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FRESNO COUNTY SUPERIOR COURT

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9 Attorneys for Petitioners, CHILDREN AND FAMILIES COMMISSION OF FRESNO COUNTY,
10 MADERA COUNTY CHILDREN AND FAMILIES COMMISSION, FIRST 5 MERCED
11 COUNTY (an agency of the County of Merced) (*the foregoing being political subdivisions or*
12 *agencies of counties exempt from filing fees pursuant to Government Code section 6103*), and
13 KENDRA ROGERS

14 SUPERIOR COURT OF CALIFORNIA
15 COUNTY OF FRESNO, CENTRAL DIVISION

16 11 CE CG 01077

17 CHILDREN AND FAMILIES)
18 COMMISSION OF FRESNO COUNTY, a)
19 public agency, MADERA COUNTY)
20 CHILDREN AND FAMILIES)
21 COMMISSION, a public agency, FIRST 5)
22 MERCED COUNTY, an agency of the County)
23 of Merced, and KENDRA ROGERS, an)
24 individual and taxpayer,)

Case No.:

VERIFIED PETITION FOR WRIT OF
MANDATE (CCP 1085, 1088.5) AND
COMPLAINT FOR DECLARATORY
RELIEF (CCP 1060), INJUNCTIVE RELIEF
(CCP 526) AND FOR ATTORNEYS' FEES
(CCP 1021.5)

25 Petitioners and Plaintiffs,

26 vs.

27 EDMUND G. BROWN, JR., California State)
28 Governor, JOHN CHIANG, California State)
California State)
Controller, ANA J. MATOSANTOS,)
California Director of Finance, in their official)
capacities, and DOES 1 to 100, inclusive,)

Respondents and Defendants.

I.

INTRODUCTION

1. In 1998, the voters of the State of California through the Initiative process created

1 a trust fund, which for the most part is locally controlled, dedicated to fostering the health and
2 development of young children from the prenatal stage to the age of five years. In order to
3 protect their creation, the voters provided that the statute created by the initiative could only be
4 amended by the voters themselves or by the Legislature by a two-thirds vote of both houses. If
5 the statute was modified by the Legislature, it could be amended only if the proposed change was
6 consistent with the purposes and intent of the initiative. Currently, the State of California is
7 facing approximately a \$26 billion deficit. In an attempt to fill the deficit, the Governor and the
8 Legislature are looking for every source of revenue possible – even trust funds, such as the one at
9 issue here, which is legally beyond their reach. This petition challenges legislative amendments
10 to the voters’ initiative because the amendments take \$1 billion from the trust fund without the
11 voters’ approval and are not consistent with the purposes of the initiative creating the fund.

12 2. This petition challenges provisions of the 2011-2012 State Budget Act and its
13 implementing legislation, Assembly Bill 99 and its companion bill, Senate Bill 75 (collectively
14 referred to herein as “AB 99”) on grounds that AB 99 unlawfully amends the California Children
15 and Families Act of 1998 (the “Act” also known as “Proposition 10” or “Prop. 10”) and illegally
16 expropriates \$1,000,000,000 in trust funds that can only be used to further the purposes of the
17 Act. Contrary to the controlling and expressed purpose and intent of the Act, the Respondents
18 herein, with the purported authority of AB 99, unlawfully intend to supplant General Fund
19 money with Prop. 10 trust funds and use the trust funds to pay for the State’s pre-existing Medi-
20 Cal services obligations. (Ass. Budget Com., Preliminary Conference Com. Report for the 2011-
21 12 Budget (March 3, 2011) p. 3.)¹

22 3. The California Children and Families Act of 1998 was enacted by Proposition 10,
23 an initiative statute adopted by California voters in the 1998 November general election. Prop.

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25 ¹ Providing that:

26 Proposition 10 Fund Shift to Medi-Cal. Cuts Medi-Cal by \$1 billion General Fund by replacing it
27 with \$1 billion in Proposition 10 funds. Directs First 5 local commission to provide \$950 million
28 and the state commission to provide \$50 million in reserves to cover Medi-Cal services for
children 0-5 years of age. Denies proposal to shift fifty percent of local funding to the state on an
on-going basis. (Emphasis added.)

1 10 was enacted for the purposes of “promoting, supporting, and improving the early development
2 of children from the prenatal stage to five years of age.” The purposes are to be accomplished
3 through services provided by state and local commissions (the “First 5 Program”). (Health &
4 Saf. Code, §§ 130100 and 130105.) The Act authorizes the creation of the California Children
5 and Families Commission (“First 5 California”) and local county commissions (“County First 5
6 Commissions”) to implement its purposes. (Health & Saf. Code, §§ 130105, 130110, 130140.)

7 4. In serving the purposes of the Act, Petitioner CHILDREN AND FAMILIES
8 COMMISSION OF FRESNO COUNTY (“First 5 Fresno County”) is one of the largest funders
9 of early childhood services in Fresno County, having invested more than \$103 million of Prop.
10 10 funds in local programs serving young children and their families since 1999. First 5 Fresno
11 County funds scores of community health initiatives that focus on preventative care and the early
12 identification of special health needs that are critical to the development of children from a
13 prenatal stage through age five. Moreover, First 5 Fresno County focuses its investments in early
14 childcare and education with the philosophy that a child’s education is best supported through
15 partnerships amongst parents, childcare providers, and other members of a young child’s life.

16 5. Petitioner MADERA COUNTY CHILDREN AND FAMILIES COMMISSION
17 (“First 5 Madera County”) is among the largest funders of early childhood services in Madera
18 County. To date, First 5 Madera County has invested more than \$19 million of Prop. 10 funds
19 on First 5 programs in Madera County, which include preschool access initiatives, child health
20 initiatives, as well as family resource centers for parents.

21 6. Likewise, Petitioner FIRST 5 MERCED COUNTY, an agency of the County of
22 Merced (“First 5 Merced County”), is among the largest funders of early childhood services in
23 Merced County. From its inception, First 5 Merced County has invested more than \$64 million
24 in Prop. 10 funds on First 5 programs and services in Merced County, including school readiness
25 and parent education programs.

26 7. Funding for the First 5 Program is provided through a mandatory surtax on all
27 cigarette and other tobacco product sales in California. (Rev. & Tax. Code, § 30131.2.)
28 Revenues from the tax, less certain administrative costs, are deposited into the California

1 Children and Families Trust Fund (the “First 5 Trust Fund”) and thereafter distributed annually
2 to First 5 California and to participating County First 5 Commissions. (Health & Saf. Code, §
3 130105(d); Rev. & Tax. Code, § 30131.3.)²

4 8. AB 99 amends the Act by, among other things: (1) creating a new fund, called the
5 Children and Families Health and Human Services Fund (the “Health Services Fund”); (2)
6 mandating that First 5 California transfer \$50,000,000 of its balance of First 5 Trust Fund
7 moneys as of June 30, 2010, into the newly created Health Services Fund; and, (3) mandating
8 that the County First 5 Commissions collectively transfer over \$950,000,000 of First 5 Trust
9 Fund moneys from their individual accounts to the Health Services Fund. (Health & Saf. Code,
10 §§ 130156-130159.) Petitioner First 5 Fresno County’s portion of this transfer of its First 5 Trust
11 fund moneys is \$16,659,721, Petitioner First 5 Madera County’s portion is \$3,237,435, and
12 Petitioner First 5 Merced County’s portion is \$3,136,168.³ The transferred moneys, totaling
13 \$1,000,000,000, are to be used to supplant General Fund moneys and provide Medi-Cal benefits
14 to children age 0 to 5 years. (Health & Saf. Code, §§ 130156-130159.)

15 9. AB 99 is unlawful. Section 8 of the Act provides that the Act “may be amended
16 only by a vote of two-thirds of the membership of both houses of the Legislature. All
17 amendments to [the Act] shall be to further the [A]ct and must be consistent with its purposes.”
18 (Prop. 10, § 8, emphasis added.) Although AB 99 was enacted by two-thirds vote of the
19 Legislature, the intended use of and control over the funds, as articulated therein, is inconsistent
20 with the intent of the Act and does not further the Act’s purposes. (See Health and Saf. Code. §§

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23 ² While twenty percent of the revenues from Prop. 10 are transferred to various First 5 California accounts, eighty
24 percent are distributed among 58 participating County First 5 Commissions in amounts in proportion to each
25 county’s birthrate. (Rev. & Tax. Code, § 130105.)

26 ³ Pursuant to Health and Safety Code section 130158, subd. (c)(2) of AB 99:

27 Each county commission not exempted by paragraph (1) [i.e. those which
28 receive less than \$600,000 from the First 5 Fund] shall remit by June 30, 2012,
for deposit in to the Children and Families Health and Human Services Fund,
fifty (50) percent of their county commission funding, which includes total
reserved, total unreserved-designated, and total unreserved-undesignated
Children and Families Trust Funds as of June 30, 2010. ...

1 130100 and 130105; Rev. & Tax. Code, § 30131.3 and 30131.4.) In particular, the amendments
2 made by AB 99 are inconsistent with the intent and purpose of the Act because the amendments,
3 among other things: (1) threaten to allow the use of First 5 Trust Fund moneys for programs
4 other than the First 5 Program for children from the prenatal stage to five years of age; (2) take
5 control over the expenditure of First 5 Trust Fund moneys away from local, participating County
6 First 5 Commissions, and give it to the State; and (3) use First 5 Trust Fund moneys to supplant
7 the funding of existing state services.

8 10. Accordingly, by this petition, without limitation, pursuant to Code of Civil
9 Procedure sections 1088.5 and 1094, Petitioners hereby do, and by noticed motion for judgment
10 on a peremptory writ will, seek:

- 11 a. A writ of mandate and injunction to prohibit the transfer of First 5 Trust Fund
12 moneys from commission accounts to the Health Services Fund in fiscal year
13 2011-2012;
- 14 b. A declaration that: (i) the fund diversions mandated by AB 99 violate the
15 restrictions articulated in Health and Safety Code sections 130100 and 130105
16 and Revenue and Taxation Code sections 30131.3 and 30131.4, and (ii)
17 violate Section 8 of Prop. 10, because AB 99 is not consistent with and does
18 not further the intent of the Act; and
- 19 c. Attorneys' fees.

20 **II.**

21 **PARTIES**

22 11. Petitioner and Plaintiff (hereinafter "Petitioner") the CHILDREN AND
23 FAMILIES COMMISSION OF FRESNO COUNTY is an independent public agency, with the
24 power to sue and be sued, established pursuant to the California Children and Families Act of
25 1998 (Health & Saf. Code, § 130100 *et seq.* and Rev. & Tax. Code, § 30131 *et seq.*). Petitioner's
26 principal place of business is in Fresno County.

27 12. Petitioner and Plaintiff (hereinafter "Petitioner") MADERA COUNTY
28 CHILDREN AND FAMILIES COMMISSION is an independent public agency, with the power

1 to sue and be sued, established pursuant to the California Children and Families Act of 1998
2 (Health & Saf. Code, § 130100 *et seq.* and Rev. & Tax. Code, § 30131 *et seq.*). Petitioner's
3 principal place of business is in Madera County.

4 13. Petitioner and Plaintiff (hereinafter "Petitioner") FIRST 5 MERCED COUNTY is
5 an agency of the County of Merced, established pursuant to the California Children and Families
6 Act of 1998 (Health & Saf. Code, § 130100 *et seq.* and Rev. & Tax. Code, § 30131 *et seq.*).
7 Petitioner's principal place of business is in Merced County. The Merced County Board of
8 Supervisors, upon recommendation by the First 5 Merced County Commission, has duly
9 authorized the bringing of this action by the County of Merced in furtherance of the goals and
10 mission of First 5 Merced County.

11 14. Petitioner and Plaintiff (hereinafter "Petitioner") KENDRA ROGERS is an
12 individual who resides in Fresno County and is a taxpayer who paid the cigarette tax imposed by
13 Revenue and Taxation Code section 30131.2 within the past year. Petitioner is also the parent of
14 a child under the age of five years.

15 15. Respondent and Defendant (hereinafter "Respondent") EDMUND G. BROWN,
16 JR. is the duly elected Governor of the State of California. Petitioners are informed and believe,
17 and based thereon allege that Governor Brown is in some way responsible for enforcing the
18 legislation challenged in this petition and complaint (hereinafter "petition").

19 16. Respondent and Defendant (hereinafter "Respondent") JOHN CHIANG is the
20 duly elected Controller of the State of California and responsible for, among other things,
21 overseeing the transfer of funds into and out of the State Treasury and into the Children and
22 Families Health and Human Services Fund as required by the legislation challenged in this
23 petition.

24 17. Respondent and Defendant (hereinafter "Respondent") ANA J. MATOSANTOS
25 is the duly appointed California Director of Finance. Petitioners are informed and believe, and
26 based thereon allege that Director Matosantos is in some way responsible for overseeing the
27 transfer of funds into and out of the State Treasury and into the Children and Families Health and
28 Human Services Fund as required by the legislation challenged in this petition.

1 18. Petitioners are ignorant of the true names and capacities of Respondents DOES 1
2 through 100, and therefore sue them by their foregoing fictitious names. Once the true names
3 and capacities of these DOE Respondents are discovered, Petitioners will seek leave to amend
4 this petition to insert their true names and capacities in lieu of said fictitious names.

5 19. Petitioners are informed and believe, and based thereon allege, that at all times
6 herein mentioned each specifically and fictitiously named Respondent (collectively
7 "Respondents") is or was the agent, employee, partner, or joint venturer of the remaining
8 Respondents and that, in acting or failing to act as alleged in this complaint, each Respondent is
9 or was acting within the course and scope of his/her/its agency, employment, partnership or joint
10 venture and with the knowledge and consent and the direction and control of each of the
11 remaining Respondents.

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13 **III.**

14 **GENERAL ALLEGATIONS**

15 **A. Restrictions on the Use of First 5 Trust Fund Moneys.**

16 20. **Express Purposes of the Act.** Section 5 of the Act added Health and Safety
17 Code section 130100, which provides the expressed purposes for which the First 5 Trust Fund
18 may be used. In particular, section 130100 provides, in relevant part:

19 There is hereby created a program in the state for the purposes of
20 promoting, supporting, and improving the early development of
21 children from the prenatal stage to five years of age. These
22 purposes shall be accomplished through the establishment,
23 institution, and coordination of appropriate standards, resources,
and integrated and comprehensive programs emphasizing
community awareness, education, nurturing, childcare, social
services, health care, and research. (Emphasis added.)

24 21. **First 5 Trust Fund and Permitted Allocations.** Section 5 of the Act also added
25 Health and Safety Code section 130105, which provides: (1) for the creation of the California
26 Children and Families Trust Fund ("First 5 Trust Fund" or the "Trust Fund"); (2) how the Trust
27 Fund will be funded; (3) how Trust Fund moneys are to be allocated; (4) how First 5 California is
28 to expend its allocations from the Trust Fund; (5) how County First 5 Commissions are to expend

1 their allocations from the Trust Fund; and, (6) for the handling of unencumbered or unexpended
2 Trust Fund monies remaining in state or county commission Trust Fund accounts at the end of
3 any applicable period prescribed by law. In particular, section 130105 provides, in relevant part:

4 The California Children and Families Trust Fund is hereby created
5 in the State Treasury.

6 (a) The California Children and Families Trust Fund shall
7 consist of moneys collected pursuant to the taxes imposed by
8 Section 30131.2 of the Revenue and Taxation Code...

8 (d) Moneys shall be allocated and appropriated from the
9 California Children and Families Trust Fund as follows:

9 (1) Twenty percent shall be allocated and appropriated
10 to separate accounts of the state commission...

11 (H) Any moneys allocated and appropriated to
12 any of the accounts described in subparagraphs (A)
13 to (F), inclusive, that are not encumbered or
14 expended within any applicable period prescribed
15 by law shall (together with the accrued interest on
16 the amount) revert to and remain in the same
17 account for the next fiscal period.

15 (2) Eighty percent shall be allocated and appropriated
16 to county commissions in accordance with Section 130140.

16 (A) The moneys allocated and appropriated to
17 county commissions shall be deposited in each local
18 Children and Families Trust Fund administered by
19 each county commission, and shall be expended
20 only for the purposes authorized by this act and in
21 accordance with the county strategic plan approved
22 by each county commission.

20 (B) Any moneys allocated and appropriated to
21 any of the county commissions that are not
22 encumbered or expended within any applicable
23 period prescribed by law shall (together with the
24 accrued interest on the amount) revert to and remain
25 in the same local Children and Families Trust Fund
26 for the next fiscal period under the same conditions
27 as set forth in subparagraph (A).... (Emphasis
28 added.)

22. **Local Control.** Section 5 of the Act also added Health and Safety Code section
130140, which provides for the method by which County First 5 Commissions are to budget their
expenditures. In particular, section 130140 provides, in relevant part:

Any county ... developing, adopting, promoting, and implementing local

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early childhood development programs consistent with the goals and objectives of this act shall receive moneys pursuant to paragraph (2) of subdivision (d) of Section 130105 in accordance with the following provisions: ...

(a)(1)(C) The requirement that the county commission adopt an adequate and complete county strategy plan for the support and improvement of early childhood development within the county.

(i) The county strategic plan shall be consistent with, and in furtherance of the purposes of, this act and any guidelines adopted by the state commission ...

(ii) The county strategic plan shall, at a minimum, include the following: a description of the goals and objectives proposed to be attained; a description of the programs, services, and projects proposed to be provided, sponsored, or facilitated; and a description of how measureable outcomes of such programs, services, and projects will be determined by the county commission using appropriate reliable indicators. No county strategic plan shall be deemed adequate or complete until and unless the plan describes how programs, services, and projects relating to early childhood development within the county will be integrated into a consumer-oriented and easily accessible system.

23. **Use of First 5 Trust Funds.** Section 6 of the Act added Revenue and Taxation Code section 30131.3, which further clarifies that First 5 Trust Fund moneys must be utilized *in perpetuity* for the exclusive purpose of the Act. In particular, section 30131.3 provides, in relevant part :

Except for payments of refunds made pursuant to Article 1 (commencing with Section 30361) of Chapter 6, reimbursement of the State Board of Equalization for expenses incurred in the administration and collection of the taxes imposed by Section 30131.2, and transfers of funds in accordance with subdivision (c) of Section 130105 of the Health and Safety Code, all moneys raised pursuant to the taxes imposed by Section 30131.2 shall be deposited in the California Children and Families Trust Fund and are continuously appropriated for the exclusive purpose of the California Children and Families Program established by Division 108 (commencing with Section 130100) of the Health and Safety Code. (Emphasis added.)

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1 24. **Prohibition on Supplanting General Fund Moneys with First 5 Trust Fund**
2 **Moneys.** Section 6 of Prop. 10 added Revenue and Taxation Code section 30131.4, which
3 explicitly prohibits (1) the use of First 5 Trust Fund moneys to fund existing levels of service and
4 (2) the use of such funds to supplant state or local General Fund moneys for any purpose. In
5 particular, section 30131.4, subdivision (a) provides:

6 All moneys raised pursuant to taxes imposed by Section 30131.2
7 shall be appropriated and expended only for the purposes
8 expressed in the California Children and Families Act, and shall be
9 used only to supplement existing levels of service and not to fund
10 existing levels of service. No moneys in the California Children
11 and Families Trust Fund shall be used to supplant state or local
12 General Fund money for any purpose. (Emphasis added.)

13 25. **Repayment of Moneys Borrowed From First 5 Trust Fund.** Since the
14 adoption of Prop. 10 in 1998, Revenue and Taxation Code section 30131.4 has been amended,
15 and the following language was added in 2008. In particular, section 30131.4, subdivision (b)
16 provides, in relevant part:

17 Notwithstanding any other provision of law and the designation of
18 the California Children and Families Trust Fund as a trust fund, the
19 Controller may use the money...for loans to the General Fund as
20 provided in Sections 16310 and 16381 of the Government Code.
21 Any such loan shall be repaid from the General Fund with interest
22 computed at 110 percent of the Pooled Money Investment Account
23 rate, with the interest commencing to accrue on the date the loan is
24 made from the fund or account. This subdivision does not
25 authorize any transfer that will interfere with the carrying out of
26 the object for which this fund or those accounts were created.
27 (Emphasis added.)

28 The 2008 amendment does not support the outright transfer of funds sought by Respondents.

29 26. **A Prior Attempt to Expropriate First 5 Trust Fund Moneys Was Rejected by**
30 **the Voters.** In 2009, the Legislature called a special state-wide election to ask the voters to
31 consider six separate state sponsored propositions. One of the six state sponsored propositions –
32 Proposition 1D - would have amended the Act to, among other things, establish a “Proposition 10
33 Health and Human Services Fund” in the State Treasury and require that two hundred sixty eight
34 million (\$268,000,000.00) be diverted into that new fund each year “prior to distribution of
35 monies from the California Children and Families Trust Fund” pursuant to Health and Safety

1 Code section 130105 (i.e., prior to distribution from the First 5 Trust Fund to First 5 California
2 and to the participating County First 5 Commissions). The \$268 million dollar transfer was to
3 take place every year for a period of five years, resulting in a total diversion of over \$1.3 billion
4 dollars in taxpayer revenues that would otherwise have been distributed to state and local
5 commissions pursuant to Health and Safety Code section 130105. The Legislature placed the
6 proposition on the ballot because it recognized that the proposed diversion of funds from the
7 California Children and Families Trust Fund was inconsistent with the Act, and therefore
8 required voter approval. Two-thirds (66%) of the voters state-wide rejected Proposition 1D. In
9 Fresno County, the proposition was rejected by 66.8% of the voters. In Madera County, the
10 proposition was rejected by 68.1% of the voters. In Merced County, the proposition was rejected
11 by 63.5% of the voters.

12 **B. The Legislature's Unlawful Transfer of \$1,000,000,000 of State and County First 5**
13 **Commission Trust Fund Moneys to Pay for the State's Existing Medi-Cal Benefits**
14 **Obligations.**

14 27. Health and Safety Code sections 130156-130158, passed by the Legislature as
15 part of AB 99 on March 16, 2011, and signed into law by the Governor on March 24, 2011,
16 amend the Act by creating the new Children and Families Health and Human Services Fund into
17 which \$50,000,000 of First 5 California trust funds and \$950,000,000 of participating
18 County First 5 Commission trust funds are to be transferred during the 2011-2012 fiscal year.
19 The Children and Families Health and Human Services Fund will be used, as determined by the
20 Legislature, to provide health and human services, including, but not limited to direct health care
21 services, to children from birth through five years of age. Health and Safety Code sections
22 130156-130158 provide in relevant part:

23 Section 130156: The Children and Families Health and Human
24 Services Fund is hereby established in the State Treasury. The
25 Children and Families Health and Human Services Fund shall be
26 used, upon appropriation by the Legislature, to provide health and
27 human services, including, but not limited to, direct health care
28 services, to children from birth through five years of age.

27 Section 130157: Notwithstanding paragraph (1) of subdivision (d)
28 of section 130105, for the 2011-12 fiscal year, fifty million dollars

1 (\$50,000,000) from the accounts described in subparagraphs (A) to
2 (F) of paragraph (1) of subdivision (d) of section 130105 of the
3 Health and Safety Code, including reserve funds, shall be
4 transferred to and deposited in the Children and Families Health
5 and Human Services Fund to support state health and human
6 services programs for children from birth through five years of
7 age. The state commission shall ensure that these funds are
8 available for the purposes described in this subparagraph, the state
9 commission, including but not limited to its representatives,
10 officers, directors and employees, including its attorneys and other
11 persons, is hereby released from any and all liability, rights,
12 claims, demands, and actions, known and unknown, which any
13 party may have, arising in connection with the disencumbering of
14 funds and/or obligations as set forth herein. For purposes of this
15 section, "state health and human services programs" includes, but
16 is not limited to, direct health care services.

17 Section 130158: (a) Notwithstanding paragraph (2) of subdivision
18 (d) of Health and Safety Code 130105, for the 2011-12 fiscal year,
19 nine hundred fifty million dollars (\$950,000,000) from the
20 combined balances of all the county Children and Families Trust
21 Funds, including reserve funds, as provided for in subparagraphs
22 (A) and (B) of paragraph (2) of subdivision (d) of Health and
23 Safety Code 130105, shall be transferred to and deposited in the
24 Children and Families Health and Human Services Fund, to
25 support state health and human services programs for children
26 from birth through five years of age.

27 (b) For purposes of this section, "state health and human services
28 programs" includes, but is not limited to, direct health care
services; and "county commission" includes, but is not limited to,
each account holder for local Children and Families Trust Funds,
county government fiscal agent, and/or county commission.

(c) The share of the amount specified in subdivision (a) required
of each county commission shall be determined in the following
manner and subject to the following conditions:

(1) A county commission that received less than six
hundred thousand dollars (\$600,000) in California
Children and Families Trust Fund revenues in the 2009-10
fiscal year is exempt from this section and is not required
to deposit funds in the Children and Families Health and
Human Services Fund as part of the budget solution
described in subdivision (a).

(2) Each county commission not exempted by
paragraph (1) shall remit, by June 30, 2012, for deposit into
the Children and Families Health and Human Services

1 Fund, fifty (50) percent of their county commission
2 funding, which includes total reserved, total unreserved-
3 designated, and total unreserved-undesignated Children and
4 Families Trust Funds as of June 30, 2010. No funds other
5 than revenues received pursuant to the California Children
6 and Families Act of 1998 shall be remitted for deposit into
7 the Children and Families Health and Human Services
8 Fund.

9 (3) County commission payments for deposit into the
10 Children and Families Health and Human Services Fund
11 shall not result in any county commission's funding level
12 being less than the amount received by the county
13 commission from the California Children and Families
14 Trust Fund in the 2009-10 fiscal year.

15 (4) Full payments to the Children and Families Health
16 and Human Services Fund shall be made by county
17 commissions within the 2011-12 fiscal year.
18 Notwithstanding any other provision of law, no 2012-13
19 allocation to a county commission shall occur prior to the
20 full payment being made.

21 (5) Notwithstanding paragraphs (1) through (4), the
22 total combined remittances from county commissions in
23 the 2011-12 fiscal year shall equal \$950,000,000. To the
24 extent paragraphs (1) through (4) result in more than
25 \$950,000,000 being provided by county commissions in
26 total, the difference shall be proportionally returned to all
27 county commissions having made a contribution.

28 (d) Pursuant to subdivision (c), each county commission, as
defined in subdivision (b), shall ensure that the fund for transfer
and deposit to the Children and Families Health and Human
Services Fund are not encumbered and are available for the
purposes described in this section. To the extent it is necessary or
appropriate for a county commission to disencumber existing
obligations to meet the requirements of this section, the county
commission, including but not limited to its representatives,
officers, directors and employees, including its attorneys and other
persons, is hereby released from any and all liability, rights,
claims, demands, and actions, known and unknown, which any
party may have, arising in connection with the disencumbering of
funds and/or obligations as set forth herein.

(e) After a county commission's share of the \$950,000,000
specified in subdivision (a) has been determined pursuant to
subdivision (c), that county commission or appropriate agent or
entity, shall remit those funds to the State Controller for deposit

1 into the Children and Families Health and Human Services Fund.
2 The entire share of funds for each county commission shall be
3 remitted within fiscal year 2011-12, and may be done, in equal
4 amounts, on a monthly basis.

5 **C. Challenges to the Transfer of First 5 Trust Fund Moneys to the Health Services**
6 **Fund to Cover Medi-Cal Benefit for Children 0 to 5 Years of Age.**

7 28. Use of First 5 Trust Fund moneys allocated under the Act to First 5 California and
8 participating County First 5 Commissions to fund the Children and Families Health and Human
9 Services Fund is inconsistent with the purposes of the Act, and violates the will of the voters who
10 passed Proposition 10, in that, without limitation:

- 11 a. It violates the local control provision of the Act provided in Health and Safety
12 Code section 130100, et seq., by shifting the determination of how First 5
13 Trust Fund moneys are to be spent from participating County First 5
14 Commissions to the Legislature;
- 15 b. It violates the prohibition on supplanting the funding of existing levels of
16 State funding, e.g., the funding of Medi-Cal services for children from birth to
17 age five, provided for in Revenue and Taxation Code section 30131.4; and,
- 18 c. It threatens to allow the expenditure of First 5 Trust Fund moneys transferred
19 to the Children and Families Health and Human Services Fund for services to
20 people of all age groups.

21 **IV.**

22 **FIRST CAUSE OF ACTION FOR MANDATE**

23 **(Code of Civ. Proc. § 1085, Against All Respondents and Defendants)**

24 29. Petitioners re-allege paragraphs 1 through 28 as though fully set forth herein.

25 30. The Governor, the State Controller, the Director of Finance, and Does 1 through
26 100, inclusive, are responsible for implementing AB 99, the unlawful legislation, and the
27 unauthorized transfer from the First 5 Trust Fund to the newly-created fund challenged herein.
28 Prop. 10, section 8, Health and Safety Code sections 130100 and 130105, and Revenue and
Taxation Code sections 30131.3 and 30131.4 impose a prohibition on the Respondents from,

1 among other things: (1) using First 5 Trust Fund moneys for anything other than funding the First
2 5 Program for children from the prenatal stage to five years of age; (2) taking control over the
3 expenditure of First 5 Trust Fund moneys away from local, participating County First 5
4 Commissions, and giving it to the State; and (3) using First 5 Trust Fund moneys to supplant the
5 funding of existing state services. Unless mandated to refrain from making unauthorized
6 transfers or diversions, the Governor, the State Controller, and the Director of Finance will cause
7 moneys in the First 5 Trust Fund, held in trust accounts by First 5 California and participating
8 County First 5 Commissions, to be transferred during the 2011-2012 fiscal year to the Children
9 and Families Health and Human Services Fund for purposes other than those mandated by the
10 Act.

11 31. The Legislature may amend or repeal an initiative statute only by another statute
12 that becomes effective when approved by the voters unless the voters, upon approval of the
13 original initiative, permit amendment of the statute without their approval. (Cal. Const., Art. II,
14 section 10.) The power of the voters to decide whether the Legislature can amend an initiative
15 statute is absolute and includes the power to enable legislative amendment subject to conditions
16 attached by the voters. For the reasons set forth above, the legislative amendments to the Act
17 challenged herein are invalid and unlawful because they do not fulfill the conditions set by the
18 voters for amending the Act.

19 32. Petitioners have no administrative means to challenge the transfers at issue in this
20 petition, nor an adequate remedy at law. Therefore, Petitioners seek a peremptory writ of
21 mandate pursuant to Code of Civil Procedure section 1085 prohibiting the Governor, the State
22 Controller, and the Director of Finance from causing moneys in the First 5 Trust Fund, held in
23 accounts by First 5 California and participating County First 5 Commissions, to be transferred to
24 the Children and Families Health and Human Services Fund for the unauthorized purposes
25 identified in this petition.

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V.

**SECOND CAUSE OF ACTION FOR DECLARATORY RELIEF
(Code Civ. Proc. § 1060, Against All Respondents and Defendants)**

33. Petitioners re-allege paragraphs 1 through 32 as though fully set forth herein.

34. AB 99 creates the Children and Families Health and Human Services Fund and requires that it be funded by transfers of moneys from the First 5 Trust Fund, held in accounts by First 5 California and participating County First 5 Commissions. Pursuant to Health and Safety Code section 130157, First 5 California is to required to transfer \$50,000,000 from its trust fund account and, pursuant to Health and Safety Code section 130158, the participating County First 5 Commissions are to collectively transfer \$950,000,000 from their trust fund accounts, to the Children and Families Health and Human Services Fund so that the Respondents may use the cumulative \$1,000,000,000 in the Children and Families Health and Human Services Fund for purposes inconsistent with the Act. Without limitation, there is a controversy as to whether the Respondents' proposed use of the First 5 Trust Funds violate the Act because: (1) it involves the use of First 5 Trust Fund moneys for purposes other than funding the First 5 Program for children from the prenatal stage to five years of age; (2) it takes control over the expenditure of First 5 Trust Fund moneys away from local, participating County First 5 Commissions, and gives it to the State; and (3) it involves the use of First 5 Trust Fund moneys to supplant the funding of existing state services.

VI.

**THIRD CAUSE OF ACTION FOR INJUNCTIVE RELIEF
(Code Civ. Proc. § 526, Against All Respondents and Defendants)**

35. Petitioners re-allege paragraphs 1 through 34 as though fully set forth herein.

36. AB 99 creates the Children and Families Health and Human Services Fund and requires that it be funded from the First 5 Trust Fund accounts held by First 5 California and participating County First 5 Commissions. Pursuant to Health and Safety Code section 130157, First 5 California is to transfer \$50,000,000 from its trust fund accounts and, pursuant to Health and Safety Code section 130158, participating County First 5 Commissions are to collectively

1 prevail, it is appropriate for this court to award Petitioners reasonable attorneys' fees pursuant to
2 Code of Civil Procedure section 1021.5.

3 **WHEREFORE, Petitioners pray for relief as follows:**

4 1. A writ of mandate and/or injunction prohibiting the Governor, the State
5 Controller, the Director of Finance, and Does 1 through 100, inclusive, from: (a) transferring
6 from the First 5 Trust Fund the amount of \$1,000,000,000 to the newly created Health and
7 Human Services Fund or the General Fund pursuant to Health and Safety Code sections 130156-
8 130158; (b) requiring the Children and Families Commission of Fresno County, the Madera
9 County Children and Families Commission and/or the First 5 Merced County Commission to
10 transfer any moneys in their trust funds, individually or collectively, to any account in the state
11 Treasury including, without limitation, the Children and Families Health and Human Services
12 Fund; and/or (c) failing to allocate any 2012-13 trust funds from the California Children and
13 Families First Trust Fund as required under the Act to the Children and Families Commission of
14 Fresno County, the Madera County Children and Families Commission and/or the First 5 Merced
15 County Commission, individually or collectively, prior to full payment being made as required
16 under Health and Safety Code section 130158.

17 2. A declaration that use of First 5 Trust Fund moneys to fund the purposes set forth
18 in Health and Safety Code section 130156 is a violation of Proposition 10, Section 8, and Health
19 and Safety Code sections 130100 and 130105, and Revenue and Taxation Code sections 30131.3
20 and 30131.4.

21 3. For a permanent injunction enjoining the use of First 5 Trust Fund moneys for the
22 purposes set forth in Health and Safety Code section 130156.

23 4. For attorneys' fees pursuant to Code of Civil Procedure section 1021.5.

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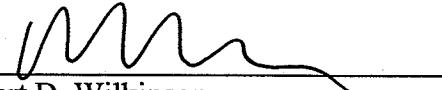
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1 5. For such other and further relief as the court deems proper.

2 DATED: April 4, 2011.

3 BAKER MANOCK & JENSEN, PC

4
5 By 
6 Robert D. Wilkinson
7 Attorneys for Petitioners,
8 CHILDREN AND FAMILIES
9 COMMISSION OF FRESNO COUNTY,
10 MADERA COUNTY CHILDREN AND
11 FAMILIES COMMISSION, FIRST 5
12 MERCED COUNTY, and KENDRA
13 ROGERS

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VERIFICATION

I, KENDRA ROGERS, declare as follows:

I am the Executive Director of Petitioner CHILDREN AND FAMILIES COMMISSION OF FRESNO COUNTY. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE (CCP 1085, 1088.5) AND COMPLAINT FOR DECLARATORY RELIEF (CCP 1060), INJUNCTIVE RELIEF (CCP 526), AND FOR ATTORNEYS' FEES (CCP 1021.5) and know the contents thereof. There same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 30 day of March 2011, at Fresno, California.


KENDRA ROGERS

VERIFICATION

I, CHINAYERA BLACK HARDAMAN, declare as follows:

I am the Executive Director of Petitioner MADERA COUNTY CHILDREN AND FAMILIES COMMISSION. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE (CCP 1085, 1088.5) AND COMPLAINT FOR DECLARATORY RELIEF (CCP 1060), INJUNCTIVE RELIEF (CCP 526), AND FOR ATTORNEYS' FEES (CCP 1021.5) and know the contents thereof. There same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 30th day of March 2011, at MADERA, California.


CHINAYERA BLACK HARDAMAN

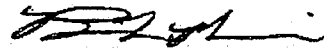
VERIFICATION

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I, BRIAN MIMURA, declare as follows:

I am the Executive Director of Petitioner MERCED COUNTY CHILDREN AND FAMILIES COMMISSION. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE (CCP 1085, 1088.5) AND COMPLAINT FOR DECLARATORY RELIEF (CCP 1060), INJUNCTIVE RELIEF (CCP 526), AND FOR ATTORNEYS' FEES (CCP 1021.5) and know the contents thereof. There same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct. Executed on this 4th day of April 2011, at Merced County, California.



BRIAN MIMURA

VERIFICATION

1 I, KENDRA ROGERS, declare as follows:

2 I am a Petitioner in the above-captioned matter. I have read the foregoing
3 VERIFIED PETITION FOR WRIT OF MANDATE (CCP 1085, 1088.5) AND COMPLAINT
4 FOR DECLARATORY RELIEF (CCP 1060), INJUNCTIVE RELIEF (CCP 526), AND FOR
5 ATTORNEYS' FEES (CCP 1021.5) and know the contents thereof. There same is true of my
6 own knowledge, except as to those matters which are therein alleged on information and belief,
7 and as to those matters, I believe them to be true.

8 I declare under penalty of perjury that the foregoing is true and correct. Executed
9 on this 30 day of March 2011, at Fresno, California.

10
11 
12 KENDRA ROGERS