UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

CASSIE M., by Next Friend Kymberli Irons; and DANNY B., by Next Friend Gregory C. Elliott; 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 JANICE E. DEFRANCES, in her official capacity as Director of the Department of Children, Youth & Families,	**Class Action** **Civil Action No. 1:07-cv-00241-ML-LDA**
Defendants.	

PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION FOR JUDGMENT ON THE RECORD PURSUANT TO RULE 52

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I. INTRODUCTION

For over seven years in this putative class action lawsuit, more than 1,800 abused and neglected children in the foster care custody of the Rhode Island Department of Children, Youth and Families ("DCYF") have sought relief from ongoing deprivations of their federal constitutional and statutory rights. The Court has declined to rule on two motions for class certification,[1] and 13 named plaintiff children in this action have either turned 18 and "aged out" or otherwise left the DCYF foster care system. The two remaining children ("Plaintiffs" or the "Named Plaintiffs") currently before the Court bring this action on behalf of themselves and a putative class of all children who are or will be in DCYF custody due to a report or suspicion of abuse or neglect, and seek solely injunctive relief.

The Court issued a protective order (Dkt. No. 230) (the "Protective Order") that "effectively precluded" Plaintiffs "from seeking policy or practice discovery" (Dkt. No. 296 at 3) but nonetheless ordered a trial, held between November 2013 and January 2014, to weigh "the proof that Plaintiffs present as to whether or not the constitutional rights of the named Plaintiffs have been violated by the Defendants and whether or not the Plaintiffs' rights pursuant to Federal statute have been violated." Hr'g Tr. 30:17-23, Aug. 14, 2013, Dkt. No. 364. Despite the lack of discovery, Plaintiffs' proof at trial showed clear violations of their federal constitutional and statutory rights. After Plaintiffs rested, Defendants moved for judgment on the record pursuant to Fed. R. Civ. P. 52 (Dkt. No. 497) (the "Rule 52 Motion").

In violation of their constitutional right to substantive due process, and despite the serial prejudice imposed by the staging of this case and the limitations on discovery, the proof at trial showed that Plaintiffs have suffered and continue to suffer physical and psychological harm, and

[1] *See* Pls.' Mot. for Class Certification & App't of Class Counsel, Dkt. No. 2; Pls.' Second Mot. for Class Certification & App't of Class Counsel & Rule 23(c)(1)(A) Req. for Timely Determination, Dkt. No. 287.

an unreasonable risk of harm, as a result of specific structural and systemic deficiencies within DCYF; that Defendants violated their constitutional right to family association; and that these children have been subject to violations of their federal statutory rights to adequate foster care maintenance payments and case plans that contain mandated components under the Adoption Assistance and Child Welfare Act of 1980 ("AACWA").[2]

Defendants' Memorandum of Law in Support of their Rule 52 Motion (Dkt. No. 497-1) ("Defs.' Mem.") repeatedly misstates both the applicable law and the evidence presented at trial. On Plaintiffs' Fourteenth Amendment substantive due process claim, Defendants make the erroneous assumption that Plaintiffs have brought an action for damages and for individualized injunctive relief, when neither is the case. In wrongly re-framing the actual claims asserted, Defendants borrow the inapplicable burdens of proving "deliberate indifference," "conscience shocking" behavior and proof of causation sufficient to support damages or individualized injunctive relief. These burdens do not apply to this case.

In sharp contrast, the remaining Named Plaintiffs Danny B. and Cassie M. assert that specific agency-wide failures have harmed them and/or caused them to suffer an unreasonable risk of harm. The overwhelming weight of authority recognizes the special relationship that exists in the foster care context, and the resulting right of foster children to substantive due process protection that ensures their freedom from unreasonable risk of psychological, emotional

[2] The Protective Order denied Plaintiffs complete discovery concerning Defendants' policies and customs that is highly relevant to establishing Defendants' "official capacity" liability, to proving that Plaintiffs are exposed to an unreasonable risk of harm and to the causal link between Defendants' actions and inactions and the risk of harm to Plaintiffs. *See* Pls.' Mem. of Law in Supp. of Appeal of Mag.'s Mem. & Order (Dkt. No. 230), Dkt. No. 240-1, at 2-3. As a result of the Protective Order, Plaintiffs were obliged to withdraw motions to compel certain policy and custom discovery and were barred from seeking additional discovery and depositions relevant to all claims. *See* Pls.' Disc. Status Report, Dkt. No. 268. Plaintiffs have addressed the impact of the staging of this case and the resulting prejudice at length and do not fully restate those arguments here. *See* Pls.' Mem. of Law in Supp. of Their Mot. for a Decision on Class Certification Prior to Any Trial on the Merits, Dkt. No. 348-1; Pls.' Reply in Further Supp. of Mots. for a Decision on Class Certification Prior to Any Trial on the Merits (Dkt. No. 348) & for Add'l Disc. & Permission to Proceed with Requested Psychological Exams. (Dkt. No. 345), Dkt. No. 359.

and physical harm while in state custody. Moreover, the "professional judgment" standard set forth by the Supreme Court in *Youngberg v. Romeo* applies to the claims of these Named Plaintiffs, who seek solely class-wide injunctive relief and are involuntarily in the state's custody as innocent dependents, and Plaintiffs need not make an additional and separate showing of conscience-shocking conduct. Indeed, no First Circuit case law applies a combination of *Youngberg*'s professional judgment standard *and* a separate shocks-the-conscience standard, and no First Circuit case law requires specific proof of conscience-shocking conduct in the context of a lawsuit brought by foster children seeking solely class-wide injunctive relief. To impose these burdens in this case would contravene the Supreme Court's recognition in *Youngberg* that involuntarily committed state wards are entitled to "more considerate treatment" than prisoners, and its recognition in *County of Sacramento v. Lewis* that their "involuntary commitment" and "total dependence" on their custodians "obliges the government to take thought and make reasonable provision" for their welfare.

Despite Defendants' incorrect assertions of the law, establishing unconstitutional harm and risk of harm under Plaintiffs' "official capacity" claims against Defendants requires proof of widespread customs or policies (notwithstanding the Protective Order) that "played a part" in the alleged violation. Additionally, the proof of past harms to the Plaintiffs is only relevant to show the propensity of the risk of harm, as these Plaintiffs do not seek damages or individualized injunctive relief. Moreover, in assessing a constitutional violation, the "professional judgment" standard applicable to this case includes standards established by federal statute, Rhode Island's own laws and its administrative code, and the standards set forth by the Child Welfare League of America ("CWLA") and the national Council on Accreditation ("COA"). Notably, the COA standards are recognized in Rhode Island state law as establishing best practices for child welfare

agencies serving abused and neglected children.

Plaintiffs clearly met their burden of proof at trial, even if this Court erroneously applies a "shocks the conscience" standard. Plaintiffs presented largely undisputed evidence of gross failures (and resulting risks of harm), including a DCYF system with dangerously high rates of maltreatment of children in foster care; excessive workloads of caseworkers assigned to protect these children; inadequate safety oversight practices in visitation, investigations of child abuse and in-service training; and an extreme shortage of homes and other appropriate placements. Plaintiffs' evidence showed how each of these risks was animated in the cases of the Named Plaintiffs, showing the imminence and propensity of the risk of harm. Far from "mere negligence," Defendants' own aggregate data in these areas shows extreme departures from professional standards for the purposes of *Youngberg*. Defendants are left arguing hypothetical excuses for why the evidence of these failures and risks of harm is not shocking, which at best, in order to prove or rebut, would require the very discovery denied to Plaintiffs under the Protective Order. Plaintiffs amply sustained their burden on their substantive due process claim.[3]

Turning to Plaintiffs' constitutional familial association claim, Plaintiffs established at trial that DCYF failed to place Cassie and Danny with their siblings and failed to ensure consistent, meaningful contact between them and their respective siblings while living in separate homes, and the ongoing risk of harm from this deprivation.

Finally, Defendants seek to revisit the law of this case, which recognized an enforceable

[3] Defendants' reference to this Court's ruling concerning certain *remedies* under the *Younger* abstention doctrine (*Sam M. ex rel. Elliott v. Chafee*, 800 F. Supp. 2d 363 (D.R.I. 2011)), has no bearing on their Rule 52 Motion. *See* Defs.' Mem. at 2 n.2. Under the Court's direction, if Plaintiffs are successful, after the trial they will then be allowed to have their class certification motion heard by the Court. Similarly, Defendants' reference to "full-scale federal oversight of DCYF decision-making" (found nowhere in Plaintiffs' pleadings), is inaccurate and irrelevant to their motion. *See* Defs.' Mem. at 11 n.6. Defendants' reference to *Horne v. Flores*, 557 U.S. 433 (2009), is also irrelevant. *Horne v. Flores* concerned the circumstances of continued enforcement of a specific consent decree, where here no consent decree is before the court. Defendants' bias against any "structural reform" litigation is unavailing. *See id.*

private right of action under AACWA to adequate foster care maintenance payments and to case plans with statutorily required elements. Defendants' challenge to the Plaintiffs' "standing" to assert these claims warrants little attention, as the requirements for Article III standing are easily met. Defendants also wrongly assert that a "substantial compliance" standard applies to the specific statutory claims in this case. Full compliance is the applicable standard, although the evidence satisfies finding a breach of even Defendants' "substantial compliance" standard. The evidence shows that Defendants lack *any* required methodology for calculating and assessing the adequacy of foster care maintenance payments, and that the base rate payments in Rhode Island fail by a wide margin to cover the statutorily enumerated costs. As to required case plans, the specific case plans in evidence for Danny and Cassie show numerous clear violations of required elements. Plaintiffs proved the violation of these Plaintiffs' rights under AACWA and the resulting and ongoing risks of harm.

For all of these reasons, fully set forth below, Defendants' Rule 52 Motion should be denied in its entirety.

II. DEFENDANTS VIOLATED PLAINTIFFS' FEDERAL CONSTITUTIONAL AND STATUTORY RIGHTS

Plaintiffs and the putative class bring this action under 42 U.S.C. § 1983 ("Section 1983") seeking only class-wide prospective injunctive relief to remedy violations of their Fourteenth Amendment substantive due process rights; rights under the First, Ninth and Fourteenth Amendments to family integrity; and federal statutory rights to adequate case plans and foster care maintenance payments under AACWA. "To make out a viable section 1983 claim, a plaintiff must show both that the conduct complained of transpired under color of state law and that a deprivation of federally secured rights ensued." *Santiago v. Puerto Rico*, 655 F.3d 61, 68 (1st Cir. 2011). In addition, where, as here, plaintiffs seek to impose Section 1983

liability on state officials in their official capacity, "'the entity's "policy or custom" must have played a part in the violation of federal law'" because "the real party in interest in an official-capacity suit is the governmental entity and not the named official." *Hafer v. Melo*, 502 U.S. 21, 25 (1991) (quoting *Kentucky v. Graham*, 473 U.S. 159, 166 (1985)).[4] Where future injury is premised on an authorized policy, "not just a random act by a minority of officers," the injurious pattern and practice demonstrates a "substantial likelihood that the alleged injury will occur in the future." *A v. Nutter*, 737 F. Supp. 2d 341, 352-53 (E.D. Pa. 2010) (internal quotation marks omitted).

Importantly, as foster children in the state's custody, Plaintiffs are entitled to be free from an unreasonable risk of harm, and they "do not need to wait to suffer an actual harm in order to obtain relief." *M.D. ex rel. Stukenberg v. Perry*, 294 F.R.D. 7, 34 (S.D. Tex. 2013) (citing *Hoptowit v. Spellman*, 753 F.2d 779, 784 (9th Cir. 1985) ("Prisoners have the right not to be subjected to the unreasonable threat of injury or death by fire and need not wait until actual casualties occur in order to obtain relief from such conditions.")). Therefore, Plaintiffs were not required to demonstrate past harms in order to meet their burden of proof at trial. Plaintiffs were simply required to prove, and did prove at trial, that Defendants exposed them and the putative class of children in DCYF's custody to an unreasonable risk of harm.[5]

In addition, rather than damages or individualized injunctive relief, Plaintiffs seek a determination that their federal constitutional and statutory rights have been violated, so that they can proceed to class certification and obtain the benefits of class-wide injunctive relief. Thus at

[4] *See also Bisbal-Ramos v. City of Mayagüez*, 467 F.3d 16, 24 (1st Cir. 2006) (municipality's custom or practice must be the cause and moving force behind the deprivation of constitutional rights); *Hopkins v. Rhode Island*, 491 F. Supp. 2d 266, 277 (D.R.I. 2007) (a necessary element in a Section 1983 lawsuit against DCYF officials sued in their official capacities is a policy that "played a part" in the alleged violations of the Constitution or federal law).

[5] *See DG ex rel. Stricklin v. Devaughn*, 594 F.3d 1188, 1196-98 (10th Cir. 2010) (holding that all Oklahoma foster children were exposed to the same unreasonable risk of harm due to Defendants' unlawful practices).

trial Plaintiffs were not required to prove entitlement to individualized injunctive relief or damages. Requiring such individualized proof would be inimical to Plaintiffs' use of the class action device in bringing this lawsuit, as the need for individualized inquiries to determine liability defeats commonality. *See Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2552-53, 2557 (2011); *see also M.D.*, 294 F.R.D. at 28 ("[I]f . . . after the common questions are answered one way or another individualized inquiries to determine liability would be needed – then commonality has not been established.").[6] As detailed below, Plaintiffs have met their burden on their substantive due process and statutory claims at trial.

A. Defendants Are Violating Plaintiffs' Substantive Due Process Rights by Exposing Them to Harm and an Unreasonable Risk of Harm

i. Plaintiffs and the Putative Class Have an Enforceable Substantive Due Process Right To Be Protected from Harm

"[T]he protections of the Due Process Clause" are triggered when the state and an individual are found to be in a "special relationship," "through incarceration, institutionalization, or other similar restraint of personal liberty." *DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 196-200 (1989). In this context, the Supreme Court has found that individuals enjoy "constitutionally protected interests in conditions of reasonable care and safety." *Youngberg v. Romeo*, 457 U.S. 307, 324 (1982). The First Circuit has held similarly. *See Vélez-Díaz v. Vega-Irizarry*, 421 F.3d 71, 79-80 (1st Cir. 2005) (recognizing that "a constitutional duty to protect may arise" in circumstances in which the government has created a "special relationship" by depriving that person of liberty). Although the First Circuit has not squarely addressed the constitutional duty owed to foster children under the Due Process Clause, *see J.R. ex rel. Raymond v. Gloria*, 593 F.3d 73, 80 (1st Cir. 2010) (assuming *arguendo* that such

[6] Defendants incorrectly seek a heightened causation burden by citing cases involving defendants sued in their *individual* capacities for damages. Defs.' Mem. at 19 (citing *Drumgold v. Callahan*, 707 F.3d 28 (1st Cir. 2013), and *Rodriguez-Cirilo v. Garcia*, 115 F.3d 50 (1st Cir. 1997)).

a special relationship exists between foster children and the state), numerous federal courts, including the District of Rhode Island, have held that a "special relationship" exists in the foster care context.[7] Defendants do not dispute the special relationship between them and Plaintiffs.

Plaintiffs have a substantive due process right to be protected from harm while in state custody and the scope of that right includes the claims asserted in this action. Courts throughout the country recognize that foster children possess a right to substantive due process protection that is adequate in scope to ensure their freedom from an unreasonable risk of psychological, emotional and physical harm while in state custody. *See, e.g.*, *Tamas v. Dep't of Soc. & Health Servs.*, 630 F.3d 833, 842 (9th Cir. 2010) (recognizing "a foster child's liberty interest in social worker supervision and protection from harm" and "reasonable safety and minimally adequate care"); *Norfleet ex rel. Norfleet v. Ark. Dep't of Human Servs.*, 989 F.2d 289, 293 (8th Cir. 1993) ("adequate medical care, protection and supervision"); *Yvonne L. ex rel. Lewis v. N.M. Dep't of Human Servs.*, 959 F.2d 883, 892-93 (10th Cir. 1992) ("reasonable safety while in foster care"); *K.H. ex rel. Murphy v. Morgan*, 914 F.2d 846, 851 (7th Cir. 1990) (right to have the state "take steps to prevent the child from deteriorating physically or psychologically"); *Meador v. Cabinet for Human Res.*, 902 F.2d 474, 476 (6th Cir. 1990) ("right to be free from the infliction of unnecessary harm to children in state-regulated foster homes"); *Connor B. ex rel. Vigurs v. Patrick*, 771 F. Supp. 2d 142, 161 (D. Mass. 2011) ("protection from unnecessary harm while in state custody; . . . the right to a living environment that protects foster children's physical, mental and emotional safety and well being; . . . the right to services such as safe and secure foster care

[7] *See, e.g.*, *Henry A. v. Willden*, 678 F.3d 991, 1000 (9th Cir. 2012); *Doe ex rel. Johnson v. S.C. Dep't of Soc. Servs.*, 597 F.3d 163, 172-73 (4th Cir. 2010); *Nicini v. Morra*, 212 F.3d 798, 808 (3d Cir. 2000) (en banc); *Norfleet ex rel. Norfleet v. Ark. Dep't of Human Servs.*, 989 F.2d 289, 291-92 (8th Cir. 1993); *Yvonne L. ex rel. Lewis v. N.M. Dep't of Human Servs.*, 959 F.2d 883, 892-94 (10th Cir. 1992); *Taylor ex rel. Walker v. Ledbetter*, 818 F.2d 791, 795 (11th Cir. 1987) (en banc); *Connor B. ex rel. Vigurs v. Patrick*, 771 F. Supp. 2d 142, 160 (D. Mass. 2011); *J.R. ex rel. Raymond v. Gloria*, 599 F. Supp. 2d 182, 194-95 (D.R.I. 2009), *aff'd on other grounds*, 593 F.3d 73 (1st Cir. 2010); *Eric L. ex rel. Schierberl v. Bird*, 848 F. Supp. 303, 307 (D.N.H. 1994).

placements, appropriate monitoring and supervision, placement in a permanent family, and adequate medical, dental, psychiatric, psychological, and educational services; [and] the right to treatment and care consistent with the purpose of the assumption of custody by [the state]" (internal quotation marks omitted)).[8]

Accordingly, Defendants' assertion that "Plaintiffs have failed to identify the exact contours of the underlying right said to have been violated," Defs.' Mem. at 18, ignores this entire well-established body of law and should be rejected.

ii. Constitutional Injury Can Be Demonstrated Through Risk of Harm

As foster children, Plaintiffs have a right to be free from not just actual harm, but also from an unreasonable risk of harm while in the state's care. *See DG ex rel. Stricklin v. Devaughn*, 594 F.3d 1188, 1196-98 (10th Cir. 2010) (constitutional injury to children in foster care could include not just actual abuse and neglect, but the impermissible risk of harm or abuse and neglect due to alleged systemic failures of child welfare agency); *M.D.*, 294 F.R.D. at 33; *Connor B. ex rel. Vigurs v. Patrick*, 272 F.R.D. 288, 295 (D. Mass. 2011); *B.H. v. Johnson*, 715 F. Supp. 1387, 1395 (N.D. Ill. 1989); *Braam ex rel. Braam v. Washington*, 150 Wash.2d 689, 699 (Wash. 2003) (en banc). This includes freedom from "an unreasonable risk of harm that would compromise their personal security or deprive them of reasonably safe living conditions," *M.D.*, 294 F.R.D. at 33; *see also Taylor ex rel. Walker v. Ledbetter*, 818 F.2d 791, 797 (11th Cir.

[8] *See also Connor B. ex rel. Vigurs v. Patrick*, --- F. Supp. 2d ----, Civil Action No. 10-30073-WGY, 2013 WL 6181454, at *23 (D. Mass. Nov. 22, 2013) (confirming rights protected under *Youngberg*); *Brian A. ex rel. Brooks v. Sundquist*, 149 F. Supp. 2d 941, 953 (M.D. Tenn. 2000) ("right to be placed in the least restrictive, most appropriate, family-like setting while in state custody . . . [and] right to receive care, treatment and services consistent with accepted, reasonable professional judgment"); *Charlie H. v. Whitman*, 83 F. Supp. 2d 476, 507 (D.N.J. 2000) ("the right to treatment, which includes the right to receive care, treatment and services consistent with competent professional judgment"); *Marisol A. ex rel. Forbes v. Giuliani*, 929 F. Supp. 662, 675-77 (S.D.N.Y. 1996) (right to "reasonably safe conditions of confinement," and "unreasonable and unnecessary intrusions into their emotional well-being"); *LaShawn A. v. Dixon*, 762 F. Supp. 959, 996 (D.D.C. 1991) (right to safe living conditions and services to prevent psychological, emotional and physical harm); *B.H. v. Johnson*, 715 F. Supp. 1387, 1396 (N.D. Ill. 1989) (right "to be free from unreasonable and unnecessary intrusions upon their physical and emotional well-being").

1987) (en banc), and Plaintiffs "do not need to wait to suffer an actual harm in order to obtain relief." *M.D.*, 294 F.R.D. at 34.[9] Thus, courts have repeatedly held that foster children's substantive due process rights protect them from unreasonable risk of harm.[10]

iii. The Professional Judgment Standard Applies to Plaintiffs' Substantive Due Process Claims

In evaluating Plaintiffs' substantive due process claims, this Court should apply the "professional judgment" standard, which Supreme Court and First Circuit precedent has clarified is the appropriate standard to apply to the substantive due process claims of dependents living in state custody through no fault of their own, and which a number of federal courts have applied in the foster care context. This standard does not require Plaintiffs to separately demonstrate conscience-shocking conduct. Defendants' claims to the contrary misrepresent applicable law.

The Supreme Court acknowledged the special considerations involved in setting the culpability standard for the constitutional claims of individuals in state custody—and the important distinction between criminal incarceration and involuntary commitment—in *Estelle v. Gamble*, 429 U.S. 97 (1976), and *Youngberg*. In *Estelle*, the Supreme Court held that in the context of criminal incarceration, where an individual "cannot by reason of the deprivation of his liberty, care for himself," the proper standard to apply to a prisoner's Eighth Amendment claim was a "deliberate indifference" standard. 429 U.S. at 104, 106; *see generally id.* at 102-06. In *Youngberg*, the Supreme Court clarified that a different standard applied to the substantive due

[9] As noted above at page 6, actionable risk of harm is also recognized in the context of prisoners alleging violations of their rights under the Eighth Amendment. *Hoptowit*, 753 F.2d at 784; *see also Brown v. Plata*, 131 S. Ct. 1910, 1925 n.3 (2011); *Helling v. McKinney*, 509 U.S. 25, 33-34 (1993). Of course, involuntarily committed state wards such as the Plaintiffs in this case are entitled to "more considerate treatment" than prisoners. *See Youngberg*, 457 U.S. at 321-22.

[10] *See M.D.*, 294 F.R.D. at 34 (plaintiff foster children "have a right to be free of the unreasonable risk of harm, and if they suffer that risk now, they have suffered a legal injury"). The Tenth Circuit similarly recognized that "[t]he injury [facing children in foster care] . . . includes exposure to an impermissible risk of harm due to [the state's] alleged agency-wide failure[s]." *DG*, 594 F.3d at 1198. Thus, even if "'only' 1.2% of . . . foster children actually suffered abuse," that percentage "reveals nothing about how many of those children were not properly monitored and yet survived an unconstitutional risk of abuse or neglect unscathed." *Id.*

process claim of an individual who had been involuntarily committed to a state institution, holding that "[p]ersons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish." *Youngberg*, 457 U.S. at 321-22. The Court adopted a professional judgment standard, which "reflects the proper balance between the legitimate interests of the State and the rights of the involuntarily committed to reasonable conditions of safety and freedom from unreasonable restraints," *id.* at 321, and requires "the decision by the professional [to be] such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment," *id.* at 323.

The First Circuit has applied *Youngberg*'s professional judgment standard to an action challenging the treatment of residents in juvenile detention facilities, where the state has "no legitimate interest in punishing such juveniles as retribution for past misdeeds (as may be permissible in the case of convicted criminals)," *Santana v. Collazo*, 793 F.2d 41, 43 (1st Cir. 1986); *see also id.* at 45, to claims by involuntarily committed, mentally retarded individuals, *Doe v. Gaughan*, 808 F.2d 871, 876 (1st Cir. 1986), and to substantive due process claims by a civil detainee, *Battista v. Clarke*, 645 F.3d 449, 453 (1st Cir. 2011) (because plaintiff was civilly committed, the "more plaintiff-friendly" *Youngberg* standard "arguably applies" and "to the extent that the *Youngberg* phrasing governs and is more helpful to [plaintiff], that only reinforces the outcome reached by the district judge" granting plaintiff relief).

In *County of Sacramento v. Lewis*, 523 U.S. 833 (1998), the Supreme Court acknowledged the importance of applying the *Youngberg* professional judgment standard to constitutional claims by individuals who are in the custody of the state through no fault of their

own. In discussing the appropriate culpability standard to apply to a substantive due process claim arising out of a high-speed police chase, the Court expressly distinguished substantive due process claims that arise out of custodial situations, where forethought about a prisoner's welfare "is not only feasible but obligatory under a regime that incapacitates a prisoner to exercise ordinary responsibility for his own welfare," 523 U.S. at 851, from the circumstances of a high-speed chase, where a police officer "must balance on one hand the need to stop a suspect and show that flight from the law is no way to freedom, and, on the other, the high-speed threat to all those within stopping range, be they suspects, their passengers, other drivers, or bystanders," *id.* at 853. Specifically with respect to those *involuntarily* committed, the Court noted that *Youngberg*'s professional judgment standard is appropriate to apply because "[t]he combination of a patient's involuntary commitment and his total dependence on his custodians obliges the government to take thought and make reasonable provisions for the patient's welfare." *Id.* at 852 n.12.

It is clear from the plain language of *Lewis* that the Court did not overturn its earlier holding in *Youngberg* that the professional judgment standard was to apply to claims of involuntarily committed innocents, but rather clarified that the deliberate indifference and professional judgment standards serve as articulations of the broader "shocks the conscience" rule. *See id.* at 849-53. Nor can *Lewis* be properly read to hold that an involuntarily committed individual must show not only a substantial departure from professional judgment under *Youngberg* but also that the conduct shocked the conscience. Indeed, the First Circuit has expressly held that individuals who are in the state's custody through no fault of their own, and therefore fall within *Youngberg*'s confines, do not need to separately demonstrate conscience-shocking conduct in order to prove a substantive due process violation. In *Davis v. Rennie*, the

First Circuit reviewed the substantive due process claim of an involuntarily committed mental patient who was punched in the head during a physical restraint at a state hospital. 264 F.3d 86, 91 (1st Cir. 2001). Relying on the Supreme Court's decision in *Lewis*, the defendants argued that the trial judge should have instructed the jury that it could impose liability only if it found that defendants' conduct shocked the conscience. *Id.* at 97, 99. Recognizing the Supreme Court's statement that "'[p]ersons who have been involuntarily committed are entitled to more considerate treatment and conditions of confinement than criminals whose conditions of confinement are designed to punish,'" the First Circuit rejected this argument, and held that the trial court did not err by declining to give a "shocks the conscience" instruction. *Id.* at 99-100 (quoting *Youngberg*, 457 U.S. at 321-22).[11] This clear mandate from the First Circuit, in a case issued after *Lewis* that expressly considered and rejected the argument that a separate shocks the conscience standard should be applied to an involuntarily committed plaintiff's substantive due process claims, confirmed that *Lewis* did not overrule *Youngberg* or create a "shocks the conscience" standard overlay that an involuntarily committed plaintiff would have to meet, in addition to the professional judgment standard, in order to prove a substantive due process claim.

Later decisions of the First Circuit that characterized *Lewis* as clarifying that the shocks-the-conscience test "governs *all* substantive due process claims based on executive, as opposed to legislative, action," *Martínez v. Cui*, 608 F.3d 54, 64 (1st Cir. 2010); *see also DePoutot v. Raffaelly*, 424 F.3d 112, 118 (1st Cir. 2005) ("[A]n abuse of power practiced by the executive branch of state government sinks to a level cognizable under the Due Process Clause only when it is so extreme and egregious as to shock the contemporary conscience."), did not overrule *Davis* or speak to the separate culpability standards that the *Youngberg* and *Estelle* Courts

[11] The *Davis* Court also rejected defendants' argument that the trial court should have instructed the jury that liability had to be premised on a finding of deliberate indifference. *Davis*, 264 F.3d at 100-01.

promulgated but merely referred to the broad "shocks the conscience" test of which *Youngberg*'s professional judgment standard provides one articulation. Indeed, the *Martínez* and *DePoutot* cases did not even involve plaintiffs who were in state custody. *See Martínez*, 608 F.3d at 56 (non-custodial sexual assault claim against doctor); *DePoutot*, 424 F.3d at 114 (non-custodial claim based on administration of breathalyzer test to motorist). Furthermore, in a decision issued after *Martínez*, the First Circuit affirmed a grant of preliminary injunctive relief to a civil detainee on Eighth Amendment and Fourteenth Amendment claims based both on the Eighth Amendment's deliberate indifference standard and the *Youngberg* professional judgment standard without any reference to the need for the detainee to prove conscience-shocking conduct. *See Battista*, 645 F.3d at 453-56.

It is undisputed that Plaintiffs are involuntarily committed wards of the state who are dependent on DCYF for their safety and basic needs; therefore, the *Youngberg* standard applies.[12] This is particularly true as Plaintiffs here seek injunctive relief rather than damages.[13] Under Supreme Court and First Circuit law, therefore, a separate "shocks the conscience" standard does not apply to this case.[14]

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[12] *See, e.g.*, *Winston ex rel. Winston v. Children & Youth Servs. of Del. Cnty.*, 948 F.2d 1380, 1390 (3d Cir. 1991) ("[W]e can consider children in foster care as analogous to the institutionalized mental patients at issue in *Youngberg v. Romeo*."); *Kenny A. ex rel. Winn v. Perdue*, No. 1:02-cv-1686-MHS, 2004 WL 5503780, at *3 (N.D. Ga. Dec. 13, 2004) ("Foster children who have been taken into state custody due to abuse or neglect are clearly more like the mentally retarded plaintiff in *Youngberg* than the prisoner in *Estelle*."); *LaShawn A.*, 762 F. Supp. at 996 (finding "plaintiffs in this case to be in a much closer position to the plaintiff in *Youngberg* than to an incarcerated prisoner"); *see also Brian A.*, 149 F. Supp. 2d at 953-54 (applying professional judgment standard); *Charlie H.*, 83 F. Supp. 2d at 507 (same).

[13] Some courts have declined to apply the professional judgment standard in the limited circumstances of a damages action, "'due to the chilling effect that an unfavorable judgment may have on municipal policymakers.'" *Kenny A.*, 2004 WL 5503780, at *4 (quoting *LaShawn A.*, 762 F. Supp. at 996 n.29). This logic does not apply to injunctive cases, which are "prospective in nature and serve[] to force appropriate conduct without exacting a financial penalty." *Id. But see Nicini*, 212 F.3d at 811 n.9 (applying deliberate indifference standard in a damages case only after the parties declined the court's invitation to consider the professional judgment standard).

[14] While the First Circuit required a deliberate indifference standard and conscience-shocking conduct in the context of foster care in *J.R.*, 593 F.3d at 79-80, that case is distinguishable because, *inter alia*, the plaintiffs sought damages against individual defendants and, because neither of the parties apparently raised the issue of *Youngberg*'s professional judgment standard, the court never addressed *Youngberg*'s applicability. The *Connor B.* court erroneously applied a combined professional judgment and shocks the conscience standard, *see Connor B.*, 771 F.

Nonetheless, as set forth below, Plaintiffs' evidence demonstrated not only that Defendants' conduct violates the professional judgment standard, but also that their conduct is conscience-shocking and deliberately indifferent in the context of a child welfare system, where children in state custody rely on the state to protect them from harm and where forethought about a child's welfare "is not only feasible but obligatory." *Lewis*, 523 U.S. at 851.[15]

iv. The Evidence at Trial Demonstrated that Defendants Violate the Substantive Due Process Rights of Plaintiffs by Exposing Them to Harm and an Unreasonable Risk of Harm in Foster Care

At trial, Plaintiffs introduced evidence of massive systemic failures in Defendants' administration of the Rhode Island child welfare system that place Plaintiffs and other children in DCYF custody at unreasonable and imminent risk of physical and psychological harm, and that reflect substantial departures from accepted standards of professional judgment. Plaintiffs' evidence also demonstrated that policies or customs of Defendants have played, and continue to play, a part in the risk of harm to which the Plaintiffs and other members of the putative class are exposed. Finally, though not required, Plaintiffs have demonstrated that Defendants' failure to ensure the well-being and safety of children in their custody shocks the conscience.[16]

a. COA and CWLA standards, along with federal law, state law and DCYF policies drive professional standards applicable to this case

Plaintiffs demonstrated at trial that standards published by the COA and the CWLA, as well as federal and state law and Defendants' own policies, govern professional judgment in the

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Supp. 2d at 163, and that ruling is currently on appeal to the First Circuit. *See Connor B. ex rel. Vigurs v. Patrick*, No. 13-2467 (1st Cir. Nov. 27, 2013).

[15] Notably, in *Connor B.*, that district court recently found the accounts of named plaintiffs' experiences in the Massachusetts child welfare system to be "harrowing." *See Connor B.*, 2013 WL 6181454, at *26. However, the court in that certified class action found that the deprivations suffered by named plaintiffs had not been demonstrated on a class-wide basis. *Id.* That ruling is currently on appeal. *See* note 14 *supra*. In contrast, here the Court has declined to consider class certification.

[16] Defendants' *Daubert* challenges (Defs.' Mem. at 21-24) should be summarily rejected, given the Court's finding that "[t]his is a bench trial. I don't need to go through a *Daubert* motion or a motion in limine." Hr'g Tr. 17:23-25, Sept. 24, 2013, Dkt. No. 417 (denying Plaintiffs' request to add deadlines to the pretrial scheduling order for *Daubert* motions and motions in limine). If the Court now allows *Daubert* challenges, Plaintiffs request an opportunity for full briefing on this issue.

areas of maltreatment in care, child protective services investigations of abuse or neglect in care, caseworker caseloads, in-service training, caseworker-child visitation, and placement array and the use of congregate care placements. Plaintiffs' experts Dr. Joseph Ryan[17] and Mr. Thomas Ward both testified at length that COA and CWLA publications establish professional standards in the child welfare field.[18] In addition, Rhode Island law expressly establishes that COA standards "are nationally recognized as best practices for protecting and providing services to abused and neglected children." R.I. Gen. Laws § 42-72-5.3(a). Numerous federal courts have applied COA and CWLA standards as the professional standards against which child welfare agencies should be held. *See, e.g.*, *Connor B. ex rel. Vigurs v. Patrick*, --- F. Supp. 2d ----, Civil Action No. 10-30073-WGY, 2013 WL 6181454, at *26 n.8 (D. Mass. Nov. 22, 2013) (noting that while "neither COA nor CWLA standards impose upon child welfare agencies obligations that have the force of law . . . . this Court elevates them as reflective of the bar to which child welfare agencies are generally expected to measure up").[19] Defendants cannot dispute that the COA and CWLA standards drive the professional judgment standards applicable to this case.

b. Children in DCYF custody are abused and neglected at an alarming rate and exposed to an unreasonable risk of abuse and neglect while in foster care

The evidence at trial showed that children in DCYF foster care custody are subject to maltreatment at an alarming rate, exposing Plaintiffs to an unreasonable risk of harm.

[17] The Court qualified Dr. Ryan as an expert in maltreatment in care, family services caseloads, caseworker-child visitation, and foster care placement array and on the risks of harm to children if professional standards are not met in these areas. Trial Tr. vol. I (Ryan), at 31:15-34:18, 46:5-7; Trial Tr. vol. II (Ryan), at 109:10.

[18] Trial Tr. vol. I (Ryan), at 26:12-22, 101:22-102:18, 134:18-21, 140:4-9; Trial Tr. vol. II (Ryan), at 26:8-12, 29:13-30:2, 30:10-17; Trial Tr. vol. V (Ward), at 21:24-22:12; Trial Tr. vol. VI (Ward), at 22:14-23:14; Trial Tr. vol. VII (Ward), at 51:24-52:18, 95:19-97:6, 97:21-99:4; Trial Tr. vol. VIII (Ward), at 9:3-10:13, 11:3-12:1, 12:17-14:11.

[19] *See also Doe ex rel. G.S. v. Johnson*, 52 F.3d 1448, 1461 (7th Cir. 1995) (holding that CWLA standards were admissible "to aid the jury in determining the proper standard of care to which [defendants] should be held"); *Kenny A.*, 2004 WL 5503780, at *12 (CWLA and COA "standards form a reliable basis for evaluating the performance of a state's child welfare system"); *D.G. ex rel. Strickland v. Yarbrough*, 278 F.R.D. 635, 642 (N.D. Okla. 2011) (considering CWLA and COA standards in decision to certify class of children alleging inadequate monitoring and abuse and neglect in foster care); *LaShawn A.*, 762 F. Supp. at 966 (standards "such as those of the Child Welfare League of America" are "relevant professional standards").

As recognized by the U.S. Department of Health and Human Services ("HHS"), "the child welfare agency's first concern must be to ensure the safety of the child." Trial Ex. 607 at PLTF 30292; *see* Trial Tr. vol. IV (Ward), at 82:8-14 ("[T]he primary purpose of that child welfare agency is to further protect that child."). CWLA and COA standards similarly recognize the prime goal of safety.[20] Further, as Dr. Ryan opined, exposing a child to abuse or neglect compromises two primary goals of foster care: (1) it undermines the agency's ability to support the child's recovery from trauma, and "expos[es] children to additional trauma," and (2) "it[] compromis[es] the child's ability to form strong attachments with adults in their life," which is "critical for development." Trial Tr. vol. I (Ryan), at 65:2-18.

HHS has established a national standard against which it measures the performance of state child welfare agencies in the area of maltreatment in care: 99.68% of children in foster care in a federal fiscal year ("FFY") must *not* be the victims of substantiated or indicated maltreatment by foster parents or facility staff members.[21] In other words, the percent of children who *are* maltreated in foster care must not exceed 0.32%.[22] Dr. Ryan testified that this standard is "the field's one measure . . . . This is . . . what we use as a benchmark." Trial Tr. vol. I (Ryan), at 62:14-22. Over the past decade, Rhode Island has operated in extreme departure from this national standard—the State reported to HHS that the rate of maltreatment of children in DCYF foster care was 1.29% in FFY 2004, 1.55% in FFY 2005, 1.49% in FFY 2006, 1.33% in FFY 2007, 0.72% in FFY 2008, 1.35% in FFY 2009, 0.97% in FFY 2010, and 1.23% in FFY

[20] CWLA standards require that "[f]amily foster care services . . . be based on premises that emphasize the safety and well-being of the children" and that "[c]hildren in family foster care also have the right to safety and protection." Trial Tr. vol. IV (Ward), at 82:15-85:6. COA standards require that "children and youth who receive foster care services . . . remain safe." *Id.* at 88:25-90:7, 91:3- 92:8; Trial Ex. 55 at PLTF 30890.

[21] Maltreatment-in-care rates are measured by dividing the (unique) number of children subject to maltreatment by the total number of children in care. Trial Ex. 590 at PLTF 30059; Trial Tr. vol. I (Ryan), 57:18-58:4.

[22] Mr. Ward testified that, prior to FFY 2006, the national standard for maltreatment in care was approximately 0.56% or 0.57%. Trial Tr. vol. IV (Ward), at 114:9-14.

2011.[23]

Defendants' argument that Rhode Island is not alone in failing to meet the maltreatment-in-care standard, Defs.' Mem. at 17-18, ignores the evidence that Rhode Island has ranked among the six *worst* reporting states in the country on this measure every year from FFY 2004 to 2011 (and third worst in FFY 2010 and 2011).[24] Indeed, Rhode Island's rate of maltreatment in FFY 2011 was over 19% higher than the next highest rate. Trial Ex. 590 at PLTF 30090. Based on his review, Mr. Ward opined that the gap between the national standard and the state's performance is "greatly significant."[25] Trial Tr. vol. IV (Ward), at 104:9-24, 114:23-115:5.

Defendants offer a series of excuses for their poor performance, primarily that Rhode Island's broad definition of child abuse and neglect somehow accounts for its high rate of maltreatment in care. Defs.' Mem. at 18. No evidence in the trial record, however, supports this hypothetical justification. To the contrary, Mr. Ward compared Rhode Island's maltreatment-in-care rate to those of states with similar definitions of abuse and neglect and opined that "there is no direct correlation" between Rhode Island's definition of abuse and neglect and its higher rates of maltreatment. Trial Tr. vol. IV (Ward), at 130:9-131:5. Among those states, Rhode Island reported the *highest* rate of maltreatment in FFY 2011, a rate approximately three times higher than the next highest rate. Trial Ex. 715.

Defendants' other hypothetical excuses for the state's extreme maltreatment rate are that Rhode Island has broad requirements for mandatory reporters and has a lower threshold for substantiating maltreatment than some other states. Defs.' Mem. at 18. Again, Defendants

[23] Trial Exs. 589, 590, 606 at TWW 488; 714; Trial Tr. vol. IV (Ward), at 101:25-102:14, 105:23-108:10, 113:25-114:8.
[24] Trial Exs. 589, 590, 606; Trial Tr. vol. IV (Ward), at 114:15-115:2, 116:8-14. A range of 44 and 51 states and territories reported on this measure each year. Trial Exs. 589, 590, 606, 607.
[25] The Court qualified Mr. Ward as an expert in maltreatment in care related to federal reporting and performance measurements and the specific national standard concerning this issue. Trial Tr. vol. IV (Ward), at 70:20-71:4.

offered no evidence to support their theories and the record shows no correlation of maltreatment rates among states with comparable mandatory reporting laws (Trial Ex. 698), or with a comparable "preponderance" standard for substantiating maltreatment (Trial Ex. 590-A). Trial Tr. vol. V (Ward), at 11:1-6, 18:15-19:7. Rather, Rhode Island's rate of maltreatment exceeded that of nearly every state in each of these categories in FFY 2011. Trial Exs. 716, 717.

Ultimately, all of Defendants' asserted excuses are purely speculative. Notably, Plaintiffs were denied a case file review during discovery to assess if any of the state's reported cases of substantiated maltreatment to HHS were affected by these hypothetical limitations, or if in fact the reported maltreatment rate was actually an *under*-estimate of the maltreatment rate.[26]

In addition to the systemic risk of harm inherent in the state's dangerous maltreatment rate, the evidence shows the propensity of the risk in the cases of the Named Plaintiffs. According to undisputed testimony of Plaintiffs' child welfare expert, Dr. Ruth Chambers,[27] prior to Danny's placement in the L.F. foster home, there were at least 11 investigations involving that home, a number of which were substantiated for lack of supervision and inappropriate discipline. Trial Tr. vol. XIII (Chambers), at 106:19-107:20. DCYF maintained L.F. as a foster home, even though DCYF personnel raised concerns about L.F.'s fitness as a foster mother. *Id.* at 117:15-118:14. Danny's DCYF file also documents allegations that he was physically harmed as a result of bullying while he was living in a residential treatment center (*id.* at 119:24-120:4); there were three occurrences between November 2011 and December 2012,

[26] Defendants' argument that the hypothetical limiting factors "operate together," Defs.' Mem. at 17-19, without any further explanation or evidence, warrants little attention. Similarly, Defendants' assertion that DCYF's lack of a formal "differential response" system theoretically impacted its maltreatment rate, *id.* at 19-20, lacks any evidentiary support (at trial or in discovery) in terms of the actual maltreatment cases reported by DCYF. Dr. Ryan testified on why the issue of differential response is a red herring. Trial Tr. vol. II (Ryan), at 125:2-128:11 (noting that "[i]f [a report of maltreatment is] going to be substantiated, it's going to be substantiated whether it started out in differential response group or it started out on its traditional CPS route").

[27] It appears the Court qualified Dr. Chambers as an expert witness, as the Court expressly stated to counsel that Dr. Chambers was allowed to testify about documents she relied on in preparing her expert report because Dr. Chambers "is an expert." Trial Tr. vol. XIII (Chambers), at 154:12-155:5.

when a DCYF caseworker noted that Danny had been hit by other residents at a residential treatment facility (*id.* at 129:2-133:1) and that Danny was physically abused by two potential adoptive parents (*id.* at 120:22-121:16).[28] Additionally, Plaintiffs' expert Dr. Harry Adamakos was qualified as an expert in clinical and forensic psychology. Trial Tr. vol. X (Adamakos), at 129:3-8. He opined that Danny and Cassie suffered psychological harm during their time in DCYF custody. *See id.* at 129:13-24; Trial Tr. vol. XI (Adamakos), at 75:19-77:13.

c. DCYF overburdens CPS investigators with high caseloads and fails to timely complete investigations of maltreatment in care

Plaintiffs proved at trial that Defendants fail to adequately investigate abuse or neglect in foster care in two ways. *First*, Defendants have a custom of overburdening their child protective service ("CPS") investigators with caseloads that significantly depart from professional standards, thereby placing Danny, Cassie, and all children in DCYF foster care custody at an unreasonable risk of harm.

Professional standards dictate that investigator caseloads must not exceed unmanageable levels. COA standards require that, "[g]enerally, caseloads do not exceed 15 investigations . . . ."[29] Trial Ex. 50 at PLTF 30833. Mr. Ward testified that this standard "sets the top end of what an investigative load should be for a worker."[30] Trial Tr. vol. V (Ward), 109:2-9. CWLA

[28] Maltreatment also includes neglect and inadequate supervision. Danny's DCYF file reveals many incidents where despite a requirement of "close supervision" Danny was involved in sexual activity with other residents. *Id.* at 156:20-157:21. Cassie's DCYF file reveals that during her placement at two different facilities, she was involved in sexually acting out with other residents while on "close supervision." Trial Tr. vol. XIV (Chambers), at 26:5-18, 38:24-41:19. While it recognized that Dr. Chambers was an expert, the Court struck Dr. Chambers' opinion that these incidents regarding Cassie showed poor supervision. *Id.* at 26:16-21, 38:24-41:19.

[29] The COA standard also provides that investigators should carry no more than "15-30 open cases." Trial Ex. 50 at PLTF 30833; *see* Trial Ex. 31 at PLTF 32946-47 (CWLA standard requiring that "[o]ngoing services to families . . . should involve no more than 17 active families, assuming the rate of new families assigned is no more than one for every six open families"). Mr. Ward testified that this requirement refers to cases involving "an open intact family," Trial Tr. vol. VIII (Ward), 137:6-19, rather than the abuse and neglect investigations handled by DCYF investigators, Trial Exs. 481 at 3093-94; 890, 891, 892, 897, 918.

[30] Though COA states that caseloads may exceed these limits under certain circumstances, there is no evidence in the record that the enumerated examples of those circumstances—lower administrative burdens for investigators or *temporary* staff vacancies—apply to Rhode Island. Trial Ex. 50 at PLTF 30833. To the contrary, DCYF policy

standards require that "[i]nitial assessments should involve no more than 12 active reports per month."[31] Trial Ex. 31 at PLTF 32946. Mr. Ward testified that, in his experience, investigators assigned caseloads exceeding 15 are often unable to complete all investigation tasks and that there is a "pretty straight correlation between when that size [of an investigator caseload] starts increasing, the ability to do all the work decreases, and in the worst case scenario it's impacting the safety of an individual child."[32] Trial Tr. vol. V (Ward), at 30:1-31:3, 38:1-17.

DCYF investigator caseloads significantly depart from these professional standards.[33] Over the most recent six months for which DCYF Report 259 was produced in discovery (February, March, April, May, July and August 2012), the majority of investigators—between 51.4% and 72.2%—were assigned caseloads that were at least *twice* the highest professional standard, and the vast majority of investigations—between 73.4% and 84% each month—were assigned to these investigators.[34] Trial Exs. 718, 719; Trial Tr. vol. V (Ward), 133:22-134:4. Based on his review of the data, Mr. Ward opined as follows:

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provides that "[p]rimary responsibility for entering information into RICHIST rests with the assigned worker," Trial Ex. 917, and that investigators must "enter[] information in RICHIST as it is obtained or as soon as possible thereafter" and "update[] information in RICHIST as appropriate," Trial Ex. 891.

[31] At trial, Mr. Ward initially agreed with the Court's interpretation that this standard allows for "wiggle room" in the context of factors "like geographic area and things like that . . . ." Trial Tr. vol. V (Ward), at 22:18-25. Mr. Ward then clarified, however, that in his experience the impact of caseload size did not in fact differ greatly between rural and urban areas. Trial Tr. vol. V (Ward), 23:1-17.

[32] Defendants' assertion that Mr. Ward did not present "with the necessary level of confidence for appropriate opinion testimony," Defs.' Mem. at 22, is easily defeated, as the Court qualified Mr. Ward as an expert in the area of CPS investigator caseloads and the timeliness of abuse investigations, based on his more than three decades of experience in this field, Trial Tr. vol. V (Ward), 96:22-97:5.

[33] DCYF's job description for CPS investigators notes that "work is reviewed and monitored in process . . . for results obtained in conformance to accepted professional investigative standards, principles, practices and techniques . . . as well as federal and state laws and departmental policies, procedures, and goals." Trial Ex. 481 at 3093.

[34] Moreover, nearly every investigation listed in this report (between 94.7% and 99.5%) was assigned to an investigator whose caseload exceeded professional standards by *some* degree. Trial Exs. 718, 719; Trial Tr. vol. V (Ward), 133:22-134:4. Further, DCYF Report 160 notes that as of January 30, 2013 (the only date for this report available) the two investigators primarily responsible for in-care investigations were assigned 17 and 35 overdue investigations, respectively. Trial Ex. 341; Trial Tr. vol. V (Ward), at 147:1-148:5. Counting *only* those investigations listed as overdue, therefore, these investigators carried caseloads significantly exceeding professional standards.

> When you look at these numbers, it would strongly indicate that the CPS investigative staff are extremely overburdened . . . , [that these caseloads] would be prohibitive for that investigator to do everything they were supposed to do with those cases . . . , [and] when . . . those investigators are at that level, it strongly suggests that there can be risk associated to individual children, whether they're in care or . . . new to the system.

Trial Tr. vol. V (Ward), 137:4-20.

Against this evidence, Defendants are again left with hypothetical excuses, such as the possibility that some investigators worked overtime. Defs.' Mem. at 22-23. These arguments fail. Defendants cannot cite to any record evidence contradicting the conclusion—based on Report 259, the only data in evidence, and Mr. Ward's testimony—that investigator caseloads in Rhode Island greatly exceed professional standards. Once again, Plaintiffs were denied systemic discovery on CPS investigator caseloads following the protective order, which would have allowed Plaintiffs to review and rebut these speculative justifications.

Second, Plaintiffs proved that Defendants have a custom of failing to ensure that investigations are completed in a timely manner, thereby exposing Cassie, Danny, and all children in DCYF foster care custody to an unreasonable risk of harm. DCYF policy requires that investigations be completed within ten days, "unless [an] extension[] is approved and then not longer than thirty days maximum." Trial Ex. 892 at 2; Trial Ex. 893 at 3. COA standards require that "[t]he investigation is completed within 30 days." Trial Ex. 50-A at PLTF 30813. Mr. Ward testified that the failure to complete investigations in a timely manner can "create[] a huge risk for whatever child" is the subject of the allegation. Trial Tr. vol. V (Ward), 39:11-40:14, 65:5-24.

The evidence shows that DCYF consistently fails to ensure the completion of CPS investigations within the timelines set by DCYF policy and professional standards. Each month between January 2010 and March 2012, DCYF Report 259 lists between approximately 90 and

over 200 overdue investigations. Trial Ex. 720.[35] Further, as of January 30, 2013, the two investigators primarily responsible for in-custody investigations were assigned 17 and 35 overdue investigations respectively—including investigations that were 33, 36, 98, 136, 138, 254, 452, 776, 1286, and 1423 days overdue. Trial Ex. 341 at 304230-31, 41; Trial Tr. vol. V (Ward), at 147:1-148:5.

The heightened risk of harm that results from these investigation failures is reflected in Danny's experiences in state custody. For example, although Danny's DCYF file indicates that "CD" called the child abuse hotline in July 2007 to report Danny's allegation that he was hit by a potential adoptive father, no documentation of this hotline report or of any investigation of this allegation appears in Danny's file.[36] Further, DCYF Report 445 shows that Danny was the subject of two (substantiated) investigations that took 35 and 48 days, respectively, to complete. Trial Exs. 145-A, 156-A, 922 at 315648, 321528, 321620, 321704.

d. DCYF dangerously overburdens family service caseworkers

The evidence also shows that Defendants have a custom of overburdening DCYF family service unit ("FSU") caseworkers with caseloads that far exceed professional standards, undermine workers' ability to perform critical casework tasks, and create an unreasonable risk of harm to Danny, Cassie, and all children in the foster care custody of DCYF.

Standards published by COA and CWLA establish professional judgment in the area of family services caseloads "in a way that ensures safety and permanency for children." Trial Tr. vol. II (Ryan), at 107:15-108:2; Trial Tr. vol. VI (Ward), at 22:14-23:14. These organizations

[35] Mr. Ward testified that, in his interpretation of Report 259, the report should not include any investigation for which there has been an extension as the investigation would not, in that case, be described as overdue. Trial Tr. vol. VIII (Ward), 112:1-113:18.

[36] Trial Tr. vol. XIII (Chambers), at 123:12-124:10. Similarly, despite Danny's DCYF worker being informed that Danny alleged abuse by "RT," a potential adoptive father, no documentation indicates the allegation was reported to the hotline, investigated or otherwise followed up on by DCYF. *Id.* at 124:23-128:14. Finally, Danny's file reveals that his arm was broken in June 2007, while he was placed in a group home, but there is no documentation in Danny's file that mentions the injury, let alone an investigation. *Id.* at 150:14-24.

also set concrete limits on caseload size. CWLA standards require that "[t]he caseload size for family foster care social workers should be between 12 and 15 children per worker . . . ."[37] Trial Ex. 17 at PLTF 32139. Mr. Ward opined that "the 15 number in that range would be the number that the worker would carry at the maximum."[38] Trial Tr. vol. VI (Ward), 57:19-58:3, 59:8-17. COA standards state that, "[g]enerally, caseloads do not exceed 18 children or 8 children with special therapeutic needs." Trial Ex. 55 at PLTF 30939. Dr. Ryan testified that, "[i]n my reading of this [standard], 18 is the max. If cases are really complex, [caseloads] should be going down."[39] Trial Tr. vol. I (Ryan), at 137:12-23. Based on his review of the extensive empirical literature in this area, Dr. Ryan testified that high caseloads can lead to, *inter alia*, job

[37] In contrast to Defendants' assertion (Defs.' Mem. at 26), while the standard states that caseload sizes may vary depending on, *inter alia*, case complexity, CWLA clearly provides that a worker should carry a caseload of no more than 15 children. Trial Ex. 17 at PLTF 32139.

[38] Though not affirmatively qualified as an expert in the areas of caseworker caseloads, in-service training, caseworker-child visitation, and placement array and the use of congregate care, the Court allowed Mr. Ward to opine on these areas and his knowledge and experience more than meet the requirements of Fed. R. Evid. 702. After receiving a master's degree in social work, with a concentration in administration and planning, Mr. Ward worked as a child care worker, program director, and director of a group home housing children in the foster care system—he was later promoted to assistant director of the non-profit running that home. Trial Tr. vol. IV (Ward), at 4:4-10:12. Thereafter, Mr. Ward worked for the Illinois Department of Children and Family Services ("DCFS") for 24 continuous years, beginning as a supervisor in the Rockford Region, as administrator of field services in Rock Island County, and then as administrator for the Peoria and Central regions. *Id.* at 10:13-12:20, 12:21-13:25, 14:1-21:19, 26:13-17, 58:19-59:6. In these positions, Mr. Ward was responsible for overseeing up to hundreds of workers (including caseworkers) and thousands of children in the state's foster care custody. *Id.* His responsibilities included overseeing the provision of the full array of foster care services, including contracting residential treatment providers, managing foster care caseloads, and monitoring the training of staff. Trial Tr. vol. IV (Ward), at 14:1-21:19, 35:23-36:23, 38:5-13; Trial Tr. vol. VI (Ward), at 26:3-17, 26:24-27:21. Mr. Ward also served as the administrator for the office of planning at DCFS, where he helped develop the state's Statewide Automated Child Welfare Information System, monitored caseworker caseloads across the state, and created reports to submit to HHS on Illinois' performance. Trial Tr. vol. IV (Ward), at 24:4-29:6. From 1997 to 2002, Mr. Ward served as the downstate manager for the regional quality assurance program, which produced aggregate reports on DCFS's performance. Specifically Mr. Ward was responsible for ensuring that COA standards were met during the state's accreditation process and that necessary in-service trainings were provided. *Id.* at 29:10-30:13, 31:1-35:11, 39:4-18. In that position, he also monitored the caseloads of caseworkers. Trial Tr. vol. VI (Ward), at 27:22-28:20. From the mid-1990s until approximately 2008 or 2009, Mr. Ward also worked as a consultant reviewer for HHS during the Child and Family Service Reviews in numerous states. Trial Tr. vol. IV (Ward), at 40:6-43:5. Mr. Ward also worked in a private consulting company that assisted public and private child welfare agencies seeking COA accreditation, *id.* at 43:6-45:15, 46:12-47:2, and, from 2004 to the present, Mr. Ward has worked as a reviewer and a team leader for COA in reviews in numerous states, *id.* at 49:11-51:18. Since 2004, Mr. Ward has taught courses on program evaluation and on supervision and staff development as an adjunct professor at the University of Illinois School of Social Work. *Id.* at 47:21-49:5.

[39] *See id.* at 136:20-137:8 (noting that foster care cases have generally been more complex "in recent years"); Trial Tr. vol. VI (Ward), 61:4-16 (interpreting this standard as requiring that 18 children is "the maximum caseload for regular foster care").

dissatisfaction, poorer job performance (including in the area of visitation), and, ultimately, poorer child welfare outcomes.[40]

DCYF has not conducted a workload study, as recommended by the CWLA (Trial Ex. 6; Trial. Tr. vol. VI (Ward), at 68:19-69:3), and instead of a mandatory caseload cap to protect child safety, DCYF merely "endeavor[s] to achieve a caseload assignment not to exceed fourteen (14) families . . . ." Trial Ex. 482 at 37944; *see also* Trial Tr. vol. VI (Ward), at 68:2-8. Unlike CWLA and COA, which require manageable caseloads by *children*, Trial Exs. 17, 55, DCYF measures acceptable caseloads by *families*, Trial Ex. 482. Yet DCYF data indicate that the number of families in foster care custody is not reflective of the (much larger) number of children in care, Trial Ex. 722, each of whom requires individual attention from his or her caseworker, Trial Exs. 481 at 3152-53; 894, 896.

The evidence shows DCYF caseworkers carry caseloads in extreme departure from professional standards. In each month between August 2012 and January 2013, the majority of FSU caseworkers—between 63.3% and 79%—were assigned caseloads that exceeded the highest professional standard of 18 children. Trial Ex. 723. Further, between 25.8% and 35.8% were assigned caseloads exceeding 24 children (that is, caseloads that were approximately at

[40] Trial Tr. vol. I (Ryan), at 100:5-21, 101:2-19, 108:14-19, 112:23-113:3, 120:2-18, 123:23-124:3, 126:25-127:4. Dr. Ryan testified that he reviewed between 20 and 30 articles and empirical studies on this subject, and created a conceptual tool to summarize his findings. Trial Tr. vol. I (Ryan), at 90:4-11, 92:1-10, 93:1-17. Dr. Ryan concluded that "heavy caseloads have a detrimental effect on the timeliness of decisions regarding child safety" and that "heavy caseload do impact - - have an effect on child welfare outcomes. . . . [High] [c]aseloads also limit the ability and time caseworkers have with children and families to develop relationships, to monitor safety; and that, in fact, puts children at risk of harm." Trial Tr. vol. I (Ryan), 130:11-16, 131:2-20; *id.* at 92:6-17 (testifying that heavy caseloads "impact the ability of the system as a whole to achieve permanency and stability for children and protect children from subsequent reports of maltreatment"). Further, the Rhode Island Senate Committee on Health and Human Services recognized that "DCYF Family Service Unit worker caseloads and the application of family-centered best practices are *key determinants* of the level of 'support' that foster families will receive. Caseload relief and ongoing worker/supervisor training are essential to full implementation of . . . best-practice guidelines." Trial Ex. 550 at PLTF 25840 (emphasis added); *id.* at PLTF 25836 (noting the importance of caseloads "in determining the level and quality of the workers' interventions"). While Defendants note that "[t]he child welfare field lacks experimental data on caseloads" (Defs.' Mem. at 25), Dr. Ryan testified that is by necessity: "Those types of studies are not available in child welfare research simply because it would be unethical to assign children to theoretically overburdened caseworkers." Trial Tr. vol. I (Ryan), 91:8-25.

least 39% higher than the highest caseload size recommended by the COA or CWLA). *Id.* Moreover, each month the vast majority of children in DCYF custody—between 74.4% and 85%—were in the hands of workers with caseloads exceeding professional standards. Trial Ex. 724.[41]

Defendants do not dispute that the caseloads reflected in DCYF Report 164A greatly exceed the highest caseload allowed by the COA or CWLA. Defs.' Mem. at 25-28. Instead, Defendants argue that FSU caseworkers carry mixed caseloads and that "Mr. Ward was unable to tell from Report 164A how many children on the caseload were at home, in out-of-home foster care, in pre-adoptive placement, or in kinship placement." Defs.' Mem. at 27. This argument completely fails to justify the high caseloads or the resulting risk of harm to Plaintiffs. And once again, Plaintiffs were denied a case record review in discovery that would be necessary to rebut Defendants' (unsupported) claim that DCYF caseloads are manageable.

Moreover, the propensity of the risk of harm is illustrated in the Named Plaintiffs' cases. For example, the evidence shows that since at least January 2009 Cassie's caseworker H.P. has carried a caseload at least 17% (and as much as 78%) higher than the highest professional standard.[42] Trial Ex. 707 at 4-7; *see* Dkt. No. 489; Trial Ex. 881-G (exemplar of Report 164-A).

[41] The issue of exceedingly high caseloads in the state is neither temporary nor improving. As early as 2008, the Rhode Island Senate Committee on Health and Human Services concluded that "[t]here is little evidence that the department seeks to manage or balance the workloads of social caseworkers," and that, "[f]aced with the increased workload, FSU social caseworkers are limited in the number of tasks that they complete." Trial Ex. 550 at PLTF 25828, 36. The Committee specifically recommended "lowering the caseloads of FSU social caseworkers to ensure at least monthly visitation with every child in care . . . ." Trial Ex. 550 at PLTF 25828. Plaintiffs' summary of DCYF Report 164A indicates, however, that on each of the dates reviewed between January 2009 and January 2013, never less than 70.2% (and a maximum of 95.3%) of children in DCYF custody were assigned caseworkers with caseloads that exceeded professional standards. Trial Ex. 707 at 23-29. These data also show that the percentage of FSU caseworkers assigned excessive caseloads has increased, rising from 70% in December 2011 to approximately 85% in January 2013, Trial Ex. 725, and the number of children assigned to these caseworkers increased from 73.7% in January 2012 to 85.6% in January 2013, Trial Ex. 707 at 27-29.

[42] Notably, trial evidence shows that H.P. frequently failed to complete minimum monthly visits with Cassie. *See infra* at 32 & n.50.

e. DCYF fails to ensure staff complete required amounts of in-service trainings

Defendants have a custom of failing to ensure that its staff completes the requisite level of in-service training, thereby exposing Cassie, Danny, and all children in the foster care custody of DCYF to an unreasonable risk of harm.

As noted by the Court at trial, the purpose of training is "common sense stuff." Trial Tr. vol. VII (Ward), at 51:9-11; *id.* at 51:16-23 (Mr. Ward testifying that "[t]he purpose is to supplement [workers'] skills"). HHS requires states to report on in-service training as part of their Child and Family Service Reviews ("CFSRs"). Trial Ex. 616.[43] Rhode Island law and DCYF policy have "establish[ed] a minimum *mandatory* level of twenty (20) hours of training per year . . . ." R.I. Gen. Laws § 42-72-5(b)(10) (emphasis added); Trial Ex. 898 at 1. DCYF policy requires that participation in such training be recorded in RICHIST, and that supervisors ensure that employees complete the minimum 20 hours of in-service training. Trial Ex. 898 at 1, 3.

Plaintiffs proved that DCYF fails to ensure that its child welfare workers complete mandatory in-service training. At trial, Plaintiffs introduced a summary of Report 162, covering the trainings completed by 42 DCYF caseworkers and supervisors assigned to the current and former Named Plaintiffs each year dating back to 1991. Trial Ex. 708; Trial Tr. vol. VII (Ward), at 88:21-89:4. Between 19.4% and 88% of the workers employed each year during this period failed to complete the requisite 20 hours of training, and in 12 of the 22 years examined at least half of the workers then employed failed to meet this training requirement. Trial Ex. 708.

[43] Trial Tr. vol. VII (Ward), at 51:24-52:18. In 2010, HHS found that in-service training was an "[a]rea [n]eeding [i]mprovement," and that, "[a]lthough ongoing training is required for staff . . . , these requirements are not monitored consistently." Trial Ex. 616 at 3267. In its statewide assessment, DCYF reported that supervisor monitoring of training "does not occur in all divisions or regions of the State" and that "supervisors routinely do not assess the training needs or complete the training plan [for staff] due to time constraints." Trial Ex. 616 at 3268.

Further, of the 42 employees for whom this report was produced in discovery, only *four* completed the requisite in-service training in over half of the years in which they were employed by DCYF. Trial Ex. 708.[44]

Moreover, Report 162 shows the propensity of the risk of harm in the lack of required training for Cassie and Danny's caseworkers. For example:

- Caseworker H.P. was assigned to Cassie from July 2006 to at least January 2013. Dkt. No. 489. In only 4 of the 7 years in which trainings are listed did H.P. complete at least 20 hours of training. Trial Ex. 708. (In one year, no trainings are listed at all. *Id.*)
- Caseworker M.C. was assigned to Danny from April 2005 to December 2009, October 2010 to February 2012, and July 2012 to at least January 2013. Dkt. No. 489. In only 1 of the 8 years in which trainings are listed did M.C. complete at least 20 hours of training. Trial Ex. 708. (In 13 years since M.C. joined DCYF, no trainings are listed at all. *Id.*)

By assigning them workers without the training required by Rhode Island law, DCYF policy, and professional standards, Defendants exposed and continue to expose Danny and Cassie to an unreasonable risk of harm.

f. DCYF fails to ensure adequate and frequent caseworker visitation of children

The evidence also shows that Defendants have a custom of failing to ensure adequate and frequent caseworker-child visitation, thereby exposing Danny, Cassie, and all children in the foster care custody of DCYF to an unreasonable risk of harm. Caseworker-child visitation "is a foundational practice, a cornerstone . . . to child welfare." Trial Tr. vol. II (Ryan), at 9:10-19. CWLA explains the importance of visits between the caseworker and child as follows:

[44] Mr. Ward also produced a summary of this report and found that in 2012 approximately 80% of workers failed to complete the 20-hour training requirement. Trial Ex. 727. Both Mr. Ward's and Plaintiffs' summaries credited workers for any trainings listed as completed in the other training files produced by Defendants, but not listed on Report 162. Trial Exs. 708, 727. In addition, Mr. Ward testified regarding his review of Report 300, a DCYF management report that provides the total number of hours of training each DCYF worker completed by calendar year. Trial Tr. vol. VII (Ward), at 63:19-73:6. According to that report, 70% of DCYF child welfare workers failed to complete at least 20 hours of in-service training in 2010 and 46% failed to do so in 2011. *Id* at 72:13-73:6. In 2011, 21% of these workers did not even complete half of the 20 hours required. *Id.* at 73:10-23. Mr. Ward relied on a DCYF organizational chart, Trial Ex. 479, and agency-authored job descriptions, Trial Ex. 481, to identify relevant child welfare workers in Report 300. Trial Tr. vol. VII (Ward), at 68:3-72:1.

> The social worker is a vital constant in the life of a child in foster care, representing stability, dependability and trust. It is the social worker's responsibility to ensure the child's continuing safety . . . .

Trial Ex. 16 at PLTF 32080. DCYF's own policy provides that face-to-face visitation is required to monitor child safety, to examine the foster care residence and the care providers, to evaluate the effectiveness of services in place, to determine if progress is being made towards a permanent placement, and to develop a relationship with that child. Trial Ex. 894. Face-to-face visits must be purposeful, well planned, and focused on the needs of the child. Trial Ex. 894 (DCYF policy); Trial Tr. vol. II (Ryan), at 10:14-11:6, Trial Tr. vol. VII (Ward), at 104:15-23.

The evidence at trial demonstrates the risk of harm that follows when an agency fails to ensure monthly visitation. Dr. Ryan opined that monthly face-to-face visits "[are] vital for ensuring safety and facilitating developmental progress and achieving permanency in family foster homes," and that "when child welfare systems [and] caseworkers are not meeting these standards and visiting children on a regular basis, at a minimum once a month . . . , that this compromises the child's relationship with the child welfare system in particular the caseworker, and exposes children . . . to risks of harm."[45]

Federal law, DCYF policy, and CWLA and COA standards all require that caseworkers should visit children in foster care at least once a month. *See* 42 U.S.C. § 624(f)(1)(A); Trial Ex. 894 (DCYF policy requiring that "[t]he worker must have face to face contact at least one time per month with each child in foster care . . . ."); Trial Ex. 15-A at PLTF 32042 (CWLA standard requiring "ongoing communication with the foster family by visiting the foster home at least monthly"); Trial Ex. 16 (CWLA standard requiring that "[t]he family foster care social worker

[45] Trial Tr. vol. II (Ryan), at 28:24-29:5, 54:2-20; *see also* Trial Tr. vol. VII (Ward), at 94:11-19 (testifying that the purpose of caseworker-child visitation is "to ensure the safety of that child" and "to build that relationship with the child, which is overall one of the most important things that has to happen between the caseworker and the child").

should visit the child at least monthly");[46] Trial Ex. 55-A (COA standard requiring that "[t]he family foster care worker meets separately with the child and the parents at least once a month" and that "[t]herapeutic foster care providers visit with the child at least twice a month"); Trial Ex. 55-C at PLTF 30922 (COA standard requiring that "[t]he foster care worker . . . visits the [foster] home at least once a month" to "evaluate safety, needs, and well-being").

The evidence shows that Defendants are well aware of the importance of visitation and the monthly visitation requirement. In emails sent to casework supervisors that circulated reports on DCYF's visitation performance, a DCYF regional administrator wrote, for example:

- "[T]he most important part of our job is keeping kids safe and the single most contributing factor to that is seeing them." Trial Ex. 440-A at FSU_CM 4052 (email dated September 7, 2010).
- "We CANNOT allow the continuation of this fundamental piece of casework not be completed on an ongoing basis." Trial Ex. 435-A at FSU_CM 10380 (capitalization in original) (email dated November 7, 2011).
- "Every child in out of home placement MUST be seen, face to face, by DCYF . . . EVERY month: that's the one thing we have long said has to happen." Trial Ex. 435-A at FSU_CM 11293 (capitalization in original) (email dated December 6, 2010).

At trial, Plaintiffs proved that DCYF routinely fails to ensure that children in care are visited at least once a month. HHS concluded as much in its final 2010 CFSR report when it rated visitation as an "[a]rea [n]eeding [i]mprovement" after finding that in 40% of the cases reviewed "[t]he frequency of caseworker visits was not sufficient to meet the needs of the child [including safety and well-being]," the visits "did not focus on issues pertinent to case planning, service delivery, and goal attainment," or both. Trial Ex. 616-A at 3240.[47] Notably, each year between

[46] Defendants note that this CWLA standard states that "[m]eetings may be less frequent" than once per month. Defs.' Mem. at 28 n.21. In his review of this standard, however, Dr. Ryan testified that the reference to visits less than once a month did not change his opinion that "professional standards are set at once a month" and that "visiting children less than once a month is problematic in the sense that we're not laying eyes on children, we're not talking with them about their placement experience, [and] we're not talking with the foster care providers with which they live." Trial Tr. vol. III (Ryan), 50:14-25.

[47] Defendants repeatedly admit severe visitation problems. In the DCYF statewide self-assessment, summarized in the 2010 CFSR report, the state reported that a "reduction in staff had resulted in higher caseloads, which make it difficult to meet all of the timeframes for face-to-face visits and to document the contacts." Trial Ex. 616-A at 3241.

at least FFY 2007 and 2010, Rhode Island reported the lowest or second lowest percentage in the country of children visited in their foster care placement each month, among all 52 reporting states and jurisdictions. Trial Ex. 607 at PLTF 30322-651.

Defendants' own data confirms DCYF's extreme departure from visitation standards. According to DCYF Report 583, approximately 25% to over 35% of children had no documented face-to-face contact with an FSU caseworker each month between January 2010 and March 2012. Trial Ex. 728; Trial Ex. 881-H (listing 771 children with no documented visits in March 2012); Trial Tr. vol. VII (Ward), at 123:7-25.[48] According to Report 609, between October 1, 2011 and July 31, 2012, 901 children in DCYF custody missed at least one monthly visit, 222 missed between three and five visits, and 55 missed six or more visits over this ten-month period. Trial Exs. 730, 881-I; *see also* Trial Ex. 440-A at FSU_CM 5574 (email from DCYF Regional Director to Region I supervisors, noting of Report 609 data that "[w]e have a pretty large number of cases that have no documented F to F contacts for a significant amount of time (3, 4, 5, 6 months)").[49] In addition, Rhode Island reported to HHS that 42% of children did not receive monthly visits in FFY 2011. Trial Ex. 881-E at 1.

Trying again to justify shocking performance data, Defendants argue that Reports 583

The DCYF Annual Progress and Services Report, submitted to HHS in June 2011, stated that "it has been an ongoing challenge to achieve the face-to-face visitations with each youth as federally required." Trial Ex. 622 at 39726. DCYF reported that, averaged across the state's four child welfare regions, only 46.7% of children received monthly visitation between October 1, 2010, and April 30, 2010. Trial Ex. 622 at 39726.

[48] In an email dated February 8, 2010, the DCYF caseworker supervisor in Region IV, described data in Report 583 as follows: "Please look at this report with your LAST DOCUMENTED face to face contacts… It's not pretty…." Trial Ex. 435-A at FSU_SS 10920; *see* Trial Ex. 728 (noting that children not visited in January and February 2010, as reflected in Report 583, exceeded 30%).

[49] Defendants argue that Mr. Ward failed to "verify the data between these two reports [583 and 609]." Defs.' Mem. at 29 n.23. Given that the reports were produced to Plaintiffs with the names of non-party children improperly redacted, it would not be possible to determine if a monthly visit with a child was recorded in one report but not the other. Trial Exs. 881-H, 881-I. Defendants also argue that a certain DCYF report, not in evidence, contradicts Mr. Ward's findings as it shows that 85% of required visits were completed over a six-month period (October 1, 2011 to March 31, 2012). Defs.' Mem. at 29. This report measures the percentage of *visits* that DCYF completed (of all required monthly visits over a fiscal year), Trial Tr. vol. XVI (Ward), at 69:7-23, and not the percentage of *children* who received all required monthly visits. Defendants ignore the serial failure of DCYF to ensure that all children in foster care receive at least monthly visitation.

and 609 only reflect *documentation* and that their own data do not accurately reflect actual visitation practice in the state. Defs.' Mem. at 29-30. Yet once again, the aggregate evidence in the record reveals a clear systemic failure to visit children, and Plaintiffs were denied systemic discovery on this issue, preventing any vetting of the hypothetical justification for this failure.

The pattern of poor visitation practices exposes Plaintiffs to an unreasonable risk of harm, and the propensity of the risk is demonstrated by Danny's and Cassie's experiences in state custody. Report 583 shows that Danny did not receive a monthly visit in December 2008, January, June, and September 2009, March and April 2010, March 2011, and May and August 2012, and that Cassie did not receive monthly visits from August to December 2009, in February, March, May, August and December 2010, in March, April, June, July, August, October, and November 2011, and in January, March, April, and July 2012. Trial Ex. 915.[50]

g. DCYF lacks an adequate array of homes for foster children and places them in congregate care facilities at extremely high rates

The evidence also shows that Defendants have an inadequate placement array and a custom of placing children in foster care custody in overly restrictive placements, thereby exposing Danny, Cassie, and all children in DCYF custody to an unreasonable risk of harm.

Federal law and professional standards dictate that children in foster care should be placed in the least restrictive, most family-like setting possible based on that child's needs. *See* 42 U.S.C. § 675(5)(A); 45 C.F.R. § 1355.34(c)(2)(i); Trial Ex. 62 at PLTF 31063 (COA standard requiring that "[p]lacement decisions are made . . . as appropriate to the individual's needs, service history, and service provided"). To ensure that children can be placed in settings

[50] Danny's DCYF file reveals that his workers failed to complete numerous required visits with him that complied with federal law and DCYF policy. *See, e.g.*, Trial Tr. vol. XIII (Chambers), at 118:24-119:9, 149:8-16, 184:12-17, 185:1-6; *see also* Trial Tr. vol. XV (Chambers), at 84:14-85:18. Cassie's DCYF file reveals similar deficiencies. *See, e.g.*, Trial Tr. vol. XIV (Chambers), at 13:15-23, 16:6-10, 16:17-17:4, and 27:15-18. Every source of evidence shows numerous missed visits for the Named Plaintiffs.

appropriate to their needs, professional standards dictate that child welfare agencies should develop a sufficient placement array.[51] COA, for example, requires that "[a] sufficiently diverse group of foster families is recruited . . . to meet the needs of the children in care, and their families" and that agencies "ensure a suitable family is available for each child entering care."[52] Congregate care, including residential treatment, is considered "more restrictive, if not the most restrictive, setting in child welfare," Trial Tr. vol. II (Ryan), at 58:19-59:9, and should be used only as a last resort, *id.* at 65:8- 66:10; Trial Tr. vol. VIII (Ward), at 10:14-18; Trial Ex. 24 at PLTF 32537 (CWLA standard); Trial Ex. 62 at PLTF 31061 (COA standard).

Placing a child in an overly restrictive foster care environment subjects that child to a risk of harm. Based on empirical studies in this area, Dr. Ryan testified that "[t]here's some evidence to suggest that . . . congregate care placements are associated with higher rates of abuse and neglect," that "there are particular risks associated with placement into residential and congregate care . . . , including reentry into care," and that one study found that placements in congregate care were associated with poorer permanency outcomes. Trial Tr. vol. I (Ryan), at 82:10-20, Trial Tr. vol. II (Ryan), at 93:12-17, 96:16-97:3; *id.* at 81:6-23, 86:14-20, 84:7-23, 85:2-13, 86:23-87:13.

DCYF places children in congregate care placements at an excessively high rate. Defendants' own data indicate that, as of the first of each month between January 2010 and April 2012, approximately 30% of children in DCYF custody were placed in congregate care facilities. Trial Exs. 396, 397, 398, 733; Trial Tr. vol. VIII (Ward), at 15:19-21:16. As of January 2013,

[51] Dr. Ryan defined placement array as "the menu of options that child welfare systems have to place, house children that are removed from their biological parents. It could include group homes, foster family homes, kinship care homes, larger residential programs." Trial Tr. vol. I (Ryan), at 81:10-18.

[52] Trial Ex. 55-B at PLTF 30929; Trial Tr. vol. VIII (Ward), at 12:2-14 ("[P]lanning efforts . . . have to be in place so that you are anticipating what the level of placement needs and the types of placement needs [the child welfare agency] [is] going to have so that you have options available . . . .")

31% of children in DCYF foster care were placed in congregate care. Trial Exs. 734, 777 at PLTF 34087; Trial Tr. vol. VIII (Ward), at 21:17-27:10.[53] Mr. Ward found that, in the fall of 2011, Rhode Island placed children in congregate care at a rate roughly *twice* the national rate. Trial Exs. 600, 735; Trial Tr. vol. VIII (Ward), at 31:24-33:16. On March 28, 2013, Defendant (DCYF Director) Dr. Janice DeFrances testified before the Rhode Island House Committee on Finance that

> [W]e do have some children that we want to be able to step down [from congregate care placements], but access into more community-based services or support right now is not readily available. We also desperately need . . . more foster homes.

Trial Tr. vol. VIII (Ward), at 54:23-56:21. Plaintiffs also proved that DCYF places young children in congregate care at enormously high rates. Among all 52 reporting states and territories, Rhode Island has reported the *highest* percentage in the country of children twelve years old or younger placed in group homes between FFY 2008 and FFY 2011. Trial Ex. 903.

The placement array failures detailed above expose all children in Rhode Island foster care to an unacceptable risk of harm, a risk animated by Cassie's experiences in state custody. For example, an email dated February 2009 from Cassie's DCYF worker states that the T facility "is very protective of 'their' kids. Group homes are rarely in the best interests of kids. This child is 12. [T] needs to be advised that the child needs an opportunity for permanency and will not achieve it in a group home with constantly changing staff." Trial Ex. 116-A. Yet Cassie remained in the T facility until June 2010, over another 16 months. Trial Tr. vol. XIV (Chambers), at 16:17-17:4.

Cassie's development suffered as a result of her excessive time in institutional care facilities. A Permanency Planning Assessment dated February 9, 2012 states that "its [sic] clear

[53] Defendants argue that the raw *number* of children placed in congregate care has decreased, Defs.' Mem. at 35-36, but ignore the fact that "the percentages [of children placed in congregate care] stayed pretty static" over the period reviewed, Trial Tr. vol. XVI (Ward), at 94:4-12; Trial Ex. 733.

that her residential history has influenced her ability to function on her own." Trial Ex. 89-J at CM 7702. Tellingly, an email from a private agency worker from 2012 read into the record by Plaintiffs' expert Dr. Chambers states: "I feel it is highly unlikely that we will find a foster home in another month. Despite the work by many people to find a foster home for Cassie, we have a significant shortage of foster homes." Trial Tr. vol. XIV (Chambers), at 43:1-47:11.

Similarly, Plaintiffs' expert Dr. Adamakos testified that Danny remains institutionalized at the S.M. residential treatment facility although his file indicated as long ago as July 2012 that the facility offers no further benefit to Danny. Trial Tr. vol. XI (Adamakos), at 6:25-12. Dr. Adamakos further opined that continued institutionalization increased the risk that Danny would attempt suicide. *Id.* at 7:21-9:4.

h. Children reenter DCYF foster care at an excessively high rate

Finally, the evidence shows that Defendants have a custom of failing to prevent the discharge and reentry (as a result of additional abuse or neglect) of children into foster care at extremely high rates, placing Danny, Cassie, and all children in DCYF foster care custody at an unreasonable risk of harm. At trial, Mr. Ward testified that reentry of children into foster care, after being released for any reason, not only negatively impacts those children but exacerbates the strain in the placement array because it requires the agency to find an appropriate placement for each child reentering care. Trial Tr. vol. VIII (Ward), 35:3-13. Accordingly, HHS directs state child welfare agencies to report on the percentage of children who reenter care within 12 months of a prior foster care episode, Trial Ex. 607 at PLTF 30282, and has established a national reentry standard of no more than 8.6 percent. Trial Ex. 736; Trial Ex. 609-A at 3568; Trial Ex. 777 at PLTF 34088 (Rhode Island KIDS COUNT report, noting that "[i]n FFY 2012, 19% of children in Rhode Island who entered out-of-home placement re-entered care within 12 months of a prior episode, more than twice the national standard (8.6%)"). Since FFY 2008,

DCYF's rate of reentry has far exceeded this standard: 17.9% in FFY 2008, 16.2% in FFY 2009, 15.3% in FFY 2010, 16.7% in FFY 2011, and 19% in FFY 2012. Trial Exs. 736, 881-E; Trial Tr. vol. VIII (Ward), 43:18-44:5.

Defendants' argument that these data are irrelevant to the Named Plaintiffs lacks merit. Defs.' Mem. at 33. As Mr. Ward testified, the excessive rate at which children reenter DCYF foster care within 12 months of having been discharged places a tremendous strain on the state's placement array. Further, Danny and Cassie are both at risk of reentering care if they are discharged to an adoptive home.[54]

In sum, Plaintiffs met their burden of proof at trial on their substantive due process claims.

B. Defendants Have Violated Plaintiffs' Rights to Family Integrity

The Supreme Court recognizes a right to family integrity under the First, Ninth and Fourteenth Amendments. *See Roberts v. U.S. Jaycees*, 468 U.S. 609, 617-20 (1984); *Santosky v. Kramer*, 455 U.S. 745, 753 (1982); *Stanley v. Illinois*, 405 U.S. 645, 651 (1972). In the context of foster care, where the state controls children's contact with their biological siblings, the right to family integrity has been repeatedly recognized. *See, e.g.*, *Connor B.*, 771 F. Supp. 2d at 163-64 (constitutional right to familial integrity is implicated when foster children are denied meaningful contact with family members).[55]

[54] Defendants misinterpret these data as referring only to reentry following reunification (Defs.' Mem. at 33), which is tracked in a separate federal measure, Trial Ex. 881-E at 6.

[55] *See also Kenny A. ex rel. Winn v. Perdue*, 218 F.R.D. 277, 296-97 (N.D. Ga. 2003) ("[This] constitutional right to family integrity encompasses the right of children in foster care to have meaningful contact with their siblings and parents."); *Brian A.*, 149 F. Supp. 2d at 956; *Marisol A.*, 929 F. Supp. at 677 (recognizing a "violation of the Fourteenth Amendment by defendants' failure to provide reasonable services and placements that protect custodial plaintiffs' right of association with their biological family members" while in foster care); *Eric L.*, 848 F. Supp. at 307; *Aristotle P. v. Johnson*, 721 F. Supp. 1002, 1006-08 (N.D. Ill. 1989) (upholding the right of siblings not to be separated for extended periods of time without visits to each other and recognizing a claim based on denied visitation with siblings).

Federal law requires efforts to maintain sibling relationships by, primarily, keeping siblings together. 42 U.S.C. § 671(a)(31). Professional child welfare standards echo this law. *See* Trial Ex. 50-B at PLTF 30825 (COA standard providing that "[t]he child is placed with siblings whenever possible"); Trial Ex. 7-A at PLTF 31209 (CWLA standard stating the importance of placing siblings together, especially to facilitate adoptions of siblings together, and the importance of visits when siblings are placed apart). Similarly, DCYF's policy acknowledges the fundamental nature of the right to family integrity and its centrality to professionally-adequate child welfare practice. *See* Trial Ex. 912 at 1; Trial Ex. 897 at 1. Moreover, DCYF policy mandates that "[s]iblings who are placed in foster care should maintain contact with each other to have continuity in their relationships" and that "[s]ibling visits are an integral part of the assessment of family relationships and the determination of the feasibility of established goals." Trial Ex. 913 at 4. Defendants are thus well aware that unnecessarily separating siblings and denying meaningful contact is harmful to foster children.[56]

Plaintiffs proved at trial that DCYF violated and continues to violate their constitutional rights to family association by denying them meaningful contact with their siblings.[57] According to a review of Danny's DCYF case file by Plaintiffs' expert Dr. Chambers, within a week of entering foster care, Danny was placed in the foster home of L.F. without his brother, and no documents in Danny's DCYF case file explain why they were separated. Trial Tr. vol. XIII (Chambers), at 140:14-141:10. Danny and his brother were placed in the home of Danny's

[56] Defendants cite *Cortes-Quinones v. Jimenez-Nettleship*, Defs.' Mem. at 11, 45, in which a man died in prison and his family members sued for damages for state interference with their familial relationship with the decedent. 842 F.2d 556 (1st Cir. 1988). That damages case is inapplicable here, where Plaintiffs only seek class-wide injunctive relief. *See Connor B.*, 2013 WL 6181454, at *27.

[57] The Protective Order denied Plaintiffs systemic discovery concerning sibling separation and placement array (which impacts siblings in foster care in Rhode Island because the state lacks an array of foster homes sufficient to ensure that siblings brought into care can be placed together). *See* Ex. 24 to the Decl. of Marcia Robinson Lowry in Supp. of Pls.' Second Mot. for Class Certification & App't of Class Counsel & Rule 23(c)(1)(A) Req. for Timely Determination (the "Lowry Decl."), Dkt. No. 288-23 (detailing discovery on topics sought by, but denied to, Plaintiffs).

great-grandparents from July 31, 2006 until September 20, 2006, *id.* at 142:10-143:21, however, after Danny was removed from this home, he and his brother were never placed together again and no documents show any efforts by DCYF to place them together, *id.* at 178:8-12. Additionally, file documentation shows only sporadic visitation between Danny and his brother up through January 2013, *id.* at 178:13-23, and for a period of over one year (September 2006 until October 2007), no visits between Danny and his brother were documented, *id.* at 178:24-179:2. Danny's brother was subsequently adopted while Danny remains in DCYF custody. Similarly, Cassie entered state custody in 2006 along with three of her siblings. However, she was not placed with any of her siblings (including her younger sister A.M.) when she entered state custody, no documents in Cassie's DCYF file explain why Cassie was separated from her siblings, and once in custody no documents describe efforts by DCYF to place Cassie with her sisters. Trial Tr. vol. XIV (Chambers), at 5:21-6:7; 8:2-5.

This evidence established a violation of Plaintiffs' rights to familial relationships with their siblings.

C. Defendants Are Violating Plaintiffs' AACWA Rights to Case Plans With Mandated Elements and to Adequate Foster Care Maintenance Payments

Plaintiffs proved at trial that their AACWA rights to case plans with statutorily-mandated elements[58] and to adequate foster care maintenance payments have been violated and are at risk of being violated by Defendants.[59] Plaintiffs' enforceable private right of action under AACWA is the law of this case. *Sam M. ex rel. Elliott v. Chafee*, 800 F. Supp. 2d 363, 383-88 (D.R.I.

[58] Rhode Island statutes use the term "service plan" in place of "case plan." *See* R.I. Gen. Laws § 42-72-10. The two terms are used interchangeably in this brief.

[59] Defendants' assertion that the AACWA claims are barred by the Eleventh Amendment, made by reference to *Seminole Tribe of Fla. v. Florida*, 517 U.S. 44 (1996), Defs.' Mem. at 47 n.32, lacks merit. In *Rosie D. ex rel. John D. v. Swift*, the First Circuit held that *Seminole Tribe* may only preclude a Section 1983 action against a state "'where Congress has prescribed a detailed remedial scheme for the enforcement against a State of a statutorily created right[.]'" 310 F.3d 230, 236 (1st Cir. 2002) (quoting *Seminole Tribe*, 517 U.S. at 74). This Court squarely rejected the argument that AACWA maintains a comprehensive remedial scheme. *See Sam M.*, 800 F. Supp. 2d at 388.

2011).[60]

i. Plaintiffs Have Standing to Assert Violations of their AACWA Rights

Defendants' "standing" challenge, Defs.' Mem. at 47-48, is easily defeated. Plaintiffs have demonstrated injury in fact, causation and redressability, and thus have standing to assert violations of their rights under AACWA. Where, as here, plaintiffs have an enforceable private right of action under a particular statute, violation of that right is sufficient to establish an injury in fact. *See, e.g.*, *Donoghue v. Bulldog Investors Gen. P'ship*, 696 F.3d 170, 175 (2d Cir. 2012) ("[I]t has long been recognized that a legally protected interest may exist solely by virtue of 'statutes creating legal rights, the invasion of which creates standing, even though no injury would exist without the statute' . . . ." (quoting *Linda R.S. v. Richard D.*, 410 U.S. 614, 617 n.3 (1973))).[61] Moreover, an injury in fact may be prospective. *See, e.g., Monsanto Co. v. Geertson Seed Farms*, 130 S. Ct. 2743 (2010) (plaintiffs had standing to challenge the potential deregulation of genetically altered crops).[62]

Here, Plaintiffs have proven that Defendants violate AACWA because case plans fail to contain AACWA-required information, and because the State's foster care maintenance payments fail to cover AACWA-required costs. Also, Plaintiffs have been subjected to these violations in the past and are at risk of future violation. As to case plans, these plans are required to be prepared on a regular basis and Plaintiffs are subjected to violations so long as they remain

[60] Defendants improperly seek to re-litigate the Court's ruling on this issue by referencing arguments made in support of their motion to dismiss, which the Court has already reviewed and rejected. Defs.' Mem. at 47 n.32. *See Sam M.*, 800 F. Supp. 2d at 383-88.

[61] *See also Edwards v. First Am. Corp.*, 610 F.3d 514, 517 (9th Cir. 2010) (where defendants' conduct violates a statute, plaintiff has demonstrated an injury sufficient to satisfy Article III), *cert. dismissed as improvidently granted*, 132 S. Ct. 2536 (2012).

[62] *See also Animal Welfare Inst. v. Martin*, 623 F.3d 19, 25 (1st Cir. 2010); *Dudley v. Hannaford Bros. Co.*, 333 F.3d 299, 305-06 (1st Cir. 2003). Additionally, Plaintiffs easily satisfy the standing requirements of causation and redressability. Defendants are responsible for complying with AACWA; their failure to do so is the cause of harm to Plaintiffs. Defendants' statutory violations can be remedied by an injunction requiring them to prepare AACWA-compliant case plans, and to increase foster care maintenance payments so they cover actual costs, and to develop a methodology to periodically review such payments for ongoing compliance with AACWA.

in DCYF custody. As to foster care maintenance payments, during their time in DCYF custody, Plaintiffs have been moved among numerous placements, including generic family foster homes that have received inadequate foster care maintenance payments.[63] Thus, Plaintiffs have been injured in the past and are at risk of being injured in the future by Defendants' statutory violations.

ii. Defendants Must Comply Fully, Not Substantially, With AACWA

Contrary to Defendants' assertion that they need only achieve "substantial conformity" with AACWA, Defs.' Mem. at 47-49, courts generally apply a full compliance standard in private rights of action under federal statutes. *See Withrow v. Concannon*, 942 F.2d 1385, 1387-88 (9th Cir. 1991) (error to apply substantial compliance); *Health Care for All, Inc. v. Romney*, No. Civ.A. 00-10833RWZ, 2005 WL 1660677, at *7-8 (D. Mass. July 14, 2005) (finding the "lower standard of substantial compliance, as opposed to full or perfect compliance" inapplicable in private actions since federal funding not at stake).[64]

iii. Plaintiffs Demonstrated Violations of Their Right to Case Plans With Statutorily Mandated Elements

Plaintiffs proved at trial that Defendants fail to provide them with case plans that comply with AACWA's requirements.[65] Under AACWA, states that accept federal funds for their child

[63] DCYF has moved Danny nine times among seven different placements, including family foster homes. Trial Tr. vol. XIII (Chambers), at 137:15-22, 140:14-141:2, 141:13-24, 142:10-17, 145:15-22, 150:25-151:20, 161:25-162:10, 166:15-167:3; *see, e.g., id.* at 146:15-19 (noting before Danny's first placement in a group home, he had been placed exclusively in generic foster homes). Similarly, DCYF has placed Cassie in 10 different placements, including generic family foster homes. Trial Tr. vol. XIV (Chambers), at 4:17-5:1, 8:6-14, 14:4-13, 16:17-25, 28:2-6, 42:3-10, 47:16-21, 50:3-13, 52:18-53:21; *see, e.g., id.* at 4:17-5:1 (noting Cassie's initial placement was with a family foster home), 50:5-7 (noting Cassie was again placed in a family foster home).

[64] Although the court in *Cal. Alliance of Child & Fam. Servs. v. Allenby* observed that the federal government might be willing to accept "substantial compliance" in some circumstances, it stated the general rule that "a state that accepts federal funds with conditions attached must strictly comply." 589 F.3d 1017, 1022-23 (9th Cir. 2009). The court then held that payments of approximately 80% of the required amounts needed to cover costs under AACWA failed to even substantially comply with the statute. *Id.* at 1023.

[65] Under the Protective Order, Plaintiffs were not permitted to obtain pattern and practice discovery to show the system-wide nature of DCYF's violation of AACWA case plan requirements. *See* Ex. 24 to the Lowry Decl. at 6,

welfare systems must provide each child in foster care with a case plan, a written document that contains "very specific requirements for an individualized case plan[.]" *Sam M.*, 800 F. Supp. at 388 (citing 42 U.S.C. § 675(1)).[66] The entirety of Defendants' Rule 52 Motion concerning the actual required *content* of the Named Plaintiffs' case plans includes two sentences with no further detail:

> The service plans for Danny and Cassie contain statements and information as to the type of their living arrangements ("Placement Type"), permanency goal ("Planned Permanency goal"), "Progress review," educational, and medical information, etc. The information contained within these individual service plans are, at the very least, in substantial conformity with the AACWA if not in complete compliance.

Defs.' Mem. at 54. However, as set forth below, the case plans in evidence establish severe and persistent violations of AACWA and the resulting risk of harm to Plaintiffs through the failure to include required basic information concerning the appropriate of the child's placement, health information and educational information.

a. Case plans missing basic information on appropriateness of child's placement

AACWA explicitly requires "[a] description of the type of home or institution in which a child is to be placed, including a discussion of the safety and appropriateness of the placement." 42 U.S.C. § 675(1)(A). In the "Placement Information" section, DCYF's own service plan form expressly asks: "Is present placement the least restrictive?"[67] Yet of the fourteen case plans produced for Danny B., ten of them (over 71%) lacked any information on this critical

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footnote 57 *supra*. At trial the Court admitted Plaintiffs' Exhibits 130 and 90, which contain, respectively, all of the case plans for Danny and Cassie produced in discovery.

[66] The First Circuit has previously affirmed a district court's order granting a preliminary injunction to a class of children in foster care in Massachusetts requiring the state to provide a case plan with statutorily-mandated items to each child in foster care, based on the district court's holding that defendants violated plaintiffs' federal statutory right to case plans. *Lynch v. King*, 550 F. Supp. 325, 338, 346-47 (D. Mass. 1982), *aff'd sub nom. Lynch v. Dukakis*, 719 F.2d 504, 506 (1st Cir. 1983). As the *Lynch* court explained: "The case plan is the very foundation of the system of protection for a foster child. It is a blueprint of the steps that must be taken, and services that must be provided, to ensure the safety and welfare of the child." *Id.* at 338.

[67] Placement type is central to the appropriateness of the placement, and federal regulations require that case plan include provisions for placing a child in the least restrictive setting appropriate to her needs, and these regulations are echoed by professional standards. *See supra* at 32-33.

question—that section was left blank.[68]

b. Case plans missing basic information on health care for the child

AACWA specifically requires that a case plan include "the most recent information available regarding . . . the names and addresses of the child's health . . . providers"; "a record of the child's immunizations"; "the child's known medical problems"; and "the child's medications." 42 U.S.C. § 675(1)(C)(i), (C)(iv), (C)(v) and (C)(vi). For Danny, out of his fourteen case plans, eight failed to include any statements regarding the name of child's physician or doctor's office;[69] none included any statements regarding documentation of immunizations or an explanation of why the information was not provided;[70] eight lacked any statements regarding any identified health problems;[71] and nine lacked any statements regarding

[68] Plaintiffs' Exhibit 130 includes fourteen case plans for Danny B., and Plaintiffs' Exhibit 90 includes twelve case plans for Cassie M. There were often multiple versions for a case plan for a specific date. In presenting conclusions regarding required information that was completely missing, Plaintiffs conservatively considered all multiple drafts, such that if any version contained any information at all for the required element, it was not counted as a failure. For example, case plans lacking any "least restrictive" assessment for Danny B. include DB 2925 (indicating plan date of 3/29/2006), DB 3036, DB 3048, DB 3231, DB 3243, DB 3938, DB 7585; DB 3177 (indicating plan date of 9/29/2006), DB 3921, DB 7573; DB 2540 (indicating plan date of 3/27/2007), DB 2946, DB 4972, DB 7553; DB 181 (indicating plan date of 12/4/2007), DB 1544, DB 4959, DB 7730; DB 4947 (indicating plan date of 7/29/2008), DB 7544; DB 4934 (indicating plan date of 3/24/2009), DB 7533, DB 7751; DB 156 (indicating plan date of 9/30/2009), DB 1519, DB 4920; DB2311 (indicating plan date of 7/13/2011), DB 4890, DB 7508; DB2716 (indicating plan date of 1/13/2012), DB 4868, DB 6952, DB 7097, DB 7494; DB 6037 (indicating plan date of 7/13/2012), DB 7478.

[69] *See* "Medical Information" section in the following case plans: DB 3079 (indicating plan date of 8/16/2005), DB 3274, DB 3963, DB 7603; DB 2925 (indicating plan date of 3/29/2006), DB 3036, DB 3048, DB 3231, DB 3243, DB 3938, DB 7585; DB 3177 (indicating plan date of 9/29/2006), DB 3921, DB 7573; DB 3904 (indicating plan date of 11/10/2006), DB 7563; DB 2540 (indicating plan date of 3/27/2007), DB 2946, DB 4972, DB 7553; DB 181 (indicating plan date of 12/4/2007), DB 1544, DB 4959, DB 7730; DB 4947 (indicating plan date of 7/29/2008), DB 7544; DB 4934 (indicating plan date of 3/24/2009), DB 7533, DB 7751.

[70] *See* "Medical Information" section in the following case plans: DB 3079 (indicating plan date of 8/16/2005), DB 3274, DB 3963, DB 7603; DB 2925 (indicating plan date of 3/29/2006), DB 3036, DB 3048, DB 3231, DB 3243, DB 3938, DB 7585; DB 3177 (indicating plan date of 9/29/2006), DB 3921, DB 7573; DB 3904 (indicating plan date of 11/10/2006), DB 7563; DB 2540 (indicating plan date of 3/27/2007), DB 2946, DB 4972, DB 7553; DB 181 (indicating plan date of 12/4/2007), DB 1544, DB 4959, DB 7730; DB 4947 (indicating plan date of 7/29/2008), DB 7544; DB 4934 (indicating plan date of 3/24/2009), DB 7533, DB 7751; DB 156 (indicating plan date of 9/30/2009), DB 1519, DB 4920; DB 141 (indicating plan date of 3/9/2010), DB 1504, DB 2529, DB 4905, DB 7112, DB 7522, DB 7771; DB 2311 (indicating plan date of 7/13/2011), DB 4890, DB 7508; DB 2716 (indicating plan date of 1/13/2012), DB 4868, DB 6952, DB 7097, DB 7494; DB 6037 (indicating plan date of 7/13/2012), DB 7478; DB 6875 (indicating plan date of 1/16/2013), DB 6880, DB 7460.

[71] *See* "Medical Information" section in the following case plans: DB 3079 (indicating plan date of 8/16/2005), DB 3274, DB 3963, DB 7603; DB 2925 (indicating plan date of 3/29/2006), DB 3036, DB 3048, DB 3231, DB 3243, DB 3938, DB 7585; DB 3177 (indicating plan date of 9/29/2006), DB 3921, DB 7573; DB 3904 (indicating plan

any identified medications.[72] For Cassie, seven of her twelve case plans failed to include any statements regarding documentation of immunizations or an explanation of why the information was not provided.[73]

Additionally, AACWA requires that a child's case plan include "any other relevant health . . . information concerning the child determined to be appropriate by the State agency." 42 U.S.C. § 675(1)(C)(vii). For example, Rhode Island DCYF explicitly asks, in the child's case plan, for information regarding the date of the child's last medical exam. However, this question was left blank in eight of the fourteen case plans for Danny.[74]

c. Case plans missing basic educational information for the child

AACWA specifically requires each case plan to include "assurances that each placement of the child in foster care takes into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement"; and to include reference to "coordinat[ion] with appropriate local educational agencies . . . to ensure that the child remains in the school in which the child is enrolled at the time of each placement"

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date of 11/10/2006), DB 7563; DB 2540 (indicating plan date of 3/27/2007), DB 2946, DB 4972, DB 7553; DB 181 (indicating plan date of 12/4/2007), DB 1544, DB 4959, DB 7730; DB 4947 (indicating plan date of 7/29/2008), DB 7544; DB 4934 (indicating plan date of 3/24/2009), DB 7533, DB 7751.

[72] *See* "Medical Information" section in the following case plans: DB 3079 (indicating plan date of 8/16/2005), DB 3274, DB 3963, DB 7603; DB 2925 (indicating plan date of 3/29/2006), DB 3036, DB 3048, DB 3231, DB 3243, DB 3938, DB 7585; DB 3177 (indicating plan date of 9/29/2006), DB 3921, DB 7573; DB 3904 (indicating plan date of 11/10/2006), DB 7563; DB 2540 (indicating plan date of 3/27/2007), DB 2946, DB 4972, DB 7553; DB 181 (indicating plan date of 12/4/2007), DB 1544, DB 4959, DB 7730; DB 4947 (indicating plan date of 7/29/2008), DB 7544; DB 4934 (indicating plan date of 3/24/2009), DB 7533, DB 7751; DB 156 (indicating plan date of 9/30/2009), DB 1519, DB 4920.

[73] *See* "Medical Information" section in the following case plans: CM 808 (indicating a plan date of 3/3/2006), CM 823, CM 4949; CM 687 (indicating plan date of 12/5/2006), CM 3325, CM 4974, CM 7556, CM 9354, CM 9358; CM 625 (indicating plan date of 6/15/2007), CM 5006, CM 5011, CM 9238, CM 9251, CM 9324; CM 5040 (indicating plan date of 12/26/2007), CM 5057, CM 9384; CM 1880 (indicating plan date of 5/9/2008), CM 1895, CM 5081, CM 5110, CM 5119, CM 9206, CM 9223, CM 9295, CM 9304; CM 1843 (indicating plan date of 9/2/2009), CM 6165; CM 3628 (indicating plan date of 7/22/2011), CM 6223, CM 7298.

[74] *See* "Medical Information" section in the following case plans: DB 3079 (indicating plan date of 8/16/2005), DB 3274, DB 3963, DB 7603; DB 2925 (indicating plan date of 3/29/2006), DB 3036, DB 3048, DB 3231, DB 3243, DB 3938, DB 7585; DB 3177 (indicating plan date of 9/29/2006), DB 3921, DB 7573; DB 3904 (indicating plan date of 11/10/2006), DB 7563; DB 2540 (indicating plan date of 3/27/2007), DB 2946, DB 4972, DB 7553; DB 181 (indicating plan date of 12/4/2007), DB 1544, DB 4959, DB 7730; DB 4947 (indicating plan date of 7/29/2008), DB 7544; DB 4934 (indicating plan date of 3/24/2009), DB 7533, DB 7751.

or "if remaining in such school is not in the best interests of the child, assurances by the State agency and the local educational agencies to provide immediate and appropriate enrollment in a new school, with all of the educational records of the child provided to the school." 42 U.S.C. § 675(1)(G)(i) & (ii). However, three of the seven case plans for Danny to which these requirements apply (case plans completed after December 31, 2008), lacked information on both requirements.[75] For Cassie, none of the seven applicable case plans had any information on the "proximity" requirement[76] and six of the seven lacked any information on the "coordination" requirement.[77]

d. Grossly outdated or inaccurate information in case plans

Additionally, the case plans for Danny and Cassie show violations of AACWA in terms of grossly outdated or inaccurate information. For example, Danny's case plans routinely indicate incorrect information for his current school grade. The case plans from 11/10/2006 to 3/24/2009 all say Danny is in kindergarten.[78] As of his next case plan for 09/30/2009, Danny is listed as in the second grade and his last grade completed is listed as first grade, yet no case plans indicate he was ever in first grade. That same academic year, in his case plan for 03/09/2010,

[75] *See* Fostering Connections to Success and Increasing Adoptions Act of 2008, 42 U.S.C. § 675(1)(G). *See* DB 4934 (indicating plan date of 3/24/2009), DB 7533, DB 7751; DB 156 (indicating plan date of 9/30/2009), DB 1519, DB 4920; DB 141 (indicating plan date of 3/9/2010), DB 1504, DB 2529, DB 4905, DB 7112, DB 7522, DB 7771.
[76] *See* "Educational Information" section in the following case plans: CM 1863 (indicating plan date of 2/16/2009), CM 5145, CM 5171, CM 9164; CM 1843 (indicating plan date of 9/2/2009), CM 6165; CM 6181 (indicating plan date of 3/17/2010), CM 6191; CM 6207 (indicating plan date of 9/30/2010), CM 9142; CM 3628 (indicating plan date of 7/22/2011), CM 6223, CM 7298; CM 6241 (indicating plan date of 2/13/2012), CM 9128; CM 8664 (indicating plan date of 12/6/2012), CM 8759, CM 9087, CM 9400.
[77] *See* "Educational Information" section in the following case plans: CM 1863 (indicating plan date of 2/16/2009), CM 5145, CM 5171, CM 9164; CM 1843 (indicating plan date of 9/2/2009), CM 6165; CM 6181 (indicating plan date of 3/17/2010), CM 6191; CM 6207 (indicating plan date of 9/30/2010), CM 9142; CM 3628 (indicating plan date of 7/22/2011), CM 6223, CM 7298; CM 6241 (indicating plan date of 2/13/2012), CM 9128.
[78] *See* "Educational Information" section in the following case plans: DB 3904 (indicating plan date of 11/10/2006), DB 7563; DB 2540 (indicating plan date of 3/27/2007), DB 2946, DB 4972, DB 7553; DB 181 (indicating plan date of 12/04/2007), DB 1544, DB 4959, DB 7730; DB 4947 (indicating plan date of 07/29/2008), DB 7544; DB 4934 (indicating plan date of 03/24/2009), DB 7533, DB 7751.

Danny is listed in the third grade.[79] Danny's case plan for 07/13/2011 lists Danny in the fourth grade, but his plan for 01/13/2012 (the same school year) lists Danny in the fifth grade.[80] As of his next case plan for 07/13/2012, Danny is listed in sixth grade, but in the same school year his plan for 01/16/2013 lists Danny in the seventh grade.[81] For Cassie, her case plans for 12/26/2007, 05/09/2008, 02/16/2009 and 09/02/2009 indicate that she is in the sixth grade; however, her very next case plan for 03/17/2010 indicates Cassie is in the eighth grade and that her last grade completed was seventh grade (no case plans indicate she was ever in seventh grade).[82]

In another example, while the case plans for Danny indicate he requires special education services, the plans repeat a single date for his last "Date of Individualized Education Plan" ("IEP") as "06/14/2006" for Danny's case plans for 11/10/2006, 03/27/2007, 12/04/2007, 07/29/2008, 03/24/2009, 09/30/2009, 03/09/2010, 07/13/2011, 01/13/2012 and 07/13/2012.[83] In other words, the DCYF case plans for Danny repeatedly reflected the same outdated 06/14/2006 IEP *for almost six years*. While case plans for Cassie indicate she requires special education

[79] *See, e.g.*, DB 156 (indicating plan date of 09/30/2009), DB 158 (indicating current grade of "2"); DB 141 (indicating plan date of 03/09/2010), DB 143 (indicating current grade of "3").
[80] *See, e.g.*, DB 4890 (indicating plan date of 07/13/2011), DB 4893 (indicating current grade of "4"); DB 2716 (indicating case plan date of 01/13/2012), DB 2719 (indicating current grade of "5").
[81] *See, e.g.*, DB 6037 (indicating plan date of 07/13/2012), DB 6040 (indicating current grade of "6"); DB 6875 (indicating case plan date of 01/16/2013), DB 6879 (indicating current grade of "7").
[82] *See, e.g.*, CM 5040 (indicating plan date of 12/26/2007), CM 5042 (indicating current grade as "6"); CM 1880 (indicating plan date of 05/09/2008), CM 1882 (indicating current grade as "6"); CM 1863 (indicating plan date of 02/16/2009), CM 1866 (indicating current grade as "6"); CM 1843 (indicating a plan date of 09/02/2009), CM 1846 (indicating current grade as "6"); CM 6181 (indicating plan date of 03/17/2010), CM 6184 (indicating current grade as "8" and last grade completed as "7").
[83] *See* "Educational Information" section in the following case plans: DB 3904 (indicating plan date of 11/10/2006), DB 7565; DB 2540 (indicating plan date of 03/27/2007), DB 4972, DB 7553; DB 181 (indicating plan date of 12/04/2007), DB 1544, DB 4959, DB 7730; DB 4947 (indicating plan date of 07/29/2008), DB 7544; DB 4934 (indicating plan date of 03/24/2009), DB 7533; DB 156 (indicating plan date of 09/30/2009), DB 1519, DB 4920. For DB 141, DB 7112 and DB 7771 (all for plan date 03/09/2010), there is a handwritten cross out of the IEP date of 06/14/2006 with the undated and unidentified handwritten date "11/09/09 to 11/11/10" (DB 143) or "11/12/09 to 11/11/10" (DB 7114, DB 7773) next to it, yet the remaining versions of that 03/09/2010 plans all keep the 06/14/2006 date, *see* DB 2529, DB 4905, DB 7522. For subsequent plans, the IEP date of 06/14/2006 is still used. *See* DB 4890 (indicating plan date of 07/13/2011), DB 7508; DB 2716 (indicating plan date 1/13/2012), DB 4868, DB 7097, DB 7494; DB 6037 (indicating plan date of 07/13/2012), DB 7478.

services, her case plan for 02/13/2012 shows a date of IEP of "10/21/2010"; however, her next case plan of 12/06/2012 shows a date of IEP of 10/21/2011 (almost four months *prior* to the date of her *prior* plan), indicating that information was never updated.[84]

In another example of inaccurate information, Danny's case plans for 07/13/2011 show a date of his last medical exam as 08/31/2011—*after* the date of the plan.[85] Danny's case plans for 07/13/2012 include a date of his last dental examination as 04/20/2011,[86] yet the very next case plan for 01/16/2013 indicated the date of last dental examination as 06/19/2012,[87] which was prior to the 07/13/2012 case plan, indicating the information was never updated.

In sum, the evidence at trial shows clear multiple violations of the case plan requirement of AACWA for the Named Plaintiffs, and the resulting risk of harm, easily violating even the "substantial compliance" standard urged by defendants.

iv. AACWA Requires Rhode Island to Make Foster Care Maintenance Payments That Fully Cover Enumerated Costs

Under AACWA, states such as Rhode Island that accept federal funds for their foster care systems must provide foster care maintenance payments that:

> [C]over the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, reasonable travel to the child's home for visitation, and reasonable travel for the child to remain in the school in which the child is enrolled at the time of placement.

42 U.S.C. § 675(4)(A); *see* 42 U.S.C. § 671(a)(1); *see also* 45 C.F.R. § 1355.20(a). These payments must "fully cover" the statutorily-enumerated costs. *C.H. v. Payne*, 683 F. Supp. 2d

[84] *See, e.g.*, CM 6241 (indicating plan date of 02/13/2012), CM 6244 (indicating a date of IEP of "10/21/2010"); CM 8664 (indicating a plan date of 12/06/2012), CM 8667 (indicating a date of IEP of "10/21/2011").
[85] *See* DB 7508 (indicating plan date of 07/13/2011), DB 7512 (showing "Date of last medical exam: 08/31/2011"), DB 4890 (indicating plan date of 07/13/2011), DB 4894 (showing "Date of last medical exam: 08/31/2011").
[86] *See* DB 6037 (indicating plan date of 07/13/2012), DB 6041 (indicating "Date of last dental examination: 04/20/2011"), DB 7478 (indicating plan date of 07/13/2012), DB 7482 (indicating "Date of last dental examination: 04/20/2011").
[87] *See* DB 6875 (indicating case plan date of 01/16/2013), DB 6880 (indicating "Date of last dental examination: 06/19/2012").

865, 879 (S.D. Ind. 2010); *see also Cal. Alliance of Child & Fam. Servs. v. Allenby*, 589 F.3d 1017, 1021, 1023 (9th Cir. 2009) (interpreting "cover" in 42 U.S.C. § 675(4)(A) to "refer to meeting all the costs of food, clothing, shelter, etc." and holding that the state was not "covering the costs required by" AACWA where it paid "approximately 80 percent of the costs of providing the listed items"). AACWA also requires states to periodically review foster care maintenance payments to "assure their continuing appropriateness." 42 U.S.C. § 671(a)(11); *see also* 45 C.F.R. § 1356.21(m).[88]

Although states are not required to use any *particular* methodology for calculating foster care maintenance payments, several courts have held that states are "obligated to use a methodology that takes into consideration the actual costs of providing the enumerated items." *C.H.*, 683 F. Supp. 2d at 880; *see also Cal. State Foster Parent Ass'n v. Wagner*, No. C 07-05086 WHA, 2008 WL 4679857, at *6 (N.D. Cal. Oct. 21, 2008), *aff'd*, 624 F.3d 974, 981 (9th Cir. 2010). In addition, as the Ninth Circuit has held, states must take inflation into account when setting their foster care maintenance rates. *Allenby*, 589 F.3d at 1022.

v. Plaintiffs Demonstrated that Rhode Island's Foster Care Maintenance Payments Fail To Comply With AACWA

Through the testimony of Plaintiffs' expert economist, Dr. Mary Hansen, Plaintiffs proved that Rhode Island's foster care maintenance payments are far below what AACWA requires, and that Rhode Island has no methodology for ensuring ongoing compliance with AACWA.

[88] Defendants appear to argue that Rhode Island's Title IV-E State Plan has been approved by the federal government and exempts the state from having to cover AACWA's statutorily enumerated costs. Defs.' Mem. at 49. This directly contradicts this Court's finding of a private right of action under AACWA. *See supra* at 38-39. Also, no such state plan was introduced into evidence at trial. Defendants introduced an amendment to a state plan (Trial Ex. 2087), but no evidence shows that this amendment allows noncompliance with AACWA or HHS approval.

Pursuant to Fed. R. Evid. 702, an expert witness is one "who is qualified as an expert by knowledge, skill, experience, training, or education." Dr. Hansen is so qualified. She earned her Ph.D. in economics in 1993, and has been teaching economics at a college level since then. Trial Tr. vol. IX (Hansen), at 8:3-16. She is an associate professor of economics at American University, where she has been teaching since 1999. *Id.* at 8:17-9:4. Dr. Hansen has received grants for work on child welfare issues from federal agencies and private organizations. *Id.* at 10:5-16. She writes and speaks extensively concerning economic analyses of child welfare matters, including foster care maintenance payments. *Id.* at 10:20-11:17, 14:8-15:1.[89]

Dr. Hansen determined the AACWA-mandated costs of caring for foster children in Rhode Island, assessed the value of foster care maintenance payments and other benefits provided by the state, and evaluated the extent to which the payments and benefits cover the actual costs. *Id.* at 4:10-7:7.[90] Trial Ex. 712 (AACWA-Enumerated Costs per Child) summarizes Dr. Hansen's estimate of the costs and the categories enumerated in AACWA for children from birth to age 17. *Id.* at 20:15-22:3. Dr. Hansen provided detailed testimony about how she calculated the costs she estimated in Trial Ex. 712. *Id.* at 22:12-28:21; *see also* Trial Ex. 712.

Dr. Hansen then explained how she assessed these costs against the basic and supplemental foster care maintenance payments and additional benefits available to generic foster homes in Rhode Island. Trial Tr. vol. IX (Hansen), at 29:12-30:11. First, Dr. Hansen testified that the current basic foster care maintenance payments were set in 2001. *Id.* at 30:3-

[89] Defendants raised no objection to Dr. Hansen's qualifications, and objected only to the relevance of her testimony. Trial Tr. vol. IX (Hansen), at 3:22-25. This objection was overruled when the Court allowed Dr. Hansen to testify. *Id.* at 4:1-3.

[90] Dr. Hansen determined the costs for caring for children utilizing the federal Consumer Expenditure Survey ("CES"), along with an analysis of CES data done by the United States Department of Agriculture ("USDA") on expenditures by families on their children. *Id.* at 16:6-15. Dr. Hansen used USDA data for a typical middle income, two-parent two-child family in the urban Northeast in order to capture costs for all eligible foster parents, who are paid the same regardless of family structure or income. *Id.* at 18:13-20:10, 128:14-129:6.

34:3. Next, Dr. Hansen explained that basic rates can be supplemented for special needs children, but that, according to DCYF's Foster Care Payment Assessment System Manual (Trial Ex. 487) such payments could only be counted towards daily supervision. *Id.* at 36:14-40:16; *see also* Trial Ex. 487. Importantly, Dr. Hansen assumed, for the purpose of her analysis, that these supplemental payments would cover 100% of daily supervision costs. Trial Tr. vol. IX (Hansen), at 49:16-24. Finally, Dr. Hansen testified about additional benefits available to foster parents in Rhode Island that could be counted toward the cost categories enumerated in AACWA.[91] *Id.* at 40:17-43:16;

Dr. Hansen's opinions as to the increases required to the basic board rates to make them AACWA compliant are summarized in Trial Ex. 710 (Summary of Costs Compared to Current Rhode Island Board Rates). *Id.* at 57:5- 60:6; *see also* Trial Ex. 710. Specifically, the data presented by Dr. Hansen shows that on average Rhode Island "would need to increase the current board rates by 72 percent in order to cover the entirety of [her] estimated cost of caring for a child." Trial Tr. vol. IX (Hansen), at 61:10-13. For a 12-year-old child (such as Danny), the basic board rate would need to be increased by 73 percent to cover the AACWA-enumerated costs. *Id.* at 62:12-63:5. For a 17-year-old child (such as Cassie), the basic board rate would need to be increased by 79 percent to cover the AACWA-enumerated costs. *Id.* at 63:6-18.[92]

[91] *See also* Trial Ex. 547 (excerpt of the Foster Parent Handbook containing information about certain benefits paid by Rhode Island); Trial Ex. 488 (document prepared by DCYF containing information about certain benefits not discussed in the Foster Parent Handbook). Trial Ex. 713 (Out-of-Pocket Costs per Child) shows the costs per child (again from birth to age 17) for each cost enumerated in AACWA that are not covered by the basic rates, supplemental rates, and additional benefits paid by Rhode Island to foster parents. Trial Tr. vol. IX (Hansen), at 43:25-46:15; *see also* Trial Ex. 713. Dr. Hansen provided detailed testimony about how she calculated the out-of-pocket costs laid out in Trial Ex. 713. Trial Tr. vol. IX (Hansen), at 46:16-52:20, 53:8-57:3*; see also* Trial Ex. 485 (DCYF document concerning transportation reimbursements for foster parents).

[92] Given the un-rebutted data and Dr. Hansen's conclusions, Defendants cannot argue that Rhode Island even "substantially" complies with AACWA, even if substantial compliance was the appropriate standard, which it is not. *See supra* at 40.

Defendants offer no serious challenge to Dr. Hansen's conclusions, other than attempting to misstate Dr. Hansen's testimony.[93]

Further, Dr. Hansen's analysis of Rhode Island's foster care maintenance payments found there is no evidence of any methodology by DCYF to set the current rates (which have not been changed to date). *Id.* at 34:4-36:13.[94] Dr. Hansen also performed an inflation adjustment on Rhode Island's basic rates, *id.* at 69:9-70:20, and concluded that as of 2011 these rates have not kept pace with inflation. *Id.* at 71:2-72:5.[95]

The evidence at trial thus proves that Rhode Island is violating the foster care maintenance provision of AACWA to the harm and detriment of Plaintiffs and the putative class.

III. CONCLUSION

The evidence introduced at trial demonstrates that (1) Defendants operate a foster care system replete with chronic structural failings that have exposed, and continue to expose, the Plaintiffs and the putative class to an unreasonable and imminent risk of physical and psychological harm in violation of their constitutional substantive due process rights; (2) Defendants have violated the Plaintiffs' constitutional rights to family association; (3) Defendants have violated Plaintiffs' federal statutory right to case plans that are timely and include statutorily-mandated items; and (4) Defendants have violated Plaintiffs' federal statutory right to adequate foster care maintenance payments. Accordingly, Defendants' Rule 52 Motion must be denied.

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[93] To give but one example, Defendants allege that Dr. Hansen "vastly inflated the cost of housing and transportation by factoring in a mortgage for a larger house and the expense of purchasing a larger vehicle." Defs.' Mem. at 52. None of Defendants' seven trial transcript citations support these allegations.

[94] Defendants refer to a periodic review to determine whether children in generic foster care should also be receiving the "supplemental rate" in addition to the base rate. Defs.' Mem. at 51. This observation ignores the fact that Dr. Hansen explicitly considered the supplemental rate in the data presented and arriving at her conclusion that foster care maintenance payments to generic foster homes do not cover AACWA's required costs. *See supra* at 49.

[95] Dr. Hansen also testified in detail about how she verified her results by considering other reports that had aims similar to that of her report, in particular a study done by Ball State concerning the costs of foster care in Indiana. Trial Tr. vol. IX (Hansen), at 72:20-79:1.

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on February 20, 2014, I caused the foregoing document to be electronically filed with the United States District Court for the District of Rhode Island, and it is available for viewing and downloading from the ECF system for all counsel of record. I further certify that on this day I caused to be served, via ECF, a copy of said document to the attorneys of record listed below:

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