

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

T.M., by and through her guardian ad litem,
Jane Doe, and on behalf of similarly situated
persons,

Plaintiff,

v.

Nikki Haley, in her official capacity as
Governor of South Carolina and Amber
Gillum, in her official capacity as Acting
Director of the South Carolina Department of
Social Services (SCDSS);

Defendants.

3:14-3933-TLW

COMPLAINT
(Injunctive Relief Requested)

T.M., by and through her guardian ad litem, Jane Doe, individually, and on behalf of similarly situated persons, complains of Defendants Nikki Haley, in her official capacity as Governor of South Carolina, Amber Gillum, in her official capacity as Acting Director of the South Carolina Department of Social Services; and the South Carolina Department of Social Services (SCDSS), and asserts the following upon information and belief (except for those allegations pertaining to Plaintiffs, which are based upon personal knowledge):

I. Introduction.

1. This is a civil rights action arising out of a pattern and practice of medical and physical neglect by the South Carolina Department of Social Services (SCDSS) of foster children who are in the custody and care of SCDSS. These children do not receive therapy for sexual abuse, physical abuse, or severe neglect and prescriptions by physicians and recommendations by psychologists, therapists, and counselors for trauma therapy, therapeutic

foster care, and residential treatment are ignored by Defendants based solely on the desire to reduce the agency's budget at the expense of the foster children.

2. Plaintiff, T.M., by and through her guardian ad litem, Jane Doe, brings this action on her own behalf and as a Class Action on behalf of a class consisting of Plaintiff and all other foster children in the temporary custody and care and permanent custody and care of the South Carolina Department of Social Services who have been sexually abused, physically abused, or severely neglected before entering the care and custody of SCDSS and while in the care and custody of SCDSS.

3. Plaintiff has filed this lawsuit individually and on behalf of similarly situated persons to ask the Court for injunctive relief and to order Defendants Nikki Haley, in her official capacity as Governor of South Carolina and Amber Gillum, in her official capacity as Acting Director of SCDSS to:

- a. Require that Defendants' social workers who provide services for Plaintiff and the Class are qualified to provide such services to foster children in South Carolina;
- b. Require that Defendants provide trauma therapy to Plaintiff and the Class;
- c. Require that Defendants provide therapeutic foster care and residential treatment to Plaintiff and the Class when prescribed by physicians and recommended by psychologists, therapists, and counselors;
- d. Require that Defendants' social workers who provide services to Plaintiff and the Class understand how to seek and apply for services for foster children who are sexually abused, physically abused, and severely neglected;
- e. Require that Defendants' social workers who provide services to Plaintiff and the Class provide the same standard of care that is required of all South Carolina

social workers pursuant to S.C. Code Ann. § 40-63-5 et seq., S.C. Code of Reg. Ann. § 114 et seq., S.C. Code of Reg. Ann. § 110, the Standards of Excellence for Family Foster Care Services issued by the Child Welfare League of America, the Standards of Excellence for Residential Services, the Standards of Excellence for Health Care Services for Children in Out-of-Home Care by the Child Welfare League of America, and the policies and procedures of SCDSS, Chapters 7 and 8.

- f. Order Defendants to enroll Plaintiff in Medicaid so that she may receive psychiatric services, psychological services and counseling, basic medical care, and medication; and
- g. Order Defendants to provide essential medical services and therapeutic foster care treatment for Plaintiff T.M.

4. Plaintiff seeks injunctive relieve pursuant to Rule 65, Fed.R.Civ.P. for violating Plaintiff's and the Class's substantive constitutional rights to reasonable medical care and treatment pursuant to Amendment XIV of the United States Constitution and 42 U.S.C. § 1983 as delineated by the United States Court of Appeals for the Fourth Circuit in *Doe ex rel. Johnson v. South Carolina Department of Social Services*, 597 F.3d 163 (4th Cir. 2010)

- 5. Plaintiff also seeks attorneys' fees and costs of this action.

II. Parties and Jurisdiction.

6. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

7. Plaintiff T.M. is a citizen and resident of Richland County. She is a minor child (DOB: 3/2002), an orphan, and a ward of the State of South Carolina and this matter is brought

on her behalf by her guardian ad litem and foster mother, Jane Doe. The parental rights of Plaintiff's parents were terminated in March of 2012.

8. Defendant Nikki Haley is hailed into Court in her official capacity for the purposes of Plaintiff's application for injunctive relief. Defendant Nikki Haley is the Governor of South Carolina. Defendant Haley was elected Governor on November 2, 2010. Defendant Nikki Haley is a resident of South Carolina. Defendant Nikki Haley is the supreme executive authority of South Carolina, responsible for ensuring that all state agencies act in compliance with all state and federal laws and the United States Constitution. Defendant Nikki Haley appoints the Director of SCDSS, with the advice and consent of the State Senate. Defendant Nikki Haley also has the power to remove the Director of SCDSS at her discretion.

9. Defendant Amber Gillum is hailed into Court in her official capacity for purposes of Plaintiff's application for injunctive relief. Defendant Amber Gillum is the acting director of the South Carolina Department of Social Services. Defendant Amber Gillum is responsible for overseeing, managing, and controlling the operation, administration, and organization of SCDSS in accordance with applicable legal standards. This includes providing safe and adequately supervised placements and treatment for children in foster care in SCDSS custody. The South Carolina Department of Social Services is an agency of the State of South Carolina created by the General Assembly of the State of South Carolina. SCDSS is responsible for ensuring that the children in its custody are safe and are receiving adequate care and treatment in accordance with applicable legal standards. Defendant Amber Gillum is responsible for continuing the failed patterns and practices of Lillian Koller, who resigned as Director of SCDSS in disgrace on June 2, 2014.

10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and 1343.

11. The Court also has personal jurisdiction over all parties and venue is proper in the Columbia Division.

III. Plaintiff T.M.'s Substantive Due Process Rights Have Been Violated By SCDSS

12. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

13. Plaintiff T.M. has been in foster care on multiple occasions.

14. Plaintiff T.M. entered into the temporary care and custody of the SCDSS this last occasion in 2009 due to sexual abuse, physical abuse, and severe neglect.

15. Allegations of abuse included sexual abuse by family members, to include her father, uncles, aunts, and visitors, as T.M. was sexually trafficked by her parents in exchange for drugs.

16. Plaintiff T.M. entered the permanent custody of SCDSS in 2012 when the Family Court of the Fifth Judicial Circuit terminated the parental rights of T.M.'s parents.

17. In August 2012, SCDSS attempted to place Plaintiff T.M. with her aunt in Rhode Island. SCDSS knew that this same aunt resided with Plaintiff T.M.'s biological mother, the same mother who sexually abused Plaintiff T.M. and trafficked her for drugs. This was part of a SCDSS instituted pattern and practice of sending children to out of state relatives in order reduce the size of its caseloads to eliminate the cost of providing services and case management to foster children.

18. In August 2012, the ten-year-old child attempted to commit suicide by hanging herself in her room in order to avoid having to move into a home where her abusive biological mother resided.

19. Upon discharge from residential treatment, Plaintiff T.M.'s medical providers – physicians, therapists, and hospital social workers – recommended that Plaintiff T.M. be placed in therapeutic foster care. SCDSS refused to place her in therapeutic foster care. SCDSS has a pattern and practice of refusing to place mentally ill and severely abused and neglected foster children in therapeutic foster care in order to eliminate the higher costs of foster care board payments for therapeutic foster children and the costs of more labor-intensive and more frequent provision of services and case management that is required for therapeutic foster care children.

20. In October 2013, Plaintiff T.M.'s therapist at Columbia Area Mental Health recommended Plaintiff be placed in residential treatment at Three Rivers in West Columbia, South Carolina. SCDSS refused this recommendation based upon its pattern and practice of refusing to place mentally ill and severely abused and neglected foster children in residential treatment in order to eliminate the high costs of Medicaid.

21. Plaintiff T.M. has been without a foster care social worker since February 2014. Plaintiff fell off of the books at SCDSS, and although she has an adoptions worker, Plaintiff T.M. cannot receive services or Medicaid insurance.

22. The lack of Medicaid insurance has prevented Plaintiff T.M. from receiving psychiatric care, psychological counseling and treatment, and medication since on or about October 2014.

23. Jane Doe has made eighty phone calls, more or less, to SCDSS in an attempt to secure a foster care worker for Plaintiff T.M. and Medicaid insurance for the child.

24. Jane Doe has left messages with the director of Richland County Department of Social Services, the supervisors of foster care, Yvonne Wilson and Mary Busky, and numerous

other employees of the agency in an effort to have a social worker assigned and to have Plaintiff T.M. enrolled in Medicaid.

25. Since Plaintiff T.M.'s placement in foster care, SCDSS social workers have not required that she receive trauma therapy. Plaintiff T.M.'s SCDSS social workers did not have the knowledge, education, and training to understand that Plaintiff T.M. needed trauma therapy and these same social workers only placed her in residential treatment for her suicide attempt. These SCDSS social workers lacked the knowledge, education, and training to provide trauma therapy which will prevent severe disruptions in Plaintiff T.M.'s life, such as the suicide attempt.

IV. SCDSS's Patterns and Practices Harm Children.

26. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

27. The South Carolina Department of Social Services ("SCDSS") is an agency of the State of South Carolina created by the General Assembly of the State of South Carolina. SCDSS is responsible for ensuring that the children in its custody are safe and are receiving adequate care and treatment in accordance with applicable legal standards. S.C. Code Ann. § 43-1-10 (1993); S.C. Code Ann. § 63-7-10(A)(5) (2008).

28. All intervention by the State has as its primary goal the welfare and safety of the child. S.C. Code Ann. § 63-7-10(A)(5) (2008).

29. The South Carolina Children's Code aims to establish an effective system of protection of children from injury and harm while living in public and private residential agencies and institutions meant to serve them. S.C. Code Ann. § 63-7-10(B)(5) (2008).

30. When children must be placed in care away from their homes, the State shall insure that they are protected against any harmful effects resulting from the temporary or permanent inability of parents to provide care and protection for their children. S.C. Code Ann. § 63-7-20(D) (2008).

31. “Contacts with the child and with others who have knowledge of the child are used: to oversee the safety of the child; to collect information in order to confirm the environment is safe (i.e. at the time of placement) or to determine that the same safe acceptable conditions remain; to determine that any changes occurring do not pose a threat to child safety. If the child is determined to be unsafe, immediate actions are taken to protect the child, including possible removal from the placement.” *Doe v. Haley*, Civil Action No. 8:13-cv-01772-GRA, dkt. no. 154-3 (D.S.C.).

32. The most fundamental charge of any foster care system is protecting the safety of children in its custody. 45 C.F.R. 1355.34(b)(1)(i)(A).

33. Child welfare agencies are “responsible for ensuring that children who have been found to be victims of abuse or neglect are protected from further harm. Whether the child is placed in out-of-home care or maintained in the home, the child welfare agency’s first concern must be to ensure the safety of the child.” *Doe v. Haley*, Civil Action No. 8:13-cv-01772-GRA, dkt. no. 154-4 (D.S.C.).

34. “Foster care is a temporary substitute care service offered to children who must be separated from their own parents/family for a specific purpose and for a planned period of time. It may take the form of relative placement, foster family care, residential group care, therapeutic foster care, residential treatment, or independent living depending on the needs of the child.” *N.G. v. SCDSS*, Civil Action No. 10-cv-029730-CMC, dkt. no. 102-6.

35. It is a policy that, “[t]he immediate safety and future risk of children must be assessed continually and serves as the foundation for all child protective service and foster care interventions. Safety and risk assessments must include foster care placements, relative and alternative care givers.” *N.G. v. SCDSS*, Civil Action No. 10-cv-029730-CMC, dkt. no. 102-6. “Selection of a foster care provider, including...therapeutic foster care,... should be based on the child’s identified needs and the resources of the foster care provider to meet the child’s needs.” *N.G. v. SCDSS*, Civil Action No. 10-cv-029730-CMC, dkt. no. 102-6. Safety of placement must be assessed at, or within 48 hours of placement and ongoing thereafter. *N.G. v. SCDSS*, Civil Action No. 10-cv-029730-CMC, dkt. no. 102-6.

36. SCDSS is required to participate in completing a child’s individual treatment plan, participate in all provider staffing and treatment planning meetings. *N.G. v. SCDSS*, Civil Action No. 10-cv-029730-CMC, dkt. no. 102-6.

37. SCDSS identifies and addresses a child’s mental health and behavioral health at the time he enters foster care. *N.G. v. SCDSS*, Civil Action No. 10-cv-029730-CMC, dkt. no. 102-6. The child’s mental health and behavioral health are continuously monitored and recorded as the child’s assessment and case plan are updated. *N.G. v. SCDSS*, Civil Action No. 10-cv-029730-CMC, dkt. no. 102-6.

38. SCDSS must obtain essential educational, medical, and mental health/behavioral information regarding a child from parents, relatives, and others in order to meet the immediate and ongoing needs of the child and that this information is to be shared with the foster parent/provider. Information gathered in the child’s record includes, but is not limited to:

- Medical, mental health conditions (i.e. critical health conditions, prescribed medications, use of sleep monitors, etc.);
- History of the child;
- The nature of the abuse and/or neglect,

- Behavioral problems, and
- Matters related to educational needs.

N.G. v. SCDSS, Civil Action No. 10-cv-029730-CMC, dkt. no. 102-6.

39. “As much information as possible is given to the foster care provider by the first working day after placement.” The agency files/databases should be researched for more information during the first week and shared with the provider. When new information is acquired, the caseworker shall immediately convey the information to the providers. The Education and Health Passport (DSS 30245) is also updated. SCDSS even encourages the meeting of birth parents and foster parents to exchange information regarding a child unless such a meeting would be inappropriate. *N.G. v. SCDSS*, Civil Action No. 10-cv-029730-CMC, dkt. no. 102-6.

40. Accepted professional child welfare standards require that, upon entry into care, the agency must provide a thorough assessment and initial case plan that allows for the appropriate matching of the child with a placement that meets their needs in the least restrictive environment. *Doe v. Haley*, Civil Action No. 8:13-cv-01772-GRA, dkt. no. 154-7 and 156-1 (D.S.C.).

41. Foster care requires a needs assessment and service planning. *Doe v. Haley*, Civil Action No. 8:13-cv-01772-GRA, dkt. no. 154-3 (D.S.C.). Service planning includes assessing for safety and risk of abuse and neglect for children in foster care, ...and the specific services the child needs while in an out-of-home placement. *N.G. v. SCDSS*, Civil Action No. 10-cv-029730-CMC, dkt. no. 102-6.

42. A comprehensive assessment and case plan is completed when the child enters foster care according to the agency assessment and case plan process. *N.G. v. SCDSS*, Civil Action No. 10-cv-029730-CMC, dkt. no. 102-6. The assessment and plan are updated as

circumstances change or every six months. *N.G. v. SCDSS*, Civil Action No. 10-cv-029730-CMC, dkt. no. 102-6.

43. SCDSS has a policy of ongoing case review every month. There is a policy of evaluating a case every six months. *N.G. v. SCDSS*, Civil Action No. 10-cv-029730-CMC, dkt. no. 102-6.

44. Professional standards require an assessment that considers the following:

- The child's needs and strengths from the perspective of the child, family, and the Department;
- The child's previous history of interventions and the outcome of each;
- Any special condition that might influence the choice of placement or the need for more in-depth diagnostic work;
- The permanency plan for the child and family;
- The services required to meet the identified need; and
- Risks posed by the child and risks to the child

Child Welfare League of America Standards of Excellence for Family Foster Care Services 2.14.

45. When developing a concurrent plan for permanency, a DSS social worker is required to consider the following information:

- Assess the core problems that brought the child into foster care;
- ... Explore underlying history of problems and family needs;
- Include information of family's environment, physical health and psychological factors;

N.G. v. SCDSS, Civil Action No. 10-cv-029730-CMC, dkt. no. 102-6.

46. The CWLA defines child well-being as only being achieved when a child's five universal needs are met. These needs include basic provisions such as "primary and preventive health and mental health care" as well as "*Safety*: Protection from harm" and "*Healing*: Easing

the impact of harm.” *Doe v. Haley*, Civil Action No. 8:13-cv-01772-GRA, dkt. no. 154-6 (D.S.C.).

47. The federal government views meeting mental health needs as an essential element of child welfare practice. *Doe v. Haley*, Civil Action No. 8:13-cv-01772-GRA, dkt. no. 157-41 (D.S.C.).

48. According to SCDSS policy, a child’s mental health and behavioral needs should be identified and addressed in both initial and ongoing updates of the child’s assessment and case plan. *Doe v. Haley*, Civil Action No. 8:13-cv-01772-GRA, dkt. no. 154-3 (D.S.C.).

49. SCDSS Policy also dictates that the SCDSS worker must “[m]onitor[] service delivery providers to determine if services are successful in . . . addressing the needs of the child.” *Doe v. Haley*, Civil Action No. 8:13-cv-01772-GRA, dkt. no. 154-3 (D.S.C.).

50. Medicaid defines “therapeutic foster care” as “an intensive treatment program for emotionally disturbed children that incorporates clinical treatment services provided within a supportive foster home setting. The goal of TFC is to enable a child to overcome emotional, behavioral or psychiatric problems in a highly supportive individualized, and flexible residential placement, thereby helping the child to move to a less intensive foster or group care placement, or to return to the natural home...” *N.G. v. SCDSS*, Civil Action No. 10-cv-029730-CMC, dkt. no. 102-9. TFC services are behavioral, psychological, and psychosocial in orientation. *N.G. v. SCDSS*, Civil Action No. 10-cv-029730-CMC, dkt. no. 102-10. Therapeutic foster parents (TFPs) are specially recruited and trained in behavioral management and treatment interventions designed to meet the individual needs of the child. Exhibit 8, p. 2-89. TFC provider agency clinical staff directly supervise and support the TFPs throughout the child’s length of stay. *N.G. v. SCDSS*, Civil Action No. 10-cv-029730-CMC, dkt. no. 102-9.

51. When a child enters treatment foster care a detailed individual treatment plan is required to be initiated, reviewed, and reformulated by the Lead Clinical Staff working for the agency. *N.G. v. SCDSS*, Civil Action No. 10-cv-029730-CMC, dkt. no. 102-9 and 102-5. The individual treatment plan (ITP) is a comprehensive plan of care that is formulated by the Lead Clinical Staff (LCS) based on the individual needs of each child. *N.G. v. SCDSS*, Civil Action No. 10-cv-029730-CMC, dkt. no. 102-9. The treatment plan validates the necessity and appropriateness of services, and outlines the service delivery needed to meet identified needs, reduce problem behaviors, and improve overall functioning. *N.G. v. SCDSS*, Civil Action No. 10-cv-029730-CMC, dkt. no. 102-9. Medicaid requires that the “...treatment plan shall be based upon an assessment of the child’s problems and needs in the areas of emotional, behavioral, and skill development. *N.G. v. SCDSS*, Civil Action No. 10-cv-029730-CMC, dkt. no. 102-9. An ITP is not something that can be cut and pasted from a previous child’s ITP. In fact, it “must be individualized for to the child. *N.G. v. SCDSS*, Civil Action No. 10-cv-029730-CMC, dkt. no. 102-9. A treatment plan must be reviewed at least every ninety days to ensure that services and treatment goals continue to be appropriate to the child’s needs, and to assess the child’s progress. *N.G. v. SCDSS*, Civil Action No. 10-cv-029730-CMC, dkt. no. 102-9. It shall be reformulated every 12 months. *N.G. v. SCDSS*, Civil Action No. 10-cv-029730-CMC, dkt. no. 102-9.

52. According to the 2010 Child and Family Service Review (CFSR) of SCDSS conducted by the Federal Administration for Children and Families (ACF) of the Department of Health and Human Services (HHS), in almost a quarter of the cases reviewed, the frequency and quality of visits by SCDSS caseworkers were “insufficient to ensure adequate monitoring [of] the child’s well-being and promote attainment of case goals.” The federal reviewers also determined SCDSS failed to make “diligent efforts to assess and address the risk of harm to the

child” in more than 40 percent of the cases reviewed. *Doe v. Haley*, Civil Action No. 8:13-cv-01772-GRA, dkt. no. 154-4 (D.S.C.).

53. That Defendants Nikki Haley and Amber Gillum had notice and knowledge of the 2010 CFSR conducted by ACF and its findings.

54. That in its 2010 Annual Progress and Services Report, SCDSS stated that it often failed to monitor the medical needs of children in its custody and that those children often did not receive appropriate follow-up and treatment.

55. That the 2010 federal CFSR of SCDSS conducted by ACF found “a scarcity of key services, such as psychological evaluations and mental health . . . treatment services.” In its 2003 CFSR of SCDSS, ACF found the same problem: “[t]he State had service gaps in key areas (particularly . . . quality mental health services) that affected the achievement of safety and permanency for children.”

56. That Defendants Nikki Haley and Amber Gillum had notice and knowledge of the SCDSS 2010 Annual Progress and Services Report and its findings, and the 2010 and 2003 CFSR reports and findings.

57. That on October 1, 2014 the Legislative Audit Counsel [LAC] of the South Carolina General Assembly issued “A Review of Child Welfare Services at the Department of Social Services.”¹

58. That the South Carolina General Assembly has exempted employees of the South Carolina Department of Social Services from licensure as social workers under the assumption that they would be “specifically trained to perform these services and the employee is not identified in any way as a social worker.” S.C. Code Ann. § 40-63-290(5).

¹ See http://lac.sc.gov/LAC_Reports/2014/Documents/DSS.pdf, last accessed October 9, 2014.

59. That there is no requirement that “DSS caseworkers have college degrees in social work or a behavioral science.”²

60. That “DSS has unclear policies regarding training and certification for caseworkers after they have been hired. The department also has no central records that document whether caseworkers have been trained and certified.”³

61. That SCDSS “takes as long as nine months to hire and train a new child welfare caseworker.”⁴

62. That “[C]aseloads managed by child welfare caseworkers are excessive, reducing the amount of attention that can be given to each child.”⁵

63. That “DSS does not have a systemic process for allocating child welfare staff among its state, regional, and county offices.”⁶

64. That SCDSS “does not have a structured system for minimizing turnover among child welfare workers and county directors.”⁷

65. Other District Courts have ordered that case workers “shall have a bachelor’s degree in social work or a related human services field.” *Dwayne B. v. Rick Snyder*, Civil Action No. 2:06-cv-13548, dkt. no. 148, p. 14 (E.D. Mich. 2008).

² See http://lac.sc.gov/LAC_Reports/2014/Documents/DSS.pdf, pg. 7, last accessed October 9, 2014.

³ See http://lac.sc.gov/LAC_Reports/2014/Documents/DSS.pdf, pg. 7, last accessed October 9, 2014.

⁴ See http://lac.sc.gov/LAC_Reports/2014/Documents/DSS.pdf, pg. 7, last accessed October 9, 2014.

⁵ See http://lac.sc.gov/LAC_Reports/2014/Documents/DSS.pdf, pg. 7, last accessed October 9, 2014.

⁶ See http://lac.sc.gov/LAC_Reports/2014/Documents/DSS.pdf, pg. 7, last accessed October 9, 2014.

⁷ See http://lac.sc.gov/LAC_Reports/2014/Documents/DSS.pdf, pg. 7, last accessed October 9, 2014.

66. The Connecticut Department of Children and Youth Services entered into an agreement to require that the “preferred qualifications for staff are: (a) A Bachelors Degree; and (b) Experience in a human services agency, hospital, or similiary setting.”⁸

67. The LAC made a recommendation that SCDSS “...require that newly-hired child welfare caseworkers have at least:

- A bachelor’s degree in social work; or
- A bachelor’s degree in behavioral science; or
- A bachelor’s degree in another field with a minimum number of years of relevant experience.⁹

68. The LAC found that SCDSS “...does not maintain central records of the training and certification received by caseworkers, nor does it maintain central records of continuing education...” and that “...counties also d[o] not maintain a listing of certified caseworkers.”¹⁰

69. The LAC also found that, “...several county directors stated that DSS did not consistently provide county staff with training before the state office implemented a new policy or program, increasing the likelihood that counties will misunderstand or not adhere to agency requirements.”¹¹

70. The LAC concluded that SCDSS takes an average of “almost nine months to hire and train new caseworkers.”¹²

71. Since 1985, the LAC found that SCDSS did not and continues not to have:

⁸ See *Juan F. v. John G. Rowland*, Civil Action No. H-89-859 (AHN), December 1, 1992 (D. Conn. 1992); http://www.childrensrights.org/wp-content/uploads/2008/06/1991-1-7_ct_consentdecree.pdf, p. 51 and 61.

⁹ See http://lac.sc.gov/LAC_Reports/2014/Documents/DSS.pdf, pg. 13, last accessed October 9, 2014.

¹⁰ See http://lac.sc.gov/LAC_Reports/2014/Documents/DSS.pdf, pg. 14, last accessed October 9, 2014.

¹¹ See http://lac.sc.gov/LAC_Reports/2014/Documents/DSS.pdf, pg. 14, last accessed October 9, 2014.

¹² See http://lac.sc.gov/LAC_Reports/2014/Documents/DSS.pdf, pg. 20, last accessed October 9, 2014.

- Maximun caseload standards for its child welfare caseworkers.
- Formal methodology for calculating caseloads.
- Policy that requires caseloads be approzimately equal from county to county.

72. The LAC learned in its investigation that excessive caseloads reduce “...the ability of caseworkers to investigate and prevent child abuse and neglect.”¹³

73. The LAC reported that 52.7% of SCDSS case workers “had combined caseloads that exceeded the Child Welfare League of America standards; 38.5% of the case workers had caseloads that exceeded the standards by 50% or more, 21.9% of caseworkers had caseloads that exceeded the standards by 100% or more, and 11.3% of caseworkers had caseloads that exceeded the standards by 150% or more.”¹⁴

74. The LAC also reported that 57.8% of the county caseworkers had “combined caseloads that exceeded DSS standards. 38.5% of the caseworkers had caseloads that exceeded the standards by 50% of more, 21.9% of caseworkers had caseloads that exceeded the standards by 100% or more, and 11.3% of caseworkers had caseloads that exceeded the standards by 150% or more.”¹⁵

75. Specifically, LAC found that Richland County social workers exceeded CWLA standards by 54.20% and exceeded SCDSS standards by 54.20%.¹⁶

76. Despite LAC criticism of SCDSS since 1985 regarding personnel management and reallocation of staff, it took rampant media exposure for the brutal death of four-year-old

¹³ See http://lac.sc.gov/LAC_Reports/2014/Documents/DSS.pdf, pg. 21, last accessed October 9, 2014.

¹⁴ See http://lac.sc.gov/LAC_Reports/2014/Documents/DSS.pdf, pg. 23, last accessed October 9, 2014.

¹⁵ See http://lac.sc.gov/LAC_Reports/2014/Documents/DSS.pdf, pg. 23, last accessed October 9, 2014.

¹⁶ See http://lac.sc.gov/LAC_Reports/2014/Documents/DSS.pdf, pg. 25, last accessed October 9, 2014.

Robert Guinard, Jr. before SCDSS “temporarily reallocated 66 staff to Richland County DSS...require[ing] 54 of the workers to dedicate a portion of their workweeks to Richland County, while continuing to perform their regularly, assigned duties.”¹⁷

77. The director of the Abbeville County Department of Social Services, Merry Eve Poole, testified that, “when there is an allegation that a child was sexually abused in care, SCDSS will have a forensic interview done and, based on those recommendations, SCDSS will determine whether further medical care is necessary.” *Doe v. Haley*, Civil Action No. 8:13-cv-01772-GRA, dkt. no. 154-17 (D.S.C.).

V. CLASS ACTION ALLEGATIONS

78. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

79. Plaintiff brings this action as a Class Action under Rules 23(a), 23(b)(1), 23(b)(2), and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of a Class consisting of Plaintiff and all other foster children in the temporary custody and care and permanent custody and care of the South Carolina Department of Social Services who have or should have a DSM-IV diagnosis of Physical Abuse of Child, Sexual Abuse of Child, Neglect of Child or other mental illness. The Class should not be limited to any legal findings of physical abuse, sexual abuse, and/or neglect of a child as this could leave out all members of a class who were placed into SCDSS custody under settlements or under agreements made pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970). The children in the Class are those who are not receiving intensive

¹⁷ See http://lac.sc.gov/LAC_Reports/2014/Documents/DSS.pdf, pg. 27, last accessed October 9, 2014.

mental health treatment or trauma treatment, or therapeutic foster care, or residential treatment despite physician's orders or psychologists', counselors', or therapists' recommendations.

80. Excluded from the Class are foster children with no diagnosis of mental illness, child sexual abuse, child physical abuse, or severe neglect, the Defendants herein, any subsidiary of any of the Defendants, any family members of the Defendants who are in the SCDSS foster care system, and the legal representatives, heirs, successors, or assigns of any such excluded person or entity.

81. The Class is so numerous that joinder of all members is impracticable. There are over 3,000 foster children in South Carolina. The number of children in SCDSS custody who need trauma therapy for child sexual abuse, child physical abuse, or severe neglect, who need therapeutic foster care, and who need residential treatment, in Plaintiff's best estimate, number in the hundreds.

82. Plaintiff's claims are typical of the claims of the other members of the Class as Plaintiffs and all other members were injured in exactly the same way – by the patterns and practices of Defendant Nikki Haley and Defendant Amber Gillum wherein the Defendants refused physicians' orders and psychologists, counselors', and therapists' recommendations for mental health treatment, therapeutic foster care, and residential treatment in order to save money and lower SCDSS's budget and Medicaid's budget.

83. Plaintiff will fairly and adequately represent the interest of the Class.

84. A Class Action is superior to other available methods for the fair and efficient adjudication of this controversy the children in the class have no voice - (1) the children are orphans and wards of SCDSS, (2) the guardian ad litem assigned to these children by the South Carolina Family Court are administered through Defendant Nikki Haley's office and the

guardians have a conflict of interest in raising these issues to protect the children, (3) the children's other protectors, SCDSS social workers, are implementing these unconstitutional patterns and practices on the behalf of Defendants Nikki Haley and Amber Gillum, (4) Plaintiff and the Class are not seeking damages, but the following injunctive relief:

- a. Require that Defendants' social workers who provide services for Plaintiff and the Class are qualified to provide such services to foster children in South Carolina;
- b. Require that Defendants provide trauma therapy to Plaintiff and the Class;
- c. Require that Defendants provide therapeutic foster care and residential treatment to Plaintiff and the Class when prescribed by physicians and recommended by psychologists, therapists, and counselors;
- d. Require that Defendants' social workers who provide services to Plaintiff and the Class understand how to seek and apply for services for foster children who are sexually abused, physically abused, and severely neglected; and
- e. Require that Defendants' social workers who provide services to Plaintiff and the Class provide the same standard of care that is required of all South Carolina social workers pursuant to S.C. Code Ann. § 40-63-5 et seq., S.C. Code of Reg. Ann. § 114 et seq., S.C. Code of Reg. Ann. § 110, the Standards of Excellence for Family Foster Care Services issued by the Child Welfare League of America, the Standards of Excellence for Residential Services, the Standards of Excellence for Health Care Services for Children in Out-of-Home Care by the Child Welfare League of America, and the policies and procedures of SCDSS, Chapters 7 and 8.

85. Although there are many confidentiality provisions that will govern discovery in this matter and this matter will be document intensive, Plaintiff knows of no difficulty that will

be encountered in the management of this litigation that would preclude its maintenance as a Class Action.

86. Common questions of law and fact exist as to all members of the Class and predominate over any questions effecting solely individual members of the Class. Among the questions of law and fact, common to the Class:

- a. Whether Defendants' social workers who provide services for the Class are qualified to provide such services to foster children in South Carolina;
- b. Whether Defendants provide trauma therapy to the Class;
- c. Whether Defendants provide therapeutic foster care and residential treatment to the Class when prescribed by physicians and recommended by psychologists, therapists, and counselors;
- d. Whether Defendants' social workers who provide services to the Class understand how to seek and apply for services for foster children who are sexually abused, physically abused, and severely neglected; and
- e. Whether Defendants' social workers who provide services to the Class provide the same standard of care that is required of all South Carolina social workers pursuant to S.C. Code Ann. § 40-63-5 et seq., S.C. Code of Reg. Ann. § 114 et seq., S.C. Code of Reg. Ann. § 110, the Standards of Excellence for Family Foster Care Services issued by the Child Welfare League of America, the Standards of Excellence for Residential Services, the Standards of Excellence for Health Care Services for Children in Out-of-Home Care by the Child Welfare League of America, and the policies and procedures of SCDSS, Chapters 7 and 8.

VI. FOR A FIRST CAUSE OF ACTION
Injunctive Relief for T.M. and the Class (42 U.S.C. § 1983)

87. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

88. 42 U.S.C. § 1983 states,

“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...”.

89. The Fourteenth Amendment to the United States Constitution guarantees the right of all children in custody to a safe and secure placement.

90. Defendant Nikki Haley and Defendant Amber Gillum are persons acting under color of law proximately causing the deprivation of Plaintiff T.M.’s and the Class’s fundamental rights to a safe and secure foster placement and to basic medical treatment pursuant to 42 U.S.C. § 1983.

91. Under 42 U.S.C. § 1983, persons acting under color of state law are liable for violating constitutional rights.

92. Defendant Nikki Haley and Defendant Amber Gillum, acting in their official capacities under color of South Carolina Law were deliberately indifferent to Plaintiff T.M.’s and the Class’s constitutional rights to a safe and secure foster placement and adequate medical treatment so as to shock the conscience. They had notice of the danger in:

- a. Creating a pattern and practice to limit and exclude Plaintiff T.M.’s and the Class’s mental health treatment in order to save money and lower the budget;

- b. Creating a pattern and practice to limit and exclude Plaintiff T.M.'s and the Class's entry into therapeutic foster care in order to save money and lower the budget;
- c. Creating a pattern and practice to limit and exclude Plaintiff T.M.'s and the Class's entry into residential treatment in order to save money and lower the budget;
- d. Creating a longstanding pattern and practice of hiring unqualified social workers to provide social services to Plaintiff and the Class;
- e. Creating a longstanding pattern and practice of failing to train these unqualified social workers to provide social services to Plaintiff and the Class;
- f. Creating a pattern and practice of ignoring the orders of physicians and recommendations of psychologists, therapists, and counselors that Plaintiff and the Class receive therapy, receive therapeutic foster care, and/or receive residential treatment;
- g. Creating a pattern and practice that Defendants' social workers who provide services to Plaintiff and the Class understand how to seek and apply for services for foster children who are sexually abused, physically abused, and severely neglected; and
- h. Creating a pattern and practice where Defendants' social workers who provide services to Plaintiff and the Class do not provide the same standard of care that is required of all South Carolina social workers pursuant to S.C. Code Ann. § 40-63-5 et seq., S.C. Code of Reg. Ann. § 114 et seq., S.C. Code of Reg. Ann. § 110, the Standards of Excellence for Family Foster Care Services issued by the Child

Welfare League of America, the Standards of Excellence for Residential Services, the Standards of Excellence for Health Care Services for Children in Out-of-Home Care by the Child Welfare League of America, and the policies and procedures of SCDSS, Chapters 7 and 8.

93. Defendant Nikki Haley and Defendant Amber Gillum ignored these dangers notwithstanding their notice of them.

94. Defendant Nikki Haley and Defendant Amber Gillum, acting in their official capacities under color of law were deliberately indifferent to Plaintiff T.M.'s and the Class's constitutional right to a safe and secure foster care placement and basic medical treatment. They had notice and knowledge of the dangers created by their patterns and practice of providing incompetent, unqualified social workers to Plaintiff T.M. and the Class and failing to provide necessary medical treatment and care to Plaintiff T.M. and the Class.

95. Plaintiffs seek injunctive relief requiring Defendants to refrain from the patterns and practices listed above. Plaintiffs seek prospective relief under 42 U.S.C. § 1983 and Amendment XIV of the United States Constitution and ask the Court to order Court Monitoring and award attorneys fees and costs.

VII. FOR A SECOND CAUSE OF ACTION Injunctive Relief for Individual T.M. (42 U.S.C. § 1983)

96. Each assertion set forth in this pleading that is consistent with the following is incorporated herein by reference as if here set forth verbatim.

97. 42 U.S.C. § 1983 states,

“Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected,

any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...”.

98. The Fourteenth Amendment to the United States Constitution guarantees the right of all children in custody to a safe and secure placement.

99. Defendants Nikki Haley and Defendant Amber Gillum are persons acting under color of law proximately causing the deprivation of Plaintiff T.M.’s fundamental rights to a safe and secure foster placement and to basic medical treatment pursuant to 42 U.S.C. § 1983.

100. Under 42 U.S.C. § 1983, persons acting under color of state law are liable for violating constitutional rights.

101. Defendant Nikki Haley and Defendant Amber Gillum, acting in their official capacities under color of South Carolina Law were deliberately indifferent to Plaintiff T.M.’s constitutional rights to a safe and secure foster placement and adequate medical treatment so as to shock the conscience. They had notice of the danger in:

- a. Failing to enroll Plaintiff in Medicaid so that she may receive psychiatric services, psychological services and counseling, basic medical care, and medication; and
- b. Failing to provide essential medical services and therapeutic foster care treatment for Plaintiff T.M.

102. Defendant Nikki Haley and Defendant Amber Gillum ignored these dangers notwithstanding their notice of them.

103. Defendant Nikki Haley and Defendant Amber Gillum, acting in their official capacities under color of law were deliberately indifferent to Plaintiff T.M.’s constitutional right to a safe and secure foster care placement and basic medical treatment. They had notice and knowledge of the dangers created by their patterns and practice of providing incompetent,

unqualified social workers to Plaintiff T.M. and failing to provide necessary medical treatment and care to Plaintiff T.M.

104. Plaintiffs seek injunctive relief requiring Defendants to refrain from the patterns and practices listed above. Plaintiffs seek prospective relief under 42 U.S.C. § 1983 and Amendment XIV of the United States Constitution and ask the Court to order Court Monitoring and award attorneys fees and costs.

WHEREFORE, the Plaintiffs pray for the following:

- A) Certification of the Class;
- B) A bench trial;
- C) Injunctive relief pursuant to 42 U.S.C. § 1983 against Defendants ordering them to:
 - a. Require that Defendants' social workers who provide services for Plaintiff and the Class are qualified to provide such services to foster children in South Carolina;
 - b. Require that Defendants provide trauma therapy to Plaintiff and the Class;
 - c. Require that Defendants who provide therapeutic foster care and residential treatment to Plaintiff and the Class when prescribed by physicians and recommended by psychologists, therapists, and counselors;
 - d. Require that Defendants' social workers who provide services to Plaintiff and the Class understand how to seek and apply for services for foster children who are sexually abused, physically abused, and severely neglected;
 - e. Require that Defendants' social workers who provide services to Plaintiff and the Class provide the same standard of care that is required of all South Carolina social workers pursuant to S.C. Code Ann. § 40-63-5 et seq., S.C.

Code of Reg. Ann. § 114 et seq., S.C. Code of Reg. Ann. § 110, the Standards of Excellence for Family Foster Care Services issued by the Child Welfare League of America, the Standards of Excellence for Residential Services, the Standards of Excellence for Health Care Services for Children in Out-of-Home Care by the Child Welfare League of America, and the policies and procedures of SCDSS, Chapters 7 and 8.

- f. Order Defendants to enroll Plaintiff in Medicaid so that she may receive psychiatric services, psychological services and counseling, basic medical care, and medication; and
- g. Order Defendants to provide essential medical services and therapeutic foster care treatment for Plaintiff T.M.;

D) Court monitoring to ensure compliance;

E) Attorneys fees and costs; and

F) Any other relief the Court may consider to be just and proper.

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ATTORNEYS FOR PLAINTIFFS

Camden, South Carolina
October 9, 2014