

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

DWAYNE B., by his next friend, John Stempfle;)
CARMELA B., by her next friend, William Ladd;)
LISA J., by her next friend, Teresa Kibby; and)
JULIA, SIMON, and COURTNEY G.,)
by their next friend, William Ladd;)
for themselves and others similarly situated,)

Plaintiffs,)

v.)

CASE NO. _____)

JENNIFER GRANHOLM, in her official)
capacity as Governor of the State of Michigan;)
MARIANNE UDOW, in her official)
capacity as Director of the Michigan)
Department of Human Services (“DHS”);)
LAURA CHAMPAGNE, in her official capacity as)
Chief Deputy Director of DHS Operations; and)
JAMES HENNESSEY, in his official capacity as)
Deputy Director of DHS Children’s Services,)

CLASS ACTION COMPLAINT

Defendants.)

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INTRODUCTION

1. This is a civil rights class action against Jennifer Granholm, Governor of Michigan; Marianne Udow, Director of the Michigan Department of Human Services (“DHS”); Laura Champagne, Chief Deputy Director of DHS Operations; and James Hennessey, Deputy Director of DHS Children’s Services (collectively, “Defendants”), on behalf of all children who are now or will be in the foster care custody of DHS in in-home or out-of-home placements (“Plaintiff Children”). Plaintiff Children seek declaratory and injunctive relief to remedy violations of their legal rights and to prevent Defendants, by their actions and inactions, from continuing to harm vulnerable children who rely on the State for care and protection.

2. With almost 19,000 children in its foster care custody, Michigan has the seventh largest foster care population in the nation. As the legal custodians for these children, Defendants are required by the United States Constitution and federal law to protect their safety and well-being and find them permanent homes. Defendants have failed to meet these obligations, and have knowingly subjected Plaintiff Children to ongoing physical, emotional, and psychological harm.

3. As a result of serious systemic deficiencies that have been known to Defendants for many years, the Michigan child welfare system inflicts numerous harms on Plaintiff Children, including:

- a. ***Maltreatment or neglect of foster children while in state custody.*** Too often children brought into Michigan’s foster care custody because they have suffered abuse or neglect are subject to further maltreatment while in the custody of DHS. This maltreatment occurs because of Defendants’ failure to (i) appropriately screen and oversee foster homes; (ii) segregate sexually reactive children (often themselves victims of prior sexual abuse) or physically aggressive children from other foster children; and (iii) adequately monitor and support caregivers, including unlicensed caregivers, who provide homes for children in the foster care custody of DHS.

- b. ***A lack of basic physical and mental health services for foster children.*** Michigan's foster children are routinely denied the services necessary to address known psychological, behavioral and emotional issues due to the absence of a minimally adequate mental health system. Moreover, due to agency cost-cutting measures, children are frequently left in foster homes that are unable to meet their special needs and in which their mental health further deteriorates. Foster children are also routinely denied timely basic medical and dental examinations and services.
- c. ***Excessive lengths of stay in state custody.*** Michigan's foster children are unnecessarily spending large portions of their lives – and sometimes their entire childhoods – in foster care custody. Defendants fail to provide foster children with appropriate case management, case plans and the services, including adoption-related services, required to prevent children from growing up in state custody. Michigan's foster children who cannot return home are routinely denied the opportunity to be adopted, and many are discharged from the foster care system at the state's age of majority without the life skills necessary to live independently.
- d. ***Frequent moves among multiple placements.*** Subjecting foster children, who have already undergone the trauma of being removed from an abusive or neglectful home, to repeated changes in their primary caregivers causes serious harm to their development and psychological health. Yet, data collected by DHS and reported to the federal government shows that over 62% of the children in DHS foster care custody during fiscal year 2002, the last year for which such data is available, had been in foster care for more than 12 months, and over 40% of these children had already experienced three or more different placements during their lengthy foster care episodes.

4. These continuing harms to Plaintiff Children are caused by a number of severe deficiencies in Michigan's foster care system, including:

- a. ***A severe shortage of foster homes.*** Defendants fail to maintain an adequate number and variety of foster homes and other appropriate placements for foster children. Foster children are placed wherever a bed or "slot" is available and not according to their individual needs. As a result, foster children are too often moved from one foster home to another because their needs are not being met, repeatedly suffering emotional harm.
- b. ***High caseloads and turnover.*** Caseworkers responsible for overseeing the care and protection of children in Defendants' foster

care custody often have dangerously high caseloads that are frequently multiples of the national standard of 12-15 foster children per caseworker. High caseloads and an unsupportive environment for many caseworkers have led to soaring caseworker turnover rates of almost 40%. The DHS early retirement programs implemented in 1997 and again in 2002 caused significant numbers of experienced DHS caseworkers to retire, resulting in a largely inexperienced frontline and supervisory child welfare workforce.

- c. ***Poor monitoring of child safety.*** Michigan's foster homes are often inadequately screened for safety. The State Auditor's 2005 "Performance Audit of the Children's Foster Care Program" identified more than 320 homes that had never undergone a safety assessment as required by DHS policy. Additionally, high caseloads prevent caseworkers from devoting the time needed to adequately monitor the safety of foster children assigned to them. As of March 2006, DHS reported that more than 30% of foster children statewide were not receiving even the minimally required monthly contact from their caseworker.
- d. ***Poor planning and services to move children out of foster care and into permanent homes.*** Defendants routinely fail to provide foster children with the appropriate case-planning and adoption-related services required to ensure that children do not languish in their care. As a result, there are more than 6300 children in the foster care custody of DHS who are legal orphans – or "permanent wards" – for whom parental rights have been terminated, but no adoptive home has been identified. More than 400 of these children age out of the child welfare system each year, ill-equipped for adult life.
- e. ***Grossly inadequate payments to foster care providers.*** The payments that Defendants provide to those caring for foster children do not even approach the actual cost of care for a child. DHS pays foster parents as little as \$433 per month to raise a two-year-old foster child, though the federal government estimates that the average monthly cost of raising a similarly aged child in the urban Midwest is \$733, net of health care expenses. Though Defendants increasingly rely upon relatives, such as retired grandparents, to care for its foster children, Defendants provide inadequate, and often no, financial support to these caregivers who are themselves frequently of limited means.
- f. ***Fiscal waste.*** Michigan regularly fails to collect available federal funds for foster children in state custody, foregoing many millions of dollars that could be used to provide desperately needed homes and services for children. The State Auditor reported in December 2005 that the State now may be exposed to over \$99 million in

reimbursements to the federal government due to the mismanagement of its federally-subsidized child welfare programs including Title IV-E foster care, adoption assistance, and the Chafee independent living program for teen youth. These failures to properly access and manage federal funding are particularly glaring given that Michigan is among the nation's bottom 12 states in the ratio of state and local funds to federal funds directed to support its child welfare system.

5. In August 2005, the State Auditor released its "Performance Audit of the Children's Foster Care Program." Having scrutinized the system, the state auditor concluded, (1) "DHS and the contracted service providers generally did not comply with material provisions of State laws and regulations related to the delivery of Program services," (2) "DHS was generally not effective and efficient in monitoring the delivery of services by Program contracted service providers," and (3) "the Program was generally not effective in meeting its outcome goals."

6. For years, knowledgeable state officials, children's advocates, and dependency judges, among others, have warned that Defendants' child welfare system fails to protect and actually endangers Michigan's foster children. DHS Director Marianne Udow has admitted that "families and children are at risk." Michigan Supreme Court Justice Maura Corrigan reported in a May 18, 2004 *Detroit News* article, "[o]ur current foster care system is in disarray, with terrible consequences for the children." A child welfare performance review conducted by the federal government in 2002 revealed significant and widespread systemic failures and gaps in basic services.

7. The decline of Michigan's child welfare system has been fueled, in part, by a series of budget cuts that have slashed almost a fifth of the State's social services caseworker staff and reduced funding for basic services intended to benefit children and their families.

8. The tragic and wholly avoidable consequence of a depleted and overburdened foster care workforce that cannot keep adequate watch over the children it is responsible for protecting is further abuse of children who already have been abused and neglected. For example:

- a. On November 22, 2005, the *Battle Creek Enquirer* reported that a 15-year-old girl in DHS custody had twice been impregnated by her biological father during unsupervised visits at a local motel;
- b. On October 31, 2005, the *Lansing State Journal* reported that an eight-year-old Ingham County girl in DHS care had been sexually assaulted by a 13-year-old boy living in her foster home;
- c. On January 15, 2005, the *Detroit Free Press* reported that two teenaged girls in DHS care had complained of assault by a staff member at a residential treatment center (“RTC”) in Inkster, Michigan despite a prior court order mandating that the children not be placed at the RTC due to its unsuitability;
- d. On May 13, 2003, the *Detroit Free Press* reported that a four-year-old foster child had been beaten to death by his foster parent in Wayne County.

These public stories represent only a subset of the harms inflicted upon foster children throughout Michigan. Many of the abuses suffered by children remain hidden from the public.

9. Defendants’ failures are further evidenced in the growing number of “permanent wards” in its custody, the designation assigned to foster children who have been in care for a period of at least 12 months and whose parents have lost their parental rights through the legal process. The number of permanent wards in DHS custody has grown by 20% in the last six years. There are currently more than 6,300 children – approximately 30% of all children in Defendants’ care – languishing in foster care as permanent wards.

10. Foster children failed by Michigan’s child welfare system often develop anger, fear, anxiety, and an inability to trust. Without safe and permanent homes and needed

therapeutic services, they fall behind in school, their medical and dental problems go unmet and they develop behavioral problems. Further, foster children frequently go from foster care into the juvenile justice system, the adult mental health system, jail, or homelessness when they are not given the permanency and services they need. Their long-term relationships with the State's criminal justice or public welfare systems will cost taxpayers millions of dollars more than the cost of having provided constitutionally required services when they came into Defendants' care as abused and neglected children.

11. Defendants have failed to implement meaningful and necessary systemic reform to remedy these severe violations. Plaintiff Children remain in danger.

JURISDICTION AND VENUE

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

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

PARTIES

Named Plaintiffs¹

Dwayne B.

14. Dwayne B. first came into the foster care custody of Wayne County DHS in January 2001, after his mother's live-in boyfriend threw him against the floor with such force that his breathing may have temporarily stopped. Prior to removing Dwayne and his brother,

¹ In accordance with Administrative Order No. 05-AO-025, the identities of the minor named Plaintiffs have been protected. Because some of the named Plaintiffs share common initials, pseudonyms have been used to avoid confusion.

DHS had received reports that the boys' parents were not giving them adequate care. Upon removal, Dwayne and his brother were immediately separated and placed into different foster homes.

15. More than five years later, Dwayne, now seven, still lives in foster care and is no closer to placement with a permanent family. Dwayne has been moved through eight different placements during his time in care and has been subjected to three different placements within the last three months alone. He suffered a damaging three-day reunification with his mother more than three years after he was removed from her. These many moves have disrupted Dwayne's educational and developmental progress as well as the continuity of his medical and mental health care and have left him severely behaviorally disturbed.

16. Dwayne was moved among three different foster family homes during his first three years in DHS custody. He was separated from his brother until December 2003, when the boys were reunited and his brother came to live in Dwayne's foster home.

17. During this prolonged period, Defendants' permanency plan for Dwayne and his brother was to reunify them with their mother. However, Defendants did not adequately assess the mother's ability to care for the boys and did not concurrently plan for the boys to be adopted should reunification fail. Dwayne's mother – who is hearing-impaired and developmentally delayed – utilized mandated services only sporadically and showed little or no promise of acquiring the parenting skills necessary for reunification with Dwayne.

18. Dwayne and his brother were reunified with their mother on May 30, 2004, despite the clear signs that their mother could not safely care for them, and without adequate safeguards to ensure they would be protected. By this time, Dwayne's mother had given birth to a third baby boy who lived with her. Just five days later, on June 1, 2004, all three

boys were removed by DHS when Dwayne's mother physically abused her baby boy while Dwayne and his brother were in the house. The baby was left permanently brain-damaged and must be fed through a tube.

19. Defendants did not obtain an order terminating Dwayne's mother's parental rights for another 15 months, by which point Dwayne had spent most of his young life in foster care without receiving the care and services necessary to allow him to develop normally and form permanent attachments.

20. From June 2004 through May 2006, Dwayne and his younger brother were returned to the foster home where they had lived prior to reunification with their mother. Although the foster mother showed interest in adopting the boys, Dwayne came to refer to this foster home as the "devil house." The foster mother's teen daughter and an infant foster child also lived in the home. The teen daughter had a history of two prior criminal charges for assault with the intent to do bodily harm, had engaged in physical disputes with her mother, and had been the subject of physical discipline in the home.

21. Dwayne and his brother were removed from this two-year foster placement on May 10, 2006, following an incident that required police intervention. That day, while the foster mother and boys were away, the teen daughter and a 19-year-old male daycare provider were at the home caring for the infant girl. The daycare provider became involved in a physical altercation in the front yard of the home, and the teen daughter stepped outside to observe the disturbance with the infant girl in her arms. Gunshots were heard, and the police reported to the scene. Defendants removed Dwayne and his brother from the home and placed them in separate foster homes, even though they had a close relationship with one another. Dwayne remains separated from his brother without regular visitation.

22. The multiple disruptions, inappropriate placements, and indifference to Dwayne's needs that have marked his life in foster care have caused Dwayne significant emotional harm, manifested in increasingly unstable behavior. Recently, Dwayne has been harming animals, intentionally urinating in inappropriate places in the home, fire-setting, breaking windows and light fixtures, engaging in inappropriate behavior with other children, and habitually self-mutilating. Dwayne is currently on a daily dose of multiple psychotropic medications, a drug regimen prescribed by DHS-provided physicians to address his uneven behavior. Dwayne weighs just 40 pounds, well below the ideal weight for a child of his age.

23. Dwayne's behavior has deteriorated to the point that family foster care providers can no longer handle him. For his own protection as well as the safety of children around him, Dwayne requires more intensive treatment than can be provided in a foster home setting, at least in the short term. Nevertheless, Defendants continue to move Dwayne among different foster homes, accelerating the cycle of placement disruptions and transitions. With each new move, Dwayne experiences increased feelings of detachment and rejection, a greater sense of instability, and worsening psychological trauma.

24. At present, Dwayne has no prospect of an adoptive placement and the stability and permanency he so badly needs. He is not receiving necessary medical and mental health care to address his deteriorating condition. Further aggravating this harm, Dwayne's unaddressed behavioral problems have caused numerous disruptions to his schooling as teachers have felt it necessary to remove him from the classroom, even though Dwayne has been enrolled in a program for emotionally impaired children.

25. Defendants' actions and inactions are part of a systemic pattern of conduct that has caused, and continues to cause, irreparable harm. Defendants have violated, and acted in

deliberate indifference to and beyond the bounds of reasonable professional judgment regarding Dwayne's constitutional and statutory rights by failing to provide necessary services and appropriate placement for him; by failing to make periodic comprehensive assessments of his needs, including his mental health needs, and providing services consistent with those needs; by failing to make timely and meaningful casework contacts and monitoring his progress in foster care in order to ensure his safety and well-being; by failing to provide him with monitoring and services necessary to prevent him from deteriorating physically, psychologically, emotionally, educationally or otherwise while in state custody; by failing to pay foster care maintenance payments on his behalf that cover the reasonable costs of caring for him; by failing to support his family relationships, in particular by not providing child-sibling visits; by failing to provide appropriate management and supervision while he has been in DHS custody in accordance with his individual needs, best interests, and reasonable professional standards; by failing to provide case management and planning in accordance with his individual needs, best interests, and reasonable professional standards; and by failing to develop and implement a viable permanency plan that will allow him to leave foster care and secure a safe and appropriate permanent home in accordance with his individual needs, best interests, and reasonable professional standards.

Carmela B.

26. Carmela B. has been languishing in DHS foster care custody for the last 14 of her 16 years, during which time she has been physically and sexually abused and subjected to at least 10 different placements, a number of them dangerous and clearly inappropriate to meet her needs. As a result of Defendants' failure to provide Carmela with appropriate treatment and case-planning services, Carmela has been denied the opportunity for a stable and permanent home and has suffered emotional harm.

27. Carmela was removed from her mother, who was engaged in prostitution and drug abuse, in 1992. She was two years old.

28. Although there was no evidence that Carmela's biological father – then imprisoned for selling drugs – would be able to care for her, DHS originally placed Carmela in a temporary foster home with a goal of reunifying Carmela with him. She was placed with her father when he was released from prison one year later, but within a month was moved to a temporary shelter when her father was arrested on another drug charge and sent back to prison.

29. In 1994, Carmela was moved again, this time to an unlicensed relative placement with her paternal step-grandmother. For the first time since her entry into DHS care, Carmela bonded with her caretaker. Carmela adjusted well in her placement, and her behavior improved.

30. Carmela's paternal step-grandmother expressed a desire to adopt her in 1997, two years after the parental rights of both of Carmela's parents had been terminated. However, when Carmela's step-grandmother was not approved for adoption, DHS moved Carmela to yet another temporary foster home in a different community. Forced to adjust to a new placement, a new school, and the severance of ties with her grandmother, Carmela became increasingly angry and disruptive. Languishing in temporary placements, Carmela was treated with a range of psychotropic medications.

31. In 2001 – nine years after Carmela entered DHS custody, and more than six years after she had been freed for adoption – DHS placed Carmela in her first pre-adoptive home. However, when the potential adoptive mother died just three months later, Carmela was again cycled through a series of temporary placements.

32. Having made no progress towards finding a permanent home for Carmela after more than eleven years, DHS next sent Carmela to Kentucky, to live with the parents of her deceased pre-adoptive mother. While in Kentucky, Carmela was sexually abused by her foster parent.

33. In 2003, Carmela was moved back to Michigan and placed in “Bridges,” a residential treatment program at Vista Maria. Carmela remained in this placement for 11 months.

34. While at Bridges, Carmela’s behavior stabilized and she began to make friends. Yet in 2004, rather than moving Carmela into a less restrictive placement and placing her with a family when appropriate, Carmela was moved to Vista Maria’s “Grace Program,” a more intensive, “locked placement,” designed for severely behaviorally-impaired adolescents.

35. While at Grace, Carmela was subjected to restrictive practices and monitored by guards. She was locked in her room at night, and forcibly restrained and secluded on a regular basis. On one occasion, a Grace guard fractured Carmela’s arm, allegedly in an attempt to restrain her.

36. The repeated and serious psychological traumas Carmela suffered during her time at Grace – and her years in DHS custody – manifested themselves in progressively more unmanageable behavior. In one three-month period in 2005, Grace staff noted that Carmela engaged in 13 incidents of misbehavior and multiple incidents of self-mutilation, requiring three emergency room visits. The guards at Grace increased their use of restraints, forced seclusion, and psychotropic medications. Carmela remained at Grace for a full year.

37. Carmela was denied adequate educational services while at Vista Maria’s Bridges and Grace programs. She attended school only sporadically, and then at a school that

served only foster children in residential care where classes were well below grade level. By the time Carmela left Vista Maria's temporary care after more than two years, she was almost three years behind in school and had received no special education services.

38. Carmela was moved by Defendants for the ninth time in late 2005, when she was placed in a group foster home. By early 2006, she was exhibiting suicidal behavior that necessitated a four-week stay at a psychiatric hospital. Upon her release from the hospital, Carmela was returned to the same group home and enrolled in an intensive outpatient program where she received therapy, but no schooling.

39. Carmela remains in the group home and her behavior continues to deteriorate.

40. Carmela has been in DHS custody for more than 14 years – almost her entire life – and has been legally free for adoption for more than 11 years. As a result of the extensive time she has spent in DHS custody and the frequent, inappropriate and unsafe placements to which she has been subjected, Carmela suffers from extensive behavioral and emotional problems. Although Carmela desperately needs the permanency of a supportive adoptive home, no prospective families have been identified by Defendants. Just three years from aging out of the child welfare system, Carmela continues to languish in foster care without a stable, long-term placement, much less an adoptive or otherwise permanent home, and is not being prepared for life as an adult.

41. Defendants' actions and inactions are part of a systemic pattern of conduct that has caused and continues to cause Carmela irreparable harm. Defendants have violated, and acted in deliberate indifference to and beyond the bounds of reasonable professional judgment regarding, Carmela's constitutional and statutory rights by failing to protect her from harm; by

failing to provide necessary services and an appropriate permanent placement for her; by failing to make periodic comprehensive assessments of her needs; by placing her in inadequately screened and monitored foster homes; by placing her into circumstances while in DHS custody which Defendants knew or should have known would have and did render her vulnerable to danger, placed her at risk of harm and which in fact resulted in severe harm to her; by failing to make timely and meaningful casework contacts and monitor her progress in foster care in order to ensure her safety and well-being; by failing to place her in the least restrictive placement available according to her needs; by failing to provide her with monitoring and services necessary to prevent her from deteriorating physically, psychologically, emotionally, educationally or otherwise while in state custody; by failing to provide appropriate management and supervision while she has been in DHS custody in accordance with her individual needs, best interests, and reasonable professional standards; by failing to provide case management and planning in accordance with her individual needs, best interests, and reasonable professional standards; and by failing to develop and implement a viable permanent plan that will allow her to leave foster care and secure a safe and appropriate permanent home in accordance with her individual needs, best interests, and reasonable professional standards.

Lisa J.

42. Lisa J. first entered the foster care custody of Berrien County DHS in December 2002, when she was nine. Within her first 12 months in foster care, Lisa was moved through five different foster homes and sexually abused by a foster father. She also engaged in inappropriate sexual behavior with one of her older brothers. She suffers and continues to suffer emotional harm.

43. DHS took custody of Lisa and her two brothers in 2002, removing them from their alcoholic father and abusive stepmother after discovering that her eldest brother, then ten years old, had been physically beaten as well as forced to live in an unheated basement and urinate in a bucket.

44. DHS initially placed Lisa in a foster home, but soon moved her and her two brothers into the unlicensed care of their paternal grandparents. This kinship arrangement lasted only two months.

45. DHS then placed Lisa in a second foster home. Lisa's behavior gradually deteriorated during this highly disruptive period in her young life. During this time, Lisa reported having been sexually abused by one of her foster parents and having engaged in sexual behavior with her youngest brother. Lisa's caseworker did not visit her for almost a year.

46. In January 2004, Lisa was returned home – without her two brothers – despite her father having tested poorly on reunification assessments that gauged his parenting skills, his emotional stability, the suitability of his domestic partner arrangement and his financial capacity to provide for his children's basic needs. Lisa's father, in fact, physically and verbally threatened numerous reunification workers, causing two service providers to stop working with him entirely. He also failed to regularly attend Alcoholics Anonymous meetings.

47. Lisa had resided with her father for less than a month when she again was removed from the home and returned to foster care because the father's new live-in girlfriend had been emotionally abusive to her. Lisa's emotional health suffered and she began to complain that she felt possessed by the devil; she did not receive regular psychological counseling because neither her foster parent nor her caseworker was willing to transport her to therapy.

48. Despite two removals from her father's home and the history of sexual behavior between Lisa and her sibling, Defendants facilitated unsupervised visits between Lisa, her father and her brother every other weekend. Though Lisa reported that her father behaved "meanly" and that he often ignored her during these visits, the visits continued unsupervised. Lisa later disclosed to her foster parents that she had engaged in sexual intercourse with her brother during the weekend visits with her biological father. Defendants continued to allow Lisa and her brother to jointly visit their father, even though the father admitted that he could not control his children's behavior.

49. Lisa attempted to run away from foster care placements and engaged in physical confrontations at school. Her basic hygiene deteriorated and her increasingly unstable behavior led to continued placement disruptions. Each time a foster care placement disrupted, Defendants simply placed Lisa in a new foster home without implementing particularized supports or services to address her needs.

50. When Defendants finally considered terminating Lisa's father's parental rights in October 2005, after Lisa had languished in foster care for three years, Defendants decided that Lisa was unadoptable and that parental rights, therefore, should not be severed.

51. In January 2006, Lisa's therapist determined that a residential treatment program was necessary to address Lisa's escalating behavioral and emotional needs; however, residential treatment was not approved by Defendants. Since then, Lisa has remained in a family foster care setting that is inadequate to meet her diagnosed needs.

52. Lisa is presently 13 years old. She has moved through 11 different foster care placements over the last three years. Though her father's parental rights finally were terminated this year as to Lisa alone, under the current plan Lisa will never know a permanent,

adoptive family due to the Defendants' failure to provide her with the services she needs and Defendants' abandonment of any attempt to find her an adoptive home.

53. Though Lisa's father has never benefited from the reunification services offered to him and continues to display an unchecked temper, Defendants reunified Lisa's oldest brother with him in January 2006 and still plans to reunify her other brother as well. Lisa no longer has any contact with either her father or her siblings.

54. Lisa's overall well-being has been significantly harmed as a direct result of Defendants' failures, a fact Lisa herself recognized when she recently told her caseworker: "I am mad at the world because the world has done me wrong, and is not helping me."

55. Defendants' actions and inactions are part of a systemic pattern of conduct that has caused Lisa, and continues to cause Lisa, irreparable harm. Defendants have violated, and acted in deliberate indifference to and beyond the bounds of reasonable professional judgment regarding, Lisa's constitutional and statutory rights by failing to provide necessary services and an appropriate placement for her; by failing to make periodic comprehensive assessments of her needs, including her mental health needs, and providing services consistent with those needs; by failing to make timely and meaningful casework contacts and monitor her progress in foster care in order to ensure his safety and well-being; by failing to provide her with monitoring and services necessary to prevent her from deteriorating physically, psychologically, emotionally, educationally or otherwise while in state custody; by failing to pay foster care maintenance payments on her behalf that cover the reasonable costs of caring for her; by failing to provide appropriate management and supervision while she has been in DHS custody in accordance with her individual needs, best interests, and reasonable professional standards; by failing to provide case management and planning in accordance with her individual needs, best

interests, and reasonable professional standards; and by failing to develop and implement a viable permanency plan that will allow her to leave foster care and secure a safe and appropriate permanent home in accordance with her individual needs, best interests, and reasonable professional standards.

Julia, Simon and Courtney G.

56. Julia, Simon and Courtney G., ages 16, 17 and 18, have been in DHS custody for more than three years. Victims of physical abuse and fetal alcohol syndrome, the siblings have serious physical, mental health and behavioral needs. Julia has an IQ of 56, indicating mental retardation; Simon is autistic; and Courtney is developmentally delayed. Throughout their tenures in foster care, Julia, Simon and Courtney have routinely been denied access to treatment and services necessary to meet their significant needs. Defendants also have failed to take any steps to secure a permanent home for these siblings, and they each now have the assigned permanency goal of “Another Planned Permanent Living Arrangement” (“APPLA”), with no opportunity for finding permanent families. Parental rights have not been terminated as to any of them, and Defendants have no plan to seek termination.

57. Julia, Simon and Courtney came into DHS custody in 2003. While living at home, the children had been neglected, exposed to drugs and alcohol, and physically abused by their mother’s boyfriend.

58. During their time in foster care, Julia, Simon and Courtney each have been subjected to multiple dangerous and inappropriate foster placements. DHS has made no apparent attempt to place the siblings together since their initial entry into care. At times they have been placed miles apart from each other. They were denied visitation with one another for more than their first two years in state care.

59. Julia has suffered through more than a dozen placement changes and has spent most of her three years in care languishing in temporary shelters. Julia was initially placed in a short-term shelter unequipped to address her significant behavioral and emotional needs. Unsupervised, and in need of adequate attention and care, Julia ran away from the shelter. Rather than properly assessing Julia to identify a placement better suited to her severe mental health needs, DHS apprehended and handcuffed this disabled girl. She was then locked in a juvenile detention facility with juvenile offenders. Nine days later, she was placed in a second temporary shelter.

60. During the next two years, Julia was moved through as many as ten shelter placements, each of which failed to provide the services and supervision critical to Julia's well-being. Julia frequently ran away from these placements to the home of her mother, where she used liquor, marijuana, and crack because "that's all there was at home." Each time, she was apprehended, handcuffed and placed in another shelter, often remaining beyond the 30-day maximum stay, once for a period of eight months.

61. When, after almost three years in DHS custody, Julia was finally placed in what DHS labeled a therapeutic foster home, the first-time foster parents lacked the necessary training and experience to meet Julia's needs. Rather than helping Julia to develop the skills necessary to overcome her significant limitations, they verbally and, on at least one occasion, physically abused Julia to punish her for her lack of understanding and her inability to take care of herself. After terminating the foster care license of the home, Defendants placed Julia in a respite home. Unable to meet Julia's needs, the foster parents in the respite home requested that she be removed from their care, and Julia was placed in another respite placement.

62. In April 2006, Julia's placing agency caseworker, placing agency supervisor, and DHS worker appeared in court for a permanency hearing. When it was determined that the case would not be heard that day, the placing agency supervisor announced that she would not take Julia back into care unless DHS approved a residential placement. DHS refused and a loud argument ensued. In care for almost three years without minimally adequate care and with no hope of permanency, Julia listened as the workers fought about who would have to take her home. The placing agency then abandoned Julia in the courtroom, and DHS nonetheless returned her to the care of the same placing agency later that day. To date, Defendants refuse to approve residential care for Julia.

63. Like his sister Julia, Simon requires heightened care, attention and therapeutic intervention. Also like her, he has been subjected to a series of inappropriate and dangerous placements while in DHS care. Simon, who is autistic, was initially placed in a specialized foster home, where he was physically abused. After removing Simon from this foster home, Defendants placed him in a temporary shelter, where he was again subjected to physical abuse. He remained in the shelter for more than a year, in gross violation of the 30-day maximum stay limit.

64. Simon is currently housed in a therapeutic foster home occupied primarily by emotionally disturbed adults. He is frequently left alone with unlicensed individuals hired by the foster mother to supervise in her absence. DHS has recognized that this practice violates state law and endangers Simon, but has allowed Simon to remain in the home because it currently lacks an appropriate placement for him.

65. Simon has no prospect of a permanent family given his assigned APPLA goal. In effect, Defendants' goal is for Simon to linger in foster care until he ages out and enters an adult life likely to be spent in adult foster care or in an institutional setting.

66. Courtney, who is developmentally delayed, has also been placed in a series of inappropriate placements. Separated from and denied regular visitation with her siblings, she spent her first nine months in DHS custody in a specialized foster home for children with developmental disabilities. However, when she threatened others in the home with a knife, Defendants moved her through two temporary shelters, inappropriate placements that failed to address Courtney's escalating behavior.

67. Courtney currently resides in a group facility. She continues to exhibit significant behavioral problems. Despite the fact that she will age out of the foster care system in less than a year, Courtney is not receiving federally mandated transitional living services, and is wholly unequipped to live independently.

68. All three siblings have been subjected to dangerous and inappropriate placements and denied needed services and the opportunity for stable and permanent homes.

69. Defendants' actions and inactions are part of a systemic pattern of conduct that has caused Julia, Simon and Courtney, and continues to cause Julia, Simon and Courtney, irreparable harm. Defendants have violated, and acted in deliberate indifference to and beyond the bounds of reasonable professional judgment regarding, Julia, Simon and Courtney's constitutional and statutory rights by failing to provide necessary services and an appropriate placement for them; by failing to make periodic comprehensive assessments of their needs, including their mental health needs, and providing services consistent with those needs; by failing to make timely and meaningful casework contacts and monitor their progress in foster

care in order to ensure their safety and well-being; by failing to provide them with monitoring and services necessary to prevent them from deteriorating physically, psychologically, emotionally, educationally or otherwise while in state custody; by placing them in emergency shelters for more than thirty days and contrary to their individual needs and best interests; by failing to place them in the least restrictive placements available according to their needs; by failing to pay foster care maintenance payments on their behalf that cover the reasonable costs of caring for them; by failing to support their family relationships, in particular by not providing child-sibling visits; by failing to provide appropriate management and supervision while they have been in DHS custody in accordance with their individual needs, best interests, and reasonable professional standards; by failing to provide case management and planning in accordance with their individual needs, best interests, and reasonable professional standards; and by failing to develop and implement a viable permanent plan that will allow them to leave foster care and secure a safe and appropriate permanent home in accordance with their individual needs, best interests, and reasonable professional standards.

Next Friends

70. Named Plaintiff DWAYNE B., appears through his next friend, John Stempfle. Mr. Stempfle currently serves as Dwayne's lawyer guardian ad litem in the Wayne County Juvenile Court. He maintains his principal office in Detroit, Michigan.

71. Named Plaintiff CARMELA B. appears through her next friend, William Ladd. Mr. Ladd currently serves as Carmela's lawyer guardian ad litem in the Wayne County Juvenile Court. He maintains his principal office in Detroit, Michigan.

72. Named Plaintiff LISA J. appears through her next friend, Teresa Kibby. Ms. Kibby currently is a DHS-licensed foster parent in Kalamazoo County and is the former foster parent of Lisa's sibling. She resides in Kalamazoo, Michigan.

73. Named Plaintiffs JULIA, SIMON and COURTNEY G. appear through their next friend, William Ladd. Mr. Ladd currently serves as their lawyer guardian ad litem in the Wayne County Juvenile Court. He maintains his principal office in Detroit, Michigan.

Defendants

74. Defendant JENNIFER GRANHOLM is the Governor of Michigan and is sued in her official capacity. Pursuant to Article V, Section 1 of the Constitution of Michigan of 1963, the executive power of the State is vested in the Governor. Pursuant to Article V, Section 8 of the Constitution of Michigan of 1963, the Governor is responsible for ensuring that all executive departments and agencies within the State, including DHS, faithfully execute and comply with applicable federal and state law. Governor Granholm maintains her principal office at the Office of the Governor, 111 S. Capitol Avenue, George W. Romney Building, Lansing, Michigan 48933.

75. Defendant MARIANNE UDOW is the Director of DHS and is sued in her official capacity. Pursuant to Section 400.3 of the Social Welfare Act, MCL § 400.1 et seq. and Executive Reorganization Order E.R.O. No. 2004-4, Director Udow is responsible for administering all DHS child welfare services and programs and assuring that all such services and programs operate in conformity with constitutional, statutory, and regulatory requirements. Director Udow maintains her principal office at the Department of Human Services, 235 S. Grand Avenue, Lansing, Michigan 48909.

76. Defendant LAURA CHAMPAGNE is the Chief Deputy Director of DHS Operations and is sued in her official capacity. Defendant Champagne reports directly to Director Udow and has overall operational responsibility for Michigan's foster care system. Deputy Director Champagne maintains her principal office at the Department of Human Services, 235 S. Grand Avenue, Lansing, Michigan 48909.

77. Defendant JAMES HENNESSEY is the Deputy Director of DHS Children's Services and is sued in his official capacity. Defendant Hennessey reports directly to Defendant Champagne and has day-to-day management responsibility for Michigan's foster care system. Deputy Director Hennessey maintains his principal office at the Department of Human Services, 235 S. Grand Avenue, Lansing, Michigan 48909.

CLASS ACTION ALLEGATIONS

78. This action is properly maintained as a class action pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure.

79. The class is defined as all children who are now or will be in the foster care custody of DHS in in-home or out-of-home placements.

80. The class is sufficiently numerous to make individual joinder impracticable. As of March 2006, almost 19,000 children resided in the foster care custody of DHS.

81. The questions of law and fact raised by the named Plaintiffs' claims are common to and typical of those raised by the putative class they seek to represent. Each child relies on Defendants for child welfare placement, services and permanency, and is harmed by the systemic and legal deficiencies existing within Michigan's child welfare system.

82. Questions of fact common to the class include:

- a. whether Defendants fail to provide Plaintiff Children with safe, appropriate and stable foster care placements as required by law and reasonable professional standards;
- b. whether Defendants fail to provide Plaintiff Children with services necessary to keep them safe and properly cared for, and to prevent them from deteriorating physically, psychologically, or otherwise while in state custody as required by law and reasonable professional standards;
- c. whether Defendants fail to provide Plaintiff Children with timely and appropriate services necessary to ensure that they are either safely reunited with their families or promptly freed for adoption and placed in a permanent home as required by law and reasonable professional standards; and
- d. whether Defendants fail to provide Plaintiff Children with the supports necessary to maintain family relationships including the provision of parent and sibling visits as required by law and reasonable professional standards.

83. Questions of law common to the class include:

- a. whether Defendants' actions and inactions violate Plaintiff Children's rights under the Substantive Due Process Clause of the Fourteenth Amendment to the United States Constitution to be free from harm while in state custody;
- b. whether Defendants' actions and inactions violate Plaintiff Children's rights under the Adoption Assistance and Child Welfare Act of 1980, as amended by the Adoption and Safe Families Act of 1997, and relevant federal regulations, to mandated foster care and adoption services and foster care maintenance payments;
- c. whether Defendants' actions and inactions violate Plaintiff Children's rights under the First, Ninth, and Fourteenth Amendments to the United States Constitution;
- d. whether Defendants' actions and inactions violate Plaintiff Children's rights to procedural due process under the Fourteenth Amendment to the United States Constitution; and
- e. whether Defendants' actions and inactions violate Plaintiff Children's rights as third party beneficiaries to the Title IV-E and Title IV-B state plans entered into between the state of Michigan and the federal government.

84. The named Plaintiffs will fairly and adequately protect the interests of the Plaintiff Children.

85. The violations of law and resulting harms averred by the named Plaintiffs are typical of the legal violations and harms suffered by all class members.

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

87. Plaintiff Children are represented by attorneys employed by Children's Rights, a non-profit legal organization whose attorneys have substantial experience and expertise in child welfare class actions; and Dykema Gossett, PLLC, a private law firm headquartered in Detroit, Michigan with extensive experience in complex civil litigation. Plaintiff Children's attorneys have identified and thoroughly investigated all claims in this action, and have committed sufficient resources to represent the class.

88. Defendants have acted or failed to act on grounds generally applicable to all Plaintiff Children, necessitating declaratory and injunctive relief for the class. Plaintiff Children's counsel knows of no conflicts among class members.

**FACTUAL ALLEGATIONS REGARDING SYSTEMIC DEFICIENCIES
IN THE CHILD WELFARE SYSTEM THAT HARM CHILDREN**

**Defendants Have Long Known of the Urgent Need for Systemic
Reform of the Child Welfare System**

89. In 2002, the United States Department of Health and Human Services ("HHS"), through the Administration of Children and Families ("ACF"), conducted a performance review of Michigan's child welfare system. The purpose of this review, called a "Child and Family Service Review" ("CFSR"), was to determine whether Michigan's child

welfare system substantially conforms to the requirements of its own “State Plan For Title IV-E of the Social Security Act Foster Care, Independent Living and Adoption Assistance,” submitted and approved under Title IV-E of the Social Security Act. Title IV-E provides an essential stream of federal foster care funds.

90. The CFSR process includes two essential phases. In Phase I, a state develops a Statewide Assessment of its child welfare system, and applies a State Profile measuring six statewide performance indicators related to safety and permanency for children entering the child welfare system. In Phase II, ACF reviews the Statewide Assessment and the State Profile, audits randomly-drawn case files from three counties, and interviews a wide range of stakeholders (including children, parents, foster parents, DHS personnel, and service providers) to determine the quality of services to foster children and to verify the performance data in the State Profile. Conformity to seven safety, permanency and well-being outcomes established by HHS is assessed. A score of 90% or higher is considered “substantial conformity.”

91. In its Phase I Statewide Assessment, submitted in September 2002, Michigan recognized serious failures in its child welfare system. The assessment, based on data from 2000-2002, reported that placements are often a “‘mismatch’, with the needs of children not being considered,” and that “there is not adequate support for foster families to prevent replacements.” Moreover, it noted that “the volume of work still prevents [caseworkers] from being successful at their jobs,” and “only 59% of cases had a permanency planning hearing held in a timely matter.”

92. In its Phase II review, conducted in September 2002, ACF determined that DHS had failed to achieve substantial conformity to each of seven safety, permanency and well-

being outcomes. ACF further determined that DHS had failed to achieve substantial conformity to two of the six statewide performance indicators: the percentage of children reunified within 12 months of entry into foster care and the percentage of children experiencing no more than two placements during the first 12 months in foster care.

93. Recent reports of the Michigan Office of the Children's Ombudsman, whose mission is to "assure the safety and well-being of Michigan's children in need of foster care, adoption and protective services and to promote public confidence in the child welfare system," have highlighted similar failures by DHS. The 2003-2004 Children's Ombudsman Annual Report described a foster care system in need of significant reform. The report found that DHS too often fails to (1) achieve timely permanency for children removed into its care consistent with federal and state law mandates, (2) maintain stable foster family placements for children or foster placements that allow siblings to live together, and (3) identify children's needs and to provide services commensurate with those identified needs.

94. The 2005 Annual Report of the Michigan Foster Care Review Board ("FCRB"), whose mission is to review and evaluate permanency planning processes and outcomes for children and families in the Michigan foster care system, reported that, "high caseloads in both the court and foster care agencies, and high caseworker turnover related to the stresses inherent in this type of work continue to plague efforts to ensure the safety, well-being, and timely permanency for all children in the foster care system. These barriers were highlighted in our 2003-2004 Annual Report. These same factors are likely to impact Michigan's compliance with federal foster care requirements." The repeat nature of these findings underscores the failure of Defendants to implement needed systemic reform despite repeated notice of systemic deficiencies.

95. The FCRB further reported that it had observed in many cases “a general lack of early assessment and treatment of children once they enter into foster care,” “delays in court-ordered referrals for treatment, long waiting lists for mental health services, and frequent breaks and disruptions in treatment and/or therapy once it begins,” typically due to “therapist turnover, foster placement changes, and funding problems.” Additionally, the FCRB noted, “the inability of the foster care system, as it is presently funded and configured, to provide these [foster] children with stable and appropriate placements and/or necessary treatment and support services.”

Defendants Have Not Taken Adequate Steps to Achieve Systemic Reform of the Child Welfare System

96. Under the CFSR review process, jurisdictions that fail to achieve “substantial conformity” are required to submit a Program Improvement Plan, (“PIP”) that sets forth remedial actions to be completed within 24 months. A state’s failure to implement its PIP and reach its targets may expose a state to Title IV-E funding penalties. On May 24, 2004, DHS submitted to HHS its required PIP. The PIP set forth measurable performance improvements that were to be achieved by May 24, 2006.

97. DHS has failed to achieve the performance improvements to which it committed in its PIP. Instead, DHS performance has substantially declined in many areas of child welfare performance. For example, as of March 2006, DHS reported:

- a. a score of 59.46% in addressing the needs and providing services to children, parents and foster parents. This represented a serious decline in the agency’s performance from the 2002 CFSR;
- b. a score of 37.90% in achieving the permanency goal of reunification for children in state foster care custody. This represented a decline in the agency’s performance from the 2002 CFSR;

- c. a score of 68.92% in meeting its basic obligation to assure monthly social worker visits with foster children in state custody, the primary means by which DHS assures the safety of foster homes and identifies the needs of the children in its foster care custody. This score represented a serious decline in the agency's performance from the 2002 CFSR; and
- d. a score of 64.79% in making required social worker visits with parents of foster children in state custody. Social worker visits with biological parents are a vital element of DHS efforts to preserve family relationships where appropriate and safe for the child. The March 2006 score represented a serious decline in the agency's performance from the 2002 CFSR.

98. Despite the fact that Defendants have long been on notice of the severe failures in the child welfare system they operate, they have not taken adequate steps to remedy the systemic deficiencies that are harming children.

Excessive Caseloads, Inadequate Training, Inexperienced Caseworkers and Inadequate Supervision Threaten Basic Child Safety

99. No child welfare system can effectively perform its basic functions absent a well-trained, experienced, and adequately staffed workforce. Caseworkers are the vehicles by which children in foster care custody access the vital safety, health, educational, and permanency services critical to their well-being.

100. When caseworkers are inadequately trained, inexperienced, and/or overburdened, the child welfare system predictably breaks down; and children served by the system suffer reasonably foreseeable harm.

101. Generally accepted professional caseload standards issued by the Child Welfare League of America ("CWLA") provide for:

- a. between 12 and 15 children per worker for foster care services; and
- b. between 10 and 12 children per worker for adoption services.

102. As admitted by DHS Director Marianne Udow on September 6, 2005, “caseload ratios in Michigan range from 25:1 to 40:1, far higher than the optimal ratio recommended by the Child Welfare League of America.”

103. Moreover, for FY 2006, DHS reduced its already over-burdened foster care caseworker staff by redirecting 41 full-time equivalent positions (“FTEs”) from foster care services to another function.

104. On January 11, 2006, the Board of Directors of the Michigan County Social Services Association (“MCSSA”) adopted a resolution stating, “the Michigan Department of Human Services released their new field staffing allocation which the MCSSA finds substantially inadequate to meet the expectations of the Legislature, the county social services boards and the public, and . . . there is not enough field staff to meet basic child welfare needs, rehabilitation and counseling needs, to encourage clients to work, or to help people solve problems.” A copy of this board resolution was transmitted to Governor Granholm and DHS Director Udow. MCSSA is a statewide association whose membership includes county DHS board members as well as the DHS directors, district managers, and supervisors from all 83 counties in Michigan.

105. The FY 2007 DHS budget proposed by Governor Granholm and Director Udow failed to request a single additional foster care or adoption caseworker.

106. DHS officials and other system stakeholders have long known of the critical staff shortage within the State’s child welfare program. This severe staff shortage has existed at least since March 2002 when former Governor John Engler introduced the second of two early retirement initiatives for state employees, the first such initiative having occurred under Governor Engler’s authority in 1997. Ruth Mutchler, UAW 6000 Chairwoman of the

Family Independence Agency (“FIA”) labor team, then observed, “[o]ur staff is stretched thin. We are really fearful we will see more children die and vulnerable adults impacted, and in some places die, too, because we cannot service them.”

107. The Michigan League for Human Services more recently has noted, “since March 2002, when the most recent state employee Early Retirement initiative was announced, department staffing has declined by over 20%. The loss of a large share of DHS’ most experienced staff, together with significant increases in most of the department’s program caseloads, suggests that the burden on remaining staff has increased very significantly.”

108. Governor Engler’s March 2002 Early Retirement initiative came after a state summoned April 2001 “Foster Care Services Workload Study Report” by the Children’s Research Center (“CRC”) finding that 348.79 additional full-time foster care caseworkers were needed if the State was to provide services consistent with even a diluted set of agency foster care service standards used for purposes of the workforce study. CRC noted that “a strict interpretation of existing agency contact standards resulted in an insufficient number of cases that met standards. Therefore, a revised version of agency standards was applied for the purpose of the study.”

109. In its FY 2006 staffing allocation, DHS distributed 783.95 funded foster care caseworker positions among 83 county offices. By its own admission, DHS determined that a workforce of 783.95 foster care caseworkers constituted only 74.93% of actual agency workforce need.

110. As of May 6, 2006, DHS employed only 708.9 active foster care caseworkers in the field.

111. Because of this staff shortage, the FY 2006 DHS appropriation was made subject to the requirement that all DHS county offices refer foster children to private child placing agencies (“CPAs”) for out-of-home placement and services when the average DHS county office foster care caseload exceeds 20 per caseworker. Yet, DHS submitted renewal contracts to its CPAs, effective April 15, 2006, that require the CPAs to maintain general foster care caseloads of 30:1, 50% higher than DHS’ own caseload standard and almost three times the national standard. This incongruent and irrational approach to addressing the severe staffing shortage within DHS exemplifies the serious inadequacies in the current funding and management of the child welfare system in Michigan.

112. There has been no significant increase in payment rates to the CPAs to compensate for the increased – and inappropriately high – caseloads imposed on them by DHS. Without adequate income flow to engage the necessary caseworker staff to meet their contractual requirements, CPAs are forced to further overload caseworkers to the detriment of the vulnerable children they serve. DHS has simply passed the burden of heavy caseloads from its staff to CPA staff, without addressing the underlying problem.

113. DHS caseworkers are also burdened by a very high turnover rate, which threatens children’s safety by creating an unending churning of inexperienced caseworkers taking on new cases, resigning, and then turning their cases over to caseworkers with even less experience.

114. Testimony to the House Subcommittee on Protective Services in 2001 reported a foster care caseworker turnover rate “as high as 40 percent.”

115. The 2003-2004 FCRB Annual Report states that “there continues to be a high rate of turnover in foster care workers in Michigan. Turnover causes delays in the

implementation of service plans and court hearings, and adds stress to workers who must handle additional workload until new people are hired and trained.”

116. The high turnover also has reduced the overall level of experience within DHS’ caseworker and supervisory ranks, exacerbating the stresses imposed by excessive caseloads. Defendants have not hired sufficient additional caseworker staff or provided adequate training to its existing caseworkers to overcome this safety issue.

117. Further aggravating the high caseloads and inexperience among caseworkers and supervisors, Defendants have failed to take necessary steps to ensure that county offices comply with DHS policy and reasonable professional standards across Michigan’s 83 counties. This management failure has resulted in inconsistent case practice, with the quality of practice often varying tremendously from county to county. Children often fail to receive the benefits to which they are entitled.

Defendants Do Not Perform Caseworker Visits Essential for the Safety of Foster Care Children

118. Regular caseworker visitation to foster homes is a vital element of any safe foster care system. Without the direct observations and remedial responses by trained caseworkers regarding the condition of foster children, foster homes, and foster care providers, the child welfare system cannot adequately monitor and assure child safety.

119. Pursuant to the DHS Foster Care Manual and standard social work practice, DHS caseworkers are required to visit all children assigned to them two times in the first month of out-of-home placement, and once per month thereafter. Caseworkers are also required to make monthly visits with the foster parent(s) or relative caregiver(s), as well as the biological parent(s). When children are returned home, caseworkers must meet with them weekly during the first month and twice a month thereafter.

120. DHS failed to conform with caseworker visitation requirements in the 2002 CFSR. Michigan's PIP required DHS to raise its child visitation performance to 84% by May 2006. As of March 2006, DHS reported a score of only 68.92%.

121. One child residing in a group home in Wayne County reports that her numerous "housemates" rarely, if ever, see their caseworkers. She reports that the girls complain that their caseworkers routinely file court reports and case plans without having met with them in their home first to discuss the contents of these vital papers or the girls' actual needs and desires. The children feel completely detached from and even uninformed about their caseworkers' decisions to provide (or not provide) services to them and Defendants' plans for their future.

Defendants Place Children in Unlicensed Kinship Homes

122. Reasonable professional standards encourage the placement of children in foster care with relatives. Of the almost 19,000 children in DHS foster care custody as of June 2006, 6784 were placed with relatives. However, more than 90% of these relative foster care placements are unlicensed and not subject to the same level of scrutiny that licensed homes receive for purposes of assuring child safety.

123. Though relative foster care providers, as a general matter, are eligible for licensure in accordance with DHS policies, Defendants have not taken the necessary steps to screen and license these relative foster homes to ensure the well-being of the children placed with them.

124. These unlicensed foster homes do not receive monthly foster care maintenance payments from Defendants and, therefore, often lack the financial resources required to meet the basic needs of an additional child or children.

125. HHS determined in its 2002 CFSR that “Michigan places a large number of children with relatives but does not provide financial support beyond TANF and has no subsidized guardianship program. Frequently relative disruptions are caused because of financial issues for the relative caregiver.”

126. The Office of Children and Adult Licensing (“OCAL”) of DHS carries out the agency’s obligation to regulate CPAs and foster homes to assure the safety of all foster children. OCAL does not oversee unlicensed relative foster homes. DHS oversight of unlicensed relative foster placements comes solely from DHS caseworkers at the time of their periodic child visits, assuming these visits even occur.

127. Relative foster homes in Michigan receive fewer services and supports than their licensed counterparts. As Defendants increasingly rely on relative care, in part motivated by the desire to reduce costs in a tight fiscal climate, the safety breakdowns occasioned by the absence of proper DHS oversight will only worsen, and children will predictably suffer.

128. Defendants are aware that children are frequently placed with relatives who are unfit to provide safe temporary or long-term care. As determined by the State Auditor in its August 2005 “Performance Audit of the Children’s Foster Care Program,” DHS routinely fails to conduct criminal background checks on adult relatives and other immediate family members within the home before placing children in their physical custody.

Defendants Maintain an Inadequate Number and Array of Foster Care Placements to Meet Children’s Needs

129. The chronic shortage of appropriate foster homes maintained by DHS frequently results in the placement of children wherever an open bed exists, rather than in the placement best-suited to the child’s needs based upon a complete assessment of all relevant

circumstances and an effort to match a child's needs with a foster care provider's capabilities. Children have frequently been placed in temporary shelters for extended periods of time, even though such shelters are designed to be short-term in nature and licensed for only limited stays. This practice directly contravenes State law and policy requiring children to be placed in the least restrictive, most family-like setting available. Children have been forced to spend nights in DHS offices due to the unavailability of beds – caseworkers refer to them as “lobby kids.”

130. In its 2002 CFSR, HHS determined that “initial placements did not match the needs of the children,” and “inadequate information about children's behavior was provided to foster parents at initial placement, inadequate support was given to foster parents to prevent disruption and there were not enough specialized homes in Michigan.”

131. The number of licensed foster parents has dropped from 8201 in 2002 to about 7569, as of June 2006. The resulting severe shortage of available family foster homes strains the DHS placement system and leads to poor matches between child and foster home that are driven solely by the immediate availability of a bed, not the needs of the child and the capabilities of the foster family.

132. Due to the shortage of suitable foster homes capable of providing specialized or more intensive levels of care, Defendants too often send children to locations far from their homes, schools, communities and siblings, in violation of DHS policy. Though some remote or out-of-county placement decisions are made to accommodate available relative placements, too many of these distant placements are the result of a basic failure to recruit and retain a sufficient array of properly licensed and trained foster homes. Nor do Defendants recruit sufficient foster homes to keep sibling groups together.

133. In its 2002 CFSR, HHS found that Michigan had recruited too few foster homes capable of accepting large sibling groups and deemed the placement of children with their siblings as an “Area Needing Improvement.”

Defendants Jail Foster Care Children Who Run From Inappropriate Placements

134. Due to the inadequate number of suitable foster care placements, Defendants frequently place foster children in foster homes or other settings that are inadequate to meet the individual needs of the child. As a result, a significant number of children in DHS foster care custody run away from their placements, often back to the homes of their parents or relatives.

135. DHS has developed an Away Without Legal Permission (“AWOLP”) project to address the issue of runaway children in its foster care custody. As described by DHS, the AWOLP project “is to track and locate missing Michigan wards of the state who are absent without legal permission from their legal placement. These children are considered at high risk of becoming involved in and/or being the victims of criminal activity. The AWOLP project works with police in locating these children and returning them to their legal home.”

136. Though DHS characterizes the AWOLP project as an initiative aimed at returning runaway children to their foster care placement, these children are actually treated as juvenile delinquents by Defendants when they are found. Under the AWOLP project, runaway foster children are frequently tracked down and apprehended by Warrant Enforcement Officers, handcuffed and transported to the county juvenile detention facility, where they are housed with juvenile offenders who have committed serious criminal offenses.

137. The AWOLP project violates federal law and state policy prohibiting the placement of foster care children into secure detention facilities. The practice is unnecessarily

punitive and inflicts further emotional harm on innocent children who already have suffered abuse and neglect in their homes and the emotional turmoil that accompanies separation from their families.

Defendants Fail to Provide Adequate Foster Care Maintenance Payments

138. Federal law requires any state receiving federal foster care funds to pay foster care maintenance payments, or “per diem” rates, to childcare providers to cover the costs associated with care, including food, clothing, shelter, daily supervision, school supplies, incidentals, liability insurance, and reasonable travel to the child’s home for visitation. Institutional care maintenance payments must also include administrative and operational costs.

139. The purpose of a foster care maintenance payment is to facilitate and support the placement of a child in a foster home by relieving the financial burden that caring for a child places on foster parents. Without adequate foster care maintenance payments, foster parents cannot meet the needs of the children in their care, and it becomes more difficult to recruit and maintain a sufficient number of foster placements.

140. DHS fails to provide foster care maintenance payments that fully meet the cost elements enumerated under federal statute. As of 2005, the United States Department of Agriculture estimated that the average monthly expenditures on a child by middle income, husband-wife families in the urban Midwest ranged from \$733 to \$815, net of health care, depending on the age of child. Yet, the average payment provided to foster parents by Defendants ranges from \$433 to \$535, depending on the child’s age.

141. The “level of care” system established by Defendants allows for incremental increases to foster care maintenance payments for children with intensive needs.

Foster parents frequently experience unwarranted difficulty from DHS caseworkers and supervisors when they request authorization for an enhanced Level I, II or III payment rate.

142. When a child is moved to a new foster home, the new foster parent with whom the child is placed is paid only a basic foster care maintenance rate, even if the child had been approved for an increased rate in the previous foster home. The newly assigned foster parent is then burdened with reestablishing the need for an elevated level of care rate. Vital services to children, therefore, are often disrupted or completely discontinued when a child is moved to a new foster home. This often aggravates the child's behavioral and emotional problems and sets into motion a cycle of disrupted foster family placements and replacements.

Defendants Move Children Repeatedly, Undermining Their Stability and Security

143. Generally accepted professional standards and DHS policy require that caseworkers avoid moving a child from one foster home or facility to another, because such moves result in a lack of stability and feelings of loss, rejection, and trauma for foster children, who are particularly vulnerable to such harms due to the abusive or neglectful circumstances that initially prompted their entry into foster care.

144. Children in the foster care custody of DHS are routinely moved a multitude of times during their prolonged stays in out-of-home care. This is particularly true for the approximately 6,300 permanent wards in DHS legal custody, most of whom have lingered in foster care for more than 24 months. Michigan's most recent Adoption and Foster Care Analysis and Reporting System ("AFCARS") data reports that 53.6% of the children in temporary care for at least 24 months, but less than 36 months, have experienced at least three foster care placements, and 63.3% of the children in temporary care over 36 months have experienced at least three placements.

145. During a June 19, 2006 radio interview, Supreme Court Justice Maura Corrigan reported that foster children in Wayne County experience an average of 5.8 placements during their lengthy stays in care.

146. In its 2002 CFSR, HHS found stability of foster care placement to be an “Area Needing Improvement” in Michigan, noting that, “[f]ocus groups with FIA staff, Court Appointed Special Advocates (CASA), and FCRB members (conducted as part of the State’s self-assessment process) identified the following as affecting movement of children in foster care: initial placements do not match children’s needs; inadequate information is provided to foster parents regarding the child’s behavior when the child is initially placed; inadequate support of foster parents to prevent movement when children entering foster care have many problems; and specialized foster homes are lacking in Michigan.”

147. In addition, Defendants routinely refuse to authorize more intensive placements for children who manifest difficult emotional and behavioral problems. CPAs repeatedly find Defendants unwilling to authorize and pay specialized rates of care, even when a foster child’s behavior has already resulted in five or more disrupted placements in basic family foster care settings. Authorization of specialized care frequently follows six or seven placement disruptions, and then only after the child has experienced maximum instability and emotional harm.

Children in DHS Custody Languish Without Adequate Permanency Services

148. Reasonable professional standards require that foster children should be placed in permanent, loving homes as quickly as possible, whether back with their parents or with an adoptive family. Social science research shows that children who do not grow up in

stable family environments are less likely to complete their education, to form healthy relationships, or to be otherwise prepared to live healthy, satisfying adult lives.

149. To that end, federal law requires states that receive federal funding for their foster care systems to assign foster children one of the following “permanency goals”: reunification with their parents or other legal guardian; placement with a fit and willing relative; adoption; or another planned permanent living arrangement. The state child welfare agency is required to provide casework and social services as required to achieve a child’s permanency goal as expediently as possible. This process is known as permanency planning.

150. Defendants fail to develop and implement permanency plans for many of the children in its foster care custody, a reality that is borne out by the growing number of children for whom parental rights have been terminated and who nonetheless linger in temporary care, many until they age out of the foster care system.

Defendants Fail to Furnish Adequate Services to Permit Timely and Safe Reunification of Children With Their Parents When Appropriate

151. State law and DHS policy require that caseworkers work to reunify foster children with their parents once it is has been determined that the problem that merited removal has been alleviated and that a safe return is possible. Under the so-called “Binsfield” reforms, a package of 1997 statutory revisions to Michigan’s child welfare laws implemented under the leadership of then Lieutenant Governor Connie Binsfield, DHS is required to return children with a goal of reunification to their parents’ home within one year of removal. Though unusual circumstances on the part of the parents may warrant an exception, DHS policy provides that that “[t]his 12 month goal is not to be extended or delayed because of a change in the caseworker or a case transfer.”

152. Defendants failed to meet the HHS national indicator for length of time to achieve reunification in the 2002 CFSR. HHS requires that at least 76.2% of all children reunified with their biological parents in the period under review have done so within 12 months of their initial removal from home. Michigan scored only 52.9% in 2002, and its performance subsequently plummeted to 29.70% as of June 2005.

153. As explained by the FCRB in its 2003-2004 Annual Report, “the most prevalent barriers to permanency for temporary wards are those related to parental issues. Among the parental issues, three of the most challenging are concerns related to substance abuse, mental health, and domestic violence.” Yet, “timely and high quality services are not consistently available throughout [Michigan] to address substance abuse and mental health issues.”

154. The availability of these necessary services for parents in Michigan has only declined in recent years. The state’s Family Reunification Program has seen its budget sliced from five million dollars in FY 2003 to less than four million dollars in FY 2007, a reduction of more than 20%.

155. Further, Defendants often develop reunification case plans for parents that are boilerplate in form, and insufficient to address the parents’ individual needs.

156. The FCRB made numerous recommendations regarding the reunification process in its 2001 Annual Report, including that DHS (1) facilitate psycho-social assessments for all involved parents and incorporate recommendations from the assessments into Parent Agency Treatment Plans; (2) require caseworkers to develop Parent Agency Treatment Plans in conjunction with children (age permitting), parents, and such other professionals as appropriate in order to arrive at a plan which takes into account the specific needs and capabilities of all parties involved; (3) research and develop more effective parenting classes that will address the

specific needs of parents and their children; and (4) expand parent mentoring programs using trained volunteers in order to provide parents with additional resources as appropriate.

157. DHS has not adequately implemented these critical recommendations, nor has it requested the additional funding and supports needed for the delivery of minimally adequate reunification services. The FCRB reported in its 2005 Annual Report that, “in the majority of cases reviewed, the Parent Agency Treatment Plan-Service Agreement provided by DHS was not signed, indicating that the parent was not involved in the development of the agreement and may not have understood the requirements listed. Of the parents responding to the Board’s inquiry into this matter, the vast majority felt they had little input, and that the Agreement was basically developed by the caseworker and sent to the parent for signature.”

158. The use of out-of-county foster care placements (due to an inadequate service array in many locations) makes it practically impossible for parents to regularly visit their children and to sustain connections, as necessary for successful reunification. By placing children with the permanency goal of reunification in distant or inaccessible locations, Defendants create a substantial obstacle to the reunification of a child with his parents.

Defendants Fail to Timely Place Children Who Cannot Return Home into Permanent Adoptive Homes

159. Federal and state law and reasonable professional standards require that Defendants make prompt efforts to find foster children an alternative permanent home, typically through adoption, when reunification with their parents is not possible. Under the Binsfield reforms, children who cannot be reunified are to be freed for adoption through the termination of the parental rights (“TPR”) within one year of removal.

160. At present, over 6300 children in Michigan are legally free for adoption. However, DHS does not have a sufficient number of adoption caseworkers and supporting

resources to recruit adoptive homes effectively or to perform the home studies and related assessments required for matching children with willing and appropriate adoptive homes; nor are Defendants making adequate efforts to recruit adoptive homes for all those children in need of them.

161. In its 2005 Annual Report, the FCRB described the typical foster child awaiting adoption while in DHS custody as “10-17 years in age; multiple foster care placements; chaotic/abusive history prior to coming into care; three or more years in the foster care system; oppositional and defiant behavior toward adults; physical and verbal aggression; poor peer relationships; behavioral and academic problems in school.” This profile aptly demonstrates the profound and lasting harm routinely caused to children who linger in DHS foster care custody without a permanent home, and the vital importance of a fully staffed and well-functioning adoption system to address the needs of these oftentimes troubled children.

162. Defendants have long understood the importance of adoption services, and the high individual and societal costs of failing to effectively provide such services. In 1992, DHS adopted Direction 14 providing, “[e]very child deserves a loving, nurturing family. For most children, a family is their birthright. For too many others, that right somehow has been violated and they await adoption through a complex process We believe that the cost of inaction is enormous and that each year we wait, a larger long-term burden is placed on society – a burden that causes more children to experience needless and preventable pain and suffering. We believe there is no excuse for inaction.”

163. On September 2, 2003, the Adoption Work Group that had been formed by Supreme Court Justice Maura Corrigan reported critical failures in Michigan’s provision of adoption and permanency services:

The first involves temporary wards and the requirement that each child has an appropriate written case plan. The federal [CFSR] review concluded that despite Michigan's policy requirements for preparation of such plans, they were not being developed in many cases. Further, it found that case plans were not being consistently developed jointly with the children and parents Case plans are often generic and do not address individualized family needs. Appropriate case plans developed early in the process can insure that there are fewer obstacles to permanency later.

Michigan was also cited as needing improvement in providing a process to ensure that a permanency hearing is held at least every 12 months. The [CFSR] review found that the requirement was met in only 59 percent of the cases.

164. Despite the fact that the Adoption and Safe Families Act requires Defendants to search for potential adoptive families simultaneously with its efforts towards family reunification – a practice known as concurrent planning – Defendants delay adoptive recruitment until after a TPR order is secured. Even then, Defendants often take several months to simply reassign a case file from the foster care worker to an adoptions worker so that adoptive planning can proceed.

165. Some children are never referred for adoption at all, because, in the view of Defendants, they are not “adoptable.” Many of these children have physical, emotional, or cognitive disabilities. For various reasons, they cannot be reunified with their parents. But rather than pursuing individualized adoption strategies for these children, Defendants leave them to languish in foster care.

166. Adoptions are also delayed, or even disrupted, due to Defendants' unreasonable refusal to authorize increased levels of care for children with special needs where appropriate. Federal law does not permit the payment of monthly adoption subsidies in excess of the child's monthly foster care maintenance payment at the time of adoptive placement. Defendants' refusal to authorize heightened foster care per diems, therefore, drives away fit and

willing adoptive parents who cannot carry the financial risks associated with a child with special medical, psychological and educational needs absent government support.

167. Though DHS is required by law to list all children free for adoption on the State's adoption registry, known as the Michigan Adoption Resource Exchange ("MARE"), many such children are never listed on MARE.

Defendants Fail to Deliver Adequate Health Care Services to Children in DHS Custody

168. Defendants are required to provide for the medical, dental and mental health needs of all children in state foster care.

169. DHS policy requires that all children in DHS custody are to have a physical examination within 30 days of their initial foster care placement, with regular examinations to occur every 14 months after the initial exam. DHS is also required to provide all children in its custody with a dental exam within 90 days of placement, unless the child had an exam in the 12 months prior to placement or is less than 4 years old.

170. The 2002 CFSR reported that Defendants failed to substantially conform to the well-being outcome requiring that "children receive adequate services to meet their physical and mental health needs." According to the CFSR Final Report, "[a] key concern identified was that mental health services were not always available or of sufficient quality to meet the children's needs. In addition, in some cases children did not receive adequate monitoring to ensure that recommended mental health services were actually received." The CFSR Statewide Assessment noted "the lack of adequate funding in the State for mental health services."

171. The 2005 Annual Report of the FCRB found, "[t]he majority of foster care workers who come before the Review Board have minimal training or experience in assessing

whether mental health services or medications prescribed are having the desired impact on the child. Even when it is obvious the child is not benefiting from either, there is a reluctance on the part of most caseworkers to advocate for a change in treatment provider or reevaluation of the medication, as they do not believe that they have the expertise to do so.” The FCRB recommended that DHS provide more suitable training to caseworkers on mental health issues, and that necessary steps be taken to provide “adequate funding and accessibility to comprehensive and appropriate mental health assessment services for all children who come into the state foster care system.”

172. Additionally, DHS providers too often resort to medicating children with difficult behavior with psychotropic drugs which, in many instances, are not medically appropriate.

173. The ongoing failure of Defendants to provide adequate mental health services to the children in its legal custody is exacerbated by the high incidence of diagnosable mental health disorders in the foster care population.

174. Defendants also fail to provide foster children with their required federally-subsidized Early and Periodic Screening, Diagnosis and Treatment (“EPSDT”) program services, including periodic medical, psychological and dental screenings aimed at identifying and treating children’s health needs.

175. According to a statewide external quality review of EPSDT services for calendar year 2001, 63.45% of foster children in Michigan did not receive basic EPSDT screenings and services. Another 12.27% of the Title IV-E wards in Michigan received no health services at all.

176. These findings were made seven years after DHS (through its predecessor agency, FIA) adopted Direction 10, “Improving Child’s Health through EPSDT (1994),” which mandated a “number of initiatives to increase the EPSDT participation of Medicaid eligible children.” Defendants have failed to implement Direction 10.

177. Two years after the statewide external quality review of EPSDT services, the Michigan Statewide Independent Living Council reported that “for many years, the state of Michigan has failed to comply with its obligations under the EPSDT program which guarantees comprehensive medical care to children eligible for Medicaid. As a result, children on Medicaid who are entitled to comprehensive preventive and treatment services are not getting them.”

178. The state of Michigan spent only \$1,581 per foster child enrollee on Medicaid services in federal fiscal year 2001, the fifth lowest rate in the nation. In contrast, the average national rate in 2001 was \$4,336 per foster child enrollee, and the high was \$19,408 per enrollee by the state of Maine.

179. DHS also fails to maintain the basic capacity to identify the types and volume of health needs of foster care children, specifically in relation to children with disabilities who often require special medical services. According to the “Developmental Disabilities Five-Year Strategic State Plan, Fiscal Years 2002-2006,” jointly prepared by the Michigan Developmental Disabilities Council and the Michigan Department of Community Health, “although it is clear that many children with disabilities are in foster care, it is difficult to identify what types of disabilities are represented because of a limited reporting capacity. It is therefore critical for the agency to increase its data collecting capacity to identify children with disabilities more specifically to assure that appropriate supports are being provided.” Without sufficient records, it is impossible for Defendants to plan for the care of children in its custody.

180. Defendants fail to adequately provide for the health needs of children in private agency placements. CPAs frequently experience long waits simply to obtain a foster child's Medicaid card from DHS, even though all children in state foster care are automatically eligible for Medicaid coverage. In one such instance, a young child was removed from her home due to medical neglect resulting in serious dental and oral health issues; Defendants did not furnish her Medicaid card for another six months.

181. Defendants also often fail to furnish CPAs and foster parents with complete and accurate medical histories of the children in their care, making it impossible for foster care providers to address the children's medical needs. This failure is aggravated by Defendants' practice of moving foster children among multiple foster placements.

Defendants Fail to Deliver Adequate Educational Services to Children in DHS Custody

182. Generally accepted professional standards provide that all children in foster care custody must attend school full-time; be provided educational assessments and services; receive the education most appropriate to their needs, including special education; receive supplementary educational support as necessary; and be helped to achieve the maximum level of formal education of which they are capable.

183. As reported by HHS in the 2002 CFSR, Defendants fail to adequately meet the basic educational needs of the children in its foster care custody. The CFSR noted that, "according to the Statewide Assessment, focus groups with FCRB members and CASA (convened as part of the state's self-assessment process) identified a lack of tutoring services and special education services for children in foster care." In a mail survey of FIA foster parents, 45% of respondents did not feel adequately supported by their caseworker in addressing the educational needs of the children in their care.

184. Foster children frequently moved among placements are forced to change schools repeatedly. It is not unusual for children in foster care who have experienced multiple placements to fall two years or more behind in their schooling because of repeated absences from class or the disruptive process of school enrollment and reenrollment.

185. Additionally, DHS caseworkers do not regularly or adequately collaborate with schoolteachers and school administrators regarding the special needs presented by foster children, most of whom frequently enter new schools without knowing anyone, and with learning problems that have not been addressed. Many of these foster children manifest their feelings of instability, loss, grief, and anger through disruptive behaviors in the classroom. Frequently, and without sufficient, if any, intervention by DHS, elementary schools and high schools in Michigan place these children on suspension or probation, rather than addressing the very real needs they present, so as to remove obstacles to their learning.

186. Defendants' failure to assure proper educational outcomes for foster children is documented in a study by Wayne State University's Research Group on Homelessness and Poverty that determined that 43% of foster children who had aged out of the Macomb and Wayne County systems in 2002 and 2003 were high school dropouts.

Defendants Fail to Prepare Teens in Foster Care for Life As Adults

187. In making the transition to life as an independent, healthy adult, it is important for a young person leaving foster care to have a number of key services in place, including a stable place to live; job training or education; Medicaid or other medical insurance; and any government benefits for which they may be eligible. It is essential that Defendants ensure that children who are "aging out" of care have all these needs met before they leave the

custody of the State. Yet, more than 400 children age out of the Michigan foster care system each year without the necessary supports and services.

188. In January 2004, Professor Gary Anderson of the Michigan State University School of Social Work published “Aging Out of Foster Care in Michigan,” finding that “the State of Michigan faces a significant challenge in responding to young adults who age out of care. For many years, there was no funding for services and assistance for young people who in effect were kicked out of the child welfare system at age 18. The outcomes for these youth were harsh with high rates of homelessness, unemployment, and involvement in the criminal justice system and low rates of college attendance.”

189. The report recommended that DHS (1) increase access to life skills and employment training, (2) increase funding for post-secondary education, (3) provide access to health care coverage, and (4) improve access to employment pathways. It also recommended that DHS utilize proper data management and evaluation techniques in implementing these changes: “[t]here is a paucity of centralized data regarding services provided to youth aging out of foster care and what happens to youth after they leave the child welfare system. Assessment and evaluation of the processes and outcomes of programs or interventions identified in the implementation strategies should be conducted.”

190. In 2004, DHS turned down \$1.2 million in federal Chafee funds, resources targeted to help youth aging out of foster care, because DHS’ dwindling workforce was insufficient to process or expend the funds as required by federal guidelines. The federal government reallocated this \$1.2 million among other states, including neighboring Ohio. As noted by Sharon Peters, Executive Director of Michigan’s Children, “[i]t’s an outrage. With

Michigan being a donor state already, putting in more federal dollars than we receive back, it is unacceptable for us to not be getting federal resources for vulnerable young people.”

191. Defendants continue to ignore these problems in the current FY 2007 budget cycle.

192. DHS officials readily admit the challenges and hardships experienced by teen foster children. Director Udow stated on January 26, 2006, “[e]very year, hundreds of children age out of our foster care system without a connection to a caring adult. They face enormous challenges staying in school, finding safe and stable housing, supporting themselves financially, and getting needed physical and mental health care.” While Director Udow has announced a new state task force to study the issue, this comes fully two years after DHS learned of the aging out crisis in Michigan. The time for study has long since passed, yet further study, rather than concrete, fully funded and aggressive action, is now underway.

193. A recent study conducted by the Wayne State University Research Group on Homelessness and Poverty revealed that almost half of the children who had aged out of the Macomb and Wayne County child welfare systems in 2002 and 2003 were homeless at some point during their first three years on their own, and fully 25% were homeless immediately after aging out. 16.7% lived on the streets, in cars, or in abandoned buildings. These youth were unemployed for 48% of the time since aging out and earned a median income of only \$598.33 per month.

Defendants Squander Available Federal Funds

194. Pursuant to Title IV-E of the Social Security Act, 42 U.S.C. § 670 et seq., the federal government provides matching funds to all state-managed child welfare systems to reimburse a portion of the costs of maintaining abused and neglected children in foster care. The

Title IV-E foster care program is an open-ended entitlement that provides matching funds for all eligible children without the imposition of a federal spending cap. It is the obligation of the states to meet certain federal criteria to access and sustain the flow of Title IV-E funding.

195. HHS conducted an audit of Michigan's Title IV-E foster care program in March 2004 to determine whether DHS was properly determining eligibility and accurately submitting costs for federal reimbursement. HHS found that DHS had failed to comply with federal program standards and required the State to return \$283,223.89 to the federal government.

196. In response, HHS required DHS to submit a Title IV-E Program Improvement Plan ("Title IV-E PIP") setting forth a remedial process to assure compliance with Title IV-E eligibility rules and regulations. DHS is currently implementing the Title IV-E PIP and, as a result of a statewide audit of all Title IV-E foster care case files, has disclosed that the state may be required to return another \$40 million to the federal government due to erroneous eligibility determinations.

197. Specifically, as a result of the internal state audit, DHS has restated its statewide total of Title IV-E eligible and reimbursed foster children from 5101 as of February 2006 to 3817 as of April 2006. Similarly, DHS restated its Wayne County total of Title IV-E eligible and reimbursed foster children from 1298 as of February 2006 to 670 as of April 2006.

198. In December 2005, the Office of the Auditor General in Michigan released its "Financial Audit Including the Provisions of the Single Audit Act of the Department of Human Services." Having reviewed the federally subsidized child welfare programs operated by DHS, the state auditor concluded:

Federal expenditures for the Foster Care Program totaled approximately \$253.4 million for the two-year period ended September 30, 2004. We identified known questioned costs of \$8,924,359 and known and likely questioned costs totaling \$47,152,137.

...

FOR THE SECOND CONSECUTIVE AUDIT, WE RECOMMEND THAT DHS IMPROVE ITS INTERNAL CONTROL OVER THE FOSTER CARE PROGRAM TO ENSURE ITS COMPLIANCE WITH FEDERAL LAWS AND REGULATIONS (emphasis in original).

199. The state auditor further identified in relation to the Title IV-E adoption assistance program “known and likely questioned costs totaling \$45,559,881” and in relation to the Chafee Foster Care Independent Living Program “known and likely questioned costs totaling \$7,026,735.”

200. In total, the State Auditor has identified \$99,738,753 in known or likely questioned costs that DHS may be required to reimburse to the United States government because of accounting irregularities and a lack of suitable controls within DHS over program eligibility determinations and payment processes. Such mismanagement of the state’s federally subsidized child welfare programs is unconscionable.

201. An appropriately managed child welfare system in the United States qualifies about 50% of its foster care population for Title IV-E reimbursements from the federal government. Prior to the HHS Title IV-E audit and Title IV-E PIP implementation in Michigan, DHS reported a Title IV-E utilization or “penetration” rate of only 36% in 2002 and 33.8% in 2003. In 2004, the average penetration rate in the United States was 54%. DHS fails to access millions of dollars in available federal funds to finance the State’s overburdened child welfare system, instead drawing down on limited state funds far more than prudent or necessary.

Defendants Have Failed to Implement an Electronic Management Information System That Conforms to Federal Standards and Meets Agency Need

202. Given the large population of children in foster care custody and the number and variety of state and private agencies involved in child welfare service delivery and oversight, it is critical that Defendants maintain an efficient data information system that facilitates the timely and accurate provision of services, a performance-based management approach, and the expeditious transmission of important funding documentation.

203. FIA, the predecessor agency to DHS, contracted with Unisys in 1993 to develop and install Michigan's Statewide Automated Child Welfare Information System ("SACWIS"), a computer system called the Services Worker Support System ("SWSS"). The SWSS system has a protective services module, known as SWSS CPS, and a foster care, adoption and juvenile justice module, known as SWSS FAJ. As of September 1998, Michigan had expended over \$31 million on the development of SWSS. To this day, however, SWSS has not been certified as conforming to federal SACWIS requirements, including the mandate that it be a unified system. Indeed, as noted by HHS in the course of Michigan's 2002 CFSR, "the existence of multiple case management systems would be problematic in a SACWIS review." Michigan is now identified by HHS as one of only 16 states without an operational SACWIS conforming to federal requirements or at least subject to an ongoing compliance assessment, 23 years after the State first contracted with Unisys.

204. As recently summarized by Ruth Mutchler, a senior union representative for DHS caseworkers, "the new SWSS FAJ computer program continues to cause considerable grief and makes an impossible job harder." Moreover, stakeholders throughout the system are concerned with the quality and accuracy of the SWSS FAJ database due to a lack of proper controls and quality assurance in data input.

Defendants Fail to Provide Children in DHS Custody With Meaningful Court Access

205. Under Michigan law, a lawyer guardian ad litem (“L-GAL”) must be appointed to represent the minor child in every child protective proceeding instituted under the Juvenile Code in Michigan.

206. The quality and scope of legal representation provided by many L-GALs in Michigan is too frequently impaired, if not completely eviscerated, by oppressive caseloads. Foster children from across the state commonly complain that they rarely, if ever, meet with their appointed counsel in dependency proceedings. The failure of appointed counsel to satisfy this fundamental element of representation prevents L-GALs from communicating with their client children before appearing in court on the child’s behalf. The dependency process in Michigan provides little or no meaningful opportunity for the children in foster care to enforce their basic rights.

207. As one example, the L-GALs in Genesee County carry caseloads of 450 cases or higher. Due to the oppressive demands generated by such excessive caseloads, the L-GALs are not able to interview their minor clients on a regular basis to determine their best interests and needs, to conduct complete and fully competent independent investigations of all cases, or to be fully prepared for court appearances and hearings.

208. In its 2005 Annual Report, the FCRB noted, “[i]nformation provided to the review board by the caseworkers, foster care providers, and in some cases, the children themselves, would indicate that the L-GALs in many cases are not fulfilling their statutory responsibility. Reasons given to the Board by the L-GALs include inadequate financial compensation and large client caseloads.” Regardless of the reason(s) for this pervasive non-

performance by L-GALs, Plaintiff Children ultimately suffer the loss of meaningful access to the dependency court.

COUNT I

(Substantive Due Process under the U.S. Constitution)
(Asserted by all named Plaintiffs and Plaintiff Children)

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

210. A state assumes an affirmative duty under the Fourteenth Amendment to the United States Constitution to protect a child from harm when it takes that child into its foster care custody.

211. The foregoing actions and inactions of Defendants Jennifer Granholm, Marianne Udow, Laura Champagne and James Hennessey, in their official capacities, constitute a failure to meet the affirmative duty to protect from harm all named Plaintiffs and class members, which is a substantial factor leading to, and proximate cause of, the violation of the constitutionally-protected liberty and privacy interests of all named Plaintiffs and class members.

212. The forgoing actions and inactions of Defendants Jennifer Granholm, Marianne Udow, Laura Champagne and James Hennessey, in their official capacities, constitute a policy, pattern, practice and/or custom that is inconsistent with the exercise of reasonable professional judgment and amounts to deliberate indifference to the constitutionally-protected rights and liberty and privacy interests of all named Plaintiffs and class members. As a result, all named Plaintiffs and class members have been and are being deprived of the substantive due process rights conferred upon them by the Fourteenth Amendment to the United States Constitution.

213. These substantive due process rights include, but are not limited to: the right to protection from unnecessary harm while in government custody; the right to a living environment that protects foster children's physical, mental and emotional safety and well-being; the right to services necessary to prevent foster children from deteriorating or being harmed physically, psychologically, or otherwise while in government custody, including but not limited to the right to safe and secure foster care placements, appropriate monitoring and supervision, appropriate planning and services directed toward ensuring that the child can leave foster care and grow up in a permanent family, and adequate medical, dental, psychiatric, psychological, and educational services; the right to treatment and care consistent with the purpose of the assumption of custody by DHS; the right not to be maintained in custody longer than is necessary to accomplish the purposes to be served by taking the child into custody; the right to receive care, treatment and services determined and provided through the exercise of accepted, reasonable professional judgment; and the right to be placed in the least restrictive placement according to a foster child's needs.

COUNT II

(First, Ninth, and Fourteenth Amendments to the United States Constitution)
(Asserted by all named Plaintiffs and Plaintiff Children)

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

215. The foregoing actions and inactions of the Defendants, Jennifer Granholm, Marianne Udow, Laura Champagne and James Hennessey, amount to a pattern, practice, or custom of failure to exercise reasonable professional judgment and of deliberate indifference to Plaintiffs' constitutional rights, and are the cause of the violation of such rights. As a result of Defendants' conduct, all named Plaintiffs and class members have been and are being severely

harmful and deprived of the liberty interests, privacy interests and associational rights conferred on them by the First, Ninth, and Fourteenth Amendments to the United States Constitution not to be deprived of a child-parent or a child-sibling family relationship.

COUNT III

(The Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. § 670 et seq.)

(Asserted by all named Plaintiffs and Plaintiff Children)

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

217. As a result of the foregoing actions and omissions by Defendants, Jennifer Granholm, Marianne Udow, Laura Champagne and James Hennessey, in their official capacities, Defendants are engaging in a policy, pattern, practice, and/or practice of depriving all named Plaintiffs and class members of rights conferred on them by the Adoption Assistance and Child Welfare Act of 1980, as amended by the Adoption and Safe Families Act of 1997 (collectively the “Adoption Assistance Act”) and the regulations promulgated under the Act, 45 C.F.R. Parts 1355-1357. These rights include, but are not limited to: the right to timely written case plans containing mandated elements, and to the implementation of these plans; the right to placement in foster homes or other settings that conform to national professional standards and are subject to a uniformly applied set of standards; the right to have a petition to terminate parental rights filed, or have a compelling reason documented why such a petition has not been filed, in accordance with specified, statutory standards and time frames; the right of children whose permanency goal is adoption to planning and services to obtain a permanent placement, including documentation of the steps taken to secure permanency; the right to services to facilitate the child’s return to his family home or the permanent placement of the child; the right to services that protect children’s safety and health; the right to have health and educational

records reviewed, updated, and supplied to foster parents or foster care providers with whom the child is placed at the time of placement; the right to receive services in a child welfare system that has an information system adequate to permit the State to make fully informed decisions concerning each foster child's best interests; and the right of each Plaintiff child to foster care maintenance payments paid to the foster parents or foster care providers with whom the child is placed that cover the actual cost (and the cost of providing) the Plaintiff child's food, clothing, shelter, daily supervision, school supplies, reasonable travel to visitation with family, and other expenses; and in the case of a Plaintiff child who has reached 16 years of age, the right to services needed to help the child prepare for the transition from foster care to independent living.. 42 U.S.C. Sections 671(a)(10); 671(a)(16); 671(a)(22); 672(b) and (c); 675(1); 675(5)(D); 675(5)(E); 622(b)(10)(B); 45 C.F.R. Section 1355.20.

COUNT IV

(Procedural Due Process)

(Asserted by all named Plaintiffs and Plaintiff Children)

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

219. The foregoing actions and inactions of the Defendants amount to a pattern, practice, and custom of failure to exercise reasonable professional judgment and of deliberate indifference to the constitutional rights of Plaintiffs, and are the cause of the violation of such rights. As a result of Defendants' conduct, Plaintiffs have been and are being harmed and deprived of both federal and state-created liberty or property rights without due process of law in violation of their constitutional rights.

220. Defendants' actions and inactions have resulted and are continuing to result in deprivations of the following federal-law entitlements to which Plaintiff Children have a

constitutionally protected interest: the entitlements arising from the Adoption Assistance Act and regulations promulgated thereunder; and

221. Defendants' actions and inactions have resulted and are continuing to result in deprivations of the following state-law entitlements to which each Plaintiff child has a constitutionally protected interest:

a. the entitlements arising from MCL § 722.954c(2) and (5), requiring DHS, and its supervising child placing agencies, *inter alia*, to provide each child with a medical examination when the child is first placed in foster care and to develop a medical passport for each child who comes under its care;

b. the entitlements arising from MCL § 722.954b(3), requiring DHS, and its supervising child placing agencies, to require that its workers make monthly visits to the home or facility in which each child is placed and that its workers monitor and assess in-home visitation between the child and his or her parents;

c. the entitlements arising from MCL § 722.954b(2), requiring DHS, and its supervising child placing agencies, to submit the necessary information for inclusion of a foster child in the statewide adoption registry if an adoptive family has not been identified within 90 days after entry of an order of termination of parental rights;

d. the entitlements arising from MCL § 722.954b(1), requiring DHS, and its supervising child placing agencies, to strive to achieve a permanent placement for each child in its care, including either a safe return to the child's home or implementation of a permanency plan, no more than 12 months after the child is removed from his or her home; and

e. the entitlements arising from MCL § 712.18f(3), requiring DHS, and its supervising child placing agencies, *inter alia*, to provide for the placement of each child in the

most family-like setting available and in as close proximity to the child's parents' home as is consistent with the child's best interests and special needs.

COUNT V

(Breach of Federal Contractual Obligations to Third Party Beneficiaries)
(Asserted by all named Plaintiffs and Plaintiff Children)

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

223. Under Titles IV-B and IV-E of the Social Security Act, states receive certain federal monies so long as they enter into plans approved by the United States Department of Health and Human Services and comply with their terms. Michigan receives federal funding under Titles IV-B and IV-E of the Social Security Act and has submitted such State Plans, which are legal contracts between the federal government and the State, and such plans have been approved. In these State Plan contracts, the State agrees to provide child welfare, foster care and adoption services to Plaintiffs in accordance with specific statutes, regulations and policies and all applicable federal regulations and other official issuances of the United States Department of Health and Human Services.

224. As a result of their foregoing actions and inactions, Defendants have breached and continue to breach their obligations under Michigan's State Plan contracts, and all Plaintiffs, as the intended direct third-party beneficiaries to these State Plan contracts, are (i) being denied their rights under law to the services and benefits that the state of Michigan is obligated to provide to them under such contracts, and (ii) being harmed thereby.

PRAYER FOR RELIEF

225. WHEREFORE, the Plaintiff Children respectfully request that this

Honorable Court:

- a. Assert jurisdiction over this action;
- b. Order that Plaintiff Children may maintain this action as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure;
- c. Declare unconstitutional and unlawful pursuant to Rule 57 of the Federal Rules of Civil Procedure:
 - i. Defendants' violation of Plaintiff Children's rights under the Due Process Clause of the Fourteenth Amendment to the United States Constitution;
 - ii. Defendants' violation of Plaintiff Children's rights under the First, Ninth, and Fourteenth Amendments to the United States Constitution;
 - iii. Defendants' violation of Plaintiff Children's rights under the Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. § 670 et seq.;
 - iv. Defendants' violation of Plaintiff Children's right to procedural due process under the Fourteenth Amendment to the United States Constitution; and
 - v. Defendants' breach of their contractual obligations to Plaintiff Children under the state of Michigan's Title IV-E and Title IV-B state plans.
- d. Permanently enjoin Defendants from subjecting Plaintiff Children to practices that violate their rights;
- e. Order appropriate remedial relief to ensure Defendants' future compliance with their legal obligations to Plaintiff Children;
- f. Award to Plaintiff Children the reasonable costs and expenses incurred in the prosecution of this action, including reasonable attorneys' fees, pursuant to 42 U.S.C. §§ 1920 and 1988, and Federal Rules of Civil Procedure 23(e) and (h); and

- g. Grant such other and further equitable relief as the Court deems just, necessary and proper to protect Plaintiff Children from further harm by Defendants.

DATED: August 8, 2006

Respectfully Submitted:

By:

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