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11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 FOR THE COUNTY OF SAN FRANCISCO

13 JOY WARREN,)
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Petitioner/Plaintiff,
vs.
RITA SAENZ, in her capacity as
Director of California Department of
Social Services; CALIFORNIA
DEPARTMENT OF SOCIAL SERVICES,
Respondent/Defendants

Case No. **317487**

PETITION FOR WRIT OF MANDATE
(C.C.P. § 1085) AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF

21 I. INTRODUCTION

22 1. This is a taxpayer action alleging that defendant CALIFORNIA DEPARTMENT OF
23 SOCIAL SERVICES ("CDSS") and respondent/defendant RITA SAENZ ("Saenz")
24 violate the Community Care Licensing Act ("Act"), Health and Safety Code §§1500 *et*
25 *seq.*, by permitting several California counties to house children alleged or adjudicated to
26 be abused or neglected in unlicensed community care facilities. This action seeks to
27 require CDSS and Saenz to comply with the Act and its implementing regulations, 22
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California Code of Regulations §§ 80000 *et seq* , by issuing a notice of operation in violation of law and taking all necessary actions to prohibit these facilities from operating unless or until they comply with licensing standards and are, in fact, licensed.

2. This action challenges the willful failure of CDSS and Saenz to comply with clear requirements set out both in statute and in CDSS's own regulations. CDSS and Saenz have knowingly and deliberately allowed publicly run shelter care facilities in at least nine counties to operate in violation of licensing regulations. These regulations incorporate standards that are crucial to ensuring the physical, mental, and emotional well-being of children in out-of-home care for their own protection. Because CDSS has not complied with these procedures, thousands of children each year are subjected to dangerous and detrimental conditions in county run shelter care facilities. These conditions include overcrowding resulting in violence and unsafe conditions; confinement of vulnerable children with others who are dangerous to them; isolation from the community; harsh disciplinary practices; lack of appropriate care and treatment, including mental health treatment; and a disregard for the special developmental needs of young children.

II. PARTIES

A. Petitioner/Plaintiff

3. Petitioner/Plaintiff JOY WARREN (“Warren”) is a citizen taxpayer in the State of California. Warren is assessed to pay, and within one year of this lawsuit has paid, taxes to the State of California. While she was a minor, Warren was a dependent of the San Diego juvenile court and was housed in an unlicensed shelter care facility operated by that county. Warren brings this action pursuant to California Code of Civil Procedure § 526a to enjoin illegal and wasteful policies and practices, and to ensure the safety and

1 well-being of children in protective custody.

2 **B. Defendants/Respondent**

3 4. Defendant CALIFORNIA DEPARTMENT OF SOCIAL SERVICES (“CDSS”) is
4 required to establish and support a public system of state-wide child welfare services
5 pursuant to Welfare & Institutions Code §§ 16500 *et seq*; to supervise the administration
6 of state public social services, including child welfare services; and to secure full
7 compliance with applicable provisions of state and federal law Welfare & Institutions
8 Code § 10600. Under these provisions, CDSS is required to adopt and enforce
9 regulations governing facilities maintained and operated to provide nonmedical
10 residential care to abused and neglected children, to monitor conditions and practices in
11 community care facilities, and to ensure the well-being of children by enforcing all
12 licensing requirements Health & Safety Code §§ 1500 *et seq*.

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15 5 Respondent/Defendant RITA SAENZ (“Saenz”), Director of California Department of
16 Social Services, is responsible for administering the laws relating to child welfare
17 services; promulgating regulations and standards; and supervising the administration of
18 public social services, including child welfare services. Welfare & Institutions Code §§
19 10553, 10554. Under Welfare & Institutions Code § 10605, she has the authority to
20 enforce state statutes and regulations Under Health & Safety Code § 1541, she has the
21 authority to enforce the Community Care Licensing Act and to bring an action to enjoin
22 any violation of the Act.

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24 **III. STATUTORY AND REGULATORY FRAMEWORK**

25 **A. Federal Financial Participation**

26 6. California receives federal financial participation to support child welfare services
27 pursuant to Title IV-B of the Social Security Act, 42 U S C §§ 620 –629d, and uses
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1 those funds to support services provided at children's shelter care facilities. Pursuant to
2 42 U.S.C § 671(a)(10), California must establish standards related to admission policies,
3 safety, sanitation, and protection of civil rights for child care institutions and apply those
4 standards to all facilities receiving funds under Title IV-B or Title IV-E of the Social
5 Security Act. Failure to comply with federal requirements can result in reduced federal
6 funding for the state program or other fiscal penalties.
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8 **B. Child Welfare Services**

9 7. County child welfare agencies remove children from home pursuant to Sections 300 *et*
10 *seq* of the Welfare and Institutions Code because they have suffered, or are at risk of
11 suffering, harm due to abuse or neglect. The purpose of removing children from home is
12 to provide them with maximum protection and safety, and to ensure their physical and
13 emotional well-being.
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15 8. State and federal law require that children who must be removed from home be placed in
16 the least restrictive, most family-like setting, in close proximity to the child's home,
17 consistent with the needs of the child. Welfare and Institutions Code § 16000; 42 U.S.C.
18 §§ 622(b)(10)(B)(ii) & 675(5)(A). State law permits the appropriate placement of
19 children in residential care facilities when placement is in the best interest of the child,
20 paying attention to the individual needs of the child and the ability of the facility to meet
21 those needs as well as the licensing requirements of the facility as determined by the
22 licensing agency. Health and Safety Code § 1501.1.
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24 **C. Community Care Licensing Act**

25 9. In California, foster care placements, other than those providing medical care, are
26 regulated pursuant to the California Community Care Facilities Act ("Act"), Health &
27 Safety Code §§ 1500, *et seq* and are licensed by CDSS
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1 10. The Act prohibits the operation of community care facilities, including those designed for
2 foster children, without a current valid license issued by CDSS Health & Safety Code §
3 1508 Any facility providing 24-hour care for seven or more children must be licensed as
4 a group home 22 California Code of Regulations § 84001(g) Health & Safety Code §
5 1508 expressly applies the provisions of the Act to community care facilities operated by
6 state and local public agencies
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8 11. Community Care licensing regulations provide protection to children by prohibiting
9 overcrowding; requiring criminal records and child abuse registry checks for staff;
10 establishing minimum staff qualifications and training; strictly limiting the use of
11 physical restraints and other staff interventions that may be harmful; requiring that
12 children be permitted to interact with the community, including their families; ensuring
13 that vulnerable children are not confined with youth who may be dangerous to them;
14 providing that infants and toddlers receive special care consistent with their
15 developmental needs; and ensuring residents privacy and personal rights. These
16 regulations take into account the fact that dependent children are victims and should not
17 be subjected to punitive conditions.
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19 12. CDSS annually inspects licensed community care facilities that provide 24-hour care to
20 children and investigates complaints about licensed facilities Health & Safety Code §§
21 1522 4(a)(4), 1534(a)(1)(A) If a facility is out of compliance with licensing
22 requirements, CDSS issues a notice of deficiency, works with the facility to develop a
23 corrective action plan, and conducts follow-up visits to monitor compliance. Health &
24 Safety Code §§ 1526.5, 1534(a)(2). CDSS has the authority to suspend or revoke the
25 license of a facility that is out of compliance with licensing requirements, and may issue
26 an immediate temporary suspension when the health or safety of a child is jeopardized
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1 Health & Safety Code §§ 1550, 1550.5 When a license is suspended or revoked, the
2 facility must cease operation, and residents are moved to a facility licensed to provide
3 appropriate care. Health & Safety Code § 1556.

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5 13 CDSS may make unannounced inspections of any community care facility to secure
6 compliance with, or prevent a violation of, licensing requirements. Health & Safety
7 Code § 1533.

8 **IV. STATEMENT OF FACTS**

9 **A. The Shelters**

10 14. Several California counties operate shelter care facilities that provide nonmedical
11 residential care for abused and neglected children. These include MacLaren Children's
12 Center ("MacLaren") operated by Los Angeles County, Polinsky Children's Center
13 ("Polinsky") operated by San Diego County, the Santa Clara County Children's Shelter
14 operated by Santa Clara County, Orangewood Children's Center ("Orangewood")
15 operated by Orange County, Placer Children's Receiving Center operated by Placer
16 County, the Children's Shelter operated by Humboldt County, the Jamison Children's
17 Center operated by Kern County, the Mary Graham Children's Center ("Graham
18 Center") operated by San Joaquin County, and Valley of the Moon Children's Home
19 operated by Sonoma County

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22 15. Each of these shelter care facilities provides nonmedical residential care for foster
23 children and meets the definition of a community care facility under Health & Safety
24 Code § 1502(a), and 22 California Code of Regulations § 84001(g)(1). Although the
25 relevant statutes and regulations require that the shelter care facilities be licensed as
26 group homes, none of these county-run shelter care facilities has a valid current license
27 issued by CDSS.
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1 16. Although these facilities are called "emergency" or "temporary" shelters, and are
2 intended to provide care for a short period, many children -- including infants and
3 toddlers -- are housed in shelters for several months to a year under inadequate, unsafe,
4 and often chaotic conditions. Many children cycle in and out of shelter care facilities,
5 returning up to 20 separate times.

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7 17. On any given day counties collectively confine hundreds of children in these unlicensed
8 shelter care facilities. Over a period of a year, several thousand children may spend from
9 a few hours to several months in these unlicensed shelters.

10 18. These shelter care facilities routinely operate in violation of licensing requirements and
11 the standards set forth in Community Care licensing regulations. CDSS and Saenz are, or
12 should be, aware of these violations, which have not only been brought to their attention
13 directly, but have been routinely reported in the press. They have taken no action to
14 enforce the statute or licensing regulations.

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16 **B. Overcrowding**

17 19. Pursuant to state licensing regulations, CDSS sets a maximum capacity for each licensed
18 group care facility for children (group home) based on the number of children the facility
19 can care for safely. 22 California Code of Regulations § 80028. Licensed capacity is
20 based on design capacity, physical features of the facility, and the number of staff
21 available to care for the children. Group home regulations provide that no more than two
22 children may sleep in a bedroom. 22 California Code of Regulations § 84087(b)(1). No
23 room commonly used for other purposes, such as hallways and stairways, may be used as
24 a bedroom, and no bedroom may be used as a public or general passageway to another
25 room, bath, or toilet. 22 California Code of Regulations § 84087(b)(4),(5)

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27 20. Unlicensed shelter care facilities are routinely overcrowded. Children sleep in hallways
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and in common areas. Rooms built to house one or two children sleep three or four. As a result, children have no privacy or personal space. Children must dress and undress in front of strangers. This is particularly harmful for children who have been victims of sexual or physical abuse.

21. Overcrowding contributes to a chaotic, stressful environment in which troubled children must eat, sleep, and live in very close proximity to one another. Violent incidents are common, further traumatizing children who have been removed from home because of violent acts.

22. For example, MacLaren was designed to serve 125 children. However, it often exceeds this capacity by as much as 50%. During the period from January 1, 2000 to July 1, 2000, the average population was 152, with the daily population rising as high as 181. Even these figures do not reflect the full extent of the problem. Since the facility consists of several living units to which children are assigned based on age and gender, specific units may be extremely overcrowded even when the facility is at or under capacity.

23. As a result of this overcrowding, county officials routinely require children to sleep and dress and undress in the hallways and common areas. It is common practice to confine three children to sleeping rooms designed to accommodate no more than two.

24. Confinement at MacLaren subjects children to a chaotic, violent, and dangerous environment. Statistics for the first six months of 2000 show that police were called to MacLaren almost twice a day on average (339 total calls in six months). Since January, 2000, at least 53 children have been arrested at MacLaren.

25. At Polinsky, overcrowding has been a consistent problem. Although the facility was designed to house 130 children, reports from the Grand Jury and the Juvenile Justice Commission indicate that the average daily population was 160 in fiscal year 1996-1997;

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ranged from 163 to 188 from September 1997 through May 1988; and rose to 234 in March 1999, 243 in June 1999, and 285 in July 1999.

26. When Polinsky is overcrowded, children sleep in common areas. Education and recreational activities are severely limited because of a lack of space and staff

27. In April 2000, the adolescent girls' unit rioted at Polinsky. Children destroyed property, fought with each other and staff, and barricaded themselves in their rooms. Several girls required medical treatment and 17 were arrested. The cottage in which they were housed was built for no more than 30 girls and housed 40. The San Diego County Human Services Agency attributed the violence to overcrowding and predicted that it would recur

28. The 1999-2000 Santa Clara Grand Jury found that the population at the shelter often exceeds its capacity of 132 children, rising as high as 178 in December 1999. According to the report, fights and other violent behavior are routine. Previous reports found similar problems. In 1998, an evaluation commissioned by the county found that children routinely slept on cots, couches, and in sleeping bags.

29. The Santa Clara County Grand Jury documented 49 incidents of "high risk behavior" including assaults, sexual behavior and running away in one month. "Altercations" are almost equally common. There are over 130 documented serious incidents a month. More than 3 a day occurred in the two months reviewed by the panel. These crises affect not only the children involved, but all the children at the shelter.

30. Orangewood has a capacity of 236. Although the population has decreased recently, the Orange County Grand Jury reports the daily population prior to 1999 has been as high as 320. During periods of overcrowding, beds and cribs were pushed closer together to accommodate the additional children. When there were not enough beds available, or

1 when there was not enough space to add beds, children slept on mattresses on the floor.

2 **D. Excessive Force**

3 31 Community care licensing regulations prohibit the use of physical force to control
4 behavior except to prevent a child exhibiting assaultive behavior from exposure to
5 immediate injury or danger to herself or others. 22 California Code of Regulations §
6 84800(b). Staff may not use physical restraint on children unless the facility has an
7 approved emergency intervention plan that meets the requirements of licensing
8 regulations. Certain interventions, such as corporal punishment, are prohibited
9 altogether, and physical restraint may not be used for punishment. 22 California Code of
10 Regulations § 84081. Licensing regulations also mandate specific record keeping and
11 reporting requirements concerning incidents and the facility's response. 22 California
12 Code of Regulations § 84805

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15 32. These limitations on use of force and discipline are necessary to protect children in
16 shelters. These children have been removed from abusive or neglectful homes that are
17 often violent. A repetition of this violent behavior is not only traumatic, but can
18 exacerbate emotional problems resulting from this abuse. Professional literature
19 demonstrates that children are often unwilling to report abuse for fear they will be
20 punished. Confinement in a facility that uses harsh disciplinary practices confirms this
21 fear. In addition, staff in shelters are unfamiliar with the special needs of the children in
22 their care. They have no way of knowing how a specific child will react or how the use
23 of physical restraint will impact the child's mental health.

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25 33. Unlicensed shelters regularly use physical restraint to control children's behavior without
26 any of the safeguards incorporated in licensing requirements. As a result, children can be
27 and have been subjected to physical abuse by staff with no effective means of monitoring
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1 or reviewing their treatment.

2 34. Despite prohibitions in licensing regulations, use of physical restraint is common at
3 MacLaren. In a 12 month period, MacLaren staff used physical restraints over 1500
4 times, an average of over 4 times a day. Staff are not required to follow procedures
5 mandated by licensing regulations which are designed to minimize use of restraint and
6 eliminate abusive practices and inappropriate discipline
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8 35. The Santa Clara shelter uses physical restraint to control children. There is no efficient
9 system for monitoring staff use of restraints. Staff identify interventions as
10 "restraints/timeout," but these cover a wide variety of incidents. Since the county does
11 not follow licensing requirements, it is impossible to know whether there is any
12 justification at all for physical intervention and there is no means to ensure that children
13 are not subject to abusive practices.
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15 36. Polinsky Center maintains no central records of staff use of restraints. However, staff are
16 authorized to and do restrain children. This is particularly problematic since the facility
17 uses untrained, unscreened "temporary" staff when the facility is overcrowded. There is
18 no way to monitor use of restraints by these occasional employees.

19 **E. Failure to Provide Treatment Necessary to Children's Mental Health and**
20 **Development**

21 37. State law permits the appropriate placement of children in residential care facilities when
22 placement is in the best interest of the child, paying attention to the individual needs of
23 the child and the ability of the facility to meet those needs as well as the licensing
24 requirements of the facility as determined by the licensing agency. Health and Safety
25 Code § 1501 1. Community care licensing regulations require facilities to determine
26 each child's needs and to develop an individualized plan to meet those needs. 22
27 California Code of Regulations § 84068 2. The plan must incorporate information from
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1 the child's educational, medical, dental, and mental health records, and must identify the
2 services necessary to meet the child's needs. *Id*

3 38. Unlicensed shelter care facilities do not develop or implement approved individual needs
4 and services plans for children, even for children who remain in the shelters for months
5 at a time. Nor do they provide appropriate services for children housed there. They
6 house children with widely disparate needs and backgrounds, most of whom they are
7 incapable of serving. Children in shelter care facilities include those traumatized by
8 severe abuse and neglect, those with extensive histories of mental health problems, those
9 recently released from psychiatric facilities, those with sensory impairments, and those
10 with mild to moderate cognitive disabilities. Shelter care facilities are not equipped to
11 provide treatment beyond crisis intervention to these children.
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13 39. This total disregard for the needs of children results in immediate trauma and long lasting
14 harm. Already traumatized children move into institutional settings where they eat and
15 sleep in large units, cannot maintain their possessions, are deprived of choice in food and
16 clothing, and are exposed to children with serious emotional problems. The longer they
17 stay in shelter the more they learn to exhibit unacceptable behavior in order to get
18 attention. Children who enter the shelters as toddlers often suffer from attachment
19 disorders and are unable to adjust to homes in the community.
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21 40. Many children in shelter care facilities have extensive mental health needs. The shelter
22 cannot provide adequate services for these children. They are deprived of urgently
23 needed treatment for months at a time while confined in unlicensed shelters.
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25 41. Children with developmental disabilities are deprived of habilitative treatment. Because
26 of their condition, they are likely to take on the characteristics of more behaviorally or
27 emotionally disturbed children housed with them. They are also more likely to be
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victimized. Their placement in the shelter impairs their ability to achieve normalcy.
42 The only criteria for admitting a child to a shelter is his or her need for a bed. As a result, children with serious behavioral problems are confined with vulnerable, victimized children. While there are some very general criteria for dividing children into living units -- usually age and gender -- children with extensive experience in the system are housed in close proximity to children who have come into the system for the first time. This results in anxiety and trauma and, in some instances, physical injury. It also has a contaminating effect, by which previously naive children adapt to and emulate the behavior of more troubled youth.

43. Children in Santa Clara County's unlicensed shelter have extensive unmet mental health needs. The Social Service Agency Director reported that as many as 25% of children admitted to the shelter have mental health issues that will become worse if they remain in the shelter. As many as 40% of the children in the population on any given day will suffer emotional harm if they remain in the shelter. Each day an average of 80-90 children are being seen at the mental health clinic. At least two children every day require one-on-one staff supervision because they are dangerous to themselves or others. In 1998, an expert evaluation concluded that "on average two thirds of the average daily census are inappropriately placed at the shelter." The 1999-2000 Grand Jury Report confirmed extended lengths of stay and inappropriately served children. Santa Clara County is housing children in a shelter that cannot serve their needs, thereby making their condition worse.

44. Because the Santa Clara county shelter admits any child who comes to its door, there is no effective way to segregate or treat dangerous children. In fact, because of the overcrowding discussed above and the physical structure, dangerous children cannot be

1 separated from others in any safe way. Staff has resorted to placing sexual perpetrators
2 together as roommates because they cannot provide individual rooms.

3 45. MacLaren confines children with emotional disturbance, developmental disabilities,
4 mental illness, and special physical needs. A recent report estimates that approximately
5 24% of the children at MacLaren have a dual diagnosis of mental illness and
6 developmental disability. None of these children has a plan for receiving services in the
7 facility that will meet their special needs. In fact, because staff are untrained in the
8 special needs of developmentally disabled children, the children are likely to be abused
9 in an effort to control their behavior. One seriously disabled girl was locked in the
10 bathroom by staff unable to control her behavior.

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12 **C. Children Under the Age of Six**

13 46. The California Legislature has expressed its intention that children under the age of six
14 be placed in family homes rather than group or institutional care, recognizing “the
15 specific needs of very young children, from birth to six years of age, experiencing the
16 trauma of separation from their family who must be placed in out-of-home care.”
17 Welfare & Institutions Code § 11467.1.

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19 47. Shelter care facilities that house children under six for less than 30 days must assign
20 primary caregivers to children under six at a ratio of 1:3 (22 California Code of
21 Regulations §§ 84200(a)(2), 84201(p)(2) and 84265.5). Shelter care facilities that house
22 children under six for more than 30 days must care for children in cottages or individual
23 buildings with no more than six children and two live-in houseparents; and must involve
24 the child’s family in the development of the needs and services plan. 22 California Code
25 of Regulations §§ 84201(f) and (h); 84222(a). All shelter care staff who care for children
26 under six must receive enhanced education in early childhood education and related
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1 topics (22 California Code of Regulations § 84265)

2 48. These regulations reflect the findings of research demonstrating the negative effects of
3 institutionalization on young children, including limitation on the child's capacity to
4 form lasting relationships, impairment of the child's cognitive development, and
5 behavioral problems related to an increased need for attention.

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7 49. Unlicensed shelter care facilities routinely house children under six. In 1999,
8 approximately 30% of the children housed in the Santa Clara County shelter were under
9 the age of six. Prior to settlement of a lawsuit filed in 1998, up to 40% of the children
10 housed in Orangewood were under the age of six

11 50. Shelter care facilities fail to assign primary caregivers to young children, or to meet the
12 staff ratio requirements.

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14 51. Although unlicensed shelter care facilities routinely hold young children for periods
15 greater than 30 days, none of the shelters comply with requirements that children be
16 cared for by houseparents in family groups, and none involve families in the
17 development of needs and services plans.

18 52. Many of the shelter care staff who care for young children have not received the required
19 education or training.

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21 53. The practice of housing infants, toddlers and preschoolers in unlicensed shelter care
22 facilities deprives them of a consistent caregiver and individualized care, and subjects
23 them to unnecessary trauma and permanent and irreparable emotional, psychological, and
24 developmental harm.

25 54. Because the shelters are unlicensed, CDSS does not monitor their compliance with
26 regulations governing the care of children under six. Counties routinely violate these
27 regulations and neither Saenz nor CDSS has taken any action on behalf of the children
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1 the Legislature intended to protect.

2 **F. Violation of Personal Rights**

3 55 Community care regulations provide specific personal rights to residents. These rights
4 include, among others, the right to participate in community activities; the right not to be
5 locked in any room, building, or facility; the right to have private visits with family and
6 friends without prior notice; the right to have access to individual private storage space;
7 and the right to file a complaint with the facility. 22 California Code of Regulations §§
8 80072, 84072, 84079
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10 56. At many unlicensed shelter care facilities including MacLaren, Orangewood, Polinsky,
11 and Santa Clara, children are restricted to limited visiting hours with family and cannot
12 visit with friends. Policy and practice severely limit the time for visits, and children are
13 physically searched after visits. Children cannot participate in any activities in the
14 community, including religious activities, except in groups. In fact, although they have
15 committed no criminal act, they are subject to the same treatment and restrictions on their
16 freedom as are youth in a detention facility.
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18 57. MacLaren was built to serve as a juvenile detention facility. Many areas of the facility
19 are locked. Children are prohibited from leaving the facility except for group outings.
20 Visits are restricted to family members at the facility at specified hours.
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22 58. Orangewood is a secure facility; all exits and entrances to the outside are locked. The
23 outside perimeter of the facility is protected by eight-foot high chain-link fence or
24 masonry wall. The institution and grounds are monitored by video cameras that feed into
25 a control room that is staffed 24 hours a day. Children are not allowed to move about the
26 facility without prior permission or prior notification of the control room.
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28 59. Community care licensing regulations also give residents the right to wear their own

1 clothes, and to possess and use their own personal items, including their own toilet
2 articles. 22 California Code of Regulations § 84072.

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4 60 At MacLaren children are permitted only a limited number of clothing items, and certain
5 toilet items are not permitted. Upon entry to the facility the minor and his or her property
6 are searched. All items in excess of the permitted amount of clothing and property are
7 taken and stored.

8 61 At Orangewood all personal property including clothing is stored and children are given
9 clothing to wear during their stay.

10 **G. Criminal Background Checks**

11 62 The Act and implementing regulations require a criminal background check and a child
12 abuse registry check of all facility staff and, with limited specified exceptions, all other
13 individuals who provide assistance to or have contact with clients of a facility. Health &
14 Safety Code § 1522, 22 California Code of Regulations § 80019. The purpose of this
15 requirement is to identify individuals whose contact with clients may pose a risk to the
16 client's health and safety. The California legislature has specifically recognized the need
17 for timely background checks, and state law requires CDSS to give expeditious treatment
18 to employees of, and applicants for, employment with community care facilities
19 providing services to children. Health & Safety Code §§ 1522, 1522.04 & 1522.5.

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22 63 Polinsky has relied on temporary staff to fill vacant positions. Training for these staff
23 consisted of a 15-minute video and a handbook. Registry staff has been permitted to
24 work at Polinsky prior to obtaining the results of criminal records checks.

25 64. According to local news reports, background checks of staff at the Graham Shelter in San
26 Joaquin, which should have been completed three years prior, had not been done as of
27 August 31, 2000
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1 65. Because the shelters are unlicensed, there is no effective means to ensure that all shelter
2 care staff have undergone a criminal check and clearance. CDSS does not enforce this
3 requirement with respect to shelter staff

4 **H. Failure of CDSS to Act**

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6 66. On October 26, 2000, the Youth Law Center made a written complaint to CDSS alleging
7 that county operated children's shelters are currently operating without a license in
8 violation of Health and Safety Code §§ 1503 5 and 1508.

9 67 CDSS failed to conduct an onsite investigation of these facilities within 10 days, to issue
10 a notice of operation in violation of law, to refer for civil or criminal proceedings, or to
11 notify the Youth Law Center of its proposed course of action as required by Health and
12 Safety Code § 1538 and 22 California Code of Regulations § 80006

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14 68. CDSS has a policy and practice of failing to take action to require county operated
15 children's shelter care facilities to comply with the Act; failing to respond to complaints
16 that county operated children's shelter care facilities, are unlicensed community care
17 facilities; and failing to respond to complaints alleging specific violations of community
18 care regulations in county run children's shelter care facilities.

19
20 69. CDSS does not regularly inspect or monitor conditions and practices in unlicensed
21 county operated children's shelter care facilities, and does not investigate complaints
22 concerning practices or conditions in these facilities.

23 70. Based on this policy and practice, counties have decided not to license their shelters,
24 even when they have been licensed in the past. The Santa Clara Board of Supervisors
25 decided that the current shelter care facility would not be operated as a licensed facility,
26 even though CDSS licensed the previous facility. An audit commissioned by Santa Clara
27 County reported that the larger shelters have "removed themselves" from licensing
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1 because of maximum occupancy violations, that is, because they chose to be
2 overcrowded. According to a county resolution, the Los Angeles County Board of
3 Supervisors is informed each day the population at MacLaren is over capacity, but has
4 taken no action to ensure that overcrowding does not occur.

5
6 **V. CAUSES OF ACTION**

7 **First Cause of Action**
8 **Violation of Community Care Facilities Act**
9 **Writ of Mandate**
10 **Code of Civil Procedure § 1085**

11 71. The Respondent's failure to enforce the licensing requirements at county operated
12 children's shelter care facilities and to monitor conditions and practices at these facilities
13 violates the California Community Care Facilities Act. Health & Safety Code §§ 1500 *et*
14 *seq.*

15 72. This violation constitutes a waste of public funds within the meaning of Code of Civil
16 Procedure § 526a.

17 73. Respondent has a clear, present and ministerial duty to enforce the licensing requirements
18 and other mandates of the Community Care Licensing Act and regulations at county
19 operated children's shelter care facilities. Petitioner has a beneficial interest in the
20 Respondent's performance of that duty. Respondent has, at all relevant times, had the
21 ability to comply with this duty, but has failed and refused to do so. Petitioner has no
22 plain, speedy, adequate remedy at law. Unless the court issues the requested writ,
23 Respondent will continue to violate her clear legal duties.

24
25 **Second Cause of Action**
26 **Violation of Social Security Act**

27 74. CDSS' use of federal funds to support child welfare services to children placed at
28 unlicensed children's shelter care facilities violates the Adoption Assistance and Child

1 Welfare Act. 42 U.S.C. § 671(A)(10). California is at risk of losing substantial federal
2 funding if found to violate federal law.

3 75. This violation constitutes a waste of public funds within the meaning of Code of Civil
4 Procedure § 526a.

5
6 **Third Cause of Action**
Violation of Due Process

7 76. The Defendants' failure to impose licensing standards on the operation of county
8 operated children's shelter care facilities; to monitor conditions and practices in these
9 facilities; and to ensure that shelters meet the individual needs of children placed in these
10 facilities violates the children's right to due process of law under the 14th Amendment of
11 the United States Constitution and Article I, Section 6 of the California Constitution

12
13 77. Defendants' failure to require licensure of the shelters represents a substantial departure
14 from accepted professional judgment, practice and standards, and subjects the children
15 placed in unlicensed shelters to unsafe conditions and psychological and physical harm.

16 78. These failures constitute a waste of public funds within the meaning of Code of Civil
17 Procedure § 526a.

18
19 **Fourth Cause of Action**
Violation of Equal Protection

20 79. The Defendants' failure to impose licensing standards on the operation of county
21 operated children's shelter care facilities violates the children's right to equal protection
22 of law under the 14th Amendment of the United States Constitution and Article I, Section
23 6 of the California Constitution.

24
25 80. Children placed in unlicensed county operated shelter care facilities are not afforded the
26 protections extended to children placed in licensed community care facilities, even
27 though these children are similarly situated. There is no rational basis for subjecting
28

1 these similarly situated children to differential treatment.

2 81. Defendants' failure constitutes a waste of public funds within the meaning of Code of
3 Civil Procedure § 526a

4 **VI. PRAYER FOR RELIEF**

5 Petitioner/Plaintiff requests that this Court:

6
7 82. Issue a writ of mandate pursuant to California Code of Civil Procedure § 1085
8 commanding the Respondent to order the counties to cease operation of county run
9 children's shelter care facilities unless and until they comply with all licensing
10 requirements of the California Community Care Facilities Act, Health & Safety Code §§
11 1500, *et seq.*

12 83. Declare that the practices and conditions identified in this complaint violate the Due
13 Process and Equal Protection Clauses of the 14th Amendment of the United States
14 Constitution; Article I, Section 6 of the California Constitution; the Adoption Assistance
15 and Child Welfare Act, 42 U S C. §§ 620-629, 670-679; and the California Community
16 Care Licensing Act, Health & Safety Code §§ 1500 *et seq*

17
18 84. Enter a preliminary and permanent injunction requiring CDSS to order counties to cease
19 operation of county operated children's shelter care facilities unless and until they
20 comply with all licensing requirements of the California Community Care Facilities Act,
21 Health & Safety Code §§ 1500, *et seq*

22
23 85. Award Petitioner/Plaintiff reasonable attorneys' fees and costs.

24 86. Grant such other relief as the Court finds just and proper.
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1 Dated: December 18, 2000 at San Francisco, California

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Respectfully submitted,

SHANNAN L. WILBER
MARIA F. RAMIU
ALICE BUSSIÈRE
CAROLE B. SHAUFFER
YOUTH LAW CENTER

Attorneys for Petitioner

By: 
SHANNAN L. WILBER

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VERIFICATION

I, MARIA RAMIU, declare:

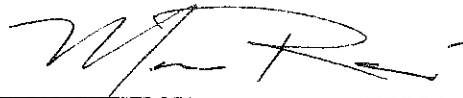
I am an attorney at law duly admitted and licensed to practice before all courts of this State and I have my professional office at 417 Montgomery Street, Suite 900, San Francisco, San Francisco County, California

I am one of the attorneys of record for Petitioner/Plaintiff in the above-entitled action

The Petitioner/Plaintiff is absent from the county in which I have my office. For that reason I am making this verification on her behalf

I have read the foregoing Petition for Writ of Mandate and Complaint for Injunctive and Declaratory Relief and know the contents thereof. I am informed and believe that the matters in it are true and on that ground allege that they are true

Dated:



Maria Ramiu
Attorney for Plaintiff/Petitioner