

Defendants"), as a relator under the qui tam provisions of the False Claims Act, 31 U.S.C. §§ 3729 et seq. (the "False Claims Act"), to recover damages allegedly sustained by the United States as the result of the City Defendants' alleged violations of the False Claims Act (the "Original Complaint");

WHEREAS, the United States, by its attorney Mary Jo White, United States Attorney for the Southern District of New York, filed a notice of intervention pursuant to 31 U.S.C. § 3730(b)(4), and filed an amended complaint and a first amended complaint covering the years 1990 through 1994 (the "Amended Complaint"), which added the State of New York and the New York State Department of Social Services² as defendants (collectively referred to as the "State Defendants");

WHEREAS, the defendants have appeared and consented to the entry of this Stipulation and Order of Settlement and Dismissal (the "Stipulation"), and deny any wrongdoing or liability under the False Claims Act and specifically deny the allegations in the Original Complaint and in the Amended Complaint; and

WHEREAS, to avoid the delay, expense, uncertainty, and

² After the commencement of this action, the New York State Department of Social Services was renamed the Department of Family Assistance, which consists of two autonomous offices, the Office of Temporary and Disability Assistance and the Office of Children and Family Services. New York State's Office of Children and Family Services ("OCFS") now oversees the child welfare and foster care programs at issue in this case, and accordingly, this Stipulation refers specifically to OCFS in the paragraphs below pertaining to the relief provided for in paragraphs 8, 9, 10, and 11 herein.

inconvenience of protracted litigation, the United States, the Relator, and the defendants desire to reach a full and final compromise and resolution of the claims against the defendants in this action;

NOW, THEREFORE, the parties hereto, in consideration of the mutual promises, obligations, undertakings, and commitments hereinafter set forth, do hereby covenant and agree as follows:

1. The parties hereto consent to this Court's exercise of subject matter jurisdiction over this action and personal jurisdiction over each of them.

2. The defendants agree to pay the United States, in full compromise and satisfaction of this action, the sum of forty-nine million dollars (\$49,000,000.00) (the "Settlement Amount") in connection with funds received under Title IV-B of the Social Security Act, 42 U.S.C. § 620 et seq., that the United States had previously paid to the defendants. The State Defendants shall pay to the United States the amount of thirty-five million dollars (\$35,000,000.00) and the City Defendants shall pay to the United States the amount of fourteen million dollars (\$14,000,000.00). The Settlement Amount shall constitute a debt due and owing upon entry of this Stipulation by the Court and is to be discharged by payment to the United States under the following terms and conditions:

(a) The defendants shall pay to the United States the entire Settlement Amount no later than 90 days after the date that this Stipulation is "so ordered" by the Court.

(b) The Settlement Amount shall be electronically transferred pursuant to instructions to be provided to counsel for the defendants by the United States Attorney's Office for the Southern District of New York, which instructions shall be provided no later than five business days prior to the due date for payment, as defined in paragraph 2(a) above.

(c) Nothing in this Stipulation shall preclude the defendants from prepaying any and all of the Settlement Amount due under this Stipulation.

3. If the defendants fail to comply with the payment obligations set forth in paragraph 2, the defendants also shall pay interest in an amount calculated at a rate equal to the United States 90 day Treasury bond rate at the time the payment is due on any balance of the Settlement Amount that remains unpaid, such interest to begin accruing on the day after payment is due, until full payment of the amount due is made to the United States. Any such interest that becomes due pursuant to the terms of this Stipulation shall be deemed to be part of the Settlement Amount as defined and used herein. The United States may exercise all statutory, common law, or equitable rights to collect such outstanding balance of the Settlement Amount, including offsetting funds owed to the defendants by the United States. The United States shall be entitled to an award of reasonable costs and attorneys' fees in connection with its collection efforts.

4. The Relator agrees that the settlement of this

action as against the defendants, including all allegations in the Original Complaint filed by the Relator, is fair, adequate, and reasonable under all the circumstances under 31 U.S.C. § 3730(c)(2)(B). The Relator, on her own behalf and on behalf of her descendants, dependents, heirs, executors, administrators, agents, successors, assigns, representatives, and any party acting for or on behalf of or claiming under the Relator, hereby releases and discharges the defendants, including the defendants' employees, agents, representatives, subdivisions, and agencies, from any and all claims, causes or rights of action, demands, liabilities or penalties of any kind or nature whatsoever, in law or in equity, that the Relator had, has, or may have, in an individual, qui tam, or representative capacity, including without limitation any and all claims arising out of, in connection with, or relating in any way to, the allegations set forth in the Original Complaint and in the Amended Complaint, including any claims to a share of the proceeds pursuant to 31 U.S.C. § 3730(d).

5. Contemporaneously with the submission of this Stipulation, the United States and the Relator will submit a Stipulation to the Court that determines the Relator's share of the Settlement Amount.

6. Pursuant to 31 U.S.C. § 3730(d)(1), within 90 days after the date that this Stipulation is "so ordered" by the Court, the City Defendants and State Defendants each shall pay to the Relator's counsel the sum of two hundred twelve thousand and

five hundred dollars (\$212,500.00) for a total of four hundred and twenty-five thousand dollars (\$425,000.00) as reasonable expenses, attorneys' fees, and costs in settlement of the Relator's claims against the City Defendants and State Defendants in the Original Complaint and in the Amended Complaint. This payment shall be made pursuant to instructions to be provided by counsel for the Relator to the City Defendants and State Defendants, which instructions shall be provided no later than five business days prior to the due date for payment. The United States has no liability or responsibility for the payment of the Relator's expenses, attorneys' fees or costs.

7. In addition to the payment of the Settlement Amount described in paragraph 2 above, for a three year period from the date that this Stipulation is "so ordered" by the Court, the City Defendants, and in particular ACS, agree to provide to the Region II Office of the Administration for Children and Families ("ACF"), a component of HHS, (a) copies of all final fiscal and programmatic reports prepared by an external source (i.e., reports generated by an entity other than ACS, including but not limited to State entities and the City Comptroller) conducted through the ACS Office of Audit or any successor thereto that address the nature and quality of the City Defendants' case planning and case management of foster care cases, and (b) copies of all final fiscal and programmatic reports processed and/or prepared by the ACS Office of Audit and any successor thereto and provided to an external party that address the nature and quality

of the City Defendants' case planning and case management of foster care cases. In addition, the City Defendants, and in particular ACS, agree to provide to the Region II Office of ACF copies of all final reports issued in connection with the audits listed in Appendix A hereto whenever such final reports are issued, regardless of whether such final reports are issued within three years from the date this Stipulation is "so ordered" by the Court.

8. In addition to the payment of the Settlement Amount described in paragraph 2 above, for a three year period from the date that this Stipulation is "so ordered" by the Court, the

State Defendants, and in particular OCFS, agree to provide to the Region II Office of ACF (a) copies of all final reports prepared by an external source (i.e., reports generated by an entity other than OCFS, including but not limited to, local social service districts and the State Comptroller) that address the nature and quality of the State Defendants' -- or New York State's local social service districts' -- case planning and case management of foster care cases, and (b) copies of all final reports prepared by OCFS and provided to an external party that address the nature and quality of the State Defendants' -- or New York State's local social service districts' -- case planning and case management of foster care cases. In addition, the State Defendants, and in particular OCFS, agree to provide to the Region II Office of ACF copies of all final reports issued in connection with the audits listed in Appendix B hereto whenever such final reports are

issued, regardless of whether such final reports are issued within three years from the date this Stipulation is "so ordered" by the Court.

9. In addition to the payment of the Settlement Amount described in paragraph 2 above, the State Defendants, and in particular OCFS, also agree (i) that on a monthly basis for a three year period from the date that this Stipulation is "so ordered" by the Court, they will provide to the Region II Office of ACF computer diskettes reflecting preliminary data concerning compliance or non-compliance with the requirements of New York State Social Service Law § 153-d ("Section 153-d") (hereinafter referred to as "preliminary 153-d Data") and (ii) that whenever the OCFS Commissioner, or his or her successor or designee, issues a final determination regarding a local social services district's compliance with Section 153-d, they will provide to the Region II Office of ACF computer diskettes reflecting final data concerning compliance or non-compliance with Section 153-d (hereinafter referred to as "final 153-d Data").

(a) The parties understand that there are two types of 153-d Data, preliminary and final. The parties also understand that preliminary 153-d Data does not represent a final determination by the State of non-compliance with the requirements of Section 153-d or Section 422 of the Social Security Act. The parties further understand that final 153-d Data represents a final determination by the Commissioner of non-compliance with the requirements of Section 153-d, subject to the

local district's right to request a hearing, but that the Commissioner has made no determination of compliance with the requirements of Section 422 of the Social Security Act.

(b) Should the New York State Legislature amend, alter or repeal Section 153-d within the three year period in which the State Defendants are otherwise obligated to provide the preliminary and final 153-d Data described in paragraph 9 such that such data is no longer required to be collected, the State Defendants will no longer be obligated to provide this data to the United States.

(c) HHS hereby represents that it will not take a disallowance where the Section 153-d Data is the sole evidentiary basis for the proposed disallowance of funds claimed by the defendants under Titles IV-E or IV-B of the Social Security Act. HHS further represents that in the event it pursues a disallowance action that is based in part on the Section 153-d Data received pursuant to this Stipulation, before the issuance of such a disallowance, its representatives will meet with officials of ACS and OCFS and attempt to resolve the issues involved in the contemplated disallowance.

10. In addition to the payment of the Settlement Amount described in paragraph 2 above:

a. ACS agrees that for a period of three years from the date this Stipulation is "so ordered" by the Court, it will provide to ACS copies of all of the procedures issued by the ACS Division of Procedures of the Office of Management

Development and Research (or any successor entity) that address foster care programs as well as copies of updates to such procedures.

b. OCFS agrees that for a period of three years from the date this Stipulation is "so ordered" by the Court, it will provide to ACF copies of all State Administrative Directives, Local Commissioner's Memoranda, Information Memoranda, and written instructions of general applicability to local districts on claiming, policies, procedures, and processes that address foster care programs as well as copies of updates to such policies and procedures.

11. In addition to the payment of the Settlement Amount described in paragraph 2 above, the State Defendants, and in particular OCFS, agree that within thirty (30) days of the time that the CONNECTIONS computer system (or any other system employed in lieu of CONNECTIONS) becomes fully operational, they will provide ACF, at the State Defendants' expense, for a period of three years from the date of installation with a read-only terminal on the CONNECTIONS computer system to be located at the Region II Office of ACF for installation on an existing ACF phone line or on a new phone line to be provided by and paid for by ACF. In the event the terminal is damaged or becomes non-functional as a result of the negligence, recklessness or other wrongful conduct of ACF and/or its employees and agents, the State Defendants will have no obligation to repair or replace the terminal at the State's expense. Should the terminal become

damaged or non-functional as a result of ordinary wear and tear during the period provided for herein, the terminal will be repaired and/or replaced, as necessary, at the State's expense. HHS, in turn, agrees that use of the CONNECTIONS system will be limited to those staff members who perform child welfare-related duties. HHS and such staff members whom HHS authorizes to use the CONNECTIONS terminal further agree that the information derived from the CONNECTIONS system will be kept confidential and not disclosed to the public except if necessary for law enforcement purposes or to process a formal claim disallowance or deferral. HHS hereby represents that it will not use data

available to it only from the CONNECTIONS terminal at the Region II Office of ACF as the sole basis for disallowing funds claimed by the defendants under Title IV-E or IV-B. HHS further represents that in the event it pursues a disallowance action that is based in part on data available to it only from the CONNECTIONS terminal at the Region II Office of ACF, before the issuance of such a disallowance, its representatives will meet with officials of OCFS and ACS and attempt to resolve the issues involved in the contemplated disallowance. ACF agrees to approve a request for a no cost replacement of SACWIS equipment in the Region II Office of ACF if such a request is included in the State's next advanced planning document ("APD") update submission. However, the approval of the APD update shall not increase the approved federal funding ceiling for the CONNECTIONS project and any cost or expense associated with this paragraph

shall be paid for by OCFS, except as specifically provided for in this paragraph.

12. Effective upon the receipt of the Settlement Amount, with respect to funds claimed or received by the defendants under Title IV-E of the Social Security Act, 42 U.S.C. § 670 et seq., the United States, on behalf of itself, its officers, employees, agents, representatives, subdivisions, agencies, and departments, hereby releases and discharges the defendants, including the defendants' employees, agents, representatives, subdivisions, and agencies, from any civil or administrative monetary or injunctive claim the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729 et seq., the common law theories of payment by mistake, unjust enrichment, and fraud, or any other statute or common law legal or equitable theory creating a cause of action for civil damages, civil penalties, or injunctive relief for submitting or causing to be submitted claims to the United States for federal fiscal years 1990 through 1994, for the conduct alleged in the Original Complaint or the Amended Complaint.

13. Effective upon the receipt of the Settlement Amount, with respect to incentive funds claimed or received by the defendants under Title IV-B of the Social Security Act, 42 U.S.C. § 620 et seq., the United States, on behalf of itself, its officers, employees, agents, representatives, subdivisions, agencies, and departments, hereby releases and discharges the defendants, including the defendants' employees, agents,

representatives, subdivisions, and agencies, from any civil or administrative monetary or injunctive claim the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729 et seq., the common law theories of payment by mistake, unjust enrichment, and fraud, or any other statute or common law legal or equitable theory creating a cause of action for civil damages, civil penalties, or injunctive relief for submitting or causing to be submitted claims to the United States for federal fiscal years 1990 through 1996, for the conduct alleged in the Original Complaint or the Amended Complaint.

14. The United States does not release or discharge the defendants, including the defendants' employees, agents, representatives, subdivisions and agencies, from (a) any claims arising under the Internal Revenue Code, Title 26 of the United States Code, and the regulations promulgated thereunder; or (b) any obligations created by this Stipulation.

15. While the United States is not releasing or settling any claims under Title IV-E of the Social Security Act, 42 U.S.C. §§ 670, et seq., related to the years 1995 through 1998, and the defendants deny any wrongdoing with respect to those years, the United States is aware of certain facts that might support a claim that for those years the defendants failed to meet the requirements of 42 U.S.C. § 672(d) for reimbursement of maintenance payments made on behalf of children voluntarily placed into foster care.

16. For the purposes of this Stipulation only, the

defendants agree that all costs including, but not limited to, administrative and clerical expenses, the costs of legal services, whether performed by in-house or private counsel, the costs of the services of accountants, consultants, or others retained by defendants to assist them, costs of employees, officers, and directors, and any similar costs incurred by or on behalf of the defendants, including the defendants' employees, representatives, and agents, in connection with (a) the matters covered by this Stipulation, (b) the federal government's audit and investigation of the matters covered by this Stipulation, (c) the defendants' investigation, defense of this matter, and any corrective action, (d) the negotiation of this Stipulation, and (e) the payments made to the United States and the Relator's counsel shall be unallowable costs for federal government reimbursement purposes and shall not be included in claims submitted to the federal government. These amounts shall be separately accounted for by the defendants by identification of costs incurred: (1) through accounting records to the extent that this is possible; (2) through memorandum records including diaries and informal logs, regardless of whether such records are part of official documentation, where accounting records are not available; and (3) through itemized estimates where no other accounting basis is available. If any such amounts have been included in claims submitted to HHS prior to the date that this Stipulation is "so ordered" by the Court, OCFS, on its quarterly expenditure report for the October to December 1998 period, will

make corresponding downward adjustments so that HHS is reimbursed in full for such amounts. At the time that it makes these adjustments, the State of New York agrees to submit to HHS's Division of Cost Allocation a written report with the following information: (a) the identification of all of the defendants' functions or activities that have incurred costs of the type described in this paragraph; (b) the identification of all of the defendants' functions or activities identified in response to (a) that have claimed for costs of the type described in this paragraph; (c) for those functions or activities identified in response to (a) that the defendants note will not make claims under federal programs for costs of the type described in this paragraph, the bases for the defendants' conclusion; (d) for those functions or activities identified in response to (b), the methods and/or procedures used by the defendants to determine the required adjustments for each unit, including the time period of the adjustment covered for each unit; and (e) identification of the procedures in place to ensure that any future costs of the type described in this paragraph will not be claimed from the federal government.

17. Subject to the defendants' payment of the Settlement Amount and compliance with the obligations set forth in paragraphs 7, 8, 9, 10, 11 and 16 and the conditions of paragraph 18 below, the Office of Inspector General and ACF, on behalf of HHS or any successor agency vested with the responsibility for overseeing child welfare programs that is

currently vested in HHS, agree to refrain from instituting, directing, or maintaining against the defendants, including the defendants' employees, representatives, agents, subdivisions, agencies, and departments, any administrative or court action or eligibility audit or review seeking repayment of funds paid to the defendants under Title IV-E or section 427 of the Social Security Act related to federal fiscal years 1990 through 1994 that were allegedly improperly claimed, received, or paid. This Stipulation does not preclude any administrative or court action against any of the defendants by the United States regarding claims for reimbursement of Title IV-E funds spent during any federal fiscal year before 1990 or after 1994 or for any claims filed or amended after the date hereof.

18. Nothing in this Stipulation shall in any way affect the administrative or court actions set forth in Appendix C hereto. The defendants expressly agree that their payment of the Settlement Amount and the Relator's expenses, attorneys' fees, and costs does not entitle them to reduce amounts due and owing or previously paid to the United States or HHS by virtue of a former or current administrative or court action (including, but not limited to, disallowances, deferrals, Departmental Appeals Board proceedings, audits, reviews, and cost allocation plan disapprovals).

19. In consideration of payment by the City of New York to the United States of \$14 million in settlement of the instant action, the State of New York on behalf of itself, its

officers, employees, agents, representatives, subdivisions, agencies and departments, hereby releases and discharges the City of New York and its officers, employees, agents, representatives, subdivisions, agencies, departments, successors, and assigns from the cross-claim contained in the Answer of the State of New York to the First Amended Complaint, dated July 31, 1998, as well as any and all actions, causes of action, suits, demands, disallowances, deferrals and sanctions whatsoever, in law or equity, against the City of New York, that the State of New York has or may have, for, upon or by reason of any matter, cause or thing whatsoever based on the allegations set forth in the

Original Complaint or in the Amended Complaint. Nothing in the foregoing is or shall be construed as a release, waiver or limitation on the right of the State of New York or its officers, employees, agents, representatives, subdivisions, agencies and departments to seek or claim sanctions, return of funds or reimbursement, or any other remedies against the City of New York or its officers, employees, agents, representatives, subdivisions, agencies, and departments, successors and assigns pursuant to Section 153-d of the Social Services Law. Nothing in the foregoing is or shall be construed as a release, waiver or limitation on the right of the State of New York or its officers, employees, agents, representatives, subdivisions, agencies and departments to seek or claim sanctions, return of funds or reimbursement, or any other remedies against the City of New York or its officers, employees, agents, representatives,

subdivisions, agencies, departments, successors, and assigns pursuant to any other provision of the Social Services Law or other laws of the State or New York for any alleged violations of law other than alleged violations of law based on allegations raised in the Original Complaint or Amended Complaint. Nothing in the foregoing is or shall be construed as release, waiver or limitation on the right of the State of New York or its officers, employees, agents, representatives, subdivisions, agencies and departments to seek or claim return of funds or any other remedies against the City of New York or its officers, employees, agents, representatives, subdivisions, agencies, departments, successors and assigns in connection with any existing or pending litigation, disallowance, deferrals or other civil or administrative actions involving the State of New York, the City of New York and/or the United States, or any officers, employees, agents, representatives, subdivisions, agencies and departments, successors and assigns thereof other than claims based on the allegations of the Original Complaint or Amended Complaint.

20. The Relator represents and warrants that, other than any fee arrangement she may have with her counsel, she has not assigned or transferred, or purported to assign or transfer, to any other person or entity, in whole or in part, voluntarily, involuntarily, or by operation of law, (a) any right, claim, or interest arising out of, in connection with, or relating in any way to, the subject matter of the Original Complaint or the Amended Complaint, or the settlement of this action, or (b) any

other right, claim, or interest the Relator had, has, or may have against the defendants, including the defendants' employees, agents, representatives, subdivisions, and agencies, and the United States and all departments, agencies (including without limitation DOJ and HHS), subdivisions, officers, employees, agents, or representatives of the United States.

21. The defendants and the United States acknowledge, understand, and agree that this Stipulation sets forth the entire agreement and understanding between the defendants and the United States and fully supersedes any and all prior agreements or understandings between the defendants and the United States

pertaining to the subject matter hereof. In addition, the defendants and the Relator acknowledge, understand, and agree that this Stipulation sets forth the entire agreement and understanding between the defendants and the Relator and fully supersedes any and all prior agreements or understandings between the defendants and the Relator pertaining to the subject matter hereof. Moreover, the United States and the Relator acknowledge, understand, and agree that subject only to the provisions of paragraph 5, this Stipulation sets forth the entire agreement and understanding between the United States and the Relator and fully supersedes any and all prior agreements or understandings between the United States and the Relator pertaining to the subject matter hereof.

22. Each party hereto acknowledges and represents, on behalf of itself only, that subject only to the provisions of

paragraph 5, such party does not rely and has not relied upon any representations or statements other than those contained or referred to herein, by any other party or any of such other party's agents, officers, employees, representatives or attorneys with regard to the subject matter, basis, or effect of this Stipulation.

23. This Stipulation may not be supplemented, modified, canceled, or waived or otherwise altered in any way, in whole or in part, except in writing, signed by the United States, the defendants and, as to the provisions of paragraphs 1, 4-6, 20-21, 24-25, and 27-28, the Relator.

24. Any communication required under this Stipulation must be in writing and must be sent as follows:

To the United States:

Glenn C. Colton, Esq.
Kathy S. Marks, Esq.
Heidi A. Wendel, Esq.
Assistant United States Attorneys
United States Attorney's Office
Southern District of New York
100 Church Street, 19th Floor
New York, New York 10007

To the City Defendants:

Marjorie Landa, Esq.
Hilary Klein, Esq.
Joan Weiner Margiotta, Esq.
Office of Corporation Counsel
for the City of New York
100 Church Street
New York, New York 10007

To the State Defendants:

Michael Siller, Esq.
Office of the Attorney General
of the State of New York
120 Broadway
New York, New York 10271

To the Relator:

Carl H. Loewenson, Jr. Esq.
Morrison & Foerster
1290 Avenue of the Americas
New York, New York 10104

If the contact persons or addresses listed above change, the party whose information changes shall notify the other parties in writing of such change.

~~25. This Stipulation shall be binding upon and inure~~
to the benefit of (a) the United States, including the United States' employees, agents, representatives, subdivisions and agencies, and each of their respective legal representatives, successors, transferees, and assigns; (b) the defendants, including the defendants' employees, agents, representatives, subdivisions and agencies, and each of their respective legal representatives, successors, transferees, and assigns; and (c) the Relator and her descendants, heirs, executors, administrators, agents, representatives, successors, assigns, and any party acting for or on behalf of or claiming under the Relator. The parties identified in this paragraph are the sole beneficiaries of the United States' releases in paragraphs 12 and 13 of this Stipulation. The undersigned representatives of the parties certify that they are authorized by the parties to enter into and consent to the terms and conditions of the Stipulation

and to execute and legally bind the parties to it.

26. It is understood and agreed that this Stipulation is in compromise of disputed claims and shall not constitute or be construed as (a) an admission of or evidence of wrongdoing or liability on the part of any of the defendants, or (b) a final adjudication of any issue of law or fact.

27. Subject to and upon receipt of the Settlement Amount, the Amended Complaint and the defendants' cross claims shall be dismissed with prejudice, with each party to bear its own attorneys' fees and costs, except as provided in paragraph 6.

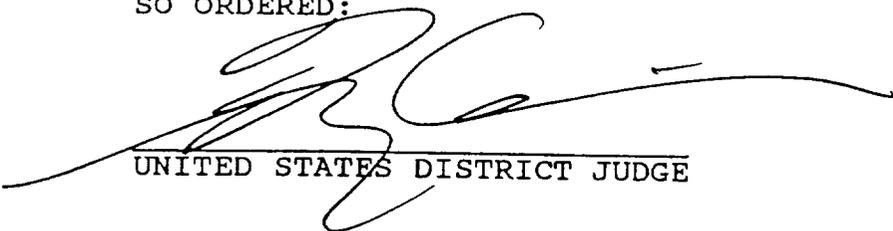
28. This Court shall retain exclusive jurisdiction

over the provisions of this Stipulation, including, but not limited to, any application to enforce or interpret the provisions of this Stipulation.

29. The parties to this Stipulation agree that it may be signed in counter parts if necessary.

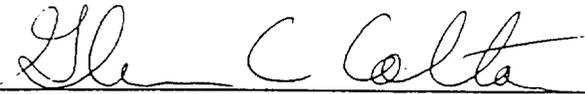
Dated: New York, New York
November 10, 1998

SO ORDERED:



UNITED STATES DISTRICT JUDGE

MARY JO WHITE
United States Attorney for the
Southern District of New York,
Attorney for the United States

By: 

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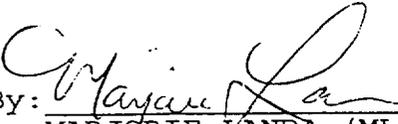
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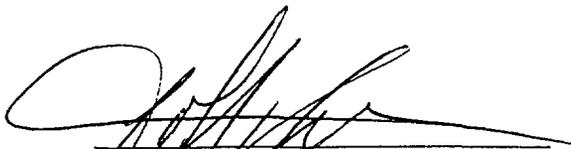
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A handwritten signature in black ink, appearing to read 'John A. Johnson', written over a horizontal line.

John A. Johnson
Commissioner
New York State Office of Children
and Family Services

