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**UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON  
EUGENE DIVISION**

C.S. *ex rel.* K.C.; K.C. *ex rel.* L.C.; T.B. *ex rel.* C.B.; B.B. *ex rel.* C. B.; T.C. *ex rel.* L.C.,  
on their own behalf and on behalf of all  
those similarly situated,

Plaintiffs,

v.

FARIBORZ PAKSERESHT<sup>1</sup>, in his official  
capacity as the Director of Department of  
Human Services, State of Oregon; and  
LILIA TENINTY, in her official capacity as  
the Director of the Office of Developmental  
Disabilities Services, Oregon Department of  
Human Services,

Defendants.

Case No. 6:17-cv-00564-MC

**Joint Status Report and Joint Motion to  
Continue Stay**

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This Court stayed proceedings in this matter on April 18, 2017 (eDoc. 10) and, the following day, issued a preliminary injunction (eDoc. 11). The parties last updated the Court on

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<sup>1</sup> Caption modified from *C.S. v. Saiki* by operation of Fed. Civ. P. 25(d). See eDoc. 18.

December 5, 2017. (eDoc 17). After that report, the Court continued the stay and ordered the parties to further update the Court by June 5, 2018. (eDoc. 19).

### **Current Status**

The parties continue to work cooperatively to resolve the issues raised in the complaint. The Defendants continue to work in earnest to develop a new assessment tool, although progress has been somewhat slower than anticipated by the parties at the time of the December 5 report. Mission Analytics Group, Inc., the consultant engaged to develop the new tool, the Oregon Needs Assessment (ONA), completed its initial testing and validation of the tool in June 2017. Defendants engaged Oregon Health & Science University (OHSU) to review the reliability and validity analysis previously done by Mission Analytics. OHSU completed its report on April 3, 2018. OHSU found that the methods Mission Analytics used to develop and test the tool had generally been appropriate. OHSU also found that the ONA has strong “face validity” because items were drawn from other tools commonly used for similar purposes. However, OHSU concluded that inter-rater reliability (IRR) of the tool is not yet established for children due to the low numbers of children included in IRR testing. IRR measures how similar the data collected by different assessors are. OHSU included recommendations to address this issue during implementation. OHSU concluded that “it is reasonable and appropriate to proceed with implementation of the ONA,” provided that the Defendants implement OHSU’s recommendations to continue to assess reliability.

Defendants plan to continue work with OHSU to further evaluate the reliability of the ONA for children. Beginning July 1, 2018, Defendants plan to begin using the ONA as its functional

needs assessment.<sup>2</sup> Although Defendants plan to use the ONA as a functional needs assessment, Defendants will not initially set service levels based on the ONA, and the parties anticipate that this Court's injunction will remain in place for some time.

Defendants have also engaged Human Services Research Institute (HSRI) which will develop service level groups and hours allotments for the ONA. In May 2018, HSRI began consumer record reviews with Defendants and stakeholders. HSRI will use these records reviews, and further planned reviews, to develop service level groups and hours allotments for the ONA. Defendants are targeting July 1, 2019, subject to approval by the federal Centers for Medicare and Medicaid Services, as the date they will be prepared to use ONA to set service levels.

At the same time they are developing an assessment tool, Defendants are developing an exceptions process. Although they have not yet completely resolved their differences, the parties have engaged in discussions on the exceptions process and criteria for granting exceptions.

### **Impact on this Case**

Well in advance of the July 1, 2019 target date for use of the ONA to set service levels, the Defendants intend to file a motion to vacate the preliminary injunction. In the December 5, 2017 report, the Defendants projected that they would make such a motion in the spring of 2018. Defendants now project that such a motion is not likely until early 2019 at the earliest. However, Defendants may move to vacate before expiration of the stay, if an extension of the stay is granted as the parties request below. The parties will meet and confer about any motion to vacate the preliminary injunction and to set a briefing schedule for the motion prior to filing. Plaintiffs do not waive their right to oppose any motion to vacate the preliminary injunction, nor do the Defendants

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<sup>2</sup> See 42 C.F.R. 441.535, *see also* ODDS Director's Message, <http://www.oregon.gov/DHS/SENIORS-DISABILITIES/DD/DirectorMessages/Director's%20message%20-%20ONA%20-%20final.pdf>.

waive their right to file a motion to vacate the preliminary injunction by agreeing to a stay of proceedings.

### **Motion**

Based upon the ongoing cooperation between the parties, the parties move this Court to continue the stay for an additional six months, subject to the Defendants' right to file a motion to vacate the preliminary injunction as described above. Neither the answer nor a response to Plaintiffs' motion for class certification need be filed during that time. However, the parties each reserve the right, upon 30 days' written notice, to reinstate litigation on this case prior to the end of that six-month period should they deem it necessary. The parties agree that the filing of a motion to vacate the preliminary injunction, by itself, will not reinstate the litigation such that an answer and response to Plaintiffs' motion for class certification would be required to be filed before the expiration of the stay.

Dated: June 4, 2018

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