

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

DWAYNE B., by his next friend, John Stempfle; CARMELA B., by her next friend, William Ladd; LISA J., by her next friend, Teresa Kibby; and JULIA, SIMON, and COURTNEY G., by their next friend, William Ladd; for themselves and others similarly situated,

No. 2:06-cv-13548

Hon. Nancy G. Edmunds

Plaintiffs,

v.

RICK SNYDER, in his official capacity as Governor of the State of Michigan, *et al.*,

Defendants.

**MOTION TO DISSOLVE OR MODIFY THE MODIFIED SETTLEMENT
AGREEMENT (MSA) INJUNCTION**

Defendants respectfully move for an order under Federal Rule of Civil Procedure 60(b) that dissolves the court-entered Modified Settlement Agreement consent order injunction or, alternatively, modifies that order so that it consists only of those provisions listed on Exhibits C and D to the attached Brief. In support of their motion, Defendants state:

1. On October 24, 2008, the Court entered the parties' consent-decree injunctive order and appointed Public Catalyst to monitor Defendants' progress.

2. On July 18, 2011, the Court entered a Modified Settlement Agreement consent-decree injunction (MSA).

3. Defendants have made historic progress in improving Michigan's child welfare system. As documented on Exhibits A–D to the attached Brief, Defendants have fully or substantially complied with 165 of the MSA's 211 commitments and made substantial progress on the remaining 46 goals.

4. The Supreme Court has held that “federal-court decrees [in institutional-reform litigation] exceed appropriate limits if they are aimed at eliminating a condition *that does not violate [federal law] or does not flow from such a violation.*” *Horne v. Flores*, 557 U.S. 443, 450 (2009) (quoting *Milliken v. Bradley*, 433 U.S. 267, 282 (1977)) (emphasis added). “If a durable remedy has been implemented,” as is the case here, “continued enforcement of the [federal-court] order is not only unnecessary, but improper.” *Id.*

5. Because Plaintiffs cannot prove that Defendants are currently violating federal law in their administration of Michigan's child welfare system, Defendants are entitled to an order vacating the MSA consent decree.

6. If the Court ultimately concludes that federal violations persist, Defendants are alternatively entitled to an order modifying the MSA.

7. The Supreme Court has made clear that a federal district court has "the discretion to order an incremental or partial withdrawal of its supervision and control." *Freeman v. Pitts*, 503 U.S. 467, 489 (1992). In considering whether to modify an institutional-reform consent decree, a district court's "remedy is justifiable only insofar as it advances the ultimate objective of alleviating the initial constitutional violations." *Id.*

8. Because federal monitoring of the 165 MSA commitments detailed in Exhibits A and B to the attached Brief is no longer necessary, the court should vacate those portions of the MSA, allowing Defendants to focus their resources and energy on the remaining MSA commitments that have not yet been fulfilled.

9. Defendants anticipate that substantial discovery and an evidentiary hearing will be necessary to resolve this motion. Before the parties and the Court undertake that monumental exercise, Defendants respectfully request that the Court issue a briefing schedule, conduct oral argument, and issue an opinion regarding the standard Plaintiffs must satisfy to justify continuance of the MSA consent decree.

10. If Defendants ultimately prevail on this motion, Plaintiffs will no longer be the prevailing party. Accordingly, Defendants also request an order that stays Defendants' further obligation to pay Plaintiffs' attorney fees or, alternatively, an order that clarifies that Defendants have the right to recoup from Plaintiffs' counsel all attorney fees paid from this point forward should Defendants ultimately succeed on their motion.

11. Pursuant to Eastern District Local Rule 7.1(a), the undersigned left detailed voice messages for opposing counsel on Monday, November 24, 2014, and again on Tuesday, November 25, 2014, seeking Plaintiffs' concurrence in this motion. Plaintiffs' counsel did not respond to these messages. On Tuesday, November 25, 2014, the Department of Human Services also notified Kevin Ryan and Eileen Crummy of Public Catalyst of Defendants' intention to file this motion, and thanked them for their insights and advice during the MSA's implementation.

WHEREFORE, Defendants respectfully request that the Court vacate the July 18, 2011 Modified Settlement Agreement injunctive order or, at a minimum, modify the MSA injunction so that it consists only of those provisions listed on Exhibits C and D. Defendants also ask that the Court issue an order (1) staying discovery and any evidentiary hearing until after the Court has issued a ruling that sets forth the legal standard for vacating the MSA injunction, and (2) staying Defendants' obligation to pay attorney fees pending resolution of the motion.

Dated: December 2, 2014

s/ John J. Bursch

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**BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO DISSOLVE OR
MODIFY THE MODIFIED SETTLEMENT AGREEMENT (MSA)
INJUNCTION**

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INTRODUCTION

Institutional-reform litigation by consent decree can accomplish much good, but at a high price: the transfer of power from democratically elected representatives to an entirely different political process, one monitored by plaintiffs' attorneys and federal courts. Although the Constitution empowers judges to ensure that government officials comply with the law, consent decrees allow courts to dictate *how* to do so, a responsibility ordinarily delegated to state officials. Accordingly, courts supervising consent decrees should seek to get out of the "monitoring" business as quickly as practicable. As it currently stands, Michigan has paid more than \$10 million to Plaintiffs' counsel and the court-appointed monitoring team, and spent millions more in staff time to comply with reporting requirements. The State would now like to redirect these resources to improving services to children.

The history of consent-decree management is littered with letdowns. This case is a noteworthy exception. Under new management, Michigan's child welfare system has made dramatic structural changes that have significantly improved the health and welfare of children in the system. While the Department of Human Services was threatened with contempt in late 2010, newly elected Governor Rick Snyder and newly appointed Director Maura Corrigan persuaded the Court that they could transform the child welfare system into an effective, self-policing entity. And they did. As of today, the Department has successfully completed 165 of the 211 compliance goals that the Modified Settlement Agreement (MSA) specifies.

The Department is not resting on its laurels, and it will continue the child welfare system's dramatic improvements. But to justify the consent decree's continuation, Plaintiffs must demonstrate that their constitutional rights are *currently* being violated. That is a showing they cannot make. Accordingly, Defendants respectfully move under Rule 60(b) to dissolve the Modified Settlement Agreement injunctive order or, at a minimum, to significantly modify it.

BACKGROUND

The nature of consent decrees

Scholars from across the political spectrum have recognized the limited success of consent decrees in reforming governmental institutions.¹ Yet such decrees remain popular. Why the disparity? Because there are no parties at the bargaining table representing the federalist principles that should animate every federal-court decision to take control of a state governmental institution. State officials—sometimes trying to obtain a court order that will ensure increased legislative funding, other times seeking simply to delegate away a thorny problem—consent to a detailed remedial plan, typically written to conform with a “road map” by which the plaintiffs’ attorneys seek to guide multiple states’ systems.

¹ Abram Chayes, *The Role of the Judge in Public Law Litigation*, 89 Harv. L. Rev. 1281, 1309 (1976); Richard A. Posner, *The Federal Courts: Challenge & Reform* 340–42 (Harv. U. Press, 1996); Susan P. Sturm, *The Legacy & Future of Corrections Litigation*, 142 U. of Pa. L. Rev. 639, 659 (1993); Donald L. Horowitz, *The Courts & Social Policy* (Brookings Inst., 1977); Peter H. Schuck, *Suing Government: Citizen Remedies of Official Wrongs* (Yale U. Press, 1983).

Such remedial plans become judicial decrees that do not track the rule of law, but rather bargains that reflect a “welter of motives. What programs will look good to the public? Can controversial actions be deferred until after the next election? What will pry more money out of the legislature for a favored program? What do the experts say now? These are considerations of the moment, yet the decrees last for decades.” Ross Sandler & David Schoenbrod, *Democracy by Decree: What Happens When Courts Run Government* 7 (Yale U. Press, 2003).

This politicalization of the consent-decree bargaining process comes at a high cost: state sovereignty. In “a system of federal courts representing the Nation, subsisting side by side with 50 state judicial, legislative, and executive branches, appropriate consideration *must* be given to principles of federalism in determining the availability and scope of equitable relief.” *Rizzo v. Goode*, 423 U.S. 362, 379 (1976) (quotation omitted). As the Supreme Court has recognized, “enforcement of consent decrees can undermine the sovereign interests and accountability of state governments.” *Frew v. Hawkins*, 540 U.S. 431, 441 (2009). This is because “consent decrees involving state officeholders may improperly deprive future officials of their designated legislative and executive powers” and “lead to federal-court oversight of state programs for long periods of time even absent an ongoing violation of federal law.” *Id.* And “[f]ederalism concerns are heightened when . . . a federal-court decree has the effect of dictating state or local budget priorities,” *Horne v. Flores*, 557 U.S. 433, 448 (2009), as is the case here.

As a result, the Supreme Court has emphasized that “federalism and simple common sense *require* [a district] court to give significant weight” to the position of government officials moving to dissolve a consent decree. *Horne*, 557 U.S. at 441–42 (quoting *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 392 n.14 (1992)) (emphasis added). Federal courts must ensure that “responsibility for discharging the State’s obligations is returned promptly to the State and its officials” as soon as is practically possible, and courts must consider state sovereignty:

As public servants, the officials of the State must be presumed to have a high degree of competence in deciding how best to discharge their governmental responsibilities. A State, in the ordinary course, depends upon successor officials, both appointed and elected, to bring new insights and solutions to problems of allocating revenues and resources. [*Frew*, 540 U.S. at 442.]

With that backdrop, consider the current status of Michigan’s child welfare system.

The consent decree and the Department’s compliance

On October 24, 2008, the Court entered the parties’ consent decree and appointed Public Catalyst to monitor the Department’s progress. Over the next years, a combination of issues led to Plaintiffs’ invocation of the decree’s non-compliance mechanism. While this might have led to a contempt motion, Governor Snyder and Director Corrigan persuaded the Court to order the parties back to the bargaining table to allow the Department to make a fresh start. And on July 18, 2011, the Court entered a Modified Settlement Agreement injunctive order. The Department’s progress under the MSA has been swift and steady.

As detailed on Exhibits A–D, the Department calculates that the MSA prescribes some 211 goals (excluding earlier goals that have been superseded by later goals). Of those, the Monitors have formally recognized that the Department has satisfied 112 (Ex. A), and data shows the Department has reached substantial compliance—100% satisfied but no formal recognition, or at least 90% compliant—in 53 more (Ex. B), a total of 165 commitments met, or nearly 80% of the total.

Of the remaining commitments, 10 relate to continuing implementation of MiSACWIS (Ex. D), and in the other 36, the Department has made significant progress but not yet achieved substantial compliance (Ex. C). As explained below, the fact that the Department still has some work to do in these areas does not amount to an ongoing violation of Plaintiffs’ constitutional rights. Accordingly, an order granting the Department’s motion to dissolve the MSA is appropriate.

STANDARD OF REVIEW

A federal court may relieve a party of its obligations under a final judgment when “applying [the judgment] prospectively is no longer equitable,” Fed. R. Civ. P. 60(b)(5), or for “any other reason that justifies relief,” Fed. R. Civ. P. 60(b)(6).

Rule 60(b)(5) motions serve “a particularly important function” in institutional reform cases, since “the passage of time frequently brings about changed circumstances—changes in the nature of the underlying problem, changes in governing law or its interpretation by the courts, and new policy insights—that warrant reexamination of the original judgment.” *Horne*, 557 U.S. at 447–48.

ARGUMENT

I. This Court should vacate the MSA injunction because the Department has remedied any alleged constitutional violations.

A. Out of deference to state sovereignty, a consent decree can continue only if Plaintiffs show an ongoing violation of federal law.

State sovereignty and “important considerations of federalism” limit the scope of federal-court remedial power. *Rizzo*, 423 U.S. at 378; *Rufo*, 502 U.S. at 392; *Horne*, 557 U.S. at 448. “[F]ederal courts must be constantly mindful of the ‘special delicacy of the adjustment to be preserved between federal equitable power and State administration of its own law.’” *Rizzo*, 423 U.S. at 378 (quoting *O’Shea v. Littleton*, 414 U.S. 488, 500 (1974)).

Federal courts must also keep state sovereignty in mind as part of their equitable discretion when granting equitable relief because of the extraordinary nature of the remedy. *E.g.*, *Mass. State Grange v. Benton*, 272 U.S. 525, 528 (1926); *Pennsylvania v. Williams*, 294 U.S. 176, 185 (1935); *Rizzo*, 423 U.S. at 379–80. In *Williams*, for example, a federal court appointed a receiver for an insolvent building and loan association over the objection of the Pennsylvania banking secretary. 294 U.S. at 178–79. The Supreme Court reversed, holding the district court should have deferred to Pennsylvania’s plan to supervise the association’s liquidation: “It is in the public interest that federal courts of equity should exercise their discretionary power with proper regard for the rightful independence of state governments in carrying out their domestic policy.” *Id.* at 185.

There are two fundamental reasons why state sovereignty affects courts' equitable discretion. To begin, the Supreme Court has said so. Alan Effron, *Federalism & Consent Decrees Against State Governmental Entities*, 88 Colum. L. Rev. 1796, 1800 n.27 (1988); *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 104 n.13 (1984); *City of Los Angeles v. Lyons*, 461 U.S. 95, 112 (1983). In *Rufo*, the Court pronounced that “principles of federalism and simple common sense require the court to give significant weight” to the state government officials implementing the court’s order. 502 U.S. at 392 n.14. And in *Frew ex rel. Frew v. Hawkins*, 540 U.S. 431 (2004), the Court noted as “legitimate” the concern that “enforcement of consent decrees can undermine the sovereign interests and accountability of state governments.” *Id.* at 441.

In addition, failure to account for state sovereignty in dispensing equitable remedies creates a significant “dead hand” problem. Consent decrees undermine democratic accountability after state leadership changes. Although consent decrees operate on the legal fiction that the government agrees to the terms, such decrees bind their successors, who may not have agreed with the decision to enter into the agreement. *Compare with West River Bridge Co. v. Dix*, 47 U.S. 507, 531–32 (1848) (holding that state contracts could *not* override the state’s successive leaders from using eminent domain power). That is certainly the case here, where the parties’ consent decree, though renegotiated, is a remnant of an agreement made by an Administration that has been out of office for four years.

Consent decrees allow policy preferences to remain in place long after voters choose new leadership, after multiple changes in administrations. *E.g.*, *Glover v. Johnson*, 138 F.3d 229, 233 (6th Cir. 1998) (noting district court delighted in the “minutiae” of managing a consent decree and “lost sight of the forest for its long-time attention to the trees.”). And a consent decree “presents the risk that major policy decisions will be fixed in secret negotiations with small groups of private plaintiffs rather than through the more open and accountable procedures of ordinary executive decisionmaking,” Jeremy A. Rabkin & Neal Devins, *Averting Government by Consent Decree*, 40 *Stan. L. Rev.* 203, 204 (1987):

The Framers fully recognized that nothing would so jeopardize the legitimacy of a system of government that relies upon the ebbs and flows of politics to “clean out the rascals” than the possibility that those same rascals might perpetuate their policies simply by locking them into binding contracts. [*United States Trust Co. v. New Jersey*, 431 U.S. 1, 45 (1977) (Brennan, J., dissenting).]

Accordingly, the Supreme Court has directed federal courts to take a “flexible approach” to Rule 60(b)(5) motions addressing institutional consent decrees. *Horne*, 557 U.S. at 450. In doing so, “courts must remain attentive to the fact that *federal-court decrees exceed appropriate limits if they are aimed at eliminating a condition that does not violate [federal law] or does not flow from such a violation.*” *Id.* (quoting *Milliken v. Bradley*, 433 U.S. 267, 282 (1977)) (emphasis added). “If a durable remedy has been implemented, continued enforcement of the order is not only unnecessary, but improper.” *Id.*

Horne involved injunctive relief entered by a federal district court against the State of Arizona after the court concluded Arizona had violated the federal Equal Educational Opportunities Act of 1974 by failing to provide sufficient funding to enable English Language Learner students to overcome language barriers. After the State had continued to violate the Act for many years and had incurred a series of court-imposed contempt fines, Arizona enacted legislation that finally brought the State into compliance with the Act but failed to allocate enough monies to comply with the injunction. Plaintiffs filed yet again for contempt, and Arizona moved to vacate the injunction. *Horne*, 557 U.S. at 439–45.

The Supreme Court held that if a state is complying with federal law and has corrected the violations that resulted in the injunction, then a district court should vacate the injunctive order, *even if the state is continuing to violate the injunction*. *Id.* at 450 (“If a durable remedy has been implemented, continued enforcement of the order is not only unnecessary, but improper.”). If the state complies with federal law by any means—even means other than those the injunction imposes—the state satisfies the test for vacating court-ordered relief and the federal court is obligated to return control to state officials. *Id.* at 452 (“[W]hen the objects of the decree have been attained, responsibility for discharging the State’s obligations [must be] returned *promptly* to the State and its officials.”) (quoting *Frew*, 540 U.S. at 442) (emphasis added).

In so holding, the Supreme Court discussed the federalism principles at stake in institutional reform litigation, particularly the dead-hand effect. By “confining the scope of its analysis to that of the original [injunctive] order,” the court of appeals “insulated the policies embedded in the order . . . from challenge and amendment.” *Id.* Those policies “were supported by the very officials who” failed to appeal the order, “and, as a result, were never subject to true challenge.” *Id.* “To determine the merits” of Arizona’s Rule 60(b)(5) claim for relief, the court of appeals “needed to ascertain whether ongoing enforcement of the original order was supported by an *ongoing violation of federal law.*” *Id.* (emphasis added).

The Court criticized the court of appeals for discounting the state’s “[s]tructural and management reforms.” *Id.* at 465. The court of appeals “missed the legal import” of these changes, namely, that the reforms might have brought the State into compliance with federal law even if the State had not satisfied the injunctive order. *Id.* at 466. “A proper Rule 60(b)(5) inquiry should . . . ask whether, as a result of structural and managerial improvements,” the State is now in compliance with federal law. *Id.* at 468. If it is, continued enforcement of the original order is inequitable and “relief is warranted.” *Id.* at 470.

In sum, for the Department to obtain Rule 60(b)(5) relief, the Department need not show “substantial compliance” with every last MSA goal. The Department need only show that a durable remedy has been implemented, such that the MSA is no longer necessary to ensure Plaintiffs’ federal rights are not violated.

B. To demonstrate an ongoing constitutional violation, Plaintiffs must show that the Department’s administration of the child welfare system demonstrates a complete lack of professional judgment and “shocks the conscience.”

The gravamen of Plaintiffs’ Complaint is that the Department violated substantive due process rights (Compl. Count I), or otherwise engaged in unconstitutional conduct representing a “failure to exercise reasonable professional judgment and of deliberate indifference” (Compl., Counts II, IV).² Under a due-process analysis, it is Plaintiffs’ burden to show the Department’s actions “shock the conscience.” *Bell v. Ohio State Univ.*, 351 F.3d 240, 250 (6th Cir. 2003).

The Sixth Circuit has never applied the shock-the-conscience standard to a child-welfare-system dispute, but a Massachusetts district court did in *Connor B. ex rel. Vigurs v. Patrick*, 771 F. Supp. 2d 142 (D. Mass. 2011). The Massachusetts court held that to show a deprivation of substantive due process, plaintiffs bear the burden of showing that (1) the state’s “‘presumptively valid’ decisions” constituted “‘such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment,’” *id.* at 162 (quoting *Youngberg v. Romeo*, 457 US. 307, 323 (1982)), and (2) “‘the behavior of the governmental officer [wa]s so

² Plaintiffs also alleged a violation of The Adoption Assistance and Child Welfare Act of 1980, 42 U.S.C. § 670 *et seq.* (AACWA). (Compl. Count III), and a claim that the Department had breached its federal contractual obligations as a recipient of federal funding under Titles IV-B and IV-E of the Social Security Act. (Compl. Count V.) To the Department’s knowledge, it is now in compliance with all requirements imposed by the AACWA and Titles IV-B and IV-E.

egregious, so outrageous, that it may fairly be said to shock the contemporary conscience,”” *id.* (quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 847 n.8 (1998)).

The Massachusetts district court’s test is a faithful application of the Supreme Court’s precedents in *Youngberg* and *Lewis*. In *Youngberg*, the Supreme Court held that when considering the substantive due process rights of those who have been involuntarily committed to a state’s care, the legal standard must “reflect[] the proper balance between the legitimate interests of the State and the rights of the involuntarily committed to reasonable conditions of safety and freedom from unreasonable restraints.” 457 U.S. at 321. Because governmental professionals’ decisions are “presumptively valid,” a plaintiff claiming a substantive due process violation must show that the professional’s decision “is such a substantial departure from accepted professional judgment, practice, or standards as to demonstrate that the person responsible actually did not base the decision on such a judgment.” *Id.* at 323. In other words, the courts must ensure only that professional judgment was exercised, not which of “several professionally acceptable choices *should* have been made.” *Id.* at 321 (emphasis added, quotation omitted). This *Youngberg* rationale “applies with equal force” in the child welfare context. *Connor B.*, 771 F. Supp. 2d at 160 (numerous citations omitted); *accord, e.g., Yvonne L. v. N.M. Dep’t of Human Servs.*, 959 F.2d 883, 893–94 (10th Cir. 1992) (applying the professional judgment standard to foster children).

In *Lewis*, the Supreme Court reexamined its substantive due process jurisprudence and held that “only the most egregious official conduct can be said to be ‘arbitrary in the constitutional sense,’” 523 U.S. at 846, and that only conscience-shocking behavior can be sufficiently arbitrary and egregious to be of constitutional significance, *id.* at 846–47 & n.8. Accordingly, for Plaintiffs to demonstrate that the Department is violating substantive due process in its administration of Michigan’s child welfare system, Plaintiffs must show “‘stunning’ evidence of ‘arbitrariness and caprice’ that extends beyond ‘[m]ere violations of state law, even violations resulting from bad faith’ to ‘something more egregious and more extreme.’” *J.R. v. Gloria*, 593 F.3d 73, 80 (1st Cir. 2010) (quotation omitted).

C. The Department’s present administration of the Michigan child welfare system does not reflect a complete failure to exercise professional judgment, nor does it shock the conscience.

The Department has not yet achieved every MSA goal. But the Department’s present system administration does not reflect a failure to exercise professional judgment, nor does it shock the conscience. As the Monitors have acknowledged (*see* Ex. A), the Department has achieved 112 MSA goals involving:

- Permanency and placement stability (MSA §§ III.D.2-5);
- Receiving, screening, and investigating reports of abuse and neglect (MSA §§ V.A-D);
- Hiring and retaining qualified staff (MSA §§ VI.A-C);
- Mentoring (MSA § VI.A.4);
- Training (MSA § VI.A.6, VI.B.2-4);

- Caseload ratios (MSA § VI.E);
- Family engagement (MSA § VII.D);
- Adoption placements (MSA § VII.E);
- Improved coverage and delivery of medical, dental, and mental health care (MSA §§ VIII.B.1-6); and
- Implementation of statewide quality-assurance measurers to fully assess and improve performance. (MSA §§ XII.C, XIV.A-C).

With respect to an additional 53 areas, the Department has either reached 100% compliance without formal recognition, or the Department has substantially reached its goals. (*See* Ex. B.) For example, on the only “permanency composite” the Monitors have not yet certified as complete, DHS achieved a score of 122.3 against a goal of 122.6, performance that amounts to 99.8% compliance. (Ex. B #3.) For the caseload-ratio and supervisory-oversight metrics the Monitors have not yet certified, DHS has achieved better than 95% of the goal. (Ex. B #s 11–13.) In MSA 5, the Department missed its goal of keeping 99.68% of the children in placement safe from abuse or neglect by only one-third of one percent. (Ex. B #2.) and DHS achieved over 92% compliance with respect to licensing and training requirements. (Ex. B #10.)

In all, DHS has fully or substantially complied with 165 of the 211 MSA metrics, and another 10 involve the continuing implementation of MiSACWIS. This is hardly the performance of a system operating without regard to professional standards of conduct or with conscience-shocking behavior.

That leaves 36 non-MiSACWIS goals where the Department has not achieved substantial compliance. The remaining goals are serious, and the Department fully expects to satisfy them as the system improves. But the Department's actions do not equate to a lack of professional judgment, and they certainly do not shock the conscience:³

- *MiSACWIS*. The Department's rollout of MiSACWIS is still a work in progress, but the system is exceeding expectations. Based on the system's complexity (18,657 function points, 600 functions points more than Amazon.com's website), experts would predict roughly 900-1200 errors in the first month. The Department experienced just over 200. By the fourth month, experts would expect 775-1000 errors. The Department had fewer than 100. The Department's federal partners said that MiSACWIS is at a point of functionality it has taken other states three *years* to reach.
- *Visitation*. The Department has been substantially improving training and communication regarding worker-child contacts, worker-parent contacts, parent-child contacts, and child-sibling contacts. Data limits in the software system that the Department used pre-MiSACWIS skewed these performance metrics. For example, if a worker visited a child during the first month of placement then could not complete the second visit, the first contact does not count toward compliance. Similarly, the system does not track when a court has ordered a suspension in parenting, or when a parent resides out of state or is incarcerated. On the most important contact, worker-child visits, the Department achieved from 81.2% to 85.9% for the one-visit-per-month standard during MSA 5 (MSA § VII.G.2; Ex. C #8), and exceeded the *federal* standard for worker-child visitation rates in 2013 (MSA 5, p. 51 n.35).

³ As explained in the Relief Requested, DHS can and will provide supporting documentation and witness testimony to support its performance on any subject for which Plaintiffs allege there is a continuing violation as a result of systemic disregard for professional standards of care and actions that shock the conscience. But rather than engage in extensive discovery at this time, DHS requests that the Court issue an opinion reaffirming the legal standard that Plaintiffs must satisfy to justify the continued existence of the MSA injunction.

- Medical, Dental, Mental Health. All youths introduced to the child welfare system now have comprehensive medical, dental, and mental health coverage. The percentage of youths receiving routine medical, dental, and mental health exams upon entering the child welfare system is increasing, though percentages (in the two-thirds to three-quarters range) are still not as high as the Department would like. Full implementation of MiSACWIS will help the Department monitor this care, and youths with emergency medical, dental, and mental health problems always receive immediate help. In addition, the Department's new collaboration with the Department of Community Health is a systemic improvement that will be critical in increasing medical, dental, and mental health services to those in the child welfare system.
- Relative Licensing. MSA 5 was a setback for the relative-licensing metric, but an aberrational one due to a misunderstanding in the field regarding waivers. After a policy clarification and issuance of a revised waiver form, the number of active waivers has already dropped significantly. In addition, the Department has implemented a number of new policies and procedures to increase relative licensing. The effects of these changes will not be visible until future reporting periods, but they include re-engaging unlicensed waived relatives to discuss the benefits of licensure, and working to eliminate barriers to licensure. Most important, unlicensed relatives receive the same screening, assessing, reporting, and social worker home visits.
- Use of Shelters. The number of youth in shelters has already dropped significantly since MSA 5, and the average length of shelter stays has been dropping as well. The MSA's goals do not account for the reality that shelters are sometimes the best option for keeping a young person safe until a more permanent solution can be put in place.
- Detention. During MSA 5, there were 14 incidents of youths placed in jail or detention without an associated charge. These 14 incidents involved only ten individuals, approximately .06% of the total youth in the Department's care. These incidents are a good example of how hard-and-fast MSA goals are inflexible relative to conditions in the field:
 - One youth had a high-risk pregnancy and was a flight risk. She needed intensive medical oversight and supervision.
 - Two detentions were in the youths' best interests due to their behaviors, which included high-risk sexual acting out.

- Another two detentions were in the youths' best interests due to problems with running away.
- One youth was ordered detained by a judge, twice, because the youth was a material witness in a case and the court was afraid of flight risk.
- Another youth was detained because of pending criminal sexual conduct charges.
- And the final youth was detained on court order after testing positive for drugs.

Importantly, the Department's successes are not based on the efforts of any one person or group of people. The Department has satisfied or nearly satisfied almost 80% of the MSA's goals through lasting structural and management reforms and legislation, such as the Young Adult Voluntary Foster Care Act, Mich. Comp. Laws §§ 400.641–400.671. As CRI's own associate director has argued, states operating under federal court oversight should have “a genuine interest in improvements in the lives of children and families,” not merely “compliance.”⁴ And that is precisely what the Department has demonstrated.

The Department's many successes over the past four years may not yet equate to “substantial compliance” with every last jot and tittle of the MSA, though the Department's performance as a whole is getting close to that mark. But it is simply not possible to say that the Department's administration of the child welfare system represents a lack of professional judgment or even conscience-shocking

⁴ Jonathan Walters, *How to Get Out From Under Federal Oversight*, GOVERNING (Apr. 11, 2013), <http://www.governing.com/columns/col-children-family-services-get-out-under-federal-oversight.html>.

behavior. Because the Department has alleviated any alleged constitutional transgression or violation of federal law, “responsibility for discharging the State’s obligations [must be] returned promptly to the State and its officials.” *Horne*, 557 U.S. at 452.

Allowing the Department to resume its sovereignty is consistent with federalism principles and Supreme Court precedent. It is also in the best interests of Michigan’s children. Over the past five fiscal years, the Department has paid the Monitors roughly \$1.6 million per year and has paid CRI’s attorneys hundreds of thousands of dollars more. These dollars were well spent, as the Monitors and Plaintiffs’ attorneys have been tremendously helpful in assisting the Department improve its service delivery to children in the child welfare system. But state budgeting is a zero-sum game. Going forward, every dollar spent on monitors and attorneys could be redirected toward hiring additional staff to further advance the MSA’s remaining unmet goals, including the provision of prompt medical, dental, and mental health exams upon entering the system, relative licensing, visitation, and the like. The bottom line is that the Department’s structural and managerial improvements have brought the Michigan child welfare system into compliance with federal law. Accordingly, an order vacating the MSA and the injunction is appropriate.

II. At a minimum, the Court should modify the MSA injunction to eliminate ongoing monitoring of completed goals.

When an institutional-reform-litigation defendant makes significant progress but federal violations persist, the court has “the discretion to order an incremental or partial withdrawal of its supervision and control.” *Freeman v. Pitts*, 503 U.S. 467, 489 (1992). “This discretion derives both from the constitutional authority which justified its intervention in the first instance and its ultimate objectives in formulating the decree.” *Id.* But a “remedy is justifiable only insofar as it advances the ultimate objective of alleviating the initial constitutional violation.” *Id.*

When exercising this discretion, a district court considers three factors: (1) “whether there has been full and satisfactory compliance with the decree in those aspects of the system where supervision is to be withdrawn;” (2) “whether retention of judicial control is necessary or practicable to achieve compliance with the decree in other facets . . . ;” and (3) whether the defendant “has demonstrated . . . its good-faith commitment to the whole of the court’s decree and to those provisions of the law and the Constitution that were the predicate for judicial intervention in the first instance.” *Freeman*, 503 U.S. at 491. “In considering these factors, a court should give particular attention to the [defendant’s] record of compliance.” *Id.* A defendant “is better positioned to demonstrate its good-faith commitment to a constitutional course of action when its policies form a consistent pattern of lawful conduct directed to eliminating earlier violations.” *Id.*

The three *Freeman* factors are satisfied here. First, the Monitors have already verified that the Department successfully completed the 112 MSA goals listed on Exhibit A. And although the same is not yet true for the 53 MSA goals listed on Exhibit B as achieved, the Department has substantially complied, as documented on that Exhibit. The Department has completed these 165 goals.

Second, this Court's supervision of the 165 goals is unnecessary to achieve compliance with the remaining goals. And relieving the Department from tracking and reporting with respect to MSA goals that have long since been satisfied will free resources to focus on the areas where the Department needs improvement.

Third, the Department's good-faith commitment to complying with the MSA cannot be questioned. As the Monitors put it at the September 29, 2014 status conference, the Department has made "very significant progress." 9/29/14 Hr'g Tr. 5 (emphasis added); *accord id.* at 20 (The Court: "[the] changes over the last four years have been really truly, truly incredible."). The Department has undergone an institutional transformation that has set Michigan's child welfare system on a new course. Equally important, the Department, through the elected Governor and Legislature, is now better equipped than ever to improve Michigan's child welfare system. The Department can further the original purpose of the agreement—better outcomes for children—by terminating those parts of the consent decree that have already been satisfied and allowing Department personnel to focus all their energies on the few, small areas that still need to—and will—improve.

CONCLUSION AND RELIEF REQUESTED

Consent decrees in institutional-reform litigation have a long shelf life. And the longer such decrees operate, the more they impinge on a state's authority to self-govern, binding state legislatures and officials to detailed policy choices long after alleged constitutional violations have been remedied and the state officials who entered into the agreement have departed.

The Department has made significant changes to the way it administers Michigan's child welfare system, a system that has taken a dramatic turn for the better. No system of this size is perfect; Plaintiffs will still be able to show bad stories and outcomes. But the problems are not *systemic*. Accordingly, it is time for the federal courts to once again allow the system to stand on its own two feet.

DHS anticipates that resolution of this motion will entail substantial discovery and an evidentiary hearing. For example, DHS has limited its discussion in this brief and exhibits to information disclosed to the Monitors during the MSA 5 period (through December 31, 2013); more recent data will paint an even brighter picture. But before the parties and the Court undertake that monumental exercise, DHS respectfully requests that the Court issue a briefing schedule, conduct oral argument, and issue an opinion regarding the standard Plaintiffs must satisfy to justify the Court's continuation of the MSA injunction. If the Court agrees with DHS that Plaintiffs must show a continuing violation of federal law, i.e., conduct that reflects an absence of professional judgment and shocks the conscience, then

the evidentiary issues will be significantly narrowed or possibly eliminated altogether. (DHS notes that while the MSA must terminate automatically once DHS achieves compliance with all MSA terms for a period of 18 months, *see* MSA § XVI.C, the MSA expressly states in § XVI.E that it does not “limit[] DHS’s ability to seek to modify or vacate the provisions of th[e] Agreement under [federal] law.”)

Conversely, if the Court holds that DHS must substantially comply with each and every one of the MSA’s goals, regardless of whether federal law is currently being violated, then the conversation will necessarily turn to the best way to monitor and ensure compliance with the 46 goals listed in Exhibits C and D. Either way, this Court’s guidance is crucial to guiding the proceedings surrounding this motion.

Finally, DHS has reimbursed Plaintiffs’ substantial attorney fees under MSA § XVII, because Plaintiffs were the “prevailing parties.” But if Plaintiffs choose to contest the Department’s motion and fail, then DHS will be the prevailing party. It is therefore appropriate for the Court to issue an order that stays DHS’s further payment of attorney fees until this motion has been resolved or, alternatively, clarifies that DHS has the right to recoup from Plaintiffs’ counsel all attorney fees paid from this point forward should DHS ultimately succeed on its motion.

In sum, Defendants respectfully request that the Court vacate the July 18, 2011 Modified Settlement Agreement consent decree injunction or, at a minimum, modify the MSA so that the Court's order consist only of those provisions listed on Exhibits C and D. Defendants also asks that the Court issue an order (1) staying discovery and any evidentiary hearing until after the Court has issued a ruling that sets forth the legal standard for vacating the MSA injunction, and (2) staying Defendants' obligation to pay attorney fees pending resolution of the motion.

Dated: December 2, 2014

s/ John J. Bursch

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CERTIFICATE OF SERVICE

I certify that on December 2, 2014, I electronically filed the above Motion to Dissolve or Modify the Modified Settlement Agreement (MSA) Injunction and Brief in Support, with the Clerk of the Court using the ECF system, which will send notification of such filing to:

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and that copies of said motion were placed in first-class United States mail, addressed to:

Elissa Hendler
Marcia Lowry
Gena E. Wiltsek
Children's Rights
330 Seventh Avenue, 4th Floor
New York, NY 10001

s/ John J. Bursch
John J. Bursch (P57679)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

DWAYNE B., by his next friend, John Stempfle; CARMELA B., by her next friend, William Ladd; LISA J., by her next friend, Teresa Kibby; and JULIA, SIMON, and COURTNEY G., by their next friend, William Ladd; for themselves and others similarly situated,

No. 2:06-cv-13548

Hon. Nancy G. Edmunds

Plaintiffs,

v.

RICK SNYDER, in his official capacity as Governor of the State of Michigan, *et al.*,

Defendants.

INDEX OF EXHIBITS

(to Brief in Support of Defendants' Motion to Dissolve or Modify the Modified Settlement Agreement (MSA) Injunction)

Exhibit A – MSA standards that Monitors have tracked and agree have been met

Exhibit B – MSA standards where there is no real dispute that DHS has satisfied the commitment but the Monitors have not specifically said so in writing, ***or*** where the DHS commitment has been substantially achieved ($\geq 90\%$ of the goal)

Exhibit C – Continuing MSA standards that have not yet been met

Exhibit D – Standards subject to full MiSACWIS implementation

EXHIBIT A

to

Brief in Support of Defendants' Motion to Dissolve or Modify the Modified Settlement Agreement (MSA) Injunction

EXHIBIT A

MSA standards that Monitors have tracked and agree have been met

| # | MSA § | Commitment | Most recent verification |
|-----|---------|---|---|
| 1. | I.H.&I | Request state and federal funding | MSA 4, p. 5 |
| 2. | III.D.1 | Permanency Composite One: DHS shall report in each reporting period on its performance on each component elements | MSA 1, p. 3 |
| 3. | III.D.2 | Permanency Composite Two: DHS shall achieve a score of 106.4. | MSA 5, p. 7 |
| 4. | III.D.2 | Permanency Composite Two: DHS shall report in each reporting period on its performance on each component elements | MSA 1, p. 3 |
| 5. | III.D.3 | Permanency Composite Three: DHS shall achieve a score of 121.7. | MSA 5, p. 7 |
| 6. | III.D.3 | Permanency Composite Three: DHS shall report in each reporting period on its performance on each component elements | MSA 1, p. 3 |
| 7. | III.D.4 | Permanency Composite Four: DHS shall achieve a score of 101.5. | MSA 5, p. 7 |
| 8. | III.D.4 | Permanency Composite Four: DHS shall report in each reporting period on its performance on each component elements | MSA 1, p. 4 |
| 9. | IV.A.1 | Establishment of CSA headed by a Deputy Director of DHS | MSA 1, p. 7 |
| 10. | IV.A.2 | DHS shall establish a CSA that shall develop child welfare policy and determine statewide standards. DHS's CSA shall take all reasonable steps necessary to ensure that statewide policies, standard and practices are implemented and maintained in each county of the state and each county uses uniform forms, data collection, and reporting. | MSA 1, p. 2 ("The CSA is responsible for implementing the commitments of the MSA") |

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| 11. | IV.A.5 | The Quality Assurance (QA) unit shall be a permanent unit of the CSA. It shall continue to perform the functions described in this Agreement after full implementation and DHS exist from Court jurisdiction. | MSA 1, p. 30; MSA 2, p. 2 |
| 12. | IV.A.10 | The CSA shall hold responsibility for evaluating the performance of private Child Placing Agencies (CPAs) and Child Caring institutions (CCIs). | MSA 2, p. 25; MSA 3, p. 31; MSA 4, p. 24; MSA 5, p. 31 |
| 13. | V.A | DHS shall ensure that its system for receiving, screening, and investigating reports of abuse and neglect is adequately staffed. | MSA 5, p. 7 |
| 14. | V.B | Establish statewide centralized CPS hotline: adequately staffed for timely commencement, adequate telecommunications equipment and information technology. | MSA 5, p. 7 |
| 15. | V.B.1 | Establish a centralized hotline pilot for Kalamazoo, Kent, Ottawa, and Cass/St. Joe Counties | MSA 1, p. 4 |
| 16. | V.B.2 | A fully operational statewide centralized hotline by April 2012 | MSA 2, p. 48 |
| 17. | V.C | Establish and implement a QA process to ensure CPS reports are competently investigated and in cases where abuse/neglect is indicated, actions are taken and services are provided appropriate to the circumstances. | MSA 5, p. 7 |
| 18. | V.D. | DHS shall investigate all allegations of abuse or neglect relating to any child in the foster care custody of DHS (Maltreatment in Care). | MSA 1, p. 4 |
| 19. | V.D.1 | In designated counties, DHS will maintain separate Maltreatment in Care (MIC) units responsible for MIC investigations. | MSA 5, p. 7 |

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| 20. | V.D.2.a | In non-designated counties, DHS will maintain 3 separate regional MIC units for all investigations of abuse or neglect occurring in CCIs. | MSA 5, p. 7 |
| 21. | V.D.2.b | In non-designated counties DHS will provide specially trained local office and/or regional CPS staff responsible for conducting all CPS investigations in a foster home. | MSA 3, p. 5 |
| 22. | V.D.2.b | No local office MIC investigation will be conducted by an employee with an established relationship with the foster family or alleged perpetrator. | MSA 3, p. 5 |
| 23. | V.D.3.a | In non-designated counties, DHS shall maintain three separate regional MIC units responsible for all investigation of abuse or neglect occurring in child caring institutions. | MSA 1, p. 39 |
| 24 | V.D.3.b | In the non-designated counties, DHS shall provide specially trained local office and or regional Children's Protective Services (CPS) staff, responsible for conducting all investigations of abuse or neglect occurring in a foster home in the non-designated counties. | MSA 1, p. 39; MSA 5, p. 61 |
| 25. | V.D.4 | DHS Child Welfare Field Ops shall ensure dedicated supervision, oversight, and coordination of all MIC investigations. | MSA 5, p. 7 |
| 26. | VI.A.1 | Entry level caseworkers have a bachelor's degree in social work or a related human services field. | MSA 5, p. 7 |
| 27. | VI.A.2 | All caseworkers who do not have the University-Based Child Welfare Certificate will complete pre-service training that includes a total of 270 hours of competence based training which must be completed within 16 weeks from date of hire; training must include minimum of 4 weeks of classroom instruction and 5 weeks of field instruction. | MSA 5, p. 7 |

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| 28. | VI.A.3 | The University-Based Child Welfare Certificate program specific training curriculum must be reviewed by the monitors. | MSA 5, p. 7 |
| 29. | VI.A.4 | Each trainee will shadow an experienced child welfare caseworker and build practice knowledge from classroom and field training. Experienced caseworker (mentor) will shadow each trainee for key activities in a case. Mentor with a trainee must have a caseload within current caseload standards. | MSA 5, p. 7 |
| 30. | VI.A.5 | Each trainee will complete a competence-based performance evaluation, including a written exam. | MSA 2, p. 5 |
| 31. | VI.A.5.a.i | Caseload Progression for CPS: No cases will be assigned until the completion of the first 4 weeks of pre-service training (PSI). | MSA 5, p. 7 |
| 32. | VI.A.5.a.ii | Caseload Progression for CPS: Upon successful completion of week 4 PSI and successful completion of Competency Test One, up to 5 total cases may be assigned with supervisory approval using the CWTI case assignment guidelines. | MSA 5, p. 8 |
| 33. | VI.A.5.a.iii | Caseload Progression for CPS: Final caseload may be assigned after 9 weeks of PSI, successful completion of Competency Test Two and satisfactory review by the trainer and supervisor. | MSA 5, p. 8 |
| 34. | VI.A.5.b.i | Caseload Progression for FC: Three training cases may be assigned on or after day one of PSI at the supervisor's discretion using CWTI case assignment guidelines. | MSA 5, p. 8 |
| 35. | VI.A.5.b.ii | Caseload Progression for FC: Upon successful completion of week 3 PSI and successful completion of Competency Test One, up to 5 total cases may be assigned with supervisory approval using CWTI case assignment guidelines. | MSA 5, p. 8 |

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| 36. | VI.A.5.b.iii | Caseload Progression for FC: Final caseload may be assigned after 9 weeks of PSI, successful completion of Competency Test Two and satisfactory review by the trainer and supervisor. | MSA 5, p. 8 |
| 37. | VI.A.6 | All caseworkers will receive 32 hours of in-service training for SFY2013. | MSA 5, p. 8 |
| 38. | VI.A.6 | The Monitors will meet with parties to discuss in-service training and establish the minimum hrs. of in-service training | Implicit in MSA 5, p. 8 |
| 39. | VI.B.1 | Supervisor Qualifications: All staff promoted or hired to a child welfare supervisory position shall possess either 1) master's degree and three years of experience as a social service worker in a child welfare agency, CCI or in an agency performing child welfare function or 2) bachelor's degree and four years as a social service worker. | MSA 5, p. 8 |
| 40. | VI.B.2 | Implement a competency based supervisory training program at least 40 hours in length and address specific skills and knowledge. | MSA 5, p. 8 |
| 41. | VI.B.3 | All supervisors promoted or hired must complete the training program and pass a written competency based exam within 3 months of assuming the supervisory position. Failure to achieve a passing grade on written portion within two sittings requires additional training within 45 days of last failed exam. A third failure renders an individual ineligible for supervisory position. | MSA 5, p. 8 |
| 42. | VI.B.4 | University-Based Training Opportunities: Develop and maintain relationships, joint programs, and other programs with schools of social work to expand training and education for DHS and private CPA caseworkers and supervisors. | MSA 5, p. 8 |

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| 43. | VI.C | Licensing Worker Qualifications and Training: Requirements include bachelor's degree in social work or related human services field. | MSA 5, p. 8 |
| 44. | VI.D | There shall be a designated individual within the DHS central office who is responsible for overseeing and ensuring compliance with all training requirements for both DHS and private CPA workers and supervisors. | The monitors did not request a submission but gave verbal confirmation that OWT as an organization was the “designated individual” responsible for overseeing training. |
| 45. | VI.E.2.a | Supervisors: Each supervisor of foster care, CPS, adoption, POS, licensing will not be responsible for more than five caseworkers. | MSA 4, p. 6 |
| 46. | VI.E.2.b.iii | Supervisors: 80% of child welfare supervisors will supervise no more than 5 caseworkers. | MSA 5, p. 8 |
| 47. | VI.E.2.d | Supervisors: Submit a proposed formula to the monitoring team and Plaintiffs for determining the ratio caseworkers and to supervisors in circumstances when supervision is provided to both child welfare and non-child welfare caseworkers. This formula is subject to monitoring team approval. | MSA 1, p. 5 |

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| 48. | VI.E.5.c | CPS Investigation Workers: 75% of CPS investigation workers will have caseloads of no more than 12 open investigations. | MSA 5, p. 8 |
| 49. | VI.E.6.c | CPS Ongoing Workers: 75% of CPS ongoing workers will have caseloads of no more than 17 families. | MSA 5, p. 9 |
| 50. | VI.E.7.a | POS Worker model will remove responsibilities for: Review/approve case plans; attend court hearings unless so ordered; enter social work contacts into SWSS; attend quarterly visits with CPAs; attend PPCs. | MSA 4, p. 7 |
| 51. | VI.E.7.b | DHS will provide a plan to monitoring team with implementation schedule for a revised POS monitoring model subject to review and approval of Monitors. | MSA 1, p. 5 |
| 52. | VI.E.8.c | Licensing Workers: 95% of licensing workers will have a caseload of no more than 30 licensed foster homes or homes pending licensure. | MSA 5, p. 9 |
| 53. | VI.E.10 | Caseload Tracking & Reporting: DHS will provide quarterly reporting on the percentage of supervisors and caseworkers in each of the categories. Upon implementation of SACWIS, each worker's monthly average caseload will be used to determine compliance. | MSA 1, p. 5 |
| 54. | VII.D | Family Engagement Model: DHS will develop policies, procedures, and structure to implement a family engagement model which includes family engagement, child and family team meetings, and concurrent planning. | MSA 5, p. 9 |
| 55. | VII.D.5.a | Pre-Implementation: Finalize Family Engagement Model | MSA 2, p. 6 |
| 56. | VII.D.5.b | Pre-Implementation of FTM: Develop policy for Family Engagement Model. | MSA 3, p. 7 |

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| 57. | VII.D.5.c | Pre-Implementation of FTM: Communicate Family Engagement Model to all counties, private CPAs and key stakeholders. | MSA 3, p. 7 |
| 58. | VII.D.5.d | Pre-Implementation of FTM: Identify Peer Coaches in county offices and CPAs. | MSA 4, p. 7 |
| 59. | VII.D.5.e | Pre-Implementation of FTM: Conduct training for peer coaches, management, and caseworkers | MSA 4, p. 7 |
| 60. | VII.D.6.a | Implementation of FTM model, including concurrent planning to Big 14 counties. | MSA 4, p. 7 |
| 61. | VII.E.1 | Maintaining a permanency planning goal of reunification beyond 12 months requires written approval from supervisor, justifying the goal, identifying the additional services needed to occur to accomplish goal; no goal of reunification longer than 15 months without documentation in the record, approved by supervisor, of compelling reasons. | MSA 5, p. 9 |
| 62. | VII.E.2 | Concurrent Planning: Strategic planning and preparation for possible alternate permanency placement of a child shall occur concurrently with the delivery of reunification services to the child's birth parent(s), unless clearly inappropriate for case-specific reasons that are documented in the child's record. DHS shall implement concurrent planning in the schedule set forth in Section VII.D.6. | MSA 5, pp. 47-49 |
| 63. | VII.E.6 | APPLA: This goal may not be assigned to a child unless specific requirements in MSA exist. | MSA 5, p. 9 |
| 64. | VII.E.6.a | APPLA: This goal may not be assigned to a child under the age of 14. | MSA 1, p. 6 |

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| 65. | VII.E.6.e.i | Immediate Action APPLA: Conduct a review for each child who had an unapproved goal of APPLA or APPLA-E as of July 1, 2011; determine appropriateness of goal; ensure no child has a recommended goal of APPLA/ APPLA-E without DHS approval. | MSA 3, p. 7 |
| 66. | VII.E.6.e.ii | Immediate Action APPLA: Provide Monitors a report regarding status of review. | MSA 3, p. 7 |
| 67. | VII.E.6.e.iii | Immediate Action APPLA: Reduce the number of children with the goal of APPLA/ APPLA-E to 9% of the total foster care population, excluding youth over 18 years of age with a voluntary foster care agreement. | MSA 5, p. 9 |
| 68. | VII.E.7.a | Immediate Action Adoption/Guardianship: Finalize 77% of adoptions for children who had goal of adoption on 9/30/12. | MSA 5, p. 9 |
| 69. | VII.E.7.b | Immediate Action Adoption/Guardianship: Finalize 165 juvenile guardianships for calendar year 2013. | MSA 5, p. 9 |
| 70. | VII.E.9 | Disrupted Pre-Adoptive Placements: DHS will monitor the number of cases in pre-adoptive placement that disrupt before finalization; QA unit will sample these cases annually. | MSA 5, p. 9 |
| 71. | VII.F.1.b | Special Reviews: Provisions apply to children in DHS foster care from 10/1/11 that b) have a goal of reunification for more than 365 days. | MSA 5, p. 9 |
| 72. | VII.F.2 | PRMs: DHS will maintain an adequate number of PRMs to review cases of children in care more than one year as indicated in VII.F.1. PRMs will have specialized training, raise awareness of establishing permanency, possess expertise in community resources and collaborate with case managers and supervisors to identify new strategies to focus permanency for these children. | MSA 4, p. 8 |

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| 73. | VIII.B | DHS shall submit to the Monitors a detailed Health Services Plan, which the Monitors shall approve. | MSA 1, p. 41 |
| 74. | VIII.B.1 | Health Services Plan: DHS shall submit a detailed plan including specific actions to ensure that each child entering DHS custody received medical, dental, and mental health services described in VIII.B.2. | MSA 1, p. 6 |
| 75. | VIII.B.2.e.i | The Monitors in consultation with DHS will determine the baselines for periodic medical, dental, and mental health exams according to AAP guidelines with an interim target to be met by 9/30/12. | MSA 1, p. 6 |
| 76. | VIII.B.3.a.i | Medical file/history: The Monitors in consultation with DHS will determine baseline (and interim targets for 9/30/12, 6/30/13 & final standard) for foster care providers receiving specific written health information about the child entering their care. | MSA 1, p. 7 |
| 77. | VIII.B.3.b.i | Medical Passport: The Monitors in consultation with DHS will determine a baseline (and interim targets for 9/30/12, 6/30/13 & final standard) for foster care providers, medical and mental health professionals to receive specific written health information about the child in their care, including complete and regularly updated statement of all prescribed medications. | MSA 1, p. 7 |
| 78. | VIII.B.4.b | Medical Care & Coverage: The Monitors, in consultation with DHS will determine a baseline for foster children having access to medical coverage upon the child's replacement. | MSA 1, p. 7 |

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| 79. | VIII.B.5.a | DHS will hire or contract for a medical consultant who will be a physician and provide consultation on all health related matters required under MSA. Duties and responsibilities of the consultant will be set forth in the Health Services Plan required in VIII.B.1 and subject to approval of the Monitors. | MSA 1, p. 7 |
| 80. | VIII.B.5.a | DHS will maintain a full time Health Unit Manager reporting directly to CSA to oversee implementation of policies and procedures concerning psychotropic meds. The manager will have authority to recommend corrective actions and will manage the medical consultant. | MSA 1, p. 7 |
| 81. | VIII.B.6 | Reconfiguration of MH Services Spending: DHS reconfigured \$3 million to fund mental health services and will gather and analyze data to determine whether the allocation of funds matches the priority needs of children served and, if not, implement a plan to reallocate funds to support the development and provision of services to meet priority needs. | MSA 1, p. 7 |
| 82. | VIII.B.6.a | SED Waiver Implement in Wayne, Kent, Oakland, Genesee, and Macomb Counties | MSA 5, p. 11 |
| 83. | VIII.B.6.b | SED Waiver Implement in Ingham, Kalamazoo, and Saginaw Counties | MSA 5, p. 11 |
| 84. | VIII.B.6.c | SED Waiver Implement in Muskegon, Washtenaw, Eaton, and Clinton Counties | MSA 5, p. 11 |
| 85. | VIII.B.6.d | SED Waiver Implementation: for all remaining counties, DHS shall continue to engage the Michigan Department of Community Health, Community Mental Health Service Providers, and Medicaid Health Plans to ensure that all children with mental health needs are assessed and served. | MSA 5, p. 11 |

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| 86. | VIII.C.1.a.ii | Immediate Action for Youth Transitioning to Adulthood: MYOI and youth leadership boards will be implemented in Wayne, Clinton/ Gratiot and Ingham counties and be maintained to meet quarterly to provide information, training, and supportive services to youth. | MSA 3, p. 8 |
| 87. | VIII.C.1.a.iii | Immediate Action for Youth Transitioning to Adulthood: Establish Individual Development Accounts (IDA) for youth attending youth leadership board meetings enrolled in MYOI in Wayne, Clinton/Gratiot and Ingham counties. | MSA 3, p. 8 |
| 88. | VIII.C.1.a.iv | Immediate Action for Youth Transitioning to Adulthood: Expand implementation of MYOI, including IDAs to 12 additional counties. | MSA 3, p. 8 |
| 89. | VIII.C.1.a.v | Immediate Action for Youth Transitioning to Adulthood: DHS shall ensure at least 39% of youth 18 years and older leaving foster care in the Big 14 counties will have a high school diploma or GED. | MSA 3, p. 8 |
| 90. | VIII.C.1.a.vi | Immediate Action for Youth Transitioning to Adulthood: DHS will support the Michigan Fostering Connections legislations (SB 435-440) and implement as applicable upon passage. | MSA 1, p.7 |
| 91. | VIII.C.1.a.vii | Immediate Action for Youth Transitioning to Adulthood: DHS will support the Seita Scholars program at Western Michigan University. | MSA 4, p. 9 |
| 92. | VIII.C.1.a.viii | Immediate Action for Youth Transitioning to Adulthood: DHS will support the Seita Scholars program at Western Michigan University. | MSA 5, p. 11 |

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| 93. | VIII.C.1.c.ii | Youth Transitioning to Adulthood: DHS will continue to implement a policy and process by which all youth emancipating from foster care at age 18 or older are enrolled for Medicaid managed care coverage so that their coverage continues uninterrupted. | MSA 5, p. 11 |
| 94. | VIII.C.1.c.iii | Youth Transitioning to Adulthood: Beginning 9/30/11, DHS will refer all youth without identified housing at the time of emancipation from foster care at age 18 or beyond to community partners for housing, rental assistance, and services under the Homeless Youth Initiative. | MSA 1, p. 8 |
| 95. | VIII.C.1.c.iv | Education: DHS will maintain 14 regional education planners to provide consultation and support to youth age 14 and older in accessing educational services and in developing individualized education plans, including identifying financial aid resources. | MSA 1, p. 8 |
| 96. | VIII.D.3.b | Treatment Foster Homes: Maintain 200 treatment foster home beds. | MSA 5, p. 12 |
| 97. | VIII.D.4 | State Oversight of Recruitment: A designated person or unit within DHS central office will be responsible for monitoring the development and implementation of the foster and adoptive foster home recruitment and retention plans by county offices; providing or arranging for technical assistance; report to CSA Director on progress and problems in achieving goals. | MSA 5, p. 12 |
| 98. | VIII.D.6.a.ii | Immediate Action to Licensing Relatives: DHS will resolve the pending relative license applications for first target established in VIII.D.6.a.ii. | MSA 3, p. 9 |

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| 99. | VIII.D.6.i.i | Relative Foster Parents: Those pursuing licensure will be provided pre-service and in-service foster parent training which will include those parts of general foster parent training curriculum that are relevant to relative caregivers. | MSA 3, p. 10 |
| 100. | VIII.D.6.j | Relative Foster Home Licensing: DHS will maintain a position of Relative Licensing Coordinator with overall responsibility for development of a combined family home assessment for relative providers; monitoring and reporting on number of unlicensed relative homes and children in those homes; ensure availability of adequate training staff to develop curriculum and training for and to train Relative Licensing staff. | MSA 5, p. 12 |
| 101. | VIII.D.8 | Provision of Post-Adoption Services: DHS will develop, implement and maintain a full range of post-adoption services to assist all eligible special needs children adopted from state foster care and their permanent families. | MSA 5, p. 12 |
| 102. | XI.A.1.a | DHS shall draft a policy prohibiting the use of psychotropic medication as a method of discipline or in place of psychosocial or behavioral interventions the child requires. | MSA 1, p. 10 |
| 103. | XI.B.1.a | DHS shall draft a policy prohibiting corporal punishment in all foster care placements and requiring the reporting of corporal punishment in any placement, and the use of seclusion/isolation in CCIs, to the QA unit. | MSA 1, p. 10 |
| 104. | XII.A | Contract Requirements: DHS' contracts with private CPAs and CCIs will be performance-based. | MSA 5, p. 13 |

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| 105. | XII.B | Substantiated Incidents of Abuse, Neglect, and Corporal Punishment: DHS will give due consideration to any and all substantiated incidents of abuse, neglect, and/or corporal punishment occurring in the placements licensed and supervised by a contract agency at the time of processing its application for licensure renewal. | MSA 5, p. 13 |
| 106. | XII.C | Contract Evaluations: At least once a year, DHS will conduct contract evaluations of all CCIs and private CPAs. | MSA 5, p. 13 |
| 107. | XII.C.2 | DHS shall visit a random sample of each agency's foster homes as part of the annual inspection. Agencies with fewer than 50 foster homes shall have three foster homes visited. Agencies with 50 foster homes or more shall have 5% of their foster homes visited. | MSA 5, p. 14 |
| 108. | XII.D | Resources: DHS will maintain sufficient resources to permit staff to conduct contract enforcement activities. | MSA 5, p. 14 |
| 109. | XIII.D | DHS will satisfy all federal reporting requirements | MSA 2, p. 10 |
| 110. | XIV.A | DHS will, in consultation with the monitors, develop and implement a statewide Quality Assurance (QA) program. | MSA 4, p. 12 |
| 111. | XIV.B | DHS will provide a QA plan to the Monitors that will define the process for the ongoing assessment of DHS child welfare performance in relation to the performance requirements. | MSA 3, p. 11 |
| 112. | XIV.C | The CSA Director will appoint a director to administer the QA unit. The QA director will report directly to the Children's Services Administration Director. | MSA 1, p. 10 |

EXHIBIT B

to

Brief in Support of Defendants' Motion to Dissolve or Modify the Modified Settlement Agreement (MSA) Injunction

EXHIBIT B

MSA standards where there is no real dispute that DHS has satisfied the commitment but the Monitors have not specifically said so in writing, ***or*** where the DHS commitment has been substantially achieved ($\geq 90\%$ of the goal)

| # | MSA § | Commitment | Status | % Complete |
|----|---------|--|---|-----------------------|
| 1. | III.C.1 | Safety–Recurrence of Mal-treatment within Six Months: DHS shall achieve 94.6%. | DHS has achieved 93.3% | 98.6% MSA 5, p. 28 |
| 2. | III.C.2 | Safety—Maltreatment in Foster Care: DHS shall achieve 99.68%. | DHS has achieved 99.31% | 99.6% MSA 5, p. 29 |
| 3. | III.D.1 | Permanency Composite One: DHS shall achieve a score of 122.6. | DHS has achieved 122.3 | 99.8% MSA 5, p. 29 |
| 4. | IV.A.3 | Individuals within the Designated Counties of Wayne, Genesee, Kent, Macomb and Oakland, including but not limited to caseworkers, supervisors and managers, shall be assigned full-time to children’s services, and shall not hold responsibility for any of DHS’s other functions, such as cash assistance, Medicaid, and adult services. | Organizational charts showing CSA structure were sent to monitors in MSA 1, 3, 4, and 5 | 100% |
| 5. | IV.A.4 | Within the CSA, and reporting directly to the CSA Director, there shall be a person responsible for all children’s services field operations in Michigan. | Organizational charts showing CSA structure were sent to monitors in MSA 1, 3, 4, and 5 | 100% |

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| 6. | IV.A.6 | In the Designated Counties of Wayne, Genesee, Kent, Macomb and Oakland Counties, DHS offices providing children' services shall be distinct from those providing other services, and there shall be a county-level Administrator of Children's Services in each of the Designated Counties who reports directly to the Director of Children's Field Services Operations. | Organizational charts showing CSA structure were sent to monitors in MSA 1, 3, 4, and 5 | 100% |
| 7. | IV.A.7 | Ingham County is not a Designated County, but shall maintain a bifurcated management structure. | Organizational charts showing CSA structure were sent to monitors in MSA 1, 3, 4, and 5 | 100% |
| 8. | IV.A.8 | The CSA shall include units containing a sufficient number of qualified staff to exercise their functions effectively. | Organizational charts showing CSA structure were sent to monitors in MSA 1, 3, 4, and 5 | 100% |
| 9. | IV.A.9 | Dedicated staff shall be responsible for child welfare data collection and analysis, and child welfare training. | Organizational charts showing CSA structure were sent to monitors in MSA 1, 3, 4, and 5 | 100% |

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| 10. | VI.C | Licensing Worker Qualifications and Training: Requirements include training type and amount provided as indicated in plan submitted to the monitors on 3/5/09. | DHS achieved 92% compliance | 92% MSA 5, p. 26 |
| 11. | VI.E.3.c | Foster Care Workers: 95% of foster care workers will have caseloads of no more than 15 children. | DHS achieved 92% | 96.8% MSA 5, p. 19 |
| 12. | VI.E.4.c | Adoption Workers: 95% of adoption workers will have caseloads of no more than 15 children. | DHS achieved 91% | 95.8% MSA 5, p. 19 |
| 13. | VI.E.7 | POS Workers: 95% of POS workers will have a caseload of no more than 90 children. | According to MSA 5, DHS achieved 91% | 95.8% (per MSA 5, p. 19) |
| 14. | VII.B | Supervisory Oversight: Supervisors will meet at least monthly with each assigned worker to review status and progress of each case on the worker's caseload. Supervisors will review and approve each service plan which can only be approved after a face to face meeting with worker which can be the monthly meeting. | DHS achieved 95.59% compliance with this measure in MSA 5 based on a DCQI review of 88 cases | 96.59% |
| 15. | VII.E.4 | The process of freeing a child for adoption/guardianship and seeking and securing an adoptive/guardianship placement shall begin as soon as the child's permanency goal becomes adoption/guardianship, but in no event later than as required by federal law. | Based on the DCQI review of 40 applicable cases, DHS achieved 93.55% compliance | 93.55% |

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| 16. | VIII.B.2.a | Ensure each child receives emergency medical, dental, and mental health care. | In July 2013, DCQI reviewed 65 cases and 4 were applicable for requiring emergency services. In 100% of the cases DHS provided necessary services. | 100% |
| 17. | VIII.B.3.a.i | Medical file/history: Consistent with the targets established by the monitors, by 6/30/13, DHS shall ensure 80% of foster care providers receive specific written health information about the child entering their care. | Based on DCQI review of 65 cases, DHS achieved 81.5% compliance, exceeding the standard | 100% |
| 18. | VIII.B.4.a.ii | Medical Care & Coverage: DHS will ensure 95% of children have access to medical coverage within 30 days of entry into foster care by way of a Medicaid card or an alternative verification of the child's Medicaid status/number. | Based on the DCQI Health Review of 65 cases, DHS achieved 98.74% compliance in MSA 5 | 98.74% |
| 19. | VIII.B.4.b.iii | Medical Care & Coverage: DHS shall assure 95% of children have access to medical coverage upon subsequent placement. | DHS achieved 100% compliance | 100% |

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| 20. | VIII.C.1.b | DHS shall ensure that youth age 16 and older in foster care with a permanency goal of APPLA, APPLA E, or goal of adoption without an identified family have access to the range of supportive services listed. | These youth are eligible for an array of services. DHS is in compliance | 100% |
| 21. | VIII.C.1.c.i | Youth Transitioning to Adulthood: DHS will continue to implement policy and resources to extend all foster youths' eligibility for foster care until age 20 and make IL services available through the age of 21. | Pursuant to the Young Adult Voluntary Foster Care Act, DHS has extended eligibility and services as required | 100% |
| 22. | VIII.C.2.b | Education: DHS will take reasonable steps to ensure that school-aged foster children are registered for and attending school within 5 days of initial placement or any placement change, including while placed in child care institutions or emergency placements. No child shall be home schooled. | Based on a DCQI review of 88 cases, DHS achieved 100% compliance in MSA 5 | 100% |
| 23. | VIII.C.2.a | Education: DHS will take reasonable steps to ensure that school-aged foster children receive an education appropriate to their needs. | Based on a DCQI review of 88 cases, DHS achieved 93.94% compliance in MSA 5 | 93.94% |

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| 24. | VIII.D.1 | Immediate Action for Recruitment of Foster/Adoptive Homes: DHS will license 1,300 new non-relative foster homes. | DHS actually licensed 1316 new homes; monitors threw out four in a 77-home sample and pro-rated (MSA 4, p. 31) | 95% |
| 25. | VIII.D.2.c | Foster Home Placement Selection: Develop a placement process in each county that ensures the best match for the child irrespective of whether the foster home is a DHS or private CPA operated home | Each county has developed the process. The CPN is one such tool | 100% |
| 26. | VIII.D.3.c | DHS in consultation with the monitors will develop for each county, annual foster home targets based on need and number of children in care. DHS will implement and meet those targets. | DHS has developed the targets and is implementing a tool to assist assessment | 100% |
| 27. | VIII.D.3.a | Foster Home Capacity for Special Populations: For the Big 14 counties, DHS will develop and provide to the monitors and Plaintiffs recruitment plans to increase the number of available placements for adolescents, sibling groups and children with disabilities. | In MSA 2 (p. 8), the Monitors agreed DHS developed recruitment plans. In MSA (p. 44), the Monitors said the number of available placements was insufficient. That does not mean DHS failed to develop plans. | 100% |

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| 28. | VIII.D.5.a | DHS shall ensure that the Determination of Care (DOC) process is applied consistently and appropriately across all counties and office. | Integrated into FOM policy 903-3 prior to renegotiations | 100% |
| 29. | VIII.D.5.b | DHS shall maintain a unit within the CSA charged with maximizing Title IV-E reimbursements from the federal government. | Integrated into FOM policy 903-3 prior to renegotiations | 100% |
| 30. | VIII.D.6.d | All licensed relative foster care providers shall receive the same foster care maintenance rates paid by DHS to similarly situated unrelated foster care providers. | Integrated into FOM policy 903-3 prior to renegotiations | 100% |
| 31. | VIII.D.6.e | All permanent wards living with relative caregivers shall be provided foster care maintenance payments equal to the payments provided to licensed foster caregivers. | Integrated into FOM policy 903-3 prior to renegotiations | 100% |
| 32. | VIII.D.6.h | DHS shall prepare and make public the procedures on obtaining variances from standard foster care licensing requirements for purposes of licensing relative homes. DHS shall not waive any licensing standards that are essential for the safety and well-being of the child. | DHS published the following CI and L-Letters to the field: L-08-131, L-10-004-CW, and 13-076 | 100% |
| 33. | VIII.D.6.i.iii | DHS shall designate sufficient licensing staff to complete the licensing process for each family within 180 days from the date of placement. | Standard has been superseded by case-load, cohort, and performance info | 100% |

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| 34. | IX.A | Needs Assessment | Published | 100% |
| 35. | IX.B. | DHS shall make available an additional \$4 million in FY12, plus any unspent FY11 Needs Assessment funds, for services and placements identified in the 2009 Needs Assessment. DHS shall, in consultation with the Monitors, submit a plan for the expenditure of the \$4 million for FY12. | DHS satisfied this commitment | 100% |
| 36. | IX.C | Savings from POS monitoring function shall be re-allocated to funding the items and services identified in the 2009 Needs Assessment. | DHS satisfied this commitment | 100% |
| 37. | X.A.1 | All children shall be placed in accordance with their individual needs, taking into account a child's need to be placed as close to home and community as possible, the need to place siblings together, and the need to place children in the least restrictive, most home-like setting. | This is a policy that DHS promulgated within FOM 722-03 | 100% |
| 38. | X.A.2 | Children for whom the permanency goal is adoption should, whenever possible, be placed with a family in which adoption is a possibility. | This is a policy that DHS promulgated within FOM 722-03 | 100% |

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| 39. | X.A.3 | Race and/or ethnicity and/or religion shall not be the basis for a delay or denial in the placement of a child but shall otherwise be appropriate considerations in evaluating the best interest of an individual child to be matched with a particular family. | This is a policy that DHS promulgated within FOM 722-03 | 100% |
| 40. | X.A.4 | Children in the foster care custody of DHS shall be placed only in a licensed foster home, a licensed facility, or, subject to the requirements of Section VIII(C)(6) of this Agreement, an unlicensed relative home. | This is a policy that DHS follows pursuant to Act 116. | 100% |
| 41. | X.B.2 | Separation of Siblings: Siblings who enter placement at or near the same time shall be placed together, unless doing so is harmful to one or more of the siblings or other exceptions in this section are noted. In the case of separation, efforts must be made to locate/recruit a family and efforts must be documented and reassessed quarterly. | Of the siblings not placed together in MSA 5, there was a valid reason in 100% of the cases | 100% |
| 42. | X.B.5 | Placement in Jail, Correctional, or Detention Facility: Unless pursuant to a delinquency charge, no child in DHS foster care custody shall be placed by DHS in a jail, correctional, or detention facility. | During MSA 5, 13 youth were placed w/out a pending charge; only 6 in excess of length of stay requirement | 99.9% |

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| 43. | X.B.6 | Placement of High Risk Youth: DHS shall not place any child determined to be at high risk for perpetrating violence or sexual assault, in any foster care placement with foster children not so determined without an appropriate assessment concerning the safety of all children in the placement. | During MSA 5, DCQI reviewed 88 foster cases in the Modified CFSR to identify high risk youth. Of the 7 identified, 6 of 7 had a documented safety plan in the file. The number was 8 of 8 in MSA 4 | 85-100% |
| 44. | XI.B.1 | Corporal Punishment & Seclusion/Isolation: DHS shall prohibit the use of Positive Peer Culture, peer-on-peer restraint, and any other forms of corporal punishment in all foster care placements. All uses of corporal punishment in any placement, and all uses of seclusion/isolation in child caring institutions shall be reported to the Quality Assurance (“QA”) unit. Such reports shall be made available to the state’s licensing agency for appropriate action. | DHS prohibits peer on peer restraint and any other form of corporal punishment. | 100% |
| 45. | XI.B.1.c | When the Monitors have approved DHS’s proposed policy and timetable regarding corporal punishment and seclusion/isolation, DHS shall implement the policy according to the timetables set by the Monitors. | DHS has satisfied this commitment. | 100% |

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| 46. | XI.B.2 | The state's licensing agency and Child Welfare Contract Compliance unit shall be responsible for monitoring the implementation of policies and procedures surrounding all forms and use of corporal punishment and seclusion/isolation of children in DHS foster care custody, and shall issue and impose corrective actions. | DHS has satisfied this commitment. | 100% |
| 47. | XII.C | Contract Evaluations: DHS shall prepare written reports of all inspections and visits, detailing findings. DHS shall require corrective actions and require private CPAs and CCIs to report to DHS on the implementation of these corrective action plans, and shall conduct follow-up visits when necessary. Such reports shall routinely be furnished to the monitors. | MSA 5, p. 34 criticizes DHS for failing to provide information regarding review of a single agency of all the agencies DHS licenses | 99% |
| 48. | XIII.A | DHS will generate from automated systems and other data collection methods accurate and timely data reports and information until the full implementation of SACWIS. | Despite occasional problems, DHS regularly generated accurate and timely data before MiSACWIS implementation | ≥90% |

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| 49. | XIII.B. | DHS will implement a pilot of SACWIS | Although MiSACWIS is not yet fully operational, it is well past the pilot stage | 100% |
| 50. | XIII.B | DHS will seek federal approval of SACWIS | DHS has sought federal approval | 100% |
| 51. | XIII.C | SACWIS shall be the permanency tracking system | MiSAWIS is the permanency tracking system | 100% |
| 52. | XIV.D | All reports provided by the QA unit shall be public record with certain exceptions. | This is current DHS practice. | 100% |
| 53. | XV.G | The QA unit shall, within 60 days following the end of each Reporting Period, compile and analyze all pertinent information regarding statewide performance and furnish to the Monitors and Plaintiffs. | DCQI completed internal reviews of all submissions each MSA period but to date this information has not been requested. | 100% |

EXHIBIT C

to

Brief in Support of Defendants' Motion to Dissolve or Modify the Modified Settlement Agreement (MSA) Injunction

EXHIBIT C

Continuing MSA standards that have not yet been met

| # | MSA § | Commitment | Status | % Complete |
|----|-------|--|--|--|
| 1. | V.A | DHS shall ensure that investigations of all reports are commenced as required by state law. DHS shall monitor commencements through reviews of DHS data-driven reports. | During MSA 5, DHS commenced 89% of investigations within 24 hours | 89% (Statistic not noted in MSA 5 due to disagreements over data) |
| 2. | V.A | DHS shall ensure that investigations of all reports are completed pursuant to policy requirements. | During MSA 5, 85% of investigations were completed pursuant to policy | 85% MSA 5, p. 61 |
| 3. | VII.C | Provision of Services: Services in plans must be available in a timely and appropriate manner, monitor for quality/intended effect; assist parents, children and foster parents identify appropriate, accessible and compatible services; assist with transportation, resolve barriers, intervene to review and amend service plans when services are not provided or are not effective. | Future reporting for this item will be completed through MSA QA compliance case reads and the QSR. | n/a |

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| 4. | VII.E.3 | Within 30 days after a child's primary permanency goal is changed to adoption, DHS, or the assigned private CPA, shall follow a prescribed protocol. | Based on a DCQI review of 40 applicable cases, DHS achieved 81.82% compliance | 81.82% |
| 5. | VII.E.5 | A child shall not be assigned a permanency goal of placement with a fit and willing relative unless certain conditions are met. | DCQI completed case reviews during MSA 5, but no cases fit this requirement. | n/a |
| 6. | VII.E.8 | Upon identification of an adoptive family for a child legally freed for adoption, DHS shall within 14 days provide the prospective adoptive family with an adoption subsidy application and explanatory materials. | DCQI completed case reviews during MSA 5, and DHS provided the application within 14 days 62.07% of the time and explanatory materials within 14 days 100% of the time | 62.07%/100% |
| 7. | VII.F.1.a | Special Reviews: Provisions apply to children in DHS foster care from 10/1/11 that a) have been legally free for more than 365 days. | DHS conducts these reviews for <u>all</u> children with adoption case goals, but not for children with other goals | Parties disagree about the standard |

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| 8. | VII.G.2 | Worker-Child Contacts: 2 face to face visits each month during the first two months of initial placement and 1 visit per month thereafter. At least one visit each month shall take place in the child's placement location. | DHS averaged 68% in MSA 5 for 2-visit standard and 84% for 1-visit standard in subsequent months. For FY2013, DHS exceeded its federal child-visitation standard. | 68%/84% MSA 5, p. 51; <i>id.</i> at 51 n.35 |
| 9. | VII.G.2 | Worker-Child Contacts: 2 face to face visits each month during the first two months following a placement move and 1 visit per month thereafter. At least one visit each month shall take place in the child's placement location. | DHS averaged 67% in MSA 5 for 2-visit standard and 59% for 1-visit standard in subsequent months | 67%/59% MSA 5, p. 52 |
| 10. | VII.G.3 | Worker-Parent Visits: For children with goal of reunification, (a) 2 face to face caseworker-parent visits (with each parent) during first month the child is in care, one of which must be in their home; (b) for each subsequent month, 1 face to face visit and phone contact as needed; (c) one contact in each 3-month period must occur in parent's home. | DHS averaged 66% (mother) and 48% (father) for 2-visit standard and 70% (mother) and 53% (father) for 1-visit standard in subsequent months | 66/48%; 70/53% MSA 5, p. 53 |

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| 11. | VII.G.4 | Parent-Child Visits: For children with goal of reunification, at least twice monthly visits with parents unless reasonable exceptions and documentation noted in MSA apply. | DHS averaged 47% (mother) and 31% (father) | 47%/31% MSA 5, p. 52 |
| 12. | VII.G.5 | Sibling Visits: Children in foster care with siblings in custody but in a different placement will visit at least monthly unless reasonable exceptions and documentation noted in MSA apply. | Based on a DCQI review of 88 cases, DHS achieved 89.47% compliance | 89% |
| 13. | VIII.A | Access to Services: Ensure access to appropriate services including medical, dental, mental health and education; assist parents, children, foster parents connect, engage with and make use of services; monitor services to determine appropriate quality and intended effects. | Future reporting for this item will be completed through MSA QA compliance case reads and the QSR | n/a |
| 14. | VIII.B.2.b.iv | Ensure 95% of children entering care receive a full medical exam and screening for potential mental health issues within 30 days of entry to placement and refer for further assessment as necessary. | In MSA 5, DCQI reviewed 65 cases. Medical exam compliance was 75.4% and mental health screening compliance was 53.8% | 75%/54% |

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| 15. | VIII.B.2.c.iv | Ensure 95% of children have dental examination within 90 days of entry into foster care. | DHS achieved 80% compliance in MSA 5 based on DCQI review of 65 cases | 84% |
| 16. | VIII.B.2.d | Ensure children receive all required immunizations as defined by AAP at the appropriate age. | Based on DCQI review of 65 cases, DHS achieved 83.1% compliance | 83.1% |
| 17. | VIII.B.2.e.iii | Ensure 80% of children have received periodic medical, dental, and mental health exams. | Based on DCQI review of 65 cases, DHS achieved 88% for medical exams for children under 36 months & 53.1% for those over 36 months; 24% for mental health exams for children under 36 months, 53.3% for those over 36 months | 24-88% |
| 18. | VIII.B.3 | Maintain an up to date medical file for each child in care, including medical history information reasonably available to DHS. | Based on DCQI review of 65 cases, DHS achieved 43.1% compliance | 43.1% |
| 19. | VIII.B.3.a.ii | DHS shall ensure 95% of foster care providers receive specific written health information about the child entering their care. | DCQI completed case review of 80 cases and achieved 42.5% compliance in MSA 6 | 44.7% |

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| 20. | VIII.B.3.b | <p>Medical Passports: In maintaining medical records, DHS shall ensure that it is in compliance with MCL 722.954c(2) by preparing, updating, and providing medical passports to caregivers. In addition, DHS shall ensure that the medical passport, or some other DHS document inserted in each child's file, includes a complete and regularly updated statement of all medications prescribed to and given to the child.</p> | <p>Based on DCQI review of 65 cases, DHS achieved 41% compliance</p> | 41% |
| 21. | VIII.B.3.b | <p>All Medical Passport information shall be provided to all medical and mental health professionals to whom the child is referred and accepted for treatment, as well each foster care provider with whom a child is placed.</p> | <p>Based on DCQI review of 65 cases in MSA 5, DHS achieved 56.9% compliance of provision of medical information and 59% compliance on provision of mental health information. The MSA requirement is 95%</p> | 60%/62% |

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| 22. | VIII.B.5.c | Psychotropic Medications: DHS will maintain processes to ensure documentation of psychotropic medication approvals, documentation of all uses of psychotropic medications, and review of such documentation by appropriate DHS staff, including the medical consultant. The Health Unit Manager and medical consultant will take immediate action to remedy any identified use of psychotropic medications inconsistent with the policies and procedures approved by the monitors. | DHS is putting new oversight into practice while waiting for policy changes | n/a |
| 23. | VIII.C.2.c | Education: DHS will make reasonable efforts to ensure the continuity of a child's educational experience by keeping the child in a familiar or current school and neighborhood when in the child's best interests and feasible, by limiting the number of school changes. | Based on a DCQI review of 88 cases, DHS achieved 84.62 % compliance in MSA 5 | 84.62% |

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| 24. | VIII.D.2.a | Foster Home Capacity: Ensure each county has a sufficient number and adequate array of homes capable of serving the needs of those children coming into care for whom foster home placement is appropriate. | DHS continues to use an array of effective, targeted recruitment activities to recruit new foster homes to meet placement needs | n/a |
| 25. | VIII.D.2.b | Foster Home Capacity: Ensure relatives of children in foster care and non-relatives with whom a child has a family-like connection are identified and considered as placements for children; when appropriate, ensure steps are taken to license them. | DHS continues to license relative foster homes to meet placement needs | n/a |
| 26. | VIII.D.6.a.i.3 | Immediate Action to Licensing Relatives: 75% of new relative foster parents will be licensed within 180 days from the date of placement. | 40% of relatives were licensed timely in MSA 5 | 53.3% |
| 27. | VIII.D.6.b | Foster Parents: All foster parents shall be licensed except for situations identified in this provision. | Additional data is necessary | n/a |

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| 28. | VIII.D.6.c | Relative Foster Parents: Not previously licensed relatives must have a home assessment for safety before placement; law enforcement and central registry check within 72 hours of placement; complete home study determining whether the relative should be licensed. | Additional data is necessary | n/a |
| 29. | VIII.D.6.f | Relative Foster Parents: With documented, exceptional circumstances, relatives that do not desire to be licensed may forego licensing. Approval for this waiver for licensure must be approved by the Child Welfare Director in designated counties and by the County Director in non-designated counties. (See MSA for additional requirements for household to forego licensure and the review that will occur by monitors if more than 10% of unlicensed relatives decline to be licensed.) | DHS requires County Directors to approve or deny relative waivers | n/a |

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| 30. | VIII.D.6.g | Relative Foster Parents: DHS will use a form waiver letter which must be re-signed annually for relatives who choose to forego licensure. The relative may change their mind at any time and pursue licensure. | Out of 1268 active waivers, 118 were active waiver renewals in MSA 5 | n/a |
| 31. | VIII.D.6.i.ii | Relative Foster Parents: DHS shall require the designation of sufficient licensing staff to complete the licensing process for each family within 180 days from the date of placement. | Additional data is necessary | n/a |
| 32. | X.B.1 | Placement Outside 75-Mile Radius: DHS shall place all children within a 75-mile radius of the home from which the child entered custody, unless one of the exceptional situations noted in this section applies and is approved. | Because of data issues, DHS could only report information for approximately 80% of children; with respect to those 80%, DHS achieved 95.2% compliance, and that number is even higher when waivers are taken into consideration | 95.2% of the population for which data was available for MSA 5 MSA 5, p. 55 |

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| 33. | X.B.3 | Number of Children in Foster Home: No child shall be placed in a foster home if that placement will result in more than three foster children in that foster home, or a total of six children. No placement shall result in more than three children under the age of three residing in a foster home. | Lack of data | n/a |
| 34. | X.B.4.a | Children shall not remain in emergency or temporary facilities, including but not limited to shelter care, for a period in excess of 30 days. | A draft report is pending that includes a set of policy, practice, and service recommendations for improvement | n/a |
| 35. | X.B.4.b | Number of Placements in an Emergency or Temporary Facility: Children shall not be placed in an emergency or temporary facility, including but not limited to shelter care, more than one time within a 12-month period. | A draft report is pending that includes a set of policy, practice, and service recommendations for improvement | n/a |

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| 36. | X.B.7 | Residential Care Placements: No child shall be placed in a child caring institution unless there are specific findings, documented in the child's case file, that: (1) the child's needs cannot be met in any other type of placement; (2) the child's needs can be met in the specific facility requested; and (3) the facility is the least restrictive placement to meet the child's needs. | A new data collection system was implemented during MSA 5 | n/a |
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EXHIBIT D

to

Brief in Support of Defendants' Motion to Dissolve or Modify the Modified Settlement Agreement (MSA) Injunction

EXHIBIT D

Standards subject to full MiSACWIS implementation

| # | MSA § | Commitment | Status | % Complete |
|----|-----------|---|---|------------|
| 1. | VII.A | Assessments & Service Plans: Written assessments within 30 days of entry (ISP); updates quarterly (USP); treatment plans signed by caseworker, supervisor, parents and children if of age or a written explanation of no signature. | DHS will satisfy this commitment when MiSACWIS is fully operational | n/a |
| 2. | VII.D.1.a | Lists events that shall trigger Family Team Meetings for in-home cases | Pending MiSACWIS data | n/a |
| 3. | VII.D.1.b | Lists events that shall trigger Family Team Meetings for out-of-home cases | Pending MiSACWIS data | n/a |
| 4. | VII.D.2 | Describes written reports that shall follow FTM meetings | Pending MiSACWIS data | n/a |
| 5. | VII.D.3 | Transition from PPC to FTM | Pending MiSACWIS data | n/a |
| 6. | VII.D.4 | Concurrent planning shall continue in Clinton, Gratiot, and Ingham counties and shall be fully implemented in the Family Engagement Model | Pending MiSACWIS data | n/a |

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| 7. | VII.D.6 | FTM model implementation deadlines | Pending MiSACWIS data | n/a |
| 8. | VIII.B.2.f | Ensure any needed follow up medical, dental, mental health care as identified. | Future reporting for this item will be completed through MiSACWIS and MSA QA compliance case reads. | n/a |
| 9. | VIII.D.7 | Upon statewide implementation of MiSACWIS, DHS shall develop an adequate child placement process in each county or region. | Waiting for full implementation of MiSACWIS | n/a |
| 10. | XIII.B | DHS will have an operational SACWIS in all counties | MiSACWIS was implemented in all counties on April 30, 2014, and is subject to ongoing modifications and adjustments | n/a |