

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION**

ROGER CANUPP, et al.,

Plaintiffs,

v.

Case No. 2:04-cv-260-FtM-29DNF

**LIBERTY BEHAVIORAL HEALTH
CORP., et al.,**

Defendants.

_____ /

ANSWER AND DEFENSES OF DEFENDANT JERRY REGIER

Defendant, Jerry Regier, in his official capacity as Secretary of the Florida Department of Children and Families by and through undersigned counsel, hereby submits his Answer and asserts his Defenses to Plaintiffs' Complaint for declaratory and prospective injunctive relief as follows:

PRELIMINARY STATEMENT

_____ This Answer is submitted on behalf of Defendant, Jerry Regier, in his official capacities only. For purposes of this Answer, the term "Defendant" will be used when the response to an allegation pertains to Jerry Regier in his official capacity as Secretary of the Florida Department of Children and Families; "Liberty" will be used when referring to Liberty Behavioral Healthcare, Inc. The responses set forth in paragraphs 1 through 165 herein, correspond to the allegations in paragraphs 1 through 165 of the Plaintiffs' Complaint.

ANSWER

1. Defendant denies the allegations of paragraph one
2. Defendant denies the allegations of paragraph two.
3. Defendant denies the allegations of paragraph three.
4. Defendant denies the allegations of paragraph four.
5. Defendant denies the allegations of paragraph five.
6. Defendant admits that this Court has jurisdiction in this case. Defendants deny all other allegations of paragraph six.
7. Defendant denies the allegations of paragraph seven. Title 42 U.S.C. §§ 1983, 1988 and 12205 speak for themselves.
8. Defendant denies the allegations of paragraph eight.
9. Defendant admits the allegations of the first three sentences of paragraph nine, but denies the fourth sentence of paragraph nine.
10. Defendant admits the allegations of the first three sentences of paragraph ten, but denies the fourth sentence of paragraph ten.
11. Defendant admits the allegations of the first three sentences of paragraph eleven, but denies the fourth and fifth sentences of paragraph eleven.
12. Defendant denies the allegations of paragraph twelve.
13. Defendant admits allegations of the first three sentences of paragraph thirteen, but denies the fourth sentence of paragraph thirteen.
14. Defendant admits the allegations of the first three sentences of paragraph fourteen, but denies the fourth sentence of paragraph fourteen.

15. Defendant admits the allegations of the first three sentences of paragraph fifteen, but denies the fourth sentence of paragraph fifteen.

16. Defendant admits the allegations of the first three sentences of paragraph sixteen, but denies the fourth sentence of paragraph sixteen.

17. Defendant admits that Liberty Behavioral Health Corporation is a for-profit Pennsylvania corporation and otherwise denies the allegations of paragraph seventeen.

18. Defendant admits the allegations of the first, third and fourth sentences of paragraph eighteen and denies the allegations of the second sentence of paragraph eighteen.

19. Defendants admits the allegations of paragraph nineteen are plead in the Complaint.

20. Defendant denies the allegations of paragraph twenty.

21. Defendant denies the allegations of paragraph twenty-one, but admits that the population at FCCC exceeds 420 individuals.

22. Defendant denies the allegations of paragraph twenty-two.

23. Defendant denies the allegations of paragraph twenty-three.

24. Defendant denies the allegations of paragraph twenty-four.

25. Defendant is without sufficient information to admit or deny the allegations of paragraph twenty-five.

26. Defendant denies the allegations of paragraph twenty-six.

27. Defendant denies the allegations of paragraph twenty-seven and states that the allegations are of law and not fact and the referenced Florida Statute speaks for itself.

28. Defendant denies the allegations of paragraph twenty-eight and states that the allegations are of law and not fact and the referenced Florida Statute speaks for itself.

29. Defendant denies the allegations of paragraph twenty-nine and states that the allegations are of law and not fact and the referenced Florida Statute speaks for itself.

30. Defendant denies the allegations of paragraph thirty and states that the allegations are of law and not fact and the referenced Florida Statute speaks for itself.

31. Defendant denies the allegations of paragraph thirty-one and states that the allegations are of law and not fact and the referenced Florida Statute speaks for itself.

32. Defendant denies the allegations of paragraph thirty-two and states that the allegations are of law and not fact and the referenced Florida Statute speaks for itself.

33. Defendant denies the allegations of paragraph thirty-three and states that the allegations are of law and not fact and the referenced Florida Statute speaks for itself.

34. Defendant denies the allegations of paragraph thirty-four and states that the allegations are of law and not fact and the referenced Florida Statute speaks for itself.

35. Defendant denies the allegations of paragraph thirty-five and states that the allegations are of law and not fact and the referenced Florida Statute speaks for itself.

36. Defendant denies the allegations of paragraph thirty-six and states that the allegations are of law and not fact, and the referenced Florida Statute speaks for itself.

37. Defendant denies the allegations of paragraph thirty-seven and states that the allegations are of law and not fact, and the referenced Florida Statute speaks for itself.

38. Defendant denies the allegations of paragraph thirty-eight and states that the allegations are of law and not fact, and the referenced Florida Statute speaks for itself.

39. Defendant denies the allegations of paragraph thirty-nine and states that the allegations are of law and not fact, and the referenced Florida Statute speaks for itself.

40. Defendant denies the allegations of paragraph forty and states that the subject contract is the best evidence of its terms and therefore speaks for itself.

41. Defendant denies the allegations of paragraph forty-one and states that the subject contract is the best evidence of its terms and therefore speaks for itself.

42. Defendant denies the allegations of paragraph forty-two and states that the subject contract is the best evidence of its terms and therefore speaks for itself.

43. Defendant denies the allegations of paragraph forty-three and states that the subject contract is the best evidence of its terms and therefore speaks for itself.

44. Defendant denies the allegations of paragraph forty-four and states that the subject contract is the best evidence of its terms and therefore speaks for itself.

45. Defendant denies the allegations of paragraph forty-five.

46. Defendant denies the allegations of paragraph forty-six.

47. Defendant denies the allegations of paragraph forty-seven.

48. Defendant denies the allegations of paragraph forty-eight.

49. Defendant denies the allegations of paragraph forty-nine.

50. Defendant denies the allegations of paragraph fifty.

51. Defendant denies the allegations of paragraph fifty-one.

52. Defendant denies the allegations of paragraph fifty-two.

53. Defendant denies the allegations of paragraph fifty-three.

54. Defendant denies the allegations of paragraph fifty-four.

55. Defendant denies the allegations of paragraph fifty-five.

56. Defendant denies the allegations of paragraph fifty-six.

57. Defendant denies the allegations of paragraph fifty-seven.

58. Defendants admits that there are over 420 residents currently confined at FCCC, but denies the remainder of the allegations of paragraph fifty-eight.

59. Defendant admits the allegations of the first three sentences of paragraph fifty-nine, but denies the fourth sentence of paragraph fifty-nine.

60. Defendant admits the allegations of paragraph sixty.

61. Defendant admits the allegations of the first sentence of paragraph sixty-one that Mr. Canupp has been diagnosed in the past with Bipolar Disorder, Personality Disorder, and Paranoid Schizophrenia, but denies the allegations of the second sentence of paragraph sixty-one.

62. Defendant denies the allegations of paragraph sixty-two.

63. Defendant admits the allegations in paragraph sixty-three pertaining to allegation that Mr. Canupp has not been evaluated to determine the efficacy of any pharmaceutical treatments, but denies the remainder of the allegations of paragraph sixty-three because the prescribing of pharmaceuticals that may decrease Mr. Canupp's sexual impulses are not appropriate.

64. Defendant denies the allegations of paragraph sixty-four.

65. Defendant denies the allegations of paragraph sixty-five.

66. Defendant denies the allegations of paragraph sixty-six.

67. Defendant denies the allegations of paragraph sixty-seven and states that the allegation is a legal conclusion.

68. Defendant denies the allegations of paragraph sixty-eight.

69. Defendant denies the allegations of paragraph sixty-nine.

70. Defendant admits the allegations of the first two sentences of paragraph seventy, but

denies the allegations of the third sentence of paragraph seventy.

71. Defendant admits the allegations of paragraph seventy-one, but states that Mr. Myers refused to participate in the treatment program.

72. Defendant admits the allegations of the first sentence of paragraph seventy-two that Mr. Myers has been diagnosed in the past with Borderline Personality Disorder, and Schizophrenia, is without knowledge sufficient to admit or deny the sentence of paragraph seventy-two, and denies the allegations of the second sentence of paragraph seventy-two.

73. Defendants admit that there are numerous incident reports pertaining to Mr. Myers purported suicide attempts and self harm, but deny the remainder of the allegations of paragraph seventy-three.

74. Defendant admits the allegations in paragraph seventy-four pertaining to allegation that Mr. Myers has not been evaluated to determine the efficacy of any pharmaceutical treatments, but denies the remainder of the allegations of paragraph seventy-four because the prescribing of pharmaceuticals that may decrease Mr. Myers' sexual impulses are not appropriate.

75. Defendant denies the allegations of paragraph seventy-five.

76. Defendant denies the allegations of paragraph seventy-six.

77. Defendant denies the allegations of paragraph seventy-seven.

78. Defendant denies the allegations of paragraph seventy-eight, and states that the allegation is a legal conclusion.

79. Defendant denies the allegations of paragraph seventy-nine.

80. Defendant denies the allegations of paragraph eighty.

81. Defendant admits the allegations of the first, second, third sentences, and denies the

allegations of the fourth, fifth and sixth sentences of paragraph eighty-one. Defendant further states that Mr. McGee withdrew his consent to treatment in September 2003.

82. Defendant admits the allegation in paragraph eighty-two, and states that Mr. McGee's withdrawal of his consent to treatment and his refusal to participate in treatment, is the reason he has not progressed past stage 2 of the treatment program.

83. Defendant denies the allegations in paragraph eighty-three.

84. Defendant denies the allegations in paragraph eighty-four.

85. Defendant is without sufficient knowledge to admit or deny the allegations in paragraph eighty-five.

86. Defendant denies the allegation in paragraph eighty-six, and states that Mr. McGee is learning to read and write in a GED program that is in summer recess.

87. Defendant admits the allegations in paragraph eighty-seven pertaining to the allegation that Mr. McGee has not been evaluated to determine the efficacy of any pharmaceutical treatments, but denies the remainder of the allegations of paragraph eighty-seven because the prescribing of pharmaceuticals that may decrease Mr. McGee's sexual impulses are not appropriate.

88. Defendant denies the allegations in paragraph eighty-eight, and states that the allegations are a legal conclusion.

89. Defendant denies the allegations in paragraph eighty-nine, and states that the allegations are a legal conclusion.

90. Defendant denies the allegations in paragraph ninety.

91. Defendant admits the allegation in paragraph ninety-one, and states that Mr. Davidson's failure to progress past stage 2 in the treatment is because he is not meaningfully

participating in the treatment program.

92. Defendant admits the allegations in paragraph ninety-two to the extent that Mr. Davidson has been diagnosed in the past with Borderline Intellectual Functioning and a Learning Disorder, and denies the remainder of the allegations in paragraph ninety-two.

93. Defendant denies the allegations in paragraph ninety-three.

94. Defendant admits the allegations in paragraph ninety-four pertaining to the allegation that Mr. Davidson has not been evaluated to determine the efficacy of any pharmaceutical treatments, but denies the remainder of the allegations of paragraph ninety-four because the prescribing of pharmaceuticals that may decrease Mr. Davidson's sexual impulses are not appropriate.

95. Defendant denies the allegations in paragraph ninety-five, and states that the allegations are a legal conclusion.

96. Defendant denies the allegation in paragraph ninety-six.

97. Defendant denies the allegations in paragraph ninety-seven.

98. Defendant admits the allegations of the first, second, third and fifth sentences of paragraph ninety-eight and denies the allegations of the fourth sentence of paragraph ninety-eight.

99. Defendant admits the allegations in paragraph ninety-nine.

100. Defendant admits the allegations in paragraph one hundred pertaining to the allegation that Mr. Jackson has not been evaluated to determine the efficacy of any pharmaceutical treatments, but denies the remainder of the allegations of paragraph one hundred because the prescribing of pharmaceuticals that may decrease Mr. Jackson's sexual impulses are not appropriate.

101. Defendant denies the allegations in paragraph one hundred one.

102. Defendant admits the allegations in the first sentence of paragraph one hundred two

and denies the allegations in the second sentence of paragraph one hundred two.

103. Defendant denies the allegations in paragraph one hundred three.

104. Defendant denies the allegation in paragraph one hundred four.

105. Defendant denies the allegations in paragraph one hundred five

106. Defendant denies the allegation in the first sentence of paragraph one hundred six, admits the allegations in the second and third sentences of paragraph one hundred six, and, because of its lack of clarity, is without sufficient information to admit or deny the allegations in the fourth sentence of paragraph one hundred six.

107. Defendant denies the allegations in paragraph one hundred seven.

108. Defendant denies the allegation in paragraph one hundred eight.

109. Defendant denies the allegations in paragraph one hundred nine.

110. Defendant admits the allegations of the first, second, third and fifth sentences of paragraph one hundred ten and denies the allegations of the fourth sentence of paragraph one hundred ten.

111. Defendant admits the allegations in paragraph one hundred eleven.

112. Defendant denies the allegations in paragraph one hundred twelve.

113. Defendant admits the allegation in the first sentence of paragraph one hundred thirteen and denies the allegation in the second sentence of paragraph one hundred thirteen.

114. Defendant admits the allegations in the first and second sentences of paragraph one hundred fourteen as for all treatment offered, and denies the allegations in the third and fourth sentences of paragraph one hundred fourteen.

115. Defendant denies the allegation in paragraph one hundred fifteen.

116. Defendant denies the allegations in paragraph one hundred sixteen.

117. Defendant denies the allegation in the first and fourth sentences of paragraph one hundred seventeen, and admits the allegations in the second and third sentences of paragraph one hundred seventeen.

118. Defendant denies the allegations in paragraph one hundred eighteen.

119. Defendant denies the allegation in paragraph one hundred nineteen.

120. Defendant denies the allegations in paragraph one hundred twenty.

121. Defendant admits the allegations of the first, second, third and fifth sentences of paragraph one hundred twenty-one and denies the allegations of the fourth sentence of paragraph one hundred twenty-one.

122. Defendant admits the allegations in the first and second sentences of paragraph one hundred twenty-two, and denies the allegations in the third sentence of paragraph one hundred twenty-two, because Mr. Fabian was administratively suspended from the treatment program due to his refusal to take the PPG upon request.

123. Defendant admits the allegations in paragraph one hundred twenty-three pertaining to allegation that Mr. Fabian has not been evaluated to determine the efficacy of any pharmaceutical treatments, but denies the remainder of the allegations of paragraph one hundred twenty-three because the prescribing of pharmaceuticals that may decrease Mr. Fabian's sexual impulses are not appropriate.

124. Defendant denies the allegations in paragraph one hundred twenty-four.

125. Defendant denies the allegations in paragraph one hundred twenty-five.

126. Defendant denies the allegation in paragraph one hundred twenty-six.

127. Defendant denies the allegation in paragraph one hundred twenty-seven.
128. Defendant denies the allegations in paragraph one hundred twenty-eight.
129. Defendant denies the allegation in paragraph one hundred twenty-nine.
130. Defendant denies the allegations in paragraph one hundred thirty.
131. Defendant admits the allegations of the first, second and third sentences of paragraph one hundred thirty-one, and denies the allegations of the fourth sentence of paragraph one hundred thirty-one.
132. Defendant denies the allegation in paragraph one hundred thirty-two.
133. Defendant denies the allegation in paragraph one hundred thirty-three.
134. Defendant denies the allegations in paragraph one hundred thirty-four.
135. Defendant admits the allegation in the first sentence of paragraph one hundred thirty-five, and denies the allegation in the second sentence of paragraph one hundred thirty-five.
136. Defendant is without sufficient information to admit or deny the allegations in the first sentence of paragraph one hundred thirty-six, but admits the allegations of the second sentence of paragraph one hundred thirty-six.
137. Defendant is without sufficient information to admit or deny the allegations in the first sentence of paragraph one hundred thirty-seven, but admits the allegations of the second sentence of paragraph one hundred thirty-seven.
138. Defendant denies the allegation in paragraph one hundred thirty-eight.
139. Defendant denies the allegations in paragraph one hundred thirty-nine.
140. Defendant denies the allegations in paragraph one hundred forty.
141. Defendant denies the allegations in paragraph one hundred forty-one.

142. Defendant denies the allegation in paragraph one hundred forty-two.
143. Defendant denies the allegations in paragraph one hundred forty-three.
144. Defendant denies the allegations in paragraph one hundred forty-four.
145. Defendant denies the allegations in paragraph one hundred forty-five.
146. Defendant denies the allegation in paragraph one hundred forty-six.
147. Defendant denies the allegation in paragraph one hundred forty-seven.
148. Defendant denies the allegations in paragraph one hundred forty-eight.
149. Defendant denies the allegations in paragraph one hundred forty-nine.
150. Defendant denies the allegation in paragraph one hundred fifty.
151. Defendant denies the allegations in paragraph one hundred fifty-one.
152. Defendant denies the allegation in paragraph one hundred fifty-two.
153. Defendant denies the allegation in paragraph one hundred fifty-three.
154. Defendant denies the allegations in paragraph one hundred fifty-four.
155. Defendant denies the allegation in paragraph one hundred fifty-five.
156. Defendant denies the allegations in paragraph one hundred fifty-six.
157. Defendant denies the allegations in paragraph one hundred fifty-seven.
158. Defendant realleges his answers to paragraphs one through one hundred fifty-six and denies the remaining allegations in paragraph one hundred fifty-eight.
159. Defendant realleges his answers to paragraphs one through one hundred fifty-six and denies the remaining allegations in paragraph one hundred fifty-nine.
160. Defendant realleges his answers to paragraphs one through one hundred fifty-six and denies the remaining allegations in paragraph one hundred sixty.

161. Defendant realleges his answers to paragraphs one through one hundred fifty-six and denies the remaining allegations in paragraph one hundred sixty-one.

162. Defendant denies the allegations in paragraph one hundred sixty-two.

163. Defendant denies the allegations in paragraph one hundred sixty-three.

164. Defendant denies the allegation in paragraph one hundred sixty-four.

165. Defendant realleges his answers to paragraphs one through one hundred fifty-six and denies the remaining allegations in paragraph one hundred sixty-five.

166. Defendant denies all allegations not expressly admitted herein and each and every conclusion of law set forth in the Plaintiffs' Complaint.

DEFENSES

First Defense - Answer

1. As his First Defense Defendant incorporates his Answer as if expressly set forth herein.

Second Defense - Failure To State A Claim - Eleventh Amendment

2. As his Second Defense, Defendant states that Plaintiffs have no right to declaratory or injunctive relief as a result of any violations, for which Defendant is responsible, of the Constitution of the United States or applicable federal law or regulation, and the litigation of such claims in the federal courts is barred by the Eleventh Amendment of the United States Constitution.

Third Defense - Failure To State A Claim - Due Process

3. As his Third Defense, Defendant states that Plaintiffs have failed to state a claim for declaratory or injunctive relief pursuant to the due process clause of the Fourteenth Amendment.

Fourth Defense - Failure To State A Claim - Federal Law

4. As his Fourth Defense, Defendant states that Plaintiffs have failed to state a claim for declaratory or injunctive relief pursuant to a violation of federal law.

Fifth Defense - Failure To State A Claim - Federal Regulation

5. As his Fifth Defense, Defendants states that Plaintiffs have failed to state a claim for declaratory or injunctive relief pursuant to a violation of federal regulation.

**Sixth Defense -
Separation Of Powers - §20.02(1), Fla. Stat.**

6. As his Sixth Defense, Defendants states that any order requiring an expenditure of public funds by the executive branch (DCF) not specifically appropriated for such purposes would constitute an inappropriate incursion by the judicial branch into functions which have been constitutionally delegated to the legislative branch of government.

Seventh Defense - Substantial Performance

7. As his Seventh Defense, Defendants states that his obligations to the Plaintiffs and the putative class have been substantially performed in accordance with existing law and the fiscal resources provided to DCF by the Florida Legislature. Only a failure of a state agency to comply substantially will subject it to liability.

Eighth Defense -*Younger* Abstention

8. As his Eighth Defense, Defendant states that the Plaintiffs' claims for relief are better addressed by the courts having jurisdiction over their civil commitment cases. The Plaintiffs and members of the putative class can have judicial review of their individual cases pursuant to Chapter 394, Florida Statutes (2003). This Court should abstain from exercising jurisdiction and adjudicating

issues raised by the Plaintiffs and the putative class members due to the fact that the State of Florida has an existing statutory scheme and a system of judicial review to deal with the issues such as those raised in the Complaint.

Ninth Defense - No Causation

9. As his Ninth Defense, Defendant states that with respect to the Plaintiffs and the putative class, there is no causal relationship between the alleged injury and any conduct on the part of the Defendant. Defendant further states that none of the named Plaintiffs has suffered an actual or threatened injury caused by and resulting from the putatively unlawful conduct of the Defendant.

Likewise, Plaintiffs failed to causally plead the relationship of those asserted systemic defects to any actual injury to any named Plaintiffs. Therefore, there can be no violation by the Defendants of either: the Americans with Disabilities Act, Title 42 U.S.C. §12101 *et seq.*; and the regulations enacted pursuant to this Act; the United States Constitution and, therefore, Title 42 U.S.C. §1983.

Tenth Defense - Lack Of Subject Matter Jurisdiction

10. As his Tenth Defense, Defendant states Plaintiffs and the putative class have no right to the relief requested as a result of any violations for which Defendant is responsible with respect to rights guaranteed under the federal constitution, laws or regulations which Plaintiffs have identified. Plaintiffs' relevant entitlements, if any, arise under state law and through the existence and operation of regulations enacted pursuant to state law. Litigation of such claims in the federal courts is barred by the Eleventh Amendment of the United States Constitution.

Eleventh Defense - Not Maintained As A Class Action

11. As his Eleventh Defense, Defendant states that Plaintiffs have alleged only individual claims for relief. Such claims lack the essential elements of claims which may be asserted on a class

basis. The claims of the Plaintiffs require individual determination on a case-by-case basis because these individual claims are not typical and are not susceptible to treatment as a class action. If any of the named Plaintiffs are determined to be entitled to relief, relief can only properly be granted on an individualized case-by-case basis.

Twelfth Defense - Injunctive Relief Not Required

12. As his Twelfth Defense, Defendant states, in the alternative, in the event the Court determines that there are any violations of law with respect to any Plaintiff or putative class member, Defendants have been and are currently engaged in ongoing reforms to eliminate any deficiencies and problems as alleged in the Complaint, through the implementation of various plans for improvement of the SVPP and FCCC, and as a consequence of the Defendant's implementation of the aforementioned plan, injunctive relief would not be appropriate.

Thirteenth Defense - Not Denied Opportunity For Meaningful Hearing

13. As his Thirteenth Defense, Defendant states that as to his acts and omissions as alleged (or not) in the Complaint, that he is not acting under color of state law.

Fourteenth Defense - Third Party Causation

14. As his Fourteenth Defense, Defendant states that the acts of third parties have provided the causation (if any) that underlies any alleged violations of applicable law.

Fifteenth Defense - Standing-Identical Injury

15. As his Fifteenth Defense, Defendant states that even as alleged, all of the Plaintiffs or the putative class members have not/are not suffering the identical injury and thus lack standing as a representative Plaintiff exemplar or member of the putative class.

Sixteenth Defense - Standing-Redress by Ruling

16. As his Sixteenth Defense, Defendant states that the alleged injury that is/was inflicted upon the Plaintiffs is not likely to be redressed by a favorable ruling.

Seventeenth Defense - Standing-No Actual Injury

17. As his Seventeenth Defense, Defendant states that of the Plaintiffs known or believed to be known by Defendant, none of them has suffered an actual or threatened injury caused by and resulting from the putatively illegal conduct of the Defendant.

Eighteenth Defense - Standing

18. As his Eighteenth Defense, Defendant states that the named Plaintiffs and putative class members are not denied due process or a meaningful access to a facially valid adjudicatory procedure in violation of the U.S. Constitution or federal statute or regulation as alleged in the Complaint.

Nineteenth Defense - No Constitutional Violation

19. As his Nineteenth Defense, Defendant states that the relationship of the Plaintiffs and putative class members to the Defendant is insufficient to establish a constitutionally cognizable infringement of Plaintiffs' liberty interests.

Twentieth Defense - Fundamental Alteration in the Program or Activity

20. As his Twentieth Defense, Defendant states that because this is plead as a class action, the relief sought by Plaintiffs would fundamentally alter the nature of the SVPP and the treatment and programs offered at FCCC, by the Defendant. Additionally, Defendant cannot reasonably accommodate Plaintiffs' individual request for relief.

Twenty First Defense - Plaintiffs Not Entitled to Attorneys Fees

21. As his Twenty First Defense, Defendant states that prior to and since the filing of this lawsuit, the Defendant and DCF have voluntarily sought to improve the policies and operation of the SVPP and the operations of FCCC in complete compliance with applicable laws and regulations, and thus, Plaintiffs are not entitled to recovery of attorneys' fees and costs under Title 42 U.S.C. §1988; and Defendant is entitled to an award of attorneys fees and costs pursuant Title 42 U.S.C. §1988.

WHEREFORE, the Defendant, Jerry Regier, in his official capacity as Secretary of the Department of Children and Families requests this Court to enter its judgment for the him and award him reasonable attorneys' fees and costs pursuant to Title 42 U.S.C. § 1988.

Respectfully submitted,

CHARLES J. CRIST, JR.
Attorney General

s/ Chesterfield Smith, Jr.
CHESTERFIELD SMITH, JR.
Senior Assistant Attorney General
Chief, State Programs Litigation
Florida Bar No.: 0852820

CECILIA BRADLEY
Senior Assistant Attorney General
Florida Bar No.: 0363790

JASON VAIL
Senior Assistant Attorney General
Florida Bar No.: 0298824

Counsel for Defendant Regier

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed electronically and sent, by United States Mail to: **Kristen Cooley Lentz, Esq., Christopher M. Jones, Esq., and Cassandra J. Capobianco, Esq.,** of Florida Institutional Legal Services, Inc., 1010-B NW 8th Avenue, Gainesville, FL 32601, **Peter P. Sleasman, Esq., and Alice K. Nelson, Esq.,** of Southern Legal Counsel, Inc., 1229 NW 12th Avenue, Gainesville, FL 32601, **John W. Jolly, Jr. Esq.,** Jolly & Peterson, P.A., Post Office Box 37400, Tallahassee, FL 32315-7400, and **Jennifer R. Haymes, Esq.,** General Counsel, Florida Civil Commitment Center, 13613 S.E. Highway 70, Arcadia, FL 34266, on this 22nd day of July, 2004.

s/Chesterfield Smith, Jr.
Chesterfield Smith, Jr.