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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF XXXXXX**
9 **JUVENILE COURT**

11 In re Matter of) **Case No. XXXX**
12)
13) **CHILD’S MOTION TO JOIN XC DMH**
14 L.,) **UNDER WELF. & INST. CODE § 362(a)**
15 Child.)
16) **Date: December 19, 2006**
17) **Time: 8:30 a.m.**
18) **Dept.: XXXX**

17 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

18 NOTICE IS HEREBY GIVEN that on XXXX, 2006, at 8:30 a.m., in Department XXXX
19 of the above-entitled court, or as soon thereafter as may be heard, counsel for the child, L., will
20 move the court to join the X County Department of Mental Health (“XC DMH”) as a party to the
21 dependency proceedings pursuant to Welfare and Institutions Code section 362, subdivision (a).

22 XC DMH has a legal duty to ensure that foster children who are placed out-of-county
23 receive outpatient mental health services under Welfare and Institutions Code section 5777.6,
24 including paying the cost of the services. To date, XC DMH has failed to make the necessary
25 financial arrangements with XXXX Center in XXXX, California to allow L. to be placed there in
26 accordance with this court’s order. Therefore, joinder is appropriate.

1 This motion is based upon the notice of motion, the attached points and authorities, the
2 records and reports on file with the court in this matter, and upon any additional oral or
3 documentary evidence as may be presented at the time of the hearing.
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6 Dated: December 14, 2006

Respectfully submitted,

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11 By: XXXX XXXX, Esq.
12 Attorneys for Child
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2 **STATEMENT OF FACTS**

3 L., age XXX, is a legally-freed dependent currently placed at XXXX Center
4 (“CENTER”). On or around XXXX, 2006, this court ordered the X County Child Welfare
5 Agency (“Agency”) to place L. in a Level 14 facility in Northern California. (XXXX/06 Minute
6 Order.) L.’s CENTER treatment team recommended the move, believing that it was in the
7 child’s best interest to be placed near the child’s “grandmother” (apparently nonrelated) and
8 maternal aunt. (XXXX/05 XXXX Indep. Rev., att. to XXXX/06 DCFS Rpt.) The Agency
9 agrees, as does L.’s court- appointed conservator, Public Guardian XXXX. (12/1/06 DCFS Rpt.,
10 p. 2.)

11 As of XXXX, 2006, the Agency approved the out-of-county placement with XXXX
12 Adolescent Center (“A. CENTER”) in XXXX, California and has been ready and willing to send
13 the child. (XXXX/06 DCFS Rpt., p. 4.) However, before the placement will accept the child.,
14 XC DMH must enter into an agreement with the facility to pay for mental health services. (*Ibid.*;
15 A. CENTER Services Agreement, att. to XXXX/06 Rpt.) XC DMH has been aware of the
16 problem since at least XXXX, 2006. (XXXX/06 Rpt., p. 4.) To date, XC DMH has failed to
17 take any action, citing a lack of funds. It has said it is willing to look for available funds, and if
18 funds are found, enter into contract negotiations with the facility, which would take an additional
19 two to three months. It would then have to submit a proposal for approval of payment to the X
20 County Board of Supervisors. (12/1/06 Rpt., p. 3.) On XXXX, 2006, XXXX XXXX, XXXX of
21 XC DMH, appeared in court and said that the Agency had agreed to pay the additional money,
22 but as of the filing of this motion, no one has not confirmed this.

23
24 **ARGUMENT**

25 **I. THE COURT SHOULD JOIN XC DMH AS IT HAS FAILED ITS LEGAL**
26 **DUTY TO ENSURE THAT THE CHILD RECEIVE OUT-OF-COUNTY**
27 **MENTAL HEALTH SERVICES WITH “REASONABLE PROMPTNESS”**

28 *A. Juvenile Court’s Authority to Join XC DMH*

1 Welfare and Institutions Code¹ section 362, subdivision (a) provides in pertinent part:

2 When a child is adjudged a dependent child of the court on the ground that the
3 child is a person described by Section 300, the court may make any and all
4 reasonable orders for the care, supervision, custody, conduct, maintenance, and
5 support of the child, including medical treatment, subject to further order of the
6 court. To facilitate coordination and cooperation among government agencies or
7 private service providers, or both, the court may, after giving notice and an
8 opportunity to be heard, join in the juvenile court proceedings any agency or
9 private service provider that the court determines has failed to meet a legal
10 obligation to provide services to the child. In any proceeding in which an agency
11 or private service provider is joined, the court shall not impose duties upon the
12 agency or private service provider beyond those mandated by law. ...

13 Rule 5.575 of the California Rules of Court² lists the requirements for notice and conduct
14 of a joinder hearing. Notice must be provided on Judicial Council form JV-540 within five days
15 after the court signs the notice. The hearing must be held within 30 days thereafter. (Rule
16 5.575(b).) The hearing itself is governed by rule 5.570(f) or (g). (Rule 5.575(c).) Thus, the
17 party requesting the joinder must prove by a preponderance of the evidence that the child's
18 welfare requires it. (Rule 5.570(f), (g).) In addition, the juvenile court must find that the agency
19 to be joined has failed a legal obligation to provide services to the child. (§ 362, subd. (a);
20 *Southard v. Superior Court* (2000) 82 Cal.App.4th 729 [joinder reversed because child did not
21 allege, and court did not find, that DMH had violated a legal duty to child].) These are the only
22 two requirements for joinder.

23 *B. L.'s Welfare Requires Joinder*

24 As to the first requirement, it is undisputed that it is in L.'s best interest to be placed in
25 Northern California near family, as recommended by L.'s CENTER's treatment team, Agency
26 social worker, and L.'s counsel. The juvenile court adopted these recommendations when it
27 ordered L. placed in a Level 14 facility in Northern California on or around XXXX, 2006. It is
28 also uncontroverted that the only reason L. cannot be placed at A. CENTER is that XC DMH has

1 All further statutory references are to the Welfare and Institutions Code unless otherwise specified.

2 All further references to rules are to the California Rules of Court unless otherwise specified.

1 not agreed to pay for the necessary mental health services. Thus, the child has established that
2 the child’s welfare requires the court to join XC DMH.

3
4 *C. XC DMH Has a Legal Duty to Ensure That L. Receives Mental Health Services in*
5 *New County of Residence*

6 With regard to the second requirement, the law is clear that XC DMH must ensure that
7 foster children who are placed out-of-county receive outpatient mental health services to which
8 they are entitled. In 2000, the California legislature passed Senate Bill (SB) 745, which added
9 section 5777.6, to remedy the problem of foster children placed out-of-county who were being
10 deprived of necessary mental health services. The legislative findings for SB 745 state:

11 Foster children who are placed outside their county of residence and who need
12 specialty mental health services provided by county mental health plans encounter
13 delays and difficulties in accessing these specialty mental health services. ...
14 Under the federal Medicaid Act, ... the state has special responsibilities to
15 children in foster care including those who are placed outside their county of
16 residence. The state must ensure that foster children placed outside their county
17 of residence receive timely and appropriate access to necessary mental health
18 services, including mental health services pursuant to the federal Early and
19 Periodic Screening, Diagnosis and Treatment Program (42 U.S.C. Sec.
20 1396d(a)(4)(B).)

21 (Stats. 2000, ch. 811, § 1, at <http://www.leginfo.ca.gov/pub/99-00/bill/sen/sb_0701-0750/sb_745_bill_20000928_chaptered.html>.)³

22 Section 5777.6 requires local mental health plans⁴ to make arrangements with the mental
23 health departments or service providers of other counties so that foster children who are placed
24 outside their “county of adjudication” receive mental health services. It states:

25 (a) Each local mental health plan shall establish a procedure to ensure access
26 to outpatient mental health services, as required by the Early Periodic Screening

27 ³ For a detailed discussion of California’s unlawful denial of mental health services to foster children placed out-of-
28 county and suggestions for reform, see Ewbank & Gardner, *Medicaid Mental Health Waiver Makes Life Difficult for*
Many of CA’s Adopted and Foster Youth (Apr.-Jun. 2006) National Center for Youth Law’s Youth Law News,
attached as Exhibit 1.

⁴ XC DMH is the local mental health plan for this county.

1 and Diagnostic Treatment program standards, for any child in foster care who has
2 been placed outside his or her county of adjudication.

3 (b) The procedure required by subdivision (a) may be established through one
4 or more of the following:

5 (1) The establishment of, and federal approval, if required, of, a statewide
6 system or procedure.

7 (2) An arrangement between local mental health plans for reimbursement for
8 services provided by a mental health plan other than the mental health plan in the
9 county of adjudication and designation of an entity to provide additional
10 information needed for approval or reimbursement. This arrangement shall not
11 require providers who are already credentialed or certified by the mental health
12 plan in the beneficiary's county of residence to be credentialed or certified by, or
13 to contract with, the mental health plan in the county of adjudication.

14 (3) Arrangements between the mental health plan in the county of
15 adjudication and mental health providers in the beneficiary's county of residence
16 for authorization of, and reimbursement for, services. This arrangement shall not
17 require providers credentialed or certified by, and in good standing with, the
18 mental health plan in the beneficiary's county of residence to be credentialed or
19 certified by the mental health plan in the county of adjudication.

20 (c) The department shall collect and keep statistics that will enable the
21 department to compare access to outpatient specialty mental health services by
22 foster children placed in their county of adjudication with access to outpatient
23 specialty mental health services by foster children placed outside their county of
24 adjudication.

25 Here, the services that the placement is asking XC DMH to pay for appear to be largely
26 services to which L. is entitled under the Early and Periodic Screening, Diagnosis and Treatment
27 Program ("EPSDT"). (See A. CENTER Services Agreement, Avg. Daily Cost chart, under
28 "Mental Health Funding/EPSDT", p. 5.) Presumably, XC DMH is currently paying her current
placement for many, if not all, of these same services. XC DMH remains responsible for paying
for mental health services for L. regardless of the county in which the child resides. (§5777,
subd. (a)(3).)

Child's counsel anticipates that XC DMH may argue that because the new placement is a
community treatment facility ("CTF") as defined in section 4094, the mental health services it
provides are not "outpatient" and thus section 5777.6 does not apply. However, the county's
Level 14 screening committee, which includes XC DMH, has found that L. needs placement in a
CTF; otherwise, she could not have been placed at her current placement, also a CTF. (See §§
4094.5, subd. (e)(1) [county interagency placement committee must determine child in need of

1 CTF prior to admission], 4096, subd. (c) [interagency placement committee must include county
2 placement agency and representative from county department of mental health].) Moreover,
3 CTFs are entitled to be paid a supplemental rate of up to \$2,500 per month to care for a foster
4 child. The cost of the supplemental rate is to be shared by the state and county mental health
5 departments subject to the availability of funds. (§ 4094.2, subd. (d).) It is likely that XC DMH
6 is currently paying this supplemental rate to the current placement. If so, XC DMH’s assertion
7 that it lacks the money to pay new placement is disingenuous. In any case, XC DMH should not
8 be allowed to thwart the legislature’s purpose in passing Senate Bill 745 – to ensure that foster
9 children who are placed out-of-county continue to receive necessary mental health services – just
10 because it (along with the Agency) has determined that L. needs placement in a CTF.

11 *D. Services Must Be Provided With Reasonable Promptness*

12 As a recipient of federal Medicaid funds, California must comply with the federal
13 Medicaid Act. (*Wilder v. Virginia Hospital Association* (1990) 496 U.S. 498, 502, superceded
14 on other grounds as stated in *Roob v. Fisher* (II. 2006) 856 N.E.2d 723.) Federal law mandates
15 that Medicaid services be provided with “reasonable promptness.” (42 U.S.C. § 1396a(a)(8); see
16 also *Blanco v. Anderson* (9th Cir. 1994) 39 F.3d 969, 971-972.) Services may not be delayed
17 due to administrative procedures of the agency. (42 C.F.R. § 435.930(a).) Courts have
18 interpreted the reasonable promptness requirement to mean that otherwise eligible Medicaid
19 recipients cannot be placed on waiting lists for services due to administrative, including
20 budgetary, problems. (*Sobky v. Smoley* (E.D. Cal. 1994) 855 F.Supp. 1123, 1147-1148.)

21 XC DMH’s promise to look for the necessary funds and, assuming it finds them, contract
22 with the new placement two to three months after that, violates federal law. L. has been ready to
23 be placed at the new placement since XXXX, 2006. The continued delay caused by XC DMH’s
24 failure to enter into an agreement with the new placement is contrary to L.’s well-being and is
25 causing the child further emotional distress.

26
27 **CONCLUSION**
28

1 For the reasons stated, counsel for L. requests that the court join XC DMH as a party to
2 the dependency proceedings and order it to take whatever steps are necessary to enable L. to be
3 placed at A. CENTER or a comparable facility in Northern California forthwith.
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6 Dated: December 14, 2006

Respectfully submitted,

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11 By: XXXX XXXX, Esq.
12 Attorneys for Child
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