

when these service reductions take effect on July 1, 2009. The Plaintiff class today seeks a Temporary Restraining Order to preserve the status quo and continue all programs, placements and services until such time as a preliminary injunction order can issue.

I. Class Plaintiffs Are Entitled To An Order Enforcing The *Hill* Consent Decree

A consent decree resolving a dispute operates like a contract between the parties, and the law of contracts controls its interpretation and enforcement. *See, e.g., Citizens Utils. Co. of Ill. v. Centex-Winston Corp.*, 185 Ill. App. 3d 610, 613, 541 N.E.2d 681, 683 (3d Dist. 1989) (“Consent decrees, which are utilized to effectuate settlement, are considered contracts between parties to litigation, and accordingly, the law of contracts controls their interpretation.”) (citation omitted); *Wallenius v. Sison*, 243 Ill. App. 3d 495, 502-03, 611 N.E.2d 1096, 1100-01 (1st Dist. 1993). Here, in 1994, the Director of DCFS entered into the *Hill* Decree and agreed to provide critical services to pregnant and parenting teens, and to consult with Class counsel and the Teen Parent Consultant before making any material changes to that programming. DCFS’s Director has violated the *Hill* Decree leaving the Plaintiff Class no choice but to seek judicial relief compelling DCFS’s Director to comply with the terms of the *Hill* Decree.

A. The *Hill* Decree Requires DCFS To Provide Services To Class Members And To Communicate Regarding Changes.

The *Hill* Decree requires DCFS, through its Director, to provide a full array of specialized placements, programs and services specifically designed to comprehensively meet the unique needs of pregnant and parenting teens. (Motion ¶¶ 5-10.) Indeed, DCFS admits the *Hill* Decree requires it to provide specialized residential placement programs as well as other services. (Mot. Ex. 11, 2002-2003 Plan.) The scope of services is to be determined through the more than 15 year process of the Decree including consultation with the Teen Parent Consultant and Class counsel. (Motion ¶¶ 33-34.)

B. DCFS Plans To Cut Services And Has Failed To Provide For Proper Consultation Regarding Programming Changes.

There is no dispute that DCFS's Director plans to reduce and eliminate substantial services to Class Members on July 1, 2009. (Motion ¶¶ 14-18.) Likewise, there is no dispute that DCFS's Director failed to consult with Plaintiffs' counsel or the Teen Parent Consultant regarding any alternative plan. (Motion ¶ 10.) Further, DCFS's Director admitted in his letter notifying agencies that the proposed cuts would violate legal requirements and commitments that DCFS has made to its clients. (Motion ¶ 14.) After first announcing cuts on June 11, 2009, DCFS says it is promising to restore some funds for residential programming for a sixty-day period beginning July 1, 2009. (Motion ¶¶ 17-18.) As of today, it remains undisputed that: (1) DCFS's Director will still cut a substantial amount of programming required by the *Hill* Decree on July 1, 2009; and (2) DCFS's Director has provided no assurance that DCFS will continue any programming for pregnant and parenting teens beyond September 1, 2009. At present, all funds for programming stop sixty days after July 1, 2009, and DCFS will be providing no programming required under the *Hill* Decree.

C. Plaintiffs Are Entitled To An Order Enforcing *Hill* Decree

The *Hill* Decree provides that the Plaintiff Class is entitled to judicial relief to compel DCFS's Director to comply with the Decree's terms and provide all necessary placements, services and programs. (*Hill* Decree ¶ 35.) The Plaintiff Class has complied with the pre-motion notice and consultation requirements provided in the *Hill* Decree by giving DCFS ten days' notice before seeking judicial relief (DCFS itself only provided notice of cuts less than twenty days before they were to take effect—which is less than the thirty-day consultation period preferred in the *Hill* Decree). (*Hill* Decree ¶ 35.) Further, on June 25, 2009, Plaintiffs' counsel spoke with DCFS's counsel regarding this matter but DCFS refused to agree to maintain the

status quo. Thus, the Plaintiff Class is entitled to an Order compelling DCFS's Director to comply immediately with all the terms of the *Hill* Decree.

II. Class Plaintiffs Are Entitled To A Temporary Restraining Order Preserving The Status Quo.

The Plaintiff Class seeks entry of a Temporary Restraining Order to maintain the status quo because DCFS's Director's planned cuts to programs for Class Members will not only breach the *Hill* Decree, but will cause imminent harm to Class Member parents. "A TRO is an emergency remedy issued to maintain the status quo until the case is disposed of on the merits A party seeking a TRO must establish, by a preponderance of the evidence, that (1) he or she possesses a certain and clearly ascertainable right needing protection, (2) he or she has no adequate remedy at law, (3) he or she would suffer irreparable harm without the TRO, and (4) he or she has a likelihood of success on the merits." *Wilson ex rel. Geiger v. Hinsdale Elem. Sch. Dist. 181*, 349 Ill. App. 3d 243, 248, 810 N.E.2d 637, 642 (2d Dist. Ct. 2004) (citations omitted); *Hartlein v. Ill. Power Co.*, 151 Ill. 2d 142, 156, 601 N.E.2d 720, 726-27 (1992) (same); *Cross Wood Prods., Inc. v. Suter*, 97 Ill. App. 3d 282, 284, 422 N.E.2d 953, 956 (1st Dist. 1981) (same). The Plaintiff Class is entitled to a Temporary Restraining Order because absent such an order it will suffer injury and the Plaintiff Class has no other remedy for DCFS's Director's breach of his obligations under the *Hill* Decree.

A. The Plaintiff Class Has Rights To Services Under The *Hill* Decree.

"In order to be entitled to an injunction, a plaintiff must show that he or she possesses a certain and clearly ascertainable right." *Lucas v. Peters*, 318 Ill. App. 3d 1, 16, 741 N.E.2d 313, 325 (1st Dist. 2000). In this case, there is no dispute that the Plaintiff Class has clear rights under the *Hill* Decree to specialized placements, programs and services designed to comprehensively meet the unique needs of pregnant and parenting teens. Indeed, DCFS has long

admitted that the *Hill* Decree obliges it to provide such. (Mot. Ex. 11, 2002-2003 Plan.)

Further, DCFS's Director admits that these massive cuts will put him in violation of state law and of commitments made by DCFS. (Mot. Ex. 7, DCFS Letters.) Thus, the only point in dispute is whether temporary injunctive relief is the appropriate remedy.

B. Plaintiffs Have No Adequate Remedy Under Law.

“An adequate remedy at law is one which is clear, complete and as practical and efficient to the ends of justice and its prompt administration as the equitable remedy.” *Cross Wood Prods.*, 97 Ill. App. 3d at 286, 422 N.E.2d at 957, quoting *Bio-Medical Labs., Inc. v. Trainor*, 68 Ill. 2d 540, 549, 370 N.E.2d 223, 227 (1977); *Bio-Medical Labs.*, 68 Ill. 2d at 549, 370 N.E.2d at 227 (affirming order restraining the Director of Illinois Department of Public Aid from suspending plaintiff's right to participate in the Illinois medical assistance program and finding “action for damages in a case of this nature would not be ‘as practical and efficient to the ends of justice’ as an action for injunctive relief”). Here the *Hill* Decree provides by its terms that Plaintiffs may seek an order compelling specific performance of the *Hill* Decree should DCFS's Director fail to provide required services or comply with the procedures required by the *Hill* Decree. (*Hill* Decree ¶ 35.) The *Hill* Decree does not authorize the Plaintiff Class to seek individual or class-wide money damages. Thus, under the terms of the *Hill* Decree, the Plaintiff Class has no legal remedy; instead, the Plaintiff Class is entitled only to seek the equitable remedy of injunctive relief. Further, DCFS, and its Director, agreed that injunctive relief was the proper remedy for breach of the *Hill* Decree when DCFS's Director agreed to entry of the *Hill* Decree in 1994.

C. Plaintiffs Will Suffer Imminent Irreparable Injury.

The Plaintiff Class will suffer irreparable injury beginning July 1, 2009 because its members will not receive urgently required placements and services, and because the actions

taken by DCFS's Director undercut a 15 year process of building adequate supports for these young families. "An alleged injury is defined as irreparable when it is of such nature that the injured party cannot be adequately compensated therefor in damages or when damages cannot be measured by any certain pecuniary standard." *Cross Wood Prods.*, 97 Ill. App. 3d at 286, 422 N.E.2d at 957. "Alternately, the term has been defined to encompass not such injury as is beyond the possibility of repair or beyond the possibility of compensation in damages, but that species of injury that ought not be submitted to on the one hand or inflicted on the other." *Id.*; *Lucas v. Peters*, 318 Ill. App. 3d 1, 16, 741 N.E.2d 313, 325 (1st Dist. 2000) ("[I]rreparable harm' . . . denotes transgressions of a continuing nature.") (citation omitted).

First, as described in the accompanying Motion and supporting Affidavits, the Plaintiff Class will suffer immediate irreparable injury beginning July 1, 2009 because its members will not receive necessary services. The core principle animating the *Hill* Decree was that DCFS is obligated to provide appropriate placements and services to meet the unique needs of pregnant and parenting teens. (Motion ¶¶ 19-28.) By gutting key programs on July 1, 2009—including types of residential placements, therapy, intervention services, parenting classes, educational services, specialized case workers, data-tracking systems, day care, counseling, new infant support services, and others—DCFS will have returned to the days before the *Hill* Decree when it warehoused pregnant teens in whatever facility it could locate an empty bed. (*Id.*) Such improper placement will injure those teens improperly placed. (*Id.*) Further, even should those teens already in placement be allowed to continue in those placements, newly pregnant teens will suffer harm because they will not be given proper placements or support. (*Id.*)

Second, should this Court allow DCFS's director to proceed with any cuts, the Director will also undercut consultation requirements in the *Hill* Decree and the Plaintiff Class will have

no recourse or remedy. The *Hill* Decree requires that the Director provide Plaintiffs' counsel with thirty days' notice of proposed program changes so that the parties may engage in discussion and so that the parties may plan for an appropriate transition between program regimes. (Motion ¶ 34.) In this case the Director has unilaterally imposed drastic program changes without satisfying the consultation requirement. An injunction should compel the Director to restore the status quo and to require consultation for any changes. Anything less, and the consultation provisions of the *Hill* Decree are rendered meaningless.

D. Plaintiffs Are Likely To Succeed On The Merits.

To prevail, “*plaintiff[s]’ class] need[] only to raise a fair question* as to the existence of the right it claimed and to lead the trial court to conclude that it would probably be entitled to the relief it sought if the proof sustained its allegations.” *N. Pole Corp. v. Vill. of East Dundee*, 263 Ill. App. 3d 327, 334, 635 N.E.2d 1060, 1065-1066 (2d Dist. 1994) (emphasis added). Indeed, “the party seeking [temporary injunctive] relief is not required to make out its entire case that would entitle it to relief on the merits; rather, it need show only that it raises a ‘fair question’ about the existence of its right and that the court should preserve the status quo until the case can be decided on the merits.” *County of Du Page v. Gavrilos*, 359 Ill. App. 3d 629, 634, 834 N.E.2d 643, 649 (2d Dist. 2005); *see also In re Estate of Wilson*, 373 Ill. App. 3d 1066, 1075, 869 N.E.2d 824, 833 (1st Dist. 2007) (same).

As shown above, the DCFS's Director has admitted that DCFS's proposed service cuts will violate state law and the Department's commitments. The Plaintiff Class is likely to prevail on its claim that DCFS's Director's conduct is in violation of the *Hill* Decree. For that reason, this Court should enter an Order freezing the status quo while DCFS follows the procedures required by the *Hill* Decree regarding any changes to those specialized services DCFS provides to pregnant and parent teens. *See, e.g., Citizens Utils. Co.*, 185 Ill. App. 3d at 613, 541 N.E.2d at

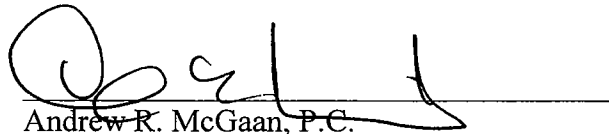
683 (granting temporary restraining order to stop the defendant from violating a consent decree); *James B. Beam Distilling Co. v. Foremost Sales Promotions, Inc.*, 13 Ill. App. 3d 176, 177-78, 300 N.E.2d 488, 489-90 (1st Dist. 1973) (stating that a temporary restraining order would have been appropriate where plaintiff alleged defendant violated the terms of a consent judgment).

Conclusion

For the foregoing reason, this Court should enter a Temporary Restraining Order maintaining the status quo, and the Court should grant all other relief requested.

Dated: June 30, 2009

Respectfully submitted,



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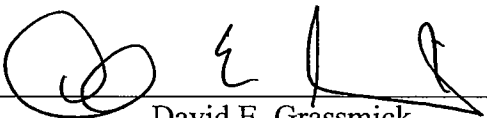
Counsel for the Plaintiff Class

CERTIFICATE OF SERVICE

David E. Grassmick, one of the attorneys for the Plaintiff Class, hereby certifies that he did cause a true and correct copy of the foregoing **Plaintiff Teen Class Members' Memorandum in Support of Their Motion for a Temporary Restraining Order and Injunctive Relief to Enforce Compliance with the Terms of the *Hill* Consent Decree** to be served on Tuesday, June 30, 2009, upon the following attorneys by messenger delivery:

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