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**BY ELECTRONIC AND U.S. MAIL**

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Re: Juan F. v Rell, Civil Action No. H-89-859 (CFD)

Dear Ann and Ray:

Pursuant to Section III.B of the Revised Monitoring Order dated October 12, 2005, Plaintiffs hereby provide notification of Defendants' actual or likely noncompliance with – and contempt of – Outcome Measure 3 (Treatment Plans) and Outcome Measure 15 (Children's Needs Met) of the Revised Exit Plan of July 1, 2004 (as modified July 11, 2006, the "2006 Revised Exit Plan"). Plaintiffs further provide notification of Defendants' actual or likely noncompliance with – and contempt of – the Stipulation Regarding Outcome Measures 3 and 15, entered by the Court on July 17, 2008 (as modified January 22, 2009, the "July 2008 Stipulation").

Outcome Measures ("OMs") 3 and 15 are both reasonable and achievable, and they comprise the lion's share of Defendants' basic responsibilities to the children and families they serve. Defendants negotiated with Plaintiffs for over six months to arrive at the methodology, approved by the Court in 2006, for assessing the Department's ability to provide adequate treatment plans for children in the class (OM 3), and the Department's ability to provide for the basic service needs of children in the class (OM 15). To achieve compliance under the Revised Exit Plan, OM 3 (Treatment Plans) requires an overall performance of 90%, and OM 15 (Children's Needs Met) requires an overall performance of only 80%. In early 2008, Plaintiffs asserted noncompliance with Outcome Measures 3 and 15. Recognizing that these measures are both reasonable and achievable, a contempt trial was avoided and Defendants, with Plaintiffs and the Monitor, negotiated and agreed upon a set of additional remedies designed to move the Department into compliance. These remedies were approved by the Court as the Stipulation Regarding Outcome Measures 3 and 15, entered by the Court on July 17, 2008. The monitoring methodology has remained unchanged under the July 2008 Stipulation, including the 2009 modifications.

Now, almost two years since the July 2008 Stipulation, Defendants remain in gross noncompliance with OM 3 and OM 15. The percentage of cases that had adequate treatment plans for the quarter ending December 31, 2009 was 47.2%, the lowest performance since the third quarter of 2007. The percentage of cases in which children’s needs were adequately met was 45.3%, the lowest performance since the first quarter of 2007. Moreover, Defendants’ performance on OMs 3 and 15 has been steadily declining for the past three quarters, from performance that was already in significant noncompliance.

Additionally, Defendants have failed to meet multiple benchmarks in the July 2008 Stipulation. Targets for increasing the number of foster homes, and for increasing the percentage of children in out-of-home placements who are placed with families and not in facilities or institutions, have been missed by a large margin.

Within the measure of meeting children’s service needs, deficiencies and/or waiting lists for services remain for mental health, behavioral health, and substance abuse services; dental services; specialized foster care; life skills and transitional services for teens; and in-home preventive services. Of particular concern in the most recent quarterly report, the Department failed to meet children’s service needs in 61.1% of in-home cases, at the same time that the current proposed budget includes significant cuts to intensive in-home preventive services and parent aide services for FY 2011 – services needed to support the in-home class member population. Additionally, waitlists continue to grow for eligible voluntary services cases. The Department must remedy all service gaps and waiting lists for services.

Finally, the Department’s accountability structure does not appear capable of preventing the large number of cases found inadequate by the Court Monitor because of the Department’s own “case management deficiencies (timely referrals, timely assessments, lack of follow-up),” as noted by the Monitor. Additionally, as documented by the Monitor, in the last quarter, “[s]afety plans as a result of the SDM Safety Assessment were documented in only 57.7% . . . of the cases in which they were required.” These systemic issues also must be remedied.

Additional detail and supporting data on the asserted noncompliance is provided below.

**Outcome Measures 3 and 15**

With regard to Outcome Measure 3 (Treatment Plans), quarterly monitoring data over the past three years (12 quarters), reveals the following:

Compliance Measure	1Q 2007	2Q 2007	3Q 2007	4Q 2007	1Q 2008	2Q 2008	3Q 2008	4Q 2008	1Q 2009	2Q 2009	3Q 2009	4Q 2009
>=90%	41.3%	30.3%	30.0%	51.0%	58.8%	54.7%	62.3%	79.2%	65.4%	73.1%	51.9%	47.2%

Defendants’ performance on Outcome Measure 15 (Children’s Needs Met) also illustrates significant and sustained noncompliance over the past three years (12 quarters):

Compliance Measure	1Q 2007	2Q 2007	3Q 2007	4Q 2007	1Q 2008	2Q 2008	3Q 2008	4Q 2008	1Q 2009	2Q 2009	3Q 2009	4Q 2009
>=80%	45.3%	51.3%	64.0%	47.1%	58.8%	54.7%	52.8%	58.5%	61.5%	61.5%	55.8%	45.3%

Defendants' longstanding noncompliance with these Outcome Measures is documented in the following reports, among others:

- DCF Court Monitor's Juan F. v. Rell Exit Plan Quarterly Report: January 1, 2007 – March 31, 2007;
- DCF Court Monitor's Juan F. v. Rell Exit Plan Quarterly Report: April 1, 2007 – June 30, 2007;
- DCF Court Monitor's Juan F. v. Rell Exit Plan Quarterly Report: July 1, 2007 – September 30, 2007;
- DCF Court Monitor's Juan F. v. Rell Exit Plan Quarterly Report: October 1, 2007 – December 31, 2007;
- DCF Court Monitor's Juan F. v. Rell Exit Plan Quarterly Report: January 1, 2008 – March 31, 2008;
- DCF Court Monitor's Juan F. v. Rell Exit Plan Quarterly Report: April 1, 2008 – June 30, 2008;
- DCF Court Monitor's Juan F. v. Rell Exit Plan Quarterly Report: July 1, 2008 – September 30, 2008;
- DCF Court Monitor's Juan F. v. Rell Exit Plan Quarterly Report: October 1, 2008 – December 31, 2008;
- DCF Court Monitor's Juan F. v. Rell Exit Plan Quarterly Report: January 1, 2009 – March 31, 2009;
- DCF Court Monitor's Juan F. v. Rell Exit Plan Quarterly Report: April 1, 2009 – June 30, 2009;
- DCF Court Monitor's Juan F. v. Rell Exit Plan Quarterly Report: July 1, 2009 – September 30, 2009; and
- DCF Court Monitor's Juan F. v. Rell Exit Plan Quarterly Report: October 1, 2009 – December 31, 2009.

### **The July 2008 Stipulation**

In addition, Defendants are in significant actual or likely noncompliance with several benchmarks in the July 2008 Stipulation, in which interim remedies were agreed upon in order to move Defendants toward compliance with OM 3 and OM 15.

- In Section I.B of the July 2008 Stipulation, Defendants agreed to a goal of a net gain of 350 foster family homes by June 30, 2009, and an additional net gain of 500 more homes, for a total of 850 new foster homes, by June 30, 2010. Defendants achieved a net gain of 32 foster homes by June 30, 2009, and to date have achieved a total net gain of only 145 homes from the June 2008 baseline.
- In Section IX.D of the July 2008 Stipulation, Defendants agreed to a goal of increasing the percentage of children in DCF custody placed with families rather than in facilities or institutions by 7% by June 30, 2009, and by an additional 3% by June 30, 2010. The most recent monitoring data indicates that the percentage of children in DCF custody placed with families has actually *decreased* from the baseline.

- In Section VI.A of the July 2008 Stipulation, Defendants agreed to prospective placement restrictions. Beginning 270 days after the entry of the July 2008 Stipulation, “no child entering any emergency or temporary facility, including STAR homes or SAFE homes, shall remain in such facility for more than 60 days,” with a one-time exception of five additional days allowed upon appropriate certification. However, according to the Monitor’s most recent report, as of February 2010, over 100 children were in such placements for over 60 days, and data reported over time fails to show improvement on this placement issue.
- In Section VI.D of the July 2008 Stipulation, Defendants agreed that, beginning 90 days after the entry of the July 2008 Stipulation, “no child age 12 and under shall be placed in a congregate non-foster family home setting,” with the exception of children with exceptional needs and the express written approval of senior DCF officials. However, according to the Monitor’s most recent report, as of February 2010, 230 children age 12 and under were in congregate care placements.
- In Section IX.B and C of the July 2008 Stipulation, Defendants agreed to interim performance improvements on specific components of the methodology for assessing whether children’s service needs are met. According to the most recent monitoring report, Defendants failed to meet the required performance for Dental Service Needs (Section IX.B.1), Mental Health Service Needs (Section IX.B.2), and Contracting or Providing Services to Meet the Permanency Goal (Section IX.C).
- In Section IX.E of the July 2008 Stipulation, Defendants agreed to interim performance improvements on specific components of the methodology for assessing adequate treatment planning. According to the most recent monitoring report, Defendants failed to meet the required performance for Action Steps to Achieving Goals Identified (Section E.1), Determining Goals and Objectives (Section IX.E.2), and Engagement of Child and Family (Section IX.E.4).

We hope our identification of the above data and issues helps to focus and shape meaningful negotiations under the Revised Monitoring Order.

Respectfully Submitted,



Ira P. Lustbader  
Gena E. Wiltsek  
Children’s Rights

-and-

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FOR PLAINTIFFS