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6 **CALIFORNIA TRIBAL FAMILIES COALITION**

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9 *Attorneys for Plaintiffs*

10 *Bear River Band of Rohnerville Rancheria Tribe and*

11 *Madison Fisher*

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF HUMBOLDT**

14  
15 BEAR RIVER BAND OF ROHNERVILLE  
16 RANCHERIA TRIBE, a federally recognized  
17 Indian Tribe, and MADISON FISHER, an  
individual,

18 Plaintiffs,

19 v.

20 CALIFORNIA DEPARTMENT OF SOCIAL  
21 SERVICES; HUMBOLDT COUNTY;  
22 HUMBOLDT COUNTY DEPARTMENT OF  
23 HEALTH AND HUMAN SERVICES; CONNIE  
24 BECK (in her official capacity as Director of  
Humboldt County's Department of Health and  
Human Services); and DOES 1 through 25,  
inclusive,

25 Defendants.  
26  
27  
28

Case No. \_\_\_\_\_

**COMPLAINT**

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

6 **NATURE OF THE ACTION**

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

13 **PARTIES**

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

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

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

25 5. Defendant California Department of Social Services (“CDSS”) is a public entity of the  
26 State of California.

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

28





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

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

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

13 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  
15 episode. No redeterminations of the AFDC linkage are required to demonstrate federal Title IV-E  
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:

25 We have eliminated AFDC redeterminations to ease an administrative burden we now  
26 believe is unnecessary. The Title IV-E agency must establish AFDC eligibility at the time  
27 the child is removed from home or a voluntary placement agreement is entered. We note  
28 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

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

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

9 **B. California’s Extended Foster Care Program**

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

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

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

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

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

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

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

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

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

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

15 33. In short, American Indian youth were unfairly impacted and penalized because they were  
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  
21 youths who receive tribal distributions between the ages of 18 and 21.

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

23 35. On June 2, 2021, California Tribal Families Coalition (“CTFC”) sent a letter to CDSS  
24 stating that its clarification regarding extended foster care “has led county agencies to overly monitor  
25 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  
27 issued immediately.

28

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

5 38. CDSS responded by acknowledging that:

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

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

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

15 40. More recently, CDSS issued a draft ACL stating that “[f]or youth who turn 18 while under  
16 an order for foster care placement, no redetermination shall be conducted solely due to the youth turning  
17 18 years old.”

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

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

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

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



1           44.     In the interim time period since CDSS acknowledged the illegality of extended foster care  
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  
4 prematurely and in contravention of controlling federal law.

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

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

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  
12 applicable federal law is intended to address.

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

16          49.     For instance, Plaintiff Fisher—a member of Plaintiff Tribe—suffered tremendous loss that  
17 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  
26 Plaintiff Fisher of her eligibility for the 18 and Over Program due to her receipt of tribal distributions,  
27 which was disclosed at the time of application. Plaintiff Fisher was given a week's notice to vacate the  
28 very same housing that was originally arranged for her by Humboldt County. Humboldt County

1 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  
4 her life.

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

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

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

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

20 **FIRST CAUSE OF ACTION**

21 **VIOLATION OF CALIFORNIA GOVERNMENT CODE § 11135**

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

24 58. 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  
26 away Plaintiffs’ foster care benefits prematurely.

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.

2 60. Defendants have thus violated, and continue to violate, rights guaranteed to Plaintiffs by  
3 California Government Code § 11135, which prohibits discrimination against individuals on the basis of,  
4 among other things, race, ancestry, or ethnic group identification, in or under any program or activity  
5 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.

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

10 **SECOND CAUSE OF ACTION**

11 **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  
28

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

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

7 **THIRD CAUSE OF ACTION**

8 **VIOLATION OF THE CALIFORNIA ADMINISTRATIVE PROCEDURE ACT /**  
9 **UNDERGROUND REGULATION**

10 70. Plaintiffs incorporate herein by reference each and every allegation contained in the  
11 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  
15 implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure.”  
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 ....”

23 73. ACL 13-91 incorrectly stated that “Indian youth must still meet the financial Aid to  
24 Families with Dependent Children-Foster Care (AFDC-FC) eligibility requirements” to participate in the  
25 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.

28







# **Exhibit A**





## CALIFORNIA TRIBAL FAMILIES COALITION

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](mailto:Kim.Johnson@dss.ca.gov)  
and [Tribal.Consultation@dss.ca.gov](mailto: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

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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 Board Member  
Iipay Nation of Santa Ysabel,  
Council Member



## CALIFORNIA TRIBAL FAMILIES COALITION

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.

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## CALIFORNIA TRIBAL FAMILIES COALITION

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,

Delia Sharpe  
Executive Director

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Habematolel Pomo of Upper Lake,  
Council Member

TERESA COUSINS  
CTFC Board Member  
Jamul Indian Village,  
Council Member

SUNNI DOMINGUEZ  
CTFC Board Member  
Iipay Nation of Santa Ysabel,  
Council Member



Agua Caliente Band Of Cahuilla Indians



Bear River Band Of Romerville Rancheria



Big Sandy Rancheria



Bishop Paiute Indian Tribe



Cachil Dehe Wintun



Cher-ae Heights Indian Community Of The Trinidad Rancheria



Coyote Valley Band Of Pomo Indians



Dry Creek Band Of Pomo Indians



Enterprise-Rancheria



Federated Indians Of Graton Rancheria



Habematolel Pomo Of Upper Lake



Hopland Band Of Pomo Indians



Iipay Nation Of Santa Ysabel



Ione Band Of Miwok



Jamul Indian Village Of California



Karuk Tribe



Mechoopda Indian Tribe



Morongo Band Of Mission Indians



North Fork Rancheria



Pala Band Of Mission Indians



Paskenta Band Of Nomlaki Indians



Pechanga Band Of Luiseno



Pit River Tribe



Redding Rancheria



Redwood Valley Little River Band Of Pomo



Resighini Rancheria



Robinson Rancheria



Round Valley Indian Tribes



Sherwood Valley Band Of Pomo Indians



Shingle Springs Band Of Miwok Indians



Soboba Band Of Luiseno Indians



Susanville Indian Rancheria



Tejon Indian Tribe



Tolowa Dee-ni Nation



Tule River Reservation



Wilton Rancheria



Yurok Tribe



Southern California Tribal Chairmen's Association

# **Exhibit B**





**KIM JOHNSON**  
DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY  
**DEPARTMENT OF SOCIAL SERVICES**  
744 P Street • Sacramento, CA 95814 • [www.cdss.ca.gov](http://www.cdss.ca.gov)



**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 [ACL 11-10](#) 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  
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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 [FC-KGEligibility@dss.ca.gov](mailto:FC-KGEligibility@dss.ca.gov), 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