

2021 SETTLEMENT AGREEMENT

This Settlement Agreement (the “Settlement Agreement”), dated as of January 27, 2021, is made by and among the following parties (collectively, the “Parties”):

Alicia M. Pedreira, Johanna W.H. Van Wijk-Bos, and Elwood Sturtevant (collectively, “Plaintiffs”);

Eric Friedlander, Secretary, Cabinet for Health and Family Services, and Justice Mary C. Noble, Secretary, Justice and Public Safety Cabinet, and their successors, officers, employees, and agents (collectively, the “Commonwealth Defendants”);

Americans United for Separation of Church and State (“Americans United”); and

the American Civil Liberties Union and the American Civil Liberties Union of Kentucky (collectively, “ACLU”) (collectively Americans United and ACLU shall be referred to as “Plaintiffs’ Organizational Counsel”).

RECITALS

A. Plaintiffs filed suit against the Commonwealth Defendants alleging, among other things, that the Commonwealth Defendants violated the Establishment Clause of the First Amendment to the United States Constitution through their agreements with Sunrise Children’s Services, Inc., f/k/a Kentucky Baptist Homes for Children (“Sunrise”). The lawsuit is captioned *Pedreira, et al. v. KBHC et al.*, No. 3:00cv210 (W.D. Ky.) (the “Lawsuit”).

B. The Parties, through their respective authorized representatives who have signed below, agree that the Lawsuit be dismissed with prejudice on the following terms and conditions.

AGREEMENT

ACCORDINGLY, the Parties to this Settlement Agreement agree as follows:

Section 1. Definitions.

(a) Agency shall collectively mean a child-caring facility as defined in KRS 199.641(1)(b) and a child-placing agency as defined in KRS 199.011(7). Child-caring facility shall have the same meaning as set forth in KRS 199.641(1)(b) and child-placing agency shall have the same meaning as set forth in KRS 199.011(7).

(b) PCC Agreement shall mean the private child care agreement used by the Commonwealth Defendants to contract with private child-caring facilities and child-placing agencies.

(c) Religious affiliation shall mean one’s religion (e.g., Christian, Jewish, Muslim, etc.) or denomination (e.g., Baptist, Methodist, Presbyterian).

(d) Proselytize or proselytization shall mean an affirmative attempt to induce a child to convert to a particular faith against the wishes or without the knowing and voluntary prior consent of the child.

Section 2. Modifications to Commonwealth Procedures and PCC Agreements. Subject to Section 2(j) below, the Commonwealth Defendants shall modify, as described in this Section 2, their procedures for providing care through private Agencies to children placed in the Commonwealth Defendants' care, and shall incorporate certain modifications, as described in this Section 2, to the PCC Agreements.

(a) Placement. The provisions of this Section 2(a) shall be effective only upon the enactment of appropriate administrative regulations.

(i) Child-caring facilities: Subject to the provisions of KRS §199.801 and upon enactment of new or modified administrative regulations within KAR Title 505 and KAR Title 922, prior to placing any child at a child-caring facility, the Commonwealth Defendants shall (i) inform the child, and the child's parent(s) or guardian if a parent or guardian can be contacted by the Commonwealth at the time of the placement, about the child-caring facility's religious affiliation, if any such religious affiliation has been identified by the child-caring facility or the Commonwealth Defendants; (ii) inquire whether the child or parent or guardian objects to the child being placed at such child-caring facility based on its identified religious affiliation; and if the child or parent or guardian so objects, (iii) consider such objection and make reasonable efforts to provide an alternative placement if an alternative placement exists. If it is not reasonably possible to provide the above-described notice and inquiry prior to placing the child, the Commonwealth Defendants shall provide such notice and inquiry as soon as reasonably practical after placement and, in all events, not more than fourteen (14) days after placement. Nothing in this section shall be construed to require that the Commonwealth place a child in an alternative placement if there is no alternative placement available for the child based on the child's needs or limitations of the potential alternative placements, or if placement at the child-caring facility, without regard to its identified religious affiliation, is in the best interests of the child, as determined by the reasonable and good faith discretion of the Commonwealth. If the Commonwealth Defendants place a child at a child-caring facility over the child's or the child's parent's or guardian's objection with respect to the religious affiliation of the child-caring facility, the Commonwealth Defendants shall promptly document in writing the reasons why such placement was made over the objection of the child or the child's parent or guardian concerning the child-caring facility's religious affiliation, and why no alternative placement was made to accommodate the child's or parent's or guardian's objection concerning the religious affiliation of the child-caring facility. Nothing in this subsection shall be construed to interfere with the Commonwealth Defendants' ability to exercise their reasonable

and good faith discretion regarding the placement that it is in the best interests of the child.

- (ii) Child-placing agencies: Subject to the provisions of KRS §199.801 and upon enactment of new or modified administrative regulations within KAR Title 505 and KAR Title 922, prior to placing any child at a foster home, the Commonwealth Defendants shall require the child-placing agency to (i) inform the child, and the child's parent(s) or guardian if a parent or guardian can be contacted by the Commonwealth at the time of the placement, about the foster home's religious affiliation, if any such religious affiliation has been identified by the foster home in the home study required by 922 KAR 1:310, Section 4, or by the Commonwealth Defendants, (ii) inquire whether the child or parent or guardian objects to the child being placed at such a foster home based on its identified religious affiliation; and if the child or parent or guardian so objects, (iii) consider such objection and make reasonable efforts to provide an alternative placement if an alternative placement exists. If it is not reasonably possible to provide the above-described notice and inquiry prior to placing the child, the Commonwealth Defendants shall provide such notice and inquiry as soon as reasonably practical after placement and, in all events, not more than fourteen (14) days after placement. Nothing in this section shall be construed to require that the child-placing agency place a child in an alternative placement if there is no alternative placement available for the child based on the child's needs or limitations of the child-placing agency, or if placement at the foster home, without regard to its identified religious affiliation, is in the best interests of the child, as determined by the reasonable and good faith discretion of the Commonwealth and the child-placing agency. If a child-placing agency places a child at a foster home over the child's or the child's parent's or guardian's objection with respect to the religious affiliation of the foster home, the child-placing agency shall promptly document in writing the reasons why such placement was made over the objection of the child or the child's parent or guardian concerning the foster home's religious affiliation, and why no alternative placement was made to accommodate the child's or parent's or guardian's objection concerning the religious affiliation of the foster home. Nothing in this subsection shall be construed to interfere with the Commonwealth Defendants' ability to exercise their reasonable and good faith discretion regarding the placement that it is in the best interests of the child.

(b) Notice of Ombudsman; Service Appeal Process. The provisions of this Section 2(b) shall be effective only upon the enactment of appropriate administrative regulations.

- (i) Upon enactment of new or modified administrative regulations, prior to placing any child at an Agency, the Commonwealth Defendants shall (A) inform the child, and the child's parent(s) or guardian if a parent or guardian can be contacted, of the terms of the modified PCC Agreement and

procedures set forth in Sections 2(a), 2(d)(i)-(ii), 2(e), and 2(f) of this Agreement; (B) inform the child, and the child's parent(s) or guardian if a parent or guardian can be contacted, of the contact information for the available Ombudsman for the Cabinet for Health and Family Services ("Ombudsman") and the Service Appeal Process set forth in 922 KAR 1:320 ("Service Appeal Process"), and that the Ombudsman and the Service Appeal Process are available in the event the child or parent or guardian has concerns regarding the Agency's alleged violations of the terms of the modified PCC Agreement and procedures set forth in Sections 2(a), 2(d)(i)-(ii), 2(e), and 2(f); (C) provide the child with a document, that the child could keep on his or her person or in his or her room, containing information about the terms of the modified PCC Agreement and procedures set forth in Sections 2(a), 2(d)(i)-(ii), 2(e), and 2(f), the Ombudsman, and the Service Appeal Process. If it is not reasonably possible to provide the above-described information and document prior to placing the child, the Commonwealth Defendants shall provide such information and document as soon as reasonably practical after placement and, in all events, not more than fourteen (14) days after placement.

- (ii) Upon enactment of new or modified administrative regulations, the PCC Agreement shall be modified to provide that a child-caring facility shall post information, in at least one common area of the child-caring facility, about the terms of the modified PCC Agreement and procedures set forth in Sections 2(a), 2(d)(i)-(ii), 2(e), and 2(f), the Ombudsman, and the Service Appeal Process; and that a child-placing agency shall post information, in a prominent place in each location operated by the child-placing agency, about the terms of the modified PCC Agreement and procedures set forth in Sections 2(a), 2(d)(i)-(ii), 2(e), and 2(f), the Ombudsman, and the Service Appeal Process.

(c) Intake. Upon intake, the Commonwealth Defendants' case worker assigned to each child shall interview the child about his or her religious affiliation, if any, and shall document this information on the DPP-886A or a similar document. Such documentation shall include, but not be limited to, questions concerning the child's choice of religion, whether the child would like to attend religious services or instruction, whether the child would like access to any religious texts or materials, and whether the child has any specific religious holidays that the child wishes to celebrate. The DPP-886A or similar document will be included in the child's case file maintained by the Commonwealth Defendants, and shall be provided to the private Agency with which the child is placed at the time of referral, or as soon as reasonably practical thereafter and, in all events, not more than fourteen (14) days after intake. If the child is under the age of 13 or otherwise unable to provide informed responses to the questions, the Commonwealth Defendants shall use best efforts to obtain responses from the child's parent(s) or guardian if a parent or guardian can be contacted and whose legal parental rights have not been previously terminated, and shall maintain such responses in the child's case file.

(d) Religious Activities.

- (i) The PCC Agreement shall be modified to provide that (A) an Agency shall adopt and enforce a written policy requiring the Agency to demonstrate consideration for and sensitivity to the racial, cultural, ethnic, and religious background and actual or perceived sexual orientation, gender identity, and gender expression of a child in its care; and (B) subject to subsection 2(d)(ii), *infra*, with the exception of religious practices that are destructive or place a child in physical danger, the child-caring facility shall (1) provide children in its care with opportunities (subject to geographic and other reasonable time, transportation, and personnel limitations) to practice the religious belief and faith of the child's individual or family religious affiliation; and (2) provide or facilitate the children's ability to participate in religious activities of the child's individual or family religious affiliation without coercion (subject to geographic and other reasonable time, transportation, and personnel limitations).
- (ii) The PCC Agreement shall be modified to state that the child-caring facility shall adopt and enforce a written policy requiring the facility to use its best efforts to (A) provide children in its care with the opportunity to attend different houses of worship and/or services of different religious denominations based on the identified religious affiliations of the children in its care (subject to geographic and other reasonable time, transportation, and personnel limitations); and (B) for children not wishing to attend any offered religious service or religious activity, provide or facilitate the children's ability to participate, at the same time as the religious service or religious activity, in an appropriate, non-religious alternative to the religious service or religious activity (the child-caring facility's selection of which non-religious alternative(s) to provide or facilitate shall be subject to geographic and other reasonable time, transportation, and personnel limitations). The religious service or religious activity and the non-religious alternative should be reasonably comparable in terms of general attractiveness to children, but they need not be of the same nature or require the use of comparable funds, staffing and other resources. Whether a particular activity constitutes a religious service or religious activity shall be determined by reference to the content of the activity, specifically whether such content is religious in nature; the fact that an activity is sponsored, funded, or otherwise supported by an entity or individual affiliated with a religion shall not be determinative of whether the activity itself is religious. Likewise, the fact that any such entity or individual may be motivated to participate in the provision of any activity on account of their own religious beliefs or convictions shall not be determinative of whether the activity itself is religious.
- (iii) The PCC Agreement shall be modified to provide that the child-caring facility shall, on at least a monthly basis, in the TWIST PCC Tracking

module or through other similar documentation: (i) list any religious services, religious instruction, or other religious activities or events attended by each child during the month, (ii) state what religious materials, if any, were provided at such activities or events, and (iii) if the child attended a non-religious alternative activity or event, describe that activity or event. If the child-caring facility does not input such information into the TWIST PCC Tracking module, the child-caring facility shall provide other similar documentation to the Commonwealth Defendants at least twice per year.

(e) Religious Materials.

- (i) The PCC Agreement shall be modified to provide that the child-caring facility shall not place religious symbols or other religious articles in any child's private room, and shall not automatically provide religious texts or materials to any child, unless such symbols, articles, texts, or materials are requested by the child. A child-caring facility shall inform children that they can request religious symbols, articles, texts, or materials. If the child makes a request for religious symbols, articles, texts, or materials, the child-caring facility shall make reasonable and good faith efforts to contact the parent or legal guardian of the child to inquire whether the parent or guardian approves the provision of and is willing to provide the child with appropriate religious symbols, articles, texts, or materials for the child's personal use while in the custody of the child-caring facility. If the parent or guardian is unavailable or otherwise does not provide the requested religious symbols, articles, texts, or materials, but does not object to the provision thereof, the child-caring facility shall make reasonable and good faith efforts to provide the child with access to such symbols, articles, texts, or materials, subject to considerations regarding the safety, security, and administration of the child-caring facility, which considerations shall be applied in a manner that is non-discriminatory with respect to children's religious faiths, and may include any prohibitory financial burdens associated with accommodating the child's request.
- (ii) The PCC Agreement shall be modified to provide that the child-placing agency shall inform foster homes that they are not permitted to place religious symbols or other religious articles in any child's private room, or to automatically provide religious texts or materials to any child, unless such symbols, articles, texts, or materials are requested by the child. A child-placing agency shall inform children that they can request religious symbols, articles, texts, or materials. If the child makes a request for religious symbols, articles, texts, or materials, the child-placing agency shall make reasonable and good faith efforts to contact the parent or legal guardian of the child to inquire whether the parent or guardian approves the provision of and is willing to provide the child with appropriate religious symbols, articles, texts, or materials for the child's personal use while in the custody of the foster home. If the parent or guardian is unavailable or

otherwise does not provide the requested religious symbols, articles, texts, or materials, but does not object to the provision thereof, the child-placing agency shall make reasonable and good faith efforts to provide the child with access to such symbols, articles, texts, or materials, subject to considerations regarding the safety, security, and administration of the child-placing agency and foster home, which considerations shall be applied in a manner that is non-discriminatory with respect to children's religious faiths and may include any prohibitory financial burdens associated with accommodating the child's request.

(f) No Discrimination or Religious Coercion. The PCC Agreement shall be modified to provide that the Agency shall not (i) discriminate in any manner against any child based on the child's religious faith or lack of religious faith or the child's failure to conform to any religious tenet or practice; (ii) require, coerce, or pressure any child in any manner to attend religious services or instruction or to otherwise engage in or be present at any activity or programming that has religious content; (iii) impose any form of punishment or benefit based on a child's voluntary decision as to whether to participate in or attend any religious service or instruction or any other activity or programming that has religious content; (iv) proselytize any child in any religious beliefs; (v) require any child to pray or to participate in any form of prayer, or to attend any form of prayer that is organized, led, or otherwise sponsored or promoted, by the Agency; (vi) discriminate in any manner against any child based on the child's actual or perceived sexual orientation, gender identity (including non-binary gender identity), or gender expression; (vii) require, coerce, or pressure any child in any manner to change, modify, or deny their sexual orientation, gender identity, or gender expression; (viii) require, coerce, or pressure any child to listen to, view, read, or participate in audio, visual, or textual materials or instruction, activities, or programming that discriminates in any manner on the basis of sexual orientation, gender identity, or gender expression, or that characterizes in any manner any sexual orientation, gender identity, or gender expression as immoral, unnatural, unacceptable, or invalid; (ix) fail to provide transgender youth access to gender-affirming medical care by medical and mental health providers experienced in the treatment of gender dysphoria; (x) fail to offer any child the choice of using sex-segregated facilities consistent with their gender identity or based on where the child feels most safe; (xi) impose any form of punishment or benefit based on a child's actual or perceived sexual orientation, gender identity, or gender expression; (xii) deny any child participation in any activities, programs, or services because of the child's actual or perceived sexual orientation, gender identity, or gender expression; (xiii) discriminate in or refuse to accept the placement of any child in any manner on the basis of the child's actual or perceived sexual orientation, gender identity, or gender expression.

(g) Training. The Commonwealth Defendants shall provide additional written training materials (such as written bulletins) to employees of all Agencies to address issues of rights and accommodations relating to religion, sexual orientation, gender identity, and gender expression. The PCC Agreement shall be modified to provide that the Agency shall (i) provide these written training materials to each employee upon hiring or, in the case of employees already employed by the Agency as of July 1, 2021, to provide these written training materials to its existing employees upon execution of the modified PCC Agreement; (ii) require each of its new and existing employees to sign a one-time form acknowledging that the employee received and read these

training materials; (iii) maintain a copy of the acknowledgment form in each employee's personnel file; (iv) provide a copy of the written employee acknowledgment form upon the request of the Commonwealth Defendants.

(h) Agency Exit Surveys. The provisions of this Section 2(h) shall be effective only upon the enactment of appropriate administrative regulations. The Commonwealth Defendants shall prepare a brief exit survey concerning the child's experiences and impressions regarding the child-caring facility's religious activities and accommodations and the child-caring facility's treatment of and respect for children's actual or perceived sexual orientation, gender identity, or gender expression. During the week of a planned discharge for any child who has been in the care of a single child-caring facility for one month or longer, the Agency shall (i) provide the child with the exit survey, (ii) provide a secure location for the child to submit the exit survey anonymously, and (iii) submit the exit surveys to the Commonwealth Defendants on at least a quarterly basis. The Commonwealth Defendants shall maintain these exit surveys, organized by the Agency from which the surveys were received. Such exit survey shall include, but not be limited to, questions concerning whether the child experienced any alleged form of religious coercion, discrimination, or proselytization or of discrimination, coercion, or other mistreatment relating to the child's actual or perceived sexual orientation, gender identity, or gender expression during such placement, as described in Section 2(f). The central office of the Department for Community Based Services or Department of Juvenile Justice, or their counsel, shall investigate any allegations of religious coercion, discrimination, or proselytization or of discrimination, coercion, or other mistreatment relating to the child's actual or perceived sexual orientation, gender identity, or gender expression contained within the Exit Surveys, and take appropriate action, as necessary. The Commonwealth Defendants, in their reasonable and good faith discretion, shall determine whether any such allegation of religious coercion, proselytization, or discrimination or of discrimination, coercion, or other mistreatment relating to the child's actual or perceived sexual orientation, gender identity, or gender expression may violate the terms of Sections 2(d), (e) or (f) of this Agreement and thus merits a referral of the complaint to the Office of Inspector General within the Cabinet for Health and Family Services ("Office of Inspector General") or the Ombudsman for further investigation and other appropriate action, as deemed necessary by the Office of Inspector General or the Ombudsman in its reasonable and good faith discretion.

(i) Case Manager Surveys. The provisions of this Section 2(i) shall be effective only upon the enactment of appropriate administrative regulations. The Commonwealth Defendants shall require case workers to (i) question all children on their caseload about the child's experiences and impressions regarding the Agency's religious activities and accommodation and the Agency's treatment of and respect for children's actual or perceived sexual orientation, gender identity, or gender expression at one of the "home visits" made by the case worker annually, and (ii) document the children's responses in TWIST, or through other similar documentation. The questions shall include without limitation inquiries regarding the activities prohibited by Section 2(f). If a case worker believes that an Agency has engaged in an act of religious coercion, discrimination, or proselytization or of discrimination, coercion, or other mistreatment relating to the child's actual or perceived sexual orientation, gender identity, or gender expression, the case worker shall report such complaint and suspected behavior to the central office of the Department for Community Based Services or Department of Juvenile Justice, who shall investigate any such allegations, and take appropriate action, as necessary. The Commonwealth Defendants, in their

reasonable and good faith discretion, shall determine whether any such allegation of religious coercion, discrimination, or proselytization or of discrimination, coercion, or other mistreatment relating to the child's actual or perceived sexual orientation, gender identity, or gender expression may violate the terms of Sections 2(d), (e) or (f) of this Agreement and thus merits a referral of the complaint to the Office of Inspector General or the Ombudsman for further investigation and other appropriate action, as deemed necessary by the Office of Inspector General or the Ombudsman in its reasonable and good faith discretion.

(j) Sunset of Certain Modifications to Commonwealth Procedures and PCC Agreements.

- (i) Subject to Section 2(j)(iii) below, the Commonwealth Defendants shall maintain the specific modifications of their procedures and the modifications to the PCC Agreements (or other similar agreements governing the Commonwealth's procurement of child services from private Agencies) set forth in Sections 2(d)(iii), 2(g), 2(h), and 2(i) only for a period of seven (7) years after the "Effective Date" of this Agreement (defined *infra*). After the expiration of the seven-year period, the Commonwealth Defendants shall determine in their sole discretion whether to maintain the modifications to their procedures and the changes to the PCC Agreements described in those Sections of this Settlement Agreement, whether to make additional modifications, or whether those modifications are unnecessary.
- (ii) Subject to Section 2(j)(iii) below, the Commonwealth shall maintain the specific modifications of their procedures and the modifications to the PCC Agreements set forth in Sections 2(a), 2(b), 2(c), 2(d)(i)-(ii), 2(e), and 2(f) indefinitely.
- (iii) Nothing in the Settlement Agreement shall be construed to prevent the Commonwealth Defendants from making other modifications to the PCC Agreements, as deemed necessary in their sole discretion, or as required by law (statutory, regulatory, or by Court Order), so long as such modifications do not conflict with the terms of this Settlement Agreement. The Commonwealth Defendants reserve the right to seek appropriate judicial relief from specific terms of this Settlement Agreement in the event that the Commonwealth Defendants believe they have become required by subsequent law (statutory, regulatory, or by Court Order) to alter their procedures or to alter the terms of the PCC Agreements in a way that conflicts with such specific terms of this Settlement Agreement. If the Commonwealth Defendants seek or obtain such relief, Plaintiffs shall have the right, in their sole discretion, to declare this entire Agreement null and void.

Section 3. Monitoring.

(a) For a period of seven (7) years following the Effective Date of this Settlement Agreement, the Commonwealth Defendants shall disclose to Plaintiffs' Organizational Counsel

whether they, the Office of Inspector General, or the Ombudsman investigated any complaint against any Agency pursuant to Section 2(h) or 2(i) of this Settlement Agreement, the results of the investigation, and what action, if any, was taken as a result of the investigation. With respect to each Agency that became or becomes a subject of such an investigation by the Office of Inspector General or the Ombudsman at any time after the Effective Date, the Commonwealth Defendants shall provide Plaintiffs' Organizational Counsel, on at least an annual basis, until seven (7) years following the Effective Date, the materials described in Sections 2(a) (documentation of placement over objection in a religiously affiliated child-caring facility or foster home), 2(c) (intake religious preference documentation), 2(d)(iii) (religious activity documentation), 2(h) (agency exit surveys), and 2(i) (copies of any reports made by case workers) of this Settlement Agreement, for all children who were placed with the Agency, redacting children's names and other personally identifying information, for purposes of allowing Plaintiffs' Organizational Counsel to monitor the Commonwealth Defendants' compliance with the terms of this Settlement Agreement. With respect to each such Agency, the Commonwealth Defendants shall provide such materials within one year of the time the Agency became or becomes the subject of an investigation, and in each subsequent year of the seven-year period, even if the Agency does not become the subject of an investigation in the subsequent year. In light of the redactions, the Commonwealth Defendants shall, for each individual child, group together the materials described in Sections 2(a), 2(c), 2(d)(iii), 2(h), and 2(i) of this Settlement Agreement.

(b) Plaintiffs and Plaintiffs' Organizational Counsel shall maintain the confidentiality of the materials and information received under this Section 3, and shall not make any disclosure of such materials, except in connection with the assertion of Future Child-Caring Claims as set forth in Section 8 of this Settlement Agreement, a court proceeding to enforce the terms of the Settlement Agreement as set forth in Section 9 of this Settlement Agreement, communicating with representatives of the Commonwealth Defendants, or as required by a court of law. To the extent that Plaintiffs and/or Plaintiffs' Organizational Counsel need to disclose such materials to a court for the purpose of asserting Future Child-Caring Claims, enforcing the Settlement Agreement, or as required by a court of law, they will move the court for leave to file the materials under seal pursuant to the terms of the Protective Order. On an annual basis, Plaintiffs' Organizational Counsel shall each identify one individual to receive the materials and information required by this Section 3.

Section 4. Waiver of Attorney's Fees. No Party, including Plaintiffs' Organizational Counsel, shall seek or be awarded, from or against any Party, any fees, costs, or expenses, including but not limited to attorney's fees, incurred in connection with the Lawsuit, or in connection with this Settlement Agreement, or in connection with any action taken pursuant to Section 9 or Section 10, *infra*, except to the extent specifically permitted in Section 9, *infra*. The Parties expressly agree that they are waiving any and all rights to seek or to recover, from or against any Party, attorney's fees, costs, and expenses arising from this Lawsuit, except to the extent specifically permitted in Section 9, *infra*. Nothing in this Section 4, however, shall be construed as a waiver of any Party's right to seek attorney's fees, expenses, or costs that are incurred in any separate lawsuit based on any Future Child-Caring Claims (defined in Section 8, *infra*).

Section 5. Dismissal of Lawsuit. Within 30 days after the date this Settlement Agreement is executed, the Parties shall file a joint motion for voluntary dismissal of this action

with prejudice based on the Parties' consensual resolution of Plaintiffs' claims through this Settlement Agreement. The parties further agree to cooperate and take any additional action as may be necessary to obtain such relief.

Section 6. Enactment or Modification of Regulations; Effective Date.

(a) Within 90 days of the execution of this Settlement Agreement, the Commonwealth Defendants shall initiate the process of enacting or modifying administrative regulations to authorize and implement the provisions of Sections 2(a), 2(b), 2(h), and 2(i) above, as well as any other provisions of this Settlement Agreement that the Commonwealth Defendants elect to memorialize in new or modified regulations or that the Commonwealth Defendants or a court determine can be lawfully implemented only upon the enactment or modification of administrative regulations. Plaintiffs and Plaintiffs' Organizational Counsel expressly agree and acknowledge that the Commonwealth Defendants cannot guarantee the promulgation of any regulation, and that the failure to promulgate any regulation shall not be considered a violation of this Settlement Agreement pursuant to Section 9, *infra*. However, if the Commonwealth Defendants fail to promulgate any regulation that must be enacted to comply with the terms of this Agreement, Plaintiffs shall have the right, in their sole discretion, to declare this entire Agreement null and void.

(b) No later than the effective date of the regulations enacted or modified pursuant to the rulemaking required by Section 6(a) (the "Effective Date"), the Commonwealth Defendants shall implement modifications to the PCC Agreement as set forth herein, subject to the conditions set forth in this Section 6. Notwithstanding the foregoing, to the extent that the provisions of Sections 2(c), 2(d), 2(e), 2(f), and 2(g) of this Settlement Agreement are not included in the rulemaking required by Section 6(a), the Commonwealth Defendants shall implement those provisions no later than July 1, 2021, if that date is earlier than the Effective Date.

(c) Plaintiffs and Plaintiffs' Organizational Counsel expressly agree and acknowledge that the Commonwealth Defendants cannot guarantee that all Agencies will agree to execute the modified PCC Agreement. Furthermore, the Commonwealth Defendants reserve the right to seek appropriate judicial relief temporarily suspending provisions of this Agreement, in the event that their compliance with this Agreement causes a material and imminent threat to their ability to fulfill their statutory duties to provide care to children placed in their custody. Such a temporary suspension shall toll the seven-year time limitations under Sections 2(j), 3, 8, 9, and 10 of this Agreement. Such a temporary suspension shall remain in effect only so long as necessary to allow the Commonwealth Defendants to make appropriate arrangements to meet their contractual obligations under this Agreement. During the period of such a temporary suspension, the Commonwealth Defendants shall use their best efforts to make such arrangements. The Commonwealth Defendants shall have 60 days in which to make such arrangements. If after 60 days the Commonwealth Defendants are unable to make arrangements that enable them to comply with their obligations under this Agreement and to provide care to children placed in their custody, Plaintiffs shall have the right, in their sole discretion, to declare this entire Agreement null and void. Failure or refusal of any Agency to execute the modified PCC Agreement shall not be considered a violation of this Settlement Agreement pursuant to Section 9, *infra*. However, if an Agency fails or refuses to execute the modified PCC Agreement, the Commonwealth may continue

to place children with the Agency prior to obtaining judicial relief temporarily suspending provisions of this Agreement only if it files, within ten (10) days of the Agency's failure or refusal to execute the modified PCC Agreement, an emergency motion for expedited issuance of such relief, and only until the motion is ruled on.

Section 7. Release of all claims/Covenant Not to Sue. With the exception of the Parties' right to enforce the terms of this Settlement Agreement, as provided in Section 9, *infra*, and the Plaintiffs' and Plaintiffs' Organizational Counsel's ability to assert claims based on future conduct, as provided in Section 8, *infra*, in exchange for the consideration provided by the Commonwealth Defendants herein, the Plaintiffs and Plaintiffs' Organizational Counsel do hereby release, acquit and forever discharge the Commonwealth Defendants and their predecessors, successors, assigns, parent corporations, subsidiary corporations, affiliated corporations, and the officers, directors, shareholders, partners, employees, attorneys, insurers and agents, past and present, of each of the aforesaid entities, from any and all claims, demands, damages, costs, expenses, attorney's fees, actions, or causes of action, whether in law or equity, known or unknown, asserted or unasserted, which in any way arise out of the Commonwealth Defendants' and/or Sunrise's acts or omissions giving rise to the Lawsuit that have occurred or will occur before the Effective Date of this Agreement (defined *supra*), including all claims, demands, liabilities, actions or causes of action, of whatever kind or nature, in law, equity or otherwise, whether now known or unknown, vested or contingent, suspected or unsuspected that Plaintiffs, the ACLU, and Americans United may now have or have ever had relating directly or indirectly, in whole or part, to the Commonwealth Defendants' agreements with Sunrise for the provision of private child-caring and child-placing services. Plaintiffs expressly covenant that they shall not subsequently bring any claims, file any lawsuit, or voluntarily participate in any lawsuit, relating to conduct that occurs prior to the Effective Date of this Agreement, against the Commonwealth Defendants arising from the Commonwealth Defendants' agreements with Sunrise for the provision of private child-caring and child-placing services, as well as any and all claims that the Commonwealth Defendants and/or Sunrise have violated, through conduct that occurs prior to the Effective Date of this Agreement, the Establishment Clause of the United States Constitution or any provision of the Constitution of the Commonwealth of Kentucky by contracting with any private providers for the provision of child-caring and child-placing services. Plaintiffs expressly covenant that any "Future Child-Caring Claim" (defined *infra*) shall not be based upon or supported by any acts or omissions which allegedly occurred prior to the Effective Date of this Agreement. Plaintiffs and Plaintiffs' Organizational Counsel further agree that this Agreement, as well as any other considerations called for in this Agreement, are conditioned upon Plaintiffs' withdrawal or dismissal of the Lawsuit in its entirety with prejudice and all related legal proceedings in any forum with prejudice. The parties expressly agree and covenant that they do not intend to make any person, entity, or organization a third-party beneficiary of this Agreement, and expressly acknowledge and warrant that only the express parties to this Agreement shall have rights and obligations arising under this Agreement.

Section 8. Preservation of Claims Based on Future Conduct. Notwithstanding Section 7 of this Agreement, the Parties agree that neither Plaintiffs nor Plaintiffs' Organizational Counsel release, discharge, or covenant not to assert claims against the Commonwealth Defendants based on any acts or omissions by the Commonwealth Defendants that occur after the Effective Date of this Agreement. To the extent such future claims relate to the Commonwealth Defendants'

agreements with any child-caring facilities or child-placing agencies based on acts or omissions that occur after the Effective Date of this Agreement (“Future Child-Caring Claims”), the Future Child-Caring Claims shall be subject to the Informal Resolution procedures set forth in Section 10, *infra*, for a period of seven (7) years after the Effective Date. Plaintiffs expressly covenant that any “Future Child-Caring Claim” shall not be based upon or supported by any acts or omissions which allegedly occurred prior to the Effective Date of this Agreement.

Section 9. Governing Law; Submission To Jurisdiction; Private Remedy; Not Consent Decree. All questions as to the execution, validity, interpretation and performance of this Agreement shall be governed by the laws of the Commonwealth of Kentucky. The Parties agree that the sole remedy for any alleged violation or failure to comply with the terms of this Settlement Agreement is specific performance pursuant to this Section 9. Any Party to this Settlement Agreement shall have the right to enforce this Settlement Agreement by filing a new lawsuit in a court with appropriate jurisdiction. The ACLU and Americans United shall have the same rights to enforce the Settlement Agreement that are provided to the other Parties under this Section 9. The Commonwealth Defendants shall not be subjected to any civil contempt fines or criminal contempt sanctions for any violation of this Settlement Agreement. Furthermore, the Commonwealth Defendants shall be liable for reasonable attorney’s fees incurred by Plaintiffs in any action to enforce this Agreement only if a Court determines that they violated the Agreement willfully and intentionally. Nothing in this Settlement Agreement shall be construed to require the Commonwealth Defendants to increase the per diem contract rates paid to each Agency pursuant to the current or modified PCCs, or to require the Commonwealth Defendants or any Agency to hire additional personnel, or to require the General Assembly of the Commonwealth of Kentucky to raise taxes. The Parties shall have six (6) months after the termination of the monitoring provisions of this Settlement Agreement (the monitoring provisions of the Settlement Agreement shall “terminate” seven (7) years after the Effective Date), to bring any lawsuit relating to the enforcement of the Commonwealth’s compliance with Sections 2(d)(iii), 2(g), 2(h), and 2(i) of the Settlement Agreement pursuant to this Section 9, or any such lawsuit shall be forever barred.

Section 10. Informal Resolution Period. For a period of seven (7) years after the Effective Date, prior to bringing any Future Child-Caring Claims against the Commonwealth Defendants, or any lawsuit pursuant to Section 9, *supra*, the Plaintiffs and/or Plaintiffs’ Organizational Counsel shall provide written notice to the Commonwealth Defendants of any Future Child-Caring Claim or any alleged breach or failure to comply with the terms of the Settlement Agreement. The Commonwealth Defendants shall have thirty (30) days from receipt of the written notice to cure the alleged basis for the claim or breach or failure to comply with the terms of the Settlement Agreement, or to provide a written response to Plaintiffs and Plaintiffs’ Organizational Counsel (the “cure period”). If, after the “cure period,” the Parties have not resolved their dispute, upon the joint agreement of the Parties, the Parties may agree to submit to a private mediation with a private mediator agreed to by all Parties. If the Parties jointly agree to conduct a private mediation, the cost of the mediation shall be shared equally by the Parties. (The “cure period,” together with the length of any mediation process to which the Parties may agree, are collectively the “informal resolution period.”) No Party shall bring any Future Child-Caring Claim, or lawsuit pursuant to Section 9, *supra*, prior to the expiration of the informal resolution period. The six (6) month limitation period pursuant to Section 9, *supra*, as well as any statute of

limitations applicable to any Future Child-Caring Claim, shall be tolled during the informal resolution period.

Section 11. Protective Order. The Parties expressly agree that they will continue to abide by the terms of the Protective Order entered by the Court in the Lawsuit on December 7, 2011 during the term of, and after the termination of the monitoring provisions of, this Settlement Agreement. The parties further agree that any information obtained or disclosed pursuant to the terms of this Settlement Agreement shall be subject to the Protective Order. Within sixty (60) days after the Effective Date of this Agreement, Plaintiffs and Plaintiffs' Organizational Counsel shall return or destroy all documents that were previously produced pursuant to the Protective Order by the Commonwealth Defendants and Sunrise. Within sixty (60) days after the conclusion of the six (6) month limitation period set forth in Section 9, *supra*, or of the conclusion of any proceeding based on Future Child-Caring Claims, or for specific performance pursuant to Section 9, *supra*, Plaintiffs and Plaintiffs' Organizational Counsel shall return or destroy all documents subsequently provided pursuant to Section 3, *supra*. Plaintiffs and Plaintiffs' Organizational Counsel shall provide to the Commonwealth Defendants and Sunrise, with any returned documents, a verified statement executed by Plaintiffs and Plaintiffs' Organizational Counsel that they have complied fully with this provision.

Section 12. No admission of liability. The execution of this Agreement affects the settlement of claims which are contested and denied and to which a bona fide dispute exists. The execution of this Agreement shall not be construed as an admission of any liability of any kind by any Party. By entering into this Settlement Agreement, the Commonwealth Defendants expressly deny that they have violated the United States Constitution or the Kentucky Constitution by contracting with Sunrise, and expressly deny that Sunrise is a "pervasively sectarian" organization, or that any alleged acts or omissions by Sunrise have violated the religious rights or freedoms of the children placed in Sunrise's care. The Commonwealth Defendants represent that they are entering into this Settlement Agreement for the sole purpose of resolving the Lawsuit. By entering into this Settlement Agreement, the Commonwealth Defendants do not concede that the United States Constitution, the Kentucky Constitution, or any state or federal law, including but not limited to the "Charitable Choice" statute, 42 U.S.C. 604a, require any of the provisions or changes agreed to in this Settlement Agreement, and Plaintiffs, the ACLU and Americans United expressly agree and acknowledge that the Commonwealth Defendants' execution of this Settlement Agreement, its agreement to make the changes set forth in this Agreement, or its alleged past failure to make the changes set forth in this Agreement, shall not be used as evidence that the Commonwealth Defendants have violated the United States Constitution, the Kentucky Constitution, or any state or federal law, that Sunrise is a "pervasively sectarian" organization, or that that any alleged acts or omissions by Sunrise have violated the religious rights or freedoms of the children placed in Sunrise's care. The parties expressly and mutually agree that by entering into this Agreement, neither party is admitting, denying, or waiving their legal position with respect to whether the Charitable Choice statute, i.e., 42 U.S.C. 604a, applies to the provision of foster care by state agencies through private providers.

Section 13. Severability. If any term of this Settlement Agreement is held by any court to be to any extent invalid, illegal, or incapable of being enforced, such term shall be excluded

only to the extent of such invalidity, illegality, or unenforceability, and all other terms of this Settlement Agreement shall remain in full force and effect.

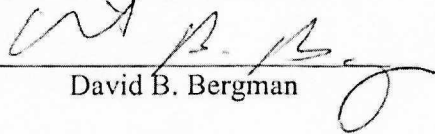
Section 14. Headings. Headings and captions used in this Settlement Agreement are included herein for convenience of reference only and shall not constitute a part of this Settlement Agreement for any other purpose or be given any substantive effect.

Section 15. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all other prior agreements and understandings (including the March 12, 2013 Settlement Agreement between the Parties and the November 18, 2015 First Amendment to Settlement Agreement), both written and oral, between the Parties with respect to the subject matter hereof.

Section 16. Counterparts. This Settlement Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument.

IN WITNESS WHEREOF, the following Parties have caused this Settlement Agreement to be executed by their respective duly authorized officers as of the date first set forth above.

On behalf of the Plaintiffs, Alicia M. Pedreira, Johanna W.H. Van Wijk-Bos, and Elwood Sturtevant, by their counsel:

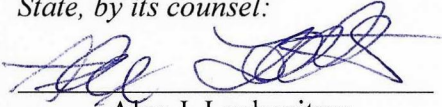


David B. Bergman

Date: 1/27/2021

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On behalf of Plaintiffs' Organizational Counsel Americans United for Separation of Church and State, by its counsel:



Alex J. Luchenitser

Date: 1/27/2021

Alex J. Luchenitser
AMERICANS UNITED FOR SEPARATION OF CHURCH AND STATE
1310 L Street, NW, Suite 200
Washington, DC 20005
(202) 466-3234
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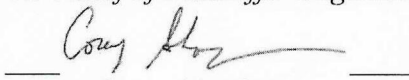
On behalf of Plaintiffs' Organizational Counsel ACLU Foundation, by its counsel:

Daniel Mach

Date: _____

Daniel Mach
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On behalf of Plaintiffs' Organizational Counsel ACLU of Kentucky, by its counsel:



Corey Shapiro

Date: 1/27/2021

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Heather L. Gatnarek
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corey@aclu-ky.org

On behalf of Plaintiffs' Organizational Counsel Americans United for Separation of Church and State, by its counsel:

Alex J. Luchenitser

Date: _____

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On behalf of Plaintiffs' Organizational Counsel ACLU Foundation, by its counsel:



Daniel Mach

Date: 1-27-21

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On behalf of Plaintiffs' Organizational Counsel ACLU of Kentucky, by its counsel:

Corey Shapiro

Date: _____

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On behalf of the Commonwealth Defendants, Eric Friedlander, Secretary, Cabinet for Health and Family Services, and Justice Mary C. Noble, Secretary, Justice and Public Safety Cabinet, and their successors, officers, employees, and agents:

DocuSigned by:

Eric Friedlander

0AEATD6CT5D6431

Eric Friedlander, Secretary

Date: 1/29/2021 | 6:51 PM EST

Eric Friedlander, Secretary
COMMONWEALTH OF KENTUCKY
CABINET FOR HEALTH AND FAMILY SERVICES
275 E. Main Street, 5W-A
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Mary C. Noble

Justice Mary C. Noble, Secretary

Date: January 29, 2021

Justice Mary C. Noble, Secretary
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