

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

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USDC DISTRICT OF SOUTH CAROLINA
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MICHELLE H., by her next friend,
Tamara Coppinger, *et al.*, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

NIKKI HALEY, in her official capacity as
Governor of the State of South Carolina,

SUSAN ALFORD, in her official capacity as
State Director of the South Carolina
Department of Social Services,

Defendants.

C/A No. 2:15-cv-00134-RMG

CONSENT IMMEDIATE INTERIM RELIEF

WHEREAS, the parties in this action are currently engaged in mediation under the direction of Senior U.S. District Judge P. Michael Duffy with the objective of seeking a resolution of the legal dispute through a negotiated settlement (Dkt. No. 21), and

WHEREAS, the parties in this action consent to the specific immediate interim relief as set forth herein:

I. Definitions:

1. Class Certification: Pursuant to the terms of this Settlement Agreement, this case shall be certified as a class action under Fed. R. Civ. P. 23(a) and (b)(2). The "Certified Class" shall be defined as follows: all children who are or will be involuntarily placed in DSS foster care in the physical or legal custody of DSS.
2. "Class Members" shall mean a child or children in the Certified Class.
3. "Juvenile Justice Placement" shall mean a placement made by the South Carolina Department of Juvenile Justice.
4. "Referral of Institutional Abuse and Neglect" as defined in S.C. Code Ann. § 63-7-20(12), means

a possible incident of abuse or neglect of a Class Member.

5. “Accepted Report of Abuse or Neglect” means a Referral of Institutional Abuse or Neglect that DSS has accepted for investigation as defined in S.C. Code Ann. § 63-7-20(12).
6. “Worker” means any employee of DSS that provides direct case management, supervision, or provides permanency services, or investigates one or more Accepted Reports of Abuse or Neglect about a Class Member.

II. Immediate Interim Relief

The parties agree that Immediate Interim Relief shall include:

1. **Workloads:** Workload Study and Workload Limits as to Foster Care:
 - (a) DSS shall design, conduct, and complete a workload study (“Workload Study”) and adopt one or more workload limits (“Workload Limits”) for foster care within one hundred and eighty (180) days. (FRCP 6 – Time Computation).
 - (b) In designing, conducting, and completing the Workload Study, DSS shall consider:
 - (i) caseload and workload provisions published by organizations including, but not limited to, the Council on Accreditation and the Child Welfare League of America;
 - (ii) the time needed and the time available for Workers to manage and complete their work; and
 - (iii) accepted best practices for workload studies.
 - (c) The Workload Study must be approved by the Co-Monitors before it is conducted. The results of the Workload Study must also be approved by the Co-Monitors before they are adopted by DSS.
 - (d) A Workload Limit must apply to every Worker and to every Worker’s supervisor. DSS may identify categories of Worker or supervisor or both and set a different Workload Limit for each category. Each Workload Limit must be approved by the Co-Monitors before it is adopted.
2. **Placement Needs Assessment:** Within one hundred twenty (120) days, DSS, with prior input from and subject to approval by the Co-Monitors, shall perform a statewide and regional foster care placement needs assessment in order to determine the minimally adequate capacity and array of placements for meeting the placement needs of all Class Members. The needs assessment shall include specific recommendations addressing all the assessment’s findings, including but not limited to recommendations that address the capacity to place Class Members close to their home community, placing Class Members in the least restrictive, most family-like placement, the number and array of therapeutic foster care placements, a system of tracking availability of beds in family foster homes, and matching of Class Members to placements that can meet their needs.

- (a) Within sixty (60) days of the completion of the needs assessment, DSS shall develop an Implementation Plan to implement the recommendations of the needs assessment within eighteen (18) months. The Implementation Plan shall have enforceable benchmarks with specific timelines, subject to approval by the Co-Monitors, to measure progress in executing the recommendations of the needs assessment.
- (b) DSS shall achieve substantial compliance with the recommendations in the Implementation Plan.

3. Placements:

- (a) Family Placements for Children Ages 6 and Under. Within sixty (60) days, DSS shall create a plan, subject to the approval of the Co-Monitors, for preventing, with exceptions approved by the Co-Monitors, the placement of any Class Member age six and under in any non-family group placement (including but not limited to group homes, shelters or residential treatment centers). The plan shall include full implementation within sixty (60) days following approval of the Co-Monitors.
- (b) Phasing-Out Use of DSS Offices and Hotels. Within sixty (60) days, DSS shall cease using DSS offices as an overnight placement for Class Members, and shall cease placing or housing any Class Members in hotels, motels and other commercial non-foster care establishments. For any Class Members moved out of such DSS Offices or Hotels, DSS shall provide for their appropriate placement.
- (c) When Class Members are placed in juvenile justice detention or another Juvenile Justice Placement, DSS shall not recommend to the family court or Department of Juvenile Justice that a youth remain in a Juvenile Justice Placement without a juvenile justice charge pending or beyond the term of their plea or adjudicated sentence for the reason that DSS does not have a foster care placement for the Class Member. DSS shall take immediate legal and physical custody of any Class Member upon the completion of their sentence or plea. DSS shall provide for their appropriate placement.

4. **Limited Co-Monitors:** Paul Vincent and Judith Meltzer shall be appointed as independent and equal Co-Monitors, whose authority is specifically limited to evaluating and validating DSS performance under items 1-3 above, including authority to provide required approvals and periodic reporting as directed by the Court. A six-month budget shall be proposed by the Co-Monitors within thirty (30) days, paid by Defendants, and agreed to by the Court. *Ex parte* communications between and among Co-Monitors or any of their agents, the Mediator, and the parties are allowed. The Monitors may meet privately with the Court concerning issues related to this Interim Relief agreement, provided the parties are made aware of the subject of such meetings. In the event that either Paul Vincent or Judith Meltzer is unable to fulfill his or her duties under this Settlement Agreement, the party who originally selected the departing Monitor will propose a replacement with the consent of the remaining Monitor and other parties, and submit the replacement to the Court for approval. After one hundred and eighty (180) days, the limited authority of the Co-Monitors under this Interim Relief agreement ends if the mediation process does not result in a negotiated settlement.

AND IT IS SO ORDERED.

A handwritten signature in black ink, consisting of a stylized 'R' followed by 'M' and a large, looped flourish.

THE HONORABLE RICHARD M. GERGEL
U.S. DISTRICT JUDGE

September 28 2015
Charleston, South Carolina

Dated: September 17, 2015

s/Monteith P. Todd
Monteith P. Todd (ID No. 3125)
Rebecca Laffitte (ID No. 1036)
J. Michael Montgomery (ID No.
10290)
Alex E. Davis (ID No. 11323)
SOWELL GRAY, LLP
Post Office Box 11449
Columbia, SC 29211
(803) 929-1400

Attorneys for Defendant Susan
Alford, in her official capacity as
State Director of the South
Carolina Department of Social
Services

s/Karl S. Bowers
Karl S. Bowers, Jr. (ID No. 7716)
BOWERS LAW FIRM
Post Office Box 50549
Columbia, SC 29250
(803) 753-1099

Attorney for Defendant Nikki Haley,
in her official capacity as Governor
of the State of South Carolina

s/Matthew T. Richardson

Matthew T. Richardson, (ID No.7791)
WYCHE P.A.
801 Gervais Street, Suite B
Columbia, SC 29201
(803) 254-6542

Ira Lustbader (*pro hac vice*)
Christina Wilson Remlin (*pro hac vice*)
Kathryn A. Wood (*pro hac vice*)
Sarah T. Russo (*pro hac vice*)
Aaron H. Finch (*pro hac vice*)
CHILDREN'S RIGHTS
330 Seventh Avenue, Fourth Floor
New York, NY 10001
212-683-2210

Susan Berkowitz (ID No. 1305)
Stephen Suggs (ID. No. 7525)
SOUTH CAROLINA APPLESEED
LEGAL JUSTICE CENTER
P.O. Box 7187
Columbia, SC 29202
(803) 779-1113

Attorneys for Plaintiffs