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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

PATRICIA SHEEHEY, PATRICK
SHEEHEY, 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

CIVIL NO. CV13-00663 LEK-KSC

DEFENDANT'S ANSWER TO FIRST
AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT AND
PERMANENT INJUNCTIVE RELIEF
[ECF #47]; CERTIFICATE OF SERVICE

Hawaii Department of Human Services,
Defendant.

Trial Date: October 20, 2015

DEFENDANT’S ANSWER TO FIRST AMENDED COMPLAINT
FOR DECLARATORY JUDGMENT AND PERMANENT
INJUNCTIVE RELIEF [ECF #47]

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 First Amended Complaint for Declaratory Judgment and Permanent Injunctive Relief filed on April 30, 2014 (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 8 of the Complaint set forth Plaintiffs’ 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 Ah Chong has in the past provided foster care services to many children and otherwise denies the allegations in said paragraph.

4. In response to paragraphs 4 and 5 of the Complaint, Defendant states that the referenced statute speaks for itself and denies the allegations in said paragraphs to the extent they are inconsistent with that statute.

5. In response to paragraph 6 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 in said paragraph.

6. In response to paragraph 7 of the Complaint, Defendant states that the referenced statutes and administrative rule speak for themselves, and otherwise denies the allegations in said paragraph.

7. In response to paragraph 9 of the Complaint, Defendant admits that Plaintiffs are presently licensed as resource caregivers, deny that Plaintiff Ah Chong is presently a foster care provider, is without knowledge or information sufficient to form a belief as to whether Plaintiffs desire to continue providing care and comfort for foster children, and otherwise denies the allegations in said paragraph.

8. Defendant admits the allegations in paragraphs 10, 13 and 26 of the Complaint.

9. In response to paragraph 11 of the Complaint, Defendant admits that Plaintiff Ah Chong has provided foster care for many children over the years, that

her license was renewed effective until September 2015 unless earlier terminated and that the terms of the license speak for themselves, admits that on April 8, 2014, DHS made an inquiry with Plaintiff Ah Chong for possible placement of a foster child but the child was placed with relatives, and otherwise denies the allegations in said paragraph.

10. In response to paragraph 12 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to what foster children Plaintiff Ah Chong will take into her home or why (except as limited by the terms of her license); admits that Plaintiff Ah Chong has no foster children in her home at the current time; admits that Plaintiff Ah Chong has permanent custody of two children but denies that she is entitled to assert any claims in this case related to alleged inadequate permanency assistance payments; admits that Plaintiff Ah Chong adopted two children and receives monthly payments for them; states that the Child Welfare Act and Department of Human Services (DHS) rules speak for themselves; and otherwise denies the allegations in said paragraph.

11. Defendant denies the allegations in paragraphs 14, 15, 16, 17, 18, 19, 20, 21, 23 including all subparts, 24, 25, 27, 44, 46, 54, 55, and 56 of the Complaint.

12. In response to paragraph 22 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to whether Plaintiffs intend

to prosecute this action vigorously or whether counsel are sufficiently experienced in matters of this type and otherwise denies the allegations in said paragraph.

13. In response to paragraphs 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, and 38 of the Complaint, Defendant states that the referenced statutes and regulations speak for themselves and denies the allegations in said paragraphs to the extent they are inconsistent with those statutes and regulations.

14. In response to paragraph 39 of the Complaint, Defendant states that the referenced budget document speaks for itself and otherwise denies the allegations in said paragraph.

15. In response to paragraph 40 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 in 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 Title IV-E Plan. Defendant further denies that the current monthly payment is \$529.

16. In response to paragraphs 41, 42 and 43 of the Complaint, Defendant states that the referenced reports speak for themselves and denies any implication

that the figures cited by Plaintiffs can appropriately be compared to Hawaii's foster care maintenance payments or that the figures reflect requirements under federal law, and denies that Hawaii's foster care payments are grossly inadequate.

17. In response to paragraph 45 of the Complaint, Defendant admits that DHS makes payments and reimbursements to resource caregivers in addition to the basic board rate and denies all other allegations in said paragraph.

18. In response to paragraph 47 of the Complaint, Defendant is without knowledge or information sufficient to form a belief as to what calculations Plaintiffs have 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.

19. In response to paragraph 48 of the Complaint, Defendant states that the amount of adoption assistance is determined in accordance with federal law and denies that the amount paid to Plaintiff Ah Chong or other Title IV-E eligible adoption assistance recipients is inadequate or fails to comply with federal law.

20. In response to paragraph 49 of the Complaint, Defendant states that permanency assistance is not a federal right and denies the allegations in said paragraph.

21. In response to paragraph 50 of the Complaint, Defendant states that testimony by DHS in past legislative sessions speaks for itself, denies that DHS is

not interested in abiding by the law or covering the cost of providing items required by 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 in said paragraph.

22. In response to paragraph 51 of the Complaint, Defendant states that bills were introduced in the 2014 legislative session to increase the appropriation for foster care, adoption assistance, and permanency assistance payments, and denies that the legislature has an obligation to consider legislation to periodically adjust the foster care maintenance rate.

23. In response to paragraph 52 of the Complaint, Defendant states that the 2014 legislature approved an increased appropriation for foster care, adoption assistance, and permanency assistance payments, denies any implication that the legislature had an obligation to set new payment rates, denies that a "clear rate-setting methodology" is required by federal law, denies that a payment amount of \$529 remains in place, and otherwise denies all other allegations in said paragraph.

24. In response to paragraph 53 of the Complaint, Defendant realleges and incorporates by reference her responses to paragraphs 1-52 of the Complaint.

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

THIRD DEFENSE

26. Plaintiffs' claims are barred by Defendant's sovereign immunity.

FOURTH DEFENSE

27. This Court lacks subject matter jurisdiction over Plaintiffs' claims.

FIFTH DEFENSE

28. Plaintiffs' claims are not ripe.

SIXTH DEFENSE

29. Plaintiffs lack standing to assert the claims in the Complaint.

SEVENTH DEFENSE

30. 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

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

NINTH DEFENSE

32. Plaintiffs have failed to exhaust administrative remedies.

TENTH DEFENSE

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

ELEVENTH DEFENSE

34. Plaintiffs do not have a private right of action to assert the claims in the Complaint.

TWELFTH DEFENSE

35. Plaintiffs' requested relief would violate the separation of powers doctrine.

THIRTEENTH DEFENSE

36. Plaintiffs' requested relief would violate the political question doctrine.

FOURTEENTH DEFENSE

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

FIFTEENTH DEFENSE

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

SIXTEENTH DEFENSE

39. The applicable statute of limitations may bar Plaintiffs' claims.

SEVENTEENTH DEFENSE

40. 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, August 07, 2014.

STATE OF HAWAII

DAVID M. LOUIE
Attorney General of Hawaii

/s/ Donna H. Kalama
JOHN F. MOLAY
DONNA H. KALAMA
Deputy Attorneys General

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CIVIL NO. CV13-00663 LEK-KSC

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, August 07, 2014.

STATE OF HAWAII

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