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6 Attorneys for Plaintiffs,
7 S.M. by and through her guardian
ad litem NICOLE TORRES; and
8 Z.M., by and through her guardian
ad litem NICOLE TORRES;
9 and NICOLE TORRES, an individual,

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA
12

13 S.M., a minor, by and through her Guardian
14 ad litem, NICOLE TORRES; and Z.M., a
15 minor, by and through her Guardian ad
litem, NICOLE TORRES; and NICOLE
16 TORRES, an individual,

17 Plaintiffs,

18 vs.

19
20 COUNTY OF RIVERSIDE; SCOTT
JOHNSON, an individual; MATTHEW
21 PLEMONS, an individual; MICHAEL
LOUISE MARTIN, an individual; DOES 1
22 through 10, inclusive;

23
24 DEFENDANTS .
25

Case No.:

COMPLAINT FOR DAMAGES

1. Civil Rights Violation (Special Relationship) (42 U.S.C. § 1983);
2. Civil Rights Violation (State Created Danger) (42 U.S.C. § 1983);
3. Violation of Federal Adoption Assistance Act and Child Welfare Act;
4. Civil Rights Violation (*Monell* Claim) (42 U.S.C. § 1983);
5. Direct Negligence;
6. Derivative Negligence; and
7. Negligent Concealment

JURY TRIAL DEMANDED

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28 ///

1 Plaintiff S.M., by and through her guardian ad litem NICOLE TORRES, and
2 Plaintiff Z.M., by and through her guardian ad litem NICOLE TORRES, and NICOLE
3 TORRES, (collectively, “Plaintiffs”) allege the following upon information and belief
4 based upon personal knowledge:

5 **INTRODUCTION & NATURE OF THE CASE**

6 1. Plaintiffs bring this action seeking damages and any other available legal or
7 equitable remedies resulting from the illegal actions and omissions of defendants
8 COUNTY OF RIVERSIDE (“DEFENDANTS” or “COUNTY” or “COR”); SCOTT
9 JOHNSON (“JOHNSON”), MATTHEW PLEMONS (“PLEMONS”); MICHAEL
10 LOUISE MARTIN (“MARTIN” or “FATHER”), and DOES 1 through 10, inclusive
11 (collectively referred to throughout portions of this Complaint as “DEFENDANTS”), in
12 placing S.M. and Z.M., into the home of Father MICHAEL MARTIN, whom
13 DEFENDANTS previously knew had previously committed physical domestic violence
14 upon S.M. and Z.M., committed rape upon his wife, sexually assaulted other minor sibling
15 children, pulled a knife upon and was shot by police, and despite DEFENDANTS’
16 documented and written notice, whereby MARTIN continued to sexually assault and rape
17 Plaintiffs S.M. and Z.M. in violation of the Plaintiffs’ Due Process Rights under the Fifth
18 and Fourteenth Amendments to the United States Constitution.

19 2. DEFENDANTS are directly liable for Plaintiffs’ injuries under federal law
20 pursuant to 42 U.S.C. § 1983. DEFENDANTS also proximately caused Plaintiffs’
21 injuries and are liable under state and federal law under the principles set forth in *Monell*
22 *v. Department of Social Services*, 426 U.S. 658 (1978). DEFENDANTS are also directly
23 liable for Negligence for failing to discharge mandatory duties causing Plaintiffs’ injuries
24 and derivatively liable for Negligence causing Plaintiffs’ injuries.

25 **JURISDICTION & VENUE**

26 3. This action is brought under 42 U.S.C. § 1983 and pendent state law claims
27 under the California Tort Claims Act against DEFENDANTS.
28

1 4. California Government Code § 905(m) creates an exception to the California
2 Government Claims Act (Gov't Code § 910 *et seq.*) requirement for claims made pursuant
3 to California Code of Civil Procedure § 340.1 (recovery of damages resulting from
4 childhood sexual abuse).

5 5. Subject matter jurisdiction over this action is conferred by 28 U.S.C. § 1331
6 (federal question) and § 1343(a)(3) (civil rights). Plaintiffs' state law claims for relief are
7 within the supplemental jurisdiction of the Court pursuant to 28 U.S.C. § 1367(a).

8 6. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because the
9 wrongful conduct giving rise to this case occurred in the County of Riverside California,
10 which is located in the Central District of California. Plaintiffs and DEFENDANTS are
11 also, and at all relevant times were, citizens and residents of Riverside County, located in
12 the Central District of California. This Court also has specific personal jurisdiction over all
13 DEFENDANTS .

14 **PARTIES**

15 7. Plaintiff S.M., by and through her guardian ad litem NICOLE TORRES, is,
16 and at all times mentioned was, a minor born in 2013, residing in Riverside County.

17 8. Plaintiff Z.M., by and through her guardian ad litem NICOLE TORRES, is,
18 and at all times mentioned was, a minor born in 2013, residing in Riverside County.

19 9. Nicole Torres is the Mother of S.M. and Z.M. who is acting as S.M. and
20 Z.M.'s Guardian Ad Litem pursuant to the Petition and Order for Appointment of Guardian
21 ad Litem.

22 10. Plaintiff NICOLE TORRES is the Mother of S.M. and Z.M. and at all times
23 mentioned was residing in Riverside County

24 11. Defendant COUNTY OF RIVERSIDE is, and at all times mentioned was, a
25 duly organized public entity, form unknown, existing as such under the law of the State of
26 California and responsible for the policies, procedures and practices implemented through
27 its various agencies, agents, departments and employees, and for the injuries occasioned
28 thereby. At all relevant times, Defendant County was the employer of defendants

1 MATTHEW PLEMONS and SCOTT JOHNSON, who were social workers employed by
2 defendant COUNTY OF RIVERSIDE’S Department of Public Social Services - Childrens
3 Services (“DPSS”) and DOES 1 through 5 (“DOE EMPLOYEES”), and DOES 6 through
4 10 (“DOE SUPERVISORS”), who were managerial, supervising and policymaking
5 employees of defendant COUNTY OF RIVERSIDE’s Department of Public Social
6 Services - Childrens Services, are sued in their individual capacity for damages only. Their
7 actions were ratified by defendant COUNTY OF RIVERSIDE.

8 12. At all relevant times, defendants PLEMONS and JOHNSON and defendants
9 DOE EMPLOYEES and DOE SUPERVISORS were duly authorized employees and
10 agents of the COUNTY subject to oversight and supervision by defendant COUNTY OF
11 RIVERSIDE’s elected and non-elected officials.

12 13. Defendant SCOTT JOHNSON is, and at all times mentioned was, a Social
13 Worker employed by defendant COUNTY OF RIVERSIDE’s Department of Public Social
14 Services - Childrens Services, and is an adult residing in County of Riverside, California.

15 14. Defendant MATTHEW PLEMONS is, and at all times mentioned was, a
16 Social Worker employed by defendant COUNTY OF RIVERSIDE’s Department of Public
17 Social Services - Childrens Services, and is an adult residing in County of Riverside,
18 California.

19 15. At all relevant times, defendants DOE EMPLOYEES and DOE
20 SUPERVISORS were duly authorized employees and agents of defendant COUNTY OF
21 RIVERSIDE who were acting under color of law within the course and scope of their
22 respective duties as employees of defendant COUNTY OF RIVERSIDE and with the
23 complete authority and ratification of their principal, defendant COUNTY OF
24 RIVERSIDE.

25 16. MICHAEL LOUISE MARTIN is the Father of S.M. and Z.M, is and at all
26 times mentioned was, residing in Riverside County.

27 17. The true names and capacities of the DEFENDANTS sued herein as DOES 1
28 through 10, inclusive, and each of them, are currently unknown to Plaintiffs, who therefore

1 sue such DEFENDANTS by fictitious names. Each of the DEFENDANTS designated
2 herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiffs will
3 seek leave of Court to amend the Complaint to reflect the true names and capacities of the
4 DOE DEFENDANTS when such identities become known.

5 18. Plaintiffs are informed and believe and thereon allege that at all relevant times,
6 each and every Defendant was acting as an agent and/or employee of each of the other
7 DEFENDANTS and was the owner, agent, servant, joint venturer and employee, each of
8 the other and each was acting within the course and scope of its ownership, agency, service,
9 joint venture and employment with the full knowledge and consent of each of the other
10 DEFENDANTS . Plaintiffs are informed and believe and thereon allege that each of the
11 acts and/or omissions complained of herein was made known to, and ratified by, each of
12 the other DEFENDANTS .

13 19. At all times mentioned herein, each and every Defendant was the successor of
14 the other and each assumes the responsibility for each other's acts and omissions.

15 20. In doing the acts and failing and omitting to act as hereinafter described,
16 defendants DOE EMPLOYEES and DOE SUPERVISORS were acting on the implied and
17 actual permission and consent of defendant COUNTY OF RIVERSIDE.

18 21. All DEFENDANTS who are natural persons, including DOES 1 through 10,
19 are sued individually and/or in his/her official capacity as officers, sergeants, captains,
20 commanders, supervisors, and/or civilian employees, agents, policy makers, and
21 representatives for defendant COUNTY OF RIVERSIDE.

22 22. DEFENDANTS COUNTY OF RIVERSIDE and PLEMONS and
23 JOHNSON, including DOES 1 through 10, are liable for Plaintiffs' injuries under
24 California law and under the doctrine of respondeat superior. Liability under California
25 law for public entities and public employees is based upon Cal. Gov't Code §§ 815.2 and
26 820.

27 23. All DEFENDANTS are, and at all times material to this Complaint, were
28 acting under color and authority of state law.

1 24. California Government Code § 905(m) creates an exception to the California
2 Government Claims Act (Gov't Code § 910 *et seq.*) requirement for claims made pursuant
3 to California Code of Civil Procedure § 340.1 (recovery of damages resulting from
4 childhood sexual abuse).

5 **FACTUAL ALLEGATIONS**

6 **A. S.M. AND Z.M. WERE PLACED IN FOSTER CARE**

7 25. Plaintiffs S.M. and Z.M. are twins and were born in 2013.

8 26. On or about March 18, 2020, S.M. and Z.M., DEFENDANTS placed S.M.
9 and Z.M. in foster care due to father MARTIN's unstable mental health, MARTIN's
10 physical domestic violence issues, MARTIN's documented violent criminal history and
11 MARTIN's previous sexual abuse of a child, among other issues.

12 27. From March 18, 2020 through present, DEFENDANTS only provided
13 NICOLE TORRES with limited visitation by and between S.M. and Z.M and TORRES.
14 From March 18, 2020 through present, TORRES submitted written requests for increased
15 visitation with S.M. and Z.M. to DEFENDANTS, however, in response to each and every
16 request by TORRES, DEFENDANTS refused the increased visitation request by and
17 between TORRES and S.M. and Z.M.

18 **B. DEFENDANTS WERE MANDATED TO DOCUMENT AND REPORT**
19 **CLAIMS OF ABUSE OF PLAINTIFFS S.M AND Z.M. AND PROTECT**
20 **PLAINTIFFS S.M AND Z.M. FROM CONTINUED TORTURE BY**
21 **FATHER MARTIN**

22 28. Defendant COUNTY OF RIVERSIDE has a responsibility to train the
23 caseworkers and social workers who provide foster care services to dependent children
24 including plaintiffs S.M. and Z.M.. These requirements are under both Federal and
25 California law. The systems in place are not just procedural guidelines. They are a scheme
26 that mandates that officials follow specific guidelines and take affirmative actions to ensure
27 the well-being and promote the welfare of children in foster care. The children are entitled
28 to defendant COUNTY OF RIVERSIDE's protection from harm.

1 29. Defendant COUNTY OF RIVERSIDE has received millions of dollars in
2 federal funds from the United States Government and from Taxpayer funds to meet the
3 needs of children in its child welfare system and is therefore required to comply with
4 federal mandates, including those set forth in the Adoption Assistance and Child Welfare
5 Act of 1980, as amended by the Adoption and Safe Families Act of 1997; Titles IV-B and
6 IV-E of the Social Security Act; 42 U.S.C. §§ 622, et seq.; 671, et seq. (“Adoption and
7 Safe Families Act.”). This Act also expressly requires that the caseworker provide an
8 updated copy of the child’s record (Case Plan) to the provider at the same time the
9 caseworker places the child with that parent or provider. 42 U.S.C. § 675(5)(D).

10 30. The State of California has codified the federal mandates and its own
11 obligations under parts of the Cal. Welf. & Inst. Code. Further regulations are spelled out
12 in California’s Department of Social Services’ Child Welfare Service’s Manual of Policies
13 and Procedures (hereinafter “DSS MPP”).

14 31. Pursuant to Cal. Welf. & Inst. Code § 16000.1(a)(1): The state has a duty to
15 care for and protect the children that the state places into foster care, and as a matter of
16 public policy, the state assumes an obligation of the highest order to ensure the safety of
17 children in foster care. The California legislature, when declaring that the state assumes an
18 obligation of the highest order to ensure the safety of children in foster care, explicitly
19 abrogated the holding of the Court of Appeal in *County of Los Angeles v. Sup. Ct. of Los*
20 *Angeles: Real Party in Interest Terrell R.*, 102 Cal.App.4th 627 (2002). See Cal. Welf. &
21 Inst. Code § 16000.1(a)(3).

22 32. Cal. Welf. & Inst. Code § 16001.9 mandates that all children in foster care,
23 including S.M and Z.M., have the right to live in a safe, healthy and comfortable home and
24 be free from physical and sexual abuse.

25 33. The Federal Foster Care and Adoption Assistance Act requires that
26 caseworkers must develop a Case Plan for each foster child that includes the child’s health
27 and education records, known medical problems, prescribed medications and other
28 relevant related information. 42 U.S.C. §§ 671(a)(16), 675(1), 45 C.F.R. § 1356.21(g)(2).

1 34. Defendants were required to develop a case plan (as defined by 42 U.S.C. §
2 675(1)) for each child, including plaintiffs S.M and Z.M. including a case review system
3 (as defined by 42 U.S.C. §§ 675(5) and 675(a), which mandates that the status of each child
4 is reviewed periodically, but not less than once every six months by either a court or by
5 administrative review in order to determine the safety of the child. There are explicitly
6 procedural safeguards. California codified this mandate under Cal. Welf. & Inst. Code §
7 366.

8 35. As a further part of the procedural safeguards for plaintiffs S.M and Z.M., Cal.
9 Welf. & Inst. Code § 16501.1(a)(13) provides that “[a] child shall be given a meaningful
10 opportunity to participate in the development of the case plan.” That case plan is to be
11 included in the court report and considered at each hearing.

12 36. At all relevant times, DEFENDANTS were under mandated rules and
13 regulations and statutes requiring that DEFENDANTS document and report claims of
14 sexual and physical abuse against foster children, including S.M. and Z.M and their
15 siblings. DEFENDANTS were required to maintain highly detailed case records of
16 plaintiffs S.M and Z.M. Each Case Plan was mandated to include, at least, the information
17 identified by DSS MPP § 31-075: “[d]ocumentation of any information provided to the
18 placement services provider and/or respite care provider...” These were requirements.

19 37. DEFENDANTS’ Social Workers have ministerial mandates, they do not have
20 discretion on whether or not to put this information into the Case Plan.

21 38. DEFENDANTS were further mandated to prepare Case Plan documentation
22 for both plaintiffs S.M and Z.M. and their minor siblings, as identified in DSS MPP § 31-
23 206, including: assessments of the child’s placement needs and description(s) of the type
24 of home or institution which best meet those needs; the child’s health information and
25 known medical problems.

26 39. DSS MPP § 31-310 mandated that DEFENDANTS monitor plaintiffs S.M
27 and Z.M.’s and their minor siblings’ physical and emotional condition and provide that
28 information to the court, including the fact that MICHAEL LOUISE MARTIN had raped

1 and physically assaulted S.M and Z.M. multiple times, MARTIN had previously sexually
2 assaulted their siblings, MARTIN had raped his wife, and MARTIN had pulled a knife
3 upon a police officer who shot him multiple times among other documented abuse by
4 MARTIN upon the minor children, of which DEFENDANTS were notified, as further
5 detailed herein below.

6 40. DEFENDANTS were further required: to monitor the child's physical and
7 emotional condition, and take necessary actions to safeguard the child's growth and
8 development while in placement (DSS MPP § 31-405.22); providing a child's background
9 information, including behavioral history (DSS MPP § 31-405.29).

10 41. DEFENDANTS were required to report the physical and sexual abuses
11 committed by MARTIN against plaintiffs S.M and Z.M. under the Child Abuse Prevention
12 and Treatment Act (P.L. 93-247) and California's Child Abuse and Neglect Reporting Act
13 and their progeny to law enforcement. Cal. Pen. Code § 11164, *et seq.* This required that
14 DEFENDANTS' social workers such as defendants JOHNSON and PLEMONS, who were
15 deemed "mandated reporter" to report suspected child abuse to entities including their own
16 county welfare department and they must cross-report to law enforcement. Cal. Pen. Code
17 § 11164, *et seq.*

18 42. The DEFENDANTS were required to keep records about any claims or
19 allegations of sexual abuse and physical abuse of foster children such as plaintiffs S.M and
20 Z.M. by MARTIN (as well as prior complaints of abuse about MARTIN) pursuant to the
21 numerous state and federal regulations governing foster care.

22 43. None of the actions done by defendants JOHNSON and PLEMONS or DOES
23 provides immunity as they were not done as a function critical to the judicial process itself
24 and were *not discretionary*. The actions were ministerial and were done with a reckless
25 disregard for the likelihood of causing PLAINTIFFS' harm.

26 44. The foster care requirements referenced above mandate an affirmative duty
27 by DEFENDANT to ensure the safety of plaintiffs S.M and Z.M. The requirements
28 include: reporting claims of abuse pursuant to the Child Abuse Prevention and Treatment

1 Act (P.L. 93-247) and California’s Child Abuse and Neglect Reporting Act; documenting
2 those claims in the Case Plan; documenting in the Case Plan sexual abuse; documenting in
3 the Case Plan physical abuse; and that Case Plan come up for periodic review as a
4 “procedural safeguard.” These mandates were put in place for the express purpose to
5 provide for the safety of foster children such as plaintiffs S.M and Z.M. and to provide
6 accurate information.

7 **C. DEFENDANTS WERE NOTIFIED THAT S.M, Z.M. AND SIBLINGS**
8 **WERE BEING ASSAULTED IN FATHER MARTIN’S CARE**

9 45. Despite the foregoing evidence, *supra*, on or about May 2021,
10 DEFENDANTS returned S.M. and Z.M. to their Father Martin, authorizing overnights and
11 unsupervised visits with their father. Pursuant to the DEFENDANTS continued consent,
12 approval and ministerial directive, from May 2021 through October 2021, S.M. and Z.M.
13 remained with Father Martin overnights and unsupervised.

14 46. From May 2021 through October 2021 MARTIN sexually and physically
15 assaulted and raped the minor plaintiffs S.M and Z.M., multiple times.

16 47. Upon information and belief, S.M and Z.M., and NICOLE TORRES and
17 grandmother Adrienne Roca notified defendants JOHNSON and PLEMONS about such
18 physical and sexual assaults by MARTIN upon S.M. and Z.M. and their siblings as well,
19 all before DEFENDANTS placed S.M. and Z.M. with MARTIN. Despite said documented
20 notifications, and awareness of MARTIN’s documented history of physical and sexual
21 assault upon Plaintiffs, DEFENDANTS refused to protect S.M. and Z.M. from MARTIN.

22 48. Upon information and belief, Defendants JOHNSON and PLEMONS were
23 told and were aware that MARTIN physically and sexually abused plaintiffs S.M and Z.M.
24 and their minor siblings prior to their placement with MARTIN.

25 49. Defendants JOHNSON and PLEMONS told mother NICOLE TORRES and
26 grandmother Adrienne Roca that something would be done about MARTIN, but no action
27 was taken by defendants JOHNSON and PLEMONS or anyone from defendant COUNTY
28 OF RIVERSIDE.

1 50. After plaintiffs S.M and Z.M., grandmother Adrianna Roca and Mother
2 Nicole Torres told defendants JOHNSON and PLEMONS about what MARTIN had done
3 to S.M. and Z.M., the plaintiffs and their family’s documented pleas for help were ignored
4 by DEFENDANTS.

5 **D. DEFENDANTS FAILED TO DOCUMENT THE PREVIOUS ABUSE**
6 **THAT S.M AND Z.M. AND SIBILING A.R. WERE ASSAULTED BY**
7 **MARTIN AND DEFENDANTS MISREPRESENTED THE**
8 **CHILDREN’S CONDITIONS IN VIOLATION OF FEDERAL AND**
9 **STATE LAW**

10 51. DEFENDANTS’ policies, customs and omissions, including but not limited
11 to, their failure to properly train and supervise caseworkers by encouraging them not to
12 report or respond to sexual abuse of foster children in their foster care system resulting in
13 their routine failure to provide required information about foster children to the court.

14 52. Upon information and belief, despite notification, DEFENDANTS failed to
15 document the physical and sexual abuse by MARTIN upon plaintiffs S.M and Z.M. and
16 their minor siblings or report the physical and sexual assaults upon S.M. and Z.M., as
17 required by law and required by ministerial mandates. S.M. and Z.M. had monthly visits
18 with DEFANDANTS’ social workers, including defendants JOHNSON and PLEMONS.
19 From March 2020 through October 2021, JOHNSON and PLEMONS and the COUNTY
20 social workers visited S.M. and Z.M. regularly. During the social workers’ visit, the girls
21 would be alone with JOHNSON and/or PLEMONS for approximately 10 minutes. On two
22 occasions, defendants JOHNSON and PLEMONS met with plaintiffs S.M and Z.M. who
23 disclosed to them the abuse by MARTIN. However, DEFENDANTS failed to notify
24 PLAINTIFFS and the court about the exculpatory evidence regarding MARTIN’s
25 continued sexual abuse upon S.M. and Z.M.. Upon information and belief, DEFENDANTS
26 threatened S.M. and Z.M. not to further disclose the abuse by MARTIN upon S.M. and
27 Z.M. to the DEFENDANTS or the court or they would have to be removed from their home
28 and go to a different foster care or a group home.

1 53. Numerous employees of defendant COUNTY OF RIVERSIDE’s Department
2 of Public Social Services - Childrens Services were aware of the abuse suffered by
3 plaintiffs S.M and Z.M. from MARTIN prior to the placement of plaintiffs S.M and Z.M
4 with father MARTIN in May 2021 for overnight and unsupervised visits. Despite this,
5 DEFENDANTS failed to protect S.M. and Z.M.

6 54. Upon information and belief, plaintiffs S.M and Z.M. were overmedicated
7 with psychotropic drugs to control their ability to tell others of their abuse and to prevent
8 them from asking for help.

9 55. Multiple incidents of physical and sexual abuse were reported to defendants
10 JOHNSON and PLEMONS, but defendants JOHNSON and PLEMONS did not want to
11 properly report the incidents to the COUNTY and the court, and instead wanted to get
12 S.M. and Z.M. into therapy.

13 56. Defendants were notified that, on March 31, 2017, MARTIN prevented
14 NICOLE TORRES and S.M. and Z.M. from leaving the home and threatened NICOLE
15 TORRES and S.M. and Z.M. that he was going to kill NICOLE TORRES. MICHAEL
16 MARTIN then turned to minor sibling A.R. and threatened to ‘pop her in the mouth’ if she
17 ‘ever spoke to him like that again’, and then he finally left the room toward the living room
18 where he kept his large gun safe containing 10 miscellaneous firearms to execute his threat.
19 The police arrived and arrested MARTIN for Criminal Threats.

20 57. Defendants were notified that, on April 11, 2017, law enforcement
21 interviewed sibling V.R., who explained how he observed MICHAEL MARTIN physically
22 assault NICOLE TORRES.

23 58. Defendants were notified that, on April 23, 2017, Hemet police received a
24 Penal Code 288(a) sexual perversion with Child 14 (sexual battery) mandatory report
25 against MICHAEL MARTIN from Acacia Middle School *counselor Che Scott*. The report
26 stated that A.R. (minor sibling of S.M. and Z.M.), notified school counselor Che Scott
27 that MICHAEL MARTIN inappropriately touched her breast and shoulders with his fingers
28 while making “ooo” and “aahh” noises on April 23, 2017. The report also stated that sibling

1 A.R. reported that MICHAEL MARTIN poked her with his index fingers on her breast
2 area and MARTIN poked A.R. in her midsection, down to her stomach.

3 59. Defendants were notified that, on May 2, 2017, MICHAEL MARTIN was
4 charged with Felony Penal Code 422 for Criminal Threats against NICOLE TORRES.

5 60. Defendants were notified that, on May 4, 2017, MICHAEL MARTIN was
6 charged with Penal Code § 136.1(c)(1) when he prevented NICOLE TORRES from
7 contacting law enforcement and intimidated a potential witness. MICHAEL MARTIN
8 demanded NICOLE TORRES recant her previous statements against him at an upcoming
9 May 8, 2017 court appearance so that he could beat his criminal charges “or else” he would
10 physically assault her as he did in the past and on that day. After MARTIN made criminal
11 threats to TORRES, he pushed TORRES against the bed. While restricting TORRES’
12 movement, MICHAEL MARTIN forcefully pulled down her pants, separated her legs, and
13 stuck his fingers into her vagina while she begged him to stop. After MARTIN had finished
14 sexually assaulting NICOLE TORRES in their home, Hemet Police responded to the
15 reported sexual abuse and arrested MICHAEL MARTIN for violating Penal Code §§
16 289(a)(1) and 136.1(a)(2).

17 61. Defendants were notified that, on May 8, 2017, the Riverside Superior Court
18 issued a three year criminal protective order to NICOLE TORRES to protect against
19 perpetrator MICHAEL MARTIN.

20 62. Defendants were notified that, on May 10, 2017, NICOLE TORRES and her
21 children moved into a domestic violence shelter to escape the MARTIN abuse. Shortly
22 thereafter, Defendants were notified that, MARTIN appeared uninvited at the Domestic
23 Violence Shelter and whereby MARTIN threatened TORRES and S.M. and Z.M. in
24 person, in spite of the active court restraining order.

25 63. Defendants were notified that, on June 29, 2017, the District Attorney charged
26 MARTIN with Penal Code 422 Criminal Threats against NICOLE TORRES and charged
27 MARTIN with a felony violation of Penal Code 136.1(c)(1) for preventing NICOLE
28 TORRES from reporting crimes to law enforcement.

1 64. Defendants were notified that an August 21, 2017 official report stated that
2 the children cower when they see MARTIN. The report stated that MARTIN left bruises
3 on sibling V.R.'s arm from grabbing them so aggressively. The report stated that
4 MICHAEL MARTIN tossed Z.M. into the air but instead of catching her, he sadistically
5 moved out of the way and let Z.M. fall and caused Z.M. to break her leg. In said report,
6 sibling A.R. testified that MARTIN broke Z.M.'s hand and arm.

7 65. Defendants were notified of the following: that on October 28, 2017,
8 MARTIN stalked NICOLE TORRES at her workplace, despite there being a restraining
9 order in place prohibiting him from doing so. MARTIN falsely imprisoned NICOLE
10 TORRES by blocking her movement. Then, MARTIN brandished a knife at TORRES and
11 threatened to kill himself. Two officers from the Hemet Police Department arrived and
12 ordered MARTIN to drop the knife. MARTIN refused to drop his knife and began charging
13 the police officers with his knife raised in the air. As a result, the two Hemet police officers
14 opened fire and struck MARTIN multiple times at close range. MARTIN survived the
15 shooting and sued the police, and received a substantial settlement from the City of Hemet
16 Police Department. (Hemet Police Report, 17-10516). After the shooting, Hemet Police
17 Officer J. Green interviewed MARTIN'S mother, Laurel Gunn, who stated that MARTIN
18 had a history of mental health issues; Officer Green stated, "Martin went into a field and
19 poured gasoline all over himself, and threatened to light himself on fire... [and also] an
20 incident where Martin beat himself in the head with a hammer...and being admitted into
21 the hospital." (Id.) Officer Green interviewed MARTIN's sister Lauren Falconieri, and
22 stated, "...two weeks prior to the shooting, Martin took a bunch of pills...Falconieri said
23 she asked Martin if he was trying to do suicide by cop and Martin answered yes and said
24 that he just wanted to die.... ...Martin was probably bipolar... Falconieri told me that after
25 the hammer incident, she remembered Martin hitting his head on walls causing cuts and
26 bruises to his face [he did this] a couple times a year...throwing things, hitting himself
27 throwing himself into walls, and breaking things to the point that he had glass in his hands
28

1 and arms...Martin was held on a 5150 hold in the Los Angeles area because of a suicide
2 attempt ...” (Id.).

3 66. Defendants were notified of the following: Hemet police officers documented
4 MARTIN’s excessive criminal history and mental health issues:

5 “Martin's juvenile history showed that he was arrested for Burglary and
6 Robbery. ...as an adult he was charged with Vehicle Theft, Insufficient funds,
7 and the most current which Martin was on bail for was a Domestic violence
8 (criminal threats) towards Torres....I found that Martin had ten firearms
9 registered to him. ..[27:37-28:8]n twelve calls involving Martin or Torres. The
10 calls began in March of 2017 when Martin was arrested under file number 17-
11 3031 for 422 PC...These calls included a report of a sexual assault which was
12 documented under file number 17-3872, a verbal disturbance where Martin
13 was arrested on file number 17-4252, an additional verbal disturbance with no
14 arrest and mental health and welfare check calls....17-4252 Martin was
15 arrested for 289(a)(1)PC and 136.1(a)(2) with Torres was listed as a
16 victim....17-10335 where Martin was the suspect of a 417(a)(1) in which he
17 used a taser on another subject. ..[Martin was charged] 243(e)(1)PC on
18 10/16/2017 (file number PE173420106).....” (Id.).

19 67. Defendants were notified that, on December 1, 2017 MARTIN was charged
20 for committing violations of Penal Code 245(a)(1) felony Assault upon Hemet Police
21 Officer Wood with a deadly weapon (knife), and MARTIN was charged with violation of
22 Penal Code § 236 felony false imprisonment upon NICOLE TORRES, and was charged
23 with violating Penal Code 273.6(a) or violation of protective order stemming from the
24 October 28, 2017 shooting incident.

25 68. Defendants were notified that, on March 13, 2018, MARTIN was arrested for
26 violating Penal Code § 488 theft.

27 69. Defendants were notified that, on June 24, 2018 MARTIN pled ***guilty*** to three
28 criminal charges: (1) Attempted Criminal Threats; (2) Brandishing a deadly weapon at
NICOLE TORRES and The Police; and (3) Falsely Imprisoning NICOLE TORRES during
the October 28, 2017 incident.

1 70. Defendants were notified that, in a July 31, 2018 police report, MARTIN’s
2 gun “collection” included a 40 Pistol, unknown Pistol, .45 Pistol, 20G Shotgun, 12G
3 Shotgun, 12G Shotgun, 3006 Rifle, 270 Rifle, .22 Rifle, .22 Rifle, 7.62 Rifle, of which all
4 guns were returned to MARTIN by the police on July 21, 2018.

5 71. Defendants were notified that, on December 13, 2018, the State of California,
6 Bureau of Security, suspended MARTIN’S exposed firearm permit due to his extensive
7 criminal history. On December 13, 2018, the State of California Bureau of Security, Case
8 No 1202018006682, issued a suspension of MARTIN’S firearm permit based upon
9 MARTIN’S criminal convictions for: (1) July 24, 2018 Penal Code § 422 conviction, (2)
10 March 13, 2007 Nevada Felony Conspiracy Grand Larceny Conviction, (3) July 25, 2001
11 Vehicle Code § 10852- tampering with vehicle, and (4) September 23, 2022 Penal Code §
12 475(a) conviction and Penal Code §§ 475, 476 forgery conviction.

13 72. Defendants were notified that, on March 14, 2019 MARTIN engaged in an
14 argument with NICOLE TORRES, and he threw a cell phone at NICOLE TORRES’s head.
15 MARTIN was arrested for assault. Thereafter, Defendants were notified that on March 14,
16 2019, MARTIN further assaulted Z.M. by repeatedly hitting her with a belt and telling her
17 “I hope you broke your back.” (Riverside Superior Court, Case No. BAF1700449).

18 73. Defendants were notified that in a June 24, 2019 report, minor sibling A.R.
19 testified that MARTIN exhibited inappropriate sexual behaviors towards her, such as
20 repeatedly watching her shower naked for about five minutes per occasion.

21 74. Defendants were notified that, on August 25, 2019, MARTIN attacked
22 NICOLE TORRES and used both his hands to push her shoulders down until she
23 subsequently fell into a plastic storage bin. When TORRES attempted to call 9-1-1,
24 MARTIN took her phone and threw it against the wall, rendering the phone inoperable.

25 75. Defendants were notified that, on September 4, 2019, MICHAEL MARTIN
26 attacked S.M. by squeezing her wrists and then MARTIN threatened S.M. telling her not
27 to “tell anyone” about the quarter size bruises he left her on her wrists or else “she would
28 be taken away.”

1 76. Defendants were notified that, on September 25, 2019, minor sibling V.R. told
2 DEFENDANTS that MICHAEL MARTIN held a gun to NICOLE TORRES stomach and
3 threatened to kill her.

4 77. Defendants were notified that, on October 9, 2019 a Criminal complaint was
5 filed against MICHAEL MARTIN for committing battery against NICOLE TORRES
6 during the August 25, 2019 incident.

7 78. Defendants were notified that, on December 25, 2019, MICHAEL MARTIN
8 hit Z.M. and sprained Z.M.'s finger. MICHAEL MARTIN threatened and instructed the
9 children to lie to the doctor by telling them Z.M. injured herself while playing.

10 79. Defendants were notified that, on December 31, 2019 at 4 a.m. MICHAEL
11 MARTIN banged on NICOLE TORRES window in violation of a restraining order.
12 MARTIN stood outside of TORRES house in a black hoodie accompanied by several other
13 individuals. NICOLE TORRES called the police and MARTIN left. Approximately four
14 hours later, at 8 a.m., MARTIN broke into TORRES house and screamed at TORRES.
15 MARTIN pushed minor sibling A.R. The police were called and took a report.

16 80. Defendants were notified that, on January 23, 2020, MICHAEL MARTIN
17 admitted: (1) he violated and disregarded the court's visitation orders and restraining
18 orders; (2) he had not completed his court ordered anger management or parenting courses;
19 (3) he refused to participate in his court ordered counseling sessions; and finally (4)
20 MARTIN gloated about using inappropriate physical discipline methods with his children.
21 MARTIN's admissions to DEFENDANTS served as ample notice to the DEFENDANTS
22 that S.M. and Z.M. were not safe in MICHAEL MARTIN's custody.

23 81. Defendants were notified that, on March 3, 2020, minor sibling V.R. reported
24 that MICHAEL MARTIN forced V.R. and his minor sister A.R. to repeatedly look at
25 explicit naked pictures of MARTIN and TORRES naked. V.R. stated that MARTIN often
26 slapped him in the face as discipline. V.R. confessed to DEFENDANTS, that V.R. kept a
27 bat by the side of his bed for protection from MARTIN in fear every night of MARTIN'S
28

1 arrival. As sibling V.R. shared with DEFENDANTS, he did not feel safe in his own home
2 when MICHAEL MARTIN was present.

3 82. Defendants were notified that, on March 13, 2020, MARTIN made threats in
4 front of the entire family to kill NICOLE TORRES and all the children.

5 83. Defendants were notified that, on March 18, 2020, MICHAEL MARTIN
6 violated the protective order and appeared at NICOLE TORRES' home. TORRES and
7 sister Kaley Torres attempted to flee from him, and MARTIN followed them in his vehicle.
8 TORRES called 911, and MARTIN blocked TORRES' vehicle by cutting her off.
9 MARTIN exited his vehicle and approached TORRES' vehicle and yelled. The police took
10 a report.

11 84. Defendants were notified that, on March 18, 2020, MICHAEL MARTIN
12 threatened in writing to kill DCSS Social Worker LaKeya Johnson, if his kids were not
13 returned to him. Social Worker LaKeya Johnson stated, "On March 18, 2020, I called to
14 notice the father; he was very upset and [MARTIN] continued to say 'where are my fucking
15 kids! LaKeya you better give back my fucking kids, I do not understand why you have
16 them, I better get back my fucking kids or some ones life is going to end tonight!'"

17 85. The Defendants were notified that, on September 22, 2020, MICHAEL
18 MARTIN was arrested for violating court protective order and falsely imprisoning
19 NICOLE TORRES during the events that transpired on March 18, 2020.

20 86. The Defendants were notified that, on November 9, 2020, MICHAEL
21 MARTIN stalked NICOLE TORRES by parking in front of her residence in violation of
22 the restraining order.

23 87. The Defendants were notified that, on November 10, 2020, the Court ordered
24 MICHAEL MARTIN to participate in a psychological evaluation.

25 88. The Defendants were notified that, on September 17, 2020, Dr. Kenneth
26 Garrett issued a psychological report on MICHAEL MARTIN. MARTIN admitted to the
27 use of inappropriate corporal punishment upon S.M. and Z.M. Dr. Garrett report identified
28 MARTIN's extensive criminal history, which commenced during his adolescent years

1 when he was arrested for forgery, auto theft and tampering with a stolen vehicle. Dr. Garret
2 identified MARTIN brandished a knife on the Police. Dr. Garrett expressed concern that
3 MARTIN showed naked pictures he had of him and his wife to his children. Dr. Garrett
4 diagnosed MARTIN with a personality disorder, turbulent type, with his histrionic features,
5 “which tends to be predictive of unstable interpersonal relationships especially members
6 of the opposite sex...” Dr. Garrett further noted MARTIN’s tendency to project some of
7 his issues which are his fault on others, and suggests this is negatively impacting the
8 wellbeing of his children.

9 89. Shortly thereafter, the Defendants referred and paid Malcolm Lilienthal to
10 provide therapy to MARTIN. Mr. Lilienthal proclaimed that he was a licensed MFT
11 therapist and was also the elected Mayor of Hemet. However, later, under oath, Mr.
12 Lilienthal admitted he never had successfully secured an MFT license, rather he had been
13 issued an AMFT license which had been suspended by the State of California four times
14 due to his failing the State ethics exam. Mr. Lilienthal admitted under oath that he had
15 provided Mr. MARTIN over 100 therapy sessions (Defendants paid Lilienthal for therapy)
16 during which time Mr. Lilienthal’s AMFT license was suspended. Moreover, Mr.
17 Lilienthal later testified under oath that pursuant to request, he had provided the Defendants
18 and the Court two official progress reports on MARTIN and testified in court that Mr.
19 MARTIN had completely rehabilitated from all his mental health issues. Lilienthal’s
20 therapy, reports and testimony all took place during which time Mr. Lilienthal’s AMFT
21 license was suspended.

22 90. The Defendants were notified that, on May 28, 2021 MARTIN kicked and
23 threw S.M. and Z.M.’s dog to the ground and forced the dogs to eat their own feces when
24 the dogs accidentally defecated.

25 91. The Defendants were notified that, on July 11, 2021 MICHAEL MARTIN
26 backhanded S.M. across the face while he was driving because he was upset at S.M. for
27 telling the social worker something he did not want her to report.
28

1 92. The Defendants were notified that, on July 27, 2021, minor Z.M. acted out in
2 person during DEFENDANTS' WRAP Team meeting by pulling out a pocketknife and
3 saying she wanted to commit suicide.

4 93. On July 28, 2021, Defendants removed S.M. and Z.M., without a proper
5 Removal Warrant.

6 94. On August 4, 2021, the Defendants placed S.M. and Z.M. with MICHAEL
7 MARTIN's custody with unsupervised and overnights. On August 5, 2021, Defendants
8 authorized S.M. and Z.M. to remain in MICHAEL MARTIN's care unsupervised and
9 overnight.

10 95. The Defendants were notified that, on August 17, 2021, MICHAEL MARTIN
11 became enraged with S.M. and Z.M. for playing, rather than cleaning their room, and as a
12 response, MARTIN kicked a Little Tykes kitchen set into his daughter's leg, injuring her.

13 96. The Defendants were notified that, on September 23, 2021, NICOLE
14 TORRES disclosed that MICHAEL MARTIN's, chased TORRES with a baseball bat, and
15 dented her car by hitting it with the bat.

16 97. The Defendants were notified that, on September 26, 2021 MARTIN pushed
17 NICOLE TORRES to the bed, sat on her chest, and while using his right hand and all his
18 weight to push NICOLE TORRES down he used his left hand to strangle her neck
19 preventing her airflow for approximately one minute. The police took a report.

20 98. Defendants were notified that, on September 29, 2021, while S.M. and Z.M.
21 were in MICHAEL MARTIN's custody, DEFENDANTS received an immediate response
22 referral notifying them of the September 26, 2021 MICHAEL MARTIN domestic violence
23 and physical abuse upon NICOLE TORRES. MICHAEL MARTIN communicated to a
24 DPSS-CSD a Social Worker by threatening "if [his] children are taken 'someone will end
25 up in the grave.'"

26 99. In October 2021, Defendants final finally removed S.M. and Z.M. from
27 MARTIN.
28

1 100. On November 16, 2021 S.M. and Z.M further notified the Defendants of
2 details of MARTIN’s previous sexual assault. Moreover, on November 16, 2021, S.M.
3 and Z.M. notified the Defendants that MICHAEL MARTIN continued to freely roam the
4 streets and MARTIN continued to stalk S.M. and Z.M. at the gate of their school or their
5 grandmother’s home. S.M. and Z.M. notified the DEFENDANTS that MARTIN was
6 constantly stalking and accosting S.M. and Z.M., and on several occasions, MARTIN
7 bribed S.M. and Z.M. with money. Despite this alarming disclosure, the Defendants failed
8 to take appropriate actions to protect S.M. and Z.M.

9 101. On March 16, 2022, S.M. and Z.M. provided more detailed information to
10 Defendants regarding MARTIN’s rape of S.M. and Z.M...

11 **E. DEFENDANTS’ FAILURE TO COMPLY WITH THEIR**
12 **OBLIGATIONS TO DOCUMENT AND REPORT MARTIN’S ABUSE**
13 **UPON S.M. AND Z.M. AND THEIR SIBLINGS, WHICH WAS THE**
14 **PROXIMATE CAUSE OF ABUSE TO PLAINTIFFS S.M AND Z.M.**

15 102. DEFENDANTS were required to document and report the physical and
16 sexual abuse by Father MARTIN upon plaintiffs S.M and Z.M and their siblings. They
17 were required to provide plaintiffs S.M and Z.M. an opportunity to be heard through the
18 Case Plan. The information was mandated to be in the Case Plan, which must be reviewed
19 at least every six months. Had the information been included, the abuse of plaintiffs S.M
20 and Z.M. by FATHER MARTIN would have ceased and the damage mitigated.

21 **FIRST CAUSE OF ACTION**

22 **(VIOLATION OF SUBSTANTIVE DUE PROCESS, FOURTEENTH**
23 **AMENDMENT– SPECIAL RELATIONSHIP, 42 U.S.C. § 1983.)**

24 **(By All Plaintiffs Against Defendants SCOTT JOHNSON,**
25 **MATTHEW PLEMONS and DOE EMPLOYEES)**

26 103. Plaintiffs hereby incorporate by reference and re-allege each and every
27 allegation set forth in each and every preceding paragraph of this Complaint, as though
28 fully set forth herein.

1 104. The Federal Civil Rights Act provides a civil remedy against a person, who
2 under color of state law, deprives another of federal rights cognizable under 42 U.S.C. §
3 1983.

4 105. There was a “special relationship,” a custodial relationship, between plaintiffs
5 S.M and Z.M. and DEFENDANTS that required defendant DEFENDANTS to assume
6 certain responsibilities for plaintiffs S.M and Z.M.’s safety and well-being.

7 106. Plaintiff S.M and Z.M. had a right to be free from harm while involuntarily in
8 government custody and the right not just to medical care, treatment and services, but to
9 not be violently assaulted, raped and sexually abused multiple times.

10 107. At all times referred to in this Complaint, Defendants JOHNSON and
11 PLEMONS and all those acting either in concert or in conjunction with them, or those
12 acting independently, were acting under color of state law, and in their individual and/or
13 official capacities as officials, agents and employees of defendant COUNTY OF
14 RIVERSIDE.

15 108. Defendants JOHNSON and PLEMONS, and all those acting either in concert
16 or in conjunction with them, or those acting independently, while in their individual and
17 official capacities and acting under color of state law, and while Plaintiffs S.M. and Z.M.
18 were under the care and custody of defendant COUNTY OF RIVERSIDE, they deprived
19 Plaintiffs S.M. and Z.M. of certain rights, privileges, and/or immunities which were
20 secured by the United States Constitution and other laws, including a denial of substantive
21 due process under the Fourteenth Amendment to the United States Constitution. This
22 deprivation of rights, privileges, and/or immunities has caused Plaintiffs to suffer damages
23 in amounts to be determined at trial.

24 109. Specifically, Defendants JOHNSON and PLEMONS engaged in affirmative
25 conduct in knowingly, intentionally and with deliberate indifference, ignoring, suppressing
26 and destroying evidence of the physical and sexual abuse suffered by Plaintiffs S.M. and
27 Z.M. and their siblings, violated state and federal law regarding the reporting and
28 prevention of sexual and physical abuse, failed to protect Plaintiffs S.M. and Z.M. from

1 such abuse, and allowed S.M. and Z.M. to be present, largely unsupervised, and overnights,
2 in close proximity to their abuser, MARTIN.

3 110. The Fourteenth Amendment substantive due process clause protects a foster
4 child's liberty interest in social worker supervision and protection from harm continuing
5 while the child is placed in foster care. Once the state assumes wardship of a child, the state
6 owes the child, as part of that person's protected liberty interest, reasonable safety and
7 minimally adequate care. Plaintiffs S.M. and Z.M. enjoyed a special relationship with the
8 Defendants and the Defendants owed them a duty to protect.

9 111. At all times referred to in this Complaint, defendants JOHNSON and
10 PLEMONS and all those acting either in concert or in conjunction with them, or those
11 acting independently, were acting under color of state law, and in their individual and/or
12 official capacities as officials, agents and employees of defendant COUNTY OF
13 RIVERSIDE.

14 112. Defendants JOHNSON and PLEMONS, and all those acting either in concert
15 or in conjunction with them, or those acting independently, while in their individual and
16 official capacities and acting under color of state law, and while Plaintiffs S.M. and Z.M.
17 was under the care and custody of defendant COUNTY OF RIVERSIDE, deprived
18 Plaintiffs S.M. and Z.M. of certain rights, privileges, and/or immunities which were
19 secured by the United States Constitution and other laws, including a denial of substantive
20 due process under the Fourteenth Amendment to the United States Constitution. This
21 deprivation of rights, privileges, and/or immunities has caused Plaintiffs to suffer damages
22 in amounts to be determined at trial.

23 113. Specifically, Defendants JOHNSON and PLEMONS engaged in affirmative
24 conduct in knowingly, intentionally and with deliberate indifference, ignoring, suppressing
25 and destroying evidence of the physical and sexual abuse suffered by Plaintiffs S.M. and
26 Z.M., violated state and federal law regarding the reporting and prevention of sexual and
27 physical abuse, failed to protect Plaintiffs S.M. and Z.M. from such abuse, and allowed
28

1 him to be present, largely unsupervised, in close proximity to their abuser, MICHAEL
2 MARTIN

3 114. The Fourteenth Amendment substantive due process clause protects a foster
4 child's liberty interest in social worker supervision and protection from harm continuing
5 while the child is placed in foster care. Once the state assumes wardship of a child, the state
6 owes the child, as part of that person's protected liberty interest, reasonable safety and
7 minimally adequate care. Plaintiffs S.M. and Z.M. enjoyed a special relationship with the
8 Defendants and the Defendants owed

9 115. Plaintiffs S.M. and Z.M. a duty that is the quintessential responsibility of those
10 assigned the responsibility to safeguard the well-being of this helpless and vulnerable child.

11 116. Defendants had an obligation to provide adequate medical care, protection and
12 supervision to children removed from their parents and placed in foster care.

13 117. The rights alleged herein were clearly established at the time they were
14 violated.

15 118. Defendants' conduct alleged hereinabove was performed with deliberate
16 indifference to the liberty and substantive due process interests of Plaintiffs S.M. and Z.M.
17 Defendants were objectively and subjectively aware of facts from which an inference could
18 be drawn that a substantial risk of serious harm existed, the Defendants actually drew such
19 an inference and any reasonable official would have been compelled to draw such inference
20 under the circumstances of this case. In fact, Defendants actually knew of the prior acts of
21 MICHAEL MARTIN to Plaintiffs S.M. and Z.M. (as well as MICHAEL MARTIN's acts
22 to others) prior to placing them in the same foster home with MARTIN, unsupervised and
23 overnights.

24 119. As a direct and proximate result of Defendants' deprivation of the rights,
25 privileges, Plaintiffs S.M. and Z.M. has suffered severe physical and psychological injury
26 and other damages, which have been caused by Defendants.

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1 120. As a result of Defendants’ conduct, Plaintiffs S.M. and Z.M., requests an
2 award of reasonable attorneys’ fees and Plaintiffs’ costs on their behalf expended as to such
3 Defendants pursuant to the Civil Rights Act of 1871, 42 U.S.C. § 1988.

4 121. Defendants’ conduct as alleged herein, involved reckless or callous
5 indifference to the federally protected rights of the Plaintiffs S.M. and Z.M. and Plaintiffs
6 S.M. and Z.M., is therefore entitled to an award of punitive damages against the
7 Defendants.

8 **SECOND CAUSE OF ACTION**
9 **(VIOLATION OF SUBSTANTIVE DUE PROCESS,**
10 **FOURTEENTH AMENDMENT**
11 **STATE CREATED DANGER, 42 U.S.C. § 1983.)**
12 **(By All Plaintiffs Against Defendants SCOTT JOHNSON and MATTHEW**
13 **PLEMONS and Doe Employees)**

14 122. Plaintiffs hereby incorporate by reference and re-allege each and every
15 allegation set forth in each and every preceding paragraph of this Complaint, as though
16 fully set forth herein.

17 123. The Federal Civil Rights Act provides a civil remedy against a person, who
18 under color of state law, deprives another of federal rights cognizable under 42 U.S.C. §
19 1983.

20 124. At all times referred to in this complaint, and all those acting either in
21 concert or in conjunction with them, or those acting independently, were acting under color
22 of state law, and in their individual and/or official capacities as officials, agents and
23 employees of defendant COUNTY OF RIVERSIDE.

24 125. Defendants JOHNSON and PLEMONS, and all those acting either in concert
25 or in conjunction with them, or those acting independently, while in their individual and
26 official capacities and acting under color of state law, while and continuing after, Plaintiffs
27 S.M. and Z.M. was under the care and custody of defendant COUNTY OF RIVERSIDE,
28 deprived Plaintiffs of certain rights, privileges, and/or immunities which were secured by

1 the United States Constitution and other laws, including a denial of substantive due process
2 under the Fourteenth Amendment to the United States Constitution. This deprivation of
3 rights, privileges, and/or immunities has caused Plaintiffs to suffer damages in amounts to
4 be determined at trial.

5 126. Specifically, defendants JOHNSON and PLEMONS engaged in affirmative
6 conduct in knowingly, intentionally and with deliberate indifference, ignoring, suppressing
7 and destroying evidence of the physical and sexual abuse suffered by Plaintiffs S.M. and
8 Z.M., violated state and federal law regarding the reporting and prevention of sexual and
9 physical abuse, failed to protect Plaintiffs S.M. and Z.M. from such abuse, and allowed
10 them to be present, largely unsupervised, in close proximity to their abuser, MICHAEL
11 MARTIN.

12 127. Defendants JOHNSON and PLEMONS and those acting in concert with
13 and/or other employees of defendant COUNTY OF RIVERSIDE, affirmatively created a
14 dangerous situation that Plaintiffs S.M. and Z.M. and the Plaintiffs, would not have
15 otherwise faced.

16 128. The Fourteenth Amendment substantive due process clause protects a foster
17 child's liberty interest in social worker supervision and protection from harm continuing
18 while the child is placed in foster care. Once the state assumes wardship of a child, the state
19 owes the child, as part of that person's protected liberty interest, reasonable safety and
20 minimally adequate care. Plaintiffs S.M. and Z.M. enjoyed a special relationship with the
21 Defendants and the Defendants owed Plaintiffs S.M. and Z.M. a duty that is the
22 quintessential responsibility of those assigned the responsibility to safeguard the well-
23 being of this helpless and vulnerable child.

24 129. Defendants had an obligation to provide adequate medical care, protection and
25 supervision to children removed from their parents and placed in foster care.

26 130. The Plaintiffs had a substantive due process right to receive communication,
27 including written reports, regarding the dangerous nature of MICHAEL MARTIN,
28 Defendants were aware of dangerous nature of MICHAEL MARTIN and by doing nothing

1 and failing to comply with their obligations to report the physical and sexual abuse of
2 MICHAEL MARTIN, while aware of the dangerous situation created by Defendants'
3 failures to follow mandated regulations, policies and directives as alleged herein, placed
4 Plaintiffs S.M. and Z.M. in danger of a known and obvious threat.

5 131. Defendants JOHNSON and PLEMONS and Defendants further acted with
6 deliberate indifference to the Plaintiffs' constitutional liberty interest in the creation of
7 their family through the adoption process by deliberately concealing material information
8 regarding the sexual and physical abuse perpetrated by MICHAEL MARTIN on Plaintiffs
9 S.M. and Z.M..

10 132. The rights alleged herein were clearly established at the time they were
11 violated.

12 133. Defendants' conduct alleged hereinabove was performed with deliberate
13 indifference to the liberty and substantive due process interests of Plaintiffs. Defendants
14 were objectively and subjectively aware of facts from which an inference could be drawn
15 that a substantial risk of serious harm existed, the Defendants actually drew such an
16 inference and any reasonable official would have been compelled to draw such inference
17 under the circumstances of this case.

18 134. As a direct and proximate result of Defendants' deprivation of the rights,
19 privileges, and/or immunities due to Plaintiffs, Plaintiffs have suffered severe physical and
20 psychological injury and other damages, which have been caused by Defendants.

21 135. As a result of Defendants' conduct, Plaintiffs request an award of reasonable
22 attorneys' fees and Plaintiffs' costs on their behalf expended as to such Defendants
23 pursuant to the Civil Rights Act of 1871, 42 U.S.C. § 1988.

24 136. Defendants conduct as alleged herein involved reckless or callous indifference
25 to the federally protected rights of the Plaintiffs S.M. and Z.M. and Plaintiffs are therefore
26 entitled to an award of punitive damages against the Defendants.

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28

THIRD CAUSE OF ACTION

**(VIOLATION OF FEDERAL ADOPTION ASSISTANCE ACT &
CHILD WELFARE ACT, 42 U.S.C. § 1983.)**

**(By All Plaintiffs Against Defendants SCOTT JOHNSON
and MATTHEW PLEMONS and Doe Employees)**

137. Plaintiffs hereby incorporate by reference and re-allege each and every allegation set forth in each and every preceding paragraph of this Complaint, as though fully set forth herein.

138. Defendants' conduct as alleged herein violated Plaintiffs' statutory rights under the federal Adoption Assistance and Child Welfare Act of 1980, as amended by the Adoption and Safe Families Act of 1997, 42 U.S.C. § 671 et seq., and the regulations promulgated under the Act, 45 C.F.R. Parts 1355-1357, including but not limited to: the right of each child placed in foster care to have his or her health and educational records reviewed, updated, and supplied to foster care providers with whom the child is placed before or at the time of placement, pursuant to 42 U.S.C. §§ 671(a)(16), 675(1), and 675(5)(D).

139. Each Defendant acted under color of state law as to the matters set forth herein.

140. Defendants' acts and omissions complained of herein constitute a policy, pattern, practice, custom, final policy making act, and/or ratification of a subordinate's actions that deprived Plaintiffs of particular statutory rights.

141. Further, Defendants have failed in their duties to properly hire, train, instruct, monitor, supervise, evaluate and investigate Defendants' caseworkers and supervisors. Defendants were deliberately indifferent to the obvious consequences of these failures, and these failures directly resulted in the deprivation of Plaintiffs' statutory rights.

142. Defendants' acts and omissions complained of herein have caused, including significant physical and emotional harm, in an amount to be determined at trial. These damages are compensable pursuant to 42 U.S.C. § 1983.

1 143. As described herein, Defendants’ acts or omissions were in willful, malicious,
2 wanton, reckless or callous disregard of Plaintiffs’ rights, thereby entitling Plaintiffs to
3 punitive and exemplary damages.

4 **FOURTH CAUSE OF ACTION**
5 **(VIOLATION OF SUBSTANTIVE DUE PROCESS,**
6 **FOURTEENTH AMENDMENT – *Monell* Claim, 42 U.S.C. § 1983.)**
7 **(By All Plaintiffs Against Defendants**
8 **County of RIVERSIDE and Doe Supervisors)**

9 144. Plaintiffs hereby incorporate by reference and re-allege each and every
10 allegation set forth in each and every preceding paragraph of this Complaint, as though
11 fully set forth herein.

12 145. The Federal Civil Rights Act provides a civil remedy against a person, who
13 under color of state law, deprives another of federal rights cognizable under 42 U.S.C. §
14 1983.

15 146. Defendant COUNTY OF RIVERSIDE acted with deliberate indifference and
16 in accordance with a policy, practice or custom in defendant COUNTY OF RIVERSIDE
17 of failing to document, report and prevent physical and sexual abuse, in failing to supervise
18 defendants JOHNSON and PLEMONS and any other employees involved in the acts
19 described herein, and in its duty to protect Plaintiffs S.M. and Z.M. and the Plaintiffs from
20 a substantial risk of harm in violation of their rights under the Fourteenth Amendment to
21 the United States Constitution and 42 U.S.C. § 1983. This was a continued practice of
22 defendant COUNTY OF RIVERSIDE.

23 147. As a direct and proximate result of Defendants’ deprivation of the rights,
24 privileges, and/or immunities due to Plaintiffs, Plaintiffs have suffered severe physical and
25 psychological injury and other damages, which have been caused by Defendants.

26 148. As a result of Defendants’ conduct, Plaintiffs request an award of reasonable
27 attorneys’ fees and Plaintiffs’ costs on their behalf expended as to such Defendants
28 pursuant to the Civil Rights Act of 1871, 42 U.S.C. § 1988.

1 149. Defendants' conduct as alleged herein involved reckless or callous
2 indifference to the federally protected rights of the Plaintiffs are therefore entitled to an
3 award of punitive damages against the Defendants.

4 **FIFTH CAUSE OF ACTION**
5 **(DIRECT NEGLIGENCE PURSUANT TO**
6 **CAL. GOV'T CODE §§ 815.6, ET SEQ.)**
7 **(By All Plaintiffs Against All Defendants)**

8 150. Plaintiffs hereby incorporate by reference and re-allege each and every
9 allegation set forth in each and every preceding paragraph of this Complaint, as though
10 fully set forth herein.

11 151. Defendants were obligated by constitutional provisions, statutes, and/or
12 regulations, as stated above, to document, report and subsequently inform others, including
13 plaintiffs, about the physical and sexual abuse suffered by Plaintiffs S.M. and Z.M. and
14 perpetrated by MICHAEL MARTIN (who DEFENDANTS knew was a clear and present
15 danger to Plaintiffs S.M. and Z.M.). Defendants did not document the information.
16 DEFENDANTS did not report the information and they did not inform others about the
17 known dangers MICHAEL MARTIN presented to Plaintiffs S.M. and Z.M.

18 152. The constitutional provisions, statutes, and/or regulations were designed to
19 protect children such as Plaintiffs S.M. and Z.M.

20 153. Cal. Welf. & Inst. Code § 16001.9 mandates that all children in foster care,
21 including Plaintiffs S.M. and Z.M., shall have the right to live in a safe, healthy and
22 comfortable home and be free from physical and sexual abuse.

23 154. Cal. Welf. & Inst. Code § 16002(b) mandates that caseworkers such as
24 defendants JOHNSON and PLEMONS, to explain how MARTIN's physical and sexual
25 abuse of S.M. and Z.M. is contrary to the safety or well-being of S.M. and Z.M. This must
26 be placed in the Case Plan.

27 155. Cal. Welf & Inst. Code § 16501.1 sets forth the specific requirements for the
28 Case Plan which includes the mandatory development of a case plan for each foster child,

1 the factors upon which the case plan must be developed, the requirement that the child be
2 given a meaningful opportunity to participate in the development of the case plan, and the
3 requirement that the case plan be reviewed as each review hearing for the child.

4 156. The foster care requirements referenced above mandate an affirmative duty
5 by Defendants to ensure the safety of Plaintiffs S.M. and Z.M. The requirements also
6 include: reporting claims of sexual abuse pursuant to the Child Abuse Prevention and
7 Treatment Act (P.L. 93-247) and California's Child Abuse and Neglect Reporting Act.
8 Penal Code Sections 11164-11174.3 is the codification of the California Child Abuse and
9 Neglect Reporting Law. Penal Code Section 11165.7 defines mandated reporters and
10 specifically includes social workers, employees of child care institutions, and any licensed
11 clinical social worker, or child counselor, who are also mandated to cross-report to law
12 enforcement.

13 157. These mandates were put in place for the express purpose to provide for the
14 safety of foster children such as Plaintiffs S.M. and Z.M. and to provide parents like the
15 Plaintiffs with accurate information.

16 158. Defendants did not comply with these duties. They failed to document the
17 physical and sexual abuse and failed to protect the safety of S.M. and Z.M., who they knew
18 or should have known were being physically and sexually assaulted by MARTIN. They
19 had an obligation to protection Plaintiffs S.M. and Z.M., including making sure the
20 information was available is their Case Plan.

21 159. Defendants failed to diligently discharge those obligations, and that failure
22 was the direct proximate cause of severe injuries caused to Plaintiffs S.M. and Z.M. Had
23 Defendants complied with their mandatory obligation to report that MICHAEL MARTIN
24 was assaulting Plaintiffs S.M. and Z.M., the physical and sexual abuse would have ended
25 earlier. The case reviews were a safeguard meant to protect against the exact type of harm
26 Plaintiffs S.M. and Z.M. suffered.

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1 160. The negligence of Defendants, and each of them, was the proximate, legal
2 causes of the damages sustained by Plaintiffs S.M. and Z.M. Plaintiffs S.M. and Z.M. has
3 incurred damages to be shown by proof at trial.

4 **SIXTH CAUSE OF ACTION**
5 **(DERIVATIVE NEGLIGENCE PURSUANT TO**
6 **CAL. GOV'T CODE §§ 815.2, ET SEQ.)**
7 **(By All Plaintiffs Against County of RIVERSIDE)**

8 161. Plaintiffs hereby incorporate by reference and re-allege each and every
9 allegation set forth in each and every preceding paragraph of this Complaint, as though
10 fully set forth herein.

11 162. Defendants JOHNSON and PLEMONS and DOE EMPLOYEES were
12 obligated by constitutional provisions, statutes, and/or regulations, as stated above, to
13 document, report and subsequently inform others, including plaintiffs, about the physical
14 and sexual abuse suffered by Plaintiffs S.M. and Z.M. and perpetrated by MICHAEL
15 MARTIN (who they knew was a clear and present danger to Plaintiffs S.M. and Z.M.).
16 Defendants JOHNSON and PLEMONS and DOE EMPLOYEES did not document the
17 information. Defendants JOHNSON and PLEMONS and DOE EMPLOYEES did not
18 report the information and they did not inform others about the known dangers MICHAEL
19 MARTIN presented to Plaintiffs S.M. and Z.M.

20 163. California public entities, including local governments, are derivatively liable
21 for the negligent acts or omissions of public employees within the scope of their
22 employment. In the instant matter, defendants COUNTY OF RIVERSIDE is liable for
23 Plaintiffs S.M. and Z.M.'s injuries under California law and under the doctrine of
24 respondeat superior for the acts and omissions of defendants JOHNSON and PLEMONS
25 and DOE EMPLOYEES. Liability under California law for public entities and public
26 employees is based upon Cal. Gov't Code §§ 815.2 and 820. The acts and omissions by
27 defendants JOHNSON and PLEMONS and DOE EMPLOYEES were not discretionary
28 functions and were not policy making decisions.

1 164. The COUNTY OF RIVERSIDE, by and through Defendants JOHNSON and
2 PLEMONS and DOE EMPLOYEES decision to not report that MICHAEL MARTIN was
3 causing Plaintiffs S.M. and Z.M. to be physically and sexually abused and to continue to
4 place MICHAEL MARTIN near Plaintiffs S.M. and Z.M., continued to place Plaintiffs
5 S.M. and Z.M. in danger. These requirements were placed to protect individuals like
6 Plaintiffs S.M. and Z.M.

7 165. The COUNTY OF RIVERSIDE, by and through Defendants JOHNSON and
8 PLEMONS and DOE EMPLOYEES' failure to diligently discharge the mandatory
9 obligations set forth previously, was the direct proximate cause of severe injuries to
10 Plaintiffs S.M. and Z.M.

11 166. The negligence of the COUNTY OF RIVERSIDE, by and through the
12 negligence of defendants JOHNSON and PLEMONS and DOE EMPLOYEES, was the
13 proximate, legal causes of the damages sustained by Plaintiffs S.M. and Z.M. Plaintiffs
14 have incurred damages to be shown by proof at trial.

15 **SEVENTH CAUSE OF ACTION**

16 **(NEGLIGENCE, CAL. GOV'T CODE §§ 815.2, 815.6, ET SEQ.)**

17 **(By All Plaintiffs Against All Defendants)**

18 167. Plaintiffs hereby incorporate by reference and re-allege each and every
19 allegation set forth in each and every preceding paragraph of this Complaint, as though
20 fully set forth herein.

21 168. Defendants were obligated, as set forth herein, to ensure the safety of S.M.
22 and Z.M. and ensure their freedom from physical and sexual abuse by reporting claims of
23 abuse, documenting such claims in the Case Plan, and removing them from being housed
24 with MICHAEL MARTIN, while documenting the reasons for that removal in the Case
25 Plan.

26 169. Defendants were further obligated by the Department of Social Services,
27 Child Welfare Regulations, to provide full and accurate information to the Plaintiffs upon
28 placing S.M. and Z.M.

1 170. The regulations require that the social workers, in this case Defendants
2 JOHNSON and PLEMONS, to provide the providers information regarding any known or
3 suspected dangerous behaviors of the child being placed.

4 171. The regulations require that the social workers provide background
5 information on the child, including the child's educational, medical, placement, family, and
6 behavioral backgrounds.

7 172. These mandates were put in place for the express purpose of providing for the
8 safety of foster children and to provide full and accurate information.

9 173. Defendants failed to comply with these duties by failing to document, and in
10 fact concealing documentation of, the physical and sexual abuse of S.M. and Z.M. by
11 MICHAEL MARTIN, by improperly placing and failing to remove S.M. and Z.M. from
12 the home with MICHAEL MARTIN and to document why such removal was necessary
13 for the safety and well-being of S.M. and Z.M.

14 174. By failing to document these incidents, Defendants committed negligent
15 and/or intentional misrepresentation and fraudulent nondisclosure of material facts to the
16 Plaintiffs.

17 175. This negligent and/or intentional misrepresentation and fraudulent
18 nondisclosure caused the Plaintiffs damages.

19 176. Defendants' negligent and/or intentional misrepresentation or fraudulent
20 concealment regarding the health and well-being of Plaintiffs S.M. and Z.M. was the direct
21 proximate cause of severe injuries to plaintiffs. Plaintiffs have incurred damages to be
22 shown by proof at trial.

23 **PRAYER FOR RELIEF**

24 Wherefore, PLAINTIFFS pray for judgment against DEFENDANTS as
25 follows:

- 26 1. For general damages, the exact amount of which will be proven at trial;
27 2. For special damages for medical and related expenses according to proof;
28 3. For punitive damages against the individual defendants;

- 1 4. For statutory damages as permitted by law;
- 2 5. For reasonable attorneys' fees;
- 3 6. For interest;
- 4 7. For costs of suit incurred herein;
- 5 8. For such other and further relief as the Court deems just and proper.

6 Respectfully Submitted,

7 SKAPIK LAW GROUP

8
9 Dated: October 6, 2023

By:

10 /s/ Eric C. Morris
11 Eric C. Morris
12 Mark J. Skapik
13 GERALYN L. SKAPIK
14 BLAIR J. BERKLEY
15 MATTHEW T. FALKENSTEIN
16 Attorneys for Plaintiffs,
17 NICOLE TORRES and
18 S.M. and Z.M., by and through her Guardian
19 ad litem NICOLE TORRES
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JURY TRIAL DEMANDED

Plaintiffs hereby demand a jury trial.

SKAPIK LAW GROUP

Dated: October 6, 2023

By:

/s/ Eric C. Morris
Eric C. Morris
Mark J. Skapik
Geraldyn L. Skapik
Blair J. Berkley
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S.M. and Z.M., by and through her Guardian
ad litem NICOLE TORRES