

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

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**ZOLA H.; MARK A.; JACKSON, DONALD,  
AND EMILY B.; AMELIA C.; JUSTIN AND  
KATHERINE D.; DIRK, MARY, RACHEL,  
and GREGORY E.; ANDREA, ANNA,  
ERICA, ANTHONY, and THOMAS F.;  
GARY and MICHAEL G.; by their next  
friend, Ann L. McNitt; and  
DAVID and KATHLEEN A.; MARK and  
JEAN B.; FREDRICK and ODETTE C.;  
GREG and LUANN D.; DAVID  
and ANN E.; JAMES and TRACY F.;  
MARIO and ELISA G.; JOHN and  
KIMBERLY H. — named Adoptive  
Parents of the children listed above; and  
JOHN SMITH, ROBERT JONES,  
and LISA ANDERSON, three other  
children of above listed Plaintiff Parents;**

**Plaintiffs,**

**-vs-**

**RICK SNYDER, in his official  
capacity as Governor of the State of Michigan;  
MAURA CORRIGAN, in her official  
capacity as Director of the Michigan  
Department of Human Services (“DHS”);  
DUANE BERGER, in his official capacity as  
Chief Deputy Director of DHS; and  
STEVE YAGER, in his official capacity as  
Acting Director of DHS Children’s Services,  
CATHE HOOVER, in her official capacity as  
Director of Adoption Services,  
BONNIE WATKINS, in her official capacity as  
Supervisor of the Adoption Subsidy Program;  
VERONICA JONES, in her official capacity as  
Adoption Subsidy Program Specialist;  
MARTHA BALLOU, in her official capacity as  
Adoption Subsidy Program Specialist;**

**INGHAM COUNTY DEPARTMENT OF  
HUMAN SERVICES;**

**COMPLAINT AND DEMAND  
FOR JURY TRIAL**

**FILE NO.: \_\_\_\_\_**

**JUDGE**

**CLINTON COUNTY DEPARTMENT OF  
HUMAN SERVICES;**

**JOEL BROWN, in his official capacity as  
Protective Services Worker for Clinton  
County DHS;**

**ANGELA WRIGHT, in her official capacity  
as Supervisor for Clinton County DHS;**

**GENESEE COUNTY DEPARTMENT OF  
HUMAN SERVICES;**

**STACIE BOWENS, individually and in her official  
capacity as Director for Genesee County DHS;**

**TIMOTHY SPENCER, individually and in his  
official capacity as Foster Adoption Worker for  
Genesee County DHS;**

**JENNIFER DILLARD, individually and in her  
official capacity as Foster Adoption Worker for  
Genesee County DHS;**

**MELINDA BAAS, individually and in her official  
capacity as Foster Adoption Worker for  
Genesee County DHS;**

**ELIZABETH DINSHAW, individually and in her  
official capacity as Foster Adoption Worker for  
Genesee County DHS;**

**MELISSA JENNICHES, individually and in her  
official capacity as Protective Services Worker for  
Genesee County DHS;**

**KALILAH MAGEED, individually and in her  
official capacity as Foster Adoption Supervisor for  
Genesee County DHS;**

**TANIA OTERO, individually and in her  
official capacity as Protective Services Worker for  
Genesee County DHS;**

**ERIN DEERING, individually and in her  
official capacity as Foster Adoption Worker for  
Genesee County DHS;**

**ALMA SYKES-EDWARDS, individually and in  
her official capacity as Foster Adoption Worker  
for Genesee County DHS;**

**BARBARA McELMORE, individually and in her  
official capacity as Foster Adoption Worker for  
Genesee County DHS;**

**LINDA KELLER, individually and in her  
official capacity as Foster Adoption Worker for  
Genesee County DHS;**

**NANCY HILL-LEADMON, individually and in**

**her official capacity as Foster Adoption Worker for Genesee County DHS;**

**ENNIS CENTER FOR CHILDREN, INC., as licensed sub-contractor and agent for the Department of Human Services;**

**ROBERT E. ENNIS, individually and in his official capacity as President of ECCI;**

**KRISTIN VARNER, individually and in her official capacity as Supervisor at ECCI;**

**JILL GRIFFIN, individually and in her official capacity as Supervisor at ECCI;**

**FELISHA BEADLE, individually and in her official capacity as Foster Worker at ECCI;**

**DEBBI MARRE, individually and in her official capacity as Foster Worker at ECCI;**

**CATHOLIC SERVICES OF MACOMB, as licensed sub-contractor and agent for the Department of Human Services;**

**THOMAS REED, individually and in his official capacity as President/CEO of CSM;**

**JOANNE ALES, individually and in her official capacity as Supervisor at CSM;**

**ST. CLAIR COUNTY DHS;**

**KAY ANDRZEJAK, individually and in her official capacity as Director at St. Clair County DHS;**

**DEBORAH WALBECQ, individually and in her official capacity as Adoption Worker at St. Clair County DHS;**

**REBECCA FOCKLER, individually and in her official capacity as Adoption Worker at St. Clair County DHS;**

**CHILD AND FAMILY CHARITIES, as licensed sub-contractor and agent for the Department of Human Services;**

**JAMES PAPARELLA, individually and in his official capacity as Executive Director at CFS-CA;**

**KRISTIN GODBY, individually and in her official capacity as Child Welfare Supervisor at CFS-CA;**

**OAKLAND FAMILY SERVICES, as  
licensed sub-contractor and agent for the  
Department of Human Services;  
MICHAEL S. EARL, individually and in  
his official capacity as President/CEO of  
OFS;  
NAOMI SCHWARTZ, individually and in  
her official capacity as Adoption Supervisor  
at OFS;  
LISA WESTPHAL, individually and in  
her official capacity as Foster Worker  
at OFS;  
RACHEL LUBETSKY, individually and in  
her official capacity as Foster Worker  
at OFS;  
LATRICE NEAL, individually and in  
her official capacity as Foster Worker  
at OFS;  
KUMARI REYNOLDS, individually and in  
her official capacity as Foster Worker  
at OFS;**

**Defendants.**

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**KALLMAN LEGAL GROUP, PLLC  
David A. Kallman (P34200)  
Attorneys for Plaintiffs  
5600 W. Mount Hope Hwy  
Lansing, MI 48917  
(517) 322-3207/Fax: (517) 322-3208**

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**INTRODUCTION**

1. This is a civil rights, 42 U.S.C. §1983, Title IV-E, and other Federal and State rights action against Rick Snyder, Governor of the State of Michigan; Maura Corrigan, Director of the Michigan Department of Human Services (“Department”; “DHS”); Duane Berger, Chief Deputy Director of DHS; Steve Yager, Acting Director of DHS Children’s Services, their employees and agents; Cathe Hoover, Director of Adoption Services; Bonnie Watkins, Supervisor of the Adoption Subsidy Program; Veronica Jones, Adoption Subsidy Program Specialist; Martha Ballou, Adoption Subsidy Program Specialist; Clinton County Department of Humans Services and its employees; Genesee County

Department of Human Services and its employees; Ennis Center for Children, Inc. and its employees; Catholic Services of Macomb and its employees; St. Clair County Department of Human Services and its employees; Child and Family Charities and its employees; and Oakland Family Services and its employees, by nineteen (19) children in eight (8) families, their adoptive parents, and three other children in two of the families. Plaintiff children, their parents, and the three other children (whom are now young adults) seek financial and injunctive relief to remedy violations of their legal and civil rights and to prevent Defendants, by their actions and inactions, from further harming these children and their families as described herein.

2. The Defendant's actions toward the named Plaintiffs have been and continue to violate named Plaintiffs' civil and other rights, Federal law and regulations, and State law and DHS policies, including its own *Mission Statement*--"Through community leadership, [DHS] helps to improve the Quality of Life in Michigan by protecting children and vulnerable adults, delivering juvenile justice services, and providing support to strengthen families and individuals striving for independence."
3. With approximately 21,000 children in foster care custody, Michigan has the seventh largest foster care population in the nation. As the legal foster care custodians for seventeen (17) of the nineteen (19) children in this case, Defendants were required by the U.S. Constitution, Federal law and regulations, and State law and policy to protect their safety and well-being. Defendants failed to meet these obligations and have knowingly and negligently caused Plaintiffs' adopted children to endure profound and permanent physical, psychological, emotional, and financial harm as a result.
4. Defendants were the legal representatives acting *in loco parentis* for the seventeen orphaned foster children, and the agent by which the children had the opportunity to find appropriate adoptive homes. Defendants were required by the U.S. Constitution, Federal regulations, State law, and Department policy to identify, train, and otherwise properly equip sub-contracting agencies, its employees, and prospective foster and adoptive parents.
5. Defendants were required to place the seventeen children into homes which were appropriately prepared to handle their multiple severely handicapping conditions. Defendants failed to meet these obligations, placed the children into inappropriate

adoptive homes, and knowingly and negligently caused all seventeen of the former Michigan foster Plaintiff children, their adoptive parents, and the three other Plaintiff Children to endure profound and permanent physical, psychological, emotional, and financial harm as a result.

6. In addition, the State of Michigan is required to comply with Federal regulations regarding provision of Federal services and “authorized entitlement” funds to children adopted from other States by Michigan-resident parents. Defendants failed to meet those obligations and have knowingly and negligently deprived two severely handicapped children—adopted from the State of Louisiana—of said funds and services, thereby subjecting them and their adoptive parents to severe financial and emotional harm.
7. In addition, Plaintiffs properly depended on the Department for complete, honest, and ethical provision of funds and services to which Plaintiffs adopted Children and their adoptive Parents were entitled—before, during, and after the processes of foster care and adoption. Instead of providing these funds and services, Defendants’ employees and agents at both the State and county levels grossly and repeatedly engaged in a variety of conspiracies to violate the due process, civil, and other rights of members of these Plaintiff families, and actually violated the due process, civil, and other rights of Plaintiffs as more fully explained herein.
8. Each of the nineteen Plaintiff adoptive Children properly relied upon Defendants for some degree of child welfare placement services, entitled Federal/State funds, and permanency, and has been severely harmed by the systemic and legal deficiencies which have been known for years to exist within Michigan’s child welfare system.
9. As residents of the State of Michigan—and “customers” of the Department—all nineteen children, their parents, and three other children in two of the families had the right to respectful, truthful, supportive, and safe treatment by the workers and agents of the Department. Defendants failed to meet these obligations and have knowingly and negligently caused Plaintiff parents and their families to endure profound and permanent physical, psychological, emotional, and financial harm.
10. Directly and only because of Defendants’ actions, the Plaintiffs—nineteen children, their adoptive parents, other non-adopted family members, and the actual “family units” --

continue to be severely harmed by the systemic and legal deficiencies which still exist within Michigan's child welfare system.

### **JURISDICTION AND VENUE**

11. This action is brought pursuant to 42 U.S.C. 1983, Title IV-E, Medicaid, and other Federal and State laws and regulations, to redress violations of the United States Constitution and federal statutes and State law. This court has jurisdiction pursuant to 28.U.S.C. §1331 and 28.U.S.C. §1343 (a)(1), (2), (3), and (4).
12. Venue is proper here pursuant to 28 U.S.C. §1391(b).

### **PARTIES<sup>1</sup>**

(Named Plaintiffs)

13. **Mark A., by his next friend, Ann L. McNitt**
  - a. Mark A., born on 04/25/93, entered Michigan DHS foster care at age nine weeks, supervised by the DHS-sub-contracting agency Child and Family Services—Capital Area (“CFS-CA”) after his birth mother passed out in a bar with the infant in a stroller at her side. His adoption was finalized on 02/07/1996.
  - b. Mark is African-American-Hispanic/Caucasian.
  - c. Mr. and Mrs. A. are Caucasian.
  - d. Mark's birth mother was documented by adoption agency workers with drug addiction, on-going untreated substance abuse problems, end-stage alcoholism, and platelet problems.
  - e. Mark was an alcoholic and drug addict at birth; alcohol withdrawal in infants takes up to 18 months, and—as in adults—can require medical treatment.
  - f. After entering foster care, he was untreated for either alcohol or drug withdrawal.

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<sup>1</sup> In accordance with Administrative Order No. 07-AO-030, the identities of the minor Plaintiffs' names have been protected. Because some of the named minor Plaintiffs share common initials, pseudonyms have been used to avoid confusion.

In addition, the identities of three Plaintiffs—young adults who were children in their respective families before the other 19 children were adopted into their respective families—have been placed into pseudonyms, to avoid identification of them and the 19 minor named adopted Plaintiffs by association.

In addition—because of the serious nature of the allegations—Initials have been substituted for the surnames of Plaintiff Adoptive Parents, in order to prevent identification of named Plaintiff Adopted Children.

- g. Mr. and Mrs. A. documented that they were willing to accept a child with no or minor handicaps.
- h. After completing their adoption application, they were told they would not wait long to adopt another child.
- i. CFS-CA lost their file and they waited almost 5 years to adopt Mark.
- j. Mark's first foster mother neglected him during the one year that he was with her.
- k. Both Mark and his later-born brother –placed into the same foster home—showed signs of having been severely neglected in foster care.
- l. After a year, Mark had symptoms of Reactive Attachment Disorder of Infancy, (RAD) a severe mental illness common in neglected and abused children.
- m. RAD can begin in and be diagnosed during early infancy; appropriate treatment can begin in infancy.
- n. Mark also had symptoms of Fetal Alcohol Syndrome (FAS). The more long-term and intense the alcohol exposure, the more severe is the FAS. It is the most common cause of mental impairment in infants.
- o. Infants with either RAD or FAS are severely impaired; those with both are profoundly handicapped, needing specially-trained therapeutic parents. Instead, Mark was placed into standard foster care.
- p. Mark was placed with Mr. and Mrs. A. at age 14 months. His birth-parents' rights were terminated one month later. His adoption was finalized nearly 3 years after foster placement.
- q. Mark was identified to M. and Mrs. A. as a healthy Hispanic child; he is actually a light-skinned African-American-Hispanic/Caucasian.
- r. Severely handicapped African-American boys are extremely difficult to place into adoptive homes with full disclosure of their race and handicaps. The adoption agency passed him as Hispanic and did not disclose his symptoms of RAD and FAS—despite extensive documentation of heavy prenatal alcohol/drug exposure.
- s. While in foster care with Mr. and Mrs. A. before his adoption, Mark's younger brother ("Gregory E." in this case) was born and placed immediately into the same foster home with Mark. The agency workers wanted to place both boys with Mr. and Mrs. A. They refused to adopt Gregory E.



- t. After Mark was placed with Mr. and Mrs. A., they noticed odd behaviors in him. He had 19 of 27 infant symptoms of RAD and multiple indicators of alcohol withdrawal. The foster/adoption worker dismissed the parent's concerns.
- u. The same worker later testified that she could recognize RAD at the time and placed children known to her to have RAD into another family-- without treatment or psychological assessments, with knowledge that those children would become more severely mentally ill, and without disclosure of their mental illness to the adoptive parents. The other placement worker later testified that she could recognize RAD, and could discern FAS in infants at the time.
- v. The foster worker falsely told Mr. and Mrs. A., "The birth-mother told us she did NOT drink during the pregnancy," while documenting the birth-mother's chronic "end-stage" alcohol abuse.
- w. DHS workers did not disclose the risks that documented long-term alcoholism in the mother presented to Mark, and did not tell Mr. and Mrs. A. that they knew that she had been drinking alcohol during her pregnancy.
- x. Mark's younger brother—born while Mark was in foster care—also had multiple indicators of severe FAS and symptoms of alcohol withdrawal.
- y. The only risks presented to Mr. and Mrs. A. were that Mark "might" develop symptoms of bi-polar disorder (from his birth-mother) or schizophrenia (from his birth-father), "but no sooner than late adolescence or earlier adulthood."
- z. Private non-profit agencies are heavily financially penalized by DHS for "slow" adoptive placements. Workers knew he might remain in foster care for years if he was properly identified as a profoundly handicapped bi-racial child.
- aa. Workers conspired to misrepresent Mark's ethnicity, condition, and family history so as to get him out of their supervision more quickly.
- bb. Both workers carried out repeated acts of fraud in Mark's placement by failing to disclose legally-mandated information before the placement by providing no documents disclosing his horrific family history until after they had developed a relationship with him.

- cc. During almost three years under Defendants’ supervision, DHS avoided creating a “paper trail” of his handicaps by failing to obtain appropriate mental health services, “early-on” special-education services, and SSI funding.
- dd. In their adoption application, Mr. and Mrs. A. documented their desire to adopt a child with “no or minor” impairments, then signed and dated it. In home study documents, CFS—CA workers document this, then signed and dated it. The combination of the two documents created a contract which was breached by Mark’s placement.
- ee. Before the adoption finalization, Mr. and Mrs. A. asked the adoption worker about financial assistance for the adoption. She told them, “You earn too much”—a *means test* which is illegal under Title IV-E. She failed to disclose that Mark met eligibility requirements for Title IV-E adoption assistance as either an ethnic minority child or a handicapped child. He separately met Title IV-E eligibility requirements as a special needs child because he was *hard-to-place* — several other families were asked to adopt him and turned him down.
- ff. After asking about “financial assistance” (i.e. Title IV-E adoption assistance), the worker should have simply handed them an application form. Her verbal denial without written notification of the right to a hearing was a *due process* violation. Title IV-E rights were never disclosed to them.
- gg. Since Mark’s adoption, his multiple handicaps have strongly impacted his family. He has destroyed extensive property, He was transferred into special education for emotionally impaired children at age 6 after inappropriately masturbating in school; this has continued throughout high school. Public masturbation and chronic bed-wetting are frequent behaviors of children who were molested in infancy.
- hh. Mark was formally diagnosed with RAD in 2002—eight years after his adoptive placement.
- ii. After several of his impairments were diagnosed, Mr. and Mrs. A. requested DHS’ Adoption Medical Subsidy funds for him. Although he was provided with a contract, Mr. and Mrs. A. were unable to obtain funds for “durable medical equipment” for him—a breach of contract.

- jj. To meet his needs, his parents became appropriate “therapeutic parents”; traditional parenting for children with RAD makes them more severely mentally ill.
- kk. The family has been and continues to be terribly injured both emotionally and financially by Mark’s adoption. Their other children went through severe emotional trauma from living with a severely mentally ill sibling.
- ll. DHS failed to provide a copy of the certified “Order of Adoption” to Mr. and Mrs. A.
- mm. In 2009, Mr. and Mrs. A. learned of Mark’s Title IV-E rights. They twice wrote to DHS by certified mail, requesting Title IV-E adoption assistance and an administrative hearing for their son. DHS ignored both requests.
- nn. Within weeks after the federal government was notified, Mr. and Mrs. A. received a hearing notice which stated that Mark was ineligible for Title IV-E adoption assistance, although his biological brother--placed under identical circumstances—was ruled Title IV-E eligible by the DHS Director three years earlier.
- oo. In a pre-hearing conference, Mr. and Mrs. A.’s attorney pointed out that Mark’s biological brother had been previously ruled Title IV-E eligible by the Department; the DHS’ Adoption Subsidy Program manager responded that Mark was ineligible because DHS had no record of the birth-mother’s income at the time of his foster care placement. (A fraudulent statement--U.S. DHHS ended this requirement long before this meeting.) It was pointed out that Mark’s foster care records documented that the birth mother received “SSI”, and another that she received “Social Security Disability.”
- pp. Title IV-E requires hearings for post-adoption requests for adoption assistance and Medicaid.
- qq. A hearing was scheduled for 02/09/2011. The ALJ told DHS workers that he had to apply the decision for Mark’s brother’s case to Mark’s case, as the circumstances were identical. After that hearing session ended, the Director of Administrative Hearings removed the assigned ALJ from the case, and assigned

- herself to it. (She was the ALJ whom had originally ruled that Gregory was ineligible for Title IV-E; her decision was overturned by the DHS Director.)
- rr. Before the next hearing session, the Department's and the family's attorneys agreed that Mark was Title IV-E eligible. The new ALJ refused to accept the settlement, and ordered that the hearing be held. The Department's counsel appeared and explained that a settlement was reached; the ALJ demanded a full hearing anyway. In the next hearing session, both attorneys explained again that a settlement was reached; the ALJ finally agreed.
- ss. In violation of DHS policy, DHS workers failed to meet with Mr. and Mrs. A. within 30 days to negotiate Mark's adoption assistance rate.
- tt. Blank adoption rate setting forms were finally received by Mr. and Mrs. A. in December 2011, filled out, and returned to DHS. Despite medical records proving his severe handicaps dating from birth, DHS refused to provide--on a contract for their signature—any amount more than the foster care rate actually paid for him, in violation of Title IV-E regulations.
- uu. DHS has since failed to enter into adoption assistance rate negotiations.
- vv. After their successful hearing, Mr. and Mrs. A. wrote to DHS requesting *DHS-333* and *DHS-334* forms, to obtain reimbursement for out-of-pocket Medicaid-eligible expenses paid since Mark's adoptive placement—a right under Federal regulations.
- ww. DHS' Adoption Subsidy Program manager sent forms with the wrong *corrective action period*. DHS ignored their written request to correct the documents, with identical illegal actions toward Gregory's family.
- xx. Mark is nineteen years old and profoundly multiply handicapped. In addition to RAD and FAS, he has been diagnosed with Autism; Cognitive Impairment (with an IQ of 41); Obsessive-Compulsive Disorder (OCD); Attention Deficit/Hyperactivity Disorder (AD/HD); and Sensory Integration Impairment. He has exhibited behaviors consistent with severe emotional disturbance and brain injury since his placement. His parents became his legal guardians shortly after his 18<sup>th</sup> birthday. He was registered for SSI immediately after his 18<sup>th</sup> birthday, because of his multiple severe handicaps. Eighteen years have passed

since his parents requested “financial assistance” to which he was entitled. He still has no Title IV-E adoption assistance.

- yy. Because of his multiple profound handicaps, Mark was wrongfully placed into his adoptive family.
- zz. Mark is entitled to receive an adoption assistance rate of up to \$98.26 per day at placement.
- aaa. Workers did not disclose the right to disrupt Mark’s placement. Mr. and Mrs. A. were led to believe that because they accepted him into their home for foster care –with planned adoption— the placement was permanent and final from that date. There is no documentation of disclosure to Mr. and Mrs. A. of the right to disrupt.
- bbb. Mr. and Mrs. A. would not have adopted Mark if there had been full disclosure of his history and medical conditions.

14. **General Allegations for Jackson, Donald, and Emily B. in paragraphs 15, 16, and 17, by their next friend Ann L. McNitt**

- a. Jackson was born on 07/18/03. Donald was born on 06/20/05. They entered DHS foster care together due to repeated profound abuse. Their sister Emily was born on 02/22/07 and placed into foster care at birth. Petitions for adoption were signed on 11/15/07; the adoptions were finalized less than one month later, on 12/14/07.
- b. The children and their adoptive parents are all Caucasian.
- c. Mr. and Mrs. B’s home study stated that they are comfortable caring for children with mild to moderate needs.
- d. The children’s birth-mother had Munchhausen’s Syndrome by Proxy.
- e. While in their birth home, the boys’ mother subjected them to dozens of unnecessary and torturous emergency hospitalizations for fictitious illnesses. They endured hundreds of invasive medical procedures, and became profoundly emotionally disturbed as a result.
- f. Since one month after Jackson’s birth in July, 2003, and after Donald’s birth in 2005, DHS received numerous protective services complaints. DHS was negligent and failed to remove the children for nearly three years until March, 2006. Jackson and Donald were severely and irreparably harmed as a result.

- g. The two boys were then placed into foster care for a year with the mother of the children's DHS adoption placement worker. The foster worker never disclosed that the children were in her own mother's home specifically because they were identified as special needs children.
- h. Later DHS documentation given to Mr. and Mrs. B. falsely stated that the placement was disrupted due to the relative caregiver's "personal circumstances."
- i. The birth-mother's cousin wanted to adopt only the yet-unborn infant, but DHS placed both boys into her home. This "relative placement" was dangerous. The boys became more severely traumatized. All three of the children stayed with the cousin for 2 months. While there, they were emotionally neglected, and the house was filthy. Donald was discovered eating cat and dog food, and cat excrement.
- j. In May 2007, Mr. and Mrs. B.'s picked up the three children, and they were paid to provide foster care. Mr. and Mrs. B. received NO records for the children before the placements. When placed into foster care with Mr. and Mrs. B., Jackson was almost age 4, Donald was almost age 2, and Emily was age 3 months.
- k. At the time of the placement, the foster worker falsely told Mr. and Mrs. B. that the birth mother did not drink alcohol at all. The same worker recorded that the birth mother was ordered into drug/alcohol rehabilitation and random drug/alcohol screening by the Probate Court Judge who removed the children from the parents. No disclosure of the birth parents' drug/alcohol addictions was ever made to Mr. and Mrs. B.
- l. Jackson and Donald have profound facial features of FAS, and have multiple impairments in cognitive and emotional functioning. Their neurologists have acknowledged likely FAS.
- m. To avoid documenting the children's' impairments, DHS workers failed to request SSI for these children with grossly obvious profound handicaps.
- n. DHS workers falsely documented that the children had mild or no emotional problems, then placed them with Mr. and Mrs. B. Three or four months before finalization, the adoption worker told them that the children could have RAD. The worker only stated that this meant they would have to hold their hands when they

cross the street. RAD is a severe mental illness. RAD specifically means that a child is not attached to his/her parents—but the worker falsely documented that the children were developing a bond with their adoptive parents.

- o. Workers provided very limited documents on the children--only 1-2 months before adoption finalization.
- p. The adoption finalizations were prematurely finalized by the adoption worker who coerced the parents into signing court documents.
- q. After the placements, Jackson required extensive dental care, and frequently requested unnecessary medical care.
- r. Jackson and Donald were documented with multiple symptoms of RAD.
- s. Emily was documented with symptoms of alcohol withdrawal, but received no treatment.
- t. The children's Title IV-E adoption assistance contracts were illegally completed when Mr. and Mrs. B. had not yet been legally converted to adoptive parents, as required by Federal Law.
- u. On the adoption assistance contracts, the hand-written rate on the contract form was not filled in by the adoptive parents--as per DHS policy.
- v. The children received DHS' lowest basic foster care rate—the one for healthy normal children. Before finalization, Mr. and Mrs. B. stated their concerns that later adoption assistance rates for the children —identical to the foster care rates-- would be inadequate, and requested Title IV-E foster care rate increases.
- w. The worker told them they would have to ask for rate increases after the adoption was finalized. When they made the same request after finalization, she refused, telling them they had to ask for that before finalization and now they would have to take DHS to court to get the rates changed. DHS does not allow re-negotiation of adoption assistance rates after finalization—a violation of Federal regulations.
- x. The children are much more severely mentally ill because DHS workers failed to promptly obtain legally mandated psychological evaluations and available effective mental health treatment.
- y. After the children were diagnosed as being severely mentally ill, Mr. and Mrs. B. obtained training to become therapeutic parents, at a cost to them of \$5,000.00.

- z. In 2009, DHS ignored two requests for administrative hearings and increases in the children's Title IV-E adoption assistance rates.
- aa. A hearing was held in late 2010. In the ALJ's *Recommended Decision*, she recognized the Department's actions in the processes of the adoptions as repeated violations of Federal regulations, State law, and Department policy. She ordered new Title IV-E adoption assistance contracts be issued for the children within 60 days.
- bb. DHS ignored the *Recommended Decision*, and failed to issue a *Final Decision and Order*.
- cc. In March, 2011, the Adoption Subsidy Manager wrote an *ex parte* letter to the State Office of Administrative Hearings and Rules (SOAHR), contesting the *Recommended Decision*.
- dd. DHS has continued to ignore the *Recommended Decision*, and still has not issued a *Final Decision and Order*.
- ee. DHS met with Mr. and Mrs. B. in late 2011—nearly a year after the ALJ's *Recommended Decision* was issued. DHS Adoption Subsidy Program directors promised to assist the parents in obtaining higher adoption assistance rates for the three children.
- ff. DHS provided standard *Determination of Care* (DOC) forms for mildly to moderately handicapped children-- not the medically fragile form for severely handicapped children. Using the standard DOC form, it is nearly impossible to obtain a DOC rate above \$15.00 per day. The form for medically fragile children was appropriate as they are unable to live independently.
- gg. Because DHS refused to provide the correct form, another adoptive parent provided the correct medically fragile form to Mr. and Mrs. B. They completed it and mailed it to DHS.
- hh. DHS workers also represented to Mr. and Mrs. B. that they would help them complete the documentation to place the two boys into a residential treatment center in New Mexico--if no appropriate placement in Michigan could be found.
- ii. Subsequently a Lansing DHS worker repeatedly attempted to get the two boys into inappropriate placements in Michigan. They were only 6 and 8 years old; the



four Michigan placements presented are expressly for children age 11 and older, with no treatment model appropriate for children with RAD. Mr. and Mrs. B. staunchly refused such placements.

- jj. To get possible approval for a placement at an appropriate residential treatment center in New Mexico, the family had to allow two DHS-hired psychologists into their home for seventeen hours over two days—an invasive act which is not a DHS requirement for approval of out-of-home placements.
  - kk. Mr. and Mrs. B. continued for years to pay \$2,500.00 per month for Jackson’s placement.
  - ll. The therapeutic guardian caring for Jackson was so exhausted by his care that he had to be moved. Mr. and Mrs. B. still had Donald at home, causing Emily and her parents further emotional trauma.
  - mm. While the boys were in the care of a guardian, DHS illegally attempted to end payment of their Title IV-E adoption assistance funds. Their lawyer threatened to sue DHS, and the threat ended.
  - nn. Since the placements, Mr. and Mrs. B. have had no semblance of normal life. They have discussed dissolution of the boys’ adoptions.
  - oo. Mr. and Mrs. B. would not have adopted any of the children had there been full disclosure of the children’s profound problems.
  - pp. DHS workers led Mr. and Mrs. B. to believe that simply placing the children into their home for foster care and eventual adoption meant that there was no way to disrupt the placements. Workers did not disclose at any time that they could disrupt an inappropriate placement.
15. **Jackson B., by his next friend, Ann L. McNitt**
- a. Jackson B. has a variety of cognitive and disabilities, including Reactive Attachment Disorder (RAD); Oppositional Defiant Disorder (ODD); Attention-Deficit Defiant Disorder (AD/HD), and likely Fetal Alcohol Syndrome.
  - b. He entered foster care with bite marks on his back and burns on his shin. He later admitted to his adoptive parents that his birth-father burned his leg to make him stop crying. He shows signs of having been sexually abused as an infant. As the oldest child of the birth mother with severe Munchausen’s Syndrome by Proxy,

he endured the worst of the medically-inflicted chronic abuse, and for the longest time.

- c. Approximately 2½ years after his adoption was finalized, he had the first of several long-term placements into a therapeutic foster/guardianship home, at an out-of-pocket cost of \$2,500.00 per month to his parents. He stayed there for five months. Since then, he has been in therapeutic placement for about half of the time since his adoption was finalized. His most recent placement before he entered the Grand Rapids facility lasted for an entire year.
- d. Jackson is paranoid when stressed; destroys property; steals and hoards food; has inappropriate sexual behavior; cannot control his extreme anger; has no conscience or remorse; makes false allegations; is destructive to property; uses people to get what he wants; has no understanding of cause and effect; and has poor impulse control. His emotions are inappropriate to given situations, and he must be “in control” of others at all times. He is unable to give regard to appropriate authority or appropriate rules.
- e. Jackson’s psychiatrist advised placement into Villa Santa Maria, a residential treatment center in New Mexico for severely emotionally disturbed children with RAD. This placement costs \$10,000.00 per month. He is so profoundly mentally ill that his psychiatrist recommended that he be institutionalized for the remainder of his life.
- f. Jackson was wrongfully placed into his adoptive family.
- g. Jackson is entitled to receive an adoption assistance rate of \$94.83 per day.

16. **Donald B., by his next friend, Ann L. McNitt**

- a. Donald has been diagnosed with severe RAD; probable bi-polar disorder, probable ODD; and likely Fetal Alcohol Syndrome. He has no conscience or remorse; is unable to handle his extreme emotions; uses people to get what he wants; has no understanding of cause and effect thinking; destroys property during multiple rages lasting for hours per day; and chronically lies. He frequently soils himself during school and at home. He has spent months at a time in out-of-home therapeutic placements at a cost to his parents of \$2,500.00 per month. He

has been prescribed a variety of psychiatric medications since his adoption was finalized.

- b. Donald has also been recommended for placement at Villa Santa Maria in New Mexico. His psychiatrist believes that he might not have to be institutionalized for the rest of his life, although he will always need heavily supervised care.
- c. Donald was wrongfully placed with Mr. and Mrs. B.
- d. Donald is entitled to receive an adoption assistance rate of \$94.83 per day.

17. **Emily B., by her next friend, Ann L. McNitt**

- a. Emily is five years old and has been diagnosed with Post-Traumatic Stress Disorder. She was placed with multiple symptoms of severe RAD and FAS. After her placement, Emily exhibited multiple symptoms of alcohol withdrawal and RAD. She was catatonic for long periods, not moving even when her parents shouted directly at her from inches away. She had poor eye contact, hated to be held, held her breath until she literally passed out, screamed for very long periods, and could not be consoled when crying. As she grew older, she threw items at her parents. Emily required substantial therapeutic parenting after her placement. As a result of therapeutic parenting and weekly therapy—which will be necessary until she reaches adulthood—Emily has become much healthier, although she exhibits significant emotional issues and behaviors after visiting with her siblings.
- b. Emily was wrongfully placed for adoption with her siblings with Mr. and Mrs. B.
- c. Emily is entitled to receive an adoption assistance rate of \$89.83 per day.

18. **Amelia C. by her next friend, Ann L. McNitt**

- a. Amelia was born at home on 02/12/07.
- b. She was placed by DHS of Genesee County (DHS-GC) into foster care as a newborn, then placed with Mr. and Mrs. C. at age 4 months, as a short-term emergency foster care placement. They had no plans to adopt her.
- c. Mr. C. is African-American/Native American. Mrs. C. is African-American. Amelia is African-American.
- d. DHS documented Amelia's prenatal alcohol exposure shortly after she entered foster care. She also had syphilis, prenatal exposure to THC (marijuana) and cocaine, and multiple symptoms of RAD and FAS.

- e. Amelia was soon diagnosed with recurrent Methicillin-Resistant Staph Aureus (MRSA)--a severe recurring skin infection which is difficult to treat--and obstructive sleep apnea.
- f. DHS did not disclose the ramifications of MRSA, including the risk to their family and others, protective actions required for dressing changes, and increased hygiene measures. The need for sterile dressing changes requires higher DOC foster care rates for children; she did not receive a higher rate.
- g. Although Amelia was born with syphilis, DHS refused to have her checked for other sexually transmitted diseases when requested by Mr. and Mrs. C.
- h. Mr. and Mrs. C. received minimal disclosure of Amelia's history or condition. DHS workers represented her as non-alcohol-exposed. DHS ignored obvious multiple symptoms of FAS and alcohol withdrawal in Amelia, and ignored documentation of prenatal alcohol exposure which occurred no less than 10 times before the adoption finalization. She was formally diagnosed with FAS twice before her adoption was finalized. DHS workers failed to obtain assessment or treatment for alcohol and/or drug withdrawal. DHS refused to register Amelia for SSI while she was in foster care, to prevent documenting her as severely handicapped.
- i. After Amelia's placement, Mr. and Mrs. C. noticed her constant bizarre behaviors. They expressed their concerns frequently to DHS workers, who observed Amelia careening around the home and even running into walls. Mr. and Mrs. C. stated their concerns; one worker angrily told them that there was nothing wrong with this child.
- j. After a year Mr. and Ms. C. again stated their refusal to adopt Amelia.
- k. The birth-parents' rights were terminated on 7/12/07.
- l. Six months after termination of parental rights—if an adoptive home has not been identified—the child's foster care worker must then place information about the child on the *Michigan Adoption Resource Exchange* (MARE) listing, so that other agencies and workers can be aware of the child's availability for adoption. Children on the MARE listing are viewed as "difficult to place".

- m. DHS had until 01/12/08 to identify an adoptive home for Amelia before she had to be placed on MARE.
- n. In a letter dated 02/07/08—a month late—a DHS worker gave Mr. and Mrs. C. four days to decide to adopt Amelia, representing that other people wanted to adopt her. Mr. and Mrs. C. agreed to adopt. Unaware that Amelia had already been twice-diagnosed with FAS, Mr. and Mrs. C. requested a FAS evaluation.
- o. Mr. and Mrs. C. were previously foster parents for other children and knew that DHS pays varying rates of foster care and adoption assistance funds. They requested Title IV-E adoption assistance, with a DOC rate for Amelia. (She then had a “level I” DOC foster care rate—\$5.00 extra per day, for children with very minor impairments.) The foster worker telephoned them and threatened an investigation for the past twenty years.
- p. After several requests, a worker gave Mr. and Mrs. C. a partial DOC form, representing that the pages were the entire set needed to request DOC rates. Mr. and Mrs. C. were unaware that several pages were missing. Workers did not complete the DOC forms with Mr. and Mrs. C., as required by DHS policy. This prevented them from fully documenting Amelia’s various needs. They never received a signed/dated copy. DHS workers represented that they were completing the partial DOC forms, but they were not processed.
- q. Mr. and Mrs. C. did not know that DHS workers were required to complete a DOC form with them every six months while Amelia was in foster care.
- r. On 9/12/08, a DHS worker in Lansing wrote to the foster worker at DHS-GC to inform her that adoption assistance was denied, although both workers knew that Amelia met all Title IV-E adoption assistance eligibility requirements on bases of either race or handicap. The reason for the denial was unspecified and the letter was unsigned.
- s. The Lansing DHS worker instructed the foster care worker to have Mr. and Mrs. C. sign the denial notice, and to return it within two weeks in order to set a hearing date. (Neither the Administrative Procedures Act, Title IV-E, nor DHS policy recognizes such a time limit.)
- t. The letter arrived in the DHS-GC mailroom 4 days after it was dated.

- u. The DHS-GC foster worker then waited 3 weeks to get the signatures, returning the forms to DHS after the two-week deadline.
- v. A DHS State worker later cited Mr. and Mrs. C.'s failure to return another document "in time", as a reason to deny Title IV-E. They never saw that document. They asked him to mail a copy to them, but never received it.
- w. On 02/10/2009, Mr. and Mrs. C. paid \$200.00 to the foster worker for adoption costs.
- x. After she left, they decided to postpone the adoption until the issues of Amelia's problems and her adoption assistance rate had been resolved.
- y. On 02/11/2009, Mr. and Mrs. C. went to the DHS-GC office, signing their names to the building's visitor register upon arrival. No adoption worker or supervisor would talk with them, and they were told there would be a two-week wait to talk with a supervisor. Mr. C. asked for a sheet of paper and hand-wrote a request to postpone the adoption, and gave it to the receptionist, who made four copies at his request. Mr. C. then wrote the names of specific DHS workers on them. He kept one copy for himself. A DHS worker escorted them from the 6<sup>th</sup> floor meeting room to the lobby. After this date, there was no further communication about Amelia's adoption between them and DHS-GC workers. Mr. and Mrs. C. assumed that DHS-GC workers were complying with their documented desire to postpone the adoption.
- z. Mr. and Mrs. C. called the foster worker a month after postponing the adoption, regarding an appropriate DOC rate for Amelia; the worker did not respond.
- aa. In response to queries about the 02/11/2009 letter requesting the postponement of the adoption, DHS-GC workers have stated that nobody remembers getting such a letter or reading it.
- bb. Five weeks after requesting the postponement, Mr. and Mrs. C. received a hearing notice regarding a foster care progress review hearing routinely scheduled for children continuing in foster care. The hearing notice reinforced their belief that the adoption had been postponed.

- cc. DHS-GC workers knew that Mr. and Mrs. C. were active in the local foster/adoption support group and that they were scheduled to attend a foster/adoption conference in Lansing on 04/30/09.
- dd. After learning of Amelia's FAS diagnosis, DHS-GC workers scheduled an adoption placement hearing for Amelia for 04/24/09, and the adoption finalization hearing only 6 days later, on 04/30/09.
- ee. State law requires six months between adoption placement and finalization.
- ff. Mr. and Mrs. C. received NO notice for either hearing, nor any other disclosure of the imminent finalization.
- gg. On 04/24/2009, an adoption placement hearing converted Mr. and Mrs. C. from foster parents to Amelia's legal adoptive parents. They were entirely unaware of this.
- hh. On 04/29/2009—the day before left for the Lansing foster care conference—a DHS-GC worker telephoned Mr. and Mrs. C. repeatedly, to ask if they were going to the conference. They assured her that they were going.
- ii. On 04/30/2009, Mr. and Mrs. C. left to attend the conference. After they left, the worker called them again, to ask if they were going to the conference. They again assured her that they were, and asked her why she continued to call them. Soon after they arrived at the conference, the worker also arrived, and stalked and monitored them all day.
- jj. Mr. and Mrs. C. were unaware that while they were being monitored by the worker, Amelia's adoption was finalized—against their documented will, without their presence, and via a conspiracy among DHS-GC workers.
- kk. Eight days later Amelia's Medicaid card would not work at their physician's office. Mr. and Mrs. C. called the worker and told her that Amelia's Medicaid card would not work. She told them that after the adoption is finalized, children do not have Medicaid coverage. Shocked at this disclosure, they demanded proof of the finalization. The worker told them to go to the DHS-GC office.
- ll. At the DHS-GC office, they met with Ms. L. Keller for the first time. Mr. and Mrs. C. repeatedly asked how this could have happened and gave Ms. Keller the opportunity to dissolve the fraudulent adoption. Ms. Keller repeatedly refused to

- respond. Ms. Keller finally tossed the uncertified *Order of Adoption* to Mr. and Mrs. C. and told them “She’s yours, now” and left the room.
- mm. Mrs. and Mrs. C. requested a hearing in writing within days; DHS ignored it.
  - nn. DHS workers entirely refused to disclose or discuss Amelia’s Title IV-E rights at any time of the foster/adoption process.
  - oo. Mr. and Mrs. C. were denied reimbursement of \$200.00 in non-recurring adoption expenses.
  - pp. DHS workers failed to disclose the services available from the Adoption Medical Subsidy Program.
  - qq. DHS is required to supply a non-identifying information document to prospective adoptive parents. The document given to Mr. and Mrs. C. was not signed or dated, nor was it provided before their decision to adopt. It was inaccurate and stated that Mr. and Mrs. C. were having Amelia assessed for FAS, when she had already been diagnosed. Amelia’s prenatal alcohol exposure and her documented FAS were entirely omitted. The document stated she had no chronic disease, when in fact she had FAS and MRSA and was actually hospitalized for several days for MRSA while in DHS foster care. The document falsely stated that she was attached to her foster parents and to their grandchildren. However, it was obvious that she had no attachment to them.
  - rr. Since before age 3, Amelia has proven that she is a severely emotionally disturbed child. She tried multiple times to strangle Mr. and Mrs. C.’s infant grand-daughter and has repeatedly attempted to kill the family’s dog with a knife.
  - ss. Mr. and Mrs. C. called Lansing DHS for help. Mr. W. Johnson and Mr. L. Park told them to deal with their problems locally.
  - tt. Mr. and Mrs. C. twice wrote to DHS requesting Title IV-E adoption assistance and a hearing—the State Office of Administrative Hearings and Rules twice denied their request.
  - uu. Defendants’ fraudulently placed this profoundly handicapped child out of the foster care system to avoid any further financial cost to DHS.
  - vv. DHS-GC workers previously placed a 10-year-old foster child with fully active AIDS with Mr. and Mrs. C., without disclosure of her illness. They learned of her



AIDS 6 months after the child's placement from a nurse after a medical appointment. The child spat at them during the placement.

- ww. Another child—an adolescent boy—was placed with them without disclosure of his known psychiatric impairments. They learned of these when a pharmacist asked them why his medication prescriptions were not being filled.
- xx. Amelia's adoption was carried out with repeated blatant disregard for and violations of State and Federal regulations, DHS policies and due process violations. It was completed through repeated acts of conspiracy, fraud, and gross negligence, by both local and state DHS staff.
- yy. Amelia has no Title IV-E adoption assistance, no Medicaid, and no Adoption Medical Subsidy Program funds.
- zz. Mr. and Mrs. C. will be 73 and 71 years old when she reaches age 18.
- aaa. Amelia was wrongfully placed for adoption with Mr. and Mrs. C.
- bbb. Amelia is entitled to foster care funding and adoption assistance at the rate of \$94.83 per day.
- ccc. With full disclosure of Amelia's condition/medical history, Mr. and Mrs. C. would not have adopted her.
- ddd. DHS workers represented the adoptive placement as a final decision. They never disclosed to Mr. and Mrs. C. their right to disrupt her inappropriate placement.

19. **Justin D., by his next friend, Ann L. McNitt**

- a. Justin D, born on 07/02/98, was adopted at age four from "American Adoptions", a sub-contractor of Louisiana's foster care system. His foster care documents were destroyed by Hurricane Katrina.
- b. Justin is African-American. His adoptive parents are Caucasian. They previously adopted other children, both Caucasian and ethnic minority children.
- c. Justin has Down Syndrome and had surgery to repair heart defects common to such children. He also has Oppositional Defiance Disorder (ODD) and requires supervision to monitor his behavior, including psychiatric monitoring.
- d. Due to his impairments, he received SSI/Medicaid while in foster care.
- e. Mr. and Mrs. D. had adopted another three month old child from the State of Michigan in 1996. That child is African-American and was diagnosed with

hydrocephalus and cerebral palsy. He receives \$1,103.00 per month in Title IV-E adoption assistance, which was individually negotiated by the worker representing him. He is less handicapped than Justin.

- f. Justin was placed for adoption with Mr. and Mrs. D., Michigan residents, in 2001. While he was still under Louisiana foster care supervision, Mr. D. telephoned the Michigan DHS Adoption Subsidy office in Lansing to request a Title IV-E adoption assistance application. Mr. and Mrs. D. completed the form and returned it to the Lansing office. DHS denied the request. A DHS worker told Mr. D. that Justin did not qualify for adoption subsidy because he is not special needs. This was clearly fraudulent because she knew from the documentation that Justin had Down Syndrome, was African-American, and had received SSI.
- g. The DHS worker went on to threaten Mr. D and told him to not bother to request a hearing to appeal this denial because he would never win. Mr. and Mrs. D. took her advice and did not appeal.
- h. Under Title IV-E and U.S. Department of Health and Human Services policies, prospective adoptive parents are to seek Title IV-E adoption assistance for un-finalized adoptions from the State in which the child resides. The DHS worker should have informed Justin's parents to request adoption assistance from the State of Louisiana's central adoption subsidy office.
- i. In October 2002—before Justin's adoption was finalized-- Mr. and Mrs. D. wrote to Michigan DHS, again requesting Title IV-E adoption assistance.
- j. The response was a denial written on 04/11/2003—six months later—stating that at no time has the State of Michigan been legally responsible for Justin's care and supervision. The denial again failed to disclose the Federal requirement to approach the State of Louisiana, and created the impression that the sole reason that Justin was entirely ineligible for Title IV-E was that he had not been in Michigan foster care. The denial also stated that Michigan law does not allow for Adoption Support Subsidy to be approved after the *placement* of the child for adoption.
- k. The DHS Adoption Subsidy Specialist stated that she had researched the file for Justin. She knew that Justin received SSI and was thus eligible for Title IV-E

adoption assistance and Medicaid for that reason alone. She knew that he was an African-American child, and qualified for Title IV-E adoption assistance separately from the SSI eligibility. Her denial stated that he was ineligible for Title IV-E, but she knew that he was, at that time, only ineligible for Title IV-E from the State of Michigan. He was eligible for Title IV-E through the State of Louisiana.

- l. The DHS worker's denial wrongly gave them 90 days to appeal. Federal regulations allow parents to request Title IV-E adoption assistance through the child's eighteenth birthday.
  - m. The denial failed to disclose that after his adoption finalization, 05/27/2003, the State of Michigan would be responsible for his adoption assistance. Mr. and Mrs. D. could then request Title IV-E adoption assistance from DHS.
  - n. In 2009, Mr. and Mrs. D. learned of Justin's Title IV-E rights, and sent two letters to DHS—several weeks apart and by certified mail—requesting Title IV-E adoption assistance and an administrative hearing for Justin. DHS ignored both letters.
  - o. Since 01/01/2010, Justin has received SSI and Medicaid due to his family's extremely low income. He still has no Title IV-E adoption assistance.
  - p. Justin is entitled to approximately \$98.26 per day in Title IV-E adoption assistance.
20. **Katherine D., by her next friend Ann L. McNitt**
- a. Katherine D., born on 05/19/2003, was adopted at age one from American Adoptions, a sub-contractor of Louisiana's foster care system. Her foster care documents were destroyed by Hurricane Katrina. Justin D. was also adopted by her parents.
  - b. Katherine and her adoptive parents are Caucasian. They had previously adopted other children, both Caucasian and ethnic minority.
  - c. Katherine has Down Syndrome and had surgery to repair heart defects common to such children. She has also Turner's Syndrome and a weak immune system. She had also received SSI in foster care.

- d. After Katherine's adoptive placement, Mr. and Mrs. D. wrote to DHS in Lansing and requested Title IV-E adoption assistance for her. DHS ignored the letter.
- e. In 2009, Mr. and Mrs. D. learned of Katherine's Title IV-E rights. They sent two letters to DHS by certified mail, weeks apart, requesting Title IV-E adoption assistance and an administrative hearing for her. DHS ignored both letters.
- f. Since 01/01/2010, Katherine has received SSI and Medicaid due to her family's extremely low income. She still has no Title IV-E adoption assistance. She is entitled to approximately \$94.83 per day in adoption assistance.

21. **Gregory E, by his next friend, Ann L. McNitt**

- a. Gregory was born on 11/01/94, and placed into foster care by the DHS-sub-contractor Child and Family Services-Capital Area (CFS-CA) three days after his birth. Gregory was placed for adoption on 4/24/95 and his adoption was finalized in late 1995.
- b. He is the full biological brother of Mark A., and had the same foster parents and workers.
- c. Gregory is African-American-Hispanic/Caucasian. His adoptive parents are Caucasian.
- d. Gregory's foster parents neglected him. At six months old, the back of his head was absolutely flat, from spending hours per day on his back. He also had 22 of the 27 infant symptoms of RAD.
- e. Gregory's foster and adoption social workers breached their duty while acting *in loco parentis* to meet his needs. They refused to obtain a psychological assessment, although he was born to a severely alcoholic mother, came from a neglectful foster home, and was severely mentally ill. DHS refused to obtain available mental health treatment, refused to obtain medical treatment for his symptoms of alcohol and drug withdrawal, and placed him into standard foster care. DHS did this while knowing that he needed therapeutic foster care because of his multiple serious problems.
- f. The workers failed to request SSI funds for him to avoid creating a record of his severe handicaps.

- g. At age four months, Gregory was to be adopted by another family. The prospective adoptive father died several days after the birth parents' rights were terminated. Mr. and Mrs. E. provided ten days of respite foster care for him at the time, with no intent to adopt him. The CFS-CA workers decided that placement with the widowed prospective mother was inappropriate, and asked Mrs. and Mrs. E. if they wanted to adopt him. The adoption worker only stated that the reason for his adoption was that the birth parents could not take care of their son and provided no medical or DHS records.
- h. Mr. and Mrs. E. wrote on their adoption application that they were NOT willing to adopt a child with FAS, one who was severely emotionally disturbed, or a child under age 1 who was prenatally drug-exposed. The two workers who placed Gregory separately documented that it would not be appropriate to place such children with Mr. and Mrs. E. because they already had a severely multiply handicapped birth son.
- i. Neither worker ever reviewed any documents about Gregory with Mr. and Mrs. E. The only document they saw before his adoption was his vaccination certificate, given to Mrs. E. by his foster mother.
- j. Neither worker disclosed alcohol use by the birth-parents which was known before his placement and repeatedly documented in agency records. The birth-mother passed out in a bar with her ten-week-old infant—now Matthew A.—at her side, only seven months before her pregnancy with Gregory. Mark also had multiple indicators of FAS. Both parents had long histories of severe untreated alcoholism and drug/cigarette addiction. The father wrote in agency records that all of his family members were alcoholics and drug addicts. The mother was documented by DHS with low platelets and bleeding problems (i.e. symptoms of chronic liver damage). DHS recorded that she was drinking during Gregory's pregnancy and she fell and broke her foot before his birth.
- k. Workers did not fully disclose of the birthparents' mental illnesses. Mr. and Mrs. E. were not told that the birth-mother had untreated mental illness, that she gave birth to four other children before Gregory, and that three of them lived with their fathers because she had lost parental rights. Mr. and Mrs. E. knew that the birth-

father was schizophrenic, but not that he wrote in agency records that his siblings and mother were also schizophrenic.

- l. Workers did not disclose the following indicators of FAS in Gregory:
  - i. premature birth,
  - ii. small size and weight at birth,
  - iii. heart murmur,
  - iv. extreme hirsutism (hairiness)—with heavy growth of fine dark hair across his forehead down to his eyebrows, and heavy growth of fine dark hair across his entire neck and back,
  - v. hypertonia (i.e. his muscles were over-developed),
  - vi. multiple symptoms of RAD (which can be caused by prenatal alcohol exposure),
  - vii. a very thin upper lip,
  - viii. a flattened philtrum (area between the nose and the upper lip),
  - ix. extremely small palpebral fissures (around the eyes).
- m. The workers did not disclose Gregory's alcoholism at birth, nor his symptoms of drug and alcohol withdrawal—for which no worker requested treatment. His foster mother told Mrs. E. that he received peppermint syrup for colic. After his adoptive placement, he spent hours daily screaming in pain. He was prone to suddenly startle and cry. He developed sudden respiratory difficulties, and had to be rushed by Mrs. E. to their family doctor multiple times for emergency breathing treatments with a nebulizer. As with adults, alcohol withdrawal can last for up to 18 months, and often requires medical treatment to prevent life-threatening consequences.
- n. The adoption worker did not disclose that Gregory's facial characteristics and the maternal alcoholism history indicated his FAS. The worker testified years later that she could recognize FAS at the time by the wide-spaced eyes. Gregory's eye spacing is 4 standard deviations below the mean, and was a parameter in diagnosing his FAS.
- o. In Michigan, alcohol abuse during one pregnancy is proof of neglect of subsequent children. Gregory's older brother came into foster care after the birth-

mother passed out in a bar with 9-week-old infant Mark at her side. The workers saw the birth-mother as often as once per week when she visited him. They documented when she was pregnant again and that she was an untreated long-term alcoholic. DHS failed to obtain temporary custody of the mother to prevent daily alcohol exposure to her unborn child Gregory which would have prevented predictable severe brain damage.

- p. The workers passed light-skinned Gregory to Mr. and Mrs. E. as white—entirely denying his parents the opportunity to help him to know and enjoy his ethnicity.
- q. After his placement, workers falsely documented Gregory’s condition by stating he was healthy and attached. In reality, he hated to be held—becoming absolutely rigid—avoided eye contact—rolling his eyes around in his head and/or rolling them back into his head so that the irises could not be seen, and forcefully turned himself around to face outward.
- r. Before his finalization, the adoption worker told Mr. and Mrs. E. that the birth mother had bi-polar disorder, the birth-father had schizophrenia, and they could not take care of him. She said that Gregory had a risk for developing either one of these, but no sooner than late adolescence or early adulthood. She suggested they take him for genetic testing in a few years. Mr. and Mrs. E. received no other information about the birth-parents.
- s. Before the finalization, Mr. E. asked the adoption worker about an adoption subsidy. The worker did not explain adoption subsidies or how to apply for them. Instead, the worker stated that Mr. E. could request a subsidy, but to not bother. She said Gregory would not get one, because he was just a baby. Her statements were a denial of due process and discrimination. Gregory qualified for Title IV-E adoption assistance because he was handicapped and/or separately because he was an ethnic minority child.
- t. Gregory compulsively lies, steals, and destroys property. He has no conscience or understanding of physical or other boundaries. The value of property damage he has caused is in the tens of thousands of dollars.

- u. At age ten—in a period of less than two minutes—he wrapped a rope around his brother’s neck and tried to strangle him, then repeated the action on the family cat.
- v. Gregory has repeatedly killed animals. After he described his actions to his psychiatrist, she diagnosed him as having no conscience at all.
- w. Gregory routinely adjusts the collars on the family’s dogs, so that they are extremely tight. He punishes the family pets for their supposed bad thoughts and actions.
- x. He has been on anti-psychotic medication for years for paranoia and delusional thinking.
- y. Gregory has engaged in multiple arson attempts. In 2010, his mother was forced to daily follow him around to dismantle various items staged to burn the family’s home, garage, and barn. He used a lighter to set fire to tissues and his hair in his bedroom.
- z. Gregory cannot be unsupervised for any period of time. He has a history of sneaking out of his second-floor bedroom window and roaming about the neighborhood at night. There is an alarm on his unlocked bedroom door, so that his parents will awaken if he tries to leave. The alarm must be tested every night, as he can disable it. His mother cannot sleep at night until he is asleep, and awakens before he does.
- aa. Gregory’s psychiatrist recently told his mother that she believes that he currently has schizophrenia, and that if he were not living at home, he would be living in a psychiatric hospital for the rest of his life.
- bb. Gregory’s diagnoses include:
  - i. FAS,
  - ii. RAD,
  - iii. Mental Impairment (IQ of 70),
  - iv. Conduct Disorder,
  - v. Intermittent Explosive Disorder (IED),
  - vi. AD/HD,
  - vii. Oppositional Defiant Disorder (ODD),



- viii. Mixed Learning Disability,
  - ix. Disorder of written expression,
  - x. severe deficits in memory, expressive language, visual reasoning,
  - xi. Bi-Polar disorder,
  - xii. possible schizophrenia, and
  - xiii. possible Obsessive-Compulsive Disorder (OCD).
- cc. In October 2003, Mrs. E. requested Title IV-E adoption assistance and an administrative hearing for Gregory. DHS ignored it. Over a period of 18 months, Mrs. E. made a total of twelve (12) written requests, as follows:
- i. 10/21/03: First letter --to Adoption Subsidy Program Manager Ms. Kate Young-- requesting Title IV-E adoption assistance, at a rate commensurate with Gregory's needs, paid retroactive to the date of his adoptive placement, and an administrative hearing. NO RESPONSE.
  - ii. 12/07/03: Second letter --to DHS State worker Ms. Veronica Jones— requesting Title IV-E adoption assistance. NO RESPONSE.
  - iii. 12/11/03: Letter to the Adoption Subsidy Program from Ms. Dawn Mead, director of foster care/adoptions at Child and Family Services—Capital Area, stating that when Gregory was placed from her agency, he was eligible for Title IV-E adoption assistance. NO RESPONSE.
  - iv. 12/30/03: Third letter--to Mr. William Johnson, DHS Director of Adoption Services--requesting Gregory's Title IV-E adoption assistance and a hearing. NO RESPONSE.
  - v. 01/29/04: Personal visit to DHS office, with face-to-face meeting with Mr. William Johnson, requesting adoption assistance for Gabriel. Mrs. E. told him that DHS' failure to respond within 30 days to each request for Title IV-E adoption assistance was a violation of State law. NO RESPONSE.
  - vi. 02/26/04: Fourth letter--to Ms. Veronica Jones--requesting Gregory's adoption assistance and a hearing, and stating that DHS was in violation of federal regulations. NO RESPONSE.
  - vii. 03/20/04: Fifth letter--to Ms. Veronica Jones-- requesting Title IV-E adoption assistance and a hearing. NO RESPONSE.

- viii. 04/09/04: Letter sent to Mrs. E. from Mr. Longino Gonzales, denying Title IV-E adoption assistance for Gregory, based on a financial means test of the family—a violation of Title IV-E.
- ix. 04/19/04: Letter to Mr. Longino Gonzales, stating that DHS was in violation of Federal and State regulations in failing to respond to her requests in accordance with Federal requirements.
- x. 04/21/04: Letter to DHS from State House member Mr. Scott Hummel, requesting action on this and other issues for this family.
- xi. 04/22/04: Sixth letter--to Governor Jennifer Granholm and DHS Director Udow--requesting action regarding Mrs. E.'s multiple requests for adoption assistance and a hearing for Gregory. NO RESPONSE.
- xii. 04/25/04: Seventh letter--to Mr. Longino Gonzales-- requesting Title IV-E adoption assistance and an administrative hearing for Gregory.
- xiii. 07/16/04: Letter from Mr. Longino Gonzales, stating, "A response to your request will be provided." No response as promised was actually provided.
- xiv. 01/31/05: Eighth written request--a hand-written note asking for Title IV-E adoption assistance and an administrative hearing for Gregory was handed by Mrs. E.'s attorney directly to ALJ Landis Lain after a hearing on another matter, with a promise by ALJ Lain that Mrs. E. would receive action. NO RESPONSE.
- xv. 05/17/05: Ninth letter to DHS from Mrs. E., requesting Title IV-E adoption assistance and a hearing. NO RESPONSE.
- xvi. 05/18/05: Tenth letter to DHS from Mrs. E., requesting Title IV-E adoption assistance and a hearing. NO RESPONSE.
- xvii. 05/19/05: Eleventh letter to DHS from Mrs. E., requesting Title IV-E adoption assistance and a hearing.
- xviii. 05/20/05: Twelfth letter to DHS from Mrs. E., requesting Title IV-E adoption assistance and a hearing.
- xix. 05/24/05: Letter from Mr. William Johnson, stating that a hearing summary would be forthcoming. That day, Mrs. E. received the *Hearing Summary* from Ms. Martha Ballou—omitting the dates that all of the

- multiple requests had been received by DHS, in violation of the Administrative Procedures Act and DHS' policy at CFA 744.
- xx. Ms. Ballou, Director Udow, and ALJ Lain did not respond to Mrs. E.'s subsequent requests to re-submit the *Hearing Summary* in accordance with State law and DHS policy.
  - xxi. 07/15/05: Letter received from Ms. Kate Hanley, Adoption Services Director, refusing to re-write the *Hearing Summary* to comply with regulations.
- dd. A hearing was held in 2006. The ALJ stated her refusal to consider Federal regulations and denied adoption assistance for Gregory. Her decision was overturned by DHS Director Udow, who ruled that Gregory was Title IV-E eligible from his adoptive placement, and that the intent of post-adoption Title IV-E adoption assistance was to rectify the situation pertaining to a needy disabled child.
  - ee. DHS initially ignored her order. DHS eventually offered a rate which was less than the Department's lowest rate—i.e. less than the one for normal healthy children. Mr. and Mrs. E. refused the bad faith offer.
  - ff. DHS worker Kate Hanley then threatened to go even lower if they did not accept that offer—and did so. The subsequent bad faith offer was less than 88% of DHS' lowest rate—no child in Michigan receives such a low rate.
  - gg. Mr. and Mrs. E.'s attorney requested another hearing so that an ALJ could order DHS to negotiate in good faith. The case was assigned to the same ALJ who previously ruled that he was not Title IV-E eligible. When both attorneys could not meet on the day of the scheduled hearing, the ALJ failed to re-schedule the hearing for two years.
  - hh. At the time the hearing was postponed, the ALJ initiated an *ex parte* e-mail to the assistant AG, instructing him to plead “no jurisdiction” in the eventual hearing. He immediately mailed a copy of the *ex parte* e-mail to the family's attorney and recused himself from the case.
  - ii. The case was assigned to another assistant AG, who—two years later—immediately pleaded “no jurisdiction” in the hearing before the same ALJ. The

ALJ accepted Plaintiff's documents, but failed to place them into evidence, allowed no oral arguments or witnesses, and ended the hearing after approximately 35 minutes.

- jj. In the ALJ's decision, she agreed with the assistant AG—and her earlier *ex parte* e-mail—that she had no jurisdiction to hear the case, but went ahead and decided the entire case as if she did have jurisdiction.
- kk. The denial was appealed to Probate Court which ruled in January 2011 that Gregory was entitled to adoption assistance at a rate based on his current multiple severe handicaps, and remanded the case back to the same ALJ to order an adoption assistance rate for him “within 90 days, because of the extreme delay.”
- ll. The ALJ completely ignored and failed to comply with the Probate Court's order.
- mm. MCL 710.23 places appeals of adoption subsidy matters under the Adoption Code and Probate Code, while other adoption subsidy matters are under the Social Welfare Act, MCL 400.115k.
- nn. The assistant AG for the Department then appealed the order—to Circuit Court, instead of the Court of Appeals as clearly specified under State law. (Under MCL 710.65, appeals made under the Adoption Code/Probate Code must go to the Court of Appeals.)
- oo. The Circuit judge properly ruled that she had no jurisdiction, then repeated her dismissal in a reconsideration. The assistant AG then filed an appeal of her ruling with the Court of Appeals, on the basis that the Circuit Court did have jurisdiction to hear the appeal from Probate Court.
- pp. In September 2011, the family's attorney threatened *contempt of court* charges to the ALJ.
- qq. In response, the assistant AG went back to the Probate Court and filed a motion for a stay of the Probate Court's order—almost ten months after it was issued.
- rr. The assistant AG then filed a late appeal of the January 2011 Probate Court decision to the Court of Appeals, failing to cite the jurisdiction under which he was filing—because if he cited the appropriate law which required the appeal to be filed in the Court of Appeals, it would have ended his other appeal of the Circuit Court's dismissal on the basis of wrong jurisdiction.

- ss. The Court of Appeals has ordered this case back to the Circuit Court.
- tt. The Probate Court judge denied the motion for a stay of his January 2011 ruling and ordered the assistant AG to immediately have the ALJ determine an adoption assistance rate for Gregory. The judge stated on the record that DHS was negotiating in bad faith, and agreed that he would approve *contempt of court* charges if the ALJ failed to comply.
- uu. The ALJ again ignored and failed to comply with the order.
- vv. Eleven months after the Probate Court's January 2011 order to the ALJ, the assistant AG filed a request for a stay of that order with the Court of Appeals; it was denied.
- ww. Despite the Court of Appeal's denial, the ALJ continued to ignore the Probate Court's order.
- xx. The Department's and AG's actions have prevented Gregory and his parents from obtaining the Title IV-E adoption assistance to which he is entitled.
- yy. DHS' actions have placed Mr. and Mrs. E. in dire financial condition. Their 2011 earned income was less than \$19,000.00.
- zz. The Department's lowest adoption assistance rate for healthy normal teenagers is \$18.26 per day. Gregory is 17 years old. Thus, DHS' offer for \$12.56 per day as written on the offered contract is less than 69% of its lowest adoption assistance rate for healthy teenagers. The Department refuses to negotiate in good faith and Gregory still has no adoption assistance.
- aaa. Federal regulations require Medicaid coverage to accompany Title IV-E adoption assistance. After Gregory was ruled Title IV-E eligible in 2006, DHS should have immediately enrolled him for Medicaid. DHS refused.
- bbb. Mrs. E. applied to the county DHS office, explaining that that they were entitled to Medicaid coverage after the Title IV-E hearing. The county worker agreed that no means test was required, and started the Medicaid coverage.
- ccc. When the state DHS office learned of this, they demanded proof of their family income—an illegal means test under Title IV-E—and completely unnecessary when Medicaid is attached to Title IV-E adoption assistance.

- ddd. When Mrs. E. repeatedly stated her refusal to provide income information, the Adoption Services Director, Kate Hanley, threatened to end his Medicaid coverage.
- eee. DHS workers harassed them by assigning his Medicaid coverage to a county across the State, then refused to correct it for months, despite multiple requests.
- fff. After the successful 2006 hearing, Mr. and Mrs. E. wrote to DHS requesting *DHS-333* and *DHS-334* forms, so that they could be reimbursed for out-of-pocket Medicaid-eligible expenses paid since Gregory's placement—a right under Federal regulations.
- ggg. DHS' Adoption Subsidy Program manager, Karen Iverson, sent forms with the wrong *corrective action period*. DHS has ignored their written request to correct the documents.
- hhh. Gregory was eligible for an adoption assistance rate of \$94.83 per day at placement, and a current rate of \$98.26 per day.
- iii. DHS workers never disclosed at any time that his inappropriate adoptive placement could be disrupted or that an adoption could be dissolved.
- jjj. Gregory was wrongfully placed for adoption. Mr. and Mrs. E. would not have adopted Gregory if there had been full disclosure of his history and medical conditions.

22. **General allegations for Dirk, Mary, and Rachel E. in Paragraphs 23, 24, and 25, by their next friend, Ann L. McNitt**

- a. Dirk, Mary, and Rachel are biological siblings identified by county Protective Services as living in profound neglect.
- b. During a PS visit to the home, one child came to the door with a “crack” pipe in her hand. The mother was passed out and had seizures. The father refused treatment. Cockroaches and garbage were throughout the home. A large hole was in an exterior wall of the home. A feral cat ate a rat in front of the family and PS workers, and other dead rodents were in the home. Mushrooms grew in the toilet, and nails stuck up from the bathroom floor. Garbage was piled everywhere—including inside a baby crib—and there was a terrible odor in the home.

- c. Two children were observed only wearing diapers. When they urinated, urine flowed down their legs to the carpet, which was already heavily stained. There were no other diapers in the home. They sucked spoiled milk from bottles. While the workers were there, the garbage in the crib moved, and an infant was discovered in the crib. The PS workers told the parents to buy garbage bags and left. They returned the next day; the garbage had been removed. The children remained there for six more months before entering foster care.
- d. Foster care supervision was under Child and Family Services—Capital Area (CFS-CA) in Lansing. Later, CFS-CA’s foster/adoption director stated that they were in such poor condition that in 30 years of placing children, these children stuck in her head like it was yesterday.
- e. The children entered standard foster care together in January 1994. Before placement in the home of Mr. and Mrs. E. for respite foster care in August 1994, Mrs. E. was only told that they were in foster care because their birth parents could not take care of them. There was no mention of the grossly pathological neglect and abuse of the children. Before they arrived, Mrs. E. called the worker to request their medical records of the children. The worker refused and stated that those were only for real foster parents.
- f. During the first respite placement, Mrs. E. caught scabies—a skin parasite—from Mary. The two girls still did not speak, and Dirk could only say a few words. Like other survivors of severe abuse, they were hyper-vigilant and too compliant in their behavior.
- g. After that visit, Mrs. E. called the foster worker to ask about adoption. The worker told Mrs. E. that it was impossible. For two more years, the worker recommended to the judge that the children be reunited with their birth-parents, although the parents never completed parenting classes or drug rehabilitation.
- h. A CFS-CA adoption worker who was not assigned to supervise the children facilitated the respite foster placements with Mr. and Mrs. E from 1994 until their assigned worker took over in approximately March 1996.
- i. The foster worker met Mrs. E. for the first time in March 1996. Before then, the worker falsely documented non-existent meetings with Mr. and Mrs. E.

- j. The birth parents' rights were terminated two years after the children entered foster care. Although the foster worker—now their adoption worker—knew that Mr. and Mrs. E. wanted to adopt them, eight months more passed before they were placed for adoption.
- k. CFS-CA had only six months after termination of parental rights to identify an adoptive home, and would lose state funding each month that passed—for each child.
- l. The worker received a written warning that she was late in listing the children on Michigan Adoption Resource Exchange (MARE).
- m. Mr. and Mrs. E. were unaware that DHS was required to fully disclose the children's histories and conditions, that agency documents mentioned possible alcohol abuse by the birth-parents, and that the three children had multiple indicators of FAS. Despite the birth-parents hitting the children at the agency, in front of DHS workers, there was no mention of physical abuse. There was no mention of both girls' oral herpes infections (common in abused toddlers who are victims of forced oral sex), that the parents ran a "crack house", or that one child was born with cocaine in her system.
- n. Before their adoptive placements, the worker called and asked Mr. and Mrs. E. to come to CFS-CA to sign some forms.
- o. On August 16, 1996, the worker gave them adoption assistance applications and told them that the children qualified for an adoption subsidy. She explained that it was for beds and clothes. She told Mr. and Mrs. E. that the girls had mild temporary speech problems, but did not disclose that the children qualified because they were all profoundly handicapped. She gave no other description of adoption subsidy.
- p. The children qualified because they were severely handicapped and/or because they were Hispanic (i.e. ethnic minority), and/or because they were a sibling group. Title IV-E adoption assistance is intended for a special needs child. There was no mention of varying rates for handicapped children.
- q. After giving them the contract form, she told Mr. and Mrs. E. to write "\$17.59" on part of the form, then to sign it. The worker sent the forms to the state DHS



office. On August 22, 1996—although Mr. and Mrs. E. had already signed the contract for \$17.59, a blank line on Dirk’s contract was filled in with “\$12.59” and a state DHS worker signed it.

- r. Federal regulations require that adoptive parents be allowed to negotiate the Title IV-E adoption assistance rate until the finalization of a child’s adoption. On August 22, 1996, the adoption assistance agreements for the three children were finalized before the children were ever placed.
- s. DHS’ (illegal) policy at the time was that after a child was simply placed into the pre-adoptive home, the rate could never be increased. DHS held Dirk’s finalized contract—with the lowered rate—until after their placements so that Mr. and Mrs. E. could not protest the alteration. A month later, DHS sent a letter confirming the rates with Mr. and Mrs. E.’s copies of the contracts.
- t. The worker falsified numerous documents including discussions with Mr. and Mrs. E. about the children’s histories and conditions which could not have occurred because the dates she documented were before Mr. and Mrs. E. met her in person. Years later, she testified that she was not present when documents about the children were disclosed, and that she was not sure that Mr. E. ever saw any documents. Mrs. E. likewise testified that she saw no documents about the children.
- u. The adoptions were finalized in 1997, nearly three years after their foster placements. After the finalizations, Mr. and Mrs. E. received a short, non-identifying information document about the children. There was no mention of the profound neglect. Much of it discussed the girls’ speech problems. There was no mention of mental illness. It was unsigned, undated, and on plain paper.
- v. After the finalization, their foster mother told Mrs. E. that the birth parents ran a “crack house,” that the birth mother had been discovered in bed with a 14-year-old during one PS visit, and that after the children were placed with her, they were so filthy that it took daily baths for two weeks to get them clean. None of the children could speak. They ate voraciously and each child gained four pounds in the first two weeks. She told Mrs. E. about the parents’ abuse during supervised visits at CFS-CA, and that the parents even told the children to hit the other

parent. The foster mother requested increased foster care payments because of the children's severe needs, but was refused.

- w. Several weeks after the finalization, another CFS-CA social worker called Mrs. E. and asked her to come to the agency. She gave Mrs. E. a few documents with birth family histories of heart disease and diabetes. She told Mrs. E. that she could copy a few things, but not to tell anyone that she let her do this.
- x. The only documents Mr. and Mrs. E. saw before the adoptions were vaccination certificates, from their foster mother.
- y. Soon after placements, the children began a variety of disturbing behaviors. (See each child's description.) When Mrs. E. mentioned these behaviors, the worker dismissed them as temporary adjustment issues.
- z. DHS workers deliberately ignored Mr. and Mrs. E.'s adoption application—and their own documentation *acknowledging* that application.
- aa. DHS workers conspired with each other and their supervisor and permanently injured the family by placing four (4) profoundly handicapped children with multiple symptoms of a severe mental illness. They documented that they met with their supervisor, reviewed the placements with her, and agreed to make the placements—although the two workers had each previously documented that placements of emotionally disturbed children would be inappropriate.
- bb. The foster worker Mary Beth Honicky (a.k.a. Betsy Grim)—who also served as their adoption worker—testified that she willingly placed the three children into the home of Mr. and Mrs. E. while knowing that they all had a severe mental illness. She admitted the following:
  - i. she chose not to obtain legally-mandated psychological assessments,
  - ii. she chose not to obtain available effective mental health treatment for them while they spent almost three years in foster care,
  - iii. she was aware they would become more disturbed without treatment,
  - iv. she placed them without the high adoption assistance rates provided by DHS for the support of older children with RAD,
  - v. she knew that older children with RAD kill animals, act out sexually, start fires, and destroy property—all behaviors exhibited by the three children,

- vi. she did not disclose the illnesses to Mr. and Mrs. E.
- cc. The workers failed to request SSI funds for the children to avoid creating a paper trail proving severe handicaps.
- dd. Several years after finalization, Mrs. E. requested increased adoption assistance rates. DHS refused and a hearing was scheduled. During the hearing, the ALJ stated that the hearing on both issues would be done by 5:00 that day. He ejected Mrs. E.'s key witness because she coughed, and would not allow her to return to testify. He was verbally and emotionally abusive of Mrs. E, and her witnesses. He turned off the tape recorder to shout at them. Other abusive statements made on the record were omitted from the hearing record. One witness said the next day that she felt like she was raped, and threw away the clothing she wore that day. She said she felt so violated by Judge Sexton she could not wear them again. The ALJ called Mrs. E. names during the day and told her she had no right to be there. After the hearing, Mrs. E. had to have counseling because she was so upset by his actions.
- ee. The ALJ was respectful of DHS representatives. A DHS worker was found withholding evidence, and the ALJ kindly asked her to make copies for later that afternoon. He did not address the serious nature of her withholding evidence.
- ff. The ALJ allowed the DHS caseworker to give unsworn false testimony, and did not swear her in until approximately 4:10 p.m.—20 minutes before the hearing ended.
- gg. When Mrs. E. asked the ALJ to address the caseworker's false statements, he screamed at her. He stated his refusal to consider pertinent federal laws—the basis for the requests for federal Title IV-E funds. The verbal abuse was missing from the hearing transcript, as well as key evidence regarding federal Title IV-E funds for handicapped children. The transcriptionist noted the large number of skips in the transcript.
- hh. The ALJ issued his decision six months later. Both parties were given 10 days in which to respond. DHS issued their objections a month later—20 days after the deadline—but he accepted their objections.

- ii. The ALJ's decision was so flawed that DHS Director Udow ordered the hearing be thrown out and a new hearing take place.
  - jj. The ALJ in the next hearing also refused to consider federal regulations regarding Title IV-E.
  - kk. Due to the children's RAD, Mr. and Mrs. E. built an extra bedroom for one child, and spent many thousands of dollars for out-of-home placements when they became violent. They made multiple changes to their home to accommodate the children's needs.
  - ll. DHS workers failed to disclose either that an inappropriate adoptive placement could be disrupted or that an adoption could be dissolved.
  - mm. Mr. and Mrs. E. would not have adopted any of the three children if there had been full disclosure of their histories or medical conditions.
  - nn. DHS wrongfully placed all three children with Mr. and Mrs. E.
23. **Dirk E., by his next friend, Ann L. McNitt**
- a. Dirk was born on February 24, 1991. He entered foster care just before his third birthday, was placed for adoption at age 5½, and was adopted in 1997 when he was six years old. He is Hispanic.
  - b. Dirk entered foster care with stick-thin arms and legs and a rounded belly consistent with the protein-deficiency disease *kwashiorkor*—seen in starving African children. He could not speak. He later told Mrs. E. that he looked for food in the birth home, gave some to each of his sisters, then he would eat the rest. He remembered opening cabinets and finding no food.
  - c. While Dirk was in foster care, the scores on his DOC form indicated his eligibility for a higher foster care rate. Former DHS Adoption Subsidy Program Director J. Hoffman testified to her act of deliberately lowering the scores on Dirk's DOC forms after receiving them from the foster care worker. She had not met Dirk, nor read medical or other records. She did not discuss the changes with the foster parents or Dirk's worker. Her fraudulent changes resulted in lower Title IV-E rates.
  - d. During Dirk's first respite foster placement, he attempted to vomit on Mrs. E. in the car because she asked him to brush his teeth.

- e. Within weeks after the placements, Mrs. E. reported to the worker that Dirk kicked and tried—several times—to strangle their multiply handicapped birth son, and that she had to literally remove Dirk’s fingers from that child’s neck each time. The worker told Mrs. E. he had probably watched too much Power Rangers in the birth home and that he would settle down in a few weeks.
- f. Soon after the placements, Mrs. E. heard Dirk and their handicapped birth son in the bathroom together. Their birth son was taking a bath. Mrs. E. heard Dirk say, “Let’s play a game. Let’s see who can hold their breath underwater the longest. You go first, and I’ll help you.” The only way to help their birth son stay underwater is by forcing his head underwater. Mrs. E. immediately realized that Dirk intended to drown her birth son and rushed in to restrain Dirk.
- g. Dirk continued to assault their handicapped son and Mrs. E. continued to report it to the worker who did not disclose that his behavior was symptomatic of a severe mental illness or that Mr. and Mrs. E. could disrupt the placement. She never suggested that the placement was inappropriate. Instead, she sent a brochure about the agency’s adoption support group. Within two months, Dirk vomited at will during meals when angered, and hoarded food in his bedroom.
- h. After the three siblings’ placements, unknown to Mr. and Mrs. E., Dirk demonstrated multiple symptoms of having been severely sexually abused in the birth home. He had “fecal hoarding”, wherein he defecated into buckets, which he hid in the family’s barn. He also refused to defecate, instead he hoarded his feces inside his body. (He was treated for severe fecal impaction.) He urinated inappropriately in the family home.
- i. Dirk’s actions escalated and included the following:
  - i. he stabbed the family’s handicapped birth son with a table knife multiple times,
  - ii. he became enraged when he was confronted about any inappropriate actions, then angrily destroyed another item belonging to someone else or his own prized item,
  - iii. he hit, punched, and kicked anyone nearby,
  - iv. he compulsively lied,

- v. he destroyed bicycles, radios, and other such gifts,
  - vi. he hoarded garbage in his bedroom,
  - vii. he destroyed thousands of dollars of property in the family home,
  - viii. he had emotional rages lasting up to an hour,
  - ix. he demonstrated a fascination with fire, and left burnt items in the family's barn,
  - x. he admitted to starving a goat to death because his birth mother starved him too,
  - xi. he had a history of self-mutilation,
  - xii. he kicked chickens to death, and
  - xiii. he was caught stabbing a horse with a pitchfork.
- j. Dirk was diagnosed with RAD in 2002—eight years after the foster worker knew that he had it. Without therapy, he became more severely mentally ill. He began appropriate therapy immediately after diagnosis.
- k. Dirk was removed from the home by his parents multiple times for violence, at the cost of \$50.00-\$75.00/day, for days to months each time.
- l. On Mother's Day in 2005, Mr. and Mrs. E's handicapped birth son told them, "Dirk put his penis in my butt." Within 24 hours, their attorney called Protective Services. Dirk was removed from the home, and two juvenile sex offender therapists were found for twice-weekly therapy. As there were no witnesses, no evidence, and their multiply handicapped birth son could not adequately give details of the rape, the State Police agreed that Dirk could not be prosecuted.
- m. After 5 months, Dirk returned home. He was not allowed to be alone with children. A door alarm was re-installed on his unlocked bedroom door, so he could not leave his room at night without awakening his parents.
- n. Dirk still engages in "magical thinking" common in young children. At age 18, he told his mother he could fly a jet and went into a rage when his parents had him clarify what is required to be a jet pilot.
- o. Dirk's history includes the triad of arson, torturing/killing animals, and inappropriate urination/defecation—indicating a high risk of adult sociopathic behaviors. In short, he has no conscience.

- p. When asked to choose between two options—typical choices for his age, and both of which he hated—Dirk dissociated for up to 30 minutes.
- q. Until Dirk reached almost age 18, Mr. and Mrs. E. were unaware that they could have disrupted the adoptive placement, or even dissolved Dirk’s adoption.
- r. Dirk was diagnosed with the following:
  - i. RAD,
  - ii. Depression,
  - iii. Post-Traumatic Stress Disorder (PTSD),
  - iv. Conduct Disorder,
  - v. Intermittent Explosive Disorder (IED), and
  - vi. possible Neurofibromatosis.
- s. Dirk very likely has FAS. DHS workers documented possible prenatal alcohol exposure. Photos of Dirk before his adoptive placement reveal his multiple facial features of FAS.
- t. Dirk is now almost 21 years old. He lives in another state and works as a truck driver. His mother is terrified at the thought of his returning home.
- u. Because of his multiple profound handicaps, Dirk was wrongfully placed with Mr. and Mrs. E.
- v. Dirk was entitled to an adoption assistance rate of \$94.83 per day.

24. **Mary E., by her next friend, Ann L. McNitt**

- a. Mary was born on March 04, 1992. She is Hispanic.
- b. At age 11 months, she could lift her head and roll over, but could not sit up or crawl. She was hospitalized for a week for starvation at age 18 months, and thrown down a set of concrete stairs by her birth father. She entered foster care just before age two, was placed for adoption at age 4½, and was adopted in 1997 at age 5½.
- c. After her adoptive placement, Mary displayed multiple symptoms of severe RAD. She did not cry at all after leaving her foster mother.
- d. Mary stabbed, punched, kicked, and otherwise physically assaulted her handicapped brother multiple times; stole others’ property daily; cut up new clothes; later, with her sister, she developed a specific plan to kill her cousin with

bathroom cleaner in his milk because she was jealous of his attention from her parents.

- e. Mary displayed multiple signs of having been molested in the birth home. She has severe oral herpes, has urinated inappropriately around the family home for years, and has hoarded her feces in buckets in the barn.
- f. Mary has Emotionally-based Enuresis (intentional urination in inappropriate places/times due to emotional trauma). She urinated onto her sleeping mother multiple times. For years she wet her bed at night and then hid the soaked items around the home. At age 12, she repeatedly urinated out the window of her second floor bedroom. It was discovered when her parents noticed the long dried streak of urine on the living room window. When given disposable training pants—at age 14—she pulled them down at night, wet her bed, then pulled them up and went back to sleep. She urinated on her bedroom floor at age 15. She still wets her bed several times weekly, and often still hides the wet items in her room.
- g. Mary was twice hospitalized at Pine Rest Psychiatric Hospital in Grand Rapids. The first time, she tried to kill herself by jumping out her second-floor bedroom window. The second time, she was hospitalized for assaulting her multiply handicapped brother.
- h. From ages 11-13, Mary tried multiple times to kill her mother. When her mother broke her foot, Mary strung a jump-rope across the top of the stairs and said she did it “so that you’ll trip on it, break your neck, and go to the hospital and die. I did it because you can’t give me as much attention because you’re on crutches.”
- i. Mary once used a hammer to tap the top rim off a glass canning jar, leaving jagged edges. She then picked up the pieces, put them into another canning jar, and hid it behind a post in the basement. She placed the jagged-edge jar on top of a paint can used by her mother as a step-stool to get items off a high basement shelf. When discovered, she said, “I want you to step on it and cut your foot and go to the hospital and bleed to death, then my birth mom can come here and live, and Dad can take care of all of us.”



- j. She once turned on the family's gas kitchen stove, then blew out the flame to allow the gas to continue flowing. She later told her mother, "I did it so that the house will fill with gas and blow up and burn down and you'll die."
- k. Mary had frequent rages lasting from 10 minutes to 4½ hours, during which she physically assaulted herself by biting her own arms, pinching her arms or face, punching herself in the head, and slamming her head against the floor. Her mother put a pillow under Mary's head at these times, but Mary would move the pillow with her head, then slam her head into the floor. During rages, Mary physically assaulted her mother by biting, punching with her fist, slapping, pinching, head-butting, kicking, and spitting.
- l. At the start of one rage, Mary drew a butcher knife and threatened her mother.
- m. During another rage lasting 2½ hours, her mother sustained a shoulder injury later requiring surgery.
- n. Mary's medical providers had to be warned in writing not to be alone in a room with her, as she made false allegations of abuse, later openly admitting that she had lied. She violently broke many items around the family home, cut up clothing, slammed and kicked through doors and cabinets, poured paint on a carpet, and once tore an exterior door handle off the family car.
- o. At the advice of Mary's therapist in Grand Rapids, she went in 2002 to the Attachment and Bonding Center of Ohio, ("ABC of Ohio") a world-renowned treatment center for children with severe RAD. After extensive therapy there, her therapist told Mr. and Mrs. E. that Mary was one of the most severely ill children she had ever worked with, stating that most parents would have dissolved the adoption of a child like Mary long before.
- p. Mary is now age 20. Recently, her mother allowed Mary to manage her own bed for a period of 2 weeks. Her mother subsequently found 12 soaked disposable underpants, three sets of dried urine-soaked bedding, dried-urine-soaked underpants and shorts, and bloody underpants from her menstrual period. When confronted about her bedroom, Mary expressed no discomfort about her actions--only rage at having been found out, and at having to take responsibility for it.
- q. Mary has been diagnosed with the following:

- i. RAD,
  - ii. PTSD,
  - iii. Neurofibromatosis (a genetic condition),
  - iv. Oral Herpes,
  - v. Enuresis (emotionally-based),
  - vi. Cerebral Palsy,
  - vii. Ocular herpes (with scarring of the cornea), and
  - viii. most likely FAS.
- r. A recent psychological evaluation states that while Mary's IQ is 87, her adaptive age (i.e. the age-equivalent at which she is able to cope with varying life activities) ranges from 2 years and 3 months to age 10 years and 6 months.
  - s. On April 24, 2012, the county Probate Court determined that Mary is a legally incapacitated individual, and ordered full guardianship for her. The Court stated in the order that Mary is totally without the capacity to care for herself.
  - t. Mary was recently approved for SSI.
  - u. Because of her multiple profound handicaps, Mary was wrongfully placed into her adoptive family.
  - v. Mary was entitled to have received an adoption assistance rate of \$94.83 per day.

25. **Rachel E., by her next friend, Ann L. McNitt**

- a. Rachel was born on 03/10/93. She is Hispanic.
- b. Rachel was discovered by protective service workers under a pile of garbage in a crib. At age 12 months, she could lift her head and roll over, but could not sit up or crawl. She entered foster care just before her first birthday, was placed for adoption at age 3½, and was adopted in 1997 at age 4 years. She was documented with prenatal crack cocaine exposure, and documented possible prenatal alcohol exposure.
- c. Rachel had epicanthal folds (an unusual eyelid formation common in severe FAS) and multiple impairments associated with FAS.
- d. After her adoptive placement, Rachel demonstrated many symptoms of RAD. She did not cry at all after leaving her foster mother. Within weeks after placement, she vomited at will at the dining room table. She tried many times to

strangle the family's cats; hoarded garbage in her room, and had occasional rages, lasting up to 2 ½ hours, often dissociating during these rages. She destroyed many items in the family home; compulsively lies; attempted to poison and cut her mother, and planned—with her sister—to poison her cousin by putting bathroom cleaner in his milk. She has a history of compulsive theft. She frequently cut up her clothes and destroyed a new quilt. She poured bleach on her mother's clothes, threw away her mother's socks, or hid the socks in the heat vents. She would also throw away dishes.

- e. Rachel showed several indicators of molestation in the birth home. She had oral herpes, urinated inappropriately, and engaged in fecal hoarding (i.e. saving her feces, in buckets in the family barn).
- f. Rachel's RAD and PTSD were diagnosed in 2002 at age 11. As she had no treatment from age one to age 11, she became more severely mentally ill. Rachel has no conscience development. When she is confronted with two undesirable choices, she dissociates for periods of up to 30 minutes.
- g. Until age 17, she frequently spoke in an immature baby voice at home.
- h. Rachel and her sister Mary have an extremely strong traumatic bond. The two of them went through the same traumatic childhood events, are unable to separate emotionally from each other, and share all of their possessions—including their underwear. They refer to themselves as "we" instead of "I" and panic if they are separated.
- i. Rachel started menstrual periods at age 13. She left bloody menstrual pads in her room and hid bloody underpants in her dresser. When asked to handle menstrual items appropriately, she chose, instead, to steal her mother's underpants and wear them during her periods.
- j. A recent psychological evaluation states that Rachel's IQ is 98, but her adaptive age ranges from age 1 year and 3 months to age 10 years and 6 months. The Probate Court recently determined that she is a legally incapacitated individual, and ordered full guardianship for her, stating in the order that she is totally without the capacity to care for herself.
- k. Rachel was diagnosed with the following:

- i. RAD,
    - ii. Depression,
    - iii. Generalized Anxiety Disorder,
    - iv. Post-Traumatic Stress Disorder (PTSD),
    - v. Oral Herpes,
    - vi. Neurofibromatosis, and
    - vii. probable FAS.
  - l. Because of her multiple profound handicaps, Rachel was wrongfully placed with Mrs. and Mrs. E.
  - m. Rachel was entitled to receive an adoption assistance rate of \$94.83 per day.
26. **General allegations for Andrea, Erica, Anna, Anthony, and Thomas F. in paragraphs 27, 28, 29, 30, and 31, by their next friend, Ann L. McNitt**
- a. Mr. and Mrs. F. had two previous birth children. They wanted only to adopt, and were not interested in providing foster care. They agreed to foster children until termination of the children’s biological parent’s rights. The DHS worker told them that after children are placed for adoption, they would not be removed. After their home study was completed, the caseworker told them that he would get them “a good quality baby that would not go home.” He also said that all children get a subsidy and medical insurance.
  - b. Mr. and Mrs. F. are Caucasian.
27. **Andrea F. , by her next friend, Ann L. McNitt**
- a. Andrea was born on 10/17/98 and placed with her foster/adoptive parents at age 6 weeks.
  - b. Andrea’s adoption was finalized when she was almost three years old.
  - c. Andrea is African-American/Caucasian.
  - d. Andrea entered foster care at age 6 weeks for failure to thrive (i.e. malnutrition). Ferrets were found living in her crib, and her face had multiple open sores from ferret and/or cat bites. Her birth parents were mentally ill.
  - e. While in foster care, Andrea was diagnosed with the following conditions:
    - i. failure to thrive – treated with prescription formula,
    - ii. atrial-septal defect, i.e. a “hole” between the chambers of her heart,

- iii. heart murmur,
  - iv. a mass around her heart,
  - v. seizures,
  - vi. colic,
  - vii. possible Neurofibromatosis,
  - viii. eczema,
  - ix. anemia (i.e. low blood-level of iron),
  - x. lactose intolerance—requiring a prescription formula,
  - xi. frequent coughs—including some described as “croupy,”
  - xii. respiratory distress, at times treated with albuterol and steroids,
  - xiii. suspected asthma—she has since been diagnosed and receives treatment for asthma,
  - xiv. frequent infections requiring antibiotics, including a urinary tract infection (UTI),
  - xv. upper respiratory infections,
  - xvi. ear infections,
  - xvii. pinkeye (i.e. conjunctivitis, an eye infection), and
  - xviii. prescribed antibiotic prophylaxis (i.e. daily antibiotics at times) to prevent a cardiac infection.
- f. Andrea has a large scar on her face which requires plastic surgery. The DHS worker told Mr. and Mrs. F. that the original laceration was inflicted by either a cat or a ferret which shared Andrea’s crib.
- g. DHS did not inform Mr. and Mrs. F. of varying foster care rates for handicapped children, and failed to complete DOC forms every six months with them.
- h. Approximately two years after her placement, her foster worker met with Mrs. F. The worker threatened to take away Andrea if Mrs. F. did not sign a form. The worker did not allow Mrs. F. to read the form and demanded that she sign it or else she would take Andrea away. Mrs. F. signed the form without ever being able to read it.

- i. During Andrea's foster placement, her adoption worker told Mrs. F. that every child gets an adoption subsidy, but did not define the meaning of the term and did not explain their Title IV-E rights.
- j. Just before her adoption was finalized, Mrs. F. asked about the subsidy, and reminded the worker of his earlier statement. The worker filled out DHS' Rate Determination form, but fraudulently checked the box next to "child has no handicaps".
- k. On the same day, he completed an Adoption Medical Subsidy Program application for Andrea, listing several of her impairments, so that her adoptive parents could later request reimbursement funds for treatment of those conditions.
- l. When the forms were received in the State DHS office the Adoption Subsidy Specialist, Bonnie Watkins, processed both forms fraudulently assigning Andrea the Title IV-E adoption assistance rate for children with no handicaps.
- m. Near the time of Andrea's adoption finalization, her adoption worker telephoned Mrs. F. The worker threatened Mrs. F. and told her to never say anything bad about the state.
- n. Andrea was in foster care for almost three years. After her placement, her biological brother J\*\* was born and placed as a newborn into foster care with Mr. and Mrs. F. for eventual adoption. After 6 months, he was removed by DHS against Mr. and Mrs. F.'s will and placed with his 79-year-old great-grandmother. He is now approximately age 10 and has not been adopted, and she is approximately 89 years old.
- o. In 2004, Andrea's second biological brother M\*\* was born. Mr. and Mrs. F. asked to have him placed with them, so that Andrea could grow up with at least one sibling. Andrea was extremely depressed after losing her first brother.
- p. A DHS worker told Mrs. F. that they could not adopt M\*\* into their home unless they made enough money to afford to adopt him without a subsidy, a violation of Title IV-E. The worker also told Mrs. F. that they did not need to fill out an adoption application form. The worker said, "DHS knows you want him."

- q. Several months later, a DHS Supervisor told Andrea that she would be reunited with her brother M\*\* at Christmas and told Mrs. F. that she would be getting M\*\* after the next court hearing.
- r. Soon after Mr. and Mrs. F. asked to adopt M\*\*, a DHS caseworker asked them to provide foster care for another child, Thomas. Mr. and Mrs. F. told the worker they feared that accepting Thomas might jeopardize M\*\*'s adoption; they were reassured it would not.
- s. Two weeks after Thomas was placed, the supervisor did an assessment of their home, taking weeks afterward to provide the results.
- t. In the meantime, M\*\* was placed as a foster child into the home of another county's DHS worker. Mr. and Mrs. F. made frequent requests to foster/adopt M\*\*, citing his older sister's presence in their home. After M\*\* spent 14 months in that placement, the supervisor told Mr. and Mrs. F. that they could not have him because the number of children living in their home was excessive, despite their foster license allowing them to have one more child.
- u. Even after agreeing to take M\*\* without an adoption subsidy, they were told he would not be placed with them.
- v. Andrea went into a deep depression, frequently crying for her brother.
- w. M\*\* was later adopted by the DHS worker, against DHS policy requiring that siblings be placed together into adoptive homes.
- x. A fourth sibling, K\*\* was born in 2005 and placed into guardianship with the birth-mother's mother, who had substantiated Protective Services complaints against her daughter while she was still living in the home.
- y. After dozens of phone calls and letters, K\*\* was placed into foster care with Mr. and Mrs. F. in late 2008.
- z. K\*\* arrived in Mr. and Mrs. F.'s home with eczema, a yeast infection on her buttocks, a staph infection, head lice, impetigo, and multiple symptoms of RAD.
- aa. A social worker told Mrs. F. there were no family members available to adopt K\*\* and she knew that Mr. and Mrs. F. intended to adopt her.
- bb. Mr. and Mrs. F. agreed to take K\*\*.

- cc. When she entered the home, K\*\* french-kissed them, inserting her tongue into their mouths, which indicated likely molestation in her birth home.
- dd. After the placement, Mrs. F. told the worker of K\*\*'s behaviors-- including nightmares and statements that she did not want to see her father.
- ee. After three months, the worker called and said DHS was going to do reunification with Dad. Mrs. F. stated that she had no desire to put K\*\* through a back and forth placement, and that she had been assured that it would not happen.
- ff. Six months after the placement, Mrs. F. was asked to go to court for the 6-month foster care review hearing to talk about K\*\*'s french-kissing and her statements about her birth home.
- gg. Another worker had told Mrs. F. that he had already recommended to the judge that K\*\* be placed with Mr. and Mrs. F., with no visits with birth parents.
- hh. In the hearing regarding K\*\*'s placement, one DHS worker told the judge that they love the foster mom (Mrs. F.), but that she wanted to adopt him too much. He said DHS thought she was sabotaging the case.
- ii. The judge at the hearing would not allow Mrs. F. to testify and ordered that K\*\* be sent to a new foster family.
- jj. Mrs. F. went home, sobbing, and picked up K\*\*, telling her that she had to go back. Mrs. F. took K\*\* to DHS that day.
- kk. Mrs. F. called a DHS supervisor, and asked if Andrea could meet with her sister. The supervisor said that Mrs. F. did not stay in court long enough because there was discussion of a Protective Services complaint against Mr. and Mrs. F.
- ll. This complaint was blatantly false because the workers had not seen K\*\* at the time of the hearing, had had no idea of her condition, and had no evidence against Mr. and Mrs. K.
- mm. A formal complaint citing “medical neglect” and “failure to return clothes” was filed against Mr. and Mrs. F. (K\*\* had impetigo—a small patchy skin condition behind her ear.)
- nn. It was impossible for DHS to have known at that time the complaint was filed that K\*\* had impetigo as she had not yet been returned when the supervisor announced that a PS complaint would be filed.



- oo. After K\*\* was returned, DHS realized that K\*\* had a mild skin problem and used that to back up their false PS charge.
- pp. Mr. and Mrs. F. provided Medicaid documents to DHS which proved four medical appointments in six months specifically to treat K\*\*'s impetigo.
- qq. DHS knew that Mr. and Mrs. F. had never received DHS funds to pay for K\*\*'s clothes while she was placed there. Mr. and Mrs. F. paid for the clothes themselves, and were not required to send them along with the child.
- rr. The PS complaint falsely stated that K\*\* was very dirty, but the children individually stated while interviewed that K\*\* had been bathed the previous two days.
- ss. The foster mother with whom K\*\* was placed after the removal also told PS investigators that the child was clean when she was brought directly to her home after Mrs. F. returned K\*\* to DHS.
- tt. The complaint's charges were later determined to be unfounded.
- uu. Two PS workers came to the family home shortly thereafter; one was described as a DHS trainee. The experienced worker handed the PS report to Mrs. F. and told her to sign it. Mrs. F. refused as she had not read it. She kept the report to read it. The next day, the trainee returned to the home to pick up the signed report. In her conversation with Mrs. F., the trainee stated, "We have a lot of complaints like this—they're totally bogus. This happens all the time."
- vv. During the six months of K\*\*'s placement, Mr. and Mrs. F. received no funds for either foster care or clothes. Three days after K\*\* was removed, Mr. and Mrs. F. received a check from DHS for the clothes. She was not required to return the money, but Mrs. F. told a DHS supervisor that she would because K\*\* was now out of the house. The supervisor told Mrs. F. to make a personal money order out to the supervisor's name instead of the State of Michigan or DHS. Mrs. F. refused to do so.
- ww. Soon after this, K\*\* was returned by DHS to her birth-father. On March 15, 2010, Mrs. F. received an e-mail from the abusive birth-mother—whose rights had been terminated—stating she still was able to see K\*\*.

- xx. In December 2011, Mrs. F. received a phone call from Genesee County PS, asking her the whereabouts of K\*\* because she was still listed as living with her. Mrs. F. told the worker that K\*\* had been taken away by DHS under a fraudulent PS investigation in the summer of 2009.
- yy. Mr. and Mrs. F. were not paid for all of K\*\*'s foster care.
- zz. After K\*\*'s placement was disrupted, Andrea began to exhibit signs of severe depression and was prescribed Zoloft. She has symptoms of generalized anxiety disorder and PTSD and is often unable to leave her mother's side.
- aaa. In addition to Andrea's diagnosed impairments at the time she entered foster care, she has now also been diagnosed with the following: Attention Deficit Disorder (ADD), Learning Disability (LD), Depression, Asthma, Migraines; Eczema, Agoraphobia, and attachment problems (i.e. RAD).
- bbb. Andrea has Title IV-E adoption assistance at the basic rate. In 2003, her State caseworker refused a rate increase, citing State law and agency policy—which contradicted Title IV-E regulations at the time.
- ccc. Years later, Mrs. F. again requested a hearing on the matter but her two letters were ignored.
- ddd. Mrs. F. was finally provided a hearing after another adoptive parent contacted the U.S. DHHS about due process violations. In the December 2010 hearing, the DHS worker cited policy declared obsolete nine years earlier.
- eee. The ALJ demonstrated bias against Mrs. F. by the following:
  - i. allowing the DHS representative to provide its defense, but without having heard Mrs. F.'s case;
  - ii. provided DHS with a vast majority of the hearing time to present its case;
  - iii. limited the time for Mrs. F.'s Authorized Hearing Representative (AHR) to state their claims and present evidence to under an hour;
  - iv. asked the DHS representative, "Am I allowed to do this?"—i.e. clarification of a specific point of law—the central point of the case; and
  - v. repeatedly ridiculed the Petitioners' AHR.

- fff. After the hearing record was closed, the ALJ demonstrated additional bias by initiating *ex parte* communication to the DHS representative to obtain additional documents of substance.
  - ggg. Although the ALJ agreed in the hearing that the policy cited by DHS in its denial was obsolete, she applied it as the reason for her denial.
  - hhh. The *Hearing Decision* erred in applying a 90-day time limit to deny an increase in Andrea's Title IV-E adoption assistance rate.
  - iii. The ALJ issued a *Final Decision*, and not a *Recommended Decision*, as required by DHS policy.
  - jjj. After the case was appealed to the Probate court, it was dismissed because DHS ignored the appeal by failing to submit a brief on the matter or produce and file the transcript.
  - kkk. After the case was re-opened, the Probate Court upheld the denial on the basis of the (illegal) 90-day time limit.
  - lll. In 2006, Mrs. F. learned of the Adoption Medical Subsidy program for the first time and requested tutoring services for Andrea. The State caseworker told Mrs. F. that they would make sure she received services. They were denied. When Mrs. F. asked for a copy of her original request, including a copy of Andrea's Individual Educational Plan (IEP,-the special education plan from her school), she was told the documents were lost.
  - mmm. Andrea receives an adoption assistance rate of \$14.83 per day.
  - nnn. Because of her multiple profound handicaps, Andrea was entitled to receive an basic DOC rate plus \$80.00 per day.
28. **Erica F. , by her next friend, Ann L. McNitt**
- a. Erica was born on November 13, 2002 and placed with her foster/adoptive parents at 3 days old. Her adoption was finalized on March 22, 2005. She was placed by the Ennis Center for Children, Inc. (ECCI), a DHS-sub-contractor. She is Caucasian.
  - b. Erica was removed from birth home for anticipatory neglect. The DHS caseworker told Mr. and Mrs. F. that she was developmentally delayed, but gave no other information.

- c. Erica's head was severely misshapen, and she wore a corrective helmet to re-shape her head for 18 months. Her body was stiff, and she had limited range of motion. Severe sensory problems prevented her from being held when sleepy. During the first appointment, the pediatrician told Mr. and Mrs. F. to give her back to DHS because she would be spending her life in and out of doctors' offices. A registered nurse warned them in an appointment to take her to an out-of-county physician because DHS would minimize her problems. She was diagnosed with spastic cerebral palsy and hemiplegia (paralysis on one side of the body).
- d. Erica's foster worker documented her as healthy, while simultaneously documenting her possible club foot, misshapen head, and multiple serious impairments. The worker's first DOC score put Erica into Level I foster care rate—only \$5.00 per day above DHS' lowest rate—although she displayed multiple symptoms indicative of alcohol withdrawal after foster care placement.
- e. The worker did not disclose Erica's multiple facial indicators of FAS, including flattened philtrum, thin upper lip, and recessed nasal bridge. Although she documented it was possible that Erica was affected by prescription medications her biological mother might have been taking while she was *in utero*, the worker did not disclose to Mr. and Mrs. F. that the birth mother took a variety of prescription medications. Despite the worker's own documentation, she stated to Mr. and Mrs. F. and told them specifically that the birth mother did not use any prescription drugs.
- f. After learning the diagnosis, Mrs. F. requested an increase in Erica's foster care payment. The foster workers told Mrs. F., "She's *normal*; she'll be fine," and accused Mr. and Mrs. F. of adopting for the money.
- g. The worker began attending Erica's medical appointments without their consent. When the worker arrived at the doctor's office one day, Mrs. F. asked why she was there. She responded that all workers do this—a false statement.
- h. During the appointment, the worker entered the examination room and challenged the doctor by stating, "She doesn't have cerebral palsy. You change that diagnosis!"

- i. The doctor requested that Mr. and Mrs. F. find medical care elsewhere because of the worker's actions. They moved their family's care to another physician.
- j. After another DHS worker identified Erica as a special needs child, she received a foster care increase to \$32.00 per day.
- k. Mrs. F. contacted DHS numerous times about the delay in finalizing the adoption. Workers told her that the delays were caused by the death of a judge and the resulting backlog.
- l. After over two years in foster care, Erica's adoption was finalized.
- m. Before Erica's adoption, Mr. and Mrs. F. specifically stated that they did not want to foster/adopt children with family histories of severe mental illness. They were told there was no schizophrenia in the birth family. After Erica's adoption, they received a packet of documents from the worker, and learned that not only did Erica's birth mother have schizophrenia, but that nearly every family member had schizophrenia and bi-polar disorder. The birth-mother was also diagnosed with multiple personality disorder and post-traumatic stress disorder (PTSD).
- n. Erica has asthma, with breathing treatments every 4-6 hours and Albuterol. She takes melatonin to help her sleep. She was diagnosed with the following:
  - i. Sensory Integration Impairments,
  - ii. Spastic Cerebral Palsy,
  - iii. Hemiplegia,
  - iv. Torticollis (neck deformation),
  - v. Bilateral Esotropia (both eyes turn inward), and
  - vi. Extreme Hyperopia (far-sightedness).
- o. Erica's mother spent years doing occupational therapy, joint compressions, and sensory integration exercises three times daily. Testing has shown that she is cognitively, developmentally, and speech delayed. She has a poor attention span and suffers from night terrors. Erica has harmed family pets and is violent with others—symptoms of RAD. She has multiple facial indicators of Fetal Alcohol Syndrome (FAS). Her cerebral palsy, ADD, and cognitive delay are also indicators of FAS. She had many symptoms of alcohol withdrawal as an infant,

and was noted to be small for her age by one physician. Her parents were not notified by DHS of any prenatal maternal alcohol abuse, or of the risk for FAS.

- p. Erica receives a Level III adoption assistance rate of \$29.83 per day (DHS' basic rate of adoption assistance, plus \$15.00 per day).
- q. Erica was entitled to a rate of \$94.83 per day.
- r. Erica was wrongfully placed with Mr. and Mrs. F.
- s. DHS workers never disclosed either that an inappropriate adoptive placement could be disrupted or that an adoption could be dissolved.
- t. Mr. and Mrs. F. would not have adopted Erica if there had been full disclosure.

29. **Anna F. , by her next friend, Ann L. McNitt**

- a. Anna was born on January 28, 2003 and placed with Mr. and Mrs. F. at age one. Her adoption was finalized when she was almost four years old. She was placed and adopted through the Ennis Center for Children, Inc. (ECCI) She is bi-racial (African-American/Caucasian).
- b. Anna was removed from her birth home after she was found in a snow bank on her first birthday, wearing a urine-soaked diaper and holding a wet blanket.
- c. Long after the placement, Mrs. F. was approached by the man who found Anna. He told her that he picked up the child from the snow, went into the home, found the birth mother unconscious from crack cocaine in the living room, and called the police. Another adoptive mother who knows the family disclosed her knowledge of the birth family's chronic alcoholism.
- d. DHS never told Mr. and Mrs. F. of the birth-mother's crack addiction or her alcoholism. Anna was exposed to crack cocaine prenatally and afterward while breast-feeding.
- e. The birth-mother visited only once—one week after foster care placement—but Anna was in foster care for almost three years.
- f. Mr. and Mrs. F. contacted DHS frequently asking why the finalization took so long.
- g. After her placement, Anna bit the breasts of anyone holding her. She hoarded food and acted out sexually. Shortly after placement at age 1, she was diagnosed with precocious puberty after developing breast buds.

- h. Anna's worker documented multiple indicators of Anna's severe problems, but did not disclose them. The worker documented that she was likely exposed to drugs or alcohol *in utero* and might be suffering effects of it. The worker never mentioned this to Mr. and Mrs. F.
- i. Anna was formally diagnosed with FAS only 2 months after her adoption was finalized.
- j. The worker documented Anna had RAD before finalization, but never disclosed this.
- k. The worker did not disclose that genital warts diagnosed by the child's physician likely meant that she had been sexually abused in her birth home—despite the doctor specifically documenting that she suspected sexual abuse.
- l. The worker failed to check pertinent items on the DOC forms. Anna was documented by Mrs. F. as needing extreme supervision so as to prevent injury to herself, others, or property; but that box was not checked by the worker.
- m. A list of necessary parental actions for the child was given to the worker, but she ignored it. The worker herself described parental actions requiring at least six hours per day—even listing the time required to perform them—but did not check that box on the DOC form.
- n. Mr. and Mrs. F. requested increased foster care payments for Anna. The worker responded by telling Mrs. F. that they were not properly caring for the child. After Mrs. F. complained to the worker's supervisor, the foster care rate was changed to Level II.
- o. Just before her adoption was finalized, the worker and Mrs. F. filled out the DOC form for Anna, to determine an appropriate adoption assistance rate. Her score put her into the individually negotiated rate which is above Level III. Mrs. F. asked the worker if they were going to do a negotiated rate. The worker refused to discuss it with her. The worker called later that day and said that Anna would not receive the negotiated rate. The worker told her to come to the office and sign for a level III rate.
- p. Anna was described by the evaluator at the University of Michigan FAS Clinic as, "One of the most severely neurologically damaged children we've ever seen."

Anna is inattentive and has difficulty focusing. She pulled the fire alarm during her first week in pre-school. She has caused much damage to the family home and vehicles. She exhibits behaviors indicating sexual abuse in infancy. Within two weeks of her placement with Mr. and Mrs. F., she began masturbating in front of her foster parents and rubbing her genitals against the top of the stairs. Later actions included forcing the legs of other children apart and touching them inappropriately; sodomizing the family's cats multiple times with her finger, and smearing their feces on the walls of the home; and intentionally urinating in inappropriate places. At age 16 months, she removed her clothes, climbed onto her sleeping sister, and began grinding her genitals against her sister's face. She cannot be left alone with other children.

- q. Before finalization, Mrs. F. mentioned Anna's masturbatory behaviors to the foster worker who simply responded, "Are you supervising her? Who's been in your home recently and where are your boys?"
- r. The worker told Mrs. F. that such sexual acting out was normal 3-year-old behavior, and so documented it in agency records.
- s. Mr. and Mrs. F. installed a video monitor to protect the other children.
- t. Anna has received appropriate therapy with specialized therapeutic parenting techniques for children used for children with RAD.
- u. Mr. and Mrs. F. have modified their home so that it is free from all dust and mold, to accommodate Anna's severe allergies.
- v. Anna was diagnosed with the following:
  - i. Cerebral Palsy,
  - ii. Precocious Puberty,
  - iii. FAS,
  - iv. RAD,
  - v. Asthma,
  - vi. Severe Allergies,
  - vii. ADD, and
  - viii. sleep disorders.



- w. Anna has Title IV-E adoption assistance at Level III (29.83 per day) with Adoption Medical Subsidy Program contracts for RAD, Asthma, Cerebral Palsy, and Precocious Puberty.
  - x. She was entitled to Title IV-E adoption assistance at the rate of \$94.83 per day.
  - y. DHS workers never disclosed that her adoptive placement could be disrupted or that an inappropriate adoption could be dissolved.
  - z. Anna was wrongfully placed with Mr. and Mrs. F.
  - aa. Mr. and Mrs. F. would not have adopted Anna if there had been full disclosure of her history and medical condition.
30. **Anthony F. , by his next friend, Ann L. McNitt**
- a. Anthony was born on March 23, 2004 and placed into his adoptive home nine months later. His adoption was finalized when he was 2½ years old. He was placed through the Ennis Center for Children, Inc. He is African-American/Caucasian.
  - b. Anthony was removed from the birth mother directly after birth and placed with his maternal great-grandmother. An older sibling was removed for sexual abuse and neglect. The birth mother had bi-polar disorder.
  - c. Anthony was born with the sexually-transmitted disease Chlamydia, as well as gonorrhea in his eyes. His adoptive parents were unaware of his ocular gonorrhea until after his adoption was finalized.
  - d. The foster worker told Mr. and Mrs. F. that Anthony was placed in foster care because his birth mother had left him and an older sibling in the care of others without legal authority. In reality, the birth-mother actually lost parental rights because she was identified as a child abuse perpetrator, including physical, sexual, and emotional abuse.
  - e. The worker told them he was treated for multiple infectious diseases after his birth and that he was no longer infectious. When asked by Mrs. F, the worker refused to specify the diseases—a violation of their right to his complete medical history.
  - f. When Mrs. F. requested further health information, the worker refused by stating that the information was privileged.

- g. Two weeks later, Mr. F. became ill. He was rushed to the hospital and diagnosed with Chlamydia Pneumonia. They later learned that Anthony had an active Chlamydia infection when he was placed. Mr. F. continues to have health problems. DHS falsely documented that Anthony was completely healthy before this placement. The entire family must now be occasionally screened for Chlamydia.
- h. After Anthony was subsequently diagnosed with an immunodeficiency disorder, Mr. and Mrs. F. requested a higher foster care rate. The worker told them he was not handicapped and did not meet the criteria for a higher foster care rate. She stated that although their family physician had provided a letter confirming his illness, she denied the request because the doctor did not complete the appropriate form.
- i. In a DOC form dated March 9, 2006, the worker failed to document multiple interventions supplied by Mr. Mrs. F. This included nebulizer treatments every 4-6 hours as needed—requiring significant time during the day for treatments and to clean the equipment; having each family member assessed/treated for Chlamydia and having Anthony treated; and checking him often during the night due to his sleep apnea.
- j. The worker assigned him a basic rate adoption subsidy. Mrs. F. refused to sign the DOC form. The worker then required Anthony to be evaluated again by the local special education program—and not by a physician—for possible developmental delay. This time, the worker denied their request for a higher foster care rate because the special education staff completed the paperwork, and not a physician.
- k. Mrs. F. called the worker’s supervisor, who told her that she would do the family a favor and authorize a Level II foster care rate for him. Mrs. F. signed it.
- l. After petitioning to adopt Anthony, Mr. and Mrs. F. inquired about an adoption subsidy. The worker told them he didn’t qualify because he did not meet the criteria and that another family was willing to adopt him without a subsidy. Afraid that they would lose him, they called a supervisor, who eventually gave him adoption assistance at Level II.

- m. Mrs. F. had met the other foster parent, who told Mrs. F. that she was interested in Anthony. Soon after this, the DHS worker began entering Mr. and Mrs. F.'s family home without an appointment, without being invited into the home, without knocking on the front door before entering, and without a warrant. Mrs. F. expressed her outrage to the worker, but the worker continued to enter the home at holidays and at other times.
- n. At approximately 11:00 pm one evening, Mrs. F. and her adult son were in their kitchen when they heard the sound of a cell phone ring from just outside the window. Looking out the kitchen window, they saw the DHS worker—dressed all in black on their porch—and watched her run away.
- o. One of the children told Mrs. F. that there was a lady looking at them from behind a tree. Another day, Mrs. F. looked out the window to see the same worker hiding behind a large tree in their front yard.
- p. Mrs. F. sent an e-mail to a DHS supervisor and asked that the worker not come to their home. Another foster mother told Mrs. F. that the worker had behaved in the same manner toward her and used the term “stalking” in describing the worker’s actions.
- q. Mrs. F. realized that the worker suddenly appeared at their home whenever the woman who wanted to adopt Anthony called. Before one scheduled meeting with the worker about Anthony, Mrs. F. went to her car, saw that all four tires were flat, and found nails around each tire. They filed a police report.
- r. Because of Anthony’s disorder, he developed impetigo which has been passed on to other members of the family. He has multiple symptoms of RAD. He screams frequently. He disrupts others for hours during the day—including spontaneous physical assaults of other students. His previous private school director told his parents that he could not stay because of his behaviors. He is on several medications.
- s. Anthony is severely developmentally delayed. He has also been diagnosed with the following:
  - i. FAS,
  - ii. Asthma,

- iii. Gastro-Esophageal Reflux Disease (GERD),
  - iv. Speech Delays,
  - v. Strabismus (a visual disorder),
  - vi. Immunoglobulin Deficiency,
  - vii. Sleep Apnea (he formerly used an apnea monitor),
  - viii. Laryngomalacia (literally, "soft larynx"; a condition in infants, in which the soft, immature cartilage of the upper larynx collapses inward during inhalation, causing airway obstruction),
  - ix. ADD, and
  - x. Bilateral Esotropia (crossed eyes).
- t. Anthony receives adoption assistance of \$24.83 per day.
  - u. He was entitled to receive Title IV-E adoption assistance of \$94.83 per day.
  - v. DHS workers failed to disclose that an adoptive placement could be disrupted or that an adoption could be dissolved.
  - w. Mr. and Mrs. F. would not have adopted Anthony if there had been full disclosure of his history and conditions.
  - x. Anthony was wrongfully placed with Mr. and Mrs. F.
31. **Thomas F., by his next friend, Ann L. McNitt**
- a. Thomas was born on June 30, 2005, and placed into his adoptive home one month later. His adoption was finalized on October 18, 2006. He was placed through the Ennis Center for Children, Inc. (ECCI)
  - b. He is bi-racial (African-American/Caucasian).
  - c. Thomas was born 5 weeks premature. The hospital nurses told Mrs. F. that he was crack-addicted. DHS failed to inform Mr. and Mrs. F of this important information.
  - d. Thomas went through severe drug withdrawal with seizures after his birth. He had a low birth weight and was unable to maintain his own body temperature. He was placed directly into foster care with Mr. and Mrs. F. who were instructed to monitor him to maintain his temperature. They had to check on him every 15 minutes—day and night—because his temperature fluctuated so rapidly. He was frequently cyanotic (i.e. “blue” from inadequate oxygen). A medical evaluation

resulted in a diagnosis of *narrowed arteries*, which decreases his level of available oxygen.

- e. Mr. and Mrs. F. requested an increased foster care rate for Thomas, but were denied. His foster care rate was finally increased to Level III just before finalization of his adoption.
- f. After his foster placement, a supervisor documented that Thomas had special needs due to his early drug exposure and would require focused care by a parent. No worker ever told Mr. and Mrs. F. that his problems were specifically caused by prenatal drug use.
- g. Thomas is developmentally delayed. He also has mild hearing loss; FAS; hypotonia (low muscle tone); pica (obsessive eating of non-food items), speech delays; gastro-esophageal reflux disease (GERD); and reactive airway disease. He becomes cyanotic with exertion.
- h. He no longer has occupational therapy two days per week, and his family has modified their home to accommodate his asthma. He has Title IV-E adoption assistance of \$27.83/day (almost Level III).
- i. Thomas was entitled to an adoption assistance rate of \$94.83 per day.

32. **Gary and Michael G., by their next friend, Ann L. McNitt**

- a. Mr. and Mrs. G. were unable to bear biological children and decided to adopt a child. They completed their home study through Catholic Services of Macomb (CSM), a DHS sub-contracting agency. They did not want to adopt a severely handicapped child and CSM agreed to comply.
- b. After Gary's adoption was finalized, Gary's biological brother Michael was also placed and adopted by Mr. and Mrs. G.
- c. Mr. and Mrs. G. are Caucasian. Both boys are Arab-American.
- d. Both boys entered CSM via voluntary placement by their birth mother. Then CSM formally placed both boys into DHS foster care before their adoptive placements took place.
- e. Mr. and Mrs. G. paid thousands of dollars to CSM for the boys' adoption. As licensed foster parents, they were eligible for free adoptions and payments for providing the boys' foster care. Agency workers failed to disclose that because

the boys were formally placed into foster care, all of the costs of the adoptions should have been covered by State funds.

- f. Both boys were represented as “Caucasian”; they were actually half-Arab. They qualified for Title IV-E adoption assistance and Medicaid based on their ethnicity or their disabilities. CSM falsely reported them as Caucasian to deny Title IV-E adoption assistance.

33. **Gary G., by his next friend, Ann L. McNitt**

- a. Gary was born on May 01, 1995, several weeks premature. The birth-father was an alcoholic from Yemen and there is no record of the Caucasian birth-mother’s drug or alcohol use. He is bi-racial (Arab-Caucasian).
- b. On April 30, 1996, the Probate Court terminated the birth parents’ rights and placed Gary into foster care with Mr. and Mrs. G. as a court ward in Macomb County.
- c. Mr. and Mrs. G. were licensed foster parents, but a copy of their foster care license was never provided to them.
- d. Gary’s legal adoption placement was on May 22, 1996, and his adoption was finalized on November 27, 1996.
- e. Gary came directly from his birth parents with a large bruise on his forehead and several facial features of FAS. CSM failed to report the birth parents to Protective Services, although they were legally mandated to do so.
- f. CSM workers failed to obtain either a mandatory psychological assessment or psychological treatment for Gary while he was in foster care.
- g. Before his placement, Gary was known to workers before his placement to have problems. In 1999, a director at CSM wrote in a letter to DHS in Lansing stating that Gary was somewhat developmentally delayed.
- h. Gary’s developmental delays and FAS indicators were never disclosed to Mr. and Mrs. G.
- i. Gary has the following conditions:
  - i. Static Congenital Encephalopathy,
  - ii. Obsessive-Compulsive Disorder (OCD),
  - iii. Attention Deficit Disorder (ADD), and

- iv. Unspecified Anxiety Disorder.
- j. DHS agrees that Gary had these conditions before his adoption. He has Adoption Medical Subsidy Program contracts for all four diagnoses. (These contracts are issued ONLY for conditions which DHS agrees preceded a child's adoption.)
- k. Gary's neurologist documented that he may have been alcohol exposed *in utero*. The most common cause of static congenital encephalopathy (i.e. brain damage) is prenatal alcohol exposure.
- l. Foster care workers are required to complete DOC forms with foster parents every six months for foster children. The forms were never offered to Mr. and Mrs. G. The DOC scores would have proven his eligibility for a high foster care rate and a higher adoption assistance rates.
- m. CSM failed to disclose the Title IV-E adoption assistance program to Mr. and Mrs. G. Although either Gary's ethnicity or his known impairments made him eligible for assistance, he has no Title IV-E adoption assistance and did not receive Medicaid coverage until his parents' income became very low years later.
- n. CSM workers failed to disclose to his parents' the right to reimbursement of non-recurring adoption expenses for parents who pay to adopt special needs children.
- o. In 2008, Mr. and Mrs. G. wrote to DHS and requested Title IV-E adoption assistance and an administrative hearing for Gary. DHS ignored their requests. A second request was likewise ignored. After another adoptive parent wrote to the U.S. DHHS about DHS' violations of due process rights, a hearing was finally held in late 2010. The ALJ ordered DHS to process a Title IV-E adoption assistance application for Gary to determine his eligibility, and to notify Gary's parents and their attorney of their determination.
- p. In February 2011, Mr. and Mrs. G. mailed a completed application for reimbursement of their non-recurring adoption expenses paid for Gary's adoption with copies of receipts proving the funds paid to CSM and to the Probate court for adoption costs. DHS ignored their application.
- q. In March 2011, Mr. and Mrs. G.'s attorney mailed Gary's Title IV-E adoption assistance application to DHS. DHS ignored it. There was no further

communication from DHS about the application. DHS violated the ALJ's order to process Gary's applications.

r. Gary was entitled to an adoption assistance rate of \$94.83 per day.

34. **Michael G., by his next friend, Ann L. McNitt**

- a. Michael G., the full biological brother of Gary G., was born on May 28, 1997. He lived with his birth mother for the first year. When he was one year old, the supervisor at CSM, Mrs. Ales, called Mr. and Mrs. G. to ask if they would adopt him. Mr. and Mrs. G. were not interested, and did not call her back. Michael stayed with his birth-mother.
- b. In December 1998, Ms. Ales called again and asked Mrs. G. to hire an attorney to force the birth father to sign termination papers for Michael. Mrs. G. refused.
- c. Michael's birth parents signed him into voluntary placement at CSM when he was 19 months old.
- d. Mrs. Ales called Mr. and Mrs. G. again and asked them to adopt Michael. They refused; they did not want another child. After several more harassing calls, Mr. and Mrs. G. finally consented to the adoption. Michael was placed into foster care with them.
- e. On July 1, 1999, Mrs. Ales wrote to DHS in Lansing, "These documents support the fact that [Michael] was in a licensed Michigan foster home at the time the petition to adopt was filed." His adoption was finalized on August 16, 1999, when he was 26 months old.
- f. Michael lived with his birth parents for 19 months and entered foster care with multiple battering injuries. He had bites on his back, an untreated finger infection, a large scar on his abdomen, and a large laceration on his lip. He had facial features of FAS and many symptoms of severe RAD. He displayed many signs of having been sexually molested as an infant. Despite the obvious battering injuries, CSM staff did not report child abuse to Protective Services.
- g. By failing to remove him at birth, CSM/DHS directly contributed to Michael's horrific injuries by failing to take action to prevent predictable abuse.



- h. Michael's birth parents lost parental rights to a previously abused child. Workers failed to charge his birth parents with abuse and did not take immediate action to terminate his birth parents' rights upon his entrance into CSM's care.
- i. After his placement, CSM/ DHS workers—acting *in loco parentis*—failed to provide for Michael's psychological needs while in foster care. They did not obtain a timely psychological evaluation for this abused 19-month-old child. His physical injuries should have led them to immediately assess and treat for psychological injury.
- j. Mrs. G. asked about Michael's injuries, but Mrs. Ales refused to talk about them and told her to contact the birth mother.
- k. Mrs. G. demanded to know the source of his injuries, but CSM refused to provide that information.
- l. A counselor treating the birth mother called Mrs. G. She told Mrs. G. that the birth mother revealed that the scar on Michael's abdomen was from a curling iron and that the other injuries were because he was a very active child and prone to accidents—including the bites on his back.
- m. Mrs. G. demanded a psychological evaluation. Mrs. Ales told Mrs. G. that she and her husband would have to pay \$500.00 to CSM for the evaluation. Mrs. G. refused. They had already paid \$4,000.00 for the adoption. Instead, Mrs. G. called Macomb Intermediate School District and had the evaluation done for free—by the same person that CSM would request to do the evaluation. (The evaluation would have been free to CSM as well.)
- n. Michael was diagnosed with RAD. This should have immediately ended the placement—Mr. and Mrs. G. had documented that they did not want to adopt a severely emotionally disturbed child.
- o. The meaning of RAD was never explained to Mr. and Mrs. G. After learning of the diagnosis, Mrs. Ales falsely told them, “All you have to do is love him and he'll be fine.”
- p. The CSM supervisor, Mrs. Ales, knew that if Michael was accurately documented as a severely emotionally disturbed ethnic child, he would be extremely difficult to place. If CSM did not place him for adoption within six months after

termination of the birth parents' rights, CSM would pay a financial penalty to DHS each month.

- q. Mrs. Ales avoided creation of a paper trail of Michael's handicaps. She did not enroll him into Early On special education services after his diagnosis. She failed to request SSI for him, failed to disclose his Title IV-E rights, and failed to disclose accurate information about RAD because Mr. and Mrs. G would not have adopted him if they knew what it meant.
- r. After Michael's RAD was diagnosed, Mrs. Ales told Mr. and Mrs. G. that he was eligible for the Adoption Medical Subsidy Program, but not Title IV- E adoption assistance. The adoption medical subsidy contract proved CSM/DHS' knowledge of his handicaps. It was requested by the CSM supervisor, and signed by DHS before finalization. With full knowledge that Michael was severely handicapped, the supervisor intended to place him without any financial support.
- s. Therapy for RAD can begin and is more effectively treated in infancy. Even after Michael was formally diagnosed, he was denied treatment.
- t. Mrs. G. requested adoption assistance for Michael before finalization. Mrs. Ales threatened Mrs. G. by stating, "If you ask for an adoption subsidy, we'll take him away." Mrs. Ales could have given them the application form, but refused to do so.
- u. Because of the threat to remove Michael, Mrs. G. waited until after finalization to make a second request for adoption assistance. Ms. Martha Ballou, in the DHS state office, told Mrs. G., "Because you didn't make a pre-finalization request, he isn't eligible for a subsidy. And don't bother to appeal the denial. You can ask for a hearing, but you won't win. Nobody ever wins."
- v. In an April 01, 2000 letter, Ms. Ballou again wrote that Michael did not qualify because he was not in foster care for 4 months. Michael actually was in foster care for almost 8 months. The U.S. DHHS cited DHS for this illegal requirement in 2002-2003, stating that DHS risked being sued by parents if they did not cease to apply it.
- w. For over seven years, Mrs. G. continued to write requests for Michael's adoption assistance. A hearing was finally scheduled. On October 16, 2007, Mrs. G. called

the State Office of Administrative Hearings and Rules (SOAHR) and asked to postpone it because she wanted to have an attorney for the hearing. She requested the SOAHR fax number, but the SOAHR worker refused and hung up on her. In January, 2009, Mrs. G. wrote to SOAHR to find out when the hearing would be re-scheduled. It was finally set for June 25, 2009—19 months after it was first scheduled.

- x. Ms. Ballou attempted to sabotage the family’s case by calling Mrs. G. one week before the scheduled hearing. She told Mrs. G., “Some people bring a lot of documents to the hearing. You don’t have to bring documents. DHS will be agreeing with you in the hearing.”
- y. At the hearing, DHS did not agree with the family and denied Title IV-E adoption assistance because Michael had not been in “state care”. When asked to define “State care”, Ms. Bonnie Watkins defined it as “foster care.” Mrs. G.’s attorney immediately produced the foster license—issued before Michael’s placement—as well as a letter from the CSM specifically stating that he had been in foster care.
- z. Ms. Watkins worker testified six times during the hearing that when there are conflicts between Federal laws and State laws/DHS policy, DHS complies with State regulations/DHS policy.
- aa. On August 27, 2009, The ALJ’s *[Recommended] Hearing Decision* ordered DHS to process a request from Mr. and Mrs. G. for Michael’s Title IV-E adoption assistance.
- bb. On October 13, 2009, The DHS Adoption Subsidy Program manager wrote an illegal seven-page *ex parte* letter to DHS Director Ahmed (i.e. attempting to influence him while he was acting as a judge in making a *Final Decision* on the matter.) The letter listed various reasons to deny Title IV-E adoption assistance to Michael—all of which violated Title IV-E regulations, State law, and DHS policy. The *Final Decision and Order* was not issued by the DHS director until September 13, 2010—thirteen months after the Recommended Decision was issued. Director Ahmad agreed with the *ex parte* letter and illegally denied Michael’s adoption assistance eligibility.

- cc. The family appealed to Probate Court, submitting various federal documents which had already been submitted into evidence during the ALJ's hearing. These documents proved that a requirement for "State care" was illegal. The Probate Court agreed with DHS' fraudulent representations that Michael had to be in "State care" to be eligible for Title IV-E adoption assistance. Their attorney requested a reconsideration; this was denied. The decision is on appeal.
- dd. Michael's parents requested reimbursement of their non-recurring adoption expenses from his adoption. DHS refused by adding eligibility requirements which are not found in Title IV-E regulations. DHS previously received documents from the U.S. DHHS stating that they could not add other requirements in considering these reimbursements.
- ee. Michael still has no Title IV-E adoption assistance. He has had Medicaid coverage occasionally as his parents' income has become low enough to qualify for it.
- ff. Michael displays many indicators of having been molested as an infant. He has a history of smearing his feces on walls and regularly defecating/urinating inappropriately around the home. At home, in school, and in public, he removes his genitals from his pants to show others and laughs at their reactions. He masturbates in front of family and non-family members, and has been sexual with animals. He has put his genitals into his mother's face.
- gg. Michael has physically injured his family members. His mother has been bitten, hit, kicked, slapped, and punched. At age 8, Michael attempted to stab her with a butcher knife and smother her with a pillow. She had broken ribs from his attacks. His brother required stitches and has numerous scars from Michael's attacks. Michael lacerated his sister's eyelid by throwing an item at her. She needs plastic surgery, but her parents cannot afford the cost. Family members fear for their safety.
- hh. Michael has demonstrated a fascination for guns, violence, and road-killed animals. He has made numerous attempts to stab others and has killed three family pets. He has destroyed many thousands of dollars of family property. At age 5, he broke a glass kitchen table with his head. He has destroyed many

windows and doors in the family home, and many parts of the family's vehicles. He set fire to the neighbors' playhouse, and twice tried to set fire to the dining room table.

- ii. He was once hospitalized at Harbor Oaks Psychiatric Hospital.
- jj. Michael has no conscience. He has repeatedly demonstrated the triad of RAD behaviors indicative of adult sociopathy: arson; torturing/killing animals and/or people; and intentional inappropriate urination/defecation.
- kk. Mr. and Mrs. G. have suffered severe financial injury. They have no Title IV-E adoption assistance for their sons and have had Medicaid for them only sporadically. They have paid many thousands of dollars to replace damaged and destroyed property. Funds are needed for family therapy, but they cannot afford it. Michael's severe handicaps make him entirely uninsurable.
- ll. Michael's therapist wanted to hospitalize him to stabilize him with appropriate medication, but the family had no mental health insurance. Community Mental Health refused to provide services without Medicaid.
- mm. Michael is more severely emotionally disturbed because CSM/DHS allowed him to remain with his birth parents, allowing further profound abuse. CSM/DHS refused to obtain appropriate effective treatment for him.
- nn. Michael has DHS Adoption Medical Subsidy Program contracts for the following: RAD, Developmental Delay, behavior problems, Depressive Disorder, Static Congenital Encephalopathy, Autism Spectrum Disorder, Asperger's Syndrome, Bipolar Affective Disorder, Speech and Language Impairment, Anxiety Disorder, and Obsessive-Compulsive Disorder. These contracts are given only for conditions which DHS agrees preceded a child's adoption.
- oo. CSM/DHS workers placed Michael into his adoptive home—with parents who expressly did not intend to adopt a profoundly impaired child—without disclosing his impairments, and intending to prevent them from learning the truth until after his adoption was finalized.
- pp. CSM workers never disclosed their contract with DHS to provide services to foster children, that federal Title IV-E funds were paid to CSM via DHS for such a purpose, that because the two children were in licensed foster care Mr. and Mrs.

G. should not have had to pay thousands of dollars for the adoptions, and that DHS pays almost all the adoption costs of foster children. Workers failed to determine the boys' eligibility for SSI in order to deny Title IV-E adoption assistance. Title IV-E mandates that an SSI-eligible child is automatically eligible for Title IV-E adoption assistance, regardless of how the foster/adoptive placement occurs. It is not required for the child to actually receive SSI—only to meet eligibility requirements. Both boys would have met SSI eligibility requirements as severely handicapped children.

- qq. One avenue of eligibility for Title IV-E adoption assistance is via membership in a sibling group. If two birth siblings are placed into the same adoptive home—even if the placements are not simultaneous—then both children qualify for Title IV-E adoption assistance. As soon as Michael was placed with Gary into the same home, they both were immediately Title IV-E-eligible. (Each child was also separately qualified based upon his ethnicity and his handicaps, as well.) DHS ignored this.
- rr. Michael is profoundly multiply handicapped. He has the following impairments:
- i. RAD,
  - ii. Infantile Autism (Asperger's Syndrome),
  - iii. Oppositional Defiant Disorder (ODD),
  - iv. Developmental delay,
  - v. Behavior Problems,
  - vi. Depressive Disorder,
  - vii. Intermittent Explosive Disorder,
  - viii. Attention Deficit Hyperactivity Disorder—combined type (ADHD),
  - ix. Anxiety Disorder,
  - x. Pervasive Developmental Disorder,
  - xi. Static Congenital Encephalopathy,
  - xii. Motor Apraxia,
  - xiii. Bipolar Affective Disorder,
  - xiv. Developmental Speech or Language Disorder,
  - xv. Obsessive-Compulsive Disorder,

- xvi. Borderline IQ,
  - xvii. Deficits in Sensory Integration,
  - xviii. Delayed Milestones, and
  - xix. facial features indicative of FAS.
  - ss. Michael was wrongfully placed with Mr. and Mrs. G.
  - tt. Michael was entitled to an adoption assistance rate of \$94.83 per day.
  - uu. CSM and DHS workers never disclosed that either adoptive placement could be disrupted or that an adoption could be dissolved.
  - vv. Mr. and Mrs. G. have stated that they would not have adopted Michael if there had been full disclosure.
35. **Zola H., by her next friend, Ann L. McNitt**
- a. Zola H. was born on June 29, 2010. She was tested for sickle cell disease immediately after her birth. The report of the positive diagnosis was issued on July 07, 2010. She was placed from the hospital into the home of a maternal aunt three days after her birth by court order for DHS foster care.
  - b. Zola's foster care supervision was subsequently assigned to Oakland Family Services (OFS). Her foster care placement with Mr. and Mrs. H. took place on August 13, 2010, and her adoption was finalized on April 27, 2011.
  - c. Zola is African-American; Mr. and Mrs. H. are Caucasian.
  - d. During the process of their home study, Mr. and Mrs. H. were given a copy of DHS' tri-fold pamphlet (DHS-538) about adoption assistance. This pamphlet contains less than 250 words about the Federal Title IV-E adoption assistance program.
  - e. Zola's birth-mother lost three other children into the foster care system in 2006 due to medical neglect of one child. He lost an eye after she failed to obtain treatment for his sickle cell disease. She was homeless, had a history of drug use, and did not obtain prenatal care for Zola's pregnancy until she was five months along.
  - f. The only records given to Mr. and Mrs. H. were the court order for foster care placement, Zola's immunization Record, and her Women, Infants, and Children (WIC) card. Mr. and Mrs. H. were falsely told by the worker that they did not

know why Zola was placed with a relative and that Zola was in foster care because the birth-mother was homeless.

- g. When Mr. and Mrs. H. asked about adoption assistance for Zola, they were told they she did not qualify for it because she did not have a DOC rate. Zola qualified either as an ethnic minority child or because of her illness. There is no requirement for a child to have a DOC rate to be eligible for adoption assistance.
- h. Mr. and Mrs. H. received no family history or medical records, and were not told about Zola's life-threatening illness.
- i. On August 13, 2010, Mrs. H. signed the last page of a Difficulty of Care (DOC) form for Zola. Mrs. H. received only the first and last pages, and it was unsigned by the worker.
- j. While Zola was Mr. and Mrs. H.'s foster child, they never reviewed a complete DOC form with any worker, in violation of DHS policy which requires completion of DOC forms after placement, and every six months thereafter.
- k. On August 25, 2010, Latrice Neal (DHS worker) and Kimberly Doblesz (DHS Social Service Supervisor) signed the Initial Service Plan report for the period from 07/02/2010 to 08/01/2010. The report advised the parents to review the attached Parent-Agency Treatment Plan and Service Agreement for specific referrals and services, but Mr. and Mrs. H. were not given a copy of the report.
- l. Between July 01, 2010 and August 25, 2010, DHS certified Zola for continued medical services in the Permanent Ward Treatment Plan and Service Agreement.
- m. On August 26, 2010, a hearing was held regarding termination of the birth-mother's parental rights for Zola. Mrs. H. attended the hearing and learned that the other children had been placed into foster care by DHS in 2005. The birth-mother's parental rights for those children had been terminated earlier that month. The children had twice been removed for physical and medical neglect. A worker testified that the birth mother had alcohol issues. This was the first notice to Mr. and Mrs. H. that any sibling had Sickle Cell Disease, but Zola's illness was not disclosed at the hearing.
- n. DHS worker Ms. Latrice Neal visited the family's home immediately after the termination hearing. She did not disclose Zola's sickle cell disease.



- o. On September 10, 2010, Mrs. H. e-mailed a request to the foster worker, Ms. Rachel Lubetsky, for a copy of Zola's birth medical records because she had just learned of the brother's sickle cell disease.
- p. On September 13, 2010, Ms. Lubetsky responded to Mrs. H. and falsely stated that DHS did not have the records and could not obtain them.
- q. On December 15, 2010, Mr. and Mrs. H. were falsely told by the adoption worker, Lisa Westphal, that if they requested adoption assistance for Zola, her adoption would be delayed for months only because of that request. Ms. Westphal falsely stated that Zola did not qualify for adoption assistance. Zola actually qualified either as an ethnic minority child or as a handicapped child.
- r. Because of the fraudulent statements—and in order to prevent her adoption from being delayed—Mr. and Mrs. H. agreed to sign the waiver of adoption assistance form.
- s. On January 5, 2011, Mr. and Mrs. H. discovered that Zola had Sickle Cell Disease through conversations with a social worker.
- t. Within days of discovering Zola's illness, Mr. and Mrs. H. again asked about adoption assistance for Zola. They were again denied because Zola did not have a DOC rate and she was not having active symptoms of sickle cell disease.
- u. Mr. and Mrs. H. made numerous changes to their home and lifestyle to accommodate her illness, and paid \$7.50 per six bottles for a prescribed specialized formula. Zola used 90 bottles per month for a cost of over \$110.00 per month. She took Penicillin to prevent infections, and Tylenol with Codeine for pain.
- v. Oakland Family Services' e-mails prove that the worker knew that Zola was hospitalized for several days at a time—on two occasions—before her adoption was finalized.
- w. Despite Zola's diagnosis, Mr. and Mrs. H. were never told that she was eligible for adoption assistance, and that DHS has a DOC form for medically fragile children.
- x. DHS failed to apply for SSI for Zola.

- y. On May 15, 2011, Mr. and Mrs. H. requested a contract from the Adoption Medical Subsidy Program. DHS failed to respond.
- z. On August 04, 2011, a worker e-mailed Mr. and Mrs. H. that the DHS office loses or claims to lose documents on a daily basis.
- aa. A second request resulted in the medical subsidy contract being completed on October 25, 2011. Mr. and Mrs. H. were subsequently told that their co-payments for Zola's hospitalizations would not be covered under the Adoption Medical Subsidy Contract without previous authorization, although hospitalizations are not listed in the contract as requiring prior approval. All of Zola's hospitalizations have taken place after she has been treated in the emergency department.
- bb. Title IV-E allows a state to present a Title IV-E adoption assistance request form only to adoptive parents (i.e. those who have been legally converted from *foster parents* to *adoptive parents* by official court order.)
- cc. Michigan law mandates that a person does not become an adoptive parent until the order of adoptive placement has been completed. The Title IV-E contract form used by DHS recognizes this mandate.
- dd. Mr. and Mrs. H. were not legal adoptive parents until March 24, 2011—over three months later.
- ee. State law requires a period of six months between legal adoptive placement and finalization. Ms. Westphal falsely told them that the period of time which Zola had spent as a foster child was included in the six-month period and urged them to request an expedited adoption.
- ff. Zola's adoption was finalized only 34 days after she was legally made their adoptive daughter. Without the expedited adoption, they would have had six months from the legal adoptive placement date of March 24, 2011 to request Title IV-E adoption assistance.
- gg. Mr. and Mrs. H.'s requests were refused by DHS by citing a 90 day time limit which conflicted with federal regulations.
- hh. On June 29, 2012, Mr. and Mrs. H., their legal counsel and Assistant Attorney General Joshua Smith met for what Mr. and Mrs. H. believed was a pre-hearing conference as a result of their request. During the conference, Mr. Smith stated

that Mr. and Mrs. H. would not receive a hearing—a violation of Title IV-E due process rights.

- ii. On August 16, 2012, DHS wrongfully terminated Medicaid coverage for Zola H.
- jj. Zola has been hospitalized 14 times in less than two years since her placement—including two hospitalizations before her adoption was finalized. She has had multiple blood transfusions and had surgery on her ears and lips. In the first year of her adoption, her parents owed approximately \$10,000.00 in medical expenses.
- kk. Mr. and Mrs. H. stated during their home study that while they would accept a child with medical issues, they were unwilling to adopt a terminally ill child. The social worker agreed to comply. Because they had Zola in their home for five months before learning of her severe life-threatening illness, they developed a strong emotional bond with her which prevented them from objectively making a decision to return her to foster care. Current research states that early mortality from sickle cell disease is highest among patients whose disease is symptomatic--the exact situation in which Zola lives. Each time she has been hospitalized, Mr. and Mrs. H. and Zola's sister--their biological child--have been severely emotionally traumatized by the possibility that she might not return to them alive.

### **ADDITIONAL PLAINTIFFS**

36. **Mr. and Mrs. A.**

- a. Since their child's adoptive placement, Mr. and Mrs. A. have had a difficult home life. Their other children were emotionally injured by the placement of a severely emotionally disturbed child into a home where the parents stated that they were willing to adopt a child with minor or no impairments. Their primary concern was how the placement would affect their other children.
- b. Much of their home was damaged by their adopted child. Their previously healthy financial condition has been severely injured.
- c. Mr. and Mrs. A expect to care for their child until they die or are too old to provide care. He receives SSI and they are his legal guardians.
- d. Mr. and Mrs. A. have stated that if anyone had told them of the child's known impairments, they never would have allowed him into their home.

- e. DHS workers did not tell Mr. and Mrs. A. at any time that they could disrupt an inappropriate placement. If they had known of the right to disrupt an inappropriate placement, they would have terminated the adoption process.

37. **Mr. and Mrs. B.**

- a. Mr. and Mrs. B. had no other children when they adopted their three severely brain-injured children.
- b. Mr. and Mrs. B. were told that the children had mild or no impairments; their experience of parenting has been grueling and traumatic.
- c. Mr. and Mrs. B. have endured severe financial distress.
- d. Since shortly after the three children were placed, Mr. and Mrs. B. have paid out-of-pocket costs of \$2,500.00 per month for two of the children to be alternately out of the home, \$5,000.00 for specialized training to become therapeutic parents, and other costs.
- e. Mr. and Mrs. B. have sustained damage to their home by the two boys.
- f. Mr. and Mrs. B. have been severely emotionally injured by the wrongful placements.
- g. DHS workers documented that Mr. B. is a recovering alcoholic, but placed three profoundly emotionally disturbed children into their home, fully aware that the placements could endanger his sobriety—which he has maintained. Mr. B. has stated that in the 17 years since his sobriety began, he has been most tempted to begin drinking since the placements of the three children.
- h. Mr. and Mrs. B. suffer from depression, PTSD, and insomnia. The children’s therapist documented that their marriage is at risk.
- i. Mr. and Mrs. B. have expressed a desire to dissolve the adoptions of the two boys, but fear the legal ramifications.
- j. DHS workers did not tell Mr. and Mrs. B. at any time that they could disrupt an inappropriate placement. If they had known of the right to disrupt an inappropriate placement, they would have terminated the adoption.

38. **Mr. and Mrs. C.**

- a. Since the adoption of their foster child against their will, Mr. and Mrs. C. have been profoundly emotionally and financially injured. Mrs. C. cannot work outside the home, as their child requires full-time supervision.
- b. Mr. and Mrs. C. will be in their 70's when their child reaches age 18—when she will then require a guardianship.
- c. Mr. and Mrs. C. would not have adopted her if they had known the severity of her impairments.

39. **Mr. and Mrs. D.**

- a. Mr. and Mrs. D. are the only parents in this case who adopted their children with full knowledge of their backgrounds and conditions; they adopted their children from Louisiana.
- b. Mr. and Mrs. D. contacted DHS simply to obtain Title IV-E adoption assistance and Medicaid to which their two children with Down Syndrome have been entitled.
- c. Mr. and Mrs. D. have been severely emotionally and financially injured as the result of DHS' violations of their due process, civil, Title IV-E, and other rights.

40. **Mr. and Mrs. E.**

- a. Mr. and Mrs. E. specified on their adoption application that they were NOT willing to adopt a child with FAS, one who was severely emotionally disturbed, or a child under age one who had been exposed to prenatal drugs.
- b. The two foster and adoption workers each separately documented their agreement to comply with their requests. The two workers knew that Mr. and Mrs. E. already had two children, including a severely multiply handicapped birth son.
- c. Before Mr. and Mrs. E. could adopt, they completed approximately 16-18 hours of foster care/adoption classes. During one class, a social worker listed multiple symptoms of RAD and fraudulently told the parents that such symptoms were mild temporary adjustment behaviors.
- d. Mr. and Mrs. E. were unaware that they were entitled to full disclosure of the children's histories and conditions.
- e. Mr. and Mrs. E. were led to believe that simple adoptive placement of a child meant that there was no turning back in the process of adoption.

- f. Mrs. E. had shoulder surgery for injuries inflicted by one of the children during a rage lasting 2½ hours. She endured a variety of assaults from her adopted children, including being bitten, head-butted, kicked, slapped, punched, pinched, and spat upon.
- g. Mrs. E. was repeatedly urinated upon by one of the children as she slept, and Mrs. E. was the intended victim of two children who attempted multiple murder attempts.
- h. Mr. and Mrs. E. are profoundly emotionally injured by the adoptions of their children. They both have Post-Traumatic Stress Disorder (PTSD) and chronic depression. Mr. E.'s blood pressure rose within weeks after the placements of three children. Mrs. E. also has chronic insomnia.
- i. The adopted children's previous therapist told Mrs. E. that because of the chronic and severe emotional and physical trauma inflicted on them by the four children--and their resulting severe PTSD—they will need to sell their home and move.
- j. Before adopting, Mr. and Mrs. E. proved their good financial condition to DHS. This has been deeply damaged by their expenditures for therapy/treatments and transportation for the children, by grossly inadequate payment of Title IV-E adoption assistance for their children, and by extensive property damage.
- k. In 2005, at the direction of Ms. Angela Wright, Mr. Joel Brown of Clinton County Protective Services telephoned and harassed Mrs. E. by demanding individual interviews with the family's six children. Even after he agreed he had no legal basis for his demand, he emailed to the Lansing DHS office that Mrs. E. was uncooperative.
- l. In 2008, Mr. E. left his salaried employment with a manufacturing company—mostly due to a child's need for complete supervision—and took a part-time job driving a special education school bus for severely emotionally disturbed children.
- m. They have taken out multiple loans and disbursements from Mr. E.'s retirement funds, and have received multiple donations of food, clothing, and other assistance from others, including thousands of dollars in financial assistance from Mrs. E.'s parents and siblings.

- n. If the fraudulent placements had not occurred, Mr. E. would not have left his salaried position in 2008, and would have earned approximately \$300,000.00 more to date. Due to multiple loans and disbursements from his retirement funds to pay for therapies, home and vehicle repair, and other expenses, Mr. E. also estimates that his retirement funds are approximately \$200,000.00 less than they would have been if they had not adopted the children.
- o. Mrs. E. is a registered nurse. She has been unable to work in her field since the adoptive placements, because their children require full-time supervision. Their adopted children required therapeutic parents. Mrs. E. travelled around the U.S. at the family's expense to obtain training in therapeutic parenting for her adopted children.
- p. Mrs. E. has acted as a whistle-blower to the U.S. DHHS for several years, disclosing various illegal actions of DHS against adoptive families, including theft of adoption assistance funds from specific handicapped children. As a result, DHS was investigated in 2007, then cited for Title IV-E violations (in nine areas) and placed under a Program Improvement Plan in 2008. Mrs. E. has testified to Michigan House and Senate committees, acted as an Authorized Hearing Representative, and assisted other parents in writing complaints to the U.S. DHHS Office for Civil Rights.
- q. In response, her family has been grossly injured by the retaliatory actions of DHS workers. Ms. Kate Young, the former Adoption Subsidy Program manager, refused services for the children from the Adoption Medical Subsidy Program. She told Mrs. E. that she had to be in the Abusive Parent Program to get the services; there is no such program.
- r. A DHS worker once told her that a reimbursement could not be processed because DHS did not receive the receipt. The same worker suddenly found the receipt seconds later, after Mrs. E. told her that it had been sent by certified mail. Defendants' workers have engaged in intimidation, coercion, and an illegal attempt to suspend her son's adoption assistance payments; violation of her children's HIPAA privacy rights; violation of her FOIA rights; and an attempt at a fraudulent Protective Services investigation.

- s. Adoption Subsidy Program staff ignore her requests for services and funds for her children.
- t. Mr. and Mrs. E. still have three of their adopted children at home. The three children will always be unable to live on their own or support themselves.
- u. Because of the fraudulent adoptive placements, Mr. and Mrs. E. have a total of five severely handicapped children. They are now legal guardians of their birth son and their two adopted daughters (who have been determined to be legally incapacitated individuals), and will seek guardianship for their youngest adopted child in November, 2012.
- v. DHS workers did not inform Mr. and Mrs. A. at any time that they could disrupt an inappropriate placement. If they had known of the right to disrupt an inappropriate placement, they would have done so after the first murder attempt on their birth son.

41. **Mr. and Mrs. F.**

- a. In their application to adopt, Mr. and Mrs. F. documented that they would prefer a child as healthy as possible. They told DHS that they were not willing to adopt a child with FAS or one who was severely emotionally disturbed.
- b. Mr. and Mrs. F. proved their healthy financial condition to DHS. Their finances have been deeply damaged by their expenditures for therapy/treatments and transportation for the children; by grossly inadequate payment of Title IV-E adoption assistance for the children's severe handicaps—caused by DHS' refusal to score DOC rates appropriately; and by extensive property damage to their home, vehicles, and personal possessions.
- c. Defendants' actions by grossly inappropriate foster and adoptive placements have caused extensive personal and marital stress. Both parents have depression, Post-Traumatic Stress Disorder, and insomnia.
- d. The symptoms of Mrs. F.'s Lyme Disease have been worsened by the stress of raising their severely impaired adopted children.
- e. Mr. F.'s health has not recovered fully since his treatment for Chlamydia, which he contracted from their adopted child.



- f. The family has been severely emotionally injured by DHS' wrongful and illegal disruptions of adoptive placements. The same day that an infant was placed into their family for eventual adoption, a DHS worker called Mrs. F. and said, "She's black. You're not allowed to have a black baby." The worker then waited six months to remove the child. The family was emotionally devastated by the illegal removal.
- g. A two year old boy was placed with them for foster care. Soon after, Mrs. F. found the child with his pants off, holding infant Anna up on her knees, and trying to sodomize her. Mrs. F. called DHS immediately and demanded that someone come to her home to remove the boy that day. DHS refused to pick up the child. Mrs. F. had to drive the child to DHS.
- h. Mr. and Mrs. F. would not have adopted three of the children if they had known about their problems. They would not have adopted from Michigan's foster care system at all, if they had known how DHS workers would treat their family.
- i. DHS workers never told Mr. and Mrs. F. that they could disrupt an inappropriate placement at any time. If they had known of the right to disrupt an inappropriate placement, they would have terminated the adoption.

42. **Mr. and Mrs. G.**

- a. Mr. and Mrs. G. were profoundly injured by the placement of their younger son. Mrs. G. endured broken ribs and multiple other assault injuries. Their son has killed three family pets and caused many thousands of dollars of property destruction.
- b. Mr. and Mrs. G. have been severely financially injured by the lack of Title IV-E adoption assistance and Medicaid for their two boys.
- c. Mr. and Mrs. G. regret adopting their younger son, due to the severe emotional and physical injuries to their other children and themselves. They will be required to care for him, or find others to care for him, for their entire lifetimes.
- d. If Mr. and Mrs. G. had known of the right to disrupt an inappropriate placement, they would have terminated the adoption.

43. **Mr. and Mrs. H.**

- a. Mr. and Mrs. H. specified during their home study that they were willing to adopt a child with medical problems. DHS placed the child as completely healthy, although Defendants knew the child had sickle cell disease.
  - b. In the one year since their daughter's adoption was finalized, she has been hospitalized fifteen times, which has included surgery and transfusions.
  - c. Without Title IV-E adoption assistance and Medicaid, their financial condition continues to worsen.
  - d. Mr. and Mrs. H. have been emotionally harmed by DHS' grossly negligent handling of their child's adoption.
44. **Robert Jones, by his next friend, Ann L. McNitt**
- a. Robert is a multiply handicapped young man with cognitive impairments, cerebral palsy, and epilepsy. He has an IQ of 47.
  - b. Before his adopted siblings' entrance into the family, he enjoyed a happy home life with his older brother and parents, and was described by his school teachers as cheerful and contented.
  - c. Within weeks after the adoptive placements of three severely emotionally disturbed adopted children, Robert's adopted brother repeatedly choked and kicked him.
  - d. The placement worker told Robert's mother that the adopted child's behaviors were minor adjustment issues that would soon go away and that the adopted child had just watched too much "Power Rangers" in the birth home.
  - e. Robert's mother continued to tell the worker about the children's disturbing behaviors. The DHS worker never informed Robert's parents that the adoption could be disrupted.
  - f. The adopted child has tried to drown Robert in the bathtub.
  - g. Because Robert's parents were unaware of their right to disrupt the grossly negligent adoptive placements, they took every step available to protect him. This included hiring adult babysitters for the children, installing alarms on the adopted children's unlocked bedroom doors, and sending the assaultive children away for months at a time after such actions. One of Robert's adopted sisters was hospitalized twice at a psychiatric hospital

- h. In May of 2005, Robert reported that the adopted child sodomized him. Robert has never fully recovered from this appalling event.
  - i. In the years since the four adoptions, Robert has had extreme difficulty living with four severely emotionally disturbed siblings. He goes into rages—which are fewer and less intense when his adopted siblings are away for a few hours—and is entirely unable to have any semblance of a normal family life.
  - j. If Mr. and Mrs. G. had been informed of the right to disrupt an inappropriate placement, they would have terminated the adoption.
45. **John Smith, by his next friend, Ann L. McNitt**
- a. John was age 11 when his birth parents adopted their last three children. Until then, he enjoyed a healthy relationship with his parents and enjoyed being with them. He was homeschooled and excelled scholastically, with academic testing placing him in the 96<sup>th</sup> percentile in science. Within only weeks after the placements, John’s parents could not provide him with attention, as they began dealing with chronically disturbed behaviors of his several mentally ill adoptive siblings.
  - b. John’s adopted siblings frequently stole and destroyed his property, including bicycles, tools, toys, stereo equipment, and his clothes. He observed dozens of his adopted siblings’ rages, their intentional vomiting during meals, and many intentional acts of destruction of his home.
  - c. During one rage, he had to sit on his sister to stop her from jumping out of a second-story window in a suicide attempt, while his mother called a psychiatric hospital to make placement arrangements.
  - d. John’s normal adolescence was lost to him. Because of the bizarre and violent behaviors of four severely emotionally disturbed adopted siblings, his friends could not come to his family home.
  - e. A camper was given to him one summer; he lived in it in the backyard, so as to escape the emotional turmoil in his home. Other than to use the bathroom and procure food—which he ate in the camper—John entirely refused to enter the family home.

- f. John suffered depression and had multiple symptoms of PTSD as a result. His schooling suffered. He is now age 26, and is slowly putting his life back together.
46. **Lisa Anderson, by her next friend, Ann L. McNitt**
- a. Lisa was the first adopted child in her home, and enjoyed a happy relationship with her parents. Her parents adopted a child with multiple impairments, then adopted another child with profound brain injuries.
- b. Lisa was seriously injured when the younger of her two adopted siblings threw an item at her, cutting her eyelid. A plastic surgeon told her parents that she needs plastic surgery to repair the eyelid; they cannot afford the expense.
- c. Lisa has been severely emotionally injured by living with her youngest adopted sibling. His history of grossly inappropriate sexual behaviors, physical assaults, arson attempts, and killing their family's pets has scarred her.
- d. Lisa began having migraine headaches when she was nine years old—when her brother began at age three to display his brain injuries. She continues to have these headaches, for which she has taken multiple prescription medications.
47. There are nineteen (19) adopted children in this case, placed into eight families. Two of the 19 children were adopted from Louisiana's foster care system, and seventeen from Michigan's foster care system.
48. Only one of the eight families was told during the processes of adopting their children that DHS had a varying scale of adoption assistance rates for handicapped children, and given the opportunity to try to obtain higher rates.
49. None of the three families whose children have adoption assistance fully and freely negotiated the adoption assistance rates for their children, nor were they told of that Federal right.
50. Seven of the eight (87.5%) families have trans-racial adoptions (i.e. at least one ethnic minority child with at least one non-same-race parent).
51. Sixteen of the 19 children (84%) are in trans-racial families (i.e. either an ethnic-minority child placed with at least one non-same-race adoptive parent, or a Caucasian child placed with Caucasian parents who previously adopted non-Caucasian children.)

52. Of the three families whose children were given Title IV-E adoption assistance contracts, all three signed adoption assistance agreements while they were still foster parents—i.e. before they were legally converted into adoptive parents.
53. Of the seventeen children adopted from Michigan’s foster care system:
  - a. Only one set of adoptive parents (Caucasian parents who adopted Caucasian children) received the State’s legally-mandated “pamphlet” about the adoption process.
  - b. Parents in only three families received DHS’ pamphlet about the adoption subsidy program before the adoption of their first child.
  - c. Sixteen of the seventeen were documented with prenatal alcohol exposure and/or were placed with facial and other features and behaviors indicative of Fetal Alcohol Syndrome (FAS)—a syndrome of severe handicaps caused by prenatal alcohol exposure via the birth-mother’s alcohol abuse. (The seventeenth child’s birth mother also had a history of alcohol addiction, but because of the child’s young age, there is currently insufficient evidence to state definitely that the child has the condition.)
  - d. Sixteen of the seventeen children came from acknowledged abuse, neglect, and/or prenatal alcohol/drug exposure. None of the families received legally-mandated psychological testing initiated by a DHS worker while in foster care. (The 17<sup>th</sup> child received such an evaluation while in foster care, because the foster parents obtained it.)
  - e. Fifteen of the seventeen children are severely to profoundly multiply handicapped; the other two are somewhat less impaired.
  - f. Fourteen of the seventeen Michigan children were placed with symptoms or actual diagnoses of Reactive Attachment Disorder of Infancy (RAD)—a severe mental illness of children.
  - g. Five of the seven families have from one to four children with severe to profound RAD; another child in a family has multiple symptoms of the mental illness.
  - h. No adoptive parents were told that RAD was a specific severe mental illness.

- i. Five children with RAD were placed by one worker into two families; she later testified that she knew the children to be mentally ill at the time she placed them, but did not tell the adoptive parents.
  - j. One child was placed with sickle cell disease which was diagnosed within days after her birth. DHS did not notify the foster/adoptive parents of her illness until five months after her placement.
  - k. Eight severely handicapped children (in six trans-racial families) have no adoption assistance. In one of these families, the parents signed a waiver of their Title IV-E rights when they were foster parents--before they were legally allowed to do so.
  - l. Eleven severely handicapped children (in three families) have adoption assistance at rates for normal healthy children, or children with mild to moderate impairments.
54. Of the two children adopted from Louisiana:
- a. Both have Down Syndrome and at least one has an additional impairment.
  - b. One child is Caucasian, and the other is African-American; both were adopted into the same trans-racial family which had previously adopted non-same-race children.
  - c. Neither has Title IV-E adoption assistance.

**NEXT FRIEND**

55. Named Plaintiff Adopted Children appear through their next friend, Ann L. McNitt. Mrs. McNitt is a graduate of Michigan State University's College of Nursing, is a registered nurse, has over 35 years of experience with handicapped children, is a therapeutic parenting specialist and instructor, works as a volunteer advocate for handicapped foster and adopted children, and has served as an Authorized Hearing Representative for parents in this case. She and her husband have five severely multiply handicapped children. Mrs. McNitt is sufficiently familiar with the facts of each child's situation to fairly and adequately represent each child's interests in this litigation.

## DEFENDANTS

56. Defendant RICK SNYDER is the Governor of the State of Michigan and is sued in his 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 Snyder maintains his principal office at the Office of the Governor, 111 S. Capitol Avenue, George W. Romney Building, Lansing, Michigan 48933.
57. Defendant MAURA CORRIGAN 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 Corrigan 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 Corrigan maintains her principal office at the Department of Human Services, 235 S. Grand Avenue, Lansing, Michigan 48909.
58. Defendant DUANE BERGER is the Chief Deputy Director of Operations in DHS and is sued in his official capacity. Defendant Berger reports directly to Director Corrigan and has overall operational responsibility for Michigan's foster care system. Deputy Director Berger maintains his principal office at the Department of Human Services, 235 S. Grand Avenue, Lansing, Michigan 48909.
59. Defendant STEVE YAGER is the Director of DHS Children's Services, and is sued in his official capacity. Defendant Yager reports directly to Defendant Corrigan and has day-to-day management responsibility for Michigan's foster care system. Deputy Director Yager maintains his principal office at the Department of Human Services, 235 S. Grand Avenue, Lansing, Michigan 48909.
60. Defendant CATHE HOOVER is DHS' Adoption, Guardianship and Permanency Program Manager and is sued in her official capacity. Defendant Hoover reports directly to Defendant Corrigan and has day-to-day management responsibility for Michigan's adoption and guardianship programs. Ms. Hoover maintains her principal office at the Department of Human Services, 235 S. Grand Avenue, Lansing, Michigan 48909.

61. Defendant BONNIE WATKINS is DHS' Supervisor of the Adoption Subsidy Program and is sued in her official capacity. Defendant Watkins reports directly to Defendant Hoover and has day-to-day management responsibility for Michigan's adoption and guardianship programs. Ms. Watkins maintains her principal office at the Department of Human Services, 235 S. Grand Avenue, Lansing, Michigan 48909.
62. Defendant VERONICA JONES is DHS' Adoption Subsidy Program Specialist and is sued in her official capacity. Defendant Jones reports directly to Defendant Watkins and has day-to-day management responsibility for Michigan's adoption subsidy programs. Ms. Jones maintains her principal office at the Department of Human Services, 235 S. Grand Avenue, Lansing, Michigan 48909.
63. Defendant MARTHA BALLOU is DHS' Adoption Subsidy Program Specialist and is sued in her official capacity. Defendant Ballou reports directly to Defendant Watkins and has day-to-day management responsibility for Michigan's adoption subsidy programs. Ms. Ballou maintains her principal office at the Department of Human Services, 235 S. Grand Avenue, Lansing, Michigan 48909.

#### **INGHAM COUNTY DEPARTMENT OF HUMAN SERVICES**

64. Defendant INGHAM COUNTY DEPARTMENT OF HUMAN SERVICES' principal office is at 5303 South Cedar Street, Lansing, Michigan 48909. The allegations contained in paragraphs 1-12, 22-25, and Count III applies to this Defendant.

#### **CLINTON COUNTY DEPARTMENT OF HUMAN SERVICES**

65. Defendant CLINTON COUNTY DEPARTMENT OF HUMAN SERVICES' principal office is at 105 W. Tolles Road, St. Johns, Michigan 48879. The allegations contained in paragraphs 1-12, 40, and Counts I, II, V, VI and XI apply to this Defendant.
66. Defendant JOEL BROWN, a Protective Services Worker at Clinton County DHS, is sued in his official capacity; his principal office is at 105 W. Tolles Road, St. Johns, Michigan 48879. The allegations contained in paragraphs 1-12, 40, and Counts I, II, V, VI and XI apply to this Defendant.
67. Defendant ANGELA WRIGHT, a Supervisor at Clinton County DHS, is sued in her official capacity; her principal office is at 105 W. Tolles Road, St. Johns, Michigan



48879. The allegations contained in paragraphs 1-12, 40, and Counts I, II, V, VI and XI apply to this Defendant.

**GENESEE COUNTY DEPARTMENT OF HUMAN SERVICES**

68. Defendant GENESEE COUNTY DEPARTMENT OF HUMAN SERVICES' principal office is at 125 E. Union Street, P.O. Box 1628, Flint, Michigan 48501. The allegations contained in paragraphs 1-12, 18, 26-31, 38, 41, and Counts I-XI apply to this Defendant.
69. Defendant STACIE BOWENS, the Director at Genesee County DHS, is sued individually and in her official capacity; her principal office is at 125 E. Union Street, P.O. Box 1628, Flint, Michigan 48501. The allegations contained in paragraphs 1-12, 18, 26-31, 38, 41, and Counts I-XI apply to this Defendant.
70. Defendant TIMOTHY SPENCER, a Foster Worker at Genesee County DHS, is sued individually and in his official capacity; his principal office is at 125 E. Union Street, P.O. Box 1628, Flint, Michigan 48501. The allegations contained in paragraphs 1-12, 26-27, 41, and Counts I-IX and XI apply to this Defendant.
71. Defendant JENNIFER DILLARD, a Foster Worker at Genesee County DHS, is sued individually and in her official capacity; her principal office is at 125 E. Union Street, P.O. Box 1628, Flint, Michigan 48501. The allegations contained in paragraphs 1-12, 26-27, 41, and Counts I-IX and XI apply to this Defendant.
72. Defendant MELINDA BAAS, a Foster Worker at Genesee County DHS, is sued individually and in her official capacity; her principal office is at 125 E. Union Street, P.O. Box 1628, Flint, Michigan 48501. The allegations contained in paragraphs 1-12, 26, 28, 31, 41, and Counts I-IX and XI apply to this Defendant.
73. Defendant ELIZABETH DINSHAW, a Foster Worker at Genesee County DHS, is sued individually and in her official capacity; her principal office is at 125 E. Union Street, P.O. Box 1628, Flint, Michigan 48501. The allegations contained in paragraphs 1-12, 26-27, 41, and Counts I-IX and XI apply to this Defendant.
74. Defendant MELISSA JENNICHES, a Protective Services Worker at Genesee County DHS, is sued individually and in her official capacity; her principal office is at 125 E. Union Street, P.O. Box 1628, Flint, Michigan 48501. The allegations contained in paragraphs 1-12, 27, 41, and Counts I, II, V, VI, and XI apply to this Defendant.

75. Defendant KALILAH MAGEED, a Foster Adoption Supervisor at Genesee County DHS, is sued individually and in her official capacity; her principal office is at 125 E. Union Street, P.O. Box 1628, Flint, Michigan 48501. The allegations contained in paragraphs 1-12, 26-27, 41, and Counts I-IX and XI apply to this Defendant.
76. Defendant TANIA OTERO, a Protective Services Worker at Genesee County DHS, is sued individually and in her official capacity; her principal office is at 125 E. Union Street, P.O. Box 1628, Flint, Michigan 48501. The allegations contained in paragraphs 1-12, 27, 41, and Counts I-IX and XI apply to this Defendant.
77. Defendant ERIN DEERING, a Foster Worker at Genesee County DHS, is sued individually and in her official capacity; her principal office is at 125 E. Union Street, P.O. Box 1628, Flint, Michigan 48501. The allegations contained in paragraphs 1-12, 18, 38, and Counts I-XI apply to this Defendant.
78. Defendant ALMA SYKES-EDWARDS, a Foster Worker at Genesee County DHS, is sued individually and in her official capacity; her principal office is at 125 E. Union Street, P.O. Box 1628, Flint, Michigan 48501. The allegations contained in paragraphs 1-12, 18, 38, and Counts I-XI apply to this Defendant.
79. Defendant BARBARA McELMORE, a Foster Worker at Genesee County DHS, is sued individually and in her official capacity; her principal office is at 125 E. Union Street, P.O. Box 1628, Flint, Michigan 48501. The allegations contained in paragraphs 1-12, 18, 38, and Counts I-XI apply to this Defendant.
80. Defendant LINDA KELLER, a Foster Worker at Genesee County DHS, is sued individually and in her official capacity; her principal office is at 125 E. Union Street, P.O. Box 1628, Flint, Michigan 48501. The allegations contained in paragraphs 1-12, 18, 38, and Counts I-XI apply to this Defendant.
81. Defendant NANCY HILL-LEADMON, a Foster Worker at Genesee County DHS, is sued individually and in her official capacity; her principal office is at 125 E. Union Street, P.O. Box 1628, Flint, Michigan 48501. The allegations contained in paragraphs 1-12, 18, 26-27, 38, 41, and Counts I-IX and XI apply to this Defendant.

**ENNIS CENTER FOR CHILDREN, INC.**

82. Defendant ENNIS CENTER FOR CHILDREN, INC.'s principal office is at 129 East Third Street, Flint, Michigan 48502. The Ennis Center for Children, Inc. was contracted by, and acted as agents for, the Michigan Department of Human Services to provide adoptions services. The allegations contained in paragraphs 1-12, 26, 28-31, 41, and Counts I-IX and XI apply to this Defendant.
83. Defendant ROBERT E. ENNIS, President of ECCI, is sued individually and in his official capacity; his principal office is at 129 East Third Street, Flint, Michigan 48502. The allegations contained in paragraphs 1-12, 26, 28-31, 41, and Counts I-IX and XI apply to this Defendant.
84. Defendant KRISTIN VARNER, a Supervisor of ECCI, is sued individually and in her official capacity; her principal office is at 129 East Third Street, Flint, Michigan 48502. The allegations contained in paragraphs 1-12, 26, 28-31, 41, and Counts I-IX and XI apply to this Defendant.
85. Defendant JILL GRIFFIN, a Supervisor of ECCI, is sued individually and in her official capacity; her principal office is at 129 East Third Street, Flint, Michigan 48502. The allegations contained in paragraphs 1-12, 26, 28-31, 41, and Counts I-IX and XI apply to this Defendant.
86. Defendant FELISHA BEADLE, a Foster Worker of ECCI, is sued individually and in her official capacity; her principal office is at 129 East Third Street, Flint, Michigan 48502. The allegations contained in paragraphs 1-12, 26, 30, 41, and Counts I-IX and XI apply to this Defendant.
87. Defendant DEBBI MARRE, a Foster Worker of ECCI, is sued individually and in her official capacity; her principal office is at 129 East Third Street, Flint, Michigan 48502. The allegations contained in paragraphs 1-12, 26, 29, 41, and Counts I-IX and XI apply to this Defendant.

**CATHOLIC SERVICES OF MACOMB**

88. Defendant CATHOLIC SERVICES OF MACOMB's principal office is at 15945 Canal Road, Clinton Township, Michigan 48038. Catholic Services of Macomb was contracted

by, and acted as agents for, the Michigan Department of Human Services to provide adoptions services. The allegations contained in paragraphs 1-12, 32-34, 42, 46, and Counts I-XI apply to this Defendant.

89. Defendant THOMAS REED, President/CEO of Catholic Services of Macomb, is sued individually and in his official capacity; his principal office is at 15945 Canal Road, Clinton Township, Michigan 48038. The allegations contained in paragraphs 1-12, 32-34, 42, 46, and Counts I-XI apply to this Defendant.
90. Defendant JOANNE ALES, a Supervisor at Catholic Services of Macomb, is sued individually and in her official capacity; her principal office is at 15945 Canal Road, Clinton Township, Michigan 48038. The allegations contained in paragraphs 1-12, 32-34, 42, 46, and Counts I-XI apply to this Defendant.

#### **ST. CLAIR COUNTY DEPARTMENT OF HUMAN SERVICES**

91. Defendant ST. CLAIR COUNTY DEPARTMENT OF HUMAN SERVICES' principal office is at 220 Fort Street, Port Huron, Michigan 48060. The allegations contained in paragraphs 1-12, 14-17, 37, and Counts I-VII and XI apply to this Defendant.
92. Defendant KAY ANDRZEJAK, Director at St. Clair County DHS, is sued individually and in her official capacity; her principal office is at 220 Fort Street, Port Huron, Michigan 48060. The allegations contained in paragraphs 1-12, 14-17, 37, and Counts I-VII and XI apply to this Defendant.
93. Defendant DEBORAH WALBECQ, an Adoption Worker at St. Clair County DHS, is sued individually and in her official capacity; her principal office is at 220 Fort Street, Port Huron, Michigan 48060. The allegations contained in paragraphs 1-12, 14-17, 37, and Counts I-VII and XI apply to this Defendant.
94. Defendant REBECCA FOCKLER, an Adoption Worker at St. Clair County DHS, is sued individually and in her official capacity; her principal office is at 220 Fort Street, Port Huron, Michigan 48060. The allegations contained in paragraphs 1-12, 14-17, 37, and Counts I-VII and XI apply to this Defendant.

### **CHILD AND FAMILY CHARITIES**

95. Defendant CHILD AND FAMILY CHARITIES', formerly known as Child and Family Services, Capital Area, principal office is at 4287 5 Oaks Drive, Lansing, Michigan 48811. Child and Family Charities was contracted by, and acted as agents for, the Michigan Department of Human Services to provide adoptions services. The allegations contained in paragraphs 1-13, 21-25, 36, 40, 44-45, and Counts I-XI apply to this Defendant.
96. Defendant JAMES PAPARELLA, the Executive Director at Child and Family Charities, is sued individually and in her official capacity; his principal office is at 4287 5 Oaks Drive, Lansing, Michigan 48811. The allegations contained in paragraphs 1-13, 21-25, 36, 40, 44-45, and Counts I-XI apply to this Defendant.
97. Defendant KRISTIN GODBY, a Child Welfare Supervisor at Child and Family Charities, is sued individually and in her official capacity; her principal office is at 4287 5 Oaks Drive, Lansing, Michigan 48811. The allegations contained in paragraphs 1-13, 21-25, 36, 40, 44-45, and Counts I-XI apply to this Defendant.

### **OAKLAND FAMILY SERVICES**

98. Defendant OAKLAND FAMILY SERVICES' principal office is at 114 Orchard Lake Road, Pontiac, Michigan 48341. Oakland Family Services was contracted by, and acted as agents for, the Michigan Department of Human Services to provide adoptions services. The allegations contained in paragraphs 1-12, 35, 43, and Counts I-XI apply to this Defendant.
99. Defendant MICHAEL S. EARL, President/CEO of Oakland Family Services, is sued individually and in his official capacity; his principal office is at 114 Orchard Lake Road, Pontiac, Michigan 48341. The allegations contained in paragraphs 1-12, 35, 43, and Counts I-XI apply to this Defendant.
100. Defendant NAOMI SCHWARTZ, an Adoption Supervisor at Oakland Family Services, is sued individually and in her official capacity; her principal office is at 114 Orchard Lake Road, Pontiac, Michigan 48341. The allegations contained in paragraphs 1-12, 35, 43, and Counts I-XI apply to this Defendant.

101. Defendant LISA WESTPHAL, a Foster Worker at Oakland Family Services, is sued individually and in her official capacity; her principal office is at 114 Orchard Lake Road, Pontiac, Michigan 48341. The allegations contained in paragraphs 1-12, 35, 43, and Counts I-XI apply to this Defendant.
102. Defendant RACHEL LUBETSKY, a Foster Worker at Oakland Family Services, is sued individually and in her official capacity; her principal office is at 114 Orchard Lake Road, Pontiac, Michigan 48341. The allegations contained in paragraphs 1-12, 35, 43, and Counts I-XI apply to this Defendant.
103. Defendant LATRICE NEAL, a Foster Worker at Oakland Family Services, is sued individually and in her official capacity; her principal office is at 114 Orchard Lake Road, Pontiac, Michigan 48341. The allegations contained in paragraphs 1-12, 35, 43, and Counts I-XI apply to this Defendant.
104. Defendant KUMARI REYNOLDS, a Foster Worker at Oakland Family Services, is sued individually and in her official capacity; her principal office is at 114 Orchard Lake Road, Pontiac, Michigan 48341. The allegations contained in paragraphs 1-12, 35, 43, and Counts I-XI apply to this Defendant.

### **GENERAL FACTUAL ALLEGATIONS**

105. In 1997, the U.S. DHHS found DHS in violation of Federal Title IV-E regulations, by illegally charging certain DHS training programs--which should have been entirely State-funded-- to the U.S. DHHS.
106. In an audit held from 10/1/98 until 9/30/00, Michigan's Auditor General cited DHS for, "[DHS'] compliance with requirements applicable to each major federal program except...Title IV-E (et al)...Our assessment disclosed instances of noncompliance related to...documentation and allowability of federally funded expenditures, noncooperation penalties, client disqualification, discontinuation of adoption subsidy payments, allowable funding sources for federal matching requirements, financial penalties for noncompliance with federal guidelines and regulations ...[DHS] often did not comply with federal guidelines and regulations, resulting in federal sanctions for the... Title IV-E Program."

107. On June 3, 2003, the U.S. DHHS issued a letter to DHS, citing violations of Title IV-E; DHS then illegally required that children receiving SSI must spend four (4) months in foster care as an added eligibility requirement for Title IV-E adoption assistance. The letter directed DHS to re-consider “eligibility decisions that were affected for those children who should have been eligible for benefits under federal regulations.”
108. In July, 2003—one month later—DHS Director Bowler wrote (incorrectly) to the U.S. DHHS, “Michigan law was recently amended to remove the requirement of a four-month stay in foster care in order to be eligible for adoption assistance.”
109. On August 5, 2003, DHS Director Bowler again wrote to the U.S. DHHS, “...We have undertaken the policy and political analysis and budgetary review to determine the best possible amendments”-- in contradiction to the previous month’s letter which stated that the law had already been amended.
110. On August 18, 2003 Director Bowler wrote again to the U.S. DHHS, “We will have a finalized plan to address the statutory contradictions completed by November 30, 2003.”
111. On May 24, 2004—one year later-- in a letter to an adoptive parent, a regional director of the U.S. DHHS wrote to DHS, “We are aware of the contradiction between federal regulations and Michigan’s policy and legislation relative to the eligibility requirements for [SSI] eligible children. We have been in contact with Michigan officials and are working to rectify it.”
112. On May 24, 2004, DHS was placed under a “Program Improvement Plan” for its violations of Title IV-E regulations.
113. On June 2, 2004, the U.S. DHHS wrote to the new DHS Director Udow, “It is our understanding that draft legislation has been developed but has not yet been introduced. Due to the length of time this discrepancy has been in existence, we are requesting that Michigan develop an update to its strategy addressing this discrepancy and tender it to my office within 90 days...Also, from a practice standpoint, consideration should be given to those eligibility decisions that were affected (sic) for those children who should have been eligible for benefits under Federal regulations....”
114. During this period, the U.S. DHHS completed a “Title IV-E foster care review” of Michigan. In subsequent documentation, U.S. DHHS wrote, “Michigan is not in substantial compliance.”

115. On November 1, 2004, DHS was placed under a “Program Improvement Plan” by the U.S. DHHS for various Title IV-E violations noted during the period 4/03-9/03.
116. On December 15, 2004, U.S. DHHS wrote to DHS again, ordering DHS to develop a “Program Improvement Plan” to force DHS compliance with Federal regulations and Regional U.S. DHHS policies. That letter also stated, “...[W]e cannot negate the possibility that Michigan could be sued by families who allege that they should have received adoption assistance payments but did not.”
117. On February 14, 2005, DHS Director Udow wrote to U.S. DHHS, “The previous language that required that ‘the adoptee is in foster care at the time the department certifies the support subsidy’ has been removed.” [The policy remains in practice; it has specifically been applied against one child in this case to deny Title IV-E adoption assistance and Medicaid.]
118. On May 13, 2005, the U.S. DHHS wrote to DHS Director Udow, “If a child is SSI eligible at the time the adoption petition is filed and is determined to be a child with special needs, the State may not apply further requirements or restrictions to the child’s eligibility for Title IV-E adoption assistance. Michigan policy [illegally] indicates that independent adoption/direct placement adoptions are ineligible for adoption support subsidy.” [The policy has remained in practice; it has been used against two children in this case to deny Title IV-E adoption assistance and Medicaid.]
119. On July 25, 2005, U.S. Representative Dave Camp obtained a one-year extension for DHS to respond to and meet the criteria for a final review, after failing the initial U.S. DHHS review in March 2004.
120. In 2006, multiple parents attended hearings of the Michigan House of Representatives’ Child and Family Services Committee, to report on various abuses of civil rights and Title IV-E regulations by State and County DHS staff against the families of handicapped adopted children. These abuses included multiple episodes of frank adoption fraud, including the placements of children into families around the State without disclosure of the severe mental illnesses present in the children. Families reported behaviors in their adopted children including tens of thousands of dollars of intentional property damage, multiple actual murder attempts against family members, intentional torture and killing of family pets, and inappropriate sexual behaviors. Some parents reported that as a result of



their huge expenses for therapy and home repairs, and the inability of one parent to work outside the home—because one parent was required to supervise the handicapped child[ren] at all times—they were enduring phenomenal financial distress even to the point of actual bankruptcy. They testified that they were told by workers at DHS and private sub-contracting agencies that their children were healthy, when it was known that they were not. Parents reported that their children were placed with no adoption assistance, or with adoption assistance rates at the “Basic” level” -- DHS’ rate for “normal healthy children.” Parents testified that after making appropriate requests for funds and services, DHS workers responded with frank acts of intimidation, harassment, and fraudulent presentations. Parents stated that they could not obtain Title IV-E adoption assistance after finalization--even though such is required by Title IV-E regulations--and that DHS workers repeatedly ignored requests for hearings, made false statements in hearings, and intimidated parents who made appropriate requests for assistance.

121. In May, 2006, DHS’ documents obtained under the Freedom of Information Act (FOIA) showed that DHS was withholding approximately \$81,000.00 per month from the subsidies of severely handicapped children who were outside of their family homes for over 30 days. Their adoptive parents were still otherwise supporting them; these suspensions were illegal under Title IV-E. In the years from 2004-2005, the Adoption Subsidy Program withheld approximately \$1,949,760.00 from these children. These figures are in addition to monies withheld from children whose siblings were out of the family home for a period of time, and monies of children whose subsidies were suspended due to other reasons while they were still in the home. When questioned, DHS managers called the actions “reimbursement;” there is no such allowable action under Federal or State law, and DHS had no required “reimbursement policy” at the time, in case a child was placed out of the home—even if the placement was entirely at the parents’ expense.
122. In late 2006-- as a direct result of testimony by adoptive parents from around the State of Michigan, and due to DHS’ refusal to comply with federal requirements-- the State legislature passed *Act 345 of 2006*, including sections 556 and 559-- ordering DHS to submit annual reports regarding post-adoption requests for assistance to the House and Senate, and stating clearly, “If a conflict arises between the provisions of state law,

- department rules, or department policy, and the provisions of Title IV-E, the provisions of Title IV-E prevail.”
123. In mid-2006, Children’s Rights, Inc. filed a class-action suit in Federal court against the State of Michigan for multiple long-standing foster care and adoption violations, including failure to provide foster children with appropriate medical, dental, and mental health care, failure to provide safe and stable foster homes, and failure to provide older foster children with the skills needed for independent living as they “age out” of the foster care system. One issue was the multiple deaths of children while in DHS foster care. (A settlement agreement was eventually reached out of court by DHS’ agreeing to immediately change policies and practices, including obtaining appropriate treatments for handicapped children in foster care.)
  124. In 2006, the Michigan Auditor General wrote in his Annual Report, “In our audit of [the] Children’s Foster Care Program, [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...”
  125. The U.S. DHHS held a “secondary Title IV-E foster care review” from 4/1/06 until 9/30/06, finding, “Michigan was determined not to be in substantial compliance with the Title IV-E eligibility requirements.”
  126. From 1998 until 2007, with the addition of Title IV-E adoption incentive payments available from the U.S. Department of Health and Human Services, DHS was eligible to obtain additional funds—per child--for the number of adoptive placements which were above and beyond “base numbers” of adoptions from foster care for previous years. These funds were mandated to be spent to provide services for adoptive families of special needs children; DHS documented that some of the funds were instead spent for DHS Adoption Services Program “in-house” expenses.
  127. On August 28, 2007, a “Region V Roundtable” was held with representatives from the Administration for Children and Families-- a federal agency within the U.S. DHHS, in direct oversight of six States’ departments of social services, including Michigan’s. The intent of the conference was to assist States’ human services programs to evaluate and develop appropriate resources for adoption and foster care and to reach compliance with Title IV-E and other federal regulations. The conference was attended by representatives

- from Wisconsin, Minnesota, Ohio, Indiana, and Illinois; no Michigan DHS representative attended the program. Michigan's absence was so obvious as to be noted by representatives of the North American Council on Adoptable Children (NACAC), a child-advocacy organization.
128. In late summer 2007, one of the parents in this case telephoned Mr. Paul Kirisitz, then the Director of Regional Programs in the Program Implementation Division of U.S. DHHS. After a lengthy conversation during which various DHS violations were highlighted to Mr. Kirisitz, he ordered the Region V office of the U.S. DHHS in Chicago to do a line-by-line review of Michigan's compliance with Title IV-E.
  129. In October 2007, three national advocacy organizations (Children's Rights, Inc.; The National Foster Parent Association; and the University of Maryland School Of Social Work) conducted a national study and subsequently issued the document, "Hitting the M.A.R.C.: Establishing Foster Care Minimum Adequate Rates for Children". In that document, the study found that DHS would have to raise foster care payments by 49-72% in order to meet the basic needs of foster children in Michigan—although Federal regulations require States to provide adequate payments to foster parents to cover the actual expenses of caring for these children.
  130. On January 16, 2008—as a result of the "line-by-line review" ordered by Mr. Paul Kirisitz--U.S. DHHS sent a letter and other documents to DHS' Director Ahmed, citing multiple violations of Title IV-E in nine separate areas, ordering DHS to prove within 30 days that the agency had changed its policies to become Title IV-E compliant, or be placed under another "Program Improvement Plan."
  131. On February 6, 2008, the U.S. DHHS wrote again to Director Ahmed, citing additional Title IV-E violations in four separate areas of Michigan's *Title IV-E State Plan*, and giving DHS 45 days to show proof that DHS had amended its illegal policies. These violations included DHS' "Adoption Assistance Program policy restricting what can be appealed"—the issues central to the eight families in this case. The letter also cited DHS' failure to complete various activities entitling the State of Michigan to tens of millions of dollars in additional federal foster care funds.

132. On December 11, 2008, the U.S. DHHS wrote to DHS Director Ahmed, formally placing DHS under a “Program Improvement Plan” for the violations cited in January and February 2008.
133. In June 2009, DHS published the “Consolidated Child and Family Services Plan—2009 Final Report.” In part, the document detailed how DHS would be recruiting and training foster parents. Ideas included providing foster parents with business cards; events such as “Safety Day”; annual picnics where backpacks and school supplies would be passed out; camping trips; and holiday events. There was no mention of increasing the payments to foster parents so that they could afford to care for their foster children, or providing services to handicapped adopted children.
134. In 2009, State DHS Ms. B. Watkins testified in an administrative hearing that when there are conflicts between Federal and State regulations, DHS complies with State regulations; her testimony included six separate statements regarding Defendants’ act of placing State law and agency policy over Federal regulations.
135. As the result of the severe systemic deficiencies that have been known to Defendants for many years, Michigan’s child welfare system has inflicted numerous harms to Plaintiff children, their parents, and the three other (now adult ) children including:
  - a. Maltreatment and neglect of 17 of the children while in State custody.
  - b. Lack of basic physical and mental health services for 17 of the children while in foster care and denial of needed services available from DHS after adoption finalization, and intended to meet the needs of handicapped adopted children.
  - c. DHS’ social worker malpractice by failing to maintain legal and reasonable professional standards in the supervision and care of children during foster care and adoption.
  - d. DHS’ illegal detention of children in foster care.
  - e. DHS’ negligence amounting to actual and deliberate indifference to the needs and rights of the 17 foster children for whom DHS was acting *in loco parentis* and the needs and rights of two other severely handicapped children who were not in DHS foster care, but who were entitled to DHS-administered funds and services after their adoptions were completed.

- f. Breach of the adoption contract by DHS through the adoption placement, adoption medical subsidy violations, determination of care (DOC) violations, and improper Title IV-E adoption assistance.
- g. Breach of Duty by DHS to these children.
- h. DHS' conspiracy to commit, and actual commission of wrongful adoption.
- i. DHS' conspiracy to commit, and actual commission of adoption fraud.
- j. DHS' conspiracy to commit, and actual deprivation of, the children's right to services and Title IV-E funding.
- k. DHS' misrepresentation to parents regarding Title IV-E rights.
- l. DHS' violation of Plaintiffs' civil rights on the basis of:
  - i. Severely handicapped individuals because of the severity of their handicaps
  - ii. Children, because of their age;
  - iii. Adoptive parents;
  - iv. Ethnic minority children, and ethnic minority parents;
  - v. Fourteen adoptive parents and their children in trans-racial adoptive families.
- m. DHS' violation of Social Security regulations and Plaintiffs' rights.
- n. DHS' violations of Title IV-E regulations and Plaintiffs' rights.
- o. DHS' violation of Medicaid regulations and Plaintiffs' rights.
- p. DHS' violation of Plaintiffs' Constitutional due process rights, Federal and State administrative hearing regulations, and Defendants' administrative hearing policies.
- q. DHS' infliction of injury to Plaintiffs and their adopted children through:
  - i. Physical injuries sustained by the children and families;
  - ii. Emotional injuries sustained by the children and families;
  - iii. Financial injury sustained by the children and families.
- r. DHS' unequal treatment of Plaintiffs' under the law through:
  - i. DHS discriminated on the basis of age, race, and handicap against all 19 of these children and their families.

- ii. DHS workers repeatedly denied Constitutional due process/administrative hearing rights.
- iii. DHS workers took special care when placing 17 children from Michigan foster care to ensure that their prospective adoptive parents would not discern the truth about these severely handicapped children, documents and disclosures about family history, medical conditions.
- iv. DHS workers ensured that information would not be given out, so that parents would not disrupt grossly inappropriate placements, and would not find out that the children were entitled to receive certain funds and services.
- v. DHS workers admitted lowering the scores on DOC forms and placing severely handicapped children without mental health assessments or treatment, and without disclosure of known mental illnesses.
- vi. DHS workers denied payment of appropriate Title IV-E adoption assistance rates since the placements of the 17 children.
- vii. DHS made false statements about increases after adoption finalization.
- viii. DHS ignored Court orders.
- s. DHS' acts of fraud upon the Court through:
  - i. Finalizing a child's adoption against the documented will of her foster parents.
  - ii. Scheduling two hearings to take place within a six day period.
  - iii. Representing to the Court that the foster parents wanted to become adoptive parents in the scheduled time period.
  - iv. Representing that parents wanted waivers to finalize the adoptions in less than six months.
  - v. Finalizing the adoption in Court without the parents being present.
  - vi. Representing to the Court to not consider federal regulations in Title IV-E cases.
  - vii. The ALJ purposefully omitting a document on appeal which stated that ALJ's may not ignore Federal law.

- t. DHS' violation of Plaintiffs' substantive procedural due process right to familial integrity, and of the liberty interest to rear children without unreasonable government interference.
- u. DHS' pattern and practice of illegal actions.
- v. DHS' attempted coercion under color of state law so as to deny access to benefits and due process rights.
- w. DHS' harassment of Plaintiffs' when they attempted to secure assistance for their children.
- x. DHS' intimidation of Plaintiffs' when they attempted to secure assistance for their children.
- y. DHS' defamation of Plaintiffs' when they attempted to secure assistance for their children.
- z. DHS' conspiracy to commit, and actual deprivation of, rights under color of state law.
- aa. DHS' violation of The Health Insurance Portability and Accountability Act of 1996 (HIPAA) and HIPAA privacy rights.
- bb. DHS' violation of the right to engage in federally protected activities.
- cc. DHS' illegal home invasion and illegal entrance under false representation.
- dd. DHS' coercion and extortion so as to prevent access to due process (*Hobbs Act*).

### **COUNT I**

#### **Violations of Substantive Due Process under the U.S. Constitution**

- 136. Plaintiffs hereby incorporate paragraphs 1 through 135 above as if fully restated herein.
- 137. 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.
- 138. As a result of the foregoing actions and inactions of Defendants and their employees and agents in their official capacities, Defendants failed to meet the affirmative duty to protect from harm Plaintiffs' adopted Children who were in foster care, which is a substantial factor leading to, and the proximate cause of, the violation of the constitutionally-protected liberty and privacy interests of these children.

139. A state assumes an affirmative duty under the Fourteenth Amendment to the United States Constitution to protect a child and its prospective and actual foster and adoptive parents from harm when that child is considered for placement, or actually placed for foster care or adoption into a previously healthy foster or adoptive home.
140. As a result of the foregoing actions and inactions of Defendants and their employees and agents, in their official capacities, they failed to meet the affirmative duty to protect from harm the fourteen Plaintiff adoptive Parents, and three other children of Plaintiff adoptive Parents who were previously living healthy happy lives with their parents before the adoptions of the Plaintiffs' foster children took place; and which is a substantial factor leading to, and proximate cause of, the violation of the constitutionally-protected liberty and privacy interests of the Plaintiff adoptive parents and the other three Plaintiff children.
141. The foregoing actions and inactions of Defendants and their employees and agents, in their official capacities, constitutes 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. As a result, all named Plaintiffs have been and are being deprived of the substantive due process rights conferred upon them by the Fourteenth amendment to the United States Constitution.
142. The substantive due process rights of foster children 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; 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 through the exercise of accepted, reasonable professional judgment; the right to be placed into the least restrictive placement according to a foster child's needs; the right to adoptive placement which takes into account the needs of the child—including the right to adoptive parent(s) who are trained and otherwise fully equipped and enabled to shoulder the transfer of the emotional, physical, and financial burdens of the child from foster care to the adoptive parent(s).

143. Substantive due process rights of prospective foster and adoptive parents exist before a child is considered for placement into a foster home and at any time in or after the processes of foster care placement and adoption. These include the rights of the fourteen Plaintiff adoptive Parents' who adopted Michigan foster children to full disclosure of and readily available access to the following: all rights and responsibilities of Defendants' workers and Defendants' sub-contractors' workers participating in the placement of children for foster care and adoption; all rights and responsibilities of prospective foster and adoptive parents; all known medical conditions, family histories, and birth family interactions of the child which could or would impact in any way the condition of a child, the child's foster care placement, and/or the child's future placement with prospective foster or adoptive parents; the right to immediately disrupt an inappropriate foster care or adoptive placement so as to protect the foster or prospective adopted child and/or the prospective parents and their previously existing family from harm; the right to postpone a child's adoption at any time in the process; the right to be free from false and/or actually fraudulent representations from individuals working in any capacity to place children for foster care or adoption; the right to expect that individuals working to place children into foster care and/or adoption will uphold applicable Federal regulations, State laws, and DHS policies in those processes; the right to full knowledge of available funds and services intended to support the child's foster care or adoptive placement--for the duration of the child's placement in foster care or as a child within the adopted family; and the right to protection from government harm while seeking foster care and adoption services to maintain a child's adoption, and other related appropriate government-administered funds and services intended to maintain a child's adoption.
144. For all the above-stated reasons, Plaintiffs seek compensatory and future damages on this count.

**COUNT II**  
**Violations of the First, Ninth and Fourteenth**  
**Amendments to the United States Constitution**

145. Plaintiffs hereby incorporate paragraphs 1 through 144 above as if fully restated herein.
146. The foregoing actions and inactions of Defendants and their employees and agents, in their official capacities, constitute a policy, pattern, practice, or custom of failure to exercise reasonable professional judgment and of deliberate indifference to Plaintiffs' constitutionally-protected rights, and are the cause of the violation of such rights. As a result of Defendants' conduct, all named Plaintiffs have been and are being severely injured 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. Plaintiffs have been deprived of timely, and/or appropriate child-parent or child-sibling relationships—whether between Plaintiff adopted Children and their birth siblings; Plaintiff adopted Children and Plaintiff adoptive Parents; and/or Plaintiff adoptive Parents and three other Plaintiff Children who were in their parents' homes previous to the foster care and/or adoptive placements of plaintiff adopted Children.
147. For all the above-stated reasons, Plaintiffs seek compensatory and future damages on this count.

**COUNT III**  
**Negligence/Wrongful Adoption**

148. Plaintiffs hereby incorporate paragraphs 1 through 147 above as if fully restated herein.
149. As a result of the foregoing actions and inactions of Defendants and their employees and agents, in their official capacities, Defendants engaged in a pattern, policy, and custom of practice that is inconsistent with the exercise of reasonable professional judgment and amounts to deliberate indifference to the constitutionally-protected rights and liberty of the 14 named Plaintiff adoptive Parents who adopted Michigan foster children and three other named Plaintiff children—all of whom were previously in happy and healthy families.
150. Defendants had the duty to place 17 Michigan foster children into appropriate foster and adoptive homes with full disclosure of the children's known family histories and medical/mental conditions; and to comply with the documented statements of named

- Plaintiff adoptive Parents about which types of conditions were acceptable in foster/adoptive children placed into their families.
151. Defendants had a duty to act in the best interests of the children, including taking the appropriate actions to assure that children are protected from abusive and neglectful homes.
  152. Defendants had a duty to act in the best interests of the children by taking appropriate care of the child while they are in the State's control and while the State was acting *in loco parentis*.
  153. Defendants breached their duty to act in the best interests of the children by allowing children to remain in abusive and neglectful homes.
  154. Defendants breached their duty to act in the best interests of the children by placing children in abusive and neglectful "relative placements" or foster homes.
  155. By repeated negligent, fraudulent, and illegal actions—including multiple failures and refusals to follow Federal and State adoption laws, Department policies, professional practices, and reasonable professional judgment—DHS workers repeatedly breached that duty by inappropriately placing 14 severely to profoundly emotionally-disturbed and/or brain-injured children into six families who documented that they did not want to adopt such severely handicapped children.
  156. Workers conspired to, and actually completed, the adoption of a Michigan foster child with sickle cell disease without disclosing the facts of her illness to her foster/prospective adoptive parents until after they had waived various rights because of Defendant's fraudulent representations.
  157. Workers knew that their representations regarding the children's histories and conditions were false, because they had themselves documented facts and information, and/or such information had been previously documented in Department or sub-contracting agency records before the children's placements for adoption.
  158. Workers further assured that the grossly inappropriate placements of the 14 severely emotionally disturbed children would not be interrupted, by failing/refusing to disclose the rights of the twelve named Plaintiff adoptive Parents to disrupt inappropriate placements. The parents are unanimous in their statements that they were led to believe that once a child was placed for foster care leading to adoption, the placement could not

- be disrupted for any reason—even after frank acts of attempted murder by an adoptive child were reported by a parent shortly after adoptive placement.
159. Workers’ actions have directly caused numerous, horrific, and on-going injuries to the 17 adopted children.
  160. Workers’ actions have directly caused numerous, horrific, and on-going injuries to the three other children, John Smith, Robert Jones, and Lisa Anderson.
  161. Workers’ actions have directly caused numerous, horrific, and on-going injuries to the 12 Plaintiff adoptive Parents who adopted severely emotionally disturbed children and to three other named Plaintiff Children who previously enjoyed happy healthy lives in their homes with their parents.
  162. Actual physical injuries include fractured ribs, an eye injury requiring plastic surgery, a shoulder injury requiring surgery, sodomy, multiple murdered pets, multiple murder attempts on other family members-- including attempted strangulation and drowning, multiple stabbings, attempted poisoning, and others; countless battering injuries by adopted children, including bites, kicks, punches, head-bashing, pinching, multiple stabbings, slaps, and spitting; intentional attempted vomiting onto a parent by a child; and actual repeated urination onto a parent as the parent slept.
  163. Actual emotional injuries to parents have been diagnosed as Post-Traumatic Stress Disorder; insomnia, hypertension (i.e. high blood pressure) due to extreme stress, chronic depression, and various types of severe fear reactions in parents, who are variously terrified when they see vehicles with the State emblem; police cars traveling past their residences; children—because their own children have inflicted such horrific emotional and physical injuries; and fear of going to the mailbox—because DHS workers have made threats via the U.S. Mail.
  164. Actual financial injuries emanate directly from the extremely high cost of obtaining frequent medical and mental health services for adopted children; obtaining training for adoptive parents so that they can simply keep their children within their homes; tens of thousands of dollars in intentional damage to home, vehicles, personal property, and the property of others by their adopted children; tens of thousands of dollars paid to providers for appropriate therapeutic out-of-home placements and therapies for months at a time for adopted children; being forced to borrow funds from family members, retirement

accounts, and other sources so as to provide for the needs of adopted children; being forced to sell personal property so as to pay the costs to raise severely emotionally disturbed adopted children; and financial loss due to quitting a high-paying salaried corporate position with a work history of over 27 years, so as to be home to supervise and assist in the care of multiple severely emotionally disturbed teenagers.

165. These named Plaintiffs endured—and continue to endure—such horrific emotional, physical, and financial injuries as to cause permanent damage within family members and in relationships with other extended family members and friends who are unable to understand the degree of profound impairments in their inappropriately-placed adopted children.
166. Plaintiff adoptive Parents will continue to suffer injuries for their lifetimes, due to their adopted children’s on-going needs for supervised housing and care, guardianship, necessary therapies, and other expenses. Six of the eight Plaintiff families each have up to four severely emotionally disturbed and/or brain-injured children for whom they must provide in some capacity.
167. Three other named Plaintiff Children have suffered severe emotional and physical injuries due to years of living with emotionally disturbed adopted siblings. They have endured repeated physical attacks, including multiple murder attempts, battering injuries, and sodomy of a multiply handicapped birth child by an adopted child. These three children have also suffered severe and permanent injury to the previous happy and healthy home lives which they enjoyed prior to the wrongful adoptive placements.
168. For all the above-stated reasons, Plaintiffs seek compensatory and future damages on this count.

#### **COUNT IV**

#### **Violations of The Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272); Title IV-E of the Social Security Act, Sections 470-475, codified at 42 USC 670-675; 45 CFR 1355 and 1356**

169. Plaintiffs hereby incorporate paragraphs 1 through 168 above as if fully restated herein.
170. As a result of the foregoing actions and inactions of Defendants and their employees and agents, in their official capacities, Defendants engaged and are continuing to engage in a policy, pattern, practice, and custom of depriving the 17 named Plaintiff Adopted

Children when they were in Michigan foster care 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 (42 U.S.C. 670 et seq.-- collectively the “Adoption Assistance Act” and/or “Title IV-E”) and the regulations promulgated under the Act, 45 C.F.R. Parts 1355 and 1357. These rights include, but are not limited to: the right to timely written case plans in foster homes and other settings that conform to national professional standards and are subject to a uniformly applied set of standards; the right of children whose permanency goal is adoption to planning and services to obtain a timely and appropriate permanent placement, including documentation of the steps taken to secure permanency--- including adequate and appropriate training, funds, and services to equip prospective adoptive parents so as to later appropriately manage the needs of prospective handicapped children; the right to other services so as to facilitate the foster or adoptive placement of the child; the right to services that protect the child’s safety and health; the right to have health and educational records reviewed, updated, and supplied to prospective and current foster care providers and adoptive parents; the right to services after the foster care or adoptive placement to properly maintain and promote the child’s functioning in the foster home and/or adoptive home; the right to foster care maintenance payments paid to the foster parents with whom each child lived that covered the actual cost (and the cost of providing) the Plaintiff adopted Children’s food, clothing, shelter, daily supervision, school supplies, reasonable travel to visitation with birth family, and other expenses.

171. As a result of the foregoing actions and inactions of Defendants and their employees and agents, in their official capacities, Defendants engaged and are continuing to engage in a policy, pattern, practice, and custom of violating the rights of Plaintiff adoptive Parents— acting on behalf of their foster children whom they later adopted, and on behalf of all 19 Plaintiff adopted Children during and after their adoptions. These rights include, but are not limited to: full disclosure of all Title IV-E rights, including but not limited to all bases by which a child may be eligible for Title IV-E foster funds and/or adoption assistance— and disclosure of known conditions in children which would qualify the child for Title IV-E adoption assistance; the opportunity to apply for Title IV-E adoption assistance; the right to apply for and receive reimbursement of non-recurring adoption expenses when

adopting a special needs child; the right to apply for, and receive Title IV-E adoption assistance for a child without the Department's illegal addition of other "eligibility factors" which are not present in Federal regulations; negotiation of a child's adoption assistance rate to a level commensurate with the child's needs, with full disclosure of Defendants' entire rate scale; re-negotiation, if necessary, of a child's Title IV-E adoption assistance rates at any time before age eighteen—without a hearing-- and based on the rate "which would have been paid during the period if the child had been in a family foster home", i.e. as if the adoption had not been finalized; registration of eligible handicapped foster children for SSI funding, so as to allow subsequent access to Title IV-E adoption assistance; full disclosure of rights and open access to post-finalization Title IV-E adoption assistance funds for eligible children placed without such funding; retroactive payment of Title IV-E adoption assistance funds --for children placed without such funding--to the date of placement in the home or the date of finalization, whichever is earlier; disclosure of and available Title IV-E "adoption incentive" funds for services to families with special needs children; the Department's use of Federally-compliant Title IV- E adoption assistance contract forms used in creating their Title IV-E adoption assistance contracts; acceptance of responsibility for a child's Title IV-E adoption assistance--as the State of the adoptive parents' residence-- for an eligible child adopted from another State and already receiving SSI funds or whom is otherwise Title IV-E-eligible; uninterrupted payment of Title IV-E adoption assistance funds for the child; disclosure of Title IV-E administrative hearing rights and easy availability of administrative hearings; neutral administrative law judges (ALJs) during hearings, with ALJ admission of the applicability of Title IV-E regulations and requirements during hearings; the right to have completed contracts unaltered by DHS workers after parents sign them; disclosure of Title IV-E's recognition of the ability to dissolve an adoption after finalization; the right to full disclosure of the amounts of funding and other services available for children from State and/or federal funding in the Title IV-E adoption assistance contract form; and the application of Federal Title IV-E regulations over conflicting State law and/or Department policies in administering Title IV-E adoption assistance funds and services.

172. For all the above-stated reasons, Plaintiffs seek payment of past Title IV-E payments due that were wrongfully withheld and future Title IV-E payments that will be due.
173. For all the above-stated reasons, Plaintiffs seek equitable relief and the granting of an injunction that DHS be required to comply with Title IV-E laws and regulations and be enjoined from enforcing State policies or laws in contravention to Federal Law, and that Defendants be required to properly set the DOC rates for each child.

**COUNT V**  
**Violations of Procedural Due Process**

174. Plaintiffs hereby incorporate paragraphs 1 through 173 above as if fully restated herein.
175. The foregoing actions and inactions of Defendants and their employees and agents, in their official capacities, 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, Plaintiffs have been and continue to be harmed and deprived of both federal-and state-created liberty and/or property rights without due process of law in violation of their constitutional rights.
176. Defendants' actions and inactions resulted in deprivations of federal-law entitlements to which 19 Plaintiff adopted Children have a constitutionally-protected interest such as the entitlements arising from the Adoption Assistance Act and regulations promulgated thereunder.
177. Defendants' actions and inactions have resulted in deprivations of the following state-law entitlements to which certain of 17 Plaintiff adopted Children placed from Michigan foster care had a constitutionally-protected interest prior to placement in foster care:
  - a. Entitlements arising from MCL 722.623a, including the requirement to report obvious child abuse by birth parents to Protective Services; and MCL 722.628(2), requiring DHS to take necessary Protective Services action to prevent further abuses by biological parents previously known to be abusive, and to safeguard and enhance the children's welfare, thereby allowing children to be free of continued, long-term abuse in the birth home;
  - b. Entitlements arising from MCL 722.954c, requiring DHS and its supervising child-placing agencies *inter alia*, to provide each child with a thorough medical



examination when a child is first placed into foster care and to develop a medical passport for each child who comes under its care; to provide a foster child who has endured any one of various types of abuse with appropriate psychological evaluation; to provide prospective foster parents with complete documentation of a child's known condition and history, so that the foster parent may properly decide whether or not to bring the child into the foster home, and to be able to more appropriately meet the foster child's needs. This presupposes that the medical examinations are complete, and that conditions and risk factors which actually cause children to be placed into foster care-- known by foster care workers to be common in foster children, and documented to foster care workers-- are disclosed to the physicians or other providers prior to conducting the mandated medical examinations, so that physicians or other providers conducting the examinations may properly assess the child for the presence of those risk factors or conditions. Inasmuch as the fourteen Plaintiff adoptive Parents of seventeen Plaintiff adopted Children placed from Michigan foster care were at one time the foster parents of the seventeen children, these parents had the right to the same full disclosure of all known information about those children as other foster parents.

- c. 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.
  - d. Entitlements arising from the Mental Health Code, including the right to prompt and appropriate mental health services for foster children.
178. In addition, Defendants' actions and inactions have resulted in deprivation of Federal- and State-law entitlement to due process under Title IV-E and Medicaid regulations, the Michigan Administrative Procedures Act, and DHS policy. These include breaches of federal Title IV-E adoption assistance contracts made between the Department—acting as a third-party payer of Federal authorized entitlement funds—and Plaintiff adoptive Parents.

179. In addition, Defendants' actions and inactions have resulted in violations and deprivations of state-law entitlements to due process under the Michigan Administrative Procedures Act *et seq.* and administered under DHS policy. These include, but are not limited to: breach of various contracts between the Department and Plaintiff adoptive Parents, and administrative hearing rights, which include: written denials which include disclosure of the right to administrative hearings; prompt scheduling of administrative hearings after the first request; neutral administrative law judges (ALJs), including ALJs whom have not previously issued denials in cases involving the same children; fully recorded hearings; adequate opportunity to present one's oral arguments and witnesses, and to have documents placed into evidence; the opportunity to question DHS workers, and full access to recordings and transcripts of hearings.
180. In addition, Defendants' actions and inactions have resulted in deprivation of Federal- and State-law entitlement to due process under the HIPAA Act, by e-mailing unauthorized information to a party who had no right to nor use for the information.
181. For all the above-stated reasons, Plaintiffs seek compensatory and future damages on this count.

**COUNT VI**  
**Violation of Civil Rights**  
**(42 U.S.C. 1983)**

182. Plaintiffs hereby incorporate paragraphs 1 through 181 above as if fully restated herein.
183. As a result of the foregoing actions and inactions of Defendants and their employees and agents, in their official capacities, Defendants engaged in policies, patterns, and/or customs of violating the civil rights of 19 Plaintiff Adopted Children, their Plaintiff adopted Parents, and three other Plaintiff Children. Such actions resulted in repeated and on-going deprivations of Plaintiffs' rights pursuant to 42 U.S.C. 1983.
184. Defendants and their employees and agents, in their official capacities, have consistently and routinely violated Plaintiffs' Civil Rights through intimidation, retaliation, coercion and harassment. For example:
- a. Ms. Ballou of DHS attempted to negatively influence the outcome of an administrative hearing by falsely telling Mrs. G., "Don't bring too many documents to the hearing. We're going to agree with you in the hearing."

- b. A DHS worker in the State office told another adoptive parent, “You’re going to get a denial. Don’t bother to appeal it, because you won’t win.”
  - c. ALJ Landis Lain failed to reschedule a hearing for two years. In the same time period, she initiated *ex parte* communication by sending an e-mail to an assistant G, telling him to plead “no jurisdiction” so as to cause the family to be denied due process.
  - d. Various DHS workers at both State and County levels engaged in a variety of coercive, intimidating, retaliatory, and harassing actions in order to force parents to give up federal rights, to force prospective parents to give up children so as to make them available for adoption by other people—including another DHS worker; to force parents to end the appropriate actions of advocating on behalf of their handicapped foster and adopted children; to deny them of them due process rights; to deny parents of appropriate medical subsidy services and funds, and to deny Title IV-E and Medicaid rights to which the children were entitled.
185. For all the above-stated reasons, Plaintiffs seek compensatory and future damages on this count.
186. For all the above-stated reasons, Plaintiffs seek equitable relief and the granting of an injunction that DHS be required to reform their adoption system in compliance with 42 U.S.C. 1983.

### **COUNT VII**

#### **Discrimination on the basis of Handicap**

#### **(Americans with Disabilities Act (“ADA”); The Rehabilitation Act of 1973; 42 U.S. C. 15001(a)(6) and (8); 45 C.F.R. 84.52 (a)(2), (3), (4), and (5)); 42 U.S.C. 15009**

187. Plaintiffs hereby incorporate paragraphs 1 through 186 above as if fully restated herein.
188. The foregoing actions and inactions of Defendants and their employees and agents, in their official capacities, amount to a pattern, practice, and custom of violation of the ADA and of Section 504 of the Rehabilitation Act of 1973, *et seq.*; failure to exercise reasonable professional judgment; and deliberate indifference to the rights of 19 Plaintiff adopted Children and their parents under these federal regulations.
189. Defendants’ actions and inactions resulted in patterns, practices, and customs of retaliation, intimidation, harassment, and coercion against Plaintiff adoptive Parents, in violation of section 12203 of the ADA, and directly in response to said parents’ acts of

appropriately advocating for their severely to profoundly handicapped children. Such actions by Defendants violated the rights of Plaintiff adoptive Parents to be free from retaliation, intimidation, and coercion, and entirely prevented the 19 Plaintiff adopted Children from the exercise of their rights and free access to Federal entitlements. Such actions and inactions also resulted in repeatedly violations of all named Plaintiffs' due process rights and some Plaintiffs' privacy rights, including the right to be free from illegal search and seizure, to be free from defamation, to be free from unnecessary home invasion, and to be free from unnecessary governmental interference in one's family functioning.

190. The forgoing actions and inactions of the Defendants also amount to a pattern, practice, and custom of violating 42 U.S.C. 15009, and violation of rights under that Act, failure to exercise reasonable professional judgment, and of deliberate indifference to the rights of 16 Plaintiff adopted Children, all of whom are developmentally disabled. Defendants failed to assure that these Plaintiff Children—all of whom were Michigan foster children—received appropriate treatment and educational and other services appropriate for their needs while in foster care.
191. The forgoing actions and inactions of the Defendants also amount to a pattern, practice, and custom of violating 42 U.S.C. 15001(a) (6) and (8), and the rights therein of certain Plaintiff adopted Children, by discriminating against severely handicapped ethnic minority children, and have resulted in deprivations of entitlements available under the Social Security Act, Title IV-E, Medicaid, and other State-funded programs.
192. Defendants' actions and inactions have resulted in patterns, practices, and customs of routinely violating 45 C.F.R. 84.52 (a)(2), (3), (4), and (5), by substituting less equal, less frequent, and grossly less effective State funds via the Department's "Adoption Medicaid Subsidy Program" for the funds from Title IV-E and Medicaid to which Plaintiff adopted Children were entitled.
193. Defendants' actions and inactions have also resulted in a pattern, practice, and customs of discriminating against the 19 Plaintiff adopted Children because their handicapping conditions are so severe; have violated the ADA *et seq.*; and have resulted in deprivations of entitlements available under the Social Security Act, Title IV-E, and Medicaid.

194. For all the above-stated reasons, Plaintiffs seek compensatory and future damages on this count.
195. For all the above-stated reasons, Plaintiffs seek equitable relief and the granting of an injunction that DHS be required to reform their adoption system in compliance with the Americans with Disabilities Act and the Rehabilitation Act.

### **COUNT VIII**

#### **Discrimination on the basis of Age**

#### **(45 CFR Parts 90 and 91: Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance From HHS; 42 USC 6101-6107; 42 USC 2000d-7)**

196. Plaintiffs hereby incorporate paragraphs 1 through 195 above as if fully restated herein.
197. As a result of the foregoing actions and inactions of Defendants and their employees and agents, in their official capacities, resulted in patterns, practices, and customs of discrimination on the basis of age against 19 Plaintiff adoptive children, depriving them of rights conferred on them by the Adoption Assistance and Child Welfare Act of 1980, Medicaid, and the Social Security Act.
198. Defendants and their employees and agents entirely failed to ensure that eight of the young Plaintiff adopted Children—who were eligible for Title IV-E adoption assistance--and/or SSI-- and Medicaid coverage by virtue of either their membership in an ethnic minority and/or their known handicapping conditions—actually received any such funds to which they were entitled—by using their young age as the basis of denial of these entitled funds.
199. Defendants and their employees and agents also failed to ensure that eleven young Plaintiff adopted Children received such funds at rates to which they were entitled, commensurate with their known severe to profound handicaps. Older similarly impaired children in Michigan and the U.S. receive Title IV-E adoption assistance at rates based on the needs emanating from their severely handicapping conditions.
200. Such deprivations caused profound financial injury to the Plaintiff adoptive Parents, as they attempted to raise their severely to profoundly handicapped children with grossly inadequate—or no—financial support to which they were entitled.
201. Such deprivations grossly lowered the families’ standard of living to the point that some children later qualified for SSI and Medicaid funds because their families’ economic conditions were so injured by Defendants’ actions and inactions.

202. DHS has had a long-standing policy—violative of federal Title IV-E regulations--that no child under age three receives Title IV-E adoption assistance—regardless of separate eligibility on the bases of either handicap or ethnicity. DHS’ recent actions indicate an agreement that workers did discriminate on the basis of age; the Department has already admitted that two ethnic-minority handicapped infants were wrongly denied Title IV-E adoption assistance when they were placed into Plaintiff families.
203. For all the above-stated reasons, Plaintiffs seek compensatory and future damages on this count.

### **COUNT IX**

#### **Discrimination on the basis of Race**

**(45 CFR 80 (1964 Civil Rights Act); 42 USC 1981(a); Multi-Ethnic Placement Act (MEPA) (PL 103-382, part E, Sec. 552(b)(2) and Sec. 553(a)(1)(B); the Small Business Job Protection Act of 1996, Title I, Subtitle H of Section 1808; Elliott-Larsen Civil Rights Act (MCL 37.2101 et sec); U.S. DHHS Non-discrimination Statement; Michigan DHS / Administrative Hearings policies; 42 USC 2000d)**

204. Plaintiffs hereby incorporate paragraphs 1 through 203 above as if fully restated herein.
205. The foregoing actions and inactions of Defendants and their employees and agents, in their official capacities, resulted in patterns, practices, and customs of discrimination on the basis of race that violated 42 U.S.C. 15001(a) (6) and (8), and thereby failed to ensure that fourteen Plaintiff adopted Children—all handicapped ethnic minority foster children—received appropriate and timely medical, mental health, and/or educational services while in Department foster care custody.
206. The foregoing actions and inactions of Defendants and their employees and agents, in their official capacities, resulted in patterns, practices, and customs of discrimination on the basis of race against two Caucasian Plaintiff adoptive Parents whose ethnic minority child was placed for adoption with them—and actually ripped from their arms six months later, solely because the child was “black”—in violation of multiple Federal adoption regulations, State law, and DHS policy, and even though they had previously adopted at least one ethnic minority child.
207. The foregoing actions and inactions of Defendants and their employees and agents, in their official capacities, resulted in patterns, practices, and customs of discrimination on the basis of race against 16 Plaintiff adopted Children, their 14 Named Plaintiff adoptive Parents, depriving them of rights conferred on them by the Adoption Assistance and

Child Welfare Act of 1980, Medicaid, and the Social Security Act, and therein failing to prevent severe financial injury to these families; this resulted in the entire deprivation of Title IV-E adoption assistance and Medicaid from eight Plaintiff adopted Children because they were ethnic minority children, or because they had been placed into families with previously adopted trans-racial children; and the provision of Title IV-E funds at grossly inadequate rates for eight other ethnic minority children or same-race children placed into already trans-racial families.

208. The foregoing actions and inactions of Defendants and their employees and agents, in their official capacities, resulted in patterns, practices, and customs of discrimination on the basis of race which harmed 3 other Plaintiff Children in two of the families physically and emotionally by their younger adopted siblings who had been denied services and assistance because of their race.
209. The foregoing actions and inactions of Defendants and their employees and agents, in their official capacities, resulted in patterns, practices, and customs of discrimination on the basis of race in depriving Plaintiff adoptive Parents of due process rights—including totally denying access to fair and neutral administrative hearings available under Federal regulations, State law, and DHS policy-- because they had adopted non-same-race children.
210. The foregoing actions and inactions of Defendants and their employees and agents, in their official capacities, resulted in patterns, practices, and customs of discrimination on the basis of race against three families with children who are “100%” African-American (i.e. children who had two African-American birth parents) in this case, by entirely denying and preventing access to administrative hearings.
211. The foregoing actions and inactions of Defendants and their employees and agents, in their official capacities, resulted in patterns, practices, and customs of discrimination on the basis of race against the only family in this case with African–American Plaintiff adoptive Parents in this case—by finalizing the adoption of their profoundly multiply handicapped African-American child against their documented will, then failing to disclose that the adoption had occurred.
212. Two African-American ALJs discriminated against trans-racial families, even to the point of initiating *ex parte* communications to DHS and to an assistant A.G., with one ALJ

- even refusing to recognize a settlement agreement which had previously been reached by both the Department and the adoptive parents.
213. Several families requested re-negotiation of Title IV-E adoption assistance rates for handicapped children. Parents in two trans-racial adoptive Plaintiff families before African-American ALJs lost their hearings; using virtually identical evidence, testimony, and children's diagnoses, a Caucasian ALJ ordered DHS to provide new Title IV-E adoption assistance contracts and to re-negotiate the Title IV-E adoption assistance rates of three Plaintiff adopted Children in a family—the only family with Caucasian parents and children.
214. For all the above-stated reasons, Plaintiffs seek compensatory and future damages on this count.
215. For all the above-stated reasons, Plaintiffs seek equitable relief and the granting of an injunction that DHS be required to reform their adoption system in compliance with (45 CFR 80 (1964 Civil Rights Act); 42 USC 1981(a); Multi-Ethnic Placement Act (MEPA) (PL 103-382, part E, Sec. 552(b)(2) and Sec. 553(a)(1)(B); the Small Business Job Protection Act of 1996, Title I, Subtitle H of Section 1808; Elliott-Larsen Civil Rights Act (MCL 37.2101 et sec); U.S. DHHS Non-discrimination Statement; Michigan DHS / Administrative Hearings policies; 42 USC 2000d)

### **COUNT X**

#### **Violation of Medicaid regulations and statutory rights (42 C.F.R. 435 and 436; 42 U.S.C. 1396; 42 C.F.R. 431)**

216. Plaintiffs hereby incorporate paragraphs 1 through 215 above as if fully restated herein.
217. The foregoing actions and inactions of Defendants and their employees and agents, in their official capacities, amount to a pattern, practice, and custom of failure to exercise reasonable professional judgment and of deliberate indifference to the Medicaid rights of Plaintiffs, and are the cause of the violation of such rights. As a result, Plaintiffs have been and continue to be harmed and deprived of various federal-and state-created Medicaid benefits in violation of their rights.
218. Due to Defendants and their employees and agents' actions and inactions, Department workers engaged in patterns, practices, and customs which violated the Medicaid rights



of eight named Plaintiff adopted Children and their Plaintiff adoptive Parents. For Example:

- a. Workers illegally denied Title IV-E funds and benefits from eight Title IV-E – eligible children; in so doing, they also illegally and wrongfully denied Medicaid coverage, which under federal regulations must be tied to Title IV-E funds.
  - b. By ignoring multiple requests for administrative hearings, workers violated the right of parents to apply for Medicaid coverage without delay; violated the right to eligibility determination which must be completed within 90 days for applications based on disability, and the associated right to eligibility determination with “reasonable promptness.”
  - c. In entirely ignoring multiple written requests for administrative hearings re Title IV-E adoption assistance issues, workers also violated Medicaid hearing rights; workers’ acts of ignoring such Title IV-E (and, thus, Medicaid) requests constituted illegal denials without due process.
219. Defendants’ violated the Medicaid rights of four parents in two families after successful hearings, by failing to promptly issue properly completed DHS forms which allow reimbursement of Medicaid-eligible out-of-pocket expenses paid by the Parents in the period since their children were placed for adoption, i.e. an illegal denial of reimbursement of Medicaid-eligible out-of-pocket expenses.
220. For all the above-stated reasons, Plaintiffs seek compensatory and future damages on this count.

**COUNT XI**  
**Conspiracy to Interfere with Civil Rights**  
**(42 USC 1985)**

221. Plaintiffs hereby incorporate paragraphs 1 through 220 above as if fully restated herein.
222. As a result of the foregoing actions and inactions of Defendants and their employees and agents, in their official capacities, Defendants engaged in a policy, pattern, and/or custom of participation in conspiracies to violate the civil rights of Plaintiff Adopted Children and their Plaintiff adopted Parents.
223. Defendants engaged in patterns, practices, and customs of conspiracy to obstruct justice, intimidate witnesses, and to deter, by intimidation and threat, Plaintiff adoptive Parents—

- i.e. parties in courts of the United States-- to prevent them from fully and freely testifying in matters pertaining to their adopted handicapped children, and thereby injuring such parents in their property, on account of Plaintiff adoptive Parents having so testified—by denying Title IV-E funds and Medicaid benefits to which their adopted children were due, for the benefit of said Plaintiff adopted Children.
224. Further, Defendants workers engaged in a pattern, practice, and custom of conspiracy for the purpose of impeding, hindering, obstructing, and defeating the due course of justice in the State of Michigan, thereby denying Plaintiff adopted Children and Parents the equal protection of the laws, and to injure certain Plaintiff adoptive Parents--and the property due to Plaintiff adoptive Parents and adopted Children for whom they advocated—because Plaintiff adoptive Parents attempted to enforce the rights of their children—a class of handicapped children—to the equal protection of the Constitution and laws.
225. Further, Defendants’ workers “conspired to go onto the premises of another” –three families—in order to deprive three Plaintiff adoptive Families—consisting of a total of six Plaintiff adoptive Parents and 12 Plaintiff adopted Children--of the equal protection of the law and immunities of the law. The Department’s workers entered the family homes of three families—with knowledge that such entrance violated Constitutional rights to familial privacy and the right to be free of unlawful search and seizure--in violation of State law and even in violation of DHS policy.
226. Members of the three families were severely traumatized by such actions, feared that their children would be taken away—and one child was actually taken away—and remain fearful this will happen again.
227. Therefore, the injured parties in this section—Plaintiff adopted Children and their plaintiff adoptive parents are entitled to recovery of damages for this section, occasioned by their injuries and the deprivation of their civil rights. For all the above-stated reasons, Plaintiffs seek compensatory and future damages on this count.

## PRAYER FOR RELIEF

WHEREFORE, the nineteen named Plaintiff adopted Children, their sixteen Plaintiff adoptive Parents, and the three other Plaintiff Children of the Plaintiff adoptive Parents respectfully request that this Honorable Court:

- a. Assert jurisdiction over this action;
- b. Order that the identities of all named Plaintiffs be safeguarded from identification by the use of pseudonyms for all Plaintiffs—including adults-- due to the severe and heinous nature of the allegations, and the severe nature of the children's handicapping conditions, and in order to entirely protect the identification of named Plaintiff adopted Children.
- c. Declare unconstitutional and unlawful pursuant to Rule 57 of the Federal Rules of Civil Procedure:
  - i. Defendants' violation of the substantive due process rights of Plaintiff adopted Children, their Plaintiff adoptive Parents, and the three other Plaintiff Children of the Plaintiff adoptive Parents under the Due Process Clause of the Fourteenth Amendment to the United States Constitution;
  - ii. Defendants' violation of the rights of Plaintiff adopted Children, their Plaintiff adoptive Parents, and the three other Plaintiff Children of the Plaintiff adoptive Parents under the First, Ninth, and Fourteenth Amendments of the United States Constitution;
  - iii. Defendants' violation of the rights of Plaintiff adopted Children and their Plaintiff adoptive Parents under the *Adoption Assistance and Child Welfare Act* of 1980, 42 U.S.C. 670; the State of Michigan's *Title IV-E State Plan*, et seq.;
  - iv. Defendants' violation of the rights of Plaintiff adopted Children, their Plaintiff adoptive Parents, and the three other Plaintiff Children of the Plaintiff adoptive Parents to procedural due process under the Fourteenth Amendment to the United States Constitution;
  - v. Defendants' violation of the rights of Plaintiff adopted Children and their Plaintiff adoptive Parents under *Medicaid regulations*;
  - vi. Defendants' violation of the rights of Plaintiff adopted Children under the *1964 Civil Rights Act*, et seq.;

- vii. Defendants' violation of the rights of Plaintiff adopted Children and their Plaintiff adoptive Parents under the *Americans with Disabilities Act, the Rehabilitation Act of 1973*, et seq.;
- viii. Defendants' violation of the rights of Plaintiff adopted Children and their Plaintiff adoptive Parents under the *Age Discrimination Act*;
- ix. Defendants' violations of State and federal adoption regulations;
- d. Permanently enjoin Defendants from further subjecting Plaintiff adopted Children, their Plaintiff adoptive Parents, and the three other Plaintiff Children of the Plaintiff adoptive Parents to practices of harassment, intimidation, and violations of due process, in order to prevent further injury and to protect their rights;
- e. Order appropriate remedial relief to ensure Defendants' future compliance with their legal obligations to Plaintiff adopted Children and their Plaintiff adoptive Parents;
- f. Order payment of past Title IV-E payments due that were wrongfully withheld and future Title IV-E payments that will be due.
- g. Order equitable relief and the granting of an injunction that DHS be required to comply with Title IV-E laws and regulations and be enjoined from enforcing State policies or laws in contravention to Federal Law, and that Defendants be required to properly set the DOC rates for each child.
- h. Order equitable relief and that DHS be required to comply with Title IV-E regulations over State policies to properly set the DOC rates for the parties.
- i. Order equitable relief and the granting of an injunction that DHS be required to reform their adoption system in compliance with the Americans with Disabilities Act, the Rehabilitation Act, 42 U.S.C. 1983, (45 CFR 80 (1964 Civil Rights Act); 42 USC 1981(a); Multi-Ethnic Placement Act (MEPA) (PL 103-382, part E, Sec. 552(b)(2) and Sec. 553(a)(1)(B); the Small Business Job Protection Act of 1996, Title I, Subtitle H of Section 1808; Elliott-Larsen Civil Rights Act (MCL 37.2101 et seq); U.S. DHHS Non-discrimination Statement; Michigan DHS / Administrative Hearings policies; 42 USC 2000d)
- j. Award to Plaintiff adopted Children, their Plaintiff adoptive Parents, and the three other Plaintiff Children of the Plaintiff adoptive Parents compensatory, general, and future

damages—for past and predictable future injuries to the six families who will continue to be injured by the actions of their fourteen severely emotionally disturbed children.

- k. Award to Plaintiff adopted Children, their Plaintiff adoptive Parents, and the three other Plaintiff Children of the Plaintiff adoptive Parents compensatory, general, and future damages—for past and predictable future injuries to the seven families who will continue to be injured by the actions of their seventeen children who were negligently and wrongfully adopted.
- l. Award to Plaintiff adopted Children and their Plaintiff adoptive Parents, compensatory, general, and future damages—for past and predictable future injuries to the eight families and nineteen children who will continue to be injured by Defendants actions in failing to provide Title IV-E adoption assistance funds, past amounts retroactive to the date of placement and all future payments due; and also order Defendants to negotiate the appropriate DOC rate based on the needs of the children and the circumstances of the adopting parents.
- m. Award all interest permitted pursuant to federal and state law on all damages awarded.
- n. Award Plaintiffs' all of their costs, expenses, and reasonable attorney's fees incurred in having to bring this action.
- o. Award such other and further relief as deemed appropriate by this Honorable Court.

Respectfully Submitted:

Dated: September 13, 2012

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David A. Kallman, Attorney for Plaintiffs  
KALLMAN LEGAL GROUP, PLLC  
5600 W. Mount Hope Hwy.  
Lansing, MI 48917  
(517) 322-3207