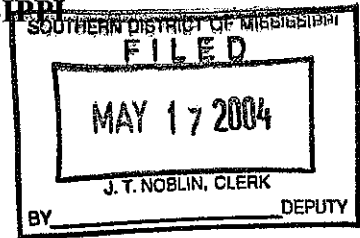


**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**



OLIVIA Y., by and through her next friend, James D. Johnson;
JAMISON J., by and through his next friend, Clara Lewis;
DESIREE, RENEE, TYSON, AND MONIQUE P.,
by and through their next friend, Sylvia Forster;
JOHN A., by and through his next friend, James D. Johnson;
CODY B., by and through his next friend, Sharon Scott;
MARY, TOM, MATTHEW, and DANA W.,
by and through their next friend, Zelatra W., AND
SAM H., by and through his next friend, Yvette Bullock;
on their own behalf and on behalf of all others similarly situated

PLAINTIFFS

V.

CIVIL ACTION NO. 3:04CV251LN

HALEY BARBOUR, as Governor of the State of Mississippi;
DONALD TAYLOR, as Executive Director of the Department
of Human Services; AND BILLY MANGOLD,
as Director of the Division of Family and Children's Services

DEFENDANTS

AMENDED COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

REQUEST FOR CLASS ACTION

INTRODUCTION

1. Every year, the State of Mississippi receives over 10,000 reports that children are being physically abused, starved, sexually abused, neglected, or otherwise maltreated. The State is charged with the responsibility of protecting these children. It is failing in its duty. Through years of mismanagement, underfunding, and deliberate indifference, the State has knowingly allowed its system for protecting children to collapse, leaving Mississippi's most vulnerable children defenseless.

2. This is a civil rights class action lawsuit on behalf of Mississippi's abused and neglected children. It seeks declaratory and injunctive relief to compel the Governor of

Mississippi, the Executive Director of the Department of Human Services ("DHS"), and the Director of the Division of Family and Children's Services ("DFCS") to meet their legal obligations to care for and protect the State's abused and neglected children.

3. For over a decade, Defendants have known of the harm that pervasive and long-standing failures of the child welfare system are causing to children. As early as 1992, the Child Welfare League of America ("CWLA"), the largest national association of public and private child welfare agencies, documented DFCS deficiencies in a scathing 144-page report, including excessive caseloads, inadequate staffing, and a lack of foster and adoptive homes. The CWLA report stated that if reform were not forthcoming, children would continue to live in abusive and neglectful environments, and some would suffer irreparable harm.

4. In 1995, the United States Department of Health and Human Services' Administration for Children and Families ("ACF"), which is responsible for monitoring state compliance with federal child welfare requirements, found that the State had insufficient services to protect children from abuse, that it was failing to provide children with adequate mental health and medical services, and that children were unnecessarily spending their childhoods in foster care. In response, DHS developed a "Strategic Plan" to reform the child welfare system. That reform plan, however, has never been fully or adequately implemented.

5. For years, knowledgeable state officials have warned that Mississippi's child welfare system fails to protect and poses dangers to Mississippi's children. In 2001, Sue Perry, Director of the Division of Family and Children's Services, wrote in a memo to Department of Human Services Executive Director Thelma Brittain that "the crisis needs to be addressed by whomever has the power to rectify the situation – before a tragedy occurs." In 2002, Mike Moore, Mississippi's Attorney General, acknowledged to the press that one of his biggest

concerns was “that some child is going to die and they’re going to die on the State’s watch.” That same year, the statewide Council of Youth Court Judges adopted a resolution stating that the shortage of DHS staff creates such a crisis for children at risk “as to constitute an endangerment to the lives of the children and to the citizens of the State of Mississippi.” In January 2004, Governor Haley Barbour acknowledged to reporters that the Department of Human Services “has collapsed, for lack of management and a lack of leadership”

6. Despite the widely recognized need to address the State’s failing child welfare system, virtually nothing has been done. Years of inaction by State officials, even in the face of dire warnings, have demonstrated that judicial intervention is needed.

7. Mississippi’s child welfare system lacks a minimally adequate number of caseworkers and foster care placements. Abused and neglected children reported to the State are left to suffer in dangerous and potentially deadly homes. The State diverts other children from the foster care system by placing them informally with relatives who are unsuitable or unable, without necessary support from the State, to provide adequate care. The children who are placed in the foster care system are often cycled through unsuitable foster care placements or institutions. Defendants fail to meet these children’s medical and psychological needs, and violate their constitutional and federal statutory rights.

8. Abused and neglected children failed by Mississippi’s child welfare system often develop anger, fear, anxiety, and an inability to trust. Without a safe and permanent home and needed therapeutic services, they can fall behind in school, develop behavioral problems, and are frequently pushed into the juvenile justice system. Many of these children grow into adults who are homeless, drug addicted, or without the skills to hold regular jobs. Their long-term relationship with the criminal justice and public welfare systems will cost taxpayers millions of

dollars more than the expense of having provided constitutionally required child welfare services when they first came to the State's attention.

9. Mismanagement of the State's child welfare system also costs Mississippi millions of dollars in lost federal funding. By failing to meet minimum federal requirements, Mississippi has forfeited federal funds available to the states for child welfare programs. Not only is the State failing to claim federal money, it has been forced to return millions of dollars to the federal government due to lax oversight of its programs.

10. Defendants fail to provide Mississippi's abused and neglected children the services to which they are legally entitled. A court-enforced remedy is necessary to prevent further harm to these children—and to stop the ongoing tragedies that officials have been warned about for years.

JURISDICTION AND VENUE

11. This action is brought pursuant to 42 U.S.C. § 1983 to redress violations of the United States Constitution and federal statutes. This court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3).

12. Venue is proper here pursuant to 28 U.S.C. § 1391(b). The claims arise in this district.

PARTIES

Named Plaintiffs

13. Plaintiff OLIVIA Y. is a three-and-a-half-year-old girl who has been in DFCS custody since September 2003.

14. Olivia Y. appears in this action through her next friend, James D. Johnson, Esquire, 301 West Pine Street; Hattiesburg, Mississippi, 39401.

15. Plaintiff JAMISON J. is a 17-year-old boy who has been in DFCS custody since 1991.

16. Jamison J. appears in this action through his next friend, Clara Lewis, 6562 Lyndon B. Johnson Drive; Jackson, Mississippi, 39213.

17. Plaintiffs DESIREE, RENEE, TYSON, and MONIQUE P. are siblings who have been known to DFCS since August 2003, aged nine, six, five, and three, respectively.

18. Desiree, Renee, Tyson, and Monique P. appear in this action through their next friend, Dr. Sylvia Forster, 787 South Main Street, Suite C; Petal, Mississippi, 39465.

19. Plaintiff JOHN A. is a 14-year-old boy from Forrest County who has been in DFCS custody since he was nine years old.

20. John A. appears in this action through his next friend, James D. Johnson, Esquire, 301 West Pine Street; Hattiesburg, Mississippi, 39401.

21. Plaintiff CODY B., aged two, was removed by DFCS from his parents in 2002, and placed in a Jackson County shelter when he was two months old.

22. Cody B. appears in this action through his next friend, Sharon Scott, 4720 Garner Street; Pascagoula, Mississippi, 39567.

23. Plaintiffs MARY, TOM, MATTHEW, and DANA W., are siblings ages thirteen, ten, seven, and six years old, respectively, who were removed from their home in Hinds County by DFCS in 2000.

24. Mary, Tom, Matthew, and Dana W. appear in this action through their next friend, Zelatra W.¹

¹ The full name and address of the next friend are not included here in order to protect the identity of the Named Plaintiffs.

25. Plaintiff SAM H. is a 14-year-old boy living with his biological mother in Lauderdale County who has been known to DFCS since 1995.

26. Sam H. appears in this action through his next friend, Yvette Bullock, 110 West Fourth Avenue; Petal, Mississippi, 39465.

Defendants

27. Defendant HALEY BARBOUR is the Governor of Mississippi, and is sued in his official capacity. He is responsible for ensuring that all Mississippi agencies comply with applicable federal and state law, and oversees and directs the activities of the Mississippi Department of Human Services, pursuant to Miss. Code Ann. §§ 43-1-2; 43-1-17; 43-15-3. His business address is P.O. Box 139; Jackson, Mississippi, 39205.

28. Defendant DONALD TAYLOR is the Executive Director of the Mississippi Department of Human Services, and is sued in his official capacity. In accordance with Miss. Code Ann. §§ 43-1-2; 43-1-17; 43-1-51; 43-15-3; 43-15-5; 43-21-353(8); 43-21-354; and 43-21-357(1), DHS is responsible for overseeing the proper and efficient operation of the Division of Family and Children's Services, as well as ensuring DHS and DFCS are adequately funded with state and federal funds. His business address is 750 North State Street; Jackson, Mississippi, 39202.

29. Defendant BILLY MANGOLD is Director of the Mississippi Department of Human Services' Division of Family and Children's Services, and is sued in his official capacity. In accordance with Miss. Code Ann. §§ 43-1-51; 43-1-53; 43-15-3; 43-21-353(8), and 43-21-354, he is responsible for: the proper and efficient operation of DFCS, its services and programs; providing for the care of the children served by DFCS; fully investigating all reports of abuse and neglect and properly referring substantiated reports to youth court officials; directing the

placement of children in appropriate state programs and/or facilities, and assuring all contracted and other programs and facilities providing child welfare services operate in conformity with all constitutional, statutory, and regulatory requirements. His business address is 750 North State Street; Jackson, Mississippi, 39202.

CLASS ACTION ALLEGATIONS

30. This action is properly maintained as a class action pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure. It is brought on behalf of two classes of children defined as follows:

- (a) The “in-custody class,” which is comprised of all children who are or will be in the legal and/or physical custody of DFCS; and
- (b) The “protective services class,” which is comprised of all of those children who are not in DFCS custody, but have been or are at risk of being abused and neglected and about whom Defendants have received a report of abuse or neglect.

31. As of August 2003, an estimated 2,981 children were in the physical and legal custody of DFCS. A similar number of children comprise the in-custody class. An estimated 16,223 children were the subjects of abuse or neglect reports to DFCS in 2002, which is the most recent date for which this information is publicly available. A similar number of children comprise the protective services class. The two classes are each sufficiently numerous as to make joinder impracticable.

32. The questions of law and fact raised by the Named Plaintiffs’ claims are common to and typical of those raised by each respective putative class member they seek to represent.

Each child relies on Defendants for child welfare services, and is harmed by the systemic deficiencies of Mississippi's child welfare system.

A. 1. Questions of fact common to the in-custody class include:

- a. whether Defendants fail to provide children in their custody with safe, licensed foster care placements;
- b. whether Defendants fail to provide children in foster care with legally required services necessary to keep them safe and to prevent them from deteriorating physically, psychologically, or otherwise, while in custody; and
- c. whether Defendants fail to provide foster children with timely and appropriate services necessary to ensure that they are either safely reunited with their families or freed for adoption and promptly placed in a permanent home.

2. Questions of law common to the in-custody class include:

- a. whether Defendants' actions and inactions violate class Plaintiffs' rights under the Substantive Due Process Clause of the Fourteenth Amendment to the United States Constitution to be safe from harm while in state custody;
- b. whether Defendants' actions and inactions violate class Plaintiffs' rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by intentionally and arbitrarily denying class members who have been placed in unlicensed facilities with child welfare protections; and
- c. whether Defendants' actions and inactions violate class Plaintiffs' rights under the Adoption Assistance and Child Welfare Act of 1980, as amended by the Adoption and Safe Families Act of 1997, 42 U.S.C. §§ 620-629(i) and 670-679(b) ("the Adoption Assistance Act") to mandated foster care and adoption services.

B. 1. Questions of fact common to the protective services class include:

- a. whether Defendants fail to investigate reports of child abuse and neglect as required by law to determine the safety of children;
- b. whether Defendants fail to refer reports of abuse and neglect and present the findings of investigations to the Youth Court;
- c. whether Defendants place abused and neglected children in unlicensed homes Defendants know or should know pose an imminent risk of harm; and
- d. whether Defendants systematically fail to provide children known to be at risk of abuse and neglect with access to the foster care system.

2. Questions of law common to the protective services class include:

- a. whether Defendants' actions and inactions violate class Plaintiffs' rights under the Procedural Due Process Clause of the Fourteenth Amendment to the United States Constitution not to be deprived of their entitlement to access to Mississippi Youth Courts;
- b. whether Defendants' actions and inactions violate class Plaintiffs' rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by intentionally and arbitrarily denying class members who have been the subject of a report of abuse or neglect investigative and protective services;
- c. whether Defendants' actions and inactions violate class Plaintiffs' rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution by intentionally and arbitrarily denying class members who have been found to be abused and neglected access to the child welfare system; and
- d. whether Defendants' actions and inactions violate class Plaintiffs' rights under the Substantive Due Process Clause of the Fourteenth Amendment to the United States Constitution to be protected from state-created dangers by placing protective services class members in homes Defendants know or should know pose an imminent risk of harm.

33. The Named Plaintiffs will fairly and adequately protect the interests of the classes they represent.

34. Each Named Plaintiff child appears by a next friend, and each next friend is sufficiently familiar with the facts of the child's situation to fairly and adequately represent the child's interests in this litigation.

35. Plaintiffs are represented by attorneys employed by Children's Rights, a national non-profit legal organization with experience in child welfare class actions, Bradley Arant Rose & White LLP, a 200-lawyer national law firm with offices in Jackson, Mississippi; Birmingham, Huntsville, and Montgomery, Alabama; and Washington, D.C., Stephen H. Leech Jr., a Jackson, Mississippi, attorney with extensive experience in complex civil litigation, and assisted by Loeb & Loeb LLP, a 200-lawyer national law firm with offices in Tennessee, California, Illinois, and

New York. The lawyers from the two firms also have extensive experience litigating complex class action lawsuits in federal court. Plaintiffs' attorneys have identified and thoroughly investigated all claims in this action, and have committed sufficient resources to represent these classes.

36. Defendants have acted or failed to act on grounds generally applicable to all Plaintiff class members, necessitating class-wide declaratory and injunctive relief. Plaintiffs' counsel knows of no conflicts among class members.

STATUTORY BACKGROUND

37. In Mississippi, responsibility for assuring the safety of abused and neglected children rests with the Division of Family and Children's Services of the Mississippi Department of Human Services. Miss. Code Ann. §§ 43-1-51; 43-15-5. DFCS has a central office in Jackson, and nine Regional Headquarters that directly oversee 84 county offices.

38. Caseworkers at DFCS local area offices are responsible for investigating all credible reports of abuse and neglect of children. Miss. Code Ann. §§ 43-21-353(1); 43-21-357; 43-1-2(4); Code Miss. R. § 11 111 001 (Investigation of Reports of Suspected Child Abuse/Neglect). DFCS must forward to the Youth Court a report summarizing its findings on each protective services case accepted for investigation. Miss. Code Ann. §§ 43-21-353(1); 43-21-357. The Youth Court is then required to review DFCS findings and make an independent and final determination as to whether the allegation of abuse or neglect should be "evidenced" — *i.e.*, substantiated — and what services, if any, DFCS is required to provide to protect the child. Miss. Code Ann. §§ 43-21-353(5); 43-21-357; 43-21-301(3). A child may not be removed from his or her home and taken into custody for longer than twenty-four hours absent a court order. Miss. Code Ann. §§ 43-21-301(2); 43-21-303(3) and (4).

39. If a child is removed from home, DFCS is obligated to provide the placement, care, and services necessary to ensure that child's safety and well-being. Miss. Code Ann. §§ 43-15-5; 43-15-13(2). According to state law, placement with relatives is encouraged, but the relatives and their homes must first be screened and approved. Miss. Code Ann. § 43-15-13(7). Approved and licensed non-relative foster homes, group homes and residential placements must be available to shelter children without appropriate relatives to care for them. Miss. Code. Ann. §§ 43-15-5; 43-15-101; 43-15-105; 42 U.S.C. § 672 (b) and (c).

40. DFCS must provide all children in its custody with at least monthly face-to-face social worker contact, regular medical and dental care, other medical and mental health services as needed, and a case plan documenting those service needs and the long-term placement goal for the child. Miss. Code Ann. §§ 43-15-5(1); 43-15-13(3); 43-15-203(2); 43-1-2(4); Code Miss. R. § 11 111 001 (Client Contact Requirements; The Case Record; Foster Care Services Medical, Dental, Psychological and Educational Services for Foster Children); 42 U.S.C. §§ 671(a)(16), 675(1). For those children who are unable to be safely reunited with their families, DFCS must timely find an alternative permanent home. Miss. Code Ann. § 43-15-13(3); 42 U.S.C. §§ 622(b)(10)(B)(ii) and (iii), 675(5). By the time a child is in DFCS custody for fifteen of the previous twenty-two months, DFCS is required to file a termination of parental rights petition on behalf of that child to free the child for adoption, unless a statutory exception is documented. Miss. Code Ann. § 43-15-13(3); 42 U.S.C. §§ 622 (b)(10)(B)(ii), 675(5)(E).

41. Regular administrative and judicial reviews must also be provided to each child in foster care. Miss. Code Ann. § 43-15-13(3) and (5); 42 U.S.C. §§ 622 (b)(10)(B)(ii), 671 (a)(16), 675 (5)(B) and (C). These reviews must assure that DFCS is providing the services required to assure a timely, safe and permanent home for the child. *Id.*

42. States that meet federally-established child welfare standards are eligible for federal child welfare funding under Titles IV-B and IV-E of the Social Security Act. 42 U.S.C. §§ 622 *et seq.*; 671 *et seq.* In order to qualify for federal child welfare funds, Mississippi has filed a mandated State Plan describing how the State will assure compliance with federal child welfare requirements under these titles.

FACTUAL ALLEGATIONS REGARDING NAMED PLAINTIFFS

A. OLIVIA Y.

43. Olivia Y. is a three-and-a-half-year-old girl who entered DFCS custody in September 2003 weighing only 22 pounds, which is the normal weight of a child less than half her age. She had been severely neglected and malnourished by her mother in her Forrest County home. Despite clear, visible indications of serious malnourishment, Defendants listed in their records “N/A” for any “physical/ medical/ developmental/ psychological problems” for this child, and did not immediately provide Olivia with a medical exam, nor did they have her assessed for obvious developmental problems. Instead, this frail and sickly girl was initially recorded in DFCS records as “quiet,” “cute,” and “petite.” DFCS listed reunification as Olivia’s permanency goal, and listed the expected discharge date as 45 days.

44. Within the first three months of her entry into DFCS custody, DFCS repeatedly uprooted Olivia, moving her through five separate placements. Olivia spent her first week in foster care with a foster family. DFCS then moved her into her aunt’s home, after stating that a background check for the adults in the home had been completed. However, Olivia was moved from that placement after one week when DFCS actually learned from the background check that the aunt’s son, who DFCS knew was living in the home, is a convicted rapist. Olivia then spent

one night in another foster home, after which this medically fragile toddler was placed, not in a therapeutic foster home, but in a shelter over a hundred miles away.

45. The shelter found that Olivia, who had been in DFCS care for several weeks, suffered from extremely small stature, low weight, abnormal facial features, severe cradle cap, strong body odor, and extremely foul smelling bowel movements.

46. A medical exam conducted in December 2003 revealed that Olivia was malnourished and depressed. She also had vaginal redness and swelling, an indicator of sexual abuse. However, the doctor performing the examination was not given a history of sexual abuse, so he did not perform a detailed vaginal examination. Despite the fact that Olivia lived in the home of a convicted rapist and it was later revealed to DFCS that she had often spent weekends in that home, and although Olivia "reacted in terror" in September 2003 when the doctor at the shelter tried to perform a more thorough examination for sexual abuse, DFCS has still made no effort to determine if Olivia has, in fact, been sexually abused or is carrying sexually transmitted diseases.

47. Because DFCS failed to immediately recognize that Olivia was suffering from severe malnourishment, and failed to provide her with a medical examination upon entering care, Olivia's health worsened once in DFCS custody. In her first week in DFCS custody, this three-year-old actually lost weight, bringing her to a low of only 20 pounds.

48. Olivia is currently living in a foster home, her fifth placement since entering care. Olivia has a permanency goal of reunification with the mother who so severely neglected her, even though her mother repeatedly has been noncompliant with her service agreement and has had positive drug screens. Olivia has never gone through a full assessment to determine the extent of her developmental delays, nor is she receiving any services to address those delays.

49. As a direct result of Defendants' actions and inactions, Olivia has been, and continues to be, irreparably harmed. She appears to have developmental delays that are not being addressed, and Defendants have failed to provide her with needed medical and therapeutic services. The repeated movements from one home to another have been emotionally traumatic for this medically fragile toddler. Although she has been in DFCS custody for more than half a year, Defendants have taken no steps to help Olivia achieve stable and safe permanency. Defendants have not even assessed the extent of her injuries.

50. Defendants have violated Olivia's constitutional and statutory rights by failing to protect her from harm; by failing to provide appropriate and necessary medical and therapeutic services; and by failing to develop and implement an appropriate permanency plan that would allow her to leave foster care and secure a safe and permanent home, all of which are required by law and by reasonable professional judgment.

B. JAMISON J.

51. Jamison J. is a 17-year-old boy who has been in DFCS custody for more than twelve years and has been shuffled through at least 28 placements, many of which were provided foster board payments that were inadequate to meet his needs. Jamison has lived in loving foster homes willing to care for him and adopt him, but DFCS never took the necessary steps to make these living situations permanent.

52. In 1991, when he was four years old, Jamison and his sisters were removed by DFCS from their mother's home in Cleveland, Mississippi, after she physically abused and severely neglected the children. Jamison's father was incarcerated out of state. DFCS separated Jamison from his sisters, and placed him in a foster home where his foster mother would

terrorize him by shoving the young boy in front of her two dogs, and letting the dogs snarl and growl in Jamison's face.

53. Jamison was removed from the abusive foster home, and next spent more than two years in a loving foster home in Cleveland, Mississippi, where he bonded with a foster mother who to this day has remained in touch with Jamison. When the then-7-year-old Jamison began acting out, though, DFCS did not provide any services to him or his foster mother, and instead placed him in a residential treatment center on psychotropic medication, even though he did not suffer from any acute mental health problems.

54. DFCS next moved Jamison from the institution into another foster home, this time in Jackson. He spent the next five years with this family, and his foster parents told DFCS that they wanted to adopt Jamison. However, instead of freeing Jamison for adoption, DFCS then attempted to reunify Jamison with his biological mother, even though at this point in time he had been in foster care for more than seven years. DFCS sent Jamison back to the Delta region to spend a summer with his mother on a trial basis. While there, he witnessed the on-going severe abuse of a two-year-old child by another adult living in the home. Jamison witnessed this little boy being thrown into walls and beaten with an iron belt, inscribed "Boss." Jamison's older sister, who also had been returned on a trial basis, reported the abuse of the toddler, pointing out the little boy's swollen lip to a visiting DFCS worker, but DFCS did nothing to help the toddler. Jamison and his sister also witnessed their mother being repeatedly beaten by her boyfriends. This deeply traumatized Jamison, as he wanted to protect his mother from abuse but was too young to effectively intervene.

55. At the end of the summer, DFCS declared the trial reunification with his mother a success, and gave Jamison two days to return to Jackson to collect his belongings and say

goodbye to the foster parents and friends where he had spent the previous five years. During Jamison's brief trip to Jackson, the two-year-old was beaten to death for wetting his bed in the very home to which DFCS sought to return Jamison and his sister. Only after the avoidable death of this helpless toddler who was known to DFCS, did DFCS decide that Jamison's pending reunification with his mother was inappropriate.

56. Although Jamison was troubled by witnessing the abuse of the toddler, and angry that he was unable to protect his mother from domestic violence, DFCS again failed to provide him with appropriate mental health services, despite the repeated requests of his foster mother. Instead, Jamison was removed from his foster home and placed in a short-term residential treatment center for seven months, where he was again unnecessarily medicated. From the institution, DFCS placed Jamison in a shelter, then into another foster home, then back at the shelter and ultimately sent him to Memphis to live in a psychiatric hospital. DFCS did not even tell Jamison he was going to the Memphis hospital until he was in the DFCS office; he had previously been told he was going to an independent living group home. Doctors and counselors at the psychiatric hospital told Jamison he did not require hospitalization, but that there was no other placement available for him. Jamison unnecessarily spent six months in this overly-restrictive institution. While Jamison was in this out-of-state placement, DFCS finally initiated proceedings to terminate his parents' parental rights. Jamison's mother, however, died of a drug overdose soon after her rights were terminated, and while Jamison was still living in the Memphis hospital.

57. At age 14, Jamison was then returned to the Jackson foster home at which he earlier had spent five years. After two years in this home, and again, with no attempts by DFCS to make this home permanent, his foster mother asked that he be removed, due to his adolescent

behaviors. From March 2003 to January 2004, Jamison was cycled through three shelter placements, four foster homes, and a group home.

58. In January 2004, DFCS abruptly sent Jamison to Kansas to live with his father, even though his father's parental rights had already been terminated and Jamison had not seen his father in 15 years because, as DFCS knew, his father had been incarcerated for most of that time. Jamison protested being sent to Kansas to live with someone who was a stranger to him, but was told by a DFCS worker that it was important to "know your daddy." Before Jamison was sent to his father in Kansas, DFCS failed to do a home study on the home, or prepare an interstate compact with the child welfare agency in Kansas, both of which are required by federal law before placing foster children out of state.

59. When DFCS finally alerted their counterparts in Kansas that Jamison had been placed in his father's home, and a home study was undertaken by the Kansas child welfare officials, the Kansas officials refused to certify the home. Jamison's father failed the home study because he had been incarcerated 37 times and could not maintain consistent housing. He had also threatened to physically hurt Jamison.

60. DFCS then ordered Jamison to return to Mississippi immediately. Although Jamison had only been in Kansas for two months, and the reunification with his biological father was bumpy, he had quickly found a welcoming community at his Kansas high school. According to his counselor, he had quickly made friends at his new school, was liked by his teachers, was making good grades, was trying out for the baseball and football teams, and had been cast as the lead role in the school play. After having been ripped from a community and school where he had been building a new life, Jamison was further traumatized when he arrived at the Jackson airport and no one was there to meet him, because DFCS forgot to pick him up.

61. Upon Jamison's return to Mississippi, he was placed in a group home on the campus of the infamous Oakley training school, currently the subject of a lawsuit brought by the U.S. Department of Justice against the State (*See United States v. State of Mississippi, et al.*, Civ. Act. 3:03-1354BN, (Filed December 18, 2003)). The other youths at the Oakley group home destroyed Jamison's clothes in a prank. Jamison has had to start working so that he can replace his clothes and buy basic toiletries.

62. Jamison, who is a very bright and motivated student, has not been allowed to attend regular public high school, but instead has been shunted to G.E.D. classes. Jamison desperately wants to go to a public high school so that he may receive his high school diploma, since he plans to apply to four-year colleges out of state. DFCS workers have told him that he cannot go to a four-year college, and that his options are community college or Job Corps. Due to living in the institution and being prohibited from attending class at a regular high school, Jamison has failed his junior year of high school because he has more than 21 absences. DFCS workers have told him that this school failure is more reason for him to attend only G.E.D. classes. Jamison's former foster mother in Cleveland, who has tried to stay in touch with him for ten years, has asked DFCS if she can take care of Jamison again, and Jamison asked his DFCS caseworker to place him with her so that he can attend a regular high school, but DFCS currently is refusing to remove him from the overly-restrictive institution and the G.E.D. program.

63. Jamison needs mental health services to help him address the continuing trauma he has suffered in the more than twelve years he has lived in DFCS custody. Yet DFCS is not providing him with any sort of counseling services or therapy to help him.

64. As a result of Defendants' actions and inactions, Jamison has been, and continues to be, irreparably harmed. His childhood has been spent in DFCS custody, yet for most of that

time Defendants took no steps to help him achieve reasonable permanency. In fact, when his foster parents wanted to adopt him, after he had been in custody more than seven years, Defendants affirmatively chose to attempt to reunify him with an inappropriate and abusive biological mother. As a result, Defendants have churned Jamison through innumerable overly-restrictive and inappropriate institutions, temporary shelters, and inappropriate foster homes. DFCS failed to provide Jamison any stability throughout his early adolescent years, causing him psychological harm.

65. Defendants have violated, and continue to violate, Jamison's constitutional and statutory rights by failing to protect him from harm in foster care; by failing to provide appropriate medical and mental health services necessary to keep him safe and to prevent him from deteriorating psychologically while in custody; by failing to place him in the least restrictive environment, instead of institutions that cause him developmental and psychological harm; by failing to develop and implement in a timely manner an appropriate permanency plan that would allow him to secure a permanent home; all of which are required by law and reasonable professional judgment.

C. DESIREE, RENEE, TYSON, and MONIQUE P.

66. Plaintiffs Desiree, Renee, Tyson, and Monique P. are a sibling group of three girls and one boy, ages nine, six, five, and three, respectively, who live with their mother and three older siblings in Forrest County, Mississippi. The children do not have stable housing, and DFCS has acknowledged that these children are in need of DFCS services to keep them safe. DFCS has failed to provide these children with access to the Youth Court, and has deliberately diverted them from the foster care system and its services.

67. In August 2003, a DFCS caseworker responded to a report that Desiree, Renee, Tyson, and Monique were homeless and being neglected by their mother, who was leaving them alone for long periods of time and failing to feed and care for them. The caseworker made a visit to where the children were temporarily staying, and, upon information and belief, determined that the children could not safely remain in the care of their mother.

68. DFCS did not, however, refer the case to the Forrest County Youth Court, as required by state law. Had such a referral been made, the Plaintiff children would have had the opportunity to have a judicial determination as to whether they could remain safely with their mother and, if not, to have a Youth Court Judge order that they be provided services necessary to ensure their protection. Instead, DFCS called Mrs. D., the children's great-grandmother, and asked her if she would take in these four great-grandchildren. At the time Mrs. D. was already caring for six other children—three older great-grandchildren, and three of Mrs. D.'s grandchildren.

69. The caseworker told Mrs. D. that if she refused to take in these four additional great-grandchildren, the children would be sent to strangers in foster care, and she would most likely never see them again. Afraid she would lose contact with Plaintiff children, Mrs. D. agreed to take all four, despite the fact that she is over 70 years old, retired, and was already caring for six other children. The same day DFCS contacted Mrs. D. about her great-grandchildren, a DFCS employee conducted a brief inspection of Mrs. D.'s home.

70. Despite having determined that the four Plaintiff children were not safe in their mother's care, and having inspected Mrs. D.'s home in preparation for the children being moved there, DFCS did not, in fact, take any immediate steps to place Plaintiff children with Mrs. D. Instead, they left these vulnerable children in the care of their mother, and instructed her to drop

them off at Mrs. D.'s home, which she did not do for a full week. After the initial visit to Mrs. D.'s home by DFCS in August 2003, no DCFS caseworker or other employee ever returned to the home to ensure the children's safety, or to evaluate the continued appropriateness of the placement.

71. Although Mrs. D. is retired and on a fixed income, DFCS never told her that she was eligible to apply to become a foster parent, and thus eligible to receive foster care board payments to help defray the costs of caring for these additional four children. In fact, in November 2003, when Mrs. D. called the same DFCS caseworker who had inspected her home, to tell the worker that she did not have enough food or money to care for the four additional children that had been placed with her, the caseworker told Mrs. D. that there was no possibility of providing her with any financial assistance. According to the DFCS caseworker, Mrs. D.'s only options were to continue to care for them with no support from DFCS or to have the children placed in a stranger's foster home.

72. On February 12, 2004, Mrs. D. suffered a stroke which left her temporarily unable to speak or to walk, and clearly unable to continue to care for ten children. Although DFCS had initially arranged for the informal placement of Desiree, Renee, Tyson, and Monique with Mrs. D., it has done nothing to assure their safety now that Mrs. D. is no longer available to care for them. The children's 27-year-old mother, who previously had been told by DFCS that she was unable to care for her children, temporarily moved into Mrs. D.'s home, and assumed responsibility for her seven children. When Mrs. D. was released from the hospital in early March 2004, the children's mother left the house with the seven children, but has no secure housing for the children, and Mrs. D. has been unable to see the children, nor does she know their whereabouts. DFCS has been made aware of the fact that the children are again residing

with their mother and have no stable housing, but the agency has refused to take any action to protect the children or assure that their mother is fit to care for them.

73. By failing to bring this case before the Forrest County Youth Court, DFCS has denied these children the opportunity to have any judicial determination regarding appropriate placement or permanency plan. Instead, DFCS placed them informally with a relative who became too ill and infirm to care for these children. Predictably, the children returned to the care of their neglectful mother, without any official determination that she is now a capable caregiver.

74. As a result of the Defendants' actions and inactions, Desiree, Renee, Tyson, and Monique P. have been, and continue to be, irreparably harmed. Defendants have violated Desiree, Renee, Tyson, and Monique's constitutional rights by intentionally and arbitrarily failing to protect them from severe neglect after investigating and deeming their mother incapable of caring for them; by intentionally and arbitrarily denying them access to the foster care system; and by denying them access to the Youth Court without due process in violation of their constitutional rights.

D. JOHN A.

75. John A. is a 14-year-old boy from Forrest County who has been in DFCS custody since he was nine years old. Although John is mentally ill, DFCS has failed to provide him with consistent, necessary, and individualized mental health services in a placement appropriate to his needs. Instead, DFCS has moved John more than 35 times in the past four years, and has sent him out of state several times.

76. When John and his four siblings first entered DFCS custody in 1999, John was placed in a psychiatric hospital where he was diagnosed with bipolar disorder. After John was discharged from the hospital, he was placed in a shelter, despite his clear need for a therapeutic

placement. Within two weeks of his placement in the shelter, John's mental health had deteriorated so severely that he again required psychiatric hospitalization.

77. At the age of ten, after being discharged from this second stay at a psychiatric hospital, DHS began repeatedly moving John among foster homes and psychiatric wards. Last year, John was cycled in and out of foster homes six times in the span of less than three months. He has been institutionalized 13 separate times, and was sent at least twice out of state to a residential treatment center in Memphis, because no available placements could be located for him in Mississippi. He also has been shipped up and down the length of Mississippi – from Pascagoula and Moss Point on the coast, to Magee and Jackson in central Mississippi, and as far north as the Memphis area, and then back to his native Hattiesburg.

78. John has been freed for adoption, but Defendants have failed to take reasonable steps to accomplish the goal of providing John with a permanent home. In early 2004, DFCS could not identify any placement options for John. He therefore sat in the DFCS office day after day, not in school, hoping that someone would agree to care for him. In the evenings, John was sent to temporary emergency foster homes to sleep, only to be returned to the DFCS office the next morning.

79. Since entering foster care, John has not been able to attend any single school regularly, and there have been periods of time when DFCS has failed to send him to school at all. In February 2004, DFCS attempted to enroll him in a new school, but John was denied admission because DFCS had not provided the school with the necessary paperwork. During the days in which John waited in the DFCS office for an available bed, DFCS did not send him to school. By subjecting John to so many placements, Defendants have deprived him of a nurturing and stable home, of necessary, consistent mental health services, and of any educational continuity.

80. As a result of Defendants' actions and inactions, John has been and continues to be irreparably harmed. John has serious psychological and behavioral problems that have been exacerbated by the numerous times DFCS has moved him to different foster homes and institutions, the failure to provide appropriate mental health services of any continuity, and the failure to provide him with a permanent family.

81. The lack of continuity of care in the treatment of John's mental illness also has aggravated his psychological and behavioral problems. DFCS has moved him to numerous institutions across the state, and even out of state. Professionally accepted psychiatric practice dictates that mental health patients, most critically and especially children, have continuity in their psychiatrists and therapists. Having multiple therapists and having to restart treatment numerous times creates abandonment and trust problems for children with mental illness, and compounds the abandonment issues that a foster child such as John has. Similarly, starting and stopping different psychiatric medications can lead to a patient never becoming adjusted to the medicine's side effects. Furthermore, left untreated, bipolar disorder will worsen with more severe cycles of mania and depression.

82. Defendants have violated John's constitutional and statutory rights by failing to protect him from harm; by failing to provide him with appropriate, least-restrictive placements; by failing to provide him with mental health services necessary to prevent him from deteriorating psychologically while in state custody; and by failing to provide necessary and appropriate permanency and adoption services, all of which are required by law and reasonable professional judgment.

E. CODY B.

83. Cody B., who was born on May 3, 2002, was removed by DFCS from his parents and placed in a Jackson County shelter when he was two months old. From the shelter, DFCS moved Cody to the foster home of Ms. B. Although Cody suffers from severe asthma, Ms. B. was not provided any of the baby's medical history. In fact, Cody arrived at the foster home without a single possession.

84. Cody had no visits with his biological parents for his first six months in the foster home. His biological parents have six additional children, but only have custody of one. In December 2002, DFCS instituted a schedule of supervised visits between Cody and his parents, but the visits were erratic because DFCS frequently failed to transport Cody to the visits as scheduled.

85. When Cody returned from visits with his biological parents, he often had difficulty breathing because the parents exposed him to cigarette smoke, which exacerbated his asthma. On at least one occasion Cody had to be brought to the hospital after a visit with his parents because his breathing was so labored.

86. During January 2004, Cody's caseworker was on leave, and no other caseworker was assigned her caseload. On February 11, 2004, a DFCS worker picked Cody up from his childcare provider's home to visit his parents. He was to be returned to the childcare provider by four o'clock in the afternoon. However, the DFCS caseworker called the provider and advised her that Cody would be returned directly to Ms. B.'s home. The foster mother was never advised of this change in arrangement. When Ms. B. called DFCS after not finding Cody at his childcare provider's home, the caseworker stated that she had attempted to return Cody to Ms. B. but when

no one was at her home, the worker tried to leave Cody with a neighbor. When no neighbor was available to take Cody, the caseworker allowed Cody's biological parents to keep him overnight.

87. Cody was returned to the childcare provider from the overnight stay with his parents late in the afternoon the next day, with a hospital admission bracelet, and his breathing was very labored. The caseworker did not disclose why Cody had been in the hospital during his unsupervised stay with his biological parents, nor did she acknowledge that Cody was suffering from breathing problems upon his return. When Ms. B. picked Cody up from the childcare provider's home, she immediately took Cody home and had to administer breathing treatments.

88. Later that evening, when the DFCS caseworker dropped off medication that had been prescribed to Cody, she refused to provide the foster mother any further explanation as to the circumstances surrounding Cody's trip to the emergency room, other than to say that he had been suffering respiratory problems.

89. Throughout February 2004, DFCS continued to only erratically provide services to Cody, including supervised parental visits. DFCS either failed to pick Cody up for visits, or would return him much later than was scheduled. When Cody was assigned an early intervention specialist to address potential developmental delays, the specialist asked to speak with the foster mother because she needed information about Cody's development from his primary caregiver. DFCS, however, refused to provide the specialist with the foster mother's contact information.

90. The foster mother became increasingly distressed by the seeming total unwillingness of DFCS to provide the care and services Cody needed. She raised her concerns with DFCS on several occasions, to no avail.

91. In frustration, the foster mother called DFCS and stated that, under the circumstances, she could no longer care for Cody. Rather than take steps to support and stabilize the foster care placement, DFCS immediately wrenched Cody from the only mother he has ever known, and put this nineteen-month-old baby into a shelter.

92. After Cody was removed Ms. B. wrote to the Governor, her United States Senator, the local DHS Regional Director and the Youth Court Judge, explaining that she deeply loved Cody, and wanted nothing more than to adopt him, but she felt she could no longer work with an agency that seemed to have no regard for Cody's well-being. She pleaded for someone to pay attention to Cody and help him achieve permanency. Immediately thereafter, DFCS revoked the foster mother's foster care license on the ground that, in advocating for Cody, she had violated confidentiality requirements.

93. When DFCS moved Cody from the shelter to a foster home, no one informed the new foster parents about Cody's respiratory problems. As a result, soon after being placed in the foster home, Cody required hospitalization. After he was released from the hospital, Cody was placed again in a shelter, where he remained for close to a month. He was next placed in yet another foster home.

94. Although Cody has been in DFCS custody close to two years, Defendants have failed to take any steps to provide him with permanency. He has not been returned to his parents on the grounds that they are unable to address his asthma, yet no steps have been taken to place this toddler with a family who is interested in adopting him.

95. As a result of Defendants' actions and inactions, Cody has been and continues to be irreparably harmed. Defendants have jeopardized his health by failing to adequately address his medical needs and by repeatedly exposing him to environments that exacerbated his asthma.

The movement from a stable and loving foster home into and out of a shelter twice and into two new foster homes has been emotionally traumatic for this toddler, and life-threatening. Defendants have not taken steps to help Cody achieve a stable and safe permanent home.

96. Defendants have violated Cody's constitutional and statutory rights by failing to protect him from harm; by failing to provide appropriate and necessary medical services; and by failing to develop and implement an appropriate permanency plan that would allow him to leave foster care and secure a safe and permanent home, all of which are required by law and reasonable professional judgment.

F. MARY, TOM, MATTHEW and DANA W.

97. Mary, Tom, Matthew, and Dana W., thirteen, ten, seven, and six years old, respectively, were removed from their home and placed in a Hinds County shelter in 2000, because their mother, a drug abuser, had neglected them, and their father was incarcerated. The children remained in the shelter for six weeks, during which time DFCS failed to send them to school.

98. While the children were residing in the shelter, their aunt and uncle, Mr. and Mrs. W., approached DFCS and offered to care for the siblings. The W.'s, who are of limited means, and, at that time, had two children of their own and were expecting a third, requested assistance from DFCS in caring for their nieces and nephews. DFCS denied the request for assistance.

99. The W.'s nonetheless assumed custody of the children, and applied to become their foster parents. After they were licensed as foster parents, the couple again sought to receive foster board rates for the children that DFCS had placed with them. Once again they were denied payments. The W.'s sought assistance from the Youth Court. After a hearing, the court ordered that DFCS assume its legal responsibility to Mary, Tom, Matthew, and Dana and pay the

couple foster board payments, including retroactive payments from the time the W.'s had been licensed as foster parents.

100. Because the children previously had been neglected and malnourished, and because Mary and Dana had been sexually abused, the children suffer from multiple behavioral and mental health problems. However, counseling was provided to them by DFCS only sporadically. Tom, then eight years old, was hospitalized for a week in the spring of 2002, when he reported that he wanted to kill himself. In February 2003, Mary, then 11 years old, also threatened suicide, and was admitted to a psychiatric hospital where she remained for a month. Both Mary and Tom were prescribed psychiatric medication upon discharge.

101. When Matthew entered DFCS custody at age four, he was still in diapers and drinking from a bottle. Matthew made enormous progress developmentally once placed with the W.'s, but continued to suffer mental health problems. His school counselor described him as being out of control, and, as a first grader, he was called into the principal's office for misbehaving no fewer than nineteen times in the span of three months. In February 2003, Matthew was also admitted briefly to a psychiatric hospital where he was prescribed psychiatric medication. When he continued to exhibit severe emotional problems after his release, his pediatrician recommended that Matthew's mental health be re-assessed. Following that re-assessment, Matthew was again hospitalized.

102. On March 7, 2003, three days after Matthew was re-admitted to the hospital, DFCS received a report alleging that Mrs. W. was inducing or exaggerating psychological problems in the children as a means of obtaining higher foster board payments. Before any steps were taken to verify the allegation, DFCS removed all four children from Mr. and Mrs. W.'s care. The DFCS worker investigating the report quickly determined that the allegation was

unfounded, based upon the children's extensive psychological and school records. On April 1, 2003, the W.'s received written confirmation from DFCS that the allegations were, in fact, unfounded. Nonetheless, DFCS has refused to return the children to their aunt and uncle, with whom they had been living for two years.

103. As a result of the children being removed from their aunt and uncle's home, Mary, Tom, Matthew, and Dana have been separated for the first time in their lives and their medical needs are not being adequately addressed. In May 2003, Dana suffered from a skin rash, began to lose clumps of hair and had ringworm on her face and back. Mary has reported that since being removed from her aunt's home, she has not been receiving her psychiatric medication.

104. Mary, Tom, Matthew, and Dana have been freed for adoption. They are living with three separate foster families, none of which are interested in adopting the children. Upon information and belief, DFCS is making no efforts to seek and secure an adoptive home for the children other than feature them on "Wednesday's Child," a television program that profiles children awaiting adoption. At the same time, the W.'s have made it clear that they are willing and eager to adopt the children. Rather than place the siblings back in a home with relatives who know and love them and who will keep them all together, DFCS has revoked the W.'s foster home license on the ground that their license contained a waiver that only allowed for the placement of relative children, and there were no longer any relative children to be placed in the home.

105. As a result of Defendants' actions and inactions, Mary, Tom, Matthew, and Dana have been and continue to be irreparably harmed. These siblings' special needs are not being met, causing them emotional harm. They do not know whether they will ever have a permanent

family. As a result, they live in a state of constant anxiety and are being deprived, entirely without necessity, of the opportunity for healthy development and a normal childhood.

106. Defendants have violated and continue to violate Mary, Tom, Matthew, and Dana's constitutional and statutory rights by failing to protect them from harm; by failing to provide for their mental health needs; by failing to place the children with an available relative; and by failing to provide planning and services necessary to achieve permanence at the earliest possible time, all of which are required by law and reasonable professional judgment.

G. SAM H.

107. Sam H. is a 14-year-old boy living with his biological mother in Lauderdale County. DFCS first began to receive reports that Sam and his older sister Sarah were being neglected sometime in late 1995 or early 1996 when the children were residing in Forrest County. It was reported that the young children were living in a trailer with no food, plumbing, or running water, and that they slept on mattresses on a floor littered by the feces of the more than twenty dogs that the family kept on the property. DFCS took no steps to protect the children at that time.

108. Over the next four years, additional reports were made concerning the children, including that they were being sexually abused, and that they were not being sent to school, but DFCS again took no steps to protect Sam or Sarah.

109. In 2001, Sarah, who was then 14 years old, was sexually abused and became pregnant by a 20-year-old friend of her mother's who was also living with the family. Upon learning of the pregnancy, the mother moved with Sam to Jackson County, abandoning her pregnant daughter in the care of the man who impregnated her. The mother left Sarah without food, money, or access to medical care. When her aunt brought Sarah to the attention of the

Youth Court, Sarah was 22 weeks pregnant, and had not eaten in three days. She was malnourished, had never been to a doctor to receive prenatal care, was infested with lice, and infected with chlamydia.

110. In March 2002, the Madison County Youth Court deemed Sarah to be a neglected child and ordered that she be placed in the custody of her aunt. The Youth Court Judge also directed that DFCS undertake an investigation to determine if Sam, who continued to reside with his mother, was also neglected and whether he was attending school. Upon information and belief, DFCS did not undertake that investigation at the time it was ordered, thereby denying Sam the opportunity to have a judicial determination regarding his safety in the continued care of his mother.

111. Since the mother was found to have neglected Sarah in 2002, there have been at least five additional reports made to DFCS regarding the mother's neglect of Sam. After Sarah was placed with her aunt, she disclosed that she had been physically abused by her mother and sexually molested by another of her mother's friends. The sexual abuse was reported to both DFCS and the police department. That friend currently lives with Sam and his mother.

112. DFCS finally undertook an investigation into Sam's welfare in April 2004. Sam is currently functionally illiterate and his mother refuses to send him to school. Sam not only lives with his mother, who has been criminally charged with abandonment and neglect of Sarah, but also the mother's friend who is currently under investigation for sexually molesting Sarah. Sam's grandmother, his maternal uncle who is a substance abuser, and another of his mother's friends also reside in the home. Upon information and belief, DFCS nonetheless recently determined that Sam is not in need of any protection or services.

113. As a result of Defendants' actions and inactions, Sam has been and continues to be irreparably harmed. Defendants have violated Sam's constitutional rights by intentionally and arbitrarily failing to protect him from abuse and neglect; by intentionally and arbitrarily denying him access to the foster care system and services; and by denying him access to the Youth Court without due process.

FACTUAL ALLEGATIONS REGARDING SYSTEMIC DEFICIENCIES

A. DEFENDANTS UNLAWFULLY DENY ABUSED AND NEGLECTED CHILDREN ACCESS TO THE CHILD WELFARE SYSTEM

114. Mississippi's child welfare system cannot and has systematically failed to meet its legal obligations to protect and care for all of the State's abused and neglected children. The systemic inadequacies of the agency have caused DFCS to take the unlawful action of intentionally and arbitrarily limiting the number of children it serves. DFCS diverts children from the child welfare system by failing to investigate reported abuse and neglect, by failing to substantiate clear cases of abuse and neglect, and by refusing to open cases and provide services even when it has determined that children are being abused or neglected. DFCS also engages in intentional, widespread, and inappropriate diversion of children from the foster care system by informally placing children with relatives who either cannot care for them, or who need support and services from the State in order to do so, but are not provided with such support.

115. The unlawful practice of diverting children from the foster care system has caused the foster care population to plummet. According to the Self-Assessment completed by the State in December 2003 in preparation for a federal Child and Family Services Review, Mississippi's foster care population has fallen from 3,292 on the last day of fiscal year 2000 to 2,686 on the last day of fiscal year 2002, a decrease of 18.4%. In fiscal year 2002, 1,575 children entered DFCS custody, more than 20% fewer children than entered custody in 2000.

116. DFCS admits in the Self-Assessment that the shrinking foster care population does not directly correspond to a drop in the number of children in need of protection. It acknowledges that fewer children were entering foster care, at least in part, because of “the [un]availability of workers to provide a full assessment” of a child’s safety and in some parts of the state “a strong reluctance to bring any child into custody unless it is extremely necessary.”

117. The practice of intentionally and arbitrarily denying abused and neglected children access to a functioning child welfare system subjects them to foreseeable injury and imminent risk of harm.

1. Defendants Fail to Investigate All Credible Reports of Abuse and Neglect or to Refer All Reports to the Youth Court

118. The safety of Mississippi’s children is at risk because Defendants do not operate a system capable of investigating all credible reports that a child is abused or neglected. Rather than hire a sufficient number of caseworkers, DFCS generally resorts to prioritizing abuse and neglect referrals, only investigating reports of harm where a child has sustained a serious, visible, physical injury. DFCS has ignored reports that a child has no food or is without any supervision.

119. In 2001, DFCS Director Sue Perry reported in a memo to DHS Executive Director Thelma Brittain that due to staffing shortages, more than 6,200 cases were being left unattended and that “children will most assuredly die.” Later that year, Perry reported to Brittain on “child deaths which could have been prevented had staff resources been provided.”

120. A February 2001 memo to Thelma Brittain from the Deputy Director of the DHS Division of Program Integrity warned that no contact was being made on over 600 Hinds County abuse and neglect cases — some “severe” — requiring visitation, including court-ordered supervision. According to public media reports, testimony given during a 2002 state legislative hearing indicated that in Harrison County, only 261 of the 576 reports of abuse and neglect that

the county accepted over a three-month period were even investigated. A judge in Harrison County stated that “[w]e cannot continue to choose which children are going to be protected.” The severe staffing shortages that result in reports of child maltreatment going uninvestigated persist in Harrison County, as well as in other counties across the state.

121. According to the 2003 Self-Assessment, low staffing numbers “have a direct effect on” DFCS’s ability to be consistent in its decisions regarding whether a report of child abuse or neglect is credible and should be investigated.

122. Discouraged by DFCS’s failure to investigate reports of maltreatment, some professionals have simply stopped calling DFCS to report anything other than extreme abuse.

123. In some cases, DFCS has informed relatives who have reported abuse of their minor kin that the only recourse to protect the children is for the relatives to seek orders from the State Chancery Court granting them legal custody.

124. When DFCS fails to investigate a credible report of abuse or neglect, it also fails to present the case to the Youth Court for a final disposition, as is statutorily required. Children denied access to the Youth Court are thereby denied the opportunity to have that court review their situation and order DFCS to take necessary steps to protect them from further abuse or neglect.

125. DFCS has no rational basis for investigating some maltreatment reports, while intentionally and arbitrarily denying other children subject to the same types of maltreatment the same investigative services, as well as denying them access to the Youth Court. In its December 2003 Self-Assessment, DFCS admitted that “[i]n order to provide *equal access* to Family and Children’s services throughout the State, reduce the significant staff turnover...and

bring staffing levels to a reasonable and stable level..., between 900-1000 fulltime social workers are needed.” (emphasis added).

126. DFCS’s intentional and arbitrary failure to investigate some credible reports of harm or to refer all such reports to the Youth Court, while investigating and referring other reports made regarding similarly situated children, has left children in dangerous situations with no recourse, in violation of their procedural due process and equal protection rights under the Constitution.

2. Defendants Fail to Confirm Reports of Clear Abuse and Neglect

127. In an effort to reduce the number of children for whom the State must provide foster care services, DFCS routinely fails to confirm abuse and neglect, even when there is a clear indication that a child is being maltreated. Maltreated children are thereby intentionally and arbitrarily denied access to child welfare services.

128. DFCS reports in its Self-Assessment that in 2001 it only “evidenced” (i.e., substantiated) approximately 14.6% of all reports of maltreatment that it investigated, which is half the national average rate of 27.5%, according to federally collected data. Even though DFCS reported an increase in the rate at which it confirmed abuse and neglect in 2002, it acknowledged that the increase likely reflected the manner in which it records data. DFCS stated that “[i]t is believed that the slightly higher rate reflects the increased probability that an evidenced case was more likely to be entered into MACWIS [the State’s computer system], rather than an increased [sic] in the substantiation rate.” In addition, Defendants’ Self-Assessment reports that the areas of the state with chronic caseworker shortages have a lower substantiation rate.

129. In at least one county, the Youth Court is so troubled by DFCS's failure to evidence cases of abuse and neglect that it orders Court Appointed Special Advocates (CASAs) to undertake an independent investigation of certain cases that DFCS has chosen not to evidence. In many instances, it is only after this second, independent investigation takes place that a report is confirmed and maltreated children receive the protection to which they are entitled.

130. The failure to uniformly substantiate reports where there is clear evidence of maltreatment results in abused and neglected children being left to fend for themselves, even after the State has investigated their situation. Children who are denied access to the child welfare system are not only subject to further abuse and neglect, but are at high risk of poor psychological and social outcomes. Not only are these children subject to emotional damage, but maltreatment, particularly when there is no intervention, is associated with juvenile delinquency and criminal behavior. It is not uncommon for some of these children to become delinquents and be sent to State training schools, where conditions may also be constitutionally deficient. *See United States v. State of Mississippi, et al.*, Civ. Act. 3:03-1354BN, (Filed December 18, 2003).

131. The deliberate practice of not evidencing clear instances of abuse and neglect for some maltreated children because of a lack of necessary resources, while evidencing reports for similarly situated children, unlawfully and arbitrarily denies those ignored children access to Mississippi's child welfare system and places them at serious and foreseeable risk of harm in violation of their equal protection rights.

3. Defendants Fail to Provide Services to Children Found to be Abused or Neglected

132. Even when DFCS evidences a report of abuse or neglect, it systematically fails to take action to protect the child. According to its Self-Assessment, in 2002 DFCS opened for services only 47.5% of the cases where children were subjects of confirmed incidents of abuse or

neglect. Thus, DFCS left more than half of the children it found to be maltreated with no oversight and services to ensure their safety.

133. In its Self-Assessment, DFCS noted “inconsistencies” in the assessment of risk to children during the initial investigation and the decision to open a case, and acknowledged that staffing shortages and the inability to provide services once a case was opened were factors in the low case opening rate.

134. Intentionally and arbitrarily abandoning children known to be abused and neglected without protection, while providing similarly situated children with access to the child welfare system, subjects these children to additional abuse and neglect, and causes serious emotional harm in violation of their constitutionally protected right to equal access to the child welfare system. It also discourages those who initially report abuse from making further reports.

4. Defendants Place Children They Acknowledge Are Abused and Neglected in Inappropriate and Unsafe Homes Outside of the Child Welfare System

135. Even when DFCS investigates a report of maltreatment and determines that the child cannot remain safely in his or her home, it regularly chooses not to assume responsibility for the neglected child. Instead of opening a case and seeking a court-ordered placement, DFCS instead routinely places children with any available relatives in order to avoid the burden on the already overwhelmed child welfare system. DFCS refers to this practice as “Informal Family Planning” and considers these children not subject to agency regulation or court oversight.

136. A child subject to “Informal Family Planning” is not afforded the same protections by DFCS as a child who is removed and then placed into a relative’s home pursuant to a court order, or into a non-related foster parent’s home. The relative caregiver’s qualifications are not critically evaluated, criminal background checks are not routinely conducted, and little, if any, effort is made to assess whether the home is safe or meets the

child's needs. DFCS does not provide informally placed children with any supportive services, regardless of whether such services are necessary for ensuring the children's physical and mental health or safety.

137. Informally placed children are not monitored by DFCS caseworkers and may never become known to the Youth Court. Unlike children who are provided access to the child welfare system, these children are never provided DFCS or Youth Court review. Their situation is therefore never assessed to determine if they are safe in the care of their relatives or whether being separated from their parents remains in their best interest. Also, no protections are in place to ensure that such children are not returned to abusive parents. The placements remain day-to-day without DFCS providing the opportunity for the children to be adopted if returning home is not a viable option. Children as young as toddlers are placed with elderly relatives with no thought to their safety, well-being, or permanency.

138. Although DFCS regulations allow for the licensing of relatives as foster parents, in practice DFCS discourages or denies access to this support and the protections that it would provide children. Relatives who ask DFCS for assistance in becoming foster parents are either told that relatives cannot become paid foster parents; or that they will lose the children to strangers during the approval period, which can take six to nine months, and the children may never be returned to their care. The practice of arbitrarily discouraging relatives from becoming licensed foster parents denies families often desperately needed support and resources to which they may be entitled. More importantly, this practice denies the child court oversight and DFCS monitoring that may be necessary to ensure the child's safety, well-being, and permanency.

139. In October 2003, DFCS issued a memorandum explaining that the agency was discontinuing its policy of allowing informal placements without approval by the Youth Court,

background checks, and a home study prior to placement of any children. However, upon information and belief, DFCS has done nothing to assure the safety of those children previously placed pursuant to the acknowledged informal family planning practice. Nor has it instituted any means of determining whether the practice of informal family planning has, in fact, stopped. Upon information and belief, caseworkers across the state continue to engage in informal family planning, leaving children in potentially harmful environments, without court oversight.

140. There is no rational basis for whether DFCS brings an abused or neglected child before the court, and provides that child with the attendant supervision and permanency services that the case may require, or simply places the child informally. By intentionally leaving abused and neglected children in unscreened and unmonitored homes, without opening cases for these children, Defendants knowingly and arbitrarily place these children at further risk of abuse, either in the new placements or by being returned to abusive parents, in violation of these children's rights to equal access to the child welfare system.

141. Even when DFCS does bring abused and neglected children to the attention of the Youth Court, those children may still be arbitrarily and intentionally denied access to the child welfare system, by being placed directly in the custody of a relative or other unrelated adult. Like informally placed children, these children are intentionally and arbitrarily denied DFCS support and oversight, regardless of whether those services are necessary for ensuring the children's physical and mental health or safety.

B. ABUSED AND NEGLECTED FOSTER CHILDREN ARE SUBJECT TO FURTHER HARM IN FOSTER CARE

142. Those children who do enter the foster care system are denied safe, stable and appropriate placements necessary to their health and well-being.

143. Despite being on notice for over a decade of the severe and long-standing shortage of foster homes and other appropriate foster care placements, Defendants have failed to take even the most basic steps necessary to recruit more foster parents and to develop a sufficient number of suitable placements. In its Self-Assessment, DFCS acknowledged that it routinely failed to even respond to inquiries and requests for applications by people interested in becoming foster and adoptive parents. As a result of the acute shortage of foster care placements, DFCS places children in unsafe, unsupported, or unsuitable relative care, in temporary shelters, and in large institutions.

144. DFCS also fails to adequately fund foster care placements through required “foster care maintenance payments” at levels sufficient to provide essential and appropriate services for foster children, or to attract interest in providing foster care services. Foster care board rates paid by the State are a fraction of the cost the United States Department of Agriculture has determined is needed to raise children in the rural and urban South.

1. DFCS Places Children in Harmful Homes

145. Some of the few available foster homes in Mississippi are overcrowded and some are affirmatively abusive.

146. In its Self-Assessment, DFCS acknowledged that private agencies seeking to recruit foster parents cannot even reliably access DFCS’s abuse and neglect records on prospective foster parents.

147. DFCS admits that it has placed some children with relatives without adequate supportive services and without first undertaking “a thorough assessment of the relatives’ ability to provide care.” Thus, children such as Named Plaintiff Olivia Y. are placed in homes with convicted criminals who threaten their safety. Toddlers have been placed with aged and ill

relatives, and children have been placed with relatives who themselves have known histories of child maltreatment. Many of these relative homes are not licensed foster care placements.

148. By relying on unsuitable, unlicensed, or harmful placements, Defendants are subjecting children removed from abusive and neglectful homes to the possibility of yet further maltreatment while in state custody, in violation of their constitutional right to be free from harm.

2. Mississippi's Foster Children are Over-Institutionalized

149. Mississippi places children of all ages in institutional or group settings regardless of their needs, simply because the State has no other placement alternatives.

150. When DFCS removes a child from his home and a relative placement cannot be located, DFCS generally places that child in an emergency shelter. State regulation generally prohibits a child from remaining in an emergency shelter for longer than 45 days. Yet, with no available foster homes, DFCS leaves children for months in these temporary placements. To avoid violating the 45-day limit, DFCS has, at times, cycled children through a series of 45-day stays in different shelters. If a relative has still not been located during the time a child has spent in an emergency shelter, DFCS will often move the child from the shelter to a large institution.

151. Defendants routinely place toddlers as young as two in institutional settings with children of all ages and service needs. Infants are placed in emergency shelters with teens suffering from emotional or behavioral problems. For example, in January 2004, the Harrison County shelter was home to, among other children, a ten-day-old infant, two toddlers, and an emotionally troubled teen. According to the last available federally reported data, in 2000, 19% of all children age 12 and younger who entered DFCS custody were placed in group and institutional settings, which is over twice the national median of 9%. Upon information and

belief, Mississippi's rate of institutionalizing young children remains well above the national average and is substantially higher than reasonable professional judgment would support.

152. Young children in institutional care are extremely vulnerable to medical and psychological harm. Institutions put young children at increased risk of delayed language development, developmental problems, and infectious illnesses. Children reared in institutions (compared to children raised by families) have been found to have lower IQ scores, difficulties forming and maintaining relationships, and poor self-esteem. The exercise of reasonable professional judgment requires that young children, particularly infants and toddlers, not be placed in institutional settings.

153. Not only are institutional settings more expensive for the State to run than foster homes, they also prolong the time children spend in foster care. Many children are taken from their own counties and shipped to institutions 40 or more miles from their homes, schools, and families. Children placed in institutions far from their families are less likely to be reunified with their families or adopted. This is because they have fewer opportunities for family visitation and less contact with their DFCS caseworkers, and because foster families are the most common source of adoptive families for children who are placed with them.

154. Some institutions relied upon by DFCS fail to meet minimum licensing standards for group placements. Children in DFCS custody may be placed in institutional residential homes that are exempt from licensing requirements because they are run by religious entities. Other children may be placed by the Youth Court directly in the custody of organizations that run unlicensed facilities. Although these unlicensed facilities must be registered with the State, they are not required to comply with regulations intended to ensure children receive a minimum degree of safety and physical as well as emotional care. Unlike licensed facilities, unlicensed

institutional residential homes are not required to abide by all State policies regarding the treatment of children, to adhere to any minimum child/staff ratio, or to train staff members in CPR/first aid. There is no requirement for procedures to address suspected incidents of abuse or neglect involving staff. Children placed in such institutions are thus at risk of foreseeable harm.

155. The State also fails to provide many of the children placed in unlicensed placements any of the planning necessary for them to achieve permanency through adoption or reunification. They are therefore *never* provided the opportunity to grow up in loving families. Placement of children in unlicensed facilities also disqualifies the State from federal Title IV-E funding for the children placed in those facilities. Placing children in unlicensed facilities denies these children their equal protection rights to the protection of minimum licensing requirements afford those similarly situated children who are placed in licensed facilities.

156. Moreover, placing children in inappropriate institutional settings that cause developmental and psychological harm violates these children's constitutionally protected right to be free from harm while in Defendants' custody. The failure to place children in a least restrictive placement also violates these children's federal statutory rights.

3. Defendants Fail to Properly Monitor Foster Children

157. DFCS fails to monitor children in its custody to determine their safety and the continued appropriateness of their placements. Children may go months without seeing a caseworker. When visits do occur, they are often at DFCS offices, which precludes an assessment of the safety and suitability of the children's living environments. According to its Self-Assessment, DFCS found in a recent review of statewide data that only 41% of cases reviewed had a documented visit of the child by the child's caseworker in the preceding 30 days.

158. In addition to failing to provide regular in-person contacts, DFCS fails to monitor the status of each foster child through case plan reviews every six months, as required by federal law. In its Self-Assessment, DFCS admits that because it has not provided for enough foster care reviewers to cover the entire state, it is unable to “ensure that each child in custody is reviewed every 6 months.”

159. Similarly, although federal law requires court reviews, which are called “permanency hearings,” to be held at least annually to determine children’s progress toward achieving permanency, through either safe reunification or adoption, they are not being consistently provided. The reviews are intended to ensure that children remain in foster care for a short a period as possible, and that their needs are being met during that time. According to its Self-Assessment, DFCS reviews indicated that only 38.7% of the children’s cases examined had court orders documenting the required annual permanency hearing.

160. The failure to monitor children in DFCS custody through face-to-face contact, case reviews, and permanency hearings means that DFCS has no ability to assure that children in its custody are not harmed and are not needlessly in government custody in violation of federal statutory law and reasonable professional judgment.

C. DEFENDANTS FAIL TO PROVIDE FOSTER CHILDREN WITH NECESSARY MEDICAL, DENTAL, AND MENTAL HEALTH SERVICES

161. Defendants fail to meet the physical and mental health needs of the children in their custody.

162. Neither caseworkers nor foster parents are adequately trained to identify and address the medical and mental health needs of children in foster care. In 2003, DFCS reported in its Self-Assessment that it could not determine what percentage of children in its custody had received a health assessment or screening. It further reported that critical medical information is

missing from children's computerized case records, estimating that only about half of the health care provided is noted in the data system. Without an updated medical history, DFCS cannot track and assure that a child is receiving needed medical services.

163. DFCS often places a child into a foster care home or institution with only the clothes on that child's back and without a medical or mental health history, a Medicaid card, or even refills of necessary prescriptions. According to its Self-Assessment, in a recent case review, DFCS admitted that in approximately half of the cases reviewed there was no documented evidence that the caseworker shared complete and detailed medical information with the foster parent. Without necessary medical information, foster parents are unable to take preventive measures to protect a child's physical and mental health. When a foster child experiences problems, the foster parents are left to arrange needed medical services without being able to provide doctors with past medical history or Medicaid payment.

164. Foster children do not receive timely or adequate dental care. There is a severe shortage of dental care providers in the state who take Medicaid. DFCS has not made alternative funding arrangements for those services.

165. DFCS cannot meet the mental health care needs of children in its custody. It has failed to develop adequate mental health services or placement resources. Outpatient counseling for foster children is in short supply, thereby precluding children from receiving consistent and adequate therapeutic services.

166. Therapeutic family foster homes (homes in which foster parents are trained to care for foster children with acute medical or psychological needs) are virtually nonexistent. In 2000, Mississippi reported having only 25 therapeutic foster homes statewide. Few have been developed since that time. According to its Self-Assessment, as of December 2003, DFCS had

entered into contracts to provide therapeutic services for only 250 children statewide, which includes group home placements, therapeutic foster homes, and intensive in-home services.

167. Children denied needed therapeutic foster home placements or other needed psychological services cycle through many institutions and foster homes. These children deteriorate mentally and emotionally as a result of frequent moves caused by inappropriate placements.

168. The American Academy of Pediatrics has concluded that multiple moves in foster care are injurious because “children need continuity, consistency, and predictability from their caregivers.” The Academy has found that the disruption and uncertainty caused by multiple moves while in foster care can be “deleterious to the young child’s brain growth, mental development, and psychological adjustment.” Yet, Defendants have created situations in which children in their custody experience dozens of moves, and some have been through more than 40 placements.

169. Intensive residential treatment care is frequently available only for short periods, with discharge occurring well before the child has accomplished his or her treatment goals. Frequently, children return from these brief stints at residential placements overly medicated and without adequate follow-up treatment plans or services. Children abruptly discharged from residential treatment are returned to placements that still cannot meet their needs and quickly require the child to be moved again.

170. Defendants’ failure to consistently provide necessary medical, dental, and mental health services to the children in their custody is outside the bounds of reasonable professional judgment and causes those children physical and emotional harm. It places them at imminent risk of injury in violation of their rights and in deliberate indifference to their well-being.

D. FOSTER CHILDREN WHO SHOULD BE ADOPTED LANGUISH IN DFCS CUSTODY UNNECESSARILY

171. DFCS consistently fails to file petitions to free children for adoption by terminating parental rights in accordance with federal statutory timeframes or to timely place children who have been legally freed for adoption in adoptive placements. According to the State's Self-Assessment, as of December 2003, the average length of time from a child's entry into foster care to his or her adoption, for those children adopted, was 3.43 years.

172. DFCS's process for filing termination petitions to free children for adoption is long and cumbersome. More than a year may pass from the time a petition for termination of parental rights is drafted until the petition is filed with the court. DFCS acknowledges in its most recent report on its Strategic Plan that unnecessary delays exist in processing termination petitions; it attributes these to a shortage of social workers and attorneys. DFCS has made little progress in addressing this issue. This avoidable delay needlessly prolongs children's stays in foster care and causes psychological harm and for some children may deny them adoption altogether.

173. DFCS has not dedicated the staff and resources necessary to ensure that children who have finally been freed are timely placed in an adoptive placement. Ensuring children are adopted requires staff to recruit adoptive families, to match families and pre-adoptive children, to support the family through the adoption process, and to oversee finalization of the adoption. According to the Self-Assessment, as of December 2003, only 18 caseworkers and three administrative assistants supported the entire state's adoption effort. DFCS admitted that the number of children who achieve permanency through adoption would be increased by "[a]dditional staff and additional permanency training"

174. As a result of Defendants' knowing failure to provide timely permanency services and recruit adoptive placements, children available for adoption drift for years in DFCS custody without being provided the opportunity to grow up with permanent families.

175. Children and youth who remain in foster care long term without the opportunity to live in a permanent family suffer psychological harm, are emotionally more vulnerable, and are more likely to have behavioral problems.

176. An unconscionable number of children in DFCS custody are never placed with a permanent family. In 2000, the last date for which federally reported information is publicly available, 35% of children who aged out of Mississippi foster care at age 18 were 12 years of age or younger when they entered care; thus much like Jamison, they needlessly spent much of their childhoods without having a permanent family.

177. The failure by DFCS to file timely petitions to free children for adoption violates their federal statutory rights. The psychological harm suffered by children left to languish unnecessarily in DFCS custody violates their constitutionally protected right to be free from harm while in state custody.

E. DEFENDANTS HAVE FAILED TO PROVIDE THE STAFFING AND RESOURCES OR TO ENGAGE IN THE PROGRAMMATIC REFORM NECESSARY FOR A PROPERLY FUNCTIONING CHILD WELFARE SYSTEM

178. Defendants are aware of the problems confronting Mississippi's child welfare system. In the late 1990s, Defendants prepared a detailed "Strategic Plan" with the assistance of the federal Administration for Children and Families, designed to address its known child welfare failures. Yet Defendants have deliberately determined not to provide staff or resources necessary for the system to function or to implement the changes set forth in the Strategic Plan as necessary to protect children.

1. A Severe Shortage of Caseworkers Has Incapacitated DFCS

179. High DFCS caseworker vacancy and turnover rates cripple DFCS. The Child Welfare League of America (CWLA) recommends that caseworkers carry no more than 12 families at the investigation phase of a case, 17 families for on-going in-home services, or 12 to 15 children in foster care. Caseworkers in Mississippi carry caseloads far in excess of these standards. For example, according to the Self-Assessment, as of September 2003, caseworkers in Washington County carried average caseloads of over 76 children per worker, those in Warren County carried average caseloads of 113, those in Harrison County carried average caseloads of 114, those in Hancock County carried caseloads averaging 120 children per worker, and caseworkers in Copiah County labored under caseloads averaging 127 children per worker. Upon information and belief, as of March 2004, there is one caseworker in Forrest County, who is responsible for 285 children.

180. In addition to failing to recruit and hire caseworkers, Defendants do nothing to ensure staff retention, while low morale and heavy caseloads caused by Defendants' poor management decisions discourage social workers from even applying for DFCS positions. From July 2001 to July 2002, DFCS only hired approximately 200 workers, while more than 400 workers resigned.

181. To address the severe shortage of caseworkers, DFCS began sending workers from other counties on "rotations" to understaffed offices. During that rotation, the caseworker's caseload in his or her county is not covered. Not only does the rotation practice jeopardize the safety of children whose cases are unsupervised during their caseworker's absence, it also provides children in the region being served with inconsistent case services.

182. Caseworkers are not provided necessary training. According to the Self-Assessment, intensive training occurs only when there are 16 to 18 new recruits who require training. Staff who are hired in the meantime begin field work and assume casework responsibilities while they are waiting for intensive training.

183. Caseworkers lack basic equipment necessary to perform their jobs, including cellular phones, car seats, and DFCS vehicles. While in the field, many caseworkers must rely on pay phones in order to communicate with county offices. DFCS offices lack clerical staff, thereby requiring caseworkers to perform administrative functions, when they should be engaged in case practice. The lack of equipment and support staff hinders caseworkers from delivering mandated services.

184. Staffing shortages have continued despite Defendants' knowledge of the resulting risk to children. In 2002, in its Annual Progress Report on its Child and Family Services Plan, DFCS admitted that "[s]taff turnover and the inability to fill vacant positions have created critical service gaps in numerous counties" and that "loss of key staff over the past year to eighteen months has had a devastating effect on overall performance. . . ." In May 2002, the federal Administration for Children and Families wrote to the State about its "urgent concern" regarding "the extremely low number of social worker and supervisory positions in DFCS and the seriously high staff vacancy rate that have resulted in dangerously high child welfare caseloads." That same year DFCS Director Sue Perry resigned, and in a letter to the Governor and the Executive Director of DHS, she warned that with staff vacancies and caseloads at an all time high, children who should be protected by the State were endangered. Yet staffing shortages persist.

2. Defendants Have Failed to Take Advantage of Available Federal Funding

185. In addition to Defendants' failure to assure adequate resources for DFCS, Mississippi has also forfeited millions of dollars in federal matching funds due to DHS and DFCS mismanagement. For example, Mississippi has the highest percentage of unused federal Temporary Assistance for Needy Families (TANF) monies of any state in its federal monitoring Region. These available federal funds could be applied to fund child welfare services if DHS and DFCS made proper claims for them. In addition, this year DHS is experiencing a \$20.7 million deficit in the TANF funds it has claimed. In an effort to close that deficit, DHS is now closing over 34 centers that provide services to families with children at risk of entering the foster care or juvenile justice systems, including the Center for the Prevention of Child Abuse in Gulfport.

186. Mississippi also cannot claim, or has been repeatedly disallowed, other federal Title IV-E funds, because of deficient case record documentation and the placement of children in unlicensed homes and facilities. As of June 30, 2003, Mississippi calculated that only 44% of the children in Mississippi foster care were eligible for Title IV-E federal reimbursements. If DFCS complied with federal statutory standards, and placed more children in licensed homes and facilities, the reimbursement rate could be twice as high, making the State eligible for millions more in federal funds.

187. In addition to failing to pull down available federal funds, Mississippi is being required to repay the federal government over \$5 million it had incorrectly claimed in Title IV-E funds because of the State's poor administrative practices.

188. Currently, according to numerous press reports, the State's Auditor as well as the Inspector General of the federal Department of Health and Human Services are conducting an

investigation into of whether DHS failed to adequately audit, monitor and account for \$89 million that was intended to be spent on services to vulnerable and needy people, including children. As a result of the investigation, DHS may be required to repay federal funds.

3. Defendants Have Failed to Engage in Needed Programmatic Reform

189. Defendants' own Strategic Plan required DFCS to develop basic management functions necessary for a child welfare system to track, monitor, and serve children. The Plan called for DFCS to retool its case practices and policies to reflect best case practice. These reforms have been largely abandoned.

190. According to the last available report made by DFCS on its reform efforts in 2002, DFCS has failed to fully implement a "Best Practice" social work practice model, intended to make necessary changes to the provision of social work services to children, and it has failed to institute needed staff training, including training on such issues as accessing federal funds.

191. Defendants' refusal to institute the reforms necessary to address known and documented deficiencies has condemned children to a child welfare system unable to meet its obligations to protect them.

192. In 2002, the Governor, members of the legislature, and other Defendants were warned by DFCS Director Sue Perry that abuse and neglect investigations were not taking place, and that children with open cases were not being monitored. Perry stated that as a result, children were being left at risk of serious bodily harm, and at least one 19-month-old child had already been killed. Despite being put on repeated notice by Youth Court judges, child advocates and people within DFCS of the disastrous effects the failing child welfare system is having on the lives of children, Defendants have not undertaken measures necessary to meet

their constitutional and statutory responsibilities, in deliberate indifference to Plaintiffs' rights and their substantial risk of harm.

CAUSES OF ACTION BROUGHT PURSUANT TO 42 U.S.C. § 1983

First Cause of Action – Procedural Due Process Claim Brought on Behalf of the Protective Services Class

193. Each and every allegation of the Complaint is incorporated herein as if fully set forth.

194. The foregoing actions and inactions of the Defendants amount to a pattern, practice, and custom of failure to exercise reasonable professional judgment and deliberate indifference to the constitutional procedural due process rights of children in the protective services class. Plaintiffs have a constitutionally protected, state-created interest in having credible reports of maltreatment referred to the Youth Court, as required by state law, and having the Youth Court make the final determination regarding the disposition of those reports. Plaintiff children are being deprived of their state-created interest in accessing the courts without due process of law.

Second Cause of Action – Equal Protection Claim Brought on Behalf of the Protective Services Class

195. Each and every allegation of the Complaint is incorporated herein as if fully set forth.

196. The foregoing actions and inactions of the Defendants amount to a pattern, practice, and custom of failure to exercise reasonable professional judgment and deliberate indifference to the constitutional rights of the children in the protective services class. Defendants are engaging in a practice of intentionally and arbitrarily denying investigative services to protective services class members who are the subject of a report of abuse or neglect,

despite the fact that they are similarly situated to those children who receive investigative services. Defendants are also intentionally and arbitrarily denying abused and neglected protective services class members access to child welfare services, despite the fact that otherwise similarly situated children receive such services. Defendants' determination to deny Plaintiff class members investigative and other child welfare services bears no rational relation to a legitimate state interest, and violates class members' Equal Protection rights.

**Third Cause of Action – Equal Protection Claim Brought on Behalf of
the Protective Services Class Placed Informally with Kin**

197. Each and every allegation of the Complaint is incorporated herein as if fully set forth.

198. The foregoing actions and inactions of the Defendants amount to a pattern, practice, and custom of failure to exercise reasonable professional judgment and deliberate indifference to the constitutional rights of the children in the protective services class. Defendants are engaging in a practice of intentionally and arbitrarily denying child welfare services to protective service class members who have been placed informally with kin, despite the fact that they are otherwise similarly situated to those children who receive child welfare services. Defendants' determination to deny Plaintiff class members informally placed with kin child welfare services bears no rational relation to a legitimate state interest, and violates these class members' Equal Protection rights.

**Fourth Cause of Action – Equal Protection Claim Brought on Behalf of the Protective
Services Class Members Placed Directly by the Court in Unlicensed Placements**

199. Each and every allegation of the Complaint is incorporated herein as if fully set forth.

200. Miss. Code Ann. §§ 43-21-609 (b) and (e)(ii) violate protective service class members' Equal Protection rights as they are applied to permit them to be placed by the Youth Court directly into unlicensed facilities or homes without entering DFCS custody. Protective service class members who have been placed by the Youth Court into unlicensed placements are intentionally and arbitrarily denied child welfare services and protection, despite the fact that they are otherwise similarly situated to children who are placed in DFCS custody and who receive child welfare services. The application of Miss. Code Ann. §§ 43-21-609 (b) and (e)(ii), to permit children to be denied child welfare services on the basis of their placement into unlicensed placements bears no rational relation to a legitimate state interest.

**Fifth Cause of Action – State-Created Danger Claim Brought on Behalf of
the Protective Services Class**

201. Each and every allegation of the Complaint is incorporated herein as if fully set forth.

202. The foregoing actions and inactions of the Defendants amount to a pattern, practice, and custom of failure to exercise reasonable professional judgment and deliberate indifference to the constitutional rights of the children in the protective services class. Defendants are engaging in a pattern and practice of violating the protective services class members' rights under the Substantive Due Process Clause of the United States Constitution, by removing class members from their caretakers and then placing them in informal relative placements that the Defendants know or should know pose an imminent risk of harm to these children, in deliberate indifference to their safety and welfare and in disregard for the exercise of reasonable professional judgment.

Sixth Cause of Action – Substantive Due Process Claim Brought on Behalf of the In-Custody Class

203. Each and every allegation of the Complaint is incorporated herein as if fully set forth.

204. The foregoing actions and inactions of the Defendants amount to a pattern, practice, and custom of failure to exercise reasonable professional judgment and deliberate indifference to in-custody Plaintiff children's constitutional rights. As a result, Plaintiff children are being deprived of their substantive due process rights conferred upon them by the Fourteenth Amendment to the United States Constitution. These rights include, but are not limited to, their right to protection from harm — physical, emotional, developmental or otherwise — while in state custody; their right not to remain in state custody unnecessarily; their right to treatment; their right to treatment related to the cause of their confinement; and their right to receive care, treatment and services consistent with competent professional judgment.

Seventh Cause of Action – Equal Protection Claim Brought on Behalf of the In-Custody Class Members Placed in Unlicensed Placements

205. Each and every allegation of the Complaint is incorporated herein as if fully set forth.

206. The foregoing actions and inactions of the Defendants amount to a pattern, practice, and custom of failure to exercise reasonable professional judgment and deliberate indifference to the constitutional rights of the children in the protective services class. Defendants are engaging in a practice of intentionally and arbitrarily denying in-custody class members who have been placed in unlicensed placements with the child welfare protections of minimum licensing requirements, including adequate safety procedures and staffing, despite the fact that they are otherwise similarly situated to those children placed in licensed placements.

Defendants' determination to deny Plaintiff class members placed in unlicensed placements child welfare protections afforded those similarly situated children placed in licensed placements bears no rational relation to a legitimate state interest, and violates these class members' equal protection rights.

**Eighth Cause of Action – Adoption Assistance Act Claims Brought on Behalf of
the In-Custody Class**

207. Each and every allegation of the Complaint is incorporated herein as if fully set forth.

208. As a result of the foregoing actions and inactions of the Defendants, the Defendants are engaging in a policy, pattern, practice, and/or custom of depriving in-custody Plaintiff children the rights conferred upon them by the federal Adoption Assistance and Child Welfare Act of 1980, as amended by the Adoption and Safe Families Act of 1997. These rights include, but are not limited to, the right to the development and implementation of individual case plans that contain specific mandated elements, including documentation of the steps taken to achieve permanency; the right to live in foster care placements that have the capacity to provide for the essential needs and services of children in their care by receiving adequate foster care maintenance payments; the right to a case record review system which includes semi-annual administrative reviews and annual permanency reviews, the right to placement only in facilities that have been licensed by the state; the right to placement in foster homes or facilities that conform to national professional standards; the right to placement in the least restrictive, most family-like setting; the right to have a petition to terminate parental rights filed, or have a compelling reason documented why such a petition has not been filed, in accordance with specified, statutory standards and time frames; the right of foster children whose permanency goal is adoption to planning and services to obtain permanent placement at the earliest possible

time and the right to have health and educational records reviewed, updated, and supplied to foster care providers with whom the child is placed at the time of placement. 42 U.S.C. §§ 671(a)(1); 671(a)(10); 671(a)(16); 672(a), (b) and (c); 675(1); 675(4)(A) and (B); 675(5)(A) through (E); 622(a) and (b)(10)(B)(ii) and (iii); 45 C.F.R. §1355.20.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff children respectfully request that this Honorable Court:

- A. Assert jurisdiction over this action;
- B. Order that all Plaintiffs may maintain this action as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure;
- C. Declare unconstitutional and unlawful pursuant to Rule 57 of the Federal Rules of Civil Procedure:
 - 1. Defendants' violation of the protective services class members' rights under the Due Process Clause of the United States Constitution;
 - 2. Defendants' violation of the protective services class members' rights under the Equal Protection Clause of the United States Constitution;
 - 3. Defendants' violation of the protective services class members' rights under the Substantive Due Process Clause of the United States Constitution not to be placed in an environment Defendants know or should know pose a risk to their safety;
 - 4. Defendants' violation of the in-custody class members' rights under the Substantive Due Process Clause of the United States Constitution;
 - 5. Defendants' violation of the in-custody class members' rights under the Equal Protection Clause of the United States Constitution;
 - 6. Defendants' violation of the in-custody class members' rights under the federal Adoption Assistance and Child Welfare Act, as amended by the Adoption and Safe Families Act of 1997, and regulations promulgated thereunder; and

7. Miss. Code. Ann. §§ 43-21-609(b) and (e)(ii) as they are applied to permit children deemed by the Youth Court as abused or neglected to be placed directly in unlicensed placements;

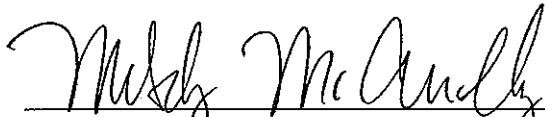
D. Permanently enjoin Defendants from subjecting members of the Plaintiff class to practices that violate their rights;

E. Order appropriate remedial relief to ensure that a detailed plan is developed, implemented, and monitored to ensure Defendants protect the legal rights of Plaintiffs as set forth in this complaint;

F. Award Plaintiffs their reasonable attorneys' fees and costs pursuant to 42 U.S.C. §§ 1988 and 1920; and

G. Grant such other and further equitable relief as the Court deems just, necessary and proper to protect Plaintiffs and Plaintiff class members from further harm by Defendants.

RESPECTFULLY SUBMITTED, this the 17th day of May, 2004.



W. Wayne Drinkwater, Jr. (MBN 6198)

Melody McAnally (MBN 101236)

BRADLEY ARANT ROSE & WHITE LLP

188 East Capital Street, Suite 450

Jackson, Mississippi 39201

(601) 948-8000

Stephen H. Leech (MBN 1173)

850 East River Place, Suite 300

Jackson, Mississippi 39202

(601) 355-4013

Marcia Robinson Lowry (MBN 43991 *pro hac vice*)

Susan Lambiase (MBN 43992 *pro hac vice*)

Eric E. Thompson (MBN 43993 *pro hac vice*)

Shirim Nothenberg (MBN 43990 *pro hac vice*)

Corene Kendrick (MBN 43989 *pro hac vice*)

CHILDREN'S RIGHTS

404 Park Avenue South

New York, New York 10016

(212) 683-2210

John Lang (MBN 43987 *pro hac vice*)
Christian Carbone (MBN 43986 *pro hac vice*)
Eric Manne (MBN 43988 *pro hac vice*)
LOEB & LOEB LLP
345 Park Ave.
New York, New York 10154
(212) 407-4000

PLAINTIFFS' COUNSEL

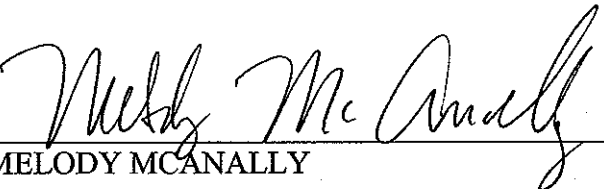
CERTIFICATE OF SERVICE

I, Melody McAnally, one of the attorneys for Plaintiffs herein, do hereby certify that I have
this day cause to be mailed, postage prepaid, a true and correct copy of the foregoing to:

Harold Pizzetta, Esquire
Special Assistant Attorney General
Carroll Gartin Justice Building
Post Office Box 220
Jackson, Mississippi 39205-0220

Attorney for Defendants

This the 17th day of May, 2004.



MELODY MCANALLY