

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

L.J., et al.,

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Plaintiffs,

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v.

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Civil Action No. JFM-84-4409

RUTH MASSINGA, et al.,

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Defendants.

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**PLAINTIFFS' PETITION FOR ORDERS OF ENFORCEMENT
AND TO SHOW CAUSE WHY DEFENDANTS SHOULD NOT BE HELD IN
CONTEMPT OF CONSENT DECREE, AND MOTIONS TO MODIFY
CONSENT DECREE AND MONITORING ORDER**

Pursuant to Fed. R. Civ. P. 60(b), Fed. R. Civ. P. 70, and this Court's inherent authority to enforce its Orders, and for the reasons and grounds set forth in the accompanying Memorandum in Support (the "Show Cause Memorandum") and the Addenda thereto, which are hereby incorporated by reference., Plaintiffs L.J., et al., by their undersigned counsel, respectfully petition and move this Honorable Court to

- A. Enforce its Orders of September 27, 1988 (Dkt. 219) and December 12, 1991 (Dkt. 301);
- B. Issue an Order for Defendants to Show Cause why they should not be held in contempt for their failure to comply with those Orders of September 27, 1988 and December 12, 1991;
- C. Modify the Court's Orders of September 27, 1988 and December 12, 1991 as set forth below and in the Show Cause Memorandum; and

- D. Modify the Court's "monitoring" Order of May 2, 1989 (Dkt. 255) as set forth below and in the Show Cause Memorandum.

For cause, Plaintiffs state the following grounds:

1. Plaintiffs brought this class action lawsuit in 1984. In April 1987, the Court entered a preliminary injunction against Defendants, finding serious deficiencies in the BCDSS foster care system.

2. Following the Fourth Circuit's affirmance of this Court's ruling, see L.J. v. Massinga, 838 F.2d 118 (4th Cir. 1988), the parties negotiated a comprehensive settlement of Plaintiffs' claims for injunctive relief which incorporated and built upon the preliminary injunction.

3. On September 27, 1988, this Court approved the terms of the settlement and incorporated them as a consent order ("Consent Decree" or "CD").

4. On December 12, 1991, this Court entered a second consent order (the "Modification" or "Mod.") extending most of the Consent Decree protection to children in BCDSS custody and placed by BCDSS in unlicensed placements with relatives ("kinship care").

5. Under the Consent Decree, Defendants are required to file semiannual reports detailing "the steps they have taken to achieve compliance with this Decree" and providing certain mandatory items of data." (Consent Decree ¶ 33). Defendants must continue to file these semiannual reports "until they file a final report showing implementation of and compliance with this Decree." Id. ¶ 34.

6. The Consent Decree expressly provides that the Court will retain jurisdiction until its terms "are fully implemented for the purposes of (i) assuring implementation and (ii) allowing

any party to apply ... for an order seeking interpretation, implementation, enforcement, or modification.” Id. ¶ 40.

7. Defendants did not reach compliance within the August 1990 deadline set by the Consent Decree or the March 1992 deadline set by the Modification and still have not reached compliance as of the filing of this Petition. They currently are not in compliance with the vast majority of Consent Decree and Modification provisions.

8. On or about May 2, 1989, this Court entered a Stipulation and Order appointing a Monitor to resolve disputes between the parties. The Monitor serves as a mediator with authority only to resolve disputes between the parties, not to independently investigate and verify Defendants’ assertions of compliance or Plaintiffs’ assertions of non-compliance.

9. Defendants’ failure to reach compliance with the Consent Decree nineteen years after its effective date requires the appointment of a Monitor with true independent monitoring and reporting authority.

10. When the Court approved the Consent Decree in 1988, it warned Defendants that if they could not comply with the Consent Decree by complying with the maximum caseload ratios set forth in the Consent Decree, the Court would lower those requirements to a level sufficient to ensure compliance. Since then, both the Child Welfare League of America, which had established the standards for caseloads that are set forth in the Consent Decree, and Maryland law, have required much lower caseloads constituting a 40% reduction from the current maximum caseload ratios.

11. Defendants have failed to provide the Court and Plaintiffs with accurate reports of their compliance with the Consent Decree and Modification. The Department of Legislative

Services (“DLS”) has determined that a majority of the data categories in the compliance reports that DLS tested are unreliable and understate the actual levels of violations. Plaintiffs have found numerous other problems with these data as well.

12. As set forth below and in the Show Cause Memorandum, Defendants are violating most provisions of the Consent Decree and Modification.

13. Violation 1: Contrary to the requirements of CD ¶ 9 that Defendants “shall establish and maintain a continuum of foster care placements reasonably calculated to ensure that there are appropriate foster care placements for all children who come into care,” Defendants fail to establish and maintain a continuum of adequate placements to ensure that there are appropriate foster care placements for all children who come into care.

14. Violation 2: Contrary to the requirements of CD ¶ 9 that Defendants “shall establish and maintain a continuum of foster care placements reasonably calculated to ensure that there are appropriate foster care placements for all children who come into care ... include[ing] regular foster homes,” Defendants have an insufficient and steadily shrinking supply of regular (unrestricted) BCDSS foster homes.

15. Violation 3: Contrary to the requirements of CD ¶ 9 that Defendants “shall establish and maintain a continuum of foster care placements reasonably calculated to ensure that there are appropriate foster care placements for all children who come into care[,]” Defendants make excessive and inappropriate use of congregate care placements for children who should be placed in foster homes.

16. Violation 4: Contrary to the requirements of CD ¶ 9 that Defendants “shall establish and maintain a continuum of foster care placements reasonably calculated to ensure that

there are appropriate foster care placements for all children who come into care ... includ[ing] ... emergency foster homes,” Defendants fail to have emergency foster homes.

17. Violation 5: Contrary to the requirements of CD ¶ 9 that Defendants “shall establish and maintain a continuum of foster care placements reasonably calculated to ensure that there are appropriate foster care placements for all children who come into care[.]” Defendants continue to house Plaintiffs in illegal overnight placements in unlicensed BCDSS office buildings and, until late last summer, in motels.

18. Violation 6: Contrary to the requirements of CD ¶ 9 that Defendants “shall establish and maintain a continuum of foster care placements reasonably calculated to ensure that there are appropriate foster care placements for all children who come into care ... includ[ing] therapeutic foster homes as defined in COMAR[.]” Defendants have an insufficient number of therapeutic/specialized foster homes.

19. Violation 7: Contrary to the requirements of CD ¶ 9 that Defendants “shall establish and maintain a continuum of foster care placements reasonably calculated to ensure that there are appropriate foster care placements for all children who come into care[.]” Defendants have an insufficient number of joint placements for Plaintiffs who themselves are parents with their children.

20. Violation 8: Contrary to the requirements of CD ¶ 9 that Defendants “shall establish and maintain a continuum of foster care placements reasonably calculated to ensure that there are appropriate foster care placements for all children who come into care[.]” Defendants have an insufficient number of placements to ensure that siblings are placed together.

21. Violation 9: Contrary to the requirements of CD ¶ 9 that Defendants “shall

establish and maintain a continuum of foster care placements reasonably calculated to ensure that there are appropriate foster care placements for all children who come into care[,]" Defendants have inadequate placements and programming for youth.

22. Violation 10: Contrary to the requirements of CD ¶ 9 that Defendants "shall establish and maintain a continuum of foster care placements reasonably calculated to ensure that there are appropriate foster care placements for all children who come into care," Defendants have not made concerted efforts to establish and maintain a continuum of foster care placements that complies with CD ¶ 9.

23. Violation 11: Contrary to the requirements of (i) CD ¶ 9 that Defendants "shall seek annually sufficient funds through their budget requests or elsewhere ... to purchase special services for children in foster care needed to prevent their institutionalization"; (ii) CD ¶ 9 that Defendants "shall establish and maintain a continuum of foster care placements reasonably calculated to ensure that there are appropriate foster care placements for all children who come into care"; (iii) Mod. ¶ 16 that "Defendants shall seek through the budget process funds for the purchase of special services to prevent the removal of children from relative placements, to promote reunification and/or to prevent a child's institutionalization"; and (iv) Mod. ¶ 14 that "DSS shall assist relative caretakers, promptly and as needed, in obtaining those services that may be needed to assist their families, such as day care[,]" Defendants do not provide child care assistance needed by children's actual or prospective caregivers to care for the children.

24. Violation 12: Contrary to the requirements of (i) CD ¶ 9 that Defendants "shall seek annually sufficient funds through their budget requests or elsewhere ... to purchase special services for children in foster care needed to prevent their institutionalization"; (ii) Mod. ¶ 16

that “Defendants shall seek through the budget process funds for the purchase of special services to prevent the removal of children from relative placements, to promote reunification and/or to prevent a child's institutionalization”; and (iii) Mod. ¶ 14 that “DSS shall assist relative caretakers, promptly and as needed, in obtaining those services that may be needed to assist their families, such as day care[,]” Defendants provide insufficient support for caregivers.

25. Violation 13: Contrary to the requirements of CD ¶ 9 that Defendants “shall seek annually sufficient funds through their budget requests or elsewhere ... to assure stipends to emergency shelter care homes even in months in which no children are being cared for,” Defendants fail to provide funding for emergency foster homes.

26. Violation 14: Contrary to the requirements of CD ¶ 10 that Defendants “shall continue their past practice of seeking through the budget process increases in the rate of reimbursement paid to foster families by including such increases in their budget requests and advocating for their appropriation with the goal of reaching by State Fiscal Year 1991 a rate of no less than the amount determined by the United States Department of Agriculture as necessary to care adequately for children in urban areas of the southern region of the country,” Defendants fail to maintain foster home subsidies at USDA levels for raising a child.

27. Violation 15: Contrary to the requirements of CD ¶ 11 that “Defendants shall maintain a foster home recruitment unit in DSS [that] shall develop and implement a sustained recruitment plan,” Defendants have not developed or implemented a viable sustained recruitment plan.

28. Violation 16: Contrary to the requirements of CD ¶ 11 that “Defendants shall maintain a foster home recruitment unit in DSS [that] shall ... issue periodic reports on the status

of its recruitment efforts[,]" Defendants fail to issue periodic reports on the status of the BCDSS recruitment office's recruitment efforts.

29. Violation 17: Contrary to the requirements of CD ¶ 9 that "Defendants shall establish and maintain a continuum of foster care placements reasonably calculated to ensure that there are appropriate foster care placements for all children who come into care," Defendants fail to address the substantial dissatisfaction among BCDSS foster parents that has substantially contributed to the loss of existing foster homes, the discouragement of potential foster parents and even the loss of actual foster parent applicants.

30. Violation 18: Contrary to the requirements of CD ¶ 13 that "Defendants shall require foster parents to participate in at least six hours of foster parent training a year" and "[o]ne year after entry of this Decree, no foster parent's license may be renewed unless one of the foster parents in the home has received the required training[,]" Defendants fail to ensure that all foster parents participate in the required in-service training each year.

31. Violation 19: Contrary to the requirements of Mod. ¶ 17 that "relative caretakers shall be informed on an annual basis of the availability and content of foster parent training and shall be invited to attend[,]" and that "[training] ... shall be made available," Defendants fail to inform all kinship care providers of the availability of foster parent training and further fail to make it available to all kinship care providers.

32. Violation 20: Contrary to the requirements of CD ¶ 33 that Defendants report on "the steps they have taken to achieve compliance with this Decree" and Mod. ¶ 3(b) that Defendants report on "all paragraphs of this Modification," Defendants do not accurately report on whether they inform all foster parents and kinship caregivers of basic facts about the children

placed in their care, as required by CD ¶ 14 and Mod. ¶ 19.

33. Violation 21: Contrary to the requirements of CD ¶ 14 that

Before a child is placed in a foster home, DSS shall provide the foster parents necessary information about the child including the reason for the child's coming into care initially and, if applicable, the reason for the current placement; medical, psychological or behavioral problems that the child may have of which the agency has knowledge and any on-going treatment the child is receiving for any such problems of which the agency has knowledge. In addition, DSS shall make reasonable efforts to provide foster parents with the child's recent grade and attendance record in school. If an emergency placement is necessary, Defendants shall provide the information to the foster parent within ten working days of placement.

and of Mod. ¶ 19 that

When a child is placed in a relative's home, DSS shall discuss with the relative caretaker information about the child, including the reason for the child's coming into care and the expected duration of the current placement and the expected permanent plan; medical, psychological or behavioral problems that the child may have, of which the worker has knowledge; and any ongoing treatment the child is receiving for any problems about which the worker has knowledge. If neither the caretaker nor child knows the child's school, recent grade in school and the name and address of the child's medical provider(s), the worker shall obtain that information. If an emergency placement is necessary, the above-described sharing and gathering of information shall occur within ten working days of placement. The information provided [to] the caretaker shall be documented in the case record.

Defendants fail to inform all foster parents and kinship caregivers of basic facts about the children placed in their care.

34. Violation 22: Contrary to the requirements of Mod. ¶ 3(b) that Defendants report on "all paragraphs of this Modification," Defendants fail to assess or report on compliance with the provisions of Mod. ¶ 15 that "[r]estrictive foster home applications shall be processed in a timely manner" and that "[u]pon approval, retroactive foster care payments (less any AFDC payments received since application) shall be made from date of application." In addition,

Defendants assess but fail to report on compliance with the provision of Mod. ¶ 15 that “[t]he caseworker shall discuss the procedures for application as a restricted foster parent with the relative caretaker during the first home visit after commitment.”

35. Violation 23: Contrary to the requirement of Mod. ¶ 15, that “[r]estrictive foster home applications shall be processed in a timely manner[.]” Defendants frequently fail to process foster home applications in a timely manner.

36. Violation 24: Contrary to the requirements of CD ¶ 26B that Defendants “shall conduct such investigations for existing and prospective caretakers and others known to be in the household” and the requirements of CD ¶ 9 that “Defendants maintain a continuum of appropriate foster care placements ... includ[ing] regular foster homes,” Defendants frequently fail to perform criminal background checks and checks for past protective services history of suspected child abuse or neglect.

37. Violation 25: Contrary to the requirements CD ¶ 26C that “DSS shall determine if a home meets basic health and sanitary standards within 30 days of placement[.]” and the requirements of CD ¶ 9 that “Defendants maintain a continuum of appropriate foster care placements ... includ[ing] regular foster homes,” Defendants frequently fail to determine if foster homes and kinship placements meet basic health and safety standards (including fire standards) and to conduct required annual assessments.

38. Violation 26: Contrary to the requirements of CD ¶ 30 that

Whenever there is a report of abuse or neglect of a child in a foster family home or a child placed with a relative, BCDSS shall notify the attorney for the child in a foster family home and, within six months of the entry of this Decree, the attorney for the child placed with a relative, if it knows of any, the child's biological parents unless psychologically contraindicated or their whereabouts or identity is unknown, and such other persons as are required to be notified by State law. Notification to the child's attorney and/or biological parents shall be within five working days of receipt of a report. A copy of the report shall be provided to the child's attorney. The completed disposition of the complaint shall be submitted to the child's attorney within five working days of its completion.

Defendants fail to send reports of suspected maltreatment and the completed dispositions of those investigations to children's counsel within five days of receipt.

39. Violation 27: Despite the requirements of CD ¶ 22 and Mod. ¶ 18 that "[e]ach child in a foster family home shall be visited by their assigned caseworker or his or her substitute at least once every month" (or bimonthly home visits after six months in a kinship care placement, per Mod. ¶ 18), Defendants fail to visit each child on a monthly basis (or on a bimonthly basis in pertinent kinship care cases), irrespective of the location of those visits.

40. Violation 28: Despite the requirements of CD ¶ 22, Mod. ¶ 18 that "[e]ach child in a foster family home shall be visited by their assigned caseworker or his or her substitute at least once every month" (or bimonthly home visits after six months in a kinship care placement, per Mod. ¶ 18), Defendants fail to provide a monthly visit to each child in the child's home.

41. Violation 29: Contrary to the requirements of CD ¶ 33 that Defendants report on “the steps they have taken to achieve compliance with this Decree[,]” and Mod. ¶ 3(b) that Defendants report on “all paragraphs of this Modification[,]” Defendants fail to report whether, as required by CD ¶ 22, “[w]here indicated” by the circumstances of the case, “the caseworker, based on his or her professional judgment, shall visit or contact the child more frequently” and that “[d]uring the first three months a child is placed or replaced, the caseworker shall visit or contact the child more frequently when in his or her professional judgment such is appropriate.”

42. Violation 30: Contrary to the requirements of CD ¶¶ 23 and 24 that “[i]f an abuse or neglect complaint is filed pertaining to a foster family home, the assigned caseworker(s) shall visit the home at least once a week until the complaint is ruled out” and that “[i]f an abuse or neglect complaint is not ruled out, the caseworkers shall visit the home at least once a week until the children are removed from the home or until the juvenile court orders otherwise or the child’s attorney and DSS agree otherwise[,]” Defendants frequently fail to make weekly home visits when reports of abuse or neglect are made.

43. Violation 31: Contrary to the requirements of CD ¶ 9 that they maintain a continuum of appropriate placements and of COMAR 07.02.25.14.A. that “[a] local department shall: (1) [c]onduct an annual reconsideration of each foster family home ... to determine continuing compliance with the family foster home regulations[,]” Defendants fail to perform annual reassessments of each foster family home.

44. Violation 32: Contrary to the requirement of CD ¶ 21B that “[a]ll foster children shall have an initial health care screening if possible before placement in an out-of-home care setting, but in any event, no later than 24 hours following placement[,]” as modified by Mod. ¶ 3(c), which provides that “[t]he initial health care screening required by [CD ¶] 21B shall occur, if possible, prior to or at the time of placement, but in any event, not later than five working days following placement[,]” Defendants fail to provide initial health screens for all children entering care within five working days of placement.

45. Violation 33: Contrary to the requirements of CD ¶ 21C that “[a]ll foster children shall be referred for a comprehensive health assessment within 30 days of entering placement” which “shall be completed within 60 days of entering placement[,]” Defendants fail to provide comprehensive health assessments for all children entering care within sixty days of placement.

46. Violation 34: Contrary to the requirements of CD ¶ 21C that “[t]he [comprehensive health] assessment shall address the child’s medical, emotional and developmental needs[,]” Defendants fail to conduct proper comprehensive health assessments that satisfactorily address the child’s needs for each child.

47. Violation 35: Contrary to the requirements of CD ¶ 21C that “[t]he [comprehensive health] assessment shall address the child’s medical, emotional and developmental needs[,]” Defendants fail to gather the health history for each child.

48. Violation 36: Contrary to the requirements of CD ¶ 21C that “[t]he [comprehensive health] assessment shall address the child’s medical, emotional and developmental needs[,]” Defendants fail to develop standards to ensure an appropriate level of quality for the initial mental health, developmental, and educational assessments.

49. Violation 37: Contrary to the requirements of CD ¶ 21C that “[t]he results of this assessment will be made available to the child’s health care provider(s),” Defendants fail to develop an integrated comprehensive health assessment that is distributed to stakeholders (including health care providers) and incorporated into a health care plan for the child.

50. Violation 38: Contrary to the requirements of CD ¶ 21D that “[a]ll foster children shall have periodic medical, dental and developmental examinations in accordance with the schedules or protocols of the EPSDT[,]” Defendants fail to provide all children with periodic medical care as required by the EPSDT protocols.

51. Violation 39: Contrary to the requirements of CD ¶ 21D that “[a]ll foster children shall have periodic medical, dental and developmental examinations in accordance with the schedules or protocols of the EPSDT[,]” Defendants fail to properly assess for compliance with the EPSDT protocols.

52. Violation 40: Contrary to the requirements of CD ¶ 21D that “[a]ll foster children shall have periodic medical, dental and developmental examinations in accordance with the schedules or protocols of the EPSDT[,]” Defendants fail to provide regular dental care to all children in BCDSS custody.

53. Violation 41: Contrary to the requirements of CD ¶ 21E that

For each child in foster care the defendants shall develop and use an abbreviated health care record (e.g., medical passport), which shall accompany the child through the out-of-home care system and upon his or her return home, adoption or emancipation. An abbreviated health care record shall require the following information: the medical facilities where the child usually receives care, the child's condition at placement as documented by his or her physician, and the child's immunization record, allergies/adverse reactions, chronic health problems and present medications. The foster parents of the child shall be provided with the health passport completed to the extent possible at the time of a child's replacement or if an initial placement within 5 days of placement. Copies of the forms contained in the passport shall be included in the child's case record and shall be reviewed by a supervisor at least every 6 months.

Defendants fail to keep health passports up-to-date for each child in BCDSS custody.

54. Violation 42: Contrary to the requirements of Mod. ¶ 34 that Defendants "shall make reasonable efforts to obtain and maintain in the case files of children placed with relatives the results of the preplacement screening, the sixty-day assessment, any mental health evaluation, any hospital discharge summary and any other comprehensive assessment, particularly those pertaining to mental health, development or education[.]" Defendants fail to make reasonable efforts to obtain these health care records for each child placed in kinship care.

55. Violation 43: Contrary to the requirements of CD ¶ 33 that Defendants report on "the steps they have taken to achieve compliance with this Decree" and Mod. ¶ 3(b) that Defendants report on "all paragraphs of this Modification[.]" Defendants fail to report known violations of the requirements of Mod. ¶ 34 that they "shall make reasonable efforts to obtain and maintain in the case files of children placed with relatives the results of the preplacement screening, the sixty-day assessment, any mental health evaluation, any hospital discharge summary and any other comprehensive assessment, particularly those pertaining to mental health, development or education."

56. Violation 44: Despite the requirements of CD ¶ 21F that Defendants “shall establish and maintain a health services management unit within DSS” which “shall be staffed by one or more health professionals who are trained and experienced in child health care[,]” Defendants fail to maintain a Health Care Unit that addresses the health care needs for all Plaintiffs after the initial period following the children’s entry into care.

57. Violation 45: Contrary to the requirements of CD ¶ 21A and Mod. ¶ 29 that “Defendants shall develop and maintain a medical care system reasonably calculated to provide comprehensive health care services to foster care children in a continual and coordinating manner in accordance with their needs[,]” Defendants have failed to develop and maintain a medical care system reasonably calculated to provide comprehensive health care services to Plaintiffs in a continual and coordinating manner in accordance with their needs.

58. Violation 46: Contrary to the requirements of CD ¶ 21A and Mod. ¶ 29 that “Defendants shall develop and maintain a medical care system reasonably calculated to provide comprehensive health care services to foster care children in a continual and coordinating manner in accordance with their needs[,]” and Defendants’ commitments to the Court that “[s]tandards used in the development of medical care plans will be consistent with the American Academy of Pediatrics” (i.e., the “CWLA/AAP standards) and that the “health care provisions (Paragraph 21) are based on CWLA recommendations,” Defendants fail to apply the CWLA/AAP standards.

59. Violation 47: Contrary to the requirements of CD ¶ 21A and Mod. ¶ 29 that “Defendants shall develop and maintain a medical care system reasonably calculated to provide comprehensive health care services to foster care children in a continual and coordinating

manner in accordance with their needs[,]" Defendants have failed to develop and maintain a tracking system that is necessary to ensure that Plaintiffs receive comprehensive health care services in a continual and coordinating manner in accordance with their needs.

60. Violation 48: Contrary to the requirements of CD ¶ 21A and Mod. ¶ 29 that "Defendants shall develop and maintain a medical care system reasonably calculated to provide comprehensive health care services to foster care children in a continual and coordinating manner in accordance with their needs[,]" Defendants have failed to develop and maintain a health unit or health suite that is necessary to ensure that Plaintiffs receive comprehensive health care services in a continual and coordinating manner in accordance with their needs.

61. Violation 49: Contrary to the requirements of CD ¶ 21A and Mod. ¶ 29 that "Defendants shall develop and maintain a medical care system reasonably calculated to provide comprehensive health care services to foster care children in a continual and coordinating manner in accordance with their needs[,]" Defendants fail to provide mental health and specialized medical treatment to meet identified health needs of the children.

62. Violation 50: Contrary to the requirements of CD ¶ 21A and Mod. ¶ 29 that "Defendants shall develop and maintain a medical care system reasonably calculated to provide comprehensive health care services to foster care children in a continual and coordinating manner in accordance with their needs[,]" Defendants have failed to develop and maintain an effective system for coordinating referrals of children already in care.

63. Violation 51: Contrary to the requirements of CD ¶ 21A and Mod. ¶ 29 that "Defendants shall develop and maintain a medical care system reasonably calculated to provide comprehensive health care services to foster care children in a continual and coordinating

manner in accordance with their needs[,]” Defendants fail to ensure a medical home for each child as called for by the standards of the American Academy of Pediatrics.

64. Violation 52: Contrary to the requirements of CD ¶ 21A and Mod. ¶ 29 that “Defendants shall develop and maintain a medical care system reasonably calculated to provide comprehensive health care services to foster care children in a continual and coordinating manner in accordance with their needs[,]” Defendants fail to ensure consistent availability of Medical Assistance to Plaintiffs.

65. Violation 53: Contrary to the requirements of CD ¶ 21A and Mod. ¶ 29 that “Defendants shall develop and maintain a medical care system reasonably calculated to provide comprehensive health care services to foster care children in a continual and coordinating manner in accordance with their needs[,]” Defendants fail to have a health plan for each child.

66. Violation 54: Contrary to the requirements of CD ¶ 21A and Mod. ¶ 29 that “Defendants shall develop and maintain a medical care system reasonably calculated to provide comprehensive health care services to foster care children in a continual and coordinating manner in accordance with their needs[,]” Defendants fail to ensure parent and family participation in the child’s health planning and decisions.

67. Violation 55: Contrary to the requirements of CD ¶ 21A and Mod. ¶ 29 that “Defendants shall develop and maintain a medical care system reasonably calculated to provide comprehensive health care services to foster care children in a continual and coordinating manner in accordance with their needs[,]” Defendants have failed to develop and maintain a health care system that provides preventive health care, such as mental health reassessments, to all children in BCDSS custody.

68. Violation 56: Contrary to the requirements of CD ¶ 21A and Mod. ¶ 29 that “Defendants shall develop and maintain a medical care system reasonably calculated to provide comprehensive health care services to foster care children in a continual and coordinating manner in accordance with their needs[,]” Defendants lack special preventive health and mental health services for adolescents.

69. Violation 57: Contrary to the requirements of CD ¶ 21A and Mod. ¶ 29 that “Defendants shall develop and maintain a medical care system reasonably calculated to provide comprehensive health care services to foster care children in a continual and coordinating manner in accordance with their needs[,]” Defendants fail to address the children’s lack of access to health care.

70. Violation 58: Contrary to the requirements of CD ¶ 21A and Mod. ¶ 29 that “Defendants shall develop and maintain a medical care system reasonably calculated to provide comprehensive health care services to foster care children in a continual and coordinating manner in accordance with their needs[,]” and the requirements of CD ¶ 21C and Mod. ¶ 29 that the “providers selected by DSS to provide health care for the child shall be reasonably calculated to meet the child’s specific needs identified by the [comprehensive] assessment[,]” Defendants do not select providers for each child who are reasonably calculated to meet the child’s specific needs identified by the comprehensive assessment.

71. Violation 59: Contrary to the requirements of CD ¶ 21A and Mod. ¶ 29 that “Defendants shall develop and maintain a medical care system reasonably calculated to provide comprehensive health care services to foster care children in a continual and coordinating

manner in accordance with their needs[,]" Defendants fail to evaluate the effectiveness of their chosen health providers for Plaintiffs.

72. Violation 60: Contrary to the requirements of CD ¶ 19A that "[w]ithin five working days of being placed in nonemergent foster care, a child of school age shall be attending school (if school is in session)" and Mod. ¶ 26 that "[t]he child shall be enrolled in school within five working days of placement," Defendants fail to take necessary steps to ensure that each child in BCDSS custody attends school on a timely basis following changes in placement.

73. Violation 61: Contrary of the requirements of CD ¶ 19B that "[i]f a child's caseworker has reason to believe that a foster child may be educationally handicapped and is not receiving special educational services, the worker shall promptly notify the local educational agency and request a screening for that child in writing[,]" and of Mod. ¶ 27 that

If the caseworker of a child placed with relatives has reason to believe that a child may be educationally handicapped and is not receiving special educational services, the worker shall assist, when necessary and appropriate, the relative in promptly notifying the local educational agency that the child may be educationally handicapped and in requesting a screening for that child in writing. If the caretaker is unable or unwilling to make this referral or if the referral is unsuccessful, the caseworker shall make or pursue the referral.

Defendants fail to refer all children suspected of educational handicaps who are not receiving special education services for special education screenings.

74. Violation 62: Contrary to the requirements of CD ¶ 19B that "[t]he child's caseworker shall be responsible for ... attending meetings on behalf of the foster child relating to identification, evaluation and placement of the child in a special educational program," and Mod. ¶ 27 that "[t]he worker will monitor whether the relative caretaker is attending meetings on behalf of the child placed in his or her care" and "[i]f the caretaker is unable or unwilling to

assume these responsibilities or if there are problems in the special education process, the caseworker shall take appropriate action[,]" Defendants frequently fail to attend special education meetings as required by the Consent Decree and the Modification.

75. Violation 63: Contrary to the requirements of CD ¶ 33 that Defendants report on "the steps they have taken to achieve compliance with this Decree," and Mod. ¶ 3(b) that Defendants report on "all paragraphs of this Modification[,]" Defendants fail to assess accurately for their compliance with the provisions of CD ¶ 19B and Mod. ¶ 27 requiring attendance at special education meetings.

76. Violation 64: Contrary to the requirements of (i) CD ¶ 19C and Mod. ¶ 29 that, once the worker receives training on special education issues, "the worker shall notify the child's attorney if these services are not provided in a timely fashion"; (ii) Mod. ¶ 28 that "[t]he caseworker of a child placed with relatives shall monitor the child's progress in school" and "shall document information obtained about the child's school progress in the case record"; and (iii) CD ¶ 22 that at monthly visits with the child, workers must determine the child's adjustment to school, Defendants fail to monitor the educational progress of all children in their care.

77. Violation 65: Contrary to the requirements of CD ¶ 33 that Defendants report on "the steps they have taken to achieve compliance with this Decree" and Mod. ¶ 3(b) that Defendants report on "all paragraphs of this Modification[,]" Defendants fail to assess compliance with the provisions of CD ¶¶ 19C and 22 and Mod. ¶¶ 28 and 29 requiring Defendants to monitor educational progress for all children in their care.

78. Violation 66: Contrary to the requirements of CD ¶ 19D and Mod. ¶ 30, that

If DSS holds guardianship with the right to consent to adoption or long-term care short of adoption of a child and that child is educationally handicapped or is suspected of being educationally handicapped, the child's caseworker shall provide the local education agency with appropriate documentation of the child's legal status so that the school can apply for the appointment of a parent surrogate.

Defendants fail to make referrals for parent surrogates for all children known or believed to be educationally handicapped whose parental rights have been terminated.

79. Violation 67: Contrary to the requirements of CD ¶ 8 and Mod. ¶ 13 that Defendants "shall establish within DSS a specialized unit to assist caseworkers and supervisors to manage effectively cases that require specialized experience and/or knowledge in areas such as assisting children or parents who need services for drug and alcohol abuse; special educational needs; developmental disabilities; mental health or other specialized health care needs; or the development of independent living skills[.]" Defendants fail to maintain a Specialized Support Unit ("SSU") that serves this function. Instead, Defendants have given SSU employees responsibility for conducting basic casework tasks (obtaining mental health assessments required by CD ¶ 21C and enrolling children placed in counties outside of Baltimore City as required by CD ¶ 19A, in direct violation of CD ¶ 8 and Mod. 13, which expressly state that "[t]he responsibilities of this unit do not include direct case responsibility or the providing of direct services."

80. Violation 68: Contrary to the requirements of CD ¶ 33 that Defendants report on "the steps they have taken to achieve compliance with this Decree" and Mod. ¶ 3(b) that Defendants report on "all paragraphs of this Modification," Defendants fail to report to the Court their internal data indicating that they frequently do not make reasonable efforts to reunify children with their families as required by CD ¶ 15A and Mod. ¶ 20.

81. Violation 69: Contrary to the requirements of CD ¶ 15A and Mod. ¶ 20 that they make reasonable efforts be made to “reunify a child who has been placed” into their care, Defendants frequently fail to make reasonable efforts to reunify children with their families.

82. Violation 70: Contrary to the requirements of CD ¶ 15B that “Defendants shall seek through the budget process and advocate for their appropriation sufficient funds to provide a program of intensive family services the goal of which shall be to reduce the number of children who need to be removed from their biological homes[,]” Defendants fail to budget and advocate for appropriation of sufficient funds for intensive family services.

83. Violation 71: Contrary to the requirements of (i) CD ¶ 15C that “[a] case plan for each child in foster care shall set forth the services and assistance that have been provided to prevent or eliminate the need for removal from the home and the reasons those efforts did not succeed”; (ii) CD ¶ 25B that “[a] child committed by the juvenile court to DSS who is placed with his or her relative(s) shall be provided a case plan”; and (iii) Mod. ¶ 21 that “[w]ithin three months after the execution of this Modification, each child placed with a relative shall have a written case plan within sixty days of placement. The case plan shall conform to applicable federal law[,]” Defendants fail to provide a case plan complying with these requirements for each child in their care.

84. Violation 72: Contrary to the requirements of CD ¶ 17A and Mod. ¶22 that

In each case in which the case plan is the child’s return home, DSS shall enter into a service agreement with the biological parent of the child within 60 days of the child’s placement unless the parent is unavailable or unwilling to agree. The agreement shall set forth the current barriers to the child’s return home, the steps the parent must take in order to have the child returned to him or her, the timelines for completion of these steps, the services, if any, the caseworker and DSS will provide to the parent (for example, referral to alcohol abuse counseling), and the timelines within which any services will be provided.

Defendants fail to enter into proper service agreements with parents in each case in which the case plan is reunification.

85. Violation 73: Contrary to the requirements of CD ¶ 33 that Defendants report on “the steps they have taken to achieve compliance with this Decree” and Mod. ¶ 3(b) that Defendants report on “all paragraphs of this Modification,” Defendants fail to report to the Court violations regarding the contents of service agreements required by CD ¶ 17A and Mod. ¶ 22.

86. Violation 74: Contrary to the requirements of CD ¶ 16 that “[i]n all cases in which the goal is to return a foster child to his or her biological home, defendants shall make reasonable efforts to facilitate weekly visits between the parent and child, unless the juvenile court orders otherwise, or DSS finds that such visits are not in the child’s best interest” and that [b]efore permanent reunification, overnight and weekend visits should be provided if appropriate and Mod. ¶ 23 that “a visiting schedule between parents and their children ... shall be established” and that “[i]n all cases where the goal is return home, parents shall be informed that, unless it is determined not to be in the child’s best interest, they are entitled to weekly visits” and “[w]here necessary, DSS shall assist visitation[.]” Defendants fail to make necessary efforts to provide weekly visits in all reunification cases.

87. Violation 75: Contrary to the requirements of Mod. ¶ 32 that Defendants “shall provide for regular visitation among children placed with relatives and other siblings in the legal custody of DSS,” Defendants frequently fail to provide regular sibling visitation to children in their custody who are placed in different homes or other placements.

88. Violation 76: Contrary to the requirements of CD ¶ 33 that Defendants assess and report on “the steps they have taken to achieve compliance with this Decree” and Mod. ¶ 3(b)

that Defendants report on “all paragraphs of this Modification[,]” Defendants fail to accurately assess and report on whether BCDSS promptly changes permanency plans from return home pursuant to agency guidelines as required by CD ¶ 17B and Mod. ¶ 24.

89. Violation 77: Contrary to the requirements of CD ¶ 17B and Mod. ¶ 24 that “Defendants shall continue to follow the guidelines for workers on when a permanency plan shall be changed from return home[,]” which “require that the case plan goal be changed promptly when the parent fails continuously to fulfill terms agreed to in the service agreement and/or when the parent has not maintained regular visitation or other contact with the child[,]” Defendants frequently fail to change permanency plans from “return home” promptly pursuant to their guidelines.

90. Violation 78: Contrary to the requirements of Mod. ¶ 25 that “[a]fter a petition [for termination of parental rights] is filed, DSS shall take such necessary steps within its power to expedite the termination of parental rights process[,]” Defendants frequently fail to expedite the process for terminating parental rights for children.

91. Violation 79: Contrary to the requirements of CD ¶ 25A and 25B that “[a child committed by the juvenile court to DSS who is placed with his or her relative(s) ... shall be provided a case plan and 6-month administrative and 18-month juvenile court reviews of his or her placement[,]” Defendants fail to provide the required 6-month administrative and 18-month periodic juvenile court review hearings for all children in kinship care cases.

92. Violation 80: Contrary to the requirements of CD ¶ 25B that “DSS shall request that the Foster Care Review Board [now the Citizens’ Review Board for Children (“CRBC”)] conduct the 6-month administrative reviews[,]” Defendants fail to request and arrange for the

CRBC to conduct these reviews for all children in kinship care.

93. Violation 81: Contrary to the requirements of Mod. ¶ 33 that “[a] copy of the review form completed at or by the six-month administrative review required by paragraph 25B of the Consent Decree shall be available to the child’s attorney[.]” Defendants fail to send the results of administrative reviews of children in kinship care to the children’s attorneys.

94. Violation 82: Contrary to the requirements of CD ¶ 5 and Mod. ¶ 7 establishing maximum average caseloads for caseworkers and supervisors, Defendants use caseload averaging in a manner that defeats the purpose of the Consent Decree caseload requirement provisions by requiring some caseworkers to maintain very high caseloads.

95. Violations 83-85: Contrary to the requirements of CD ¶ 5(e) and Mod. ¶ 9(a) that “[w]hen a worker leaves or transfers to another unit, the supervisor shall reassign cases, except for priority cases, to other workers within five working days[.]” and of Mod. ¶ 9(c) that “[w]hen a worker who serves children placed with relatives leaves BCDSS, is on extended leave that exceeds 30 days or transfers to a new unit, the supervisor shall assign that worker’s cases to other workers within five working days[.]” Defendants frequently fail to transfer cases in a timely fashion to new caseworkers, which can result in uncovered cases.

96. Violations 86-87: Contrary to the requirements of CD ¶ 5(e) and Mod. ¶ 9(c) that “[t]here shall be a conference between the supervisor and the new worker within 10 working days of reassignment[.]” Defendants frequently fail to hold case transfer conferences.

97. Violation 88: Contrary to the requirements of CD ¶ 33 that Defendants report on “the steps they have taken to achieve compliance with this Decree” and Mod. ¶ 3(b) that Defendants report on “all paragraphs of this Modification,” Defendants fail to provide reliable

reports by Quality Assurance, and instead underreport violations and overreport compliance.

98. Violation 89: Contrary to the requirements of CD ¶ 33 that Defendants report on “the steps they have taken to achieve compliance with this Decree” and Mod. ¶ 3(b) that Defendants report on “all paragraphs of this Modification,” Defendants fail to use criteria in their Quality Assurance review of cases that measure compliance with the actual terms of the Consent Decree.

99. Violation 90: Contrary to the requirements of CD ¶ 33 that Defendants report on “the steps they have taken to achieve compliance with this Decree” and Mod. ¶ 3(b) that Defendants report on “all paragraphs of this Modification,” Defendants fail to use a reliable methodology to select QA’s pool of applicable cases.

100. Violation 91: Contrary to the requirements of CD ¶ 33 that Defendants report on “the steps they have taken to achieve compliance with this Decree” and Mod. ¶ 3(b) that Defendants report on “all paragraphs of this Modification,” Defendants fail to disclose adverse Quality Assurance data regarding violations of the Consent Decree or Modification that Quality Assurance does report internally.

101. Violation 92: Contrary to the requirements of CD ¶ 33 that Defendants report on “the steps they have taken to achieve compliance with this Decree” and Mod. ¶ 3(b) that Defendants report on “all paragraphs of this Modification,” Defendants fail to provide reliable aggregate data required by CD ¶ 33(a) - (d), (h), (k) and (l) for (1) caseloads; (2) the number of foster homes; and (3) the number of children in care.

102. Violation 93: Contrary to the requirements of CD ¶ 33 that Defendants report on “the steps they have taken to achieve compliance with this Decree” and Mod. ¶ 3(b) that

Defendants report on “all paragraphs of this Modification,” Defendants fail to disclose adverse data, studies, reports, and facts.

103. Violation 94: Contrary to the requirements of CD ¶ 36A that “[i]f plaintiffs’ attorneys present a dispute arising under this Decree involving an individual class member, plaintiffs’ attorneys may inspect the file of that child, the child’s parents, and the child’s foster parent(s) upon obtaining a protective order” and that “[t]he parties agree to cooperate in obtaining the necessary protective order[.]” Defendants fail to permit Plaintiffs’ counsel access to case files of the child, the child’s parents, and the child’s foster parents when Plaintiffs’ counsel present a dispute arising under the Decree involving an individual class member.

104. Specific request for Modification: Pursuant to the warnings issued by the Court when it approved the Consent Decree, the maximum required caseloads set forth in the Consent Decree should be modified to a level sufficient to ensure compliance with the terms of the Consent Decree, which have already been established by State law pursuant to recommendations by the Child Welfare League of America.

WHEREFORE, Plaintiffs respectfully request that this Court:

1. Issue an Order for Defendants to show cause why they should not be held in contempt for their failure to comply with this Court’s Orders of September 27, 1988 and December 12, 1991.

2. Find Defendants in contempt of this Court’s Orders of September 27, 1988 and December 12, 1991.

3. Amend the existing Monitor Order (Dkt. 255, May 2, 1989) to establish a monitoring office or panel authority with full powers to:

- (a) investigate and report on Defendants' compliance (or lack thereof);
- (b) assist in the development of reasonable compliance plans focusing on practice reforms and accountability mechanisms, such as quality service reviews conducted under the monitor's authority, to facilitate compliance; and
- (c) work with the parties to develop substantive reforms and other modifications to the Decree.

4. Order Defendants to refrain from:

- (a) using unlicensed facilities, such as the Gay Street or any other BCDSS office, to hold children more than two hours pending placement;
- (b) placing Plaintiffs in congregate care settings when such placements are not clinically required;
- (c) denying day care subsidies to foster parents and relative caregivers who need such subsidies to care for Plaintiffs;
- (d) merging comprehensive health assessments into initial health screens;
- (e) allowing Plaintiffs' cases to go uncovered by an active, regularly assigned caseworker; and
- (f) diverting the BCDSS Specialized Support Unit employees to engage in

casework activities prohibited by the Consent Decree.

2. Order Defendants to:

- (a) pay foster parents the subsidy rates set forth in Consent Decree ¶ 10 and to increase those rates each year upon publication of new data by the U.S. Dept. of Agriculture;
- (b) engage a qualified consultant to conduct a comprehensive needs assessment of the types and amounts of placements needed to provide clinically and geographically appropriate placements for all Plaintiffs;
- (c) obtain an independent assessment of Defendants' foster home recruitment and retention efforts to determine why those efforts have failed and how they can be improved;
- (d) provide intensive classroom and field training that enables workers to deliver effective case practice to families, reinforced by quality service reviews conducted under the auspices of the monitor, and performance reviews of caseworkers and supervisors identified as poorly performing;
- (e) identify poorly performing employees and prevent them from serving Plaintiffs unless Defendants certify that, through training and other remedial efforts, they have demonstrated that they can comply with the Consent Decree;
- (f) assess and determine the level of intensive family services staff and "flex" fund support sufficient to prevent avoidable removal of Plaintiffs from

their families;

- (g) comply with the standards for foster children's health care issued by the CWLA and the American Academy of Pediatrics, as Defendants promised this Court twenty years ago;
- (h) develop and enforce standards for the selection of mental health providers for the assessment and treatment of the mental health needs of Plaintiffs, and develop and enforce standards for the assessment, reporting, and treatment of the mental health needs of Plaintiffs.
- (i) establish a dental clinic and hire the staff necessary to ensure that Plaintiffs receive semi-annual dental check-ups and all necessary dental services;
- (j) use a form such as that already distributed by DHR to inform caregivers of issues and background concerning children placed into their homes;
- (k) ensure that every placement of Plaintiffs has (i) annual checks for criminal background and abuse and neglect history of all household members, (ii) annual inspections for health, safety, fire, and sanitation, and (iii) annual reassessments of appropriateness of the placement to care for foster children;
- (l) send copies of (i) all reports of suspected abuse, neglect, or other maltreatment of any Plaintiff, (ii) all reports of suspected abuse, neglect, or other maltreatment in a home or facility where a Plaintiff is placed, and

- (iii) all reports discussing the disposition of those initial reports, without redaction of any information other than the name of the reporter of the suspected maltreatment, within five days of preparation to Plaintiffs' counsel and to the children's individual CINA counsel;
- (m) report all instances of fatality or serious injury to a Plaintiff child within 24 hours to the child's individual CINA attorney and to Plaintiffs' counsel.
- (n) comply with all regulatory timelines for processing foster home and adoption applications;
- (o) make monthly visits to each child in his or her placement;
- (p) develop and maintain visitation centers in sufficient quantity to ensure full compliance with the parent-child and sibling visitation requirements of the Consent Decree and the Modification;
- (q) provide regular and frequent visitation among all siblings in BCDSS custody;
- (r) require that custody and guardianship and adoption home studies be initiated immediately upon a change of the permanency plan to either outcome, or upon the identification of a proposed adoptive or custodial home;
- (s) ensure that all eligible youth are provided comprehensive independent living services and have sufficient independent living placements to meet their needs;

- (t) eliminate all exclusionary criteria for Semi-Independent Living ("SILA") eligibility that imposed restrictions not required by Maryland law;
- (u) increase the SILA stipend to adjust for inflation in the Mid-Atlantic region since the time the stipend amount was last established;
- (v) ensure that all children with identified or suspected substance abuse needs receive immediate, complete, and comprehensive substantive abuse treatment;
- (w) ensure that children with disabilities receive all necessary services, including timely requests for co-commitment with other agencies and all other appropriate requests for services and benefits from appropriate agencies;
- (x) after filing a petition for termination of parental rights, take all steps necessary to expedite a ruling on the petition, and if the petition is granted, take all steps necessary to expedite the approval of an adoptive home for the child and the approval of the adoption by the court;
- (y) provide all necessary services to maintain the child in the appropriate setting, whether with parents, in kinship care, in foster homes, in independent living settings or, if clinically required, in congregate care;
- (z) retain a consultant to perform a feasibility study of privatization of child welfare services in Baltimore City; and
- (aa) establish an independent ombudsman's office for child welfare services

and require Defendants to request through the budget process sufficient funding for it to meet the needs of the children and families that it serves.

6. In the event that the Court does not establish a monitor with the authority set forth above, to require Defendants:

- (a) to provide Plaintiffs' counsel with full access to Defendants' databases, case files, and all reports pertinent to compliance with or violations of the Consent Decree, including access to all materials and information concerning Plaintiffs, their placements, and their families; and
- (b) to disclose on a timely and regular basis all information adverse to Defendants pertaining to compliance.

7. Require Defendants to comply with the caseload limits that the CWLA has determined to be appropriate for caseworkers and supervisors in Maryland.

8. Make the following adjustments to the Quality Assurance and reporting provisions of the Consent Decree:

- (a) delete those provisions of the 1991 Modification that had excused Defendants from reporting on compliance for certain specified provisions of the Consent Decree;
- (b) require Defendants to report on their levels of compliance with each and every requirement of the Decree;
- (c) require Defendants to modify their Quality Assurance reports to correct all errors and omissions set forth in Part II, § G of the Argument and any errors or omissions identified subsequent to the filing of this Petition; and

- (d) modify the Consent Decree and Modification provisions such that the requirements for foster care and kinship care are the same, using those terms that give Plaintiffs the maximum protection.

9. For such other and further relief as the nature of their cause may require.

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