

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF RHODE ISLAND**

**SAM and TONY M., by Next Friend )  
Gregory C. Elliott; CAESAR S., by Next )  
Friend Kathleen J. Collins; DAVID T., by )  
Next Friend Mary Melvin; DEANNA H., by )  
Next Friend Gregory C. Elliott; DANNY and )  
MICHAEL B., by Next Friend Gregory C. )  
Elliott; CASSIE M. by Next Friend )  
Kymberli Irons; ALEX and JARED C., by )  
Next Friend Gregory C. Elliott; TERRENCE )  
T. by Next Friend Gregory C. Elliott; and )  
TRACY L. by Next Friend Kymberli Irons; )  
for themselves and those similarly situated\*, )**

**Plaintiffs,**

**v.**

**LINCOLN D. CHAFEE, in his official )  
capacity as Governor of the State of Rhode )  
Island; STEVEN M. COSTANTINO, in his )  
official capacity as Secretary of the )  
Executive Office of Health & Human )  
Services; and KEVIN J. AUCOIN, in his )  
official capacity as Interim Director of the )  
Department of Children, Youth and )  
Families,**

**Defendants.**

**Class Action  
Civil Action No. 1:07-cv-00241-ML-LDA**

**SUPPLEMENTAL COMPLAINT  
FOR INJUNCTIVE AND DECLARATORY RELIEF  
AND REQUEST FOR CLASS ACTION**

Pursuant to Rule 15(d) of the Federal Rules of Civil Procedure, Plaintiffs supplement their Amended Complaint (Docket No. 12) (the “Amended Complaint”) as follows:

\* pseudonyms are used for all minor named plaintiffs.

## **I. Introduction**

1. This action, brought on behalf of a putative class of “all children who are or will be in the legal custody of the Rhode Island Department of Children, Youth and Families due to a report or suspicion of abuse and neglect” (“Plaintiff Children”), was filed on June 28, 2007. The Amended Complaint was filed shortly thereafter on September 7, 2007. The district court dismissed the action on April 29, 2009. (Dkt. No. 63.) On June 18, 2010, the First Circuit reversed the dismissal of this action and remanded the case to the District Court. *Sam M. v. Carcieri*, 608 F.3d 77 (1st Cir. 2010). In light of the passing of almost four years since the original pleading, Plaintiffs supplement the allegations set forth in the Amended Complaint with new plaintiffs and new facts as follows.

2. This Supplemental Complaint, first, adds new named plaintiff children to this action and, second, sets forth recent data and information indicating the continuation of widespread, systemic problems in Rhode Island’s child welfare system that are continuing to harm Rhode Island’s most vulnerable children.

3. Since this lawsuit was filed in 2007, the Department of Children, Youth and Families (“DCYF”) remains plagued with the fundamental, systemic failings detailed in the Amended Complaint. Plaintiff Children are daily at risk of harm because DCYF has long been poorly managed and has failed to develop necessary and appropriate placements and services to meet the needs of the children it is mandated to protect. DCYF subjects Plaintiff Children to maltreatment in foster care at one of the highest rates in the country, frequent moves, inappropriately restrictive placements, a lack of services to meet their needs, and the likelihood of growing up without a permanent, loving family.

4. This civil rights class action seeks declaratory and injunctive relief to compel Defendants – the Governor of the State of Rhode Island, the Secretary of the Executive Office of Health and Human Services, and the Director of the Department of Children, Youth and Families – to meet their legal obligations to care for and protect Plaintiff Children by seeking remedies that would institute practices within the State’s dysfunctional child welfare system to conform that system with constitutional and federal statutory standards.

## **II. The Supplemental Parties**

### **CASSIE M.**

5. Cassie is a 14-year-old girl who has been known to DCYF for more than seven years and has been in foster care for the last five years. Throughout her time in DCYF custody, the agency has failed repeatedly in its most basic obligation to provide her with a safe, stable or permanent family. Instead, DCYF has moved Cassie through numerous and inappropriate placements; subjected her to inconsistent, harmful contact with her mother; and separated her from her four sisters. Although she was freed for adoption more than two years ago, upon information and belief, DCYF has left Cassie in foster care in a non-family group placement.

6. DCYF has been involved with Cassie’s family since at least September 2003. By November 2004, DCYF had received at least four separate reports of abuse and neglect, including sexual and physical abuse, in her family’s home. At that time, DCYF had knowledge that Cassie’s father had had a child with her oldest half-sister, who was pregnant at 17. DCYF also had information that Cassie’s father was a substance abuser, owned weapons, had been physically abusive toward Cassie, her mother, and her sisters and had threatened to kill them, and had been sexually inappropriate with another of Cassie’s older sisters.

7. DCYF did not “indicate” any report of abuse and neglect until March 2005, when Cassie’s mother ordered Cassie’s 16-year-old sister out of their home. At this time, DCYF received a report that Cassie’s mother was abusing drugs and failing to care for her children, at least one of whom was infested with lice. DCYF again was told that Cassie’s father had sexually abused her oldest sister for years and had impregnated her, and that he had physically abused the girls and their mother. Cassie’s father was then in prison. Cassie’s mother’s then-boyfriend had a long DCYF history, including neglect and domestic violence and an extensive criminal record that included charges for indecent exposure and possession of drugs and firearms. Although the caseworker expressed concern about the boyfriend’s influence and noted that the boyfriend had punched Cassie’s older sister in the face, DCYF left Cassie and her sisters in the home. Subsequently, one of Cassie’s sisters reported that she had been sexually abused by her mother’s boyfriend.

8. In April 2005, Cassie’s mother was again “indicated” for neglect based on reports that Cassie, then eight years old, and her two sisters who remained in the home, ages five and 10, were sleeping alone in their apartment while their mother slept in a neighbor’s apartment. The apartment where the girls were living had no furniture or electricity, and the girls reportedly slept on the floor. DCYF also discovered that Cassie and her sisters suffered from chronic head lice, that was so severe that they were not permitted to attend school.

9. At this time, DCYF implemented support services and kept the children in the home, but Cassie’s mother was consistently non-compliant. In December 2005, DCYF learned that Cassie’s father had visited the home where Cassie, her mother, and her sisters were living in violation of a court order. DCYF failed to investigate.

10. In February 2006, Cassie and her two sisters who had been living in the home were removed from their mother's care based on her chronic failure to comply with court-ordered treatment plans. DCYF initially pursued reunification with Cassie's father, despite the fact that DCYF only permitted him to have supervised visitation with his children and that DCYF knew that he had physically and sexually abused some of the girls. At the time, he had no permanent housing and no place for the girls to live.

11. DCYF placed Cassie and her two sisters into separate foster homes. DCYF moved Cassie to a new foster home less than two weeks later. In June 2006, Cassie's foster mother revealed to DCYF that she herself had been "red flagged" by DCYF. DCYF only then realized that the foster mother had an open case with DCYF and that the agency had been planning to terminate her foster parent license. Nonetheless, DCYF kept Cassie in this home for another nine months. In November 2006, DCYF expanded the foster parent's license to allow her to take in another foster child. DCYF left Cassie in this foster home until March 2007, when it then moved her to a specialized foster home.

12. Also in 2006, Cassie's younger sister, who was just six years old, was placed in a shelter. DCYF kept the young girl in two shelter placements for more than nine months. Cassie was very upset that her sister was in a shelter and asked multiple times for her sister to live with her.

13. In August 2007, when she was 10 years old, DCYF moved Cassie to a residential treatment center. Despite her DCYF caseworker and supervisor's agreement in February 2009 that Cassie should be moved from her residential facility to a specialized foster home, and DCYF's assessment in April 2010 that Cassie was not doing well in the facility, DCYF kept Cassie in this institution for almost three years.

14. DCYF ensured that Cassie had regular contact with her mother throughout her time in DCYF custody, even after her mother's parental rights were terminated, and despite DCYF knowing that the visits were chaotic and stressful for Cassie, and that Cassie and her younger sister exhibited aggression and other behavior problems following these visits. Cassie's mother often arrived at the visits late or cancelled them altogether, and when she did attend, she sometimes failed to pay attention to Cassie, which upset this young girl. On several occasions, Cassie reported to DCYF prior to a visit that she did not want to see her mother.

15. As early as April 2005, Cassie was taking medication for Attention Deficit Hyperactivity Disorder (ADHD), although a subsequent evaluation in October 2007 revealed that this diagnosis was incorrect. Cassie has also been diagnosed with adjustment disorder, disturbance of conduct, and bipolar disorder. She has been prescribed multiple powerful psychotropic medications, and as of November 2010 she was taking medication multiple times a day. Cassie has also been diagnosed with learning disabilities and has an education plan in place.

16. In May 2008, more than two years after Cassie entered foster care, DCYF filed a petition to terminate her mother's parental rights and in September 2008 Cassie was freed for adoption. Since this time, upon information and belief, DCYF has failed to find her a permanent home. Cassie often talks about wanting a family and she has expressed a desire to be placed with her younger sister in an adoptive home. In March 2010, DCYF reiterated its intent to find Cassie an adoptive placement. Yet, instead of seeking and securing an appropriate adoptive home for Cassie, as late as December 2010 DCYF continued to arrange visits and telephone contact between Cassie and her mother. In the meantime, Cassie remained in a non-family congregate setting. In June 2010, Cassie was moved to a group home because at 13 years

old she had aged out of the previous treatment facility. As of December 2010, Cassie, now 14 years old, was still living in this second congregate placement.

17. As a result of Defendants' actions and inactions, Cassie has been and continues to be irreparably harmed. DCYF allowed her to remain in her mother's care despite reports that Cassie and her sisters had been physically and sexually abused. Since Cassie entered DCYF custody, DCYF has exposed her to multiple, inappropriate placements and has allowed her to spend years in an institution. Instead of identifying a placement equipped to handle the demands of a girl who has been exposed to domestic violence and sexual abuse, DCYF has instead placed Cassie with inappropriate foster parents, ensured that Cassie maintain emotionally damaging contact with her mother long after her parental rights were terminated, and left her to languish in an institution. More than five years after entering DCYF foster care and two years after being freed for adoption, Cassie remains in a temporary institutional placement with no permanent family, separated from her sisters.

18. Defendants have violated Cassie's constitutional and statutory rights by failing to protect her from harm; by separating her from her sisters; by failing to provide her with mental health services necessary to prevent her mental health from deteriorating while in DCYF custody; and by failing to provide necessary and appropriate permanency and adoption services, all of which are required by law and reasonable professional judgment.

19. Named Plaintiff CASSIE M. appears through her next friend Kymerli Irons. Ms. Irons has worked in the Providence School Department for 21 years and has been a special educator for 28 years. Ms. Irons holds Masters degrees in Special Education and in Integrated Education. She has served as a Behavior Specialist with the Providence School department for 12 years. Ms. Irons worked with Cassie as her Behavior Specialist when Cassie

was between the ages of eight and nine. Ms. Irons also met with Cassie's mother, and spoke with Cassie's classroom teacher, principal, and assistant principal about Cassie on multiple occasions. Ms. Irons is truly dedicated to Cassie's best interests.

**ALEX AND JARED C.**

20. Alex, eight years old, and Jared, 10 years old, are brothers whose family has been known to DCYF since July 2002, before Alex was born, and who entered DCYF foster care in 2006. DCYF has failed to provide the boys with safety, stability, or permanency during their four and one half years in care. DCYF moved the boys between multiple placements during their first two years in foster care while maintaining the goal of reunifying the boys with their parents, who repeatedly demonstrated that they were unable to provide a safe and stable home for their children. In total, Alex and Jared have each experienced at least six placements, including two in institutional settings and one in a foster home where they were both sexually abused. Upon information and belief, DCYF has left the boys separated from one another and their younger sister, and although they were freed for adoption in 2009, DCYF has not secured a pre-adoptive home for either boy.

21. Alex and Jared's family has a long history with DCYF as well as with a child welfare agency in another state. Their mother's rights to at least one of her three oldest children were terminated by the other state. Their mother has a history of drug use, depression, psychiatric hospitalization, and noncompliance with treatment plans, which was known to DCYF. Their father has been charged three times with domestic assault, and has been incarcerated multiple times for these and other offenses. Prior to the boys being brought into care in November 2006, DCYF substantiated three reports against their mother for neglect, and one against her for physical abuse of their sister. Despite this, and despite DCYF's knowledge of

the boys' mother's continued drug use since at least 2002, DCYF maintained the boys at home until 2006.

22. In July 2006, it was reported to the police that the boys' parents were involved in domestic violence and that both Alex and Jared reported that they had witnessed it. The boys moved to a shelter with their mother and younger sister. While they were living at the shelter, shelter staff reported to DCYF that the boys' mother was overwhelmed by caring for her children and that she planned to drop them off with their father.

23. In early August, Alex and Jared's mother dropped the boys off at their father's house and drove off. Their mother and sister reappeared in the father's home twelve days later. With DCYF knowledge, all the children remained with their father, despite his history of violence and DCYF's previous recommendation that the children not be alone with him. DCYF also instructed that the children and their father reside with his mother (the children's grandmother), yet further required that he not allow his mother to be alone with the children, as she had a DCYF history of child maltreatment.

24. In November 2006, DCYF discovered that the boys' father had been missing for a month and that he had left them alone with their grandmother, even though DCYF prohibited that she care for them on her own. At this point DCYF discovered that the boys' mother and sister had been missing for two months. DCYF took the boys, and their sister once DCYF located her, into foster care. Soon thereafter, their parents were both arrested. Both parents spent significant portions of the next few years incarcerated due to the mother's ongoing drug use and the father's domestic violence, drug charges, assault, and vandalism. During much of this time, the children's permanency goals remained reunification.

25. When the children entered DCYF custody in November 2006, DCYF placed Alex and Jared in a foster home separated from their younger sister. The boys have not lived with their sister since entering custody. DCYF moved the boys from their first foster home after just five months and placed them in a new foster home, where two adopted children were also living. In November 2007, DCYF confirmed that at least one of the adopted children in the home had been sexually abused by both parents in the home. DCYF closed the foster home following a police investigation, and the boys' foster parents were both arrested.

26. As a result, DCYF moved Alex, then four years old, and Jared, then six years old, from this abusive home and placed them in a shelter, where DCYF kept them for two months. In January 2008, DCYF moved the boys from the shelter into a foster home; around this time, it was noted that their behavior had begun to deteriorate and that the boys had begun throwing tantrums and had become destructive. After less than a month in this home, the boys' foster mother reported that Jared said that Alex had acted out sexually towards him. When questioned by the caseworker, Alex reported that his former foster parents had sexually molested him and his brother. He also indicated that he had seen his father engage in sexual activity with his girlfriend.

27. DCYF removed the boys from the foster home in early 2008 and placed them, still only four and six years old, in separate group homes in different towns. At this time, nearly three months after DCYF removed them from the abusive home, they each received their first sexual abuse psychological evaluation and counseling session with a therapist. Alex disclosed to his therapist that their previous foster parents had had the boys engage in sexual activity, which the foster parents taped.

28. DCYF kept Alex in his group home until August 2009, a year and a half after placing him there. DCYF kept Jared in his group home until January 2010, nearly two years after placing him there. Both boys received therapeutic services while at the group homes. Eventually, DCYF moved each boy to a different family foster home. Both continue to be treated for the trauma they have endured, and Jared has been prescribed psychotropic medications to help him control his behavior.

29. In March 2009, more than two years after the boys were brought into custody, Alex and Jared's parents' rights were terminated due to lack of progress in their case plans. Although the boys, now aged eight and 10, are free for adoption, upon information and belief both remain in separate foster homes and neither is yet in a pre-adoptive home.

30. As a result of Defendants' actions and inactions, Alex and Jared have been and continue to be irreparably harmed. DCYF has failed to ensure the boys' safety and well-being despite having been involved with their family since before Alex's birth. DCYF allowed Alex and Jared to remain with their parents long after it was clear that they were unable to care for them. When DCYF did remove them from their parent's care, it placed the young boys in a dangerous home where they were sexually abused and then moved them into a shelter and congregate facilities instead of family homes. Rather than seek an appropriate alternative permanent home for the boys, DCYF continued to seek their reunification with their parents even after it was evident that that was an inappropriate goal. As a result, DCYF has failed to provide these boys with a permanent and loving family or with any family connection, instead separating Alex and Jared from each other and from their sister.

31. Defendants have violated Alex and Jared's constitutional and statutory rights by failing to protect them from harm; by separating each of them from their siblings; by delaying

services necessary to help them cope with their traumas; and by failing to timely provide necessary and appropriate permanency and adoption services, all of which are required by law and reasonable professional judgment.

32. Named Plaintiffs ALEX and JARED C. appear through their Next Friend, Gregory C. Elliott. Professor Elliott is a Professor of Sociology at Brown University in Providence, Rhode Island, where he has taught for the last 28 years. Professor Elliott is a social psychologist, specializing in the social development of the individual and the integration of the individual into society. In his work, he has dealt with issues of child maltreatment. Due to his expertise and research, Dr. Elliott has been held by the First Circuit in this case to be “aware of the issues and problems children face in foster care and he is familiar with the perils to which Plaintiffs have been exposed,” and therefore declared an appropriate next friend for four other named plaintiff children whom he did not know personally in the instant lawsuit. *Sam M. v. Carcieri*, 608 F.3d at 93.

**TERRENCE T.**

33. Terrence is a 15-year-old boy who has been in DCYF custody since he was just six years old. In the ten years that Terrence has been in DCYF custody, DCYF has failed to protect Terrence from harm and provide him stability or placement with a permanent family. During his time in DCYF custody, DCYF has moved Terrence through numerous placements, including four separate institutional settings where he has lived for over six years. Now fifteen, Terrence has all but grown up in foster care and remains isolated from his biological family without any prospects for living with a permanent, loving family.

34. Terrence’s family has a long history with DCYF. DCYF first investigated his mother for neglect in early 2000, when one of her children’s teachers found Terrence’s

seven-year-old sister home alone. During this investigation, Terrence's mother told the DCYF workers that Terrence was living with his godmother and had been for most of his life.

35. In early 2001, DCYF brought Terrence and his four siblings into DCYF custody when his mother was arrested for transporting drugs into the country. Six-year-old Terrence remained in his godmother's home, where he had been living. DCYF knew that the godmother had a criminal history and lacked a stable home.

36. Terrence stayed in foster care with his godmother until December 2001, when DCYF removed him after she was arrested for dealing drugs in Terrence's presence. In 2002, after he began counseling, Terrence revealed to his caseworker that he often had to participate in his godmother's drug deals, passing money and parcels between individuals, and often sleeping in the car while she worked. His caseworkers also determined that Terrence had been physically abused by his godmother while in DCYF custody.

37. After DCYF removed Terrence from this home in late 2001, DCYF placed him in a licensed foster home. In June 2002, when he was in first grade, DCYF moved Terrence to a residential treatment center on the recommendation of his neurologist. At the time, he was noted to have attention deficit hyperactivity disorder (ADHD), poor behaviors and feelings of separation and loss.

38. In July 2002, Terrence was sent home from camp after telling a counselor that he "wanted to drown himself." In January 2003, Terrence disclosed that an aunt had physically abused him.

39. As early as January 2004, after Terrence had lived at the residential treatment center for one and one half years, Terrence repeated that he wanted to live with a family, and his

clinician found that he was ready to leave the institution. Nonetheless, DCYF kept Terrence at this institution.

40. Terrence's father's rights were terminated in 2003 and his mother's in 2005, but DCYF identified no pre-adoptive placements for him. Rather than finding him a family home in 2004, when his clinicians said he was ready to be discharged from his group home, or an adoptive family in 2005, when his parents' rights were terminated, DCYF has left Terrence to languish in congregate care. In 2007, although other placement options had been previously identified for him, DCYF left Terrence at the facility. DCYF kept Terrence in the residential treatment center until January 2008, nearly six years after he had arrived there and four years longer than was therapeutically indicated.

41. In January 2008, DCYF placed Terrence in a foster home with his younger brother. His brother had also lived in an institution for years, had been diagnosed with major depression and post-traumatic stress disorder, and had made multiple suicide attempts. In April 2008, when Terrence had difficulty adjusting to this foster home, DCYF moved him into a group home. On the day DCYF moved him, Terrence gave his brother a long hug and cried. During the drive from the foster placement to the group home, Terrence was very emotional and cried a lot.

42. In October 2008, DCYF moved Terrence and his younger brother to California to live with an aunt whom they had never met prior to her expressing interest in being a placement resource. While in California, it took months for the boys to receive medical insurance and necessary mental health services. Terrence was removed from this home in November 2009 and returned to Rhode Island, while his younger brother remained in California. At that point, Terrence was separated from all of his six siblings, some of whom he had not had

regular contact with for years. In Rhode Island, DCYF once again placed him in a group home, where he was very sad and disengaged and had attempted suicide. He was prescribed Adderall and Prozac. Upon information and belief, today Terrence remains in an institutional facility even though it has been recommended that he receive more one-on-one attention.

43. Over the course of his nine years in DCYF custody, DCYF has maintained Terrence in an overly restrictive placement where he has languished for years, has failed to provide him with consistent mental health care, and has denied him a permanent or stable family. While in DCYF custody, Terrence was abused and separated from all of his siblings.

44. Defendants have violated Terrence's constitutional and statutory rights by failing to protect him from harm while in state custody; by failing to provide him with mental health services necessary to prevent his mental health from deteriorating while in DCYF custody; by separating him from his siblings; by failing to provide him with appropriate, least-restrictive placements; and by failing to provide necessary and appropriate permanency and adoption services, all of which are required by law and reasonable professional judgment.

45. Named Plaintiff TERRENCE T. appears through their Next Friend, Gregory C. Elliott. Professor Elliott is a Professor of Sociology at Brown University in Providence, Rhode Island, where he has taught for the last 28 years. Professor Elliott is a social psychologist, specializing in the social development of the individual. In his work, he has dealt with issues of child maltreatment and the integration of the individual into society. Due to his expertise and research, Dr. Elliott has been held by the First Circuit in this case to be "aware of the issues and problems children face in foster care and he is familiar with the perils to which Plaintiffs have been exposed," and therefore declared an appropriate next friend for four other named plaintiff

children whom he did not know personally in the instant lawsuit. *Sam M. v. Carcieri*, 608 F.3d at 93.

### **TRACY L.**

46. Tracy, almost 16 years old, was taken into DCYF custody with her younger sister in 2002, when she was just seven years old. In her nearly nine years in foster care, DCYF has moved Tracy at least 18 times and through at least 13 placements, including two different residential treatment facilities, at least three different group homes, at least one shelter, and five foster homes. She has also been hospitalized at least 14 times. Tracy has been moved through 11 different schools since entering DCYF custody.

47. Prior to Tracy and her sister's entry into foster care in 2002, their parents had been reported to DCYF at least five times for suspected neglect and abuse; at least two of these times resulted in investigations that were unfounded. In May 2002, it was reported to DCYF that Tracy, then six years old, had been sent home from school for two consecutive days for smelling like cat urine. The investigator found the home to be unlivable, as it was full of debris and clutter, had no running water, had a kitchen that was full of decaying food, smelled strongly of animal urine, and had rat holes on the outside. There were bruises and lesions on the younger girl's face and body, including her eyes, buttocks, and groin. She stated during a medical exam that her mommy did it. The physician noted probable physical abuse, but the children were not removed from their parents' care. The home was condemned and the family was required to move. DCYF filed a neglect petition against the parents in June 2002 on behalf of the girls, but left the girls in their mother's care.

48. DCYF kept the girls with their parents for six months after the neglect petition was filed, during which time their caseworkers had persistent concerns about their home

life, particularly the parents' lack of permanent housing and general lack of parenting skills. The parent aide who visited the home also had continued concerns about the parents' general parenting skills and the children's care.

49. In December of 2002, it was reported to DCYF that there was domestic violence in the home and that the girls' father had hit Tracy's sister with "cords." As a result of this investigation, DCYF took Tracy, then seven years old, into foster care custody with her sister. The next day, their foster mother observed bruises on Tracy's sister's buttocks, which both girls said were from their mother, father, and grandmother hitting her with a broken hairbrush, a punishment Tracy reported she had endured as well. Tracy reported that she had also been hit in the past, and that their parents would hit them with an orange cord and shove dirty socks in their mouths when they cried. Allegations of excessive and inappropriate discipline were founded.

50. DCYF moved Tracy and her sister from their initial foster home less than a week after they were placed there due to the foster parents' difficulty in managing the girls' behaviors. DCYF moved the girls to a shelter. Staff reported that the girls were aggressive with one another, had limited tolerance for direction, and threw tantrums when they didn't get their way.

51. DCYF separated the girls and moved Tracy to a specialized foster home in late January 2003. A month later, Tracy became extremely agitated when sent to take a bath, and her foster parents were unable to calm her down. She was admitted to a psychiatric hospital, where she disclosed to a therapist that her head had once been held under water. She was diagnosed with post-traumatic stress disorder, attention deficit hyperactivity disorder, and

depression. She was prescribed Clonidine and Ritalin and sent back to the same foster home later that month.

52. As of June 2003, both of Tracy's parents were cooperating with services, but they had yet to find permanent housing. DCYF continued to pursue reunification for the girls with their parents until October 2003, when Tracy disclosed that she had been sexually abused by her father. Tracy later reported that her mother knew about the abuse, and that when Tracy would exit the room crying, her mother would shove a dirty sock in her mouth. DCYF suspended visitation with both parents due to the allegations and on the recommendation of the girls' therapists.

53. In May 2005, after Tracy attempted to testify against her father, she had to be admitted to a psychiatric hospital. This day in court was the first time she had seen her father in two years. After this hospitalization, her foster parents determined that they could no longer provide for Tracy's needs, and DCYF placed her at a residential treatment facility. At this time, she was diagnosed with Reactive Attachment Disorder in addition to her earlier diagnoses and was taking Zoloft, Seroquel, and Ritalin. She was nine years old. DCYF kept Tracy at the residential treatment facility for almost one and a half years.

54. In October 2006, DCYF transitioned Tracy to a foster family home but she was again hospitalized in December of that year. She was then moved in August 2007 to a specialized foster home, but was in crisis in October of that year. In March 2008, her therapist noted that Tracy's Reactive Attachment Disorder was so severe that she would have to be placed in residential care, as she could not function in a family setting at that time.

55. Since she left her most recent foster home in March 2008, Tracy has moved between residential treatment centers, shelters, group homes and psychiatric hospitals at least 18

times, sometimes out of state. Tracy no longer is visited by her mother, and only rarely sees her sister. Although she is free for adoption, DCYF is not pursuing an adoptive placement for her.

56. As a result of Defendants' actions and inactions, Tracy has been and continues to be irreparably harmed. DCYF left Tracy and her sister in their parents' care even after caseworkers learned of the physical abuse and severe neglect in the home. Since Tracy entered DCYF custody almost nine years ago, DCYF has cycled Tracy from one placement to another, including numerous institutions and shelters, without providing her with adequate and consistent services to help her deal with the severe trauma she has suffered. DCYF has failed to seek and secure a permanent, loving home for Tracy. Instead, DCYF has left her in an institution, separated her from her sister.

57. Defendants have violated Tracy's constitutional and statutory rights by failing to protect her from harm while in state custody and by failing to provide her with adequate and consistent mental health services necessary to prevent her mental health from deteriorating while in DCYF custody.

58. Named Plaintiff TRACY L. appears through her next friend Kymberli Irons. Ms. Irons has worked in the Providence School Department for 21 years and has been a special educator for 28 years. Ms. Irons holds Masters degrees in Special Education and in Integrated Education. She has served as a Behavior Specialist with the Providence School department for 12 years. Ms. Irons worked with Tracy as her Behavior Specialist when Tracy was between the ages of eight and ten. Ms. Irons saw Tracy daily over the course of approximately one year, and was involved in her educational and behavioral planning. Ms. Irons also met with multiple foster families on Tracy's behalf and helped plan while Tracy was hospitalized. Ms. Irons is truly dedicated to Tracy's best interests.

### **III. Recent Data and Information Establish That Defendants Are Continuing to Fail to Fulfill Their Duties to Plaintiff Children and That DCYF Requires Urgent, Systemic Reform**

59. As alleged in the Amended Complaint, because Rhode Island receives federal funding to operate its child welfare system, it is subject to periodic reviews, known as Child and Family Services Reviews (“CFSRs”), conducted by the Children’s Bureau of the Administration for Children and Families within the United States Department of Health and Human Services. (*See* Am. Compl. ¶ 114.)

60. Rhode Island’s first CFSR was completed in 2004, and in nearly every area reviewed, Rhode Island failed to meet federal standards. (*See id.* ¶ 115.) The federal government approved a Program Improvement Plan (“PIP”) in August 2005, which required Rhode Island to engage in corrective actions to improve its performance. As set forth in the Amended Complaint, subsequent reports and reviews regarding Rhode Island’s implementation of the PIP revealed little progress toward improvement of its child welfare system. (*See id.* ¶¶ 121-22.)

61. Rhode Island’s second CSFR was conducted in April 2010, and the federal government’s report regarding the status of Rhode Island’s child welfare system was issued in September 2010.

62. The 2010 CFSR report found that DCYF still suffers from fundamental, system-wide flaws in many areas, and that Rhode Island failed to achieve substantial conformity with even one of the seven child welfare outcome measures. The CFSR found failures in essential components of DCYF’s child welfare practice, including: protecting children from abuse and neglect; providing permanency and stability in children’s living situations; preserving

continuity of family relationships and connections; and enhancing families' capacities to provide for children's needs.

**A. Plaintiff Children Continue to Be at Risk of and are Being Abused and Neglected in Foster Care**

63. As alleged in the Amended Complaint, in five of the six years from Federal Fiscal Year ("FFY") 2000 through FFY 2005, Rhode Island recorded the single highest rate of child maltreatment in foster care among all states that reported data. (*See* Am. Compl. ¶ 130.)

64. Children in DCYF foster care custody continue to be maltreated in care at a rate that is among the highest in the nation: Rhode Island had the highest rate of substantiated maltreatment of children in foster care in six of the last ten years. Moreover, it was among the fourth worst in the country in nine of those ten years. The 2010 CFSR found the rate of abuse or neglect of children in Rhode Island foster care to be almost *four times* the federal benchmark.

65. This most recent data regarding the frequency at which children are harmed in Defendants' custody is the result of a continuing failure by DCYF to not only properly screen and supervise foster care placements, but also to adequately assess and address the risk of harm to children. Unsurprisingly, the 2010 CFSR rated DCYF's risk assessment and safety management capacity as areas in need of improvement, and found that in nearly half of all cases reviewed, the risk of harm to the child had not been adequately assessed and addressed.

**B. Defendants Continue to Over-Rely on Institutions and Other Congregate Facilities as Placements for Children Where Those Children Stay for Too Long**

66. While 15 percent of children in foster care nationwide are placed in congregate settings, Rhode Island continues to far exceed that norm. According to Defendants' own data, the percentage of Rhode Island foster children placed in group homes, shelters, and other institutions has ranged from 31.4% to 36.4% during 2008 to 2010 – more than double the

national norm. Moreover, of the 208 children DCYF placed in a shelter from July 1, 2009 to June 30, 2010, half of them were small children, ages four years old or younger.

67. Rhode Island systematically over-institutionalizes foster children in DCYF foster care custody because of its on-going failure to recruit, license and retain a sufficient array of foster families. The total number of active licensed foster homes decreased by seven percent between April 2009 and March 2010.

68. As of March 2010, despite the need for foster homes, three hundred foster homes were awaiting DCYF action in order for them to be approved for licensure. This backlog and these delays are one reason for the over-institutionalization of children.

**C. Defendants Fail in Their Duty to Move Children Out of Foster Care and into Safe and Permanent Homes or to Provide Them with Stable Placements**

69. The 2010 CFSR found that DCYF is not in substantial conformity with the national norms related to timely and safely reunifying children with their families and providing them with placement stability when in foster care. Of the cases reviewed during the CFSR process, in only 35 percent of the cases was the child found to have permanency and stability in his or her living situation, far less than the 95 percent compliance required by the federal government. In addition to these case review findings, Rhode Island also did not comply with federal measures pertaining to placement stability and to the timeliness and permanency of reunification.

**1. DCYF Continues to Frequently Move Children from Place to Place**

70. As alleged in the Amended Complaint, the 2004 federal CFSR review concluded that placement stability in Rhode Island was the area of “greatest concern.” (*See Am. Compl.* ¶ 146.) Because of DCYF’s failure to develop a sufficient array of foster care placements, DCYF continues to move children from placement to placement at a high frequency,

causing them emotional and psychological harm. Almost 12 percent of children in DCYF custody in FFY 2009 had experienced *six or more placements* during their current foster care episode. In that same year, 64 percent of children who had been in DCYF's care for two years or more had three or more placements, as did 38 percent of the children in out-of-home care for more than 12 but less than 24 months.

71. This situation remains unstable for the children in Rhode Island's foster care custody. In FFY 2010, 14.1 percent of children who had been in foster care for less than a year experienced three or more placements, up from 11.6 percent in FFY 2009. The 2010 CFSR confirmed that DCYF fails to provide children with placement stability, rating this as one of the numerous areas needing improvement.

**2. Defendants Do Not Provide Plaintiff Children with Required Timely and Appropriate Assessments or Case Plans**

72. The 2004 CFSR found that DCYF failed to involve parents and children (where appropriate) in the case planning process. (*See* Am. Compl. ¶ 157.) DCYF has recently admitted that the involvement of family and children in the planning process continues to be a problem. According to the 2010 Statewide Assessment, which DCYF was required to undertake as the first step in the CFSR process, DCYF failed to make necessary efforts to involve family and children in the planning process in 52 percent of applicable cases reviewed during the state CFSR in 2008. The 2010 CSFR found that DCYF had not made concerted efforts to include family and children in the planning process in 67 percent of the applicable cases.

73. Given DCYF's continuing failure to include families and children in the case planning process, it is not surprising that, according to the 2010 CFSR, DCYF failed to adequately assess or address the service needs of children, parents and foster parents in the case planning process in more than half of applicable cases.

**3. Defendants Reunify Children with Their Parents When Not Appropriate or Without Proper Supports, Leading to Unsafe Reunifications and a High Rate of Children's Reentry into Foster Care**

74. Reasonable professional standards require that child welfare agencies pursue reunification for the children they place in foster care when such return home is safe. However, DCYF has historically failed to properly assess whether a child's return home would be appropriate or provide the resources necessary for it to be successful. This increases the risk of further child maltreatment at home, and leads to children's reentry into foster care. DCYF has continued its systemic pattern of poor decision-making and failure to provide resources when reunifying a child with his or her parents. As a result, DCYF continues to return children home, where they are again maltreated; then remove them from home into foster care again. Rhode Island foster care acts as a revolving door for too many foster children, causing them further harm.

75. According to the 2010 Statewide Assessment, 24.5 percent of the children who exited DCYF foster care during FFY 2007 reentered foster care less than one year later; this figure was 21.9 percent for FFY 2008. These percentages were significantly worse than the national median at the time of 15%.

76. An alternative measure for reentry is the percent of children entering foster care who were re-entering within 12 months of a prior foster care episode. On this measure, Rhode Island was again vastly worse than the standard. Rhode Island has a rate of 16 percent in FFY 2010, which was almost twice the 8.6 percent rate of performance deemed acceptable by the federal government. Unsurprisingly, in the 2010 CFSR, the federal government found that the rate at which children in Rhode Island are discharged from foster care to be reunified with their families but then return to foster care is an area in need of improvement.

**D. Defendants Fail to Timely Find Appropriate Permanent Homes for Children who Cannot Safely Return Home, Leaving Them Instead to Languish in Foster Care**

77. As stated in the Amended Complaint, federal law requires child welfare agencies to file a petition to terminate the rights of a child's parents if the child has been in state foster care custody for 15 of the most recent 22 months, unless certain exceptions are documented. (Am. Compl. ¶ 171.) However, according to DCYF's own 2008 data, DCYF filed petitions to terminate parental rights in only 20 percent of the cases of the 515 children who were in care for at least 15 of the most recent 22 months.

78. The 2010 CFSR concluded that, overall, Rhode Island's practice by which it moves children in foster care to a permanent home was an area needing improvement. The CFSR found that DCYF met its requirement to file a petition to free children for adoption in only 43 percent of the applicable cases and that in more than half of the applicable cases DCYF failed to establish an appropriate permanency goal in a timely manner. Moreover, DCYF made concerted efforts to achieve a finalized adoption in a timely manner in only 30 percent of the applicable cases reviewed. Overall, the CFSR deemed Rhode Island's planning to move children to permanency appropriate in only 45 percent of the reviewed cases, well below the 90 percent the CFSR requires.

**E. Defendants Fail to Provide Plaintiff Children with Needed Mental Health and Dental Care**

79. Children in foster care suffer from the trauma of the abuse and/or neglect they were subjected to by their parents (or while in DCYF custody) and from the effects of having been removed and separated from their families. Accordingly, appropriate mental health services are critical for these children. However, as alleged in the Amended Complaint, the 2004

CFSR concluded that “in 39 percent of the applicable cases . . . DCYF had not made concerted efforts to address the mental health needs of children.” (*See* Am. Compl. ¶ 179.)

80. DCYF continues to fail to provide children with adequate mental health services. In its 2010 Statewide Assessment, DCYF reported that in 36 percent of applicable cases it failed to “ensure the mental health needs of children are identified and services are in place to meet those needs.” The 2010 CFSR also found that DCYF’s provision of mental and behavioral health services needed improvement.

81. In addition, Rhode Island continues to fail to provide children in foster care with appropriate dental care. According to the 2010 Statewide Assessment, “[a]ccess to dental care continues to be a struggle for children in placement. . . . There is a lack of dentist[s] who will agree to take the State[’]s medical coverage.” This problem is the result of Defendants’ ongoing failure to develop adequate resources for dental services for children in their custody.

**F. Plaintiff Children’s Risk of Harm is a Direct and Avoidable Result of Defendants’ Mismanagement of Rhode Island’s Child Welfare System**

**1. Defendants’ Caseworkers Carry Excessive Caseloads, Making it Impossible for The Caseworkers to Ensure That Children are Safe and Get Their Needs Met**

82. At the time of the filing of the Amended Complaint, DCYF was suffering from staff shortages and high turnover rates. (*See* Am. Compl. ¶ 191.) Since that time, according to the 2010 Statewide Assessment, “[i]n 2008 the Department and the State of Rhode Island began to experience severe budget cuts. This resulted in the net loss of Child Support Technicians and Social Caseworkers as vacancies went unfilled . . . .” In addition, as of the March 2010, there were “a total of 19 vacancies in the Division of Family Services [for DCYF]. These vacancy numbers do not include staff lost to overall employee reduction.”

83. Recent data indicates that a typical Family Service unit worker's caseload averages approximately 19 to 27 children, but that caseloads can be much higher than that, with some caseworkers having responsibility for more than thirty children at one time. According to DCYF in its Statewide Assessment, high caseloads directly and negatively impact its ability to serve children, as "[h]igher caseloads make it difficult to meet all of the time frames for permanency planning, service planning, visitation, face to face visits, family visits and court."

84. As alleged in the Amended Complaint, reasonable professional standards prescribe caseloads of between 12 and 15 children per caseworker for foster care services and between 10 and 12 children per worker for adoption services. (*See* Am. Compl. ¶ 188.) DCYF caseworkers continue to be overburdened by caseloads that exceed reasonable standards. Consequently, DCYF caseworkers are handicapped in their ability to monitor a child's safety and well-being and to move that child to permanency.

## **2. Caseworkers Fail to Make Required Child Visits**

85. If caseworkers are not visiting all children as often as standards require or if the visits are not of sufficient quality, it is impossible for DCYF to ensure that children are safe and receiving proper care. According to the 2010 CFSR, caseworker visits still are not of sufficient quality and frequency in 22 percent of cases reviewed. In its Statewide Assessment, DCYF reported that reductions in staff had resulted in higher caseloads, with the result that caseworkers were failing to meet their obligation to make timely face-to-face contact with the foster children on their caseloads.

**G. Defendants' Fiscal Mismanagement of the Child Welfare System Harms Children**

**1. Defendants Waste Money on Harmful, Costly Congregate Care Placements**

86. Not only is DCYF's overuse of congregate care facilities harmful to children, these placements are far more expensive than standard or even therapeutic or specialized foster care placements. For example, according to the 2010 Statewide Assessment, DCYF pays between approximately \$272 to \$452 a day for each residential bed occupied by a foster child. By contrast, DCYF pays less than \$16 per day for a child in a regular foster home. In Fiscal Year (FY) 2010, DCYF spent a total of \$68.2 million on congregate and institutional placements for foster children.

**2. Defendants Do Not Provide Adequate Foster Care Maintenance Payments to Foster Parents**

87. DCYF reports that its standard daily board rates paid to foster parents are at the same levels as they were in mid-2007, when this action was filed. DCYF pays foster parents \$14.39 for children up to three years of age, \$13.64 for children between four and 11 years old, and \$15.79 for children ages 12 and older.

88. As alleged in the Amended Complaint, these rates are less than half what the United States Department of Agriculture estimated the average middle-income, two-parent family in the urban Northeast spent to care for children in 2006. (*See* Am. Compl. ¶ 217.) While Rhode Island's board rates have remained static since 2006, the average costs of caring for a child have only increased. Indeed, the USDA estimates that in 2009 such families spent \$36.52 a day for two-year olds, \$38.47 a day for nine-year olds, and \$43.84 a day for 16-year olds. The net effect of these USDA increases is that Rhode Island's daily rates are now just under one-third of the USDA average rates, which themselves are likely underestimations, and less than

half the rates calculated in a national report regarding foster care board rates, “Hitting the M.A.R.C.,” even including Rhode Island’s clothing allowance.

89. Indeed, the foster care maintenance payments are so low that it is affecting foster home recruitment. DCYF itself reports that an increase in interest in fostering children is offset when those potential foster families discover the low foster care stipend. These low rates are continuing to harm children because foster parents are not able to provide proper care and potential foster parents are driven away by the lack of financial support. This places a greater burden on the few foster care families in the state and exacerbates DYCF’s needlessly frequent institutionalization of foster care children.

**3. Defendants are Planning to Significantly and Swiftly Reduce the Number of Children in Foster Care**

90. Discharging any child out of foster care – whether to return him home to parents who had previously been abusive or neglectful, to send him to a new adoptive family, or to send him to a relative ready and able to care for the child – must be done carefully and planfully in order to ensure the child’s needs are being met.

91. DCYF announced in June 2011 that it plans to drastically reduce the number of children in foster care by January 2012. According to the Request for Proposal for the Rhode Island Partnership for Family and Community System of Care—Phase II—Networks of Care—DCYF (“the RFP”), DCYF intends to reduce the foster care population to approximately 1,500 children by January 2012, down from approximately 2,100 children one year earlier. The RFP does not indicate how DCYF plans to safely reduce this population in such a short period of time, nor does it provide for an increase in the supervision to children moved out of foster care ,to ensure the children’s safety and well-being.

92. According to the RFP, the proposed population of approximately 1,500 children in foster care and approximately 2,000 receiving services in their homes by January 2012 will be serviced with a budget of \$64 million. Upon information and belief, this is a significant cut to the budget that currently serves the population of children in foster care and in their own homes.

93. As part of this RFP, DCYF is announcing a drastic and quick reduction in the population of children living in foster care institutions and congregate facilities. The RFP does not indicate how DCYF will safely achieve this reduction, nor does it state how this population will be safely reduced to 468 children by January 2012. The RFP does not indicate where the children who are removed from institutions will be placed or how they will be kept safe and stable.

94. DCYF's RFP demonstrates that agency decision-making is driven by fiscal concerns over concerns for the children for whom it has legal custody.

#### **IV. Since the Filing of the Amended Complaint, Defendants Have Severely Limited Services to Older Youth**

95. Evidence demonstrates that youth who age out of the foster care system without a permanent family are often unprepared for the challenges of adult life. Such youth suffer from high rates of homelessness, incarceration, and poverty. As a result, states throughout the country have extended the maximum age of foster care from 18 to 21.

96. Rhode Island, however, has done the complete opposite. As of July 1, 2007, Rhode Island terminated Family Court jurisdiction for all youth at age 18, and DCYF severely limited services for youth ages 18 to 21. In 2007, hundreds of youth were cut off from DCYF foster care services and left to fend for themselves.

97. Rhode Island cited budget shortfalls as the reason for this cut in critical services for young adults. Yet, a recent cost-benefit analysis determined that if states extend foster care beyond 18, the potential benefits in terms of increased educational attainment, reduced reliance on public assistance and increased earnings will more than offset the costs to states. Rhode Island's efforts to limit services to older youth runs counter to the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 which extends federal funding to states that provide foster care services to youths ages 18 to 21, in recognition that doing so "improve[es] the outcomes for children in foster care."

98. This cut in services to older youth is particularly disturbing given DCYF's continued failure to find permanency for children, many of whom ultimately leave foster care at age 18. DCYF admits that "[f]inding adoptive resources for older youth continues to be a challenge for the child welfare system" and "the practice of establishing the permanent connection with an adult has yet to be fully institutionalized throughout the Department."

99. Between FFY 2006 and FFY 2010, 658 Rhode Island youth aged out of foster care with no permanent placement. This was a 61 percent increase from the previous five year period. Not only has DCYF severely limited services to Rhode Island youth ages 18 to 21 as a general matter, but it has also failed to find permanent placements for these youth before they age out of the system.

## VIII. Prayer for Relief

100. WHEREFORE, the Plaintiff Children respectfully request that this

Honorable Court:

- a. Order all relief previously requested in Plaintiff Children's Amended Complaint (¶239) ;
- b. Order that Supplemental Plaintiff Children are suitable class representatives pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure;
- c. Order that the Next Friends for the Supplemental Plaintiff Children are appropriate pursuant to Rule 17(c)(2) and the law of this case;
- d. Order appropriate remedial relief to ensure Defendants' future compliance with their legal obligations to Plaintiff Children and Supplemental Plaintiff Children, including, but not limited to, the following:
  - i. **Reduce the Rate of Maltreatment in Care:** DCYF shall develop a plan to reduce the rate of child maltreatment in care not to exceed a level set by qualified professionals. DCYF shall implement the plan and meet and sustain the levels set.
  - ii. **Reduce the Percentage of Children in Institutional and Congregate Care Settings:** DCYF shall develop a plan to safely reduce the percentage of children in institutional and congregate care settings while safely ensuring children's placement in foster homes or their return home. The percentage of children in institutional and congregate care settings shall not exceed 15% or the current national average. DCYF shall implement the plan and meet and sustain the required percentage.
  - iii. **Reduce the Rate of Children Re-entering Foster Care:** DCYF shall develop a plan to reduce the re-entry rate not to exceed a level set by an expert in the field. DCYF shall implement the plan and meet and sustain the levels set.
  - iv. **Caseloads.** DCYF shall establish and implement limits on the caseloads of all case-carrying workers for children in DCYF placements and private agency placements operating under contract with DCYF. These caseload limits shall be based on the standards for accreditation of public child welfare agencies set by the Council on Accreditation ("COA") and the professional standards set by the Child Welfare League of America ("CWLA").

- v. **Monitoring the Safety of Children in Placement.** DCYF workers shall visit all children in placement and their foster parents with the frequency set forth in the standards set by the COA and the CWLA in order to ensure that the children are safe.
- vi. **Availability of Necessary Resources for the Placement of Children.** DCYF shall commission an assessment conducted by qualified professionals to determine: (1) the need for additional placements to provide the necessary range of placement options for children in the custody of DCYF; (2) the time period during which these placements will be developed; and (3) the steps necessary to develop these placements. DCYF shall then develop these placements.
- vii. **Child-Parent and Sibling Visitation.** DCYF shall implement policies ensuring visitation between children in foster care and their parent and siblings in foster care, at a frequency set by qualified professionals.
- viii. **Foster Care Maintenance Rates.** DCYF shall commission an assessment conducted by qualified professionals to determine and set foster care reimbursement rates that fully meet the requirements set forth in 42 U.S.C section 675(4)(A); DCYF shall then implement the rates as set in the assessment.
- ix. **Quality Assurance/Data.** DCYF shall ensure that it has a quality assurance system consistent with the standards of the COA and CWLA that is capable of measuring the quality of services provided to children in DCYF custody.
- x. **Monitoring/Enforcement.** The provisions of the Court order entered pursuant to Fed. R. Civ. P. 65(d) shall be monitored by a neutral expert monitor appointed by the Court. In addition, the Court shall have continuing jurisdiction to oversee compliance with that order.
- e. Grant such other and further equitable relief as the Court deems just, necessary and proper to protect Plaintiff Children from further harm by Defendants.

DATED: July 1, 2011

Respectfully Submitted:

/s/ Susan Lambiase

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