

United States District Court
For the Northern District of California

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CALIFORNIA STATE FOSTER PARENT
ASSOCIATION, CALIFORNIA STATE CARE
PROVIDERS ASSOCIATION, and LEGAL
ADVOCATES FOR PERMANENT
PARENTING,

No. C 07-05086 WHA

Plaintiffs,

v.

**ORDER GRANTING IN PART
AND DENYING IN PART
PLAINTIFFS' MOTION FOR
FURTHER RELIEF**

JOHN A. WAGNER, Director of the California
Department of Social Services, in his official
capacity; MARY AULT, Deputy Director of the
Children and Family Services Division of the
California Department of Social Services, in her
official capacity,

Defendants.

INTRODUCTION

After a declaratory judgment in their favor and an affirmance on appeal, plaintiffs move for further relief. Specifically, they request an order compelling defendants to immediately increase California's monthly maintenance payments to foster parents to the following amounts: \$771 for children up to four; \$879 for children ages five to thirteen; and \$962 for children ages fourteen to eighteen. Plaintiffs also request that the order require annual increases "to prevent the reimbursement rates from again falling behind the real mandatory costs." For reasons stated below, their motion is **GRANTED IN PART AND DENIED IN PART** and their specific request for relief is **DENIED IN FAVOR OF OTHER RELIEF**.

STATEMENT

1
2 Plaintiffs brought this action on behalf of foster parents in California, to challenge the
3 monthly rates at which those parents are reimbursed by the State for their care of foster
4 children. They alleged and were successful on their claim for declaratory relief that California
5 was violating the federal Child Welfare Act. Judgment was entered on December 5, 2008. The
6 scope of relief granted by the order granting in part and denying in part plaintiffs' motion for
7 summary judgment and denying defendants' motion for summary judgment will not be
8 reviewed here because it is discussed below. The court of appeals affirmed the judgment. Its
9 decision addressed the threshold question of whether there is a private right of action under the
10 federal Child Welfare Act, and "[did] not address the nature of the remedy" granted by this
11 Court (Dkt. No. 156 at 7).

12 It has been over two years since judgment was entered. Apparently nothing has changed
13 in the past two years. Rates are the same as they were, and California does not consider cost
14 factors in setting rates, as before. Plaintiffs now move for further relief. Plaintiffs argue that
15 further relief is needed to effectuate the declaratory judgment that was entered. In plaintiffs'
16 view, that further relief is for this Court to *set* the rates of maintenance payments to foster
17 parents. Hence, they present evidence based on a study — called the MARC Report — that
18 payments should be as follows: \$771 for children up to four; \$879 for children ages five to
19 thirteen; and \$962 for children ages fourteen to eighteen.

20 Defendants respond that it is not true that nothing has changed in the two years since
21 judgment was entered. Though it seems uncontested that no efforts at change began until May
22 2010, plaintiffs do not object to defendants' exhaustion of their appeal (Br. 13). Since then, the
23 State has commissioned a study concerning the method by which it should begin setting rates
24 that take into account the cost factors under the CWA. According to the representations of
25 defendants, this study commenced in May 2010 and is being conducted by researchers at the
26 University of California at Davis. Defendants also represent that a preliminary presentation by
27 the researchers was made to defendants' staff on October 29, 2010, and that a preliminary
28 written report is to be produced by the end of this year, "with the final report set for release by

1 June 30, 2011.” The only information that plaintiffs have been privy to thus far about the study
2 is a “Scope of Work” statement produced by the State, pursuant to a request for records initiated
3 by plaintiffs, on October 26, 2010.

4 The Scope of Work statement is a four-page document that describes the plan for
5 defendants’ study to “develop a recommended methodology (or alternative methodologies) for
6 setting foster care rates in California.” It also states that the study will consider “of particular
7 importance” the preexisting MARC Report, which was published in 2007 out of the University
8 of Maryland, and which documents actual costs incurred by California foster parents. But the
9 new study is also considering other information. Defendants emphasize that they are pursuing a
10 new method for determining foster care payments and are thus not avoiding the declaratory
11 judgment against them.

12 Plaintiffs counter that this is insufficient. They argue that, without further relief from
13 this Court, defendants would be free to, and may well proceed to, study this problem forever. In
14 the meantime, plaintiffs continue, defendants are violating the law, because they continue to
15 disperse maintenance payments to foster parents without taking into account cost factors under
16 the CWA, as they must. They request aid of the Court to make their declaratory judgment mean
17 something real for the foster parents of our State.

18 ANALYSIS

19 After a declaratory judgment, “[i]f further relief becomes necessary at a later point . . .
20 both the inherent power of the court to give effect to its own judgment, and the Declaratory
21 Judgment Act, 28 U.S.C. s 2202 (1948), would empower the district court to grant supplemental
22 relief, including injunctive relief.” *Rincon Band of Mission Indians v. Harris*, 618 F.2d 569,
23 575 (9th Cir. 1980) (citations omitted).

24 The obvious starting place is the order that set out the terms of declaratory relief on
25 which the judgment in this action was based. The order on the parties’ cross-motions for
26 summary judgment stated:

27 [P]laintiffs’ motion is granted insofar as plaintiffs argue that *defendants are in*
28 *violation of the Act by setting rates without consideration of the Act’s mandatory*
cost factors. Plaintiffs[’] motion, however, is denied insofar as plaintiffs assert
that defendants must be in exact compliance with its particular measure of child

1 welfare maintenance payments. This order need not further broach the vexing
2 question of what precisely “substantial compliance” entails in this context and
3 whether, if California had a rate-setting process in place that adequately
4 considered the Act’s mandatory cost factors, the shortfalls that plaintiffs posit of
5 29 to 40 percent or more might nevertheless violate the Act.

6 (Dkt. No. 98 at 11 (emphasis added).) Further relevant to the primary question of what
7 declaratory relief was granted is the order denying defendants’ request for reconsideration of
8 the order on summary judgment. That order discussed again the scope of relief granted:

9 *The Act certainly did not vest with the courts the role of collecting data regarding*
10 *foster care costs and setting appropriate foster care rates in the first instance.*
11 Because the record indicates that the state does not consider the Act’s mandatory
12 foster care service costs and set rates with relation to those costs, the state has
13 failed meet its obligation to pay rates that “cover the cost of (and the cost of
14 providing)” the listed services.

15 *This order does not conclude that the state must adopt any particular method for*
16 *analyzing the statutory costs or for setting rates.* A wide range of procedures
17 likely exist by which the state could discharge its obligations under the Act.
18 Although the statute affords the states substantial discretion, however, that
19 discretion does not render the statute unenforceable by courts.

20 As explained in the October 21 order, plaintiffs’ motion was and remains granted
21 insofar as plaintiffs argue that defendants are in violation of the Act by setting
22 rates without consideration of the Act’s mandatory cost factors, but the motion is
23 denied insofar as plaintiffs assert that defendants must be in exact compliance
24 with their particular measure of child welfare maintenance payments.

25 (Dkt. No. 104 at 7–8 (emphasis added) (citations omitted).) Hence, both orders clearly granted
26 declaratory relief that defendants must consider cost factors in setting rates for payments to
27 foster parents, and clearly denied relief with regard to plaintiffs’ urging that this Court
28 determine what those payments should be.

Consequently, that plaintiffs would be entitled to further relief to effectuate their
declaratory judgment that defendants must incorporate cost factors in their rate-setting is
perfectly consistent with 28 U.S.C. 2202 and the relief granted two years ago. On the other
hand, that plaintiffs are entitled to an order setting the specific rates is not, at least not yet.
Plaintiffs spend much of their briefs bolstering the latter proposition. They discuss why the
MARC Report includes the rates that should properly be paid by the State, and how this order
should mandate that those rates be paid because the current rates are inconsistently low. These
arguments are irrelevant, however, because the judgment plaintiffs got was not new rates. It
was a declaratory judgment that defendants must consider cost factors when *they* set rates.

1 Relief in the form of an order setting specific rates would be inconsistent with the relief granted
2 two years ago and thus shall not be awarded now. Accordingly, to this extent, plaintiffs’ motion
3 is denied.

4 It must be noted, also, that despite plaintiffs’ invocation of yet another court of appeals’
5 decision that post-dated judgment in this action, that decision does not affect the result here. In
6 *California Alliance of Child and Family Services v. Allenby*, the court of appeals held — in the
7 context of group and institutional foster homes as opposed to individual foster parents — that
8 where California was properly calculating the costs to be reimbursed under the CWA, it was
9 nevertheless violating the CWA where it was only paying out 80 percent of those costs. 589
10 F.3d 1017, 1023 (9th Cir. 2009). Plaintiffs seem to assume that, because of this intervening
11 decision, they are entitled to a court order setting a certain measure of costs in this action. They
12 state that the rates in *Alliance* “were held illegal for similar reasons [to those here]” (Br. 2), and
13 that defendants’ “continu[ing] violation[of] foster parents’ rights [] is impermissible under . . .
14 *Alliance*” (Reply 8). Not so. There, “[t]he Alliance accept[ed] the State’s system for
15 calculating costs to be covered, but t[ook] issue with the State’s underfunding of foster care
16 maintenance payments as a result of having failed to adjust the standardized schedule of rates
17 by an amount equal to the [California Necessities Index] since 2001.” *Id.* at 1019. Here,
18 plaintiffs attacked the system for calculating costs. *Alliance* addressed a different issue than
19 what we have here; it does not control or affect the outcome of this motion.

20 This does not mean, however, that further relief is not warranted. Again, it has been two
21 years and defendants have done nothing but recently initiate and pursue a study. Plaintiffs are
22 not out of line to complain. The declaratory judgment that they won is not being implemented,
23 though that is not the same as saying defendants did or do not still intend to implement it.
24 Defendants’ study, though under way, will not be completed — according to the current written
25 timeline — until June 2011. Furthermore, defendants do not indicate any intended timeline for
26 *implementation* of the study’s recommendations after June.

27 At oral argument, defense counsel represented that not only will a preliminary written
28 report be completed by the end of this year — as previously known by both sides — but also the

1 California Department of Social Services expects that it will be able to produce a final report
2 before the written forecasted completion deadline of June 2011. Defense counsel also
3 represented that after the completion of the study, the steps to implementation are not overly
4 onerous: the Department of Social Services must recommend and receive approval from the
5 California Department of Finance, but it need not seek approval from the state legislature, to
6 implement the study's recommended mechanism for compliance.

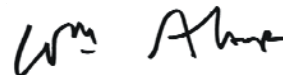
7 This order will help defendants on their path. Though the study is currently set to be
8 completed in June 2011, this order requires the study to be fully completed by **MARCH 11,**
9 **2011.** Advancing the completion date in this way is feasible based on the representations of
10 defense counsel. Defendants shall serve a copy of the final written report from the completed
11 study on plaintiffs on that date. Defendants will then need time to evaluate the report and seek
12 and receive approval of implementation of its recommendations. Accordingly, defendants shall
13 have until **APRIL 8, 2011, AT NOON,** to complete their implementation and submit a statement to
14 the Court describing the new method for determining the rates of payments to foster parents that
15 includes consideration of the cost factors required by the CWA. In the meantime, this order
16 recommends that defendants share the preliminary draft report of the study with plaintiffs when
17 it is completed before the end of this year, as a measure to expedite ultimate resolution of this
18 dispute.

19 **CONCLUSION**

20 The motion is granted to the limited extent stated above without prejudice to more
21 comprehensive relief after the State has had a full and fair opportunity to come into compliance.

22
23 **IT IS SO ORDERED.**

24
25 Dated: December 16, 2010.



26 WILLIAM ALSUP
27 UNITED STATES DISTRICT JUDGE
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