SUPREME COURT CASE NO. _____

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

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ANGIE CHRISTENSEN,

PLAINTIFF AND RESPONDENT,

v.

WILL LIGHTBOURNE, DIRECTOR, CALIFORNIA DEPARTMENT OF SOCIAL SERVICES; CALIFORNIA DEPARTMENT OF SOCIAL SERVICES,

DEFENDANTS AND APPELLANTS.

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After a Decision by the Court of Appeal for the First Appellate District, Division Two, No. A144254

Reversing a Judgment of the Superior Court of San Francisco County Case No. CPF-12-512070, Honorable Ernest H. Goldsmith, Judge

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# PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF CONTENTS
(continued)

PAGE NO.

TABLE OF CONTENTS
(continued)

PAGE NO.

TABLE OF AUTHORITIES

PAGE NO.

**Cases**



**Statutes**

TABLE OF AUTHORITIES
(continued)

PAGE NO.



**Regulations**

TABLE OF AUTHORITIES
(continued)

PAGE NO.

**Miscellaneous**

## Issues Presented for Review

1. California's CalWORKs program supports children in the homes of very poor families. Eligibility for and the amount of aid depends on the amount of income already available to the household. May income that is paid as court-ordered child support for children in other homes be considered available to children in the home of the paying parent?

2. Welfare and Institutions Code section 11005.5[1] prohibits one family's "income or resources" from being considered in determining the amount of aid to any other family. Where garnished child support is the direct or indirect income of the receiving children, does the state violate section 11005.5 when it allows the garnished income to also be considered in determining the amount of aid to the paying family?

## Introduction

Angie Christensen's family was denied public assistance because the government counted the family as having money it never had and never will receive: her husband's wages and unemployment garnished to pay child support owed to another family. Ms. Christensen sued the Department of Social Services and won in the trial court, but the Court of Appeal reversed, upholding the Department's policy of counting child support paid

[1] Section or § refers to the Welfare and Institutions Code unless otherwise stated.

to another family as available to the family of the paying parent.

If the published opinion below is allowed to stand, not just Ms. Christensen's family but similarly situated families throughout California will be harmed. CalWORKs serves nearly a million California children.[2] Grants are already low, less than 30% of the federal poverty line.[3] Whenever the Department enforces the policy at issue here and cash aid is reduced even further or, as in Ms. Christensen's case, denied altogether, families will suffer. They will have to make choices between putting food on the table or paying rent, in some cases risking eviction and homelessness. The human cost alone of the Department's policy justifies granting review.

The opinion below also conflicts with long-standing case law requiring that only resources actually available for the needs of a family may be counted to reduce the family's aid or deny eligibility. More than 40 years ago, this Court decided that theoretical resources that cannot be accessed by a needy individual or family may not be considered available financial resources. *Mooney v. Pickett*, 4 Cal.3d 669, 679-80 (1971). This Court further invalidated as "arbitrary" and "impermissible" regulations that deemed financial resources available without

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[2] Cal. Dep't of Soc. Serv's, "CalWORKs – California Families on the Road to Self-Sufficiency, Annual Summary January 2017" (CalWORKs 2017 Annual Summary) at 113, available at Exhibit B hereto (select portions) and at http://www.cdss.ca.gov/research/res/pdf/calreports/CalWORKsAnnualSummary2017.pdf.

[3] *Id.* at 25 (average grants are $514/month); Dep't of Health & Hum. Serv's, "Annual Update of the HHS Poverty Guidelines" (2017 Poverty Guidelines), 82 Fed.Reg. 8831, 8832 (Jan. 31, 2017) (federal poverty level is $20,420/year for a family of three, or $1701.67/month).

considering their actual availability. *Cooper v. Swoap,* 11 Cal.3d 856, 870-71 (1974); *Waits v. Swoap* 11 Cal.3d 887, 894-95 (1974).

No statute directs the Department to count income that families pay to support children in other homes as available to the paying family. The CalWORKs and child support laws work in tandem to secure an appropriate amount of financial support to children. Yet, the result of the Court of Appeal's decision is for the children in one home to suffer simply because an adult in the home is meeting his financial obligation to children outside the home. This result contravenes the purpose of CalWORKs and child support laws and interferes with parents' rights of association in forming relationships and family bonds.

In addition, the Court of Appeal opinion cannot be reconciled with section 11005.5. That statute inscribes a crucial principle in welfare law – that a single source of funds may not be considered twice to two households. Section 11005.5 has only been interpreted by the Court of Appeal and never by this Court. The decision below conflicts with other appellate courts' interpretations and allows the Department to ignore section 11005.5's proscription against using the same funds to reduce the amount of aid to two households.

This Court should grant review.

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## Statement of the Case

### 1. The Department of Social Services, reversing previous practice, adopts policy counting child support paid to another family as income to the paying parent.

CalWORKs, or the California Work Opportunity and Responsibility to Kids Act, is the state's program to aid poor families. §§11200; 11250. CalWORKs replaced the federal Aid to Families with Dependent Children (AFDC) program after Congress enacted federal welfare reform legislation. Assemb. Bill 1542, Stats. 1997, ch. 270 (AB 1542).

To qualify for CalWORKs, families must be poor. Applicant families must pass a gross income test, wherein "the family's income," except for the first $90 of earned income, must fall below the minimum need standard for the family's size. §11450.12(a). A net income test then determines how much aid an applicant or recipient family is entitled to. Under this test, the family's "reasonably anticipated income, less exempt income," is subtracted from the Maximum Aid Payment for a family of its size. §§11450(a); 11450.12(b). In 2010, the Maximum Aid Payment in San Mateo County was $828 for a family of four;[4] the figure is $852 today,[5] less than half of the federal poverty line.[6]

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[4] *Christensen v. Lightbourne,* No. A144254 (1st App.Dist., Div.2, Oct. 6, 2017) ("*Opinion*") at 8, n.13.

[5] Ex. B, CalWORKs 2017 Annual Summary at 24 (Non-Exempt amount in Region 1).

[6] 2017 Poverty Guidelines, 82 Fed.Reg. at 8832 ($24,600/year for a family of four, or $2,050/month, divided into $862 per month, is just 42% of the federal poverty level).

Prior to AB 1542, California's AFDC program, when considering whether and how much aid a poor family would need, did not count the child support that is paid pursuant to court order. *Opinion* at 6. Even though AB 1542 does not state that it is repealing the prior rule to disregard income paid in support of children in other homes, after AB 1542 the Department of Social Services began to count income paid as child support for children in other homes as if it were available to the children in the paying home. *Opinion* at 5.

**2. The Christensen family applies for CalWORKs cash aid, but is disqualified because of wages and benefits that are never received by the family but instead garnished to support Bruce Christensen's children outside the home.**

In October 2010, Angie Christensen applied for CalWORKs cash aid to financially support the children in her home. *Id.* at 7. Although her husband Bruce had income from wages and unemployment benefits, court-ordered child support was garnished from those funds. *Id.* The garnished income provided for children in other homes – one child whose mother also received CalWORKs, one child who was not assisted by CalWORKs at that time, and one child who was an adult and for whom support payments were for arrearages. *Id.* at 8. Had the garnished child support been excluded, the Christensen children would have been eligible to receive CalWORKs cash assistance. *Id.*; Admin. Rec. (AR) at 3, 5 (lodged April 27, 2015) [Dir.'s Alternate Dec. (Mar. 24, 2011)]. Instead, counting the garnished income, San Mateo County denied aid to the Christensens. *Id.*

### 3. An administrative law judge concludes the child support payments Bruce Christensen makes are not available to meet the Christensen family's needs, but the Director of Department of Social Services reverses the decision.

Ms. Christensen requested a fair hearing, asserting that the child support garnished from her husband's wages and unemployment should not count as income to her family. *Opinion* at 8. The administrative law judge who heard the case agreed. *Id.* The judge explained, "To be considered in determining the cash ... aid payment, income must, in fact" be "available ... to needy members of the family in meeting their needs ...." AR at 9 [Proposed Hearing Dec. (Feb. 24, 2011)]. The judge concluded that the garnished child support "is not available to meet the needs" of the Christensen children, and instructed the county welfare department to reevaluate the application, excluding the child support garnished from Bruce Christensen's earned and unearned income. *Id.*

But the Department reversed and issued an alternate decision. *Opinion* at 8-9. Although the Department's director adopted the underlying facts, he reversed the ALJ's decision on the ground that no regulation expressly exempts income that is paid outside the home for child support. *Id.* He relied on the Department's policy announced in a letter to all counties, which instructs counties to treat child support payments as income to the children in the paying family. *Id.* at 9, citing All County Letter 97-59 (Oct. 14, 1997).

**4. Trial court concludes that child support payments that are transferred to other homes are not reasonably anticipated to meet the Christensen family's needs, but Court of Appeal reverses.**

Ms. Christensen filed a petition for writ of mandate (Code of Civil Procedure section 1085), administrative mandate (Code of Civil Procedure section 1094.5), and declaratory relief. *Opinion* at 9. The trial court granted administrative mandate and declaratory relief (*id.* at 9), ruling that the Department's "policy to count court-ordered child support payments as available income of the CalWORKs applicants and recipients who pay support, is invalid." Clerk's Transcript, Vol. 2 (2CT) at 619 (filed Apr. 20, 2015) [Order Directing Issuance of Writ of Mandate, etc. (Order) (Nov. 24, 2014)].

The trial court concluded that "child support that is transferred to children that live outside the home is not available to needy members of the family." *Opinion* at 9; Order, 2CT at 618. The court also declared that the Department's interpretation violated section 11005.5, under which the same funds shall not be considered in determining the amount of aid to two recipient groups. *Opinion* at 9-10; Order, 2CT at 618.

The Court of Appeal reversed, deferring to the Department's statutory and regulatory interpretations. *Opinion* at 2. Although recognizing that no statute directs the Department's policy, the Court of Appeal was concerned that "no limiting principle" would prevent a decision that garnished child support is not available income from applying equally to any other income garnishment. *Id.* at 16-19. The court also held that

the Department's policy does not violate section 11005.5. *Id.* at 19.

Ms. Christensen did not request rehearing.

## Reasons for Granting Review

### I. This Court should settle the important question of available financial resources in the State's welfare program that supports children, and should secure uniformity with the principles announced in *Mooney, Cooper* and *Waits.*

The Court of Appeal opinion disregards the principle of availability as a matter of deference to the Department. *Id.* at 16. "An important corollary of agency interpretations, however, is their diminished power to bind. Because an interpretation is an agency's *legal opinion,* however 'expert,' ... it commands a commensurably lesser degree of judicial deference." *Yamaha Corp. of Am. v. State Bd. of Equalization,* 19 Cal.4th 1, 11 (1998). This Court should consider whether such deference is appropriate where no statute directs the Department's policy, this Court and other California Courts of Appeal have repeatedly ruled that California welfare programs do not count theoretical resources, and the Department's interpretation conflicts with the purpose of the CalWORKs and child support statutes.

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### A. To count funds transferred from one family to support children in another home, as available to the needs of poor children who live with the paying parent conflicts with a uniform body of California case law.

This Court has not considered income availability in a means-tested public benefits program since its decisions in 1971 and 1974. But at that time the Court made clear that theoretical resources do not count. Multiple Courts of Appeal that have considered the question have reached the same conclusion. The availability principle is even written into the Department's own regulation. There is no question that the garnished child support is a fictional resource that will never be available to feed or clothe the children in the Christensen home.

In *Mooney v. Pickett,* 4 Cal.3d 669, this Court held that the economic resource of employability (physical and mental fitness for work) may not be used to disqualify a person from eligibility for county General Assistance cash aid. *Id.* at 679-80. The *Mooney* Court reasoned that "theoretical employability is a barren resource; it is inedible; it provides neither shelter nor any other necessity of life." *Id.* at 680. Here, similarly, court-ordered child support garnished for children in other homes is only theoretically available to the Christensen children. In reality, it "provides [them] neither shelter nor any other necessity of life." *Id.*

Similarly, in *Cooper v. Swoap,* 11 Cal.3d 856, this Court held that "noncash economic benefits" such as shared housing may not count as income in California welfare programs that

provide cash assistance to families. The Court ruled that "constructive presumptions of income" were not permissible. *Id.* at 870 (quotation marks and citation omitted). The Court reasoned that imputing constructive income without regard to actual availability is "arbitrary"; counting "fictional" economic benefits "improperly reduce[s] the already meagre grants on which the children must seek to survive." *Id.* In a companion case, this Court in *Waits v Swoap,* 11 Cal.3d 887, rejected a similar welfare regulation, based on similar reasoning, holding that it is improper to deem income from nonneedy relatives who are not legally obligated to provide support. *Id.* at 894. The *Waits* Court held, "Only the *actual* value of ... [financial] benefits received could possibly constitute income to the recipient." *Id.* at 894-95 (quoting *Cooper,* 11 Cal.3d at 870) (emphasis in original).

Here, contrary to the rules announced in *Waits* and *Cooper,* the Court of Appeal opinion sanctions the Department's imputing of income that is paid as a matter of law to children outside the home. It is "arbitrary" to impute such "fictional" economic benefits to the Christensen children, improperly reducing the already meagre funds on which the children must seek to survive. *Cooper,* 11 Cal.3d at 870.

Other appellate courts that have considered the question of availability in welfare cash assistance programs similarly have concluded that economic resources must be available to be counted. In *Galster v. Woods,* 173 Cal.App.3d 529 (1985), the Court of Appeal invalidated an AFDC rule to count as "available" to the family real property that may legally be liquidated but is "not actually available." *Id.* at 544. The court considered whether

real estate was available "in terms of providing for a needy child on a day-to-day-basis," where petitioners did not control it or were unable to sell it. *Id.* at 540. The practice of counting such real estate as an available resource unlawfully "hindered" the "paramount goal of providing assistance to needy children and their families" by denying the opportunity to demonstrate that the resources "are not actually available." *Id.* at 544.

Likewise, in *McCormick v. County of Alameda,* 193 Cal.App.4th 201 (2011), Alameda County denied General Assistance to a boy on the ground that he was technically part of a CalWORKs assistance unit, even though he was receiving no cash aid. *Id.* at 206-207. The Court of Appeal held that it was improper to deny aid on the basis of an asserted resource – being part of a CalWORKs household – where that resource did not actually exist to meet his subsistence needs. *Id.* at 214, 218. And in *Rogers v. Detrich,* 58 Cal.App.3d 90, 101 (1976), the Court of Appeal invalidated the practice of counting other persons' SSI disability benefits as available to applicants for General Assistance, because those funds were for other persons' needs.

Indeed, the Department's own regulation, Manual of Policies and Procedures (MPP) section 44-101(a), inscribes this principle. It provides, "To be considered in determining the cash aid payment, income must be reasonably anticipated to be available to needy members of the family in meeting their needs...." MPP §44-101(a).[7]

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[7] 2CT at 509; CalWORKs MPP chapters are available at http://www.cdss.ca.gov/inforesources/Letters-Regulations/Legislation-and-Regulations/CalWORKs-CalFresh-Regulations/Eligibility-and-Assistance-Standards.

The funds garnished to support children in other homes do not support the needs of the children in the Christensen's home and thus may not be considered available to the family. The income that has been diverted from its source to provide for children outside of Ms. Christensen's home is "not actually available" to meet her own family's needs, "in terms of providing for [her children] on a day-to-day basis." *Galster,* 173 Cal.App.3d. at 540, 544.

### B. The Court of Appeal opinion conflicts with the purposes of both CalWORKs and child support, which operate jointly to secure financial support for all children.

The Court of Appeal opinion in this case disregards the availability principles announced by this Court and other appellate courts, claiming there is no logical limit that would not reach other garnished funds. *Opinion* at 16-19. The Court of Appeal reasoned that if garnished child support is not countable income because such amounts are not "available to needy members of the family in meeting their needs," then "any amounts garnished from income would likewise not count as income." *Id.* at 17. In considering whether child support uniquely benefits only the children in other homes, the Court of Appeal determined that child support obligations "cannot meaningfully [be] distinguish[ed] ... from any other debt that may lead to garnishment of income." *Id.* at 18.

But child support is different from other obligations, and the context is important. Here the context is the intertwined functions of CalWORKs and child support which both operate to

support children financially while respecting parents' rights and obligations to provide such support. Moreover, child support itself is unique. That it is difficult to draw a line does not mean it should not be drawn. This Court should revisit the law of availability in context.

This case implicates two critical statutory schemes that protect children's financial wellbeing: CalWORKs and child support. The discussion of section 11005.5 in section II below reveals how they are also deeply interconnected. Under the Family Code, "the father and mother of a minor child have an equal responsibility to support their child in the manner suitable to the child's circumstances." Fam. Code §3900. When a family is granted CalWORKs, the absent parent "shall be obligated to the county" to reimburse the support. *Id.,* §17402. Accordingly, CalWORKs applicants, with limited exceptions, must assign their rights to support and cooperate with collection efforts. §11477. The assignment remains in place until the total amount of CalWORKs aid is repaid. §11477(a)(2).

CalWORKs manifests the Legislature's purpose: "Adequate support for *all* of the needy children of California's working poor is a matter of priority." *Sneed v. Saenz,,* 120 Cal.App.4th 1220, 1229 (2004) (emphasis in original). The provisions of law relating to CalWORKs must be "fairly and equitably construed to effect the stated objects and purposes of the program." §11000. As the Legislature "finds and declares," "[e]ach family has the right and responsibility to provide sufficient support and protection of its children...." §11205. Rather than further the purpose of adequate support for all of the needy children of California's working poor,

the interpretation approved by the Court of Appeal undermines these goals – by punishing children who live in a home in which adults also meet their right and responsibility to support their children in other homes. The policy approved in the Court of Appeal's opinion flouts the Legislation's fundamental purpose, fairly and equitably construed.

To effectuate the purpose of the CalWORKs and child support statutory schemes, families that pay child support should receive the same amount of income they would otherwise receive under the CalWORKs program. To do otherwise ignores the reality that garnished child support that is frequently *collected* under the auspices of the CalWORKs program, is not available to feed and clothe children in the home of the paying family. Such a result frustrates the purpose of the CalWORKs and child support statutes.

Child support is unique in other ways that make it unsuitable to be deemed available to the children residing with the paying parent. As a debt of the highest priority, child support must be paid "before payment of any debts owed to creditors." Fam. Code §4011. Even if child support is discharged in bankruptcy, a court may "make all proper orders for the support of the child that the court determines are just." *Id.* §4013. The amount may only be modified pursuant to court order. *Id.*, §4010. Whenever there is a support order, wage garnishment is mandatory. *Id.*, §5230.

No other debt operates in such a way. Notwithstanding the Court of Appeal's concern that it would be difficult to draw a line concerning the principle of availability, child support is uniquely

suited for this Court to limit the Department from counting it.

### C. The Department's policy punishes one set of children merely for whom they are associated with, and frustrates parents' rights of association in forming relationships and family bonds.

The Christensen's blended family is far from unusual, but the effect of the Court of Appeal's decision is to support a policy that effectively punishes them for living together as a blended family. In *McCormick v. Alameda County,* 193 Cal.App.4th 201, the county asserted that it did not violate section 17000 by denying General Assistance to Dajohn McCormick, a seven-year old not eligible for any other aid under CalWORKs rules. *Id.* at 206, 217. The county argued that Dajohn would have been eligible for CalWORKs cash assistance *had he left his mother's home. Id* at 217. The Court of Appeal opinion rejected the county's argument that forcing the family to separate was a valid remedy to provide needed support to Dajohn, holding, "Such a 'solution' cannot be deemed to have been authorized by the Legislature." *Id.* at 218.

In CalWORKs, "[t]he Legislature finds and declares that the family unit is of fundamental importance to society in nurturing its members ... and providing the secure structure in which citizens live out their lives." §11205. As in *McCormick,* the Christensens are faced with the choice of living together as a family or forgoing public benefits. And as in *McCormick,* such a result is "inimical to the objectives" of the CalWORKs program and should be rejected. *McCormick,* 193 Cal.App.4th at 218.

## II. This Court should settle the important question of the meaning of section 11005.5, which prohibits California from counting the same income and resources to two recipient groups.

Section 11005.5 prohibits the same income from consideration in determining eligibility for the amount of aid to two recipient groups. Here, the same income is used to reduce CalWORKs aid – *i.e.,* in determining the amount of CalWORKs aid – to two recipient groups. The Court of Appeal opinion concluded the question of 11005.5's application to "income" was not squarely presented. *Opinion* at 22. But as will be discussed below *whenever* child support is collected from one CalWORKs family for another, the challenged policy either causes the child support income to determine the amount of CalWORKs aid to both families, or causes the income of the receiving family to also be counted against that of the paying family.

This Court has never construed section 11005.5 in its current form, and the Department's policy fails to give it effect. The Court should grant review so as to give clarity to section 11005.5's application.

### A. The Court of Appeal's interpretation of section 11005.5 is inconsistent with prior authority.

This Court in *Cooper v. Swoap* interpreted a prior version of section 11005.5, then codified at section 11006, which read, "Aid granted shall not be construed as income to any person other than the recipient." *Cooper,* 11 Cal.3d at 869; *see also, Rogers,* 58 Cal.App.3d at 99-101 (discussing history of section 11005.5). Based on this language alone, the *Cooper* court invalidated a

regulation that reduced the amount of cash assistance when recipients of AFDC lived in the same household with recipients of adult aid. *Cooper,* 11 Cal.3d at 870. The *Cooper* court held that the regulation "directly conflicts" with the proscription "by in effect designating some portion of an adult aid recipient's" benefits as income to AFDC recipients in the same household. *Id.* As will be discussed further in the section B below, the Department's policy similarly "in effect" designates the receiving family's CalWORKs (if child support is assigned) or child support (if it is not assigned) as income to the paying family. As in the prior statute interpreted in *Cooper,* this attribution of one family's income to another violates section 11005.5.

Section 11005.5, as revised in 1973,[8] begins by providing: "[a]ll money paid to a recipient or recipient group as aid is intended to help the recipient meet his individual needs or, in the case of a recipient group, the needs of the recipient group, and is not for the benefit of any other person." The court below reasoned that section 11005.5 did not apply to the Christensens because "Bruce's garnished child support is not 'aid.'" *Opinion* at 20.

But that conclusion ignores the second sentence of section 11005.5, which provides that aid "to a recipient or recipient group and *the income or resources* of such recipient or recipient group shall not be considered in determining eligibility for or the amount of aid of any other recipient or recipient group." §11005.5 (emphasis added). As the court stated in *Rogers v. Detrich,* 58

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[8] §11005.5 (added by Stats. 1973, ch. 1216, § 8).

Cal.App.3d 90, "that portion of the statute is even more clear on its face than the remainder of the statute." *Id.* at 101, n.6.

The *Rogers* court went on to decide that a county rule which used one person's Supplemental Security Income to deny General Assistance to another person in the same household "amounts to defiance of the legislative proscription." *Id.* at 101. In reaching its decision, the *Rogers* court considered that the SSI funds in question were both "aid" that should not count as income against another recipient group, *and* "income" of that other group. *Id.* The court concluded that the defendant county must "determine eligibility for General Assistance and the amount of General Assistance to which an applicant is entitled without reference to aid, *income,* or resources of SSI[] recipients...." *Id.* at 106 (emphasis added). In limiting the scope of section 11005.5 to "aid," the Court of Appeal opinion failed to follow *Rogers.*

This Court should construe section 11005.5 and settle that it is improper to consider one recipient group's income to reduce another group's amount of aid.

### B. Child support funds that are garnished to pay for other families' cash aid are direct or indirect income to that family, while simultaneously reducing the paying family's eligibility for cash aid in violation of section 11005.5.

The Court of Appeal opinion also stated that even if section 11005.5 prohibited garnished child support from also being considered income to another CalWORKs assistance unit, the statute still does not apply because child support paid to a CalWORKs family "is not generally counted as income." *Opinion*

at 20-21. On the contrary, whenever child support funds are collected from one CalWORKs family for another, the support is paid to another CalWORKs family either indirectly as aid or directly as countable income. Under the challenged policy, the same funds also are considered in determining the paying family's eligibility for and amount of aid. This violates section 11005.5 as "[a]id granted ... to a recipient or recipient group and the income or resources of such ... group shall not be considered in determining eligibility for or the amount of aid" of any other recipient group. §11005.5.

**1. When garnished child support is passed directly to CalWORKs families, it is both the income of the family that receives the support directly, and is counted as the income of the paying group.**

When child support is collected from one CalWORKs family on behalf of another CalWORKs family, it may and frequently does count directly as income to both families. Although the first $50 of current child support does not count as income to the family (*Opinion* at 21; Fam. Code §17504), all other child support funds that are collected on behalf of a CalWORKs family are paid directly and counted as income dollar for dollar, unless they are used to repay the government for aid. §11477.

This occurs whenever child support is not assigned to the government, such as when all adults in the home are excluded from the assistance unit because they have received 48 months of assistance, have been sanctioned for 12 consecutive months, or are ineligible because they are in violation of the terms of

probation or parole. §11477(c)(1); *see Opinion* at 22 (discussing "safety-net" families where adults are excluded from the home). It also occurs when child support is collected for arrears that accrued before the family started receiving aid, as well as when support is collected in excess of what is owed. *Opinion* at 22; MPP §12-425(f)(1), (i).[9] In all of these cases, other than the first $50, the child support paid directly to the family counts as income. §11477(c)(2) ("intent of the Legislature that the regular receipt of child support ... be considered" in determining income); MPP §44-113.5 (child support which is reasonably anticipated to be paid and not forwarded to the county "shall be considered available income").

The Court of Appeal opinion described such scenarios as "exceptions to the general rule that child support paid on behalf of a child is not treated as income to the child's family." *Opinion* at 22. But California allows child support that is collected from one CalWORKs family to be treated as income to a large number of CalWORKs families. These include over 80,000 "safety-net" households – where the adults have received 48 months of aid and only the children are assisted.[10]

Thus, other than the first $50 of current assistance, whenever child support that is not assigned is paid by a

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[9] Child Support Collections and Distribution Regulations are available at http://www.childsup.ca.gov/portals/0/resources/docs/regulations/mpp/ch12-400.pdf.

[10] *Opinion* at 22; 2CT 579 ["CalWORKs Prog. Caseload by Category July 2009 – Aug. 2014" (81,025 safety-net households as of August 2014)]; Ex. B, CalWORKs 2017 Annual Summary at 11 (on average, 87,582 safety-net households in 2015-16).

CalWORKs applicant or recipient family for another CalWORKs family, the receiving family's income is counted against the paying family's, in violation of section 11005.5.

The Court of Appeal refused to decide whether illegal double counting occurs in such cases, stating that there was no evidence in the record that in this case the amounts garnished from Mr. Christensen were for pre-aid arrears or that the child receiving aid was a safety-net child. *Opinion* at 22. But this is an action for declaratory relief, and there is no dispute that the child support Bruce Christensen paid supported other CalWORKs children. Nor is there dispute that the Department's policy does not consider section 11005.5 at all.

That double counting can potentially occur in at least 80,000 households even under a narrow interpretation of section 11005.5 cannot be ignored. In addition, as we now discuss, the Department's policy violates section 11005.5 even when the child support owed to the receiving family is assigned to the government.

**2. When child support is assigned and pays indirectly for CalWORKs, the aid paid to one family is considered in determining eligibility for the paying family's amount of aid, in violation of section 11005.5.**

The Court of Appeal reasoned that because CalWORKs recipients generally "must assign their rights to child support to the county and state," it "is not received by families receiving CalWORKs cash aid and is not counted as income to them." *Opinion* at 21-22. Such support is used to reimburse the county

and state for CalWORKs aid (Fam. Code §17402), and is "permanently assigned until the entire amount of aid paid has been reimbursed." §11477(a)(2). Such support simultaneously is counted to reduce the amount of aid that the paying family, such as the Christensens, may receive. Thus, "aid granted" to one recipient group – paid for by the paying family – is simultaneously considered in determining eligibility for and the amount of aid of another recipient group.

The analysis in *County of Yolo v. Francis,* 179 Cal.App.3d 647 (1986), is instructive. In that case, Yolo County sought reimbursement from Mr. Francis for AFDC support to a child who was not living with him. *Id.* at 650. Among other things, he asserted that the collection order violated section 11005.5 because during the time that his other child was assisted, he also was receiving AFDC benefits for his wife and their two children. *Id.* at 650, 656. The *County of Yolo* court held section 11005.5 did not bar a child support order against him where he was employable (but not employed), even though his own income at the time was AFDC. *Id.* at 655-56.

The court determined that the child support order was permissible, where the county had not tried to collect from his own AFDC grant. *Id.* at 656. But in doing so, the *County of Yolo* court observed that section 11005.5 "undoubtedly" prohibits "attaching, garnishing or executing upon defendant's AFDC grant" to pay child support that reimburses another child's AFDC. *Id.*; *see also* §17516 ("In no event shall public social service benefits [including CalWORKs] ... be employed to satisfy a support obligation").

Here, contrary to the result that *County of Yolo* disapproves, the Court of Appeal's decision effectively sanctions the garnishment of the Christensen family's CalWORKs benefit to pay child support to another child who also is assisted by the CalWORKs program. Instead of garnishing the CalWORKs benefit directly as was disapproved in *County of Yolo*, the Department's policy does so indirectly – by counting the garnished child support income to reduce the amount of CalWORKs aid the Christensens may receive. Under *County of Yolo's* logic, such result "undoubtedly" is prohibited by section 11005.5.

Viewed another way, when garnished child support is used to reimburse another family's CalWORKs, both families effectively receive less CalWORKs. Thus, the income of one recipient group (the garnished child support) is effectively considered in determining the amount of aid of both the paying and receiving families, in violation of section 11005.5. The funds are considered in determining the amount of aid to the paying family, as they were in the Christensen's case when San Mateo County denied their CalWORKs application. But they are also considered in determining the amount of aid to the "receiving" family. The "receiving" family effectively receives less CalWORKs aid because the child support funds are used to repay the CalWORKs, thus reducing the amount of CalWORKs aid to that family. It is as if the "receiving" family first physically received the child support and then was required to hand the funds over to the state. Where the assigning family cedes the funds to the state to pay for its own aid, and the paying family is deemed to still

have the funds, the challenged policy effectively reduces the CalWORKs aid paid to both families. The child support that is supposed to go to the receiving family is used to reduce the value of the CalWORKs benefit the family actually receives, and the same income effectively determines the amount of aid to both recipient groups, in violation of section 11005.5.

Where garnished child support reduces the amount of aid to the paying family and is also the direct or indirect income of the other family, section 11005.5 is violated. This Court should settle the question.

## Conclusion

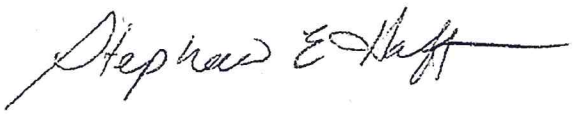
The Department's policy conflicts with express statutory authority in section 11005.5, and with established principles of availability in California case law and the Department's own regulation. The policy violates the fundamental purposes of CalWORKs and child support, needlessly impoverishes families meeting their support obligations, and interferes with family bonds.

This Court should grant review.

Respectfully submitted,

Dated: November 14, 2017

WESTERN CENTER ON LAW & POVERTY
LEGAL AID SOCIETY OF SAN MATEO COUNTY



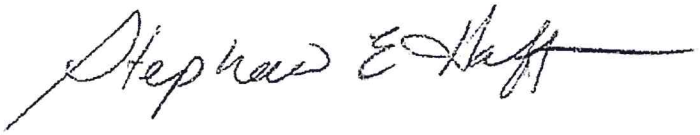
By:_____
STEPHANIE E. HAFFNER

## CERTIFICATE OF WORD COUNT

As required by Rule 8.504, subdivision (d)(1), of the California Rules of Court, I certify that this Petition for Review contains 5,907 words, including footnotes, according to the computer program used to generate the document.

Dated: November 14, 2017

WESTERN CENTER ON LAW & POVERTY
LEGAL AID SOCIETY OF SAN MATEO COUNTY



By:_____
STEPHANIE E. HAFFNER

# EXHIBIT A

# EXHIBIT A

Filed 10/6/17

**CERTIFIED FOR PUBLICATION**

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

| | |
|---|---|
| ANGIE CHRISTENSEN,<br>Plaintiff and Respondent,<br>v.<br>WILL LIGHTBOURNE, as Director, etc.,<br>Defendants and Appellants. | A144254<br><br>(San Francisco County<br>Super. Ct. No. CPF-12-512070) |

This appeal presents a narrow question about what counts as family income when determining a family's eligibility for cash aid under the California Work Opportunity and Responsibility to Kids Act (CalWORKs) program. (Welf. & Inst. Code, §§ 11200 et seq.)[1]

Here, a CalWORKs applicant, Angie Christensen, lives with her husband and her children. Her husband is the noncustodial parent of additional children, and court-ordered child support is garnished from his income for the benefit of these children who do not live in the applicant's home. Counting the garnished amounts as nonexempt income to the applicant's family, San Mateo County determined the family's income was too high to qualify for CalWORKs cash aid and denied the application. Following an administrative appeal, the California Department of Social Services (Department) affirmed the denial decision.

The applicant then petitioned for writ of mandate challenging the Department's policy of counting child support paid to benefit children who live outside the home as

[1] Further undesignated statutory references are to the Welfare and Institutions Code.

nonexempt income for purposes of CalWORKs (Code Civ. Proc., § 1085) and for writ of administrative mandate seeking to overturn the Department's denial decision (Code Civ. Proc., § 1094.5). She also sought declaratory relief. The trial court granted the petition for writ of administrative mandate and the request for declaratory relief. The trial court found the Department's policy of counting child support payments as nonexempt income was invalid on the grounds it was contrary to regulation, and it resulted in improper "double counting" of income among recipients of aid.

The Department and its Director, Will Lightbourne, (together "appellants") appeal. We conclude that no statute or regulation required the exemption of the husband's garnished child support from the income of applicant's family and, therefore, the Department properly treated such amounts as income in determining the applicant's family's eligibility for CalWORKs cash aid. We reverse the judgment.

## BRIEF OVERVIEW OF CALWORKS

We begin with a brief history of the CalWORKs program, including a discussion of the concepts of income and exemptions relevant to this case.

*Welfare Reform*

In 1996, Congress passed what is commonly referred to as the Welfare Reform Act. Under this law, the federal program Aid to Families with Dependent Children (AFDC) was replaced by Temporary Aid to Needy Families (TANF), which provides states with block funding to distribute to needy families as each state sees fit. (*Sneed v. Saenz* (2004) 120 Cal.App.4th 1220, 1231 (*Sneed*).)

"In 1997, as part of a comprehensive review and overhaul of its welfare system, California created CalWORKs through which it administers TANF block grants. [Citations.] . . . Like the former AFDC program, CalWORKs provides cash grants to families with minor children who meet certain requirements, including limited income and resources, and are deprived of the support of one or both parents due to factors such as absence, disability or unemployment." (*Sneed*, *supra*, 120 Cal.App.4th at p. 1231.) The Legislature adopted the CalWORKs program through Assembly Bill No. 1542 (AB 1542). (*Ibid*.)

Under CalWORKs, the Welfare and Institutions Code establishes a schedule of maximum aid payments, with maximum payments varying according to the number of eligible needy persons in the family and by the region of California in which the family lives. (See §§ 11450, 11450.12, 11450.018, 11452.018.) The amount of a family's CalWORKs aid payment is calculated by taking the applicable maximum aid payment for the eligible family members and subtracting the family's nonexempt income.[2] (*Ibid*.)

The Legislature's purpose in enacting CalWORKs was "to increase personal responsibility and encourage financial self-sufficiency for families." (*Sneed, supra*, 120 Cal.App.4th at p. 1242.) Compared with the previous welfare program, "CalWORKs provides increased education and training, greater work incentives and time limits on aid."[3] (*Ibid*.) Among the changes made, the Legislature adopted a new method for calculating cash aid amounts, which was "designed to motivate welfare recipients to increase their work efforts. Under the new system, enacted in 1997 and still in effect, aid recipients who increase their work efforts and obtain greater employment income may retain more of the increased income before cash aid is affected." (*Id.* at p. 1232.)

Specifically, section 11451.5, subdivision (a), allows a family to exempt from its income up to the first $225 of its earned income, plus 50 percent of any remaining earned income.[4] This is a more generous earned-income exemption than existed prior to

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[2] For purposes of determining eligibility for CalWORKs cash aid, families are grouped into "assistance units" or "AUs," which must include at least one eligible child and a care taker relative, and which also include the eligible relatives of the eligible child living in the same home with the child. (§ 11450.16, subds. (a)–(c).) In the parties' briefing, appellants use the term "household" synonymously with assistance unit, and Christensen uses the terms "family," "CalWORKs family," and "assisted family" to refer to her assistance unit. We sometimes use the term "family" to refer to an assistance unit in general, and we refer to Christensen's assistance unit in particular as her "family."

[3] The law also imposed a new requirement that aid recipients participate in welfare-to-work activities (see § 11320.3), and the CalWORKs program is "often described as 'welfare-to-work.' " (*Mendoza v. Ramos* (2010) 182 Cal.App.4th 680, 686.)

[4] Section 11451.5's exemption of $225 applies first to any disability-based unearned income (DBI), and any remaining exemption amount applies to earned income. In the present case, Christensen's family had no countable DBI income, so the entire

CalWORKs. (See *Sneed*, *supra*, 120 Cal.App.4th at p. 1242.) The AFDC program (which CalWORKs replaced) allowed a family to exempt only the first $30 and one-third of any remaining earned income. The intent "was to provide a greater, more advantageous work incentive, one that rewards additional work efforts and gives welfare recipients a better understanding of the impact that *increased earnings* have on the income of the family and the amount of the grant payment." (*Id*. at p. 1240.)

Also as part of welfare reform, "the Legislature reviewed various statutes adopted during the time the AFDC program was in effect and either repealed, amended or continued those laws as part of the new CalWORKs program." (*Sneed*, *supra*, 120 Cal.App.4th at p. 1240.)

Each county administers CalWORKs under the supervision of the Department. (*Smith v. Los Angeles County Bd. of Supervisors* (2002) 104 Cal.App.4th 1104, 1109 (*Smith*); § 10600.) The Department has adopted regulations and standards to implement CalWORKs, which are found in its Manual of Policies and Procedures (MPP), Eligibility and Assistance Standards. (*Smith*, at p. 1109.)[5]

*Income and Exemptions Under CalWORKs*

As we have mentioned, section 11451.5 provides an exemption of up to the first $225 of earned income, plus half of any remaining earned income. (§ 11451.5, subd. (a).) The statute defines "earned income" as "gross income received as wages, salary, employer-provided sick leave benefits, commissions, or profits from activities such as a business enterprise or farming in which the recipient is engaged as a self-employed

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$225 exemption applied to the family's earned income. Because this provision applies to DBI and earned income, we sometimes refer to the exemption as the "DBI/earned-income exemption."

[5] These regulations were adopted in accordance with the state Administrative Procedures Act (Gov. Code, §§ 11340 et seq.). (See § 10554.)

individual or as an employee." "Unearned income" is any income that is not classified as either earned income or DBI.[6] (*Id*., subds. (b)(1) & (3).)

MPP section 44–101(a) defines income for purposes of administering CalWORKs as follows: "Income, generally, is any benefit in cash or in-kind which is reasonably anticipated to be available to the individual or is received by him/her as a result of current or past labor or services, business activities, interests in real or personal property, or as a contribution from persons, organizations or assistance agencies. To be considered in determining the cash aid payment, income must be reasonably anticipated to be available to needy members of the family in meeting their needs during the . . . Payment Period. Subject to this limitation and the exemptions and exclusions, as specified in Section 44–111 of this chapter, such benefits are taken into consideration as income in evaluating the need of the recipient and in determining the amount of cash aid to which the recipient is entitled."

Exemptions from income are provided by statute and regulation. For example, in addition to section 11451.5's DBI/earned-income exemption, MPP section 44–111 lists types of payments or benefits that are exempted or excluded, in whole or in part, from consideration as income for purposes of the CalWORKs program.[7]

*All County Letter No. 97-59: The Department's Policy of Counting Child Support for Children Who Live Outside the Payer's Assistance Unit as Nonexempt Income*

No statute or regulation specifically addresses how to treat child support payments paid by a member of an assistance unit for the benefit of children who live outside the assistance unit. Since 1997, however, the Department has taken the position that such child support payments are not exempted from income.

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[6] DBI refers to "state disability insurance benefits, private disability insurance benefits, temporary workers' compensation benefits, social security disability benefits, and any veteran's disability compensation." (§ 11451.5, subd. (b)(2).)

[7] Exemptions include a child's earnings from a job training program, (MPP § 44–111.211) income earned from a college work study program (*id*., § 44–111.24), certain relocation benefits (*id*., § 44–111.3a), certain tax credits and rebates (*id*., § 44–111.3k, l), and certain educational grants (*id*., § 44–111.435).

The Department's position is set forth in All County Letter (ACL) No. 97-59, dated October 14, 1997, a letter to all county welfare directors and AFDC program managers. The purpose of the letter was "to provide counties with the instructions they requested for implementing the new grant structure and aid payment provisions of [AB 1542]," the newly-enacted CalWORKs program. (ACL No. 97-59, p. 1.) Under prior law, a family could disregard (i.e., exempt) court-ordered child support paid by family members for children living outside the home. (ACL No. 97-59, p. 3.) ACL No. 97-59 explained that this child-support exemption and other "existing income disregards" were eliminated by AB 1542 and replaced with new exemptions.[8] The letter described in particular the "new income disregard," which "exempts the first $225 of any disability-based unearned income and/or earned income plus 50 percent of any remaining earned income." (ACL No. 97-59, p. 3)

*Repeal of Pre-CalWORKs Regulation on Child Support*

Consistent with its understanding of the changes in the law, the Department also repealed a regulation (former MPP section 44–113.9), which had provided a deduction from income of court-ordered support payments to a child or spouse not in the home. The repeal became effective on July 1, 1998. (ACL No. 98-45.)[9] In the rule-making

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[8] Specifically, under the heading "Treatment of Income," the Department wrote: "The existing income definitions and treatment of income are retained except for the changes noted below.

"**Income Disregard** [¶] Effective January 1, 1998, AB 1542 amends the method of determining net nonexempt income (NNI) in the grant computation by *eliminating the existing income disregards and replacing them with new income disregards*. *The following existing income disregards are eliminated*: (1) $30 and 1/3 earned income disregards, (2) $90 standard work expense, (3) dependent/child care costs, (4) *court-ordered child*/spousal *support paid by family members to persons outside the home*, and (5) support paid by Non-AU members to others not living in the home who are claimed as federal tax dependents . . . ." (ACL No. 97–59, p. 3, italics added.)

[9] After giving counsel notice of our intent to do so, we take judicial notice of ACL No. 98-45 on our own motion under Evidence Code section 452, subdivisions (c) and (h), and section 459, subdivision (a). (See *California Advocates for Nursing Home Reform v. Bonta* (2003) 106 Cal.App.4th 498, 515, fn. 8 [taking judicial notice of an ACL because

process, the Department explained the child and spousal support "disregards" "that were allowed previously under federal and state law have been *replaced* with disregards of $225 of disability based unearned income and/or earned income and then 50% of the remaining earned income as set forth in Welfare and Institutions Code Section 11451.5."[10] (Italics added.)

## FACTUAL AND PROCEDURAL BACKGROUND

*Application for Aid*

In October 2010, Christensen applied for CalWORKs cash aid. Her family consisted of herself, her three children from a prior marriage, her husband, Bruce Christensen, and their three children together.[11] Christensen received supplemental security income/state supplemental payments (SSI). Bruce worked part-time and also received unemployment insurance benefits (UIB). Child support payments were garnished from Bruce's income (both his paychecks and his UIB checks) for his children

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it "is an official act of an executive department that is not reasonably subject to dispute and is capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy"].)

[10] In public hearings on the changes to regulations, the Western Center on Law & Poverty, Inc., (Christensen's counsel in this case) took the position that the CalWORKs legislation did not repeal the deductions for child and spousal support to benefit persons who live outside the home. The Department disagreed, responding, "AB 1542 provides only a $225 and 50% deduction to disability based unearned and earned income. There is no provision to disregard payment made to support a child or spouse who lives outside the CalWORKs household."

We granted appellants' unopposed request to take judicial notice of the rule-making file, which was not before the trial court. Christensen now urges us to disregard the document, but she does not dispute that a rule-making file may be the subject of judicial notice. (E.g., *Engine Manufacturers Association v. California Air Resources Board* (2014) 231 Cal.App.4th 1022, 1035.) Nor does she explain why she did not raise her objections in a timely manner.

[11] For the sake of brevity, we refer to Bruce Christensen by his first name only. No disrespect is intended.

from prior relationships; these children did not live with Christensen and Bruce.[12] Bruce's child support payments were for three children: one child lived with the mother and received aid, one child was an adult and the support payments were for arrearages, and one child was not on assistance, as far as Christensen knew.

San Mateo County denied Christensen's application on the ground the "family's net countable income" exceeded the maximum aid payment (MAP) set by statute for the number of eligible members of the family.[13]

*Administrative Appeal*

Christensen requested a hearing on the denial of her CalWORKs application. The only issue she raised was whether the child support garnished from Bruce's checks should count as income to Christensen's family.

Following an administrative hearing, the administrative law judge (ALJ) issued a proposed decision in Christensen's favor, but it was not adopted. Instead, the Department Director at that time, John Wagner, exercised his authority to issue an alternate decision.

Director Wagner adopted the ALJ's statement of facts, but reached a different legal conclusion. He explained: "[A]ll nonexempt income to the AU is considered available to the AU and is included in determining eligibility for CalWORKs benefits. There is no regulation that exempts child support payments paid by or garnished from an

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[12] $127.89 was deducted from his biweekly paychecks, and the amount deducted from his UIB checks varied depending on the amount of the UIB payment, which in turn varied based on the amount he earned from his part-time job. Evidence showed no less than $61 was withheld from Bruce's UIB checks per week.

[13] It is not disputed that the applicable MAP was for four persons—Christensen's own three children from a prior marriage and Bruce. (The three children of the Christensen marriage were considered "maximum family grant" children, and so did not count in determining the MAP, and Christensen herself was excluded from the MAP because she received SSI.) The MAP for San Mateo County for a four-person family at the time was $828 per month. The county found Bruce's monthly earned income was $600.17, and other monthly nonexempt income (i.e., his UIB benefits) was $793.12 (a total of $1,393.29 gross income). After subtracting "disregards" (exemptions), the county determined the family's net countable income was $980, which exceeded the applicable MAP of $828.

AU member's earned or unearned income. Therefore, the child support payments garnished from [Bruce's] earned income and UIB w[ere] correctly included as nonexempt available income in determining AU's eligibility for CalWORKs benefits." The Director concluded that San Mateo County correctly calculated the nonexempt income to Christensen's family, and denied Christensen's claim.

In reaching his conclusion, the Director relied on the Department's longstanding policy of treating child support payments as nonexempt income to the payer's assistance unit, citing ACL No. 97-59.

*Writ Petition*

In March 2012, Christensen filed a petition for writ of mandate under Code of Civil Procedure sections 1085 (traditional mandate) and 1094.5 (administrative mandate) and complaint for declaratory relief. She sought to overturn the Department's decision and further sought a declaration that, under California law, child support funds paid or garnished under court order for children outside the home are not income available to meet the needs of the children of the home for purposes of the CalWORKs program.

In November 2014, the trial court granted Christensen's petition for administrative mandate (Code Civ. Proc., § 1094.5) and her request for declaratory relief.[14] The court found that the relevant statutes did not provide an exhaustive list of items that are exempt in calculating income for purposes of determining CalWORKs eligibility. Relying on MPP section 44–101(a), the court concluded that "child support that is transferred to children that live outside the home is not available to needy members of the family." The court also found the Department's interpretation of the governing scheme was contrary to

[14] At Christensen's request, the court took judicial notice of documents including portions of AB 1542, various sections of the MPP, Department ACLs, and other Department documents related to CalWORKs. Appellants requested the court take judicial notice of Senate Bill No. 1233 (Stats. 1999, ch. 933) (SB 1233), Senate Bill No. 1041 (Stats. 2012, ch. 47) (SB 1041), and MPP § 44–100.

section 11005.5 and observed, "Double counting should not occur among recipient groups."[15]

The trial court, however, denied Christensen's request for traditional mandate (Code Civ. Proc., § 1085) on the ground "the statutory landscape regarding the exemption was unclear and [Christensen] does not cite a clear ministerial statutory duty."

The court set aside the Director's alternate decision, and declared, "[The Department's] policy to count court-ordered child support payments as available income of the CalWORKs applicant and recipients who pay the support is invalid . . . ."

Appellants timely appealed.

## DISCUSSION

### I. Standard of Review

Section 1094.5 of the Code of Civil Procedure governs judicial review by administrative mandate of any final decision or order rendered by an administrative agency. Because a decision denying public assistance affects fundamental vested rights, the trial court exercises its independent judgment in reviewing the decision. (*Frink v. Prod* (1982) 31 Cal.3d 166, 180.) We review "the record to determine whether the trial court's findings are supported by substantial evidence." (*LaGrone v. City of Oakland* (2011) 202 Cal.App.4th 932, 940.)

However, "where the facts are undisputed, the reviewing court faces a question of law. 'On questions of law arising in mandate proceedings, we exercise independent judgment.' [Citation.] In those circumstances, the trial and appellate courts perform the same function." (*Santa Clara Valley Transp. Authority v. Rea* (2006) 140 Cal.App.4th

[15] Section 11005.5 provides: "All money paid to a recipient or recipient group as aid is intended to help the recipient meet his individual needs or, in the case of a recipient group, the needs of the recipient group, and is not for the benefit of any other person. Aid granted under [state programs including CalWORKs] to a recipient or recipient group and the income or resources of such recipient or recipient group shall not be considered in determining eligibility for or the amount of aid of any other recipient or recipient group." (Fn. omitted.)

1303, 1313.)[16] Interpretation of a statute or regulation is a question of law subject to independent review. (*Pacific Gas and Electric Company v. Public Utilities Commission* (2015) 237 Cal.App.4th 812, 840.) "[W]e apply our independent review without reference to the trial court's actions." (See *Santa Clara Valley Transp. Authority v. Rea*, p. 1313.)[17]

In this case, the issue is whether the Department's interpretation of CalWORKs statutes and regulations is valid. Generally, "[a]n agency interpretation of the meaning and legal effect of a statute is entitled to consideration and respect by the courts." (*Yamaha Corp. of America v. State Bd. of Equalization* (1998) 19 Cal.4th 1, 7 (*Yamaha*).) We "independently judge the text of the statute, taking into account and respecting the agency's interpretation of its meaning, of course, whether embodied in a formal rule or less formal representation." (*Ibid.*)

In *Yamaha,* our high court identified "two broad categories of factors relevant to a court's assessment of the weight due an agency's interpretation." (*Yamaha, supra,* 19 Cal.4th at p. 12.) The first category of factors relate to the agency's " 'comparative interpretive advantage over the courts,' " and the second category includes factors " 'indicating that the [agency's] interpretation in question is probably correct." (*Ibid.*)

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[16] "Similarly, in a declaratory relief action questions of fact are generally reviewed for substantial evidence and questions of law are reviewed de novo." (*K.G. v. Meredith* (2012) 204 Cal.App.4th 164, 174.)

[17] Appellants assert the standard of review for a petition of administrative mandate is abuse of discretion. "Abuse of discretion" may be "established if the [Department] has not proceeded in the manner required by law" (Code Civ. Proc., § 1094.5, subd. (b)), and Christensen essentially argues the Department did not proceed in a manner required by law in counting Bruce's garnished child support as income to her family. Still, the question whether the Department's policy of counting child support violates statute or regulation is one of law subject to de novo review. (See *California Teachers Assn. v. Butte Community College Dist.* (1996) 48 Cal.App.4th 1293, 1299 [in review of petition for administrative mandate, "[w]here the pertinent facts are undisputed, and the appellant claims the agency exceeded its jurisdiction and failed to proceed in a manner required by law, our standard of review is de novo"].)

"In the first category are factors that 'assume the agency has expertise and technical knowledge, especially where the legal text to be interpreted is technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion. A court is more likely to defer to an agency's interpretation of its own regulation than to its interpretation of a statute, since the agency is likely to be intimately familiar with regulations it authored and sensitive to the practical implications of one interpretation over another.' [Citation.] The second group of factors . . . includes [1] indications of careful consideration by senior agency officials . . ., [2] evidence that the agency 'has consistently maintained the interpretation in question, especially if [it] is long-standing' [citation] . . ., and [3] indications that the agency's interpretation was contemporaneous with legislative enactment of the statute being interpreted. If an agency has adopted an interpretive rule in accordance with Administrative Procedure Act provisions—which include procedures (e.g., notice to the public of the proposed rule and opportunity for public comment) that enhance the accuracy and reliability of the resulting administrative 'product'—that circumstance weighs in favor of judicial deference." (*Yamaha*, *supra*, 19 Cal.4th at pp. 12–13.)

More recently, our Supreme Court explained the task of a reviewing court considering an agency's interpretation of the law: "While we assign considerable importance to the agency's views, we also retain ultimate responsibility for interpreting the relevant statute. [Citation.] If the agency's interpretation is clearly erroneous or unauthorized under the statute, we will not give effect to its understanding of the statute. [Citation.] . . . But where the [agency's] conclusion is not plainly at odds with the statutory scheme, we assign great weight to it." (*Larkin v. W.C.A.B.* (2015) 62 Cal.4th 152, 158 (*Larkin*).)

## II. Counting Court-Ordered Child Support as Nonexempt Income

### A. *Deference to the Department's Longstanding Policy*

As we have seen, the CalWORKs statutes and regulations do not specifically prescribe how to treat child support paid by a noncustodial parent in determining the nonexempt income of the paying parent's assistance unit. The Department's position is

straightforward. Bruce's earnings from work and his UIB payments qualify as income, and the child support garnished from Bruce's income counts as nonexempt income to Christensen's family because no statute or regulation expressly exempts it from income. Before welfare reform, there was an exemption for child support paid to benefit children who lived outside the home, but CalWORKs eliminated that exemption (along with others) and replaced it with a more generous earned-income exemption.

Consideration of the two broad categories of factors described in *Yamaha* leads us to accord great weight to the Department's interpretation of the law. First, as the agency responsible for both adopting regulations and standards to implement the CalWORKs program and supervising counties that run the program, the Department clearly has expertise and technical knowledge in the administration of CalWORKs. It is also undeniable that the CalWORKs statutes and regulations are technical, complex, and entwined with issues of fact and policy. Second, the Department announced its policy on the treatment of child support in an ACL when CalWORKs was first enacted, and it has consistently maintained its interpretation of the law since 1997. "[W]here the agency has special expertise and its decision is carefully considered by senior agency officials, that decision is entitled to correspondingly greater weight." (*Sharon S. v. Superior Court* (2003) 31 Cal.4th 417, 436 [describing deference due to the Department's interpretation of an adoption statute, which was set forth in an ACL].) Further, our Supreme Court has observed, " ' "Consistent administrative construction of a statute over many years, particularly when it originated with those charged with putting the statutory machinery into effect, is entitled to great weight and will not be overturned unless clearly erroneous" ' " (*Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1012) or unauthorized (*Larkin*, *supra*, 62 Cal.4th at p. 158).

Thus, we should not overturn the Department's policy of counting child support as income to the payer's assistance unit, which it has maintained since the inception of the CalWORKs program 20 years ago, unless it is clearly erroneous or unauthorized under the applicable statutes and regulations. The trial court found the Department's policy was invalid on two separate grounds. First, it found that counting court-ordered child support

as income to the payer's assistance unit would conflict with MPP section 44–101(a), which provides that income must be "reasonably anticipated to be available to needy members of the family in meeting their needs." Second, the court found the Department policy was contrary to section 11005.5, suggesting the policy resulted in "double counting." Christensen, of course, agrees with the trial court, and further argues the Department's policy conflicts with the legislative history and the purpose of the CalWORKs program. We consider each of these arguments.

B. *"Reasonably Anticipated" Income "Available to Needy Members of the Family in Meeting Their Needs"*

Christensen argues the Department's policy violates section 11265.2 and MPP section 44–101(a), both of which provide that income must be "reasonably anticipated."[18] Appellants respond that Christensen misunderstands the purpose of considering a family's "reasonably anticipated" income in determining eligibility for CalWORKs cash aid.

Appellants maintain that "reasonably anticipated" income under section 11265.2 and MPP section 44–101 is not intended to refer to a family's take-home or net income. Instead, the Legislature enacted section 11265.2 to adopt a new budgeting system, and the Department, in turn, adopted MPP section 44–101 to implement this new system. According to appellants, the phrase "reasonably anticipated" is intended to signify that the income determination is forward-looking rather than retrospective—family income is

[18] Section 11265.2 provides for prospective determination of cash aid payments based on income that is "reasonably anticipated" for the reporting period. (§ 11265.2, subd. (a).) MPP section 44–101(a) provides that income "generally, is any benefit in cash or in-kind which is *reasonably anticipated* to be available . . . ." (Italics added.)

Christensen also claims the Department's position violates sections 11450 and 11451.5. However, sections 11450 and 11451.5 do not contain the phrase "reasonably anticipated" and do not address whether income is "available" to meet the needs of the family. It appears that any claim of violation of section 11450 and 11451.5 is therefore dependent upon a showing that the Department's policy on determining income violates either 11265.2 and MPP section 44–101(a).

"reasonably anticipated" if it is reasonably expected to continue in the coming budgeting period.

In support of their position, appellants explain that, when CalWORKs was enacted in 1997, family income was determined based on monthly reporting. (See Assem. Bill No. 444 (2001-2002 Reg. Sess.) 6 Stats. 2002, Summary Dig., p. 466.) In 2002, the Legislature changed the CalWORKs program so that family income, eligibility, and aid amounts would be determined based on prospective budgeting. (*Ibid*.; see former § 11265.2, added by Stats. 2002, ch. 1022, § 32.)[19] The law now requires that "[t]he grant amount a recipient shall be entitled to receive for each month of the semiannual reporting period shall be *prospectively determined* as provided by this section. . . . The grant shall be calculated using the income that the county determines is reasonably anticipated for the *upcoming* semiannual *period*." (§ 11265.2, subd. (a), italics added.) Section 11265.2, subdivision (b), provides, "For the purposes of the semiannual reporting, prospective budgeting system, income shall be considered to be 'reasonably anticipated' if the county is reasonably certain of the amount of income and that the income will be received during the semiannual reporting period. The county shall determine what income is 'reasonably anticipated' based on information provided by the recipient and any other available information."[20]

When the Legislature adopted prospective budgeting for CalWORKs, it instructed the Director to adopt regulations establishing a budgeting system consistent with the new

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[19] "This bill would revise CalWORKs recipient reporting requirements. It would also require that counties make eligibility determinations based on a quarterly system, rather than a monthly system, and would provide for the implementation of a *prospective budgeting system*, to be applied on a quarterly basis." (See Assem. Bill No. 444 (2001–2002 Reg. Sess.) 6 Stats. 2002, Summary Dig., p. 466, italics added.)

[20] CalWORKS currently uses a semiannual reporting period. (§ 11265.2.) When CalWORKS initially changed from monthly reporting to prospective budgeting, the Legislature adopted a quarterly reporting period. (See former § 11265.2, added by Stats. 2002, ch. 1022, § 32.) The only difference between former section 11265.2, subdivision (b), and the current version of subdivision (b) is the change in reporting period from quarterly to semiannual.

law on prospective budgeting. (§ 11450.5.) As a result, MPP section 44–101(a) defines income, generally, as a benefit that is "reasonably anticipated to be available" during the upcoming reporting period.

In short, appellants argue the concept of "reasonably anticipated" income serves as a budgeting tool for a family deemed eligible to continue on aid for the upcoming reporting period, and such "reasonably anticipated" income under section 11265.2 and MPP section 44–101 refers to gross income before any potential exemptions or deductions are subtracted. Given the legislative history, we find the Department's interpretation of "reasonably anticipated" income as used in the CalWORKs statute and regulation reasonable and worthy of deference.[21]

Christensen next argues the Department's policy violates MPP section 44–101(a) because court-ordered child support is not "available to needy members of the family in meeting their needs."[22] We are skeptical of Christensen's interpretation of the phrase "available to needy members of the family in meeting their needs," however, because it would apply equally to *any* deduction or withholding from paychecks.

As appellants point out, by Christensen's reasoning, "any applicant for aid who has money deducted from his [or her] paycheck regarding any type of debt, such as garnishment of wages by the IRS for delinquent past taxes owed or for debts owed to a creditor, could argue under the same reasoning that such funds are not 'available' to meet their household[']s needs and should not be counted as 'income' in determining

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[21] We also note that section 11451.5, subdivision (b)(1), expressly defines "earned income" as "*gross* income received as wages, salary, [etc.]." (Italics added.) This definition supports the Department's position that "income" generally refers to *gross* income before any deductions or exemptions are considered.

Nothing in the language or history of MPP section 44–101(a) suggests it was intended to supplant the definitions of income (earned, DBI, and unearned) of section 11451.5.

[22] Recall MPP section 44–101(a) provides, "To be considered in determining the cash aid payment, income must be *reasonably anticipated to be available to needy members of the family in meeting their needs* during the . . . Payment Period." (Italics added.)

CalWORKs aid." The problem with Christensen's position is it contains no limiting principle. If garnished child support is not income under MPP section 44–101(a) because such amounts are not "available to needy members of the family in meeting their needs," then any amounts garnished from income would likewise not count as income. This result would mean that garnishments for any debts could be exempted from income, a potentially limitless exemption which finds no support in the statutory structure or purpose of CalWORKs.

We find the reasoning of the Supreme Court in *Heckler v. Turner* (1985) 470 U.S. 184 instructive. In that case, a class of AFDC recipients challenged state regulations that defined "income" as gross income, thereby including mandatory payroll deductions as income to welfare recipients. (*Id.* at pp. 187–188.) An intermediate court agreed with the plaintiffs and held that mandatory tax withholdings could not be considered income, relying on "the principle of 'actual availability.' " (*Id.* at p. 199.) The Supreme Court unanimously rejected this holding because the intermediate court offered no limiting principle for its rationale. The Supreme Court observed, "Yet sums mandatorily withheld for obligations such as union dues, medical insurance, or retirement programs no more pass through the wager earner's hands than do mandatory tax withholdings. Insofar as the Court of Appeals' definition pivots on *availability to meet family expenses*, any distinction between various species of payroll withholdings would be 'metaphysical indeed.' [Citation.] Likewise, the expenditure of funds on other work-related expenses, such as transportation, meals, and uniforms, just as effectively precludes their use for the needs of the family. . . . There is no reason, then, why the actual availability principle, once applied to exclude mandatory tax withholdings from the definition of income would not similarly apply to other mandatory payroll withholdings and other standard work expenses, both of which also render a portion of a wage earner's income unavailable to meet the recipient family's need." (*Id.* at p. 202, italics added.) Similarly, in this case, Christensen's argument offers no limiting principle.

Christensen responds that "ordinary consumer debts such as for rents, credit cards or other expenses collected via garnishment" are different from court-ordered child

support because they could "legitimately be assumed to benefit needy members of the family." We are not persuaded. To the extent Christensen suggests any debt owed by a member of a CalWORKs family must be assumed to have been incurred to buy food or pay rent or otherwise directly benefit all the members of the family, we see no reason for such an assumption. A person's income may be garnished based on consumer debt incurred before the person joined the family, a judgment arising from a car accident, or any other reason unrelated to benefiting members of the family. If, on the other hand, Christensen's position is that garnishment to meet debt obligations inherently benefits a member of the CalWORKs family, then garnishment to meet child support obligations similarly benefits a member of the family. (Cf. *Peura By and Through Herman v. Mala* (9th Cir. 1992) 977 F.2d 484, 491 [paying child support "arguably" meets the needs of the payer].) We reject Christensen's argument because she cannot meaningfully distinguish child support obligations from any other debt that may lead to garnishment of income.

In support of the Department's interpretation of income under MPP section 44–101(a), appellants cite MPP section 44–102.1. This regulation provides, "All reasonably anticipated income *shall be considered to be available to meet the needs of the AU* during the . . . Payment Period and *shall be considered* when determining eligibility and grant amount . . . ." (Italics added.) Thus, while MPP section 44–101(a) states that "income must be reasonably anticipated to be available to needy members of the family in meeting their needs," in order to be considered in determining CalWORKs eligibility, MPP section 44–102.1 specifies that all "reasonably anticipated income" is, by definition, "available to meet the needs of the" family.

Christensen argues that appellants' reasoning is circular and the Department's interpretation of MPP section 44–101 renders certain phrases surplusage. Appellants respond that MPP section 44–101(a) provides a general definition of "income," while MPP section 44–102.1 pertains to "availability of income." They argue a specific regulation providing a consistent interpretation of what constitutes "available" income is not surplusage.

We must give the regulation "a reasonable and common sense interpretation consistent with the apparent purpose and intention of the agency, practical rather than technical in nature, and which, when applied, will result in wise policy rather than mischief or absurdity." (*Aguilar v. Association for Retarded Citizens* (1991) 234 Cal.App.3d 21, 29.) And, as we have discussed, the Department is entitled to greater deference in the interpretation of its own regulations, since it is " 'intimately familiar with regulations it authored and sensitive to the practical implications of one interpretation over another.' " (*Yamaha, supra,* 19 Cal.4th at p. 12.) Here, appellants have offered a reasoned explanation for the Department's interpretation of its own regulation, and Christensen's contrary interpretation of MPP section 44–101(a) would result in *all* mandatory garnishments from income being exempted from income in determining CalWORKs eligibility. Yet, this cannot be what the Department intended when it adopted MPP section 44–101(a). Under these circumstances, we defer to the Department's interpretation of "available" income under MPP section 44–101(a).

C. *Section 11005.5 and "Double Counting"*

Christensen contends the Department's policy of counting garnished child support as income to the payer's assistance unit "results in counting the same income twice" in violation of section 11005.5 and *Rogers v. Dietrich* (1976) 58 Cal.App.3d 90 (*Rogers*).[23] We disagree.

In *Rogers,* a group of general assistance (GA) applicants and recipients sued five counties, challenging the counties' practices in making GA eligibility determinations. In these counties, if a GA applicant or recipient resided with a person (such as a spouse,

[23] Again, section 11005.5 provides: "All money paid to a recipient or recipient group as aid is intended to help the recipient meet his individual needs or, in the case of a recipient group, the needs of the recipient group, and is not for the benefit of any other person. Aid granted under this part or Part A of Title XVI of the Social Security Act [Supplemental Security Income under 42 U.S.C. §§ 1381 et seq.] to a recipient or recipient group and the income or resources of such recipient or recipient group shall not be considered in determining eligibility for or the amount of aid of any other recipient or recipient group." This "part" refers to Part 3 of Division 9 of the Welfare and Institutions Code and now includes the CalWORKs program.

child, or parent) who received aid (such as SSI), that person's individual aid would be considered in determining the applicant or recipient's eligibility for GA and the amount of any GA payment. The plaintiffs argued this practice violated section 11005.5. (*Rogers, supra,* 58 Cal.App.3d at pp. 93–95.) The Court of Appeal agreed. After reviewing the history of section 11005.5, the court reasoned, "Analysis of the various amendments . . . reveals the Legislature's intent to insure that aid paid (1) is for the individual needs of its recipient, (2) is not for the benefit of any other person, and (3) shall not be viewed or treated as income available to any other person. To treat one person's aid as a reason to deny eligibility or to reduce assistance to which another is entitled amounts to defiance of the legislative proscription." (*Id*. at p. 101, fn. omitted.)

*Rogers* held that considering one person's "aid" in denying or reducing another person's "aid" violates section 11005.5, and "aid" is expressly defined in the Welfare and Institutions Code as "financial assistance provided to or in behalf of needy persons under the terms of this division, including direct money payments and vendor payments." (§ 10052.) Here, however, Christensen does not claim that any family's CalWORKs cash aid is being considered to deny another person or family CalWORKs aid. *Rogers* simply does not apply to the facts of this case because Bruce's garnished child support is not "aid."

Christensen also claims that the Department's policy violates section 11005.5's advisement that "the *income or resources* of [an aid] recipient or recipient group shall not be considered in determining eligibility for or the amount of aid of any other recipient or recipient group." (Italics added.) She argues the amount of Bruce's income that is garnished to pay child support for his noncustodial child receiving aid is also considered income to that child's assistance unit.[24] Christensen's argument fails because child

[24] Recall that $127.89 was deducted from Bruce's biweekly paychecks and about $61 was garnished from his weekly UIB checks. This works out to about $541.43 per month garnished for three children. Assuming the garnishment is divided equally among the children, about $180.48 per month is garnished from Bruce's income to support his noncustodial child who receives aid with that child's mother.

support paid to benefit a child living in a family receiving CalWORKs aid is not generally counted as income to that child's family.[25]

Federal and state law require that CalWORKs applicants assign their rights to any child support payments to the county and state in order to receive CalWORKs aid. (See 42 U.S.C. § 608, subd. (a)(3); § 11477, subd. (a)(1)(B) [as a condition of eligibility for aid, each applicant or recipient applying after September 30, 2009, shall "assign to the county any rights to support from any other person the applicant or recipient may have on his or her own behalf, or on behalf of any other family member for whom the applicant or recipient is applying for or receiving aid"].) Thus, child support from a noncustodial parent for the benefit of a child receiving CalWORKs aid is "paid directly to the local child support agency and shall not be paid directly to the family." (§ 11457, subd. (a).)

The law provides a pass-through of the first $50 of any amount of child support collected each month on behalf of a child in a CalWORKs family and that amount is *not* counted as income to the family. (See MPP § 44–111.47; former § 11475.3, as amended by Stats. 1999, ch. 478, § 27 ["The first fifty dollars ($50) of any amount of child support . . . shall be paid to a recipient of aid under this chapter . . . and shall not be deducted from the amount of aid to which the family would otherwise be eligible."]; Fam. Code, § 17504 [same].) Aside from the first $50 paid to the recipient family, the balance of child support collected on behalf a child in a CalWORKs family is distributed among the county, state, and federal government (see §§ 11457, subd. (b), 11487, 11487.1) and is *not* considered income to the recipient family. (Decl. of Shawn Dorris, Program Policy Manager of the CalWORKs Eligibility Bureau, ¶22.)

Christensen asserts that "[f]unds *received* as child support are considered unearned income, as they are not earned income and are not [DBI]." But, as we have seen,

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[25] Underpinning Christensen's argument is the premise that counting garnished child support as income to the child receiving the child support and also counting that amount as income to the payer's family would violate section 11005.5. To be clear, we are *not* deciding that this a correct interpretation of section 11005.5. We only assume Christensen's premise for the sake of argument and conclude there is still no violation of section 11005.5.

recipients of CalWORKs aid must assign their rights to child support to the county and state and any garnished child support payments are distributed among various government agencies. Therefore, child support is not received by families receiving CalWORKs cash aid and is not counted as income to them.

There are two exceptions to the general rule that child support paid on behalf of a child is not treated as income to the child's family. One exception is for child support arrears that accumulate during a period when a family is not receiving CalWORKs cash aid. We have seen that, in order to receive CalWORKs cash aid, a family must assign any child support owed to children of the family to the county (and those amounts are disbursed to various levels of government). But if the county receives child support for arrears that accrued *before* the family started receiving aid, such arrears are disbursed directly to the family, and those amounts are considered income to the family. Another exception arises when the custodial parent is ineligible for CalWORKs aid because he or she has received aid under CalWORKs or any other state's TANF program for a cumulative total of 48 months. (§ 11454.) In this situation, only the children in the family may receive CalWORKs cash aid; this is referred to as a "safety-net" case. In safety-net cases, child support payments are directed to the family, and the payments (aside from the $50 monthly pass-through) are treated as unearned income to the family. (See § 11477, subd. (c).)

But Christensen does not claim that the assistance unit that includes Bruce's noncustodial child who is receiving aid falls into either of these exceptions. Nor is there evidence in the record showing either that the amounts garnished from Bruce were for pre-aid arrears or that the child receiving aid was a safety-net child. Accordingly, it cannot be said that Bruce's garnished child support payments were considered income to the assistance unit of the child receiving aid, and Christensen's "double counting" argument fails.

Christensen tries to avoid this result by arguing that a factual finding of "double counting" was made in this case. She asserts, "The ALJ, the [Department] Director, and the trial court all made the same factual finding: [The Department's] policy at issue

results in double counting of income." This argument is too clever by half. Neither the Director nor the trial court made a finding of fact as claimed by Christensen.

In his alternate decision, the Director restated almost verbatim the "Statement of Facts" from the ALJ's proposed decision, while rejecting the ALJ's legal conclusion. Under the heading "Statement of Facts," the ALJ had described Christensen's testimony at the hearing in the following paragraph: "The claimant testified that the garnished child support is for one child currently receiving aid with the child's mother, for arrearages for [a second] child who is now an adult, and for a third child who is not on assistance as far as the claimant knows. *To count the child support as income to claimant's AU would result in the income being counted in computing the eligibility and grant for the child currently receiving cash assistance and the same income being counted for the claimant's AU.*" (Italics added.) Christensen argues the last sentence of the paragraph is a finding of fact that the garnished child support for the benefit of the noncustodial child receiving aid was counted as income to that child. Appellants respond that this statement is not a finding of fact but a description of Christensen's legal argument. Considering the import and the context of Director's alternative decision, we agree with appellants. As to the trial court's decision, the court reached a legal conclusion that the Department's policy violated section 11005.5, but it made no factual findings in support of this conclusion.

In short, we reject Christensen's argument that the Director made a factual finding of "double counting" in this case.

D. *Remaining Arguments*

Christensen's remaining arguments do not establish that the Department's policy is clearly erroneous or unauthorized.

1. *Section 11157*

In their opening brief, appellants note that no statute or regulation specifically calls for exemptions of child support to children who do not live in the assistance unit. They argue, "Had the Legislature intended to require the Department to deduct all court-

ordered child support payments to children outside the home from the income of the non-custodial parent, it would have said so explicitly."[26]

In response, Christensen points out that an exemption for child support existed prior to the enactment of CalWORKs. She cites section 11157, which provides in part, "Except as otherwise provided . . . 'income' shall be deemed to be the same as applied under the [AFDC] program on August 21, 1996 . . . ." She argues, "Given that a deduction for garnished child support existed when the Legislature created CalWORKs and [CalWORKs] explicitly defined income to be the same as under the AFDC program except for new exemptions, it is unreasonable for [the Department] to claim AB 1542 ended the deduction for garnished child support under the CalWORKs program."

This argument lacks merit. A provision that the definition of "income" remains the same does not mean the deductions, disregards, and exemptions remain the same. As the Department explained in ACL No. 97-59, AB 1542 eliminated "existing income disregards" and replaced them with new exemptions, most notably, section 11451.5's DBI/earned-income exemption. Moreover, CalWORKs was intended to establish a "*simplified* grant calculation method [that] was designed to create a greater incentive for welfare recipients to earn additional income and thus to assist families in becoming self-sufficient more quickly." (*Sneed*, *supra*, 120 Cal.App.4th at p. 1240, italics added.) The grant calculation would not be more simplified if new exemptions were adopted yet all the prior deductions remained in effect.

2. *Legislative History*

Christensen cites an Enrolled Bill Report for AB 1542 prepared by the Department and a document entitled "Major Items of Welfare Reform Contained in AB 1542." She observes that neither report made any mention of a repeal of the child-support disregard.

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[26] Appellants cited as an example, the CalFresh program (formerly known as the Food Stamp Program (*Pich v. Lightbourne* (2013) 221 Cal.App.4th 480, 485)), which under federal law excludes from income "child support payments made by a household member to or for an individual who is not a member of the household if the household member is legally obligated to make the payments" (7 U.S.C. § 2014, subd. (d)(6)).

But the silence of these reports on the treatment of child support does not demonstrate any conflict in the Department's understanding that AB 1542 eliminated the child-support exemption. Certainly, these reports are insufficient reason to overturn the Department's policy, which it has maintained since 1997. Christensen notes that the Enrolled Bill Report provides, under the heading "Grant Structure: Child Support, Disregard" "The amount paid shall not be considered as income or resources for the purposes of calculating the grant amount." But this statement follows a description of the county collecting child support and paying $50 to the receiving family. It is obvious in context that the statement applies to the family of the child for whom child support is paid, not the family of the payer of child support. Finally, Christensen quotes the following statement from Legislative Counsel's digest on AB 1542: "By increasing amounts of income and resources that will not be considered in determining CalWORKs recipient eligibility, the bill would increase the class of persons eligible for the CalWORKs program . . . ." (Stats. 1997, ch. 270, p. 3.) This refers to the more generous earned-income exemption provided under CalWORKs (see *Sneed*, *supra*, 120 Cal.App.4th at p. 1242), and does not undermine the Department's policy on child support payments.

3. *Policy Considerations*

Finally, Christensen contends the Department's policy contravenes one of the legislative purposes of CalWORKs, to "provide sufficient support and protection" to poor California children, quoting section 11205. In full, this statute provides: "The Legislature finds and declares that the family unit is of fundamental importance to society in nurturing its members, passing on values, averting potential social problems, and providing the secure structure in which citizens live out their lives. Each family unit has the right and responsibility to provide for its own economic security by full participation in the work force to the extent possible. Each family has the right and responsibility to provide sufficient support and protection of its children, to raise them according to its values and to provide every opportunity for educational and social progress." (§ 11205.) There is nothing in this legislative statement requiring that child support be exempted

from a payer's assistance unit. (It could be argued instead that the legislative statement demonstrates a noncustodial parent has the "responsibility to provide for" his or her family, including children who do not live in the home.) As we have seen, the CalWORKs statutes and regulations are technical and complicated, and the Department's policy of not exempting child support from the income of the payer's assistance unit is based on a reasonable interpretation of the statutes and regulations. Considerations of policy do not dictate a different result.

E. *Conclusion*

Since the Legislature first adopted CalWORKs 20 years ago, the Department has consistently maintained that court-ordered child support counts as income to the payer's family in determining the family's CalWORKs eligibility and aid amount. This interpretation of the CalWORKs statutes and its own regulations (set forth in writing in ACL No. 97-59) is entitled to deference, and we conclude the Department's interpretation is neither erroneous nor unauthorized in this case. Accordingly, the trial court erred in granting Christensen's petition for writ of administrative mandate and in granting declaratory relief.

## DISPOSITION

The judgment is reversed. On remand, the trial court shall vacate its writ of mandate and order for declaratory relief, and enter a new judgment denying the petition for writ of administrative mandate and complaint for declaratory relief. The parties shall bear their own costs on appeal.

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Miller, J.

We concur:

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Kline, P.J.

_____
Richman, J.

A144254, *Christensen v. Lightbourne*

Trial Court: Superior Court of San Francisco

Trial Judge: Hon. Ernest H. Goldsmith

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# EXHIBIT B

# EXHIBIT B

# CalWORKs-

**California Families on the Road to Self-Sufficiency**

# ANNUAL SUMMARY

# JANUARY 2017


CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

WELFARE TO WORK DIVISION

# Chapter 1 – Caseload Dynamics

This chapter provides a comprehensive overview of the CalWORKs caseload, including the number of cases receiving CalWORKs assistance delineated by case type: the percentage of cases with individuals who are exempt from welfare-to-work participation requirements; cases in sanction, child-only, and safety-net status; a longitudinal analysis of CalWORKs cases over time; tables illustrating the number of applications for aid and the number of those approved and denied; and the benefits provided to CalWORKs recipients.

CalWORKs cases with an unaided but federally work-eligible adult (specifically, safety-net cases and cases in which the parent is a fleeing felon) are funded from state general fund (GF) that does not count toward the TANF Maintenance-of-Effort (MOE) starting from Federal Fiscal Year (FFY) 2014; as a result, these cases are no longer included in the federally defined TANF program for federal reporting purposes. Or rather, safety-net and fleeing felon cases have been "moved out" of the TANF program.

In 2015, the Work Incentive Nutritional Supplement (WINS) program became fully operational. WINS cases are provided with a ten dollar monthly cash nutritional benefit funded from state General Fund that counts toward the MOE requirement and, therefore, are counted in the federal TANF caseload –that is, WINS cases have been "moved in" to the TANF caseload. The WINS caseload is not reflected in the CalWORKS caseload tables provided in this chapter, but WINS issuances are displayed in Table 6C.

## Key Terms in This Chapter

The CalWORKs caseload is characterized using the following key terms.

- **Assistance Unit (AU)** –An AU is a group of related persons living in the same home who have been determined to be eligible for CalWORKs and for whom cash aid has been authorized. An AU is sometimes referred to as a CalWORKs case. An AU or case differs from a "household" in that a household includes all persons in the same dwelling regardless of their relationship to members of the AU, or their eligibility for CalWORKs aid.
- Definitions of Assistance Units (AU) Types:
    - **Single-Parent or 1-Parent** – Includes one or more children, and one aided adult who is a natural or adoptive parent, a stepparent, or another caretaker relative.
    - **Two-Parent or 2-Parent** – Includes at least one child and two natural or adoptive aided adult parents.
    - **WTW Participants** – Includes Single-Parent and Two-Parent households with an aided adult who is NOT exempt from work activities and NOT sanctioned.
    - **WTW Exempts** – Includes Single-Parent and Two-Parent households where the aided adult(s) are exempt from work activities.

- **WTW Sanction** – Adults were removed from aid due to non-compliance with program requirements without good cause or compliance efforts have failed. Aid continues for the eligible children in the AU.
- **Child-Only or Zero-Parent** – Cases in which only the children in the case are aided because the parents are ineligible due to immigration status or being an SSI recipient or a non-parental, non-needy caretaker is caring for the children.
- **Safety-Net** – Cases in which only the children in an AU are aided because the parent(s) are discontinued for cash aid due to their reaching the 48-month lifetime assistance limit. *Safety-net cases are funded with non-MOE state-only funds and not subject to federal TANF reporting rules.*
- **TANF-Timed Out** – Cases in which the head of household or spouse of the head of household (parent, stepparent, or caretaker relative) has reached federal TANF assistance time limit of 60 months, but still has time left on CalWORKs assistance.
- **Fleeing Felon** – Cases in which only children in an AU are aided because parent(s) are fleeing to avoid prosecution.

- **Long-Term Sanction** – Cases with a parent or caretaker who has been sanctioned due to failing or refusing to comply with welfare-to-work program requirements, without good cause, for 12 consecutive months or longer.

- **Non-MOE Moved Out** – All cases that are funded with non-MOE General Fund dollars (Safety Net, Fleeing Felon, and Long-Term Sanctioned) and, as such, are “moved out” of the Work Participation Rate calculation.

- **Time on Aid** – Time on aid for WTW Cases is calculated by the aided adult on aid longest (as an adult) since the beginning of the look-back period. Time on aid for CalWORKs Non-MOE cases (Safety Net, Fleeing Felon and Long-Term Sanction) as well as the Child-Only cases is determined by the child member on aid longest since the beginning of the look-back period.

# Table 1D.
# CalWORKs Quarterly Caseload Analysis:
# FY 2007-08 through FY 2015-16

| Fiscal Year | | Types of Cases | | | | | |
|---|---|---|---|---|---|---|---|
| | | Total CalWORKs Cases | Single-Parent | Two-Parent | TANF Timed-Out Cases | Zero-Parent Families | Safety Net |
| FY 07-08 | Quarter 1 | 456,561 | 187,057 | 32,701 | 28,144 | 163,378 | 45,282 |
| | Quarter 2 | 461,639 | 189,974 | 33,422 | 28,359 | 164,342 | 45,541 |
| | Quarter 3 | 469,307 | 190,434 | 34,929 | 28,150 | 169,467 | 46,327 |
| | Quarter 4 | 476,296 | 193,897 | 36,278 | 27,837 | 171,072 | 47,212 |
| | Monthly Avg. | 465,951 | 190,341 | 34,332 | 28,123 | 167,065 | 46,091 |
| FY 08-09 | Quarter 1 | 481,078 | 199,691 | 37,348 | 27,803 | 169,096 | 47,139 |
| | Quarter 2 | 494,146 | 205,708 | 39,464 | 28,097 | 173,033 | 47,844 |
| | Quarter 3 | 514,523 | 211,433 | 42,974 | 27,821 | 183,457 | 48,838 |
| | Quarter 4 | 530,230 | 217,276 | 45,735 | 27,936 | 189,105 | 50,178 |
| | Monthly Avg. | 504,994 | 208,527 | 41,380 | 27,914 | 178,673 | 48,500 |
| FY 09-10 | Quarter 1 | 537,063 | 222,600 | 48,163 | 30,421 | 187,768 | 48,110 |
| | Quarter 2 | 550,639 | 227,689 | 50,816 | 30,626 | 191,929 | 49,579 |
| | Quarter 3 | 561,243 | 230,280 | 52,548 | 30,823 | 198,748 | 48,844 |
| | Quarter 4 | 564,443 | 231,583 | 53,411 | 31,673 | 198,862 | 48,913 |
| | Monthly Avg. | 553,347 | 228,038 | 51,234 | 30,886 | 194,327 | 48,861 |
| FY 10-11 | Quarter 1 | 573,710 | 241,413 | 56,028 | 32,701 | 194,050 | 49,519 |
| | Quarter 2 | 582,262 | 245,470 | 56,587 | 33,939 | 196,014 | 50,252 |
| | Quarter 3 | 593,424 | 247,487 | 58,060 | 34,727 | 202,393 | 50,758 |
| | Quarter 4 | 597,226 | 249,014 | 58,443 | 36,138 | 202,551 | 51,079 |
| | Monthly Avg. | 586,856 | 245,846 | 57,280 | 34,376 | 198,752 | 50,402 |
| FY 11-12 | Quarter 1 | 583,769 | 238,622 | 55,226 | 25,879 | 193,472 | 70,570 |
| | Quarter 2 | 577,446 | 234,889 | 53,473 | 24,893 | 191,973 | 72,218 |
| | Quarter 3 | 574,910 | 229,740 | 52,677 | 25,367 | 195,419 | 71,707 |
| | Quarter 4 | 567,516 | 226,252 | 51,597 | 26,143 | 191,747 | 71,777 |
| | Monthly Avg. | 575,910 | 232,376 | 53,243 | 25,570 | 193,153 | 71,568 |
| FY 12-13 | Quarter 1 | 561,772 | 228,533 | 51,033 | 27,186 | 183,741 | 71,279 |
| | Quarter 2 | 560,642 | 226,824 | 50,083 | 27,986 | 184,229 | 71,519 |
| | Quarter 3 | 562,656 | 221,132 | 49,531 | 28,642 | 190,407 | 72,944 |
| | Quarter 4 | 554,414 | 216,238 | 47,673 | 29,451 | 187,924 | 73,128 |
| | Monthly Avg. | 559,871 | 223,182 | 49,580 | 28,316 | 186,575 | 72,218 |

# Table 1D.
# CalWORKs Quarterly Caseload Analysis: FY 2007-08 through FY 2015-16 (continued)

| Fiscal Year | | Total CalWORKs Cases | Types of Cases: Single-Parent | Two-Parent | TANF Timed-Out Cases | Zero-Parent Families | Safety Net |
|---|---|---|---|---|---|---|---|
| FY 13-14 | Quarter 1 | 547,125 | 215,844 | 46,208 | 30,301 | 182,037 | 72,735 |
| | Quarter 2 | 546,948 | 217,414 | 46,605 | 31,636 | 177,983 | 73,311 |
| | Quarter 3 | 555,316 | 220,224 | 49,037 | 32,101 | 176,544 | 77,410 |
| | Quarter 4 | 554,076 | 220,055 | 50,041 | 32,658 | 170,279 | 81,045 |
| | Monthly Avg. | 550,867 | 218,384 | 47,973 | 31,674 | 176,711 | 76,125 |
| FY 14-15 | Quarter 1 | 550,169 | 221,446 | 49,725 | 32,909 | 165,367 | 80,723 |
| | Quarter 2 | 541,354 | 216,023 | 48,254 | 33,212 | 163,674 | 80,192 |
| | Quarter 3 | 531,157 | 205,319 | 46,370 | 32,926 | 163,693 | 82,850 |
| | Quarter 4 | 517,600 | 194,887 | 45,121 | 31,629 | 159,736 | 86,227 |
| | Monthly Avg. | 535,070 | 209,419 | 47,367 | 32,669 | 163,117 | 82,498 |
| FY 15-16[1] | Quarter 1 | 510,388 | 194,509 | 43,761 | 30,727 | 154,780 | 86,611 |
| | Quarter 2 | 500,303 | 187,756 | 41,855 | 29,992 | 152,609 | 88,091 |
| | Quarter 3 | 490,275 | 179,684 | 40,106 | 29,417 | 153,651 | 87,418 |
| | Quarter 4 | 474,140 | 169,825 | 38,157 | 29,134 | 148,816 | 88,207 |
| | Monthly Avg. | 493,777 | 182,943 | 40,970 | 29,818 | 152,464 | 87,582 |

Data Sources: CA 237 CW, EBT issuance system

Note:
[1]EBT issuance system data is the source for Los Angeles County caseload from October 2015 to June 2016.

## MAP Levels

The Maximum Aid Payment (MAP) is the maximum grant level provided for CalWORKs families. MAP levels are established by the California State Legislature and are based on family size, whether the adults in the household are able to work (exempt or non-exempt), and the geographical location of the family residence (Region 1 or Region 2).

## Table 2A. CalWORKs Maximum Aid Payment (MAP) Levels Effective October 1, 2016

Region 1[1]

| Assistance Unit Size | Maximum Aid Payment Exempt | Maximum Aid Payment Non-Exempt |
|---|---|---|
| 1 | $392 | $355 |
| 2 | $645 | $577 |
| 3 | $799 | $714 |
| 4 | $949 | $852 |
| 5 | $1,080 | $968 |
| 6 | $1,214 | $1,087 |
| 7 | $1,334 | $1,195 |
| 8 | $1,454 | $1,301 |
| 9 | $1,571 | $1,407 |
| 10 or more | $1,689 | $1,511 |

Region 2[1]

| Assistance Unit Size | Maximum Aid Payment Exempt | Maximum Aid Payment Non-Exempt |
|---|---|---|
| 1 | $374 | $336 |
| 2 | $616 | $549 |
| 3 | $762 | $680 |
| 4 | $904 | $810 |
| 5 | $1,031 | $922 |
| 6 | $1,157 | $1,035 |
| 7 | $1,272 | $1,136 |
| 8 | $1,385 | $1,239 |
| 9 | $1,498 | $1,340 |
| 10 or more | $1,610 | $1,438 |

Notes:
For more information on CalWORKs historical MAP levels, please refer to the CDSS website at:
ACL 16-64 (August 16, 2016)
[1]California is divided into two regions based roughly on cost of living, Region 1 (higher cost of living) and Region 2 (lower cost of living).

Region 1 Counties: Alameda, Contra Costa, Los Angeles, Marin, Monterey, Napa, Orange, San Diego, San Francisco, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma, and Ventura.

Region 2 Counties: Alpine, Amador, Butte, Calaveras, Colusa, Del Norte, El Dorado, Fresno, Glenn, Humboldt, Imperial, Inyo, Kern, Kings, Lake, Lassen, Madera, Mariposa, Mendocino, Merced, Modoc, Mono, Nevada, Placer, Plumas, Riverside, Sacramento, San Benito, San Bernardino, San Joaquin, Shasta, Sierra, Siskiyou, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo, and Yuba.

## CalWORKs Caseload and Grants with CalFresh Benefits

Table 2B displays the average monthly CalWORKs caseload and grant, as well as the MAP and maximum CalFresh allotment for Fiscal Years 2007-08 through 2016-17.

### Table 2B. CalWORKs Caseload and Grants with CalFresh Benefits Recent History and Projections (FY 2007-08 through FY 2016-17)

| Fiscal Year | Average Monthly CalWORKs Cases | Average CalWORKs Grants | MAP for AU of 3 Region 1[1] | CalFresh MCA for HH of 3[2] |
|---|---|---|---|---|
| 2007-08 | 465,951 | $538 | $723 | $426 |
| 2008-09 | 504,994 | $541 | $723 | $463 |
| 2009-10 | 553,347 | $514 | $694 | $526 |
| 2010-11 | 586,856 | $517 | $694 | $526 |
| 2011-12 | 575,910 | $466 | $638 | $526 |
| 2012-13 | 559,871 | $465 | $638 | $526 |
| 2013-14 | 550,867 | $474 | $670 | $526 |
| 2014-15 | 535,070 | $492 | $670<br>$704 | $497 |
| 2015-16 | 493,777 | $506 | $704 | $511 |
| 2016-17[3] | 485,851 | $514 | $704<br>$714 | $511 |

Notes:
**Acronyms** used in this table: **MAP** = Maximum Aid Payment; **AU** = Assistance Unit; **MCA** = Maximum CalFresh Allotment; **HH** = household

[1]California's grant levels are divided into two regions based roughly on cost of living. This chart reflects the California Work Opportunity and Responsibility to Kids (CalWORKs) Maximum Aid Payment (MAP) for an Assistance Unit (AU) of three in Region 1 Counties: Alameda, Contra Costa, Los Angeles, Marin, Monterey, Napa, Orange, San Diego, San Francisco, San Luis Obispo, San Mateo, Santa Barbara, Santa Clara, Santa Cruz, Solano, Sonoma and Ventura.

[2]CalFresh benefit amounts are based on a Federal Fiscal Year (October-September) versus the State Fiscal Year (July-June). The FY 2016-17 CalFresh benefit amount is based on the FFY 2017 household (HH) Maximum CalFresh Allotment (MCA).

[3]Represents projections from the 2016-17 Appropriation. Prior years reflect actual data based on the CA 800 Expenditure Report. The CalWORKs MAP for an AU of three increased from $704 to $714 on October 1, 2016.

**PROOF OF SERVICE**

*Christensen v. Lightbourne et al,*
Appeal No. A144254
Superior Court No. CPF-12-512070

I, the undersigned, say: I am over the age of 18 years and not a party to the within action or proceeding. My business address is 3701 Wilshire Blvd., Suite 208, Los Angeles, CA 90010.

On November 14, 2017, I served the following document described as: **PETITION FOR REVIEW** on all interested parties in this action by electronic transmission and by placing copies thereof enclosed in a sealed envelope addressed as follows:

***Via TrueFiling and USPS***
JENNIFER A. BUNSHOFT
Deputy Attorney General
Health, Education and Welfare
California Department of Justice
Office of the Attorney General
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102
Phone: (415) 703-5085
Email: Jennifer.Bunshoft@doj.ca.gov

*Attorneys for Respndents and Appellants,*
*Will Lightbourne, et al.*

***Via TrueFiling and USPS***
California Court of Appeal
First Appellate District, Division Two
350 McAllister Street
San Francisco CA 94102

***Via USPS***
Hon. Ernest J. Goldsmith
Judge of the Superior Court, Dept. 302
San Francisco Superior Court
400 McAllister Street
San Francisco CA 94102

[X] ImageSoft TrueFiling (TrueFiling) – I caused service through the Court's electronic filing system by filing the document(s) via TrueFiling (Pursuant to California Rules of Court, rules 8.44, 8.70, and First District Court of Appeal Local Rule 16).

[X] By United States Postal Service - I placed a true copy thereof enclosed in a sealed envelope and deposited such envelope in the mail at Los Angeles, California, with first class postage thereon fully prepaid. I am readily familiar with the business practice for collection and processing of correspondence for mailing. Under that practice, it is deposited with the United States Postal Service on that same day, at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing in affidavit.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 14, 2017, at Los Angeles, California.

_____

Marilyn Harris