Tara Ford (SBN 322049)
tford@publiccounsel.org
PUBLIC COUNSEL
610 South Ardmore Avenue
Los Angeles, California 90005
Telephone: (213) 385-2977
Facsimile: (213) 385-9089

Leecia Welch (SBN 208741)
lwelch@childrensrights.org
CHILDREN'S RIGHTS
2021 Fillmore Street
San Francisco, California 94115
Telephone: (415) 602-5202

Sarah Manimalethu (SBN 326441)
smanimalethu@alliancecr.org
ALLIANCE FOR CHILDREN'S RIGHTS
3333 Wilshire Boulevard, Suite 550
Los Angeles, California 90010
Telephone: (213) 368-6010
Facsimile: (213) 368-6016

Grant A. Davis-Denny (SBN 229335)
grant.davis-denny@mto.com
MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue, 50th Floor
Los Angeles, California 90071-3426
Telephone: (213) 683-9100
Facsimile: (213) 687-3702

Attorneys for Plaintiffs

* *Additional counsel of record listed in the signature page.*

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION (LOS ANGELES)

OCEAN S., et al.,

Plaintiffs,

v.

LOS ANGELES COUNTY, et al.,

Defendants.

Case No.: 2:23-cv-06921-JAK-E

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Before: Hon. John A. Kronstadt
Date of Hearing: March 25, 2024
Time of Hearing: 8:30 a.m.
Courtroom: 10B

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I. INTRODUCTION

This civil rights action arises from Defendants' failure to meet their Constitutional and statutory obligations to transition age foster youth aged 16-21. In 2008, Congress raised the maximum age for foster care to 21, so that foster youth turning 18 who may not even be finished with high school would no longer be pushed off a placement cliff, often into homelessness. *See* Pub. L. No. 110-351, 122 Stat. 3949. California followed suit, defining a foster youth up to age 21 as a "foster child" under the "placement and care responsibility" of the county. *See* Cal. Welf. & Inst. Code ("WIC") § 11400(v). The law grants foster youth aged 18-21, referred to as "nonminor dependents," the right to housing, and obligates county welfare departments to take responsibility for nonminor dependents, just like other foster youth. *See id.* §§ 303(e), § 16001.9(a)(1). Defendants, however, are not fulfilling their obligations. Transition age foster youth are bounced around from inappropriate placements, to homeless shelters, to living on the streets, where they suffer further injuries such as attempted sexual assault, (dkt. 21 ¶ 38), inappropriate psychiatric hospitalization, (*id.* ¶ 80), and separation from their own young children. (*Id.* ¶ 98.)

County Defendants now move to dismiss,[1] their basic position being that transition age foster youth are entitled to nothing. According to County Defendants, transition age foster youth have no substantive due process rights because, if they do not like their treatment, they can always leave foster care. (*See* Dkt. 52-1 at 8.) But the Ninth Circuit has made clear that wards of the state, which include transition age foster youth, are entitled to a constitutional standard of minimally adequate care. *Lipscomb v. Simmons*, 962 F.2d 1374, 1379 (9th Cir. 1992). Similarly, County

[1] This motion (Dkt. 52) was filed by Los Angeles County, which Defendants Department of Children and Family Services ("DCFS"), Department of Mental Health ("DMH"), DCFS Director Brandon Nichols, and DMH Director Lisa Wong seek to join. (*See* Dkt. 54.)

Defendants argue that Plaintiffs are not entitled to any procedural due process rights because there is "no entitlement to housing" in extended foster care. (Dkt. 52-1 at 12.) That is flat wrong: youth in extended foster care have the same entitlement to housing as all other foster youth. WIC § 16001.9(a)(1), (4). And County Defendants wrongly claim that a district court has overturned Supreme Court precedent by finding "no 'right to family integrity.'" (Dkt. 21 at 16.) In fact, that right clearly exists, and County Defendants' policies are deliberately indifferent to it.

With respect to statutory rights, County Defendants disregard Plaintiffs' detailed allegations. Plaintiffs' allegations of a systemic failure of case planning in violation of AACWA, including the specific experiences of multiple named Plaintiffs, are wrongly brushed off as "generalized critiques." (Dkt. 52-1 at 6.) Plaintiffs' ADA allegations are similarly panned as "generalized criticisms" and Plaintiffs' Medicaid claims are criticized as "tacked on" with no serious effort to grapple with the allegations in the FAC. (*Id.* at 25.) The motion should be denied.

II. LEGAL STANDARD

In considering a motion to dismiss for failure to state a claim, the court generally accepts as true the allegations in the complaint, construes the pleading in the light most favorable to the party opposing the motion, and resolves all doubts in the pleader's favor. *Lazy Y Ranch LTD. v. Behrens*, 546 F.3d 580, 588 (9th Cir. 2008).

To state a claim against a municipality (a so-called "*Monell*" claim), the plaintiff must allege an "official policy, custom, or pattern" on the part of the municipality that was the cause of the claimed injury. *See, e.g.*, *Est. of Osuna v. Cnty. of Stanislaus*, 392 F. Supp. 3d 1162, 1172 (E.D. Cal. 2019) (citation omitted) (discussing *Monell v. Dep't of Soc. Servs. of City of N.Y.*, 436 U.S. 658(1978)). The details of that custom or policy, however, are "properly left to development through discovery," since "requiring a plaintiff to plead its existence in detail is likely to be no more than an exercise in educated guesswork." *Id.* at 1174.

III. ARGUMENT

A. Plaintiffs Have Stated a Substantive Due Process Claim.

1. Plaintiffs Have Brought Suit on Behalf of Minors in Foster Care With an Undisputed Right to Substantive Due Process.

Youth in foster care have a "special relationship" with the state under which the state assumes responsibility for their "reasonable safety and minimally adequate care" as a matter of substantive due process. *Tamas v. Dep't of Soc. & Health Servs.*, 630 F.3d 833, 842 (9th Cir. 2010) (quoting *Lipscomb,* 962 F.2d at 1379). County Defendants argue that these rights are extinguished when a foster child turns 18. (Dkt. 52 at 7.) Plaintiffs disagree, as discussed at Part III.A.2) *infra*. But as an initial matter, County Defendants ignore two critical facts. First, Onyx G. was a minor when this lawsuit was filed. (Dkt. 21 ¶ 46; *see also* Dkt. 1 (Complaint) ¶ 17.) Second, Plaintiffs seek to certify a class of transition age foster youth aged **sixteen to twenty-one**. (*See, e.g.*, Dkt. 21 ¶¶ 1, 282.) County Defendants do not dispute that minors in foster care are entitled to substantive due process protections (Dkt. 52-1 at 7), so their argument that Plaintiffs have no such rights must fail.

To the extent County Defendants contend in their reply that Onyx G's turning 18 renders the claims of the minor members of the putative class moot, they are wrong. *See Belgau v. Inslee*, 975 F.3d 940, 949 (9th Cir. 2020); *Wyatt B.by McAllister v. Brown*, 2022 WL 3445767, at *21 (D. Or. Aug. 17, 2022) (denying motion to dismiss based on mootness of class representative claims). For example, in *Wyatt B.*, defendants moved to dismiss prior to class certification because the named plaintiffs' claims were moot, including due to aging out of foster care. 2022 WL 3445767, at *10. The court denied the motion to dismiss, holding that the named plaintiffs' claims were inherently transitory because, *inter alia*, "children grow up" and may age out before the court has an opportunity to rule on certification, and that their injuries will recur in "other similarly situated individuals." *Id.*; *see also, e.g.*, *Casa Libre/Freedom House v. Mayorkas*, 2023 WL 3649589, at *6 (C.D. Cal. May 25, 2023).

As in *Wyatt B.*, Onyx G's and the putative class of 16 and 17-year-olds' substantive due process claims as minors are "inherently transitory" because "children grow up." *Id.* Moreover, as in *Wyatt B.*, Plaintiffs have alleged systemic failures that are certain to impact additional minors in the class. *See id.* Before Onyx G. turned 18, Defendants' failure to meet their constitutional duties to provide reasonable safety and minimally adequate care caused her to cycle between unsafe and abusive STRTP placements and homelessness. (Dkt. 21 ¶¶ 50-52.) Unfortunately, Defendants' constitutional violations also harm other 16-17 year olds. (*See id.*; *see also, e.g.*, *id.* ¶¶ 36-37 (prior to turning 18, Erykah B. was placed in a foster home that she correctly predicted would be abusive and from which she had to be removed at age 17, after which she cycled through three additional foster homes before turning 18); *id.* ¶ 91 (Ocean S., who entered foster care just prior to turning 16, experienced severe placement instability and periods of homelessness, and at one point had to remain incarcerated after becoming eligible for release due to lack of safe placement options).) These systemic risks have been recognized, but not addressed, by Defendants. (*See, e.g.*, *id.* ¶ 149 (CDSS has created a Transitional Housing Placement Program for foster youth aged sixteen and seventeen, but has failed to contract with a single provider or to directly offer any such placements).) Plaintiffs' detailed allegations showing County Defendants' violations of multiple 16 and 17-year olds' constitutional rights easily establish that Onyx G.'s claims are of a type "capable of repetition yet evading review." *See Belgau,* 975 F.3d at 949 (citation omitted).

2. Nonminor Dependents Also Are in a Special Relationship.

Turning 18 does not extinguish a foster youth's substantive due process rights to reasonable safety and minimally adequate care. Under California law, a nonminor dependent ("NMD") is a "foster child" who is a "current dependent child or ward of the juvenile court," and is "under the placement and care responsibility of the county welfare department." WIC § 11400(v); *see also* WIC § 303(a) (juvenile court may

retain jurisdiction over "ward or a dependent child" up to 21 years of age). That status has constitutional significance because "[o]nce the state assumes wardship[2] of a child, the state owes the child, as part of that person's protected liberty interest, reasonable safety and minimally adequate care and treatment appropriate to the age and circumstances of the child." *Lipscomb*, 962 F.2d at 1379; *see also Henry A. v. Willden*, 678 F.3d 991, 1000 (9th Cir. 2012) (foster children have a federal constitutional right to state protection); *Tamas*, 630 F.3d at 846-47 (same).

County Defendants erroneously argue that they cannot have any "special relationship" with NMDs because participation in extended foster care is, in their view, voluntary and "non-custodial." (Dkt. 52-1 at 8.) Although NMD's are not in the "legal custody" of the Juvenile Court, WIC § 303(d)(1), they remain in a custodial relationship with the state. Like minors in foster care, NMDs continue to be under the jurisdiction of the juvenile court and under the "placement and care responsibility of the state," and the state is obligated to provide them, among other things, a safe and healthy home. WIC §§ 11400(v), 16001.9(a)(1).

NMDs can petition to leave foster care, but their status is not "voluntary" in the same sense as, for example, a voluntary resident in a state-funded care facility. *See, e.g.*, *Campbell v. State of Wash. Dep't of Soc. & Health Servs.*, 671 F.3d 837, 843 (9th Cir. 2011) (no "special relationship" because participation in "State Operated Living Alternative" program was always "voluntary"). In *Campbell,* the plaintiff entered care under the guardianship of her birth mother, and was never under the

[2] *Lipscomb* used the term "wardship" to refer to youth within the jurisdiction of the juvenile court over whom the court had assigned a child welfare agency care, supervision, and placement responsibility. *See* 962 F.2d at 1376. The term "ward" was not used, as it sometimes is under California law, to mean delinquent wards. *Cf.* WIC §§ 241.1(c). Thus, the "wardship "category in *Lipscomb* would include the Plaintiffs in this case, i.e., "dependents" up to age 21 over whom the court retains jurisdiction. *See id.* WIC §§ 303(a), 11400(v).

jurisdiction or placement authority of the state. *Id.* at 840. The context for the court's finding that the program was "voluntary" was that the state was not the party ultimately responsible for the recipient's care – in other words, that the participant had some other place to go and some other person to care for her. *See id.*

By contrast, nonminor dependents are under the jurisdiction and placement authority of the state. California has extended foster care and dependency jurisdiction over these youth precisely because it acknowledged that after the trauma of removal and foster care, many children are *not* ready for independence at age 18, and terminating dependency before some of these youth even finish high school is essentially a sentence to homelessness. The entire premise of the legal framework around nonminor *dependents* is that they require support and do not have family members able to care for them. Moreover, the state's own action in removing these children from their families is a significant factor in their continuing dependency. *Cf. id.* at 844 (plaintiff's mental abilities did not render her under state's control because those were not caused by the state but limitations she brought with her into custody). For these youth, there is nothing "voluntary" about their status as dependents.

NMDs under dependency jurisdiction have numerous restraints on their liberty. They are required to attend court hearings (in person or through counsel); prove to the satisfaction of a social worker and the juvenile court that they are complying with requirements such as completing high school or maintaining employment, *see* WIC § 11403(b), (c); communicate monthly with their social worker, *see Scott v. Cnty. of L.A.*, 27 Cal. App. 4th 125, 142 (1994); and undergo background checks for certain placements, *see* WIC § 16504.5(a)(1)(D). Moreover, because they are under the placement authority of Defendants, they are at the mercy of Defendants as to whether they will be put in an unduly restrictive placement, or out on the street.

The fact that NMDs may have some hypothetical ability to leave an unsuitable placement is of no moment. *See Tamas*, 630 F.3d at 843. In *Tamas*, the state argued

that it did not interfere with the foster children's liberty interest by leaving them in the care of an abusive foster parent, because the children "were free to leave [the foster parent's] care upon request." *Id.* The Ninth Circuit rejected this argument, holding that "the law does not impose the duty of guarding their own safety on wards of the state." *Id.* Similarly, the law imposes the duty of guarding the safety of NMDs on the state, regardless of whether they are "free to leave" unsafe placements. *See id.*

Plaintiffs, like many foster youth, were severed from the care of their families by the state. The state has now recognized that the support networks ordinarily provided by family are critical through age 21, and has stepped into that role by accepting legal responsibility for the continuing dependency of NMDs. The Court should recognize that the state owes NMDs the same standard of care under the substantive due process clause as it owes to all foster children.

3. Plaintiffs Have Alleged Cognizable Substantive Due Process Rights and Deliberate Indifference to Those Rights.

When County Defendants fail to provide a minimally adequate array of placement options such that youth are living on the streets or in homeless shelters, they have not met their obligation of "minimally adequate care." *Lipscomb*, 962 F.2d at 1379; (*see, e.g.*, Dkt. 21 ¶¶ 37-38 (Plaintiff Erykah B. lived on the streets and survived an attempted sexual assault due to inadequate emergency housing placements); *id.* ¶¶ 50-51 (Plaintiff Onyx G. has cycled through homeless shelters and STRTPs where she has faced harassment and an inappropriately restrictive living environment); *id.* ¶¶ 66-67 (when Rosie S. reached out to DCFS to re-enter extended foster care, DCFS only referred her to homeless shelters).)

County Defendants' argument that there is no constitutional guarantee against "suboptimal placement settings" misunderstands Plaintiffs' allegations. (*See* Dkt. 52-1 at 9 (quoting *M. D. by Stukenberg v. Abbott*, 907 F.3d 237, 268 (5th Cir. 2018).) Homeless shelters or homelessness resulting insufficient placement options do not constitute "placement settings." County Defendants' reliance on *Wyatt B.* is also

misplaced. *Id.* (citing *Wyatt B. by McAllister v. Brown*, 2021 WL 4434011 (D. Or. Sept. 27, 2021)). Plaintiffs are not claiming a constitutional right to transition services for youth aging out of foster care, but a right to minimally adequate care for youth who *remain* in foster care. Likewise, Plaintiffs' allegation that County Defendants' placement providers do not respect their rights, (dkt. 21 ¶ 295), is not an allegation of "improper licensure" as County Defendants contend, (dkt. 52-1 at 10-11), rather an allegation that the state has failed to protect Plaintiffs from abuse and harassment. *See, e.g.*, *Wyatt B.*, 2021 WL 4434011 at *8 (recognizing right to be free from "violence, abuse and harassment"); (*see also, e.g.*, Dkt. 21 ¶ 51 (alleging abuse and harassment in STRTP).)

County Defendants' durable and widespread policy of deliberate indifference to Plaintiffs' rights gives rise to municipal liability. The deliberate indifference standard, as applied to foster children, requires a showing of "an objectively substantial risk of harm" and a showing that defendants were "subjectively aware of facts from which an inference could be drawn that a substantial risk of serious harm existed" and either drew that inference or "would have been compelled" to do so. *Tamas,* 630 F.3d at 845. Here, the Los Angeles County Board of Supervisors has recognized an "acute need" for more housing for youth in extended foster care. (Dkt. 21 ¶ 164.) Yet County Defendants have failed for years to deliver the needed increase in capacity, and have even failed to collect or produce wait list or other data that might reveal the severity of the problem. (*Id.* ¶¶ 165-172.) Moreover, a recurring pattern of homelessness among Plaintiffs, of which County Defendants were aware and which County Defendants failed to prevent, underscores a policy of deliberate indifference to Plaintiffs' rights. (*Id.* ¶¶ 37, 52, 65, 91, 109, 124, 134); *see, e.g.*, *Jeremiah M. v. Crum*, 2023 WL 6316631, at *17 (D. Alaska Sept. 28, 2023) (allegations that defendants knew plaintiffs were not receiving needed services plausibly alleged deliberate indifference). The resulting injuries to Plaintiffs were

directly caused by Defendants' failures. (*See, e.g.*, Dkt. 21 ¶¶ 140, 164-168.)

B. Plaintiffs Have Stated a Claim Under AACWA.

Plaintiffs repeatedly connect the specific harms they suffered to the failures of Defendants to supervise and enforce AACWA-compliant case plans. (*See, e.g.*, Dkt. 21 ¶ 54 (Onyx G.'s inability to obtain a THPP-NMD or SILP placement should have been mitigated through appropriate case planning); *id.* ¶ 57 (Defendants failed to provide Onyx G. with compliant case and transition plans); *id.* ¶ 102 (Ocean S. could not access necessary behavioral health services in part because of inadequate case planning); *id.* ¶ 126 (Monaie T. never received appropriate case planning, preventing her from accessing a safe and stable placement).) Plaintiffs then connect these failures to specific customs and policies of Defendants. (*See id.* ¶ 181 DCFS uses TILPs in lieu of case plans for transition aged youth, which do not include all of the case planning information required under AACWA); *id.* ¶ 182 (Defendants use forms with check boxes rather than plans individualized to each youth's needs, thereby omitting information required under AACWA); *id.* ¶ 184 (Defendants lack a system for ensuring that youth receive compliant case plans).)

What Plaintiffs have alleged are not "isolated or sporadic incidents," but, rather, a pattern or practice sufficient to state a claim for municipal liability. *See, e.g.*, *D.C. by & through Cabelka v. Cnty. of San Diego*, 445 F. Supp. 3d 869, 892 (S.D. Cal. 2020). In *Cabelka,* the plaintiff foster parent alleged that "multiple social workers engaged in unlawful behavior on multiple occasions" by concealing that a child placed in her care could be a danger to her other children, in violation of AACWA. *Id.* at 892-93. Although the violations involved only one foster child placement, the court found that the allegations were sufficient to state a Section 1983 claim against County defendants because Plaintiff had alleged that multiple County employees had lied to her over multiple years, and connected those lies to an alleged wrongful policy of not requiring accurate disclosures as required by AACWA. *Id.* Similarly, here,

multiple unrelated Plaintiffs have alleged a pattern of AACWA violations over multiple years and connected those violations to specific unlawful County customs and practices. Their claims merit disposition on a fully-developed factual record. *See id*.

C. Plaintiffs Have Stated a Procedural Due Process Claim.

County Defendants argue that youth applying for placements have no procedural due process protections because they have "no entitlement to housing." (Dkt. 52-1 at 12.) They further argue that youth in placements have adequate protections. (*Id.* at 13.) As explained below, they are wrong on both counts.

1. Plaintiffs Are Entitled to Housing.

A protected property interest is present where an individual has a reasonable expectation of entitlement deriving from "an independent source such as state law." *Wedges/Ledges of Cal., Inc. v. City of Phoenix*, 24 F.3d 56, 62 (9th Cir. 1994) (quoting *Bd. of Regents v. Roth,* 408 U.S. 564, 577 (1972)). All youth in foster care, expressly including nonminor dependents, have a "right" under state law to "live in a safe, healthy, and comfortable home" and to be "placed in the least restrictive setting possible." WIC §16001.9(a)(1), (4); *see also* WIC § 16000.1(a) ("the state assumes *an obligation of the highest order* to ensure the safety of children in foster care") (emphasis added). Courts have confirmed that Section 16001.9 enumerates legally enforceable rights. *See Von Bradley v. Dep't of Child. & Fam. Servs.*, 2018 WL 7291450, at *2 (C.D. Cal. Dec. 12, 2018) (citing *Martinez v. Cnty. of Sonoma*, 2015 WL 5354071, at *10 (N.D. Cal. Sept. 14, 2015)). Thus, Plaintiffs have a clear entitlement under state law to a placement that includes a safe home.[3] Defendants have no discretion under California law to deny foster youth a placement and direct

[3] Youth are also entitled to emergency housing between placements. *See* WIC § 16001(a)(2). These entitlements under state law are distinct from Defendants' substantive due process obligations. *See* Part III.A).

them to the nearest homeless shelter.

Foster youth are entitled to placements targeted to their individual needs, specifically, "the least restrictive setting possible." WIC § 16001.9(a)(4). California, as a condition of receiving federal funding, must maintain a compliant "case review system" in which each youth has a "case plan" designed to "achieve placement in a safe setting that is the least restrictive." 42 U.S.C.A. §§ 671(a)(16), 675(5)(A). Thus, a compliant case plan must identify the "least restrictive" placement to which each youth is entitled under WIC Section 16001.9(a)(4). *See id.* If that setting is, for example, THPP-NMD, then the foster youth is by definition "in a class of individuals whom the [THPP-NMD] program was intended to benefit," and has a protectable interest in that benefit. *See Ressler v. Pierce*, 692 F.2d 1212, 1215 (9th Cir. 1982).

County Defendants argue that applicants for THPP-NMD are not entitled to any due process due to the "unfettered discretion" of THPP-NMD providers. (Dkt. 52-1 at 12.) Defendants, however, cannot violate Plaintiffs' due process rights by administering their housing entitlement through third parties with allegedly unfettered discretion. Alleged compliance with Defendants' own regulations "does not automatically satisfy due process requirements," since "'[p]roperty' cannot be defined by the procedures provided for its deprivation." *See Nozzi v. Hous. Auth. of City of Los Angeles*, 425 F. App'x 539, 542 (9th Cir. 2011) (quoting *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 541 (1985)); *see also K.W. ex rel. D.W. v. Armstrong*, 789 F.3d 962, 973 (9th Cir. 2015) ("If a state grants a property interest, its procedures for terminating or modifying that interest do not narrow the interest's scope.").

Moreover, County Defendants are wrong that THPP-NDP providers have "unfettered discretion." THPP providers' discretion is circumscribed by statute. Providers are statutorily required to provide "admission criteria" such as age, placement history, and delinquency history. Cal. Welf. & Inst. Code § 16522.1(b)(1). They are also forbidden from using certain "admission criteria" such as automatic

exclusion based on the use of psychotropic medications (*id.*), and CDSS must review and approve providers' admission criteria to ensure that they "protect" participants and do not discriminate on the basis of protected characteristics. WIC § 16522.1(b)(2). THPP-NMD providers must be "willing and able to accept the AFDC-FC-eligible nonminor dependents for placement by the placing agency who need the level of care and services that will be provided by the program." § 16522.1(c)(3). That is not "unfettered discretion." *See Ressler*, 692 F.2d at 1215. In *Ressler*, as here, the state argued that applicants did not have a protectable property interest because "selection of tenants" was by statute a "function of the owner." *Id.* (quoting 42 U.S.C. § 1437f(d)(1)(A)). The Ninth Circuit, however, found that owner discretion was "circumscribe[d]" and did not foreclose due process protections because, *inter alia,* a certain percentage of units were reserved for "very low-income families," eligible tenants were to be selected "in accordance with a HUD-approved marketing plan," and HUD's administrative guidelines set "eligibility standards." *Id.* Likewise here, provider "discretion" is sufficiently circumscribed to state a claim under *Ressler.*

County Defendants also do not have "unfettered discretion" in approving or denying SILP placements, which are placements that have already been agreed to by the housing provider (e.g., landlord or relative), but require approval by County Defendants. (*See* Dkt. 21 ¶ 142.) For the reasons explained above, youth for whom SILP is the least restrictive placement possible have a cognizable entitlement to it. *See* WIC § 16001.9(a)(1), (4). Even if the Court were to consider Defendants' improper "evidence" from outside of the pleadings, what it shows is that the County uses a "Standardized SILP Readiness Assessment Tool" and a "Checklist of Facility Health and Safety Standards," hardly indicia of "unfettered discretion." (Dkt. 52-13 at 111); *Cf. Wedges/Ledges,* 24 F.3d at 63 (although government was to consider all "relevant information," regulations provided an "articulable standard" sufficient to

give rise to a legitimate claim of entitlement). At minimum, the quantum of discretion should not be resolved on a motion to dismiss. *See, e.g.*, *J.L. v. Cissna*, 374 F. Supp. 3d 855, 869 (N.D. Cal. 2019).

2. Defendants Fail to Provide Due Process for Youth Seeking Housing.

The protections due in a given case requires a careful balancing of (a) the nature of the interest and "degree of potential deprivation," (b) the "fairness and reliability" of existing safeguards and probable value of additional safeguards, and (c) the public interest, including administrative burden. *Nozzi v. Hous. Auth. of City of Los Angeles*, 806 F.3d 1178, 1192 (9th Cir. 2015) (quoting *Mathews v. Eldridge*, 424 U.S. 319, 341-343 (1976). Where, as here, the potential deprivation can mean "the difference between safe, decent housing and being homeless," the private interest is "substantial." *Id.* at 1193.

Defendants do not dispute that the absence of due process (or any process) for youth seeking placements is Defendants' deliberate policy, and instead argue that no due process rights exist. (Dkt. 52-1 at 11.) This absence of any due process has injured Plaintiffs. For example, Rosie S. prepared applications to THPP-NMD, only to learn that DCFS never submitted them. (Dkt. 21 ¶ 70.) They finally did so, but told her there were no openings for parenting youth. (*Id.*) Rosie S. then spent months in limbo, with no waitlist procedures, no notices of denials, an no opportunity to contest any denials. (*Id.*) Junior R. was rejected from a THPP-NMD for asking the wrong questions; he was not afforded any opportunity to challenge the denial, despite the fact that he was homeless. (*Id.* ¶ 110.) These injuries, caused by Defendants' unconstitutional policies, are sufficient to state a claim for municipal liability under Section 1983. *See, e.g.*, *Oviatt By & Through Waugh v. Pearce*, 954 F.2d 1470, 1477 (9th Cir. 1992).

3. Pre-deprivation Protections Are Inadequate.

Defendants concede that once in a placement, Plaintiffs have a protectable

property interest in continued receipt of benefits. (Dkt. 52-1 at 13.) Defendants argue, however, that Plaintiffs have "fail[ed] to plead inadequate process," because they have not alleged how discharge processes are deficient, and have not sufficiently alleged a deprivation of process. (*Id.*) Defendants' arguments are without merit.

Plaintiffs have alleged specific deficiencies in the fairness and reliability of existing safeguards surrounding discharges from placements: the existing 7-day notice period for THPP-NMD is inadequate (Dkt. 21 ¶¶ 197-198); youth are not given notice of how to contest discharges or provided an opportunity to contest discharges during an evidentiary hearing before a neutral arbiter, (*id.* ¶ 199); youth are not allowed to remain housed while any contest is pending, (*id.*); there are no procedural guardrails to prevent regular discharges from being mischaracterized as "emergency" discharges with even fewer protections, (*id.* ¶¶ 201-202); and SILP placements are terminated with no written explanation or meaningful opportunity to be heard, (*id.* ¶¶ 203-204.) Each of these is the type of procedural deficiency that courts have recognized as falling short of due process requirements. *See, e.g.*, *Goldberg v. Kelly*, 397 U.S. 254, 267-68, 271 (1970) (due process required timely and adequate notice detailing the reasons for the deprivation, and evidentiary hearing before an impartial decision maker prior to termination of benefits); *id.* at 268 (fairness in some cases may require more than seven-day notices of benefits); *Jordan v. Dir., Off. of Workers' Comp. Programs, U.S. Dep't of Lab.,* 892 F.2d 482, 488 (6th Cir. 1989) ("where the affected individuals are 'of various levels of education, experience, and resources,' they must receive notice of the availability of a procedure for protesting the threatened deprivation") (quoting *Memphis Light, Gas & Water Div. v. Craft,* 436 U.S. 1, 14 n.15 (1978)); *Zinermon v. Burch*, 494 U.S. 113, 136 (1990) (plaintiff stated a claim for violation of procedural due process rights based on state officials' "uncircumscribed power" to mischaracterize involuntary commitments as voluntary, thereby avoiding procedural protections of involuntary discharges).

Further, Plaintiffs have alleged specific instances in which they have been injured by constitutionally deficient discharge processes. ((Dkt. 21 ¶ 201) ("Jackson K., for example, was given a three-day notice to vacate his THPP-NMD placement that did not cite any program rules violation and noted that it was his responsibility to find a placement once he was discharged."); *id.* ¶ 204 ("Junior R., for example, was forced to leave SILP with no written explanation or meaningful opportunity to be heard.").) In addition, Plaintiffs are currently residing in THPP-NMD or SILP placements and thus are threatened with deprivation of their placements without due process. (*See, e.g.*, *id.* ¶ 85 (Jackson K.'s housing situation in THPP-NMD remains tenuous due to lack of due process protections).) These threatened deprivations further support Plaintiffs' claims. *See, e.g.*, *Goldberg*, 397 U.S. at 256 n.2 (plaintiffs included those who alleged they were in danger of losing benefits without due process); *Vitek v. Jones*, 445 U.S. 480, 495-96 (1980) (case was not moot where prisoner was threatened with potential transfer to mental hospital).

Defendants argue that the existence of post-deprivation procedures such as complaining to CDSS after a THPP-NMD placement discharge or requesting a CDSS administrative hearing to challenge SILP funding denials shows that Plaintiffs have adequate process. (Dkt. 52-1 at 15.) But Plaintiffs are challenging the adequacy of Defendants' *pre-deprivation* processes, including, as explained above, the notice period, the inadequacy of the notice, the unavailability of a fair pre-deprivation hearing, and the lack of guardrails around "emergency" removals. *Zinermon*, relied upon by Defendants, rejects exactly the argument that Defendants make here. *See* 494 U.S. at 126. As *Zenermon* explains, the Supreme Court "usually has held that the Constitution requires some kind of a hearing *before* the State deprives a person of liberty or property." *Id.* at 127. *Zinermon* held that plaintiff's allegation was sufficient to state a Section 1983 claim, *notwithstanding availability of post-deprivation remedies*, because pre-deprivation safeguards may have been required by

due process. *Id.* at 135-39. Plaintiffs make exactly the same allegation here: Plaintiffs' deprivations do not result from "random and unpredictable" acts by Defendants but from their insufficient pre-deprivation processes. *Id.* at 132.

To the extent Defendants argue that Plaintiffs were required to exhaust administrative remedies, that is also incorrect. "[A] state administrative remedy, which purports to provide relief for an already accomplished deprivation of civil rights, need not be pursued before resort to federal court." *See Toney v. Reagan*, 326 F. Supp. 1093, 1096 (N.D. Cal. 1971) (citing *McNeese v. Bd. of Ed.*, 373 U.S. 668 (1963)). "[E]xhaustion of state administrative remedies should not be required as a prerequisite to bringing an action pursuant to [Section] 1983." *Heath v. Cleary*, 708 F.2d 1376, 1378 (9th Cir. 1983) (citing *Patsy v. Bd. of Regents*, 457 U.S. 496 (1982)). This is "a flat rule without exception." *Id.* at 1379 (citations omitted).

Finally, Plaintiffs have sufficiently alleged, and Defendants do not meaningfully dispute, that Defendants' procedural shortcomings for removals – the inadequate seven-day notice period, the absence of a meaningful pre-deprivation opportunity to be heard, the absence of procedural guardrails around "emergency" removals – are deliberate policy choices, as well as that the repeated pattern of inadequate notice amounts to official policy. (Dkt. 21 ¶¶ 197-204.) These policies are the cause of Plaintiffs' injuries and threatened injuries. (*See, e.g.*, *Id.* ¶¶ 201 (Jackson K.), 204 (Junior R.).) Thus, Plaintiffs have sufficiently alleged municipal liability under Section 1983. *See, e.g.*, *Oviatt*, 954 F.2d at 1477.

D. Plaintiffs Have Stated a Familial Association Claim.

The Supreme Court has recognized a right to family integrity derived from the broad right to association under the First Amendment and the Ninth Amendment's reservation of rights to the people, as well as the Fourteenth Amendment. *Roberts v. U.S. Jaycees,* 468 U.S. 609, 617–20 (1984); *Santosky v. Kramer,* 455 U.S. 745, 753 (1982); *see also Stanley v. Illinois*, 405 U.S. 645, 651 (1972) ("The integrity of the

family unit has found protection in the due process clause of the Fourteenth Amendment . . . and the Ninth Amendment.") (citations omitted). In particular, a parent's fundamental liberty interest in companionship with her child "is perhaps the oldest of the fundamental liberty interests recognized by the Supreme Court." *United States v. Wolf Child*, 699 F.3d 1082, 1091 (9th Cir. 2012) (quoting *Troxel v. Granville*, 530 U.S. 57, 65 (2000)).

Defendants are deliberately indifferent to that right. Although there are over 250 transition age foster youth in Defendants' care who are parenting their own young children, DCFS does not track the number who are unhoused or maintain waitlists for safe and stable placements. (Dkt. 21 ¶ 206; *see also* Part 0).) DCFS policy permits THPP-NMD programs to exclude parenting youth, and to discharge youth who become pregnant. (*Id.* ¶¶ 208-209.) Defendants also permit their contractors to maintain rules that effectively push out parenting youth, for example, enforcing employment requirements that are much shorter than federal standards for parental leave. (*Id.* ¶ 210.) The result of these policies is a critical shortage of placements for parenting youth, leading directly to preventable family separations.

For example, in the face of a dire shortage of placements for parenting youth, Defendants' policies allow THPP-NMD providers to reject parenting applicants who do not have physical custody of their children. (Dkt. 21 ¶ 98.) This left Plaintiff Ocean S. in a Catch-22: she could not regain physical custody of her daughter without stable housing, but she was ineligible for housing without physical custody. (*Id.*) The consequence of Defendants' policies was to hinder the reunification of a young mother and her baby. (*Id.*) Plaintiff Monaie T. and her daughter struggled with homelessness for several months, as DCFS did not locate any safe and stable placements for them. (*Id.* ¶ 124.) Even when Monaie T. was able to find housing through her own efforts and without the assistance of the County, that housing proved to be unstable and resulted in Monaie and her daughter becoming homeless for several

months. (*Id.* ¶ 125.) These periods of homelessness greatly increased the risk of Monaie's daughter being removed from her care, just as Ocean S.'s child was removed from her care during a period of housing instability.

Plaintiffs' injuries as a result of Defendants' policies are sufficient to state a claim under Section 1983. *See, e.g.*, *Aristotle P. v. Johnson,* 721 F. Supp. 1002, 1006 (N.D. Ill. 1989). In *Aristotle,* a foster home provider had a practice of prohibiting anyone, including relatives, from coming into the foster homes that it operated, a practice that the state defendants were aware of and supported. *Id.* at 1004. The district court found that plaintiffs had sufficiently alleged that the defendants "enforced and maintained their policies regarding sibling visitation notwithstanding their knowledge that these policies were causing severe emotional harm to the plaintiffs" and that the allegations "support an inference that the defendants were deliberately indifferent" to the plaintiffs' constitutional right to associate with their siblings. *Id.* at 1006. Likewise, here, Defendants' awareness and support of provider policies that collectively serve to exclude and/or push out parenting youth, causing a severe undersupply of safe and appropriate placements for those youth, amounts to deliberate indifference to their constitutional right of family integrity. *See id.* If anything, the injury to Plaintiffs' liberty interest is even greater here given the special deference reserved for the parent-child relationship. *Wolf Child*, 699 F.3d at 1091.

The fact that Monaie T., unlike Ocean S., did not lose custody of her child during her bouts of homelessness, does not lessen her standing to bring this claim. "Those entitled to this duty of care do not need to wait to suffer an actual harm in order to obtain relief." *M.D. v. Perry*, 294 F.R.D. 7, 34 (S.D. Tex. 2013).[4] For

[4] Contrary to Defendants' claims, (dkt. 52-1 at 16), *M.D.* does not hold that the right to family integrity does not exist, but rather that Plaintiffs had not sufficiently explained how the "[s]tate's placement decisions" had violated that right. 294 F.R.D. at 47-48.

example, "[p]risoners have a right to be free from an unreasonable threat of injury and they can suffer a legal injury if that right is violated by . . . unreasonably unsafe fire safety conditions, without the risk becoming actualized and causing physical injuries." *Id.* The risk of injury to family integrity from Defendants' policies is substantially greater than the risk to a prisoner from a broken smoke detector.

Defendants argue that the Constitution prohibits only unlawful interference with the parent-child relationship, (dkt. 52-1 at 16), but ignore Plaintiffs' detailed allegations setting forth how Defendants' policies do exactly that. The cases relied upon by Defendants are entirely consistent with Plaintiffs' claims. *Jeremiah M.* holds that there is no constitutional duty to "facilitate" parental visitation, but that policies which unreasonably thwart parental visitation, such as allowing children to see their mothers for only one hour per week, violate the parent child right of association. 2023 WL 6316631, at *17. Defendants' hostile policies to parenting foster youth are more similar to the latter than the former. *See id.*

Similar to *Jeremiah M.*'s first holding, *Marisol A. by Forbes v. Giuliani* holds that there is no constitutional obligation to provide a particular level of services to reunite foster children with their biological parents. 929 F. Supp. 662, 676 (S.D.N.Y. 1996), *aff'd sub nom. Marisol A. v. Giuliani*, 126 F.3d 372 (2d Cir. 1997). But again, Plaintiffs challenge policies that threaten the integrity of existing families, not a lack of reunification services. Notably, *Marisol* also held that allowing children in foster care "to languish without taking steps to reunite them with their biological family where appropriate" was a harm to their right of association with biological family members that supported their substantive due process claim. *Id.* at 677. The Court should likewise find in this case that the harms to parenting foster youth from hostile policies and inadequate placement for young families further bolster their substantive due process claims. *See* Part III.A).

Finally, *Black v. Beame* stands for the unremarkable proposition that the state

does not have a constitutional duty to increase a mother's welfare or housing benefits to ensure that she can care for all of her children in her own home. *See* 419 F. Supp. 599, 607 (S.D.N.Y. 1976), *aff'd*, 550 F.2d 815 (2d Cir. 1977). The mother in *Black*, unlike the foster children in *Aristotle* and Plaintiffs here, was not a victim of state policies that injured or threatened to injure her right to family integrity. It bears underscoring that the parenting youth among the Plaintiffs are not just parents, but like the foster children in *Aristotle*, they are *dependents* under the placement and care responsibility of Defendants. *See* WIC § 11400(v). Like those children, they have sufficiently alleged that Defendants' affirmative policies and practices with respect to their placements violate their right to familial association and family integrity.[5]

E. Plaintiffs Have Stated a Medicaid Act Claim.

Federal law requires California, as a state participating in Medicaid, to cover certain mandatory services, including "Early and Periodic Screening, Diagnostic, and Treatment" ("EPSDT") services for Medicaid eligible youth participants under the age of 21. *See* 42 U.S.C. § 1396a(a)(43)(A); *see also, e.g.*, *M.J. v. D.C.*, 401 F. Supp. 3d 1, 13 (D.D.C. 2019). Under the EPSDT provision, California is required to provide screenings to identify transition age foster youth's mental and physical health needs and arrange for any "necessary health care, diagnostic services, treatment, and other measures" to treat those mental or physical health conditions. 42 U.S.C. § 1396d. Since the "only limit" on the provision of EPSDT services is the requirement that they be "medically necessary," the "scope of the EPSDT program is wide-ranging." *M.J.*, 401 F. Supp. 3d at 13; *see also Katie A., ex rel. Ludin v. L.A. Cnty.*, 481 F.3d 1150,

[5] Defendants' other cases pertain to removals and are not relevant here. *Keates v. Koile* affirmed a claim for violation of right to familial association where their child was removed from custody without sufficient cause. 883 F.3d 1228, 1239 (9th Cir. 2018). *Grae-El v. City of Seattle* held that *pro se* plaintiff parents did not state a familial association claim based on the loss of custody through removal proceedings. 2022 WL 16758473, at *5 (W.D. Wash. Nov. 8, 2022).

1162 (9th Cir. 2007) ("Requiring the State actually to provide EPSDT services that have been found to be medically necessary is consistent with the language of the Medicaid Act . . . ."). Further, under Section 1396a(a)(10)(A), states have an affirmative obligation to ensure availability of "covered services," not just to reimburse services if they are available. *See* 42 U.S.C. § 1396a(a)(10)(A); *C.A. through P.A. v. Garcia*, 2023 WL 3479153, at *7 (S.D. Iowa May 15, 2023).

In California, transition age foster youth are eligible for a variety of EPSDT services referred to as Specialty Mental Health Services ("SMHS"). (Dkt. 21 ¶¶ 262-263.) SMHS includes intensive care coordination, therapeutic foster care, intensive home-based services, mental health services, peer support specialists services, and crisis services. (*Id.* ¶ 264.) Publicly available data published by the state, however, indicate that as foster youth in Los Angeles transition to extended foster care, the provision of those needed services drops off a cliff, from 60.67% of foster children aged of 12-17 accessing SMHS, to 39.81% youth between the ages of 18-20. (*Id.* ¶ 271.) This is not because a third of foster youth suddenly stop needing services at age 18. Rather, it is because Defendants are failing to provide or arrange for behavioral health services that are necessary to correct or ameliorate the youths' mental health conditions and failing to coordinate among themselves to ensure that these youth are receiving care. (*Id.* ¶¶ 274-275.)

Defendants' failures are readily apparent from Plaintiffs' experiences. Onyx G. has required psychiatric hospitalizations on approximately seventeen occasions. (Dkt. 21 ¶ 48.) Yet, "Onyx G. did not receive adequate mental health support [including] needed intensive, trauma responsive, field-based mental health services with 24-hour crisis response, … and cognitive behavioral therapy." (*Id.* ¶ 58.) Likewise, Junior R., who has been diagnosed with depression, anxiety, and attention deficit hyperactivity disorder, waited months before he was finally able to connect with necessary mental health services. (*Id.* ¶ 112.) And Ocean S., who has been

diagnosed with mood disorders, PTSD, and major depression, was left to try to conduct her own care coordination in an attempt to access the therapeutic treatment program she needed. (*Id.* ¶¶ 90, 94-103.) What little therapy she did receive was "inconsistent and sporadic, often with long wait times." (*Id.* ¶ 102.)

Courts have found these types of allegations sufficient to state an EPSDT claim. For example, in *M.J.*, plaintiffs alleged a systemic failure to provide intensive community-based services ("ICBS"). 401 F. Supp. 3d at 6. Plaintiffs in *M.J.*, like Plaintiffs here, sought critical community-based mental health services, including intensive care coordination, crisis services, and therapeutic foster care. *Id.* Plaintiffs alleged that the District of Columbia's ICBS offering was deficient, for example, because the District did not offer "sufficiently intensive behavior support services." *Id.* at 14. The court rejected defendants' argument that plaintiffs had failed to allege "instances of services" that have been "declined or not been provided." *Id.* at 15. Instead, the court found that plaintiffs had adequately alleged a violation of the Medicaid requirement to provide or arrange for services, noting that "the District fails to provide appropriate treatment opportunities in the three areas that comprise ICBS services." *Id.* Similarly, here, Plaintiffs have alleged a policy or practice of failing to provide or arrange for appropriate types of SMHS to transition age foster youth in Los Angeles County, as well as specific instances of harm from that policy or practice. These allegations demonstrate that Defendants knew or should have known of this failure, yet they consistently failed to provide or arrange for the required services. That is sufficient at the pleading stage. *See id.* at 15; *see also, e.g.*, *C.A.*, 2023 WL 3479153, at *9 (plaintiffs stated a claim under §§ 1396a(a)(10)(A) & 1396a(a)(43)(A) where they alleged that they had "'sought' or 'attempted to access' certain services but did not receive them to the degree they needed").

It is Defendants' argument for dismissal, not Plaintiffs' Medicaid claim, that appears to be "tacked-on." (Dkt. 52-1 at 17.) Two of the three cases cited by

Defendants were brought by *pro se* plaintiffs with deficient claims. *See Olson v. Carter*, 2021 WL 3115126, at *6 (E.D. Cal. July 22, 2021) (*pro se* plaintiff did not describe what medical assistance is at issue); *Shaughnessy v. Wellcare Health Ins. Inc.*, 2017 WL 663230, at *3 (D. Haw. Feb. 16, 2017) (same). The third case dismissed plaintiffs' claims because they had failed to allege that they had "request[ed] a screening." *Troupe v. Barbour*, 2013 WL 12303126, at *4 (S.D. Miss. Aug. 23, 2013). That holding has no applicability here. Plaintiffs have *diagnosed* mental health needs. (*See, e.g.*, Dkt. 21 ¶¶ 43, 49, 72, 112.) The FAC is focused on failure to provide services, not screening. (*Id.* ¶ 352.) In any event, it is *Defendants'* obligation to request and coordinate screening and health care services for foster youth. *See* 42 U.S.C. § 622(b)(15)(A).

For the reasons discussed above, Plaintiffs' allegations are sufficient to state a Section1983 claim against Defendants for violation of their rights under the Medicaid Act. *See M.J.*, 401 F. Supp. at 16.

F. Plaintiffs Have Stated a Claim Under The ADA and RA.

Defendants' attacks on Plaintiffs' ADA and RA claims simply state that elements are missing, without engaging with any of the allegations in the FAC. In fact, Plaintiffs have properly alleged every element of their ADA and RA claims.

First, Defendants argue that Plaintiffs have insufficiently alleged how their disabilities "substantially limit" one or more major life activities. The term "substantially limits" must be "construed broadly in favor of expansive coverage," and is "not meant to be a demanding standard." 29 C.F.R. § 1630.2(j)(1)(i). Moreover, certain psychiatric diagnoses presumptively substantially limit major life activities, including "major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder, and schizophrenia." *Id.* § 1630.2(j)(3)(iii); *see also, e.g.*, *Reimer v. Cnty. of Snohomish*, 2019 WL 13261425, at *2 (W.D. Wash. Feb. 5, 2019) ("[B]y alleging that Plaintiff suffers from PTSD, the

[c]omplaint plausibly alleges that [p]laintiff is disabled under the ADA."). Here, several of the Plaintiffs allege conditions that are presumptively sufficient to state a claim. (Dkt. 21 ¶ 43 (Erykah B. alleges a diagnosis of PTSD); *id.* ¶ 49 (Onyx G. alleges a diagnosis of major depressive disorder); *id.* ¶ 72 (Plaintiff Rosie S. alleges a diagnosis of major depressive disorder); *id.* ¶ 90 (Ocean S. alleges diagnoses of PTSD).) Other plaintiffs have sufficiently pled mental health disabilities together with how those disabilities substantially limit their major life activities. For example, Junior R. suffers from depression, anxiety, and attention deficit hyperactivity disorder, and his placement instability has caused him to experience panic attacks and suicidal ideation. (*Id.* ¶ 112.) This placement instability and the mental health crises it provoked have also limited his ability to maintain school attendance or employment, which are major life activities. (*Id.* ¶ 113.)

Next, Defendants argue that Plaintiffs have failed to allege "discriminatory denials of service." (Dkt. 52-1 at 25.) Not so. Onyx G, for example, has alleged that she has been cycled through highly restrictive STRTP placements and hindered from accessing less-restrictive THPP-NMD placements due to discriminatory policies that weed out applicants with mental health needs. (Dkt. 21 ¶¶ 50, 54.) Furthermore, Plaintiffs have alleged specific policies that discriminate against transition-aged youth seeking the least restrictive placement to which they are entitled, including failing to assist disabled youth in the SILP and THPP-NMD application process, *id.* ¶ 222; screening out disabled youth from applying to THPP-NMD, *id.* ¶ 225; encouraging disability discrimination by placement providers by providing mental health histories with no guardrails on how they are used (including requiring a reason for denial or opportunity to request reasonable accommodation), *id.* ¶¶ 225-227; and a systematic failure to provide reasonable accommodations to disabled youth, *id.* ¶¶ 228-229. These discriminatory policies have had and continue to have a disparate impact on all of the youth in the ADA subclass. (*See, e.g.*, *id.* ¶¶ 94, 97, 228 (Ocean S. was

repeatedly rejected from THPP-NMD programs, then pushed out rather than receiving reasonable accommodations); *id.* ¶ 70 (Rosie S. was not provided with written notice of the denials of her THPP-NMD applications).)[6]

Finally, Defendants argue that there can be no violation of the integration mandate because no Plaintiffs are "at risk of being institutionalized due to discrimination." (Dkt. 52-1 at 25.) But the case cited by Defendants rejects exactly this premise. *Lane v. Kitzhaber*, 841 F. Supp. 2d 1199, 1206 (D. Or. 2012) (rejecting defendants' argument that the integration mandate "applies only where the plaintiff faces a risk of institutionalization in a residential setting"). Defendants do not have a system to provide reasonable accommodations or help youth with mental health disabilities access services that would allow them to participate in less restrictive placements. (Dkt. 52 ¶ 228.) Defendants' discriminatory policies result in disabled youth being segregated into more-restrictive STRTP settings rather than more integrated settings such as THPP-NMDs and SILPs. (Dkt. 21 ¶¶ 249-253.) In addition, Defendants' policies that result in mentally ill youth becoming unhoused increase Plaintiffs' risk of institutionalization, for example, through incarceration. (*Id.* ¶¶ 255-258.) Those injuries are more than sufficient to state a claim. *See Lane*, 841 F. Supp. 2d at 1206.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs request the Court deny Defendants' motion to dismiss for lack of subject matter jurisdiction (Dkt. 51).

[6] Defendants insist that all of Plaintiffs' complaints must be framed as the result of "disparate impacts." (Dkt. 52-1 at 25 (citing *Payan v. L.A. Cmty. Coll. Dist.*, 11 F.4th 729, 739 (9th Cir. 2021).) This is exactly the error that led to a partial reversal in *Payan*. *See* F.4th at 739 ("[T]he district court erred in requiring [p]laintiffs to present all of their claims as disparate impact claims.").

DATED: January 23, 2024

Respectfully submitted,

By: */s/ Grant A. Davis-Denny*

Grant A. Davis-Denny
MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue, Fiftieth Floor
Los Angeles, California 90071-3426
Telephone: (213) 683-9100
Facsimile: (213) 687-3702
Attorney for Plaintiffs

***ADDITIONAL ATTORNEYS OF RECORD FOR PLAINTIFFS**

Kathryn Eidmann (SBN 268053)
keidmann@publiccounsel.org
Mark R. Rosenbaum (SBN 59940)
mrosenbaum@publiccounsel.org
Amanda Mangaser Savage (SBN 325996)
asavage@publiccounsel.org
Rachel Stein (SBN 257411)
rstein@publicounsel.org
Molly Mauck (SBN 344278)
mmauck@publiccounsel.org
Natalie Garnica (SBN 320230)
ngarnica@publiccounsel.org
Alero Egbe (SBN 349753)
aegbe@publiccounsel.org
Amelia Piazza (SBN 342473)
apiazza@publiccounsel.org
PUBLIC COUNSEL
610 South Ardmore Avenue
Los Angeles, California 90071-3426
Telephone: (213) 385-2977
Facsimile: (213) 385-9089

William D. Temko (SBN 98858)
william.temko@mto.com
Peter Gratzinger (SBN 228763)
peter.gratzinger@mto.com
Jimmy P. Biblarz (SBN 341874)
jimmy.biblarz@mto.com
MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue, Fiftieth Floor
Los Angeles, California 90071-3426
Telephone: (213) 683-9100
Facsimile: (213) 687-3702

Jessica Zou (NY Bar No. 5922091)
(Pro hac vice)
jzou@childrenrights.org
Stephanie Persson
(NY Bar No. 5469648)
(Pro hac vice)
spersson@childrensrights.org
Rebecca Ritchin (NY Bar No.
6015069)
(Pro hac vice)
CHILDREN'S RIGHTS
88 Pine Street, Suite 800
New York City, New York 10005
Telephone: (212) 683-2210

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiffs, certifies that this brief contains 25 pages, which complies with this Court's Standing Orders. (Dkt. 18 (9)(d).)

DATED: January 23, 2024

Respectfully submitted,

By: */s/ Grant A. Davis-Denny*

Grant A. Davis-Denny
MUNGER, TOLLES & OLSON LLP
350 South Grand Avenue, Fiftieth Floor
Los Angeles, California 90071-3426
Telephone: (213) 683-9100
Facsimile: (213) 687-3702
Attorney for Plaintiffs