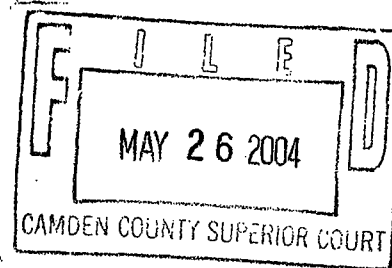


DWYER & DUNNIGAN LLC
17 Academy Street, Suite 1010
Newark, New Jersey 07102
(973) 242-3636
Attorneys for Plaintiffs

SUPERIOR COURT OF NEW JERSEY
CAMDEN COUNTY



-----X
K.J., T.J., and M.J., minors by their Guardian Ad Litem,
MARCIA ROBINSON LOWRY,

L002895 04

Docket No. _____
Civil Action

Plaintiffs,

- against -

**COMPLAINT
AND JURY DEMAND**

DIVISION OF YOUTH AND FAMILY SERVICES,
DEPARTMENT OF HUMAN SERVICES,
STATE OF NEW JERSEY, PATRICIA BALASCO-BARR,
MICHELE GUHL, CHARLES VENTI, DORIS JONES,
MANAGERIAL DOES 1-10, SUPERVISORY DOES 1-10,
and CASEWORK DOES 1-10,

Defendants.
-----X

NATURE OF THE ACTION

1. Plaintiffs, minor children K.J., T.J., and M.J. (the "Plaintiffs" or the "minor Jackson brothers"),¹ by and through their Guardian Ad Litem, Marcia Robinson Lowry,² and their counsel, Dwyer & Dunnigan LLC, Emery Celli Brinckerhoff & Abady LLP, Eric Thompson and Jeffrey Powell, for their Complaint allege as follows:

2. This is an action to remedy federal and state civil rights violations and tortious

¹ Plaintiff children are identified by pseudonym to protect their identities.

² A Verified Petition to appoint Marcia Robinson Lowry as guardian ad litem to prosecute Plaintiffs' claims has been filed simultaneously with this Complaint by the New Jersey Child Advocate Kevin M. Ryan pursuant to Superior

conduct committed by the State of New Jersey and its employees against the Plaintiffs who were placed by the Division of Youth and Family Services ("DYFS") of the Department of Human Services ("DHS") in a home where they were systematically starved. Defendants failed to adequately monitor Plaintiffs' safety and well-being, or provide for their basic needs and treatment while in their care resulting in their maltreatment by the foster and adoptive parents Defendants approved for them.

3. In the early morning hours of October 10, 2003, a resident of Collingswood, New Jersey heard someone rooting through the trash outside his home. The resident approached and observed a boy he believed to be less than ten years old. The boy was emaciated. The resident summoned the Collingswood Police Department, which responded to the scene. The boy was subsequently identified as Bruce Jackson, the adopted son of DYFS foster parents Raymond and Vanessa Jackson. Bruce Jackson stood just 4 feet tall and weighed a mere 45 pounds. The responding officers were shocked to learn that Bruce Jackson was 19 years old.

4. When the police entered the Jackson home, they observed three other adopted boys B ages 14, 10 and 9 B all of whom were extraordinarily small in stature and emaciated in appearance. The 14-year-old boy, Plaintiff K.J., weighed 40 pounds. Plaintiff T.J., age 10, weighed 28 pounds. Plaintiff M.J., who was nine years old, weighed just 23 pounds. Their teeth were rotted, their stomachs were distended, and the outlines of their ribs and shoulders were readily visible. DYFS removed Plaintiffs from the home later that day.

5. Plaintiffs were admitted to area hospitals, where they spent several weeks being fed B first intravenously, and later with solid food. By February 2004, less than four months after they were removed from the Jackson household, their medical conditions had improved dramatically.

K.J. had gained 33 pounds and had grown almost two inches. T.J. had gained 15 pounds and had grown 3 inches. M.J. had gained 21 pounds and had grown over two inches. This remarkable progress was achieved simply by giving the Plaintiffs a proper diet and vitamins; no growth medications were administered.

6. Medical professionals have determined that the Plaintiffs do not suffer from any inherited medical deficiencies or eating disorders. Rather, these professionals have concluded that Plaintiffs were systematically starved in the Jackson home over a period of many years. On May 5, 2004, Raymond and Vanessa Jackson were indicted on Aggravated Assault and Endangerment charges for “failing to provide proper and sufficient nutrition resulting in severe growth retardation and malnutrition” from the time of placement of Bruce and the minor Jackson brothers in the Jackson foster home as DYFS foster children through October 10, 2003.

7. Defendants, who took the Plaintiffs into their custody in 1994, placed them in the Jackson home in 1995, approved their adoptions in that home in 1997, and continued to use the home as an approved DYFS placement through October 10, 2003, had been on notice for years that the Jacksons were not providing adequate care to the Plaintiffs. Defendants were also on notice that training, supervision and communication at DYFS were inadequate to protect the Plaintiffs from known risks of harm in inappropriate foster homes. As detailed below, from 1994 to October 10, 2003, Defendants acted and failed to act in reckless disregard and total indifference to the desperate plight of the Plaintiffs, in violation of their federal and state constitutional rights, and numerous state statutory obligations.

8. Defendants failed to ensure that Plaintiffs had their basic needs met during their time in foster care. Defendants failed to ensure that Plaintiffs received adequate nourishment and medical

and mental health care while in state custody, and failed to appropriately monitor and approve the Jacksons as a foster and ultimately an adoptive home for the minor Jackson brothers, resulting in significant injury. Defendants also failed to report, investigate and protect Plaintiffs from ongoing maltreatment and starvation in the Jackson home.

THE PARTIES

9. Plaintiff K.J., D.O.B. October 11, 1989, is 14 and a half years old. He was taken into DYFS custody in September 1994, and was adopted by the Jacksons in March 1997. He is currently in DYFS custody and placement.

10. Plaintiff T.J., D.O.B. October 14, 1993, is 10 and a half years old. He was taken into DYFS custody in January 1994, and was adopted by the Jacksons in December 1997. He is currently in DYFS custody and placement.

11. Plaintiff M.J., D.O.B. March 26, 1994, is 10 years old. He was taken into DYFS custody in September 1994, and was adopted by the Jacksons in March 1997. He is currently in DYFS custody and placement.

12. Defendant Division of Youth and Family Services is a division of the Department of Human Services located at 50 East State Street, P.O. Box 717, Trenton, New Jersey, 08625.

13. Defendant Department of Human Services is a principal department of the Executive Branch of state government located at 222 South Warren Street, P.O. Box 700, Trenton, New Jersey, 08625.

14. Defendant State of New Jersey is the Executive Branch of state government located at the State House, P.O. Box 001, Trenton, New Jersey, 08625.

15. Defendant Patricia Balasco-Barr was the Director of DYFS from 1994 to 1997, and

is a Managerial Defendant. She is sued in her personal capacity. Her address is 1001 West Franklin Street, P.O. Box 842027, Richmond, Virginia, 23284.

16. Defendant Michele Guhl was the Director of DYFS from 1997 to 1998, and is a Managerial Defendant. She is sued in her personal capacity. Her address is 50 West State Street, Suite 1012, Trenton, New Jersey, 08608.

17. Defendant Charles Venti was the Director of DYFS from 1998 to 2002, and is a Managerial Defendant. He is sued in his personal capacity. His address is 154 Lake Avenue, Red Bank, New Jersey, 07704.

18. Defendant Doris Jones was the (Acting) Director of DYFS from 2002 to 2003 and is a Managerial Defendant. She is sued in her personal capacity. Her address is 420 East Pine Street, Lawnside, New Jersey, 08045.

19. Defendant Managerial Does, held managerial positions within DYFS and/or DHS with responsibilities to ensure adequate training and supervision of, and/or communication among DYFS and DHS supervisory and casework staff responsible for the safety and well-being of the Plaintiffs. They are sued in their personal capacities.

20. Defendant Supervisory Does, held supervisory positions within DYFS and/or DHS with responsibilities to supervise the casework staff responsible for the safety and well-being of the Plaintiffs. They are sued in their personal capacities.

21. Defendant Casework Does, held caseworker, investigator, and/or inspector positions within DYFS and/or DHS with responsibilities for the safety and well-being of the Plaintiffs. They are sued in their personal capacities.

BACKGROUND

22. The Division of Youth and Family Services is the agency within the Department of Human Services established by the State of New Jersey to investigate reports of suspected child abuse and neglect; provide necessary services to children and families to protect children who are the subject of such reports, including placing children into out-of-home custody; provide proper care to abused and neglected children in state custody; ensure the safety and well-being of such children in state custody; protect such children in state custody from further maltreatment; and secure permanent placements for such children in state custody.

23. If a child is removed from her home and placed in DYFS custody, her case is assigned to a district office caseworker. A regional DYFS Foster Home Unit is responsible for matching the child to an appropriate placement. The district office from the county where the child was removed or in the county where the child is placed assumes case planning and case management responsibilities over the child and the placement. These responsibilities include making face-to-face and other regular contacts with the foster child and ensuring that the child and foster family are receiving necessary services.

24. Once adoption is identified as a child's case goal, her case is forwarded from the district office to one of DYFS's several regional Adoption Resource Centers ("ARCs"). An adoption caseworker then takes over case management responsibilities. Regional ARCs are responsible for finalizing adoptions by pursuing termination of parental rights or voluntary surrenders of custody and consents for adoption, and ensuring that the child is placed in an appropriate, safe and nurturing adoptive home.

25. DYFS was responsible for approving or certifying/licensing foster homes during most of the relevant times at issue through its District Office Foster Home Units, Regional Foster Home Units, and its Bureau of Licensing. This responsibility was transferred to DHS's Office of Licensing ("OOL") in 2003. Annual re-evaluations for DYFS foster homes are required. A regional Institutional Abuse Investigation Unit ("IAIU") is responsible for investigating reports of abuse and

neglect in DYFS placements. The responsibility to train DYFS staff was shared at various times by DYFS and DHS.

FACTS

1991-1994

26. Defendants approved Vanessa and Raymond Jackson as DYFS foster parents in August 1991.

27. In December 1991, Defendants placed non-party Bruce Jackson ("Bruce") in the Jackson foster home. At that time, Bruce was seven years old, was 48.25 inches tall, and weighed 43.75 pounds. Thereafter, Defendants were repeatedly put on notice that the Jacksons were not meeting Bruce's medical and nutritional needs, but failed to take appropriate remedial steps to ensure that this foster home was safe.

28. In September 1992, for example, DYFS received a call indicating that another foster child in the Jackson household alleged that he and Bruce were being mistreated and that this other foster child was hungry. The caller also stated that the foster child had not grown in height, had only gained half a pound while in the Jacksons' care, and was observed to have thin chest bones. DYFS conducted an investigation, but no medical examinations were conducted, nor did DYFS address the foster child's complaints of hunger in the Jackson home. Defendants did not substantiate the allegations or implement any further monitoring of the home.

29. In February 1993, Vanessa Jackson reported to the caseworker during a home visit that Bruce had been caught taking his classmates' lunches and looking for food in the trash. The caseworker noted that Bruce had compulsive eating. Bruce was eight and a half years old and weighed 51 pounds.

30. In July 1994, when the caseworker transported Bruce to an appointment, Bruce pleaded to be taken to eat at McDonald's or Dunkin Donuts, but the worker refused. On the ride home, Bruce opened the glove compartment, found half a cookie and ate that, and then pleaded with the caseworker not to tell Mrs. Jackson.

31. In December 1994, the caseworker noted that Bruce was thin for his size and that he stole food at school. The caseworker noted that Bruce had an "eating disorder" and "parasites in his body which [sic] will restrict his growth." There was no medical basis for these conclusions, nor did Defendants follow up to ensure medical or psychological treatment for these identified issues.

32. Defendants continued to approve the Jackson home as a DYFS foster home, but without addressing Bruce's starvation in the home or requiring medical documentation of his medical treatment. Re-evaluations of the home were conducted in 1992 and 1994.

33. Also within this time period, Managerial Defendants closed the DYFS Training Academy and cut back on the training made available to DYFS staff.

1995

34. Despite the Jacksons' known history of not meeting Bruce's nutritional and medical needs over a period of years, Defendants placed all three Plaintiffs one after the other in the Jackson foster home during 1995. Defendants also failed to conduct regular face-to-face visits with the Plaintiffs, or re-evaluate the Jackson foster home.

35. In January 1995, Bruce's doctor contacted the caseworker, informing him that she terminated services due to Mrs. Jackson's failure to comply with her suggestions and inappropriate administration of Bruce's medication. Defendants took no action to investigate and protect Bruce who was starving in the Jackson home. As a result, Defendants proceeded to place Plaintiffs in this

unsafe foster home.

T.J. is Placed in the Jackson Foster Home

36. On March 8, 1995, Defendants placed Plaintiff T.J. in the Jackson foster home. He was one and a half years old, 31.25 inches tall, and weighed 28 pounds, which placed him between the 25th to 50th percentile for height and between the 75th and 90th percentile for weight for a child his age.

37. Defendants knew, or should have known, that placing T.J. in the Jackson home placed him at imminent risk of harm.

38. T.J. had entered DYFS custody in January 1994, when he was 3 months old. Born prematurely and weighing approximately 3.9 pounds at birth, he was placed in a foster home for medically fragile children. He lived in that home until July 1994, when DYFS no longer classified him as medically fragile and moved him. T.J.'s third and final placement was with the Jacksons.

39. In May 1995, DYFS received a report from Bruce's school after he arrived to school with a bruise on his face. The caller expressed concern that Bruce had failed to gain weight, always appeared hungry, and that Bruce complained that the Jacksons did not give him enough to eat. The caller also advised that Vanessa Jackson had delayed taking Bruce to a medical appointment. DYFS placed the Jackson home on suspension pending the investigation.

40. Bruce told the DYFS investigator that he did not get enough to eat. When questioned, Mrs. Jackson told the investigator that Bruce had stomach problems that required her to control his diet. The investigator did not request a medical examination of Bruce or explore or recommend any further plan of treatment or monitoring as required by reasonable professional judgment. The

allegations were apparently not substantiated.

41. Defendants left Bruce and T.J. in the Jackson home where they knew, or should have known, that they were at imminent risk of further harm, in deliberate indifference to T.J.'s safety and well-being.

42. Both in July and August 1995, a caseworker noted that Bruce appeared underweight. Defendants took no action as a result.

43. An August 1995 medical exam of T.J. revealed that he weighed 24 pounds, having lost 4 pounds in the 6 months since he was placed with the Jacksons. His weight had dropped from between the 75th to 90th percentile to between the 10th to 25th percentile. Defendants failed to secure medical treatment for T.J. and place him in a foster home that could meet his needs.

M.J. is Placed in Jackson Foster Home

44. On August 30, 1995, Plaintiff M.J. was placed by Defendants in the Jackson foster home. He was one and a half years old, 29 inches tall, and weighed 17.5 pounds, which placed him in less than the 3rd percentile for both height and weight for a child his age.

45. Defendants knew, or should have known, that placing M.J. in the Jackson home placed him at imminent risk of harm.

46. M.J., along with his biological brother K.J., had been taken into DYFS custody in September 1994, when M.J. was 6 months old. After both boys were placed together in a second foster home (not the Jackson home) in October 1994, M.J. lost weight, dropping over a pound and a half to approximately 16.5 pounds in January 1995. In February 1995, the boys' foster mother was noted as alleging that both K.J. and M.J. had "eating disorders." In April 1995, the caseworker noted that M.J. had "an obsession" with food. In June 1995, at a family visit, M.J.'s biological father

complained to the District Office Manager that M.J. appeared not to weigh enough. In July 1995, M.J.'s foster mother reported to the caseworker that his behavior was escalating and he would throw a fit for food.

47. From October 1994 on, Defendants failed to place M.J. in therapeutic foster homes that could meet his identified health and nutritional needs, causing him harm.

48. In September 1995, Bruce was not sent to school by the Jacksons. When DYFS found out the next month that Bruce was not going to school, the Jacksons belatedly advised DYFS that they had begun home-schooling him. DYFS did not question the Jacksons' decision to home-school Bruce, despite the obvious implication that Vanessa Jackson had removed Bruce from school because the school had made allegations of abuse four months earlier. Bruce was 11 years old and weighed 48.84 pounds.

49. In October 1995, T.J. was seen for his two-year-old well child exam. He was 31 inches tall and weighed 23 pounds, placing him below the 3rd percentile for both height and weight for a child of his age. He had now lost 5 pounds in the 8 months since he was placed with the Jacksons. Defendants failed to remove T.J. from the home or ensure that he receive appropriate medical treatment. T.J. was not taken to a doctor for another year.

50. That same month, M.J.'s caseworker prepared a transfer memo to a DYFS ARC office, stating, without any medical basis, that M.J. had an "eating disorder," that a physical cause had been ruled out and it was believed that this supposed handicap was psychological. No psychological evaluation was ever provided M.J., nor was he placed in a therapeutic foster home to address his food issues.

51. Also in October, the Jacksons advised the new caseworker that M.J. would stuff food

in his mouth, but that they had seen this kind of behavior before with their other foster children.

52. In November 1995, M.J. was seen by a pediatric endocrinologist to evaluate him for failure to thrive syndrome and rickets. M.J. weighed 18.55 pounds (less than the 3rd percentile) and was 29.9 inches tall. The doctor noted him to be small and thin, but rickets was ruled out. When the doctor suggested that Mrs. Jackson give M.J. whole milk to increase his caloric intake, she refused because it would mean purchasing two types of milk for her family. The doctor also noted that her other suggestions to enroll M.J. in WIC or give him PediaSure were not met with positive responses from Mrs. Jackson.

53. Defendants failed to remove M.J. from the Jackson home or otherwise address Mrs. Jackson's unwillingness to meet his nutritional needs.

K.J. is Placed in the Jackson Foster Home

54. Also in November 1995, Plaintiff K.J. was placed by Defendants in the Jackson foster home. He was almost six years old, weighed 39 pounds and was 43.5 inches tall, placing him in the 25th percentile for height and the 10th to 25th percentile for weight for a child his age.

55. Defendants knew, or should have known, that placing K.J. in the Jackson home placed him at imminent risk of harm.

56. K.J., along with his biological brother M.J., had been taken into DYFS custody in September 1994, when K.J. was one month shy of his fifth birthday. As early as October of 1994, K.J.'s first foster mother reported to the caseworker that he had issues with food. After both boys were placed together in a second foster home (not the Jackson home), the new foster mother reported to the caseworker that K.J. had issues with food in November and December of 1994, as well as in January 1995. In February 1995, the boys' foster mother was noted as alleging that both K.J. and

M.J. had "eating disorders."

57. In April 1995, the caseworker advised K.J.'s biological father during a family visit – without any medical basis - that K.J. was not supposed to eat large portions due to his supposed "eating disorder." At a family visit in June 1995, K.J.'s biological father complained to the District Office Manager that K.J. did not weigh enough. In July 1995, the caseworker noted that the Foster Home Unit was looking for another home for K.J. and M.J. When both boys were removed from their foster home in August 1995, the caseworker noted that it was partly because of the foster mother's neglect in not registering K.J. for kindergarten so he could be evaluated by a Child Study Team. The caseworker also noted that K.J. had a voracious appetite. He had lost three pounds and only grown a quarter inch since entering DYFS custody a year before.

58. In October 1995, K.J.'s third foster mother reported that K.J. had issues with food. When K.J.'s case was to be transferred that month to a DYFS ARC office, the supervisor noted that K.J.'s issues with food were "not medically/physically related and an additional assessment is needed." The transfer memo prepared by the caseworker noted, without any medical basis, that "both boys [K.J. and M.J.] have an eating disorder since placement. Though a physical cause has been ruled out, it is believed that its basis is psychological." No psychological evaluation of K.J. was ever secured.

59. K.J.'s new caseworker's supervisor noted that K.J. had a problem overeating and needed to be moved because he was having difficulty in the foster home in which he had been placed. An immediate referral for therapy to address an eating disorder was noted as necessary. The supervisor recommended placement in a home with few children so that K.J. could benefit from individual attention. The Foster Home Unit subsequently approved K.J. to be placed in the Jackson

home, with 8 other children already residing there, including his biological brother M.J.

60. From October 1994 on, Defendants placed K.J. in foster homes that they knew or should have known did not meet his identified health and nutritional needs, causing him harm.

61. In November 1995, once K.J. was placed with the Jacksons, the independent Child Placement Review Board ("CPRB") contacted the caseworker and informed her that its Order would state that K.J. needed a Child Study Team evaluation and that CPRB had a specific counselor in mind to help K.J. with his food and hunger issues. Defendants took no action to secure either an evaluation of K.J. or therapy.

62. In December 1995, M.J. was admitted to Cooper Hospital due to the results of his lab work that month. Defendants failed to document or inquire as to the cause for M.J.'s hospitalization.

63. A December 1995 DYFS adoption assessment of Bruce noted that the Jacksons had an alarm system in place since 1992 that denied him access to the kitchen. It was noted that Bruce was surreptitiously finding and eating food at home. Defendants took no actions to have this alarm system removed or investigate whether Bruce and Plaintiffs were being adequately fed.

64. By the end of 1995, Bruce was 11 years old and weighed less than 47 pounds. He had lost almost 10 pounds in the Jackson home since March of that year and his weight had fallen off the low end of any pediatric growth chart. Instead of pursuing immediate hospitalization for Bruce who was being starved, Defendants processed the Jacksons' application for an adoption subsidy for Bruce.

65. Defendants failed to communicate, report and investigate the known systematic deprivation of food by the Jacksons from Bruce, and the obvious malnourishment and documented failure to thrive of Bruce and Plaintiffs T.J. and M.J. Defendants recklessly left Plaintiffs in the

Jackson home even though they knew or should have known of Plaintiffs' ongoing maltreatment by the Jacksons.

1996

66. In 1996, despite further evidence that all three Plaintiffs and Bruce were being starved and continued to deteriorate in the Jackson home, Defendants took no action to protect them in reckless disregard for their health and well-being. Defendants also failed to conduct regular face-to-face visits with the Plaintiffs, and re-evaluated the Jackson foster home without interviewing Bruce and the Plaintiffs or reviewing their medical information. Moreover, Defendants approved Bruce and M.J. to be adopted in the Jackson foster home without meeting similar requirements that would have revealed the ongoing maltreatment in the home.

67. In February 1996, Mrs. Jackson reported that Bruce's physician had referred him to an endocrinologist in order to evaluate whether he had a growth problem. This referral was never acted upon by either the Jacksons or Defendants, and Bruce was never seen by an endocrinologist. From 1996 until October 2003, Bruce received no medical care. The worker also documented in Bruce's record at this time that Bruce's school was concerned that he was not receiving occupational therapy.

68. In March 1996, Mrs. Jackson reported to the caseworker that Bruce had recently gone into a neighbor's trash can looking for food. The worker observed that M.J.'s growth appeared "slow or delayed," but Defendants did not pursue medical treatment for him or ensure that he was being adequately fed.

69. K.J.'s caseworker was on sick leave for three months through April 30, 1996, during which time Defendants did not monitor his care. Defendants failed to assure that K.J.'s case was

assigned to a caseworker in the interim.

70. In May 1996, K.J.'s caseworker finally referred him for therapy, at least seven months after the need had been specifically identified by DYFS. The referral, however, did not indicate that K.J. had issues with food and hunger that needed to be addressed.

71. In June 1996, K.J. had a pre-adoptive medical examination. Defendants did not ensure, however, that his complete medical history was available. Six years and eight months old, he was 44 inches tall and weighed 41 pounds, placing him in the 10th percentile for height and weight for a child his age. He had only grown by half an inch and two pounds in the 19 months since being placed in the Jackson home. K.J. also started therapy that month, and was approved by DYFS for a higher foster care board rate.

72. Also in June, a therapist who had been seeing Bruce noted in her summary progress report to DYFS that he had climbed out of a second story window to get access to a neighbor's garbage can. The therapist also noted that Vanessa Jackson informed her that the Jackson family kept their food locked away. Defendants failed to investigate whether Bruce and Plaintiffs were being adequately fed in the Jackson home.

73. That same month, Defendants submitted a final report to the Family Court supporting Bruce's adoption by the Jacksons, falsely stating that "Bruce Jackson's physical, emotional, and social development has been very good since placement in the home. He has an eating disorder, which is being attended to by a specialist."

Bruce is Adopted by the Jacksons

74. Bruce's adoption by Raymond and Vanessa Jackson was finalized, with Defendants' concurrence, on July 8, 1996, at which point the Jacksons began to receive a monthly adoption

subsidy.

75. Defendants failed to monitor Bruce immediately post-adoption for at least six months as required.

76. In August 1996, a caseworker noted that T.J. looked thin. Mrs. Jackson stated that T.J. had issues with food and that she took him to therapy to address those issues. No further inquiry was made into T.J.'s supposed food issues handicap or his non-existent therapy.

77. That same month, M.J.'s caseworker submitted a foster care board rate increase for M.J.'s care, noting that it appeared that M.J. had a growth deficiency that would need to be monitored for years to come.

78. In September 1996, M.J. was seen at the DYFS office for pre-adoption medical examination. Defendants did not ensure, however, that his complete medical history was available. The doctor noted that M.J. had generalized loss of subcutaneous tissue, presented as being significant failure to thrive and having possible stigmata of fetal alcohol syndrome. The doctor advised that follow-up was necessary, and recommended that M.J. be evaluated by an Early Intervention Program. Defendants failed to take any steps to assure that M.J. be evaluated as recommended or to protect him from further deterioration in the Jackson home.

79. Later that same month, the ARC manager signed the Consent for Adoption of M.J. by the Jacksons, despite overwhelming evidence that M.J. was starving in the Jackson home. Defendants also failed to interview and get medical information for all members of the Jackson household as required, including Bruce and the Plaintiffs who were dramatically deteriorating in the home.

80. The next day, M.J.'s pediatric endocrinologist noted that M.J. had lost weight and

appeared emaciated. M.J. weighed 18 pounds and was 31 inches tall. He was referred to a pediatric gastroenterologist. M.J. was not brought to a gastroenterologist, or for his three-month follow-up appointment with his endocrinologist.

81. Also in September, K.J. was seen by a doctor for an updated pre-adoption exam. Defendants did not ensure, however, that his complete medical history was available. He was 45 inches tall and weighed 38 pounds, placing him in the 3rd to 10th percentile for height and below the 3rd percentile for weight for a child his age. He had lost three pounds since his last evaluation three months earlier. The doctor noted that K.J. presented as an underweight, failure to thrive appearing youngster with possible fetal alcohol syndrome. He referred K.J. for a Child Study Team evaluation.

82. With the exception of one appointment with a dermatologist in 1999, K.J. received no further medical or dental care between September 1996 and his hospitalization in October 2003.

83. Also in September, K.J.'s school contacted his caseworker and notified her that he had already missed 15 days of school. The Jacksons explained that they had not sent him to school because they were waiting for the results of the latest medical evaluation. Defendants did not question this nonsensical excuse.

84. In October 1996, T.J.'s law guardian notified DYFS that it had not complied with a July 1996 court order that DYFS ensure regular medical treatment for T.J., including an evaluation by an orthopedist and a podiatrist.

85. That same month, T.J. had his pre-adoption medical examination. Defendants did not ensure, however, that his complete medical history was available. At that time, he was three years old, 32 inches tall, and weighed 21 pounds, placing him below the 3rd percentile for both

height and weight for a child of his age. In the 19 months since he was placed with the Jacksons, T.J. had only grown one inch and lost 7 pounds. The doctor who examined him noted that T.J. was markedly underweight and undersized, and that he presented with "failure-to-thrive syndrome" and possible fetal alcohol syndrome. The doctor recommended that T.J. be evaluated by an orthopedist to rule out rickets.

86. In November 1996, T.J. was seen for his three-year-old well child exam. He weighed about 23.25 pounds. He was diagnosed with speech delay and failure to thrive. The doctor ruled out rickets, ordered lab work, and scheduled another visit for a week later. He also instructed Vanessa Jackson to keep a diary of T.J.'s diet for the next week, and to bring the diary to the next visit.

87. When T.J. was seen by the same doctor the next week, Vanessa Jackson did not bring the diet diary with her to this visit, explaining to the doctor that she had forgotten it. The medical records reflect that Mrs. Jackson told the doctor that T.J. had lived with her for 6 months, when in fact he had lived with her for 20 months. The doctor noted that T.J. presented with social failure to thrive syndrome, referred him to orthopedics, and scheduled a follow-up visit for one month later. T.J., however, was never returned to that doctor for the scheduled follow-up visit. After one appointment with an orthopedist in March 1997, T.J. received no further medical or dental care until he was hospitalized in October 2003.

88. In December 1996, K.J.'s caseworker completed a six month review of his placement and noted - in violation of reasonable professional judgment and in deliberate indifference to K.J.'s deteriorating health - that he was healthy, when his last medical exam during this period noted that he appeared underweight and failing to thrive.

89. Defendants failed to investigate why the Plaintiffs were deteriorating or evaluate the quality of care they were receiving in the Jackson home.

1997

90. In 1997, despite the fact that Bruce and Plaintiffs were being starved in the Jackson home, and Bruce, K.J., and T.J. were no longer receiving any medical care, Defendants approved K.J. and T.J. for adoption by the Jacksons in reckless disregard for their health and well-being. Defendants failed to conduct regular face-to-face visits with the Plaintiffs, and re-evaluated the Jackson foster home without interviewing Bruce and the Plaintiffs or reviewing their medical information. All three Plaintiffs' adoptions in the Jackson home were then finalized upon Defendants' recommendations.

91. In January 1997, K.J.'s therapist submitted her quarterly summary to the caseworker. It reflected that she had advised Mrs. Jackson to have K.J. medically evaluated and to refrain from threatening K.J. with home schooling as a consequence for poor school behavior. Defendants never followed up on either issue.

92. In February 1997, M.J. was seen by his endocrinologist. The doctor noted that M.J. was "dramatically failing to thrive" and that Mrs. Jackson did not seem appropriately concerned. As M.J. had not been taken to a gastroenterologist pursuant to the doctor's previous referral in September 1996, she again referred M.J. for a pediatric GI evaluation. M.J. was never brought back to his endocrinologist again.

93. In March 1997, M.J.'s caseworker submitted to the Family Court a Report for Final Hearing approving his adoption by the Jacksons. The caseworker falsely stated that M.J. was "presently seen by a neurologist, who monitors his small stature. Physicians are more confident that

it is related to genetics, given both his parents are of small stature.” The caseworker also erroneously stated that the Jacksons had been very conscientious in providing medical care for M.J. Omitted from the Report was any mention of the doctors’ concerns about M.J.’s failure to thrive, or the pediatric endocrinologist’s consternation regarding Vanessa Jackson’s inappropriate lack of concern for M.J.’s medical condition.

94. Likewise, the DYFS court report submitted in support of K.J.’s adoption failed to document K.J.’s deterioration in the Jackson home.

95. Prior to approving the adoption of K.J., Defendants failed to interview and obtain medical information for all members of the Jackson household as required, including Bruce and the Plaintiffs who were dramatically deteriorating in the home and no longer receiving any medical care (except minimally for M.J. as detailed below).

K.J and M.J. are Adopted by the Jacksons

96. On March 14, 1997, K.J. and M.J.’s adoptions by the Jacksons were finalized with the concurrence of Defendants.

97. Defendants failed to monitor K.J. and M.J. immediately post-adoption for at least six months as required.

98. Later that same month, M.J. was finally seen by a pediatric gastroenterologist. He weighed 20.9 pounds and was 31 inches long. The doctor recommended that M.J. undergo a series of evaluations, including a nutritional evaluation and an upper GI series. He provided Mrs. Jackson with a series of recommendations to increase M.J.’s caloric intake. M.J. was not seen again for any further medical care until his hospitalization in October 2003.

99. A June 1997 DYFS Adoption assessment noted that T.J. presented medically with

“failure to thrive syndrome” and that he “may also have fetal alcohol syndrome.” Defendants took no action to remove T.J. from the abusive Jackson home or secure medical treatment for him.

100. In August 1997, a casework supervisor reviewed T.J.’s file and signed the Consent for Adoption. Prior to approving the adoption of T.J., Defendants failed to interview and obtain medical information for all members of the Jackson household as required, including Bruce and the Plaintiffs who were dramatically deteriorating in the home and no longer receiving any medical care.

101. In December 1997, DYFS’s final report to the Family Court supporting T.J.’s adoption by the Jacksons falsely indicated that T.J. enjoyed general good health and that the Jacksons continued to follow up on his medical and developmental needs. It made no mention of the three diagnoses of failure to thrive or of his severely low height and weight.

T.J. is Adopted by the Jacksons

102. T.J.’s adoption by Raymond and Vanessa Jackson was finalized, with Defendants’ concurrence, on December 12, 1997.

103. Defendants failed to monitor T.J. immediately post-adoption for at least six months as required.

1998-2003

104. Between 1998 and the October 2003 hospitalization of Bruce, K.J., T.J., and M.J., Defendants continued to use and approve the Jackson home as a foster home and adoptive placement for additional children. Foster child J.J. was adopted by the Jacksons in 2000, and foster child B.P.’s adoption by the Jacksons had been approved by DYFS and was pending in October 2003.

105. As a result, DYFS employees were in the home at least 38 times during these years, and documented seeing all or some of the adopted children, including Plaintiffs, multiple times

without taking any action to rescue them from ongoing starvation.

106. Defendants who had contact with Bruce and the Plaintiffs failed to report and investigate suspected abuse and neglect of the Plaintiffs as required by law.

107. The Jackson home was re-evaluated and approved by DYFS and/or DHS in 1999 and twice in 2002, despite the Jacksons' documented history of not meeting the medical and basic nutritional needs of children placed in their care by DYFS. Defendants failed to interview household members Bruce and Plaintiffs, nor was their medical information reviewed, as required for continued foster home approval.

CONCLUSION

108. Defendants failed to protect the Plaintiffs due to a decade of repeated acts and omissions at all levels of DYFS and/or DHS. As a result, Plaintiffs have suffered grievous harm and permanent physical, emotional, developmental, psychological and psychiatric injuries.

109. Managerial Defendants failed to ensure that DYFS and DHS staff was adequately trained and supervised to track and understand information relevant to the screening and approval of the Jackson foster home in a manner that was consistent with the exercise of reasonable professional judgment, and in deliberate indifference to the risk of harm to Plaintiffs. Supervisory Defendants failed to adequately supervise DYFS and DHS staff responsible for screening and approving the Jackson home in a manner that was consistent with the exercise of reasonable professional judgment, and in deliberate indifference to the risk of harm to Plaintiffs. Casework Defendants failed to screen and approve the Jackson home in a manner that was consistent with the exercise of reasonable professional judgment, and in deliberate indifference to the risk of harm to Plaintiffs.

110. Managerial Defendants failed to ensure that DYFS staff was adequately trained and supervised to screen and monitor the Jackson foster home in a manner that was consistent with the exercise of reasonable professional judgment, and in deliberate indifference to the risk of harm to Plaintiffs. Supervisory Defendants failed to adequately supervise DYFS staff responsible for screening and monitoring the Jackson home in a manner that was consistent with the exercise of reasonable professional judgment, and in deliberate indifference to the risk of harm to Plaintiffs. Casework Defendants failed to adequately screen and monitor the Jackson home in a manner that was consistent with the exercise of reasonable professional judgment, and in deliberate indifference to the risk of harm to Plaintiffs.

111. Managerial Defendants failed to ensure that DYFS staff was adequately trained and supervised to conduct required regular face-to-face visits with Plaintiffs in a manner that was consistent with the exercise of reasonable professional judgment, and in deliberate indifference to the risk of harm to Plaintiffs. Supervisory Defendants failed to adequately supervise DYFS staff responsible for conducting required regular face-to-face visits with Plaintiffs in a manner that was consistent with the exercise of reasonable professional judgment, and in deliberate indifference to the risk of harm to Plaintiffs. Casework Defendants failed to conduct required regular face-to-face visits with Plaintiffs in a manner that was consistent with the exercise of reasonable professional judgment, and in deliberate indifference to the risk of harm to Plaintiffs.

112. Managerial Defendants failed to ensure that DYFS and DHS staff was adequately trained to report and investigate suspected abuse and neglect in the Jackson home or of Plaintiffs as required by law in a manner that was consistent with the exercise of reasonable professional judgment, and in deliberate indifference to the risk of harm to Plaintiffs. Supervisory Defendants

failed to ensure that DYFS and DHS staff report and investigate suspected abuse and neglect in the Jackson home or of Plaintiffs as required by law in a manner that was consistent with the exercise of reasonable professional judgment, and in deliberate indifference to the risk of harm to Plaintiffs.

Defendants who had contact with Bruce and the Plaintiffs failed to report and investigate suspected abuse and neglect in the Jackson home or of Plaintiffs as required by law in a manner that was consistent with the exercise of reasonable professional judgment, and in deliberate indifference to the risk of harm to Plaintiffs.

113. Managerial Defendants failed to ensure that DYFS staff was adequately trained and supervised to track, understand, and protect the medical and mental health of Plaintiffs in a manner that was consistent with the exercise of reasonable professional judgment, and in deliberate indifference to the risk of harm to Plaintiffs. Supervisory Defendants failed to adequately supervise DYFS staff responsible for tracking, understanding, and protecting the medical and mental health of Plaintiffs in a manner that was consistent with the exercise of reasonable professional judgment, and in deliberate indifference to the risk of harm to Plaintiffs. Casework Defendants failed to adequately track, understand, and protect the medical and mental health of Plaintiffs in a manner that was consistent with the exercise of reasonable professional judgment, and in deliberate indifference to the risk of harm to Plaintiffs.

114. Managerial Defendants failed to ensure that DYFS staff was adequately trained and supervised to ensure the regular and necessary medical and mental health treatment of Plaintiffs in a manner that was consistent with the exercise of reasonable professional judgment, and in deliberate indifference to the risk of harm to Plaintiffs. Supervisory Defendants failed to adequately supervise DYFS staff responsible for the regular and necessary medical and mental health treatment of

Plaintiffs in a manner that was consistent with the exercise of reasonable professional judgment, and in deliberate indifference to the risk of harm to Plaintiffs. Casework Defendants failed to adequately ensure the regular and necessary medical and mental health treatment of Plaintiffs in a manner that was consistent with the exercise of reasonable professional judgment, and in deliberate indifference to the risk of harm to Plaintiffs.

115. Managerial Defendants failed to ensure that DYFS staff was adequately trained and supervised to avoid the unjustified labeling of Plaintiffs as handicapped and unlawful discrimination against them as a result. Supervisory Defendants failed to adequately supervise DYFS staff to avoid the unjustified labeling of the Plaintiffs as handicapped and unlawful discrimination against them as a result. Casework and Supervisory Defendants' unjustified perception and labeling of M.J. as having an "eating disorder" and "growth deficiency" handicap caused Defendants to discriminate against him by failing to address his physical deterioration and failure to grow while in a DYFS foster home. Casework and Supervisory Defendants' unjustified perception and labeling of K.J. as having an "eating disorder" handicap caused Defendants to discriminate against him by failing to address his physical deterioration and failure to grow while in a DYFS foster home. Casework and Supervisory Defendants' unjustified perception and labeling of T.J. as having a "food issues" handicap caused Defendants to discriminate against him by failing to address his physical deterioration and failure to grow in a DYFS foster home.

116. The Managerial Defendants failed to ensure that DYFS staff shared, reported and investigated evidence of abuse and neglect of foster children in the Jackson home managed by different caseworkers in a manner that was consistent with the exercise of reasonable professional judgment, and in deliberate indifference to the risk of harm to Plaintiffs. Supervisory Defendants

failed to adequately supervise DYFS staff to ensure that evidence of abuse and neglect of the foster children in the Jackson home was shared, reported and investigated in a manner that was consistent with the exercise of reasonable professional judgment, and in deliberate indifference to the risk of harm to Plaintiffs. Casework Defendants failed to share, report or investigate evidence of abuse and neglect of the foster children in the Jackson home in a manner that was consistent with the exercise of reasonable professional judgment, and in deliberate indifference to the risk of harm to Plaintiffs.

117. Managerial Defendants failed to ensure that DYFS staff was adequately trained and supervised to ensure that required pre-adoption protections were understood and met before approving the Plaintiffs' adoptions in a manner that was consistent with the exercise of reasonable professional judgment, and in deliberate indifference to the risk of harm to Plaintiffs. Supervisory Defendants failed to ensure that all the necessary requirements to protect Plaintiffs had been met before their adoptions in the Jackson home were approved in a manner that was consistent with the exercise of reasonable professional judgment, and in deliberate indifference to the risk of harm to Plaintiffs. Casework Defendants failed to interview and obtain medical information for all members of the Jackson household as required before the Plaintiffs' adoptions were approved in a manner that was consistent with the exercise of reasonable professional judgment, and in deliberate indifference to the risk of harm to Plaintiffs.

118. Managerial Defendants failed to ensure that DYFS staff was adequately trained and supervised to ensure the required monitoring of Plaintiffs immediately post-adoption in a manner that was consistent with the exercise of reasonable professional judgment, and in deliberate indifference to the risk of harm to Plaintiffs. Supervisory Defendants failed to adequately supervise DYFS staff responsible for the required monitoring of Plaintiffs in the Jackson home immediately

post-adoption in a manner that was consistent with the exercise of reasonable professional judgment, and in deliberate indifference to the risk of harm to Plaintiffs. Casework Defendants failed to adequately monitor Plaintiffs in the Jackson home immediately post-adoption consistent with professional judgment in a manner that was consistent with the exercise of reasonable professional judgment, and in deliberate indifference to the risk of harm to Plaintiffs.

FIRST CAUSE OF ACTION

**42 U.S.C. § 1983 B Substantive Due Process: Special Relationship
(Against the Managerial Does, the Supervisory Does, and the Casework Does, in their
personal capacities)**

119. Each of the foregoing paragraphs is incorporated as if fully set forth herein.

120. At all times when Defendants had Plaintiffs in their foster care custody, Defendants had a special relationship with Plaintiffs which imposed upon Defendants an affirmative duty to care for and protect Plaintiffs from harm under the Fourteenth Amendment to the United States Constitution.

121. Defendants breached that duty. Defendants' actions and omissions were a substantial departure from the exercise of reasonable professional judgment, practice, and standards, and amounted to deliberate indifference to Plaintiffs' welfare.

122. Defendants acted with deliberate indifference to and callous disregard of repeated indications and signs that Plaintiffs were not receiving adequate care, nourishment, and services while in foster care, and that they were severely under-developed.

123. Defendants failed to ensure the safety and well-being of Plaintiffs while they were in foster care and in the custody of the State, thus proximately causing them substantial and unnecessary physical, emotional, developmental, psychological, and psychiatric harm.

124. The actions and inactions that resulted in this harm include but are not limited to: the

failure to ensure that Plaintiffs received basic necessities while in foster care, including adequate food and nourishment; the failure to ensure that Plaintiffs received adequate medical care, treatment, and services while in foster care; the failure to adequately monitor Plaintiffs' safety and well-being while the children were in foster care; the failure to provide Plaintiffs with a safe and appropriate foster care placement; and the failure to adequately screen, approve, license and monitor the Jacksons as suitable foster parents.

125. In addition, the Managerial Does failed to assure the adequate training of the Supervisory and Casework Does concerning the provision of adequate care and services to foster children and the adequate screening, approval, licensure, and monitoring of foster homes, and failed to ensure that DYFS policies and procedures were interpreted and implemented in a consistent manner. The Managerial Does were aware for years of the inadequate training and other systemic deficiencies in the State's foster care system that contributed to the harm suffered by the Plaintiffs but failed to take reasonable steps to remedy these deficiencies. The failure to adequately train the Supervisory and Casework Does was so obvious, and so obviously likely to result in a constitutional violation, that it amounted to deliberate indifference to Plaintiffs' welfare. The failure to provide adequate training to the Supervisory and Casework Does directly resulted in the harms suffered by Plaintiffs.

126. In addition, the Supervisory Does failed to adequately supervise the Casework Does with respect to the provision of adequate care and services to foster children and the adequate screening, approval, licensure, and monitoring of foster homes, and failed to ensure that DYFS policies and procedures were interpreted and implemented in a consistent manner. The Supervisory Does were aware for years of the inadequate supervision and other systemic deficiencies in the

State's foster care system that contributed to the harm suffered by the Plaintiffs but failed to take reasonable steps to remedy these deficiencies. The Supervisory Does were deliberately indifferent to Plaintiffs' welfare by failing to take action that was obviously necessary to prevent or stop the deprivation of Plaintiffs' constitutional rights. The failure to adequate supervision to the Casework Does directly resulted in the harms suffered by Plaintiffs.

127. By virtue of the foregoing, Defendants deprived Plaintiffs of various rights protected by the Due Process Clause of the Fourteenth Amendment, including but not limited to: the right to personal security and reasonably safe living conditions; the right to protection from harm; the right not to be harmed physically, emotionally, developmentally or otherwise; the right to basic life necessities, such as adequate food and nourishment; the right not to deteriorate in state custody; and the right to adequate medical care, treatment, and services consistent with the exercise of reasonable professional judgment.

128. Defendants arbitrarily and capriciously deprived Plaintiffs of their due process rights in the absence of any countervailing state interest.

129. Plaintiffs' substantive due process rights were clearly established constitutional rights at the time of Defendants' acts and omissions, and a reasonable individual would have known that their acts and omissions would violate these clearly established constitutional rights.

SECOND CAUSE OF ACTION

**42 U.S.C. § 1983 B Substantive Due Process: State-Created Danger
(Against the Managerial Does, the Supervisory Does, and the Casework Does in their
personal capacities)**

130. Each of the foregoing paragraphs is incorporated as if fully set forth herein.

131. The Fourteenth Amendment to the United States Constitution guarantees Plaintiffs

the substantive due process right to be free from state-created dangers.

132. Defendants violated this right by taking affirmative steps to approve the minor Jackson brothers' adoptions in the Jackson home and having those adoptions finalized, which placed the children at imminent and foreseeable risk of danger and harm.

133. The physical, emotional, developmental, psychological, and psychiatric harm that Plaintiffs suffered after being adopted by the Jacksons was foreseeable, and directly, and proximately caused by Defendants' unconstitutional acts and omissions.

134. Defendants acted with callous and willful disregard for Plaintiffs' safety by approving the minor Jackson brothers' adoptions by the Jacksons, despite Defendants' knowledge of repeated indications and signs that Plaintiffs were not receiving adequate care, nourishment, or services from the Jacksons while in foster care, and repeated indications and signs of their under-development while in the Jackson home.

135. At the time of Plaintiffs' adoptions, Defendants and Plaintiffs had a special relationship, given that Plaintiffs were in foster care and in State custody.

136. Defendants' exercise of their authority to pursue and ask the Family Court to finalize the adoption of Plaintiffs by individuals who had a known history of failing to provide basic care and nourishment to the children created a risk of danger that would not have otherwise existed if Defendants had adequately screened and monitored the Jacksons as potential adoptive parents or identified an alternative appropriate adoptive placement.

137. Defendants arbitrarily and capriciously deprived Plaintiffs of their due process rights in the absence of any countervailing state interest.

138. Plaintiffs' substantive due process rights to be free from state-created dangers were

clearly established constitutional rights at the time of Defendants' acts and omissions, and a reasonable individual would have known that their acts and omissions would violate these clearly established constitutional rights.

THIRD CAUSE OF ACTION

42 U.S.C. § 1983 Procedural Due Process

(Against the Managerial Does, the Supervisory Does, and the Casework Does in their personal capacities)

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

140. The foregoing actions and inactions of Defendants resulted in Plaintiffs being deprived of constitutionally protected liberty interests without due process of law, which was a substantial factor leading to, and proximate cause of, the physical, emotional, developmental, psychological, and psychiatric harm Plaintiffs have suffered.

141. Plaintiffs were vested, by virtue of the New Jersey Child Placement Bill of Rights Act, with certain state-created liberty interests protected by the federal Due Process Clause, including the right to be free from physical or psychological abuse; the right to receive adequate, safe, and appropriate food, clothing, and housing; the right to receive adequate and appropriate medical care; the right to have regular contact with case workers assigned to their case; the right to receive services of a high quality that are designed to maintain and advance their mental and physical well-being; the right to receive an educational program which maximized their potential; and the right to be free from unwarranted physical restraint and isolation. N.J.S.A. 9:6B-4(h)-(i), (k), (m)-(p).

142. Plaintiffs were vested, by virtue of N.J.S.A. ' 30:4C-25, with certain state-created liberty interest protected by the federal Due Process Clause, including the right to regular visits from Defendants while Plaintiffs were in foster care to ensure that they were receiving adequate services and care.

143. Plaintiffs were vested, by virtue of various statutory and regulatory obligations imposed upon Defendants to adequately screen, approve, and monitor Plaintiffs' foster homes, with certain state-created liberty interest protected by the federal Due Process Clause, including the right to a detailed home study of the Jackson home prior to Plaintiffs' placement there, N.J.A.C. 10:122C-2.8(a); a right to have Defendants ensure that Raymond and Vanessa Jackson were able to care effectively for Plaintiffs as foster parents, N.J.A.C. 10:122C-1.5(a); a right to have Defendants ensure that the Jacksons were providing the necessities of life to their family, N.J.A.C. 10:122C-1.5(i); a right to have Defendants ensure that the Jacksons had income or other means of financial support that made them economically independent of Plaintiffs' foster care maintenance payments, N.J.A.C. 10:122C-1.5(j); a right to have Defendants ensure that the Jacksons used all of the money received in the name of each Plaintiff to provide for that child's care, N.J.C.A. 10:122C-1.5(k); a right to have Defendants ensure that the Jacksons had the ability to provide for Plaintiffs' basic nutritional, developmental, educational, and health needs, and to provide Raymond and Vanessa Jackson with information on nutrition and child health needs, N.J.A.C. 10:122C-1.10(a), 10:122B-4.1(b); a right to have Defendants ensure that Plaintiffs received appropriate and necessary health care while in the custody of Raymond and Vanessa Jackson, and that Plaintiffs received medical and dental examinations at least annually, N.J.A.C. 10:122D-2.5; a right to have Defendants ensure that Vanessa and Raymond Jackson were properly trained to fulfill their obligations as foster parents, N.J.A.C. 10:122D-2.7; a right to have Defendants visit the foster home to assess compliance with sleeping space and life safety standards, to interview each household member not participating in pre-service training, and to verify information about each household member, N.J.A.C. 10:122B-5.3; a right to have Defendants obtain medical references for each member of the Jackson

household, and for each new household member, N.J.A.C. 10:122C-2.3(a), (b); N.J.A.C. 10:122C-1.5(b); a right to have Defendants support the Jacksons in fulfilling their roles with respect to Plaintiffs' case goals, N.J.A.C. 10:122B-4.1(h); a right to have Defendants conduct annual inspections of the foster homes, which shall include interviews with all foster children and other household members, N.J.A.C. 10:122C-2.8(b), N.J.A.C. 10:122C-2.9(b); a right to have Defendants promptly and thoroughly investigate any complaints or reports questioning Raymond and Vanessa Jackson's compliance with applicable statutes and/or regulations, N.J.A.C. 10:122C-2.12(a); and a right to have Defendants ensure remove Plaintiffs from foster care with the Jacksons upon a determination that Plaintiffs were not safe in the Jacksons' home, N.J.A.C. 10:122E-2.1; N.J.A.C. 10:122E-2.5.

144. Plaintiffs were vested, by virtue of various statutory and regulatory obligations imposed upon Defendants to adequately screen and approve the Jackson home as an appropriate adoptive home for the Plaintiffs and to ensure Plaintiffs' post-adoption safety and welfare, with certain state-created liberty interest protected by the federal Due Process Clause, including the right to have Defendants select Plaintiffs' adoptive home based on an informed, objective judgment, after a full and careful assessment of each factor which could have affected Plaintiffs' ability to benefit physically, socially, and emotionally from the adoptive placement, N.J.A.C. 10:121C-4.1; the right to have Defendants perform a detailed pre-adoptive home study of the Jackson home, including ensuring that Raymond and Vanessa Jackson had the capacity to meet Plaintiffs' physical and emotional needs and had disclosed any history of child abuse or neglect or any criminal record, N.J.S.A. 9:3-54.2; N.J.A.C. 10:121C-3.1(b); N.J.A.C. 10:121C-4.2; N.J.A.C. 10:121A-5.7; N.J.A.C. 10:121A-5.6(c)(2), (d); the right to have Defendants ensure that such home study included at least

three in-person contacts with Raymond and Vanessa Jackson and at least one in-person contact with all members of the household, at least one visit to the Jackson home, a review of the Jacksons' job references, a review of their personal references, the procurement of various specific categories of information, and completion of background checks regarding criminal records and/or records of prior child abuse or neglect, N.J.A.C. 10:121A-5.6(e)-(j); the right to have Defendants refrain from placing Plaintiffs in the Jackson home for the purpose of adoption without a properly completed home study, N.J.A.C. 10:121A-5.6(m); and the right to have Defendants provide post-placement services to Plaintiffs and to Raymond and Vanessa Jackson, including face-to-face communication, to assist with issues relevant to Plaintiffs' adoption, to assess the need for counseling, to refer the adoptive family to medical, therapeutic, educational, self-help, or other services as needed, to assist the family to function autonomously, and to assess the family's readiness and suitability for final adoption, N.J.A.C. 10:121C-5.1.

145. Plaintiffs were vested, by virtue of various statutory and regulatory obligations imposed upon Defendants to report any suspected abuse of Plaintiffs in order to ensure their ongoing safety and welfare, with certain state-created liberty interest protected by the federal Due Process Clause, including the right to have Defendants report any suspicion that Plaintiffs were being subjected to acts of child abuse, N.J.S.A. § 9:6-8.10; N.J.A.C. 10:121A-3.5; the right to have Defendants investigate such suspected child abuse, N.J.S.A. § 30:4C-12; and the right to have Defendants immediately report all instances of suspected child abuse and neglect to the county prosecutor in the county in which Plaintiffs resided, N.J.S.A. 9:6-8.36a.

146. Defendants' actions and inactions were inconsistent with the exercise of reasonable professional judgment and amount to deliberate indifference to the procedural due process rights of

Plaintiffs. Defendants acted with deliberate indifference and callous disregard to repeated indications and signs that the Plaintiffs were not receiving adequate care, nourishment, and services while in foster care, and were under-developed. As a result, Plaintiffs were deprived of the procedural due process rights conferred upon them by the Fourteenth Amendment to the United States Constitution.

147. Defendants arbitrarily and capriciously deprived Plaintiffs of their due process rights in the absence of any countervailing state interest.

148. Plaintiffs' procedural due process rights and state law entitlements were clearly established at the time of the alleged acts and omissions, and a reasonable individual would have known that the alleged acts and omissions would violate these clearly established rights.

FOURTH CAUSE OF ACTION

New Jersey Constitution Substantive Due Process: Special Relationship (Against all Defendants)

149. Each of the foregoing paragraphs is incorporated as if fully set forth herein.

150. At all times when Defendants had Plaintiffs in their foster care custody, Defendants had a special relationship with Plaintiffs, which imposed upon Defendants an affirmative duty to care for and protect Plaintiffs from harm under the Fourteenth Amendment to the United States Constitution.

151. Defendants breached that duty. Defendants' actions and omissions were a substantial departure from the exercise of reasonable professional judgment, practice, and standards, and amounted to deliberate indifference to Plaintiffs' welfare.

152. Defendants acted with deliberate indifference to and callous disregard of repeated indications and signs that Plaintiffs were not receiving adequate care, nourishment, and services

while in foster care, and that they were severely under-developed.

153. Defendants failed to ensure the safety and well-being of Plaintiffs while they were in foster care and in the custody of the State, thus proximately causing them substantial and unnecessary physical, emotional, developmental, psychological, and psychiatric harm.

154. The actions and inactions that resulted in this harm include but are not limited to: the failure to ensure that Plaintiffs received basic necessities while in foster care, including adequate food and nourishment; the failure to ensure that Plaintiffs received adequate medical care, treatment, and services while in foster care; the failure to adequately monitor Plaintiffs' safety and well-being while the children were in foster care; the failure to provide Plaintiffs with a safe and appropriate foster care placement; the failure to ensure that Plaintiffs did not deteriorate while in state custody; and the failure to adequately screen, approve, license and monitor the Jacksons as suitable foster parents.

155. In addition, the Managerial Does failed to assure the adequate training of the Casework Does concerning the provision of adequate care and services to foster children and the adequate screening, approval, licensure, and monitoring of foster homes, and failed to ensure that DYFS policies and procedures were interpreted and implemented in a consistent manner. The Managerial Does were aware for years of the inadequate training and other systemic deficiencies in the State's foster care system that contributed to the harm suffered by the Plaintiffs but failed to take reasonable steps to remedy these deficiencies. The failure to adequately train the Casework Does was so obvious, and so obviously likely to result in a constitutional violation, that it amounted to deliberate indifference to Plaintiffs' welfare.

156. In addition, the Supervisory Does failed to adequately supervise the Casework Does

with respect to the provision of adequate care and services to foster children and the adequate screening, approval, licensure, and monitoring of foster homes, and failed to ensure that DYFS policies and procedures were interpreted and implemented in a consistent manner. The Supervisory Does were aware for years of the inadequate supervision and other systemic deficiencies in the State's foster care system that contributed to the harm suffered by the Plaintiffs but failed to take reasonable steps to remedy these deficiencies. The Supervisory Does were deliberately indifferent to Plaintiffs' welfare by failing to take action that was obviously necessary to prevent or stop the deprivation of Plaintiffs' constitutional rights.

157. By virtue of the foregoing, Defendants deprived Plaintiffs of various rights protected by the New Jersey State Constitution, Article 1, ¶ 1, including but not limited to: the right to personal security and reasonably safe living conditions; the right to protection from harm; the right not to be harmed physically, emotionally, developmentally or otherwise; the right to basic life necessities, such as adequate food and nourishment; and the right to adequate medical care, treatment, and services consistent with the exercise of reasonable professional judgment.

158. Defendants arbitrarily and capriciously deprived Plaintiffs of their due process rights in the absence of any countervailing state interest.

159. Plaintiffs' substantive due process rights were clearly established constitutional rights at the time of Defendants' acts and omissions, and a reasonable individual would have known that their acts and omissions would violate these clearly established constitutional rights.

FIFTH CAUSE OF ACTION

New Jersey Constitution Substantive Due Process: State-Created Danger (Against all Defendants)

160. Each of the foregoing paragraphs is incorporated as if fully set forth herein.

161. The New Jersey State Constitution, Article 1, ¶ 1, guarantees Plaintiffs the substantive due process right to be free from state-created dangers.

162. Defendants violated this right by taking affirmative steps to approve the minor Jackson brothers' adoptions in the Jackson home and having those adoptions finalized, which placed the children at imminent and foreseeable risk of danger and harm.

163. The physical, emotional, developmental, psychological, and psychiatric harm that Plaintiffs suffered after being adopted by the Jacksons was foreseeable, and directly, and proximately caused by Defendants' unconstitutional acts and omissions.

164. Defendants acted with callous and willful disregard for Plaintiffs' safety by approving the minor Jackson brothers' adoptions by the Jacksons, despite Defendants' knowledge of repeated indications and signs that Plaintiffs were not receiving adequate care, nourishment, or services from the Jacksons while in foster care, and repeated indications and signs of their under-development while in the Jackson home.

165. At the time of Plaintiffs' adoptions, Defendants and Plaintiffs had a special relationship, given that Plaintiffs were in foster care and in State custody.

166. Defendants' exercise of their authority to pursue and ask the Family Court to finalize the adoption of Plaintiffs by individuals who had a known history of failing to provide basic care and nourishment to the children created a risk of danger that would not have otherwise existed if Defendants had adequately screened and monitored the Jacksons as potential adoptive parents or identified an alternative appropriate adoptive placement.

167. Defendants arbitrarily and capriciously deprived Plaintiffs of their due process rights in the absence of any countervailing state interest, and caused Plaintiffs substantial and unnecessary

physical, emotional, developmental, psychological, and psychiatric harm as a result.

168. Plaintiffs' substantive due process rights to be free of state-created dangers were clearly established constitutional rights at the time of Defendants' acts and omissions, and a reasonable individual would have known that their acts and omissions would violate these clearly established constitutional rights.

SIXTH CAUSE OF ACTION

N.J.S.A. 9:6B-1 *et seq.* Violation of Child Placement Bill of Rights Act (Against all Defendants)

169. Each of the foregoing paragraphs is incorporated as if fully set forth herein.

170. Under the New Jersey Child Placement Bill of Rights Act, Plaintiffs possessed the following rights while placed outside of their biological home: a right to be free from physical or psychological abuse; a right to receive adequate, safe, and appropriate food, clothing, and housing; a right to receive adequate and appropriate medical care; a right to have regular contact with case workers assigned to their case; a right to receive services of a high quality that are designed to maintain and advance their mental and physical well-being; a right to receive an educational program which maximized their potential; and a right to be free from unwarranted physical restraint and isolation. N.J.S.A. 9:6B-4(h)-(i), (k), (m)-(p).

171. Defendants had a duty to provide Plaintiffs services and care to ensure that these statutory rights were protected.

172. Defendants violated Plaintiffs' statutory rights by failing to meet their duties to the Plaintiffs while the children were in out-of-home placement, causing substantial and unnecessary physical, emotional, developmental, psychological, and psychiatric harm to Plaintiffs, as well as pain and suffering, anxiety, social disruption, and other grievous harm.

SEVENTH CAUSE OF ACTION
N.J.S.A. 30:4C-25 B Failure to Visit
(Against all Defendants)

173. Each of the foregoing paragraphs is incorporated as if fully set forth herein.

174. Under N.J.S.A. ' 30:4C-25, Defendants had a duty to regularly visit Plaintiffs while they were in foster care to ensure that they were receiving adequate services and care.

175. Defendants breached this duty.

176. As a direct and proximate cause of Defendants' failure to fulfill these duty, Plaintiffs sustained substantial and unnecessary physical, emotional, developmental, psychological, and psychiatric harm to Plaintiffs, as well as pain and suffering, anxiety, social disruption, and other grievous harm.

EIGHTH CAUSE OF ACTION
Regulations Promulgated Pursuant to Articles 9 and 30 of the New Jersey Statutory Code:
Failure to Adequately Screen, Approve, and Monitor the Jackson Home as an Appropriate
Foster Home
(Against all Defendants)

177. Each of the foregoing paragraphs is incorporated as if fully set forth herein.

178. Defendants were under various statutory and regulatory obligations to Plaintiffs to adequately screen, approve, and monitor the Jackson foster home in order to ensure Plaintiffs' safety and welfare. These obligations included but were not limited to: a duty to conduct a detailed home study of the Jackson home prior to placing Plaintiffs with the Jacksons, N.J.A.C. 10:122C-2.8(a); a duty to ensure that Raymond and Vanessa Jackson were able to care effectively for Plaintiffs as foster parents, N.J.A.C. 10:122C-1.5(a); a duty to ensure that the Jacksons were providing the necessities of life to their family, N.J.A.C. 10:122C-1.5(i); a duty to ensure that the Jacksons had income or other means of financial support that made them economically independent of Plaintiffs'

foster care maintenance payments, N.J.A.C. 10:122C-1.5(j); a duty to ensure that the Jacksons used all of the money received in the name of each Plaintiff to provide for that child's care, N.J.C.A. 10:122C-1.5(k); a duty to ensure that the Jacksons had the ability to provide for Plaintiffs' basic nutritional, developmental, educational, and health needs, and to provide Raymond and Vanessa Jackson with information on nutrition and child health needs, N.J.A.C. 10:122C-1.10(a), 10:122B-4.1(b); a duty to ensure that Plaintiffs received appropriate and necessary health care while in the custody of Raymond and Vanessa Jackson, and that Plaintiffs received medical and dental examinations at least annually, N.J.A.C. 10:122D-2.5; a duty to ensure that Vanessa and Raymond Jackson were properly trained to fulfill their obligations as foster parents, N.J.A.C. 10:122D-2.7; a duty to visit the foster home to assess compliance with sleeping space and life safety standards, to interview each household member not participating in pre-service training, and to verify information about each household member, N.J.A.C. 10:122B-5.3; a duty to obtain medical references for each member of the Jackson household, and for each new household member, N.J.A.C. 10:122C-2.3(a), (b); N.J.A.C. 10:122C-1.5(b); a duty to support the Jacksons in fulfilling their roles with respect to Plaintiffs' case goals, N.J.A.C. 10:122B-4.1(h); a duty to conduct annual inspections of the foster homes, which shall include interviews with all foster children and other household members, N.J.A.C. 10:122C-2.8(b), N.J.A.C. 10:122C-2.9(b); a duty to promptly and thoroughly investigate any complaints or reports questioning Raymond and Vanessa Jackson's compliance with applicable statutes and/or regulations, N.J.A.C. 10:122C-2.12(a); and a duty to remove Plaintiffs from foster care with the Jacksons upon a determination that Plaintiffs were not safe in the Jacksons' home, N.J.A.C. 10:122E-2.1; N.J.A.C. 10:122E-2.5.

179. Defendants breached these statutory and regulatory obligations to Plaintiffs.

180. As a direct and proximate result of Defendants' failure to fulfill these duties, Plaintiffs sustained substantial and unnecessary physical, emotional, developmental, psychological, and psychiatric harm to Plaintiffs, as well as pain and suffering, anxiety, social disruption, and other grievous harm.

NINTH CAUSE OF ACTION

Regulations Promulgated Pursuant to Articles 9 and 30 of the New Jersey Statutory Code: Failure to Adequately Screen and Approve the Jackson Home as an Appropriate Adoptive Home and to Provide Post-Adoptive Services (Against all Defendants)

181. Each of the foregoing paragraphs is incorporated as if fully set forth herein.

182. Defendants were under various statutory and regulatory obligations to Plaintiffs to adequately screen and approve the Jackson home as an appropriate adoptive home for the Plaintiffs and to ensure Plaintiffs' post-adoption safety and welfare. These obligations included but were not limited to: a duty to select Plaintiffs' adoptive home based on an informed, objective judgment, after a full and careful assessment of each factor which could have affected Plaintiffs' ability to benefit physically, socially, and emotionally from the adoptive placement, N.J.A.C. 10:121C-4.1; a duty to perform a detailed pre-adoptive home study of the Jackson home, including ensuring that Raymond and Vanessa Jackson had the capacity to meet Plaintiffs' physical and emotional needs and had disclosed any history of child abuse or neglect or any criminal record, N.J.S.A. 9:3-54.2; N.J.A.C. 10:121C-3.1(b); N.J.A.C. 10:121C-4.2; N.J.A.C. 10:121A-5.7; N.J.A.C. 10:121A-5.6(c)(2), (d); a duty to ensure that such home study included at least three in-person contacts with Raymond and Vanessa Jackson and at least one in-person contact with all members of the household, at least one visit to the Jackson home, a review of the Jacksons' job references, a review of their personal references, the procurement of various specific categories of information, and completion of

background checks regarding criminal records and/or records of prior child abuse or neglect, N.J.A.C. 10:121A-5.6(e)-(j); a duty not to place Plaintiffs in the Jackson home for the purpose of adoption without a properly completed home study, N.J.A.C. 10:121A-5.6(m); and a duty to provide post-placement services to Plaintiffs and to Raymond and Vanessa Jackson, including face-to-face communication, to assist with issues relevant to Plaintiffs' adoption, to assess the need for counseling, to refer the adoptive family to medical, therapeutic, educational, self-help, or other services as needed, to assist the family to function autonomously, and to assess the family's readiness and suitability for final adoption, N.J.A.C. 10:121C-5.1. To perform these post-placement services, Defendants had a duty to visit Plaintiffs within 14 days of their adoptive placement and on a monthly or bi-monthly basis for at least six months thereafter. N.J.A.C. 10:121A-5.8.

183. Defendants breached these statutory and regulatory obligations to Plaintiffs.

184. As a direct and proximate result of Defendants' failure to fulfill these duties, Plaintiffs sustained substantial and unnecessary physical, emotional, developmental, psychological, and psychiatric harm to Plaintiffs, as well as pain and suffering, anxiety, social disruption, and other grievous harm.

TENTH CAUSE OF ACTION
Violation of New Jersey Statutory and Regulatory Duties
Duty to Report and Investigate Abuse
(Against all Defendants)

185. Each of the foregoing paragraphs is incorporated as if fully set forth herein.

186. Defendants were under various statutory and regulatory obligations to Plaintiffs to report any suspected abuse of Plaintiffs in order to ensure their ongoing safety and welfare.

187. All Defendants who had any contact with Plaintiffs while they were residing with the Jacksons had cause to believe that the children had been subjected to child abuse or acts of child

abuse and thus had a duty to immediately report this information. N.J.S.A. § 9:6-8.10; N.J.A.C. 10:121A-3.5.

188. Defendants had a duty to investigate such suspected child abuse. N.J.S.A. § 30:4C-12.

189. DYFS also had a duty to immediately report all instances of suspected child abuse and neglect to the county prosecutor in the county in which Plaintiffs resided. N.J.S.A. 9:6-8.36a.

190. Defendants breached these statutory and regulatory obligations to Plaintiffs.

191. As a direct and proximate cause of Defendants' failure to fulfill these duties, Plaintiffs sustained substantial and unnecessary physical, emotional, developmental, psychological, and psychiatric harm to Plaintiffs, as well as pain and suffering, anxiety, social disruption, and other grievous harm.

ELEVENTH CAUSE OF ACTION
New Jersey Tort Claims Act B Negligence
(Against all Defendants)

192. Each of the foregoing paragraphs is incorporated as if fully set forth herein.

193. Plaintiffs have complied with the notice requirements of the Tort Claims Act. N.J.S.A. 59:1-1 et seq.

194. Defendants owed numerous duties to the Plaintiffs. DYFS and Managerial Does had a duty to train their employees to ensure that any suspected abuse and neglect of the Plaintiffs be recognized, reported and investigated as legally required. DYFS and Supervisory Does had a duty to supervise the Casework Does to assure that they recognize, report and investigate any suspected abuse and neglect of the Plaintiffs as legally required. DYFS and Casework Does had a duty to recognize, report and investigate suspected abuse and neglect of the Plaintiffs as legally required.

195. Defendants had a general duty to ensure that Plaintiffs received adequate nourishment, care, and services.

196. Defendants also had a duty to screen, approve, license and monitor the Jackson home to ensure that Plaintiffs received reasonable nourishment and medical care and remained reasonably safe.

197. Defendants had a duty to take reasonable steps to investigate suspected abuse or neglect and remove Plaintiffs from an abusive and/or neglectful home.

198. By their acts and omissions, Defendants violated the care of duty owed to Plaintiffs. Defendants acted with gross negligence and/or recklessly. Defendants' acts and omissions were outside of their scope of employment, and did not involve the mere exercise of professional judgment or discretion.

199. By their acts and omissions, Defendants proximately caused permanent injuries to the Plaintiffs, including substantial physical, emotional, developmental, psychological, and psychiatric harm. Defendants' acts and omissions were a material element and/or a substantial factor in bringing the harm about to the Plaintiffs. The harms sustained by the Plaintiffs were a reasonably foreseeable result of Defendants' acts and omissions.

200. By the foregoing, Defendants are liable for Plaintiffs' injuries pursuant to N.J.S.A. 59:1-1 et seq. Defendants are jointly and severally liable for the injuries sustained by the Plaintiffs.

TWELFTH CAUSE OF ACTION
Violation of New Jersey Law Against Discrimination
(Against all Defendants)

201. Each of the foregoing paragraphs is incorporated as if fully set forth herein.

202. DYFS is a place of public accommodations under N.J.S.A. 10:5-1 et seq.

203. Plaintiffs were perceived and labeled by Defendants as handicapped individuals (having an “eating disorder,” “growth deficiency,” and/or “food issues” handicap), within the meaning of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.

204. Defendants denied Plaintiffs basic services in an approved and licensed DYFS foster home, including but not limited to the provision of food and basic medical care, because of their perceived handicaps.

205. By their acts and omissions, Defendants discriminated against Plaintiffs on the basis of their perceived handicaps.

206. Defendants acted with wanton recklessness and/or reckless indifference.

207. Defendants’ conduct was intentional and motivated by actual malice.

208. Defendants acted in bad faith.

209. Defendants acted with willful indifference and reckless disregard toward the discrimination against Plaintiffs.

210. Defendants either approved or acted with willful indifference or reckless disregard to the discrimination against Plaintiffs, so as to warrant punitive damages against them.

211. As a result of Defendants’ unlawful conduct, Defendants have caused Plaintiffs to suffer personal hardships, including substantial and unnecessary physical, emotional, developmental, psychological, and psychiatric harm to Plaintiffs, as well as pain and suffering, anxiety, social disruption, and other grievous harm.

THIRTEENTH CAUSE OF ACTION

**Violation of New Jersey Law Against Discrimination B Aiding and Abetting
(Against all Individual Defendants)**

212. Each of the foregoing paragraphs is incorporated as if fully set forth herein.

213. DYFS is a place of public accommodations under N.J.S.A. 10:5-1 et seq.

214. The Plaintiffs were perceived and labeled by Defendants as handicapped individuals (having an “eating disorder,” “growth deficiency,” and/or “food issues” handicap), within the meaning of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 et seq.

215. Defendants aided and abetted the denial to Plaintiffs of basic services in an approved and licensed DYFS foster home, including but not limited to the provision of food and basic medical care, because of their perceived handicaps.

216. By their acts and omissions, Defendants have aided and abetted in the discrimination against the Plaintiffs on the basis of their perceived handicaps.

217. Defendants acted with wanton recklessness and/or reckless indifference.

218. Defendants’ conduct was intentional and motivated by actual malice.

219. Defendants acted in bad faith.

RELIEF

WHEREFORE, Plaintiffs demand that judgment be awarded in their favor as

follows:

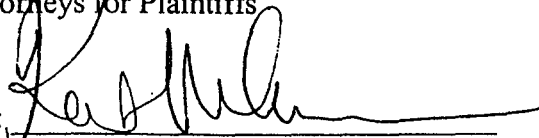
1. an order awarding compensatory damages in an amount to be determined at trial;
2. an order awarding punitive damages in an amount to be determined at trial;
3. an order awarding reasonable attorneys' fees;
4. an order awarding prejudgment interest; and
5. an order directing such other and further relief as the Court may deem just and proper, including but not limited to appropriate costs and disbursements.

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury on all claims triable to a jury.

DWYER & DUNNIGAN, LLC

Attorneys for Plaintiffs

By: 
Kathleen Dunnigan

Dated: May 26, 2004

EMERY CELLI BRINCKERHOFF & ABADY LLP

Richard Emery*

Eric Hecker*

545 Madison Avenue, 3rd Floor

New York, New York 10022

(212) 763-5000

ERIC THOMPSON*

JEFFREY POWELL*

Children's Rights

404 Park Avenue South, 11th Floor

New York, New York 10016

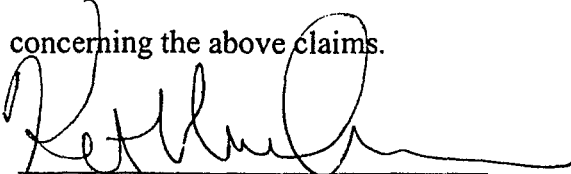
(212) 683-2210

Attorneys for Plaintiffs

*Not licensed in New Jersey

CERTIFICATION

The undersigned hereby certifies that to the best of her knowledge and belief, there are no other parties who should be joined in this action and there are no other actions pending concerning the above claims.

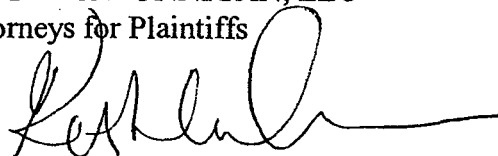

Kathleen Dunnigan

Dated: May 26, 2009

DESIGNATION OF TRIAL COUNSEL

PLEASE TAKE NOTICE that pursuant to Rule 4:25-4, Kathleen Dunnigan is hereby designated as trial counsel for Plaintiffs.

DWYER & DUNNIGAN, LLC
Attorneys for Plaintiffs

By: 
Kathleen Dunnigan

Dated: May 26, 2009