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

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

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

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 LOS ANGELES COUNTY DEFENDANTS' MOTION TO DISMISS SECOND AMENDED COMPLAINT CLAIMS THREE THROUGH EIGHT

Before: Hon. John A. Kronstadt
Hearing Date: January 27, 2025 at 8:30 a.m.

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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 with mental health disabilities. Plaintiffs' discrimination and methods of administration claims under the Americans with Disabilities Act and Rehabilitation Act, as well as their substantive due process claim, survived a first motion to dismiss. (*See* Order on Mot. To Dismiss ("Order"), Dkt. 120 at 29). The Court dismissed other claims with leave to amend. *Id.* In their Second Amended Complaint ("SAC"), Dkt. 130-1, Plaintiffs have narrowed their additional claims and supported them with additional facts in line with the Court's prior Order. County Defendants' motion to dismiss those narrowed claims, which the State Defendants have joined, *see* Dkt. 147, is without merit.

First, Plaintiffs have revised their procedural due process claim with respect to placement decisions. The Court has held that the statutory right to the "least restrictive" placement does not create a protected property interest, but left open the possibility that the right to "receive ***any*** placement" does. (Dkt. 120 at 20) (emphasis added). That is exactly what Plaintiffs allege in the Third cause of action: Plaintiffs' right to a placement supports a procedural due process right to written notice of Defendants' placement decision and an explanation of how to contest it. Defendants argue the right to placement is either too non-discretionary or too discretionary to support a due process right. Neither is correct. Plaintiffs have an entitlement to a placement, and a right to due process to prevent its erroneous deprivation.

Second, Plaintiffs in the THPP-NMD subclass with *existing* placements have clarified their distinct procedural due process claim relating to discharges or "push-outs" from THPP-NMD housing. In the Fifth cause of action, Plaintiffs seek basic procedural safeguards, including an adequate notice period and a pre-deprivation right to be heard. Defendants incorrectly ignore the distinction between the Third and Fifth causes of action, which involve different classes of Plaintiffs, different property rights and violations of those rights, and different remedies. Furthermore, Defendants are wrong that the Juvenile Court affords sufficient *pre-deprivation* processes. Finally, Defendants are wrong that Plaintiffs do not challenge government conduct: Plaintiffs directly challenge the inadequate state regulations around "push-outs", as well as conduct by providers that is inextricably intertwined with that of County officials.

Third, Plaintiffs within the Medicaid subclass have narrowed their claims to two services that they are entitled to receive and that Defendants have systematically failed to provide: Intensive Care Coordination ("ICC") and mobile crisis services ("MCS"). Defendants are mistaken that MCS cannot be the basis for a claim because it was only recently added to the "State plan." This state-plan requirement applies to services for adult Medicaid recipients, not to EPSDT services for eligible youth under 21. Defendants are also wrong that Plaintiffs' allegations are insufficient to support a *Monell* claim. Plaintiffs' detailed accounts of their injuries, together with their systemic allegations, are more than sufficient, and the County's arguments about the inferences to be drawn from Plaintiffs' statistics are inapposite on a motion to dismiss.

Fourth, the integration mandate claims are now limited to the STRTP subclass. STRTP placements provide intensive treatment and twenty-four hour supervision in a congregate setting. Although the legislature intended these to be short-term placements, Plaintiffs such as Onyx G. have been cycled through STRTPs and segregated from their community for years. These Plaintiffs have more than adequately pled a serious risk of institutionalization. Furthermore, the Court should reject Defendants' invitation to ignore the Ninth Circuit's "risk of institutionalization" standard. The Court must follow Ninth Circuit precedent unless it is "clearly irreconcilable" with Supreme Court precedent. *See Miller v. Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (en banc). Defendants do not come close to meeting this standard.

Finally, the Court should reject the County's renewed bid to dismiss or improperly narrow Plaintiffs' substantive due process claim, which the Court has already found sufficient. Plaintiffs have adequately alleged a deprivation of their "basic human needs." (Order at 18) (*citing DeShaney v. Winnebago Cnty. Dep't of Soc. Servs.*, 489 U.S. 189, 197 (1989)). Defendants' request to slice up the claim into parts for purposes of a motion to dismiss is improper and should be rejected.

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 Are Entitled to Prompt Written Notice of Placement Decisions And How to Contest Them (Third Cause of Action).

Plaintiffs challenge Defendants' policy of notifying youth of placement decisions (including denial of any placement) through informal communications that fail to explain how Plaintiffs can contest those decisions. (Dkt. 130-1 ¶ 247). Plaintiffs use "placement" here and in the SAC to mean housing into which youth can legally be placed, i.e., "licensed community care facilities, license-exempt facilities, and settings, or with resource families." (*Id.* ¶ 236; *see also id.* ¶ 2, n. 5). Due to this lack of notice, youth spend days, weeks, or even months in limbo without any placement, and without any information about how to challenge a denial. *See* (Dkt. 130-1 ¶¶ 248-

252). The due process that Plaintiffs seek is modest: a timely written notice setting forth the County's placement decision (either identifying a placement or stating that none is being offered) and how to contest that decision. (*Id.* ¶¶ 253-255).

Defendants' lead challenge to Plaintiffs' procedural due process claims mistakenly argues that Plaintiffs lack a protectable property interest in the public benefit of a placement. Defendants argue that if this benefit amounts to an entitlement that cannot be denied to Plaintiffs, it cannot be the type of property interest that gives rise to procedural due process protections. Alternatively, Defendants contend that state law does not mandate a particular outcome. Both arguments are wrong. Finally, Defendants are wrong that Plaintiffs have failed to plead inadequate process or that the existence of the Juvenile Court provides sufficient process.

1. Plaintiffs Are Entitled to a Placement, Which Gives Rise to a Protectable Property Interest.

The County's position—that an entitlement to a public benefit negates the existence of a property interest—turns the law of procedural due process for public benefits on its head. As the Supreme Court held in *Board of Regents of State Colleges v. Roth*, "[t]o have a property interest in a benefit" that is protectable by procedural due process, a plaintiff "must … have a legitimate claim of entitlement to it." 408 U.S. 564 , 577. Ninth Circuit cases applying *Roth* thus have found that the nature of a benefit as an entitlement supports application of procedural due process. *See Nozzi v. Housing Authority of City of Los Angeles*, 806 F.3d 1178, 1191 (9th Cir. 2015), *as amended on denial of reh'g and reh'g en banc* (Jan. 29, 2016); *Griffeth v. Detrich*, 603 F.2d 118 (9th Cir. 1979).

In *Nozzi*, the Ninth Circuit held that a regulation requiring a one-year notice period before local agencies could reduce Section 8 voucher payments gave Section 8 recipients procedural due process protections. The Ninth Circuit characterized the regulation at issue as "mandatory." 806 F.3d at 1191. The fact that the Section 8 regulations gave the administrative agency no discretion to reduce participants' benefits during the one-year waiting period *supported* the applicability of procedural due process protections. It did not, as the County would have it, preclude a procedural due process claim.[1] Similarly, in *Griffeth*, the Ninth Circuit held that General Relief was subject to procedural due process protections where "the authorizing statute . . . use[d] mandatory language" and there were "objective eligibility criteria for receipt of aid." 603 F.2d at 121. These factors "create[d] a legitimate claim of entitlement and expectancy of benefits in persons who claim to meet the eligibility requirements," and thus created "an interest protected under the Fourteenth Amendment." *Id.*

The placement benefit at issue here is an entitlement that creates a property interest subject to procedural due process. Like the California public benefits statute in *Griffeth*, Section 16001.9(a), subsections (1) and (7) use mandatory language.[2] Specifically, those subsections identify living "in a safe, healthy, and comfortable home" and "hav[ing] a placement that utilizes trauma-informed and evidence-based deescalation and intervention techniques" as "rights" that "all children placed in foster care … shall have," including "non-minor dependents in foster care." California Department of Social Services ("CDSS") guidance confirms the statute's plain meaning. CDSS has instructed counties that "the placing agency **must offer** the NMD

[1] Due process is necessary and appropriate even when the state's discretion is limited because due process protects individuals from the "risk of an *erroneous* deprivation" by the state. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976) (emphasis added). The SAC is replete with examples of Plaintiffs being erroneously deprived of their placement benefit. For example, Ocean S. and Junior R. were precariously housed in a motel, which is not a licensed or licensed-exempt facility or setting and therefore not a "placement." (Dkt. 130-1 ¶¶244-245; *see also id.* ¶ 236). Jackson K. spent months in an unsafe adult shelter, which is also not a "placement." (*Id.* ¶ 243). Rosie S. was consigned to find her own accommodations in another state, while DCFS failed to submit her THPP-NMD applications. (*Id.* ¶ 249). Erykah B. was not offered any placement and had to resort to a sober living facility identified by her sister, then lost a spot in a THPP-NMD program because the County did not notify her that she had been accepted. (*Id.* ¶¶ 42, 251). When Onyx G. left an STRTP placement due to safety concerns, she was not offered anything at all and became unhoused. (*Id.* ¶ 252).

[2] Plaintiffs do not seek to relitigate the Court's prior finding that a separate right under subsection (4) "to be 'placed in the least restrictive setting'" is discretionary (Dkt. 120 at 20), though Plaintiffs reserve their right to challenge this holding on appeal. Relevant here is Plaintiffs' right "to be placed" at all.

a safe and suitable placement that is **immediately available** to the NMD. The placing agency remains responsible for ensuring that NMDs have access to a safe and suitable placement **at all times**." (Dkt. 130-1 ¶ 239) (emphasis added). Consistent with the mandatory nature of the placement benefit, when the County used unlicensed motels as emergency shelter for youth, CDSS issued a "Notice of Operation of Violation of Law," telling the County that it is "**required by law** to place children only in licensed community care facilities, license-exempt facilities, and settings, or with resource families." (*Id.* ¶ 236) (emphasis added); *see also Gerhart v. Lake Cnty., Mont.*, 637 F.3d 1013, 1020 (9th Cir. 2011) (holding that constitutionally-protected property interests can arise from "policies and practices that create a legitimate claim of entitlement"). Finally, the nature of the placement benefit as an entitlement is consistent with the County's acknowledgement at the prior motion to dismiss hearing that "Plaintiffs have a right to placement by statue [sic – statute]." (05/14/2024 Tr., Dkt. 115 at 46:3).

The existence of the entitlement is further supported by Defendants' creation of placements whose sole purpose is to house transition-aged youth. In *Ressler,* the Ninth Circuit explained that an entitlement was created by virtue of "membership in a class of individuals whom the [housing] program was intended to benefit." *Ressler v. Pierce,* 692 F.2d 1212, 1215 (9th Cir. 1982). Here, Defendants' placement array, including THPP-NMD and SILPs, is expressly designed to benefit Plaintiffs. In short, because Section 16001.9(a)(1) and CDSS policy create an unequivocal right to a placement for qualifying youth, that placement benefit is a protectable property interest subject to procedural due process protection.

To support a contrary rule, the County cites a slew of cases where plaintiffs alleged Procedural due process claims that essentially raised Eighth Amendment or Fourteenth Amendment substantive due process protections. (Dkt. 138-1 at 13-15). As those cases show, Courts have consistently resisted attempts to ground procedural due process claims in another provision of the U.S. Constitution. The logic of the decisions is that there is a constitutional duty on the part of the Government not to impose cruel and unusual punishment and not to subject those in a custodial relationship to physical harm. Affording additional process in these circumstances is both insufficient to justify the constitutional violation and unnecessary because the violation can be remedied through the substantive constitutional provisions themselves. *See, e.g., Miranda v. Cnty. of Lake*, 900 F.3d 335, 353 (7th Cir. 2018) (plaintiff could recover for denial of medical care in custody under substantive due process; procedural due process is "beside[s] the point" because no process could justify withholding care). Additionally, the Eighth Amendment and substantive due process rights are "created by the Constitution," and not by an "independent source such as state law," and thus do not give rise to the type of property interests that the Fourteenth Amendment procedural due process protects. *See Roth,* 408 U.S. at 577.

Plaintiffs do not ground their procedural due process claim in the Eighth Amendment or substantive due process. Rather, Plaintiffs base their procedural due process rights on the property interest in a placement, an interest that arises from state law, specifically, Section 16001.9(a), CDSS guidance, and Defendants' creation of a placement array specifically designed for transition-aged youth. Plaintiffs have an independent substantive due process claim, but substantive due process is not the property interest that Plaintiffs seek to protect through procedural due process. The two claims vindicate separate rights. For example, while DCFS' use of an unlicensed motel for foster youth awaiting placement might not violate a substantive due process right to *shelter,* warehousing foster youth in motels and depriving them of a placement benefit without adequate notice of a placement decision, or how to contest it, violates youth's procedural due process rights. (*See* Dkt. 130-1 ¶ 236).

Defendants incorrectly suggest that *Mueller* held that Section 16001.9 does not create a protectable property interest. (Dkt. 138-1 at 18). However, the *Mueller* court did not address Section 16001.9 in examining whether the plaintiffs in that case had alleged a property interest subject to procedural due process. *Mueller v. County of San Bernardino*, No. CV 18-151 DSF (SPX), 2018 WL 8130611, at *6 (C.D. Cal. May 9, 2018). Instead, the former foster youth and his adopted parents argued that the county welfare system did not do enough to protect the youth from his brother while he was in foster care. *Id.* The court thus had no occasion to consider whether Section 16001.9's placement provisions create a property interest.

The *Mueller* court noted that the plaintiffs did not describe any process that, if followed, could have justified leaving the plaintiff in an abusive home. 2018 WL 8130611, at *4. Here, by contrast, Plaintiffs *have* described additional processes to avoid erroneous deprivations, or alternatively, approve the County's actions (for example, if the applicant is determined not to qualify for placement, or if the applicant was already offered a placement). (*See* Dkt. 130-1 ¶¶ 254-258). Thus, this case is nothing like County's cases about abuse of prisoners or abused foster children, but rather, like numerous cases that have afforded due process protections for housing benefits. *See Nozzi*, 806 F.3d at 1191; *see also, e.g., Ressler,* 692 F.2d at 1215.

2. Plaintiffs Have Adequately Alleged Erroneous Deprivation.

Defendants' argument that each Plaintiff was offered a placement when suit was filed (Dkt. 138-1 at 20), ignores that foster youth are entitled to a placement "at all times." (Dkt. 130-1 ¶239). Plaintiffs have alleged numerous instances in which Defendants have erroneously deprived them of their benefits by failing to offer any placement. (*See, e.g., id.* ¶¶ 36, 46 (Erykah B.); ¶¶ 60, 65 (Onyx G.); ¶¶ 83, 88 (Rosie S.); ¶¶ 102, 109 (Jackson K.); ¶¶ 126, 134, 137 (Ocean S.); ¶¶ 148, 154 (Junior R.); ¶¶ 171, 178 (Monaie T.)). Defendants' apparent view that there is an "acceptable" period without placement for transition-aged youth—who are legally in Defendants' care to the same extent as younger foster children—is all the more reason to require written notice and a defined process of appeal, so that a neutral arbiter can decide whether Defendants' delay is a *de facto* deprivation of Plaintiffs' property rights.

Defendants do not dispute that it is their policy to not provide such notice, arguing instead that the requested notice is "not how procedural due process works." (Dkt. 138-1 at 16). Defendants' policy choice has injured Plaintiffs by prolonging the time they spend without a placement and by impeding their ability to challenge Defendants' erroneous deprivations. (*See* Dkt. 130-1 ¶¶ 248-252). That is sufficient to state a *Monell* claim against the County. *See, e.g.*, *Oviatt By and Through Waugh v. Pearce*, 954 F.2d 1470, 1477 (9th Cir. 1992).

Defendants also argue that Plaintiffs fail to allege deprivation "by the government," but that argument does not appear to be directed to this claim. (Dkt. 138-1 at 19-20). Notifying youth of placements is purely a government function that is currently carried out by County social workers. Defendants' arguments regarding private actors relate to the Fifth Cause of Action, addressed separately below.

3. Plaintiffs Have Adequately Alleged Inadequate Process.

Contrary to Defendants' suggestion, the possibility of raising a placement decision in the Juvenile Court does not relieve Defendants of their constitutional obligation to provide Plaintiffs with "timely and adequate notice" of a placement decision so that Plaintiffs have a determination that they can challenge before that decision-maker. *Goldberg v. Kelly*, 397 U.S. 254, 267-68 (1970). In addition, foster youth "must receive notice of the availability of a procedure" in order to access it. *Jordan v. Dir., Off. of Workers' Comp. Programs, U.S. Dep't of Lab.,* 892 F.2d 482, 488 (6th Cir. 1989) (quoting *Memphis Light, Gas & Water Div. v. Craft,* 436 U.S. 1, 14 n.15 (1978)). If the County believes that the appropriate forum to contest a placement decision is the Juvenile Court, the notice can so state, along with clear instructions for how the youth may timely bring the issue before the court. Alternatively, Defendants could use the CDSS State Administrative Hearing process, just as they do for disputes over foster care funding decisions, or could identify another neutral decision-maker. But here Defendants do not provide adequate notice of placement decisions, nor *any* explanation of how to contest erroneous denials. (*See* Dkt. 130-1 ¶¶ 248-252). That is sufficient to state a procedural due process claim.

B. Plaintiffs Are Entitled to Pre-Deprivation Process Before Push-Out From THPP-NMD Placements (Fifth Cause of Action).

In the Fifth Cause of Action, Plaintiffs in the THPP-NMD subclass challenge specific procedural deficiencies in discharges from THPP-NMD placements, including an inadequate 7-day notice period (Dkt. 130-1 ¶¶ 260-261); failure to notify youth how to contest those discharges (*Id.* ¶ 262); failure to implement a pre-deprivation process and ensure that youth remain housed while it is pending (*Id.* ¶ 263); and failure to provide procedural guardrails to prevent regular discharges from being mischaracterized as "emergency" discharges with even fewer protections (*Id.* ¶¶ 265-266). Defendants' policies that deny these procedures to Plaintiffs violate procedural due process. *See, e.g.*, *Goldberg*, 397 U.S. at 267-68, 271 (due process required timely and adequate notice detailing the reasons for the deprivation); *id.* at 268 (fairness in some cases may require more than seven-day notice of benefits decisions); *Jordan,* 892 F.2d at 488 (6th Cir. 1989) (government must provide notice of availability of procedures for appeal); *Zinermon v. Burch*, 494 U.S. 113, 136 (1990) (plaintiff stated a claim based on state officials' "uncircumscribed power" to mischaracterize involuntary commitments as voluntary, thereby avoiding procedural protections). And these policies cause injury to Plaintiffs and threaten further injury. (*See, e.g.*, Dkt. 130-1 ¶ 111 (Jackson K.), ¶¶ 132-133 (Ocean S.). ¶ 152 (Junior R.); ¶¶ 260-266). Thus, Plaintiffs have sufficiently alleged municipal liability under Section 1983. *See, e.g.*, *Oviatt*, 954 F.2d at 1477.

Many of Defendants' procedural due process arguments are directed only to *applications* for placements (Third Cause of Action), not *discharges* from THPP-NMD (Fifth Cause of Action). (*See* Dkt. 138-1 at 12-18) (arguing no property interest in receipt of placement). Indeed, Defendants conceded in their first motion to dismiss that Plaintiffs already in a THPP-NMD have a protectable property interest in *continued* receipt of those benefits. (Dkt. 52-1 at 13); *see also Nozzi*, 806 F.3d at 1191 ("continued receipt" of benefits is "safeguarded by procedural due process.").

Defendants' arguments that appear to be directed to the Fifth Cause of Action—i.e., (1) that Plaintiffs have failed to allege inadequate process (Dkt. 138-1 at 21-22); and (2) that any due process violations that occur during THPP-NMD push-outs do not involve government action (Dkt. 138-1 at 19-20)—are without merit.

1. The County's Pre-Deprivation Processes Are Inadequate.

Defendants are wrong that the Juvenile Court provides adequate process (Dkt. 138-1 at 21-22), because Defendants' policy is to deny constitutionally-required *pre-deprivation* procedures. The Supreme Court "usually has held that the Constitution requires some kind of a hearing *before* the State deprives a person" of property. *Zinermon*, 494 U.S. at 127; *see also, e.g., Weinberg v. Whatcom Cnty.*, 241 F.3d 746, 753 (9th Cir. 2001). Here, Defendants policy is not to provide Plaintiffs with adequate pre-deprivation notice, notice periods, or continued residence in placements pending a hearing. (Dkt. 130-1 ¶¶ 260-66). Plaintiffs cannot be faulted for not using pre-deprivation processes that do not exist. *See id.*

2. THPP-NMD Push-Outs Are State Action.

When determining if a private entity engaged in state action, the Ninth Circuit first identifies the specific challenged conduct. *Rawson v. Recovery Innovations, Inc.,* 975 F.3d 742, 747 (9th 2020). The court then uses a number of recognized tests to determine whether the private entity's conduct constituted state action. *Id*. at 747–48 (citing *Kirtley v. Rainey*, 326 F.3d 1088, 1092 (9th Cir. 2003) (internal citation omitted)). "Satisfaction of any one test is sufficient to find state action, so long as no countervailing factor exists." *Id*. at 747.

(a) Plaintiffs Directly Challenge State Regulations.

State action may lie in private conduct that is "affirmatively commanded" by state protocols. *Rawson,* 975 F.3d at 755-756. *Rawson* explains, for example, that the challenged conduct in that case—involuntary commitment and forced medical treatment—was state action because it was carried out by private actors under regulations expressly providing for such commitment and treatment. *Id.* at n.13.

Similarly, in this case, the challenged procedures carried out by private THPP-NMD providers directly implement Defendants' policies and regulations. To become a THPP-NMD, a provider must be licensed by CDSS. (Dkt. 130-1 ¶ 206); *see also* WIC § 16522. CDSS' "Interim Licensing Standards" govern all aspects of THPP-NMD providers' operations, including procedures for removal and discharge of program participants. (Dkt. 130-1 ¶ 207). For example, CDSS' regulations expressly provide for only seven days of notice for non-emergency discharges and zero notice in "emergency" circumstances. (*Id*. ¶¶ 260, 265). A youth facing discharge may submit a complaint against the THPP-NMD program to CDSS's Community Care Licensing Division ("CCLD"), but this state-provided appeal process has no mechanism to ensure that foster youth remain housed while the complaint is investigated; in other words, it fails to provide the pre-deprivation process that the constitution mandates. (*Id*. ¶ 262).

Gallman v. Pierce is directly on point. 639 F. Supp. 472 (N.D. Cal. 1986). The plaintiff tenants in *Gallman* challenged the government-mandated termination procedures for their subsidized housing. *Gallman,* 639 F. Supp. at 474. In particular, plaintiffs challenged a federal regulation allowing private landlords to terminate plaintiffs' subsidized leases using the ordinary eviction procedures of California law. *Id.* Plaintiffs argued that this violated their due process rights because ordinary California eviction procedures do not require any statement of reasons for the eviction. *Id.* at 474-475. The court found that the state action requirement was met because the federal agencies "at least significantly encouraged the conduct that plaintiffs contest" (*i.e.,* the practice of evicting without stating the cause) and because the plaintiffs "directly challenge[d] the government-mandated termination procedures." *Id.* at 481. Likewise, here, Plaintiffs challenge the CDSS-mandated termination procedures that permit push-outs with no notice or with seven-day notice and without any pre-deprivation process. The direct challenge to CDSS' regulations satisfies the state action requirement. *See id.*

(b) The Challenged Conduct Is State Action Under the Joint Action and Government Nexus Tests.

The state action requirement is also met because there is "a sufficiently close nexus" between Defendants and their contracted THPP-NMD providers. *Rawson,* 975 F.3d at 748. In *Rawson,* for example, the fact that the private actors "communicated extensively with the [county] prosecutor regarding discharge possibilities" supported a finding of state action. *Id.* at 754; *see also Jensen v. Lane Cnty.*, 222 F.3d 570, 573 (9th Cir. 2000) (state action based on joint decision-making with county employees). Like in *Rawson* and *Jensen*, DCFS coordinates closely with providers during the process of discharging foster youth from placements. (Dkt. 130-1 ¶ 208). In fact, DCFS exercises sufficient control over the process that it can and does reverse discharge decisions when it disagrees with them. (*Id.* ¶266). Thus, there is "a sufficiently close nexus between the state and the private actor 'so that the action of the latter may be fairly treated as that of the State itself.'" *Rawson,* 975 F.3d at 748 (9th Cir. 2020) (quoting *Jensen*, 222 F.3d at 575).

Furthermore, Defendants are "so far insinuated into a position of interdependence" with the providers that they are "a joint participant in the enterprise." *See id.* at 753. Defendants regulate all aspects of the providers' activities, imposing requirements on providers through the County's contracting process. (Dkt. 130-1 ¶¶ 206-208). THPP-NMDs are one of the primary placement options available to NMDs, and DCFS and CDSS do not operate their own THPP-NMD programs in Los Angeles County. As a result, contracted providers' operation of the THPP-NMD programs, funded and supervised by Defendants, is indispensable to Defendants' ability to meet their duty to provide out-of-home care to NMDs. (Dkt. 130-1 ¶ 205).

This interdependence is sufficient to find state action. *See, e.g., Trout v. Cnty. of Madera*, No. 122CV00867ADASAB, 2023 WL 3994932, at *13 (E.D. Cal. June 14, 2023). The *Trout* court found that plaintiffs had sufficiently alleged state action by a private domestic violence services provider. *Id* at *13. The court relied on the allegations that the county and provider had a contractual relationship to provide services that led to the victim's harm, the services at issue were primarily funded by the government, and the plaintiffs had alleged sufficient oversight by the county. *Id.; see also Geneva Towers Tenants Organization v. Federated Mortg. Inv.,* 504 F.2d 483, 487-88 (private landlords' administration of subsidized housing benefits constituted state action under joint action test based on government regulations and a close and mutually-beneficial state-private relationship). The argument for "joint action" is even stronger here than *Trout* or *Geneva Towers*, because unlike independent adult recipients of subsidized housing or domestic violence services, foster youth remain in the care of Defendants even when placed with a privately-run provider. Thus, the state action test is met.

C. Plaintiffs Have Adequately Pled Violations of the Medicaid Act (Sixth Cause of Action).

As explained in Part I, Plaintiffs have narrowed their Medicaid claim to two critical services. (Dkt. 130-1 ¶ 424). Defendants are wrong as a matter of law that one of those services, mobile crisis services ("MCS"), cannot be the basis for a violation because it only recently became part of the State plan. And Defendants are also mistaken that Plaintiffs have not pled sufficient facts to state a *Monell* claim.

1. EPSDT Mandated Services Need Not Be Listed in the State Plan to Be Statutorily Required.

Defendants incorrectly assume that MCS must be identified in California's state plan in order for Plaintiffs to base their EPSDT claim on the denial of MCS. As a participant in Medicaid, California is required to provide EPSDT care to eligible youth under the age of 21. *Katie A., ex rel. Ludin v. Los Angeles Cnty.*, 481 F.3d 1150, 1154 (9th Cir. 2007). EPSDT services are defined in 42 U.S.C. § 1396d(r), which expressly states that the state must provide all "necessary health care" that a state can provide under Medicaid "***whether or not such services are covered under the State plan***." 42 U.S.C. § 1396d(r)(5) (emphasis added); *see also* § 1396d(a) (defining scope of care under Medicaid). Thus, the question is not whether the treatment is covered in the state plan but whether it is medically necessary. *See, e.g.*, *Ekloff v. Rodgers*, 443 F.Supp.2d 1173, 1179 (D. Ariz. 2006) (collecting cases).

Defendants' error stems from their incorrect application of the standard for *adult* Medicaid services, rather than the EPSDT standard for youth under age 21. The one case Defendants cite for their purported state-plan requirement, *Shaughnessy v. Wellcare Health Ins. Inc.*, No. CV 16-00635 DKW-KSC), 2017 WL 663230, at *3 (D. Haw. Feb. 16, 2017), is an adult Medicaid case that does not address EPSDT or the express language of § 1396d(r)(5) that requires provision of necessary services regardless of whether they are identified in the state plan.

Courts have found that allegations that a jurisdiction failed to provide medically-necessary MCS can support an EPSDT claim. *See e.g. M.J. v. District of Columbia*, 401 F.Supp. 3d 1, 6, 9, 15 (D.D.C. 2019); *Rosie D. v. Romney*, 410 F.Supp. 2d 18, 22-26, 53 (D. Mass. 2006) (concluding after trial that the defendants violated EPSDT by not delivering "crisis services" to children with serious emotional disturbances in the home). For example, in *M.J.*, children with mental illnesses challenged the District of Columbia's failure to provide MCS, ICC, and intensive behavioral support services. The District moved to dismiss, arguing that the children failed to allege an EPSDT violation. *M.J.*, 401 F.Supp. at 14. Because "the only limit placed on the provision of EPSDT services is the requirement that they be 'medically necessary'" and the plaintiffs had alleged that the services were necessary and that the District had failed to provide them, the district court concluded that "[t]he allegations, if true, would form the basis for a statutory violation." *Id*. at 14-15. As in *M.J.*, Plaintiffs in this case allege that MCS was medically necessary for their care, and that they have been denied access to MCS. (*See, e.g.,* Dkt. 130-1 ¶¶ 59, 75, 101, 114, 125, 130, 139, 147, 162, 170, 183; *see also id*. ¶ 328). That is sufficient.

2. Plaintiffs Have Sufficiently Pled a *Monell* Claim.

Plaintiffs have also satisfied the requirements for pleading *Monell* liability. Under *Monell*, a municipality can be held liable where plaintiffs allege an "official policy, custom, or pattern" on the part of the municipality that caused the claimed injury. *Tsao v. Desert Palace, Inc*., 698 F.3d 1128, 1143 (9th Cir. 2012). Such policy failures can include "policies of inaction as well as policies of action." *Jackson v. Barnes*, 749 F.3d 755, 763 (9th Cir. 2014), *cert. denied*, 135 S.Ct. 980, 190 L.Ed.2d 835 (2015). "[A] policy of inaction is based on a government body's 'failure to implement procedural safeguards to prevent constitutional violations.'" *Id*. at 763. The plaintiff may state a claim by showing "actual or constructive notice" that the omission "would likely result in a constitutional violation," and that "the municipality could have prevented the violation with an appropriate policy." *Id*. Further, "a custom or practice can be inferred from widespread practices," "evidence of repeated [] violations," or a "failure to investigate." *Hunter v. Cnty. of Sacramento*, 652 F.3d 1225, 1233-34 (9th Cir. 2011) (internal citations omitted).

Plaintiffs' allegations easily suffice to show a policy, custom, and practice on the part of Defendants to fail to provide medically-necessary EPSDT services. Plaintiffs allege that Defendants maintain a policy, custom, or pattern of failing to "provide necessary behavioral health services to transition age foster youth who require them." (Dkt. 130-1 ¶ 332). Specifically, Plaintiffs contend that DMH "has consistently failed to provide Plaintiffs with medically-necessary Specialty Mental Health Services such as Intensive Care Coordination and Mobile Crisis Response services to which they are entitled, despite evidence demonstrating the deficiencies in

DMH's provision of these services." (*Id.* ¶ 342). Plaintiffs also allege that none of the Named Plaintiffs in the Medicaid subclass have "consistently received Intensive Care Coordination," and that several did not receive Mobile Crisis Response services needed to address instances of behavioral health crises. (*Id.* ¶¶ 338-339).

Plaintiffs also provide detailed factual support for these allegations. For example, "DHCS's own quality assurance review process," which DMH and the County both participate in, "revealed that DMH has systematically failed to provide Intensive Care Coordination services to youth who need such services." (Dkt. 130-1 ¶ 333).[3] An analysis of DMH data showed significant deficiencies in the provision of mobile crisis services and the ability of such services to be timely deployed. (*Id.* ¶ 335). Further, "DMH officials themselves claimed they had insufficient staff to appropriately respond to the need for mobile crisis services." (*Id.*).

These facts show Defendants' actual knowledge of their failure to sufficiently provide these EPSDT services, or alternatively, that the deficiency was so "serious or widespread such that Defendants should have known" of these concerns. *Jensen v. Cnty. of Los Angeles*, No. CV1601590CJCRAO, 2017 WL 10574059, at *9 (C.D. Cal. July 13, 2017). They also show Defendants' failure to appropriately investigate such deficiencies, to follow up on concerns that were raised, or to create a system that ensures the delivery of these mandatory Medicaid services. These failures are the moving force behind the violation of Plaintiffs' Medicaid rights detailed in the behavioral health histories set forth in the SAC. (Dkt. 130-1 ¶¶ 35, 48–54 (Erykah B.); ¶¶ 59, 74–77 (Onyx G.); ¶¶ 101, 114–119 (Jackson K.); ¶¶ 125, 138–141 (Ocean S.); ¶¶ 147, 161–164 (Junior R.); ¶¶ 170, 182–185 (Monaie T.)).

Defendants' challenge to the sufficiency of certain statistics provides no basis

[3] Defendants are correct that Plaintiffs included an incorrect hyperlink in footnote 63 of the SAC. (Dkt. 138-1 at 27). The correct hyperlink supporting the factual allegations is https://www.dhcs.ca.gov/Documents/LA-Charts-Report-FY-21-22.pdf, at pp. 21-22.

for dismissing Plaintiffs' EPSDT claim. (*See* Dkt. 138-1 at 27). Plaintiffs allege that among Medi-Cal eligible foster children in Los Angeles, only 23.9% received ICC and only 6.4% received MCS in 2022. (Dkt. 130-1 ¶¶ 334, 336). Defendants contend that this does not show the percentage of this population that should receive ICC and MCS, and that unwarranted inferences cannot support a claim. (Dkt. 138-1 at 27).

This contention fails for three reasons. First, it does not address the numerous other allegations set forth above that provide independently sufficient bases for Plaintiffs' EPSDT claim. Second, the inference Plaintiffs draw from these statistics—that Defendants are not providing medically-necessary ICC and MCS services—is amply warranted. Indeed, Defendants' own eligibility criteria recognize that *all* foster youth are at "high risk for a mental health disorder" and likely to need intensive specialty mental health services and coordination of such care. Cal. Welf. & Inst. Code § 14184.402(c); (Dkt. 130-1 ¶ 328). In light of this pervasive need, the fact that fewer than one in four received ICC and that only about one in fifteen received MCS in 2022 is compelling evidence that Defendants are not satisfying their EPSDT obligations. Finally, Defendants' challenge to the inference that should be drawn from these facts is a factual question for trial, not a pleading issue that can be resolved at the motion to dismiss stage. *Barker v. Riverside Cnty. Off. of Educ.*, 584 F.3d 821, 824 (9th Cir. 2009) (on a motion to dismiss, courts "must draw inferences in the light most favorable to the plaintiff" and "accept as true the facts alleged in the complaint"). In sum, Plaintiffs have adequately pled a *Monell* claim for violation of EPSDT.

D. Plaintiffs Have Sufficiently Stated an Integration Mandate Claim (Seventh and Eighth Causes of Action).

1. A Serious Risk of Institutionalization Can Support an Integration Mandate Claim.

The Court should decline Defendants' invitation to disregard binding Ninth Circuit precedent holding that a plaintiff alleging an integration mandate claim may base that claim on a serious risk of institutionalization. (*See* Dkt. 138-1 at 29-31).

In *M.R. v. Dreyfus*, the Ninth Circuit held that the integration mandate may be used to challenge a failure to provide community-based services where that failure tends to increase the risk of placement in an institutional or less integrated setting. 663 F.3d 1100, 1116-17 (9th Cir. 2011), *opinion amended and superseded on denial of reh'g*, 697 F.3d 706 (9th Cir. 2012). As explained further below, the Ninth Circuit relied in part on deference to DOJ's interpretation of its own regulation—so-called *Auer* deference—and in part on its own conclusion that the DOJ's interpretation was "not only reasonable" but "also better effectuates the purpose of the ADA" in light of the statutory purpose, policy considerations, and Tenth Circuit and district court decisions that had reached the same conclusion. *Id*. at 1118.

Defendants wrongly contend that the Court is free to disregard the law of this circuit and to adopt the competing view of the Fifth Circuit. Defendants reason that because the Supreme Court held in *Kisor v. Wilkie*, 588 U.S. 558, 574 (2019) that a court should not "afford *Auer* deference unless the regulation is genuinely ambiguous," and because the *Dreyfus* court relied on *Auer* deference without expressly finding the regulation to be ambiguous, *Dreyfus* is no longer good law and a district court may ignore its holding on the risk of institutionalization.

In order for a district court to find that a Supreme Court decision has effectively overruled Ninth Circuit precedent, the Supreme Court authority must "undercut the theory or reasoning underlying the prior circuit precedent in such a way that the cases are clearly irreconcilable." *Miller v. Gammie*, 335 F.3d 889, 900 (9th Cir. 2003) (en banc). This "clearly irreconcilable" test "is a high standard." *Lair v. Bullock*, 697 F.3d 1200, 1207 (9th Cir. 2012). So "[i]t is not enough for there to be 'some tension' between the intervening higher authority and prior circuit precedent, or for the intervening higher authority to 'cast doubt' on the prior circuit precedent.'" *Id*. Rather, "as long as [a court] can apply … prior circuit precedent without 'running afoul' of the intervening authority, [it] must do so.'" *Id.*

There are at least two reasons why this Court can follow *Dreyfus* without running afoul of *Kisor*. First, *Kisor* did not address whether the integration mandate permits claims based on a serious risk of institutionalization. Indeed, *Kisor* did not concern the ADA or the Rehabilitation Act at all. Thus, the Court can follow *Dreyfus's* without creating any irreconcilability with *Kisor*. Second, *Dreyfus's* risk-of-institutionalization holding does not depend on whether *Auer* deference was appropriate. The Ninth Circuit independently analyzed the DOJ's interpretation of the regulation and statute and concluded it was superior to the alternative interpretation of requiring current institutionalization:

> DOJ's interpretation is not only reasonable; it also better effectuates the purpose of the ADA "to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities." 42 U.S.C. § 12101(b)(2). Institutionalization sometimes proves irreversible. Dr. Gardner, Plaintiffs' expert on habilitative mental health care, declared that "[i]nstitutionalization … creates an unnecessary clinical risk that the individual will become so habituated to, and so reliant upon, the programmatic and treatment structures that are found in an inpatient setting that his or her ability to function in less structured, less restrictive, environments may become severely compromised." In recognition of this clinical reality, the cases accord with DOJ's interpretation. *See, e.g., V.L.,* 669 F.Supp.2d at 1119 ("[P]laintiffs who currently reside in community settings may assert ADA integration claims to challenge state actions that give rise to a risk of unnecessary institutionalization."); *Brantley,* 656 F.Supp.2d at 1170–71 ("[T]he *risk* of institutionalization is sufficient to demonstrate a violation of [the ADA]."); *see also, e.g., Fisher v. Okla. Health Care Auth.,* 335 F.3d 1175, 1182 (10th Cir.2003) ("*Olmstead* does not imply that disabled persons who, by reason of a change in state policy, stand imperiled with segregation, may not bring a challenge to that state policy under the ADA's integration regulation without first submitting to institutionalization.").

Dreyfus, 697 F.3d at 735-36. Defendants' claim that *Dreyfus* "eschewed an independent analysis of whether mere risk of institutionalization is enough" is thus wrong. (Dkt. 138-1 at 29). The *Dreyfus* panel found that a rule permitting risk-of-institutionalization claims furthered the ADA's purpose, avoided the consequences of forcing litigants into institutional settings, and comported with earlier circuit and district court decisions. Regardless of whether *Kisor* undermined *Dreyfus's* use of *Auer* deference, *Dreyfus* remains good law for the proposition that risk-of-institutionalization claims are actionable. *See Waskul v. Washtenaw Cnty. Cmty. Mental Health*, 979 F.3d 426, 461 (6th Cir. 2020) (deciding after *Kisor* that regardless of whether *Auer* deference would be appropriate, the Tenth Circuit had correctly concluded that "the integration mandate's 'protections would be meaningless if plaintiffs were required to segregate themselves by entering an institution before they could challenge an allegedly discriminatory law or policy.'" (quoting *Fisher v. Okla. Health Care Auth.*, 335 F.3d 1175, 1181 (10th Cir. 2003))).[4]

2. Plaintiffs Have Adequately Pled Risk of Institutionalization.

Defendants incorrectly contend that Plaintiffs' SAC does not plead a serious risk of institutionalization. STRTPs are institutional settings that may impose restrictions that limit residents' freedom of movement. (*See* Dkt. 130-1 ¶ 69); *see also* Cal. Health & Safety Code § 1531.1 (youth with developmental disabilities may be restricted from leaving STRTPs using delayed egress devices). Plaintiffs' SAC directly alleges that multiple Plaintiffs face a "serious risk of institutionalization" because of Defendants' misconduct. (Dkt. 130-1 ¶¶ 61 ("Onyx G's past STRTP institutionalization places her at serious risk of future institutionalization"), ¶ 127 (same as to Ocean S.), ¶ 149 (same as to Junior R.), ¶ 172 (same as to Monaie T.), ¶ 76 (Onyx G. "remains at high risk of future institutionalization"), ¶ 141 ("serious risk that Ocean S. could become unnecessarily institutionalized"), ¶ 164 (same as to Junior R.), ¶ 185 ("Monaie remains at serious risk of a return to institutionalization"), ¶ 435 (Defendants cause Plaintiffs "to be … placed at serious risk of institutionalization"), ¶ 436 ("As a result of Defendants' acts and omissions, Plaintiffs and STRTP Subclass Members are … placed at serious risk of institutionalization"),

[4] The Fifth Circuit's decision in *United States v. Mississippi* is not binding, and in any event distinguishable. *See* 82 F.4th 387 (5th Cir. 2023). The Fifth Circuit held that the case was "factually distinguishable" from previous "at risk" cases that, as here, brought "individual or class claims for personal care services or medically necessary items pursuant to Medicaid." *Id.* at 396. Another district court has already concluded that the decision provides "no reason to deviate from Ninth Circuit precedent." *Jeremiah M. v. Crum,*, 695 F.Supp.3d 1108, 1060 at n. 318 (D. Alaska 2023).

¶ 448 (denial of necessary services in integrated settings places Plaintiffs "at serious risk of institutionalization"), ¶ 449 (Defendants' administrative policies, practices, and procedures place Plaintiffs "at a serious risk of institutionalization")).

Defendants wrongly characterize these allegations as "pure conclusion[s]" that are "not facts" and incorrectly assert that Plaintiffs do not allege that they are at risk of institutionalization in order to obtain services that could be provided in a community setting. *See* (Dkt. 138-1 at 32-33). The SAC identifies multiple, specific facts that make a serious risk of institutionalization not only plausible, but likely, due to Defendants' failure to provide community-based services. Plaintiffs allege, for example, that Defendants' failure to provide needed behavioral health services in community settings is a "major contributor" to Plaintiffs' institutionalization in the segregated and restrictive environment of an STRTP. (Dkt. 130-1 ¶ 310). Moreover, Plaintiffs plead that even after their release from STRTPs, Defendants' failure to ensure the continuity of behavioral health care in the community undermines Plaintiffs' reintegration into the community resulting in a high risk of re-institutionalization. (*Id.* ¶ 311; *see also* ¶ 74 (when Onyx G. was discharged from STRTP, the delivery of intensive behavioral health services was interrupted), ¶¶ 138, 141 (Ocean S. did not receive needed intensive behavioral health services after she left an STRTP and that the lack of supports creates a serious risk of institutionalization), ¶¶ 161, 162, 164 (Junior R. did not receive needed intensive behavioral health services after STRTP discharge, that he subsequently was confined in a psychiatric hospital, and that he faces a serious risk of further institutionalization), ¶¶ 177, 185 (Monaie T. did not receive behavioral health services in the community after STRTP discharge and she faces a serious risk of future institutionalization)).[5] Plaintiffs also allege that Defendants' denial of access to less restrictive housing

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[5] The County is incorrect that Plaintiffs must allege that treatment professionals have prescribed community-based services. *See, e.g., Jeremiah M.*, 695 F.Supp.3d at 1108; *M.J.*, 401 F. Supp. 3d at 12-13.

placements to youth with mental health disabilities forces them into or to remain in non-integrated STRTP settings. (*Id.* ¶¶ 307-308). Finally, Plaintiffs allege that their history of improper institutionalization in STRTPs leads to a serious risk of future institutionalization. (*Id.* ¶¶ 61, 127; 149; 172.) As Plaintiffs explain, congregate care settings like STRTPs have the highest rates of reentry into institutions when compared to less restrictive settings because congregate care does not generally improve development, stability, or long-term outcomes and instead negatively impacts youth (e.g., by increasing the likelihood of harm). (*Id.* ¶ 306).

E. Plaintiffs Have Adequately Pled a Substantive Due Process Claim.

In their Fourth Cause of Action, Plaintiffs challenge Defendants' custom, policies, and practices that deprive Plaintiffs of their substantive due process right to reasonable safety, shelter, and minimally adequate care and treatment appropriate to Plaintiffs' age and circumstances. (Dkt. 130-1 ¶¶406-413); *Tamas v. Dep't of Soc. & Health Servs.*, 630 F.3d 833, 842 (9th Cir. 2010) (quoting *Lipscomb,* 962 F.2d at 1379). Defendants' practices include, but are not limited to, failing to provide shelter; failing to track the extent to which transition age foster youth are unsheltered; failing to identify sufficient emergency housing options for youth transitioning between placements or re-entering care; affirmatively issuing standards and policies that undermine shelter for transition age foster youth; and deliberately ignoring the need to evaluate and expand the number of safe and appropriate placements and the emergency housing capacity for the transition age foster youth. (Dkt. 130-1 ¶408).

1. There Is No Basis To Reconsider The Court's Ruling On Plaintiffs' "Special Relationship" With The State.

The Court previously held that a foster youth's "special relationship does not automatically terminate" at age 18. (Dkt. 120 at 18). Defendants claim that they "offered to forego" relitigating the issue, but that "Plaintiffs refused to agree that the issue would be preserved for appeal without doing so." (Dkt. 138-1 at 23 n.5). As Plaintiffs correctly explained to Defendants, "[a] refusal to dismiss is not a final order and hence is not appealable," so there was nothing to preserve. *See Morrison-Knudsen Co., Inc. v. CHG International, Inc.*, 811 F.2d 1209, 1214 (9th Cir. 1987); Moridani Ex. C. Defendants' purported "preservation" is in fact an improper motion for reconsideration. Local Rule 7-18 requires such a motion to be brought within 14 days unless good cause is shown. Far more than 14 days have elapsed since the Court's June 11, 2024 Order on the first motion to dismiss, and Defendants have not offered any justification for the delay, let alone one that would constitute good cause.

Defendants also have not shown that any of Local Rule 7-18's permitted bases for seeking reconsideration apply here. Defendants, for example, do not establish that there has been a change in applicable law. The only cases cited by Defendants that post-date the Court's June 11, 2024 Order are two district court cases, which are not controlling and do not signify a change in law. (*See* Dkt. 138-1 at 23-24) (*citing Wyatt B. v. Kotek,* 2024 WL 3200547, at *4 (D. Or. June 27, 2024); *Schwartz v. Booker*, 2024 WL 3540355, at *9 (D. Colo. July 25, 2024)). Instead, those cases rely principally on *DeShaney* and other authority that the parties already extensively briefed and that are not relevant to whether transition-aged foster youth are in a special relationship with the state. *Wyatt B. v. Kotek,* No. 6:19-CV-00556-AA, 2024 WL 3200547, at *1 (D. Or. June 27, 2024) (analyzing special relationship relating to children who are in physical custody of their parents); *Schwartz v. Booker*, No. 09-CV-0915-WJM-MDB, 2024 WL 3540355, at *2, 7-9 (D. Colo. July 25, 2024) (analyzing special relationship related to child who state court ruled was not in foster care but rather in custody of "psychological father").

2. Plaintiffs properly pled violations of Substantive Due Process.

Defendants' alternative request, that the substantive due process claim "remain dismissed to the extent it goes beyond shelter," is also procedurally improper. (Dkt. 138-1 at 24). The Federal Rules do not provide a mechanism for "dismissing only a portion of a claim." *Franklin v. Midwest Recovery Sys., LLC*, No. 8:18-CV-02085-

JLS-DFM, 2020 WL 3213676, at *1 (C.D. Cal. Mar. 9, 2020). If the Court were inclined to consider Defendants' arguments, it should find that Plaintiffs properly pled violations of their substantive due process rights such that the claim as a whole survives a motion to dismiss. The Plaintiffs' liberty interest that flows from their "special relationship" is in "reasonable safety and minimally adequate care and treatment appropriate to the age and circumstances of the child." *Lipscomb*, 962 F.2d at 1379. The Court ruled that "[d]ue to their special relationship with the state, transition age foster youth have the right to the 'basic human needs—*e.g.*, food, clothing, shelter, medical care, and reasonable safety.'" (Dkt. 120 at 18) (*citing DeShaney,* 489 U.S. at 197).

The SAC amply alleges Defendants' failure to provide Plaintiffs with minimally adequate care, including failing to meet their basic needs. (Dkt. 120 at 17-18); (*see, e.g.,* Dkt. 130-1 ¶¶ 4-5, 7, 191, 194-195, 200, 214, 217, 221-233, 313-316). Plaintiffs in the Unsheltered Subclass are all youth with mental health disabilities who were deprived of shelter and reasonable safety. (*Id.* ¶¶ 358(e), 406-413). Each experienced periods of being unhoused while under the Defendants' care. (*See, e.g., id*. ¶¶ 36, 38, 40-41, 46 (Erykah B.); ¶¶ 83, 86-88 (Rosie S.); ¶¶ 148, 154-156 (Junior R.); ¶¶171, 175, 178, 180-181 (Monaie T.)). Defendants' request that the Court parse their failures of "minimally adequate care" into subparts is improper. The Court should deny their motion to dismiss Plaintiffs' substantive due process claim. *See Franklin*, 2020 WL 3213676, at *1.

IV. <u>CONCLUSION</u>

For the foregoing reasons, Plaintiffs request that Defendants' motion be denied. To the extent a claim is dismissed on the basis of inadequate factual allegations, discovery is ongoing and other claims are moving forward, such that Defendants would not be prejudiced by a further opportunity to amend.

DATED: November 4, 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 application pending)
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 8,985 words, which:

__ complies with the word limit of L.R. 11-6.1.
__ complies with the word limit set by court order.

DATED: November 4, 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