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14 UNITED STATES DISTRICT COURT
15 DISTRICT OF NEVADA

16 CLARK K., et al.,
17 Plaintiffs,
18 vs.
19 MICHAEL WILLDEN, et al.,
20 Defendants.

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

**PLAINTIFFS' NOTICE OF MOTION,
MOTION AND MEMORANDUM OF
POINTS OF AUTHORITIES IN SUPPORT
OF RENEWED MOTION FOR CLASS
CERTIFICATION**

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1 may be presented to the Court at the time of the hearing.

2

3 Dated: March 28, 2008

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MEMORANDUM OF POINTS OF AUTHORITIES

I. INTRODUCTION

Plaintiffs are abused and neglected children taken from their parents and placed in Defendants’ custody. Unfortunately, the foster care system that is supposed to nurture and protect them often causes them further harm; in the worst cases, even death. It is a system that Tom Morton, the Director of the Clark County Department of Family Services (“DFS”), describes as a “crippled child welfare system,” and that has been “designated by Federal officials as the ‘worst child welfare system’ in the nation.” Director Morton himself has admitted “it is probably somewhat of a miracle that more tragedies have not occurred.”¹

In order to remedy this dangerous situation, plaintiff foster children bring this class action suit on behalf of “children who have been, are, or will be victims of child abuse and neglect and have been, are, or will be in the legal custody of Clark County DFS.” Second Amended Complaint (“SAC”) at 11 (Docket No. 142-1). They seek to enforce their rights under federal and state law to have their most basic of needs met – safety, health, and stability.

A party seeking certification must show that: (1) the proposed class is so numerous that joining all members individually is impractical (“numerosity”); (2) the class shares at least one common question of fact or law (“commonality”); (3) the class representatives’ claims are typical of the class (“typicality”); and (4) the named plaintiffs will fairly protect the interests of the class (“adequacy of representation”). Fed. R. Civ. P. 23(a); *Hanlon v. Chrysler*, 150 F.3d 1011, 1019 (9th Cir. 1998); *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992). Plaintiffs must also satisfy one of the Rule 23(b) requirements. In this case, plaintiffs seek to proceed under Rule 23(b)(2), requiring a showing that the opposing party “has acted or refused on act on grounds generally applicable to the class,” making injunctive relief for the class as a whole appropriate.

The Court has already ruled that plaintiffs have satisfied the numerosity requirement of Rule 23(a)(1). May 14, 2007 Order at 44 (Docket No. 134). The Court deferred ruling on the

¹ Director Morton made these statements in his “Report to U.S. Representative Shelley Berkley On The State of Clark County Department of Family Services” (submitted May 2007) (“Morton Report to Rep. Berkley”) at 8 & 17, Ex. D. All Exhibits referenced herein are attached to the Declaration of William Grimm in Support of Plaintiffs’ Renewed Motion for Class Certification (“Grimm Decl.”) unless otherwise stated.

1 remaining requirements until further discovery “specific to the proposed class” was conducted.
2 *Id.* at 44-47.

3 Multiple sources of information summarized herein provide overwhelming evidence that
4 the harms suffered by the named plaintiffs are common and typical of those experienced by the
5 class of foster children as a whole. Importantly, the vast majority of the evidence comes from
6 Defendants themselves: their own words or the words of their agents, reports and evaluations they
7 have commissioned, and data they maintain. The evidence leaves no question that the
8 experiences of the named plaintiffs are merely the tip of the iceberg. In Clark County, all foster
9 children are at risk of harm in a dysfunctional system that operates with dysfunctional practices.

10 This renewed motion demonstrates that the class satisfies the requirements of
11 commonality, typicality, and adequacy of representation. Plaintiffs also show that certification
12 under 23(b)(2) is appropriate and necessary. To ensure that all Clark County foster children
13 receive the care and protection to which they are entitled, plaintiffs respectfully request that the
14 Court grant their Renewed Motion for Class Certification.

15 **II. PROCEDURAL HISTORY & LEGAL BACKGROUND**

16 On August 30, 2006, plaintiffs filed their initial complaint in this action. (Docket No. 1).
17 Shortly thereafter, on October 19, 2006, plaintiffs filed a First Amended Complaint. (Docket No.
18 57). Plaintiffs have asserted the majority of their legal claims pursuant to 42 U.S.C. § 1983,
19 seeking to enforce their statutory and constitutional rights. All claims are brought on behalf of
20 the class as a whole.

21 Plaintiffs first moved to certify their class on November 21, 2006. (Docket No. 74). On
22 May 14, 2007, this Court ruled that plaintiffs satisfied Rule 23(a)(1)’s “numerosity” requirement.
23 (Docket No. 134). However, the Court deferred consideration of the remaining certification
24 requirements until the parties had “an opportunity to conduct discovery specific to the proposed
25 class.” (*Id.* at 45-47). In accordance with this directive, plaintiffs have conducted discovery,
26 including propounding requests for production and interrogatories, conducting depositions, and
27 issuing third-party subpoenas.² Grimm Decl. at ¶ 10.

28 ² County Defendants’ insufficient response to plaintiffs’ document discovery requests – including requests relevant to

1 In its May 14, 2007 Order, the Court also ruled on Defendants' motions to dismiss,
 2 upholding the majority of plaintiffs' claims.³ (Docket No. 134). Following this ruling, plaintiffs
 3 filed a Second Amended Complaint to address the Court's concerns. (Docket No. 142-1).
 4 Currently, plaintiffs' action includes claims based on substantive due process, the Federal
 5 Adoption Assistance Act, the Child Abuse Prevention and Treatment Act, and the Medicaid Act.

6 **III. STATEMENT OF FACTS**

7 The tragic histories of the named plaintiffs illustrate the numerous harms suffered by
 8 foster children in Clark County: the death of baby Jerome A. in a foster home, the physical abuse
 9 and neglect suffered by his surviving siblings while in foster care, the denial of adequate health
 10 care for Donna C. and Clark K., and the many placement changes experienced by Summer and
 11 Frank B., are but a few examples. With this motion, plaintiffs present overwhelming evidence
 12 that these injuries are sadly not the exception, but the norm. Furthermore, the facts presented
 13 below show that these harms do not result from isolated or unusual causes; they are the inevitable
 14 result of system-wide deficiencies affecting all class members.

15 Numerous sources corroborate the systemic failures in Clark County. Significantly, some
 16 of the most powerful evidence comes from the State and County Defendants themselves,
 17 including: the agencies' own records, admissions of current and former senior administrators, and
 18 reports and evaluations which Defendants themselves conducted or commissioned. The
 19 following three sources alone provide a wealth of information from Defendants and professionals
 20 they have hired to examine the Clark County child welfare system:

- 21 • Independent Child Welfare Consultant Edward Cotton's Report of Data Analysis,
 22 Findings and Recommendations presents troubling findings based on an extensive
 23 review of all cases (1,352) involving families with at least one child under the age
 of five who was currently a ward of Clark County. ("Cotton Report", Ex. E).

24 this Motion – forced plaintiffs to move to compel further production. (Docket No. 156). Plaintiffs' Motion to
 25 Compel was recently granted, as was Plaintiffs' Motion for Protective Order. (Docket Nos. 186 & 187). Those
 26 Orders were filed on March 12, 2008, and the information Defendants are compelled to produce has not yet been
 27 provided. Grimm Decl. at ¶11. In an effort to further delay production of crucial documents, County Defendants
 28 have recently filed a motion for reconsideration of these orders, which is pending before this Court. (Docket No.
 192). However, even without this information, Plaintiffs' Renewed Motion is supported by more than sufficient
 evidence. Grimm Decl. at ¶11.

³ Subsequently, the Court ruled upon a second motion to dismiss from State Defendants. September 4, 2007 Order at
 9-10 (Docket No. 161).

- 1 • Director Morton’s Report to U.S. Representative Shelley Berkley on the State of
2 Clark County Department of Family Services describes a myriad of problems with
3 Clark County’s child welfare system. (“Morton Report to Rep. Berkley”, Ex. D).⁴
- 4 • Independent Consultant Missouri Alliance for Children and Families’ Report to
5 Clark County Nevada DFS, Out of Home Care Resources and Practices,
6 (submitted August 2007) evaluates Clark County DFS’s out-of-home care program
7 and provides recommendations based on intensive site visits. (“Missouri Alliance
8 Report”, Ex. F).

9 These and countless other sources underscore the inescapable fact that the Clark County
10 foster care system is miserably failing the children placed in its care. Without significant
11 changes, every child in the custody of Clark County DFS goes from one day to the next, at risk of
12 becoming the next tragedy.

13 **A. All Children in Foster Care in Clark County Are Being Harmed or Exposed**
14 **to a Substantial Risk of Harm.**

15 Child welfare systems exist for the express purpose of protecting children from harm.
16 However, in Clark County, foster children suffer a wide spectrum of injuries while in Defendants’
17 custody – from physical abuse and neglect, to denial of medical care and mental health services,
18 to lack of a permanent place to call home. In the most tragic cases, children have died while in
19 Defendants’ care. The evidence presented below proves that it is not just the named plaintiffs
20 who have been injured while in the custody of DFS; all class members are exposed to and at risk
21 of suffering harm.

22 **1. Foster Children in Clark County Are Dying From Abuse and Neglect.**

23 The deaths of children in foster care are the most tragic results of a broken system. In
24 Clark County, there are simply far too many *preventable* child deaths occurring on Defendants’
25 watch.

26 Jerome A., the baby brother of named plaintiffs Jalen, Sia, Roshaun, Caleb, and King
27 (“the A. children”) died while in foster care at the age of 14 months. Declaration of Tarrah Logan
28 (“Logan Decl.”) at ¶ 13 (Docket No. 82). Jerome was scalded to death in a DFS-licensed foster
home when the foster mother left him and his siblings alone at night without adult supervision.

⁴ Much of Defendant Morton’s report to Congresswoman Berkley relies upon the findings of the Cotton Report.

1 *Id.* at ¶¶ 10, 12-13. Several of his siblings witnessed his death. *Id.* at ¶ 13. For months before
 2 Jerome’s death, DFS ignored numerous reports of abuse and neglect in the foster home, as well as
 3 the foster mother’s pleas to have the children removed. (Logan Decl. at ¶¶ 9-12 (Docket No. 82);
 4 Deposition of Tarrah Logan (“Logan Dep.”) at 121:22 –122:5, 123:2 – 125:25). Disturbingly, the
 5 many problems that existed in that home exist in countless other homes in Clark County. *See*
 6 *generally infra* Part III.B.

7 According to information provided by County Defendants themselves, a shocking number
 8 of children have died while in the care and custody of DFS in the last seven years. (Clark County
 9 DFS: Child Fatality and Open DFS Cases, 2000 to Present, Ex. G). The data demonstrates that
 10 the deaths of children with open DFS cases have been steadily increasing over the past four years:
 11 3 deaths in 2003, 7 deaths in 2004, 12 deaths in 2005, 15 deaths in 2006, and 12 deaths in just the
 12 first half of 2007. (*Id.*).⁵

13 The circumstances of the following individual cases reveal how systemic deficiencies
 14 contribute to the disappearance and deaths of foster children:

- 15 • Two-year-old Everlyse Cabrera disappeared from a foster home on June 10, 2006.
 16 A subsequent investigation found that DFS ignored indicators that the foster home
 17 was unsafe, failed to visit children placed in the home, and failed to investigate
 18 reports of suspected child abuse in the home, among other dangerous practices.
 (Case Review: Manual and Vhee Carrascal Foster Home (June 29, 2006), Ex. H;
See also Complaint, *Cabrera v. Balane*, No. CV-1285 (JCU) (D. Nev. October 12,
 2006)).
- 19 • One-year-old Joshua Sharp died at Child Haven, County Defendants’ shelter for
 20 children entering foster care, in August 2006. Joshua entered Child Haven in June
 21 2006 in relatively good health but died there two months later of a severe ear
 22 infection that was known to DFS staff but went untreated. An investigation
 conducted by State Defendants uncovered numerous violations of policies and
 practices that clearly contributed to his death, including failing to obtain medical

23 ⁵ The County document provided through discovery does not include any information about the causes of death of
 24 these children who died with open DFS cases. Grimm Decl. at ¶ 16. Defendants are required to make certain
 25 information about child fatalities available pursuant to the public disclosure requirements of the federal Child Abuse
 26 Prevention and Treatment Act of 1974. Significantly, many of the deaths listed in the County’s document are not
 27 included in Child Welfare Agency Public Disclosure forms for Clark County available on the State’s website. (*See*
 28 http://dcfs.state.nv.us/DCFS_ChildFatalities_Disclosures_Clark.htm (last visited 3/11/08); *see also* Grimm Decl. at
 ¶17). For example, just between January 1 and May 3, 2007, 12 children died in the care and custody of County
 Defendants, according to their own document. However, only seven of these deaths are reported on the State’s
 website. Even if DFS has an explanation for their failure to report these five “missing” deaths to the State, the fact
 remains that more children are dying while in Clark County DFS custody than is publicly known, and very little is
 known about the circumstances of their deaths. Grimm Decl. at ¶17.

1 records, failing to check his ears or monitor his fever, and failing to provide him
2 with proper medication. (Deposition of Renee Swain (“Swain Dep.”) at 86:11-
101:25, 102:6-103:14, Ex. UU; DCFS Child Fatality Report (undated), Ex. I).⁶

- 3
- 4 • Seven-month-old Baby Boy Charles died in a foster home in October 2006 from
blunt force trauma to the head resulting in a fatal skull fracture and other injuries.
5 His foster mother was arrested and charged with murder by child abuse. Baby Boy
Charles did not receive the required visits from his caseworker prior to his death,
6 and the foster home was overloaded with children. (See Declaration of
Warrant/Summons of Holly LeBergen (No. 060802-2003) at 2 & 4, Ex. J; First
7 Amended Complaint, *Charles and Prum v. Ochs*, No. CV-1212 (RLH) (D. Nev.
February 1, 2008)).⁷
 - 8 • Two-year-old Zander Martino died just eight months ago, after DFS returned him
to his father despite repeated previous instances of severe physical abuse,
9 including a fractured skull and multiple other broken bones. A coroner’s autopsy
concluded that Zander’s death was a homicide caused by blunt force trauma to the
10 abdomen. Zander’s sister told a DFS investigator “Dad hit Zander with a hammer
last night.” This occurred just 12 days after DFS decided to return Zander to his
11 father. It is unclear what sort of safety assessment, if any, was completed prior to
this placement. (See Declaration of Warrant/Summons of Lisa Myk (No.070710-
12 0859) at 2, Ex. K; See also Child Welfare Agency Public Disclosure Form, dated
8/8/07, Ex. L).

13 Defendants’ poor practices, including failing to visit children and failing to conduct abuse
14 investigations, contributed to the deaths of these children. Until the systemic problems leading to
15 these and other deaths are addressed, all children in foster care are at risk.

16 **2. DFS Puts Children at Risk of Abuse and Neglect While in Foster Care.**

17 Although foster care should be a safe haven, many children are instead further abused and
18 neglected while in Clark County’s custody. This mistreatment compounds the already grave and
19 long term effects of child abuse and neglect.⁸

20 ⁶ Ms. Swain, DFS Division Manager at the time, confirmed that Child Haven’s file for Joshua contained little
21 information other than an entry that his temperature had been taken a couple of weeks before his death. (Swain Dep.
at 88:3-89:4; 94:1-6, Ex. UU). She was fired by Defendant Morton two days after Joshua’s death, after receiving an
22 e-mail from Defendant Morton asking “[h]ow am I going to explain this [Joshua’s death] to the National Center for
Youth Law.” (*Id.* at 85:10-86:14). Ms. Swain also testified about the death of another infant who had been placed by
23 County Defendants in an emergency shelter foster parent home. (*Id.* at 103:15-105:3).

24 ⁷ In addition to this and the *Cabrera* suit cited above, several other suits are pending on behalf of the estates of
children who died in foster care with County Defendants. See, e.g., Complaint, *Lewis v. State of Nevada*, No. CV-
25 1109 (KJD) (D. Nev. August 21, 2007) (four month old infant died from suffocation in a foster home that had four
foster children under the age of 19 months in violation of State law; foster parents failed to supervise the care of the
26 foster children); Complaint, *Garcia v. Clark County*, No. CV-1507 (RCJ) (D. Nev. November 12, 2007); Complaint,
Ruttenbur v. Jackson, No. CV-1382 (RCJ) (D. Nev. October 16, 2007) (alleging physical and sexual abuse and
emotional neglect of three brothers at the hands of Clark County foster parents and their teenage son).

27 ⁸ See Rosemary Chalk, *et al.*, “The Multiple Dimensions of Child Abuse and Neglect: New Insights into an Old
28 Problem,” Child Trend Research Brief, May 2002, Ex. M (“Hundreds of research studies and agency reports have
consistently reported negative outcomes from abuse and neglect for many children. Taken together, this evidence

1 The experiences of named plaintiffs are representative of the harms suffered by other
 2 foster children in Clark County. For example, the A. children suffered abuse and neglect in
 3 multiple foster homes, including being left home alone again at night shortly after the death of
 4 their baby brother. (*See* Logan Decl. at ¶¶ 10, 14 (Docket No. 82); Logan Dep. at 50:11 – 52:19,
 5 113:19 – 114:16, 110:16 – 111:21, Ex. TT; Swain Dep. at 110-111, Ex. UU (“... the same
 6 scenario happened twice, except the second time, obviously, there wasn’t a death.”)). In fact,
 7 none of the named plaintiffs was spared the experience of abuse or neglect while in Defendants’
 8 custody. (*See* Declaration of Marilyn Paikai (“Paikai Decl. I”) at ¶11 (Docket No. 79) (foster
 9 mother physically abused Frank B., leaving a black and blue bruise on his left hip the size of a
 10 baseball); Declaration of Clark K. (“Clark K. Decl.”) at ¶¶ 14, 17-19 (Docket No. 78) (severe
 11 neglect); Declaration of Jacquelyn Romero (“Romero Decl.”) at ¶¶ 6-9 (Docket No. 80) (severe
 12 neglect and emotional abuse)).

13 Defendants’ own documents reveal that abuse and neglect while in Defendants’ custody is
 14 a widespread problem. For example, Clark County’s foster home licensing documents reflect an
 15 alarming number of license revocations, suspensions, and denials,⁹ which in turn reveal that foster
 16 children are suffering wide-ranging abuse and neglect in the very foster homes in which they are
 17 placed for their safety. These documents provide evidence that children are sexually assaulted in
 18 foster homes (CC-DRSFHL 0166), brutally restrained by foster parents (CC-DRSFHL 0243),
 19 severely physically abused by foster parents (CC-DRSFHL 0046, 0075, 0156, 0171, 0148),
 20 medically neglected by foster parents (CC-DRSFHL 0119, 0037-38), and left alone in dangerous
 21 situations or with foster parents under the influence of illegal drugs (CC-DRSFHL 0020-21,
 22 0029-30, 0041-42, 0095-96).¹⁰ These examples are but a small sample of the numerous instances
 23

24 suggests that abuse and neglect are associated with both short- and long-term negative consequences for children’s
 25 physical and mental health, cognitive skills and educational attainment, and social and behavioral development.”)

26 ⁹ The documents provided by Defendants do not appear to include all homes in which abuse/neglect occurred. For
 27 example, there was no revocation or suspension notice for Melanie Ochs, who was arrested in October 2006 and
 charged with the murder of a child in her foster home. *See supra* Part III.A.1., for further description of the case.

28 ¹⁰ All documents labeled CC-DRSFHL – Clark County DFS Notices of Revocation, Notices of Suspension, and
 Denials of License Renewal – were produced by County Defendants, and are attached to the Grimm Decl. as Ex. N.

1 of abuse and neglect described in the licensing documents.¹¹

2 Institutional Abuse Reports¹² obtained from Clark County provide further evidence that
3 foster children in Clark County are suffering abuse and neglect at disturbing rates. These reports
4 also document the ugly fact that the incidence of abuse and neglect while in foster care has been
5 steadily increasing since 2004.¹³ (Clark County Institutional Abuse Reports, Ex. P). Foster
6 children have been subjected to all types of abuse and neglect – sexual abuse, physical
7 abuse/beatings, emotional abuse, neglect, lack of supervision, medical neglect, and failure to
8 provide basic necessities.

9 Moreover, these reports do not capture the magnitude of abuse and neglect suffered by
10 foster children in Clark County. First, studies and surveys provide considerable evidence that the
11 actual incidence of maltreatment of foster children exceeds the number that is officially reported
12 and investigated.¹⁴ Second, these reports only record instances in which a formal report of abuse
13 or neglect in a licensed placement is called in and accepted for investigation. (DFS Reporting
14 Module User Manual at 64, Ex. O). They exclude allegations against DFS staff, any complaint
15 that is not viewed as reaching a “criminal level,”¹⁵ and perhaps most concerning, any reports of
16 abuse and neglect of the thousand-plus children in unlicensed homes (e.g. with family or “fictive
17 kin”).¹⁶

18 As described above, Defendants’ own documents establish that that the abuse and neglect

19 _____
20 ¹¹ County Defendants have produced over 400 pages of licensing revocation, suspension, and denial notices. Grimm
21 Decl at ¶ 23.

22 ¹² Institutional Abuse Reports generated by Clark County provide a list of licensed foster care providers who have
23 been the subject of an allegation of abuse and neglect of a child in foster care. (DFS Reporting Module User Manual
24 at 64, Ex. O).

25 ¹³ For calendar year 2004, Institutional Abuse Reports were 73 pages, increasing to 90 pages for 2005, 104 pages for
26 2006, and 28 pages for just the first quarter of 2007.

27 ¹⁴ See *Casey Family Programs Foster Care Alumni Study Improving Family Foster Care: Findings from the
28 Northwest Foster Care Alumni Study* (“Casey Alumni Study”) (Rev. 2004), at 30-31, Ex. Q.

¹⁵ The Institutional Abuse Team Meeting Minutes note that: “Currently, all complaints on Child Haven are being
screened through LVMPD [Las Vegas Metro Police Dep’t]. If it does not reach criminal level, it is not investigated;
even if 432B [child protective services statute] has been violated.” (2/26/2007 Inst. Abuse Meeting Minutes at 2,
Ex. R).

¹⁶ From data provided by Defendants, it appears that well over 1,000 children are placed in unlicensed relative
placements. (Clark County DFS Relative Placement Data at FC Relatives 002 – 004, Ex. S).

1 suffered by the named plaintiffs is also experienced by countless other class members. Foster
 2 children in Clark County remain at risk even in the foster homes designed to protect them.

3 **3. Defendants Fail to Provide Much-Needed Medical Care and Mental**
 4 **Health Services to Foster Children in Clark County.**

5 Defendants fail to provide Clark County foster children with medically necessary health
 6 and mental health services, compounding the harm caused by their maltreatment. Given that high
 7 percentages of children entering foster care have significant medical and mental health needs¹⁷,
 8 timely access to services is critical. (See 6/6/06 Presentation to Clark County Board of County
 9 Commissioners on Family Services at 7, Ex. U). At the most basic level, children need initial
 10 health screenings in the first days of placement to identify the need for immediate medical or
 11 mental health care. On an ongoing basis, foster children, like all children, need regular medical
 12 and dental examinations, developmental and mental health screenings, and any necessary
 13 therapeutic and treatment services. All too often in Clark County, health screenings are not
 14 performed and medically necessary services are not delivered.

15 **a. Denial of Mental Health Services**

16 Defendants regularly fail to provide foster children with needed mental health assessments
 17 and services. Moreover, the quality of the mental health services that are provided is often poor.

18 The named plaintiffs' experiences illustrate the lack of adequate mental health care
 19 provided to the class as a whole. Despite their need for wide-ranging mental health services, the
 20 named plaintiffs have been subjected to harmful delays in the provision of needed assessments
 21 and services, if not an outright denial of such care. For example, although Donna C. had been
 22 severely emotionally abused, neglected, and traumatized, she was not assessed or provided with
 23 any form of therapy for nearly four months. (Romero Decl. at ¶¶ 6-9, 12-13 (Docket No. 80);
 24 Romero Dep. at 38: 20 – 41:10, Ex. VV). Similarly, despite the damaging experiences suffered
 25 by Clark K. when DFS sent him to Texas (Clark K. Decl. at ¶¶ 17-19 (Docket No. 78)), DFS
 26

27 ¹⁷ National studies indicate that between 50 and 80 percent of children in foster care suffer from moderate to severe
 28 mental health problems. (S. dosReis et al., *Mental health services for youths in foster care and disabled youth*,
 American Journal of Public Health, 91(7): 1094-1099 (2001), Ex. T).

1 made no efforts to provide him with any mental health services upon his return to Las Vegas,
 2 despite his caseworker's agreement that he needed counseling. (*Id.* at ¶¶ 22, 24-25; *see also*
 3 Anderson Dep. at 72:11 – 74:13, 113:9-13, Ex. WW (noting that DFS thwarted Clark's
 4 grandparents' efforts to obtain mental health services for him)). DFS also deprived crucial mental
 5 health services to other named plaintiffs who had experienced the trauma of witnessing their
 6 sibling's death. (Logan Decl. ¶ 18, 19 (Docket No. 82); Logan Dep. at 115:1 – 116:19, 131:13 –
 7 133:6, Ex. TT).¹⁸

8 The named plaintiffs' experiences are not unusual in Clark County. Countless children in
 9 foster care are denied needed mental health services. (*See, e.g.*, March 26-29, 2001 DCFS Clark
 10 County Case Review at 227105, Ex. V (State review of Clark County finding that nearly 50% of
 11 foster children were not receiving adequate services to meet their physical and mental health
 12 needs); UNLV School of Social Work Report, *A Survey of Foster Parents' Satisfaction Toward*
 13 *Nevada's System of Child Welfare* ("Nevada Foster Parent Survey") at 12, Ex. W (25% of foster
 14 parents reported that children with behavioral problems did not receive needed services); *see also*
 15 Declaration of Terrie Crawford ("Crawford Decl.") at ¶¶ 20-23; March 28, 2008 Declaration of
 16 Marilyn Paikai ("Paikai Decl. II") at ¶¶ 16-17)). Foster youth who are provided with mental
 17 health services often experience significant delays. (*See, e.g.*, Clark County Administrative Case
 18 Review at CC QA/QIR-0054, Ex. X (County consultant finds that a sexually abused child with
 19 serious mental health needs waited many months for counseling)). In addition, the quality and
 20 effectiveness of services are often inadequate. (*See, e.g.*, Nevada Foster Parent Survey at 12, Ex.
 21 W (finding that one third of foster parents were dissatisfied with the quality of mental health
 22 services received by children in their homes)). DFS Director Morton himself admits that
 23 "[r]egardless of what [needs are] identified, the same limited array of services is offered rather
 24 than individualizing services around the unique needs of the child and family." (Morton Report
 25 to Rep. Berkley at 10, Ex. D).

26 _____
 27 ¹⁸ When Mrs. Logan told Child Haven counselors that the A. children were having nightmares about their baby
 28 brother's death and needed counseling, she was told "because they were not teary, they [Child Haven counselors]
 would not bring up the situation." (Logan Dep. at 132:16-133:6, Ex. TT). Mrs. Logan was told that the children
 "were not entitled to other services because they were still in the placement of the haven." (*Id.*).

1 Based on evidence gathered from Clark County through discovery, Defendants fail to
 2 provide necessary services to those youth with even the most serious mental health needs.
 3 Incident Reports and Walkaway Checklists¹⁹ from the teen girls' cottage at Child Haven prove
 4 that this leads to very dangerous situations for foster youth:

- 5 • A 14-year-old female diagnosed with bipolar disorder and ADHD was allowed to leave
 6 Child Haven by herself (termed a "walk away") just after midnight in her pajamas. She
 7 had not been given her medication or mental health services for at least three weeks.
 8 (Child Haven Incident Reports and Walkway Checklists at CHIR036, Ex. Y).
- 9 • A 15-year-old diagnosed with bipolar disorder and oppositional defiant disorder (ODD)
 10 was allowed to walk away from Child Haven. She had not been receiving mental health
 11 services or her prescribed medication. (*Id.* at CHIR045, Ex. Y).
- 12 • A 12-year-old who cut herself all over her arms with a pencil sharpener was placed in the
 13 "day room" for observation. She was not provided with any mental health services to
 14 address her self-mutilation. (*Id.* at CHIR081, Ex. Y).

15 (*See also Id.* at CHIR023; CHIR032; CHIR039; CHIR051-053; CHIR054; CHIR049; CHIR067;
 16 CHIR072; CHIR083; CHIR089 (describing similar situations to those detailed above), Ex. Y).

17 Additional reports confirm that Defendants lack an array of services to meet the needs of
 18 foster children with severe mental health issues. (*See, e.g.*, Missouri Alliance Report at 8-9, Ex.
 19 F) (County consultant found that children with high level mental health needs placed in so-called
 20 treatment homes are at risk due to lack of training, support, standards, and accountability, and
 21 high numbers of children in homes). Indeed, Director Morton, himself, has stated that there are
 22 not adequate mental health placements and that "[o]ften, when a child is stabilized in an in-patient
 23 facility and ready for release, there is no lower level of care provider willing or able to accept the
 24 child." (Morton Report to Rep. Berkley at 12, Ex. D).

25 **b. Denial of Medical and Dental Care**

26 The named plaintiffs have also experienced problems with access to medical and dental
 27 care. For example, King A. had serious respiratory problems while at Child Haven, but was not
 28 taken to see a specialist for nine or ten months, during which time he was not allowed to go

¹⁹ Incident Reports give a report of incidents occurring in the teen girls' cottage (Nork), as well as actions taken as a result. Walkaway Checklists are filled out when youth leave Child Haven without permission and unsupervised. *See* Crawford Decl. at ¶ 19 (noting that Child Haven staff regularly allowed her grandsons to "walkaway").

1 outside at all. (Logan Dep. at 116:13-16, Ex. TT; *See also*, Romero Dep. at 78:2-8, Ex. VV;
 2 Anderson Dep. at 101:9-21, Ex. WW).²⁰ Defendants' own documents demonstrate that access to
 3 adequate medical and dental care is a common problem for many Clark County foster youth.
 4 (*See, e.g.*, March 26-29, 2007 DCFS Clark County Case Review at STATE 227105, Ex. V) (State
 5 review of Clark County finding that nearly 50% of foster children were not receiving adequate
 6 services to meet their physical and mental health needs).

7 Multiple sources suggest that DFS routinely fails to ensure that foster youth have access to
 8 Medicaid, which is a major barrier to obtaining medical care. Foster parents have reported that
 9 “[t]imely access to a Medicaid card or Medicaid reference number is needed so that medical
 10 appointments and services can be scheduled and obtained in a timely manner” and that
 11 “[c]hildren are placed without a medical card or Medicaid reference number causing delays in
 12 scheduling medical appointments.” (Statewide Multidisciplinary Team Quarterly Report, Jan-
 13 March 2007 at STATE 234023-234024, Ex. Z²¹; *See also* State Child Welfare Multidisciplinary
 14 Team Monthly Report, December 2006 at 19, Ex. BB (foster parents report lack of timely access
 15 to treatment, lengthy delays if prior authorization is needed from Medicaid)).

16 Denial of necessary medical and mental health services is itself a form of further neglect.
 17 As shown above, all foster children in Clark County are at risk of suffering this additional harm
 18 while in the custody of Defendants.

19 **4. Defendants Fail to Provide Foster Children With Stable Placements.**

20 Being removed from family and placed in foster care is a traumatic disruption in a child's
 21 life. Placement disruptions while in foster care cause additional harm to foster children, including
 22 affecting their educational progress and mental health outcomes.²² In addition, research has

23 _____
 24 ²⁰ Recent declarations regarding children in DFS custody confirm these continuing problems. (*See* Paikai II Decl. at ¶¶ 13-15, 18 & 20; Declaration of Nancy Danelson (“Danelson Decl.”) at ¶¶ 17-19).

25 _____
 26 ²¹ Although the State Multidisciplinary Team only reviews a small sample of cases, the fact that they reinforce the
 27 findings of other, independently conducted reviews – as well as the fact that each sample of cases reviews tends to
 28 reveal similar problems – lends them added significance. (*See* 7/6/07 Decision Making Group Minutes at STATE
 226018, Ex. AA (stating “while the sample is not statistically significant, that most issues are apparent and keep
 showing up review after review”)).

²² *See* Casey Alumni Study at 40-43, Ex. Q (optimizing placement stability had 22% reduction in undesirable mental

1 shown that frequent placement disruptions while in foster care increase the risk of delinquency
2 for boys in particular.²³

3 Despite the known harms resulting from placement disruptions, Defendants operate a
4 system in which placements often break down, and children are shuttled from one house, group
5 home, and institution to another. Not surprisingly, all of the named plaintiffs have experienced
6 multiple placement disruptions while in the custody of DFS. For example, Summer and Frank B.
7 were moved eight or nine times in less than five months. (Paikai Decl. I. at ¶¶ 7-15 (Docket No.
8 79)). These placement disruptions were due to many factors, including being abused or neglected
9 in foster homes; being placed with foster parents who were ill-prepared and ill-supported to care
10 for their many needs; and a combination of these and many other systemic deficiencies. (*See Id.*;
11 Paikai Dep. at 39:14 – 52:22, Ex. XX; *see also* Logan Dep. at 113:9 – 114:16, Ex. TT; Logan
12 Decl. at ¶¶ 13-14 (Docket No. 82)).

13 Named plaintiffs' experience of being shuttled from placement to placement while in the
14 custody of Clark County DFS is common. The last federal performance review of Nevada's child
15 welfare system found that only 31 percent of foster children in Clark County had stable
16 placements. (Final Report, Nevada CFSR, June 1, 2004 at 31-33, Ex. DD). Frequent placement
17 disruptions led to a lack of continuity in services, changes in schools, and an overall negative
18 impact on children's well-being. (*Id.* at 32; *see also* Danelson Decl. at ¶¶ 12 & 15; Crawford
19 Decl. at ¶¶ 14 & 26). Subsequent reports indicate that Clark County seriously undercounts the
20 number of placements of children in its care. A review of case files found that in over two-thirds
21 of the cases reported to the federal government, children had experienced significantly more
22 placement disruptions than were reported. (AFCARS Assessment Review Findings: Foster Care
23 Data Elements for Nevada, July 2006, at 13-15, Ex. EE (finding that a significant number of
24 records had one move reported when the actual number of placements was between two and
25 health outcomes, and almost 18% reduction in undesirable education outcomes).

26 ²³ *See* Abstract of Joseph P. Ryan & Mark F. Testa, *Child maltreatment and juvenile delinquency: Investigating the*
27 *role of placement and placement instability*, Children and Youth Services Review (Vol. 27) 227-249 (March 2005),
28 Ex. CC (male victims of maltreatment with one placement in a foster home had a similar rate of delinquency to those
who remained in their family homes, but the rate of delinquency almost doubled for children with four or more
placements while in foster care).

1 five)). Importantly, recent data provided by County Defendants themselves establishes that over
 2 40% of children who entered foster care between October 1, 2005 and September 30, 2006
 3 experienced *three or more* placements during their time in foster care.²⁴ (Clark County DFS
 4 Three or More Placements Data at FCPL009-027, Ex. FF).

5 The evidence cited above proves that Defendants operate a system in which foster
 6 children face the constant threat of placement disruption. These disruptions are a symptom of the
 7 many systemic deficiencies and poor practices in Clark County, discussed in more detail below.

8 **B. Common DFS Practices Put All Class Members at Risk of Harm.**

9 The harms described above are not the result of a few rogue caseworkers or freak
 10 accidents, but rather the natural consequence of Defendants' failure to operate a system that
 11 protects and nurtures the abused and neglected children in its care. Among the systemic
 12 deficiencies that have led to the current level of dysfunction are an ill-qualified, untrained, and
 13 unsupervised workforce burdened with overwhelming caseloads; a failure to effectively
 14 investigate reports of abuse and neglect; a failure to provide foster parents with critical
 15 information about the children placed in their home; a lack of adequate support for foster parents;
 16 a lack of reliable data and quality assurance systems; and the failure to provide children with
 17 advocates to make their voices heard. These systemic deficiencies affect all class members, not
 18 just named plaintiffs. As long as they are allowed to persist, all children will be at risk of
 19 suffering serious harm.

20 **1. Many DFS Caseworkers Lack the Qualifications, Training, and**
 21 **Supervision Necessary to Ensure Foster Children's Safety and Well-**
 22 **Being.**

23 In Clark County, high stakes decisions about the lives of foster children are entrusted to
 24 caseworkers who are often unprepared to perform their challenging job responsibilities. They are
 25 frequently hired with no child welfare experience; they are not adequately trained to make the

26 ²⁴ These numbers are even more disturbing considering that this data includes placement moves of children who were
 27 in the system for as few as 30 days. Grimm Decl. at ¶ 41. Plaintiffs have made their best efforts to analyze the data
 28 provided to them by County Defendants. *Id.* County Defendants have refused to provide the type of placement data
 that plaintiffs requested many months ago, and have not given a satisfactory explanation of the limited data provided
 thus far. *Id.*

1 many difficult and complex decisions they must make every day; and they are not provided
2 adequate supervision to support them in making those decisions. Any one of these areas of
3 concern – the low entry requirements, the nonexistent or at best “stop-gap” training, the lack of
4 supervision – is dangerous on its own. Combined, these deficiencies create a situation in which
5 children will inevitably be subject to further harm.

6 **a. Lack of Qualifications**

7 Clark County regularly hires caseworkers who lack any social work education or
8 experience. Clark County requires only that caseworkers have a bachelor’s degree in any social
9 science – not social work in particular. (*See Ruiz-Lee Dep. at 176:13-15, Ex. YY*). Additionally,
10 although the other regions of Nevada (Washoe County and the rural areas) require that child
11 welfare caseworkers must be licensed as social workers, Clark County does not. As Director
12 Morton himself stated, “[t]hese entry requirements generally mean that new employees come
13 without the critical skills needed to ensure the safety, permanency and well-being of children and
14 to plan and facilitate family change.” (Morton Report to Rep. Berkley at 10, Ex. D).

15 **b. Lack of Training**

16 Despite the fact that new employees come to DFS lacking “critical skills,” Defendants fail
17 to provide adequate training to new caseworkers. Defendant Morton has acknowledged that since
18 workers come in with little (or no) experience, it is crucial that “comprehensive pre-service
19 training be provided to new staff before assuming case responsibilities.” (Morton Report to Rep.
20 Berkley at 10, Ex. D). He has admitted, however, that “[t]his has never happened in Clark
21 County.” (*Id. See also Missouri Alliance Report at 4, Ex. F* (“[t]raining is vital to the integrity of
22 clinical and case management practice performed by the agency” ... “comprehensive training is
23 not offered to new staff.”)). The only training currently provided to new caseworkers in Clark
24 County is considered “stop-gap” even by the DFS Assistant Director in charge of training, and
25 falls far short of preparing caseworkers to perform their crucial role in ensuring children’s safety
26 and well-being. (*Ruiz-Lee Dep. at 157:17-20, Ex. YY*).

27 Further complicating this issue is the fact that Clark County DFS is uncertain who even
28 has responsibility – the state or the county – for new caseworker training. (*Ruiz-Lee Dep. at*

1 153:1-14, Ex. YY). According to Defendant Morton, the “state has been unsuccessful in
 2 developing and delivering training that adequately prepares caseworkers for the job;” but since
 3 Clark County has never had its own training capacity, it has remained reliant on the state for
 4 provision of core training to new staff. (Morton Report to Rep. Berkley at 9, Ex. D).

5 As a result, according to a former DFS Assistant Director²⁵ “[w]e have an untrained
 6 workforce and we have untrained supervisors, and people are struggling with knowing how to do
 7 their job.” (Rubin Dep. Vol II at 222:1-3, Ex. ZZ). This same Assistant Director pointed to
 8 training as the greatest systemic issue in DFS, and the most prevalent issue brought to her by her
 9 managers, who supervised the large majority of caseworkers in the agency. (*Id.* at 269:18 –
 10 270:18 (stating that caseworkers are not clear about many day to day details, including what to do
 11 before you place a child)). She described the training needs as global: “investigative training,
 12 case management training, ongoing safety training, supervisory training, pretty much anything
 13 you can think of.” (*Id.* at 222:11-15, Ex. ZZ; *See also* State Multidisciplinary Team Report Jan-
 14 March 2007 at STATE 234015-016, Ex. Z (describing basic types of training that are needed)).

15 The lack of caseworker training puts all children in the class at risk of harm. Defendant
 16 Morton himself has explicitly described the wide-ranging harms to children resulting from the
 17 lack of training: “The consequences of this [lack of comprehensive pre-service training] can be
 18 seen in reviewing almost every case. ... Safety and risk factors are often missed or
 19 misinterpreted. Many caretaker and child needs are never identified...” (Morton Report to Rep.
 20 Berkley at 10, Ex. D. (emphasis added); *see also* Rubin Dep. Vol. II at 270:24-25, Ex. ZZ (“if
 21 someone isn’t well trained, then a child could be put at risk”)).

22 **c. Poor Supervision**

23 The problems associated with a poorly qualified and trained staff are exacerbated by the
 24 absence of administrators and supervisors who have the professional training and background to
 25 provide adequate supervision.²⁶ All the way up the chain of command, there is a serious lack of

26 _____
 27 ²⁵ Ann Rubin was one of three Assistant Directors when she was deposed on November 13 and December 6, 2007,
 but she left the position in mid-December 2007.

28 ²⁶ Notably, John Goad, an independent contractor County Defendants hired to evaluate aspects of their system,
 recently wrote an extensive evaluation of the Michigan Department of Human Services. He expressed serious

1 child welfare experience. In Clark County, most supervisors are not licensed as social workers
 2 and only about 25% of line supervisors have a master's degree in social work. (79 Child Death
 3 Review Cases: Staff Qualifications, Exhibit HH). Only one (out of six) of the Assistant Managers
 4 has a master's degrees in social work (*Id.*). Even the people at the highest levels of the State and
 5 County agencies do not necessarily have any background in child welfare. (*See* Ruiz-Lee Dep. at
 6 28:3 – 29:4, Ex. YY (noting that before becoming an Assistant Director at DFS, Ms. Ruiz-Lee
 7 had never worked in a child welfare agency); Rubin Dep. at 29:9-10, Ex. ZZ (state administrators
 8 do not have a lot of child-welfare expertise)).

9 As Defendant Morton himself has acknowledged, multiple reviews of Clark County have
 10 noted that supervisors often lack knowledge and skills in monitoring casework, assisting workers
 11 in making decisions, holding workers accountable, and improving performance. (Morton Report
 12 to Rep. Berkley at 11, Ex. D; *see also* Rubin Dep. Vol II at 221:13-20, Ex. ZZ (“[s]ystematically,
 13 there’s never been good supervisory training” statewide or locally, despite the fact that “everyone
 14 identifies that the supervisor line is the most critical line in child welfare.”); Agency Improvement
 15 Plan for Clark County DFS (“AIP”), Ex. II; Statewide Multidisciplinary Team Report Jan-March
 16 2007 at 234016, Ex. Z)).

17 This lack of such essential supervisory skills has negative consequences for children. As
 18 noted in the Agency Improvement Plan for Clark County DFS,²⁷ “[i]nadequate supervisory
 19 oversight and QA [quality assurance] at case closure” impacts the safety goal of keeping children
 20 “first and foremost protected from abuse and neglect.” (AIP at 130000099, Ex. II).

21 Caseworkers are the immediate protectors of foster children’s safety and well-being. Yet,
 22 as shown above, Clark County caseworkers are not prepared or supported to fulfill that role,
 23 placing all foster children at risk of harm.

24
 25
 26 concerns about top administrators in a child welfare agency holding positions “critical to the protection of ...foster
 27 children” lacking any education or experience to prepare them to fulfill their challenging responsibilities.” (John
 28 Goad, Michigan Department of Health Services: An Evaluation of the Capacity to Assure the Safety of Foster
 Children, February 11, 2008, at 7, Ex. GG).

²⁷ Agency Improvement Plans are part of the federal review process of state child welfare agencies.

1 **2. DFS Caseworkers Have Dangerously High Caseloads.**

2 Compounding the impact of the lack of experience and training, many Clark County case
3 workers are also burdened with unmanageable caseloads. Defendant Morton recognizes that
4 generally accepted professional standards for child welfare practice recommend caseloads of 12
5 to 15 children per case manager. (Letter from Tom Morton and Virginia Valentine to Governor
6 Gibbons (“Morton Letter to Gov. Gibbons”) at 2, Ex. JJ). He has admitted, however, that
7 “currently foster care caseloads are at a dangerously high level of 39 children per case manager”
8 and that such caseload ratios place children “at an unacceptable level of risk.” (*Id.* at 2; *see also*
9 Rubin Dep. Vol II at 220:4-8, Ex. ZZ (stating that “[m]any workers have over 40 kids” and
10 several in-home workers “have over 50.”); Missouri Report at 4, Ex. F (finding in their
11 caseworker interviews that “caseloads of 40-60 were common.”)). Defendant Morton has also
12 admitted that “[u]niformly, all examinations of Nevada’s child welfare system have cited high
13 caseloads as a preeminent threat to the safety, permanency, and well-being of abused and
14 neglected children in Nevada.” (Morton Letter to Gov. Gibbons at 1, Ex. JJ;²⁸ *See also* Morton
15 Report to Rep. Berkeley at 8, Ex. D (stating that “in virtually every aspect of DFS operation, the
16 agency remains understaffed relative to the levels necessary to meet the safety, permanency and
17 well-being needs of maltreated children.”); Missouri Alliance Report at 4, Ex. F (“overwhelming
18 size of caseloads carried by permanency case managers constrains even the best case manager
19 from carrying out best practices in child welfare.”)).

20 High caseloads impact caseworkers’ ability to meet children’s basic needs for safety, well-
21 being, and permanency in many ways, including:

- 22 • High caseloads prevent caseworkers from having contact with children and families, the
23 most important factor in keeping children safe. Defendant Morton has acknowledged that
24 high caseloads have a direct impact on “frequency of child and family contact.” (Morton
25 Report to Rep. Berkley at 8, Ex. D; *see also* Rubin Dep. Vol II at 220:1-15, Ex. ZZ (high
caseloads are “a huge systemic issue that relates back to why children aren’t seen on a
regular basis.”); AIP at 130000102, Ex. II (noting that the “[i]nability to manage or

26 ²⁸ Although 27 new case manager positions have been approved, as of January 2008, none of these positions had
27 been filled. (Ruiz-Lee Dep. at 236:10-14, Ex. YY). According to DFS leadership, the caseload situation may well
28 have worsened since Morton sent his letter to Governor Gibbons due to an increase in foster children. (*Id.* at 234:3-
11). Additionally, even if the positions are filled, caseloads will still remain above professional standards. (*Id.* at
235:1-21).

1 coordinate visitations due to high caseloads” prevent workers from increasing the
2 frequency of visits)).

- 3 • High caseloads lead to inadequate assessments, or a failure to conduct assessments at all.
4 (See Morton Report to Rep. Berkeley at 9, Ex. D (stating that caseworkers lack sufficient
5 time to conduct a comprehensive assessment); see also AIP at 130000100, Ex. II
6 (identifying high caseloads (or lack of training) as leading to “inadequate assessment of
7 children’s needs”)).
- 8 • High case loads harm children’s chances of achieving permanency. (See Rubin Dep. Vol
9 II at 220:19- 221:1, Ex. ZZ (citing “timely movement to permanency for children” as
10 being most severely impacted by high caseloads); AIP at 130000100 & 01, Ex. II
11 (identifying high caseloads as a factor preventing achievement of permanency goals
12 appropriate to the child’s needs)).

13 The above evidence proves that Clark County is staffed by ill-qualified, inadequately
14 trained, and poorly supervised caseworkers who are burdened with caseloads three or more times
15 larger than recommended levels. Under these circumstances, named plaintiffs²⁹ and all foster
16 children are placed at risk of harm.

17 **3. DFS Fails to Conduct Adequate Investigations of Child Abuse/Neglect** 18 **Complaints.**

19 Clark County routinely fails to investigate reports of abuse or neglect placing countless
20 children in serious risk. (See, e.g., Paikai II Decl. at ¶ 5; Crawford Decl. at ¶ 9). The experiences
21 of the named plaintiffs provide vivid examples of such failures, and the terrible harms that result.
22 Clark County DFS failed to investigate the multiple reports of abuse and neglect that were made
23 while the A. children were living in one of their foster homes (Logan Decl. at ¶ 10 (Docket No.
24 82); , Logan Dep. at 52:11 – 53:18, 123:18 – 125:6, Ex. TT); failed to investigate reports and
25 evidence of sexual abuse of Summer B. and physical abuse of Frank B. in a foster home (Paikai
26 Decl. I at ¶¶ 6, 11-12 (Docket No. 79)); and failed to investigate multiple reports of abuse or
27 neglect of Clark K. and his little brother before he entered care (Clark K. Decl. at ¶¶ 2-3 (Docket
28 No. 78)). After deciding to place Clark K. and Donna C. back with their respective biological
mothers, DFS did not even bother to check in on their status, resulting in serious harm to both
children. (*Id.* at ¶ 16; Romero Decl. at ¶ 10).

²⁹ Information obtained through discovery shows that the A. children’s caseworker has 43 cases on her caseload.
(AFCARS 0074, Ex. KK).

1 Clark County's failure to conduct adequate investigations is documented in multiple
 2 sources, including recent child fatality public disclosure forms, reports of the Statewide
 3 Multidisciplinary Team, and reports of independent child welfare consultants hired by Clark
 4 County. Child Welfare Consultant Edward Cotton's review of abuse and neglect investigations in
 5 Clark County³⁰ revealed that investigations were not initiated in a timely manner, insufficient
 6 information was gathered to make a good judgment in more than half of the cases reviewed, and
 7 investigators' decisions to rule a child abuse complaint substantiated or unsubstantiated were
 8 incorrect in two-thirds of the cases. (Independent Consultant Edward Cotton's Administrative
 9 Review of Child Abuse and Neglect Investigations at 4, 18, 23-25, Ex. LL. *See also* Statewide
 10 Multidisciplinary Team Report, Jan-March 2007 at STATE 234004, Ex. Z (finding that only 50%
 11 of children in the sample were seen immediately when the allegations suggested present danger)).
 12 Notably, Defendant Morton has affirmed these findings, admitting that inadequate abuse and
 13 neglect investigations are the norm in Clark County. (Morton Report to Rep. Berkley at 6-7, Ex.
 14 D; *See also Id.* at 9-10 (noting that investigations are generally brief and that staff lack training on
 15 how to conduct investigations)).³¹ Most recently, Assistant DFS Director Ruiz-Lee confirmed
 16 that there is no reliable data to refute the findings of the Cotton reviews or to suggest that the
 17 quality of investigations has improved at all. (Ruiz-Lee Dep. at 141:7-143:2, Ex. YY).

18 Recent child fatalities reported on the State's website provide further evidence that the
 19 failure to conduct adequate child protective services investigations has dire consequences for
 20 children. *See supra* Part III.A.1. In 22 (44%) of the 50 child deaths in 2007 reported at the
 21 website the family had a history of child protective services referrals. In a third of those cases
 22 there were four or more reports of abuse or neglect before the incident leading to the child's
 23 death.³²

24
 25 ³⁰ Prior to conducting his review of over 1300 child welfare cases in Clark County (Cotton Report, Ex. E), Mr.
 Cotton was hired to review child abuse and neglect investigations conducted by DFS.

26 ³¹ Though both County and state Defendants expended much effort trying to undermine or discredit some of the
 27 findings of the Cotton Report, Defendant Morton relied extensively upon Mr. Cotton's findings in his June 2007
 report to U.S. Representative Berkley.

28 ³² *See* http://dcfs.state.nv.us/DCFS_ChildFatalities_Disclosures_Clark.htm (last visited 3/11/08).

1 The ability to make determinations about children’s safety is one of the core
 2 responsibilities, if not the primary role, of a child welfare agency. Defendants’ failure to
 3 adequately perform this most basic and critical task – as evidenced by the many sources of
 4 information described above – places all children in the class at risk of harm.

5 **4. DFS Fails to Regularly Visit Children In its Custody to Ensure Their**
 6 **Health and Safety.**

7 The failure to conduct regular caseworker visits is a chronic problem in Clark County that
 8 has placed named plaintiffs and class members at risk. *See e.g.*, Crawford Decl. at ¶ 13. For
 9 example, named plaintiffs Donna C. and Clark K. each suffered significant harm when DFS
 10 placed them back with biological parents without conducting appropriate safety assessments and
 11 then failed to visit them. (Romero Decl. at ¶¶ 7 & 10 (Docket No. 80); Clark K. Decl. at ¶¶ 14-
 12 15, 17-20, 25 (Docket No. 78)).

13 Numerous sources have documented DFS’s chronic failure to regularly visit foster
 14 children, and Defendant Morton has admitted that “conducting regular visits with children and
 15 parents is an ongoing challenge.” (Morton Report to Rep. Berkley at 7, Ex. D (noting that Cotton
 16 case review found that less than 50% of kids had been seen in last 30 days, 33% had been visited
 17 in last 30-60 days, and more than 20% had not been seen in more than 60 days). *See also*
 18 Statewide Multidisciplinary Team Report, Jan-March 2007 at STATE 234024, Ex. Z (finding that
 19 foster parents repeatedly reported concern that children are not contacted or visited regularly by
 20 workers; in three particular instances, workers failed to visit for 12 to 18 months)).³³ Defendant
 21 Morton has also voiced serious concerns about his agency’s failure to visit children regularly.
 22 When he was first advised of the Cotton review finding that many children were not receiving
 23 regular visits, he said, “I consider this situation very dangerous . . .” (Email from Tom Morton
 24 (5/28/06), CCCR-1176-77, Ex. MM). Given that caseworkers are still burdened with
 25 overwhelming caseloads, it seems inevitable that this dangerous situation still exists.

26 _____
 27 ³³ Defendants also appear to have no accurate information about how often caseworkers are actually visiting children
 28 other than the case reviews; data from the State and County varies wildly. (Ruiz-Lee Dep. at 144:22–46:6, Ex. YY
 (“there is a discrepancy between the UNITY data and the hand-counted data”); Rubin Dep. at 74:1–5:8, Ex. ZZ).
 Nor do they track any information about the length or quality of visits. (Ruiz-Lee Dep. at 147:22–148:20, Ex. YY).

1 **5. DFS Fails to Provide Foster Parents with Adequate Information About**
 2 **Children Placed in Their Homes and Fails to Provide Them Adequate**
 3 **Support.**

4 Defendants regularly fail to provide foster parents with critical information about their
 5 foster children or with adequate support to meet their needs. (*See, e.g.,* Statewide
 6 Multidisciplinary Team Report, Jan-March 2007 at STATE 234018, Ex. Z (finding that “[f]oster
 7 parents should have better supervision/screening of foster homes, support services for foster
 8 homes, placement transition planning, strengthen FC recruitment/matching” and “should be
 9 adequately prepared when children with emotional problems are placed in their care.”) *See also*
 10 Paikai II Decl. at ¶¶ 10, 12 & 14; Danelson Decl. at ¶¶ 13-14). The experiences of the named
 11 plaintiffs illustrate the harms that can and do result from this systemic problem. For example,
 12 Jalen A. and his siblings were placed in shelter and foster homes that lacked the information and
 13 services to care adequately for their basic needs, leading to tragic results. (Logan Decl. at ¶ 13
 14 (Docket No. 82); Logan Dep. at 121:4-16, 123:2-17, Ex. TT). Donna C. and the B. children were
 15 similarly placed in multiple foster homes that were not given critical background and health
 16 information, leading to the failure of many of those placements. (*See* Romero Decl. at ¶11
 17 (Docket No. 80); Paikai Decl. I at ¶¶ 2, 6-10, 13-14 (Docket No. 79); Paikai Dep. at 123:15 –
 18 124:6, Ex. XX). In addition, DFS’s failure to inform Clark K.’s grandparents about the hearings
 19 in which the decision was made to send Clark to Texas or seek their involvement had dire
 20 consequences for him. (Anderson Dep. at 31:18–32:5, Ex. WW).

21 Documents obtained through discovery confirm that the lack of information described
 22 above is common and pervasive within the agency, exposing all children in the class to risk of
 23 harm. (Statewide Multidisciplinary Team Report Jan-March 2007 at STATE 234023-234024, Ex.
 24 Z (finding that by month, only 57%, 54%, and 33% of foster parents reported receiving
 25 “sufficient background information regarding children placed in the home.”); Nevada Foster
 26 Parent Survey at 11, Ex. W (finding that over 40% of foster parents reported that caseworkers do
 27 not inform them of foster children’s behavioral needs prior to placement, and over 33% did not
 28 receive sufficient information about the child’s medical history or educational needs); Missouri
 Alliance Report at 7-9, Ex. F (finding that sharing of information about the needs of the child

1 entering foster care or changing placements is a widespread problem)). Access to caseworkers as
2 well as access to supportive services, such as respite care, are sorely lacking system wide.
3 (Statewide Multidisciplinary Team Report, Jan-March 2007 at STATE 234024, Ex. Z (finding
4 that staff do not return phone calls, and the agency “seems to respond only to requests for a
5 child’s removal from the home”); DFS Recruitment and Retention Plan at STATE 230000015-16,
6 Ex. NN (finding that Clark County lacks sufficient respite resources)). This lack of information
7 and support directly affects not just the day-to-day safety of children, but also the stability of their
8 placements. (Statewide Multidisciplinary Team Report, Jan-March 2007 at STATE 234023, Ex. Z
9 (finding a correlation between lack of information and requesting removal of foster child and
10 stating “[p]lacement disruptions may have been avoided had information regarding child’s
11 behavioral health history been provided prior to or at the time of placement.”); *See Id.* at STATE
12 234015, Ex. Z (noting failed foster placement due to lack of medical knowledge)).

13 DFS entrusts the daily care of many of the children in its custody to foster parents of its
14 choosing. To ensure the safety and well-being of the vulnerable children in its care, it is DFS’
15 obligation to adequately train, inform, and support foster parents. As demonstrated by the
16 evidence above, DFS falls far short of living up to this responsibility.

17 **6. Defendants Lack an Adequate Management Information and Quality**
18 **Assurance System.**

19 As a matter of good practice, child welfare agencies must maintain accurate up-to-date
20 information about children in their care in order to ensure health and safety. On a broader level, it
21 is also critical that agencies use data as part of an overall quality assurance system to monitor the
22 general functioning of the system and make needed improvements. (DCFS Case Review of the 53
23 Cases in Clark County Identified by Ed Cotton’s Report, dated April 27, 2007, at 2, Ex. OO
24 (noting that “an internal case review process is an essential part of a well-functioning child
25 welfare system.”). Defendants fail to do either.

26 Multiple sources confirm that State and County Defendants fail to gather and use reliable
27 data to monitor the safety and health of the children in its system. (*See Blue Ribbon Panel Report*
28

1 on Child Deaths at 5, Ex. PP (finding glaring deficiencies in the state’s UNITY³⁴ database, noting
 2 that documentation is severely lacking, and concluding that UNITY produces little, if any, usable
 3 information); Morton Report to Rep. Berkley at 7, Ex. D (finding that “[d]ocumentation of case
 4 practice . . . is inconsistent or absent from UNITY and hard copy files” and “often found to be
 5 incomplete, irrelevant or difficult to discern . . .”); AIP at 130000099, Ex. II (finding “lack of or
 6 inconsistent documentation in case record and UNITY” as a “causative factor” interfering with
 7 achievement of the majority of safety, permanency, and well-being objectives)).³⁵ Clark County
 8 caseworkers consistently fail to document critical information in case files such as investigative
 9 contacts, family background checks, progress toward case goals, the basis for safety decisions,
 10 and contact with service providers for children. (*Id.*) Moreover, Clark County does not
 11 systematically monitor at least one significant group of children for whom DFS has responsibility
 12 – the thousand-plus³⁶ children in unpaid placements. (9/25/07 DMG Minutes at STATE 226038),
 13 Ex. QQ (DFS Director Morton expressing “concern that UNITY does not count children in non-
 14 paid placements”). These poor documentation practices represent a critical weakness in case
 15 practice that is not being adequately addressed by Defendants. (Rubin Dep. Vol II at 210:13-14,
 16 Ex. ZZ (“[a]t this point we don’t have a process to monitor case notes being entered in a timely
 17 basis.”); *See also* Missouri Alliance Report at 5, Ex. F (noting that “[it] is impossible to imagine
 18 trying to administer a child welfare program of this magnitude without basic accurate
 19 management information” and that the lack of such information would “lead the DFS
 20 administrators to some incorrect decisions.”)).

21 Defendants have also failed to develop an adequate quality assurance system to monitor
 22

23 ³⁴ The Unified Nevada Information Technology for Youth (UNITY) system is Nevada’s response to the federal
 24 requirement for a Statewide Automated Child Welfare Information System (SACWIS). The UNITY system was
 designed to support all aspects of child welfare case management and service delivery.

25 ³⁵ In fact, the data quality within UNITY is so poor that the federal Administration for Children and Families has
 26 requested that Clark County clean up the data. The County estimates that correcting the data errors would cost \$10
 27 million. (Morton Report to Rep. Berkley at 10-11, Ex. D. *See also* AFCARS Assessment Review Findings for
 Nevada, Ex. EE (detailing a wide range of concerns with the accuracy of Nevada’s data based on comparisons of
 actual case records with what was reported in AFCARS, a federal child welfare database)).

28 ³⁶ *See* Clark County DFS Relative Placement Data at FC Relatives 002 – 004, Ex. S (1,210 children with removal
 date between Oct 1, 2006 and Sep 30, 2007 placed in unlicensed relative placements).

1 the care they are responsible for providing to abused and neglected children. (Blue Ribbon Panel
 2 Report at 4, Ex. PP (finding that “[t]he State needs to have in place a system of oversight and
 3 accountability.”). Defendants’ UNITY database is mired with problems that impede “effective
 4 case and agency management” (Morton Report to Rep. Berkley at 10, Ex. D).³⁷ and the current
 5 case review process is lacking. Although County Defendants entered into a one-time contract
 6 with Consultant Ed Cotton for a review of child welfare cases involving children under the age of
 7 six years in 2005-2006, the case review protocol utilized in the Cotton Report has not been
 8 incorporated into the County Defendants’ practices. (*See* Ruiz-Lee Dep. at 52:21-23, 55:1-14,
 9 Ex. YY (testimony about number of cases reviewed and admission that they are woefully
 10 inadequate to determine if policies are being implemented). *See also* Rubin Depo, Vol II at
 11 243:17-19, Ex. ZZ (agency does not currently do random case reviews)).³⁸

12 The harms from the dysfunctional data system and lack of quality assurance process are
 13 many. As Defendant Morton explained:

14 Managers have had to make decisions based on anecdotal information or based on their
 15 personal assumptions about the performance of the organization. Without systematic
 16 quality assurance activities, the true size of problems was never known, leading to some
 instances in which problems were incorrectly assumed to be isolated when, in fact, they
 were prevalent.

17 (Morton Report to Rep. Berkley at 11, Ex. D). Such management practices and deficiencies
 18 contribute to an unsafe environment in which all children in foster care are exposed to
 19 unnecessary risk.

21 _____
 22 ³⁷ In response to this dysfunction, County Defendants have developed several free-standing databases, which they
 23 refer to as the Reporting Module and COGNOS. But these databases are also incomplete. (Ruiz-Lee Dep. at 114:7-
 24 13, 223:13 – 224:14, Ex. YY). Additionally, many staff, units, and supervisors have developed their own so-called
 25 databases, which are often no more than hand counts on a piece of paper, where significant amounts of information
 26 are stored. The information in these “underground databases” is isolated from other data sources, frequently
 27 inaccurate, and sometimes only in hard copy files. (Morton Rpt to Rep. Berkley at 10, Ex. D; Ruiz-Lee Dep. at
 28 121:17-19, 146:4 – 147:5, Ex. YY). As a result, data about any given child may be strewn throughout a variety of
 possible locations; data in the individual databases may not be in UNITY; and critical information about a child may
 be kept only in hard copy form. (Rubin Dep. Vol. II at 208:14 – 212:23, Ex. ZZ).

³⁸ State Defendants use case reviews as part of a Quality Assurance/Quality Improvement process, but those reviews
 occur infrequently – every nine months – and include less than 30 cases. (Morton Report to Rep. Berkley at 4).
 Although these reviews have revealed a variety of on-going problems in Clark County, they provide only a snapshot
 of practice, and are not used in conjunction with review of more comprehensive data.

1 7. **Defendants Fail to Provide Foster Children with an Advocate in Their**
 2 **Court Proceedings.**

3 In abuse and neglect cases, critical decisions affecting a child’s life are made at the initial
 4 court hearing determining whether the child should be removed from his or her family.
 5 Subsequent hearings may address equally fundamental issues such as where the child will live or
 6 who may have contact with the child. With such important matters at stake, foster children need
 7 an advocate in dependency court to ensure their voice is heard. Given the many systemic
 8 problems documented above, including unmanageable caseloads, it is all the more important for
 9 the child to have an advocate because case workers may not be aware of crucial issues.

10 Unfortunately, only about 35% of children in Clark County are provided with a guardian
 11 *ad litem* or attorney.³⁹ Moreover, of those few children who are represented, the vast majority do
 12 not have any representation until well after many critical decisions are made about their lives.
 13 (Hiltz Decl. at ¶ 20 (estimating that that 90% of the referrals received by CAP are to represent
 14 children who have been in the foster care system for a year or more and that two-thirds have no
 15 representation at termination of parental rights hearings); Thacker Dep. at 134:11-17, Ex. AAA
 16 (estimating that at least 90% of children do not have CASAs appointed until their review
 17 hearings)). In fact, professionals at CAP and CASA have provided estimates suggesting that only
 18 about 3.5% of Clark County children are represented by either an attorney or guardian *ad litem*
 19 during their first year in care when crucial decisions are being made about their fates. (*Id.*)⁴⁰

20 The failure to provide children with representation in dependency proceedings not only
 21 denies them a role in important decisions about their lives, but also leads to ill-informed decisions
 22 and eliminates an important safeguard against harm. The experiences of the named plaintiffs
 23 demonstrate the harm that can occur when children are denied representation. For example,

24 ³⁹ See Deposition of Patricia Thacker (“Thacker Dep.” at 48:11-13, Ex. AAA (about 400 children in Clark County
 25 have a Court Appointed Special Advocate (CASA)); Declaration of Steven Hiltz (“Hiltz Decl.”) at ¶ 8 (the
 26 Children’s Attorney Project (CAP) provides legal representation to approximately 1,000 children). The estimate of
 35% assumes there is not an overlap in these populations, and is based on an approximation that there are 4,000
 children in foster care in Clark County. See *infra* Part IV.A.

27 ⁴⁰ If 90% of the 1,400 children who are represented do not get a CAP attorney or CASA until after their first year or
 28 review hearing, this means that only 10%, or 140, are represented at earlier stages of the dependency process. These
 140 children represent about 3.5% of the approximately 4,000 children in the Clark County foster care system.

1 during their first year in care, neither the A. children nor the B. children were provided a guardian
 2 *ad litem* or an attorney. During this time, the children experienced a variety of harms —
 3 including multiple placement changes, emotional abuse, physical abuse, and, tragically, the death
 4 of a sibling. (Paikai Decl. I at ¶¶ 3, 4, 7, 10, 11 (Docket No. 79); Logan Decl. ¶¶ 4, 10, 12-14).
 5 Clark K., who has never been provided with representation of any kind, suffered horribly when
 6 neither he nor his grandparents were permitted to attend a court hearing that resulted in his re-
 7 location to Texas. (Clark K. Decl. at ¶¶ 7-10, 17-18 (Docket No. 78); Danelson Decl. at ¶ 16;
 8 Paikai II Decl. at ¶ 25).

9 Many of the harms experienced by named plaintiffs may well have been avoided or at
 10 least mitigated had Defendants provided them with the advocates to which they are entitled.
 11 Given the chronic shortage of advocates in Clark County, this is a common experience for many
 12 class members.

13 **IV. PLAINTIFFS' CLASS IS ENTITLED TO CERTIFICATION UNDER THE**
 14 **RULE 23(A) LEGAL STANDARD.**

15 Plaintiffs seek to certify a class of all children who have been, are, or will be victims of
 16 child abuse and neglect and have been, are, or will be in the legal custody of Clark County DFS.
 17 Because of the widespread and systemic nature of the violations at issue in this case, it is
 18 appropriate – and critical – for the Court to certify this case as a class action.

19 Plaintiffs have described in some detail the harms suffered and pervasive risks to which
 20 children in the putative class are subjected while in Defendants' custody. *See* Section III.A.
 21 While the nature and extent of the harms suffered by class members varies, those individual
 22 differences are of little consequence to class certification. The plaintiff class seeks only
 23 injunctive relief, not individual damages, so an individual inquiry into the relief to be afforded
 24 each class member is not required.

25 Plaintiffs have also provided overwhelming evidence, most of it from Defendants
 26 themselves, that those injuries and risks are not the result of a few incompetent or maverick
 27 caseworkers nor are they isolated to a few of Defendants' offices. *See* Section III.B. They result
 28 from system-wide practices and deficiencies including unmanageable caseloads, poor training and

1 supervision, and inadequate data and accountability practices. Taken together, the litany of harms
 2 and the widespread practices contributing to such harms, clearly satisfy the two factors –
 3 commonality and typicality – for which the Court sought additional information before ruling on
 4 Plaintiffs’ Motion for Class Certification.

5 As plaintiffs discussed in their initial class certification papers, Rule 23 promotes judicial
 6 efficiency by permitting many parties to litigate similar claims in one action, thereby eliminating
 7 multiple and duplicative litigation. *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998), *cert.*
 8 *denied* 526 U.S. 1003 (1999). A party seeking certification must show that: (1) the proposed
 9 class is so numerous that joining all members individually is impractical (“numerosity”); (2) the
 10 class shares at least one common question of fact or law (“commonality”); (3) the class
 11 representatives’ claims are typical of the class (“typicality”); and (4) the named plaintiffs will
 12 fairly protect the interests of the class (“adequacy of representation”). *Hanon v. Dataproducts*
 13 *Corp.*, 976 F.2d 497, 508 (9th Cir. 1992).

14 The sole question in determining the propriety of class certification is whether the
 15 requirements of Rule 23 are met; this analysis does not include an inquiry into whether plaintiffs
 16 have stated a cause of action or will prevail on the merits. *Jordan v. Los Angeles County*, 669
 17 F.2d 1311, 1321 (9th Cir. 1982), *vacated on other grounds*, 459 U.S. 810 (1982); *Eisen v.*
 18 *Carlisle & Jacquelin*, 417 U.S. 156, 177 (1974). To this end, when analyzing plaintiffs’ Rule 23
 19 showing, the District Court “is bound to take the substantive allegations of the complaint as true.”
 20 *Blackie v. Barrack*, 524 F.2d 891, 901 fn.17 (9th Cir. 1975), *cert. denied*, 429 U.S. 816 (1976)
 21 cited by *Hernandez v. Alexander*, 152 F.R.D. 192 (D.Nev 1993); *Thomas v. Baca*, 231 F.R.D.
 22 397, 399 (C.D. Cal. 2005). In addition, while this Court has discretion to determine the propriety
 23 of class certification, the exercise of that discretion must be within the framework of Rule 23.
 24 *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 630 (1997); *Gulf Oil Co. v. Bernard*, 452 U.S. 89,
 25 100 (1981).⁴¹ Plaintiffs meet all of the Rule 23 requirements, as set forth in detail below.

26 ⁴¹ For example, applying an overly-restrictive legal standard in evaluating the requirements of Rule 23 constitutes an
 27 abuse of discretion, subject to reversal. *Baby Neal v. Casey*, 43 F.3d 48, 60 (3d Cir. 1994); *see also Hawkins v.*
 28 *Comparet-Cassani*, 251 F.3d 1230, 1237 (9th Cir. 2001) (abuse of discretion when court’s certification assessment
 and ruling are “premised on legal error.”); *Griffin v. Carlin*, 755 F.2d 1516, 1531 (11th Cir. 1985) (failure to follow
 Rule 23 parameters is an abuse of discretion).

1 **A. THE COURT HAS RULED THAT PLAINTIFFS’ CLASS IS SO**
 2 **NUMEROUS THAT JOINDER IS IMPRACTICAL.**

3 This Court has already held that plaintiffs’ proposed class meets the numerosity
 4 requirement for certification. May 14, 2007 Order at 44-45 (Docket No. 134) (“Plaintiffs satisfy
 5 the numerosity requirement.”). The Court’s conclusion was based on “the very numbers that
 6 Defendants have determined are in the Clark County foster system.” *Id.* at 44. Given that those
 7 numbers have not changed significantly,⁴² this Court should affirm its earlier ruling that the class
 8 is so numerous that joinder is impractical.

9 **B. THE CLASS SHARES COMMON ISSUES OF LAW AND FACT.**

10 The second prerequisite to certification as a class action is that “there are questions of law
 11 or fact common to the class.” Fed. R. Civ. P. 23(a)(2). The requirement of “commonality”
 12 ensures that the class shares sufficiently comparable grievances that can be redressed through a
 13 collective remedy. *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001) (commonality aims to
 14 verify that “maintenance of a class action is economical”), *cert. denied*, 537 U.S. 812 (2002); *see*
 15 *also Walters v. Reno*, 145 F.3d 1032, 1045 (9th Cir. 1998) (commonality ensures “practical and
 16 efficient case management”), *cert. denied*, 526 U.S. 1003 (1999).

17 **1. In the Ninth Circuit, the Burden of Establishing Commonality Is**
 18 **Minimal.**

19 The Ninth Circuit construes the commonality requirement “permissively” and has
 20 described the requirement as “minimal.” *Hanlon*, 150 F.3d 1011, 1019-1020 (burden of
 21 establishing commonality is minimal); *see also Dukes v. Wal-Mart, Inc.*, 509 F.3d 1168, 1177
 22 (9th Cir. 2007); *Jordan*, 669 F.2d at 1321 (permissive application means class usually establishes
 23 commonality). The commonality test is “qualitative rather than quantitative – one significant
 24 issue common to the class may be sufficient to warrant certification.” *Dukes v. Wal-Mart*, 509
 25 F.3d 1168, 1177 (9th Cir. 2007)(citations omitted). The Ninth Circuit has recognized that the

26 _____
 27 ⁴² According to data provided from the Clark County DFS database, nearly 4,000 children were in foster care in
 28 Clark County from 10/01/06 – 9/30/07. (Clark County Placement Data, Ex. RR, DFSLCFC030 – DFSLCFC045).
 And according to data provided by the State, there were 4,173 children in foster care in Clark County as of October
 31, 2007. (AFCARS Placement Summary for State, Clark, and Washoe, for 10-31-2007 at STATE 223007, Ex. SS).

1 commonality requirement “is said to be met if plaintiffs’ grievances share a common question of
 2 law or fact.” *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001)(emphasis added)(quoting
 3 *Baby Neal v. Casey*, 43 F.3d 48, 56 (3d Cir. 1994) (commonality met if class representatives
 4 share “at least one question of fact or law with the grievances of the prospective class”)); *see also*
 5 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (“The existence of shared legal issues with
 6 divergent factual predicates is sufficient, as is a common core of salient facts coupled with
 7 disparate legal remedies.”). The fact that the class seeks only injunctive relief further supports a
 8 finding that commonality is satisfied. Because suits seeking solely class-wide injunctive relief do
 9 not require individualized inquiries to determine damage awards, they “by their very nature often
 10 present common questions satisfying Rule 23(a)(2).” 7A Wright et al., Section 1763 at 201.

11 **2. Plaintiffs Surpass the Minimal Commonality Requirement.**

12 In this case plaintiffs easily surpass the minimal requirements of Rule 23(a)(2). Though
 13 Ninth Circuit case law dictates that they need only share *one* common question of law or fact to
 14 satisfy the commonality requirement, the named plaintiffs share many questions of law and fact
 15 with the prospective class. In fact, common questions of fact and law form the core of the named
 16 plaintiffs’ claims, which are co-extensive with the claims of the class as a whole.

17 Plaintiff children challenge long-standing, systemic deficiencies in Defendants’ foster care
 18 system that cause harm and risk of harm not only to the named plaintiffs, but inevitably to all
 19 children in the system. As such, the ability of plaintiff foster children – as well as the ability of
 20 the class as a whole – to prevail in challenging Defendants’ conduct rests on the resolution of the
 21 same legal and factual issues. These common questions include:

- 22 • Whether Defendants’ operation of a dysfunctional system regularly places all children in
 23 foster care at risk of harm; specifically, risk of death, abuse and neglect, denial of needed
 medical and mental health services, and placement instability;
- 24 • Whether the following deficiencies exist in the Clark County child welfare system,
 25 placing children at risk of the above described harms:
 - 26 ○ A caseworker training program so lacking that caseworkers are ill-equipped to
 provide critical support to children and families;
 - 27 ○ Assignment of overwhelming caseloads to poorly qualified, trained, and
 28 supervised caseworkers;

- 1 ○ Routine failure to adequately investigate allegations of abuse and neglect;
- 2 ○ Failure to ensure that foster children receive timely visits from caseworkers;
- 3 ○ Failure to provide critical information to foster parents about children in their
- 4 care, as well as the support they need to provide adequate care;
- 5 ○ Lack of representation for foster children in dependency court hearings,
- 6 denying them a voice in the decisions Defendants make about their lives;
- 7 ● Whether Defendants' operation of a foster care program with the deficiencies
- 8 described above, among many others – violates the mandates of the Substantive Due
- 9 Process Clauses of the United States and Nevada Constitutions, the Federal Adoption
- 10 Assistance Act, the Child Abuse Prevention and Treatment Act, and the Medicaid Act.

11 These common questions were pled in the original complaint and described in the original
12 motion for class certification. The present motion provides overwhelming evidence of the
13 common questions of law and fact that permeate this case. *See generally supra* Part III.

14 3. **Cases Challenging System-wide Policies and Practices Have Regularly** 15 **Been Found to Meet the Commonality Requirement.**

16 In civil-rights cases such as this one, the Ninth Circuit has held that “commonality is
17 satisfied where the lawsuit challenges a system-wide practice or policy that affects all of the
18 putative class members.” *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001) (citing *LaDuke*
19 *v. Nelson*, 762 F.2d 1318, 1332 (9th Cir. 1985)); *Walters v. Reno*, 145 F.3d 1032, 1045, 1047 (9th
20 Cir. 1998) (common question of law where plaintiffs challenge constitutionality of INS
21 procedures), *cert. denied*, 526 U.S. 1003 (1999).

22 Across the nation, federal courts have granted class certification in actions specifically
23 related to foster care asserting identical or analogous allegations of common questions of law or
24 fact. *See e.g.*, *Marisol A. v. Giuliani*, 126 F.3d 372, 377 (2d Cir. 1997) (affirming district court's
25 finding of commonality where common question of law was whether each child has a legal
26 entitlement to services and common question of fact was whether defendants systematically have
27 failed to provide those legally mandated services); *Baby Neal v. Casey*, 43 F.3d 48, 56 (3d Cir.
28 1994) (finding “DHS’s systemic deficiencies in providing legally mandated child care services”
to be a common legal basis to support class certification); *Kenny A. v. Perdue*, 218 F.R.D. 277,
300 (N.D. Ga. 2003) (citing *Baby Neal*, 43 F.3d at 53, 60) (commonality met where plaintiffs’

1 challenge “systemic deficiencies” in “implementation of support programs and services for all
2 foster children”).

3 The Ninth Circuit – along with its constituent district courts – has cited with approval the
4 Rule 23 analysis laid out by the Third Circuit in *Baby Neal. Armstrong v. Davis*, 275 F.3d 849,
5 868 (9th Cir. 2001); *Ziufang Situ v. Leavitt*, 240 F.R.D. 551, 561 (N.D. Cal. 2007); *Ferrari v.*
6 *Gisch*, 225 F.R.D. 599, 606-07 (C.D. Cal. 2004). Like the foster children before this court,
7 plaintiffs in *Baby Neal* asserted numerous violations of their legal entitlement to comprehensive
8 foster care services. The Third Circuit found that the class easily met the commonality
9 requirement of Rule 23, holding that “putative class members in this case share the common legal
10 claim that DHS’s systemic deficiencies result in widespread violations of their statutory and
11 constitutional rights.” *Baby Neal v. Casey*, 43 F.3d 48, 61 (3d Cir. 1994). The Third Circuit
12 further observed that Rule 23(b)(2) classes “have been certified in a legion of civil rights cases
13 where commonality findings were based primarily on the fact that defendant’s conduct is central
14 to the claims of all class members...” *Id.* at 57 (citation omitted).

15 Here, just as in *Baby Neal*, the putative class members share the common legal claim that
16 the systemic deficiencies in the foster care system operated by Clark County and overseen by the
17 State of Nevada result in widespread violations of their statutory and constitutional rights. *See*
18 *generally* SAC (Docket No. 142-1).

19 **4. Individual Factual Differences Among Litigants Do Not Preclude a**
20 **Finding of Commonality In Suits Challenging System-wide Practices.**

21 The Ninth Circuit has explicitly held that in suits challenging system-wide practices
22 affecting all class members, “individual factual differences among the individual litigants or
23 groups of litigants will not preclude a finding of commonality.” *Armstrong v. Davis*, 275 F.3d
24 849, 868 (citing *Baby Neal*, 43 F.3d at 56); *see also Walters*, 145 F.3d at 1047-1048
25 (commonality satisfied where plaintiffs make a common allegation about the unconstitutionality
26 of the defendant’s actions, despite factual distinctions in the class members’ underlying claims);
27 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 1998) (“the existence of shared legal
28 issues with divergent factual predicates is sufficient...”).

1 Indeed, as the court in *Baby Neal* observed, Defendants’ “violations exist independently
 2 of individual children’s circumstances; Defendants’ misconduct is established by reference to the
 3 objective statutory and constitutional criteria.” *Baby Neal*, 43 F.3d at 62 (emphasis added). Here,
 4 plaintiff foster children have alleged that DFS and DCFS have failed to provide them with
 5 adequate and legally required services, violating their constitutional and statutory rights. Those
 6 violations exist independently of the particular circumstances of the named plaintiffs and all other
 7 individual class members.

8 **a. Commonality Exists Where Class Members Are at Risk of**
 9 **Suffering Harm Due to Systemic Legal Violations.**

10 In determining commonality, district courts need only examine plaintiffs’ claims to
 11 determine whether all class members are *at risk* of suffering a legal violation should plaintiffs
 12 ultimately prove systemic violations – not whether they have already suffered injury. *Walters v.*
 13 *Reno*, 145 F.3d 1032, 1045, 1047 (9th Cir. 1998) (certification appropriate even where some class
 14 members have not been injured or aggrieved by defendants’ conduct), *cert. denied*, 526 U.S. 1003
 15 (1999). Plaintiffs can demonstrate commonality by showing that system-wide deficiencies
 16 “either violate class members’ rights currently or subject them to the risk of such a violation.”
 17 *Baby Neal*, 43 F.3d 60-61; *See also Id.* at 56; *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147,
 18 155 (1982) (certification permits adjudication of issues “potentially affecting every [class
 19 member]”) (quoting *Califano v. Yamasaki*, 442 U.S. 682, 701 (1976)). In the present case, while
 20 the nature and extent of their exposure to risk varies from day to day, from placement to
 21 placement, the risk of harm is ever-present for all class members. All plaintiffs are subject to the
 22 same common course of conduct by Defendants, putting them all at risk of harm.

23 Further, due to the uniquely transitory nature of foster care, it is “unreasonable to require
 24 that all plaintiffs suffer from the same injury simultaneously.” *Baby Neal*, 43 F.3d 48, 60.⁴³

25 ⁴³ Additionally, because common question relates to the Defendants’ course of conduct, it is not a barrier to class
 26 certification that some class members were not subject to the illegal practices alleged by the class as a whole.
 27 *Walters v. Reno*, 145 F.3d 1032, 1045 (9th Cir. 1998) (commonality satisfied where some but not all class members
 28 received proper treatment), *cert. denied* 526 U.S. 1003 (1999). In fact, the Ninth Circuit has recognized that would
 be “a twisted result” to allow to an agency to avoid system-wide class action litigation “that challenges the
 constitutionality of its general practices” by pointing to a few exceptions to the general pattern of violation of
 constitutional and statutory mandates. *Walters*, 145 F.3d at 1046.

1 Constant change is a way of life for all class members; many foster children in Clark County
2 experience high numbers of placements while in foster care. *See supra* Part III.A.4. This fact,
3 combined with the evidence of the unfortunate prevalence of abuse and neglect in foster homes in
4 Clark County (*see supra* Part III.A.2), means that while an individual child may currently be in a
5 home where she is not being abused or neglected, she is always at risk of being moved to an
6 unsafe placement. Similarly, while a particular foster child may not currently require
7 psychological services, she may well require and be denied such services in the future. As long
8 as DFS fails to follow up on reports of abuse and neglect, as long as caseloads remain
9 “dangerously high,” as long as children are not visited regularly, as long as DFS fails to provide
10 foster parents with critical information about the children in their care – and the list goes on –
11 every child remains at serious risk of harm.

12 **b. Commonality Exists Where Class Members Have Experienced**
13 **Different Types of Harm as a Result of Defendants’ Common**
14 **Course of Conduct.**

15 It is not a barrier to class certification that individual class members have experienced
16 different types of harm as a result of Defendants’ unconstitutional and unlawful patterns and
17 practices. *See Baby Neal*, 43 F.3d at 57 (citing *Califano v. Yamasaki*, 442 U.S. 682, 701 (1976))
18 (neither a child’s specific circumstances nor her individualized injuries can defeat commonality).
19 Nor will plaintiff children’s individual need for varied, specific services affect their ability to
20 satisfy the commonality requirement. The Ninth Circuit has clearly held that a class comprised of
21 members with varying needs and factual circumstances is able to satisfy commonality. *Armstrong*
22 *v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001). In *Armstrong v. Davis*, a class of prisoners and
23 parolees with a range of physical and mental disabilities, requiring a range of services, sought
24 certification. Citing with approval *Baby Neal v. Casey*, 43 F.3d 48, 56 (3d Cir. 1994), the
25 *Armstrong* court concluded that those factual disparities would not preclude a finding of
26 commonality. *Id.* Rather, the common issue was defendants’ failure to consistently
27 accommodate plaintiffs’ various disabilities. *Id.* The variation in plaintiffs’ needs and injuries
28 was not the focus in determining commonality; what mattered was that they were all affected by
defendants’ system-wide practices and policies.

1 Here, plaintiff foster children have experienced a variety of harms (*see supra* Part III.A.)
2 and have a range of needs according to their individual circumstances, but all suffer as a result of
3 Defendants' unconstitutional and unlawful practices (*see supra* Part III.B.). A foster child who is
4 beaten in a foster home is trapped in the same failing child welfare system as is a teenager in
5 foster care who is denied necessary prescription medication for her psychiatric disorder –
6 injunctive relief to address Defendants' constitutional and statutory violations as alleged in the
7 complaint will address both of their needs.

8 The evidence presented in this motion proves that all plaintiffs are being harmed or put at
9 risk of harm by Defendants' unconstitutional and unlawful practices, clearly satisfying the
10 requirement of commonality.

11 **C. THE NAMED PLAINTIFFS' CLAIMS SATISFY TYPICALITY.**

12 Rule 23(a)(3) requires the named plaintiffs to demonstrate that their claims are typical of
13 the class members' claims. Fed. R. Civ. P. 23(a)(3). The purpose of this requirement is to
14 "assure that the interest of the named representative[s] aligns with the interests of the class."
15 *Hanon v. Dataproducts*, 976 F.2d at 508 (citation omitted). To demonstrate "typicality," the
16 named plaintiffs' claims must arise from a course of conduct "not unique to the named plaintiffs"
17 that has resulted in similar injury to other class members. *Id.* As with the commonality
18 requirement, the typicality requirement is interpreted permissively by the Ninth Circuit. *Hanlon*
19 *v. Chrysler*, 150 F.3d 1011, 1020 (9th Cir. 1997). The evidence submitted with this Motion
20 clearly demonstrates that the course of conduct leading to the named plaintiffs' injuries was not
21 unique to them, nor was it the result of an isolated group of caseworkers ignoring sound policies.
22 Rather, plaintiffs' harms result from pervasive system-wide practices.

23 Although stated separately, Rule 23's typicality and commonality requirements tend to
24 merge. *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 158 n.13 (1982). Both factors serve as
25 guideposts for ensuring that a class action is economical and that the interests of the class
26 members will be fairly and adequately protected. *Armstrong v. Davis*, 275 F.3d at 868, citing
27 *Marisol A. v. Giuliani*, 126 F. 3d 372, 376 (2d Cir. 1997). A finding of commonality thus
28 frequently confirms typicality. *Doe v. Los Angeles Unified Sch. Dist.*, 48 F. Supp. 2d 1233, 1245

1 (C.D. Cal. 1999). Particularly where, as here, “the challenged conduct is a policy or practice that
2 affects all class members, the underlying issue presented with respect to typicality is similar to
3 that presented with respect to commonality, although the emphasis may be different.” *Armstrong*,
4 275 F.3d at 868-69. Here, the harms and risks of harm asserted by the named plaintiffs arise from
5 a common course of conduct by Defendants, and are clearly – and sadly – typical of those
6 experienced by the class as a whole.

7 Typicality is satisfied when the claims of the class representatives and the proposed class
8 rest on similar legal theories; if the claims are “reasonably co-extensive.” *See Armstrong*, 275
9 F.3d at 868; *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1997)(“representative
10 claims are ‘typical’ if they are reasonably co-extensive with those of absent class members”);
11 *Schaefer v. Overland Express Family of Funds*, 169 F.R.D. 124, 128 (S.D. Cal. 1996)(named
12 plaintiffs’ claims should be “based on the same legal theories that would be generally relied upon
13 by the class”). Courts have found typicality to be satisfied in cases where plaintiffs have suffered
14 the deprivation of services or have failed to receive the full benefit of services to which they are
15 entitled by statute, and suffered the violation of their constitutional rights. *Armstrong*, 275 F.3d
16 at 869; *Baby Neal*, 43 F.3d at 58.

17 As with the commonality inquiry, variations in the specific factual circumstances of the
18 named plaintiffs will not defeat a finding of typicality. *Hanon v. Dataproducts Corp.*, 976 F. 2d
19 497, 509 (9th Cir. 1992)(test for typicality is whether other class members have been injured by
20 the same course of conduct); *Baby Neal*, 43 F.3d 48, 58 (3d Cir. 1994)(“factual differences will
21 not render a claim atypical if the claim arises from the same event or practice or course of
22 conduct that gives rise to the claims of the class members, and if it is based on the same legal
23 theory”(citation omitted)). Hence, typicality does not require that the named plaintiffs’ injuries
24 are identical to those of other class members, only that they are similar and result from the same
25 course of conduct. *Armstrong*, 275 F.3d at 869, citing *Hanon v. Dataproducts*, 976 F.2d 497, 508
26 (9th Cir. 1992); *Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. at 157-159 (named plaintiffs
27 suffering one specific injury from a common practice can represent class members that have
28 suffered different injuries, as long as they can show that the injuries result from the common

1 practice).

2 Plaintiff foster children's claims arise from a course of conduct not at all unique to them,
3 but to which they are subject only by virtue of their membership in the larger class of children in
4 foster care in Clark County. They allege that they have been harmed or put at risk of harm due to
5 the operation of a child welfare system that violates the federal and state constitutions and state
6 and federal laws. Defendants have failed to provide a full range of services to which plaintiff
7 foster children are entitled, including but not limited to, timely visits from child welfare workers,
8 sufficient training for case workers responsible for plaintiff children's safety, proper child abuse
9 and neglect investigations, mental and physical health services, and an advocate to represent their
10 needs at court hearings, among many other services. *See infra* Part III.B.

11 The named plaintiffs' claims go far beyond the permissive requirement that they be
12 "reasonably co-extensive" with those of absent class members. Here, the named plaintiffs' claims
13 are one and the same as those of the absent class members, based on Defendants' common course
14 of conduct, making their interests fully aligned. Plaintiffs clearly fulfill the requirement of
15 typicality.

16 **D. PLAINTIFFS' COUNSEL AND CLASS REPRESENTATIVES SERVE AS**
17 **FAIR AND ADEQUATE REPRESENTATIVES OF THE CLASS.**

18 Rule 23(a)'s final prong requires that named plaintiffs display the ability and willingness
19 to fairly and adequately protect the interests of the class. Rule 23(a)(4). Here, plaintiffs'
20 collective interest in reforming Defendants' foster care system and representation by experienced
21 class counsel ensure that named plaintiffs will zealously guard and pursue the interests of the
22 class at every stage of the case.

23 Rule 23(a)(4) seeks to ensure that the proposed class representatives can fairly and
24 adequately protect the interests of the class. This factor requires: (1) that the named plaintiffs do
25 not have any conflicts of interest with the proposed class and (2) that plaintiffs are represented by
26 qualified and competent counsel. *Dukes v. Wal-Mart, Inc.*, 509 F.3d 1168 (9th Cir. 2007), citing
27 *Hanlon v. Chrysler*, 150 F.3d at 1020; *see also Lerwill v. Inflight Motion Pictures, Inc.* 582 F.2d
28 507, 512 (9th Cir. 1978).

1 The named plaintiffs have already established their compelling joint interests in forcefully
 2 pursuing their co-extensive remedial and legal theories. *See supra* Part IV.C.⁴⁴ With the single
 3 objective of ending the widespread violation of their legal rights through injunctive and
 4 declaratory relief, class members harbor no internal animosity. *See Stolz v. United Brotherhood*
 5 *of Carpenters and Joiners of America*, 620 F.Supp. 396, 405 (D.C. Nev. 1985)(plaintiffs’ aim of
 6 remedying statutory violations of class member rights inherently removed threat of antagonism);
 7 *See also Baby Neal v. Casey*, 43 F.3d 48, 63 (3rd Cir. 1994)(in suit seeking only declaratory and
 8 injunctive relief, “[t]here is no danger here that named plaintiffs have unique interests that might
 9 motivate them to litigate against or settle with the defendants in a way that prejudices the
 10 absentees”). Additionally, the non-existence of any individual claims for damages removes any
 11 possibility of internal conflict between class members over the amount of individual damages.
 12 Here, all plaintiffs raise the same claims, seeking only injunctive and declaratory relief that will
 13 benefit them equally – named plaintiffs will adequately represent the interests of the absent class
 14 members.

15 Plaintiffs’ counsel has the qualifications, experience, and general capability to conduct the
 16 litigation and vigorously pursue plaintiffs’ claims. Lead counsel is the National Center for Youth
 17 Law, a privately-funded, non-profit organization with award-winning attorneys who have
 18 extensive state and federal court experience litigating complex class action child welfare reform
 19 suits. *See generally* Grimm Decl. at ¶¶ 2-8. The Las Vegas offices of Wolfenzon Schulman &
 20 Ryan and the San Francisco law firm of Farella Braun & Martel also represent plaintiffs.
 21 Together these firms bring sophistication in resolving and litigating a broad range of high-stakes
 22 actions. Declaration of Gregory M. Schulman (“Schulman Decl.”) at ¶¶ 4-6; Declaration of
 23 Katina Ancar (“Ancar Decl.”) at ¶¶ 3, 5.

24 Counsel have knowledge of state and federal child welfare laws and have represented

25 _____
 26 ⁴⁴ Coextensiveness of the interests of the named plaintiffs with those of the rest of the class is properly understood as
 27 both an aspect of the typicality inquiry of 23(a)(3), and also functioning “as a further demonstration of a lack of
 28 adversity or antagonism between the named and unnamed members of the class for purposes of testing the adequacy
 of the representation” under 23(a)(4). 7A Wright & Miller Federal Practice & Procedure § 1769. Here, the fact that
 named plaintiffs’ claims are coextensive with the claims of the proposed class supports a finding that named
 plaintiffs will adequately represent the interests of the class as a whole.

1 plaintiffs in certified class action litigation. Ancar Decl. at ¶ 4. Collectively, plaintiffs’ attorneys
 2 bring more than 50 years of legal practice, covering the full range of civil litigation from initiation
 3 of the action to trial representation. Grimm Decl. at ¶¶ 2-3, 7-8; Schulman Decl. at ¶¶ 2, 4; Ancar
 4 Decl. at ¶¶ 2, 5-6. Plaintiffs’ legal representatives have the resources, expertise, and experience
 5 to meet the test for highly-competent class counsel. Further, plaintiffs’ counsel has demonstrated
 6 that they will vigorously pursue this action.

7 **V. PLAINTIFFS’ CLASS IS A MODEL ACTION FOR RULE 23(B)(2)**
 8 **CERTIFICATION.**

9 Plaintiffs also assert that the class may be properly maintained under the second category
 10 of Rule 23(b). Rule 23(b)(2) certification is proper if

11 the party opposing the class has acted or refused to act on grounds
 12 generally applicable to the class, thereby making appropriate final
 13 injunctive relief or corresponding declaratory relief with respect to
 the class as a whole.

14 *Walters*, 145 F.3d at 1047. Closely linked to the Rule 23(a)(2) commonality prerequisite, actions
 15 seeking injunctive relief to remedy violations of civil and constitutional rights easily satisfy
 16 23(b)(2). These suits “are precisely the sort . . . that Rule 23(b)(2) was designed to facilitate.”
 17 *Walters*, 145 F.3d at 1046-47 (plaintiff class challenged constitutionality of the INS’s official
 18 forms and procedures); Fed. R. Civ. Proc. 23 Advisory Committee Notes 1966 Amendment (civil
 19 rights actions requiring final injunctive relief “illustrative” of actions suitable for this category).

20 Rule 23(b)(2) focuses solely on the actions of the defendants. *See Stolz*, 620 F.Supp. at
 21 407 (initial inquiry is “whether the defendants have allegedly acted on grounds generally
 22 applicable to the entire class. If this is the case, then injunctive relief is appropriate and necessary
 23 to remedy the wrong...”). In order to meet the requirements of 23(b)(2), class members must
 24 simply “complain of a pattern or practice that is generally applicable to the class as a whole.”
 25 *Walters v. Reno*, 145 F.3d 1032, 1047 (9th Cir. 1998). Because the focus is not on the individual
 26 class members, “[e]ven if some class members have not been injured by the challenged practice, a
 27 class may nevertheless be appropriate.” *Id.*

28 Plaintiffs’ proposed class is perfectly suited for certification under subdivision (b)(2).

1 Plaintiffs allege that Defendants' unitary course of conduct deprives each class member of the
2 right to receive essential protections and services, violating both constitutional and statutory law.

3 **VI. CONCLUSION**

4 Many foster children have already suffered serious harm while in Clark County's custody.
5 Given the dismal failures of Defendants' system, all children entering care face the risk of similar
6 harms – unsafe living conditions, physical abuse, neglect, and, worst of all, death. The interests
7 of justice require the Court to permit this case to proceed as a class action to redress the harms
8 suffered day after day by thousands of class members. Plaintiffs respectfully request that the
9 Court grant their renewed motion for class certification.

10
11 Dated: March 28, 2008

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