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

JEREMIAH M., <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	Case No.: 3:22-cv-00129-SLG
v.)	
)	
KIM KOVOL, <i>et al.</i> ,)	
)	
Defendants.)	

DECLARATION OF CHRISTOPHER A. ROBISON

I, Christopher A. Robison, declare under penalty of perjury that the following is true and correct:

1. I am an Assistant Attorney General at the Alaska Department of Law, and I am one of the attorneys for the Defendants in this lawsuit.

2. On January 16, 2025, the State of Alaska executed a letter agreement with the Department of Justice. A true and correct copy of the letter is attached hereto as Exhibit A. Under the terms of the letter agreement, the Department of Justice agreed not to sue the State under Title II of the ADA for a period of three years in exchange for the State completing certain steps (described in the letter agreement) during the three-year period covered by the agreement.

3. Attached as Exhibit B is a true and correct copy of the Plaintiffs' Objections and Responses to Defendants' Second Set of Interrogatories. In their Responses, which asked the Plaintiffs to identify the relief they seek in this case, Plaintiffs failed to provide a substantive response under Federal Rule of Civil Procedure 65(d)(1)(C). To date, Plaintiffs' Responses have not been supplemented.

4. Attached as Exhibit C is a true and correct copy of Plaintiffs' Responses to Defendants' First Set of Requests for Production.

By: /s/ Christopher A. Robison
Christopher A. Robison
Date: January 30, 2025

Certificate of Service

I certify that on January 30, 2025, the foregoing **Declaration of Christopher A. Robison** was served electronically on:

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/s/ Margaret Paton Walsh

Margaret Paton Walsh, Chief Assistant Attorney General



U.S. Department of Justice

Civil Rights Division

DJ 204-6-53

*Special Litigation Section – 4CON
950 Pennsylvania Ave, NW
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January 16, 2025

Christopher A Robison
Chief Assistant Attorney General – Human Services
Alaska Department of Law
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Anchorage, AK 99501
Via email to chris.robison@alaska.gov

Dear Mr. Robison:

This letter serves to memorialize an understanding between the United States Department of Justice (DOJ) and the State of Alaska (the Parties) regarding steps they will take to address the alleged violations of Title II of the Americans with Disabilities Act identified in DOJ's December 15, 2022 Notice to the State and report entitled "Investigation of the State of Alaska's Behavioral Health System for Children" (collectively the "Notice"). Specifically, DOJ shall forego commencing litigation, for a period of three years from the date of this letter (Assessment Period), against the State of Alaska regarding any and all claims it may have under Title II related to the Notice. In exchange, during the Assessment Period, the State shall, as detailed below, provide DOJ access to State information and personnel; facilitate access to children, families, service providers, and other stakeholders; and engage in open, problem-solving discussions with DOJ toward a final resolution of the investigation.

The Parties are taking these steps because of the State's representations and supporting data that the State has made progress toward correcting the alleged Title II violations identified in the Notice and other considerations. The Parties' shared goal is that, by or before the end of the Assessment Period, the State will have demonstrated that it has taken durable steps that have corrected the alleged Title II violations identified in the Notice—enabling DOJ to close this matter in its entirety. But if that goal is not achieved to the Parties' mutual agreement, they shall work in good faith to resolve any remaining issues through a collaborative approach that seeks to avoid the need for contested litigation.

During the Assessment Period, beginning January 2025, the State shall: (1) facilitate DOJ visits to psychiatric hospitals and PRTFs operated by the State or in the State's control to interview children and staff and review children's records there, upon reasonable notice by DOJ; and (2) provide to DOJ the data and records identified in Appendix A. Any modification to the information to be provided under Appendix A shall be agreed by the Parties in writing, and DOJ shall safeguard all confidential information as required by federal law.

Also during the Assessment Period, the Parties (including the Commissioner of the Alaska Department of Health and State Medicaid Director) shall meet on a quarterly basis to

discuss the State's system improvement progress, including whether the use and/or availability of community-based services has expanded and whether institutional settings are being relied upon less. The Parties envision that up to two of their meetings each year will be in-person, to facilitate an open exchange of information and a problem-solving approach. The Parties understand that DOJ may, during the Assessment Period, hold meetings with stakeholders in the State's behavioral health system for children.

Within sixty days following the Assessment Period's conclusion, DOJ shall give the State a written description of any remaining issues that DOJ determines must be addressed before DOJ closes this matter, and the Parties shall meet and confer in a good faith effort to resolve those issues. Neither Party shall commence litigation against the other Party regarding any remaining issues without providing the other Party 60 days' advance written notice of the intent to commence litigation. If there are no remaining issues at the end of the Assessment Period, DOJ will issue the State a notice that it is closing the investigation

Please confirm that the foregoing terms are acceptable to the State of Alaska by countersigning this letter where indicated below.

Sincerely,

/s/ Benjamin O. Tayloe, Jr.
Benjamin O. Tayloe, Jr.
Acting Principal Deputy Chief
Special Litigation Section



Christopher A. Robison
Chief Assistant Attorney General – Human Services
Alaska Department of Law

Appendix A

State Data and Records

Regarding the data described below, “children” are individuals under the age of 21, unless otherwise noted, and “community-based behavioral health services” are: (1) non-residential behavioral health services covered by Medicaid, including those offered under Alaska’s State plan and Medicaid waiver programs, and (2) where specified below, other State-funded, non-residential behavioral health services. The year refers to calendar year or fiscal year, whichever would best facilitate the provision of consistent data across these topics. Because providers have up to one year to submit claims, the State will provide data that is available at the intervals specified below and subsequently update such data once all claims are submitted.

Regarding severe emotional disturbance (SED) data, the State’s position is that, because of data limitations, the State is unable to directly report complete and accurate data that includes all services to children with SED. The State intends to use proxy data, such as services rendered that are likely to be used by or are intended to benefit children who meet the definition of SED according to State regulation, in a good faith effort to meet DOJ’s request.

1. **Annual Data for state fiscal years 2021-2024**, provided by April 30, 2025, that is separated by year and includes:
 - a. Total, nonduplicated number of Alaska Medicaid-enrolled children for each of the following:
 - i. In psychiatric hospitals, in-state and out-of-state;
 - ii. In psychiatric residential treatment facilities (PRTF), in-state and out-of-state; and
 - iii. Who received Alaska Medicaid-funded community-based behavioral health services, broken down by service category, duplicated across service categories, not duplicated within service category.
 - b. Total expenditures on each of the following Alaska Medicaid-funded services for children, with the State and federal contributions delineated:
 - i. Psychiatric hospital services in-state and out-of-state;
 - ii. PRTF services in-state and out-of-state;
 - iii. Community-based behavioral health services, broken down by service category; and
 - iv. Community-based behavioral health services to children with severe emotional disturbance (SED) as defined by 7 AAC 135.065, broken down by service category.

For the data described in 1.a-b, community-based behavioral health services will include the following service categories (*e.g.*, Crisis Services, Intensive Case Management):

1115 Waiver Services (Behavioral Health)

- A. Crisis Services
- B. Intensive Case Management
- C. Intensive Outpatient

- D. Outpatient and Intensive In-Home
- E. Partial Hospitalization
- F. Therapeutic Treatment Homes
- G. Treatment Planning

State Plan Services (Behavioral Health)

- H. Case Management
- I. Crisis
- J. Day Treatment
- K. Outpatient and Intensive In-Home

2. **Quarterly data beginning state fiscal year 2025**, provided by April 30, 2025, and within 30 days after each quarter thereafter. Each quarterly report will be inclusive of cumulative data for the current fiscal year (with the fourth quarter report reflecting the total, nonduplicated number of children present in each setting for the full year) and will include:
 - a. Total, nonduplicated number of Alaska Medicaid-enrolled children:
 - i. In psychiatric hospitals, in-state and out-of-state; and
 - ii. In PRTFs, in-state and out-of-state.
3. **Semi-annual data beginning state fiscal year 2025**, provided by September 30, 2025, and within 90 days after each half-year thereafter. Each report will be inclusive of cumulative data for the current fiscal year (with the second semi-annual report reflecting the total, nonduplicated number of children and total expenditures for the full year) and will include:
 - a. Total number of Alaska Medicaid-enrolled children who received Alaska Medicaid-funded community-based behavioral health services, broken down by service category, duplicated across service categories, not duplicated within service category.
 - b. Total expenditures on Alaska Medicaid-funded services for children, with the State and federal contributions delineated:
 - i. Psychiatric hospital services in-state and out-of-state;
 - ii. PRTF services in-state and out-of-state;
 - iii. Community-based behavioral health services, broken down by service category; and
 - iv. Community-based behavioral health services to children with severe emotional disturbance (SED) as defined by 7 AAC 135.065, broken down by service category.

For the data described in 3.a-b, community-based behavioral health services will include the following service categories:

Waiver Services - 1115 (Behavioral Health)

- A. Crisis Services
- B. Intensive Case Management
- C. Intensive Outpatient
- D. Outpatient and Intensive In-Home

- E. Partial Hospitalization
- F. Therapeutic Treatment Homes
- G. Treatment Planning

State Plan Services (Behavioral Health)

- H. Case Management
- I. Crisis
- J. Day Treatment
- K. Outpatient and Intensive In-Home

4. **Semi-annual data, starting with state fiscal year 2024**, submitted by September 30, 2025, and semi-annually thereafter. Each report will be inclusive of cumulative data for the current fiscal year (with the second semi-annual report reflecting the total, unduplicated number of children and total expenditures for the full year) and will include:

- a. Total number of children, under 18, who received **crisis response** services funded by the state through sources **other than Medicaid**. These numbers may be duplicated and, if so, the State will provide an explanation of why the unduplicated number of children is not available. To the extent unduplicated numbers are available for particular geographic areas, the State will provide those unduplicated numbers. The State will delineate the types of crisis services covered and their sources of funding. Data from services funded outside of the department may only be available annually.
- b. Total number of unduplicated children who received community-based behavioral health services and total number of community-based behavioral health service claim units paid, broken down by region and service. The State notes that claims submitted identify the billing location, rather than the service delivery location. This may result in incomplete and unreliable data. The State will attempt to address this; however, it may not be possible to collect the data in such a way that it fully represents the locations of services provided.
- c. Total number of community-based behavioral health service claim units paid, broken down by service category and population served (SED/Non-SED).

For the data described in 4.c, community-based behavioral health services will include the following service categories:

1115 Waiver Services (Behavioral Health)

- A. Crisis Services
- B. Intensive Case Management
- C. Intensive Outpatient
- D. Outpatient and Intensive In-Home
- E. Partial Hospitalization
- F. Therapeutic Treatment Homes
- G. Treatment Planning

State Plan Services (Behavioral Health)

- H. Case Management
- I. Crisis
- J. Day Treatment
- K. Outpatient and Intensive In-Home

- d. Total number of school-based behavioral health services claim units, delivered by school Medicaid providers, provided annually.
 - e. Total expenditures on school-based behavioral health services, delivered by school Medicaid providers, with the State and federal contributions delineated, provided annually.
5. Quarterly Care Coordination data for children identified “at risk” starting January 1, 2026, to be provided by May 31, 2026, and each quarter thereafter. Each quarterly report will be inclusive of the data for the current fiscal year and will include:
- a. Total, non-duplicated number of children who were offered **care coordination** services as a result of being identified as “at risk” based on data and patient profiles developed by the State. This service is funded by Medicaid. The State will provide a description of the care coordination services covered by 5.a-c, and a description of the State’s methodology for identifying children “at risk.”
 - b. Total number of children identified as “at risk.”
 - c. Total expenditures on **care coordination** services for children identified as “at risk,” funded by the state through **Medicaid** beginning January 1, 2026, with the State and federal contributions delineated.
6. Quarterly information regarding individual children in PRTFs, starting with the January to March 2025 quarter, to be provided by May 31, 2025, and thereafter within 30 days after the end of each quarter (and thereafter updated if additional information such as additional claims becomes known after the provision of data):
- a. Child’s name, PRTF location, PRTF contact information, and guardian’s contact information upon request for Alaska Medicaid-enrolled children who are currently in PRTFs.
7. Upon DOJ’s request, which will not be made more than twice a year, the State will work to facilitate access to documents, regarding individual children in PRTFs, which will include, where applicable:
- a. Individual files containing biographical information, diagnoses, treatment history, assessments, treatment plans, treatment notes, and discharge plans for a sample of no more than ten children per PRTF per year (to reduce administrative burden) that are selected by DOJ for review.

For purposes of the State's provision of data to DOJ, service categories include the following services. These service categories and services are subject to revision upon changes to, or the availability of additional information, regarding the State's behavioral health system, considering tracking trends over time. The State and DOJ will discuss and make revisions to the service categories and services, as needed.

Waiver Service Categories – 1115 (Behavioral Health)

- A. Crisis Services:
 - a. Peer-based crisis services
 - b. 23-Hour Crisis Observation & Stabilization
 - c. Crisis Residential & Stabilization
 - d. Mobile Outreach and Crisis Response
- B. Intensive Case Management:
 - a. Intensive Case Management
- C. Intensive Outpatient:
 - a. Intensive Outpatient - Group
 - b. Intensive Outpatient – Individual
- D. Outpatient and Intensive In-Home:
 - a. Assertive Community Treatment Services
 - b. Home-based family treatment Level 1
 - c. Home-based family treatment Level 2
 - d. Home-based family treatment Level 3
 - e. Community & Recovery Support - Group
 - f. Community & Recovery Support – Individual
- E. Partial Hospitalization:
 - a. Partial Hospitalization
- F. Therapeutic Treatment Homes:
 - a. Therapeutic Treatment Home
- G. Treatment Planning:
 - a. BH Treatment Plan Development/Review

State Plan Service Categories (Behavioral Health)

- H. Case Management:
 - a. Case Management
- I. Crisis:
 - a. Short-term Crisis Intervention Per Hour
 - b. Short-term Crisis Intervention, 15 minutes
 - c. Short-term Crisis Stabilization

- J. Day Treatment:
- a. Day Treatment for Children (combined mental health & school district resources)
- K. Outpatient and Intensive In-Home:
- a. Psychiatric Assessment -Diag Eva 1
 - b. Psychotherapy, Individual, 30 minutes
 - c. Psychotherapy, Individual, 45 minutes
 - d. Psychotherapy, Individual, 60 minutes
 - e. Family psychotherapy (without the patient present), 30 minutes
 - f. Family psychotherapy (without the patient present), 60 minutes
 - g. Family psychotherapy (with patient present), 30 minutes
 - h. Family psychotherapy (with patient present), 60 minutes
 - i. Multiple-family group psychotherapy, 60 minutes
 - j. Group psychotherapy (other than multi-family group), 60 minutes
 - k. Developmental Screening
 - l. Developmental Screening, Physician/Qualified Health Professional 1st hour
 - m. Developmental Screening, Physician/Qualified Health Professional, each additional hour
 - n. Neurobehavioral Status Exam
 - o. Neurobehavioral Status Exam, Physician/Qualified Health Professional, each additional hour
 - p. Psychological Testing, 30 minutes, 1 unit
 - q. Psychological Testing, 30 minutes, 7 units
 - r. Neuropsychological Testing, 30 minutes
 - s. Neuropsychological Testing, 60 minutes
 - t. Psychological Testing, 60 minutes, 1 unit
 - u. Psychological Testing, 60 minutes, 1 unit
 - v. Psych Test Result
 - w. Multiple-family group psychotherapy, 30 minutes
 - x. Group psychotherapy (other than multi-family group), 30 minutes
 - y. Mental Health Intake Assessment
 - z. Integrated MH & SU Intake Assessment
 - aa. Oral Medication Administration, direct observation; on premises
 - bb. Oral Medication Administration, direct observation; off premises
 - cc. Peer Support Services -Individual - Self-Help/Peer Svc Per 15 Min
 - dd. Peer Support Services -Family (with patient present) Self-Help/Peer Svc Per 15 Min
 - ee. Peer Support Services -Family (w/o patient present)
 - ff. Comprehensive Medication Services
 - gg. Short-term Crisis Stabilization Service Crisis Intervention
 - hh. Comprehensive Community Support – Group
 - ii. Therapeutic BH Services -Individual, Per 15 Min
 - jj. Therapeutic BH Services -Group, Per 15 Min
 - kk. Therapeutic BH Services -Family (with patient present), Per 15 Min
 - ll. Therapeutic BH Services -Family (w/o} patient present), Per 15 Min

mm. Behavioral Health Screen

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ATTORNEYS FOR PLAINTIFFS

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

Jeremiah M., Hannah M. and Hunter M. by their next friend Lisa Nicolai; Mary B. and Connor B. by their next friend Charles Ketcham; David V., George V., Lawrence V., Karen V., and Damien V. by their next friend Michelle Caldwell; Rachel T., Eleanor T. and Gayle T. by their next friend Rebecca Fahnestock, and Lana H. by her next friend Melissa Skarbek, individually and on behalf of all other similarly situated

Plaintiffs,

v.

KIM KOVOL, Director, Alaska Department of Health and Social Services, in his official capacity; KIM GUAY, Director, Office of Children's Services, in her official capacity; ALASKA DEPARTMENT OF HEALTH AND SOCIAL SERVICES; and ALASKA OFFICE OF CHILDREN'S SERVICES,

Defendants.

Case No. 3:22-cv-00129-SLG

**PLAINTIFFS' OBJECTIONS AND RESPONSES TO DEFENDANTS'
SECOND SET OF INTERROGATORIES**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Plaintiffs, through counsel, provide their responses and objections to Defendants' Second Set of Interrogatories served August 2, 2024 as follows:

GENERAL OBJECTIONS

1. Plaintiffs object to Defendants' Interrogatories to the extent they demand information protected by the attorney-client or work-product privilege, or constitute material prepared for litigation purposes.

2. Plaintiffs reserve the right to supplement their responses with additional information, if and when such information becomes available to Plaintiffs' counsel. Plaintiffs also reserve their right to object to future disclosure of any such information.

OBJECTIONS AND RESPONSES TO INTERROGATORIES

INTERROGATORY NO. 1: For any Named Plaintiff that was institutionalized, please state the following:

- a. The name of the plaintiff and dates of the institutionalization;
- b. The name and location of the institution;
- c. Whether any party in the Named Plaintiff's child in need of aid (CINA) case, including the Named Plaintiff's guardian ad litem, objected to the placement, and if so, the date of the objection;
- d. Whether the placement in an institution was approved by a superior court, and if so, the date of the order approving the placement;
- e. If the placement was approved by a superior court, whether the Named Plaintiff appealed the ruling;
- f. Whether any health care professional or treatment professional concluded community placement was appropriate for any time for which the Named Plaintiff was placed in the institution and, if so, the name of that professional;

- g. Whether you contend institutionalization was unnecessary, and if so, the factual basis for your contention that it was unnecessary (including a description of why you contend institutionalization was inappropriate from a clinical perspective);
- h. Whether you contend the Named Plaintiff could have been served in a less restrictive setting, and if so, (1) the factual basis for your contention, (2) an identification or description of such less restrictive setting, and (3) an explanation of why it would have been appropriate for that particular child;
- i. Whether you contend the Named Plaintiff remained in an institutional setting longer than necessary, and if so, (1) the factual basis for your contention, (2) when the Named Plaintiff should have been moved to a less restrictive setting, and (3) an identification or description of that less restrictive setting.

RESPONSE TO INTERROGATORY NO. 1: Plaintiffs object that this interrogatory as it is eight separate interrogatories or distinct parts disguised as one in contravention of the limit on interrogatories. Fed. R. Civ. P. 33(A)(1). Plaintiffs also object to this Interrogatory as irrelevant and overly broad to the extent that it requests information about institutionalization without any limitation as to time period, and to the extent that it requests information about Named Plaintiffs outside of the time during which the Named Plaintiffs were in the custody of OCS.

Plaintiffs object to these interrogatories as overly broad and unduly burdensome because the Named Plaintiffs are children in the custody of OCS with whom communication is either impossible or difficult and for whom it would be especially onerous to request that they confirm, in great detail, all instances of institutionalization.

This information, however, is in the possession, custody, or control of Defendants who are the legal guardians of the Named Plaintiffs. Thus, Plaintiffs would need to rely on OCS's own records for documentation of Named Plaintiffs' institutionalization and can neither confirm nor deny that those documents are accurate or fulsome. Plaintiffs have also received updated information on the named Plaintiffs as recently as last week and their review of those materials is ongoing. Plaintiffs further object on the grounds that these interrogatories are irrelevant as Plaintiffs do not challenge individual placement decisions, but rather the risk of institutionalization.

INTERROGATORY NO. 1(a): The name of the plaintiff and dates of the institutionalization;

RESPONSE TO INTERROGATORY NO. 1(a): Plaintiffs object to this Interrogatory as irrelevant and overly broad to the extent that it requests information about institutionalization without any limitation as to time period and to the extent that it requests information about Named Plaintiffs outside of the time during which the Named Plaintiffs were in the custody of OCS. Plaintiffs object to this interrogatory as overly broad and unduly burdensome because the Named Plaintiffs are children in the custody of OCS with whom communication is either impossible or difficult and for whom it would be especially onerous to request that they confirm all instances and dates of institutionalization. This information, however, is in the possession, custody, or control of Defendants who are the legal guardians of the Named Plaintiffs. Thus, Plaintiffs would need to rely on OCS's own records for documentation of Named Plaintiffs' institutionalization and can neither confirm nor deny that those documents are accurate or fulsome. Plaintiffs have also received

updated information on the named Plaintiffs as recently as last week and their review of those materials is ongoing. Because Defendants have the best access to and control over evidence relating the institutionalization of children in their custody, requesting a recitation of facts that are in Defendants' possession is not appropriate when considering "the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b)(1). Plaintiffs further object on the grounds that these interrogatories are irrelevant as Plaintiffs do not challenge individual placement decisions, but rather the risk of institutionalization.

INTERROGATORY NO. 1(b): The name and location of the institution;

RESPONSE TO INTERROGATORY NO. 1(b): Plaintiffs object to this Interrogatory as irrelevant and overly broad to the extent that it requests information about institutionalization without any limitation as to time period and to the extent that it requests information about Named Plaintiffs outside of the time during which the Named Plaintiffs were in the custody of OCS. Plaintiffs object to this interrogatory as overly broad and unduly burdensome because the Named Plaintiffs are children in the custody of OCS with whom communication is either impossible or difficult and for whom it would be especially onerous to request that they confirm all instances, names and locations of institutionalization. This information, however, is in the possession, custody, or control of Defendants who are the legal guardians of the Named Plaintiffs. Thus, Plaintiffs would need to rely on OCS's own records for documentation of Named Plaintiffs' institutionalization and can neither confirm nor deny that those documents are accurate or

fulsome. Plaintiffs have also received updated information on the named Plaintiffs as recently as last week and their review of those materials is ongoing. Because Defendants have the best access to and control over evidence relating the institutionalization of children in their custody, requesting a recitation of facts that are in Defendants' possession is not appropriate when considering "the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P. 26(b)(1). Plaintiffs further object on the grounds that these interrogatories are irrelevant as Plaintiffs do not challenge individual placement decisions, but rather the risk of institutionalization.

INTERROGATORY NO. 1(c): Whether any party in the Named Plaintiff's child in need of aid (CINA) case, including the Named Plaintiff's guardian ad litem, objected to the placement, and if so, the date of the objection;

RESPONSE TO INTERROGATORY NO. 1(c): Plaintiffs object to this interrogatory as overly broad and unduly burdensome because the Named Plaintiffs are children in the custody of OCS with whom communication is either impossible or difficult. Plaintiffs object to the extent that the request requires information outside of Plaintiffs' knowledge, that is, knowledge of objections made by "any party in the Named Plaintiff's child in need of aid (CINA) case, including the Named Plaintiff's guardian ad litem." This information, however, is in the possession, custody, or control of Defendants who are the legal guardians of the Named Plaintiffs. Thus, Plaintiffs would need to rely on OCS's own records for documentation of any objections made by "any party" to Named Plaintiffs'

Plaintiffs' Objections and Responses to Defendants' Second Set of Interrogatories

Jeremiah M. et al. v. Kovel et al., No. 3:22-cv-00129-SLG

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placement decisions. Plaintiffs can neither confirm nor deny that those documents are accurate or fulsome. Plaintiffs have also received updated information on the named Plaintiffs as recently as last week and their review of those materials is ongoing. Because Defendants have the best access to and control over evidence relating the placement and institutionalization of children in their custody, requesting a recitation of facts that are in Defendants' possession is not appropriate when considering "the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P.26(b)(1). Plaintiffs further object on the grounds that these interrogatories are irrelevant as Plaintiffs do not challenge individual placement decisions, but rather the risk of institutionalization.

INTERROGATORY NO. 1(d): Whether the placement in an institution was approved by a superior court, and if so, the date of the order approving the placement;

RESPONSE TO INTERROGATORY NO. 1(d): Plaintiffs object to this interrogatory as overly broad and unduly burdensome because the Named Plaintiffs are children in the custody of OCS with whom communication is either impossible or difficult. Because Defendants have the best access to and control over evidence relating the court records of children in their custody, requesting a recitation of facts that are in Defendants' possession is not appropriate when considering "the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P.26(b)(1). Plaintiffs further object on the grounds that these interrogatories

are irrelevant as Plaintiffs do not challenge individual placement decisions, but rather the risk of institutionalization.

INTERROGATORY NO. 1(e): If the placement was approved by a superior court, whether the Named Plaintiff appealed the ruling;

RESPONSE TO INTERROGATORY #1(e): Plaintiffs object to this interrogatory as overly broad and unduly burdensome because the Named Plaintiffs are children in the custody of OCS with whom communication is either impossible or difficult. Because Defendants have the best access to and control over evidence relating to the court records of children in their custody, requesting a recitation of facts that are in Defendants' possession is not appropriate when considering "the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit." Fed. R. Civ. P.26(b)(1). Plaintiffs further object on the grounds that these interrogatories are irrelevant as Plaintiffs do not challenge individual placement decisions, but rather the risk of institutionalization.

INTERROGATORY NO. 1(f): Whether any health care professional or treatment professional concluded community placement was appropriate for any time for which the Named Plaintiff was placed in the institution and, if so, the name of that professional;

RESPONSE TO INTERROGATORY #1(f): Plaintiffs object to this interrogatory as overly broad and unduly burdensome because the Named Plaintiffs are children in the custody of OCS with whom communication is either impossible or difficult and for whom it would be especially onerous to request that they confirm all instances in which "any

health care professional or treatment professional” concluded that community base placement was appropriate during a time when the Named Plaintiff was institutionalized. Because Defendants have the best access to and control over evidence relating the treatment history of children in their custody, requesting a recitation of facts that are in Defendants’ possession is not appropriate when considering “the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.” Fed. R. Civ. P.26(b)(1). Plaintiffs further object on the grounds that these interrogatories are irrelevant as Plaintiffs do not challenge individual placement decisions, but rather the risk of institutionalization.

INTERROGATORY NO. 1(g): Whether you contend institutionalization was unnecessary, and if so, the factual basis for your contention that it was unnecessary (including a description of why you contend institutionalization was inappropriate from a clinical perspective);

RESPONSE TO INTERROGATORY NO. 1(g): Plaintiffs object on the grounds that this is a premature contention interrogatory which asks Plaintiffs to state all facts while discovery is still ongoing. Plaintiffs have also received updated information on the named Plaintiffs as recently as last week and their review of those materials is ongoing. Plaintiffs object to these interrogatories on the grounds that they impermissibly require Plaintiffs’ counsel to draw legal conclusions. Specifically, this interrogatory asks Plaintiffs to draw legal conclusions regarding whether Plaintiffs’ placement in institutional facilities violated their federal constitutional and statutory rights. To the extent that this interrogatory seeks

expert “clinical” and/or medical conclusions, Plaintiffs further object on the grounds that it is premature, as expert reports are not yet due. Plaintiffs also object on the grounds that these interrogatories are irrelevant as Plaintiffs do not challenge individual placement decisions, but rather the risk of institutionalization.

INTERROGATORY NO. 1(h): Whether you contend the Named Plaintiff could have been served in a less restrictive setting, and if so, (1) the factual basis for your contention, (2) an identification or description of such less restrictive setting, and (3) an explanation of why it would have been appropriate for that particular child;

RESPONSE TO INTERROGATORY NO. 1(h): Plaintiffs object on the grounds that this is a premature contention interrogatory which asks Plaintiffs to state all facts while discovery is still ongoing. Plaintiffs have also received updated information on the named Plaintiffs as recently as last week and their review of those materials is ongoing. Plaintiffs object on the grounds that this interrogatory impermissibly requires Plaintiffs’ counsel to draw legal conclusions. Specifically, this interrogatory asks Plaintiffs to draw legal conclusions regarding whether Plaintiffs’ placement in institutional facilities violated their federal constitutional and statutory rights. Plaintiffs also object on the grounds that it calls for conjecture and speculation. Specifically, it asks Plaintiffs to speculate as to what alternative placements may theoretically have been available and appropriate in the past. To the extent that this interrogatory seeks expert “clinical” and/or medical conclusions, Plaintiffs further object on the grounds that it is premature, as expert reports are not yet due. Plaintiffs also object on the grounds that these interrogatories are irrelevant as

Plaintiffs do not challenge individual placement decisions, but rather the risk of institutionalization.

INTERROGATORY NO. 1(i): Whether you contend the Named Plaintiff remained in an institutional setting longer than necessary, and if so, (1) the factual basis for your contention, (2) when the Named Plaintiff should have been moved to a less restrictive setting, and (3) an identification or description of that less restrictive setting.

RESPONSE TO INTERROGATORY NO. 1(i): Plaintiffs object on the grounds that this is a premature contention interrogatory which asks Plaintiffs to state all facts while discovery is still ongoing. Plaintiffs have also received updated information on the named Plaintiffs as recently as last week and their review of those materials is ongoing. Plaintiffs object on the grounds that this interrogatory impermissibly requires Plaintiffs' counsel to draw legal conclusions. Specifically, this interrogatory asks Plaintiffs to draw legal conclusions regarding whether Plaintiffs' placement in institutional facilities violated their federal constitutional and statutory rights. Plaintiffs also object on the grounds that it calls for conjecture and speculation. Specifically, it asks Plaintiffs to speculate as to what alternative placements may theoretically have been available and appropriate in the past. To the extent that this interrogatory seeks expert "clinical" and/or medical conclusions, Plaintiffs further object on the grounds that it is premature, as expert reports are not yet due. Plaintiffs also object on the grounds that these interrogatories are irrelevant as Plaintiffs do not challenge individual placement decisions, but rather the risk of institutionalization.

DATED: September 3, 2024.

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CERTIFICATE OF SERVICE

I hereby certify that on September 3, 2024, a true and correct copy of the foregoing document was served via e-mail on:

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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JEREMIAH M., <i>et al.</i> ,)	
Plaintiff,)	
)	CIVIL ACTION No. 3:22-cv-00129
v.)	
)	
KIM KOVOL, <i>et al.</i>)	
Defendants.)	
_____)	

PLAINTIFFS' RESPONSES TO DEFENDANTS'
FIRST SET OF INTERROGATORIES

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Plaintiffs, through counsel, provide their responses and objections to Defendants' First Set of Interrogatories as follows:

GENERAL OBJECTIONS

RESPONSES AND OBJECTIONS TO INTERROGATORIES

INTERROGATORY #1: Please state, with specificity, the terms of any injunction or restraining order you are seeking from the Court in this case. See FRCP 65(d)(1)(B).

PLAINTIFFS' RESPONSE TO INTERROGATORY #1:

Plaintiffs object to this Interrogatory as premature, as discovery has recently started, and Defendants have produced few documents to Plaintiffs, have not produced any electronically stored information, and Plaintiffs have only had the opportunity to take one initial deposition. Indeed, in denying in part Defendants' motion to dismiss, the Court found that "[e]ven at the class certification stage, Plaintiffs need only describe the general contours of an injunction that would provide relief to the whole class, that is more specific

than a bare injunction to follow the law, and that can be given greater substance and specificity at an appropriate stage in the litigation through fact-finding, negotiations, and expert testimony.” *Jeremiah M. v. Crum*, No. 22-cv-00129, 2023 U.S. Dist. LEXIS 173564, at *41 (D. Alaska Sept. 28, 2023) (internal quotation marks omitted).

Plaintiffs will update their response to this Interrogatory as they receive sufficient expert and fact discovery.

INTERROGATORY #2: Please describe, in reasonable detail and without referring to the complaint or any other document, all acts that would be restrained or required under any injunction or restraining order you are seeking from the Court in this case. See FRCP 65(d)(1)(C).

PLAINTIFFS’ RESPONSE TO INTERROGATORY #2:

Plaintiffs object to this Interrogatory as premature, as discovery has recently started, and Defendants have produced few documents to Plaintiffs, have not produced any electronically stored information, and Plaintiffs have only had the opportunity to take one initial deposition. Indeed, in denying in part Defendants’ motion to dismiss, the Court found that “[e]ven at the class certification stage, Plaintiffs need only describe the general contours of an injunction that would provide relief to the whole class, that is more specific than a bare injunction to follow the law, and that can be given greater substance and specificity at an appropriate stage in the litigation through fact-finding, negotiations, and expert testimony.” *Jeremiah M. v. Crum*, No. 22-cv-00129, 2023 U.S. Dist. LEXIS 173564, at *41 (D. Alaska Sept. 28, 2023) (internal quotation marks omitted).

Plaintiffs will update their response to this Interrogatory as they receive sufficient expert and fact discovery.

DATED: April 11, 2024.

Respectfully submitted,

/s/ Marcia Robinson Lowry

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Exhibit C

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I hereby certify that on April 11, 2024, a true and correct copy of the foregoing document was served via e-mail on:

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