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Attorneys for Defendant
RACHAEL WONG, DrPH, in her official
capacity as the Director of the Hawaii
Department of Human Services

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

PATRICIA SHEEHEY, PATRICK
SHEEHEY, RAYNETTE AH CHONG,
individually and on behalf of the class
of licensed foster care providers in the
state of Hawaii,

Plaintiffs,

vs.

RACHAEL WONG, DrPH, in her
official capacity as the Director of the
Hawaii Department of Human Services

Defendant.

CIVIL NO. CV13-00663 LEK-KSC

DEFENDANT RACHAEL WONG, Drph,
In Her Official Capacity As The Director
Of The Hawaii Department Of Human
Services' OPPOSITION TO
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT;
CERTIFICATE OF SERVICE

Hearing

Date: November 16, 2015

Time: 9:45 a.m.

Judge: Hon. Leslie E. Kobayshi

DEFENDANT RACHAEL WONG, DRPH, IN HER OFFICIAL CAPACITY AS
THE DIRECTOR OF THE HAWAII DEPARTMENT OF HUMAN SERVICES'
OPPOSITION TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

This court should deny Plaintiffs' motion for summary judgment because the facts do not support their argument that DHS fails to meet its obligations under the Child Welfare Act ("CWA"). To the contrary, undisputed facts prove that DHS is in compliance with the CWA. Specifically, the uncontroverted deposition testimony, exhibits, and Defendant's experts' opinions confirm that DHS's fixed monthly rate plus variable payment structure covers the enumerated CWA costs.

The crux of Plaintiffs' argument is that DHS's monthly basic board rate is too low to cover the CWA costs; however, as Plaintiffs know, DHS supplements that single payment in a variety of ways. Plaintiffs do not offer any data or expert opinion to support their unsubstantiated and incorrect argument that the basic board rate, alone, must provide for all of the needs of the child. Instead, Plaintiffs completely misrepresent the payment structure and methodology utilized by DHS in their motion, and the unfounded (and patently false) accusation of "callousness" does nothing to support their faulty reasoning.

As testified to repeatedly by DHS representatives, the department engaged in extensive research and policy discussions in order to frame their budget request to the legislature. There was nothing arbitrary about this process, which resulted in

the legislature agreeing with and funding the request for an increased basic board rate. As Plaintiffs may remember, many other individuals and organizations, including their own counsel, also submitted testimony to the legislature arguing for a different rate increase, but the legislature approved DHS's budget request. *See* Doc No. 31 p. 9 and its Exhibit "B". Plaintiffs' Motion should be denied and Defendant's Motion for Summary Judgment should be granted instead.

II. MATERIAL FACTS

Defendant does not understand how Plaintiffs can dedicate nine pages of their motion to a "material undisputed facts" section, wherein they blatantly ignore deposition and documentary evidence which directly contradict their assertions. Most of their characterizations are not fact based at all, but the "facts" they do rely on actually support Defendant's positions.

A. Federal Requirement Under the CWA

42 U.S.C § 671(a)(2) provides in part that the state shall make "foster care maintenance payments on behalf of each child..." (emphasis added). "Foster care maintenance payments" is later defined to mean:

payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, reasonable travel to the child's home for visitation, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement..

42 U.S.C. § 675(4)(A) (emphasis added)

Although these rates must be reviewed periodically, there are no statutes or regulations dictating how often that review must occur, what the review process must entail, or what the result of the review must be. 42 U.S.C. § 671 (a)(11).

B. Context Prior To Most Recent Increase

Plaintiffs insist on attacking the history of the basic board rate, even though their claim is for prospective injunctive relief. They continue to complain that in 2011 the DHS Director opposed an increase for the basic board rate. Motion, p. 4. Former Director Patricia McManaman explained that in 2011, the administration's first year in office, the department was operating off of the prior administration's budget. It was still recovering from the great recession, inheriting hiring freezes, budgets not fully funded, limitations to expand the existing budget, and essentially an austere fiscal state. Deposition of Patricia McManaman dated August 19, 2015, Exhibit "A" at 40:21-41:21. Although supportive of an increase, and aware certain numbers like \$75 per month had been suggested, she wanted to ensure that the department developed a well researched and thoughtful method for raising the rate. *Id.* at 42:5-43:15.

It has become apparent that the reason for their continued harping on the past \$529 rate (and lack of increase) is that they are locked into their inflation argument, and incapable of calculating what they believe should be the appropriate rates without that number; nor have they have done any analysis as to the

appropriateness of that amount in 1990 or over time. *See* Deposition of Paul Brewbaker, dated October 13, 2015 at 34:10-35:7; 36:18-38:20, attached as Exhibit “B”.

In any event, the current age-tiered monthly rate, plus the additional benefits and reimbursements, are the rates that should be considered.

C. DHS Intentionally Selected Basic Board Rate Amounts To Supplement Additional Payments To Cover The CWA

Plaintiffs claim that the basic monthly board rate paid by DHS to foster care and adoption providers (collectively referred to as “providers”) falls below the requirements of the CWA. Motion, pp. 4-5. This argument fails because it operates off the faulty assumption that the single board rate must cover all costs. Not even Plaintiffs’ expert believes that the board rate alone, without consideration of the needs of the child, must cover all the CWA costs. *See* Brewbaker Deposition at 38:22 – 39:18, Exhibit “B”.

1. DHS Utilizes A Sufficient Methodology For Covering CWA Costs

The CWA does not require a single basic rate to cover all of the enumerated items – indeed, it does not require any methodology at all, as discussed *supra*. There is no national standard for implementing CWA payments; states utilize an array of criteria and payment structures. *See* Deposition Transcript of Mona Maehara dated August 17, 2015 at 19:10-15, attached as Exhibit “C”.

In doing its initial research, DHS learned very quickly that other states included different things in their board rates – for example some included clothing and liability insurance, while others did not. Deposition Transcript of Kayle Perez dated June 19, 2015 at 85:6-14, attached as Exhibit “D”. And the rate amount varied depending on what each state included in the basic rate. Deposition Transcript of Barbara Yamashita dated August 20 and October 29 at 77:13-78:9, attached as Exhibit “E”.

Plaintiffs know that DHS makes many additional payments and includes in-kind support to supplement the basic board rate because DHS informed them through its answers to interrogatories and deposition testimony. *See* Defendant’s Response to Plaintiffs’ First Set of Interrogatories, attached as Exhibit “F”.

Specifically, DHS looked at the USDA’s categories as guidance for its basic board rate, but knowingly considered other forms of reimbursements provided outside of that board rate. Deposition Transcript of Lisa Nakao dated June 19, 2015 Exhibit “G” at 35:17 – 36:11; 43:16-44:1; 44:21-46:6; 81:11-82:8; 83:1-22. Because the CWA does not require a certain method or number, DHS considered the totality of payments based on an individual child’s needs:

Q: so who was trying to make sure that the numbers complied with state and federal law?

A: well, I don’t believe that state and federal law states a number. And so when we calculated or we worked out the numbers, we didn’t only take the board rate. It’s the foster care maintenance payments, in

addition to the benefits, yea, the other payments that the child is eligible for, and it was that that we determined that what we recommended, the 95 urban west and all of that, would meet the child's needs.

See Perez Deposition, Exhibit "D" at 33:19-34:4.

A: its – really, its hard to put an average package together, because depending on the child's age, depending on the child's needs – outside of clothing and the board payment, difficulty of care is based on the child's needs and the documented needs. Medical is for all children. But transportation, depending on what appointments or like therapists or medical needs of the child, that would be determined. So its hard to put a one price to it. But looking at all the costs, whatever the child would incur, we have different categories that we cover that cost.

Id. at 49:4-15.

2. DHS Payments Cover All CWA Costs

Plaintiffs erroneously state the payments do not cover school supplies.

Motion, p. 5. First it is curious that their only argument for incomplete reimbursement is the lack of school supplies payments. Second, DHS's payments actually do cover those costs. Indeed, Defendant's expert discussed the totality of DHS payments, which clearly include school supplies. See Expert Report of Brendan P. Burke dated August 7, 2015, at exhibits 4(a) and 4(b) attached as Exhibit "H". Third, Plaintiffs have failed to demonstrate that the supposed failure to cover school supplies means that DHS is not in substantial conformity with the CWA. See *infra* part IV.A; and Defendant's Motion for Summary Judgment filed August 7, 2015 (Doc. No. 143) (discussing that if there is a private right of action

under 42 U.S.C. § 1983, the proper standard by which to measure DHS's compliance is substantial compliance, and that deference should be given to DHS's methodology.) They also fail to inform this Court that in the USDA report, child care and education expenses are a combined category, that is was "the only budgetary component for which **about half of all households reported no expenditure,**" and that the USDA report's figures included only those households **with** child care and/or education expenses. USDA Expenditures on Children by Families, 2011, at 6 (emphasis added), *available at* http://www.cnpp.usda.gov/sites/default/files/expenditures_on_children_by_families/CRC2011.pdf. In other words, the USDA report does not reflect an average of all surveyed families; it is skewed because it reports only those families with child care and/or education expenses. Plaintiffs have failed to present evidence on what the monthly cost of school supplies in Hawaii is and have failed to demonstrate that DHS's payment structure is not in substantial compliance as to school supplies.

Plaintiffs also completely mischaracterize evidence by incorrectly stating that DHS admitted benefits are subject to eligibility requirements and suffer from low receipt of payments. Motion, pp. 5-6. Ms. McManaman testified that all foster children were eligible; that she did not consider fund availability an issue – if it was required, it would be funded; and the varying percentages of fund

recipients did not indicate an inadequate payment structure to her because of the varying needs of the children. McManaman deposition, Exhibit “A” at 157:22-159:3

D. DHS Did Not Base Its Legislative Request on Budgetary Restrictions

Plaintiffs are under the [seemingly intentional and] misguided belief that DHS “reverse engineered” its request to the legislature based on budget constraints, and that DHS capped its budget at \$8.5 million. Motion, pp. 8-9. This is patently untrue. Plaintiffs cite to selected portions of the deposition transcript of Susan Chandler, her draft report, and an email she sent without proper context. *Id.* Dr. Chandler is not a DHS employee or representative, she did not have any decision making authority, was not privy to any ultimately made decisions, and she was not involved in the legislative or budget process at all. Rather, DHS hired her as a consultant to conduct research and provide policy and methodology recommendations, to guide DHS so that it could make an informed presentation to the legislature. *See* Maehara Deposition, Exhibit “C” at 18:1-13. The point of hiring Dr. Chandler was to get information so that they could come up with a rationally based number to present to the legislature. *See* Yamashita Deposition, Exhibit “E” at 52:13-21.

The only proper testimony that can be relied on as to how DHS made its recommendation, and the timing of the decision as it relates to the budget process,

is that of DHS the representatives who actually worked with the Governor's office on the budget proposal that became part of the Governor's budget package, i.e. Patricia McMananan - the then DHS Director.

Ms. McManaman provided an extensive explanation of the budget process. McManaman Deposition, Exhibit "A" at 25:3-28:7. She also denied the existence of a cap, and clarified that she made a decision to submit the budget request for a certain amount, based on the detailed analysis and calculations she had done (with the assistance of staff). 61:5-62:24; 63:7-64:2. *After* DHS submitted its budget and the Governor's office approved it, DHS committed to the \$8.5 million request, not before. *Id.* at 65:25-66:11; 68:4-69:14. Going into the process of coming up with a methodology and increase, she did not have any preconceived notion of what the budget would be – whether \$8.5, \$12, or \$2 million – she went through the process to learn what the options were. *Id.* at 109:16-110:2. In fact, when the 2012 USDA report came out after she submitted her budget to the governor and after he submitted his package to the legislature, she presented the new, higher numbers and was prepared to go back to ask for more. It was the legislature who decided to stick with the 2011 numbers. McManaman depo, 147:14-148:6; 148:21-149:5.

Ms. Yamashita also provided a summary of the budget proposal process. Exhibit "E" at 86:3-87:11. The legislature could then accept it, deny it or adjust it,

or could introduce its own piece of legislation and accept that. *Id.* at 89:19-90:10. DHS did not base its recommendation to the legislature on political or budgetary concerns. *Id.* at 105:15-107:25. Another DHS representative confirmed this approach:

Q: at the time the process began with Dr. Chandler in terms of getting that research and that information, had the department made any decision about whether or not to update the amount?

A: well, we had made a decision to look at that and to consider it, yes. As to what steps we were going to take, no. It was contingent on what information emerged from this study.

Maehara Depo, Exhibit “C” at 25:19 – 26:1. She further explained that she prepared the specific budget request, which is known as the “Form A” and that the division begins its initial research and request proposal in August/September, submits it to the director, who then submits it to the governor, who in turn submits it to the Legislature in January. *Id.* at 110:18-111:21.

The \$8.5 million budget request for an increased board rate, plus the totality of programs benefits, and opportunities does cover the CWA costs. McManaman Depo 68:6-15.

III. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate where “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Fed R. Civ. P. 56(a)(2010). Using the well recognized summary judgment standard of

review, Plaintiffs fail to meet their burden of establishing no genuine issue of material fact exists. Thus, their motion should be denied.

IV. ARGUMENT

Plaintiffs' motion fails because the uncontroverted facts unequivocally prove that DHS's payment structure is in substantial compliance with the CWA.

Plaintiffs twist the truth and ignore contrary evidence in an attempt to support their incorrect positions.

A. DHS'S Methodology Provides For Adequate Payments Under The CWA

The Ninth Circuit gives deference to a reasonable methodology employed by the state if the applicable statute does not prescribe a particular method for calculating costs. *California State Foster Parent Ass'n v. Wagner*, 642 F.3d 974, 981 (9th Cir. 2010). DHS looked to the CWA requirements, reviewed the MARC and USDA reports, read reports criticizing MARC, studied how other jurisdictions reached their rates, reviewed litigation results in other states, and ran different scenarios based on its own calculations to determine what its appropriate methodology should be. McManaman depo, Exhibit "A" at 56:4-57:2, 60:8-20. The methodology it chose to employ – whether based on USDA, the administrative rules, or the totality of payments, does indeed comply with the CWA. *Id.* p. 139:18-24.

1. DHS utilized highly respected and popularly used methods

DHS utilized USDA data as a foundation because it shows what families spend on raising a child. The USDA reports are based on information derived annually, and many states use that data. Maehara Depo, Exhibit “C” at 72:14-19. Moreover, the USDA divides its research into regions, and takes into consideration the cost of living in making its projections per region. *Id.* at 114:7-14

DHS used the urban west region because it includes Hawaii. Deposition Transcript of Lisa Nakao, Exhibit “G” at 43:2-12. The urban west region includes other expensive cities like Los Angeles, San Francisco, San Diego, and Seattle – making it a reliable and reasonable benchmark for DHS to utilize. McManaman deposition, Exhibit “A” at 141:7-142:12. Plaintiffs’ expert agrees that USDA is a proper source to rely upon and that it does a better job with the data than others. Brewbaker Depo, Exhibit “B” at 65:10-13; 71:8-10.

After committing to the USDA and the urban west region, DHS made decisions regarding the applicability of certain costs. For example, the USDA includes video games in its “entertainment” category, yet the CWA does not require video games as essential to the well being of the child. Also, the USDA includes rent and mortgage in its housing costs, which are not required by the CWA, but DHS believed that Hawaii has higher utility costs, so took that into consideration. McManaman depo at 133:1-16; 133:22-134:6.

2. DHS's Payment System Does Cover CWA Costs

Again, Plaintiffs incorrectly presume that the board rate must cover *all* of the enumerated costs. Motion, pp 12-13. DHS's board rate and supplemental payments do cover the CWA costs. Plaintiffs provide no basis to support their mistaken belief that only the basic rate must cover everything, because that just simply is not the law or the accepted standard. Their expert concedes that the total package should be considered. Brewbaker Deposition, Exhibit "B" at 40:22-41:5.

And again, Plaintiffs grossly misrepresent the deposition testimony and characterization of DHS's payment structure to argue that the payments are inadequate because of eligibility, fund availability, and the reimbursement utilization rate. Motion, pp 13-14. In addition to Ms. McManaman's testimony referenced *infra*, DHS representatives' testimony confirms Plaintiffs' intentionally misleading arguments are incorrect.

Eligibility:

Plaintiffs argue that DHS "concedes that many of these benefits are subject to eligibility requirements and availability of funds" motion, p. 14. In support of this inaccurate statement, they cite to Exhibits 9 and 10, Defendant's answers to interrogatories, and highlight "eligibility." Upon actually reviewing those eligibility requirements which are obviously very broad and inclusive, and additionally reviewing the deposition testimony of Lynne Kazama, Mona Maehara,

Kayle Perez, and Pat McManaman, it is clear that all children who need a particular service do indeed receive it, at no cost to the provider. *See* Deposition Testimony of Lynne Kazama dated September 18, 2014, Exhibit “M” 2014 at 18:7-21; 19:13-21; 23:9-20; and Deposition of Kayle Perez, Exhibit “D” dated June 19, 2015 at 146:13-22; 150:3-8; 153:23-154:1; 157:21-158:17.

Fund Availability

A DHS representative also testified that only one type of DHS payment is limited by funds; the rest will always be covered.

Q: Are there certain benefits or payments that are limited by the amount appropriated, so that some foster parents may get them and other foster parents won't?

A: what comes to mind is the respite care funds. We're limited to \$100,000 a year.

Q: and is that fund usually exhausted each year or is there a surplus?

A: Actually, there's been a surplus, yeah...so whenever a request is needed, you know, we've been able to respond.

Perez deposition, Exhibit “D” at 22:25 - 23:23. She explained that all of the other reimbursements are covered by DHS's general fund and that the only ones that are limited are administered by another division and a private entity. *Id.* at 140:12-15; 149:9-15; 156:2-157:15; 165:11-20; 167:8-17.

Fund Accessibility

The argument that the “CWA does not condone an ‘Easter egg hunt’” and that providers must “ferret out” such benefits is ridiculous and without support. Motion, p. 13. Plaintiffs offer no authority for these emphatically bold statements, because none exists.

Actually, the CWA clearly does allow for a payment structure comprised of more than one payment – payments in a plural sense is repeatedly used in the actual regulation, and this circuit has held that no specific methodology must be utilized. *See* 42 U.S.C. § 671 *et seq* and *California Alliance of Child and Family Services v. Allenby*, 589 F.3d 1017 (9th Cir. 2009). Moreover, the “Easter egg hunt” characterization could not be further from the truth. Both Plaintiffs testified they received information from DHS personnel - both in writing and in person - about the many benefits available to them:

Plaintiff Raynette Ah Chong testified that she received a booklet of information when she first did a home study to get licensed, that she received a list of benefits, and that a public health nurse came to her home to explain how to obtain women-infant-child benefits. *See* Deposition Transcript of Raynette Ah Chong dated August 11, 2015, Exhibit “I” at 15:10-24; 18:25-19:19. These documents Plaintiff testified to receiving are attached as Exhibits “J” “K” and “L” respectively.

Plaintiff Patricia Sheehey also testified to receiving a binder of information from Catholic Charities, who conducted trainings for DHS. *See* Deposition Transcript of Patricia Sheehey, dated August 20, 2015 at 12:21-13:13; 14:1-12 attached as Exhibit “N”. She produced this binder on October 16, 2015. Dated January 9, 2013 - indicating she received it before Plaintiffs filed their lawsuit - this packet of information clearly lists *all* of the reimbursements and benefits available to her in an alphabetical chart, including direction on how to obtain the reimbursements. *See* Exhibit “N”.

Receipt of funds

Plaintiffs argue that because not all providers receive 100% of the available reimbursements, DHS is not in compliance. Motion, p. 14. They highlight Exhibit “11” on p. 8 to show the percentage of providers who receive certain payments. This is a faulty argument for several reasons.

First, the CWA does not require all providers to receive the same amount, and Plaintiffs provide no authority for a contrary interpretation. Second, as explained by the child welfare services branch administrator, not all children or providers require the same resources due to varying lengths of stay, ages, and needs. Perez deposition, Exhibit “D” at 65:1-66:11; 142:22-144:25; 159:22-160:17; Maehara Deposition, Exhibit “C” at 126:22-127:20. The Director provided a few more specific examples of why foster children’s needs vary:

activity fees could be offset by A plus or child care; some kids may walk to school, so do not require a bus pass; some children may not have visitation because it would be adverse to them, so do not require that type of reimbursement.

McManaman deposition, Exhibit "A" 166:1-21. Nothing in the CWA requires DHS to make payments to providers for items a foster child does not need or use.

3. DHS Did Consider the Cost of Living and Inflation

Another one of Plaintiffs' erroneous arguments is that DHS did not consider the high cost of living in Hawaii or the cost of inflation. Motion, p. 15. Lisa Nakao, however, explained that she considered the higher costs of utilities in Hawaii, and included that consideration in her adjustments. *See* Exhibit "G" at 51:8-52:1; 53:7-54:11; 55:14-56:8. She also explained that the USDA projects its numbers out to current dollars, even though it uses data from past years. *Id.* at 58:3-59:2.

DHS properly utilized the USDA's urban west region for its benchmark because Hawaii was included in that region. And DHS recommended setting its rates at 95% of that region's cost estimates because of the availability of other funds to support foster children. McManaman Deposition, Exhibit "A" at 107:13-108:19.

Plaintiffs repeatedly argue that there should be an automatic adjustment written into the request to the Legislature, but that completely ignores the

legislative process. *Id. at* 101:7-102:13; 103:8-24. Moreover, nothing in the CWA requires an automatic adjustment. The CWA specifically contemplates periodic review, not automatic adjustment. 42. U.S.C. § 671 (a)(11).

DHS's consideration of the urban west figures and Hawaii's utility rates (and the many other considerations described herein) resulted in rates which do indeed substantially comply with the CWA. Defendant's experts utilized DHS's actual payments, taking into consideration inflation and cost of living adjustments to present day values, and concluded that DHS's payment system covers the cost of the CWA items. *See* Exhibit "H".

B. No Support For Insufficiency of Payment Structure

Plaintiffs argue DHS's payments do not cover the enumerated costs because they have been discounted. Motion, pp 14-15. And again, Plaintiffs make blatantly erroneous allegations that DHS chose to pay less in order to meet a budget request. Motion, p. 15.

They have the burden of proving that DHS does not pay enough, but cannot meet their burden because they do not even know what their costs are. When asked how much she spends a month on each of the costs, Ms. Ah Chong, the only class representative for foster parents, said she did not know for each enumerated category except for daily supervision, which was zero, and her mortgage and 2015 Honda van, which are excluded from reimbursement. *See* Ah Chong Deposition,

Exhibit “I” at pp 50:3-54:24. Yet, despite not knowing what she spends, she knows that what she provides to her foster and adopted children is adequate. *Id.* at 55:8-25. Ms. Ah Chong also admitted that she does not know what other families spend. *Id.* at 57:23-24. Because Plaintiffs have no idea what their costs are, they cannot prove that DHS’s payments are insufficient under the CWA, and their motion must fail.

Instead, Defendant’s experts opined that the basic board rate plus the variable reimbursements offered by DHS based on the needs of the child and provider satisfy the CWA. See Exhibit “H”. Notably, Plaintiffs do not rely on *any* expert opinion to make their oversimplified and baseless assertions.

The payment structure DHS currently has in place covers the CWA required costs, and does so in a way that appreciates the varied needs of the children and providers. For example, not all children require the same amount of travel: some may have to fly to another island, while others may be specifically prohibited from family visits for a certain period of time. *See* McManaman deposition, 137:17-138:23. DHS’s method was adopted after extensive research, which informed its request to the legislature, not the other way around. *Id.* at 109:16-110:2.

C. DHS meets the Periodic Review Requirement

First and foremost, Plaintiffs do not have a private right of action to assert a claim under 42 U.S.C. § 1983 for failure to conduct a period review. *See Foster Parents Ass'n of Washington v. Quigley*, 2014 WL 3513338 * 4(W.D Wash. 2014). Notwithstanding that jurisdictional barrier and in spite of specific testimony to the contrary, Plaintiffs inexplicably continue to make the argument that DHS failed to meet the periodic review requirement, which they know is untrue. Motion, p. 16. Two different DHS representatives testified to having participated in a review of the board rate within the past five years (which resulted in an increase), and also to their intention to conduct another review within the next five years. *See Perez* deposition, Exhibit "D" at 29:19-30:7 and Maehara deposition, Exhibit "C" at 104:25-105:3.

Because DHS has conducted periodic reviews, and intends to continue to do so, Plaintiffs' argument fails, and their motion should be denied.

V. Conclusion

Plaintiffs' Motion for Summary Judgment should be denied because it is based on faulty assumptions, groundless arguments, and blatantly mischaracterized facts. Despite their intentionally incorrect and misleading statements, the facts prove that DHS is in compliance with the CWA. Thus, Defendant respectfully

requests this Court deny Plaintiffs' motion and grant Defendant's motion instead.

DATED: Honolulu, Hawaii, October 26, 2015.

/s/ Dana A. Barbata

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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

RAYNETTE AH CHONG, individually
and on behalf of the class of licensed
foster care providers in the state of
Hawaii,

Plaintiffs,

vs.

PATRICIA MCMANAMAN, in her
official capacity as the Director of the
Hawaii Department of Human Services,

Defendants.

CIVIL NO. CV13-00663 LEK-KSC

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the date indicated below, a copy of the foregoing document was served on the following parties at their last-known addresses by means of either depositing said copy in the United States mail, postage prepaid, or served electronically through CM/ECF as follows:

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