

1 BRUNO WOLFENZON, ESQ.  
Nevada Bar No. 6177  
2 GREGORY M. SCHULMAN, ESQ.  
Nevada Bar No. 5766  
3 WOLFENZON SCHULMAN  
4530 South Eastern Avenue, Suite 9  
4 Las Vegas, NV 89119  
Telephone: (702) 836-3138  
5 Facsimile: (702) 836-3139

6 WILLIAM GRIMM, ESQ. (admitted pro hac vice)  
LEECIA WELCH, ESQ. (admitted pro hac vice)  
7 BRYN MARTYNA, ESQ. (admitted pro hac vice)  
NATIONAL CENTER FOR YOUTH LAW  
8 405 – 14th Street, 15th Floor  
Oakland, CA 94612  
9 Telephone: (510) 835-8098  
Facsimile: (510) 835-8099

10 KATINA ANCAR, ESQ. (admitted pro hac vice)  
11 SONYA SANCHEZ, ESQ. (admitted pro hac vice)  
FARELLA BRAUN & MARTEL LLP  
12 235 Montgomery Street, 17th Floor  
San Francisco, CA 94104  
13 Telephone: (415) 954-4400  
Facsimile: (415) 954-4480

14 Co-attorneys for Plaintiffs  
15 CLARK K., *et al.*

16 UNITED STATES DISTRICT COURT  
17 DISTRICT OF NEVADA  
18

19 CLARK K.<sup>1</sup>, by his next friend Sherry  
Anderson; JALEN, SIA, ROSHAUN,  
20 CALEB, and KING A., by their next friend  
Tarrah Logan; TONI, SUMMER, and  
21 FRANK B., by their next friend Marilyn  
Paikai; and DONNA C., by her next friend  
22 Jacquelyn Romero,

23 Plaintiffs,

24 vs.

25 MICHAEL WILLDEN, Director of the  
26

CASE NO.: 2:06-cv-01068-RCJ-RJJ  
JUDGE: Hon. Robert C. Jones

**SECOND AMENDED COMPLAINT  
(CLASS ACTION ALLEGED)**

27 <sup>1</sup> Plaintiffs are proceeding under fictitious names and satisfy the requirements of Rule 10(a) of the Federal Rules of  
28 Civil Procedure. Pseudonym litigation should be permitted in this case because plaintiffs meet the following  
requirements laid out in Rule 10(a): plaintiffs are children; they are challenging governmental activity; and pressing  
the lawsuit using their real identities would compel plaintiffs to reveal highly intimate information.

1 Nevada Department of Health and Human  
2 Services; FERNANDO SERRANO,  
3 Administrator of the Nevada Division of  
4 Child and Family Services; JOHN DOE,  
5 Bureau Chief of the Bureau of Services for  
6 Child Care of the Division of Child and  
7 Family Services; VIRGINIA  
8 VALENTINE, Clark County Manager;  
9 CLARK COUNTY; TOM MORTON,  
10 Director of Clark County Department of  
11 Family Services; LOUIS PALMA,  
12 Manager of Shelter Care for the Clark  
13 County Department of Family Services;  
14 BRUCE L. WOODBURY, TOM  
15 COLLINS, CHIP MAXFIELD, YVONNE  
16 ATKINSON GATES, MYRNA  
17 WILLIAMS, LYNNETTE BOGGS  
18 MCDONALD, and RORY REID, Clark  
19 County Commissioners

20 Defendants.

21  
22  
23  
24  
25  
26  
27  
28  
**SECOND COMPLAINT (CLASS ACTION ALLEGED)<sup>2</sup>**

**I.**

**JURISDICTION AND VENUE**

1. This court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1343, and 1367. Plaintiffs’ action for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 1343, 2201, 2202, and by Fed. R. Civ. P. 57 and 65.

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

**II.**

**THE PARTIES**

3. Plaintiff Clark K. is a seventeen-year-old boy who has been in the legal custody of Clark County Department of Family Services (“Clark County DFS”) since July 2003. He

<sup>2</sup> Plaintiffs submit their Second Amended Complaint in accordance with this Court’s May 14, 2007 Order, which granted plaintiffs leave to amend the second and sixth causes of action. May 14, 2007 Order at 24 & 28.

1 currently resides in Clark County, Nevada in the home of his grandparents who have been  
2 licensed foster parents for Clark County. Clark appears in this action by his next friend, Sherry  
3 Anderson who is his paternal grandmother.

4 4. Plaintiffs Jalen A., a nine-year-old boy; Sia A., an eight-year-old girl; Roshaun A.,  
5 a six-year-old boy; Caleb A., a five-year-old boy; and King A., a two-year-old boy, are all  
6 siblings. They have been in the legal custody of Clark County DFS since December 2004. They  
7 currently reside in a foster home in Clark County, Nevada. Jalen, Sia, Roshaun, Caleb, and King  
8 appear in this action by their paternal aunt, Tarrah Logan, who is acting as their next friend. The  
9 children lived with Tarrah at various points in their lives, sometimes for as long as nine months,  
10 prior to their placement in foster care in December 2004. When they were taken into foster care,  
11 she visited them regularly. She is currently the legal guardian of the children's oldest and  
12 youngest siblings.

13 5. Plaintiffs Toni B., a five-year-old girl; Summer B., an eight-year-old girl; and  
14 Frank B., a six-year-old boy, are siblings. They have been in the legal custody of Clark County  
15 DFS since October 3, 2002. They currently reside in a foster home located in Clark County,  
16 Nevada. Toni, Summer, and Frank appear in this action by their next friend, Marilyn Paikai.  
17 Mrs. Paikai has been a shelter/foster parent for Clark County since October 2001. She was the  
18 foster parent for Toni for more than two years, and has provided care for and is familiar with  
19 Toni's siblings, Summer and Frank.

20 6. Plaintiff Donna C. is a six-year-old girl who has been in the legal custody of Clark  
21 County DFS since December 2004. She currently resides in a foster home in Clark County,  
22 Nevada. Donna appears in this action by her next friend, Jacqueline Romero. Mrs. Romero  
23 previously cared for Donna as a Clark County foster parent.

24 7. Defendant Michael Willden is the Director of Nevada Department of Health and  
25 Human Services ("Nevada DHHS"), and is sued in his official capacity. Nevada DHHS is the  
26 "sole agency responsible for administering the provisions of law relating to its respective  
27 divisions", which includes Nevada Division of Children and Family Services ("State DCFS").  
28 Nev. Rev. Stat. Ann. § 232.300. Nevada DHHS is also the single state agency responsible for

1 administering Nevada's Medicaid program. Nev. Rev. Stat. Ann. § 422.270. The Director of  
2 Nevada DHHS is responsible for carrying out the administration of State DCFS, as well as the  
3 other divisions of the Department. Nev. Rev. Stat. Ann. § 232.320. He is also responsible for  
4 appointing divisional directors, including the Administrator of State DCFS, which has  
5 responsibility for ensuring the provision of child welfare services throughout the state. Nev. Rev.  
6 Stat. Ann. § 232.320. His business address is 505 East King Street, Room 600 Carson City, NV  
7 89701-3708.

8 8. Defendant Fernando Serrano is the Administrator of State DCFS, and is sued in his  
9 official capacity. He is responsible for the administration and oversight of all functions of State  
10 DCFS. State DCFS administers all federal funds granted to the State for child welfare services; it  
11 must adopt regulations establishing uniform standards for child welfare services provided by the  
12 counties and is charged with monitoring the delivery of all child welfare services by Clark and  
13 Washoe Counties. His business address is 711 East 5th Street, Carson City, NV 89701.

14 9. Defendant John Doe is the Bureau Chief of the Bureau of Services for Child Care  
15 ("the Bureau") of State DCFS, and is sued in his official capacity.<sup>3</sup> The Bureau has the  
16 responsibility to "ensure that every person operating a [child care] facility is licensed." Nev.  
17 Admin. Code § 432A.170(1). Various statutes and regulations address the role of the Bureau in  
18 making sure that child care facilities and services are "safe and responsive" as set forth in Nev.  
19 Rev. Stat. Ann. § 432A.010. *See* Nev. Rev. Stat. Ann. §§ 432A.040, 432A.070, 432A.131,  
20 432A.210; Nev. Admin. Code §§ 432A.170, 432A.180. The Bureau Chief is the administrator in  
21 charge of ensuring the proper and efficient performance of the functions of the Bureau. Nev.  
22 Rev. Stat. Ann. §432A.070. The business address for the Bureau Chief is 400 W. King St., Suite  
23 230, Carson City, Nevada 89703.

24 10. Defendants Bruce L. Woodbury, Tom Collins, Chip Maxfield, Yvonne Atkinson  
25 Gates, Myrna Williams, Lynette Boggs McDonald, and Rory Reid are the seven members of the  
26 Clark County Board of County Commissioners. The Board of County Commissioners is

27 \_\_\_\_\_  
28 <sup>3</sup> Plaintiffs were notified by State Defendants' counsel that the former Bureau Chief, Paula Hawkins, resigned shortly  
before Plaintiffs' Complaint was filed. Upon information and belief, the position currently remains unfilled.

1 responsible for running the County government, including hiring a County Manager who is  
2 responsible for the day-to-day administrative operations of the County government. Their  
3 business address is 500 Grand Central Parkway, Las Vegas, Nevada 89106.

4 11. Defendant Clark County is subject to the jurisdiction of this court. With the  
5 passage of Assembly Bill 1 in 2001, for counties with a population over 100,000, responsibility  
6 for the funding and provision of child welfare and child protective services in that county was  
7 transferred from State DCFS to the county agency. Clark County has a population of over  
8 100,000, and is responsible for providing funding in an amount set by the County for the  
9 provision of child welfare services. Clark County has created a political department, Clark  
10 County DFS, to provide and administer child welfare services in the County.

11 12. Defendant Virginia Valentine is the Clark County Manager, and is sued in her  
12 official capacity. She is responsible for managing the County's \$5 billion budget and providing  
13 administrative oversight for all County departments, including Clark County DFS. Her business  
14 address is 500 S. Grand Central Parkway, Las Vegas, NV 89155.

15 13. Defendant Tom Morton is the Director of Clark County DFS, and is sued in his  
16 official capacity. He is the executive officer of Clark County DFS, and is responsible for  
17 administering child welfare services in Clark County and for ensuring the safety and well-being  
18 of children in or at risk of entering the child welfare system, pursuant to Nev. Rev. Stat. Ann.  
19 § 432B. His business address is 701 N. Pecos Rd., Bldg. K, Las Vegas, Nevada 89101.

20 14. Defendant Louis Palma is the Manager of Shelter Care for Clark County DFS, and  
21 is sued in his official capacity. He is responsible for oversight of all shelter care facilities and  
22 programs in Clark County, which includes the day-to-day operations of Child Haven. His  
23 business address is 701 N. Pecos Rd., Las Vegas, Nevada 89101.

24 **III.**

25 **INTRODUCTION**

26 15. This civil rights class action lawsuit is brought by ten children on behalf of all  
27 abused and neglected children who are in, or at risk of entering, the Clark County foster care  
28 system. Plaintiffs seek declaratory and injunctive relief to compel Nevada and Clark County

1 officials to meet their legal duties under federal and state law to protect and care for abused and  
2 neglected children.

3 16. During 2004, there were 8,979 investigations of child abuse or neglect reports in  
4 Clark County. During the same year, 4,548 children entered foster care. There are currently over  
5 3,600 children in the legal custody of Clark County placed in foster family homes, group homes,  
6 unlicensed and/or unpaid relative homes, and other settings.

7 17. Until 2004, Nevada operated a bifurcated child welfare system in which the state's  
8 two counties with populations of over 100,000 – Clark and Washoe Counties – were responsible  
9 for providing child protective services, while the State bore responsibility for providing foster  
10 care services. As a result of AB 1, passed by the Nevada State Legislature in 2001, responsibility  
11 for both child protective services and foster care were vested with Clark and Washoe Counties.  
12 The State retained responsibility for supervision and oversight of Clark and Washoe Counties'  
13 programs to ensure, among other things, compliance with federal and state laws, regulations, and  
14 standards. The transfer of foster care staff and services from the State to Clark County was  
15 completed in October 2004.

16 18. Clark County's child welfare system is in crisis. Virtually every aspect of the  
17 County's child protective services and foster care system is failing the children and youth it is  
18 charged with protecting. The County's child welfare system denies children their rights under the  
19 Federal and State Constitutions, laws, regulations, policies, and accepted professional standards.

20 19. The County and State's failures have resulted in harm to an untold number of  
21 children. A recent state report indicates that within the last four years at least 79 children have  
22 died from abuse or neglect. These victims of fatal injuries or neglect include children in foster  
23 care and children left at home following a substantiated report of abuse. Many of their deaths  
24 were preventable.

25 20. Within the past two and a half years, one study after another has documented Clark  
26 County's failure to protect the health, safety, and well-being of child abuse victims and children  
27 in foster care. Defendants have had full knowledge of these studies, and have nonetheless failed  
28

1 to take adequate steps to address the long-standing problems identified in them. These studies  
2 include:

- 3 • A December 2003 Statewide Assessment of child welfare services conducted as  
4 part of the preparation for the February 2004 federal Child and Family Services  
5 Review (“CFSR”);
- 6 • A February 2004 federal CFSR of Nevada’s child welfare system that included an  
7 audit of Clark County’s system (“2004 Federal Review”);
- 8 • An April 2004 Audit of Child Haven and the Clark County Shelter Home Program  
9 conducted by the Audit Department of Clark County;
- 10 • An April 2005 Report to the Clark County Commissioners on the Status of Child  
11 Welfare Services;
- 12 • A June 2005 report of a review of child abuse fatalities in Clark County conducted  
13 by the Child Welfare Institute of which Defendant Morton was the former director;
- 14 • An October 2005 case review of Clark County child abuse and foster care cases  
15 conducted by State DCFS (“2005 County Case Review”); and
- 16 • An April 2006 Report of the Findings and Recommendations: Child Deaths 2001-  
17 2004 describing the results of an independent child death review panel  
18 investigation of deaths related to child abuse or neglect in Clark County (“2006  
19 Child Fatality Report”).

20 21. During July 2006, representatives of the Administration for Children and Families  
21 of the United States Department of Health and Human Services (“Federal DHHS”) conducted a  
22 site visit to reassess Clark County’s child welfare program. Federal officials concluded that the  
23 situation for children and families served by Clark County’s child welfare system “has worsened”  
24 since officials’ earlier on-site visit in February 2004. Some of the specific deficiencies reported  
25 by federal officials include:

- 26 • The State’s acquiescence in Clark County’s continued use of an unlicensed  
27 congregate care facility – Child Haven;
- 28 • Consistent overcrowding at Child Haven;

- 1 • Unnecessary removal of children from their homes due to Clark County's failure
- 2 to provide an adequate array of services to prevent placement;
- 3 • Frequent changes in placement of children in foster care;
- 4 • Inadequate assessments of the safety of suspected victims of child abuse and
- 5 neglect;
- 6 • Inadequate training of staff and insufficient recruitment of foster parents;
- 7 • Unanswered or lengthy delays in answering calls to the Child Abuse Hotline;
- 8 • The use of an invalid, ineffective risk assessment tool;
- 9 • The failure to use data to provide effective oversight and supervision; and
- 10 • The failure to provide a guardian *ad litem* for every child in foster care.

11 22. In a letter to Nevada child welfare officials on August 11, 2006, Sharon M. Fujii,  
12 the Regional Administrator for the Administration for Children and Families of Federal DHHS,  
13 informed Nevada that "the manner in which the continuum of child welfare services is managed  
14 in Clark County should be a grave concern to the State." August 11, 2006 Letter from Sharon M.  
15 Fujii to Defendant Willden. She notified state officials that the current Program Improvement  
16 Plan between the State and federal officials "is no longer adequate to address the serious  
17 deficiencies in the State's child welfare program, most specifically Clark County which accounts  
18 for the majority of the State's child welfare population." *Id.*

19 23. Defendants Willden and Serrano subsequently wrote a letter to Defendant Morton  
20 warning him that:

21 we continue to receive information indicating serious deficiencies  
22 with the [child welfare] system ...; the existing level of effort to  
23 correct system deficiencies is not adequate; [and] that despite lists  
of corrective action plans ... still we have major failures.

24 August 30, 2006 Letter from Defendants Willden and Serrano to Defendant Morton.

25 24. For years, Clark County has evaded scrutiny of its child protective services and  
26 foster care programs. It has hidden behind a veil of confidentiality meant to protect children and  
27 families, but which the County has used to shield itself from oversight and criticism.

28



1           25.     Among other things, it has failed and continues to fail to comply with federal law  
2 requiring that it provide the public with findings and information concerning child abuse victims  
3 who have died or suffered near fatalities. The little information available to the public about the  
4 child welfare system is incomplete and out of date. The most recent data on child abuse and  
5 foster care is from 2004.

6           26.     Nevada and its counties receive millions of dollars in federal funds to meet the  
7 needs of children in the child welfare system and are therefore required to comply with federal  
8 mandates, including those set forth in the Adoption and Safe Families Act of 1997, the Child  
9 Abuse Prevention and Treatment Act, and the Early Periodic Screening, Diagnosis and Treatment  
10 provisions of Medicaid law. In state fiscal year 2004, Nevada spent over \$79 million on child  
11 welfare services, of which \$44 million was federal funds.

12           27.     This lawsuit also challenges the placement of children, and the conditions in which  
13 they are forced to live, at Child Haven – an unlicensed child care institution operated by Clark  
14 County. For years, Child Haven has not been a safe “haven” for the children and youth placed  
15 there. Upon entering foster care in Clark County, children are placed at Child Haven and remain  
16 there for as little as a few hours or as long as a year or more. For years, unlike other facilities  
17 providing care to foster children in Nevada, Child Haven has been allowed to operate without  
18 meeting the minimum licensing standards required by state law. The Child Haven facility houses  
19 infants and young children alongside teenagers, some of whom have significant behavioral  
20 problems and pose a risk of serious harm to the younger, more vulnerable children in the facility.  
21 Child Haven is frequently extremely overcrowded resulting in children sleeping on the floors and  
22 in gymnasiums, separated from their siblings and in conditions that have contributed to the spread  
23 of infectious disease at Child Haven. Children’s needs, particularly their need for mental health  
24 care, are not being met.

25           28.     High caseloads and inadequate training of Clark County child protective services  
26 and foster care workers contribute to the crisis within the system. Many workers’ caseloads  
27 exceed those established by national standards. Workers are ill prepared and supervised to  
28

1 perform a job in which failure to abide by law, regulations, and professional standards, and failure  
2 to exercise professional judgment result in serious injury to or death of a child.

3 29. Investigations of child abuse reports – both those involving children in foster care  
4 and those left at home – routinely fail to comply with state law and professional standards. As a  
5 direct result, children who could and should have been protected suffer unnecessarily.

6 30. Clark County DFS has failed to recruit and retain a sufficient number of foster  
7 homes, resulting in harm to children whose needs are mismatched with the foster parents'  
8 experience and abilities. Placements are often made based solely upon whether or not there is an  
9 available bed in the foster home. As a result, placements often break down, and children are  
10 shuttled from one house, group home, and institution to another. Caseworkers fail to visit  
11 children in these placements, and, as a result, are unaware of the quality of care the child is  
12 receiving, the harm befalling the child, the risk to which the child is exposed, and the lack of  
13 needed services.

14 31. Children in foster homes recruited, licensed, and supervised by Defendants are  
15 subjected to abuse and neglect in those homes. When there are complaints about foster homes,  
16 Clark County DFS often turns a deaf ear, allowing children to remain in dangerous homes that  
17 either should not have been licensed in the first place or should have had their license revoked.  
18 At the same time, Clark County DFS retaliates against foster parents who advocate for services  
19 for a child placed in their homes or who disagree with the department's plan for the child, driving  
20 out the very foster parents the system needs. Clark County DFS also fails to provide foster  
21 parents with even the most basic background information about children they place in their homes  
22 and the supportive services needed.

23 32. Children entering foster care have many special needs – for medical and mental  
24 health care as well as educational and special educational services. Clark County DFS fails to act  
25 as a responsible parent to children in its custody. As a result, foster children's needs are not met  
26 and services are delayed or not provided at all, causing substantial harm to these children.

27 33. Children in foster care have no voice in the court proceedings where decisions are  
28 made that affect their basic safety, their temporary and permanent placement, and their general

1 well-being. Even though state and federal law mandate appointment of a representative to look  
2 out for the interests of the child in all cases, Clark County falls woefully short of meeting this  
3 requirement.

4 34. If Defendants' unconstitutional and unlawful actions and omissions are not halted,  
5 many more children will be harmed. Another generation of children entrusted to the County and  
6 State will suffer untold misery, some will die, and others will leave the foster care system ill  
7 prepared to live healthy, independent, and productive lives.

8 **IV.**

9 **CLASS ACTION ALLEGATIONS**

10 35. This action is maintainable as a class action pursuant to Fed. R. Civ. P. 23(a) and  
11 23(b)(2). Plaintiffs represent a countywide class of children who have been, are, or will be  
12 victims of child abuse and neglect and have been, are, or will be in the legal custody of Clark  
13 County DFS.

14 36. The requirements of Fed. R. Civ. P. 23 are met in that the class is so numerous that  
15 joinder of all members is impracticable. Furthermore, the class is fluid in that new members are  
16 regularly created. There are over 3,600 children in foster care in Clark County. Throughout the  
17 year, many more children enter care than is reflected in any single day census. During 2004, for  
18 example, a total of 4,548 were removed from their homes and placed in foster care.

19 37. All the members share common issues of law and fact. All of the plaintiffs and  
20 class members are in need of adequate child welfare services, must rely on Clark County and  
21 State DCFS Defendants for those services, and are harmed by Defendants' systemic failure to  
22 fulfill their legal obligations to provide safe care, adequate treatment, and necessary services.  
23 Questions of law and fact common to the class of plaintiffs predominate over any individual  
24 issues of law and fact.

25 38. Specific common questions of fact include, but are not limited to,

- 26 (a) Whether class members are placed at an overcrowded, unlicensed  
27 congregate facility that fails to meet their needs;

- 1 (b) Whether class members are left in dangerous situations due to Defendants’
- 2 failure to conduct timely investigations of reports of abuse and neglect;
- 3 (c) Whether Defendants fail to recruit and support an adequate array of foster
- 4 placements to meet the needs of class members;
- 5 (d) Whether class members are placed in homes and other facilities in which
- 6 they have been harmed or are at risk of harm;
- 7 (e) Whether class members are deprived of needed medical, mental health, and
- 8 dental care services;
- 9 (f) Whether class members are provided with appropriate educational services;
- 10 and
- 11 (g) Whether class members are represented by a guardian *ad litem* in abuse
- 12 and neglect proceedings in the Clark County District Court.

13 39. Specific common questions of law include, but are not limited to,

- 14 (a) Whether upon entry into foster care class members’ placement in Child
- 15 Haven, an unlicensed child care facility, violates Nevada and federal laws;
- 16 (b) Whether the failure to conduct timely investigations of complaints of child
- 17 abuse or neglect involving class members violates their rights under
- 18 Nevada and federal law;
- 19 (c) Whether the failure to properly screen, license, support, and supervise
- 20 foster homes in which class members are placed is a denial of their rights
- 21 under Nevada and federal law;
- 22 (d) Whether the failure to provide class members with timely necessary
- 23 medical and mental health screenings, assessments, and treatment denies
- 24 their rights under Nevada and federal law; and
- 25 (e) Whether the failure to appoint a guardian *ad litem* for class members is a
- 26 denial of their rights under Nevada and federal law.

27 40. The claims of the named plaintiffs are typical of the claims of the class they

28 represent.



1 situations, the department must conduct an evaluation within three days of receiving the report to  
2 determine whether an investigation is warranted. Nev. Rev. Stat. Ann. § 432B.260(3). If the  
3 department determines that an investigation is warranted, it must initiate an investigation within  
4 three days of completing the evaluation. Nev. Rev. Stat. Ann. § 432B.260(4).

5 48. All child protective services investigations must include certain actions. In all  
6 cases there must be a prompt face-to-face meeting with the child. Nev. Admin. Code § 432B.155.  
7 If there are other children in the household, the caseworker must also assess the protective needs  
8 of each of those children even though they may not be the subject of the report. Nev. Admin.  
9 Code § 432B.150(3)(c).

10 49. The child protective service investigation must be completed within 30 days of  
11 receipt of the report, at which time Clark County DFS must determine if the report is  
12 substantiated or unsubstantiated. Nev. Admin. Code § 432B.170 (a). Upon completion of the  
13 investigation, the department may file a petition with the juvenile court, provide services to the  
14 family to ensure the safety of the child or children, or close the case.

15 2. Protective custody and filing of petition

16 50. While conducting or upon completion of an investigation, Clark County DFS may  
17 decide to remove the child from the home and place the child in protective custody. Nev. Rev.  
18 Stat. Ann. § 432B.390.

19 51. If the child is placed in protective custody, a juvenile court hearing must take place  
20 within 72 hours to determine whether the child should remain in protective custody or be returned  
21 home pending further action by the Court. Nev. Rev. Stat. Ann. § 432B.470(a).

22 52. Within ten days of the hearing on protective custody, Clark County DFS must file  
23 a petition to initiate further child welfare proceedings or recommend against further court action.  
24 Nev. Rev. Stat. Ann. § 432B.490(1)(a).

25 53. If the child is released from protective custody, Clark County DFS must provide a  
26 range of services to help preserve the family and prevent further placement outside the home,  
27 including, but not limited to: social work and counseling, psychological and medical services,  
28

1 parental education, and services for treatment of substance abuse. Nev. Admin. Code  
2 § 432B.240.

3 3. Adjudicatory and dispositional hearings

4 54. An adjudicatory hearing must be held within 30 days of filing the petition. Nev.  
5 Rev. Stat. Ann. § 432B.530(1)-(2). If the court finds that the allegations in the petition are  
6 unsupported, the petition is dismissed and the child ordered released if he is in protective custody.  
7 Nev. Rev. Stat. Ann. § 432B.530(5). If the court determines that the allegations in the petition are  
8 true and that the child is in need of protection, Clark County DFS is required to submit a report  
9 and recommendations for the disposition of the case. If the department recommends that the  
10 child be removed from the custody of her parents, it must submit a plan for ensuring that the child  
11 will receive safe, proper, and appropriate care in the placement, and describe the services that will  
12 be provided to the child and her parents to facilitate the reunification of the family. Nev. Rev.  
13 Stat. Ann. § 432B.540(2).

14 55. Upon receipt of the report and recommendation of Clark County DFS, the court  
15 may order the child to remain in the custody of his parents with or without supervision by Clark  
16 County DFS, place the child in the custody of a relative, or place him in the custody of the  
17 department. Nev. Rev. Stat. Ann. § 432B.550.

18 4. Appointment of guardian *ad litem*

19 56. Upon the filing of a petition, the court must appoint a guardian *ad litem* for the  
20 child. Nev. Rev. Stat. Ann. § 432B.500. The guardian *ad litem* must “represent and protect the  
21 best interests of the child until excused by the court” and “inform the court of the desires of the  
22 child, but exercise his independent judgment regarding the best interests of the child.” Nev. Rev.  
23 Stat. Ann. § 432B.500(3)(a)&(g). Among other responsibilities, the guardian *ad litem* is required  
24 to research the facts of the child’s case and ensure that the court receives an independent,  
25 objective account of the facts; meet with the child at the child’s placement as often as necessary  
26 to determine whether the child is safe and to ascertain that the placement is in the child’s best  
27 interests; participate in the development and negotiation of any plans or orders regarding the  
28 child; monitor whether the plans are being implemented and appropriate services are being

1 provided; appear at all proceedings regarding the child; and present recommendations to the  
2 court. Nev. Rev. Stat. Ann. § 432B.500(3).

3 5. Placement in and supervision of foster family homes

4 57. State DCFS is required to establish and ensure the counties' compliance with  
5 minimum standards for foster family homes, group homes, and other child care facilities in which  
6 foster children are placed. Nev. Rev. Stat. Ann. § 424.020. In carrying out this obligation, State  
7 DCFS is required to promulgate regulations establishing uniform standards for the licensing of  
8 foster family homes, group homes, and child care institutions. Nev. Rev. Stat. Ann.  
9 § 432B.190(1).

10 58. Clark County DFS is responsible for licensing foster and group homes in which it  
11 places foster children in its custody and ensuring that those homes meet state standards. Nev.  
12 Rev. Stat. Ann. § 424.030; Nev. Rev. Stat. Ann. § 424.016(1). Licensing is required in order to  
13 protect children from abuse or neglect and ensure that the foster parent can properly care for  
14 children. Nev. Rev. Stat. Ann. §§ 424.016, 424.030; Nev. Admin. Code § 424.100.

15 59. Upon being granted protective or legal custody of a child in foster care, Clark  
16 County DFS selects the foster home or other setting in which the child is placed.

17 60. No family foster home can be licensed to care for more than six children,  
18 excluding any children residing in the home who are related to the foster parent or who are not  
19 foster children. The number of children for whom a home may be licensed must factor in the  
20 foster parents' own children under the age of 16, as well as the characteristics of the children in  
21 need of placement. No more than two children under the age of eighteen months or four children  
22 under the age of five may be placed in the same home. Nev. Admin. Code § 424.160.

23 61. Before placing a child in a foster home, Clark County DFS must provide the foster  
24 parent with information necessary to ensure the health and safety of the child and other persons in  
25 the foster home. That information must include the medical history and behavior of the child.  
26 Nev. Rev. Stat. Ann. § 424.038.



1           62.     Clark County DFS must supervise and monitor the child’s care in a foster home.  
2     At any time during the child’s placement that it appears that a child lacks proper care and  
3     management, the child must be removed from the home. Nev. Rev. Stat. Ann. § 424.060.

4           63.     Clark County caseworkers must have at least monthly face-to face contact with  
5     children in foster care. At least bi-monthly, caseworkers must visit children in their foster care  
6     placements. Nev. Admin. Code § 432B.405(a)&(b).

7           64.     Clark County DFS must also provide support and services to the foster parent  
8     including responding in a timely manner to requests for assistance and establishing a program of  
9     respite care for foster parents to temporarily relieve them of the stresses and responsibilities of  
10    caring for children. Nev. Rev. Stat. Ann. § 424.077; Nev. Admin. Code § 424.805.

11          65.     Clark County DFS must complete an assessment for each child in DFS custody at  
12    least semiannually. The assessment must include the current level of functioning of the family,  
13    the current risk to the child if he were returned to the custody of his parent, and the services  
14    required to meet the child’s needs as set out in his case plan. Nev. Admin. Code § 432B.420(1).  
15    These assessments must be based, in part, on direct interviews with family members of the child,  
16    personal observations of interaction at home and in the community between the child and family  
17    members, case histories, and medical records. Nev. Admin. Code § 432B.420(2).

18           6.     Placement in and supervision of child care institutions

19          66.     Any child care institution used for the placement of foster children must be  
20    licensed by either the city, county, or state, depending on its location. Nev. Rev. Stat. Ann.  
21    §§ 432A.131, 432A.220. Child care institutions located within Las Vegas must be licensed by the  
22    city. Nev. Rev. Stat. Ann. § 432A.131. It is a misdemeanor offense to operate a child care  
23    institution without a license. Nev. Rev. Stat. Ann. § 432A.220.

24          67.     Although Las Vegas has the authority to grant licenses to child care institutions,  
25    such as Child Haven, that are located within its city limits, the Bureau has the responsibility to  
26    “ensure that every person operating a [child care] facility is licensed.” Nev. Admin. Code §  
27    432A.170(1). Various statutes and regulations address the role of the Bureau in making sure that  
28

1 child care facilities and services are “safe and responsive” as set forth in Nev. Rev. Stat. Ann. §  
2 432A.010. *See* Nev. Rev. Stat. Ann. §§ 432A.040, 432A.070, 432A.131, 432A.210; Nev. Admin.  
3 Code §§ 432A.170, 432A.180. The Bureau Chief is the administrator in charge of ensuring the  
4 proper and efficient performance of the functions of the Bureau. Nev. Rev. Stat. Ann. §  
5 432A.070. She has a duty to ensure that no unlicensed facility is allowed to accept children for  
6 placement. Nev. Admin. Code § 432A.170(1).

7 68. Among her duties, the Bureau Chief is responsible for reviewing a roster of all  
8 facilities in the jurisdictions of local agencies that are currently licensed to ascertain if an  
9 unlicensed facility is operating. Nev. Admin. Code § 432A.180. Upon information and belief,  
10 the Bureau Chief has known for years that Child Haven operates without a license consequently  
11 exposing children to harm and risk of harm.

12 7. Interstate placements of children

13 69. If a child is placed with any person who resides outside of the state, the placement  
14 must follow the procedures and criteria set forth in the Interstate Compact on Placement of  
15 Children (“ICPC”). Nev. Rev. Stat. Ann. § 127.330.

16 70. In adopting and enacting the ICPC, the Nevada Legislature sought to ensure that:  
17 (a) each child requiring placement receives the maximum opportunity to be placed in a suitable  
18 environment and with persons or institutions having appropriate qualifications and facilities to  
19 provide a necessary and desirable degree and type of care; (b) the appropriate authorities in a state  
20 where a child is to be placed may have full opportunity to ascertain the circumstances of the  
21 proposed placement, thereby promoting full compliance with applicable requirements for the  
22 protection of the child; (c) the proper authorities of the state from which the placement is made  
23 may obtain the most complete information on the basis of which to evaluate a projected  
24 placement before it is made; and (d) appropriate jurisdictional arrangements for the care of  
25 children are promoted. Nev. Rev. Stat. Ann. § 127.330.

26 71. The ICPC requires, among other things, that a child must not be sent to the  
27 receiving state until the appropriate public authorities in the receiving state notify the sending  
28

1 agency, in writing, that the proposed placement does not appear to be contrary to the interests of  
2 the child.

3 8. Responsibilities of State Agencies

4 72. Nevada DHHS is the “sole agency responsible for administering the provisions of  
5 law relating to its respective divisions”, which includes State DCFS. Nev. Rev. Stat. Ann.  
6 § 232.300. The Director of Nevada DHHS is responsible for carrying out the administration of  
7 State DCFS, preparing a master plan for the provision of human services in the state, and  
8 appointing the Administrator of State DCFS. Nev. Rev. Stat. Ann. § 232.320.

9 73. Nevada DHHS is also the “single state agency” responsible for administering  
10 Nevada’s Medicaid program. Nev. Rev. Stat. Ann. § 422.270. DHHS is responsible for adopting  
11 all Medicaid state plans required by the federal government and to comply with those state plans.  
12 Nev. Rev. Stat. Ann. § 422.271.

13 74. State DCFS has broad responsibilities to children in the plaintiff class. Among its  
14 responsibilities, the Division must administer any money granted to the State by the Federal  
15 Government; plan, coordinate, and monitor the delivery of child welfare services provided  
16 throughout the State; and request sufficient money for the provision of child welfare services  
17 throughout the State. Nev. Rev. Stat. Ann. § 432B.180. State DCFS is also required to  
18 promulgate regulations “establishing reasonable and uniform standards for child welfare services”  
19 provided throughout the state. Nev. Rev. Stat. Ann. § 432 B.190. The statute identifies 11  
20 specific program areas in which State Defendants are required to adopt regulations. Most  
21 importantly, State DCFS is required to “[e]valuate all child welfare services provided throughout  
22 the State and withhold money from any agency providing child welfare services which is not  
23 complying with the regulations adopted ....” Nev. Rev. Stat. Ann. § 432B.180 (8).

24 75. For the last three years, State DCFS periodically has evaluated child welfare  
25 services in Clark County. Those evaluations have uncovered policies and practices that violate  
26 the state and federal constitutional and statutory rights of plaintiffs.

27 76. State Defendants have the duty and responsibility to take action, including the  
28 withholding of funds, to correct the violations of plaintiff class members’ state and federal

1 constitutional and statutory rights. They have failed to fulfill those duties thereby allowing those  
 2 violations to continue unabated for years, increasing the number of plaintiff class members  
 3 harmed and exacerbating the harm suffered by plaintiff class members.

4 77. The duties of Nevada DHHS and State DCFS exceed merely documenting and  
 5 reviewing other's documentation of Clark County's failures to provide safe and proper care. In  
 6 their own words,

7 The Division **is responsible** for Children's Mental Health (in the  
 8 two largest populated counties), Youth Corrections and Child  
 9 Welfare Services. The implementation and administration of Title  
 10 IV-E, Title IV-B, Subpart I (Child Welfare Services) and Subpart 2  
 (Promoting Safe and Stable Families), Child Abuse and Treatment  
 Act (CAPTA), and the Chafee Foster Care Independence Program  
 (CFCIP) **are also the responsibility** of the Division.

11 Annual Progress & Services Report (APSR) 2005-2009, at 1 (June 30, 2006) (emphasis added).

12 **B. Federal statutory framework**

- 13 1. The Adoption Assistance and Child Welfare Act of 1980, as amended by the  
 14 Adoption and Safe Families Act of 1997: Titles IV-B and IV-E of the Social  
Security Act. 42 U.S.C. §§ 622 et seq.; 671 et seq.

15 78. States that meet federally established child welfare standards in the day-to-day  
 16 operation of their child welfare programs are eligible for federal child welfare funding under  
 17 Titles IV-B and IV-E of the Social Security Act. 42 U.S.C. §§ 622 et seq.; 671 et seq. Nevada  
 18 has submitted a mandated State Plan describing how the State will assure compliance with federal  
 19 child welfare requirements under these titles, and receives federal child welfare funds. This State  
 20 Plan is a contract into which the State of Nevada enters for the express benefit of plaintiffs, who  
 21 are third party beneficiaries of the contract. Nevada may contract with public or private agencies  
 22 to provide direct services, but this does not discharge the State from its responsibility to ensure  
 23 that those agencies follow the mandates of the federal statute. 42 U.S.C. § 672 (a)(2)(B); *Child*  
 24 *Welfare Policy Manual* § 8.1G.

25 79. Defendants Willden and Serrano are responsible for administering any federal  
 26 funds for child welfare services, including Title IV-B and IV-E funds, and ensuring county  
 27 compliance with federal mandates. *See* Nev. Rev. Stat. Ann. § 432B.180(1); Nev. Rev. Stat. Ann.  
 28 § 232.070.

1           80.     Federal DHHS has stressed in correspondence with Defendant Willden that “the  
2 manner in which the continuum of child welfare services is managed in Clark County should be a  
3 grave concern to the State and should be addressed by the State in its administration and  
4 supervision of the program.” August 11, 2006 letter from Sharon M. Fujii to Defendant Willden.

5           81.     Defendants Willden and Serrano are also responsible for the drafting and  
6 negotiation of the Program Improvement Plan (“PIP”) with federal authorities to address  
7 deficiencies uncovered in the administration of their Title IV-B & E program. 45 C.F.R. §1355.  
8 The PIP identifies the persons responsible for addressing deficiencies in Clark County’s child  
9 welfare program. Those “responsible persons” identified in the PIP are virtually all officials or  
10 employees of Nevada DHHS or State DCFS.

11           82.     Defendants Clark County and Morton are directly responsible for fulfilling the  
12 obligations undertaken by the State of Nevada when it entered into this contract. Moreover,  
13 pursuant to AB 1, responsibility for the day-to-day implementation of both child protective  
14 services and foster care was vested with Defendants Clark County, Valentine, and County  
15 Commissioners Woodbury, Collins, Maxfield, Gates, Williams, McDonald, and Reid  
16 (collectively “Defendant Commissioners”).

17           83.     Federal child welfare mandates with which Nevada must comply include the  
18 following: to place children only in settings that conform to national professional standards and  
19 are subject to a uniformly applied set of standards; to provide quality services that protect foster  
20 children’s safety and health; to provide each child with a written case plan containing specified  
21 elements, and a case review system with specified elements; to place each child in a safe setting  
22 that is the least restrictive and most family like setting; to provide updated health and education  
23 records to foster parents or foster care providers at the time of placement; and to provide notice  
24 and a right to be heard to foster parents and any preadoptive parent or relative providing care in  
25 any proceeding concerning the child. 42 U.S.C. §§ 671(10); 671(16); 671(22); 675(1); 675(5);  
26 675(5)(A); 675(5)(B); 675(5)(D); 675(5)(G); 622(b)(10)(B)(ii).

27  
28

1           2.       The Child Abuse Prevention and Treatment and Adoption Reform Act  
2                    (“CAPTA”), 42 U.S.C. § 5101 et seq.

3           84.       The Child Abuse Prevention and Treatment and Adoption Reform Act  
4            (“CAPTA”), as codified at 42 U.S.C. § 5101 *et seq.*, provides federal grants to states to assist  
5            them in supporting their programs for abused and neglected children. To receive federal money  
6            under CAPTA, each state must submit a State Plan outlining the areas of child protective services  
7            the state intends to address with the funding, and it must ensure that it is complying with the  
8            statutory provision. 42 U.S.C. § 5106a(b)(1)(A); 42 U.S.C. § 5106a(b)(2)(A)(ix).

9           85.       Nevada has submitted a State Plan to the federal government, and receives federal  
10           funding pursuant to CAPTA. This State Plan is a contract into which the State of Nevada enters  
11           for the express benefit of plaintiffs, who are third party beneficiaries of the contract.

12           86.       Defendants Willden and Serrano are responsible for administering any federal  
13           funds for child welfare services, including CAPTA funds, and ensuring county compliance with  
14           federal mandates. *See Nev. Rev. Stat. § 432B.180(1); Nev. Rev. Stat. Ann. § 232.070.*  
15           Defendants Willden and Serrano are in charge of planning, coordinating, and monitoring the  
16           delivery of child welfare services provided throughout the state, as well as evaluating all child  
17           welfare services and withholding money from any agency that is not complying with pertinent  
18           regulations. *Nev. Rev. Stat. § 432B.180(2); Nev. Rev. Stat. § 432B.180(6).* They are also  
19           responsible for promulgating regulations to establish uniform standards for child welfare services  
20           provided in the state. *Nev. Rev. Stat. § 432B.190(1).* Defendants Clark County and Morton are  
21           directly responsible for fulfilling the obligations undertaken by the State of Nevada when it  
22           entered into this contract. Moreover, pursuant to AB 1, Defendants Valentine and County  
23           Commissioners are responsible for the implementation of the requirements in the State Plan.

24           87.       CAPTA specifically requires that every abused or neglected child who is the  
25           subject of a judicial proceeding must be represented by a properly trained guardian *ad litem*. 42  
26           U.S.C. § 5106a(b)(2)(A)(xiii). The guardian *ad litem* may be an attorney or a court-appointed  
27           special advocate, or both. Since the original enactment of this federal mandate, Congress has  
28           amended the provision several times to describe explicitly and amplify the duties of the guardian

1 *ad litem*. For example, the guardian *ad litem* must obtain a first-hand, clear understanding of the  
2 situation and needs of the child and make recommendations to the court concerning the best  
3 interests of the child. 42 U.S.C. § 5106a(b)(2)(A)(xiii).

4 3. The Medicaid Act, Early and Periodic Screening, Diagnostic and Treatment  
5 (EPSDT) Services, 42 U.S.C. § 1396-1396v

6 88. Medicaid is a cooperative federal-state program that directs federal funding to  
7 states to assist them in providing medical assistance to low income people under Title XIX of the  
8 Social Security Act, 42 U.S.C §§ 1396-1396v. States choose whether to participate in Medicaid.  
9 To receive Medicaid funds, states must adhere to the minimum federal requirements according to  
10 the Social Security Act and its implementing regulations, 42 C.F.R. §§ 430 *et seq.* DHHS is the  
11 single state agency responsible under federal law for the administration of the Medicaid program  
12 in Nevada.

13 89. To participate in Medicaid, states must submit and have approved by the Secretary  
14 of Health and Human Services a state plan for medical assistance. The Medicaid Act requires  
15 that each state plan “provide for making medical assistance available, including at least the care  
16 and services listed in paragraphs (1) through (5), (17), (21) of section 1396d(a) of this title, to all  
17 individuals [listed under certain statutory provisions].” 42 U.S.C. § 1396a(a)(10)(A). Early and  
18 Periodic Screening, Diagnostic and Treatment (“EPSDT”) services, for Medicaid-eligible  
19 children under the age of 21, are among the mandatory categories of medical assistance. *Id.* at §§  
20 1396a(a)(10)(A), 1396a(a)(43), 1396d(a)(4)(B), 1396d(r). Under 42 U.S.C. § 1396d(r)(5) states  
21 must cover necessary health care, diagnostic services, treatment and other measures described in  
22 subsection 1396d(a) when needed to correct or ameliorate physical or mental health problems.

23 90. Under 42 U.S.C. § 1396a(a)(43)(B), states must provide or arrange for screening  
24 services in all cases where they are requested and, under § 1396a(a)(43)(C), must arrange for,  
25 directly or through referral to appropriate individuals, needed corrective treatment.

26 91. Nevada has submitted a State Plan under Title XIX of the Social Security Act, and  
27 receives federal funding. Nevada’s State Plan is a contract into which the State of Nevada enters  
28 for the express benefit of plaintiffs, who are third party beneficiaries of the contract. Nevada’s

1 state agencies must comply with Title XIX of the Social Security Act and the requirements of the  
2 State Plan. Defendant Willden is responsible for administering these federal funds, and ensuring  
3 county compliance with federal mandates. *See Nev. Rev. Stat. Ann. § 232.070.* Defendant  
4 Serrano is responsible for administering this program with respect to children in the child welfare  
5 system. *Nev. Rev. Stat. § 432B.180(1).* Defendants Clark County and Morton are directly  
6 responsible at the county level for fulfilling the obligations of federal Medicaid law. Moreover,  
7 pursuant to AB 1, Defendants Valentine and County Commissioners are responsible for the  
8 implementation of the requirements in the State Plan.

9 92. Under its Medicaid program, Nevada must provide EPSDT care to eligible  
10 children under the age of 21. Virtually all children under the age of 21 who are in foster care are  
11 eligible for Medicaid. 42 U.S.C. § 1396a(a)(10)(A). Accordingly, Nevada is mandated to  
12 provide EPSDT care to these children.

## 13 VI.

### 14 **FACTUAL ALLEGATIONS FOR NAMED PLAINTIFFS**

#### 15 **A. Clark K.**

16 93. Clark is a seventeen-year-old youth who came into the legal custody of Clark  
17 County DFS in July 2003. Prior to that time, the department had received ten reports of abuse or  
18 neglect involving Clark and/or his siblings.

19 94. While in DFS custody, Clark has been placed in inappropriate and dangerous  
20 placements, which have been harmful to his physical, mental, and emotional well-being. He has  
21 been denied adequate food, clothing and shelter; subjected to frequent changes in placement;  
22 denied necessary medical and mental health care; denied an education and special education  
23 services; separated from his siblings; denied other necessary services to meet his needs; and  
24 denied access to any sort of representation by an attorney or guardian *ad litem*.

25 95. In September 1999, Clark's mother moved from Las Vegas to Texas, and took  
26 Clark with her. Clark and his mother lived with approximately ten other relatives in a two-  
27 bedroom trailer. Most of their food came out of dumpsters behind grocery stores because Clark's  
28 mother spent her money on drugs. About a year later, Clark's mother took him with her to live in



1 Virginia. In Virginia, he was often left with strangers while his mother was off buying, dealing,  
2 and taking illegal drugs. Clark missed many days of school due to his mother's absence, neglect,  
3 and instability. As a result of these absences, Clark was held back at least one grade.

4 96. In December 2001, Clark and his mother returned to Texas. Subsequently, Clark  
5 contacted his grandparents in Las Vegas and pleaded with them to rescue him from the unsafe  
6 and unhealthy living arrangement in Texas. His grandmother drove to Texas, and brought Clark  
7 back to live with her and his grandfather in Las Vegas.

8 97. Following Clark's arrival at their home, his grandparents contacted Clark County  
9 DFS and shared information about the unsafe living environment Clark had endured in Texas. At  
10 the advice of DFS, Clark's grandparents first were appointed legal guardianship of Clark and his  
11 younger brother on August 14, 2002, and later became licensed foster parents. During the entire  
12 time that Clark lived with his grandparents, he attended school regularly, got good grades, and  
13 was in good health. Clark's younger brother also lived with him and his grandparents for much  
14 of the time.

15 98. In July of 2003, Clark's grandparents transitioned from being his legal guardians  
16 to being his licensed foster parents, and Clark was taken into foster care. On or about July 25,  
17 2003, Clark County DFS placed Clark and his younger brother in the custody of their paternal  
18 grandparents. Clark did not receive notice of any hearing on this matter, nor was he represented  
19 by an attorney or guardian *ad litem*. Although Clark's grandparents had discussed Clark's need  
20 for a Court Appointed Special Advocate (CASA) with his caseworker, he was never provided  
21 one. On or about August 26, 2003, a petition for abuse/neglect was filed on Clark and his  
22 younger brother and they were found to be in need of protection and within the jurisdiction of the  
23 Court pursuant to Nev. Rev. Stat. Ann. § 432B. From this point on, if not earlier, Clark was in  
24 the legal custody of Clark County DFS.

25 99. On September 17, 2003, a dispositional hearing was held on Clark's Petition for  
26 Neglect. Clark's grandparents went to the courthouse to attend the hearing, but were refused  
27 entry into the courtroom. Clark's caseworker knew that Clark's grandparents were at the  
28 courthouse and that they wished to attend the hearing and provide input, but they were denied an

1 opportunity to express Clark's wishes or explain their concerns for his safety should he be  
2 returned to his mother in Texas. Clark's caseworker did not notify Clark about the hearing, tell  
3 him the purpose of the hearing, or ask him whether he wanted to go back to Texas. Clark was  
4 given no opportunity to speak to the court or have anyone else represent his interests. Had he  
5 been asked about his wishes, or allowed to speak at the hearing, he would have told the court that  
6 he absolutely did not want to go back and live with his mother in Texas and would have  
7 explained the reasons he was afraid to be placed with her. Nonetheless, at this hearing, the Court  
8 ordered that Clark be "reunified" with his mother in Texas.

9 100. Subsequently, Clark's caseworker told his grandparents and Clark that the court  
10 had decided that he should be placed back with his mother in Texas. Clark's grandparents were  
11 strongly opposed to this decision and expressed their concerns to Clark County DFS. They sent  
12 letters to DFS caseworkers and administrators describing their concerns regarding Clark's safety  
13 and health should he be returned to Texas. Clark County DFS never responded to their letters or  
14 addressed their concerns.

15 101. Throughout October 2003, Clark County DFS attempted to get Clark's  
16 grandparents to disenroll him from school and take him to the airport to go to Texas. They  
17 refused.

18 102. On October 21, 2003, a Clark County DFS caseworker spoke to Clark for the first  
19 time about his impending placement back with his mother in Texas. The caseworker told Clark  
20 that he had spoken to Clark's mother and that she reported that she had a job, was not using  
21 drugs, and could take care of him. Clark responded: "It's horrible down there . . . I know my  
22 mom . . . she can't keep a steady job . . . she has been on drugs since I was little . . . I know what  
23 it's like down there. I don't want to go."

24 103. Despite Clark's strong desire to remain with his grandparents, his articulated  
25 concerns about going to live with his mother in Texas, and his history of neglect in Texas, Clark  
26 County DFS nonetheless forced him to return to Texas. In late October 2003, Clark's caseworker  
27 picked Clark up at his house, drove him to the airport, walked him to security, and put him on a  
28 flight to Houston, Texas. By doing so, Defendants greatly increased the danger to Clark by

1 taking the affirmative step of removing him from a safe environment and placing him in a  
2 dangerous living situation against his wishes.

3 104. Clark's caseworker failed to complete an assessment of his safety before returning  
4 him to his mother's custody. The caseworker made no attempt to confirm what Clark's mother  
5 had told him during their brief phone conversations. He did not contact her alleged employer, her  
6 alleged landlord, or the local Texas child protective services. Despite her years of drug abuse, he  
7 did not require that she submit verification of successfully completing treatment or that she  
8 submit to a drug screen. He also did not conduct any criminal background check with Texas  
9 authorities. In addition, Clark County DFS failed to comply with the requirements of the  
10 Interstate Compact on the Placement of Children, to which both Texas and Nevada are signators.  
11 Nev. Rev. Stat. Ann. §§ 127.320-350; Tex. Fam. Code § 162.101 *et seq.*

12 105. Had the caseworker conducted a reasonable investigation, he would have learned  
13 that Clark's mother was on probation for burglary, had been without a job for a very long time,  
14 and had no suitable housing. She was sharing an overcrowded trailer with her alcoholic parents,  
15 and was continuing to abuse drugs and alcohol.

16 106. After sending Clark to Texas, Clark County DFS essentially washed their hands of  
17 him altogether. They made no efforts to determine whether he was safe with his mother, nor did  
18 they follow up with anyone in Texas to ensure that his needs were being met.

19 107. Once again, Clark led a miserable life in Texas. He initially lived with his mother,  
20 maternal grandmother, and many others in a filthy trailer. At any given time, there were at least  
21 eight people sharing the trailer with five or six dogs. Animal feces were littered throughout.  
22 Clark slept on a filthy mattress on a bunk bed that he shared with his grandmother, or he slept on  
23 the floor. Clark was surrounded by drug use and drug dealing. His mother used and sold  
24 everything from marijuana to crack in Clark's presence. His relatives stole his possessions  
25 (including clothes, shoes, socks, hats, CDs, a CD player, a guitar, a backpack, and a bike), and  
26 sold them for drug money.

27 108. Clark often went several days without food. Although his mother was receiving  
28 food stamps for him, she traded them for drugs. She and her parents frequently dug food out of

1 dumpsters for themselves and Clark to eat. At other times he would only have a few crackers and  
2 applesauce. Much of the time, his only meal of the day was the free lunch he received at school.

3 109. For the year and a half he was left in Texas, Clark was moved around among  
4 various family members, moving about twelve times. Most of the time they moved from one  
5 trailer park to another. At one point they were all living out of a truck with a camper shell on the  
6 back. During most of his time in Texas, Clark was virtually abandoned by his mother. She  
7 would frequently disappear on drug binges; she never held down a job; and she never provided  
8 for his basic needs.

9 110. Although Clark was getting A's and B's in school when he lived with his  
10 grandparents in Las Vegas, upon placement with his mother in Texas, his grades plummeted. In  
11 some of the places he was taken to live, he had no transportation to school. He also never  
12 received the special education services to which he was entitled based on previous assessments  
13 and an IEP adopted while attending Clark County School District. In addition, during the entire  
14 time he was in Texas, his mother never provided him with medication to address his attention  
15 deficit hyperactivity disorder, which made it even more difficult for him to concentrate in school.

16 111. Finally, in the spring of 2005, Clark managed to get in touch with his grandmother  
17 in Las Vegas. With help from his sister, Clark took a Greyhound bus back to his grandparents in  
18 Las Vegas in April 2005.

19 112. Shortly after returning to Las Vegas, Clark's family contacted Clark County DFS  
20 to tell them Clark had returned to live with his grandparents. Subsequently, DFS attempted to  
21 locate Clark's mother, but was not successful.

22 113. Despite the traumatic events Clark experienced in Texas, he was denied medical  
23 assistance upon his return to Las Vegas. Medicaid-covered services were requested by his  
24 grandparents, but not provided, arranged, or paid for by Defendants.

25 114. In particular, Clark was in need of a comprehensive mental health assessment and  
26 therapeutic services, including counseling, medication management and monitoring, and  
27 physician and outpatient services, that were necessary to correct or ameliorate his mental health  
28 condition, and rehabilitative services required to achieve the maximum reduction of physical or

1 mental disability and restoration to the best possible functioning. These services are mandated  
2 under 42 U.S.C. § 1396a(a)(10)(A) as defined in 42 U.S.C. §§ 1396d(a)(4)(B), (a)(5)(A),  
3 (a)(2)(A), and (a)(13), as well as under 42 U.S.C. § 1396a(a)(43)(B) & (C). Despite repeated  
4 requests by his grandparents, Clark County DFS failed to provide or arrange for such services. In  
5 fact, not only did Clark's grandparents request services, they made appointments that were then  
6 cancelled by DFS and never rescheduled. For example, Clark's grandparents made an  
7 appointment with Dr. Bonnie Winkelman, a psychologist, for June 2005, but the caseworker told  
8 his grandparents that the appointment was cancelled and that DFS handles all medical  
9 appointments – including any counseling or psychological services – for the children, and the  
10 grandparents were not allowed to make appointments or take Clark to appointments. Clark's  
11 grandfather also made an appointment with Debi Bhattacharyya, a Child and Family Intervention  
12 Specialist with DFS, to have Clark evaluated. Ms. Bhattacharyya cancelled the appointment, and  
13 DFS did not follow up to make a replacement appointment. Later, the DFS caseworker said DFS  
14 would take him to Mojave Mental Health for an evaluation, but they never did.

15 115. Clark County DFS also failed to provide him with any educational services to  
16 make up for the significant time he was not in school. In the absence of any services or assistance  
17 from DFS, Clark and his grandparents researched various training programs and decided that  
18 Clark should attend Job Corps.

19 116. Clark was accepted at the Job Corps in Reno, and began living there and attending  
20 classes and vocational training. However, on or around March 15, 2006, Clark went missing.  
21 Although Job Corps officials notified Clark County DFS of Clark's disappearance, little or no  
22 attempts were made to locate him. Even after the court directed DFS to do everything in their  
23 power to find Clark, DFS took few, if any, steps to determine Clark's whereabouts. At one point,  
24 Clark called the DFS hotline and told them he was ready to go home to his grandparents, but DFS  
25 failed to take timely action to help bring him back to a safe placement.

26 117. Clark lived on the streets in Reno for about three months, until he eventually  
27 learned about a program called "Home Free" sponsored by the National Runaway Switchboard.  
28

1 He was provided with a free one-way Greyhound ticket back to his grandparents in Las Vegas.  
2 He returned to their care on May 19, 2006.

3 118. Since returning to Las Vegas, Clark has received almost no independent living  
4 services, or any other kind of services from Clark County DFS. His caseworker has been  
5 unresponsive to multiple calls from Clark's grandparents to follow up on securing needed  
6 services. Clark is afraid to go back to school because he is now so far behind. He still has  
7 significant unmet mental health needs, and lives with the fear that DFS could again take him from  
8 his grandparents and send him to an unsafe placement against his will. He has difficulty trusting  
9 adults or believing that anyone cares about him. He worries that people are like his relatives in  
10 Texas – just waiting to do him in.

11 **B. The A. Children**

12 119. Jalen, Sia, Roshaun, Caleb, and King A. are siblings – four boys and one girl, ages  
13 nine, eight, six, five, and two, respectively. They have been in the custody of Clark County DFS  
14 since December 2004. Their baby brother, Jerome, died in a DFS-licensed foster home on April  
15 3, 2005, at the age of 14 months.

16 120. While in DFS custody, these five children have been placed in multiple  
17 inappropriate and dangerous placements that have been harmful to their physical, mental, and  
18 emotional well-being. They have been placed in a restrictive, overcrowded, and dangerous child  
19 care facility (Child Haven) for almost a year; subjected to further emotional and physical abuse  
20 and neglect while in foster and shelter homes; placed in shelter and foster homes that lacked the  
21 information and services to care adequately for their basic needs; denied medical assistance to  
22 address their history of abuse and neglect; denied visitation and contact with relatives; denied  
23 representation by either a guardian *ad litem* or an attorney during their first year in foster care;  
24 and separated from each other for long periods of time.

25 121. The A. children first came into foster care after the youngest sibling, King, tested  
26 positive for drugs when he was born in December 2004. The children were initially taken to  
27 Child Haven for a day, and then were split up and placed in three different DFS-licensed foster  
28 and shelter homes. The three oldest children were placed in the foster home of Joan Smith.

1 About a month later, Caleb and Jerome were moved into the Smith home with their siblings.  
2 King was placed in a different foster home, separated from his siblings.

3 122. While in the Smith home, the children were physically and emotionally abused as  
4 a result of Clark County DFS's failure to provide adequate training, supervision, and support to  
5 foster parents; failure to investigate reports of abuse and neglect; and failure to remove children  
6 from dangerous placements.

7 123. Within their first month of placement, Ms. Smith had difficulty caring for the five  
8 children who at the time ranged in age from one year to six years of age. During this time, Ms.  
9 Smith was also having problems with her troubled adopted daughter, who was regularly running  
10 away from home. In February or March 2005, Ms. Smith began making repeated requests to  
11 Clark County DFS, both verbally and in writing, to remove the children from her home. Upon  
12 information and belief, DFS failed to respond to these requests and failed to provide Ms. Smith  
13 with any supportive services to help her care for the A. children.

14 124. Clark County DFS also failed to investigate multiple reports of abuse and neglect  
15 while the children were living at the Smith home. While visiting Jerome in the hospital in  
16 February 2005, the children's biological father observed bruises on Jerome. During another visit  
17 with all of the children, they told their father that they were being mistreated at the Smith home  
18 by both the foster mother and her adopted daughter, and that Ms. Smith would hit infant Jerome.  
19 Although the children's father made multiple reports to DFS of the abuse occurring in the Smith  
20 home, DFS did not investigate the reports, and let all five children remain in the home until  
21 Jerome was tragically scalded to death on April 3, 2005.

22 125. Despite the reports of abuse in the home and Ms. Smith's requests to have the A.  
23 children removed, Clark County DFS placed another infant in Ms. Smith's home in February or  
24 March 2005. At this time, Ms. Smith had seven children in her home: the five A. children, her  
25 adopted twelve-year-old daughter, and the new infant.

26 126. When she was originally licensed for foster care in August 2002, Ms. Smith was  
27 granted a license for only three female children, ages 11-18 years. On April 16, 2004, Ms. Smith  
28 was issued a Group Foster Home license for four male or female children, ages 0-17 years. On its

1 face, this license noted “there is only one bedroom allocated to foster children in this home.”  
2 Effective September 20, 2004, her capacity was increased to five beds, and effective January 4,  
3 2005, her capacity was increased to six beds. On April 1, 2005, just two days before Jerome’s  
4 death, her shelter care license for six beds was renewed.

5 127. Clark County DFS’s increases in the licensed capacity of Ms. Smith’s home did  
6 not take into consideration her training, abilities, or demonstrated record of caring for such a large  
7 number of foster children. Rather, it was based solely on the need for more shelter care beds in  
8 the county.

9 128. On April 3, 2005, Ms. Smith left the A. children at home alone with her teenage  
10 adoptive daughter. While Ms. Smith was at the hospital with her other foster infant, fourteen-  
11 month-old Jerome was scalded to death in the bathtub at the Smith home. At least two of  
12 Jerome’s siblings witnessed his death.

13 129. On November 8, 2005, the City of North Las Vegas filed criminal charges against  
14 Ms. Smith related to Jerome’s death. Smith ultimately pled guilty and is currently serving her  
15 sentence of a few months in a Clark County facility. Her foster care license was revoked.

16 130. The day after Jerome’s death, his five surviving siblings were placed at Child  
17 Haven. A few days later, all of the siblings except for King, who remained at Child Haven, were  
18 placed in another foster home. During their first week at this home, the children were left home  
19 alone at night multiple times. They were subsequently removed from this placement after less  
20 than two weeks and returned to Child Haven where they remained from April 2005 through May  
21 2006 – over a year and a month.

22 131. For the thirteen months the A. children were in Child Haven, they were subject to  
23 restrictive, overcrowded, oppressive conditions, and denied necessary services, resulting in  
24 deterioration of their mental and physical health and well-being. At the time when they most  
25 needed a caring environment, they were forced to give up their personal clothes and belongings;  
26 were required to wear communal clothing; were not allowed to attend school in the community  
27 for at least ten months; were given only limited visiting time with parents and relatives; and were  
28



1 subjected to a point-based discipline system inappropriate for children of their young ages —  
2 conditions that have lead Child Haven to be described as a “junior prison.”

3 132. After King was moved back to the infant building at Child Haven, he developed  
4 serious respiratory problems. His condition was so severe that he was not allowed to go outside,  
5 and had to have breathing treatments twice a day. He was in need of services that are mandated  
6 under 42 U.S.C. §1396a(a)(10)(A) as defined in 42 U.S.C. §§1396d(a)(5)(A) (physician services),  
7 1396d(a)(6) (medical care), and 42 U.S.C. § 1396d(a)(4)(B) (EPSDT). His condition persisted  
8 for over nine months before he was taken outside Child Haven to see a specialist.

9 133. At Child Haven the A. children were denied needed medical assistance to help  
10 them cope with witnessing the death of their infant brother, as well as the abuse and neglect they  
11 have experienced in their short lives. Jalen is the only child who has received any mental health  
12 services, and the little counseling he was provided at Child Haven was on an “as needed” basis  
13 and was inadequate to meet his needs. When the children’s aunt Tarrah asked Child Haven staff  
14 why the children were not receiving mental health services following the death of their infant  
15 brother, she was told by staff that Child Haven is “not a placement,” and because of this DFS  
16 does not have to provide them with any services while they are there.

17 134. Accordingly, the A. children went over a year without a comprehensive health or  
18 mental health assessment and therapeutic services, including counseling, medication management  
19 and monitoring, and physician and outpatient services, that were necessary to correct or  
20 ameliorate their health and mental health conditions, and rehabilitative services required to  
21 achieve the maximum reduction of physical or mental disability and restoration to the best  
22 possible functioning. These services are mandated under 42 U.S.C. § 1396a (a)(10)(A) as defined  
23 in 42 U.S.C. §§ 1396d(a)(4)(B), (a)(5)(A), (a)(2)(A), and (a)(13), as well as under 42 U.S.C. §  
24 1396a(a)(43)(B) & (C). Despite the trauma and grief they had experienced, Clark County DFS  
25 failed to provide or arrange for such services.

26 135. The A. children also received inadequate educational services while at Child  
27 Haven. Jalen and Sia, the two older children, never attended school in the community during the  
28 entire year and a month they were placed at Child Haven; they were only allowed to attend the

1 on-site school with other children living at Child Haven. Caleb and Roshaun were finally able to  
2 attend a school in the community for a half-day after they had been in Child Haven for over ten  
3 months.

4 136. Tarrah visited the children at Child Haven about every other weekend from April  
5 2005 through March 2006. However, in the Spring of 2006, a County DFS caseworker informed  
6 Tarrah that she could no longer visit with her nieces and nephews because it would give them  
7 “false hope.” The caseworker did not allow Tarrah a goodbye visit with the children nor did she  
8 allow Tarrah to explain to the children that she was not abandoning them, but rather it was the  
9 department’s decision to terminate her visits. The children now have no stable adult figure in  
10 their lives.

11 137. In May 2006, the children were moved from Child Haven to another foster home.  
12 This is the fifth placement change for Jalen, Sia, and Roshaun since they entered Clark County  
13 DFS custody in December 2004. It is Caleb’s fourth placement change, and King’s third  
14 placement change since entering foster care in December 2004, and they are all at risk of future  
15 placement changes, including being returned once again to Child Haven.

16 **C. The B. Children**

17 138. Eight-year-old Summer, six-year-old Frank, and five-year-old Toni B. are siblings.  
18 They have been in the legal custody of Clark County DFS since October 2002.

19 139. While in foster care, the B. children have been placed with a series of foster  
20 parents who were given little background information about the children and were not trained or  
21 supported to meet the children’s special needs. As a direct and foreseeable result, the children  
22 changed placements many times, with Frank and Summer experiencing between five and seven  
23 placements within three months. The children were also physically and emotionally abused in at  
24 least one foster home, and have been placed at Child Haven several times. In addition, Clark  
25 County DFS failed to conduct a proper investigation of reports of abuse of Summer and Frank,  
26 and failed to provide the children with needed health and educational services. For the first year  
27 that the children were in DFS custody, they were not represented by a guardian *ad litem*.  
28

1           140. On October 3, 2002, Clark County DFS assumed legal custody of then eleven-  
2 month-old Toni, three-and-a-half-year-old Summer, and two-year-old Frank when the children  
3 were brought to Child Haven by a baby sitter who reported that the mother had abandoned them.  
4 DFS petitioned the juvenile court to find the children abused and neglected based upon the  
5 mother's history of substance abuse, including having taken methamphetamine during her  
6 pregnancy with Toni, and the father's incarceration. The children were placed in the DFS  
7 licensed shelter home of Marilyn Paikai, where they lived for the next six months.

8           141. Upon their entry into foster care, all three children demonstrated multiple special  
9 needs. Frank suffered anxiety attacks and night terrors, and often banged his head from one side  
10 of the crib to the other in the middle of the night. His language skills were not developmentally  
11 appropriate for a child his age. Summer was physically aggressive toward her younger siblings,  
12 and her other behaviors suggested that she had been the victim of sexual abuse. One of  
13 Summer's foster parents took her to the doctor after she complained of "burning" on her  
14 "bottom," and the examination revealed that she had genital warts. Although her therapist  
15 subsequently reported to Clark County DFS that she suspected Summer had been sexually  
16 abused, DFS never investigated these concerns or reports. Toni was underweight and emotionally  
17 disturbed. Her behavior was self-abusive – pulling her hair out, banging her head on the walls  
18 and floor, and biting her arms. One mental health therapist described little Toni as "a bundle of  
19 raw nerves." Others suspected she suffered from Down Syndrome. She was hypertonic and was  
20 very difficult to console and relax.

21           142. On April 9, 2003, all three children were removed from Mrs. Paikai's shelter  
22 home, supposedly to be placed in a permanent placement. However, they stayed at their next  
23 foster care placement with the Jackson family for less than seven weeks before being moved  
24 again. At the time the children came to live with them, the Jacksons were newly licensed and had  
25 recently completed the foster parent training program. They had never cared for any other foster  
26 children, and had no experience or training in caring for children with the extent of special needs  
27 of Toni, Summer, and Frank. The Jacksons also had two young children of their own – ages three  
28 and six.

1           143. Almost from the first day the children were placed in the Jackson foster home, the  
2 foster parents began calling the caseworker asking for help with their care of the children. They  
3 did not know how to respond to the children's behaviors. Summer, for example, threw temper  
4 tantrums, forced herself to vomit, and attacked her younger brother.

5           144. Clark County DFS did not return the foster parents' calls nor did they provide any  
6 supportive services that might have enabled the Jacksons to continue caring for the children and  
7 prevented another disruption in the children's placement.

8           145. On May 26, 2003, the Jackson foster father called and asked Mrs. Paikai, the  
9 former shelter care mother, to provide them with respite by taking the children for the day. She  
10 agreed and the foster father dropped off the children at her home. When the time came for the  
11 foster father to pick up the children later that day, he refused to do so.

12           146. Mrs. Paikai then called Child Haven and reported that she had the children back in  
13 her home but had bed space only for one. Child Haven staff told Mrs. Paikai to keep the children  
14 and call back on Tuesday after the holiday weekend. The children remained in Mrs. Paikai's  
15 home until the following Friday when the caseworker picked up Summer and Frank, and decided  
16 that Toni would remain with Mrs. Paikai.

17           147. Toni remained in Mrs. Paikai's shelter home for more than two years – until  
18 August 2005 – when she was returned to her mother on a trial basis. During the entire time Toni  
19 was placed with Mrs. Paikai, her Clark County DFS caseworker made only one visit to the foster  
20 home to check on the well-being of Toni.

21           148. For the next three months, between June and August 2003, Summer and Frank  
22 were moved every two weeks from one foster home to another. Altogether they were moved five  
23 or six times in less than three months. After being moved five or six times, they went back to  
24 Child Haven for six weeks.

25           149. In each home selected by Clark County DFS, the foster parents were not  
26 adequately trained nor did they have the experience and skills to provide the type of intensive  
27 care that Summer and Frank required.

28

1           150. Frank was physically abused by the foster mother in one of the foster homes  
2 through which County DFS shuttled Summer and Frank between June and August 2003. In July  
3 2003, during a visit with their biological mother, the children told her that the foster mother was  
4 hitting them. Frank pulled down his pants and showed his mother a black and blue bruise on his  
5 left hip the size of a baseball. The mother called the caseworker in and told her about the bruise  
6 and what the children had said.

7           151. Following the mother's report of abuse in the foster home, the caseworker failed to  
8 take pictures of Frank's injury. The caseworker did not refer the report of abuse to an  
9 investigator, but instead took Summer and Frank out one at a time to talk to them. After these  
10 conversations with the children and without conducting any investigation, the caseworker took  
11 the children back to the same foster home the children had complained about. Upon returning the  
12 children to this foster home, the caseworker merely reminded the foster parent not to hit kids.

13           152. Several days after the children reported abuse in the foster home, the foster mother  
14 called and admitted to Mrs. Paikai that she had hit Summer; she insisted that Summer needed to  
15 be on medication to deal with her out of control behaviors. She also admitted that she punished  
16 Summer by making her lay in her bed for four or five hours during the day.

17           153. The very next morning after the phone call from the foster mother, Mrs. Paikai  
18 called the children's caseworker. She told her about the conversation she had with the foster  
19 mother and expressed her concerns for the safety of the children. Following this call, the  
20 caseworker removed Summer and Frank from the foster home – seven days after Frank showed  
21 the bruise to his mother and she reported it to the caseworker.

22           154. Upon removing the children from the abusive foster home, the caseworker asked  
23 Mrs. Paikai to keep them. However, Mrs. Paikai had no bed space available and was at her  
24 licensed capacity. Nonetheless, with the plea of the caseworker that there was nowhere else for  
25 the children to go, she agreed to keep them until the worker could find another home. While they  
26 were back with Mrs. Paikai, Summer and Frank told her that the foster mother threatened them  
27 with being sent back to Child Haven and told Summer that if she did not stop crying, staff there  
28 would pull her eyes out.

1           155.   Subsequently, Frank and Summer were placed with Mrs. Paikai's sister who was a  
2 licensed foster parent. In the new foster home, the children demonstrated much of the same  
3 behaviors and special needs that they had shown in the previous homes. Their new foster mother  
4 repeatedly called the caseworker for support with the care of the children but her calls, too, were  
5 never returned. For the entire two weeks the children were in this foster home no one from Clark  
6 County DFS came to check on the children or responded to the foster mother's pleas for help.

7           156.   With no support, assistance, or response to her pleas for help, the foster mother  
8 took the children to a therapist's office in search of some assistance. When the therapist called  
9 the caseworker, she told her to take the children back to Child Haven. Following these  
10 instructions, the therapist transported the children back to Child Haven, where they remained for  
11 another five weeks.

12           157.   In August 2003, Summer and Frank were placed in the therapeutic foster home of  
13 Rosie and Robert Beck. They lived in this home for two years.

14           158.   At the end of August 2005, Clark County DFS returned all three children to their  
15 mother — while maintaining legal custody. DFS did not perform the requisite safety assessment  
16 prior to placing the children with their mother. Indeed, at the time the decision was made, the  
17 caseworker stated that she was "95% certain that placement back with the mother will fail." By  
18 doing so, Defendants greatly increased the danger to the B. children by taking the affirmative step  
19 of removing them from a safe placement and placing them in a dangerous living situation.

20           159.   During the "trial" time with their mother, the children's educational, mental health,  
21 and medical needs went unmet. For the entire time that Toni lived with her mother she was not  
22 enrolled in, nor did she attend one day of, school. She had previously been enrolled at the early  
23 Program for Delayed Children of Clark County, and was receiving special education services,  
24 weekly speech therapy, and occupational therapy. While living with her mother, she did not  
25 receive any of the special education or related services she had been receiving. As a result,  
26 Toni's speech, behavior, and educational progress deteriorated significantly. Her speech became  
27 unintelligible. Her medical needs also went unmet.

28

1           160. In October 2005, while back with her mother, Clark County DFS received a report  
2 that Summer had a suspicious burn on her thigh. Upon information and belief, this report was not  
3 properly investigated. School authorities also reported concerns about Summer, and that she was  
4 missing many days of school. On several occasions during this “trial visit” with their mother, the  
5 children were caught in the middle of domestic violence between their mother and her boyfriend.

6           161. On January 6, 2006, the trial placement with the children’s mother was abruptly  
7 ended, and Toni, Summer, and Frank were returned to foster care. Upon information and belief,  
8 the removal of the children was prompted by the mother’s failing a drug test and calls from  
9 Summer’s school reporting that the children were being left alone.

10           162. The return of the children to foster care was handled in a manner inconsistent with  
11 the safety, needs, and well-being of the children and in violation of professional standards and  
12 common sense. After a loud and disturbing argument and struggle with their mother in front of  
13 the B. children, the caseworker put the children in her car. She then called Summer and Frank’s  
14 former foster parent, Rosie Beck, and asked her to meet her at a major intersection in Las Vegas.  
15 The caseworker then drove into a parking lot and handed off the children to Mrs. Beck. Summer  
16 refused to get out of the car until the caseworker told her that she would be taken to Child Haven  
17 if she did not go with Mrs. Beck. The caseworker provided the foster mother with no paperwork  
18 or authorization to care for the children.

19           163. Upon the children’s return to foster care in January 2006, the Clark County DFS  
20 caseworker did not contact Mrs. Paikai to ask if she would resume care of Toni and her siblings.  
21 DFS refused to place Toni in the foster home in which she had spent most of her life, despite the  
22 repeated requests of Mrs. Paikai. Instead, the agency placed the children with foster parents who  
23 are in their sixties and have three other special needs children. Despite the advice of Toni’s  
24 physician that it was in Toni’s best interest to continue contact with Mrs. Paikai and her husband,  
25 DFS has cut off all contact between Toni and the Paikais.

26 **D. Donna C.**

27           164. Six-year-old Donna C. has been in the legal custody of Clark County DFS since  
28 December 2004. She is currently placed in a DFS licensed foster home.

1           165. Since Clark County DFS assumed custody of Donna, she has been denied  
2 necessary and appropriate medical, dental, and mental health care; removed from a foster home in  
3 which she was receiving exemplary care; and subjected to mental and emotional harm. In  
4 addition, she has at no time been represented by a guardian *ad litem* or attorney. She has had no  
5 legal representation at court hearings, staffings, Child and Family Team meetings, or in any other  
6 decision-making meetings held by DFS at which decisions were made about her placement,  
7 treatment, and/or permanent plan.

8           166. Donna was removed from the custody of her mother and placed in foster care due  
9 to her mother's addiction to drugs, multiple child molestation allegations her mother had made  
10 against multiple partners, lack of stable living accommodations, her mother's criminal history  
11 (which included serving four years in federal penitentiary for the sale and possession of cocaine),  
12 and a Florida juvenile court's removal of Donna's older sister from her mother's care and  
13 custody.

14           167. In 2005, Donna was returned to her mother on a trial visit with Clark County DFS  
15 retaining legal custody. Upon information and belief, before Donna was reunited with her  
16 mother, DFS failed to complete a safety and risk assessment. After Donna's placement back with  
17 her mother, DFS failed to make regular visits to the home and monitor her care, safety, and well-  
18 being. Upon information and belief, DFS also failed to provide services to Donna and failed to  
19 continually assess whether her mother had achieved the goals and objectives of the case plan.  
20 Shortly after Donna was placed back with the mother, her assigned caseworker left or was  
21 reassigned and no other DFS caseworker was assigned to Donna's case for several months. By  
22 making this placement change without any safety assessment or monitoring, Defendants greatly  
23 increased the danger to Donna by taking the affirmative step of removing her from a safe  
24 placement and placing her in a dangerous living situation.

25           168. While Donna was living with her mother, her mother stole a car, left Nevada with  
26 Donna, and began traveling throughout the United States and Canada. For three or more months,  
27 Donna lived in the stolen car with her mother and was subjected to a series of traumatizing  
28 events. Her mother drove from one state to another, evading authorities and engaging in illegal



1 conduct including the purchase of illegal drugs. Donna was often forced to accompany her  
2 mother into truck stop bathrooms in which she witnessed her mother buy, sell, smoke, snort, and  
3 inject drugs. Donna also endured mental torment and torture. She was terrorized by her mother's  
4 paranoia and began herself to believe and participate in it. For example, she was not permitted to  
5 drink water because her mother was convinced that all water was poisoned by the "cult." She  
6 frequently had Donna crawl under the car to look for a global tracking device she believed the  
7 "cult" had put there.

8 169. During the months Donna was with her mother, she went without food and water  
9 for long periods of time. She developed an eating disorder characterized by excessive chewing of  
10 her food, failing to swallow it, and then gagging. She was confined to the car for long periods of  
11 time and denied exercise and play.

12 170. While in the care of her mother, Donna was repeatedly exposed to domestic  
13 violence in which she was often caught in the middle of physical fights between her mother and  
14 her mother's boyfriend. From a very early age, Donna's mother told her that she had been  
15 sexually molested by members of the "cult."

16 171. As a result of her months of living with a severely emotionally disturbed and drug-  
17 addicted mother, Donna suffered long-lasting harm, the full impact of which is not yet known.

18 172. In December 2005, Donna's mother was arrested in New Mexico and charged with  
19 auto theft. Law enforcement authorities in New Mexico discovered that Donna was in the  
20 custody of Clark County DFS and made arrangements to have her returned to Las Vegas.

21 173. On December 12, 2005, Donna was returned to Las Vegas. She was taken by a  
22 DFS caseworker from the airport directly to the foster home of Ernest and Jacquelyn Romero.  
23 When she arrived at the Romero home, she had nothing but a small bag of severely worn clothing  
24 stained with cat urine and feces. She had no toys, and not even an extra pair of clean underwear.

25 174. Since County DFS was not visiting Donna while she was placed with her mother  
26 or otherwise monitoring her care, several months went by before DFS discovered that Donna had  
27 been abducted. Indeed, DFS first learned that Donna was no longer in Las Vegas when they were  
28 contacted by New Mexico authorities in December 2005.

1           175. Three days before her placement in the Romeros' home, a Clark County DFS  
2 caseworker contacted them to ask if they would accept Donna. Although Donna had been in  
3 foster care before her abduction by her mother, DFS provided almost no information about  
4 Donna, other than her age, to the prospective foster parents. They were told that Donna had no  
5 known behavioral problems or sexual abuse history.

6           176. Upon her return to foster care, Donna weighed approximately thirty pounds. Her  
7 bones were sticking out; she appeared anorexic. Her muscles were atrophied as a result of sitting  
8 in the car for days at a time.

9           177. Despite her physical condition and the trauma she experienced, Donna was denied  
10 medical assistance for services needed to cope with her ordeal. Medicaid-covered services were  
11 requested by her foster parents, but not provided, arranged, or paid for by Defendants.

12           178. In particular, Clark County DFS failed to provide or arrange for the provision of a  
13 comprehensive health and mental health assessment of Donna when she returned to foster care.  
14 Donna's caseworker told the foster parents a few days after Donna was placed with them that she  
15 needed a comprehensive assessment, but Clark County DFS did not arrange directly or through  
16 referral to appropriate individuals for such an assessment. Comprehensive health and mental  
17 health assessments are among those services mandated under 42 U.S.C. § 1396a(a)(10)(A) as  
18 defined in 42 U.S.C. §§ 1396d(a)(4)(B) and under 42 U.S.C. § 1396a(a)(43)(B). However, even  
19 after repeated requests, the Romeros did not receive a Medicaid card for Donna until several  
20 months after she was placed in their home.

21           179. Clark County DFS also failed to provide or arrange for health and therapeutic  
22 services, including counseling, medication management and monitoring, and physician and  
23 outpatient services, that were necessary to correct or ameliorate Donna's health and mental health  
24 conditions, and rehabilitative services required to achieve the maximum reduction of physical or  
25 mental disability and restoration to the best possible functioning. These services are mandated  
26 under 42 U.S.C. § 1396a(a)(10)(A) as defined in 42 U.S.C. §§ 1396d(a)(4)(B), (a)(5)(A),  
27 (a)(2)(A), and (a)(13), as well as under 42 U.S.C. § 1396a(a)(43)(C). Donna needed such  
28 services to help her cope with the harm caused by months of living with her severely mentally ill

1 mother. Despite her foster parents' repeated requests for help, she was placed on a waiting list for  
2 several months. Almost four months elapsed before she was seen by any mental health  
3 professional.

4 180. While in the Romero home, Donna flourished and began to recover from the  
5 harms she had suffered while on the road with her mother. When she came to the Romero home,  
6 Donna did not know her ABCs, or numbers. With the daily help of the foster mother, Donna  
7 made great strides.

8 181. The Romero home is the type of foster home Clark County DFS should retain and  
9 try to replicate, if possible. The Romeros possess the attributes foster families need to help  
10 children brought into foster care. The Romeros are licensed as a flex family, meaning they are  
11 dually licensed as an adoptive and foster home. The Romeros wanted to adopt Donna, and  
12 conveyed this to DFS. However, they were also prepared to provide her with a stable foster care  
13 home even if adoption was not the placement goal.

14 182. On or about April 25, 2006, a hearing was scheduled in the Clark County District  
15 Court to review Donna's case and to determine, among other things, if a petition to terminate  
16 parental rights should be filed. Prior to this hearing, Donna's foster parent sent a letter to the  
17 juvenile court judge presiding over Donna's case. In her letter, Mrs. Romero described Donna's  
18 condition when she arrived at the foster home, their concerns for her safety and well-being, and  
19 the progress she had made since she came to live with them. She expressed her concerns about  
20 Donna's safety if returned to her mother, based on Donna's statements and information that her  
21 mother herself had shared about her drug abuse history. Finally, she asked the court to consider  
22 revising Donna's visitation plan to ensure that her mother could not leave town with her again.

23 183. On May 4, 2006, Mrs. Romero was summoned to a meeting at Clark County DFS  
24 where for two hours she was confronted and criticized by five members of the DFS staff for  
25 having written a letter to the juvenile court judge in Donna's case. Donna's caseworker was upset  
26 that Mrs. Romero wrote the letter without asking DFS for permission. The caseworker retaliated  
27 against the Romeros by beginning to plan for Donna's removal from their home despite the fact  
28 that she was receiving exemplary care.

1 184. For Donna's birthday, her foster parents were planning a party. It would have  
2 been the first birthday party Donna had ever had. They told the caseworker about the party, and  
3 asked that any placement changes of Donna be postponed until at least after her birthday party.  
4 The worker refused. She removed Donna from the Romeros' home ten days after the meeting at  
5 DFS and just before her birthday.

6 185. Donna's therapist advised the County DFS caseworker that removing Donna from  
7 the Romero home would be harmful and detrimental to Donna's well-being. During the almost  
8 six months Donna was living with the Romeros, she developed an attachment not only to the  
9 foster parents, but also to their seven- year-old daughter. As a direct and foreseeable result of the  
10 abrupt, unplanned, and wholly unjustified removal of Donna from the Romero home, she suffered  
11 significant mental distress and emotional harm.

12 **VII.**

13 **CLARK COUNTY'S CHILD WELFARE**  
14 **SYSTEM IS DESPERATELY IN NEED OF REFORM**

15 186. Defendants have long known of the urgent need for systemic reform of Nevada's  
16 child welfare system. Numerous reports have demonstrated that the system fails to protect and  
17 actually affirmatively harms many of Nevada's abused and neglected children. The failures of  
18 Clark County's child protection and foster care system have been open and notorious for years.

19 187. In December 2003, DHHS/DCFS officials submitted a Statewide Assessment of  
20 Child Welfare as part of the federally mandated Child and Family Services Review. That  
21 assessment begins with state officials' affirmation that State DCFS "is responsible for ... foster  
22 care, adoptions and other child welfare services." *CFSR Statewide Assessment* at 4. The  
23 Assessment notes deficiencies in Clark County's child welfare program, including absence of  
24 case plans and infrequent caseworker visits to foster homes.

25 188. Between February 2004 and August 2006, local newspapers and television stations  
26 in Las Vegas reported on the child abuse or neglect deaths of more than twenty-four children in  
27 Clark County. A substantial number of these children were in foster care with Clark County  
28 DFS, had an open child protective services case with DFS at the time of their death, or had a

1 history of involvement with child protective services and a case that had been closed by DFS  
2 despite strong indications that the child was at risk.

3 189. In 2004, Federal DHHS conducted a performance review of Nevada's child  
4 welfare system. The 2004 Federal Review, referred to as a Child and Family Service Review  
5 ("CFSR"), was designed to determine whether Nevada's child welfare system substantially  
6 complies with the requirements of the "State's Plan for Title IV-E of the Social Security Act  
7 Foster Care" and meets children's needs for safety, well-being, and permanency. During the  
8 CFSR review process, Federal DHHS identified numerous concerns related to Clark County's  
9 child welfare system, as discussed below.

10 190. In October 2005, State DCFS conducted a review of a sample of child welfare  
11 cases from Clark County DFS. The 2005 County Case Review assessed DFS performance in  
12 protecting child abuse victims and foster children from harm, achieving permanent placements for  
13 them, and promoting their physical and emotional well-being. The children whose cases were  
14 reviewed included children in foster care and children left in their home after a report of  
15 suspected abuse/neglect. The case review instrument used by State DCFS was adapted from the  
16 tool used by Federal DHHS for the CFSR in 2004.

17 191. In six of the seven outcome measures used to assess Clark County DFS's  
18 protection and care of children, reviewers found that DFS failed to achieve a minimally  
19 acceptable level of performance. More specifically, the 2005 County Case Review found that  
20 DFS failed to conduct appropriate assessments prior to removing children from their homes or  
21 returning them to their homes, failed to conduct legally required visits with foster children, failed  
22 to address the educational needs of children in foster care, and failed to ensure that foster children  
23 received needed health care and mental health services.

24 192. Many of the findings of the 2005 County Case Review were corroborated by a  
25 more recent review of child abuse cases in Clark County. In December 2005, after several  
26 meetings with plaintiffs' counsel, Nevada DHHS began an analysis of Clark County's alarming  
27 child fatality data. Based on concerns relating to child welfare practices raised by this  
28 preliminary analysis of fatality data, State DCFS contracted with the National Center for Child

1 Death Review to conduct an in-depth study of 79 suspected child abuse/neglect deaths that  
2 occurred between 2001 and 2004. A panel of child welfare experts from outside Nevada was  
3 hired to manage the review process.

4 193. In its 2006 Child Fatality Report, the panel made numerous findings regarding  
5 systemic problems, including: failure to respond to hotline calls promptly, failure to conduct  
6 appropriate safety assessments, and failure to substantiate reports of abuse and neglect that should  
7 have been substantiated. The panel also identified significant deficiencies relating to case  
8 practices, including: failure to make monthly visits with foster children, failure to provide  
9 children and families with needed services, and failure to prepare service or safety plans for  
10 children and families. In addition, the panel noted that there was inadequate training for  
11 caseworkers and that the system did not have adequate resources and staffing to meet children's  
12 needs.

13 194. On August 11, 2006, Federal DHHS took the unusual step of informing the State  
14 of Nevada that it intended to renegotiate the State's Program Improvement Plan due to worsening  
15 conditions for abused and neglected children in Clark County. Federal DHHS's rationale for  
16 taking this step included that there were "[s]erious deficiencies in the State's child welfare  
17 program, most specifically Clark County" and that there was "[c]onsistent overcrowding at Child  
18 Haven and recent tragedies involving children in foster care." August 11, 2006 Letter from  
19 Sharon M. Fujii to Defendant Willden. Federal DHHS further stated that "the manner in which  
20 the continuum of child welfare services is managed in Clark County should be a grave concern to  
21 the State and should be addressed by the State in its administration and supervision of the  
22 program." *Id.* The letter demanded revisions in the State's Program Improvement Plan "that  
23 specifically address the ongoing concerns regarding Clark County." *Id.*

24 195. Subsequently, Defendants Willden and Serrano wrote a letter to Defendant Morton  
25 acknowledging that "many hours have been directed towards several efforts in hopes of  
26 improvement [in Clark County's child welfare system]." August 30, 2006 letter from  
27 Defendants Willden and Serrano to Defendant Morton. The letter further stated that:  
28

1 we continue to receive information indicating serious deficiencies  
2 with the [child welfare] system ...; the existing level of effort to  
3 correct system deficiencies is not adequate; [and] that despite lists  
of corrective action plans ... still we have major failures.

4 *Id.* Defendants' letter underscores State Defendants' knowledge of and concern about the serious  
5 failures in Clark County's child welfare system.

6 196. On August 31, 2006, Defendant Willden responded to Federal DHHS, describing a  
7 number of steps that State Defendants were taking to improve Clark County's compliance with  
8 federal child welfare mandates. August 31, 2006 Letter from State Defendant Willden to Sharon  
9 Fujii. He refers to plans developed for compliance with Title IV-E and the CAPTA. *Id.* Implicit  
10 in this correspondence is Defendant Willden's concession that Nevada DHHS and State DCFS  
11 are responsible for ensuring Clark County's compliance with federal laws.

12 **A. Abused and neglected children in Clark County are placed in an unlicensed,**  
13 **overcrowded, and unsafe facility for extended periods of time**

14 197. Defendants' failure to recruit, train, support, and retain a sufficient number of  
15 foster homes has resulted in over reliance on Child Haven, a large, unlicensed congregate care  
16 facility in Las Vegas. Nearly all children who have been removed from the homes of their  
17 parents because of suspected abuse or neglect are first taken to Child Haven. Children frequently  
18 are forced to stay at Child Haven for long periods of time because there are no available beds at  
19 foster family shelter homes.

20 198. Upon admission to Child Haven, children are stripped of their clothes and all  
21 personal belongings. Throughout their stay at Child Haven, children are not permitted to wear  
22 their own clothes – not even their own underwear – but are periodically issued clothes and shoes  
23 from a communal pile of clothing. Oftentimes the clothes and shoes do not fit, and may not even  
24 match the child's gender.

25 199. Children placed at Child Haven are forced to live in overcrowded buildings where  
26 they sometimes sleep on the floor, are not provided with the health, educational or therapeutic  
27 services they need, and often act out their justifiable rage at being treated neglectfully. Their  
28

1 basic emotional needs are not met and they are not given even basic information about the plans  
2 the agency has for them.

3 200. Child Haven is an unsafe place for children. A growing number of children with  
4 significant behavioral and emotional/mental health problems are placed at Child Haven without  
5 adequate therapeutic services to meet their needs. In addition, older teens, some with a history of  
6 delinquent behavior, reside on the same campus, in close proximity to and sharing some common  
7 areas with toddlers and elementary school age children.

8 201. For years, Defendants have failed to address the problem of runaways from Child  
9 Haven. Some youth are allowed to “walk away” from the facility when behaviors escalate to a  
10 point that staff determine that it is in the best interests of other children at Child Haven that they  
11 be allowed to run away. While on runaway, these youth have engaged in dangerous, sometimes  
12 life-threatening behaviors. During August 2006, a youth who had run away seven times from  
13 Child Haven was murdered on the streets of Las Vegas. Clark County DFS has done little to  
14 address the chronic problem of runaways from Child Haven thus placing children and youth at  
15 substantial risk of harm.

16 202. In 2004, federal reviewers found that “there is no monitoring or oversight process  
17 for Child Haven.” This finding and the continued operation of Child Haven without a license,  
18 they concluded, was a violation of federal mandates that the State of Nevada develop and  
19 implement standards to ensure that children in foster care are provided with quality services that  
20 protect the safety and health of children.

21 203. Following another site visit by federal officials to Child Haven in the summer of  
22 2006, federal officials notified Defendants that “the situation (at Child Haven and within other  
23 parts of Clark County’s child welfare system) had worsened since the on-site visit” in February  
24 2004. Federal officials concluded that “immediate and ongoing attention” was needed to ensure  
25 the safety, permanency, and well-being of children placed at Child Haven.

26 204. During the last couple of years, a number of factors have compounded the  
27 inevitable risk and harm to children admitted to Child Haven. The problems resulting from  
28 chronic, increasingly severe overcrowding are exacerbated by the admission of children and



1 youth with ever more serious and challenging behaviors, the agency practice of compelling staff  
2 from other sections of the agency to work overtime at the buildings, the use of untrained  
3 volunteers, and the failure to provide children with the necessary assessments and therapeutic  
4 interventions to meet their needs.

5 205. Federal law forbids the use of federal funds for institutions caring for more than  
6 twenty-five children. As a result, Clark County does not receive any federal funds to defray the  
7 \$9 million per year that it costs to support the 6,000 children that pass through or reside at Child  
8 Haven in a year. Despite this fact, federal officials notified Nevada that “[w]hile Child Haven  
9 placements are not eligible for Title IV-E reimbursement, the children placed in this unlicensed  
10 congregate facility are the responsibility of the State of Nevada not just Clark County.”

11 206. Current social science research provides substantial evidence that the care children  
12 and youth receive in group care and shelters like Child Haven is far more expensive and less  
13 beneficial than care provided in foster family homes. As Richard Barth, the current Dean of the  
14 School of Social Work at the University of Maryland wrote recently, “[c]ounties across the  
15 United States have been closing child welfare shelters – at times, as a result of court orders – but  
16 mostly because it is humane and cost effective...The money [spent to operate large shelters like  
17 Child Haven] could be more effectively spent in recruiting and providing training and support for  
18 foster caregivers.”

19 1. Child Haven has been chronically overcrowded for years

20 207. Child Haven was designed to be a temporary shelter while children await  
21 placement with their relatives or in a more family-like setting. Child Haven’s campus consists of  
22 eight buildings and an on-grounds school. One building is used for visits between parents and  
23 children and/or administrative purposes; it is not used to house children. Each of the seven  
24 buildings used to house children has a capacity for 12 children except for the infants’ building,  
25 which has a capacity for 20 infants. Accordingly, Child Haven currently has a total capacity for  
26 92 infants, children, and youth.

27 208. Despite its large size, Child Haven is chronically overcrowded, with many of the  
28 buildings housing more than twelve children. Overcrowding has been tolerated for years. For all

1 but a few months since January 2003, the number of children housed at Child Haven has  
2 exceeded capacity. The average daily population has been as high as 160 children or higher, and  
3 has frequently been 146 or higher.

4 209. The overcrowding at Child Haven has worsened since October 2005, most recently  
5 reaching more than 220 infants, children, and youth. Overcrowding in the Agassi building –  
6 reserved for a maximum of twenty newborns and infants – is endemic. During the first week of  
7 April 2006, there were 56 infants in several buildings at Child Haven.

8 210. In recent months the situation has become so dire that the staff lunch room was  
9 converted into an annex for infants. Cribs were stacked one against the other in a room not  
10 intended or designed for the care of infants.

11 211. Overcrowding at Child Haven is not limited to the infant and toddler buildings.  
12 On December 9, during a “special evening inspection” of Child Haven by the Clark County  
13 Health Department, the inspector noted overcrowding in the Bigelow building. The Bigelow  
14 building is for boys between the ages of five and ten. Instead of the usual 18 children, on that  
15 evening there were 26 children being housed in the building. Several children had no bedroom,  
16 and were forced to sleep on the floors of the common areas of the building. These children slept  
17 on mats placed on the floor.

18 212. Most recently, the federal government weighed in on the chronic overcrowding at  
19 Child Haven. As of June 30, 2006, there were 205 children living at Child Haven, over half of  
20 whom were between the ages of 0-4. Federal DHHS stressed the need to develop immediate  
21 strategies to address this and other problems at Child Haven.

22 2. Conditions at Child Haven endanger children and do not promote their well-being

23 213. Overcrowding at Child Haven has contributed to and exacerbated the frequency  
24 and severity of outbreaks of infectious and communicable diseases among the children placed  
25 there. On August 1, 2005, the Clark County Health Department reported an outbreak of hand-  
26 foot-mouth disease. A September 30, 2005 Health Department survey reported a concern of  
27 possible Methicillin-resistant Staphylococcus aureus (MRSA) among children in Child Haven.  
28 On that occasion, a two-year-old boy was found to have an MRSA infection of the eye and a 10-

1 month-old girl suffered an infection on her buttocks. The boy was taken to Sunrise Hospital for a  
2 culture to determine if the suspected infection was MRSA, but was returned to the Child Haven  
3 building before the culture results were obtained thus exposing other children to the risk of  
4 infection.

5 214. In addition to these health concerns, there are also no standards in place to ensure  
6 that children's health, mental health, and educational needs are met. No individual assessments  
7 of children's needs are conducted while they are placed at Child Haven, and as a result, their  
8 treatment needs go unidentified and neglected and informed decision-making to select the child's  
9 next placement does not occur.

10 215. Clark County DFS considers Child Haven to be a temporary placement even  
11 though many children stay for weeks, months, and years at a time. Because of the purported  
12 short-term nature of the placement, DFS does not arrange for or provide services for many of the  
13 children in need of special treatment and services.

14 216. Children who are discharged from Child Haven are not prepared for what is ahead.  
15 A child is given little or no explanation of where they are being placed and who will be their next  
16 caregiver. They are given no opportunity to meet the caregiver before being abruptly transferred  
17 to the next placement. They have no voice in the selection of the placement.

18 3. Placement of infants and toddlers at Child Haven is harmful, contrary to the  
19 overwhelming opinion of mental health, child development and child welfare  
20 experts, and contrary to federal and state mandates

21 217. Infants entering foster care have very high rates of risk factors for  
22 psychopathology, medical illnesses, and developmental delays, and consequently have extensive  
23 service needs. Sixty to eighty percent of young children entering care have at least one medical  
24 illness and twenty-five percent have three or more chronic conditions. As many as three-quarters  
25 of young children in placement need further developmental evaluation or have a developmental  
26 delay.

27 218. Infants and toddlers, in particular, are most susceptible to long-term detrimental  
28 effects as a result of placement, even for relatively short periods of time, in institutions. The first

1 three years of a child's life are the most critical period for brain development, as this is the time  
2 when the brain is in an unparalleled time of developmental change.

3 219. Infants and toddlers need the presence of a primary caregiver to form an  
4 attachment to in order to develop normal emotional bonds and socialization skills. Having  
5 already suffered the trauma of abuse and neglect by a primary caregiver, they have an even  
6 greater need for a stable, nurturing, individual caregiver.

7 220. Children in Child Haven end up interacting with a multiple shift-work staff. At  
8 Child Haven, infants and young children receive care from an ever-changing and large number of  
9 different caretakers, which is contrary to their well-being and harmful to their development.  
10 There is no one person who provides consistent care for each infant. It is estimated that in a  
11 week, an infant may have as many as twenty different caregivers. Staff, though well-meaning,  
12 are simply unable to respond to each child's individual cues and unable to attend to each child's  
13 individual needs. Shelter care institutions like Child Haven tend to be more concerned with the  
14 children's physical care and establishment of routine, rather than the development of appropriate  
15 social interaction, language development, and autonomy.

16 221. The placement of infants and toddlers in Child Haven is at odds with the mandate  
17 of federal law that children in foster care must be placed in the least restrictive, most family like  
18 setting consistent with the best interest and special needs of the child.

19 222. Placement of infants and toddlers in Child Haven runs counter to the  
20 overwhelming opinion of experts in the field of child welfare, infant mental health, and child  
21 development. It is also against the overwhelming weight of current social science and infant  
22 mental health research. That research confirms that children living in institutions like Child  
23 Haven tend to suffer from motor and language delays and display a lack of attachment and sense  
24 of trust, a restricted range of emotion expressions, and an absence of social play. In comparison  
25 to children placed in foster family homes, these children show poorer development and social  
26 emotional functioning.

27 223. Clark County DFS's practice of placing infants at Child Haven also is inconsistent  
28 with its own determination, as stated in a 2004 Clark County Audit Department report, that

1 “based on research ... infants and small toddlers under 3 years of age ... have been shown to do  
2 better in a home with consistency in their caregivers versus those placed in an institution.”

3 4. Children remain housed at Child Haven for months and sometimes years

4 224. Child Haven is intended to be a short-term placement for children taken into  
5 custody. Clark County DFS policy specifies that children are not to be placed in the shelter for  
6 longer than two weeks. Despite this policy, many children, including infants and toddlers, remain  
7 in Child Haven for long periods of time.

8 225. In 2004, community stakeholders interviewed as part of the federal CFSR  
9 expressed concerns about the number of infants and very young children who are placed in Child  
10 Haven and who remain in the shelter for long periods of time.

11 226. As of June 2006, the average length of stay was 45 days, with many children  
12 remaining at Child Haven for three to six months, and sometimes a year or longer. According to  
13 Federal DHHS, one child had been living in Child Haven for over two years.

14 5. Child Haven operates without the required license

15 227. Although Nevada law requires all child care facilities operating in the state to  
16 obtain a license from the appropriate government agency before accepting children, Child Haven  
17 has operated for years without a license. Child Haven as also never complied with the licensing  
18 standards and regulations for child care facilities established by Las Vegas and the State of  
19 Nevada.

20 228. More than two years ago, as part of a federal CFSR, reviewers noted that Child  
21 Haven operated without the necessary license. State and County Defendants were directed as part  
22 of the State’s Program Improvement Plan to ensure that Child Haven met all applicable licensing  
23 requirements. A deadline of January 31, 2006, was established for compliance with this provision  
24 of the PIP. Child Haven was not licensed as of January 31, 2006, and continues to operate in  
25 violation of the applicable licensing statutes, regulations, and standards.  
26  
27  
28

1           6.       Staffing and training at Child Haven are woefully inadequate

2           229.     Buildings at Child Haven are staffed by a combination of full-time employees,  
3 part-time staff, temporary employees, and volunteers. “Child Development Specialists” staff  
4 each of the buildings working in three shifts around the clock.

5           230.     Direct care staff receives a mere two days of training in what the agency calls the  
6 Child Haven Active Teaching Treatment Approach (CHATTA). During what amounts to no  
7 more than twelve hours of actual training, staff receive half-hour segments on such subjects as  
8 principles of behavior, relationship building, youth rights, and working with the school.  
9 Furthermore, the CHATTA model has little or no empirical basis and its use with all age groups  
10 of children is inappropriate.

11           231.     The number and qualifications of staff at Child Haven are inadequate to ensure the  
12 care, protection, and well-being of children at the facility. Overcrowding at Child Haven has led  
13 to requests and/or demands from the DFS director that other DFS staff not employed at Child  
14 Haven volunteer for duty at Child Haven. Clark County DFS caseworkers who are encouraged or  
15 coerced into volunteering to staff Child Haven are not trained in the care or supervision of the  
16 infants, children, and youth at the facility, thus placing those children at risk.

17       **B.     Defendants’ failure to conduct proper child abuse and neglect investigations and**  
18       **make reasonable efforts to keep children safely at home is harmful to children**

19           232.     Multiple studies of casework practices in Clark County have indicated that DFS is  
20 failing to conduct adequate investigations of allegations of child abuse and neglect.

21           233.     In the October 2005 County Case Review conducted by State DCFS, the reviewers  
22 found that children were removed from home without conducting a safety assessment to  
23 determine whether they could remain safely at home with the provision of supervision and  
24 services to the family. The review also found that Clark County DFS failed to conduct ongoing  
25 safety and risk assessments to monitor children left in their homes.

26           234.     These findings were reinforced in the 2006 Child Fatality Report prepared by the  
27 National Center for Child Death Review. The panel concluded that Clark County DFS has failed  
28 to investigate numerous child deaths despite evidence of substance abuse, prior substantiations,

1 significant neglect, and lack of supervision; failed to perform timely safety assessments relating  
2 to other children living in the home following a child death; and failed to substantiate numerous  
3 reports of abuse and neglect that should have been substantiated. The panel also found that DFS  
4 failed to respond to hotline calls promptly, leaving some callers on hold for over 55 minutes and  
5 resulting in 27% dropped calls.

6 235. Based on the federal Program Improvement Plan review and a recent on-site visit  
7 to Clark County, Federal DHHS again echoed findings in previous reports of severe problems  
8 with CPS investigations in Clark County. Federal DHHS concluded that Clark County does not  
9 have a 24 hour, seven day a week Child Protective Services Response team, which results in  
10 many children being unnecessarily removed by law enforcement and taken directly to Child  
11 Haven. Children who are removed from their homes by law enforcement are not provided with a  
12 safety or family risk assessment. Moreover, Federal DHHS noted that employees staffing the  
13 child abuse hotline have been deployed by the shelters to handle shelter intake, resulting in even  
14 longer waits and hotline calls going unanswered.

15 236. Child abuse investigations often are not completed within a reasonable time thus  
16 placing children who are the subject of such reports and their siblings at tremendous risk. In  
17 recent months, there have been more than 340 investigations that are still pending and unresolved  
18 more than 45 days after the initial report of suspected abuse or neglect was received by Clark  
19 County DFS.

20 237. In addition to inadequate investigations, Clark County DFS has also failed to make  
21 reasonable efforts to ensure that families receive services that would allow children to remain  
22 safely in their homes. Federal DHHS has found that “there is an inadequate array of services to  
23 prevent placement by providing in-home family support services that are integrated and facilitate  
24 the ability of children to remain in their own homes or return home in a timely manner.” August  
25 11, 2006 Letter from Sharon M. Fujii to Defendant Willden.

26 238. Nevada’s Court Improvement Program workgroups have also identified the overall  
27 lack of services as a significant problem, and identified three areas in which services are  
28 particularly needed: substance abuse, mental health, and developmental delays. Courts in Nevada

1 have begun levying fines on State and county agencies for failing to provide children and families  
2 with needed court-ordered services.

3 **C. Defendants fail to place children in safe, appropriate, stable foster home placements**  
4 **and supervise and support those placements**

5 239. Defendants' over-reliance on Child Haven is fueled, in part, by their failure to  
6 recruit an array of suitable foster homes to meet the needs of Nevada's abused and neglected  
7 children.

8 240. Clark County DFS also fails to follow up on foster and adoptive parent inquiries  
9 from its own recruitment campaigns. A recent recruitment campaign received 1,340 inquiries,  
10 but only resulted in 24 new foster homes. Many inquiries from prospective foster parents were  
11 not pursued in a timely manner.

12 241. Clark County DFS has failed to devote the staff and other resources necessary to  
13 recruit, train, and retain an adequate number of foster parents to meet the needs of children in  
14 foster care. Clark County has only one full-time foster parent recruiter and one foster parent  
15 trainer. Washoe County, with one-fourth the number of children in foster care, has three full-time  
16 recruiters and three full-time trainers. Clark County DFS continues to employ the same  
17 recruitment strategies from year to year with the same poor results.

18 242. Due to the shortage of foster homes, children are often placed wherever an open  
19 bed exists, rather than in homes that meet their needs. Little effort is made to assess children's  
20 needs before placing them in a foster home or to match them with a foster parent who has the  
21 appropriate skills or training. To make matters worse, caseworkers often fail to provide foster  
22 parents with information that is crucial to ensuring foster children's safety, health, and well-  
23 being.

24 243. Some children have been placed with foster families that are taking care of more  
25 children than allowed by their license permits. Clark County DFS frequently grants waivers in  
26 order to place more children in the foster home than the foster parents' license permits.

27 244. Once children are placed in foster homes, they are often all but forgotten. Foster  
28 parents are not provided adequate support or training, and are frequently left to fend for



1 themselves under challenging circumstances. This lack of support results in failed foster  
2 placements and increased instability for foster children. Worsening the effects of the traumatic  
3 experiences they encountered prior to entering foster care, foster children are re-traumatized by  
4 frequent placement disruptions.

5 245. Caseworkers fail to make the requisite visits with children to ensure that their  
6 needs are being met. Clark County DFS's own study found that in almost two-thirds of cases,  
7 case workers failed to visit their clients as required by law. Federal reviewers found that in more  
8 than 40% of Clark County cases, the frequency of visits between caseworker and children was  
9 insufficient to ensure adequate monitoring of the child's safety and well-being.

10 246. The federal performance review of Nevada's child welfare system found that only  
11 31 percent of foster children in the Clark County had stable placements. Many of the children  
12 experiencing multiple placements in Clark County were under five years of age. Frequent  
13 changes in placement led to a lack of continuity in services, changes in schools, and an overall  
14 negative impact on children's well-being.

15 247. Federal reviewers found that chronic widespread disruptions in foster children's  
16 placements are due to a lack of supports for foster families, failure to provide foster parents with  
17 sufficient information about a child prior to placement to ensure that the family is able to meet the  
18 child's needs, insufficient mental health resources for children, and a lack of an array of  
19 placements to permit the matching of a child's needs with the skills, knowledge, and abilities of  
20 the foster caregiver.

21 **D. Defendants fail to provide abused and neglected children with timely medical care,**  
22 **mental health care, and educational services necessary to meet their needs**

23 248. Federal and State law require Defendants to provide foster children with medical  
24 assistance to meet their medical, dental, and mental health needs and to arrange and provide for  
25 screening and treatment services through EPSDT. Given the neglectful and chaotic environments  
26 foster youth often grow up in, it is crucial that they receive prompt assessments and medically  
27 necessary services.

28

1           249.   Moreover, studies have shown that a high percentage of foster children have  
2 significant mental health problems. Mental health experts agree that children with serious mental  
3 health problems require an array of individualized services tailored to address their needs. Such  
4 services should include professionally acceptable assessments, behavioral support and case  
5 management services, family support, crisis support, wraparound services, therapeutic foster care,  
6 and other mental health services, in a home-like setting.

7  
8           250.   The 2005 County Case Review found that Clark County DFS fails to assess the  
9 mental health and health needs of 50% of the children in care. For those children who do receive  
10 some sort of assessment, DFS fails to ensure that physical and mental health services are being  
11 provided.

12           251.   The 2006 Child Fatality Report also found that DFS fails to provide children and  
13 families with services needed to resolve identified issues. DFS fails to complete service plans for  
14 children or to document or follow-up on referrals for services.

15           252.   In addition, DFS does not ensure that children with mental health needs receive  
16 individualized treatment that addresses their needs. There is a severe lack of mental health  
17 services such as behavioral support, psychiatric and other clinical services, case management  
18 services, therapeutic foster care services provided in a home-like setting, and wraparound  
19 services.

20           253.   Nevada law also requires foster placements to ensure that foster children attend  
21 school full-time; are provided with appropriate educational assessments and services; receive an  
22 appropriate education, including special education services or training programs, as needed; and  
23 are afforded an opportunity to complete schooling or training in accordance with their aptitude.

24           254.   Despite these requirements, Federal DHHS has found that foster children's  
25 educational needs were being woefully neglected. DFS fails to obtain copies of school records  
26 for children in foster care; fails to obtain copies of the Individualized Education Plan (IEP) for  
27 children receiving special education services and to provide such information to foster parents;  
28 and fails to advocate for children's educational needs in the school system.

1 **E. Caseworkers' high caseloads, inadequate training, and poor supervision threaten the**  
2 **safety and well-being of Nevada's abused and neglected children**

3 255. A well-trained, experienced, and adequately staffed workforce is a vital  
4 component of any child welfare system. When caseworkers are overwhelmed, untrained, and  
5 poorly supervised, the child welfare system inevitably breaks down, resulting in reasonably  
6 foreseeable harm to foster children. Unfortunately, Clark County's system is lacking in each of  
7 these important workforce areas.

8 256. High caseloads are prevalent among Clark County DFS caseworkers and are  
9 among the highest in the state. In February 2005, the average caseload for DFS caseworkers was  
10 1:35.

11 257. DFS staff caseloads are significantly higher than the caseload ratio required for  
12 accreditation by the Council on Accreditation, which is no greater than 1:18. They also far  
13 exceed the caseload ratios established by Child Welfare League of America Standards, which are  
14 between 1:12 and 1:15.

15 258. As a direct result of the high caseloads of workers within Clark County DFS,  
16 investigations of reports of abuse are not initiated promptly nor completed within 30 days,  
17 investigations fail to comply with minimum standards required of such investigations, monthly  
18 visits to foster homes are not conducted, and children are harmed or at grave risk of harm.

19 259. Caseworkers receive only minimal training prior to working with children and  
20 families. As a result, they are ill-prepared to perform the duties and responsibilities assigned to  
21 them and fail to exercise professional judgment when making life and death decisions for  
22 children.

23 260. During the 2004 federal CFSR, federal reviewers found that many caseworkers do  
24 not complete required ongoing in-service training. Although Washoe County and the rural areas  
25 of the state require that workers must be licensed, Clark County does not. Even staff assigned to  
26 investigate abuse reports are not licensed.

27 261. The Child Fatality Study found that DFS fails to make monthly contact with  
28 children and family who have open cases and follow-up appropriately; fails to resolve problems

1 or concerns prior to closing cases; fails to complete service or safety plans for children and  
2 families; and fails to provide case workers with appropriate training.

3 262. The 2006 Child Fatality Report found that County DFS caseworkers consistently  
4 fail to document critical information. Case files lacked documentation of investigative contacts,  
5 family background checks, progress toward case goals, the basis for safety decisions, the nature  
6 and purpose of service referrals, and contact with service providers to ascertain progress. The  
7 study found that such poor documentation practices serve as a major barrier to future quality  
8 assurance efforts, and could represent a critical weakness in the overall safety net.

9 **F. Defendants fail to ensure that abused and neglected children have a voice in court**  
10 **proceedings**

11 263. Approximately half of all children and youth who are the subject of abuse and  
12 neglect proceedings in Clark County are not represented by a guardian *ad litem* in those  
13 proceedings.

14 264. Children who are the subject of abuse and neglect proceedings in Clark County  
15 are, if provided with any representation at all, represented either by the Children's Advocacy  
16 Project (CAP) of Clark County Legal Services or Las Vegas Court Appointed Special Advocates  
17 (CASA). On occasion a child may have both an attorney and CASA.

18 265. CAP employs six attorneys, each of whom represents 40 to 50 children.  
19 Consequently, on average, no more than 300 out of the 3,000 children in foster care in Clark  
20 County are represented by an attorney. Upon information and belief, CAP attorneys do not act as  
21 guardians *ad litem* for the children or youth they are appointed to represent.

22 266. There are about 200 CASAs in Clark County. In 2005, they represented 480  
23 children, and they reported that they had to turn away 89 children who were referred by the court.

24 267. Neither CAP nor CASA represent children at the earliest stages of the proceedings,  
25 including proceedings to determine if children should be taken into or remain in initial protective  
26 custody.

27 268. The lack of representation for child abuse and neglect victims in Clark County  
28 District Court proceedings has been known to Defendants and tolerated for years.

1 269. In January 2006, Chief Justice Rose of the Nevada Supreme Court acknowledged  
2 that “[w]e need more attorneys and CASA volunteers to assist children.”

3 270. Clark County Family Court Judge Gerald Hardcastle has admitted that over half of  
4 all children and youth who are the subject of abuse and neglect proceedings in Clark County  
5 District Court are unrepresented in the proceedings.

6 271. During the entire time that children and youth have gone unrepresented in child  
7 abuse and neglect proceedings in Clark County District Court, State DCFS has received and  
8 continues to receive funds under the federal Child Abuse Prevention and Treatment Act.

9 272. The failure to provide children and youth with representation in the juvenile court  
10 leads to ill-informed decisions and inhibits the court’s obligation to oversee the child’s placement,  
11 care, and treatment while in foster care.

12 **VIII.**

13 **FIRST CAUSE OF ACTION–**  
14 **SUBSTANTIVE DUE PROCESS UNDER THE UNITED**  
15 **STATES CONSTITUTION (ASSERTED PURSUANT TO 42 U.S.C. § 1983)**

16 273. Each and every allegation is incorporated herein as if fully set forth.

17 274. The foregoing actions and inactions of Defendants Willden, Serrano, Doe, Morton,  
18 Valentine, County Commissioners, and Clark County constitute a failure to meet the affirmative  
19 duty to protect all plaintiffs from harm, which is a substantial factor leading to, and proximate  
20 cause of, the violation of the constitutionally protected liberty and privacy interests of all  
21 plaintiffs, as asserted pursuant to 42 U.S.C. § 1983.<sup>4</sup>

22 275. The foregoing actions and inaction of these Defendants constitute a policy, pattern,  
23 practice, and/or custom that is inconsistent with the exercise of reasonable professional judgment  
24 in violation of the constitutionally protected rights and liberty and privacy interests of all  
25 plaintiffs. As a result, all plaintiffs have been and are being deprived of the substantive due  
26 process rights conferred upon them by the Fourteenth Amendment to the United States  
27 Constitution.

28 <sup>4</sup> As noted above, all individually named Defendants are being sued in their official capacities.

1 276. These substantive due process rights include, but are not limited to: the right to  
2 protection from unnecessary harm while in government custody; the right to a living environment  
3 that protects foster children’s physical, mental, and emotional safety and well-being; the right to  
4 services necessary to prevent foster children from deteriorating or being harmed physically,  
5 developmentally, psychologically, or otherwise while in government custody, including but not  
6 limited to the right to safe and secure foster care placements, appropriate monitoring and  
7 supervision, appropriate planning and services directed toward ensuring that the child can leave  
8 foster care and grow up in a permanent family, adequate mental, dental, psychiatric,  
9 psychological, and educational services; the right to treatment and care consistent with the  
10 purpose of the assumption of custody by Defendants; the right not to be retained in custody  
11 longer than is necessary to accomplish the purposes to be served by taking the child into custody;  
12 the right to be placed in the least restrictive placement based on the foster child’s needs; and the  
13 right to receive care, treatment, and services determined and provided through the exercise of  
14 accepted, reasonable professional judgment.

15 **IX.**

16 **SECOND CAUSE OF ACTION–**  
17 **SUBSTANTIVE DUE PROCESS UNDER THE UNITED STATES CONSTITUTION:**  
18 **STATE CREATED DANGER CLAIM (ASSERTED PURSUANT TO 42 U.S.C. § 1983)**

19 277. Each and every allegation is incorporated herein as if fully set forth.

20 278. The foregoing actions and inactions of Defendants Willden, Serrano, Morton,  
21 Valentine, Palma, County Commissioners, and Clark County amount to a pattern, practice, and  
22 custom of failure to exercise reasonable professional judgment in violation of the constitutional  
23 rights of all plaintiffs, as asserted pursuant to 42 U.S.C. § 1983. Defendants are engaging in a  
24 pattern and practice of violating plaintiffs’ rights under the Due Process Clause of the United  
25 States Constitution, by affirmatively moving them from safe placements and putting them in  
26 placements that Defendants know or should know pose an imminent risk of harm to these  
27 children, in disregard of the exercise of reasonable professional judgment. By doing so,  
28 Defendants greatly increase the danger to plaintiffs.

X.

**THIRD CAUSE OF ACTION-**  
**PROCEDURAL DUE PROCESS UNDER THE FOURTEENTH AMENDMENT TO**  
**THE UNITED STATES CONSTITUTION (ASSERTED PURSUANT TO 42 U.S.C. § 1983)**

279. Each and every allegation is incorporated herein as if fully set forth.

280. The foregoing actions and inactions of Defendants Willden, Serrano, Doe, Morton, Valentine, County Commissioners, and Clark County constitute a failure to exercise an affirmative duty to protect the welfare of all plaintiffs, which is a substantial factor leading to, and proximate cause of, the violation of the constitutionally protected liberty and privacy interests of all plaintiffs, as asserted pursuant to 42 U.S.C. § 1983.

281. The foregoing actions and inactions of these Defendants constitute a policy, pattern, practice and/or custom that is inconsistent with the exercise of reasonable professional judgment and violates the constitutionally protected rights and liberty and privacy interests of all plaintiffs. As a result, all plaintiffs are being deprived of federally created and state-created liberty or property rights without due process of law. The state law entitlements to which children have a constitutionally protected interest include the following:

- (a) The entitlements arising from Nev. Rev. Stat. Ann. §§ 432B.500 and 432B.505, requiring that plaintiffs be appointed a guardian *ad litem* who must appear at all proceedings before the court and perform specific duties, including representing and protecting the best interests of the child;
- (b) The entitlements arising from Nev. Rev. Stat. Ann. § 432B.260, requiring Clark County DFS to initiate child welfare investigations promptly upon receipt of a report of possible abuse or neglect of a child;
- (c) The entitlements arising from Nev. Admin. Code Ann. §§ 424.160 and 424.805, requiring Clark County DFS to ensure that the number of children placed in a particular foster home does not exceed established levels; to respond in a timely manner to foster parents' requests for assistance in meeting their foster child's needs; to assist foster parents in developing

- 1 their capabilities to meet their foster child's needs; and to provide a  
2 program of respite care to foster parents;
- 3 (d) The entitlements arising from Nev. Admin. Code Ann. § 432B.405 and  
4 Nev. Admin. Code Ann. § 424.565, requiring Clark County DFS to ensure  
5 that foster children receive necessary care and services for their mental and  
6 emotional health, and receive visits no less than once a month from a  
7 caseworker;
- 8 (e) The entitlements arising from Nev. Admin. Code. Ann. §§ 432B.185 and  
9 432B.405, requiring Clark County DFS to assess plaintiffs' safety before  
10 returning them to the custody of their parents, using input from persons  
11 directly involved with the case;
- 12 (f) The entitlements arising from Nev. Rev. Stat. Ann. § 432A.131 and Las  
13 Vegas Mun. Code § 6.24.050, requiring that child care facilities must be  
14 licensed prior to placement of plaintiffs in such facilities;
- 15 (g) The entitlements arising from Nev. Admin. Code Ann. § 432B.340,  
16 requiring residential institutions to provide the resources needed to prevent  
17 foreseeable harm to children;
- 18 (h) The entitlements arising from Nev. Admin. Code Ann. § 424.530 to be free  
19 from physical and emotional abuse while in a foster home; and
- 20 (i) The entitlements arising from Nev. Rev. Stat. Ann. § 127.330, requiring  
21 that placements of plaintiffs with a person who resides outside of the State  
22 must follow certain procedures and criteria.

23 **XI.**

24 **FOURTH CAUSE OF ACTION—**  
25 **FEDERAL ADOPTION ASSISTANCE ACT**  
26 **(ASSERTED PURSUANT TO 42 U.S.C. § 1983)**

27 282. Each and every allegation is incorporated herein as if fully set forth.

28 283. The foregoing actions and omissions of Defendants Willden, Serrano, Morton,  
Valentine, County Commissioners, and Clark County amount to a policy, pattern, and/or practice



1 of depriving all plaintiffs of rights conferred on them by the federal Adoption Assistance and  
2 Child Welfare Act of 1980, as amended by the Adoption and Safe Families Act of 1997  
3 (collectively the “Adoption Assistance Act”) and the regulations promulgated under the Act, 45  
4 C.F.R. Parts 1355-1357, as asserted pursuant to 42 U.S.C. § 1983. These rights granted to  
5 individual foster children include, but are not limited to:

- 6 (a) The right to placement in foster homes or other settings that conform to  
7 national professional standards and are subject to a uniformly applied set of  
8 standards. 42 U.S.C. § 671(a)(10).
- 9 (b) The right to quality services that protect foster children’s safety and health.  
10 42 U.S.C. § 671(a)(22).
- 11 (c) The right of each child to have a written case plan, containing specified  
12 elements, the right to have services provided in accordance with that plan,  
13 and the right to have the status of her case reviewed no less than every six  
14 months in order to determine, among other things, the safety of the child  
15 and the extent of compliance with the case plan. 42 U.S.C. §§ 671(a)(16),  
16 675(1), 675(5)(B).
- 17 (d) The right to placement in a safe setting that is the least restrictive and most  
18 family like setting, consistent with the best interest and special needs of the  
19 child. 42 U.S.C. §§ 622(b)(10)(B)(ii), 675(5)(A).
- 20 (e) The right to have health and educational records reviewed, updated, and a  
21 copy supplied to foster parents or foster care providers with whom the  
22 child is placed at the time of placement. 42 U.S.C. §§ 622(b)(10)(B)(ii),  
23 675(5)(D).
- 24 (f) The right to have the foster parents and any pre-adoptive parent or relative  
25 providing care to the child present at any proceeding held with respect to  
26 the child as a matter of right. 42 U.S.C. §§ 622(b)(10)(B)(ii), 675(5)(G).
- 27 (g) All other rights created by 42 U.S.C. §§ 622(b)(10)(B)(ii) and 675(5).
- 28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**XII.**

**FIFTH CAUSE OF ACTION–  
VIOLATION OF RIGHT TO GUARDIAN AD LITEM PURSUANT TO CHILD ABUSE  
PREVENTION AND TREATMENT ACT (ASSERTED PURSUANT TO 42 U.S.C. § 1983)**

284. Each and every allegation is incorporated herein as if fully set forth.

285. As a result of the foregoing actions and inactions of Defendants Willden, Serrano, Morton, Valentine, County Commissioners, and Clark County, plaintiffs have been deprived of their right to a guardian *ad litem* in all proceedings before the juvenile court in violation of 42 U.S.C. § 5106a(b)(2)(A)(xiii), as asserted pursuant to 42 U.S.C. § 1983, causing serious injury and harm.

**XIII.**

**SIXTH CAUSE OF ACTION–  
EARLY PERIODIC SCREENING, DIAGNOSIS AND  
TREATMENT PROGRAM (“EPSDT”) OF THE MEDICAID ACT  
(42 U.S.C. 1396 ET SEQ.) (ASSERTED PURSUANT TO 42 U.S.C. § 1983)**

286. Each and every allegation is incorporated herein as if fully set forth.

287. By their actions described herein, Defendants Willden, Serrano, Morton, Valentine, County Commissioners, and Clark County have failed and continue to fail to provide medical assistance as required under 42 U.S.C. § 1396a(a)(10)(A). Defendants Willden, Serrano, Morton, Valentine, County Commissioners, and Clark County have also failed to provide or arrange for necessary EPSDT services for plaintiffs, which are required to treat or ameliorate their mental or physical conditions, in violation of 42 U.S.C. §§ 1396a(a)(10)(A), 1396a(a)(43), 1396d(a)(4)(B), and 1396d(r).

288. By their violation of Title XIX of the Social Security Act, Defendants, acting under color of state law, have denied plaintiffs their rights, privileges, and immunities secured by the laws of the United States.

**XIV.**

**SEVENTH CAUSE OF ACTION–  
PROCEDURAL DUE PROCESS CLAIM UNDER THE NEVADA CONSTITUTION**

289. Each and every allegation is incorporated herein as if fully set forth.

1           290. The foregoing actions and inactions of Defendants amount to a pattern, practice,  
2 and custom of failure to exercise reasonable professional judgment in violation of the  
3 constitutional procedural due process rights of plaintiffs, and are the cause of the violation of such  
4 rights. Plaintiffs have been and are being harmed and deprived of their state-created liberty or  
5 property rights without due process of law.

6           291. Defendants' actions and inactions have resulted and are continuing to result in  
7 deprivations of the following state law entitlements to which plaintiffs have a constitutionally  
8 protected interest:

- 9           (a) The entitlements arising from Nev. Rev. Stat. Ann. §§ 432B.500 and  
10           432B.505, requiring that plaintiffs be appointed a guardian *ad litem* who  
11           must appear at all proceedings before the court and perform specific duties,  
12           including representing and protecting the best interests of the child;
- 13           (b) The entitlements arising from Nev. Rev. Stat. Ann. § 432B.260, requiring  
14           Clark County DFS to initiate child welfare investigations promptly upon  
15           receipt of a report of possible abuse or neglect of a child;
- 16           (c) The entitlements arising from Nev. Admin. Code Ann. §§ 424.160 and  
17           424.805, requiring Clark County DFS to ensure that the number of children  
18           placed in a particular foster home does not exceed established levels; to  
19           respond in a timely manner to foster parents' requests for assistance in  
20           meeting their foster child's needs; to assist foster parents in developing  
21           their capabilities to meet their foster child's needs; and to provide a  
22           program of respite care to foster parents;
- 23           (d) The entitlements arising from Nev. Admin. Code Ann. § 432B.405 and  
24           Nev. Admin. Code Ann. § 424.565, requiring Clark County DFS to ensure  
25           that foster children receive necessary care and services for their mental and  
26           emotional health, and receive visits no less than once a month from a  
27           caseworker;
- 28

- 1 (e) The entitlements arising from Nev. Admin. Code. Ann. §§ 432B.185 and  
2 432B.405, requiring Clark County DFS to assess plaintiffs' safety before  
3 returning them to the custody of their parents, using input from persons  
4 directly involved with the case;
- 5 (f) The entitlements arising from Nev. Rev. Stat. Ann. §§ 432A.040;  
6 432A.070; 432A.131; 432A.210, Nev. Admin. Code §§ 432A.170;  
7 432A.180 and Las Vegas Mun. Code § 6.24.050, requiring that state,  
8 county, and local agencies ensure that child care facilities are licensed prior  
9 to placement of children in such facilities;
- 10 (g) The entitlements arising from Nev. Admin. Code Ann. § 432B.340,  
11 requiring residential institutions to provide the resources needed to prevent  
12 foreseeable harm to children;
- 13 (h) The entitlements arising from Nev. Admin. Code Ann. § 424.530 to be free  
14 from physical and emotional abuse while in a foster home; and
- 15 (i) The entitlements arising from Nev. Rev. Stat. Ann. § 127.330, requiring  
16 that placements of plaintiffs with a person who resides outside of the State  
17 must follow certain procedures and criteria.

18 **XV.**

19 **EIGHTH CAUSE OF ACTION-**  
20 **SUBSTANTIVE DUE PROCESS CLAIM UNDER THE NEVADA CONSTITUTION**

21 292. Each and every allegation is incorporated herein as if fully set forth.

22 293. The foregoing actions and inactions of Defendants constitute a failure to exercise  
23 an affirmative duty to protect the welfare of all plaintiffs, which is a substantial factor leading to,  
24 and proximate cause of the violation of the constitutionally protected liberty and privacy interests  
25 of plaintiffs. The foregoing actions and inactions of these Defendants constitute a policy, pattern,  
26 practice and/or custom that is inconsistent with the exercise of reasonable professional judgment  
27 and violates the constitutionally protected rights and liberty and privacy interests of all plaintiffs.  
28

1 As a result, plaintiffs have been and are being deprived of the substantive due process rights  
2 conferred upon them by Art. 1, § 8(5) of the Nevada Constitution.

3 294. These substantive due process rights include, but are not limited to: the right to  
4 protection of their person from unnecessary harm while in government custody; the right to a  
5 living environment that protects foster children's physical, mental, emotional safety, and well-  
6 being; the right to services necessary to prevent foster children from deteriorating or being  
7 harmed physically, psychologically, otherwise while in government custody; the right not to be  
8 deprived of liberty by retention in government custody or locked detention facilities beyond  
9 necessity; the right to treatment and care consistent with the purpose of the assumption of custody  
10 by Defendants; the right not to be retained in custody longer than necessary to accomplish the  
11 purposes to be served by taking the child into custody; and the right to receive care, treatment,  
12 and services determined and provided through the exercise of accepted, reasonable professional  
13 judgment.

14 **XVI.**

15 **NINTH CAUSE OF ACTION-**  
16 **NEGLIGENCE**

17 295. Each and every allegation is incorporated herein as if fully set forth.

18 296. The foregoing actions and inactions of Defendants Clark County and Morton  
19 amount to a pattern, practice, and custom of failure to exercise reasonable professional judgment  
20 in violation of Nevada child welfare statutes, as follows:

- 21 (a) Nev. Rev. Stat. Ann. § 432B.260, requiring Clark County DFS to initiate  
22 child welfare investigations promptly upon receipt of a report of possible  
23 abuse or neglect of a child;
- 24 (b) Nev. Admin. Code Ann. §§ 424.160 and 424.805, requiring Clark County  
25 DFS to ensure that the number of children placed in a particular foster  
26 home does not exceed established levels; to respond in a timely manner to  
27 foster parents' requests for assistance in meeting their foster child's needs;

- 1 to assist foster parents in developing their capabilities to meet their foster  
2 child's needs; and to provide a program of respite care to foster parents;
- 3 (c) Nev. Admin. Code Ann. § 432B.405 and Nev. Admin. Code Ann.  
4 § 424.565, requiring Clark County DFS to ensure that foster children  
5 receive necessary care and services for their mental and emotional health,  
6 and receive visits no less than once a month from a caseworker;
- 7 (d) Nev. Admin. Code. Ann. §§ 432B.185 and 432B.405, requiring Clark  
8 County DFS to assess plaintiffs' safety before returning them to the  
9 custody of their parents, using input from persons directly involved with  
10 the case;
- 11 (e) Nev. Admin. Code Ann. § 432B.340, requiring residential institutions to  
12 provide the resources needed to prevent foreseeable harm to children; and
- 13 (f) Nev. Rev. Stat. Ann. § 127.330, requiring defendants to follow established  
14 procedures and criteria when placing plaintiffs with a person who resides  
15 outside of the state.

16 297. As evidenced by their failure to comply with these laws, these Defendants have  
17 breached their legal duties to plaintiffs. Plaintiffs belong to the class of persons that the  
18 provisions were intended to protect, and the injuries plaintiffs suffered are of the type the  
19 provisions were intended to prevent. Defendants' negligence has caused harm to plaintiffs.

20 **XVII.**

21 **TENTH CAUSE OF ACTION-**  
22 **BREACH OF STATE PLANS**

23 298. Each and every allegation is incorporated herein as if fully set forth.

24 299. Under Titles IV-B, IV-E, and XIX of the Social Security Act, states receive certain  
25 federal reimbursements so long as they enter into plans approved by Federal DHHS and comply  
26 with their terms. The State of Nevada receives federal funding under Titles IV-B, IV-E, and XIX  
27 of the Social Security Act and has submitted such plans, which are legal contracts between the  
28 federal government and the state. In these State Plan contracts, the state agrees to provide child

1 welfare, foster care, adoption, and health services to plaintiffs in accordance with specific statutes  
2 and policies and all applicable federal regulations and other official issuances of Federal DHHS.

3 300. As a result of the foregoing actions and inactions of Defendants Willden, Serrano,  
4 Morton, Valentine, County Commissioners, and Clark County, these defendants have breached  
5 and continue to breach their obligations under the State Plan contracts. Plaintiffs, as intended  
6 third party beneficiaries to the Nevada State Plan contracts, are being denied their rights to the  
7 services and benefits that the State of Nevada is obligated to provide to them under such  
8 contracts, and are harmed thereby.

9 **XVIII.**

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs respectfully request that this Court:

- 12 a) Assert jurisdiction over this action;
- 13 b) Order that plaintiffs may maintain this action as a class action pursuant to Rule  
14 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure;
- 15 c) Declare unconstitutional and unlawful pursuant to Rule 57 of the Federal Rules of  
16 Civil Procedure Defendants' violations of plaintiffs' rights.
- 17 d) Preliminarily and permanently enjoin Defendants from subjecting plaintiffs to  
18 practices that violate their rights.
- 19 e) Order appropriate remedial relief to ensure Defendants' future compliance with  
20 their legal obligations to plaintiffs and retain jurisdiction of this matter to ensure full, adequate,  
21 and effective implementation of the relief ordered by this Court;
- 22 f) Award to the plaintiffs the reasonable costs and expenses incurred in the  
23 prosecution of this action, including but not limited to reasonable fees and costs pursuant to 42  
24 U.S.C. §§ 1988 and 1920 and Fed. R. Civ. P. 23(h); and
- 25  
26  
27  
28

1 g) Grant such further equitable relief as the court deems just, necessary, and proper to  
2 protect the plaintiffs from further harm by Defendants.

3 DATED this 14th day of June, 2007.

4 WOLFENZON SCHULMAN

NATIONAL CENTER FOR YOUTH LAW

5  
6  
7 BRUNO WOLFENZON, ESQ.  
Nevada Bar No. 6177  
8 GREGORY M. SCHULMAN, ESQ.  
Nevada Bar No. 5766  
9 4530 South Eastern Avenue, Suite 9  
Las Vegas, NV 89119  
10 (702) 836-3138  
(702) 836-3139 fax no.  
Co-attorneys for Plaintiffs  
11 CLARK K., JALEN A., SIA A., ROSHAUN  
A., CALEB A., KING A., TONI B.,  
12 SUMMER B., FRANK B., and DONNA C.

7 WILLIAM GRIMM, ESQ.  
Admitted to the Maryland Bar  
LEECIA WELCH, ESQ.  
California Bar No. 208741  
BRYN MARTYNA, ESQ.  
California Bar No. 239852  
405 – 14th Street, 15th Floor  
Oakland, CA 94612  
(510) 835-8098  
(510) 835-8099 fax no.  
Co-attorneys for Plaintiffs  
13 CLARK K., JALEN A., SIA A., ROSHAUN  
A., CALEB A., KING A., TONI B.,  
14 SUMMER B., FRANK B., and DONNA C.

14 FARELLA BRAUN & MARTEL LLP

15  
16 /s/ Katina Ancar  
KATINA ANCAR, ESQ.  
17 SONYA SANCHEZ, ESQ.  
California Bar No. 207950  
18 Co-attorneys for Plaintiffs  
19 CLARK K., JALEN A., SIA A., ROSHAUN  
A., CALEB A., KING A., TONI B.,  
20 SUMMER B., FRANK B., and DONNA C.

21  
22  
23  
24  
25  
26  
27  
28



**CERTIFICATE OF SERVICE**

I, Greg George, hereby certify that I am an employee of Farella Braun + Martell LLP and that on June 14, 2007, I served the following:

**SECOND AMENDED COMPLAINT (CLASS ACTION ALLEGED)**

On the parties by filing a true copy thereof with the Clerk of the Court using the CM/ECF system to be served upon all parties using the CM/ECF system addressed to:

Bruno Wolfenzon, Esq.  
Gregory M. Schulman, Esq.  
WOLFENSZON SCHULMAN  
4530 S. Easton Avenue, #9  
Las Vegas, NV 89119  
Attorneys for Plaintiff

William Grimm, Esq.  
Leecia Welch, Esq.  
Bryn Martyna, Esq.  
NATIONAL CENTER FOR YOUTH LAW  
405 14<sup>th</sup> Street, 15<sup>th</sup> Floor  
Oakland, CA 94612  
Co-Attorneys for Plaintiffs

GEORGE J. CHANOS  
Attorney General  
LINDA ANDERSON  
Senior Deputy Attorney General  
555 E. Washington Ave., Suite 3900  
Las Vegas, NV 89101  
Attorneys for State Defendants Willden, Serrano, Hawkins

Gloria J. Sturman, Esq.  
Margaret Foley, Esq.  
WILSON ELSER  
415 S. Sixth Street, Suite 300  
Las Vegas, NV 89101  
Attorney for CLARK COUNTY Defendants

CATHERINE CORTEZ MASTO  
Nevada Attorney General  
MARTINA GEINZER  
Deputy Attorney General  
555 E. Washington Avenue, Suite 3900  
Las Vegas, NV 89101  
Attorneys for Defendant Governor KENNY GUINN

\_\_\_\_\_  
/s/ Greg George  
Greg George  
Employee of Farella Braun + Martell LLP