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Attorneys for Defendant
PATRICIA MCMANAMAN, in her official
capacity as the Director of the Hawaii
Department of Human Services

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

RAYNETTE AH CHONG, individually
and on behalf of the class of licensed
foster care providers in the state of
Hawaii,

Plaintiffs,

vs.

PATRICIA MCMANAMAN, in her
official capacity as the Director of the
Hawaii Department of Human Services,

CIVIL NO. CV13-00663 LEK-KSC

**DEFENDANT'S ANSWER TO
COMPLAINT FOR DECLARATORY
JUDGMENT AND PERMANENT
INJUNCTIVE RELIEF [ECF #1];
CERTIFICATE OF SERVICE**

No Trial Date

Defendants.

**DEFENDANT'S ANSWER TO COMPLAINT FOR DECLARATORY
JUDGMENT AND PERMANENT INJUNCTIVE RELIEF [ECF #1]**

COMES NOW Defendant Patricia McManaman, in her official capacity as the Director of the Hawaii Department of Human Services ("Defendant"), by and through her undersigned counsel, and answers the Complaint for Declaratory Judgment and Permanent Injunctive Relief filed on December 3, 2013 (the "Complaint"), as follows:

FIRST DEFENSE

1. The Complaint fails to state a claim against the Defendant upon which relief can be granted.

SECOND DEFENSE

2. Paragraphs 1, 3 and 6 of the Complaint set forth Plaintiff's description of the case and the relief sought and therefore require no response, but to the extent a response is required, the allegations in said paragraphs are denied.

3. In response to paragraph 2 of the Complaint, Defendant admits that Plaintiff has provided foster care services to many children since the mid-1990's, is without knowledge or information sufficient to form a belief as to whether Plaintiff desires to continue to do so and what compensation she is seeking for providing such services, and otherwise denies the allegations in said paragraph.

4. In response to paragraph 4 of the Complaint, Defendant states that the referenced statute speaks for itself and denies the allegations of said paragraph to the extent they are inconsistent with that statute.

5. In response to paragraph 5 of the Complaint, Defendant admits that the State of Hawaii has an approved Title IV-E Plan under which it receives federal funds as partial reimbursement, and otherwise denies the allegations of said paragraph.

6. Defendant admits the allegations in paragraphs 7, 8, 18 of the Complaint.

7. Defendant denies the allegations in paragraphs 9, 10, 11, 12, 13, 15, 16, 17, 19, 28, 33, 38 and 39 of the Complaint.

8. In response to paragraph 14 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to whether Plaintiff intends to prosecute this action vigorously or whether counsel are sufficiently experienced in matters of this type and otherwise deny the allegations in said paragraph.

9. In response to paragraphs 20, 21, 22, 23, 24, 25, 26, and 27 of the Complaint, Defendant states that the referenced statutes and regulations speak for themselves and denies the allegations of said paragraphs to the extent they are inconsistent with those statutes and regulations.

10. In response to paragraph 29 of the Complaint, Defendant states that foster care maintenance payments (including the basic board rate and difficulty of care payments), foster care related payments, and respite care payments are intended to cover those items and services described in Hawaii Administrative Rules chapter 17-1617 (Foster Care Maintenance and Related Payments) and deny the allegations of said paragraph to the extent they are inconsistent with the Administrative Rules. Said payments are consistent with federal law as evidenced by the federal government's approval of the State of Hawaii's IV-E Plan.

11. In response to paragraphs 30, 31 and 32 of the Complaint, Defendant states that the referenced reports speaks for themselves and deny any implication that the figures cited by Plaintiff can appropriately be compared to Hawaii's foster care maintenance payments or that the figures reflect requirements under federal law, and deny that Hawaii's foster care payments are grossly inadequate.

12. In response to paragraph 34 of the Complaint, Defendant states that the referenced article speaks for itself and denies the conclusion Plaintiff purports to draw from said article.

13. In response to paragraph 35 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to what calculations Plaintiff has used to make the allegation therein and is therefore unable to respond to said allegation, but denies that the stated figure is required by federal law.

14. In response to paragraph 36 of the Complaint, Defendant states that testimony by the Department of Human Services in past legislative sessions speaks for itself, denies that the Department is not interested in abiding by the law, is without knowledge or information sufficient to form a belief as to the reasons for the Hawaii Legislature's actions, and otherwise denies the allegations of said paragraph.

15. In response to paragraph 37 of the Complaint, Defendant realleges and incorporates by reference her responses to paragraphs 1-36 of the Complaint.

16. Any allegations of the Complaint not specifically responded to above are hereby denied.

THIRD DEFENSE

17. Plaintiff's claims are barred by Defendant's sovereign immunity.

FOURTH DEFENSE

18. This Court lacks subject matter jurisdiction over Plaintiff's claims.

FIFTH DEFENSE

19. Plaintiff's claims are not ripe.

SIXTH DEFENSE

20. Plaintiff lacks standing to assert the claims in the Complaint.

SEVENTH DEFENSE

21. As a matter of law, Defendant cannot be held liable on any claim based on acts or omissions in performing or failing to perform a discretionary function or duty.

EIGHTH DEFENSE

22. Defendant is not liable to Plaintiff for any claims based upon the failure to enforce, or the adequacy of enforcement, of statutes, ordinances, rules and regulations.

NINTH DEFENSE

23. Plaintiff has failed to exhaust administrative remedies.

TENTH DEFENSE

24. The doctrine of primary jurisdiction warrants a stay of these proceedings.

ELEVENTH DEFENSE

25. Plaintiff does not have a private right of action to assert the claims in the Complaint.

TWELFTH DEFENSE

26. Plaintiff's requested relief would violate the separation of powers doctrine.

THIRTEENTH DEFENSE

27. Plaintiff's requested relief would violate the political question doctrine.

FOURTEENTH DEFENSE

28. The conduct of Defendant was at all times lawful, reasonable and proper.

FIFTEENTH DEFENSE

29. One or more abstention doctrines preclude a determination of this matter.

SIXTEENTH DEFENSE

30. The applicable statute of limitations may bar Plaintiff's claims.

SEVENTEENTH DEFENSE

31. Defendant reserves all rights to assert any affirmative defenses or to rely on any other matter constituting an avoidance pursuant to Rule 8(c) of the Federal Rules of Civil Procedure and to seek leave to amend her Answer to allege any such defenses and to assert any other defenses, claims and counterclaims as discovery and the evidence may merit.

WHEREFORE, Defendant prays as follows:

- A. That the Complaint be dismissed with prejudice;
- B. That Defendant be awarded reasonable attorneys' fees and costs; and

C. That the Court award such other and further relief as may be just and proper under the circumstances.

DATED: Honolulu, Hawaii, December 23, 2013.

STATE OF HAWAII

DAVID M. LOUIE
Attorney General of Hawaii

/s/ Donna H. Kalama

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CERTIFICATE OF SERVICE

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The undersigned hereby certifies that on the date indicated below, a copy of the foregoing document was served on the following parties at their last-known addresses electronically through CM/ECF as follows:

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DATED: Honolulu, Hawaii, December 23, 2013.

STATE OF HAWAII

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