

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

_____	:	
JOSEPH WATLEY and KARIN	:	
HASEMANN,	:	
Plaintiffs,	:	
	:	
v.	:	3:13-CV-1858-RNC
	:	
JOETTE KATZ and DEPARTMENT	:	
OF CHILDREN AND FAMILIES	:	
Defendants.	:	June 10, 2016
	:	
_____	:	

**First Amended Complaint and Jury Demand**

Plaintiffs Joseph Watley (“Mr. Watley”) and Karin Hasemann (“Ms. Hasemann”) (collectively Mr. Watley and Ms. Hasemann are referred to as “Plaintiffs”) hereby allege upon information and belief as follows:

**PRELIMINARY STATEMENT**

1. Mr. Watley and Ms. Hasemann are the parents of two sons, Joey, Jr. and Daniel, now eleven and ten years old, respectively. Mr. Watley and Ms. Hasemann’s parental rights to Joey Jr. and Daniel were terminated not based on any actual harm or abuse having ever occurred, but rather on the inchoate doctrine of “predictive neglect,” following a series of discriminatory acts by the State of Connecticut Department of Children and Families (“DCF”) and its Commissioner, Joette Katz (“Commissioner Katz”) (collectively, DCF and Commissioner Katz are “defendants”), based on Plaintiffs’ disabilities, perceived disabilities or association with another individual with a disability. DCF’s decision to remove Plaintiffs’ children from them at birth directly from the hospital and commence neglect and termination proceedings was discriminatory and based upon stereotypes, generalizations and assumptions about Plaintiffs

based on their disability, perceived disability and/or relation to another individual with a disability. At all relevant times, Defendants had no disability discrimination policy, procedures or training in place for the delivery of its parental services and programs to parents with mental or psychological disabilities. DCF had never conducted a self-evaluation, designated an individual to address ADA and Rehabilitation Act issues or create any grievance procedure. Plaintiffs are either disabled, have a record of disability or were regarded as having mental and/or physical disabilities by DCF. DCF retaliated against Plaintiffs when Plaintiffs requested modifications and denied Plaintiffs visitation when they attempted to assert their ADA and Rehabilitation rights. DCF repeatedly told Plaintiffs that the ADA and Rehabilitation Act did not apply to the programs and services Plaintiffs were eligible to receive and benefit from and failed to accommodate or modify or alter DCF's programs and services in a manner so that Plaintiffs could fully access, participate and/or benefit from those programs and services. Plaintiffs were eligible for DCF services and programs, but discriminated against based on their disabilities and/or stereotypes about those perceived disabilities and otherwise denied or unable to access to programs and services and retaliated against in violation Title II of the Americans with Disabilities Act ("Title II of the ADC" or "ADA"), 42 U.S.C. §§ 12131-12134, Section 504 of the Rehabilitation Act of 1973 ("Rehabilitation Act"), the First, Ninth and Fourteenth Amendments and 42 U.S.C. § 1983.

2. Mr. Watley and Ms. Hasemann have never stopped and will never stop loving their children. They bring this action because of their love and commitment to their children and so that there can never be any doubt that they did everything possible to remedy the violations of their rights. Through this action, Mr. Watley and Ms. Hasemann seek to hold Defendants' responsible for violating their federal rights and to stop Defendants' discriminatory conduct

towards them and other parents with mental or cognitive disabilities, those perceived to have such disabilities, and/or associate with an individual with such disabilities.

### **JURISDICTION AND VENUE**

3. This court has subject matter jurisdiction over this dispute by virtue of 28 U.S.C. §§ 1331 and 1343.

4. The claims are brought pursuant to Title II of the ADA, the Rehabilitation Act, the First, Ninth and Fourteenth Amendments of the Constitution, 42 U.S.C. §§ 1983, 1988 and *Ex parte Young*, 209 U.S. 123 (1908).

5. All of the acts complained of occurred in the District of Connecticut and venue is proper pursuant to 28 U.S.C. § 1391(b).

### **THE PARTIES**

6. Plaintiff, Mr. Watley, is the father of two sons, Joey Jr. and Daniel. Mr. Watley resides in Thomaston, Connecticut in the same home with his mother. Mr. Watley is disabled as a result of a spinal injury he sustained in a car accident. Mr. Watley receives Social Security Disability Insurance (“SSDI”) benefits. According to DCF, Mr. Watley also suffers from a personality disorder not otherwise specified.

7. Plaintiff, Ms. Hasemann, is the mother of Joey Jr. and Daniel, as well as another daughter Kristina. Ms. Hasemann lives in the same home as her parents in Watertown, Connecticut. Ms. Hasemann suffers from severe narcolepsy, has a history of seizures and when she was sixteen years old, Ms. Hasemann had a frontal lobe brain tumor removed. DCF contended that severe narcolepsy made activities of daily personal life difficult because individuals like Ms. Hasemann who suffer from narcolepsy have difficulty maintaining alertness and activities such as driving to school and work. DCF also contends that Ms. Hasemann

suffered from the following inconsistent and contradictory disabilities: (1) ADHD, (2) personality disorder major depression, (3) chronic functional impairments, (4) cognitive deficits, (5) serious mental health issues, (6) cognitive disorder not otherwise specified subsequent to having her brain tumor removed, (7) neurological based disorder; (8) schizotypal personality disorder, or (9) antisocial personality disorder. Some of the DCF doctors opined that some of Ms. Hasemann's symptoms are consistent with a frontal lobe brain tumor.

8. Defendant Department of Children and Families ("DCF") is the state of Connecticut agency responsible for receiving and responding to reports of child abuse and neglect; providing and administering programs to strengthen families; making reasonable efforts to encourage and assist families to use all available resources to maintain the family unit intact and to reduce the risk of a child's placement into substitute care; and providing substitute care only when child safety and risk factors cannot be reasonably reduced or eliminated through services to the child's family. DCF receives financial assistance from the federal government.

9. Defendant Joette Katz is the Commissioner of DCF ("Commissioner Katz"). Commissioner Katz is sued in her official capacity. Commissioner Katz is chief policymaker for DCF and responsible for its customs, policies and procedures. Commissioner Katz is sued in her official capacity and in her individual capacity for her acts and omissions arising under color of state law.

10. Non-Party, Joseph John ("Joe Jr."), is the first son born to Mr. Watley and Ms. Hasemann on July 18, 2005. Joe, Jr. is now eleven years old.

11. Non-Party, Daniel ("Daniel"), is the second born son Mr. Watley and Ms. Hasemann on July 20, 2006. Daniel is now ten years old.

12. Non-Party, Kristina (“Kristina”), is Ms. Hasemann’s daughter with a prior boyfriend, born on October 9, 2002. Kristina is now thirteen years old.

13. Non-Parties, Mr. and Mrs. Doe (pseudonym) served as foster parents to Kristina, Joey Jr. and Daniel from the time each child was taken into DCF custody until Plaintiffs’ parental rights with respect to Joe Jr. and Daniel were terminated in December 2013. Thereafter, Mr. and Mrs. Doe adopted Joey Jr. and Daniel.

### **FACTUAL ALLEGATIONS**

14. At all times relevant to this action, DCF has affirmatively denied Plaintiffs’ repeated efforts to invoke their rights under the ADA and Rehabilitation Act. DCF has repeatedly stated that the ADA and Rehabilitation Act do not apply to neglect and/or termination proceedings and that DCF does not have to provide reasonable modifications for Plaintiffs so that they may benefit and access the programs, activities and services offered by DCF, all in violation of the ADA and Rehabilitation Act.

15. DCF bore an ongoing duty to reunite the Plaintiffs with their children through a range of services and programs aimed at rehabilitation and remediation of the alleged deficiencies that DCF alleged to be the basis of the predicted neglect.

16. At all times relevant to this action, DCF contended that the causes of the predicted future neglect were Mr. Watley and Ms. Hasemann’s actual or perceived medical and psychological disabilities.

17. DCF bore the duty to offer programs and services aimed at rehabilitation and reunification until their parental rights were terminated.

18. DCF has failed to adopt policies and/or procedures and failed to train its employees of DCF’s obligations, duties and responsibilities under the ADA and Rehabilitation

Act in providing services, programs and activities to parents, including Plaintiffs.

19. Upon information and belief, DCF did not conduct the required self-evaluation or transition plan for its programs, activities and services as it was required to do following passage of Title II of the ADA. *See* 28 CFR § 35.150(d)

20. Even though DCF regarded Mr. Watley and/or Ms. Hasemann as being disabled and contended based on assumptions and stereotypes of those disabilities, Plaintiffs were not able to care for their children. Defendants never provided Plaintiffs with notice of their rights and/or DCF's obligations under the ADA and/or Rehabilitation Act.

21. Defendants did not designate a responsible person and grievance procedure for parents like Plaintiffs to raise their disability-based discrimination and retaliation concerns. *See* 28 C.F.R. § 35.107

22. Plaintiffs repeatedly requested the name of the responsible ADA coordinator, but were never provided a name or contact information.

23. At no time after becoming involved with Plaintiffs did DCF ever designate an ADA coordinator. No ADA coordinator was ever assigned to handle or respond to Plaintiffs' requests or complaints. DCF failed to ever provide Plaintiffs with a grievance procedure for Plaintiffs or other similarly situated parents to grieve requests under the ADA and Rehabilitation Act.

24. DCF also failed to modify its programs and services so that Plaintiffs could fully access and benefit from those services for which they qualified and DCF was required to provide.

25. DCF and/or Commissioner Katz knew or should have known that such position was contrary to the law.

26. When Plaintiffs attempted to assert their rights under the ADA and Rehabilitation Act and request modifications, DCF rejected their requests and affirmatively told Plaintiffs that the ADA and Rehabilitation Act did not apply to its programs and services.

27. All of DCF's programs, services and/or activities are subject to the requirements and obligations imposed under the ADA and Rehabilitation Act.

28. Ms. Hasemann gave birth to her first child, Kristina on October 9, 2002. Kristina was born extremely premature and had to remain in the hospital's neonatal intensive care unit for some time following her birth.

29. DCF decided to remove Kristina from Ms. Hasemann at birth based on stereotypes and/or erroneous assumptions about her based on her disability or perceived disability.

30. At the time they initially decided to remove Kristina, there had been no actual or threatened harm to or neglect of Kristina.

31. Ms. Hasemann consistently denied the statements DCF attributed to her following the birth of Kristina. Doctors at the hospital confirmed that Ms. Hasemann was not a threat to herself or Kristina.

32. Nonetheless, based on unfounded stereotypes, generalization and/or assumptions about Ms. Hasemann, DCF wrongfully took Kristina into its custody directly from the neonatal intensive care unit and commenced an investigation and removed Kristina from her care.

33. Prior to the birth of Kristina, Ms. Hasemann had never been diagnosed for any mental health issue.

34. DCF removed Kristina from Ms. Hasemann based on DCF's discriminatory and stereotypical conclusions based on unspecified mental health issues.

35. Upon information and belief, Kathy Dayner, the DCF social worker assigned to Ms. Hasemann and then to Mr. Watley was not qualified or trained to make medical or psychological diagnoses and had received absolutely no training, knowledge or aware of what the ADA was or required.

36. During the course of the DCF investigation, Ms. Hasemann was evaluated by several professionals. Several of the professionals affirmatively concluded and opined that Ms. Hasemann was more than capable of caring for a child, did not pose a threat to children and had good family support from her parents.

37. DCF's own referring psychologist determined that Ms. Hasemann was not a threat to Kristina, did not reveal psychotic symptoms and had adequate family supports.

38. Ms. Hasemann was found to be capable of assuming the care of Kristina, but would benefit from interventions to assist her and that that her parents would be a support her.

39. Nonetheless, Kristina was discharged from the hospital and immediately placed in foster care and placed with complete strangers, Mr. and Mrs. Doe. DCF did so without visiting Ms. Hasemann's house or meeting with her parents.

40. DCF did not place Kristina, Joe Jr. or Daniel in the custody of Ms. Hasemann's family even though she lived with her parents and had two siblings. DCF was fully aware that that Ms. Hasemann had good family supports and that her parents, with whom she lived, would be able to assist her.

41. Three days after Joe Jr. was born, DCF him from the care of Mr. Watley and Ms. Hasemann and placed him with Mr. and Mrs. Doe.

42. Daniel was likewise immediately removed from the care of Mr. Watley and Ms. Hasemann at birth in the hospital.



43. Similarly, DCF did not consider or place Joe Jr. and Daniel with Mr. Watley's family even though he resided in the same house with his mother and at that time his grandmother. DCF did not consider placement with Mr. Watley's sister or brother, who both had the means and ability to assist Mr. Watley and/or care for the boys. Mr. Watley's brother had previously been licensed by DCF to serve as a foster parent for others, yet DCF never placed Joe Jr. and/or Daniel with Mr. Watley's brother or any other family members.

44. Ms. Hasemann and Mr. Watley could have significantly benefitted from a number of supports and services DCF provides or makes available to families involved in the child welfare system and which could have prevented the ongoing placement of Kristina, Joe Jr. and/or Daniel into foster care. In particular, DCF first failed to consider a plan that relied on Mr. Watley and Ms. Hasemann's respective family resources. To the extent DCF continued to have concerns, it could have implemented various in-home supports to afford Mr. Watley and Ms. Hasemann the opportunity to have Kristina, Joe Jr. and Daniel at home. Instead, DCF immediately placed each of the children into foster care and set its goal to terminating their parental rights based solely on stereotypes and generalizations about their disabilities and how their disabilities impaired their ability to parent.

45. Ms. Hasemann's parents, who had emigrated to the United States from Germany, became understandably upset when DCF removed their first grandchild from Ms. Hasemann. DCF interpreted Ms. Hasemann's parents' skepticism and disagreement with DCF's stereotypes as evidence of their denial. Ms. Hasemann and her parents were in a Catch 22-position. DCF concluded that because they did not agree with DCF's stereotypes and assumptions about Ms. Hasemann, Ms. Hasemann and her parents could not be trusted. Prior to DCF involvement, Ms. Hasemann had never been diagnosed or treated for any mental or psychological condition.

46. Based on unfair stereotypes and assumptions about Ms. Hasemann based on the disabilities perceived by DCF and/or discrimination based on German ethnicity and national origin, Ms. Hasemann's visitation with Kristina had been significantly reduced to weekly by the time Joe Jr. was born. All of her visits were supervised at an inconvenient location outside her home.

47. DCF later used the fact that Ms. Hasemann did not appear fully connected with Kristina at her infrequent visits as evidence that she would not be a good parent. Thus, DCF set up its own self-fulfilling prophesy by failing to modify its programs and services to permit Ms. Hasemman to fully access and benefit from the services.

48. At the time Joe Jr. was removed from Plaintiffs and placed into foster care, there had been no actual or threatened harm to or neglect of Joe Jr.

49. At the time Joe Jr. was born, Mr. Watley had no previous DCF involvement. Mr. Watley also had never received any psychological treatment or diagnosis.

50. Three days after Joe Jr.'s birth, DCF removed Joe Jr. from Mr. Watley and Ms. Hasemann's care and custody.

51. Mr. Watley and Ms. Hasemann never even took Joe Jr. home from the hospital.

52. DCF's initial suspicions to remove Joe Jr. was not based on any evidence of neglect or abuse, but instead based on stereotypes and assumptions made by DCF based on Plaintiffs' disabilities or perceived disabilities.

53. DCF removed Daniel from Mr. Watley and Ms. Hasemann as soon as he was born and then placed him immediately in foster care with Mr. and Mrs. Doe.

54. Again, DCF did not place Joe Jr. or Daniel with any of Mr. Watley or Ms. Hasemann's families.

55. DCF denied Mr. Watley and Ms. Hasemann access to appropriate family-based support services that if provided would have permitted them to successfully achieve rehabilitation and reunification.

56. DCF also failed to reasonably modify its policies, practices, and procedures to accommodate Mr. Watley and Ms. Hasemann's disability and/or perceived disability.

57. DCF assumed that Mr. Watley and Ms. Hasemann were incapable of learning how to safely care for their children because of their disabilities, and, therefore, denied them the opportunity to receive meaningful assistance from their parents, siblings and/or other service providers.

58. From the start of their involvement, DCF pre-determined that the goal for the Watley/Hasemann children was foster care and adoption and sought to terminate Plaintiffs' parental rights on the basis of their disability without considering the ample family supports, modifications that would have permitted them to fully access and benefit from services and programs and/or supports that the Plaintiffs needed based on the type of disabilities they have or were perceived as having.

59. Mr. Watley was also intentionally discriminated against based on his association with Ms. Hasemann.

60. Mr. Watley's only fault was being in love with Ms. Hasemann and wanting to raise his sons with the woman he loved.

61. DCF's own psychologist determined that Mr. Watley was not a risk to himself or his son, Joe, Jr.

62. One of DCF's own clinical psychologists recommended that Joe Jr. stay with Mr. Watley three nights per week for a six-week trial period to allow Joe Jr. to acclimate, with DCF

making unannounced visits, with the goal that if after six weeks, there were no incidents, full reunification should proceed.

63. DCF intentionally disregarded its own psychologist's recommendation that Mr. Watley be provided such overnight visitations. Joe Jr. never spent a single overnight visit with Mr. Watley. Instead, DCF continued to act based on its own assumptions and stereotypes based on Plaintiff's disabilities and/or perceived disabilities.

64. DCF discriminated against Mr. Watley based upon Mr. Watley's relationship with Ms. Hasemann.

65. When Mr. Watley invoked his and Ms. Hasemann's rights under the ADA and rejected DCF's ultimatum that he could have his sons only if he agreed to end his relationship with Ms. Hasemann and agreed not to let her see his sons, DCF only redoubled their resolve to terminate his and Ms. Hasemann's parental rights.

66. DCF retaliated against Mr. Watley solely because he did not appear to endorse their stereotype and assumption that Ms. Hasemann's alleged mental problems would interfere with her ability to parent.

67. Near the end of 2006, DCF determined that Ms. Dayner, the caseworker who had been assigned since 2002, had to be taken off from the case. DCF's own consulting psychologist had recommended removal of Ms. Dayner based on the negative impact she was having on Mr. Watley and Ms. Hasemann.

68. Plaintiffs' attempts to dispute the many and conflicting diagnoses and opinions proffered by the professionals who DCF had them evaluated by were used by DCF as further evidence of their denial and difficulty.

69. However, even assuming for the sake argument that Defendants' were correct, Defendants knew or should have known that any resistance, denial, sensitivity to criticism or difficulties with trust exhibited by Plaintiffs was the consistent with the disabilities they were believed to have. Somewhat ironically, Plaintiffs were deemed unable to parent solely based on DCF's assessment of predictive neglect based on their disability, yet DCF did not modify its programs, activities or procedures or provide additional supports to assist Plaintiffs in accessing and benefitting from those services given those same disabilities. In other words, DCF knew or should have known that given Plaintiffs' alleged psychological or emotional diagnoses and disabilities, they would need modifications or additional supports to access the programs, services and activities offered to others who were not disabled.

70. For instance, Ms. Hasemann had been successfully receiving treatment from Ms. Rosalie Guest, RN, a licensed professional counselor. Even though Ms. Hasemann had grown to trust Ms. Guest and was making progress, DCF refused to allow Ms. Hasemann to continue to receive treatment from Ms. Guest because she had not been recommended and approved by DCF. DCF refused to modify its procedures and requirements to permit Ms. Hasemann to continue to treat with Ms. Guest and fully access and benefit from these services.

71. Similarly, Mr. Watley had grown to trust a psychologist with whom he had been working. However, DCF contacted this psychologist and the psychologist then attempted to convince Mr. Watley to accept a plea of *nolo contendere* offered by DCF whereby Mr. Watley would agree to terminate his right to his sons. Naturally, Mr. Watley lost all confidence in the psychologist. DCF retaliated against Mr. Watley and directly interfered with his treatment with this psychologist.

72. At a later point, Mr. Watley requested a referral for treatment with another doctor located in Waterbury close to his home that had been highly recommended, but DCF denied Mr. Watley's request.

73. Mr. Watley also requested referral to a program that DCF had previously recommended, but DCF again refused.

74. After the first and the second trials, DCF essentially stopped providing Plaintiff services and remained steadfast in guaranteeing the result DCF sought at the outset – the termination Plaintiffs' parental rights over their sons.

75. DCF failed to meaningfully provide Plaintiffs with access to services and essentially stopped trying to rehabilitate or reunify Plaintiffs with their children.

76. For example, when Mr. Hasemann and Mr. Watley requested providers near their homes given the difficulties they had with traveling, DCF failed to recommend qualified providers to them.

77. Even though regular visitation is required and offered to other parents, and Plaintiffs repeatedly requested visitation, Mr. Watley and Ms. Hasemann did not have any visitation with their children after their rights were initially terminated following the first trial in October 2008. Even though their parental rights did not terminate until December 2013, DCF refused to any visitation while the state court appeals and retrials took place.

78. Following the cancellation of Plaintiffs' visitation with their sons, Mr. and Mrs. Doe continued to need the assistance of a behavioralist assigned by DCF to address significant behavioral issues exhibited by one of the sons. Upon information and belief, the behavioralist continued to work with Mr. and Mrs. Doe for over eight months.

79. Based on the mental and psychological disabilities that DCF contended Mr. Watley and Ms. Hasemann have, DCF knew or should have known that they would be highly resistant to intervention, suspicious and distrustful of receiving negative information. Nonetheless, DCF remained deliberately indifferent and failed to provide them with an ADA coordinator, provide them with requested modifications or provide other supports that would have permitted them to access and benefit from the services and programs they were entitled to receive.

80. DCF instead remained deliberately indifferent to their needs and hastily determined that foster care and termination of their parental rights and adoption was the goal. DCF failed to provide reasonable modifications or provide family and other supports.

81. Mr. Watley and Ms. Hasemann have had no contact or visitation with Joe Jr. or Daniel since October 2008, even though their parental rights were not finally terminated until December 2013.

82. Mr. Watley and Ms. Hasemann requested visitation, but DCF denied them visitation with their sons. DCF then used the lack of visitation and an ongoing relationship between Plaintiffs and their sons to justify the ultimate termination of their parental rights.

83. Mr. Watley and Ms. Hasemann did and do not even know whether their children are alive, healthy, sick, doing well in school, playing sports, receiving accolades, or any of the things any parent would want to know about their children.

84. All of this was extremely traumatic to Mr. Watley and Ms. Hasemann. Each of them has suffered extreme emotional distress, anxiety and other damages as a direct result of Defendants' discriminatory and retaliatory conduct in violation of the ADA and Rehabilitation Act.

85. As a result of Defendants' discrimination, Mr. Watley and Ms. Hasemann have been deprived of a loving parent-child relationship with their sons and Kristina.

86. Prior to all of this, Mr. Watley and Ms. Hasemann were engaged and planned to raise their family together. The stress and toll of Defendants' disability-based discrimination directly lead to the end of their relationship.

87. Not only have Mr. Watley and Ms. Hasemann lost forever the opportunity to care for and raise their children and enjoy a loving family together, but Mr. Watley and Ms. Hasemann also have little chance of enjoying an adult parent-child relationship with their children as each of them fully enjoys with their own parents with whom they reside.

88. Mr. Watley and Ms. Hasemann continue to live with their parents and presently care for children.

89. Mr. Watley and Ms. Hasemann separately plan to continue to care for children and either have or adopt a child, but remain at substantial risk of having any child presently in their care or in the future in their custody removed or face investigation and other discriminatory actions by DCF based on assumptions and stereotypes about their disabilities.

#### **COUNT ONE**

##### **Intentional Discrimination Based on Disability or Being Regarded as Having a Disability (ADA and Rehabilitation Act)**

90. Plaintiffs repeat and reallege Paragraphs 1 through 89 as if fully set forth herein.

91. Title II of the ADA covers essentially everything state and local governments and their agencies do. *See Pa. Dept. of Corrs. v. Yeskey*, 524 U.S. 206, 209-12 (1998). The Rehabilitation Act also applies to all of the activities of agencies that are federally funded and as a general rule, violations of Rehabilitation Act also constitute violations of Title II of ADA.



92. Title II of the ADA and Rehabilitation Act apply to everything DCF does, including its investigations, assessments, removals, family preservation, provision of services, determining goals and permanency plans, setting service plan tasks, reunification, guardianship, adoption, and assisting clients in meeting such tasks. Defendants are subject to Title II of the ADA and Rehabilitation Act.

93. Mr. Watley and Ms. Hasemann are qualified individuals with a disability or regarded as having a disability under the ADA and Rehabilitation Act.

94. Alternatively, Ms. Watley and Ms. Hasemann are regarded by defendants as having a disability under the ADA, 12 U.S.C. § 12102(2)(C) and Section 504 of the Rehabilitation Act, 29 U.S.C. § 705(20)(b)(iii).

95. DCF violated its obligations under Title II of the ADA and Rehabilitation Act at each stage of its process by (1) placing Joe Jr. and Daniel into foster care based on stereotypes and assumptions based on Plaintiffs' disabilities, (2) failing to provide Plaintiffs with family supports even though Mr. Watley and Ms. Hasemann had good family supports, (3) denying Plaintiffs equal opportunities to participate in and benefit from its services, programs, and activities, 28 C.F.R. § 35.130(a), (b)(1)(i)-(ii); 45 C.F.R. § 84.4(a), (b)(1)(i)-(ii); (4) utilizing criteria and methods of administration having the effect of discriminating against Plaintiffs on the basis of disability and defeating or substantially impairing accomplishment of the objectives of its rehabilitation and/or reunification program with respect to Plaintiffs, 28 C.F.R. § 35.130(b)(3); 45 C.F.R. § 84.4(b)(3); and (5) failing to reasonably modify its policies, practices, and procedures where necessary to avoid discriminating against Plaintiffs on the basis of their disability, 28 C.F.R. § 35.130(b)(7).

96. DCF failed to conduct an appropriate individualized analysis of Plaintiffs and what family support services it needed to provide and accommodations it needed to make at the outset of its involvement, and for more than seven years. Instead, DCF repeatedly acted on its own assumptions about Plaintiffs' disability.

97. Defendants also failed to (1) implement appropriate reunification services while Joe Jr. and Daniel were in foster care; (2) identify appropriate tasks; (3) assist Plaintiffs in meeting tasks to achieve rehabilitation reunification; (4) provide meaningful visitation and opportunities to enhance Plaintiffs' parenting skills; and (5) impose only necessary and legitimate safety requirements.

98. Defendants intentionally discriminated against Mr. Watley and Ms. Hasemann on the basis of their disability and/or remained deliberately indifferent to their needs by denying them opportunities to benefit from supports and services, including their existing family supports, failing to reasonably modify policies and procedures, and imposing methods of administration that have the effect of discriminating on the basis of disability.

99. Defendants acted based on Mr. Watley and Ms. Hasemann's disability as well as on DCF's discriminatory assumptions and stereotypes about their disabilities, without consideration of implementing appropriate family-based support services. Defendants denied Plaintiffs access to appropriate family-based support services it makes available to parents to successfully achieve rehabilitation and/or reunification and failed to reasonably modify its policies, practices, and procedures to accommodate their disability. DCF assumed that Mr. Watley and Ms. Hasemann were unable to learn how to safely care for their children because of their disabilities or perceived disabilities, and, therefore, denied them the opportunity to receive meaningful assistance from their parents, siblings and/or other service providers. DCF

moved too hastily to remove the children, place them in foster care with strangers and set the final goal to adoption and to terminate Mr. Watley and Ms. Hasemann's parental rights on the basis of their disabilities.

100. Defendants were deliberately indifferent to Plaintiffs' rights and reasonable requests for modifications of their policies, programs and procedures, and failed to respond to or reasonably engage in the iterative process with Plaintiffs after they made repeated requests for modifications.

101. Defendants were aware of Mr. Watley and Ms. Hasemann's disabilities, rights, and Plaintiffs' repeated requests for modifications and/or additional support, but Defendants intentionally disregarded Plaintiffs' rights and Plaintiffs' requests. Defendants repeatedly told Plaintiffs that the ADA and Rehabilitation Act did not apply.

102. If Defendants had agreed to the modest and reasonable modifications of their policies, programs, and procedures repeatedly requested by Plaintiffs, Plaintiffs could have accessed and fully benefitted from the programs, services and benefits offered.

103. By insisting that Plaintiffs meet all of its procedures, policies and requirements, even though they were aware of Plaintiffs' disabilities and difficulty trusting and accepting intervention, and disregarding Plaintiffs' repeated requests for reasonable modifications, an ADA coordinator and to know their rights, Defendants violated Plaintiffs' rights and were intentionally discriminatory against them based on his disability.

104. The DCF employees involved in this case, including, but not limited to, Ms. Dayner were not provided appropriate policies and training to guide their decision-making and understand their obligations under the ADA and Rehabilitation Act. DCF's position is that the ADA and Rehabilitation Act does not apply to its services, programs and activities.

105. DCF did not have procedures or formalized training concerning its civil rights obligations related to individuals with disabilities, including training that would have assisted DCF employees in identifying and addressing ADA and Rehabilitation Act violations.

106. The lack of ADA and Rehabilitation Act policies, procedures and training to DCF employees led to a focus on diagnoses and numbers, and assumptions and generalizations, and a failure to consider what services and modifications to policies and practices are appropriate to ensure an individual with a disability – in this case, Plaintiffs – had to an equal opportunity to fully benefit from DCF’s reunification program.

107. Tellingly, Ms. Dayner, the case manager who worked on this matter for the first four years was not aware of the ADA and had never received any training.

108. As a result of Defendants’ violation of Plaintiffs’ rights under the ADA and Rehabilitation Act, Plaintiffs were denied equal opportunity and access to the services, benefits and programs offered and experienced, damages, including mental and emotional distress and anguish.

## COUNT TWO

### **Intentional Discrimination Based on Relationship/Association With an Individual With a Disability (ADA and Rehabilitation Act)**

109. Plaintiffs repeat and reallege Paragraphs 1 through 108 as if fully set forth herein.

110. Mr. Watley was discriminated against based upon his association and/or relationship with Ms. Hasemann.

111. As alleged above, Ms. Hasemann is a qualified individual with a disability or was regarded as having a disability under the Americans with Disabilities Act and/or the Rehabilitation Act. See 42 U.S.C. § 12102(a).

112. DCF discriminated against Mr. Watley based on his association and/or relationship with Ms. Hasemann.

113. At the time Joe Jr. was removed from Mr. Watley's care and control at the hospital, Mr. Watley was threat to his son and/or himself and DCF had no information or evidence suggesting that he was.

114. As indicated previously, a DCF-appointed clinical psychologist recommended that Joe Jr. stay with his father three nights per week for a six-week trial period to allow Joe Jr. to acclimate, with DCF making unannounced visits, with the goal that if after six weeks, there were no incidents, full reunification should proceed.

115. DCF intentionally ignored its own psychologist's conclusion that Mr. Watley was not a threat to himself or to his sons and recommendation that Mr. Watley should be provided three overnight visitations per week for a trial period with the intent that if all went sell, the sons could return to Mr. Watley's residence.

116. Joe Jr. and Daniel never spent a single overnight visit with their father. Instead, DCF cancelled all visitation and refused to restore visitation in retaliation for Plaintiffs having requested reasonable modifications and asserting their rights under the ADA.

117. As a result of Defendants' conduct, Mr. Watley and Ms. Hasemann have suffered severe pain and suffering and mental and emotional distress and anguish. Accordingly, Plaintiffs are entitled to compensatory damages, as well as injunctive relief against Defendants preventing them from discriminating or retaliating against Mr. Watley and Ms. Hasemann based on disability.

**COUNT THREE**

**Retaliation (ADA and Rehabilitation Act)**

118. Plaintiff repeats and realleges Paragraphs 1 through 117 as if fully set forth herein.

119. Mr. Watley and Ms. Hasemann engaged in protected activity in good faith when they made reasonable requests for modifications and requested additional supports and asserted their rights under the ADA and Rehabilitation Act, including who was the ADA coordinator and how they could raise such rights..

120. Such conduct is protected activity under the Rehabilitation Act and ADA.

121. Defendants intimidated, threatened, coerced, and/or engaged in discriminatory conduct against Mr. Watley and Ms. Hasemann after they asserted their rights or requested reasonable modifications or otherwise engaged in protected activity to secure their rights protected by the ADA and Rehabilitation Act. *See* 42 U.S.C. § 12203; 28 C.F.R. § 35.134; 45 C.F.R. § 80.7(e) (incorporated by reference in the Rehabilitation Act implementing regulation at 45 C.F.R. § 84.61).

122. Defendants cancelled Plaintiffs' visitation with their sons and denied their requests for modifications and additional supports, including the ability to seek or continue to seek treatment from certain providers.

123. Based on stereotypes and assumptions about Plaintiffs' disabilities, Defendants justified their hunch under the doctrine of predictive neglect that Ms. Hasemann and now Mr. Watley had to have their parental rights forever terminated.

124. As a result of Defendants' conduct, Plaintiffs' have suffered and will continue to incur harm, including the loss of their fundamental right to parent their children, the enjoyment

of their relationship with one another, the loss of support, harm to their good name and reputation, the expenses of trying to enforce their rights, as well as mental and emotional distress and anguish.

125. As a result of Defendants deliberate indifference, Mr. Watley and Ms. Hasemann have suffered severe pain and suffering, mental and emotional distress and anguish, and increased risk of serious complications or health effects. Accordingly, Plaintiffs are entitled to compensatory damages, as well as injunctive relief against Defendants preventing them discriminating or retaliated against Mr. Watley and Ms. Hasemann based on disability.

#### **COUNT FOUR**

##### **Violation of the First, Ninth and Fourteenth Amendments (Section 1983 and/or *Ex parte Young*)**

126. Plaintiffs repeat and reallege Paragraphs 1 through 125 as if fully set forth herein.

127. Commissioner Katz is the chief policy maker for DCF with final approval and authority and responsibility for all DCF policies, practices and procedures, including those relating to the applicability of the ADA and Rehabilitation Act to its programs, services and activities for parents with disabilities.

128. DCF and Commissioner Katz knew or should have known that Plaintiffs and other parents within the state of Connecticut have been and continue to be denied their fundamental right to parent their children as guaranteed by the First and Ninth Amendments to the United States Constitution and denied their right of substantive due process as guaranteed by the Fourteenth Amendment to the United States Constitution.

129. “[T]he interests of parents in the care, custody, and control of their children . . . is perhaps one of the oldest of the fundamental liberty interests. *See Troxel v. Granville*, 530 U.S. 57, 65 (2000).

130. Commissioner Katz knew or should have known based upon her education, training and experience that all of DCF's programs and activities must comply with the ADA and Rehabilitation Act.

131. Consistent with its policies, procedures and practices, DCF affirmatively told Plaintiffs and other similarly situated parents with mental or psychological disabilities that the ADA and Rehabilitation Act did not apply to the programs and services they were entitled to receive and that there was no ADA coordinator.

132. Commissioner Katz knew or should have known of DCF's policy, procedure and practice given DCF took that position throughout Plaintiffs' state court litigation and consistently takes this position when other parents have attempted to assert their ADA and Rehabilitation Act rights.

133. DCF's ADA policy available on its website is directed to and expressed in terms of DCF employees or job applicants and does not reference parents eligible for its programs and services. The notice of rights DCF provides to parents informing them of their rights does not mention or reference their rights under the ADA or Rehabilitation Act.

134. DCF and Commissioner Katz knew or should have known that DCF's policies, practices and procedures were contrary to federal law to the extent that DCF took the position that the ADA and Rehabilitation Act did not apply to the services, programs and activities offered to Plaintiffs and other parents.

135. Plaintiffs and other parents with disabilities or regarded as being mentally or psychologically disabled have complained about DCF's failure to comply with the ADA and Rehabilitation Act.



136. Commissioner Katz knew or should have known that DCF policy and procedures denied parents the ability to request modifications and took the draconian and erroneous position that DCF's services and activities for parents involved in investigations and other neglect and termination proceedings were not subject to the requirements imposed under the ADA and Rehabilitation Act.

137. Pursuant to Title IV-E of the Social Security Act, DCF was required to make reasonable efforts to preserve and reunify families prior to the placement of a child in foster care, to prevent or eliminate the need for removing the child from the child's home; and to make it possible for a child to safely return to the child's home. *See* 42 U.S.C. § 671(a)(15).

138. Commissioner Katz through her actions and omissions failed to modify DCF's policy, practices and procedures and position that its activities, programs and services are not subject to the ADA and Rehabilitation Act is contrary to federal law and continues to subject Plaintiffs and other parents in the state of Connecticut to the substantial risk of having their fundamental right to parent and care for their children wrongfully terminated.

139. Upon information and belief, at all times relevant to this action (and through today), DCF does not inform parents subject to investigations, neglect and/or termination proceedings of their rights under the ADA and Rehabilitation Act.

140. At all relevant times, DCF's publicly available ADA policy addresses to the rights of job applicants and employees under Title I of the ADA. DCF fails to inform parents and children of their rights under the ADA and Rehabilitation Act.

141. DCF intentionally failed and continues to fail to inform parents and children of their rights under the ADA and Rehabilitation Act, while knowingly seeking to interfere and terminate the rights of parents with disabilities.

142. Commissioner Katz's deliberate indifference and violations of these fundamental federal rights caused Mr. Watley and Ms. Hasemann to suffer and continue to suffer severe mental and emotional distress and anguish, the complete loss of any relationship with or any information about their children and the infringement of the fundamental constitutional rights described above.

143. Mr. Watley and Ms. Hasemann and other parents within the state of Connecticut also face the substantial risk of further violations of these fundamental rights given Mr. Watley and Ms. Hasemann each take care of children and intend to parent another child, but face the substantial risk that their rights will continue to be violated under DCF's policies, customs and procedures.

144. As a result of Commissioner Katz's deliberate indifference to how the policies, practices and procedures she approves as the chief policymaker for DCF impact parents with mental and psychological disabilities, Mr. Watley and Ms. Hasemann have suffered severe pain and suffering, mental and emotional distress and anguish. Accordingly, Plaintiffs are entitled to compensatory damages as against Commissioner Katz, in her individual capacity pursuant to Section 1983. In addition, Plaintiffs are entitled to appropriate injunctive relief against Defendants enjoining them from continuing to violate Mr. Watley and Ms. Hasemann's Constitutional rights.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, Mr. Watley and Ms. Hasemann demand judgment be entered against defendants and that this court enter an order:

(a) awarding compensatory and/or nominal damages in an amount to be determined at trial;

(b) awarding appropriate injunctive relief prohibiting further discrimination and retaliation against Plaintiffs, including *inter alia*;

- (i) requiring defendants to develop and implement policies and procedures addressing how ADA and Rehabilitation Act requirements apply to DCF programs, services and activities, including assessments, service planning and implementation, visitation, family support and safety requirements;
- (ii) requiring defendants to complete a self-assessment, to inform parents with mental and/or psychological disabilities of their rights and DCF's obligations under the ADA and Rehabilitation Act;
- (iii) requiring defendants to implement a training program for all investigators, social workers, supervisors on the requirements and how DCF seeks to comply with the ADA and Rehabilitation Act with respect to its programs and services; and

(c) awarding reasonable attorneys' fees, costs and disbursements under 29 U.S.C. § 794a, 42 U.S.C. § 12205; and 42 U.S.C. § 1988;

(d) directing such other and further relief as the court may deem just and proper, together with attorneys' fees, interest, costs and disbursements of this action.

Respectfully submitted

Dated: June 10, 2016

PLAINTIFFS

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Their Attorney

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiffs demand trial by jury in this action of all issues so triable.

Respectfully submitted

Dated: June 10, 2016

PLAINTIFFS

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Their Attorney

### CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2016, a copy of foregoing First Amended Complaint was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the court's electronic filing system. Parties may access this filing through the court's CM/ECF System.

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