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ENDORSED  
12 2000  
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*cutd*

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10 Attorneys for Plaintiffs/Petitioners

11  
12 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **IN AND FOR THE COUNTY OF SACRAMENTO**

14 AUDREY RUSH, KERRY RUSH, )  
15 and PHYLLIS CRISP, on behalf of )  
16 themselves and all others similarly )  
17 situated, )  
18 Plaintiffs/Petitioners )

Case No. 97CS01014

CLASS ACTION

~~PROPOSED~~ JUDGMENT

19 v. )

20 RITA SAENZ, Director of the )  
21 California Department of Social Services, )  
22 and the CALIFORNIA DEPARTMENT )  
23 OF SOCIAL SERVICES, )  
24 Defendants/Respondents. )

25 This case was filed in March, 1997. Plaintiff/Petitioners First Amended Petition for Writ  
26 of Mandate and Complaint for Declaratory and Injunctive Relief was filed on September 8, 1997.  
27 Plaintiff/Petitioners Second Amended Petition for Writ of Mandate and Complaint for Declaratory  
28 and Injunctive Relief was filed on May 13, 1999. Class Certification was granted on October 1,  
1999. Throughout this case, Stephen Goldberg and Grace Galligher have appeared on behalf of  
Plaintiff/Petitioners Audrey Rush, Kerry Rush and Phyllis Crisp, and Deputy Attorney General  
Darryl Mansfield has appeared on behalf of Respondent Director of the California Department of  
Social Services. The parties have reached a settlement of this case. The court, having granted the

1 Motion for Approval of the Settlement Agreement and Motion for Entry of Judgment Pursuant to  
2 Terms of Stipulated Settlements, enters the following Judgment:

3 IT IS ORDERED THAT:

4 1. The parties to this action shall complete all terms, conditions and provisions of the  
5 settlement reached between them as stated in the Revised Stipulation for Settlement attached as  
6 Exhibit A and incorporated as if fully set forth herein.

7 2. The individual case of Petitioner Phyllis Crisp is remanded to the California  
8 Department of Social Services for a new administrative hearing to be held in accordance with the  
9 Stipulation re: Second Cause of Action attached as Exhibit B and incorporated as if fully set forth  
10 herein.

11 3. The court retains jurisdiction over the parties at their request in order to enforce this  
12 judgment until performance in full of its terms and the terms of the two settlement agreements  
13 incorporated herein.

14 DEC 12 2000

15 Dated: \_\_\_\_\_

LLOYD G. CONNELLY

16 HONORABLE LLOYD G. CONNELLY  
17 Judge of the Superior Court

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19  
20  
21  
22  
23 \FS1\DAT.A\WPDOCS\STEPHEN\RUSH\JUDGMENT.RSH

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9

10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **IN AND FOR THE COUNTY OF SACRAMENTO**  
12

13 AUDREY RUSH, KERRY RUSH, )  
and PHYLLIS CRISP, on behalf of )  
14 themselves and all others similarly )  
situated. )

15 Plaintiffs/Petitioners )

16 v. )

17 ELOISE ANDERSON, Director of the )  
18 California Department of Social Services, )  
and the CALIFORNIA DEPARTMENT )  
19 OF SOCIAL SERVICES. )

20 Defendants/Respondents. )  
21

**Case No. 97CS01014**

**CLASS ACTION**

**REVISED  
STIPULATION FOR SETTLEMENT**

22 The parties desire to avoid the expense and uncertainty of further litigation of this action, and  
23 have reached a mutually acceptable resolution of the First, Third, Fourth, Fifth and Sixth Causes of  
24 action stated in the Second Amended Complaint in the above entitled action. The parties, by and  
25 through their respective attorneys of record, hereby stipulate as follows:

- 26 1. Respondent California Department of Social Services (hereinafter DSS) will issue a new  
27 "Notes from the Training Bureau" which will make the following changes to the documents entitled  
28

1 "Notes from the Training Bureau", Item 94-12-2, dated December 20, 1994 (attached as Exhibit 1) and  
2 Notes from the Training Bureau, Item 94-12-2a, dated March 21, 1995 (attached as Exhibit 2):

3 a. The first full paragraph on page 1. is hereby deleted. That paragraph stated "This  
4 memo sets forth the general guidelines which CDSS believes are appropriate in decisions involving the  
5 claim of equitable estoppel. Judges who write decisions in accord with these guidelines may write final  
6 decisions. Failure to adhere to these guidelines will require the judge to write a proposed decision."

7 b. The third paragraph under the heading "ELEMENT 4" on page 3, which currently  
8 states "There are three ways in which detrimental reliance can be established. They are as follows:" is  
9 hereby changed to "Three ways in which detrimental reliance can be established are:".

10 c. The paragraph above the heading "ELEMENT 5" on page 6, is hereby deleted. That  
11 paragraph stated "In all other overpayment cases, where the claimant's only contention is that he cannot  
12 afford to repay the overpayment, this element of estoppel is not met. That is, the fact that the individual  
13 has to repay an overpayment caused by county error alone does not satisfy the fourth element of  
14 estoppel. Incurring the debt does not, of itself, constitute injury. If the claimant's only contention of  
15 injury is the inability to repay the overpayment, the case should be denied without further analysis at this  
16 step."

17 d. The paragraph labeled 4 on page 8 is hereby deleted. That paragraph stated:  
18 "Hardship in repaying an overpayment or over issuance is not evaluated under the 4th element, but under  
19 the 5th element, i.e. balancing."

20 2. All DSS Administrative Law Judges will be provided with instructions implementing this  
21 settlement agreement within 30 days of approval of this Stipulation by the Court. A copy of these  
22 instructions will be provided to plaintiffs attorneys.

23 3. Notice will be mailed to all members of the class defined as "All AFDC, TANF, or  
24 CalWORKs claimants in administrative hearings conducted by the Department of Social Services or its  
25 successor agencies on or after December 20, 1994, who have contended or will contend that an action  
26 of a county or its agents, employees, contractors or successors was or will be completely or partially  
27 estopped and that claim is denied solely because of a Department of Social Services finding that the  
28

1 claimant did not satisfy the fourth element of equitable estoppel pursuant to the CDSS Policy on  
2 Equitable Estoppel (Notes from the Training Bureau-Issue 94-12-2a, December 20, 1994 and March 21,  
3 1995, page 6), that the claimant's inability to repay an overpayment, by itself, does not constitute  
4 injury."<sup>1</sup>

5 4. The list of class members to whom notice will be mailed will be generated using the DSS  
6 State Hearings Division's electronic data processing system. DSS shall update the addresses on the list  
7 through the Medi-Cal Eligibility Data System and the United States Postal Service FASTforward  
8 system.

9 5. The notice to members of the class will include:

10 a. A description of this litigation and Stipulation.

11 b. A statement that the class member can request a new administrative hearing regarding  
12 whether repayment of the overpayment of benefits at issue constitutes injury for the purpose of the  
13 fourth element of the doctrine of equitable estoppel and whether the fifth elements of the doctrine of  
14 equitable estoppel is met.

15 c. A statement that the new administrative hearing must be requested within 90 days of  
16 the date of receipt of the notice by the claimant.

17 d. A description of how to request the new administrative hearing.

18 e. A statement that the new administrative hearing will address all of the claimant's  
19 hearing decisions in AFDC, TANF and CalWORKs cases since December 20, 1994 in which a claim  
20 of equitable estoppel was denied because the claimant's inability to repay an overpayment, by itself, did  
21 not constitute injury.

22 f. The notice will include the following: "You must prove repayment would have been  
23 a hardship at the time of your prior hearing. Your actual repayment does not prevent you from proving  
24 hardship."

25 g. A statement that if a new administrative hearing is requested, the prior hearing

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26  
27 <sup>1</sup>This class was certified by the court by order dated October 1, 1999. A copy of that order is  
28 attached as Exhibit 1.

1 decision(s) will be set aside.

2 h. The notices will be in English on one side and in Spanish on the opposite side. The  
3 notice will include information in Vietnamese, Cambodian, Chinese and Russian explaining how class  
4 members can obtain more information about their rights under this Stipulation.

5 6. A draft of the notice to be mailed to class members shall be forwarded to plaintiffs attorneys  
6 for review and comment no more than 15 days after lodging of this Stipulation with the court. Plaintiffs  
7 attorneys shall forward any written comments regarding the notice to defendants' attorney within 15  
8 days of their receipt of the draft notice. DSS shall mail the notice to class members no more than 60  
9 days after approval of this Stipulation by the court.

10 7. If 20% or more of the notices are returned as undeliverable, posters containing the same  
11 information as will be contained in the notice will be posted at every county welfare department office.

12 8. After receipt of the request for the new administrative hearing as described in Paragraph 3(b),  
13 DSS will issue a Decision Pursuant to Court Order setting aside all of the claimant's hearing decisions  
14 since December 20, 1994 in which a claim of equitable estoppel was denied in AFDC, TANF or  
15 CalWORKs cases because the claimant's inability to repay an overpayment, by itself, did not constitute  
16 injury.

17 9. After issuing the Decision Pursuant to Court Order, DSS will schedule a new administrative  
18 hearing for the claimant on the same time schedule as any other request for a DSS administrative  
19 hearing. The new hearing will address all of the claimant's hearing decisions since December 20, 1994  
20 in which a claim of equitable estoppel was denied AFDC, TANF or CalWORKs cases because the  
21 claimant's inability to repay an overpayment, by itself, did not constitute injury. The only issues in the  
22 new hearing will be whether repayment of the overpayment of benefits at issue constitutes injury for the  
23 purpose of the fourth element of the doctrine of equitable estoppel and whether the fifth element of the  
24 doctrine of equitable estoppel is met.

25 10. If the claimant prevails in an administrative hearing provided in accordance with this  
26 stipulation, all collection on the overpayment amount found to be estopped will cease. All amounts  
27 collected on the overpayment which are found to be estopped will be returned to the claimant or used  
28

1 to offset other uncollected overpayments. If the amount is used to offset other uncollected  
2 overpayments, a notice of action to that effect shall be issued to the claimant which the claimant can  
3 challenged using the normal administrative hearing process.

4 11. If the claimant is a CalWORKs recipient at the time he or she receives any corrective  
5 payment made after an administrative held pursuant to this Stipulation, the claimant shall be entitled to  
6 place the payment, up to the statutory amount, in a restricted account under Welfare and Institutions  
7 Code § 11155.2. Any administrative hearing decision pursuant to this Stipulation which orders  
8 corrective payments shall inform the claimant of his/her right to place to place the payment, up to the  
9 statutory amount, in a restricted account.

10 12. Within 90 days of the issuance of the last hearing decision in a hearing held pursuant to  
11 paragraph 7 of this stipulation, DSS will send plaintiffs attorneys a report detailing the number of notices  
12 sent pursuant to this stipulation, the number of hearings requested pursuant to this stipulation, the  
13 number of claims granted in hearings with issue code 009 from the date of approval of this Stipulation  
14 to the date of the report, the number of claims denied in hearings with issue code 009 from the date of  
15 approval of this Stipulation to the date of the report, and the number of claims partially granted and  
16 partially denied in hearings with issue code 009 from the date of approval of this Stipulation to the date  
17 of the report. The parties expressly agree that no particular outcome of this reporting is guaranteed.

18 13. Plaintiff/Petitioners' counsel shall be entitled to recover costs. The parties shall attempt to  
19 reach a separate agreement as to the amount of costs to be recovered. However, if good faith negotiation  
20 fails to result in an agreement, Plaintiff/Petitioners shall file a memorandum of costs within the time  
21 specified by California Rule of Court 870.

22 14. Plaintiff/Petitioners' counsel shall be entitled to recover attorney fees. The parties shall  
23 attempt to reach a separate agreement as to the amount of such fees. However, if good faith negotiation  
24 fails to result in an agreement, Plaintiff/Petitioners shall file a motion to claim attorney fees within the  
25 time specified by California Rule of Court 870.2.

26 15. This stipulation has been drafted by all the parties. In the event a court is required to  
27 interpret this Stipulation, no party shall have the right to argue that the other is responsible for any  
28

1 ambiguity in the language of this Stipulation, and any uncertainty or ambiguity shall not be interpreted  
2 against any one party.

3 16. This agreement does not constitute an admission by either party regarding the legal or factual  
4 issues raised in this action.

5 17. This stipulation can be signed in counterparts.

6  
7 DATED: 11-3-00

  
AUDREY RUSH

8  
9 DATED: 11-3-00

  
KERRY RUSH

10  
11  
12 DATED: 11/20/00

NORTHERN CALIFORNIA LAWYERS  
FOR CIVIL JUSTICE

13  
14 COALITION OF CALIFORNIA WELFARE  
RIGHTS ORGANIZATIONS

15  
16 By:   
STEPHEN GOLDBERG  
17 Attorney for Plaintiffs/Petitioners

18  
19 DATED:

\_\_\_\_\_  
Representative of the Department of  
Social Services

20  
21  
22 DATED:

BILL LOCKYER  
Attorney General  
FRANK FURTEK, Supervising  
Deputy Attorney General  
DARRYL MANSFIELD  
Deputy Attorney General

23  
24  
25  
26  
27 \_\_\_\_\_  
Attorneys for Defendants/Respondents

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7 DATED:

8 \_\_\_\_\_  
AUDREY RUSH

9  
10 DATED:

11 \_\_\_\_\_  
KERRY RUSH

12 DATED:

13 NORTHERN CALIFORNIA LAWYERS  
FOR CIVIL JUSTICE

14 COALITION OF CALIFORNIA WELFARE  
RIGHTS ORGANIZATIONS

15  
16 By:

17 \_\_\_\_\_  
STEPHEN GOLDBERG  
Attorney for Plaintiffs/Petitioners

18  
19 DATED:

*11/15/00*

20 \_\_\_\_\_  
*Karen D. Harrison*  
Representative of the Department of  
Social Services

21  
22 DATED:

*11/15/00*

23 BILL LOCKYER  
Attorney General  
FRANK FURTEK, Supervising  
Deputy Attorney General  
24 DARRYL MANSFIELD  
Deputy Attorney General

25  
26 \_\_\_\_\_  
*Darryl Mansfield*  
Attorneys for Defendants/Respondents