UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JUAN F., *et al.*, Plaintiffs,	)	
v.	)	CIVIL NO. H89-859 (CFD)
M. JODI RELL, *et al.*, Defendants.	)	

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY AND PERMANENT INJUNCTION TO ENJOIN DEFENDANTS FROM SUSPENDING NEW INTAKES TO THE VOLUNTARY SERVICES PROGRAM

Pursuant to the terms of the Revised Exit Plan entered July 12, 2006, the Revised Monitoring Order entered October 12, 2005, and Federal Rule of Civil Procedure 65, Plaintiffs respectfully submit this memorandum in support of their motion for a temporary restraining order and preliminary and permanent injunction which seeks to enjoin Defendants Hon. M. Jodi Rell and the Department of Children and Families Commissioner, Susan I. Hamilton, from suspending new intakes to the Voluntary Services Program ("VSP"), until such time as: a) the parties can negotiate an alternative program to ensure that "at risk" class members will receive the benefits of the Consent Decree and the 2006 Revised Exit Plan which were previously entered in this case; and/or b) the Court can conduct a hearing for a preliminary and permanent injunction and issue an order declaring unlawful, and permanently enjoining, the suspension of new intakes to the VSP, together with such other and further relief as may be necessary or appropriate.

PRELIMINARY STATEMENT

From the entry of the Consent Decree in this action in 1991, to the Revised Exit Plan entered July 12, 2006 ("2006 Revised Exit Plan"), and through the present, Defendants have been legally obligated to provide critical services for *Juan F.* class members who are deemed to be "at risk" of being abused, neglected and abandoned, and "at risk" of being committed to state custody – in addition to having obligations to provide services to children actually committed to state custody. For over eighteen years, the core program of the Department of Children and Families ("DCF") through which many "at risk" children and families obtain the critical services, protections and oversight guaranteed by the Consent Decree is through the VSP. These services include the provision of casework, community referrals, and treatment services to children with behavioral health needs without requiring parents to relinquish custody or guardianship to the State. Specifically, VSP provides such services as mental health clinical and day treatment services for children who remain in their homes, hospitalization or residential placement for children with more severe mental health needs, the assignment of social workers to ensure the children's safety and well-being, and the creation and implementation of treatment plans for each "at risk" child. The VSP serves approximately 1,000 children on any given day, with a constant flow of new intakes.

Despite the importance of the VSP, and the large number of children served by the program, Defendants have unilaterally decided to suspend all new intakes to the VSP, with the cut-off beginning during the week of December 7, 2009. If allowed to proceed with their plan to suspend new intakes, Defendants will unilaterally cut off the service lifeline for vulnerable "at risk" children in the *Juan F.* class, leaving these class members at imminent risk of irreparable harm, and placing Defendants in non-compliance with and contempt of their obligations under

the Consent Decree. Accordingly, Plaintiffs are compelled to move for a Temporary Restraining Order ("TRO") enjoining Defendants from suspending new intakes to the Voluntary Services Program, until the parties have an opportunity to negotiate an alternative program to ensure that "at risk" class members will receive the benefit of the Consent Decree, and/or until the Court conducts a hearing and issues a ruling on Plaintiffs' motion for a preliminary and permanent injunction.

Plaintiffs overwhelmingly satisfy the requirements for a TRO. First, *Juan F.* class members will be irreparably harmed without an injunction. By Defendants' own admission, the VSP serves children who require "community based treatment or temporary residential or other out of home placement who might otherwise be committed as neglected, uncared for, or dependent."[1] The children served by the VSP are, by definition, "at risk" class members whose "treatment needs cannot be met through services currently available to the parent or guardian."[2] Defendants' suspension of new intakes was a pure budgetary decision – the class members who will be denied services going forward are just as desperately in need of those services as the children who have been receiving them before the cut-off and who will continue to receive them.

By unilaterally ending new intakes to the VSP, without announcing any alternative programs to guarantee the same protections under the Consent Decree to these "at risk" children, Defendants will deny "at risk" class members access to mental health services and supports when they *need it the most*. Defendants' actions place children at imminent risk of devastating mental health deterioration, place their families at risk of not being able to provide for their children's treatment needs, and will ultimately cause children to be removed from their families and committed to DCF custody in order to obtain these same services. The harm to children and

[1] DCF Agency Regulations § 17a-11-4, attached hereto as Ex. A.
[2] *Id.* § 17a-11-7(a)(2).

families from being forced to have a child committed to DCF custody solely to get mental health services is so significant that the Connecticut legislature passed a law in 1997 prohibiting the commitment of children for this reason.[3]

Second, Plaintiffs have a substantial likelihood of success on the merits of their claims. Children who would otherwise be eligible for the VSP are "at risk" children and members of the *Juan F.* class. Accordingly, these children are entitled to the benefits and protections of the 2006 Revised Exit Plan, which sets forth the "Outcome Measures" that Defendants must meet and sustain in order to achieve full compliance with Court-ordered reforms and to terminate jurisdiction over this action. At least seven of these Outcome Measures include "at risk" children in the VSP, and the suspension of new intakes to the VSP will place Defendants in non-compliance with and contempt of these Exit Plan requirements.

For example, Outcome Measure 15 ("Children's Needs Met") requires that Defendants meet the "medical, dental, mental health and other service needs" of class members, including "at risk" children who obtain services through the VSP.[4] The elimination of new intakes, if permitted, will ensure that these class members will not have their service needs met. This non-compliance with, and contempt of, the Revised Exit Plan is particularly egregious given that Defendants have been in gross non-compliance with Outcome Measure 15 every quarter since the Outcome Measure first became operative in 2004.[5]

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[3] Conn. Gen. Stat. § 17a-129. In addition, the DCF Commissioner has emphasized the critical importance of family preservation services in preventing children from having to be committed to DCF custody and has repeatedly categorized the VSP as an important improvement and achievement for the agency. *See June 28, 2007 Hearing Before the Executive and Legislative Nominations Committee* (statement of Susan Hamilton) 16, 51-53; *see also* Department of Children and Families, At a Glance (2008), *available at* http://www.das.state.ct.us/Digest/Digest_2008/Children%20and%20Families,%20Department%20of.htm

[4] 2006 Revised Exit Plan (Dkt. 523) at 25.

[5] Outcome Measure 15 requires that children's service needs are met in at least 80 percent of the cases. *See* DCF Court Monitor's Office, *Juan F. v. Rell Exit Plan Quarterly Report, April 1, 2009 – June 30, 2009* (Dkt. 582) at 9.

Additional Outcome Measures require that class members, including "at risk" children obtaining services through the VSP, receive case management services to ensure oversight of their safety and well- being. For example, "at risk" children are assigned social workers, and Outcome Measure 16 ("Worker-Child Visitation (Out-of-Home)") ensures that social workers visit these children at least quarterly; Outcome Measure 18 ("Caseload Standards") ensures that social workers assigned to "at risk" children in the VSP have caseloads below mandated limits; and Outcome Measure 3 ("Treatment Plans") requires that "at risk" children receive individualized treatment plans that identify the needs and services required by the child so that services can be monitored and delivered. The VSP is the program through which Defendants provide these and other case management services for "at risk" children and families who obtain them, and the elimination of new intakes, if allowed, will ensure that these class members will be denied these benefits under the Consent Decree.[6]

Moreover, the 2006 Revised Exit Plan expressly requires that "[t]he Defendants shall provide funding and other resources necessary to fully implement the Exit Plan."[7] If Defendants' unilateral suspension of new intakes into the VSP is allowed, Defendants will be in non-compliance with, and contempt of, this enforceable provision as well.[8]

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[6] Additional Outcome Measures that include "at-risk" children are Outcome Measure 6 ("Maltreatment of Children in Out-of-Home Care"); Outcome Measure 14 ("Placement Within Licensed Capacity"); and Outcome Measure 19 ("Reduction in the Number of Children Placed in Residential Care" and limits on placing children out-of-state). If Defendants are permitted to suspend new intakes to the VSP, they will be in non-compliance and contempt of these requirements as well.

[7] 2006 Revised Exit Plan (Dkt. 523) at 4.

[8] On at least two occasions in this action, Defendants' attempts to avoid their financial and resource obligations under the Consent Decree have been rejected in court decisions. *See Juan F. v. Weicker*, 37 F.3d 874, 878-80 (2d Cir. 1994) (affirming district court's holding that Defendants are required to provide resources necessary to fully implement the obligations in decree, including specific staffing and training requirements necessary to comply with the decree's caseload standards, and payments to foster parents at 100% of the federal USDA reimbursement rate); *see also Juan F. v. Rowland*, Civil No. H-89-859 (D. Conn. Feb. 10, 2004) (ruling and order on defendants' motion for reconsideration) (Dkt. 465) at 3-5, attached hereto as Ex. B (upholding the express funding provision in the Exit Plan and finding that "even if the . . . provision was not included in the Exit Plan, the court could, under its equitable powers, require state officials to provide necessary funds.").

The remaining factors considered on a TRO motion also weigh in Plaintiffs' favor. The threatened irreparable harm to children far outweighs any possible financial "injury" to Defendants in depriving class members of important services secured under a federal Consent Decree. Finally, the public interest will be served by the granting of injunctive relief and the enforcement of the Consent Decree.

Defendants' plan to unilaterally and precipitously deny protections required by the federal Consent Decree to a portion of the class is unlawful and immediately threatens the health and safety of those "at risk" class members. Defendants intend to implement their plan this week. As fully set forth below, this Court should exercise its discretion and grant Plaintiffs' motion for a TRO.[9]

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Plaintiffs in this action are a class of (1) all children "who are, or will be, in the care, custody, or supervision" of DCF "as a result of being abused, neglected or abandoned or being found at risk of such maltreatment"; and (2) all children about whom DCF "knows, or should know by virtue of a report" to DCF, "who are now, or will be, abused, neglected or abandoned, or who are now, or will be, at serious risk of such maltreatment." Consent Decree (Dkt. 90) § II(13). Defendants are the Connecticut Governor, Hon. M. Jodi Rell, and the DCF Commissioner, Susan I. Hamilton, in their official capacities.

Plaintiffs commenced this action on December 19, 1989, under 42 U.S.C. § 1983, alleging, among other things, that Defendants' failure to provide adequate services, protection and care to children who are abused, neglected, or who are at risk of such maltreatment,

[9] Plaintiffs specifically invoke Section III(C) of the Revised Monitoring Order (Dkt. 501) in this action, under which "Plaintiffs may bypass the dispute resolution procedures in Section III.B. . . . upon a written assertion of immediate threat to the health or safety of the class."

subjected Plaintiff children to significant and irreparable harm, in violation of their rights under the U.S. Constitution and federal statutes. *See* Complaint (Dkt. 1) 1-3.

Defendants' failure to provide adequate and appropriate services to "at risk" children, including the overwhelming absence of mental health and other services necessary to avert out-of-home placements and avoid the unnecessary commitment of children to state custody, has been a significant issue since the inception of this litigation. *See id.* ¶¶ 140-142, 151-152.

On January 7, 1991, this Court entered a Consent Decree, through which the class was certified and Plaintiffs obtained significant benefits through numerous mandated reforms of the Connecticut child welfare system. *See* Consent Decree (Dkt. 90). The Consent Decree divided these benefits into 21 substantive Sections, and further mandated the creation of enforceable Manuals in specific areas of services for class members.

Specific to this enforcement motion, the Consent Decree created "Voluntary Service Units" and mandated the issuance of an enforceable "Voluntary Services Manual." *See id.* at 55-56. *See also* DCYS Voluntary Services Unit Manual, attached hereto as Ex. C. The VSP began as a pilot program (*see id.* § II, pp. 4-5; Consent Decree (Dkt. 90) § XIII(A)(2)), and was later permanently rolled out statewide. State law, DCF Agency Regulations, and official DCF Policy were later established concerning the eligibility and delivery of services for children and families in the VSP.

Children eligible for the VSP include children "requiring community based treatment or temporary residential or other out of home placement who might otherwise be committed as neglected, uncared for, or dependent." DCF Agency Regulations (Ex. A) § 17a-11-4. *See generally,* DCF Policy Manual at Chapter 37 (attached hereto as Ex. D); Conn. Gen. Stat. § 17a-11. Furthermore, DCF regulations and policy expressly define the "at risk" children eligible for

VSP as those whose "treatment needs cannot be met through services currently available to the parent or guardian." DCF Agency Regulations (Ex. A) § 17a-11-7(a)(2); *see also* DCF Policy Manual (Ex. D) at Chapter 37-3.

Eligible "at risk" children may become known to DCF for admission to the VSP through requests received by the Department's centralized intake system and through written application.[10] *See* Conn. Gen. Stat. § 17a-11(a); DCF Agency Regulations (Ex. A) § 17a-11-11; and DCF Policy Manual (Ex. D) at Chapter 37-4.

Once eligibility is determined, "at risk" children in the VSP are provided a wide range of case management protections to ensure oversight of their safety and well-being. These protections include:

- completing of an assessment to determine eligibility and identify treatment needs of the child/youth and family;
- developing, with the child/youth and family, a treatment plan detailing time-limited, measurable goals and objectives and roles and responsibilities of each party;
- assisting the family to secure treatment needs;
- providing casework services to families;
- coordinating, if necessary, development of out-of-home placement referral materials;
- providing information and referral services, when appropriate, and coordination with other community services as needed in the case;
- evaluating progress and planning for the termination of the Department's services via Administrative Case Review and Probate Court hearings; and
- providing interpreter/translation services for caregivers who do not speak English.

See DCF Policy Manual (Ex. D) at Chapter 37-2.

[10] "At risk" children may also become known to DCF, without being committed to state custody, through child protective services reports received and investigated by the agency (such children are not served by the VSP; *see* DCF Policy Manual (Ex. D) at Chapter 37-3), and DCF may also learn of "at risk" children when providing case management oversight to children already committed to DCF custody.

The actual services provided to "at risk" children in the VSP include:

- intensive in-home case management services;
- referral to and utilization of community-based services as needed to carry out the child's case service and treatment plan; and
- "place[ment] in, or transfer[] to, any resource, facility or institution within the Department or available to the Commissioner except the Connecticut Juvenile Training School" (*Id.* at Chapter 37-7), including but not limited to placement in psychiatric hospital settings, residential treatment facilities, therapeutic foster homes, and extended day treatment programs, if necessary.

See id.; *see also* DCF Agency Regulations (Ex. A) § 17a-11-14.

On July 11, 2006, this Court entered the 2006 Revised Exit Plan (Dkt. 523).[11] The 2006 Revised Exit Plan defines the *Juan F.* class, delineates 22 specific "Outcome Measures" whose achievement is a prerequisite for full compliance, and outlines the functions of the Court Monitor.[12] The class definition in the 2006 Revised Exit Plan is identical to the definition originally set forth in the Consent Decree. *See* 2006 Revised Exit Plan at 3. Under the 2006 Revised Exit Plan, the district court "retains continuing jurisdiction over this action until the Court terminates such jurisdiction." *Id*.

Defendants must be in compliance with all of the Outcome Measures in the 2006 Revised Exit Plan, and must have sustained compliance with all measures for at least two consecutive quarters prior to asserting compliance and seeking termination of court jurisdiction. *See id.*; *see also Juan F. v. Weicker*, 37 F.3d 874, 879 (2d Cir. 1994) (affirming District Court's

[11] The 2006 Revised Exit Plan modified the Revised Exit Plan dated July 1, 2004 (attached hereto as Ex. E), which in turn had modified the original Exit Plan dated December 23, 2003 (Dkt. 454).

[12] Defendants remain bound by other orders entered by this Court setting forth the State's obligations to the class, including, *e.g.*, the July 17, 2008 Stipulation Regarding Outcome Measures 3 & 15 (Dkt. 563) (the "July 2008 Remedial Order") and the Agreed January 2009 Stipulated Modifications to the July 2008 Remedial Order (Dkt. 572), which address Plaintiffs' assertion of Defendants' noncompliance with Outcome Measures 3 and 15. *See* Letter from Pls.' Counsel to Defs.' Counsel and DCF Court Monitor dated May 5, 2008, attached hereto as Ex. F.

interpretation of the *Juan F.* Consent Decree concerning staffing and holding that the Decree "does not contemplate anything less than 100% compliance" with its terms).

In addition, the 2006 Revised Exit Plan includes a funding provision which requires Defendants to "provide funding and other resources necessary to fully implement the Exit Plan." 2006 Revised Exit Plan (Dkt. 523) at 4. This provision is almost identical to the provision contained in the original Consent Decree.[13]

The procedures for the resolution of any disputes regarding non-compliance with the 2006 Revised Exit Plan or any other governing orders related to this action are set forth in the Revised Monitoring Order dated October 12, 2005 (Dkt. 501). Among other things, the Revised Monitoring Order provides that Plaintiffs may bypass the dispute resolution procedures and seek immediate relief from the Court when Defendants' actual or likely non-compliance with the Revised Exit Plan or other governing orders of this action present "an immediate threat to the health and safety of the class." Revised Monitoring Order § III(C).

At least seven of the 22 Outcome Measures in the 2006 Revised Exit Plan include class members in the VSP:

- **Outcome Measure 3** ("Treatment Plans") requires that all children, including "at risk" children in the VSP, receive individualized treatment plans that identify the needs and services required by the child so that services can be monitored and delivered (2006 Revised Exit Plan (Dkt. 523) at 8);

- **Outcome Measure 6** ("Maltreatment of Children in Out-of-Home Care) mandates that "all children in out of home care (including those in voluntary placement)" are assured protections so that they are not the victims of substantiated maltreatment by substitute caregivers while in out-of-home care (*id.* at 15);

- **Outcome Measure 14** ("Placement Within Licensed Capacity") ensures that all children in out-of-home care, including "at risk" children who are placed out-of-home, are placed in homes and facilities that do not exceed their licensed capacity (*id.* at 24);

[13] Section XXIV of the Consent Decree states that the "State of Connecticut shall pay for, and fund, the costs for the establishment, implementation, compliance, maintenance, and monitoring of all mandates in the Consent Decree . . ." Consent Decree (Dkt. 90) at 114.

- **Outcome Measure 15** ("Children's Needs Met") requires that Defendants meet the "medical, dental, mental health and other service needs" of all class members, including "at risk" children in the VSP (*id.* at 25);

- **Outcome Measure 16** ("Worker-Child Visitation (Out of Home)") ensures that social workers visit "at risk" children in the VSP at least quarterly (*id.* at 27);

- **Outcome Measure 18** ("Caseload Standards") ensures that case workers assigned to "at risk" children in the VSP have caseloads below mandated limits (*id.* at 29); and

- **Outcome Measure 19** ("Reduction in the Number of Children Placed in Residential Care") ensures that all children placed in residential care, including "[c]hildren in facilities via voluntary placement per the request of parent," are placed in the least restrictive setting necessary to meet their needs and minimizes the placement of children in out-of-state facilities (*id.* at 30).

Defendants have never been in compliance with Outcome Measure 3 ("Treatment Plans"):

Compliance Measure	2004 Percentages				2005 Percentages				2006 Percentages			
	1Q	2Q	3Q	4Q	1Q	2Q	3Q	4Q	1Q	2Q	3Q	4Q
>=90%	X[14]	X	10	17	X	X	X	X	X	X	54	41

Compliance Measure	2007 Percentages				2008 Percentages				2009 Percentages	
	1Q	2Q	3Q	4Q	1Q	2Q	3Q	4Q	1Q	2Q
>=90%	41	30	30	51	59	55	62	79	65	73

Similarly, Defendants have been in non-compliance with Outcome Measure 15 ("Children's Needs Met") since performance under the Exit Plan was first measured in 2004:

Compliance Measure	2004 Percentages				2005 Percentages				2006 Percentages			
	1Q	2Q	3Q	4Q	1Q	2Q	3Q	4Q	1Q	2Q	3Q	4Q
>=80%	53	57	53	56	X	X	X	X	X	X	62	52

Compliance Measure	2007 Percentages				2008 Percentages				2009 Percentages	
	1Q	2Q	3Q	4Q	1Q	2Q	3Q	4Q	1Q	2Q
>=80%	45	51	64	47	59	55	53	59	62	64

See Juan F. v. Rell Exit Plan Quarterly Report, April 1, 2009 – June 30, 2009 (Dkt. 582) at 9.

[14] An "X" indicates that performance was not measured during a particular quarter. The period without measurement on Outcome Measures 3 and 15 in 2005 and early 2006 corresponds to the parties' negotiations around a revised monitoring methodology, which was approved by the court in an order entered July 12, 2006 (Dkt. 523).

On August 31, 2009, the Connecticut State Legislature passed the Fiscal Year 2010 state budget, which went into effect on September 8, 2009. Since then, Defendant Rell has announced a series of rescissions reducing state agency budgets. The most recent rescission was effectuated by the Governor's Deficit Mitigation Plan dated November 24, 2009. *See* Deficit Mitigation Plan for Fiscal Year 2010 dated November 24, 2009, attached hereto as Ex. G. This Plan expressly provides for the elimination of all new intakes to the VSP. *Id.* at 4.

On December 3, 2009, the DCF Court Monitor confirmed that Defendants intended to implement the cuts during the "week" of December 7, 2009. *See* Email from R. Mancuso, dated December 3, 2009, attached hereto as Ex. H. Pursuant to Section III(C) of the 2005 Revised Monitoring Order (Dkt. 501), on December 7, 2009, Plaintiffs formally put Defendants on notice that the planned suspension of new intakes to the Voluntary Services Program presents an immediate threat to the health and safety of children in the *Juan F.* class. *See* Letter from Pls.' Counsel to Defs.' Counsel dated December 7, 2009, attached hereto as Ex. I. Plaintiffs expressed concern with the possible elimination of VSP services six months ago as well. *See* Letter from Pls.' Counsel to Defs.' Counsel dated June 9, 2009, attached hereto as Ex. J.

ARGUMENT

I. A TRO to Enjoin Defendants from Suspending New Intakes to the Voluntary Services Program is Necessary and Appropriate in this Case.

The Second Circuit standard for injunctive relief is well established. Under Fed. R. Civ. P. 65(b), a court may grant a TRO when a moving party demonstrates "(1) a likelihood of irreparable harm in the absence of the injunction; and (2) either a likelihood of success on the merits or sufficiently serious questions going to the merits to make them a fair ground for litigation, with a balance of hardships tipping decidedly in the movant's favor." *Doninger v. Niehoff*, 527 F.3d 41, 47 (2d Cir. 2008). Additional considerations include the harm that

granting the injunction would inflict on the opposing party, and the public interest. *See Phillip v. Nat'l Collegiate Athletic Ass'n,*, 960 F.Supp. 552 (D. Conn. 1997) (citing 11A Charles A. Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice and Procedure* § 2948 (1969 & Supp.1986)).

The granting of a TRO is within the sound discretion of the district court. *See* Fed. R. Civ. P. 65; *see also Hartford Consumer Activists Ass'n v. Hausman*, 381 F.Supp. 1275, 1282 (D. Conn. 1974) (finding that Rule 65 grants discretion); *St. Albans Coop. Creamery, Inc. v. Glickman*, 68 F.Supp.2d 380, 384 (D.Vt. 1999) ("The trial court is vested with wide discretion in deciding whether to grant a temporary restraining order"). Pursuant to Fed. R. Civ. P. 65(b), a TRO "expires at the time after entry – not to exceed 14 days – that the court sets, unless before that time the court, for good cause, extends it for a like period or the adverse party consents to a longer extension." Fed. R. Civ. P. 65(b).

As set forth fully below, Plaintiffs amply satisfy the standard for a TRO, and this Court should exercise its discretion and grant the requested injunction.

A. Children in the *Juan F.* Class Will Be Irreparably Harmed Without an Injunction.

The 1991 Consent Decree and the 2006 Revised Exit Plan include the same class definition of children entitled to the Court-ordered protections in this action. That definition expressly includes children "at risk" of "being abused neglected or abandoned" and "[a]ll children about whom the Department knows, or should know" are "at serious risk" of being "abused neglected or abandoned." *See* Consent Decree (Dkt. 90) § II(13); *see also* 2006 Revised Exit Plan (Dkt. 523) at 3. Moreover, it cannot be credibly disputed that children eligible for the VSP are "at risk" children in the *Juan F.* class. *See, e.g.,* DCF Policy Manual (Ex. D) at Chapter

37-3 and DCF Agency Regulations (Ex. A) § 17a-11-7(a)(2) ("[t]he child or youth's treatment needs cannot be met through services currently available to the parent or guardian").[15]

The VSP serves approximately 1,000 children on any particular day. *See* Data Chart Provided by DCF Court Monitor, attached hereto as Ex. K. Upon information and belief, several hundred new children enter the VSP each year. The range of services include intensive in-home case management services; referral to and utilization of community-based services as needed to carry out the child's treatment plan; and "place[ment] in, or transfer[] to, any resource, facility or institution within the Department or available to the Commissioner except the Connecticut Juvenile Training School," including but not limited to placement in psychiatric hospital settings, residential treatment facilities, therapeutic foster homes, and extended day treatment programs, if necessary. *See* DCF Policy Manual (Ex. D) at Chapter 37-7; *see also* DCF Agency Regulations (Ex. A) § 17a-11-14.

As set forth above, the critical treatment needs of the *Juan F.* class members who would otherwise receive these services, by definition, "cannot be met through services currently available to the parent or guardian." DCF Agency Regulations (Ex. A) § 17a-11-7(a)(2). Thus, if intakes to the VSP are suspended, *there will be no other source for the provision of these services to meet these children's treatment needs.* The otherwise eligible children denied intake into the VSP all face the imminent risk of suffering severe deterioration of their mental health. Additionally, these children face the imminent risk that their parents will be unable to provide for

[15] *See also* DCF Policy Manual (Ex. D) at Chapter 37-3 (setting forth eligibility criteria for the VSP and stating that a child is eligible for services if, among other things, (1) "the child/youth has an emotional, behavioral or substance abuse disorder diagnosable under the most recent issue of Diagnostic and Statistical Manual of Mental Disorders (DSM-IV)"; and (2) "the child/youth has an emotional, behavioral or mental health disturbance resulting in the functional impairment of the child or youth which substantially interferes with, or limits, his/her functioning in family, school, or community activities").

their treatment needs, and the risk of commitment to DCF custody just to receive the same services.

As set forth in the affidavit of Martha Stone, attached hereto as Ex. L, children's "lives have been profoundly affected by the availability of services through the VSP." *See* Affidavit of Martha Stone ¶ 7. Some illustrations of specific children affected by the VSP include:

- Edward B.[16] [who] was the product of a rape, born to a twelve-year-old mother, and grew up in a household where he was physically and sexually abused. At fifteen, he became involved with the juvenile justice system after inappropriately touching a younger half-sibling. As a result, Edward could no longer live with his mother and younger siblings, when he completed his juvenile justice placement and his family did not have the resources to address his mental health treatment needs. He qualified for voluntary services and was placed in group home in another city, received counseling, and was enrolled in a special education placement where the smaller class sizes and structured environment allowed him to thrive academically.

- Nicholas R. [who] is a twelve-year-old child diagnosed with ADHD and depression who had struggled with behavior in school, to the point where he had to repeat seventh grade. His family did not have the resources to meet his treatment needs. He qualified for voluntary services, and he and his mother received IICAPS[17] counseling in the home to help with behavior problems there and at school, and he was connected with a psychiatrist who prescribed medication for his ADHD. Teachers and administrators reported a complete change in []'s behavior and academic performance: He went from being almost uncontrollable in a small classroom with all special education students to mixing easily with non-special education students in a noisy cafeteria, making huge progress on recovering a lost year of reading and writing lessons in a matter of months, and emerging as a leader among his peers in defusing fights and confrontations.

- Jose G. [who] is a 14-year-old freshman diagnosed with ADHD, who was facing major behavioral problems, compounded by linguistic and cultural difficulties because he was primarily Spanish-speaking but attended school in a predominantly white, English-speaking suburb. His family did not have the resources to address his treatment needs. He qualified for voluntary services and was connected with an IICAPS social worker who spoke Spanish and was able to serve as a strong advocate to get Jose special education services.

[16] Pseudonyms have been used to protect the identity of the children and youth. Should the court need the real identities, counsel can provide such information.

[17] IICAPS stands for Intensive In-Home Child and Adolescent Psychiatric Services, which provides home-based clinical treatment to children and youth returning from out-of-home care or who are at risk of requiring out-of-home care due to psychiatric, emotional, or behavioral difficulties.

- Rosa T. [who] is a 17-year-old diagnosed with depression. She has struggled in school, at home, and socially for several years. She has attempted suicide as a result of her depression. Rosa and her family are very poor immigrants. Her family did [n]ot have the resources to address her treatment needs. They do not have any health insurance. As a result, she did not have money to pay for medication or mental health services for her depression. When she began receiving voluntary services from DCF, she was provided with critical mental health services, including an FST worker from Catholic Charities.[18] DCF has also paid for her medication to fight her depression. Without voluntary services, Rosa would not have been able to access her needed mental health care and medication at all.

- Seven year old Justin, [who] even at his young age, already carried diagnoses of generalized anxiety disorder and bi-polar disorder with psychotic features, and had been hospitalized and treated with a variety of psychoactive medications. Justin received special education services from the public school system, yet these supports were inadequate to meet his extensive needs. Justin displayed two virtually different personalities, described auditory hallucinations, labeled himself a "bad boy" and presented with periodic suicidal ideation. His family did not have the resources to address his treatment needs. He qualified for voluntary services and eventually, both his mother and the school system relied on key therapeutic wrap-around services to provide supports critical to keeping Justin in the community. Justin was able to be maintained safely in his home with the help of IICAPS, out-patient counseling, a parent-aid, and a therapeutic mentor.

See id.

In sum, this factor weighs heavily in favor of granting the requested TRO.

B. Plaintiffs Have A Substantial Likelihood of Success on Their Legal Challenge.

In order to establish a likelihood of success on the merits, Plaintiffs need not show that success is an absolute certainty but must only "make a showing that the probability of . . . prevailing is better than fifty percent." *Phillip v. Nat'l Collegiate Athletic Ass'n,*, 960 F.Supp. 552, 554 (D. Conn. 1997); *see also Hamilton Watch Co. v. Benrus Watch Co.*, 206 F.2d 738, 740 (2d Cir.1953).[19] Here, Plaintiffs can establish that Defendants' unilateral suspension of new

[18] FST stands for Family Support Teams, which are multidisciplinary teams that provide an array of intensive treatment and support services to children, youth, and families in their homes and communities.

[19] Plaintiffs present a high likelihood of success on the merits, and also present "sufficiently serious questions going to the merits to make them a fair ground for litigation, with a balance of hardships tipping decidedly in the movant's favor." *Doninger v. Niehoff*, 527 F.3d 41, 47 (2d Cir. 2008).

intakes to the VSP violates the plain terms of numerous enforceable provisions in the 2006 Revised Exit Plan.[20]

The 2006 Revised Exit Plan includes Outcome Measure 15, which requires Defendants to meet "all" of the "medical, dental, mental health and other service needs" of class members, including the service needs of "at risk" children. *See* 2006 Revised Exit Plan (Dkt. 523) at 25. Notably, Defendants have been in severe non-compliance with this measure for years, and a remedial court order dated July 17, 2008 remains in place. *See* July 2008 Remedial Order (Dkt. 563); Agreed January 2009 Stipulated Modifications to the July 2008 Remedial Order (Dkt. 572).

Children served by the VSP are by definition "at risk" children in the *Juan F.* class. *See* p. 13-14, *supra*. The VSP is the core program though which many "at risk" children and families obtain services from Defendants. *See generally* DCF Agency Regulations (Ex. A) §§ 17a-11-4 to -27; DCF Policy Manual (Ex. D) at Chapter 37. While Defendants intend immediately to begin the suspension of all new intakes to the VSP, regardless of children's needs, no program or binding commitment is in place that guarantees that Defendants will provide needed services to "at risk" children who would otherwise receive services under the VSP if new intakes were not cut off. That is not surprising, since the VSP includes children for whom "treatment needs cannot be met through services currently available to the parent or guardian." DCF Agency Regulations (Ex. A) § 17a-11-7.

[20] "Consent decrees are construed for enforcement purposes as contracts. . . . A decree is always specifically enforceable as written." *Stotts v. Memphis Fire Dep't*, 679 F.2d 541, 557 (6th Cir. 1982), *rev'd on other grounds sub nom. Firefighters Local Union No. 1784 v. Stotts*, 467 U.S. 561 (1984). A court "has an independent duty to ensure that the terms of the decree are effectuated" and "to protect the integrity of its decree," especially upon motion of a party. *Id.* at 557 & n.16. *See also American Soc. of Composers, Authors and Publishers v. Showtime/The Movie Channel, Inc.* 912 F.2d 563, 575 -76 (2d Cir. 1990) ("As a general matter consent decrees are to be read in accordance with their 'plain meaning' or 'explicit language'"); *Berger v. Heckler*, 771 F.2d 1556, 1568 (holding that great weight must be given to the explicit language of the decree); *Juan F. v. Rowland*, No. CIV H-89-859 AHN, 2000 WL 33119474, at *2 (D. Conn. Dec. 22, 2000) (Dkt. 342) (upholding the unambiguous plain meaning of staffing ratio requirement).

Accordingly, the suspension of new intakes into the VSP will place Defendants in non-compliance with, and contempt of, the plain meaning of Outcome Measure 15.

In addition to the guarantee of services to "at risk" children, the 2006 Revised Exit Plan includes Outcome Measures that require case management oversight and protections for "at risk" children. Outcome Measure 3 requires that "appropriate treatment plans shall be developed" for all class members "except probate, interstate, and subsidy only cases" and thus plainly includes "at risk" children served by the VSP.[21] *See* 2006 Revised Exit Plan (Dkt. 523) at 8.

DCF policy makes clear that the VSP is the program through which many "at risk" children are provided with treatment plans, and through which each child's treatment plan is implemented and modified as necessary to ensure their safety and well-being.[22] By suspending new intakes into the VSP, no program exists through which "at risk" class members who would otherwise be eligible for the VSP will receive treatment plans. Accordingly, the suspension of new intakes into the VSP will place Defendants in non-compliance with, and contempt of, the plain meaning of Outcome Measure 3.

Additionally, the VSP is the program through which many "at risk" children are provided with social workers and through which children are guaranteed visits by their social workers under the 2006 Revised Exit Plan.[23] No other program is in place that will provide these case management protections in the absence of the VSP. Accordingly, the suspension of new intakes into the VSP will place Defendants in non-compliance with, and contempt of, the plain meaning

[21] Defendants have also been in continued non-compliance with this measure since the first Exit Plan was entered in December of 2003, and the remedial court order dated July 17, 2008 remains in place. *See* pp. 11, 17, *supra.*
[22] *See* DCF Policy Manual (Ex. D) at Chapter 37-6 (requiring that the VSP worker "shall, together with the child/youth and family, develop a treatment plan(s) outlining the family and child/youth's needs and the services to be offered by the Department to address those needs" and mandating that the treatment plans be reviewed by the Department every six months).
[23] *See* DCF Policy Manual (Ex. D) at Chapters 37-5 and 37-6 (outlining the requirements for the assignment of a social worker and the worker's requisite case management responsibilities) and Chapter 37-7 (establishing visitation standards).

of Outcome Measure 16 (requiring social worker visits) and Outcome Measure 18 (establishing caseload limits). *See* 2006 Revised Exit Plan (Dkt. 523) at 27, 29.

Still other Outcome Measures in the 2006 Revised Exit Plan provide critical safety protections for "at risk" children, including protection from overcrowding in out-of-home placements (Outcome Measure 19; *id.* at 30), protection from abuse or neglect by out of home caregivers (Outcome Measure 6; *id.* at 15), and ensuring that children are placed in the least restrictive placement to meet their needs and limiting the use of out-of-state placements (Outcome Measure 19; *id.* at 30). By unilaterally eliminating new intakes from the VSP program without any substitute program in place, Defendants will deny "at risk" children these protections of the Consent Decree, putting Defendants in non-compliance with, and contempt of, these provisions.

Finally, the 2006 Revised Exit Plan specifically requires that "[t]he Defendants shall provide funding and other resources necessary to fully implement the Exit Plan." *Id*. at 4. As set forth above, by unilaterally cutting off funds and services for new intakes to the VSP, Defendants are in violation with, and contempt of, the plain meaning of this provision. The District Court in this case and the Second Circuit have affirmed Defendants' obligations to provide the funding and resources needed to comply with applicable Court orders in this case. [24]

At a minimum, Plaintiffs have raised extremely serious issues and have established a strong likelihood of success on the merits of their claims.

C. The Remaining Considerations for a TRO Weight Heavily in Plaintiffs' Favor.

The remaining two factors considered on a TRO motion – the balance between the harm the movant would suffer and the harm that granting the injunction would inflict on the opposing

[24] *See Juan F. v. Weicker*, 37 F.3d at 878-80; *Juan F. v. Rowland*, Civil No. H-89-859 (D. Conn. Feb. 10, 2004) (ruling and order on defendants' motion for reconsideration) at 3-5.

party and the public interest – also weigh heavily in Plaintiffs' favor. *See Phillip v. Nat'l Collegiate Athletic Ass'n*, 960 F. Supp. 552, 554 (D. Conn. 1997). Here, the cost to the State if VSP intakes are allowed to continue – the only "harm" the State can claim – is certainly outweighed by the potential irreparable harm to "at risk" children that will result if these class members are deprived of the critical services, protections, and oversight guaranteed by the Consent Decree. Furthermore, the vigorous enforcement of consent decrees is in the public interest and the public interest is clearly served in ensuring that all "at risk" children receive the services and protections that they desperately need and which are guaranteed by the Consent Decree.

CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that this Court issue a temporary restraining order, enjoining Defendants from suspending new intakes to the Voluntary Services Program, until such time as: a) the parties can negotiate an alternative program to ensure that "at risk" class members will receive the benefits of the Consent Decree which was previously entered in this case; and/or b) the Court can conduct a hearing for a preliminary and permanent injunction and issue an order declaring unlawful, and permanently enjoining, the

suspension of new intakes to the VSP, together with such other and further relief as may be necessary or appropriate.

DATED: December 8, 2009

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, on December 8, 2009, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF system for filing and transmittal of Notice of Electronic Filing to the following ECF registrant:

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DATED: December 8, 2009

/s/ Steven Frederick