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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA/WESTERN DIVISION

KATIE A.¹ by and through her next friend
Michael Ludin; MARY B.¹ by and through
her next friend Robert Jacobs; JANET C.¹
by and through her next friend Dolores
Johnson; HENRY D.¹ by and through his
next friend Gillian Brown; AND GARY
E.¹ by and through his next friend Michael
Ludin, individually and on behalf of others
similarly situated,

Plaintiffs,

v.

DIANA BONTÁ, Director of California
Department of Health Services; LOS
ANGELES COUNTY; LOS ANGELES
COUNTY DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES; MARJORIE KELLY,
Acting Director of the Los Angeles County
Department of Children and Family
Services; RITA SAENZ, Director of the
California Department of Social Services,
and DOES 1 through 100, inclusive,
Defendants.

Case No.: 02-056662 AHM (SHx)

[CLASS ACTION]

UNLIMITED JURISDICTION

FIRST AMENDED COMPLAINT
FOR DECLARATORY AND
INJUNCTIVE RELIEF

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

1 Plaintiffs allege as follows:

2 **I. JURISDICTION AND VENUE**

3 1. This class action lawsuit challenges the failure of Diana Bontá, Director of
4 the California Department of Health Services to provide necessary health care services
5 to correct or ameliorate the mental health conditions of foster children in California.
6 Plaintiffs also challenge the unlawful denial to children in the custody of the Los
7 Angeles County Department of Children and Family Services (DCFS), or at imminent
8 risk of being placed in DCFS custody, of necessary mental health, behavioral support,
9 and case management services in community settings. This court has jurisdiction over
10 this action pursuant to 28 U.S.C. §§ 1331, 1343, and 1367. Plaintiffs' action for
11 declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201, 2202, and 1343,
12 and by Fed. R. Civ. P. 57 and 65.

13 2. Venue is proper pursuant to 28 U.S.C. § 1391(b) because a substantial part
14 of the events or omissions giving rise to the claims herein occurred in this district, and
15 because all Defendants named herein reside in, maintain offices in, or are responsible for
16 enforcing the laws relevant to this litigation in this district.

17 **II. INTRODUCTORY STATEMENT**

18 3. More than 90,000 children are in foster care in California; virtually all of
19 these children receive their health care services, including mental health services,
20 through Medi-Cal, California's Medicaid program. In addition, a significant number of
21 children under the supervision of a county child welfare agency or otherwise at risk of
22 foster care placement are eligible for Medi-Cal.

23 4. Los Angeles County's foster care system is our nation's largest, responsible
24 for some 50,000 children, nearly all of them indigent, and the vast majority African
25 American and Latino. Tragically, many thousands of children with behavioral,
26 emotional, and psychiatric impairments who are in the custody of the Los Angeles
27 County Department of Children and Family Services, or at imminent risk of being
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1 placed in DCFS custody, desperately need, but are not being provided, necessary — and
2 legally mandated — mental health, behavioral support, and case management services in
3 community settings. That the situation has reached a crisis point cannot seriously be
4 disputed: numerous reports by state and county commissions, as well as grand jury
5 findings, media articles, and published research, attest to the dismal failure of the child
6 welfare system to provide appropriate care to the children who need it most. Far too
7 many children with behavioral and emotional problems are bounced between multiple
8 foster placements and group homes that do not meet their individual needs; then, when
9 their conditions predictably deteriorate, they are effectively abandoned by the system,
10 consigned to languish in psychiatric hospitals and secure congregate facilities such as
11 MacLaren Children's Center under notorious and deplorable conditions.

12 5. Children in the foster care system with severe mental health and behavioral
13 problems find themselves, in the words of one state commission, "cast into a maelstrom
14 of rules and regulations that are not based on their best interests," or even on their most
15 basic needs. Treatments are doled out according to a bureaucratic rationing process
16 whereby available "slots," rather than individualized assessments, dictate which services
17 will be provided to which children. The results of such a cruelly haphazard system have
18 come to seem inevitable: children whose emotional, educational, and familial needs are
19 not met in traditional foster homes or group homes invariably "fail" in those placements
20 and, after the traumatic process has been repeated numerous times, are deemed by the
21 system to be "unplaceable." At that point, the system relegates them to group facilities
22 like MacLaren, which purports to be a temporary emergency shelter with stays of no
23 more than 30 days, but has in fact become the long-term placement of last resort for
24 children who have endured multiple "failed" placements.

25 6. Despite widespread agreement among children's mental health experts that
26 restrictive, congregate shelters are actually a harmful environment for children with the
27 most severe emotional and behavioral problems, the dependency care system provides
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1 virtually no alternative for children with such problems. This is so even though the
2 experiences of numerous other jurisdictions have proven that intensive, community-
3 based mental health services, including therapeutic foster care, behavioral support
4 services, psychiatric or other clinical services, and comprehensive case management
5 services, can be successfully and cost-effectively provided in the home or in a home-like
6 setting, even to children with the most severe emotional and behavioral problems.
7 Indeed, intensive, community-based mental health services are not only legally required,
8 but they are less expensive than the congregate and institutional placements upon which
9 the system has relied for too long.

10 7. By failing to create and support such therapeutic services in community
11 settings, and by instead confining children with emotional and behavioral problems in
12 restrictive, institutional settings with dozens of other similarly troubled children, the
13 system is setting these children up for needless psychiatric hospitalizations and, in many
14 cases, “graduation” to the juvenile delinquency system. The cost to taxpayers of failing
15 to provide necessary treatment and services to children is well documented: inadequate
16 care leads to a worsening of symptoms, with costlier consequences requiring more
17 expensive responses. The cost in lost opportunities to the children themselves — most
18 of whom will never receive a high school diploma, many of whom will end up in the
19 juvenile and criminal justice systems, and some of whom will be institutionalized for the
20 rest of their lives — cannot be calculated.

21 8. The Constitution and laws of the United States, as well as of the State of
22 California, require the Defendants named herein to provide appropriate diagnosis and
23 treatment of children’s mental health and behavioral needs. The five named Plaintiffs
24 are part of a class of similarly disabled and needy children in foster care, or at imminent
25 risk of being placed in foster care, who are entitled to, but have not received, necessary
26 mental health services in a home-like setting.

9. This class action lawsuit seeks prospective injunctive relief ordering Defendants to meet their statutory and constitutional duties to children in their care and custody who suffer from psychiatric, emotional, and behavioral impairments. The problems described herein have long been recognized and have been the subject of numerous reports and proposals, but little has been done to address the crisis. Defendants' violations of the law will continue absent injunctive and declaratory relief ensuring that Plaintiffs are provided the treatment and services to which they are entitled by law.

III. PARTIES

Plaintiffs

10. Plaintiff **Katie A.** is a 14-year-old Caucasian girl who has been in foster care for ten years. Katie was removed from her home at age four on account of neglect; her mother was living on the street and her father was incarcerated.

11. During her ten years in DCFS custody, Katie has not been provided with necessary mental health treatment and services. By age five, Katie's assessments indicated that she was a trauma victim in need of intensive trauma treatment, with supportive services for her caretaker. Pleas for support from Katie's caretaker as well as multiple assessments identifying Katie's needs were ignored by DCFS, and Katie never received trauma treatment or other necessary individualized services.

12. Katie's early assessments also indicated that she required a stable and secure home. Instead, DCFS has shuttled her from one inappropriate placement to another – 37 placements in all – repeatedly warehousing her in psychiatric facilities or at MacLaren when there were no available “slots” in which to place her. Numerous professionals have documented that Katie responds best to one-on-one attention and has difficulty with peer relations, yet since the age of eight Katie has been placed in a succession of congregate care facilities with other behaviorally and emotionally disturbed children, where she has received limited individual attention.

1 13. Katie has also suffered significant educational deterioration as a result of
2 Defendants' failure to provide her with appropriate treatment and care. As a
3 kindergartner, Katie was identified as a bright child with some minor behavioral
4 problems. At age nine, she read at the 8th grade level. Five years later, she read at a 7th
5 grade level and had made almost no progress in math or spelling. Yet Katie remains
6 engaging and articulate, she enjoys reading and art, and she hopes to become a
7 pediatrician when she grows up.

8 14. In her ten years in DCFS custody, Katie has been subjected to 37 out-of-
9 home placements. In the nearly four years since her eleventh birthday, Katie has had 30
10 different placements, among them four different group homes, 19 stays at eight different
11 psychiatric hospitals, including a two-year stay at Metropolitan State Hospital, and
12 seven stays at MacLaren. Katie last lived in a family setting in 1995, at age eight, when
13 she stayed in two different foster homes for a total of five days. Katie currently resides
14 at a hospital facility, and she brings this action through her next friend, Michael Ludin.

15 15. Plaintiff **Mary B.** is a 16-year-old, legally blind, Latina girl who has been
16 in foster care for three years. Mary was removed from her home at age 13 after being
17 physically and emotionally abused and left unsupervised by her mother. Following her
18 entry into DCFS custody, Mary was diagnosed with a sexually transmitted disease, and
19 she disclosed that between 1994 and 1996 she had been sexually abused by her maternal
20 uncle and stepfather.

21 16. Notwithstanding her repeated psychiatric hospitalizations and clear
22 evidence of severe trauma, Mary has never received a comprehensive psychiatric
23 assessment since her entry into DCFS custody. In September, 1999, after Mary had
24 undergone two foster home placements, two hospitalizations, and more than a month in
25 MacLaren, the DCFS case worker characterized Mary's emotional needs as "hormones
26 acting up." Even her hospital records did not include thorough psychiatric or
27 psychological evaluations. Moreover, Mary did not receive therapy until her fourth
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1 foster placement, two years after her removal from home, although she had been abused
2 for years as a young child, had been rejected by her parents, and had social
3 disappointments connected in part to her visual impairment.

4 17. Mary continues to have hope for her future. She is learning Braille, and she
5 wants to complete high school and attend community college. She has told a foster
6 mother, "I'm not crippled; I'm only blind."

7 18. In her three years in DCFS custody, Mary has been subjected to 28
8 placements, including 16 hospital stays at seven different hospitals and three stays at
9 MacLaren. In October, 2001, a Department of Mental Health screening committee
10 suggested that a specialized foster home with "wraparound" services in place could meet
11 Mary's needs, but DCFS instead placed Mary in a large, residential facility. Mary last
12 lived in a family setting in September, 2000, when she was briefly sent home to her
13 mother without any supportive services. Mary currently resides in a high-level,
14 restrictive group home, and she brings this action through her next friend, Robert
15 Jacobs.

16 19. Plaintiff **Janet C.** is an 11-year-old, African-American girl who has been
17 in foster care for more than two years. Janet was first removed from her parents'
18 custody in October, 1999, following reports of physical abuse in the home.

19 20. Janet was in DCFS custody for nine months, with several psychiatric
20 hospitalizations, before Defendant DCFS provided her with a mental health evaluation.
21 Despite her numerous placements, and a wide spectrum of different and inconsistent
22 psychiatric diagnoses, no assessment has analyzed and evaluated the multiple traumas
23 Janet experienced.

24 21. DCFS has failed to identify Janet's individual needs and the specific
25 services that would meet her needs. Rather, the DCFS case plan calls for "age
26 appropriate, child oriented services." A progress report prepared by a therapist states
27 that Janet can show "tremendous growth with intensive therapy." However, DCFS has
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1 failed to provide Janet with the consistent, intensive mental health services and other
2 support that she needs. As a result, Janet has been left to languish at MacLaren for the
3 past six months, interrupted only by two hospitalizations, and her condition continues to
4 deteriorate.

5 22. Janet has a network of family and friends who are involved in her life and
6 who are concerned about her well-being. From a young age, Janet has been a family
7 caretaker, looking after her young siblings and elderly grandmother. She has a strong
8 sense of justice and defends those who are being treated unfairly. Indeed, she has been
9 physically restrained at MacLaren for attempting to intervene on behalf of another child
10 who was being disciplined.

11 23. In less than two and a half years in DCFS custody, Janet has been subjected
12 to 25 placements, including five with family members, 12 hospital stays at seven
13 different hospitals, and three stays at MacLaren. She last lived in a family setting in
14 November 2001, when she was briefly sent home to her mother without any supportive
15 services. Janet is currently placed at MacLaren, and she brings this action through her
16 next friend, Dolores Johnson.

17 24. Plaintiff **Henry D.** is a nine-year-old, legally blind, African-American boy
18 in his second entry into foster care. He was first removed from his mother's care at the
19 age of four, following reports of physical and sexual abuse by his mother's boyfriend.
20 Despite written documentation of Henry's serious behavioral and emotional problems
21 just weeks after his removal, Defendant DCFS failed to provide him with a mental
22 health evaluation or with appropriate mental health services upon his first removal from
23 home. After placements in several foster homes and in two group homes, Henry was
24 returned to his mother's custody but, without the mental health services that he needed,
25 Henry's condition deteriorated.

26 25. At the age of seven, Henry was voluntarily placed into foster care by his
27 mother after further evidence of abuse by his mother's boyfriend. Notwithstanding
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1 many early indications that Henry had significant emotional problems, he apparently
2 received no psychological evaluation until May, 2001 when he was eight years old, four
3 years after his initial removal from the home. Even after he was belatedly diagnosed
4 with Major Depression and Post Traumatic Stress Disorder, he was not provided with
5 intensive individual therapy until more than a half year later. DCFS's current case plan
6 for Henry fails to identify his individual needs nor any specific services to be provided
7 to him.

8 26. Yet Henry is resilient and is still able to form trusting relationships. He is
9 an affectionate child, and his records have consistently indicated that he responds well to
10 one-on-one attention and positive reinforcement.

11 27. In the 14 months following his second removal from home, Henry was
12 subjected to 12 out-of-home placements, including six hospital stays at three different
13 hospitals and one stay at MacLaren — all before his ninth birthday. He last lived in a
14 family setting — a ten-day stay in a foster home — in September, 2000. Henry
15 currently resides in a group home with children of various ages, and he brings this action
16 through his next friend, Gillian Brown.

17 28. Plaintiff **Gary E.** is a 14-year-old Caucasian boy who has recently returned
18 home after six months in out-of-home foster placements. Gary's mother voluntarily
19 placed him and his older sister into foster care because she felt overwhelmed and was
20 unable to cope with her children's behaviors in the absence of supportive services.

21 29. During his six months in foster care, Gary was placed at MacLaren and at
22 two group homes. In an educational plan developed while Gary was in his second group
23 home placement, a therapist documented Gary's significant emotional and behavioral
24 problems which have impeded his educational progress. However, at no time following
25 his removal from home did Gary receive appropriate mental health and behavioral
26 support services.

1 30. Gary was returned to his mother's home because, as DCFS reported to the
2 juvenile court, "there is no indication that DCFS knows of a facility that is capable of
3 meeting [Gary's] educational, physical, and emotional needs. [Gary's] continuing
4 pattern of failure in foster care is detrimental to his overall well-being." However, Gary
5 and his family are still without necessary supportive services.

6 31. Gary's therapist reports that Gary has the ability to be charming, humorous,
7 and gracious. He enjoys playing the guitar and working with people. He has a strong
8 desire to remain at home with his mother, sister, and niece, but without appropriate
9 mental health, behavioral support, and other supportive services for him and his family,
10 Gary faces the imminent risk of another traumatic entry into the foster care system.
11 Gary currently resides at home, and he brings this action through his next friend,
12 Michael Ludin.

13 **Defendants**

14 32. Defendant DIANA BONTÁ is the Director of the California Department of
15 Health Services ("DHS"). DHS is the single state agency responsible under federal law
16 for the administration of the Medi-Cal program in California. Defendant Bontá's duties
17 include supervision and control of the Medi-Cal program to secure full compliance with
18 the governing laws. Defendant BONTÁ is sued in her official capacity.

19 33. Defendant LOS ANGELES COUNTY ("County") is a local governmental
20 entity, duly authorized and formed under the laws of the State of California. The
21 County oversees and monitors the Department of Children and Family Services.

22 34. Defendant LOS ANGELES COUNTY DEPARTMENT OF CHILDREN
23 AND FAMILY SERVICES ("DCFS") is the agency responsible for administering child
24 welfare services in Los Angeles County, for locating placements for children in the
25 County foster care system, and for ensuring the safety and well-being of children under
26 court supervision pursuant to Welfare and Institutions Code § 300.

35. Defendant MARJORIE KELLY is the Acting Director of the Los Angeles County Department of Children and Family Services and, as such, is responsible for administering child welfare services in Los Angeles County, and for ensuring the safety and well-being of children under court supervision pursuant to Welfare and Institutions Code § 300. Defendant KELLY is sued in her official capacity.

36. Defendant RITA SAENZ is the Director of the California Department of Social Services ("CDSS"). CDSS is the single state agency responsible for supervising and monitoring the administration of child welfare services in California. Defendant Saenz is responsible for administering laws relating to child welfare services; promulgating regulations and standards; supervising the administration of public social services, including child welfare services; and investigating, examining, and making reports on public offices responsible for the administration of public social service funds. Welfare & Institutions Code §§ 10553, 10554, 10600, 10602. Under Welfare & Institutions Code § 1605, she has the authority to enforce state statutes and regulations. Defendant SAENZ is sued in her official capacity.

IV. CLASS

37. This action is maintainable as a class action pursuant to Fed. R. Civ. P. 23(a) and 23(b)(2). Plaintiffs represent a statewide class of children in foster care in California, or at imminent risk of foster care placement, who have a behavioral, emotional or psychiatric impairment and who need individualized mental health services, including but not limited to professionally acceptable assessments, behavioral support and case management services, family support, crisis support, therapeutic foster care and other necessary services in the home or in a home-like setting, to treat or ameliorate their disabilities or impairments.

38. A subclass consists of children who are in the custody of the Los Angeles County Department of Children and Family Services (DCFS), or have been referred to or are subject to referral to DCFS, who have a behavioral, emotional, or psychiatric

1 impairment, and who need individualized mental health services, including but not
2 limited to professionally acceptable assessments, behavioral support and case
3 management services, family support, crisis support, therapeutic foster care, and other
4 necessary services in the home or in a home-like setting, to treat or ameliorate their
5 disabilities or impairments.

6 39. The requirements of Fed. R. Civ. P. 23 are met in that the class is so
7 numerous that joinder of all members is impracticable. Furthermore, the class is fluid in
8 that new members are regularly created.

9 40. All the members share common issues of law and fact in that Plaintiffs,
10 while under the custody and care of Defendants, or at imminent risk of being placed in
11 Defendants' custody, are not being provided legally mandated services within
12 appropriate, community-based settings able to meet their individual needs, resulting in
13 multiple, unsuccessful placements, in violation of federal and state laws.

14 41. The claims of the named Plaintiffs are typical of the claims of the class they
15 represent.

16 42. Plaintiffs will fairly and adequately protect the interests of the class they
17 represent. Plaintiffs know of no conflict of interest among the class members.

18 43. Plaintiffs are represented by experienced counsel who will adequately
19 represent the interests of the class.

20 44. Defendants have acted and refused to act and continue to do so on grounds
21 generally applicable to the class that Plaintiffs represent, thereby rendering appropriate
22 injunctive and declaratory relief for the class as a whole.

23 V. STATEMENT OF FACTS

24 45. Numerous studies have estimated that between 60 and 85 percent of foster
25 children nationwide have significant mental health problems. Yet in California,
26 according to a 2001 report of the Little Hoover Commission, "[m]ore than 50,000
27 children in the foster care system who may need mental health services do not get

1 them.” As the Commission has observed, “While [foster] children may be eligible for
2 an array of services, the system for delivering services is so fragmented, anemic, and
3 disorganized that it regularly fails to meet the needs of these children.” In Los Angeles
4 County, these problems are particularly acute, and the County’s abysmal record of
5 multiple foster placements and needless institutionalizations has all too often led to a
6 downward spiral of behavioral and emotional problems for children in its care.

7 46. There is virtual unanimity among mental health experts that children with
8 serious mental health problems require an array of individualized services tailored to
9 meet their needs. These services, which are required by law, include professionally
10 acceptable assessments, as well as behavioral support and case management services,
11 family support, crisis support, wraparound services, therapeutic foster care and other
12 mental health services, in a home-like setting. Around the United States such
13 individualized services have been successfully provided to children in and out of foster
14 care, and have been shown to be more effective — and more cost effective — than
15 congregate and institutional care.

16 47. Notwithstanding this consensus among mental health professionals as to the
17 necessity of providing children with individualized treatment that meets their needs,
18 Defendants have failed to ensure that children in foster care, or at imminent risk of being
19 placed in foster care, receive the mental health services to which they are entitled by
20 law. The systemic failure to provide Plaintiff children with legally mandated
21 individualized services is the result of numerous deficiencies, including:

22 (a) Failure to assess children’s needs, including medical, mental health,
23 educational, and family needs;

24 (b) Unavailability of such necessary mental health services as behavioral
25 support, psychiatric or other clinical services, comprehensive case management services,
26 wraparound services, and therapeutic foster care, in a home-like setting;

1 (c) Over-reliance on restrictive, congregate, institutional placements, including
2 locked psychiatric hospitals and so-called “emergency” shelters such as MacLaren
3 Children’s Center;

4 (d) Multiple foster care placements — often with no attempt made to consider
5 geographic placement near the child’s community or school — that are harmful to
6 children and disruptive of family contact, educational continuity, and necessary mental
7 health treatment; and

8 (e) Excessive and unwarranted reliance on the removal of children from their
9 families and their placement into foster care, as opposed to providing necessary mental
10 health services in the home, including individually tailored family preservation services
11 where appropriate.

12 48. Los Angeles County’s child welfare system has been under considerable
13 scrutiny for many years and has been the subject of numerous grand jury investigations,
14 management audits, and county commissions. In its 1999-2000 report, the Los Angeles
15 County Civil Grand Jury excoriated the County’s foster care system, observing that
16 “[t]he best interests of the child are rarely paramount in considering the placement
17 options for children in the system.” The report concluded: “Despite a widely stated
18 child-first philosophy, decisions made throughout the system . . . appear to be motivated
19 primarily by cost considerations and secondarily by shifting policies and politics.
20 Furthermore, the high volume of cases together with [caseworker] understaffing and
21 turnover result in a system built on a warehousing, ‘board and care’ model, not on
22 treatment and services to improve children’s lives.”

23 49. Instead of ensuring the development of legally mandated individualized
24 services, Defendants have relied excessively on out-of-home, geographically remote,
25 institutional settings, such as MacLaren, where children with mental health needs are
26 warehoused rather than treated. In the words of one mental health expert retained by
27 Defendant Los Angeles County to investigate conditions at MacLaren:

1 MacLaren becomes a necessary "holding pattern" in which to
2 put the child while the worker looks desperately for an
3 alternative. And the alternatives are limited and come in rigid
4 packages, i.e. the "slots" prescribed by the purchase of service
5 contracting systems and risk averse providers. The result is
6 placements made under pressure into "best available" program
7 slots which are likely to fail children, who over the years
8 become more and more disenchanted and despairing.

9 Three years later, in 2001, the same expert conducted a follow-up investigation and
10 concluded:

11 The only practical alternative is to engage each child
12 immediately upon arrival in the facility in a process that will
13 meet his or her individual needs and those of their family and
14 move them with deliberate speed into their own or substitute
15 families with a string of services and supports wrapped around
16 them.

17 50. The MacLaren Children's Center has a sordid history of difficulties and
18 controversies. The subject of no less than six county commissions and task forces in
19 recent years, it has come to epitomize the system's dysfunctional approach towards
20 caring for children with serious mental health needs. As acknowledged by County
21 Supervisor Gloria Molina in an October 27, 2001 letter to the Los Angeles Times,
22 "MacLaren is really a symptom of the overall problems facing the Department of
23 Children and Family Services. If the Department fails to make the appropriate
24 placement on the front end, children will cycle in and out of MacLaren's doors" A
25 recent management audit of MacLaren prepared by an independent audit firm engaged
26 by the Los Angeles County Civil Grand Jury 2001-2002 found that the population at
27 MacLaren is increasingly comprised of psychologically and emotionally troubled
28 children, but that the core staff working with children are not trained to provide direct
mental health services.

51. Though never intended as anything but a temporary emergency shelter with
stays of no more than 30 days, MacLaren has evolved into a placement of last resort for
children with serious behavioral, emotional, and psychiatric problems. The management
audit determined that fully 86 percent of the children at MacLaren remained there for

1 more than 30 days, and the average length of stay was three months. Between 1999 and
2 2000, including repeat admissions, two children had been in residence at MacLaren for
3 more than 700 days; 12 children had a length of stay of over 400 days; and 82 had a
4 length of stay of between 200 and 400 days. The audit noted that individualized therapy
5 was either non-existent or administered for as little as one hour per week, and it
6 recommended increased use of individualized mental health services, observing, for
7 example, that “wraparound [services] can help remove children from the ongoing cycle
8 of stays at MacLaren.”

9 52. The absence of necessary individualized services results in a dysfunctional
10 system that allows children like Plaintiff Mary B. to experience 28 out-of-home
11 placements in three years, including 16 hospital stays at seven hospitals and three stays
12 at MacLaren, and Plaintiff Janet C. to experience 25 out-of-home placements in two and
13 a half years, including 12 hospital stays at seven hospitals and three stays at MacLaren.
14 In a recent report, the Los Angeles County Auditor-Controller found that “[t]he majority
15 of children referred to residential care have suffered multiple placement failure and in
16 many cases are more severely disturbed than when they first entered out of home care.”
17 Multiple placements are harmful to children for several reasons. Children have a limited
18 number of attachments they can form, and multiple placements can lead to long-lasting
19 attachment and trust problems. Children are fearful each time they go to a new place;
20 they often become preoccupied with trying to understand the expectations of each place.
21 Children who have experienced abuse or neglect have a heightened need for
22 permanency, security, and emotional constancy; each move may make them more
23 hopeless. The chance of being emotionally, physically, or sexually abused by other
24 children or caretakers increases as the child moves. Moving often discontinues therapy
25 and other services and usually means a new school for children who are behind in school
26 and lack social skills to move easily into a new school.

53. Over-reliance on restrictive, institutional settings is similarly harmful to children with mental health problems. Hospitals and restrictive facilities are designed to offer short-term stabilization and behavior management, not intensive, individualized services. In fact, during 16 separate psychiatric hospitalizations, Plaintiff Mary B. never once received an adequate psychiatric or psychological evaluation. Moreover, children with trauma-caused depression and anxiety do not make progress in short, restrictive placements; to the contrary, group living often exacerbates children's behavior problems. Children with serious mental health needs who require intensive individualized treatment tend to deteriorate when they are indiscriminately confined in congregate care facilities with other similarly traumatized children.

54. Beyond the obvious human costs of failing to provide timely and appropriate treatment and services to children with serious mental health needs, the systemic failure to deliver individualized services results in staggering economic costs. For example, during the fiscal year of 2001-02, stays at MacLaren were estimated to cost an average of \$757 per day per child, or \$276,287 per year. As a recent report by the Little Hoover Commission observed, “unaddressed mental health needs result in increased school failure, juvenile justice costs, and residential and state hospital costs.”

VI. STATUTORY AND CONSTITUTIONAL BACKGROUND

A. The Medicaid Act, Early and Periodic Screening, Diagnostic and Treatment (EPSDT) Services, 42 U.S.C. § 1396 *et seq.*

55. Medicaid is a cooperative federal and state funded program designed to provide medical and remedial services to low income people under Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq. States that choose to participate in the Medicaid program receive federal matching funds for their own programs. To receive those funds, states must adhere to the minimum federal requirements according to the Social Security Act, its implementing regulations, 42 C.F.R. §§ 430 et seq., and the Supremacy Clause of the United States Constitution, Art. VI, Cl.2.

1 56. Federal law requires states to cover certain mandatory services, including
2 Early and Periodic Screening, Diagnostic and Treatment (EPSDT) services, for
3 Medicaid-eligible children under the age of 21. 42 U.S.C. § 1396a(a)(10)(A); 42 U.S.C.
4 § 1396d(a)(4)(B). Under EPSDT, states are required to provide screening services to
5 identify defects, conditions, and illness. States must then provide the necessary
6 diagnostic and treatment services to correct or ameliorate those conditions, whether or
7 not such services are covered under the state plan. 42 U.S.C. § 1396d(r)(1), 42 C.F.R. §
8 441.56(b), 42 U.S.C. § 1396d(r)(5).

9 57. California has chosen to participate in the Medicaid program. Under its
10 Medicaid program, known as Medi-Cal, California must provide EPSDT services to
11 eligible children under the age of 21.

12 58. For children with mental health problems, necessary services include
13 professionally adequate assessments and case management and, depending on the needs
14 of the child, may include behavioral support services, individualized wraparound
15 services, therapeutic foster care and psychiatric or clinical services provided in a home-
16 like setting. The provision of necessary services may require the development of an
17 individualized wraparound treatment plan.

18 59. Wraparound services are specific individualized community-based services
19 and supports designed for children who have serious mental or emotional disorders and
20 provided in the child's own home or an alternative family setting. Developed in response
21 to the inflexibility and inefficiency of delivery systems that denied needed services to
22 children, wraparound has been found effective for diverse youth with a wide range of
23 mental health needs. Although the key to wraparound is provision of services and
24 supports tailored to the individual needs of each child, typical wraparound services
25 include crisis intervention, mobile therapy, therapeutic staff support, behavioral
26 specialist consultation, cognitive retraining, family based rehabilitation services,
27 specialized evaluations, family therapy, parent education and training, and other
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1 outpatient psychiatric and psychological services. Case management is essential to
2 coordinate the provision of these services and to coordinate health care services with
3 services available from other programs, such as child welfare and education. The
4 provision of wraparound services is necessary to treat or ameliorate certain mental
5 health conditions and permits treatment of children in the least restrictive, most
6 integrated setting appropriate to their needs.

7 60. California does not provide wraparound as a Medi-Cal service, nor does the
8 State make the components of wraparound available to Medi-Cal recipients on a
9 consistent statewide basis. As a result, many foster children with behavioral,
10 psychiatric, or emotional impairments do not receive services necessary to treat or
11 ameliorate these conditions.

12 61. Therapeutic foster care (also known as treatment foster care) is an
13 important Medicaid benefit provided in other states. It consists of intensive and highly
14 coordinated mental health and support services provided to a foster parent or caregiver,
15 in which the foster parent/caregiver becomes an integral part of the child's treatment
16 team. In some cases, the foster parent or caregiver may be reimbursed for therapeutic
17 services provided to the child under the supervision of a licensed health care provider.
18 For children in the foster care system or who are at risk of out-of-home placement and
19 whose needs are too great for a conventional foster home (even with access to outside
20 mental health services) therapeutic foster care is an important alternative to placement in
21 an institutional or congregate care setting. California does not include therapeutic foster
22 care as a benefit under its Medicaid program, nor is this service available to Medicaid
23 beneficiaries on a consistent statewide basis through other means.

24 62. Case management services are a Medicaid benefit that assists Medicaid
25 beneficiaries in gaining access to needed medical, social, educational, and other
26 services.

1 63. In California, children in foster care with emotional and behavior problems
2 and who need specialty mental health services do not have access to Medicaid case
3 management on a consistent, statewide basis. For many children, there is no
4 coordination between the services provided to them through the Medi-Cal mental health
5 system and the services available to them through the child welfare care system. In
6 addition, neither system offers consistent coordination of services to which these
7 children are entitled under other programs such as special education under the
8 Individuals with Disabilities Education Act (IDEA), Maternal and Child Health
9 programs under Title V of the Social Security Act, including programs for children with
10 special health care needs, and Social Services under Title XX of the Social Security Act.

11 **B. Substantive Due Process under the 14th Amendment to the United States**
12 **Constitution and Article I, Section 7(a) of the California Constitution**

13 64. The Fourteenth Amendment to the United States Constitution guarantees
14 that States will not “deprive any person of life, liberty, or property without due process
15 of law,” and protects those fundamental rights and liberties that are implicit in the
16 concept of ordered liberty such that sacrifice of them would prevent the existence of
17 liberty or justice.

18 65. While in direct custody of the State, children have a substantive due
19 process right to safety and to reasonable treatment consistent with professional
20 judgment. Children have a constitutionally protected right to be free from unreasonable
21 and unnecessary intrusions upon their physical and emotional well being and to be free
22 from harm.

23 66. Article I, Section 7(a) of the California Constitution guarantees that a
24 “person may not be deprived of life, liberty, or property without due process of law.”
25 The protections of substantive due process under California law have the same scope
26 and purposes as those under the United States Constitution.
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1 **C. The Americans with Disabilities Act, 42 U.S.C. § 12132, 28 C.F.R. § 35.130;**
2 **Section 504 of the Rehabilitation Act, 29 U.S.C. § 701 et seq.; and California**
3 **Government Code § 11135 et seq., 22 C.C.R. § 98000 et seq.**

4 67. The Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12131 et seq.,
5 prohibits public entities from discriminating against or excluding a qualified individual
6 with a disability from enjoying or participating in the benefits of services, programs, or
7 activities of the public entity on the basis of disability. 42 U.S.C. § 12132, 28 C.F.R. §
8 35.130.

9 68. Public entities must administer services, programs, and activities in the
10 most integrated setting appropriate to the needs of qualified individuals with disabilities.
11 28 C.F.R. § 35.130(d).

12 69. Public entities also must make reasonable modifications in policies,
13 practices, or procedures when necessary to avoid discrimination on the basis of
14 disability, unless the public entity can demonstrate that the modifications would
15 fundamentally alter the nature of the service, program, or activity. 28 C.F.R. §
16 35.130(b)(7).

17 70. Section 504 of the Rehabilitation Act provides in pertinent part: “[N]o
18 otherwise qualified individual with a disability . . . shall, solely by reason of her or his
19 disability, be excluded from the participation in, be denied the benefits of, or be
20 subjected to discrimination under any program or activity receiving Federal financial
21 assistance. . . .” 29 U.S.C. § 794.

22 71. Under California law, “No person in the State of California shall, on the
23 basis of . . . a physical or mental disability, be denied the benefits of, or be unlawfully
24 subjected to discrimination under any program or activity funded by the State or
25 receiving any financial assistance from the state.” 22 C.C.R. § 98100.

26 72. California Government Code section 11135 provides that programs or
27 activities conducted, operated, or administered by the state or by any state agency
28 funded directly by the state, or receiving financial assistance from the state, “shall meet

1 the protections and prohibitions contained in Section 202 of the Americans with
2 Disabilities Act of 1990 (42 U.S.C. § 12132), and the federal rules and regulations
3 adopted in implementation thereof except that if the laws of this state prescribe stronger
4 protections and prohibitions, the programs and activities [receiving state funding] shall
5 be subject to stronger protections and prohibitions.” Cal. Govt. Code § 11135(b).

6 73. Recipients of state funding must provide disabled persons with services that
7 are as effective in affording an equal opportunity to obtain the same result, to gain the
8 same benefit, or to reach the same level of achievement as those provided to others. In
9 some situations, identical treatment may be discriminatory. 22 C.C.R. § 98101(c).

10 **VII. REQUISITES FOR RELIEF**

11 74. By reason of the factual allegations set forth above, an actual controversy
12 has arisen and now exists between Plaintiffs and Defendants. Plaintiffs contend that
13 their rights under the Constitution and laws of the United States and the State of
14 California are being violated, while Defendants are charged with enforcing and
15 complying with those legal requirements. A declaration from this Court that Plaintiffs’
16 rights have been violated is therefore necessary and appropriate.

17 75. Defendants’ failure to comply with the requirements of federal and state
18 law will result in irreparable harm to Plaintiffs. Plaintiffs have no plain, adequate, or
19 complete remedy at law to address the wrongs described herein. Plaintiffs therefore
20 seek injunctive relief restraining Defendants from engaging in the unlawful and
21 unconstitutional acts and policies described herein.

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VIII. CLAIMS
FIRST CAUSE OF ACTION

(Against DHS and Los Angeles County for Violation of the
Medicaid Act, Early and Periodic Screening, Diagnostic and Treatment
(EPSDT) Services, 42 U.S.C. § 1396 et seq.)

76. Plaintiffs incorporate by reference the foregoing paragraphs of this
Complaint as though fully set forth herein.
Defendants, while acting under color of law, have developed and maintained customs,
policies, and practices that deprive Plaintiffs of statutory rights, in violation of 42 U.S.C.
§ 1983, by failing to provide Medi-Cal-eligible children with the full range of services
covered by Medicaid when such services are necessary to treat or ameliorate a child's
condition, in violation of 42 U.S.C. § 1396d(r)(5).

SECOND CAUSE OF ACTION

(Against All Defendants for Violation of Substantive Due Process
under the 14th Amendment to the United States Constitution)

77. Plaintiffs incorporate by reference the foregoing paragraphs of this
Complaint as though fully set forth herein.

78. Defendants have restrained Plaintiffs' personal liberty by taking these
minors into State custody, assuming responsibility for their safety and general well
being, and thereby rendering them wholly dependent on Defendants.

79. Defendants, while acting under color of law, have developed and
maintained customs, policies, and practices that deprive children with behavioral,
emotional, and psychiatric impairments of their constitutional rights, in violation of 42
U.S.C. § 1983, by failing to provide them with adequate living conditions, reasonable
safety and protection from harm, and adequate and appropriate medical care and
services. Such failures have caused Plaintiffs' conditions to deteriorate. These practices
of Defendants represent a substantial departure from accepted professional judgment,

1 practice, and standards, and subject Plaintiffs to unsafe conditions and psychological and
2 physical harm, in violation of the Fourteenth Amendment to the United States
3 Constitution.

4 **THIRD CAUSE OF ACTION**

5 (Against All Defendants, for Violation of Americans with Disabilities Act,
6 42 U.S.C. § 12132, 28 C.F.R. § 35.130), and Section 504 of the
7 Rehabilitation Act, 29 U.S.C. § 701 et seq.)

8 80. Plaintiffs incorporate by reference the foregoing paragraphs of this
9 Complaint as though fully set forth herein.

10 81. Children in DCFS custody with behavioral, emotional, and psychiatric
11 impairments are qualified individuals with disabilities within the meaning of the ADA,
12 42 U.S.C. § 12131(2), and are "otherwise qualified individuals with a disability" within
13 the meaning of the Rehabilitation Act.

14 82. Defendants are public entities subject to the provisions of the ADA. 42
15 U.S.C. § 12131(1)(A). Defendants receive federal financial assistance, and are thus
16 subject to the provisions of the Rehabilitation Act.

17 83. Defendants have failed to administer services, programs, and activities in
18 the most integrated setting appropriate to the needs of children in DCFS custody. 28
19 C.F.R. § 35.130(d). Defendants have placed children in restrictive, institutional settings,
20 where children are prevented from maintaining meaningful contact with their families,
21 schools, and communities.

22 84. Defendants have discriminated against Plaintiffs by denying them the
23 opportunity to participate in and benefit from Defendants' foster care and health
24 services, programs and activities; affording them an unequal opportunity to participate
25 in Defendants' foster care and health programs and services; and aiding and
26 perpetuating discrimination by assisting the other Defendant agencies in discriminating
27 against Plaintiffs. 28 C.F.R. § 35.130(b)(1).

85. Defendants have further discriminated against Plaintiffs in violation of the ADA by utilizing criteria or methods of administration that have the effect of (i) subjecting Plaintiffs to discrimination on the basis of disability; (ii) substantially impairing accomplishment of the objectives of Defendants' foster care program; and (iii) perpetuating discrimination by other Defendant agencies subject to common administrative control. 28 C.F.R. § 35.130(b)(3).

86. Defendants have discriminated against Plaintiffs on the basis of their disabilities by failing to make reasonable modifications in their policies, practices, or procedures. Reasonable modification of Defendants' policies, practices, or procedures would not fundamentally alter the nature of their services, programs, or activities, but rather would further Defendants' stated goals. 28 C.F.R. § 35.130(b)(7).

87. Defendants have discriminated against Plaintiffs solely on the basis of disability in violation of the Rehabilitation Act by: (i) failing to provide reasonable accommodations to allow Plaintiffs to participate fully in Defendants' programs and receive adequate services; and (ii) failing to provide and support appropriate community-based placements, instead requiring Plaintiffs to be confined in restrictive, institutional settings without adequate services. Defendants' acts and omissions alleged herein have denied and continue to deny Plaintiffs the opportunity to benefit from Defendants' services, programs, and activities.

FOURTH CAUSE OF ACTION

(Against All Defendants for Violation of Substantive Due Process under Article I,
Section 7(a) of the California Constitution)

88. Plaintiffs incorporate by reference the foregoing paragraphs of this Complaint as though fully set forth herein.

89. Defendants have restrained the Plaintiffs' personal liberty by taking these minors into State custody, assuming responsibility for their safety and general well being, and thereby rendering them wholly dependent on Defendants.

1 90. Defendants, through their acts and omissions, have deprived Plaintiff
2 children of their constitutionally protected liberty interest to be reasonably safe and free
3 from harm and to receive reasonable treatment as described in the foregoing paragraphs
4 of this Complaint. The practices of Defendants represent a substantial departure from
5 accepted professional judgment, practice, and standards.

6 **FIFTH CAUSE OF ACTION**

7 (Against All Defendants for Violation of California Government Code § 11135 et seq.,
8 22 C.C.R. § 98000 *et seq.*)

9 91. Plaintiffs incorporate by reference the foregoing paragraphs of this
10 Complaint as though fully set forth herein.

11 92. Defendants have discriminated against Plaintiff children by failing to make
12 reasonable modifications in their policies, practices, or procedures, that would allow
13 them to participate in and benefit from Defendants' foster care and health services.
14 Reasonable modification of Defendants' policies, practices, or procedures would not
15 fundamentally alter the nature of their services, programs, or activities, but rather would
16 further Defendants' stated goals.

17 **IX. PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs respectfully request that this Court:

- 19 (a) Assert jurisdiction over this action;
20 (b) Order that Plaintiffs may maintain this action as a class action pursuant to
21 Rule 23(b)(2) of the Federal Rules of Civil Procedure;
22 (c) Declare unconstitutional and unlawful Defendants' failure to comply with the
23 mandates of the Medicaid Act; the Fourteenth Amendment to the United States
24 Constitution; the Americans with Disabilities Act; Section 504 of the Rehabilitation Act;
25 Article I, Section 7(a) of the California Constitution; and California Government Code §
26 11135 et seq.;

1 (d) Permanently enjoin Defendants from subjecting members of the Plaintiff
2 Class to practices that violate their rights;

3 (e) Award to the Plaintiffs the reasonable costs and expenses incurred in the
4 prosecution of this action, including but not limited to reasonable fees and costs
5 pursuant to 42 U.S.C. §§ 1988 and 1920; and

6 (f) Award such other equitable and further relief as the Court deems just and
7 proper.

8
9 DATED: December 20, 2002

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13 RONALD C. PETERSON

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PROOF OF SERVICE BY MAIL

I, Debora K. Biggers, declare as follows:

I am employed with the law firm of Heller Ehrman White & McAuliffe LLP,
whose address is 601 South Figueroa Street, 40th Floor, Los Angeles, California 90017.

I am readily familiar with the business practices of this office for collection and
processing of correspondence for express mailing with the United States Postal Service;

I am over the age of eighteen years and not a party to this action.

On December 20, 2002, I served the following:

**FIRST AMENDED COMPLAINT FOR DECLARATORY AND
INJUNCTIVE RELIEF**

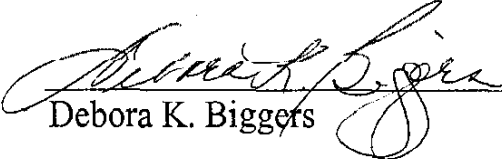
on the below parties in this action by placing true copies thereof in sealed envelopes,
addressed as shown, for collection and mailing pursuant to the ordinary business
practice of this office which is that correspondence for express mailing is collected and
deposited with the United States Postal Service on the same day in the ordinary course
of business:

Name: Richard T. Waldow Facsimile Number: (213) 897-2805

Name: Jerry M. Custis Facsimile Number: (323) 881-3791

I declare under the penalty of perjury under the laws of the United States of
America that the foregoing is true and correct and that I am employed in the office of a
member of the bar of this Court at whose direction the service was made.

Executed at Los Angeles, California, on December 20, 2002.


Debora K. Biggers

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