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11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE COUNTY OF LOS ANGELES

14 REVEREND DAVID WHEELER,  
15  
16 Petitioner/Plaintiff,

17 V.

18 DAVID SANDERS, in his capacity as  
Director of the Los Angeles County  
19 Department of Social Services; Los Angeles  
County; and Los Angeles County Department  
20 of Children and Family Services,

21 Respondent/Defendants.  
22

Case No.:  
} PETITION FOR WRIT OF MANDATE  
(C.C.P. § 1085) AND COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE  
RELIEF

24 I. INTRODUCTION

25 1. This action and Petition has been brought as a result of the complete breakdown of the  
26 relative foster care system in Los Angeles County. There are currently thousands of  
27 children in foster care under the supervision of Los Angeles County. Many of these  
28 children have been placed with relatives who have agreed to care for them after their

1 biological parents could not or would not do so, or were determined to be unfit to care for  
2 their children. Notwithstanding its legal obligations to ensure that these children are  
3 placed in homes that are safe and secure, Los Angeles County has utterly failed to  
4 comply with its legal obligations or take the necessary actions to safeguard the health and  
5 welfare of the children. The County's failures in this regard were recently and tragically  
6 exemplified when, after a drug raid, seven children were removed from a relative's home  
7 where they had been placed by the County. In addition to the presence of drugs, the  
8 home did not meet basic health standards, had unbreakable bars on the windows and was  
9 otherwise out of compliance with state standards. In addition, the requisite criminal  
10 background checks were not completed, thereby failing to prevent placement of the  
11 children in the home with a drug dealer. In addition, the County was unaware of the total  
12 number of children that had been placed in the home, which exceeded the number of beds  
13 and living space, a situation that would have easily been prevented had the County been  
14 in compliance with state and federal requirements. To make matters even worse, its own  
15 internal records indicate that site visits had occurred as recently as eight days before the  
16 children were removed from conditions described by a veteran police officer as among  
17 the most squalid he had witnessed in more than 20 years of police work. Social workers  
18 removed the children because they were in imminent danger. Petitioner fears that this  
19 one incident of which the public is aware may be representative of many more that  
20 remain hidden from public scrutiny.

- 21 2. Accordingly, this taxpayer action seeks a writ of mandate and injunctive relief requiring  
22 Los Angeles County, Los Angeles County's Department of Children and Family Services  
23 and its Director, David Sanders (collectively, Respondent/Defendants), to comply with  
24 federal and state mandates concerning relative placements for children in foster care. It  
25 also seeks a declaratory judgment holding that Respondent/Defendants have failed to  
26 comply with federal and state law.
- 27 3. When children must be removed from the custody of their parents because of abuse,  
28 neglect, or abandonment, state and federal law requires child welfare agencies first to

1 consider placement with relatives who are willing and able to care for them before  
2 looking for alternative placements with caregivers who are strangers. Los Angeles  
3 County's Department of Children and Family Services has long relied on relatives for  
4 foster care placements. Currently, over 36% of children in foster care in Los Angeles are  
5 placed with relatives. In order to ensure that children placed with relatives are safe, both  
6 state and federal law require that relative placements meet basic health and safety  
7 standards established for licensing foster families. In order to receive federal foster care  
8 funds, Respondent/Defendants must certify to the state and federal government that the  
9 homes of all federally funded relative foster parents have either been licensed or  
10 approved as meeting these licensing standards.

11 4. Respondent/Defendants have failed to follow the system mandated by the State of  
12 California for evaluating and approving the homes of relatives and assisting relatives in  
13 meeting licensing standards. They have claimed federal reimbursement for the costs of  
14 relative placements, and, in doing so, certified to the federal government that these  
15 placements meet licensing standards. However, Respondent/Defendants have no  
16 adequate basis for believing that these homes meet these standards and have direct  
17 information that many of them do not. They have not taken adequate steps to determine  
18 whether relative homes meet these standards or to assist families in complying with  
19 licensing requirements. As a result of the failure of Respondent/ Defendants to act, foster  
20 children are subjected to dangerous and unhealthful conditions and may be deprived of  
21 placement with relatives who are willing and able to care for them. In addition, the 36%  
22 of Los Angeles foster children who are placed with relatives are in danger of losing their  
23 monthly foster care benefits, and Los Angeles County is likely to lose substantial federal  
24 funding.

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26 II. PARTIES

27 5. Petitioner/Plaintiff Reverend David Wheeler is a taxpayer residing in the State of  
28 California. As a minister and an advocate for children and families, he has worked to

1 keep families together and support disadvantaged families and children. Reverend  
2 Wheeler is assessed to pay, and within one year of this lawsuit has paid, taxes to the State  
3 of California.

4 6. Defendant LOS ANGELES COUNTY ("County") is a local governmental entity, duly  
5 authorized and formed under the laws of the State of California. The County oversees  
6 and monitors the Department of Children and Family Services.

7 7. Defendant LOS ANGELES COUNTY DEPARTMENT OF CHILDREN AND FAMILY  
8 SERVICES ("DCFS") is the agency responsible for administering child welfare services  
9 in Los Angeles County, for locating placements for children in the County foster care  
10 system, and for ensuring the safety and well-being of children under court supervision  
11 pursuant to Welfare and Institutions Code § 300.

12 8. Defendant DAVID SANDERS ("Sanders") is the Director of DCFS and, as such, is  
13 responsible for administering child welfare services in Los Angeles County, and for  
14 ensuring the safety and well-being of children under court supervision pursuant to  
15 Welfare and Institutions Code § 300. Defendant SANDERS is sued in his official  
16 capacity.  
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19 III. FACTUAL ALLEGATIONS

20 9. Counties operate their child welfare systems using a blend of state, county and federal  
21 funds. Counties are required to comply with the standards and regulations issued by the  
22 California Department of Social Services ("CDSS") as well as their own policies.  
23 Counties are also required to comply with state and federal law and federal regulations.

24 10. In order to receive federal funds for the operation of the foster care system, CDSS  
25 submits a plan (IV-E plan) to the U.S. Department of Health and Human Services  
26 ("HHS"). This plan provides assurances to the federal government that California is, and  
27 will be, in compliance with all federal requirements for receipt of these funds. In  
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1 addition, in submitting claims to the federal government, CDSS certifies that all expenses  
2 claimed are valid and comply with the requirements of federal law.

3 11. Although states have some discretion in the design of child welfare services, federal law  
4 requires states to administer and supervise the services, use proper and efficient methods  
5 to operate them, and arrange for periodic independent audits. 42 U.S.C. §§ 629b(a)(1) &  
6 (6), 671(a)(7) & (13). Federal law also requires the state child welfare services plan to be  
7 in effect in all political subdivisions of the state and, if administered by those  
8 subdivisions, to be mandatory upon them. 42 U.S.C. § 671(3).

9 12. For many years, Los Angeles County has relied on relatives to provide homes for  
10 children in the foster care system. State law gives a clear preference to placement with  
11 relatives who are willing and able to care for the child. Federal law also requires states to  
12 give priority in placement with relatives. For many years, Los Angeles County has not  
13 required relatives to be licensed or meet licensing standards. Nonetheless, these relatives  
14 were and are paid for the care of these children with federal foster care funds.

15 13. California provides foster care maintenance payments for the care of all children who  
16 qualify for federal foster care benefits under Title IV-E of the Social Security Act, which  
17 governs the provision of reimbursement for state foster care programs and for all children  
18 living with nonrelated foster parents. Foster children who are not IV-E eligible and who  
19 are placed with relative caregivers are not eligible for foster care maintenance payments  
20 in California.

21 14. Over 36% of foster children in Los Angeles County are placed in the homes of relatives.  
22 The vast majority of these relatives receive foster care payments to meet the child's basic  
23 expenses. All of these relative foster parents were informed that the children in their care  
24 were eligible for foster care payments when the child first came to live with them. If  
25 children lose eligibility for federal foster care benefits, their quality of life will be  
26 substantially reduced or the relative foster parents will be unable to care for them at all.

27 15. In 1999, HHS promulgated new regulations clarifying the requirement of 42 U.S.C.  
28 672(c) that children on whose behalf federally reimbursable foster care payments are

- 1           made must be placed in homes that are licensed or approved as meeting licensing  
2           standards. 65 Fed. Reg. 4032-4033, HHS Child Welfare Policy Manual, 8.3A.8c.
- 3           16. As a result of these regulations and California's policy and practice concerning relative  
4           placements, children placed with relatives would no longer be eligible for federal  
5           reimbursement. Because California does not provide foster care maintenance benefits for  
6           children living with relatives who are not IV-E eligible, these children would no longer  
7           be eligible for foster care payments at all.
- 8           17. The federal regulations took effect March 27, 2000. As of that date, all relative homes  
9           were to be licensed or approved as meeting licensing standards. States were given a six-  
10          month grace period until September 28, 2000, to license or approve existing homes to  
11          avoid disruption to children and to give relatives time to meet standards. This grace  
12          period would enable states to comply with the federal preference for placement with  
13          relatives and with federal policy against multiple moves for children in foster care.
- 14          18. In 2001, the California State Legislature enacted a law modifying licensing requirements  
15          and requiring that relative foster parents be approved as meeting the new licensing  
16          standards. Assembly Bill No. 1695 (stats. 2001 ch. 653).
- 17          19. In response to the new law, CDSS sent out an All County Letter informing counties that  
18          as of January 1, 2002, relatives' homes must be approved and distributed draft  
19          regulations requiring that relatives' homes be approved. These regulations were  
20          promulgated as emergency regulations on July 1, 2002 and as final regulations on July  
21          22, 2003.
- 22          20. In June, July and August 2002, HHS concluded that CDSS was submitting inadequately  
23          substantiated claims for reimbursement and withheld 37.4 million dollars. HHS intends  
24          to continue to withhold at least \$18.7 million per quarter until the relative approval issue  
25          is resolved.
- 26          21. In September 2002, in response to information about deficiencies in relative homes in  
27          Los Angeles County, suit was filed against the CDSS to require formal approval of  
28          relative homes in accordance with the requirements of state and federal law (Higgins v.

1            CDSS, SFSC Case No. CPF-02-501937, hereinafter the "Higgins Action"). The  
2 information obtained before filing the Higgins Action included a 2002 study conducted of  
3 200 randomly selected relative foster homes in Los Angeles County. None of these  
4 homes had been through the approval process. The study assessed these relatives on  
5 whether they met licensing or approval standards. One hundred and ninety eight of these  
6 homes did not meet licensing requirements. Many had not had criminal records  
7 clearances. Some had no beds for children; some did not meet fire safety. Most homes  
8 had violations that were dangerous or unhealthful, but could be easily remedied with  
9 assistance by the placing or licensing agency. Because they had not been approved or  
10 licensed and did not meet approval or licensing standards, all of these homes were  
11 ineligible for federal reimbursement and, therefore, ineligible for foster care payments.

12 22. In or about October, 2002, CDSS settled the Higgins Action (the "Higgins Settlement").  
13 The terms of the Higgins Settlement included specific procedures by which relative  
14 homes would be approved and set forth due process procedures for relatives whose  
15 homes were rejected. A true and correct copy of the Higgins Settlement as approved and  
16 ordered by the Court is attached hereto as Exhibit "1" and incorporated herein by this  
17 reference.

18 23. In December 2002, as part of the Higgins Settlement, CDSS issued an All County Letter  
19 providing counties with forms and procedures for approving relatives. These forms were  
20 specifically developed to ensure that the relative approval process met the same standards  
21 as licensing for non-relative homes. The forms include requirements that counties assist  
22 relatives in meeting approval requirements when appropriate. The forms are included in  
23 the Higgins Settlement in Exhibit A, thereto.

24 24. Los Angeles County has failed to adequately and accurately complete these forms or  
25 follow these procedures. On information and belief, a review of the computer based  
26 information system indicates that Los Angeles County has not followed procedures for  
27 any relative homes where children are currently placed. A review of paper  
28 documentation indicates that only half of these homes have been properly approved. In

1 addition, relatives whose homes are rejected are not provided with adequate notice or a  
2 right to appeal this decision as required by state policy.

3 25. Because of Respondent/Defendants' failure to comply with their clearly mandated duties  
4 as set forth in ¶23, above, children are living in unhealthful, potentially dangerous  
5 conditions. For example, in Los Angeles County in 2001, a young child died of neglect  
6 while in the home of a grandparent. The child had no bed, the home was unsanitary and  
7 overcrowded, and the grandparent was known to have serious problems supervising the  
8 child. Nevertheless, the child was allowed to stay in the home and the grandparent  
9 received foster care payments.

10 26. Even children living with relatives in homes that are safe are in danger of losing foster  
11 care payments because their placements do not meet federal criteria. This may result in  
12 children leaving homes of relatives because these relatives cannot afford to care for them  
13 or a reduction in the child's standard of living if they remain.

14 27. If Respondent/Defendants do not comply with federal law, thousands of foster children  
15 are in danger of losing foster care benefits. A substantial number of children placed with  
16 relatives face the possibility of unnecessary dislocation. Children entering the system  
17 will be deprived of their right to live with relatives as mandated by state and federal law.

18 28. There are many ways that Respondent/Defendants could ensure that relative homes meet  
19 basic standards without extraordinary expenses or dislocation of children. Los Angeles  
20 County, for example, has a system of family preservation networks that provide support  
21 to families in danger of losing their children. This support includes improving the  
22 family's physical living situation, among other things. These networks could provide  
23 services necessary to ensure compliance with state and federal law at substantially less  
24 than the cost of losing federal reimbursement for these placements.

25 29. Respondent/Defendants' failure to comply with federal and state mandates concerning  
26 relative placements for children in foster care causes children irreparable harm by  
27 subjecting them to substandard conditions, placement changes and impermanence,  
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1 deprivation of basic support in the form of foster care maintenance payments, and  
2 interference with the relationships children have with relatives.

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4 IV. CAUSES OF ACTION

5 FIRST CAUSE OF ACTION

6 Violation of Welfare and Institutions Code  
7 Writ of Mandate  
8 Code of Civil Procedure § 1085

9 30. The Respondent/Defendants' failure to ensure that relative foster homes meet standards  
10 applicable to licensed foster homes violates Welfare and Institutions Code §§ 309 &  
11 362.7, the All County Letters issued under and pursuant to the Higgins Settlement and the  
12 obligation pursuant to Welfare and Institutions Code § 16502 to administer child welfare  
13 services in accordance with the standards and regulations established by the California  
14 Department of Social Services.

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16 31. This violation constitutes an illegal expenditure and waste of public funds within the  
17 meaning of Code of Civil Procedure § 526a.

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19 32. Respondent/Defendants have a clear, present and ministerial duty to ensure that relative  
20 foster homes meet the same licensing standards as licensed foster homes. Petitioner has a  
21 beneficial interest in the Respondent/Defendants' performance of that duty. Respondent/  
22 Defendants have, at all relevant times, had the ability to comply with this duty, but has  
23 failed and refused to do so. Petitioner has no plain, speedy, adequate remedy at law.  
24 Unless the court issues the requested writ, Respondent/Defendants will continue to  
25 violate their clear legal duties.  
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SECOND CAUSE OF ACTION

Violation of Social Security Act -- Standards

33. Respondent/Defendants' failure to ensure that 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 violates the Adoption Assistance and Child Welfare Act. 42 U.S.C. § 671(a)(10)& (11). Los Angeles County is at risk of losing substantial federal funding if found to violate federal law.

34. This violation constitutes an illegal expenditure and waste of public funds within the meaning of Code of Civil Procedure § 526a.

THIRD CAUSE OF ACTION

Violation of Due Process

35. The Respondent/Defendants' failure to ensure that 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 jeopardizes children's health and safety and increases the likelihood that children will experience increased changes in placement and therefore violates the children's right to due process of law under the 14<sup>th</sup> Amendment of the United States Constitution and Article I, Section 6 of the California Constitution.

36. These failures constitute an illegal expenditure and waste of public funds within the meaning of Code of Civil Procedure § 526a.

V. PRAYER FOR RELIEF

Wherefore, Petitioner/Plaintiff prays that the Court provide relief as follows:

1. Issue a writ of mandate pursuant to California Code of Civil Procedure § 1085.85 requiring Respondent/Defendants:

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- a. to comply with state and federal law, regulations and policies regarding relative approvals; and
- b. to ensure that all kinship caregivers presently receiving foster care payments and all kinship caregivers who will receive such payments in the future:
  - i. are assessed to determine whether they meet all licensing/approval requirements, including the use of waivers when appropriate;
  - ii. do, in fact, meet those requirements; and
  - iii. provide relative foster caregivers 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.

2. Issue injunctive relief ordering Respondent/Defendants:

- a. to ensure that all kinship caregivers presently receiving foster care payments and all kinship caregivers who will receive such payments in the future:
  - i. are assessed to determine whether they meet all licensing/approval requirements, including the use of waivers when appropriate, by a process equivalent to that used for licensed unrelated caregivers, including specially trained assessors who are not involved with the case; and
  - ii. do, in fact, meet those requirements to provide relative foster caregivers 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.

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3. Issue declaratory relief that:

a. Respondent's/Defendants' current practice of failing to inspect or monitor homes for compliance with licensing standards and failing to take reasonable steps to ensure that these placements do comply violates state and federal law;

4. Award Petitioner/Plaintiff reasonable cost and attorneys' fees; and

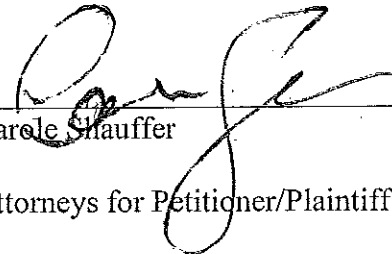
5. Issue such other and further relief as this court shall deem necessary and is necessary to avoid removal of a child or placement of a child in an unrelated home.

Dated: March 17, 2004

Respectfully submitted,

YOUTH LAW CENTER  
GREENBERG GLUSKER FIELDS CLAMAN  
MACHTINGER & KINSELLA, LLP

By:

  
Carole Schauffer  
Attorneys for Petitioner/Plaintiff

VERIFICATION

I, Carole B. Shauffer, 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: March 17, 2004

CAROLE B. SHAUFFER  
Attorney for Petitioner/Plaintiff