

IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
WESTERN DIVISION

FILED  
JUL 12 1977  
WESTERN DIVISION

G. L. , an infant, by  
and through his next friend,  
W. S.

and

D. T. , an infant, by  
and through her next friend,  
C. C.

and

R. M., JR., an infant  
by and through his next friend,  
M. A.

and

K. W. , an infant, by  
and through her next friend,  
J. W.

and

T. W. , an infant, by and  
through his next friend, J.  
W. , on their own behalf and  
on behalf of all others  
similarly situated,

Plaintiffs,

vs.

J. Z. , in his official  
capacity as State Director of  
the Missouri Division of Family  
Services,

and

E. C. , individually and  
as State Director of the Missouri  
Division of Family Services,

and

J. J. L. , individually  
and as County Director of the  
Jackson County Office of the  
Missouri Division of Family  
Services,

and

S. B. , individually  
and as County Director of the  
Clay County Office of the  
Missouri Division of Family  
Services,

Civil Action No.

77-242-CV-W-3

FIRST AMENDED COMPLAINT

SHERRELL HUNT, individually and )  
 as Social Service Supervisor of )  
 the Jackson County Office of the )  
 Missouri Division of Family )  
 Services, )  
 )  
 and )  
 )  
 GAIL HORSEY, individually and )  
 as Social Service Supervisor of )  
 the Jackson County Office of the )  
 Missouri Division of Family )  
 Services, )  
 )  
 Defendants. )

FIRST AMENDED COMPLAINT

JURISDICTION

1.

1. The jurisdiction of this Court is invoked pursuant to, and in accordance with, the provisions of 28 U.S.C. §§1331, 2201 and 2202. The jurisdiction of this Court is also invoked pursuant to the provisions of 28 U.S.C. §1343 (3) and (4). This action arises under 42 U.S.C. §1983, and is brought to redress the deprivation, under color of state law, of rights, privileges and immunities secured by the prohibition against cruel and unusual punishment in the Eighth Amendment to the United States Constitution, and the provisions of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §601 et seq. and 42 U.S.C. §1302 and the regulations promulgated thereunder. The amount in controversy exceeds \$10,000, exclusive of interest and costs. The pendent jurisdiction of this Court is invoked over state causes of action which are based upon the facts which give rise to the federal causes of action.

TYPE OF PROCEEDING

2. This is a proceeding brought by children who have been placed in, and who continue to reside in, Missouri Division of Family Services foster homes pursuant to Court orders of commitment or pre-hearing protective custody. The children have been placed in Division of Family Services foster homes as a result of their being abused or neglected by their natural parents or guardians. Plaintiffs and the members of their class have been abused and neglected by their Division of Family Services foster parents, and have been

subjected to deplorable conditions in violation of federal regulations and state statutes and regulations.

3. The plaintiffs, on their own behalf, and on behalf of the class which they seek to represent, seek permanent injunctive and declaratory relief to remedy the conditions of their foster homes. Plaintiffs individually seek actual and punitive monetary damages for physical and psychological harms suffered while in Division of Family Services foster homes. Plaintiffs seek reasonable attorney's fees pursuant to the provisions of 42 U.S.C. §1938. Plaintiffs bring this cause as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure.

PARTIES

Plaintiffs

4. G. L. is a child of four years of age, his date of birth being February 17, 1973. G. brings this cause by and through his next friend, W. S., who has been duly appointed by this Court to serve in that capacity.

5. On August 22, 1973, G. L. was committed to the Missouri Division of Family Services for foster home placement by Order of the Juvenile Court of the Circuit Court of Jackson County, Missouri. A copy of said Order, identified as "Plaintiffs' Exhibit 1", is attached and incorporated herein by reference.

6. G. L. continues to reside in a Division of Family Services foster home pursuant to the Order of Commitment.

7. D. T. is a child of 17 years of age, her date of birth being October 10, 1959. D. brings this cause by and through her next friend, C. C., who has been duly appointed by this Court to serve in that capacity.

8. On January 6, 1975, D. T. was committed to the Missouri Division of Family Services for foster home placement by Order of the Juvenile Court of the Circuit Court of Jackson County, Missouri. A copy of said Order, identified as "Plaintiffs' Exhibit 2", is attached and incorporated herein by reference.

9. D. T. continues to reside in a Division of Family Services foster home pursuant to the Order of Commitment.

10. R. M. , Jr., is a child of three and one half years of age, his date of birth being April 21, 1973. R brings this cause by and through his next friend, M A. , who has been duly appointed by this Court to serve in that capacity.

11. On May 11, 1976, R M. , Jr., was committed to the Missouri Division of Family Services for foster home placement by Order of the Juvenile Court of the Circuit Court of Jackson County, Missouri. A copy of said Order, identified as "Plaintiffs' Exhibit 3", is attached hereto and incorporated herein by reference.

12. R M. , Jr., continues to reside in a Division of Family Services foster home pursuant to the Order of Commitment.

13. K W. and T W. are siblings of six years and four and one-half years of age, respectively, their dates of birth being January 2, 1971, and May 13, 1972. K and T bring this cause by and through their next friend, J W. , who has been duly appointed by this Court to serve in that capacity.

14. On January 14, 1976, K W. was committed to the Missouri Division of Family Services for foster home placement by Order of the Juvenile Court of the Circuit Court of Jackson County, Missouri. A copy of said Order, identified as "Plaintiffs' Exhibit 4", is attached hereto and incorporated herein by reference.

15. On January 14, 1976, T W. was committed to the Missouri Division of Family Services for foster home placement by Order of the Juvenile Court of the Circuit Court of Jackson County, Missouri. A copy of said Order, identified as "Plaintiffs' Exhibit 4", is attached hereto and incorporated herein by reference.

16. K and T W. reside together in a Division of Family Services foster home pursuant to the Orders of Commitment.

#### Defendants

17. John Zumwalt is sued in his official capacity as State Director of the Missouri Division of Family Services. John Zumwalt has administrative and supervisory responsibility and control over the activities and operations of the Missouri Division of Family Services.

18. Ewing Gourley is sued individually and in his capacity as State Director of the Missouri Division of Family Services. Ewing Gourley has administrative and supervisory responsibility and control over the activities and operations of the Missouri Division of Family Services.

19. J. Joseph Lewis is sued individually and in his capacity as County Director of the Jackson County Office of the Missouri Division of Family Services. J. Joseph Lewis has administrative and supervisory control over the activities and operations of the Jackson County Office of the Missouri Division of Family Services.

20. Sandra Brooks is sued individually and in her capacity as County Director of the Clay County Office of the Missouri Division of Family Services. Sandra Brooks has administrative and supervisory responsibility and control over the activities and operations of the Clay County Office of the Missouri Division of Family Services.

21. Sherrell Hunt is sued individually and as Social Service Supervisor of the Missouri Division of Family Services. Sherrell Hunt has administrative and supervisory control over the placements of children in D.F.S. foster homes in Jackson County, Missouri.

22. Gail Horsey is sued individually and as Social Service Supervisor of the Missouri Division of Family Services. Gail Horsey approves the applications of prospective D.F.S. foster parents in Jackson County. Gail Horsey possesses and exercises the authority to select the foster homes into which plaintiffs and the members of their class are placed.

#### CLASS ACTION ALLEGATIONS

23. Plaintiffs bring this action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure on their own behalf and on behalf of all persons constituting the class described below who are similarly situated. Plaintiffs represent a class of children placed in foster homes by the Missouri Division of Family Services pursuant to Court Orders of commitment or pre-hearing protective custody issued by the Juvenile Court of the Circuit Court of Jackson County, Missouri.

24. The class is so numerous that joinder of all members is impractical in that, as of this date, there are over 100 children within the class.

25. There are questions of law and fact common to the class in that:

- (a) The Missouri Division of Family Services has legal and physical custody of all members of the class.
- (b) All members of the class seek to vindicate rights, privileges and immunities which have been violated by defendants and which are secured by the prohibition against cruel and unusual punishment in the Eighth Amendment to the United States Constitution, the Fourteenth Amendment to the United States Constitution, Article I §10 of the Missouri Constitution, 42 U.S.C. §601 et seq. and 42 U.S.C. §1302 and the regulations promulgated thereunder.
- (c) All members of the class challenge similar conditions of their foster homes.

26. The claims of the representative parties are typical of the claims of the class in that the same acts and omissions of defendants form the basis for the claims of all members of the class.

27. The representative parties will fairly and adequately represent and protect the rights and interests of the class.

28. Defendants have acted and failed to act, and continue to do so, on grounds generally applicable to the class, thereby requiring appropriate declaratory and injunctive relief with respect to the class as a whole.

#### STATEMENT OF FACTS

#### General Allegations Regarding Division of Family Services

#### Division of Family Services Responsibilities

29. Plaintiffs and the members of their class have been placed in the legal custody of the Missouri Division of Family Services pursuant to orders of commitment or prehearing protective custody

which have been issued by the Juvenile Court of the Circuit Court of Jackson County, Missouri, pursuant to the provisions of §§211.151 and 211.181, R.S.Mo. (1969).

30. Plaintiffs and the members of their class have been placed in the legal custody of the Missouri Division of Family Services as a result of said children being abused and/or neglected by their natural parents or guardians.

31. Plaintiffs and the members of their class reside in Missouri Division of Family Services foster homes in Clay County and Jackson County, Missouri.

32. Plaintiffs and the members of their class are in the physical custody of the Missouri Division of Family Services and its agents and employees.

33. The Missouri Division of Family Services and its agents and employees are under a duty to investigate and license the foster homes within which plaintiffs and the members of their class are placed, as set out in §210.221, R.S.Mo. (1969).

34. The Missouri Division of Family Services and its agents and employees are under a duty to revoke the licenses of foster homes which fail to comply with §§210.201 to 210.245 R.S.Mo. (1969), or the rules and regulations promulgated by the Division of Family Services, as set out in §210.221, R.S.Mo. (1969).

35. The Missouri Division of Family Services and its agents and employees are under a duty to provide plaintiffs and the members of their class with services designed to reunite said children with their natural families, as set out in §210.145(5), R.S.Mo. (supp. 1977).

36. The Missouri Division of Family Services has promulgated mandatory rules and regulations regarding licensing and supervision of D.F.S. foster homes pursuant to §210.221, R.S.Mo. (1969). Said rules and regulations [hereinafter called "Rules"] are contained within the "REGULATIONS AND STANDARDS For the Licensed Boarding Homes for Children (Foster Family)", which are attached hereto as "Plaintiffs' Exhibit 5", and incorporated herein by reference.

37. Plaintiffs and the members of their class are entitled to the protections and safeguards of the Rules.

38. Plaintiffs and the members of their class are entitled to foster placements:

- (a) with foster parents of good moral character, as set out in Rule 22.43 and §210.221, R.S.Mo., (1969);
- (b) with foster parents in good physical and mental health and free from contagious diseases or mental disorders, as set out in Rule 224.5;
- (c) wherein they receive necessary medical care, as set out in Rule 224.6;
- (d) in foster homes which are in adequate repair and conducive to health and decency, as set out in Rule 224.7(1);
- (e) wherein they are provided with clothing consistent with community standards, as set out in Rule 224.7(8).

39. The foster home placements of plaintiffs and the members of their class who are committed to the Division of Family Services, and who are not detained in protective custody pending juvenile court hearings, are financed in part by money received directly or indirectly from the Department of Health, Education and Welfare of the United States, pursuant to the provisions of 42 U.S.C. §§601 et seq.

40. The Missouri Division of Family Services has consented and agreed to comply with the statutes and regulations of the United States regarding foster placements which are funded directly or indirectly by money which is authorized by 42 U.S.C. §§601 et seq.

41. The requirements of 42 U.S.C. §601 et seq., 45 C.F.R. §220 et seq., and 45 C.F.R. §223 et seq. apply to foster placements funded directly or indirectly by funds authorized by 42 U.S.C. §601 et seq.

42. The Missouri Division of Family Services and its agents and employees are subject to the requirements of 42 U.S.C. §601 et seq., 45 C.F.R. §220 et seq. and 45 C.F.R. §233 et seq.

43. Plaintiffs and the members of their class who are not detained in protective custody pending Juvenile Court hearings are



entitled to foster home placements which comply with the requirements of 45 C.F.R. 220 et seq.

44. Plaintiffs and the members of their class who are not detained in protective custody pending Juvenile Court hearings are entitled to foster home placements:

(a) wherein said children receive care appropriate to their individual needs, as required by 42 U.S.C. §601 et seq., 45 C.F.R. §220 et seq. and 45 C.F.R. §223 et seq.;

(b) wherein said children receive proper care, as required by 42 U.S.C. §601 et seq., 45 C.F.R. §220 et seq. and 45 C.F.R. §233 et seq.

Division of Family Services Actions and Omissions

45. Plaintiffs and the members of their class have been and continue to be subjected to violent and debilitating conditions and practices as enumerated in this complaint.

46. The acts, policies and omissions of the defendants have subjected plaintiffs and/or have caused plaintiffs to be subjected to the conditions mentioned in this complaint.

47. At all times pertinent to this complaint, defendants' acts, policies and omissions which are referred to in this complaint occurred, and continue to occur, under color of state law, statute, ordinance, regulation, custom and practice.

48. The Missouri Division of Family Services and its agents and employees license and maintain D.F.S. foster homes without adequately investigating the moral character of the foster parents, in contravention of Rule 224.5 and §210.221, R.S.Mo. (1969).

49. The Missouri Division of Family Services and its agents and employees license and maintain D.F.S. foster homes without obtaining physician's statements that the foster parents are in good mental health and free from mental disorder, in contravention of Rule 224.5.

50. The Missouri Division of Family Services and its agents and employees license and maintain D.F.S. foster homes without obtaining physician's statements that the foster parents are in

good physical health and free from contagious diseases, in contravention of Rule 224.5.

51. The Missouri Division of Family Services and its agents and employees license and maintain D.F.S. foster homes wherein D.F.S. foster parents fail to provide necessary medical and psychiatric care, in contravention of Rule 224.6.

52. The Missouri Division of Family Services and its agents and employees license and maintain D.F.S. foster homes which are not sanitary or conducive to the health of foster children, in contravention of Rule 224.7(1).

53. The Missouri Division of Family Services and its agents and employees license and maintain D.F.S. foster homes which are overcrowded and are without adequate sleeping space, in contravention of Rule 224.7(2).

54. The Missouri Division of Family Services and its agents and employees maintain D.F.S. foster homes wherein D.F.S. foster children are not clothed properly and in accordance with community standards, in contravention of Rule 224.7(6).

55. The Missouri Division of Family Services and its employees license and maintain D.F.S. foster homes wherein D.F.S. foster children fail to receive the care and services mandated by 42 U.S.C. §601 et seq., 45 C.F.R. §220 et seq., 45 C.F.R. §233 et seq. and §210.145(5). R.S.Mo. (Supp. 1977).

56. The Missouri Division of Family Services and its agents and employees license and maintain D.F.S. foster homes without psychologically screening or evaluating foster parents in order to determine their mental health and ability to provide proper care for foster children.

57. The Missouri Division of Family Services and its agents and employees fail to train or prepare foster parents for their duties as foster parents.

58. The Missouri Division of Family Services and its agents and employees fail to supervise D.F.S. foster homes.

59. The Missouri Division of Family Services assigns excessive caseloads to D.F.S. Social Service workers and Protective Service workers, thereby preventing the adequate supervision of foster homes by Social Service workers and Protective Service workers.

60. The Missouri Division of Family Services and its agents and employees fail to protect D.F.S. foster children from physically and psychologically harmful foster parents.

61. Division of Family Services foster children are regularly transferred between foster homes by D.F.S. and its agents and employees thereby placing each plaintiff and each member of the class in danger of suffering each and every harm identified in the succeeding paragraphs of this complaint.

62. At all times pertinent to this complaint, defendants knew, or should have known, of the actions and omissions referred to in this complaint and the effects of those actions and omissions upon plaintiffs and the members of their class.

63. At all times pertinent to this complaint, defendants had the ability and authority to remedy the wrongful acts and omissions referred to in this complaint.

Specific Allegations Regarding Plaintiffs

G. L.

64. Pursuant to the Order identified as "Plaintiffs' Exhibit 1", G. L. was placed in a D.F.S. foster home in Jackson County, Missouri.

65. The Missouri Division of Family Services transferred G. L. to a foster placement with J. and W. E. H., Jr., in Clay County, Missouri, on a date unknown to plaintiffs.

66. G. L.'s foster placement with J. and W. E. H., Jr., was arranged and approved by the Missouri Division of Family Services and its agents and employees in Clay County and Jackson County, Missouri.

67. J. and W. E. H., Jr., were not capable of providing safe and proper care for G. L., which defendants knew or should have known if G. L.'s foster home had been adequately licensed and supervised.

68. G. L. had behavioral problems which the H. were not capable of dealing with.

69. Prior to October 30, 1976, the H. unsuccessfully requested help from D.F.S. for G. L.'s behavioral problems.

70. J. and W. E. H., Jr., intentionally and/or negligently inflicted upon G. L. certain injuries on or about October 30, 1976, to wit:

- (a) first and second degree burns on both hands;
- (b) massive bruises on both buttocks; and,
- (c) numerous smaller bruises on G.'s legs and arms.

71. As a result of the injuries identified in Paragraph 70, G. L. experienced pain, emotional suffering and severe mental anguish.

72. G. continues to live in a D.F.S. foster home pursuant to the Order of Commitment.

73. The injuries and suffering and inadequate care described above was and is the proximate result of defendants' violation of their duties under the Missouri and United States Constitutions and federal and state statutes and regulations.

D. T.

74. Pursuant to the Order identified as "Plaintiffs' Exhibit 2", D. T. was placed in a D.F.S. foster home in Jackson County, Missouri.

75. D. was placed by the Division of Family Services in the D.F.S. foster home of C. M.

76. C. M. was not capable of providing proper care for D. T., which the defendants knew, or should have known, if the foster home had been adequately licensed and supervised.

77. While in the foster home of C. M., D. experienced fainting spells, dizziness, recurring headaches and menstrual problems.

78. D. informed C. M. of the medical problems referred to in Paragraph 77.

79. C. M. dismissed D.'s complaints as being unimportant, and failed to obtain medical help for the problems identified in Paragraph 77.

80. C. M. deliberately and falsely informed the Division

of Family Services that D had received medical attention for the dizziness, fainting spells, headaches and menstrual problems.

81. C M deliberately persuaded D and C M's other foster children to tell D's Social Service worker that D had received a complete medical examination for the problems identified in Paragraph 77.

82. The defendants negligently relied upon the statements of C M and her foster children regarding D's receipt of medical care, and failed to verify the statements made by C M and the foster children.

83. C M never obtained medical help for D's medical problems identified in Paragraph 77.

84. As a result of D's failure to receive medical care for the problems identified in Paragraph 77, D suffered a ruptured ovarian cyst which inflamed D's appendix and caused an appendicitis attack.

85. As a result of D's failure to receive medical care for the problems identified in Paragraph 77, D required emergency medical care in the form of an appendectomy, the partial removal of her right ovary, and other medical services attendant thereto.

86. As a result of the facts alleged in Paragraphs 79 through and including 85, D experienced severe pain, prolonged physical discomfort and emotional grief.

87. The facts alleged in Paragraphs 79 through and including 86, were the proximate result of defendants' failure to properly license, supervise and train C M.

88. C M, who is Caucasian, repeatedly and deliberately, and in the presence of other foster children, told D, who is Caucasian, that D's natural mother is a "tramp" and a "whore" because D's natural mother gave birth to a child whose father is a Negro.

89. C M deliberately, and in the presence of other foster children, told D that D's natural mother had abandoned D in favor of D's bi-racial sibling and the bi-racial sibling's father.

90. As a result of the facts alleged in Paragraphs 88 and 89:

- (a) D. . . . perceives her natural mother as a "tramp" and a "whore";
- (b) D. . . . no longer feels love and affection for her natural mother;
- (c) D. . . . 's relationship with her mother is permanently damaged and D. . . . has no desire to ever resume living with her natural mother;
- (d) D. . . . does not feel love and affection for her bi-racial sibling;
- (e) D. . . . 's relationship with her bi-racial sibling is permanently damaged.

91. The facts alleged in Paragraphs 88 through and including 90; were the proximate result of defendants' failure to properly license, train and supervise C. M. . . . and defendants' violation of their duties under the Missouri and United States Constitutions and federal and state statutes and regulations.

92. D. . . . continues to reside in a D.F.S. foster home pursuant to the Order of Commitment.

R. M. . . . , Jr.

93. Pursuant to the Order identified as "Plaintiffs' Exhibit 3", R. M. . . . , Jr., was placed in a D.F.S. foster home in Jackson County, Missouri.

94. R. M. . . . , Jr., suffers from psychological and emotional problems which his foster parents were not prepared for and were not capable of dealing with.

95. As a result of the facts alleged in Paragraph 94, R. . . . is presently in his fifth foster home.

96. Each time R. . . . was transferred from a foster home, he was summarily removed by D.F.S. without preparing him emotionally or psychologically.

97. R. . . . was transferred from his foster homes because his foster parents were unable to properly care for children with emotional and psychological problems.

98. R. . . . 's foster parents were unable to properly care for him and deal with his problems as a result of the failure of defendants to train or prepare said foster parents.

99. R. . . . 's emotional and psychological problems worsened as a result of his numerous foster home transfers and the methods by which he was transferred.

100. Defendants knew, or should have known, had the foster homes been properly licensed, that R. . . . 's foster parents were incapable of dealing with R. . . . 's problems and properly caring for R. . . .

101. R. . . . 's present foster parents have not been trained to care for children with problems such as those exhibited by R. . . .

102. The injuries, suffering and inadequate care, described above was and is the proximate result of defendants' violation of their duties under the Missouri and United States Constitutions and federal and state statutes and regulations.

103. R. . . . continues to reside in a D.F.S. foster home pursuant to the Order of Commitment.

K. . . . and T. . . . W. . . .

104. Pursuant to the Orders identified as "Plaintiffs' Exhibit 4", K. . . . and T. . . . W. . . . were placed in a D.F.S. foster home in Jackson County, Missouri.

105. K. . . . and T. . . . W. . . . were placed in the foster home of W. . . . A. . . .

106. T. . . . W. . . . suffers from severe speech and language disabilities and he is possibly afflicted with aphasia associated with motor and concentration problems.

107. T. . . . W. . . . requires specialized educational care, including parental participation, as a result of the problems identified in Paragraph 106.

108. T. . . . W. . . . is enrolled in a specialized educational program which requires the weekly participation of the students' parents or guardians.

109. W. . . . A. . . . has refused to participate in, or cooperate with, the specialized educational program in which T. . . . is enrolled.

110. As a result of the failure of W. . . . A. . . . to participate

in, or cooperate with T's specialized school, T has failed to progress at a normal rate and has not reached the developmental levels which he would have attained with the participation of his foster mother.

111. Staff members of T's specialized school informed the Division of Family Services and its agents and employees of W. A.'s failure to participate in, or cooperate with, the educational program for T.

112. Defendants have failed to either remove T from the W. A. home or assure that T receives proper care.

113. The Division of Family Services and its agents and employees, including Defendant Sherrell Hunt, obtained information which gave them reason to believe that W. A. physically abused some or all of her foster children, including T.

114. T. W. regularly arrives at his specialized school with unexplained bruises and other signs of external trauma.

115. D.F.S. social workers assigned to T. W. and other children have requested that T. and K. W. and other foster children be removed from the W. A. foster home.

116. Pursuant to demands by W. A., Defendant Sherrell refused to close the W. A. foster home or remove T. and K. W. from said home.

117. Sherrell Hunt's decision to keep T. and K. in the W. A. foster home was based on a desire to placate W. A. and was not founded upon a desire to serve the best interests of the children.

118. The Division of Family Services and its agents and employees have never attempted to determine, through psychological examinations or other appropriate methods, whether W. A. is a physical threat to K. and T. W.

119. K. and T. continue to reside with W. A. pursuant to the Order of Commitment.

120. The Missouri Division of Family Services and its agents and employees have not provided K. and T. W. with services designed to reunite said children with their natural family.



121. W. A. fails to maintain a clean and tidy home and fails to provide K. and T. with a proper parental role model.

122. As a result of defendants' failure to remove K. and T. W. from the foster home of W. A., both children have suffered emotional and physical harm.

123. The injuries, suffering and inadequate care described above was and is the proximate result of defendants' violation of their duties under the Missouri and United States Constitutions and federal and state statutes and regulations.

General Allegations Regarding  
Plaintiffs and Their Class

124. Plaintiffs and the members of their class have been, and continue to be, subjected to physical abuse inflicted by Division of Family Services foster parents who are psychologically and emotionally incapable of providing safe and proper care for said children.

125. The physical abuse which has been inflicted upon members of plaintiffs' class includes, but is not limited to, sexual abuse by D.F.S. foster parents.

126. Plaintiffs and the members of their class have been, and continue to be, placed in unsanitary foster homes contaminated with contagious diseases, bedbugs, lice, ringworm and scabies.

127. As a result of the facts alleged in Paragraph 126, plaintiffs and the members of their class:

- (a) have become infested with, and bitten extensively by, bedbugs in their foster homes,
- (b) have become infected with ringworm in their foster homes, and
- (c) have become infected with scabies in their foster homes.

128. Plaintiffs and the members of their class have been, and continue to be, placed with D.F.S. foster parents who are unable, due to lack of transportation, and who are unwilling, to provide necessary and timely medical and psychological care for said children.

129. As a result of the facts alleged in Paragraph 128, plaintiffs and the members of their class have not received necessary and timely medical and psychological care.

130. Plaintiffs and the members of their class have been, and continue to be, placed with D.F.S. foster parents who:

- (a) have provided plaintiffs and the members of their class with little or no love and parental affection;
- (b) have provided plaintiffs and the members of their class with improper role models and parental examples; and,
- (c) have intentionally subjected plaintiffs and the members of their class to emotional abuse in the form of derogatory comments about said children and their natural families.

131. Plaintiffs and the members of their class have been, and continue to be, placed in D.F.S. foster homes regarding which the Division of Family Services and its agents and employees have reason to believe that foster children have been neglected, physically abused, sexually abused and received improper care.

132. The Missouri Division of Family Services and its agents and employees transfer plaintiffs and the members of their class between foster homes summarily and without preparing the children emotionally or psychologically for the change.

133. The Missouri Division of Family Services and its agents and employees fail to provide plaintiffs and the members of their class with services designed to reunite said children with their natural families.

134. The Missouri Division of Family Services and its agents and employees place plaintiffs and the members of their class in overcrowded foster homes without adequate sleeping space.

135. There exists between the parties a case and controversy cognizable by this Court.

136. Plaintiffs have suffered harm, as set out in this complaint, as a result of the actions and omissions of defendants.

### FIRST CLAIM

Plaintiffs reincorporate by reference Paragraphs 1 through 136 above.

The acts and omissions of defendants have denied plaintiffs and the members of their class their right to be free from cruel and unusual punishment, in contravention of the Eighth and Fourteenth Amendments to the United States Constitution and Article I §§10 and 21 of the Constitution of the State of Missouri as a result of defendants:

- (a) infliction of harsh and brutal punishment and conditions upon plaintiffs and the members of their class;
- (b) failure to adequately investigate and evaluate foster parents;
- (c) failure to supervise foster parents; and
- (d) failure to close and de-license unsafe and unhealthy foster homes.

### SECOND CLAIM

Plaintiffs reincorporate by reference paragraph 1 through 136 above.

The acts and omissions of defendants have denied plaintiffs and the members of their class due process of law in contravention of the Fourteenth Amendment to the United States Constitution and Article I §10 of the Constitution of the State of Missouri as a result of defendants' failure to keep plaintiffs and the members of their class free from harm by placing plaintiffs and the members of their class in foster homes wherein:

- (a) said children have suffered physical and emotional harm; and
- (b) said children are subjected to a high risk of suffering further physical and emotional harm.

### THIRD CLAIM

Plaintiffs reincorporate by reference Paragraphs 1 through 136 above.

The acts and omissions of defendants have denied plaintiffs and the members of their class of property and liberty without due process of law, in contravention of the Fourteenth Amendment to the United States Constitution and Article I §10 of the Constitution of the State of Missouri as a result of defendants placing said children in foster homes which did not comply with §§210.221 and 210.145, R.S.Mo., and the mandatory provisions of the "REGULATIONS AND STANDARDS For The Licensed Boarding Homes For Children (Foster Family)."

#### FOURTH CLAIM

Plaintiffs reincorporate by reference Paragraph 1 through 136 above.

Defendants have denied plaintiffs and the class they represent their rights as guaranteed by 45 C.F.R. §220 et seq. 45 C.F.R. §233 et seq. and 42 U.S.C. §601 et seq.

#### FIFTH CLAIM

Plaintiffs incorporate by reference Paragraphs 1 through 136 above.

Defendants have denied plaintiffs and the class they represent their right to appropriate care as guaranteed by the Fourteenth Amendment.

#### PRAYER FOR RELIEF

WHEREFORE, plaintiffs on their own behalf and on behalf of all others similarly situated, respectfully pray this Honorable Court:

- (1) To assume jurisdiction of this action and to declare this a class action under Rule 23(b)(2) as soon as practicable as set out in Rule 23(c)(1).
- (2) To enter a final judgment pursuant to 28 U.S.C. §§2201 and 2202, declaring that defendants' policies and practices have denied plaintiffs and the members of their class due process of law as guaranteed by the Constitutions of the United States and the State of Missouri, and have subjected plaintiffs and the members of their class to cruel and unusual punishment in contravention of the Constitutions of the United States and the State of Missouri.

said policies and practices violate 45 C.F.R. §220 et seq. and 45 C.F.R. §233 et seq.; 42 U.S.C. §601 et seq.; §210.221 and §210.145(5) R.S.Mo.; and Rules 224.3, 224.5, 224.6, 224.7(1) and 224.7(8).

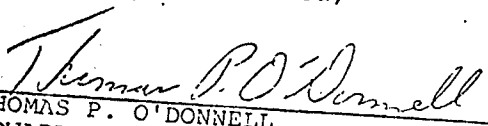
(3) To enter permanent injunctions pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining defendants, their successors in office, agents, employees and all persons in active concert with them, from:

- (a) licensing, maintaining, and placing plaintiffs and the members of their class in foster homes without determining that the present or prospective foster parents are not likely to abuse or neglect foster children;
- (b) licensing, maintaining, and placing plaintiffs and the members of their class in foster homes without preparing the foster parents to meet the individual needs of each child placed in their home;
- (c) licensing, maintaining, and placing plaintiffs and the members of their class in foster homes which have not met all requirements and recommendations established in Missouri's "REGULATIONS AND STANDARDS For The Licensed Boarding Homes For Children (Foster Family)."
- (d) failing to close or de-license all inadequate, dangerous and unhealthy foster homes;
- (e) failing to supervise foster homes;
- (f) assigning D.F.S. caseworkers who are assigned to plaintiffs and the members of their class excessive caseloads;
- (g) failing to prepare plaintiffs and the members of their class emotionally and psychologically for foster home transfers;
- (h) failing to provide plaintiffs and the members of their class the services and care mandated by 45 C.F.R. §220 et seq., 45 C.F.R. §233 et seq. and 42 U.S.C. §601 et seq. and

their class the services and care mandated by the Fourteenth Amendment to the United States Constitution.

- (4) Award plaintiff G L the sum of \$50,000 in actual damages and \$50,000 in punitive damages against the Missouri Division of Family Services, Ewing Gourley, J. Joseph Lewis, Sandra Brooks, Sherrell Hunt and Gail Horsey.
- (5) To award plaintiff D T the sum of \$50,000 in actual damages and \$50,000 in punitive damages against the Missouri Division of Family Services, Ewing Gourley, J. Joseph Lewis, Sherrell Hunt, and Gail Horsey.
- (6) To award plaintiff R M, Jr., the sum of \$50,000 in actual damages and \$50,000 in punitive damages against the Missouri Division of Family Services, Ewing Gourley, J. Joseph Lewis, Sherrell Hunt and Gail Horsey.
- (7) To award plaintiff K W the sum of \$50,000 in actual damages and \$50,000 in punitive damages against the Missouri Division of Family Services, Ewing Gourley, J. Joseph Lewis, Sherrell Hunt and Gail Horsey.
- (8) To award plaintiff T W the sum of \$50,000 in actual damages and \$50,000 in punitive damages against the Missouri Division of Family Services, Ewing Gourley, J. Joseph Lewis, Sherrell Hunt and Gail Horsey.
- (9) To award reasonable attorney's fees to plaintiffs' attorneys, under 42 U.S.C. §1988.
- (10) To award plaintiffs and the members of their class any and all other relief as may be deemed appropriate by this Court

Respectfully submitted,

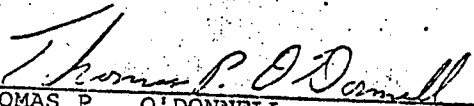
  
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CERTIFICATE OF SERVICE

I hereby certify that a true  
and correct copy of the above  
and foregoing document was  
mailed postage prepaid, this  
26th day of October, 1979, to:

Mr. Weldon W. Perry, Jr.  
Assistant Attorney-General  
Supreme Court Building  
Jefferson City, Missouri 65102  
Attorney for Defendants

  
THOMAS P. O'DONNELL