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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF XXXXXX**
10

11 In the Matter of:) CASE NUMBER: CK XXXX
12)
13) MEMORANDUM OF POINTS AND
14 M, Q and L) AUTHORITIES IN RESPONSE TO
15) AGENCY'S MEMORANDUM
Minors) CONCERNING FOSTER CARE BENEFITS
16)
17) Date:
Time: 8:30 AM
18) Dept: XXX
19)
20)

21 This Memorandum of Points and Authorities is submitted in response to the
22 Memorandum of Points and Authorities filed by the XXXXXX County Social Services Agency
23 [Agency], in which they take the position that this court does not have authority to order the
24 continuation of foster care funding for the minors, pending a decision in the administrative
25 appeal proceedings.

26 The minors M, Q and L respectfully submit that this court does have the authority to
27 order continued funding to ensure continuity of care for the minors, and to prevent the severe
28 trauma that would be caused by placement disruption, for the following reasons.

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2 **1. This Court is not being asked to make a determination of benefits eligibility, but**
3 **to exercise its authority under Welf. & Inst. Code § 362(a).**

4 As the Agency's Memorandum explains at length, questions of eligibility for federally-
5 funded foster care benefits are resolved through an administrative appeals process, as required
6 by the federal welfare benefits program (TANF). In fact, an administrative appeal is pending in
7 this case, which will eventually resolve the issue of whether the minors' caregiver is or is not
8 eligible for federally-funded "D rate" foster care benefits.

9 Minors' counsel is not requesting that this Court make any legal ruling on the question of
10 funding eligibility. Instead, minors' counsel requests that this court exercise its proper authority
11 under Welf. & Inst. Code § 362(a) to make a "necessary order" for the "care, supervision ...
12 maintenance and support" of the minors. The factual circumstances of this case are that the
13 three minors are at immediate and serious risk of severe trauma -- including separation from a
14 long-term and familiar caregiver and possibly separation from each other -- because the Agency
15 has recently taken the position that the caregiver is not eligible for "D rate" foster care
16 payments, and the caregiver has stated that she will be unable to continue caring for the minors
17 without this level of financial support. The question of the caregiver's eligibility for "D rate"
18 benefits will be resolved, hopefully within the next few months, through the administrative
19 appeal process. The danger is that the minors' placement will be unnecessarily disrupted in the
20 near future, even if the administrative appeal process eventually results in the restoration of "D
21 rate" funding.

22 In light of these factual circumstances, minors' counsel requested that, *while the*
23 *administrative appeal is pending*, the Agency be ordered to use county funds to ensure that the
24 caregiver continues to receive the equivalent to the "D rate," so as to prevent a traumatic
25 disruption of the children's placement. This is a proper exercise of the court's broad powers
26 under § 362(a), and does not constitute a ruling or determination as to the caregiver's benefits
27 eligibility, nor an act of judicial "rate setting," as argued by DCFS.
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CONCLUSION

For the foregoing reasons, minors M, Q and L respectfully submit that the Agency's objections to an order requiring them to use county funds to ensure continuity of care for the minors while the administrative appeal is pending are meritless, and that this court can and should make such an order under Welf. & Inst. Code § 362(a).

DATED: January ___, 2007

By _____
XXXX XXXX
Attorney for the Minors