

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

T.J., INDIVIDUALLY )  
AND ON BEHALF OF MINOR T.S., )

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 )

and )

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

Defendants )

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Case: 1:21-cv-00663 JURY DEMAND  
Assigned To : Hogan, Thomas F.  
Assign. Date : 03/11/2021  
Description: Gen. Civil (E-DECK)

Civil Action No.

JURY TRIAL DEMANDED

## 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 diversion<sup>1</sup>, whereby Defendants remove

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<sup>1</sup> Kinship diversion is also referred to as "hidden foster care." See Josh Gupta-Kagan, *America's Hidden Foster Care System*, 72 Stan. L. Rev. (2020).

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 T.S. is a 16-year-old girl<sup>2</sup> who has a 21-month-old daughter (“K.S.”) who lives with her. T.S. is the biological child of her mother, T.X.S. T.S.’s father is not listed on her birth certificate, and there has been no legal determination of paternity. T.S.’s mother has long-standing mental health issues, an alcohol addiction, and a history of abusing and neglecting T.S. As a result, Defendants removed T.S. from T.X.S.’s home and informally and illegally placed T.S. through kinship diversion in the care of T.S.’s god-sister, Plaintiff T.J. (hereinafter “T.J.”).<sup>3</sup> At that time, Defendants did not inform T.J. of her option to become a licensed foster parent for T.S.

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<sup>2</sup> Pursuant to Rule 5.2(a) of the Federal Rules of Civil Procedure and Rule 5.4(f) of the Local Rules of the U.S. District Court for the District of Columbia, the minor plaintiff and her infant daughter are identified by their initials. Plaintiffs have filed a motion and accompanying memorandum requesting leave of the Court for T.J. and T.S.’s biological mother to be identified anonymously and for all Plaintiffs’ residential addresses to be substituted with the address of their counsel, DC KinCare Alliance.

<sup>3</sup> K.S. continued to be in the care of and live with her mother, T.S., after T.S. was removed by Defendants and placed with T.J. through kinship diversion.

5. T.J. has continued to care for T.S. on a daily basis since Defendants effected the kinship diversion on July 26, 2020. During this time, Defendants have failed to provide any support or services to T.S. or T.J., including development of a case plan to reunify T.S. with her mother and services to protect the health and safety of T.S. Further, Defendants failed to make foster care maintenance payments to T.J. on behalf of T.S.

6. Defendants' failures have resulted in withheld foster care support services and financial losses from foster care maintenance payments that otherwise would have been paid in the amount of approximately \$11,514 for T.S. to date,<sup>4</sup> as well as other amounts to be determined at trial.

7. As a direct consequence of Defendants' conduct, T.S. and T.J. (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 by treating the relative caregiver and child under her care 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.

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<sup>4</sup> This rate is higher than the regular foster care maintenance rate because T.S. has a child of her own, K.S., who is also residing with T.J.

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 T.S. is a minor child who was removed from the custody of her biological mother and placed via kinship diversion in the care of her god-sister, T.J. Plaintiff T.J. brings this action on her own behalf and on behalf of T.S.

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

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

17. 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**

18. 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”), and the Fifth and Fourteenth Amendment rights of the Plaintiffs.

19. 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, and the Fifth and Fourteenth Amendments of the United States Constitution.

**A. Obligations Under The Federal Social Security Act**

20. 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.

21. The Social Security Act requires any “State”<sup>5</sup> 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

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<sup>5</sup> 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 payments<sup>6</sup> be made on behalf of each child who has been removed from their home, if the child “would have met the [TANF]<sup>7</sup> 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

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<sup>6</sup> 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).

<sup>7</sup> 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).

22. 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**

23. The D.C. Child Abuse and Neglect Act provides that CFSA shall, *inter alia*: (i) receive and respond to reports of child abuse and neglect<sup>8</sup>; (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

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<sup>8</sup> 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.*

24. 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).<sup>9</sup> 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).

25. 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).

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<sup>9</sup> 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.

26. Once CFSA has removed a child from their home, CFSA is required to place the child with a licensed foster parent.<sup>10</sup> §§ 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).

27. 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).

28. 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

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<sup>10</sup> 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).

29. 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).

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

30. 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.

31. 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).

32. 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.*

33. 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 substantiated<sup>11</sup> 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 licensed as a foster parent, and threatens that if there is not agreement for the child to live informally with the relative, the child will go into foster care with a stranger. Through such actions, CFSA informally and illegally places the child with the relative through kinship diversion, rather than removing the child in

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<sup>11</sup> 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. In this case, however, CFSA did substantiate a finding of neglect.

accordance with applicable law and formally placing the child with a relative who has been licensed as a foster parent.

34. 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, 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.

35. 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.<sup>12</sup> Moreover, neither the diverted children nor the relatives responsible for their care receive financial support, such as foster care maintenance payments and

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<sup>12</sup> 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.

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.

36. Upon information and belief, senior management of CFSA has long directed, 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 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**

37. CFSA engaged in kinship diversion when it failed to notify T.J. of her option to be licensed as a foster parent, allowed T.S. to be removed from her home, and informally and illegally placed her in the care of T.J.

38. Plaintiff T.S. is the biological child of her mother, T.X.S. Although a purported father was identified, upon information and belief, there is no father listed on T.S.'s birth certificate, there has been no legal determination of paternity, and the purported father was not acting in loco parentis. T.S.'s mother has long-standing mental health issues, an alcohol addiction, and a history of abusing and neglecting T.S.

39. On July 26, 2020, the Metropolitan Police Department ("MPD") and a Child Protective Services ("CPS") worker named Taylor Leach responded to a call from T.S., who stated that T.X.S. threatened to shoot her with one of her boyfriend's guns. T.X.S. was inebriated at the time. The

boyfriend lives with T.S. and T.X.S., and had pointed one of his guns at T.S. two weeks earlier. T.S.'s daughter K.S. lives with her and was present for the incident.

40. Leach informed T.X.S. that she needed to make a plan for T.S. to live with a relative. T.X.S. stated she wanted T.S. to live with T.X.S.'s mother, however T.X.S.'s mother declined to take T.S. Plaintiff T.J. arrived at T.S.'s home during the incident and offered to take T.S. T.X.S. would not agree to the placement, even after Leach discussed it with her. Leach told T.J. that she needed to file for custody of T.S. in court. T.S. indicated she wanted to stay with T.J., so T.J. took T.S. and K.S. (who remained in T.S.'s care) home with her.

41. On July 29, 2020, T.X.S. called MPD to try to force T.S. to return home. MPD notified CPS.

42. On August 7, 2020, T.J., on behalf of T.S., filed Petitions for Civil Protection Orders with the Domestic Violence Division of D.C. Superior Court (the "CPO cases"), and after an ex-parte hearing, Temporary Protection Orders (the "TPOs") were issued against T.X.S. and her boyfriend on August 10, 2020.<sup>13</sup> The TPOs prohibit T.X.S. and her boyfriend from threatening, stalking, harassing, or physically abusing T.S. or K.S., and requires them to stay 100 yards away from T.S. and K.S. The TPO against T.X.S. does not address custody of T.S. Because of limited operations of D.C. Superior Court resulting from the public health emergency, the evidentiary hearings to consider the Petitions for Civil Protection Orders were scheduled for October 9, 2020, two months rather than two weeks after issuance of the TPOs, before Domestic Violence Division Judge Lee.

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<sup>13</sup> Pursuant to the D.C. Intrafamily Offenses Act ("DV Act"), "[i]f, upon the filing of a petition under oath, a judicial officer finds that the safety or welfare of the petitioner or a household member is immediately endangered by the respondent, the judicial officer may issue, ex parte, a temporary protection order. D.C. Code § 16-1004(b)(1). Prior to the public health emergency, an initial temporary protection order would typically last 14 days, with an evidentiary hearing on the matter set for 14 days later. See. D.C. Code § 16-1004(b)(2).

43. By letter dated August 10, 2020, T.J. requested that CFSA license her as a foster parent for T.S.

44. On August 13, 2020, CFSA held an At-Risk Family Team Meeting (“FTM”), at which CFSA representatives were present and led the meeting. During the FTM, T.X.S. would not agree that T.J. could care for T.S. Later that day, CFSA Deputy Director Robert Matthews informed T.J. by email that CFSA had substantiated neglect and was removing T.S. to foster care. Ms. Matthews stated as follows: “[T.S.] is without a caretaker of which would trigger an official removal that is to be effectuated today. The CFSA kinship team will be working to assess and support [T.J.] for licensure. If for any reason [T.J.] is not licensable CFSA would authorize a traditional foster home suitable to meet her needs.” T.J. was subsequently contacted by the CFSA kinship licensing unit to submit a foster parent application, which she completed.

45. Sometime between August 13 and August 17, 2020, D.C. filed a neglect case in DC Superior Court for removal of T.S. from T.X.S.

46. Upon information and belief, on or about August 17, 2020, D.C. requested that the CPO case against T.X.S. (to which D.C. was not a party)<sup>14</sup>: be certified to the Family Division; modified; and that a hearing be held. There is no notation in the CPO case docket regarding any of these requests, nor any evidence that a motion or legally proper notice of any kind as required by the Superior Court Rules was provided to T.J. or T.S.

47. On August 17, 2020, a hearing was held contemporaneously in the neglect and CPO cases before Magistrate Judge Breslow, the judge assigned to the neglect case. When the cases were called by Judge Breslow, the following individuals were present: an attorney from the D.C. Office of Attorney General (“OAG”); CPS social worker Jalisa Hill, CPS supervisory social worker Sierra

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<sup>14</sup> D.C. Super. Ct. Dom. Viol. Rule 7(g) only permits parties to request modifications of TPOs.

Roach; CPS Supervisor Angela Laster; CFSA's Office of Youth Empowerment social worker Crystal Montgomery; CPS administrator Elizabeth Montgomery; a guardian *ad litem* appointed in the neglect case for T.S.; an attorney appointed in the neglect case for T.X.S. along with T.X.S.; and an attorney appointed in the neglect case for the purported father. Neither T.J. nor T.S. was present when the hearings commenced, nor for the following discussion. The OAG represented to Judge Breslow that "essentially given the TPO that's been filed, we believe that the CPO case is the more appropriate forum to resolve this case as opposed to the full neglect matter." *See* Transcript at p. 4. The OAG further represented that D.C. sought a modification of the TPO "to allow for mother and child to have contact with CFSA present so that CFSA can continue to work with the family if they're willing." *Id.*

48. Judge Breslow stated her understanding that this would be "a consent modification" of the TPO, to which the OAG said "yes" and indicated that T.J. had been contacted about the hearing by telephone earlier that day. CFSA social worker Laster stated that T.J. was available to appear but T.S. was not. The guardian *ad litem* appointed in the neglect case had not had any contact with T.S. to ascertain her wishes about the hearing.

49. When T.J. called into the hearing, Judge Breslow explained that she was the judge assigned to the neglect case and that the CPO case had also been certified to her. She then explained: "I'm going to make a quick modification to that today . . . and then I'm going to send this case right back to Judge Lee, who's going to hold a trial on October 9." *Id.* at 13 and 14. Judge Breslow further stated, "I'm going to dismiss the neglect case or no paper the neglect case, and I'm going to certify the domestic violence case back to the domestic violence calendar."

50. Although T.J. called into the hearing, she had been told by CFSA social worker Laster that she needed to participate in a "meeting" with a judge, not a hearing. T.J. did not understand that part of the purpose of the meeting was to modify the TPO, and prior to the hearing, neither she nor

T.S. had been asked by the social worker if they would agree to a modification of the TPO. During the hearing, T.J. provided affirmative responses to indicate that she was listening to the judge and could hear what the judge was saying. T.J. did not intend to indicate consent to the TPO modification.

51. On August 18, 2020, Mr. Matthews notified T.J. by email that CFSA would not be pursuing foster care licensure for T.S.

52. On September 3, Mr. Matthews notified T.J. by email that the CFSA investigation had been closed.

53. Because of the court's COVID-19 operational status, hearings on case matters were being regularly postponed. On September 9, 2020, the evidentiary hearings in the CPO cases were rescheduled until April 5, 2021. In any event, a CPO case is not a substitute for a neglect case, in that it does not provide any of the support, services, case plan, or due process protections of a neglect case.

54. By letter dated September 15, 2020, CFSA notified T.J. that her foster care application was closed. On or about this same date, CFSA closed its case related to T.S. and ceased any engagement with the family despite the fact that T.S. has no legal caregiver. Further, CFSA never followed up with T.J. or T.S. regarding any contact between T.X.S., T.S., and K.S.

55. T.J. did not have standing to file for custody of T.S. until November 29, 2020. On December 4, 2020, T.J. filed a Complaint for Custody of T.S. in D.C. Family Court. An initial hearing in the custody case was scheduled for February 3, 2021, at which T.J. was granted sole legal and physical custody of T.S. A status hearing is scheduled on April 9, 2021.

56. Upon information and belief, T.X.S. continues to receive SSI for T.S. and TANF for K.S. T.X.S. has not provided any of those financial resources to T.J. Without a court order, T.J. could not get these resources transferred.

57. Despite the fact that Defendants determined that T.S. needed to be removed from her mother's care and placed with T.J., Defendants failed to complete the legally required removal and placement procedures.

58. Since July 26, 2020, T.J. has cared for T.S. During this time, Defendants have failed to provide any support or services to T.S. or T.J., including development of a case plan to reunify T.S. with her mother, provide services to protect the health and safety of T.S., and provide assistance to enroll T.S. in school.

59. Further, Defendants failed to make foster care maintenance payments to T.J. on behalf of T.S. At all relevant times, T.S. was eligible to receive benefits under the TANF program and, accordingly, T.J. was entitled to receive foster care maintenance payments on behalf of T.S., at the rate of \$57 per day (for a foster child who is caring for a child of her own). T.J. did not receive any foster care payments on behalf of T.S. and was forced to shoulder all of the costs of caring for T.S. and her infant daughter, a substantial financial and emotional burden for her.

60. As described above, CFSA's failure to complete the removal of T.S. to foster care and license T.J. 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.S. CFSA's affirmative misconduct has resulted in an egregiously unfair and harmful injury to T.S. and T.J.

61. On October 23, 2020, T.J., for herself and on behalf of T.S., submitted a Notice of Claim against District of Columbia to the D.C. Office of Risk Management.

62. On November 4, 2020, 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**

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

64. The foregoing actions and inactions of Defendants District of Columbia and CFSA, constitute a deprivation of rights conferred on Plaintiff T.S. by Title IV-E of the Social Security Act, to:

- (a) removal from her 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).

65. Further, the foregoing actions and inactions of Defendants District of Columbia and CFSA, constitute a deprivation of rights conferred on Plaintiff T.J. by Title IV-E of the Social Security Act, to:

- (a) receive formal 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 formal 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).

66. 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.

67. 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 AS APPLIED TO D.C. THROUGH THE DUE  
PROCESS CLAUSE OF THE FIFTH AMENDMENT**

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

69. As averred in Par. 64-65, Defendants, through their custom and practice of kinship diversion, have intentionally deprived Plaintiffs of their rights under the Social Security Act.

70. Further, through the custom and practice of kinship diversion, Defendants have deprived and continue to deprive T.S. of certain entitlements conferred by the D.C. Child Abuse and Neglect Act to which T.S. has a constitutionally protected interest. These entitlements include the right to:

- (a) be removed from her home once CFSA had determined that the child could not be adequately protected in her 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 her 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 her 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).

71. In depriving T.S. of her 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.

72. In depriving T.J. of her 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.

73. 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.

74. 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**

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

76. As averred in Par. 64 and Par. 70, Defendants, through their custom and practice of kinship diversion, have intentionally deprived T.S. of her rights under the Social Security Act and the D.C. Child Abuse and Neglect Act to which T.S. has a constitutionally protected interest, without providing an adequate or meaningful opportunity to be heard.

77. Moreover, through its custom and practice of kinship diversion, Defendants have deprived T.S. of her 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 T.S. of her constitutionally protected right to familial integrity without providing an adequate or meaningful opportunity to be heard.

78. As averred in Par. 65, Defendants, through their custom and practice of kinship diversion, have intentionally deprived T.J. of her 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.

79. 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.

80. 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.

81. 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: NEGLIGENCE**

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

83. 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 T.S. the duty to act with due care.

84. Once Defendants identified T.S. as a child 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 T.S., to act with due care in fulfilling their duties and responsibilities under the D.C. Child Abuse and Neglect Act to:

- (a) remove T.S. from her home in compliance with statutorily mandated safeguards, § 4-1303.04(c);
- (b) ensure that T.S. was placed in a licensed foster family home or licensed child care institution, § 4-217.02;
- (c) provide or arrange for appropriate services for T.S., §§ 4-1301.09(b), 4-1301.02(3);
- (d) prepare a case plan for T.S. and her 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 T.S. § 4-217.01, CFSA, *Resource Parent Handbook* 93–95 (2018).

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

86. Defendants’ breach of duty proximately caused injury to T.S. in the form of emotional and financial harm, which injury was reasonably foreseeable.

### **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 T.S. to T.J., 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, and the D.C. Child Abuse and Neglect Act;

- (b) Entry of a permanent injunction preventing Defendants from retaliating against T.J. 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 \$57 per day, 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 T.S., remains in the sole or primary physical custody of T.J. 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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