1 2 3 4 5 6 7 8 9	JENNER & BLOCK LLP Todd C. Toral (SBN CA 197706) TToral@jenner.com Kate Spelman (SBN CA 269109) KSpelman@jenner.com 515 South Flower Street, Suite 3300 Los Angeles, CA 90071-2246 Telephone: +1 213 239 5100 Facsimile: +1 213 239 5199 CALIFORNIA TRIBAL FAMILIES COALITIC Kimberly Cluff (SBN CA 196139) Kimberly.cluff@caltribalfamilies.org 3053 Freeport Boulevard, Suite 154 Sacramento, CA 95818-4346 Telephone: +1 916 583 8289 Attorneys for Plaintiffs Bear River Band of Rohnerville Rancheria Tribe ar		
11	Madison Fisher		
12	SUPERIOR COURT OF THE STATE OF CALIFORNIA		
13	COUNTY OF HUMBOLDT		
14			
15	BEAR RIVER BAND OF ROHNERVILLE	Case No.	
16	RANCHERIA TRIBE, a federally recognized Indian Tribe, and MADISON FISHER, an individual,	COMPLAINT	
17	Plaintiffs,		
18	V.		
19	CALIFORNIA DEPARTMENT OF SOCIAL		
20	SERVICES; HUMBOLDT COUNTY;		
21	HUMBOLDT COUNTY DEPARTMENT OF HEALTH AND HUMAN SERVICES; CONNIE		
22	BECK (in her official capacity as Director of Humboldt County's Department of Health and		
23	Human Services); and DOES 1 through 25, inclusive,		
24	Defendants.		
25 26			
27 28			
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	COM	MPLAINT	

Plaintiffs Bear River Band of Rohnerville Rancheria Tribe ("Tribe") and Madison Fisher, by and through their attorneys, complain against Defendants California Department of Social Services, Humboldt County, Humboldt County Department of Health and Human Services, Connie Beck, in her capacity as Director of Humboldt County's Department of Health and Human Services, and DOES 1 through 25 as follows:

NATURE OF THE ACTION

1. This dispute involves Defendants' decision to disregard a binding federal directive the direct effect of which targeted Plaintiffs for being American Indian and stripped away Plaintiffs' foster care benefits prematurely. As a result of Defendants' unlawful actions, Plaintiffs have been denied years of monetary and in-kind benefits they were legally entitled to, which has resulted in the loss of access to housing, education, and medical treatment, among other necessities. Plaintiffs have directly suffered, and continue to suffer, significant and irreparable harm because of Defendants' actions.

PARTIES

2. Plaintiff Tribe is a federally recognized Indian tribe located in Humboldt County, California. The Tribe is located in two separate parts of Humboldt County, one at the eastern edge of Fortuna and the other to the southeast of Loleta. The Tribe exercises inherent sovereign governmental authority within its Indian Lands and on behalf of the health and welfare of the Tribe and its members ("Tribal Members"), descendant children, grandchildren and other inhabitants of the Tribe's Indian Lands.

3. This action is brought by and on behalf of the Tribe in the exercise of its authority as a sovereign government and under its *parens patriae* authority in the public interest to protect the health, safety, and welfare of all Tribal Members, as well as to recover damages and seek other redress for harm caused by Defendants' improper actions.

4. Madison Fisher is a non-minor dependent of the Humboldt Superior Court and a member of Plaintiff Tribe.

5. Defendant California Department of Social Services ("CDSS") is a public entity of the State of California.

6. Defendant Humboldt County is a political body of the State of California.

7. Defendant Humboldt County Department of Health and Human Services is responsible for administering Humboldt County's extended foster care program within Humboldt County.

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8. Defendant Connie Beck is the Director of Defendant Humboldt County's Department of Health and Human Services. Plaintiffs sue Ms. Beck in her official capacity. Ms. Beck is responsible for the enforcement, operation and execution of laws pertaining to Defendant Humboldt County's administration of Humboldt County's extended foster care program, including the administration of applications for foster care benefits described therein.

9. The fictitious Defendants Does 1 through 25 are sued pursuant to the provisions of
California Code of Civil Procedure § 474. Plaintiffs do not know the true names and capacities, whether
individual, entity, or otherwise, of such fictitious Defendants. Plaintiffs are informed and believe and
based thereon allege that each of said Defendants were in some way responsible for, participated in or
contributed to the matters and things of which Plaintiffs complain herein, and in some fashion have legal
responsibility therefor. Plaintiffs will amend this Complaint to show the true names and capacities when
the same have been ascertained.

15 10. Plaintiffs are informed and believe, and based upon such information and belief allege, that 16 at all times mentioned below each Defendant was the officer, employee, principal, agent, representative, 17 partner or co-conspirator of the remaining Defendant, and each other, and that in doing the acts alleged, 18 each Defendant was acting within the course and scope of his or her agency, employment, partnership, 19 conspiracy, or other authorized relationship with the other Defendant and with the permission and 20 ratification of Defendant. Whenever and wherever reference is made in this Complaint to any acts of 21 Defendant, such allegations and references shall also be deemed to mean the acts of each Defendant acting 22 individually, jointly, or severally.

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JURISDICTION AND VENUE

11. This Court has personal jurisdiction over each of the Defendants because each of them
resides and/or conducts business in the State of California and the facts, actions, and occurrences giving
rise to this litigation take place in the State of California and, in part, Humboldt County, California.

27 12. This Court has subject matter jurisdiction pursuant to California Constitution, article VI,
28 section 10, California Code of Civil Procedure section 410.10, and California Government Code § 11139.

13. Venue is proper in this Court because the facts giving rise to the causes of action arose in and continue to occur in the State of California and, in part, Humboldt County, California.

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GENERAL ALLEGATIONS

Federal Foster Care Program and Title IV-E Eligibility

14. The Federal Foster Care Program helps to provide out-of-home care for children until they are safely returned home, placed permanently with adoptive families, or placed in other planned arrangements for permanency. Authorized by Title IV-E of the Social Security Act, the Federal Foster Care Program entitles states, territories, and tribes to claim partial federal reimbursement for the cost of providing foster care, adoption assistance, and kinship guardianship assistance to children who meet federal eligibility criteria.

11 15. Eligibility for the Federal Foster Care Program is based on the requirements of the Aid to
12 Dependent Families ("AFDC"), as they were in effect on July 16, 1996. Although the Temporary
13 Assistance for Needy Families ("TANF") welfare program eventually replaced AFDC, eligibility for the
14 Federal Foster Care Program is still linked to the eligibility requirements of the defunct AFDC (*i.e.*,
15 "AFDC linkage") to this date.

16 16. AFDC was a grant program enabling states to provide cash welfare payments for "needy"
17 children who had been deprived of parental support or care because their father or mother was absent from
18 the home, incapacitated, deceased, or unemployed. To determine whether a child is "needy," a two-step
19 income test and a resources test must be conducted. Under the two-step income test, the child's family's
20 (i) gross income must be less than 185 percent of the State's AFDC need standard and (ii) net income had
21 to be less than the payment standard. Under the resources test, the child's family must have financial
22 resources under a certain value.

17. States administered the program or supervised its administration, including defining
"needy," setting their own benefit levels, and established (within federal limitations) income and resource
limits.

18. To establish federal eligibility for foster care, a child must meet certain standards, which
include AFDC linkage requirements, deprivation, income, property, court requirements and placement in
an eligible facility. To meet the AFDC linkage requirement, one of the following conditions must exist

during the month that a petition to remove a child from the home of the child's parent or relative is filed 1 in juvenile court: (a) the child was living in the home of the parent or relative from whom they were 2 3 removed in the month of the petition and was eligible for, and received, AFDC; (b) the child was living in the home of the parent or relative from whom they were removed in the month of the petition and would 4 5 have been eligible for AFDC had an application been made; or (c) the child was living in the home of the parent or relative from whom they were removed within any of the previous six months prior to the month 6 7 of the petition and would have been eligible for AFDC had an application been made in the month of 8 petition.

19. AFDC linkage may only be based on a physical removal that is the result of either a court order or a voluntary placement agreement. The home from which the child was physically removed must be identified by the court order as the home of removal.

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20. If there is no AFDC linkage, there is no federal funding eligibility for a child's case.

21. Determinations of the child's continued eligibility for federal Title IV-E foster care benefits 14 are conducted periodically but the AFDC linkage requirement is only required once per foster care episode. No redeterminations of the AFDC linkage are required to demonstrate federal Title IV-E 15 16 eligibility so long as the youth remains in foster care. See Child Welfare Policy Manual 8.4A.24 (citing 17 Social Security Act-Section 472(a)(3); Sections 406(a) and 407 (as in effect on July 16, 1996); 45 C.F.R. 18 § 233.20).

19 22. As part of the Fostering Connections to Success and Increasing Adoptions Act of 2008 20 (P.L. 110-351), ("Fostering Connections") Congress amended the Title IV-E program to provide states 21 and tribes an option to extend eligibility for federal foster care to youth between the ages of 18 and 21.

22 23. To the extent states indeed opt into the federal program (e.g., California), binding federal 23 directive from the Administration for Children and Families through ACYF-CB-PI-10-11 governs the 24 AFDC linkage requirement relative to youth in extended foster, which states:

We have eliminated AFDC redeterminations to ease an administrative burden we now believe is unnecessary. The Title IV-E agency must establish AFDC eligibility at the time the child is removed from home or a voluntary placement agreement is entered. We note that it is not possible to implement the option to extend Title IV-E assistance to youth in foster care who are age 18 or older as permitted by P.L. 110-351 and require such youth to be subject to AFDC redeterminations. Specifically, youth age 19 or older cannot meet the AFDC eligibility requirements because they would not be able to meet the definition of a

"needy child" in former section 406 of the Act. This clearly is inconsistent with the law's amendments to provide an option for extended Title IV-E assistance to older youth. For the purpose of a Title IV-E eligibility review, we [Children's Bureau] will not review whether the Title IV-E agency conducted annual AFDC redeterminations for a child in the sample.

24. In other words, redeterminations for extended foster care are not required as they would be inconsistent with the goals of the Fostering Connections Act—which was to extend and not deprive the eligibility for federal foster care to youth between the ages of 18 and 21.

В.

California's Extended Foster Care Program

25. In 2010, the California Fostering Connections to Success Act (Assembly Bill 12) was enacted, which subsequently opted California into the federal Title IV-E extended foster care program. This means California's extended foster care program ("18 and Over Program") includes the AFDC linkage requirement for federal Title IV-E eligibility for nonminor dependents participating in the program.

26. California's Manual of Policy and Procedures Section 45-310-311 governs eligibility determinations regarding the extended foster care program. Specifically, Section 45-310.21 states:

If a nonminor dependent was receiving federal or nonfederal foster care prior to age 18 and continued to be in foster care after his/her 18th birthday, the nonminor dependent continues to be eligible for federal or nonfederal foster care without a new eligibility determination.

27. On January 28, 2011, the CDSS provided further clarification on this standard in All County Letter No. 11-10, stating that annual redeterminations of AFDC linkage were not required for nonminors who *continued* in foster care upon reaching the age of 18.

28. On March 23, 2012, California issued All County Letter No. 12-12, which imposed requirements for a new determination of AFDC linkage eligibility only on *re-entry* of a former foster youth after the age of 18. ACL No. 12-12 stated that "youth who voluntarily re-enter foster care after turning 18 years of age following dismissal of dependency are considered to be entering a new foster care episode and a new eligibility determination is required."

27 29. Nonetheless, despite the clear directive from the federal government as reflected in 28 California's Manual of Policy and Procedures, on November 1, 2013, CDSS thereafter issued All County

Letter No. 13-91 ("ACL 13-91"), which stated that "Indian youth must still meet the financial Aid to Families with Dependent Children-Foster Care (AFDC-FC) eligibility requirements." Importantly, this 2 3 ACL did not differentiate between a youth continuing in foster care or re-entering foster care.

30. As a result, CDSS regularly conducted redeterminations of eligibility on non-minor youth of the Tribe entering the 18 and Over Program even though they had never left the foster care program.

31. These redeterminations have had a significant and disproportionate impact on American Indian youth, including non-minor Tribal Members, seeking extended foster care benefits. This is because "tribally based financial distributions (*e.g.*, gaming or trust funds) may become available to [Indian] youth upon reaching the age of majority," ACL 13-91, and Defendants considered such per capita distributions a potentially disqualifying resource in conducting redeterminations, rendering a significant number of non-minor American Indian youth ineligible for the 18 and Over Program.

32. These American Indian youths would have been eligible for the 18 and Over Program absent CDSS's improper redeterminations because they met the initial AFDC-FC eligibility requirements and their eligibility remained unchanged aside from tribal distributions.

33. In short, American Indian youth were unfairly impacted and penalized because they were 15 16 identified as being American Indian or a member of an Indian tribe and a *possible* recipient of tribal assets 17 or income after their initial AFDC-FC eligibility determination. They were thus excluded from the 18 and 18 Over Program despite their significant need for the benefits that should have been afforded to them.

19 34. These redeterminations contravene the purpose of federal and state extended foster care 20 programs, which are intended to extend the eligibility of foster care benefits, not deprive otherwise eligible youths who receive tribal distributions between the ages of 18 and 21.

C. **Defendants' Failed Attempt to Remedy the Loss of Benefits**

35. On June 2, 2021, California Tribal Families Coalition ("CTFC") sent a letter to CDSS stating that its clarification regarding extended foster care "has led county agencies to overly monitor tribal youth in extended foster for eligibility." See Exhibit A (June 2, 2021 letter from CTFC to CDSS).

26 36. Specifically, CTFC requested that ACL 13-91 be rescinded, and a corrective directive be issued immediately. 27

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37. Additionally, CTFC requested that CDSS take "steps to remedy any loss of benefits that Indian youth may have experienced due to this misstep, including reviewing the eligibility determinations of all Indian youth in California that have been excluded from the benefits afforded under extended foster care programs statewide since the issuance of the ACL [13-91]."

38. CDSS responded by acknowledging that:

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[F]ederal guidance, as issued via program instructions (PI-10-11) on July 9, 2010, eliminated the federal requirement for annual redeterminations of deprivation and is clear that the title IV-E agency must establish AFDC eligibility at the time the child is removed from the home or when a voluntary placement agreement is entered; that is, upon legal entry or re-entry to foster care.

See Exhibit B (July 14, 2021 letter from CDSS to CTFC).

39. Further, CDSS stated it "intends to issue new program guidance to inform counties that a redetermination is not required when a child or nonminor dependent in foster care receives income or 12 property after the initial linkage determination has been completed." Id. 13

40. More recently, CDSS issued a draft ACL stating that "[f]or youth who turn 18 while under an order for foster care placement, no redetermination shall be conducted solely due to the youth turning 18 years old."

41. Defendants have, upon information and belief, undertaken nominal efforts to re-enroll 17 American Indian youth who remain eligible for the 18 and Over Program but for the reassessment of their 18 financial resources are the age of majority. 19

42. Yet, despite these "efforts," no steps have been considered or undertaken by Defendants to redress the harm suffered by American Indian youth who have unlawfully lost years of benefits to which they were entitled and would have otherwise received from the extended foster care program but for the unlawful redetermination evaluations performed by Defendants.

D. Defendants' Actions Continue to Harm American Indian Youth, Including Non-**Minor Tribal Members**

43. 26 Despite binding federal directives and CDSS's partial attempt to remedy the harm, 27 Humboldt County has continued to find non-minor American Indian youth, including non-minor Tribal 28 Members, ineligible for the 18 and over Program as a result of tribal "per capita distributions."

44. In the interim time period since CDSS acknowledged the illegality of extended foster care 1 2 redeterminations, Humboldt County has failed and refused to take corrective action to the specific 3 detriment of American Indian youth, many of whom have had their foster care benefits stripped away prematurely and in contravention of controlling federal law. 4

5 45. American Indian youth are being unfairly precluded from the critical benefits under the extended foster care program based on their American Indian status, as members of an American Indian 6 7 tribe, or both.

46. The harm suffered by these individuals is not theoretical; rather, it has resulted in the loss of access to housing, education, and medical treatment, among other basic life necessities.

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10 47. These eligible American Indian youths are already a vulnerable population and 11 Defendants' actions stripping them of much needed programs have exacerbated that vulnerability, which applicable federal law is intended to address. 12

48. What is more, older youth who age out of foster care are at increased risk for several adverse adult outcomes, including homelessness, high unemployment rates, low educational attainment, and early or unintended pregnancies.

16 49. For instance, Plaintiff Fisher—a member of Plaintiff Tribe—suffered tremendous loss that was exacerbated by Defendants' improper redeterminations of her extended foster care benefits.

18 50. Plaintiff Fisher met the AFDC linkage requirement when she was physically removed from 19 her home by a court order in 2019.

20 51. As she turned 18, without ever having left the foster care program, Plaintiff Fisher 21 continued to need additional support, including financial and emotional support that under federal law was 22 guaranteed from the 18 and Over Program. Once she applied for extended foster care benefits, she was 23 initially told that she was eligible for the 18 and Over Program. Upon approval of her application for 24 extended foster care benefits, Plaintiff Fisher moved into housing managed by Humboldt County

25 52. A few months later, however, Humboldt County changed its mind unilaterally and stripped Plaintiff Fisher of her eligibility for the 18 and Over Program due to her receipt of tribal distributions, 26 27 which was disclosed at the time of application. Plaintiff Fisher was given a week's notice to vacate the very same housing that was originally arranged for her by Humboldt County. Humboldt County 28

threatened to remove her by force using a police escort if she did not leave her home. At the time of this 2 eviction, she had nowhere to go and could not bring necessities with her. Again, Fisher was already in a 3 vulnerable position even with housing, but Humboldt County did not care and unlawfully further unended her life. 4

53. After losing her housing and primary income—the extended foster care benefits she was entitled to from Humboldt County—Plaintiff Fisher struggled to find new housing and pay for necessities with her savings and unemployment. She was further ineligible for any food assistance due to her receipt of tribal distributions.

54. Plaintiff Fisher faced significant substance and mental health issues at this time. The abrupt eviction and elimination of her primary income left Plaintiff Fisher vulnerable to depression, homelessness, and relapse given her history of substance abuse. She even made an attempt to end her life.

55. Plaintiff Fisher met her initial AFDC eligibility requirements and her eligibility for the 18 and Over Program should have remained unchanged despite turning 18 and receiving tribal distributions. Instead, Humboldt County stripped away the extended foster care benefits that were necessary for Plaintiff Fisher's livelihood. Plaintiff Fisher has yet to be made whole for this wrongdoing.

56. When state and county systems fail, as they have here, Tribes may lose their young citizens, a vital resource for continued existence. Indeed, as Congress has acknowledged, "there is no resource more vital to the continued existence and integrity of Indian tribes than their children" (25 United States Code Section 1901(3)).

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VIOLATION OF CALIFORNIA GOVERNMENT CODE § 11135

FIRST CAUSE OF ACTION

57. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

58. 24 Defendants' decision to blatantly disregard the federal government's "clear" and binding 25 directive and enforce ACL 13-91 unlawfully targeted Plaintiffs for being American Indian and stripped away Plaintiffs' foster care benefits prematurely. 26

27 59. As a result, Plaintiffs have been denied years of monetary and in-kind benefits they were 28 legally entitled to, which has resulted in the loss of access to housing, education, and medical treatment, 1 among other necessities.

60. Defendants have thus violated, and continue to violate, rights guaranteed to Plaintiffs by California Government Code § 11135, which prohibits discrimination against individuals on the basis of, among other things, race, ancestry, or ethnic group identification, in or under any program or activity conducted, operated, or administered by the state or any state agency.

6 61. Plaintiffs have directly suffered, and are continuing to suffer, significant and irreparable
7 harm because of Defendants' actions.

62. If not enjoined by the Court, Defendants will continue to deny Plaintiffs compensation for the lost monetary and in-kind benefits to which they were clearly entitled.

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SECOND CAUSE OF ACTION

DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT (42 U.S.C. § 1983)

12 63. Plaintiffs incorporate herein by reference each and every allegation contained in the
13 preceding paragraphs of this Complaint as though fully set forth herein.

14 64. Under the Due Process Clause of the Fourteenth Amendment, no State shall "deprive any
15 person of life, liberty, or property, without due process of law."

16 65. Plaintiffs had a constitutionally protected property interest in the foster care benefits they
17 were receiving at the time they turned 18 and Defendants stripped away those benefits without notice and
18 in contravention of federal law. Indeed, but for Defendants' issuance and enforcement of ACL 13-91,
19 Plaintiffs would have continued to be eligible (and received benefits) for the 18 and Over Program under
20 binding federal directive.

21 66. Certain Plaintiffs have not been compensated for the monetary and in-kind benefits they
22 should have received during the time that Defendants unlawfully excluded them from the 18 and Over
23 Program.

24 67. Defendants have thus failed to comply with the substantive requirements of the U.S.
25 Constitution in connection with Plaintiffs' rights and liberties.

26 68. As a direct and proximate result of the aforementioned acts and/or omissions of
27 Defendants, Plaintiffs have no adequate remedy at law and will suffer serious and irreparable harm to their

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constitutional rights unless Defendants are enjoined from enforcing ACL 13-91 and similar California directive.

69. Pursuant to 42 U.S.C. § 1983, Plaintiffs are entitled to declaratory relief and permanent injunctive relief invalidating and restraining enforcement of ACL 13-91 and similar California directives. Further, as a direct and proximate result of the foregoing, Plaintiffs are entitled to monetary damages and have been damaged in an amount to be proven at trial.

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THIRD CAUSE OF ACTION

VIOLATION OF THE CALIFORNIA ADMINISTRATIVE PROCEDURE ACT / UNDERGROUND REGULATION

70. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

12 71. Regulations are defined in the California Administrative Procedure Act, which defines 13 regulation as "every rule, regulation, order, or standard of general application or the amendment, 14 supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." 15 16 Cal. Gov. Code § 11342.600. A regulation both (1) is intended to apply generally, rather than in a specific 17 case; and (2) must implement, interpret, or make specific the law enforced or administered by the agency, 18 or govern the agency's procedure. Tidewater Marine Western, Inc. v. Bradshaw, 14 Cal. 4th 557, 571 19 (1996) (citing Cal. Gov. Code § 11342.600).

20 72. Binding federal directive in PI-10-11 stated that "As indicated in policy issued in [Child
21 Welfare Policy Manual] 8.3A.4, 8.3A.10, and 8.4A on April 8, 2010, we have eliminated AFDC
22 redeterminations"

73. ACL 13-91 incorrectly stated that "Indian youth must still meet the financial Aid to
Families with Dependent Children-Foster Care (AFDC-FC) eligibility requirements" to participate in the
18 and over Program.

26 74. ACL 13-91 was intended to apply generally and implemented and interpreted the law
27 administered by the CDSS.

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75. Under the California APA, an agency may not issue, utilize, enforce, or attempt to enforce ... a regulation" without complying with the APA's notice and comment provisions. Cal. Gov. Code § 11340.5(a).

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76. The CDSS's decision to issue ACL 13-91 was subject to the rulemaking procedures of the APA as the Letter was intended as a rule of general application to guide counties in their evaluations of AFDC-FC eligibility requirements, and was therefore an "underground regulation" and void.

77. Plaintiffs are entitled to an order invalidating ACL 13-91 and enjoining Defendants from enforcement thereof.

FOURTH CAUSE OF ACTION

DECLARATORY RELIEF

78. Plaintiffs incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

79. An actual controversy has arisen and now exists between Plaintiffs and Defendants relating to their legal rights and duties. Plaintiffs contend that Defendants are pursuing a policy in excess of their legal authority and failing to fulfill their legal obligations by enforcing their policies as described herein.
Defendants deny this contention and contend that they legally may continue to enforce their policies.

80. Plaintiffs need a judicial determination of their rights and of Defendants' duties and a
declaration as to whether the policies being pursued by Defendants to redetermine eligibility of extended
foster care program recipients are in conformity with law, and as to whether Plaintiffs are entitled to a
rescission by Defendants of their conduct to date. A judicial declaration is necessary and appropriate at
this time because Plaintiffs are suffering and will continue to suffer financially as a result of Defendants'
policies and measures.

FIFTH CAUSE OF ACTION

PETITION FOR WRIT OF MANDATE

81. Plaintiffs incorporate herein by reference each and every allegation contained in the
preceding paragraphs of this Complaint as though fully set forth herein.

82. Plaintiffs are beneficially interested in and affected by Defendants' directives and polices
as alleged herein.

COMPLAINT

83. Defendants have improperly subjected Plaintiffs and other extended foster care program 1 recipients to redeterminations of eligibility at the detriment of American Indian youth, many of whom 2 3 have had their foster care benefits stripped away prematurely despite meeting the initial AFDC-FC eligibility requirements. Defendants' directives are not authorized by state or federal law. 4

84. Defendants have a clear, present, and ministerial duty to administer the extended foster care program in a manner consistent with applicable law and to stop enforcement of their policies that 6 conflict with state and federal law.

85. 8 In failing to perform their duty as set forth herein, Defendants committed a prejudicial 9 abuse of discretion.

Demand was made upon Defendants to perform this duty. In direct contravention of law 86. 10 11 and the demand that has been made upon them, Defendants have failed, and in the future will continue to 12 fail, to perform their duty expressly mandated by law, despite their ability to carry out this duty.

> 87. Plaintiffs have no plain, speedy, or adequate remedy, other than the relief here sought.

14 88. Plaintiffs seek a writ of mandate to compel Defendants and its authorized representatives to invalidate and restrain enforcement of ACL 13-91 and similar California directive in order to comply 15 16 with the governing California and federal mandates for extended foster care programs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

1. For compensatory damages in an amount to be determined by proof at trial;

2. For special damages;

3. For preliminary and permanent equitable relief, ordering Defendants to invalidate and restrain enforcement of ACL 13-91 and similar California directive.

4. 23 A writ of mandate under Code of Civil Procedure section 1085 compelling Defendants to comply with its lawful duties and due process laws to provide and maintain extended foster care benefits 24 25 for Plaintiffs and others similarly situated as set forth above.

26 5. Declaratory relief declaring that Defendants' policies of redetermining eligibility of 27 American Indian youth in the extended foster care program violates state law and is null and void.

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1	6	6. For interest on all recoverable damages at the highest legal rate from the earliest date	
2	possible;		
3	7	7. For attorneys' fees and costs incurred in connection with this action to the fullest	
4	extent permitted by law; and		
5	8	8. For such other and further relief as this Court may deem just and proper for Plaintiffs'	
6	benefit.		
7			
8	Dated:	March 14, 2023 JENNER & BLOCK LLP	
9			
10		By: <u>/s/ Todd C. Toral</u> Todd C. Toral	
11		Kate Spelman	
12		CALIFORNIA TRIBAL FAMILIES COALITION	
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14		By: <u>/s/ Kimberly Cluff</u>	
15		Kimberly Cluff	
16		Attorneys for Plaintiffs	
17		Bear River Band of Rohnerville Rancheria Tribe and Madison Fisher	
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		15 COMPLAINT	

Exhibit A



June 2, 2021

Kim Johnson, Director California Department of Social Services 744 P Street Sacramento, CA 95814

Sent via email to: Kim.Johnson@dss.ca.gov and Tribal.Consultation@dss.ca.gov

RE: Inequitable Treatment of Indian Youth in Extended Foster Care

Dear Ms. Johnson:

It has come to the attention of California Tribal Families Coalition that a number of tribal children in extended foster care are losing critical extended foster care benefits, including housing and monthly foster care maintenance payments. This has resulted in tribal youth becoming homeless and being told they do not qualify for critical housing benefits.

Additionally, member tribes have reported youth disengaging completely from extended foster care programs when the housing and maintenance payments are stripped. Extended foster care programs were created nationwide because of the frightening outcomes seen for youth exiting foster care without robust transition support. Therefore, the impacts of removing any portion of extended foster care benefits, including housing and maintenance payments, likely have greater long-term consequences than the immediate loss of the direct benefit, essentially leaving youth without any transition support upon reaching the age of 18.

Additionally concerning, is the fact that youth and child welfare agencies may believe they have additional time to build transition supports in anticipation of the youth's entry into extended foster care to suddenly find those supports abruptly cut off. In the case of the youth who became homeless, their entry into a THP+ housing unit had occurred only three months prior to being told they were no longer eligible for the benefits and therefore had to leave the supportive housing unit. This youth then refused any further participation in the extended foster care program leaving them without a home and any further support from the agency.

The explanation to tribes and their tribal youth for this loss in benefits is described as youth becoming ineligible for benefits when receiving tribal trust fund distributions upon reaching the ages of 18 and 21. It is well understood that Title IV-E regulations regarding foster care benefits that

OUR MISSION

To protect the health, safety and welfare of tribal children and families, which are inherent tribal governmental functions and are at the core of tribal sovereignty and tribal governance

BOARD MEMBERS

ROBERT SMITH CTFC Chairperson Pala Band of Mission Indians, Chairperson

MARYANN MCGOVRAN CTFC Vice-Chairperson North Fork Rancheria, Treasurer

CATALINA CHACON CTFC Treasurer Pechanga Band of Luiseno Indians, Council Member

TILFORD DENVER CTFC Secretary Bishop Paiute Tribe, Chairperson

VIRGIL MOOREHEAD CTFC Board Member Big Lagoon Rancheria, Chairperson

DEANA BOVEE CTFC Board Member Susanville Indian Rancheria, Chairperson

GLENDA NELSON CTFC Board Member Estom Yumeka Maidu Tribe of the Enterprise Rancheria, Chairperson

JERI LYNN THOMPSON CTFC Board Member Tolowa Dee-ni' Nation, Secretary

TERESA SANCHEZ CTFC Board Member Morongo Band of Mission Indians, Council Member

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TERESA COUSINS CTFC Board Member Jamul Indian Village, Council Member

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are federally funded are dependent on a youth's eligibility, which includes specific AFDC linkage requirements regarding the income and resources of a child/youth and members of the home they are removed from. Yet, this linkage is only required to be determined once for each foster care episode, therefore most youth in extended foster care do not require a redetermination upon reaching the age of 18 so long as they continue to remain in foster care. The need for only one linkage determination during the course of a foster care episode in spite of the age of the child is clearly laid out in federal and state guidance (please see ACYF-CB-PI-10-11; California's Manual of Policy and Procedures Section 45-310-311; ACL-11-10; and, ACL 12-12).

CTFC believes currently issued California Department of Social Services (CDSS) guidance regarding extended foster care eligibility has led county agencies to overly monitor tribal youth in extended foster for eligibility. Specifically, California provided guidance related to Indian children in extended foster care and the application of ICWA in ACL 13-91. The AFDC linkage requirement is discussed in this guidance and unlike other guidance provided on the extended foster care program, this ACL does not differentiate between a youth continuing in foster care or re-entering foster care in discussion of the AFDC linkage for Title IV-E eligibility. Instead, the ACL highlights that Indian youth in extended foster care may present specific considerations in the eligibility determination based on per capita distributions that may be released to the youth upon reaching the age of 18.

CTFC is extremely concerned that Indian youth are being unfairly precluded from the critical benefits offered under the extended foster care program. As stated above, at least one youth has become homeless due to what appears to be inequitable application of federal and state policy. At this time, we do not know the extent and breadth of the effects of this inequity on Indian children statewide. We can assume that there may be far wider reaching consequences than what has been shared here and we ask that CDSS take immediate action to correct any misleading guidance that may be creating this unfair situation for Indian youth.

CTFC requests that ACL 13-91 be rescinded, and corrective guidance be issued immediately. Additionally, CTFC requests that CDSS take proactive steps to remedy any loss of benefits that Indian youth may have experienced due to this misstep, including reviewing the eligibility determinations of all Indian youth in California that have been excluded from the benefits afforded under extended foster care programs statewide since the issuance of the ACL.

OUR MISSION

To protect the health, safety and welfare of tribal children and families, which are inherent tribal governmental functions and are at the core of tribal sovereignty and tribal governance

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CTFC staff have attempted to discuss this issue informally with CDSS staff over the past month without resolution. This issue is critically time sensitive given its life changing impacts on Indian youth in foster care. CTFC requests that CDSS respond addressing the concerns outlined within two weeks from receipt of this letter. If such a response is not received, the CTFC Board will ask that CDSS leadership meet directly with tribal leaders to address these concerns.

Respectfully,

Whit Marge

Delia Sharpe Executive Director

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Agua Caliente Band Of Cahuilla Indians



Cher-ae Heights Indian Community Of The Trinidad Rancheria



Habematolel Pomo Of Upper Lake



Karuk Tribe



Paskenta Band Of Nomlaki Indians



Resighini Rancheria



Soboba Band Of Luiseno Indians



Wilton Rancheria



Bear River Band Of Rolmerville Rancheria



Coyote Valley Band Of Pomo Indians



Hopland Band Of Pomo Indians



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Big Sandy Rancheria



Dry Creek Band Of Pomo Indians



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Morongo Band Of Mission Indians



Pit River Tribe



Round Valley Indian Tribes



Tejon Indian Tribe



Southern California Tribal Chairmen's Association



Bishop Paiute Indian Tribe



Enterprise-Rancheria



lone Band Of Miwok



North Fork Rancheria



Redding Rancheria



Sherwood Valley Band of Pomo Indians



Tolowa Dee-ni Nation





Federated Indians Of Graton Rancheria



Jamul Indian Village Of California



Pala Band Of Mission Indians



Redwood Valley Little River Band Of Pomo



Shingle Springs Band Of Miwok Indians



Tule River Reservation

Exhibit B







GAVIN NEWSOM GOVERNOR

July 14, 2021

Delia Sharpe, Executive Director California Tribal Families Coalition 3053 Freeport Blvd., Suite 154 Sacramento, CA 95818

SUBJECT: INEQUITABLE TREATMENT OF INDIAN YOUTH IN EXTENDED FOSTER CARE

Dear Ms. Sharpe:

Your letter to Kim Johnson, Director of the Department of Social Services (CDSS), dated June 2, 2021, has been forwarded to me for response. Your letter relays that the California Tribal Families Coalition (CTFC) has learned that some tribal youth in extended foster care are losing extended foster care benefits, including funding for placement, as a result of the receipt of tribal trust fund distributions upon or after turning 18. You request that the CDSS rescind guidance issued in All County Letter (ACL) 13-91 and issue corrective guidance to counties. You further request that CDSS take steps to remedy the loss of benefits youth may have experienced as a result of a redetermination of eligibility after the receipt of a tribal trust fund distribution.

The CDSS agrees that Title IV-E AFDC redeterminations of deprivation are no longer required under federal law. Rather, federal guidance, as issued via program instructions (PI-10-11) on July 9, 2010, eliminated the federal requirement for annual redeterminations of deprivation and is clear that the title IV-E agency must establish AFDC eligibility at the time the child is removed from the home or when a voluntary placement agreement is entered; that is, upon legal entry or re-entry to foster care.

The CDSS issued <u>ACL 11-10</u> to describe the federal guidance, as well as a relevant change to state law enacted subsequent to the federal guidance that applies to all AFDC-FC eligibility determinations, whether or not federal IV-E funding is available for the placement. That ACL explained that annual deprivation redeterminations are no longer required by the ACF, and that specific sections of the FC 2, used for all state and federal AFDC-FC cases, are no longer required at annual redetermination. Although ACL 11-10 instructs counties that deprivation redeterminations no longer apply in California, it does not state directly that monthly income or resources are not to be evaluated on an ongoing basis.

Executive Director Sharpe Page Two

Therefore, the CDSS intends to issue new program guidance to inform counties that a redetermination is not required when a child or nonminor dependent in foster care receives income or property after the initial linkage determination has been completed. Further, the proposed guidance will remind counties that the annual review must examine factors such as eligible placement, continued court jurisdiction, and, for nonminor dependents, participation in one of the employment or education activities, as applicable under current law, but it is not a redetermination of deprivation.

The proposed guidance will expressly address the population of youth who turn 18 while under an order for foster care placement and will remind counties that no redetermination shall be conducted solely due to the youth turning 18 years old. When youth are continuously in foster care, their income and assets need not be reconsidered. Similarly, the proposed guidance will remind counties that no new AFDC-FC eligibility determination or redetermination is required following an absence from placement or change of placement, unless there was a formal termination of dependency.

This issue is not unique to tribal youth, but also impacts all other minors and nonminors in foster care who come into assets or income after the initial AFDC-FC eligibility determination measuring deprivation, income, and assets at the time of removal. Therefore, the proposed guidance will apply to all foster care cases. The CDSS will highlight the particular impact on tribal youth who receive per capita distributions. Updates to relevant forms will also be provided. The CDSS intends to include this guidance and updates to any forms as part of the Department's ongoing work to update regulations.

In the interim, the Foster Care Funding and Eligibility Unit (FCFEU) is available to provide technical support to counties in cases where an unnecessary eligibility redetermination have occurred and a child or youth has been adversely impacted. If you become aware of cases, please contact <u>FC-KGEligibility@dss.ca.gov</u>, which will work directly with the county. The FCFEU will also be available to provide technical assistance to counties and tribes after the guidance is issued.

Sincerely,

ANGIE SCHWARTZ Deputy Director Children and Family Services Division