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8  
9 Attorney Specially Appearing for Claimant XXX

10 **OFFICE OF ADMINISTRATIVE HEARINGS**  
11 **OF THE STATE OF CALIFORNIA**

12 In the Matter of:	CASE #
13 XXX,	MOTION TO ORDER
14 Claimant	REGIONAL CENTER TO
15 vs.	PROVIDE PROPER NOTICE
16 ALTA CALIFORNIA REGIONAL CENTER,	AND TO PROVIDE AID PAID
17 <u>Service</u>	PENDING
18 <u>Agency /</u>	AND
19	OBJECTION TO
20	MOTION TO DISMISS
21	FAIR HEARING REQUEST

22 Jackie Coleman is licensed to practice law in the state of California  
23 and is an employee of  
24 Disability Rights California. Jackie Coleman is making a special appearance  
25 for the sole purpose of representing Claimant in this Motion and Objection to  
26 Motion.

27 **FACTS**  
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1 On August 19, 2009, Alta California Regional Center (ACRC) mailed  
2 three Notices of Action (NOA) to XXX (Claimant). Claimant is a minor and  
3 lives with her mother XXX (Mother). On August 28, 2009, Mother faxed  
4 three Requests for Hearings to ACRC and on August 29, 2009, Mother  
5 mailed three Requests for Hearing to ACRC. One NOA terminated “City of  
6 Sacramento Access Leisure”. The second NOA terminated “Horses for  
7 Healing”. And the third NOA reduced respite.  
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11 Claimant has a diagnosis of autism, mental retardation, incontinence,  
12 trouble with balance and walking, seizures and respiratory problems.  
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14 All three NOAs were written in English. Mother does not read English.  
15 Mother reads and speaks Spanish. Attached are the three Requests for  
16 Hearing which were all written in Spanish by Mother. ACRC communicates  
17 with Mother in Spanish and knows that Spanish is Mother’s preferred  
18 language. In order for Mother to receive adequate notice, she needs to  
19 receive the NOAs in English.  
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22 The NOAs state: “Due to the budget reductions, several changes  
23 were made to the Lanterman Act that now prohibit Alta California Regional  
24 Center from paying for some services including social recreation,  
25 experimental therapies, and non-medical therapies like art, dance and  
26 music.”  
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1           The NOAs fail to mention that an exemption may be granted in  
2 extraordinary circumstances to permit purchase of a service. Since the NOA  
3 fails to explain how and when an exemption may be granted, it is incomplete  
4 and therefore does not provide adequate notice.  
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6           The NOAs terminate the funding for “City of Sacramento Access  
7 Leisure” and “Horses for Healing” effective September 20, 2009. Shortly  
8 before receiving the NOA, Mother was notified by both “City of Sacramento  
9 Access Leisure” and by “Horses for Healing” that ACRC had stopped  
10 funding to these agencies effective immediately and that their services  
11 would no longer be available unless Mother paid for the services. ACRC  
12 constructively terminated these services on \_\_\_\_\_. Per the NOA,  
13 Claimant is entitled to this service during the appeal process. ACRC has  
14 failed to continue to provide the services of “City of Sacramento Access  
15 Leisure” and “Horses for Healing”.  
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21           ACRC states in its Motion to Dismiss that it has reviewed available  
22 information, including Claimant’s Fair Hearing Request, and has determined  
23 that Claimant’s circumstances do not warrant an exemption pursuant to W&I  
24 Code §4648.5(c).  
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26           Other than reviewing Claimant’s Fair Hearing Request, there is no  
27 indication in ACRC’s Motions to Dismiss as to what other records have been  
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1 reviewed. There is also no indication that ACRC has explained the  
2 exemption to Claimant or that ACRC has discussed with Claimant how  
3 Claimant in fact may warrant an exemption or be entitled to these services  
4 under a different classification.  
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7 Because of her disabilities, Claimants has balance problems that are  
8 ameliorated by services through "Horses for Healing". Alta has offered no  
9 other services to ameliorate the physical effects of Claimant's developmental  
10 disability. "City of Sacramento Access Leisure" provides both social skills  
11 training and social recreation services. "City of Sacramento Access Leisure"  
12 has greatly benefitted Claimant by teaching her social skills and assisting  
13 her in developing meaningful relationships with other children.  
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17 **LAW**

18 4705. (a) Every service agency shall, as a condition of continued  
19 receipt of state funds, have an agency fair hearing procedure for  
20 resolving conflicts between the service agency and recipients of, or  
21 applicants for, service.

22 4710. (a) Adequate notice shall be sent to the applicant or  
23 recipient and the authorized representative, if any, by certified  
24 mail at least 30 days prior to any of the following actions:

25 (1) The agency makes a decision without the mutual consent of the  
26 service recipient or authorized representative to reduce, terminate,  
27 or change services set forth in an individual program plan.

28 4710.5. (a) Any applicant for or recipient of services, or  
authorized representative of the applicant or recipient, who is  
dissatisfied with any decision or action of the service agency which  
he or she believes to be illegal, discriminatory, or not in the

1 recipient's or applicant's best interests, shall, upon filing a  
2 request within 30 days after notification of the decision or action  
3 complained of, be afforded an opportunity for a fair hearing. The  
4 opportunity to request a voluntary informal meeting and an  
5 opportunity for mutually agreed upon voluntary mediation shall also  
6 be offered at this time.

7  
8 In this case, there is a question of fact as to whether Claim warrants  
9 an exemption for "Horses for Healing" pursuant to W&I Code §4648.5(c).  
10 There is also a question of fact as to whether "City of Sacramento Access  
11 Leisure" provides social skills training. W&I Code §4648.5(c) does not limit  
12 social skills training.  
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16 The law does not require that Claimant prove that she has a valid  
17 exemption prior to requesting a hearing. While the new law has made  
18 changes to services provided through the Regional Center, the new law has  
19 not changed the right to a hearing through the Office of Administrative  
20 Hearings. Claimant still has the right to obtain and produce documentation  
21 and to present testimony as to why she believes that she warrants an  
22 exemption.  
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26 ACRC's Service Policy Manual for Socialization Training Services  
27 states that:

28 "(ACRC) supports the promotion of social skill development  
when a school-aged individual's developmental disability interferes

1 with appropriate social development. Socialization training services  
2 address the development in social and behavioral domains with the  
3 objective of enhancing age appropriate social functioning, as  
4 appropriate to the individual's potential. These services may be  
5 purchased for individuals through the age of 21."

6 "City of Sacramento Access Leisure" provides both social skills training  
7 and social recreation services. While the new law does limit social  
8 recreation services, it does not limit social skills training. Claimant has the  
9 right to have a hearing and to produce evidence that she is receiving social  
10 skills training through "City of Sacramento Access Leisure".  
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13 It is Claimant's right to have an Administrative Law Judge determine  
14 what service "City of Sacramento Access Leisure" provides and whether  
15 Claimant is entitled to continue receiving it.  
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17 4715. (a) Except as otherwise provided in this section, if a  
18 request for a hearing is postmarked or received by the service agency  
19 no later than 10 days after receipt of the notice of the proposed  
20 action mailed pursuant to subdivision (a) of Section 4710, services  
21 that are being provided pursuant to a recipient's individual program  
22 plan shall be continued during the appeal procedure...

### 22 CONCLUSION

23 Alta does not have the right to be the sole arbiter of whether Claimant  
24 is entitled to an exemption or to the classification of a service. Claimant is  
25 entitled to a hearing. Thus, this matter should not be dismissed.  
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Claimant is entitled to adequate notice. Mother does not read English. The NOA should be found to be inadequate because it was not written in Spanish. The NOA failed to explain how and when an exemption may be granted. The NOA is incomplete and therefore should be found to be inadequate notice. Alta should be ordered to provide adequate notice in Spanish with an explanation of what qualifies as an exemption prior to this case going forward.

ACRC wrongfully stopped funding “City of Sacramento Access Leisure” and “Horses for Healing”. ACRC constructively terminated these services on \_\_\_\_\_. ACRC should be ordered to immediately fund “City of Sacramento Access Leisure” and “Horses for Healing” and to provide compensatory services dating back to \_\_\_\_\_.

Respectfully Submitted,  
Disability Rights California

Dated: \_\_\_\_\_

\_\_\_\_\_  
JACKIE COLEMAN  
Attorney for Claimant XXX

1 It is the mission of Alta California Regional Center to assist persons with  
2 developmental disabilities, including infants at risk and their families by  
3 providing and securing those services and supports necessary to maximize  
4 opportunities and choices.

5 It is our belief that the principal test of the success of the Alta California  
6 Regional Center is the extent to which it enhances the quality of individual  
7 and family life and improves the consumer's and the family's satisfaction  
8 with the services received from or through the Regional Center.

9 **DDS**  
10 The fair hearing process is a process for resolving disagreements between  
11 the regional center or state developmental center and consumers

12 ***What are My Rights at Each Phase of the Fair Hearing Process?***

13 Every applicant, recipient of services, or authorized representative has the  
14 following rights

15 at each phase of the fair hearing process (informal meeting, mediation, fair  
16 hearing) :

17 & You may have a person or agency appointed by the local area board as  
18 your representative

19 to assist you in the fair hearing process;

20 & You may be present at the informal meeting, mediation, and at the fair  
21 hearing with the

22 representative of your choice;

23 & You may give written and oral evidence;

24 & You may confront and cross-examine witnesses;

25 & You may appear with an attorney or any other representatives you  
26 choose;

27 & You may review records the regional center or state developmental center  
28 obtained while

providing services; and

& You may request that an interpreter be provided, if necessary, at no cost  
to you.



1 **California Welfare and Institutions Code**

2 **Division 4.5. Services for the Developmentally Disabled**

3 **Chapter 7. Appeal Procedure**

4 **Article 4. Services Pending Final Administrative Decision**

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6 4715. (a) Except as otherwise provided in this section, if a  
7 request for a hearing is postmarked or received by the service agency  
8 no later than 10 days after receipt of the notice of the proposed  
9 action mailed pursuant to subdivision (a) of Section 4710, services  
10 that are being provided pursuant to a recipient's individual program  
11 plan shall be continued during the appeal procedure up to and  
12 including the 10th day after receipt of any of the following:

11 (1) Receipt by the service agency, following an informal meeting,  
12 of the withdrawal of the fair hearing request pursuant to Section  
13 4710.9.

13 (2) Receipt by the service agency, following mediation, of the  
14 withdrawal of the fair hearing request pursuant to subdivision (a) of  
15 Section 4711.4.

15 (3) Receipt by the recipient of the final decision of the hearing  
16 officer or single stage agency pursuant to subdivisions (a) and (c)  
17 of Section 4712.5.

17 (b) Services continued pursuant to subdivision (a) may be modified  
18 by agreement of the parties in accordance with the decision of the  
19 interdisciplinary team and the individual program plan.

19 (c) Any appeal to a court by either party shall not operate as a  
20 stay of enforcement of the final administrative decision, provided  
21 that either party may seek a stay of enforcement from any court of  
22 competent jurisdiction.

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24 4648.5. (a) Notwithstanding any other provision of law or  
25 regulations to the contrary, effective July 1, 2009, a regional  
26 centers' authority to purchase the following services shall be  
27 suspended pending implementation of the Individual Choice Budget and  
28 certification by the Director of Developmental Services that the  
Individual Choice Budget has been implemented and will result in  
state budget savings sufficient to offset the costs of providing the

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following services:

- (1) Camping services and associated travel expenses.
  - (2) Social recreation activities, except for those activities vendored as community-based day programs.
  - (3) Educational services for children three to 17, inclusive, years of age.
  - (4) Nonmedical therapies, including, but not limited to, specialized recreation, art, dance, and music.
- (b) For regional center consumers receiving services described in subdivision (a) as part of their individual program plan (IPP) or individualized family service plan (IFSP), the prohibition in subdivision (a) shall take effect on August 1, 2009.
- (c) An exemption may be granted on an individual basis in extraordinary circumstances to permit purchase of a service identified in subdivision (a) when the regional center determines that the service is a primary or critical means for ameliorating the physical, cognitive, or psychosocial effects of the consumer's developmental disability, or the service is necessary to enable the consumer to remain in his or her home and no alternative service is available to meet the consumer's needs.