

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

K.H., INDIVIDUALLY)
AND ON BEHALF OF MINOR K.J.,)

and)

M.M., INDIVIDUALLY)
AND ON BEHALF OF MINOR L.E.,)

and)

L.C., INDIVIDUALLY)
AND AS A NEXT FRIEND ON BEHALF OF)
MINOR T.C.,)

D.C. KinCare Alliance)
1101 Connecticut Avenue NW, Suite 450)
Washington, D.C. 20036)

Plaintiffs)

v.)

THE DISTRICT OF COLUMBIA)
One Judiciary Square)
441 Fourth Street, NW)
Washington, D.C. 20001)

SERVE:)

MURIEL BOWSER)
Mayor of the District of Columbia)
1350 Pennsylvania Avenue, NW, 4th Fl.)
Washington, D.C. 20004)

KARL RACINE)
Attorney General for DC)
441 4th Street NW, Suite 630 South)
Washington, DC. 20001)

Civil Action No. 1:19-cv-3124

JURY TRIAL DEMANDED

and)
)
 DC CHILD AND FAMILY SERVICES)
 AGENCY)
 BRENDA DONALD, Director)
 200 I Street, SE)
 Washington, DC 20003)
)
)
 Defendants)

FIRST AMENDED COMPLAINT

I. PRELIMINARY STATEMENT

1. The District of Columbia is obligated under federal and D.C. law to safeguard children’s health and well-being, and to take necessary and appropriate steps to ensure that abused or neglected children who cannot be protected from harm in their home are placed in a safe environment and provided assistance, including financial support. Specifically, if the District of Columbia, through its agency, the Child and Family Services Agency (“CFSA”) (collectively, the “Defendants”), determines that a child has been neglected or abused and cannot be protected in the home by the provision of services, CFSA must remove the child from the unsafe home. Unless a parent consents to removal, CFSA must petition the Family Division of the D.C. Superior Court (“D.C. Family Court”) to initiate a neglect case and seek custody of the child so that the child can be placed in foster care.

2. CFSA must consider giving preference to an adult relative over a non-related caregiver when placing a child in foster care. When CFSA places a child with a relative, which is known as kinship placement or kinship foster care, CFSA is required to license the relative as a foster parent. Once the child has been placed with a licensed foster parent (related or nonrelated), the child is entitled to a number of services that help to ensure their continued health and safety, including continued court and CFSA supervision. Additionally, the foster parent is entitled to foster care maintenance payments to help alleviate the financial burden of caring for the child.

3. Despite these requirements, Defendants, for at least the last 10 years, have consistently and repeatedly engaged in the custom and practice of kinship diversion¹, whereby Defendants remove children from the custody of their parents and informally place them in the care of a relative caregiver, rather than placing the child in foster care with that same relative. Unlike foster children and foster parents, Defendants do not provide diverted children and their relative caregivers with any services or foster care maintenance payments. By ignoring the legally-required removal and placement procedures, Defendants avoid the legal and financial responsibilities to support these children and their relative caregivers. Indeed, on information and belief, Defendants have adopted this custom and practice of kinship diversion to relative caregivers, and now use it routinely, *precisely to avoid those responsibilities*. The use of kinship diversion rather than kinship foster care placement deprives both child and caregiver of their rights to assistance, in violation of the United States Constitution, and federal and D.C. law.

4. Plaintiff K.J.² (hereinafter “K.J.”) is a six-year-old girl whose parents are unable to provide her with necessary and adequate care due to their mental and developmental health issues and housing instability. K.J.’s parents have neglected and abused K.J. As a result, Defendants removed K.J. from her mother’s home and informally and illegally placed K.J. through kinship diversion in the care of her maternal aunt, Plaintiff K.H. (hereinafter “K.H.”). Defendants deliberately did not inform K.H. of her option to become a licensed foster parent for K.J., and instead pressured K.H. into filing an emergency motion for custody by making her believe K.J. would be placed in foster care with a stranger if she failed to do so. K.H. has continued to care for K.J. on a daily basis since

¹ Kinship diversion is also referred to as “hidden foster care.” See Josh Gupta-Kagan, *America’s Hidden Foster Care System*, 72 Stan. L. Rev. (forthcoming 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3437849.

² With the Court’s permission, all Plaintiffs and minor Plaintiffs’ biological parents are identified by their initials only. See Oct. 18, 2019 Order, ECF No. 2.

Defendants effected the kinship diversion on October 18, 2018. During this time, Defendants have failed to provide any support or services to K.J. or K.H., including development of a case plan to reunify K.J. with her parents, services to protect the health and safety of K.J., and foster care maintenance payments made on behalf of K.J. Further, after learning about the option to become a foster parent from a third party, K.H. has submitted numerous requests to CFSA to license her as a foster parent and provide services and foster care maintenance payments. CFSA has denied each of these requests. To date, these failures have resulted in withheld foster care support services and financial losses of approximately \$17,100 in foster care maintenance payments that otherwise would have been paid and other amounts to be determined at trial.

5. Plaintiff L.E. (hereinafter “L.E.”) is a one-year-old girl whose parents are unable to provide her with necessary and adequate care because of, *inter alia*, her parents’ substance use and mental health issues, domestic violence, and housing instability. L.E.’s parents have neglected and physically abused L.E. As a result, Defendants removed L.E. from her mother’s care and informally and illegally placed her through kinship diversion in the care of her maternal great-aunt, Plaintiff M.M. (hereinafter “M.M.”). Defendants deliberately did not inform M.M. of her option to become a licensed foster parent for L.E., and instead pressured M.M. into filing an emergency motion for custody by making her believe L.E. would be placed in foster care with a stranger if she failed to do so. M.M. has continued to care for L.E. on a daily basis since Defendants effected the kinship diversion on February 20, 2019. During this time, Defendants have failed to provide any support or services to L.E. or M.M., including development of a case plan to reunify L.E. with her parents, services to protect the health and safety of L.E., and foster care maintenance payments made on behalf of L.E. Further, after learning about the option to become a foster parent from a third party, M.M. submitted a request to CFSA to license her as a foster parent and provide services

and foster care maintenance payments, which CFSA denied. To date, Defendants' actions have resulted in withheld foster care support services and financial losses of approximately \$12,540 in foster care maintenance payments that otherwise would have been paid and other amounts to be determined at trial.

6. Plaintiff T.C. (hereinafter "T.C.") is a fifteen-year-old boy whose parents were unable to provide him with necessary and adequate care because of, *inter alia*, his parents' substance use and mental health issues and housing instability. T.C.'s parents have neglected and physically abused T.C. As a result, Defendants removed T.C. and four of his siblings from their mother's home and informally and illegally placed them through kinship diversion in the care of their paternal grandmother, Plaintiff L.C. (hereinafter "L.C."). Defendants deliberately did not inform L.C. of her option to become a licensed foster parent for T.C. and his siblings, and as a result, L.C. filed for emergency custody of the children. L.C. cared for T.C. and his siblings from March 6, 2019 until June 22, 2019 and continued to be responsible for T.C.'s care until January 13, 2020. During that time, Defendants failed to provide any support or services to T.C. or L.C., including development of a case plan to reunify T.C. with his parents, services to protect the health and safety of T.C., and foster care maintenance payments made on behalf of T.C. Further, after learning about the option to become a foster parent from a third party, L.C. submitted a request to CFSA to license her as a foster parent and provide services and foster care maintenance payments, which CFSA denied. Defendants' actions resulted in withheld foster care support services and financial losses of approximately \$25,080 in foster care maintenance payments that otherwise would have been paid and other amounts to be determined at trial.

7. As a direct consequence of Defendants' conduct, K.J., K.H., L.E., M.M., T.C. and L.C. (collectively, the "Plaintiffs") have been and continue to be denied the full services, economic benefits and other rights to which they are entitled under federal and D.C. law.

8. Moreover, Defendants have violated federal and D.C. law by discriminating against Plaintiffs and other "kinship families" (*i.e.*, families in which children who were abused and/or neglected and are now being raised by relatives who should be licensed as foster parents but are not, due to Defendants' custom and practice). Defendants do so by treating kinship families differently and less supportively than Defendants treat children in licensed foster care and their foster parents.

9. This action seeks declaratory and injunctive relief, as well as damages, to redress the violations of federal and D.C. law.

II. JURISDICTION AND VENUE

10. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3) and 42 U.S.C. § 1983 because this action arises under the Constitution and the laws of the United States. Specifically, this action arises under Title IV-E of the Social Security Act, 42 U.S.C. §§ 670-679c ("Social Security Act"), and the Fifth and Fourteenth Amendments to the United States Constitution.

11. Plaintiffs' claims for declaratory relief and damages are authorized by 28 U.S.C. §§ 2201-2202 and 42 U.S.C. § 1983, and by the inherent powers of this court in law and in equity.

12. This Court also has supplemental jurisdiction over Plaintiffs' pendent state law claims under 28 U.S.C. § 1367.

13. Venue is proper under 28 U.S.C. §1391(b)(2) because all of the events and omissions giving rise to Plaintiffs' claims occurred in D.C.

III. PARTIES

14. Plaintiff K.J. is a minor child who was removed from the custody of her biological parents and placed through kinship diversion in the care of her maternal aunt, K.H. As the legal custodian of K.J., Plaintiff K.H. brings this action on her own behalf and on behalf of K.J.

15. Plaintiff L.E. is a minor child who was removed from the custody of her biological mother and placed through kinship diversion in the care of her maternal great-aunt, M.M. As the legal custodian of L.E., Plaintiff M.M. brings this action on her own behalf and on behalf of L.E.

16. Plaintiff T.C. is a minor child who was removed from the custody of his biological mother and placed through kinship diversion in the care of his paternal grandmother, L.C. Plaintiff L.C. brings this action on her own behalf and, as a next friend, on behalf of T.C.

17. Plaintiffs are citizens of the United States and have been D.C. residents at all relevant times.

18. Defendant District of Columbia is the government of D.C. Defendant District of Columbia operates and has oversight over Defendant CFSA.

19. Defendant CFSA is a cabinet-level agency of the District of Columbia charged with administering the foster care system and ensuring the safety and well-being of children residing within D.C. CFSA is responsible both for responding to and investigating reports of child abuse and neglect and for removing and placing neglected or abused children who cannot be protected in their own home.

IV. FEDERAL AND D.C. LAW GOVERNING DISTRICT OF COLUMBIA'S OBLIGATIONS TO ABUSED AND NEGLECTED CHILDREN AND THEIR CAREGIVERS

20. By acting through CFSA to effect kinship diversions without following the legally required procedures for removal and foster care placement, Defendant District of Columbia has violated and continues to violate the Social Security Act, the D.C. Prevention of Child Abuse and Neglect

Act of 1977 (“D.C. Child Abuse and Neglect Act”), the D.C. Human Rights Act of 1977 (“D.C. Human Rights Act”), and the Fifth and Fourteenth Amendment rights of the Plaintiffs.

21. By effecting kinship diversions without following the legally required procedures for removal and foster care placement, Defendant CFSA has violated and continues to violate the Social Security Act, the D.C. Child Abuse and Neglect Act, the D.C. Human Rights Act, and the Fifth and Fourteenth Amendments of the United States Constitution.

A. Obligations Under The Federal Social Security Act

22. The Social Security Act establishes a federal-state grant program that is designed to ensure that abused and neglected children who cannot be protected from harm in their homes are placed in a safe and stable environment until those children are able to return home safely or are placed in another permanent living arrangement.

23. The Social Security Act requires any “State”³ that opts to receive Title IV funds to have a plan approved by the Secretary of the U.S. Department of Health and Human Services, and to agree to administer its foster care program in accordance with the statutory requirements and implementing regulation, which, in pertinent part –

- (a) require that reasonable efforts be made to preserve and reunify families by seeking to prevent or eliminate the need for removing the child from their home prior to placement in foster care and to make it possible for the child to safely return to their home, and, if the family cannot safely be reunified, require that steps be taken to finalize a permanent placement for the child, 42 U.S.C. § 671(a)(15)(B)-(C);
- (b) require that the removal of a child from their home is in accordance with a judicial determination that continuation in the home would be contrary to the welfare of the

³ Under the Act, the term “State” includes the District of Columbia. 42 U.S.C. § 603(b)(7).

child or with a voluntary placement agreement, and require that the child is placed in a foster family home or child care institution that meets the standards for foster family homes or child care institutions and has been licensed or approved by the State, 42 U.S.C. §§ 671(a)(10), 672(a)(2), 672(c);

- (c) require that due diligence be exercised to provide notice to adult relatives within 30 days of effecting a removal, which, *inter alia*, must “explain[] the options the relative has under Federal, State, and local law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice” and “describe[] the requirements...to become a foster family home and the additional services and supports that are available for children placed in such a home,” 42 U.S.C. § 671(a)(29);
- (d) require that children in foster care receive quality services to protect their health and safety, 42 U.S.C. § 671(a)(22);
- (e) require that foster care maintenance payments⁴ be made on behalf of each child who has been removed from their home, if the child “would have met the [TANF]⁵ eligibility requirements” prior to being removed, 42 U.S.C. § 672(a)(1);
- (f) provide for the development of a “case plan” for each child in foster care that, *inter alia*, ensures that services are provided to the child, parents and caregivers in order

⁴ Foster care maintenance payments are defined as payments which “cover 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).

⁵ TANF, which stands for Temporary Assistance for Needy Families, is a federal program that provides assistance to families with children when the parents or other responsible relatives cannot provide for the family’s basic needs.

to “facilitate return of the child to his own safe home or the permanent placement of the child, and address the needs of the child while in foster care” and includes the child’s health and education records, 42 U.S.C. §§ 671(a)(16), 675(1); and (g) require that each case plan be reviewed at least every six months by a court or administrative body under the State’s “case review system” to assess, *inter alia*, the child’s safety, the continuing need for and appropriateness of the placement, and the likely date by which the child may be safely returned to their home or be placed for adoption or legal guardianship, 42 U.S.C. §§ 671(a)(16), 675(5).

24. District of Columbia has opted to receive Title IV-E funds and, accordingly, is bound by each of the foregoing requirements with respect to the provision of benefits and services to each abused and neglected child.

B. Obligations Under D.C. Child Abuse and Neglect Act

25. The D.C. Child Abuse and Neglect Act provides that CFSA shall, *inter alia*: (i) receive and respond to reports of child abuse and neglect⁶; (ii) when necessary, remove children from their homes; (iii) ensure that children who have been abused or neglected are protected from further experiences and conditions detrimental to their healthy growth and development; (iv) obtain substitute care for a child whose parents are unable to meet the child’s minimum needs; (v) provide services and resources to abused and neglected children and their families, including services aimed at safely reuniting the family as quickly as possible; and (vi) ensure timely permanent

⁶ Under the D.C. Child Abuse and Neglect Act, child abuse includes the infliction of physical or mental injury upon a child, sexual abuse or exploitation of a child, and the negligent treatment or maltreatment of a child. D.C. Code § 16-2301(23)(A). A neglected child is, *inter alia*, a child who is without proper parental care or control, subsistence, education or other care necessary for his or her physical, mental, or emotional health, and a child whose parent, guardian, or custodian is unable to discharge his or her responsibilities to and for the child because of incarceration, hospitalization, or other physical or mental incapacity. § 16-2301 (9)(A)(ii) and (iii).

placement of the child where reunification is not possible. D.C. Code § 4-1303.01a. *See also* § 4-1303.03 *et seq.*

26. Pursuant to its responsibility to receive and respond to reports of child abuse and neglect, CFSA is required to “conduct a thorough investigation of a report of suspected child abuse or neglect to protect the health and safety of the child or children when . . . [CFSA] suspects a child is at imminent risk of or has experienced abuse or neglect that [CFSA] determines to be severe.” § 4-1301.04(a)(1). The investigation must determine “the nature, extent, and cause of the abuse or neglect, if any.” § 4-1301.06(a)-(b)(1).⁷ If the suspected abuse or neglect is substantiated, CFSA shall determine whether there is any child in the home whose health, safety, or welfare is at risk and whether any child who is at risk should be removed from the home or can be protected by the provision of resources. § 4-1301.06(b)(3).

27. When a report of child abuse or neglect is substantiated and CFSA determines the child cannot be “adequately protected” while living in the parental home through the provision of services, CFSA is only authorized to: “(1) Remove the child with the consent of the parent, guardian, or person acting in loco parentis; (2) Request the Corporation Counsel of the District of Columbia to petition the [D.C. Family Court] for a finding of abuse or neglect and, where appropriate, the removal of the child; and (3) Request the police to remove the child when the consent of a parent, guardian or other custodian cannot be obtained and the need to protect the child does not allow sufficient time to obtain a court order.” § 4-1303.04(c).

⁷ While CFSA is permitted 30 days to complete a full investigation, oftentimes the abuse or neglect is readily apparent and is effectively substantiated when the social worker arrives at the scene.

28. Once CFSA has removed a child from their home, CFSA is required to place the child with a licensed foster parent.⁸ §§ 4-1303.04(a-1)(1), 4-217.02. For each child who is removed to foster care, CFSA must provide monetary benefits to the foster parent on behalf of the child if the child is eligible for TANF and certain other criteria are satisfied. § 4-217.01. Although the statute prescribes certain eligibility requirements, CFSA's policy is to make "resource payments" on behalf of all children in the foster care system. *See, e.g., CFSA, Resource Parent Handbook* 93-95 (2018).

29. In addition, CFSA must prepare a case plan for the child and family and must take such steps (including, but not limited to, providing or arranging for appropriate services to the child and family) as are needed for the protection of the child and the preservation, rehabilitation and, when safe and appropriate, reunification of the family. D.C. Code § 4-1301.09(b). *See also* § 4-1301.02(3) (defining "case plan"). The case plan must include the child's health and education records, and CFSA is required to assist foster parents in obtaining personal records for foster children, including immunization records, birth certificate, social security card, or health insurance card. § 4-1301.02(3)(C); D.C. Mun. Reg. § 29-6003; CFSA, *Relationship with Resource Parents Policy*, (effective Aug. 7, 2004).

30. CFSA must ensure that the status of each child in foster care is reviewed periodically. D.C. Code § 4-1301.09(d). This review shall determine the safety of the child, the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, the extent of progress towards alleviating or mitigating the causes necessitating foster care, and a projected

⁸ CFSA also may place the child in a child care institution if that "best meets" the child's needs. § 4-217.02.

date for returning the child safely to the home or placing the child for adoption or other permanent placement. § 4-1301.09(e)(1).

31. CFSA is required to make reasonable efforts to make it possible for a child in foster care to return safely to their home. § 4-1301.09a(b). In making such reasonable efforts, “the child’s safety and health shall be the paramount concern.” § 4-1301.09a(a). If such reasonable efforts “are determined to be inconsistent with the child’s permanency plan, [CFSA] shall make reasonable efforts to place the child in accordance with the child’s permanency plan and to complete whatever steps are necessary to finalize the child’s permanent placement.” § 4-1301.09a(c).

C. Obligations Under D.C. Human Rights Act

32. The D.C. Human Rights Act states that it is “an unlawful discriminatory practice for a District government agency or office to limit or refuse to provide any facility, service, program, or benefit to any individual on the basis of an individual’s actual or perceived: . . . familial status.”⁹ § 2-1402.73.

33. Pursuant to the D.C. Human Rights Act, CFSA may not unlawfully discriminate against diverted children and their relative caregivers by refusing to provide them with foster care benefits and services on the basis of familial status. Instead, CFSA must provide diverted children placed with relative caregivers who are seeking, or who already have, legal custody of those children the same services and support as it provides to foster families.

⁹ The term ‘familial status’ is defined as “one or more individuals under 18 years of age being domiciled with: (1) a parent or other person having legal custody of the individual; or (2) the designee, with written authorization of the parent, or other persons having legal custody of individuals under 18 years of age. The protection afforded against discrimination on the basis of familial status shall apply to any person who is pregnant or in the process of securing legal custody of any individual under 18 years of age.” § 2-1401.02(11A).

V. CUSTOM AND PRACTICE OF REMOVAL AND INFORMAL PLACEMENT THROUGH KINSHIP DIVERSION

34. Because Defendants receive money under Title IV-E of the Social Security Act, Defendants must operate the D.C. foster care program in accordance with the requirements under the Act, as well as the requirements under the D.C. Child Abuse and Neglect Act. Although receipt of these funds requires such compliance, Defendants' custom and practice of kinship diversions is in blatant violation of those statutes.

35. As discussed above, when CFSA determines a neglected or abused child must be removed from their home, CFSA is only authorized to do so if CFSA obtains a judicial determination or parental consent to effect the removal, or requests the police to remove the child because there is insufficient time for CFSA to petition for removal. § 4-1303.04(c). These removal requirements "protect[] the integrity of established family units" and apply regardless of whether the child is placed with a relative or non-relative foster parent. *Miller v. Youakim*, 440 U.S. 125, 139 (1979).

36. Once the child has been removed from their home, the child must be placed in a licensed foster family home or licensed child care institution. CFSA has a formal procedure for placing the child with a relative foster parent, which CFSA refers to as a *kinship placement*. Prior to effecting a kinship placement, CFSA is required to issue the relative with whom the child is being placed a license (or a temporary license) to operate a foster home. D.C. Mun. Reg. § 6027.1. Even though the foster parent is a relative of the child, such licensure is necessary "to assure that each child in [CFSA's] care and custody has a placement that meets their needs for safety, permanence, and well-being." CFSA, *Temporary Licensing of Foster Homes for Kin Policy*, (effective Sept. 20, 2011). This also ensures "the same level of protection for all children who are placed in out-of-home care" and entitles both the foster parent and foster child to the same services and benefits afforded to other foster parents and children who are not related. *Id.*

37. Despite the fact that there are legally established procedures and requirements for effecting a kinship placement, CFSA has instead adopted the custom and practice of informally and illegally placing abused and neglected children with relatives through *kinship diversion*, without issuing licenses to the caretaker relatives. Specifically, after CFSA has substantiated¹⁰ a report of child abuse or neglect and determined the child cannot be protected in their home through the provision of services, CFSA will contact a relative to see if they are willing to care for the child. If CFSA identifies a willing relative that is available to care for the child, CFSA deliberately ignores its responsibility to inform the relative of their option to become a licensed as a foster parent, and typically directs or pressures the relative to file a an emergency motion for legal and physical custody, including by threatening to place the child in foster care with a stranger if the relative does not agree to do so. Through such actions, CFSA informally and illegally places the child with the relative through kinship diversion, rather than removing the child in accordance with applicable law and formally placing the child with a relative who has been licensed as a foster parent.

38. CFSA's use of kinship diversion constitutes a *flouting* of D.C. law, because it subverts the formally established procedures for removal and kinship placements and thereby denies diverted children and their relative caregivers the same benefits, services, and protections that foster children and foster parents receive. For example, prior to placing a child in foster care, CFSA is required to, *inter alia*, perform a health and safety assessment of the foster parent's home and require the foster parent to meet conditions related to the child's sleeping arrangement, health care,

¹⁰ When CFSA engages in kinship diversion, the agency does not always accurately record that an allegation against a parent was substantiated, presumably because that would trigger legal requirements under federal and/or D.C. law for removal and placement of a child in licensed foster care if the child cannot remain safely at home.

and education. However, when CFSA effects a kinship diversion, CFSA does not routinely conduct a home study to ensure that the relative caregiver's residence is safe, collect basic information about the relative caregiver and others living in the home, or ensure the relative caregiver has the means to care for the child.

39. Furthermore, once the child has been informally placed in a kinship diversion arrangement, CFSA does not monitor the child or provide even minimal post-diversion services or support to the child, birth parent, or relative caregiver. Without CFSA oversight and accountability, the urgent needs of the child (*e.g.*, mental health, medical, and educational services), the birth parent (*e.g.*, mental health or substance abuse treatment, parent education classes), and the relative caregiver (*e.g.*, child care, peer support groups, respite) can go unmet, and there is no process for safely reunifying the child with their parents.¹¹ Moreover, neither the diverted children nor the relatives responsible for their care receive financial support, such as foster care maintenance payments and vouchers for camps, enrichment programs, or other programs available to foster children. When relative caregivers seek such services or support by requesting to be licensed as a foster parent, CFSA also routinely denies their requests, even though the relative caregivers meet the requirements for licensure.

40. Upon information and belief, senior management of CFSA has long knowingly acquiesced to and/or expressly endorsed this custom and practice, which allows CFSA to appear to meet certain statistical targets for reducing the number of children in foster care. These targets are not only arbitrary but provide CFSA with a perverse incentive to use kinship diversion, rather than

¹¹ The Supreme Court has recognized that parents have a fundamental Constitutional liberty interests in “the care, custody, and control of their children.” *Troxell v Granville*, 530 U.S. 57 (2000). Accordingly, when CFSA decides that a child should be removed from the parental home and cared for by a relative without parental consent or a court order, it also violates the parents’ constitutional rights.

attempt to license relative caregivers as foster parents. The custom and practice of kinship diversion has saved District of Columbia millions of dollars over at least the past 10 years by depriving its most vulnerable residents of resources to which they are legally entitled.

VI. DEFENDANTS' KINSHIP DIVERSION OF CHILDREN VIOLATES FEDERAL AND D.C. LAW

41. As averred in detail below, CFSA engaged in kinship diversion when it removed K.J., L.E., and T.C. from their homes and informally and illegally placed them in the care of their relatives, K.H., M.M., and L.C., respectively.

A. PLAINTIFFS K.J. AND K.H.

42. K.J. is the biological daughter of K.D., her father, a Maryland resident, and O.J., her mother, a D.C. resident. In November 2016, O.J. obtained sole legal and physical custody of K.J. pursuant to a Permanent Custody Order issued by the D.C. Family Court. Under the Permanent Custody Order, K.J.'s father was granted visitation as agreed between the parties but was not permitted overnight visits without O.J.'s consent.

43. O.J. has had a long history of serious mental health issues, including paranoia, that have adversely impacted her parenting and have prevented her from providing K.J. with adequate care. CFSA has received numerous reports alleging O.J. neglected or abused K.J., including, *inter alia*, that O.J. failed to obtain adequate medical care for K.J., failed to enroll K.J. in school, allowed K.J. to dance for money on a street corner, kept K.J. out all night with male strangers, and left K.J. alone in the home. CFSA also received reports that K.J. ingested O.J.'s medication, that K.J. was unclean and hungry, and that there was general filth in the home. As a result of these reports, CFSA has been heavily involved with O.J. and K.J. for many years.

44. In October 2018, CFSA responded to allegations regarding O.J.'s mental illness and failure to enroll K.J. in school. On October 17, 2018, a CFSA in-home social worker, Zakia Joyner-

Kennedy, and a CFSA investigative social worker, Claire Hoffman, visited O.J. and K.J. in their home. Hoffman reported that, during the meeting, O.J. wore no clothing other than a cardigan, appeared dirty, and needed reminders to keep covered up. Hoffman also reported that O.J. had difficulty understanding that CFSA had opened a case against her and often stopped speaking and stared off blankly during conversation. Following the meeting, Hoffman notified Community Connections, a CFSA-contracted mental health agency involved in O.J.'s case, that O.J.'s hygiene and paranoia appeared to be getting worse and that she was concerned that O.J. could become dangerous to herself or others.

45. On the evening of October 17, 2018, Community Connections staff visited O.J.'s home and determined that O.J. needed an emergency admission to the hospital for mental health evaluation. Community Connections staff completed D.C. Department of Behavioral Health Form FD12, which authorizes immediate detention if the writer has reason to believe that the person is mentally ill and likely to injure herself or others because of mental illness. Pursuant to this action, officers from the D.C. Metropolitan Police Department arrived at O.J.'s house and transported her to the Comprehensive Psychiatric Emergency Program ("CPEP"), where she was admitted and stayed overnight.

46. O.J. called K.H., told her that she had been admitted to CPEP, and asked K.H. to go to her home to pick up K.J. On her way over, K.H. called the CFSA child protection hotline. K.H. arrived at O.J.'s home around the same time as K.D. The police officers released K.J. to K.D.'s care for the night, in violation of the Permanent Custody Order. CFSA did not arrive at the scene or take custody of K.J. that evening.

47. The next morning, K.H. picked up K.J. and took her to school to begin the kindergarten enrollment process as O.J. had not enrolled or taken K.J. to school at all during the 2018-2019 school year.

48. In the early afternoon of October 18, 2018, Hoffman was notified that O.J. would likely be discharged from CPEP later that day. As a result, Hoffman met with K.H. at her work, and instructed her to file for emergency custody of K.J. Because K.H. was not able to file for emergency custody until the following day, Hoffman asked Community Connections whether it would be possible for O.J. to be held longer at CPEP. This action was effectively a determination by CFSA that K.J. was in immediate danger and that immediate removal from her home was necessary. Despite making this determination, Hoffman did not follow the legally required removal procedures but instead made K.H. responsible for effecting the removal of K.J. Moreover, Hoffman did not inform K.H. of all her options to participate in K.J.'s care, including that CFSA could petition the D.C. Family Court for removal and place the child with K.H. in a formal foster care placement, despite the fact that such notice is required by law.

49. Relying on Hoffman's instruction to file an emergency motion for custody, on October 19, 2018, K.H. filed a Motion for Emergency Custody of K.J. The D.C. Family Court granted K.H. emergency sole physical custody and joint legal custody with O.J., with a full hearing scheduled for November 8, 2018.

50. On October 22, 2018, Hoffman told K.H. that, if the judge did not grant her custody at the hearing on November 8, 2018, CFSA would have to remove K.J. and place her in foster care. Because K.H. had not been informed that *she* could be licensed by CFSA as K.J.'s foster parent, K.H. understood Hoffman to be saying that, if she did not obtain custody of K.J., CFSA would be required to place K.J. in foster care with a stranger. Hoffman concealed the full facts from K.H.

and made this false, misleading, and incomplete representation to her with knowledge of its falsity and with the intent to deceive her regarding her and K.J.'s rights under federal and D.C. law. K.H. reasonably relied on that material misleading representation to K.J.'s and her detriment.

51. On October 31, 2018, K.H. met with Joyner-Kennedy, the CFSA in-home social worker, at CFSA's office. Prior to this date, K.H. had learned of the option to become a foster parent from a source other than CFSA, and during the meeting she requested that CFSA license her as a foster parent for K.J. In response to K.H.'s request, Joyner-Kennedy suggested that K.H. did not want to care for K.J. K.H. explained she did want to care for K.J. but wanted to do so as a foster parent so that there would be a safe way for K.J. to return home to her mother. K.H. expressed concern that K.J. previously had been informally placed with relatives through kinship diversion arrangements without safe reunification of the child with her mother and that O.J. blamed K.H. for "taking away" K.J. K.H. also stated she did not want the burden of bringing an action against her sister in court to obtain custody of K.J.

52. Joyner-Kennedy then told K.H. that getting custody through a custody case is the same as a neglect case and removal to foster care because the same services would be provided. However, unlike a custody case, in a neglect case CFSA takes legal custody of the child and is legally responsible for the care and well-being of the child. CFSA also assigns a social worker to the family, prepares a case plan and provides financial assistance and services to the family. Joyner-Kennedy made this false, misleading, and incomplete representation to K.H. with knowledge of its falsity and with the intent to deceive her regarding K.J.'s and her rights under federal and D.C. law.

53. On November 13, 2018, the D.C. Family Court issued an order granting K.H. temporary sole physical and legal custody of K.J. Both parents continue to seek custody of K.J., and a trial

in the custody case was held on January 21 and 22, 2020. The court has taken the case under advisement, and the November 13, 2018 temporary custody order remains in effect.

54. K.H. has continuously cared for K.J. since October 18, 2018. During this time, CFSA has failed to provide any services to K.J. CFSA failed to develop a case plan for K.J. and has not provided her with any mental health, medical, or educational services.

55. Further, CFSA has not provided foster care maintenance payments to K.H. On several occasions in November 2018, K.H. requested that CFSA license her as a foster parent for K.J., and each time CFSA refused to do so despite the fact that K.H. had satisfied the requirements to become a licensed foster parent. Moreover, prior to being diverted to live with K.H., K.J. received benefits under the TANF program and, accordingly, K.H., if formally granted foster parent status, would be entitled to receive foster care maintenance payments on K.J.'s behalf in the amount of \$1,140 per 30-day period. K.H. has not received any foster care maintenance payments on behalf of K.J. because Defendants took K.J. out of her mother's unsafe home without a court removal proceeding and informally and illegally placed her in the care of her aunt K.H. through kinship diversion, without licensing K.H. as a foster parent.

56. Additionally, while CFSA is required to assist foster parents in obtaining personal records for foster children, CFSA did not make any effort to help K.H. obtain K.J.'s immunization records, birth certificate, social security card, or health insurance card. Without these documents, K.H. could not obtain any public benefits for K.J. K.H. only started to receive TANF and Supplemental Nutrition Assistance Program benefits as of April 1, 2019.

57. Since October 18, 2018, K.H. has shouldered the financial costs of caring for K.J. This is a substantial financial burden for K.H., who is having difficulty paying for rent, utilities, food, and other necessities.

58. As described above, CFSA's failure to remove K.J. to foster care or license K.H. as a foster parent has resulted in injury to Plaintiffs including, but not limited to, housing and food instability, emotional distress, and a lack of permanency for K.J. CFSA's affirmative misconduct, including misrepresentations and concealments to K.H., have resulted in an egregiously unfair and harmful injury to K.H. and K.J.

59. On April 15, 2019, K.H., for herself and on behalf of K.J., submitted a Notice of Claim against District of Columbia to the D.C. Office of Risk Management. By letter dated April 24, 2019, the D.C. Office of Risk Management acknowledged receipt of the Notice of Claim.

B. PLAINTIFFS L.E. AND M.M.

60. L.E. is the biological daughter of her father N.F. ("N.F."), and her mother K.E. ("K.E."). N.F. is 32 years-old and a Maryland resident. K.E. is 18 years-old and her last known place of residence is D.C.

61. N.F. has a history of violence against women. In 2014, N.F. assaulted an ex-girlfriend in Prince George's County, Maryland and was charged with, *inter alia*, attempted first- and second-degree murder and first- and second-degree assault. N.F. was convicted of second-degree assault and sentenced to 10 years in prison, with all but one year suspended.

62. K.E. has suffered from serious mental health and substance use issues for many years and has been admitted for acute inpatient psychiatric hospital treatment for suicidal ideations. Upon information and belief, K.E. is currently in foster care and, prior to turning 18, was the subject of ongoing juvenile and Person In Need Of Supervision (PINS) cases in D.C. Superior Court. K.E. was only 16 years-old when L.E. was conceived. During K.E.'s pregnancy, K.E. told L.E.'s great-aunt M.M. that N.F. had kicked K.E. in the stomach.

63. When L.E. was born in January 2019, she was medically fragile and was in the Neonatal Intensive Care Unit (NICU) for three days. During this time, K.E. never left her room to visit L.E.

in the NICU. Because of K.E.'s lack of interest in L.E. and K.E.'s young age, hospital social workers only permitted K.E. to take L.E. home because she would be living with M.M.

64. Once L.E. was living in M.M.'s home, K.E. never cared for L.E. K.E. would leave M.M.'s home every day to hang out with her friends and would only return to sleep at night.

65. On February 20, 2019, K.E. engaged in a physical altercation with her own mother who was visiting M.M.'s home. While K.E.'s mother was holding L.E., K.E. punched her mother numerous times, leaving bruises. She then tried to forcibly take L.E. from her mother's arms by yanking L.E.'s leg. The police were called, and K.E. was arrested. K.E. was released to CFSA, but she ran away from the CFSA offices.

66. The next day, February 21, 2019, Karen Reed, a CFSA social worker, came to M.M.'s home and told M.M. that she needed to file for emergency custody that day or CFSA would take L.E. and place her in foster care with an unrelated person. This action was effectively a determination by CFSA that L.E. was in immediate danger and that immediate removal from her mother's care was necessary. Despite making this determination, Reed did not follow the legally required removal procedures but instead made M.M. responsible for effecting the removal of L.E. Moreover, Reed did not inform M.M. of all her options to participate in L.E.'s care, including that CFSA could petition the D.C. Family Court for removal and place the child with M.M. in a formal foster care placement, despite the fact that such notice is required by law. In fact, even though M.M. told Reed that she had been licensed as a foster parent, Reed still insisted that M.M. had to file for custody or CFSA would take the child away. Reed never explained to M.M. that L.E. could be placed into foster care with M.M. as her foster parent. Reed concealed the full facts from M.M. and made these false, misleading, and incomplete representations to her with knowledge of their falsity and with the intent to deceive her regarding L.E.'s and her rights under federal and D.C.

law and M.M. reasonably relied on those material misleading misrepresentations to L.E.'s and her detriment.

67. Relying on Reed's instructions, M.M. went to the courthouse to file for custody of L.E. However, when she arrived, the D.C. Family Court was already closed. M.M. notified Reed that she was unable to file the custody papers that day but would file them first thing the next morning. Reed instructed M.M. not to allow K.E. into her home because of concerns for the safety of L.E. in K.E.'s presence.

68. On February 22, 2019, M.M. filed a Motion for Emergency Custody of L.E. and was granted temporary sole legal and sole physical custody of the child. Both parents opposed M.M.'s Motion for Emergency Custody -- K.E. sought joint legal custody and visitation with the child, and N.F. sought custody of L.E.

69. In early June 2019, M.M. learned of the option to become a licensed foster parent from a source other than CFSA. Accordingly, on June 9, 2019, M.M. submitted to CFSA a written request to be licensed as a foster parent for L.E. On June 24, 2019, CFSA denied M.M.'s request.

70. In the early morning hours of July 20, 2019, M.M. received text messages from K.E. asking M.M. to call the police because N.F. had just beat her up and she could not breathe.

71. On August 2, 2019, M.M. received a call from K.E. that N.F. had thrown bleach on her and asked M.M. to pick her up and take her to the Emergency Room. When M.M. picked up K.E., she told M.M. that N.F. had thrown the bleach on her two days prior. She then showed M.M. burns on her thighs. At the hospital, when M.M. helped K.E. take off her clothes to put on a hospital gown, M.M. saw burns on K.E.'s back and buttocks. Burn specialists were called in to treat K.E.

72. On August 27, 2019, N.F. was charged with first- and second- degree assault and reckless endangerment for pouring bleach on K.E., causing first- and second- degree burns. N.F. is

incarcerated awaiting his trial, which is scheduled for February 19, 2020. Upon information and belief, K.E. is sympathetic to N.F. and is reluctant to testify against him at trial.

73. A trial in the custody case has been continued pending the outcome of N.F.'s criminal trial. As of the date of this filing, M.M. continues to have temporary sole legal and sole physical custody of L.E.

74. M.M. has continuously cared for L.E. since February 20, 2019. During this time, CFSA has failed to provide any services to L.E. CFSA failed to develop a case plan for L.E. and has not provided her with any services.

75. Further, CFSA has not provided any support or financial assistance to M.M. CFSA denied M.M.'s request to be licensed as a foster parent despite the fact that M.M. has satisfied the requirements. Moreover, prior to being diverted to M.M.'s care, L.E. was eligible to receive benefits under the TANF program and, accordingly, M.M., if formally granted foster parent status, would be entitled to receive foster care maintenance payments on L.E.'s behalf in the amount of \$1,140 per 30-day period. M.M. has not received any foster care maintenance payments on behalf of L.E. because Defendants removed L.E. from her mother's care without a formal removal proceeding and informally and illegally placed her in the care of her great-aunt M.M. through kinship diversion, without licensing M.M. as a foster parent.

76. Since February 20, 2019, M.M. has shouldered the financial costs of caring for L.E. This has been a substantial financial burden for M.M. who is having difficulty paying for rent, utilities, food, and other necessities.

77. As described above, CFSA's failure to remove L.E. to foster care with M.M. has resulted in injury to Plaintiffs including, but not limited to, housing and food instability, emotional distress, and a lack of permanency for L.E. CFSA's affirmative misconduct, including Reed's

misrepresentations and concealments to M.M., have resulted in an egregiously unfair and harmful injury to M.M. and L.E.

78. On July 23, 2019, M.M., for herself and on behalf of L.E., submitted a written Notice of Claim against District of Columbia to the D.C. Office of Risk Management. By letter dated July 29, 2019, the D.C. Office of Risk Management acknowledged receipt of the Notice of Claim.

C. PLAINTIFFS T.C. AND L.C.

79. L.C. is the grandmother and former caretaker of T.C.

80. T.C. and his siblings are the biological children of their father T.H. (“T.H.”) and their mother L.K. (“L.K.”), both of whom are D.C. residents.

81. L.K. has suffered from serious and untreated mental health and substance use issues for many years. T.H. has struggled with homelessness.

82. CFSA has been involved with this family for years, and has informally and illegally placed the children with T.H.’s mother, L.C., through kinship diversion arrangements on two prior occasions.

83. On March 6, 2019, T.C.’s oldest sibling reported to L.C. that L.K. had put bug repellent in the children’s food, spit in their drinks, poured barbeque sauce on their school clothes, and woke them up by dousing them in hot water. L.C. called the assigned CFSA in-home social worker, Narendra Date, to report the incident.

84. After receiving the call from L.C., Date removed T.C. and his siblings from L.K.’s home and transported the children to L.C.’s home. Even though the rules governing L.C.’s unit do not permit her to have any additional individuals live in her home, CFSA informally and illegally placed five children in L.C.’s home. This action was effectively a determination by CFSA that T.C. and his siblings were in immediate danger and that immediate removal from their home was necessary. Despite making this determination, Date did not follow the required removal procedures

but instead made L.C. responsible for effecting the removal of T.C. and his siblings. Moreover, Date did not inform L.C. of all her options to participate in T.C. and his siblings' care, including that CFSA could petition the D.C. Family Court for removal and place the child with T.C. in a formal foster care placement, despite the fact that such notice is required by law. Despite the fact that Date had a duty to provide this information to L.C., Date concealed this material information with the intent to deceive her and T.C.'s rights under federal and D.C. law. Because of this concealment, L.C. was deprived of the ability to make an informed decision about the best course of action regarding T.C.

85. On March 13, 2019, L.C. filed a Motion for Emergency Custody of T.C. and his siblings and a same-day emergency hearing was held. At the hearing, L.C. told the judge of L.K.'s conduct on March 6, and also alleged that L.K. had a substance use problem and regularly neglected the children. L.C. further represented that T.H. did not want to care for the children. CFSA General Counsel Paul Kratchman participated in the custody hearing by phone and confirmed all of L.C.'s representations. The D.C. Family Court granted L.C. temporary custody of T.C. and his siblings. L.C. did not agree to take custody of T.C.'s youngest sibling and as a result, CFSA initiated court proceedings and the child was formally removed from L.K.'s home and placed in a foster care home with an unrelated foster parent.

86. CFSA never informed L.C. of her option to become a foster parent for T.C. or his siblings, despite the fact that such notice is required by law. L.C., however, had learned of the option to become a foster parent from a source other than CFSA, and on June 9, 2019, L.C. submitted a written request to CFSA to be licensed as a foster parent for T.C. and his siblings. Despite the fact that L.C. met the requirements to become a licensed foster parent, CFSA denied L.C.'s request to be licensed as a foster parent.

87. Even though T.C. and his siblings suffer from trauma and have behavioral issues, CFSA failed to provide any support services to them. It became increasingly difficult for L.C. to manage all of the children. On June 22, 2019, after one of T.C.'s siblings was involved in a physical altercation with L.C.'s granddaughter in her home, L.C. returned T.C.'s siblings to L.K.'s home. Custody of T.C.'s siblings was granted to T.H. by the D.C. Family Court on July 18, 2019.

88. T.C., however, remained with L.C., and on September 20, 2019, L.C., T.H. and L.K. agreed to a custody order approved by the D.C. Family Court that permitted T.C. to remain in the custody of L.C. On November 2, 2019, T.C. left L.C.'s home because L.C. refused to let T.C. stay overnight at the home of his girlfriend. Over the following two months, T.C. spent some time staying with T.H. and some time staying with L.C.

89. L.C. continued to have legal custody of T.C. until January 13, 2020, when L.C., T.H., and L.K. agreed to a custody order approved by the D.C. Family Court that granted custody of T.C. to T.H. From March 6, 2019 to January 13, 2020, CFSA failed to provide any services to T.C. CFSA failed to develop a case plan for T.C. and did not provide him with any mental health, medical, or educational services.

90. Further, CFSA did not provide any support or financial assistance to L.C. Upon information and belief, prior to being diverted to live with L.C., T.C. was eligible to receive benefits under the TANF program and, accordingly, L.C., if formally granted foster parent status, would be entitled to receive foster care maintenance payments on T.C.'s behalf in the amount of \$1,140 per 30-day period. Further, upon information and belief, T.C.'s siblings were also eligible to receive benefits under the TANF program prior to their diversion to live with L.C., and L.C., if formally granted foster parent status, would be entitled to receive foster care maintenance payments on their behalf for the three months they were under her care. L.C., however, has not

received any foster care maintenance payments on behalf of T.C. or his siblings because Defendants removed T.C. and his siblings from their mother's unsafe home without a formal removal proceeding and informally and illegally placed them in the care of their grandmother L.C. through kinship diversion, without licensing L.C. as a foster parent.

91. Additionally, while CFSA is required to assist foster parents in obtaining personal records for foster children, CFSA did not make any effort to help L.C. obtain the immunization records, social security cards, or Medicaid cards for T.C. or his siblings. As a result, L.C. was delayed in receiving public benefits.

92. The costs to L.C. of raising T.C. and his siblings resulted in a substantial financial burden for L.C., who during that time had difficulty paying for rent, utilities, food, and other necessities.

93. As described above, CFSA's failure to remove T.C. or his siblings to foster care or license L.C. as a foster parent has resulted in injury to Plaintiffs including, but not limited to, housing and food instability, emotional distress, and a lack of permanency for T.C. and his siblings. CFSA's affirmative misconduct, including Date's concealments to L.C., have resulted in an egregiously unfair and harmful injury to L.C. and T.C.

94. On August 20, 2019, L.C., for herself and on behalf of T.C., submitted a written Notice of Claim against District of Columbia to the D.C. Office of Risk Management. By letter dated September 3, 2019, the D.C. Office of Risk Management acknowledged receipt of the Notice of Claim.

VII. CLAIMS

COUNT I: VIOLATION OF TITLE IV-E OF THE SOCIAL SECURITY ACT, 42 U.S.C. §§ 670-679c

95. Plaintiffs incorporate herein the allegations set forth in the preceding paragraphs of this complaint.

96. The foregoing actions and inactions of Defendants District of Columbia and CFSA, constitute a deprivation of rights conferred on each of Plaintiffs K.J., L.E., and T.C. by Title IV-E of the Social Security Act, to:

- (a) removal from their home pursuant to a voluntary placement agreement or judicial determination that continuation in the home would be contrary to the welfare of the child, 42 U.S.C. § 672(a)(2);
- (b) placement in a home that meets the standards for foster family homes, and has been licensed or approved by the State, 42 U.S.C. §§ 671(a)(10), 672(c);
- (c) the provision of quality services to protect the child's safety and health, 42 U.S.C. § 671(a)(22);
- (d) a written case plan that describes the type of home in which the child is to be placed, including the safety and appropriateness of the placement, 42 U.S.C. §§ 671(a)(16), 675(1)(A);
- (e) a written case plan that ensures that the child receives safe and proper care while in foster care and implementation of that plan, 42 U.S.C. §§ 671(a)(16), 675(1)(B);
- (f) a written case plan that ensures provision of services to the child, parents and foster parents in order to facilitate reunification or where that is not possible, the permanent placement of the child, and to address the needs of the child while in foster care and implementation of that plan, 42 U.S.C. §§ 671(a)(16), 675(1)(B);
- (g) a written case plan that ensures the educational stability of the child while in foster care and implementation of that plan, 42 U.S.C. §§ 671(a)(16), 675(1)(G);
- (h) a case review system that ensures the child has a case plan designed to achieve placement in a safe and appropriate setting, 42 U.S.C. §§ 671(a)(16), 675(5)(A);

- (i) a case review system in which the status of the child is reviewed no less frequently than every six months by a court, or person responsible for case management, for purposes of determining the safety of the child, the continuing necessity for and appropriateness of the placement, extent of compliance with the case plan and projected date of permanency, 42 U.S.C. §§ 671(a)(16), 675(5)(B), 675(5)(C); and
- (j) foster care maintenance payments to cover the cost of food, clothing, shelter, daily supervision, school supplies, the child's personal incidentals, liability insurance with respect to the 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. §§ 671(a)(1), 672(a)(1), 675(4)(A).

97. Further, the foregoing actions and inactions of Defendants District of Columbia and CFSA, constitute a deprivation of rights conferred on each of Plaintiffs K.H., M.M., and L.C. by Title IV-E of the Social Security Act, to:

- (a) receive notice that explains the options the relative has under Federal and D.C. law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice, 42 U.S.C. § 671(a)(29);
- (b) receive notice that describes the requirements to become a foster family home and the additional services and support that are available for children placed in such a home, 42 U.S.C. § 671(a)(29); and
- (c) receive foster care maintenance payments on behalf of each child who has been removed from their home and placed in the relative's care to cover the cost of providing food, clothing, shelter, daily supervision, school supplies, the child's personal incidentals, liability insurance with respect to the 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. §§ 671(a)(1), 672(a)(1), 675(4)(A).

98. By its acts and omissions, in particular its custom and practice of kinship diversion, Defendants have deprived Plaintiffs of their rights under Title IV-E of the Social Security Act, and thereby caused injury to Plaintiffs, including financial and emotional harm.

99. Plaintiffs' claim for violation of Title IV-E of the Social Security Act is brought pursuant to 42 U.S.C. § 1983, which affords Plaintiffs a private right of action. Pursuant to 42 U.S.C. § 1983, Plaintiffs are entitled to compensation for such injuries and for the payment of reasonable attorneys' fees, costs, and interest in an amount to be proven at trial.

**COUNT II: VIOLATION OF THE EQUAL PROTECTION CLAUSE
OF THE FOURTEENTH AMENDMENT**

100. Plaintiffs incorporate herein the allegations set forth in the preceding paragraphs of this complaint.

101. As averred in Par. 95-96, Defendants, through their custom and practice of kinship diversion, have intentionally deprived Plaintiffs of their rights under the Social Security Act.

102. Further, through the custom and practice of kinship diversion, Defendants have deprived and continue to deprive K.J., L.E., and T.C. of certain entitlements conferred by the D.C. Child Abuse and Neglect Act to which K.J., L.E., and T.C. have a constitutionally protected interest.

These entitlements include the right to:

- (a) be removed from their home once CFSA had determined that the child could not be adequately protected in their home through the provision of services, and to have such removal be made pursuant to a D.C. Family Court finding of abuse or neglect

and removal or the consent of their parents, or by requesting the police to remove if there was insufficient time for CFSA to file a petition, § 4-1303.04(c);

- (b) be placed in a licensed foster care home or facility, § 4-217.02;
- (c) receive appropriate services, §§ 4-1301.09(b), 4-1301.02(3);
- (d) receive a case plan and have their status reviewed periodically, §§ 4-1301.09(b), 4-1301.09(d), 4-1301.02(3); and
- (e) have monetary support provided by CFSA on their behalf, § 4-217.01, CFSA, *Resource Parent Handbook* 93–95 (2018).

103. In depriving K.J., L.E., and T.C of their rights under the Social Security Act and the D.C. Child Abuse and Neglect Act, Defendants have failed to provide the same procedures, services, and support as Defendants provide to other children who have experienced a similar type and severity of mistreatment. Defendants' discriminatory treatment is not rationally related to advancing any legitimate governmental interest and therefore violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution as applied to D.C. through the Due Process Clause of the Fifth Amendment.

104. In depriving K.H., M.M., and L.C. of their rights under the Social Security Act, Defendants have failed to provide the same procedures, services, and support as Defendants provide to foster parents caring for children who experienced a similar type and severity of mistreatment. Defendants' discriminatory treatment is not rationally related to advancing any legitimate governmental interest and therefore violates the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution as applied to D.C. through the Due Process Clause of the Fifth Amendment.

105. Defendants' acts and omissions complained of herein have caused the violation of Plaintiffs' constitutional rights and caused injury to Plaintiffs, including financial and emotional harm.

106. Plaintiffs' claim for violation of the Equal Protection Clause of the Fourteenth Amendment is brought pursuant to 42 U.S.C. § 1983, which affords Plaintiffs a private right of action. Pursuant to 42 U.S.C. § 1983, Plaintiffs are entitled to compensation for such injuries and for the payment of reasonable attorneys' fees, costs, and interest in an amount to be proven at trial.

**COUNT III: VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH
AMENDMENT**

107. Plaintiffs incorporate herein the allegations set forth in the preceding paragraphs of this complaint.

108. As averred in Par. 95 and Par. 101, Defendants, through their custom and practice of kinship diversion, have intentionally deprived K.J., L.E., and T.C. of their rights under the Social Security Act and the D.C. Child Abuse and Neglect Act to which K.J., L.E., and T.C. have a constitutionally protected interest, without providing an adequate or meaningful opportunity to be heard.

109. Moreover, through its custom and practice of kinship diversion, Defendants have deprived K.J., L.E., and T.C. of their constitutional right to familial integrity and have done so without respecting the required procedural safeguards. In particular, to protect the integrity of established family units, District of Columbia has implemented procedural safeguards which require that CFSA either obtain parental consent or obtain a court finding of abuse or neglect and removal, prior to removing a child from their home, or request the police remove the child if there is insufficient time to petition for removal. By circumventing the mandated removal procedures,

Defendants have deprived K.J., L.E., and T.C. of their constitutionally protected right to familial integrity without providing an adequate or meaningful opportunity to be heard.

110. As averred in Par. 96, Defendants, through their custom and practice of kinship diversion, have intentionally deprived K.H., M.M., and L.C. of their rights under the Social Security Act, including the right to receive foster care maintenance payments, without providing an adequate or meaningful opportunity to be heard.

111. In each instance, Defendants deprived Plaintiffs of the rights and entitlements afforded to them under the Social Security Act and D.C. Child Abuse and Neglect Act, without providing an opportunity for a fair hearing, thereby denying Plaintiffs of their right to due process of law.

112. Defendants' acts and omissions complained of herein have violated the Plaintiffs' rights under the Due Process Clause of the Fifth Amendment to the U.S. Constitution and caused injury to Plaintiffs, including financial and emotional harm.

113. Plaintiffs' claim for violation of the Due Process Clause of the Fifth Amendment is brought pursuant to 42 U.S.C. § 1983, which affords Plaintiffs a private right of action. Pursuant to 42 U.S.C. § 1983, Plaintiffs are entitled to compensation for such injuries and for the payment of reasonable attorneys' fees, costs, and interest in an amount to be proven at trial.

COUNT IV: VIOLATION OF D.C. HUMAN RIGHTS ACT

114. Plaintiffs incorporate herein the allegations set forth in the preceding paragraphs of this complaint.

115. Under the D.C. Human Rights Act, it is "an unlawful discriminatory practice for a District government agency or office to limit or refuse to provide any facility, service, program, or benefit to any individual on the basis of an individual's actual or perceived . . . familial status...." D.C. Code § 2-1402.73.

116. CFSA's practice of kinship diversion intentionally discriminates on the basis of familial status. As averred in Par. 37-38, if, following a determination that a child has been abused or neglected and should be removed from their home, CFSA identifies a relative willing to care for the child, CFSA has a custom of placing the child with the relative informally, rather than licensing the relative as a kinship foster parent. CFSA routinely directs or pressures the relative to file an emergency motion for legal and physical custody of the child (which creates "familial status" under D.C. Code § 2-1401.02(11A)), including by threatening to place the child in foster care with a stranger if the relative does not agree to do so. Thereafter, if the relative caregiver requests that CFSA license them as a foster parent, CFSA refuses to do so and thereby denies the relative caregiver and the diverted child the benefits and services that CFSA provides to foster families.

117. CFSA removed K.J., L.E., and T.C. and informally placed them in the care of K.H., M.M., and L.C., respectively, through kinship diversion. Shortly after CFSA effected the kinship diversion and, in the cases of K.H. and M.M., at CFSA's direction, each of the relative caregivers filed an emergency motion for legal custody of the respective minor child. K.H., M.M. and L.C., subsequently requested that CFSA allow them to apply to be foster parents and thereby receive foster care maintenance payments on the children's behalf and other benefits. CFSA denied their requests.

118. CFSA has intentionally discriminated against Plaintiffs based on familial status by refusing to provide the same benefits and services, including the tangible benefit of foster care maintenance payments, it provides to foster families. CFSA's decision to selectively deny Plaintiffs the opportunity to receive these services and support is based solely on familial status. Accordingly, Defendants discriminated against Plaintiffs by denying them the tangible benefit of foster care maintenance payments based on the Plaintiffs' status in a protected class.

119. As a consequence of Defendants' acts or omissions, Plaintiffs have sustained damages and will sustain future damages in an amount to be proven at trial.

COUNT V: NEGLIGENCE

120. Plaintiffs incorporate herein the allegations set forth in the preceding paragraphs of this complaint.

121. The D.C. Child Abuse and Neglect Act creates a special relationship between Defendants and D.C.'s abused and neglected children, imposing on Defendants statutorily-defined duties and responsibilities to, *inter alia*, "safeguard[] the rights and protect[] the welfare" of those children. D.C. Code § 4-1303.01a. At all times Defendants owed K.J., L.E., and T.C. the duty to act with due care.

122. Once Defendants identified K.J., L.E., and T.C. as children who had been abused or neglected and who could not be adequately protected in the parental home through the provision of services, Defendants owed a legal duty to K.J., L.E., and T.C., to act with due care in fulfilling their duties and responsibilities under the D.C. Child Abuse and Neglect Act to:

- (a) remove K.J., L.E., and T.C. from their homes in compliance with statutorily mandated safeguards, § 4-1303.04(c);
- (b) ensure that K.J., L.E., and T.C. were placed in a licensed foster family home or licensed child care institution, § 4-217.02;
- (c) provide or arrange for appropriate services for K.J., L.E., and T.C., §§ 4-1301.09(b), 4-1301.02(3);
- (d) prepare a case plan for K.J., L.E., and T.C. and their relative caregivers and ensure their status was reviewed periodically, §§ 4-1301.09(b)-(d), 4-1301.02(3);
- (e) provide monetary support on behalf of K.J., L.E., and T.C. § 4-217.01, CFSA, *Resource Parent Handbook* 93–95 (2018).

123. Defendants' failure and refusal to properly discharge these responsibilities constitutes a breach of Defendants' duty of care.

124. Defendants' breach of duty proximately caused injury to K.J., L.E., and T.C. in the form of emotional and financial harm, which injury was reasonably foreseeable.

COUNT VI: FRAUDULENT MISREPRESENTATION

125. Plaintiffs incorporate herein the allegations set forth in the preceding paragraphs of this complaint.

126. CFSA, through its agents, made false representations to K.H., M.M., and L.C. about their rights and responsibilities regarding K.J., L.E., and T.C., respectively, or willfully omitted material facts about those rights and responsibilities. Pursuant to 42 U.S.C. § 671(a)(29), Defendants had a statutory duty to explain to K.H., M.M., and L.C. the options to participate in K.J., L.E., and T.C.'s care and placement, and Defendants' failure to provide such explanation constitutes a breach of this duty to disclose. CFSA's agents knowingly made these false statements or willful omissions, or concealed the truth knowingly and with the intent to induce reliance on their misrepresentations or willful omissions. K.H., M.M., and L.C. reasonably and justifiably relied on the incomplete information and, as a result, took action that led to an egregiously unfair result for all Plaintiffs.

127. Specifically, on October 18, 2018, Hoffman told K.H. to file for emergency custody of K.J. but did not inform K.H. of other options to participate in K.J.'s care and placement, including that CFSA could petition the D.C. Family Court for removal of the child, license K.H. as a foster parent, and place the child with K.H. despite the fact that such notice is required by law. Further, on October 22, 2018, Hoffman told K.H. that if the judge did not grant her custody at the hearing on November 8, 2018, CFSA would have to remove K.J. and place her in foster care with a stranger. Hoffman knew she was falsely representing K.H.'s options by omitting material facts she was

legally obligated to disclose, and made these misrepresentations to deceive K.H. into believing she needed to file an emergency motion for custody of K.J. K.H. reasonably relied on the representations of Hoffman, filed the emergency motion for custody, and has suffered emotional and financial harm as a result, in an amount of damages to be determined at trial.

128. On February 21, 2019, Reed, a CFSA agent, came to M.M.'s home and told her that she needed to file for emergency custody that day or CFSA would take L.E. and place her in foster care with an unrelated person. This statement was false because M.M. had other options to participate in L.E.'s care and placement, including that CFSA could petition the D.C. Family Court for removal of the child, license M.M. as a foster parent, and place the child with M.M. Despite the fact the Reed was required to inform M.M. of these options, Reed concealed those material facts and made affirmative misrepresentations to deceive M.M. into believing she needed to file an emergency motion for custody of L.E. in order to keep L.E. in her home. M.M. reasonably relied on Reed's misrepresentations, filed the emergency motion for custody of L.E., and has suffered emotional and financial harm as a result, in an amount of damages to be determined at trial.

129. On March 6, 2019, Date brought T.C. and his siblings to L.C.'s home. Date concealed from L.C. her options to participate in the children's care and placement, including that CFSA could petition the D.C. Family Court for removal of the children, license L.C. as a foster parent, and place the children with L.C. in a foster care placement. Date concealed this material fact from L.C., which deceived L.C. into believing she needed file an emergency motion for custody of the children in order to be able to care for them. L.C. reasonably relied on the incomplete representations of Date, filed the emergency motion for custody, and has suffered emotional and financial harm as a result, in an amount of damages to be determined at trial.

COUNT VII: NEGLIGENT MISREPRESENTATION

130. Plaintiffs incorporate herein the allegations set forth in the preceding paragraphs of this complaint.

131. Alternatively, even if Hoffman, Reed, and Date did not know their representations to K.H., M.M., and L.C. were false and did not intend to deceive them, their misrepresentations were negligent.

132. As averred in Par. 124 – 126, the statements CFSA agents made to K.H., M.M., and L.C. were false or omitted material facts, as CFSA failed to inform these relative caregivers of their options to participate in the care of K.J., L.E., and T.C. CFSA agents had a legal duty to disclose such information pursuant to 42 U.S.C. § 671(a)(29). Those statements or concealments concerned the material issue of whether K.H., M.M., and L.C. needed to file an emergency motion for custody in order to participate in the care of K.J., L.E., and T.C. K.H., M.M., and L.C. reasonably relied on the advice of the CFSA agents to their detriment and suffered emotional and financial harm as a result, in an amount of damages to be determined at trial.

VIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

- (a) Issuance of a declaratory judgment that Defendants' custom and practice of kinship diversion, in particular the informal removal and placement through kinship diversion of K.J., L.E., and T.C. to K.H., M.M., and L.C., respectively, violates Title IV-E of the Social Security Act, 42 U.S.C. §§ 670–679c, the Equal Protection Clause of the Fourteenth Amendment, the Due Process Clause of the Fifth Amendment, the D.C. Child Abuse and Neglect Act, and D.C. Human Rights Act;

- (b) Entry of a permanent injunction preventing Defendants from retaliating against K.H., M.M., and L.C. for seeking licensure as a foster parent and foster care maintenance payments;
- (c) Entry of a permanent injunction preventing Defendants from continuing the custom and practice of kinship diversion;
- (d) Award Plaintiffs compensatory damages in an amount equal to the total foster care maintenance payments that Plaintiffs would have received since the kinship diversion was effected, applying the current payment rate of \$1,140 per 30-day period, plus interest, and other damages attributable to Defendants' violation of federal and D.C. law;
- (e) Issuance of an order that, for so long as K.J. and L.E., remain in the sole or primary physical custody of K.H. and M.M., respectively, Defendants continue to pay to Plaintiffs an amount equal to foster care maintenance payments and other damages attributable to Defendants' violation of federal and D.C. law;
- (f) Award costs, and expenses for this action, including attorneys' fees; and
- (g) Award such further relief as this Court deems necessary, proper, and just.

A JURY TRIAL IS HEREBY DEMANDED.

Respectfully submitted,

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