

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION**

MICHELLE H., by her next friend Tamara)
Coppinger, **AVA R.**, by her next friend)
Tamara Coppinger, **ZAHARA L.**, by her next)
friend Deborah Wilson, **SAMMY V.**, by his)
next friend Aleksandra Chauhan, **ANDREW)
R.**, by his next friend Cheryl Kreider,)
MARCUS, ANNIE, CAMERON, SARA,)
and ROGER B., by their next friend)
Margaret Wilson, and **KYLE S.**, by his next)
friend Tamara Coppinger,)

**Individually, and on behalf of all other)
similarly situated children.**)

Plaintiffs,)

v.)

C/A No. 2:15-cv-00134-RMG

NIKKI HALEY, in her official capacity as)
Governor of the State of South Carolina, and)

SUSAN ALFORD, in her official capacity as)
Acting State Director of the South Carolina)
Department of Social Services.)

Defendants.)

FINAL SETTLEMENT AGREEMENT

I. Preamble

- A. This Court has subject matter jurisdiction and personal jurisdiction over this action and therefore the authority to enter this settlement agreement (“Settlement Agreement”).
- B. This Court shall have continuing jurisdiction of this action to ensure compliance with the terms of this Settlement Agreement.
- C. The provisions of this Settlement Agreement shall resolve the federal statutory and constitutional claims of the Named Plaintiffs and the Class for injunctive and declaratory relief in the Complaint.

- D. For as long as this Settlement Agreement remains in effect, all provisions referring to the “Department,” the “Department of Social Services” or “DSS,” shall apply with full force and effect to the State of South Carolina and to any subsequent agency or agencies with any of the responsibilities that apply to the current DSS as of the date of this Settlement Agreement regardless of any subsequent changes to the governmental organizational structure of the South Carolina DSS. This Settlement Agreement shall be binding on all successors, assignees, employees, agents and all those working for or on behalf of Defendants. Any state agency responsible for the care, protection, or supervision of plaintiff Class Members shall be bound by the provisions of this Settlement Agreement.
- E. “Contractors” include agents.
- F. This Settlement Agreement, and any of its provisions, are not, and shall not be construed to be, an admission of any liability on the part of any of the Defendants concerning any of the claims and allegations in the Complaint.
- G. The parties agree that controlling federal or state laws, rules, or regulations will govern.
- H. The undertaking of any obligation by the Defendants under this Settlement Agreement shall not be construed as an admission of liability or as an admission of a violation of a federal or constitutional right of a Class Member.
- I. The Defendants shall make all reasonable efforts to provide funding and other resources necessary to the implementation and achievement of the obligations under the Settlement Agreement. Defendants’ failure to provide or Defendants’ efforts to provide such adequate funding and resources shall not excuse and shall not limit remedies to address the failure to implement or achieve any of the obligations set forth in the Settlement Agreement.
- J. If the Court does not grant final approval of the Settlement Agreement, or if appellate review of the approval of the Settlement Agreement reverses approval, then the Settlement Agreement shall become null and void.
- K. Without limiting the obligations of Defendants under this Agreement in any way, it is understood and acknowledged between the parties that compliance with the Agreement and achievement of the targets set by the Agreement involves a process of performance improvement that will occur over time and multiple reporting periods.

II. Class Definition, other Definitions

- A. Class Certification and Definition: Pursuant to the terms of this Settlement Agreement, this case shall be certified as a class action under Fed. R. Civ. P. 23(a) and (b)(2). The “Certified Class” shall be defined as follows: all children who are involuntarily placed in DSS foster care in the physical or legal custody of DSS either now or in the future.
- B. “Class Members” shall mean a child or children in the Certified Class.
- C. “Complaint” and the “Litigation” means the initial pleading filed in this case, 2:15-cv-00134-RMG, on January 12, 2015, setting forth Plaintiffs’ claims and causes of action (Dkt. No. 1).
- D. “Assessment and Evaluation Process” is an assessment of the Class Member’s strengths and needs, designed to inform decision-making about placement and services, including the level and type of appropriate care within the therapeutic placement and services array.
- E. “Day” or “days” mean calendar days.
- F. “Defendants” means Defendant Nikki Haley (in her official capacity as Governor of South Carolina) and Defendant Susan Alford (in her official capacity as State Director of the South Carolina DSS).
- G. “DJJ” is the South Carolina Department of Juvenile Justice.
- H. “Emergency or Temporary Placement” means an emergency shelter or other placement used as an emergency or temporary facility to house children as described by Human Services Policy and Procedure Manual § 817.
- I. “Exiting the Juvenile Justice System” is when (a) the youth has completed the term of their plea or adjudicated sentence; (b) the youth’s charge is dismissed and/or the youth no longer has a pending charge; or (c) there is otherwise no statutory requirement to detain the youth in a Juvenile Justice facility and the youth could be served in a foster care facility.
- J. “Congregate Care Facility” means a facility that includes those organizations which provide temporary or long term, full time residential care for children on a year round basis such as child caring institutions, emergency shelters, group homes and organizations with supervised individual living facilities.
- K. “Improvement Plan” means the requirements defined in Section IV of this Settlement Agreement.

- L. “Including” means including, but not limited to.
- M. “Juvenile Justice Placement” shall mean a placement made by the South Carolina Department of Juvenile Justice.
- N. “Placement Moves” means changes in foster care placements. Temporary absence from an ongoing placement setting such as trial home visit, visit to siblings, hospitalization, respite, summer camp, and runaway shall be excluded from the placement setting count, provided the child returns to the ongoing placement setting. The removal to foster care and moves occurring after a Class Member’s 18th birthday shall be excluded from the placement setting count.
- O. “Placement Instability” means the rate of Placement Moves per one thousand (1,000) days of foster care among Class Members, shown by the following formula:

$$\frac{\text{Among Class Members included in the denominator,} \\ \text{the total number of Placement Moves during the 12 month period}}{\text{Among Class Members in foster care for 8 days or more during the 12 month} \\ \text{period, the total number of days spent in foster care during the 12 month period}} \times 1000 = \text{Placement} \\ \text{Instability}$$

- P. “Referral of Institutional Abuse or Neglect” as defined in S.C. Code Ann. § 63-7-20(12), means a possible incident of abuse or neglect of a Class Member.
- Q. “Reporting Periods” are the sequential six-month intervals beginning when the Settlement Agreement is entered by the Court; however, the first Reporting Period shall end on March 31, 2017. Thereafter, the sequential six-month reporting periods shall run from April 1 through September 30 and October 1 through March 31.
- R. “Accepted Report of Abuse or Neglect” means a Referral of Institutional Abuse or Neglect as defined in S.C. Code Ann. § 63-7-20(12) that DSS has accepted for investigation.
- S. “Therapeutic Level of Care” means the leveling system used by DSS within the therapeutic placement and services array, including but not limited to Level 1, 2, 3 foster care placements and Psychiatric Residential Treatment Facilities, as described in the Human Services Policy and Procedures Manual and The State of South Carolina, Fixed Price Bid No. 5400002885.
- T. “Worker” means any employee of DSS that provides direct case management, supervision, or provides permanency services to a Class Member, or investigates one or more Accepted Reports of Abuse or Neglect about a Class Member.
- U. “DSS Monitoring Team” means the individuals designated by DSS as primary contacts for the Co-Monitors.

III. Monitoring

- A. Paul Vincent and Judith Meltzer shall be appointed and shall serve jointly as independent and equal Co-Monitors, whose role shall be to issue periodic public reports on performance on the Settlement Agreement to be filed with the Court. At the conclusion of a Reporting Period, or after the Defendants produce the necessary data to the Co-Monitors, the Co-Monitors shall have one hundred and twenty (120) days to produce a confidential draft report to the parties. After receipt of the draft report, the parties shall have twenty-one (21) days to submit comments to the Co-Monitors on their findings. The parties shall have ten (10) days to file a written motion to the Court requesting a hearing after the final report is filed.
- B. The Co-Monitors may employ Contractors to assist them in their duties under this Settlement Agreement. If the Co-Monitors employ outside consultants, the Co-Monitors will notify counsel of the retention. The Co-Monitors may not delegate decision-making authority to one another or any other individual(s) without prior approval of the parties. Any contractors recommended by the Co-Monitors for assistance in this area will be proposed by the Co-Monitors to the parties and final selection will be made by the Co-Monitors in consultation with the parties.
- C. In the event that either Paul Vincent or Judith Meltzer or a replacement Monitor is unable to fulfill his or her duties under this Settlement Agreement, the party who originally selected the departing Monitor will propose a replacement with the consent of the remaining Monitor and other parties, and submit the replacement to the Court for approval.
- D. The Co-Monitors shall conduct the factual investigation and verification of data and documentation necessary to compile and issue public record reports on progress and performance on the terms of the Settlement Agreement, including but not limited to specific numerical indicators of each measurable target dating back to the first report and each consecutive report thereafter. These reports shall be issued directly to the Court and to the parties. These reports shall be issued approximately one hundred twenty (120) days after the close of each Reporting Period, or after the State and/or DSS produces the necessary data to the Co-Monitors. The Co-Monitors will have an additional thirty (30) days to review parties' comments and produce a final report to the Court. The Co-Monitors' final reports shall be public documents upon final submission to and filing with the Court, except that any individually-identifying information and any other confidential information protected from disclosure shall be filed under seal and redacted or otherwise removed from any public report.
- E. No party, nor any employee or agent of a party, shall have any supervisory authority over the independent Co-Monitors' activities, reports or responsibilities under this Settlement Agreement.

- F. The parties shall have access from the Co-Monitors to all information made available to the Co-Monitors.
- G. Within one hundred twenty (120) days from the date of Court approval of this Settlement Agreement, the Co-Monitors shall provide the parties and the Court with a written initial monitoring plan setting forth the methodologies by which the Co-Monitors shall measure DSS's progress in implementing the terms of this Settlement Agreement. Specifically, the Co-Monitors' methodologies may include, but are not limited to, analyses of information collected: (1) by DSS's management and information systems as determined to be valid and reliable by the Co-Monitors; (2) from a review of relevant case records; (3) from the production and review of data aggregated by DSS, the Co-Monitors or third parties; and (4) from interviews with DSS staff, resource families, Class Members or prior Class Members and their families, contract agency staff, service providers, and other child welfare stakeholders. The monitoring plan may be revised by the Co-Monitors, after consultation with the parties.
- H. DSS shall cooperate with the Co-Monitors in providing access to personnel, documents and other information necessary to monitor the progress and performance on the terms of the Settlement Agreement. The DSS Monitoring Team shall be the Co-Monitors' primary point of contact, and prior to contacting DSS personnel to obtain data or other information, the Co-Monitors must notify a member of the DSS Monitoring Team and give reasonable notice if the Co-Monitors want to talk to any employee not on the DSS Monitoring Team.
- I. DSS shall provide the Co-Monitors with the necessary resources to perform their duties, including payment of their reasonable fees and expenses. The Co-Monitors will prepare an initial budget proposal and provide it to the parties and the Court within thirty (30) days of court approval of the Settlement Agreement. The budget is subject to review and written objections by the parties prior to court approval and shall be updated or revised and subject to court approval annually on or about the anniversary date of entry of the Settlement Agreement.
- J. While the cost of the independent Co-Monitors will be borne by the Defendants, the parties will explore ways to limit the cost of monitoring.
- K. The Co-Monitors shall not express any conclusion as to whether Defendants have reached legal compliance on any provision(s).
- L. The Co-Monitors may communicate privately with the parties.
- M. The Co-Monitors may meet privately with the Court concerning issues related to this case, provided the parties are made aware of the occurrence and subject of such

meetings. Unless scheduling prevents, both Co-Monitors should be present for such meetings with the Court.

IV. Improvement Plan

A. Workloads.

A.1. The Workload Study for Foster Care.

The dates and obligations set forth in IV.A.1 became operative as of September 28, 2015, when the Consent Immediate Interim Relief was entered (Dkt. No. 29).

- (a) DSS shall design, conduct, and complete a foster care workload study (“Workload Study”) that applies to every Worker and to every Worker’s supervisor and adopt one or more workload limits (“Workload Limits”) for foster care within one hundred and eighty (180) days. (Fed. R. Civ. P. 6 – Time Computation).
- (b) In designing, conducting, and completing the foster care Workload Study, DSS shall consider:
 - (i) caseload and workload provisions published by organizations including, but not limited to, the Council on Accreditation and the Child Welfare League of America;
 - (ii) the time needed and the time available for Workers to manage and complete their work; and
 - (iii) accepted best practices for workload studies.
- (c) The foster care Workload Study must be approved by the Co-Monitors before it is conducted. The results of the Workload Study must also be approved by the Co-Monitors before they are adopted by DSS.
- (d) A foster care Workload Limit must apply to every Worker and to every Worker’s supervisor. DSS may identify categories of Worker or supervisor or both and set a different Workload Limit for each category. Each Workload Limit must be approved by the Co-Monitors before it is adopted.

A.2. Implementing the Workload Limits for Foster Care.

- (a) Within sixty (60) days of the entry of the Order approving the Settlement Agreement, Defendants shall develop an Implementation Plan to implement the achievement of the final targets in this subsection. The Implementation Plan shall have enforceable interim benchmarks with specific timelines, subject to consent by the Plaintiffs and approval by the Co-Monitors, to measure progress in achieving the final targets in this subsection. Plaintiffs will not unreasonably withhold consent, and if the

Co-Monitors approve and Plaintiffs do not consent, Plaintiffs will describe with sufficient detail, rationale, and recommendations that will lead to consent.

- (b) At least 90% of Workers and Worker supervisors shall have a workload within the applicable Workload Limit.
- (c) No Worker or Worker's supervisor shall have more than 125% of the applicable Workload Limit.

B. Worker-Child Visitation.

- B.1** Within sixty (60) days of the entry of the Order approving the Settlement Agreement, Defendants shall develop an Implementation Plan to implement the achievement of the final targets in this subsection. The Implementation Plan shall have enforceable interim benchmarks with specific timelines, subject to consent by the Plaintiffs and approval by the Co-Monitors, to measure the progress in achieving the final targets in this subsection. Plaintiffs will not unreasonably withhold consent, and if the Co-Monitors approve and Plaintiffs do not consent, Plaintiffs will describe with sufficient detail, rationale, and recommendations that will lead to consent.
- B.2** At least 90% of the total minimum number of monthly face-to-face visits with Class Members by caseworkers during a 12-month period shall have taken place.
- B.3** At least 50% of the total minimum number of monthly face-to-face visits with Class Members by caseworkers during a 12-month period shall have taken place in the residence of the child.

C. Investigations.

- C.1.** Within sixty (60) days of the entry of the Order approving the Settlement Agreement, Defendants shall develop an Implementation Plan to implement the achievement of the final targets in this subsection. The Implementation Plan shall have enforceable interim benchmarks with specific timelines, subject to consent by the Plaintiffs and approval by the Co-Monitors, to measure progress in achieving the final targets in this subsection. Plaintiffs will not unreasonably withhold consent, and if the Co-Monitors approve and Plaintiffs do not consent, Plaintiffs will describe with sufficient detail, rationale, and recommendations that will lead to consent.

C.2. Intake – No Investigation. At least 95% of decisions not to investigate a Referral of Institutional Abuse or Neglect about a Class Member must be made in accordance with South Carolina law and DSS policy.

C.3 Case Decisions of Investigations. At least 95% of decisions to “unfound” investigations of a Referral of Institutional Abuse or Neglect must be based upon DSS ruling out abuse or neglect or DSS determining that an investigation did not produce a preponderance of evidence that a Class Member was abused or neglected.

C.4 Timely Initiation and Completion.

- (a) The investigation of a Referral of Institutional Abuse or Neglect must be initiated within twenty-four (24) hours in accordance with South Carolina law in at least 95% of the investigations.
- (b) The investigation of a Referral of Institutional Abuse or Neglect must include face-to-face contact with the alleged victim within twenty-four hours in at least 95% of investigations, with exceptions for good faith efforts approved by the Co-Monitors.
- (c) Contact with core witnesses must be made in at least 90% of the investigations of a Referral of Institutional Abuse or Neglect, with exceptions approved by the Co-Monitors. Core witnesses will vary from case to case and may or may not include the victim(s), Class Members, alleged perpetrators, reporter (if identified), identified eyewitness(es), other children in the placement, facility staff, treating professionals, and foster parents or caregivers as deemed to be relevant to the investigation.
- (d) **Timely Completion of Investigations Within Forty-Five (45) Days.** At least 60% of investigations of a Referral of Institutional Abuse or Neglect shall be completed within forty-five (45) days of initiation of an investigation, unless the DSS Director or DSS Director’s designee authorizes an extension of no more than fifteen (15) days upon a showing of good cause. For the purposes of this section, an investigation is not completed if DSS determines the Report is unfounded because the deadline to complete the investigation has passed.
- (e) **Timely Completion of Investigations Within Sixty (60) Days.** At least 80% of investigations of a Referral of Institutional Abuse or Neglect shall be completed within sixty (60) days of initiation of the investigation, and all investigations not completed within sixty (60) days shall have authorization of the DSS Director or DSS Director’s designee of an extension of no more than thirty (30) days upon a showing of good cause. For the purposes of this section, an investigation is not completed if DSS

determines the Report is unfounded because the deadline to complete the investigation has passed.

- (f) **Timely Completion of All Investigations Within Ninety (90) Days.** At least 95% of all investigations of a Referral of Institutional Abuse or Neglect not completed within sixty (60) days shall be completed within ninety (90) days. For the purposes of this section, an investigation is not completed if DSS determines the Report is unfounded because the deadline to complete the investigation has passed.

D. Placement Resources.

The dates and obligations set forth in IV.D became operative as of September 28, 2015, when the Consent Immediate Interim Relief was entered (Dkt. No. 29).

D.1 Placement Needs Assessment. Within one hundred twenty (120) days, DSS, with prior input from and subject to approval by the Co-Monitors, shall perform a statewide and regional foster care placement needs assessment in order to determine the minimally adequate capacity and array of placements for meeting the placement needs of all Class Members. The needs assessment shall include specific recommendations addressing all the assessment's findings, including but not limited to recommendations that address the capacity to place Class Members close to their home community, placing Class Members in the least restrictive, most family-like placement, the number and array of therapeutic foster care placements, a system of tracking availability of beds in family foster homes, and matching of Class Members to placements that can meet their needs.

- (a) Within sixty (60) days of the completion of the needs assessment, DSS shall develop an Implementation Plan to implement the recommendations of the needs assessment within eighteen (18) months. The Implementation Plan shall have enforceable benchmarks with specific timelines, subject to approval by the Co-Monitors, to measure progress in executing the recommendations of the needs assessment.
- (b) DSS shall achieve substantial compliance with the recommendations in the Implementation Plan.

D.2 Family Placements for Children Ages Six (6) and Under. Within sixty (60) days, DSS shall create a plan, subject to the approval of the Co-Monitors, for preventing, with exceptions approved by the Co-Monitors, the placement of any Class Member age six (6) and under in any non-family group placement (including but not limited to group homes, shelters or residential treatment centers). The plan shall include full implementation within sixty (60) days following approval of the Co-Monitors.

D.3 Phasing-Out Use of DSS Offices and Hotels. Within sixty (60) days, DSS shall cease using DSS offices as an overnight placement for Class Members, and shall cease placing or housing any Class Members in hotels, motels and other commercial non-foster care establishments. For any Class Members moved out of such DSS Offices or Hotels, DSS shall provide for their appropriate placement. In the extraordinary event that a child stays overnight in a DSS office, Defendants shall immediately notify the Co-Monitors, who shall provide a report to the parties as appropriate, including whether or not, in their view, the incident should be reported to the court as a violation which would preclude Defendants' ability to achieve compliance on this provision.

E. Congregate Care Placements and Emergency or Temporary Placements.

E.1. As part of the Implementation Plan required in connection with the needs assessment in IV.D.1.a above, that Implementation Plan shall have enforceable interim benchmarks with specific timelines, subject to consent by the Plaintiffs and approval by the Co-Monitors, to measure progress in achieving the final targets in this subsection. Plaintiffs will not unreasonably withhold consent, and if the Co-Monitors approve and Plaintiffs do not consent, Plaintiffs will describe with sufficient detail, rationale, and recommendations that will lead to consent.

E.2. At least 86% of the Class Members shall be placed outside of Congregate Care Placements on the last day of the Reporting Period.

E.3 At least 98% of the Class Members twelve (12) years old and under shall be placed outside of Congregate Care Placements on the last day of the Reporting Period unless an exception pre-approved or approved afterwards by the Co-Monitors is documented in the Class Member's case file.

E.4 Class Members shall not remain in any Emergency or Temporary Placement for more than thirty (30) days. Under exceptions subject to the Co-Monitors' approval, if a child is initially placed in an Emergency or Temporary Placement that is not a Congregate Care Placement, and that placement is re-designated within thirty (30) days as a long term foster home or therapeutic foster home, then the child's stay shall not be considered a violation of this provision and the re-designation shall not be considered a placement move under Section IV.F.1 below.

E.5 Class Members experiencing more than one Emergency or Temporary Placement within twelve (12) months shall not remain in the Emergency or Temporary Placement for more than seven (7) days. Under exceptions subject to the Co-Monitors' approval, if a child's subsequent placement within twelve (12) months in an Emergency or Temporary Placement is not

a Congregate Care Placement, and that placement is re-designated within thirty (30) days as a long term foster home or therapeutic foster home, then the child's stay shall not be considered a violation of this provision and the re-designation shall not be considered a placement move under Section IV.F.1 below.

F. Placement Instability.

F.1 For all Class Members in foster care for eight (8) days or more during the 12-month period, Placement Instability shall be less than or equal to 3.37.

G. Sibling Placement.

G.1 As part of the Implementation Plan required in connection with the needs assessment in Section IV.D.1.a above, that Implementation Plan shall have enforceable interim benchmarks with specific timelines, subject to consent by the Plaintiffs and approval by the Co-Monitors, to measure progress in achieving the final targets in this subsection. Plaintiffs will not unreasonably withhold consent, and if the Co-Monitors approve and Plaintiffs do not consent, Plaintiffs will describe with sufficient detail, rationale, and recommendations that will lead to consent.

G.2 At least 85% of Class Members entering foster care during the Reporting Period with their siblings or within thirty (30) days of their siblings shall be placed with at least one of their siblings unless one or more of the following exceptions apply: (1) there is a court order prohibiting placing all siblings together; (2) placement is not in the best interest of one or more of the siblings and the facts supporting that determination are documented in the case file; or (3) additional exceptions as approved by the Co-Monitors.

G.3 At least 80% of Class Members entering foster care during the Reporting Period with their siblings or within thirty (30) days of their siblings shall be placed with all their siblings, unless one or more of the following exceptions apply: (1) there is a court order prohibiting placing all siblings together; (2) placement is not in the best interest of one or more of the siblings and the facts supporting that determination are documented in the case file; or (3) additional exceptions as approved by the Co-Monitors.

H. Youth Exiting the Juvenile Justice System.

The dates and obligations set forth in IV.H became operative as of September 28, 2015, when the Consent Immediate Interim Relief was entered (Dkt. No. 29).

H.1 When Class Members are placed in juvenile justice detention or another Juvenile Justice Placement, DSS shall not recommend to the family court or Department of Juvenile Justice that a youth remain in a Juvenile Justice

Placement without a juvenile justice charge pending or beyond the term of their plea or adjudicated sentence for the reason that DSS does not have a foster care placement for the Class Member. DSS shall take immediate legal and physical custody of any Class Member upon the completion of their sentence or plea. DSS shall provide for their appropriate placement.

I. Therapeutic Foster Care Placements.

- I.1** As part of the Implementation Plan required in connection with the needs assessment in Section IV.D.1.a above, that Implementation Plan shall have enforceable interim benchmarks with specific timelines, subject to consent by the Plaintiffs and approval by the Co-Monitors, to measure progress achieving the targets in this subsection. Plaintiffs will not unreasonably withhold consent, and if the Co-Monitors approve and Plaintiffs do not consent, Plaintiffs will describe with sufficient detail, rationale, and recommendations that will lead to consent.
- I.2** All Class Members that are identified by a Worker as in need of interagency staffing and/or in need of diagnostic assessments shall be referred for such staffing and/or assessment to determine eligibility for therapeutic foster care placement and/or services within thirty (30) days of the need being identified. This requirement shall not apply if the Worker withdraws the identified need in good faith and in the best interests of the Class Member within thirty (30) days.
- I.3** All Class Members that are referred for interagency staffing and/or needed diagnostic assessments shall receive recommendations for specific therapeutic foster care placement and/or services within forty-five (45) days of receipt of the completed referral. The recommendation(s) may include diagnostic assessment, community support services, rehabilitative behavioral health services, therapeutic foster care, group care, and psychiatric residential treatment facility. Level of Care Placement recommendations shall utilize the least restrictive care philosophy suitable to the child's needs and seek to place a Class Member in a family setting with a community support system. DSS shall update the assessment at least annually thereafter, upon a placement disruption or upon a material change in the Class Member's needs. In making that determination, DSS may consider the full array of appropriate placement alternatives to meet the needs of the Class Members.
- I.4** At least 90% of children assessed as in need of therapeutic foster care placement shall be in the Therapeutic Level of Care and specific placement type that matches the Level of Care for which the child was assessed within sixty (60) days following the date of the first Level of Care Placement recommendation.

- I.5** At least 95% of children assessed as in need of therapeutic foster care placement shall be in the Therapeutic Level of Care and specific placement type that matches the Level of Care for which the child was assessed within ninety (90) days following the date of the first Level of Care Placement recommendation.

J. Family Visitation

- J.1** Within sixty (60) days of the entry of the Order approving the Settlement Agreement, Defendants shall develop an Implementation Plan to implement the achievement of the final targets in this subsection. The Implementation Plan shall have enforceable interim benchmarks with specific timelines, subject to consent by Plaintiffs and approval by the Co-Monitors, to measure progress in achieving the final targets in this subsection. Plaintiffs will not unreasonably withhold consent, and if the Co-Monitors approve and Plaintiffs do not consent, Plaintiffs will describe with sufficient detail, rationale, and recommendations that will lead to consent.
- J.2** At least 85% of the total minimum number of monthly sibling visits for all siblings not living together shall be completed, with exceptions when (1) there is a court order prohibiting visitation or limiting visitation to less frequently than once every month; (2) visits are not in the best interest of one or more of the siblings and the facts supporting that determination are documented in the case file; or (3) with exceptions approved by the Co-Monitors.
- J.3** At least 85% of Class Members with the goal of reunification will have in-person visitation twice each month with the parent(s) with whom reunification is sought, unless (1) there is a court order prohibiting visitation or limiting visitation to less frequently than twice every month; or (2) based on exceptions approved by the Co-Monitors.

K. Health Care Improvement Plan.

- K.1** Within one hundred eighty (180) days, Defendants, with prior input from and subject to approval by the Co-Monitors, shall develop a Health Care Improvement Plan with enforceable dates and targets for phased implementation and concerning initial screening services, periodic screening services, documentation, and health care treatment services for Class Members in the areas of physical health, immunizations and laboratory tests, mental health, developmental and behavioral health, vision and hearing, and dental health. The Plan shall address:

- (a) Developing the capacity to track screening and treatment services for individual children and aggregate tracking data, including but not limited to screens that are due and past due;
- (b) Assessing the accessibility of health care screening and treatment services throughout the state, including the capacity of the existing health care providers to meet the screening and treatment needs of Class Members; and
- (c) Identifying baselines and interim percentage targets for performance improvement in coordinating screens and treatment services.

K.2 With approval of the Co-Monitors and based on evidence of progress toward the development of the Health Care Improvement Plan, Defendants may request an extension of an additional sixty (60) days to complete the Plan.

K.3 The Co-Monitors shall have the ability to engage, as needed, contractors with specific expertise in the area of child welfare health care reform to assist in the development and monitoring of the Health Care Improvement Plan. Any consultants recommended by the Co-Monitors for assistance in this area will be proposed by the Co-Monitors to Defendants and final selection will be made in consultation with the parties.

K.4 (a) By the end of sixty (60) days following final court approval of the Final Settlement Agreement (identification period), DSS shall identify Class Members who have been in DSS custody for more than sixty (60) days as of the date of final court approval of the Final Settlement Agreement, and who have not had initial health assessments (physical/medical, dental or mental health). Within thirty (30) days after the identification period, Defendants shall schedule the initial health assessment for at least 85% of the identified Class Members.

(b) By the end of ninety (90) days following final court approval of the Final Settlement Agreement (identification period), DSS shall identify Class Members with Immediate Treatment Needs (physical/medical, dental or mental health) for which treatment is overdue. Within forty-five (45) days of the identification period, DSS shall schedule the necessary treatment for at least 90% of the identified Class Members. (Immediate Treatment Needs means immediate non-elective physical/medical, dental or mental health treatment needs and documented assessment needs, excluding routine periodic assessments.)

- (c) With approval of the Co-Monitors and based on evidence of progress toward the goals set forth in K.4 (a) and (b), Defendants may request an extension of up to an additional forty-five (45) days to complete the requirements of this section.

K.5 Within one hundred twenty (120) days of the completion of the Health Care Improvement Plan, the Co-Monitors, with input from the parties, shall identify the final health care outcome measures related to initial screening services, periodic screening services, documentation, treatment and other corrective services, which the parties agree will be final and binding.

V. Enforcement, Dispute Resolution, Termination and Exit

- A. All of the provisions in this Settlement Agreement are separately and independently enforceable.
- B. The Settlement Agreement delineates the specific compliance targets whose achievements are prerequisite for requesting the Court to issue an order of dismissal and termination of jurisdiction over the Settlement Agreement and the Litigation.
- C. Unless otherwise specifically stated, all provisions of this Settlement Agreement shall apply to all Class Members, regardless of whether they are in a placement under the direct supervision of DSS or of a contract provider, or being provided a service directly by DSS, other state governmental agency or through a private provider.
- D. Dispute Resolution. If any party alleges non-compliance with this Settlement Agreement, the following dispute resolution process shall apply:
 - 1. Prior to seeking judicial remedies for non-compliance, the party alleging non-compliance shall notify the other party in writing if they believe the other party is out of compliance with any provisions of this Settlement Agreement.
 - 2. The parties shall engage in good faith negotiations for at least thirty (30) days, which may be extended with consent of the parties, in an effort to resolve the non-compliance issues. The parties may also request that the Co-Monitors and/or Senior U.S. District Judge P. Michael Duffy assist, facilitate or mediate this dispute resolution process.
 - 3. If a matter is not resolved through negotiations, it may be presented to the Court for resolution. If a matter is presented to the Court, the Court may refer such matters to Senior U.S. District Judge P. Michael Duffy for mediation or for a report and recommendations.

4. A party may bypass the dispute resolution provisions in subsections V.D.1-3 above and seek immediate relief from the Court if the party can clearly demonstrate that the action or inaction in contravention of this Settlement Agreement caused or is likely to cause an immediate and substantial risk of serious harm to Class Members.
5. Any allegation of non-compliance with the Settlement Agreement and the dispute resolution process contained in subsections V.D.1-2 shall remain confidential as settlement negotiations to the fullest extent permitted by law.

E. Identification of Maintenance of Effort Provisions

1. Any of the specific obligations in the Improvement Plan in Section IV may be designated by the Court for “Maintenance of Effort” status, which means that Defendants have achieved compliance for the specific obligation as reflected in the monitoring report. Under Maintenance of Effort status, if the Defendants continue to maintain substantial compliance with the level of performance reflected in the monitoring report that caused such designation (or if such performance exceeded or was better than a numerical requirement in the Settlement Agreement and the Defendants continue to maintain at least performance at the level of the numerical remedy identified in the Settlement Agreement), then substantial compliance with that level of performance for a year for that specific remedy shall be considered sufficient compliance for purposes of exit, subject to Section V.F.3 below.
2. A designation of Maintenance of Effort further means that, for each such remedy, the independent Co-Monitors shall reduce the level of monitoring over that item to a level sufficient to identify any significant deterioration of performance and not continue at the level of monitoring prior to a designation of “Maintenance of Effort.”
3. The Co-Monitors will identify in their monitoring report Defendants’ performance on compliance targets in the Improvement Plan, and will identify which provisions may be eligible for the Maintenance of Effort designation.
4. After each monitoring report is filed with the Court, for a period of sixty (60) days the parties will meet and confer in good faith to agree on which items the parties will jointly request the Court designate for Maintenance of Effort monitoring; provided that this does not limit any party from seeking a ruling from the Court regarding a designation of Maintenance of Effort after a reasonable time and after all parties make good faith efforts to agree.
5. The parties may file joint petitions for a modified Settlement Agreement that identifies the obligations that have achieved a Maintenance of Effort status so that the Court and the public can track progress towards exit and dismissal.

F. Termination and Exit

1. This Settlement Agreement shall remain in full force and effect until the Court issues an order of dismissal terminating jurisdiction over this action.
2. This Settlement Agreement does not limit any rights of any party to seek any relief from the Court under applicable federal law.
3. Once a compliance target falls into Maintenance of Effort status and substantial compliance on that target is sustained for a year, Defendants may seek the termination of the Court's jurisdiction over that specific provision of the Settlement Agreement. If Plaintiffs do not agree that the Court should terminate jurisdiction over the particular provision, Defendants may seek a ruling from the Court terminating jurisdiction over the provision. The Court shall terminate its jurisdiction over the provision only if Defendants can demonstrate both achievement of the specific compliance target and sustained substantial compliance for one year; unless in response to such a petition by Defendants, Plaintiffs can establish either: (1) that Defendants have failed to carry this burden; or (2) that the specific provision is directly related to Defendants achieving compliance and sustaining substantial compliance with another term of the Settlement Agreement, and then the Court shall retain jurisdiction over the provision at issue.
4. This Settlement Agreement shall remain in effect until a motion to terminate jurisdiction over this Settlement Agreement is approved by the Court based on achieving Maintenance of Effort status and sustaining substantial compliance for one year on all remaining provisions of the Implementation Plan.

VI. Confidentiality

The Confidentiality Order entered by this Court (Dkt. No. 12) shall remain in full force and effect during the implementation and monitoring of the Settlement Agreement. All communications concerning the Settlement Agreement's negotiation shall be confidential to the fullest extent permitted by law.

VII. Attorneys' Fees and Expenses

- A. For Plaintiffs' attorneys' fees and expenses through the date of final approval by the Court of this Final Settlement Agreement, the parties agree to submit the amount and terms of fees and expenses to final and binding arbitration by the Mediator, Senior U.S. District Judge P. Michael Duffy, as the sole Arbitrator. The amount of reasonable fees and expenses awarded by the Arbitrator will be issued in a public Arbitration Award, which will be incorporated into this Final

Settlement Agreement and which may also be entered by the Court as a judgment if necessary.

- B. For Plaintiffs' attorneys' fees and expenses after the date of final approval by the Court of this Final Settlement Agreement, the parties agree to negotiate and mediate through the Court-appointed Mediator for at least thirty (30) days the amount of fees and expenses since the last payment of fees and expenses by Defendants to Plaintiffs; and only after that time and if the Mediator declares an impasse will Plaintiffs file any petition for fees and expenses with the Court.

VIII. Miscellaneous

- A. The Settlement Agreement may be modified upon the consent of the parties and approval of the Court.
- B. DSS shall bear all costs of notice prescribed by the Court pursuant to Fed. R. Civ. P. 23 in connection with the process for final Court approval of this Settlement Agreement.
- C. The Settlement Agreement constitutes the entire agreement between the parties with regard to the subject matters contained therein, and hereby supersedes all prior agreements, representations, statements, negotiations, and undertakings.
- D. All parties to the Settlement Agreement have participated in its drafting and, consequently, any ambiguity shall not be construed either for or against any party.

AND IT IS SO ORDERED:

THE HONORABLE RICHARD M. GERGEL
U.S. DISTRICT JUDGE

Dated:

Respectfully Agreed to and Submitted by:

THE HONORABLE NIKKI HALEY
GOVERNOR OF THE STATE OF SOUTH CAROLINA

THE HONORABLE SUSAN ALFORD
DIRECTOR OF THE SOUTH CAROLINA
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