CASE NO. S249593

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

KERRIE REILLY

Petitioner and Appellant,

v.

MARIN HOUSING AUTHORITY

Respondent and Respondent.

ANSWER BRIEF ON THE MERITS

After the Decision of the Court of Appeal for the First Appellate District
Division Two, No. A149918

Affirming the Judgment of the Superior Court for the State of California,
County of Marin, Case No. CIV 1503896, Hon. Paul M. Haakenson

---

Marin Housing Authority
Ilya Filmus, Esq.
4020 Civic Center Drive
San Rafael, CA 94903
Tel: (415) 491-2525
Fax: (415) 472-2186
E-Mail: ilya.filmus@gmail.com

WFBM, LLP
Randall J. Lee, State Bar No. 144220
rlee@wfbm.com
*Anne C. Gritzer, State Bar No. 172496
agritzer@wfbm.com
601 Montgomery Street, Ninth Floor
San Francisco, California 94111-2612
Telephone: (415) 781-7072
Facsimile: (415) 391-6258

Attorneys for Defendant
MARIN HOUSING AUTHORITY

CASE NO. S249593

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

KERRIE REILLY

Petitioner and Appellant,

v.

MARIN HOUSING AUTHORITY

Respondent and Respondent.

ANSWER BRIEF ON THE MERITS

After the Decision of the Court of Appeal for the First Appellate District
Division Two, No. A149918

Affirming the Judgment of the Superior Court for the State of California,
County of Marin, Case No. CIV 1503896, Hon. Paul M. Haakenson

---

Marin Housing Authority
Ilya Filmus, Esq.
4020 Civic Center Drive
San Rafael, CA 94903
Tel: (415) 491-2525
Fax: (415) 472-2186
E-Mail: ilya.filmus@gmail.com

WFBM, LLP
Randall J. Lee, State Bar No. 144220
rlee@wfbm.com
*Anne C. Gritzer, State Bar No. 172496
agritzer@wfbm.com
601 Montgomery Street, Ninth Floor
San Francisco, California 94111-2612
Telephone: (415) 781-7072
Facsimile: (415) 391-6258

Attorneys for Defendant
MARIN HOUSING AUTHORITY

CASE NO. S249593

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

KERRIE REILLY

Petitioner and Appellant,

v.

MARIN HOUSING AUTHORITY

Respondent and Respondent.

ANSWER BRIEF ON THE MERITS

After the Decision of the Court of Appeal for the First Appellate District
Division Two, No. A149918

Affirming the Judgment of the Superior Court for the State of California,
County of Marin, Case No. CIV 1503896, Hon. Paul M. Haakenson

---

Marin Housing Authority
Ilya Filmus, Esq.
4020 Civic Center Drive
San Rafael, CA 94903
Tel: (415) 491-2525
Fax: (415) 472-2186
E-Mail: ilya.filmus@gmail.com

WFBM, LLP
Randall J. Lee, State Bar No. 144220
rlee@wfbm.com
*Anne C. Gritzer, State Bar No. 172496
agritzer@wfbm.com
601 Montgomery Street, Ninth Floor
San Francisco, California 94111-2612
Telephone: (415) 781-7072
Facsimile: (415) 391-6258

Attorneys for Defendant
MARIN HOUSING AUTHORITY

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CALIFORNIA CASES

FEDERAL CASES

CALIFORNIA STATUTES & CODES

OTHER CALIFORNIA AUTHORITIES

FEDERAL STATUTES & CODES

OTHER FEDERAL AUTHORITIES

MISCELLANEOUS

INTRODUCTION AND SUMMARY OF MHA'S POSITION

Despite appellant's protests, Marin Housing Authority ("MHA" or "respondent") has over the years been the part of the solution for her, not the problem. Appellant has been a participant in the Department of Housing and Urban Planning ("HUD") Section 8 Housing Choice Voucher program since 1998. Throughout this time, appellant has benefitted from this program by having her rental expense capped at 30% of her earnings. MHA is the local agency charged with administering appellant's Section 8 voucher.

The goal of the Section 8 program is to enable low income families to afford safe, decent housing while encouraging families to follow a path leading to economic opportunity and self-sufficiency. HUD does this by subsidizing a family's rent so that the family pays no more than 30% of its income in rent. *By its very structure, HUD shields low income families from ever-increasing housing costs in this jurisdiction, by absorbing the difference between the voucher participant's contribution and the market rent of housing.*

It is unfortunate that appellant chose to engage in a course of conduct, spanning a ten-year period, which placed her voucher in jeopardy, despite cautions from respondent concerning her obligations under the

voucher program. She deflects attention away from her malfeasance[1] with a creative but legally unsupported argument that wages paid to her by the state to care for her daughter are not income to be included in the HUD eligibility calculations. Instead, she claims this income is compensation for the emotional cost to her to care for her daughter and therefore falls within the exemption from income related to "costs of services." This is a new argument not raised below, unsupported by a reasoned legal argument and is therefore waived. Even if preserved, appellant's interpretation of the regulation would lead to absurd consequences never intended by the drafters of these regulations which is disfavored by the courts.

As discussed more fully below, the portion of the regulation at issue, 24 C.F.R. Section 5.609[2] sets forth the *definitions* of income when determining eligibility for the Section 8 subsidy. Section 5.609 broadly defines "income" as *wages and salaries, . . . and* other *compensation for personal services* paid to the family head or to any other family member. It also excludes "[a]mounts paid by a State agency to a family with a member who has a developmental disability and is living at home *to offset the cost*

---

[1] This stems not only from the failure to repay her debt, with sixteen or more missed payments over a five year period but also from the actions that created the debt in the first instance, appellant's under-reporting of the number of family members living in the household, under penalty of perjury during each annual report during the previous five year period.

[2] Hereafter, all sections of 24 Code of Federal Regulations part 5.609 will be identified as section 5.609 (a), (b) (c) as applicable.

of services and equipment needed to keep the developmentally disabled family member at home."

As reflected in the regulation at issue, HUD's broad policy goals include "ensur[ing] economic opportunity, empowering the poor and expanding affordable housing opportunities." (60 Fed. Reg. 17162 (April 11, 1996).) One of its most generous exemptions is the one at issue which frees the family breadwinner to remain in the workforce for the purpose of earning a living to support the family. Appellant ignores the plain words of the regulation, something the Administrative Judge, the Trial Court and Court of Appeal did not do.

There are a number of mischaracterizations in both the Petition for Review and the Opening Brief on the Merits which must be called to this court's attention. First, throughout the Opening Brief, appellant chooses not to use the plain words of the regulation, "the cost of services and equipment," and instead substitutes a different phrase, "*the developmental disability State payments exclusion*" which deviates from the plain words of the regulation and instills a different meaning. Nowhere do these words appear in the regulation or in the Federal Register.

The court may recall that appellant employed the same tactic in the Petition for Review, where she substituted the phrase, "DD income exemption" which also infers a different meaning than the plain words of the section (c)(16). The rhetorical question is why would appellant feel the

need to provide distorted paraphrasing of the regulation instead of transparently referring to the plain words "cost of services." The answer is that she is attempting to change the law. It is simply impossible to tease appellant's interpretation from the regulation itself, particularly when section 5.609 is examined as a whole. Throughout the regulation, the plain meaning of the word "cost," as well as similar phrasing in other portions of the regulation, such as "reimbursement" are expressed in conventional language, referencing monetary expenses, without adornment leaving no room to infuse other meanings not expressed.

Appellant's claim that the Court of Appeal's interpretation of the regulation at issue will cause an increase in her obligation toward rent is simply untrue. Appellant has always been obligated to pay 30% of her income toward rent and has remained obligated to pay 30% throughout this litigation.[3] This requirement treats her on par with other similarly situated Section 8 recipients. The claim, advanced by appellant and *amici* supporting the Petition for Review, that the Court of Appeal's decision will create housing instability for Lanterman participants, is not supported in the record.

---

[3] The stay which is in place precludes termination of appellant's participation in the Section 8 program due to the breach of the agreement to pay restitution as is noted in the Court of Appeal's decision. Appellant remains obligated to contribute 30% of her income toward her rent each month.

In addition, appellant's rant regarding her employment relationship with the State of California, who pays her to take care of her daughter, and the claimed lack of other supportive services provided by the state is another attempt to misdirect this court from the issues that are properly before it. This argument was not advanced to the Court of Appeal, waiving consideration here, most likely because it has nothing to do with the plain meaning of the HUD regulation at issue. MHA does not administer the benefits available to appellant's developmentally disabled daughter, K.R., under the Lanterman Act and has never been appellant's employer. The adequacy of appellant's compensation and the claimed lack of resources provided through the state are not properly before the court. MHA administers HUD programs only, and in the appellant's situation administered the Section 8 voucher program only.

The issue for this court to consider is the plain meaning of the words set forth in HUD's definition of income, specifically the meaning of the word "cost." The Court of Appeal concluded, the "more common and concrete meaning of the word 'cost' is the amount or equivalent paid or charged for something; price." The court further reasoned that if cost means price, then the cost of services that appellant provides her daughter is "zero," and the family incurs no "cost of services." (*Reilly v. Marin Housing Authority* (April 25, 2018) 23 Cal.App.5th 425, 435.) This court is not empowered to change the law. It may only interpret the law and in

doing so must defer to MHA's interpretation of the regulation that it is charged to administer.

It is readily apparent that this appeal is frivolous and is pursued by appellant to maintain her occupancy in a residence for which she has not qualified since 2004. This appeal further delays the termination of this specific benefit as well as termination of appellant's participation in the Section 8 program due to serious, repeated violations beginning in 2004 of HUD program requirements. Respondent would respectfully urge this court to dismiss the appeal as improvidently granted. Should the court decline, respondent requests that the decision of the Court of Appeal be affirmed.

STATEMENT OF FACTS

I. CONGRESS AND THE STATE LEGISLATURE ENACTED COMPREHENSIVE PROGRAMS TO ASSIST FAMILIES IN MEETING THE CHALLENGES OF CARING FOR DEVELOPMENTALLY DISABLED FAMILIES IN THE LEAST RESTRICTIVE SETTING.

A. The Federal Framework Reducing The Institutionalization Of The Developmentally Disabled.

Appellant has sought to broaden the issues beyond respondent's discrete function to administer HUD's Section 8 program and beyond the only issue properly before the court, which is the meaning of the words set forth in section 5.609. In respondent's view, appellant has not provided

sufficient information to allow the court to make an informed assessment and has instead sought to play on the sympathies of the court regarding issues much broader than those which are properly before the court.

In the late 1970s – early 1980s, concerns grew in Congress that a disproportionate percentage of Medicaid resources were being used for long-term institutional care for persons capable of living at home or in the community, and who preferred a home placement, but could not do so due to lack of support resources. In 1981, in response to these concerns, Congress authorized the Home and Community Based Services ("HCBS") waiver program. (*See, generally, Olmstead v. L.C.* (1999) 527 U.S. 581, 601–02, 119 S.Ct. 2176, 144 L.Ed.2d 540.)

California opted into this program. (Welf. & Inst. Code, § 14132.95.) This enabled many Medicaid beneficiaries to return to a home placement or at the least a community-based group home. Under waiver provisions of the act, "medical assistance" may include all or part of the cost of home or community-based services for the developmentally disabled, the cost of which could be reimbursed under the state's Medi-Cal plan. (See, 42 U.S.C. § 1396 *et seq.*)

California, however, had already been working to provide community-based services to the developmentally disabled. Indeed, in 2005, a Ninth Circuit Court noted that California's existing system already met the standards enunciated in *Olmstead* noting that 98% of California's

developmentally disabled population were living at home or in local, intermediate residential care facilities. (*Sanchez v. Johnson* (9th Cir. 2005) 416 F.3d 1051, 1064.)

B. The Lanterman Act

The Lanterman Developmental Disabilities Services Act, (AB 846) codified in 1977 as Welf. & Inst. Code, §§ 4500–4846, (the "Lanterman Act"), requires the State of California to provide an individualized array of supportive services intended to meet the needs and choices of each person with developmental disabilities at each stage of life, regardless of age or degree of disability in the least restrictive setting possible. (*Association for Retarded Citizens v. Dep't of Developmental Servs.* (1985) 38 Cal.3d 384, *citing* Welf. & Inst. Code, § 4501.) Under the Lanterman Act, it is the developmentally disabled individual, not her family or conservator, who is afforded all the legal rights and responsibilities guaranteed by the United States and California Constitutions." (*Michelle K. v. Sup. Ct (Harbor Developmental Disabilities Foundation)* (2013) 221 Cal.App.4th 409, 445.)

Under the Lanterman Act the Department of Developmental Services ("DDS") has "jurisdiction over the execution of the laws relating to the care, custody, and treatment of developmentally disabled persons," but delegates the delivery of these services to the counties and local non-profit organizations known as Regional Centers which are responsible for developing individualized plans and coordinated care. (Welf. & Inst. Code,

§§ 4416, 4512, subd. (j), 4620, subd. (b), 4646, subd. (c), (d); *Mowhoshi v. Pacific Home* (2004) 34 Cal. 4th 482, 487-88;.) The Statewide annual budget to serve this population is more than $3 billion.[4]

"A Person-Centered Planning approach is used in making decisions regarding where a person with developmental disabilities will live and the kinds of services and supports that may be needed. In person-centered planning, everyone who uses regional center services has a planning team that includes the person utilizing the services, family members, regional center staff and anyone else who is asked to be there by the individual. The team joins together to make sure that the services that people are getting are supporting their choices in where they want to live, how and with whom they choose to spend the day, and hopes and dreams for the future".[5] These include non-medical care, which include a variety of community-based programs, such as Day Programs and Respite Care, and assistance with attaining access additional supporting programs, such as Supplementary Security Income (SSI), state administered Medicaid services which include In-Home Support Services ("IHSS") program which

---

[4] https://www.dds.ca.gov/RC/ProgramServices.cfm

[5] *Id.* Seventy percent of developmentally disabled persons, residing in California, qualify for Medicaid funding. In addition, many of the developmentally disabled persons eligible for services under the Lanterman Act do not have a level of impairment which would qualify them for matching funds from the federal government under California's HCBS waiver program. (*Sanchez, supra,* 416 F.3d at 1065.)

pays appellant's salary, well as additional benefits administered through the Social Security Administration.[6]

In-Home Supportive Services ("IHSS") program, administered by each county, with oversight by the California Department of Social Services (CDSS), is available for the hiring of helpers, freeing the caregiver as appropriate, for other pursuits, such as gainful employment.[7] The IHSS program provides in-home assistance to eligible aged, blind and disabled individuals, up to 65 hours each week. The IHSS program pays for domestic and personal care services for disabled individuals of all ages, such as toileting, bathing and dressing, protective supervision due to functional limitations where it has been determined that the individual would be unable to remain at home safely unsupervised. (Welf. & Inst. Code, § 12300, subd. (b)-(e).)[8] IHSS currently funds over 495,000 providers to care for a persons with physical and/or mental disabilities.[9]

IHSS services may be delivered by county employees or private contractors. (State Department of Social Services, Manual of Policies & Procedures, Division 30, §§ 30-767.1983.9.) If the caregiver is an individual, the county must make payment through a state payrolling

---

[6] https://www.dds.ca.gov/RC/ProgramServices.cfm

[7] **https://www.dds.ca.gov/SupportSvcs/IHSS.cfm**

[8] **https://www.marinhhs.org/home-supportive-services-ihss**

[9] **http://www.cdss.ca.gov/inforesources/IHSS**

system prescribed by regulation. (Regs. § 30-467.132; current § 30-767.131.) (*In-Home Supportive Services v. Workers' Comp. Appeals Bd.* (1984) 152 Cal.App.3d 720, 730.) This is explained in opposing counsel's own handbook which states:

> IHSS is administered by the California Department of Social Services (CDSS). Eligibility for IHSS in each county is determined by the county welfare (or social services) departments (CWD) . . . [which] is also responsible for administering the provision of IHSS services, such as handling *payrolling transactions*.

Disability Rights California, *IN HOME SUPPORTIVE SERVICES, Nuts and Bolts, SERVICE RIGHTS AND ENTITLEMENT PROGRAMS AFFECTING CALIFORNIANS WITH DISABILITIES,* May 2008, at ii.[10]

This publication evinces a familiarity with the IHSS program.[11] It therefore seems a bit duplicitous for opposing counsel to be arguing that that IHSS payments made to appellant are not wages and instead represent a cost to her. In addition, counsel's claim, that appellant is uncompensated for the "vast majority of those hours," ignores the range of services which are apparently available to her daughter,[12] overlooks appellant's

---

[10] **https://www.disabilityrightsca.org/system/files?file=file-attachments/547001.pdf**

[11] One financial dictionary defines payroll as:

1. Total amount required to pay workers and employees during a week, month or other period.

2. Paysheet which records wage rates, deductions, and net pay.

http://www.businessdictionary.com/definition/payroll.html

[12] https://www.dds.ca.gov/SupportSvcs/IHSS.cfm

independent duty to ensure that her daughter is supervised at all times and disregards societal norms as well as appellant's legal duty under the Family Code which is recognized in the IHSS statute itself. (Fam. Code Section 7610;[13] Welf. & Inst. Code, § 12300, subd. (e); *see generally, Basden v. Wagner* (2010) 181 Cal.App.4th 929, 934.) That said the adequacy of the Lanterman resources provided to appellant and her daughter is not properly before the court. Neither are appellant's employment concerns.

Appellant also ignores the generous option that she could have selected which was to permit a state-paid third-party to come into her home to care for her developmentally disabled child. The IHSS program provides a generous allowance to fund up to 65 hours care each week which is enough for a parent to put in an eight-hour day, commute and even stop for groceries on the way home from time to time. This is an extraordinarily generous benefit which allows flexibility for the parent to make the best choice for her family. She has the choice to pursue gainful employment while the state funds care for her daughter or alternatively to be her daughter's paid caregiver.

---

[13] Irrespective of available public resources to K.R., the Family Code requires appellant to provide the basic necessities of life, including food, clothing and shelter, continues for this child who, based on appellant's representations, is unlikely to ever be able to attain independence, making her destined to become a public charge. (Family Code § 7610 ; *In re Marriage of Drake* (1997) 53 Cal.App.4th 1139, 1154–1155, *as modified* (Apr. 18, 1997).)

It is this "cost of services" which is contemplated in the definition set forth in section 5.609 (c)(16), discussed *infra*. The focus of the court's attention is whether respondent misconstrued the HUD regulation at issue. When viewed together, the IHSS third-party caregiver program and HUD's exemption of the cost of these services combine to effectuate a second important public policy goal, enabling a family to seek economic opportunity and self-sufficiency while also providing appropriate care to the developmentally disabled child. No one is criticizing appellant for choosing to remain at home as a state-paid aide, but when doing so, the wages paid to her by the state are considered income under HUD regulations just like wages from any other position.

C. HUD Section 8 Housing Subsidies Complement The Goal Of Community Placement For The Developmentally Disabled While Encouraging Self-Sufficiency.

In 1974, Congress added the Section 8 housing program to the United States Housing Act of 1937, codified at 42 U.S.C. §§ 1437 *et seq.*, the stated purpose of the Section 8 program is to aid low-income families in obtaining a decent place to live and promote economically mixed housing. Section 8 housing subsidies provide an essential safety net to low income families, the elderly, and disabled persons. (42 U.S.C. § 1437f.)

The Section 8 program is funded by HUD which provides and provides training, technical assistance and monitors local public housing agencies ("PHA") which administers the program, to ensure that the PHA

complies with program requirements and goals. (24 C.F.R. § 982.1(a)(1).) Respondent, Marin Housing Authority, is the PHA in this case.

The PHA performs a number of functions when administering the Section 8 program. It conducts community surveys to determine the fair market rent, generally based on the number of bedrooms and geographical location; it inspects each unit to ensure that it satisfies Housing Quality Standards; it reviews and approves the lease; it enters into a Rental Assistance Contract with the unit owner and pays the subsidy directly to him. (24 C.F.R. § 982.1(a)(1), (a)(2), (b; *Apartment Assn. of Los Angeles County, Inc. v. City of Los Angeles* (2006) 136 Cal.App.4th 119, 122–123.)[14]

Based on 2016 data, which is the most recent available as of the drafting of this brief, 89 California PHAs reported that approximately 304,000 California households were voucher recipients. Statewide, approximately 27% of voucher recipients were disabled. How many of these roughly 189,500 voucher recipients are developmentally disabled as opposed to physically disabled is not defined. Also unknown is the number of Section 8 households participating in the IHSS program.[15]

---

[14] The subsidies are not counted as the participant's income. (*See, Sabi v. Sterling* (2010) 183 Cal.App.4th 916, 933.)

[15] https://www.cbpp.org/research/housing/national-and-state-housing-fact-sheets-data and supporting data linked to this website.

Each family pays up to 30% of its income toward rent.[16] The amount of contribution made by each family moves up and down based on income, *not housing prices*. As a result, HUD *shields* participating families from the financial impact of escalating rents due to the shortage of housing in the Bay Area. Clearly, HUD provides a valuable resource to low income families, particularly in today's rental market.

To maintain eligibility for continued Section 8 voucher assistance, Section 8 families must comply with specific obligations. One of these is to report annually, under penalty of perjury, the family's total income and the number of family members who reside in the household. (24 C.F.R. § 982.551(b).) Pertinent to this case, an over statement of the number of persons residing in the household is likely to result in the over payment of the subsidy by the PHA. A misrepresentation in this regard is grounds for termination of the voucher. (24 C.F.R. § 982.552 (c) (1) (i).) Another terminating violation is the failure to repay a debt owed to the PHA. (24 C.F.R. § 982.552 (c) (vii).)[17]

---

[16] Total Section 8 subsidies in California exceeded $3,100,000,000 in 2016. (*Id.*)

[17] The procedures for termination are set out in the federal regulations as well as Marin Housing Administrative Plan sections 16-IV.A. OVERVIEW, 16-IV.B. REPAYMENT POLICY ("Admin. Plan"),"), Exhibits 2 and 3, to Respondent's Request for Judicial Notice filed concurrently with the demurrer to the Amended Petition for Writ of Administrative Mandate and Petition for Writ of Mandate, AA 187-91.)

There is no disagreement that families who care for a developmentally disabled family member have a difficult job which should be encouraged, not punished. (60 Fed. Reg. 17388-89.) That is why, when calculating Section 8 subsidies, HUD excludes funds provided by the state to families to enable them to obtain resources, including services from third parties, that enable the family to keep the developmentally disabled family member at home while leading otherwise productive lives. Although its primary goal is to ensure the family has a safe and decent place to live, HUD views the step toward self-sufficiency is an important component of its program.

II. THE STATUTE AT ISSUE

Each year the PHA is required to complete an evaluation which identifies family income and calculates program eligibility as well as the amount of subsidy that it will provide to the household. This determination is guided by HUD regulations. (24 C.F.R. § 982.402(a)(1), (b)(1)-(3).) Specifically, sections 5.609(a) and (b) provide in pertinent part:

> (a) Annual income means all amounts, monetary or not, which:
>
> (1) Go to, or on behalf of, the family head or to any other family member[18] . . .

[18] This would include social security disability payments paid for the benefit of K.R. (*See, Laurel Homes LP v. Hunter* (N.Y. Dist. Ct. 2009) 26 Misc.3d 665, 668.), as well as income earned by appellant to provide in-

. . .

(3) Which are not specifically excluded in paragraph (c) of this section.

. . .

(b) Annual income includes, but is not limited to:

(1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

. . .

(4) The full amount of periodic amounts received from Social Security . . . disability or . . . other similar types of periodic receipts.

(5) Payments in lieu of earnings, such as unemployment and disability compensation . . . (except as provided in paragraph (c)(3) of this section);

(6) Welfare assistance payments.

(7) Periodic and determinable allowances . . . and regular contributions or gifts received from organizations or from persons not residing in the dwelling;

(24 C.F.R. § 5.609(a), (b).) When the plain words of section 5.609 (a)(1), (a)(3) and (b)(1) are read together, the court must reach the conclusion that *the full amount of wages and other compensation for personal services paid to appellant*, as pled in the amended petition, are to be included in her annual income for the purposes of determining her eligibility and the amount of subsidy for which her family qualifies. From this income, HUD

---

home care for her daughter.

permits deductions for specific costs which support HUD's policy goals of encouraging participating families to pursue economic opportunities.

Specifically, section 5.609 (c) provides in pertinent part:

> Annual income does not include the following:
>
> . . .
>
> (2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);
>
> (4) Amounts received by the family that are specifically for, or in reimbursement of, the *cost of medical expenses for any family member*;
>
> . . .
>
> (6) *Subject* to paragraph (b)(9) of this section, the full amount of student financial assistance paid directly to the student or to the educational institution;
>
> . . .
>
> (8)(i) Amounts received under training programs funded by HUD;
>
> (ii) Amounts received by a person with a disability that are disregarded for a limited time . . . because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);
>
> (iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;
>
> . . .
>
> (v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs . . . with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;

. . .

> (16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home *to offset the cost of services and equipment* needed to keep the developmentally disabled family member at home.

(24 C.F.R. §5.609(a)-(c).)[19]

Two additional policy goals are expressed in this regulation that supplement the core goal of enabling safe, decent housing. This first is to provide a hand-up to families who are dealing with difficult circumstances relating to health and disability. The other is to promote self-sufficiency. This is achieved by not penalizing families for participating in training programs and not penalizing them for obtaining services to provide care for disabled family members so that the head of household can obtain outside employment to support the family.

III. BACKGROUND OF THIS LITIGATION

A. Underlying Facts

As set forth in the Amended Verified Petition for Administrative Mandate and Writ of Mandate, appellant and her two daughters became HUD Section 8 Housing Choice Voucher recipients in 1998 when they moved into a three bedroom unit in Novato. In 2004, one daughter moved out. The other daughter, K.R. who is presently approximately 30 years of

---

[19] 61 FR 54498, Oct. 18, 1996, as amended at 65 FR 16716, Mar. 29, 2000; 67 FR 47432, July 18, 2002; 70 FR 77743, Dec. 30, 2005; 79 FR 36164, June 25, 2014; 81 FR 12370, Mar. 8, 2016.

age and has been diagnosed with Fragile X Syndrome,[20] continues to reside with appellant. (AA 138:13-14, 140:14-19.)

During 2004 - 2009, appellant failed to report the reduction in family size on the annual recertification applications, signed under penalty of perjury, every year during a five year period, contrary to reporting obligations under 24 C.F.R. section 982.552 (b) (1) and the Marin Housing Administrative Plan. (AA 140:20-24.) This violation provided grounds for terminating appellant's voucher.(Marin Housing Administrative Plan sections 16-IV.A. OVERVIEW, 16-IV.B. REPAYMENT POLICY ("Admin. Plan")"), Exhibits 2 and 3, to Respondent's Request for Judicial Notice filed concurrently with the demurrer to the Amended Petition for Writ of Administrative Mandate and Petition for Writ of Mandate, AA 171-191.)

Following the discovery of this discrepancy in 2009, MHA afforded appellant the opportunity remain in the program, and in a unit that exceeded program guidelines in terms of size, provided that she repay the sums received due to her reporting omissions. (AA 140:22-28.)

Over the years, this contract has been modified multiple times at appellant's request to ease the financial burden caused by this debt. (AA 141:3-9.) Nonetheless, as acknowledged in the Amended Petition,

---

[20] https://ghr.nlm.nih.gov/condition/fragile-x-syndrome

appellant failed to make multiple payments. In 2010, at a hearing regarding the breach, appellant was warned the any future failure to repay would result in termination of her housing assistance. Nonetheless, appellant continued to fall behind, missing 16 payments in 2012, 2014 and 2015. (AA 141:1-10.)

In July 2015, MHA provided notice of its intent to terminate the Section 8 Voucher on the grounds that appellant had breached the repayment agreement. (AA 141:19-20.) Appellant requested an informal hearing. (*Reilly, supra*, 23 Cal.App.5th at 429.)

B. The Administrative Hearing.

A hearing was held in late August 2015, at which time the hearing officer received evidence from appellant and respondent. (AA 193-201.) At the hearing, appellant argued that respondent had improperly included IHSS payments as income when calculating her Section 8 subsidy. (*Reilly, supra*, 23 Cal.App.5th at 429.) (AA 141:21-24, 199.)

The hearing officer was unpersuaded, finding the argument and evidence to be "based on factors not related to the actual cause of the termination," and made a factual finding that appellant had repeatedly breached the repayment agreement. She also concluded that this breach violated HUD regulations and respondent's administrative plan which states that a voucher participant's failure to make three payments in one calendar year is sufficient grounds to terminate the voucher. (Section 8 Informal

Hearing Decision, Marin Housing Authority (September 8, 2015) ("Hearing Decision") (AA 199-200); (24 C.F.R. § 982.552 (c)(1)(vii).) Based on these grounds, the hearing officer upheld the termination of appellant's Housing Choice Voucher. (Hearing Decision, AA 199-200.) The Trial Court took judicial notice of this decision. (AA 413.)

C. Appellant's Amended Petition For Mandate.

In both the First Cause of Action, Petition for Administrative Writ (Code Civ. Proc., §1094.5), and the Second Cause of Action, Petition for Writ of Mandate (Code Civ. Proc., § 1085), appellant claims that respondent erred in counting her IHSS wages as earnings when it performed the Section 8 income calculations. Specifically, appellant sought an administrative writ setting aside the administrative hearing decision, reinstating the voucher and terminating the repayment plan. She also sought a writ of mandate to terminate the repayment plan and exclude appellant's IHSS earnings from income calculations. (Amended Petition, First Cause of Action, ¶ 30, AA 143:7-12 and Second Cause of Action, ¶¶36, 37, 40, AA 143: 24-144:4, 11-13.) That said, appellant judicially admitted in the petition that the state is *her employer* and paid her to provide services to her daughter through its IHSS program. (AA 142:6-14.)

Respondent demurred to the amended petition on the ground that neither cause of action stated facts constituting a cause of action. (Code Civ. Proc., § 430.10, subd. (e).) The Trial Court sustained the demurrer

without leave to amend.

To reach its conclusion, the Trial Court considered the pertinent regulation, section 5.609 (c)(16), and appellant's identical argument raised in both causes of action, and concluded that appellant's interpretation of section 5.609 (c)(16) was "wrong as a matter of law." (AA 412-413.) To reach this conclusion, the Trial Court considered case authority from this jurisdiction which expressly concludes that IHSS wages are earnings paid by the state to caregivers. The Trial Court then considered section 5.609(a), (b) which broadly define income to the household and appellant's tortured construction of section 5.609 (c)(16) wherein she urged the Trial Court to disregard some of the words contained in the definition to arrive at a meaning completely at odds with the plain meaning set forth by the drafters of the regulation. As discussed *infra*, appellant's proposed construction flies in the face of well-accepted rules of statutory construction. (*See e.g., Bialo v. Western Mutual Ins. Co.* (2002) 95 Cal.App.4th 68, 76–77.) The Trial Court declined appellant's invitation to ignore specific words in the regulation. The order which sustained the demurrer without leave to amend, concluded:

> "If HUD intended to exclude all amounts paid by a State agency to a family that has a developmentally disabled family member living at home there would have been no reason for it to go on to state in the regulation itself that such excluded amounts are paid "to offset the cost of services and equipment needed to keep the developmentally disabled family member at home[.]" That language must have some

meaning."

The Trial Court reached the correct conclusion.

D. *Reilly v. Marin Housing Authority* (April 25, 2018) 23 Cal.App 5th 425

On appeal, the Court of Appeal followed well-accepted rules of statutory construction and considered all the words set forth in section 5.609 (c)(16) which is itself a definition. Focusing on the term "cost," the court held that "Section 5.609(c)(16)'s exemption from income appears to reach money paid to a family so that the family can go out and hire services or purchase equipment necessary for the developmentally disabled family member. Such payments "offset the cost of services and equipment" that would otherwise fall on the family." (*Id.* at 434.) Rejecting appellant's argument that costs should include those incurred by the state, the court reasoned that

> If a payment is to "offset the cost of services," the payment must go to the same entity that incurs the cost of those services. Otherwise the payment does not counterbalance or compensate for the cost of services. Here, section 5.609(c)(16) addresses amounts paid "to a family ... to offset the cost of services ...." This means that the costs these payments offset must be costs that the family itself incurs.

(*Id.*) The court also looked at other portions of the regulation which employed the term cost with the express purpose of harmonizing the meaning of the term consistently throughout. Specifically, the court considered the exemptions set forth in Section (c)(4), pertaining to

"[a]mounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member." (24 C.F.R. § 5.609(c)(4) (§ 5.609(c)(4)).) and Section 5.609(b)(6)(B)(ii) (§ 5.609(b)(6)(B)(ii).) which uses to term "cost" to refer to "an amount of money paid, as in "the actual cost of shelter and utilities" for a welfare recipient. (*Id.* at 435.) The court reasoned:

> Because "cost" has this concrete and specific meaning in sections 5.609(c)(4) and 5.609(b)(6)(B)(ii), we presume it has the same meaning in section 5.609(c)(16). Generally " 'words or phrases given a particular meaning in one part of a statute must be given the same meaning in other parts of the statute' " and "[t]he same rules of construction apply to administrative rules as to statutes" Applying this canon to construe section 5.609(c)(16), the "cost of services and equipment needed to keep the developmentally disabled family member at home" must refer to amounts of money that the Reilly family pays, rather than lost opportunities or other non-financial penalties it incurs.

(*Id.* at 435-36.)

After considering alternative interpretations, advanced by the parties, the Court of Appeal accepted respondent's construction of the regulation as leading to the more reasonable result, (*Greening v. Johnson* (1997) 53 Cal.App.4th 1223, 1229) concluding that section 5.609 (c)(16) excludes IHSS payments from income only to the extent the payments go to third parties who provide in-home care for a developmentally disabled child while enabling the parent to work outside the home. The parent's outside income counts in the voucher calculation, but IHSS payments to cover the

cost of the homecare aide are exempt. The court concluded that if instead, the parent took on the job of providing the child's homecare, as occurred in this case, then the IHSS payments to compensate for parental caregiving would count toward income. (*Id.* at 437.)

The court also found respondent's interpretation of the regulation "achieves a measure of parity between a family with a developmentally disabled family member and a family with a member disabled by severe medical problems," treating out-of-pocket costs to provide protective supervision for a developmentally disabled family under section 5.609(c)(16) similarly to medical expenses for a medically fragile family member under section 5.609(c)(4). (*Id.* at 437-38.) In addition, under this construction, neither IHSS payments to a parent providing care for her developmentally disabled child nor payments made to a parent providing care for a physically disabled family member would be exempted under the regulation, eliminating a disparity in treatment of the two families. (*Id.* at 438.)

The court observed that Reilly's construction of the regulation would do the opposite, providing families in appellant's position *a benefit that comparable families would not receive*. Her contribution toward rent would be calculated as if she had no income, while the income earned by a parent working outside the home, with a paid caregiver for the child, would be included as income. Also "inequitable" would be the exclusion of

appellant's IHSS income where IHSS payments made to a parent, to care for a medically disabled child, would be counted in income calculations. (*Id.*)

This well-reasoned opinion reached the conclusion that the Trial Court correctly interpreted the meaning of section 5.609(c)(16), and as a result the court found no error in the Trial Court's order sustaining respondent's demurrer to the petition. Because the Court concluded that appellant had shown no reasonable possibility that she could cure the defect if granted leave to amend, the court found no abuse of discretion when the Trial Court dismissed the petition with prejudice. (*Id.* at 439.) This decision is correct and it should be affirmed.

STANDARD OF REVIEW

A demurrer tests the legal sufficiency of the complaint, and the granting of leave to amend involves the Trial Court's discretion. (Code Civ. Proc., § 430.10, subd. (e).) Therefore, an appellate court employs two separate standards of review on appeal. (*Beckwith v. Dahl* (2012) 205 Cal.App.4th 1039, 1049.) First, the complaint is reviewed de novo to determine whether it states facts sufficient to state a cause of action. (*Id.*) The court accepts as true the well-pleaded allegations in plaintiffs' first amended petition, giving the petition a reasonable interpretation when read as a whole with its parts in context. (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318.) While extrinsic evidence may not be considered, the court may

take judicial notice of a document in its own files, or in those of another court, and it may consider the truth of an order, statement of decision, or judgment. (Code Civ. Proc., § 430.10, subd. (a); *Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369, 374.) It is an abuse of discretion to sustain a demurrer without leave to amend if the plaintiff shows there is a reasonable possibility any defect identified by the defendant can be cured by amendment to state facts sufficient to constitute a cause of action. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966–67.) Otherwise, the Trial Court's decision will be affirmed for lack of abuse. (*Hernandez v. City of Pomona* (1996) 49 Cal.App.4th 1492, 1497–1498.)

When reviewing a local agency's interpretation of a federal regulation that it is charged to administer, the local agency's interpretation of the regulation is entitled to deference, and so long as its decision was rationally based on the evidence presented to it, its *reasonable construction* of the regulation may not be disturbed. (*Lamar Central. Outdoor, LLC v. State* (N.Y. App. Div. 2009) 64 A.D.3d 944, 948–49; accord, *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.* (1984) 467 U.S. 837, 843–44, 104 S.Ct. 2778, 81 L.Ed.2d 694 (*a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency.*").) Moreover, given the plain meaning of the words used in regulation, the Court must defer to the local agency's interpretation. (*Robinson v. District of Columbia Housing Authority*

(D.D.C. 2009) 660 F.Supp.2d 6, 17 (construing HUD regulations and terminating participation).)

Here, similar deference should be given to the findings and conclusions of the administrative hearing decision. (*Fukuda v. City of Angels* (1999) 20 Cal.4th 805, 812. (police officer's termination of employment).) Further, "in exercising its independent judgment, a Trial Court must afford a strong presumption of correctness concerning the administrative findings, and the party challenging the administrative decision bears the burden of convincing the court that the administrative findings are contrary to the weight of the evidence." (*Id.* at 817.)

Here, the Administrative hearing officer summarily rejected appellant's arguments concerning the calculation of income, finding it "a factor not related to the actual cause of the termination" and upheld respondent's termination based on the repeated failure to repay the repayment agreement. (AA 199-200.) While more explanation as to why she came to this conclusion would have been enlightening, "[t]he agency's explanation need not be a model of analytic precision to survive a challenge' under the APA; rather, '[a] reviewing court will uphold a decision of less than ideal clarity if the agency's path may reasonably be discerned.' " (*Feinerman v. Bernardi* (D.D.C.2008) 558 F.Supp.2d 36, 45.) It is fair to presume that the hearing officer was familiar with the regulation at issue (*Chevron, supra,* 467 U.S. at 843–44, 104 S.Ct. 2778, 81 L.Ed.2d

694), and a strong presumption supports her findings of fact and conclusions of law.

As explained below, no amendment to the petition would succeed in stating a cause of action. As a result there was no abuse of discretion, and the judgment dismissing appellant's petition should be affirmed.

ARGUMENT

I. JUDICIAL ADMISSIONS CONTAINED IN THE AMENDED PETITION PROVIDE SUFFICIENT BASIS TO AFFIRM THE JUDGMENT WITHOUT FURTHER CONSIDERATION.

Clearly, this is a frivolous appeal. As set forth above, the amended petition contains the express judicial admission that the state is *her employer and pays her to provide services to her daughter through its IHSS program.* (AA 142:6-14.) This admission is conclusive concerning the receipt of wages from the state and its characterization of the earnings as wages and or other compensation for paid for personal services under section 5.609 (a)(1), (a)(3) and (b)(1). It is also conclusive as to the characterization of moneys that are paid to her are earnings and not "cost of services" for the purpose of construing section 5.609 (c)(16). (*Dang v. Smith* (2010) 190 Cal.App.4th 646, 657.)

Once made, the admission is ever before the court, and always exists, particularly where an amended complaint attempts to avoid defects set forth in a prior complaint by ignoring them. (*Vallejo Development Co. v. Beck Development Co.* (1994) 24 Cal.App.4th 929, 946.) "A pleader may

not attempt to breathe life into a complaint by omitting relevant facts which made his previous complaint defective." (*Hills Trans. Co. v. Southwest* (1968) 266 Cal.App.2d 702, 713.)

Here, the admission that appellant was an employee of the state when she provided personal services to care for her daughter under the IHSS program, in and of itself, is sufficient to require the judgment to be affirmed. (*Longshore v. County of Ventura* (1979) 25 Cal.3d 14, 21 "if any one of the several grounds of demurrer is well taken.").) Because there is no reasonable possibility that the defect can be cured by amendment, it was not an abuse its discretion to sustain the demurrer without leave to amend. (*See, Aubry,* 2 Cal.4th at 966–67.)

II. A TWO PART ANALYSIS IS REQUIRED.

This appeal requires a two-part analysis. First we begin with the evaluation of well-settled law which allows this court to reach only one conclusion, an employment relationship existed between appellant and the state, and therefore wages are paid to her under the IHSS program.

The second step is to compare this employment status with the plain words of the HUD regulations which define income for the purposes of performing a Section 8 eligibility assessment, including categories of expenses that are exempt. This analysis requires an examination of the plain words of the regulation at issue, viewed together with the words in section 5.609 which is used to calculate family income for the purpose of

determining Section 8 eligibility.

Although the Lanterman Act and HUD have separate and distinct scopes, one specific to the goal of providing care for the developmentally disabled in the least restrictive setting possible and the other with a broader and different goal of providing an opportunity to low income families, in innumerable circumstances, a safe, decent place to live, the two intersect in circumstances where the low-income family is striving to maintain a home placement for a developmentally disabled family member.

A. Case Authority Consistently Construes The In-Home Support As Creating An Employment Relationship.

IHSS is a state social welfare program designed to avoid institutionalization of incapacitated persons, including the aged, blind, or disabled persons who cannot care for themselves and cannot safely remain in their homes unless the services are provided to them. Supportive services include domestic services, personal care services, and protective supervision which make it possible for the recipient to establish and maintain an independent living arrangement." (Welf. & Inst. Code, § 12300.) Important here is protective supervision to monitor the behavior of non-self-directing, mentally impaired recipients in order to safeguard against injury, hazard, or accident. (*Norasingh v. Lightbourne* (2014) 229 Cal.App.4th 740, 745.)

Administration of the IHSS program, however, falls to county

welfare departments, under the supervision of CDSS. (*Miller v. Woods* (1983) 148 Cal.App.3d 862, 868.) The counties that "process applications for IHSS, determine the individual's eligibility and needs, and authorize services." (*Basden, supra*, 181 Cal.App.4th at p. 934.) Caregivers are compensated, and the existence of a state public employee-employer relationship is well recognized. (*See e.g., Basden, supra,* 181 Cal.App.4th at 940 (unemployment compensation and workers' compensation).)

As acknowledged in *In-Home Supportive Services v. WCAB,* a dual employment relationship exists, and the IHSS provider is also the employee of the county or the recipient of the services. ((1984) 152 Cal.App.3d 720, 732–733, comparing *Bonnette v. California Health and Welfare Agency* (N.D.Cal. 1976) 414 F.Supp. 212, suggesting counties and state as well as IHSS recipients are joint employers of IHSS providers for purposes of the federal Fair Labor Standards Act.) Although it is a complicated and flexible rubric, it is undeniable that an employment relationship exists between appellant and the state, under the IHSS program. (*Guerrero v. Sup. Ct (Weber)* (2013) 213 Cal.App.4th 912, 931 (evaluating the employer's duty to withhold income tax, unemployment compensation premiums as required by federal and state regulations.) Implicit in this structure is the recognition of the many "soft factors" which support a caregiver's successful placement. Appellant has judicially admitted this employment relationship yet she pursues a tortured construction and asks

for the first time that this court to construe her wages as some sort of reparations to her without citing to any authority to support this construction. As a policy matter, the Supreme Court "normally may not consider an issue that petitioner failed to timely raise in the Court of Appeal. (Rules Ct, Rule 8.500(c); *Jimenez v. Sup. Ct (T.M. Cobb Co.)* (2002) 29 Cal.4th 473, 481.

It is undeniable that if appellant had not chosen to be employed under the IHSS program, and had instead sought employment outside the home, it would have been necessary to hire a third party caregiver to provide protective supervision and other personal services to enable her daughter to remain safely in a home placement. "The state pays the person providing the service, whether they are a family member or a third party." (*Reilly, supra,* at 793-94.) Clearly, the position is properly classified as employment, and remuneration for these services are wages paid to the person providing the services. They are only "costs" when paid to a third party.

B. Appellant's Employment Grievances Are Not Properly Before This Court.

Appellant complains that the state's compensation, under the IHSS program, is insufficient as it fails to pay her for the 24-hour care that she provides to her daughter and fails to compensate her for the "emotional cost" of caring for this child. However, the sufficiency and basis for her

compensation under this program is not properly before the court. There is no contention that respondent has ever been her employer or owed her any duty as an employer. Moreover, this contention was not raised below and is therefore waived. (*See, Badie v. Bank of America* (1998) 67 Cal.App.4th 779, 784–785 (argument not supported with reasoned argument and citations to authority waived.)

III. HUD POLICIES PROMOTE SAFE, DECENT HOUSING AND SELF-SUFFICIENCY FOR FAMILIES CARING FOR DEVELOPMENTALLY DISABLED CHILDREN.

HUD's purpose is to provide a housing subsidy for low income families. The benefits are subject to means testing. Section 5.609 provides the definitions of income to enable the PHA to conduct this evaluation. It is these definitions that are at the heart of the appeal.

When engaging in statutory interpretation, the court begins by examining the text of the statute. As this court recently explained:

> The language of the statute is [not considered] in isolation, but in the context of the statutory framework as a whole in order to determine its scope and purpose and to harmonize the various parts of the enactment. *If the language is clear, courts must generally follow its plain meaning unless a literal interpretation would result in absurd consequences the Legislature did not intend.* If the statutory language permits more than one reasonable interpretation, courts may consider other aids, such as the statute's purpose, legislative history, and public policy. *Furthermore, we consider portions of a statute in the context of the entire statute and the statutory scheme of which it is a part, giving significance to every word, phrase, sentence, and part of an act in pursuance of the legislative purpose.*

(*City of San Jose v. Sup. Ct (Smith)* (2017) 2 Cal.5th 608, 616-17 (internal citations omitted, emphasis added. ("*San Jose*").)

The Dyna-Med Court instructs similarly, heeding the court to first ascertain the intent of the Legislature so as to effectuate the purpose of the law:

> In determining such intent, a court must look first to the words of the statute themselves, *giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose. A construction making some words surplusage is to be avoided.*

(*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3d 1379, 1386-87.) Dyna-med also instructs to consider the words "in context" and where various sections of the statute relate to the same subject, the words must be harmonized to the extent possible. (*Id.* at 1387.) Thus, under well accepted rules of statutory construction, "[t]he court turns first to the words themselves for the answer." (*San Jose, supra,* 2 Cal.5th at 617.) The court gives the words their plain, common place meaning and harmonizes them throughout the statute to arrive at a meaning that breathes life into the Legislature's intent so as to effectuate the purpose of the law. The same rules of construction apply to administrative rules as to statutes. (*Exelon v. Local 15, Intern. Broth. of Elec.* (7th Cir. 2012) 676 F.3d 566, 570.)

A. Nowhere Does Section 5.609 Exclude Income Such As That Earned By Appellant.

Although the focus of this litigation has been the meaning of "cost," understanding the meaning of the word "income" is essential to answer the question of whether respondent overstated her income when determining appellant's Section 8 eligibility.

Sections 5.609(a) and (b) provide expansive definitions of income which appellant ignores but which courts below did not. It defines as "income" *wages and salaries, . . . and* other *compensation for personal services* paid to the "family head." (24 C.F.R. § 5.609 (b)(1) (emphasis added.) As both the Trial Court and the Court of Appeal concluded, appellant's wages paid to her to provide services to her daughter, under the IHSS program, are income.

The entirety of section 5.609(c) identifies what is *not income*. Pertinent here is section 5.609(c)(16) which excludes from income calculations:

> Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home *to offset the cost of services and equipment* needed to keep the developmentally disabled family member at home.

(24 C.F.R. § 5.609(c)(16) (emphasis added.) Under well accepted rules of statutory construction stated above, "[t]he court turns first to the words themselves for the answer" and consider them in the context of the legislative purpose of the statute. (*San Jose, supra,* 2 Cal. 5th at 616-17.)

It is well recognized that the drafters of statutes and regulations discuss and revise the wording of the statute until it becomes precisely what they intend. (*Bialo, supra,* 95 Cal.App.4th at 76–77.) When doing so, the court should look at *all the words in the statute, giving each word its ordinary, everyday meaning.* (*Id.*) It should only deviate from the ordinary, everyday meaning of the words if the statute itself specifically defines the word to give it a special meaning, not applicable here. (*See id.*) In addition, the court should look at every word, phrase and sentence. "*A construction making some words surplusage is to be avoided.*" (*Dyna-Med, supra*, 43 Cal.3d at 1386-87.)

Here, when looking at the plain words of the regulation, the Court of Appeal observed, the ordinary, everyday meaning of the word "cost" is "the amount or equivalent paid or charged for something; price." (*Reilly, supra,* 23 Cal.App.5th at 435, *citing* Merriam-Webster's Collegiate Dict. (10th ed. 2001) p. 262.) The court further reasoned that if cost means price, then the cost of services that appellant provides her daughter is "zero," and the family incurs no "cost of services." (*Id.)*

Since the language is clear, the court applied the plain, common sense meaning of the word which had the same meaning as the term or similar terms elsewhere in the regulation. The literal interpretation lead to common sense construction leading to the purpose of the regulation which was to determine the amount of income which should be included when

calculating appellant's Section 8 subsidy. In contrast, appellant's interpretation of cost as "an emotional cost" would not lead to an accurate mathematical calculation of her income. Instead, it would lead to an absurd result not intended by Congress. (*See*, *San Jose, supra,* 2 Cal.5th at 616-17.)

Similarly, the straightforward meaning of the word "offset" is "to counterbalance or compensate for something." (*Id.* at 433, *citing Steinmeyer v. Warner Cons. Corp.* (1974) 42 Cal.App.3d 515, 518.) The court explained that for the purposes of "offset[ting] the cost of services, the payment must go to the same entity that incurs the cost of those services. Otherwise the payment does not counterbalance or compensate for the cost of services." This means that the costs these payments offset must be costs that the family itself incurs. (*Id.* at 434.)

This is the correct result and the evaluation can end here. Only if the meaning of the words is not clear, courts must take the second step and refer to the legislative history. (*Bialo, supra,* 95 Cal.App.4th at 76–77.) However, legislative history frequently speaks in generalities making it imprecise. (*Id.*) As the Trial Court and the Court of Appeal noted, the only indicia of legislative intent before the court, were statements set forth in the Federal Register which neither found illuminating. (*See,* 60 Fed. Reg. 17388, 17391-93 (April 5, 1995).) In fact, the discussion might even be considered circular in which case the "circularity strongly implies,

however, that the statutory terms have their ordinary meanings rather than unusual or technical meanings." (*Kaiser Aluminum & Chemical Corp. v. Catellus Development Corp.* (9th Cir. 1992) 976 F.2d 1338, 1341 (construing CERCLA.)

It is only after the first two steps fail to reveal a clear meaning, that the third and final step applies which is to "apply reason, practicality, and common sense to the language at hand. If possible, the words should be interpreted to make them workable and reasonable." (*Bialo, supra*, 95 Cal.App.4th at 76–77.) Here applying the plain meaning of the words, and all the words and phrases, have already achieved this result. Applying this standard "amounts paid by the state to a family . . . *to offset the cost of services and equipment* needed to keep the developmentally disabled family member at home" lends itself to only one reasoned, practical and common sense interpretation. The family must incur the cost. (24 C.F.R. § 5.609 (c)(16).) Whether the money is paid to enable the family to go out and hire services or reimbursed after the fact, these costs must be expenses that "would otherwise fall on the family." (*Id.* at 434.)

This result is not dissimilar from that reached by the Anthony Court, which is the only case on point currently known. (*Anthony v. Poteet Housing Authority* (5th Cir. 2009) 306 Fed.Appx. 98 (*Anthony*).)[21] There,

[21] The court is permitted to cite to this unpublished federal opinion as

plaintiff was employed by a state-funded non-profit agency to provide in-home care for her severely disabled son. She sought to have this income excluded from her Section 8 eligibility calculations which were used to calculate her portion of the subsidized rent. She argued that the individual services plan for her son had a cost, but the court observed that for Anthony, "they are free. She has no out-of-pocket expenses—"costs"—that must be reimbursed or "offset" by the state." (*Id.* at 102.) Characterizing the sums paid to plaintiff as income, the court admonished that the "courts should not interpret an agency regulation to thwart the statutory mandate it was designed to implement." (*Id.* at 101, *citing Jochum v. Pico Credit Corp. of Westbank, Inc.* (5th Cir.1984) 730 F.2d 1041.)

This reasoning is persuasive here as appellant makes the same argument regarding the regulation and rejected by both courts below, neither finding any support in the language of the regulation. The Trial Court found the reasoning in *Anthony* persuasive, concluding that like the plaintiff in that case, appellant had not incurred any out-of-pocket expenses that are being "offset" by the IHSS payment, concluding that she is paid for her services. (AA 412-413.) The court further reasoned that "if HUD had intended to exclude all amounts paid by a state agency to a family that has a developmentally disabled family member living at home there would have

---

persuasive authority. (Rules Civ.Proc., § 32.1, 28 U.S.C.)

been no reason to state in the regulation itself that such excluded amounts are paid "to offset the cost of services and equipment needed to keep the developmentally disabled family member at home[.] That language must have some meaning." (*Id.*) The Court of Appeal also found meaning in the phrase, adhering to the interpretive maxim that instructs us to construe a statute or regulation in a manner that gives meaning to every word or phrase if possible, concluding that the term "offset" and "cost" should be given their common and concrete meanings. (*Reilly, supra,* 23 Cal.App.5th at 734-736.)

Appellant urged that the courts below to ignore the words "to offset the cost of services" in order to have reached the result which she desires, ignoring the well accepted "cardinal rule of construction" instructs us to avoid "a construction making some words surplusage." (*State of South Dakota v. Brown* (1978) 20 Cal.3d 765, 776.) This was particularly bold in that these words are not extraneous. In fact, they are essential and removing these words changes the meaning of the regulation, which is appellant's intent, and does violence to the language and spirit of the statutory scheme carefully crafted by HUD to achieve its purpose of providing parity as between low income families facing a variety of challenging circumstances.

B. The term "Cost" Is Used Consistently Throughout Section 5.609.

1. Cost Is A Monetary Term

Appellant's argument that the word "cost of services" set for the in section 5.609(c) (16) is used differently than where stated elsewhere in the regulation is nonsense. Under the canon of statutory interpretation, "it is generally presumed that when a word is used in a particular sense in one part of a statute, it is intended to have the same meaning if it appears in another part of the same statute" and must be given the same meaning. (*People v. Valencia* (2017) 3 Cal.5th 347, 381, reh'g denied (Aug. 30, 2017).) In addition, statutes or statutory sections relating to the same subject must be harmonized, both internally and with each other, to the extent possible." (*Dyna–Med, Inc., supra* 43 Cal.3d at 1387.)

This guidance is instructive here. Section 5.609 (c)(16) unambiguously excludes "costs of services and equipment" required to keep the in-home placement viable. Similarly, section 5.609 (c)(4) unambiguously excludes the "cost' of medical care and section, and section 5.609 (c)(8) excludes amounts "specifically for or in reimbursement" of out-of-pocket expenses related to participating in a training program. (§ 5.609 (c)(8).) Further, section (b)(6)(B)(ii) (§ 5.609(b)(6)(B)(ii).) unambiguously uses to term "cost" to refer to "an amount of money paid, as in "the actual cost of shelter and utilities" for a welfare recipient. In fact,

wherever used in sections 5.609 and 5.611, the terms "cost," "reimbursement" relates to a monetary cost, nothing more or different.

Appellant's reliance on *Gomez* is misplaced as the facts are distinguishable. (*Gomez v. Sup. Ct (People)* (2012) 54 Cal.4th 293, 300.) *Gomez* evaluated two grants of authority in different parts of the statute. One permits commissioners to "hear and determine" certain *ex parte* matters, while others permit a commissioner to hear and only report on other specified matters. (*Id.* at 304.) The court explained that through the use of different language in the two portions of the statute. Concluding the Legislature "knew exactly how to express itself," the Legislature made clear that it did not intend to limit a commissioner's authority under the one subdivision at issue as it had done in the other subdivisions. (*Id.*)

2. IHSS Payments Do Not Compensate For Emotional Costs

In the absence of any authority to support the resection of the regulation as appellant suggests, she now seeks the court to read into the meaning of the word "cost" additional words, not stated anywhere in the regulation, to support her claim that the meaning of the word encompasses the emotional costs in caring for her daughter. Appellant's tortured construction calls for this Court to ignore that she is a paid employee of the state and the earnings that she receives are income. Appellant presents no reasoned argument and cites to no authority that would require this court's

consideration of the issue. (*See, Badie, supra,* 67 Cal.App.4th at 784–785 (argument not supported with reasoned argument and citations to authority waived.) Furthermore, this contention is not pled and not raised below providing a second basis for rejecting this contention. (*See, Jimenez, supra,* 29 Cal.4th at 481.) In reality, this argument is merely noise to distract the court's focus from the overall intent of the regulation which is to provide an objective measure of income for the purposes of calculating eligibility in the Section 8 program. Had HUD intended to craft such a rule, it certainly could have done so. (*See, Flores v. Presbyterian Intercommunity Hospital* (2016) 63 Cal.4th 75, 86 (evaluating the statutes of limitations pertinent to the rendering of professional services.) It did not.

Moreover, it is well accepted that expression of some things in a statute necessarily means the exclusion of other things not expressed. (*Gikas v. Zolin* (1993) 6 Cal.4th 841, 852.) Here, costs are expressed in terms of discrete monetary costs, i.e., the cost of medical care and housing. Nowhere does the regulation address the emotional costs of the many, varied stressors which Section 8 families face.

The court must select the construction that comports most closely with HUD's apparent intent with a view of promoting the general purpose of the regulation which in this instance is purpose of measuring dollars available to a family to meet its housing costs. (*See, In re Marriage of Walrath* (1998) 17 Cal.4th 907, 918.) It must also avoid an interpretation

that would lead to the absurd consequences. (*Id.*) Where, as here, the words of the statute are clear and unambiguous, the court may not alter them as appellant would urge. (*See, Bialo, supra*, 95 Cal.App.4th at 76–77.) This court should disregard this argument altogether.

3. IHSS Payments Do Not Compensate For Opportunity Costs

The Court of Appeal evaluated whether payments made under the IHSS program reimbursed appellant for her opportunity costs arising from her choice to remain at home so she could care for her daughter. The court reasoned that "[j]ust as IHSS payments substitute in the family's budget for the money the parent would have earned outside the home, so, too, they substitute for those foregone wages in being counted as income." (*Id.* at 437.)

Respondent respectfully disagrees with this analysis. The term, opportunity cost, is not an accounting term; it will not be found on any balance sheet or flow of funds statement. Rather, it is a financial planning tool which is used to weigh the cost of a foregone opportunity against the potential gain to be attained by pursuing another.[22] A common example is

---

[22] BusinessDictionary.com defines an opportunity cost as "a benefit, profit, or value of something that must be given up to acquire or achieve something else. Since every resource (land, money, time, etc.) can be put to alternative uses, every action, choice, or decision has an associated opportunity cost. Opportunity costs are fundamental costs in economics. . . . Such costs, however, are not recorded in the account books but are

income foregone when one steps out of the workforce to pursue an education. The total lost income is weighed against the anticipated increase in earnings upon completion of the degree. It is distinguishable from medical costs or child care costs which would be found on an accounting ledger. Because this is a theoretical planning tool and not an accounting concept, it has no application to the valuation of costs as used in the regulation. In contrast, the cost of services or equipment, needed to sustain a family placement for a developmentally disabled child, is a discrete cost readily measured in dollars. This is a minor point and one that does not impact the holding which concluded that IHSS wages paid to appellant are earnings, not a cost excluded under section 5.609 (c)(16).

C. HUD's Goal Of Encouraging Self-Sufficiency Is Apparent From the Plain Words Of section 5.609 (c).

The Section 8 voucher plays an important role by enabling low income families to afford safe, decent housing, by limiting their rent obligation to 30% of income. As set forth in the Federal Register, HUD seeks to promote, not discourage families, to care for the developmentally disabled at home so that they may be full and active participants in their community. (60 Fed. Reg. 17388, 17391-93 (April 5, 1995).) This policy is achieved by exempting the costs of services and equipment needed to

---

recognized in decision making."
http://www.businessdictionary.com/definition/opportunity-cost.html

maintain the family placement. (24 C.F.R. § 5.609 (c)(16).) The goal is a compassionate one and is also consistent with HUD's goal to promote economic opportunity and family self-sufficiency as it frees the parent to pursue outside employment without imperiling its eligibility for Section 8 assistance.

This is consistent with other portions of the regulation. As appellant acknowledges, HUD will not count as income stipends related to job training or educational scholarships. The goal is to not block the path personal development by penalizing the family, but to encourage it. (*See e.g.*, 24 C.F.R. § 5.609(c) (8)(i) –(iii), (v),.) Reading more broadly in the regulation, HUD also allows deductions of unreimbursed supportive services and child care expenses incurred in the pursuit of education, and unreimbursed cost of equipment and services to enable a disabled family member to obtain outside employment.[23] (24 C.F.R. § 5.611 (a)(3)(i), (a)(3)(ii), (a)(4).) These income exclusions and deductions are consistently expressed in monetary terms with the intention of providing guidance to the PHA worker when calculating eligibility for program benefits.

---

[23] These permit deductions from income for the unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family to be employed, providing the deduction does not exceed the earned income of the person who is enabled to work as a result. (24 C.F.R. § 5.611 (a)(3)(i), (a)(3)(ii), (a)(4).)

Section 5.609 (c)(16) provides one of the more generous and an essential exemption to enable the family to pursue economic opportunity. At the approved rate for Marin County in-home caregivers, the monthly cost to a family, receiving 65 hours of care each week, during a 22 workday month, would be approximately $2,500/month.[24] Few households are able to afford the upfront cost of this magnitude each month, every month, only to wait for reimbursement thirty, sixty, ninety, one hundred twenty days down the road. Although not expressly stated, it is not too far a leap to draw the conclusion that those who drafted the regulation had given this reality some consideration and hence chose the phrase "*offset[ting] the cost of services* and equipment needed to keep the developmentally disabled family member at home" in lieu of a more restrictive term, such as "reimbursement." As the Court of Appeal noted, to "offset" does not require that the costs must first be paid. Thus, the intended purpose of regulation is consistent with other provisions in the regulation, intended to promote not hinder self-sufficiency. The reality here is that appellant has chosen not to seek outside employment and has chosen instead to be employed as an in-home care provider. As a result she does not qualify for this generous exemption. Appellant cannot have it both ways.

D. Appellant's Interpretation Would Result In Disparate

[24] http://www.cdss.ca.gov/inforesources/IHSS/County-IHSS-Wage-Rates

Treatment And Further Litigation.

Appellant's proposed interpretation would disrupt the present parity that has been carefully constructed to balance the interests of a wide range of households, including the medically infirmed, disabled and elderly who participate in the Section 8 program. As the Court of Appeal acknowledged, should appellant's interpretation be adopted, those families who are caring for a developmentally disabled child would receive dramatically more generous benefits than families who are similarly situated but who are caring for a physically disabled family member. (*Reilly, supra*, 23 Cal.App.5th at 438-39.) This outcome would create a colorable claim for discrimination, including disparate treatment, under federal statutes such as the Americans with Disabilities Act and the Fair Housing Act, 42 U.S.C. section 3600, et seq., as well as applicable state statutes.

"To establish a prima facie case [of disparate treatment] predicated upon 42 U.S.C. section 3604(b) the plaintiff[s] must make a modest showing that a member of a statutorily protected class was not offered the same terms, conditions or privileges of rental of a dwelling . . . made available to others under circumstances giving rise to a reasonable inference of prohibited discrimination." (*Khalil v. Farash Corp.* (W.D.N.Y. 2006) 452 F.Supp.2d 203, 208, aff'd (2d Cir. 2008) 277 Fed.Appx. 81, *citing, McDonnell Douglas Corp. v. Green* (1973) 411 U.S.

792, 93 S.Ct. 1817, 36 L.Ed.2d 668.)

Specifically, should this court accept plaintiff's interpretation of section 5.609 (c)(16), the wages which she receives for caring for her developmentally disabled daughter would not be counted as income. In contrast, a similarly situated family who also receives IHSS income to compensate them for caring for physically disabled family member, would have their income included in the calculation as this would be income under section 5.609 (a)(1), (b)(1) but would not fall within section 5.609 (c)(16), resulting in the inclusion of the income for Section 8 voucher purposes. This is the calculation presently applied in appellant's situation which she seeks to evade.

Where the disability is physical as opposed to developmental, the physically disabled would be subject to facially disparate treatment, if not outright discrimination, and respondent would be placed in the untenable position of having to defend what is sure to be a flood of lawsuits. Respondent would also be required to defend this policy with legitimate, non-discriminatory reasons for the denial of the same level of benefits where in truth there would be none. This result would irreparably harm respondent and similarly situated housing authorities.

Similarly, as the Court of Appeal noted, the existing parity, between families who choose to hire a caregiver and work outside the home and those who choose instead to be employed by the state to care for the

developmentally disabled family member, would be destroyed. As presently interpreted, respondent families with a developmentally disabled family member at home are able to exclude IHSS payments from income only to the extent the payments go to provide services and equipment for which the family pays. For example, if the family pays an in-home service provider to care for a disabled child while an able parent works outside the home, IHSS payments to cover the cost of that homecare aide are not counted toward the family's income. Only the parent's outside income counts. If instead the parent takes on the job of providing the child's homecare, as occurred in this case, then the IHSS payments to compensate for parental care count toward income. (*Reilly, supra,* 23 Cal.App.5th at 437.) This is the equitable result; anything else is sure to lead to discrimination claims.

E. The IRS Is A Late Comer In Acknowledging Families Providing In-Homecare For Developmentally Disabled Family Members, And Its Regulations Stand Side By Side But Do Not Control HUD.

In 2016, the IHSS program announced to its caregivers that effective January 2017, a change in the income tax laws pertinent to live-in IHSS providers, the IRS in which the Treasury Department announced that it would no longer tax earnings of IHSS workers who reside in the home of

the person for whom they provide care [25] This position is nothing more than another example of the implementation of federal policy to encourage family placements in lieu of institutionalization.

Appellant attempts to muddy the waters by suggesting that her interpretation of the regulation is supported by IRS regulations. This issue was not raised to the Court of Appeal and is therefore waived. (*Thomson v. Anderson* (2003) 113 Cal.App.4th 258, 271.) In addition, appellant cites to no authority that support the contention that IRS regulations have a prescriptive impact on the implementation of HUD's Section 8 program, including income calculation. In fact, existing authority shows that the regulations followed by the IRS for purposes related to the federal tax do not directly impact HUD. For example, the HUD Occupancy Handbook, pertaining to rent calculations based on family income, acknowledges that "the definitions of annual and adjusted income used for programs . . . have some similarities with rules used by the U.S. Internal Revenue Service (IRS)" but "the tax rules are different from the HUD program rules." Further, "many of the items listed as exclusions from annual income under HUD requirements are items that the IRS includes as taxable income" for

[25] http://www.cdss.ca.gov/inforesources/ihss/Live-in-provider-self-certification

income calculation purposes.[26] HUD includes certain forms of wages or benefits as income for rent calculation purposes while the IRS characterizes these same wages or benefits as taxable income.[27] For example, HUD includes income from employment of children, child support payments, and workers compensation benefits when calculating annual income[28] while the IRS excludes such payments for federal tax purposes.[29] As a result, the simple fact that the IRS may exclude IHSS payments as taxable income has no bearing on HUD income calculations for voucher subsidy calculations.

HUD is the Department of Housing and Urban Development and it was created to support community development and home ownership. In contrast, the IRS is part of the Department of the Treasury, authorized under Section 7803 of the Internal Revenue Code. Its principal function is to collect revenue to fund government programs and it provides "services" to facilitate the large majority of taxpayers comply with the tax law, while ensuring that the minority who are unwilling to comply pay their fair share.[30] It also to facilitates income redistribution to some extent. An example of this is the Earned Income Tax credit which is available to

---

[26] https://www.hud.gov/sites/documents/43503C5HSGH.PDF

[27] *Id.* Chapter 5- Page 22.

[28] https://www.hud.gov/sites/documents/43503C5HSGH.PDF

[29] https://www.irs.gov/pub/irs-pdf/p525.pdf;

[30] https://www.irs.gov/about-irs/the-agency-its-mission-and-statutory-authority

supplement the income of low income households.[31]

This is one of the few areas where the IRS and HUD have acted in concert. In 2004, the IRS and HUD signed a partnership agreement where HUD and the IRS collaborated to educate and assist low-income families as millions of eligible low-income individuals who had failed to claim tax credits for federal tax purposes. HUD already had a pipeline to this population and assisted the IRS in reaching them.

It is important to note that HUD is not the only agency to count IHSS earnings as income. The California Department of Social Services (CDSS) characterize IHSS payments differently from the IRS. CDSS administers the CalFresh program, which provides low-income families food stamps and additional buying power to purchase nutritious food.[32] Similar to how Section 8 counts IHSS payments as earned income, CalFresh does the same as the parent with the disabled child is essentially earning income through providing care giving services.[33] In May 2017, the CDSS sent a notice to every county in California providing clarification regarding the treatment of IHSS wages for the purposes of determining

---

[31] https://www.irs.gov/credits-deductions/individuals/earned-income-tax-credit

[32] http://dpss.lacounty.gov/wps/portal/dpss/main/programs-and-services/calfresh/

[33] http://www.cdss.ca.gov/Portals/9/ACIN/2017/I-34_17.pdf?ver=2017-06-01-083648-743

CalFresh eligibility.[34] The notice states that "[a]n IHSS provider is considered an employee of the IHSS recipient and therefore paid a wage for the provision of authorized services" and therefore, "IHSS wages are considered earned income for the purpose of determining CalFresh eligibility."

The IRS and HUD collaborate in one respect. For instance, in 2004, the IRS and HUD signed a partnership agreement where HUD and IRS would work in collaboration to educate and assist low-income families as millions of eligible low-income individuals failed to claim tax credits for federal tax purposes.[35]

Additionally, HUD has the statutory authority to publish notices in the Federal Register to update PHAs and housing owners concerning additional benefits that qualify for exemptions from income calculations. (24 C.F.R. § 5.609(c)(17).) For instance, in 2012 and 2014, HUD published a notice in the Federal Register detailing certain benefits that qualified for income exclusion.[36] One of the exclusions listed in the 2014 notice which is inclusive of additions adopted in 2012, was amounts received as payment for child care under the Child Care and Development

---

[34] *Id.*

[35] https://www.irs.gov/newsroom/hud-and-irs-launch-joint-effort-to-help-families

[36] https://www.federalregister.gov/documents/2014/05/20/2014-11688/federally-mandated-exclusions-from-income-updated-listing;

Block Grant Act of 1990 (42 U.S.C. § 9858q), a program directed at small businesses and unrelated to IHSS.[37] Had HUD intended to specifically exclude IHSS payments made to parents who directly care for their developmentally disabled child, HUD could do so pursuant to this statute. To date, HUD has not updated this exclusion list to modify and or clarify section 5.609(c)(16).

It would seem that if any conclusion can be drawn concerning the importance of this change in Treasury policy is that it comes more than twenty years after HUD's recognition concerning the needs of families caring for developmentally disabled children and its response differs to some extent.

CONCLUSION

The conclusion here is quite straightforward. The plain words of the regulation can lead to only one conclusion, IHSS wages paid to appellant are income and do not fall within any exception set forth in section 5.609 (c). (24 C.F.R. §§ 5.609 (a)(1), (b)(1), (c)(16).) Specifically, while section 5.609 (c)(16) excludes the costs of services required to maintain home placement, wages paid to appellant is income and is therefore included in Section 8 eligibility calculations. For this reason, appellant will be unable to state a cause of action, and the judgment must be affirmed. (Code Civ.

---

[37] *Id.* at (xii).

Proc., § 430.10, subd. (e).)

Dated: October 26, 2018 Respectfully submitted
WFBM, LLP

By: _____
RANDALL J. LEE
ANNE C. GRITZER
Attorneys for Defendant
MARIN HOUSING AUTHORITY

Case No. S249593
IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

Dated: October 26, 2018 Respectfully submitted

By: /s/ Ilya Filmus
Ilya Filmus, Esq.
MARIN HOUSING AUTHORITY

Case No. S249593
IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

Proc., § 430.10, subd. (e).)

Dated: October 26, 2018 Respectfully submitted
WFBM, LLP

By: _____
RANDALL J. LEE
ANNE C. GRITZER
Attorneys for Defendant
MARIN HOUSING AUTHORITY

Case No. S249593
IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

Dated: October 26, 2018 Respectfully submitted

By: 
Ilya Filmus, Esq.
MARIN HOUSING AUTHORITY

Case No. S249593
IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

CERTIFICATE OF WORD COUNT

Counsel of Record hereby certifies that pursuant to Rule 8.204(c)(1) or 8.360(b)(1) of the California Rules of Court, the enclosed brief is produced using 13-point Roman type including footnotes and contains approximately 13,144 words which is less than the total words permitted by the rules of court. The text of this brief was counted by the MICROSOFT WORD 2010 word-processing program used to generate the brief.

Dated: October 26, 2018 Respectfully submitted
WFBM, LLP

By: _____
RANDALL J. LEE
ANNE C. GRITZER
Attorneys for Defendant
MARIN HOUSING AUTHORITY

Case No. S249593
IN THE SUPREME COURT OF THE
STATE OF CALIFORNIA

CERTIFICATE OF SERVICE

Kerrie Reilly v. Marin Housing Authority
Supreme Court of California Case No.: S249593
Our Client: Marin Housing Authority

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of San Francisco, State of California. My business address is 601 Montgomery Street, 9th Floor, San Francisco, CA 94111-2612.

On October 26, 2018, I served true copies of the following document(s) described as

ANSWER BRIEF ON THE MERITS

on the interested parties in this action as follows:

Disability Rights California
Attn: Deborah Gettleman, Esq.
1330 Broadway, Suite 500
Oakland, CA 94612
Email:
deborah.gettleman@disabilityrightsca.org
Attorney for Petitioner and Appellant
KERRIE REILLY

BY OVERNIGHT DELIVERY: I enclosed said document(s) in an envelope or package provided by the overnight service carrier and addressed to the persons at the addresses listed in the Service List. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight service carrier or delivered such document(s) to a courier or driver authorized by the overnight service carrier to receive documents.

Hon. Paul M. Haakenson
Marin County Superior Court
3501 Civic Center Drive,
Courtroom E
San Rafael, CA 94903
Case No. CIV 1503896

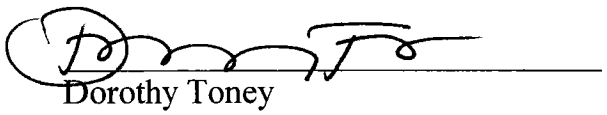
Court of Appeal, First
Appellate District
Division Two
350 McAllister Street
San Francisco, CA 94102
Case No. 149918

Ilya Filmus, Esq.
Marin Housing Authority
4020 Civic Center Drive
San Rafael, CA 94903
Tel: (415) 491-2525
Fax: (415) 472-2186
E-Mail: ilya.filmus@gmail.com
Co-Counsel for Respondent
MARIN HOUSING AUTHORITY

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List above and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with WFBM, LLP's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed in the county where the mailing occurred. The envelope was placed in the mail at San Francisco, California.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on October 26, 2018, at San Francisco, California.



Dorothy Toney