

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

NICOLE P., BRITTANEY S., and DEONA
W., individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

ILLINOIS DEPARTMENT OF CHILDREN
AND FAMILY SERVICES, and GEORGE
H. SHELDON in his capacity as DIRECTOR
OF THE ILLINOIS DEPARTMENT OF
CHILDREN AND FAMILY SERVICES,

Defendants.

2016CH12809
CALENDAR/ROOM 11
TIME 00:00
Class Action

Case No. _____

2016 SEP 28 AM 11:35
CIRCUIT COURT OF COOK COUNTY
CHANCERY DIVISION

**VERIFIED CLASS ACTION COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF**

Plaintiffs Nicole P., Brittaney S., and Deona W., individually and on behalf of all others
similarly situated, by and through their undersigned attorneys, hereby state for their Complaint as
follows:

INTRODUCTION

1. This is a class action against Defendants Illinois Department of Children and
Family Services (DCFS) and George H. Sheldon, in his official capacity as Director of DCFS
(the Director), for their past, present, and continuing use of a void DFCS rule, Allegation 74,
against thousands of people in Illinois, including Plaintiffs, in violation of the Illinois
Administrative Procedure Act (the IAPA).

2. Almost a year ago, this Court ruled in a final order that Allegation 74 is void
because it exceeds DFCS's authority under the Abused and Neglected Child Reporting Act,
which defines and limits DFCS's authority to investigate child abuse and neglect. Yet,

Defendants have invoked and continue to invoke that void rule to investigate and indicate thousands of Illinois residents as child neglecters and to register them in a “confidential” state database—the State Central Register—accessible to thousands of people, including doctors, schools, courts, and certain employers. These investigations are traumatic for their targets, and indication for child neglect under the void rule has serious consequences for those individuals, including harms to their reputations, professional and occupational prospects, and family life.

3. Defendants’ use of the void Allegation 74 is contrary to a final judgment of the Circuit Court of Cook County and a clear violation of Plaintiffs’ rights under the IAPA. Plaintiffs thus bring this action to put a stop to Defendants’ use of that void rule.

THE PARTIES

4. Plaintiff Nicole P. is a natural person and resident of Chicago (Cook County), Illinois. She is the mother of minors A.P., E.P., and G.P, with whom she resides in Chicago.

5. Plaintiff Brittany S. is a natural person and resident of Evergreen Park (Cook County), Illinois. She is the mother of minors A.S., C.S., and D.G., with whom she resides in Evergreen Park.

6. Plaintiff Deona W. is a natural person and resident of Kenosha (Kenosha County), Wisconsin. She is a family friend of minor A.S.

7. The named Plaintiffs also bring this Complaint as a class action. The Plaintiff Class is defined at paragraph 76 *infra*.

8. Defendant Illinois Department of Children and Family Services is a state agency with headquarters in both Springfield (Sangamon County), Illinois and Chicago (Cook County), Illinois.

9. Defendant George H. Sheldon is a natural person and, on information and belief, a resident of Illinois. He is being sued in his official capacity as Director of DCFS, a state agency

with headquarters in both Springfield (Sangamon County), Illinois and Chicago (Cook County), Illinois. Director Sheldon maintains an executive office in the State of Illinois Building in Chicago (Cook County), Illinois.

FACTUAL BACKGROUND

The Illinois System For Investigating Reports Of Child Abuse And Neglect

10. DCFS administers the investigation, indication and reporting system for child abuse and neglect in Illinois as provided for by the Abused and Neglected Child Reporting Act (ANCRA), 325 ILCS 5/1 *et seq.* DCFS has adopted rules governing the policies, procedures, and substantive requirements for investigating allegations of child abuse or neglect, as well as the determinations a DCFS investigator and his or her supervisor must make in order to find that child abuse or neglect occurred.

11. ANCRA requires persons who are “mandated reporters” to make a report to DCFS “if they have reasonable cause to believe a child known to them in their professional or official capacity may be an abused child or a neglected child.” 325 ILCS 5/4.

12. Upon receipt of a report of possible child abuse or neglect, DCFS investigates and must determine within 60 days whether the report is “indicated” or “unfounded,” with a longer investigation period permitted for “good cause.” 325 ILCS 5/7.12. Allegations of abuse or neglect are coded according to defined “allegations” set forth in DCFS rules, *see* 89 Ill. Admin. Code, § 300, App’x B. Allegation 74 concerns circumstances under which DCFS alleges child neglect based on “inadequate supervision.”

13. Pending the outcome of investigations, DCFS investigators may seek to have individuals that they investigate undergo substance abuse testing, release confidential information, or even be separated from their children. *See, e.g.*, 89 Ill. Admin. Code § 300, App’x G.

14. For persons who work for DCFS-licensed facilities, including day care centers, foster homes, child welfare agencies, and group homes, a pending investigation will often result in imposition of a so-called “protective plan” which restricts individuals against whom the allegation is made from working with children and/or requires any contact with children to be supervised. *See Dupuy v. McDonald*, 141 F. Supp. 2d 1090, 1105 (N.D. Ill. 2001) (citing Ill. Admin. Code tit. 89, § 300.160). Protective plans may continue for the full duration of an investigation, which may be 60 days or more. During this period, employees of licensed facilities may lose their jobs if their employer is unable to find alternative work for them or may be suspended with or without pay.

15. If an individual’s case is “indicated,” the finding is registered along with the individual’s identifying information in a database known as the Illinois State Central Register (the Register) for a prescribed period of time ranging from five to 50 years. 325 ILCS 5/7.10, 5/7.12, 5/7.14. Reports and investigations for Allegation 74, if deemed indicated and not expunged after an appeal, remain registered for 5 years.

16. The information in the Register is made accessible to a list of authorized persons, including State police, physicians, grand juries, legal supervisors of children, law enforcement agencies, school superintendents, welfare agencies, and anyone the Director authorizes for research purposes. 325 ILCS 5/11.1.

17. Schools and a wide variety of programs for children require background checks for individuals that include checking the Illinois Central Register. A “hit” on such a check can prevent parents or caregivers from being able to, *e.g.*, coach Little League, help with after-school activities, or even adopt a child. Such a “hit” may also be used by a current or prospective employer as a ground for suspension, termination, or refusal of employment.

18. An indicated report may prevent its subject from working in the entire field of child care, or even in occupations in which the subject has access to children. An indicated report is a basis for denial or revocation of a child care facility license. 225 ILCS 10/8(9). Child care facilities are required to verify through DCFS whether potential hires have been indicated. 225 ILCS 10/4.3. Child care facilities are also required to notify DFCS if they decide to hire an individual indicated for child abuse or neglect. Ill. Admin. Code tit. 89, § 385.50.

19. DCFS also “makes the presumption” that individuals indicated for certain allegations, or for more than one allegation of certain kinds, are “not suitable for work that allows access to children.” Ill. Admin. Code tit. 89, § 385.50. Child neglect due to “inadequate supervision” (Allegation 74) is included in the list of allegations that trigger this presumption based on “more than one indicated report ... regardless of severity.” Ill. Admin. Code tit. 89, § 385.50(a)(14). Thus, two indications for Allegation 74, or one indication for Allegation 74 combined with an indication for another allegation on this list, would trigger this presumption.

20. Both Illinois and federal appellate courts have recognized that indication and registration for child abuse or neglect under the DCFS regime described above causes harm to the subject’s reputation and employment opportunities, and implicates a constitutional liberty interest. *See, e.g., Dupuy v. Samuels*, 397 F.3d 493, 510 (7th Cir. 2005); *Lyon v. Dep’t of Children & Family Servs.*, 209 Ill. 2d 264, 274 (2004).

DCFS’s Authority Under ANCRA

21. DCFS’s authority to investigate allegations of child abuse and neglect is defined and limited by ANCRA. 325 ILCS 5/2.

22. As first enacted in 1975, ANCRA’s definition of “neglect” included “subjecting a child to an environment injurious to the child’s welfare.” P.A. No. 79-65, § 3, eff. July 1, 1975; Ill. Rev. Stat. 1977, ch. 23, ¶ 2053. The statute provided:

“Neglect” means a failure to provide, by those responsible for the care and maintenance of the child, the proper and necessary support, education as required by law, or medical or other remedial care recognized under State law, other care necessary for the child’s well-being; or abandonment by his parent, guardian or custodian; or subjecting a child to an environment injurious to the child’s welfare.

23. In 1980, the Illinois legislature amended ANCRA and removed the language “or subjecting a child to an environment injurious to the child’s welfare.” P.A. 81-1077, § 1, eff. July 1, 1980.

24. In 2001, ANCRA defined a “neglected child” as

any child who is not receiving the proper or necessary nourishment or medically indicated treatment ... or otherwise is not receiving the proper or necessary support or medical or other remedial care recognized under State law as necessary for a child’s well-being, or other care necessary for his or her well-being, including adequate food, clothing and shelter; or who is abandoned by his or her parents ... without a proper plan of care, or who has been provided with interim crisis intervention services ... and whose parent, guardian, or custodian refuses to permit the child to return home ... or who is a newborn infant whose blood, urine, or meconium contains any amount of a controlled substance.

P.A. 92-432, eff. Aug. 17 2001; codified at 325 ILCS 5/3 (2002).

25. In October of 2001, DCFS adopted a set of rules, called “Allegations,” that DCFS uses as a basis to investigate, indicate, and register individuals for child abuse and neglect. 25 Ill. Reg. 12,781, 12,781–91 (eff. Oct. 1, 2001) (promulgated as 89 Ill. Admin. Code § 300, App’x B).

26. One of DCFS’s Allegations, Allegation 60, defined child neglect to include “placing a child in an environment that is injurious to the child’s health and welfare (neglect).” 25 Ill. Reg. 12,781, 12,781–91 (eff. Oct. 1, 2001).

27. In 2011, the Appellate Court for the Second District held that DCFS’s Allegation 60 was void *ab initio* because it exceeded DCFS’s authority based on ANCRA’s definition of

“neglected child.” *Julie Q. v. Dep’t of Children & Family Servs.*, 2011 IL App. (2d) 100643, ¶ 43.

28. In 2013, the Illinois Supreme Court affirmed the Appellate Court’s ruling. The Supreme Court reasoned that DCFS was without authority to enforce an “environment injurious” definition of neglect that the Illinois legislature had removed from ANCRA, and that Allegation 60 therefore “exceeds DCFS’s scope of authority under ANCRA and is void.” *Julie Q. v. Dep’t of Children & Family Servs.*, 2013 IL 133783, ¶ 44.

29. After the Illinois Supreme Court’s *Julie Q.* decision, DCFS expunged over 19,000 indicated findings of neglect that it had entered based on Allegation 60.

30. In 2012, the Illinois legislature revised ANCRA’s definition of “neglected child” to include a narrowed version of the “environment injurious” language that had been removed in 1980. Specifically, the legislature revised the definition of “neglected child” to include one “who is subjected to an environment which is injurious insofar as (i) the child’s environment creates a likelihood of harm to the child’s health, physical well-being, or welfare and (ii) the likely harm to the child is the result of a blatant disregard of parent, caretaker, or agency responsibilities.” P.A. 97-803 § 5, eff. July 13, 2012.

31. As revised in 2012, ANCRA defines “blatant disregard” to mean “an incident where the real, significant, and imminent risk of harm would be so obvious to a reasonable parent or caretaker that it is unlikely that a reasonable parent or caretaker would have exposed the child to the danger without exercising precautionary measures to protect the child from harm.” *Id.*; 325 ILCS 5/3 (2014).

Allegation 74

32. DCFS’s October 2001 Allegations, which (again) DCFS uses as a basis to investigate, indicate, and register persons for child abuse and neglect, include Allegation 74,

titled "Inadequate Supervision." 89 Ill. Admin. Code, § 300, App'x B. Allegation 74 provides as a basis for indication for neglect:

The child has been placed in a situation or circumstances that are likely to require judgment or actions greater than the child's level of maturity, physical condition, and/or mental abilities would reasonably dictate.

33. Allegation 74 also includes a non-exhaustive list of examples and various "factors to be considered" in applying it, including "child factors," "caretaker factors," and "incident factors." 89 Ill. Admin. Code, § 300, App'x B.

34. Allegation 74 has not been revised or re-promulgated since it was initially promulgated in 2001.

35. Allegation 74 does not contain limitations confining its use to situations in which a child is not receiving "the proper or necessary support or medical or other remedial care recognized under State law as necessary for a child's well-being, or other care necessary for his or her well-being, including adequate food, clothing and shelter." 325 ILCS 5/3.

36. Allegation 74 does not contain limitations confining its use to situations in which a child is "abandoned by his or her parents ... without a proper plan of care, or who has been provided with interim crisis intervention services ... and whose parent, guardian, or custodian refuses to permit the child to return home." 325 ILCS 5/3.

37. Allegation 74 does not address circumstances in which "a newborn infant whose blood, urine, or meconium contains any amount of a controlled substance." 325 ILCS 5/3.

38. Allegation 74 does not contain limitations confining its use to situations involving a child "who is subjected to an environment which is injurious insofar as (i) the child's environment creates a likelihood of harm to the child's health, physical well-being, or welfare

and (ii) the likely harm to the child is the result of a blatant disregard of parent, caretaker, or agency responsibilities.” 325 ILCS 5/3.

Allegation 74 Is Ruled Void

39. On December 18, 2014, an individual whom DCFS had indicated under Allegation 74 brought an administrative review action in the Circuit Court of Cook County against DCFS and the Director to review DCFS’s denial of the plaintiff’s request for expungement of the indicated finding. The plaintiff contended that Allegation 74 is void on its face because it exceeds the scope of DCFS’s authority under ANCRA. Complaint, *Manier v. DCFS*, No. 14 CH 20237 (Dec. 18, 2014) (Ex. A).

40. Defendants in this case, DCFS and the Director, were also defendants in the *Manier* case. *Id.*

41. The issue whether Allegation 74 is void because it exceeds DCFS’s statutory authority was fully litigated in *Manier*.

42. The Circuit Court of Cook County ruled in favor of the plaintiff in *Manier*. The Court reversed DCFS’s denial of the plaintiff’s expungement request on two grounds: “1. Allegation #74 is unlawful as outside the scope of ANCRA,” and “2. The ALJ’s findings of fact were against the manifest weight of the evidence.” Order, *Manier v. DCFS*, No. 14 CH 20237 (Aug. 28, 2015) (Ex. B) (“*Manier* Order”).

43. DCFS and the Director declined to appeal the Court’s final order in *Manier*.

DCFS Continues To Invoke Allegation 74

44. Nonetheless, DCFS has used Allegation 74 since 2001 as a basis for investigating, indicating, and registering individuals for child neglect, and DCFS has continued to invoke Allegation 74 after the *Manier* ruling.

45. DCFS has used and continues to use Allegation 74 to investigate parents and caregivers for routine parenting decisions, actions by children that are commonplace accidents, incidents that the parent had no reason to be aware of or take action against, and even for normal childhood bickering and play.

46. For example, DCFS has used Allegation 74 against many dozens of Family Defense Center clients, as described in its August 2015 report, *When Can Parents Let Children Be Alone*, available at <http://goo.gl/QNZoqi>, including two who were involved in two successful appeals for which the Center served as counsel; Natasha Felix, the appellant in *Felix v. DCFS*, 1-14-3921 (1st Dist.), was investigated and indicated for inadequate supervision for letting her three children play for 30–40 minutes in the park next door to her apartment. Blanca V., the appellant in 13-2758 (1st Dist., Rule 23 opinion), was indicated for leaving an 8-year-old child home with a 1-year-old child while she drove her son to school after he missed his bus. These cases required over two years of legal proceedings and substantial expenditure of legal resources before the indicated findings against these individuals were overturned either by agreement (in the case of Natasha Felix) or through an appellate opinion holding that DCFS’s findings of neglect were erroneous (in the case of Blanca V.).

47. As the Center’s report describes, and as has been documented in numerous letters from the Center to DCFS, the range of alleged acts and omissions that DCFS has cited as bases for indication under Allegation 74 includes myriad incidents where children are in no obvious risk of harm and there is no indication the parent or caregiver has exhibited “blatant disregard” of the duty to provide adequate care to the child:

- A young child escapes from his locked home while the parents are asleep;
- A mother orders a birthday cake for her son’s birthday and runs into the store to pick up the cake, leaving her son in the car for less than 5 minutes.

- Parents miscommunicate about which parent was supposed to pick up a child or take a child with them, leaving the child alone by mistake.
- Parents place their 4-year-old son who has been having a temper tantrum on a time out on their apartment balcony for 1 ½ minutes. Onlookers pass by, hear the child screaming, and call the Hotline.
- A residential case worker is directed to monitor a 15-year-old youth who has just been in an altercation with another youth. The 15-year-old hears footsteps coming upstairs and knows the police have been called. The 15 year old slams the door to his room. The residential care worker is accused of inadequate supervision for allowing the 15 year old to close his door, rendering the youth “unsupervised” for an indefinite period of time.
- A nine-year-old who is sick is left home while her mother runs to the store to get her medicine.

48. On information and belief, in its fiscal year 2014, DCFS investigated approximately 23,566 cases under Allegation 74 and issued indicated findings in approximately 6,588 of those cases.

49. On information and belief, in its fiscal year 2015, DCFS investigated approximately 23,312 cases under Allegation 74 and issued indicated findings in approximately 6,564 of them.

50. On information and belief, prior fiscal years that are included within the scope of the plaintiff class had similar numbers of investigations and indicated findings under Allegation 74.

51. Even after this Court’s August 28, 2015 final order in *Manier* ruling that Allegation 74 is void, DCFS has continued to investigate, indicate, and register individuals for child neglect based on Allegation 74.

52. DCFS has willfully continued to investigate, indicate, and register individuals for child neglect based on Allegation 74, despite having full knowledge of the *Manier* Order.

53. DCFS has willfully continued to investigate, indicate, and register individuals for child neglect based on Allegation 74, despite having knowledge that investigation or indication under a void allegation would be “in violation of the Procedure Act and outside of the scope of DCFS’s authority.” *Ashley M. v. Dep’t of Children and Family Servs.*, 2014 WL 3535216 (Ill.Cir.Ct.).

54. DCFS has maintained that Allegation 74 is in full force and effect, even after the ruling in *Manier*.

55. Thus, thousands of people in Illinois have been and remain at risk of being investigated, indicated, and/or registered based on the void Allegation 74.

56. On information and belief, tens of thousands of people in Illinois are registered in the Illinois State Central Register based on an indicated finding under Allegation 74.

57. As described in the 2015 report, *When Can Parents Let Children Be Alone*, available at <http://goo.gl/QNZoqi>, a variety of harms flow from investigation, indication, and registration under Allegation 74. Parents accused of inadequate supervision for an action they considered to be reasonable and appropriate—such as allowing a school-age child to be alone, or allowing two children to go to the park together—will commonly experience a chilling effect on their parenting judgment. Even if the parenting decision in question was reasonable and safe, class members still do not wish to subject their family life to state scrutiny, nor the risk of the possibility that a child-protection investigator will decide to label them responsible for child neglect and possibly remove their children from their care.

58. Children are also adversely affected by having their parent subjected to a neglect investigation based on an allegation of inadequate supervision. Children’s sense of security in their own home may be challenged, making children anxious and upset, and when allegations

come from parties seeking to gain an advantage in a custody matter, children's ability to remain in the care of a stable parent may be temporarily or permanently harmed.

Discussions With DCFS Regarding Implementation Of A New Allegation 74

59. In the wake of a highly publicized appeal involving Allegation 74 (*Felix v. DCFS*, 1-14-3921 (1st Dist.)), which received attention of the *Washington Post*, *CBS News*, and the *Chicago Tribune* (including an editorial against DCFS overreach), the Family Defense Center notified DCFS and the Director, through the DCFS General Counsel and the Attorney General's Office, that Allegation 74 was unlawful and that class litigation to end its use was being considered, unless an agreement was made to (1) adopt a new lawful rule and procedures and (2) expunge the names of identified persons subject to Allegation 74 from the State Central Register during the negotiations of a new policy.

60. In October 2015, DCFS agreed to discuss modifying Allegation 74 prospectively through rulemaking to comply with ANCRA.

61. During these discussions with Plaintiffs' counsel (Family Defense Center), DCFS indicated that it would promptly adopt a new procedure, by no later than March 2016, that would bring its investigation practices into conformity with ANCRA even if a new version of Allegation 74 had not yet been promulgated. However, DCFS has yet to issue any amended procedures to protect against investigation, indication, or registration based on the current, void incarnation of Allegation 74.

62. Plaintiffs' counsel, Family Defense Center, has asked DCFS repeatedly to expunge all of the findings of identified individuals who had come to counsel's attention during the period of negotiations described above. DCFS has refused to do so, after which the Family Defense Center notified them on two separate occasions, in writing, that it would be left with no recourse except to litigate the issues presented herein.

Additional Facts Regarding Nicole P.

63. Plaintiff Nicole P. is the mother of minors A.P., E.P., and G.P.

64. On or about May 5, 2016, a Hotline call was made to DCFS that targeted Nicole P. as a perpetrator of child neglect, based on an observation that E.P. (age 5) was observed with small bruises and scratches on his arms and face. E.P. stated several times that his brothers, A.P. (age 7) and G.P. (age 9) were responsible. Nicole P. explained that the three children had been roughhousing.

65. DCFS coded the report of Nicole P. under Allegation 74 as well as Allegation 61 (“Cuts, Bruises, Welts, Abrasions, and Oral Injuries by Neglect”). After an investigation, DCFS indicated Nicole P. under Allegations 74 and 61 on July 1, 2016. The indicated report and Nicole P.’s identifying information are registered in the Illinois State Central Register.

Additional Facts Regarding Brittany S.

66. Plaintiff Brittany S. is the mother of minor D.G.

67. On or about August 12, 2016, a Hotline call was made to DCFS that targeted Brittany S. as a perpetrator of child neglect. Brittany S. had given birth to D.G. on August 3, 2016. Brittany S. coordinated with the hospital to take D.G. home on August 12, 2016. That morning, she called the hospital to inform them that she was delayed due to weather. When Brittany S. called back after the weather cleared, the hospital instructed her that she needed to speak with DCFS.

68. DCFS coded the report of Brittany S. under Allegation 74. As of the date of this filing, DCFS continues to investigate Brittany S. under Allegation 74.

Additional Facts Regarding Deona W.

69. Plaintiff Deona W. is a family friend of minor A.S..

70. Deona W. is attending college full-time to study early childhood education, and she plans to seek employment as a teacher in preschool or elementary school upon completion of her education and training. Prior to attending college, she was employed in Wisconsin at an after-school child care facility for 4 years, and she also cared for two children in her home. In Wisconsin, she was a licensed child caregiver.

71. On or about May 6, 2016, a Hotline call was made to DCFS that named Deona W. as a perpetrator of child neglect. At the time, Deona W. lived with her friend Nashay P. That morning, A.S.'s father, Gregory S., was visiting Nashay P. Gregory S. left A.S. in Nashay P.'s care without telling Deona W. At the time, Deona W. was upstairs in the home reorganizing her closet. Nashay P. fell asleep, and A.S. wandered outside and was found by police officers, who returned her to the house.

72. DCFS coded the report of Deona W. under Allegation 74. After an investigation, DCFS indicated Deona W. under Allegation 74. The indicated report and Deona W.'s identifying information are registered on the Illinois State Central Register.

Additional Facts Regarding Plaintiffs' Harms

73. As a result of being investigated, indicated, and registered in the Illinois State Central Register as child neglecters under Allegation 74, Plaintiffs have suffered harms including but not limited to violation of their rights under the IAPA, 5 ILCS 100/5-10(c), as well as to their reputations, occupational prospects, and other interests described in paragraphs 13 through 20 and 57 through 58.

74. These harms accrue on a daily basis as Plaintiffs continue to be labeled as child neglecters.

75. Plaintiffs' above-described harms are irreparable and cannot be adequately measured in or compensated with monetary damages.

Class Allegations

76. Plaintiffs bring this action individually and on behalf of a Class of persons defined as follows: Any and all persons who have been or are being investigated, indicated, or registered in the Illinois State Central Register as perpetrators of child neglect based on Allegation 74, including all persons whose indicated report under Allegation 74 is on the Illinois State Central Register.

77. The Class is so numerous that joinder of all members is impracticable. The Class on information and belief includes tens of thousands of people in Illinois.

78. There are questions of fact or law common to the Class, which predominate over any questions affecting only individual members. The questions of law and/or fact include, but are not limited to, (1) whether Allegation 74 is void on its face because it exceeds DCFS's statutory authority under ANCRA, and (2) whether the final order of this Court in *Manier* has collateral-estoppel effect in this case. These questions bear on whether DCFS has jurisdiction to invoke Allegation 74 against the class members. If Plaintiffs prevail on these issues, the claims of each of the class members will be resolved.

79. Allegation 74 and the DCFS policies and practices described above have been, are being, and will continue to be invoked against the Plaintiff Class, absent the relief requested herein.

80. The representative parties will fairly and adequately protect the interest of the Class. Plaintiffs are well aware of the State's unlawful use of the void Allegation 74, having been subject to an investigation and proceedings under that void rule. Plaintiffs are committed to vigorously litigating this matter and are pursuing relief that is also available to class members, namely expunging their names from the Illinois State Central Register and preventing DCFS

from continuing to use a void rule to investigate, indicate, and register people in Illinois for child neglect.

81. Plaintiffs' attorneys are competent, qualified, experienced, and generally able to prosecute the action on behalf of the Class. Plaintiffs' attorneys have experience litigating class action lawsuits as well as lawsuits defending Illinois residents against DCFS with respect to the investigation and indication of child abuse and neglect.

82. Neither Plaintiffs nor their counsel have any interest which might preclude them from vigorously pursuing this action.

83. There is no better method available than a class action for the adjudication of the Plaintiffs' claims, which might otherwise be brought by each of the numerous individuals investigated and indicated under the void Allegation 74.

COUNT I

Declaratory Judgment Act

84. Plaintiffs repeat and re-allege paragraphs 1–83 as though fully set forth herein in Count I.

85. Illinois law provides that:

The court may, in cases of actual controversy, make binding declarations of rights, having the force of final judgments, whether or not any consequential relief is or could be claimed, including the determination, at the instance of anyone interested in the controversy, of the construction of any statute, municipal ordinance, or other governmental regulation, or of any deed, will, contract or other written instrument, and a declaration of the rights of the parties interested.

735 ILCS 5/2-701.

86. Plaintiffs have legal tangible rights and interests—including under the Illinois Administrative Procedure Act, in their reputations, professional and occupational pursuits, and as

parents—in not being investigated, indicated, or registered as child neglecters under a void DCFS rule.

87. An actual controversy exists between the parties concerning such interests because Defendants have investigated and/or indicated and registered Plaintiffs as child neglecters based on the void Allegation 74.

88. In *Manier v. DCFS*, No. 14 CH 20237, the Circuit Court of Cook County ruled in a final, unappealed order that Allegation 74 is void because it exceeds the scope of DCFS's authority under ANCRA. *Manier* Order.

89. This action presents the identical issue: whether Allegation 74 is void because it exceeds DCFS's authority under ANCRA.

90. The *Manier* Order was a final judgment on the merits.

91. Defendants in this action were also the defendants in the *Manier* case.

92. Defendants had full incentive and fair opportunity to litigate the issue of Allegation 74's validity in the *Manier* case.

93. There are no material procedural differences between this action and the *Manier* case that could lead to a different result with respect to the legal question whether Allegation 74 is void as outside the scope of ANCRA.

94. This action will minimize future litigation regarding Allegation 74 by finally determining the rule's validity on its face and enjoining its unauthorized use by DCFS.

95. Accordingly, collateral estoppel precludes Defendants from relitigating this Court's final judgment that Allegation 74 is void.

96. In addition, based on the facts alleged in paragraphs 21 through 38, Allegation 74 exceeds DCFS's authority under ANCRA. Allegation 74 is void.

97. Plaintiffs are entitled to a declaration that Allegation 74 is void and unenforceable.

98. By granting the relief Plaintiffs seek in this action, this Court can dispose of the controversy between the parties.

COUNT II

Illinois Administrative Procedure Act

99. Plaintiffs repeat and reallege paragraphs 1–83 as though fully set forth herein in Count II.

100. At all relevant times, the Illinois Administrative Procedures Act was in full force and effect, and provides, in pertinent part:

No agency rule is valid or effective against any person or party, nor may it be invoked by the agency for any purpose, until it has been made available for public inspection and filed with the Secretary of State as required by this Act.

5 ILCS 100/5-10(c).

101. The above provision was enacted for the benefit of Plaintiffs and the Class.

102. DCFS promulgated Allegation 74 in 2001.

103. The Circuit Court of Cook County ruled in a final order on August 28, 2015, that Allegation 74 is void.

104. Because Allegation 74 is void, it is a legal nullity; the state of the law is as if Allegation 74 were never passed.

105. Therefore, in order to invoke Allegation 74 against any person or party for any purpose, DCFS must go through the complete rulemaking process established by the IAPA and may not continue to use a void allegation pending the outcome of that rulemaking process. That

defendants have initiated that process on September 15, 2016 does not authority them to use the void rule in the interim.

106. Despite the declaration that Allegation 74 is void, DCFS has continued to use the current void incarnation of Allegation 74 to accept Hotline calls, assign cases for investigation, carry out investigations, indicate and register individuals as child neglectors.

107. By invoking a void rule to investigate, indicate, and register Illinois residents as child neglectors, DCFS has violated and continues to violate the Plaintiffs' and the Class's rights under the IAPA.

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, ask this Court to enter an order:

- (a) Certifying this action as a class action;
- (b) Appointing all named Plaintiffs as representatives of the Class and Plaintiffs' counsel as class counsel;
- (c) Declaring that the currently used Allegation 74 is void and unenforceable;
- (d) Preliminarily and permanently enjoining Defendants to cease accepting Hotline calls under the current void incarnation of Allegation 74.
- (e) Preliminarily and permanently enjoining DCFS, its Director, and its agents, employees, and all persons acting in concert or cooperation with them, from invoking or using the current, void incarnation of Allegation 74 to investigate, indicate, and register Illinois residents as responsible for child neglect;
- (f) Preliminarily and permanently expunging from the Illinois State Central Register all indicated reports based on the current void incarnation of Allegation 74;

(g) Awarding Plaintiffs expenses and attorney's fees pursuant to 5 ILCS 100/10-55;
and

(h) Providing such other relief as this Court deems appropriate.

Dated: September 28, 2016

Respectfully submitted,

Nicole P., Brittaney S., and Deona W.,
individually and on behalf of all others similar
situated

By: 

One of Their Attorneys

Diane Redleaf
Sara Gilloon
Melissa L. Staas
FAMILY DEFENSE CENTER
70 East Lake Street, Suite 1100
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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

NICOLE P., BRITTANEY S., and DEONA
W., individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

ILLINOIS DEPARTMENT OF CHILDREN
AND FAMILY SERVICES, and GEORGE
H. SHELDON in his capacity as DIRECTOR
OF THE ILLINOIS DEPARTMENT OF
CHILDREN AND FAMILY SERVICES,

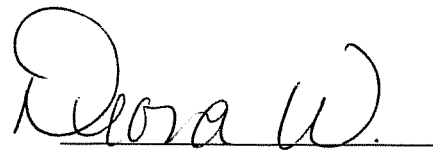
Defendants.

Case No. _____

**CERTIFICATION OF VERIFIED CLASS ACTION COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument pertaining to the undersigned are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

DATED: 9/22/16


Deona W.

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

NICOLE P., BRITTANEY S., and DEONA
W., individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

ILLINOIS DEPARTMENT OF CHILDREN
AND FAMILY SERVICES, and GEORGE
H. SHELDON in his capacity as DIRECTOR
OF THE ILLINOIS DEPARTMENT OF
CHILDREN AND FAMILY SERVICES,

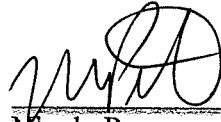
Defendants.

Case No. _____

**CERTIFICATION OF VERIFIED CLASS ACTION COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF**

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DATED: 9/21/16



Nicole P.

Exhibit A

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION - 1**

JORDAN MANIER

Plaintiff,

v.

ILLINOIS DEPARTMENT OF CHILDREN
AND FAMILY SERVICES, and BOBBIE
GREGG in her official capacity as Acting
Director of DCFS,

Defendants.

) 2014 DEC 18 AM 11:53
)
) CIRCUIT COURT OF COOK
) COUNTY, ILLINOIS
) CHANCERY DIV.
)
) ~~NO~~ CLERK
) DOROTHY BROWN
)
) **14CH20237**
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COMPLAINT IN ADMINISTRATIVE REVIEW

Plaintiff Jordan Manier, by and through his attorneys Brian J. Beck and Steven B. Varick of Holland & Knight, LLP and Sara E. Gilloon of the Family Defense Center, pursuant to the Illinois Administrative Review Act, 735 ILCS 5/3-101 *et seq.*, complain as follows:

1. In July 2014, the Illinois Department of Children and Family Services (hereinafter “DCFS” or “Department”) notified Plaintiff that it was indicating a report of “Allegation #74: Inadequate Supervision” as to Plaintiff.
2. Plaintiff requested a timely appeal seeking expungement of the indicated findings. Therefore, Plaintiff was a party of record to the proceedings.
3. On October 2, 2014 the DCFS Administrative Hearings Unit concluded a hearing on Plaintiff’s appeal.
4. Thereafter, the Director of DCFS issued a final administrative hearing decision dated November 17, 2014, Exhibit 1, denying Plaintiff’s request for expungement of the findings against him in SCR #2128384-A.
5. Plaintiff alleges that the final administrative hearing decision at Exhibit 1 should be reversed on the following grounds:

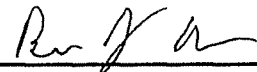
(a) Findings of fact made by the Administrative Law Judge are against the manifest weight of evidence;

(b) The indicated findings are clearly erroneous as a misapplication of law to the facts in this case; and,

(c) The final administrative hearing decision is erroneous as a matter of law because, *inter alia*, Allegation #74 is outside the scope of DCFS's authority as set forth by the Illinois Abused and Neglected Child Reporting Act, 325 ILCS 5/1 *et seq.*

6. Plaintiff requests that this Court reverse the administrative hearing decision at Exhibit 1 based on the grounds set forth in ¶ 5 and any other grounds as the Court deems just pursuant to the Administrative Review Act.

Respectfully submitted,



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Exhibit B

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

JORDAN MANIER,)
)
Plaintiff,)
) 14 CH 20237
v.)
) Judge Hall
ILLINOIS DEPARTMENT OF CHILDREN)
AND FAMILY SERVICES; et al.)
)
Defendants.)

ORDER

This cause coming before the Court for ruling, the parties appearing through counsel and the Court being duly advised in the premises, IT IS HEREBY ORDERED:

The Department's final administrative decision of November 17, 2014 denying Plaintiff's request for expungement of an indicated finding of Allegation of Harm #74 (inadequate supervision) is REVERSED for the reasons stated by the Court.

1. Allegation # 74 is unlawful as outside the scope of AN CRA,
2. The ALJ's findings of fact were against the manifest weight of the evidence.

Entered:

DANIELLE J. STEIMEL, AAG
100 W. Randolph, Suite 11-200
Chicago IL 60601
312/814-6761
Atty No. 99000
Atty for Defendants

Hon. Sophia Hall

Date

AUG 28 2015

EXHIBITS C-D
[REDACTED FOR POSTING
PURPOSES]