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UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

18 Beth K. by her next friend Margaret Tinsley;
19 Charles P. and Bryce by their next friend
20 Jennifer Kupiszewski; Alex A.; Aiden C-B;
21 Mark C-B; Jane C-B; Darcy C-B; Jack M. and
22 Jacob C. by their next friend Susan Brandt, for
23 themselves and those similarly situated,

24 Plaintiffs,

25 v.

26 Charles Flanagan, in his official capacity as
27 Director of the Arizona Department of Child
28 Safety; and William Humble, in his official
capacity as Director of the Arizona
Department of Health Services,

Defendants.

) No.
)
)
) **COMPLAINT FOR INJUNCTIVE**
) **AND DECLARATORY RELIEF**
) **AND REQUEST FOR CLASS**
) **ACTION**

1 Plaintiffs, by their undersigned attorneys, bring this civil action for declaratory and
2 injunctive relief, and allege as follows:

3 INTRODUCTION

4 1. This is a civil rights class action brought by the Named Plaintiffs, children in
5 Arizona state foster care custody, on behalf of themselves, a general class of children who
6 are or will be placed in such custody following reports that they have suffered child abuse
7 or neglect, and certain subclasses of these children.

8 2. Plaintiffs are among the State’s most vulnerable citizens. Through no fault
9 of their own, they find themselves in the legal custody of the State after having already
10 suffered the trauma of being abused or neglected by their own families. Plaintiffs seek
11 declaratory and injunctive relief to end certain child welfare policies and practices
12 described herein exposing them to yet further physical and emotional harm and
13 unreasonable risk of harm while in the State’s care.

14 3. On May 29, 2014, legislation was enacted giving responsibility for the
15 state’s child welfare operations to the state Department of Child Safety (“DCS”) and
16 removing such responsibility from the state Department of Economic Security (“DES”).
17 As of May 29, 2014, DCS, which was established as an independent agency, is legally
18 responsible for managing the state’s child welfare system.

19 4. Plaintiffs name Charles Flanagan, the Director of DCS, as a defendant.
20 Defendant Flanagan, who is sued solely in his official capacity, directly and indirectly
21 controls and is responsible for the policies and practices of DCS, including those set forth
22 herein.

23 5. Plaintiffs also name William Humble, the Director of the state Department of
24 Health Services (“DHS”), as a defendant. DHS is responsible for providing mental and
25 behavioral health services to children in Arizona state foster care custody. Defendant
26 Humble, who is sued solely in his official capacity, directly and indirectly controls and is
27 responsible for the policies and practices of DHS, including those set forth herein.

28

1 6. Over the past several years, while foster care rates across the nation have
2 been on the decline, Arizona has experienced a dramatic increase in the number of children
3 in state foster care. From 2003 to 2012, the number of children in the State’s foster care
4 custody nearly doubled. More recently, Arizona’s foster care population grew from
5 10,207 as of March 31, 2010 to 15,037 as of September 2013, a 47.3% increase. The
6 number of children in out-of-home care grew by another 10% from February 2013 to
7 February 2014. As of September 30, 2014, there are 16,990 children in state foster care
8 custody who have been placed in out-of-home care.

9 7. This huge growth in the state’s foster care population has been fueled by
10 extensive state budget cuts to important support services that had previously helped keep
11 families together. In particular, state funding for DES’s contracts with community-based
12 providers who offered in-home services to children, aimed at making removal of children
13 into foster care unnecessary, was cut in half in recent years, from \$43 million in fiscal year
14 2008 to under \$22 million in fiscal year 2012.

15 8. These cuts followed the state’s termination of its Family Builders program in
16 2004, which had provided family-centered assessments, case management, and services for
17 families with children deemed to be at low or only potential risk of being abused or
18 neglected.

19 9. According to the Arizona Chapter of the American Academy of Pediatrics
20 “[c]uts to DES family support services including child care assistance, housing assistance,
21 substance-abuse treatment and job training for families has resulted in a 40% increase in
22 the number of children who needed to be placed in foster care since 2009 and these
23 children are staying in foster care longer because their parents are not provided with the
24 services they need.”

25 10. As former Governor Brewer publicly acknowledged in 2014, the Arizona
26 “child welfare system is broken, impeded by years of structural and operational failures.”
27 Defendants DCS and DHS (collectively the “Defendants”) are legally responsible for
28 overseeing this “broken” system.

1 11. Defendants are well aware that the following structural and operational
2 failures continue to plague the state’s child welfare system:

- 3 • **A severe shortage in and inaccessibility of physical, mental and**
4 **behavioral health services available to children in state care.** As a result,
5 far too many children in state foster care custody do not receive the health
6 care services they desperately need and all children in state care are subject
7 to an unreasonable risk that they will suffer physical and emotional harm and
8 deterioration while in the state’s care.
- 9 • **A widespread failure to conduct timely investigations of reports that**
10 **children have been maltreated while in state foster care custody.** As a
11 result of the state’s deficient investigation practices, children in state foster
12 care custody are placed at an undue risk of suffering physical and emotional
13 harm while in state care.
- 14 • **A severe and sustained shortage of family foster homes.** As a result of
15 this shortage, children in state foster care are emotionally harmed and
16 subjected to an unreasonable risk of harm by being placed far from their
17 families and communities, separated from their siblings, and forced to
18 experience disruptive school changes.
- 19 • **A widespread failure to engage in basic child welfare practices aimed at**
20 **maintaining family relationships, such as placing siblings together,**
21 **placing children with their biological parents on a trial reunification**
22 **basis, coordinating visits between children in state foster care and their**
23 **biological families, and having caseworkers make regular visits with the**
24 **children’s biological parents to monitor progress toward family**
25 **reunification.** These failures subject children in state foster care to an
26 unreasonable risk of suffering emotional harm while in state care. Moreover,
27 as a result of these deficiencies, children are subjected to unreasonable
28 delays in being reunified with their families, causing them to suffer further
emotional harm.

19 12. The State has failed to remedy these ongoing failures.

20 13. Moreover, Arizona officials have long been aware of these deficiencies and
21 harms. As far back as 2003, the Maricopa County Attorney’s Office released a report on
22 the state’s child welfare system, *In Harm’s Way*, detailing the system’s deficiencies.
23 Among its findings, the report identified a shortage of foster homes and stated that “[p]art
24 of the reason many feel that children stay in a ‘risky’ situation is the inability to place them
25 elsewhere.” The report concluded that the state’s child welfare system was “overloaded
26 without the proper resources to ensure the safety of all children.”

27 14. That same year, then Governor Janet Napolitano acknowledged that “[t]he
28 system for protecting Arizona’s children from abuse and neglect, which has been falling

1 apart for years due to poor design and chronic under-funding, is in critical need of repair.”
2 Governor Napolitano convened an “Advisory Commission on CPS Reform” that issued an
3 *Action Plan for Reform of Arizona’s Child Protection System* in September 2003 (the
4 “*Action Plan*”). The *Action Plan* noted several systemic deficiencies in the state’s child
5 welfare system, including a shortage of foster homes and limited access to services for
6 foster children.

7 15. In the years since *In Harm’s Way* and the *Action Plan* were released, the
8 child welfare system has continued to suffer from a vast shortage of foster homes and
9 inadequate access to child services, despite the known harm that these structural
10 impairments have caused children in state foster care to suffer.

11 16. As a result of the state’s failure to remedy these problems, plaintiffs have
12 been, and continue to be, exposed to harm and an unreasonable risk of harm, in violation
13 of their federal constitutional and statutory rights.

14 **JURISDICTION AND VENUE**

15 17. This action is brought pursuant to 42 U.S.C. § 1983 to redress violations of
16 the United States Constitution and the provisions of the federal Medicaid Act, including 42
17 U.S.C. §§ 1396a(a)(10)(A)(i)(I), 1396a(a)(43)(C), 1396d(a)(4)(B) and 1396d(r), that
18 require states to provide early and periodic screening, diagnostic and treatment (“EPSDT”)
19 services. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3), and
20 authority to grant declaratory relief under 28 U.S.C. §§ 2201 and 2202.

21 18. Venue is proper here pursuant to 28 U.S.C. § 1391(b) because the claims
22 arise in this district.

23 **PARTIES**

24 **A. The Named Plaintiffs**

25 **Beth K.**

26 19. Beth K. is a ten-year-old girl who has spent more than half of her life in state
27 foster care. Even though she is only ten, DCS’s permanency goal for her is permanent
28 foster care, meaning that DCS has concluded that she has little, if any, chance of leaving

1 foster care over the next eight years. During her time in state foster care, Beth K. has been
2 deprived of needed physical and mental health care, separated from her siblings, deprived
3 of contact with her mother and siblings, and placed in institutional settings on two different
4 occasions. As a result of these experiences, Beth K. has been subjected to emotional harm
5 and/or an ongoing unreasonable risk of harm.

6 20. Beth K. first entered voluntary state custody in 2005 when she was five
7 months old. At that time, Beth K.'s mother had a substance abuse problem and could not
8 care for her. Beth K remained in the legal custody of the state until September 2006 when
9 she was returned to her mother.

10 21. In 2008, then three-year-old Beth K. and her three siblings were removed
11 from their mother's home. Upon assuming their care, the state immediately separated the
12 four siblings, placing Beth K. and her brother in a licensed foster home, and their two
13 sisters in a second foster home. In late 2009, the state returned Beth K. and her siblings to
14 their mother's care.

15 22. In 2012, Beth K. and her three siblings were again removed from their
16 mother's home and placed in state foster care custody. Upon coming into state care for the
17 third time, Beth K. was diagnosed with Posttraumatic Stress Disorder ("PTSD"), a mood
18 disorder, psychosis and anxiety. An investigation showed that Beth K. had been physically
19 abused by her mother, and had bumps and bruises on her head and behind her ears.

20 23. Despite her fragile emotional state, the state separated Beth K. from all of
21 her siblings, placing her in a group home on "emergency shelter" status. Though such
22 placements are supposed to be short-term, Beth K. remained at the group home for more
23 than two years.

24 24. While at the group home, the state failed to ensure that Beth K. obtained the
25 glasses she needed to see properly. The state also failed to discover that Beth K. was
26 walking with a limp, and failed to make sure that she received the orthopedic shoes she
27 needed. Despite months of complaints from Beth K. about a toothache, the state failed to
28 make sure she saw a dentist while she was living at the group home.

1 25. From the time Beth K. was placed at the group home in 2012 until early
2 2014, the state also failed to ensure that Beth K. received consistent counseling and needed
3 mental health services. During this time, Beth K. was saying that she was hearing voices
4 that were telling her to hurt other people or that someone would die. One time she was so
5 scared by the voices that she called the police. The state knew that the group home was
6 failing to arrange for Beth K.'s transportation to appointments with health care providers,
7 but failed to see to it that Beth K. received undisrupted services. The group home also
8 enrolled Beth K. in a specialized school where she was the only girl.

9 26. In May 2014, the state finally placed Beth K. in a foster home after she had
10 spent 25 months in the group home. The state placed her with a man and his great-nephew
11 who went to the same specialized school as Beth K. The man told the state that he was
12 concerned about Beth K.'s mental health and asked the state to make sure she received an
13 updated psychological evaluation. The last complete evaluation had been conducted five
14 years earlier when Beth K. was four. The updated assessment was never performed. After
15 only eight weeks, Beth K. was moved to a second foster home with neighbors of the man
16 and his great-nephew. After two weeks at this second home, the foster parents packed up
17 Beth K.'s things and dropped her off at a DCS office.

18 27. In August 2014, DCS moved Beth K. to a shelter. The move to shelter care
19 caused Beth K. to have to change schools, resulting in educational and social disruption.
20 Moreover, the counselor who had been treating Beth K. at the group home refused to drive
21 to see Beth K. at the shelter because of the distance involved, and DCS again failed to
22 ensure that Beth K. received transportation to her counseling sessions.

23 28. During August 2014, Beth K.'s behavioral health coordinator concluded that
24 Beth K. should be placed in a "Home Care Training to Home Care Client Services"
25 ("HCTC") therapeutic foster home. No such placement was made and Beth K. remained
26 in a shelter until September. While at the shelter, Beth K. had no contact with her mother
27 or three older siblings, even though her siblings have been returned to their mother's care.
28

1 Beth K.'s mental health deteriorated at the shelter and she threatened to hurt herself and
2 others. She was admitted to a psychiatric hospital for a week to be stabilized.

3 29. In late September 2014, DCS moved Beth K. from the hospital to a non-
4 therapeutic foster home. This resulted in another change in schools. DCS did not ensure
5 that she had regular contact with her mother or siblings.

6 30. In December 2014, still waiting to be placed in an HCTC home, Beth K. had
7 another psychiatric crisis and threatened suicide. The state moved her out of the foster
8 home and admitted her to another psychiatric hospital. She stayed in the hospital for a
9 week and a half.

10 31. In late December, months after her providers agreed she needed a therapeutic
11 foster home, Beth K. was finally discharged from the hospital to an HCTC placement.
12 This resulted in yet another change in schools.

13 **Charles P.**

14 32. Charles P. is a seven-year-old boy who has been in state foster care custody
15 since June 2013. His current permanency goal is adoption. During his time in state care,
16 he has attended eight different schools and has had to live in 11 different placements,
17 including two stays in shelters and a placement in a foster home where he was physically
18 abused. While in state care, he has been separated from his siblings, deprived of visits
19 with them, and has been deprived of access to both the mental health services and
20 placements he desperately needs. As a result of these experiences, Charles P. has been
21 subjected to physical and emotional harm and/or an ongoing unreasonable risk of harm.

22 33. Charles P. and his two sisters were taken into state custody after being
23 exposed to neglect and domestic violence. They were initially placed in an unlicensed
24 foster home for four days before being moved to their grandmother's home. During the
25 two-month period that Charles P. was with his grandmother, she repeatedly asked the state
26 for help with Charles P.'s mental health needs, but Charles P. did not receive any mental
27 health care services. Ultimately, his grandmother asked the state to remove Charles P. and
28 his siblings from her home.

1 34. The state then separated Charles P. and his older sister from their younger
2 sister. Charles P. and his older sister were placed in a Spanish-speaking foster home, even
3 though the children do not speak Spanish. The home was almost an hour away from
4 Charles P.'s grandmother and the foster home where Charles P.'s younger sister was
5 placed. Within ten days of arriving at the Spanish-speaking foster home, Charles P. and
6 his older sister were separated and placed in two different foster homes.

7 35. In early September 2013, the state moved Charles P. to yet another foster
8 home. After months in foster care, Charles P. was belatedly assigned a therapist. Even
9 then, however, Charles P.'s foster mother refused to take Charles P. to his appointments
10 and the state failed to arrange for other transportation. As a result, Charles P. did not have
11 a single therapy session during the four months he lived at the foster home.

12 36. The foster mother was also reported to the state Child Abuse Hotline, to
13 Charles P.'s DES case manager and to the state licensing office, after she placed Charles P.
14 in the front seat of her car without a car seat or booster seat. DCS did not conduct an
15 investigation of these reports. Moreover, the case manager acknowledged that she had
16 made an earlier report to the Child Abuse Hotline herself when it was discovered that the
17 foster mother had left Charles P. unsupervised with another foster child. DCS did not
18 investigate that report either.

19 37. In January 2014, Charles P. began visiting at another home where his older
20 sister was living. When his foster mother failed to pick him up from a visit, the state
21 simply told the family whom Charles P. was visiting to keep him. Charles P. subsequently
22 disclosed that his former foster mother had hit him with a spoon. Though the state
23 investigated the reported abuse, DCS never entered any investigation findings into the
24 agency's Children's Information Library and Data Source ("CHILDS") system, nor did the
25 state close the investigation.

26 38. Charles P. started living at the new foster home with his older sister in
27 January 2014. Shortly thereafter, he became suicidal. Though he had a crisis stabilization
28 team in place, it failed to promptly respond to this crisis, and the foster mother called the

1 police who took Charles P. to the hospital. Charles P. did not see his older sister again for
2 nearly a year.

3 39. Charles P. was admitted to a psychiatric hospital for a week. He was
4 diagnosed with PTSD and his doctors indicated that he needed immediate intensive trauma
5 therapy and specialized therapy at a therapeutic HCTC home. Charles P.'s stabilization
6 team agreed that Charles P. needed to be placed in a foster home equipped to respond to
7 his needs. Nevertheless, when Charles P. left the hospital, the state took him directly to a
8 shelter. He spent ten days in that shelter before being moved to a second shelter, a move
9 that also resulted in Charles P. having to change schools.

10 40. In February 2014, three weeks after arriving at the second shelter, Charles P.
11 became suicidal again, telling staff about his plan to get a knife and hurt himself. He was
12 hospitalized for a second time and prescribed psychotropic medication. He remained in
13 the hospital for two weeks before being discharged in March 2014. Again, the doctors at
14 the psychiatric hospital recommended that Charles P. be released to a therapeutic HCTC
15 home.

16 41. Instead, the state placed Charles P. in a non-therapeutic foster home. Charles
17 P. had to switch schools again and was inappropriately placed in first grade instead of
18 kindergarten, where he should have been enrolled based on his age and school experience.
19 He stayed in first grade for a month before anyone realized he was in the wrong grade.

20 42. In April 2014, the state finally placed Charles P. in an HCTC home.
21 Unfortunately, he was required to switch schools again as a result of this latest placement.

22 43. In December 2014, both of Charles P.'s two sisters were adopted. During
23 the year before they were adopted, Charles P. had only one sibling visit with one of his
24 sisters, even though his mental health assessments indicate that his sisters are the only
25 people with whom he has meaningful attachments. Moreover, he has had no contact with
26 either of them since they were adopted. Nor has Charles P. received the intensive trauma
27 therapy that was recommended for him in January 2014. Because his HCTC placement is
28

1 temporary, his providers have decided that he should not receive intensive trauma therapy
2 until he is in a more stable home.

3 **Bryce**

4 44. Bryce is a fourteen-year-old boy diagnosed with PTSD. His current
5 permanency goal is adoption. During his many years in state foster care custody, he has
6 been shuffled through numerous institutional settings despite his young age, separated
7 from his siblings, denied sibling visitation, deprived of much needed mental health care,
8 and has had to endure repeated educational disruptions. As a result of these experiences,
9 Bryce has been subjected to emotional harm and/or an ongoing unreasonable risk of harm.

10 45. In January 2005, Bryce was taken into foster care for the first time, along
11 with his two older brothers. Bryce and one of his older brothers were placed together in a
12 group home, and the other brother was separated and placed in a different group home.

13 46. A month after being taken into state care, Bryce had a psychological
14 evaluation, which indicated that he needed therapeutic treatment. He had to wait six
15 months before his first therapy session.

16 47. In June 2005, Bryce was removed from the group home and separated from
17 the brother with whom he was placed there. He was moved to a kinship foster home with
18 a paternal aunt. By December 2005, Bryce had spent six months in his new home without
19 any visits with his older brothers. He did not see his brothers again until January 2006.

20 48. In August 2006, Bryce's aunt told the state that Bryce was not receiving the
21 counseling that he needed. She requested that Bryce have an updated psychological
22 evaluation, but no such evaluation was conducted. During this same time period, the state
23 was again failing to provide Bryce with regular visits with one of his brothers.

24 49. In September 2006, Bryce's aunt told the state that she could no longer care
25 for Bryce since the state was not providing him with the mental health services he needed.
26 Rather than providing those services, the state moved Bryce to an emergency receiving
27 foster home.

1 50. In October 2006, Bryce threatened to kill himself and the foster family with
2 whom he was temporarily placed. Despite his mounting mental health issues, Bryce still
3 was not receiving regular therapy. The state responded to this latest crisis by removing
4 Bryce from the home. Bryce, then six years old, was again placed in a group home.

5 51. Shortly thereafter, the state received reports that Bryce was struggling
6 emotionally in the group home. Again, an updated psychological evaluation for Bryce was
7 requested, but the evaluation was not scheduled until December 2006. The state also failed
8 during this time to ensure that Bryce received needed counseling.

9 52. Bryce's evaluation indicated that he needed individual therapy every other
10 week. He was also prescribed psychotropic medication. A psycho-educational evaluation
11 was recommended, but never conducted.

12 53. In January 2008, Bryce was placed in a pre-adoptive home with one of his
13 brothers. A month later, the family told the state that Bryce needed more intensive
14 counseling and a different counselor who could better meet Bryce's needs.

15 54. In August 2008, both Bryce and his brother were adopted. In March 2011,
16 however, they were both taken back into state foster care. Shortly after this occurred,
17 Bryce reported that his adoptive father had been beating him with a belt.

18 55. The state immediately separated Bryce from his brother, placing the two
19 boys in different non-therapeutic group homes. The group home where Bryce was placed
20 told the state that Bryce desperately needed counseling. Despite this, Bryce did not receive
21 any counseling while at the group home.

22 56. A month after being brought back into state care, Bryce was hospitalized in
23 an acute care mental health facility for two weeks. After leaving the hospital, the state
24 returned Bryce to the group home.

25 57. Once back at the group home in May 2011, Bryce's mental health worsened.
26 The state approved Bryce for a therapeutic HCTC placement, but did not have one
27 available for him.

28

1 58. Stuck in the group home, Bryce responded by trying to run away. Bryce
2 spent the night at a juvenile detention center. In that one night, his group home filled his
3 open bed with another child. As a consequence, the state moved Bryce to a new group
4 home hours away from his prior placement.

5 59. In July 2011, Bryce was moved to an HCTC home, but he was still not
6 receiving trauma therapy and no psycho-sexual evaluation had been completed, despite
7 one having been recommended months earlier. It was not until October 2011 that a
8 psycho-sexual evaluation was conducted.

9 60. During April 2012, the state began looking for another HCTC placement to
10 better meet Bryce’s needs. Unable to find one, it instead moved him to a non-therapeutic
11 group home/shelter in August 2012. By October 2012, Bryce reported “I feel like I get
12 tossed around like a bag of chips.” He threatened to kill himself three times while in this
13 non-therapeutic congregate care placement.

14 61. In November 2012, the shelter told the state that Bryce needed a higher level
15 of care. The next month he was moved again, this time to a therapeutic group home.
16 While placed there, Bryce continued to express suicidal thoughts.

17 62. In January 2013, Bryce was returned to the same non-therapeutic group
18 home/shelter that had told the state just two months earlier that Bryce needed a higher
19 level of care. Bryce remained at that shelter for a few more weeks before the state moved
20 him again to a therapeutic group home two hours from his home community. In May
21 2013, the brother with whom Bryce was adopted in 2008 was placed in a pre-adoptive
22 placement with a family that ultimately adopted him. Bryce felt defeated and said he
23 thought he would never get out of the group home. The following month, Bryce grabbed
24 the steering wheel of a van driven by group home staff, saying, “I want us all to die.” That
25 same day, the state’s therapeutic team coordinating Bryce’s behavioral health services
26 reported that “with a few exceptions, Bryce is doing well over the last 2 weeks.”

27 63. Following the apparent suicide attempt, Bryce’s treating psychiatrist
28 recommended that Bryce be placed in a residential treatment facility. An application was

1 made the following month. While that request was pending, the state moved Bryce to
2 another therapeutic group home far from his home county. In September 2013, the state
3 moved Bryce to yet another therapeutic group home.

4 64. In March 2014, the state moved Bryce to a non-therapeutic family foster
5 home, but this placement disrupted after the state failed to provide Bryce with any therapy
6 to support his transition to a family home. In July 2014, Bryce was moved to another non-
7 therapeutic foster home. By September, Bryce had only had a single therapy session.

8 65. In October, DCS moved Bryce to a shelter where he stayed for more than a
9 month. Bryce did not receive any therapy sessions in the placement. In early November,
10 his Child and Family Team (“CFT”) recommended and the state approved Bryce for a
11 therapeutic HCTC placement. No such placement was made. Instead, DCS placed Bryce
12 in another therapeutic group home.

13 66. Almost every time the state has moved Bryce over the last three and a half
14 years, he had to go to a new school.

15 67. In December 2014, Bryce threatened to commit suicide while living in the
16 therapeutic group home. In January 2015, Bryce was placed in juvenile detention in
17 Maricopa County following an incident in a prior group home.

18 68. Now 14 years old, Bryce has spent half his life in Arizona foster care
19 custody and does not expect to find a permanent family.

20 **Alex A.**

21 69. Alex is a ten-year-old boy in state foster care currently living in a non-
22 therapeutic group home. His current permanency goal is adoption. He was taken into state
23 foster care custody most recently in September 2011 with his nine-year-old brother.
24 During his time in state care, Alex has been placed in institutional care; deprived of
25 necessary physical, dental and mental health care services; separated from his brother and
26 deprived of sibling visitation; and, has been subject to missed visits by his state child
27 welfare caseworker. As a result of these experiences, Alex has been subjected to
28 emotional harm and/or an ongoing unreasonable risk of harm.

1 70. Alex and his younger brother were taken into state foster care custody after
2 their father committed suicide in mid-2011. This was their second time in state care. They
3 had also been in state foster care custody prior to 2007. Their mother’s parental rights
4 were terminated in January 2007.

5 71. Following their father’s suicide, the state placed Alex and his brother in an
6 unlicensed kinship home with an uncle, his wife and their young son. In November 2011,
7 Alex’s brother was removed from the home and placed in a therapeutic group home. Alex
8 remained with his uncle’s family.

9 72. During the period from November 2012 to March 2013, the state failed to
10 arrange for sibling visits between Alex and his brother, and Alex’s state caseworker failed
11 to make monthly visits, as required under state policy. In February 2013, the state was
12 ordered to ensure that the boys had visitation with each other twice weekly. The state was
13 also ordered to transfer Alex’s case to the adoption unit to begin the process of finding a
14 permanent family. As alleged below, the state failed to comply with that order.

15 73. As of March 2013, Alex had not had a routine physical or seen a dentist in a
16 year.

17 74. At a status hearing in April 2013, the juvenile court made a finding of “no
18 reasonable efforts” against the state for its failure to arrange for sibling visitation, to help
19 Alex progress with his schooling, and to transfer Alex’s case to the adoption unit. Despite
20 this ruling, and despite the fact that Alex had been free for adoption since he re-entered
21 care in 2011, the state still failed to transfer Alex’s case to the adoption unit 13 months
22 later, in May 2014.

23 75. In November 2013, a mental health evaluation was scheduled for Alex and
24 his brother. The appointment could not proceed because the state failed to arrange
25 transportation for the boys. As a result, the evaluation had to be re-scheduled for the
26 following month.

27 76. The evaluation was not completed until February 2014. The evaluator
28 concluded that more information was needed with regard to Alex’s response to his father’s

1 suicide before any therapeutic services could be recommended. Nonetheless, the state
2 failed to request any further assessments.

3 77. In February 2014, Alex also reported that his aunt and uncle left him for two
4 to three hours at a time to care for his five-year-old cousin while they delivered
5 newspapers in the early mornings. Around the same time, Alex's uncle posted a video on
6 YouTube of himself tasing a 15-year-old child living in the house while another child is
7 heard crying in the background. Alex's aunt and uncle were also using corporal
8 punishment to discipline Alex. While these facts were known to the state, it never
9 investigated them.

10 78. That same month, Alex's uncle and aunt announced that they were leaving
11 the state and would not be taking Alex with them. Alex was thereupon removed from the
12 uncle's home and placed in the same foster/adoptive home as his brother, but no services
13 were put in place for the first three weeks to help Alex with the transition. Shortly after
14 being placed in the foster/adoptive home, Alex started saying he wanted to die.

15 79. The state subsequently moved Alex to an emergency respite foster home.
16 His brother's foster family told the state it was willing to have Alex return to live with
17 them, but not until Alex received the behavioral health services he needed. Nevertheless,
18 in April 2014, the state moved Alex to a non-therapeutic group home out of his home
19 county and 1½ hours away from his brother. The state did not arrange visits between the
20 two boys.

21 80. In May 2014, the juvenile court directed the state to immediately place Alex
22 back in his home county. As Alex was receiving no therapy or counseling at the time, the
23 court also ordered the state to provide therapy for Alex immediately, beginning no later
24 than the end of the month. However, in July 2014, DCS again failed to coordinate Alex's
25 transportation and Alex was unable to go to his scheduled psychological evaluation.

26 81. Despite the May 2014 court order, Alex remained in a non-therapeutic group
27 home two hours away from his home community for five months. During that time he had
28

1 to travel nearly two hours each way to obtain needed mental health services. DCS moved
2 Alex to a non-therapeutic group home in his home county in September 2014.

3 **The C-B Siblings**

4 82. The C-B siblings include two brothers, Aiden and Mark, aged five and
5 seven, and two sisters, Jane and Darcy, aged three and six, all of whom were taken into
6 state foster care custody in January 2014. Their current permanency goal is reunification.
7 During their time in state care, they have been unnecessarily separated, deprived of needed
8 mental health care and parental visitation, and the sisters were placed in an inappropriate
9 institutional setting. As a result of these experiences, they have been subjected to
10 emotional harm and/or an ongoing unreasonable risk of harm.

11 83. Because of the traumatizing circumstances that led to their being taken into
12 foster care, the siblings' lawyer requested at the first juvenile court hearing of the case in
13 January 2014 that the state immediately provide the children with trauma therapy. As
14 alleged further below, the state delayed those services for nine months.

15 84. The state initially placed the four siblings with a relative 2½ hours away
16 from the home from which they were removed. Because of this distant placement, their
17 urgent response assessments, required for every child taken into foster care, were delayed,
18 and the children never received any behavioral health services while in this placement.

19 85. In March 2014, the state removed the children from the relative and placed
20 them in separate locations. The state placed seven-year-old Mark and five-year-old Aiden
21 in a licensed family foster home. Six-year-old Darcy and three-year-old Jane were placed
22 in a non-therapeutic group home. None of the siblings received behavioral health services
23 while in these placements.

24 86. That same month, Mark and Aiden's foster parents requested that Mark
25 receive a psychological evaluation. The evaluation was not conducted for eight months.

26 87. In April 2014, the state moved all four of the C-B siblings to their father's
27 home. The children's state child welfare case manager never visited them in the home.
28 The state also failed to ensure that any of the children received behavioral health services

1 or counseling, even though Darcy and Aiden were exhibiting sexualized behaviors
2 indicative of possible sexual abuse. Only two weeks after being placed there, the
3 children’s father requested that the state remove them.

4 88. In May 2014, the state again split up the siblings, this time into three
5 different foster homes. Mark and Aiden were placed in the same foster home where they
6 had previously been placed. The state placed each of the girls, Darcy and Jane, in separate
7 foster homes.

8 89. From the time they were taken into custody to May 2014, none of the
9 siblings had any visits with their biological mother.

10 90. Following a juvenile court hearing in early June 2014, DCS agreed to ensure
11 that all four children receive therapy – not just an intake or enrollment – with a trauma
12 therapist by June 20. DCS also agreed to pay for the services if DHS would not pay. In
13 addition, the court directed DCS to provide the children with relational therapy with both
14 parents. DCS further agreed to work with the children’s father to help meet his
15 transportation needs in order to facilitate visitation with the children, including providing
16 him with a gas card. DCS failed to provide any of these services or supports.

17 91. Consequently, on July 2, 2014, the juvenile court made a “no reasonable
18 efforts” finding with regard to DCS’s failure to provide services for the siblings. The court
19 called the agency’s conduct “appalling.”

20 92. In late July 2014, Darcy was placed in the same foster home as Mark and
21 Aiden. Jane remains in a separate foster home.

22 93. In August 2014, eight months after being brought into foster care, the three
23 eldest siblings finally had their behavioral health evaluations completed.

24 94. In mid-September 2014, nine months after being taken into foster care, Mark
25 and Aiden had received only one therapy session. Though their CFT recommended that
26 they receive weekly therapy sessions, the facility where the therapist is located can only
27 accommodate therapy sessions every other week.

28

1 95. By September 2014, Darcy had received only two sessions with a therapist.
2 Jane had an intake meeting with her therapist, but her therapy sessions had not yet started.

3 96. In December 2014, the state had only just begun the psychological
4 evaluation that Mark’s foster parents first requested in March 2014. In addition, Mark and
5 Aiden are both struggling in school with attention problems.

6 **Jack M.**

7 97. Jack M. is an eight-year-old boy who was taken into foster care when he was
8 six years old. His current permanency goal is adoption. During his time in state foster
9 care custody, Jack M. has been deprived of needed mental health care, placed in
10 institutions on numerous occasions, and has had his education repeatedly disrupted. As a
11 result of these experiences, Jack M. has been subjected to emotional harm and/or an
12 ongoing unreasonable risk of harm.

13 98. Jack M. was brought into state foster care in May 2012. The state initially
14 placed him in a shelter for five days, then moved him to live with his grandmother. When
15 she could not care for him, the state moved Jack M. to a group home in a different county.
16 Jack M. remained there for two months.

17 99. In July 2012, the state moved Jack M. to an unlicensed kinship home back in
18 his home community. Jack M. entered first grade that summer. The state failed to ensure
19 that Jack M. had transportation to and from school. As a consequence, Jack M. missed
20 sixty days of schooling.

21 100. In September 2013, Jack M. was moved to another kinship placement two
22 hours from his home county. As a result of this placement change, Jack M. had to start
23 second grade at a new school. The move also resulted in a change in Jack’s mental health
24 providers, disrupting his mental health care.

25 101. In October 2013, the state moved Jack M. to a licensed family foster home
26 back in his home county, resulting in yet another school change for Jack M.

27 102. In February 2014, the state moved Jack M. to a non-therapeutic group home
28 in another county two hours away. As a result, he had to enroll at his fourth school in less

1 than two years since being brought into state foster care. His teachers began developing an
2 Individualized Education Program (“IEP”) for him, but it was not finalized or
3 implemented. He was also diagnosed with ADHD.

4 103. Between February and June 2014, Jack M. had to move among four different
5 group homes, all two hours from his home community. During this period, the state took
6 the position that Jack M. could not be placed in an HCTC therapeutic foster home until he
7 had first received, and exhausted, out-patient counseling. But each time Jack M. was
8 forced to move to a different group home, he had to start his therapy over again with a new
9 therapist.

10 104. Jack M.’s visitation with his mother was also disrupted when he was moved
11 among these various group homes. Jack M. has no siblings and his mother is his only
12 intimate family relationship. She had trouble traveling the two hours by bus to see Jack M.
13 at his group homes and the state refused to coordinate alternative transportation for her.
14 Instead, the state required eight-year-old Jack M. to travel three hours each way in a
15 transport van for a two-hour visit with his mother.

16 105. In June 2014, DCS removed Jack M. from his most recent group home and
17 returned him to a shelter. This placement resulted in another disruption in his education
18 and mental health treatment. With each educational disruption, Jack M.’s new school has
19 had to re-start the IEP process of assessment and planning. DCS has failed to ensure that
20 his IEP was completed or provided to his new school, which had to be ordered by the
21 juvenile court.

22 106. Later in June 2014, the state finally approved Jack M. for an HCTC
23 placement after counseling proved inadequate. However, at that time, there were no
24 HCTC placements available and Jack M. continued to live at the shelter for four months.
25 In late October, DCS moved him to a licensed non-therapeutic foster home. It was not
26 until November 2014 that his current school concluded the necessary evaluations and
27 finalized his IEP.

1 **Jacob C.**

2 107. Jacob C. is a ten-year-old boy who was taken into state foster care when he
3 was eight. His current permanency goal is adoption. During the 2½ years he has been in
4 Arizona foster care, Jacob C. has suffered delays in needed health care treatment after
5 being diagnosed with PTSD; he has been placed in inappropriate institutional settings; and
6 he has been shuffled through numerous schools. He was also physically abused while in
7 state custody. As a result of these experiences, Jacob C. has been subjected to emotional
8 and physical harm and/or an ongoing unreasonable risk of harm.

9 108. Jacob C. was brought into state foster care custody in March 2012. He
10 displayed behaviors that suggested he had been sexually abused, and was placed in an
11 HCTC home. However, in September 2012, he was moved from that home and placed in a
12 non-therapeutic group home. Not surprisingly, his mental health immediately deteriorated.
13 Among other things, he soiled his pants and banged his head against the wall. Despite this,
14 the state kept Jacob C. in the group home for seven months.

15 109. The state moved Jacob C. back with his father in March 2013, while
16 retaining legal custody over Jacob C. Jacob C.'s father did not take Jacob to his therapy
17 sessions. Nonetheless, the state left Jacob C. with his father and failed to ensure that Jacob
18 received the care he needed.

19 110. Two months later, nine-year-old Jacob C. attempted suicide by taking an
20 overdose of his psychotropic medication. He was transported to the emergency room and
21 admitted to a psychiatric hospital for ten days. The state then returned him to his father's
22 home, still retaining legal custody over Jacob.

23 111. In March 2014, Jacob C. disclosed that his father had been physically
24 abusing him by hitting him with a belt. The state then removed Jacob C. from his father's
25 home. The abuse was so severe that the police criminally investigated Jacob C.'s beating.

26 112. After removing him from his father, the state placed Jacob C. in a non-
27 therapeutic group home. As a result of this placement change, Jacob C. had to change
28 schools and has had significant problems adjusting. In July, DCS moved Jacob C. again,

1 this time to a therapeutic group home in another county, resulting in another school
2 disruption. In August 2014, DCS moved Jacob to an HCTC foster home, where he
3 currently lives.

4 **B. The Next Friends**

5 113. Pursuant to Fed. R. Civ. P. 17(c)(2), Named Plaintiffs Alex A., Aiden C-B,
6 Mark C-B, Jane C-B, Darcy C-B, Jack M., and Jacob C. appear through their next friend
7 Susan M. Brandt. Ms. Brandt is Social Work Supervisor at the Office of Children's
8 Counsel in Tucson, Arizona. She resides in Tucson.

9 114. Pursuant to Fed. R. Civ. P. 17(c)(2), Named Plaintiffs Bryce and Charles P.
10 appear through their next friend Jennifer L. Kupiszewski. Ms. Kupiszewski is an attorney
11 in private practice in Scottsdale who has previously represented children and parents in
12 dependency matters. She resides in Scottsdale, Arizona.

13 115. Pursuant to Fed. R. Civ. P. 17(c)(2), Named Plaintiff Beth K. appears through
14 her next friend Margaret R. Tinsley, a retired attorney who has previously represented
15 children and parents in dependency matters. Ms. Tinsley resides in Tempe, AZ.

16 **C. The Defendants**

17 116. Defendant Charles Flanagan is the Director of DCS and is being sued in his
18 official capacity. Director Flanagan maintains his principal office at the Department of
19 Child Safety, 1717 West Jefferson S/C005A, Phoenix, Arizona 85007. Director Flanagan
20 is mandated under state law to carry out the purposes of DCS, including the formulation of
21 policies, plans and programs to effectuate DCS's missions and purposes.

22 117. Defendant William Humble is the Director of DHS and is being sued in his
23 official capacity. Director Humble maintains his principal office at the Department of
24 Health Services, 150 North 18th Avenue, Phoenix, Arizona 85007. Director Humble is
25 mandated under state law to administer DHS, including the formulation of policies, plans
26 and programs to provide mental and behavioral health services to children in DCS foster
27 care custody.

1 **FIRST CAUSE OF ACTION – VIOLATION OF PLAINTIFFS’ SUBSTANTIVE**
2 **DUE PROCESS RIGHTS UNDER THE U.S. CONSTITUTION**

3 118. Paragraphs 1-117 above are repeated and re-alleged as if fully set forth
4 herein.

5 119. This claim is asserted against defendants Flanagan and Humble in their
6 official capacities on behalf of a class of children who are or will be in the legal custody of
7 the Arizona Department of Child Safety due to a report or suspicion of abuse or neglect
8 (the “General Class”).

9 120. DCS provides and is legally obligated to provide members of the General
10 Class with physical and dental health care services through the state Comprehensive
11 Medical and Dental Program (“CMDP”). DCS administers the CMDP.

12 121. DHS provides and is legally obligated to provide members of the General
13 Class with mental and behavioral health services through ADHS Behavioral Health
14 Services (“BHS”). BHS delivers these services through contracts with Regional
15 Behavioral Health Authorities (“RBHAs”) across the state.

16 122. DCS is also responsible for monitoring the physical, behavioral and
17 emotional health status and needs of all members of the General Class and coordinating the
18 physical, behavioral and mental health services provided to those children to ensure that
19 they receive the health care services they need while in state care.

20 123. Many children in state foster care need such services to help them cope with
21 the significant trauma to which they were exposed before being removed from their homes.
22 For example, according to the Arizona Office of the Auditor General, “as of September
23 2013, approximately 31 percent of the children in out-of-home care aged 13 or older were
24 clinically diagnosed as emotionally disturbed.”

25 124. DCS and DHS are failing to fulfill their obligations to provide, coordinate
26 and monitor medical, dental, mental and behavioral health services to members of the
27 General Class. As a result, members of the General Class are being harmed and subjected
28 to an unreasonable risk of harm and deterioration while in DCS state foster care custody.

1 125. In both its 2011 and 2012 annual reports, Arizona’s state-wide Citizen
2 Review Panel (“CRP”) found that many children in state foster care were not receiving
3 adequate mental and behavioral health assessments and services. The CRP “repeatedly
4 observed untreated mental health problems” among children in state foster care. It also
5 found that a “lack of access to comprehensive and timely mental health assessments and
6 services exacerbated the problems of the children” and resulted in, among other things,
7 “multiple disrupted foster and adoptive placements, delays in children obtaining
8 permanency, and CPS involvement in the next generation of children.”

9 126. Moreover, according to the CRP’s 2012 report, “[w]hen services were
10 provided, they were observed to be brief and limited with cases being closed without
11 observation of sustained behavior changes and few aftercare services in place. When
12 children were removed, delays between the time of referral and assessment were observed
13 to cause even longer delays before intervention was provided.”

14 127. Similarly, in its 2013 Report, the CRP found that “the continuum of services
15 . . . for families is limited.” According to the report, “comprehensive services were lacking
16 and existing services are unable to maintain long term change in these families.”

17 128. The CRP is not alone in noting unacceptable shortages and delays in the
18 provision of needed services. According to a 2012 report issued by DES’s own consultant,
19 “[a]s much as half of the time a child spends in [foster care] is spent waiting on services.”
20 More recently, the Office of the Auditor General’s report on DCS policy and practice
21 recognized the “[i]nadequate access to behavioral health services” for youth in foster care.

22 129. The Arizona Chapter of the Foster Family-Based Treatment Association
23 (“FFTA”) has also noted the severe shortage of mental health services delivered by
24 professional foster homes (also known as “therapeutic foster homes”) to children in state
25 foster care. These services, referred to in Arizona as “Home Care Training to Home Care
26 Client Services” (“HCTC”), are supposed to be available to children in state care who need
27 therapeutic family-based intervention. These therapeutic foster homes are administered by
28

1 DHS through RBHAs. DCS pays room and board for children in state foster care placed in
2 HCTC homes.

3 130. There are currently only about 400 HCTC homes for more than 16,500
4 children in state foster care. Moreover, most of these homes are only licensed for 1 or 2
5 placements, severely limiting the number of children for whom these homes are available.
6 The severe shortage of HCTC homes places members of the General Class at an
7 unreasonable risk of deteriorating while in state care.

8 131. The shortage of HCTC providers, coupled with the short-term nature of
9 HCTC services (DHS has a practice of requiring such services to be re-authorized every 90
10 days), also subjects children in state care to emotionally harmful placement instability, as
11 children are moved out of HCTC homes far too soon after being placed there. The CRP's
12 2013 Report specifically found that the HCTC placement structure "causes disruption
13 when a specialized placement is required to meet a child's needs." This placement
14 disruption causes children with higher needs to "yo-yo" up and down in terms of their
15 behaviors, thereby driving additional placement moves, which results in even further
16 unnecessary re-traumatization.

17 132. The Arizona Auditor General has also recognized the state's practice of
18 failing to provide "long-term solutions for children in need of continued support" for their
19 mental health needs. According to the Auditor General's Report, "[c]hildren whose
20 behavioral health improves in therapeutic foster homes may be moved to less restrictive
21 family settings, but without the same continued support, their behaviors may worsen,
22 resulting in placement disruptions and subsequent placement in congregate care."

23 133. DCS and DHS further abdicate their legal duty to provide care for members
24 of the General Class by leaving the decision whether children should be placed in HCTC
25 homes to the six RBHAs that operate throughout the state, rather than allowing that
26 decision to be made by the children's Child and Family Teams ("CFTs"). Making matters
27 worse, the RBHAs have different processes for determining whether HCTC should be
28 provided to the children in their geographic regions. As a result, the availability of HCTC

1 turns in part on the fortuitous circumstance of where the member of the General Class
2 happens to live at the time HCTC is requested.

3 134. DCS caseworkers also fail to meet their obligation under agency policy to
4 participate in CFT meetings, including inter-agency meetings with DHS, that are a
5 prerequisite to members of the General Class receiving behavioral health services. When
6 DCS caseworkers do not join CFT meetings, essential information about a child's needs is
7 not shared, treatment planning and referrals are held up, and services are delayed. These
8 deficiencies expose members of the General Class to an undue risk that they will not
9 receive the behavioral services they require, leading to a deterioration of the child's
10 condition while in state custody.

11 135. Remarkably, even former DES Director Carter acknowledged at an October
12 17, 2013 meeting of the CPS Oversight Committee that DES does not collect data in a way
13 that enables the child welfare agency to show that a particular set of family interventions is
14 effective. At the same meeting, Ms. Sotomayor, then Assistant Director for the former
15 DES Division of Children, Youth and Families, agreed that it is unclear whether a number
16 of services provided by DES "are appropriate or adequate" for families.

17 136. In addition to the lack of adequate mental health services, far too many
18 children in state foster care fail to receive needed physical health care services. According
19 to the state's Practice Improvement Case Review ("PICR") for 2013, DCS failed to
20 properly assess and address the children's physical health needs in a third (34%) of the
21 cases reviewed. The same review found that 22% of children who had been in foster care
22 for more than 12 months had not received a comprehensive physical health examination.
23 In addition, more than 40% of children who had been in care for less than a year did not
24 receive an examination within 30 days as required by agency policy. Based on the same
25 2013 PICR, DCS had failed to assess and provide necessary services to address the
26 children's mental health needs in nearly one in five cases reviewed.

27 137. Based on the 2012 PICR, the state failed to meet the physical health care
28 needs of children in state foster care in 49% of the cases reviewed.

1 138. Moreover, according to the state's own data, during federal fiscal year 2012,
2 36% of children in state foster care ages three to six did not receive well-care visits
3 required under the periodicity schedule that the State is required to establish under the
4 EPSDT provisions of the federal Medicaid Act. A nearly identical percentage of
5 adolescents in foster care likewise failed to receive such required health care visits.
6 Similar failures in providing such services to these age groups were reported for federal
7 fiscal years 2009, 2010 and 2011.

8 139. In addition, according to the State's PICR for 2013, 34% of children who
9 had been in state care for more than six months were found not to have had a dental
10 examination within the most recent six months. During 2012, the number of children who
11 had missed required dentist visits was nearly four in ten.

12 140. The inadequacy of the health care services provided to the General Class
13 subjects these children to harm and/or an unreasonable risk of suffering ongoing physical
14 and emotional harm and deterioration while in state care.

15 141. A state assumes an affirmative duty under the Fourteenth Amendment to the
16 United States Constitution to protect a child from an unreasonable risk of harm once it
17 takes that child into its legal foster care custody.

18 142. Defendant Flanagan directly and indirectly controls and is responsible for the
19 child welfare policies and practices of DCS. The foregoing DCS policies and practices fail
20 to satisfy its affirmative duty to protect the General Class, including the Named Plaintiffs,
21 from an unreasonable risk of physical and emotional harm. These failures are a substantial
22 factor leading to, and proximate cause of, the ongoing violation of the General Class's
23 constitutionally protected liberty and privacy rights.

24 143. Defendant Humble directly and indirectly controls and is responsible for the
25 policies and practices regarding the provision of mental and behavioral health services by
26 DHS. The foregoing DHS policies and practices fail to satisfy its affirmative duty to
27 protect the General Class, including the Named Plaintiffs, from an unreasonable risk of
28 emotional harm. These failures are a substantial factor leading to, and proximate cause of,

1 the ongoing violation of the General Class’s constitutionally protected liberty and privacy
2 rights.

3 144. The foregoing policies and practices of DCS and DHS described herein
4 constitute a policy, pattern, custom and/or practice that shocks the conscience, is outside
5 the exercise of any professional judgment, and amounts to deliberate indifference to the
6 constitutionally protected rights and liberty and privacy interests of the Named Plaintiffs
7 and other members of the General Class. As a result, all members of the General Class
8 have been harmed or are being subjected to an ongoing unreasonable risk of harm, in
9 deprivation of their substantive due process rights guaranteed by the Fourteenth
10 Amendment to the United States Constitution.

11 145. These substantive due process rights include, but are not limited to: the right
12 of members of the General Class to protection from harm and unreasonable risk of harm
13 while in state foster care custody; the right to a living environment that protects the
14 physical, mental and emotional safety and well-being of the General Class; the right to
15 necessary treatment, care and services to prevent members of the General Class from
16 deteriorating or being harmed physically, psychologically or otherwise while in state care;
17 and the right to adequate caseworker supervision and monitoring of the General Class’s
18 safety and well-being.

19 146. As of September 30, 2014, there were 16,990 members of the General Class.
20 The General Class is sufficiently numerous to make individual joinder impracticable.

21 147. Named Plaintiffs’ First Cause of Action raises questions of fact and law that
22 are common to, and typical of, all members of the General Class. Such common questions
23 of fact include:

24 a. Whether DCS has a practice of failing to provide members of the
25 General Class with legally required medical and dental services necessary to keep
26 the General Class safe and properly cared for, and to prevent them from
27 deteriorating physically while in state custody;
28

1 b. Whether DHS has a practice of failing to provide members of the
2 General Class with legally required mental and behavioral health services necessary
3 to keep the General Class safe and properly cared for, and to prevent them from
4 deteriorating emotionally and psychologically while in state custody; and

5 c. Whether DCS has a practice of failing to coordinate and ensure that
6 the General Class are provided with the legally required mental and behavioral
7 health services to keep the General Class safe and properly cared for, and to prevent
8 them from deteriorating emotionally and psychologically while in state custody.

9 148. Such common questions of law include whether DCS's and DHS's actions
10 and inactions violate the General Class's substantive due process rights to be free from
11 harm and an unreasonable risk of harm while in state custody.

12 149. Named Plaintiffs will fairly and adequately protect the interests of the
13 General Class they seek to represent.

14 150. Named Plaintiffs and the putative General Class are represented by:

15 a. Attorneys employed by Coppersmith Brockelman PLC, a private law
16 firm based in Arizona with extensive experience in complex civil and public interest
17 litigation, including class action litigation;

18 b. Attorneys employed by the Arizona Center for Law in the Public
19 Interest, a nonprofit legal organization based in Phoenix whose attorneys also have
20 extensive experience in complex civil and public interest litigation, including class
21 action litigation; and

22 c. Attorneys employed by Children's Rights, Inc., a nonprofit legal
23 organization whose attorneys have substantial experience and expertise in child
24 welfare class actions nationally.

25 151. The attorneys and organizations listed above have investigated all claims in
26 this action and have committed sufficient resources to represent the General Class.

1 152. Each Named Plaintiff appears by a next friend, and each next friend is
2 sufficiently familiar with the facts of the child’s situation to fairly and adequately represent
3 the child’s interests in this litigation.

4 153. Defendants Flanagan and Humble have acted or failed to act on grounds
5 generally applicable to the General Class, necessitating declaratory and injunctive relief.
6 Plaintiffs’ counsel know of no conflicts between or among members of the General Class.

7 **SECOND CAUSE OF ACTION – VIOLATION OF PLAINTIFFS’ RIGHTS**
8 **UNDER THE EPSDT PROVISIONS OF THE MEDICAID ACT**

9 154. Paragraphs 1-153 above are repeated and re-alleged as if fully set forth
10 herein.

11 155. This claim is asserted against defendants Flanagan and Humble in their
12 official capacities on behalf of all members of the General Class who are eligible for
13 Medicaid (the “Medicaid Subclass”).

14 156. Medicaid is a joint federal-state program under Title XIX of the Social
15 Security Act, 42 U.S.C. § 1396, *et seq.*, designed to provide medically necessary physical
16 and mental health care to, among others, eligible children.

17 157. States that choose to participate in the Medicaid program are reimbursed by
18 the federal government for a portion of the cost of providing Medicaid benefits. To
19 receive federal funds, states must comply with the requirements set forth in Title XIX of
20 the Social Security Act and its implementing regulations. Among those requirements,
21 states are required to develop state plans that identify the medical services available to
22 eligible beneficiaries.

23 158. Children in state foster care are eligible beneficiaries of Medicaid services
24 under 42 U.S.C. § 1396a(a)(10)(A)(i)(I).

25 159. Under 42 U.S.C. § 1396a(a)(10)(A) and 42 U.S.C. § 1396d(a)(4)(B), states
26 are required to provide EPSDT services to eligible children in state foster care. The required
27 screening services are set forth in 42 U.S.C. § 1396d(r)(1), while §§ 1396a(a)(43)(C) and
28 1396d(r)(5) require states to provide necessary health care, diagnostic services and treatment

1 to correct or ameliorate defects or physical and mental illnesses and conditions discovered
2 by those screening services.

3 160. Under 42 U.S.C. § 1396d(r)(1)(A)(i) and 42 C.F.R. § 441.58, states are
4 required to establish periodicity schedules setting forth when the screening services
5 required under the Medicaid Act must be provided.

6 161. Moreover, under 42 U.S.C. § 1396a(a)(8) and 42 C.F.R. § 435.930(a), states
7 must provide EPSDT services with reasonable promptness.

8 162. The policy underlying the EPSDT mandate is to prevent illness, as well as to
9 ensure that health problems are comprehensively diagnosed and then treated as soon as
10 they are detected, before they become more complex and their treatment more costly.

11 163. Pursuant to a contract with the Arizona Health Care Cost Containment
12 System (“AHCCCS”), DCS serves as the statewide administrator responsible for the
13 provision of physical, dental, vision and hearing health care services, including screening,
14 diagnostic and treatment services, to members of the Medicaid Subclass. In that capacity,
15 DCS is legally obligated to ensure that members of the Medicaid Subclass receive such
16 medical services. DCS provides such medical services through CMDP.

17 164. DCS also determines the Medicaid eligibility of every child in state foster
18 care custody.

19 165. Pursuant to a contract with AHCCCS, DHS serves as the statewide
20 administrator responsible for the provision of mental and behavioral health care services,
21 including screening, diagnostic and treatment services, to members of the Medicaid
22 Subclass. In that capacity, DHS is legally obligated to ensure that members of the
23 Medicaid Subclass receive such medical services. DHS provides such services through
24 BHS, which, in turn, delivers these services through contracts with RBHAs across the
25 state.

26 166. Under Arizona’s EPSDT Periodicity Schedule, DCS is required to provide
27 annual physical examinations to members of the Medicaid Subclass who are age three and
28 older, and more frequent physical examinations to members of the Medicaid Subclass

1 under age three. The state's Periodicity Schedule further requires DCS to provide annual
2 vision screenings to members of the Medicaid Subclass ages 4-6, 8, 10 and 12 years old,
3 and semi-annual dental examinations to members of the Medicaid Subclass who are six
4 months of age or older.

5 167. DCS's Policy and Procedure Manual further provides that it is the
6 responsibility of the DCS foster care caseworker to ensure that a child entering foster care
7 be given a complete medical examination that meets EPSDT requirements within 30 days
8 after initial placement in out-of-home care.

9 168. As for mental and behavioral health services, DHS is required under
10 Arizona's EPSDT Periodicity Schedule to provide members of the Medicaid Subclass age
11 three and older with annual psychosocial/behavioral assessments. For members of the
12 Medicaid Subclass under the age of three, the Periodicity Schedule requires DHS to
13 provide more frequent psychosocial/behavioral assessments.

14 169. Under DHS policy, DHS is also responsible for conducting an Urgent
15 Response assessment of every child within 24 hours of removal from his or her home to
16 detect both initial and delayed effects of trauma.

17 170. Defendants have a practice of failing to provide members of the Medicaid
18 Subclass with the screening, diagnostic and treatment services required under the EPSDT
19 provisions of the Medicaid Act, in violation of 42 U.S.C. §§ 1396a(a)(10)(A)(i)(I),
20 1396a(a)(43)(C), 1396d(a)(4)(B) and 1396d(r).

21 171. Defendants also have a practice of failing to provide such services with
22 reasonable promptness, in violation of 42 U.S.C. § 1396a(a)(8) and 42 C.F.R. § 435.930(a).

23 172. The foregoing policies and practices of defendant Flanagan, who directly and
24 indirectly controls and is responsible for the policies and practices of DCS, and defendant
25 Humble, who directly and indirectly controls and is responsible for the policies and
26 practices of DHS, violate the rights of Named Plaintiffs and the Medicaid Subclass under
27 the Medicaid Act.
28

1 173. As of September 30, 2014, there were over 10,000 members of the Medicaid
2 Subclass. The Medicaid Subclass is sufficiently numerous to make individual joinder
3 impracticable.

4 174. Named Plaintiffs' Second Cause of Action raises questions of fact and law
5 that are common to, and typical of, all members of the Medicaid Subclass. Such common
6 questions of fact include:

7 a. Whether DCS has a practice of failing to provide members of the
8 Medicaid Subclass with screening services that comply with the state's Periodicity
9 Schedule;

10 b. Whether DCS has a practice of failing to provide members of the
11 Medicaid Subclass with medically necessary diagnostic and treatment services;

12 c. Whether DHS has a practice of failing to provide members of the
13 Medicaid Class with screening services that comply with the state's Periodicity
14 Schedule; and

15 d. Whether DHS has a practice of failing to provide members of the
16 Medicaid Subclass with medically necessary diagnostic and treatment services.

17 175. Such common questions of law include whether DCS's and DHS's actions
18 and inactions violate the Medicaid Subclass's rights under the EPSDT provisions of the
19 federal Medicaid Act.

20 176. Named Plaintiffs will fairly and adequately protect the interests of the
21 Medicaid Subclass they seek to represent.

22 177. Named Plaintiffs and the putative Medicaid Subclass are represented by:

23 a. Attorneys employed by Coppersmith Brockelman PLC, a private law
24 firm based in Arizona with extensive experience in complex civil and public interest
25 litigation, including class action litigation;

26 b. Attorneys employed by the Arizona Center for Law in the Public
27 Interest, a nonprofit legal organization based in Phoenix whose attorneys also have
28

1 extensive experience in complex civil and public interest litigation, including class
2 action litigation; and

3 c. Attorneys employed by Children’s Rights, Inc., a nonprofit legal
4 organization whose attorneys have substantial experience and expertise in child
5 welfare class actions nationally.

6 178. The attorneys and organizations listed above have investigated all claims in
7 this action and have committed sufficient resources to represent the Medicaid Subclass.

8 179. Each Named Plaintiff appears by a next friend, and each next friend is
9 sufficiently familiar with the facts of the child’s situation to fairly and adequately represent
10 the child’s interests in this litigation.

11 180. Defendants Flanagan and Humble have acted or failed to act on grounds
12 generally applicable to the Medicaid Subclass, necessitating declaratory and injunctive
13 relief. Plaintiffs’ counsel know of no conflicts between or among members of the
14 Medicaid Subclass.

15 **THIRD CAUSE OF ACTION – VIOLATION OF PLAINTIFFS’ SUBSTANTIVE**
16 **DUE PROCESS RIGHTS UNDER THE U.S. CONSTITUTION**

17 181. Paragraphs 1-180 above are repeated and re-alleged as if fully set forth
18 herein.

19 182. This claim is asserted on behalf of the General Class against defendant
20 Flanagan in his official capacity.

21 **Members of the General Class Are Not Receiving Timely Investigations of**
22 **Reports That They Have Been Maltreated in State Custody.**

23 183. In late 2013, it was publicly disclosed for the first time that the State had
24 failed to investigate 6,600 reports of alleged child abuse and neglect between 2009 and
25 2013, choosing instead to simply set those reports aside. In July 2014, it was disclosed
26 that in another 14,000 cases, no documentation had been entered in the child’s or family’s
27 case file for 60 days or more through April 2014.

1 184. While the legislation passed on May 29, 2014 attempts to address those
2 enormous backlogs, DCS’s failure to complete child maltreatment investigations in a
3 timely manner is not limited to those 20,600 reports and cases. In fact, DCS is also failing
4 to initiate and complete investigations in a timely manner of reports that children have
5 been abused or neglected *while in state care*. DES’s own consultants acknowledged in
6 2012 that foster care workers “often have a backlog” of new maltreatment reports
7 involving children in state custody.

8 185. According to the state’s own data, during federal fiscal year 2012, the state
9 failed to initiate investigations into 36% of all reports that children in state foster care
10 custody had been abused or neglected, within the time frames required under state policy.
11 During the six-month period from October 1, 2012 through March 31, 2013, 54% of all
12 investigations involving children in state care were initiated late.

13 186. State law and agency policy further requires that the outcomes of child
14 maltreatment investigations be entered into the State’s child welfare information database
15 within 45 days and that investigations be closed within 60 days. However, according to
16 state data, during the six-month period from October 1, 2012 to March 31, 2013, the State
17 failed to meet this 60-day deadline in the large majority of investigations involving
18 children already in state care, regardless of the level of risk to which members of the
19 General Class were exposed. In fact, 72% of investigations into high risk reports involving
20 a present danger to children in state care were still not closed after 60 days; 73% of
21 investigations into reports involving an impending danger to children in care were not
22 closed in a timely manner; 72% of investigations into reports that children in care had been
23 abused or neglected within the past 30 days were not closed within the required period;
24 and 78% of investigations were not closed within the required timeframe where the reports
25 involved children in state care who had been abused or neglected more than 30 days prior,
26 the date of the last occurrence of abuse or neglect was unknown, or the child was exposed
27 to an unreasonable risk of harm.

1 187. These widespread delays in initiating and completing investigations into
2 reported child abuse and neglect subject members of the General Class to an unreasonable
3 risk of physical and emotional harm while in state care.

4 188. A state assumes an affirmative duty under the Fourteenth Amendment to the
5 United States Constitution to protect a child from an unreasonable risk of harm once it
6 takes that child into its legal foster care custody.

7 189. Defendant Flanagan directly and indirectly controls and is responsible for the
8 child welfare policies and practices of DCS. The foregoing DCS policies and practices fail
9 to satisfy its affirmative duty to protect the General Class, including the Named Plaintiffs,
10 from an unreasonable risk of physical and emotional harm. These failures are a substantial
11 factor leading to, and proximate cause of, the ongoing violation of the General Class's
12 constitutionally protected liberty and privacy rights.

13 190. The foregoing policies and practices of DCS described herein constitute a
14 policy, pattern, custom and/or practice that shocks the conscience, is outside the exercise
15 of any professional judgment, and amounts to deliberate indifference to the constitutionally
16 protected rights and liberty and privacy interests of the Named Plaintiffs and other
17 members of the General Class. As a result, all members of the General Class have been
18 harmed or are being subjected to an ongoing unreasonable risk of harm, in deprivation of
19 their substantive due process rights guaranteed by the Fourteenth Amendment to the
20 United States Constitution.

21 191. These substantive due process rights include, but are not limited to: the right
22 of members of the General Class to protection from harm and unreasonable risk of harm
23 while in state foster care custody; the right to a living environment that protects the
24 physical, mental and emotional safety and well-being of the General Class; the right to
25 necessary treatment, care and services to prevent members of the General Class from
26 deteriorating or being harmed physically, psychologically or otherwise while in state care;
27 and the right to adequate caseworker supervision and monitoring of the General Class's
28 safety and well-being.

1 192. As of September 30, 2014, there were 16,990 members of the General Class.
2 The General Class is sufficiently numerous to make individual joinder impracticable.

3 193. Named Plaintiffs' Third Cause of Action raises questions of fact and law that
4 are common to, and typical of, all members of the General Class. Such common questions
5 of fact include whether DCS has a practice of failing to conduct timely investigations into
6 reports that members of the General Class have been abused or neglected while in state
7 foster care custody.

8 194. Such common questions of law include whether DCS's actions and inactions
9 violate the General Class's substantive due process rights to be free from harm and an
10 unreasonable risk of harm while in state custody.

11 195. Named Plaintiffs will fairly and adequately protect the interests of the
12 General Class they seek to represent.

13 196. Named Plaintiffs and the putative General Class are represented by:

14 a. Attorneys employed by Coppersmith Brockelman PLC, a private law
15 firm based in Arizona with extensive experience in complex civil and public interest
16 litigation, including class action litigation;

17 b. Attorneys employed by the Arizona Center for Law in the Public
18 Interest, a nonprofit legal organization based in Phoenix whose attorneys also have
19 extensive experience in complex civil and public interest litigation, including class
20 action litigation; and

21 c. Attorneys employed by Children's Rights, Inc., a nonprofit legal
22 organization whose attorneys have substantial experience and expertise in child
23 welfare class actions nationally.

24 197. The attorneys and organizations listed above have investigated all claims in
25 this action and have committed sufficient resources to represent the General Class.

26 198. Each Named Plaintiff appears by a next friend, and each next friend is
27 sufficiently familiar with the facts of the child's situation to fairly and adequately represent
28 the child's interests in this litigation.

1 199. Defendant Flanagan has acted or failed to act on grounds generally
2 applicable to the General Class, necessitating declaratory and injunctive relief. Plaintiffs’
3 counsel know of no conflicts between or among members of the General Class.

4 **FOURTH CAUSE OF ACTION – VIOLATION OF PLAINTIFFS’**
5 **SUBSTANTIVE DUE PROCESS RIGHTS UNDER THE U.S. CONSTITUTION**

6 200. Paragraphs 1-199 above are repeated and re-alleged as if fully set forth
7 herein.

8 201. This claim is asserted against Defendant Flanagan in his official capacity on
9 behalf of all members of the General Class, except those children who are or will be in a
10 kinship placement (the “Non-Kinship Subclass”).

11 **A. The Non-Kinship Subclass Suffers from a Severe Shortage of Foster**
12 **Homes.**

13 202. The State has failed to provide members of the Non-Kinship Subclass with an
14 adequate number and array of foster care placements. The severe shortage of foster care
15 placements frequently results in the State placing members of the Non-Kinship Subclass in
16 the first available bed, rather than selecting placements based on the children’s needs.

17 203. While Arizona’s population of children in out-of-home care has grown by
18 56% from September 2009 to March 2014, the number of Arizona foster families has only
19 increased by 9%, and the percentage of children placed in licensed foster homes has
20 decreased by 9%, during the same time period.

21 204. As of September 30, 2014, there were 9418 children in state foster care who
22 were not placed with relatives or in trial home reunification settings. Nevertheless, the
23 State reported that it had licensed only 4397 foster homes to accept children in state care.
24 Moreover, these foster homes provided only 5669 available spaces that could potentially
25 match the needs of the children in DCS’s custody. Even assuming that each of these
26 spaces matched the needs of the Non-Kinship Class, 3749 class members would still be
27 without a foster home.

1 205. A spokeswoman for DCS acknowledged in July 2014 that the department
2 “desperately needs more foster families to care for the increased number of children in out-
3 of-home care.”

4 206. A recent DCS report stated that “[h]omes are needed for children of all ages,
5 however the most significant shortages of homes are for teens, sibling groups, and children
6 who have complex medical needs.” The agency admits that “[t]here is a significant need
7 for additional foster and adoptive homes in all areas of Arizona.”

8 207. According to a recent audit by the Arizona Auditor General, the state “has not
9 adequately implemented” performance-based contracting in the contracts it has entered into
10 with private child placing agencies to recruit foster parents, identify and arrange child
11 placement options, and supervise and monitor licensed foster parents. The audit also found
12 that the state has not developed policies and procedures for monitoring the performance
13 measures in its contracts, has not used performance measure data to assess contractor
14 performance, and has not adequately designed the contracts to incentivize performance.

15 208. In addition to the inadequate recruiting of new foster homes, a 2012 survey
16 conducted by Arizona State University noted that programs and financial benefits available
17 to foster families have been drastically cut in recent years due to severe budget constraints.
18 For example, in 2009, the state cut foster family reimbursement rates and allowances for
19 clothing.

20 209. The scarcity of foster homes in Arizona is a well-known problem. In 2012,
21 *The Arizona Republic* reported that “[t]he state is in dire need of families to care for
22 children removed from their homes because of suspected abuse or neglect. But families
23 leave the foster care system faster than new ones come in. Many who leave say it’s not
24 necessarily the children who have caused them to turn in their license but their frustration
25 with the system’s inability to help them.”

26 210. Defendant Flanagan has also acknowledged to members of the state
27 legislature that there are many instances when children have slept in agency offices
28 because the agency did not have a placement for them.

1 211. In fact, according to a recent press account, over just a six-day span from
2 September 28 to October 4, 2014, 36 members of the Non-Kinship Subclass spent at least
3 one night in DCS office buildings in Maricopa and Pima counties. Of those 36 children,
4 10 were between 2 and 5 years old, 11 were between 6 and 12 years old, and 15 were
5 between 13 and 18 years old. According to Gene Burns, who supervises DCS after-hours
6 units, “[i]n the 17 years [he has] been here, the biggest shock to [him] is when [DCS]
7 bought cribs” for the young children sleeping at DCS’s offices. As he acknowledged,
8 “[t]his is not the place to put a kid.”

9 **B. Because of the Shortage of Foster Homes, Members of the Non-Kinship**
10 **Subclass Are Frequently Placed Far from Their Home Communities.**

11 212. DCS’s failure to maintain an adequate array of foster homes harms members
12 of the Non-Kinship Subclass by causing them to be placed, or putting them at an
13 unreasonable risk of being placed, far from their home communities. Such placements
14 disconnect members of the Non-Kinship Subclass from family, friends and neighbors, and
15 frequently lead to highly disruptive changes in schooling.

16 213. Only 31% of all children in foster care as of September 30, 2012, for whom
17 removal and current zip code information was available, were placed within the same zip
18 code as their homes. Moreover, nearly half of these children were placed outside their
19 home city.

20 214. Consultants retained by DES reported that in 2011, almost 60% of children
21 in state care were placed over an hour from their homes. As the consultant recognized,
22 “[t]his makes parent visits and services difficult and contributes to Ongoing staff driving
23 more hours and spending more time away from their other cases.”

24 **C. Because of the Shortage of Foster Homes, Members of the Non-Kinship**
25 **Subclass Are Frequently Separated from Their Siblings.**

26 215. For children entering state foster care, siblings can serve as a crucial buffer
27 against the emotional upheaval of being separated from their parents. Sibling relationships
28 can also promote resilience as children navigate the trauma of removal. In recognition of

1 the importance of maintaining sibling relationships, federal law requires states to make
2 reasonable efforts to place siblings together, unless contrary to a sibling's safety or well-
3 being – a requirement echoed in Arizona state policy.

4 216. DCS's failure to maintain an adequate array of foster homes harms members
5 of the Non-Kinship Subclass by causing them to be separated, or putting them at an
6 unreasonable risk of being separated, from their siblings. As of September 30, 2013, the
7 State failed to place all siblings together in 35% of cases, and failed to place at least two
8 siblings together in 24% of cases. Based on information the state submitted to the federal
9 government in 2012, in nearly 40% of cases when at least two siblings entered out-of-
10 home care, the State failed to place them together. The State's performance was nearly as
11 bad every year from 2008 through 2011. A DES official acknowledged in 2012 that it had
12 become more difficult to place siblings in the same home because of the shortage of foster
13 families and because more children stay in care longer.

14 217. A state assumes an affirmative duty under the Fourteenth Amendment to the
15 United States Constitution to protect a child from an unreasonable risk of harm once it
16 takes that child into its legal foster care custody.

17 218. Defendant Flanagan directly and indirectly controls and is responsible for the
18 child welfare policies and practices of DCS. The foregoing DCS policies and practices fail
19 to satisfy its affirmative duty to protect the Non-Kinship Subclass, including the Named
20 Plaintiffs, from an unreasonable risk of physical and emotional harm. These failures are a
21 substantial factor leading to, and proximate cause of, the ongoing violation of the Non-
22 Kinship Subclass's constitutionally protected liberty and privacy rights.

23 219. The foregoing policies and practices of DCS described herein constitute a
24 policy, pattern, custom and/or practice that shocks the conscience, is outside the exercise
25 of any professional judgment, and amounts to deliberate indifference to the constitutionally
26 protected rights and liberty and privacy interests of the Named Plaintiffs and other
27 members of the Non-Kinship Subclass. As a result, all members of the Non-Kinship
28 Subclass have been harmed or are being subjected to an ongoing unreasonable risk of

1 harm, in deprivation of their substantive due process rights guaranteed by the Fourteenth
2 Amendment to the United States Constitution.

3 220. These substantive due process rights include, but are not limited to: the right
4 of members of the Non-Kinship Subclass to protection from harm and unreasonable risk of
5 harm while in state foster care custody; the right to a living environment that protects the
6 physical, mental and emotional safety and well-being of the Non-Kinship Subclass; the
7 right to necessary treatment, care and services to prevent members of the Non-Kinship
8 Subclass from deteriorating or being harmed physically, psychologically or otherwise
9 while in state care; and the right to adequate caseworker supervision and monitoring of the
10 Non-Kinship Subclass's safety and well-being.

11 221. As of September 30, 2014, there were 9,454 members of the Non-Kinship
12 Subclass. The Non-Kinship Subclass is sufficiently numerous to make individual joinder
13 impracticable.

14 222. Named Plaintiffs' Fourth Cause of Action raises questions of fact and law
15 that are common to, and typical of, all members of the Non-Kinship Subclass. Such
16 common questions of fact include:

17 a. Whether DCS maintains an adequate number and array of foster home
18 placements for members of the Non-Kinship Subclass; and

19 b. Whether a shortage of foster homes subjects members of the Non-
20 Kinship Subclass to an unreasonable risk of being placed far from their families,
21 schools and home communities.

22 223. Such common questions of law include whether DCS's actions and inactions
23 violate the Non-Kinship Subclass's substantive due process rights to be free from harm
24 and an unreasonable risk of harm while in state custody.

25 224. Named Plaintiffs will fairly and adequately protect the interests of the Non-
26 Kinship Subclass they seek to represent.

27 225. Named Plaintiffs and the putative Non-Kinship Subclass are represented by:
28

1 a. Attorneys employed by Coppersmith Brockelman PLC, a private law
2 firm based in Arizona with extensive experience in complex civil and public interest
3 litigation, including class action litigation;

4 b. Attorneys employed by the Arizona Center for Law in the Public
5 Interest, a nonprofit legal organization based in Phoenix whose attorneys also have
6 extensive experience in complex civil and public interest litigation, including class
7 action litigation; and

8 c. Attorneys employed by Children’s Rights, Inc., a nonprofit legal
9 organization whose attorneys have substantial experience and expertise in child
10 welfare class actions nationally.

11 226. The attorneys and organizations listed above have investigated all claims in
12 this action and have committed sufficient resources to represent the Non-Kinship Subclass.

13 227. Each Named Plaintiff appears by a next friend, and each next friend is
14 sufficiently familiar with the facts of the child’s situation to fairly and adequately represent
15 the child’s interests in this litigation.

16 228. Defendant Flanagan has acted or failed to act on grounds generally
17 applicable to the Non-Kinship Subclass, necessitating declaratory and injunctive relief.
18 Plaintiffs’ counsel know of no conflicts between or among members of the Non-Kinship
19 Subclass.

20 **FIFTH CAUSE OF ACTION – VIOLATION OF PLAINTIFFS’ RIGHTS TO**
21 **FAMILY INTEGRITY UNDER THE U.S. CONSTITUTION**

22 229. Paragraphs 1-228 above are repeated and re-alleged as if fully set forth herein.

23 230. This claim is asserted against Defendant Flanagan in his official capacity on
24 behalf of all members of the General Class who have been assigned a permanency goal of
25 family reunification (the “Reunification Subclass”).

26 231. Despite the fact that over 50% of children in state care have a permanency
27 goal of family reunification, the State is failing to preserve family relationships after
28 children are removed from their homes.

1 232. One of the principal ways that states preserve the family relationships of
2 children in foster care is to place siblings together when they are removed from their
3 homes, as required under federal and state law. In 2012, however, Arizona failed to place
4 siblings together in nearly 40% of cases when at least two siblings entered out-of-home
5 care. As of September 30, 2013, the state failed to place all siblings together in 35% of
6 cases, and failed to place at least two siblings together in 24% of cases.

7 233. Moreover, as alleged in paragraphs 212-214 above, the state routinely places
8 children in its care far from their home communities, knowingly interfering with their
9 ability to maintain connections with their families.

10 234. Another way that states preserve the family relationships of children in foster
11 care is to place such children, when appropriate, with one or both biological parents on a
12 “trial reunification” basis, while maintaining legal custody over the child. Arizona,
13 however, systematically fails to do so. As of September 30, 2014, only 0.21% of children
14 in state custody (36 out of 16,990 children) were placed with their parents on a trial
15 reunification basis.

16 235. As of September 30, 2013, only 0.29% of children in out-of-home care (23
17 of the 7,875 children) who had a permanency goal of family reunification were in a trial
18 reunification placement.

19 236. Similarly, only 1.6% of the children in care who exited to reunification
20 during federal fiscal year 2012 (60 out of 3,684) were in a trial home visit placement at the
21 time of exit. The national average was 37.5%. Moreover, only 0.5% of children in
22 custody during federal fiscal year 2012 (97 out of 21,267) had a most recent placement
23 type of trial home visit. The national average was 11.0%.

24 237. When children in state custody are not placed with their families on a trial
25 reunification basis, DCS is under a legal duty to coordinate contact between these children
26 and their biological parents, as well as any siblings from whom the child may have been
27 separated when taken into custody. The state has recognized that “there is a strong
28 correlation between consistent and timely visitation and positive outcomes for children

1 who have been removed from their home. Regular parent-child visitation, along with CPS
2 Specialists' visits with the child, are both associated with achieving permanency and other
3 indicators of child well-being."

4 238. For 2012, however, the state reported that barely half (51%) of children in
5 out-of-home care whose cases were reviewed as part of the child welfare agency's PICR
6 had visits with their parents and siblings at a frequency consistent with the child's safety
7 and best interests. During calendar year 2013, a similarly low percentage of children
8 (56%) whose cases were reviewed in connection with the PICR had adequate visits with
9 parents and siblings.

10 239. The State's poor performance in coordinating family visits is no surprise
11 given the long wait lists that children in foster care face before being provided with
12 transportation to and from, and supervision of, family visits. As of October 2013, there
13 were 475 families waiting for such visitation services. Remarkably, the State does not
14 even track how long families have been waiting for those services.

15 240. The State further impairs family relationships by routinely failing to comply
16 with its obligation to make monthly contact with the biological parents of children in state
17 foster care. During the six-month period from April 1, 2014 through September 30, 2014,
18 1,213 out of 2,528 (48.0% of) parents of children in foster care with a case plan goal of
19 reunification did not receive required visits from a state child welfare caseworker.

20 241. Likewise, during the six-month period from October 1, 2013 through
21 March 31, 2014, 1,152 out of 2,496 (46.2% of) parents of children in foster care with a
22 case plan goal of reunification did not receive required visits from a state caseworker.

23 242. DCS recently reported that during 2013, caseworkers made concerted efforts
24 to have adequate contact with mothers in only 36% of cases reviewed, and with fathers in
25 only 18% of cases reviewed.

26 243. Not surprisingly, given the state's failure to make adequate contact with the
27 biological parents of children in foster care, the agency also systematically fails to involve
28 those parents in their children's case planning. During 2013, the state made concerted

1 efforts to actively involve the child’s mother in case planning in only slightly more than
2 half (54%) of cases reviewed, and to involve the father in little more than a third (36%) of
3 cases. According to DCS, “[c]ase plans are not consistently developed and reassessed
4 within required timeframes.”

5 244. An all too predictable result of the state’s failure to preserve family
6 relationships is that far too few members of the Reunification Subclass are reunified with
7 their families. Moreover, when reunification does occur, it takes far too long.

8 245. The amount of time that members of the Reunification Class spend in out-of-
9 home care before being reunified with their families has also increased over time.
10 According to data prepared for the state, the percentage of children who reunified within
11 90 days decreased from 30% for children who entered state foster care in 2008 to 18% for
12 children who entered such care in 2012; the percentage of children who reunified within
13 six months fell from 35% for the 2008 entry group to 23% for the 2012 entry group; and
14 the percentage of children who reunified within one year fell from 44% for the 2008 entry
15 group to 37% for the 2012 entry group.

16 246. DCS is aware of its poor performance. According to a 2014 agency report,
17 “[c]ompared to prior years, children are now less likely to exit to reunification, and they
18 experience longer lengths of stay before reunifying.”

19 247. The foregoing DCS practices interfere with the right to family integrity held
20 by members of the Reunification Subclass, and subject them to emotional harm and an
21 unreasonable risk of emotional harm.

22 248. Defendant Flanagan directly and indirectly controls and is responsible for the
23 policies and practices of DCS. The foregoing policies and practices fail to satisfy DCS’s
24 affirmative duty to protect the welfare of the Reunification Subclass, which failure is a
25 substantial factor leading to, and a proximate cause of, the violation of the constitutionally
26 protected liberty interests, privacy interests and associational rights of all members of the
27 Reunification Subclass.

1 249. The foregoing policies and practices of DCS amount to a policy, pattern,
2 custom and/or practice that is outside the exercise of any professional judgment and
3 amounts to deliberate indifference to the Reunification Subclass’s constitutional rights.
4 As a result, all members of the Reunification Subclass are being deprived, or are at
5 unreasonable risk of being deprived, of their liberty interests, privacy interests and
6 associational rights conferred on them by the First, Ninth, and Fourteenth Amendment to
7 the United States Constitution not to be deprived of child-parent or child-sibling family
8 relationships.

9 250. The Reunification Subclass has thousands of members and is therefore
10 sufficiently numerous to make individual joinder impracticable.

11 251. Named Plaintiffs’ Fifth Cause of Action raises questions of fact and law that
12 are common to, and typical of, all members of the Reunification Subclass. Such common
13 questions of fact include:

- 14 a. Whether DCS engages in a practice of placing members of the
15 Reunification Subclass far from their home communities;
- 16 b. Whether DCS engages in a practice of failing to place members of the
17 Reunification Subclass in trial home reunification settings;
- 18 c. Whether DCS engages in a practice of failing to coordinate contact
19 between members of the Reunification Class and their biological families;
- 20 d. Whether DCS engages in a practice of failing to make required
21 monthly contact with the biological parents of members of the Reunification
22 Subclass; and
- 23 e. Whether DCS engages in a practice of failing to involve the biological
24 parents of members of the Reunification Subclass in the case planning of those
25 children.

26 252. Such common questions of law include whether DCS’s actions and inactions
27 violate the Reunification Subclass’s rights to family integrity, guaranteed by the First,
28 Ninth, and Fourteenth Amendments to the United States Constitution.

1 C. Declare unconstitutional and unlawful pursuant to Rule 57, Fed. R. Civ. P.:

2 1. DCS's and DHS's violation of plaintiffs' substantive rights to be free
3 from harm and unreasonable risk of harm under the Due Process Clause of the
4 Fourteenth Amendment to the United States Constitution;

5 2. DCS's violation of the Reunification Subclass's rights to family
6 integrity under the First, Ninth, and Fourteenth Amendments to the United States
7 Constitution;

8 3. DCS's and DHS's violation of plaintiffs' rights under 42 U.S.C.
9 §§ 1396a(a)(8), 1396a(a)(10)(A)(i)(I), 1396a(a)(43)(C), 1396d(a)(4)(B) and
10 1396d(r);

11 D. Permanently enjoin DCS and DHS from subjecting plaintiffs to practices that
12 violate their rights;

13 E. Order appropriate remedial relief to ensure DCS's and DHS's future
14 compliance with their legal obligations to plaintiffs, including, but not limited to, the
15 following:

16 **1. Health Care Services Provided to Children in State Care.** DCS
17 and DHS shall establish and implement practices to ensure that all members of the
18 General Class receive the physical, mental and behavioral health services to which
19 they are entitled under the federal substantive Due Process Clause. Likewise, DCS
20 and DHS shall establish and implement practices to ensure that all members of the
21 Medicaid Subclass receive the physical, mental and behavioral health services to
22 which they are entitled under the EPSDT provisions of the federal Medicaid Act.

23 **2. Availability of Necessary Resources for the Placement of**
24 **Children.** DCS shall establish and implement practices to ensure a minimally
25 adequate capacity and array of placements to meet the placement needs of the Non-
26 Kinship Class, including foster and HCTC homes.

27 **3. Family Contact and Visitation.** DCS shall establish and implement
28 practices providing for minimally adequate visitation between members of the

1 Reunification Subclass and their biological parents and siblings. DCS shall also
2 establish and implement practices to adequately provide for siblings in the
3 Reunification Subclass to be placed together in foster care.

4 **4. Caseworker Investigations.** DCS shall establish and implement
5 practices providing for minimally adequate investigations into reports that members
6 of the General Class have been abused or neglected.

7 **5. Parent-Caseworker Contacts.** DCS shall establish and implement
8 practices providing for minimally adequate caseworker visits with the biological
9 parents of members of the Reunification Subclass and for the involvement of such
10 parents in the case planning of members of the Reunification Subclass.

11 **6. Monitoring/Enforcement.** The provisions of the Court order entered
12 pursuant to Fed. R. Civ. P. 65(d) shall be monitored by a neutral expert monitor
13 appointed by the Court. In addition, the Court shall have continuing jurisdiction to
14 oversee compliance with that order;

15 F. Award to the Named Plaintiffs the reasonable costs and expenses incurred in
16 the prosecution of this action, including reasonable attorneys' fees, pursuant to 28 U.S.C.
17 § 1920 and 42 U.S.C. § 1988, and Fed. R. of Civ. P. 23(e) and (h); and

18 G. Grant such other and further equitable relief as the Court deems just,
19 necessary and proper to protect Named Plaintiffs, the General Class, the Medicaid
20 Subclass, the Non-Kinship Subclass and the Reunification Subclass from further harm and
21 unreasonable risk of harm by DCS and DHS.

22
23 Respectfully submitted this 3rd day of February, 2015.

24 **COPPERSMITH BROCKELMAN PLC**

25 By s/ Roopali H. Desai

26 Keith Beauchamp
27 Roopali H. Desai
28 Shelley Tolman

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