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23 **UNITED STATES DISTRICT COURT**
24 **CENTRAL DISTRICT OF CALIFORNIA**
25 **WESTERN DIVISION (LOS ANGELES)**

26 OCEAN S., et al.,

27 Plaintiffs,

28 v.

LOS ANGELES COUNTY, et al.,

Defendants.

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

**PLAINTIFFS' OPPOSITION TO
STATE DEFENDANTS' MOTION
TO DISMISS SECOND AMENDED
COMPLAINT**

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

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1 **I. INTRODUCTION**

2 In this action, Plaintiffs allege that they and other transition age foster youth
3 with mental health disabilities are being harmed because of a failure by County and
4 State government agencies to uphold their basic constitutional and statutory rights.
5 As a result, Plaintiffs face homelessness and unsafe living conditions, and do not
6 receive the appropriate medical and other supportive services to which they are
7 entitled. This Court already denied State Defendants' motion to dismiss Plaintiffs'
8 substantive due process claim (as to the County Defendants), and discrimination and
9 methods of administration claims under the Americans with Disabilities Act ("ADA")
10 and Rehabilitation Act ("RA"). (*See* Order on Mot. to Dismiss, Dkt. 120 at 29). The
11 Court granted Plaintiffs leave to amend their other claims. (*Id.* at 29-30).

12 In their Second Amended Complaint, Plaintiffs have added well over one
13 hundred new allegations that specifically detail the harms experienced by Plaintiffs
14 and the systemic policy and practice failures on the part of State Defendants that cause
15 these harms. (*See* Plaintiffs' Second Amended Complaint ("Amended Complaint"),
16 Dkt. 130-1).

17 Specifically, Plaintiffs amended their Fourteenth Amendment substantive and
18 procedural due process claims against then-Director Johnson and Secretary Ghaly,¹
19 Medicaid Act claim against Defendant Baass, and integration mandate claims against
20 all State Defendants under the RA and ADA, including the three agency heads, as
21 well as the California Health and Human Services Agency ("CalHHS"), California
22 Department of Social Services ("CDSS"), and California Department of Health Care
23

24 ¹ On October 9, 2024, Governor Gavin Newsom announced that Jennifer Troia was
25 appointed Director of CDSS. Former CDSS Director Kim Johnson replaced Secretary
26 Ghaly as the Secretary of CalHHS. Pursuant to Fed. R. Civ. P. 25(d). Ms. Troia and
27 Secretary Johnson, who are sued in their official capacities only, are automatically
28 substituted as State Defendants in their new capacities. *See Bracco v. Lackner*, 462
F. Supp. 436, 441 n. 2 (N.D. Cal. 1978).

Services (“DHCS”) (collectively “State Defendants”). The following table sets forth the claims asserted against State Defendants that are at issue in this motion.

Causes of Action	State Defendants	Statutory Basis
Third and Fifth: Procedural Due Process	CDSS Dir. Troia (official capacity)	Section 1983
Fourth: Substantive Due Process	CDSS Dir. Troia (official capacity) CalHHS Dir. Johnson (official capacity)	Section 1983
Sixth: Medicaid Act, EPSDT	DHCS Dir. Baass (official capacity)	Section 1983
Seventh and Eighth: Integration mandate	CDSS & Dir. Troia (official capacity) CalHHS & Dir. Johnson (official capacity) DHCS & Dir. Baass (official capacity)	ADA and RA

The Court should deny State Defendants’ motion to dismiss these causes of action. The allegations in the Amended Complaint are far more than merely “plausible” and Plaintiffs have met the Federal Rules’ lenient pleading standard. (*See* State Defendants’ Mot. to Dismiss, Dkt. 137 at 8). State Defendants’ attempts to insert incorrect standards and inapplicable legal doctrines do not negate the adequacy of Plaintiffs’ allegations.

First, State Defendants attempt to hold Plaintiffs to the incorrect standard for a claim against a state officer sued in their official capacity. (Dkt. 137 at 9, 22–25). Ninth Circuit authority does not require Plaintiffs to plead an officer’s personal involvement where, as here, the officer is named in their official capacity. Rather, Plaintiffs are required to plead a state agency’s *policy or practice* that caused a constitutional or statutory violation, which Plaintiffs have done.

Second, State Defendants misunderstand the purpose of Plaintiffs’ new allegations demonstrating that officials in the highest levels of the Defendant agencies admit to failures in delivering housing and needed services to transition age youth. (Dkt. 137 at 8, 22–25). Those allegations are not intended to show personal involvement in Plaintiffs’ injuries by the department heads since, as explained, those

1 individuals are sued in their official capacity. Rather, those allegations substantiate
2 the systemic harms and policy failures experienced by Plaintiffs and show that the
3 heads of those agencies are in a position to remedy those failures. Further, those
4 allegations support Plaintiffs’ substantive due process claim by showing State
5 Defendants’ awareness of the risk of serious harm to Plaintiffs. Plaintiffs separately
6 allege State Defendants’ deficient policies and practices that have *caused* the
7 deprivation of federal rights.

8 Third, State Defendants are wrong that the *Noerr-Pennington* doctrine prevents
9 Plaintiffs from relying upon these new allegations showing high-level state officials’
10 awareness of the systemic failures at issue in this lawsuit. (Dkt. 137 at 8, 18–22).
11 *Noerr-Pennington* does not apply where, as here, Plaintiffs allege petitioning activity
12 to show Defendants’ knowledge of systemic policy failures and have *not* alleged that
13 Defendants’ petitioning activity is in itself illegal.

14 Finally, State Defendants wrongly assert that Plaintiffs rely on the strict liability
15 doctrine for their integration mandate claims. (Dkt. 137 at 9, 25–26). Plaintiffs
16 adequately and repeatedly allege State Defendants’ specific responsibilities for the
17 violations of the integration mandate throughout the Amended Complaint.

18 **II. LEGAL STANDARD**

19 A motion to dismiss under Rule 12(b)(6) “tests the legal sufficiency of a claim.”
20 *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir. 2001). To avoid dismissal, the plaintiff
21 need only allege enough facts to “nudge[]” his claims “across the line from
22 conceivable to plausible.” *Ashcroft v. Iqbal*, 556 U.S. 662, 680 (2009), *citing Bell*
23 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). When a court reviews a motion
24 to dismiss, it must accept all factual allegations pleaded as true and view them in the
25 light most favorable to the nonmoving party. *Id.* “A complaint should not be
26 dismissed unless it appears beyond [a] doubt that [the] plaintiff can prove no set of
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1 facts in support of his claim which would entitle him to relief.” *Kimes v. Stone*, 84
2 F.3d 1121, 1126 (9th Cir. 1996).

3 Moreover, the “complaint should be read as a whole, not parsed piece by piece
4 to determine whether each allegation, in isolation, is plausible.” *In re Toyota Motor*
5 *Corp.*, 790 F.Supp.2d 1152, 1164 (C.D. Cal., 2011). This task of determining if a
6 complaint states a plausible claim for relief is “context specific” and “requires the
7 reviewing court to draw on its judicial experience and common sense.” *Ashcroft v.*
8 *Iqbal*, 556 U.S. 663-64 (2009).

9 **III. ARGUMENT**

10 **A. Plaintiffs Have Sufficiently Pled their Section 1983 Claims.**

11 Plaintiffs have adequately alleged their claims brought pursuant to Section
12 1983. (See Dkt. 130-1 ¶¶ 309–405, Claim Three (Procedural Due Process); ¶¶ 406–
13 413, Claim Four (Substantive Due Process); ¶¶ 414–422, Claim Five (Procedural Due
14 Process); ¶¶ 423–426 Claim Six, (Medicaid)). None of State Defendants’ arguments
15 to the contrary have merit.

16 First, although State Defendants agree that supervisory liability is not the
17 correct standard (Dkt. 137 at 23 n.5), they nonetheless attempt to hold Plaintiffs to
18 that incorrect standard anyway. Plaintiffs have clearly alleged that they brought
19 claims against the individual agency heads in their official capacities *only*. Official
20 capacity suits need only allege that the policies and practices of the government
21 agency are the source of the violation, not any knowledge or malfeasance on the part
22 of any individual.

23 Second, State Defendants focus on five new paragraphs in the Amended
24 Complaint as if they were the only basis for Plaintiffs’ Section 1983 claims, ignoring
25 the majority of allegations that form the basis for these claims. (Dkt. 137 at 8, 22–25,
26 citing Dkt. 130-1 ¶¶ 346-351). Plaintiffs’ allegations in those five paragraphs
27 demonstrate that high-level officials in Defendant agencies are aware of, and admit
28

1 to, failures in delivering housing and needed services to transition age youth.
2 (Dkt. 137 at 8, 22–25). These new paragraphs substantiate the systemic harms and
3 policy failures experienced by Plaintiffs and that the heads of those agencies are in a
4 position to remedy those failures.

5 Plaintiffs separately allege State Defendants’ policies and practices that have
6 *caused* the deprivation of federal rights. In fact, Plaintiffs added well over 150 new
7 allegations throughout their Amended Complaint. This includes over 100 new
8 paragraphs detailing specific harms experienced by the Named Plaintiffs. (Dkt. 130-1
9 ¶¶ 33–37, 41, 43–46, 48–53 (Erykah B.); ¶¶ 59–69, 72, 74–76 (Onyx G.); ¶¶ 79–81,
10 83–84, 87–88, 91–94 (Rosie S.); ¶¶ 98–104, 108–109, 113–119 (Jackson K.), ¶¶ 121–
11 127, 129–131, 134, 137–139, 141 (Ocean S.); ¶¶ 143–149, 151, 154–156, 161–164
12 (Junior R); ¶¶ 166–172, 177–178, 180–185 (Monaie T.)). It also includes nearly 50
13 new paragraphs alleging systemic policy and practice failures on the part of
14 Defendants that resulted in the violation of Plaintiffs’ constitutional and statutory
15 rights. (Dkt. 130-1 ¶¶ 216, 223 (Section VI); ¶¶ 241–258 (Section VII); ¶¶ 262–263,
16 266–268 (Section VIII); 277, 305–306, 309, 311–313 (Section IX); 332–339, 342–
17 343 (Section X); ¶¶ 346–351 (Section XI)). Those allegations easily meet the lenient
18 pleading standard under the Federal Rules.

19 **1. Plaintiffs Bring Suit Against the State Directors in Their**
20 **Official Capacities Only.**

21 The Amended Complaint pleads claims against the Directors in their official
22 capacities only. Indeed, Plaintiffs’ amended allegations specifically state that
23 “Defendant Ghaly is sued solely in his official capacity,” “Defendant Johnson is sued
24 solely in her official capacity,” and “Defendant Baass is sued solely in her official
25 capacity.” (Dkt. 130-1 ¶¶ 26, 28, 30).

26 When sued in their official capacities, state officials serve as a stand-in for their
27 state agency. *See Hafer v. Melo*, 502 U.S. 21, 25 (1991); *Will v. Michigan Dept. of*
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1 *State Police*, 491 U.S. 58, 71 (1989). Ninth Circuit jurisprudence is clear that, when
2 a Section 1983 plaintiff seeks injunctive relief against a state official solely in their
3 official capacity, the plaintiff “is not required to allege a named official’s personal
4 involvement in the acts or omissions constituting the alleged constitutional violation.”
5 *Hartmann v. California Dep’t of Corr. & Rehab.*, 707 F.3d 1114, 1127 (9th Cir. 2013)
6 (internal citations omitted). Rather, “a plaintiff need only identify the law or policy
7 challenged as a constitutional violation and name the official within the entity who
8 can appropriately respond to injunctive relief.” *Id.*; see also *Colwell v. Bannister*, 763
9 F.3d 1060, 1070 (9th Cir. 2014).

10 As such, State Defendants can be held liable in their official capacities “if
11 policy or custom played a part in the violation of federal law.” *Gomez v. Vernon*, 255
12 F.3d 1118, 1127 (9th Cir. 2001). Plaintiffs need not allege that State Defendants “had
13 any personal knowledge of the specific constitutional violations that led to Plaintiffs’
14 injuries.” (Dkt. 137 at 24). As outlined in detail below, Plaintiffs have adequately
15 pled that State Defendants and the agencies they represent have violated Plaintiffs’
16 constitutional and statutory rights through deficient policies and practices advanced
17 by those agencies. In addition, Plaintiffs have alleged that each of the State
18 Defendants sued in their official capacities are positioned within their agencies to
19 appropriately “respond to [the] injunctive relief requested by Plaintiffs.” *Hartmann.*,
20 707 F.3d at 1127. Those allegations are sufficient.

21 State Defendants’ reliance on *Henry A. v. Willden*, 678 F.3d 991 (9th Cir. 2012)
22 is misplaced. *Henry A.* addressed the standard for a state official sued in his *individual*
23 capacity for money damages under a theory of supervisory liability. *Id.* This standard
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1 is not applicable in this case, where Plaintiffs have brought suit seeking injunctive
2 relief against the State Defendants in their official capacities only.²

3 **2. Plaintiffs Have Sufficiently Pled Medicaid Claims Against**
4 **Defendant Baass.**

5 Plaintiffs have sufficiently pled that Director Baass, in her official capacity
6 only, violates Plaintiffs' statutory right to receive EPSDT services. To plead a
7 statutory violation of the EPSDT provisions of the Medicaid Act, Plaintiffs must
8 demonstrate that they were entitled to the relevant services under the Medicaid statute,
9 but that Defendants failed to adequately ensure Plaintiffs received them. *Katie A., ex*
10 *rel. Ludin v. Los Angeles Cnty.*, 481 F.3d 1150, 1154 (9th Cir. 2007). In addition, to
11 state a claim under Section 1983, "a plaintiff must allege the violation of a right
12 secured by the Constitution and laws of the United States, and must show that the
13 alleged deprivation was committed by a person acting under color of state law." *West*
14 *v. Atkins*, 487 U.S. 42, 48 (1988). Plaintiffs have alleged each of these required
15 elements.

16 The two EPSDT services at issue here—Intensive Care Coordination and
17 Mobile Crisis services—are both required services under the Medicaid Act. Under
18 the EPSDT provisions, "states must 'cover every type of health care or service
19 necessary'" to "correct or ameliorate a child's medical condition," that a state can
20 provide under the Medicaid Act. *Katie A.*, 481 F.3d at 1154; *see also* 42 U.S.C. §§
21 1396d(r)(5); 1396d(a). Intensive Care Coordination and Mobile Crisis services are
22 both required services under Section 1396d(a) when they are determined to be
23 medically necessary. *See* 42 U.S.C. §§ 1396d(r)(5); 1396d(a).

24 _____
25 ² Plaintiffs do not and need not allege that State Defendants are liable because of "a
26 generalized duty to enforce state law or general supervisory power." *Nichols v.*
27 *Brown*, 859 F. Supp. 2d 1118, 1131 (C.D. Cal. 2012). Rather, Plaintiffs amended
28 their complaint to further demonstrate the specific failings in the policies and practices
of the state agencies that State Defendants represent and head.

1 As discussed in Plaintiffs’ Opposition to Los Angeles County Defendants’
2 Motion to Dismiss (“County Opposition”), section III(C), courts have repeatedly held
3 that the EPSDT provisions of the Medicaid Act require states to ensure provision of
4 the two services at issue here. In *M.J. v. District of Columbia*, 401 F. Supp. 3d 1, 6,
5 9, 15 (D.D.C. 2019), for example, the court allowed plaintiffs to proceed with a claim
6 that the District of Columbia violated the EPSDT provisions by failing to provide for
7 needed mental health services, including “Intensive Care Coordination,” and “Mobile
8 Crisis Services.” Likewise, in *Rosie D. v. Romney*, 410 F. Supp. 2d 18, 22-26 (D.
9 Mass. 2006), the court found that the state violated the Medicaid Act by failing to
10 provide children with necessary “case management” and “crisis services.”

11 Defendants do not contest that each of the Plaintiffs in the Medicaid Subclass
12 are Medicaid eligible. (Dkt. 130-1 ¶¶ 34, 58, 100, 124, 146, 169, 270, 321). Each of
13 the Plaintiffs required either Intensive Care Coordination or Mobile Crisis services,
14 or both, to correct or ameliorate their behavioral health conditions, but did not
15 sufficiently receive these services. (*Id.* ¶¶ 35, 48–53 (Erykah B.); ¶¶ 59, 74–77 (Onyx
16 G.); ¶¶ 101, 114–119 (Jackson K.); ¶¶ 125, 138–141 (Ocean S.); ¶¶ 147, 161–164
17 (Junior R.); ¶¶ 170, 182–185 (Monaie T.)). Moreover, at a systemic level, Intensive
18 Care Coordination and Mobile Crisis services are not sufficiently available to all
19 putative class members across LA County, and Defendants’ own data and reports
20 document the insufficient provision of such services. (*Id.* ¶¶ 332–336). These
21 allegations sufficiently plead a Medicaid violation.

22 Additionally, Plaintiffs have met the requirements of Section 1983. Director
23 Baass and DHCS, the agency she represents, have violated Plaintiffs’ statutory rights
24 while acting under the color of state law. DHCS is the single state Medicaid agency
25 responsible for the provision of Medicaid services in California (*Id.* ¶ 325). DHCS
26 and Director Baass have a statutory obligation to ensure the adequate provision of
27 EPSDT services to all Medicaid eligible children under the age of 21. 42 U.S.C. §
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1 1396a(5); 42 C.F.R. § 431.10. “Even if a state delegates the responsibility to provide
2 treatment to other entities such as local agencies . . . the ultimate responsibility to
3 ensure treatment remains with the state.” *Katie A.*, 481 F.3d at 1159.

4 Despite this statutory obligation, DHCS and Director Baass employ policies
5 and practices that fail to ensure Plaintiffs receive the medical services to which they
6 are entitled. For example, “DHCS’s own quality assurance review process revealed
7 that [its subcontractor] DMH has systematically failed to provide Intensive Care
8 Coordination services to youth who need such services.” (Dkt. 130-1 ¶ 333).
9 Likewise, DHCS’s own public data demonstrates deficiencies in the provision of
10 Intensive Care Coordination and Mobile Crisis services to transition age foster youth,
11 including low percentages of eligible youth receiving the relevant services, and a
12 significant drop-off in access to services when youth turn 18. (Dkt. 130-1 ¶¶ 332, 334,
13 336). In addition, DHCS and Director Baass have failed to take steps to address these
14 concerns and remedy this statutory violation. “Director Baass has . . . failed to
15 monitor and oversee DMH’s provision of necessary Specialty Mental Health
16 Services, including failing to conduct an adequate monitoring process, and failing to
17 follow up on DHCS’s limited monitoring processes when that review revealed
18 failures and non-compliance on the part of DMH.” (Dkt. 130-1 ¶ 343). Such
19 allegations sufficiently meet the requirements of Section 1983.

20 Defendants incorrectly claim that “the new allegations [in the Amended
21 Complaint] have nothing to do with Director Baass,” apparently because the five
22 paragraphs at ¶¶ 346-351 of the Amended Complaint do not address the Medicaid
23 claim. (Dkt. 137 at 24). However, as described above, Plaintiffs added numerous
24 allegations throughout the Amended Complaint specifically describing the failures by
25 DHCS and Defendant Baass to ensure that Plaintiffs receive the mental health services
26 they need and are entitled to. Plaintiffs’ allegations are more than sufficient to state
27 a claim.

1 **3. Plaintiffs Have Sufficiently Pled Substantive Due Process**
2 **Claims Against Defendant Johnson and Defendant Troia.**

3 Plaintiffs adequately allege that Secretary Johnson and Director Troia, in their
4 official capacities, violate Plaintiffs' substantive due process rights under the
5 Fourteenth Amendment, and have done so while acting under color of state law. *West*,
6 487 U.S. at 48. "Due to their special relationship with the state, transition age foster
7 youth have the right to "basic human needs—*e.g.*, food, clothing, shelter, medical
8 care, and reasonable safety." (Dkt. 120 at 18); *see also Tamas v. Dep't of Soc. &*
9 *Health Servs.*, 630 F.3d 833, 842 (9th Cir. 2010); *Lipscomb v. Simmons*, 962 F.2d
10 1374, 1379 (9th Cir. 1992). However, while in Defendants' care, Plaintiffs in the
11 Unsheltered Subclass were repeatedly deprived of reasonable safety and minimally
12 adequate care and treatment. (Dkt. 130-1 ¶¶ 406-413).

13 Defendants Johnson and Troia have direct responsibility to ensure that children
14 in the custody of California's foster care system have their Constitutional rights
15 upheld. CDSS is the "single state agency" responsible for ensuring that California's
16 foster care system complies with federal law. Cal. Welf. & Inst. Code § 10600; (Dkt.
17 130-1 ¶¶ 27-28). CDSS has authority to make rules and regulations governing the
18 administration of the State plan for federal financial assistance and may not delegate
19 its authority to exercise discretion in the administration and supervision of the plan.
20 45 C.F.R. § 205.100(a)(1)(ii); (b)(1). Though other state and local agencies may
21 perform services for the single state agency, they do "not have authority to review,
22 change, or disapprove any administrative decision of the single State agency, or
23 otherwise substitute their judgment for that of the agency as to the application of
24 policies, rules, and regulations promulgated by the State agency." 45 C.F.R. §
25 205.100(b)(3). CDSS and Director Troia are therefore statutorily responsible for
26 monitoring and enforcing county compliance with California and federal child
27 welfare laws, and for taking immediate action where appropriate to secure county
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1 compliance with such laws. Cal. Welf. & Inst. Code § 10605(a)-(b); (Dkt. 130-1 ¶
2 28). CalHHS and Secretary Johnson are likewise directly responsible for all
3 departments within their agency’s purview, including CDSS and DHCS. (Dkt. 130-
4 1 ¶¶ 25-26). Specifically, Secretary Johnson must “evaluate the performance . . . of
5 each department” and must “hold the head of each department . . . responsible for . .
6 . program performance.” Cal. Gov’t Code § 12800(b).

7 Despite these obligations to children in California foster care, Defendants
8 Johnson and Troia have failed to develop and execute policies and practices to ensure
9 that LA County transition age foster youth with mental health disabilities receive
10 minimally adequate care, resulting in them becoming unhoused or living in otherwise
11 unsafe settings. (Dkt. 130-1 ¶¶ 7, 25-28, 197, 200, 212–214, 219–223, 265–266, 268,
12 408–412). Plaintiffs in the Unsheltered Subclass were repeatedly deprived of
13 reasonable safety and minimally adequate care and treatment. (Dkt. 130-1 ¶¶ 358,
14 406-413). Each of these youth experienced periods of being unhoused while under
15 the Defendants’ care. (*See, e.g.*, Dkt. 130-1 ¶¶ 36, 40, 41, 46 (Erykah B.); ¶¶ 83, 86–
16 88 (Rosie S.); ¶¶ 148, 154–156 (Junior R.); ¶¶ 171, 175, 178, 180–181 (Monaie T.)).
17 For example, Erykah B. was not provided any emergency housing after surviving an
18 attempted sexual assault and fleeing her former foster home, forcing her to sleep
19 outside for two weeks. (*Id.* ¶¶ 36, 41). Likewise, Monaie T. was left without a
20 placement and was not provided housing for several months while in foster care; as a
21 result, she became unhoused and was forced to sleep on the street and on buses. (*Id.*
22 ¶¶ 171, 178, 181).

23 Plaintiffs’ allegations are sufficient to show “deliberate indifference” by
24 Defendants Johnson and Troia in their official capacities. *See Henry A. v. Willden*,
25 678 F.3d 991, 1000 (9th Cir. 2012). In the child welfare context, such deliberate
26 indifference can be demonstrated by “an objectively substantial risk of harm and a
27 showing that the officials were subjectively aware of facts from which an inference
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1 could be drawn that a substantial risk of serious harm existed and that either the
2 official actually drew that inference or that a reasonable official would have been
3 compelled to draw that inference.” (Dkt. 120 at 19 (quoting *Tamas.*, 630 F.3d at
4 845)).

5 Defendants Johnson and Troia, and the agencies they represent, knew, or
6 should have known, of a substantial risk that Plaintiffs would become unhoused or
7 live in otherwise unsafe conditions. Yet both agencies failed even to evaluate the
8 adequacy of their placement resources, “and have failed to ameliorate these structural
9 systemic failures.” (Dkt. 130-1 ¶ 200). For example, CDSS received materials
10 documenting that “1 in 5 youth in extended foster care experience homelessness.”
11 (*Id.* ¶ 349). And as members of the California Interagency Council on Homelessness,
12 both Defendants and their staff have “extensively discussed the lack of permanent
13 housing for TAY.” (*Id.* ¶ 348). Yet CDSS, by its own admission, does not even
14 “track data in a way that allows [CDSS] to know how frequently [foster] youth
15 experience homelessness or housing insecurity.” (*Id.* ¶ 350).

16 State Defendants’ suggestion that Plaintiffs cite “evidence of Defendants’
17 activities to help people like Plaintiffs as evidence of their deliberate indifference to
18 them” is wrong. (Dkt. 137 at 23). Plaintiffs cite this evidence to demonstrate
19 Defendants’ awareness of a substantial risk of serious harm to Plaintiffs. Plaintiffs
20 separately allege conduct that demonstrates State Defendants’ deficient policies and
21 practices and amounts to deliberate indifference. (Dkt. 130-1 ¶¶ 346-351). The Court
22 should not credit Defendants’ attempts to read the allegations in paragraphs 346–351
23 in isolation from the rest of the Amended Complaint, which shows that any supposed
24 expressions of concern by Defendants have not translated into their agencies meeting
25 minimum constitutional standards. Any contrary inference that Defendants wish to
26 draw is a matter for trial, not a motion to dismiss.

1 **4. Plaintiffs Have Sufficiently Pled Procedural Due Process**
2 **Claims Against CDSS Director Troia.**

3 Plaintiffs adequately allege that Defendant Troia,³ in her official capacity,
4 violated Plaintiffs' procedural due process rights under the Fourteenth Amendment.
5 As explained in greater detail in Plaintiffs' County Opposition, sections III(A)-(B),
6 Plaintiffs have a constitutionally-protected property interest in a foster care placement
7 by virtue of "membership in a class of individuals whom the [housing] program was
8 intended to benefit," and by virtue of Defendant Troia and CDSS' policy and state
9 law mandating that foster youth be offered a placement. *Ressler v. Pierce*, 692 F.2d
10 1212, 1215 (9th Cir. 1982); (Dkt. 130-1 ¶ 236, 239). Plaintiffs who are already in
11 THPP-NMD placements also have a distinct property interest in continued receipt of
12 benefits. *Nozzi v. Housing Authority of Los Angeles*, 806 F.3d 1178, 1191 (9th Cir.
13 2015). Accordingly, Defendant Troia must provide Plaintiffs with adequate
14 procedural safeguards to reduce the risk of erroneous deprivation of these interests.
15 Through Defendants' deficient policies and procedures, they failed to meet their
16 duties to Plaintiffs.

17 (a) *Defendant Troia Failed to Develop Policies and*
18 *Procedures to Provide Adequate Notice of Placement*
19 *Decisions and How to Contest Them.*

20 As discussed, CDSS is the single state agency responsible for ensuring that
21 California's foster care system complies with federal law. (Dkt. 130-1 ¶ 27); Cal.
22 Welf. & Inst. Code § 10600. In this role, CDSS is responsible for overseeing DCFS'
23 administration of foster care services to Plaintiffs, and CDSS has a non-delegable duty
24

25 ³ Because this suit has been brought against individual State Defendants in their
26 official capacity only and because Defendant Troia has been automatically substituted
27 for former-CDSS Director Kim Johnson per Fed. R. Civ. P. 25(d), references to
28 current-CDSS Director Troia's actions and failures encompass those of her
predecessor.

1 to make rules and regulations governing the administration of the State plan.
2 (Dkt. 130-1 ¶ 27); Cal. Welf. & Inst. Code § 10605(c); 45 C.F.R. § 205.100(a)(1)(ii);
3 (b)(1); (b)(3). CDSS' specific responsibility to oversee DCFS' administration of
4 foster care placements and to take corrective action when DCFS violates the law is
5 aptly demonstrated by CDSS' issuance of a "Notice of Operation in Violation of Law"
6 to DCFS in February 2024, based on DCFS' unlawful use of unlicensed motels as
7 emergency shelter for foster youth. (Dkt. 130-1 ¶ 236).

8 Despite CDSS' plenary authority to regulate DCFS' administration of foster
9 care services, which includes oversight of DCFS' notification process for placement
10 decisions, Defendant Troia and CDSS, the agency she represents, abdicated their duty
11 to ensure that DCFS' notice to Plaintiffs was constitutionally adequate. Defendant
12 Troia's and CDSS' failure to develop adequate notice procedures regarding DCFS'
13 placement decisions and the procedures to appeal denials of placement violated
14 Plaintiffs' procedural due process rights. Based on her authority to regulate DCFS's
15 administration of foster care services, Defendant Troia can "appropriately respond"
16 to the injunctive relief sought here by implementing appropriate notice procedures,
17 and is therefore properly sued in her official capacity. *See Hartmann*, 707 F.3d
18 at 1127.

19 Defendant Troia does not dispute that it is CDSS' policy to permit DCFS to
20 informally convey DCFS' placement decisions without any formal written notice or
21 any explanation of how to contest those decisions. That policy is established by the
22 uniform experience of Plaintiffs, and is not challenged anywhere in the State's brief.
23 The State's primary argument as to procedural due process is that new allegations
24 regarding the personal knowledge of the State Defendants do not mention "THPP-
25 NMD placements and removals." (Dkt. 137 at 24). But the knowledge of State
26 Defendants of their own policies or the effect of those policies is not at issue in the
27 procedural due process claim. Rather, as explained in greater detail in Plaintiffs'
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1 County Opposition, at section III(A), Plaintiffs state a claim based on their entitlement
2 to a placement under state law, and Defendants' failure to provide constitutionally
3 adequate notice to protect against the erroneous deprivation of that interest.

4 Defendant Troia's policy choice not to require formal notice of placement
5 decisions has injured Plaintiffs by prolonging the time Plaintiffs spend without a
6 placement and by impeding Plaintiffs' ability to challenge DCFS' erroneous
7 deprivations of their right to a placement benefit. (*See* Dkt. 130-1 ¶¶ 248-252). Thus,
8 Plaintiffs have adequately pled that Defendant Troia's policies deprived Plaintiffs of
9 their placement benefits without due process.

10 (b) *Defendant Troia Promulgated Policies and Procedures that*
11 *Deny Adequate Process Before Push-Out from THPP-NMD*
12 *Placements.*

13 Plaintiffs in the THPP-NMD subclass challenge specific procedural
14 deficiencies in discharges from THPP-NMD placements, including an inadequate 7-
15 day notice period (Dkt. 130-1 ¶¶ 260-261); failure to notify youth how to contest those
16 discharges (¶ 262); failure to implement a pre-deprivation process and ensure that
17 youth remain housed while it is pending (¶ 263); and failure to provide procedural
18 guardrails to prevent regular discharges from being mischaracterized as "emergency"
19 discharges with even fewer protections (¶¶ 265-266). Courts have recognized each
20 of these as the type of procedural deficiency that falls short of due process
21 requirements. *See, e.g., Goldberg v. Kelly*, 397 U.S. 254, 267-68, 271 (1970) (due
22 process required timely and adequate notice detailing the reasons for the deprivation);
23 *id.* at 268 (fairness in some cases may require more than seven-day notice of benefits
24 decisions); *Jordan v. Dir., Off. of Workers' Comp. Programs, U.S. Dep't of Lab.*, 892
25 F.2d 482, 488 (6th Cir. 1989) (government must provide notice of availability of
26 procedures for appeal); *Zinerman v. Burch*, 494 U.S. 113, 136 (1990) (plaintiff stated
27 a claim based on state officials' "uncircumscribed power" to mischaracterize
28 involuntary commitments as voluntary, thereby avoiding procedural protections).

1 And each of these deficiencies stem directly from policies and procedures
2 promulgated by Defendant Troia and CDSS.

3 CDSS’ “Interim Licensing Standards” govern all aspects of THPP-NMD
4 providers’ operations, including procedures for removal and discharge of program
5 participants. (Dkt. 130-1 ¶ 207). Although Defendant Troia and CDSS have full
6 authority through their issuance of the Interim Licensing Standards to create
7 constitutionally adequate discharge procedures for THPP-NMD providers,
8 Defendants have chosen not to do so. Instead, CDSS’ regulations expressly provide
9 for only seven days of notice for non-emergency discharges and zero notice in
10 “emergency” circumstances. (*Id.* ¶¶ 260, 265). CDSS’ regulations also do not contain
11 adequate safeguards to prevent regular discharges from being mischaracterized as
12 “emergency circumstances.” (*Id.* ¶¶ 265-266).

13 Apart from its authority to issue regulations governing THPP-NMD providers’
14 procedures, CDSS also is responsible for licensing THPP-NMD providers and
15 investigating complaints made against them. (*Id.* ¶¶ 206-207, 262); Cal. Welf. & Inst.
16 Code § 16522. While Defendant Troia and CDSS have authority to create a
17 constitutionally adequate, pre-deprivation appeals process for youth facing discharge
18 from their THPP-NMD provider, Defendants again chose not to do so. A youth facing
19 discharge may submit a complaint against the THPP-NMD program to CDSS’
20 Community Care Licensing Division (“CCLD”), but this state-provided appeal
21 process has no mechanism to ensure that foster youth remain housed while the
22 complaint is investigated. (Dkt. 130-1 ¶ 262-263). Without an adequate policy for
23 keeping Plaintiffs in their placement pending a hearing, the CCLD complaint process
24 cannot constitute adequate process. *Zinermon*, 494 U.S. at 127 (the Supreme Court
25 “usually has held that the Constitution requires some kind of a hearing *before* the State
26 deprives a person” of property) (emphasis added). As explained in greater detail in
27 the Plaintiffs’ County Opposition, at section III(B), these policies have caused
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1 violations of Plaintiffs’ procedural due process rights and contributed to the erroneous
2 deprivation of Plaintiffs’ placement benefits in the context of THPP-NMD push-outs.
3 The motion to dismiss Plaintiffs’ procedural due process claims should therefore be
4 denied.

5 **5. The *Noerr-Pennington* doctrine does not apply.**

6 State Defendants’ invocation of *Noerr-Pennington* immunity is misplaced.
7 (See Dkt. 137 at 18–22). The *Noerr-Pennington* doctrine, which arises primarily from
8 the antitrust context, “ensures that those who petition the government for redress of
9 grievances remain immune from liability for statutory violations, notwithstanding the
10 fact that their activity might otherwise be proscribed by the statute involved.” *White*
11 *v. Lee*, 227 F.3d 1214, 1231 (9th Cir. 2000); *see also Kearney v. Foley & Lardner,*
12 *LLP*, 590 F.3d 638, 644 (9th Cir. 2009). Plaintiffs have not alleged that Defendants’
13 petitioning activity violates any statute.

14 Instead, Plaintiffs allege that Defendants Johnson, Troia, and Baass knew about
15 the “difficulties faced by TAY and the inadequacies of the support systems their
16 agencies each provide to TAY” to demonstrate Defendants’ awareness of a substantial
17 risk of serious harm to plaintiffs, which supports Plaintiffs’ Substantive Due Process
18 claim. (Dkt. 130-1 ¶ 346).

19 Courts have specifically held that *Noerr-Pennington* does not preclude use of
20 evidence regarding petitioning activity to establish knowledge on the part of the
21 speaker, as opposed to alleging that activity was itself unlawful. As one court
22 explained, “Plaintiffs are not asserting that . . . Defendants’ lobbying activity was
23 unlawful. Instead, they assert that the lobbying activity helps prove knowledge . . .
24 [therefore] Defendants’ lobbying activity in this manner is not barred by *Noerr-*
25 *Pennington*.” *In re Chrysler-Dodge-Jeep Ecodiesel Mktg., Sales Pracs., & Prod.*
26 *Liab. Litig.*, 295 F. Supp. 3d 927, 973 at n.7 (N.D. Cal. 2018); *see also In re Tylenol*
27 *(Acetaminophen) Marketing, Sales Practices, and Products Liability Litigation*, 181
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1 F. Supp. 3d 278, 306 (E.D. Pa. 2016) (rejecting motion to exclude evidence of
2 defendants’ petitioning activities offered by plaintiffs to show defendants’
3 “knowledge, state of mind, or intent” because “[i]t would be a stretch to say that
4 *Noerr-Pennington* bars any use of any evidence of the defendants’ petitioning”
5 activities).

6 State Defendants effectively concede that this is the correct standard, citing (in
7 a footnote) authority that affirms that *Noerr-Pennington* “does not foreclose use of
8 communications to government as evidence, e.g., of knowledge, intent, state of
9 mind.” *In re JUUL Labs, Inc., Mktg., Sales Pracs., & Prod. Liab. Litig.*, 497 F. Supp.
10 3d 552, 614 (N.D. Cal. 2020) (citation omitted). Defendants attempt to distinguish
11 *JUUL* by arguing that in that case Plaintiffs had additional evidence for liability. The
12 *JUUL* court did not suggest that if a plaintiff lacked other liability evidence, then
13 *Noerr-Pennington* would preclude the use of petitioning activity to show knowledge
14 and state of mind. And there is no logical reason why that would be so. In any event,
15 Defendants’ claims that “government employees’ communications” are “the only
16 basis for liability” alleged in the Amended Complaint is mistaken. (Dkt. 137 at 20.).
17 As described in detail *supra*, Plaintiffs have alleged State policies and practices
18 throughout the Amended Complaint that are the moving force behind violations of
19 Plaintiffs’ federal rights. That is the conduct that forms the basis for Section 1983
20 liability, not Defendant’s petitioning activity. The *Noerr-Pennington* doctrine does
21 not immunize that conduct, and it does not defeat Plaintiffs’ claims.

22 **B. Plaintiffs Have Sufficiently Pled their Olmstead Integration**
23 **Mandate Claims.**

24 This Court has already denied State Defendants’ motions to dismiss Plaintiffs’
25 General Discrimination and Methods of Administration claims against them, finding
26 that Plaintiffs had sufficiently alleged these disability discrimination claims against
27 the State Defendants. (*See* Dkt. 120 at 27-29). The Court should, consistent with its
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1 prior findings, deny the State Defendants’ motion to dismiss Plaintiffs’ integration
2 mandate claims because, as discussed further below, Plaintiffs sufficiently plead their
3 integration mandate claim against the State Defendants under the RA and ADA.

4 The integration mandate requires that individuals with disabilities be afforded
5 the maximum possible integration with (and not be unnecessarily segregated from)
6 their communities, consistent with their needs. *See Olmstead v. L.C. ex rel. Zimring*,
7 527 U.S. 581, 600-01 (1999); *see also* 28 C.F.R. § 35.130(d). The integration
8 mandate prohibits State Defendants from taking actions or executing policies that
9 “place individuals at risk of unnecessary institutionalization.” *M.R. v. Dreyfus*, 697
10 F.3d 706, 734-35 (9th Cir. 2011) (citation omitted). Plaintiffs have sufficiently pled
11 State Defendants’ failures to ensure compliance with the integration mandate in their
12 child welfare and behavioral health programs. State Defendants are responsible for
13 designing, coordinating, and overseeing the system of child welfare placements and
14 community behavioral health services that make up the core of Plaintiffs’ integration
15 mandate claims. The State Defendants have failed to oversee and implement systems
16 of behavioral health services and placements that comply with Plaintiffs’ right to live
17 and receive services in the most integrated setting appropriate to their needs, free from
18 institutionalization or serious risk of institutionalization. (*See* Dkt. 130-1 ¶¶ 198, 235,
19 304, 307-308, 313).

20 State Defendants have specific statutory responsibility for ensuring the
21 behavioral health and child welfare systems comply with federal disability law and to
22 ensure that Transition Age Youth are not unnecessarily institutionalized. As discussed
23 *supra*, CDSS is the “single state agency” responsible for ensuring that California’s
24 foster care system complies with federal law, including the ADA and RA. Cal. Welf.
25 & Inst. Code § 10600; (Dkt. 130-1 ¶190). CDSS sets interim licensing standards
26 which apply to all STRTPs in LA County pursuant to Cal. Welf. & Inst. Code §
27 1562.01. (Dkt. 130-1 ¶ 188). CDSS and Director Troia have the power to license
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1 STRTPs, revoke licenses, and to oversee the development and implementation of
2 STRTP staff training regulations. (*Id.*). DHCS is the single state agency responsible
3 for the provision of Medicaid services in California, with statutory responsibility for
4 ensuring Medicaid eligible children receive the services to which they are entitled.
5 (Dkt. 130-1 ¶ 325); 42 U.S.C. § 1396(a)(5); 42 C.F.R. § 431.10. Defendant Baass
6 and DHCS are required to oversee the administration of health care services by county
7 agencies throughout the state. Cal. Welf. & Inst. Code § 10742. They are also
8 responsible for collaborating with CDSS on a system of “governmental monitoring
9 and oversight” over STRTPs. Cal. Welf. & Inst. Code § 11462(d).

10 State Defendants’ specific policy and practice failures have resulted in the
11 violation of Plaintiffs’ statutory rights. Members of the STRTP Subclass all face a
12 serious risk of institutionalization in STRTPs. (Dkt. 130-1 ¶¶ 61, 76, 127, 141, 149,
13 164, 172). STRTPs are institutional settings that may impose restrictions that limit
14 residents’ freedom of movement. (*See id.* ¶ 69); *see also* Cal. Health & Safety Code
15 § 1531.1 (youth with developmental disabilities may be restricted from leaving
16 STRTPs).

17 Plaintiffs face this risk of institutionalization because of “Defendants’
18 administrative policies, practices, and procedures.” (Dkt. 130-1 ¶ 449). For example,
19 although DHCS is aware, through its own quality assurance review process and data
20 tracking, that its subcontractor, DMH, fails to adequately provide mandatory
21 Medicaid mental health services to Plaintiffs in the community, DHCS has taken no
22 steps to remedy this statutory violation. (*Id.* ¶¶ 332-345). Defendants’ failure to
23 provide or ensure needed behavioral health services in the community is a “major
24 contributor” to Plaintiffs’ institutionalization. (*Id.* ¶ 310). In addition, even after
25 Plaintiffs are released from STRTPs, Defendants fail to ensure they continue to
26 receive behavioral health care in the community. This undermines Plaintiffs’
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1 reintegration into the community resulting in a high risk of re-institutionalization.
2 (*Id.* ¶ 311; *see also* ¶¶ 74, 138, 141, 161, 162, 164, 177, 185).

3 As this Court has previously noted, State Defendants may not abdicate their
4 responsibility by pointing to the County Defendants as the source of violations. (*See*
5 Dkt. 120 at 29, quoting *Castle v. Eurofresh, Inc.*, 731 F.3d 901, 910 (9th Cir. 2013)
6 (“the Ninth Circuit has made clear that “State Defendants may not harvest . . .
7 immunity for ADA violations.”)); *see also* *Henrietta D. v. Bloomberg*, 331 F.3d 261,
8 286 (2d Cir. 2003) (A “state defendant is liable to ensure that localities comply with
9 the Rehabilitation Act in their delivery of federally-funded social services” because
10 “a presumption that the State is responsible for guaranteeing that local entities
11 delivering services comply with the Rehabilitation Act is consistent with Congress’s
12 practice in other Spending Clause legislation.”).

13 Finally, the State’s argument (Dkt. 137 at 26) that the integration mandate
14 claims should be dismissed against the Individual State Defendants as redundant fails.
15 In *Miranda B. v. Kitzhaber*, the Ninth Circuit Court of Appeals held that plaintiffs
16 may sue both the agency and its officials under Section 504 of the RA and Title II of
17 the ADA, and permitted the plaintiffs’ claims against both the state and its acting
18 officials to go forward. *Miranda B. v. Kitzhaber*, 328 F.3d 1181, 1187-1189 (9th Cir.
19 2003) (“[W]e follow the Sixth, Seventh, and Eighth Circuits in holding that Title II’s
20 statutory language does not prohibit [Plaintiffs’] injunctive action against state
21 officials in their official capacities.”).⁴

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23
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25 ⁴ State Defendants cite a Fourth Amendment case where the Circuit Court noted that
26 a court *may* dismiss a *municipal* officer as a redundant defendant. *Center for Bio-*
27 *Ethical Reform, Inc. v. Los Angeles Sheriff Department*, 533 F.3d 780, 799 (9th Cir.
28 2008). *Miranda B.*, which specifically addresses the RA and ADA controls this issue
for purposes of the integration mandate claim.

1 **IV. CONCLUSION**

2 For the foregoing reasons, Plaintiffs request the Court deny State Defendants'
3 motion to dismiss. (Dkt. 137). To the extent a claim is dismissed on the basis of
4 inadequate factual allegations, discovery is ongoing and other claims are moving
5 forward, such that Defendants would not be prejudiced by a further opportunity to
6 amend.

7
8 DATED: November 4, 2024

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Plaintiffs certifies that this brief contains 6,867 words, which:

X complies with the word limit of L.R. 11-6.1.

___ complies with the word limit set by court order.

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