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10 **Attorneys for Plaintiff Counties**

11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF SACRAMENTO**

13 **COUNTY OF SACRAMENTO, et al,**

14 **Plaintiffs,**

15 **v.**

16 **STATE OF CALIFORNIA, et al,**

17 **Defendants.**

Case No. 34-2010-00090983

**NOTICE OF ENTRY OF ORDER
GRANTING MOTION FOR JUDGMENT
ON THE PLEADINGS**

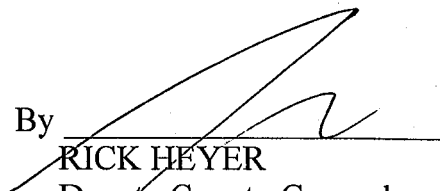
**Dept: 16
Judge: The Honorable Kevin Culhane**

18 **TO ALL PARTIES AND THEIR COUNSEL OF RECORD**

19
20 PLEASE TAKE NOTICE THAT the Court granted Plaintiffs Motion for Judgment on the
21 Pleadings. The Order granting this motion was entered on this case on April 14, 2011. A copy of
22 the Order is attached hereto as Exhibit A.

23 Dated: April 19, 2011,

ROBERT A. RYAN, JR.
County Counsel

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25
26 By 
27 **RICK HEYER**
28 **Deputy County Counsel**

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EXHIBIT A

1 **ROBERT A. RYAN, JR., County Counsel**
2 **RICK HEYER, Deputy County Counsel**
3 **[State Bar No. 216150]**
4 **COUNTY OF SACRAMENTO**
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10 **File No.: 124963-000002**

FILED / ENDORSED
APR 14 2011
By S. K. Brown, Deputy Clerk

11 **Attorneys for Plaintiffs**

12 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF SACRAMENTO**

14 **COUNTY OF SACRAMENTO, et al.,**

Case No. 34-2010-00090983

15 **Plaintiffs,**

**[PROPOSED] ORDER GRANTING
MOTION FOR JUDGMENT ON THE
PLEADINGS**

16 **vs.**

17 **STATE OF CALIFORNIA, et al.,**

Hearing Date: March 25, 2011

Time: 1:30 p.m.

Dept: 16

Judge: Hon. Kevin Culhane

18 **Defendants.**

19 The motion for judgment on the pleadings of the Plaintiff counties was originally
20 heard before the Court on January 7, 2011, in Department 53, located at 800 9th Street,
21 Sacramento, California 95814. The Honorable Kevin Culhane heard the motion and
22 issued a ruling upon that motion on February 9, 2011. Thereafter, a Motion for
23 Reconsideration was filed by the Intervenor. The Motion for Reconsideration was first
24 heard on March 7, 2011 and continued to March 25, 2011 for further briefing. The
25 hearings on the Motion for Reconsideration were heard by Judge Culhane, however,
26 Judge Culhane moved to Department 16, located at 720 9th Street, Sacramento,
27 California, 95814.

28 At all times Plaintiff counties were represented by lead counsel Rick Heyer,

1 Deputy County Counsel from the Office of the County Counsel, Sacramento County. All
2 named Defendants were represented by Tamar Pachter, Deputy Attorney General.
3 Intervenor California School Boards Association were represented by Deborah Caplan
4 and Mathew Cody of Olson Hagel & Fishburn LLP, and Intervenor Clovis Unified
5 School District were represented by Karen Samman of Atkinson, Andelson, Loya, Ruud
6 & Romo.

7 After full briefing on the issues, Judge Culhane took the matter under submission.
8 On March 24, 2011, the Court issued its ruling granting the Motion for Judgment on the
9 Pleadings on the First Cause of Action contained in the First Amended Complaint filed
10 by the Plaintiff counties.

11 Based upon the pleadings filed in this case, the memoranda of points and
12 authorities in support of and in opposition to the Motion for Judgment on the Pleadings
13 and the Motion for Reconsideration, the stipulations filed by the parties, the exhibits of
14 which the Court took judicial notice, and the oral arguments, and good cause appearing,
15 the Court adopts the holding of the Tentative Ruling of March 24, 2010 attached as
16 exhibit A to this order and therefore,
17

18
19 IT IS HEREBY ORDERED that:
20

21 1. The Plaintiff counties' Motion for Judgment on the Pleadings is granted as
22 to the First Cause of Action for Declaratory Relief. The AB 3632 mandate is suspended
23 for fiscal year 2010-2011, and Plaintiff counties need not provide any service pursuant to
24 the AB 3632 mandate, found in Chapter 26.5 of the Government Code, for fiscal year
25 2010-2011.
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2. On the Court's own motion, the second Cause of Action in Plaintiffs' First Amended Complaint for Injunctive Relief is stricken, without leave to amend.

DATED: 4-14-11, 2011

KEVIN R. CULHANE

Judge of the Superior Court

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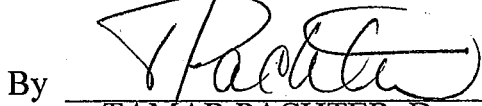
PREPARED BY AND APPROVED AS TO FORM ON BEHALF OF ALL PLAINTIFF COUNTIES:

ROBERT A. RYAN, JR., County Counsel
Sacramento County, California

By 
RICK HEYER, Deputy County Counsel
Lead Counsel for Plaintiff Counties

APPROVED AS TO FORM:

KAMALA D. HARRIS, Attorney General
STATE OF CALIFORNIA

By  4/4/2011
TAMAR PACTER, Deputy Attorney General
Attorney for all named Defendants

DEBORAH CAPLAN,
Lead Counsel for the California School Boards Association

By _____
KAREN SAMMAN,
Counsel for Clovis Unified School District

EXHIBIT A

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF SACRAMENTO
CIVIL
TENTATIVE RULINGS - March 16, 2011**

EVENT DATE: 03/25/2011 EVENT TIME: 01:30:00 PM DEPT.: 16

JUDICIAL OFFICER:

CASE NO.: 34-2010-00090983-CU-OE-GDS

CASE TITLE: COUNTY OF SACRAMENTO, ET AL. VS. STATE OF CALIFORNIA, ET AL.

CASE CATEGORY: Civil - Unlimited

CASE TYPE: Other employment

EVENT TYPE: Motion - Other - Civil Special Sets

CAUSAL DOCUMENT/DATE FILED:

County of Sacramento v. State of California – Case No. 34-2010-00090983 – Motion for Reconsideration – Tentative Ruling

On March 7, 2011 the Court continued this matter on its own motion to March 25, 2011 at 1.30 p.m.

The Court ordered the continuance to allow the parties to submit further briefing as to the effect on this case of the Second District Court of Appeal's published opinion in *California School Boards Association v. Brown* (2011) 192 Cal.App.4th 1507.

The Court has reviewed all of briefs and supplemental responses submitted in light of the court of appeal decision and now rules as follows.

Part One

The motion for reconsideration is granted both on intervenors' motion and on the Court's own motion in the following respect.

Intervenors have moved for reconsideration of the Court's order partially granting plaintiff's motion for judgment on the pleadings.

Intervenors' motion is based on the ground that in partially granting the motion, the Court determined an issue that was not adequately briefed. Intervenors contend that the requirements of Code of Civil Procedure section 1008(a) are met because the precise nature and effect of Welfare & Institutions Code section 18355 was not the focus of the proceedings prior to the Court's February 9 ruling. The Court agrees that the requirements of Code of Civil Procedure section 1008 have been met. (See *Kollander Construction v. Superior Court* (2002) 98 Cal.App.4th 304, 314, disapproved on other grounds in *Le Francois v. Goel* (2005) 35 Cal.4th 1094) In any event, the Court believes that it is in the interests of justice and of ensuring that the record is clear that the Court reconsider this matter on its own motion even if the requirements of section 1008 had not been met.

Intervenors contend that the ruling is erroneous on the merits because the services required by Welfare & Institutions Code section 18355 are not a separate mandate but are funded by the same funding and thus they cannot be separately adjudicated.

In their supplemental briefing, intervenors acknowledge that *California School Boards Association v. Brown* (supra) can be read as broad enough to render this case moot. However, intervenors continue to request that the Court reconsider the part of its February 9 order partially granting the motion for judgment on the pleadings.

Intervenors contend that neither the counties nor the state have asserted that such a mandate exists and neither has responded to the merits of the arguments advanced in intervenor's motion for reconsideration. Intervenors argue that the Court's order separating board and care costs from the remainder of the AB 3632 mandate services has engendered confusion and that confusion is likely to continue if the order stands even if the case is ultimately dismissed based on the decision of the Second District Court of Appeal.

Based on the uncontroverted contentions that the order is erroneous and that, as it stands, it may continue to cause confusion, the Court has determined that the ruling on submitted matter and order shall be vacated and the following order entered in the interests of a clear record.

It is now ordered, based on the record as it existed on February 7, 2010, before the decision in *California School Boards Association v. Brown* (supra) that plaintiff's motion for judgment on the pleadings is denied.

As of February 7, 2011, there are factual issues concerning the effect of the governor's elimination of the \$133 million and the distribution of \$76 million in monies for AB 3632 services that cannot be addressed at the pleading stage.

The parties' requests for judicial notice are granted.

Part Two

The Court has also determined that it is appropriate to further reconsider its order on the judgment on the pleadings based on the change in law caused by the decision in *California School Boards Association v. Brown* (supra).

The parties all agree that the decision in the California School Boards decision addresses the same issues that are before this Court. It has been certified for publication and thus at this time it is controlling on this Court. California Rules of Court, rule 977(d) provides in part: "A published California opinion may be cited or relied on as soon as it is certified for publication or ordered published." Except in extraordinary circumstances, a trial judge should follow an opinion of the Court of Appeal that speaks to conditions or practices in the judge's courtroom, even though the opinion is not final, until the opinion is depublished or review is granted. (*Jonathon M. v. Superior Court* (2006) 141 Cal. App. 4th 1093)

Intervenors request that the Court withhold any final order of dismissal until after disposition of the petition for review by the Supreme Court.

Defendants contend the case should be dismissed but have no opposition to the deferral of the entry of

the final order of dismissal until after the Supreme Court has determined whether to grant or deny the petition for review.

Plaintiffs object to any delay in this Court's ruling. Plaintiffs also disagree with defendants that the case should be dismissed. Plaintiffs argue that they were not parties to the *California School Boards Association* decision and dismissal of this action would deprive the counties of the relief to which they are entitled. Plaintiffs request that the Court grant the motion for judgment on the pleadings as the most effective means by which the plaintiff counties can ensure that all stakeholders in the AB 3632 process within the plaintiff counties understand that the mandate is suspended as to each plaintiff county.

Plaintiffs are persuasive on the merits.

Therefore, the Court orders reconsideration of the denial of the motion for judgment on the pleadings on its own motion.

The order denying the motion is hereby vacated. The Court now grants plaintiffs' motion for judgment on the pleadings and declares that AB 3632 mandate is suspended in Fiscal Year 2010-2011. Plaintiffs are entitled to judgment on their complaint as a matter of law.

The Court has determined in the interests of clarity that the orders for part one and part two shall be prepared and entered separately.

Therefore the Court directs intervenors to prepare, serve and submit a formal order for the Court's signature incorporating the findings and order in part one.

The Court directs counsel for plaintiffs to prepare, serve and submit a formal order incorporating the findings in part two and a judgment for the Court's signature.

Intervenors' request to delay entry of judgment is denied. Plaintiffs are entitled to the certainty of a judgment based on the state of law at the time the judgment is rendered. The proposed delay would simply cause further confusion and uncertainty.

1 **PROOF OF SERVICE**

2 I declare:

3 I am over the age of 18 years, and not a party to the above-entitled action. I am
4 employed in the County of Sacramento and my business address is 700 H Street, Suite 2650,
5 Sacramento, California 95814.

6 On APRIL 19, 2011, I served a copy of the following document:

7 **NOTICE OF ENTRY OF ORDER GRANTING MOTION FOR JUDGMENT ON THE**
8 **PLEADINGS**

9 on interested parties in this action by:

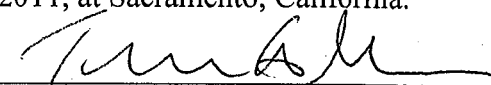
10 **mail** by enclosing a true copy in a sealed envelope in a designated area for outgoing mail,
11 addressed as set forth below. I am readily familiar with the business practices of the Office of
12 the Sacramento County Counsel for collection and processing of correspondence for mailing
13 with the United States Postal Service, and correspondence so collected and processed is
14 deposited with the United States Postal Service on the same date in the ordinary course of
15 business.

14 Tamar Pachter, Deputy Attorney General
15 Office of the Attorney General
16 455 Golden Gate Avenue, Suite 11000
17 San Francisco, CA 94102
18 FAX: 415-703-1234

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17 Karen E. Samman
18 Atkinson, Andelson, Loya, Ruud & Romo
19 5075 Hopyard Road, Suite 210
20 Pleasanton, CA 94588
21 FAX: 925-227-9202

22 I declare under penalty of perjury under the laws of the State of California that the
23 foregoing is true and correct. Executed on April 19, 2011, at Sacramento, California.

24 
25 TRAVIS ALLEN
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