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IN THE SUPERIOR COURT FOR THE STATE OF WASlhlaWGk'Ofl
IN AND FOR THE COUNTY OF WHATCOM

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JWSICA BRAAM, a minor child, by and Through her guardians, Dale and Vickie Braam; JENNEIVA BURSCH, a minor child, by and through her guardians, Greg & Sherry Bursch; CASSIDEE BURSCH, a minor child, by and through her guardians Greg & Sherry Bursch; DES1 MORGAN, a minor child, by and through her guardians, Lori Morgan and Lonnie Morgan; PATRICK MORRIS, a minor child, by and through his guardians, Cathy and David Morris; TIM OLSON, a minor child, by and through his guardians, David and Diane Olson; SHAUN SANCHEZ, a minor child, by and through his court appointed GAL, Shawn Hosford; AMIE ANDERSON, a minor child, by and through her court appointed GAL, Jim Haynes, ROBYN BRANDON, a minor child, by and through her guardian, E. Sparrowhawk Brandon; BETH HARDIN, a minor child, by and through her guardians, David and Mary Hardin; ERYK HARDIN, a minor child, by and through his guardians, David and Mary Hardin; IVORY HARDIN, a minor child, by and through her guardians, David and Mary Hardin; EBONY HARDIN, a minor child, by and through her guardians, David and Mary Hardin, Plaintiffs, v.	)	No.98201570 1 AMENDED MEMORANDUM IN SUPPORT OF MOTION FOR CLASS CERTIFICATION David A. Nichols

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STATE OF WASHINGTON and the)
DEPARTMENT OF SOCIAL AND)
HEALTH SERVICES, and LYLE QUASI&l,)
Individually, and as Secretary of the Department of)
Health and Human Services)
Defendants.)

I. Introduction

This is an action brought on behalf of abused and neglected children removed from the homes of their natural parents or guardians and placed in state custody to protect them from further harm. Defendants, acting under their statutory authority, deprive parents of the custody of these children and then fail to fulfill the statutory, constitutional, and common law duties and obligations imposed upon them as the children's custodians. Certain actions of the state custodians have caused irreparable injury to the plaintiffs. Specifically, despite defendants' knowledge of the devastating impact of multiple placements upon this vulnerable population of children, and notwithstanding a clear legislative mandate to provide them a stable placement, they have continued a pattern and practice of moving children from one home or facility to another while in their custody. This practice affects a substantial part of the state's foster care population. No group of children is immune. Boys and girls, infants, young children and teenagers, and children from all ethnic groups are adversely effected by the practice. Plaintiffs now seek to assert some claims on behalf of a class of abused and neglected children in state custody who are subjected to this injurious practice. For that purpose, they seek the court's certification of this case as a class action.

Placement stability is a key to assuring the child's health, adjustment, and progress while in care and upon discharge Ii-om the- state's custody. Professional childcare standards emphasize the importance of maintaining stability for children in out-

1 of-home placements. For more than five decades, child development specialists have
2 stressed the dangers of abrupt and unplanned removal and placement of children.
3 Numerous studies and reports written by or for defendants point out the damaging impact
4 of failing to provide a stable home for children in foster care. Washington legislative
5 policy in one enactment after another emphasizes the importance of maintaining children
6 in stable placements. Case law governing how child custody decisions outside the
7 dependency process should be determined also consistently affirms the principle of
8 stability.

9 At the core of the complaint for class relief is the practice of shuttling children
10 from one placement to another. The plaintiff class challenges the longstanding and
11 widespread practice of moving children from one placement to another without telling
12 them or their duly appointed legal representatives of the impending move, nor giving
13 them or their representative an opportunity to question the propriety of the move.

14 Initially, this case was brought by thirteen plaintiffs against the Washington
15 Department of Social and Health Services seeking damages for the injuries caused by
16 multiple changes in placement while in defendants' custody. *Amended CompZaint* at p.6.
17 Some of the plaintiffs have left the foster care system and this action was brought on their
18 behalf by their adoptive parents. Some of the plaintiffs have remained in the state's
19 custody for years, Since their removal from the home of their natural parents, these
20 children have had no lasting, permanent substitute parent but a series of unrelated,
21 temporary caretakers. Still other plaintiffs have reentered foster care when their adoptive
22 placements failed. Concerned that their experiences of having no permanent and stable
23 home should not be repeated for others, plaintiffs amended the complaint to seek
24 declaratory and injunctive relief on behalf of a class of similarly situated children in
25 foster care. The class is narrowly defined to include only a subclass of all children in

foster care and the issues sought to be resolved for the class also are limited to questions :onceming the procedural protections to which members of the class are entitled. *Second 4mended Complaint,* at pp. 4-6.

The wholesale violation of children's rights is an opinion held not only by many child welfare experts outside of DSHS, but by the top leaders of DSHS as well. Jean Soliz and Suzanne Peterson were the Secretary and Deputy Secretary of DSHS. In this position, these two administrators were the heads of DSHS. DSHS Secretary Jean Soliz and her deputy Suzanne Peterson wrote:

> These children are in the worst position of any people in our society. Study after study shows that children are bounced from placement to placement for years on end. They get no say in where they live or with whom. Their rights to visitation or a new adoptive home are unenforced. DSHS cannot fix this without cooperation from the legislature and the courts.
> . . .
> . . .little attention is given to the misery of thousands of children in out of home care.

Exhibit 3 to deposition of Suzanne Peterson.

Ms. Peterson identified the "misery" as the shuttling of DSHS' children from home to home, who. . . have to change schools, who . . .don't have permarrency.. _ Peterson Deposition p. 92

Ms. Peterson, further testified:

> *Q.* Was it your understanding at the time this document was written about the Washington State child welfare system that certain children's rights in foster care were being violated?
>
> A. . . .--yes.

Peterson Deposition p. 94

/Is. Soliz and Ms. Peterson were so offended at the violation of children's' rights and hat court intervention was essential they met on September 30, 1996 (after leaving Iffice) with a large Seattle law firm to form a "major case litigation team" whose purpose was to conduct impact litigation that will improve.. .child welfare and/or treatment ervices." *Peterson Deposition p.* 89 DSHS, their former agency, was considered as a defendant.

Ms. Peterson testified in support of a class action lawsuit to protect the rights of hildren in state foster care.

> . . .if class action litigation can be conducted, if it could be conducted in such away as it creates momentum and a forum for real problem solving around these issues, then I think it has the potential to help contribute.. .

Peterson Deposition p. 103

I. The Proposed Class

The named plaintiffs seek to represent the following class:

> All children who are now (or who in the future will be) in the custody of the Department of Health and Social Services foster care system who have been placed by the Defendants in three or more placements and those children in the foster care system who are at risk to be placed in three or more placements by the Defendant.

This amended class description more specifically defines and narrows the targeted :lass of foster care children who are the subject to multiple placements and the Complaint filed in this case.

Pursuant to CR 23 c(4)(A) the plaintiffs seek class certification limited to the 'ollowing issues :

- Whether by Defendants' practice of placing children in multiple placements while in foster care, Defendants violate a children's right to be free from harm caused
- Whether the Defendants' violations of different state and federal laws cause harmful multiple placements of children in foster care.
- Whether the Defendants' violations "singly or in combination" cause the multiple placements.

These violations of state and federal laws include but are not limited to:

1. Whether, by failing to provide assessments of children within 30 days of placement in care, Defendants violate RCW 74.14A.050(3) which requires such assessments within thirty days.
2. Whether by not petitioning the court for the appointment of a GAL, Defendants violate RCW 13.34.100 which requires the appointment of Guardian ad Litem for each child in foster care
3. Whether by placing dependent children in unsafe homes, including placing children in shelters, children sleeping in DSHS offices, children left unsupervised during the day and placing children in the homes where another child or parent has a history of sexually acting out, of physical assaults or abuse or neglect, Defendants violate RCW 13.34.020 which establishes the right of children to safe, stable and permanent homes
4. Whether by failing to adequately inform foster parents about the child prior to being placed in the home. Defendants violate WAC 388-73-212

5. Whether by not mandating that caseworkers visit the child at home not less than every ninety days, Defendants violate WAC 388-73-212 which requires that the child's caseworker have at least one home visit within that time period.

6. Whether by failing to provide mental health care recommended by the child's health care providers (including therapy, proper placement in a therapeutic group home or residential treatment facility) and by placing children in foster homes where the foster parent has not been trained to care for a child with mental health problems, Defendants violate the rights of children to needed and necessary health care

7. Whether by the Defendants failure to develop an "effective program" which "effectively address the educational, physical, emotional, mental, and medical needs of children and youth" in long term care" and "Multiple foster care placements", the Defendants violate RCW 74.14A.050.

8. Whether by failing to adequately notify foster parents of dependency hearings, Defendants violate SSB 5916, which requires such notification.

9. Whether by failing to provide "the right of a child's basic nurturing that includes the right to a safe, stable and nermanent home and a speedy resolution of any proceeding" under the dependency proceedings, Defendants violate RCW 13.34.020 which protects that right.

10. Whether by the Defendants' practice of shuttling children from placement to placement, and the resulting harms to class members, violate

class members' rights under Washington statutes and regulations and to substantive due process under the Fourteenth Amendment to the Constitution of the United States.

11. Whether by Defendants' failure to revise a child's case plan to take into account the new placement after a child is moved from one home or facility to another violates 42 U.S.C. $5671 (a)(16) and 675 (1).

12. Whether the state is in violation of state and federal law and policies with regard to completion of passports for children in care.

In Plaintiffs original motion, Plaintiffs alleged the State violated state and federal statutes. In this amended motion, Plaintiffs more specifically identify the violation of statutes identified in Plaintiffs original motion. Moreover, given this Court's ruling on **the** children's federal due process claims under federal statutes, Plaintiffs have not included those federal statutory due process rights in this motion.

Plaintiffs seek a permanent injunction on behalf of the class specifically enjoining Defendants from causing harm to the children in DSHS care by the multiple placements of children. Plaintiffs further seek a detailed and thorough permanent injunction enjoining the Defendants from further violations of state and federal law which contribute **to** the multiple placements of children and cause harm to children, Finally, plaintiffs ask **this court to preside** over the Defendants compliance with the injunctive relief issues by **the Court.**

2 [II. General Princinles Anplicable to Class Certification.

3 CR 23 authorizes class actions. Plaintiffs seek class certification under CR 23 (a)

4 md 23(b)(2) :

5 (a) Prerequisites to a Class Action. One or more members of a class may
6 sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2)
7 there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or
8 defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

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10 (b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of section (a) are satisfied, and in addition:
11 . ..(2) The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate
12 final injunctive relief or corresponding declaratory relief with respect to the class as a whole...

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14 Since CR 23 repeats verbatim the language of the Federal Rule of Civil Procedure

15 on class actions, Washington courts may look to federal cases interpreting Fed. R. Civ. P.

16 Rule 23 for guidance. Brown v. Brown, 6 Wn. App. 249,252,492 P.2d 581 (1971).

17 The court may not require a plaintiff to make a prima facie showing that he will

18 prevail on the merits in order to certify the class. *See Eisen v. Carlisle & Jucquelin,* 417

19 U.S. 156, 177 (1974) ("nothing in either the language or the history of Rule 23 . . . gives a

20 court any authority to conduct a preliminary inquiry into the merits of a suit in order to

21 determine whether it may be maintained as a class action"). In determining whether or

22 not to certify the class, the court does not inquire into the merits of the underlying claims

23 but must regard the allegations in the complaint as true. *WEA v. Shelton School Dist., 93*

24 Wn.2d 783, 790, 613 P.2d 769 (1980) ("the certification of a class is to be undertaken

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with no consideration of the merits of the plaintiffs' claims"); *Blackie v. Barrack, 524* F.2d 891, 901 n. 17 (9th Cir. 1975); *Kirkpatrick v. J.C. Bradford & Co., 827* F.2d 718, *722, reh'g denied, 832* F.2d 1267 (ll[th] Cir. 1987); *Redditt v. Miss. Extended Care Centers,* 718 F.2d 1381 (5th Cir. 1983); *Anderson v. City ofAlbuquerque, 690* F.2d 796 (10th Cir. 1982); *In re Badger Mountain Irr. Dist. Securities Litigation,* 143 F.R.D. 693, 696 (W.D. Wash. 1992); *Rodriguez v. Carlson,* 166 F.R.D. 465,475 (E.D. Wash. 1996).

Courts must liberally construe Rule 23 to favor class certification. The court in *Brown* explained why:

> We... favor a liberal interpretation of CR 23, rather than a restrictive one. Not only does liberal application of the rule avoid a multiplicity of litigation, but (1) it saves members of the class the cost and trouble of filing individual suits; and (2) it also frees the defendant from the harassment of identical future litigation.

Brown v. Brown, 6 Wn. App. 249,256-57,492 P.2d 581 (1971).

The reasons for applying a liberal interpretation of the Rule are clearly served by granting certification in this case. Separate lawsuits brought by foster children living in other counties may well lead to different standards by which defendants' conduct is to be measured. The parameters of defendants' obligations to children in its custody may be defined more narrowly or broadly G-om one court to the next.

IV. The Class Representatives

Plaintiff class representative Shaun Sanchez was less than six months old when defendants removed him from the custody of his parents and placed him in foster care in 1989. Before the age of five, Shaun had been moved at least five times. While still a toddler, Shaun had been in several foster home placements which lasted less than two

months. Since defendants assumed custody of Shaun, he has been in approximately eleven placements. Prior to these moves, no one from the defendant agency discussed with Shaun why he was being moved and what the new plan was for him. Shaun has not reached his twelfth birthday. Though the rights of his natural parents were terminated on the petition of defendants when Shaun was not yet seven years old, he has never been adopted.

While in defendants' custody, Shaun has been represented intermittently by a court appointed Guardian Ad Litem (GAL). He had no GAL from October 1996 to October 1997. At least five different GALs have been assigned to Shaun since he entered foster care. His court-appointed GAL was not told about impending changes in placement prior to the defendants moving Shaun. *Declaration of Cynthia Novotny.* Compounding defendants' failure to provide Shaun with a safe, stable, and permanent home, they denied him the mental health treatment recommended by his doctor, failed to give his foster parents sufficient information about his background and needs, and neglected to monitor his care and treatment every ninety days as required by law. *Declaration of Shawn Hosford.*

Likewise, defendants failed to_p.rovide Jessica Braam with a safe, stable and permanent home. Jessica, now thirteen years old, was placed in defendants' custody before her fifth birthday. Between March 1991, and October 1992, she was shuttled from one foster home to another. Her placement was changed four times. Jessica's natural parents' rights were terminated on defendants' petition in January 1994, when she was seven years old. In October 1995, the Braams adopted Jessica, however she re-entered foster care in July 1999, after her adoptive placement failed. Since defendants assumed custody of Jessica in 1999, she has been in at least five different placements throughout the State of Washington, including several foster homes and two hospitals.

Jessica's repeated moves are the direct result of defendants' failure to follow the adoptive parent's placement request that was in Jessica's best interest. The Braams secured a bed in a residential treatment facility at Indian Trails. All defendants were required to do for this placement was to place a phone call of approval to the facility. Defendants refused to place the call. Nearly three months and two placements later, defendants finally agreed to place Jessica at Indian Trails. Defendants failed to provide Jessica with the required 90 day visits from her caseworker, did not provide Jessica with a comprehensive evaluation within ninety days of entering state care, and did not fully inform the Braams of Jessica's background prior to placing her in their home as a foster child. *Declaration of Vickie Braam.*

Timothy Olson's placement is representative of the defendants' failure to sufficiently inform the foster/adoptive parents of a child's background. Mr. and Mrs. Olson wanted to adopt a child but specifically told defendants that they did not wish to adopt a child with mental or physical defects. Nevertheless, defendants placed Timothy in the Olsons' home, a child with significant mental defects, covertly and contrary to the Olsons' wishes. *Declaration of David Olson.*

Class representatives Ivory Hardin and Desi Morgan, like Jessica Braam, are in defendants' custody once again following a failed adoptive placement made by the defendants. While under defendants' care and custody, Ivory has been transferred from one home or facility to another no less than 37 times. Some of the "placements" included periods of two weeks during which she slept at the defendants' office. Many of her other placements lasted no more than a day or two before defendants shuttled her to another home. *Declaration of Cynthia Novotny.*

Shaun, Jessica, Timothy, Ivory and Desi afford this court but a glimpse into the deficient workings of the foster care system. These examples are most unfortunate for the

housands of other foster children who must trust that their legal guardian, the defendants, vi11 act with their best interests in mind.

4. This Action Meets the Four Requirements of Rule 23 (a) and Satisfies the Criteria for Zertification Under 23(b)(2)

This action fulfills all the requirements for class certification.

9. Imnracticalitv of Joinder

Rule 23 first requires that the class be "so numerous that joinder of all members is mpracticable." There is no precise threshold, no minimum number of class members leeded to satisfy this requirement. *General Tel. Co. v. E.E.O.C., 446* U.S. 318, 330 :1980); *Paxton v. Union Nat. Bank, 688* F.2d *552, 559* (8th Cir. 1982), *cert. denied, 460* L-J.S. 1083 (1983); See *also,* 5 James Wm. Moore Et Al., Moore's Federal Practice 3 !3.22[3][b] (3d ed. 1997). Plaintiff must produce some evidence of or reasonable :stimate of class size, but need not prove the identity ofeach class member or the specific lumber of class members. *Robidoux v. Celani, 987* F.2d 931, 935 (2d Cir. 1993). Exact size of the class need not be provided as long as "general knowledge and common sense ndicate that it is large." *Perez-Funez v. District Director,* 611 F. Supp. 990, 995 (C.D. Zal. 1984). The trial court may make common assumptions to support a finding about :lass size. *Vickery* v. *Jones,* 856 F.Supp. 1313, 1328 (S.D.111. 1994) ("[tlhis Court is entitled to make common sense assumptions to support a finding of numerosity"); *Waywalt v. Parker & Parsley Petroleum Co.,* 147 F.R.D. 51, 55 (S.D.N.Y. 1993) :"precise quantification of the class members is not necessary because the court may make 'cornmon sense assumptions' to support a finding of numerosity").

Classes of plaintiffs with as few as 50 members frequently have been approved.

1 *Tones v. Diamond, 5* 19 F.2d 1090, 1100 n. 18 (5'h Cir. 1975) (class of 48 prisoners);
2 Leyva v. *Buley,* 125 F.R.D. 512 (E.D. Wash. 1989) (class of 50 migrant workers); *Polan*
3 *1. McIntosh,* 546 F.Supp. 1328 (E.D. Pa. 1982) (class of 30-40 prisoners); *Bradley v.*
4 *Yarrelson* 115 1 F.R.D. 422 (MD Ala. 1993) (25 inmates a year subjected to challenged
5 lractice). Once the class size reaches forty members, there is a presumption that the
6 -equirements of CR 23(a)(l) are met. *Robidoux, 987* F.2d at *936; Consolidated Rail*
7 *sbrp. v. Town of Hyde Park, 47* F.3d 473,483 (2d Cir. 1995)

8 The members of the proposed plaintiff class numbers in the thousands. It is
9 :omposed of subclasses of all children currently in defendants' care and custody and
10 :hose children who will enter the state's custody in the future. In a recent report by Dee
11 Wilson, DSHS Regional Administrator for Region 6, he compiled data that shows that
12 :he number of children who have been placed in three or more placements is at least 2399
13 :hildren. *(See page 7-8 of Mr. Wilson 's Report, Reducing Multiple Placements-Revised,*
14 *zttached to the Declaration of Counsel.)* Not included in Mr. Wilson's count of 2399
15 children are almost 900-1000 children in current care (which he concedes contain a
16 substantial number of children who are experiencing multiple placements or such real
17 placements as respite placements, hospital stays etc.- all of which present very real
18 strangers to children. Neither does it presumably include DSHS practice of having
19 children sleep in DSHS offices (which lack beds) for lack of bed for foster care children.
20 Other data on the current population of foster children indicates that 52% of children in
21 defendants' custody have had three or more placements during the most recent removal
22 from their parents' home.' As nearly 10,000 children are in foster care each month, the
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plaintiff class easily exceeds 5,000 members. Defendant officials report that twenty five percent of children who remain in foster care for longer than a year have four or more placements and that fifteen percent of these children have had 6 or more placements while in custody.[2] Other data drawn from the defendants' records indicate that the large number of class members is not merely a recent phenomenon. An analysis of foster care records for the ten year period between 1985 and 1995 revealed that for children who were in foster care for longer than 12 months (1 O,OOO), 44% of them (4400) were moved to a different placement two or more times.[3] A class numbering "several thousand" satisfies the numerosity requirement with ease. *Morgan v. Laborers Pension Trust Fund for Northern California,* 81 F.R.D. 669,676 (N.D.Cal. 1979).

The class of children for whom certification is sought is limited to those children for whom procedural safeguards were not provided prior to their change in placement and/or those children for whom there was no change in the case plan accompanying the change in placement. The class as so defined and limited is nonetheless so numerous that joinder is impractical.

’ This data is drawn from the Adoption and Foster Care Analysis and Reporting System (AFCARS). **Exhibit A.** States receiving federal fmancial support for their child welfare programs under Title IV-E & B (42 U.S.C. $9620 and 670 et *seq.)* are required to collect certain data about children in foster care. A child's number of placement while in foster care is one of the mandatory data elements. See, 45 C.F.R. 1355.40 Appendix A. AFCARS, however, does not provide a complete placement history for a child in foster care. Unfortunately, many children reenter the foster care system one or more times during their childhood. AFCARS data reports only the number of placements during the child's current out of home episode.

[2] Memorandum from Dee Wilson to Jake Romo Re: Instability of Foster Care Placements (October **20,** 1999). **Exhibit B**

[3] Office of Children's Administration Research, *Report of Children in Foster and Group Care Placements In Washington State Between June, I985 and August 1995* (May 1, 1996). Attached as **Exhibit** C. (hereinafter *'Child Placement Report')* This report excludes large numbers of children who experienced multiple moves since it counted only those children who remained in care for 12 months or longer, and left out any children either placed with a relative or for whom no foster care payment record was found.

1 As set forth in the declarations accompanying this memorandum, attorneys and
2 Guardians Ad Litem with years of experience with DSHS foster care children, the
3 nultiple placements of children is the result of DSHS wholesale violation of state and
4 federal laws designed to provide children with the stability and permanency. Aside from
5 :he fact that state law expressly entitles children to a "safe, stable and permanent home",
6 DSHS violates such state laws as failing to adequately inform foster parents about the
7 oehaviors and history of children placed with foster parents, violates state laws which
8 require caseworkers to visit the child at least every ninety days, violates state laws which
9 require a "passport" containing information on children in care, violates state law
10 assuring children the right to a "safe home" by DSHS practices of placing known
11 sexually aggressive foster care youth and physically violent youth in the same homes
12 with other foster care children. DSHS also glaringly fails to provide what its own
13 administrators call "necessary" mental health care for mentally ill children. Mr. Wilson
14 in his recent report also comments on the DSHS practice of placing severely mentally ill
15 children in homes of foster parents who are often inadequately informed and trained and
16 further notes:

17 It is not enough for child welfare staff to feel reget when children are rejected by
18 caregivers following out of home placement. A child welfare system must take proactive steps to reduce the possibility of these emotionally devastating
19 experiences. Concretely, this means providing adequate training, supervision and
support for foster parents and unpaid relative caregivers. All too often, foster
20 parents wait until they are desperate before asking for and receiving help. In
addition, the lack of close supervision of foster parents caring for children with
21 serious mental health problems is unconscionable. Mr. Wilson's Report p. 28-29

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23 At least one of DSHS current administrators calls the current system and harm being
24 inflicted on children "unconscionable". All of these violations contribute to foster

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parents unable or unwilling to trust a DSHS that for years has been violating statutes, rights of the children and good agency practice.. Today, the day this motion is filed, both Seattle newspapers report that almost 1700 foster families left the foster system. (See Seattle Times and Seattle Newspapers articles attached to Declaration of Counsel). Foster parents leave the system because DSHS violates state laws intended to support foster parents and assure stability for children. Without adequate beds, DSHS admits children sleep in offices, children are placed with known sexual predators who are then assaulted and siblings (like the slaves I early American history) are separated from each other because DSHS' violations of state law have driven foster parents out of the system leaving inadequate beds. According to today's media reports, Vicki Wallen the official state ombudsman, states "There is a crisis. There is no question that the continuing lack of foster homes is undermining the state's ability to protect children." Unfortunately, the "crisis" is foster care is not new. Attached to the Declaration of Dr. Jon Conte are numerous newspaper articles that are almost twenty years of age describing the foster care system, then and now, in "crisis" with children being hurt and harmed. DSHS own Regional Administrator has testified that DSHS' failure to follow policy (which is also state law) are causes of multiple placements.

The declarations in support of this motion also represent numerous experts with years of experience representing clients in the juvenile courts report that notice of a change in placement is rarely provided. They learn of transfers of children only after the fact and frequently not until the next court hearing. Even when a change in placement requires a modification of a court order, the agency moves the child to the new placement without the court's approval. In the rare instance in which notice is provided, it is inadequate and incomplete generally providing little, if any, explanation of why the child is being moved or how the new placement meets his/her best interests. Clearly, there are

10 procedural safeguards afforded to most children whom the agency moves from)lacement to placement. *Declaration of Deborah Lippold.*

A change in placement for many if not most of the children who are shuttled from)ne house to another also does not trigger a modification in the child's case plan. Former DSHS Secretary Quasim acknowledged this in a letter written in response to a complaint kern foster parents in 1998 : "There is no DCFS policy requiring that a new ISP rindividualized service plan) be completed whenever a child changes placement."[4] Attorneys representing parties in dependency actions have observed that DSHS practice follows the policy described by former Secretary Quasim. *See, Declaration of Deborah Cippold.*

Once plaintiffs have demonstrated that the class is composed of a substantial number of persons, the trial court may consider other factors in determining whether ioinder of all proposed class members would be impractical. In this case, several additional factors support a finding of impracticality. First, the members of the proposed plaintiff class are constantly changing. Plaintiff class members are part of the state's foster care population. That population changes every day as some children are returned home, others adopted, some age-out of the system, and still others enter or renter the systemG[5] In 1998, 8183 new children entered DCFS custody. Joinder is not only impractical, it is impossible, if as here, the plaintiffs seek injunctive relief for future members. *See Horn v. Associated lT%olesale Grocers,* Inc., 555 F.2d 270, 275 (10th Cir. 1977). *Clarlcson v. Cough&n* 145 F.R.D. 339 (S.D.N.Y. 1993).

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[4] Letter from Secretary Lyle Qnasim to Walter H. Olsen, Jr. of 4/10/98 at **4. Exhibit D**

[5] Of the 77,000 foster children who were placed out-of-home for more than a month, 32% had been in foster care, returned home and thereafter re-entered the system at least once. *Child Placement Report,* at p.8

Second, the future class members are not even identifiable. The impossibility of identifying and joining future class members supported the Court of Appeals reversal of a denial of class certification in *Zimmer v. City of Seattle,* 19 Wn. App. 864, 578 P.2d 548 (1978). The trial judge had denied class certification on grounds that the plaintiff had failed to establish "numerosity" of the class. Like the proposed class here, *Zimmer* involved a class of children "who have been or will be" removed from the custody of their parents. *Id.* at 866, 578 P.2d at 549. Though plaintiff produced evidence that more than 200 children within the past 2 years had been subjected to the challenged practice, the trial court concluded that she had not satisfied the requirements of CR 23 (a)(l). In reversing the trial court, the Court of Appeals found that those class members who will be subjected to the practice in the future were "inherently unidentifiable" and "[ulnder these circumstances, the joinder of all members of the class is not only impracticable it is impossible." *Id.* at *868, 578* P.2d at *550. See also, Robinson v. Peterson,* 87 Wn.2d 665, *667, 578* P.2d 548 (1978) (in challenge to jail conditions, "the joinder of all [class members] is impractical, the jail population being a constantly changing one"); *Johnson* v. *Moore,* 80 Wn.2d 531, 533, 496 P.2d 334, 335 (1972) (in challenge to jail detention, "the constant expansion and contraction of the class renders joinder of all its members sufficiently difficult to comply with CR 23(a)(l), citing *Adderly v. Wainwright,* 46 F.R.D. 97 (M.D. Ala. 1968).

Third, children in foster care have little capacity to bring individual lawsuits. The problems they face in initiating such litigation are illustrated by many of the plaintiffs here, the majority of whom brought this litigation only after leaving the state's custody and control and with the support of their adoptive

parents. Commencing litigation such as this, where the plaintiffs challenge the policies and practices of their legal custodian, are particularly difficult. Furthermore, most children in foster care come from families of limited income with little access to legal representation and therefore cannot depend upon their parents to provide the resources needed to pursue relief on their behalf against state agencies with unlimited legal resources.[6] Furthermore, the children themselves are often unrepresented in the dependency process and have little access to counseL[7]

B. Common Ouestion of Law or Fact

CR 23(a)(2) provides that in order for the case to proceed as a class action, there must be a question of law or fact common to the class. This provision of the Rule is frequently referred to as the "commonahty" requirement. Commonality requires only a single issue common to the class. *Marisol v. Giuliani,* 126 F.3d 372, 376 (2d Cir. 1997); *Baby Neal v. Casey, 43* F.3d *48, 56* (3d Cir. 1994); *In re American Medical System, Inc. 75* F.3d 1069, 1080 (6th Cir. 1996); *Blackie v. Barrack, 524* F.2d 891, 904 (g[th] Cir. 1975), *cert. denied,* 424 U.S. 816 (1976). See *also,* Newberg and Conte, *Newberg on Class Actions,* 0 3.12, at 3-69 (3d ed. 1992) (hereinafter *"Newberg").*

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[6] See e.g., *The Report of the Task Force on Foster Care* (February, 1989) fmding that children in families receiving AFDC are 4 times more likely to end up in foster care than other children and that 70% of children in foster care Washington come from families with low socio-economic status. pp. l-2.

[7] According to a recent report, more than a third of children who are the subject of dependency proceedings have neither an attorney nor a lay volunteer advocate appointed to represent them. Vicki Wallen, *Report on Guardian Ad Litem Representation of Children in Child Abuse and Neglect Proceedings,* at _____ (January, 1999) (hereinafter, *'GAL Report').* Exhibit E.

When proposed class members are moving for certification under Rule 23(b)(2) as here, the commonality requirement is relaxed. *Hodgers-Durgin v. de la Vina,* 165 F.3d 667,675-79 (g[th] Cir. 1999), *rev'd on othergrounds,* 175 F.3d 761 (9* Cir. 1999); *Walters* v. *Reno,* 145 F.3d 1032, 1045-48 (S[ch] Cir. 1998) cert. denied U.S. -, 119 S.Ct. 1140 (1999); Baby *Neal v. Casey, 43* F.3d *48, 56-57* (3d Cir. 1994); *AZZiance to End Repression v. Rochford,* 565 F.2d 975, 976 (7th Cir. 1977). This liberal interpretation of the commonality provision has been adopted by Washington's appellate courts. *Johnson,* 80 Wn.2d at *535-36; Zimmer v. Seattle,* 19 Wn. App. *864, 870* (1978); *Brown v. Brown,* 6 Wn. App. 249, 256-57 (1971).

There is no requirement that every class member be affected by the institutional practice or condition in the *same* way. *Bradley v. Harrelson,* 15 1 F.R.D. 422, 426 (M.D. Ala. 1993) (challenge to prison mental health care); *Hassine v. Jefis, 846* F.2d 169 (3d Cir. 1988). A finding of commonality is not precluded because the harm suffered by each class member may be of a different degree and nature. Baby *Neal,* 43 F.3d at 61 (citing *Calzjbno v. Yamasaki, 442* U.S. 682, (1979)). A "common nucleus of operative fact is usually enough to satisfy the commonality requirement of Rule 23(a)(2)." *Rosario v. Livaditis,* 963 F.2d 1013, 1017-18 (7th Cir. 1992), *cert. denied,. 506* U.S. 1051 (1993). Such a 'common nucleus of operative fact' is typically found where "defendants have engaged in standardized conduct toward members of the proposed class . . ..'I *Keele v. Wexler,* 149 F.3d 589, 594-595 (7th Cir. 1998). "All questions of fact and law need not be common to satisfy the rule. The existence of shared legal issues with divergent factual predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies within the class." *Hanlon v. Chrysler Corp.,* 150 F.3d 1011, 1019 (9th Cir. 1998). When the class is united by a common interest in determining whether the defendants' course of conduct is, in its broad outlines actionable, differences in the class

members positions should not defeat class certification. *Leyva* v. *Buley,* 125 F.R.D. 512, 515-516 (E.D. Wash. 1989). S*ee also, Troutman v. Cohen, 661* F. Supp. 802,811 (E.D. Pa. 1987) (certifying class over 'typicality' and 'commonality' objections, "because it is not the unique facts of the individual appeals which give rise to this action but rather the decision-making process."); *Coley vi Clinton, 635* F.2d 1364 (sth Cir. 1980) (challenge to commitment procedures).

Plaintiffs in the present case challenge defendants' longstanding and widespread practice of shuttling children from one placement to another without notifying them or their legal representatives of the impending move nor giving them an opportunity to question the propriety of the change in placement. They allege that this practice violates their rights under state and federal statutes and the United States Constitution. Plaintiffs seek to compel defendants to comply with these state and federal statutory and constitutional mandates. A shared common issue is inherent in the definition of the class which is limited to those children in foster care denied the right to notice and an opportunity to be heard prior to a change in their placement.'

Defendants' practices of arbitrarily, unilaterally, and frequently moving class members f?om one placement to another violate numerous state statutes. These statutory violations include RCW 13.34.020 (right to a "safe, stable and permanent home"); RCW 74.13.290 ("first placement shall be viewed as the only placement"); RCW 74.13.3 10 (". . .placement disruptions can be harmful to children by denying them consistent and nurturing support . . ."); RCW 74.15.010 ("Children placed in foster care are particularly vulnerable and have a special need for placement in an environment that is stable, safe,

' There is a subclass which includes children whose placement was changed without a contemporaneous amendment in their caseplan.

1 md nurturing.“); RCW 13.34.100 (requiring the appointment of a GAL for each child).

2 The questions of fact common to the members of the proposed class of children

3 nc lude:

4
- Whether the defendants move children frequently, arbitrarily, and/or unilaterally from one placement to another.
5
- Whether prior to each change in placement, the defendants provide notice to the child, his parent, his legal representative, court-appointed special advocate, or guardian ad litem of the intent to remove him from his current home?
6
7
- Whether the notice provided, if any, is timely and adequate?
- Whether prior to each change in placement, the defendant provides the child, his parent, his legal representative, court-appointed special advocate, or guardian ad Jitem with an opportunity to challenge the change in placement?
8
9
- Whether each child’s case plan is amended to take into account the new placement after a child is moved fi-om one home or facility to another?

10

11 The questions of law common to the members of the proposed class of children include:

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13
- Whether the failure to afford notice of a change in placement to the child, his parent, his legal representative, court-appointed special advocate, or guardian ad litem and an opportunity to be heard prior to the move, violates 42 U.S.C. 675 *(5)(C)*
14
15
16
- Whether the defendants’ practice of moving children frequently, arbitrarily, and unilaterally from one placement to another violates the above mentioned state statutes.
17
- Whether defendants’ failure to revise a child’s case plan to take into account the new placement after a child is moved from one home or facility to another violates 42 U.S.C. $675 (1).
18
19
- Whether the defendants’ practice of moving children frequently, arbitrarily, and unilaterally from one placement to another and their failure to provide notice and an opportunity to be heard prior to a change in placement violates a foster child’s right under the Due Process Clause to the Fourteenth Amendment.
20
21

22 Federal regulations require that defendant maintain statistics and track children in

23 foster care who have had more than one placement. See, 45 C.F.R. 1355.40 & Appendix

24 A. Furthermore, recently adopted outcome measures also mandate that the state track

25

26

his group of children.[9] Since the defendant is required to keep statistics on the Jacement history of each child in foster care, many of the current members of the class re identifiable. These members share a common, distinct identity supporting a finding)f commonality. Members of the class also are united in the relief sought - a declaration hat the current practice of moving them from one placement to another without notice md an opportunity to be heard violates their federal statutory and constitutional rights md an injunction requiring defendants to provide the requisite procedural safeguards. 411 of these factors support a finding of commonality. *Doe v. Los Angeles Unified School Xstrict,* 48 F. Supp.2d 1233, 1242 (C.D. Cal. 1999).

Plaintiff classes challenging a lack of procedural due process have been certified n a wide variety of cases. *Walters,* raised procedural due process questions relating to he adequacy of notice provided to aliens by the INS. In an attempt to show that there vas a lack of commonality among class members, the defendants provided evidence that ;ome class members may have received adequate notice. The Ninth Circuit rejected this rgument and held that the common allegation that the INS procedures provided nsufficient notice made the plaintiffs' claims suitable for a class action. *Walters,* 145 ?.3d at 1046. *Walters* commonality standard was affirmed in *Hodgers* where the court leld that "the existence of shared legal issues with divergent factual predicates is sufficient to meet the commonality requirement of Rule 23 (a)." *Hodgers,* 165 F.3d at 578-79 (quoting *HanZon v. Chrysler Corp.,* 150 F.3d 1011,1019 (9th Cir. 1998)); *Hodgers* and *Wakers* have been described as standing for the proposition that "under Rule 23(b)(2), commonality exists if plaintiffs share a common harm or violation of their

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[9] *64* Fed Reg. 45552-54, *Notice ofFinal List of Child Werfare Outcomes and Measures* (August 20, 1999) Congress mandated that the number of placements for each child in foster care be included in the

rights, even if individualized facts supporting the alleged harm or violation diverge" Due *v. Los AngeZes Unified School District,* 48 F. Supp.2d 1233, 1241(C.D. Cal. 1999).

As in *Doe, Hodgers,* and *Walters,* plaintiffs in the present case seek to invalidate defendant's practice on constitutional and/or statutory grounds. In a civil rights case such as this, "the central showing. . . is that the class members share a general, common violation, rather than a unitary claim premised on identical facts or legal remedies." *Doe* at 1242. The common violation here is defendants' practice of failing to provide procedural protections prior to a change in the plaintiffs' placements. They allege that this practice violates their rights under provisions of the Social Security Act and the Due Process Clause of the Fourteenth Amendment. Clearly, this combination of a common violation and a shared legal theory satisfy the commonality requirement of CR 23 (a)(2).

Finally, the proposed plaintiff class is a narrowly drawn subclass of children in foster care in the state of Washington. The named class representatives clearly are members of that subclass and have experienced the same deprivation of rights as all other class members. Their injuries and those of the absent class members are all linked to the same practices of defendants. Courts commonly have approved much broader classes of children seeking to vindicate violations of their civil rights. *See. e.g, LaShawn A. v. Dixon,* 762 F.Supp. 959, 960 (D.D.C. 1991) (class action brought on behalf of children who are in foster care under the supervision of the District of Columbia Department of Human Services (DHS) and children who, although not yet in the care of the DHS, are known to the department because of
reported abuse or neglect); *B.H. v. Johnson,* 715 F.Supp. 1387, 1389 (N.D. Ill. 1989) ("All persons who are or will be in the custody of the Illinois Department of Children and

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outcome measures adopted by the Secretary of the Department of Health and Human Services. 42 U.S.C. 4

Family Services and who have been or will be placed somewhere other than with their parents."

C. Tvpicalitv

CR 23 (a)(3) requires that the "claims or defenses of the class representative must be typical of the claims or defenses of the class. A finding of commonality frequently supports a finding of typicality. *See General Tel Co. v. Falcon, 457* U.S. 147, 157 n.13 (1982) (noting how the commonality and typicality requirements merge). Courts often merge the typicality and commonality requirements. *Milonas v. Williams, 69* 1 F.2d 93 1, *938* (lO[th] Cir. 1984); *Rodgers v. Electronic Data Sys. Corp.* 160 F.R.D. 532, 538 (E.D.N.C. 1995); *Buyckr-Roberson v. Citibank Federal Sav. Bank,* 162 F.R.D. 322 (N.D. Ill. 1995) (commonality and typicality are closely related and a finding of one generally compels a finding of the other).

"[A] plaintiffs claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and his or her claims are based on the same legal theory." Keele, 149 F.3d at 595 (quoting De *La Fuente v. Stokely-Van Camp,* Inc., 713 F.2d 225, 232 (7th Cir.1983); *In re Drexel Burnham Lambert Group, Inc, 960* F.2d 285,291 (2d Cir. 1992), *cert dismissed, 506* U.S. *1088* (1993); *Rodriquez,* 166 F.R.D. at 472-473. The named plaintiffs must have claims "reasonably coextensive with those of absent class members without the claims having to be substantially identical." *Ha&on,* 150 F.3d at 1020. "When it is alleged that the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented, the typicality requirement is usually satisfied.. .Typicality turns on the

defendant's actions toward the plaintiff class.. ." *Smith v. University of Wash. Law School,* 2 F. Supp.2d 1324, 1342 (W.D. Wash. 1998) (citations omitted).

The focus of the typicality inquiry, like the adequacy of representation criteria which follows, is upon the characteristics of the class representatives. Here the proffered class representatives are clearly part of the class sought to be certified. Each of them is currently in the custody of defendants either as a result of a commitment under RCW 13.34 or a voluntary placement by their adoptive parent. They each share a common grievance and challenge the same conduct as the absent class members - that defendants' transfer them from one placement to another without notice or opportunity to be heard on the change in placement. While there may be differences among them, such as their gender, age, number of placements endured, or the location of the new placement in relation to the old, these facts are of little import to the determination of whether the defendants' practices violate the class members right to procedural safeguards. Resolution of the class claims does not require the court to undertake any examination of the underlying reasons for the change in placement. These individual factual differences among class members are irrelevant to the narrow issue on which class certification is focused. Plaintiffs' claim that the defendant is engaged in a "common course of conduct" in relation to all potential class members makes certification appropriate. *Brown v. Brown,* 6 Wash. App. 249,255,492 P.2d 581 (1971).

D. Adeauacv of Representation

The final prerequisite under Rule 23(a) is that the person representing the class must "fairly and adequately protect the interests" of all members in the class. CR 23(a)(4). The purpose of this provision is to protect the due process rights of absent class members since they will be bound by the decision in the case. *Crawford v. Honig, 37*

;.3d 485, 487 (9th Cir. 1994). Just as the earlier requirements of commonality and ypicality tend to merge, the adequacy of representation requirement tends to merge with he commonality and typicality criteria of Rule 23 (a)"; *Amchem Products, Inc. v. Windsor,* 521 U.S. 591, n.20 (1997).

Representation is adequate when counsel for the class is qualified and competent; he class representative(s) does not have interests antagonistic to the remainder of the lass, and the class representative has a sufficient interest in the outcome of the case to nsure vigorous advocacy. *Ballard* v. *Equifax Check Services,* 186 F.R.D. 589, 595 (E.D. Jai. 1999). *VaZentino v. Carter- Wallace, Inc.,* 97 F.3d 1227, 1234 (9th Cir. 1996); *Lerwill v. Inj7ight Motion Pictures, Inc.,* 582 F.2d 507, 512 (9th Cir. 1978). The plaintiffs fulfill all of these requirements.

Plaintiffs are represented by local counsel with the firm of Brett and Daugert who are joined in this action by the National Center for Youth Law in Oakland, California. Mr. Fan-is has successfully represented numerous children and families in claims that DSHS breached certain duties. He was lead counsel *in McKinney* v. *DSHS* 134 Wn.2d 388, 950 P2d 461 (1998) which established the right of adoptive parents to sue DSHS for failing to disclose material information about the child, he was counsel to child in *Yonker* v. *DSHS* 85 Wn. App. 71, 930 P.2d 958 (1997) which imposed the duty of the State to use reasonable care to investigate the claims of sexual abuse; he was counsel for the family in *Butt* v. *DSHS* that was the first wrongful adoption verdict in state history ($750,000) for failure of DSHS to disclose material information about the child; in addition, Mr. Fan-is has successfully litigated numerous large cases involving the rights of children and families. Mr. Grimm has been lead counsel in three federal civil rights actions in which class certification has been granted on behalf of children in foster care. *L.J. by Darr v. Massinga,* 838 F.2d 118 (4th Cir. 1988) and 699 F. Supp. 508 (D. Md.

988); Angela R by Hesselbein v. Clinton, 999 F.2d 320 (8th Cir. 1993); *David C. v. Leavitt,* Civ. No. 93-C-206W (D. Ut. 1994). The size of the plaintiff classes in each of hose cases was substantially larger than the proposed class here. The issues which are he subject here are much narrower than the federal statutory and constitutional rights alleged in those cases. In each of the previous cases, plaintiffs achieved, either through ur injunction or court approved settlement agreement, substantial relief on behalf of the llaintiff class.

There can be little doubt that named plaintiff(s) will vigorously pursue the relief ;ought herein for the absent class members. Plaintiff Shaun Sanchez has been moved at east eleven times since defendants became his legal custodian. He is now only eleven iears old. Since defendants assumed custody of Shaun he has been separated from his siblings. Although defendants' obtained authority to place him in a permanent, adoptive zome almost five year ago, Shaun remains in temporary foster care. With this history, it s likely that Shaun will remain in foster care for many more years. Under Washington Law, Shaun may remain if foster care until his twenty-first birthday. *RCW 74.13.031.* While in defendants' custody, Shaun has suffered substantial injury as a result of the defendants' practices. So long as he remains in defendants' custody there is a high likelihood that he will again be subjected to the harmful practices of which the class complains. Having suffered through more than 11 placements, certainly no on is more highly motivated to curtail the defendants' harmful practices than plaintiff Sanchez.

E. Class Certification Should Be Granted Under Rule 23(b)(2)

Class certification under Rule 23(b)(2) is appropriate when :

> The party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final

> injunctive relief or corresponding declaratory relief with respect to the class as a whole.

The focus of a class action brought under this subsection is on the defendants' conduct. *Smith* v. *University of Wash. Law School, 2* F. Supp.2d 1324, 1341 (W.D. Wash. 1998)

This action challenges the failure of state agency defendants to provide procedural safeguards to members of the plaintiff class. The system-wide denial of procedural due process - notice and opportunity to be heard - is the paradigm case of a Rule 23 (b)(2) class action. It is "the classic type of action envisioned by the drafters of Rule 23 to be brought under subdivision (b)(2)." Ca*Zyano v. Yamasaki, 442* U.S. 682, 70-l (1979) (action to enjoin federal agency from recouping benefits without a hearing).

The plaintiff class challenges the Defendants violation of state and federal law and the wholesale failure to provide basic health care to children - all of which (along with lack of due process protections) are causes of multiple placements and injury to children in state custody. They do not seek damages but seek injunctive relief to require the State to comply with state law, federal law, the rights of children to a safe, stable and permanent home and to provide the children' right to essential, basic health care. They also challenge the failure to provide them with procedural safeguards designed to protect them from the injury caused by being moved from house to house. As such, this is an appropriate class for certification under CR 23 (b)(2). *Sorenson v. Concannon, 893* FSupp. 1469 (D.Or. 1994); *Upper Valley Association For Handicapped Citizens v. Mills,* 168 F.R.D. 167 (D. Vt. 1996) (granting 23(b)(2) certification in case challenging defendants' systematic failure to adopt and implement procedures to comply with the mandates of the Individuals With Disabilities Education Act); *Johnson,* 80 Wn.2d at 535 (plaintiff class challenging lack of procedural due process following their detention by

police).

Plaintiff class representatives retain their prayer for damages while also seeking equitable relief for the class. Damage claims on the part of class members, however, do not preclude certification under Rule 23 (b)(2) as long as they are not the primary relief requested, *Probe v. State Teachers ' Retirement System, 780* F.2d 776 (g[th] Cir. 1986), *cert* denied, 476 U.S. 1170 (1986). See *also, Newberg* $ 4.14.at 4-39. Where declaratory and/or injunctive relief is sought, a request for monetary relief, including punitive damages, does not destroy Rule 23(b)(2) eligibility. *Murray* v. *Local* 2620, 192 F.R.D. 629 (N.D. CA. 2000)

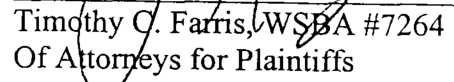
As discovery proceeded in this case, the large numbers of children effected by the same practices which led to plaintiffs injuries became more and more apparent. Consequently, plaintiffs decided to forego an early trial date on their claim for damages in order to pursue the claims and relief on the part of class members they now seek to represent. The injuries that named plaintiffs have suffered as a result of the challenged practices of defendants will require substantial remediation. Named plaintiffs do not have the resources to obtain the services to address the injuries suffered as a result of defendants' practices. Nevertheless, they have delayed the pursuit of those individual damages in the interest of the class of children for whom they hope to prevent some of the same injuries they themselves have suffered. Under these circumstances, there can be little doubt that the equitable relief is paramount, thus making certification under CR 23 (b)(2) appropriate.

VI. Conclusion

For all the foregoing reasons, the Court should certify the proposed plaintiff class with respect to the particular issues of procedural safeguards.

DATED this 3 day of May, 2001.

BRETT & DAUGERT, PLLC



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