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

SANDRA TURNER, et al.,
Plaintiffs,
v.
LINDA McMAHON, et al.,
Defendants.

Civil Action No. C 81-4457 TEH

CONSENT DECREE RE PLTF'S
FIRST CAUSE OF ACTION

JUN 20 1983

NORTHERN DISTRICT OF CALIF.

1 Children, operated pursuant to 42 U.S.C. § 601 et seq.,
2 or any essentially similar successor program(s).

3 b. "All-County Letter(s)" or "All-County
4 Information Notice(s)" refers to standard DSS written
5 instructions to all counties regarding implementation of
6 the AFDC program.

7 c. "County" or "Counties" refers to the
8 58 counties within the State of California and their
9 respective Departments or personnel which administer the
10 AFDC program, as agents of DSS.

11 d. "DSS" refers to the Department of Social
12 Services or any successor agency responsible for adminis-
13 tering AFDC in the State of California.

14 e. "Explanation of reasons for intended
15 action" or "explanations" refers to that portion of a
16 Notice of Action which explains the reasons for the
17 proposed action, including a statement of the rule of
18 law being applied and why the recipient's individual
19 circumstances require the action taken. It also includes,
20 when applicable, a statement of what information or
21 action is needed to reverse the proposed action, to
22 reestablish eligibility or to determine the correct
23 amount of aid. See DSS All-County Information Notice
24 I-151-82, November 23, 1982.

25 f. "Law change(s)" refers to any change in
26 local, state or federal law and shall include a change
27 in statute, regulation or rule, as well as a change
28 required by court decision or order.

1 g. "Notice(s) of Action" refers to any
2 notice sent to an AFDC recipient purporting to inform
3 him or her of any proposed action affecting an AFDC
4 grant, including but not limited to suspension, reduc-
5 tion, discontinuance or denial of a grant.

6 h. "Notice of Action forms" or "forms"
7 refers to preprinted Notice of Action form(s), including
8 forms which are used for computer generated Notices of
9 Action, which contain general information concerning
10 matters such as hearing rights and spousal support
11 enforcement, and which would be completed by the counties
12 with information applicable to individual AFDC recipients.
13 Examples of existing "Notice of Action forms" are
14 current DSS forms NA 290, NA 291 and NA 990.

15 i. "Plaintiffs' counsel" refers to the
16 San Francisco Lawyers' Committee for Urban Affairs, and
17 the Western Center on Law and Poverty, Inc. or such
18 substituted counsel as approved by the Court.

19 j. "Recipient(s)" refers to both applicants
20 for and recipients of AFDC grants.

21 k. "Recipient information notices" or
22 "notices" refers to any general notices sent by the
23 counties to AFDC recipients informing them of law
24 changes.

1
2 II

3 GENERAL PROVISIONS

4 2. This Court has jurisdiction over this action.

5 3. The parties agree that this action may be, and
6 is hereby, dismissed against (a) the Department of Social
7 Services, (b) the Department of Finance, (c) Marion Woods, in
8 his individual capacity, (d) Mary Ann Graves, in her individual
9 capacity, and (e) Kyle McKinsey, in his individual and
10 official capacity. The remaining defendants are Linda
11 McMahon, in her official capacity as Director of the Department
12 of Social Services, and Michael Franchetti, in his official
13 capacity as Director of the Department of Finance. Defendants
14 McMahon and Franchetti enter into this agreement which binds
15 them, their successors in office and the officers, employees
16 and agents of their respective departments, including county
17 welfare departments.

18 4. For purposes of this Consent Decree, the
19 plaintiffs are representatives of a class, previously certified
20 under Fed. R. Civ. P. 23, of all present and future California
21 AFDC recipients who are or will be affected by Public Law
22 97-35 and whose benefits are reduced, suspended or terminated
23 as a result of changes in State and federal law and who fail
24 to receive constitutionally adequate notice of the reasons
25 for the change in their grant and of their right to an
26 administrative appeal. It is the intent of this Consent
27 Decree to bind the members of that class to the extent
28 permitted by law.

1 5. The parties agree that this Consent Decree
2 addresses only issues raised by the First Cause of Action in
3 Plaintiffs' First Amended Complaint and that this Decree is
4 final and binding only as to the issues in the First Cause of
5 Action resolved herein.

6 6. The parties agree that a legally adequate
7 Notice of Action is one which (a) informs the recipient of
8 the action the county intends to take, (b) gives an explanation
9 of reasons for intended action, (c) where appropriate, sets
10 forth the necessary calculations, (d) cites the regulation or
11 statute supporting the action and (e) explains the recipient's
12 right to appeal and aid-paid-pending. The parties have
13 agreed through this Consent Decree to establish a procedure
14 to assure that Notices of Action are as comprehensible as
15 possible, both in the format in which the information is
16 presented and in the language used.

17 7. DSS and the counties are permanently enjoined
18 from terminating, suspending, or reducing an AFDC recipient's
19 benefits unless the recipient receives a legally adequate
20 Notice of Action.

21 8. DSS and the counties are permanently enjoined
22 from using Notice of Action forms NA 292 and NA 293, attached
23 as Exhibits A and B. DSS shall instruct the counties that
24 such use is prohibited.

25 9. DSS shall neither adopt nor revise Notice of
26 Action forms, explanations of reasons for intended action, or
27 recipient information notices except as provided in this
28 Consent Decree.

1 10. DSS shall instruct the counties to use only
2 the Notice of Action forms, format, explanations of reasons
3 for intended action and recipient information notices as
4 provided in this Consent Decree.

5 11. Notice to the class, as defined in paragraph 4
6 above, pursuant to Fed. R. Civ. P. 23(e) may be required as
7 deemed appropriate by the Court.

8 12. Copies of documents referred to in this
9 Consent Decree but not attached as Exhibits are in an Appendix
10 filed separately with the Court.

11

12

III

13

14

REQUIREMENTS AND PROCEDURES FOR LAW
CHANGES OCCURRING FROM THE DATE OF
THIS DECREE UNTIL OCTOBER 1, 1985

15 13. From the date of the entry of this decree to
16 October 1, 1985, DSS shall deliver to plaintiffs' counsel
17 copies of all proposed All-County Letters (or similar documents)
18 containing explanations of reasons for intended action or
19 recipient information notices developed by DSS to implement
20 law changes (together with exemplars of how such explanations
21 and notices will appear when used by both computer and
22 non-computer counties) at least 10 days before transmitting
23 the All-County Letters to the counties.

24 14. Plaintiffs' counsel shall attempt to provide
25 DSS with any objections to the legal adequacy of such notices
26 and explanations as expeditiously as possible, and in no
27 event more than four days after receipt of the DSS proposal.

28

1 15. Plaintiffs' counsel and DSS shall attempt to
2 resolve any differences regarding the proposed explanations
3 or notices as expeditiously as possible. If the parties
4 cannot resolve their differences, plaintiffs shall, no later
5 than six days after receipt of the DSS proposal, request a
6 conference with the Court.

7 16. Within four days of plaintiffs' counsel's
8 request for a conference with the Court pursuant to paragraph
9 15, the Court will hold a conference with the parties. The
10 parties shall have the opportunity to make written submissions
11 to the Court.

12 17. At the conclusion of the conference, or after
13 the conference but within the four days provided for in
14 paragraph 16, the Court will:

15 a. Rule as to the legal adequacy of the
16 explanations or notices proposed by DSS and objected to
17 by plaintiffs' counsel, or

18 b. In the event that, for any reason, the
19 Court is not able to rule on the legal adequacy of the
20 explanations or notices, provide such guidance as may be
21 appropriate to the parties; or

22 c. Rule as to some explanations or notices
23 and provide appropriate guidance as to others pursuant
24 to paragraphs 17(a) and (b).

25 18. In making rulings regarding the legal adequacy
26 of Notice of Action forms, explanations of reasons for
27 intended actions or recipient information notices under
28 paragraphs 17 or 27, the Court will not declare the DSS

1 proposals legally inadequate unless they do not meet the
2 minimum standard for adequacy under applicable constitutional,
3 statutory and/or regulatory law. The Court recognizes that
4 although a major goal of this Consent Decree is to produce
5 forms, explanations and notices that are as comprehensible as
6 possible (i.e., the very best that can be done), that such
7 standard is not the criterion for measuring legal adequacy.

8 19. If the Court rules that an explanation or
9 notice proposed by DSS is legally inadequate, DSS shall be
10 enjoined from instructing the counties to use such explanation
11 or notice and shall prohibit the counties from implementing
12 the law change until a legally adequate explanation or notice
13 is approved by the Court. However, if for any reason the
14 Court does not rule on the legal adequacy of an explanation
15 or notice, DSS shall not be prevented from instructing the
16 counties to use the explanation or notice as originally
17 proposed or as amended by DSS after consideration of the
18 advice of plaintiffs' counsel or of the Court, subject to any
19 subsequent order of the Court holding that the explanation or
20 notice is legally inadequate.

21 20. The time periods provided in paragraphs 13
22 through 19 are minimums. If DSS provides more advance notice
23 to plaintiffs' counsel, the time periods shall be extended
24 proportionally. DSS shall make all best efforts to provide
25 the items described in paragraph 13 to plaintiffs' counsel at
26 the earliest time practicable.

27 21. In the event a court order in another action
28 requires changes in the AFDC program affecting the determination

1 of aid amounts, the receipt of aid or eligibility for aid,
2 nothing in this decree shall be deemed to preclude the
3 immediate implementation of that court's ruling, if that
4 court so orders. DSS shall immediately send to plaintiff's
5 counsel a copy of such court order.

6
7 IV

8 REVISION AND DEVELOPMENT OF
9 FORMS AND EXPLANATIONS OF
10 REASONS FOR INTENDED ACTION

11 22. DSS agrees to retain a consultant to assist
12 DSS in the development of Notice of Action forms, explanations
13 of reasons for intended action and recipient information
14 notices in accordance with the goals and terms of this
15 decree.

16 a. DSS shall, with the assistance of plaintiffs'
17 counsel and, if necessary, the Court, prepare a Request
18 for Proposal (RFP) which describes the qualifications
19 and duties of the consultant prior to soliciting bids
20 for the consultant contract.

21 b. The RFP must provide, at the minimum,
22 that the consultant will perform the following tasks:

23 (1) Obtain information and data regarding
24 the literacy level of AFDC recipients from
25 currently available sources and, to the extent
26 he or she deems necessary, do limited field
27 testing to determine their understanding of
28 the AFDC program and their fair hearing
rights. It is not envisioned by the parties

1 that such field testing, if undertaken by the
2 consultant, will require a significant amount
3 of the consultant's time.

4 (2) Review all DSS Notice of Action
5 forms used by the counties to inform recipients
6 of their AFDC eligibility status or aid amount
7 (including the forms referred to in Part V),
8 and assist DSS in preparing revisions of all
9 such forms with the goal of making the forms
10 as comprehensible as possible in language and
11 format to the AFDC recipient population.

12 (3) Review current explanations of
13 reasons for intended action specified in
14 Exhibit C to this Decree and assist DSS in
15 preparing revisions of all such explanations
16 with the goal of making such explanations as
17 comprehensible as possible in language and
18 format to the AFDC recipient population.

19 (4) Assist DSS in the development of the
20 language and format of explanations of reasons
21 for intended action and recipient information
22 notices due to law changes which are enacted
23 or adopted during the term of the consultant's
24 contract and such changes adopted pursuant to
25 Part III of this Decree adopted prior to the
26 retention of the consultant.

27 (5) Assume the major responsibility in
28 the preparation of a manual explaining techniques

1 and criteria for drafting comprehensible
2 Notice of Action forms, explanations of
3 reasons for intended action, and recipient
4 information notices which can be used by DSS
5 and the counties in drafting future forms,
6 explanations and notices.

7 (6) Assist in training DSS staff respon-
8 sible for Notice of Action forms, explanations
9 of reasons for intended action and recipient
10 information notices on how to draft such
11 forms, explanations and notices so that they
12 are as comprehensible as possible to the AFDC
13 recipient population.

14 (7) The consultant will be required to

15 (a) meet with plaintiffs' counsel
16 at least quarterly during the contract
17 period to discuss the work undertaken
18 (one observer from DSS may be present at
19 such meetings), and

20 (b) submit to plaintiffs' counsel
21 at the same time as the consultant
22 submits to DSS his or her final draft of
23 recommended Notice of Action forms,
24 explanations of reasons for intended
25 action, recipient information notices,
26 and the manual specified in subsection (5)
27 above.
28

1 c. The RFP provided in paragraph 22(a) shall
2 be completed by July 8, 1983.

3 d. DSS shall create a selection committee to
4 screen bids received in response to the RFP and to
5 select the consultant from those individuals or organiza-
6 tions which submit responsive bids. Plaintiffs' counsel
7 shall designate a representative to serve as a member of
8 the selection committee. From those bids which are
9 responsive to the RFP the selection committee shall pick
10 three bids in descending order of preference. If
11 plaintiffs' counsel objects to the consultant chosen by
12 the selection committee, plaintiffs may, by appropriate
13 noticed motion, petition the Court to overrule any or
14 all of the selection committee's three choices. Plaintiffs
15 shall have the burden of showing that any or all of the
16 choices of the selection committee (1) are not qualified
17 to perform the tasks to be undertaken by the consultant,
18 (2) have not submitted a bid that is responsive to the
19 RFP, or (3) will likely not accomplish the goals set
20 forth in this Decree. If the plaintiffs make the
21 necessary showing as to any or all of the three choices,
22 the Court shall overrule the choice(s) of the selection
23 committee. If the Court overrules all three choices,
24 the selection committee shall select three more choices
25 pursuant to the procedures set forth above. Plaintiffs
26 shall have the same right to challenge any or all of
27 those choices pursuant to the procedures above. This
28 procedure shall continue until an appropriate consultant

1 is selected. DSS shall contract with a consultant by
2 November 1, 1983, or as soon thereafter as possible.

3 e. DSS shall initially make available a sum
4 of up to \$50,000 to fund the consultant contract. In
5 the event that all bids responsive to the requirements
6 of the RFP are greater than \$50,000, DSS shall obtain an
7 additional sum of up to \$50,000 by either legislative
8 appropriation or by allocation of the additional sum
9 from the DSS budget.

10 23. DSS shall review and, if necessary, propose
11 revisions to:

12 a. All DSS Notice of Action forms used by
13 the counties, including the forms specified in section V;

14 b. the current explanations of reasons for
15 intended action specified in Exhibit C to this Decree;

16 c. explanations of reasons for intended
17 action and recipient information notices adopted pursuant
18 to Part III; and

19 d. any forms, explanations or notices
20 adopted pursuant to paragraph 32.

21 This process of review and revision is intended to make the
22 language and format of all such forms, explanations and
23 notices as comprehensible as possible for the AFDC recipient
24 population.

25 24. DSS shall serve on plaintiffs' counsel and
26 file with the Court a statement indicating its conclusions
27 regarding the review and revisions, if any, of the documents
28 specified in paragraph 23 (including its decision not to

1 revise any particular form(s) or explanation(s) that have
2 been reviewed). Along with the aforesaid statment, DSS shall
3 include copies of the reviewed or revised documents which it
4 intends to instruct the counties to use and the proposed,
5 accompanying All-County Letter.

6 25. Within thirty days of the receipt of the
7 material provided pursuant to paragraph 24, plaintiffs'
8 counsel shall communicate with DSS and shall file with the
9 Court any objections they may have regarding the legal
10 adequacy of this material.

11 26. If such objections are filed with the Court,
12 DSS shall file their response to plaintiffs' counsel's
13 objections within twenty-one days. Plaintiffs' counsel shall
14 file any reply to DSS's response within seven days.

15 27. The Court shall rule as to the legal adequacy
16 of the reviewed or revised documents specified in paragraph 23
17 as submitted by DSS. DSS shall not transmit to the counties
18 or instruct the counties to use the reviewed or revised
19 documents specified in paragraph 23 until the Court has
20 approved the documents as legally adequate.

21 28. DSS shall require the counties to use the
22 Notice of Action forms, explanations of reasons for intended
23 action, and recipient information notices as approved by the
24 Court. No deviations shall be permitted, except as follows:

25 a. DSS may permit a county which uses
26 computer generated Notices of Action to deviate, with
27 respect to that portion of the Notice of Action printed
28 by the computer, from the type face and type size

1 mandated b. DSS to the extent that the replication of
2 differences in type face and type size is not feasible
3 with its existing computer capability. DSS must instruct
4 the county to use typographical features that approximate
5 the typographical features of the required format (for
6 example, similar use of white space and, if feasible,
7 the use of underlining of capitalized words to provide
8 emphasis). Further, DSS shall encourage the counties
9 when obtaining or changing computer facilities for
10 sending Notices of Actions to obtain such computer
11 facilities as will allow maximum flexibility with
12 respect to the Counties' ability to replicate DSS
13 required format of notices.

14 b. Before DSS permits a county to deviate in
15 accordance with paragraph 28(a), DSS shall deliver to
16 plaintiff's counsel a copy of the county's proposed
17 exception to the DSS mandated Notice of Action format at
18 least three weeks prior to instructing the counties that
19 such deviations in format will be allowed by DSS.

20 29. The review, proposed revisions and Court
21 approval of all forms and explanations (including Court
22 approval of existing forms and explanations, if applicable)
23 undertaken pursuant to this Part IV shall be completed by
24 October 1, 1985. The counties shall be required to implement
25 the mandated changes in forms and explanations by no later
26 than January 1, 1986.

INTERIM NOTICE OF ACTION FORMS
PRIOR TO REVISION BY DSS

30. Until the revision of forms pursuant to Part IV, and within 30 days of the signing of this decree, DSS shall instruct the counties to use only the forms currently in use and to transmit to DSS copies of all forms currently being used, including exemplars of any heretofore approved deviations from otherwise presently mandated forms. DSS shall send to plaintiffs' counsel copies of all such forms received from the counties within 10 days of their receipt from the counties.

31. Until the revision of forms pursuant to Part IV, DSS shall instruct the counties to use only the form attached as Exhibit D to this decree as the "back" side of all AFDC Notice of Action forms, subject to the following additional qualifications:

a. Plaintiffs' counsel shall provide DSS with the current names, addresses, and telephone numbers of legal aid or welfare rights organizations which provide direct assistance to individual welfare recipients in each county. DSS shall suggest to each county that it specify in the space allotted on the aforesaid attached form the name, address, and telephone number of the appropriate legal aid or welfare rights organization.

b. In agreeing to include information about aid paid pending on the aforesaid attached form, plaintiffs neither admit nor stipulate to the legality of the

1 policy and practice of treating aid-paid-pending a "fair
2 hearing" decision as an overpayment when the hearing
3 decision determines that a recipient received more aid
4 than he or she was entitled to receive, nor does the
5 Court in endorsing this decree rule on this issue.

6 32. During the period prior to the retention of
7 the consultant pursuant to paragraph 22, DSS may develop and
8 instruct the counties to use revised Notice of Action forms,
9 explanations and notices if:

- 10 a. plaintiffs' counsel agree to such use, or
11 b. absent consent from plaintiffs' counsel,
12 the Court approves such use.

13 VI

14 CONTINUING REQUIREMENTS AND PROCEDURES

15 In addition to the provisions set forth above, DSS
16 hereby agrees to do the following on an ongoing basis:

17 33. Continue to instruct the counties to follow
18 All-County Information Notice I-151-82.

19 34. Utilize the techniques and criteria articulated
20 in the manual described in paragraph 22(b)(5) of this Decree,
21 as appropriate, when drafting all subsequent Notice of Action
22 forms, explanations of reasons for intended action and
23 recipient information notices.

24 35. Prepare Spanish language versions of Notice of
25 Action forms, explanations of reasons for intended action and
26 recipient information notices for distribution to the counties
27 at the same time as distribution of English language versions
28 (nothing herein shall be construed as limiting the availability

1 of such material in other languages pursuant to the Bilingual
2 Services Act, California Government Code § 7290 et seq. and
3 DSS Regulations on Civil Rights, DSS Manual of Policies and
4 Procedures § 21-115 et seq.

5 36. Consult with representatives of AFDC recipients
6 prior to the adoption of new or revised Notice of Action
7 forms, explanations of reasons for intended action or recipient
8 information notices, as follows:

9 a. Until October 1, 1985, the provisions set
10 forth in Parts III through V of this Consent Decree that
11 govern notice to plaintiffs' counsel shall satisfy this
12 requirement.

13 b. By October 1, 1985, DSS shall establish,
14 with assistance from plaintiffs' counsel, methods for
15 obtaining the views of AFDC recipient representatives on
16 a continuing basis. These methods inter alia shall
17 specify the following:

18 (1) DSS shall designate as recipient
19 representatives one person recommended by the
20 California Coalition of Welfare Rights Organiza-
21 tions or comparable state-wide organization;
22 the members, if any, of DSS's public assistance
23 recipient advisory council; and 6-10 persons
24 selected by DSS from a list of persons identified
25 by the counties as local welfare rights
26 organization representatives;

27 (2) DSS shall deliver to such recipient
28 representatives advance copies of all proposed

1 documents which fall within this requirement,
2 ordinarily at least thirty (30) days, and in
3 emergency situations at least ten (10) days,
4 before instructing the counties to implement
5 the proposed changes. If DSS must instruct
6 the counties about a law change in less than
7 10 days, DSS shall provide the recipient
8 representatives copies of the aforesaid
9 documents as soon as feasible and in any event
10 no later than the date on which such documents
11 are transmitted to the counties.

12 37. Monitor and enforce compliance by the counties
13 with the provisions of this Decree and the requirements of
14 legally adequate Notice of Action to AFDC recipients by
15 taking all steps necessary to achieve such compliance as
16 quickly as possible.

17 38. Until January 15, 1986, DSS shall send to
18 plaintiffs' counsel, by the fifteenth day of July, October,
19 January and April, quarterly reports which include the
20 following information:

21 a. A random sample of AFDC recipient requests
22 for fair hearings for the previous three months, such
23 sample to be derived by selecting every 100th fair
24 hearing request with accompanying Notice of Action
25 (names and addresses of affected recipients to be
26 deleted) received by DSS.

27 b. A random sample of AFDC fair hearing
28 decisions, including the underlying Notice of Action

1 appealed from, for the preceding three months, such
2 sample to be derived by selecting every 25th fair
3 hearing decision (names and addresses of affected
4 recipients to be deleted).

5 c. A random sample of AFDC fair hearing
6 decisions dismissing the recipient's appeal pursuant to
7 paragraph 45(e) of this Decree, said sample to be
8 derived by selecting every second such decision of
9 dismissal (names and addresses of affected recipients to
10 be deleted).

11 d. A statement of all steps taken by DSS to
12 obtain county compliance with the terms of this Decree
13 during the preceding three months. This statement shall
14 include copies of all Notices of Action determined not
15 to be in compliance and all written communications
16 between DSS and the counties regarding such non-compliance.

17 VII

18 LIMITATION ON WHEN WELFARE & INSTITUTIONS
19 CODE SECTION 10950 MAY BE INVOKED TO
20 RESTRICT HEARING RIGHTS OF AFDC RECIPIENTS

21 39. The parties agree that the Section 10950
22 limitation on fair hearing rights shall only be invoked by
23 DSS to limit fair hearing rights of AFDC recipients when a
24 law change requires an arithmetical adjustment to a preexisting
25 grant level or statutory income disregard or a withdrawal of
26 eligibility from a class of recipients and is not likely to
27 generate disputes about individual factual circumstances.
28 Specifically, DSS shall be prohibited from invoking the
 Section 10950 limitation on fair hearing rights for AFDC

1 recipients unless the law change meets either of the following
2 criteria:

3 a. The law change makes a specific change in
4 a dollar amount for computation of a recipient's grant.
5 Examples of such changes include statutory changes in
6 (1) the standard of need (Minimum Allowable Basic
7 Standard of Care -- MABSC) for a particular Family
8 Budget Unit (FBU), (2) the maximum grant payable to a
9 particular FBU, (3) a specific dollar limitation under
10 the program for special needs, and (4) the dollar amount
11 of a standardized deduction or disregard, e.g., a change
12 in the \$75.00 standard work expense deduction, the
13 \$160.00 child care expense limitation or the \$30.00 and
14 1/3 work incentive disregard currently specified in
15 42 U.S.C. § 602(a)(8); or

16 b. The law change effects the status, e.g.,
17 eligibility, of a class of recipients and is not likely
18 to raise factual disputes. An example of such a change
19 would be a provision that made 18 year olds ineligible
20 for assistance in all circumstances. An example of a
21 status change in which the Section 10950 limitation on
22 fair hearing rights shall not be invoked would be a
23 provision that made 18 year olds ineligible unless they
24 were attending high school or engaged in gainful employment.

25 40. The parties agree that none of the law changes
26 proposed in the following California legislative bills in
27 versions pending as of May 23, 1983 involve changes to which
28 the Section 10950 limitation on fair hearing rights would be

1 applicable under the criteria specified above: S.B. 124,
2 A.B. 223, and S.B. 962 except Section 14.

3 41. The parties also agree that none of the Public
4 Law 97-35 law changes affecting AFDC grant computations or
5 eligibility implemented by California, except the provision
6 limiting payments to amounts of \$10 or more and the provision
7 making all 19-year olds ineligible for assistance, involve
8 changes to which the Section 10950 limitation on fair hearing
9 rights would be applicable under the criteria specific above.

10 42. The Section 10950 limitation on fair hearing
11 rights of AFDC recipients shall not apply to any grant
12 decrease, suspension, or termination which results from the
13 simultaneous application of a law change(s) and a change(s)
14 in the recipient's circumstances (such as a change in earnings
15 or family size). In the case of a grant adjustment resulting
16 from the simultaneous application of two or more law changes,
17 the Section 10950 limitation shall not be applied unless both
18 or all of the law changes meet the criteria set forth above.

19 43. The Section 10950 limitation on fair hearing
20 rights may be invoked by DSS only for the very first month
21 that the particular law change(s) affects a class of recipients
22 in a particular county.

23 44. Until October 1, 1985, if DSS decides to
24 invoke the Section 10950 limitation on fair hearing rights
25 with respect to a future law change, DSS shall so inform
26 plaintiffs no later than the date specified in paragraph 13
27 concerning notice of proposed explanations of reasons for
28 intended action.

VIII

PROCEDURES TO BE FOLLOWED WHEN THE
USE OF SECTION 10950 IS AUTHORIZED

45. In those situations where the use of the Section 10950 limitation of hearing rights is authorized and DSS elects to use such limitation, DSS shall use the following procedures:

a. The Notice of Action forms sent to the recipients shall contain the same language regarding appeal rights and aid-paid-pending that would be used in situations where the Section 10950 limitation did not apply.

b. If a recipient files a request for hearing, the matter shall be set for hearing in the same manner as any other request for hearing would be handled, regardless of the reasons, if any, specified in the request.

c. DSS shall not use any prehearing screening process to dismiss such appeals. However, nothing herein shall be construed to prohibit the use by DSS or the counties of existing procedures to effectuate withdrawals of hearing requests by the mutual consent of the recipient and the county pursuant to the provisions as now provided in Division 22 of the DSS Manual of Policies and Procedures (MPP), §§ 22-023.232 and 22-054.11, or, as amended to comply with the terms of this Consent Decree.

1 d. Except as provided by paragraph 45(e)
2 below, the hearing afforded a recipient when the
3 Section 10950 limitation on fair hearing rights is
4 imposed shall be governed by the same requirements of
5 State and Federal Law that govern hearings under other
6 circumstances. Specifically, the recipient shall enjoy,
7 but not be limited to, those rights provided in MPP
8 § 22-049-53. The present state fair hearing practices
9 do not provide for telephone fair hearings. Plaintiffs
10 do not stipulate that telephonic hearings would comply
11 with State or Federal Law.

12 e. If, at the hearing, the hearing officer
13 decides that based on the written and oral record the
14 recipient was complaining only about the wisdom of the
15 law, not its validity or its application to the recipient's
16 circumstances, the hearing officer may terminate the
17 hearing and DSS may, by written decision, dismiss the
18 appeal.

19 f. Within six months of the signing of this
20 decree, DSS shall submit to the Office of Administrative
21 Law amendments to Division 22 of MPP to comply with the
22 provisions of this Decree, using the normal non-emergency
23 notice and comment procedure.

24 46. The parties agree that the question of whether
25 Due Process permits the state to deny AFDC recipients a
26 hearing on the merits of their challenge to the intended
27 action based on a determination that the recipient is only
28 challenging the validity of a law change with respect to

1 which the Section 10950 limitation on hearing rights is
2 invoked is not resolved by this Consent Decree. Such question
3 shall be presented to the Court by way of cross-motions for
4 summary judgment on a date to be agreed between the parties,
5 pursuant to the provisions of Fed. R. Civ. P. 56. In the
6 event that defendants prevail on that issue, paragraph 45(e)
7 shall be deemed modified accordingly. Any party may appeal
8 the Court's ruling to the same extent it could appeal any
9 other ruling of the Court.

10
11 IX

12 RECOUPMENT OF AMOUNTS RESTORED
13 PURSUANT TO COURT ORDER

14 47. On October 15, 1982, the Court entered an
15 Order Prohibiting Recoupment which enjoined DSS from recouping
16 (or otherwise recovering) as "overpayments" the amounts
17 restored recipients pursuant to the Temporary Restraining
18 Order and Preliminary Injunction issued in this action. DSS
19 appealed the Order Prohibiting Recoupment to the Court of
20 Appeals for the Ninth Circuit. That appeal (USCA No. 82-4616)
21 is still pending.

22 48. In order to avoid further litigation on the
23 issues raised by the aforesaid appeal, the parties agree, as
24 follows:

25 (a) DSS will move the Court of Appeals to
26 dismiss its appeal. Plaintiffs will agree to support
27 DSS in its motion. If the Court of Appeals does not
28 dismiss the appeal, the provisions of paragraph 48(e) of
this Part IX shall no longer be binding on the plaintiffs.

1 (b) DSS will continue to instruct the counties
2 to discontinue or dismiss any actions to recoup or
3 recover amounts covered by the Order Prohibiting Recoupment.

4 (c) DSS will take all necessary steps to
5 comply with the Order Prohibiting Recoupment with
6 respect to any individual case in the administrative
7 "fair hearing" process or before the courts.

8 (d) With respect to Solano County, DSS will
9 fully enforce compliance with the Order Prohibiting
10 Recoupment, the Contempt Orders dated July 2 and 16,
11 1982, and the Order Re: Recoupment dated July 16, 1982,
12 both retroactively and prospectively.

13 (e) Plaintiffs agree that except with respect
14 to Solano County they will not seek, in any forum,
15 either (1) retroactive application of the Order Prohibiting
16 Recoupment for periods prior to October 15, 1982, or
17 (2) enforcement of the Order Prohibitng Recoupment for
18 the period October 15, 1982 to April 21, 1983.

19 X

20 MODIFICATIONS OR REVISIONS OF THIS DECREE

21 49. Any party may, by appropriate noticed motion,
22 seek changes in the provisions agreed to in this Decree. The
23 party seeking any changes may base its request upon a change
24 in statutory or decisional law or upon a showing that the
25 matters agreed to above have operated or will operate inequitably.
26
27
28

XI


ATTORNEYS FEES

50. This Consent Decree neither addresses nor resolves plaintiff's entitlement to an award of attorneys fees and the amount thereof; such issues are reserved for separate determination by the Court upon appropriate application by plaintiffs.


1 THE UNDERSIGNED CONSENT TO THE ENTRY OF THIS DECREE.

2

3 JOHN VAN DE KAMP
4 California Attorney General

5 By: 
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7 Deputy Attorney General
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10 Attorney for Defendant
11 Linda McMahon

12 By: 
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17 Attorney for Defendant
18 Michael Franchetti

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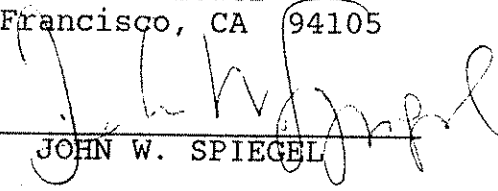
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Attorneys for Plaintiff

Notice of Action

If you have questions or want more information about this action, please contact your worker.

Case Name :
Case Number :
Worker :
Phone :
Date :

Description of the Action. Effective _____, your monthly cash grant will be:

- ☐ Changed from \$ _____ to \$ _____.
- ☐ Discontinued.

Reason for the Action — Law Change. This action is an automatic grant adjustment made for an entire class of recipients and is required by change in the following State or Federal law(s): _____ Description of the change in law: _____

Comments:

Grant Computation.

A. Total Earned Income	_____	H. Maximum Grant for _____ Persons	_____
B. Less: Work Related Expenses Allowed	- _____	I. Less: Amount on Line G	- _____
C. Less: Dependent Care Expenses Allowed	- _____	J. Less: _____	- _____
D. Less: Income Exemption Allowed	- _____	K. Plus: _____	+ _____
E. Plus: Other Countable Income (See Comments)	+ _____	L. Equals total Grant Authorized	= _____
F. Less: Court Ordered Child Support Paid	- _____		
G. Equals: Net-Nonexempt Income	= _____		

Regulations. This action is required by the following State regulations which are available for review at the county welfare department — Manual of Policies and Procedures Sections 22-003.12, 22-054.1.

- ☐ Child Support (If Aid is Discontinued). If you ask, the District Attorney's office can still help you locate an absent parent, establish paternity, and collect child support. If the county now collects your support payments, you can ask that this service continue and the payments be sent to you, or that the absent parent send support directly to you.

Family Planning Services. Information is available from the county welfare department on request.

No Right to a State Hearing to Appeal a State or Federal Law Change. A State Hearing will not be granted to appeal a State or Federal law change requiring that an automatic grant adjustment be made for an entire class of recipients. The above action is required by a change in the law. If you ask for a State Hearing to appeal this change in the law, your request will not be granted and you will not be entitled to have your aid continued unchanged.

Right to a State Hearing to Appeal Incorrect Application of Law. You may appeal this action if you believe that the new law has been incorrectly applied in your case or if you believe that the arithmetic is wrong. If you ask for a State Hearing because you believe that an error has been made and your request is made before the effective date of this action, your aid may continue unchanged. Read the back for further information about your right to appeal this action.

Notice of Action

If you have questions or want more information about this action, please contact your worker.

Case Name :
Case Number :
Worker :
Phone :
Date :

Description of the Action, effective _____, your cash grant will be:

- ☐ Changed from \$ _____ to \$ _____.
- ☐ Discontinued.

Reason For the Action — Law Change. This action includes an automatic grant adjustment made for an entire class of recipients which is required by change in the following State or Federal law(s): _____.
Description of the change in law:

Limited Right to a State Hearing to Appeal a State/Federal Law Change. A hearing will not be granted to appeal a change in State or Federal law which requires that an automatic grant adjustment be made for an entire class of recipients. If you ask for a State hearing to appeal the change in the law cited above, your request will not be granted, and you will not be entitled to have your benefits continue unchanged. However, if you believe that the new law has been incorrectly applied in your case or if you believe that the arithmetic is wrong, see "Your Right to a State Hearing" at the bottom of the page.

Reason For the Action — Change in Circumstances. This action is also required because of the following change(s) in your household's circumstances:

Grant Computation.

A. Total Earned Income	_____	H. Maximum Grant for _____ Persons	_____
B. Less: Work Related Expenses Allowed	- _____	I. Less: Amount on Line G	- _____
C. Less: Dependent Care Expenses Allowed	- _____	J. Less: _____	- _____
D. Less: Income Exemption Allowed	- _____	K. Plus: _____	- _____
E. Plus: Other Countable Income (See Comments)	+ _____	K. Plus: _____	+ _____
F. Less: Court Ordered Child Support Paid	- _____	L. Equals total Grant Authorized	= _____
G. Equals: Net Nonexempt Income	= _____		

Regulations. This action is required by the following State regulations which are available for review at the county welfare department — Manual of Policies and Procedures Sections 22-003.12, 22-054.1.

☐ **Child Support (If Aid is Discontinued).** If you ask, the District Attorney's office can still help you locate an absent parent, establish paternity, and collect child support. If the county now collects your support payments, you can ask that this service continue and the payments be sent to you, or that the absent parent send support directly to you.

Family Planning Services. Information is available from the county welfare department on request.

Your Right to a State Hearing. You may appeal this action if you believe that the new law has been incorrectly applied in your case or if you believe that the arithmetic is wrong, or if you believe that any other part of this action is wrong; your aid may continue unchanged if you ask for a State hearing before the effective date of the action. Read the back for more information about your right to appeal this action.

EXHIBIT C

The following list represents plaintiffs' and defendants' agreement as to the reasons for discontinuances and decreases in the AFDC program that shall be reviewed and, when appropriate, revised as provided in paragraph 23(b) of the Consent Decree.

List of Reasons for Decreases and Discontinuances

1. Ineligible Child (decrease and discontinuance).
 - a. Eligible Child Left Home
 - b. Child Not in School
 - c. Age of Child.
2. Failure to Provide Information (discontinuance, decrease and penalty).
 - a. Reasons Related to CA7 Form -- incomplete and failure to submit
 - b. CA-2 Re-verification
 - c. Other essential information
3. Failure to Register for Work.
4. 150% Income Test (discontinuance and suspension).
5. Principal Wage Earner.
6. Property Limit.
7. \$10 Minimum Payment.
8. Changes in Non-Exempt Income -- FBU Employment Related.
 - a. Changes in mandatory payroll tax withholdings

- 1 b. Changes in child care expenses
- 2 c. Changes in earnings from employment
- 3 d. Change in status regarding full-time and
- 4 part-time employment
- 5 9. 30 and 1/3 four-month rule (discontinuance and
- 6 decrease).
- 7 10. Reasons Related to Stepparent Income.
- 8 11. Common Changes in Non-Earned Income, e.g.,
- 9 Unemployment Insurance, SDI, Social Security.
- 10 12. Reasons Related to Pregnancy or Unborn Benefits.
- 11 13. Overpayments.
- 12 a. Notice of Overpayment -- On-going eligibility
- 13 b. Notice of Overpayment -- Discontinuance
- 14 c. Overpayment Adjustment
- 15 d. Overpayment Recovery -- New FBU
- 16 14. Receipt of Lump Sum Income.
- 17 a. Anticipated
- 18 b. Ineligible One Month -- Reported and
- 19 Suspended
- 20 c. Reported
- 21 15. Alien Eligibility.
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Your Right to Appeal This Action

If you are dissatisfied with the action described on the other side, or any other county action, you may request a state hearing before a Hearing Officer of the State Department of Social Services. This hearing will be conducted in an informal manner to assure that everyone present is able to speak freely. Your county or adoption worker can help you request a hearing. If you decide to request a hearing you must do so WITHIN 90 DAYS OF THE MAILING DATE OF THIS NOTICE.

FOOD STAMPS AND CASH AID†: If this action stops or reduces your food stamps or cash aid and you ask for a hearing before the effective date of the action, your benefits may continue unchanged under certain circumstances until the hearing or until you receive your hearing decision. Food Stamps will not continue past the end of your current certification period.

Authorized Representative

You can represent yourself at the state hearing. You can also be represented by a friend, attorney or any other person, but you are expected to arrange for the representative yourself. You can get help in locating free legal assistance by calling the toll-free number of Public Inquiry and Response.

How to Request a State Hearing

The best way to request a hearing is to fill in and send this entire notice to:

Office of the Chief Referee
State Department of Social Services
744 P Street, Mail Station 6-100
Sacramento, CA 95814

You may also request a hearing by calling the toll-free number of Public Inquiry and Response.

Public Inquiry and Response (Public Information)

Toll-Free Number: (800) 952-5253*

For the Deaf Only TDD (800) 952-8349*

*You may have to dial "1" first.

The State Public Inquiry and Response Unit can provide you with further information about your hearing rights or files or other welfare-related matters. Assistance is also available in some languages other than English, including Spanish. You may phone, write or come in.

Public Inquiry and Response
State Department of Social Services
744 P Street, Mail Station 16-23
Sacramento, CA 95814

Request for a State Hearing

Name				Phone number		
Address	City	State	Zip Code			

I am requesting a state hearing because of an action by the welfare department of _____ county related to my family's: ☐ Cash Aid ☐ Food Stamps ☐ Medi-Cal ☐ Adoption Assistance Program Payments

Reasons for my request:

☐ I speak a language other than English and need an interpreter for my hearing. (The state will provide the interpreter at no cost to you.)

Language

Dialect

†If you request a state hearing and your benefits continue unchanged, the county can recover as an overpayment the cash aid and value of food stamps the hearing decision finds you were not eligible for. If you remain eligible to receive cash aid after the hearing, and you have no other income or resources, your grant will be reduced by 10% each month until the full amount of such overpayment is collected. If you do have other income or available property, the amount your grant will be reduced each month will be greater.

Check here if you want your benefits reduced or discontinued now, as described in this Notice of Action.

☐ Cash Aid

☐ Food Stamps

If you checked the box(es) and the hearing decision is in your favor, any lost benefits will be made up.

Signature

Date

The information you provide on this form is needed to process your request for a hearing, and processing may be delayed if your request is incomplete. A case file will be set up by the Chief Referee. You have a right to examine the materials that make up the file and may

do so by contacting Public Inquiry and Response. Any information you provide may be shared with the county welfare department with the U.S. Department of Health and Human Services, or the U.S. Department of Agriculture. Authority W&IC 10950.

1 ORDER APPROVING CONSENT DECREE

2 The issues presented by the First Cause of Action
3 of Plaintiffs' First Amended Complaint are easy to state but
4 difficult to solve. While the rule that welfare recipients
5 are entitled to constitutionally adequate notices affecting
6 their grants is not disputed, the determination of what
7 constitutes an "adequate" notice in a particular case is made
8 difficult when one considers the varying levels of education
9 and literacy of the welfare recipient community, the often
10 complicated conceptual ideas to be communicated and the time
11 problems inherent in implementing legislative changes in the
12 welfare rules. The parties have worked long and hard at
13 devising a plan to assure that in the future, notices to
14 welfare recipients will be as good as possible in light of
15 the many constraints on the system. The Court, at the
16 request and with the consent of the parties, has taken an
17 active role in those negotiations.

18 Based on its knowledge of the problem and its role
19 in the negotiations, the Court is satisfied that the above
20 Consent Decree is fair, just and equitable and should be
21 approved. The Court finds that the Consent Decree will work
22 advantageously as to all members of the class and that no
23 individual plaintiff, class representative or class segment
24 has received any special consideration or treatment to the
25 disadvantage of any other individuals or class segments.

26 The Court is aware of Fed. R. Civ. P. Rule 23(e)
27 which requires that notice of a proposed compromise should be
28 given to the absent class members prior to court approval.

ORDER APPROVING CONSENT DECREE

1 The Court is convinced, however, that Rule 23(e) was never
2 intended to require pre-approval notice in cases such as this
3 where the consent decree is essentially "interlocutory" in
4 nature and contemplates future court action. In this case,
5 final court action will occur when the reviewed and/or
6 revised notices and forms are presented to the Court for
7 approval. See, Cunningham v. English, 269 F.2d 539 (D.C.
8 Cir. 1959)

9
10 Accordingly, it is hereby ordered that the Consent
11 Decree is approved.

12
13 THELTON E. HENDERSON

14 Thelton E. Henderson
15 UNITED STATES DISTRICT JUDGE
NORTHERN DISTRICT OF CALIFORNIA

16 Dated: JUN 20 1983
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