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Counsel for Plaintiff Tonisha Smith

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

TONISHA SMITH,
Plaintiff,
vs.

Case No.: RG20079483

ALAMEDA COUNTY; ALAMEDA COUNTY
SOCIAL SERVICES AGENCY; LORI A. COX,
DIRECTOR, ALAMEDA COUNTY SOCIAL
SERVICES AGENCY; ANGELITA ALCORCHA,
SOCIAL WORKER, ALAMEDA COUNTY
SOCIAL SERVICES AGENCY; and DOES 1-30,
inclusive.
Defendants.

**VERIFIED FIRST AMENDED
COMPLAINT**

(Cal. Gov. Code §§ 815.2 and 815.6)

DEMAND FOR JURY TRIAL

INTRODUCTION

1
2 1. Plaintiff Tonisha Smith, a former Alameda County foster youth, asks this Court to award
3 damages for the harm caused when Defendants—Alameda County, Alameda County Social Services,
4 and its officials and employees—failed to meet their mandatory duties centered around providing her
5 with a safe foster care placement and providing aid to meet her basic needs at all times while she was in
6 their care. As a result of the Defendants’ failures, Ms. Smith, who was eight months pregnant, spent
7 eighteen days homeless and suffered significant emotional and physical distress.

8 2. Defendants are responsible for the administration and provision of child welfare services
9 to foster youth in Alameda County. Cal. Welf. & Inst. Code § 14000(k), (v). As part of their
10 responsibility for the welfare of youth who have been placed under their care, custody, and control,
11 Defendants are required by California law to meet multiple mandatory duties aimed at ensuring that
12 foster youth always have a safe place to live and have their basic needs met. Each of these duties
13 applies to young adults in extended foster care, known as nonminor dependents, just as they do to
14 minors in foster care. Cal. Welf. & Inst. Code § 303(e) (“Unless otherwise specified, the rights of a
15 dependent child and the responsibilities of the county welfare or probation department, or tribe, and
16 other entities, toward the child and family, shall also apply to nonminor dependents.”); *see also*
17 Cal. Welf. & Inst. Code § 16001.9(a); Cal. Dep’t. of Soc. Servs., All County Letter No. 11-77, 12 (Nov.
18 18, 2011) (hereinafter “ACL 11-77”); Cal. Dep’t. of Soc. Servs., All County Letter No. 19-105, 2, 4
19 (Oct. 29, 2019) (hereinafter “ACL 19-105”).

20 3. Defendants have a duty to provide nonminor dependents with a placement at all times.
21 Cal. Welf. & Inst. Code §§ 361.2(e), 366.32(b), 16501.1(d)(1); ACL 19-105, 2, 4; 45 CFR §
22 1356.21(g)(3). In order to select a placement, Defendants must use the criteria and procedures set forth
23 by statute, and must document the selection and the reasons for the selection in the case plan. Cal. Welf.
24 & Inst. Code §§ 16501.1(d)(1)-(d)(3), 361.2(h); ACL 19-105, 2; ACL 11-77, 3. The duty to provide a
25 placement includes provision of emergency and temporary placement options. CAL. DEP’T OF SOC.
26 SERVS., CHILD WELFARE SERVICES MANUAL OF POLICIES AND PROCEDURES (2019) §§ 31-410, 31-415
27 (hereinafter, “MPP § 31-410” and “MPP § 31-415”); ACL 19-105, 2; ACL 11-77, 12. Defendants also
28 have a duty to pay for the expenses of supporting and maintaining foster youth who are in their care,

1 custody, and control, including covering the costs of food, clothing, shelter, and other basic needs. Cal.
2 Welf. & Inst. Code §§ 900(a), 11401, 11402; 42 U.S.C. §§ 671(a)(3), 672(a), 675(4). Defendants must
3 regularly evaluate their placement resources and programs, to examine the adequacy of those existing
4 resources, and to identify the type of additional placement resources and programs needed. Cal. Welf. &
5 Inst. Code § 16001(a) (1993) (amended 2020). Defendants are required to provide these services and
6 aid to foster youth “promptly and humanely”. Cal. Welf. & Inst. Code § 10000.

7 4. Defendants failed to meet their duty to provide Ms. Smith with a safe placement at all
8 times while she was in their care. Upon information and belief, Defendants failed to provide any
9 placement for Ms. Smith for a period of eighteen days, let alone a safe, comfortable, and healthy
10 placement selected using the required statutory criteria; as a result, Ms. Smith became homeless. Upon
11 information and belief, Defendants had no emergency or temporary housing options available to Ms.
12 Smith.

13 5. Defendants also failed to meet their duty to pay the costs of Ms. Smith’s support and
14 maintenance during the time she was homeless. Upon information and belief, Ms. Smith was not
15 provided with any support during this eighteen-day period.

16 6. Defendants failed to meet their duty to “promptly and humanely” provide aid and
17 services when they took eighteen days to provide Ms. Smith with a placement and to resume paying for
18 her support and maintenance, causing Ms. Smith to become homeless during that time.

19 7. On information and belief, Defendants attributed their failures to the fact that no
20 placement was available at the time Ms. Smith lost her prior housing placement. The lack of available
21 placement resources only serves to highlight Defendants’ failure to meet their additional duty to evaluate
22 the availability of foster care placement resources and ensure that all nonminor dependents have
23 immediate access to housing.

24 8. On information and belief, Defendants failed to assess the adequacy of the County’s
25 foster care placement resources for nonminor dependents, and this led to a routine lack of available
26 placements. Nonminor dependents in Alameda County often spend days, weeks, or months on waitlists
27 to obtain housing and other basic resources, and Defendants were aware of this problem prior to Ms.
28 Smith’s struggle to obtain a foster care placement and housing.

1 THE UNIVERSITY OF CHICAGO 1 (2010), [https://www.chapinhall.org/wp-](https://www.chapinhall.org/wp-content/uploads/Midwest_IB2_Homelessness.pdf)
2 [content/uploads/Midwest_IB2_Homelessness.pdf](https://www.chapinhall.org/wp-content/uploads/Midwest_IB2_Homelessness.pdf). In California, almost one third of youth who leave
3 foster care become homeless. CAL. BLUE RIBBON COMM’N ON CHILDREN IN FOSTER CARE, FOSTERING A
4 NEW FUTURE FOR CALIFORNIA’S CHILDREN: FINAL REPORT AND ACTION PLAN 32
5 (2009), <https://www.courts.ca.gov/documents/brc-finalreport.pdf> (hereinafter “Fostering a New
6 Future”).

7 22. Homelessness has serious adverse consequences for young people. A federal study found
8 that almost two-thirds of homeless transition-aged youth were beaten up, robbed, sexually assaulted or
9 raped, threatened with a weapon, or assaulted with a weapon while they were homeless. ADMIN. FOR
10 CHILDREN AND FAMILIES, FAMILY AND YOUTH SERVS. BUREAU, STREET OUTREACH PROGRAM, DATA
11 COLLECTION STUDY FINAL REPORT 33 (2016),
12 [https://www.acf.hhs.gov/sites/default/files/fysb/data_collection_study_final_report_street_outreach_pro-](https://www.acf.hhs.gov/sites/default/files/fysb/data_collection_study_final_report_street_outreach_program.pdf)
13 [gram.pdf](https://www.acf.hhs.gov/sites/default/files/fysb/data_collection_study_final_report_street_outreach_program.pdf); *see also* Applied Survey Research, *San Francisco 2017 Homeless Unique Youth Count &*
14 *Survey Comprehensive Report 23* (2017), [https://hsh.sfgov.org/wp-content/uploads/2017/06/2017-](https://hsh.sfgov.org/wp-content/uploads/2017/06/2017-Youth-PIT-Final-Report-6.21.17.pdf)
15 [Youth-PIT-Final-Report-6.21.17.pdf](https://hsh.sfgov.org/wp-content/uploads/2017/06/2017-Youth-PIT-Final-Report-6.21.17.pdf) (in 2017, half of homeless youth in San Francisco reported that
16 their safety had been threatened one or more times in the prior thirty days, and more than a third
17 reported having been assaulted or physically attacked in the last year). In addition to the increased risks
18 of violence, suicide, and abuse associated with the experience of homelessness, youth who spend time
19 without a stable place to live suffer a multitude of other harms. These include increased rates of serious
20 depression and anxiety, reduced access to healthcare and prenatal care, a reduction in employment,
21 lower rates of school attendance and educational attainment, lower self-esteem, frustration and a sense
22 of injustice, sleeplessness and insomnia, lack of control, food insecurity, and other attendant issues that
23 can lead to poor long-term outcomes. *See* M.A. Kull et al., *Missed Opportunities: Education Among*
24 *Youth and Young Adults Experiencing Homelessness in America*, CHAPIN HALL AT THE UNIVERSITY OF
25 CHICAGO (2019), [https://www.chapinhall.org/wp-content/uploads/ChapinHall_VoYC_Education-](https://www.chapinhall.org/wp-content/uploads/ChapinHall_VoYC_Education-Brief.pdf)
26 [Brief.pdf](https://www.chapinhall.org/wp-content/uploads/ChapinHall_VoYC_Education-Brief.pdf); U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, HOMELESSNESS IN AMERICA: FOCUSING ON
27 YOUTH (2019),
28 https://www.usich.gov/resources/uploads/asset_library/Homelessness_in_America_Youth.pdf; Gina E.

1 Miranda Samuels et al., *Voices of Youth Count (VoYC) In-Depth Interviews: Technical Report*, CHAPIN
2 HALL AT THE UNIVERSITY OF CHICAGO (2019), [https://www.chapinhall.org/wp-content/uploads/Voices-](https://www.chapinhall.org/wp-content/uploads/Voices-of-Youth-Count-Component-Report-FINAL-May-28.pdf)
3 [of-Youth-Count-Component-Report-FINAL-May-28.pdf](https://www.chapinhall.org/wp-content/uploads/Voices-of-Youth-Count-Component-Report-FINAL-May-28.pdf).

4 23. Historically, states have provided little or no support to those who have “aged out” of
5 foster care upon reaching adulthood, while the majority of their peers who are not in foster care continue
6 to receive assistance from their parents or extended family members as they move into adulthood. Mark
7 E. Courtney, et al., *When Should the State Cease Parenting? Evidence from the Midwest Study*, CHAPIN
8 HALL AT THE UNIVERSITY OF CHICAGO 1 (2007), [https://www.chapinhall.org/research/when-should-the-](https://www.chapinhall.org/research/when-should-the-state-cease-parenting/)
9 [state-cease-parenting/](https://www.chapinhall.org/research/when-should-the-state-cease-parenting/). However, research has shown strong evidence that extending foster care beyond
10 the age of 18 “significantly improves educational, employment, and housing outcomes for these [young
11 adults].” STAFF OF CAL. S. JUDICIARY COMM., 2009-10 REG. SESS., Analysis of A.B. 12, *California*
12 *Fostering Connections to Success Act*, at 6 (June 22, 2010).

13 24. Recognizing the lack of support that existed for transition-aged foster youth and the
14 benefit of such support for these youth, in 2008, Congress raised the maximum age for foster youth from
15 age 18 to age 21, and provided reimbursement for states who chose to do the same. Mark E. Courtney,
16 et al., *Findings from the California Youth Transitions to Adulthood Study (CalYOUTH): Conditions of*
17 *Youth at Age 19: Los Angeles County Report*, CHAPIN HALL AT THE UNIVERSITY OF CHICAGO 10 (2016),
18 https://www.chapinhall.org/wp-content/uploads/CY_YT_RE0517_1.pdf.

19 25. California elected to exercise the federal option in 2010 and enacted Assembly Bill 12
20 (“AB 12”) to extend foster care services for eligible youth up to age 21. The state recognized that
21 homelessness of youth aging out of the foster care system was “an enormous problem for this state,” and
22 required “aggressive action to provide needed support for transitioning youth.” *Fostering a New Future*
23 at 32. In passing AB 12, California legislators intended to address the “sobering” outcomes for
24 “[y]oung Californians who enter adulthood from foster care [and who] have fewer supports . . . than do
25 young adults who have not been in foster care.” STAFF OF CAL. S. HUMAN SERVS. COMM., 2009-10 REG.
26 SESS., Analysis of A.B. 12, *California Fostering Connections to Success Act*, at 6 (June 10, 2010)
27 (hereinafter “Analysis of A.B. 12, 6/10/2010”). In contrast to their peers who “are receiving ever more
28 increasing support from parents and extended families,” youth exiting foster care are “on their

1 own.” *Id.* The legislature intended for the “options of support provided by AB 12” “to those
2 young adults . . . who were our collective responsibility” to be “similar to the options that many parents
3 provide their 18, 19, and 20 year old children.” *Id.* at 7.

4 26. Unless otherwise specified in law, California extended to nonminor dependents all the
5 same rights as dependent minors, and county welfare departments have the same responsibilities with
6 respect to nonminor dependents that they have to dependent minors. Cal. Welf. & Inst. Code § 303(e).
7 Among these obligations, counties must ensure that support, in the form of aid, is provided to meet
8 nonminors’ basic needs. Cal. Welf. & Inst. Code §§ 900(a), 11401, 11402; 42 U.S.C. §§ 671(a)(3),
9 672(a), 675(4).

10 27. AB 12 created an array of placement options and support services for transition-aged
11 foster youth who turn 18 under the placement and care responsibility of a county placing agency. This
12 expanded selection of housing options was intended to better support nonminor dependents’
13 individualized needs and promote a gradual transition to independence.

14 28. However, despite this legislative effort to provide nonminor dependents with a wide
15 range of placement options, homelessness continues to be a problem for these transition-aged youth who
16 remain in foster care. In a 2018 survey of former nonminor dependents in California, “nearly 20 percent
17 reported that they were homeless at some point in extended care.” Mark E. Courtney, et al., *Findings*
18 *from the California Youth Transitions to Adulthood Study (CalYOUTH): Conditions of Youth at Age 21*,
19 CHAPIN HALL AT THE UNIVERSITY OF CHICAGO 20 (2018), [https://www.chapinhall.org/wp-](https://www.chapinhall.org/wp-content/uploads/CY_YT_RE0518_1.pdf)
20 [content/uploads/CY_YT_RE0518_1.pdf](https://www.chapinhall.org/wp-content/uploads/CY_YT_RE0518_1.pdf).

21 29. In a 2017 Request for Proposals, Social Services confirmed that homelessness while
22 waiting for placement is a serious problem for NMDs in its care: “While waiting, NMDs typically have
23 few to no options and are faced with temporarily residing with multiple individuals in poor housing
24 conditions until an appropriate placement option is found by the County.” Alameda Cty. Soc. Servs.
25 Agency, Request for Proposal No. 2017-SSA-CFS-ETB for Non-Minor Dependents Emergency
26 Transitional Beds, 5 (2017), [https://gsa.acgov.org/do-business-with-us/contracting-opportunities/closed-](https://gsa.acgov.org/do-business-with-us/contracting-opportunities/closed-bids/current-bid/?bidid=1876)
27 [bids/current-bid/?bidid=1876](https://gsa.acgov.org/do-business-with-us/contracting-opportunities/closed-bids/current-bid/?bidid=1876) (hereinafter “Request for Proposal”). The Request for Proposal noted that
28 in Alameda County, the option offered by the county “to avoid having to sleep in the elements or ‘couch

1 surf from place to place while placement efforts are underway” is its County Assessment
2 Center. *Id.* However, youth may not enter the Assessment Center after 8 PM. Letter from Lori A. Cox,
3 Director, Alameda Cty. Soc. Servs. to Plaintiff’s Counsel (Nov. 28, 2018) (hereinafter “Letter from Lori
4 A. Cox to Plaintiff’s Counsel”). In addition, when youth struggle to adhere to the Assessment Center’s
5 strict policies and procedures, “they are asked to leave the facility while we continue to search for an
6 appropriate placement option . . . and the cycle of ‘couch surfing’ begins again.” Request for Proposal,
7 *supra*, at 5.

8 30. In addition to the restrictions limiting access to the Assessment Center, youth may also
9 only stay at the facility for up to 72 hours. Letter from Lori A. Cox, Director, Alameda Cty. Soc. Servs.
10 to Alameda Cty. Bd. of Supervisors 2 (Jan. 15, 2020),
11 http://www.acgov.org/board/bos_calendar/documents/DocsAgendaReg_02_04_20/PUBLIC%20ASSIS
12 [TANCE/Regular%20Calendar/SSA_290595.pdf](http://www.acgov.org/board/bos_calendar/documents/DocsAgendaReg_02_04_20/PUBLIC%20ASSIS). Alameda County received a license from the State of
13 California to operate the Assessment Center as a Transitional Shelter Care Facility that serves children
14 ages 0-17. CAL. DEP’T OF SOC. SERVS. LICENSE TO ALAMEDA COUNTY ASSESSMENT CENTER, FACILITY
15 NUMBER: 015650115 (effective Jan. 30, 2019). Based on the terms of an agreement between Alameda
16 County and the California Department of Social Services, children may only remain at the Assessment
17 Center for a maximum duration of 72 hours. Essential Terms of Agreement Between the Cal. Dep’t of
18 Soc. Servs. and the Cty. of Alameda (signed Dec. 2018).

19 31. In its 2017 Request for Proposal, Social Services indicated that delays related to
20 transitional housing placements often leave NMDs waiting without a placement or appropriate housing.
21 The stated reason for these delays was that: “Admission into [a transitional housing program] is a
22 process that may take days, weeks, even months depending on housing availability at the time of the
23 NMD’s application. Contributing to this delay, most programs have a list of other NMDs also awaiting
24 placement in THP+FC Housing Programs.” Request for Proposal, *supra*, at 5.

25 32. After Social Services received no responses to the Request for Proposal, Social Services
26 intended to issue a 2019 RFP to again attempt to meet the needs of nonminor dependent foster youth.
27 Letter from Lori A. Cox to Plaintiff’s Counsel. However, upon information and belief, Social Services
28

1 has not issued a new request aimed at addressing the problems identified in 2017 Request for Proposal.
2 The pattern of NMD homelessness continues unaddressed.

3 33. Upon information and belief, the long wait times to enter transitional housing placements
4 continued to be a problem through 2019. According to a report from the John Burton Foundation, the
5 number of nonminor dependents on waitlists for transitional housing placements (THP) on June 30,
6 2019 increased 64 percent from the same date in 2018. John Burton Advocates for Youth, *THP-NMD &*
7 *THP-Plus Annual Report 2018-19: Providing Affordable Housing and Supportive Services to Youth*
8 *Transitioning from California's Foster Care and Juvenile Probation Systems* 18 (2019),
9 [https://www.jbaforyouth.org/wp-content/uploads/2019/10/V8-THP-NMD-THP-PLUS-Annual-Report-](https://www.jbaforyouth.org/wp-content/uploads/2019/10/V8-THP-NMD-THP-PLUS-Annual-Report-2019.pdf)
10 [2019.pdf](https://www.jbaforyouth.org/wp-content/uploads/2019/10/V8-THP-NMD-THP-PLUS-Annual-Report-2019.pdf). Statewide, 341 NMDs were reported on transitional housing waitlists; and 52 NMDs were
11 reported on waitlists for transitional housing in Alameda County. *Id.*

12 **Ms. Smith's Loss of Placement and Homelessness**

13 34. Plaintiff Tonisha Smith was a nonminor dependent subject to a juvenile court order for
14 foster care placement until she turned 21 on December 17, 2019. Defendants were responsible for her
15 "placement and care" by virtue of the juvenile court's order and a signed mutual agreement.

16 35. Ms. Smith was told she could not return to her transitional housing placement apartment
17 on or about April 20, 2019. When Ms. Smith lost her placement, she immediately informed Defendants,
18 and she also informed Defendants that she had no other placement available. Despite this knowledge,
19 Defendants left Ms. Smith with no placement from approximately April 20, 2019 to May 8, 2019. Ms.
20 Smith was a nonminor dependent during this entire time period, and she was eight months pregnant.

21 36. This was not the first time Ms. Smith experienced homelessness as a nonminor foster
22 youth in Defendants' care. In addition to the period of homelessness between April 20 and May 8,
23 2019, Ms. Smith experienced at least one other episode of homelessness while in the care of the County
24 and Social Services. In September 2018, Ms. Smith was without a placement for several days after a
25 shooting took place at her transitional housing apartment involving her then roommate's boyfriend. The
26 incident placed her in fear for her life, seriously compromised her safety, left her traumatized, and
27 forced her out of her transitional housing apartment.
28

1 37. In September 2018, Ms. Smith was living in an apartment and participating in a program
2 operated by Holly Place. While residing in that apartment she repeatedly complained to her social
3 worker and program staff of safety concerns at her home. In particular, she noted serious concerns
4 regarding her roommate's boyfriend. The boyfriend was spending a lot of time at the apartment, and
5 often stayed there overnight. He regularly brought friends to the house who made Ms. Smith
6 uncomfortable, and he argued with Ms. Smith's neighbors, which led to tension for Ms. Smith when she
7 would come and go from the apartment.

8 38. Ms. Smith repeatedly asked for either a new transitional housing placement provider or a
9 new apartment through the same transitional housing placement provider. However, both Holly Place
10 and Defendants told Ms. Smith that she could not move to a new apartment because nothing else was
11 available. Neither Defendants nor Holly Place addressed Ms. Smith's concerns about the safety of her
12 apartment unit.

13 39. Late one Saturday evening in September 2018, Ms. Smith's safety concerns were
14 realized. Ms. Smith was in her bedroom when she heard gunshots outside her apartment. She looked
15 out the window and saw her roommate's boyfriend and his friend in the yard running and ducking
16 behind cars. She saw her roommate's boyfriend get shot and his friend drag him to the gate of her
17 apartment. Her roommate let them into the apartment. When Ms. Smith went downstairs, she saw her
18 roommate's boyfriend lying on the living room floor bleeding.

19 40. The police were called. Ms. Smith also called her aunt for help. Ms. Smith's aunt
20 arrived shortly thereafter with her husband to get Ms. Smith. Ms. Smith packed a bag and left the
21 apartment in the early hours of Sunday morning. Ms. Smith also notified her Holly Place case manager
22 and her social worker about the situation early Sunday morning.

23 41. Ms. Smith's Holly Place case manager informed her that the program director had been
24 notified of the incident. She also told Ms. Smith that she would not be able to start looking for a new
25 apartment until the office opened on Monday. Ms. Smith did not receive a new apartment until that
26 Wednesday, which left her without a placement and homeless for several days.

27 42. The September 2018 shooting incident was traumatic for Ms. Smith. During the incident
28 she feared for her life and safety. She had ongoing stress and nightmares about the event, and it made

1 her very nervous about having strangers in her home. After the shooting, Ms. Smith had serious
2 reservations about continuing to work with Holly Place, because she felt they had ignored her concerns
3 about safety. She ultimately agreed to move into a new apartment with Holly Place because she was
4 told no other transitional housing providers in Alameda County had openings.

5 43. In April of 2019, Ms. Smith was still participating and living in a transitional housing
6 program operated by Holly Place. The transitional housing program served as her placement and
7 provided Ms. Smith with a new apartment following the September 2018 shooting incident that resulted
8 in her loss of housing. Ms. Smith resided in the new apartment with a roommate who was also
9 participating in the program and her roommate's baby.

10 44. Ms. Smith was also preparing for the birth of her own child whose anticipated due date
11 was May 28, 2019. Ms. Smith was planning for her upcoming delivery and working to get her home
12 ready for the arrival of her baby. This included acquiring necessary baby furniture and other items,
13 cleaning and making a space for the baby, and following the prenatal recommendations of her doctor.
14 Ms. Smith had already purchased a crib, a new carpet, and a variety of other baby supplies that she set
15 up in her apartment.

16 45. While living in her new Holly Place apartment, Ms. Smith made several complaints about
17 the cleanliness and safety of the placement. Ms. Smith informed both her Holly Place case manager and
18 her Social Services social worker, Angelita Alcorcha, about ongoing filthy conditions including bags of
19 trash piling up outside the door, dirty diapers left around the house, old or half-eaten food left
20 everywhere, and bugs attracted by the garbage. Ms. Smith reported that she was unable to prepare food
21 at home because the kitchen was constantly left in an unusable condition with piles of dishes and food in
22 the sink, old food and dirty containers covering the counters and stove, soiled diapers left on the floor
23 and kitchen table, garbage overflowing the trash and spilling all over the floor, and a consistent lack of
24 clean cookware.

25 46. In addition to the filthy kitchen conditions, Ms. Smith also reported that garbage was left
26 throughout the entire apartment including piled on furniture and falling out of all the household trash
27 cans. Ms. Smith made several reports of trash piling up directly outside her apartment door on the
28 small, fenced in patio. The trash outside the door was piled waist-high and started to rise above the

1 fence. Many of the garbage bags on the patio were left or torn open, and dirty diapers were thrown on
2 or near the trash pile with no bag at all. The situation became so bad that it drew bugs and animals to
3 the patio. Ms. Smith explained this situation to her Holly Place case manager and Ms. Alcorcha, and
4 expressed concerns about bringing a newborn into the apartment in such unhealthy and unsanitary
5 conditions.

6 47. Ms. Smith also informed her Holly Place case manager and Ms. Alcorcha that her
7 roommate's boyfriend was living at the apartment, and that her roommate's sister and nephew were also
8 regularly staying at the apartment. Ms. Smith explained to her case manager that having several people
9 regularly at the apartment was causing additional mess and trash accumulation as well as an increase in
10 household bills which Ms. Smith was partly responsible for paying. Ms. Smith expressed particular
11 concern about her roommate's boyfriend living at the apartment because she felt unsafe after
12 experiencing the traumatic shooting incident involving her prior roommate's boyfriend. Given her
13 experience with the September 2018 shooting incident at her prior THP apartment, Ms. Smith did not
14 feel safe or comfortable living with her new roommate's boyfriend who was otherwise unknown to her.
15 The arrangement was causing Ms. Smith significant stress and anxiety as she tried to prepare for the
16 arrival of her baby. Ms. Smith explained her stress and deep concern with her Holly Place case manager
17 and with her Social Services social worker, Ms. Alcorcha.

18 48. Ms. Smith considered having her own boyfriend stay at the apartment in order to help her
19 as she prepared for the arrival of their baby, and because she felt safer not being alone in the apartment
20 with several strangers. However, her Holly Place case manager told her that she could not have her
21 boyfriend stay with her because it was against Holly Place rules. When Ms. Smith asked why her
22 roommate's boyfriend could live in the apartment, she was told Holly Place was allowing it because her
23 roommate had a new baby. The fact that Holly Place was willing to make an exception that made Ms.
24 Smith uncomfortable, but not willing to make a similar exception to make her feel safer when no one
25 objected, was a significant source of frustration for Ms. Smith.

26 49. On or about April 20, 2019, Ms. Smith again attempted to discuss the increasingly
27 unlivable conditions at the apartment with a Holly Place employee. The conversation between Ms.
28 Smith and the employee became heated when the employee accused Ms. Smith of complaining too

1 much, and it ultimately escalated to the point where both Ms. Smith and the employee were screaming.
2 After several minutes of loud argument, Ms. Smith collected a few belongings and stormed out of the
3 apartment.

4 50. After leaving her apartment, Ms. Smith went to her aunt's home to spend the rest of the
5 day and to calm down. While at her aunt's home, Ms. Smith received a phone call from an employee of
6 Holly Place advising her that she could not return to her apartment at Holly Place, and requesting she
7 return her keys to her apartment. When Ms. Smith asked why, the employee informed her that Holly
8 Place deemed her to have voluntarily exited the program when she walked out earlier in the day. Ms.
9 Smith repeatedly told the employee that she only left her apartment for the afternoon to collect herself at
10 her aunt's house. The Holly Place employee maintained that this constituted a voluntary exit from the
11 program, and she told Ms. Smith that she would not be allowed to return to her apartment.

12 51. Ms. Smith immediately contacted her Social Services social worker, Ms. Alcorcha, to
13 address the problem. Ms. Smith reached Ms. Alcorcha and explained the situation. Upon information
14 and belief, Ms. Alcorcha called Holly Place to try and preserve the placement, but she was not
15 successful. Holly Place refused to allow Ms. Smith to return.

16 52. Ms. Alcorcha advised Ms. Smith to make her way to the Assessment Center to search for
17 another placement. Ms. Smith followed these instructions and went to the Assessment Center. She
18 remained there for two days, during which Defendants offered no suitable placement options.

19 53. Upon information and belief, while Ms. Smith was at the Assessment Center, Social
20 Services social workers attempted to find Ms. Smith a new placement, but they told Ms. Smith that none
21 were available for her in Alameda County. Ms. Smith did not wish to leave the county, but at eight
22 months pregnant she was also concerned about finding a new placement quickly. In hopes of finding a
23 suitable placement option as soon as possible, Ms. Smith told Social Services social workers she would
24 be willing to travel to a neighboring county and live there, at least temporarily, in order to get a
25 placement. The only placement discussed with Ms. Smith during her two days at the Assessment
26 Center was in Southern California. Ms. Smith understood this placement to be near Los Angeles, but
27 she was never told the specific location, and the placement was never formally offered to her.
28

1 54. Ms. Smith did not have any family or other support resources in Southern California.
2 She repeatedly explained this to the Social Services social workers at the Assessment Center who were
3 searching for her new placement. She also explained that she did not want to travel far away from her
4 family and her support network, particularly when she was expecting her first baby within a matter of
5 weeks. All of Ms. Smith's possessions, including items she acquired in preparation for arrival of her
6 baby, were in Alameda County. Ms. Smith had an obstetrician and was receiving prenatal care in
7 Alameda County, and she did not know if she could find a new obstetrician who would accept her as a
8 patient in Southern California at her late stage of pregnancy. She had a birth plan that included
9 delivering her baby at an area hospital, and she was relying on her family, particularly her aunt, for
10 critical support in the days immediately following delivery.

11 55. Ms. Smith was extremely concerned about having her baby far away from her support
12 system and being alone with a new baby in an unfamiliar city. Ms. Smith had no doctor or
13 hospital identified in Southern California to provide care through the final weeks of her pregnancy or
14 during the birth of her child; nor did she have any supports identified to help her in the days following
15 the birth. Ms. Smith deemed this an unsafe option for both herself and her baby, and she repeatedly
16 expressed this safety concern to the Social Services social workers, including Ms. Alcorcha.

17 56. Despite Ms. Smith expressing her concerns and strong need to remain near her healthcare
18 providers and supportive connections, Social Services social workers continued to suggest that she move
19 to an unknown location in Southern California and pressed her to allow them to book travel plans and
20 make other arrangements. Social Services social workers told Ms. Smith that the Southern California
21 placement was the only one they could locate that was immediately available, but never indicated that
22 they considered whether the placement could meet her individual or developmental needs. Ms. Smith
23 felt pressured to accept the placement in Southern California, and that pressure was compounded when a
24 Social Services social worker told Ms. Smith that she should consider moving to Southern California
25 because she was only allowed to remain at the Assessment Center for 72 hours. Despite placing
26 pressure on Ms. Smith to move across California, no person from Social Services ever informed Ms.
27 Smith how she would travel to the transitional housing program in Southern California, consulted or
28 asked her to consult her doctor on whether flying was advised in the 35th week of her pregnancy,

1 indicated which hospital or doctor she might use for prenatal care and delivery, explained who would
2 move her belongings and the items she had for her baby, indicated any plan to help her family or her
3 baby's father travel and be present for the birth, or provided any details with regard to the placement in
4 Southern California. Ms. Smith is not aware of the name of the placement that Social Services social
5 workers wanted her to consider or even the city in which it is located. The Social Services social
6 workers never provided Ms. Smith with formal written or oral notice of the possible out-of-county
7 placement or of the reasons that required placement out of county, and was not given any opportunity to
8 object or to request a court hearing.

9 57. Social workers never discussed Ms. Smith's concerns about moving to Southern
10 California with her, and they never described any details regarding a placement there. Ms. Smith is not
11 aware of any efforts to actually place her in Southern California beyond the mere mention that a
12 placement might be available in the region. Since no specific information was provided regarding such a
13 placement, Ms. Smith does not know if the placement was actually available or if it was a transitional
14 housing program that had openings and may have been available following an application process.

15 58. Ms. Smith remained at the Assessment Center for two days with no placement offer in
16 Alameda County or in any neighboring county. During her time at the Assessment Center Ms. Smith
17 experienced significant stress. She was not able to sleep well at the Assessment Center because of the
18 constant commotion, the younger children coming and going in distress, and her own increasing
19 distress. While she was there, she talked with one of the counselors at the Assessment Center who tried
20 to help her cope with her increasing fear and anxiety about not having a place to go. Ms. Smith cried
21 throughout her time at the Assessment Center and several times she cried so hard that she began
22 experiencing contractions. On multiple occasions she became so upset and had so much physical
23 discomfort that staff at the Assessment Center asked whether she wanted to go to the hospital or to have
24 them call an ambulance. At one point a staff member took Ms. Smith outside for a walk to try and help
25 her calm down and catch her breath. Ms. Smith was scared and overwhelmed by suddenly having no
26 place to go and no idea where she would live when her baby was born. Ms. Smith suddenly had no
27 place to set up the things she acquired for her baby, and she experienced growing anxiety about when
28 and whether she would have a place to live with her baby.

1 59. While Ms. Smith was at the Assessment Center, Holly Place informed her that it would
2 not release the funds they were holding for her until she returned her keys. This presented a challenge
3 because Ms. Smith needed to collect her things from the apartment in order to return the keys and
4 without a new placement she did not have a place for her belongings. Ultimately, in order to get her
5 check, Ms. Smith sent her aunt and brother over to collect what they could from her apartment and
6 return the keys. Ms. Smith's family was able to pick up many of her things and store them in her aunt's
7 garage. While Ms. Smith was grateful to have a place to keep her belongings while she waited for a new
8 placement, she was distressed by the fact that her baby's new crib and other items were all sitting in a
9 garage instead of in a home where she would be able to live with her baby. Ms. Smith was also upset
10 because her family was not able to move her bed out of the apartment in time and she ultimately lost her
11 bed.

12 60. At the end of two days, worried about her own emotional and physical discomfort, Ms.
13 Smith left the Assessment Center. Because of the Assessment Center's 72-hour policy, Ms. Smith
14 believed she would be kicked out of the Assessment Center the following day. Ms. Smith determined
15 that remaining at the Assessment Center was not in her best interest since her anxiety and frustration
16 continued to mount due to the stress of not having secure housing. However, she remained in consistent,
17 daily contact with Social Services social workers, including Ms. Alcorcha, to continue her placement
18 search.

19 61. From April 20, 2019 to May 8, 2019, Ms. Smith was forced to find places to stay on a
20 night-by-night basis due to Defendants' failure to provide Ms. Smith with a safe, appropriate, and
21 available placement. This left Ms. Smith, eight months pregnant at the time, homeless.

22 62. Social workers did not offer Ms. Smith any specific or available placement from April
23 20, 2019 to May 8, 2019. Eventually social workers informed Ms. Smith that a transitional housing
24 placement would soon be available. She was able to move into a new transitional housing placement
25 apartment on May 8, 2019, just ten days before she had her baby on May 17, 2019.

26 63. As a result of her homelessness and lack of placement, Ms. Smith was deprived of her
27 right to live in a safe, healthy, and comfortable home, and her entitlement to have an actual, suitable
28 placement at all times while in foster care. Ms. Smith suffered physical discomfort and significant stress

1 during this time. Ms. Smith had difficulty sleeping and ultimately lost a lot of sleep, she found herself
2 crying inconsolably, she was anxious and fearful about the future, and she was in constant worry that
3 she would have a baby without any place to go. She was also mentally and emotionally injured as a
4 result of being left homeless and without a placement or basic provisions, which caused mental anguish,
5 emotional distress, feelings of abandonment and unjust treatment, reputational harm, fear, anxiety,
6 humiliation, and trauma.

7 LEGAL FRAMEWORK

8 64. Defendants have a mandatory obligation to provide foster youth entrusted to its care with
9 actual and available suitable placements at all times; to pay for the support and maintenance of youth in
10 its care; to provide aid and services promptly and humanely; and to evaluate its placement array. Yet
11 Defendants failed to fulfill these duties, which resulted in Ms. Smith enduring approximately eighteen
12 days of homelessness while eight months pregnant. As a result, Ms. Smith suffered substantial harm,
13 trauma, and emotional distress.

14 Nonminor dependents have the same rights and are owed the same obligations by the child 15 welfare agency as minor dependents.

16 65. Unless otherwise stated in law, “the rights of a dependent child and the responsibilities of
17 the county welfare or probation department, or tribe, and other entities, toward the child and family,
18 shall also apply to nonminor dependents.” Cal. Welf & Inst. Code § 303(e); Analysis of AB. 12,
19 6/10/2010, *supra*, at 5 (“Unless otherwise specified, [AB 12] declares that the rights of a dependent
20 child and responsibilities of specified departments and other entities toward them also apply
21 to nonminor dependents.”); *see also* 42 U.S.C. § 675(8)(B) (federal law permitting the definition of
22 “child” to include nonminors up to age 21 in states that extended foster care to nonminors); Cal. Welf. &
23 Inst. Code § 16001.9(a)(1) (“These rights also apply to nonminor dependents in foster care, except when
24 they conflict with nonminor dependents’ retention of all their legal decisionmaking authority as an
25 adult.”); ACL 19-105, 2 (Oct. 29, 2019) (“A placing agency has an obligation to offer the least-
26 restrictive safe and appropriate available placement for an NMD, the same as is required for a minor in
27 foster care.”). State law defines a “nonminor dependent” in part as a “foster child,” Cal. Welf. & Inst.
28 Code § 11400(v), and AB 12 made “clear that the rights of current foster children will remain with those

1 young adults who choose to stay in foster care through the provisions of the Fostering Connections Act,”
2 Analysis of A.B. 12, 6/10/2010, *supra*, at 8.

3 **Defendants have a mandatory duty to provide nonminor dependents with a safe placement at all**
4 **times.**

5 66. Ms. Smith was a nonminor dependent foster youth under the care of Social Services. As
6 a result of both a court order and a signed mutual agreement, Social Services was the placing agency
7 responsible for Ms. Smith’s placement and care.

8 67. Nonminor dependents like Ms. Smith are, by definition, “in foster care under the
9 placement and care responsibility of the county welfare department.” Cal. Welf. & Inst. Code
10 § 11400(v)(2); *see also* Cal. Welf. & Inst. Code § 11400(k) (defining “placement and care” as “the
11 responsibility for the welfare of a child vested in an agency”); Cal. Welf. & Inst. Code § 11403(b)
12 (providing that a nonminor dependent “meet[s] the legal authority for placement and care by being
13 under a foster care placement order by the juvenile court, or the voluntary reentry agreement”); Cal.
14 Dept. of Social Services, “Mutual Agreement for Extended Foster Care,” Form SOC 162
15 (7/18), <http://www.cdss.ca.gov/Portals/9/FMUForms/O-T/SOC162.pdf> (last accessed Apr. 22, 2021)
16 (“agree[ing] to foster care *placement* and supervision *by* the ... County Agency”) (emphasis added); Cal.
17 Dept. of Social Services, “Voluntary Re-Entry Agreement for Extended Foster Care,” Form SOC 163
18 (7/18), <http://www.cdss.ca.gov/Portals/9/FMUForms/O-T/SOC163.pdf> (last accessed Apr. 22, 2021)
19 (“agree[ing] *to be placed* in a supervised foster care setting” (emphasis added).

20 68. Therefore, the county has a duty to provide nonminor dependents to a placement at all
21 times, just as it has a duty to provide placement at all times to minor children in its care. Cal. Welf. &
22 Inst. Code § 361.2(e) (“... the court shall order the care, custody, control, and conduct of the child to be
23 under the supervision of the social worker who may place the child in” any of the enumerated
24 placements); Cal. Welf. & Inst. Code § 366:32(b) (At the conclusion of a permanency hearing “[i]f the
25 court continues dependency jurisdiction of the nonminor as a nonminor dependent of the juvenile court,
26 the court shall order the development of a planned permanent living arrangement under a mutual
27 agreement, as described in subdivision (u) of Section 11400, which may include continued placement
28 with the current caregiver or another licensed or approved caregiver or in a supervised independent

1 living placement, as defined in subdivision (w) of Section 11400, consistent with the youth's
2 Transitional Independent Living Case Plan.”); ACL 19-105, 2 (“A placing agency has an obligation to
3 offer the least-restrictive safe and appropriate available placement for an NMD, the same as is required
4 for a minor in foster care.”); “The placing agency remains responsible for ensuring that NMDs have
5 access to a safe and suitable placement at all times.”).

6 69. Like all foster youth, nonminor dependents are entitled to an appropriate placement in the
7 least restrictive setting that meets their needs. ACL 19-105, 2 (“A placing agency has an obligation to
8 offer the least-restrictive safe and appropriate available placement for an NMD, the same as is required
9 for a minor in foster care.”); ACL 11-77, 3 (“it is expected that NMDs *will be provided placements* that
10 are the least restrictive and encourage as much independence as possible, based on the NMDs’
11 developmental needs and readiness for independence”) (emphasis added). California recognizes that for
12 nonminor dependents, “[t]he benefits of staying in foster care include having safe and stable
13 housing.” Form SOC 162 (7/18), *supra*; *see also* Form SOC 163 (7/18), *supra* (same).

14 70. State law provides that foster youth, including nonminor dependents, have a basic right to
15 “live in a safe, healthy, and comfortable home.” Cal. Welf. & Inst. Code § 16001.9(a)(1); *see*
16 *also* Cal. Welf. & Inst. Code § 16001.9(a)(17) (providing that foster youth have a right to “have fair and
17 equal access to all available services, placement, care, treatment, and benefits”).

18 71. Placing agencies must also provide for the temporary and emergency placement needs of
19 nonminor dependents. ACL 19-105, 2 (“Despite challenges that may arise when working with an NMD
20 to meet their individual needs, the placing agency must offer the NMD a safe and suitable placement
21 that is immediately available to the NMD.”). Even during the initial implementation of extended foster
22 care, CDSS recognized that nonminor dependents may sometimes require emergency placement or
23 shelter, and it provided instructions to the counties for accommodating such needs. ACL 11-77, 12
24 (stating that MPP §§ 31-410, 415 apply to NMDs until separate regulations for extended foster care are
25 developed); *see also* Cal. Welf. & Inst. Code § 16514(a) (addressing placement of nonminors in an
26 emergency shelter); ACL 19-105, 3 (if a youth requesting extended foster care “does not have safe,
27 appropriate housing and presents with a need for placement, the placing agency is responsible for
28 immediately offering a placement to the NMD prior to a re-entry hearing . . . If . . . the youth loses or

1 leaves placement, the county placement agency remains responsible for offering a safe and appropriate
2 placement for the NMD while the youth remains under juvenile court jurisdiction or is party to a reentry
3 agreement.”).

4 72. Social workers and county placing agencies have a duty to select a placement for a
5 nonminor dependent using statutorily enumerated criteria. The decision must be based on, among other
6 things, “the least restrictive family setting” and “the most appropriate setting that meets the child’s
7 individual needs and is available.” Cal. Welf. & Inst. Code § 16501.1(d)(1); 42 U.S.C. §§ 671(a)(16),
8 675(5)(A). For nonminor dependents, “the selection of the placement, including a supervised
9 independent living placement . . . shall also be based upon the developmental needs of young adults by
10 providing opportunities to have incremental responsibilities that prepare a nonminor dependent to
11 transition to successful adulthood.” Cal. Welf. & Inst. Code § 16501.1(d)(3). Having selected a
12 placement, the placing agency and social worker must document the selection and the reasons for the
13 selection in the case plan. Cal. Welf. & Inst. §§ 16501.1(d)(1), 361.2(h); 42 U.S.C. §§ 671(a)(3),
14 671(a)(16). The case plan must “at a minimum[] specif[y] the type of home in which the child shall be
15 placed, the safety of that home, and the appropriateness of that home to meet the child’s needs.” Cal.
16 Welf. & Inst. Code §§ 11400(b); *see* Cal. Welf. & Inst. Code §16501.1(d)(1); 42 U.S.C § 671(a)(3). If a
17 social worker “is unable to find a suitable placement within the county and must place the child outside
18 the county,” the social worker must serve written notice of the possible placement on interested
19 individuals, including the child who is ten years of age or older, and if an objection is made, the court
20 must hold a hearing prior to the placement. Cal. Welf. & Inst. Code § 361.2(h)(1).

21 73. State law specifies the types of placements available for all dependents in foster
22 care. The legally permissible placements available include placement with relatives, extended family
23 members, tribal members, foster family homes, treatment certified homes, and in certain circumstances,
24 congregate care settings. Cal. Welf. & Inst. Code § 16501.1(d)(1). For nonminor dependents
25 specifically, supervised independent living placements and a Transitional Housing Placement Program
26 for Nonminor Dependents (THP-NMD) are also available. Cal. Welf. & Inst. Code §§ 11400(w), (x),
27 16501.1(d)(3); *see also* ACL 11-77, 2 (setting forth the “continuum of placement options for NMDs”).
28

1 74. The California Department of Social Services issued a letter of guidance and
2 interpretation to county placing agencies which interpreted California Welfare and Institutions Code
3 Sections 303, 388(e), 388.1, 11400, 11402, 11403, and 16501.1 as obligating agencies to provide an
4 actual and available placement for a nonminor dependent. All County Letter No. 19-105, 2-3 (“The
5 placing agency remains responsible for ensuring that NMDs have access to a safe and suitable
6 placement at all times.”; “If . . . the youth loses or leaves placement, the county placement agency
7 remains responsible for offering a safe and appropriate placement for the NMD while the youth remains
8 under juvenile court jurisdiction or is party to a reentry agreement.”).

9 **Defendants have a duty to maintain enough placements to meet the needs of the youth under its**
10 **placement and care responsibility.**

11 75. A placing agency enters into a mutual agreement or voluntary re-entry agreement with
12 each nonminor dependent, in which it agrees to provide a suitable foster care placement and supervision
13 for the nonminor dependent. Form SOC 162 (7/18), *supra*; *see also* Form SOC 163 (7/18), *supra*
14 (same).

15 76. Defendants, through their social workers, are responsible for providing case management
16 for each foster child and nonminor dependent in their care. This includes developing their case plans,
17 assessing their placement needs, and making determinations as to the most appropriate placements that
18 best meets those needs. CAL. DEP’T OF SOC. SERVS., CHILD WELFARE SERVICES MANUAL OF POLICIES
19 AND PROCEDURES (2019) §§ 31-002(c)(2); CAL. DEP’T OF SOC. SERVS., CHILD WELFARE SERVICES
20 MANUAL OF POLICIES AND PROCEDURES (2020) 31-206.31. For nonminor dependents, case workers
21 must make the placement determination in consultation with the nonminor dependent. ACL 19-105, 2;
22 ACL 11-77, 3.

23 77. Defendants cannot avoid their placement responsibility simply because too few
24 placement resources exist locally. Instead, the County and Social Services have an affirmative obligation
25 to regularly evaluate its placement resources and programs, to examine the adequacy of those existing
26 resources, and to identify the type of additional placement resources and programs needed. Cal. Welf. &
27 Inst. Code § 16001(a) (1993) (amended 2020). The County and Social Services must also “specifically
28 examine placements which are out of county and shall determine the reason the placement was

1 necessary, and identify the additional placement resources and programs which need to be developed
2 and available to allow a child to remain within the county and as close as possible to his or her home.”

3 *Id.* The County and Social Services failed to fulfill their obligation to regularly evaluate Alameda
4 County’s placement needs and available resources, and likewise failed to address the gaps Alameda
5 County’s placement continuum and resources that such an evaluation would have discovered.

6 78. As a result, the County and Social Services failed to maintain sufficient placement
7 resources. Consequently, Defendants did not have a placement or a suitable emergency placement
8 available for Ms. Smith when she lost her housing on or about April 20, 2019. Defendants were not able
9 to locate and obtain a placement for Ms. Smith until May 8, 2019. For eighteen days, Defendants left
10 Ms. Smith, a nonminor dependent for whom it was legally responsible, without a suitable placement and
11 homeless. In doing so, Defendants ignored the many substantial risks that accompany homelessness
12 including the risk of being beaten up, robbed, sexually assaulted or raped, threatened with a weapon, or
13 assaulted with a weapon. It also ignored the substantial risk to Ms. Smith’s emotional wellbeing, her
14 physical health at eight months pregnant, and the inherent trauma of experiencing homelessness.
15 Defendants failed to assess the placement needs and resources available to nonminors in their care,
16 failed to ensure adequate placement and emergency placement resources, and as a result lacked an
17 available placement for Ms. Smith when she needed one. Ms. Smith, a nonminor dependent, suffered
18 physical distress and emotional harm as a direct result of Defendants’ failure to carry out their
19 mandatory duty to assess and ensure the adequacy of the County’s placement and emergency placement
20 resources, and their failure to provide Ms. Smith a safe, suitable placement at all times.

21 **Defendants have a mandatory duty to provide support for nonminor dependents, in the form of**
22 **aid, to cover the costs of food, clothing, shelter and other basic needs.**

23 79. Among the responsibilities and duties that county welfare departments owe children and
24 nonminor dependents is the duty to provide support. This support, in the form of aid, “shall be provided
25 under this chapter on behalf of any child under 18 years of age, and to any nonminor dependent who
26 meets the conditions of any” of the statutorily enumerated groups. Cal. Welf. & Inst. Code § 11401.
27 One of the enumerated categories of foster youth who “shall be provided” aid pursuant to the statute is
28

1 nonminor dependents “placed pursuant to a mutual agreement . . . under the placement and care
2 responsibility of the county child welfare services department.” Cal. Welf. & Inst. Code § 11401(e).

3 80. The provision of aid pursuant to Section 11401 is part of California’s approved plan to
4 implement Part E of Title IV of the Social Security Act, which creates a federal-state plan for foster care
5 and adoption assistance. 42 U.S.C. §§ 670 et seq.; California Agency Plan for Title IV-E of the Social
6 Security Act (2018),

7 [https://www.cdss.ca.gov/Portals/9/FCARB/Federally%20Approved%20Title%20IV-](https://www.cdss.ca.gov/Portals/9/FCARB/Federally%20Approved%20Title%20IV-E%20State%20Plan%20%202-6-18.pdf?ver=2018-04-24-090113-613)

8 [E%20State%20Plan%20%202-6-18.pdf?ver=2018-04-24-090113-613](https://www.cdss.ca.gov/Portals/9/FCARB/Federally%20Approved%20Title%20IV-E%20State%20Plan%20%202-6-18.pdf?ver=2018-04-24-090113-613). The statutory requirement to
9 provide aid to foster youth implements provisions of Title IV-E that obligate the states and local
10 agencies providing child welfare services “to cover the cost of (and the cost of providing) food, clothing,
11 shelter,” and other basic needs. 42 U.S.C. § 675(4); *see also* 42 U.S.C § 672. As part of the State Plan,
12 this obligation must be met by all agencies providing services under the plan. 42 U.S.C. § 671(a)(3). In
13 order to receive aid, which “shall be provided” pursuant to Section 11401, a “nonminor dependent shall
14 be placed in one” of the enumerated placements. Cal. Welf. & Inst. Code § 11402.

15 81. Defendants had an obligation to place Ms. Smith in one of the placements listed in
16 Section 11402 in order to ensure that she had a suitable placement and also to ensure that she remained
17 eligible and received the aid required to meet her basic needs. While Defendants’ failure to provide a
18 placement in compliance with Section 11402 may have compromised her eligibility for the aid described
19 in Section 11401, it did not obviate their duty to provide for Ms. Smith’s basic needs. Defendants’
20 obligation to provide support for children in their placement and care is separate and distinct from a
21 child’s eligibility for any particular form of aid. Having failed to maintain Ms. Smith’s eligibility for aid
22 pursuant to Sections 11401 and 11402, Defendants became obligated to provide for Ms. Smith’s shelter
23 and other basic needs through other means—which shall include providing support through transfers
24 from the county treasury. Cal. Welf. & Inst. Code § 900; Cal. Welf. & Inst. Code § 17000 (“Every
25 county and every city and county shall relieve and support all incompetent, poor, indigent persons, and
26 those incapacitated by age, disease, or accident, lawfully resident therein, when such persons are not
27 supported and relieved by their relatives or friends, by their own means, or by state hospitals or other
28 state or private institutions.”).

1 **Defendants have a mandatory duty to provide placement, support, and child welfares services**
2 **“promptly and humanely”.**

3 82. The legislature has declared “that aid shall be administered and services provided
4 promptly and humanely”. Cal. Welf. & Inst. Code § 10000. The aid provided should also “encourage
5 self-respect, self-reliance, and the desire to be a good citizen, useful to society.” *Id.*

6 83. The prompt provision of aid must, at the very least, require a county to administer a
7 program of services and aid in a reasonably timely manner so as to avoid foster youth becoming or
8 remaining homeless. Ms. Smith received no aid or provision of support for shelter or other basic needs
9 during the eighteen days she spent without a placement.

10 84. The mandate to provide care humanely requires, at a minimum, that counties provide a
11 level of service and support to keep foster youth from being homeless, and which remedies their lack of
12 ability to meet their basic needs. Cal. Welf. & Inst. Code §§ 10000, 17000. Ms. Smith received no
13 provision for support during the time she remained without a placement, and thus did not receive a
14 humane level of services or aid.

15 85. The objectives and minimum standards set forth in Sections 10000 and 17000 are not
16 merely statements of policy goals. Instead, they require counties to maintain and administer programs in
17 compliance with the minimum standards and objectives announced in those sections. County actions or
18 inactions that fail to serve foster youth “promptly and humanely” or to support their basic needs fail to
19 comply with these mandates.

20 **FIRST CAUSE OF ACTION**
21 **Damages for Failure to Discharge a Mandatory Duty**
22 **(Cal. Gov. Code § 815.6)**

23 86. Ms. Smith incorporates by reference all of the above allegations as though fully set forth
24 herein.

25 87. Cal. Gov. Code § 815.6 provides for liability against a public entity when:

- 26 a. The public entity violates a mandatory duty imposed by an enactment;
27 b. The enactment is designed to protect against the kind of injury complained of by the
28 plaintiff;
c. The plaintiff is in the class of persons protected by the enactment;

- d. The violation proximately caused the injury; and
- e. The public entity did not exercise reasonable diligence in discharging its duty established by the enactment.

88. An enactment includes a federal or state constitutional provision, statute, charter provision, ordinance, or properly adopted regulation.

89. Defendants Alameda County, Social Services, Cox, Alcorcha, and Does were under a mandatory duty to provide Ms. Smith with a placement at all times while she was in foster care. This duty is imposed through State and Federal laws and regulations which read separately and together govern the obligation of child welfare departments to provide nonminor dependents with placements. Cal. Welf. & Inst. Code §§ 361.2(e), 366.32(b), 16501.1(d)(1); ACL 19-105, 2, 4; 45 CFR § 1356.21(g)(3). It is also enshrined in the foster care bill of rights, which guarantees foster youth the right “to live in a safe, healthy, and comfortable home where they are treated with respect” and to “have fair and equal access to all available services, placement, care, treatment, and benefits”. Cal Welf. & Inst. Code §§ 16001.9(a)(1), (a)(17). Defendants must provide immediately available temporary and emergency placement for nonminor dependents. *See, e.g.*, ACL 19-105, 3 (“If efforts to preserve the placement fail and the youth loses or leaves a placement, the county placement agency remains responsible for offering a safe and appropriate placement for the NMD”); ACL 11-77, 12 (making the temporary and emergency placement provisions in the Manual of Policies and Procedures applicable to nonminor dependents until regulations are developed for extended foster care); MPP §§ 31-410, 415. In providing a placement, Defendants are required to use statutorily enumerated criteria, including, among other things, “the least restrictive family setting” and “the most appropriate setting that meets the child’s individual needs and is available”. Cal. Welf. & Inst. Code § 16501.1(d)(1). The placement selection and the reasons for the selection must then be documented in the case plan, which “at a minimum[] specifies the type of home in which the child shall be placed, the safety of that home, and the appropriateness of that home to meet the child’s needs.” Cal. Welf. & Inst. § 11400(b); *see* Cal. Welf. & Inst. Code § 16501.1(d)(1); 42 U.S.C. §§ 671(a)(3), 671(a)(16).

90. The purpose of the mandatory duty to provide a placement at all times is to ensure that foster youth, including nonminor dependents, are not left without supervision, shelter, or provision for

1 their basic needs. Upon information and belief, Defendants, individually and/or while acting in concert
2 with one another, did not exercise reasonable diligence in discharging their mandatory duty to provide a
3 placement, and as a result Ms. Smith was left without a placement, which is the sort of injury that the
4 duty is intended to protect against.

5 91. Defendants Alameda County, Social Services, Cox, Alcorcha, and Does were under a
6 mandatory duty to routinely assess and ensure the availability of placements for Alameda County foster
7 youth. Cal. Welf. & Inst. Code § 16001(a) (1993) (amended 2020). County placing agencies have a
8 duty to, “on a regular basis, conduct an evaluation of the county’s placement resources and programs in
9 relation to the needs of children placed in out-of-home care,” including to “examine the adequacy of
10 existing placement resources and programs and identify the type of additional placement resources and
11 programs needed.” Cal. Welf. & Inst. Code § 16001(a) (1993) (amended 2020). The purpose of this
12 mandatory duty is to ensure sufficient availability of placement resources for children and nonminor
13 dependents in need of placements. Upon information and belief, Defendants, individually and/or while
14 acting in concert with one another, did not exercise reasonable diligence in discharging their mandatory
15 duty to assess and ensure the adequacy of the County’s placement resources. Defendants’ failure to
16 discharge their mandatory duty led to a shortage of placements and to no placement being available for
17 Ms. Smith. As a result of Defendants’ failure Ms. Smith without a placement and homeless, and she
18 suffered exactly the sort of injury that the statutory duty is intended to avoid.

19 92. Defendants Alameda County, Social Services, Cox, Alcorcha, and Does were under a
20 mandatory duty to provide support to meet the basic needs of youth in foster care, including nonminor
21 dependents. Cal. Welf. & Inst. Code §§ 900, 11401, 11402, 17000. Upon information and belief,
22 Defendants, individually and/or while acting in concert with one another, did not exercise reasonable
23 diligence in discharging their mandatory duty to provide financial support, and as a result Ms. Smith was
24 left without provision for her basic needs which is the sort of injury that the duty is intended to protect
25 against.

26 93. Defendants Alameda County, Social Services, Cox, Alcorcha, and Does were under a
27 mandatory duty to provide child welfare services, including support, aid, and an available placement,
28 “promptly and humanely”. Cal. Welf. & Inst. Code § 10000. Upon information and belief, Defendants,

1 individually and/or while acting in concert with one another, did not exercise reasonable diligence in
2 discharging their mandatory duty to provide Ms. Smith with a safe, suitable placement “promptly and
3 humanely” and this led to Ms. Smith being deprived of placement and support services for a period of
4 eighteen days, which is the type of injurious delay that the statutory duty is intended to prevent.

5 94. The conduct of said Defendants was done within the course and scope of their
6 employment with Social Services and under Director Cox. Defendants Social Services and Director Cox
7 are therefore liable for said conduct under *respondeat superior*.

8 95. As a result of Defendants’ violations of the mandatory duties described above Ms. Smith
9 with left without a safe, suitable placement, or provision for support, and she suffered the injuries and/or
10 damages as alleged in this Complaint.

11 **SECOND CAUSE OF ACTION**
12 **Damages for Negligence**
13 **(Cal. Gov. Code § 815.2)**

14 96. Ms. Smith incorporates by reference all of the above allegations as though fully set forth
15 herein.

16 97. Defendants are liable under California law for negligence where:

- 17 a. There is a legal duty to use due care;
- 18 b. There is a negligent breach of that duty;
- 19 c. The breach of the duty is a substantial factor in causing harm to the plaintiff; and
- 20 d. There is actual loss or damage to the plaintiff.

21 98. In doing and failing to do the acts complained of in this Complaint,
22 Alameda County, Social Services, Cox, Alcorcha, and Does, individually and/or while acting in concert
23 with one another, did act within the scope of their employment to cause Ms. Smith to be without a
24 suitable placement, homeless, and without support or provision to meet her basic needs from
25 approximately April 20, 2019 to May 8, 2019.

26 99. Defendants owed a duty of care to Ms. Smith because they were the individuals
27 responsible for complying with the Welfare and Institutions Code and provisions of the Social Security
28 Act to ensure that nonminor dependents had a suitable placement, case plan, and provision for support at

1 all times. Cal. Welf. & Inst. Code §§ 361.2(e), 366.32(b), 14000(k), (v), 16501.1(d)(1); ACL 19-105,
2 2, 4; 45 CFR § 1356.21(g)(3).

3 100. The acts and omissions of Defendants violated their legal duty within their special
4 relationship to foster children, like Ms. Smith, to provide for safe placement, care and provision for
5 basic needs.

6 101. Defendants' negligent failure to fulfill their legal duty to Ms. Smith was a substantial
7 factor in causing the harms she experienced, including homelessness and emotional distress.

8 102. Ms. Smith suffered the injuries and/or damages as alleged in this Complaint.

9 103. Pursuant to California Government Code Section 815.2, Defendants
10 Alameda County, Alameda County Social Services Agency, and Alameda County Social Services
11 Agency Director Cox are derivatively liable for the torts of their employees—Defendants Alcorcha,
12 and/or Does—who were acting within the scope of their employment when they negligently failed to
13 provide a placement or support for basic needs to Ms. Smith.

14 WHEREFORE, Plaintiff prays for relief as hereinafter set forth.

15 **JURY DEMAND**

16 104. Plaintiff demands a jury trial on claims so triable.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff respectfully pray for relief, as follows:

19 105. Order damages according to proof; and

20 106. Grant Plaintiff such further relief as the Court deems just and proper.

21 DATED: April 23, 2021

22 Respectfully submitted,

23 By: /s/ Erin Palacios 

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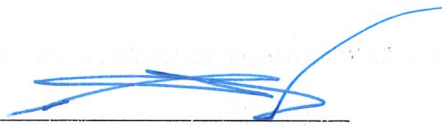
Attorneys for Plaintiff

VERIFICATION

1
2 I, Erin Palacios, have read this Verified Complaint and know its contents. I am one of the
3 attorneys for Tonisha Smith, a party to this action. Ms. Smith is absent from the County where her
4 attorneys have their offices, and I make this verification for and on her behalf for that reason. I am
5 informed and believe, and on that ground allege that the matters stated in the foregoing document are
6 true.

7 I declare under penalty of perjury under the laws of the State of California that the foregoing is
8 true and correct.

9
10 DATED: April 23, 2021

By: /s/ Erin Palacios 
Erin Palacios
Attorney for Tonisha Smith