

The Honorable David A. Nichols

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHATCOM

JESSICA BRAAM, etc., et al.,

Plaintiffs,

vs.

STATE OF WASHINGTON, etc., et al.,

Defendants.

NO. 98-2-01570-1

**MOTION BY CHILDREN'S ALLIANCE
TO INTERVENE AND MEMORANDUM
IN SUPPORT THEREOF**

THE CHILDREN'S ALLIANCE,

Plaintiff-Intervenor,

vs.

STATE OF WASHINGTON, etc., et al.,

Defendants.

Plaintiff-Intervenor The Children's Alliance moves to intervene as a plaintiff in the

1 above-captioned action under Civil Rule 24, conditioned upon this Court's grant of the pending
2 motion for class certification. For the reasons set forth below, this Court should grant the
3 motion.

4 1.

5 **STATEMENT OF FACTS**

6 The Children's Alliance is a nonprofit public benefit corporation organized under
7 Washington law. (Complaint in Intervention 1 1.) It is a statewide, member-based advocacy
8 organization. (Id. 'I[2.) The mission of The Children's Alliance is to improve the safety,
9 security, health, and education of Washington's children. (Id. 13.)

10 Roughly 150 organizations currently are members of the Children's Alliance. (Id. 1 2.)
11 These members include the following organizations:

- 12 • Children's Home Society of Washington;
- 13 • Children's Hospital & Regional Medical Center;
- 14 • Foster Parents Association of Washington State;
- 15 • Fremont Public Association;
- 16 • Institute for Family Development;
- 17 • Junior League of Seattle;
- 18 • League of Women Voters of Washington;
- 19 • Lutheran Social Services of Washington and Idaho;
- 20 • Ruth Dykeman Children's Center;
- 21 • Sisters of Providence Health Care System;
- 22 • Volunteers of America-Spokane;
- 23 • Spokane County HeadStarUECEAP;
- 24 • Washington State CASA.

22 (Id. >

2E As this sampling of organization members suggests, the member organizations of The

1 Children's Alliance are of different sizes, assist different populations, are based in different
2 parts of Washington State, are staffed by people who come from all walks of life, offer
3 expertise in literally dozens of areas, and have a wide variety of different goals. (*Id.* 7 4.)
4 These organizations include health care providers, foster parents, children's advocates,
5 charitable organizations, groups working for social change, volunteer groups, local government
6 units, and church-affiliated organizations. (*Id.*)

7 Yet all these organizations share a common interest in the mission of The Children's
8 Alliance and have joined it. The sheer diversity of organizations who belong to The Children's
9 Alliance and share in its mission to improve the safety, security, health, and education of
10 Washington's children speaks to the critical importance of that mission to all citizens of
11 Washington State. (*Id.* 15.)

12 In furtherance of its mission, The Children's Alliance is involved in a variety of
13 activities. These activities include policy analysis and development, public education,
14 outreach, training, and policy advocacy. (*Id.* 1 6.) The Children's Alliance also supports a
15 variety of collaborative efforts by individuals and organizations working on issues relating to
16 juvenile justice, food program policies, medical and dental services, family support, budget
-17 priorities, and prevention strategies. (*Id.* 17.j)

18 The care foster children receive in state custody is of critical concern to The Children's
19 Alliance and is of direct relevance to its mission. Children in state custody should receive
20 adequate health care and medical attention, or so The Children's Alliance contends. Children
21 in state custody should receive an adequate education, or so The Children's Alliance alleges.
22 And children in state custody should be placed in foster homes where they have a reasonable
23 chance of thriving. Or so The Children's Alliance will argue, if this Court permits it to
24 intervene.

25 In their opposition to plaintiffs' motion for class certification, defendants announce that
26 even under what they present as plaintiffs' own reckoning, the Department of Social and Health

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Services “complies with the law and properly administers the State’s foster care system for Dver eighty (SO) percent of the children placed into foster care.” (Opp. Mot. Certify Class 3: 4- 6.) As though this were a game of horseshoes and close were good enough.

Yet this quote reveals one thing, and that is the importance of perspective in guiding the Court to a just resolution of this action. The defendants’ perspective is reflected in statements like the one quoted above. Not surprisingly, the plaintiffs don’t share that perspective.

The Children’s Alliance brings its own perspective to the issues now before the Court, one that may differ in some respects from that of the existing plaintiffs, and certainly one that differs from the above-expressed view of the defendants. The membership of the Children’s Alliance consists, in part, of associations of foster parents and of organizations responsible for providing foster care to Washington children. It includes organizations that act as advocates for children in Washington’s courts. And it encompasses medical care professionals and organizations responsible for providing medical care, including mental health care, to children.

For some time, this case has existed as a private action between thirteen children and the State for damages arising from injuries these children suffered while in foster care.’ The issues raised by these children are undeniably important and nothing in this motion means to suggest otherwise.

Yet they don’t directly implicate the interest of The Children’s Alliance because The Children’s Alliance isn’t interested in money awards to individual children. Its interest, as its mission reflects, is to correct the statewide inadequacies of foster care.

Let there be no mistake; these inadequacies exist. The sad fact is that hundreds, if not thousands, of foster children have not have received adequate care, or the care to which they are entitled by law, while in state custody.

’ It is hard to tell how seriously the defendants dispute the harm these children claim to have suffered. In their **opposition to class certification, after all, they acknowledge the “tragic tale”** each of these children has experienced, and seem to concede, by pointing to the fact that foster care as worked well for others, that it has not worked well for the individual plaintiffs. (Opp. at 2 & 9.)

1 In their opposition to class certification, defendants don't really argue otherwise.
2 Rather, they make two arguments. First, they contend that the problems foster children
3 admittedly experience, such as multiple placements, are unavoidable and aren't their fault.
4 (Opp. at 4.) With the extensive foster care experience many members of The Children's
5 Alliance have, The Children's Alliance should be able to shed significant light on the accuracy
6 of this contention.

7 Second, as previously mentioned, defendants suggest it's good enough if they comply
8 with the law and properly administer the foster care system 80% of the time. Unfortunately, the
9 consequences of getting it wrong, even it's "only" twenty percent of the time, are substantial.
10 Twenty percent of the close to 10,000 children currently in foster care amounts to nearly 2,000
11 children. Twenty percent of the 77,000 foster children in care between 1985 and 1995, which
12 defendants reference on page three of their opposition to class certification, represents another
13 15,400 children.

14 These figures, upon which defendants themselves rely in opposition to the class
15 certification motion, clearly show a systemic problem. The goal of The Children's Alliance is
16 to fix that problem on a system-wide basis.

17 Unfortunately, however just the cause, individual damages actions just aren't up to that
18 task. That, ultimately, is why The Children's Alliance has not intervened until now.
19 (Declaration of Steven Wickmark 714-7) So as long as this case is a private action for
20 damages and individual injunctive relief, it does not directly implicate the goal of The
21 Children's Alliance to reform the state's foster care system. (Neither does The Children's
22 Alliance have the financial resources to intervene in every such piece of litigation.)

23 Now, however, this case is on the cusp of a potential transformation into a class action
24 whose predominant focus will be the improvement of Washington's foster care system. Such a
25 case *will* directly implicate The Children's Alliance, whose members are involved in many
26 aspects of the State's foster care system, and its mission to improve the safety, security, health,

1 and education of Washington's children. If foster care is to be reformed, The Children's
2 Alliance, whose members are important stakeholders in the system of providing foster care,
3 should have a voice in that reform.

4 For these reasons, The Children's Alliance now moves to intervene. Attached to this
5 motion as Exhibit 1 is a copy of the Complaint in Intervention The Children's Alliance has
6 filed.

7 For the same reasons, The Children's Alliance expressly conditions its motion upon
8 grant of the pending motion for class certification. If the Court chooses not to certify the
9 proposed class, The Children's Alliance will not intervene.

10 If this Court chooses to grapple with the issue of how to reform Washington's foster
11 care system, The Children's Alliance can play an invaluable role in assisting the Court. The
12 Children's Alliance wants to provide that assistance. It is the hope of The Children's Alliance
13 that this Court will welcome that assistance and permit intervention.

14
15 **II.**
DISCUSSION

16 The Children's Alliance seeks to intervene under Civil Rule 24. Rule 24 was adopted
17 verbatim from the federal equivalent, so this Court may look to decisions and analysis of the
18 federal rule for guidance.- *American Discount Corp. v. Sakatoga West, Inc.*, 81 Wn. 2d 34, 37,
19 499 P.2d 869 (1972). Federal courts have given Rule 24 of the federal rules a liberal
20 construction in favor of applicants for intervention. *United States ex rel. McGough v.*
21 *Covington Technologies Co.*, 967 F.2d 1391, 1394 (9th Cir. 1992) (reversing denial of motion to
22 intervene). Accordingly, it is proper for this Court to give the state rule a similarly liberal
23 construction.

24 **A. Intervention Is Appropriate Because the Complaint In intervention Has Questions**
of Law and Fact In Common With the Main Action.

25 Civil Rule 24 permits intervention where the intervention action and the main action
26 have "a question of law or fact in common." CR 24(b)(2); *State ex rel. Keeler v. Port of*

1 *Penkula*, 89 Wn. 2d 764, 767, 575 P.2d 713 (1978). “[Elxact parallelism between the
2 original action and the intervention action is not required.” *Port of Peninsula*, 89 Wn. 2d at
3 767. Where the intervening plaintiff and the original plaintiff are “complaining of the same
4 general activity,” the test is satisfied. See *id.*

5 To determine whether the intervening plaintiff and the original plaintiff raise common
6 issues of law or fact, courts look to the pleadings, accepting the well pleaded allegations therein
7 as true. See, e.g., *American Discount Corp. v. Saratoga West, Inc.*, 81 Wn. 2d 34, 36, 499 P.2d
8 869 (1972). When one compares plaintiffs’ existing Second Amended Complaint with the
9 Complaint in Intervention of The Children’s Alliance, one can see the test is easily satisfied.
10 Both complaints arise from the defendants’ handling and treatment of foster children in their
11 custody. Both allege defendants have failed to provide adequate services and support to foster
12 children with emotional or mental disorders. (Second Amended Complaint 71 6.3 - 6.6;
13 Complaint in Intervention 71 32-60.) Both assert a causal link between the defendants’
i 14 handling and treatment of foster children and certain mental health disorders, including reactive
15 attachment disorder. (Second Amended Complaint 71 6.4 - 6.5 & 7.2; Complaint in
16 Intervention 11 32-60.) Both contend defendants have breached their statutory and common-
17 law duties by failing to take reasonable steps to prevent multiple or inappropriate placements of
18 children in foster homes. (Second Amended Complaint 11 4.3; 6.1 - 6.2; Complaint in
19 Intervention 7 32-60.)

20 There can be no real doubt that the Complaint in Intervention of The Children’s
21 Alliance and plaintiffs’ Second Amended Complaint have issues of fact and law in common,
22 and that they complain of the same general activity. Indeed, the issues raised virtually overlap.
23 Intervention, therefore, is clearly appropriate unless intervention either is untimely or would, in
24 the words of CR 24(b), “unduly delay or prejudice the adjudication of the rights of the original
25 parties.”
26

1 **B. This Motion is Timely.**

2 Our Supreme Court has noted that motions to intervene brought before trial are timely.
3 See *Saratogu West*, 81 Wn. 2d at 43. On the flip side, interventions after judgment are
4 generally found to be untimely. E.g., *Kreidler v. Eikenberry*, 111 Wn. 2d 828, '832-33 (1989)
5 (intervention after judgment allowable only upon a strong showing after considering all the
6 circumstances, including prior notice, prejudice to the other parties, and reasons for and length
7 of the delay). By this measure, intervention here is clearly timely, since it has been filed long
8 before trial.²

-9 Some courts, however, admittedly have looked to the amount and reasons for delay is-
10 assessing timeliness. In determining the amount of time the intervenor delayed, the inquiry
11 isn't how much time elapsed between the commencement of the action and the filing of the
12 intervention motion. Nor is it the amount of time that elapsed between the intervenor's first
13 notice of the action and the filing of the motion to intervene.

14 Rather, the question is how much time elapsed from the time the intervenor first became
15 aware that its interest could be adversely affected by the lawsuit. See *United Airlines, Inc. v.*
16 *McDonald*, 432 U.S. 385, 394, 97 S. Ct. 2464, 2450 (1970); *League of United Latin American*
17 *Citizens v. Wilson*, 131 F.3d 1297, 1304 (g^b) Cir. 1997). As set forth above, the interest of The
18 Children's Action is statewide reform of the foster care system, not individual monetary
19 damages awards. As a practical matter, a statewide class action is far more likely to affect that
20 interest than a private action seeking damages.

21 In this sense, this case is very much like *Edwards v. City of Houston*, 78 F.3d 983 (5th
22 Cir. 1996). In that case, several individual plaintiffs brought a discrimination claim against the
23 defendant police department. The parties later stipulated to certify a class composing of
24 employees of the department and agreed to entry of a consent decree that would apply to the

25 ² See also *Edwar-cis v. Cify of Houston*, 78 F.3d 983, 1001 (5th Cir. 1996) ("most of our case law
26 rejecting petitions for intervention as untimely concern motions tiled after judgment was entered in the
litigation").

1 class. Once the consent decree was entered, a number of different groups moved to intervene.
2 The trial court denied the motions, apparently because they were untimely, and the Fifth Circuit
3 reversed. The defendants argued that the would-be intervenors had known of the action long
4 before the consent decree was filed. The Fifth Circuit rejected the argument, reasoning:

5 [Because no class was ever certified in [two related lawsuits],
6 nor was the class in this case certified until the court approved the
7 decree on March 25, 1993, these applicants had no reason to
8 expect extensive class-based remedies, but instead anticipated
9 only narrowly tailored relief.

10 *Id.* at 1001-02. The Court of Appeals therefore permitted intervention.

11 Similarly, here the mission of The Children's Alliance is implicated by the possibility of
12 "extensive class-based remedies" as opposed to monetary relief awarded to individual
13 plaintiffs. Because the class has not been certified yet, there really is no delay between the
14 certification of the class and the filing of this motion. Moreover, The Children's Alliance had a
15 valid reason for waiting until the class certification motion was ripe and ready for decision.
16 This motion is clearly timely.

17 C. **Intervention Will Not Unduly Delay or Prejudice the Adjudication of the Rights of**
18 **the Original Parties.**

19 In deciding whether to permit intervention, this Court must also consider whether
20 intervention will unduly delay or prejudice the adjudication of the rights of the existing parties.
21 Plaintiffs do not object to intervention by The Children's Alliance. (Scaramastra Decl. 7 2.)
22 Indeed, counsel for plaintiffs advises that he welcomes intervention by The Children's
23 Alliance. (*Id.*)

24 Defendants, however, have advised that they object to intervention. (*Id.* 1 3.) So the
25 question narrows to whether intervention would somehow delay or prejudice the adjudication
26 of the rights of the defendants.

In addressing the issue of possible prejudice or delay, the question is whether existing
parties may be prejudiced *by delay in moving to intervene*, and *not* whether the intervention

1 itself will cause the nature, duration, or disposition of the lawsuit to change. See, e.g.,
2 *Edwards*, 78 F.3d at 1002; *United States v. Union Elec. Co.*, 64 F.3d 1152, 1159 (8th Cir.
3 1995). Thus, it is not enough for defendants to argue that intervention itself will raise new
4 issues or somehow make their lives more difficult.

5 Of course, even if defendants complain about the intervention itself, which is
6 impermissible, that complaint would be hard to square with the facts here. Here, after all, The
7 Children's Alliance expressly conditions its motion upon the Court's certification of the
8 proposed class. Thus, if the Court decides not to certify the proposed class, The Children's
9 Alliance will withdraw its request to intervene. Needless to say, the potential of intervention to
10 increase the complexity of this litigation pales in comparison with the potential of class
11 certification to do so. It is difficult to fathom how intervention by the Children's Alliance
12 would present any complications beyond those that will already be posed by class certification.

13 Nor does The Children's Alliance raise legal or factual theories that differ profoundly
14 from those that are already at issue in this case. Intervention by The Children's Alliance thus
15 does not threaten to radically expand the scope of issues defendants will have to face or that
16 this Court will have to resolve. For example, intervention (in contrast to class certification)
17 will not expand the scope or complexity of issues relating to damages because the Alliance
18 does not *seek* damages in this action.

19 Intervention also does not pose major case management problems between now and
20 trial. For example, entry of The Children's Alliance will not require discovery in addition to
21 that already needed to prepare this case for trial. Instead, The Children's Alliance does not
22 contemplate taking discovery beyond that already planned by plaintiffs.

23 Therefore, in the words of our Supreme Court, "[n]o different defense [is] required" of
24 defendants just because The Children's Alliance has intervened now instead of at some earlier
25 point. *Port of Peninsula*, 89 Wn. 2d at 763. If this Court certifies a plaintiff class, intervention
26 by The Children's Alliance will have a virtually insignificant impact on defendants' ability to

1 prepare this case for trial. Therefore, defendants cannot show how they will be prejudiced by
2 the delay in intervention (as opposed to the intervention itself).

3 **III.**
4 **CONCLUSION**

5 If this Court chooses to certify a statewide class of plaintiffs seeking institutional reform
6 of the state's system of foster care, the scope and nature of the issues to be tried will be
7 different than if this case remains a private action for damages or individual injunctive relief.
8 Far from denying that, defendants make it one of the central pillars of their opposition to class
9 certification.

10 In a suit involving a statewide class seeking changes in the statewide system of
11 providing foster care, it is only appropriate that a statewide organization, consisting of the
12 many organizations with an interest in those changes be allowed to participate. The Children's
13 Alliance is such an organization. Its members deal with all aspects of child welfare in this
14 state, including foster care for many of our state's children. Its members can offer the benefit
15 of their experience, and expertise, to this Court in evaluating the issues presented in this
16 litigation.

17 In short, there is much to gain, and little if anything to lose, by allowing The Children's
18 Alliance to intervene. This Court should grant the motion and allow The Children's Alliance to
19 participate fully in this case as a plaintiff.

20 DATED this 2 day of June, 2001.

21 Respectfully submitted,

22 GARVEY, SCHUBERT & BARER

23 **B y k**

24 Donald B. Scaramasta, WSBA #21416
25 Of Attorneys for Plaintiff-Intervenor The
26 Children's Alliance

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF WHATCOM

JESSICA BRAAM, a minor child, by and through her guardians, Dale and Vickie Braam; JENNEIVA BURSCH, a minor child, by and through her guardians, Greg and Sherry Bursch; CASSIDEE BURSCH, a minor child, by and through her guardians, Greg and Sherry Bursch; DESI MORGAN, a minor child, by and through her guardians, Lot-i and Lonnie Morgan; PATRICK MORRIS, a minor child, by and through his guardians, Kathy 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; and

NO. 98-2-01570-1
COMPLAINT IN INTERVENTION

EXHIBIT - / -

1 EBONY HARDIN, a minor child, by and
2 through her guardians, David and Mary Hardin,

3
4 Plaintiffs,

5 vs.

6 STATE OF WASHINGTON and the
7 DEPARTMENT OF SOCIAL AND HEALTH
8 SERVICES, and LYLE QUASIM, individually,
9 and as Secretary of the Department of Health
10 and Human Services,

11 Defendants.

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THE CHILDREN'S ALLIANCE,

14 Plaintiff-Intervenor,

15 vs.

16 STATE OF WASHINGTON and the
17 DEPARTMENT OF SOCIAL AND HEALTH
18 SERVICES, and DENNIS BRADDOCK,
19 individually, and as Secretary of the Department
20 of Health and Human Services,

21 Defendants.

22 Plaintiff-Intervenor The Children's Alliance alleges:

23 I.

24 **THE PARTIES**

25 1. Plaintiff The Children's Alliance is a nonprofit public benefit corporation
26 organized under Washington law.

27 2. The Children's Alliance is a statewide, member-based advocacy organization.
28 Roughly 150 organizations currently are members of the Children's Alliance. These members
29 include the following organizations:

- 30 • Children's Home Society of Washington;
- 31 • Children's Hospital & Regional Medical Center;

- 1 ◦ Foster Parents Association of Washington State;
- 2 • Fremont Public Association;
- 3 • Institute for Family Development;
- 4 • Junior League of Seattle;
- 5 • League of Women Voters of Washington;
- 6 • Lutheran Social Services of Washington and Idaho;
- 7 ◻ Ruth Dykeman Children's Center;
- 8 • Sisters of Providence Health Care System;
- 9 • Volunteers of America-Spokane;
- 10 • Spokane County HeadStart/ECEAP;
- 11 • Washington State CASA.

12 3. The mission of The Children's Alliance is to improve the safety, security,
13 health, and education of Washington's children.

14 4. As is apparent from the sampling of organization members provided in
15 paragraph 2 above, the member organizations of The Children's Alliance are of different sizes,
16 assist different populations, are based in different parts of Washington State, are staffed by
17 people who come from all walks of life, offer expertise in literally dozens of areas, and have a
18 wide variety of different goals. Yet all these organizations share a common interest in the
19 mission of The Children's Alliance.

20 5. The sheer diversity of organizations who belong to The Children's Alliance and
21 share in The Children's Alliance's mission to improve the safety, security, health, and
22 education of Washington's children speaks to the critical importance of that mission to all
23 citizens of Washington State.

24 6. In furtherance of its mission, The Children's Alliance is involved in a variety of
25 activities. These activities include policy analysis and development, public education,
26 outreach, training, and policy advocacy.

1 placement in an environment that is stable, safe, and nurturing.” For this reason, the
2 Legislature has declared, “foster homes should be held to a high standard of care.”

3 18. Defendants have a responsibility to protect the statutory right of foster children
4 to a “safe, stable, and permanent home.”

5 19. DSHS and Braddock are required by statute to place children in foster homes
6 “with a view toward the fewest possible placements for each child.” If possible, DSHS is
7 required to view the initial placement as the only placement for the child.

8 20. DSHS and Braddock are required by statute to establish, after consultation with
9 qualified professionals, minimum guidelines for identifying foster-children who need long-term
10 care or assistance because of emotional, medical, or mental challenges relating to multiple
11 foster care placements and/or repeated unsuccessful efforts to be placed with a permanent
12 adoptive family. DSHS is also required by statute to develop programs to provide the
13 necessary long-term care for foster children with the above-described needs.

14 21. A DSHS case worker is required by statute to contact each foster child in its
15 custody at least once each ninety days.

16 22. A DSHS case worker is required by statute to contact one or both foster parents
17 of each foster child in its custody at least once each ninety days.

18 23. DSHS is required by statute to conduct an evaluation of all children in its
19 custody with thirty days of placement. The purpose of the evaluation is to identify each child’s
20 needs, including the child’s need for permanency and child’s need for treatment for mental
21 health conditions,

22 24. With respect to each child in its custody, DSHS is required to “give sufficient
23 information about the child (especially behavioral and emotional problems) and the child’s
24 family to foster parents to enable them to make an informed decision regarding whether or not
25 to accept a child in their home.”

26 25. The State has an obligation to exercise reasonable care for the health, safety, and

1 well being of foster children in its custody.

2 26. DSHS has an obligation to exercise reasonable care for the health, safety, and
3 well being of foster children in its custody.

4 27. Braddock has an obligation to exercise reasonable care for the health, safety, and
5 well being of foster children in DSHS custody.

6 28. The State has an obligation to ensure that adequate medical care is provided to
7 foster children in its custody.

8 29. DSHS has an obligation to ensure that adequate medical care is provided to
9 foster children in its custody.

10 30. Braddock has an obligation to ensure that adequate medical care is provided to
11 foster children in DSHS custody.

12 31. Adequate medical care includes, but is not limited to, the exercise of reasonable
13 efforts to obtain medical care needed to diagnose and treat medical conditions, including
14 mental health disorders.

15 **IV.**
16 **DEFENDANTS' BREACHES AND VIOLATIONS OF THEIR RESPONSIBILITIES TO**
17 **FOSTER CHILDREN IN THEIR CUSTODY**

18 32. DSHS case workers routinely fail to contact foster children and their foster
19 parents at least every ninety days, as required by statute.

20 33. Many children who enter foster care have suffered from some form of abuse or
21 neglect. Many children who enter defendants' custody already have developed mental health
22 disorders.

23 34. One documented mental disorder experienced by many foster children in
24 defendants' custody is reactive attachment disorder. The American Psychiatric Association's
25 Diagnostic and Statistical Manual documents and describes this disorder. According to the
26 American Psychiatric Association, reactive attachment disorder's essential feature is markedly
disturbed and developmentally inappropriate social relatedness in most contexts that begins

1 before age 5 years and is associated with grossly pathological care.

2 35. The type of disregard of a child's basic emotional and physical needs that leads
3 to the placement of children in defendants' custody in the first place is one type of pathological
4 care that is capable of causing reactive attachment disorder.

5 36. Repeated changes in the primary caregiver that prevent formation of stable
6 attachments, however, are also a form of pathological care that is capable of causing reactive
7 attachment disorder.

8 37. Frequent changes in foster care also constitute a form of pathological care
9 capable of causing reactive attachment disorder.

10 38. Children who have suffered from some form of abuse or neglect, or who have
11 developed mental health disorders, require a comprehensive system of health care that is
12 responsive to their individual circumstances and needs.

13 39. Many foster children who have suffered from some form of abuse or neglect, or
14 who have developed mental health disorders such as reactive attachment disorder, do not
15 receive adequate medical attention while in defendants' custody.

16 40. For example, on many occasions, defendants have failed to conduct an initial
17 health evaluation of foster child in their custody within a reasonable period of time.

18 41. On many occasions, defendants have also failed to conduct either a mental
19 health screening or a standardized diagnostic mental health assessment of foster child in their
20 custody.

21 42. On many occasions, defendants also have failed to make mental health services
22 available to those children in their custody who need them.

23 43. On many occasions, defendants have failed to conduct an evaluation of children
24 in defendants' custody within thirty days of placement, as required by law.

25 44. On many occasions, defendants have failed to provide sufficient information to
26 potential foster parents about foster children in defendants' custody to enable potential foster

1 parents to make an informed decision about whether or not to accept a child into their home. In
2 particular, defendants have failed to provide sufficient information about the behavioral,
3 emotional, and mental health problems experienced by foster children.

4 45. On many occasions, defendants have failed to maintain, and make available to
5 foster parents, adequate records concerning the medical history of foster children in their
6 custody.

7 46. A foster child with emotional problems or a mental health disorder, especially a
8 disorder that has gone undiagnosed and untreated, has a significantly decreased chance of being
-- 9 reunified with his or her birth parents.

10 47. A foster child with emotional problems or a mental health disorder, especially a
11 disorder that has gone undiagnosed and untreated, also has a significantly decreased chance of
12 successful placement in a stable and permanent home with adoptive parents.

13 48. Placement of a foster child in a home with foster parents who lack adequate
14 information regarding the child's health has a significantly decreased chance of being a stable
15 and permanent placement.

16 49. Each unsuccessful placement has the potential to exacerbate or worsen a foster
17 child's mental health, which in turn steadily reduces that child's chances of being placed in a
18 stable and permanent home.

19 50. Defendants' practice of failing to provide adequate medical care, adequate home
20 visits, and adequate medical histories to potential foster parents, has directly and proximately
21 caused the number of foster homes available to meet the needs of foster children in defendants'
22 custody to decrease.

23 51. As a direct and proximate consequence of this decline in foster homes, and
24 defendants' actions that have led to this decline, defendants no longer have enough homes to
25 accommodate all of the foster children in their custody. To deal with this, defendants have
26 forced foster children in their custody in DSHS offices or in street shelters for homeless

1 children and runaways.

2 52. The decline in available foster homes has also led defendants to adopt the
3 practice of placing foster children where there is a "bed available" rather than where their needs
4 can best be met. Upon information and belief, defendants take this action at least in part to
5 limit delays in placing children and to place as many children as possible in a bed, so that they
6 are not left to sleep in DSHS offices and in street shelters. Placements made with insufficient
7 investigation into what is best for the child, of course, have a significantly reduced chance of
8 being stable and permanent.

9 53. In the worst cases, defendants have placed foster-children in homes in which a
10 sexual predator resides, or in homes with abusive foster parents. Upon information and belief,
11 a reasonable pre-placement investigation could have prevented some or all of these placements.

12 54. The ultimate consequence of placing foster children where there is a bed
13 available as opposed to a suitable home, of not providing foster children with adequate medical
14 attention, and of not providing foster parents with adequate information and support, is that
15 placements fail at high rates. Defendants must, therefore routinely place children in more than
16 one foster home. DSHS's own study shows that between 1985 and 1995, DSHS placed over
17 14,000 children in more than two foster homes. The same study shows that over 7,000 children
18 were placed in more than three foster homes and that over 1,300 children were placed in more
19 than eight different foster homes! A DSHS regional administrator found that twenty-five
20 percent of children in Washington State who remain in foster care for longer than one year are
21 placed in four or more different foster homes.

22 55. The high number of unsuccessful placements, which leads to the high rate of
23 multiple placements, directly and proximately causes a further decline in the number of
24 available foster homes. And so the vicious cycle repeats itself, as the decline in the number of
25 foster homes leads defendants to continue the very practices that are the cause of that decline.

26 56. Each year, approximately two hundred children "age out" of DStHS's system

1 without ever having been placed in a permanent home. In other words, these children reach
2 eighteen years in age or finish high school without ever having been placed in a permanent
3 home while in defendants' custody.

4 57. Upon information and belief, as a direct and proximate result of defendants'
5 actions, many children in defendants' custody fail to receive adequate or sufficient education.
6 A substantial number of children who "graduate" from defendants' foster care system fail to
7 graduate from high school.

8 58. A substantial number of children who "graduate" from defendants' system also
9 lack any significant employment experience.

10 59. Children who fail to graduate from high school and who have limited or no
11 employment experience lack many of the skills they need to survive financially.

12 60. Many children who "age out" of the system simply end up homeless because
13 they have no place to stay and no ability to earn enough money to find adequate housing.

14 **V.**
15 **CLAIMS BY THE CHILDREN'S ALLIANCE**

16 **A. Violation of Substantive Due Process.**

17 61. The Children's Alliance incorporates the allegations of paragraphs 1 through 60
18 as though fully set forth herein.

19 62. Foster children in defendants' custody have certain interests protected by the
20 Due Process of the Fourteenth Amendment to the United States Constitution. These interests
21 include, but are not limited to, the right to basic medical care, the right to an education, and the
22 right to adequate housing.

23 63. Defendants' actions, as set forth above, have denied foster children their
24 interests in receiving basic medical care, and education, and adequate housing without due
25 process of law, in violation of the Fourteenth Amendment to the United States Constitution.

26 64. As a direct and proximate result of defendants' violations of the constitutional

1 rights of foster children in their custody, foster children in their custody have suffered physical,
2 emotional, and economic injuries.

3 **B. Violation of Washington Statutes.**

4 65. The Children's Alliance incorporates the allegations of paragraphs 1 through 60
5 as though fully set forth herein.

6 66. As set forth above, Washington statutes impose on defendants certain
7 obligations to foster children in their custody.

8 67. Defendants' conduct violates the above-described statutory obligations, which
9 defendants owe to foster children in their custody.

10 68. As a direct and proximate result of defendants' violations of Washington
11 statutes, foster children in their custody have suffered physical, emotional, and economic
12 injuries.

13 **C. Negligence.**

14 69. The Children's Alliance incorporates the allegations of paragraphs 1 through 60
15 as though fully set forth herein.

16 70. Defendants conduct, as alleged, above, constitutes negligence.

17 71. As a direct and proximate result of defendants' negligence, foster children in
18 their custody have suffered physical, emotional, and economic injuries.

19
20 **VI.**

21 **RELIEF SOUGHT BY THE CHILDREN'S ALLIANCE**

22 WHEREFORE, plaintiff-intervenor The Children's Alliance prays for the entry of relief
23 as follows:

- 24 1. Entry of a judgment permanently and affirmatively enjoining defendants to
25 perform their legal obligations to foster children in their custody, including but not limited to:
26 a. maintaining written records of the medical history of each and every foster child

1 in defendants' custody;

2 b. performing mental health screening assessments of each and every foster child
3 in defendants' custody;

4 c. establishing minimum guidelines for defendants to follow in identifying foster
5 children who need long-term care or assistance because of emotional, medical, or mental
6 challenges relating to multiple foster care placements and/or repeated unsuccessful efforts to be
7 placed with a permanent adoptive family;

8 d. visiting each foster child and one or both of the child's foster parents at least
9 once every ninety (90) days;

10 e. removing known sex offenders or individuals with histories of domestic abuse
11 from the ranks of foster parents;

12 f. providing adequate medical care to foster children in their custody, such as
13 arranging for each foster child to be regularly evaluated for possible mental health disorders
14 resulting from prior abuse or multiple foster care placements; and

15 2. Entry of a judgment permanently enjoining defendants from performing certain
16 actions in violation of their constitutional, statutory, and/or common-law duties to foster
17 children in their custody, including but not limited to:

18 a. "Housing" foster children in defendants' business offices; and

19 b. "Housing" foster children in street shelters for the homeless.

20 3. An award of their fees and costs of suit; and

21 4. Such other and further relief as this Court deems just and appropriate.
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1 DATED this 3 day of June, 200 1.

2 Respectfully submitted,

3 GARVEY, SCHUBERT & BARER

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5 B y j / l &
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7 Attorneys for Intervening Plaintiff
8 Children's Alliance
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