

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

EDWARD ANDERSON; THELMA OUTEN;  
LILLIAN LONGS; THERESA NORMAN;  
ROSETTA SPIVEY; ELLA TATE; JODI and  
SHEPPARD POPE; BILLIE MAE KLINZING;  
GLORIA COMITO; PATRICIA HAUS-  
HERNANDEZ; ELISIA L. VAZQUEZ, by and  
through her next friend, PATRICIA HAUS-  
HERNANDEZ; EVAN VAZQUEZ, by and  
through his next friend, PATRICIA HAUS-  
HERNANDEZ; EVELYN URQUHART; CYNTHIA  
WODARSKI, on behalf of themselves and all  
others similarly situated,

Plaintiffs,

v.

Civil Action No. 00-4148-CV

FEATHER O. HOUSTOUN, in her official  
capacity as Secretary of the Department  
of Public Welfare of the Commonwealth of  
Pennsylvania; JOANN R. LAWER, in her official  
capacity as the Deputy Secretary for the Office of  
Children, Youth and Families, DPW;  
DEPARTMENT OF HUMAN SERVICES  
OF THE CITY OF PHILADELPHIA; ALBA  
MARTINEZ, in her official capacity as  
Commissioner of DHS, Philadelphia; MAXINE  
TUCKER, in her official capacity as the Deputy  
Commissioner of the Children and Youth Division,  
DHS, Philadelphia; LANCASTER COUNTY  
CHILDREN AND YOUTH SERVICES; JILL  
McVEY, in her official capacity as Executive  
Director of Lancaster County CYS; MONROE  
COUNTY CHILDREN AND YOUTH  
SERVICES; SAT BAHL in his official capacity  
as Agency Administrator of Monroe County CYS;  
MONTGOMERY COUNTY CHILDREN AND  
YOUTH SERVICES; WALTER JUNEWICZ,  
in his official capacity as Director, Montgomery  
County CYS; BEAVER COUNTY CHILDREN  
AND YOUTH SERVICES; VICTOR  
COLONNA, in his official capacity as Director

Class Action

of Beaver County CYS; WASHINGTON  
COUNTY CHILDREN AND YOUTH SERVICES:  
JEFF FELTON, in his official capacity as  
Director, Washington County CYS

Defendants

SECOND AMENDED COMPLAINT

**I. PRELIMINARY STATEMENT**

1. This civil rights class action seeks declaratory and injunctive relief to redress defendant state and county officials' failure to provide mandated financial support, in the form of per diem foster care payments, to abused and neglected children who are in the care of plaintiff care givers, who are all relatives or close friends of the children in their care. State and county defendants have failed to meet the financial needs of these children and their care givers by either failing to inform plaintiffs of their right to receive per diem foster care payments for their care of these dependent children, or failing to pay plaintiff care givers per diem foster care payments for their care of these dependent children, as required under Title IV-E of the Social Security Act, 42 U.S.C. § 670 ~., the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution, and Pennsylvania state law and regulations.
2. Named plaintiffs are all adult care givers who care for children whose parents are unable to provide care for them for a variety of reasons, including abuse and neglect. Plaintiffs are either relatives of the children for whom they care, or close friends of the children's parents. Generally referred to as "kinship care givers," plaintiffs have no legal responsibility to provide financial support to the children they have taken into their homes. Named plaintiffs also include children who are in the care of the aforementioned "kinship care givers."
3. Plaintiffs bring this action for declaratory and injunctive relief on behalf of themselves and a putative class of similarly situated kinship care givers and children. Plaintiffs claim that the defendants have violated state and federal law by failing to: (a) notify them and other kinship care givers of their right to apply for foster care benefits on behalf of the children in their care; (b) receive and process applications for foster care benefits from them and other kinship care givers; and (c) reimburse them and other kinship care givers

for the care of the dependent children placed in their homes at the same per diem rate as non-kinship foster care givers.

4. As a consequence of defendants' failure to provide foster care payments to plaintiff kinship care givers, the dependent children in their care have been, and continue to be, denied the full economic benefits to which they are legally entitled under state and federal law. Many of these children lived in socially and economically disadvantaged settings prior to their placement with relatives and close friends. The defendants' failure to provide these children the opportunity to receive foster care maintenance payments, which are meant to cover such basic necessities as the cost of food, clothing, shelter, daily supervision, and school supplies, contributes to the cycle of poverty in which so many of these children find themselves. Moreover, as a consequence of defendants' acts and omissions described herein, some foster children may be placed in the care of strangers instead of relatives, if their relatives are without other sufficient financial resources to provide care for them.

## **II. JURISDICTION**

5. This Court has jurisdiction pursuant to 28 U.S.C. § 1343 (3) over the subject matter of this Complaint because it is an action brought under 42 U.S.C. § 1983 for redress of civil rights under the Social Security Act, 42 U.S.C. § 670, *et seq.*, and the Fourteenth Amendment to the United States Constitution. This Court also has jurisdiction under 28 U.S.C. § 1331. This Court has supplemental jurisdiction over plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.
6. Plaintiffs' claims for declaratory and injunctive relief are authorized by 28 U.S.C. §§ 2201 and 2202, and 42 U.S.C. § 1983.

## **III. PARTIES**

### PLAINTIFFS

#### Philadelphia

7. Plaintiff Edward Anderson is a resident of Philadelphia, Pennsylvania. Mr. Anderson cares for his sister's three children, who have been in the legal custody of defendant Philadelphia Department of Human Services ("Philadelphia DHS") since July 1998. Mr.

Anderson has had temporary physical custody of these children since March 1999. Mr. Anderson has been expressly denied kinship care payments by Philadelphia DHS.

8. Plaintiff Thelma Outen is a resident of Philadelphia, Pennsylvania. Ms. Outen cares for her medically-needy grandson. Upon information and belief, the child has been in the legal custody of Philadelphia DHS since 1989. Ms. Outen has never received foster care maintenance payments nor was she ever informed about the possibility of receiving such payments.
9. Plaintiff Lillian Longs is a resident of Philadelphia, Pennsylvania. Ms. Longs cares for two children of a close friend. The two children have been in the legal custody of the Philadelphia DHS since 1992. Ms. Longs has never received foster care maintenance payments for the care of these children, nor was she ever informed about the availability of such payments.
10. Plaintiff Theresa Norman is a resident of Philadelphia, Pennsylvania. Ms. Norman has cared for her nephew since January 1998. Upon information and belief, the child was adjudicated dependent and committed to the legal custody of Philadelphia DHS at the time he was placed in Ms. Norman's care. On more than one occasion, DHS has denied Ms. Norman's request to become a certified foster care giver in order to receive foster care maintenance payments. In August 2000, DHS tried to close her nephew's dependency case and simultaneously cease paying for her nephew's day care, but the case remains open and has been continued until November 21, 2000.
11. Plaintiff Rosetta Spivey is a resident of Philadelphia, Pennsylvania. Ms. Spivey has been caring for her two grandchildren since July 1998, two months after Philadelphia DHS removed from their mother's care on an emergency basis. In July 1998, the Philadelphia Court of Common Pleas awarded Ms. Spivey temporary legal custody of her grandchildren while retaining supervision of the children by deferring an adjudication of dependency. Since that placement, Philadelphia DHS has regularly monitored and supervised Ms. Spivey's home, and has contracted with Lutheran Family Services to Children in their Own Home (SCOH) to Ms. Spivey. Philadelphia DHS has repeatedly told Ms. Spivey's SCOH worker that kinship care payments were unavailable to Ms.

Spivey, and that instead, she should apply for general assistance from the Pennsylvania Department of Public Welfare.

12. Plaintiff Ella Tate is a resident of Philadelphia, Pennsylvania. Ms. Tate has been caring for her great-niece for eight and a half years. Upon information and belief, Philadelphia DHS placed the child in her care on an emergency basis in 1990. Following that initial placement, DHS had no contact with Ms. Tate or the child until 1998, when Ms. Tate contacted DHS about obtaining special services for her nephew. At that time, Ms. Tate was told by a DHS worker that the case had been closed in 1990, that DHS was trying to get rid of foster care maintenance payments for kinship care givers and that they were, therefore, unavailable to help her.

#### Beaver County

13. Plaintiffs Jodi Rae and Sheppard Pope are residents of Beaver County, Pennsylvania. Mr. and Mrs. Pope care for their grandniece and their grandnephew. Upon information and belief, the Pope's grandniece has been in the legal custody of defendant Beaver County Children and Youth Services ("Beaver County CYS") since August, 1997. Upon information and belief, the Pope's grandnephew has been in the legal custody of Beaver County CYS since June, 1999. Beaver County CYS has repeatedly denied the Pope's request for foster care maintenance payments.

#### Washington County

14. Plaintiff Billie Mae Klinzing is a resident of Washington County, Pennsylvania. Ms. Klinzing cares for her three grandchildren who, upon information and belief, have been in the legal custody of defendant Washington County Children and Youth Services ("Washington County CYS") since January, 1999. Ms. Klinzing has inquired about, but been denied, kinship care/foster care payments for the three grandchildren placed in her care.
15. Plaintiff Gloria Comito is a resident of Washington County, Pennsylvania. Ms. Comito cares for her two grandchildren who have been in the legal custody of defendant Washington County Children and Youth Services since July 1997. Washington County CYS has never informed Ms. Comito about the possibility of becoming a certified foster caregiver who is eligible to receive foster care maintenance payments. Instead,

Washington County CYC has informed Ms. Comito that she is not eligible to receive financial assistance because she is related to the children in her care.

Lancaster County

16. Plaintiff Patricia Haus-Hernandez is a resident of Lancaster County, Pennsylvania. Ms. Haus-Hernandez cares for her four grandchildren who have been in the legal custody of defendant Lancaster Children and Youth Services ("Lancaster County CYC") since June, 1999. Ms. Haus-Hernandez has never received foster care maintenance payments for the care of these children and has repeatedly been told by Lancaster County CYC that she was ineligible to receive such payments because she was a relative care giver.
17. Plaintiff Elisia L. Vasquez, birthdate 8/13/87, is a grandchild of plaintiff Haus-Hernandez, who has been in her care since June 1999. She brings this action through her next friend and current care giver, Patricia Haus-Hernandez.
18. Plaintiff Evan Vazquez, birthdate 10/3/88, is a grandchild of plaintiff Haus-Hernandez, who has been in her care since June 1999. He brings this action through his next friend and current care giver, Patricia Haus-Hernandez.

Monroe County

19. Plaintiff Evelyn Urquhart is a resident of Philadelphia, Pennsylvania. Ms. Urquhart has cared for her grandchild since April, 1999. Upon information and belief, Ms. Urquhart's grandchild has been in the legal custody of defendant Monroe County Children and Youth Services ("Monroe County CYC") since April, 1999. When Ms. Urquhart asked Monroe County CYC about the availability of kinship foster care payments, she was told that she was only eligible for kinship care payments from Philadelphia County. When Ms. Urquhart contacted Philadelphia DHS, she was told that she was only eligible for kinship care payments from Momoe County CYC.

Montgomery County

20. Plaintiff Cynthia Wodarski is a resident of Montgomery County, Pennsylvania. Ms. Wodarski has cared for her nephew since October 1997. In 1995, the child was removed from his mother's care by defendant Montgomery County Children and Youth Services ("Montgomery County CYS") and placed by the Montgomery County Court of Common Pleas in a foster care family. When Ms. Wodarski's nephew was placed in her care, he was in the legal custody of Montgomery County CYS. When Ms. Wodarski assumed responsibility *for* the child, she was told by Montgomery County CYS that they did not provide foster care maintenance payments to kinship care givers.

DEFENDANTS

21. Defendant Feather O. Houstoun is sued in her official capacity, as the Secretary of the Department of Public Welfare of the Commonwealth of Pennsylvania ("DPW"). DPW is an executive agency of the Commonwealth of Pennsylvania that oversees and supervises the Commonwealth's public welfare system. 71 P.S. § 591. As Secretary of DPW, Ms. Houstoun is charged with exercising the powers and performing the duties which are vested in, and imposed upon, the DPW by law, 71 P.S. § 66. Among other things, Secretary Houstoun is responsible for the enforcement of the Pennsylvania Public Welfare Code, 62 P.S. §§ 101- 1503 et seq., including without limitation, 62 P.S. §§ 7701 et seq. Secretary Houstoun is also expressly responsible for:
- a. making and enforcing all rules and regulations necessary and appropriate to the proper accomplishment of the child welfare duties and functions vested by law in the county institution districts. 62 P.S. § 201;

- b. overseeing DPW's application for and use of federal funds for the financing of programs in fields in which the DPW has responsibility, 62 P.S. § 201 including the administration of the federal foster care program pursuant to Title IV-E of the Social Security Act, 42 U.S.C. § 671;
  - c. overseeing the policies, practices and operations of social services agencies in the state, including those of the Office of Children, Youth, and Families, 62 P.S. § 701,55 Pa. Code § 3130.12; and
  - d. ensuring compliance by those agencies with applicable provisions of state and federal law including the administration of the federally funded foster care maintenance payment program under Title IV-E of the Social Security Act, 42 U.S.C. §§ 670, et seq.
22. Defendant Jo Ann R. Lawer is sued in her official capacity as the Deputy Secretary for the Office of Children, youth and Families ("OCYF"), a division of DPW. 62 P.S. § 701. Ms. Lawer is responsible for the policies, practices and operation of OCYF and for ensuring compliance by the office with applicable provisions of state and federal law. 71 P.S. § 1467.
23. Defendant Department of Human Services of the City of Philadelphia ("Philadelphia DHS") is an agency of the Philadelphia County Institution District, the corporate entity created by the County of Philadelphia, pursuant to the County Institution District law, 62 p .8. § 2231, and is the county agency responsible, inter alia, for the supervision, care, custody, and support of dependent children in Philadelphia County. Philadelphia, P A., Charter § 5- 700. Philadelphia DHS is the sole authority for certifying a child's eligibility for placement maintenance in Philadelphia County. 55 Pa. Code § 3140.111. Once DHS



determines that a child is eligible for placement maintenance costs, DHS is responsible for authorizing the payment of those costs to the foster parents, including relative foster parents. Id.

24. Defendant Alba Martinez is sued in her official capacity as Commissioner of Philadelphia DHS. Ms. Martinez is responsible for the policies, practices and operation of the Philadelphia DHS and for ensuring compliance by DHS with applicable provisions of state and federal law. 62 P.S. § 2252; Philadelphia, PA., Charter § 3-101.
25. Defendant Maxine Tucker is sued in her official capacity as the Deputy Commissioner of the Children and Youth Division, Philadelphia DHS. Ms. Tucker is responsible for the policies, practices and operation of the Children and Youth Division and for ensuring compliance by the division with applicable provisions of state and federal law .62 p .S. § 2256; Philadelphia, PA., Charter § 3-701.
26. Defendant Lancaster County CYS is an agency of the Lancaster County Institution District, the corporate entity created by the County of Lancaster, pursuant to the County Institution District law, 62 p .S. § 2232, and is the county agency responsible, inter alia, for the supervision, care, custody, and support of dependent children in Lancaster County, including authorizing the payment of foster care payments to relative and non-relative care givers alike.
27. Defendant Jill McVey is sued in her official capacity as Executive Director of Lancaster County CYS. Ms. McVey is responsible for the policies, practices and operation of Lancaster County CYS and for ensuring compliance by the Lancaster County CYS with applicable provisions of state and federal law. 62 P.S. § 2252.

28. Defendant Monroe County CY S is an agency of the Monroe County Institution District, the corporate entity created by the County of Monroe, pursuant to the County Institution District law, 62 p .8. § 2232, and is the county agency responsible, inter alia, for the supervision, care, custody, and support of dependent children in Monroe County , including authorizing the payment of foster care payments to relative and non-relative care givers.
29. Defendant Sat Bahl is sued in his official capacity as Agency Administrator of Monroe County CY S. Mr. Bahl is responsible for the policies, practices and operation of Monroe County CY S and for ensuring compliance by the Monroe County CY S with applicable provisions of state and federal law. 62 P.S. § 2252.
30. Defendant Montgomery CY S is an agency of the Montgomery County Institution District, the corporate entity created by the County of Montgomery, pursuant to the County Institution District law, 62 P.S. § 2232, and is the county agency responsible, inter alia, for the supervision, care, custody, and support of dependent children in Montgomery County, including authorizing the payment of foster care payments to relative and non-relative care givers alike.
31. Defendant Walter Junewicz is sued in his official capacity as Director of Montgomery CY S. Mr. Junewicz is responsible for the policies, practices and operation of Monroe County CY S and for ensuring compliance by the Montgomery County CY S with applicable provisions of state and federal law. 62 P.S. § 2252.
32. Defendant Beaver County CY S is an agency of the Beaver County Institution District, the corporate entity created by the County of Beaver, pursuant to the County Institution District law, 62 P.S. § 2232, and is the county agency responsible, inter alia, for the

supervision, care, custody, and support of dependent children in Beaver County, including authorizing the payment of foster care maintenance payments to relative and non-relative care givers alike.

33. Defendant Victor Colonna is sued in his official capacity as the Director of Beaver County CYS. Mr. Colonna is responsible for the policies, practices and operation of Beaver County CYS and for ensuring compliance by the Beaver County CYS with applicable provisions of state and federal law. 62 P.S. § 2252.
34. Defendant Washington County CYS is an agency of the Washington County Institution District, the corporate entity created by the County of Washington, pursuant to the County Institution District law, 62 P. S. § 2232, and is the county agency responsible, inter alia, for the supervision, care, custody, and support of dependent children in Washington County, including authorizing the payment of foster care maintenance payments to relative and non-relative care givers alike.
35. Defendant Jeff Felton is sued in his official capacity as the Director of Washington County CYS. Mr. Felton is responsible for the policies, practices and operation of Washington County CYS and for ensuring compliance by the Washington County CYS with applicable provisions of state and federal law. 62 P.S. § 2252.

#### **IV. CLASS ALLEGATIONS**

36. Pursuant to Fed. R. Civ. P. 23(a) and 23(b)(1), 23(b)(2), the named plaintiffs bring this state-wide class action on their own behalf and on behalf of all other persons similarly situated. The plaintiff class consists of:
  - a. *Plaintiff Class A* – All children in Pennsylvania and their Kinship Caregivers who were not provided notice of their ability to seek foster care maintenance payments

or who were otherwise denied the opportunity to seek foster care maintenance payments from August 16, 2000, and who fit into any one of the following categories:

- i. Who were adjudicated dependent and committed by court order to the legal custody of a Defendant County Agency and were placed by the Defendant County Agency in the physical custody of a Kinship Caregiver, where the court subsequently transferred legal custody to the Kinship Caregiver;
  - ii. Who were committed by court order to the legal custody of a Defendant County Agency, after adjudication of dependency was deferred, and were placed by the Defendant County Agency in the physical custody of a Kinship Caregiver, where the court subsequently transferred legal custody to the Kinship Caregiver;
  - iii. Who were adjudicated dependent and committed by court order to the legal custody of a Defendant County Agency and were placed by the Defendant County Agency in the physical custody of a Kinship Caregiver.
- b. *Plaintiff Class B* – All children in Pennsylvania and their kinship Caregivers, who fit into any one of the following four categories during the period from August 16, 2000, until this case is dismissed:
- i. Who were adjudicated dependent and committed by court order to the legal custody of a County Agency and were placed by the County Agency in the physical custody of a Kinship Caregiver without notice to the Kinship Caregiver of the ability to seek foster care maintenance payments,

where the court subsequently transferred legal custody to the Kinship Caregiver;

- ii. Who were committed by court order to the legal custody of a County Agency, without an adjudication of dependency, and were placed by the County Agency in the physical custody of a Kinship Caregiver without notice to the Kinship Caregiver of the ability to seek foster care maintenance payments, or who were otherwise denied the opportunity to seek foster care maintenance payments, where the court subsequently transferred legal custody to the Kinship Caregiver;
- iii. Who were committed by court order to the legal custody of a County Agency, with or without an adjudication of dependency, and were placed by the County Agency in the physical custody of a Kinship Caregiver who did not receive notice of the ability to seek foster care maintenance payments, or were otherwise denied the opportunity to seek foster care maintenance payments;
- iv. Who were placed with a Formal Kinship Caregiver who has received or is receiving foster care maintenance payments at a lower per diem rate than other similarly situated foster parents providing the same level of care within the county.

37. The defined class is so numerous that joinder of all plaintiffs is impracticable. Upon information and belief, the number of class members statewide exceeds 7500.
38. There are questions of fact and law common to the class, and those questions predominate over all other questions affecting individual class members. All plaintiff

class members have the same federal and state rights to be notified of the availability of foster care maintenance payments for the children in their care and have the same federal and state rights to be paid foster care per diem payments on the same basis and at the same rate as all other foster care givers of dependent children in Pennsylvania.

39. Common questions of fact include the following:

- a. Whether defendants have a policy, practice or custom of refusing to pay any per diem foster care reimbursement, clothing allowance or other support for dependent children placed by the court in the care of kinship care givers;
- b. Whether defendants have a policy, practice or custom of failing to notify kinship care givers of their right to apply for foster care per diem reimbursements, clothing allowances and other support available to non- kinship foster families with whom the court and county children and youth agency have placed dependent children;
- c. Whether defendants have a policy, practice or custom of deterring and discouraging kinship care givers from applying for foster care per diem reimbursements, clothing allowances and other support in order to avoid paying such costs and
- d. Whether defendants have a policy or practice of failing to notify kinship care givers of the circumstances under which they could become eligible for foster care per diem reimbursements, clothing allowances and other support for the dependent children in their care.

40. Common questions of law include the following:

- a. Whether defendants have violated and are continuing to violate Title IV-E of the Social Security Act, 42 U.S.C. § 672, due to their failure to pay mandated per diem reimbursements, clothing allowances or other supports to the judicially approved kinship care givers;
- b. Whether defendants have violated and are continuing to violate Title IV-E of the Social Security Act by their failure to require, through regulations or otherwise, that county agencies inform kinship care givers of the provisions of Title IV-E and of the circumstances under which they could become eligible for Title IV -E foster care maintenance payments;
- c. Whether defendants have violated and are continuing to violate Title IV-E of the Social Security Act due to their failure to reimburse kinship foster care givers at the same per diem rate as non-kinship foster care givers;
- d. Whether defendants have violated and are continuing to violate Pennsylvania law due to their failure to provide mandated per diem reimbursements, clothing allowances and other supports to kinship care givers of dependent children in their care;
- e. Whether defendants have violated and are continuing to violate Pennsylvania law and policy due to their failure to inform formal kinship care givers of their right to receive foster care maintenance payments for the dependent children in their care;
- f. Whether defendants have violated and continue to violate Pennsylvania law and policy due to their failure to reimburse kinship foster care givers at the same per diem rate as non-kinship foster care givers.

41. The claims of the named plaintiffs are typical of the claims of the class. The named plaintiffs' claims arise from the same conduct -- the failure to notify and/or provide class members with mandated foster care payments -- that give rise to the absentee members', claims.
42. The named plaintiffs will fairly and adequately protect the interests of the class. They have no interests antagonistic to the interests of the class; the plaintiffs and class members seek to assure the availability of, and access to, foster care maintenance payments for the children in their care. Therefore, the relief that the named plaintiffs seek will benefit all.
43. Plaintiffs' attorneys are experienced career public interest lawyers with extensive experience litigating federal civil rights class action lawsuits.
44. By routinely denying foster care maintenance payments to kinship care givers and/or by routinely failing to inform kinship care givers of the circumstances under which they are entitled to foster care reimbursement payments, defendants have acted on grounds generally applicable to members of the class. As a result, declaratory and injunctive relief with respect to the entire class is appropriate. The plaintiffs' rights to foster care maintenance payments can best be addressed through one action on their behalf.
45. A class action is superior to other methods for the fair and efficient adjudication of this controversy and this litigation presents no unusual manageability problems.

## **V. FACTUAL ALLEGATIONS**

### **FEDERAL LAW**

46. Title IV-E of the Social Security Act, 42 U.S.C. § 672, requires states receiving funds pursuant to that Act to make foster care maintenance payments to foster parents caring for children placed in their care who have, inter alia, either been removed from the home



pursuant to a voluntary placement agreement or as the result of a judicial determination and court order, where such children would have been eligible for Temporary Assistance to Needy Families ("TANF") in accordance with the State plan. 42 U.S.C. § 672 (a)(1), (4)(A), (B).

47. Title IV-E of the Social Security Act, 42 U.S.C. § 670 ~., does not distinguish between foster parents who are unrelated to a child placed in their home, and those who are kinship care givers, for the purposes of establishing the care givers' legal right to receive foster care maintenance payments.
48. Title IV-E of the Social Security Act, 42 U.S.C. § 671, requires a state to designate a state agency to be responsible for administering its foster care maintenance program. In Pennsylvania, the agency responsible for overseeing the administration of the foster care maintenance program, which includes the disbursement of federal funds under Title IV-E of the Social Security Act, is the Pennsylvania Department of Public Welfare. 71 P .S. § 201
49. Title IV-E of the Social Security Act, 42 U.S.C. § 675, defines foster care maintenance payments as "payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation."
50. Title IV-E of the Social Security Act, 42 U.S.C. § 672, defines a foster family home as a "home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State having responsibility for licensing homes of this types, as meeting the standards established for such licensing."

51. Title IV-E of the Social Security Act, 42 U.S.C. § 671, requires a State to consider giving preference to an adult relative over a non-related care giver when determining a placement for a child, provided that the relative care giver meets all relevant State child protection standards.
52. Pursuant to the federal statutory scheme described above, Pennsylvania receives a portion of its funds for foster care payments, including kinship care payments, from the federal government. On information and belief, the federal share of these payments is not less than 50%.
53. On information and belief, the remaining portion of federally mandated foster care payments is made up of a combination of state and county funds.

STATE LAW AND POLICY

54. According to regulations promulgated by the Pennsylvania DPW, a county agency may place a child in a foster family home if the agency finds placement essential to protect the health and safety of a child and: "(1) the child has been taken into custody under the provisions of the Juvenile Act or by a physician under the Child Protective Services Law; (2) the county agency obtains a court order which transfers temporary legal custody to the county agency and which authorizes such placement; or (3) the county agency obtains a voluntary placement agreement." 55 Pa. Code § 3130.64 (a)(1), (2), and (3).
55. Once a child is placed in a judicially approved foster care home pursuant to a court order or a voluntary placement agreement, the foster care giver is entitled to foster care maintenance payments, to be administered by the county agency. 55 Pa. Code § 3140.111.

56. A foster family in Pennsylvania is "[t]he living unit, including the foster family residence and foster parent, approved by a foster family care agency to provide foster family care to children." 55 Pa. Code § 3700.4
57. A foster parent in Pennsylvania is "[an] individual responsible for providing foster family care to children placed by the Foster Family Care Agency." Foster family care is defined as "[r]esidential care and supervision provided to a child placed with a foster family." 55 Pa. Code § 3700.4.
58. Pennsylvania regulations require county agencies to give all foster care givers, including kinship care givers, information about the availability of foster care maintenance payments under Title IV-E of the Social Security Act. 55 Pa. Code § 3700.38. The Office of Children, youth and Families of DPW recognizes that "child welfare agencies should inform potential kinship care givers in writing of their possible right to receive foster care payments." OCYF Bulletin 00-97-06.
59. State regulations regarding the certification and approval of foster family homes are to be uniformly applied to any adult providing substitute family care for any child considered to be in placement regardless of the relatedness of the care giver and the child. OCYF Bulletin, 3130-84-06, 3700-84-01.
60. OCYF defines kinship care as "the full-time nurturing and protection of children who must be separated from their parents and temporarily placed in the home of a care giver who has an existing relationship with the child and/or the child's family." OCYF Bulletin 00-97 -06.
61. OCYF defines a formal kinship care giver as "[a]n individual providing care for a child who has a relationship with a child or the child's family. The child is in the custody of an

approved county children and youth agency. The relationship will involve one of the following characteristics: (i) related to the child through blood or marriage; OR (ii) god parent as recognized by an organized church; OR (iii) member of a tribe or clan; OR (iv) significant and positive relationship with the child or the child's family." OCYF Bulletin 00-97-06.

62. According to OCYF regulations, if a child is placed with a relative through a formal kinship care arrangement, the agency is responsible for providing supervision to kinship care givers and supervision and services to the child. OCYF Bulletin 00-97-06.
63. In accordance with federal law, OCYF officially recognizes that "[f]oster parents who are related to the foster child are entitled to the same rate of reimbursement as would be paid to non-relative foster parents." OCYF Bulletin 3130-84-07,3700-84-02.
64. Upon information and belief, and notwithstanding the foregoing, Pennsylvania DPW and defendants Houstoun and Lawer have a policy, custom or practice of directing the county agencies to reimburse kinship foster care givers and non-kinship foster care givers at different per diem rates. See Exhibit " A " attached hereto, setting forth schedule of rates for Pennsylvania Contracts, and showing lower per diem rates for kinship care foster parents.
65. Notwithstanding the foregoing, on information and belief, DPW state officials, including Robert Stefan, DPW Western Regional Director, and John Austin, DPW Western Regional Supervisor, have in the past been made aware of the inability of certain of plaintiff class members to obtain kinship foster care payments from their county CYS, but have failed to advise plaintiffs of their right to file a complaint with DPW, or to instruct the relevant county CYS office to proffer the state and federally mandated payments to

plaintiffs. On further information and belief, state DPW officials Stefan and Austin have advised plaintiffs that the state's authority was limited to "urging" the counties to comply, despite DPW's clear obligation to ensure state and county compliance with the federal law and mandates.

66. Notwithstanding the foregoing, on information and belief, DPW state officials, including Richard A. Houston, DPW Regional Director, were and are aware that county CYS agencies are not complying with state and federal laws regarding the provision of foster care maintenance payments to eligible kinship care givers. See Exhibit "C" (redacted) attached hereto, wherein Mr. Houston writes in an e-mail dated 9/8/00 that DPW is "addressing the areas that all agencies will need to address to come into compliance with the Children, Youth and Families Bulletin on Kinship Care."

COUNTIES' POLICIES, PRACTICES AND CUSTOMS

67. Upon information and belief, Philadelphia DHS has a policy, practice and custom of reimbursing kinship foster care givers in Philadelphia county at a different per diem rate than non-kinship foster care givers. See Exhibit " A," setting forth schedule of rates for Pennsylvania Contracts, and showing lower per diem rates for kinship care foster parents.
68. Upon information and belief, all defendant county children and youth agencies have a policy, practice or custom of not informing kinship care givers' of their right to receive foster care maintenance payments.
69. Upon information and belief, all defendant county children and youth agencies have a policy, practice or custom of encouraging kinship care givers to assume legal custody of the children in their care without explaining the full ramifications of that decision or

informing them of the option of becoming formal kinship care givers, thereby relieving the defendant county agencies of any legal or financial responsibilities toward the children or their caretakers through the provision of foster care payments.

70. Upon information and belief, all defendant county children and youth agencies have a policy, practice or custom of denying foster care payments to kinship care givers who ask about such payments.
71. Upon information and belief, in addition to named defendant county CYS agencies, numerous other county CYS agencies around the state have a policy, practice or custom of denying foster care payments to kinship care givers either by failing to inform eligible care givers about the possibility of becoming certified foster parents or by expressly denying eligible care givers foster care payments on the basis of their relatedness to the children in their care. These counties include but are not limited to: Westmoreland County, Huntingdon County , Delaware County , and Carbon County.

#### ALLEGATIONS OF INDIVIDUAL PLAINTIFFS

##### Plaintiff Anderson

72. Plaintiff Edward Anderson was awarded temporary physical custody of his sister's three children, ages 3,4, and 14, on March 22, 1999.
73. The three children were committed to the custody of Philadelphia DHS in July 1998.
74. At that time, Mr. Anderson was told by DHS that, in order to qualify for kinship care payments, he would have to move to a larger apartment, as Mr. Anderson also has custody of his 11 year-old son.
75. Mr. Anderson subsequently obtained a three bedroom apartment, and was awarded temporary physical custody of the children. Mr. Anderson has completed parenting

classes at the request of DHS and currently receives SCOH ("Services to Children In Their Own Homes") from DHS.

76. The oldest of plaintiff Anderson's three foster children has special needs, and receives Supplemental Security Income ("SSI") benefits.
77. Although Mr. Anderson has requested kinship care payments from DHS, his DHS caseworker, Francia Taggart, and Taggart's supervisor, Gail Cummings, have denied Mr. Anderson these payments. Instead, DHS has directed Mr. Anderson to apply for public welfare benefits, or Temporary Assistance to Needy Families ("TANF") and to rely as well on the SSI payments received on the oldest foster child's behalf. According to DHS employees Taggart and Cummings, the decision whether to award kinship foster care payments is "discretionary," and in DHS's view, Mr. Anderson does not need these payments.

#### Plaintiff Outen

78. Plaintiff Thelma Outen has been caring for her grandson for eight and a half years.
79. Upon information and belief, the child has been in the custody of the Philadelphia DHS since he was born, nine years ago.
80. Ms. Outen began caring for the child when he was nine months old, following his removal from a medical foster care placement.
81. When DHS placed her grandson in her home, Ms. Outen was informed by DHS that "grandparents cannot be foster parents."
82. Ms. Outen was never informed about the availability of foster care maintenance payments.

Plaintiff Longs

83. Plaintiff Lillian Longs began caring for the two children of her friend in 1992, when Philadelphia DHS removed the children from the care of their mother.
84. Upon information and belief, the children were adjudicated dependent and placed by the court in Ms. Longs' home in 1992.
85. Upon information and belief, Ms. Longs' home was a certified foster care home at the time the children were placed.
86. At the time Ms. Longs became a formal kinship caregiver for the two children, she was not informed of the availability of foster care maintenance payments.
87. Instead, Ms. Longs was advised by her DHS caseworker, Phyllis Williams, and William's supervisor, Bill Lawhorne, to apply for public assistance for the care of the children.
88. Upon information and belief, the amount Ms. Longs receives in public assistance is less than the amount she would receive as a kinship foster caregiver.

Plaintiff Norman

89. Plaintiff Theresa Norman has cared for her four-year old nephew since January 1998.
90. Upon information and belief, the child was adjudicated dependent on November 12, 1997 and committed to the legal custody of Philadelphia DHS. In January 1998, the child was placed by Philadelphia family court in Ms. Norman's home.
91. Throughout the time that Ms. Norman has cared for her nephew, DHS has paid for his day care arrangements.
92. In August, 2000, Ms. Norman received a letter from DHS in which she was informed that DHS was closing her nephew's case and also stopping payments for her nephew's day care.



93. When Ms. Norman informed DHS that she would not be able to care for her nephew without DHS' help in paying for day care, she was told that the child would be removed from her home and placed for adoption.
94. When Ms. Norman asked DHS about becoming a certified foster parent, she was told she was ineligible.
95. When Ms. Norman asked DHS about accessing kinship care payments, she was told that kinship care was only available "to those who deserve it" and that the child in her care did not need the financial help.
96. On October 20, 2000, there was a hearing in Philadelphia Family Court which was continued until November 21, 2000.

Plaintiff Spivey

97. Plaintiff Rosetta Spivey has cared for her two grandchildren, now ages eight and seven, since July 1998, two months after Philadelphia DHS removed them on an emergency basis from their mother's care.
98. Upon information and belief, a dependency petition was filed on behalf of the children, but in July 1998 the Philadelphia Court of Common Pleas deferred adjudication on the petition and awarded temporary legal custody to Ms. Spivey.
99. Since the children's placement, Philadelphia DHS has regularly monitored and supervised Ms. Spivey's home through the provision of Services to Children in their Own Homes (SCOH).
100. In accordance with the Pennsylvania Juvenile Act, specifically 42 Pa. Cons. Stat. § 6351(e), six-month review hearings before the Philadelphia Court of Common Pleas are routinely scheduled in this case. The most recent hearing was in June, 2000.

101. Although Ms. Spivey is wheelchair bound, Ms. Spivey has no difficulty parenting her grandchildren, attending court hearings, or participating in other required activities or meetings involving her grandchildren. Additionally, Ms. Spivey's twenty-seven-year-old daughter lives with her and assists in taking care of the grandchildren.
102. On behalf of Ms. Spivey, the SCOH worker, Michelle Murphy, has asked Philadelphia DHS about the possibility of Ms. Spivey receiving kinship care payments for the care of her grandchildren. Philadelphia DHS has declined to offer Ms. Spivey kinship care payments, purportedly because DHS does not believe Ms. Spivey would attend parenting classes based on her disability.
103. On information and belief, Philadelphia DHS has never advised Ms. Spivey of its kinship care program, or of the criteria for her participation as a kinship care giver.
104. Upon information and belief, the amount Ms. Spivey receives in public assistance is less than the amount she would receive as a kinship care giver.

Plaintiff Tate

105. Plaintiff Ella Tate has been caring for her great-niece for eight and a half years.
106. The child was originally taken from her mother's custody by the Philadelphia DHS in 1990 because the child was living in a shelter.
107. At that time, DHS asked Ms. Tate to begin caring for the child on an emergency basis.
108. When Ms. Tate agreed, DHS gave her a document stating that the child would only be in her care for two weeks.
109. Following the placement, DHS had no contact with Ms. Tate or the child until early 1998.

110. At that time, Ms. Tate contacted DHS because she wanted their help in getting therapy for the child.
111. Ms. Tate was informed by a DHS worker, Patricia Simmons, that the agency had closed the case after the child was placed in her care in 1990.
112. Further, Ms. Tate was told by Simmons that DHS was trying to get rid of kinship care payments and that they were, therefore, unavailable to her.
113. Upon information and belief, there was never any formal transfer of custody to Ms. Tate.

Plaintiffs Jodi Rae and Sheppard Pope

114. Plaintiffs Jodi Rae and Sheppard Pope began caring for their grandniece in August, 1997, when Beaver County CYS removed the child from his mother's care and placed him with Mr. and Mrs. Pope. Upon information and belief, the Pope's grandniece was adjudicated dependent by the Beaver County Court of Common Pleas in August, 1997.
115. In 1997, Mr. and Mrs. Pope completed all of the foster care parent requirements specified by Beaver County CYS.
116. Despite the fact that Mr. and Mrs. Pope are certified foster care givers, they have never received foster care maintenance payments for the care of their grandniece. Mr. and Mrs. Pope have been repeatedly denied these payments by Beaver County CYS because they are "blood relatives" of their grandniece.
117. In June of 1999, Mr. and Mrs. Pope also began caring for their grandnephew after he was removed from his parent's care by Beaver County CYS. Following the boy's removal from his parent's home, a caseworker from Beaver County CYS called Mr. and Mrs. Pope several times to ask for permission to place the child in their care.

118. Upon information and belief, the Pope's grandnephew was adjudicated dependent by the Beaver County Court of Common Pleas and placed by the court in the home of Mr. and Mrs. Pope.
119. Mr. and Mrs. Pope have never received foster care maintenance payments for the care of their grandnephew. Beaver County CYC has denied them these payments because the Pope's are kinship care givers.
120. Beaver County CYC advised the Pope's that they were only entitled to welfare payments. On information and belief, Mr. and Mrs. Pope began receiving welfare payments in late 1999. Upon information and belief, the amount that the Pope's receive in welfare is less than the amount that they would have received in foster care maintenance payments.
121. The Pope's have on several occasions asked Beaver County CYC to provide assistance in securing necessities for the foster children, such as car seats and a bed. Beaver County CYC provided a car seat for the grandniece. However, after the placement of the grandnephew with the Pope's, the agency refused to provide a second car seat. The agency also refused to provide a bed for the grandnephew, making it necessary for him to sleep with his grandparents.
122. On August 24, 2000, a caseworker for Beaver County CYC sent a letter to Mr. and Mrs. Pope in which she wrote that Beaver County CYC was "in the process of developing a Kinship Care Program, which will provide a variety of services to support families who care for children." See Exhibit "D" attached hereto.

Plaintiff Billie Mae Klinzing

123. Plaintiff Billie Mae Klinzing had taken care of her three grandchildren intermittently prior to 1999, sometimes as a result of a Washington County Court adjudication of dependency

and sometimes voluntarily at the request of Washington County CYS. Never once did Washington County CYS advise Ms. Klinzing that she is entitled to foster care maintenance payments for the foster children in her care.

124. Most recently, Ms. Klinzing began caring for her three grandchildren in January of 1999 at the request of a Washington County CYS caseworker, who decided to remove the children from their mother's care.
125. Klinzing's grandchildren were adjudicated dependent and placed formally by the Washington County Court of Common Pleas in Ms. Klinzing's home on June 3, 1999.
126. Ms. Klinzing was told by her Washington County CYS caseworker, Julie Moresschi and Ms. Moresschi's supervisor, Marjorie King, that she was not eligible for foster care payments. Instead, she was advised to apply for TANF.
127. On information and belief, on July 26,2000, the Washington County Court of Common Pleas continued placement of the three grandchildren with the Klinzings, and scheduled a further review hearing in six months from that date.

Plaintiff Gloria Comito

128. Plaintiff Gloria Comito has cared for her two granddaughters since July of 1997 when they were removed from their mother's care by Washington County CYS.
129. Ms. Comito's grandchildren were adjudicated dependent, committed to the legal custody of Washington County CYS and placed by the Washington County Court of Common Pleas in her care in July of 1997.
130. Ms. Comito has never received foster care maintenance payments for the care of her grandchildren.

131. When Ms. Comito asked Washington County CYC about receiving financial assistance for the care of her granddaughters, she was told that she was not eligible to receive assistance because she was a grandparent.
132. On information and belief, in August 2000 the Washington County Court of Common Pleas ordered the two children to remain in foster care placement with their maternal grandmother and scheduled a further review hearing six months from that date.

Plaintiffs Haus-Hernandez and Elisia and Evan Vazquez

133. Plaintiff Patricia Haus-Hernandez began caring for her four grandchildren, including plaintiffs Elisia L. Vazquez and Evan Vazquez, in June of 1999. At that time, Lancaster County CYC had removed the children from their mother's care.
134. Plaintiff Haus-Hernandez's grandchildren were adjudicated dependent, committed to the custody of Lancaster County CYC, and placed by the Lancaster County Court of Common Pleas in Ms. Haus-Hernandez' home in June, 1999.
135. When Ms. Haus- Hernandez inquired about the availability of foster care payments for the care of her four grandchildren, she was told by Lancaster County CYC supervisor Kurt Miller and CYC caseworkers Amber Goehreg and Marlene Jennings that she was not entitled to receive any money because she was a relative care giver.
136. Again, when Ms. Hernandez asked Lancaster County CYC about becoming a certified foster care giver, she was told that regardless of whether or not she was a certified foster parent, she would still not be eligible to receive any foster care payments because she was related to the children in her care.

137. Ms. Hernandez was advised to apply for public assistance (TANF) for the care of her grandchildren. Ms. Hernandez has not received been receiving TANF, but has been receiving SSI benefits effective January 2000.
138. Ms. Hernandez is currently receiving child support from her grandchildren's parents. Upon information and belief, the amount Ms. Hernandez receives in child support is less than the amount she would receive as a kinship foster care giver.

Plaintiff Urquhart

139. Plaintiff Evelyn Urquhart has cared for her grandchild since April 5, 1999.
140. The child was living in Monroe County when he was removed from his mother's care by Monroe County Children and Youth Services ("CYS").
141. On information and belief, Monroe County CYS caseworker, PJ Giese, informed Ms. Urquhart that if she did not agree to care for her granddaughter, the child would be placed in foster care.
142. Subsequently, Ms. Urquhart went to Domestic Relations Court in Philadelphia County and was given emergency temporary custody of the child.
143. When Ms. Urquhart asked Monroe County CYS about the availability of kinship foster care payments, she was told by Giese that she was only eligible for kinship care payments from Philadelphia County, where she was a resident.
144. When Ms. Urquhart contacted Philadelphia DHS, she was told by Philadelphia DHS caseworker, Chris Sirachman, that she was only eligible for kinship care payments from Monroe County.
145. Ms. Urquhart has not received kinship foster care payments from either county.

Plaintiff Wodarski

146. Plaintiff Cynthia Wodarski has cared for her nephew since October, 1997.
147. In 1995, the child was removed from his mother's care by in Montgomery County CYS, adjudicated dependent and placed by the Montgomery County Court of Common Pleas in a foster care family.
148. When Ms. Wodarski assumed responsibility for the child, she was told by Montgomery County CYS that they do not provide foster care payments to kinship care givers.
149. When Ms. Wodarski began caring for her nephew in October, 1997, he was in the legal custody of Montgomery County CYS.
150. Ms. Wodarski was also told by Montgomery County CYS that if she could not handle the financial burden of caring for her nephew, he would be removed from her care and placed elsewhere.

Allegations as to all Plaintiffs

151. All plaintiffs, who have been entrusted with the care and placement of foster children by defendant county agencies and/or the court, have either been formally certified as foster parents or could and should have been certified as foster parents.
152. On information and belief, all of the children placed in the care of plaintiff kinship care givers would have been eligible for state aid (now T ANF) at the time they were placed with plaintiff kinship care givers, in accordance with 42 U.S.C. § 672(a)(4)(A),(B).

Harm to all Plaintiffs

153. Defendants' failure to inform plaintiffs of their rights under federal and state law to receive foster care per diem financial assistance to help with the care of the children in their custody, and the defendants' failure to provide the legally required subsidies, has



caused plaintiffs significant financial hardship and has in some instances deprived the foster children of important life necessities.

154. As a result of state and county defendants' policies and practices, actions and omissions set forth above, all plaintiffs have suffered, are suffering and will continue to suffer immediate and irreparable harm. Plaintiffs have no adequate remedy at law.

## **VI. CLAIMS**

### **FIRST COUNT: VIOLATION OF DUE PROCESS AND EQUAL PROTECTION**

#### **(ALL DEFENDANTS)**

155. Plaintiffs incorporate herein the allegations set forth in Paras. 1- 152 of this Complaint.
156. Defendants, by their acts and omissions under color of state law as described above, including, without limitation, (1) their failure to pay any support in the form of a per diem reimbursement, clothing allowance or other support to the judicially approved plaintiff care givers of the circumstances under which they can apply for such benefits in order to avoid paying such costs established under the federal AFDC-FC foster care regulations; and (3) their failure to reimburse judicially approved kinship foster care givers at the same per diem rate as non-kinship foster care givers for the care of dependent children placed with them pursuant to a court order or a voluntary placement agreement, have violated the Due Process and Equal Protection Clauses of the United States Constitution.

### **SECOND COUNT: VIOLATION OF TITLE IV-E OF THE SOCIAL SECURITY ACT**

#### **(ALL DEFENDANTS)**

157. Plaintiffs incorporate herein the allegations set forth in Paras. 1- 154 of this Complaint.
158. Defendants, by their acts and omissions under color of state law described above, including, without limitation, (1) their failure to pay any support in the form of a per diem

reimbursement, clothing allowance or other support to the judicially approved plaintiff kinship care givers and their dependent children; and (2) their failure to notify plaintiff kinship care givers of the circumstances under which they can apply for such benefits, have violated Title IV-E of the Social Security Act, 42 U.S.C. § 672, the purpose of which is to assure that children who have been determined by a court to be dependent, whose placement and care are the responsibility of the state or local agency responsible for administering the state plan for aid and services to needy families, and who were eligible for AFDC-FC are placed in certified foster homes and receive foster care per diem reimbursements.

159. Defendants, by their acts and omissions under color of state law described above, including, without limitation, their failure to reimburse judicially approved kinship foster care givers at the same per diem rate as non-kinship foster care givers for the care of dependent children placed with them pursuant to a court order or a voluntary placement agreement, have violated Title IV -E of the Social Security Act, 42 U .S.C. §§ 670 et seq., which establishes kinship foster care givers' legal right to receive foster care maintenance payments on the same basis and at the same rate as non-kinship care givers.

THIRD COUNT: VIOLATION OF PENNSYLVANIA LAW

(DEFENDANT COUNTY CHILDREN AND YOUTH AGENCIES  
AND INDIVIDUAL COUNTY DEFENDANTS)

160. Plaintiffs incorporate herein the allegations set forth in Paras. 1- 157 of this Complaint.
161. Defendant County Children and Youth Agencies and individual county defendants, by their acts and omissions under color of state law described above, including, without limitation, their failure to notify kinship care givers of their right to receive foster care

reimbursement payments for the care and support of dependent children placed with them by the court, have violated their obligations under Pennsylvania law to fully inform prospective foster care givers of all applicable statutes and regulations governing Pennsylvania's foster care system. 55 Pa. Code § 3700.38.

162. Defendant County Children and Youth Agencies and individual county defendants, by their acts and omissions under color of state law described above, including, without limitation, their failure to reimburse plaintiff kinship care givers for their care and support of dependent children placed with them by the court, have violated their obligations under Pennsylvania law to pay reimbursement and support to caretakers of dependent children who are not legally responsible for the children's support, 55 Pa. Code § 3140.111.
163. Defendant County Children and Youth Agencies and individual county defendants, by their acts and omissions under color of state law described above, including, without limitation, their failure to reimburse kinship care givers at the same per diem rate as non-kinship foster care givers for the care of dependent children placed with them pursuant to a court order or a voluntary placement agreement, have violated their obligations under Pennsylvania law, 55 Pa. Code § 3700 et seq., and OCYF Bulletin 3130-84-07,3700-84-02, attached hereto as Exhibit "B", which establishes that kinship care givers should receive foster care maintenance payments on the same basis and at the same rate as non-kinship care givers.

## **VII. RELIEF**

WHEREFORE, Representative Plaintiffs respectfully pray:

1. That this Court assume jurisdiction of the action;

2. That this Court certify this as a class action under Fed. R. Civ. P. 23(a) and 23(b)(1), 23(b)(2);
3. That this Court issue a declaratory judgment that the State and County defendants' policy and practice of failing to notify plaintiff kinship care givers of their eligibility for per diem foster care payments, and/or failing to pay any per diem foster care reimbursement, clothing allowance or other support for dependent children placed in the homes of plaintiff kinship care givers pursuant to either a court order or voluntary placement agreement, violates Title IV-E of the Social Security Act, 42 U.S.C. § 670 et seq., as well as the Due Process and Equal Protection Clauses of the United States Constitution;
4. That this Court issue a declaratory judgment that the County defendants, policies and practices of failing to notify plaintiff kinship care givers of their eligibility for per diem foster care payments, and/or failing to pay any per diem foster care reimbursement, clothing allowance or other support for dependent children placed in the homes of plaintiff kinship care givers pursuant to a court order or voluntary placement agreement, violates Pennsylvania law and regulations;
5. That this Court issue a declaratory judgment that plaintiff kinship care givers who have been or will in the future serve as kinship care givers for dependent children placed in their homes pursuant to a court order or voluntary placement agreement, are entitled to foster care reimbursement payments at the same per diem rate as non-kinship care givers;
6. That this Court issue preliminary and then permanent injunctive relief enjoining State and County defendants:
  - (1) from engaging in the practices complained of in this Complaint, namely,

- (a) failing to give plaintiff provide kinship care givers information about foster care benefits;
  - (b) failing to notify plaintiffs of their right to apply for foster care benefits;
  - (c) failing to notify plaintiffs in writing of the action taken on their request for foster care benefits and, if benefits are denied, the reason for the denial, the legal basis for the denial, and an explanation and description of their appeal rights;
  - (d) failing to notify plaintiffs in writing of the action taken on their request for foster care benefits and, if benefits are approved, a statement of the starting date of eligibility , the amount of the maintenance payment and an explanation of any offset for recoupment of TANF or Family GA, the amount of the difficulty of care supplement, an explanation of how it was calculated, and an explanation and description of appeal rights; and
7. That this Court order State and County defendants to audit their records and notify eligible class members of their potential right to file claims and seek state administrative proceedings;
  8. That this court award plaintiffs' costs and reasonable attorney's fees; and
  9. That this Court award such additional or alternative relief which this Court deems just, proper, or equitable.

Respectfully submitted,

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