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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

JANICE MENDENHALL & MARK CATO,

Plaintiffs,

vs.

CITY AND COUNTY OF SAN FRANCISCO, DEPARTMENT OF HUMAN SERVICES,

Defendant(s).

Case No. CV 11-4029 EMC

**DEFENDANT CITY AND COUNTY OF SAN FRANCISCO'S AMENDED NOTICE OF MOTION AND MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR A MORE DEFINITE STATEMENT**
[F.R.C.P. 12(b)(6) and 12(e)]

Hearing Date: November 28, 2011
Time: 2:30 p.m.
Place: Judge Edward M. Chen
Courtroom 5, 17th Floor
450 Golden Gate Ave.
San Francisco, CA 94612

Trial Date: Not Set

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**AMENDED NOTICE OF MOTION AND MOTION**

**TO PLAINTIFF AND HIS ATTORNEY OF RECORD:**

PLEASE TAKE NOTICE THAT on November 28, 2011 at 2:30 p.m., or as soon thereafter as the matter may be heard in Courtroom 5, 17th Floor of the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, California, the Honorable Edward M. Chen presiding, Defendant City and County of San Francisco (the "City") will and hereby does move this Court for an order dismissing with prejudice Plaintiffs Janice Mendenhall and Mark Cato's Employment Discrimination Complaint in its entirety. This motion is made pursuant to Federal Rule of Civil Procedure 12(b)(6) on the following grounds:

(1) The Complaint fails to state any claim for relief against the City because Plaintiffs alleged claim for unlawful employment discrimination is barred by Plaintiffs' failure to file a timely charge of discrimination; and

(2) The Complaint fails to state any claim for relief against the City because Plaintiffs have not alleged facts sufficient to demonstrate a *prima facie* case of employment discrimination;

In the alternative, the City will and hereby does move for a more definite statement of the Employment Discrimination Complaint. This motion is made pursuant to Federal Rule of Civil Procedure 12(e) on the grounds that the Employment Discrimination Complaint is so vague and ambiguous that the City cannot prepare a response.

Defendant's Motion is based upon this Notice and accompanying Memorandum of Points and Authorities, the papers and records on file with the Court in this action, and such argument and evidence as may be presented at the hearing on this Motion.

Dated: October 14, 2011

DENNIS J. HERRERA
City Attorney
ELIZABETH S. SALVESON
Chief Labor Attorney
JONATHAN C. ROLNICK
Deputy City Attorney

By: /s/ Jonathan C. Rolnick
JONATHAN C. ROLNICK

Attorneys for Defendant
CITY AND COUNTY OF SAN FRANCISCO

## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

Plaintiffs' Mark Cato and Janice Mendenhall filed a form complaint alleging race and gender discrimination by the City and County of San Francisco (the City) in violation of Title VII of the Civil Rights Act of 1964. But their form complaint provides almost no factual allegations setting forth the basic requirements for such claims. In fact, it appears from the limited allegations of their Employment Discrimination Complaint (including the attached exhibits and documents referenced) that neither one of them was ever employed by the City, and that their only connection to the City relates to public welfare benefits received through the City's Department of Human Services. The City seeks dismissal of Plaintiffs' claims in their entirety and without prejudice because they have not and cannot state a *prima facie* claim for violation of Title VII or any other federal law prohibiting employment discrimination. In the alternative, the City seeks a more definite statement of Plaintiffs' claims such that the City will be able to provide a responsive pleading.

## II. STATEMENT OF FACTS

Plaintiffs Janice Mendenhall and Mark Cato filed their Employment Discrimination Complaint on August 17, 2011. (See Employment Discrimination Complaint.) Therein, they allege that they have been the victims of unlawful employment discrimination on the basis of their race and sex. (Employment Discrimination Complaint ¶¶ 4-5.) They claim to have been subjected to unlawful termination, failure to promote, and harassment. (*Id*.) They assert claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq*. (*Id*.)

According to Plaintiff' the City's Department of Health Services (DHS) "is with holding [their] case from them for six years," and has "civi[l]y harassed" them. (*Id*. at ¶ 4.) Plaintiffs also contend that their "family & case files was retaliated against in the department as 'hard case.'" (*Id*. at ¶ 5.)

Plaintiff Mendenhall filed a charge of discrimination with the EEOC on August 1, 2011. (Exhibit to Employment Discrimination Complaint.) Therein, she alleges that she was hired in April 2008 "through [DHS's] Community Job Program." (*Id*.) She further contends that she was harassed from April 2008 through December 2008 by a Michael LNU. (*Id*.) She asserts that she was "unjustly terminated" by LNU in December 2008. (*Id*.) Mendenhall further asserts in her charge of

discrimination that DHS held a hearing related to her "pending case" on January 25, 2011. (*Id.*) Mendenhall received a right to sue letter from the California Department of Fair Employment and Housing (DFEH) on August 8, 2011. (*Id.*)

The "pending case" Mendenhall references was a a hearing before an administrative law judge for the California Department of Social Services (CDSS).[1] (See Exhibit A.) An administrative law judge for the California Department of Social Services held a hearing on January 25, 2011 to consider Mendenhall's claim for CalWORKs benefits. (*Id.*) The City had denied those benefits to Mendenhall. (*Id.*) In a decision adopted March 15, 2011, the CDSS denied Mendenhall's claim. (*Id.*)

## III. ARGUMENT

### A. Legal Standard for a Rule 12(b)(6) Motion

Federal Rule of Civil Procedure 12(b)(6) provides that a motion to dismiss may be made if the plaintiff fails "to state a claim upon which relief can be granted." In deciding whether to grant a motion to dismiss, the court "accept[s] all factual allegations of the complaint as true and draw[s] all reasonable inferences" in the light most favorable to the nonmoving party. *TwoRivers v. Lewis*, 174 F.3d 987, 991 (9th Cir. 1999); see also *Rodriguez v. Panayiotou*, 314 F.3d 979, 983 (9th Cir. 2002). "To avoid a Rule(b)(6) dismissal, a complaint need not contain detailed factual allegations; rather, it must plead 'enough facts to state a claim to relief that is plausible on its face.'" *Weber v. Dept. of Veterans Affairs*, 521 F.3d 1061 (9th Cir. 2008) (citing *Bell Atlantic v. Twombly*, (2007) 550 U.S. 544, (rejecting interpretation of Rule 8 that permits dismissal only when plaintiff can prove "no set of facts" in support of his claim). A court is not "required to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

[1] The City attaches as Exhibit A a copy of the Proposed Decision by Administrative Law Judge N. Lee Ormasa *In the Matter of Claimant(s): Janice Mendenhall* (Hearing No. 2010335505). Plaintiffs have referred to this matter in their Employment Discrimination Complaint and is central to their claims. Accordingly, the City requests that the Court consider such matters on this motion. *Branch v. Tunnell*, 14 F.3d 449, 454 (9th Cir. 1994), overruled on other grounds *Galbraith v. County of Santa Clara*, 307 F.3d 1119, 1127 (9th Cir. 2002).

**B. Plaintiffs' Claims Are Untimely**

Under Title VII a plaintiff must file a timely administrative charge with the EEOC before instituting a lawsuit. 42 U.S.C. § 2000e-5(f)(1); *EEOC v. Farmer Bros. Co.*, 31 F.3d 891, 899 (1994)(Title VII exhaustion). Plaintiffs were required to exhaust their administrative remedies by either "filing a timely charge with the EEOC, or the appropriate state agency." *Id.* To be timely, an EEOC charge must be filed within 300 days of the date on which the allegedly unlawful conduct occurred. 42 U.S.C. §2000e-5(e)(1)).

Here, Plaintiff Cato does not allege that he ever filed an administrative charge. In fact, the only charge appears to be one filed by Plaintiff Mendenhall. (See Exhibit to Employment Discrimination Complaint.) Moreover, only Mendenhall received a right to sue letter. And that letter came from the California Department of Fair Employment and Housing, not the EEOC. (*Id.*) Neither the Employment Discrimination Complaint nor Mendenhall's administrative charge make clear the identity of Mendenhall's alleged employer. However, her administrative charge does make clear that Mendenhall was terminated from employment in December 2008. (*Id.*)

Cato's failure to file an administrative charge with either the DFEH or EEOC relating to his claims bars any claim for relief he might have under Title VII and the court should dismiss his claims.

As to Mendenhall, it appears from the face of her administrative charge that she did not bring her claims to the EEOC in a timely fashion. In fact, her termination from employment occurred more than 3 and a half years before she filed her August 2011 administrative charge. (*Id.*) Accordingly, the Court should also dismiss her Title VII claims as untimely.

**C. Plaintiffs Have Failed to State a *Prima Facie* Claim of Employment Discrimination**

Title VII protects *employees* and "*applicants for employment*" from unlawful discrimination, retaliation, and harassment by their employers. 42 U.S.C. § 2000e-2(a)(1),(2). To resolve claims of employment discrimination including those under Title VII, courts apply the *McDonnell Douglas* "shifting burdens" analytical framework. *St. Mary's Honor Center v. Hicks*, 509 U.S. 502, 506 (1993); *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 800-804 (1973) Under this framework, the plaintiff at all times bears the ultimate burden of persuasion. *Lyons v. England*, 307 F.3d 1092, 1112 (9th Cir. 2002) citing *Texas Dep't of Community Affairs v. Burdine*, 450 U.S. 248, 253 (1981). A

plaintiff bears the initial burden of establishing a *prima facie* case of discrimination by producing evidence that: (a) she belonged to a protected class; (b) she performed her job adequately; (c) she suffered an adverse employment action; and (d) she was treated differently than similarly situated employees or other circumstances showing a causal link between her status and the adverse action. *St. Mary's Honor Center*, 509 U.S. 506; *Fonseca v. Sysco Food Services of Arizona, Inc.*, 374 F.3d 840, 847 (9th Cir. 2004).

Plaintiffs have not and cannot establish facts to establish a *prima facie* claim. First, neither Cato nor Mendenhall allege that they were employed by the City or any of its constitutent departments. In the Employment Discrimination Complaint, Plaintiffs checked boxes noting that they are complaining about the "termination of [their] employment," and "failure to promote," but provide no facts alleging that either of them had any employment relationship with the City. Nor are there any factual allegations that they sought City employment. In fact, it appears that Plaintiffs' connection to the City arose not through any employment relationship, but through contact with DHS regarding the processing of certain welfare benefits. (Employment Discrimination Complaint ¶¶ 4, 6; Exhibit A to Def's Mtn to Dismiss.) Moreover, the Civil Cover Sheet completed by Mendenhall and filed with the Employment Discrimination Complaint indicates that the nature of her suit is one concerning "welfare" civil rights.

Second, neither Cato nor Mendenhall offer any allegations to support an inference that they were performing any job for the City (adequately or otherwise). Mendenhall alleges in her administrative charge that she was hire "through" DHS's Community Job Program, but does not allege in the Employment Discrimination Complaint or her administrative charge that she was employed by the City. Cato offers no allegations of any kind regarding his employment status.

Third, there are no allegations that either Plaintiff suffered any adverse employment action at the hands of the City. Again, Mendenhall indicates that she was terminated more than 3 and one half years ago from her "Sales Association" job, one she obtained through an alleged City job program, but fails to offer any allegations that she was terminated or suffered any other adverse action effecting her City employment. Nor does she offer any allegation that the City was in any fashion involved in the termination of her employment. At best, there are allegations that Plaintiffs were denied certain

welfare benefits by the City. But such deprivations do not support an employment discrimination claim.

Finally, assuming that Plaintiffs suffered some adverse action, there are no allegations from which an inference might be drawn that any such actions were taken against because of Plaintiffs' protected status.

Because Plaintiffs have not and cannot allege facts to support a *prima facie* case, the Court should dimiss their claims with prejudice.

**D. The Employment Discrimination Complaint is so Vague and Ambiguous that the City Cannot Reasonably Prepare a Response**

A party may move for a more definite statement of a pleading where the pleading is "so vague or ambiguous that the party cannot reasonably prepare a response." F.R.C.P. 12(e). A motion for a more definite statement is warranted where the complaint is so indefinite that the defendant cannot ascertain the nature of the claim being asserted. *Cellars v. Pacific Coast Packaging, Inc.*, 189 F.R.D. 575, 578 (ND CA 1999).

Here, the Employment Discrimination Complaint is so vague and ambiguous that the City cannot possibly prepare a response. As noted above, there are numerous deficiencies and unanswered questions regarding what, if any, facts are actually alleged in the Employment Discrimination Complaint. Moreover, there are substantial uncertainties whether or not any of the cursory allegations refer or relate to Cato, who is named in the caption as one of the Plaintiffs. Finally, there are significant uncertainties whether Plaintiffs' claims related to matters of employment or the provision of public welfare benefits and, if they related to public welfare benefits, whether such claims are properly before this Court.

Accordingly, and in the alternative to its motion to dismiss, the City requests that Plaintiffs provide a more definite statement of their claims.

## IV. CONCLUSION

For all the reasons set forth above, the City requests that the Court dismiss the Employment Discrimination Complaint with prejudice.

Dated: October 14, 2011

DENNIS J. HERRERA
City Attorney
ELIZABETH S. SALVESON
Chief Labor Attorney
JONATHAN C. ROLNICK
Deputy City Attorney

By: /s/ Jonathan C. Rolnick
JONATHAN C. ROLNICK

Attorneys for Defendant
CITY AND COUNTY OF SAN FRANCISCO

**PROOF OF SERVICE**
***Janice Mendenhall, et al. v. CCSF, DHS***
**File No. 120331**

I, DEBRA GRIFFIN, declare as follows:

I am a citizen of the United States, over the age of eighteen years and not a party to the above-entitled action. I am employed at the City Attorney's Office of San Francisco, Fox Plaza Building, 1390 Market Street, Fifth Floor, San Francisco, CA 94102.

On October 14, 2011, I served the following document(s):

**DEFENDANT CITY AND COUNTY OF SAN FRANCISCO'S AMENDED NOTICE OF MOTION AND MOTION TO DISMISS OR, IN THE ALTERNATIVE, FOR A MORE DEFINITE STATEMENT** [F.R.C.P. 12(b)(6) and 12(e)]; and

**[PROPOSED] ORDER GRANTING MOTION TO DISMISS**

on the following persons at the locations specified:

JANICE MENDENHALL IN PRO PER
MARK CATO
P.O. Box 24370
San Francisco, CA 94124
Tel: 415-410-6023

in the manner indicated below:

☒ **BY UNITED STATES MAIL**: Following ordinary business practices, I sealed true and correct copies of the above documents in addressed envelope(s) and placed them at my workplace for collection and mailing with the United States Postal Service. I am readily familiar with the practices of the San Francisco City Attorney's Office for collecting and processing mail. In the ordinary course of business, the sealed envelope(s) that I placed for collection would be deposited, postage prepaid, with the United States Postal Service that same day.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed October 14, 2011, at San Francisco, California.

/s/ Debra Griffin
DEBRA GRIFFIN

# CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

*Hearing No.* **2010335505**

*In the Matter of Claimant(s):*

Janice Mendenhall
P.O. Box 24370
San Francisco, CA 94124

# PROPOSED DECISION

ADOPTED BY THE DIRECTOR
3/15/11

California Department of Social Services

I submit the attached proposed decision for review and recommend its adoption.

Cert Date: 3/15/11

N. Lee Ormasa
Administrative Law Judge

*State Hearing Record*

| | | | |
|---|---|---|---|
| *Hearing Date:* | January 25, 2011 | *Release Date:* | 3/17/11 |
| *Aid Pending:* | Not Applicable | *Issue Codes:* | [073-2] |
| *Agency:* | San Francisco County | *Agency Representative:* | Beth Novero |
| *Agency:* | | *Agency Representative:* | |
| *Authorized Rep. Organization:* | | *Authorized Rep:* | |
| *SSN:* | | *SSN:* | |
| *AKA:* | | *AKA:* | |
| *Case Name:* | | *Language:* | |
| *LA District/Case:* | | *Companion Case:* | |

*Appeal Rights*

*You may ask for a rehearing of this decision by mailing a written request to the Rehearing Unit, 744 P Street, MS 9-17-37, Sacramento, CA 95814 within 30 days after you receive this decision. This time limit may be extended up to 180 days only upon a showing of good cause. In your rehearing request, state the date you received this decision and why a rehearing should be granted. If you want to present additional evidence, describe the additional evidence and explain why it was not introduced before and how it would change the decision. You may contact Legal Services for assistance.*

*You may ask for judicial review of this decision by filing a petition in Superior Court under Code of Civil Procedure §1094.5 within one year after you receive this decision. You may file this petition without asking for a rehearing. No filing fees are required. You may be entitled to reasonable attorney's fees and costs if the Court renders a final decision in your favor. You may contact Legal Services for assistance.*

*This decision is protected by the confidentiality provisions of Welfare and Institutions Code §10850.*

## SUMMARY

San Francisco County correctly failed to pay additional CalWORKs benefits for the claimant's second child born in February 2006 because under the Maximum Family Grant rule, the claimant's second child was ineligible for cash aid. [073-2]

## FACTS

San Francisco County did not send the claimant a Notice of Action (NOA) informing the claimant that her second child was subject to the Maximum Family Grant (MFG) rule and not eligible for cash aid benefits.

The claimant was advised at hearing of her right to a postponement of the hearing so that the county could issue a NOA describing to the claimant the county action taken regarding imposition of the MFG rule. The claimant was also advised that she could proceed with the hearing, waiving her right to a NOA, with the county verbally describing the county action taken and the reasons for the county action. The claimant elected to waive her right to a NOA and proceed with the hearing.

The county appeals specialist testified that 10 months prior to the birth of the claimant's second daughter the claimant was continuously receiving cash aid benefits. The claimant's child was born February 17, 2006. The claimant's Assistance Unit (AU) received cash aid from April 2005 through January 2006. The appeals specialist stated that the claimant signed an acknowledgement of her receipt of an MFG rule informing notice explaining the operation of the MFG rule on August 30, 2005 and October 7, 2004. Given the foregoing, the appeals specialist argued that under the MFG rule the claimant's second child was not eligible for cash aid and the claimant's AU continued to receive cash aid only for the three person AU consisting of the claimant, her husband and their older daughter born January 10, 2004.

The claimant questioned whether the county had correctly applied the MFG rule to her second child. She also questioned whether she had received cash aid for 10 consecutive months prior to the birth of her child.

On August 18, 2005, the county issued a NOA informing the claimant that effective September 1, 2005, the claimant's AU would no longer get a regular cash aid check because of her husband's employment in a community job. The notice said specifically the claimant would "no longer get a regular CalWORKs check sent to you. Instead, you will get paychecks issued to you from the Private Industry Council (PIC), for working in a community job."

On August 19, 2005, the county issued a NOA informing the claimant that as of November 1, 2005, the claimant's AU would again start receiving a regular cash aid check because her husband was no longer participating in the community job initiative. The monthly grant amount was stated to be $723. The notice said specifically. that the claimant "will start getting regular CalWORKs checks again, since you will no longer be in the community jobs initiative (CJI) program. Your monthly grant will be $723.00"

On October 18, 2005, the county issued a NOA informing the claimant that her EBT card had not been used in over 45 days, and that the balance was $0.23.

On October 20, 2005, the county issued a NOA informing the claimant that as of October 19, 2005 the county approved back cash aid of an additional $47 because of an unpaid pregnancy allowance raising the monthly cash aid benefit from $723 to $770 per month.

The claimant argued that the during the consecutive months of September and October 2005 the claimant was not receiving cash aid and thus her second child should be eligible for cash aid since there had been a two month break in cash aid during the 10 month period prior to the birth of the second child.

The record was left open for the county to produce additional proof that the claimant received 10 consecutive months of cash aid prior to the birth of the claimant's second child.

The county submitted additional information showing that the claimant cash aid in September and October 2005 in the amount of $723 per month was paid to Private Industry Council (PIC) for the claimant's husband work. The county also submitted a copy of §42-701 from the Welfare to Work regulations referencing Grant-Based On-the-Job Training. The county also submitted a copy of the Paid Community Service Participation: Voluntary Consent Form agreement which referenced the PIC employment and that "The department of Human Services (DHS) will pay my employer (PIC) the amount of my monthly aid payment: $723. "The form included a Section No. 11, initialed by the claimant's husband, which stated "The DHS will give my cash aid to my employer (PIC) to pay all or part of my wages." [emphasis in original]The form also included a section No. 17, initialed by the claimant's husband, which stated "I am still a CalWORKs recipient."

The claimant also submitted additional information and argued that her husband elected to receive wages instead of the cash aid. She also argued that the fact that no additional funds were added to the EBT card and that her husband instead received a check for his wages was further evidence that the claimant's AU was off cash aid for September and October 2005.

## LAW

All the regulations cited refer to the Manual of Policies and Procedures (MPP), unless otherwise noted. For purposes of this decision, W&IC is the abbreviation for the Welfare & Institutions Code.

"Subsidized employment" means employment in which the welfare-to-work participant's employer is partially or wholly reimbursed for wages and/or training costs. (§42-701.2s.(2))

Per W&IC §§11322.8(a) and (b), the hours of participation for a one-parent AU remains at 32 hours per week, and the requirement for a two-parent AU remains at 35 hours per week.

Per W&IC §§11322.8(c), at least 20 hours of the 32 or 35 hour requirements must be in core WTW activities. Core activities are defined as unsubsidized employment; subsidized private sector employment; subsidized public sector employment; work experience; on-the-job training; grant based on-the-job training; supported work or transitional employment; work-study; self-employment; community service; vocational education and training; programs for up to 12 cumulative months during an individual's 60-month time limit on aid, and job search and job readiness assistance

Hours spent in specified non-core activities can also count as core hours as noted in §42-716.23.

Non-core activities are as follows: adult basic education; job skills training directly related to employment; education directly related to employment; satisfactory progress in secondary school or in a course of study leading to a certificate of GED; mental health, substance abuse, and domestic violence services; vocational education and training programs beyond the 12-month cumulative period counted as core activities, other activities necessary to assist an individual in obtaining unsubsidized employment, and participation required of the parent by the school to ensure the child's attendance.

(§42-701.2(c)(4), (n)(1); ACL 04-41, October 8, 2004)

"Grant-Based On-The-Job Training (OJT)" is a funding mechanism for subsidized public or private sector employment or OJT in which the CalWORKs recipient's cash grant, or a portion of it, together with the aid grant savings resulting from employment, is diverted to the employer as a wage subsidy to offset the payment of wages to the participant. The total amount diverted shall not exceed the family's maximum aid payment. Grant savings from employment is the net nonexempt income from employment, as determined pursuant to §44-111.2. Grant-based OJT may include community service positions. (§42-701.2(g)(2))

State law provides that for purposes of determining the Maximum Aid Payment (MAP), and for no other purpose, the number of needy persons in the same family shall not be increased for any child born into a family that has received aid continuously for the 10 months prior to the birth of the child. Aid shall be considered continuous unless the family did not receive aid for two consecutive months. (W&IC §11450.04(a), see also §§44-314.2, .32, and .6)

In order for this section to apply, notification must be provided to applicants or recipients in writing. "The notification required by this section shall set forth the provisions of this section and shall state explicitly the impact these provisions would have on the future aid to the assistance unit. This section shall not apply to any recipient's child earlier than 12 months after the mailing of an informational notice as required by this subdivision." (W&IC §11450.04(f))

Under state regulations, in order for the Maximum Family Grant (MFG) limitations to apply, the AU must have "... received written notice of the MFG at least ten months prior to the birth of the child...." (§44-314.31)

In addition, if the AU has had a break in aid of at least two consecutive months during the ten months prior to the month of birth of the child, the MFG rule will not apply. (§44-314.32)

For MFG purposes, months in suspense (see §44-315.8 prior to implementation of QR/PB) and months in which the AU was eligible for a zero basic grant (see §44-315.9) are considered months in which the AU did not receive aid. (§44-314.143, effective July 1, 2001, implementing the August 25, 2000 San Francisco County Superior Court, Class Action No. 310867, Settlement Agreement and Stipulation for Entry of Judgment in *Nickols* v. *Saenz*; All-County Letter No. 00-78, November 30, 2000).

State regulations provide that the MFG shall not apply when:

.51 Rape: The child was conceived as a result of an act of rape, as defined in Sections 261 and 262 of the Penal Code, and

.511 The rape has been reported to a law enforcement agency, medical or mental health professional or an organization that provides counseling to victims of rape prior to, or within three months after, the birth of the child.

(a) The recipient shall provide written verification from one of the entities listed above, that the incident of rape was reported and the date that the report was made.

.52 Incest: The child was conceived as a result of incest, as defined in Section 285 of the Penal Code, and

.521 Paternity has been established, or

.522 The incest has been reported to a law enforcement agency, medical or mental health professional or an organization that provides counseling to victims of incest prior to, or within three months after, the birth of the child.

(a) The recipient shall provide written verification from one of the entities listed above that the incident of incest was reported and the date the report was made.

.53 Contraceptive Failure: It is medically verified that the child was conceived as a result of the failure of:

.531 An intrauterine device, or

.532 Norplant, or

.533 The sterilization of either parent.

.54 Unaided Caretaker Relative: The child was conceived while either parent was an unaided nonparent caretaker relative.

.55 Not Living with Parent: The child is not living with either parent

(§44-314.5)

## CONCLUSION

San Francisco County did not grant additional cash aid benefits upon the birth of the claimant's second child because the county maintained that the claimant's second child, born February 2006, was an MFG child and not eligible for cash aid. The claimant questioned whether the county had correctly determined that the MFG rule applied to the claimant's second child. The claimant also argued that her husband's participation in a community job program resulted in her cash aid being terminated for the two months of September and October 2005 and that therefore the MFG rule should not be applied to her cash aid AU.

The first question to be answered is whether or not the claimant's second child is an MFG child. Under the applicable regulations the MFG rule acts to exclude a child born while the claimant's AU is receiving cash aid if 1) the claimant was provided the proper informing notice regarding the MFG rule at least 10 months prior to the birth of the child, and 2) that the claimant was on cash aid for the 10 consecutive months prior to the birth of the child. The claimant signed acknowledging receipt of MFG informing notices in both 2004 and 2005 and thus it is concluded that the first of the two requirements was satisfied.

The claimant disputes that she was on cash aid for 10 consecutive months. Thus whether or not the claimant was on aid for 10 months must be determined. The claimant produced a NOA that

stated the claimant would "no longer get a regular CalWORKs check sent to you. Instead, you will get paychecks issued to you from the Private Industry Council (PIC), for working in a community job." She also produced a NOA that stated "you will start getting regular CalWORKs checks again, since you will no longer be in the community jobs initiative (CJI) program. Your monthly grant will be $723.00"

The claimant also produced a NOA showing that her EBT card balance in October 2005 was only $0.23 and had not been used in 45 days, reflecting that no cash aid had been paid to her AU by posting on the card balance.

The county produced records showing that the claimant's cash aid had been paid to her husband's employer during September and October 2005 as part of his welfare to work participation in the amount of $723 per month.

The applicable regulations provide that if an AU is off cash aid for two consecutive months during the 10 months prior to the birth of the MFG child, the MFG rule does not apply and the child is eligible for cash aid.

The question raised by the facts of this case is whether or not the claimant's AU was considered off cash aid for two consecutive months during September and October 2005. The answer is that although the claimant was not paid her cash aid benefits directly during those months the claimant 's AU remained on cash aid during September and October 2005, under the applicable regulations and the terms of the Paid Community Services Participation: Voluntary Consent Form.

The claimant's cash aid was simply diverted to subsidize the claimant's husband's community job as part of his welfare to work requirements. The cash aid grant was paid to the claimant in the form of the husband's paycheck rather than as a credit on the claimant's EBT card. The claimant is still considered on aid under the applicable regulation during that time. The claimant's husband further acknowledged in writing that he was "still a CalWORKs recipient" when he signed the participation form.

While there are a few other exceptions to application of the MFG rule, none of those exceptions are applicable under these facts.

Given the foregoing it is concluded that the claimant's AU was on cash aid for 10 consecutive months prior to the birth of the claimant's second child. Thus, it is determined that the claimant's AU was not entitled to receive additional cash aid for the claimant's second child born in February 2006. San Francisco County correctly withheld benefits for that child under the MFG rule and the county action is sustained.

## ORDER

The claim is denied.