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27 UNITED STATES DISTRICT COURT
28 DISTRICT OF NEVADA

29 HENRY A., by his next friend M.J.; CHARLES AND
30 CHARLOTTE B., by their next friend R.D.; LEO and
31 VICTOR C., by their next friend C.T.; DELIA,
32 MAIZY, AND JONATHAN D. by their next friend
33 S.W.; LINDA E. by her next friend E.F.; CHRISTINE
34 F., OLIVIA G., SHELDON H. by their next friend
35 E.F., and MASON I., by his next friend M.J.,
36 individually and on behalf of others so situated,

37 Plaintiffs,

38 vs.

39 MICHAEL WILLDEN, Director of the Nevada
40 Department of Health and Human Services; DIANE
41 COMEAUX, Administrator of Nevada Division of
42 Child and Family Services; VIRGINIA VALENTINE,
43 Clark County Manager; CLARK COUNTY; TOM
44 MORTON, Director of Clark County Department of
45 Family Services; and DOES I-XX,

46 Defendants.

Case No. 2:10-CV-00528

COMPLAINT
(Class Action Alleged)
(Jury Trial Demanded)

COMPLAINT

sf-2772895

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ADHD	Attention Deficit/Hyperactivity Disorder
CAP	Children’s Attorneys Project of Legal Aid Center of Southern Nevada
CAPTA	Child Abuse Prevention and Treatment Act
Clark County DFS	Clark County Department of Family Services
Comeaux	Diane Comeaux - Administrator of Nevada Division of Children and Family Services
CPS	Child Protective Services
EPSDT	Early Periodic Screening, Diagnostic and Treatment
ICPC	Interstate Compact on the Placement of Children
IDEA	Individuals with Disabilities Education Act
IEP	Individualized Education Plan
Morton	Tom Morton - Director of Clark County Department of Family Services
NDA	National Deaf Academy
Nevada DHHS	Nevada Department of Health and Human Services
State DCFS	Nevada Division of Children and Family Services
UNITY	Unified Nevada Information Technology for Youth
Valentine	Virginia Valentine - Clark County Manager
Willden	Michael Willden - Director of the Nevada Department of Health and Human Services

INTRODUCTION

1
2 1. This action, consisting of individual claims for damages, declaratory, and injunctive
3 relief, and class claims for declaratory and injunctive relief, is brought by thirteen children who
4 are or have been in the legal custody of the State of Nevada and/or Clark County and placed in
5 foster care. Plaintiffs seek redress for the harms suffered while in Defendants’ care and custody.

6 2. Plaintiffs were removed from the care of their parents, and their custody was
7 transferred to Defendants, for the explicit purpose of keeping them safe from further harm and
8 ensuring their well being. But Defendants’ child welfare system routinely fails in its legal
9 obligations, duties and responsibilities to foster children. Although Defendants are and have long
10 been aware of these failures, in many instances their proposed solutions have been ineffective,
11 and in many cases they have taken no action at all. Defendants’ policies, customs and omissions,
12 as set forth in detail below, fail to comply with federal and state laws, depart substantially from
13 professional judgment, standards, and/or practice, and reflect a deliberate indifference to the
14 health and safety of the children Defendants are obligated to protect. As a result, Plaintiffs have
15 sustained numerous injuries detailed below, including:

- 16 • abuse by a foster family that was so severe that the two very young Plaintiff
17 children Defendants placed in that home had to be treated at a hospital;
- 18 • ignoring requests for authorization of urgently needed medical treatment until
19 emergency surgery was required;
- 20 • destruction of a deaf Plaintiff’s cochlear implant, which severely impaired his
21 language development; and
- 22 • multiple placement disruptions, including a one-year-old child who was sent to
23 *twelve* different foster care settings in a single year and two children who have
24 been sent to more than *forty* different homes during their time in Defendants’
25 custody.

26 3. Defendants operate a child welfare system that fails to comply with state and federal
27 laws or professional standards. Although Nevada law grants explicit responsibility and authority
28 to the state officials sued herein to develop and promulgate child welfare policy, these State

1 Defendants have abdicated that responsibility in large respects. As a result, Clark County
2 Defendants have created many of their own policies. This mixture of state and county policies
3 makes it virtually impossible to determine what policies apply and confounds the ability of even
4 the most well-intentioned staff to determine what their responsibilities are to the children on their
5 caseload. Defendant Tom Morton, the director of the Clark County agency responsible for
6 administering child welfare services, characterized the absence of clearly constructed policies and
7 procedures, coupled with inadequate training of caseworkers, as “a recipe for disaster.”

8 4. Nevada’s foster care system is currently financed through a mix of federal, state, and
9 county funds. The State provides funding to Clark County for operation of its foster care
10 program, while Clark County is responsible for providing funding for child protective services
11 within the county. The State also receives millions of dollars of federal funds for its child welfare
12 system and allocates a portion of these funds to Clark County. Federal funds are the single
13 greatest source of support for Nevada’s child welfare system, ranging each year from 53% to 55%
14 of all state spending on child welfare.

15 5. To become eligible for federal funding, Nevada agreed to administer its foster care
16 program in accordance with federal statutes, regulations, and policies promulgated by the U.S.
17 Department of Health and Human Services. The U.S. Department of Health and Human Services
18 conducts periodic reviews to assess whether Nevada is in compliance with those federal
19 mandates. Federal Reviews were conducted in 2004 and 2009. Both of these reviews assessed
20 the State’s performance with regard to seven “child and family outcome categories” and seven
21 “systemic factors” relating to key federal requirements. The 2004 review of Nevada’s foster care
22 program found that Nevada was not in substantial compliance with *any* of the seven child welfare
23 outcomes designed to ensure children’s “safety, permanency and well being.” U.S. DEP’T OF
24 HEALTH AND HUM. SERVS., Final Report, Nevada Child And Family Services Review (“2004
25 Federal Review”), dated June 1, 2004. The outcomes included whether the State is protecting
26 children from abuse and neglect; providing permanency and stability in children’s living
27 situations; and ensuring that children receive services to meet their physical and mental health
28 needs.

1 6. The State's performance continued to fall far below national standards in the 2009
2 Federal Review. U.S. DEP'T OF HEALTH AND HUMAN SERVS., Final Report Nevada Child and
3 Family Services Review, dated January 2010 ("2009 Federal Review"). Nevada was only in
4 substantial compliance with one of the seven child welfare outcomes designed to ensure
5 children's "safety, permanency and well being." In addition, Nevada was *not* in substantial
6 compliance with four of the seven "systemic factors." The State failed to meet federal standards
7 in broad categories, including safety-related outcomes, staff and care provider training, the case
8 status review system, and the outcome for children's physical and mental health.

9 7. In 2008, the University of Nevada Las Vegas (UNLV) analyzed Clark County's
10 foster care policies pursuant to a legislatively commissioned audit of child welfare services. The
11 analysis determined the extent to which Clark County policies incorporated state child welfare
12 laws and regulations and the mandates of federal laws and regulations. The auditors concluded
13 that Clark County policies included barely a third (37%) of federal and state laws and regulations.

14 8. The 2008 legislative audit also assessed the extent to which Clark County policies
15 incorporated the recommendations of several prior reports of the County's deficiencies. The
16 auditors found that Clark County had adopted a mere 13% of the recommendations in those reports.

17 9. Since 2003, more than ten studies and reports have documented Defendants' failure
18 to protect the health, safety, and well being of child abuse victims and children in foster care.
19 Defendants commissioned many of these reports. In addition, Defendants have conducted
20 multiple case reviews that further document these failures. Though Defendants have had full
21 knowledge of these studies, reports, audits, and case reviews, they have nonetheless failed to
22 remedy the long-standing and substantial deficiencies identified in them. These studies put
23 Defendants on notice that, among other problems:

24 (a) *Defendants fail to adequately train and supervise caseworkers.* The 2008
25 legislative audit documented that few entry-level caseworkers have the rudimentary knowledge,
26 skills, or training needed to perform their job of ensuring the health, safety, and well being of
27 foster children in Defendants' custody. Few Clark County caseworkers or their direct supervisors
28 have a degree in social work or a license to practice social work in Nevada. Many caseworkers

1 are assigned caseloads before completing even the most basic training. High caseloads and
2 inadequate training of Clark County child protective services providers and foster care workers
3 contribute to the crisis within the system. Many workers' caseloads far exceed those established
4 by national standards. Poorly trained and unsupervised caseworkers with high caseloads fail to
5 abide by law, regulations, and professional standards, and are incapable of or fail to exercise
6 professional judgment, resulting in serious injury to children in foster care. Indeed, a recent
7 assessment of Nevada's performance in managing its foster care system revealed that
8 caseworkers failed to prepare a federally and state-mandated case plan for approximately 47% of
9 the foster children in its care within the state-mandated 45-day time window following removal
10 from the home. Further, the 2009 Federal Review found that Nevada failed to meet national
11 standards for staff and provider training, noting that although Nevada requires licensed social
12 workers to complete continuing education requirements, not all caseworkers are licensed social
13 workers. The State has no ongoing training or education requirements for caseworkers who are
14 not licensed social workers.

15 (b) *Defendants fail to meet the needs of children under their care.* Despite legally
16 mandated obligations to these children, Defendants fail to identify and meet foster children's
17 needs, causing them substantial harm. Defendants routinely fail to ensure that children in foster
18 care are provided with the mental health, medical, and early intervention services that they need
19 and to which they are legally entitled. For example, in many instances, Defendants address the
20 mental health needs of foster children solely by the prescribing of psychotropic drugs. Moreover,
21 Defendants fail to monitor the children's health and well being after these drugs have been
22 administered. Even after discovering abuse or neglect in the foster home, Defendants often fail to
23 obtain needed services for the foster children who were victimized. This problem has been
24 exacerbated by Defendants' failure to fulfill their legal obligation to provide prospective foster
25 parents with critical information about the foster child's background and history of abuse,
26 medical history and needs, family history, behaviors, and educational records.

27 (c) *Defendants fail to ensure that caseworkers conduct legally required visits with*
28 *foster children.* Caseworkers regularly fail to visit children in their placements and are therefore

1 unaware of the quality of care the child is receiving, the harm befalling the child, the risk to
2 which the child is exposed, and the lack of needed medical, mental health, education, and other
3 services.

4 (d) *Defendants fail to take reasonable and legally mandated steps to protect*
5 *children from harm.* Investigations of child abuse reports involving children in foster care
6 routinely fail to comply with state law and professional standards. As a direct result, children
7 who could and should have been protected suffer unnecessarily. County Defendants often turn a
8 deaf ear to reports of abuse and neglect in foster care settings, allowing children to remain in
9 dangerous homes that either should not have been licensed in the first place or should have had
10 their licenses revoked. Even though state and federal law mandate appointment of a
11 representative to look out for the interests of the child in all cases, the requirement to appoint a
12 guardian *ad litem* is routinely left unfulfilled. Children in foster care thus frequently have no
13 voice in court proceedings where decisions are made that affect their basic safety, their temporary
14 and permanent placements, and their general well being.

15 10. As alleged herein, Defendants are further victimizing foster children rather than
16 discharging their duty to provide for their safety, care, and well being. Because of their
17 pervasive, long-standing, and well-documented deficiencies in providing suitable out-of-home
18 placements, mental health services and monitoring, and other basic needs, Defendants have
19 harmed and continue to harm Plaintiff children physically, emotionally, and psychologically.
20 Defendants' policies, customs and omissions described in this Complaint threaten the ability of
21 foster children to grow, develop, and live safe and healthy childhoods. Plaintiffs have been
22 harmed by Defendants' policies, customs, omissions and failures to fulfill their legal obligations
23 to foster children, and without court action, they will continue to suffer injury as a result of
24 Defendants' unconstitutional deprivations and statutory violations. Many other children entrusted
25 to the care and protection of Defendants will also suffer unless Defendants' violations are
26 redressed.

27 11. This action seeks compensatory and punitive damages for the past harms that
28 Plaintiffs have suffered while in the custody of Defendants. This action also seeks declaratory

1 and injunctive relief to stop continuing violations of Plaintiffs' legal rights and to prevent
2 Defendants, through their policies, customs and omissions, from continuing to harm the very
3 children whom Defendants have a responsibility to protect.

4 12. In addition, this action also seeks declaratory and injunctive relief on behalf of
5 certain specified classes of children in the Clark County foster care system for whom Defendants
6 have failed to fulfill mandatory obligations to (1) develop case plans with the requisite
7 information within the requisite time period under Nevada and federal law; (2) provide guardians
8 *ad litem* as required under Nevada and federal law; and (3) provide early intervention services as
9 required under Nevada and federal law.

10 JURISDICTION AND VENUE

11 13. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and
12 1343(a)(3) & (4). Plaintiffs' action for declaratory relief is authorized by 28 U.S.C.
13 §§ 1343(a)(4), 2201, 2202 and by Fed. R. Civ. P. 57. Plaintiffs further invoke the supplemental
14 jurisdiction of this Court pursuant to 28 U.S.C. § 1367 to hear and decide claims arising under
15 state law.

16 14. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial
17 part of the events or omissions giving rise to the claims in this case arise in this District.

18 THE PLAINTIFFS

19 15. At all times relevant herein, Plaintiffs and their next friends¹ were and continue to
20 be residents of Clark County, Nevada, with the exceptions of Plaintiff Mason I., who has resided
21 in Clark County, Nevada, at all times relevant herein, except from May 2008 to December 2009,
22 _____

23 ¹ Plaintiffs and their next friends are proceeding under fictitious names and satisfy the
24 requirements of Rule 10(a) of the Federal Rules of Civil Procedure. Plaintiffs are minors in
25 government custody who are challenging governmental action. Revealing their true identities
26 would cause them to disclose highly intimate information, including details of abuse and neglect.
27 Disclosure of the next friends, many of whom are currently caring for the children, would result
28 in identification of the Plaintiffs. In addition, the use of next friends should be permitted in this
case, as plaintiffs and their next friends satisfy the requirements of Rule 17(c) of the Federal
Rules of Civil Procedure and the criteria set forth in *Whitmore v. Ark.*, 495 U.S. 149, 163-64
(1989). The next friends are all either family members or current or former foster parents. These
individuals have the intention to act in the children's best interest.

1 when the State sent him to a treatment center in Florida, Sheldon H., who resided in Clark
2 County, Nevada at all times relevant herein, prior to February 23, 2010, when he was placed with
3 a relative out of state, and next friend R.D., who resides in Kingman, Arizona.

4 16. Plaintiff **Henry A.** is an eleven-year-old boy who has been in the legal custody of,
5 and placed in foster care with, Clark County Department of Family Services (“Clark County
6 DFS”) and/or Nevada Division of Children and Family Services (“State DCFS”) since he was
7 four years old. Henry appears in this action by his former foster parent, M.J., who is acting as his
8 next friend. Henry entered foster care at the age of four after being physically abused by his
9 mother, including being locked in the trunk of her car. Despite knowledge of extreme physical
10 abuse, Clark County DFS placed Henry back with his mother, only to later return him to foster
11 care. Henry suffers from severe mental health problems, but any treatment he received was
12 repeatedly discontinued and disrupted because Defendants moved him to more than forty
13 different placements, and assigned him six or seven different caseworkers (including one who had
14 not completed basic training), in the seven years that he has been in their care. He has had to
15 change mental health providers more than ten times, and Defendants have often failed to provide
16 any information regarding his mental health assessments and treatment history to his new
17 providers. Defendants have also caused Henry to be administered multiple psychotropic
18 medications without adequate care and monitoring and without periodic reassessments of his
19 psychological condition. In July 2009, for example, Henry suffered drug poisoning as a result of
20 the multiple medications he was administered, spent several weeks in the intensive care unit
21 (ICU) of a hospital, and suffered near organ failure. Henry has suffered and continues to suffer
22 injury as a result of Defendants’ policies, customs and omissions.

23 17. Plaintiffs **Charles B.**, age nine, and **Charlotte B.**, age one, are siblings. They have
24 been in the legal custody of, and placed in foster care with, Clark County DFS since March 2009.
25 Charles and Charlotte appear in this action by their grandfather, R.D., who is acting as their next
26 friend. Upon removing Charles and Charlotte from their home, Defendants refused to place them
27 with their grandmother, despite an obligation to place foster children with relatives when safe and
28 appropriate placements are available, despite a court order requiring that these children be placed

1 with their grandmother, and despite their grandmother being ready, willing, and able to provide
2 them a safe and appropriate placement. Instead, Defendants placed Charles and Charlotte in a
3 foster home in which the foster mother and her teenaged son abused them, including by locking
4 Charlotte in a closet without food and water for long periods of time in a soiled diaper and
5 beating Charles when he tried to help Charlotte. The Las Vegas police ultimately removed the
6 children from that foster home and brought them to a hospital for treatment. At the hospital,
7 Charlotte was found to be suffering from dehydration, bruises on her forehead, cuts on both legs,
8 and diaper rash so severe that her buttocks were ulcerated and bleeding. The foster mother has
9 been charged with child abuse, and her son has pleaded guilty to assault. In the twelve months
10 since they entered Defendants' custody, Charles and Charlotte have been in at least seventeen
11 placements, including multiple single-night placements at Child Haven, a shelter for abused and
12 neglected children. Charles and Charlotte have suffered and continue to suffer injury as a result
13 of Defendants' policies, customs and omissions.

14 18. Plaintiff **Linda E.** is a seventeen-year-old girl who has been in the legal custody of,
15 and placed in foster care with, Clark County DFS and/or State DCFS for over fifteen years.
16 Linda appears in this action by her former foster parent, E.F., who is acting as her next friend.
17 Defendants have placed Linda in more than forty different foster care settings, including many
18 inappropriate and dangerous placements in which she suffered abuse and neglect. For example,
19 Defendants placed Linda in the home of an aunt where she had previously suffered abuse. Linda
20 reported this abuse to her caseworker, but her circumstances did not improve. She was also left at
21 a psychiatric facility for six months because Defendants failed to identify an appropriate
22 placement for her. Linda's placement history with Defendants is so riddled with failures that it
23 was not until the 2008–2009 school year—her junior year in high school and her fourteenth year
24 in Defendants' custody—that she was able to complete an entire grade in the same school.
25 Defendants have failed to provide Linda with the medical and mental health care she needs and
26 have instead caused her to be administered multiple psychotropic drugs without adequate care and
27 monitoring and without periodic reassessments of her psychological condition. Linda has
28 suffered and continues to suffer injury as a result of Defendants' policies, customs and omissions.

1 19. Plaintiffs **Leo** and **Victor C.** are seventeen-year-old twins who have been in the
2 legal custody of, and placed in foster care with, Clark County DFS since November 2006. Leo
3 and Victor appear in this action by their grandmother, C.T., who is Leo's current foster care
4 provider and Victor's former foster care provider, and is acting as their next friend. Defendants at
5 first repeatedly refused to place the brothers in the care of their grandmother, who was ready,
6 willing, and able to provide a safe and appropriate placement for them. Instead, Defendants
7 shuttled the brothers between their father's house and the home of their mother and her boyfriend,
8 where they were repeatedly abused. The boys were eventually abandoned at Child Haven. While
9 in the custody of Defendants, Leo and Victor have not received the urgently needed psychiatric
10 care to which they are entitled. Defendants took no steps to arrange psychiatric treatment in
11 response to repeated suicidal threats made by Victor. Additionally, after Victor's needs and
12 symptoms escalated to the point where he had to be hospitalized twice, Defendants failed to
13 arrange for Victor to receive follow-up treatment by a psychiatrist. Leo and Victor have suffered
14 and continue to suffer injury as a result of Defendants' policies, customs and omissions.

15 20. Plaintiffs **Delia**, **Maizy**, and **Jonathan D.** are siblings. Two-year-old Delia has
16 been in the legal custody of, and placed in foster care with, Clark County DFS since March 2008.
17 Maizy, age five, and Jonathan, age four, were in the legal custody of, and placed in foster care
18 with, Clark County DFS from late 2005 until August 2009. Delia, Maizy, and Jonathan appear in
19 this action by S.W., who has adopted Maizy and Jonathan and is acting as the next friend of all
20 three children. Delia, Maizy, and Jonathan have multiple medical problems and developmental
21 delays. Defendants placed the children in Child Haven as infants, where they did not receive
22 even basic care to meet their medical and nutritional needs. Instead of feeding the children age-
23 appropriate food, the staff at Child Haven kept the children on an inadequate formula diet and
24 failed to adjust the feeding techniques after observing the children regurgitate their food on
25 numerous occasions. Both Maizy and Jonathan were left in their cribs for the majority of their
26 days at Child Haven with limited interaction with adults and other children and few opportunities
27 for exercise or physical development. As a result of this neglect, both children were diagnosed
28 with failure to thrive, a diagnosis made when children are consistently underweight due to

1 environmental and social factors. At the time of the children's placement with her, S.W. was
2 given little information about their history, background, or special needs. Defendants also failed
3 to provide S.W. with the training, support, or assistance DFS knew she needed in order to meet
4 the medical, developmental, and emotional needs of the children.

5 21. Defendants have actively impeded S.W. from obtaining urgently needed medical
6 treatment for Jonathan and Delia, including neglecting to return calls and failing to provide
7 authorization for at least three necessary procedures. Left untreated, these conditions became so
8 severe that doctors determined they could proceed with the procedures on an emergency basis
9 without Defendants' authorization. As a result of Defendants' failure to provide medical
10 treatment when it was urgently needed, Jonathan and Delia have ongoing complications.
11 Jonathan's colon is now misshapen and needs to be surgically corrected as a result of Defendants'
12 delay in authorizing treatment to remove a calcified stool from his impacted colon. Delia has also
13 had to undergo emergency surgery to remove a tumor located behind her eye. This surgery was
14 delayed because of Defendants' failure to provide her with necessary and timely medical care,
15 and Delia is now undergoing chemotherapy as a follow-up to the surgery. Delia, Maizy, and
16 Jonathan have suffered and continue to suffer injury as a result of Defendants' policies, customs
17 and omissions.

18 22. Plaintiff **Olivia G.**, age nine, has been in the legal custody of, and placed in foster
19 care with, Clark County DFS since January 2006. Olivia appears in this action by E.F., who is
20 her current foster parent and is acting as her next friend. During 2005, Defendants received
21 multiple reports that Olivia and her siblings were being abused, but they did not remove Olivia
22 and her siblings from their parents' care until almost a year after the initial report. Olivia was
23 placed with a series of relatives, but Defendants made no effort to determine whether those
24 relatives were able to provide appropriate care for her or to monitor the care she received in the
25 relative homes. Olivia suffered abuse in those homes, including multiple incidents where she was
26 beaten with a belt. She has been diagnosed as suffering from severely impaired
27 neuropsychological functioning and a range of cognitive and behavioral impairments.
28 Defendants caused Olivia to be administered powerful multiple psychotropic medications without

1 adequate care and monitoring and without periodic reassessments of her psychological
2 condition—Olivia sometimes went for up to eighteen months without a neuropsychological exam
3 or reassessment while in Defendants’ care. In April 2009, Defendants placed Olivia with E.F. but
4 failed to provide E.F. with all the information and authorizations required to obtain Olivia’s
5 prescriptions. As a result, Olivia was forced to go through an abrupt, medically contraindicated
6 withdrawal from powerful psychotropic medications. Olivia has suffered and continues to suffer
7 injury as a result of Defendants’ policies, customs and omissions.

8 23. Plaintiff **Christine F.** is a three-year-old girl who has been in the legal custody of,
9 and placed in foster care with, Clark County DFS since May 2008. Christine appears in this
10 action by her current foster parent, E.F., who is acting as her next friend. Christine is a medically
11 fragile child who is severely developmentally delayed and who suffers from permanent
12 disabilities and a seizure disorder. Christine was hospitalized at University Medical Center after
13 falling out of a second-story window at the home of her mother, grandmother, and two uncles.
14 Despite suspicious marks around her ankles, suggesting that someone had held her out the
15 window by her ankles before dropping her, or had swung her by her legs into a wall, DFS did not
16 investigate the incident and did not take custody of Christine until her parents refused to authorize
17 medically necessary treatments to remedy Christine’s injuries. Approximately six weeks after
18 Christine was medically ready for discharge from the hospital, Defendants finally placed her in
19 the custody of E.F. Defendants failed to provide E.F. with Christine’s seizure medications and
20 offered almost no support or training on how to care for Christine’s extensive special needs.
21 Defendants have failed to provide Christine with regular medical care or therapeutic services,
22 such as physical, occupational, and speech therapy. County DFS also allowed Christine’s
23 grandmother, who County DFS knew to have a history of child abuse allegations made against
24 her and who was watching over Christine when she fell from the window, to have unsupervised
25 visits with Christine in her own home, greatly increasing the danger to Christine’s health and
26 safety. Christine has suffered and continues to suffer injury as a result of Defendants’ policies,
27 customs and omissions.

1 24. Plaintiff **Sheldon H.** is a five-year-old boy who has been in the legal custody of,
2 and placed in foster care with, Clark County DFS since August 2008. Sheldon appears in this
3 action by E.F., who is acting as his next friend, and with whom he lived with for nearly 1.5 years.
4 Sheldon has extreme developmental disabilities, including behavioral problems. County DFS
5 assumed custody of Sheldon after he was injured in a car crash, the culmination of his mother and
6 stepfather fleeing from the police in a high-speed chase. After Sheldon was placed in E.F.'s care,
7 Defendants failed to make any home visits for six weeks, despite calls to the caseworker from
8 E.F. County DFS also failed to respond to repeated requests from Sheldon's foster mother for
9 training and support to meet Sheldon's needs and failed to provide a timely needs assessment for
10 Sheldon. Sheldon has thus missed many months of school, special education, and related services
11 during a critical window in his development. DFS has also endangered Sheldon by compelling
12 him to have unsupervised visits with his mother and stepfather, whom Sheldon has alleged
13 sexually abused him. This allegation was reported to Sheldon's caseworker in March 2009 but
14 was not investigated for nearly a year. Sheldon has suffered and continues to suffer injury as a
15 result of Defendants' policies, customs and omissions. In February 2010, Sheldon was placed
16 with his grandmother, out of state.

17 25. Plaintiff **Mason I.** is a twelve-year-old boy who has been in the legal custody of,
18 and placed in foster care with, Clark County DFS since July 2003. Mason appears in this action
19 by his former foster parent, M.J., who is acting as his next friend. Mason lived with M.J. for
20 nearly 1.5 years, beginning in September of 2008. Deaf since birth, Mason entered foster care at
21 the age of six after enduring sexual, physical, and emotional abuse by his parents and
22 grandparents. He suffers from posttraumatic stress disorder and reactive attachment disorder,
23 among other serious mental health diagnoses. During the six years he has been in Defendants'
24 custody, Mason has been in more than twenty-five placements, including a treatment center in
25 Florida, the National Deaf Academy ("NDA"), to which Defendants transferred Mason for
26 approximately nineteen months. Mason's only means of communication with others is via
27 American Sign Language. Despite knowing of his impairments, Defendants have failed to place
28 Mason in homes able to meet his special needs. Defendants have not provided Mason with a

1 qualified American Sign Language Interpreter on a consistent basis, thereby depriving him of the
2 ability to effectively communicate with others and participate in and benefit from evaluations and
3 medical treatment. Defendants have routinely failed to fully disclose Mason's relevant medical,
4 mental health, family, social or educational backgrounds to Mason's foster parents, or health and
5 mental health professionals, or to provide him with the medical, mental health, and educational
6 services he needs and to which he is entitled. For example, Defendants failed to provide Mason
7 with proper and medically necessary treatment, including speech therapy, following his receipt of
8 a cochlear implant. Against Mason's wishes, the NDA staff with whom Defendants placed him
9 rendered Mason's implant permanently inoperative. Defendants also routinely administered, had
10 administered by caregivers they selected and supervised, or acquiesced in others' administering,
11 multiple psychotropic drugs to Mason with little to no information about the individual drugs or
12 their possible interaction. Further, Defendants placed Mason at NDA without ensuring that it was
13 safe and capable of meeting Mason's needs. Defendants then ignored Mason's complaints of
14 sexual abuse at NDA, took no steps to investigate or verify his safety or well being, and never
15 once visited the facility or had a face-to-face interview with Mason while he was there. Mason
16 has suffered and continues to suffer injury as a result of Defendants' policies, customs and
17 omissions.

18 26. Each Plaintiff appears by a next friend, and each next friend is sufficiently familiar
19 with the facts and circumstances surrounding the child's situation to represent the child's best
20 interests in this litigation fairly and adequately.

21 **THE DEFENDANTS**

22 27. Defendant Michael Willden ("Willden") has been the Director of the Nevada
23 Department of Health and Human Services ("Nevada DHHS") since July 2001 and is sued in his
24 official and individual capacities. As Director of Nevada DHHS, Defendant Willden is
25 responsible for carrying out the administration of the Nevada Division of Children and Family
26 Services ("State DCFS"), which has responsibility for ensuring the provision of child welfare
27 services throughout the state. N.R.S. §§ 232.300, 232.320. Defendant Willden is also
28 responsible for appointing divisional directors, including the Administrator of State DCFS.

1 N.R.S. § 232.320. Nevada DHHS, through its Division of Health Care Financing and Policy, is
2 also the single state agency responsible for administering Nevada’s Medicaid program. N.R.S.
3 §§ 422.270, 422.271. Defendant Willden is responsible for administering federal funds and
4 ensuring county compliance with all federal mandates of the Medicaid program. N.R.S. 232.070.

5 28. Defendant Diane Comeaux (“Comeaux”) has been the Administrator of State DCFS
6 since June 2008 and is sued in her official and individual capacities. She is responsible for the
7 administration and oversight of all functions of State DCFS. State DCFS has broad
8 responsibilities to Plaintiffs and other foster children. Among its responsibilities, the Division
9 must administer all federal funds provided to the State by the United States Department of Health
10 and Human Services, as well as plan, coordinate, and monitor the delivery of child welfare
11 services throughout the State. N.R.S. 432B.180. State DCFS is required to promulgate
12 regulations “establishing reasonable and uniform standards for child welfare services.” N.R.S.
13 432 B.190. Notably, federal law precludes State DCFS from “delegat[ing] to other than its own
14 officials its authority for exercising administrative discretion in the administration or supervision
15 of the plan including the issuance of policies, rules, and regulations on program matters.”
16 45 C.F.R. §205.100(b)(2). Thus, State DCFS must evaluate all child welfare services provided
17 throughout the State and take corrective action against any agency providing child welfare
18 services which is not complying with any applicable laws, regulations or policies. N.R.S.
19 432B.180 (8). Defendant Comeaux, as Administrator of State DCFS, is also responsible for
20 administering the Medicaid program with respect to children in the child welfare system.
21 N.R.S. 432B.180(1).

22 29. Defendants Willden and Comeaux are referred to collectively as the “State
23 Defendants.”

24 30. Defendant Clark County is a public entity established and maintained by the laws
25 and Constitution of the State of Nevada. Clark County owns, operates, manages, directs, and
26 controls Clark County DFS and employs and/or is responsible for the other County Defendants in
27 this action including, but not limited to, caseworkers, supervisors, foster home licensors, and
28

1 administrators. Clark County has created the Clark County DFS Political Department to provide
2 and administer child welfare services in the County.

3 31. Defendant Virginia Valentine (“Valentine”) has been the Clark County Manager
4 since August 2006 and is sued in her official and individual capacities. She is responsible for
5 managing the County’s budget and providing administrative oversight for all County
6 departments, including Clark County DFS.

7 32. Defendant Tom Morton (“Morton”) has been the Director of Clark County DFS
8 since in or about July 2006 and is sued in his official and individual capacities. He is the
9 Executive Officer of Clark County DFS and is responsible for administering child welfare
10 services in Clark County and for ensuring the safety and well being of children in or at risk of
11 entering the child welfare system, pursuant to Nev. Rev. Stat. Ann. § 432B.

12 33. Defendants Clark County, Valentine, and Morton are collectively referred to herein
13 as the “County Defendants.”

14 34. Doe Defendants I through X are, and at all times relevant hereto were, caseworkers
15 for Clark County and Clark County DFS responsible for overseeing the safety, placement, health
16 care, education, and/or well being of Plaintiffs while in the custody of Clark County DFS, and are
17 sued in their official and individual capacities.

18 35. Doe Defendants XI through XX are, and at all times relevant hereto were,
19 supervisors for Clark County and DFS directly responsible for the supervision of Doe Defendants
20 I through X, and are sued in their official and individual capacities.

21 36. The true names and capacities of Defendants named herein as Does I through XX
22 are presently unknown to Plaintiffs who therefore sue Defendants by fictitious names. When the
23 true names and positions of these Does are discovered, Plaintiffs will seek leave to amend this
24 complaint and substitute the true names of Defendants. Plaintiffs or their next friends are
25 informed, believe, and therefore allege that Defendants so designated herein are responsible in
26 some manner and legally accountable for the events, occurrences, and harms suffered by
27 Plaintiffs as set forth in this action.
28

1 37. At all material times, each Defendant acted under the color of the laws of the State
2 of Nevada.

3 38. The acts and omissions of the Clark County Defendants, caseworkers, supervisors,
4 and other employees described herein were pursuant to the actual policies and customs of Clark
5 County.

6 **ORGANIZATIONAL STRUCTURE AND RESPONSIBILITIES OF DEFENDANTS**

7 39. State Defendants Willden and Comeaux are responsible for the statewide
8 implementation and administration of federal child welfare programs including Titles IV-B and
9 IV-E of the Social Security Act. *See* N.R.S. § 232.300; § 232.320; § 432B.180.

10 40. State Defendants receive millions of dollars in federal funds to meet the needs of
11 children in the child welfare system and are therefore required to comply with federal mandates,
12 including those set forth in the Adoption Assistance and Child Welfare Act of 1980, as amended
13 by the Adoption and Safe Families Act of 1997: Titles IV-B and IV-E of the Social Security Act.
14 42 U.S.C. §§ 622 *et seq.*; 671 *et seq.* (“Adoption and Safe Families Act”), and the Child Abuse
15 Prevention and Treatment Act (“CAPTA”), 42 U.S.C. § 5101 *et seq.*; 20 U.S.C. § 1430 *et seq.*;
16 Individuals With Disabilities Education Act (“IDEA”).

17 41. Between 1996 and 2006 federal financial contribution to Nevada’s child welfare
18 system increased from \$31 million per year to over \$54 million per year. Federal funds comprise
19 over 50% of all State spending on child welfare.

20 42. State Defendants also are responsible for the management and day to-day operation
21 of Nevada’s Children’s Mental Health Services program, which includes services provided to
22 children in Clark County’s foster care system. Children’s Mental Health Services is the Nevada
23 program created to address the needs of children with significant emotional and behavioral
24 challenges and their families.

25 43. Until October 2004, Nevada operated a bifurcated child welfare system in which the
26 State’s two counties with populations of over 100,000—Clark and Washoe Counties—were
27 responsible for providing child protective services, while the State bore responsibility for
28 providing foster care services. Under this system, abused and/or neglected children removed

1 from their parents or guardians were first placed in the legal and protective custody of Clark
2 County DFS pending the juvenile court's findings and disposition of the case. Children not
3 returned from protective custody were placed in the legal custody and foster care of State DCFS.
4 Consequently, many current foster care children, including plaintiffs Henry and Linda, have been
5 in the legal custody of both the Clark County DFS and the State DCFS.

6 44. As of October 2004, as a result of AB 1 (2001), responsibility for foster care was
7 transferred from State DCFS to Clark and Washoe Counties. The State retained responsibility for
8 supervision and oversight of Clark and Washoe Counties' child protective services and foster care
9 programs to ensure, among other things, compliance with federal and state laws, regulations, and
10 standards. The transfer of foster care staff and services from the State to Clark County was
11 completed in October 2004.

12 45. Clark County is responsible for providing funding in an amount set by the County
13 for the provision of child protective services. N.R.S. 432B.325. State DCFS provides the
14 funding to Clark County for the operation of its foster care program. The legislative
15 appropriation for foster care services and all federal funds for child welfare services go to State
16 DCFS. State and County Defendants negotiate a contract—the Intrastate Interlocal Contract with
17 the State of Nevada for Operation of Child Welfare, Eligibility and Foster Care Licensing
18 Programs—detailing the County's responsibilities and specifying how the funds will be allocated.

19 46. Children committed to the legal custody of State or County Defendants may be
20 placed in one of several different types of out-of-home placements. These placements include,
21 among others, foster family homes, treatment foster homes, and group homes.

22 47. State DCFS is required to establish and ensure the Counties' compliance with
23 minimum standards for licensure of foster family homes, group homes, and other child care
24 facilities in which foster children are placed. N.R.S. 424.020. In carrying out this obligation,
25 State DCFS is required to promulgate regulations establishing uniform standards for the licensing
26 of foster family homes, group homes, and child care institutions. *Id.*; N.R.S. 432B.190(1).

27 48. Clark County DFS is responsible for licensing foster and group homes in which it
28 places foster children in its custody and for ensuring that those homes meet state standards.

1 N.R.S. 424.016(1), 424.020, and 424.030. This responsibility includes monitoring foster and
 2 group homes to ensure that they continue to meet licensing standards, removing foster children
 3 from homes where necessary, and providing support to those homes. N.R.S. 424.040, 424.060,
 4 424.077. Licenses must be renewed every two years. N.R.S. 424.030. Licensing is required in
 5 order to protect children from abuse or neglect and ensure that the foster parent can properly care
 6 for children. N.A.C. § 424.100.

7 **I. ALLEGATIONS REGARDING DEFENDANTS' POLICIES, CUSTOMS AND**
 8 **OMISSIONS**

9 **A. Defendants Fail to Inform Foster Parents and Other Caregivers of Essential**
 10 **Information Necessary for Stable and Successful Placements**

11 **1. Federal and State Laws Require Caseworkers to Provide Foster**
 12 **Parents Specific Information About a Child's Health and Behavioral**
 13 **Background Before Placing the Child**

14 49. When Defendants remove a child from his home and take him into protective
 15 custody, they assume an obligation to place him into a safe and appropriate living situation with
 16 foster parents or other caregivers to take care of him. *See, e.g.*, 42 U.S.C. § 671(a)(22).

17 50. To fulfill that obligation, federal law mandates, among other things, that “before a
 18 child in foster care under the responsibility of the State is placed with prospective foster parents,
 19 the prospective foster parents will be prepared adequately with the appropriate knowledge and
 20 skills to provide for the needs of the child, and that such preparation will be continued, as
 21 necessary, after the placement of the child.” 42 U.S.C. § 671(a)(24).

22 51. The Federal Foster Care and Adoption Assistance Act also requires that within 60
 23 days of removal from the home, caseworkers must develop a case plan for each foster child that
 24 includes the child's health and education records, known medical problems and prescribed
 25 medications, and other relevant related information. 42 U.S.C. §§ 671(a)(16), 675(1), 45 C.F.R.
 26 §1356.21(g)(2). This Act also expressly requires that the caseworker provide an updated copy of
 27 the child's record to the foster parent or provider *at the same time the caseworker places the child*
 28 *with that parent or provider.* 42 U.S.C. § 675(5)(D).

52. Nevada law also requires County DFS and/or State DCFS to provide prospective
 foster parents with specific information about the child, including information about the child's

1 family, medical, and behavioral history, *before* placing that child with the foster parents. N.R.S.
2 424.038. The purpose of sharing such information is to identify and provide for the most
3 appropriately matched foster home. N.R.S. § 424.038(1), N.A.C. § 424.465. State regulations
4 further require that information about the child’s situation and needs be continually shared by the
5 child welfare agency and the foster care providers in a timely manner, thereby ensuring that the
6 child’s needs are continuously addressed with appropriate services, including respite for foster
7 care providers. N.A.C. §§ 424.805, 424.810.

8 53. State DCFS acknowledges these obligations. Its Substitute Care Manual expressly
9 requires that its social workers inform a child’s foster care providers about that child’s known
10 history, including the child’s current and previous behavior and any “acting out” behavior. As
11 required by law, the Manual requires the social workers to provide this information to the foster
12 parents *before* placing the child. The Manual cautions: “[C]are providers need as much
13 information as possible . . . to decide if they are capable of caring for the child.”

14 54. Both federal and state laws require caseworkers to provide this information before
15 or during placement to ensure that the prospective foster parent, relative, or other caregiver has
16 sufficient information to make an informed judgment about his ability to provide the child with
17 safe and appropriate care and to ensure that the placement selected for the child will remain
18 stable, thereby avoiding another move for a child already traumatized by his removal from home.
19 Further, placing a child with severe psychological and/or behavioral problems in a home that is
20 not equipped to handle him puts both the child and the foster family members at risk of harm.

21 55. Defendants acknowledged that once they place a child into a foster home, keeping
22 his placement as stable as possible is crucial to that child’s well being. Clark County Placement
23 in Substitute Care Policies and Procedures § 3000. Conversely, removing a child from his foster
24 home and sending him to yet another placement is a serious disruption in the child’s life that can
25 have devastating effects. Removal causes the child to lose any sense of stability he developed in
26 the home and can prevent him from receiving vital medication, counseling, educational or
27 therapeutic services. Moving a child repeatedly can prevent the child from developing
28 attachments, cause severe emotional trauma, and exacerbate existing mental health and behavioral

1 problems. It is therefore critical that Defendants' caseworkers fulfill the agency's obligation to
2 provide the requisite information to the foster parents to ensure the success of each foster child's
3 placement.

4 56. In addition, failure to disclose information about the child's health care needs and
5 history can also result in delays in getting appropriate assessments and treatment. Foster parents
6 unaware of the child's past providers, diagnoses, and treatments cannot provide crucial history
7 information to the child's healthcare providers. It is therefore critical for the provision of
8 necessary medical and mental health treatment that Defendants fulfill their information-gathering
9 and sharing obligations.

10 **2. Defendants' Policies, Customs and Omissions Violate Federal and**
11 **State Law Regarding the Provision of Information to Foster Parents**

12 57. Defendants' policies, customs and omissions result in their routine failure to provide
13 the required information about foster children to foster parents.

14 58. The most recent data from the statewide Unified Nevada Information Technology
15 for Youth ("UNITY") information system indicates that only approximately 53% of children had
16 case plans within 45 days of removal from the home. This data confirms that a specifically
17 identified deficiency noted in the 2004 Federal Review continues to be a serious problem. Thus,
18 Defendants are well aware of their routine failure to collect necessary information in the first
19 place.

20 59. Even when State Defendants have collected highly relevant medical and mental
21 health information about foster children, they routinely fail to share that information with County
22 actors to whom the State Defendants have delegated such critical responsibilities in the foster care
23 arena, making it impossible for caseworkers to pass the information on to foster parents. For
24 example, because most children entering foster care are enrolled in Medicaid, information about
25 their medical history is readily available in the State Defendants' Medicaid database. This is also
26 the case with information maintained by State Defendants' Children's Mental Health Services
27 program, which is responsible for providing mental health services to Plaintiffs and other children
28 in Clark County who are in need of mental health screenings, assessments, and treatment. On

1 information and belief, State Defendants do not provide critical information within their
2 possession and control to County Defendants to ensure that foster parents receive accurate and
3 complete health histories of the foster children.

4 60. The failure of Defendants' caseworkers to fulfill the obligation to share required
5 information about the children in their custody and care with foster parents is foreseeable.
6 Defendants employ many caseworkers who are not adequately educated or trained regarding how
7 to collect the necessary and required information about foster children or what information they
8 must share with prospective foster parents. A large majority of County Defendants' caseworkers
9 do not have degrees in social work, even at the bachelor's level, and approximately one-third of
10 the caseworkers have been at their jobs for less than one year. Compounding these caseworkers'
11 lack of education and experience, upon information and belief, Defendants allow new
12 caseworkers to proceed in the field for months before providing them with even the initial, basic
13 training. Nor are caseworkers who fail to provide the requisite information to foster parents in
14 violation of federal and state law held accountable through supervision.

15 **3. Plaintiffs Have Been Injured as a Result of Defendants' Failure to**
16 **Provide Required Information**

17 61. Defendants' policies, customs and omissions regarding withholding critical and
18 required information about children caused injury to children in Defendants' custody, including
19 Plaintiffs, by causing frequent and avoidable movements from one failed placement to another,
20 and by causing the disruption, delay and/or withholding of services needed by Plaintiffs. For
21 example:

22 (a) Defendants had significant and extensive information about Henry's history,
23 including that Henry had (1) suffered severe physical abuse from his mother before entering
24 foster care; (2) received numerous diagnoses of serious and often conflicting mental health
25 disorders from a variety of mental health providers; (3) been administered psychotropic
26 medications, including multiple medications at the same time; and (4) was prone to extremely
27 erratic behavior. Defendants failed to provide this information to prospective foster parents. In
28 May 2009, when M.J. met with Defendants' caseworkers to decide whether to take Henry into her

1 home upon his discharge from a treatment facility, M.J. was told only that Henry “might” have
2 ADHD, and that he no longer needed a higher level of care. Defendants did not provide any
3 information or written record of Henry’s medications, other diagnoses, or significant mental
4 health and behavioral issues, and they failed to discuss Henry’s discharge plan with M.J. or to put
5 her in contact with any psychiatrist who had treated Henry to discuss continuation of his care or
6 how to administer his many medications. In fact, M.J. learned for the first time that Henry was
7 on multiple psychotropic medications when she picked him up from treatment and was given a
8 plastic bag containing Adderall, Abilify, Trileptal, and other prescription drugs. When he arrived
9 in M.J.’s home, Henry was aggressive and threatening toward M.J. and her other children. It was
10 only after M.J. brought Henry to meet with a psychiatrist that M.J. learned from Henry’s
11 caseworker of Henry’s extensive history of psychiatric problems and erratic behaviors. Henry’s
12 aggressive behavior continued, and he was eventually admitted to two psychiatric facilities.
13 Since being admitted, Henry has not been returned to M.J.’s care. Henry’s multiple placements
14 have disrupted his medical and mental health care and deprived Henry of the consistent
15 assessment and treatment needed to address his multiple physical and mental health needs.
16 Defendants’ failure to provide M.J. with the information described here prevented M.J. from
17 assessing her ability to handle a child with his high level of special needs, placed his safety and
18 the safety of M.J. and her other children at risk, and ultimately caused the placement to fail. In
19 addition, Defendants have shuttled Henry among more than ten different mental health providers.
20 Upon information and belief, Clark County DFS did not provide many of these mental health
21 providers with information about Henry’s health history, previous providers, assessments, and
22 treatment. Defendants’ failures also impaired the continuity and effectiveness of Henry’s mental
23 health care. Henry has suffered injuries to his health, safety and well being as a result of
24 Defendants’ policies, customs and omissions.

25 (b) In 2007, when Olivia was seven years old and in Defendants’ custody, a neuro-
26 psychological evaluation found that she had “severely impaired neuropsychological functioning”
27 and a range of cognitive and behavioral impairments. Olivia was placed on multiple psychotropic
28 medications, including an antipsychotic and medications for bipolar disorder and ADHD. In

1 March 2009, Defendants moved Olivia to a treatment foster home. Upon information and belief,
2 Defendants did not provide the foster parents with an accurate and complete description of
3 Olivia's mental and behavior health and other special needs prior to placing her in their home.
4 Within two weeks of her arrival, Olivia was admitted to Monte Vista, and the treatment foster
5 parents refused to accept her back into their home. While Olivia was a patient at Monte Vista,
6 she was administered at least three different medications, including an antipsychotic. Upon
7 Olivia's discharge from Monte Vista, Defendants placed her with E.F. Defendants failed to
8 provide E.F. with information about Olivia's medications and failed to grant her the authorization
9 necessary to obtain them through Medicaid. As a result, E.F. was unable to fill Olivia's
10 prescriptions for the drugs she was then taking. Defendants' failure to secure Olivia's
11 medications forced Olivia to go through an abrupt and painful withdrawal from powerful
12 psychotropic drugs. Upon information and belief, the abrupt withdrawal of a child from such
13 medications is medically contraindicated and posed a grave risk to her health and safety.
14 Defendants' failure to provide full and accurate information regarding Olivia's history and mental
15 health and behavioral needs caused her March 2009 placement to fail. Olivia suffered injury to
16 her health, safety and well being as a result of Defendants' policies, customs and omissions.

17 (c) Before entering Defendants' custody, Leo and Victor suffered physical,
18 emotional, and sexual abuse at the hands of their parents and other adults with whom they lived at
19 various times. In April of 2007, while the brothers were living at Child Haven, Victor became
20 severely depressed and threatened to hang himself. He exhibited harmful and destructive
21 behaviors toward himself and other children in the group home. In May and June 2007, Victor
22 was hospitalized at two different psychiatric institutions. In June 2007, Defendants placed Leo
23 and Victor with a foster parent who had a developmentally delayed teenaged granddaughter living
24 in the home. Upon information and belief, Defendants failed to provide the foster parent with
25 sufficient information about Leo's and Victor's history of physical and sexual abuse, multiple
26 placements, and psychiatric problems for her to make an informed decision about accepting
27 placement of the children, and determine the level of care and supervision they would need upon
28 joining her home. Just weeks after accepting Leo and Victor into her home, and with no

1 knowledge of the boys' history of abuse, the foster mother left the children unsupervised, and
2 Victor and the teenaged granddaughter had sexual intercourse. The placement was terminated
3 immediately. Victor was given three years probation, and experienced multiple additional
4 placements before he was eventually sent to a youth prison in Elko. Leo was eventually placed
5 with his grandmother, where he remains today. Defendants' policies, customs and omissions
6 resulted in the failed placement and injured Victor's and Leo's health, safety and well being.

7 (d) In March 2009, Defendants removed Charles and Charlotte from their parents'
8 home and placed them in a foster home. In the twelve months since, Charles and Charlotte have
9 been in at least twelve different placements, including multiple stays at Child Haven for only a
10 day at a time. Upon information and belief, when Defendants placed Charles and Charlotte with
11 foster parents, Defendants failed to provide the foster parents with sufficient information about
12 the children's background and needs to enable them to make informed decisions about their
13 ability to care for the children, and as a result, multiple placements failed. Charles and Charlotte
14 suffered injury to their health, safety and well being as a result of Defendants' policies, customs
15 and omissions.

16 (e) In the fifteen years that Linda has been in Defendants' custody, she has been in
17 more than forty placements, including foster homes, shelters, group homes, and psychiatric
18 hospitals. She has suffered abuse and neglect throughout her time in foster care and has been
19 placed on psychotropic drugs, including multiple drugs at the same time. Upon information and
20 belief, Defendants failed to provide multiple foster parents with whom they placed Linda with
21 required information about her background, special needs, medication history, prior placement
22 history, and other information necessary for the foster parents to make informed decisions about
23 their ability to provide adequate care for Linda. Defendants' failures caused multiple foster
24 families to terminate her placements. As a result of Defendants' policies, customs and omissions,
25 Linda suffered injury to her health, safety and well being.

26 (f) Upon information and belief, Defendants failed to disclose to prospective foster
27 parents Mason's history of maltreatment, his behaviors, the results of his mental health
28 evaluations and treatment, and other information critical to making an informed decision about

1 their capacity and willingness to provide safe and adequate care for Mason, and how their
2 acceptance of Mason might affect the other children in their foster home. Some of the foster
3 homes in which Defendants placed Mason were incapable of meeting his needs. For example,
4 Defendants placed him with newly licensed, completely inexperienced foster parents who were
5 not properly equipped to care for Mason. As a result of Defendants' policies, customs and
6 omissions, Mason was injured.

7 62. As the direct and proximate result of Defendants' policies, customs and omissions
8 regarding the failure to collect, and/or the withholding of, critical and required information, as
9 alleged herein, Plaintiffs have endured repeated failed placements, lack of access to continuous
10 and/or effective mental health care, abuse, and neglect, and have been forced to take numerous
11 psychotropic drugs. As a result of these experiences, Plaintiffs have suffered bodily harm,
12 substantial physical and emotional pain and suffering, humiliation, extreme and severe mental
13 anguish, acute anxiety, emotional and physical distress, and fear and depression, all to their
14 damage and detriment.

15 **4. It Is Likely that Plaintiffs and Others Will Continue to Suffer Harm as**
16 **a Result of Defendants' Policies, Customs and Omissions**

17 63. Defendants' policies, customs and omissions regarding the collection and sharing of
18 critical information about foster children make it likely that Plaintiffs and others will continue to
19 suffer harm in Defendants' custody.

20 64. A recent federal audit of a sample of Defendants' data from 2007 and 2008
21 indicates that during these years, almost a quarter of the children who were in foster care for less
22 than a year moved to three or more placements. Similarly, almost half of children who remained
23 in foster care between one and two years moved to three or more placements. A 2008 UNLV
24 Performance Audit showed that almost one-third of children in foster care had been in multiple
25 school placements since coming into care.

26 65. This data comes as no surprise to Defendants. Defendants have been on notice for
27 years that children in their custody are frequently shuttled from one temporary placement to
28 another. The 2004 federal performance review of Nevada's child welfare system found that

1 only 31% of foster children in Clark County had stable placements. Many of the children who
2 experienced multiple placements were under five years of age.

3 66. Defendants' policies, customs and omissions regarding their withholding of
4 information from foster parents reflect a deliberate indifference to the health and safety of those
5 children, constitute a substantial departure from professional standards, and evidence a lack of
6 professional judgment.

7 67. Unless Defendants change their policies and customs to ensure that foster parents
8 receive the required information about foster children before accepting them into their care,
9 Plaintiffs and other foster children face likely future injury from the failure of those placements,
10 and from the disruption, delay, and/or withholding of services that results when Defendants fail to
11 share critical information.

12 **B. Defendants Fail to Provide Foster Children with Necessary Medical and**
13 **Mental Health Treatment to Which They Are Entitled**

14 **1. Federal and State Laws Require Defendants to Provide Timely**
15 **Medical and Mental Health Services to Meet the Needs of Children in**
16 **Their Custody**

17 68. The Fourteenth Amendment to the U.S. Constitution provides foster children in
18 government custody with substantive due process rights to services necessary to prevent foster
19 children from deteriorating or being harmed physically, developmentally, psychologically, or
20 otherwise while in government custody, including adequate mental, dental, psychiatric, and
21 psychological services and the right to receive care, treatment, and services determined and
22 provided through the exercise of accepted, reasonable professional judgment.

23 69. Federal laws require Defendants to provide foster children with medical and dental
24 care and mental health treatment when needed. Federal law grants foster children the right to
25 services to protect their safety and health. 42 U.S.C. § 671(a)(22). Similarly, state law requires
26 that Defendants provide services to foster children to address their needs while in foster care.
27 N.A.C. 432B.400, N.A.C. 432B.405. Those services include, but are not limited to, medical,
28 hospital, psychiatric, surgical or dental services, or any combination thereof. N.R.S. 432B.044 &
N.R.S. 432.010 (8). It is State DCFS policy to "ensure that physical, developmental and mental

1 health needs of custodial children are identified and diagnosed through the use of standardized,
2 periodic screenings.” State Child Welfare Policies and Procedures, Nevada Division of Child and
3 Family Services Policy Manual § 0207.2.1. It is also State DCFS policy to “identify and respond
4 to the needs of children under the age of three with developmental delay(s).” *Id.* § 0502.2.1.

5 70. Defendants provide medical services to foster children in their custody primarily, if
6 not exclusively, through the Medicaid program. As broad as the overall Medicaid umbrella is
7 generally, the initiatives aimed at children are even more expansive. When Congress amended
8 the Medicaid statute in 1989, it made the provision of Early Periodic Screening, Diagnosis, and
9 Treatment services (“EPSDT”) to Medicaid eligible children mandatory for participating states.
10 42 U.S.C. §§ 1396d(r), 1396d(a)(4)(B). When medically necessary, states are bound to make
11 available to Medicaid eligible children all of the twenty-eight types of care and services included
12 as part of the definition of “medical assistance” in the Medicaid Act, including “necessary health
13 care, diagnostic services, treatment and other measures . . . to correct or ameliorate defects and
14 physical and mental illnesses and conditions discovered by the screening services[.]” 42 U.S.C.
15 §§ 1396d(r)(5).

16 71. The breadth of Medicaid’s EPDST requirements is underscored by the statute’s
17 definition of “medical services.” Section 1396d(a)(13) defines as covered medical services any
18 “diagnostic, screening, preventative, and rehabilitative services, including any medical or
19 remedial services . . . for the *maximum reduction of physical or mental disability* and restoration
20 of an individual to the *best possible functional level.*” 42 U.S.C. § 1396d(a)(13) (emphasis
21 added). The Medicaid Act further requires that medical assistance “shall be furnished with
22 *reasonable promptness* to all eligible individuals.” 42 U.S.C. § 1396a(a)(8) (emphasis added).

23 72. Federal laws also require that State DCFS provide methods to (a) inform foster
24 children or their caretakers about EPSDT programs, (b) provide foster children on request with
25 “screening (periodic comprehensive child health assessments); that is, regularly scheduled
26 examinations and evaluations of the general physical and mental health, growth, development,
27 and nutritional status,” and (c) provide foster children diagnostic and treatment services. 42
28 C.F.R. § 441.56(a)-(c).

1 73. State DCFS policy requires that children in the custody of a child welfare agency
2 “will receive Healthy Kids (EPSDT) Screenings followed by referrals for diagnosis and
3 treatment.” State Child Welfare Policies and Procedures, Nevada Division of Child and Family
4 Services Policy Manual § 0207.5.1. Screenings must include, but are not limited to,
5 comprehensive health and development/behavior history; developmental/behavioral assessment;
6 and comprehensive unclothed physical exam. *Id.* State DCFS policy also determines the
7 frequency of such screenings: children under 1 year are to receive 5 screenings; children from 1-2
8 years are to receive a total of 4; and the frequency lessens as children age. *Id.* § 0207.5.2.1. State
9 DCFS policy requires County DFS to develop internal policies to comply with these
10 requirements, to document referrals in a state database within five days of the referral, and to
11 ensure that supervisors verify that screening exams take place on all children who enter foster
12 care “within the removal episode of 24 hours or more,” and that any “exams, diagnosis,
13 treatments, and /or referrals” are documented by the caseworker. *Id.* § 0207.6.5.

14 74. It is County DFS policy to “assure[] the safety of each child in its care and custody
15 by providing a pre-placement health screening for initial placement or any placement movement”
16 and “ensure[e] that foster children participate in Nevada’s EPSDT program.” County DFS
17 Medical Case Management Unit Policies and Procedures § 9130, discussion draft, dated
18 December 19, 2008. On information and belief, these policies and procedures are now in place.
19 County DFS also has undertaken the responsibility to “[e]nsure completion of Early Periodic
20 Screening, Diagnostic and Treatment (EPSDT) examination and any required medical follow-up
21 care within fourteen (14) days for *all* children who enter substitute care.” *Id.* § 9120.

22 75. In addition to the required screenings and treatments, caseworkers are required to
23 visit foster children at their placements on a monthly basis. N.A.C. 432B.405. Such visits
24 provide opportunities for the caseworker to observe whether a child has unmet medical and
25 mental health needs or is in need of additional screening and treatment.
26
27
28

1 **2. Defendants' Policies, Customs and Omissions Cause Defendants**
2 **Regularly and Routinely to Fail to Provide Required Screenings and**
3 **Treatment to Which Foster Children in Their Custody Are Entitled**

4 76. Defendants have a long history of failing to provide the periodic screenings required
5 by law. A 2005 County Case Review found that Clark County DFS fails to meet the health and
6 mental health needs of a full 50% of the children in its care. The 2008 UNLV Performance Audit
7 found that only 46.2% of children with identified mental health needs received mental health
8 screenings. The 2009 Federal Review found that caseworkers had made no concerted effort to
9 address children's mental health needs in 36% of the cases sampled.

10 77. Even when Defendants do assess children to determine what services they need,
11 Defendants routinely fail to provide them with the necessary services. The 2008 UNLV Audit
12 found that 60% of children in foster care had not received Medicaid services to which they were
13 entitled. The study also found that, of the children referred for mental health services, 45.5%—
14 nearly half—did not receive the recommended services. Further, Defendants do not ensure that
15 children with mental health needs receive individualized treatment that addresses their particular
16 needs. Instead, as detailed below, many children with serious mental health needs receive only
17 medication to control their behavior, rather than therapeutic services to treat their underlying
18 mental health issues.

19 78. In September 2008, the Children's Attorneys Project (CAP) of the Legal Aid Center
20 of Southern Nevada, which represents several hundred foster children in Clark County, sent a
21 letter to Defendants Willden and Morton addressing the inadequate mental health services their
22 clients were receiving, including that: medication is often the only mental health treatment foster
23 children receive; children are sent from one psychiatric facility to another, typically with new
24 diagnosis and treatment regimes at each facility, with no consultation between providers at the
25 different facilities; and children who could be treated in outpatient facilities are instead confined
26 in hospital settings. The letter was signed by Barbara Buckley, the Executive Director of the
27 Legal Aid Center of Southern Nevada, who also is the Speaker of the Nevada Assembly. The
28

1 letter described these inadequacies as “both systemic and of such magnitude as to actually put our
2 clients at risk.”

3 79. Defendants’ policies and customs with respect to psychotropic drugs are a key
4 aspect of their failure to provide required screenings and treatment. Psychotropic medications,
5 including antidepressants, antipsychotics, mood stabilizers, and tranquilizers, are powerful drugs
6 that affect the central nervous system. Some of these medications can cause users to become
7 addicted. Many of these drugs carry potentially serious side effects, such as diabetes, obesity, and
8 liver failure, and have the potential to adversely affect children’s brain chemistry later in life.
9 The FDA has not approved such drugs for the widespread uses for which they are being
10 prescribed to the foster children in Defendants’ custody. Administering a combination of two or
11 more psychotropic drugs can cause adverse reactions that endanger the patient’s health. Little to
12 no data exists to support the prescribing of multiple psychotropic medications in the pediatric
13 population.

14 80. Rather than provide mental health services with necessary psychiatric treatment,
15 such as individual therapy, group counseling, or other types of care that meet their mental health
16 needs, Defendants have elected to respond to many foster children’s issues by allowing
17 widespread administration of powerful psychotropic medications, often in combination.
18 Defendants’ policies, customs, and omissions permit the routine administration of these drugs to
19 subdue a child’s misbehavior and make the child easier to control, without regard to the side
20 effects and potential dangers of these medications and whether the drugs are medically necessary.
21 Defendants fail to ensure that psychiatrists who prescribe psychotropic drugs comply with
22 professional standards for doing so, including ensuring that such psychiatrists have a
23 specialization in child and adolescent psychiatry and have received training in the use of these
24 medications in the child’s age group. Further, Defendants fail to ensure psychiatrists are provided
25 with child-specific information, including the child’s health history, physical exam, psychosocial
26 assessment, and mental health, co-morbid conditions, family history, and school records, required
27 to conduct a thorough examination in accordance with professional standards, before prescribing
28

1 psychotropic medications. Defendants have failed to control and monitor the administration of
2 these drugs to foster children, jeopardizing their health and safety.

3 81. Once a child begins taking a psychotropic medication, it is critical that the child
4 receive proper monitoring to ensure that the drug is having its intended effect and is not causing
5 harm. Such monitoring requires sufficient time to assess clinical response and side effects.
6 Professional standards therefore require that the doctor monitor, among other things, the child's
7 height, weight, blood pressure, blood test results, and other laboratory findings and make any
8 adjustments to the dosage or type of medication that may become necessary. Psychosocial
9 interventions, including psychotherapy, are frequently required along with the medication.
10 Defendants fail to ensure that the necessary monitoring takes place or that other psychosocial
11 interventions are provided to foster children, including Plaintiffs.

12 82. As a direct and foreseeable result of Defendants' policies, customs and omissions,
13 foster children who are administered psychotropic medication do not receive proper monitoring,
14 including psychotherapy, to ensure that the drug is having its intended effect and is not causing
15 harm. This problem is exacerbated when foster children change placements, because in those
16 instances, the children are often forced to change health care providers, including psychiatrists.
17 As a result of Defendants' policies, customs and omissions, Defendants often fail to transmit a
18 child's assessments, diagnoses, medication history, and treatment records to the new treating
19 physician. Defendants do not require a child's current and former mental health providers to
20 consult on the treatment plan. As a direct and foreseeable result, children routinely receive new
21 and often conflicting diagnoses from their new doctors and may begin taking different or
22 additional medications, increasing the risk of harm to the child.

23 **3. Plaintiffs Have Been Injured as a Result of Defendants' Failure to**
24 **Provide Necessary Medical and Mental Health Services to Which They**
25 **Are Entitled**

26 83. Plaintiffs have been injured by Defendants' policies, customs and omissions that
27 result in foster children not receiving the necessary medical and mental health services to which
28 they are entitled. For example:

1 (a) Although Delia was noticeably underweight when she entered Defendants'
2 custody, Defendants failed to assess her developmental and medical needs. In July 2009, Delia's
3 current foster parent, S.W., brought Delia to the hospital to seek care for a severely swollen
4 eyelid. The examining physician determined that Delia needed an MRI to determine whether she
5 had a potentially life-threatening tumor, but S.W. lacked authority to authorize the diagnostic
6 procedure. S.W. immediately attempted to contact Delia's caseworker and supervisor. Despite
7 multiple calls about this emergency situation, however, neither the caseworker nor the supervisor
8 returned S.W.'s calls. Ultimately, S.W. was able to obtain consent from Delia's biological
9 mother. The MRI revealed that Delia had a tumor that needed to be removed immediately. Delia
10 had surgery and is now undergoing chemotherapy. Defendants' conduct delayed Delia's access
11 to the MRI screening that diagnosed her malignant tumor and delayed her surgery and
12 chemotherapy. During Delia's time in Defendants' custody, Defendants' caseworkers rarely
13 visited her at her placement and did not monitor Delia's health to verify that she was receiving all
14 necessary medical screenings, assessments, and treatment services. Defendants' conduct in
15 failing to provide prompt, periodic, and necessary screening, assessments, and treatment services
16 to address her physical and mental health needs has injured Delia.

17 (b) While Jonathan was placed at Child Haven as an infant, the staff failed so
18 completely to provide for his medical and nutritional needs that he was diagnosed with failure to
19 thrive and was developmentally delayed. Although he often regurgitated his food after eating,
20 staff took no steps to ensure he received adequate nutrition. At five months, Jonathan was unable
21 to turn his head. Defendants also deprived Jonathan of urgently needed medical care. After
22 coming to live with S.W., Jonathan became seriously ill with an impacted colon. When his
23 doctor recommended a colonoscopy, S.W. and Jonathan's doctor repeatedly sought authorization
24 from Defendants, but Defendants refused to consent and failed to approve medical procedures
25 that would assist in diagnosing his medical condition and developing a treatment plan to alleviate
26 his symptoms. Jonathan suffered constant physical pain from his condition for several months,
27 until it became so severe that he required emergency surgery to remove the calcified stool.
28 Further, DFS never authorized the surgery. Rather, because the doctor determined that it had

1 become a life-threatening situation, the doctor apparently determined that Nevada law authorized
2 him to conduct the surgery without obtaining DFS consent or a court order. This emergency
3 surgery was a direct result of Defendants' deliberate indifference to Jonathan's medical needs.
4 During Jonathan's time in Defendants' custody, Defendants' caseworkers rarely visited Jonathan
5 and did not monitor his health to verify that he was receiving all necessary medical screenings,
6 assessments, and treatment services. Defendants' conduct in failing to provide prompt, periodic,
7 and necessary screening, assessments, and treatment services to address his physical and mental
8 health needs has injured Jonathan.

9 (c) While Maizy was placed at Child Haven as an infant, she also suffered from
10 lack of attention and care. She too was diagnosed with failure to thrive and became
11 developmentally delayed. At fifteen months, Maizy weighed only thirteen pounds and was
12 unable to crawl. During Maizy's time in Defendants' custody, Defendants' caseworkers rarely
13 visited her and did not monitor her health to verify that she was receiving all necessary medical
14 screenings, assessments, and treatment services. Defendants' conduct in failing to provide
15 prompt, periodic, and all necessary screening, assessments, and treatment services to address her
16 physical and mental health needs have injured Maizy.

17 (d) Defendants have caused Henry to change medical and mental health providers
18 more than ten times during his time in their custody. Upon information and belief, Defendants
19 failed to transfer Henry's records to each doctor in the chain. Accordingly, Henry's treating
20 doctors were often unaware of his health history, previous providers, assessments, diagnoses,
21 medications, and treatment. This has led to inconsistent diagnoses and the administration of
22 multiple and inconsistent medications. Henry has experienced long periods during which no
23 assessment of his mental and behavioral health needs was completed or updated and during which
24 he did not receive necessary periodic assessments and reassessments of the various medications
25 that he had been prescribed. For many years while in Defendants' custody, Henry has been
26 administered various psychotropic medications, including multiple medications at the same time.
27 Defendants failed to monitor Henry's reactions to the medications. In June 2009, Henry fell
28 gravely ill after being poisoned by the combination of psychotropic medications he was then

1 taking. Henry was hospitalized in an ICU for two weeks and nearly suffered organ failure. Upon
2 his discharge from the ICU to Monte Vista, and while still in Defendants' custody, Henry was
3 again administered the same or similar psychotropic medications that had led to his emergency
4 hospitalization. Henry again fell gravely ill and again spent two weeks in treatment in the ICU.
5 During Henry's time in Defendants' custody, Defendants' caseworkers rarely visited him and did
6 not monitor his health to verify that he was receiving all necessary medical screenings,
7 assessments, and treatment services. Defendants' conduct in failing to provide prompt, periodic,
8 and necessary screening, assessments, and treatment services to address his physical and mental
9 health needs has injured Henry.

10 (e) Upon information and belief, when Linda was seven years old and in
11 Defendants' custody, she was confined at a psychiatric facility for a six-month period that was
12 longer than medically necessary because Defendants did not have another placement for her.
13 Linda was placed on psychotropic drugs at various points from the time she was seven until she
14 was thirteen. Linda was often compelled to take a variety of such drugs, at times taking as many
15 as five or six different medications at once. These medications often made Linda lethargic and
16 unable to focus. Upon information and belief, Linda was at times prescribed these medications
17 simply because a caregiver requested a "fix" for her behavior, without proper consent and without
18 an appropriate, comprehensive assessment by a qualified health professional. During Linda's time
19 in Defendants' custody, Defendants' caseworkers rarely visited her and did not monitor her health
20 to verify that she was receiving all necessary medical screenings, assessments, and treatment
21 services. Although Defendants caused Linda to take powerful psychiatric medications,
22 Defendants failed to provide her with psychiatric care to consistently monitor her medication.
23 Defendants also failed to provide Linda with a mental health assessment and medically necessary
24 medical and dental care. Defendants' conduct in failing to provide prompt, periodic, and
25 necessary screening, assessments, and treatment services to address her physical and mental
26 health needs has injured Linda.

27 (f) Defendants did not provide Victor with a mental health assessment or services
28 to address his severe depression, suicidal threats, and other needs for many months. The staff at

1 one of Victor's group homes did not allow him to attend medical and psychiatric appointments.
2 In the spring of 2007, due to continued suicide threats, Victor was hospitalized twice in quick
3 succession at two different mental health facilities, without consultation between the facilities.
4 Defendants also failed to provide Victor with follow-up psychiatric services and did not ensure
5 that he received prescribed medications upon release from the second facility. Further, although
6 they knew both Leo and Victor had suffered abuse, Defendants failed to provide care to address
7 those traumas. Defendants' conduct in failing to provide prompt, periodic, and necessary
8 screening, assessments, and treatment services to address their physical and mental health needs
9 caused injury to Victor and Leo.

10 (g) Defendants failed to provide necessary medical care to Charles and Charlotte.
11 In 2009, while in foster care and in Defendants' custody, Charles was placed on Adderall and
12 Ritalin. Upon information and belief, Charles's psychiatrist prescribed these drugs for ADHD,
13 instead of treating Charles with behavioral approaches, based on nothing more than the request of
14 a foster mother who had only known Charles for a matter of weeks. Upon information and belief,
15 these medications were not medically necessary and subjected Charles to risk of serious harm.
16 Charlotte, who was less than a year old at the time, was administered asthma medications even
17 though she does not have asthma and such medications were not medically necessary. Upon
18 information and belief, both children were medicated at the request of foster parents, rather than
19 as a result of assessments and examinations by qualified health professionals. During Charles and
20 Charlotte's time in Defendants' custody, Defendants' caseworkers rarely visited them and did not
21 monitor their health to verify that they were receiving all necessary medical screenings,
22 assessments, and treatment services. Defendants' conduct in failing to provide prompt, periodic,
23 and necessary screening, assessments, and treatment services to address their physical and mental
24 health needs has injured Charles and Charlotte.

25 (h) Defendants failed to provide Olivia with a timely mental health assessment or
26 needed services despite her history of physical abuse. Although she had been placed in foster
27 care in January 2006, it was not until October 2007 that Olivia received a mental health
28 assessment, and that occurred only because her elementary school referred her to a licensed

1 psychologist for evaluation. The evaluation recommended that she receive psychotherapy, be
2 evaluated for medication by a psychiatrist, and be tested for Fetal Alcohol Syndrome. Following
3 that evaluation, she was prescribed three different psychotropic drugs simultaneously but did not
4 receive ongoing psychiatric care and has not been tested for Fetal Alcohol Syndrome. The drugs
5 made Olivia extremely lethargic and made it difficult for her to do school work. In March 2009,
6 she was placed in Monte Vista. Defendants discharged her to a foster parent with no transition
7 plan and no ability to obtain her medications, forcing her to suffer abrupt withdrawal from the
8 medications. During Olivia's time in Defendants' custody, Defendants' caseworkers rarely
9 visited her and did not monitor her health to verify that she was receiving all necessary medical
10 screenings, assessments, and treatment services. Defendants' conduct in failing to provide
11 prompt, periodic, and necessary screening, assessments, and treatment services to address her
12 physical and mental health needs has injured Olivia.

13 (i) Christine is a medically fragile child who fell out of a second-story window
14 while in her mother's custody. Following the injury, Christine had a titanium plate permanently
15 installed in her head to protect her brain. As a result, she has severe developmental delays and
16 medical needs, including a seizure disorder, and requires a high level of medical care. In
17 July 2008, Defendants allowed Christine to remain in a hospital for four to six weeks longer than
18 medically necessary rather than placing her in an appropriate foster home. Defendants then
19 placed Christine in E.F.'s custody but failed to provide E.F. with her seizure medication or any
20 training on how to care for a child with such a high level of medical needs. Defendants also
21 failed to arrange for medical and therapeutic professionals to treat Christine or to provide her with
22 therapeutic or early intervention services. During Christine's time in Defendants' custody,
23 Defendants' caseworkers rarely visited her and did not monitor her health to verify that she was
24 receiving all necessary medical screenings, assessments, and treatment services. When Christine
25 required emergency surgery to replace a screw in her titanium plate, Defendants took
26 approximately two weeks to approve the procedure. Defendants' conduct in failing to provide
27 prompt, periodic, and necessary screening, assessments, and treatment services to address her
28 physical and mental health needs has injured Christine.

1 (j) Sheldon also has significant developmental delays. Upon taking custody of
2 Sheldon, Defendants placed him at Child Haven. The staff at that facility failed to recognize or
3 address his readily apparent disabilities and failed to obtain an evaluation or any services for him.
4 Defendants later placed Sheldon with E.F. but failed to respond to her requests for training on
5 how to care for his developmental disabilities. As a result, Sheldon lost his opportunity to receive
6 vital services during a critical window in his development. During Sheldon's time in Defendants'
7 custody, Defendants' caseworkers rarely visited him and did not monitor his health to verify that
8 he was receiving all necessary medical screenings, assessments, and treatment services.
9 Defendants' conduct in failing to provide prompt, periodic, and necessary screening, assessments,
10 and treatment services to address his physical and mental health needs has injured Sheldon.

11 (k) Defendants failed to provide Mason with the mental health, medical, and
12 education services he needed. Mason has severe-to-profound hearing loss in both ears. To
13 communicate with those who do not know sign language, he needs an interpreter proficient in
14 American Sign Language. For substantial periods of time, Defendants failed to provide or ensure
15 that Mason was provided with a qualified interpreter. Only one of the more than eight different
16 mental health professionals who treated Mason from 2005 to 2007 was capable of communicating
17 with Mason in American Sign Language. As early as the fall of 2004, after at least three
18 psychiatric hospitalizations, his treating psychiatrist and other professionals recommended that he
19 be placed in a residential treatment center able to handle his hearing impairment. Defendants
20 refused to place Mason in a placement recommended by his treating professionals and instead
21 subjected him to a series of foster home placements and hospitalizations, none of which was
22 capable of meeting his long-term mental health needs. Defendants also failed to obtain diagnostic
23 tests recommended by physicians to whom they took him for an assessment. For example, a
24 geneticist who examined him in May 2007 recommended "a comparative genomic hybridization
25 array study be performed." The recommended tests were never completed. Defendants also
26 failed to provide Mason with necessary medical and other treatment, including speech therapy,
27 following his receipt of a cochlear implant, both before and after his placement at NDA. NDA
28 unilaterally made the decision to remove the external device necessary to the proper functioning

1 of the cochlear implant, rendering it largely inoperative and depriving Mason of the use and
2 benefit of the cochlear implant. Mason was discharged from NDA and returned to Las Vegas.
3 Upon information and belief, Defendants failed to arrange for any therapy prior to bringing him
4 back to Las Vegas from NDA. Defendants' conduct in failing to provide prompt, periodic, and
5 necessary screening, assessments, and treatment services to address his physical and mental
6 health needs has injured Mason.

7 84. As the direct and proximate result of Defendants' policies, customs and omissions
8 regarding the failure to provide care, treatment, and services necessary to prevent foster children
9 from deteriorating or being harmed physically, developmentally, psychologically, or otherwise
10 while in government custody, including adequate mental, dental, psychiatric, and psychological
11 services to which they are entitled, as alleged herein, Plaintiffs have suffered bodily harm,
12 substantial physical and emotional pain and suffering, humiliation, extreme and severe mental
13 anguish, acute anxiety, emotional and physical distress, and fear and depression, all to their
14 damage and detriment.

15 **4. It Is Likely that Plaintiffs and Others Will Continue to Suffer Harm as**
16 **a Result of Defendants' Policies, Customs and Omissions**

17 85. Rather than address these grave problems, Defendants adhere to policies and
18 customs that ensure the problems will continue. Defendants are well aware that many children
19 entering foster care have serious mental health problems, yet Defendants fail to train their
20 caseworkers to recognize and address these problems. Defendants also fail to provide
21 caseworkers with basic information regarding available children's mental health services or how
22 to access and advocate for those services. As a direct and foreseeable result, caseworkers
23 routinely fail to secure mental health services for children who need them.

24 86. Similarly, Defendants are well aware that many children entering foster care have
25 serious developmental delays or disabilities resulting from abuse or neglect. Defendants fail,
26 however, to train caseworkers on developmental milestones or to educate them on how to identify
27 a child's developmental delay or disability.
28

1 87. Defendants' policies, customs and omissions regarding their failure to provide
2 necessary medical and mental health services reflect a deliberate indifference to the health and
3 safety of children in their custody, constitute a substantial departure from professional standards,
4 and evidence a lack of professional judgment.

5 88. Unless Defendants change their policies and customs to ensure foster children are
6 provided necessary medical and mental health services to which they are entitled, Plaintiffs and
7 other foster children face likely future injury in Defendants' custody.

8 **C. Defendants Fail to Ensure the Safety and Well Being of the Foster Children in**
9 **Their Care and Custody**

10 **1. Defendants Fail to Protect Foster Children by Failing to Ensure the**
11 **Adequacy of Relative Caregivers**

12 **a. Federal Law Requires That Relative Placements Be Subject to**
13 **the Same Licensing Standards as Other Caregivers**

14 89. The United States Congress has mandated that state authorities shall be responsible
15 for establishing and maintaining standards for foster family homes that are reasonably in
16 accordance with recommended national standards, including those that relate to admission
17 policies, safety, sanitation, and protection of civil rights. 42 U.S.C. 671(a)(10). In 2008,
18 Congress enacted the Fostering Connections to Success and Increasing Adoptions Act. This Act
19 amended Section 471(a)(10) of the Social Security Act by mandating that relatives cannot be
20 exempted from licensing requirements except on a case-by-case basis, and only in relation to non-
21 safety standards, such as the minimum square footage for a foster home, for specific children in
22 foster care. 42 U.S.C. 671(a)(10). The purpose of this requirement is to ensure relative
23 placements conform to the same level of safety as placements with non-relative caregivers.

24 **b. Nevada's Blanket Exemption of Relative Caregivers from**
25 **Foster Home Licensing Standards Violates Federal Law**

26 90. On May 16, 2009, Nevada enacted AB76, codified at N.R.S. 424.090, which
27 became effective on October 1, 2009. N.R.S. 424.090 provides a blanket exemption for relative
28 caregivers from all safety and non-safety standards contained within N.R.S. 424.

1 91. N.R.S. 424.090 completely exempts relative care givers from complying with the
2 foster home standards of N.R.S. 424 and exempts child welfare officials from having to ensure
3 compliance with required licensing standards.

4 92. Nevada has mandated that any person who violates any of the provisions of N.R.S.
5 424 is guilty of a misdemeanor. N.R.S. 424.090 is therefore mandatory and binding on
6 caseworkers, and any caseworker who fails to comply with the blanket exemption provided for
7 relative caregivers could possibly be prosecuted under N.R.S. 424.100.

8 93. State participation in Titles IV-B and IV-E of the Social Security Act (the “Act”) is
9 voluntary. Despite the voluntary nature of state participation, acceptance of federal funding under
10 the Act is contingent on adherence to the requirements set forth in the Act. By accepting federal
11 funds under the Act, Nevada has implicitly consented to the Act’s requirements, including the
12 requirements under 42 U.S.C. 671(a)(10) that relative caregivers must be subjected to the same
13 standards as non-relative caregivers.

14 94. Defendants’ policies, customs and omissions fail to fulfill their obligation to protect
15 children placed in relative foster homes. The only “investigation” caseworkers are required to
16 conduct of a relative foster home is a criminal background check on the adults in the home and
17 verification that the home has fire and pool safety equipment. N.A.C. 432B.430. Defendants do
18 not require caseworkers to make any other inquiries to determine whether the relatives are able to
19 provide appropriate care for the children, including, for example, whether the relatives have any
20 training or experience in taking care of children; whether they are equipped to meet any special
21 needs the children may have; whether they have adequate room in their homes to accommodate
22 the children; or whether they satisfy any other criteria for foster parent licensing. In some
23 instances, Defendants place children in relatives’ homes without even completing a criminal
24 background check and, in some cases, without even verifying the identities of the adults living in
25 the home.

26 95. County Defendants require all placements other than relative placements to go
27 through the DFS Placement Unit. With relative placements, however, Defendants’ policy is to
28 allow individual caseworkers to determine on their own whether the home is safe and appropriate

1 for the child. Defendants therefore fail to provide any supervision over the approval of relative
2 placements to ensure that they meet requisite standards.

3 96. Compounding this problem, Defendants fail to train caseworkers regarding how to
4 determine whether a relative placement is acceptable. Caseworkers responsible for the placement
5 of children in the homes of relatives are not familiar with, nor do they apply, foster home
6 licensing standards to relative placement decisions.

7 97. When Defendants place a child in any foster home, Nevada law and professional
8 standards require a caseworker to visit him at least monthly to ensure that he is receiving
9 adequate care. N.A.C. 432B.405. Professional standards require that children with special needs,
10 including health or behavioral problems, receive more frequent visits.

11 98. Defendants' failure to investigate relative placements results in their placing many
12 foster children with relatives who are unable or unwilling to provide adequate care. As a direct
13 and foreseeable result, many foster children suffer abuse and neglect in these placements.
14 Because Defendants routinely fail to monitor the care children receive in relative placements,
15 many foster children, including Plaintiffs, are left to suffer this abuse for long periods of time.

16 99. Defendants' policies, customs and omissions concerning the investigation, approval,
17 and monitoring of relatives with whom they place foster children reflect a deliberate indifference
18 to the health and safety of those children, constitute a substantial departure from professional
19 standards, and evidence a lack of professional judgment.

20 **c. Plaintiffs Have Been Injured as a Result of Defendants' Failure**
21 **to Investigate and Monitor Relative Placements**

22 100. Defendants' policy and practice of failing to conduct adequate investigations into
23 the safety and appropriateness of relative foster placements or to monitor those placements has
24 injured Plaintiffs. For example:

25 (a) When Linda was four years old, Defendants placed her in the home of an aunt.
26 Upon information and belief, Defendants' caseworkers failed to conduct an adequate
27 investigation of the aunt at any time before or after placing Linda in her home and failed to visit
28 Linda to ensure that she was receiving proper care. In fact, the aunt was ill-equipped to care for

1 Linda and abused and neglected her throughout the two years that Linda lived in the home. But
2 for Defendants' failure to investigate and monitor the placement, Linda would not have been
3 subjected to this abuse.

4 (b) Defendants placed Olivia with a series of relatives, including with her
5 grandparents and cousins, over a three-year period from 2006 through 2009. Upon information
6 and belief, Defendants' caseworkers failed to conduct adequate investigations into the suitability
7 of these relatives to care for Olivia at any time before or after placing her in their homes and
8 failed to visit Olivia regularly to ensure that she was receiving proper care. During that time,
9 Olivia's relatives repeatedly abused her, including by beating her with a belt and forcing her to
10 stand for long periods of time holding her arms up with books on her hands. But for Defendants'
11 failure to investigate and monitor the placements, Olivia would not have been subjected to this
12 abuse.

13 101. As the direct and proximate result of Defendants' failure to conduct adequate
14 investigations into the safety and appropriateness of relative foster placements or to monitor those
15 placements, as alleged herein, Plaintiffs have been subjected to abuse and neglect resulting in
16 bodily harm, substantial physical and emotional pain and suffering, humiliation, extreme and
17 severe mental anguish, acute anxiety, emotional and physical distress, and fear and depression, all
18 to their damage and detriment.

19 **d. It Is Likely That Plaintiffs and Others Will Continue to Suffer**
20 **Harm as a Result of Defendants' Violation of Federal Law**

21 102. Defendants' failure to require that relative caregivers be subjected to the same
22 foster home standards as non-relative caregivers has caused and is continuing to cause widespread
23 harm throughout the foster care system and make it likely that Plaintiffs and others will continue
24 to suffer harm in Defendants' custody.

25 103. Unless Defendants fulfill their obligation to implement and enforce applicable
26 federal law, Plaintiffs and others face the risk of future injury, including future abuse, from being
27 placed in inappropriate, unsafe and unmonitored relative caregiver placements.
28

1 **2. Defendants Fail to Protect Foster Children by Failing to Investigate**
2 **Reports of Abuse and Neglect**

3 **a. The Law Requires Defendants to Promptly and Thoroughly**
4 **Investigate Suspected Abuse and Neglect of Foster Children**

5 104. When Defendants remove a child from her home and cause her to live in a foster
6 care placement, Defendants are obligated to ensure that the child is safe in the placement they
7 have chosen for her. Nevada law mandates that Defendants must immediately investigate any
8 report of possible abuse or neglect involving a child under the age of six, who is at a high risk for
9 serious harm, or who has visible signs of physical abuse. N.R.S. 432B.260. Defendants must
10 evaluate all other reports within three days. *Id.* If during the evaluation the Defendants conclude
11 that an investigation is warranted, they must initiate the investigation within three days from the
12 end of the evaluation. *Id.*

13 105. When Defendants receive a report of abuse, they must conduct an evaluation.
14 N.A.C. 432B.150. Defendants must determine how the child is being affected by the situation
15 and whether the child is currently safe, at risk of abuse or neglect, or threatened with harm.
16 N.A.C. 432B.160. In making these determinations, Defendants must consider a number of
17 factors, including age, any exceptional needs of the child, the child's need for medical care,
18 whether the child has sustained a serious injury for which there is no reasonable or credible
19 explanation, and whether safety risks are created because of a caretaker's lack of knowledge,
20 skill, or motivation relating to parenting. N.A.C. 432B.160.

21 106. State law also mandates that Defendants follow a specific protocol in investigating
22 suspected abuse. If the allegations suggest imminent harm, then the caseworker assigned to
23 investigate must see the child immediately and must assess the safety of all children in the home.
24 N.A.C. 432B.150. In other cases, the caseworker must attempt a face-to-face meeting with the
25 child and his family on the next business day and on each successive business day until a
26 supervisor deems the matter resolved. N.A.C. 432B.155. Further, the caseworker investigating
27 the report of abuse must consider a multi-factored list of considerations, including the risk posed
28 to children by others living in the home. N.A.C. 432B.160. The manner in which the
investigation was initiated and any information obtained must be documented in writing. N.A.C.

1 432B.155. Upon completing an investigation, Defendants must file a report with the Central
2 Registry detailing the facts of the alleged abuse or neglect and the ultimate disposition of the
3 investigation. N.R.S. 432B.310. Defendants have thirty days to complete a Child Protective
4 Services (CPS) investigation, make recommended investigative findings, and submit a complete
5 file to the CPS Supervisor from the receipt of the report at the hotline. *Investigations Policies
6 and Procedures* (dated 9/5/2008), Discussion Draft. In addition, Clark County DFS policy
7 requires caseworkers to contact the child who is the subject of the report of abuse, as well as the
8 child's siblings.

9 **b. Defendants' Policies, Customs, and Omissions Do Not Comply**
10 **with Laws Mandating Investigations of Suspected Abuse**

11 107. Despite these mandated procedures, Defendants regularly and routinely fail to
12 conduct required investigations and evaluations of suspected or reported instances of abuse and
13 neglect of children they have placed in foster care. When Defendants do investigate or evaluate
14 such reports, caseworkers routinely fail to investigate the factors required by N.A.C. 432B.160,
15 including the requirement that they assess the risk posed to a child by others living in the home.

16 108. Defendants also fail to train their investigators in techniques for gathering and
17 evaluating facts on which to determine whether a child has been a victim of abuse or neglect.

18 109. Similarly, Defendant supervisors fail to supervise caseworkers to ensure that they
19 are conducting investigations in accordance with law, regulations, and policy.

20 110. The 2009 Federal Review concluded that following reports of neglect or abuse, the
21 State of Nevada fails to meet national standards for appropriately conducting ongoing risk
22 assessments to assess safety-related concerns, including whether a child is likely to be in
23 immediate or imminent danger of serious physical harm.

24 111. Defendants' failure to adequately investigate suspected abuse and neglect of the
25 foster children in their custody reflects a deliberate indifference to the health and safety of those
26 children, constitutes a substantial departure from professional standards, and evidences a lack of
27 professional judgment.
28

1 On information and belief, CPS failed to adequately investigate the foster parent and placed the
2 boys with her despite her mistreatment of children in her care.

3 (e) In the summer of 2007, Defendants placed Victor in a group home. Victor
4 reported to his caseworker that the staff at the group home had withheld medical and psychiatric
5 treatments from him as a form of punishment. Withholding treatment constitutes neglect that
6 triggers Defendants' obligation to investigate. On information and belief, Victor's complaints
7 were not investigated pursuant to the requisite procedures.

8 (f) As detailed above, the relatives with whom Defendants placed Olivia abused
9 her repeatedly over the course of several years. On information and belief, this abuse was not
10 investigated pursuant to the requisite procedures.

11 (g) Despite knowledge that Mason had been abused while living in his
12 grandparents' home, after obtaining legal custody of Mason, Defendants required him to visit
13 with his grandparents, where he was again physically and possibly sexually abused. Defendants'
14 failure to investigate and monitor Mason's visitations with his grandparents caused Mason to
15 suffer abuse.

16 114. As the direct and proximate result of Defendants' failure to conduct adequate
17 investigations of reports of abuse and neglect, as alleged herein, Plaintiffs have been subjected to
18 abuse and neglect resulting in bodily harm, substantial physical and emotional pain and suffering,
19 humiliation, extreme and severe mental anguish, acute anxiety, emotional and physical distress,
20 and fear and depression, all to their damage and detriment.

21 **d. It Is Likely That Plaintiffs and Others Will Continue to Suffer**
22 **Harm as a Result of Defendants' Policies, Customs and**
23 **Omissions**

24 115. So long as Plaintiffs remain in the foster care system, Defendants' policies,
25 customs and omissions regarding failure to investigate reports of abuse adequately, or at all, make
26 it likely that Plaintiffs will suffer harm in the future. As demonstrated above, foster children in
27 Clark County, including Plaintiffs, routinely experience multiple placements while they are in
28 Defendants' custody. As a result, Plaintiffs and others are likely to be again placed in homes
where they will suffer abuse.

1 116. Unless Defendants change their policies and customs to institute a proper protocol
2 for investigating abuse and to train their caseworkers on how to do so, these policies, customs and
3 omissions will continue to injure children, including Plaintiffs.

4 **3. Defendants Fail to Protect Foster Children When Transferring Them**
5 **to Out of State Facilities**

6 **a. The Law Requires Defendants to Physically Inspect and**
7 **Monitor Treatment and Services Provided to Foster Children**
8 **by Out of State Facilities**

9 117. When transferring foster children to facilities outside of Nevada, Defendants are
10 required to physically inspect such facilities before or at the time of the transfer and placement to
11 determine whether the facility provides the services or treatment necessary for the child, is
12 accredited or licensed and in good standing with the entity that accredits or licenses the facility,
13 and is subject to health inspections. Defendants are also required to review the results of any
14 health inspections conducted within the immediately preceding three years. N.R.S. 432.0177(1).

15 118. The Interstate Compact on the Placement of Children (“ICPC”) is an agreement
16 that establishes uniform legal and administrative procedures governing the interstate placement of
17 foster children. It has been enacted by all 50 states and is codified in Nevada as N.R.S. 127.330.

18 119. The ICPC also governs Defendants’ transfer of foster children outside of Nevada,
19 and requires, among other things, that before any such transfer Defendants receive a written
20 notice from the receiving state that the proposed placement does not appear to be contrary to the
21 interests of the child, and also provides that Defendants retain jurisdiction over the foster child
22 sufficient to determine all matters in relation to the custody, supervision, care, treatment, and
23 disposition of the child. N.R.S. 127.330, Art. III, V.

24 120. State law requires Defendants to monitor the continued appropriateness of the
25 placement by, at least one time each year, physically inspecting each out of state facility and
26 reviewing the services being provided to the child at the facility and any treatment plan
27 established for the child, and interviewing each foster child placed at an out of state facility at
28 least one time each year. N.R.S. 432.0177(2). These laws are meant to ensure that the placement
of a foster child in a facility in another state is safe and capable of meeting the child’s needs.

1 121. In addition, federal law mandates that with respect to children “placed in foster
 2 care outside the State in which the home of the parents of the child is located,” Defendants are
 3 required to “periodically, but not less frequently than every 6 months” have “a caseworker on the
 4 staff of the State agency of the State in which the home of the parents of the child is located, of
 5 the State in which the child has been placed, or of a private agency under contract with either
 6 such State, visit such child in such home or institution and submit a report on such visit to the
 7 State agency of the State in which the home of the parents of the child is located.” 42 U.S.C. §
 8 675(5)(A)(ii) (as amended by 109 P.L. 239). Thus, for all out of state placements of foster
 9 children, federal law requires Defendants to ensure that each child in an out of state placement
 10 receives a visit at least every six months and to record a report about each such visit. *Id.*
 11 N.R.S. 432.0177(2), which requires visits to out of state placements only once per year, directly
 12 contradicts the congressional mandate in 42 U.S.C. § 675(5)(A)(ii), which requires visits every
 13 six months.

14 **b. Defendants’ Policies, Customs and Omissions Do Not Comply**
 15 **with Federal and State Laws Governing Transfer of Foster**
 16 **Children Outside of Nevada**

16 122. Despite these statutory requirements, on information and belief, Defendants
 17 regularly and routinely fail to physically inspect out of state facilities at least annually and before
 18 placing foster children at such facilities. Further, on information and belief, Defendants also
 19 regularly and routinely fail to ensure that foster children in out of state placements receive visits
 20 at least every six months, to submit reports regarding such visits, and to annually review the
 21 services provided to, and any treatment plans established for, foster children in out of state
 22 placements.

23 123. State participation in Titles IV-B and IV-E of the Social Security Act (the “Act”) is
 24 voluntary. Despite the voluntary nature of state participation, acceptance of federal funding under
 25 the Act is contingent on adherence to the requirements set forth in the Act. By accepting federal
 26 funds under the Act, Nevada has implicitly consented to the Act’s requirements, including the
 27 requirements under 42 U.S.C. 675(5)(a)(ii) that children placed out of state be visited at least
 28 every six months by a caseworker.

1 124. As a direct and foreseeable result of Defendants’ failure to comply with statutory
2 requirements governing out of state placements, Defendants routinely fail in their duty to protect
3 the children in their custody and care by placing them in dangerous and poorly supervised out of
4 state placements that result in the abuse and neglect of foster children in Defendants’ custody.

5 125. Defendants’ policies, customs and omissions concerning out of state visitations
6 and the inspection of out of state facilities reflect a deliberate indifference to the health and safety
7 of children placed out of state, constitute a departure from professional standards, and evidence a
8 lack of professional judgment.

9 **c. Plaintiff Mason Has Been Injured by Defendants’ Failure to**
10 **Physically Inspect and Monitor Out of State Facilities in Which**
11 **Foster Children Are Placed**

12 126. Defendants’ policy and custom of failing to physically inspect and monitor out of
13 state facilities and other placements in which foster children are placed has injured Plaintiff
14 Mason. For example:

15 (a) In approximately May 2008, Defendants transferred Mason from Nevada to the
16 National Deaf Academy (“NDA”), an out of state facility located in central Florida. Mason’s
17 placement at NDA in Florida is a placement controlled by the provisions of ICPC, N.R.S.
18 127.330, N.R.S. 432.0177, and 42 U.S.C. § 675(5)(a)(ii).

19 (b) On information and belief, before transferring Mason to NDA, Defendants did
20 not review any health inspections, nor did they take certain mandatory steps to determine whether
21 NDA would provide Mason with necessary services and treatment, as required by N.R.S.
22 432.0177. In the seventeen months between January 1, 2008 and May 27, 2009, local police
23 responded to 369 calls at NDA, and while Mason was a resident at NDA, Florida Health Care
24 Agency Administration investigated numerous reports of patient abuse/neglect, lack of
25 supervision, and improper use of restraint. The Agency confirmed many of those complaints.

26 (c) Mason remained at NDA from approximately May 2008 until the end of
27 December 2009. During Mason’s approximately nineteen-month placement at NDA, Defendants
28 never visited him, nor participated in any of Mason’s monthly treatment sessions or the
development and review of his Individual Education Plan.

1 (d) Before being transferred to NDA, Mason requested and underwent surgery for a
2 cochlear implant. A cochlear implant is a surgically implanted electronic device that provides a
3 sense of sound to individuals who, like Mason, are profoundly deaf. Mason's medical providers
4 informed Defendants that after he received the cochlear implant, Mason would need follow-up
5 care, and that Mason and his care providers would need to take special precautions to keep the
6 implant properly functioning. Defendants, however, failed to provide Mason with the necessary
7 follow-up or to ensure the proper care of his cochlear implant. In approximately May 2008,
8 shortly after his transfer to NDA, NDA staff removed the external device for Mason's cochlear
9 implant, rendering it largely inoperative and depriving Mason, against his wishes, of the use and
10 benefit of the cochlear implant. As a result of NDA's destruction of Mason's cochlear implant,
11 Mason has suffered severe impairment to his language development.

12 (e) In June 2008, approximately one month after his transfer to NDA, Mason
13 complained of sexual abuse by a resident. Upon information and belief, NDA staff notified
14 Defendants of this report shortly thereafter and provided them with the police report number and
15 the e-mail address and phone number of the investigating officer. Additional persons, including
16 Mason's former therapist in Las Vegas and his foster mother in Las Vegas, also notified
17 Defendants of this report. Defendants nonetheless failed to investigate Mason's complaint.
18 Defendants left Mason at NDA for approximately eighteen months, and took no steps to verify
19 his safety or well being or to visit him during this time.

20 127. As the direct and proximate cause of Defendants' failure to physically inspect and
21 monitor out of state facilities in which foster children are placed and ensure that they receive
22 visits at least every six months as alleged herein, Plaintiff Mason has been subjected to abuse and
23 neglect resulting in bodily harm, substantial physical and emotional pain and suffering,
24 humiliation, extreme and severe mental anguish, acute anxiety, emotional and physical distress,
25 and fear and depression, all to his damage and detriment.

1 **d. It Is Likely That Plaintiff Mason and Others Will Continue to**
2 **Suffer Harm as a Result of Defendants’ Policies, Customs and**
3 **Omissions**

4 128. Defendants’ failure to physically inspect out of state facilities before and during
5 the placement of foster children to such facilities, to ensure that foster children in out of state
6 facilities receive visits at least every six months, and to at least annually review the services
7 provided to foster children placed at out of state facilities, has caused, and is continuing to cause,
8 widespread harm throughout the foster care system and makes it likely that Plaintiff Mason and
9 others will continue to suffer harm in Defendants’ custody.

10 129. Unless Defendants cease their failure to implement and enforce applicable law
11 regarding out of state placement of foster children, it is likely that Plaintiff Mason and others face
12 future injury from the failure of Defendants to physically inspect and monitor treatment of foster
13 children in out of state facilities.

14 **II. CLASS ACTION ALLEGATIONS**

15 130. Plaintiffs bring certain claims for injunctive and declaratory relief in this action on
16 behalf of themselves and three distinct classes of foster children in the legal custody of Clark
17 County DFS pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2).

18 **A. Defendants Routinely Fail to Develop a Case Plan for Each Foster Child as**
19 **Required Under Nevada and Federal Law**

20 131. The first class is as follows:

21 All children removed from their homes and placed in foster care in
22 the legal custody of Clark County for whom a case plan in
23 compliance with federal and state requirements has not been
24 prepared (the “Case Plan Class”).

25 132. The Case Plan Class Representatives are Henry A., Charles and Charlotte B.,
26 Leo and Victor C., Delia, Maizy, and Jonathan D., Linda E., Christine F., Olivia G., Sheldon H.,
27 and Mason I. On information and belief, the Case Plan Class Representatives are members of the
28 class they seek to represent.

 133. The Case Plan Class consists of numerous individuals, making joinder of all
 members impracticable. Furthermore, the Case Plan Class is fluid in that new members are

1 regularly created. There are more than 3,600 children in foster care in Clark County. Throughout
2 the year, many more children enter care than are reflected in any single-day census. During 2004,
3 for example, a total of 4,548 were removed from their homes and placed in foster care. Nearly
4 half of the children in Clark County foster care are not provided with written case plans within 45
5 days of removal from the home.

6 134. There are material issues of law and fact common to the members of the Case Plan
7 Class. The material questions of law and fact common to the Case Plan Class include:

8 (a) Whether Defendants developed a written case plan containing the requisite
9 information for each class member within the statutorily required time limit;

10 (b) Whether the failure to develop a written case plan for each class member is a
11 denial of class members' rights under Nevada and federal law;

12 (c) Whether class members are entitled to declaratory and injunctive relief for the
13 rights they have been denied.

14 135. The claims of the Case Plan Class Representatives are typical of the claims of the
15 Case Plan Class. The Case Plan Class Representatives will fairly and adequately represent and
16 protect the interests of the Case Plan Class. Case Plan Class Representatives know of no conflict
17 of interest among the Case Plan Class members. Each Case Plan Class Representative appears by
18 a next friend, and each next friend is sufficiently familiar with the facts and circumstances
19 surrounding the child's situation to fairly and adequately represent the child's interests in this
20 litigation.

21 136. As noted above, when Defendants remove a child from his home and take him into
22 protective custody, the Federal Foster Care and Adoption Assistance Act requires that
23 caseworkers develop a case plan for each foster child that includes the child's health and
24 education records, known medical problems and prescribed medications, and other relevant
25 related information. 42 U.S.C. §§ 671(a)(16), 675(1). Federal regulations mandate that the case
26 plan be developed within a reasonable period, to be established by the State, but in no event later
27 than 60 days from the child's removal from the home. 45 C.F.R. §1356.21 (g)(2).
28

1 137. Nevada law requires the inclusion of medical and educational information
2 collected about each child in a written case plan within 45 days after the removal of that child
3 from his home. N.A.C. 432B.400.

4 138. The development of a case plan is crucial in identifying each child's needs and
5 ensuring that those needs are met. Federal and state laws require caseworkers to prepare case
6 plans in order to ensure that each child receives safe and proper care by identifying barriers to the
7 provision of a safe environment for the child, clarifying responsibilities of the involved persons to
8 address any identified barriers, and defining overall goals for the case, including step-by-step
9 proposed actions of all persons to reach the goal. Without a case plan, for example, there is an
10 increased risk that a child's special behavioral, emotional, or medical needs will not be met.

11 139. Collection and preparation of case plans is also critical to ensure required
12 information about foster children is recorded and passed on to every foster care provider.
13 Without this information, prospective foster parents cannot make a considered judgment about
14 their ability to provide adequate care for the child nor are they made aware of and able to ensure
15 that the child receives all necessary care, treatment, and services. Children placed with foster
16 care providers who have not received this information are more vulnerable to disruptions in their
17 placements.

18 140. Defendants' policies, customs and omissions result in Defendants' routine failure
19 to collect the required information about foster children and to incorporate the information into a
20 written case plan.

21 141. The most recent statewide data from the UNITY system indicates that only
22 approximately 53% of children had case plans within 45 days of removal from the home. This
23 data confirms that what was an obvious deficiency noted four years earlier during the 2004
24 Federal Review continues to be a serious problem. Statewide Assessment at 88.

25 142. The failure of Defendants' caseworkers to fulfill the obligation to collect required
26 information and develop a timely written case plan for the children in their custody and care is
27 foreseeable. Defendants employ many caseworkers who are not adequately educated or trained
28 on how to collect the necessary and required information regarding foster children and who fail to

1 meet minimal education levels such as a degree in social work. Approximately one-third of the
2 caseworkers have been at their jobs for less than one year. Compounding these caseworkers' lack
3 of education and experience, upon information and belief, Defendants allow new caseworkers to
4 proceed in the field for months before providing them with even the initial basic training. In
5 addition, caseworkers who fail to develop written case plans are not held accountable for such
6 failings through requisite supervision.

7 143. Defendants' policies, customs and omissions regarding the failure to collect
8 critical and required information and develop it in a written case plan for each foster child causes
9 injury to Case Plan Class members in Defendants' custody, including by causing frequent and
10 avoidable movements from one failed placement to another, and by causing a disruption, delay,
11 and/or a withholding of services needed by Case Plan Class members.

12 144. As the direct and proximate result of Defendants' policies, customs and omissions
13 regarding the failure to develop a written case plan as alleged herein, Case Plan Class members
14 have endured repeated failed placements, delay, and/or withholding of needed services, lack of
15 access to continuous and/or effective mental health care, abuse, and neglect, and have been forced
16 to take and abruptly withdraw from numerous psychotropic drugs. On information and belief,
17 written case plans were not prepared for Case Plan Class Members and the Case Plan Class
18 Representatives as required by federal and Nevada law.

19 145. Defendants' policies, customs and omissions regarding the collection and
20 compilation of critical information about foster children make it likely that Case Plan Class
21 members and others will continue to suffer harm, including failed placements, in Defendants'
22 custody.

23 146. Defendants' policies, customs and omissions regarding the failure to develop a
24 written case plan reflect a deliberate indifference to the health and safety of those children,
25 constitute a substantial departure from professional standards, and evidence a lack of professional
26 judgment.

27 147. Unless Defendants change their policies and customs to ensure that a written case
28 plan is developed for each foster child, Case Plan Class members face likely future injury.

1 **B. Defendants Fail to Provide All Foster Children with Guardians *ad litem***

2 148. The second class is as follows:

3 All children removed from their homes and placed in foster care in
4 the legal custody of Clark County who have not been assigned a
5 guardian *ad litem* as required by federal and state law (the
6 “Guardian *ad Litem* Class”).

7 149. The Guardian *ad Litem* Class Representatives are Linda B., Delia, Maizy, and
8 Jonathan D., Charles and Charlotte B., Olivia G., Christine F., and Sheldon H. On information
9 and belief, the Guardian *ad Litem* Class Representatives are members of the class they seek to
10 represent.

11 150. The Guardian *ad Litem* Class consists of numerous individuals, making joinder of
12 all members impracticable. Furthermore, the Guardian *ad Litem* Class is fluid in that new
13 members are regularly created. There are more than 3,600 children in foster care in Clark
14 County. Throughout the year, many more children enter care than are reflected in any single-day
15 census. During 2004, for example, a total of 4,548 were removed from their homes and placed in
16 foster care. Approximately two-thirds of children who are removed from their homes and are the
17 subject of abuse and neglect proceedings in Clark County are not represented by a guardian *ad*
18 *litem*. Only 3.5% of children who are in foster care receive a guardian *ad litem* within the first
19 year.

20 151. The material questions of law and fact common to the Guardian *ad Litem* Class
21 include:

- 22 (a) Whether Defendants failed to timely appoint a guardian *ad litem* for class
23 members;
24 (b) Whether the timely failure to appoint a guardian *ad litem* for class members is a
25 denial of class members’ rights under Nevada and federal law; and
26 (c) Whether class members are entitled to declaratory and injunctive relief for the
27 rights they have been denied.

28 152. The claims of the Guardian *ad Litem* Class Representatives are typical of the
29 claims of the Guardian *ad Litem* Class. The Guardian *ad Litem* Class Representatives will fairly

1 and adequately protect the interests of the class they represent. Guardian *ad Litem* Class
2 Representatives know of no conflict of interest among the class members. Each Guardian *ad*
3 *Litem* Class Representative appears by a next friend, and each next friend is sufficiently familiar
4 with the facts and circumstances surrounding the child's situation to fairly and adequately
5 represent the child's interests in this litigation.

6 153. Federal law requires that in *every* case involving an abused or neglected child that
7 results in a judicial proceeding, the State must appoint a guardian *ad litem* to represent the child
8 in such proceedings at the time of the first protective custody hearing. 42 U.S.C.
9 § 5106a(b)(2)(A)(xiii). The purpose of this requirement is to ensure that there is an adult to
10 advocate on behalf of the child whose only allegiance is to the child. His role is to obtain a first-
11 hand understanding of the child's needs and to make recommendations to the court concerning
12 the child's best interests. The guardian *ad litem* must be either an attorney or a court-appointed
13 special advocate, and he must receive training appropriate to the role. *Id.*

14 154. Defendants regularly and routinely deny representation by guardians *ad litem* to
15 children in foster care. Although the law requires Defendants to appoint a guardian *ad litem* for
16 *every* child who is the subject of abuse and neglect proceedings, approximately two-thirds of such
17 children in Clark County are not represented by a guardian *ad litem* in those proceedings. Of the
18 one-third who receive some representation, the vast majority are without a guardian *ad litem* until
19 they have been in foster care for a year or more and after many major decisions regarding their
20 placements and other important issues have already been made.

21 155. In each case in which Defendants fail to provide a guardian *ad litem*, they deprive
22 the court and other decision makers of the information needed to make important decisions
23 affecting the child's health and safety. As a result, children are often placed in unsafe and/or
24 inappropriate settings; left to suffer abuse and neglect in such placements; denied health care,
25 mental health treatment, and early intervention and other special educational services; and/or
26 administered inappropriate and dangerous medications. Many of these injuries would not occur if
27 each foster child received representation to protect his interests, and many injuries that do occur
28 would have a greater chance of being remedied.

1 156. On information and belief, each of the Guardian *ad Litem* Class Representatives
2 was denied representation by a guardian *ad litem*, in violation of federal and Nevada law.

3 157. Defendants have known about the lack of representation for foster children in
4 Clark County for years and have failed to address it. Unless Defendants change their policies and
5 customs and appoint a guardian *ad litem* for each child at the time his case begins, many more
6 children will continue to lose protected rights and will suffer injuries that could have been
7 prevented if they had been appointed guardians *ad litem* to represent their interests.

8 **C. Defendants Fail to Ensure That Foster Children Receive Early Intervention**
9 **Services to Which They Are Entitled**

10 158. The third class is as follows:

11 All children under age three removed from their homes and placed
12 in foster care in the legal custody of Clark County who were
13 involved in substantiated cases of child abuse or neglect or who had
14 a positive drug screen at birth and have not been referred to early
 intervention services as required by federal law (the “Early
 Intervention Class”).

15 159. The Early Intervention Class Representative is Christine F. On information and
16 belief, the Early Intervention Class Representative is a member of the Early Intervention class she
17 seeks to represent.

18 160. The Early Intervention Class consists of numerous individuals, making joinder of
19 all members impracticable. During the 2009 fiscal year, 1,197 children under the age of 3 were
20 the subject of substantiated reports of abuse or neglect. Federal law and state and county policy
21 require that each of these children be referred to early intervention services. On information and
22 belief, referrals were not made for a substantial number of these children. Furthermore, the Early
23 Intervention Class is fluid in that new members are regularly created. There are over 3,600
24 children in foster care in Clark County. Throughout the year, many more children enter care than
25 is reflected in any single day census. During 2004, for example, a total of 4,548 were removed
26 from their homes and placed in foster care. Many of these children qualify for mandatory referral
27 to early intervention services.
28

1 161. The material questions of law and fact common to the Early Intervention Class
2 include:

3 (a) Whether Defendants fail to refer class members who are involved in
4 substantiated cases of child abuse or neglect or who have positive drug screenings at birth to early
5 intervention services;

6 (b) Whether the failure to refer class members to early intervention services is a
7 denial of class members' rights under Nevada and federal law and the U.S. Constitution; and

8 (c) Whether class members are entitled to declaratory and injunctive relief for the
9 rights they have been denied.

10 162. The claims of the Early Intervention Class Representative are typical of the claims
11 of the Early Intervention Class. The Early Intervention Class Representative will fairly and
12 adequately protect the interests of the class she represents. The Early Intervention Class
13 Representative knows of no conflict of interest among the class members. The Early Intervention
14 Class Representative appears by a next friend, and the next friend is sufficiently familiar with the
15 facts and circumstances surrounding the child's situation to fairly and adequately represent the
16 child's interests in this litigation.

17 163. Federal law mandates that Nevada have in effect and enforce a state law, or have
18 in effect and operate a statewide program regarding child abuse and neglect, that includes
19 referring children under the age of three who are involved in substantiated cases of child abuse or
20 neglect or who have a positive drug screen at birth to early intervention services funded under
21 federal law. 42 U.S.C. § 5106a(b)(2)(A)(xxi) (CAPTA); 20 U.S.C. § 1437(a)(6)(A) (Part C of
22 Individuals With Disabilities Education Act).

23 164. State DCFS policy requires that all such children be referred to "early intervention
24 services" within two working days of being identified as qualifying for referral. State Child
25 Welfare Policies and Procedures, Nevada Division of Child and Family Services Policy Manual
26 §§ 0502.2.2, 0502.5.2; *see also id.* § 0207.5.2 (requiring that children in substantiated cases of
27 abuse/neglect be referred to an "Early Intervention Program" for a developmental assessment and
28 that the results of the referral be documented within five working days of receipt of the

1 information), § 0207.6 (requiring, *inter alia*, that supervisors verify by case note that referrals
2 take place and the results of the referrals).

3 165. On information and belief, Defendants regularly and routinely fail to refer
4 abused/neglected children to early intervention services as required by law. In each case in which
5 Defendants fail to refer a child to early intervention services, that child misses a critical window
6 of opportunity to effectively address and correct any learning and developmental difficulties she
7 is facing. As a result, children often suffer from delayed or stunted development relative to
8 children who are referred to early intervention services. Nevada's Bureau of Early Intervention
9 Services website states that the human brain develops extremely quickly during the first three
10 years of life. Intervention during this window is particularly important in lessening the impact of
11 educational and developmental disabilities later in life and in helping abused and neglected
12 children grow into independent and productive adults. When Defendants fail to refer Early
13 Intervention Class Members to early intervention services, the result is a lasting negative impact
14 on the child's future quality of life and ability to function in an independent manner. "In order for
15 children to succeed in school, they need supportive environments that enhance social and
16 cognitive development before they enter kindergarten." H.R. Rep. No. 108-77, at 123-124 (2003)
17 (referring to proposed Individuals with Disabilities Education Act ("IDEA") reauthorization and
18 amendments as the Improving Education Results for Children with Disabilities Act of 2003).
19 "The early years of a child's development lay the groundwork for future years and are critical
20 years for children with disabilities and their families." *Id.* "Research shows that early
21 identification and intervention can have a significant positive impact on children with disabilities
22 and, in many cases, may help prevent the need for more costly services once a child reaches
23 school age." *Id.*

24 166. Injuries of the type described herein and sustained by the Early Intervention Class
25 would not occur if foster children were referred to early intervention services as required by law.

26 167. On information and belief, the Early Intervention Class Representative was denied
27 referral to early intervention services, in violation of federal and Nevada law and policy.
28

1 168. On information and belief, Defendants have been on notice for years of their
2 failure to refer children to early intervention services. Unless Defendants change their policies
3 and customs and refer children to early intervention services as appropriate, many more children
4 will suffer injuries from the denial of these crucial services.

5 169. The three proposed classes are represented by experienced counsel who will
6 adequately represent the interests of the classes. Plaintiffs are represented by Morrison &
7 Foerster LLP and Wolfenzon Schulman & Rolles, law firms that have extensive experience
8 litigating complex legal disputes, including class actions. Plaintiffs are also represented by the
9 National Center for Youth Law, a privately funded, nonprofit organization with extensive
10 national experience in complex class action litigation involving child welfare systems. Plaintiffs'
11 counsel have the resources, expertise, and experience to prosecute this action.

12 170. Members of the three classes have all suffered, and will continue to suffer, harm as
13 a result of Defendants' unlawful and wrongful conduct. Defendants have acted and failed to act
14 on grounds generally applicable to the Class Representatives and the classes and require court
15 imposition of uniform relief to ensure compatible standards of conduct toward the classes,
16 thereby making appropriate equitable relief to the classes as a whole within the meaning of
17 Federal Rules of Civil Procedure 23(b)(1) and (b)(2).

18 **CAUSES OF ACTION**

19 **FIRST CAUSE OF ACTION**
20 **(Fourteenth Amendment to the United States Constitution,**
21 **Substantive Due Process: Duty to Protect)**
22 **(42 U.S.C. § 1983)**
23 **(Against All Defendants)**

24 171. Plaintiffs reallege and incorporate herein by reference each and every allegation
25 contained in paragraphs 1 through 170 of this Complaint.

26 172. Defendants' conduct as alleged herein deprived Plaintiffs of their clearly
27 established and well-settled rights under the Fourteenth Amendment to the United States
28 Constitution, including their right to be free from harm while involuntarily in government custody
and their right to medical care, treatment, and services. Defendants' conduct includes the
following acts and omissions:

1 (a) failure to adequately provide medical, dental, and mental health services,
2 including but not limited to standardized periodic health screenings and treatments, medical
3 services for maximum reduction of physical or mental disability, and monitoring of,
4 administration, and use of psychotropic drugs by foster children;

5 (b) failure to inform caregivers of essential information;

6 (c) failure to conduct legally required visits with foster children;

7 (d) failure to adequately respond to reports of abuse;

8 (e) failure to ensure adequacy of relative caregiver placements; and

9 (f) failure to adequately inspect out of state facilities and monitor treatment and
10 services provided to foster children placed in out of state facilities.

11 173. Each Defendant acted under color of state law as to the matters set forth herein.

12 174. Defendants' acts and omissions alleged herein reflect a lack of professional
13 judgment and deliberate indifference in depriving Plaintiffs of their Constitutional rights.

14 175. Defendants' acts and omissions complained of herein constitute a policy, pattern,
15 practice, custom, final policymaking act, and/or ratification of a subordinate's action that
16 deprived Plaintiffs of particular Constitutional rights.

17 176. Further, Defendants have failed in their duties to properly hire, train, instruct,
18 monitor, supervise, evaluate and investigate Defendants' caseworkers and supervisors.
19 Defendants were deliberately indifferent to the obvious consequences of these failures, and these
20 failures directly resulted in the deprivation of Plaintiffs' Constitutional rights.

21 177. Defendants' acts and omissions complained of herein have caused the violation of
22 Plaintiffs' Constitutional rights and caused Plaintiffs to suffer damages, including significant
23 physical and emotional harm, in an amount to be determined at trial. These damages are
24 compensable pursuant to 42 U.S.C. § 1983.

25 178. Plaintiffs are entitled to injunctive relief against Defendants' conduct as described
26 herein because they are suffering and will continue to suffer substantial and immediate irreparable
27 injury from such conduct unless and until Defendants are restrained.
28

1 179. As described herein, Defendants' acts or omissions were in willful, malicious,
2 wanton, reckless or callous disregard of Plaintiffs' rights, thereby entitling Plaintiffs to punitive
3 and exemplary damages.

4 **SECOND CAUSE OF ACTION**
5 **(Fourteenth Amendment to the United States Constitution,**
6 **Substantive Due Process: State Created Danger)**
7 **(42 U.S.C. § 1983)**
8 **(Against All Defendants)**

9 180. Plaintiffs reallege and incorporate herein by reference each and every allegation
10 contained in paragraphs 1 through 179 of this Complaint.

11 181. Defendants' acts and omissions as alleged herein deprived Plaintiffs of their
12 clearly established and well-settled rights to personal liberty under the Fourteenth Amendment to
13 the United States Constitution. Defendants' conduct includes acting with deliberate indifference
14 to known or obvious danger in removing Plaintiffs from their homes and placing them in the care
15 of foster parents, including in the care of relative caregivers and out of state facilities and homes,
16 who were unfit to care for them and posed an imminent risk of harm to Plaintiffs' safety.

17 182. Each Defendant acted under color of state law as to the matters set forth herein.

18 183. Defendants' acts and omissions complained of herein constitute a policy, pattern,
19 practice, custom, final policymaking act, and/or ratification of a subordinate's action that
20 deprived Plaintiffs of particular Constitutional rights.

21 184. Further, Defendants have failed in their duties to properly hire, train, instruct,
22 monitor, supervise, evaluate and investigate Defendants' caseworkers and supervisors.
23 Defendants were deliberately indifferent to the obvious consequences of these failures, and these
24 failures directly resulted in the deprivation of Plaintiffs' Constitutional rights.

25 185. Defendants' acts and omissions complained of herein have caused the violation of
26 Plaintiffs' Constitutional rights and caused Plaintiffs to suffer damages, including significant
27 physical and emotional harm, in an amount to be determined at trial. These damages are
28 compensable pursuant to 42 U.S.C. § 1983.

1 186. Plaintiffs are entitled to injunctive relief against Defendants' conduct as described
2 herein because they are suffering and will continue to suffer substantial and immediate irreparable
3 injury from such conduct unless and until Defendants are restrained.

4 187. As described herein, Defendants' acts or omissions were in willful, malicious,
5 wanton, reckless or callous disregard of Plaintiffs' rights, thereby entitling Plaintiffs to punitive
6 and exemplary damages.

7 **THIRD CAUSE OF ACTION**
8 **(Federal Adoption Assistance Act and Child Welfare Act; Federal Child Abuse Prevention**
9 **and Treatment and Adoption Reform)**
10 **(42 U.S.C. § 1983)**
11 **(Against All Defendants)**

12 188. Plaintiffs reallege and incorporate herein by reference each and every allegation
13 contained in paragraphs 1 through 187 of this Complaint.

14 189. Defendants' conduct as alleged herein violated Plaintiffs' statutory rights under the
15 federal Adoption Assistance and Child Welfare Act of 1980, as amended by the Adoption and
16 Safe Families Act of 1997, 42 U.S.C. § 671 *et seq.*, and the regulations promulgated under the
17 Act, 45 C.F.R. Parts 1355-1357, including but not limited to:

18 (a) the right of each Plaintiff to have his or her health and educational records
19 reviewed, updated, and supplied to foster care providers with whom the child is placed before or
20 at the time of placement, pursuant to 42 U.S.C. §§ 671(a)(16), 675(1), and 675(5)(D);

21 (b) the right of each Plaintiff to have Defendants place him or her with relative
22 foster parents only if those foster parents satisfy Defendants' foster parent licensing standards,
23 pursuant to 42 U.S.C. § 671(a)(10); and

24 (c) the right of each Plaintiff who Defendants place in an out of state placement to
25 visits from caseworkers at least every six months, pursuant to 42 U.S.C. § 675(5)(A)(ii).

26 190. Each Defendant acted under color of state law as to the matters set forth herein.

27 191. Defendants' acts and omissions complained of herein constitute a policy, pattern,
28 practice, custom, final policymaking act, and/or ratification of a subordinate's action that
deprived Plaintiffs of particular statutory rights.

1 192. Further, Defendants have failed in their duties to properly hire, train, instruct,
2 monitor, supervise, evaluate and investigate Defendants' caseworkers and supervisors.
3 Defendants were deliberately indifferent to the obvious consequences of these failures, and these
4 failures directly resulted in the deprivation of Plaintiffs' statutory rights.

5 193. Defendants' acts and omissions complained of herein have caused the violation of
6 Plaintiffs' statutory rights and caused Plaintiffs to suffer damages, including significant physical
7 and emotional harm, in an amount to be determined at trial. These damages are compensable
8 pursuant to 42 U.S.C. § 1983.

9 194. Plaintiffs are entitled to injunctive relief against Defendants' conduct as described
10 herein because they are suffering and will continue to suffer substantial and immediate irreparable
11 injury from such conduct unless and until Defendants are restrained.

12 195. As described herein, Defendants' acts or omissions were in willful, malicious,
13 wanton, reckless or callous disregard of Plaintiffs' rights, thereby entitling Plaintiffs to punitive
14 and exemplary damages.

15 **FOURTH CAUSE OF ACTION**
16 **(Substantive Due Process under the Nevada Constitution)**
17 **(Against All Defendants)**

18 196. Plaintiffs reallege and incorporate herein by reference each and every allegation
19 contained in paragraphs 1 through 195 of this Complaint.

20 197. Defendants' conduct as alleged herein deprived Plaintiffs of their substantive due
21 process rights conferred upon them by Article I, § 8(5) of the Nevada Constitution, including their
22 right to be free from harm while involuntarily in government custody and their right to medical
23 treatment, services and care which are provided through the exercise of accepted, reasonable
24 professional judgment. Defendants' conduct includes the following acts and omissions:

25 (a) failure to adequately provide medical, dental, and mental health services,
26 including but not limited to standardized periodic health screenings and treatments, medical
27 services for maximum reduction of physical or mental disability, and monitoring of use of
28 psychotropic drugs by foster children;

(b) failure to inform caregivers of essential information;

- 1 (c) failure to conduct legally required visits with foster children;
- 2 (d) failure to adequately respond to reports of abuse;
- 3 (e) failure to ensure adequacy of relative caregiver placements; and
- 4 (f) failure to adequately inspect out of state facilities and monitor treatment and
- 5 services provided to foster children placed in out of state facilities.

6 198. Defendants' acts and omissions complained of herein constitute a policy, pattern,
7 practice, custom, final policymaking act, and/or ratification of a subordinate's action that
8 deprived Plaintiffs of particular Constitutional rights.

9 199. Further, Defendants have failed in their duties to properly hire, train, instruct,
10 monitor, supervise, evaluate and investigate Defendants' caseworkers and supervisors.
11 Defendants were deliberately indifferent to the obvious consequences of these failures, and these
12 failures directly resulted in the deprivation of Plaintiffs' Constitutional rights.

13 200. Defendants' acts and omissions reflect a lack of professional judgment and
14 deliberate indifference to Plaintiffs' Constitutional rights and caused the violation of Plaintiffs'
15 Constitutional rights and caused Plaintiffs to suffer damages, including significant physical and
16 emotional harm, in an amount to be determined at trial.

17 201. Plaintiffs are entitled to injunctive relief against Defendants' conduct as described
18 herein because they are suffering and will continue to suffer substantial and immediate irreparable
19 injury from such conduct unless and until Defendants are restrained.

20 202. As described herein, Defendants' malicious and/or oppressive acts and omissions
21 caused injury to Plaintiffs, thereby entitling Plaintiffs to punitive and exemplary damages
22 pursuant to NRS 42.005.

23 **FIFTH CAUSE OF ACTION**
24 **(Negligence)**
25 **(Against All Defendants)**

26 203. Plaintiffs reallege and incorporate herein by reference each and every allegation
27 contained in paragraphs 1 through 202 of this Complaint.

28 204. At all times Defendants owed Plaintiffs the duty to act with due care in the
execution and enforcement of their duties to Plaintiffs.

1 205. Defendants were negligent in performing their duties and failed, neglected, and/or
2 refused to properly and fully discharge their responsibilities, including but not limited to engaging
3 in the following acts or omissions:

4 (a) Failing to ensure that foster children receive necessary care and services for
5 their mental and emotional health, and receive visits from a caseworker no less often than once
6 per month, as required by N.A.C. §§ 432B.400, 432B.405 and 424.565;

7 (b) Failing to initiate a child welfare investigation promptly upon receipt of a report
8 of possible abuse or neglect of a child, as required by N.R.S. § 432B.260 and N.A.C.
9 §§ 432B.150 and 432B.155;

10 (c) Failing to ensure that Plaintiffs were free from physical and emotional abuse
11 while in a foster home, as required by N.A.C. § 424.530;

12 (d) Failing to provide information regarding each Plaintiff's medical history and
13 behavior with prospective foster parents before placing each Plaintiff with those parents, as
14 required by N.R.S. § 424.038;

15 (e) Failing to physically inspect, monitor treatment and care at, and interview
16 children transferred to out of state facilities, as required by N.R.S. § 432.0177 and § 127.330; and

17 (f) Failing to inform caregivers of essential information as required by N.R.S. §
18 424.038, N.A.C. §§ 424.465, 424.810 and 424.805.

19 206. Additionally, Defendants breached their duties of due care by:

20 (a) Failing to adequately hire, investigate, train, supervise, and monitor their
21 employees to ensure that those employees act at all times in the public interest and in
22 conformance with the law;

23 (b) Failing to make, enforce, and at all times act in conformance with policies and
24 procedures that are lawful and that protect individual rights, including Plaintiffs' rights; and

25 (c) Failing to refrain from making, enforcing, and/or tolerating the wrongful
26 policies and customs set forth herein.
27
28

1 207. Defendants' negligence proximately caused Plaintiffs to suffer damages, including
2 significant physical and emotional harm, in an amount to be determined at trial. The harm
3 Defendants caused through their negligence was reasonably foreseeable.

4 208. As described herein, Defendants' malicious and/or oppressive acts and omissions
5 caused injury to Plaintiffs, thereby entitling Plaintiffs to punitive and exemplary damages
6 pursuant to NRS 42.005.

7
8 **SIXTH CAUSE OF ACTION**
(Violation of Supremacy Clause (N.R.S. 424.090))
(Against State Defendants Willden and Comeaux)

9 209. Plaintiffs reallege and incorporate herein by reference each and every allegation
10 contained in paragraphs 1 through 208 of this Complaint.

11 210. The United States Constitution gives Congress the power to enact the "supreme
12 Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the
13 Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. art. VI, § 3,
14 cl. 2.

15 211. Through the Fostering Connections to Success and Increasing Adoptions Act, as
16 amended, Congress has mandated that relatives be exempted from licensing requirements for
17 foster care placements only on a case-by-case basis for specific children in foster care and only in
18 relation to non-safety standards. 42 U.S.C. § 671(a)(10).

19 212. In direct contravention of Congress's mandate, the State of Nevada has enacted,
20 and the State Defendants enforce, N.R.S. 424.090. N.R.S. 424.090 creates a blanket exemption
21 from standards for foster family homes for all relative caregivers and is not restricted to
22 exemptions on only a case-by-case basis as Congress requires. N.R.S. 424.090 also exempts
23 relative caregivers from safety standards, notwithstanding the Congressional mandate that relative
24 caregivers receive exemptions only from non-safety standards.

25 213. An actual justiciable controversy exists between Plaintiffs on the one hand and the
26 State Defendants on the other. Plaintiffs contend that, pursuant to 42 U.S.C. § 671(a)(10) and the
27 Supremacy Clause, the State Defendants may not enforce N.R.S. 424.090, and may not thereby
28 authorize County Defendants to place Plaintiffs and other foster children with relative caregivers

1 without ensuring that the relative caregivers either meet the same standards as other foster family
2 homes or are entitled to an exemption from a non-safety standard on a case-by-case basis. State
3 Defendants contend to the contrary.

4 214. The threat that this unconstitutional and preempted law will be enforced against
5 the Plaintiffs and others is an irreparable harm that makes injunctive relief appropriate. In
6 addition to the imminent enforcement of N.R.S. 424.090, its unconstitutionality itself reinforces
7 the irreparable harm Plaintiffs and other foster children face.

8 215. Plaintiffs are entitled to injunctive relief against enforcement of the challenged
9 Statute because they are suffering and will continue to suffer substantial and immediate
10 irreparable injury from enforcement of the challenged provision of N.R.S. 424.090. Plaintiffs
11 also seek a declaration that N.R.S. 424.090 is unconstitutional.

12 **SEVENTH CAUSE OF ACTION**
13 **(Violation of Supremacy Clause (N.R.S. 432.0177)**
14 **(Against State Defendants Willden and Comeaux)**

15 216. Plaintiffs reallege and incorporate herein by reference each and every allegation
16 contained in paragraphs 1 through 215 of this Complaint.

17 217. The United States Constitution gives Congress the power to enact the “supreme
18 Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the
19 Constitution or Laws of any State to the Contrary notwithstanding.” U.S. Const. art. VI, § 3,
20 cl. 2.

21 218. Through the Safe and Timely Interstate Placement of Foster Children Act of 2006,
22 Congress has mandated that a caseworker visit each foster child placed outside the state in which
23 the home of the child’s parents is located no less frequently than once every six months. 42
24 U.S.C. § 675(5)(ii) (as amended by 109 P.L. 239).

25 219. In direct contravention of Congress’s mandate, the State of Nevada has enacted,
26 and the State Defendants enforce, N.R.S. 432.0177. N.R.S. 432.0177(2) mandates only annual
27 visits to foster children transferred to out of state facilities.

28 220. An actual justiciable controversy exists between Plaintiffs on the one hand and the
State Defendants on the other. Plaintiffs contend that, pursuant to 42 U.S.C. § 675(5)(A)(ii) and

1 the Supremacy Clause, the State Defendants may not enforce 432.0177(2), and may not thereby
2 authorize County Defendants to place Plaintiffs and other foster children in out of state facilities
3 without ensuring that they are visited by caseworkers at least every six months, as mandated by
4 federal law. State Defendants contend to the contrary.

5 221. The threat that this unconstitutional and preempted law will be enforced against
6 the Plaintiffs and others is an irreparable harm that makes injunctive relief appropriate. In
7 addition to the imminent enforcement of N.R.S. 432.0177(2), its unconstitutionality itself
8 reinforces the irreparable harm Plaintiffs and other foster children face.

9 222. Plaintiffs are entitled to injunctive relief against enforcement of the challenged
10 Statute because they are suffering and will continue to suffer substantial and immediate
11 irreparable injury from enforcement of the challenged provision of N.R.S. 432.0177. Plaintiffs
12 also seek a declaration that N.R.S. 432.0177(2) governing the frequency of visitations is
13 unconstitutional.

14 **EIGHTH CAUSE OF ACTION**
15 **(Federal Adoption Assistance Act and Child Welfare Act; Federal Child Abuse Prevention**
16 **and Treatment and Adoption Reform)**
17 **(42 U.S.C. § 1983)**
18 **(On Behalf of the Case Plan Class Representatives and Case Plan Class**
19 **Against Defendants)**

20 223. Case Plan Class Representatives reallege and incorporate herein by reference each
21 and every allegation contained in paragraphs 1 through 222 of this Complaint.

22 224. The conduct of Defendants as alleged herein violated Case Plan Class
23 Representatives' and class members' statutory rights under the federal Adoption Assistance and
24 Child Welfare Act of 1980, as amended by the Adoption and Safe Families Act of 1997,
25 42 U.S.C. § 671 *et seq.*, and the regulations promulgated under the Act, 45 C.F.R. Parts 1355-
26 1357, including the right of each class member to have a written case plan pursuant to 42 U.S.C.
27 §§ 671(a)(16), 675(1), and 675(5)(D).

28 225. Each Defendant acted under color of state law as to the matters set forth herein.

1 226. Defendants' acts and omissions complained of herein constitute a policy, pattern,
2 practice, custom, final policymaking act, and/or ratification of a subordinate's action that
3 deprived Case Plan Class Representatives and the class members of particular statutory rights.

4 227. Further, Defendants have failed in their duties to properly hire, train, instruct,
5 monitor, supervise, evaluate and investigate Defendants' caseworkers and supervisors.
6 Defendants were deliberately indifferent to the obvious consequences of these failures, and these
7 failures directly resulted in the deprivation of Case Plan Class Representatives' and the class
8 members' statutory rights.

9 228. Case Plan Class Representatives and Case Plan Class members are entitled to
10 injunctive relief against Defendants' conduct as described herein because they are suffering and
11 will continue to suffer substantial and immediate irreparable injury from such conduct unless and
12 until Defendants are restrained.

13 **NINTH CAUSE OF ACTION**
14 **(Child Abuse Prevention and Treatment Act; Guardian *ad litem*)**
15 **(42 U.S.C. § 1983)**
16 **(On Behalf of the Guardian *ad Litem* Class Representatives and Class Against Defendants)**

17 229. Guardian *ad Litem* Class Representatives reallege and incorporate herein by
18 reference each and every allegation contained in paragraphs 1 through 228 of this Complaint.

19 230. The conduct of Defendants as alleged herein violated Guardian *ad Litem* Class
20 Representatives' and class members' federal statutory right under 42 U.S.C.
21 § 5106a(b)(2)(A)(xiii) to representation from a guardian *ad litem* in all proceedings before the
22 juvenile court.

23 231. Each Defendant acted under color of state law as to the matters set forth herein.

24 232. Defendants' acts and omissions complained of herein constitute a policy, pattern,
25 practice, custom, final policymaking act, and/or ratification of a subordinate's action that
26 deprived Guardian *ad Litem* Class Representatives and class members of particular statutory
27 rights.

28 233. Further, Defendants have failed in their duties to properly hire, train, instruct,
monitor, supervise, evaluate and investigate Defendants' caseworkers and supervisors.

1 Defendants were deliberately indifferent to the obvious consequences of these failures, and these
2 failures directly resulted in the deprivation of Guardian *ad Litem* Class Representatives' and class
3 members' statutory rights.

4 234. Guardian *ad Litem* Representatives and class members are entitled to injunctive
5 relief against Defendants' conduct as described herein because they are suffering and will
6 continue to suffer substantial and immediate irreparable injury from such conduct unless and until
7 Defendants are restrained.

8 **TENTH CAUSE OF ACTION**
9 **(Child Abuse Prevention and Treatment Act; Early Intervention Services)**
10 **(42 U.S.C. § 1983)**
11 **(On Behalf of the Early Intervention Class Representative and Class Against Defendants)**

12 235. The Early Intervention Class Plaintiff realleges and incorporates herein by
13 reference each and every allegation contained in paragraphs 1 through 234 of this Complaint.

14 236. The conduct of Defendants as alleged herein violated the Early Intervention Class
15 Representative's and class members' federal statutory right under 42 U.S.C.
16 § 5106a(b)(2)(A)(xxi) (CAPTA) and 20 U.S.C. § 1437(a)(6)(A) (IDEA) to early intervention
17 services.

18 237. Each Defendant acted under color of state law as to the matters set forth herein.

19 238. Defendants' acts and omissions complained of herein constitute a policy, pattern,
20 practice, custom, final policymaking act, and/or ratification of a subordinate's action that
21 deprived the Early Intervention Class Representative and class members of particular statutory
22 rights.

23 239. Further, Defendants have failed in their duties to properly hire, train, instruct,
24 monitor, supervise, evaluate and investigate Defendants' caseworkers and supervisors.
25 Defendants were deliberately indifferent to the obvious consequences of these failures, and these
26 failures directly resulted in the deprivation of the Early Intervention Class Representative's and
27 class members' statutory rights.

28 240. The Early Intervention Class Representative and class members are entitled to
injunctive relief against Defendants' conduct as described herein because they are suffering and

1 will continue to suffer substantial and immediate irreparable injury from such conduct unless and
2 until Defendants are restrained.

3 **ELEVENTH CAUSE OF ACTION**
4 **(Fourteenth Amendment to the United States Constitution,**
5 **Substantive Due Process: Duty to Protect)**
6 **(42 U.S.C. § 1983)**

7 **(On Behalf of the Early Intervention Class Representative and Class Against Defendants)**

8 241. The Early Intervention Class Representative realleges and incorporates herein by
9 reference each and every allegation contained in paragraphs 1 through 240 of this Complaint.

10 242. Defendants' conduct as alleged herein deprived the Early Intervention Class
11 Representative and class members of their clearly established and well-settled rights under the
12 Fourteenth Amendment to the United States Constitution, including their right to be free from
13 harm while involuntarily in government custody and their right to minimal care, including
14 medical care, treatment and services. Defendants' conduct includes the failure to provide early
15 intervention services as required under federal and state law.

16 243. Each Defendant acted under color of state law as to the matters set forth herein.

17 244. Defendants' acts and omissions alleged herein reflect a lack of professional
18 judgment and deliberate indifference in depriving the Early Intervention Class Representative and
19 class members of their Constitutional rights.

20 245. Defendants' acts and omissions complained of herein constitute a policy, pattern,
21 practice, custom, final policymaking act, and/or ratification of a subordinate's action that
22 deprived the Early Intervention Class Representative and class members of particular
23 Constitutional rights.

24 246. Further, Defendants have failed in their duties to properly hire, train, instruct,
25 monitor, supervise, evaluate and investigate Defendants' caseworkers and supervisors.
26 Defendants were deliberately indifferent to the obvious consequences of these failures, and these
27 failures directly resulted in the deprivation of the Early Intervention Class Representative's and
28 class members' Constitutional rights.

29 247. Defendants' acts and omissions complained of herein have caused the violation of
30 the Early Intervention Class Representative's and class members' Constitutional rights. The

1 Early Intervention Class Representatives and class members are entitled to injunctive relief
2 against Defendants' conduct as described herein because they are suffering and will continue to
3 suffer substantial and immediate irreparable injury from such conduct unless and until Defendants
4 are restrained.

5 **TWELFTH CAUSE OF ACTION**
6 **(Substantive Due Process under the Nevada Constitution)**
7 **(On Behalf of the Early Intervention Class Representative and Class Against Defendants)**

8 248. The Early Intervention Class Representative realleges and incorporates herein by
9 reference each and every allegation contained in paragraphs 1 through 247 of this Complaint.

10 249. Defendants' conduct as alleged herein deprived the Early Intervention Class
11 Representative and class members of their substantive due process rights conferred upon them by
12 Article I, § 8(5) of the Nevada Constitution, including their right to be free from harm while
13 involuntarily in government custody and their right to minimal care, including medical care,
14 treatment and services; Defendants' conduct includes the failure to provide early intervention
15 services as required under state law.

16 250. Defendants' acts and omissions alleged herein reflect a lack of professional
17 judgment and deliberate indifference in depriving the Early Intervention Class Representative and
18 class members of their Constitutional rights.

19 251. Defendants' acts and omissions complained of herein constitute a policy, pattern,
20 practice, custom, final policymaking act, and/or ratification of a subordinate's action that
21 deprived the Early Intervention Class Representative and class members of particular
22 Constitutional rights.

23 252. Further, Defendants have failed in their duties to properly hire, train, instruct,
24 monitor, supervise, evaluate and investigate Defendants' caseworkers and supervisors.
25 Defendants were deliberately indifferent to the obvious consequences of these failures, and these
26 failures directly resulted in the deprivation of the Early Intervention Class Representative's and
27 class members' Constitutional rights.

28 253. Defendants' acts and omissions complained of herein have caused the violation of
the Early Intervention Class Representative's and class members' Constitutional rights. The

1 Early Intervention Class Representative and class members are entitled to injunctive relief against
2 Defendants' conduct as described herein because they are suffering and will continue to suffer
3 substantial and immediate irreparable injury from such conduct unless and until Defendants are
4 restrained.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiffs pray for judgment against all Defendants, jointly and severally,
7 and for the Court to provide relief as follows:

- 8 1. Assert jurisdiction over this action;
- 9 2. Order that Plaintiffs may maintain Causes of Action Eight, Nine, Ten, Eleven, and
10 Twelve as class actions pursuant to Rule 23(a) and 23(b)(2) of the Federal Rules of Civil
11 Procedure;
- 12 3. Compensatory damages for Causes of Action One through Five, in an amount to
13 be proven at trial;
- 14 4. Punitive damages against the individual defendants under 42 U.S.C. § 1983 and
15 Nevada law in an amount to be proven at trial;
- 16 5. All other damages, penalties, costs, interest, and attorneys' fees as allowed by
17 42 U.S.C. §§ 1983 and 1988 and as otherwise allowed by federal or Nevada law;
- 18 6. Declare unconstitutional and unlawful Defendants' violations of Plaintiffs' and
19 Class Members' rights;
- 20 7. Preliminarily and permanently enjoin Defendants from subjecting Plaintiffs and
21 Class Members to practices that violate their rights;
- 22 8. Costs of suit; and
- 23 7. Such further relief as the Court deems just, necessary, and proper to protect
24 Plaintiffs from further harm by Defendants.

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JURY DEMAND

Plaintiffs hereby demand trial by jury on any and all issues triable by a jury.

Dated: April 13, 2010

By: /s/ Lori A. Schechter
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