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16
17 **UNITED STATES DISTRICT COURT**
18 **CENTRAL DISTRICT OF CALIFORNIA**
19 **WESTERN DIVISION (LOS ANGELES)**

20 OCEAN S., et al.,

21 Plaintiffs,

22 vs.

23 LOS ANGELES COUNTY, et al.,

24 Defendants.

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

**PLAINTIFFS’ OPPOSITION TO
CALIFORNIA DEPARTMENT OF
SOCIAL SERVICES AND
DIRECTOR KIM JOHNSON’S
MOTION TO DISMISS**

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

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2 *Youngberg v. Romeo*,

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11 Cal. Welf. & Inst. Code §16522.1(b)(2)..... 15

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14 28 C.F.R. § 35.130(b)(7) 19

15 28 C.F.R. pt. 35, app. A 20

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1 **I. INTRODUCTION**

2 Plaintiffs brought this lawsuit on behalf of a putative class of foster youth aged
3 16 to 21 (“transition age foster youth”) who are now, or will be, in extended foster
4 care in Los Angeles County. Defendants are county and state government officials
5 statutorily mandated to operate and oversee the Los Angeles County foster care
6 system. As set forth in Plaintiffs’ First Amended Complaint (“FAC”), Defendants
7 have failed to meet their statutory and constitutional duties to Plaintiffs and the
8 putative class, creating a pipeline from foster care to homelessness.

9 The California foster care system is county operated and state supervised. The
10 California Department of Social Services (“CDSS”), led by Director Kim Johnson
11 (together “CDSS Defendants”), is the state agency responsible for overseeing the
12 provision of foster care services throughout California. CDSS is the “single state
13 agency” responsible for ensuring that California’s foster care system complies with
14 federal law. Cal. Welf. & Inst. Code § 10600.

15 The Court should reject CDSS Defendants’ attempts to deny culpability for the
16 legal violations detailed in the FAC. Plaintiffs’ FAC documents the myriad ways in
17 which CDSS Defendants have failed to ensure the Los Angeles County foster care
18 system provides for Plaintiffs’ basic needs, and the resulting harms that Plaintiffs have
19 experienced. Plaintiffs have sufficiently pled their constitutional and statutory claims
20 and easily satisfy the Federal Rules’ lenient pleading standard. CDSS Defendants’
21 arguments regarding Plaintiffs’ standing to bring a claim under the Adoption
22 Assistance and Child Welfare Act (“AACWA”) are also without merit. Finally, the
23 Eleventh Amendment does not grant CDSS Defendants immunity from this lawsuit.
24 CDSS Defendants’ motion to dismiss should be denied (Dkt. 50).

25 **II. FACTUAL BACKGROUND**

26 CDSS is the “single state agency with full power to supervise every phase of
27 the administration of public social services . . . in order to secure full compliance with
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1 . . . federal laws.” Cal. Welf. & Inst. Code § 10600; (Dkt. 21 ¶ 30.) Such supervisory
2 authority includes responsibility for “developing California’s statewide foster care
3 plan,” “supervising the administration of statewide foster care services by county
4 agencies,” and “[enforcing] state and federal law.” Cal. Welf. & Inst. Code
5 § 10605(c); (*see also* Dkt. 21 ¶¶ 30-31.) As the head of CDSS, Director Johnson is
6 likewise statutorily responsible for monitoring and enforcing county compliance with
7 California and federal child welfare laws, and for taking immediate action where
8 appropriate to secure county compliance with such laws. Cal. Welf. & Inst. Code
9 § 10605(a)-(b); (Dkt. 21 ¶ 31.)

10 The federal government provides the largest single source of funding for
11 California’s foster care system through Title IV-E of the Social Security Act. (Dkt. 21
12 ¶ 128.) To comply with the federal funding requirements, California designated
13 CDSS as the “single state agency” responsible for administering the state foster care
14 system. (*Id.* ¶ 129); 42 U.S.C. § 671(a)(2). States that accept federal dollars for their
15 foster care system must administer their foster care programs in compliance with
16 federal law and regulations. (Dkt. 21 ¶ 128); 42 U.S.C. § 671(a).

17 As the state agency responsible for ensuring compliance with federal laws,
18 CDSS is specifically responsible for ensuring that the California foster care system
19 operates in compliance with federal statutes, including the case planning requirements
20 set out in AACWA and the requirements of the Americans with Disabilities Act
21 (“ADA”) and Section 504 of the Rehabilitation Act (“Section 504”). (Dkt. 21 ¶¶ 130,
22 184); 42 U.S.C. § 671(a)(16); Cal. Welf. & Inst. Code §§ 10600, 10605(a)-(c). CDSS
23 also receives federal funds pursuant to Section 504. (Dkt. 21 ¶¶ 130, 216, 310.)

24 CDSS is directly responsible for ensuring there is an adequate array of safe,
25 stable, and appropriate placements for foster youth throughout the state. (*Id.* ¶¶ 129,
26 147 (citing 42 U.S.C. § 671(a)(2)).) In this role, CDSS is required to “facilitate the
27 county placement agency’s evaluation of placement needs and the development of
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1 needed placement resources and programs.” Cal. Welf. & Inst. Code § 16001(a).
 2 CDSS also oversees development of a statewide foster care system that “ensures an
 3 appropriate array of placement resources” for foster youth. Cal. Welf. & Inst. Code
 4 § 16500.1(b)(9)-(10). CDSS is further required to allocate funds to support
 5 “programs, services, practices, and training that build[] system capacity and ensure[]
 6 the provision of a high-quality continuum of care to support foster children in the least
 7 restrictive setting.” Cal. Welf. & Inst. Code § 16001.1(b)(1).

8 CDSS is directly responsible for establishing and maintaining licensing
 9 standards for placements, and for licensing and overseeing such placements. (Dkt. 21
 10 ¶ 129 (citing 42 U.S.C. § 671(a)(2)); Dkt. 21 ¶ 147.) CDSS is responsible for licensing
 11 and establishing county certification standards and procedures for transitional housing
 12 placement programs (“THPP”) and transitional housing placement programs for non-
 13 minor dependents (“THHP-NMDs”). Cal. Health & Safety Code §§ 1559.110(a)(1),
 14 16522(a), (c).

15 Despite CDSS’ responsibility for overseeing California’s child welfare system,
 16 CDSS Defendants have failed to fulfill their statutory and constitutional obligations
 17 to protect transition age youth in Los Angeles County’s foster care system from harm
 18 and discrimination, including by systematically failing to: monitor case plans, develop
 19 community resources for placements, prevent housing discrimination, and ensure
 20 access to safe, stable placements. (Dkt. 21 ¶ 137.) CDSS Defendants have also
 21 directly failed to monitor and ensure that its primary county agent, Los Angeles
 22 Department of Children and Family Services (“DCFS”), and DCFS’ Director,
 23 Brandon Nichols, meets all constitutional and statutory minimums. (*Id.* ¶¶ 30, 31.)
 24 As a result, Plaintiffs have been harmed and placed at substantial risk of harm.

25 **III. STANDARD OF REVIEW**

26 A motion to dismiss under Rule 12(b)(6) “tests the legal sufficiency of a claim.”
 27 *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). To avoid dismissal, the plaintiff
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1 must allege enough facts to “nudge[]” his claims “across the line from conceivable to
 2 plausible.” *Ashcroft v. Iqbal*, 556 U.S. 662, 680 (2009) (citing *Bell Atlantic Corp. v.*
 3 *Twombly*, 550 U.S. 544, 570 (2007)). When reviewing a motion to dismiss, a court
 4 must accept all factual allegations pleaded as true and construe the pleading in the
 5 light most favorable to the nonmoving party. *Lazy Y Ranch LTD. v. Behrens*, 546 F.3d
 6 580, 588 (9th Cir. 2008). “A complaint should not be dismissed unless it appears
 7 beyond [a] doubt that [the] plaintiff can prove no set of facts in support of his claim
 8 which would entitle him to relief.” *Kimes v. Stone*, 84 F.3d 1121, 1126 (9th Cir.
 9 1996).

10 **IV. ARGUMENT**

11 CDSS Defendants’ motion to dismiss (Dkt. 50) should be denied. First,
 12 Plaintiffs meet each of the requirements for Article III standing to bring their
 13 AACWA case planning claims. Second, Plaintiffs have sufficiently pled their
 14 constitutional and statutory claims and easily satisfy the Federal Rules’ lenient
 15 pleading standard. Finally, there is no Eleventh Amendment bar to the continuation
 16 of this case. Plaintiffs have properly brought suit against Director Johnson, in her
 17 official capacity, on claims seeking prospective injunctive relief under 42 U.S.C.
 18 § 1983 (“Section 1983”). Likewise, Plaintiffs have properly brought suit against
 19 Defendant CDSS and Director Johnson under the ADA and Section 504.

20 **A. Plaintiffs Have Standing to Bring Their Well-Pled AACWA Claims.**

21 Plaintiffs meet the requirements for Article III standing to bring their AACWA
 22 case planning claims. They have (1) presented an injury that is “concrete and
 23 particularized,” and “actual or imminent,” (2) that injury is “fairly traceable to the
 24 challenged action of the defendant,” and (3) that injury is “redress[able] by a favorable
 25 decision.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992).

26 CDSS Defendants incorrectly assert that Plaintiffs lack standing because they
 27 have not “meaningfully” alleged that they lacked case plans or review. To the
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1 contrary, Plaintiffs have clearly pled that Defendants fail to provide them with case
2 plans that comply with AACWA’s mandates. AACWA requires that when a child or
3 youth enters foster care, the state foster care system must develop a “case plan,” a
4 document that includes a discussion of the appropriateness of the child’s placement
5 and a plan for assuring that the child receives safe and appropriate care and services
6 to address the child’s needs. (Dkt. 21 ¶ 174; 42 U.S.C. § 675(1)(A)-(B)); *see also*
7 *Henry A. v. Willden*, 678 F.3d 991, 1006-08 (9th Cir. 2012). The case plan must also
8 include transition planning to help youth transition successfully into adulthood and
9 live independently outside of foster care. (Dkt. 21 ¶ 176); 42 U.S.C. § 675(1)(D);
10 Cal. Welf. & Inst. Code §§ 11400(y), 16501.1(g)(16)(A)(i). In their FAC, Plaintiffs
11 allege that Defendants violate case planning requirements under AACWA by
12 developing “formulaic” case plans that “merely [check] boxes” on forms and “lack
13 description of individualized trauma-responsive supports and treatments needed by
14 the youth.” (Dkt. 21 ¶ 182.) Plaintiffs also allege that, when it comes to transition
15 planning for transition age foster youth, Defendants use transitional independent
16 living plans (“TILPs”) that do not meet AACWA case planning standards and
17 “routinely fail to discuss the safety or stability of the foster youth’s current placement,
18 the reasoning behind the choice of placement, or even the type of placement in which
19 the youth is residing.” (*Id.* ¶ 181.) As a result, Plaintiffs are at risk for placement
20 instability and homelessness. (*Id.* ¶ 135.)

21 The FAC is also replete with examples of the concrete harms the Named
22 Plaintiffs have suffered as a result of Defendants’ failure to ensure they receive case
23 plans and transition plans in compliance with federal law. For example, Onyx G. did
24 not receive “legally compliant case plans and transition plans,” and Ocean S.
25 “received limited to no transition planning.” (*Id.* ¶¶ 57, 93; *see also id.* ¶ 113 (Junior
26 R. did not receive “adequate transition planning support”); *id.* ¶ 126 (Monaie T. did
27 not receive “appropriate case planning”).) As a result, Plaintiffs have suffered harm
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1 or substantial risk of harm, including inappropriate placements and a lack of necessary
 2 medical services. (*See, e.g., id.* ¶¶ 52-58 (lack of appropriate case or transition
 3 planning for Onyx G. led to inappropriate placements in Short Term Residential
 4 Therapeutic Programs (“STRTP”) without necessary supportive and therapeutic
 5 services); *id.* ¶¶ 66-70, 72 (lack of appropriate case planning for Rosie S. led to an
 6 inappropriate placement in Nevada away from her support network in Los Angeles,
 7 without necessary supportive and therapeutic services); *id.* ¶¶ 92-97, 100-02 (lack of
 8 appropriate case or transition planning for Ocean S. led to inappropriate placements
 9 without necessary supportive and therapeutic services); *id.* ¶¶ 109, 111 (lack of
 10 appropriate case planning for Junior R. led to inappropriate and unstable placements
 11 and homelessness without necessary supportive and therapeutic services).) These
 12 detailed allegations of concrete, particularized, and actual and imminent harm easily
 13 satisfy this first element for standing.

14 **B. Plaintiffs’ Injuries are Directly Traceable to Action and Inaction by**
 15 **CDSS and Director Johnson.**

16 Plaintiffs have also sufficiently pled that their failure to receive sufficient case
 17 plans is directly traceable to CDSS Director Johnson’s failure to ensure compliance
 18 with the requirements of AACWA. CDSS Defendants’ argument that CDSS and
 19 Director Johnson play no role in ensuring that its county agents are complying with
 20 AACWA regarding the development and review of case plans is incorrect. (*See*
 21 *Dkt. 50 Section I(B)(2).*) As discussed in detail above, Director Johnson bears direct
 22 power and responsibility to monitor and ensure county compliance with state and
 23 federal laws such as AACWA. *See supra* Section II; Cal. Welf. & Inst. Code § 10605.
 24 Plaintiffs specifically allege that “CDSS, as the single state agency charged with
 25 complying with the case planning and transition planning provisions of AACWA, has
 26 failed to monitor and ensure that DCFS is meetings its legal obligations.” (*Dkt. 21*
 27 *¶ 184.*)

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1 CDSS and Director Johnson have failed to develop policies and procedures to
2 ensure that their county agents comply with the case planning provisions of AACWA,
3 and, as a result, Plaintiffs have not received legally required case plans and transition
4 plans. (*See id.* ¶¶ 181-82, 184, 291; *see also supra* Section IV(A); Dkt. 21 ¶¶ 57, 93,
5 113, 126 (describing instances in which the Named Plaintiffs did not receive case
6 plans compliant with AACWA, and the harms they suffered as a result).) Plaintiffs
7 have clearly alleged both DCFS’ failure to comply with AACWA requirements and
8 Director Johnson’s failure to monitor and enforce DCFS’ compliance.

9 **C. Plaintiffs’ Substantive Due Process Claim Should Not Be Dismissed.**

10 Plaintiffs have sufficiently pled a substantive due process claim against CDSS
11 Director Johnson under Section 1983. “To succeed on a § 1983 claim, a plaintiff must
12 show that (1) the conduct complained of was committed by a person acting under
13 color of state law; and (2) the conduct deprived the plaintiff of a federal constitutional
14 or statutory right.” *Patel v. Kent Sch. Dist.*, 648 F.3d 965, 971 (9th Cir. 2011). CDSS
15 has developed and maintained customs, policies and practices under color of state law
16 that, among other deficiencies, “fail[ed] to provide a minimally adequate array of safe
17 and stable placements” and “fail[ed] to identify sufficient emergency housing options
18 for youth transitioning between placements or re-entering care.” (Dkt. 21 ¶ 295; *see*
19 *also id.* ¶¶ 140-63.) In her official capacity, CDSS Director Johnson is thus directly
20 liable for failing to develop regulations and standards to ensure Plaintiffs’ access to a
21 minimally adequate array of safe placements. (*See id.* ¶ 31 (citing Cal. Welf. & Inst.
22 Code § 10553).)

23 In arguing that there is no substantive due process right to “an array of
24 placement options” and that Plaintiffs fail to allege any specific deficiencies by CDSS,
25 Director Johnson misstates both the law and Plaintiffs’ claims. (*See* Dkt. 50 (I)(C).)
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1 I. *There Is a Well-Established Right to Safe and Adequate*
 2 *Placements for Children and Youth in Foster Care.*

3 Individuals in foster care have a well-established substantive due process right
 4 to “reasonable safety and minimally adequate care and treatment appropriate to the
 5 age and circumstances” of the foster youth, and the state has a “duty to protect” these
 6 youth from deprivation of these protected liberty interests. *Lipscomb ex rel. DeFehr*
 7 *v. Simmons*, 962 F.2d 1374, 1379 (9th Cir. 1992) (citing *DeShaney v. Winnebago*
 8 *Cnty. Dep’t of Soc. Servs.*, 489 U.S. 189, 199-200 (1989); *Youngberg v. Romeo*,
 9 457 U.S. 307, 315-16 (1982); *Estelle v. Gamble*, 429 U.S. 97, 103-04 (1976)).

10 Courts in the Ninth Circuit, as well as across Circuits, have consistently found
 11 that the substantive due process rights of children and youth in foster care include the
 12 right to reasonably safe and minimally adequate placements. *See, e.g., Tamas v. Dep’t*
 13 *of Soc. & Health Servs.*, 630 F.3d 833, 847 (9th Cir. 2010) (holding there is a
 14 “protected liberty interest in safe foster care placement”); *Hernandez v. Tex. Dep’t of*
 15 *Protective & Regul. Servs.*, 380 F.3d 872, 880 (5th Cir. 2004) (upholding a
 16 “constitutional right . . . to personal security and reasonably safe living conditions”);
 17 *Yvonne L. ex rel. Lewis v. N.M. Dep’t of Hum. Servs.*, 959 F.2d 883, 892 (10th Cir.
 18 1992) (same); *Meador v. Cabinet for Hum. Res.*, 902 F.2d 474, 476 (6th Cir. 1990)
 19 (same); *Jeremiah M. v. Crum*, 2023 WL 6316631, at *16 (D. Alaska) (finding a
 20 “constitutionally protected right to basic needs, such as . . . shelter . . . and reasonable
 21 safety”).

22 CDSS Defendants cite no cases to the contrary. They instead rely on *Wyatt B.*
 23 *ex rel. McAllister v. Brown*, 2021 WL 4434011 (D. Or. Sept. 27, 2021), and *M.D. ex*
 24 *rel. Stukenberg v. Abbott*, 907 F.3d 237, 268 (5th Cir. 2018), two cases involving
 25 claims fundamentally different from those pled here. The courts in those cases found
 26 that Plaintiffs sought particular types of placements that were “optimal” to plaintiffs’
 27 particular needs. *See Wyatt B.*, 2021 WL 4434011, at *9; *M.D.*, 907 F.3d at 268. The
 28

1 courts found that children in foster care *have* a substantive due process right to
2 reasonably safe and minimally adequate placements, but found that that right did not
3 extend to requiring foster children to be placed in the most optimal setting. *See Wyatt*
4 *B.*, 2021 WL 4434011, at *7, 9 (citing *Lipscomb*, 962 F.2d at 1379); *M.D.*, 907 F.3d
5 at 250 (citing *Hernandez*, 380 F.3d at 880).

6 By contrast, Plaintiffs here claim that Director Johnson’s failures to ensure a
7 minimally adequate array of safe and stable placements are so substantial that they
8 have resulted in Plaintiffs frequently having *no placement at all*. (*See, e.g.*, Dkt. 21
9 ¶¶ 38, 98, 109, 122, 125, 135.) While protection of Plaintiffs’ substantive due process
10 rights may not require Director Johnson to maintain a placement array that would
11 allow for “maximum personal psychological development, optimal treatment, or the
12 most appropriate care,” that is not the claim in this case. Director Johnson must
13 maintain a minimally adequate placement array that ensures “personal security and
14 reasonably safe living conditions” for all foster youth in its care. *M.D.*, 907 F.3d at
15 250 (citing *Hernandez*, 380 F.3d at 880). A foster care system that allows transition
16 age foster youth to become unhoused is one that fundamentally fails at providing
17 personal security and reasonably safe living conditions. Every single Named Plaintiff
18 has endured periods living in homeless shelters, hotels, or on the streets despite their
19 status as dependents in CDSS Defendants’ care. (*See, e.g.*, Dkt. 21 ¶¶ 38, 52, 65-66,
20 78, 97, 100, 108-9, 124-25.)

21 2. *Director Johnson Is Responsible for Ensuring California’s Child*
22 *Welfare System Meets Constitutional Minimums.*

23 Director Johnson is responsible for ensuring adequate placements for transition
24 age foster youth in her capacity as the head of CDSS. (*See id.* ¶¶ 30-31, 129
25 (describing CDSS’ supervisory responsibility over county administration of foster
26 systems).) As the single state agency “with full power to supervise every phase of the
27 administration of public social services” for which California receives federal
28

1 funding, CDSS is responsible for ensuring that its county agents maintain a minimally
2 adequate placement array for foster youth. Cal. Welf. & Inst. Code § 10600. *See*
3 *supra* Section II; *In re Danielle W.*, 207 Cal. App. 3d 1227, 1235 n.6 (Ct. App. 1989)
4 (“[T]he county social service agencies . . . are performing powers of the state
5 executive branch and are subject to the administration, supervision and regulation of
6 the State Department of Social Services.”).

7 The Ninth Circuit has explicitly held that, where county agencies administer
8 child welfare programs and the state agency directly oversees and supervises that
9 administration, foster youth are sufficiently in the custody of both county *and* state
10 agencies for the purposes of substantive due process claims. *Henry A.*, 678 F.3d at
11 1003. Where that custodial relationship exists, CDSS owes transition age foster
12 youth, “as part of [their] protected liberty interest, reasonable safety and minimally
13 adequate care and treatment appropriate to the age and circumstances of the child.”
14 *Lipscomb*, 962 F.3d at 1379. Moreover, courts have specifically found that claims of
15 constitutional deficiencies in state child welfare systems may proceed jointly against
16 county and state defendants where plaintiffs sufficiently “cite[] specific statutory
17 provisions that create direct supervisory control over subordinates actively involved
18 in the foster care system.” *Clark K. v. Guinn*, 2007 WL 1435428, at *24 (D. Nev.
19 May 14, 2007); *see also Jeanine B. ex rel. Blondis v. Thompson*, 877 F. Supp. 1268,
20 1278-80 (E.D. Wis. 1995). Director Johnson has both the responsibility and the
21 authority to enforce county agency compliance with constitutional requirements,
22 particularly the right to access safe and stable placements at all times through a
23 minimally adequate placement array. CDSS Defendants fail to cite any case law to
24 the contrary.

25 Director Johnson cannot, as the head of the agency responsible for ensuring
26 California’s foster care system complies with constitutional requirements, simply
27 deny her constitutional and statutory responsibilities by claiming that “CDSS cannot
28

1 force more private entities to become licensed THPP-NMD providers.” (Dkt. 50
2 Section I(C)(1).) Director Johnson is statutorily obligated to develop policies and
3 procedures to adequately guarantee the protection of Plaintiffs’ basic substantive due
4 process rights. Plaintiffs’ requested relief would require that Defendants “correct
5 systemic failures to ensure there is a minimally adequate placement array such that
6 Class members have access to safe and stable placements at all times.” (Dkt. 21
7 Request for Relief (d).)

8 **D. Plaintiffs’ Procedural Due Process Claim Should Not Be Dismissed.**

9 Plaintiffs have sufficiently alleged that they have a property interest in a safe,
10 stable, and appropriate placement benefit at all times, and that Director Johnson’s
11 policies and procedures deprive Plaintiffs of that right without adequate due process.

12 *1. Plaintiffs Have a Procedural Due Process Right to Adequate*
13 *Placements.*

14 A protected property interest is present where an individual has a reasonable
15 expectation of entitlement deriving from “existing rules or understandings that stem
16 from an independent source such as state law.” *Wedges/Ledges of Cal., Inc. v. City*
17 *of Phoenix*, 24 F.3d 56, 62 (9th Cir. 1994) (quoting *Bd. of Regents v. Roth*, 408 U.S.
18 564, 577 (1972)). All youth in foster care, expressly including nonminor dependents,
19 have a “right” under state law to “live in a safe, healthy, and comfortable home,” and
20 to be “placed in the least restrictive setting possible.” Cal. Welf. & Inst. Code
21 §16001.9(a)(1), (4); *see also* Section 16000.1(a) (“[A]s a matter of public policy, the
22 state assumes *an obligation of the highest order* to ensure the safety of children in
23 foster care.”) (emphasis added). Courts have confirmed that Section 16001.9
24 enumerates legally enforceable rights. *See Von Bradley v. Dep’t of Child. & Fam.*
25 *Servs.*, 2018 WL 7291450, at *2 (C.D. Cal. Dec. 12, 2018) (citing *Martinez v. Cnty.*
26
27
28

1 of *Sonoma*, 2015 WL 5354071, at *10 (N.D. Cal. Sept. 14, 2015)). Thus, Plaintiffs
 2 have a clear entitlement under state law to a placement that includes a safe home.¹

3 CDSS Defendants mischaracterize Plaintiffs’ procedural due process claim as
 4 alleging a property right in a THPP-NMD placement. (Dkt. 50 Section I(D)(2).) But
 5 Plaintiffs allege more precisely that they have a protected property interest in the right
 6 to a *placement benefit* while in foster care, and that “Defendants’ procedures deny
 7 [them] the right to due process in applying for and maintaining their *placement*
 8 *benefit*.” (Dkt. 21 ¶ 185 (emphasis added).) Foster youth are entitled to placements
 9 targeted to their individual needs, specifically, in “the least restrictive setting
 10 possible.” Cal. Welf. & Inst. Code § 16001.9(a)(4). California, as a condition of
 11 receiving federal funding, must maintain a compliant “case review system” in which
 12 each youth has a “case plan” designed to “achieve placement in a safe setting that is
 13 the least restrictive.” 42 U.S.C.A. §§ 671(a)(16), 675(5)(A). Thus, a compliant case
 14 plan must identify the “least restrictive” placement to which each youth is entitled
 15 under Cal. Welf. & Inst. Code § 16001.9(a)(4). *See id.* If that setting is, for example,
 16 THPP-NMD, then the foster youth is by definition “in a class of individuals whom
 17 the [THPP-NMD] program was intended to benefit,” and has a protectable interest in
 18 that benefit. *See Ressler v. Pierce*, 692 F.2d 1212, 1215 (9th Cir. 1982).

19 Director Johnson has no discretion to deny this property right, and cannot avoid
 20 her due process obligations by administering the placement benefit through a number
 21 of allegedly “discretionary” programs. Compliance with CDSS’ own regulations
 22 “does not automatically satisfy due process requirements,” since “[p]roperty’ cannot
 23 be defined by the procedures provided for its deprivation.” *Cleveland Bd. of Educ. v.*

24 _____
 25 ¹ Youth are also entitled to emergency housing between placements. *See* Cal. Welf.
 26 & Inst. Code § 16001(a)(2) (county placement authorities must assess “[t]he county’s
 27 ability to meet the emergency housing needs of nonminor dependents in order to
 28 ensure that all nonminor dependents have access to immediate housing upon
 reentering foster care or for periods of transition between placements”). These
 entitlements under state law are distinct from Defendants’ obligations under the
 substantive due process clause. *See supra* Section IV(C)(1).

1 *Loudermill*, 470 U.S. 532, 541 (1985). *See also Nozzi v. Hous. Auth. of Los Angeles*,
2 425 F. App'x 539, 542 (9th Cir. 2011) (“Technical compliance with regulatory
3 procedures does not automatically satisfy due process requirements.”); *K.W. ex rel.*
4 *D.W. v. Armstrong*, 789 F.3d 962, 973 (9th Cir. 2015) (“If a state grants a property
5 interest, its procedures for terminating or modifying that interest do not narrow the
6 interest’s scope.”). Furthermore, THPP providers’ discretion is circumscribed by
7 statute. Providers are statutorily required to provide “admission criteria” such as age,
8 placement history, and delinquency history. Cal. Welf. & Inst. Code § 16522.1(b)(1).
9 They are also forbidden from using certain “admission criteria” such as automatic
10 exclusion based on the use of psychotropic medications, *id.*, and CDSS must review
11 and approve providers’ admission criteria to ensure that they “protect” participants
12 and do not discriminate on the basis of protected characteristics. § 16522.1(b)(2).
13 THPP-NMD providers must be “willing and able to accept the AFDC-FC-eligible
14 nonminor dependents for placement by the placing agency who need the level of care
15 and services that will be provided by the program.” § 16522.1(c)(3).

16 In *Ressler*, as here, the state argued that applicants did not have a protectable
17 property interest because “selection of tenants” was by statute a “function of the
18 owner.” 692 F.2d at 1215 (quoting 42 U.S.C. § 1437f(d)(1)(A)). The Ninth Circuit,
19 however, found that owner discretion was “circumscribe[d]” and did not foreclose
20 due process protections because, *inter alia*, a certain percentage of units were reserved
21 for “very low-income families,” eligible tenants were to be selected “in accordance
22 with a HUD-approved marketing plan,” and HUD's administrative guidelines set
23 “eligibility standards.” *Id.* Likewise here, provider “discretion” is sufficiently
24 circumscribed to state a claim under *Ressler*.

25 2. *Plaintiffs Have Sufficiently Alleged Violations of Their*
26 *Procedural Due Process Rights with Respect to Placement*
27 *Benefits.*

28

1 The FAC repeatedly details allegations sufficient to state a claim for violation
2 of Plaintiffs’ procedural due process rights. The process due in a given case requires
3 a balancing of (a) the nature of the interest and “degree of potential deprivation,” (b)
4 the “fairness and reliability” of existing safeguards and probable value of additional
5 safeguards, and (c) the public interest, including administrative burden. *Nozzi, v.*
6 *Hous. Auth. of City of Los Angeles*, 806 F.3d 1178, at 1192 (9th Cir. 2015) (quoting
7 *Mathews v. Eldridge*, 424 U.S. 319, 341-343 (1976)). Where, as here, the potential
8 deprivation can mean “the difference between safe, decent housing and being
9 homeless,” the private interest is “substantial.” *Id.* at 1193.

10 Plaintiffs have alleged specific deficiencies in the fairness and reliability of
11 existing policies and procedures administered and overseen by Director Johnson. As
12 the Director of the single state agency charged with overseeing foster care, Director
13 Johnson is liable for failing to develop regulations and standards to ensure Plaintiffs’
14 due process rights are protected in foster care placement application and discharge
15 procedures. (*See* Dkt. 21 ¶ 31.) In addition to general oversight responsibilities,
16 Director Johnson is responsible for overseeing all THPP-NMD providers, including
17 by licensing THPP-NMD providers (Cal. Health & Safety Code § 1559.110(a)),
18 establishing certification standards to govern providers (Cal. Welf. & Inst. Code
19 § 16522(c)), and reviewing providers’ admission criteria to ensure they do not
20 discriminate on the basis of any protected characteristic (Cal. Welf. & Inst. Code
21 § 16522.1(b)(2)).

22 Plaintiffs allege numerous deficiencies and due process violations in existing
23 placement processes, including that: the existing 7-day notice period for THPP-NMD
24 is inadequate (dkt. 21 ¶¶ 197–198); youth are not given notice of how to contest
25 discharges or provided an opportunity to contest discharges during an evidentiary
26 hearing before a neutral arbiter (*id.* ¶ 199); youth are not allowed to remain housed
27 while any contest is pending (*id.*); there are no procedural guardrails to prevent regular
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1 discharges from being mischaracterized as “emergency” discharges with even fewer
2 protections (*id.* ¶¶ 201-02); and Supervised Independent Living Placements
3 (“SILPs”) are terminated with no written explanation or meaningful opportunity to be
4 heard (*id.* ¶¶ 203-204). Each of these are the types of procedural deficiencies that
5 courts have recognized as falling short of due process requirements. *See,*
6 *e.g., Goldberg v. Kelly*, 397 U.S. 254, 267–68, 271 (1970) (due process required
7 timely and adequate notice detailing the reasons for the deprivation and evidentiary
8 hearing before an impartial decision maker prior to termination of benefits); *id.* at 268
9 (fairness in some cases may require more than seven days’ notice of benefits); *Jordan*
10 *v. Dir., Office of Worker’s Comp. Programs, U.S. Dep’t of Lab.*, 892 F.2d 482, 488
11 (6th Cir. 1989) (“[W]here the affected individuals are ‘of various levels of education,
12 experience, and resources,’ they must receive notice of the availability of a procedure
13 for protesting the threatened deprivation.”) (quoting *Memphis Light, Gas & Water*
14 *Div. v. Craft*, 436 U.S. 1, 14, n.15 (1978)).

15 Further, Plaintiffs have alleged specific instances in which they have been
16 injured by constitutionally deficient discharge processes. (Dkt. 21 ¶ 201 (“Jackson
17 K., for example, was given a three-day notice to vacate his THPP-NMD placement
18 that did not cite any program rules violation and noted that it was his responsibility to
19 find a placement once he was discharged.”); *id.* ¶ 204 (“Junior R., for example, was
20 forced to leave SILP with no written explanation or meaningful opportunity to be
21 heard.”).)

22 CDSS Defendants assert that if Plaintiffs are denied entrance to a particular
23 placement, “the remedy is for the County to find another placement.” (Dkt. 50 Section
24 I(D)(4).) But Plaintiffs do not have the option of readily moving to another placement
25 when they are denied housing precisely because Director Johnson has failed to
26 develop regulations and standards to ensure Plaintiffs’ access to a minimally adequate
27 array of safe placements. (Dkt. 21 ¶ 295; *see also id.* ¶¶ 140-63.) Rather than being
28

1 moved to “another placement” upon discharge, Plaintiffs become unhoused. (*Id.*
2 ¶¶ 38, 98, 109, 122, 125, 135.) Director Johnson’s constitutionally deficient
3 placement application and discharge processes exacerbate the harm caused by her
4 substantive due process violations.

5 Moreover, Plaintiffs’ requested remedy is not to find another individual
6 placement, but for Director Johnson to oversee and implement a system which
7 provides transition age foster youth with fair and reliable procedural safeguards
8 related to placements. (*Id.* ¶ 304.) Such safeguards include: clear application
9 procedures and transparency regarding the wait times for placement, timely and
10 adequate written notice of placement denials and discharges, and meaningful
11 opportunities to contest placement denial and discharge decisions, including a pre-
12 deprivation evidentiary hearing before a neutral arbiter. (*Id.* ¶ 304.)

13 **E. Plaintiffs Adequately State a Claim for Relief Under the ADA and**
14 **Section 504.**

15 CDSS Defendants do not contest that Plaintiffs are qualified individuals with
16 disabilities for purposes of the ADA and Section 504. CDSS Defendants also do not
17 dispute that CDSS is a public entity for purposes of the ADA and Section 504 and
18 receives federal funding under Title IV-E for its foster care services. The only
19 argument that CDSS Defendants raise is that “Plaintiffs fail to allege CDSS
20 discriminated against them based on disability.” (Dkt. 50 Section II.) CDSS
21 Defendants are incorrect. Plaintiffs have sufficiently alleged facts which entitle them
22 to relief under Title II of the ADA and Section 504 against CDSS and Director
23 Johnson. CDSS’ policies and procedures have denied Plaintiffs’ and ADA Subclass
24 members’ equal access to placements available to non-disabled transition age foster
25 youth, and placement in the most integrated, least restrictive setting appropriate to
26 their needs.

27
28

1 In general, to state a claim for relief under the ADA, a plaintiff must allege that
2 (1) they are a qualified person with a disability, (2) they were excluded from
3 participation in, or denied the benefits of a program offered by a public entity, or
4 otherwise subjected to discrimination by a public entity, and (3) the discrimination
5 was by reason of their disability. *See Payan v. L.A. Cmty. Coll. Dist.*, 11 F.4th 729,
6 737 (9th Cir. 2021). Courts typically interpret claims under Title II of the ADA and
7 Section 504 coextensively because “there is no significant difference in the analysis
8 of rights and obligations created by the two Acts.” *Vinson v. Thomas*, 288 F.3d 1145,
9 1152, n.7 (9th Cir. 2002).

10 As described in Plaintiffs’ FAC, CDSS plays a primary role in licensing
11 placement providers and establishing standards to maintain licensure, particularly
12 through CDSS’ promulgation of the Interim Licensing Standards for THPP-NMD
13 providers. (Dkt. 21 ¶¶ 129, 147.) Plaintiffs’ FAC further describes in detail the ways
14 in which CDSS’ Interim Licensing Standards have encouraged discrimination against
15 transition age foster youth with disabilities. (*See, e.g., id.* ¶ 225 (licensing standards
16 fail to place guardrails on how providers can use medical and disability information
17 to assess suitability for placement); *id.* ¶ 246 (licensing standards allow discriminatory
18 removals from placement based on behavioral or psychiatric crises); *id.* ¶ 247
19 (licensing standards allow discriminatory removals from placement when a youth
20 with disabilities requires accommodations).)

21 Additionally, Defendants’ procedures are not designed, and do not provide for
22 a reliable system, to: (1) allow youth to request reasonable accommodations to enable
23 them to fully access and benefit from the placements available to their non-disabled
24 peers despite their disability; (2) provide, or require THPP-NMD programs to
25 provide, assistance to transition age foster youth with mental health disabilities to
26 access individualized and developmentally appropriate mental health services or other
27 reasonable accommodations that would allow the youth to participate in THPP-NMD
28

1 programs; and (3) allow youth to dispute a provider’s interpretation of the youth’s
2 needs. (*Id.* ¶¶ 227-28.)

3 These procedural and policy failings are captured in the experiences of the
4 Named Plaintiffs. (*See, e.g., id.* ¶¶ 90, 95-97 (Ocean S., who has been diagnosed with
5 Post-Traumatic Stress Disorder and major depression, was forced out of her THPP-
6 NMD placement after she experienced a domestic violence incident); *id.* ¶¶ 112, 114-
7 15 (Junior R., who has been diagnosed with depression and anxiety, was rejected from
8 THPP-NMDs based on his behavioral history with no opportunity to ask for needed
9 accommodations); *id.* ¶ 228 (Jackson K., learned of several denials by THPP-NMD
10 programs but had no opportunity to present his application or respond, let alone
11 discuss reasonable accommodations that would allow him to succeed in the placement
12 programs).)

13 Plaintiffs have also alleged in great detail how the county agents of CDSS
14 Defendants, over whom CDSS Defendants hold supervisory responsibility, have
15 discriminated against ADA Subclass members. (*See id.* ¶¶ 221-30; *see also* Dkt. 67
16 III(F) (discussing County Defendants’ violations of the ADA and Section 504).)
17 DCFS’ discriminatory policies and practices are a direct reflection of CDSS’ failure
18 to ensure nondiscrimination in the foster care programs it directly supervises.
19 Plaintiffs have more than adequately stated a claim against CDSS Defendants for
20 violations of the ADA and Section 504.

21 None of CDSS Defendants’ attempts to avoid liability for their own
22 discriminatory policies, or for the discriminatory policies of the agencies they oversee,
23 hold water. First, CDSS Defendants’ attempts to hide behind “facially reasonable”
24 policies misstate the legal standard. Such policies can still violate the law where they
25 unduly burden disabled persons. Second, it does not matter whether CDSS
26 Defendants directly provide the services at issue, as long as they bear direct
27 supervisory responsibilities for such discriminatory acts or policies.

28

1 CDSS Defendants’ assertion that they should not be held liable because its
2 policies are “facially reasonable” misstates the legal standard. (Dkt. 50 Section II.)
3 The Ninth Circuit has “repeatedly recognized that facially neutral policies may violate
4 the ADA when such policies unduly burden disabled persons.” *McGary v. City of*
5 *Portland*, 386 F.3d 1259, 1265 (9th Cir. 2004). Under Title II of the ADA, Defendant
6 state and county agencies are required to “make reasonable modifications in policies,
7 practices, or procedures when the modifications are necessary to avoid discrimination
8 on the basis of disability.” 28 C.F.R. § 35.130(b)(7). Plaintiffs’ FAC even suggests
9 examples of reasonable modifications to CDSS’ policies that could prevent the
10 disability discrimination described in this matter. For instance, CDSS’ standards
11 could require providers to use “trauma-responsive interventions and dispute
12 resolution processes to enable youth with mental health disabilities to remain in
13 placements at all times.” (Dkt. 21 ¶ 248.)

14 CDSS Defendants are also incorrect that they have no liability under the ADA
15 or Section 504 simply because it is “not responsible for providing plaintiffs with direct
16 services.” (Dkt. 50 Section II.) As discussed in detail above, CDSS and Director
17 Johnson bear significant responsibilities for supervising county agencies and
18 enforcing compliance with federal laws. *See supra* Section II. CDSS must ensure
19 that its foster system services, programs, and activities comply with the ADA and
20 Section 504, even when operated by private entities through contracts, licenses, or
21 other arrangements. 28 C.F.R. § 35.130(b)(3); *see also Indep. Living Ctr. of S. Cal.*
22 *v. City of Los Angeles*, 2012 WL 13036779, at *8 (C.D. Cal. Nov. 29, 2012) (finding
23 that Congress’s “‘strong interest in ensuring that federal funds are not used in a
24 discriminatory manner’ . . . would be undermined if government entities could avoid
25 liability by transferring funds to private parties”) (citing *Lovell v. Chandler*,
26 303 F.3d 1039, 1051 (9th Cir. 2002)). When services are administrated by “[another]
27 public entity that has its own [T]itle II obligations,” – for instance, the County – the
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1 state “is still responsible for ensuring that the other public entity complies with [T]itle
 2 II in providing those services.” 28 C.F.R. pt. 35, app. A; *see also Armstrong v.*
 3 *Schwarzenegger*, 622 F.3d 1058, 1074 (9th Cir. 2010) (“[A] state cannot avoid its
 4 obligations under federal law by contracting with a third party to perform its
 5 functions.”); *Indep. Living Ctr.*, 2012 WL 13036779, at *8 (“Congress’s interest in
 6 eliminating disability-based discrimination ‘flows with every dollar spent by a
 7 department or agency receiving federal funds.’”) (citing *Koslow v. Pennsylvania*,
 8 302 F.3d 161, 175-76 (3d. Cir. 2002)). Thus, as the recipient of Title IV-E funds for
 9 California’s foster system, CDSS Defendants are responsible for ensuring that both
 10 the county agencies and private placement providers that subsequently receive these
 11 federal funds do not discriminate against transition age foster youth with disabilities.
 12 CDSS Defendants, however, have clearly failed to do so.

13 **F. Plaintiffs’ Familial Association Claim Should Not Be Dismissed.**

14 Plaintiffs have also adequately alleged that Director Johnson deprives
 15 transition age foster youth who are pregnant or parenting of their right to familial
 16 association under the First, Ninth, and Fourteenth Amendments of the United States
 17 Constitution. Parents have a well-established “fundamental liberty interest” in the
 18 “care, custody, and management of their child.” *Santosky v. Kramer*, 455 U.S. 745,
 19 753 (1982); *see also Stanley v. Illinois*, 405 U.S. 645, 651 (1972). In fact, a parent’s
 20 interest in the care and upbringing of their children is “perhaps the oldest of the
 21 fundamental liberty interests recognized by [the Supreme] Court.” *Troxel v.*
 22 *Granville*, 530 U.S. 57, 65 (2000). “Minors also have a right to familial association
 23 with their parents . . . rooted in the First and Fourteenth Amendments.” *Lucas R. v.*
 24 *Becerra*, 2022 WL 2177454, at *14 (C.D. Cal., 2022).

25 The right to familial association is implicated any time the state unlawfully
 26 interferes with the parent-child relationship by removing the parent’s ability to make
 27 decisions about the “nurture and upbringing of their children.” *Wisconsin v. Yoder*,

28

1 406 U.S. 205, 232-233 (1972); *see also Quilloin v. Walcott*, 434 U.S. 246 (1978).
 2 Courts have also found that once a state agency removes a child from their parents’
 3 care, “it cannot deliberately and without justification deny that child the services
 4 necessary to facilitate reunification . . . when safe and appropriate, without violating
 5 the child’s right to family integrity.” *Kenny A. ex rel. Winn v. Perdue*, 218 F.R.D.
 6 277, 297 (N.D. Ga. 2003). Likewise, courts have found that children also have a right
 7 to familial association with their parents, and have required government agencies to
 8 undertake additional protective procedures where a class of children in government
 9 custody were “erroneously deprived of their interest in . . . familial association with
 10 parents and close family members.” *Lucas R.*, 2022 WL 2177454, at *28.

11 Director Johnson misstates Plaintiffs’ claims, arguing that “there is no
 12 constitutional right that imposes an affirmative duty to nurture familial relationships.”
 13 (Dkt. 50 I(4)(E).) Plaintiffs seek no such relief.² Instead, Plaintiffs allege that
 14 Director Johnson *interferes* with their right to family association, through maintaining
 15 practices and policies that “deny pregnant and parenting youth and their children of
 16 access to safe, stable and appropriate placement,” while simultaneously permitting
 17 the county agencies they directly supervise to initiate and maintain dependency
 18 proceedings against these same parenting youth on the basis of inadequate housing or
 19 homelessness. (Dkt. 21 ¶¶ 205-14.) Critically, transition age foster youth who are
 20 pregnant and parenting are themselves in government care, and therefore reliant on
 21 Director Johnson to ensure access to an adequate array of placements sufficient to
 22 meet their housing needs. (*Id.*) CDSS Defendants’ policies and practices place
 23

24 ² The case CDSS Defendants cite for this proposition is also not factually analogous
 25 to the case at bar. In *Marisol A. by Forbes v. Giuliani*, 929 F. Supp. 662, 677
 26 (S.D.N.Y. 1996), Plaintiffs “challenge[d] defendants’ general failure to provide
 27 services that function to preserve the family unit.” This is not the case here. Notably,
 28 *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.*

1 pregnant and parenting youth in an impossible situation. Parenting youth risk removal
2 of their children if they do not secure stable housing, yet the same government
3 officials responsible for their housing also discriminate against pregnant and
4 parenting youth, making obtaining such housing nearly impossible. (*Id.*) Moreover,
5 once a child is removed, Defendants’ policies “impose housing as a condition of
6 family reunification.” (*Id.*)

7 The FAC is replete with examples of the harms faced by pregnant or parenting
8 transition age youth as a direct result of policies and practices that Defendant Johnson
9 oversees and administers. (Dkt. 21 ¶¶ 62-73; 87-103; 118-26.) For example, DCFS,
10 over whom Director Johnson bears direct oversight responsibilities, permits THPP-
11 NMD providers to exclude parenting youth from their programs and to discharge
12 youth who become pregnant. (*Id.* ¶¶ 208-09.) DCFS also permits contractors to
13 maintain rules that effectively push out parenting youth, for example, enforcing
14 employment requirements that are much shorter than federal standards for parental
15 leave. (*Id.* ¶ 210.) And DCFS policies allow THPP-NMD to reject applicants who
16 do not have physical custody of their children. (*Id.* ¶ 98.) The direct and foreseeable
17 result of these policies is a critical shortage of placements for parenting youth, leading
18 to preventable family separations. For example, Ocean S. became unhoused because
19 of a lack of appropriate placement options and planning around her placement. (*Id.*
20 at ¶¶ 93-102.) During this time her daughter was removed from her care. (*Id.*) Ocean
21 S. could not get her daughter back without stable housing, but she was ineligible for
22 the limited THPP-NMD placements available for parenting youth without having
23 physical custody of her daughter. (*Id.* at ¶ 214; *see also* Dkt. 67 III(D) (discussing in
24 further detail the right to familial association, and Defendants’ violation of this right).)

25 Director Johnson, as head of CDSS, is directly responsible for overseeing the
26 availability of placements for children and youth placed in foster care, and for policies
27 around their care. (Dkt. 21 ¶¶ 179, 202.) As the agency responsible for administering
28

1 the foster care system state-wide, CDSS is tasked with licensing and overseeing
 2 placements programs and services for all of California’s foster youth. (*Id.* ¶¶ 40, 67,
 3 128-29, 131, 135-36.) CDSS’ duties include establishing and maintaining standards
 4 for foster family homes and childcare institutions, and overseeing administration by
 5 the County. (*Id.* ¶ 129 (citing 42 U.S.C. § 671(a)(2)).) Moreover, as the state
 6 licensing agency, CDSS is responsible for working with counties to ensure there is an
 7 adequate array of safe, stable, and appropriate placements that are licensed and in
 8 compliance with the state’s standards. (*Id.* ¶ 147.) Director Johnson has acted with
 9 deliberate indifference to the harms faced by pregnant and parenting youth by failing
 10 to ensure the availability of sufficient placements for pregnant and parenting transition
 11 age foster youth, and by failing to adopt practices and policies that address current
 12 discrimination within the system that result in family separation.

13 **G. This Litigation Is Not Barred by the Eleventh Amendment.**

14 Plaintiffs have properly brought suit against Director Johnson, in her official
 15 capacity, on claims arising under Section 1983, the ADA, and Section 504.³
 16 Likewise, Plaintiffs have properly brought suit against CDSS under the ADA and
 17 Section 504.⁴

18 While Plaintiffs do not contest that CDSS has Eleventh Amendment immunity
 19 from Section 1983 claims, CDSS is not immune from suit for those claims brought
 20 under the ADA and Section 504. Congress may remove state sovereign immunity if
 21 it “unequivocally expresse[s] its intent to abrogate that immunity” and “act[s]
 22 pursuant to a valid grant of constitutional authority.” *Kimel v. Fla. Bd. of Regents*,

23 _____
 24 ³ The Eleventh Amendment does not bar Plaintiffs’ Section 1983 claims against
 25 Defendant Johnson in her official capacity under the well settled *Ex parte Young*
 26 exception. *Ex parte Young*, 209 U.S. 123, 159 (1908); *see also Miranda B. v.*
 27 *Kitzhaber*, 328 F.3d 1181, 1189 (9th Cir. 2003) (actions seeking prospective
 28 injunctive relief from state officials who have a duty to enforce the challenged action
 are not barred by the Eleventh Amendment).

⁴ Plaintiffs concede that claims 1, 2, 3, and 6 should be dismissed as to agency
 Defendant CDSS.

1 528 U.S. 62, 73 (2000). Congress explicitly abrogated state immunity under the ADA
 2 and Section 504. *See* 42 U.S.C. §§ 2000d-7(a)(1), 12202. In *Clark v. California*, the
 3 Ninth Circuit held that the ADA and Section 504’s abrogations of Eleventh
 4 Amendment immunity were valid exercises of Congressional authority. 123 F.3d
 5 1267, 1271 (9th Cir. 1997); *see also Y.M. by & through Nancy P. v. Beaumont Unified*
 6 *Sch. Dist.*, 2020 WL 8175551, at *3 (C.D. Cal. Aug. 10, 2020) (finding plaintiff’s
 7 claims under Title II of the ADA and Section 504 are not barred by Eleventh
 8 Amendment immunity). And “[b]ecause California accepts federal funds under the
 9 Rehabilitation Act, California has waived any immunity under the Eleventh
 10 Amendment.” *Clark*, 123 F.3d at 1271.

11 CDSS Defendants cite no cases to the contrary. Instead, CDSS Defendants rely
 12 on inapposite cases for the general proposition that state agencies are immune from
 13 suit. (Dkt. 50 Section III, citing *Genevier v. U.S. Citizenship & Immigr. Servs.*,
 14 144 F. App’x 586, 587 (9th Cir. 2005) (general statement of Eleventh Amendment
 15 immunity); *Dittman v. California*, 191 F.3d 1020, 1025-26 (9th Cir. 1999) (CDSS
 16 immune in case not brought under *Ex Parte Young* or the ADA or Section 504); and
 17 *Sossamon v. Texas*, 563 U.S. 277, 293 (2011) (holding that states, in accepting federal
 18 funds, do not waive their sovereign immunity to private suits for *money damages*
 19 *under RLUIPA*) (emphasis added).) None of CDSS Defendants’ cited cases apply to
 20 Plaintiffs’ ADA and Section 504 claims in light of Congress’s valid abrogation of
 21 sovereign immunity in those statutes. Because it is well settled that state agencies
 22 lack Eleventh Amendment immunity for ADA and Section 504 claims, CDSS’
 23 argument that it should be dismissed from the case on Eleventh Amendment grounds
 24 must be rejected. (*See* Dkt. 50 Section III.)

25 **V. CONCLUSION**

26 For the foregoing reasons, Plaintiffs request the Court deny CDSS Defendants’
 27 motion to dismiss (Dkt. 50).

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DATED: January 23, 2024

Respectfully submitted,

By: /s/ Grant A. Davis-Denny
Grant A. Davis-Denny
Attorney for Plaintiffs

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CERTIFICATE OF COMPLIANCE

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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

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