

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made and entered into, as of the last date written below, by the parties identified in Section I, infra, by and through their attorneys of record, in order to resolve all claims asserted by all of the parties in their respective Complaints and Cross-complaints on file in the civil action, Case No. CA001128, now pending in the Superior Court for the State of California, County of Los Angeles (the "Action"). This Agreement does not constitute an admission of liability by any party, and the County Defendants specifically deny any such liability. Nor does this Agreement constitute any admission by the State Defendant that the County Defendants do not have to comply with all the regulations promulgated by the State Defendant, unless expressly exempted by the State Defendant. It is therefore understood and agreed that the parties are entering into this Agreement solely for the purposes of settlement and compromise and to avoid the burdens, expenses and inconveniences incident to the further prosecution and defense of the claims which are the subject of this Agreement.

I.

PARTIES

The parties to this Agreement are:

A. The plaintiffs Timothy J. by his guardian ad litem Cheryl J., Tequila L. by her guardian ad litem Donna Groman and Andrea U. by her guardian ad litem Kim K. and the plaintiff in

intervention, Nora Quinn, a taxpayer in Los Angeles County ("Plaintiffs");

B. The County Defendants and Cross-complainants Robert Chaffee, by his successor in interest, Peter Digre, in his official capacity as the Director of the Los Angeles County Department of Children's Services ("Director"), and the Board of Supervisors of Los Angeles County (collectively "County Defendants"); and

C. The State Defendant and Cross-complainant, Linda McMahon, through her successor in interest, Eloise Anderson, in her official capacity as the Director of the California State Department of Social Services ("State Defendant").

## II.

### AGREEMENT

Based upon the agreement and covenant herein, the undersigned parties agree to settle the Action in its entirety on the following terms and conditions:

A. This Agreement shall be binding and effective for one year from the last date written below.

B. The State Defendant agrees to use best efforts to submit to the United States Department of Health and Human Services (HHS) a Title IV-A California State Plan amendment for Emergency Assistance that includes utilization of Emergency Assistance for non-federal foster care and emergency shelter care to be effective September 1, 1993.

C. In any fiscal year for which the Agreement is in effect, its provision shall be subject to renegotiation if there

is a reduction from the previous fiscal year of more than five (5) percent in combined state and federal funds for the Child Welfare Services program in any fiscal year as measured by the average cost per funded case. The average cost shall be determined by the total amount of state and federal funds, as adjusted for any cost of living increase or trigger reduction, divided by the total aggregate number of child welfare cases. The total aggregate number of cases is the average monthly case total during the 12 months immediately preceding the affected fiscal year for Emergency Response, Family Maintenance, Family Reunification and Permanent Placement. The number does not include Emergency Response assessments.

D. The State Defendant agrees to and hereby does withdraw the pending notice of non-compliance with its regulations governing face-to-face social worker visits with children, foster care givers and parents which notice was issued to the County on or about July 10, 1989.

E. For purposes of this Agreement only, the County Defendants agree to comply with the regulations as they currently exist or as they may be promulgated in the future by the California State Department of Social Services concerning face-to-face social worker visits with children, foster care givers, and parents ("State Regulations"), with the exception of certain express modifications to those regulations set forth as Exhibit A, which is incorporated here by reference.

F. This Agreement is not intended to and shall not establish any liability or responsibility on the part of the County to any person or entity.

G. In order to monitor the County's compliance with Section II., Paragraph E, above, the County will create an ad hoc advisory committee consisting of the "Director", his representative, one designated County Defendants' counsel and one designated plaintiffs' counsel. The Committee will receive quarterly information compiled by the County Defendants concerning the County's compliance with Section II., Paragraph E. above. At least quarterly and more frequently if necessary, during the term of this Agreement, the Committee will confer telephonically to discuss the information provided by the County Defendants and may make recommendations concerning same. In addition, the Director may call in person meetings no more than once a quarter, in which case the County will reimburse plaintiffs' counsel for the reasonable expenses incurred in connection with attendance at the meeting. Or, after conferring with the Director, plaintiffs counsel may request an in person meeting no more than once a quarter, in which case plaintiffs' counsel will bear their own expenses.

H. In order to monitor the implementation and progress of this Agreement, and for purposes of this Agreement only, the County Department of Children's Services will develop audit guidelines which will be reviewed by plaintiffs' counsel and which will be used to measure the County Defendants' performance under the Agreement.

I. Except as expressly provided in Section II., Paragraph G, above, no party to this Agreement shall be entitled to reimbursement for any costs or fees incurred in connection with the monitoring of such performance.

J. Immediately upon execution of this Agreement, counsel of record for the parties will file with the Court a joint motion for an order of dismissal of the entire Action with prejudice. In the event the Court fails for any reason to issue such order, this Agreement shall become null and void and have no force or effect whatsoever.

K. Within 30 days of the issuance of the order of dismissal, the County Defendants will pay to counsel for the plaintiffs the sum of \$185,000.00 in full satisfaction of any and all claims plaintiffs may have against the County Defendants for recovery of attorneys' fees and costs incurred in connection with the Action.

L. Within 30 days of the issuance of the order of dismissal, the State Defendant will pay to counsel for the [class] plaintiffs the sum of \$50,000.00 in full satisfaction of all claims for recovery of attorneys' fees and costs incurred in connection with the Action.

M. Immediately upon execution of this Agreement, counsel of record for the parties shall execute the Joint Motion for Dismissal, attached hereto as Exhibit B, and deliver same to counsel for County Defendants for filing with the Court no later than the second business day after receipt.

N. For, and in consideration of, the payment described in Section II., Paragraph K, and the covenants and conditions contained herein, plaintiffs hereby release, discharge and acquit the County Defendants, their former and current employees and representatives from any and all actions, causes of action, debts, agreements, promises, liabilities, claims, damages or demands of any kind or nature whatsoever, whether past, present or future, personal or representative, known or unknown, arising out of or relating in any way to the subject of the Action.

O. For, and in consideration of the covenants and conditions contained herein, the State Defendant and County Defendants each hereby mutually release the other regarding any claim for contribution or other liability arising from either party's payment of attorneys' fees to plaintiffs.

P. It is understood and agreed that this Agreement and the release contained in Section II., Paragraph N are intended to cover and do cover any and all future damages or claims for injunctive relief not now known to the parties, or which may later develop or be discovered, arising out of or in connection with the subject matter of the Action.

Q. Plaintiffs hereby acknowledge with respect to the foregoing release that they are aware of the provisions of California Civil Code, section 1542, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY

HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH  
THE DEBTOR."

Plaintiffs hereby waive the benefits of California Civil Code,  
section 1542.

R. Plaintiffs hereby warrant and represent that they have  
not assigned, hypothecated, sold or transferred any claim or any  
rights arising from, or in any way related to, the Action.

S. This Agreement shall be governed and construed in  
accordance with the laws of the State of California.

T. This Agreement may be executed simultaneously in three  
or more counterparts, each of which shall be deemed an original,  
but all of which together shall constitute one and the same  
instrument.

U. This Agreement embodies the entire understanding of the  
parties hereto with respect to this matter and there are no other  
agreements, either written or oral, with respect to same.

V. The counsel of record shall execute any and all further  
documents that may be necessary to effect the purposes of this  
Agreement.

W. Counsel of record represent and warrant that they have authority to execute this document on behalf of their respective clients.

IN WITNESS HEREOF, counsel of record for the parties have executed this Agreement as of the dates written below.

Dated: *October 12, 1993*

BAKER & MCKENZIE  
ROBERT H. PHILIBOSIAN  
TERRENCE M. KING

By *Terrence M. King*  
Terrence M. King  
Attorneys for Defendants  
Robert Chaffee and the  
Board of Supervisors  
County of Los Angeles

Dated: *Oct 12, 1993*

STATE OF CALIFORNIA  
DEPARTMENT OF JUSTICE  
KAREN FRIED

By *Karen Fried*  
Karen Fried  
Attorneys for Defendant  
State Department of  
Social Services

Dated: *Oct 12, 1993*

YOUTH LAW CENTER  
CAROLE SHAUFFER

By *Carole Shauffer*  
Carole Shauffer  
Attorneys for Plaintiffs



EXHIBIT "A"

1. For children in in-home placement, the social worker shall be credited with a monthly visit to a parent(s)/guardian named in the case plan, but not living in the home and unavailable for monthly visits, if the social worker maintains monthly written or telephone contact with him/her regarding the child's status and the parent's/guardian's actions that should be occurring in order to obtain the case plan goals.

2. When a child is in in-home placement, the social worker shall be credited with a monthly visit to a parent or guardian living in the home if the social worker has seen the child and has attempted a face-to-face visit with the parent(s) or attempted to schedule such a face-to-face visit, and the case record includes the following documentation:

- (a) the date(s) of the attempted visit or attempt to schedule the visit;
- (b) the reasons why the attempt was unsuccessful;
- (c) the date the parent(s)/guardian was notified by telephone or in writing to contact the social worker to arrange a visit; and
- (d) the results of that communication.

In court cases, if the social worker performs the foregoing but is still not successful in visiting the parent(s), the social worker will document in the case record the progressive efforts to arrange visits, including notifying the court where necessary.

In voluntary in-home cases, the social worker will document the parent's failure to contact the social worker to arrange a visit, or subsequent failure to attend an arranged visit, and ultimately determine whether to file a petition or to close the case.

Credit for the visit will be given for the month(s) of the attempt(s) if the above actions are taken in a timely manner and continue into subsequent months. In in-home cases in which the child has not been seen, credit will be given for attempts to visit the child and the parent(s) if the case worker has notified the Court of his or her inability to contact the parent and the child or documented in the case record the justification for not doing so.

3. The social worker shall not be required to visit the parent(s)/guardian named in the case plan during a specified month, if the parent(s)/guardians are unavailable for a specified period for a specified reason and if there is documentation in the case record of the duration of the absence, the location of the parent or guardian, a discussion with the social worker about the absence, and a specific plan for contact upon return.

4. The social worker shall not be required to visit the child named in the case plan during a specified month, if the child is unavailable for a specified period and for a specified reason, such as vacation or hospitalization, and the following information is documented in the case file:

- (a) the duration of the unavailability and the location of the child;

- (b) the fact that the unavailability was discussed with the social worker;
- (c) a specific plan for contact on return; and
- (d) in the case of the child's hospitalization, the date of a discussion with the physician or other medical professional regarding the child's progress.



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13 KAREN FRIED  
14 STATE OF CALIFORNIA,  
15 DEPARTMENT OF JUSTICE  
16 300 South Spring Street, 9-North  
17 Los Angeles, California 90013

18 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
19 FOR THE COUNTY OF LOS ANGELES

20	TIMOTHY J., <u>et al.</u> ,	)	CASE NO. CA 001128
21		)	
22	Plaintiffs,	)	(1) JOINT APPLICATION OF ALL
23		)	PARTIES FOR COURT APPROVAL
24	v.	)	OF DISMISSAL OF CLASS
25		)	ACTION PRIOR TO CLASS
26	ROBERT CHAFFEE, Director, Los	)	CERTIFICATION;
27	Angeles County Department of	)	
28	Children's Services, in his	)	(2) DECLARATION OF CAROLE B.
29	official capacity, <u>et al.</u> ,	)	SHAUFFER IN SUPPORT OF
30		)	THEREOF;
31	Defendants.	)	
32		)	(3) [PROPOSED] ORDER
33		)	[Lodged Concurrently
34	AND RELATED CROSS ACTION	)	Herewith]; and
35		)	
36		)	(4) REQUEST FOR DISMISSAL
37		)	[Lodged Concurrently
38		)	Herewith]

39 TO THE HONORABLE COURT:

40 PLEASE TAKE NOTICE that the parties to this action, by  
41 and through their respective counsel of record, hereby jointly  
42 apply to this Court for approval of the dismissal of this class

1 action with prejudice. As of the date of this application, the  
2 class has not been certified.

3 This application is made pursuant to California Rules of  
4 Court, Rule 365, and Los Angeles County Superior Court Manual for  
5 the Conduct of Pre-Trial Proceedings in Class Actions, Rule 470,  
6 and is based upon the attached Memorandum of Points and  
7 Authorities, the declaration of Carole B. Shauffer submitted in  
8 support thereof, all documents and records on file herein, and any  
9 other matters which may be raised at the hearing on this  
10 application.

11  
12 Dated: October \_\_, 1993

BAKER & MCKENZIE  
ROBERT H. PHILIBOSIAN  
TERRENCE M. KING

14

15

By \_\_\_\_\_  
Terrence M. King  
Attorneys for Defendants  
Robert Chaffee and the Board  
of Supervisors,  
Los Angeles County

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19 Dated: October \_\_, 1993

CAROLE SHAUFFER  
YOUTH LAW CENTER

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By \_\_\_\_\_  
Carole Shauffer  
Attorneys for Plaintiffs

23

24 Dated: October \_\_, 1993

KAREN FRIED  
STATE OF CALIFORNIA,  
DEPARTMENT OF JUSTICE

25

26

27

By \_\_\_\_\_  
Karen Fried  
Attorneys for Defendant  
State Department of Social Services

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2  
3 I. PRELIMINARY STATEMENT

4  
5 This litigation began as a class action brought by  
6 certain plaintiff representatives seeking declaratory and  
7 injunctive relief, as well as a writ of mandate, based on the  
8 alleged failure of Los Angeles County Department of Children's  
9 Services ("County") social workers to meet the minimum contact and  
10 visitation requirements set forth in applicable child welfare  
11 statutes.

12 Following a demurrer by the County, this Court ordered  
13 plaintiffs to join the State Department of Social Services  
14 ("State") as a necessary party defendant. Once the State was  
15 joined as a party, the State and County cross-complained against  
16 each other. Thereafter, at a hearing on the County's motion for a  
17 discovery protective order, the Court indicated that this case may  
18 not be appropriate as a class action and ordered the plaintiffs to  
19 proceed on their writ of mandate claim, thereby obviating the need  
20 to conduct discovery on class issues or pursue certification of  
21 the class.

22 Subsequently, the Court stayed further proceedings on  
23 the plaintiffs' writ of mandate claim and directed the County to  
24 respond to the State's notice of non-compliance as set forth in  
25 the applicable statutes. The County duly responded by submitting  
26 a corrective action plan to the State, but the State rejected this  
27 initial proposal.

1           Following the appointment of a special referee by the  
2 Court, and subsequent administrative action by the State, the  
3 parties continued to attempt to devise a corrective action plan  
4 which would be acceptable to the State. Finally, in October 1990,  
5 the County submitted a second corrective action plan to the State

6           At a Status Conference held in November 1990, to discuss  
7 the County's plan and its contemplated motion to abate or dismiss  
8 the action based upon the State's concurrent administrative  
9 action, the Court indicated that it was inclined to abate or  
10 dismiss this action in light of the administrative remedies being  
11 pursued, but requested that the parties cooperate in reaching a  
12 resolution of this action short of formal court intervention.

13           Accordingly, since in or about January 1991, the parties  
14 have been working diligently toward a settlement of this action,  
15 which settlement now has been achieved. [A true and correct copy  
16 of the settlement agreement is attached as Exhibit "1" to the  
17 Shauffer declaration filed in support hereof.] Thus, the parties  
18 now jointly apply to this Court for approval of the dismissal of  
19 this action with prejudice.

20  
21           **II. PLAINTIFFS CANNOT VOLUNTARILY DISMISS THEIR CLASS ACTION**  
22           **CLAIMS WITHOUT PRIOR APPROVAL FROM THIS COURT**

23  
24           As noted, supra, the parties have agreed to settle the  
25 entire matter, including the plaintiffs' class action claims.  
26 Both the State and Local Rules, however, require prior court  
27 approval of a request for dismissal of a class action. California  
28 Rules of Court, Rule 365; and Los Angeles County Superior Court



1 Class Action Manual for the Conduct of Pre-Trial Proceedings, Rule  
2 470.

3 Accordingly, the parties cannot consummate the  
4 settlement of this action, which includes a voluntary dismissal by  
5 the plaintiffs of their class action claims, without Court  
6 approval.

7 As set forth in the referenced State and Local Rules,  
8 such approval of a request for dismissal of a class action must be  
9 based upon a declaration seeking forth the facts upon which the  
10 party relies. That declaration must include a clear statement of  
11 whether consideration is being given and shall describe the  
12 consideration in detail.

13  
14 **III. THIS COURT SHOULD APPROVE THE DISMISSAL OF THIS**  
15 **ACTION WITH PREJUDICE**

16  
17 As set forth in the declaration of Carol Shauffer  
18 submitted concurrently herewith, the issues raised by this  
19 plaintiffs' First Amended Complaint have been resolved during the  
20 course of this litigation: (1) the State defendants have required  
21 the County to comply with the applicable child welfare  
22 regulations; and, (2) the County has come into substantial  
23 compliance with those regulations.

24 Moreover, the settlement agreement reached by the  
25 parties provides reasonable assurances that the County will remain  
26 in compliance and that evidence of that compliance will be  
27 available to all parties.

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The declaration also discloses the provision in the settlement agreement for payment of plaintiffs' attorneys' fees and the basis therefor.

Accordingly, this Court should approve the dismissal of this class action with prejudice, as such dismissal is in the best interests of all concerned.

**IV. CONCLUSION**

Based upon the foregoing, the parties respectfully request that this Court approve the dismissal of this action with prejudice pursuant to the settlement agreement reached by the parties.

Dated: October \_\_, 1993

BAKER & MCKENZIE  
ROBERT H. PHILIBOSIAN  
TERRENCE M. KING

By \_\_\_\_\_  
Terrence M. King  
Attorneys for Defendants  
Robert Chaffee and the Board  
of Supervisors,  
Los Angeles County

DECLARATION OF CAROLE B. SHAUFFER

I, Carole Shauffer, hereby declare and say:

1. I am an attorney licensed to practice in the State of California. I represent plaintiffs in the above captioned matter.

2. The parties to this action have agreed to request that this Court approve the dismissal with prejudice of this action.

3. Named plaintiffs originally filed this action as a class action. The class was never certified. At the Court's suggestion the parties have treated this as a petition for writ of mandate.

4. Rule 365 of the California Rules of Court and Rule 470 of the Los Angeles County Superior Court Manual for the Conduct of Pretrial Proceedings in Class Actions require court approval for dismissal of a class action or any portion thereof. To obtain approval, the parties must provide the court with a declaration indicating what, if any, consideration has been given to the named parties or their attorneys in compensation for the dismissal.

5. Attached to this declaration is a copy of the settlement agreement reached by the parties. This document incorporates all agreements made in consideration of this dismissal.

6. This case originally raised two issues: County defendants' alleged failure to comply with State regulations governing face to face contacts between caseworkers and clients

1 and State defendants' alleged failure to enforce compliance with  
2 those regulations. During the course of this litigation both  
3 issues have been resolved. State defendants have required the  
4 County to comply with these regulations and the County has come  
5 into substantial compliance. The settlement agreement provides  
6 reasonable assurances that the County will remain in compliance  
7 and that evidence of that compliance will be available to all  
8 parties.

9 7. The settlement agreement also includes a provision  
10 for payment of plaintiffs' attorneys' fees. The amount of these  
11 fees was arrived upon after extensive negotiations and is based on  
12 the time records of plaintiffs' counsel and fee schedules  
13 promulgated by the Los Angeles County Bar.

14 8. This settlement and consequent dismissal of this  
15 action is in the best interests of the class which plaintiffs  
16 purported to represent. Continuation of this litigation would not  
17 benefit the class and would result in an unnecessary expenditure  
18 of State and County resources.

19  
20 I declare under penalty of perjury that the foregoing is  
21 true and correct to the best of my knowledge and that I executed  
22 this declaration on the \_\_\_\_ day of October, 1993, in San  
23 Francisco, California.

24  
25  
26 \_\_\_\_\_  
Carole B. Shauffer

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11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 FOR THE COUNTY OF LOS ANGELES

13 TIMOTHY J., et al., ) CASE NO. CA 001128  
14 Plaintiffs, ) [PROPOSED] ORDER APPROVING  
15 v. ) DISMISSAL OF CLASS ACTION  
16 )  
16 ROBERT CHAFFEE, Director, Los )  
17 Angeles County Department of )  
17 Children's Services, in his )  
18 official capacity, et al., )  
18 Defendants. )

19 \_\_\_\_\_ )  
20 AND RELATED CROSS ACTION )  
21 )  
22 )  
23 \_\_\_\_\_ )

24 ORDER

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26  
27 Based upon the joint motion of all parties for court  
28 approval of dismissal of the class action prior to class  
certification and the declaration of Carole B. Shauffer submitted  
in support thereof,

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IT IS HEREBY ORDERED that the referenced motion is granted and that the request for dismissal of the entire action lodged concurrently with the motion shall be accepted for filing by the clerk forthwith.

Dated: October \_\_, 1993

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The Honorable Kurt Lewin  
Judge, Los Angeles County  
Superior Court