IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

MELISSA BOYLE SPECIAL NEEDS TRUST,
c/o Thomas P. Schwaba as co-trustee, and
c/o Nicolet National Bank, of Marinette, Wisconsin,
attn: David Maguire as co-trustee,

Plaintiffs,

v.

Case No. 13-C-___
Marinette County Case No. 12-CV-432

DEPARTMENT OF HEALTH SERVICES,
c/o Attorney General J.B. Van Hollen,

Defendant.

PETITION AND NOTICE OF REMOVAL

Defendant, Wisconsin Department of Health Services (the "Department"), by its attorneys, J.B. Van Hollen, Attorney General, and Maria S. Lazar, Assistant Attorney General, hereby petition for removal and give notice of removal of this civil action filed in Circuit Court for Marinette County, Wisconsin, to the United States District Court for the Eastern District of Wisconsin. The grounds for this petition and notice are as follows:

1. A civil action was commenced in Branch 1 of the Circuit Court for Marinette County, Wisconsin, on December 19, 2012, and assigned Marinette County Case No. 12-CV-432.

2. Service of the Summons and Complaint was made on the Department on December 26, 2012. Pursuant to 28 U.S.C. § 1446(a), a true and complete copy of the Summons and Complaint, as served on the Department, is attached to this petition and notice as Exhibit 1.

3. This action is timely removed within 30 days after service on December 26, 2012. *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 516 U.S. 344, 353-54 (1999); 28 U.S.C. § 1446(b).

4. The civil action governed by the complaint remains pending.

5. The action arises under provisions of federal statutes and regulations (Complaint, ¶¶ 13, 22). The state statutes discussed in the Complaint, Wis. Stat. §§ 49.496(3) and 49.454(4), refer to the state's Medicaid eligibility to obtain reimbursement from the Melissa Boyle Special Needs Trust pursuant to 28 U.S.C. § 1396p.

6. This Court has federal question removal jurisdiction over the action. 28 U.S.C. §§ 1331 and 1441-1447. *Wisconsin Dept. of Corrections v. Schacht*, 524 U.S. 381, 386 (1998). Removal is proper when federal law claims are asserted in state court, even when a statute provides that federal law claims may be initiated in state court. *Breuer v. Jim's Concrete of Brevard, Inc.*, 538 U.S. 691, 693 (2003).

7. The transactions are alleged to have occurred within the Eastern District of Wisconsin, and the action was commenced in a Wisconsin circuit court within this district. Venue lies in this district.

8. Defendant has given notice to plaintiffs and will promptly file a copy of the notice with the Clerk of Courts for Marinette County, as required by 28 U.S.C. § 1396p.

9. Pursuant to 28 U.S.C. § 1441(b), removal of this claim is mandatory upon compliance with 28 U.S.C. § 1446 as herein accomplished.

WHEREFORE, defendant represents that it has complied with the provisions of law and given notice that this action stands removed from the Circuit Court for Marinette County, Wisconsin, to the United States District Court for the Eastern District of Wisconsin.

Dated this 23rd day of January, 2013.

Respectfully submitted,

J.B. VAN HOLLEN
Attorney General

s/Maria S. Lazar
MARIA S. LAZAR
Assistant Attorney General
State Bar #1017150

Attorneys for Defendant,
Department of Health Services

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 267-3519
(608) 267-2223 (Fax)
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WIED-JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

Place an "X" in the appropriate box: ☒ Green Bay Division ☐ Milwaukee Division

I. (a) PLAINTIFFS

MELISSA BOYLE SPECIAL NEEDS TRUST c/o Thomas P. Schwaba as co-trustee and c/o Nicolet National Bank, of Marinette, Wisconsin, attn: David Maguire as co-trustee

(b) County of Residence of First Listed Plaintiff: Marinette, WI
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Gregory B. Conway, Kurt A. Goehre; Liebmann, Conway, Olejniczak & Jerry, S.C., 231 South Adams Street, Green Bay, WI 54301
(920) 437-0476

DEFENDANTS

DEPARTMENT OF HEALTH SERVICES
c/o Attorney General J.B. Van Hollen

County of Residence of First Listed Defendant: Dane, WI
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

Assistant Attorney General Maria S. Lazar, Wisconsin Department of Justice, P.O. Box 7857, Madison, WI 53707-7857 (608) 267-3519

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities Employment
- ☐ 446 Amer. w/Disabilities Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☐ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 840 Trademark

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☒ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing **(*Do not cite jurisdictional statutes unless diversity*)**:
42 U.S.C. sec. 1396p

Brief description of cause:
Reimbursement to State, from Special Needs Trust, of medical assistance payments made on behalf of M. Boyle

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Print Save As... Reset

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I.(a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked**.** (See Section III below**; NOTE: federal question actions take precedence over diversity cases.**)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. **Origin.** Place an "X" in one of the six boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

CASE ASSIGNED TO
JUDGE DAVID G. MIRON
BRANCH I

STATE OF WISCONSIN CIRCUIT COURT MARINETTE COUNTY
BRANCH

MELISSA BOYLE SPECIAL NEEDS TRUST
c/o Thomas P. Schwaba as co-trustee,
1851 Riverside Avenue
Marinette, WI 54143, and
c/o Nicolet National Bank, of Marinette,
Wisconsin, attn: David Maguire as co-trustee
2009 Hall Avenue
Marinette, WI 54143,

Plaintiff,

-vs-

DEPARTMENT OF HEALTH SERVICES
c/o Attorney General J.B. Van Hollen
1 West Wilson Street
Madison, WI 53703,

Defendant.

Case No. 12-CV-432

Case Code No. 30701

AUTHENTICATED COPY
LINDA L. DUMKE-MARQUARDT

DEC 19 2012

CLERK OF COURTS
MARINETTE COUNTY, WI

SUMMONS

THE STATE OF WISCONSIN

To each person named above as a Defendant:

You are hereby notified that Plaintiff, Melissa Boyle Special Needs Trust, c/o Thomas P. Schwaba and Nicolet National Bank of Marinette, WI, as co-trustees, have filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action.

Within forty-five (45) days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The Court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the Court, whose address is Marinette County Clerk of Court, 1926 Hall Avenue, Marinette, Wisconsin, 54143-1717, and to Liebmann, Conway, Olejniczak & Jerry, S.C., Plaintiffs' attorneys, whose address is 231 South Adams Street, P.O. Box 23200, Green Bay, Wisconsin, 54305-3200. You may have an attorney help or represent you.

If you do not provide a proper answer within forty-five (45) days, the Court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 18th day of December, 2012.

LIEBMANN, CONWAY, OLEJNICZAK & JERRY, S.C.
Attorneys for Plaintiff

By: ______________________
Gregory B. Conway
Kurt A. Goehre

POST OFFICE ADDRESS:
231 South Adams Street
Green Bay, WI 54301
P.O. Box 23200
Green Bay, WI 54305-3200
(920) 437-0476
State Bar Nos: 1012636 / 1068003
021215.013# 1406096

STATE OF WISCONSIN | CIRCUIT COURT BRANCH | MARINETTE COUNTY

MELISSA BOYLE SPECIAL NEEDS TRUST
c/o Thomas P. Schwaba as co-trustee,
1851 Riverside Avenue
Marinette, WI 54143, and
c/o Nicolet National Bank, of Marinette,
Wisconsin, attn: David Maguire as co-trustee
2009 Hall Avenue
Marinette, WI 54143,

Plaintiff,

-vs-

DEPARTMENT OF HEALTH SERVICES
c/o Attorney General J.B. Van Hollen
1 West Wilson Street
Madison, WI 53703,

Defendant.

Case No. 12-CV-432

Code No. 30701

AUTHENTICATED COPY
LINDA L. DUMKE-MARQUARDT

DEC 19 2012

CLERK OF COURTS
MARINETTE COUNTY, WI

COMPLAINT

NOW COMES Plaintiff, Melissa Boyle Special Needs Trust, through its Trustees, Thomas P. Schwaba and Nicolet National Bank, by and through its attorneys, Liebmann, Conway, Olejniczak & Jerry, S.C., and as and for its request for Declaratory Judgment, allege and show to the Court as follows:

1. Plaintiff , Thomas P. Schwaba, is a co-trustee of the Melissa Boyle Special Needs Trust dated May 25, 2010 (hereafter "SN Trust"). A copy of the SN Trust is attached hereto and marked as "Exhibit A."

2. Plaintiff, Nicolet National Bank, of Marinette, Wisconsin, c/o David Maguire, is a co-trustee of the SN Trust dated May 25, 2010.

3. Patrick Boyle and Terri Jo Ryan, Melissa Boyle's parents, are remainder beneficiaries of the Melissa Boyle Special Needs Trust dated May 25, 2010.

4. Upon information and belief, Defendant, Department of Health Services, an agency of the State of Wisconsin, paid Medicaid benefits on behalf of Melissa Boyle and claims an interest in this action. The principal address for the State of Wisconsin, Department of Health Services, is 1 West Wilson Street, Madison, Wisconsin 53703.

5. Melissa Boyle (hereafter "Melissa") was born on June 21, 1979.

6. In March 1980, Melissa suffered severe and permanent brain damage resulting in athetoid cerebral palsy and blindness at or shortly after her treatment at Milwaukee Children's Hospital. As a result, she suffered severe cognitive and physical developmental delays and other multiple disabilities, all of which were permanent in nature.

7. Melissa, then a minor, and her parents pursued legal action. In 1988, the Circuit Court of Milwaukee County approved a compromise settlement of the action in Milwaukee County Circuit Court Case No. CV 722424.

8. The Circuit Court of Milwaukee County determined that the creation of a trust to receive and administer the periodic payments required by the compromise settlement was in Melissa's best interests; and, therefore, authorized the creation of the Melissa Boyle Life and Care Trust (hereafter "LC Trust"). Attached hereto is a copy of the LC Trust marked as "Exhibit B."

9. The State of Wisconsin, at that time referred to as the Department of Health and Social Services, upon information and belief, received a copy of the LC Trust for its review and determined that Melissa was eligible for Medicaid.

10. Following the creation of the LC Trust, Melissa received Medicaid benefits, despite the fact that the LC Trust did not require reimbursement of such benefits upon Melissa's death.

11. According to the State of Wisconsin, Melissa received medical assistance or benefits from October 7, 1993 through December 17, 1998 and November 25, 2003 through May 24, 2010.

12. On or about March 29, 2010, a letter was sent to the LC Trust threatening to terminate Melissa's eligibility for Medicaid as of April 30, 2010, unless the LC Trust was changed to comply with statutory special needs trust requirements. The letter stated that an agency error had occurred, but "[a]s a result, no overpayment in benefits ha[d] occurred." Attached hereto is a copy of the March 29, 2010 correspondence marked as "Exhibit C."

13. Pursuant to Wis. Stat. § 49.454 and 42 USC § 1396p, both enacted in 1993, to qualify for Medicaid benefits when assets of a trust would otherwise disqualify an individual from receiving said benefits, a special needs trust may be established and must provide that "the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan...." 42 USC § 1396p. The LC Trust, created in 1988, did not contain this or any similar language.

14. Upon information and belief, the State of Wisconsin in or around March 2010 insisted upon a change to the LC Trust because the LC Trust terms did not provide the State of Wisconsin with a right to recover Medicaid benefits received by a recipient from the LC Trust, as opposed to the right to recover Medicaid benefits from an estate as provided under Wisconsin law, and therefore the assets of the LC Trust would be considered assets of Melissa Boyle for

purposes of Medicaid eligibility, which would result in disqualifying Melissa Boyle for Medicaid eligibility.

15. To retain Melissa's eligibility for Medicaid benefits, the SN Trust was created pursuant to a court order *In the Matter of the Guardianship of Melissa Boyle*, Marinette County case number 90-GN-40.

16. The SN Trust reads in part:

> This Trust is established with the intent that the funding of this Trust should not subject Melissa, the Trust beneficiary, to a period of ineligibility under the Medicaid Laws, and that the Trust Estate and its administration according to the terms of this Trust will not disqualify Melissa from Medicaid benefits, Supplemental Security Income (SSI) benefits or any other public assistance for which she is otherwise eligible.

Exhibit A, at pp. 1-2.

17. The SN Trust also provided a prospective reimbursement to the State for medical assistance payments made on Melissa's behalf:

> After Melissa's death, the Trustee shall, *to the extent required by law*, distribute such assets of this Trust as shall be required to reimburse a State for the Medical Assistance benefits paid on behalf of Melissa which, if not reimbursable by the terms of this Trust, would cause assets held by this Trust to disqualify Melissa for benefits during her lifetime.

Exhibit A, at p. 7 (emphasis added).

18. Melissa's eligibility for Medicaid continued until her death on October 10, 2010.

19. The State of Wisconsin now claims that the SN Trust must reimburse it for medical assistance paid on Melissa's behalf since October 1993, rather than from the date of the creation of the SN Trust on May 25, 2010.

20. To the contrary, the State of Wisconsin is limited to the pursuit of reimbursement from the Estate of Melissa Boyle for any medical assistance payments prior to the creation of the SN Trust.

21. Wisconsin Statutes § 49.496(3)(a) grants the State of Wisconsin the authority to file a claim "*against the estate*" of a recipient for the "amount of medical assistance paid on behalf of the recipient while the recipient resided in a nursing home or while the recipient was an inpatient in a hospital and was required to contribute to the cost of care." Wis. Stat. § 49.496(3)(a)1. (emphasis added).

22. Wisconsin law does not grant the State of Wisconsin the authority to file a claim against a trust for reimbursement of Medicaid benefits paid to a recipient. *See* Wis. Stat. § 49.496(3)(a)1. Rather, it provides that trust income will not be included in Medicaid eligibility determinations if the trust provides for reimbursement by the State upon the recipient's death. Wis. Stat. § 49.454(4) (referring to 42 USC § 1396p).

23. The State of Wisconsin does not have authority to recover Medicaid benefits paid on behalf of a recipient from a trust unless the trust expressly grants the State of Wisconsin authority for reimbursement.

24. The plain and unambiguous language of the SN Trust, created in May 2010, does not allow the State of Wisconsin to recover Medicaid benefits paid on behalf of Melissa prior to the creation of the SN Trust.

25. Plaintiff disputes that the State of Wisconsin can read additional language into the unambiguous SN Trust language cited above to find that the trust settlor intended to create a *retroactive* right to reimbursement of Medicaid benefits paid on Melissa's behalf by the State of Wisconsin since 1993.

DECLARATORY JUDGMENT

26. Plaintiffs incorporate herein Paragraphs 1 through 25 as set forth fully herein.

27. Plaintiffs seek a declaration that i) pursuant to Wis. Stat. § 49.496(3), the State of Wisconsin may only file a claim against the Estate of Melissa Boyle, not the SN Trust, for the "amount of medical assistance paid on behalf of the recipient while the recipient resided in a nursing home or while the recipient was an inpatient in a hospital and was required to contribute to the cost of care;" and ii) the reimbursement provision included at the request of the State of Wisconsin in the SN Trust dated May 25, 2010 unambiguously provides for prospective, not retrospective, reimbursement from the date the SN Trust was created through the date of Melissa's death.

28. The aforementioned judicial declaration would end the controversy and/or remove any uncertainty regarding whether the State of Wisconsin may only lawfully recover Medicaid benefits from the SN Trust since the date of the SN Trust's inception.

WHEREFORE, Plaintiffs respectfully request the following relief:

A. A declaration that i) pursuant to Wis. Stat. § 49.496(3), the State of Wisconsin may only file a claim against the Estate of Melissa Boyle, not the SN Trust, for the "amount of medical assistance paid on behalf of the recipient while the recipient resided in a nursing home or while the recipient was an inpatient in a hospital and was required to contribute to the cost of care." Wis. Stat. § 49.496(3)(a)1; and ii) the reimbursement provision included at the request of the State of Wisconsin in the SN Trust dated May 25, 2010 unambiguously provides for prospective, not retrospective, reimbursement from the date the SN Trust was created through the date of Melissa's death.

B. For the costs and attorneys' fees made necessary as a result of bringing this action; and

C. For such other and further relief as deemed just and equitable by the Court.

Dated this 18th day of December, 2012.

LIEBMANN, CONWAY, OLEJNICZAK & JERRY, S.C.
Attorneys for Plaintiffs

By: ______________________
Greg B. Conway
Kurt. A. Goehre

POST OFFICE ADDRESS:
231 South Adams Street
Green Bay, WI 54301
P.O. Box 23200
Green Bay, WI 54305-3200
(920) 437-0476
State Bar Nos: 1012636 / 1068003
1318623

MELISSA BOYLE
<u>SPECIAL NEEDS TRUST</u>

<u>DATED MAY 25, 2010</u>

I, **L&L Guardian Services, Inc.**, a corporation organized and existing under the laws of the State of Wisconsin, by its representative, **Linda Schultz**, as duly appointed corporate guardian of Melissa Boyle, pursuant to a court order <u>In the Matter of the Guardianship of Melissa Boyle</u>, Marinette County case number 90-GN-40, declare this trust in existence.

The Trustee, as defined herein, agrees to hold and administer the Trust Estate as set forth in this agreement. Schedule A, attached hereto, lists the assets subject to this Trust agreement. Additional assets may be accepted by the Trustee and added to the Trust Estate.

<u>ARTICLE I</u>

<u>GENERAL PROVISIONS</u>

A. <u>Name of Trust</u>. This Trust shall be known as the **MELISSA BOYLE SPECIAL NEEDS TRUST DATED MAY 25, 2010** and this name shall be used in any deed, assignment, document of title or named asset.

B. <u>Governing Law</u>.

1. The validity of this Trust and the construction of its beneficial provisions shall be governed by the laws of the State of Wisconsin in force from time to time. This article shall apply regardless of any change of residence of a Trustee or any beneficiary, or the appointment or substitution of a Trustee residing or doing business in another state.

2. This Trust is established with the intent that the funding of this Trust should not subject Melissa, the Trust beneficiary, to a period of ineligibility under the Medicaid

Initials L.S.

EXHIBIT
A

Laws, and that the Trust Estate and its administration according to the terms of this Trust will not disqualify Melissa from Medicaid benefits, Supplemental Security Income (SSI) benefits or any other public assistance for which she is otherwise eligible.

C. **Irrevocability.**

1. This Trust is hereby declared to be irrevocable. No person, persons or Court can amend, alter or modify this Trust except as provided in paragraph C.2., below.

2. a. Notwithstanding paragraph C.1. to the contrary, in the event that this Trust is challenged or faces invasion by any governmental agency or department or if the Trust Estate may be held to affect Melissa's eligibility for any government benefits, the Court, upon petition of the Trustee, may amend this Trust so as to qualify or maintain Melissa's eligibility for benefits or to conform the Trust to any changes in the law relating to public assistance programs which may be available to her. The Trustee has full discretion to determine whether or not the benefits that are threatened are substantial enough for the Trust to be modified. Notwithstanding the above, in no event can this trust be amended to change the fact that this trust is a sole benefit trust for the benefit of Melissa Boyle.

b. In accordance with the Trust purposes, the Trustee is authorized without court approval to make administrative and ministerial modifications to the provisions of this Trust for the purpose of conforming to law or factual and economic circumstances. Any such modification shall be in all events consistent with the purposes of the Trust, and shall be in writing, signed by the Trustee, with copies delivered to Melissa's guardian, if any, and Melissa.

D. **Purpose of this Trust.**

1. This Trust shall be for the sole benefit of Melissa and shall be

administered according to the terms and limitations set forth herein. This Trust is being established in order to continue the qualification of Melissa for public benefits including, but not limited to, Supplemental Security Income (SSI), Medical Assistance (MA), Community Options Program (COP) funds and COP-Waiver funds.

2. Melissa is disabled. Due to her disability, she has the right to receive certain governmental assistance. The purpose in making assets available from this Trust is to provide the funds necessary to ensure Melissa's care and happiness over and above essential, primary support and services if funding for those services is provided through public aid. The intent of this Trust is to give Melissa the opportunity to develop her full potential and to enjoy as pleasant, comfortable and happy a life as is possible by qualifying her for public benefits and using the Trust assets to supplement those benefits. The Trustee may use discretion to pay for supplemental support and maintenance keeping this purpose in mind.

ARTICLE II

ADMINISTRATION OF TRUST ASSETS

A. The Trustee shall hold, manage, invest and reinvest the Trust Estate, and shall apply the income and principal of the Trust Estate for Melissa's benefit pursuant to the following terms and conditions:

1. The Trustee may distribute Trust income and principal for Melissa's benefit at such times and in such amounts as the trustee, in its sole and absolute discretion, may determine is consistent with the purpose of this Trust.

2. The Trustee may investigate all public/governmental sources of support, services or benefits available to Melissa and take whatever steps are necessary and not otherwise

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prohibited to qualify and maintain Melissa's eligibility for that support, service or benefit. The Trustee may consider the effect of any distribution to or for Melissa's benefit on her eligibility for such support, service or benefit. The Trustee may make distributions that reduce or disqualify Melissa for certain public benefits if, in the Trustee's discretion , this is in Melissa's best interest.

B. Distributions which may be made include but are not limited to payments for the following expenses or costs:

1. Medical, dental, psychological or therapeutic services or treatment of any kind which are otherwise not available to Melissa through public assistance; medication, equipment or supplies not available through public assistance; home care, respite care or long term care in a community based residential facility or nursing facility services not available through public assistance; nursing or rehabilitative services, private room charges, physical, occupational and other therapy, or any other care, services or equipment not available to Melissa through public assistance;

2. Educational or vocational expenses, private case management services, and housekeeping expenses;

3. Holidays, travel, vacations, transportation expenses, entertainment expenses and miscellaneous treats, for Melissa;

4. Appliances, furniture, household goods and other personal items to be used by Melissa on such terms and conditions as the Trustee, in its sole discretion, shall deem best;

5. a. Melissa's maintenance and living expenses, including purchase of

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a residence or adapting a residence to Melissa's needs, and payments for taxes, maintenance and other expenses of said residence, payment of rent, utilities, and payment for personal needs, such as laundry, diapers, hair cutting and styling;

b. In regard to payments for Melissa's shelter, utilities, clothing, food, or for other essential support and maintenance, the Trustee may make payments to third parties if such payments will not affect Melissa's eligibility for governmental benefits, unless the Trustee believes it is in Melissa's best interest to not qualify Melissa for said benefits, or to reduce the amount of government benefits due Melissa, in order to increase Melissa's standard of living by making such third party payments;

6. An automobile and/or van for Melissa's benefit, modification, improvement and maintenance of such vehicle(s), and insurance, deductible amount on insurance, and license on such vehicle(s);

7. Items by which Melissa's life will be enriched and made more enjoyable including, but not limited to, radios, televisions, cable television service, audio, video and computer equipment, Melissa's adaptive toys, electronic devices and/or equipment, and the maintenance of same;

8. Expenses for maintenance of contact between Melissa and other family members and friends, including transportation for Melissa;

9. Payment of any premiums and deductible amounts for Melissa on any health insurance policies covering her;

10. Attorney fees, accounting fees, and disbursements and court fees;

11. Any tax obligation of Melissa or the Trust;

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12. Any other purpose which, in the Trustee's discretion, promotes the purpose of this Trust.

C. Members of Melissa's family may also indirectly benefit from any distribution so long as, in the Trustee's sole discretion, such distribution promotes the purpose of this Trust and is in Melissa's best interest.

D. The Trustee shall have the authority, if it deems it advisable, to initiate itself, or pay the expenses of another party, such as Melissa's guardian, to initiate action to enforce Melissa's right to public assistance should such public assistance be suspended, reduced, challenged, threatened or terminated for any reason whatsoever. The Trustee may employ legal counsel or pay the expenses of legal counsel employed by another party to determine the effect of any distribution from this Trust on public assistance Melissa receives or is entitled to receive.

E. The Trustee has no duty to preserve principal if it considers its current use is in Melissa's best interest. The Trustee shall have no liability for any good faith exercise of its power to make or withhold distributions of income or principal. The Trustee may consider other resources available to Melissa including her eligibility for public assistance.

F. At no time shall Melissa obtain a vested interest in Trust income or principal. The Trustee may terminate all distributions of income and principal for Melissa's benefit if the Trustee considers it likely that such continued distributions will result in a reduction of public assistance to Melissa. At all times this Trust is meant to be interpreted to come within the provisions of Wisconsin Statute 701.06(5m), Laws of 1977, as amended, which exempts the Trust assets from the claims of the State of Wisconsin or its agencies.

G. Distribution of the income and principal of this Trust is solely in the Trustee's

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discretion and is not subject to any order of any court under Section 701.13, Stats.

H. The term "public assistance" shall include all monetary, medical, supportive, social or other services provided by or through any federal, state or local governmental program or federal, state or local government sponsored program.

ARTICLE III

TERMINATION AND DISTRIBUTION

A. This Trust shall terminate upon Melissa's death, subject to the provision of Paragraph III(F)..

B. After Melissa's death, the Trustee shall, to the extent required by law, distribute such assets of this Trust as shall be required to reimburse a State for the Medical Assistance benefits paid on behalf of Melissa which, if not reimbursable by the terms of this Trust, would cause assets held by this Trust to disqualify Melissa for benefits during her lifetime.

C. After any payments made by the Trustee pursuant to paragraph B, the Trustee may, in its discretion, pay Melissa's funeral, burial and related expenses.

D. After any payments made by the Trustee pursuant to paragraphs B and C, the Trustee may, at its discretion, pay directly or indirectly from the Trust Estate, any and all death, inheritance or estate taxes imposed on or by reason of Melissa's estate.

E. The Trustee shall distribute the remaining undistributed income and principal as follows:

1. Melissa shall have the power to appoint by Will, by specific reference to this power, the remaining undistributed income and principal to a class of beneficiaries limited to Melissa's immediate family, relatives by blood, marriage or adoption, or charities pursuant to

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Section 2055 of the Internal Revenue Code, upon such terms and conditions, whether outright, in Trust or otherwise, as Melissa may choose.

2. To the extent that Melissa fails effectively to exercise her power of appointment, then the remaining undistributed principal and income shall be distributed equally to Melissa's issue. In the event Melissa has no surviving issue, the remaining undistributed principal and income shall be distributed equally to Melissa's surviving parents. In the event Melissa has no surviving issue or parents, then the remaining undistributed principal and income shall be distributed equally to Melissa brothers and sisters who survive her. In the event Melissa has no surviving issue, parents or brothers or sisters, then the remaining undistributed principal and income shall be distributed equally to Melissa's nieces and nephews who survive her. In the event Melissa has no surviving issue, parents, brothers, sisters, nieces or nephews then the remaining undistributed principal and income shall be distributed equally to Melissa's grandparents who survive her. In the event Melissa has no surviving issue, parents, brothers, sisters, nieces, nephews or grandparents, then the remaining undistributed principal and income shall be distributed equally to Melissa's aunts and uncles who survive her.

F. Pursuant to a Settlement Agreement and Release in Milwaukee County case number CV 722424, Melissa Boyle, et al vs. Milwaukee Children's Hospital, et al, Melissa is entitled to certain payments for the remainder of her lifetime, with said payments being guaranteed through May 1, 2022. In the event Melissa passes away prior to May 1, 2022, the Trustee shall make the distributions to the State of Wisconsin set forth in Paragraph III(B), to the extent of current trust assets. No other distributions shall be made until such time as the repayment to the State of Wisconsin has been made pursuant to Wisconsin law. In such event,

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the trust shall continue in existence for the sole purpose of receiving the final guaranteed payments. The Trustee shall continue to pay out subsequent trust funds to the State of Wisconsin, until the repayment required by law is complete. At such time, the Trustee shall make the distributions called for in this Article III, until any further guaranteed payment pursuant to the Settlement Agreement and Release terminate. At such time, this trust shall terminate.

ARTICLE IV

TRUSTEES

A. Nicolet National Bank, Marinette, Wisconsin and Attorney Thomas P. Schwaba, shall serve as initial co-trustees. In the event one of the designated Trustees is unable or unwilling to serve in this capacity, the remaining named Trustee shall serve as sole Trustee.

B. If for any reason none of the designated Trustees herein act as Trustee, the Marinette County Guardianship Court, or other court of competent jurisdiction, shall appoint a successor Trustee, provided that Melissa may not serve as Trustee. Each successor Trustee shall have the powers and discretions granted in this agreement to his/her predecessor.

C. The Trustee may resign by giving written notice (including the effective date of resignation) to Melissa's legal guardian, if any, or to Melissa if she has no guardian.

D. Bond or surety shall be required of any Trustee or Trustees serving hereunder at the direction of the Court.

E. No successor Trustee shall have a duty to audit or investigate the administration accounts of a predecessor Trustee. No successor Trustee shall be liable for any act, omission, or default of a predecessor Trustee.

F. All discretions and powers exercised by the Trustee may be done without leave of

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Court. No Trustee shall be liable for any loss or damage resulting from decisions or determinations made, or actions taken, in good faith, and any such decisions, determinations or actions shall be binding and conclusive on all persons.

ARTICLE V

POWERS OF THE TRUSTEE

A. Delegation of Powers. In addition to the powers granted by law and those customarily exercised by fiduciaries, the Trustee is granted the following powers:

1. **Retention, Investment and Reinvestment.** To retain, invest and reinvest in any kind of accounts or property without regard to the location, unproductivity, risk or lack of diversification thereof, including (without thereby limiting) real property, bonds, common stocks, preferred, preferred stocks, annuities, mutual investment funds, common trust funds and insurance on the life of any person, without any obligation to comply with any statute or rule of law concerning diversification or restricting investments by trustees; to retain cash uninvested for such periods of time as it deems advisable; to open continue, maintain, change or close accounts with any banks, bankers, trust company, investment or brokerage firm or other person, firm or corporation, and to make deposits therein and withdrawals therefrom by check, draft or otherwise; to have access to safe deposit box or boxes wherever located. The Trust should be maintained as a separate investment portfolio, but realizing the impracticability of anticipating future circumstances, such decision is entirely within the uncontrolled discretion of the Trustee.

2. **Sell or Exchange.** To sell any real or personal property at fair values, for cash or on credit, at public or private sale; to exchange any property for other property; and to grant options to purchase or acquire any property.

3. **Nominee.** To cause any securities or other property, real or personal, to be held or registered in name or in the name of its nominee or in such other form as it deems best without disclosing the fiduciary relationships.

4. **Manage Property.** To operate, maintain, repair, rehabilitate, alter, improve, or remove any improvements on real estate; to make leases and subleases for terms of any length, even though the terms may extend beyond the termination of a Trust; to subdivide real estate; to grant easements, give consents, and make contracts relating to real estate or its use; and to release or dedicate any interest in real estate.

5. **Borrow.** To borrow money on such terms and conditions as the Trustee may deem proper and to pledge or mortgage estate or Trust assets as security therefor, including

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authority to a personal representative to borrow from the Trustee, the Trustee to borrow from a personal representative, and a corporate personal representative and trustee (or either) to borrow from itself in its corporate capacity.

6. **Allocate.** To allocate in the Trustee's discretion all charges and credits as between principal and income or partly to each, where uncertainty exists as to allocations of charges and credits under the applicable law, whenever the Trustee considers these other allocations to be more reasonable and equitable under the circumstances and to charge any Trustee fee to income.

7. **Receive or Reject Additions.** To receive or reject additional property from any source and add it to the Trust Estate, as long as said additions are consistent with the purpose of this Trust and the governing law.

8. **Insurance.** To purchase life, casualty, automobile, health, title and liability insurance as the Trustee believes to be desirable.

9. **Exercise Power.** To exercise any power or discretion without qualifying before, being appointed by, or obtaining the order or approval of any court.

10. **Act.** To do all other acts to accomplish the proper management, investment, and distribution of the Trust.

11. **Loan.** To make loans, secured or unsecured, from the corpus of the Trust to Melissa for such terms as the Trustee deems advisable and with or without interest.

12. **Permit Use.** To permit Melissa to use any tangible personal property held as an asset without liability for damage to, or consumption of, such property.

13. **Exercise of Elections.** To exercise available elections regarding the use of estate expenses as deductions upon income tax or death tax returns, stock options and other employee benefits, the selection of a calendar or fiscal year for death tax purposes, and the allocation of any taxes, refunds or credits resulting therefrom.

14. **Governmental Agencies.** To deal with governmental agencies to make applications for, receive and administer any of the following benefits, if applicable: Social Security, Medicare, Medicaid, Supplemental Security Income and any other available government resources and community support services.

15. **Taxes.** To pay from the Trust any taxes, including interest and penalties thereon, and in its discretion, to pay taxes of the beneficiary which accrue as the result of accumulations or income or distribution of income or principal.

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B. **Additional Trustee Provisions.**

1. In the exercise of the Trustee's powers, the Trustee shall use the judgment and care a prudent person would use if the prudent person were the owner of the Trust assets.

2. The Trustee may rely on any notice, certificate, affidavit, letter, telegram, or other paper or document believed to be genuine, or on any evidence deemed by the Trustee to be sufficient, in making any payment or distribution.

3. The Trustee shall be entitled to reasonable compensation for services in administering and distributing the Trust property and to reimbursement for expenses.

4. The Trustee may retain and pay for attorneys, accountants, financial planners, social workers, health care professionals and any other person, including persons, who may be family members, to attend to the maintenance, comfort, companionship, enjoyment, medical care, legal or financial needs of Melissa as required for her benefit in the sole discretion of the Trustee, subject to the limitations set forth in Article II hereof. The Trustee shall not be liable for any neglect, omission, misconduct, mistake or default of any agent, broker, attorney, advisor or assistant that the Trustee selected and retained with reasonable care.

5. The foregoing provisions notwithstanding, it is recognized that the Trustee is not licensed nor skilled in the field of social services. The Trustee may seek the counsel and assistance of Melissa's guardian, if any, of Melissa's physician(s), and of any state, local, private or charitable agencies that have been established to assist the handicapped or disabled, and similar resources. The Trustee may use these resources to aid Melissa's guardian, if any, as appropriate, in identifying programs that may be of social, financial, developmental or other assistance to Melissa. However, the Trustee shall not in any event be liable to Melissa, the remainder beneficiaries of the Trust or any other party for its acts as Trustee hereunder so long as it acts reasonably and in good faith. For example, the Trustee, as well as Melissa's guardian, if any, shall not be liable for the failure to identify each and every program or resource that might be available to Melissa on account of her disability.

ARTICLE VI

ACCOUNTING

The Trustee shall render at least annually to Melissa's guardian, and the Guardianship Court having jurisdiction over Melissa's guardianship, an annual account showing in detail all receipts, disbursements, and distributions of both principal and income from the Trust since the last such statement. Unless the account is objected to in writing within sixty (60) days from its

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rendition, the account shall be deemed approved as stated.

ARTICLE VII

USE AND ENJOYMENT OF TRUST-OWNED PERSONALTY AND REALTY

Except to the extent considered not practical or advisable in the Trustee's sole discretion, Melissa shall have the sole right to the use, possession, and enjoyment of all of the tangible personal property held by this Trust. Melissa also shall have the sole right to the use, possession, and enjoyment of all real property held by this Trust that may be occupied by Melissa for residential purposes. This use, possession, and enjoyment shall be without rent, unless such rent is necessary to qualify or maintain Melissa's eligibility for public benefits, or other financial obligation, or if at the discretion of the Trustee, the Trustee requires rent to maintain the property. The Trustee, to the extent of the Trust assets, shall see to the timely payment of all taxes, insurance, maintenance and repairs, safeguarding, and other charges related to the preservation and maintenance of such property.

ARTICLE VIII

INTEREST UNDER TRUST NOT ASSIGNABLE

No interest under this agreement shall be assignable by any beneficiary, or be subject to claims of Melissa or her creditors, including claims for alimony or separate maintenance, or be subject to seizure by legal process. However, any beneficiary may, at any time, disclaim all or any part of his/her interest in this Trust by an instrument in writing delivered to the Trustee, in which event such disclaimed interest shall thereafter by administered as though the person disclaiming predeceased Melissa.

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ARTICLE IX

TAXES

The Trustee may make distributions to any beneficiary hereunder or directly to the Internal Revenue Service (IRS) or any State Department of Revenue, for any taxes, income or otherwise that may be owing as a result of distributions or accumulation of income in this Trust.

ARTICLE X

SPENDTHRIFT CLAUSE

The provisions of any Trust created hereunder are intended for the personal protection and welfare of the beneficiaries. No interest under this instrument shall be subject to transfer, assignment, anticipation, pledge, or seizure by legal process, or be subject during a beneficiary's life to the claims of Melissa or her creditors. If the Trustee believes the beneficiary's interest is threatened to be diverted in any manner from the purposes of this Trust as stated above, the Trustee shall withhold the income and principal from distribution and shall apply payment at the Trustee's discretion in such manner as the Trustee believes will benefit Melissa or the remainder beneficiaries, consistent with the purpose and provisions of this Trust. Whenever the Trustee is satisfied that the diversion is no longer threatened, the Trustee shall resume distributions or distribute income and principal as authorized.

ARTICLE XI

SEPARABILITY PROVISION

No Trust created under this Trust Agreement shall be construed to extend beyond the period permitted by applicable law, if any, notwithstanding anything herein to the contrary, and in case any provision in this Trust Agreement shall be illegal or contrary to law, it shall be

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deemed as void and not written herein and such invalidity shall not affect the other and remaining provisions hereof.

IN WITNESS WHEREOF, this Trust agreement was executed on this 27th day of May, 2010, effective May 25, 2010.

L&L Guardian Services, Inc.

Linda Schultz

By: Linda Schultz, Guardian

STATE OF WISCONSIN)
)ss.
COUNTY OF MARINETTE)

Personally came before me this 27th day of May, 2010, the above named Linda Schultz, Guardian of Melissa Boyle, to me known to be the person who executed the foregoing instrument and acknowledged the same.

* MICHAEL J. PALID

Notary Public, State of Wisconsin

My commission ~~expires~~ is permanent.

***Print or Type Name Below Signature.**

THIS INSTRUMENT WAS DRAFTED BY:
WALSH & WALSH, S.C.
ATTORNEY DANIEL J. WALSH
1000 N. BROADWAY
DE PERE, WI 54115
(920) 337-0272
STATE BAR NO. 01014974

MELISSA BOYLE
SPECIAL NEEDS TRUST

DATED MAY 25, 2010

SCHEDULE A

1. All assets currently titled in the name of the Melissa Boyle Life and Care Trust.

2. All income or other assets payable in the future to the Melissa Boyle Life and Care Trust or the Melissa Boyle Special Needs Trust dated May 25, 2010.

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MELISSA BOYLE LIFE AND CARE TRUST

THIS AGREEMENT is made by and between Lynn R. Laufenberg, duly appointed, qualified and acting guardian ad litem of Melissa Boyle, a minor, as Grantor and Thomas P. Schwaba as Trustee.

WHEREAS, Lynn R. Laufenberg is an attorney licensed to practice law in the State of Wisconsin and is the duly appointed, qualified and acting guardian ad litem of Melissa Boyle, a minor born on June 21, 1979; and,

WHEREAS, Melissa Boyle ("Melissa") suffers from severe and permanent brain damage resulting in athetoid cerebral palsy and blindness and producing severe cognitive and physical developmental delays and other multiple disabilities, all of which are permanent in nature, and which were sustained at or shortly after her treatment at Milwaukee Children's Hospital during March of 1980, and are alleged to have been caused by the negligence of certain persons named below; and,

WHEREAS, as a result of these injuries, Patrick Boyle, Melissa's father, Terri Jo Boyle Linstad, Melissa's mother, and Melissa have prosecuted their claims for damages against Milwaukee Children's Hospital, S. Bert Litwin, M.D., David Z. Friedberg, M.D., Thomas Lee Schlenker, M.D., Stephanie H. Williamson, M.D., Thomas Donohue, M.D., Wisconsin Hospital Association Optional Segregated Account, Wisconsin Health Care Liability Insurance Plan, and the Wisconsin Patients Compensation Fund as Case No. CV 722424 in the Milwaukee County Circuit Court after complying with all the applicable provisions of Chapter 655, Wisconsin Statutes; and,

EXHIBIT B

WHEREAS, the Circuit Court for Milwaukee County has approved a compromise settlement of all claims and causes of action which Melissa, a minor, and her parents, may now have or may hereafter have against Milwaukee Children's Hospital, S. Bert Litwin, M.D., David Z. Friedberg, M.D., Thomas Lee Schlenker, M.D., Stephanie H. Williamson, M.D., Thomas Donohue, M.D., Wisconsin Hospital Association Optional Segregated Account, Wisconsin Health Care Liability Insurance Plan, and the Wisconsin Patients Compensation Fund, pursuant to the terms of a Settlement Agreement and Release, a copy of which is attached hereto as Exhibit 1 and incorporated by reference herein; and

WHEREAS, Melissa's parents and Lynn R. Laufenberg, the guardian ad litem for Melissa, desire both to provide for the care and rehabilitation needs of Melissa Boyle resulting from the above described injuries and to insure that a source of funds is available to meet these care and rehabilitation needs as nearly as possible for as long as Melissa may live; and,

WHEREAS, the Circuit Court for Milwaukee County has determined that the creation of a Trust to receive and administer the periodic payments required by the above described Settlement Agreement and Release is in Melissa's best interests; and,

WHEREAS, Patrick Boyle and Terri Jo Boyle Linstad, as divorced parents of Melissa, and Melissa's guardian ad litem desire to establish a trust for the benefit of Melissa whose disability is expected to continue indefinitely, and which disability substantially impairs

Melissa from adequately providing for her own care or custody and which constitutes a substantial handicap,

NOW, THEREFORE, the Grantor causes this Trust to be created and designates Thomas P. Schwaba as the Trustee and Melissa as beneficiary of the Trust Property which consists of cash and the periodic payments identified and reflected in the Settlement Agreement and Release attached hereto as Exhibit 1. Such payments, all additional property received by the Trustee from any person by will or otherwise and all investments and reinvestments thereof are together and collectively referred to as the "Trust Property" and shall be administered and distributed as follows:

ARTICLE I

A. It is the expressed and declared purpose of this Trust during Melissa's minority while in the private care of her parents, or either of them, or their designee, or in private placement, to use the Trust Property for Melissa's immediate and ongoing medical, developmental and rehabilitation needs which are a direct consequence of the injuries and damages for which the above described settlement was made. To implement said purpose, the Trustee shall use such part or all of the net income and/or accumulated principal to purchase such aids, material, and equipment and pay for such medical, developmental and rehabilitation services as the Trustee determines is reasonably necessary from time to time for Melissa's medical, developmental and rehabilitation needs; provided, however, it is not the purpose of this Trust to use Trust Property to provide for such items otherwise covered by insurance or available and/or provided through public funding or government aid programs. As an example, but not intended as a limitation, such expenditures may include individually designed barrier-free modifications to Melissa's home, positioning equipment, wheelchairs and other mobility devices, specially designed vehicles for transportation, therapeutic and recreational devices and equipment, communication systems, specially modified clothing and inside/outside home health care, day care or babysitting services; such expenditures may also include those medical, hospitalization and specialized therapy needs (such as occupational, speech and physical therapy) not covered by any insurance or benefit program or not available through any publicly funded program.

B. The Trust Property is not intended for, nor shall such property be used to satisfy, the obligations of Melissa's parents to meet her everyday needs for care, support, maintenance, recreation, education and medical attention during the time of her minority. However, in the event the Trustee determines that Melissa's custodial parent is unable to provide adequately for Melissa's everyday needs for care, support, maintenance, recreation, education or normal medical care and neither Melissa nor Melissa's custodial parent qualify for any federal, state or local benefits to meet those needs, then the Trustee may provide in his or her discretion for such needs, and it is the expressed purpose of this Trust to so provide if the Trustee so determines.

ARTICLE II

It is the further expressed and declared purpose of this Trust from the time Melissa reaches her majority until she dies to use the Trust Property for Melissa's private care, support, maintenance, recreation and education, including the immediate and ongoing medical, developmental and rehabilitation needs and her everyday need for care; provided, however, it is not the purpose of this Trust to use Trust Property to provide for such items otherwise covered by insurance or available and/or provided through public funding or government aid programs.

ARTICLE III

It is the further purpose of this Trust to fund only the expenses of private care provided for Melissa by her parents, a designee of her parents, or through private placement, and the Trust Property is not intended to be used for public support, and is exempt from, claims by those who administer public support programs in which Melissa has participated. In the event that both (a) a physician then treating Melissa or any other physician appointed by the court is of the opinion that Melissa is in need of care in a publicly funded residential care facility, and (b) Melissa is actually and physically placed in a publicly funded residential care facility, then, and in that event, the Trustee shall make no disbursement of Trust Property until such time as Melissa may again receive private care from her parents, their designee or in private placement.

ARTICLE IV

This Trust Agreement may be amended from time to time with the approval of a court of appropriate jurisdiction (at the date hereof, the Circuit Court of Milwaukee County in any respect, except that the Trust Property shall be solely expended for Melissa's benefit during her lifetime to accomplish the purposes of this Trust and except for Article X concerning disposition of the Trust Property on Melissa's death. The provisions of this Trust Agreement shall be liberally construed at all times to effectuate and to accomplish the declared purposes of this Trust.

ARTICLE V

A. To implement the purposes of this Trust as expressed in Articles I, II and III hereof, the Trustee shall pay out such part or all of the net income and accumulated principal as the Trustee determines to be reasonably to accomplish the desired purposes hereunder.

B. It is recognized at the date of creating this Trust that Melissa's natural parents are divorced and that Melissa's mother, Terri Jo Boyle Linstad, has legal and physical custody of Melissa as provided in a judgment of divorce. "Custodial parent" as used throughout this Trust document means the parent or other person having legal custody of Melissa, as determined by a court of competent jurisdiction from time to time. In determining what is reasonably necessary under this Trust, the Trustee shall consider the wishes and input of both parents, but when appropriate shall keep in mind the legal responsibilities given by the court to the custodial parent for the care of Melissa.

C. Any payment of income or principal expended on behalf of Melissa hereunder may be made by the Trustee, without responsibility for its application, in any one or more of the following ways:

(1) to the custodial parent of Melissa;

(2) to a relative or friend of Melissa to be expended for her benefit;

(3) to Melissa's legally appointed guardian or conservator;

(4) to the custodian of Melissa Boyle under the Uniform Gifts to Minors Act of any state; or

(5) by making direct expenditure for Melissa's benefit.

ARTICLE VI

The interest of the beneficiary of the trust created hereunder shall not be transferable or assignable, nor be subject to the claims of her creditors.

ARTICLE VII

The Trustee and any successor Trustee shall have the following powers, and any others that may be granted by law, with respect to the Trust created hereunder:

(a) to retain any Trust Property in the form received without regard to diversification or to suitability for the purchase by fiduciaries, including any securities issued by, or insured interest-bearing accounts with, any corporate fiduciary or its subsidiary, affiliate or parent corporation;

(b) to invest and reinvest in assets without limitation by any law applicable to investments by fiduciaries, including any securities issued by, or insured interest-bearing accounts with, and corporate fiduciary or its subsidiary, affiliate or parent corporation and units of any common trust fund available to a corporate fiduciary;

(c) to hold uninvested cash, but not in excess of anticipated cash needs;

(d) to lend or borrow money upon appropriate terms, including loans obtained from the banking department of any corporate fiduciary or its subsidiary, affiliate or parent corporation, and to pledge or mortgage Trust Property as security for loans obtained;

(e) to sell, convey, grant options upon, lease or sublease, partition, exchange, manage, plat, improve or demolish any Trust Property and to sign and deliver deeds, leases, mortgages or other required instruments. Any lease may be made for a term which extends beyond the termination date of a fiduciary's responsibilities;

(f) to purchase property, casualty, liability, title, health or other insurance and to continue any policies in full force and effect;

(g) to pay, compromise, contest or abandon claims;

(h) to exercise directly or by proxy all voting, subscription, conversion or other rights in securities held, and to participate in or oppose any plan of reorganization, dissolution, liquidation or merger;

(i) to distribute Trust Property in satisfaction of any beneficiary interest either in cash, in kind, or partly in each without any requirement that every asset be divided and distributed ratably or that its tax cost basis be considered;

(j) to employ accountants, legal counsel, investment advisers or other agents, and to pay them reasonable compensation from the Trust Property held, except that employment of any investment adviser or manager shall be upon notice to and without objection from a court of appropriate jurisdiction which notice shall include the credentials of the investment adviser or manager;

(k) to hold Trust Property in the name of a nominee or in bearer form;

(l) to allot to any trust an undivided interest in property and to make joint investments for two or more trusts hereunder;

(m) to create out of income and credit to principal reasonable reserves for depreciation and depletion;

(n) to deal with the fiduciary of any other estate or trust, even though the fiduciary is a Trustee hereunder; and,

(o) to resign upon giving written notice to the court of appropriate jurisdiction together with a final account.

ARTICLE VIII

A. The Trustee shall retain care and custody of all Trust Property and shall maintain complete and accurate records of assets, receipts, disbursements, and other financial transactions relating to the Trust.

B. The Trustee shall render an annual accounting of his Trust administration during the month of January for approval by the Circuit Court for Marinette County, the County of Melissa's residence as of the date hereof. Copies of the accounting shall be provided to Terri Jo Boyle Linstad and Patrick Boyle by certified mail. Terri Jo Boyle Linstad and Patrick Boyle shall have 30 days to file any objection to the accounting with the Circuit Court.

C. Prior to the receipt of the periodic cash payments from the above described settlement, the Trustee shall secure and provide evidence of appropriate errors and omissions insurance coverage or a suitable bond to secure performance hereunder as the Court deems necessary. The Trustee shall thereafter keep said insurance or bond in full force and effect until he is no longer Trustee or the Trust hereunder terminates. Any successor Trustee, except for a corporate Trustee, shall secure and provide evidence of similar insurance or bond.

D. The Trustee shall be entitled to reasonable compensation for services in administering and distributing the Trust Property and to reimbursement for expenses including the insurance referred to in paragraph C of Article VIII hereof if said Trustee is not an institutional Trustee. Fees and expenses of the Trustee shall be first charged against income to the extent of such income and then against principal to the extent necessary and subject to Court approval.

E. The Trustee shall determine in accordance with the Principal and Income Act of Wisconsin in effect at the time of the determination or in an equitable manner in those cases not then clearly covered by that law, the allocation or appointment of all receipts and disbursements between income and principal. Such determination shall be binding and conclusive. The Trustee shall allocate all capital gains to principal.

F. In determining the amount of any payment of income or principal to or for Melissa, the Trustee may, in his discretion, take into consideration other property or sources of income in support of Melissa actually known to the Trustee, and taking into account the obligation of the parents to provide for the support, care, maintenance and education, including any publicly funded programs available to effectuate the declared purposes of this Trust.

ARTICLE IX

Upon the death or resignation of a Trustee acting hereunder, the Court of appropriate jurisdiction shall appoint a Successor Trustee.

ARTICLE X

In further settlement of the claims of Patrick Boyle and Terri Jo Boyle Linstad as a result of the injuries to Melissa, upon Melissa's death the Trustee may continue to receive certain guaranteed periodic payments as described in Paragraph 2(b) of the Settlement Agreement and Release attached hereto, until such time as the last guaranteed payment is made. In the event of Melissa's death, the Trustee shall distribute, at least annually, the accumulated principal of the Trust Property, including but not limited to the guaranteed payments under the annuity contract, and all accrued or undistributed net income thereof equally, share and share alike, to Melissa's parents, Patrick Boyle and Terri Jo Boyle Linstad. In the event either Patrick Boyle or Terri Jo Boyle Linstad are deceased at the time of Melissa's death, or before the last guaranteed periodic payment is made, then the proportion of principal, interest or income which would have been allocated to the deceased parent had he or she not predeceased Melissa, shall be disbursed in accordance with the laws of intestate succession, excluding from the succession the surviving parent. In the event both Patrick Boyle or Terri Jo Boyle Linstad are deceased at the time of Melissa Boyle's death, or before the last guaranteed periodic payment is made, then the principal, interest and income from the Trust will be disbursed in accordance with the laws of intestate succession. The Trustee may reserve from any payments under this Article an amount necessary for the payment of fees and taxes.

ARTICLE XI

The Circuit Court for Marinette County shall retain continuing jurisdiction over the Trust Property and this Declaration of Trust in accordance with the terms as herein set forth except that the jurisdiction may be referred to such Circuit Court in the county where Melissa Boyle may reside from time to time for the convenience of the parties.

ARTICLE XII

All questions pertaining to the validity, construction, and administration of this Trust shall be determined in accordance with the laws of the State of Wisconsin. This Agreement shall be known as the MELISSA BOYLE LIFE AND CARE TRUST.

This Agreement is signed at Milwaukee, Wisconsin, this 25th day of July, 1988.

Witness

Lynn R. Laufenberg, Guardian ad Litem for Melissa Boyle, a minor, as Grantor

Accepted and agreed to this 25th day of JULY, 1988.

Terri J. Boyle Linstad
Witness

Thomas P. Schwaba, Trustee

Wisconsin Job Center
Human Services Economic Support
1605 University Drive - Suite B
Marinette, WI 54143-4132
Voice (715) 732-7840 FAX (715) 732-7537
Internet: www.marinettecounty.com

March 29, 2010

L&L Guardian Services
N5883 State Highway 180
Marinette, WI 54143-9349

Re: Melissa Boyle Life & Care Trust

Dear Linda:

After a recent review of the above-mentioned trust, it was determined that Melissa's trust doesn't contain provisions necessary to consider it a Special Needs Trust, per MA Handbook Section 16.6.5 (2). There is no language in the trust that the Wisconsin Medicaid program will receive all amounts remaining in the trust not in excess of the total amount Medicaid paid on behalf of the beneficiary when she dies. As a result, this trust is not an exempt asset under this policy. Also, this trust contains no language to state that it is irrevocable and must be considered an available asset in her MA eligibility determination. Since no trust accounting has been provided to you or this agency, we have entered an estimated value previously provided to the Court of $160,000. Melissa's asset limit for Medicaid eligibility is $2000. You have received a notice of decision stating that Melissa's MA eligibility is ending April 30, 2010, due to her being over the MA asset limit.

Our suggestion to you at this time would be to have the trust language amended to meet the requirements to exempt it as a Special needs Trust. Even if the trust was made irrevocable, we would still consider it available since it was funded with her assets and there are provisions that show that payments can be made to or for the benefit of Melissa.

We have determined that our previous decision was agency error and not client error. As a result, no overpayment in benefits has occurred. It is my opinion that we should have received a copy of the trust document at the time of her application and reviewed it ourselves to determine if it met the Wisconsin MA Special Needs Trust criteria.

If you have any additional questions or concerns, please feel free to contact me.

Cordially,

Jill Messenger

Jill Messenger
Economic Support Lead Worker

EXHIBIT
C