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CLARK K., *et al.*

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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

Plaintiffs,

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

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

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 plaintiffs to reveal highly intimate information.

1
2 vs.

3 KENNY C. GUINN, Governor of Nevada;
4 MICHAEL WILLDEN, Director of the
5 Nevada DHHS; FERNANDO SERRANO,
6 Administrator of the Nevada Division of
7 Child and Family Services; JOHN DOE,
8 Bureau Chief of the Bureau of Services for
9 Child Care of the Division of Child and
10 Family Services; VIRGINIA
11 VALENTINE, Clark County Manager;
12 CLARK COUNTY DEPARTMENT OF
13 FAMILY SERVICES; TOM MORTON,
14 Director of Clark County Department of
15 Family Services; LOUIS PALMA,
16 Manager of Shelter Care for the Clark
17 County Department of Family Services;
18 BRUCE L. WOODBURY, TOM
19 COLLINS, CHIP MAXFIELD, YVONNE
20 ATKINSON GATES, MYRNA
21 WILLIAMS, LYNNETTE BOGGS
22 MCDONALD, and RORY REID, Clark
23 County Commissioners; and CLARK
24 COUNTY,

25 Defendants.

26
27 **FIRST AMENDED COMPLAINT (CLASS ACTION ALLEGED)**²

28 I.

JURISDICTION AND VENUE

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

² Plaintiffs submit their First Amended Complaint in accordance with Fed. R. of Civ. P. 15(a), which provides that a "party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served." Defendants have not filed answers in this matter, only motions to dismiss. Federal case law holds that a motion to dismiss is not a responsive pleading within the meaning of Rule 15. See *Crum v. Circus Circus Enterprise*, 231 F.3d 1129, 1130 n. 3 (9th Cir. 2000); *Tahoe-Sierra Preservation Council Inc. v. Tahoe Regional Planning Agency*, 216 F.3d 764, 788 (9th Cir. 2000). Accordingly, plaintiffs are not required to obtain leave of court to file their First Amended Complaint. See *Crum v. Circus Circus Enterprise*, 231 F.3d at 1130 n. 3.

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

II.

THE PARTIES

3. Plaintiff Clark K. is a seventeen-year-old boy who has been in the legal custody of Clark County Department of Family Services ("Clark County DFS") since July 2003. He currently resides in Clark County, Nevada in the home of his grandparents who have been licensed foster parents for Clark County. Clark appears in this action by his next friend, Sherry Anderson who is his paternal grandmother.

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

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

6. Plaintiff Donna C. is a five-year-old girl who has been in the legal custody of Clark County DFS since December 2004. She currently resides in a foster home in Clark County,

1 Nevada. Donna appears in this action by her next friend, Jacqueline Romero. Mrs. Romero is a
2 Clark County foster parent who previously cared for Donna.

3 7. Defendant Kenny C. Guinn is the Governor of Nevada and Chief Executive
4 Officer for the State, and is sued in his official capacity. He is responsible for ensuring that all
5 Nevada agencies comply with the applicable federal and state laws, and oversees and directs the
6 activities of Nevada Department of Health and Human Services ("Nevada DHHS") and Nevada
7 Division of Child and Family Services ("State DCFS"), pursuant to Nev. Rev. Stat. Ann.
8 § 232.310. His business address is Capitol Building, 101 N. Carson Street, Carson City, NV
9 89701.

10 8. Defendant Michael Willden is the Director of Nevada DHHS, and is sued in his
11 official capacity. Nevada DHHS is the "sole agency responsible for administering the provisions
12 of law relating to its respective divisions", which includes State DCFS. Nev. Rev. Stat. Ann.
13 § 232.300. The Director of Nevada DHHS is responsible for carrying out the administration of
14 State DCFS, as well as the other divisions of the Department. Nev. Rev. Stat. Ann. § 232.320.
15 He is also responsible for appointing divisional directors, including the Administrator of State
16 DCFS, which has responsibility for ensuring the provision of child welfare services throughout
17 the state. Nev. Rev. Stat. Ann. § 232.320. His business address is 505 East King Street, Room
18 600 Carson City, NV 89701-3708.

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

25 10. Defendant John Doe is the Bureau Chief of the Bureau of Services for Child Care
26 ("the Bureau") of State DCFS, and is sued in his official capacity.³ The Bureau has the

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

1 responsibility to “ensure that every person operating a [child care] facility is licensed.” Nev.
2 Admin. Code § 432A.170(1). Various statutes and regulations address the role of the Bureau in
3 making sure that child care facilities and services are “safe and responsive” as set forth in Nev.
4 Rev. Stat. Ann. § 432A.010. *See* Nev. Rev. Stat. Ann. §§ 432A.040, 432A.070, 432A.131,
5 432A.210; Nev. Admin. Code §§ 432A.170, 432A.180. The Bureau Chief is the administrator in
6 charge of ensuring the proper and efficient performance of the functions of the Bureau. Nev.
7 Rev. Stat. Ann. §432A.070. The business address for the Bureau Chief is 400 W. King St., Suite
8 230, Carson City, Nevada 89703.

9 11. Defendants Bruce L. Woodbury, Tom Collins, Chip Maxfield, Yvonne Atkinson
10 Gates, Myrna Williams, Lynette Boggs McDonald, and Rory Reid are the seven members of the
11 Clark County Board of County Commissioners. The Board of County Commissioners is
12 responsible for running the County government, including hiring a County Manager who is
13 responsible for the day-to-day administrative operations of the County government. Their
14 business address is 500 Grand Central Parkway, Las Vegas, Nevada 89106.

15 12. Defendant Clark County is subject to the jurisdiction of this court. With the
16 passage of Assembly Bill 1 in 2001, for counties with a population over 100,000, responsibility
17 for the funding and provision of child welfare and child protective services in that county was
18 transferred from State DCFS to the county agency. Clark County has a population of over
19 100,000, and is responsible for providing funding in an amount set by the County for the
20 provision of child welfare services.

21 13. Defendant Virginia Valentine is the Clark County Manager, and is sued in her
22 official capacity. She is responsible for managing the County’s \$5 billion budget and providing
23 administrative oversight for all County departments, including the Department of Family
24 Services. Her business address is 500 S. Grand Central Parkway, Las Vegas, NV 89155.

25 14. Defendant Clark County DFS has its principal place of business in Clark County,
26 Nevada. Clark County DFS is responsible for administering and providing all child welfare
27 services for abused and neglected children in Clark County, including child protective services
28 and shelter care, pursuant to Nev. Rev. Stat. Ann. § 432B.030.

standards. The transfer of foster care staff and services from the State to Clark County was completed in October 2004.

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

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

22. Within the past two and a half years, one study after another has documented Clark County's failure to protect the health, safety, and well-being of child abuse victims and children in foster care. Defendants have had full knowledge of these studies, and have nonetheless failed to take adequate steps to address the long-standing problems identified in them. These studies include:

- A December 2003 Statewide Assessment of child welfare services conducted as part of the preparation for the February 2004 federal Child and Family Services Review ("CFSR");
- A February 2004 federal CFSR of Nevada's child welfare system that included an audit of Clark County's system ("2004 Federal Review");
- An April 2004 Audit of Child Haven and the Clark County Shelter Home Program conducted by the Audit Department of Clark County;
- An April 2005 Report to the Clark County Commissioners on the Status of Child Welfare Services;
- A June 2005 report of a review of child abuse fatalities in Clark County conducted by the Child Welfare Institute of which Defendant Morton was the former director;
- An October 2005 case review of Clark County child abuse and foster care cases

1 conducted by State DCFS (“2005 County Case Review”); and

- 2 □ An April 2006 Report of the Findings and Recommendations: Child Deaths 2001-
3 2004 describing the results of an independent child death review panel
4 investigation of deaths related to child abuse or neglect in Clark County (“2006
5 Child Fatality Report”).

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

- 12 □ The State’s acquiescence in Clark County’s continued use of an unlicensed
13 congregate care facility – Child Haven;
14 □ Consistent overcrowding at Child Haven;
15 □ Unnecessary removal of children from their homes due to Clark County’s failure
16 to provide an adequate array of services to prevent placement;
17 □ Frequent changes in placement of children in foster care;
18 □ Inadequate assessments of the safety of suspected victims of child abuse and
19 neglect;
20 □ Inadequate training of staff and insufficient recruitment of foster parents;
21 □ Unanswered or lengthy delays in answering calls to the Child Abuse Hotline;
22 □ The use of an invalid, ineffective risk assessment tool;
23 □ The failure to use data to provide effective oversight and supervision; and
24 □ The failure to provide a guardian *ad litem* for every child in foster care.

25 24. In a letter to Nevada child welfare officials on August 11, 2006, Sharon M. Fujii,
26 the Regional Administrator for the Administration for Children and Families of Federal DHHS,
27 informed Nevada that “the manner in which the continuum of child welfare services is managed
28 in Clark County should be a grave concern to the State.” August 11, 2006 Letter from Sharon M.

1 Fujii to Defendant Willden. She notified state officials that the current Program Improvement
2 Plan between the State and federal officials “is no longer adequate to address the serious
3 deficiencies in the State’s child welfare program, most specifically Clark County which accounts
4 for the majority of the State’s child welfare population.” *Id.*

5 25. Defendants Willden and Serrano subsequently wrote a letter to Defendant Morton
6 warning him that:

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

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

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

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

19 28. Nevada and its counties receive millions of dollars in federal funds for the
20 provision of child welfare services and are therefore required to comply with federal mandates,
21 including those set forth in the Adoption and Safe Families Act of 1997, the Child Abuse
22 Prevention and Treatment Act, and the Early Periodic Screening, Diagnosis and Treatment
23 provisions of Medicaid law. In state fiscal year 2004, Nevada spent over \$79 million on child
24 welfare services, of which \$44 million was federal funds.

25 29. This lawsuit also challenges the placement of children, and the conditions in which
26 they are forced to live, at Child Haven – an unlicensed child care institution operated by Clark
27 County. For years, Child Haven has not been a safe “haven” for the children and youth placed
28 there. Upon entering foster care in Clark County, children are placed at Child Haven and remain

1 there for as little as a few hours or as long as a year or more. For years, unlike other facilities
2 providing care to foster children in Nevada, Child Haven has been allowed to operate without
3 meeting the minimum licensing standards required by state law. The Child Haven facility houses
4 infants and young children alongside teenagers, some of whom have significant behavioral
5 problems and pose a risk of serious harm to the younger, more vulnerable children in the facility.
6 Child Haven is frequently extremely overcrowded resulting in children sleeping on the floors and
7 in gymnasiums, separated from their siblings and in conditions that have contributed to the spread
8 of infectious disease at Child Haven. Children's needs, particularly their need for mental health
9 care, are not being met.

10 30. High caseloads and inadequate training of Clark County child protective services
11 and foster care workers contribute to the crisis within the system. Many workers' caseloads
12 exceed those established by national standards. Workers are ill prepared and supervised to
13 perform a job in which failure to abide by law, regulations, and professional standards, and failure
14 to exercise professional judgment result in serious injury to or death of a child.

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

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

26 33. Children in foster homes recruited, licensed, and supervised by Defendants are
27 subjected to abuse and neglect in those homes. When there are complaints about foster homes,
28 Clark County DFS often turns a deaf ear, allowing children to remain in dangerous homes that

1 either should not have been licensed in the first place or should have had their license revoked.
2 At the same time, Clark County DFS retaliates against foster parents who advocate for services
3 for a child placed in their homes or who disagree with the department's plan for the child, driving
4 out the very foster parents the system needs. Clark County DFS also fails to provide foster
5 parents with even the most basic background information about children they place in their homes
6 and the supportive services needed.

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

11 35. Children in foster care have no voice in the court proceedings where decisions are
12 made that affect their basic safety, their temporary and permanent placement, and their general
13 well-being. Even though state and federal law mandate appointment of a representative to look
14 out for the interests of the child in all cases, Clark County falls woefully short of meeting this
15 requirement.

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

20 IV.

21 CLASS ACTION ALLEGATIONS

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

26 38. The requirements of Fed. R. Civ. P. 23 are met in that the class is so numerous that
27 joinder of all members is impracticable. Furthermore, the class is fluid in that new members are
28 regularly created. There are over 3,600 children in foster care in Clark County. Throughout the