

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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LASHAWN A. by her next friend, Evelyn :
Moore, *et al.*, :
Plaintiffs, :
: :
v. : 89-CV-1754 (TFH)
: :
ADRIAN M. FENTY, as Mayor of the :
District of Columbia, *et al.*, :
Defendants. :
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**PLAINTIFFS’ OPPOSITION TO THE MOTION OF THE DISTRICT OF
COLUMBIA FOR APPROVAL OF ITS SIX-MONTH PLAN**

Plaintiffs submit this response in opposition to the Motion of the District of Columbia for Approval of its Six-Month Plan, and memorandum of points and authorities in support thereof, (“Defendants’ Motion” or “Motion for Approval”). Plaintiffs respectfully request that Defendants’ Motion be denied because it: (1) Violates the express requirement of the October 7, 2008 Stipulated Order that Defendants’ strategy plan be “acceptable to the Court Monitor;” (2) Seeks to undermine the authority vested in the Court Monitor under the Modified Final Order and Amended Implementation Plan; (3) Seeks its basis in a disingenuous interpretation of the findings and recommendations contained in the December 23, 2008 Report and Recommendations of the Public Catalyst Group; (4) Seeks judicial approval of a Six-Month Plan that is unduly narrow and fails to include the concrete and measurable action steps and benchmarks reasonably required by the Modified Final Order and Amended Implementation Plan; (5) Relies upon an incomplete and inaccurate portrayal of the current state of child welfare practice and reform in the District; and (6) Seeks judicial approval of a Six-Month Plan that prematurely would require planning for Defendants’ exit from this Court’s jurisdiction.

INTRODUCTION

Defendants' Motion for Approval reveals a District leadership that is less than candid with this Court in assessing the internal capacity of the Child and Family Services Agency ("CFSA") to implement vital reforms and the conclusions to be drawn from the agency's downward-spiraling performance under Mayor Adrian Fenty's stewardship. In the face of a well-chronicled history of unsatisfactory and uneven CFSA performance, as demonstrated by the periodic performance data independently validated and reported by the Court Monitor, and a calendar year 2008 marked by tragedy and crisis, internal agency upheaval and an ineffective and unstable CFSA management, Defendants nevertheless assert in their Motion for Approval:

Over the last eight years, CFSA has demonstrated that it is an agency committed to delivering child welfare services that ensure the safety, well-being and permanence of the children and families it serves. It is a well-resourced agency making progress on ensuring sound case practice and delivering good outcomes for children and youth.

(Defs.' Mem. at 10). Defendants provide no support for this astonishing statement. They then argue that, given the agency's proven commitment and transformation "over the last eight years" that has "corrected most of the Court's prior findings," the Court should endorse their Six-Month Plan without approval from the Court Monitor. (Defs.' Mem. at 3). Defendants also conclude, "The Court should carefully scrutinize the now existing record to determine whether continued heightened court supervision is appropriate." (*Id.*).

Defendants fail to cite any authority, or indeed to provide any legal basis, for the Court's approval of their Six-Month Plan. Moreover, they neglect to acknowledge the numerous legal and factual predicates for ongoing, if not heightened, court monitoring:

- Under the Modified Final Order (“MFO”) and Amended Implementation Plan (“AIP”), Defendants’ annual strategy plans are subject to initial approval by the Court Monitor and thereafter may only be modified with the Court Monitor’s approval;
- Under the October 7, 2008 Stipulated Order entered following Plaintiffs’ Motion for a Finding of Civil Contempt (“Plaintiffs’ July 24, 2008 Contempt Motion”), Defendants are required to submit “a proposed annual strategy plan for the 2009 year *acceptable to the Court Monitor . . .*” (emphasis added);
- Under the MFO (following Defendants’ emergence from a federal receivership in 2000) and AIP, Defendants have had considerable discretion to manage the business planning and day-to-day operations of CFSA and have consistently failed to exercise that management authority competently or effectively, as manifested by the agency’s unsatisfactory performance over a protracted period of time through the present day;
- Over the past 13 months, CFSA has on three different occasions internally developed, without interference from Plaintiffs or the Court Monitor, a court-mandated strategy plan for moving the agency toward compliance with the MFO and AIP and, each time, has come forward with a proposed plan that has failed to secure the approval of the Court Monitor due to a lack of concrete, measurable and appropriately framed and targeted objectives;
- Since April 2004, CFSA has had four different directors, and currently lacks a permanent director and permanent deputy directors for operations, contracts, community services and administration;
- Given Defendants’ ongoing effort to recruit a permanent CFSA director and management team, Public Catalyst Group (“PCG”) has recommended that the parties defer the preparation of the annual strategy plan required under the Stipulated Order precisely because CFSA does not currently have the leadership and internal capacity necessary to conduct independent and prudent long-term planning;
- PCG further recommends that Defendants prepare a six-month bridge plan to be immediately followed by the longer-term strategy plan required under the October 7, 2008 Stipulated Order;
- CFSA performance over the last 24 months has been substandard, and deteriorating;

- Only after Plaintiffs initiated contempt proceedings on July 24, 2008, and the Stipulated Order was entered, has CFSA begun to stabilize; and
- In the last three months, Defendants have only accomplished a limited number of specific aims – a narrowly tailored, short-list of items prescribed in the Stipulated Order; massive noncompliance remains with the rest of their obligations under the MFO and AIP.

In short, Defendants have demonstrated over a sustained period of time that they still lack the focused leadership, the management capability and the will to protect children from harm absent court supervision.

Finally, not only does Defendants' Six-Month Plan violate the Stipulated Order, MFO and AIP, but, even in the near-term, it is inadequate. The proposed plan contains virtually no concrete action steps or outcome benchmarks for children in care, and what is included is paltry. Over the next six months, for example, the plan promises that only *18 children* will obtain permanency. (Six-Month Plan at Par. 14). And, for the over 800 District children designated with a goal of APPLA ("Another Planned Permanent Living Arrangement"), the plan pledges that the agency will "review" their cases, but only provides that these reviews will "result in recommendations and action steps" for approximately 40% of this group of children. (See Letter from Judith Meltzer to the Honorable Thomas F. Hogan, dated January 5, 2009, attached as Ex. A, at 9 (indicating "800 plus" District children have an APPLA goal); Six-Month Plan at Par. 17). There is no commitment to act on any of these recommendations or action steps. As explained in Plaintiffs' Renewed Motion and Supporting Memorandum For Entry of Contempt, dated January 30, 2009 ("Plaintiffs' Renewed Contempt Motion"), APPLA is an assigned permanency goal, "which is the default goal for children not expected to be reunified or achieve permanency through adoption or guardianship." (Pls.' Renewed Contempt Mot.

at 13 n.4 (citations omitted)). The short-term needs of this extremely vulnerable group of children are stark given that a number of them will actually age out of CFSA supervision within the next six months.

The current plan submitted by Defendants is unacceptable to the Court Monitor and fails to follow the recommendations made in the December 23, 2008 Report and Recommendations of the Public Catalyst Group (the “PCG Report”). Most importantly, it fails to meet the urgent needs of the children living under CFSA’s supervision. The Court should therefore deny Defendants’ Motion for Approval.

ARGUMENT

I. DEFENDANTS’ SIX-MONTH PLAN VIOLATES THE OCTOBER 7, 2008 STIPULATED ORDER BECAUSE IT IS UNACCEPTABLE TO THE COURT MONITOR

As Defendants concede in their Motion for Approval, the Stipulated Order “requires the District, in consultation with the plaintiffs, to complete a proposed annual plan that is acceptable to the Monitor.” (Defs.’ Mem. at 2). The District’s Six-Month Plan is not acceptable to the Court Monitor. Indeed, in her January 26, 2009 letter to the Court, the Court Monitor observed:

[T]he Plan as developed by the District is not sufficient in its current form to receive approval by the Monitor The District has indicated their intention to ask the Court to approve the plan without the agreement of the Monitor. We have provided the District with specific feedback on the plan and are prepared to provide the Court with our views on why the plan is not acceptable. We are troubled by the District’s decision to ignore the Court’s requirement that the plan be acceptable to the Monitor and the implications of this action for moving forward constructively.

(Letter from Judith Meltzer to the Honorable Thomas F. Hogan, dated January 26, 2009, attached as Ex. B, at 2).

Nevertheless, contrary to the Court's order, Defendants move this Court to approve their plan absent the Court Monitor's approval without any legal basis. (Defs.' Mem. at 1-3). Further, Defendants have not presented any evidence, nor could they, that the Court Monitor's rejection of their proposed plan is unreasonable or lacks good faith. In fact, because the Court Monitor has consistently assessed Defendants' proposals in a highly professional, independent and reasonable manner during the course of the reform process, this Court has never had occasion to override the judgment of the Court Monitor, nor has it ever been asked to do so until now.

As set forth in Plaintiffs' Renewed Contempt Motion, fully incorporated by reference herein, Defendants should not now be permitted to repudiate their own commitment and legally enforceable obligation under the Stipulated Order.

II. DEFENDANTS SEEK TO UNDERMINE THE AUTHORITY VESTED IN THE COURT MONITOR

Defendants' Motion for Approval seeks to undermine the authority vested in the Court Monitor under the MFO and the AIP. From the inception of the court-ordered reform process, the Court Monitor has played a critical role. As an independent advisor to the Court possessing technical expertise in child welfare agency management and case practice, the Court Monitor's role is to assure that the MFO is implemented effectively and in good faith. With child welfare performance declining and systemic reform

floundering under an unstable CFSA management, it is not the time to reduce the role of the Court Monitor.¹

Defendants mistakenly assert that the Court Monitor “does not have the authority to direct the Executive on how best to implement the AIP.” (Defs.’ Mem. at 2).

Following a trial on the merits at which liability was established, the parties agreed, with Court approval, to vest original authority in the Court Monitor, under Section XX, Par. B(1) of the MFO, to prepare in consultation with the parties an implementation plan that itself would become court-enforceable. Specifically, the MFO provides, “The Monitor shall prepare and present to the parties and the court an Implementation Plan within 120 days of the entry of this Order.” (Pls.’ July 24, 2008 Contempt Mot., Ex. A at Section XX, Par. B(1)). The MFO further provides, “Upon completing the Implementation Plan or a plan update, the Monitor shall submit the plan to the parties, and it shall become binding upon the parties and a part of this court’s order. The plaintiffs and defendants waive any rights they may have to challenge any aspect of any such plan and agree to be bound by the plan.” (Pls.’ July 24, 2008 Contempt Mot., Ex. A at Section XX, Par. B.3(b)(4)). Contrary to Defendants’ arguments, the Court Monitor of course does possess the authority and discretion to formulate the implementation plans required under the MFO.

When the December 31, 2006 deadline for compliance with the original Implementation Plan (“IP”) arrived without full compliance by CFSA, the Court Monitor in consultation with the parties prepared a plan update (designated the “AIP”) in accordance with Section XX, Paragraph B of the MFO. The AIP provides: “The parties

¹ If anything, this may well be the time for court oversight to increase. (See Pls.’ July 24, 2008 Contempt Mot. and Pls.’ Renewed Contempt Mot.).

hereby submit this Amended Implementation Plan . . . as developed by the Court Appointed Monitor in consultation with the parties pursuant to Section XX.B of the MFO.” (Pls.’ July 24, 2008 Contempt Mot., Ex. B at preamble). The AIP further requires that Defendants prepare an annual strategy plan to be approved by the Court Monitor:

The parties agree that the Defendant’s Strategy Plan and action steps are a means to achieving compliance with the required outcomes. The action steps are enforceable by the Court but can be changed or deleted *with the approval of the Court Monitor*. The Strategy Plan will be updated annually in consultation with the Plaintiffs and the Court Monitor and *is subject to approval by the Court Monitor*.

(Pls.’ July 24, 2008 Contempt Mot., Ex. B at Section III) (emphasis added). The AIP agreed to by the Defendants thus provides that Defendants’ annual strategy plans are subject to initial approval by the Court Monitor and thereafter may only be modified with the Court Monitor’s approval.

Defendants put forth no legal basis to unilaterally alter the terms of a binding legal requirement. Nor do they even put forward any equitable argument about why the legal requirement should be changed. Defendants did fulfill a limited number of obligations during the last three months governed by the Stipulated Order. That was commendable. But that hardly justifies the complete change in oversight they now seek with so many obligations remaining. Defendants must not be permitted to undermine the authority vested in the Court Monitor, particularly at this critical juncture of the reform process.

III. DEFENDANTS' SIX-MONTH PLAN IS BASED ON A DISINGENUOUS INTERPRETATION OF THE PCG REPORT

Even if the report of a consultant's group were an adequate basis to unilaterally disregard an existing court order, which of course it is not, the report on which Defendants' rely provides no such support. Defendants' proposed plan contravenes the PCG Report not as much for what it includes, but for everything it does not. As a threshold matter, Defendants' Six-Month Plan and motion in support thereof ignore PCG's key findings that confirm CFSA remains mired in a number of fundamental systemic problems. Apparently as a result, Defendants disregard the two-stage planning process recommended by PCG, which calls first for a six-month bridge plan containing "concrete, reasonable, measurable, and public targets," modeled after the Stipulated Order and second for a longer term plan designed to move toward compliance with the AIP and MFO. (PCG Report, attached as Ex. C, at 7). Instead, contrary to their assertions otherwise, Defendants proffer a short-term plan that fails to include either PCG's immediate or long-term recommendations.

a. PCG Findings

The PCG Report indicates that CFSA continues to fall "far short" on child and family outcomes based on the federal Child and Family Services Review (the "CFSR") and based on other external quality reviews. (Ex. C at 14). PCG concludes:

Even before the 2008 investigations crisis, the fact that DC's case practice needs sustained attention is well documented in the federal CFSR, the Quality Service Review (QSR) of a year ago, the federal monitoring reports and the reports of many of the other experts and consultants deployed in DC over the past several years. Suffice it to say here that there is consensus among these experts that DC needs to improve its safety outcomes, the quality of its investigations, its provision of health and mental health

services to children in care, improve stability while children are in placement, and ensure many more of its children and youth achieve permanency and achieve it in a timely fashion.

(Ex. C at 14).

PCG then provides two examples to illustrate the myriad of problems cited above. *First*, it maintains that CFSA “drastically overuses” APPLA as a permanency goal: “For youth 21 and under, fully 36% of DC’s placement population is goaled APPLA, compared to 14% nationally, 12% in New York City, and 12% in Detroit (Wayne County). Moreover, practice has actually slipped in the last couple of years with more and more youth given a goal of ‘emancipation’ at a younger and younger age.” (Ex. C at 14-15). *Second*, PCG discusses “how deeply siloed are the units in the agency, meaning each unit tends to operate as an island without routine partnership across units.” (Ex. C at 15). PCG explains that these silos are problematic because they distance decision-making from the field and “create[] incentives to move responsibility and cases onto the next unit.” (Ex. C at 15).

Further, throughout the report, PCG identifies a number of additional structural deficiencies within CFSA, including, among others, the devastating turnover in directors, other leadership and staff (Ex. C at 9, 25), a dysfunctional performance-based contracting system (Ex. C at 21), and inefficiently utilized administrative and support functions (Ex. C at 18–19).

b. PCG's Proposal for Implementation of a Two-Stage Planning Process

Given these findings, PCG does not, as Defendants' Six-Month Plan suggests, recommend that Defendants create a six-month bridge plan, which provides for exit planning within the next three months. To the contrary, PCG recommends a two-stage planning process as follows:

The parties should build on the success of the past several months with *concrete, reasonable, measurable, and public targets* that focus CFSA on outcomes during a six month bridge period . . . modeled on the stipulation period. Negotiations to build a plan to achieve the overall goals of the AIP, building a successful, well-functioning system that delivers good outcomes for children and families, should begin between April and May, with a goal of finalizing the plan by the end of June.

(Ex. C at 7) (emphasis added).

Not only is a two-stage planning process explicitly recommended, but throughout the report, PCG makes proposals premised on a second stage, comprehensive reform planning period. (*See, e.g.*, Ex. C at 12 (suggesting that planning for structural changes, such as eliminating the Office of Youth Development and re-aligning CFSA's organization to a neighborhood-based approach, occur in the second stage)). Thus, as opposed to beginning exit planning in May, the PCG Report instead suggests April/May as a starting point to begin negotiating a long-term plan for the comprehensive structural and organizational reform needed at the agency in order to ensure that children are protected and the provisions of the applicable court orders are implemented.

c. PCG’s Recommendation that a Bridge Plan Contain Concrete, Reasonable, Measurable, and Public Targets

Ultimately, Defendants’ plan fails even to incorporate the specific advice PCG provides with respect to the six-month bridge plan. PCG is clear that the Six-Month Plan should include “*concrete, reasonable, measurable, and public targets that focus CFSA on outcomes during a six month bridge period . . . modeled on the stipulation period.*” (Ex. C at 7) (emphasis added). In fact, the PCG Report reiterates this advice several times. (*Id.*) It also discusses at length the attributes of the “recent stipulation period,” explaining why it is so critical that it should be carried on in the Six-Month Plan:

During this period, agreement on a select, critical set of goals among the parties to the litigation has proven crucial for the agency. Everyone inside and outside the agency knew precisely what they were supposed to be doing – with *concrete, measurable, reasonable and very public targets*. . . . The backlog targets were aggressive but reasonable – they were developed based on some intensive diagnostic work by the agency. Because they were reasonable and founded in facts, staff could get on board because they were not being asked to do the unattainable. As each day ticked by and progress was made over the past several months, critical staff who had been disengaged became more engaged because they could see progress. The targets were concrete – they allowed the agency a clear definition of what success would be and for the first time in a long time, the agency had an experience of success The parties should build on the success of the past several months with *concrete, reasonable, measurable, and public targets that focus CFSA on outcomes during a six month bridge period, beginning in January 2009, modeled on the stipulation period*. . . . The attention of all parties during this period should be squarely on supporting the building of sound case practice with performance targets and goals focused on good outcomes for children and families”

(Ex. C at 5, 6, 7, 8) (emphasis added).

Notwithstanding Defendants' arguments to the contrary, the Six-Month Plan largely does not embrace the above recommendations. It contains extremely few targets that are either concrete or measurable. To the extent that there are concrete targets, they are markedly not reasonably "aggressive," ambitious or progressive in any respect. Instead, the specific benchmarks Defendants do include either maintain the status quo or establish shamefully low aims.²

As set forth fully in Plaintiffs' Renewed Contempt Motion, Defendants' proposed plan focuses on vague provisions related to quality review, assurance and improvement processes (Defs.' Proposed Plan at Pars. 1–5, 7, 9, 21–23, 32–33). (Pls.' Renewed Contempt Mot. at 12).³ For example, Defendants state that they will: "implement a plan to ensure completion of quality investigations within 30 days" (Par. 1); "translate lessons learned from reducing the prior backlog into specific actions" (Par. 2); "reduce multiple placements for children in care by completing a review of existing placement structure, protocols, and practices and modifying the placement process" (Par. 7(a)); and "explore and test methods of strengthening technical assistance, monitoring and support for foster parents and congregate care providers" (Par. 9). While such goals are consistent with the PCG Report, Defendants fail to translate them into "concrete, measurable, reasonable, and public targets," as PCG recommends.

² As such, the plan does not include targets for success that, once achieved, will engender the type of improved morale among agency staff that PCG believes has occurred over the past few months. (*See, e.g.*, Ex. C at 6).

³ Inexplicably, the quality assurance and review processes in Paragraphs 3-5 are virtually identical to those set forth in Paragraph 32 (a-c).

With a few significant exceptions,⁴ to the extent that Defendants do include concrete, measurable targets, they are either low-hanging fruit or wholly insufficient. For example, CFSA states that it will maintain performance of: (1) no children staying overnight in “the CFSA Intake Center or office building” (Par. 10); and (2) no more than 20 children under the age of 12 placed in congregate care for more than 30 days (Par. 11). Based on the Court Monitor’s reports, CFSA has managed to achieve these two basic practices since June 2007 at a minimum. (See *LaShawn v. Fenty*, An Assessment of the District of Columbia’s Child Welfare System dated June 2007, attached as Ex. D, at 47; see also Court Monitor’s *LaShawn* Performance on Selected AIP Outcomes as of November 2008, attached as Ex. E, at 4). Thus, though concrete, and though sustained performance is important, these placement targets reflect no attempt to improve agency performance. The remaining specific targets in the Six-Month Plan are feeble. The plan proposes that in the next six months: 18 children will achieve permanency (Par. 14); 600 APPLA cases will be reviewed, with action steps devised (as opposed to outcomes achieved) for only about 40% of those children (Par. 17); certain health and dental targets will be met (of the targets Defendants have set, one is below current performance and the remainder are only 1-4% above it) (Pars. 24-27; Pls.’ Renewed Contempt Mot. at 12); and no supervisors will be responsible for more than 6 caseworkers⁵ (Six-Month Plan at Par. 29).

⁴ Defendants’ plan establishes that CFSA will maintain caseloads at AIP standards (Par. 28), sufficient staff and resources to ensure no CPS investigation backlogs (Par. 6), no supervisors being responsible for managing ongoing cases (Par. 30), and no cases unassigned for more than 5 business days (Par. 31). Unfortunately, even these concrete goals are negated by Defendants’ catch-all provision that “CFSA reserves the right to change the approaches as needed during the six-month period.” (Six-Month Plan at 1).

⁵ Defendants’ plan fails to limit this provision to accord with the AIP requirement that supervisors can have responsibility for no more than 5 caseworkers, or 6 total workers, *including case aides*. (Pls.’ July 24, 2008 Contempt Motion, Ex. B at Section I, Par. 29(a)).

IV. DEFENDANTS' PROPOSED PLAN IS INADEQUATE

The Six-Month Plan fails to meet the urgent and long-term needs of the District's children in care. As described above and fully set forth in Plaintiffs' Renewed Contempt Motion, Defendants' plan neither adheres to PCG's recommendations that the six-month bridge plan contain "*concrete, reasonable, measurable, and public targets . . . modeled on the stipulation period,*" nor to the requirements of the Stipulated Order that the plan contain "specific action steps and benchmarks to move Defendants toward compliance with all MFO and AIP final requirements." (Ex. C at 7; Stipulated Order at Par. 8). For all the reasons the Six-Month Plan fails to satisfy PCG's recommendations and the requirements of the Stipulated Order, it is inadequate and should be rejected.

In summary, the Six-Month Plan is inadequate because:⁶

- It contains almost no concrete action steps and benchmarks, let alone steps that will move the District toward compliance with the MFO and AIP;
- None of the provisions in the plan are enforceable because Defendants reserve the right to unilaterally "change the approaches as needed during the six-month period;"
- The plan lacks specificity with respect to provisions for setting up processes for area-specific reviews and quality assurance, and does not provide for Court Monitor involvement in assessing these protocols;
- To the extent that there are benchmarks in Defendants' proposed plan, they are not sufficiently ambitious – for example, at a minimum, the plan should include targets extrapolated from those set forth in the Stipulated Order on the

⁶ This list is intended to be representative, not exhaustive.

basis of a six month, rather than three month, time frame, i.e. CFSA should add 180 placements in an appropriate mix; 80 additional children with a goal of adoption should be identified for assistance from high impact teams; a contract with an external specialized agency, such as Adoptions Together, should be entered into to obtain services for 50 additional children who have a permanency goal of adoption and no adoptive resource; all outstanding cases of youth with an APPLA goal should be reviewed for legal permanency options, resulting in identification of potential resources for permanent, legal relationships for all of the reviewed youth, and recommendations and action steps should be implemented for at least some portion of them;

- The targets related to health and dental services are too low, and do not include a requirement that caregivers be provided documentation of Medicaid coverage within five days of placement and Medicaid cards within 30 days;
- There are no targets for providing services to meet other urgent needs for children in care, and none for mental health services in particular;
- There are no targets for reducing the number of placement moves;
- There are no specific targets for capacity building, such as benchmarks for mandatory pre-service and in-service training, performance-based contracting, and technical assistance to private agencies;
- No time frame is provided for hiring a permanent director of CFSA; and
- The plan prematurely establishes a time frame for exit planning, rather than long-term, comprehensive reform planning.

V. DEFENDANTS MISREPRESENT THE STATE OF CHILD WELFARE PERFORMANCE IN THE DISTRICT IN SEEKING ENHANCED CFSA AUTONOMY IN THE DEVELOPMENT OF ITS SIX-MONTH STRATEGY PLAN

Defendants misrepresent the state of child welfare performance in the District in seeking to engineer a narrow reform process and a premature exit plan. Thus, Defendants state in their Motion for Approval, “It is undeniable that CFSA has been transformed over the last eight years and has corrected most of the Court’s prior findings.” (Defs.’ Mem. at 3). Nothing could be further from the truth. CFSA has, in fact, not “corrected most of the Court’s prior findings.” It is also well-established in the performance data reported by the Court Monitor that CFSA has failed to comply with numerous provisions of the MFO, IP, AIP and 2007 Annual Strategy Plan.

As fully set forth in Plaintiffs’ July 24, 2008 Contempt Motion and Plaintiffs’ Renewed Contempt Motion, Defendants have failed to comply with requirements of the MFO and accompanying implementation plans relating to (1) permanency planning and permanency outcomes for children, (2) placement development and planning and the reduction of placement moves experienced by children, (3) visitation practice required to promote timely reunification, preserve sibling relationships and assure basic safety in foster care, (4) supervisory and caseworker training, (5) agency oversight of child placing agency performance and development of an adequate contract monitoring function including performance-based contracting, (6) delivery of timely and appropriate medical, dental and mental health screenings and professional treatment, (7) comprehensive and quality child protective services investigations, and (8) the development of a quality assurance function within CFSA to enable the agency to track aggregate performance and address problematic performance areas. Defendants disregard these numerous and

significant systemic deficiencies, instead boasting to the Court about a self-proclaimed job well done and seeking to subvert the authority of the Court Monitor.

Defendants have shown an utter disregard for a fully informed and good faith reform process in their Motion for Approval and, in so doing, have themselves proven the need for a finding of contempt and enhanced judicial oversight to reinvigorate the reform effort.

VI. DEFENDANTS SEEK A PREMATURE EXIT PLAN EVEN THOUGH THEY HAVE NOT COMPLIED WITH NUMEROUS REQUIREMENTS OF THE MFO AND AIP

Defendants' Motion for Approval effectively asks this Court to require the development of an exit plan before CFSA has even demonstrated initial compliance with the MFO and AIP, much less fully institutionalized and sustained compliance.

Defendants' request conflicts with the Court Monitor's and Plaintiffs' position that an additional strategy plan to move CFSA toward compliance with the MFO and AIP must be prepared and implemented before the parties are in a position to make an informed judgment regarding the timing, contents and duration of any exit plan.⁷ Simply put, Defendants seek to shift focus and energy away from fundamental compliance. They wish to begin a premature exit process before CFSA has undertaken all steps necessary to ensure that the agency is functioning and can satisfy the requirements of the MFO and AIP, thereby achieving appropriate outcomes for children that conform to constitutional mandates.

Defendants' effort to override the sound professional judgment of the Court Monitor regarding the propriety of exit planning at this time is particularly egregious

⁷ The October 7, 2008 Stipulated Order also requires an additional annual strategy plan, not an exit plan. (Stipulated Order at Par. 8).

given the present state of CFSA management. CFSA is currently unable to perform effective and prudent strategic planning beyond a short six-month horizon due to the unfilled CFSA director and deputy director positions. (Ex. C at 18). It is irresponsible and irrational to suggest that this same beleaguered agency can nonetheless prepare a sound plan for exit from court supervision. Until CFSA has recruited and entrenched a management team, developed and installed an appropriate organizational structure, formulated and embedded a proper case practice model and satisfactorily moved toward full compliance with the requirements of the MFO and AIP, any exit planning will remain premature.

CONCLUSION

Plaintiffs respectfully request that the Court deny Defendants' Motion for Approval and make a judicial finding of contempt against Defendants for their noncompliance with the clear terms of the Stipulated Order and their continued noncompliance with the MFO and the AIP.

Respectfully Submitted,

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