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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

BCFS-HEALTH AND HUMAN SERVICES, a non-profit organization

No. 2:10-cv-02989-MCE-DAD

Plaintiff,

v.

**TEMPORARY RESTRAINING ORDER**

JOHN A. WAGNER, in his Official Capacity as Director of the California Department of Social Services; MICHELE M. WONG in her Official Capacity as the Regional Manager for the Northern California Residential Program for the California Department of Social Services,

Defendants.

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The above matter came before the Court upon Plaintiff's Ex Parte Application, filed November 8, 2010, for entry of a Temporary Restraining Order and Order to Show Cause why a Preliminary Injunction should not be issued. Following its review of the papers submitted on behalf of Plaintiff, the Court conducted a hearing at 11:00 a.m. on November 9, 2010.

1 Melissa A. Jones and Marc Koenigsberg appeared on behalf of  
2 Plaintiff; Defendants were represented by Julie Weng-Gutierrez  
3 and Niromi Pfeiffer.

4 The purpose of a temporary restraining order is to preserve  
5 the status quo pending the complete briefing and thorough  
6 consideration contemplated by full proceedings pursuant to a  
7 preliminary injunction. See Dunn v. Cate, 2010 WL 1558562 at \*1  
8 (E.D. Cal. 2010) ("A temporary restraining order is designed to  
9 preserve the status quo until there is an opportunity to hold a  
10 hearing on the application for a preliminary injunction").

11 Issuance of a temporary restraining order, as a form of  
12 preliminary injunctive relief, is an extraordinary remedy, and  
13 plaintiffs have the burden of proving the propriety of such a  
14 remedy by clear and convincing evidence. See Mazurek v.  
15 Armstrong, 520 U.S. 968, 972 (1997); Granny Goose Foods, Inc. v.  
16 Teamsters, 415 U.S. 423, 442 (1974). In general, the showing  
17 required for a temporary restraining order and a preliminary  
18 injunction are the same. Stuhlberg Int'l Sales Co., Inc. v. John  
19 D. Brush & Co., Inc., 240 F.3d 832, 839 (9th Cir. 2001).

20 As recognized by the Supreme Court in Winter v. Natural  
21 Resources Defense Council, 129 S. Ct. 365 (2008), the party  
22 requesting preliminary injunctive relief must show that "he is  
23 likely to succeed on the merits, that he is likely to suffer  
24 irreparable harm in the absence of preliminary relief, that the  
25 balance of equities tips in his favor, and that an injunction is  
26 in the public interest." Stormans, Inc. v. Selecky, 586 F.3d  
27 1109, 1127 (9th Cir. 2009) (quoting Winter, 129 S. Ct. at 374.

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1           Alternatively, under the so-called sliding scale approach,  
2 as long as the plaintiffs demonstrate the requisite likelihood of  
3 irreparable harm and show that an injunction is in the public  
4 interest, a preliminary injunction can still issue so long as  
5 serious questions going to the merits are raised and the balance  
6 of hardships tips sharply in Plaintiffs' favor. Alliance for  
7 Wild Rockies v. Cottrell, 2010 WL 3665149 at \*4-8 (9th Cir.  
8 Sept. 22, 2010) (finding that sliding scale test for issuance of  
9 preliminary injunctive relief remains viable after Winter).

10           The propriety of a temporary restraining order, in  
11 particular, hinges on a significant threat of irreparable injury  
12 (Simula, Inc. Autoliv, Inc., 175 F.3d 716, 725 (9th Cir. 1999))  
13 that must be imminent in nature. Caribbean Marine Serv. Co. v.  
14 Baldrige, 844 F.2d 668, 674 (9th Cir. 1988).

15           Having considered the documents presented, and after hearing  
16 arguments of counsel, the Court finds that Plaintiff has  
17 demonstrated a significant threat of irreparable injury. First,  
18 the children housed in Plaintiff's Fairfield, California facility  
19 may be harmed if they are transferred to alternative  
20 accommodations in Washington or Illinois- a process that could  
21 severely impact both their educational interests and  
22 psychological well-being. Moreover, such transfer could derail  
23 the children's pending immigration proceedings and reunification  
24 efforts, all of which could literally have to begin anew if they  
25 are transferred to distant states.

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1 Secondly, with respect to Plaintiff's own financial losses  
2 stemming from closure of the subject facility, such losses are  
3 likely uncompensable, should closure proceed as dictated by  
4 Defendants, given the protections afforded by sovereign immunity  
5 under the Eleventh Amendment.

6       The Court further believes that the other factors which must  
7 be scrutinized in assessing the availability of preliminary  
8 injunctive relief also weigh in favor of granting a temporary  
9 restraining order at this juncture. Given what appears, at least  
10 on the basis of Plaintiff's papers, to be valid preemption  
11 concerns stemming from a clear conflict between federal and state  
12 regulations applicable to the subject facility, the Court  
13 believes that the requisite likelihood of success has been  
14 demonstrated. In addition, the balance of hardships tips  
15 squarely in Plaintiff's favor given the imminent transfer of the  
16 children being housed to distant states should such transfer  
17 occur by November 10, 2010 as Plaintiff alleges, along with the  
18 impact on the children should such transfer occur as discussed  
19 above. Finally, the public interest would appear to be served by  
20 preserving the status quo until the matter can be fully briefed  
21 and argued by way of preliminary injunction.

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1 Plaintiff's Ex Parte Application for Temporary Restraining  
2 Order (ECF No. 5) is consequently GRANTED. It is hereby ordered  
3 as follows:

4 1. A Temporary Restraining Order shall be issued  
5 immediately. Defendants, their officers, representatives, and  
6 all persons acting on their behalf, and all of them  
7 ("Defendants") are hereby enjoined and restrained, directly or  
8 indirectly, whether acting alone or in concert with others, from  
9 taking any action to shut down the Fairfield, California facility  
10 at issue in this litigation. The status quo shall thereby be  
11 maintained and Plaintiff shall be permitted to continue to  
12 lawfully operate said facility pending the Court's decision on  
13 Plaintiff's request for a preliminary injunction.

14 2. This Order shall remain in full force and effect for a  
15 period not to exceed fourteen (14) days, absent an order from the  
16 Court otherwise. A hearing on Plaintiff's request for a  
17 preliminary injunction is scheduled for **November 19, 2010 at**  
18 **10:00 a.m.** Opposition to Plaintiff's request for injunctive  
19 relief in that regard shall be filed by Defendants not later than  
20 **November 12, 2010.** Plaintiff's reply, if any, is due on  
21 **November 16, 2010.**

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1           3.    No bond will be required because the Court finds, under  
2 the circumstances present, no likelihood of harm to Defendants  
3 from implementation of this Order.

4           IT IS SO ORDERED.

5           Dated this 9th day of November, 2010, at 2:00 p.m. in  
6 Sacramento, California.

7           Dated: November 9, 2010

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10 MORRISON C. ENGLAND, JR.  
11 UNITED STATES DISTRICT JUDGE  
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