

# **EXHIBIT 2**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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NEW HOPE FAMILY SERVICES, INC.,

5:18-CV-1419 (MAD/TWD)

Plaintiff,

vs.

SHEILA J. POOLE, in her official capacity  
as Acting Commissioner for the Office of  
Children and Family Services for the State  
of New York,

**AFFIDAVIT OF JUDITH A.  
GEYER IN SUPPORT OF NEW  
HOPE FAMILY SERVICES'  
MOTION FOR PRELIMINARY  
INJUNCTION**

Defendant.

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1. My name is Judith A. Geyer.
2. I am above the age of 18, of sound mind, and with full authority to make this declaration.
3. I am currently the Interim Executive Director of New Hope Family Services, Inc. (hereafter "New Hope"), located at 3519 James Street, Syracuse, NY 13206.
4. I became an employee of New Hope in 1992.
5. I began my employment with New Hope as an adoptive parent caseworker.
6. I became Executive Director in 1996 and continued in that role until 2013 when I retired.
7. Even after retirement as Executive Director, I continued to work for New Hope Family Services as an adoption caseworker. When the woman who replaced me as Executive Director became ill, I stepped in as Acting Executive Director in August of 2017.

8. After she passed away in April of 2018, I was given the title of Interim Executive Director and I have continued to maintain that position until today.

9. Kathy Jarman, Director of Client Services, for our pregnancy center is anticipated to succeed me as Executive Director on or about April 1, 2019.

10. The care of orphans and infants whose parents cannot care for them has been a Christian mission since the beginning of the faith.

11. St. James instructed the earliest church that “Religion that God our Father accepts as pure and faultless is this: to look after orphans and widows in their distress.” James 1:27.

12. New Hope’s adoption ministry is one small part of America’s rich religious heritage of helping birthmothers and children through adoption.

13. In 1958, Clinton H. Tasker, a Christian minister serving in a rescue mission, strongly sensed the call of God to open a Christian adoption ministry in New York that would care for women facing unplanned pregnancies and for their children.

14. He left the Mission and began traveling throughout the state speaking to churches, service organizations, and missionary committees to raise funds.

15. His vision was realized when New Hope Family Services’ incorporation was approved in 1965 by the State Board of Social Welfare under the name Evangelical Family Service, Inc.

16. Its board was composed of ministers and Christian philanthropists.

17. In 1977, New Hope amended its name to Evangelical Adoption and Family Services, Inc. to better reflect all of its services.

18. In 1986, New Hope began operating a pregnancy resource center under its umbrella.

19. In the early 1990s, Evangelical Adoption and Family Services, Inc., amended its name to New Hope Family Services, Inc.

20. Though New Hope's name has changed several times, the mission and Christian character of the organization have remained the same.

21. Like its founding board, the current board of New Hope is composed of devout believers who are actively involved in their Christian churches, including one member who is actively pastoring a church.

22. New Hope's mission is "to be Christ's hands extended to offer hope and help to people with pregnancy, parenting, adoption, or post-abortion needs in the Syracuse area and throughout the State of New York."

23. There are over 440,000 children in foster care in the U.S.

24. Over 120,000 of those children are waiting to be adopted.

25. In federal fiscal year 2017, New York had 27,268 children served in foster care, with 19,213 in foster care on September 30, 2017.

26. Of those, over 4,400 New York children were waiting to be adopted.

27. During fiscal year 2017, throughout the state of New York, a total of only 1,729 children were adopted.

28. Consistent with New Hope's mission, it operates as a pregnancy



resource center and temporary-foster-placement and adoption provider.

29. In order to scrupulously ensure its autonomy to operate in accordance with its religious beliefs, New Hope accepts no government funding.

30. New Hope's Christian faith and religious beliefs motivate and permeate its mission and all of its activities.

31. All of New Hope's paid staff, board members, and counseling volunteers must be in agreement with and sign New Hope's statement of faith, must be in agreement with and supportive of New Hope's religious mission, and must conduct themselves consistent with Christian faith and belief. Paid staff and counseling volunteers must also be willing and able to pray with and present the Gospel to New Hope's clients.

32. New Hope's board members pray at New Hope board meetings.

33. New Hope holds regular times of worship and prayer for its employees and volunteers.

34. All of New Hope's paid staff and counseling volunteers are expected to counsel consistently with biblical truth.

35. New Hope believes that the Bible is the inspired and authoritative word of God and strives to follow its commands.

36. New Hope believes that:

- God is sovereign over and involved in the creation of every human life and every human life is created in the image and likeness of God and is worthy of protection;

- Every person has inherent dignity and self-worth and should be treated with respect and love;
- The biblical model for the family as set out in the Bible—one man married to one woman for life for their mutual benefit and the benefit of their children—is the ideal and healthiest family structure for mankind and specifically for the upbringing of children;
- God created two sexes—male and female. And each sex has a unique role and gifting that is intended to benefit the other and any children in the family;
- An individual’s sex as male or female is determined at the time of conception and cannot be changed;
- Caring for orphans is important to God and God desires believers to do so.

37. Through its adoption program, New Hope strives to save the lives of babies that God has created.

38. New Hope operates as a pregnancy resource center that exists to lovingly serve women facing the fears and concerns of an unplanned pregnancy, and their children.

39. New Hope’s pregnancy resource center serves approximately 700 clients per year.

40. New Hope provides the following services to its pregnancy center clientele: free urine pregnancy tests; free supplies from its care corner that clients

can frequent once per month, including items like car seats, clothes, formula, diapers, and wipes for children ages 0-2 years; referral for free ultrasound if pregnancy test is positive; free unplanned pregnancy options counseling focused on parenting and/or adoption; free childbirth education courses taught by a registered nurse; free counseling on parenting issues/challenges; referrals for medical, community, and social services; free post-abortion counseling; and free counseling following miscarriage or infant loss.

41. All of the services that New Hope provides as a pregnancy resource center are provided without consideration of the recipient's marital status, sexual orientation, gender identity, or religious belief.

42. All of the services that New Hope provides its pregnancy resource center clients are provided free of charge.

43. New Hope provides its services to women in unplanned pregnancies pursuant to its pro-life viewpoint, desiring to empower the women it serves to choose life for their child by either choosing to parent or to create a loving adoption plan for their child, rather than choosing abortion.

44. As a pregnancy resource center, New Hope regularly serves unmarried couples and those who identify as lesbian, gay, bisexual or transgender.

45. When New Hope has a pregnancy-resource-center client who has a positive pregnancy test and is open to learning about adoption, New Hope provides the mother counseling about the adoption process. New Hope encourages her that adoption is a loving option, enabling the mother to give her baby life and to select

the adoptive family with whom she feels comfortable entrusting her child.

46. New Hope never pressures a birthmother to make an adoption plan over parenting.

47. During the counseling process, New Hope shows the prospective birthmother profiles of some of the families with whom it has recently placed children as examples of the types of loving adoptive families that New Hope may be able to provide for her child.

48. New Hope holds over 1,500 counseling sessions per year as a pregnancy resource center.

49. New Hope's ability to serve its pregnancy-resource-center clients through its adoption program enhances its efficacy in encouraging women to choose life for their babies instead of abortion.

50. In addition, New Hope networks with and acts as a resource to other faith-based pregnancy resource centers throughout the State of New York, none of which are licensed adoption agencies. New Hope offers education sessions to pregnancy resource centers about adoption and the New York adoption process, so that pregnancy resource centers will be familiar with New Hope's services and will be conversant on the subject. New Hope does this so that other pregnancy resource centers will be more effective in their ability to counsel their clients toward adoption over abortion. These centers refer clients to New Hope who are open to learning about adoption.

51. New Hope's ability to serve other pregnancy resource centers and the

pregnant women those centers serve is enhanced by its ability to directly facilitate the creation of adoption plans and adoptive placements.

52. New Hope also operates as a New York voluntary adoption provider and is authorized to place children with New York state residents.

53. New Hope serves individuals from all over the state through its adoption program.

54. New Hope has been placing children in loving homes since 1965 and has placed over 1,000 children.

55. In recent years, New Hope has placed between eight and twelve children in adoptive homes per year.

56. New Hope is unique in New York as an adoption provider because it also operates as a pregnancy resource center.

57. New Hope's primary focus is providing placements for newborns, infants, and toddlers up to two years of age. It is of the greatest urgency that these youngest children be placed into foster or adoptive homes as quickly as possible. OCFS' data indicates that "children less than one year of age are most likely to be involved in a report to the [Statewide Central Register of Abuse and Maltreatment], and the allegations within those reports are most likely to be substantiated."

58. New Hope is a relatively small adoption provider and takes a personal "arm-around-the-shoulder" approach to the services it provides to its adoption clients, walking birthparents through the journey of creating an adoption plan and providing guidance and counsel to prospective adoptive families through each step

of the application, homestudy placement, supervision, and finalization process.

59. Almost all of the adoptions New Hope handles are considered open adoptions, meaning that New Hope facilitates some degree of communication between the adoptive parents and birthparents about the child even after the adoptions are finalized.

60. New Hope allows birthparents and adoptive families to determine the level of openness they desire in the adoption, which includes issues such as (1) meeting the adoptive family before placement, (2) exchanging letters and photos with the adoptive family, (3) sending gifts to the child on holidays or birthdays, and/or (4) having one or two in-person visits per year with the child and adoptive family.

61. The chosen level of openness must be included in a Post Adoption Contact Agreement between the birthparents and adoptive parents, and is facilitated through New Hope until the child turns 18 years of age.

62. Even when birthparents and adoptive parents mutually agree to meet or communicate directly, New Hope remains available as a mediator should they develop a disagreement.

63. New Hope allows birthparents to choose a closed adoption if they prefer. In a closed adoption, there is no information sharing or communication from the adoptive parent to the birthparent regarding the child after the placement.

64. Many of New Hope's prospective birthmothers are referred to New Hope from other pregnancy resource centers throughout the state.

65. Many of New Hope's prospective birthparents contact New Hope directly because they have become aware of New Hope's adoption program and are interested in placing their unborn child for adoption through New Hope.

66. Many of New Hope's prospective birthparents are referred to New Hope by hospital social workers following the child's birth. Many of these clients are seeking immediate foster care placement for their child until an adoption can be arranged. New Hope provides this short-term foster care through its Tender Loving Care program.

67. Regardless of how a prospective birthparent is connected to New Hope, New Hope provides counseling concerning adoption and the adoption process to its prospective birthparents.

68. During the counseling process, New Hope discusses with birthparents their desires for the adoptive family with whom they would place their baby.

69. Consistent with state law and regulations, this includes discussing the birthparents' religious beliefs and whether they desire their baby to be placed in a home that practices those beliefs.

70. Consistent with state law and regulations, New Hope also discusses birthparents' race, ethnicity, and/or color and whether they desire the child to be placed with adoptive parents of similar race, ethnicity, or color.

71. During this process, birthmothers or birthfathers may also make statements to New Hope's birthparent caseworker about the age or sex of individuals with whom they would be willing to place their child.

72. During this process, birthmothers or birthfathers may also make statements about the family structure they would desire for their child's placement, such as a preference or aversion for the child to be placed in a home that already has other biological or adopted children, or a preference for the child to be placed in a home with a married mother and father.

73. During the process, birthmothers and birthfathers may also make statements about the type of community demographics or cultural characteristics they would desire for their child's upbringing.

74. During the process, birthmothers and birthfathers may also make statements about the educational or cultural backgrounds of individuals with whom they would be willing to place their child.

75. Based on the birthparent's desired characteristics for an adoptive family, New Hope reviews its list of prospective adoptive parents.

76. New Hope meets with birthparents, once a birthmother is approximately seven months along in her pregnancy, to show them actual parent profiles created by its current list of prospective adoptive parents.

77. If a birthmother has already given birth to the child, the child's actual characteristics are considered during these discussions.

78. New Hope typically shows five parent profiles to its prospective birthparents and ensures that the profiles match the birthparents' desires as well as the adoptive parents' willingness to adopt a child with the anticipated characteristics of the specific child.



79. New Hope generally has between 14 and 20 prospective adoptive families on its list that it has recommended for adoption.

80. All of the birthparents who have placed a child through New Hope have been able to find a family with whom they were comfortable placing their child for adoption from the profiles that New Hope provided during this process.

81. In some instances, a birthmother does not want to select the adoptive family with whom her child will be placed for personal reasons.

82. In those instances, New Hope considers the prospective adoptive parents on its list in light of the best interest of the child.

83. New Hope has never had a delay in placement because of consideration of these requirements.

84. New Hope receives inquiries about its adoption program from prospective adoptive parents from all over the state of New York.

85. New Hope invites those parents to attend one of its periodic orientation sessions to learn about New Hope, its program, and the adoption process.

86. During the orientation presentation, New Hope makes its nature as a religious ministry clear, opening the meeting with prayer, and providing information about the organization's history and religious mission. New Hope also explains scripture passages and principles about children, including that Jesus loves children, that children are to be valued as gifts from God, and that Christians are told to have faith like a child.

87. During the presentation, New Hope instructs prospective adoptive parents about its vision that adoption is intended to meet the needs of the child by providing a loving home, and that the role of a child should never be to meet the needs of the adoptive parent. New Hope also educates prospective adoptive parents about open adoption, the adoption triad (child, birth parents, adoptive parents), birthparents and their desires to select a good home for their child if they are unable to parent, the home-study process, legal surrenders, and agency fees, among other things.

88. At the orientation meeting, prospective adoptive parents are given New Hope's application packet. Completion of this application puts an applicant on New Hope's waiting list to begin the homestudy process.

89. Usually within six months of receipt of the initial application, the applicant is mailed an invitation to begin the homestudy process and must resubmit an updated application to accept.

90. The first session of the homestudy process—Session One—is an all-day session that begins with prayer. The first portion is a group session with several other applicants. It is followed by individual meetings in the afternoon with an adoptive-parent caseworker.

91. In Session One, applicants receive a homestudy packet with various documents they need in order to complete the homestudy process.

92. At the end of Session One, New Hope provides prospective adoptive families a little booklet entitled "Steps to Peace with God."

93. Session One includes, among other things, an overview of the home-study process, a review of application documents and requirements, a discussion of required reading on interracial adoption, an exploration of applicants' motivations to adopt, including discussion relating to infertility, grief, and loss, and how faith in God can help applicants through these issues. The session also includes education on bonding and attachment, with an emphasis on how different types of child care plans impact bonding and attachment for working parents.

94. Homestudy Session Two takes approximately two and a half hours and takes place on site at the applicant's home and begins with prayer.

95. Session Two includes an in-depth interview by the New Hope caseworker to survey the home for compliance with safety requirements, explore the prospective adoptive parents' experience with children, family support, parenting philosophy, ability to parent a child of a different race or culture, faith and religious practice, and family dynamics, including interviews of any children in the home.

96. Homestudy Session Three is perhaps the most intensive and takes approximately four hours at New Hope's facility.

97. In Session Three, the caseworker further interviews the applicant or applicants. Married applicants are interviewed separately as well as together.

98. The purpose of Session Three is to explore the applicants' strengths and weaknesses in more detail, and to explore the following subjects: family of origin, family dynamics, thoughts on discipline and affection, work responsibilities, marital stability including sensitive topics like pornography use, mental-health

history, financial stability, and parenting philosophy.

99. In the case of a married couple, New Hope is concerned about the importance of ensuring the intimacy and strength of the marriage for the benefit of any child placed with them.

100. New Hope views any discrepancies it discovers through these interviews to potentially be cause for concern regarding the marital relationship.

101. New Hope's primary concern during Session Three is ensuring that the home of the applicant(s) will be a safe, stable environment for the child.

102. After each session, the caseworker makes notes regarding the caseworker's findings and assessments.

103. Following Session Three, the caseworker and I meet to review the entire contents of the casefile. During this meeting the caseworker and I consider all of the documentation submitted and make a determination to approve or disapprove the applicants as prospective adoptive parents. In making this determination, New Hope is always focused on the best interest of any child who may be placed in the home.

104. Only those who are recommended for placement will be invited to participate in Session Four.

105. Homestudy Session Four is a teaching session that is done in a group setting that begins with prayer.

106. During Session Four, New Hope discusses how to talk to your child about adoption and other issues that are common to adopted children and families.

107. During Session Four, New Hope also shows examples of adoptive-parent profiles to prospective adoptive parents and instructs them about how to create their own profile, which will be the picture and message that connects them with the birthparent.

108. After Session Four, adoptive parents are given a month or so to make a profile. They first complete a draft profile, including pictures and wording, which they submit to New Hope for review.

109. New Hope's adoptive-parent caseworker and birthparent caseworker both review this draft, make suggested edits, and provide the adoptive parents with helpful feedback. Upon receiving that feedback, adoptive parents may collaborate further with New Hope on edits to their parent profile before finalizing them in a scrapbook format.

110. Once adoptive parents have finalized their profile, they are placed on the list for consideration by birthparents when a child is in need of an adoptive home.

111. Shortly after adoptive parents have submitted their profile, the New Hope caseworker discusses again in more detail the characteristics and legal risks of a child they are willing to adopt.

112. Consistent with state law and regulation, this discussion will include preferences for a child of a specific sex, race, color, or ethnicity.

113. New Hope will also discuss the adoptive parents' willingness to be involved in an open adoption including meeting the birthparent prior to placement,

exchanging letters and pictures, and meeting with the birthparent in person once or twice per year during a visit supervised by New Hope.

114. Prior to making a placement with adoptive parents, New Hope educates them on sudden infant death syndrome, vaccinations, safe sleep environments for children, caring for premature infants, and the placement, supervision, and finalization process.

115. Information relevant to New Hope's formal homestudy report for its adoptive parents must be assembled prior to making a placement.

116. That report includes the following language:

This report is the culmination of the Homestudy process conducted by New Hope Family Services, Inc. This homestudy process includes training on the following topics: Adoption as a life-changing process, the adoption triangle, the seven core issues of adoption, preparation for the homestudy process from the perspective of both agency and self-assessment, adoptedness as it relates to the developmental esteem in the adopted child, discussion on the uses adopted children usually face, discussion regarding birthparents' resolution of loss, profile preparation instructions and learning to wait. The homestudy process also includes a tour of the home, individual interviews with the husband and wife and joint interviews with the couple.

.....

New Hope Family Services, Inc. is authorized by the New York State Office of Children and Family Services as a child-placement and child care agency. The Agency certifies that it has completed a homestudy on the above mentioned family and that the family has met all the pre-adoption requirements established by the State of New York, including a search of the New York State Central Register on Child Abuse and Maltreatment.

117. The shortest length of time allowed by law for finalization after

placement is three months, but the process usually takes between six months and one year to complete. During that time New Hope maintains legal custody of the child while the adoptive parents have physical guardianship.

118. After a child is placed, New Hope remains in close contact with the adoptive family to ensure that the child is receiving proper medical care and feeding, among other things.

119. New Hope places phone calls to the family and follows up with in-person visits at least two or three times during a period of about six months, and usually once every quarter thereafter if necessary.

120. These supervisory visits are intended to gather information about the child's growth, health, and development as well as to assess the degree of attachment developing between the adoptive parents and the child.

121. New Hope's caseworkers also assess how the level of openness agreed to in the Contact Agreement is playing out in actuality for the adoptive parents and how they are coping with it emotionally.

122. The caseworker's goal is to ensure the child's safety but also to help facilitate the adjustment of the adoptive parents to the child's placement in the home.

123. New Hope caseworkers are required to complete field reports reporting on their supervisory visits for inclusion in the case file and formal supervisory report.

124. In preparation for finalization, the homestudy report—which serves as

New Hope's official recommendation of an adoptive family—must be notarized.

125. Before finalization, the homestudy update and supervisory reports are also prepared and notarized. These reports include information about the child's placement in the home and the child's adjustment to the family. These reports serve as New Hope's official recommendation of the adoptive family for the adoption of the specific child.

126. Following the finalization of an adoption, because of Contact Agreements, New Hope remains involved with the majority of its clients until the child turns 18 years of age.

127. New Hope facilitates letters, photos, and/or gifts being passed back and forth between the adoptive family and birthparents.

128. Depending on the level of openness, New Hope may also supervise and facilitate up to two in-person visits per year.

129. Under certain circumstances, New Hope provides temporary foster placements.

130. New Hope calls its foster-care services Tender Loving Care homes.

131. In general these temporary placements occur when either (1) a birthmother working with New Hope has delivered in a hospital and has not decided between parenting or placement for adoption, or (2) a birthparent is referred to New Hope by a hospital social worker because she has not yet made an adoption plan and desires to do so.

132. New Hope recruits foster families that are willing to take in newborns



on short notice.

133. For the same reasons previously set forth, New Hope typically seeks married husband and wife couples to serve as foster parents.

134. New Hope certifies its foster families for placements in accordance with the state regulatory process.

135. Similar to the adoption homestudy process, that process requires New Hope to interview and collect information on applicants in order to explore applicants' reasons for wanting to foster, their marital stability, family structure, religious affiliation, family background, and life history, among other things.

136. New Hope neither receives nor distributes any government funding in connection with its Tender Loving Care foster program.

137. Because of New Hope's religious beliefs, New Hope will not recommend or place children with unmarried couples or same-sex couples as adoptive parents.

138. New Hope's "Special Circumstances" policy, formalizes this policy and practice and states in part:

If the person inquiring to adopt is single . . . The Executive Director will talk with them to discern if they are truly single or if they are living together without the benefit of marriage. . . because New Hope is a Christian Ministry it will not place children with those who are living together without the benefit of marriage.

If the person inquiring to adopt is in a marriage with a same sex partner . . . (The Executive Director will . . . explain that because New Hope is a Christian Ministry, we do not place children with same sex couples).

139. New Hope has worked with unmarried individuals who are truly single in the past and remains willing to work with such individuals.

140. Because New Hope handles inquiries from unmarried couples and same-sex couples pursuant to the policy and practice described above, New Hope has never denied an unmarried couple or same-sex couple's application. Whenever a same-sex couple or unmarried couple is interested in a referral, New Hope refers them to the appropriate county social services office or another provider. On information and belief, no same-sex couple or unmarried couple who has inquired with New Hope about adoption has ever complained to OCFS about how New Hope handled their inquiry.

141. In January or February of 2018, Suzanne Colligan of OCFS called me. During the call, Ms. Colligan conveyed that, under a new policy implemented in 2018, OCFS would be conducting comprehensive on-site reviews of each private provider's procedures.

142. On July 18, Ms. Colligan sent me an email to schedule the adoption program review. That email stated in part:

For your information and in considering a date, below is a general outline of the topics to be covered when we meet. Additionally, I'll need to review adoption records; 1 closed record and if available 3 open pending adoptions. We can talk this through depending on the types of records you have in process.

The on-site review takes anywhere from 4-5 hours to complete, which depends on the record details and the length of discussion needed to cover the topics. Please let me know if you have any questions.

Adoption Model  
Agency Goals & Objectives (Fiscal & Program)  
Range of Services  
Advertisements  
Staffing

Waiting List  
Maintenance of records

I will need a copy of the following:

Fee Schedule  
Board of Directors  
Policy and Procedural Manual  
Forms  
State licenses and/or Contracts  
Fiscal Review

143. On July 20, Ms. Colligan confirmed by email that the adoption program review was scheduled for September 6, 2018 at 9:00 a.m.

144. Based on Ms. Colligan's direction that she would need a copy of New Hope's policies and procedure manual, I updated New Hope's formal policies and procedures on adoption into one consolidated manual.

145. On August 28, I received an email from Ms. Colligan, stating in part:

I also thought that it might be helpful for you to see the application we use with agencies requiring reauthorization for corporate authority. Since you are authorized in perpetuity, your agency is not required to complete/submit this form. However, I will be asking many of the program questions on it, so you may find it helpful in preparing for my visit.

146. A few days before the on-site review, Ms. Colligan and I had a call. During the call, Ms. Colligan advised me that she would be providing me with a form that she would be using as a guide for the format of her review. Ms. Colligan stressed that I did not need to complete the form or sign it because of New Hope's perpetual authorization status.

147. On September 6, 2018, Ms. Colligan met with myself and Kathy Decesare, New Hope's Center Director for approximately eight hours.

148. At that meeting, Ms. Colligan provided me with a new regulation that all agencies are required to implement.

149. Ms. Colligan also advised me about how New Hope had handled information that a specific birthparent had died, stating that even in such circumstances the agency could not share the information but could only direct inquiries to the New York State Adoption Registry.

150. Ms. Colligan identified these two topics as opportunities for improvement.

151. During the on-site review, Ms. Colligan never indicated that New Hope's authorization to handle adoption placements was in jeopardy as a result of these opportunities for improvement.

152. Ms. Colligan indicated that OCFS' review would be written up formally within one month, further stating that this timeframe was an OCFS requirement.

153. Ms. Colligan took a copy of New Hope's policy and procedure manual with her when she left.

154. On October 1, 2018, OCFS sent me a letter as an attachment to an email. The letter documented the on-site review and stated in part:

Our office found that your program has a number of strengths in providing adoption services within the community. one of which is the strong emphasis on assisting the birth parents in making an informed decision for their newborn, providing them time to make the decision, along with a supportive and detailed adoptive family selection process. During the site visit there were a few topic areas that warranted a follow up meeting to discuss and verify adjustments have been made to the current agency policies. The topics include:

- Immediate implementation of 18-OCFS-ADM-07: Foster/Adoptive Home Certification Approval Process
- Request for non-identifying information and medical history by adoptive families, adoptee, or birth parent; including usage of the Adoption Information Registry through the Department of Health.
- The agency's role and limitations regarding the exchange of information related to conditions of a surrender.

This program review will be conducted at your agency every three years. Annual onsite visits will be conducted over the next two years. We would like to thank you for the courtesy and cooperation extended to us during the visit and look forward to working with you as you continue to provide adoption services.

155. On October 5, 2018, Ms. Colligan and I scheduled a follow up meeting for October 15, 2018 to address the items mentioned in the October 1 letter.

156. On or about October 9, 2018, I received a call from Ms. Colligan. During the call, Ms. Colligan stated that she had been reading New Hope's policies and procedures manual and that New Hope's policy not to place children with those who are living together without the benefit of marriage or with same-sex couples violated Title 18 NYCCR § 421.3 and was impermissible.

157. Ms. Colligan told me that New Hope would have to comply with § 421.3 by placing children with unmarried couples and same-sex couples.

158. Ms. Colligan said that if New Hope did not comply, New Hope would be "choosing to close."

159. I responded that New Hope would be unwilling to violate its religious beliefs by placing children with unmarried or same-sex couples.

160. During the phone call, Ms. Colligan stated that "[s]ome Christian

ministries have decided to compromise and stay open.”

161. I affirmed again that New Hope would be unwilling to violate its beliefs and stated that “[w]e will never choose to close. You will be forcing us to close.” I also stated that New Hope’s religious freedom was being violated.

162. Ms. Colligan told me that I would be getting a letter from OCFS mandating compliance by a specific date.

163. On October 11, 2018, I sent Ms. Colligan an email stating in part:

I just was thinking about the 18 years of correspondence contracts that our adoptive couples have and the visits—sometimes two per year between adoptive couples and birthparents. If you were to close down our agency, would another agency provide staff to handle all of this casework for the next 18 years?

164. Ms. Colligan replied on October 11, 2018, stating in part:

You will be receiving a letter from our office soon requesting a formal written response regarding your agency’s position. When OCFS receives written notification of an agency’s intention to close a program, OCFS will respond with written instructions to the agency with the steps they must take. These steps include the agency’s responsibility to seek and obtain agreement with another NYS authorized agency to maintain and store their adoption records, of which includes the handling of activities outlined in the legally bound agreements with birth parents.

165. On October 12, 2018, Ms. Colligan sent me an email stating in part:

We will put Monday’s follow up meeting [to discuss a few minor improvements identified during the visit] on hold for now. The purpose of the follow up meeting would be to work on the necessary changes to your agency policy manual. Based on our recent phone call, the follow up meeting for those purposes does not appear needed at this time.

166. On October 17, 2018, Ms. Colligan indicated in email to me that she

had mailed out a certified letter. That email stated in part:

Once the letter is returned providing us with written notice of your intent, we will send out a letter outlining our expectations around the handling of those that you are currently providing services and the adoption records.

167. I did not receive the certified letter, so I called several times to follow up with Ms. Colligan, but my voicemails were unreturned.

168. On October 26, because I was going to be having a meeting with the Board of New Hope and could not reach Ms. Colligan, I called and spoke to another OCFS staff member.

169. On October 26, 2018, I received an electronic copy of the letter to which Ms. Colligan had referred. The letter stated that New Hope's policy pertaining to "not placing 'children with those who are living together without the benefit of marriage' or 'same-sex couples' violates Title 18 NYCRR § 421.3." The letter further stated:

OCFS hereby requests a formal written response from [New Hope] stating the agency's position in regard to revising this policy to eliminate those portions that violate the above-cited regulation. Please respond within 15 days of receipt of this letter indicating specifically whether [New Hope] intends to revise the present policy and continue the existing adoption program, or that [New Hope] will not revise the policy so as to comply with the above-cited regulation.

Please be aware that should the agency fail to bring the policy into compliance with the regulation, OCFS will be unable to approve continuation of [New Hope's] current adoption program and [New Hope] will be required to submit a close-out plan for the adoption program.

170. New Hope was given until November 30, 2018, to respond to OCFS' ultimatum.

171. Without violating its religious beliefs, New Hope is unable to comply with the OCFS ultimatum to recommend unmarried couples and same-sex couples as foster and adoptive parents, to counsel unmarried and same-sex couples concerning adoptive parenthood and related relational issues, and to place children with unmarried couples and same-sex couples.

172. In fulfillment of its longstanding mission pursued in obedience to the faith of its staff and board, New Hope desires to continue taking on new adoptive parents, birthparents, foster parents, and children for placement in foster care and adoption, but the state now threatens to absolutely prevent New Hope from doing so by terminating New Hope's perpetual license and prohibiting it from serving in all of these ways.

173. At the time of the State's ultimatum, New Hope had approximately thirteen prospective adoptive families on its list that had completed the homestudy process and were waiting for a child to be placed with them.

174. New Hope had a homestudy Session One meeting scheduled for October 29, 2018, to begin the homestudy process with six more prospective adoptive families. Because it had been told that it would have to violate its beliefs or shut down, New Hope was forced to cancel the homestudy Session One meeting. New Hope advised those families of what the state was requiring. Four of the families requested a refund of their application fees.

175. Since receiving the demand from OCFS that New Hope violate its beliefs or cease adoptions, nine additional prospective adoptive families have



contacted New Hope about beginning the adoption process. Because of OCFS' threats, New Hope was obliged to tell them that it may not be able to work with them at this time.

176. New Hope desires to contact these prospective adoptive parents and work with them to place children in need of loving homes.

177. Since receiving the demand from OCFS that New Hope violate its beliefs or cease adoptions, at least five expectant birthmothers contacted New Hope asking for help in placing their children for adoption. But New Hope was obliged to tell them that that it has suspended taking on new birthparents and children to work with towards adoption because of OCFS' threats.

178. New Hope desires to work with these prospective birthparents to help them find loving homes for their children.

179. New Hope has three active foster families that are willing to accept placements, but it has similarly had to advise them that its program is on hold due to the uncertainty caused by the OCFS ultimatum.

180. New Hope had a training session concerning adoption scheduled for October 18, 2018, for center directors from several pregnancy resource centers from around the state. Because of OCFS' threat to terminate New Hope's authorization to provide adoption services, New Hope was forced to cancel the training.

181. If New Hope were to violate its religious beliefs and place children with unmarried couples and same-sex couples, the pregnancy resource centers that it currently serves through trainings and referrals would be less inclined to refer to

New Hope, and may no longer refer to New Hope at all, because they are faith-based organizations that share New Hope's religious beliefs regarding the nature of marriage and family.

182. If New Hope were to violate its beliefs, it would lose some of its clients, including birthmothers, adoptive families, and foster families, who choose to work with New Hope because of their shared Christian faith.

183. If New Hope is unable to place children for adoption or in foster care, its ability to effectively minister to and help women who are facing unplanned pregnancies through its pregnancy resource center will be impaired.

184. New Hope currently retains legal custody of three children that it has placed with three separate adoptive families this year.

185. New Hope continues to actively supervise those placements but has advised those families of what the state is requiring and that it is unsure if it will be able to continue to handle the finalization of their adoptions. If New Hope is unable to do so, finalization of these adoptions will be delayed because of being transferred to another provider.

186. Because the majority of New Hope's adoptions are open adoptions, if New Hope is unable to continue its adoption program, it will have to transfer 117 adoptive families and 117 birthparent families that it has worked with over the past 18 years, to another provider to facilitate those Contact Agreements.

187. If New Hope loses its authorization to place children, it will have to transfer all fifty-three years of its adoptive family and birthparent files to another

provider.

188. If New Hope loses its authorization to place children in adoptive homes or foster care, it will likely have to terminate the employment of five of its employees.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.

Date: December 11<sup>th</sup>, 2018.

Judith A. Geyer  
Judith A. Geyer

STATE OF NEW YORK )  
 ) ss.:  
COUNTY OF )  
Onondaga

On the 11<sup>th</sup> day of December, 2018, before me, the undersigned, a Notary Public in and for said state, personally appeared Judith A. Geyer, personally known to me or proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the person or the entity upon behalf of which the person acted, executed the instrument.

Kathryn Decesare

Notary Public

**KATHRYN DECESARE**  
**NOTARY PUBLIC-STATE OF NEW YORK**  
**NO. 01-DE6065549**  
**QUALIFIED IN ONONDAGA COUNTY**  
**MY COMMISSION EXPIRES 10-22-20 21**

# **EXHIBIT 3**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK

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NEW HOPE FAMILY SERVICES, INC.,

Plaintiff,

vs.

SHEILA J. POOLE, in her official capacity  
as Acting Commissioner for the Office of  
Children and Family Services for the State  
of New York,

Defendant.

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No.: 5:18-cv-1419 (MAD/TWD)

**SUPPLEMENTAL AFFIDAVIT  
OF KATHLEEN JERMAN IN  
SUPPORT OF NEW HOPE  
FAMILY SERVICES' MOTION  
FOR PRELIMINARY  
INJUNCTION**

I, KATHLEEN JERMAN, hereby declare:

1. I am the Executive Director of New Hope Family Services ("New Hope"). I assumed this position on February 25, 2019.

2. I make this declaration to further explain details of New Hope's operations as an adoption agency, and to further explain the harm that New Hope will suffer if its motion for preliminary injunction is denied.

**I. New Hope places only infants and toddlers for adoption, including primarily children who are considered "hard to place."**

3. As my predecessor Judith Geyer said in her affidavit dated December 11, 2018, "New Hope's primary focus is providing placements for newborns, infants, and toddlers up to two years of age." Aff. of Judith A. Geyer in Supp. of New Hope Family Services' Mot. for Prelim. Inj. ("Geyer Aff.") ¶ 57, ECF No. 15-2. In fact, New Hope does not place older children. Within the last 20 years, New Hope has not placed any child older than three years of age.

4. New Hope often receives referrals of birthmothers from hospitals, social service agencies, or crisis pregnancy centers, in part because New Hope has a reputation that it will never say "no" to an infant in need of a loving family. New

Hope often receives these referrals within a month or less of the expected birth of the child—or even after the child is born.

5. New Hope often places infants considered “hard to place.” This includes infants born with addiction due to the mother’s addiction, infants with physical disabilities or unusual medical needs, infants whose mothers suffer from mental health problems, and infants of a race different than the race shared by most parents seeking to adopt. Among the last 20 infants New Hope has placed, a substantial majority fell into these “hard to place” categories, with many of them bearing multiple disadvantaging characteristics. Yet New Hope found a loving adoptive home comprised of a married mother and father for each of these children.

6. In part because of our own faith-based orientation, and also because of the faith and sense of ministry and mission that many of the couples who come to New Hope as adoptive parents bring with them, New Hope has never to my knowledge turned away any infant that it was asked to place because that infant was “hard to place,” and New Hope has in every case found a loving home even for newborn infants with hard-to-place characteristics.

7. For example, about five years ago we successfully placed an infant with Down Syndrome in a loving adoptive home. Three years ago, we did the same for a baby girl who had been born with many of her organs outside her body—an extremely rare condition that required emergency surgery and countless doctors’ appointments since. We also regularly place children born with Neonatal Abstinence Syndrome (NAS), which means the child was exposed to drugs in-utero and often requires time in the Neonatal Intensive Care Unit (NICU).



**II. New Hope does and must engage in extensive, discretionary, and value-laden speech throughout its provision of adoption-related services.**

**A. New Hope speaks discretionary and value-laden messages to birthmothers.**

8. As Mrs. Geyer has said, “New Hope provides counseling concerning adoption and the adoption process to its prospective birthparents.” Geyer Aff. ¶ 67.

9. Often, prospective birthmothers grew up in single parent or severely dysfunctional homes and wish for their child to have a better family and home life experience than they had.

10. When birthmothers are ready to choose adoptive parents for their infant, New Hope offers to them portfolios of up to six adoptive couples. In so doing, New Hope represents to birthmothers that placement with any of the adoptive couples in those portfolios would be in the best interests of their infant. New Hope does not, and could not consistent with its ministry and convictions, present to birthmothers adoptive couples whom New Hope does not believe could provide a family that is consistent with the best interests of the child.

11. If New Hope were forced to work with unmarried or same-sex couples to approve them as adoptive parents, in light of its faith-based beliefs about family and the best interests of children, New Hope would be compelled by conscience— informed by its faith—to advise birthmothers whom it serves that it does not believe that an unmarried or same-sex couple could provide the best home for their child.

12. In my experience and to my knowledge, before the events described in New Hope’s complaint in this litigation, OCFS has never tried to compel or censor what New Hope says to the birthmothers it serves about what will be in the best interests of their children.

**B. New Hope speaks discretionary and value-laden messages to adoptive parents.**

13. New Hope's counseling with adoptive parents includes counseling about building a healthy family environment for the child they will adopt.

14. If New Hope were required to work with unmarried or same-sex couples in the counseling and home study process, New Hope would be compelled by conscience—informed by its faith—to advise those couples that New Hope does not believe that an unmarried or same-sex couple can provide the best home for adopted children, because the best home for each infant is a family comprised of a mother and father committed to each other—and thus together to their children—for life in marriage.

15. Before the events described in New Hope's complaint in this litigation, to my knowledge, OCFS has never tried to compel, censor, or alter New Hope's counselling to adoptive parents about family relationships.

16. When New Hope approves a prospective adoptive couple for adoption generally, New Hope then helps them create a portfolio about themselves to inform birthmothers about who they are, what they believe, why they seek to adopt, and other important background characteristics of themselves and their home. New Hope regularly advises adoptive parents about the content that should go into this portfolio and assists them in its preparation, reviewing drafts, making suggestions, and editing the content before it is finalized. In this process, New Hope seeks to help adoptive couples present themselves and their family in a positive and appealing manner, while at the same time remaining consistent with New Hope's obligation to birthmothers and infants by ensuring that the content of this portfolio is in New Hope's understanding truthful and accurate.

17. I do not believe that New Hope staff could meaningfully and in good faith assist unmarried or same-sex couples in preparing such a portfolio while



remaining true to New Hope's faith-based beliefs about family and the best interests of children, and to New Hope's obligation to seek the best interests of infants entrusted to its care.

18. Before the events described in New Hope's complaint in this litigation, to my knowledge, OCFS has never tried to compel, censor, or alter New Hope's counsel and editorial assistance to adoptive parents about their portfolios.

**C. New Hope is required to and does exercise judgment and wide discretion in the course of its evaluation of applicant adoptive parents and specific placements.**

19. New Hope's role in working with an applicant adoptive couple, and potentially approving that couple for adoption, and approving a specific adoption for a couple, is very far from a narrowly clerical or administrative role. New Hope's role does not consist of and could not be satisfied by merely "checking the boxes" on a list of criteria provided by the state. Instead, in its role as an adoption agency New Hope is required to and does exercise judgment and wide discretion in the course of its evaluation of applicant adoptive parents, and its evaluation of specific placements.

20. Notably, as part of its evaluation of prospective adoptive parents, New Hope must determine whether the placement of any infant with them is "in the best interests of children awaiting adoptions." 18 NYCRR § 421.15(g)(2)(iii). A great deal of judgment is necessarily involved in making this decision, and that judgment is necessarily guided by one's beliefs about human nature, healthy relationships, and the nature of a healthy family.

21. To illustrate with examples that New Hope has actually encountered, if New Hope concludes that a prospective adoptive parent has a problem with pornography or alcohol use, New Hope believes that these are issues that are likely to interfere with healthy and stable family life and relationships, and that as a

result, placement of an infant with this adoptive parent would not be in the best interests of a child. As a result, New Hope will require that he or she obtain counseling and resolve this problem before moving forward in the adoption process. The State does not specifically mandate this response to these particular personal issues, and New Hope recognizes that other agencies may not require such counseling because they may view these issues, or at least the import of them for healthy family and emotional life, differently than New Hope does.

22. As part of the process to determine whether placement of an infant with a candidate adoptive couple could be in the best interests of a child, the State requires New Hope to complete certain forms, while New Hope uses additional standard forms of its own creation. But these forms cannot and do not eliminate judgment and discretion.

23. For example, OCFS requires New Hope to complete form OCFS-5183F, titled "Household Composition and Relationships Form." I have attached this form as Exhibit A to this affidavit.

24. That form requires New Hope to complete it using "information [about the adoptive couples] gathered from interviews, observations, and other information acquired during the certification/approval process." Ex. A at 1. This form further specifies that New Hope is to make use of its "engagement and assessment skills to explore" topics like the prospective adoptive parent's past and present marriage situation. *Id.* at 4. OCFS allows New Hope wide discretion to conduct this evaluation. The form poses a wide range of questions, such as "How are stressors in your relationship handled?" and "How do you spend a typical weekday?", but OCFS does not specify what answers should be considered positive, and which negative, nor how the answers to the many questions should be weighed by the adoption worker in reaching an overall conclusion. *Id.* at 1-2. After completing the form,

OCFS requires a New Hope adoption worker and his or her “supervisor” to sign it and keep it on file. *Id.* at 1.

25. Similarly, New Hope must exercise its independent judgment and assessment skills to develop an adoptive home study report. This is not a State-provided form. In this report, New Hope evaluates a host of factors about the adoptive family, including the adoptive parents’ marriage relationship.

26. If, in New Hope’s independent judgment, approval of the prospective adoptive parents is in the best interests of children awaiting adoption, New Hope will express its approval in the home study report. New Hope will also express its approval to the adoptive parents themselves through a letter congratulating them and indicating that New Hope believes approving them for adoption is in the best interests of children awaiting adoption. New Hope will then place the approved couple in its pool of couples waiting to adopt.

27. If, on the other hand, in New Hope’s independent judgment, approval of the prospective adoptive parents is not in the best interests of children awaiting adoption, New Hope will first try to counsel that couple into withdrawing their application. This is because if New Hope (or any agency) formally rejects an application submitted by a prospective adoptive couple, that couple must admit in future adoption applications—no matter the agency they choose to work with—that they were rejected before, which is likely to make it more difficult for them to obtain approval to adopt in the future, even if that couple has resolved the issues in their lives or relationship that resulted in a rejection.

28. For this reason, it is not likely to be in the best interests of a potential adoptive couple to work with an adoption agency that has religious beliefs about families and the best interests of children that are at odds with basic beliefs and choices of that couple about these topics.



29. If such a couple rejects New Hope's counsel to withdraw their application, New Hope will be obliged to express in its final determination that approval of those applicants as adoptive parents will not be in the best interests of children awaiting adoption.

30. Before the events described in New Hope's complaint in this litigation, to my knowledge, OCFS has never suggested that it could ever be required—or even acceptable—for New Hope to state in a home study report (or any required report) that it approves an adoptive couple when, in fact, New Hope does not believe that approving them would be in the best interests of children awaiting adoption.

31. After New Hope places a child with approved adoptive parents, it conducts field studies, which culminate in a final "supervisory report." These field studies occur at New Hope and at the adoptive couple's home, where New Hope evaluates how the adoptive child and parents are adjusting to the placement.

32. In these field studies, New Hope asks about the adoptive child's health and development, physical characteristics, eating and sleeping habits, and mental and emotional condition. In addition, New Hope gathers information about how the family is adjusting to the placement. Based on the information it receives in these field studies, New Hope assesses whether finalization of this specific adoption is consistent with the best interests of this specific child.

**D. New Hope speaks discretionary and value-laden messages to the State.**

33. When New Hope completes the home study, including the Household Composition and Relationships Form, it then uses that information to complete a different State form, OCFS-5183K, titled "Final Assessment and Determination." I have attached this form as Exhibit B to this affidavit. OCFS requires New Hope to complete and retain this form as part of its adoptive-parent evaluation, and to

provide it to OCFS upon request. OCFS may and has required New Hope to produce these forms in agency reviews.

34. According to OCFS, the “purpose” of this form is for adoption agencies “to apply their critical thinking skills to assess all the information they have received.” *Administrative Directive*, 18-OCFS-ADM-07 at 7 (OCFS 2018), [https://ocfs.ny.gov/main/policies/external/ocfs\\_2018/ADM/18-OCFS-ADM-07.pdf](https://ocfs.ny.gov/main/policies/external/ocfs_2018/ADM/18-OCFS-ADM-07.pdf).

35. Section VI of that form is titled, “Agency Determination.” Ex. B at 5. Under that, it asks, “Based on the application, home study, safety review form, medical report(s), references, and background checks, is this applicant(s) ready to parent a child in foster care?” *Id.* Beneath that are three blank boxes, one beside “Yes: Foster/Adoptive,” another beside “Yes: Foster Only,” and the last beside “No.” *Id.* at 6. The form then instructs adoption agencies like New Hope, in the event they disapprove of an applicant, to “Explain the reason(s) for denial.” *Id.*

36. This Section VI, according to OCFS, is where New Hope must record its “determination on whether to approve or not approve the application.” *Administrative Directive* at 8. That is, agency workers must make “a final decision on whether the home can be certified or approved.” *Id.*

37. If, in New Hope’s independent judgment, it is in the best interests of children awaiting adoption to approve the adoptive couple, New Hope will express its approval in Section VI of that form. Similarly, if, in New Hope’s independent judgment, it is not in the best interests of children awaiting adoption to approve that couple, New Hope will express its disapproval in Section VI (or will counsel that couple to withdraw their application, as I have explained above).

38. Before making this final decision, in Section I of that form, New Hope must certify whether the “current marital status of the applicant(s) affects the ability of the parent(s) to provide adequate care.” Ex. B at 1. New Hope must answer “Yes” or “No” and then give its “explanation” for that answer. *Id.*



39. In Section IV of that form, New Hope must analyze the prospective adoptive parents' relationship to one another. In so doing, New Hope must give its view on the couple's "strengths," the "supports" they need, and the "considerations" New Hope applied in performing this relationship analysis. *Id.* at 3.

40. As my predecessor Judy Geyer explained in her declaration, based on its religious beliefs New Hope does believe that the marital status of adoptive parents is an important consideration bearing on the best interests of children who might be entrusted to their care.

41. New Hope must reject prospective adoptive parents if, after completing its evaluation process, New Hope believes their "approval would not be in the best interests of children awaiting adoptions." 18 NYCRR § 421.15(g)(2)(iii).

42. OCFS requires a New Hope adoption worker and his or her supervisor to sign this Final Assessment and Determination after completing it.

43. By completing this form, and marking "Yes" in Section VI, New Hope believes it is certifying its judgment and opinion to OCFS and to the adoptive couple that it is in the best interests of children awaiting adoptions to approve for adoption the adoptive couple discussed therein.

44. Before the events described in New Hope's complaint in this litigation, to my knowledge, OCFS has never suggested that it could be required—or even acceptable—for New Hope to state in a Final Assessment and Determination that it approves adoptive parents when, in fact, New Hope does not believe that approving them would be in the best interests of children awaiting adoption.

45. After New Hope places a child with adoptive parents, New Hope works with the adoptive family toward finalization. As my predecessor, Mrs. Geyer has said, in this process New Hope prepares and notarizes "the homestudy report," "the homestudy update" and "supervisory reports." Geyer Aff. ¶¶ 124-25. New Hope exercises its independent judgment in completing these reports.

46. I described the home-study and supervisory reports above. In the home-study update, New Hope evaluates information it gathers on much of the same topics discussed in the home-study report, only this time the evaluation occurs after New Hope places a child with adoptive parents and thus includes an evaluation of how the adoptive family is adjusting to placement. And in this home-study update, New Hope determines whether the placement of a *specific child* with the adoptive parents is in the best interests of *that child*. Again, New Hope is required to and does exercise its independent judgment in making this recommendation.

47. After New Hope completes the home-study report, the home-study update, and supervisory report, a New Hope worker and I must sign them and have them notarized. New Hope then sends these documents, along with others, to its attorney who prepares legal papers necessary for finalization. That attorney will then send two documents for me to sign, the “Adoption and Consent” and “Verified Schedule,” both of which are necessary to complete the adoption. New Hope’s attorney will then file each of these documents with the court.

48. Without New Hope’s expressed approval, no child in New Hope’s custody may be placed with, nor finally adopted by, adoptive parents whom New Hope serves.

49. Before the events described in New Hope’s complaint in this litigation, to my knowledge, OCFS has never suggested that it could be required—or even acceptable—for New Hope to give its approval and consent to a placement of a child with, or an adoption of a child by, adoptive parents it serves when, in fact, New Hope does not believe that doing so would be in the best interests of that child awaiting adoption.

**III. New Hope engages in expressive association throughout the adoption process.**

**A. New Hope expressively associates with adoptive couples.**

50. In my judgment and based on conversations I have had over the years with adoptive parents whom New Hope has served, the majority of adoptive parents choose to work with New Hope initially, and continue working with New Hope, because they value and want to work with an adoption agency that shares their faith, or because they value the faith-based perspective and values that New Hope brings to its work, regardless of their own religious faith.

51. For example, two couples, who have completed our orientation program, are currently waiting to continue the adoption process with New Hope. These couples could choose to work with a different agency and thus expedite their schedule for receiving a child placement. Instead, these couples have told me that they have chosen to delay their adoption in order to work with New Hope specifically, in important part because they value and want to work with an adoption agency that shares their faith.

52. As Mrs. Geyer explained in her Affidavit (Geyer Aff. ¶¶ 86, 90, 94, 105), Christian prayer is a regular part of New Hope's group meetings with potential applicants. This includes prayers for the applicants, for children in need of homes, for birthparents, and for God's blessings on the formation of new families through adoption. Because New Hope and most of the adoptive couples who choose to work with New Hope share or value similar faith-based beliefs about marriage, family, and children, these beliefs underpin and inform New Hope's instruction to and counseling of adoptive couples about the adoption process, both in group meetings at earlier stages of the process, and in meetings with individual couples



later in the process. It is not uncommon for a New Hope adoption worker to pray with an applicant couple, if they wish, at any one of their meetings.

53. Christian evangelism is also a part of New Hope's ministry to birthmothers and adoptive couples, but only to those who *desire* to hear about the Gospel. In these conversations, New Hope team members often discuss Scripture and share about the Christian doctrine of our adoption as children of God. However, New Hope only engages in these conversations with those who wish to have them.

54. New Hope team members believe that Christian truths—about the Gospel and healthy families—will profoundly help infants, birthparents, and adoptive parents. All New Hope team members have associated together in part because they can convey those shared beliefs and values more effectively through their adoption work at New Hope.

55. I am concerned that 18 NYCRR § 421.3(d) may be interpreted by OCFS to require New Hope to correct or discipline employees who, sharing New Hope's religious beliefs, act on, or even express, those beliefs in interacting with birthparents or prospective adoptive parents. I fear that OCFS would treat New Hope's refusal to correct or discipline its team members in this way as a violation of law.

56. In my opinion, it would be difficult for New Hope to maintain the faith-informed nature of its group instruction and discussions, and to teach what it believes to be true about family and the best interests of children, if New Hope were required to include in these group discussions individuals or couples who are strongly hostile to New Hope's faith and to its faith-based convictions on these topics.

**B. New Hope expressively associates with its employees.**

57. For each New Hope employee, working with New Hope is primarily a calling and a ministry, and only secondarily a job.

58. I have spoken with multiple New Hope employees who have told me that if New Hope began placing children with unmarried or same-sex couples, they could no longer associate with New Hope, because by doing so New Hope would be endorsing and expressing a message that they believe to be wrong and inconsistent with their faith. Indeed, this is true for me.

59. I have spoken with multiple New Hope employees who have told me that they could receive higher pay working somewhere else but choose to work with New Hope because they view their work with and through New Hope primarily as a ministry motivated by their faith, not primarily as a means of earning income.

60. For example, one of New Hope's Adoptive Parent Caseworkers, Amber Doody, has a master's degree in social work. She has told me that she could earn a higher income working somewhere else but chooses to work with New Hope because she views her work with and through New Hope primarily as a ministry motivated by her faith, not primarily as a means of earning income.

61. New Hope team members desire to declare to the world around them, by word and example, God's love for birthmothers and infants, and His good plan for healthy marriage and families. Many team members have told me this. Indeed, I also share this desire and commitment.

62. New Hope's employees meet regularly to pray for the work of New Hope, and to pray for all the people whom New Hope serves—including infants, birthparents, adoptive couples, and the many additional mothers and infants who are served by New Hope's crisis pregnancy ministry.

63. New Hope's employees and board members also work together each year to host a gala dinner which combines fund-raising for New Hope's ministries

with an explicit pro-life, pro-family, and Christian message to the attendees, through speakers and prayer.

**IV. New Hope will suffer irreparable injury if this Court does not enter the requested preliminary injunction.**

**A. The existing injunction.**

64. Last August, while this case was on appeal and without warning, OCFS issued a sudden demand that New Hope violate its beliefs and change its policies within 15 days or be shut down.

65. That demand prompted New Hope to file an emergency motion for interim relief, in which New Hope's counsel accurately said, "[t]his threat, if carried out, would destroy or cripple New Hope's adoption ministry even if [the] Court later" reinstates New Hope's complaint. Appellant's Emergency Mot. for Interim Protection at 3, *New Hope Family Services, Inc. v. Poole*, No. 19-1715 (2d Cir. Aug. 13, 2019), ECF No. 52-1.

66. I understand that on November 4, 2019, the Second Circuit entered an interim order proposed by New Hope's counsel. This order allowed New Hope, "pending a decision on [ ] appeal," to "continue to accept surrenders of children and to place out children with approved adoptive applicants." However, consistent with a proposal made by New Hope only for the period of that appeal, that interim order prevents New Hope from "accept[ing] any new prospective adoptive parents for adoption services."

67. In its most recent order reinstating New Hope's complaint, I understand that the Second Circuit kept this injunction in place "unless and until vacated or modified by the district court." New Hope has complied with these provisions. However, in my opinion New Hope will suffer irreparable harm if the interim injunction remains in place unchanged much longer, and certainly if New



Hope faces even a temporary shutdown. I explain the bases for these views in the paragraphs that follow.

**B. Even temporarily shutting down New Hope's adoption services would severely harm birthmothers who have come to trust New Hope and are relying on New Hope to find homes for their newborns.**

68. New Hope presently serves four birthmothers, each of whom expects to place her child within the next three months. These women have depended on New Hope during a time of crisis. They have developed an intense relationship of trust with one of New Hope's counselors; they have asked New Hope to find wonderful families to adopt their children; and they have chosen to rely on New Hope's judgment and experience to find that family.

69. These birthmothers, of course, cannot wait for the district court to hear and decide New Hope's case. If New Hope is forced to turn away these birthmothers, they will be forced to shift, on almost no notice, to working with another placement agency and staff with whom they have not developed a relationship or a trust, and whose values and judgment they do not know and may not share.

70. In my experience, birthmothers who come to New Hope to place their children need and value close relationships and as much stability as possible. An abrupt, unexpected, and forced breaking of this relationship with New Hope would be extremely distressing and stressful for these women, each of whom is already in distressing life circumstances, and already grieved about giving up her baby.

**C. Even temporarily shutting down New Hope's adoption services would severely harm adoptive parents who have already invested time working and developing a relationship with New Hope.**

71. New Hope is currently working with a total of 18 adoptive couples. Of these, eight are approved and waiting for placement; five are at earlier stages of the

application and home study process; two couples have received placements but have not yet had their adoptions finalized; two couples have been selected by a birthmother and are awaiting adoption placement; and one other couple has received a foster placement and is awaiting adoption placement and finalization. The eight approved couples have persevered through months of applications, counseling, home studies, and reviews. They are now on New Hope's waiting list, expecting a call and a new baby at any time.

72. All of these couples have chosen to go through all this with New Hope because they value its openly faith-based nature and beliefs as well as its highly personal approach. They have come to know New Hope staff as trusted friends, have been open with that staff about personal hopes, fears, and concerns for their families, and are relying on New Hope to walk with them through the entire adoption process.

73. Many of these couples have already endured significant heartbreak, having suffered through infertility, failed treatments, and the emotional fallout from their dashed hopes, dreams, and expectations.

74. If New Hope is suddenly prohibited from providing adoptive services to these couples because of OCFS's shutdown order, the impact on these couples will be severe. First, if the approved couples wish to move ahead with adoption at all, they will have to get on the waiting list of another adoption agency, which could set their hopes back by many months, or even years. The not-yet-approved couples will likely have to re-start the application and home-study process from the beginning with another agency. Second, each of the approved couples—and several of the in-process couples—have invested immense time and emotional energy in developing honest and open relationships with New Hope staff, so that New Hope can fairly portray them to birthmothers, and so that New Hope can help them effectively through all the emotional ups and downs of the adoption process and formation of a

family through adoption. If these couples are forced to change to a new adoption service, they will become just names on a list, instead of known and loved friends—as they currently are with New Hope’s ministry. Third, several of these couples have told New Hope staff that they are willing to go down the sometimes scary road of adoption in important part because they know and value New Hope’s faith-based nature and its convictions, and trust that New Hope will be guided by that faith and those convictions as it in turn guides them through adoption.

75. For these couples, each of these impacts will be painful. For some, the disruption may be too much emotionally, forcing them to step back from adoption at least at the present time. This will, of course, mean that some children will not be placed, or must wait even longer to be placed, into a permanent loving home.

**D. Even temporarily shutting down New Hope’s adoption services would severely harm New Hope by forcing it to dismiss critical team members.**

76. Shutting down New Hope’s adoption services for a period of six months or more would also do long-term damage to New Hope’s ministry by forcing it to lay off critical staff, who could not readily be replaced if and when New Hope’s constitutional rights are finally vindicated.

77. New Hope has approximately eight team members who work in or oversee its adoptions and foster care ministry. Each of these team members does and must share New Hope’s religious convictions.

78. These team members fill various ministry roles, including performing case work for birthparents, adoptive parents, and foster parents, in addition to coordinating correspondence, preparing home studies, and providing administrative support and executive leadership.

79. If New Hope is forced to cease all adoption services for six months, a year, or more, New Hope will be forced to lay off some of its team members. In



particular, New Hope employs five adoption case workers. The ministry would be forced to lay off at least some of these case workers.

80. In my judgment, the degradation of New Hope's team would harm New Hope's reputation as an adoption service provider, and hamper its ability to resume its full ministry quickly and effectively if and when a court affirms that New Hope has a right to do so that is protected by the First Amendment.

81. New Hope's team members by no means perform merely clerical functions. They build trusted relationships with birthmothers and adoptive parents. They love these people in emotionally difficult times. And they do their work with excellence. New Hope's strong reputation as an adoption ministry depends on the skill, love, and reputations of its dedicated and in many cases long-serving and extremely experienced team members.

82. If New Hope is forced to dismiss any of its team members, it is likely that those lost team members would need to secure new jobs and that New Hope would not be able to quickly re-hire them if it were allowed to resume its placement services without limitation. Further, based on my experience in recruiting for New Hope, it will not be easy to find other skilled replacements who share New Hope's religious convictions, and who have the compassionate heart that is essential to New Hope's ministry to both adoptive parents and birthparents.

83. Further, rebuilding New Hope's adoption ministry, once it is closed, would require much more than hiring replacements, difficult as that would be. It would also require rebuilding New Hope's reputation, conducting new rounds of training for new employees, attracting new adoptive couples, and winning back the trust of its sources of referrals of birthmothers.

**E. Shutting down New Hope’s adoption and foster care services would dismantle or undermine New Hope’s ability to provide ongoing correspondence services for birthmothers, children, and adoptive parents that New Hope has served.**

84. New Hope provides correspondence services for about 115 families who wish to maintain a relationship between their adoptive child and his or her birth mother, serving as a go-between to enable communications between birthmother and child without disclosing addresses, and also often coordinating annual in-person meetings. New Hope provides these services for each birthmother and adoptive family who requests them until the adopted child reaches 18 years of age. *See Geyer Aff.* ¶¶ 126-28. These services occupy a considerable amount of New Hope staff time each year, yet New Hope does not charge any fees, nor receive any other compensation, for providing this ongoing service to adoptive families, adopted children, and birth-parents. Instead, the cost to New Hope of providing these services is entirely covered by private donations to New Hope.

85. It is unclear to me how OCFS’s shutdown order will affect New Hope’s ability to provide correspondence services for those families.

86. If the shutdown order affirmatively requires that New Hope abandon its correspondence services for those families, even for a period of months to a year, the ministry would be forced to transfer case files for those families to a different adoption agency—that is, if another agency would *agree* to take them. Assuming that were possible, the transition would likely create significant administrative problems and would disrupt contracted-for correspondence between many adopted children and their birthmothers.

87. On the other hand, if the shutdown order requires that New Hope maintain its correspondence services for those families, the ministry would face a different problem—a services mandate with no funding. New Hope does not receive



compensation for providing these services—often for many years after an adoption occurs—so if New Hope is financially forced to dismiss staff as a result of OCFS’s shutdown order, it may simply lack the capacity to provide this service at the level it has done in the past.

88. Either way, New Hope, birthmothers, and adoptive parents will all likely suffer from a shutdown’s interference with the ministry’s correspondence services.

**F. Even temporarily shutting down New Hope’s adoption services would severely harm New Hope’s future ability to attract referrals of birthmothers, and thus to locate infants in need of placement.**

89. Shutting down New Hope’s adoption and foster care services would also increase the risk that New Hope will suffer harm to its future ability to attract referrals of birthmothers who desire to place their children for adoption, even if courts ultimately rule in favor of New Hope.

90. I discussed New Hope’s referral sources in paragraph 4 above. These referral sources often value New Hope’s religious character. Some birth mothers will not choose to entrust the future of their children to an agency unless it has a reputation for placing children promptly and permanently into homes that are not only loving, but meet birthmothers’ other desires for their children—which sometimes includes preferences for a specific religious upbringing.

91. Even just the threat of a shutdown has already contributed to a drastic decline in New Hope’s child placements since this litigation began. New Hope has placed only three children with adoptive parents since the beginning of 2019, primarily because the number of birthmothers being referred to New Hope has declined and because of this litigation and rumors that New Hope was not able to place children. By contrast, since 2012, and up until the time OCFS threatened to

shut down New Hope's adoption and foster care services in 2018, New Hope placed on average about 8 children per year with adoptive parents. That span includes one year in which New Hope placed 13 children with adoptive parents.

92. Given this decline in referrals based only on rumors or the *possibility* that New Hope would be unable to complete placements, if New Hope is forced to shut down as OCFS is demanding, or to turn away birth mothers who seek its aid, or to turn away birth mothers and adoptive parents with whom New Hope is already working, I anticipate further and serious harm to New Hope's reputation with these referral sources as an adoption service on which they can rely.

93. The loss of referral relationships will make it difficult or impossible for New Hope to find infants for any adoptive couples with whom it is permitted to work during any interim period. The loss of referral relationships will also make it that much more difficult and time-consuming to restore New Hope's adoption ministry to its historic levels once New Hope's right to continue that ministry consistently with its faith has been protected by the courts.

**G. Even with the existing injunction in place, New Hope's adoption ministry is suffering irreparable harm and will continue to do so because of its dwindling pool of adoptive couples and reduced number of placements.**

94. Before this litigation, New Hope typically averaged between 14 and 20 couples on our list of couples approved to adopt. Geyer Aff. ¶ 79. New Hope also had been averaging between 8 and 12 placements of children in adoptive homes per year in recent years. *Id.* ¶ 55.

95. Under the Second Circuit's interim November 4, 2019 order, consistent with a proposal made by New Hope solely for the period of the appeal, New Hope

has only been allowed to work with prospective adoptive couples “who completed New Hope’s orientation prior to the commencement of this lawsuit.”

96. At the oral argument held on November 13, 2019, New Hope counsel Roger Brooks explained that the restriction on accepting new prospective adoptive parents, if continued for an extended period, “will kill New Hope by strangulation as surely as the effort by OCFS a few weeks ago would have done.”

97. This statement was accurate. In order to accept referrals of new birthmothers in good faith, New Hope must have a sufficiently large group of approved, waiting adoptive couples so that New Hope can be confident that it can find a loving home for that mother’s baby. This is particularly true given New Hope’s pattern of serving “hard-to-place” infants. As New Hope’s waiting list of approved couples dwindles—whether because couples receive a child, or because they withdraw their names for some other reason—New Hope will become unable to serve birthmothers and infants.

98. New Hope is currently working with a total of 18 adoptive couples. Of these, eight are approved and waiting for placement; five are at earlier stages of the application and home study process; two couples have received placements but have not yet had their adoptions finalized; two couples have been selected by a birthmother and are awaiting adoption placement; and one other couple has received a foster placement and is awaiting adoption placement and finalization.

99. We filed our lawsuit on December 6, 2018. For some period between when OCFS threatened to close our adoption ministry and when we filed our lawsuit, many of our traditional referral sources believed that we had already lost our authorization to handle adoptions. As a result, referrals reduced to a trickle, and New Hope did not place any infants *for the next 14 months*.

100. In May of this year, New Hope received a very short-notice referral from a local hospital of a child whose birthmother had mental health issues. Within



two days, we were able to place the child with one of the couples that the Court has allowed us to continue working with during our appeal. This was our first placement in 14 months, after previously averaging between 8 to 12 placements per year. This also, of course, reduced our pool of approved adoptive couples by one.

101. Meanwhile, since we filed this suit, several couples have withdrawn, or placed a hold on, their applications for various personal and family reasons, as inevitably happens over time among any group of couples who apply to adopt.

102. As a result of placements and couples' choices to withdraw or place their applications on hold, New Hope currently only has eight couples who stand ready to consider adopting a child if called.

103. I am deeply concerned that with this small number of adoptive couples waiting, a very few more placements will leave New Hope with an inadequate pool of adoptive couples to assure us that we will be able to find a home for each child entrusted to our care, including infants with hard-to-place characteristics.

104. Should this occur, New Hope will not be able in good conscience to accept referrals of birthmothers who want to place their newborns through New Hope. This, in my opinion, would be gravely harmful to the infants involved, to birthmothers, and to New Hope's reputation among service providers who would otherwise refer birthmothers to New Hope.

105. Unfortunately, once our pool of approved adoptive parents becomes depleted, that problem cannot be fixed quickly. From the time a prospective adoptive couple first contacts us, it can take between six months to a year to help them through the application, orientation, home-study, and approval processes.

106. Our dwindling pool of prospective adoptive couples is especially troubling because, through active outreach efforts that have included calls, in-person conversations, and a new brochure, New Hope has recently succeeded in informing organizations that we have worked with previously that we remain open

and able to accept referrals and place infants. As a result of these efforts, a large faith-based pregnancy support ministry in New York recently told me they want to use New Hope as their primary adoption service that they refer birthmothers to—mainly because of our shared beliefs about marriage and family and the best interests of children.

107. Having to turn referrals away based on our dwindling pool of couples will harm New Hope's reputation as an adoption provider that has been able to place every child entrusted to our care. In my opinion, that harm will have a lasting negative effect on our ability to attract referrals of birthmothers from social-service providers, and also our ability to attract new prospective adoptive parents once we are allowed to do so.

108. Since we filed our lawsuit in December of 2018, we have received calls from *more than 100 couples* who are interested in adopting a child through New Hope. We have had to turn away all of these couples, explaining that we are not presently able to accept any new applications.

109. If the Court allows us to do so, we will begin accepting new applications right away, while referring to other agencies any unmarried or same-sex couples who wish for such a referral.

I, Kathleen Jerman, a citizen of the United States and a resident of the State of New York, hereby declare under penalty of perjury under 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge.

Executed this 28 day of August, 2020, at Syracuse,  
New York.

Kathleen Jerman  
Kathleen Jerman

# **EXHIBIT A**

NAME OF APPLICANT(S):  
NEW YORK STATE

OFFICE OF CHILDREN AND FAMILY SERVICES

**HOUSEHOLD COMPOSITION AND RELATIONSHIPS FORM**

Instructions:

**Home finders:** This form must be completed with information gathered from interviews, observations, and other information acquired during the certification/approval process. The form must be signed by a supervisor when it is completed.

<b>NAME OF APPLICANT(S):</b>	
<b>MARITAL STATUS - to be completed by the home finder individually with each applicant</b>	
Are you married?	<input type="checkbox"/> No <input type="checkbox"/> Yes
Do you have any previous marriages/long term relationships? a. If yes, when and why did they end?	<input type="checkbox"/> No <input type="checkbox"/> Yes
<b>IF MARRIED:</b>	
1. What date were you married?	/ /
2. How long have you been together?	
3. How would you describe your relationship?	
<b>IF NOT MARRIED:</b>	
1. Do you have a partner or significant other?	<input type="checkbox"/> No <input type="checkbox"/> Yes If yes, name:
2. How often do they reside with you?	<input type="checkbox"/> N/A
3. How long have you been together?	
4. How would you describe your relationship?	
<b>I. RELATIONSHIP – to be completed by the home finder individually with each applicant in a marriage/partner relationship</b>	
1. What makes you happy regarding your partner?	
2. What kind of things make you angry regarding your partner?	
3. What are the strengths of your relationship?	
4. What are the areas of disagreement in your relationship?	
5. How are disagreements handled?	
6. How do you react to your partner when there are disagreements?	
7. How are decisions made?	
8. What stressors exist in your relationship?	
9. How are stressors in your relationship handled?	
10. Who manages the money in your relationship?	
11. How are financial decisions made?	
12. How would you describe your partner's strengths and needs?	
13. How would your partner describe your strengths and needs?	

NAME OF APPLICANT(S):

**II. FAMILY – to be completed by the home finder individually with each household member**

**SCHEDULE**

1. How do you spend a typical weekday?  a. Typical weekend?	
2. How do you spend leisure time as a family?  a. Individually?	
3. What community resources/activities are you (and your family) involved in?	

**RELATIONSHIPS**

1. What extended family do you have?  a. Where do they live?  b. How frequently do you interact?  c. What kind of relationship do you have?	
2. Where are your friends located?  a. How long have you been friends?  b. Under what circumstances and how frequently do you interact?	
3. What support systems do you have available?	
4. If considering adopting, who would be the backup resource if you were no longer able to care for the child?	

**HOUSEHOLDS WITH CHILDREN (IF APPLICABLE)**

1. How do the children in the household get along with each other and, if applicable, with your children who reside outside of the home?	
2. What rules exist in the house, and what are the consequences if broken?	
3. How are rules adjusted based on age, capacity, etc. of each child?	
4. How is discipline handled?	

**FOSTER CARE/ADOPTION**

1. What is each household member's feeling about becoming a foster/adoptive family?	
2. What is each household member's level of readiness?	
3. How do your extended family and friends feel about you foster parenting/adopting?	

**III. PARENTING – to be completed by the home finder individually with each applicant**

1. What experience have you had parenting?	
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NAME OF APPLICANT(S):

2. What is your parenting style?  a. What is your partner's parenting style?	<input type="checkbox"/> N/A
3. What do you find to be the most effective form of discipline?	
4. Describe your relationship with each of the children in the household and outside the household, if applicable.	
5. What, if any, parenting training have you had?  a. What parenting training/supports do you think you will need?	
6. What do you think would make you a good foster parent?  a. What strengths would you bring to fostering?	
7. What child caring experiences have you had?	
8. How do you support your children academically, at home and in school?	<input type="checkbox"/> N/A
9. Are any of your children homeschooled?	<input type="checkbox"/> N/A

**PARENTING A CHILD IN FOSTER CARE**

1. What are the reasons you think a child would be in foster care?	
2. What is your motivation for pursuing fostering/adoption at this time?	
3. What is your understanding of your role as a foster parent?	
4. What is your understanding of your role as an adoptive parent?	<input type="checkbox"/> N/A
5. What experience have you had with foster care and/or adoption?	
6. How would you support a child in foster care academically, at home and in school?  a. What are your expectations of a child's academic progress?	
7. How would you help a child in foster care maintain family, cultural, religious, and community connections?	
8. What role do you think the biological family will have with your child in foster care?  a. What role will you have with the biological family?	

**SUPPORTS – to be completed by the home finder individually with each applicant(s)**

1. Do any household members have special needs or challenges? a. If yes, describe.	<input type="checkbox"/> No <input type="checkbox"/> Yes
2. If applicable, describe your children's history of substance abuse, mental health issues, behavioral issues, if any, as well as treatment.	<input type="checkbox"/> N/A

**IV. PSYCHOSOCIAL INTERVIEW – to be completed by the home finder with each applicant individually**

The purpose of the psychosocial interview is to explore the applicant’s history and current psychological/social factors and their impact on the capacity, willingness, and readiness to safely care for a child in foster care; and to develop support plans where applicable.

In this section, questions are provided as guidance only. Home finders will need to use their engagement and assessment skills to explore these areas, using the questions and guidance below as relevant and applicable. Applicant’s responses should be provided in narrative format in the space provided below.

**PERSONAL HISTORY**

**Areas for consideration:**

- Familial history and relationships with all household members and extended family (Genogram)
- Family relationship
- Childhood experiences and defining moments
- How were you disciplined as a child?
- Traditions and religion/spirituality
- Marriage/Dating history
- Has the foster/adoption plan added any stress to you and/or your family?

**COPING SKILLS AND STRESS MANAGEMENT**

**Areas for consideration:**

- Life experiences of loss and/or trauma
- Infertility (if applicable)
- Coping strategies and stress management
- Impact of life experiences on current functioning
- Realistic expectations of childhood

**Sample Questions:**

- Many of the most successful foster/adoptive parents have experienced loss and trauma in their lives that has helped them become the people they are today. Has this occurred in your life?
  - What impact has it had on you then and now?
  - What challenges has it posed for you?
- When experiencing challenging times, what resources do you use to cope? Who helps you?
- How do you know when you are getting stressed out? What cues do you notice physically, socially, and/or cognitively?
- What are situations that are likely to generate stress for you or trigger a crisis?
- What strategies for self-care are effective for you?

**BEHAVIORAL HEALTH FOR ALL HOUSEHOLD MEMBERS**

**Areas for consideration:**

- Alcohol and/or substance abuse
- Mental health
- Family/partner violence
- Is anyone in the household currently or was in the past under treatment for substance abuse (drugs/alcohol) or mental health issues?

**Sample Questions:**

- Describe any history of alcohol/substance use in your family growing up and today.
- Does anyone in your family currently receive or have a history of receiving substance abuse/alcohol abuse treatment?
- Have you or anyone in your family experienced emotional difficulties or significant health challenges including physical, mental, or emotional difficulties?
- Has your self-care included seeking the benefits of a counselor or therapist?
- Can you describe any time you or another family member threatened/hurt/scared another family member or felt threatened/hurt/scared by another family member?

**HOME FINDER NOTES**

NAME OF APPLICANT(S):

Dates of visits/interviews:	
Notes:	
Date of Completion:	/ /
<b>SIGNATURE/DATE:</b>	
HOME FINDER'S SIGNATURE: <b>X</b>	DATE: / /
SUPERVISOR'S SIGNATURE: <b>X</b>	DATE: / /
AGENCY'S NAME:	

**V. CHILD INTERVIEW** – The home finder will complete a separate form for each household member under 18 years of age, depending on the child's developmental stage. The family, home finder, and home finder's supervisor will determine whether the child will participate and whether the applicant(s) should be present. (Please note that this form can also be used for adult children of the applicant[s].)

**CHILD'S NAME:** \_\_\_\_\_ **DATE OF BIRTH:** \_\_\_\_\_

Child's relationship to the applicant(s): \_\_\_\_\_

If a decision was made for a child not to participate, explain why: \_\_\_\_\_

**YOU**

1. Are you in school? a. If yes, what grade are you in?	<input type="checkbox"/> No <input type="checkbox"/> Yes
2. What are your feelings about school?	
3. What are your hobbies and interests?	
4. What five words best describe you?	
5. Who are you able to talk to if you need help?	

**YOUR PARENT(S)**

1. What is your relationship like with each of the applicants/parents? a. Siblings?	
2. Describe your parents'/applicants' relationship.	

**HOUSEHOLD**

1. How often do you visit friends? a. How often do friends visit your house?	
2. Can you describe any rules in your house? a. What happens when you don't follow these rules?	
3. Do you have house rules? a. What house rules are difficult to follow?	

**FOSTER CARE/ADOPTION**

1. What do you know about foster care/adoption?	
2. What are your feelings about sharing your home with another child?	

NAME OF APPLICANT(S):

3. Explain how you think a child will fit in with your family.	
4. What concerns do you have about your parent's/applicant's fostering and/or adopting a child?	
5. How do you imagine the decision to foster and/or adopt will impact you?	
6. What will you do if the child disagrees with you or your parents/applicants?	
7. What would be your wish for any child who joins your family? For example: age, gender, interests?	
8. Have you ever wanted another sibling?	<input type="checkbox"/> No <input type="checkbox"/> Yes <input type="checkbox"/> I don't know/Never thought about it

**HOME FINDER NOTES**

Dates of visits/interviews:	
Notes:	
Date of Completion:	/ /

**SIGNATURE/DATE:**

HOME FINDER'S SIGNATURE: <b>X</b>	DATE: / /
SUPERVISOR'S SIGNATURE: <b>X</b>	DATE: / /
AGENCY'S NAME:	

# **EXHIBIT B**



NAME OF APPLICANT(S):

NEW APPLICATION     CHANGES (Interim Home Study)

NEW YORK STATE  
OFFICE OF CHILDREN AND FAMILY SERVICES  
**FINAL ASSESSMENT AND DETERMINATION**

This form is a written analysis and summary of the entire certification/approval process. Home finder completes this form for each new application and reviews with supervisor. For changes (Interim Home Study), update sections IV-VI. Determinations must be shared with applicant(s) for review.

**I. DEMOGRAPHICS**

APPLICANT 1:

APPLICANT 2:

ADDRESS:

HOUSEHOLD MEMBERS:

Name	DOB	Name	DOB
Name	DOB	Name	DOB
Name	DOB	Name	DOB

**II. REGULATORY REQUIREMENTS**

Compliance with regulations 18 NYCRR 443 and/or 18 NYCRR 420 and 18 NYCRR 421

1. Each foster parent is over the age of 21.  
 No     Yes  
 Foster parent 1 DOB:  
 Foster parent 2 DOB:  
  
 Document(s) used to verify:  
 As verified by:

2. Each member of the household is in good physical and mental health, and free from communicable diseases, infection, or illness, or any physical condition that might affect the proper care of a foster child.  
 No     Yes  
 Explain:  
  
 Document(s) used to verify:  
 As verified by:

3. There is a suitable plan for the care and supervision of the child in foster care at all times.  
 No     Yes  
 Explain:

4. The current marital status of the applicant(s) affects the ability of the parent(s) to provide adequate care.  
 No     Yes  
 Explain:  
  
 The applicant(s) current marital status is:  
 Document(s) used to verify:  
 As verified by:

5. Three personal references were submitted attesting to each of the applicants' moral character, mature judgement, ability to manage financial resources, and capacity to develop a meaningful relationship with children.

NAME OF APPLICANTS:

No  Yes

Explain:

Date(s) of most current references: / /

6. Employment references were:

a. Provided?  No  Yes  NA

b. Checked?  No  Yes

c. Acceptable?  No  Yes

Explain:

Date of most current reference: / /

7. Applicant(s) understand(s) role of a foster parent and demonstrates the ability, motivation, and psychological readiness.

No  Yes

Explain:

8. Does at least one applicant in the home have functional literacy (in their primary language)?

No  Yes

Explain:

9. Other family members understand foster care and the foster child's role in the family.

No  Yes

Explain:

10. List the dates received and results of all applicant's and applicable household member's background checks:

a. Staff Exclusion List (SEL)

Dates and Results:

b. Statewide Central Register (SCR)

Dates and Results:

c. Out-of-State Child Abuse Register  N/A

Dates and Results:

d. NYS Division of Criminal Justice (DCJS)

Dates and Results:

e. Federal Bureau of Investigation (FBI)

Dates and Results:

11. Applicant's/Applicants' history as foster and/or adoptive parent(s) has been:

a. Verified?  No  Yes  N/A

b. Is acceptable?  No  Yes

Explain:

Document(s) and/or methods used to verify:

NAME OF APPLICANTS:

12. Were the applicant(s) approved for an exception by a supervisor?  
 No  Yes  
 If yes, provide date of approval and approver's name:  
  
 Explain the exception:

13. FOR LETTERS OF APPROVAL ONLY  
 Were the applicant(s) approved for a waiver by the LDSS?  
 No  Yes  NA  
 If yes, provide date of approval and approver's name:  
 Explain the waiver:

**III. CERTIFIED OR APPROVED EMERGENCY FOSTER HOME**

Are the applicant(s) certified or approved emergency foster parent(s)?  No  Yes

FIRST NAME OF CHILD <small>List all children in foster care currently placed in the home.</small>	AGE	DATES OF PLACEMENT IN THE HOME <small>To and from</small>	CHILD INTERVIEW DATE <small>If still in home</small>	FOSTER CARE WORKER AND CONTACT DATE
		/ / - / /	/ /	/ /
		/ / - / /	/ /	/ /
		/ / - / /	/ /	/ /

Based on the analysis of information gathered during the interview and observation of the child(ren), describe how the child(ren)'s physical, emotional, developmental, and educational needs are being met by the emergency certified or approved foster parent(s) since being placed in this home:

Summarize the emergency certified or approved foster parent(s) overall ability to work with the birth family, school/service providers, and partner with the LDSS/agency since the child(ren) have been placed in the home:

**IV. ASSESSMENT OF HOME STUDY COMPONENTS**

**PARTNER RELATIONSHIPS**

Based on the information provided by the family and your analysis of the applicant(s), summarize each area below as it impacts the ability to foster and/or adopt.

**STRENGTHS:**

**CONSIDERATIONS:**

**SUPPORTS NEEDED:**

NAME OF APPLICANTS:

--

**PARENTING**

Based on the information provided by the family and your analysis of the applicant(s), summarize each area below as it impacts the ability to foster and/or adopt.

**STRENGTHS:**

**CONSIDERATIONS:**

**SUPPORTS NEEDED:**

**FAMILY RELATIONSHIPS**

Based on the information provided by the family and your analysis of the applicant(s), summarize each area below as it impacts the ability to foster and/or adopt.

**STRENGTHS:**

**CONSIDERATIONS:**

**SUPPORTS NEEDED:**

**CHILD INTERVIEWS, IF APPLICABLE**

Based on the analysis of information gathered during the interview(s) and the observation(s) of the child(ren), describe how the child(ren)'s physical, emotional, and developmental needs are being met in this home.

**STRENGTHS:**

**CONSIDERATIONS:**

**SUPPORTS NEEDED:**

**PSYCHOSOCIAL**

Based on the information provided by the family and your analysis of the applicant(s), summarize each area below as it impacts the ability to foster and/or adopt.

**STRENGTHS:**

**CONSIDERATIONS:**

**SUPPORTS NEEDED:**

**V. CHANGES (INTERIM HOME STUDY ONLY)**

The following changes have occurred prior to the reauthorization period:

NAME OF APPLICANTS:

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**AGENCY TRANSFER:**

Effective date:     /     /

Explain:

**HOME ADDRESS** (                     form, OCFS-5183E required):

Effective date:     /     /

Explain:

**HOUSEHOLD COMPOSITION** (Fingerprinting is required when new adult enters household or turns 18.):

Effective date:     /     /

Explain:

**CRIMINAL RECORDS RESULT:**

Effective date:     /     /

Explain:

**MARITAL STATUS** (New application required if adult spouse of foster parent enters home):

Effective date:     /     /

Explain:

**AGE RANGE OR GENDER:**

Effective date:     /     /

Explain:

**CAPACITY:**

Effective date:     /     /

Explain:

**PROGRAM TYPES:**

Effective date:     /     /

Explain:

**LEVEL OF CARE:**

Effective date:     /     /

Explain:

**REOPEN A HOME:**

Effective date:     /     /

Explain:

If any of the above changes are made, summarize the effect on the children in foster care:

CHILD(REN)'S NAME(S):

Explain:

**VI. AGENCY DETERMINATION**

Home finder should not submit the Final Assessment and Determination in CONNECTIONS until it has been reviewed with the supervisor, the determination is shared with the applicant(s), and applicant's comments are received and entered in CONNECTIONS.

Based on the application, home study, safety review form, medical report(s), references, and background checks, is this applicant(s) ready to parent a child in foster care?



NAME OF APPLICANTS:

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Issue Certificate or Letter of Approval/Approved Changes (Interim Home Study)

Yes: Foster/Adoptive

Placement considerations, if applicable:

**OR**

Yes: Foster Only

Placement considerations, if applicable:

**OR**

No

Explain the reason(s) for denial:

HOME FINDER'S SIGNATURE:

DATE:

**X** / /

SUPERVISOR'S SIGNATURE:

DATE:

**X** / /

**VII. APPLICANT'S COMMENTS**

Enter applicant's comments here:

APPLICANT'S SIGNATURE:

DATE:

**X** / /

APPLICANT'S SIGNATURE:

DATE:

**X** / /

HOME FINDER'S SIGNATURE:

DATE:

**X** / /

SUPERVISOR'S SIGNATURE:

DATE:

**X** / /

# **EXHIBIT 4**

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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NEW HOPE FAMILY SERVICES, INC.,

Plaintiff,

5:18-CV-1419 (MAD/TWD)

vs.

SHEILA J. POOLE, in her official capacity  
as Acting Commissioner for the Office of  
Children and Family Services for the State  
of New York,

**AFFIDAVIT OF CHARITY  
LOSCOMBE IN SUPPORT OF  
NEW HOPE FAMILY  
SERVICES' MOTION FOR  
PRELIMINARY INJUNCTION**

Defendant.

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1. My name is Charity Loscombe.
2. I am above the age of 18, of sound mind, and I have personal knowledge of the facts explained in this document.
3. My husband, Todd, and I have four children of our own. We have also been a Tender Loving Care ("TLC") foster family through New Hope for a number of years.
4. For several years, I worked for New Hope as a birth mother case worker and as the TLC coordinator.
5. As a birth mother case worker, I was blessed to work closely with birth mothers. My desire was to walk through the difficult situations they faced with them and help them through the process of placing their child with an adopting family. I would meet regularly with each birth mom I worked with. Some of those meetings were scheduled, some were not. I made myself available to them as they needed me throughout their pregnancy. I would go with these moms to family meetings and later to court hearings. I would go to the hospital after the baby was

born and sometimes before or during labor. I would also talk with the moms regularly throughout the pregnancy. Sometimes I would even get calls in the middle of the night and I would comfort these moms.

6. I talked with these moms about a lot of things: their lives, their families, their plans for the future. We talked about the pregnancy, the adoption process, and how they were feeling about both. These moms often wanted to talk about God and about how they saw God in their lives and their babies' lives. We would talk about God's love for them and, when they wanted, I would pray with them. I always saw the great love of each birth mom in placing her baby in an adoptive home. I was always individually praying for the moms I worked with, and for their babies.

7. I would also talk regularly with the birth mom's family, especially the baby's grandparents and father, if he was present, to comfort and counsel them through the process.

8. The mothers I worked with would tell me that they came to New Hope because they wanted to work with a faith-based adoption agency. Most moms I worked with told me that they wanted to place their baby in a Christian home. Every mom I worked with wanted both a mom and a dad for their baby. At New Hope, I got to see that happen for the moms and babies I worked with.

9. After Todd and I married, we wanted to continue helping babies through New Hope. After our four kids were born, we decided to become a TLC family and foster. Todd's mom had provided TLC care while he was still living at

home so we were both very familiar with the program. We have fostered five babies so far and are still active with New Hope.

10. Each of the babies we fostered came to us when they were days old. We provided the initial care, took them to doctor's appointments, cared for them, prayed for them, and loved them until they could be placed with their adoptive family. The shortest we have fostered a baby was 4-5 weeks. The longest was four months, and most were close to that four months. We have fostered babies with special needs.

11. In some cases, we have been able to keep up with the babies we have fostered. We hear how they are doing and see how they grow. I love that.

12. To my knowledge, the TLC program is unique to New Hope. We have decided to foster babies because we believe in that unique program. If New Hope closes its doors, we would not continue fostering through any other agency or state program.

13. I have appreciated working with New Hope for so many years because I share their Christian beliefs about the value of human life and about the nature of the family. I hope they are able to continue the good work that they do for many years to come.

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