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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

E.T., K.R., C.B. and G.S., by their next friend,
Frank Dougherty, on their behalf and on behalf of
all those similarly situated,

Plaintiffs,

v.

RONALD M. GEORGE, Chair of the Judicial
Council of California, in his official capacity;
WILLIAM C. VICKREY, Administrative Director
of the Administrative Office of the Courts of the
Judicial Council, in his official capacity; and
JAMES M. MIZE, Presiding Judge of the Superior
Court of the County of Sacramento, in his official
capacity,

Defendants.

Case No.

**COMPLAINT FOR DECLARATORY
JUDGMENT AND PERMANENT
INJUNCTIVE RELIEF**

42 U.S.C. § 1983 and Pendent State Law
Claims

CLASS ACTION

Plaintiffs E.T., K.R., C.B. and G.S. ("Plaintiffs"), on behalf of themselves and others similarly
situated, allege the following claims against the Honorable Ronald M. George, William C. Vickrey,
and the Honorable James M. Mize, in their official capacity ("Defendants").

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I. JURISDICTION AND VENUE

1. This action arises under Title 42 of the United States Code, § 1983, as Plaintiffs allege they have been deprived of their rights under the federal Constitution and federal statutes. This Court has jurisdiction over the action under 28 U.S.C. §§ 1331 and 1343.

2. The pendent state claims alleged in this action arise from the same facts as the federal claims, such that all claims alleged would ordinarily be prosecuted in a single action. This Court therefore has supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367(a).

3. All events alleged in this action occurred in the County of Sacramento, California. Venue therefore lies in this Court under 28 U.S.C. § 1391(b)(2).

II. SUMMARY OF CASE

4. This lawsuit seeks a Dependency Court for Sacramento's abused and neglected children that comports with basic Due Process and the effective, adequate, and competent assistance of counsel for the children of Sacramento County in dependency proceedings.

III. PARTIES

A. The Plaintiffs

5. Plaintiff E.T. is a resident of the County of Sacramento. She is presently in foster care and is 14 years old. At all times relevant to this lawsuit, E.T. was a resident of the County of Sacramento.

6. Plaintiff K.R. is a resident of the County of Sacramento. She is presently in foster care and is 13 years old. At all relevant times to this lawsuit, K.R. was a resident of the County of Sacramento.

7. Plaintiff C.B. is a resident of the County of Sacramento. She is presently in foster care and is 17 years old. At all times relevant to this lawsuit, C.B. was a resident of the County of Sacramento.

8. Plaintiff G. S. is a resident of the County of Sacramento. He is presently a ward of the court and is 18 years old. At all times relevant to this lawsuit, G.S. was a resident of the County of Sacramento.

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B. The Defendants

9. The Honorable Ronald M. George ("Chief Justice George") is Chair of the Judicial Council, the body responsible for overseeing the statewide administration of justice in the California courts. Chief Justice George is responsible, in his official capacity, for the administration of the Judicial Council, including the allocation of the judicial branch budget (and allocation of relevant funds for courts and court-appointed child representation in Dependency Court proceedings); the promulgation of rules of court administration, practice, and procedure; and establishing the direction and setting priorities for the continual improvement of the court system. Chief Justice George is sued only in his official capacity.

10. Defendant William C. Vickrey ("Mr. Vickrey") is the Administrative Director of the Administrative Office of the Courts of the Judicial Council (the "AOC"). The AOC is the staff agency of the Judicial Council and is responsible for a variety of programs and services to improve access to a fair and impartial judicial system. The Center for Families, Children, and the Courts, a division of the AOC, has implemented a program called "DRAFT" (as described below), which provides court funding to participating California counties. The children's court-appointed counsel are paid for through funding from DRAFT by virtue of the County of Sacramento's participation in the program. Mr. Vickrey is responsible, in his official capacity, for the administration of the AOC. Mr. Vickrey is sued only in his official capacity.

11. The Honorable James M. Mize ("Judge Mize") is the Presiding Judge of the Superior Court of the County of Sacramento ("Sacramento County Superior Court"). Judge Mize is responsible, in his official capacity, for leading the court, establishing policies, and allocating resources in a manner that promotes access to justice for all members of the public, provides a forum for the fair and expeditious resolution of disputes, maximizes the use of judicial and other resources, increases efficiency in court operations, and enhances service to the public. Cal. R. Ct Rule 10.603. He has the authority to assign judges to departments, such as Sacramento County Superior Court's Dependency Court. *Id.* Rule 10.603(b)(1)(A). He also has a duty to approve the allocation of funds in a manner that promotes the implementation of state and local budget priorities and that ensures equal access to justice and the ability of the court to carry out its functions effectively. *Id.* Rule

10.603(b)(6)(C). His duties also include implementing the legislative mandate requiring the appointment of counsel to children in dependency proceedings pursuant to Section 317 of the California Welfare and Institutions Code. Judge Mize is sued only in his official capacity.

IV. CLASS ACTION ALLEGATIONS

12. Plaintiffs bring this suit as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of themselves and all other similarly-situated persons as members of a Class initially defined as follows:

All children currently and hereafter represented by court-appointed counsel in juvenile dependency proceedings in the Sacramento County Superior Court.

13. Numerosity. The proposed Class is sufficiently numerous, as approximately 5,100 children are currently represented by court-appointed counsel in dependency proceedings in the County of Sacramento. Class Members are so numerous that joinder of all members is impracticable. Class Members can be identified by records maintained by the court-appointed attorneys and Defendant Judge Mize.

14. Typicality. Plaintiffs' claims are typical of the claims of members of the Class because Plaintiffs and Class Members have been, and currently are, being harmed by Defendants' wrongful conduct as detailed herein. Specifically, Plaintiffs' and Class Members' claims arise from Defendants' inadequate provision of Dependency Courts and counsel. This, in turn, causes the following harms to Plaintiffs; harms typical of the harms suffered by members of the Class:

a. Class Members, including Plaintiffs, are not, or are not adequately, represented by their counsel;

b. Class Members, including Plaintiffs, are not meaningfully interviewed by their counsel nor do they meet regularly with them such that counsel cannot effectively represent the child's desires or best interests, nor assess the child's well-being or the child's wishes on such issues as placement, reunification, and eligibility for, and enrollment in, programs, services, or the refusal to enroll in such services;

c. Class Members, including Plaintiffs, do not benefit from counsel engaging in further investigations, whether beyond the scope of the dependency proceeding or not, as may be

reasonably necessary to ascertain facts about the child's best interests and needs;

d. Class Members, including Plaintiffs, do not benefit from witnesses that, but for the overwhelming caseloads of the children's appointed attorneys, would be interviewed, called to testify, or effectively examined on either direct or cross, resulting in a situation where the child and the court are deprived of facts which, if known by the court or the child's counsel, may alter the outcomes in Dependency Court;

e. Class Members, including Plaintiffs, are, through their counsel, denied contact with social workers and other professionals associated with their case and denied the ability to work with other counsel and the court to resolve disputed aspects of a case without contested hearing;

f. Class Members, including Plaintiffs, do not have sufficient contact with their counsel to establish and maintain an adequate and professional attorney-client relationship;

g. Class Members, including Plaintiffs, through their counsel, are not able to obtain copies of all pleadings and relevant notices; not able to participate in depositions, negotiations, discovery, pre-trial conferences, and hearings; not able to inform other parties and their representatives that their counsel is representing the Class Member and obtain reasonable notification prior to case conferences, changes of placement, and other changes of circumstances affecting the Class Member and their family; not able to attempt to reduce case delays and ensure that the court recognizes the need to speedily promote permanency for the child; unable to counsel the child concerning the subject matter of the litigation, the child's rights, the court system, the proceedings, the lawyer's role, and what to expect in the legal process; unable to develop a theory and strategy of the case to implement at hearings, including factual and legal issues; and unable to identify appropriate family and professional resources for the child;

h. Class Members, including Plaintiffs, are denied the right to have their individual rights adjudicated by a neutral tribunal because (1) the caseloads of the hearing officers for the Dependency Court are too large to permit the children and their counsel a meaningful opportunity to be heard, and (2) the caseloads of the judicial officers are too large to permit the officers to obtain and evaluate the sufficiency of the information provided to them in and of itself and proportional to the liberty interest and other constitutional-level interest at stake for the children.

i. Class Members, including Plaintiffs, as a result of the aforementioned, are denied full and fair hearings on determining every facet of Dependency Court, including, but not limited to, placement; termination of parental rights; reunification; relationships with relatives and siblings; educational needs; emotional, physical, and mental well-being; medical needs; and eligibility for and enrollment in various programs, particularly when they age out of the system at eighteen years old.

j. Accordingly, and due to the effects enumerated above, Class Members, including Plaintiffs, are deprived of their due process rights under the federal and California Constitutions, and their rights under federal and state statutes.

15. Common Questions of Law and Fact. There are questions of law and fact common to the Class, pursuant to Rule 23(a)(2) of the Federal Rules of Civil Procedure as the claims of every Class Member are based upon the excessive caseloads shouldered by court-appointed counsel and the Dependency Courts of the County of Sacramento. Among these common questions of law and fact are:

- A. Whether Plaintiffs and Class Members have a right under the federal and California Constitutions to adequate and effective legal representation in dependency proceedings and related appeals;
- B. Whether Plaintiffs and Class Members have a state law entitlement to competent assistance of counsel with a caseload that ensures adequate representation and federal law entitlements under the Child Welfare Act and Child Abuse Prevention and Treatment and Adoption Reform Act;
- C. Whether the caseloads of court-appointed dependency counsel in the County of Sacramento are so excessive that federal and state constitutional rights are abridged in violation of 42 U.S.C. § 1983, and state and federal statutory standards are breached, in that:
 - i. Counsel cannot provide adequate or effective legal assistance to Plaintiffs and Class Members;

- ii. Defendants have not protected Plaintiffs' and Class Members' health and safety under 42 U.S.C. § 671(a)(22) of the Child Welfare Act;
- iii. Defendants have not provided Plaintiffs and Class Members with guardians ad litem who can meet the obligations set forth in 42 U.S.C. § 5106a(b)(2)(A)(ix) of the Child Abuse Prevention and Treatment and Adoption Reform Act;
- iv. Defendants have not provided counsel with caseloads that ensure adequate representation as required by CAL. WELF. & INST. CODE § 317(c); and
- v. Counsel cannot provide competent legal representation as required by CAL. WELF. & INST. CODE § 317.5;

D. Whether the Dependency Courts of the County of Sacramento are so overburdened with cases that they cannot provide a fair and adequate tribunal to hear the dependency proceedings to which Plaintiffs and Class Members are subject, thus depriving Plaintiffs and Class Members of their due process rights under the Federal and California Constitutions; and

E. Whether injunctive relief and a declaratory judgment is appropriate.

16. Adequacy. Plaintiffs, through their next friend, Frank Dougherty, will fairly and adequately protect the interests of Class Members and have retained counsel competent and experienced in complex class actions and civil rights litigation. Plaintiffs, through their next friend, Frank Dougherty, are committed to vigorous prosecution of this action and have no interests antagonistic to or in conflict with those of Class Members.

17. Certification under Rule 23(b)(2): Certification is appropriate under Fed. R. Civ. P. 23 (b)(2) because:

18. The prosecution of separate actions by individual Class Members is likely and would create a risk of inconsistent or varying adjudications with respect to individual Class Members, which would establish incompatible standards of conduct for Defendants to ensure that they provide court-appointed counsel and Dependency Courts that comply with legal requirements;

19. Defendants are obligated by law to treat all Class Members alike with respect to the due process rights afforded to each Class Member under the federal and state constitutions, the Federal Child Welfare Act, the Child Abuse Prevention and Treatment and Adoption Reform Act and

the California Welfare and Institutions Code. The prosecution of separate actions by individual Class Members as to the caseloads of Dependency Courts and court-appointed counsel in the County of Sacramento would create a risk of adjudications that would, as a practical matter, be dispositive of the interests of other Class Members who are not parties to the individual adjudications, or substantially impair or impede their ability to protect their interests; and

20. By failing to provide sufficient Dependency Courts and court-appointed counsel, Defendants have acted, or refused to act, on grounds generally applicable to the Class, thereby making final injunctive relief and declaratory relief appropriate as to the Class as a whole.

21. Notice. Plaintiffs will provide notice to the Class if the Court, in its discretion, requests that notice be given pursuant to Rules 23(b)(1) and 23(b)(2) of the Federal Rules of Civil Procedure.

V. FACTS CONCERNING DEFENDANTS' LEGAL VIOLATIONS

A. Preliminary Background Facts

22. In Sacramento County, crushing and unlawful caseloads are illegally frustrating both the ability for Dependency Courts to adjudicate and provide children with a meaningful opportunity to be heard, as well as the effective, adequate and competent assistance of counsel, to the enduring harm of Sacramento's abused and neglected children.

23. Dependency Court and, by extension, foster care, fundamentally is a legal process. In this legal process, the Dependency Court judge acts as the State, which is *in loco parentis* (standing in place of the parents). The judge decides whether the child will be removed from the care of his parents and whether, and under what circumstances, the child will be reunited with them. Dependency proceedings, therefore, are usually life-altering for the child. The judge determines not only if a right to an existing parent will be abridged, but all of the building blocks of the child's life: whether the child will have contact with a previous parent, who will actually serve as parent, where the child will live, whether siblings will be in the household or never seen again, what school the child will attend, and even what medicines the child will be given.

24. The legal system within which the judge makes these decisions remains, at its core, an adversarial one. As with any other adversarial legal proceeding, the ability of the Dependency Court

1 judge to render sensible and informed decisions is contingent upon both the information brought to
2 him or her by counsel, and a judicial caseload that permits the judge to consider carefully what he has
3 been provided.

4 25. Both state and federal statutes and the state and federal constitutions provide that
5 children in dependency proceedings have a right to counsel. And as with any right to counsel, the
6 right must be a meaningful one. The child is guaranteed the right to assistance of counsel that is – as
7 a real-world, practical matter – effective, competent, and adequate.

8 26. Plaintiffs are informed and believe, and on the basis of such information and belief
9 allege that caseloads currently carried by counsel for children in dependency proceedings in the
10 County of Sacramento are so large that such counsel are not able to effectively, adequately, or
11 competently represent their clients, violating state and federal statutes and the state and federal
12 constitutions.

13 27. For these reasons and those detailed herein, children subject to dependency
14 proceedings in the County of Sacramento – one of the most important legal proceedings of their lives
15 – are denied their guaranteed rights under state and federal law to effective, adequate, and competent
16 assistance of counsel, and to a fair and adequate tribunal to hear and decide the dependency
17 proceedings to which they are subject.

18 **B. Dependency Proceedings**

19 28. Dependency proceedings are conducted to protect the safety and well-being of an
20 abused or neglected child whose parents or guardians either cannot or will not do so, or who
21 themselves pose a threat to the child. During removal from parental custody, the State holds a
22 “jurisdictional” hearing and thereafter may take parental jurisdiction of the child. The State then
23 decides the child’s placement pending the litigation. That placement may be in family foster care,
24 with a family foster agency, with relatives, or in an institutional foster care. After a child is removed
25 from his or her parents, subsequent court proceedings and reviews are required to determine whether
26 to reunite the child with his or her parents, or to focus instead on finding a permanent and stable
27 placement for the child. If reunification services are terminated, the State takes permanent
28 jurisdiction of the child under a permanent placement plan. That plan may include adoption,

guardianship, or continued foster care custody. While in foster care, the child depends upon the court, and therefore also his or her counsel, for decisions pertaining to everything from extra-curricular activities to visitation to clothing allowances to whether the child should be administered certain drugs. A child is entitled to appeal and seek writs from the various judgments of the Dependency Court.

C. An Overburdened Dependency Court System

29. Plaintiffs are informed and believe, and on the basis of such information and belief allege that California's Dependency Courts and foster care system are similarly overwhelmed and unreasonable. In the words of the Blue Ribbon Commission on Children in Foster Care (the "Blue Ribbon Commission"), headed by California Supreme Court Justice Carlos Moreno, "California's Dependency Court system is overstressed and under-resourced," with "[f]ull-time judicial officials in California carry[ing] an average of 1,000 cases, which has a direct impact on the level of time and attention any one case receives." Administrative Office of the Courts of the Judicial Council of California, CHILDREN IN FOSTER CARE: FINAL RECOMMENDATIONS OF THE BLUE RIBBON COMMISSION ON CHILDREN IN FOSTER CARE TO IMPROVE THE JUVENILE DEPENDENCY COURTS AND FOSTER CARE SYSTEM IN CALIFORNIA 13, 16 (2008) (hereinafter Blue Ribbon Commission Report). These statistics are borne out in the caseloads of the Sacramento Dependency Courts. The County of Sacramento presently has only 5 judicial referees (who preside over dependency proceedings) responsible for approximately 5,100 active dependency cases. A former lead dependency referee from Sacramento estimates that such caseload affords referees roughly two minutes of courtroom time per case. A foster child appearing in a Sacramento Dependency Court with ineffective counsel therefore cannot reasonably expect the judicial referee to serve as a backstop and look out for his or her best interests. The referee is just as overburdened as counsel.

30. Plaintiffs are informed and believe, and on the basis of such information and belief allege that Courts saddled with such workloads cannot afford to give sufficient attention to these life-changing proceedings proportionate to their importance to the liberty and other constitutional-level interests of Sacramento County's abused and neglected children. Former Sacramento County Lead

1 Dependency Referee Carol Chrisman has observed, “When you calculate it out, it’s two minutes per
 2 case – enough time for everyone to say submit or object, but not much more.” Karen de Sá, Broken
 3 Families, Broken Courts, San Jose Mercury News, Feb. 8, 2008. This is certainly not enough time to
 4 make the appropriate parental decisions for the children under the court’s care.

5 31. Plaintiffs are informed and believe, and on the basis of such information and belief
 6 allege that the Judicial Council is well aware of this problem. The Blue Ribbon Commission
 7 recommended that the Judicial Council undertake a new judicial caseload study focused specifically
 8 on juvenile dependency courts and, pending completion of the study, that presiding judges evaluate
 9 their current allocation of judgeships and resources and make adjustments as necessary. Blue Ribbon
 10 Commission Report, at 22. The Judicial Council accepted this recommendation in full but has not yet
 11 released any guidelines or made any institutional changes.

12 32. Plaintiffs are informed and believe, and on the basis of such information and belief
 13 allege that while social workers serve as an arm of the judicial court, they are in no position to take
 14 up the slack to protect foster children given their own heavy workloads, executive and Board level
 15 mismanagement, and CPS’s failure to follow through on oversight by the Board of Supervisors. A
 16 study commissioned by the California Department of Social Services concluded that the optimal, per-
 17 week caseload for social workers, by program, is as follows: 9.88 emergency response cases, 10.15
 18 family maintenance cases, 11.94 family reunification cases, and 16.42 permanent placement cases.
 19 American Humane Association, SB2030: CHILD WELFARE SERVICES WORKLOAD STUDY iii
 20 (2000). But some Sacramento social workers carry caseloads that are more than double these
 21 recommended levels. See MGT of America, Inc., REVIEW OF THE SACRAMENTO CHILD
 22 PROTECTIVE SERVICES DIVISION, FINAL REPORT (March 23, 2009) (“MGT Report”).
 23 Moreover, they do so while laboring under long-standing policies that “plac[e] more emphasis and
 24 focus on documentation and desk-work activities than . . . on meeting with children and families and
 25 performing out-of-office fieldwork.” *Id.* at 6. Against this backdrop, the ability of the children’s
 26 appointed attorneys to conduct thorough and independent investigations are all the more critical.

27 33. With the courts and social workers incapable of protecting their wards, the last
 28 remaining guardian for a child in Dependency Court is his or her attorney.

C. Court-Appointed Counsel In Dependency Proceedings

34. Section 317 of the California Welfare and Institutions Code requires that (1) counsel be appointed for children in almost all dependency cases, and (2) appointed counsel have caseloads and training that ensure adequate representation. CAL. WELF. & INST. CODE § 317(c). Section 317.5 further mandates that all parties who are represented by counsel in dependency proceedings, including minors who are the subject of dependency proceedings, are entitled to competent counsel. CAL. WELF. & INST. CODE § 317.5.

35. Section 317(c) states the primary responsibility of counsel for children in Dependency Court:

“shall be to advocate for the protection, safety, and physical and emotional well-being of the child.” Cal. Welf. & Inst. Code § 317(c).

36. Section 317(e) imposes specific mandatory, minimum duties of counsel for children in dependency proceedings:

37. The counsel for the child shall be charged in general with the representation of the child's interests. To that end, the counsel shall make, or cause to have made, any further investigations that he or she deems in good faith to be reasonably necessary to ascertain the facts, including the interviewing of witnesses, and he or she shall examine and cross-examine witnesses in both the adjudicatory and dispositional hearings. He or she may also introduce and examine his or her own witnesses, make recommendations to the court concerning the child's welfare, and participate further in the proceedings to the degree necessary to adequately represent the child. In any case in which the child is four years of age or older, counsel shall interview the child to determine the child's wishes and to assess the child's well-being, and shall advise the court of the child's wishes. Counsel for the child shall not advocate for the return of the child if, to the best of his or her knowledge, that return conflicts with the protection and safety of the child. In addition, counsel shall investigate the interests of the child beyond the scope of the juvenile proceeding and report to the court other interests of the child that may need to be protected by the institution of other administrative or judicial proceedings. The attorney representing a child in a dependency proceeding is not required to assume the responsibilities of a social worker and is not expected to provide

nonlegal services to the child. The court shall take whatever appropriate action is necessary to fully protect the interests of the child. CAL. WELF. & INST. CODE § 317(e) (emphasis added).

38. State law recognizes the nexus between effective representation of children in dependency proceedings and caseloads for their lawyers. Section 317(c) provides that:

The appointed counsel shall have a caseload and training that ensures adequate representation of the child. The Judicial Council shall promulgate rules of court that establish caseload standards, training requirements, and guidelines for appointed counsel for children and shall adopt rules as required by Section 326.5 no later than July 1, 2001.

CAL. WELF. & INST. CODE § 317(c) (emphasis added).

39. The California Rules of Court expand upon these standards. California Rule of Court 5.660(d) provides in pertinent part:

(4) Standards of representation

Attorneys or their agents are expected to meet regularly with clients, including clients who are children, regardless of the age of the child or the child's ability to communicate verbally, to contact social workers and other professionals associated with the client's case, to work with other counsel and the court to resolve disputed aspects of a case without contested hearing, and to adhere to the mandated timelines. The attorney for the child must have sufficient contact with the child to establish and maintain an adequate and professional attorney-client relationship. The attorney for the child is not required to assume the responsibilities of a social worker and is not expected to perform services for the child that are unrelated to the child's legal representation.

* * * *

(6) Caseloads for children's attorneys

The attorney for a child must have a caseload that allows the attorney to perform the duties required by section 317(e) and this rule, and to otherwise adequately counsel and represent the child. To enhance the quality of representation afforded to children, attorneys appointed under this rule must not maintain a maximum full-time caseload that is greater than that which allows them to meet the requirements stated in (3), (4), and (5). Cal. R. Ct. Rule. 5.660(d)(4) & (6) (emphasis added).

40. The ABA also has prescribed the basic obligations of dependency counsel. Counsel must, at a minimum:

A. Obtain copies of all pleadings and relevant notices;

- B. Participate in depositions, negotiations, discovery, pre-trial conferences, and hearings;
- C. Inform other parties and their representatives that he or she is representing the child and expects reasonable notification prior to case conferences, changes of placement, and other changes of circumstances affecting the child and the child's family;
- D. Attempt to reduce case delays and ensure that the court recognizes the need to speedily promote permanency for the child;
- E. Counsel the child concerning the subject matter of the litigation, the child's rights, the court system, the proceedings, the lawyer's role, and what to expect in the legal process;
- F. Develop a theory and strategy of the case to implement at hearings, including factual and legal issues; and
- G. Identify appropriate family and professional resources for the child.

American Bar Association, STANDARDS OF PRACTICE FOR LAWYERS WHO REPRESENT CHILDREN IN ABUSE AND NEGLECT CASES (1996). Discharging just these basic obligations is necessarily time-consuming.

41. As stated above, California law requires the Judicial Council to "promulgate rules of court that establish caseload standards, training requirements, and guidelines for appointed counsel." CAL. WELF. & INST. CODE § 317(c). In October 2007, the Judicial Council adopted a caseload standard of 188 clients per attorney, assuming that each full-time attorney is aided by one-half of the time of a full-time investigator or social worker. While the Judicial Council's standard would help to mitigate inadequate representation, even that number may not go far enough. NACC, for instance, recommends that a full-time attorney represent no more than 100 clients at a time.

D. Federal and State Rights Implicated By Excessive Court and Attorney Caseloads

42. Children subject to dependency proceedings or in foster care are entitled to due process under both the Fourteenth Amendment of the Federal Constitution and Article I, § 7 of the California Constitution. In proceedings to terminate parental rights, these children have, at the very least, a fundamental liberty interest in their own safety, health, and well-being, as well as an interest in maintaining the integrity of their family units and relationships with their biological parents or subsequent caregivers. These interests continue to be at stake even after these children are placed in state custody because a "special relationship" is created that gives rise to rights to reasonably safe living conditions and services necessary to ensure protection from physical, psychological, and

1 emotional harm. As a result of these interests, these children are constitutionally entitled to adequate
2 and effective assistance of counsel under the Due Process Clauses of the State and Federal
3 Constitutions in both dependency proceedings and ensuing appeals. Their overworked, court-
4 appointed lawyers are unable to meet this constitutional standard.

5 43. Children in dependency proceedings also are entitled under the Due Process Clauses
6 of the State and Federal Constitutions to a fair and adequate tribunal to hear and decide their case so
7 that they have a meaningful opportunity to be heard; thus, Dependency Court hearing officers are
8 routinely unable to obtain and evaluate the sufficiency of the information provided to them in and of
9 itself, and proportional to the liberty interests and other constitutional-level interests at stake for the
10 children. Because of their excessive caseloads, the Dependency Courts of the County of Sacramento
11 are unable to meet this constitutional standard.

12 44. As set forth above, Sections 317 and 317(c) of the California Welfare and Institutions
13 Code afford children in dependency proceedings with a state law entitlement to competent assistance
14 of counsel with a caseload that ensures adequate representation. These children also have federal law
15 entitlements arising from the Child Welfare Act, 42 U.S.C. §§ 670 et seq., and the Child Abuse
16 Prevention and Treatment and Adoption Reform Act (“CAPTA”), 42 U.S.C. § 5101 et seq. These
17 entitlements are cognizable property interests under the Due Process Clauses of the State and Federal
18 Constitutions. Children in dependency proceedings are unconstitutionally deprived of these property
19 interests when they are provided with court-appointed counsel that cannot provide competent or
20 adequate representation.

21 45. Moreover, the actions and inactions of the Defendants have resulted in the deprivation
22 of the substantive due process rights conferred upon these children by the Fourteenth Amendment of
23 the United States Constitution.

24 46. Article I, § 1 of the California Constitution ensures that “[a]ll people are by nature free
25 and independent and have inalienable rights. Among these are . . . pursuing and obtaining safety.”
26 Because children in dependency proceedings are subject to overloaded tribunals and have court-
27 appointed counsel that are unable to safeguard their protection, safety, and physical and emotional
28 well-being, Defendants’ actions and inactions violate this inalienable right.

1 47. For all periods relevant to this Complaint, California has agreed to administer its foster
 2 care program pursuant to the Child Welfare Act, related regulations, and policies promulgated by the
 3 Secretary of the United States Department of Health and Human Services. 42 U.S.C. § 671(a)(22) of
 4 the Child Welfare Act provides that “the State shall develop and implement standards to ensure that
 5 children in foster care placements in public or private agencies are provided quality services that
 6 protect the safety and health of the children.” The systemic failings of dependency proceedings
 7 caused by Defendants’ actions and inactions violate § 671(a)(22) of the Child Welfare Act in at least
 8 two ways: (1) in the County of Sacramento, children in dependency proceedings are, in and of
 9 themselves, not “quality services that protect the health and safety of children”; and (2) because
 10 attorneys for children cannot and do not provide effective representation, which means that children
 11 are not able to obtain access to health and safety programs that they are eligible for, have no safety
 12 net, and are not adequately protected given the excessive caseloads of their court-appointed counsel
 13 and court referees. Court-appointed counsel are, among other things, unable to “investigate their
 14 [child clients’] interests beyond the scope of the juvenile proceeding” or “report to the courts other
 15 interests of the children that may need to be protected by the institution of other administrative or
 16 judicial proceedings,” as required by CAL. WELF. & INST. CODE § 317(e).

17 48. Plaintiffs are informed and believe, and on the basis of such information and belief
 18 allege that for all periods relevant to this Complaint, the State of California has received federal
 19 funding pursuant to CAPTA to assist California in supporting its programs for abused and neglected
 20 children. To receive federal money under CAPTA, a state must submit a State Plan outlining the
 21 areas of child protective services the state intends to address with the funding, and it must ensure that
 22 it is complying with the statutory provisions. See 42 U.S.C. § 5106a(b)(1)(A), (b)(2)(A)(ix).
 23 CAPTA specifically requires:

24 [T]hat in every case involving an abused or neglected child which
 25 results in a judicial proceeding, a guardian ad litem, who has
 26 received training appropriate to the role, and who may be an
 27 attorney or a court appointed special advocate who has received
 28 training appropriate to that role (or both), shall be appointed to
 represent the child in such proceedings—

(I) to obtain first-hand, a clear understanding of the situation and
 needs of the child; and

(II) to make recommendations to the court concerning the best interests of the child.

42 U.S.C. § 5106a(b)(2)(A)(ix) (emphasis added).

49. Accordingly, every child who is subject to dependency proceedings in the County of Sacramento must be represented by a properly trained guardian ad litem who is charged with representing the child in those proceedings for these purposes. Court-appointed counsel serve as guardians ad litem for these children. For all the reasons given above, these children are deprived of their federal rights under 42 U.S.C. § 5106a(b)(2)(A)(ix) because their guardians ad litem can neither obtain a first-hand, clear understanding of a child's situation and needs, nor make recommendations to the court concerning the best interests of the child.

E. The Caseloads of the Court-Appointed Attorneys Prevent Them from Providing Adequate, Effective, or Competent Legal Assistance to Their Clients

50. Pursuant to a Standing Order of the Superior Court of the County of Sacramento, third party, court-appointed attorneys are automatically appointed to represent each child who is the subject of dependency proceedings in that county, and are also appointed as the child's guardian ad litem.

51. Plaintiffs are informed and believe, and on the basis of such information and belief allege that the staff attorneys for the non-profit agency, who serve as court-appointed counsel for the approximately 5,100 children subject to dependency proceedings in the County of Sacramento, carry as many as 395 cases at a time – more than double the 188 caseload standard established by the Judicial Council of California ("Judicial Council"), and nearly four times the number promulgated by the National Association of Counsel for Children ("NACC"). And, their caseloads are growing dramatically. By the end of 2008, these court-appointed attorneys handled over 235 new cases per month. By contrast, they handled around 175 new cases per month one year earlier. As a consequence, the appointed lawyers for these children are unable to adequately perform even the minimum tasks required of such counsel under law and in accordance with the American Bar Association's ("ABA") standards. The overloaded lawyers rarely meet with their child clients in their foster care placements, rely on brief telephone contact or courtroom exchanges to communicate,

1 have no time to conduct complete case investigations or client-specific legal analysis, virtually never
2 file extraordinary writs or pursue appeals, and are forced to rely on overworked county social
3 workers and thus cannot meaningfully assess each client's placement or conduct an informed review
4 of Child Protective Services' ("CPS") placement decisions.

5 52. These staggering caseloads are far in excess of those set forth by the Judicial Council
6 and NACC and have led partly responsible for a high attorney turnover. Plaintiffs are informed and
7 believe, and on the basis of such information and belief allege that twenty-two attorneys have left the
8 nonprofit organization, which provides counsel for the foster children pursuant to the court-
9 appointments, just within the last two years, with the majority of these attorneys having been
10 employed for less than one year. For each attorney that departs, the child client must muster the
11 strength to share his or her story, yet again, with a strange adult that the child is told to trust – an
12 adult the child is told will be there to fight for him or her. Unfortunately, the child has already seen a
13 myriad of "trustworthy adults" leave him or her behind for better opportunities. Insufficient funding
14 makes it impossible for nonprofit organizations to offer its attorneys salaries commensurate with
15 those paid by the County of Sacramento to similarly-tasked attorneys, which also contributes to the
16 high attrition rate. In fact, these court-appointed attorneys are paid significantly less than what
17 attorneys with comparable backgrounds earn if they work for the County of Sacramento. To make
18 matters worse, high turnover exacerbates attorney caseloads by forcing the attorneys who remain on
19 staff to shoulder the caseloads of the departed attorneys while their replacements are trained.

20 53. These overloaded attorneys cannot adequately, effectively, or competently represent
21 the foster children of the County of Sacramento as required by federal and state statutory and
22 constitutional law. The court-appointed attorneys are unable to meet regularly with their clients. In
23 fact, months may pass between meetings. The needs of a child change on a weekly, if not daily,
24 basis. This is particularly true when they are shuffled around between new homes and schools.
25 Without regular contact, the court-appointed attorneys are incapable of adequately assessing or
26 representing their clients' needs. Moreover, they routinely are unable to contact social workers and
27 other professionals associated with their clients' cases, greatly hindering their abilities to develop
28 their clients' cases or identify appropriate family and professional resources for the children. Often, a

1 foster care placement that is in trouble can be saved when appropriate resources are in place. When
 2 these resources are not properly addressed, the child is simply moved, leading to phenomenon known
 3 as “foster care drift”. Throughout this drift, the child’s needs are not addressed but, instead, the
 4 problems are simply moved along. Further, critical pleadings, motions, responses, and objections
 5 often are neglected. Overworked social workers sometimes miss or are forced to ignore court orders.
 6 Without an attorney to file motions to enforce the court orders, a child may go without, for example,
 7 mandated visits with family members. The delay of court-ordered visitation can then lead to a delay
 8 of family reunification and permanence – the goal of the dependency system. And when a child
 9 inevitably shifts from one attorney to another due to regular turnover, the new attorney wastes
 10 precious time trying to come up to speed and risks missing key issues.

11 54. Plaintiffs are informed and believe, and on the basis of such information and belief
 12 allege that the appeals process does not fare any better. Due to their excessive caseloads, the court-
 13 appointed attorneys are rarely able to spend any or sufficient time pursuing their clients’ interests on
 14 appeal or by extraordinary writ. Extraordinary writs are a vital tool in dependency proceedings as it
 15 is through this avenue that many of the juvenile court’s interim orders, such as placement decisions,
 16 are reviewed. This problem is exacerbated by the fact that the nonprofit organization’s staff does not
 17 have enough time or money to establish a writ or appellate division or to train its attorneys in the
 18 specialized practice of seeking writs. As a result, in the last four years, these court-appointed
 19 attorneys have taken only two extraordinary writs – one of which was handled by outside pro bono
 20 counsel. This means that hundreds of children have been forced to remain in placements or adhere to
 21 visitation plans simply because there was no attorney available to take the next legal step in their
 22 case.

23 **F. Unlawful Caseloads are Due to Inadequate Funding**

24 55. Plaintiffs are informed and believe, and on the basis of such information and belief
 25 allege that for years, the Superior Court of Sacramento paid for the court-appointed attorneys’
 26 services pursuant to the MOU. In 2008, however, the Superior Court of Sacramento agreed to
 27 participate in California’s Dependency Representation, Administration, Funding, and Training
 28 (“DRAFT”) program. Initiated in July 2004, DRAFT was established by the Judicial Council to

1 centralize the administration of court-appointed counsel services within the AOC. Accordingly,
2 when Sacramento County joined the DRAFT program, the AOC became responsible for paying for
3 the court-appointed attorneys' services.

4 56. Plaintiffs are informed and believe, and on the basis of such information and belief
5 allege that if the AOC had followed its own guidelines for DRAFT in funding the court-appointed
6 attorneys, these attorneys could have met the recommended judicial council caseload standards.
7 Assuming an aggregate caseload of 4,500 children, DRAFT guidelines provide that the court-
8 appointed attorneys should receive funding sufficient to maintain 24 staff attorneys, 3.5 supervisors,
9 and 12 social workers. The guidelines do not envision that supervisors will carry cases.
10 Accordingly, each case-carrying attorney would be responsible for 188 cases and be assisted by a
11 half-time social worker.

12 57. Plaintiffs are informed and believe, and on the basis of such information and belief
13 allege that the staggering caseloads of attorneys and Dependency Court judges result from the
14 funding practices of Defendants. The AOC's funding is disparate and seemingly arbitrary, at least to
15 the extent that caseloads are concerned. For example, the AOC provides the children's court-
16 appointed attorneys with essentially the same level of funding that it provides to Alameda County
17 (roughly \$2.6 million) even though Alameda County has less than half of Sacramento's caseload
18 (2,300 dependency cases as compared to Sacramento's 5,100). Indeed, despite the growth of the
19 caseload in 2008, the AOC has threatened to reduce the funding for the children's court-appointed
20 attorneys by 10%.

21 58. Plaintiffs are informed and believe, and on the basis of such information and belief
22 allege that to make matters worse, the AOC expects to reduce DRAFT funding state-wide by 10% in
23 its next funding round. Consequently, we will likely see the already-insufficient funding for court-
24 appointed attorneys reduced by 10%.

25 VI. FACTUAL ALLEGATIONS REGARDING THE PLAINTIFFS

26 A. E.T.

27 59. E.T. is a 14-year-old girl who is in her third foster care placement in less than one
28 year. She is a special education student who has been diagnosed with depression. She was assigned

1 a court-appointed attorney in October 2008, and she has had two attorneys in the short time since
2 then.

3 60. Her lawyers have had little contact with her. Although her case has had 14 court
4 hearings, her attorneys have met with her briefly only three times. Further, the County filed an
5 amended petition with the Court, and her attorney was unable to discuss it with her beforehand.

6 61. E.T.'s lawyers have been unable to stabilize her foster care placements. She has only
7 been visited by a lawyer at one placement.

8 62. E.T.'s lawyers also have been unable to investigate E.T.'s mental health issues and
9 notify the Dependency Court on her behalf of any problems. Thus, consistent with the other
10 Plaintiffs, E.T.'s attorneys have not, and are not, investigating this special education student's
11 interests beyond the scope of the juvenile proceeding.

12 **B. K. R.**

13 63. K.R. is a 13-year-old girl who is in her fifth foster care placement. She suffers from
14 severe behavioral problems, including oppositional defiance disorder. She was assigned a court-
15 appointed attorney in early 1996. When her case was reopened in September 2005, she was again
16 assigned a court-appointed legal representative. K.R. has had six attorneys since then.

17 64. K.R.'s lawyers have had almost no contact with her. Although her case has had 17
18 court hearings since September 2005, she has been interviewed only once outside of court (by a
19 social worker). Further, her lawyers have not visited any of K.R.'s foster care placements, nor have
20 they had any contact with school personnel.

21 65. Court-appointed counsel's investigation has been limited to some interviews with
22 K.R.'s relatives years ago, early in the representation. Virtually nothing has been done to investigate
23 K.R.'s interests beyond the scope of the Dependency Court proceeding. Her attorneys have been
24 unable to file pleadings, motions, responses, or objections as necessary to protect her interests.
25 Further, K.R.'s lawyers have failed to stabilize her foster care placements, determine whether she
26 requires any services from the DHHS, or secure a proper educational placement.

27 **C. C.B.**

28 66. C.B. is a 17-year-old, developmentally disabled girl in over her tenth foster care

1 placement. She was assigned a court-appointed attorney on February 17, 1999, and she has had 10
2 attorneys over the last 10 years.

3 67. C.B.'s case has had five court and administrative hearings. Her lawyers did not meet
4 with her before the majority of those hearings.

5 68. Further, C.B.'s lawyers have been unable to file pleadings, motions, responses, or
6 objections as necessary to protect her interests. They likewise have done little to investigate C.B.'s
7 needs and emotional health beyond the scope of the juvenile proceeding, or to ensure that she is in a
8 stable foster care placement. For instance, they have not visited her in at least 7 of her 10
9 placements.

10 69. C.B. has a sibling who has been adopted and has a post-adoption contact agreement to
11 allow C.B. to see her sibling. C.B.'s lawyers have been unable to ensure compliance with this
12 agreement. In addition, she has an adult sibling and no efforts have been made by her attorneys to
13 contact him.

14 70. C.B. operates at an early grade school level with social skills that are similarly
15 inconsistent with her age. C.B.'s lawyers have been unable to investigate her educational interests to
16 assess whether her interests need to be protected by the institution of other administrative or judicial
17 proceedings.

18 71. In addition, C.B. will "age out" of the foster care system when she turns 18 in
19 September. Her attorneys have not had any time to assess whether C.B.'s psychological and
20 developmental issues require that she be allowed to remain in the system until she is 21.

21 **D. G.S.**

22 72. G.S. is a 18-year-old, emotionally disturbed boy in his tenth foster care placement. He
23 has had 11 attorneys since he first entered the dependency system on May 3, 2001.

24 73. G.S.'s case has had 28 court and administrative hearings. His lawyers did not meet
25 with him before the majority of those hearings – including the original detention hearing.

26 74. Further, G.S.'s lawyers have been unable to file pleadings, motions, responses, or
27 objections as necessary to protect his interests. They likewise have done little to investigate G.S.'s
28 needs and emotional health beyond the scope of the juvenile proceeding, or to ensure that he is in a

1 stable foster care placement. For instance, they have not visited him in at least 9 of his 10
2 placements.

3 75. G.S.'s lawyers also have been unable to ensure compliance with court orders. For
4 example, the Sacramento County Department of Health and Human Services ("DHHS") has been
5 ignoring a court order that G.S. be allowed to be visited by his siblings. G.S.'s counsel nonetheless
6 has done nothing to enforce this order, and G.S. continues to have no access to his siblings.

7 76. In addition, G.S.'s attorneys have not yet assessed whether G.S.'s psychological issues
8 will require that he be allowed to remain in the system until he is 21 have made no efforts thus far to
9 address his potential imminent transition to life outside of the foster care system.

10 VII. CLAIMS

11 FIRST CLAIM

12 **Deprivation of Federal Constitutional Rights in Violation of 42 U.S.C. § 1983**

13 77. The preceding paragraphs are incorporated as if set forth here in full.

14 **A. Procedural Due Process Violations From Excessive Attorney Caseloads**

15 78. The foregoing actions and inactions of Defendants have deprived Plaintiffs and Class
16 Members of their right to adequate and effective legal representation in both dependency proceedings
17 and subsequent appeals, in violation of Plaintiffs' and Class Members' right not to be deprived of
18 liberty and property without due process of law under the Fourteenth Amendment to the United
19 States Constitution.

20 79. The foregoing actions and inactions of Defendants also deprive Plaintiffs and Class
21 Members of state and federally created liberty or property rights without due process of law, in
22 violation of the Fourteenth Amendment to the United States Constitution. The state law entitlement,
23 of which Plaintiffs and Class Members have a protected interest, arises from the right to have
24 competent assistance of counsel with a caseload that ensures adequate or competent representation, as
25 guaranteed by CAL. WELF & INST. CODE §§ 317(c) and 317.5. The federal law entitlements, of
26 which Plaintiffs and Class Members have a protected interest, arise from the Child Welfare Act, 42
27 U.S.C. §§ 670 et seq., and CAPTA, 42 U.S.C. §55101 et seq.

28 ///

B. Substantive Due Process Violations From Excessive Attorney Caseloads

80. Further, the foregoing actions and inactions of Defendants constitute a failure to exercise an affirmative duty to protect the welfare of Plaintiffs and Class Members, which is a substantial factor leading to, and the proximate cause of, violation of Plaintiffs' and Class Members' constitutionally protected liberty and privacy interests. The foregoing actions and inactions constitute a policy, pattern, practice and/or custom that is inconsistent with the exercise of reasonable professional judgment and amounts to deliberate indifference to Plaintiffs' and Class Members' serious and constitutionally protected rights and liberty and privacy interests. As a result, Plaintiffs and Class Members have been, and are being, deprived of the substantive due process rights conferred upon them by the Fourteenth Amendment of the United States Constitution. Defendants have arbitrarily and capriciously deprived Plaintiffs and Class Members of their due process rights in the absence of any countervailing state interest.

81. These substantive due process rights include, but are not limited to, the right to protection from unnecessary harm while in government custody; the right to a living environment that protects foster children's physical, mental, and emotional safety and well-being; the right to services necessary to prevent foster children from deteriorating or being harmed physically, psychologically, or otherwise while in government custody, including, but not limited to, the right to safe and secure foster care placements, appropriate monitoring and supervision, appropriate planning and services directed toward ensuring that the child can leave foster care and grow up in a permanent family, and adequate medical, dental, psychiatric, psychological, and educational services; the right not to be deprived of liberty by retention in government custody or locked detention facilities beyond necessity; the right to treatment and care consistent with the purpose of assumption of custody by the County of Sacramento; the right not to be retained in custody longer than is necessary to accomplish the purposes to be served by taking the child into custody; and the right to receive care, treatment, and services determined and provided through the exercise of accepted, reasonable, professional judgment.

C. Procedural Due Process Violations From Excessive Judicial Caseloads

82. Further, the foregoing actions and inactions of Defendants deprive Plaintiffs and Class

Members of a fair and adequate tribunal to hear and decide the dependency proceedings to which they are subject. Thus, Dependency Court hearing officers are routinely unable to obtain and evaluate the sufficiency of the information provided to them in and of itself, and proportional to the liberty interests and other constitutional-level interests at stake for the children. Accordingly, Plaintiffs and Class Members have no meaningful opportunity to be heard in their dependency proceedings, thus depriving them of due process of law in violation of the Fourteenth Amendment to the United States Constitution.

83. The violation by Defendants, and each of them, of the foregoing procedural and substantive due process rights deprives Plaintiffs and Class Members of their federal rights, privileges, and immunities under color of state law in violation of 42 U.S.C. § 1983.

84. Plaintiffs and Class Members have suffered injury that is irreparable in nature as the proximate result of the failure of Defendants, and each of them, (1) to enable the SCA to provide Plaintiffs and Class Members with adequate, effective, and competent assistance of counsel and (2) maintain a Dependency Court system with a reasonable caseload that is capable of providing Plaintiffs and Class Members with a meaningful opportunity to be heard. Plaintiffs and Class Members are without an adequate remedy at law.

SECOND CLAIM

Deprivation of Rights under the Federal Child Welfare Act in Violation of 42 U.S.C. § 1983

85. The preceding paragraphs are incorporated as if set forth here in full.

86. As set forth above, the Dependency Court system in Sacramento County is overloaded. CPS social workers are overworked and labor under internal, systemic policies that have been criticized by outsiders for years, and thus cannot be relied upon to provide complete or accurate information about children involved in dependency proceedings. Accordingly, the children's court-appointed attorneys are not fully informed. That, coupled with their excessive caseloads, renders the attorneys unable to adequately, effectively or competently represent the interests of their child clients or meet their minimum responsibilities in doing so, as expressed in state and federal law. Judicial referees likewise carry overly burdensome caseloads that make it impossible to safeguard the health and safety of children in Dependency Court proceedings when the counsel for children who are the

centerpiece of the proceeding are unable to meet their obligations, thus depriving Dependency Courts with argument, authorities, and information that because of their own caseloads they cannot obtain for themselves. Accordingly, the actions and inactions of Defendants place Plaintiffs and Class Members at risk and constitute a failure to “develop or implement standards to ensure that children in foster care placements in public or private agencies are provided quality services that protect the safety and health of the children,” in violation of 42 U.S.C. § 671(a)(22) of the Child Welfare Act.

87. The violation by Defendants, and each of them, of the foregoing federal rights deprives Plaintiffs and Class Members of their federal rights, privileges, and immunities under color of state law in violation of 42 U.S.C. § 1983.

THIRD CLAIM

Deprivation of Rights under the Child Abuse Prevention and Treatment and Adoption Reform Act in Violation of 42 U.S.C. § 1983

88. The preceding paragraphs are incorporated as if set forth here in full.

89. As set forth above, Plaintiffs’ and Class Members’ overworked, court-appointed counsel – as their guardians ad litem – are incapable of representing their child clients in dependency proceedings. Among other things, their counsel cannot conduct meaningful investigations within and beyond the scope of the juvenile proceeding to obtain, first-hand, a clear understanding of their child clients’ situation and needs and are unable to make any recommendations to the Dependency Court concerning the best interests of their child clients. As a result of the foregoing actions and inactions of Defendants, Plaintiffs and Class Members have been deprived of their right to a guardian ad litem in dependency proceedings in violation of 42 U.S.C. § 5106a(b)(2)(A)(xiii) of CAPTA.

90. The violation by Defendants, and each of them, of the foregoing federal rights deprives Plaintiffs and Class Members of their federal rights, privileges, and immunities under color of state law in violation of 42 U.S.C. § 1983.

FOURTH CLAIM

Violation of Art. I, § 1 of the California Constitution

91. The preceding paragraphs are incorporated as if set forth here in full.

92. The foregoing actions and inactions of Defendants constitute a failure to provide

1 Plaintiffs and Class Members with fair and adequate tribunals and with adequate and effective legal
 2 counsel whose duty is to safeguard, and whose adequate and effective assistance is necessary to
 3 safeguard, their protection, safety, and physical and emotional well-being, thereby violating their
 4 inalienable right to pursue and obtain safety under the California Constitution. CAL. CONST. Art. I,
 5 § 1.

6 **FIFTH CLAIM**

7 **Violation of Art. I, § 7 of the California Constitution**

8 93. The preceding paragraphs are incorporated as if set forth here in full.

9 94. The foregoing actions and inactions of Defendants have deprived Plaintiffs and Class
 10 Members of their right to adequate and effective legal representation in both dependency proceedings
 11 and subsequent appeals, in violation of Plaintiffs' and Class Members' right not to be deprived of
 12 liberty and property without due process of law under the California Constitution. CAL. CONST.
 13 Art. I, § 7.

14 95. The foregoing actions and inactions of Defendants also deprive Plaintiffs and Class
 15 Members of state and federally created liberty or property rights without due process of law. The
 16 state law entitlement of which Plaintiffs and Class Members have a protected interest arises from the
 17 right to have competent assistance of counsel with a caseload that ensures adequate representation, as
 18 guaranteed by CAL. WELF & INST. CODE §§ 317(c) and 317.5. The federal law entitlements, of
 19 which Plaintiffs and Class Members have a protected interest, arise from the Child Welfare Act, 42
 20 U.S.C. §§ 670 et seq., and CAPTA, 42 U.S.C. §55101 et seq.

21 96. Further, these actions and inactions deprived Plaintiffs and Class Members of a fair
 22 and adequate tribunal to hear and decide their dependency proceedings. Accordingly, Plaintiffs and
 23 Class Members have no meaningful opportunity to be heard in their dependency proceedings, thus
 24 depriving them of due process of law.

25 **SIXTH CLAIM**

26 **Welf. & Inst. Code § 317(c)**

27 97. The preceding paragraphs are incorporated as if set forth here in full.

28 98. As a result of the foregoing actions and inactions of Defendants, Plaintiffs and Class

Members have been deprived of their right to representation by counsel with caseloads that ensure adequate representation in dependency proceedings, in violation of CAL. WELF & INST. CODE § 317(c).

SEVENTH CLAIM

Welf. & Inst. Code § 317.5(b)

99. The preceding paragraphs are incorporated as if set forth here in full.

100. As a result of the foregoing actions and inactions of Defendants, Plaintiffs and Class Members have been deprived of their right to representation by competent counsel in their dependency proceedings in violation of CAL. WELF & INST. CODE § 317.5.

PRAYER FOR RELIEF

1. For the foregoing reasons, Plaintiffs request the following relief:

2. For an order certifying the proposed Class herein under Rule 23b (2) of the Federal Rules of Civil Procedure and appointing Plaintiffs' and Plaintiffs' counsel of record to represent that Class;

3. For a declaratory judgment that due to Defendants' actions or inactions, Defendants, and each of them, violated, continue to violate, and/or will violate:

A. Plaintiffs' and Class Members' rights under the Due Process Clause of the Fourteenth Amendment of the United States Constitution;

B. Plaintiffs' and Class Members' rights under 42 U.S.C. § 671(a)(22) of the Child Welfare Act;

C. Plaintiffs' and Class Members' rights under 42 U.S.C. § 5106a(b)(2)(A)(xiii) of CAPTA;

D. Plaintiffs' and Class Members' inalienable right to safety under Art. I, § 1 of the California Constitution;

E. Plaintiffs' and Class Members' rights under the Due Process Clause of Art. I, § 7 of the California Constitution;

F. Plaintiffs' and Class Members' right to representation by counsel in their dependency proceedings with a caseload that ensures adequate representation under CAL.

WELF. & INST. § 317(c); and

G. Plaintiffs' and Class Members' right to representation by competent counsel in their dependency proceedings under CAL. WELF. & INST. § 317.5;

4. Defendants, and each of them, be temporarily and permanently enjoined from currently and continually violating Plaintiffs' and Class Members' constitutional and statutory rights under state and federal law;

5. For an order mandating that Defendants provide the additional resources required to comply with the Judicial Council of California and the National Association of Counsel for Children's recommended caseloads for each court-appointed attorney;

6. Costs and attorney's fees under 42 U.S.C. § 1988; and

7. Such other relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial for all issues that are so triable.

Dated: July 16, 2009

WINSTON & STRAWN LLP

By: 

Jonathan M. Cohen
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Attorneys for Plaintiffs