

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Case No. 3:19-cv-00912

CLAYTON HARRELL, by and through his next
Friend, Connie Harrell, and AUSTIN TRUEBLOOD,
by and through his Guardian, Suzanne Trueblood, on
behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

CHAD POPPELL, in his official capacity as Secretary
for the FLORIDA DEPARTMENT OF CHILDREN
AND FAMILIES, and MARY MAYHEW, in her
official capacity as Secretary for the FLORIDA
AGENCY FOR HEALTH CARE
ADMINISTRATION,

Defendants.

SETTLEMENT AGREEMENT

RECITALS

This SETTLEMENT AGREEMENT (“Agreement”), entered into as of the Effective Date, by and between Plaintiffs, CLAYTON HARRELL, through his next Friend, Connie Harrell, and AUSTIN TRUEBLOOD, through his Guardian, Suzanne Trueblood (herein “Plaintiffs”), who brought a putative class action under 42 U.S.C. § 1983 on August 7, 2019 against Defendants, CHAD POPPELL, in his official capacity as Secretary of the Florida Department of Children and Families (herein “DCF”) and MARY MAYHEW, in her official capacity as Secretary of the Florida Agency for Health Care Administration (herein “AHCA”) (collectively herein the “Parties”), alleging violations of 42 U.S.C. § 1396a, and its implementing regulations, and the Due Process Clause of the Fourteenth Amendment to the United States Constitution. At issue is:

- (1) Defendants' redetermination of eligibility under a Medicaid coverage group for individuals subject to an adoption assistance agreement or individuals previously eligible for Medicaid due to receipt of SSI (Supplemental Security Income) (as defined below), commonly referred to as an "ex parte review."
- (2) Defendants' obligation to provide notice of case action and an opportunity for a fair hearing.
- (3) Defendants' obligation to continue Medicaid coverage through the ex parte review.

OBLIGATIONS OF THE PARTIES

The Parties have consulted with their legal counsel and have agreed to resolve the issues regarding the Plaintiffs' claims and execute this Agreement as follows:

1. **This Agreement** is the product of multiple discussions between the Parties. This Agreement is not a class action settlement; however, this Agreement is intended to resolve the specific issues discussed herein on a statewide basis. This Agreement requires Defendants to modify their procedures with respect to two subgroups of Florida Medicaid recipients:
 - a. Subgroup One: Individuals eligible for Medicaid pursuant to an Adoption Assistance Agreement and whose Medicaid coverage subsequently ends under the Adoption Assistance category, but who remain eligible for another category of Medicaid.
 - b. Subgroup Two: Individuals eligible for Medicaid pursuant to the receipt of SSI ("Supplemental Security Income") benefits and whose Medicaid coverage subsequently ends due to the cessation of SSI benefits, but who remain eligible for another category of Medicaid.

2. Data and System Modifications.

a. Data and System Modifications – Subgroup One.

DCF will determine how to track ex parte reviews of Adoption Assistance Medicaid beneficiaries and identify the reason(s) why Adoption Assistance Medicaid beneficiaries were not subject to an ex parte review. DCF will notify Plaintiffs’ counsel within ninety (90) days of the Effective Date of this Agreement, as to actions DCF has taken to identify these individuals and track reviews.

b. Data and System Modifications – Subgroup Two/ SSI Termination Ex Parte Project.

DCF will modify its eligibility determination system in order to automate DCF’s eligibility determinations of those Medicaid beneficiaries whose coverage has been terminated as a result of their SSI termination (herein referred to as the “SSI Termination Ex Parte Project”). This project requires approximately 4,548 hours to build and implement. DCF began work on this project in October 2019, with an implementation target date of April 30, 2020. If DCF does not meet its implementation target date of April 30, 2020 without good cause, Plaintiffs will initiate the conflict resolution process as set forth in Paragraph 10 of this Agreement and, if resolution is not reached, initiate enforcement proceedings as set forth in Paragraph 11 of this Agreement.

3. Staff Training.

a. Staff Training – Subgroup One.

DCF will develop and train staff designated to conduct ex parte reviews of Adoption Assistance Medicaid terminations. Specifically, DCF will update its Child In Care Medicaid guide and will provide face-to-face training for Child In Care staff located in all DCF regions. The updates to the Child In Care Medicaid guide and subsequent face-to-face training will include a

topic about Child In Care staff reviewing beneficiaries' continued Medicaid eligibility. DCF agrees to develop this training within forty-five (45) days of the Effective Date of this Agreement and will then immediately provide a copy of the training materials to Plaintiffs' counsel.

b. Staff Training – Subgroup Two.

DCF will develop and train staff designated to conduct ex parte reviews of SSI terminations. Within forty-five (45) days of implementation of the SSI Termination Ex Parte Project, DCF will develop staff training regarding the relevant data and system enhancements and will then immediately provide a copy of the training materials to Plaintiffs' counsel. The training will include a topic about using all available information to verify a beneficiary's continued eligibility for Medicaid under all available categories in accordance with 42 C.F.R. §§435.948(b), 435.952, and 435.956.

4. **Corrective Measures; Notice.** DCF has already begun the process of determining the number of Ex Parte Reviewees whose Medicaid eligibility has yet to be determined. For purposes of this Agreement, "Ex Parte Reviewees" shall be defined as those Medicaid beneficiaries whose SSI or Adoption Assistance Medicaid has been terminated, who remain living, and are not, at the time of the review, receiving SSI, Medicaid or Medically Needy, or Buy-in, or those individuals whose eligibility has not been denied after their SSI terminated.

DCF will develop and run data queries to identify Ex Parte Reviewees in Subgroup Two from January 1, 2019, to the Effective Date of this Agreement and take corrective action in accordance with 42 C.F.R. §435.916 and Rule 65A-1.702, Florida Administrative Code (F.A.C.), to determine whether the Ex Parte Reviewee is eligible for Medicaid under any other category (hereinafter referred to as "Final Corrective Action"). Upon taking Final Corrective Action, DCF will transmit a Notice of Case Action to the Ex Parte Reviewee, which will include a notice of

hearing rights and, if DCF finds the Ex Parte Reviewee is Medicaid eligible, the effective date of coverage.

DCF will provide a report to Plaintiffs' counsel summarizing its Final Corrective Action (including number of individuals affected and outcomes) within thirty (30) days of completing all reviews under this subsection. This report will be titled "Ex Parte Reviewees – Final Corrective Action" and will not include any personally identifying information.

Additionally, AHCA will, within one hundred and twenty (120) days of the Effective Date of this Agreement, modify its notices titled "Information About Your Medicaid" to include the date of Medicaid termination for those beneficiaries who lose SSI benefits and a statement regarding DCF's obligation to provide the beneficiary notice of case action no later than ten (10) days prior to Medicaid termination. AHCA will provide a copy of the template notice to Plaintiffs' counsel within thirty (30) days of having modified it. Upon modification of its notice, AHCA is relieved of any and all obligation under this Agreement and shall not be subject to enforcement action herein.

5. Data Collection & Monitoring.

a. Data Collection & Monitoring - Subgroup One.

DCF will develop and run data queries that evidence the timely completion of DCF's ex parte review in Subgroup One starting within thirty (30) days of the Effective Date of this Agreement. For purposes of this Agreement, an "ex parte review" shall be defined as a determination made by DCF of an Ex Parte Reviewee's Medicaid eligibility, including a determination that additional information is needed of an Ex Parte Reviewee in accordance with 42 U.S.C. §1396w. "Timely completion" shall mean the ex parte review will occur by the 15th day of the month in which their Adoption Assistance Medicaid is to be terminated. DCF will send

a report to Plaintiffs' counsel by the 20th of each following month for the term of this agreement and the report shall include all Adoption Assistance Medicaid terminations that have been received for the month prior, less the number of the following individuals: those receiving some type of Medicaid or SSI; those individuals who have been denied Medicaid eligibility and provided notice of denial; and those individuals who are deceased. This report will be titled "Ex Parte Review Monthly Data – Subgroup One" and will not include any personally identifying beneficiary information.

After the initial report, the following reports will include the results of a review of a random sample of 50% of cases received in the previous reporting period, but no more than 100 cases each month. Of these cases, DCF will report whether the ex parte review was completed timely; whether the Ex Parte Reviewee was provided notice of the result; and the final outcome of each case, i.e., whether Medicaid was terminated, continued Medicaid, or enrolled in Medically Needy. If, at any time prior to the expiration of this Agreement, reports provided by DCF indicate that DCF has timely completed no less than 85% of the ex parte review in this subgroup for any three months, DCF's reporting obligations under this subsection shall cease.

b. Data Collection & Monitoring - Subgroup Two.

DCF will develop and run data queries that evidence the timely completion of DCF's ex parte review (as defined above) for Ex Parte Reviewees in Subgroup Two. For purposes of this Agreement, timely completion shall occur within fifty (50) days of receiving notice of an SSI termination of an Ex Parte Reviewee. Starting within ninety (90) days of the Effective Date of this Agreement and by the 20th of every third month thereafter for the term of this Agreement, DCF will send a report to Plaintiffs' counsel that shall include all SSI terminations that Defendants have received for the three-months prior, less individuals receiving some type of Medicaid or SSI;

those individuals who have been denied Medicaid eligibility and provided notice of denial; those individuals who are deceased; and those individuals for who additional information was requested. This report will be entitled the “Ex Parte Review Quarterly Data – Subgroup Two” and will not include any personally identifying beneficiary information.

After the initial report, the report shall include the results of a review of a random sample of 100 ex parte reviews each quarter, or 100% if less than 100 ex parte reviews, from the previous reporting period. In the Ex Parte Review Quarterly Data – Subgroup Two report, DCF will provide a summary of the findings of this review, including whether the ex parte review was completed timely; whether the Ex Parte Reviewee was provided notice of the result; and whether Medicaid was terminated, continued Medicaid, or enrolled in Medically Needy. If, at any time prior to the expiration of this Agreement, a report provided by DCF indicates that DCF has timely completed no less than 85% of the ex parte review in this subgroup for two consecutive months, within or across, any two quarterly reports (for a total of four months), DCF’s reporting obligations under this subsection shall cease.

c. Data Collection & Monitoring – Subgroups One and Two.

Beginning three (3) months from the Effective Date of this Agreement, DCF will provide to Plaintiffs’ counsel, on a quarterly basis, an update of the baseline data report provided to Plaintiffs’ counsel via email on December 19, 2019, using the same methodology and format as the report attached hereto as Exhibit “A,” and incorporated herein for reference only. The report shall reflect that, at each quarter, the percentage of beneficiaries for whom DCF has not taken action (i.e., the beneficiary has not received a timely ex parte review) and the final report shall reflect that DCF is timely reviewing no less than 85% of the Ex Parte Reviewees in each subgroup.

6. **Effective Date; Term.** The Effective Date of this Agreement shall be the date upon which the last party executes same. The term of this Agreement shall be no more than twelve (12) months from its Effective Date, or such time as may be extended by agreement of the Parties in writing.

7. **Governing Law.** The laws of the State of Florida and of the United States shall govern the validity, construction, interpretation, and effect of this Agreement.

8. **Construction and Headings.** This Agreement resolves Plaintiffs' disputed claim and is a contractual compromise between the Parties. The Parties enter into this Agreement in order to avoid the costs, burdens and necessity of trial. Each party has reviewed and revised this Agreement, and the normal rule of construction that ambiguities are to be construed in favor of the non-drafting party shall not be employed or applied to the interpretation of this Agreement.

9. **Pre-Dispute Resolution of Ex Parte Reviewees.** During the term of this Agreement, where Plaintiffs' counsel identifies Ex Parte Reviewees whose Medicaid has terminated after the Effective Date of this agreement but did not receive timely reviews, Plaintiffs' counsel will communicate information about the Ex Parte Reviewee to DCF's designee. DCF will review the case and be given the opportunity to resolve the concern and issue a notice of case action. In the event that an Ex Parte Reviewee disagrees with DCF's determination of eligibility, the Parties agree that the proper course of action is for the Ex Parte Reviewee to submit a fair hearing request to the Office of Appeal Hearings at DCF. This section does not afford these individuals any additional rights or privileges under this Agreement. This section is not subject to jurisdiction or enforcement by the Court.

10. **Dispute Resolution; Right to Cure.** If counsel for Plaintiffs have concerns regarding effectuation of this Agreement, the Parties agree that such concerns should be

communicated to DCF's Office of General Counsel designee, so that DCF is given the opportunity to address potential resolution of the concern. Plaintiffs will be required to serve written notice on Defendants detailing any claim of non-compliance. Defendants shall have thirty (30) business days to provide a written response to Plaintiffs' notice. Within seven (7) business days after Defendants' written response is due, or at such time as is mutually agreed upon, the Parties shall confer by telephone or in-person in a good faith effort to resolve the dispute. If issues involving the implementation of this Agreement should arise, the Parties shall cooperate with each other to amicably resolve any conflicts arising herein before seeking resolution through the Court. If the parties are unable to resolve the dispute, however, then Plaintiffs may file a motion with this Court alleging a claim of non-compliance and shall specify the relief sought as further detailed in Paragraph 11 of this Agreement.

11. **Jurisdiction; Enforcement.** The Defendants' obligations under this Agreement are distinct and separate. The Parties agree that, for the term of this Agreement, this Court retains jurisdiction for the sole purpose of enforcement of this Agreement as to the original Parties, and only to the extent that a Party retains obligations under the Agreement. Plaintiffs may, upon motion to this Court, allege a claim of substantial non-compliance with the terms of this Agreement after undertaking steps to first amicably resolve any conflicts arising herein. Prior to bringing any such motion, Plaintiffs will serve written notice on the Defendant(s) that details the claim of substantial non-compliance as set forth in Paragraph 10 of this Agreement. If the Party or Parties are unable to resolve the dispute, Plaintiffs' counsel may file a motion with the Court alleging a claim of substantial non-compliance and shall specify the relief sought.

12. **Release.** Plaintiffs, in consideration of the following agreements, hereby covenant not to sue and voluntarily remise, release and forever discharge the Defendants and all

officers, directors, servants, agents and employees of the Defendants from any and all liability, demands, claims, damages, or loss of any kind and nature, whether at law or equity, or administrative in nature, including but not limited to, all matters raised in the case styled as *CLAYTON HARRELL, by and through his next Friend, Connie Harrell, and AUSTIN TRUEBLOOD, by and through his Guardian, Suzanne Trueblood, on behalf of themselves and all others similarly situated versus CHAD POPPELL, in his official capacity as Secretary for the FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES, and MARY MAYHEW, in her official capacity as Secretary for the FLORIDA AGENCY FOR HEALTH CARE ADMINISTRATION,* under case number 3:19-cv-00912 in the United States District Court, Middle District of Florida, and any other matter which has or could have been asserted by Plaintiffs based on, related in any way to any act, omission, event, occurrence or agreement involving Plaintiffs and Defendants at any time up and through the execution of this Agreement. Furthermore, it is understood and agreed that this Agreement is a release of all known and unknown, past, present, and future injuries, property damage, permanent injuries, disfigurements and pain and suffering, medical, hospital and nursing expenses, expense for servants, housekeepers, or help, mental anguish, including claims for punitive or exemplary damages, humiliation, embarrassment, loss on income, loss of earning power, ambulance service, medical expenses, loss of services, loss of companionship, loss of consortium, loss of comfort, third party claims of any kind or character whether for contribution, indemnity or any other cause of action, all of the above for past, present, and future known or unknown, or possible wrongful death should death ever occur and be attributed to the aforesaid under case number 3:19-cv-00912, and any and all other matters and things from the beginning of time to the date of the execution of this Agreement suffered by or on behalf of Plaintiffs attributed to the aforesaid circumstances raised in under case number 3:19-cv-00912.

13. Neither this Agreement, nor any of its subparts, parts or terms shall be interpreted in such a manner that the interpretation prohibits or restricts the Parties from carrying out any obligation, right, or duty which is established by state or federal law.

14. **Attorney Fees and Costs.** DCF agrees to provide payment for Plaintiffs' reasonable attorneys' fees and costs in the amount of thirty thousand dollars (\$30,000) within thirty (30) days of an ordering dismissing the case, made payable to the trust account of Jacksonville Area Legal Aid, Inc., and mailed to the attention of James Kowalski, Jacksonville Area Legal Aid, 126 W. Adams Street, Jacksonville, Florida 32202.

15. **Entire Agreement.** This Agreement constitutes the entire agreement of the Parties with respect to its subject matter and supersedes any and all other prior agreements and all negotiations leading up to the execution of this Agreement, whether oral or written, regarding the subject covered in this Agreement. The Parties acknowledge that no representations, inducements, promises, or statements related to this settlement or the subjects covered in this Agreement, oral or written, have been made by any of the Parties or by anyone acting on behalf of the Parties which are not embodied or incorporated by reference in this Agreement, and further agree that no other agreement, covenant, representation, inducement, promise, or statement relating to this Agreement or the subjects covered in this Agreement not set forth in writing in this Agreement have been made by any party.

16. **Impossibility.** Should a war, riot, fire, flood, hurricane, typhoon, earthquake, lightning, explosion, strike, pandemic, or prolonged shortage of energy supplies substantially impede Defendants in its compliance with any of the terms of this Agreement, or substantially impede Defendants timely compliance with any of the terms of this Agreement, the Parties agree that the failure to comply or comply timely shall be excused and shall not be

considered a failure to meet the terms of this Agreement. Should any of the events in this Paragraph occur and substantially impede compliance, Defendants shall make reasonable efforts to restore or alternatively achieve substantial compliance as soon as it is possible to do so.

17. **No Admission.** Neither party will consider, deem, or suggest that anything in this Agreement constitutes the other party's admission of liability, wrongdoing, or violation of law. This Agreement nor any of its terms shall be used as an admission or introduced as evidence as to any issue of law or fact, in any proceeding, suit or action, other than an action to enforce this Agreement.

18. **Execution; Stipulated Order.** By executing this Agreement, the Parties stipulate that they understand the terms hereof, execute it by their own free will, and intend to be bound by it. Within thirty (30) days of execution of this Agreement by the Parties, the Parties shall submit and file the attached Joint Motion for Order of Dismissal Retaining Jurisdiction to Enforce the Terms of the Settlement Agreement, and Proposed Order, attached as Exhibit "B," with the District Court requesting that the Court enter the Order retaining jurisdiction for enforcement of the Agreement by the Parties for twelve (12) months from the Effective Date of the Agreement, and otherwise dismissing the cause of action with prejudice. Failure or refusal of the Court to enter an Order in substantial form as agreed to by the Parties will release the Parties of any and all obligations under the Agreement.

19. **Counterparts.** This Agreement may be executed in counterparts, which taken together constitute a fully executed document.

THE UNDERSIGNED SIGNATURES REPRESENT THAT S/HE HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO THE TERMS AND CONDITIONS.

FOR THE PLAINTIFFS	

<p>Date: <u>2/11/2020</u></p> <p><u>Kathy D. Briere</u> Katherine Debriere debriere@floridahealthjustice.org Florida Health Justice Project</p>	<p>Date: <u>2-12-2020</u></p> <p><u>Rachel Siegel-McLaughlin</u> Rachel Siegel-McLaughlin Rachels@disabilityrightsflorida.org Disability Rights Florida</p>
<p>Date: <u>2/12/2020</u></p> <p><u>Travis England</u> Travis England England@ncej.org Nat'l Ctr for Law & Economic Justice, Inc.</p>	
<p>Date: <u>02/11/2020</u></p> <p><u>Clayton Harrell</u> Clayton Harrell</p>	
<p>Date: <u>2/11/2020</u></p> <p><u>Connie Harrell</u> Connie Harrell</p>	<p>Date: <u>2-11-2020</u></p> <p><u>Suzanne P. Trueblood</u> Suzanne Trueblood</p>

FOR THE DEFENDANTS	
<p>Date: <u>2/12/2020</u></p> <p><u>Javier Enriquez</u> Javier Enriquez General Counsel Javier.Enriquez@myflfamilies.com Florida Dept. of Children & Families</p>	<p>Date: <u>2/12/20</u></p> <p><u>Stefan R. Grow</u> Stefan Grow General Counsel Stefan.Grow@ahca.myflorida.com Agency for Health Care Administration</p>

(2020-02-11)

1317 Winewood Boulevard Building 2; Room 204 Tallahassee, Florida 32399	2727 Mahan Drive, Building 3 Tallahassee, Florida 32308
---	--

[END OF SETTLEMENT AGREEMENT]

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Case No. 3:19-cv-00912

CLAYTON HARRELL, by and through his next
Friend, Connie Harrell, and AUSTIN TRUEBLOOD,
by and through his Guardian, Suzanne Trueblood, on
behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

CHAD POPPELL, in his official capacity as Secretary
for the FLORIDA DEPARTMENT OF CHILDREN
AND FAMILIES, and MARY MAYHEW, in her
official capacity as Secretary for the FLORIDA
AGENCY FOR HEALTH CARE
ADMINISTRATION,

Defendants.

Settlement Agreement

EXHIBIT A

Joint Motion - Ex. A

Baseline Report

SSI Terminations	Jul-19	Aug-19	Sep-19
SSI Terminations Received			
Covered under Medicaid or Medically Needy			
Covered under Medicaid			
Covered under Medically Needy			
Back on SSI			
Deceased			
Denied for Medicaid (or Medically Needy)			
No Action			

Cumulative counts from July 2019
 Not mutually exclusive (individual may fall in more than one category.)

Adoption Subsidy	Oct-19	Nov-19	Dec-19
Individuals turning 18			
Covered under Medicaid or Medically Needy			
Deceased			
Denied for Medicaid (or Medically Needy)			
Difference			

Adoption Subsidy	Oct-19	Nov-19	Dec-19
Individuals turning 21			
Covered under Medicaid or Medically Needy			
Deceased			
Denied for Medicaid (or Medically Needy)			
Difference			

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Case No. 3:19-cv-00912

CLAYTON HARRELL, by and through his next
Friend, Connie Harrell, and AUSTIN TRUEBLOOD,
by and through his Guardian, Suzanne Trueblood, on
behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

CHAD POPPELL, in his official capacity as Secretary
for the FLORIDA DEPARTMENT OF CHILDREN
AND FAMILIES, and MARY MAYHEW, in her
official capacity as Secretary for the FLORIDA
AGENCY FOR HEALTH CARE
ADMINISTRATION,

Defendants.

Settlement Agreement

EXHIBIT B

Joint Motion - Ex. A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Case No. 3:19-cv-00912

CLAYTON HARRELL, by and through his next
Friend, Connie Harrell, and AUSTIN TRUEBLOOD,
by and through his Guardian, Suzanne Trueblood, on
behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

CHAD POPPELL, in his official capacity as Secretary
for the FLORIDA DEPARTMENT OF CHILDREN
AND FAMILIES, and MARY MAYHEW, in her
official capacity as Secretary for the FLORIDA
AGENCY FOR HEALTH CARE
ADMINISTRATION,

Defendants.

**JOINT MOTION FOR ORDER OF DISMISSAL RETAINING
JURISDICTION TO ENFORCE TERMS OF SETTLEMENT
AGREEMENT**

Plaintiffs, CLAYTON HARRELL, through his next Friend, Connie Harrell,
and AUSTIN TRUEBLOOD, through his Guardian, Suzanne Trueblood (herein
“Plaintiffs”), and Defendants, Florida Department of Children and Families (herein
“DCF”), and Agency for Health Care Administration (herein “AHCA”) (collectively
herein the “Parties”), jointly move this Honorable Court to enter an Order, pursuant
to Fed. R. Civ. P. 41(a)(2), to resolve the above-styled as follows:

1. Plaintiffs brought a proposed Class Action lawsuit on August 7, 2019, against Defendants on behalf of two groups (collectively, “Ex Parte Reviewees” or “Reviewees”):

- a. Individuals eligible for Medicaid pursuant to an Adoption Assistance Agreement and whose Medicaid coverage subsequently ends under the Adoption Assistance category, but who remain eligible for another category of Medicaid, and
- b. Individuals eligible for Medicaid pursuant to the receipt of SSI (“Supplemental Security Income”) benefits and whose Medicaid coverage subsequently ends due to the cessation of SSI benefits, but who remain eligible for another category of Medicaid.

2. Plaintiffs’ complaints stem from the alleged failure of Defendants to perform pre-termination eligibility reviews, commonly referred to as an “ex parte review,” and failing to provide these Reviewees with notice of case action, which deprived them of the opportunity for a fair hearing.

3. Defendants, through counsel, responded to Plaintiffs’ Complaint and the Parties agreed to engage in settlement negotiations under an abeyance from the Court. (Dkt. #1).

4. On October 25, 2019, the Parties held their first settlement conference to discuss potential terms of an agreement.

5. After the October 25th meeting, the Parties exchanged multiple draft agreements and held multiple telephonic meetings regarding settlement terms upon which both Parties could agree.

6. On February 4, 2020, the Parties met in person for a full day settlement conference. At that conference, the Parties reached an agreement in principle. On February 12, 2020, the Parties executed an agreement (“Settlement Agreement”) which is attached hereto as Exhibit “A”.

7. As part of the Settlement Agreement, the Parties agreed this would not be a class action settlement.

8. The Settlement Agreement provides for system enhancements and modifications in Defendants’ processes to ensure Ex Parte Reviewees receive pre-termination eligibility reviews and notice of those reviews. The Settlement Agreement also provides for reporting of progress regarding the system enhancements and modifications to Plaintiffs’ counsel. The system enhancements, modifications of procedures, and progress reporting are all subject to the measures as outlined in the Settlement Agreement.

9. Additionally, the Parties agreed to file this Joint Motion and Proposed Order (“Order”), which provides that the Court will retain jurisdiction for the sole purpose of enforcement of the terms of the Settlement Agreement for the term of the

Agreement and otherwise dismiss the case with prejudice pursuant to Fed. R. Civ. P. 41(a)(2).

10. The Parties request that the Settlement Agreement shall only be enforced under a breach of contract standard in the United States District Court – Jacksonville Division.

11. As discussed in more detail below, the Parties respectfully request that this Court grant this Joint Motion pursuant to *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375 (1994) and enter an Order of Dismissal pursuant to Fed. R. Civ. P. 41(a)(2) explicitly retaining jurisdiction to enforce the terms of the Settlement Agreement.

MEMORANDUM OF LAW

I. Procedural History

a. Plaintiffs' Complaint

Plaintiffs' Complaint against DCF and AHCA and, respectively, its Secretaries, Chad Poppell and Mary Mayhew, alleged violation of various provisions of federal Medicaid law and the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *See generally*, Dkt. #1. Plaintiffs' filed the Complaint as a result of Defendants' alleged failure to perform pre-termination eligibility reviews, commonly referred to as an "ex parte review," for individuals who lost Medicaid eligibility due to cessation of Supplemental Security Income

(“SSI”) or due to the termination of an Adoption Assistance Agreement. *Id.* The Complaint further alleged that Defendants did not comply with notice requirements required under federal law upon completing an ex parte review, which deprived the individuals of the opportunity for a fair hearing. *Id.*

b. The Settlement Process

Upon the filing of Plaintiffs’ Complaint on August 7, 2019, Defendants contacted Plaintiffs, through counsel, and the Parties agreed to engage in settlement negotiations under an abeyance from the Court. *See* Dkt. #20 and #22. The Parties then proceeded to communicate through multiple telephone calls and e-mails to establish a first draft of the Settlement Agreement. Once a first draft of the Settlement Agreement was complete, the Parties met in-person on October 25, 2019 to discuss the first draft and the changes needed to effectuate settlement and resolve the concerns raised by Plaintiffs. After the adjournment of that conference, the Parties held additional meetings through telephone calls and e-mail communications to redraft the Settlement Agreement based on the October 25th in-person discussions. On December 20, 2019, a second draft Settlement Agreement was circulated among the Parties. On February 4, 2020, the Parties met in-person to finalize the terms of the Settlement Agreement. At the February 4th conference, the Parties agreed to the terms of the Settlement Agreement in principle. On February 12, 2020, after the final

draft Settlement Agreement was reviewed fully by all Parties, the Settlement Agreement was executed.

c. The Settlement Agreement

The Settlement Agreement thoughtfully addresses Plaintiffs' allegations set forth in the Complaint in that it includes: an implementation timeline, a comprehensive approach to address the violations alleged in the Complaint, and a requirement that the Defendants' report progress of the agreed upon actions to the Plaintiffs as well as a provision for attorneys' fees. *See Exhibit A.* More specifically, the Settlement Agreement includes substantive relief addressing the system modifications needed to ensure that ex parte reviews are undertaken on a consistent basis and that the appropriate notice is provided to an individual at any time Medicaid benefits are terminated under this review. Ex. A at ¶2. The Settlement Agreement also provides for extensive training of DCF staff on existing ex parte review policies as well as training related to the system modifications. Ex. A at ¶3. Furthermore, the Settlement Agreement includes a provision to provide corrective measures from January 2019 to the effective date of the Settlement Agreement for all individuals whose Medicaid eligibility was terminated due to a loss of Supplemental Security Income benefits without an ex parte review. Ex. A at ¶4. Finally, the Settlement Agreement provides for regular reporting to Plaintiffs' counsel to monitor the efficacy of the system enhancements, modifications to

Defendants' processes, staff training, as well as the number of individuals afforded relief through the corrective action. Ex. A at ¶5.

In the event there is a dispute over an alleged lack of substantial compliance with the terms of the Settlement Agreement, the Plaintiffs must provide Defendants, in writing, the specific reasons it believes the Defendants are not in substantial compliance. Ex. A at ¶10. Defendants will have thirty (30) days to provide a written response to Plaintiffs regarding Plaintiffs' notice. Ex. A at ¶10. Within seven (7) days of receiving Defendants' response, or at a time mutually agreed upon by the Parties, the Parties will meet and confer in a good faith effort to resolve the dispute. Ex. A at ¶10. Only if the Parties are unable to resolve the dispute, then Plaintiffs may file a motion with this Court asking the Court to exercise its jurisdiction to enforce a specific claim of non-compliance as set forth in the Settlement Agreement. Ex. A at ¶10.

While the Agreement becomes effective upon the date it is fully executed by all parties,¹ it further contains a provision that all parties will be released from the obligations set forth in the Agreement unless the Court enters an Order that retains jurisdiction to enforce the terms of the Settlement Agreement and otherwise dismisses the Complaint with prejudice pursuant to Fed. R. Civ. P. 41(a)(2). Ex. A

¹ The Parties agreed to this definition of the Effective Date to remove uncertainty about when the deadlines in the Agreement begin to run so Defendants can more easily implement the Agreement's terms.

at ¶11. The Parties agreed the Court’s jurisdiction should extend for the term of the Settlement Agreement, which is 12 months from its effective date. Ex. A at ¶18.

II. Legal Standard

Courts have the discretion to enter, pursuant to Fed. R. Civ. P. 41(a)(2), a dismissal order retaining ancillary jurisdiction to enforce the terms of a settlement agreement. *Kokkonen*, 511 U.S. 375 at 381 (finding that pursuant to a court ordered dismissal under Fed. R. Civ. P. 41(a)(2) “the parties’ compliance with the terms of the settlement contract (or the court’s ‘retention of jurisdiction’ over the settlement contract) may, in the court’s discretion, be one of the terms set forth in the order.”). Importantly, there is a “strong judicial policy favoring settlement as well as the realization that compromise is the essence of the settlement.” *Bennet v. Behring Corp.*, 737 F.2d 989, 986 (11th Cir. 1984).

As set forth in Paragraph 1(c) above, the Parties have been able to, through diligent negotiation and thorough investigation, set forth remedies that are well tailored to address the claims alleged in Plaintiffs’ Complaint. To effectuate the Parties’ negotiated Settlement Agreement, the Parties’ agree that settlement is contingent upon the Court exercising its discretion to enter an Order, pursuant to Fed. R. Civ. P. 41(a)(2), retaining jurisdiction to enforce the terms of the Settlement Agreement but otherwise dismissing Plaintiffs’ claims with prejudice. Ex. A at ¶18.

Entering such an Order will promote the “strong judicial policy favoring settlement...” *Bennett* at 986.

III. Conclusion

The Parties share the goal of ensuring that qualifying individuals receive an ex parte review and accompanying notices of termination, upon the loss of Medicaid eligibility due to cessation of SSI benefits or the termination of Adoption Assistance. The Parties agree that the Settlement Agreement, as properly implemented, resolves all claims alleged in the Complaint and that, by the Court retaining jurisdiction for the limited purpose of enforcing its terms, the Court is more likely to accomplish the constitutional goals, minimize litigation expenses, and respect judicial economy than will an order imposed at the end of expensive and protracted litigation. *See U.S. v. City of Miami*, 664 F. 2d 435, 441 (5th Cir. 1981).

WHEREFORE, the Parties jointly request that this Court enter an Order retaining jurisdiction for the limited purposes of enforcing the terms of the Settlement Agreement and otherwise dismissing Plaintiffs’ claims with prejudice under Fed. R. Civ. P. 41(a)(2).

Respectfully Submitted,

JAVIER ENRIQUEZ
General Counsel, DCF

KATHERINE DEBRIERE
Florida Health Justice Project

STEFAN GROW,
General Counsel, AHCA

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail or via CM/ECF on February 13, 2020 on all counsel or parties of record on the Service List below.

JAVIER ENRIQUEZ
General Counsel

<p>Katherine Debriere debriere@floridahealthjustice.org Florida Health Justice Project 126 W. Adams Street Jacksonville, FL 32202 <i>Counsel for Plaintiffs</i></p>	<p>Rachel Siegel-McLaughlin Rachels@disabilityrightsflorida.org Disability Rights Florida 2473 Care Drive, Suite 200 Tallahassee, FL 32308 <i>Counsel for Plaintiffs</i></p>
<p>Marc Cohan Cohan@nclej.org National Center for Law & Economic Justice, Inc. 275 Seventh Avenue, Suite 1506 New York, NY 10001 <i>Counsel for Plaintiffs</i></p>	<p>Stefan Grow Stefan.Grow@ahca.myflorida.com Andrew Sheeran 2727 Mahan Drive, Building 3 Tallahassee, Florida 32308 <i>Counsel for Defendant AHCA</i></p>

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

Case No. 3:19-cv-00912

CLAYTON HARRELL, by and through his next
Friend, Connie Harrell, and AUSTIN TRUEBLOOD,
by and through his Guardian, Suzanne Trueblood, on
behalf of themselves and all others similarly situated,

Plaintiffs,

vs.

CHAD POPPELL, in his official capacity as Secretary
for the FLORIDA DEPARTMENT OF CHILDREN
AND FAMILIES, and MARY MAYHEW, in her
official capacity as Secretary for the FLORIDA
AGENCY FOR HEALTH CARE
ADMINISTRATION,

Defendants.

ORDER OF DISMISSAL

THIS CAUSE is before the Court on the parties' Joint Motion for Order of Dismissal, pursuant to Fed. R. Civ. P. 41(a)(2). The Settlement Agreement agreed to by the Parties provides for this Court to enter an Order retaining limited jurisdiction for enforcement of the Settlement Agreement for a period of no more than twelve (12) months after the date of this Order, or as long as the Agreement is otherwise still effective, whichever is earlier, while otherwise dismissing the case with prejudice.

Accordingly, it is **ORDERED AND ADJUDGED:**

1. The Court reserves jurisdiction over this matter to enforce the terms of the Parties' Settlement Agreement attached to the Joint Motion for Order of Dismissal (Dkt. #__, Exhibit A), for no longer than twelve (12) months from the effective date of the Agreement;
2. The Parties' Joint Motion for Order of Dismissal Retaining Jurisdiction to Enforce Terms of Settlement Agreement is **GRANTED**;
3. The Complaint is **DISMISSED WITH PREJUDICE**; and
4. The Clerk is directed to **CLOSE** this case.

DONE AND ENTERED at Jacksonville, Florida, this ____ day of February,
2020.

BRIAN J. DAVIS
UNITED STATES DISTRICT JUDGE