

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF KANSAS
KANSAS CITY DIVISION**

M.B. and **S.E.** through their next friend)
Katharyn McIntyre, **R.M.** through his next)
friend Allan Hazlett, **C.A.** through his next)
friend Allan Hazlett, **E.B.** through his next)
friend Allan Hazlett, **J.P.** through her next)
friend Allan Hazlett, **Z.Z.** through her next)
friend Ashley Thorne, and **M.A.** through his)
next friend Ashley Thorne, for themselves and)
those similarly situated,)

Case No. 2:18-cv-02617-DDC-GEB

Plaintiffs,

v.

Laura Howard in her official capacity as)
Kansas Department for Children and Families)
Secretary, **Dr. Lee A. Norman** in his official)
capacity as Kansas Department of Health and)
Environment Secretary, and **Laura**)
Howard in her official capacity as Kansas)
Department for Aging and Disability Services)
Secretary,)

Defendants.

NOTICE OF SETTLEMENT

Plaintiffs hereby notify the Court that the parties have reached a full settlement of this case subject to Court approval, which the parties will seek in due course. The parties' executed Settlement Agreement is attached here as Exhibit A.

Dated: July 8, 2020

Respectfully submitted,

**KANSAS APPLESEED CENTER FOR LAW
AND JUSTICE, INC.**

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was filed electronically with the Clerk of the Court on July 8, 2020, to be served by the operation of the Court's CM/ECF electronic filing system upon all parties.

DATED: July 8, 2020

/s/ Teresa A. Woody

Teresa A. Woody

Attorney for Plaintiffs

Exhibit A

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF KANSAS**

M.B. and S.E., through their next friend
KATHARYN MCINTYRE, et al.,

Plaintiffs,

v.

LAURA HOWARD, et al.,

Defendants.

Case No. 18-CV-02617-DDC-GEB

SETTLEMENT AGREEMENT

This Settlement Agreement has been executed on the dates set forth below but made effective as of the Date of Final Approval, by and between Plaintiffs **M.B.** and **S.E.** through their next friend Katharyn McIntyre, **R.M.** through his next friend Allan Hazlett, **C.A.** through his next friend Allan Hazlett, **E.B.** through his next friend Allan Hazlett, **J.P.** through her next friend Allan Hazlett, **Z.Z.** through her next friend Ashley Thorne, and **M.A.** through his next friend Ashley Thorne, for themselves and those similarly situated, by and through Plaintiffs' Counsel (collectively "Plaintiffs"), and Defendants Laura Howard, in her official capacity as Kansas Department for Children and Families ("DCF") Secretary, Laura Howard, in her official capacity as Kansas Department of Aging and Disability Services ("KDADS") Secretary, and Dr. Lee A. Norman, in his official capacity as Kansas Department of Health and Environment ("KDHE") Secretary, by and through Defendants' Counsel (collectively "Defendants"; Plaintiffs and Defendants collectively the "Parties"). This Settlement Agreement is conditioned on approval by the United States District Court for the District of Kansas in this action, as required by Rule 23 of the Federal Rules of Civil Procedure.

RECITALS

WHEREAS, Plaintiffs filed this action ("the Litigation") (ECF 1 and 63) alleging ongoing federal statutory and constitutional violations and seeking prospective declarative and injunctive relief concerning the Kansas Child Welfare System; and

WHEREAS, Defendants deny any violations of federal law in the Litigation; and

WHEREAS, since she was appointed, DCF Secretary Howard has made improvement in the Kansas foster care program a top priority; and

WHEREAS, this Agreement was approved by the Kansas State Finance Council on July 8, 2020;

WHEREAS, the Parties wish to amicably resolve this action in a way that addresses the concerns identified in the Litigation and benefits the children and families served by the Kansas Child Welfare System.

NOW, THEREFORE, in consideration of the execution of this Settlement Agreement and the mutual recitals and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

SECTION 1: DEFINITIONS AND PRINCIPLES

Part I: Definitions

1.1 “CFSR” shall mean the Child and Family Services Review Round 3.

1.2 “Class” shall mean the class, authorized by the terms of this Settlement Agreement and approved by the Court, to be certified under Fed. R. Civ. P. 23(a) and (b)(2) and defined as: all children who are now, or in the future will be, in the protective custody of DCF pursuant to Kan. Stat. Ann. § 38-2242(c)(1).

1.3 “Class Counsel” shall mean attorneys of record for Plaintiffs in the Litigation.

1.4 “Class Counsel Fees and Expenses” shall mean reasonable fees and expenses of Class Counsel in an amount determined to be reasonable by the Court. The Court shall retain jurisdiction to make this determination. Defendants stipulate that Class Counsel is entitled to Class Counsel Fees and Expenses but reserve the right to dispute the appropriate amount.

1.5 “Crisis Intervention Services” shall mean in-person on-site or virtual face-to-face mental health services provided to a person who is experiencing a behavioral health crisis, designed to interrupt and/or ameliorate a crisis experience. These services include a preliminary assessment, which may be conducted over the phone to determine the appropriate level of intervention, immediate crisis resolution and de-escalation, crisis intervention and stabilization services, and timely referral and linkage to appropriate community services to avoid more restrictive levels of treatment, based on the individualized needs of the person experiencing the behavioral health crisis.

1.6 “Contract” or “Grant” shall mean any agreement between Defendant(s) and licensed private providers to provide foster care placements or services, including mental and behavioral health services, to Class Members. This definition includes any agreement or arrangement under which funding is provided in exchange for the provision of foster care placements or services, regardless of its form.

1.7 “Contractor” or “Grantee” shall mean a licensed private provider with whom Defendant(s) contract or otherwise arrange to provide foster care placements or services, including mental and behavioral health services, to Class Members. This definition applies to such a

provider regardless of the form of the agreement or arrangement under which funding is provided in exchange for the provision of foster care placements or services.

1.8 The “Date of Final Approval” shall mean the date upon which the Judgment and Order is entered by the Court.

1.9 “Defendants” shall mean the defendants in the Litigation (Laura Howard, in her official capacity as Secretary of DCF and KDADS, and Dr. Lee A. Norman, in his official capacity as Secretary of KDHE) and each such agency, and their officers, agents, and elected or appointed officials, past, present, and future.

1.10 “Extraordinary Circumstances” shall mean an immediate or imminent crisis whereby measures must be taken to protect the safety and security of the child. A lack of safe and/or appropriate placement options does not constitute Extraordinary Circumstances.

1.11 “Initial Mental Health and Trauma Screen” shall mean the Child and Adolescent Functional Assessment Scale (attached hereto as Attachment 1 and available at www2.fasoutcomes.com), the Preschool and Early Childhood Functional Assessment Scale (attached hereto as Attachment 2 and also available at www2.fasoutcomes.com), the Child and Adolescent Needs and Strengths tool (attached hereto as Attachment 3 and available at praedfoundation.org), or their functional equivalents as agreed by the Parties.

1.12 “Judgment and Order” shall mean the Order of the United States District Court for the District of Kansas finally approving the Settlement Agreement.

1.13 The “Litigation” shall mean *M.B. and S.E. through their next friend Katharyn McIntyre, et al., v. Laura Howard, in her official capacity as Kansas DCF Secretary, et al.*, Case No. 18-CV-2617-DDC-GEB, pending in the United States District Court for the District of Kansas, Kansas City Division.

1.14 “Mediator” shall mean the following individual: Karen Baynes-Dunning.

1.15 “Neutral” shall mean the following individual: Judith Meltzer and the Center for the Study of Social Policy.

1.16 “Notice of Settlement” shall mean the notice to the Class in the form approved by the Court in this Litigation in an order granting Preliminary Approval of the Settlement Agreement, setting forth the nature and terms of the Settlement Agreement, the schedule and manner for filing any submissions in objection to or in favor of the Settlement Agreement and/or requests to be heard at the final fairness hearing, and the date, time, location and purpose of a final fairness hearing, and notifying the Class of Class Counsel’s request for an award of Class Counsel Fees and Expenses.

1.17 “Night-to-Night Placement” shall mean a one calendar day placement that is not the same residence address for consecutive days.

1.18 “Placement Move” shall mean a change in foster care placement setting, as defined by the Adoption and Foster Care Analysis and Reporting System (AFCARS).

1.19 “Plaintiff Class” or “Class Members” shall mean each member of the Class certified by the Court.

1.20 “Preliminary Approval of the Settlement Agreement” shall mean an Order from the Court granting preliminary approval of the Settlement Agreement; approving the form, manner and timeframe for the publication of the Notice of Settlement (at Defendants’ expense); setting forth the schedule and manner for filing any submissions in objection to or in favor of the Settlement Agreement and any requests to be heard at the final fairness hearing, and the Parties’ response to any such submissions; the timing and process for Plaintiffs to file a motion for Class Counsel Fees and Expenses for work up through the Date of Final Approval (including opposition and reply briefs); and the date, time, location and purpose of a final fairness hearing.

1.21 A “Qualified Mental Health Professional” shall mean a physician or psychologist, a licensed masters level psychologist, a licensed clinical psychotherapist, a licensed marriage and family therapist, a licensed clinical marriage and family therapist, a licensed professional counselor, a licensed clinical professional counselor, a licensed specialist social worker or a licensed master social worker, or a registered nurse who has a specialty in psychiatric nursing.

1.22 “Released Claims” shall mean all claims for declarative and injunctive relief and causes of action asserted in the Amended Complaint arising or accruing against the Defendants on or before the Date of Final Approval, relating to the Plaintiff Class, activities involving the Plaintiff Class, and any duties, actions or inactions of the Defendants with respect thereto, which were asserted in the Litigation.

1.23 “Respite” shall mean the assumption of daily caregiving responsibilities on a temporary basis, designated as approved twenty-four (24) hour-a-day family-based care, to provide parents or other caregivers with temporary relief from their responsibilities to a child. Such temporary care shall not be considered a Placement Move if it is requested by the child’s current parent/caregiver, and the foster child returns to the same placement upon completion of the Respite care. The Parties intend this definition to support placement stability and to avoid and deter serial, repeated Respite placements over a short time period.

1.24 “Short-Term Placement” shall mean a placement duration of fourteen (14) calendar days or fewer.

1.25 “Subcontract” shall mean any agreement between a Contractor or Grantee and another licensed private provider to provide foster care placements or services, including mental and behavioral health services, to Class Members. This definition includes any agreement or arrangement under which funding is provided in exchange for the provision of foster care placements or services, regardless of its form.

1.26 “Subcontractor” shall mean a licensed private provider with whom a Contractor or Grantee contracts or otherwise arranges to provide foster care placements or services, including mental and behavioral health services, to Class Members. This definition applies to such a provider regardless of the form of the agreement or arrangement under which funding is provided in exchange for the provision of foster care placements or services.

1.27 “Substantial Compliance” shall mean performance with respect to each of the enforceable obligations set forth in this Settlement Agreement in Section 2, that is sufficient to conclude that the specific obligation has been achieved. The Parties reserve the right to argue whether performance with respect to any specific obligation meets this standard.

1.28 The “Kansas Department for Children and Families” is referred to herein as “DCF.”

1.29 The “Kansas Department for Aging and Disability Services” is referred to herein as “KDADS.”

1.30 The “Kansas Department of Health and Environment” is referred to herein as “KDHE.”

Part II: Principles

1.31 The Agreement shall be governed by the following principles:

1.31.1 Providing community-based preventive and rehabilitative services, to safely avoid and prevent removal and out of home care if possible.

1.31.2 Providing the opportunity for all Class Members to grow up in a safe, nurturing family, preferably their own biological family or with kin.

1.31.3 Promoting and supporting biological family, kin, sibling, and community connections for Class Members.

1.31.4 Ensuring that all aspects of the child welfare system that serve Class Members are trauma-informed.

1.31.5 Recognizing the state’s ultimate legal custodial responsibility for the safety and well-being of Class Members.

1.31.6 Promoting the least restrictive, most family-like, most connected and community-based setting possible to meet the needs of Class Members.

1.31.7 Promoting stability for Class Members, including in placements and in educational settings.

1.31.8 Ensuring that Class Members’ physical, mental, and emotional needs are identified and met.

SECTION 2: PERFORMANCE GOALS

Part I: Accountability, Reporting and Implementation

2.1 With input from Plaintiffs and the Neutral, Defendants shall implement the following:

2.1.1 Contract Oversight and Accountability. Within thirty (30) days of entry of the Court's Judgment and Order, Defendants will amend provider grants for foster care case management to include a set of immediate mandates, with the Outcomes and Practice Improvements in Section 2, Parts II and III herein incorporated into the grant agreements. The requirements will address performance-based metrics and applicability of DCF discretionary corrective action for nonperformance or inadequate performance. DCF shall reasonably exercise discretion in taking corrective action.

2.1.2. Community Accountability Structure. Within six (6) months of the entry of the Court's Judgment and Order, Defendants with input from Plaintiffs shall develop an independent advisory group to inform action planning and program improvement and to assist in implementation of this Settlement Agreement. The advisory group shall remain in place until the final termination of this Settlement Agreement. The structure shall include a statewide cross section of stakeholders and may include representation from existing advisory or planning groups for child welfare collaboration including family partners and youth with experience in care.

At least one-third of this group shall be stakeholders who are foster care providers, relative care providers, parents, or youth who are experiencing or have experienced alternative placements within their families. No more than 20% of the members of this group shall be employees of the state of Kansas. At least 50% of the professional members of this group shall be professionals directly working with and providing services to families, or direct supervisors of professionals directly working with and providing services to families.

If this advisory group makes written recommendations to Defendants, Defendants shall respond in writing to this group within thirty (30) days, commenting upon the recommendations and advising as to whether the recommendations will be accepted in whole or in part or will not be accepted.

2.1.3. Reporting. In addition to the reporting requirements specified elsewhere herein, Defendants shall: (a) track and report for each twelve (12) month period, aligned with the four (4) one-year periods specified in Section 2.6, and every twelve (12) months thereafter until settlement termination, validated by the Neutral, all Class Members placed in a jail, correctional facility, detention facility, or other juvenile justice system placement, and the duration of time Class Members were or have been placed in such placements; and (b) track and report for each twelve (12) month period, aligned with the four (4) one-year periods specified in Section 2.6, and every twelve (12) months thereafter until settlement termination, validated by the Neutral, caseloads of all placement caseworkers and placement caseworker supervisors.

Part II: Practice Improvements

2.2 Defendants shall achieve Substantial Compliance with the following Practice Improvements in Section 2.5 by no later than October 31, 2021. The period of measurement for Substantial Compliance shall be from November 1, 2020 through October 31, 2021.

2.3 The Neutral shall review Defendants' performance data and information produced pursuant to Section 3.4 and shall validate that information as necessary to neutrally report on performance under each, consistent with the terms of this Settlement Agreement. Defendants shall track and report timely, reliable, and valid data concerning the Practice Improvements outlined in this Section, in a manner and format determined with input from the Neutral and Plaintiffs.

2.4 Once a Practice Improvement is achieved based on agreement of the Parties or validation by the Neutral, Defendants must maintain Substantial Compliance for one successive twelve (12) month period. Once Defendants have maintained Substantial Compliance for one successive twelve (12) month period for any of the Practice Improvements, all reporting and monitoring of that Practice Improvement will cease and that Practice Improvement is no longer enforceable under this Settlement Agreement.

2.5 Practice Improvements.

2.5.1 **Practice Improvement 1:** DCF shall end the practice of utilizing any of the following to temporarily house or otherwise maintain Class Members overnight: (a) any public or private provider agency offices or annexes absent Extraordinary Circumstances; or (b) any non-child welfare housing or temporary accommodations, including but not limited to: (i) hotels or motels, (ii) other commercial non-foster care establishments, (iii) cars, (iv) retail establishments, and (v) unlicensed homes of DCF's or its Contractors', Grantees', or Subcontractors' employees.

2.5.2 **Practice Improvement 2:** DCF shall ensure that no placement exceeds its licensed capacity without an approved exception pursuant to DCF's "Policy: Exception Requests for Foster Homes, 6/20/18, Rev. 10/21/2019" (attached hereto as Attachment 4).

2.5.3 **Practice Improvement 3:** Defendants shall not delay authorization and provision of medically necessary mental health treatment services until placement stability is achieved or otherwise link access to medically necessary mental health treatment services with placement stability.

2.5.4 **Practice Improvement 4:** Defendants shall ensure that Crisis Intervention Services are available to Class Members statewide.

2.5.5 **Practice Improvement 5:** With the exception of (a) emergency care or placements if appropriately time-limited and utilized in true emergency situations and (b) placements deemed appropriate using Item 4 of the Round 3 CFSR Onsite Review Instrument and Instructions (Jan. 2016) (attached hereto as Attachment 5), DCF shall end the practice of Night-to-Night Placements of Class Members by the end of Period 1 and end the practice of Short-Term Placements of Class Members by the end of Period 3, as those periods are specified in Sections 2.6 and 2.9. The

lack of safe and appropriate placement options cannot justify the use of emergency or Respite care. All Placement Moves, regardless of the reason, must be separately tracked and recorded.

Part III: Outcomes

2.6 Defendants shall be in Substantial Compliance with the following Outcomes in Section 2.9, which will be phased in over three (3) or four (4) one-year periods as specified in Section 2.9, commencing January 1, 2021, January 1, 2022, January 1, 2023, and, if applicable, January 1, 2024. DCF is alternatively entitled to accelerate the due date on any of the Outcomes in a manner and format set forth and approved by the Neutral.

2.7 The Neutral shall review Defendants' performance data and information produced pursuant to Section 3.4 and shall validate that information as necessary to neutrally report on performance under each, consistent with the terms of this Settlement Agreement. Defendants shall track and report timely, reliable, and valid data concerning the Outcomes outlined in this section, in a manner and format determined with input from the Neutral and Plaintiffs.

2.8 Once a Final Outcome target is achieved based on agreement of the Parties or validation by the Neutral, Defendants must maintain Substantial Compliance for one successive twelve (12) month period. Once Defendants have maintained Substantial Compliance for one successive (12) month period for any of the Outcomes, all reporting and monitoring of that Outcome will cease and that Outcome is no longer enforceable under this Settlement Agreement.

2.9 Outcomes.

2.9.1 **Outcome 1:** As independently validated by the Neutral, all Class Members entering DCF custody in a twelve (12) month period shall have a rate of Placement Moves that does not exceed the specified number of moves per 1,000 days in care during their current episode. The rate shall be determined using the definitions and measurements utilized by the CFSR Round 3 Statewide Data Indicator for Placement Stability and its Syntax Revisions (attached hereto as Attachment 6).

Period 1 – 7 moves per 1,000 days in care
Period 2 – 6 moves per 1,000 days in care
Period 3 – 5 moves per 1,000 days in care
Period 4 – Final Outcome - 4.44 moves per 1,000 days in care

2.9.2 **Outcome 2:** At least the following percentages of a statistically significant, representative, random sample of all Class Members in DCF custody during a twelve (12) month period shall have had their mental and behavioral health needs addressed, calculated utilizing the definitions and measurements in Item 18 of the CFSR Onsite Review Instrument and Instructions (Jan. 2016) (attached hereto as Attachment 5). The sample shall be to a 90% confidence interval with a 5% margin of error. The sample selection process and review protocol shall be approved by the Neutral. The results shall be independently validated by the Neutral who will review up to 50% of the cases in the sample.

Period 1 – 80%
Period 2 – 85%
Period 3 – Final Outcome - 90%

2.9.3 **Outcome 3:** At least the following percentages of a statistically significant, representative, random sample of all Class Members in DCF custody during a twelve (12) month period shall be in a placement setting that at the time of the review is stable, utilizing the definitions and measurements in Item 4 of CFSR Onsite Review Instrument and Instructions (Jan. 2016) (attached hereto as Attachment 5). The sample shall be to a 90% confidence interval with a 5% margin of error. The sample selection process and review protocol shall be approved by the Neutral. The results shall be independently validated by the Neutral with the Neutral reviewing up to 50% of the cases in the sample.

Period 1 – 80%
Period 2 – 85%
Period 3 – Final Outcome - 90%

2.9.4 **Outcome 4:** At least the following percentages of all Class Members in DCF custody at any point during the twelve (12) month reporting period shall have one (1) or fewer Placement Moves in the twelve (12) months immediately preceding the last date of that reporting period. Moves shall be determined using the definitions and measurements utilized by the CFSR Round 3 Statewide Data Indicator for Placement Stability and its Syntax Revisions. This measure shall include all children in the Class at any point during the twelve (12) month reporting period, whether or not they were still in the Class at the end of the reporting period. The measure shall be the number of Placement Moves in the twelve (12) months immediately preceding the last date of the reporting period, i.e., only moves occurring during the reporting period will be considered for this measure.

Period 1 – 75%
Period 2 – 80%
Period 3 – 85%
Period 4 - Final Outcome - 90%

2.9.5 **Outcome 5:** At least the following percentages of a statistically significant, representative, random sample of all Class Members entering DCF custody during a twelve (12) month period shall have received a timely Initial Mental Health and Trauma Screen within thirty (30) days upon each entry into the foster care system. The Initial Mental Health and Trauma Screen shall be performed by a person who has been trained to reliably administer the Screen, and who is either a Qualified Mental Health Professional or a professional who holds a bachelor's degree in the field of human services or a related field, including but not limited to the following: Community Counseling, Human Development, Child and Family Development, Applied Family and Youth Studies, Public Health,

Health Sciences, Trauma Studies, Sociology/Social Services, Substance Abuse/Addictions, Education/Early Childhood, or Psychology. The sample shall be to a 90% confidence interval with a 5% margin of error. The sample selection process and review protocol shall be approved by the Neutral. The results shall be independently validated by the Neutral with the Neutral reviewing up to 50% of the cases in the sample.

Period 1 – 80%

Period 2 – 85%

Period 3 – Final Outcome - 90%

SECTION 3: SUBSTANTIAL COMPLIANCE AND TERMINATION

3.1 Neutral. The Parties agree that the Neutral will be Judith Meltzer and the Center for the Study of Social Policy or, if s/he is unable or unwilling to serve, the Parties agree to choose a mutually agreeable alternative Neutral, and if they are unable to agree on the Neutral to invoke the Dispute Resolution process in Section 4. Neither Party shall have supervisory authority over the Neutral. Defendants shall engage the Neutral at Defendants' expense. Defendants will ensure the Neutral has access to the information and data and staff necessary to perform the responsibilities assigned to the Neutral in this Agreement, including direct remote access to Defendants' data systems. The Parties shall have access to all information utilized by the Neutral consistent with the terms of this Settlement Agreement. The Neutral shall be bound by the Protective Order governing this action, and all confidential information obtained by the Neutral shall be maintained as such by the Neutral consistent with federal and state law, and shall be returned to Defendants or destroyed upon final exit and termination of jurisdiction over this Settlement Agreement. The Neutral may retain child welfare professionals solely for the purposes of satisfying his/her responsibilities under this Settlement Agreement. Any child welfare professionals retained under this provision shall review and sign the Protective Order in this action.

3.2 The Neutral shall be permitted to communicate separately ex parte with all Parties and the Court.

3.3 The Neutral shall convene a confidential meeting of the Parties to discuss progress and performance at least quarterly during the first twelve (12) months following the Judgment and Order and then at least semiannually thereafter.

3.4 The Neutral shall produce reports to the Parties validating Defendants' performance on the obligations in Section 2 of this Settlement Agreement. Within sixty (60) days of any obligation in Section 2 of this Settlement Agreement coming due, Defendants shall provide to the Neutral all data and other information necessary for the Neutral to validate performance and produce a report to the Parties on performance. The Neutral's report validating Defendants' performance shall be produced to the Parties as soon as practicable.

3.5 The Neutral shall have continuing access to all data and other information necessary to validate performance on any outstanding obligation in Section 2 of this Settlement Agreement.

3.6 Subsequent to entry of the Judgment and Order, the Neutral shall provide the Parties with consolidated public performance reports on all outstanding obligations in Section 2 of this Settlement Agreement. These public reports shall be provided on approximately an annual basis or more frequently as the Neutral may determine is efficient.

3.7 For any and all reports issued by the Neutral, the Neutral shall first provide the Parties with a draft report with an opportunity to allow the Parties to provide comments to the Neutral, which comments the Neutral must review and consider prior to finalizing the report.

3.8 If Defendants believe their performance on any obligation in Section 2, Parts II and III, of this Settlement Agreement warrants achievement, dismissal and termination from the Court's jurisdiction under this Settlement Agreement, the Parties shall first negotiate for fourteen (14) days to see if there is agreement to dismissal and termination with respect to the provision. If there is agreement, the Parties shall promptly and jointly file a proposed Order dismissing and terminating the provision from the Settlement Agreement. If there is no agreement, unless the Parties consent to extend negotiations, Defendants may trigger the Dispute Resolution process in Section 4.

3.9 With respect to each obligation in Section 2, Parts II and III, of this Settlement Agreement, if Defendants believe they have achieved Substantial Compliance with a "hit" or a "hold," Defendants may invoke Section 3.8.

3.10 Defendants may accelerate the due date for any of the Outcomes if Defendants believe they have achieved the final target for that Outcome. If Defendants choose to accelerate the due date of the final target for any Outcome, the Neutral shall review and validate the performance for the most recent twelve (12) month period prior to Defendants' assertion of accelerated achievement of the Outcome. Once the Neutral reports on validated performance for the accelerated final Outcome, and Defendants have achieved both the required "hit" and successive twelve (12) month "hold" period, Defendants may invoke Section 3.8.

3.11 The additional successive twelve (12) month "hold" period only applies to the Practice Improvements and final target Outcomes, not the interim targets.

3.12 Once Defendants have achieved both the "hit" and the "hold" for a Practice Improvement or a final target Outcome – either as agreed upon by the Parties or as determined by the Court – that Practice Improvement or Outcome is no longer enforceable under this Settlement Agreement.

3.13 Once Defendants have achieved termination and dismissal of all of Section 2, Parts II and III, of this Settlement Agreement, Defendants' obligations under this entire Settlement Agreement shall end, and the Parties will file a pleading with the Court requesting that the Court's continuing jurisdiction in the Litigation should be terminated.

SECTION 4: DISPUTE RESOLUTION

4.1 Mediator. The Parties agree that the Mediator will be Karen Baynes-Dunning or, if s/he is unable or unwilling to serve, the Parties agree to choose a mutually agreeable alternative Mediator, and if they are unable to agree, the Neutral shall select the Mediator. Neither Party shall

have supervisory authority over the Mediator. The Parties shall engage the Mediator at Defendants' expense. The Parties shall have access to all information utilized by the Mediator consistent with the terms of this Settlement Agreement. The Mediator shall be bound by the Protective Order governing this action, and all confidential information obtained by the Mediator shall be maintained as such by the Mediator consistent with federal and state law, and shall be returned to Defendants or destroyed upon final exit and termination of jurisdiction over this Settlement Agreement.

4.2 Plaintiffs or Defendants shall invoke the provisions of this Dispute Resolution Section 4 with respect to any disputes pertaining to Substantial Compliance, exit, or any assertion of noncompliance under this Settlement Agreement by delivering written Notice of the dispute(s) or assertions of violation to the other Party and to the Mediator.

4.3 The Notice of dispute shall be accompanied by any written argument and any request for remedies.

4.4 The Parties shall proceed with a confidential mediation process, which shall include the engagement of the Mediator over a sixty (60) day period to arrive at a mutually agreed resolution of the dispute. The time period for confidential mediation may be extended on the consent of the Parties. The Neutral may participate in the confidential mediation process if the Parties agree. If the issue is not resolved within sixty (60) days or as extended on the consent of the Parties, the Party raising the dispute may bring a motion to the Court for enforcement and remedies under applicable federal law.

4.5 The Parties agree that any disputes brought to the Court pertaining to Substantial Compliance, exit, or any assertion of noncompliance, shall only be based on the information contained within the Neutral's validated reports, unless otherwise directed by the Court. The Court may call the Neutral as a witness. The Neutral shall not provide any legal opinions in any report or testimony.

4.6 The Court shall have and shall retain jurisdiction over any enforcement.

4.7 Class Counsel may bypass the sections above and seek immediate relief in Court if they clearly demonstrate that Defendant(s)' action or inaction in material contravention of this Settlement Agreement caused or is likely to cause an immediate and substantial risk of harm to Class Members and there is no time for negotiations. The Court shall have and shall retain jurisdiction over any enforcement under this section.

SECTION 5: COURT APPROVAL AND DISMISSAL

5.1 As soon as practical after the execution of this Settlement Agreement, the Parties shall file a joint or unopposed motion seeking Preliminary Approval of the Settlement Agreement.

5.2 After the Order of Preliminary Approval is granted, and as instructed by the Court, in advance of the final fairness hearing the Parties shall submit a joint or unopposed motion for a Judgment and Order granting final approval of the Settlement Agreement. The Parties agree that the proposed Judgment and Order shall:

- 5.2.1 Grant final approval of the Settlement Agreement, without modification of its terms in any respect, unless the Parties have agreed to any modifications, as fair, reasonable, and adequate to the Plaintiff Class as provided in Federal Rule of Civil Procedure 23, and find that the Settlement Agreement resulted from extensive arm's length, good faith negotiations between the Parties through experienced counsel, with the assistance of an independent mediator and subject-matter expert.
- 5.2.2 Dismiss the Litigation with prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(2), after compliance with Federal Rule of Civil Procedure 23(e). The Order of dismissal will also comply with the requirements of Federal Rule of Civil Procedure 65(d)(1), and the Court will expressly incorporate the actual terms of this Settlement Agreement and make the Parties' compliance with the terms of this Settlement Agreement part of that dismissal order.
- 5.2.3 Find that each Class Member shall be deemed to have released the Released Claims against the Defendants.
- 5.2.4 Bar all Class Members from prosecuting, commencing, or continuing any of the Released Claims against the Defendants.
- 5.2.5 Include a finding that by agreeing to settle the Litigation, Defendants do not admit, and specifically deny, any and all liability in the Litigation.
- 5.2.6 Incorporate the entirety of the express terms of the Settlement Agreement and provide that the Court has and shall retain jurisdiction over its Judgment and Order for the purposes stated herein.

5.3 The proposed Judgment and Order may also propose that the Court rule on a motion for Class Counsel Fees and Expenses for work through the Date of Final Approval, or the Parties may propose that such motion be resolved in a separate Order.

SECTION 6: MISCELLANEOUS

- 6.1 This Settlement Agreement shall be interpreted under applicable federal law.
- 6.2 This Settlement Agreement may be executed in counterparts.
- 6.3 All provisions in this Settlement Agreement are separately and independently enforceable, as set forth herein. Unless otherwise specifically stated in this Settlement Agreement all provisions shall apply to all Class Members.
- 6.4 If the Court does not grant final approval of the Settlement Agreement as set forth herein, it shall become null and void.

6.5 The obligations of Defendants set forth in this Settlement Agreement are binding whether they are performed, delivered, implemented or managed directly by the Defendant(s)' employees or by provider agencies under Contract, Grant, or Subcontract.

6.6 This Settlement Agreement shall be binding and enforceable against the Parties. For as long as the Settlement Agreement remains in effect, all provisions will be applicable to DCF, KDHE, KDADS, and their successors, and upon any changes to the current organizational structure of DCF, KDHE, or KDADS, will apply with full force and effect to any subsequent agency or agencies with any of the responsibilities of the current DCF, KDHE, and KDADS.

6.7 Each of the Parties to this Settlement Agreement shall use their best efforts to cause the Settlement Agreement to be given final approval.

6.8 This Settlement Agreement and its Attachments constitute the entire agreement between the Parties and no representations, warranties, or inducements have been made to any party concerning this Settlement Agreement other than the representations, warranties, and covenants contained in this Settlement Agreement. No amendment to this Settlement Agreement prior to the final Judgment and Order is effective unless in writing and signed by the Parties and approved by the Court. Subsequent to the final Judgment and Order, any modification of the Settlement Agreement or the final Judgment and Order shall be governed by federal law.

6.9 The Parties and their counsel have mutually contributed to the preparation of this Settlement Agreement. Accordingly, no provision shall be construed against any Party on the grounds that one of the Parties or their counsel drafted the provision.

6.10 The Settlement Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties.

6.11 Plaintiffs agree not to seek judicial relief for isolated, technical, or de minimis violations of this Agreement, or for violations relating solely to an individual child. Nothing in this Agreement is intended to prevent any state court with jurisdiction over an individual Class Member's case from issuing specific rulings in such an individual case.

6.12 The operative Stipulated Confidentiality and Protective Order ordered by the Court on February 8, 2019 (ECF 26) shall remain in full force and effect until the Court issues an Order granting final termination of jurisdiction over and exit from the Settlement Agreement and the final Judgment and Order. Any and all communications concerning the negotiation of the Settlement Agreement, including, but not limited to, its content or any details conveyed to or by either Party or the mediator during its negotiation, shall be confidential. However, nothing in this Settlement Agreement shall prohibit or restrict any Party or their representatives from publicly communicating the fact that the Parties are or have been engaged in communications regarding settlement without revealing specific details. The Parties acknowledge that the terms of the Settlement Agreement will be made public upon the filing of the settlement with the Court and that the Parties may comment on specific terms of the Settlement Agreement following its approval by the State Finance Council.

6.13 The Parties anticipate that the Settlement Agreement may be modified, upon the consent of the Parties and approval of the Court, in an ongoing effort to accelerate the successful

achievement of its obligations and final termination of jurisdiction over the Settlement and the final Judgment and Order.

6.14 The Parties recognize that nothing in this Settlement Agreement obligates the Legislature to appropriate funds in connection with the implementation of this Settlement Agreement or to establish any new programs. Defendants shall make all reasonable efforts to provide funding and other resources necessary to implement and achieve the obligations under the Settlement Agreement, including making requests for State funds or seeking federal/special fund authorization. Defendants' failure to provide and/or Defendants' efforts to provide such adequate funding and resources will not excuse, or limit remedies to address, the failure to implement or achieve any of the obligations set forth in the Settlement Agreement.

6.15 The undersigned each represents that he or she is fully authorized to execute this Settlement Agreement on behalf of the settling party for which he or she signs.

IN WITNESS WHEREOF, the Parties hereto have executed this Settlement Agreement in several counterpart originals on the date set forth opposite their names.

SIGNATURE PAGE

WHEREFORE, the Parties hereto signify their agreement to this Settlement Agreement and to all the terms herein by signing where indicated below.

FOR AND ON BEHALF OF PLAINTIFFS:

Dated: July 8, 2020

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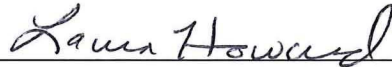
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FOR AND ON BEHALF OF DEFENDANTS:

KANSAS DEPARTMENT FOR CHILDREN AND FAMILIES

By: 

Title: Secretary Laura Howard

Dated: July 8, 2020

KANSAS DEPARTMENT OF AGING AND DISABILITY SERVICES

By: 

Title: Secretary Laura Howard

Dated: July 8, 2020

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

By: 

Title: Secretary Dr. Lee A. Norman

Dated: July 8, 2020

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