

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

AIMEE MADDONNA,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES et al.,

Defendants.

Civil Action No. 6:19-cv-03551-JD

FEDERAL DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

For the reasons stated in the accompanying memorandum, the Federal Defendants file this Motion for Summary Judgment.

Dated: November 21, 2022

Respectfully submitted,

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**FEDERAL DEFENDANTS' MEMORANDUM IN SUPPORT
OF THEIR MOTION FOR SUMMARY JUDGMENT**

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NATURE OF THE CASE

At the core of this suit is Plaintiff Aimee Maddonna’s allegation that Miracle Hill Ministries, a private child-placement agency, declined to work with her because of her religion. The Federal Defendants—the U.S. Department of Health and Human Services (HHS), the Administration for Children and Families (ACF), Secretary Xavier Becerra, and Assistant Secretary January Contreras—did not encourage or otherwise influence Miracle Hill’s decision. Plaintiff nevertheless named them as defendants in this suit because HHS provides funding to South Carolina’s foster care program, which in turn funded Miracle Hill; they conditionally exempted South Carolina from a religious non-discrimination provision of HHS grants regulations (“Conditional Exception Letter”); and, more than nine months after Plaintiff’s most recent interaction with Miracle Hill, they issued a notification that they would not enforce certain agency rules while they worked to repromulgate them due to concerns over compliance with administrative requirements (“Notification of Nonenforcement”).

This Court previously held that Plaintiff had standing to sue the Federal Defendants, but key developments since that decision have eliminated any connection between Plaintiff’s alleged injury and the Federal Defendants. On July 16, 2021, Miracle Hill announced that it would no longer receive government funds as of July 1, 2021, severing any ties between Miracle Hill’s actions and the Federal Defendants. Without federal funds flowing to Miracle Hill, there is no longer any connection between the actions of the Federal Defendants that Plaintiff challenges—the Conditional Exception Letter and the Notice of Nonenforcement—and Plaintiff’s alleged injury. For this reason alone, Plaintiff’s entire case against the Federal Defendants is moot. In addition, on November 18, 2021, the Federal Defendants withdrew the Letter, which formed the basis of several of Plaintiff’s claims against the Federal Defendants. As a result, Plaintiff’s claims

challenging the Letter are doubly moot.¹

Even if this Court determines that it has jurisdiction, the Federal Defendants are entitled to summary judgment with respect to Plaintiff’s Notification of Nonenforcement claim. First, the Notification is a classic exercise of agency enforcement discretion such that it is precluded from judicial review. Second, the Notification does not violate the Establishment Clause because it does not mention and was not prompted by considerations relating to religion.

BACKGROUND²

I. Miracle Hill’s Decision Not to Receive Government Funds

Plaintiff lives in Simpsonville, South Carolina and would like to be a foster parent. *See* Compl. ¶¶ 16, 77, 79, 80, ECF No. 1. The dispute in this case arose on February 20, 2019, when Miracle Hill, a foster care service provider in South Carolina, informed Plaintiff that she could not serve as a volunteer mentor to foster children in Miracle Hill’s care. *Id.* ¶ 86. Plaintiff “clearly understood that she and her family were turned away by Miracle Hill because they do not share Miracle Hill’s evangelical-Christian beliefs and cannot affirm its statement of faith.” *Id.* ¶ 89.

At the time that Plaintiff contacted Miracle Hill, it received funding from South Carolina that was partially provided to the State by the federal government under Title IV-E of the Social Security Act, as explained further below. On July 16, 2021, however, Miracle Hill announced that it would no longer accept government funding. The organization’s president stated, “It is with a

¹ Indeed, the plaintiffs in *Rogers v. HHS*, a similar case brought by prospective foster parents challenging the Conditional Exception Letter, have voluntarily dismissed their claims against HHS, presumably because they recognized that there is no longer a case or controversy against HHS.

² Because the Court’s review of Plaintiff’s claims against the Federal Defendants is limited to the administrative record, there are no disputed material facts. *See, e.g., 3V Sigma USA, Inc. v. Richardson*, No. 2:20-CV-0807-DCN, 2021 WL 809399, at *3 (D.S.C. Mar. 3, 2021). Accordingly, the Federal Defendants do not provide “a concise statement of the material facts in dispute,” Local Civ. R. 7.05(A)(4).

humble heart that we have taken a step of faith and are officially choosing dependence on the Lord by declining government funding effective July 1, 2021, for our Foster Care Program.” Ex. 1, Facebook Post. Indeed, South Carolina has confirmed that “Miracle Hill has not received any funding from [the South Carolina Department of Social Services (SCDSS)] for any reason for any services provided after June 30, 2021.” Ex. 2, Letter from Miles E. Coleman, Nelson Mullins, to Kate Janson, Cravath, Swaine & Moore LLP (April 25, 2022); *see also* Ex. 3, Change Order #5 (stating that “SCDSS will remove the administrative rate effective July 1, 2021, at Miracle Hill’s written request not to receive these funds”); Ex. 4, Roben Dep. 60:15–18 (explaining that as of July 1, 2021, Miracle Hill stopped receiving administrative fee payments).

II. Title IV-E and Accompanying Regulations

Plaintiff’s claims against the Federal Defendants concern HHS’s award of grants to South Carolina under Title IV-E of the Social Security Act, which authorizes federal funding to states “[f]or the purpose of enabling each State to provide, in appropriate cases, foster care” programs for eligible children, 42 U.S.C. § 670. To be eligible for Title IV-E payments, a state must submit a state plan containing certain features for HHS approval. *Id.* § 671(a). States with a compliant plan receive Title IV-E funding for a portion of the state’s foster care maintenance payments for each statutorily eligible child in foster care. *Id.* § 674(a)(1). A state may also receive reimbursement for administrative expenses necessary for the provision of child placement services and the proper and efficient administration of the Title IV-E state plan. *Id.* § 674(a)(3). These expenses may include activities such as training, case management, and recruitment and licensing of foster homes. 45 C.F.R. § 1356.60(c). States have discretion to engage third parties to provide many of these services. Title IV-E does not contemplate or express any preference regarding whether these third parties should or should not be faith-based.

Title IV-E prohibits states and their subgrantees from “deny[ing] to any person the

opportunity to become an adoptive or a foster parent, on the basis of the race, color, or national origin of the person, or of the child involved[.]” 42 U.S.C. § 671(a)(18)(A). HHS promulgated a regulation in 2016, rooted in an HHS “public policy requirement,” that no person may be “denied the benefits of, or subjected to discrimination in the administration of HHS programs and services based on . . . religion.” 45 C.F.R. § 75.300(c).

III. The Conditional Exception Letter and Its Withdrawal

In 2018, South Carolina sought an exception from section 75.300(c)’s religious non-discrimination provision in connection with its use of federal funds to reimburse faith-based organizations that provide services under the State’s Title IV-E Foster Care Program (“the SC Foster Care Program”). HHS granted South Carolina’s request on January 23, 2019. Letter from Steven Wagner, Principal Deputy Assistant Secretary, Administration for Children and Families, to Henry McMaster, Governor, South Carolina (Jan. 23, 2019), ECF No. 34-2 [hereinafter Conditional Exception Letter].

Miracle Hill figured prominently in HHS’s decision to grant the exception, as it does in Plaintiff’s Complaint. HHS granted South Carolina’s requested exception as to “Miracle Hill or any other subgrantee in the SC Foster Care Program that uses similar religious criteria in selecting among prospective foster care parents” on the condition that South Carolina require Miracle Hill and any other subgrantee using the exception “to refer potential foster parents that do not adhere to the subgrantee’s religious beliefs to other subgrantees in the SC Foster Care Program” or to the State itself for service. Conditional Exception Letter at 4. HHS reasoned that “requiring . . . Miracle Hill to comply with the religious non-discrimination provision of 45 C.F.R. § 75.300(c) would cause a burden to religious beliefs that is unacceptable under [the Religious Freedom Restoration Act (RFRA)].” *Id.* at 3.

HHS withdrew the Conditional Exception Letter on November 18, 2021. ACF notified Governor McMaster that “the religious exception South Carolina sought from the 2016 Rule is no longer warranted and, thus, is hereby rescinded.” Letter from Joo Yeun Chang, Principal Deputy Assistant Secretary, Administration for Children and Families, to Henry McMaster, Governor, South Carolina (Nov. 18, 2021) at 1, ECF No. 91-1 [hereinafter Withdrawal Letter]; *see also id.* at 7 (“ACF hereby withdraws the January 23, 2019 exception letter granted to South Carolina, with respect to Miracle Hill and any other subgrantee in the South Carolina foster care program using religious criteria to select among prospective foster care parents.”). The basis for this withdrawal was twofold. First, “the non-discrimination provisions in the 2016 Rule that the waiver issued to South Carolina sought to address are not currently being enforced” in accordance with the Notification of Nonenforcement. And second, “the January 23, 2019 exception was overbroad and did not properly apply the substantial burden requirement under . . . RFRA.” *Id.*

IV. The Notification of Nonenforcement

More than nine months after Plaintiff’s most recent interaction with Miracle Hill in February 2019, Compl. ¶¶ 85, 86, HHS issued the Notification of Nonenforcement, which addresses a group of regulations promulgated and amended at 81 Fed. Reg. 89,393 (Dec. 12, 2016), including § 75.300(c). HHS concluded that, in amending and promulgating these rules, the agency had failed to either perform an adequate analysis required by the Regulatory Flexibility Act (“RFA”) or certify that the rules’ economic impact on “small entities” would not be “significant.” 84 Fed. Reg. 63,809, 63,809–11 (Nov. 19, 2019). Given these deficiencies and HHS’s concern that the rules may in fact have significant effects on small entities, HHS decided it would not enforce these rules pending re-promulgation to address these concerns. *Id.* at 63,811. Rather than exempt only “small entities” from enforcement on this basis, HHS exercised its discretion not to enforce the regulations as to any entities because “[a]pplying these rules differently to agency grantees

depending on size would be unfair, create increased compliance costs for all entities as they seek to determine whether they are or are not still subject to the rules, and impose additional administrative burdens on the Department disproportionate to the benefit of enforcement.” *Id.*

On the same day it issued the Notification of Nonenforcement, HHS also issued a proposed rule to modify or repeal the provisions at issue in the Notification. 84 Fed. Reg. 63,831 (Nov. 19, 2019). Among other things, HHS proposed to revise § 75.300(c) to state: “It is a public policy requirement of HHS that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs and services, to the extent doing so is prohibited by federal statute.” 84 Fed. Reg. at 63,832.

HHS subsequently issued a final rule on January 12, 2021, with an effective date of February 11, 2021. *See* 86 Fed. Reg. 2,257, 2,278 (Jan. 12, 2021) [hereinafter 2021 Grants Rule]. As a result of litigation challenging the 2021 Grants Rule, its effective date was postponed on several occasions under 5 U.S.C. § 705. *See generally Facing Foster Care in Alaska v. HHS*, No. 1:21-cv-00308 (D.D.C. Feb. 2, 2021). Recently, HHS discovered anomalies in HHS’s review of the comments for the 2021 Grants Rule that led HHS to conclude that the rule was not promulgated in compliance with procedural requirements of the Administrative Procedure Act (“APA”); HHS accordingly moved the *Facing Foster Care* court to remand the rule with vacatur, *Facing Foster Care in Alaska*, No. 1:21-cv-00308, Defs.’ Mot. Remand 1, ECF No. 41 (D.D.C. June 17, 2022). In that motion, HHS reaffirmed the Notification of Nonenforcement, stating that “vacating the 2021 [Grants] Rule’s formal repeal of the 2016 [Grants] Rule will not cause disruption or change the status quo” because “the 2016 [Grants] Rule has never been enforced, and HHS has stated publicly that it will not enforce the 2016 [Grants] Rule pending promulgation of a new rule.” *Id.* at 8–9. The court granted the motion and vacated the 2021 Grants Rule. *See Facing Foster Care*

in Alaska, No. 1:21-cv-00308, Order, ECF No. 44 (D.D.C. June 29, 2022). HHS has not yet promulgated a new rule.

V. Procedural History

Plaintiff filed her Complaint on December 20, 2019, challenging the Conditional Exception Letter, the Notification of Nonenforcement, and HHS's partial funding of the South Carolina Foster Care Program. Plaintiff asserted that these actions violate the Administrative Procedure Act, the Establishment Clause, and the Fifth Amendment's equal protection component. *See* Compl. ¶¶ 109–30, 148.

The Federal Defendants moved to dismiss the complaint, on the grounds that Plaintiff lacked standing and failed to state a claim. On August 10, 2020, the Court issued an order granting in part and denying in part the motion. Order, ECF No. 43 [hereinafter Mot. Dismiss Order]. In particular, the Court dismissed Plaintiff's equal protection claims in their entirety, *id.* at 37–41, dismissed Plaintiff's constitutional challenges to the Notification of Nonenforcement, *id.* at 21–22, and dismissed Plaintiff's claims challenging the Federal Defendants' funding of the South Carolina Foster Care Program to the extent that Plaintiff relied on taxpayer standing, *id.* at 20 n.7, 28–30. Thus, Plaintiff's only remaining claims against the Federal Defendants are that (1) the Conditional Exception Letter violates the Establishment Clause (Count I); (2) the Conditional Exception Letter violates the APA because it is arbitrary and capricious, an abuse of discretion, contrary to law, and contrary to constitutional right (specifically, the Establishment Clause) (Counts IV and V); and (3) the Notification of Nonenforcement violates the APA because it is contrary to constitutional right (specifically, the Establishment Clause) (Count IV).

LEGAL STANDARD

Summary judgment is appropriate where “the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R.

Civ. P. 56(a). To obtain summary judgment, the movant need only point to the absence of evidence of an essential element of the plaintiff's claim. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). If it does, the respondent must designate specific facts showing there is a genuine issue for trial. *See id.* at 324.

Because federal courts have an ongoing obligation to assure themselves of jurisdiction, jurisdictional objections, such as mootness, may be raised in a summary judgment motion. *See Catawba Riverkeeper Found. v. N. Carolina Dep't of Transp.*, 843 F.3d 583, 588 (4th Cir. 2016).

ARGUMENT

I. Plaintiff's Claims Are Moot.

A. Title IV-E Funds No Longer Flow to Miracle Hill.

As alleged in Plaintiff's Complaint, the linchpin connecting Plaintiff's alleged injury and the Federal Defendants is federal funding: HHS funded South Carolina's foster care program, which in turn funded Miracle Hill. Although the Court previously determined that Plaintiff could not rely on taxpayer standing for any of her claims, it permitted the case to proceed because Plaintiff "has alleged a direct injury resulting from the funding of the private [child protective agencies]." Mot. Dismiss Order at 43 n.17. That connection is now broken. Miracle Hill determined that, effective July 1, 2021, it would no longer accept government funding, state or federal. Plaintiff's claims against the Federal Defendants are therefore moot.

"Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Arizonans for Off. Eng. v. Arizona*, 520 U.S. 43, 68 n.22 (1997) (quotation marks and citation omitted). For example, when a plaintiff's standing depends on the existence of federal funds flowing to a particular entity, the plaintiff's interest in the case becomes moot once those federal funds cease. *See Catawba Riverkeeper Found.*, 843 F.3d at 588—

89 (holding that a plaintiff’s claim against the federal government was moot once the challenged state project stopped receiving federal funds); *Doe v. Shalala*, 122 F. App’x 600, 603 (4th Cir. 2004) (holding that a challenge to a federal program that funded stem cell research became moot because “[n]o federal funds are being used to further research involving embryonic stem-cell lines that have not yet been generated from extant embryos such as” the plaintiff).

That is precisely the case here. Plaintiff’s claims against the Federal Defendants depend entirely on Miracle Hill receiving federal funds. Plaintiff argues that she is injured “because, by *funding* and licensing child-placement agencies, including Miracle Hill, that exclude prospective foster parents and volunteer mentors who do not affirm the agencies’ religious beliefs, . . . Defendants have erected a barrier to Mrs. Maddonna and her family’s participation in *publicly funded* governmental foster-care services on the same terms as other prospective foster families.” Compl. ¶ 17 (emphases added). This Court previously determined that Plaintiffs had standing to sue the Federal Defendants at the pleading stage because HHS issued a conditional exception to South Carolina that permitted federal funds to flow to Miracle Hill. *See* Mot. Dismiss Order 24–25. Similarly, the Court determined that Plaintiffs had standing to challenge the Notification of Nonenforcement under the APA because, although it was issued after Plaintiff’s most recent interactions with Miracle Hill, it too permitted federal funds to continue to flow to Miracle Hill, which created a substantial likelihood that Plaintiff would be injured in the future. *Id.* at 27–28.

Although SCDSS provided funding to Miracle Hill at the time the Complaint was filed, SCDSS has confirmed that “Miracle Hill has not received any funding from SCDSS for any reason for any services provided after June 30, 2021,” Coleman Letter, Ex. 2. Regardless of whether there was previously any connection between the Federal Defendants and Miracle Hill’s actions, there certainly is not now. Miracle Hill’s actions are entirely independent of the Federal Defendants.

And no declaratory judgment or injunction regarding the Conditional Exception Letter (which, as discussed below, has been withdrawn anyway) or the Notification of Nonenforcement, *see* Compl. 31–33 (describing the relief sought from the Federal Defendants), could redress Miracle Hill’s decision not to work with Plaintiff. *See Smith v. Becerra*, 44 F.4th 1238, 1247 (10th Cir. 2022) (observing that it “must decide whether a case is moot as to ‘each form of relief sought’” (quoting *Prison Legal News v. FBI*, 944 F.3d 868, 880 (10th Cir. 2019))); *cf. Davis v. FEC*, 554 U.S. 724, 734 (2008) (observing that “‘a plaintiff must demonstrate standing for each claim he seeks to press’ and ‘for each form of relief’ that is sought” (quoting *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2006))). As such, there is nothing left for the Court to do other than to dismiss the claims against the Federal Defendants for lack of jurisdiction. To do otherwise would result in “an opinion advising what the law would be upon a hypothetical state of facts.” *See Catawba Riverkeeper Found.*, 843 F.3d at 589 (quoting *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975)).

B. HHS Withdrew the Conditional Exception Letter.

Plaintiff’s claims challenging the Conditional Exception Letter are moot for an additional reason: the Letter has been withdrawn.

It is a “well-settled principle of law” that “when an agency has rescinded and replaced a challenged regulation, litigation over the legality of the original regulation becomes moot.” *Alaska v. USDA*, 17 F.4th 1224, 1226–31 (D.C. Cir. 2021) (quoting *Akiachak Native Cmty. v. DOI*, 827 F.3d 100, 113 (D.C. Cir. 2016)); *see also Covenant Media of SC, LLC v. City of N. Charleston*, 493 F.3d 421, 429 n.4 (4th Cir. 2007); *Brooks v. Vassar*, 462 F.3d 341, 348 (4th Cir. 2006). In fact, once a regulation is withdrawn, and therefore no longer poses a possible injury to the plaintiff, courts “usually ‘would handle such a matter in an unpublished order.’” *Alaska*, 17 F.4th at 1226 (quoting *Freeport-McMoRan Oil & Gas Co. v. FERC*, 962 F.2d 45, 46 (D.C. Cir. 1992)).

There is a narrow exception to this general rule, but it is typically reserved for private actors who voluntarily cease an activity as a pretext to resume the injurious activity once the litigation ends. By contrast, “[g]overnment actors in their sovereign capacity and in exercise of their official duties are accorded a presumption of good faith because they are public servants, not self-interested private parties.” *Moore v. Brown*, 868 F.3d 398, 407 (5th Cir. 2017) (quoting *Sossamon v. Lone Star State of Tex.*, 560 F.3d 316, 325 (5th Cir. 2009)); *Redeemer Fellowship of Edisto Island v. Town of Edisto Beach, S.C.*, No. 2:18-CV-02365-DCN, 2019 WL 1243108, at *4 (D.S.C. Mar. 18, 2019). In fact, courts have almost uniformly held that challenges to government policies become moot when the government voluntarily ceases those policies. *See Alaska*, 17 F.4th at 1227 (observing “that it had ‘serious doubts’ about whether the ‘voluntary cessation’ rationale applied to cases” involving a withdrawn regulation); *Redeemer Fellowship of Edisto Island*, 2019 WL 1243108, at *4. This is so even when the agency *could* re-promulgate the same regulation—to exercise jurisdiction in such cases would require the court “to speculate about future actions by policymakers,” which is antithetical to federal question jurisdiction. *See Alaska*, 17 F.4th at 1229; *see also Brooks*, 462 F.3d at 348 (“Only if reenactment is not merely possible but appears probable may [the court] find the harm to be ‘capable of repetition, yet evading review’ and hold that the case is not moot.” (quoting *Am. Legion Post 7 of Durham, N.C. v. City of Durham*, 239 F.3d 601, 606 (4th Cir. 2001))).

Plaintiff’s personal interest in the Conditional Exception Letter, to the extent it ever existed, has been extinguished by its withdrawal. On November 18, 2021, the Administration for Children and Families withdrew the letter, stating that “the religious exception South Carolina sought from the 2016 Rule is no longer warranted and, thus, is hereby rescinded.” Withdrawal Letter. Accordingly, there is no relief for the Court to award. It cannot “enjoin all Defendants from

implementing, enforcing, or relying on the exemption from the religious-antidiscrimination requirement of 45 C.F.R. § 75.300(c),” Compl. at 32, because that waiver no longer exists. Thus, Plaintiff’s challenge to the Conditional Exception Letter is moot. *See Brooks*, 462 F.3d 348.

Plaintiff also cannot overcome the presumption that HHS will not reinstate the Conditional Exception Letter. On the contrary, HHS’s withdrawal letter demonstrates that the agency is unlikely to do so. HHS identified various reasons why the Conditional Exception Letter was flawed, explaining that the “exception was overbroad and did not properly apply the substantial burden requirement under the Religious Freedom Restoration Act (RFRA).” Withdrawal Letter, Ex. 1. Specifically, HHS noted that South Carolina “did not provide evidence supporting a blanket exception from section 75.300(c)’s religious non-discrimination requirement for the benefit of all faith-based subrecipients in South Carolina” and that “the government maintains a strong interest in tailoring the relief provided to mitigate the potential harm of limiting the diversity of available foster homes for children in the foster care population, many of whom identify as lesbian, gay, bisexual, transgender, and queer or questioning (LGBTQ+).” *Id.* at 1–2.

II. Even if Plaintiff’s Claims Were Not Moot, the Federal Defendants Would Be Entitled to Summary Judgment on Plaintiff’s Challenge to the Notification of Nonenforcement.

A. The Notification of Nonenforcement Is Not Subject to Judicial Review.

The Court should revisit its prior holding that the Notification of Nonenforcement is reviewable based on changed circumstances.

The APA precludes jurisdiction over actions that are “committed to agency discretion by law,” 5 U.S.C. § 701(a)(2). *Angelex Ltd. v. United States*, 723 F.3d 500, 502 (4th Cir. 2013). “[A]n agency’s decision not to prosecute or enforce, whether through civil or criminal process, is . . . generally committed to an agency’s absolute discretion” and is therefore “presumed immune from judicial review under § 701(a)(2).” *Heckler v. Chaney*, 470 U.S. 821, 831–32 (1985). That is

because an agency’s decision not to enforce is analogous to a prosecutor’s decision not to indict— “a decision which has long been regarded as the special province of the Executive Branch.” *Id.* at 832; *see also United States v. Armstrong*, 517 U.S. 456, 464 (1996) (“[T]he decision whether or not to prosecute . . . generally rests entirely in [the prosecutor’s] discretion.”). An agency’s decision not to enforce a regulation similarly involves “a complicated balancing of a number of factors which are peculiarly within [an agency’s] expertise.” *Chaney*, 470 U.S. at 831. These factors include assessing whether any violation has occurred at all, “whether agency resources are best spent” on any particular enforcement action, and whether such action “best fits the agency’s overall policies[.]” *Id.* “The agency is far better equipped than the courts to deal with the many variables involved in the proper ordering of its priorities.” *Id.* at 831–32.

The Court previously held that the Conditional Exception Letter and Notification of Nonenforcement, taken together, overcame the APA’s presumption of non-reviewability because the “Federal Defendants essentially created a mechanism through which individual states could circumvent constitutional protections for individuals like Plaintiff.” Mot. Dismiss Order 42. But HHS has withdrawn the Conditional Exception Letter, noting the “exception was overbroad and did not properly apply the substantial burden requirement under [RFRA].” Withdrawal Letter 1. All that remains is the Notification of Nonenforcement, and it does not speak to *Plaintiff’s* (or any individual’s) ability to enforce any *constitutional protections* at all. It merely explains HHS’s intent not to enforce certain of the agency’s own regulations while the agency works to repromulgate those rules based on the agency’s concerns regarding compliance with the Regulatory Flexibility Act and the potential economic impact on “small entities.” Unlike the Conditional Exception Letter, which was targeted specifically at South Carolina and Miracle Hill and specifically at section 75.300(c)’s religious nondiscrimination requirement, the Notification

of Nonenforcement is a generally applicable nonenforcement policy based on concerns related to compliance costs, fairness, and administrative burden. *See* 84 Fed. Reg. at 63,811. Those kinds of non-legal considerations are well within the agency’s discretion and, per *Chaney*, are unreviewable. *See Chaney*, 470 U.S. at 824–25 (concluding FDA policy *categorically* concluding agency should not enforce a statute’s misbranding prohibition against the use of certain drugs for capital punishment was not judicially reviewable).

B. The Notification of Nonenforcement Does Not Violate the Establishment Clause.

Even if there were jurisdiction, Plaintiff’s claim that the Notification of Nonenforcement violates the APA because it is contrary to the Establishment Clause, Compl. ¶ 143, fails on the merits.

The Establishment Clause prohibits the government from making any law “respecting an establishment of religion.” U.S. Const. amend. I. The Supreme Court recently stated that it had “long ago abandoned” the Establishment Clause test articulated in *Lemon v. Kurtzman*, 403 U.S. 602 (1971), and had instructed that, instead, courts “must” interpret the Establishment Clause “by ‘reference to historical practices and understandings.’” *Kennedy v. Bremerton School Dist.*, 142 S. Ct. 2407, 2428 (2022) (quoting *Town of Greece v. Galloway*, 572 U.S. 565, 576 (2014)); *see also id.* (holding that the district court erred by applying *Lemon* in place of a test based on historical practices and understandings). The Court instructed that the line “between the permissible and the impermissible has to accor[d] with history and faithfully reflec[t] the understanding of the Founding Fathers.” *Id.* (citation omitted).

The Notification of Nonenforcement does not violate the Establishment Clause. It does not mention religion and was not prompted by considerations relating to religion. Instead, HHS issued the Notification of Nonenforcement because it was concerned that, in promulgating the relevant

rules, it had failed to either perform an adequate analysis required by the Regulatory Flexibility Act or certify that the rules' economic impact on "small entities" would not be "significant." 84 Fed. Reg. at 63,809–11. Thus, the Notification of Nonenforcement was prompted by HHS's concern over its compliance with administrative requirements, not religion. Indeed, HHS's nonenforcement decision does not apply only to the religious non-discrimination prohibition in section 75.300(c), but to an entire group of rules that were promulgated and amended at 81 Fed. Reg. at 89,393. And the purpose of the nonenforcement decision was not to establish any religion, but rather to give the agency time to issue new rules that adequately addressed the Regulatory Flexibility Act and any economic impact on "small entities." 84 Fed. Reg. at 63,809–11. Plaintiffs have not shown—and cannot show—that an agency's exercise of this sort of enforcement discretion while it complies with administrative requirements would violate the Establishment Clause as interpreted in light of its "original meaning and history." *See Kennedy*, 142 S. Ct. at 2428. Accordingly, if the Court reaches this claim notwithstanding the jurisdictional problems discussed above, the Court should enter summary judgment in the Federal Defendants' favor.

CONCLUSION

For the foregoing reasons, the Court should grant the Federal Defendants' motion for summary judgment.

Dated: November 21, 2022

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
Civil Division

ADAIR F. BOROUGHS
United States Attorney
District of South Carolina

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Attorneys for Federal Defendants



Miracle Hill Ministries

16 July · 🌐

...

Foster Care Funding Update

Miracle Hill friends and family,

As many of you know, the Miracle Hill Foster Care program has been recruiting Christian foster parents since 1988 and is successfully meeting a critical need for foster families in the State of South Carolina. Each night we have 150 children in loving Christian foster homes in the Upstate. In recent years, we have felt the call from the Lord to fully rest on Him for our funding.

It is with a humble heart that we have taken a step of faith and are officially choosing dependence on the Lord by declining government funding effective July 1, 2021, for our Foster Care program. We still greatly value our relationship with DSS, which helps us continue to license these selfless servant families in Foster Care.

This decision creates some additional funding needs of around \$550,000 each year that we are trusting God to fill over the next year and each year beyond. In doing this, we remain committed to our position of standing on the Gospel of Christ and fully relying on His provision. We remain committed to helping to fill this critical need of providing Christian foster homes to the children in need across the state.

Now more than ever, Christian foster care programs are a necessity in our state and country. We are joyful and enthusiastic with this decision, understanding the great things the Lord will continue to accomplish.

We earnestly covet your prayers as we embark on this journey. Would you please pray about how you can partner with us at a deeper level to fill this need? A one-time gift would help to eliminate the initial need, and monthly giving through our lamplighter program helps us to fill this need each month.

God bless you for caring for the least and the lost at Miracle Hill. It is because of your faithfulness and the commitment of so many that we are able to be His hands and feet each day.

In Christ,

Ryan T. Duerk
President & CEO



NELSON MULLINS RILEY & SCARBOROUGH LLP
ATTORNEYS AND COUNSELORS AT LAW

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nelsonmullins.com

April 25, 2022

Via electronic mail

Kate Janson
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Worldwide Plaza
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New York, NY 10019-7475
kjanson@cravath.com

RE: *Rogers et al. v. U.S. Dept. of Health and Human Servs. et al.*
Civil Action No. 6:19-cv-01567-JD (D.S.C.)
Our File No. 059326/01501

Dear Kate:

Pursuant to our discussion with Judge Dawson on March 15, 2022, and as discussed with your colleagues in our meet-and-confer call held on March 30, 2022, I write in further reply to your letter of February 23, 2022 and, in particular, your seven bullet-pointed questions relating to the deposition of Susan Roben.

As to your first bullet point, even assuming *arguendo* that your question about why Miracle Hill began receiving administrative fee payments before other nontherapeutic CPAs were within the scope of Ms. Roben's 30(b)(6) designation, *contra* Roben dep. Tr. at 11:10–24 (noting the limited scope of her designation), her testimony in response to that question described how she undertook reasonable but, ultimately, unsuccessful, efforts to find the answer during her preparation for the deposition. *See id.* at 12:8 to 18:11; *id.* at 58:14 to 59:8. Accordingly, there is no basis to reopen Ms. Roben's deposition, as there is nothing further for her to say on the matter.

As to your second bullet point, Ms. Roben could not immediately recall during her deposition the exact date when SCDSS began using federal Title IV-E funds to pay a portion of the CPAs administrative fees. *See id.* at 33:24 to 34:10. Later in her deposition, however, while looking at the document marked as deposition Exhibit 2, she answered the question, explaining that SCDSS began using Title IV-E funds to pay the administrative fee during Fiscal Year 2020 (the year spanning July 1, 2019 to June 30, 2020). *See id.* at 75:19 to 76:17; *see also* Dep. Ex. 2. I subsequently confirmed with Ms. Roben that SCDSS first used Title IV-E funds to make CPA administrative fee payments at the end of that Fiscal Year.

Rogers v. HHS et al.
April 25, 2022
Page 2

As to your third bullet point, the question of which licensed CPAs are not currently under contract with SCDSS falls outside the scope of Ms. Roben's 30(b)(6) designation. *See* Roben dep. Tr. at 11:10–24 (noting the limited scope of her designation). In any event, however, the answer to your question can be found in the evidence already produced to you, which includes the names of all licensed CPAs serving the Upstate Region and the contracts between SCDSS and all the CPAs serving the Upstate Region. A review of that evidence reveals that one CPA, Lifeline Children's Services, is licensed by SCDSS but is not under contract with SCDSS.

As to the fourth and fifth bullet points in your February 23 letter, assuming *arguendo* that the information you seek is relevant, SCDSS confirms that at the time Miracle Hill decided to decline the CPA administrative fee for services provided after June 30, 2021, Miracle Hill was not receiving any other government funding known to SCDSS, and Miracle Hill has not received any funding from SCDSS for any reason for any services provided after June 30, 2021.

As to the sixth bullet point in your letter, your inquiry is not relevant to the claims or defenses of this proceeding as it seeks information related to payments made to therapeutic CPAs for the placement of children in therapeutic foster care. The facts giving rise to this proceeding, in contrast, involve only a nontherapeutic CPA, nontherapeutic foster parents, the placement of nontherapeutic foster children, and payment of the nontherapeutic administrative fee. Indeed, Plaintiffs' Complaint admits as much and expressly states that Plaintiffs are not interested in providing therapeutic foster care. *See* Compl. ¶¶ 43, 45, 82; *see also* Plaintiffs' Opp. to State Defendants' Mot. for Judgment on the Pleadings (ECF No. 180) at 4.

As to the final bullet point in your February 23 letter, the question of why SCDSS pays the foster child maintenance payments directly to the foster families associated with Miracle Hill rather than passing those amounts through the CPA to disburse to the foster families falls outside the scope of Ms. Roben's 30(b)(6) designation, *see* Roben dep. Tr. at 11:10–24, and, more importantly, is irrelevant to the claims and defenses in this suit. The precise payment mechanism used beginning in 2021 cannot be a basis to argue that Defendants' challenged actions in 2018 and 2019 were constitutionally impermissible.

We trust this resolves your questions.

Very truly yours,



Miles E. Coleman

Rogers v. HHS et al.
April 25, 2022
Page 3

CC: (by electronic mail):
Peter Barbur
Serena Candelaria
Bob Cook
Currey Cook
Leslie Cooper
Daniel Mach
Mika Madgavkar
Christie Newman
Christopher Ray
Rebecca Schindel
Nekki Shutt
Benjamin Takemoto
Ken Woodington

	<p>State of South Carolina</p> <p>Change Order# 5</p>	<p>Contract Number: 4400021038</p>
		<p>Date: 5/27/2021</p> <p>Procurement Officer: Elizabeth M. Muenzenberger</p> <p>Phone: 803-898-1844</p> <p>E-Mail Address: Elizabeth.M.Muenzenberger@dss.sc.</p> <p>Address: 1535 Confederate Avenue Columbia, SC 29201</p>

DESCRIPTION: **Statewide Support for Non-Therapeutic Foster Families**
 USING GOVERNMENTAL UNIT: **South Carolina Department of Social Services**
 CONTRACTOR'S NAME AND ADDRESS: **Miracle Hill Ministries**

P.O. Box 2546
 Greenville, South Carolina 29602

TYPE OF CHANGE:

- Change to Contract Scope of Work
- Change to Contract Pricing Pursuant to Existing Contract Clause.

Clause Name:

Clause No.:

- Administrative Change to Contract (such as changes in paying office, name of Agency Contract Administrator, etc.)
- Other Change

IMPORTANT NOTICE:

- Change Order:** Contractor is required to sign this document and return **one (1)** copies to the procurement officer named above by the following date: **7/15/2021** Signed copy may be returned by email.
- Contract Modification:** Contractor is required to acknowledge receipt of this document in writing by the following date: Signed copy may be returned by email.

Contractor does not indicate agreement with change simply by acknowledging receipt.

<p>DESCRIPTION OF CHANGE / MODIFICATION: (Attach additional pages if necessary)</p> <p>This contract will be extended to July 1, 2021 through June 30, 2022. SCDSS will remove the administrative rate effective July 1, 2021 at Miracle Hill's written request not to receive these funds. A change to the Scope of Work has been listed on Page 2.</p>	
+	
<p>Except as provided herein, all terms and conditions of the Contract referenced above remain unchanged and in full force and effect.</p>	
<p>CONTRACTOR'S CERTIFICATE OF CURRENT COST OR PRICING DATA: The Contractor certifies that, to the best of its knowledge and belief, the cost or pricing data (as defined by 48 C.F.R. 2.101) submitted, either actually or by specific identification in writing, by the Contractor to the Procurement Officer in support of this change order are accurate, complete, and current as of the date this change order is signed. [Procurement Officer must initial here _____ if Certificate inapplicable to this Change Order]</p> <p style="text-align: center;">(See "Pricing Data - Audit - Inspection" provision.) (Reference § 11-35-1830 & R. 19-445.2120)</p>	
<p>SIGNATURE OF PERSON AUTHORIZED TO EXECUTE THIS CHANGE ORDER & CERTIFICATE ON BEHALF OF CONTRACTOR:</p> <p>By: <u>Ryan Duerk</u> <small>Digitally signed by Ryan Duerk Date: 2021.07.19 15:36:23 -04'00'</small> (authorized signature)</p> <p><u>Ryan T. Duerk</u> (printed name of person signing above)</p> <p>Its: <u>CEO</u> (title of person signing above)</p> <p>Date: <u>7.19.21</u></p>	<p>SIGNATURE OF PERSON AUTHORIZED TO EXECUTE / ISSUE THIS CHANGE ORDER / CONTRACT MODIFICATION ON BEHALF OF USING GOVERNMENTAL UNIT:</p> <p>By: <u>Susan Roben</u> <small>Digitally signed by Susan Roben Date: 2021.07.20 10:50:00 -04'00'</small> (authorized signature)</p> <p><u>Susan Roben</u> (printed name of person signing above)</p> <p>Its: <u>Chief Financial Officer</u> (title of person signing above)</p> <p>Date: <u>7/20/2021</u></p>

CHANGE ORDER (MAR 2015)

**Exhibit
0005**

The Provider must provide SCDSS a yearly Foster Home Recruitment and Retention Plan by August 15, 2021. Foster Home Recruitment and Retention efforts must be submitted to SCDSS on a quarterly basis to the Statewide Foster Parent Liaison. Reports must be submitted via email to FPhelp@dss.sc.gov.

Monthly Rate Effective 7/1/2021 - 6/30/2022

Age	Rate per Month
0-5 Years	\$605.00
6-12 Years	\$708.00
13+ Years	\$747.00

END OF CHANGE ORDER FIVE

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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

EDEN ROGERS

and

BRANDY WELCH,

Plaintiffs,

vs.

CASE NO. 6:19-CV-01567-JD

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; ALEX AZAR, in his official capacity as Secretary of the UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; ADMINISTRATION FOR CHILDREN AND FAMILIES; LYNN JOHNSON, in her official capacity as Assistant Secretary of the ADMINISTRATION FOR CHILDREN AND FAMILIES; STEVEN WAGNER, in his official capacity as Principal Deputy Assistant Secretary of the ADMINISTRATION FOR CHILDREN AND FAMILIES; HENRY MCMASTER, in his official capacity as Governor of the STATE OF SOUTH CAROLINA; and MICHAEL LEACH, in his official capacity as State Director of the SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES,

Defendants.

30 (b) (6)

VIDEOTAPED VTC

DEPOSITION OF: SOUTH CAROLINA DEPARTMENT OF SOCIAL SERVICES

BY: SUSAN ROBEN
(Appearing by VTC)

DATE: FEBRUARY 17, 2022

TIME: 9:00 a.m.

LOCATION: 1320 Main Street
Columbia, SC

TAKEN BY: Counsel for the Plaintiffs

REPORTED BY: Susan M. Valsecchi, RPR, CRR
Certified Realtime Reporter
(Appearing by VTC)

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APPEARANCES OF COUNSEL VIA VTC:

ATTORNEYS FOR THE PLAINTIFFS

EDEN ROGERS and BRANDY WELCH:

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- and -

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- and -

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capacity as Governor of the STATE OF
SOUTH CAROLINA and MICHAEL LEACH, in
his official capacity as State Director
of the SOUTH CAROLINA DEPARTMENT OF
SOCIAL SERVICES:

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ATTORNEYS FOR THE DEFENDANTS

UNITED STATES DEPARTMENT OF HEALTH AND
HUMAN SERVICES; ALEX AZAR, in his
official capacity as Secretary of the
UNITED STATES DEPARTMENT OF HEALTH AND
HUMAN SERVICES; ADMINISTRATION FOR
CHILDREN AND FAMILIES:

UNITED STATES ATTORNEY'S OFFICE
SOUTH CAROLINA

BY: CHRISTIE NEWMAN

(Appearing by VTC)

1441 Main Street, Suite 500
Columbia, SC 29201
(803) 929-3030
christie.newman@usdoj.gov

ALSO PRESENT VIA VTC:

Ashley Bowler, Videographer

(INDEX AT REAR OF TRANSCRIPT)

1 THE VIDEOGRAPHER: Good morning, we are
2 going on the record at 9:04 a.m. on February 17th,
3 2022. This is media unit 1 of the video recorded
4 deposition of Susan Roben taken by counsel for the
5 Plaintiffs in the matter of Eden Rogers, et al.,
6 versus United States Department of Health and Human
7 Services, et al., filed in the United States
8 District Court, Case Number 6:19-CV-01567-JD.

9 This deposition is being held via Zoom.
10 My name is Ashley Bowler from the firm Veritext.
11 The court reporter is Susan Valsecchi from the firm
12 Veritext.

13 Counsel, will you please state your
14 affiliations for the record.

15 MS. JANSON: Kate Janson from Cravath,
16 Swain & Moore on behalf of the Plaintiffs.

17 MS. CANDELARIA: Serena Candelaria from
18 Cravath, Swain & Moore on behalf of the Plaintiffs.

19 MR. COOK: Currey Cook from Lamda Legal
20 on behalf of the Plaintiffs.

21 MS. COOPER: Leslie Cooper from the
22 ACLU on behalf of the Plaintiffs.

23 THE VIDEOGRAPHER: Will the court
24 reporter please --

25 MR. COLEMAN: Miles --

1 THE VIDEOGRAPHER: I'm sorry.

2 MR. COLEMAN: -- Coleman --

3 MS. NEWMAN: And I'm -- I'm sorry, I'm
4 Christie Newman and I'm here on behalf of the
5 federal defendants.

6 MR. COLEMAN: And Miles Coleman of the
7 law firm Nelson, Mullins, Riley & Scarborough, LLP,
8 on behalf of Defendants Henry McMaster and Michael
9 Leach in their respective official capacities as
10 the Governor of South Carolina and the Director of
11 the South Carolina Department of Social Services.

12 THE VIDEOGRAPHER: Will the court
13 reporter please swear in the witness, and we may
14 proceed.

15 THE COURT REPORTER: Yes, I'd like to
16 put a stipulation on the record.

17 The attorneys participating in this
18 deposition acknowledge that I am not physically
19 present in the deposition room and that I will be
20 reporting this deposition remotely.

21 They further acknowledge that in lieu
22 of an oath administered in person, I will
23 administer the oath remotely.

24 The parties further agree that if the
25 witness is testifying from a state where I am not a

1 Notary that the witness may be sworn in by an
2 out-of-state Notary.

3 If any party has an objection to this
4 manner of reporting, please state it now.

5 [NO RESPONSE]

6 THE COURT REPORTER: Hearing none, I
7 will proceed.

8 SUSAN ROBEN
9 being first duly sworn, testified as follows:

10 EXAMINATION

11 BY MS. JANSON:

12 Q. Good morning, Ms. Roben, my name is
13 Kate Janson. Excuse me. I'm one of the attorneys
14 representing the Plaintiffs in this lawsuit. And
15 I'm going to ask you some questions this morning.

16 Before we get started, would you please
17 state your full name and your current address for
18 the record.

19 A. Sure. My name is Susan Lynn Roben, and
20 my address is 257 Wood Moor Place, Columbia, South
21 Carolina.

22 Q. Thank you.

23 Have you ever had your deposition taken
24 before?

25 A. No, I have not.

1 Q. Okay. First time for everything,
2 right?

3 A. Right.

4 Q. So let me just run through a few ground
5 rules, just, you know, so we make sure we're on the
6 same page.

7 Please make sure that you answer my
8 questions audibly and verbally. Nodding your head,
9 for instance, can't be picked up by the court
10 reporter.

11 Also, for the court reporter's benefit,
12 please wait until I finish my question before you
13 begin your answer. I will do the same. I will
14 wait until you've finished your answer before I ask
15 my next question. Your attorney might object to my
16 questions. You should still go ahead and answer
17 unless he specifically instructs you not to.

18 If at any point you don't understand
19 what I'm asking, please ask me for clarification;
20 I'm happy to do that. But make sure you direct
21 those questions to me and not to your attorney.

22 If at any point during the deposition
23 you need to take a break, just let me know, I'm
24 happy to do that. I would just ask that if there's
25 a question pending, you answer the question before

1 we take a break. And I will keep my eye on the
2 clock as well and we'll take, you know, periodic
3 breaks to make sure that neither of us get too
4 tired.

5 And, as you know, we're taking the
6 deposition over a remote deposition platform. And
7 so just a reminder, that even though we're not
8 sitting in a conference room together, while we're
9 on the record, you can't communicate with anybody
10 via any means apart from this video conference,
11 so --

12 And if at any reason -- sorry -- if for
13 any reason you have an issue with your connection
14 during the deposition, just flag that for us, we'll
15 stop, we'll get everything sorted out. Veritext
16 can help us with tech support if we need it.

17 Are you properly set up there with
18 Exhibit Share to see documents that I might want to
19 talk to you about?

20 A. Yes, we are.

21 Q. Okay, great. And if that becomes a
22 problem, I can also share my screen -- we have done
23 it that way before -- but hopefully it will be
24 smooth sailing.

25 And do you understand that your

1 testimony today is under oath and that you're being
2 videotaped?

3 A. Yes, I do.

4 Q. Is there any reason that you can't
5 provide truthful and accurate testimony today?

6 A. No.

7 Q. Are you on any medication that would
8 interfere with your ability to testify truthfully?

9 A. No, I'm not.

10 Q. And you don't have any other condition
11 that would interfere with your ability to testify
12 truthfully?

13 A. No.

14 Q. Okay, great.

15 Do you understand that you are here
16 today answering questions on behalf of the South
17 Carolina Department of Social Services?

18 A. Yes.

19 Q. And if I refer to that entity as DSS,
20 you'll understand that I'm talking about the South
21 Carolina Department of Social Services?

22 A. Yes.

23 Q. Okay. Do you understand that if you
24 cannot answer one of my questions on behalf of DSS,
25 you should tell me that you don't know the answer?

1 A. Yes.

2 MS. JANSON: Serena, why don't we go
3 ahead and mark as Exhibit 1, Tab 1, the 30(b)(6)
4 notice.

5 (EXHIBIT 1, Deposition subpoena, was
6 marked for identification.)

7 MS. JANSON: It usually just takes a
8 minute for that -- for the documents to pop up on
9 Exhibit Share, so let me know when you -- when you
10 can see that.

11 MR. COLEMAN: Hang on, I'm going
12 to -- this is Miles. I'm going to try refreshing
13 again. It still hasn't shown up.

14 MS. JANSON: Okay, sometimes it takes a
15 couple minutes.

16 It's still not pulling up?

17 MR. COLEMAN: It just popped up. We've
18 got it now.

19 MS. JANSON: Oh, great, okay.

20 BY MS. JANSON:

21 Q. Okay. So we're going to mark this as
22 Exhibit 1. This is the Rule 30(b)(6) Subpoena that
23 Plaintiffs served on the South Carolina Department
24 of Social Services in this action.

25 And if you just -- I guess I will ask

1 you first: Have you seen this document before?

2 A. Yes, I have.

3 Q. Okay. And do you recognize this as the
4 30(b)(6) Subpoena that Plaintiffs served on -- that
5 Plaintiffs served on DSS in this action?

6 A. Yes.

7 Q. Great. So let's just scroll down -- I
8 think it's to -- it's going to be Page 4 of the
9 PDF. We have a list of topics there under the
10 heading Exhibit A. And my understanding is that
11 you're designated today to testify on the second
12 part of topic 2, which reads, The amount of state
13 and federal funding provided to each CPA for foster
14 care services for each of the past five years, and
15 also Topic 19D, which has to do with a particular
16 document that was produced by DSS in this
17 litigation, The compilation of and analysis of data
18 provided in response to Interrogatory Number 20
19 concerning the payments made to CPAs in South
20 Carolina from state or federal sources.

21 Does that comport with your
22 understanding of the topics that you're designated
23 to testify on today?

24 A. Yes, it does.

25 Q. And are you prepared to testify on

1 behalf of DSS as to these topics?

2 A. Yes, I am.

3 Q. Is it your understanding that you are
4 the most knowledgeable DSS employee regarding these
5 topics?

6 A. Yes.

7 Q. Great.

8 So what did you do to prepare for your
9 deposition today?

10 A. So I met with our legal counsel, um, a
11 few times back, I think twice, back when the
12 original deposition was scheduled, I believe, back
13 in -- it was originally scheduled back in December.
14 I don't remember the dates, but I believe we met
15 twice back in December.

16 And then when it was rescheduled, we
17 met again a few weeks ago, maybe two or three weeks
18 ago, you know, for a couple of hours, and then we
19 met twice this week -- two or three times, I think,
20 this week -- you know, for shorter periods of time
21 to prepare for today.

22 I also met with my boss, Don Grant, who
23 is our agency's -- he's the deputy state director
24 of administration. He used to be in the role I'm
25 in now, the chief financial officer role, so, you

1 know, he has knowledge, as well, of this issue, the
2 payments made.

3 I also met with another employee, who
4 has knowledge of these -- this issue as well,
5 reviewed, you know, the document that was sent,
6 gosh, what, over a year ago, that original
7 document, I believe, that was sent, I think the
8 initial document that I believe that we're going to
9 review, and then obviously reviewed the document
10 that was sent, I believe, yesterday or the day
11 before -- I can't remember which -- was sent out to
12 you all. And then, of course, you know,
13 re-reviewed the Subpoena and looked at this
14 document I'm looking at now just to refresh my
15 memory of what I was going to be speaking on.

16 Q. Okay. Let me just break a little bit
17 of that down. When you said you met with counsel,
18 who was that specifically?

19 A. Miles Coleman.

20 Q. Okay. Was anyone else present at those
21 meetings, or was it just you and Mr. Coleman?

22 A. It was me and Mr. Coleman and then Don
23 Grant was present at just one of those meetings.

24 Q. And you said you -- you also met
25 separately with Mr. Grant; is that right?

1 A. Uh, yes.

2 Q. And when was that meeting?

3 A. I can't recall. It was sometime within
4 the last few weeks.

5 Q. Okay.

6 A. I don't remember the specific date.

7 Q. Sure, that's fine.

8 And was that just one meeting between
9 the two of you, or was -- was there more than one?

10 A. It was just one meeting, yeah.

11 Q. Okay. And what did you talk to
12 Mr. Grant about during that meeting?

13 A. Um, I just reviewed the documents with
14 him just to make sure that I -- you know, we both
15 had a clear understanding of the documents.

16 Q. Okay. And when you say the documents,
17 are you referring to the -- to the two sort of
18 data -- like charts --

19 A. Yes.

20 Q. -- essentially that -- yeah, okay.

21 A. Yes, uh-huh.

22 Q. Okay, yeah, I thought that's
23 what -- we'll obviously look at those and get into
24 those in more detail.

25 And then you said there was

1 another -- I think you said there was another
2 employee you spoke to as well. Who was that?

3 A. Her name is Laura Claspill.

4 Q. Okay. And what is Laura's role there
5 at DSS?

6 A. She -- her title is director of program
7 development.

8 Q. And what did you speak to her about?

9 A. So she has knowledge of the more
10 detailed payments to our CPAs. She actually -- she
11 tracks the administrative payments to the CPAs, and
12 so I just wanted to talk to her and just get a
13 better understanding, make sure I was clear on --
14 on the administrative fees and kind of the timeline
15 of what happened and when, um, for the -- for the
16 administrative fees, and, you know, when, and also
17 on the -- on the maintenance payments, which I'm
18 sure we'll get into as well, because we -- there
19 were some -- there were some timing issues of when
20 we used to pay the CPAs directly, and then
21 we -- I'm sorry, the CPA -- the foster homes under
22 the CPA providers directly. And then there was a
23 time when we switched over and now we pay the CPAs
24 directly for the foster homes, and then the CPAs
25 are responsible for then paying the foster homes.

1 So I just wanted to make sure that those timelines
2 were correct.

3 Q. Okay. And when you say the maintenance
4 payment, I have heard other people refer to it as
5 a -- as a foster care -- foster family -- or a
6 board payment. Is that --

7 A. Uh-huh.

8 Q. Are you referring to the same thing?

9 A. Yes, they're the same things. Some
10 people call it a maintenance payment, some people
11 call it a board payment, but they are the same
12 thing.

13 Q. Okay, all right, I just wanted to make
14 sure we are speaking the same language.

15 A. Yep.

16 Q. And so when you -- was that just one
17 meeting that you had with Laura to discuss those
18 topics?

19 A. I believe I had two meetings. And they
20 were really just conversations, yeah, but I believe
21 I talked to her twice.

22 Q. And anyone else there at DSS that you
23 spoke to that we haven't already talked about?

24 A. No.

25 Q. Anybody outside of current employees of

1 DSS that you talked to in preparation for the
2 deposition?

3 A. No.

4 Q. And were there any other documents
5 apart from what you already described that you
6 reviewed in advance of the deposition?

7 A. No.

8 Q. Did you look at any electronic
9 databases, or those types of sources in advance of
10 the deposition?

11 A. As far as electronic databases, I'm not
12 sure what you're referring to. I mean, our
13 accounting system, I would call that an electronic
14 database. And obviously that's where the data is
15 pulled from, so...

16 But besides that, there's no other
17 electronic database that I would have looked at.

18 Q. Okay, yeah, that's a -- yeah, not a
19 trick question, just -- just checking my boxes.

20 A. Okay.

21 Q. And apart --

22 MR. COLEMAN: Kate --

23 (Technical difficulties.)

24 MR. COLEMAN: Kate --

25 (Off-the-record discussion regarding

1 technical difficulties.)

2 MS. JANSON: All right. Well,
3 hopefully -- hopefully that was just a minor
4 glitch. I have never had issues before, but we
5 will -- we'll figure it out.

6 BY MS. JANSON:

7 Q. I think my last question that you
8 missed was just, apart from what we have already
9 discussed, did you take any other steps to prepare
10 for today's deposition?

11 A. Um, no, that would have been it.

12 Q. Okay, great.

13 What is the highest level of education
14 that you have obtained, Ms. Roben?

15 A. I have a bachelor's degree in
16 accounting.

17 Q. Okay. And from what school did you
18 obtain that degree?

19 A. It's called Loras College and it's in
20 Dubuque, Iowa.

21 Q. And what year was that?

22 A. That was in December of 1998.

23 Q. Okay. And how long have you been
24 employed by DSS?

25 A. I've been with DSS for about

1 four -- four years and about three-quarters.

2 Q. Okay. And what is your current
3 position there?

4 A. Currently I am the chief financial
5 officer.

6 Q. And just, you know, in broad strokes,
7 can you describe for us what your responsibilities
8 are in that position?

9 A. Sure. So, in this role, I, you know,
10 lead the -- just the general accounting, so general
11 accounts payable, accounts receivable, grants
12 accounting, budgeting, financial forecasting,
13 procurement, contract monitoring, our Title IV-E
14 revenue maximization, our -- we've got Social
15 Security benefits that we, you know, make sure that
16 the kids coming in foster care, if they're eligible
17 for that, we'll make sure that they're able to get
18 those benefits, so we make sure that that is
19 occurring. Our internal operations, so building
20 management, maintenance, building leases, mail
21 room, vehicles, state fleet. That's kind of a
22 general overview. There's certainly a lot more
23 that goes into it, but that's kind of a general
24 overview.

25 Q. So just a few things. You're not busy.

1 A. Just a few, not at all, no.

2 Q. Okay, thank you.

3 And did you hold any other positions at
4 DSS after you joined the agency before you became
5 the CFO?

6 A. I did. So when I joined the agency, I
7 joined the agency as the controller and so I was in
8 that role for about three -- well, let me
9 think -- about three years, roughly -- and then I
10 moved into the chief financial officer role in July
11 of 2020, so I've -- I've been in the CFO role for
12 about a year -- well, in July it will be two years.

13 Q. Okay. And just again, generally, what
14 were your responsibilities in the controller
15 position?

16 A. So in that position, you know, a lot of
17 them were -- were -- it was similar, I just didn't
18 have as broad of a -- of a role as I do now. It
19 was -- it was limited -- more limited in scope, I
20 think, to more of the accounts payable, accounts
21 receivable, general accounting in that role, um, so
22 a little bit less. I worked very closely with our
23 CFO at that time, though, so it was -- it was a
24 fairly easy transition into this role.

25 Q. And prior to that, have you served in

1 any other positions in the South Carolina State
2 government?

3 A. Yes, before that I worked at Department
4 of Employment and Workforce as the controller there
5 and I was there for about four years in that role.

6 Q. Okay, great. Am I right that South
7 Carolina is divided up into regions for purposes of
8 DSS's work; is that right?

9 A. They are, uh-huh. We have four
10 regions.

11 Q. And the Greenville area is part of the
12 region that's now referred to as the Upstate
13 region, right?

14 A. That's correct.

15 Q. And at some point in the past that used
16 to be called Region 1?

17 A. I'm not certain of that. I -- I
18 believe so, but I would have to go back and double
19 check.

20 Q. Okay, fair enough. I'll -- I will try
21 and be careful with my -- with my terminology.

22 So just at a -- I want to walk through
23 the different funding that -- well, let me back up
24 for a second.

25 South Carolina DSS licenses what we --

1 what we refer to as child placing agencies, right?

2 A. Correct.

3 Q. And those are agencies that perform
4 foster care services, such as recruiting,
5 supporting, screening foster families to become
6 licensed by DSS to serve as foster families; is
7 that a fair statement?

8 A. Um, I believe so, but that's really
9 more in Jackie Lowe and Dawn Barton's wheelhouse,
10 and I believe that that's something that they
11 probably testified to in their deposition.

12 Q. That's fair, yeah. I know, I'm just
13 trying to make sure that we're on the same page.

14 If I refer to a CPA, you'll understand
15 that I'm talking about a child placing agency?

16 A. Yes, yes.

17 Q. Okay. And I understand that CPAs
18 receive what is referred to as an administrative
19 rate from DSS.

20 Can you explain to me what that is?

21 A. So, yeah, the CPAs receive -- now, as
22 far as -- I can tell you about the funding and the
23 dollar amount of the administrative rate; is that
24 what you're asking about?

25 Q. Yep, uh-huh.

1 A. Okay. So we do pay an administrative
2 rate to the CPAs, and that is based on -- you know,
3 that is a per-day and per-child rate.

4 So if a CPA has a child that is -- that
5 is placed in a home, for each day that that child
6 is placed in one of the CPA homes, they get -- they
7 get an administrative rate.

8 And so based on the age of the child,
9 that rate is either \$20 a day, \$25 a day or \$30 a
10 day. And those rates just began on January 1st of
11 2021.

12 Q. Okay. So the administrative rate is
13 paid to the CPA, and it's a --

14 A. Correct.

15 Q. -- per-child per diem rate --

16 A. Correct.

17 Q. -- and that begins to be paid at the
18 time when the child -- a child is placed with a
19 family that is supported by that CPA.

20 A. Correct.

21 Q. Is that an accurate summary?

22 A. That's correct.

23 Q. Great. And you told -- you told us the
24 different -- the different rates and that they vary
25 by age. So for the \$20-per-day rate, what ages of

1 children does that apply to?

2 A. So that's if the child is ages zero to
3 5.

4 Q. Okay. And then for \$25 a day, what age
5 range is that?

6 A. That's ages 6 to 12.

7 Q. Okay.

8 A. And then the \$30 is 13 to 20.

9 Q. And after a child is over 20, I assume
10 they've aged out of the -- of the system by that
11 point?

12 A. That's the assumption, yes.

13 Q. Okay. And what is the -- what is the
14 administrative rate intended to reimburse the CPA
15 for?

16 A. So I -- I really can't speak to that.
17 Again, I think Jackie and/or Dawn would need to
18 answer that and may have already answered that in
19 their testimony.

20 Q. You don't have an understanding in your
21 personal capacity as to what the administrative
22 rate is meant to reimburse --

23 (Technical difficulties.)

24 BY MS. JANSON:

25 Q. -- the CPA for?

1 A. Um, Kate, you broke up. You broke up
2 again.

3 Q. Can you hear me now?

4 A. Yeah, now I can hear you again.

5 Q. I'm sorry about this. I've never --
6 I've never had this issue before.

7 So my question was simply, You don't
8 have any understanding, then, of what the
9 administrative rate is intended to reimburse the
10 CPAs for?

11 A. So I -- I have a -- I would have
12 a -- it would be a speculation on my part, um, it
13 would be in the -- that would be outlined in the
14 contract. I don't have -- I don't have the
15 contracts memorized, so I would -- you know, that
16 -- that would be outlined in the contract, so that
17 was not something that I was expected to talk about
18 today. My understanding is that I'm here to talk
19 about the federal and state funding that we're
20 giving to the CPAs. So that is not something that
21 I was prepared or that I had expected that I would
22 need to talk about today.

23 Q. Okay, fair enough.

24 So can you tell me what happens with
25 regard to the payment of that admin rate if a child

1 moves from placement with a home supported by,
2 we'll call it, CPA A, to placement in a home
3 supported by CPA B?

4 A. So when you say what happens to the
5 payment, the payment that has already been made
6 or --

7 Q. Going forward, going forward, the
8 payment going forward, yeah. I can rephrase. I'm
9 just trying to understand, does the administrative
10 rate, if a child moves -- changes placements --

11 A. Okay.

12 Q. -- to a home being supported by a
13 different CPA than its initial placement, his or
14 her initial placement, that admin rate would --
15 would follow the child and would start being paid
16 to the new CPA -- the CPA that was supporting the
17 new home that the child was placed in; is that
18 right?

19 A. Yes, that's correct --

20 Q. Okay.

21 A. -- yes.

22 Q. And if a child leaves foster care for
23 whatever reason, then there would no longer be an
24 administrative rate being paid for that child to
25 any CPA, right?

1 A. That's correct. If the -- if the child
2 leaves foster care and they are not in a foster
3 home at all, there is no admin fee that is paid,
4 correct.

5 Q. And if a CPA closes, whether by choice
6 or its license was terminated -- doesn't matter the
7 reason -- am I right that the admin fee, the per
8 diem admin fee that we're talking about for the
9 children that were placed with families supported
10 by that CPA, that admin rate would then be paid to
11 whatever CPA those families went -- went on to work
12 with, is that -- is that right?

13 A. I'm sorry, can you say that again?

14 Q. Sure. So if a CPA closes --

15 A. Uh-huh.

16 Q. -- and we assume that the families that
17 were supported by that CPA move on to work with a
18 different CPA, then the admin rate associated with
19 the children that had been placed with those
20 families, that admin rate would be paid to the new
21 CPAs supporting -- supporting those families; is
22 that right?

23 A. Yes, that's correct.

24 Q. Okay. And what happens if there's a
25 licensed CPA that has no children placed with

1 families, that that's --

2 (Technical difficulties.)

3 (Off-the-record discussion.)

4 THE VIDEOGRAPHER: We're going off
5 record. The time is 9:36 a.m.

6 (A brief recess was held.)

7 THE VIDEOGRAPHER: We are back on
8 record. The time is 9:38 a.m.

9 BY MS. JANSON:

10 Q. So before we went off the record, I
11 think I was asking what happens with regard to the
12 admin rate if there's a licensed CPA that has no
13 children that are placed with families that that
14 CPA supports?

15 A. Well, if that's the case, then that CPA
16 would receive no admin fees.

17 Q. Okay. Are the funds that are used to
18 pay the admin fees, are those state funds or
19 federal funds, or a mix of the two?

20 A. So at this time, they are a mix of the
21 two.

22 Q. You said "at this time."

23 Does that mean that it worked
24 differently at some point in the past?

25 A. In the past we were using all state

1 general funds, yes, and then we -- you know, we
2 discovered that we were able to actually draw down
3 federal funds for admin fees based on the IV-E
4 eligibility of the child, and so we -- you know, we
5 obviously have begun doing that -- had begun doing
6 that.

7 Q. And when you said "based on the IV-E
8 eligibility of the child," can you explain to me
9 what that means?

10 A. Sure. So when a child comes into
11 foster care, they -- every child is -- goes through
12 an eligibility, a IV-E eligibility determination,
13 to, kind of as it sounds, make a determination on
14 whether they are eligible for IV-E funding or not.

15 And if they are eligible for Title IV-E
16 funds, then -- and if they are -- you know, if they
17 are placed with a CPA provider, a family through a
18 CPA provider, and that that provider is paid an
19 admin fee, then that admin fee is also,
20 quote/unquote eligible for title IV-E funds, um,
21 at -- you know, at the admin rate.

22 Q. And what -- what are some of the
23 considerations that determine whether a child is
24 eligible for the title IV-E funds?

25 A. So there are several and I don't have

1 my -- it's an exhaustive list. I don't have that
2 list in front of me. And unfortunately I don't
3 have that list memorized, either. But one of the
4 big ones is income. Some of the other ones, there
5 has to be certain court language, language in the
6 court document.

7 There has to be what's called
8 deprivation, there has to be -- I forget the other
9 ones. But the biggest ones, honestly, is income.
10 The state -- and this is actually nationally. It's
11 not just South Carolina. The Title IV-E rules --
12 this is -- and these are federal guidelines. We
13 are working with 1996 AFDC standards, rules and
14 regulations. And so, as you can imagine, the
15 income guidelines from 1996 to 2002, vary greatly.
16 The income -- there's been a lot of inflation since
17 1996. And so when we're looking at, for example, a
18 family of four, um, and I shouldn't even -- I'm not
19 going to give an exact dollar amount, because I
20 don't know the exact number. It's somewhere around
21 \$600 a month. And so if you have a family of 4
22 coming in, that child, coming into care, if they
23 came from a family of four, that family has to make
24 less than 600 dollars a month. And that includes
25 if they're receiving Social Security benefits, some

1 sort of -- you know, other disability benefits,
2 child support benefits. You know, it -- we have to
3 include all sorts of -- all of their sort of income
4 that they're getting.

5 It's very difficult, in a lot of -- in
6 most cases -- to make a child eligible just simply
7 on the income rule alone. And so, you know, our
8 IV-E eligibility rate is somewhere around 45
9 percent, which is actually fairly good, um, and is
10 comparable to a lot of other states in the nation,
11 simply because of those -- those very low income
12 thresholds.

13 Q. Okay. Yeah, \$600, that -- that's
14 tough.

15 So a couple -- a couple follow-ups to
16 that.

17 So you said your IV-E eligibility rate
18 is about 45 percent. So does that mean that for
19 about 45 percent of the children who are placed in
20 foster care, the admin rate that's paid to the CPAs
21 that support their foster families is drawn from
22 federal funds, and for the remaining approximately
23 55 percent of children, the admin rate that's
24 associated with those children that's paid to the
25 CPA comes out of the state general funds? Am I

1 getting that right?

2 A. So that's correct overall; but you're
3 not going to -- but as far as dollars, the way that
4 the admin fee works -- so when we talk about --
5 it's hard to talk about the administrative fee,
6 because then you have -- in IV-E world, you have --
7 you have IV-E dollars -- and we're getting, I
8 think, on a tangent here, but you have IV-E dollars
9 that are paid at the maintenance, like the FMAP
10 rate, you have 40 dollars paid at a training rate,
11 and you have 40 dollars paid at an admin fee rate,
12 at an admin rate. So the admin fee is paid at an
13 admin rate, so you have admin and admin, which gets
14 a little bit confusing.

15 So the admin rate -- the admin fee --
16 is paid -- you basically pay it at a 50 percent
17 rate. So if I'm paying -- let's just take the \$20
18 admin fee, okay?

19 If that child is IV-E eligible, I can't
20 claim that whole -- just because that child is
21 eligible, I can't claim the entire \$20. I can't
22 draw that entire \$20 down from federal IV-E. I can
23 draw 50 percent of that \$20 -- so I can only draw
24 down \$10 of that -- because it's considered an
25 administrative type of IV-E payment.

1 Does that make sense?

2 Q. It does, yeah, it does.

3 A. Okay.

4 Q. Even -- even for children where -- that
5 are IV-E eligible -- the admin rate that's paid to
6 the CPA that supports their foster family is still
7 going to be a mix --

8 A. Yes.

9 Q. -- of the federal IV-E funds and the
10 state general funds --

11 A. That's correct.

12 Q. -- at a simple -- at a simple
13 description.

14 A. Yeah.

15 Q. Okay.

16 A. Yes.

17 Q. That makes sense.

18 And then you had said that at some
19 point you discovered that you could sort of tap
20 into the federal IV-E funds to pay some portion of
21 the admin rate for the IV-E-eligible -- eligible
22 children. Prior -- when -- when was that -- and
23 that, prior to that, those rates had been paid out
24 of the state general funds. When did that shift
25 happen in time, approximately?

1 A. So, I believe that that happened -- um,
2 I know that was happening -- I believe that was
3 happening, um -- well, I know that was happening
4 when we -- when we increased the rate to the \$20,
5 \$25 and \$30 a day.

6 I can't recall, um, off the top of my
7 head, um, exactly the date that it -- that the
8 shift happened. I would -- I would have to go back
9 and look at our records to know exactly when that
10 shift happened.

11 Q. Okay. And we talked about this very
12 briefly at the very beginning of the deposition;
13 but do foster families receive some level of
14 reimbursement from DSS for the cost of having a
15 foster child?

16 A. Are you -- are you talking about the
17 maintenance payment?

18 Q. I am, yes, the maintenance payment, or,
19 we said earlier, sometimes it's referred to as a
20 board payment?

21 A. Yes, they do.

22 Q. Okay. Is that rate also a per-child,
23 per-day rate?

24 A. It is.

25 Q. And is that -- is it a rate that's

1 determined by the age of the child, or is it
2 standard across all ages of children?

3 A. It's determined.

4 Now, yeah, it's determined by the -- by
5 the age of the child.

6 Q. Okay. Do you know what the -- what the
7 rates are for the -- for the different age
8 brackets?

9 A. So if you're talking about -- now, we
10 have a lot of different rates. So if you're
11 talking about just regular foster care, because we
12 have many different -- we have therapeutic kids,
13 we've got special needs kids, we've got medically
14 fragile kids, and then we've got group home
15 payments, which are, you know, much higher
16 payments.

17 If you're talking about regular foster
18 homes with no special needs, no -- you know,
19 nothing else -- I have the -- I have those amounts,
20 but I'd have to -- we have a whole list of other
21 payments that I don't have memorized, so I'd have
22 to, you know, go back and get those. I do have the
23 regular foster rates, though.

24 Q. Yeah, no, thank you for that. Thank
25 you for that clarification. Yeah, what I'm

1 interested in is for just standard nontherapeutic
2 foster care, what -- what those board payment rates
3 are?

4 A. Sure, so those are -- so it's \$20.03
5 per day for ages zero to 5. And then it's \$23.41
6 per day for ages 6 to 12. And then it's \$24.72 per
7 day for ages 13 to 20. And these rates are also
8 specified in provisos, so that's out on our -- it's
9 out on the -- it's in the appropriations act and
10 it's -- you know, you can get that on the website,
11 on the appropriations act website, it's set
12 in -- set in the proviso each year. So that is
13 published.

14 Q. Okay. And is that -- is that money,
15 those -- the foster care board payment -- is that
16 paid directly to the foster family from DSS, or
17 does it work some other way?

18 A. Um, so the -- those payments are paid
19 to the CPA provider and then the CPA provider is
20 required to make the payments to the -- to the
21 family.

22 So we make the payment directly to the
23 CPA and then they turn around and pay -- and they
24 are required, by contract, to pay those amounts to
25 the -- to the foster family.

1 Q. Okay. So the CPA sort of serves as
2 sort of a pass-through, if you will --

3 A. Correct.

4 Q. -- for that board payment from DSS,
5 goes to the CPA, the CPA is contractually obligated
6 to pay it on to the family?

7 A. Yes.

8 Q. Do you know if it's always worked that
9 way, or if that -- or if that was a change at some
10 point?

11 A. It was a -- it has been a change. It
12 has not always worked that way, so I believe that
13 changed January 1st of '21. And before that, we
14 were -- DSS was paying the regular foster homes,
15 the nontherapeutic foster homes, we were paying
16 them directly.

17 But January 1st '21 is when that change
18 happened, and we began paying the CPA provider
19 directly and then the provider -- the CPA passed on
20 the payments to the homes.

21 Q. Okay, great. So apart from the
22 administrative rate that we've been talking about,
23 are there -- and let's -- let's stay in the
24 universe of nontherapeutic CPAs. Are there other
25 amounts of state or federal funding that those CPAs

1 might receive related to foster care?

2 A. If you -- can you clarify what you mean
3 by "related to foster care"? Are you specifically
4 talking about for the -- for the care of the child,
5 like their housing, their clothing, their food? Or
6 are you referring to something else?

7 Q. We can start with that.

8 Are there any other amounts
9 that -- that those CPAs would receive from state or
10 federal funding, you know, specifically related to
11 the care -- the care of the child?

12 A. I mean, that -- the amount -- the
13 amounts that I gave you, the \$20.03, \$23 and \$24
14 per day, those amounts are to cover, um, you know,
15 the housing, the clothing, the food, the -- you
16 know, uh, medical -- any medical, you know,
17 doctor's appointments, just the normal care, what
18 it costs all of us to raise a child, the normal
19 care -- the normal cost of raising a child.

20 So they're not receiving anything else
21 above and beyond that for the cost of raising a
22 child, if that's what you're asking. I --

23 Q. Okay, so -- yeah, so let me -- let me
24 clarify.

25 So you're talking now about -- about

1 the board payment, right --

2 A. Right, uh-huh.

3 Q. -- the payment that goes to the family
4 to help them cover the costs of taking care of the
5 foster child.

6 A. Correct.

7 Q. And I apologize for not being clear.
8 What I'm interested in is the payment from -- out
9 of state and federal funds that goes to the CPA
10 itself.

11 Are there any other amounts of funding
12 that the CPA might receive that is related to
13 foster care, apart from that admin rate, that per
14 diem per-child rate that's paid to the CPA based on
15 the children that are placed in the family -- in
16 the homes of the families that the CPA supports.

17 A. Okay.

18 Q. Yeah, got it.

19 A. Sorry, I misunderstood your question
20 earlier.

21 So -- so there are payments. There
22 certainly are payments for -- that they would
23 receive for -- you know, for transportation. We
24 have a separate contract for transportation.

25 They pay for -- we pay for -- they get

1 payments for, like, BMOD services, behavior
2 modification services. I'm trying to think of what
3 else. Those are two that are off the top of my
4 head. But those are -- you know, those are
5 payments potentially to CPA providers, potentially
6 to other providers that aren't CPAs, just -- just
7 to, you know, to providers in general, not
8 only -- not necessarily only to CPAs.

9 So, yes, there would potentially be
10 other -- other payments to the CPAs and to other
11 providers.

12 Q. Okay. So one of the examples you gave
13 was -- was transportation, for instance. So just
14 so I understand, would that be -- what type of
15 transportation services might a CPA provide that it
16 would receive funding for from -- from the state?

17 A. So I think most of the time it's going
18 to be medical transportation, so transportation
19 for -- you know, to doctors appointments, to -- I
20 think that's most of the time what it -- what it
21 is, to, you know, medical -- medical type
22 appointments.

23 Q. Okay. And I think you said that
24 those -- that if a CPA were providing those
25 transportation services, for example, that would be

1 covered under a separate contract?

2 A. Correct.

3 Q. And same thing with -- well, let me
4 back up. When you say behavioral modification
5 services, what do you -- what do you mean by that?

6 A. So I'm -- I'm not sure that I can speak
7 to that with certainty. Um, that's getting into a
8 realm of our child and family wellbeing team, and
9 that is not something that me as a finance person
10 has a lot of knowledge in, so I -- I certainly do
11 not want to speak in their realm of area of
12 expertise.

13 Q. Good enough.

14 But, again, that might be -- providing
15 that type of services would be -- might be
16 something a CPA would receive funding for, but that
17 would be covered by a specific -- a contract
18 specific to --

19 A. Correct.

20 Q. -- the provision of those services.

21 A. Yes, that's correct.

22 Q. Okay. And there might be -- there
23 might be other services a CPA would provide
24 pursuant to a separate contract for which it
25 would -- it would receive funding from the State;

1 is that fair?

2 A. That's fair, uh-huh.

3 Q. And, um, does every -- I mean, I would
4 assume that it's not the case that every CPA
5 necessarily provides those types of additional
6 services pursuant to other contracts. Some may,
7 some may not. Is that fair?

8 A. That would be probably a fair
9 statement, yes.

10 Q. Okay.

11 THE COURT REPORTER: Was there an
12 objection there, Mr. Coleman?

13 MR. COLEMAN: I'll object to the
14 question to the extent it calls for speculation,
15 but it's been asked and answered so we can -- we
16 can keep going.

17 MS. JANSON: Okay, so let's see. So
18 I'm about to change topics. We've been going
19 for -- for about an hour. Would folks like to
20 take, you know, maybe just a quick five-minute
21 break and then -- and then we can come back?

22 MR. COLEMAN: This is Miles. I will
23 say -- I will leave it up to the witness. I'm fine
24 to take a break or we can press on for another 30
25 minutes or an hour, but, Susan, it's up to you.

1 THE WITNESS: I'm okay going for
2 another, maybe, 30 minutes or so. That's fine with
3 me, if that's okay.

4 MS. JANSON: Okay, great.

5 All right. So, Serena, if we can -- if
6 we can put up Tab 2, please.

7 I know it may take a minute, so just
8 let me know when you -- when you can see that.

9 (EXHIBIT 2, South Carolina Department
10 of Social Services Child Placing Agency
11 Administrative Fees; Bates 10545-G0001, was marked
12 for identification.)

13 MR. COLEMAN: We've got it here.

14 BY MS. JANSON:

15 Q. Okay, great.

16 So we're going to mark as Exhibit 2 --
17 this is a chart titled South Carolina Department of
18 Social Services Child Placing Agency Administrative
19 Fees, and it's Bates numbered 10545-G0001 through
20 02.

21 Have you seen this chart before?

22 A. Yes, I have.

23 Q. And this appears to be a chart
24 reflecting administrative fees paid to South
25 Carolina CPAs from between January 1st -- I'm

1 sorry, I'm sorry -- July 1st, 2016 through January
2 31st, 2020 [sic]. Is that right?

3 A. Did you say January 31st? I thought
4 you said 2020, but it's 2022. I may have misheard
5 you, though.

6 Q. No, you're right, I said 2020. I'm
7 looking back at the transcript. I meant 2022.

8 A. Okay.

9 Q. Thank you for catching that. I'm
10 living in the past this morning, apparently.

11 Okay. Can you tell me what -- well,
12 first of all, were you involved in -- in preparing
13 this chart?

14 A. I was, yes.

15 Q. And how did you go about compiling this
16 information?

17 A. So this was compiled by pulling -- we
18 pulled this out of our account -- state accounting
19 system, which is SCEIC, which all of the state
20 agencies use.

21 And we have specific accounting codes
22 that track the administrative fees separately and
23 so I pulled -- using those specific accounting
24 codes -- and pulled all of the payments that were
25 paid to -- paid from those accounting codes and

1 pulled the data together that way.

2 Q. Okay. You said that the state
3 accounting system -- and then I think you had a --
4 maybe it was an abbreviation or an acronym?

5 A. Yes, I'm sorry. It was -- it's called
6 SCEIC, S-C-E-I-C.

7 Q. S-C-E-I-C, okay.

8 A. It's an -- it's an SAP system, if that
9 matters.

10 THE COURT REPORTER: It's a what
11 system?

12 THE WITNESS: It's an SAP system.

13 THE COURT REPORTER: Thanks.

14 BY MS. JANSON:

15 Q. SAP?

16 A. Correct.

17 Q. And what is -- what is an SAP system?

18 A. It's an accounting system, it's just
19 the type of accounting system that it is.

20 Q. Okay. And so is this -- is this data
21 that DSS keeps within its accounting system as part
22 of the regular course of business?

23 A. It is, yes.

24 Q. But the -- the sort of the compilation
25 of the data in the format that we see here on this

1 chart, that was -- that was pulled -- was that
2 pulled specifically for purposes of this
3 litigation?

4 A. It was.

5 Q. Okay. And, so, like I said, this --
6 this chart reflects administrative fees that were
7 paid to a list of CPAs over -- over the years that
8 are indicated across the top of the columns of the
9 chart. And just so we're clear, that
10 administrative fee again is the per-day per diem
11 rate -- per diem, per child rate that we've been
12 talking about that goes to the CPA once the child
13 is placed in one of its foster homes; is that
14 right?

15 A. That's correct.

16 Q. And so in these figures, the only
17 payments that would be -- is it true that the only
18 payments included in these -- for the figures on
19 this chart -- are -- is that administrative rate;
20 is that right?

21 A. Yes, that's correct.

22 Q. Okay. So there's no other payments
23 that might go to a CPA, like we were discussing
24 earlier, for some other service it might provide
25 that would be reflected in this, in these figures?

1 A. No, these are just the administrative
2 fees.

3 Q. Right, okay. And then if we look under
4 the first -- the column all the way to the left, it
5 says provider name and then it has -- I think I
6 counted 18 CPAs.

7 Do you know whether that's the full
8 list of CPAs that are licensed in South Carolina,
9 or were licensed at some point during the years
10 covered by this chart?

11 A. Um, I do not have that information.
12 You know, that would be a question for Jackie Lowe.
13 She would have that -- that list of information.

14 Q. Okay. Is it fair to say, though, that
15 this is the full list of South Carolina CPAs that
16 would have received -- or that did receive
17 administrative fee payments from July 1st, 2016
18 through January 31st, 2022?

19 A. Yes, that is correct.

20 Q. Okay, so let's just -- let's just look
21 at the first -- the first CPA that's listed there;
22 it's Child Abuse Prevention Association. And I
23 noticed that there's no amounts listed for the
24 first two years, for the July 1, 2016 through June
25 30th, 2017 year and the -- and I assume that's

1 the -- that's how South Carolina does its fiscal
2 year; is that right?

3 A. That's correct --

4 Q. From --

5 A. -- yes, July 1 to June 30th, uh-huh.

6 Q. So do we call -- this might make it
7 easier for me. Do we call July 1 through June 2016
8 through June 30th, 2017 is that fiscal year 2017 --

9 A. That's correct.

10 Q. -- or 2016?

11 A. Yes, fiscal year '17, yes, yes.

12 Q. All right. That might save me some
13 words.

14 Okay. So I note here that Child Abuse
15 Prevention Association doesn't have any amounts
16 listed for fiscal year '17 and fiscal year '18.

17 Do you know why that is?

18 A. So prior to -- so in those two fiscal
19 years, the therapeutic CPA providers that had
20 a -- if they had a nontherapeutic child placed in
21 their -- in their therapeutic home -- they were
22 getting paid a \$10 per child -- per-day,
23 per-child -- rate, but it was in addition -- it was
24 a payment in addition to their regular maintenance
25 payment.

1 So, back then, it was not considered an
2 administrative fee, so it would -- it's not -- it
3 would not show up in this chart because it
4 was -- it was being paid, really, as part of their
5 maintenance payment, or board payment, as, you
6 know, we know now they're the -- maintenance and
7 board are the same thing, maintenance payment and
8 board payment.

9 So that \$10 per day per child, we
10 can -- I think we can kind of think of it that
11 maybe was supposed to be an administrative fee, but
12 we were not -- we were not calling it an
13 administrative fee and it was not coded as an
14 administrative fee and we didn't -- we weren't --
15 we weren't classifying it as an administrative fee.

16 It was -- it was an additional
17 maintenance payment that we were giving the
18 therapeutic providers that had a nontherapeutic
19 child placed in their home.

20 And the idea, from my research in kind
21 of putting this together -- because I had that same
22 thought, I thought, well, why is nothing showing up
23 here -- so when I went back and did research and
24 talked -- you know, had a conversation, when I said
25 I talked to Laura in our office, the thought was

1 initially they were trying to keep siblings
2 together; and so, for instance, you had some -- you
3 had a lot of therapeutic kids who had siblings that
4 were -- maybe the sibling was nontherapeutic, but
5 you wanted to keep those siblings together and not
6 break them up, and so we would -- they would pay
7 that \$10 per day per child to basically keep the
8 siblings together. And so it was not considered an
9 administrative fee. It was really just an
10 additional -- kind of an additional maintenance
11 payment on top of the maintenance payment they were
12 already getting. So that \$10 a day per child does
13 not show up on this chart.

14 Q. So you said it's -- it was sort of an
15 additional maintenance fee. But did the \$10 per
16 day per child go to the CPA, or did it go to the
17 family?

18 A. We don't know that. We have -- we
19 really have no way of knowing if -- we can make
20 a -- we can make an assumption, but that's really
21 all it would be. We really don't know if it
22 went -- if the CPA kept that \$10 a day or if they
23 passed it on to the -- to the family.

24 Q. Okay, okay. And, so, but in any event,
25 for purpose of the data, that \$10 per child per day

1 wasn't, I'll say, you know, coded in your
2 system --

3 A. Right.

4 Q. -- as an administrative fee; so when
5 you went back to pull the data, using the
6 accounting codes that you told us about, it
7 wouldn't have -- those payments wouldn't
8 have -- wouldn't have been picked up. Is that a
9 fair understanding?

10 A. That's correct.

11 Q. And you said that that \$10 per child --
12 that additional \$10 per child per day -- went to
13 therapeutic CPAs that had a nontherapeutic child
14 placed in -- in one of their homes; is that right?

15 A. That's right.

16 Q. So does that mean that on this -- on
17 this chart that we're looking at on Exhibit 2 that
18 for -- so for all of the -- you know, there's a lot
19 of CPAs listed here.

20 In fact, I think it's all
21 but -- everybody listed -- all the CPAs listed on
22 this chart, apart from Miracle Hill Ministries,
23 have blanks for the -- you know, have no -- no
24 payments reflected for fiscal year '17 and fiscal
25 year '18 years. But these aren't all exclusively

1 therapeutic CPAs, right?

2 A. Um, I'm not certain. I don't believe
3 so, but I'm not certain. I would have to go back
4 and check the list.

5 Q. Okay. So what -- I guess what I'm
6 trying to understand is if one of the CPAs listed
7 here that has, you know, no payments reflected for
8 fiscal year '17 or '18, and it's a -- strictly a
9 nontherapeutic CPA --

10 A. Uh-huh.

11 Q. -- is there a different explanation?
12 Does that -- is there a different explanation for
13 why there's no payments listed there?

14 Does it mean, for instance, that that
15 CPA, that nontherapeutic CPA, had no children
16 placed with homes that they supported in those
17 years? Or is it potentially some sort of
18 record -- recordkeeping issue like we've been
19 discussing?

20 A. No, so non -- the nontherapeutic, or
21 the regular CPA providers, they did not begin to
22 receive the \$10-per-day-per-child administrative
23 fee until January of 2019. So they weren't even
24 receiving it in fiscal years '17 or '18.

25 And so that's why you will start to

1 see, in that third column, which is July 1st '18 to
2 June 30th '19, kind of halfway through that year,
3 the regular or the nontherapeutic CPA providers
4 started. So they were not even receiving that \$10
5 per day in those earlier years.

6 Q. I see, okay. All right. So they
7 started being eligible to receive that -- that
8 administrative fee, you said, halfway through --

9 A. Yeah.

10 Q. -- through --

11 A. Yes, January of 2019.

12 Q. Uh-huh, okay. And so then once we get
13 to -- once we get to fiscal year 2019, there's
14 obviously some more -- some more figures
15 listed -- you know, there's payments indicated
16 there for more of the CPAs on the chart.

17 For those CPAs for fiscal year 2019,
18 that, again, still show that they received, you
19 know, no dollars in administrative fees, what does
20 that mean?

21 Does that -- does that indicate that
22 they didn't have any children placed during those
23 fiscal years with children that they support -- I'm
24 sorry, with no children placed in families that
25 they support?

1 A. Um, I would have -- that -- it
2 would -- I would be speculating, but that's what
3 the data showed. I mean, again, I've pulled the
4 data based on the coding that we have for
5 administrative fees specifically, so if -- if we
6 have no data that has been charged -- no payments
7 that have been charged to the codes that are for
8 administrative fees, to me, that would say that
9 there were no administrative fees paid to those
10 CPAs during that time.

11 Q. Okay, so take, for instance, Lutheran
12 Family Services. For -- they're one of the -- one
13 of the CPAs that doesn't show any -- any payments
14 in the first four fiscal years reflected on this
15 chart.

16 So that would -- that would suggest to
17 you for at least -- at least for fiscal year 2019
18 and fiscal year 2020, that they did not receive any
19 administrative fees during that period, which would
20 mean they didn't have any children placed with
21 families that they supported.

22 Is that -- is that a fair
23 interpretation of this?

24 A. That's what it would say to me, yes.

25 Q. Okay.

1 A. And I will clarify that to say that
2 this report is based on when the payments are made,
3 so there could be a timing issue here as well.

4 So our accounting system -- when we run
5 this data, our accounting system has no way to know
6 when the services were actually performed.

7 So take, for example, Lutheran Family
8 Services, while it could have been that they had
9 some families in fiscal year '20, maybe at the
10 later part, maybe April, May, June, but that those
11 payments weren't actually made until July or maybe
12 August of the next fiscal year.

13 Well, those payments are not going to
14 show up, then, until that next fiscal year. So our
15 accounting system is going to show them in fiscal
16 year '21. But if we dig into the data and pull --
17 drill down into each specific invoice, we'll see,
18 then -- possibly -- this is my -- I'm speculating
19 here -- but I have seen this on some of the
20 invoices -- that it's actually for a previous
21 fiscal year.

22 In our -- in the accounting system,
23 it's not based on service dates, it's based -- it
24 is literally based on this is when the invoice was
25 paid. And so it's not -- there could be timing

1 issues here as well. I just want to have -- I just
2 want to add that caveat.

3 Q. Okay. So -- so I can understand, so
4 there -- so if I'm a CPA, and I have, you know,
5 five families that I'm supporting that have
6 children placed with them and those children are
7 placed on, you know, day one, that's when I guess
8 we would -- that's when we would start sort of
9 counting, I suppose, for purposes of calculating
10 the number -- you know, the number of days for
11 which, you know, I'm entitled -- I being the
12 CPA -- the CPA is entitled to that admin rate,
13 right?

14 A. Uh-huh, correct.

15 Q. But what it sounds like you're
16 explaining is that, you know, the CPA doesn't get
17 that \$20 a day, or \$25 a day, or \$30 a day,
18 beginning on the first day the child is actually
19 placed, so there may be some lag time, processing
20 time, in terms of when the payment is actually made
21 to the -- from DSS to the CPA; is that correct?

22 A. Yeah, we don't pay the CPA daily. It's
23 a daily rate --

24 Q. I understand that, yeah.

25 A. But, yeah, we don't pay them daily. We

1 pay them on a -- we pay them monthly --

2 Q. Okay.

3 A. -- and there is a -- there is a delay,
4 so...

5 Q. Yep, okay, understood.

6 Yeah, you couldn't possibly pay
7 daily --

8 A. Yeah.

9 Q. -- that would be -- that would --
10 Okay. All right, so that's an
11 important -- an important caveat.

12 Okay. So looking down, then, at the
13 line for Miracle Hill Ministries, do you see
14 that --

15 A. I do.

16 Q. -- that line on the chart?

17 A. Yes.

18 Q. Okay. So Miracle Hill is a -- is a
19 nontherapeutic CPA; is that right?

20 A. Yes, I believe so.

21 Q. Okay. So I think what you just
22 testified to just a little while ago is that the
23 nontherapeutic CPAs didn't start to receive the
24 administrative fee -- that per-day, per-child
25 fee -- until halfway through fiscal year '19,

1 right?

2 A. Yes.

3 Q. So then what I'm -- what I'm trying to
4 understand, then, is this chart reflects that in
5 fiscal year '17, Miracle Hill received \$620,800 and
6 in fiscal year '18, Miracle Hill received \$592,080
7 in administrative fees. So I'm not understanding
8 what -- what those -- what those amounts are.

9 A. So Miracle Hill was an exception.
10 There was a decision made with a previous
11 administration, you know, way back in -- you know,
12 before this -- this chart started -- so prior to,
13 you know, July of 2016.

14 Um, and, again, I had -- I have gone
15 back, I have talked to Laura, I have tried to
16 figure out why we have tracked, so we've -- we've
17 tracked Miracle Hill's admin payments separately.
18 Miracle Hill is the only CPA that received, back at
19 that time, an admin fee of \$10 per day per child.

20 We've tried to go back to figure out
21 why that is and look at -- try to find
22 documentation, try to find reasoning, and we're
23 not -- we were not able to come up with -- we were
24 not able to find any reasonable explanation as to,
25 you know, why that was.

1 Again, it was a previous
2 administration, previous decisions that were made.
3 I have -- I have done research, I have asked other
4 people. Um, for some reason, though, we -- you
5 know, we were -- we had tracked Miracle Hill
6 separately, um, and so we are able to show the
7 amount of administrative fees that they have been
8 paid back to that time.

9 And so they -- they are the -- they
10 were the only ones that were receiving that
11 administrative fee.

12 And I will say that that \$188,000 that
13 shows in the current fiscal year is another one of
14 those -- those timing issues -- that because they
15 are no longer receiving an administrative fee; that
16 stopped. They're -- you know, they have said we
17 don't -- we don't want to receive an administrative
18 fee anymore, we're not going to accept the
19 administrative fee.

20 So that \$188,000 that you see in the
21 current fiscal year actually was paid in the
22 current fiscal year, but it was -- I looked up -- I
23 specifically looked up those invoices. It was for
24 the previous fiscal year. It was for services that
25 they -- you know, that were provided in June of

1 2021.

2 Q. Okay. Yeah, you anticipated what some
3 of my next questions --

4 A. I did.

5 Q. -- were going to be there, because --
6 and we'll get into this a little -- a little bit
7 more in detail later, but there was a point in the
8 middle of last year when Miracle Hill determined
9 that it was going to stop accepting the
10 administrative fee from DSS; is that right?

11 A. That's correct.

12 Q. And so but you're saying that -- and do
13 you know when -- do you know when -- what date that
14 decision was -- was effective as of?

15 A. It was effective as of -- they -- as of
16 June 30th, 2021, would be the ending, so then July
17 1st they were receiving -- July 1st, 2021 they
18 would receive no more administrative fee payments.

19 Q. Okay, so effective as of the start of
20 the 2022 fiscal year?

21 A. Correct.

22 Q. Okay. So the number here in this
23 chart, in the far right, or the
24 second-to-farthest-right column, about \$188,305,
25 you're explaining that that is -- those are

1 administrative fees that would have been paid for
2 the -- for the first -- services provided in the
3 first part -- in the second half of fiscal year
4 '21 -- but they just -- they just weren't paid,
5 because, like you said, there's sometimes a delay
6 in payments, that the money actually wasn't paid
7 out until -- until the fiscal year 2022.

8 A. Correct.

9 Q. Am I getting right?

10 A. Yes, that's correct.

11 Q. Okay. So going back to -- I guess to
12 the first -- the first two years, fiscal years '17
13 and '18, well, I guess for --

14 Yeah, for those -- for those first two
15 years, Miracle Hill is the only CPA on this list
16 for which administrative -- nontherapeutic CPA or
17 any CPA on this list -- for which administrative
18 fees were paid in those two years.

19 And you described to us that you've
20 looked into it, you're not sure why that is the
21 case, but, for whatever reason, that's the case and
22 those are the -- those are the numbers that are
23 reflected there.

24 As we move sort of into the later
25 years, in fiscal year '19, '20, and '21, just by

1 comparison, if you look at the figures that were
2 paid to Miracle Hill for administrative fees and
3 the figures that were paid to any of the
4 other -- the amounts that were paid to any of the
5 other CPAs in administrative fees in those years,
6 is it -- is it fair to say that Miracle Hill
7 received, by far, the largest amount of funding in
8 administrative fees during those years --

9 MR. COLEMAN: Object to the form.

10 BY MS. JANSON:

11 Q. -- compared to the other CPAs?

12 MR. COLEMAN: I apologize, Kate, I cut
13 off the last part of your question there, sorry.

14 MS. JANSON: No, that's okay.

15 Um, yeah, I was just -- think we got
16 it.

17 BY MS. JANSON:

18 Q. My question is, Is it fair to say that
19 Miracle Hill received, by far, the largest amount
20 of funding in administrative fees during the fiscal
21 years reflected in this chart?

22 MR. COLEMAN: Object to the form of the
23 question, but you can answer it.

24 THE WITNESS: Um, yes, according to the
25 chart, that is what is showing.

1 BY MS. JANSON:

2 Q. And does that also reflect, then, that
3 there would -- and we can leave fiscal years '17
4 and '18 aside -- aside for now.

5 But for fiscal years '19, '20 and '21,
6 where there are at least some other CPAs in those
7 years that received administrative fees, according
8 to the data here, in those years, does it mean --
9 does this mean that there were more children
10 placed -- significantly more children placed with
11 families supported by Miracle Hill than with
12 families supported by any other CPA?

13 MR. COLEMAN: Object to the form of the
14 question, but you can answer.

15 THE WITNESS: I -- I wouldn't have
16 knowledge of how many children are placed in
17 each -- with each CPA.

18 BY MS. JANSON:

19 Q. Okay, let's -- maybe we can -- maybe we
20 can take an example.

21 So if we look at -- let's look at
22 fiscal year '21. The chart indicates that Miracle
23 Hill received \$755,900, in administrative fees for
24 that fiscal year; is that right?

25 A. Correct.

1 Q. And as we've discussed, that amount,
2 the amount in administrative fees that a CPA
3 receives -- and we're talking now nontherapeutic
4 CPA receives -- is based on the number of children
5 that are placed in homes supported by that CPA and
6 the number of days that those children have been
7 placed there; is that right?

8 A. That's correct.

9 Q. And then if you look at -- let's say,
10 um, let's say Epworth Children's Home, which is the
11 fourth CPA listed there, if we go over to the
12 column for fiscal year '21, it looks like Epworth
13 received \$298,490 in administrative fees.

14 Do you see that?

15 A. I do.

16 Q. Okay. So wouldn't that mean, then,
17 that Epworth had significantly -- you know, so
18 there's a difference in those two numbers of -- and
19 this is ballpark -- approximately \$450,000? Is
20 that right?

21 A. Approximately, yes.

22 Q. Yep, I'm sure you're -- I'm sure you're
23 better at math than I am. But that's my best
24 estimation.

25 So for fiscal year '21, Epworth

1 received approximately \$450,000 less in
2 administrative fees than Miracle Hill did; is that
3 right?

4 A. Correct.

5 Q. And so then that means that Epworth
6 must have had -- and I definitely cannot do the
7 math to figure this out -- but must have had
8 significantly fewer children placed in homes that
9 it supported during that fiscal year, right?

10 A. So, on the surface, it looks like it;
11 however, again, I cannot speak to the number of
12 children that each of the CPAs had.

13 And, also, it depends on the age of the
14 child, because if you just simply take -- like, for
15 example, if Miracle Hill -- now, this is probably
16 not the case, but if Miracle Hill had all children
17 ages zero to 6, they're getting 10 -- they're
18 getting \$20 a day. If Epworth had all children
19 ages 13 to 20, they're getting -- I'm saying that
20 backwards.

21 If Miracle Hill had children ages 13 to
22 20, they're getting \$30 a day. And if Epworth had
23 children ages zero to 5, they're getting \$20 a day.

24 So if you just take the \$10 difference
25 times 365 days, that's \$365,000 a day -- a year --

1 difference. And that's -- that makes up quite a
2 bit of your -- your difference right there.

3 So I'm not sure -- again, I know that
4 doesn't make up the whole difference, but, so, yes,
5 on the surface it would seem that Miracle Hill has
6 quite a few -- quite a few more children than
7 Epworth; but, again, I can't speculate to the
8 number. I don't know the number of children
9 Miracle Hill had versus Epworth.

10 Q. Understood.

11 And that's an -- that's an important
12 clarification with regard to there being the
13 variability in the rate tied to the age of the
14 child, so -- so that's helpful. So there may be --
15 some of that difference might be attributable by
16 the ages of the children and the corresponding
17 rates that are associated with those ages.

18 But we wouldn't -- we wouldn't be able
19 to know that specifically unless we had the data in
20 front of us that showed how many children Epworth
21 had, what their ages were, how many children
22 Miracle Hill had in their homes, what their ages
23 were, and we don't have that information in front
24 of us today, right?

25 A. Right.

1 MS. JANSON: Okay. All right, so we've
2 been -- now we've been going about an hour and a
3 half, so I think now would be a good time to take a
4 break. So why don't we take 10 minutes and aim to
5 come back about 10:45? Sound good?

6 MR. COLEMAN: Sounds good.

7 THE VIDEOGRAPHER: We are going off
8 record. The time is 10:33 a.m. This is the end of
9 media unit 1.

10 (A brief recess was held.)

11 THE VIDEOGRAPHER: We are back on
12 record. This is the beginning of media unit 2.
13 The time is 10:48 a.m.

14 BY MS. JANSON:

15 Q. Okay. So we're still -- we're still
16 looking at this chart of Child Placing Agency
17 Administrative Fees that we marked as Exhibit 2.

18 Ms. Roben, are you able to tell me,
19 looking at this list of CPAs, which of these are
20 therapeutic versus nontherapeutic CPAs?

21 A. No, not from looking at this list, I am
22 not.

23 Q. And I think you had told us earlier
24 that nontherapeutic CPAs in South Carolina were not
25 receiving any administrative fees prior to fiscal

1 year 2019.

2 Is that right?

3 A. Um, prior to January '19.

4 Q. Prior to January of 2019, got it, thank
5 you. And so were there -- prior to January 2019,
6 there were nontherapeutic CPAs licensed by the
7 State of South Carolina that were providing foster
8 care services; is that right?

9 A. I believe so, but that would be a
10 question for Jackie or Dawn.

11 Q. Okay. You -- you can't tell me for
12 certainty that prior to January of 2019, there were
13 any nontherapeutic CPAs operating under license in
14 South Carolina?

15 A. So I don't do the licensing. I'm in
16 the fiscal side. We made -- I can tell you what
17 payments we made, but I am not certain at this time
18 which are therapeutic and which are nontherapeutic,
19 so I would need to verify that with Jackie, which
20 are therapeutic and which are nontherapeutic; and
21 then I would be able to tell, from the payments we
22 made, if we -- you know, if they were -- based on
23 the payments we made -- if they were therapeutic,
24 nontherapeutic, if they were licensed -- you know,
25 that we were making those payments, but --

1 Q. Okay.

2 A. -- based on this information right now,
3 I -- I can't with certainty tell -- answer that
4 question.

5 Q. Okay. So let's assume that there were
6 nontherapeutic CPAs that were licensed by the State
7 of South Carolina prior to January 2019 and that
8 they were performing, you know, this work, you
9 know, pursuant to their contracts of recruiting,
10 screening, supporting foster -- prospective foster
11 families and foster families after -- after
12 licensure.

13 Assuming that there were nontherapeutic
14 CPAs doing that work prior to January 2019, we've
15 established that they were not receiving
16 administrative fees prior to January 2019 --

17 A. Correct.

18 Q. -- so would they have been receiving
19 any payments from the State of South Carolina for
20 the work that they were doing?

21 A. In terms of the work -- I'm trying
22 to -- I'm trying to understand.

23 Are we getting back to the question of,
24 like, the different contracts, transportation
25 contracts again, or are you talking strictly on the

1 work with -- specifically the work with the foster
2 families in --

3 Q. Yeah, the --

4 A. Yeah.

5 Q. -- specifically the work with the
6 foster families.

7 What I'm trying to get at is we've
8 established that they were not getting this
9 administrative fee, this per-child-per-day payment
10 for children placed with the families that those
11 CPAs supported prior to January 2019?

12 A. Okay.

13 Q. So my question is, you know, were
14 they -- were they getting paid by the State in some
15 other way to do this work or were they doing it for
16 free?

17 A. So they were getting -- the regular
18 nontherapeutic were not getting paid an
19 administrative fee prior to that time.

20 Q. Were they getting paid anything?
21 Another type of fee? Was there a different payment
22 structure in place at that time apart from
23 the -- that's different from the administrative
24 fee? I'm just trying to understand, if they're not
25 getting the admin fee, and they're doing all of

1 this work to bring in the families, screen them,
2 help them get licensed, support them, train them,
3 you know, how are they getting paid for that? Or
4 are they doing it for free?

5 A. So we don't -- we don't know. We were
6 paying -- um, well, let me back up. There's a lot
7 of dates and I'm trying to keep them all straight
8 in my head.

9 So, yeah, we were paying the
10 foster -- the regular foster homes directly, so
11 that would be correct, they were -- they were not
12 receiving any fee. They were not receiving an
13 administrative fee, and they were -- I
14 would -- that would be true, that they were doing
15 it for no -- for no -- for no payment.

16 Q. They were doing it for free, um, okay.

17 And that is, of course, Miracle Hill
18 being the exception, as we've discussed --

19 A. Correct.

20 Q. -- because Miracle Hill was receiving
21 substantial amounts in administrative fees during
22 the years prior to January 2019 that are reflected
23 on this chart, right?

24 A. Yes.

25 Q. Okay. So if we can look at the

1 two -- the two columns on the chart for fiscal year
2 2021 and the first half of fiscal year 2022.

3 If you -- is it fair to say that if a
4 CPA is not included on this chart, that would mean
5 that they received no administrative fees in fiscal
6 year 2021 or the first portion of fiscal year 2022;
7 is that right?

8 A. That's correct.

9 Q. And if they received no administrative
10 fees, that would mean that they had no children
11 placed with foster families that those CPAs
12 supported; is that right?

13 MR. COLEMAN: Object to the form of the
14 question, but you can answer.

15 THE WITNESS: Yes, that would
16 be -- that would be my assumption, yes.

17 BY MS. JANSON:

18 Q. Okay. There isn't any reason that a
19 foster family -- or a CPA -- would have children
20 placed with families it supported during those
21 years but not be receiving the administrative rate,
22 right?

23 A. Not to my knowledge, no.

24 Q. And you're speaking as the
25 representative for DSS on this topic. So when you

1 say "not to my knowledge," you're really saying not
2 to DSS's knowledge, right?

3 A. Correct, yes.

4 Q. Okay, uh, so -- all right, looking back
5 to the last of the chart, under each of
6 these -- under each of the provider names, the CPA
7 names listed, and there's two rows. There's state
8 general funds and federal funds.

9 Um, and we talked a little -- we talked
10 some about this -- about this earlier -- but can
11 you describe to me what -- what state general funds
12 means?

13 A. Uh, well, so that -- I mean, I'm not
14 sure how to describe it in really any other way.
15 It's really our state appropriations, the state
16 appropriations from the General Assembly.

17 Q. Okay.

18 A. And, I'm sorry, I do need to back up; I
19 apologize. But there -- there are -- I misspoke
20 just a minute ago. I believe that there are a few
21 CPAs that did not sign -- we -- we issued a new
22 contract effective January 1st of 2021.

23 When the -- when the providers started
24 receiving the new administrative rate of \$20, \$25
25 and \$30 a day, there were, I believe, a few -- and

1 I don't know which ones; I don't have that --
2 those -- I don't have that list -- but there were a
3 few, I don't believe many, but there were a few CPA
4 providers that actually did not sign the contract
5 and so they would not be receiving that
6 administrative rate. I apologize for that
7 oversight on my part.

8 Q. If they did not -- if they didn't sign
9 the contract, could they nonetheless have children
10 placed in the homes that they were supporting?

11 MR. COLEMAN: Object to the form of the
12 question; but if you know the answer, you can
13 answer it.

14 THE WITNESS: Um, I would have to
15 have -- I don't have the contract in front of me
16 and I don't have the contract memorized, so I would
17 need to -- I don't know that answer off the top of
18 my head.

19 BY MS. JANSON:

20 Q. Okay. Just to backtrack just one
21 second, I know you told me that you can't -- you
22 can't identify, looking at this chart, sitting here
23 today, which of these CPAs are nontherapeutic and
24 which are therapeutic; is that right?

25 A. Correct.

1 Q. Is it fair to say that the chart
2 includes CPAs, both types of CPAs, both therapeutic
3 and nontherapeutic CPAs?

4 A. Yes, I believe it does.

5 Q. So when you were compiling this data,
6 you weren't endeavoring to limit it to just
7 therapeutic CPAs or just nontherapeutic CPAs,
8 right?

9 A. No, no, uh-uh.

10 Q. And could it be a -- as we've looked at
11 before, as we've looked at -- sorry, let me -- let
12 me skip that. I lost my train of thought there.

13 Okay. So going back to the state
14 general funds, you explained that that's the state
15 appropriation, that's money pulled from the state
16 appropriated funds, appropriated by the General
17 Assembly; is that right?

18 A. That's correct.

19 Q. And so what does the line for federal
20 funds under each of these CPA provider names
21 denote?

22 A. That would be the Title IV-E funding.

23 Q. I believe we talked about that a bit
24 before --

25 A. Correct.

1 Q. -- but that's money that, under Title
2 IV-E, the Department of Health and Human
3 Services -- HHS, we'll call them -- distributes to
4 the states for -- for their foster care programs,
5 is that correct, generally?

6 A. At a -- at a high level, yes.

7 Q. Okay. That's where my understanding
8 fits --

9 A. Yes.

10 Q. -- of how the federal funding works.

11 Okay. And are there -- so the federal
12 funds line is a reference to that Title IV-E
13 funding.

14 Is there any other federal FUNDING
15 SOURCE that would be included in that, or is it
16 just the Title IV-E funds.

17 A. It's just Title IV-E funds.

18 Q. Okay. And I think earlier you
19 described -- you said there was a -- you know,
20 there was a point, for a time, all of the
21 administrative fees were being paid out of the
22 state general funds and -- and then at some point
23 DSS figured out that you could -- you know, you
24 could start drawing from the Title IV-E funds to
25 pay a portion of those administrative fees based

1 on, you know, whether the children met the Title
2 IV-E eligibility; is that right?

3 A. That's correct.

4 Q. And so is that -- so when we look
5 at -- let's pick -- let's pick Epworth. We'll look
6 at the line for Epworth again. It looks like for
7 Epworth they started receiving administrative fees,
8 according to this chart, in fiscal year 2019.
9 There's a \$28,000 dollar -- \$28,720 -- number
10 there. And it looks like, in that fiscal year, all
11 of that money came out of the state general funds,
12 right?

13 A. Correct.

14 Q. And then the following year they
15 received -- in fiscal year 2020, they received
16 about \$110,000 in administrative fees and the vast
17 majority of that came out of the state general
18 funds, but it looks like \$150 of it came out of the
19 federal funds; is that right?

20 A. Correct.

21 Q. I think there's just one -- there's
22 just one other CPA on here that had administrative
23 fees paid in fiscal year 2020 out of -- out of
24 federal funding, and I think that's Child Abuse
25 Prevention Association, the first one listed.

1 Do I have that right?

2 A. I'm looking. That appears to be
3 correct.

4 Q. Okay. And then -- so I guess -- can
5 you explain to me -- why it is that for those two
6 CPAs DSS started to draw from federal funding to
7 pay a portion of the administrative fees in that
8 fiscal year of 2020 but not for any of the others
9 yet?

10 A. I -- I wouldn't know that, just looking
11 at this chart. That would have to be something
12 that -- that would need to be -- we would need to
13 go back and, you know, really drill down and figure
14 that out. That would take quite a bit of time,
15 probably, to look into each -- each provider and
16 each one of these payments to figure that out.

17 Q. Okay. So then once we look -- once we
18 get over to fiscal year 2021, by this point, just
19 scanning through the numbers, it looks like, for
20 most of the CPAs listed here, the administrative
21 fees that they were receiving was paid out of a
22 combination --

23 A. Uh-huh.

24 Q. -- of both the state general funds and
25 those federal Title IV-E funds; is that right?

1 MR. COLEMAN: Object to form.

2 THE WITNESS: Correct.

3 MS. JANSON: Okay. All right. I think
4 we can put -- we can put that aside for now; I'm
5 not promising we won't come back to it.

6 But, Serena, could we put up Tab 3?

7 Let me know when you have that in front
8 of you.

9 (EXHIBIT 3, SCDSS Payments to Child
10 Placing Agencies; Bates 10545-D-0091, was marked
11 for identification.)

12 MR. COLEMAN: Okay, we've got it.

13 BY MS. JANSON:

14 Q. So let's mark this as Exhibit 3. It's
15 a document marked SCDSS payments to child placing
16 agencies, and it's Bates numbered 10545-C-0091 to
17 92.

18 Have you seen this chart before,
19 Ms. Roben?

20 A. I have.

21 Q. Okay. And can you -- can you explain
22 to me what this -- what this chart is, what this
23 data is intended to show?

24 A. So this chart shows payments to
25 the -- again, the providers -- or as it says here,

1 the vendor -- vendor/provider. It really means the
2 same thing.

3 But this chart shows, really, all
4 payments, so including -- as we were talking about
5 earlier, it would include not only the admin fees
6 but also the, um, maintenance payments, the
7 transportation payments, the BMOD payments, it also
8 includes some group home payments in here, so it
9 includes a wide variety of payments. Um, you know,
10 I know I'm missing some things, but it includes
11 basically all payments. It was not narrowed down
12 at all on this report.

13 Q. Okay. And were you involved in
14 preparing this document or pulling the data that
15 was -- that is reflected on this document?

16 A. On this one, I was not.

17 Q. Okay. Do you know who was responsible
18 for compiling this information?

19 A. I do.

20 Q. And who was that?

21 A. It was David O'Kelly, who is our
22 controller.

23 Q. And what was the -- what was the source
24 of this data? Is it coming from the same
25 accounting system that we talked about earlier?

1 A. It is.

2 Q. Okay. So you anticipated and you
3 answered a whole bunch of -- a whole bunch of my
4 questions, which was, you know, sort of trying to
5 understand, you know, what is -- what's accounted
6 for in -- in these figures.

7 And so if I'm understanding correctly,
8 the payments that are reflected here on Exhibit 3
9 are a broader universe than just the administrative
10 fees that are reflected on Exhibit 2 that we have
11 just been discussing; is that right?

12 A. That's correct.

13 Q. And so if we look at -- for instance,
14 we'll take Miracle Hill as an example. If we look
15 at -- um, on Exhibit 3, if we look at fiscal year
16 2019 and we look down to Miracle Hill, it's the
17 very last line on Exhibit 3.

18 In fiscal year 2019, Miracle Hill
19 received, it looks like, 1.76 million in payments.

20 And then if we look back to Exhibit 2
21 and we look at the line for Miracle Hill for fiscal
22 year -- oh, wait, no, I'm sorry, I'm talking about
23 fiscal year 2020 I think. I'm getting my terms
24 wrong. Yeah, fiscal year 2020.

25 If we look at Exhibit 2, we see that

1 for that year, Miracle Hill received \$525,280 in
2 administrative fees. Do you see that?

3 MR. COLEMAN: I object to the form of
4 the question to the extent we don't have both
5 documents pulled up simultaneously; but with the
6 caveat that assuming the question reflects the
7 numbers on Exhibit 2 that we're not looking at,
8 then you can answer.

9 THE WITNESS: Okay. Now -- sorry, now
10 I forget your question.

11 BY MS. JANSON:

12 Q. I was just pointing out that Exhibit 2,
13 which is the administrative fees chart --

14 A. Right, okay.

15 Q. -- shows that Miracle Hill received
16 about \$525,000 in administrative fees in fiscal
17 year '20.

18 A. Okay.

19 Q. And in Exhibit 3, which I think is the
20 one you have up, it shows that Miracle Hill
21 received 1.6 -- I'm sorry -- 1.76 million in
22 payments --

23 A. Uh-huh.

24 Q. -- in 2020.

25 A. Okay.

1 Q. And so obviously there's a significant
2 difference there of about, you know, 1.2 million.

3 And am I correct in understanding that
4 the reason for that difference is what you
5 described, that Exhibit 3 is capturing a much
6 broader universe of payments to a given CPA, apart
7 from just the administrative fees, right?

8 A. Yes, that's correct.

9 Q. I think you said it could include
10 payments for transportation or behavioral
11 modification services, it includes the maintenance
12 payments that go -- that are passed through to the
13 family themselves. And potentially other things as
14 well, right?

15 A. Correct.

16 Q. And so on this Exhibit 3, there's also
17 a distinction there under each provider name, a
18 separate line for federal and state.

19 A. Uh-huh.

20 Q. And do those -- are those -- does the
21 federal line there refer to Title IV-E funds the
22 same way it did on Exhibit 2?

23 A. So, it does not. On this report, it's
24 going to include other funds such as -- it will
25 include Title IV-E, but it will also include TANF,

1 Temporary Assistance for Needy Families --

2 Q. All right.

3 A. It could include some IV -- Title IV-B
4 funding -- so it includes other federal funds as
5 well --

6 Q. Okay, under --

7 A. -- just because of the scope of the
8 payments.

9 Q. Okay, understood.

10 And how about for the state line? Is
11 that a reference to the state general funds?

12 A. Yes, it is.

13 Q. Okay, so that's -- that's comparable to
14 what we saw on Exhibit 2?

15 A. Yes.

16 Q. I noticed, when I was comparing these
17 two charts side-by-side, that there -- there's more
18 CPAs listed, more providers listed on Exhibit 3
19 than there are on Exhibit 2.

20 Do you have any understanding of why
21 that is?

22 A. So, I mean, I don't know that I can
23 answer that fully, but I do know -- you know, for
24 example, I'll just take the very top one on
25 exhibit -- what are we on -- Exhibit 3 --

1 Q. Uh-huh.

2 A. -- Alston Wilkes, they're a group home
3 provider, and so that's -- you know, that's why
4 they're on Exhibit 3 and not on Exhibit 2.

5 You know, some of these other -- I'm
6 trying to look down the list. Let me see if I can
7 find it. Um, SAFY. One is listed as SAFY, Inc.,
8 one is SAFY of South Carolina. I'm not sure what
9 the difference is there. But SAFY actually
10 provides -- they're a -- they provide -- we have a
11 contract with them to provide a service and it has
12 really nothing to do with CPAs or group homes, and
13 so they wouldn't be on the CPA -- they're not a
14 CPA. And so there's -- there's some -- some
15 providers on here that are -- they're just simply
16 not CPAs. Again, this list was pulled to show an
17 entire universe, I think, when -- when the person
18 who pulled this list, they asked for, you know
19 providers that may have been, at any time in the
20 past, a CPA or now a CPA, have ever applied to be a
21 CPA, just to make sure they were trying -- they
22 were capturing everything, um, which is -- which is
23 great, but we may have -- you know, at that point
24 we got -- we got information in here that maybe
25 was -- was not necessary.

1 Q. Okay, so that's helpful. I understand.
2 Okay.

3 All right, I think we can put that to
4 the side for now.

5 We -- we've talked, at several points,
6 I think, during the deposition so far, about
7 Miracle Hill's decision/announcement in that last
8 year, that as of July 1st, 2021, it would no longer
9 accept government funding for its foster care
10 services, right?

11 A. Correct.

12 Q. How did you -- how did you become aware
13 or at what point did you become aware of that
14 decision by Miracle Hill?

15 A. I -- I honestly do not remember. I do
16 know that Dawn Barton made me aware in a
17 conversation, but I can't remember the exact date.

18 Q. Okay. But it was Dawn Barton that told
19 you?

20 A. Yes.

21 Q. Do you know -- do you remember what you
22 talked about in that conversation with Ms. Barton?

23 A. Um, honestly, I don't.

24 Q. Do you have any understanding as to why
25 it was that Miracle Hill made the decision to stop

1 accepting the administrative fee payments?

2 A. I do not.

3 MS. JANSON: And do you know
4 whether -- well, why don't we just take a look
5 at -- at Tab 4 real quickly. Just let me know when
6 you can see that.

7 MR. COLEMAN: Okay, we've got it.

8 (EXHIBIT 4, Miracle Hills Ministry July
9 16 Facebook post, was marked for identification.)

10 BY MS. JANSON:

11 Q. Okay. So we're marking as Exhibit 4 --
12 this is an announcement that Miracle Hill posted on
13 its Facebook page on July 16th, 2021 regarding its
14 decision to decline government funding for its --
15 for its foster care services.

16 Have you seen this before, Ms. Roben?

17 A. I -- I honestly don't think I have.

18 Q. If you want to take a minute and
19 just -- just read through it, that would be great.

20 A. Okay.

21 MR. COLEMAN: Kate, because this is a
22 document that hasn't been produced to us and we
23 haven't seen before, we're going to exercise our
24 right under the applicable rule to go off the
25 record and to read it and confer. If you can give

1 us maybe five minutes, then we'll come back on.

2 MS. JANSON: Sure, no problem.

3 THE VIDEOGRAPHER: We are going off
4 record. The time is 11:19 a.m.

5 (A brief recess was held.)

6 THE VIDEOGRAPHER: We are back on
7 record. The time is 11:22 a.m.

8 BY MS. JANSON:

9 Q. Okay. So if we could just look at -- I
10 think it's the second full paragraph of Exhibit 4,
11 which is this announcement on Miracle Hill's
12 Facebook page.

13 And it says there, "It's with a humble
14 heart that we have taken a step of faith and are
15 officially choosing dependence on the Lord by
16 declining government funding effective July 1, 2021
17 for our foster care program."

18 When Miracle Hill says here that it's
19 declining government funding, what does
20 that -- does that -- do you have an understanding
21 as to -- as to what exactly that means?

22 We discussed earlier that Miracle Hill,
23 as of July 1st, 2021, no longer gets that
24 administrative fee that we've been talking about.
25 Are -- is that right?

1 A. That's correct.

2 Q. Do you know whether there are other
3 sources of government funding that Miracle Hill --
4 or other amounts of government funding, I should
5 say -- that Miracle Hill had been receiving prior
6 to this announcement that it no longer receives?

7 A. Um, I would have to go back and look at
8 our records. I don't believe so, but I would have
9 to go back and look at that to be -- to be certain.

10 Q. Okay, so if we -- I know -- I know it's
11 not -- I have -- I have all of my documents here in
12 hardcopy, which makes it easy for me to look from
13 one to another, and I know -- I apologize, I know
14 you don't have that.

15 But we discussed a little while ago
16 that for fiscal year 2020, there was a significant
17 delta between the amount of money that was shown on
18 Exhibit 3 as having been paid to Miracle Hill -- I
19 think that was the 1.76 million, was the
20 number -- versus the amount that was shown on
21 Exhibit 2 as having been paid to Miracle Hill in
22 just administrative fees for that same year, and
23 that was about \$525,000, right?

24 A. Right.

25 Q. So can we infer from the difference

1 between those two numbers and what we know about
2 and what we've discussed about what the two charts
3 reflect, that there was -- there's a significant
4 amount of funding that Miracle Hill was receiving
5 separate and apart from the administrative fees,
6 right?

7 A. Um, yes, I know at some point -- at one
8 point -- and I don't know when they stopped -- but
9 they were also running a group home. They also had
10 a group home --

11 Q. Okay.

12 A. -- obviously apart from their -- their
13 CPA provider.

14 Um, so, but I believe that that -- and,
15 again, I would have to double check -- but I'm
16 pretty sure that they no longer run a group home,
17 but I -- but I don't have that date of when that
18 stopped. It may have been sometime in 2020.

19 Q. Okay. So some of that difference
20 between those two numbers might be accounted for by
21 the fact that they were running a group home at
22 some point and they were receiving payments from
23 that?

24 A. That could be, uh-huh.

25 Q. Is it possible that there are other

1 amounts of funding that Miracle Hill was receiving?
2 Maybe they had -- and I know you don't have the
3 specifics on this -- but maybe they had a
4 transportation contract, like we talked about, or I
5 think we said that -- yeah, maybe they had a
6 transportation contract, for example.

7 MR. COLEMAN: Object to the form of the
8 question to the extent it calls for speculation,
9 but you can answer.

10 THE WITNESS: Yeah, again, I would be
11 speculating on that; but, to my knowledge, Miracle
12 Hill has not had a transportation contract with
13 DSS.

14 BY MS. JANSON:

15 Q. Okay. Bad example.

16 What I'm trying to understand is simply
17 when -- when Miracle Hill announced that it was
18 going to stop accepting government funding, we know
19 that that means it's no longer accepting the
20 administrative fee; but does that also mean it's no
21 longer accepting any funding whatsoever from DSS
22 related in any way to foster care?

23 A. I would be --

24 MR. COLEMAN: Object to the form.

25 THE WITNESS: I would be speculating on

1 what they mean by what they're saying in that
2 paragraph.

3 BY MS. JANSON:

4 Q. Okay, okay, that's fair enough.

5 And so when we were looking at -- when
6 we were looking at Tab 2 earlier -- and that's the
7 chart of the Child Placing Agency Administrative
8 Fees -- we looked at the fact that there's a
9 number, a \$188,000 number, included there for the
10 first half of fiscal year '22 -- '20 -- yeah,
11 fiscal year 2022 -- and we -- we discussed the fact
12 that even though those payments were made after the
13 effective date of Miracle Hill's announcements that
14 it wasn't going to accept anymore government
15 funding, it's really just a timing issue there and
16 that those were administrative fees being paid for
17 children placed in the later months, for instance,
18 the later months of fiscal year 2021.

19 Do you remember that discussion?

20 A. Yes.

21 Q. And so, uh, can you tell us with
22 certainty that all of that -- all of that \$188,000
23 is, in fact, accounted for by that explanation and
24 that Miracle Hill, in fact, has not received any
25 administrative fees for services provided in fiscal

1 year 2022 after its announcement?

2 A. Yes, I have verified that.

3 Q. Okay, great. So you've verified that
4 they're not getting any administrative rates
5 after -- they have not received any administrative
6 rates for services provided after June 30th, 2021.

7 Do you know whether Miracle Hill
8 is -- has gotten any funding whatsoever from DSS in
9 the period after June 30th, 2021?

10 A. I can't answer that right now.

11 Q. Okay.

12 A. I would have to check.

13 Q. Okay. Is that something that would
14 be -- would be knowable if you had -- if you had
15 time to check?

16 A. Um, I mean, it's something that we
17 certainly -- that somebody could certainly look
18 into, yes.

19 Q. Okay. Do you know whether Miracle Hill
20 is still receiving the -- that board payment, the
21 maintenance payment, from DSS to pass along to the
22 families that it worked with that have children
23 placed with them?

24 A. So I believe that we are paying the
25 Miracle Hill CPA homes directly. Again, that's

1 another nuance. I -- I may not have mentioned that
2 earlier, but we are paying those homes directly
3 under Miracle Hill.

4 So we don't pay that to Miracle Hill
5 and then expect them to pay, to pass it on. We pay
6 those homes, directly to the homes.

7 Q. Has it always worked that way?

8 A. I believe it has, yes.

9 Q. Okay. So that was not a -- that was
10 not a change that was made as a result of Miracle
11 Hill's decision last year to --

12 A. No.

13 Q. -- stop accepting funds?

14 A. No.

15 Q. Okay. How did Miracle Hill notify DSS
16 of its decision to stop accepting government
17 funding for its foster care program effective July
18 1st, 2021?

19 A. That, I'm not sure of. I believe --
20 I'm not sure. That would be something that Dawn
21 Barton and/or Jackie Lowe would -- would have the
22 answer to.

23 MS. JANSON: Serena, let's look at Tab
24 9, if we can.

25 (EXHIBIT 5, State of South Carolina

1 Change Order 5; Bates 10545-G0250, was marked for
2 identification.)

3 MS. JANSON: Let me know when you have
4 that up.

5 MR. COLEMAN: Okay, we've got it.

6 MS. JANSON: Okay.

7 BY MS. JANSON:

8 Q. So we are up to Exhibit 5, I believe.
9 So let's mark as Exhibit 5 a document that's
10 entitled State of South Carolina Change Order
11 Number 5, and it's Bates stamped 10545-G0250 to
12 251.

13 Have you seen this document before,
14 Ms. Roben?

15 A. Yes.

16 Q. I see that you signed it at the bottom,
17 or you digitally signed it?

18 A. Correct.

19 Q. Can you describe for me what this is?

20 A. Um, so this is -- this is what we call
21 one of our change orders. And this was sent out
22 to -- well, all of our nontherapeutic foster
23 families -- or not our foster families, our CPAs.

24 And this is basically we had a -- we
25 had a change in our monthly rate, or the -- well,

1 we talked about a daily rate but we -- we converted
2 it basically to a monthly rate in our change order.

3 We talk about a daily rate, monthly
4 rate, it's really the same -- it equates to the
5 same thing. We take the daily rate times 30. It
6 comes out to these rates that you see here for
7 these age groups. And so we issued this change
8 order to let them know what the new monthly rate is
9 for these -- these age groups.

10 And this is -- it actually, I
11 believe -- at least I thought -- oh, it wouldn't
12 have been in Miracle Hill's because we don't pay
13 Miracle Hill; we pay the provider.

14 So this is just letting them know that
15 the new rate is the \$605, the \$708 and the \$747 for
16 these -- these age groups.

17 Q. Okay. So a change order, then, is --
18 is what, exactly, in general terms?

19 A. It's -- so there's an original contract
20 issued for -- for a -- a service. And then
21 anything that happens after that fact, we have to
22 issue a change order. Like, any change to the
23 original contract has to be -- the contract has to
24 be amended; we do that via a change order. And
25 that's per state -- State of South Carolina

1 procurement rules and regulations.

2 Q. Okay. And so any -- I think you said
3 every nontherapeutic CPA would have gotten the same
4 change order when it was issued; is that right?

5 A. They -- they would have, except I
6 believe -- and I would have to -- again, I would
7 have to double check -- but the other ones,
8 except -- except for Miracle Hill, because we paid
9 the foster families directly -- but since
10 the -- since the rest of the non-therapeutics we
11 pay to the CPAs and then they pass them through to
12 the families, there was kind of a clause in there
13 that said, you know, basically -- I don't -- I
14 don't remember the wording, but something to the
15 effect of, you know, you have to -- you must at
16 least pay the foster families these rates,
17 according to the proviso, and it listed the proviso
18 number.

19 Q. Okay. So looking at this one
20 specifically, this change order is -- was, in fact,
21 sent to Miracle Hill Ministries; is that right?
22 They're listed as the contractor's name at the top
23 of the document?

24 A. Yes.

25 Q. And then if you look down about halfway

1 on the page it says, Description of
2 change/modification, and it says the contract will
3 be extended to July 1st, 2021 through June 30th,
4 2022. SCDSS will remove the administrative rate
5 effective July 1, 2021 at Miracle Hill's written
6 request not to receive these funds. A change to
7 the scope of work has been listed on Page 2.

8 Do you see that there?

9 A. I do.

10 Q. So that's a reflection, then, of the
11 decision we've been talking about by Miracle Hill
12 to decline to receive government funding, right?

13 A. Correct.

14 Q. And it makes reference there to Miracle
15 Hill's written request not to receive these funds.

16 Have you seen a written request by
17 Miracle Hill not to receive the government funding?

18 A. I don't -- I honestly don't remember; I
19 may have. But since we're going on about a year
20 now, or nine months ago, I don't remember. I don't
21 have -- I know I don't have a copy of it myself,
22 so, um, I really don't remember if I have seen it
23 or not.

24 Q. Okay. Do you know whether Miracle Hill
25 had discussions with anyone from DSS about its

1 decision to stop accepting government funding
2 effective July 1, 2021?

3 A. No, I don't. I don't know that.

4 Q. You don't know whether there were any
5 discussions in advance of Miracle Hill's decision?

6 A. I do not, uh-uh.

7 Q. And how about after Miracle Hill's
8 decision?

9 A. I don't know if there were any
10 discussions.

11 Q. And when I say discussions, I'm
12 referring to discussions between the people at
13 Miracle Hill and people at DSS.

14 Is that -- were you understanding that
15 in my question?

16 A. Yes.

17 Q. And have you been aware of any
18 discussions among people within DSS about Miracle
19 Hill's decision to stop accepting government
20 funding?

21 A. Well, we've -- I mean, of course, we've
22 had to talk about it, because we've -- we've had to
23 issue this change order, we've had to talk about it
24 internally to adjust our internal system to stop
25 paying the -- the admin -- the administrative

1 rate -- because that's kind of tied along with the
2 number of children that they have placed. I mean,
3 there, of course, had to be internal discussions
4 regarding that.

5 Q. Okay, that's sort of the -- the
6 implementation --

7 A. Correct.

8 Q. -- of -- of that decision?

9 A. Yes.

10 Q. What about any -- what about any
11 discussions just more -- you know, more broadly
12 about -- about Miracle Hill's decision?

13 A. Not that I'm aware of.

14 Q. But despite its decision to stop
15 accepting government funding, Miracle Hill is still
16 serving as a CPA licensed by DSS, right?

17 A. Yes, that's my understanding.

18 Q. Do you know whether there are any other
19 CPAs that are licensed by DSS that decline to
20 accept government funding for their foster care
21 services?

22 A. Not to my knowledge.

23 Q. And so not to -- not to DSS's knowledge
24 as well, then, right?

25 A. That's correct.

1 Q. So everybody else, apart from Miracle
2 Hill, takes the money, right?

3 A. Yes.

4 Q. And I think you said earlier, but just
5 to make sure we covered this, you don't have any
6 understanding of why it was that Miracle Hill
7 decided to make the decision to stop accepting
8 government funding for its foster care services?

9 A. It would be speculation on my part.

10 Q. Okay, we can put -- we can put Exhibit
11 5 away, I think.

12 MS. JANSON: Serena, could we put up
13 Tab 5, please.

14 (EXHIBIT 6, Contract Between the South
15 Carolina Department of Social Services and South
16 Carolina Mentor; Bates 10545-G0335, was marked for
17 identification.)

18 MR. COLEMAN: Okay, we've got it.

19 BY MS. JANSON:

20 Q. Okay, great. So we've marked as
21 Exhibit 6 a document titled Emergency Contract
22 Between the South Carolina Department of Social
23 Services and South Carolina Mentor, and it's Bates
24 numbered 10545-G0335 through 354.

25 Have you seen this document before, Ms.

1 Roben?

2 A. I have.

3 Q. And can you explain to me what this is?

4 A. Let's see. All right. Sorry, I've got
5 to get back to the top one.

6 Q. Okay.

7 A. It might help if I do this with my
8 right hand and not my left hand.

9 So this is -- this looks like this is
10 our emergency -- one of our emergency contracts
11 for, um -- between South Carolina DSS and South
12 Carolina Mentor, um, for them to provide -- as a
13 CPA for nontherapeutic services.

14 Q. Okay. And what does it mean -- what
15 does it mean that it's an emergency contract?

16 A. So, again, I am not the procurement
17 expert, and so I am -- I am probably not the best
18 one to answer this. I'm trying to think of
19 the -- so we issue emergency contracts
20 when -- basically when there is -- there is
21 not -- when the health and wellbeing of the
22 children of South Carolina are, you know, in harms
23 way, basically.

24 So if we were -- if we were -- if we
25 did not issue this contract, then we would not be

1 able to, um, have a contract with South Carolina
2 Mentor, they would not be able to take children,
3 or, you know, become a -- we would not be able to
4 pay them, they would not be able to basically start
5 taking children under their -- under the CPA
6 provisions, um, and then we would
7 have -- potentially we would have children that
8 would not be able to find a foster home.

9 And that, obviously, is not in the best
10 interest -- we don't want children -- I mean, we
11 know that children are best suited in loving foster
12 families, not necessarily in congregate care
13 facilities, or in other facilities. We want them
14 in a stable environment. So that's -- that's
15 really what we mean by an emergency contract. So
16 there's -- we are -- we are working on a -- on a
17 procurement, but regular procurements take a long
18 time, sometimes a year and a half, and so until
19 that gets done, we really -- I don't want to say we
20 don't have a choice, but we really have -- this is
21 the way to get this done in a quick manner for
22 something that really is for the best interest and
23 the health and well being of the children in South
24 Carolina's care and custody.

25 Q. Okay, that's helpful; thank you.

1 So I picked, just an example, an
2 example of a contract between DSS, and, you know,
3 one of the nontherapeutic CPAs here, South Carolina
4 Mentor, just so we can look at some of the
5 provisions in here.

6 But does DSS enter into the same
7 emergency contract, or an equivalent emergency
8 contract, with all of the nontherapeutic CPAs that
9 are licensed?

10 A. At this point, yes, until we're able to
11 move forward with a full solicitation RFP process,
12 uh-huh.

13 Q. If we look at Article I here about
14 halfway through the first page, it says Contract
15 Period and it says, The emergency contract must
16 take effect as of August 1, 2020 and must continue
17 in full force and effect through December 31, 2022
18 [sic].

19 So that's the -- that's the time period
20 of this; is that right?

21 A. December 31st, 2020. I think you said
22 2022.

23 Q. I said it wrong again. Thank you for
24 catching my error. Yes, December 31st, 2020.

25 Okay. And then if we go -- if we flip

1 ahead to Page 5 of the document itself, there's a
2 heading there, B, Limit on Total Reimbursement.

3 Do you see that?

4 A. I do.

5 Q. And I'm just going to read that. It
6 says, SCDS -- SCDSS -- will reimburse the licensed
7 regular child placing agency under this emergency
8 contract a monthly rate of \$300 per child, or \$10
9 per child per day if less than 30 days in a given
10 month.

11 And so that's a reference to the
12 administrative rate that we've been discuss, right?

13 A. Correct.

14 Q. And so at the time of this emergency
15 correct, which was August 1 through December 31,
16 2020, the rate was \$30 per month per child, or
17 \$10 -- I'm sorry -- \$300 per month per child, or
18 \$10 per child if less than 30 days in a given
19 month; is that right?

20 A. That's correct.

21 Q. And so at this point, there wasn't --
22 there wasn't a distinction between the ages of the
23 children, or there were not different -- different
24 rates provided for different -- different brackets
25 of ages --

1 A. No.

2 Q. -- like we discussed earlier?

3 A. No, no, that started on
4 January -- January 1st of 2021.

5 Q. Okay. And underneath the part I just
6 read it says -- in bold there it says, Total funds,
7 \$150,000. What does that indicate?

8 A. So with each contract, we have to issue
9 a dollar amount on -- on the contract, on the
10 purchase order, there has to be a dollar amount.

11 And so this was our -- this was the
12 estimate given to this -- this particular contract.
13 That doesn't mean that they're absolutely limited
14 and then cut off at that point in time. We can
15 always increase that dollar amount if -- if need
16 be, but there has to be a -- there has to be a
17 dollar amount on each contract. And so it's -- on
18 contracts like this where it's -- it's really just
19 based on the number of children. And we're not
20 going to cut that off, obviously. If they're
21 placing more children, then we're going to increase
22 that dollar amount. But they won't necessarily --
23 they may not use that total \$150,000; it may be
24 less. So it's somewhat arbitrary for these types
25 of contracts.

1 Q. And if there needed to be a change to
2 that total funding amount, would that be
3 effectuated through a -- through another change
4 order like this?

5 A. Yes.

6 Q. And when that estimate is being made
7 for, you know, what the -- what the total funds
8 figure under the contract should be, does that
9 number vary based on, you know, the size of -- of
10 the CPA that the -- that the contract pertains to?

11 A. Yes, it does, I mean, we've -- I think
12 that, you know, the procurement team looks
13 at -- along with Dawn and Jackie and based on the
14 history of the number of children that have been
15 placed historically and maybe what Dawn and Jackie
16 think in conversations, you know, maybe what they
17 think that the future placement will be, they kind
18 of assign a value of how much -- how many dollars
19 they think they might need.

20 Q. Okay. And if you flip forward to Page
21 15 of the contract, I see your -- your digital --
22 digital signature there from November 10th of 2020;
23 do you see that?

24 A. Yes.

25 Q. Are you the signatory for DSS on all

1 CPA contracts?

2 A. I am. We have that -- the -- so the
3 director, state director, Mike Leach has -- has
4 authorized myself, John Grant, our state director,
5 state deputy director of administration, and Emily
6 Medere who is our chief of staff now, all three of
7 us have signature authority on behalf of the state
8 director, but I am the one who typically -- unless
9 I'm unavailable or out of the office for an
10 extended period of time, I sign all procurement
11 contracts.

12 MS. JANSON: Okay.

13 All right, I think we can put that
14 aside for now.

15 Serena, could we look at Tab 6, please.

16 (EXHIBIT 7, State of South Carolina
17 change order number 1; Bates 10545-G0355, was
18 marked for identification.)

19 MS. JANSON: Let me know when you have
20 that.

21 MR. COLEMAN: Okay, we've got it up.

22 BY MS. JANSON:

23 Q. Okay, so we are marking as Exhibit 7 a
24 document titled State of South Carolina change
25 order number 1, Bates numbered 10545-G0355 through

1 362.

2 Have you seen this document before,
3 Ms. Roben?

4 A. I have.

5 Q. And is this a change order to the
6 contract between DSS and South Carolina Mentor that
7 we just looked at?

8 A. It is, yes.

9 Q. And if you look down about halfway
10 through the page where it says Description of
11 Change Modification -- let's see -- it reads there
12 in the -- I guess the second sentence -- that the
13 contract has been extended for the time period of
14 January 1st, 2021 through June 30th, 2021, with a
15 total potential value of \$300,000.

16 Do you see that?

17 A. I do.

18 Q. And then if we look over to Page 2,
19 there's a heading there at the top of the page that
20 says, Description of changes. And I'll just read
21 that so we have it.

22 It says, The following is a change
23 order to the emergency contract for nontherapeutic
24 foster home services.

25 So that's -- that would indicate that a

1 similar change order would have been entered into
2 for all emergency contracts for nontherapeutic
3 foster home services; is that right?

4 A. Can you say that again?

5 Q. Sure, I'm just trying to understand,
6 this is a change order that would apply to all of
7 the existing emergency contracts that DSS had with
8 nontherapeutic foster care providers --
9 nontherapeutic CPAs at the time.

10 This isn't something specific to South
11 Carolina Mentor only, right?

12 A. Yes, that's correct.

13 Q. Okay. And then it goes on and it says,
14 In July of 2020, the South Carolina Department of
15 Social Services began transitioning all non-kin
16 foster family licensing and support work to
17 licensed child placing agencies across the state.
18 This change order adds a mechanism to provide an
19 interim rate increase that supports the continued
20 non-kin licensing and support work by the CPAs.

21 Do you see that?

22 A. Uh-huh, I do.

23 Q. And we've talked about that, that
24 for -- that operational change that's described
25 there with your -- with your colleagues -- so I

1 won't -- I won't delve into that.

2 But what I'm wondering is, you know,
3 why was it -- why was it deemed necessary to
4 implement this interim rate increase as a result of
5 the change whereby DSS began transitioning all of
6 the non-kin foster family licensing and support
7 work to private CPAs?

8 A. Well, I mean, believe Dawn or Jackie --
9 or either/or -- probably have answered this
10 already. But we were expecting and asking these
11 CPAs to do more work on DSS's behalf, and so we
12 felt it only right and fair to compensate them for
13 that work.

14 Q. And if you look below under the heading
15 Requirements, there's a chart there that lists what
16 looks to be the age of the child, and then it says
17 monthly/daily admin rate.

18 And it lists the rates that I think we
19 talked about earlier, where it's \$20 per day, \$600
20 per month for ages zero to 5; \$25 per day, \$750 per
21 month for ages 6 to 12; and \$30 per day, or \$900
22 per month, for 13 and up.

23 You see that, right?

24 A. Yes.

25 Q. And prior to this change, as reflected

1 in the contract we just discussed that was Exhibit
2 6, there was a -- there was a flat rate per child
3 per day, and it wasn't broken out by age group,
4 right?

5 A. Correct.

6 Q. Why was the -- why was the decision,
7 then, made to -- to create different rates based on
8 these three different age brackets?

9 A. I think that would be a question that
10 either Dawn or Jackie would need to answer.

11 Q. You don't have any understanding of
12 that?

13 A. It would be speculation on my part.

14 Q. And like we said before, the rate prior
15 to this was \$10 per child per day for -- you know,
16 for a maximum of \$300 per month per child in the
17 admin rate; is that correct?

18 A. That's correct.

19 Q. And so this change here that we're
20 seeing in Exhibit 7 is a pretty substantial bump-up
21 in the admin rate that the CPAs are receiving based
22 on the children placed with -- placed with families
23 that they support; is that right?

24 A. That's correct.

25 Q. And then if we flip back, if we flip

1 back to Page 1, we saw there, in the language I
2 read earlier, that the -- as part of this change
3 order, the total -- the total funding amount under
4 the contract went up from \$150,000 to \$300,000; is
5 that right?

6 A. Correct.

7 Q. And so would that -- that would
8 be -- that increase would have been a reflection of
9 the increase in the amounts of the admin rates that
10 are being paid; is that right?

11 A. Yes.

12 Q. All right. We can put that one -- we
13 can put that one away. And I just have a couple
14 more of these I want to look at. Serena, why don't
15 we put up Tab 7.

16 (EXHIBIT 8, State of South Carolina,
17 Change Order Number 2; Bates 10545-G0363, was
18 marked for identification.)

19 MS. JANSON: Let me know when you can
20 see that.

21 MR. COLEMAN: We've got it.

22 BY MS. JANSON:

23 Q. Okay, great.

24 So this is Exhibit 8. It's another
25 document titled State of South Carolina, Change

1 Order Number 2, Bates numbered 10545-G0363 to 64.

2 Have you seen this change order before,
3 Ms. Roben?

4 A. This specific one, I actually have not,
5 but I have seen similar change orders.

6 Q. Okay. So is this another change order
7 to the emergency contract between South Carolina
8 Mentor and DSS?

9 A. Yes.

10 Q. And if we look at that section in the
11 middle of the page with the heading description of
12 change/slash modification, it says the contract
13 number -- I won't read the number -- but with the
14 Department of Social Services has been modified as
15 described on Page 2 of this change order regarding
16 payment effective February 1st, 2021 to June 30th,
17 2021.

18 So it looks like this is a change that
19 went into effect just about a month after the last
20 change order that we just looked at; is that right?

21 A. Yes, that's correct.

22 Q. Okay. And if you flip to Page 2 of the
23 document, under description of changes, it says,
24 The following is a change order to the emergency
25 contract for nontherapeutic foster home services

1 effective February 1, 2021. Child placing agencies
2 will now receive the monthly foster care payments
3 and administrative rate out of Child and Adult
4 Protective Services' system, parentheses, CAPS.

5 What is that indicating? Is that
6 describing some sort of change to how those
7 payments have been made in the past?

8 A. Um, so in the past, the -- the CPAs had
9 to send us and submit to us an invoice, um, and we
10 would pay them the admin fee from the
11 actual -- like a completely separate invoice.

12 And so by doing it through CAPS, this
13 system, it basically -- high level -- CAPS looks at
14 the number of children placed with that CPA by
15 ages. I mean, our system tracks, you know, how
16 many -- what children -- the individual children
17 that are placed with that -- through that CPA, the
18 ages of the children, what day they came, were
19 placed, what day they left, you know, throughout
20 that month, and it will calculate the admin fee
21 automatically.

22 And so it's -- it's an automatic
23 process now, instead of the CPA having to keep
24 track of all of that and then us having to go in
25 the system and verifying it all.

1 So they no longer have to
2 submit -- keep track of everything and submit a
3 separate invoice to us.

4 Q. I bet they were happy about that
5 change.

6 A. Yes, they were.

7 Q. Okay. And then under -- under the
8 heading Requirements, there is -- there's a chart
9 there. And if you look at the third column over in
10 the chart, it says "monthly/daily admin rate" and
11 it lists those same -- same rates we discussed in
12 prior charts of \$20, \$25, and \$30 based on the --
13 the age brackets of the child.

14 Do you see that there?

15 A. I do.

16 Q. And then -- and that's -- again, that's
17 the amount referring to -- those amounts are paid
18 to the CPA, um, and that's the money that stays
19 with the -- with the CPA, those administrative
20 rates, right?

21 A. Um, yes, we assume.

22 Now, the CPA -- it's up to them. If
23 they want -- if they feel generous and they want to
24 pass some of that on to the foster family, they
25 certainly can. It's up to them what they want to

1 do with that admin rate. Our assumption is that
2 they keep that for themselves, but they can do with
3 it what they -- what they choose.

4 Q. Okay. And then the column to the left
5 of that, it says, Monthly/daily rate --

6 A. Uh-huh.

7 Q. -- different -- different rates there.

8 A. Yep.

9 Q. Is that column referring to the board
10 payments?

11 A. It is.

12 Q. And the rates there are listed as \$500
13 per month for zero to 5; \$523 per month for ages 6
14 to 12; and \$589 per month for 13 and up; is that
15 right?

16 A. That's correct.

17 Q. And it seems like those are different
18 numbers than -- I don't have -- I don't have the
19 testimony right in front of me, but I think those
20 are different numbers than you told me were the
21 amounts for the board members earlier in the
22 deposition. Has the -- have the amounts changed
23 since --

24 A. They have.

25 Q. -- what we looked at earlier?

1 They have?

2 A. They have. So those were the amounts
3 through June 30th of '21.

4 And then -- excuse me -- the General
5 Assembly passed a new proviso and we increased our
6 regular foster care board payments, our maintenance
7 payments, and they did increase effective July 1 of
8 '21. And so you will see -- you may even be
9 getting ready to show me one with another change
10 order that shows the new monthly rates effective
11 July 1 of '21.

12 Q. Okay, great. And then in the text
13 above it says -- second sentence there under
14 requirements -- it says, "You," and that's in
15 reference to the CPA, You also agree to pay the
16 foster family the monthly rate or daily rate if
17 less than 30 days in the placement.

18 And so that -- that's reflecting what
19 we discussed earlier that the -- at this point, the
20 board payment was being paid from -- started being
21 paid from DSS to the CPA and then the CPA is
22 responsible for passing that on to the foster
23 family itself, right?

24 A. That's correct.

25 Q. And is it -- is it at this point as of

1 the -- you know, the entry of this change order,
2 that that change was made so that it was -- instead
3 of having DSS paying the foster families directly,
4 that it started to be that that money went from DSS
5 to the CPA and then to the foster family?

6 A. Um, that -- yes, that's correct.

7 Q. Okay. And there would have been a
8 similar change order to this one entered into for
9 all of the emergency contracts with nontherapeutic
10 CPAs that DSS had at this time, right?

11 A. Correct.

12 MS. JANSON: Okay, we can put that one
13 away.

14 And, Serena, could we put up Tab 8,
15 please.

16 (EXHIBIT 9, State of South Carolina
17 Change Order Number 3; Bates 10545-G0365, was
18 marked for identification.)

19 MS. JANSON: Let me know when you can
20 see that.

21 MR. COLEMAN: We're just pulling it up
22 now. Okay, we've got it.

23 BY MS. JANSON:

24 Q. Great, okay. So we've marked as
25 Exhibit 9 a document titled State of South Carolina

1 Change Order Number 3, Bates numbered 10545-G0365
2 to 366.

3 And this is another change order
4 between DSS and South Carolina Mentor; is that
5 right?

6 A. That's correct.

7 Q. Have you seen this before?

8 A. Yes.

9 Q. And if you look down under Description
10 of Change/Modification, it says, The contract will
11 be extended to July 1, 2021 through June 30th, 2022
12 for a total potential value during this term of
13 \$50,000.

14 Do you see that?

15 A. I do.

16 Q. That's extending the South Carolina
17 Mentor emergency contract out by an additional
18 fiscal year, right?

19 A. Yes.

20 Q. And it indicates there that the total
21 potential value of the contract during the term is
22 \$50,000.

23 And that represents a decrease, I
24 think, to the contract amount that we had seen in
25 the original contract and then in -- I think it's

1 the first -- the first of the change orders that we
2 looked at, right?

3 A. If I remember correctly, yes.

4 Q. I think the contract had \$150,000 and
5 the first change order bumped it up to \$300,000.

6 I'm curious why, with this change
7 order, the total potential value would have been
8 decreased down to just \$50,000?

9 A. I wouldn't be able to answer that at
10 this time.

11 Q. Okay. If you look over to Page 2,
12 there's a little table there that says, Monthly
13 rate effective July 1st, 2021 through June 30th,
14 2022. Do you see that?

15 A. I do.

16 Q. So these would be the rates, the admin
17 rates, that are effective currently, right?

18 A. No, those are the -- the board rates --
19 the monthly board rates.

20 Q. Those are the -- those are the board
21 rates?

22 A. Yes.

23 Q. Oh, okay. Okay, so --

24 A. The admin rates -- the admin rates
25 didn't change, so they're -- they're not reflected

1 in this change order, because they're not changing.

2 Q. Got it, okay. So the admin rates are
3 not here, so they're the same as the 20, 25 --

4 A. Yep, the previous, yep.

5 Q. So these are the -- okay, so these are
6 the board rates.

7 So looking back to the prior change
8 order, it looks like this reflects an increase,
9 then, to the board rates for all three of the age
10 ranges; is that right?

11 A. That's correct.

12 MS. JANSON: All right. So we've
13 been -- we've been going now quite a while since
14 our last break. I am definitely nearing -- nearing
15 the end. I would love to take just about ten
16 minutes off the record and then we can circle back
17 and I -- I should be able to finish up.

18 MR. COLEMAN: Sounds good to us.

19 THE VIDEOGRAPHER: We are going off
20 record. This is the end of media unit 2, the time
21 is 12:14 p.m.

22 (A brief recess was held.)

23 THE VIDEOGRAPHER: We are back on
24 record. This is the beginning of media unit 3.
25 The time is 12:29 p.m.

1 BY MS. JANSON:

2 Q. Okay, so just a -- just a few -- a few
3 last things, you know, before -- before I wrap up.

4 If -- are you able to look back at
5 Exhibit 3?

6 A. Okay, we've got it.

7 Q. Okay. So this is the Payments to Child
8 Placement Agencies chart that we had discussed
9 before. And I know you said -- you testified
10 earlier that prior to January 1 of 2019, there was
11 no administrative fee paid to nontherapeutic CPAs
12 and that those CPAs were effectively
13 working -- working for free prior to that point.

14 Do you remember that discussion?

15 A. Yes.

16 Q. And if we look here, we can
17 take -- let's take South Carolina Mentor as an
18 example, since we have been talking about them and
19 we understand that they are a nontherapeutic -- you
20 know, they're a nontherapeutic CPA. The line for
21 them is over on Page 2 of the document.

22 And it looks -- it looks to me that for
23 the -- I guess this just has the -- the beginning
24 of 2017 to June 30th of 2017 and then the 2018
25 fiscal year and then the beginning -- beginning

1 part of the 2019 fiscal year prior to January 1st
2 of 2019, South Carolina Mentor received, for each
3 of those time periods -- and I will estimate, you
4 know, 2.25 million, 4.2 million and 4.6 million
5 in -- in payments from DSS; do you see that?

6 A. I do.

7 Q. So I just want to ask again, is it
8 possible that nontherapeutic CPAs like South
9 Carolina Mentor were being paid for their foster
10 care services through some other mechanisms apart
11 from the administrative fee?

12 MR. COLEMAN: Object to the form of the
13 question to the extent it assumes that South
14 Carolina Mentor was only a nontherapeutic CPA,
15 which I am not sure of. But to the extent you can
16 answer the question, go ahead.

17 THE WITNESS: So and I -- I might need
18 to rephrase your question. Are you -- so are you
19 asking if they were only a nontherapeutic CPA and
20 these are the amounts of payments that they
21 received? Is that basically your question? I'm
22 sorry.

23 BY MS. JANSON:

24 Q. No, I'm just trying -- I'm just trying
25 to understand, you know, we know that South

1 Carolina Mentor has worked as a nontherapeutic CPA
2 and I'm trying to under -- you know, and this chart
3 indicates that they received, you know --

4 A. Uh-huh.

5 Q. -- several million dollars in
6 payments --

7 A. That's correct.

8 (Technical difficulties.)

9 Q. -- through the time period --
10 (Reporter clarification.)

11 BY MS. JANSON:

12 Q. And yet you testified earlier that,
13 prior to January 1st, of 2019, the nontherapeutic
14 CPAs weren't receiving anything in the way of an
15 administrative rate.

16 So I'm just trying to understand what
17 the money reflected on this chart for those three
18 years was going to and whether there's some
19 possibility that nontherapeutic CPAs were being
20 compensated by DSS for their foster care services
21 in a different -- through a different mechanism
22 than the administrative fee during that period.

23 A. So the amounts -- I don't have the
24 details of what's included in each of these -- in
25 each of these line items.

1 Again, this is just a sum total for
2 each of these providers of various -- like I said
3 before, various different services -- whether that
4 be for a therapeutic CPA, a regular CPA, could be
5 for a group home, could be for transportation
6 services, could be for BMOD services, it could be
7 for a variety of things. So I don't have what
8 makes up the total of this, but I -- what I can say
9 is the amounts for South Carolina Mentor would
10 be -- would include the amounts -- well, I guess I
11 can't speculate at this point. I just -- I
12 can't -- I don't know. I don't have the details
13 with me right now to know what's included in that,
14 in those payments.

15 Q. Okay. Okay, um, let's -- if we
16 can -- if you can pull up Tab 2 again. And I just
17 have one more -- one more question I wanted to ask
18 you about that. That's the Child Placing Agency
19 Administrative Fees chart.

20 A. Okay.

21 Q. And so we've talked about how there was
22 no administrative rate being paid to nontherapeutic
23 CPAs prior to fiscal year '19. And I think we've
24 discussed, or you testified earlier, that this
25 chart, Exhibit 2, includes both therapeutic and

1 nontherapeutic CPAs, right?

2 A. Yes.

3 Q. And if you look at the columns for
4 fiscal year '17 and fiscal year '18, you'll note
5 that all of those -- that for every CPA on this
6 list, apart from Miracle Hill, for every other CPA,
7 there are no amounts listed as administrative fees
8 having been paid in fiscal year '17 or '18,
9 right --

10 A. Correct.

11 Q. -- except for Miracle Hill, right?

12 A. Correct.

13 Q. So my question is, for the therapeutic
14 CPAs on this list, does that mean that they were
15 also not receiving any administrative fee in fiscal
16 year '17 or '18?

17 A. So I believe I talked about this
18 earlier. The therapeutic CPA providers were being
19 paid \$10 a day per child if they had a
20 nontherapeutic child placed in their therapeutic
21 home, but it was not -- it was not called or
22 separated out as an administrative -- as a separate
23 administrative fee, it was in addition to their
24 regular board payment, so it was added on as part
25 of their board payment. So we cannot separate that

1 out. We don't have any way of separating that out
2 as an administrative fee, so we can't -- it's not
3 going to be -- we're not able to pull that amount
4 into this report. So we don't have any way of
5 knowing what that separate \$10-per-day/per-child
6 fee is because it was added onto their maintenance
7 payment.

8 Q. Okay, understood. So that's -- that's
9 an accounting sort of record -- recordkeeping issue
10 that leads to the blanks here for -- for the
11 nontherapeutic CPAs, right?

12 A. I don't know that I would say it's an
13 accounting issue. It really was not considered --
14 back in that time, '17 and '18, it was not
15 considered, really, an administrative -- it wasn't
16 called an administrative fee. It was a -- it was a
17 payment that was added on to their -- as part of
18 their -- their maintenance payment. And, again,
19 I'm speculating, because that was a long time ago.

20 Q. Yes.

21 A. But from my talking to other staff and
22 from my research, it was -- it was a fee that was
23 added onto their maintenance fee -- their
24 maintenance payment, not their maintenance fee.

25 Q. Okay. And that \$10, was that added on

1 just for -- I think you had said earlier that it
2 was added on in the case where there was a
3 nontherapeutic placement with a therapeutic
4 foster -- foster home -- is that right?

5 A. With a therapeutic foster child, a
6 non -- a thera -- so a therapeutic -- a therapeutic
7 home that had a nontherapeutic child in that home.

8 Q. Okay. And so -- and so was there any
9 admin rate or extra amount on top of the board
10 payment that was being paid for therapeutic foster
11 placements in those homes, or was it just for a
12 nontherapeutic foster placement within a
13 therapeutic foster home, if that makes sense?

14 A. I believe it does. I -- I can't answer
15 that. I would need to go back and do some more
16 research on that -- on that one.

17 Q. Okay. And are you -- are you
18 able -- you know, we -- I keep -- I keep going back
19 to this question of no administrative fee being
20 paid to nontherapeutic CPAs prior to 2019.

21 Do you know with certainty that those
22 nontherapeutic foster -- or those nontherapeutic
23 CPAs were, in fact, providing their foster care
24 services for free prior to January 1st of 2019?

25 A. Based on the information that I have

1 gathered and the research that I have done, that is
2 the conclusion that I have come to.

3 Q. So you don't know for sure?

4 A. I mean, I don't know where -- I
5 mean -- I'm -- well --

6 Effective January -- what I know is
7 that effective January '19 is when the regular CPA
8 providers began to receive the \$10 per day per
9 child. They did not receive it before then.

10 Q. But you don't know for sure, or you
11 can't tell me with certainty right now whether
12 there may have been some other -- or whether there
13 was some other funding mechanism whereby those
14 nontherapeutic CPAs were being paid for their
15 foster care services prior to that January 2019
16 initiation of the admin fee, right?

17 A. There wouldn't have been any other
18 funding mechanism.

19 Q. There would not have been, or there was
20 not?

21 A. There wouldn't -- there was not any
22 other funding mechanism. We were not paying them
23 any other -- any other way.

24 Q. So they were providing those foster
25 care services -- recruiting, screening,

1 supporting/training prospective foster families and
2 families after they received licensure from DSS --
3 they were doing all of that work for free?

4 MR. COLEMAN: Object to the form of the
5 question to the extent that "for free" is a little
6 bit ambiguous, but you can answer.

7 THE WITNESS: I am saying that,
8 effective January of 2019, is when the regular
9 nontherapeutic CPA providers began to receive the
10 \$10-per-child/per-day administrative fee. They did
11 not receive it before then.

12 BY MS. JANSON:

13 Q. But they were -- but they were -- at
14 least some of them -- were working as licensed CPAs
15 and providing those foster care services before
16 then, right?

17 A. That is my understanding, yes.

18 Q. Okay. And so they -- and so then they
19 were -- they must have been doing all of those --
20 providing all of those service and all of that work
21 without receiving any government funding from DSS?

22 A. Yes.

23 Q. Why would they do that? How would they
24 pay -- how would those CPAs pay their employees,
25 for instance?

1 MR. COLEMAN: Object to the form of the
2 question on the basis that it calls for
3 speculation. But if you know the answer, you can
4 answer it.

5 THE WITNESS: I can't answer that
6 question.

7 BY MS. JANSON:

8 Q. With regard to Miracle Hill, I think
9 you testified earlier that the Miracle Hill -- the
10 foster families that are supported by Miracle Hill
11 have always gotten their -- have their board
12 payments paid directly by DSS; is that right?

13 A. Yes.

14 Q. And that's not the case for other
15 nontherapeutic CPAs, right?

16 MR. COLEMAN: Object to the form of the
17 question to the extent it misstates prior
18 testimony, but you can answer.

19 THE WITNESS: Sorry. Can you repeat
20 that question?

21 BY MS. JANSON:

22 Q. Sure.

23 I think you testified earlier that at
24 some point there was a change by which the board
25 payment that goes to the foster families was paid

1 from DSS to the CPA and then passed on to the
2 family, right?

3 A. Yeah, so the -- DSS paid the regular
4 CPA homes, or the nontherapeutic homes, directly
5 through December of 2020.

6 And then starting on January 1st, 2021,
7 DSS started paying the CPA providers directly for
8 those homes, and they passed it on to the homes.

9 Q. But not for Miracle Hill, right?

10 A. Yes, with that exception.

11 Q. Why -- why was it that that was handled
12 differently for Miracle Hill than for the other
13 nontherapeutic CPAs?

14 A. I can't answer that. I'm not sure.

15 Q. We talked a little bit earlier about
16 how you had -- how you had learned of Miracle
17 Hill's decision to stop funding -- or to stop
18 accepting government funding -- and I believe you
19 said that you had learned from Dawn Barton; is that
20 right?

21 A. Yes.

22 Q. What exactly did Dawn tell you in that
23 conversation?

24 A. What exactly did she say? I don't
25 remember. It was quite a while ago.

1 Q. Do you remember whether she said
2 anything more than, um, Miracle Hill is no longer
3 accepting government funding?

4 A. I don't remember.

5 Q. Do you know -- did she tell you why
6 Miracle Hill decided to stop accepting government
7 funding?

8 MR. COLEMAN: Object to the form, asked
9 and answered, but you can answer.

10 THE WITNESS: I don't -- I don't
11 remember.

12 BY MS. JANSON:

13 Q. Do you -- do you know whether Dawn
14 Barton knows why Miracle Hill decided to stop
15 accepting government funding?

16 MR. COLEMAN: Object to the form, but
17 you can answer.

18 THE WITNESS: No, I don't know.

19 BY MS. JANSON:

20 Q. Do you have any understanding, as you
21 sit here today, of why it is that Miracle Hill is
22 no longer accepting government funding?

23 MR. COLEMAN: Object to the form of the
24 question. Repeatedly asked and answered. But you
25 may answer.

1 THE WITNESS: I'm not aware of -- of
2 that. It would be speculation on my part.

3 BY MS. JANSON:

4 Q. You haven't heard anything about what
5 the reason might have been?

6 MR. COLEMAN: Same objection.

7 THE WITNESS: Again, it would be
8 speculation. I can speculate, but it would be
9 clear speculation on my part.

10 BY MS. JANSON:

11 Q. I'm interested in hearing your
12 thoughts.

13 MR. COLEMAN: Object to the form of the
14 question to the extent you're asking the witness to
15 speculate on behalf of SCDSS or Director Leach.

16 MS. JANSON: Not on behalf -- I'm
17 asking the question in Ms. Roben's personal
18 capacity. I'm just interested in whether she has
19 any understanding as to why it is that Miracle Hill
20 made that decision.

21 MR. COLEMAN: Object to the relevance
22 of any pure speculation, but if you have any, I
23 can't stop you from saying it.

24 THE WITNESS: The speculation on my
25 personal behalf, from what I have -- what I have

1 heard -- is that they -- and what I have seen today
2 in this -- this Facebook post -- is that there
3 is -- there is some issue with some sort of
4 discrimination, or something, of some sort, of
5 which I'm not real sure of what it is, I think
6 something to do with because they're a faith-based
7 organization, but that's about all I know.

8 BY MS. JANSON:

9 Q. That's about all you know? Is there
10 anything more?

11 A. No.

12 Q. You made reference to -- to "some sort
13 of discrimination."

14 What do you mean by that?

15 A. Because of -- because of they're
16 faith -- they're faith-based.

17 Q. Do you mean that Miracle Hill -- are
18 you saying that Miracle Hill discriminates because
19 they're faith-based?

20 MR. COLEMAN: Object to the form of the
21 question.

22 BY MS. JANSON:

23 Q. Did you need me to restate the
24 question?

25 A. No, I -- I believe that I'm here to

1 testify -- testify on the state and federal
2 funding, on the payments to CPAs, child placing
3 agencies; is that correct?

4 Q. That's correct, but I'm asking you this
5 question in your -- in your personal capacity, not
6 as a representative of DSS.

7 A. Okay.

8 Q. The question was simply, Are you saying
9 that...

10 I'm just trying to understand your
11 prior answer.

12 Are you saying that Miracle Hill
13 discriminates because they're a faith-based agency?

14 A. I don't know that. I don't know
15 whether they do or not. I have never worked with
16 Miracle Hill.

17 Q. Okay. So you told me
18 everything -- everything that you know and your
19 full understanding, to the extent you have any, of
20 why it is that Miracle Hill stopped accepting
21 government funding; is that right?

22 A. Yes.

23 Q. Do you know whether or did -- let
24 me -- let me withdraw that and restate that.

25 Did DSS ask Miracle Hill to stop

1 accepting government funding?

2 A. Not to my knowledge.

3 Q. And are you speaking in your -- in your
4 personal capacity or in your capacity as a DSS
5 representative?

6 A. As a DSS representative.

7 MS. JANSON: Okay, so I -- I don't have
8 any further questions at this point, although,
9 Miles, I would like to leave the deposition open.

10 I think there were a number of
11 questions that fell within Ms. Roben's topic areas
12 for which she wasn't able to provide us with full
13 answers, and so we're going to need to take a look
14 at the transcript and potentially follow up on
15 those. But I do want to, you know, reserve that
16 right to reopen the deposition if we need to.

17 MR. COLEMAN: I disagree with that. I
18 think she was able to answer all of the questions
19 adequately within the scope of her designation, and
20 we are deeming the deposition to be closed.

21 If you want to try to reopen it later,
22 you can, but we believe it to be closed.

23 MS. JANSON: Okay. Well, we obviously
24 have a disagreement on this, so we can -- we can
25 take up offline.

1 MR. COLEMAN: If you're finished with
2 your questions, I have none. So unless Christie
3 has any, I think that will be it.

4 MS. NEWMAN: This is Christie; I have
5 none.

6 THE VIDEOGRAPHER: We are off the
7 record. The time is 12:51 p.m. and this concludes
8 the video recorded testimony of Susan Roben and it
9 will be retained by Veritext.

10 (The witness, after having been advised
11 of her right to read and sign this transcript, does
12 not waive that right.)

13 (The deposition was adjourned at 12:52
14 p.m.)

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CERTIFICATE OF REPORTER

I, Susan M. Valsecchi, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 22nd day of February, 2022 at Columbia, Richland County, South Carolina.



Susan M. Valsecchi, RPR, CRR
My Commission expires
December 4, 2024

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1 MILES COLEMAN, ESQ.

2 miles.coleman@nelsonmullins.com

3 February 24, 2022

4 RE: ROGERS/WELCH v. U.S. DEPT. OF HEALTH/HUMAN SERVICES
5 2/17/2022, Susan Roben (#5088783)

6 The above-referenced transcript is available for
7 review.

8 Within the applicable timeframe, the witness should
9 read the testimony to verify its accuracy. If there are
10 any changes, the witness should note those with the
11 reason, on the attached Errata Sheet.

12 The witness should sign the Acknowledgment of
13 Deponent and Errata and return to the deposing attorney.
14 Copies should be sent to all counsel, and to Veritext at
15 erratas-cs@veritext.com

16

17 Return completed errata within 30 days from
18 receipt of testimony.

19 If the witness fails to do so within the time
20 allotted, the transcript may be used as if signed.

21

22 Yours,

23 Veritext Legal Solutions

24

25

1 ROGERS/WELCH v. U.S. DEPT. OF HEALTH/HUMAN SERVICES

2 2/17/2022 - Susan Roben (#5088783)

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ROGERS/WELCH v. U.S. DEPT. OF HEALTH/HUMAN SERVICES

2/17/2022 - Susan Roben (#5088783)

ACKNOWLEDGEMENT OF DEPONENT

I, Susan Roben, do hereby declare that I have read the foregoing transcript, I have made any corrections, additions, or changes I deemed necessary as noted above to be appended hereto, and that the same is a true, correct and complete transcript of the testimony given by me.

Susan Roben Date

*If notary is required

SUBSCRIBED AND SWORN TO BEFORE ME THIS
____ DAY OF _____, 20__.

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[& - 2021]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1,

2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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