

**IN THE CIRCUIT COURT OF CEDAR COUNTY
TWENTY-EIGHTH JUDICIAL CIRCUIT**

The State of Missouri, <i>ex rel.</i>)	
Attorney General Eric S. Schmitt, and)	
)	
The Missouri Department of Social)	
Services;)	
)	
<i>Plaintiffs,</i>)	
v.)	Case No. 22CD-CV00394
)	
Agapé Baptist Church Inc., d/b/a)	
Agapé Boarding School;)	
)	
<i>Defendant.</i>)	

**STATE OF MISSOURI’S MOTION FOR LEAVE TO FILE A
SECOND AMENDED PETITION**

The State of Missouri and Missouri Department of Social Services (collectively, “the State”) respectfully request that the Court file the attached Second Amended Petition under Rule 55.33(a) or treat it as a supplemental pleading under Rule 55.33(d). There is good cause to allow this amendment because new evidence provided by Defendant Agapé and current and former Agapé students should be considered by the Court under § 210.1271.

The State filed its original Verified Petition on September 7, 2022. In that Petition, the State alleged that an individual had been added to the Child Abuse/Neglect Central Registry that same day who had been listed on an August 22, 2022 census of Agapé employees, and the State had received no information regarding a change in employment status. The State also alleged that “former Agapé students have suffered physical abuse through physical restraints, extreme workouts, long days of manual labor, food and water withheld as punishment, constant berating and

mind games, and sexual abuse.” Pet., ¶ 44. In addition, the State alleged that the “Attorney General’s Office has uncovered evidence of criminal activity and DSS has uncovered evidence of child abuse and neglect at Agapé, which together also constitutes an ‘immediate health or safety concern’ under § 210.1271.” *Id.* at ¶ 57.

On September 9, 2022, the State filed a First Amended Petition as a matter of right to address new developments after the State filed the original Petition. First, Agapé reported that it had terminated the staff member added to the Child Abuse/Neglect Central Registry on September 7, 2022, but that he continued to reside on the Agapé property. Second, Agapé provided an updated employee roster on September 8, 2022, and this roster contained new names that had not been provided to the State on the August 22, 2022 roster. Based on this new information, the State alleged that an immediate health and safety concern existed at Agapé due to the now-former employee’s presence on the Agapé property, Agapé’s employment and harboring of other individuals with child abuse or neglect findings still on appeal, and the withholding of information on the employee roster. *See, e.g.*, First Am. Pet., ¶¶ 30, 66-68.

Since filing the First Amended Petition, the State has continued to receive evidence from Agapé and from current and former students. This evidence is relevant and material to this proceeding, and includes the following:

1. Since September 8, 2022, two Children’s Division workers have been present at the Agapé facility to observe the children there. During the past week, numerous current Agapé students have proactively approached the Children’s

Division workers, often surreptitiously, and requested to speak with them. DSS staff took appropriate action for the students to be interviewed. In these interviews, the students reported physical abuse by current Agapé employees at times before the Children's Division workers were present.

2. The recent abuse reports concerning current Agapé employees are consistent with the reports made by former Agapé students, and provide evidence of a pattern of systemic abuse at Agapé.

3. Current Agapé students also have thanked Children's Division workers for their presence at Agapé because the Agapé employees have not physically or verbally abused the students while the workers have been present.

4. DSS has reviewed each name that Agapé included on its September 8, 2022 employee roster. Multiple Agapé employees listed on the roster have not completed the required background check process. Failure to comply with background checks is an independent ground under § 210.1271.1(3) to cease the operation of Agapé and provide for the appropriate removal of the children there.

5. DSS also has received information that Agapé employs other individuals who are not listed on the September 8, 2022 roster. These individuals work with Agapé students and are required by § 210.1264 to be included on the Agapé employee roster. Without knowing all employees who have been omitted from the September 8, 2022 roster, it is unknown how many employees have failed to comply with background checks, and who may present immediate health and safety concerns due to their proximity to children.

Under Rule 55.33(a), “leave shall be freely given when justice so requires.” “A party may amend his pleadings at any time by leave of court, and such leave should be freely given.” *Jennings v. Chatsworth Apartments Project Ltd.*, 186 S.W.3d 457, 463 (Mo. Ct. App. 2006). “Factors guiding whether justice requires leave to amend a petition include: hardship to the moving party if leave to amend is denied; reasons for any failure to include the new matter(s) in previous pleadings; timeliness of the application; whether an amendment could cure any defects in the pleading; and injustice to the party opposing the motion.” *Metro Fill Dev., LLC v. St. Charles Cnty.*, 614 S.W.3d 582, 595 (Mo. Ct. App. 2020).

Here all factors weigh in favor of granting leave to amend. Agapé will suffer no hardship, as their actions initiated the need to amend. They will not need to change any of their pleadings, as they have yet to file an answer, and this case is little more than one week old. The amendment, including additional claims, arises from new developments in the case, and all allegations relate to the health and safety of children at Agapé. As the State has received information within the past week, the motion is timely. Similarly, there are no defects to the pleadings, as any amendment is due to Agapé’s attempts to avoid judicial review. Defendants will suffer no injustice by permitting amendment, but the State and the children still at Agapé would be prejudiced by restarting the pleadings. The Second Amended Petition addresses the changed circumstances (including Agapé’s recent actions) and alleges additional violations of state law.

The Court would also be justified in treating the Second Amended Petition as a supplemental pleading under Rule 55.33(d). On motion and “upon reasonable notice and upon such terms as are just, permit service of a supplemental pleading setting forth transactions or occurrences or events that have happened since the date of the pleading sought to be supplemented.” Mo. Sup. Ct. R. 55.33(d). The same facts that show good cause exists to amend also support that it is just to supplement the pleadings with the subsequent history in this case.

CONCLUSION

For the reasons stated, the Court should grant the State leave to amend and accept the Second Amended Petition that is attached as Exhibit A. The State will notice a hearing on this Motion for September 21, 2022 at 9 a.m., so that the hearing that day can address the allegations in the Second Amended Petition.

Dated: September 19, 2022

Respectfully submitted,

ERIC S. SCHMITT
Attorney General of Missouri

/s/ Justin D. Smith
Justin D. Smith, #63253
First Assistant Attorney General
James S. Atkins, #61214
General Counsel
Jason Lewis, #66725
Assistant Attorney General
Maddie M. Green, #73724
Assistant Attorney General
Office of the Attorney General
Supreme Court Building
207 W. High Street
P.O. Box 899
Jefferson City, MO 65102

(573) 751-8870
(573) 751-0774 (fax)
Maddie.Green@ago.mo.gov

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that, on September 19, 2022, a true and correct copy of the foregoing was filed with the Court's electronic filing system to be served by electronic methods on counsel for all parties entered in the case.

/s/ Justin D. Smith