994 when she turned
12 18. During the first five years she was in care, she saw her social worker only two or three
13 times.

15 9. Petitioner ARTHUR P. is a citizen of the State of California. He entered foster
16 care in 1979 at age two and left care in 1983 when he was six. He entered care again in 1989
17 at age 12 and remained in care until 1995 when he turned 18. During his second stay in care,
18 he lived in more than 14 different placements. Arthur saw a social worker no more than twice
19 a year except when he was removed from placement. While in placement, Arthur was
20 physically assaulted by the Director of his group home. During the two and a half months he
21 was in that group home he never had an opportunity to talk to his social worker. He was
22 removed from this group home only after the police were contacted.

24 B. Respondents

26 10. Respondent ELOISE ANDERSON is sued in her official capacity as the
27 Director of Respondent CALIFORNIA DEPARTMENT OF SOCIAL SERVICES. Under

1 Welfare and Institutions Code § 10553, she is legally responsible for state-wide administration
2 of public social services, including child welfare services. It is her duty to formulate,
3 implement and enforce statewide policies for the administration of public social services
4 throughout the state of California.

6 11. Respondent CALIFORNIA DEPARTMENT OF SOCIAL SERVICES
7 ("CDSS") is the single state agency authorized and required to supervise the administration of
8 public social services programs in California, including child welfare services. CDSS is
9 responsible for assuring compliance with federal and State law in the administration of public
10 social services programs, including the child welfare services program.

12 III.

13 STATUTORY AND REGULATORY FRAMEWORK

14 12. California law requires CDSS to establish and support a public system of
15 statewide child welfare services, W & I Code §§ 16500 et seq., to supervise the
16 administration of state public social services including child welfare services and to secure full
17 compliance with applicable provisions of state and federal law. W & I Code § 10600
18 Respondent Anderson is responsible for administering laws relating to child welfare services;
19 promulgating regulations and standards; supervising the administration of public social
20 services including child welfare services, and investigating, examining and making reports on
21 public offices responsible for the administration of public social service funds. W & I Code
22 §§ 10553, 10554, 10600, 10602. Under W & I Code § 10605, she has the power to enforce
23 State statutes and regulations

26 13. The child welfare services program is a joint federal-state program, governed
27 by Titles IV-B and IV-E of the Social Security Act. 42 U.S.C.A. §§ 621 et seq. and 671 et
28

1 seq While state participation in these programs is not mandatory, states which choose to
2 participate must comply with federal requirements. The federal government provides
3 substantial funding to the states to provide child welfare services. In order to receive these
4 funds, the states must operate their child welfare services programs in compliance with
5 enumerated federal requirements under a detailed state plan.

7 14 To insure compliance with federal requirements, the federal government
8 conducts periodic conformity reviews to determine program adherence to federal standards
9 and the state plan. State failure to comply can eventually result in reduced federal funding for
10 the state program. 42 U.S.C. § 1320a-1a.

12 15 State law designates Respondent CDSS as the single state agency responsible
13 for administration of child welfare services on a statewide basis in accordance with federal
14 law. W & I Code §10600

15 16 To fulfill that responsibility, Respondent CDSS is required to monitor and
16 conduct periodic audits of County Child Welfare Agency activities related to child welfare and
17 foster care services, 42 U.S.C. § 671(a)(7). These audits are designed to ensure that the State
18 is in compliance with federal requirements and that the CWAs are providing services that
19 effectively protect the safety and well-being of all children receiving child welfare services in
20 compliance with State and federal law

22 17 To fulfill these responsibilities, CDSS has developed an audit procedure
23 Audits of County Child Welfare Agencies consist of an on site review of a randomly selected
24 sample of files to determine documented compliance with State and federal law. The audit
25 protocol examines performance in specific "questions" in six "areas." The "areas" are:

27 Contacts: Examines whether children and families are seen by their social workers

1 Medical: Examines whether basic health examinations were provided

2 Case Plans: Examines the timely and accurate preparation of a written plan detailing
3 the need for child welfare services, the long term goal sought to be achieved, the specific
4 services to be provided and case management activities to be performed Both State and
5 federal law provide specific requirements for case plans W & I Code § 16501.1, 42 U.S.C.A.
6 § 675.

7
8 Hearings: Questions designed to determine compliance with federal and State
9 requirements providing basic due process

10 Target: Examines special requirements for interstate placement and for independent
11 living plans for children placed outside the home aged 16 or over.

12 Foster Care: Questions designed to ensure that children in foster care meet State and
13 federal requirements for such placements.

14
15 18. The specific questions are not complicated, onerous or burdensome They are
16 designed to determine compliance with the basic requirements of law and good practice For
17 example, one contact question asks:

18 Was face-to-face contact made with the child within the latest required
19 regulatory time frame and in accordance with the visit schedule
20 documented in the case plan?

21
22 The required time frame is ordinarily 30 days The principle behind the question is simple and
23 obvious Protecting the welfare of children in the system demands face-to face contact with
24 those children A system without strict adherence to this principle will fails to comply with
25 performance standards

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1 19. The audit protocol requires the CWA to develop a corrective action plan for
2 improving performance in any "question" where the agency fails to meet compliance
3 with federal law.
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5 IV

6 FACTUAL ALLEGATIONS

7 A Respondents' Audit Performance Is Inadequate

8 20. CDSS is not performing regular audits of CWA child welfare services.
9 Twenty-three counties have not been audited since 1986. Eleven counties were last audited in
10 1991, 1992 or early in 1993.
11

12 21. CDSS has found only three counties, Los Angeles, Kern and Yuba to be in full
13 compliance with State and federal requirements. Of the 12 counties audited in 1991 and
14 1992, nine were out of compliance. CDSS has made substantial efforts to remedy violations
15 in only one of these counties, San Francisco

16 22. In late 1994 and 1995, CDSS conducted approximately 18 audits. None of the
17 recently audited counties was found to be in compliance on all questions. Ten of eighteen
18 counties failed on more than half of the questions. All counties failed to comply with one or
19 more of the regulations governing minimum contact between social workers and clients. Ten
20 did not meet minimum standards for visiting children in their care. Fifteen failed to provide
21 health care to children in foster care in accordance with state regulation. Seventeen failed to
22 provide foster parents with information about the medical and educational history of children
23 in their care. All counties failed to complete case plans that complied with federal and State
24 requirements. Case plans are described by California law as "the foundation and central
25 unifying tool in child welfare services." W & I Code §16501.1. Every county failed at least
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1 four of the fifteen questions

2 23. Two facts graphically illustrate the inadequacy of the Respondents'
3 monitoring, improvement and enforcement efforts. First, of the twenty-three counties not
4 audited since 1986, seventeen "failed" the audit in 1986. Second, of the 10 counties found
5 not in compliance with a majority of the "questions" in the 96-96 audits, eight have "failed" in
6 the 1986 cycle as well. The inescapable conclusion: Most CWAs have been failing
7 California's children for at least the last ten years and Respondents have failed to do anything
8 about it

9
10 24. In November of 1995, CDSS suspended its official audits, conducting only
11 three "reviews" between November 1995 and July 1996. CDSS conducted one audit in July
12 of 1996 and one in August of 1996. No audits were conducted in September

13
14 25. Even when it does conduct audits, CDSS has no system for ensuring that
15 failing counties come into compliance with law and regulation. On information and belief, a
16 number of counties found to be out of compliance have never filed written corrective action
17 plans. Even when corrective action plans have been filed, there has been little or no follow-up
18 to determine whether they have been implemented and whether they have been effective.

19
20 26. Abusive situations like those experienced by petitioners are the direct result of
21 this failure by Respondents to act to ensure that counties comply with laws and regulations
22 that are critical to protect the safety of abused and neglected children

23 FIRST CAUSE OF ACTION

24
25 27. Respondents' failure to properly audit and insure ongoing compliance with
26 appropriate standards by CWAs violates the provisions of W & I Code §§ 16500 et seq. As a
27 result, children are denied effective protective and reunification services and placed at

1 unnecessary risk of ongoing and irreparable harm

2 28. Respondents have a clear and mandatory duty to audit CWAs and secure their
3 compliance with the provisions of W & I Code § 16500 and implementing regulations
4 Respondents have, at all relevant times had the ability to comply with this duty, but have failed
5 and refused to do so. Unless the court issues the requested writ, Respondents will continue to
6 violate their clear legal duties

8 PRAYER FOR RELIEF

9 Petitioners request that this Court:

10 1 Issue a writ of mandate pursuant to Code of Civil Procedure § 1085
11 commanding Respondents to:

- 12
- 13 a. Schedule an audit of every county that has not been audited since 1986
 - 14 to be completed within the next twelve months;
 - 15 b. Audit each county in the State no less often than once every three
 - 16 calendar years;
 - 17 c. Require all CWAs that have been found out of compliance with State
 - 18 and federal statutes and regulation to come into compliance
 - 19 immediately;
 - 20 d. When CWAs are found out of compliance, require prompt filing of
 - 21 adequate corrective action plans addressing all deficiencies noted in
 - 22 their audits;
 - 23 e. Develop a monitoring schedule for CWAs that fail or have failed State
 - 24 audits to ensure that they achieve prompt compliance; and
 - 25 f. Take all actions necessary to ensure that children in California's child
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welfare program receive all the services and protections to which they
are entitled by law.

- 2. Award Petitioners reasonable attorneys fees and costs.
- 3. Grant such other and further relief as the Court finds just and proper.

Dated: February 11, 1997

Respectfully submitted,

CAROLE SHAUFFER
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YOUTH LAW CENTER

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TOM WEATHERED

Attorneys for Petitioners

By: 
TOM WEATHERED

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VERIFICATION

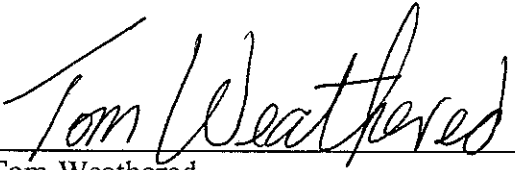
I, TOM WEATHERED, declare:

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 202 Louisburg Street, San Francisco, San Francisco County, California.

I am one of the attorneys of record for Petitioners in the above-entitled action.

The Petitioners are absent from the county in which I have my office. For that reason I am making this verification on their behalf.

I have read the foregoing First Amended Petition for Writ of Mandate 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.



Tom Weathered

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PROOF OF SERVICE BY MAIL

I am employed in the County of San Francisco, State of California. I am over the age of 18 and not a party to this action. My business address is 114 Sansome Street, Suite 950, San Francisco, California 94104.

On the date indicated below, I served the foregoing:

FIRST AMENDED PETITION FOR WRIT OF MANDATE

to counsel hereinafter listed by placing a true and correct copy of such document in an envelope and placing such envelope in a United States post office box, postage prepaid:

Elizabeth Edwards
Assistant Attorney General
50 Fremont Street, room 300
San Francisco, CA 94105

I, Robin Bishop, declare under penalty of perjury that the foregoing is true and correct. Served and executed on this 26th day of February, 1997 at San Francisco, California

Robin Bishop