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5
6 **IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

7
8 Lori Phu, an individual,

9 Plaintiff

10 v.

11 Placer County, California, a county
12 government, and

13 Jennifer Martin, in her official capacity
14 as a social worker and as an
individual, and

15 Miranda Long, in her official capacity
16 as a social worker supervisor and as an
17 individual, and

18 Does 1 through 10,
19 Defendants.

CASE NO.

**COMPLAINT FOR VIOLATIONS OF 42
U.S.C. §1983; VIOLATIONS OF
CALIFORNIA CIVIL CODE §51; AND
RESPONDEAT SUPERIOR LIABILITY**

JURY TRIAL DEMANDED

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Respondeat Superior Liability Under California

Government Code §815.2(a) And/Or §815.6 88-94 **26**

VI. PRAYER 29

ATTACHMENTS

Exhibit 1: The Placer County FCS Manual 12 **3**

Exhibit 2: FCS Emergency Response Referral Form (“ERRF”) 14 **5**

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I.
PARTIES

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3 1. Plaintiff Lori Phu (“Phu”) is the natural mother of two minor children: “BR”,
4 age 16, and “BI”, age 11, during the relevant time period for this Complaint.

5 Plaintiff Phu was born in Vietnam and legally immigrated to the United States in
6 1989. Plaintiff became a citizen of the United States in 1994 and was educated and
7 then trained as a licensed vocational nurse which remains her chosen profession to
8 the present. Plaintiff is proud of her heritage and she has employed many of the
9 traditional values and parenting choices of her Chinese-Vietnamese heritage in
10 raising her children BR and BI. Plaintiff’s values, which she has tried her best to
11 employ in the raising of BR and BI, include personal discipline, hard work, respect
12 for elders, modest dress, the importance of education, and the love of family.

13 2. Plaintiff Phu resides at 2733 Ledgestone Lane, Lincoln, CA 95648.

14 3. Reginald Gill (“Gill”) is the biological father of BR and BI. Gill resided at 763
15 Deer Park Drive, Lincoln, California 95648 during the relevant time period for this
16 Complaint.

17 4. Plaintiff Phu and Gill were married in 1997 and then divorced in 2000.
18 Plaintiff has had sole legal and physical custody of BR and BI. Gill has never
19 sought to modify the custody status, even after the events set forth below.

20 5. Defendant Placer County, California, operates the Placer County Family and
21 Children Services agency (“FCS”) which is responsible for implementing local, state
22 and federal laws and regulations concerning children’s welfare. The FCS employs
23 social workers to conduct investigations into children’s welfare and to recommend
24 and/or take action to ensure the safety of children residing in Placer County,
25 California.

26 6. Defendant Jennifer Martin (“Martin”) is a social worker employed by FCS
27 during the relevant time period.
28

1 7. Defendant Miranda Long (“Long”) is a social worker employed by FCS and
2 was the supervisor of Defendant Martin during the relevant time period.

3 8. The true names and capacities of defendants sued herein as Does 1-10,
4 inclusive, whether individual, corporate, or otherwise are unknown to Plaintiff who,
5 therefore sues such defendants by such fictitious names. When their true names
6 and capacities are ascertained, Plaintiff will amend this complaint by asserting
7 their true names and capacities herein. Plaintiff is informed, believes and thereon
8 alleges, that at all times herein mentioned, all defendants, including DOES 1
9 through 10, inclusive: (i) are qualified to do business in California, and/or did, in
10 fact, do business in California; (ii) jointly perpetrated the acts herein with their
11 co-defendants; (iii) were the successors in interest to, or agents, alter egos,
12 principals, co-tenants, partners, joint venturers, or co-conspirators of their
13 co-defendants in doing the things herein alleged; and/or (iv) were acting within the
14 scope of their authority or in furtherance of a common scheme or design with the
15 knowledge, permission, consent or ratification of their co-defendants in doing the
16 things herein alleged, and therefore are liable, jointly and severally, for all damages
17 and other relief or remedies sought by complainants in this action.

18 **II.**
19 **JURISDICTION AND VENUE**

20 9. Jurisdiction over the federal causes of action under Title 42 U.S.C. §1983 are
21 proper in this Court under 28 U.S.C. §1331. Pendant Jurisdiction over the state
22 causes of action is proper under Title 28 U.S.C. §1367(a) and Title 28 U.S.C.
23 §1343(a)(3).

24 10. Venue is proper in this Court under 28 U.S.C. §1391(b) because all of the
25 defendants reside, and the acts complained of occurred, within the territorial
26 boundaries of this United States District Court.

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**III.
BACKGROUND ALLEGATIONS**

Placer County Family and Children Services

11. FCS is obligated to adopt and follow the written policies and procedures established by the California Department of Social Services (“CDSS”). The CDSS mandates that a “Structured Decision Making” (“SDM”) process be followed in any investigation of child neglect or abuse. The SDM policy and procedures applicable to the incident in this action are set forth in detail in the CDSS “Structured Decision Making System Policy and Procedures Manual”, dated May 2008 (as updated August 14, 2013) (hereafter the “CDSS Manual”).

12. The FCS has adopted additional written policies and practices as set forth in a series of policy and procedure documents, a true and correct copy of which are attached hereto as Exhibit 1 (previously stamped nos. 190-204). Collectively, these documents will be referred to herein as the “FCS Manual”.

13. The FCS Manual, in accordance with the CDSS Manual, requires that a social worker must do the following things whenever a referral is investigated:

- (a) make a timely, thorough and complete investigation that includes all of the safety and risk factors identified in the family (Exhibit 1, p. 190);
- (b) address any areas of risk identified during the course of the investigation (Exhibit 1, p 190);
- (c) interview in person any parent who has been in regular contact with the child (Exhibit 1, p. 190);
- (d) complete in the field an SDM Safety Assessment (described in detail in the CDSS Manual, Section II, including a prescribed assessment form) (Exhibit 1, p. 191, 203-204);
- (e) complete by the end of the investigation an SDM Risk Assessment (described in detail in the CDSS Manual, Section III, including a

1 prescribed assessment form) (Exhibit 1, p. 191, 203-204);

2 (f) if, after the SDM Safety and Risk Assessments are made, significant
3 new information has been revealed, subsequent assessments SDM
4 Safety and Risk Assessments should be made and entered into the
5 SDM database (Exhibit 1, p. 192);

6 (g) obtain the prior consent of the custodial parent to conduct an interview
7 of the child whenever possible (Exhibit 1, p. 193);

8 (h) if, during the interview of a child, a social worker comes to believe that
9 the child is in danger of “imminent” physical harm, then the social
10 worker must immediately consult with their supervisor and determine
11 if they agree that “imminent” risk of harm exists (Exhibit 1, p. 195);

12 (i) In assessing if there is “imminent” risk, a social worker must identify
13 the facts that lead to the conclusion that the child suffer serious
14 physical harm if action is not taken for a few hours (Exhibit 1, p. 201);

15 (j) If there is an “imminent” risk of serious harm, the social worker must
16 determine if the immediate risk can be eliminated by a Safety Plan
17 that the parents can follow;

18 (k) after the social worker and supervisor determine that there is
19 imminent risk and removal of custody is necessary, then they have to
20 call county counsel to receive a final determination as to whether the
21 legal threshold for immediate removal has been met (Exhibit 1, p. 202);

22 (l) develop a safety plan in consultation with the parents and if the Safety
23 Plan will alleviate the risks, then allow the child to stay with the
24 parent (Exhibit 1, p. 203-204);

25 **The Removal of The Minor Children Without Exigent Circumstances**

26 14. Plaintiff Phu is informed and believes, and on that basis alleges, that on or
27

1 about May 1, 2015, her minor daughter BR filed, or caused to be filed, a complaint
2 with FCS against Plaintiff for purported "emotional" abuse. This report was made
3 by telephone and was notated on an Placer County FCS Emergency Response
4 Referral Form ("ERRF"), a true and correct copy of which is attached as Exhibit 2.

5 15. On or about May 5, 2015, Defendant Martin notified Plaintiff by telephone
6 that a claim had been made against her for "emotional" child abuse and for "general
7 neglect". Martin asked Plaintiff Phu for permission to talk with BR and BI at
8 school and Plaintiff gave her consent.

9 16. On or about May 6, 2015, Martin interviewed the two minor children and
10 made the following finding in her Investigative Narrative (p. 4), a true and correct
11 copy of which is attached as Exhibit 3:

12 BR - She is a straight A student, drug free, cheerleader, tutor, and she
13 is seeking a career in broadcasting.

14 BI - She is a super child, listens to advice, she is a respectful and
15 humble girl, very intelligent, kind, sensitive and sweet, mindful of
16 others, patient and friendly and she is nurturing too.

17 17. On or about May 7, 2015, Defendant Martin called Plaintiff Phu to further
18 discuss BR's concerns. Martin invited Plaintiff to a "Family Team Meeting" on May
19 12, 2015, at 9:30 at Placer County Human Services Offices in Rocklin, California.
20 Martin told Phu that the purpose of this meeting would be to have a discussion with
21 the entire family (i.e., Phu, the two minor children BR and BI, Phu's fiancé Ray
22 Unk, and Gill the biological father) where Martin could discuss the concerns about
23 purported emotional abuse. Plaintiff Phu asked Martin if they could meet prior to
24 the proposed Family Team Meeting so that Phu could have an opportunity to
25 explain to Martin why BR was emotionally upset.

26 18. On May 12th, prior to the start of the Family Team Meeting in Rocklin, CA,
27 Plaintiff met with Martin and explained her Chinese-Vietnamese heritage and the
28 cultural values that Phu had been raised under. Phu told Martin that she was

1 proud of her family heritage and that these were the values she had been teaching
2 her daughters. Phu further explained that BR had entered a rebellious teenage
3 phase in which she wanted complete personal freedom, did not want to do chores at
4 home, and did not want to abide by Phu's preference for simple makeup and
5 clothing choices that were not overly sexualized. Defendant Martin, however,
6 expressed disdain for Plaintiff's traditional Chinese-Vietnamese cultural and
7 parenting values and insisted that Plaintiff had to adopt modern American cultural
8 norms and a relaxed parenting style. Martin contended that Phu was emotionally
9 abusing her daughters by trying to enforce her heritage and values upon BR and BI.

10 19. The Family Team Meeting then commenced and was attended by Plaintiff,
11 Defendant Martin, Daryl Morales (a counselor from Lincoln Lighthouse Counseling
12 and Family Resource Center), Ray Flissinger (Plaintiffs' Fiancé), Gill (the minors'
13 Father), and both minor children. After about 45 minutes of discussion about the
14 family dynamics, cultural values and parenting choices, Defendant Martin
15 unilaterally announced a "safety plan" *whereby custody of both minor children*
16 *would be transferred immediately after the meeting to their biological father Gill.* A
17 true and correct copy of this "safety plan" is attached hereto as Exhibit 4.

18 20. Martin made no finding in her Investigative Narrative or safety plan of any
19 threat of imminent harm to either of the children and Martin did not contact Placer
20 County Counsel before making the decision to immediately transfer custody of both
21 children to Gill.

22 21. Plaintiff is informed and believes, and based thereon alleges, that the order
23 to transfer custody of both children to Gill as set out in the safety plan was based
24 upon Martin's opinion that Plaintiff was wrong in her traditional Chinese-
25 Vietnamese cultural values, parenting approach and personal choices for BR and
26 BI.

1 22. Plaintiff Phu rejected Defendant Martin's unilateral decision to transfer
2 custody of both children to Gill. Plaintiff, however, did agree to Martin's demand
3 that Phu attend a counseling session at the Lighthouse Family Resource Center
4 ("Lighthouse FRC") in Lincoln, California by Friday, May 15, 2015.

5 23. Martin then instructed the father, Reginald Gill, to take the children home
6 with him from the May 12th meeting. However, both Gill and BR asked Defendant
7 Martin to postpone the effective date of change in custody until June 8, 2015,
8 because Gill's girlfriend was visiting him at the time and "wanted the house" alone
9 with Gill. Defendant Martin denied this request, stating that the change in custody
10 should be immediate and that both of Plaintiffs' minor children should live with
11 Gill.

12 24. Observing the situation, Plaintiff insisted that Martin ask each minor child
13 where they preferred to live. Martin then asked each child where they wanted to
14 live and BR said she wanted to reside with Gill and BI stated she wanted to remain
15 with Plaintiff. Despite this stated preference, Defendant Martin insisted that both
16 children live immediately with Gill. The May 12th meeting then ended and
17 Plaintiffs' minor children left with Gill as ordered by Martin. Plaintiff had just a
18 brief moment to hug her daughters and say goodbye.

19 25. On or about May 12, 2015, at 11:00 am (about 30 minutes after the foregoing
20 meeting), Plaintiff called a Mr. Daryl Morales of Lincoln Lighthouse FRC to request
21 information on the recommended counseling. Mr. Morales told Plaintiff that, due to
22 Plaintiff's work schedule as a licensed vocational nurse, a regular "in class"
23 counseling course was not practical and that Plaintiff should search for an
24 appropriate class to take via the internet. Plaintiff searched the internet and found
25 a "Parent Education and Stabilization Course" and completed it on or about July
26 17, 2015. Based upon the information noted by Martin in the Investigative
27

1 Narrative (p. 4), Gill never attended any family counseling classes as he was
2 instructed under the safety plan.

3 26. On or about May 13, 2015, Plaintiff was told by her minor children that Gill
4 agreed to permit BI to return to Plaintiff's custody and BI did, in fact, return to
5 Plaintiff's home on or about May 20, 2015.

6 **The Wrongful Reporting Of Phu To The DOJ**

7 27. On or about June 5, 2015, Placer County FCS submitted a report to the
8 California Department of Justice Child Abuse Central Index Listing reporting
9 Plaintiff Phu as a "substantiated" child abuser. This report was signed by
10 Defendant Martin on June 5, 2015 and by Defendant Long on June 23, 2015. A true
11 and correct copy of the "Notice of Report In The Child Abuse Central Index" ("DOJ
12 Report") is attached hereto as Exhibit 5.

13 28. On June 29, 2015, Plaintiff received a phone call from her friend Veronica
14 Medina, the mother of BR's boyfriend. Ms. Medina informed Plaintiff that BR, who
15 was supposed to be living with Gill under Defendant Martin's custody order and
16 "safety plan" for the child, has been asking Ms. Medina to pick BR up in the
17 morning at various different homes of BR's friends and not at Gill's house. This
18 phone call confirmed Phu's judgment as a mother that her child BR just wanted to
19 live without a parent's supervision and control.

20 29. On or about June 29, 2015, Plaintiff received a copy of the DOJ Report letter
21 informing her that she had 30 days to file a grievance to prevent being placed on the
22 California Department of Justice Child Abuse Central Index. Plaintiff was very
23 emotionally and mentally distressed by this notice because: (a) the allegations of
24 abuse were erroneous and based upon Defendant Martin's personal "cultural and
25 parenting values"; and (b) Phu's placement on the Central Child Abuse Index would
26 almost certainly have resulted in Plaintiff losing her employment and career path
27

1 as a licensed vocational nurse.

2 30. On or about July 7, 2015, Plaintiff contacted Defendant Martin to obtain a
3 copy of the ERRF (Exhibit 2). Defendant Martin provided Phu with a phone
4 number that had an automated response without an option to obtain a copy of the
5 ERRF. Plaintiff finally obtained a copy of the ERRF from the Placer County CPS
6 office in Auburn, California. When Plaintiff reviewed the ERRF and the
7 accompanying Investigation Report (Exhibits 2-3), Plaintiff Phu was finally able to
8 see that Martin had failed to: (a) investigate Gill; (b) ever make an inspection of
9 Gill's house prior to the May 12th meeting; or (c) follow up on BR's living situation
10 with Gill. Moreover, it was obvious that the allegations in the ERRF against Phu
11 were not "substantiated" and were based upon Martin's life style choices for
12 Plaintiff's daughter.

13 31. Plaintiff Phu then hired legal counsel to challenge the ERRF findings and to
14 file a grievance to prevent being placed on the Child Abuse Central Index.
15 Plaintiff's legal counsel served Placer County on August 11, 2015, with Plaintiff's
16 challenge to the factual allegations in the Investigative Report and objections to the
17 submission to the Child Abuse Central Index. A true and correct copy of Plaintiff's
18 challenge is attached as Exhibit 6.

19 32. On or about August 15, 2015, Placer County responded to Plaintiff's
20 challenge to the factual allegations in the Investigative Report and rescinded its
21 effort to place Plaintiff on the Child Abuse Central Index with a "Modification of
22 Findings" from "substantiated" to "Inconclusive." A true and correct copy of this
23 document is attached as Exhibit 7.

24 **Plaintiff Timely Filed A Government Tort Claim**

25 33. Plaintiff filed a claim against Placer County on September 29, 2015, for the
26 wrongful conduct of Defendant Martin and Placer County CPS. Placer County has
27

1 never responded to this claim, and therefore, pursuant to California Government
2 Code §912.4, the claim was deemed denied on or about November 14, 2015. Under
3 California Government Code § 945.6, a claimant whose claim has not been acted
4 upon by the county government has a period of two years to file an action.

5 **Failure To Follow Proper Procedures**

6 34. Defendant Martin failed to abide by the policies and procedures of FCS and
7 as set forth in the FCS Manual (see paragraph 14, supra) by failing to:

- 8 (a) make a timely, thorough and complete investigation that includes all
9 of the safety and risk factors identified in the family and/or in the
10 course of the investigation;
- 11 (b) complete in the field an SDM Safety Assessment (described in detail in
12 the CDSS Manual, Section II, including a prescribed assessment form)
13 (Exhibit 1, p. 191, 203-204);
- 14 (c) complete by the end of the investigation an SDM Risk Assessment
15 (described in detail in the CDSS Manual, Section III, including a
16 prescribed assessment form) (Exhibit 1, p. 191, 203-204);
- 17 (d) if, after the SDM Safety and Risk Assessments are made, significant
18 new information has been revealed, subsequent assessments SDM
19 Safety and Risk Assessments should be made and entered into the
20 SDM database (Exhibit 1, p. 192);
- 21 (e) complete an SDM Safety Assessment;
- 22 (f) complete an SDM Risk Assessment;
- 23 (g) find or establish facts that constitute or show that BR and/or BI were
24 in danger of “imminent” physical harm;
- 25 (h) devise a Safety Plan to address any safety concerns so that Plaintiff
26 could continue to enjoy custody of BR and BI, either joint or sole; and
27

- 1 (i) call county counsel to receive a final determination as to whether the
2 legal threshold for immediate removal of BR and BI was met.

3 In addition, Defendant Martin acted outside the boundaries of the policies
4 and procedures of FCS and CDSS by:

- 5 (a) failing to inspect the home of Gill to see that it was a suitable place for
6 BR and BI to live;
7 (b) failing to follow up with Gill to ensure that he completed the
8 counseling required in the safety plan;
9 (c) failing to follow up with BR to ensure that she was living with her
10 father and was doing well in school, etc.;
- 11 (d) preparing and filing with the California DOJ a false and inadequate
12 report about Plaintiff being a “substantiated” perpetrator of “emotional
13 abuse” and guilty of “general neglect” of her children; and
14 (e) failing to ever present a reunification plan.

15 35. Defendant Long failed to abide by the policies and procedures of FCS and as
16 set forth in the FCS Manual by, *inter alia*, failing to verify that Martin had:

- 17 (a) properly employed the SDM procedures;
18 (b) conducted a thorough investigation in good faith, including *inter alia*,
19 investigating the home of Gill before ordering the transfer of custody to Gill;
20 (c) contacted Placer County counsel to confirm that there were exigent
21 circumstances for the immediate removal of BR and BI from Plaintiff’s custody; and
22 (d) performed a follow up investigation after the transfer of custody to Gill to
23 confirm that BR and BI were living with Gill and were doing well.

1 IV
2 **Claims For Violation of Federal Civil Rights Under 42 U.S.C. §1983**

3 **FIRST CAUSE OF ACTION**

4 **Defendant Placer County**

5 **Violation Of Phu's Procedural Due Process As A
6 Result Of A Failure To Enforce Or Train**

7 36. Plaintiffs hereby incorporate by reference paragraphs 1 through 35,
8 inclusive, as though set forth fully herein.

9 37. Placer County has established policies, practices, or procedures as alleged in
10 paragraphs 12-13 for conducting an investigation of alleged neglect or abuse of a
11 child. Placer County, however, failed to follow these policies, practices, or
12 procedures in the course of its investigation of the claims of BR as set forth above
13 paragraphs 14-27 and 34-35, and this caused the violation of Phu's constitutional
14 rights. In particular, Placer County failed, *inter alia*, to:

15 (a) make a timely, thorough and complete investigation that included all of
16 the safety and risk factors;

17 (b) identify specific facts to support the conclusion in the safety plan that BR
18 and BI would imminently suffer serious harm if a change in custody to Gill was not
19 effected immediately;

20 (c) determine if any immediate risk of harm could have been eliminated by a
21 safety plan that both parents could follow; and

22 (d) telephone county counsel for a determination that the threshold for
23 removal of a child under exigent circumstances had been met.

24 38. The foregoing conduct of Placer County is not an isolated incident, but part of
25 *a pattern of wrongful failure to enforce* the policies, practices, or procedures as
26 alleged in paragraph 37. For example, there is another pending action in the
27 United States Federal District Court, Eastern District of California, Case No. 2:14-

1 CV-2402 (“*Akey v. Placer County*, et al”) for violation of Placer County’s established
2 policies, practices, or procedures concerning Placer County CPS’ ordering of the
3 immediate transfer of custody of a minor without either a court order or the
4 showing of exigent circumstances, including: (a) the failure to identify specific facts
5 that lead to the conclusion that the child was in immediate danger of serious harm;
6 and (b) the failure to telephone Placer County Counsel before making the custody
7 change without a court order. The facts alleged in this Complaint, combined with
8 the facts alleged in the *Akey v. Placer County* action, demonstrate a pattern of
9 failure by Placer County to follow its established policies, practices, or procedures,
10 and further, that such pattern of failure constitutes a deliberate indifference to the
11 procedural due process afforded to a parent by the 14th amendment.

12 39. The conduct of Placer County as alleged in paragraph 37 is not an isolated
13 incident, but part of *a pattern of wrongful failure to train or supervise* its employees
14 about its policies, practices, or procedures. The wrongful conduct alleged in *Akey v.*
15 *Placer County* further demonstrates that Placer County has continued to fail to
16 train or supervise its employees about its policies, practices, or procedures. In
17 particular, Placer County has failed to train its CPS personnel about what
18 constitutes exigent circumstances (aka imminent danger to a child) that permit the
19 removal of a child from the custody of a parent without the procedural due process
20 requirement for a hearing and prior judicial approval. This repeated failure to train
21 or supervise constitutes a deliberate indifference to the known or obvious
22 consequence that, without training, its employees would be far more likely to
23 violate the right of a parent to a mother-child relationship protected by the 4th
24 and/or the 14th Amendment to the United States Constitution.

25 40. The foregoing failures were actions and omissions under the color of state law
26 that were the direct and proximate cause of the violation of the constitutional rights
27

1 of Plaintiff Phu, including without limitation, the violation of her procedural due
2 process rights for proper notice and hearing and a prior judicial determination
3 before any changes were made in her custody of BR and BI under the Fourteenth
4 Amendment to the United States Constitution.

5 41. As a direct and proximate result of the wrongful conduct of Placer County as
6 set forth above, Plaintiff Phu has sustained general damages of an estimated
7 \$500,000, according to proof, including, but not limited to: (a) the attorney's fees
8 and costs incurred by Phu in objecting to the findings of the FCS and Martin in the
9 Investigative Report that the allegations against Phu were unsubstantiated and a
10 formal retraction thereof by Placer County in an amount of approximately \$1,578;
11 (b) interest and reimbursable costs of borrowing the sums necessary to pay
12 attorneys fees in an approximate amount of \$75 to date; (c) damage to reputation;
13 and (d) severe emotional and mental distress caused by the loss of familial relations
14 with her daughter and feelings of shame, anxiety, humiliation, and the loss of a
15 sense of security, dignity, and pride.

16 42. As a direct and proximate result of the wrongful conduct of Placer County as
17 set forth above, Phu has been forced to file this action under 42 U.S.C. §1983, and is
18 entitled to recover her attorneys fees and costs under 42 U.S.C. §1988.

19 **SECOND CAUSE OF ACTION**

20 **Defendant Placer County**

21 **Unlawful Interference With Phu-BR and Phu-BI Relationships As A**
22 **Result Of A Failure To Enforce Or Train**

23 43. Plaintiffs hereby incorporate by reference paragraphs 1 through 35, inclusive,
24 as though set forth fully herein.

25 44. Placer County has established policies, practices, or procedures as alleged in
26 paragraph 13 for conducting an investigation of alleged physical neglect or abuse of
27 a child. Placer County, however, failed to follow these policies, practices, or

1 procedures in the course of its investigation of BR and BI as set forth in paragraphs
2 14-27 and 34-35), and this caused the violation of Phu's constitutional rights. In
3 particular, Placer County failed, *inter alia*, to:

4 (a) make a timely, thorough and complete investigation that included all of
5 the safety and risk factors;

6 (b) identify specific facts that lead to the conclusion that BR and BI would
7 suffer serious harm if action were not taken immediately;

8 (c) determine if any immediate risk of harm could be eliminated by a Safety
9 Plan that both the parents could follow; and

10 (d) telephone county counsel for a determination that the threshold for
11 removal of a child under exigent circumstances had been met.

12 45. The foregoing conduct of Placer County is not an isolated incident, but part of
13 *a pattern of wrongful failure to enforce* the policies, practices, or procedures as
14 alleged in paragraph 44. For example, there is the *Akey v. Placer County*, et al
15 action (see paragraph 38) alleging violation of Placer County's established policies,
16 practices, or procedures concerning Placer County CPS' ordering of the immediate
17 transfer of custody of a minor without either a court order or the showing of exigent
18 circumstances, including: (a) the failure to identify specific facts that lead to the
19 conclusion that the child was in immediate danger of serious harm; and (b) the
20 failure to telephone Placer County Counsel before making the custody change
21 without a court order. The facts alleged in this Complaint, combined with the facts
22 alleged in *Akey v. Placer County*, demonstrate a pattern of failure by Placer County
23 to follow its established policies, practices, or procedures, and further, that such
24 pattern of failure constitutes a deliberate indifference to the right of a mother-child
25 relationship protected by the 4th Amendment and/or the 14th amendment to the
26 United States Constitution.

1 46. The conduct of Placer County as alleged in paragraph 44 is not an isolated
2 incident, but part of *a pattern of wrongful failure to train or supervise* its employees
3 about its policies, practices, or procedures. The wrongful conduct alleged in *Akey v.*
4 *Placer County* action further demonstrates that Placer County has continued to fail
5 to train or supervise its employees about its policies, practices, or procedures. In
6 particular, Placer County has failed to train its CPS personnel about what
7 constitutes exigent circumstances (aka imminent danger to child) that permit the
8 removal of a child from the custody of a parent without the procedural due process
9 requirement for a hearing and prior judicial approval. This repeated failure to train
10 or supervise constitutes a deliberate indifference to the known or obvious
11 consequence that, without training, its employees would be far more likely to
12 violate the right of a parent to a mother-child relationship protected by the 4th
13 and/or the 14th Amendment to the United States Constitution.

14 47. The foregoing failures were actions and omissions under the color of state law
15 that were the direct and proximate cause of the violation of the constitutional rights
16 of Plaintiff Phu, including without limitation, the violation of her constitutional
17 right to a mother-daughter relationship under the Fourth and/or Fourteenth
18 Amendment to the United States Constitution.

19 48. As a direct and proximate result of the wrongful conduct of Placer County as
20 set forth above, Plaintiff Phu has sustained general damages of an estimated
21 \$500,000, according to proof, including, but not limited to: (a) the attorney's fees
22 and costs incurred by Phu in objecting to the findings of the FCS and Martin in the
23 Investigative Report that the allegations against Phu were unsubstantiated and a
24 formal retraction thereof by Placer County in an amount of approximately \$1,578;
25 (b) interest and reimbursable costs of borrowing the sums necessary to pay
26 attorneys fees in an approximate amount of \$75 to date; (c) damage to reputation;

1 and (d) severe emotional and mental distress caused by the loss of familial relations
2 with her daughter and feelings of shame, anxiety, humiliation, and the loss of a
3 sense of security, dignity, and pride.

4 49. As a direct and proximate result of the wrongful conduct of Placer County as
5 set forth above, Phu has been forced to file this action under 42 U.S.C. §1983, and is
6 entitled to recover her attorneys fees and costs under 42 U.S.C. §1988.

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8 **THIRD CAUSE OF ACTION**

9 **Defendant Martin**

10 **Violation Of Phu's Procedural Due Process**

11 50. Plaintiffs hereby incorporate by reference paragraphs 1 through 35,
12 inclusive, as though set forth fully herein.

13 51. Martin failed to follow the FCS policies, practice, and procedures regarding
14 the removal of a child from the custody of a parent without prior judicial approval,
15 including *inter alia*, failing to:

16 (a) employ the SDM procedures (see ¶ 34);

17 (b) conduct an investigation in good faith, including *inter alia*, failing to
18 investigate the home of Gill before ordering the transfer of custody to Gill;

19 (c) failing to investigate after the transfer of custody to Gill to verify that BR
20 and BI were living with Gill and were doing well.; and

21 (d) failing to confirm with Placer County counsel that there were exigent
22 circumstances for the immediate removal of BR and BI from Plaintiff's custody.

23 52. Martin removed BR and BI from Plaintiff Phu's custody without a court order
24 and without exigent circumstances, i.e., BR or BI were not in "imminent" danger.

25 In fact, both children were observed by Martin to be in good health and doing well
26 in school prior to Martin's order transferring the children from Plaintiff's custody to
27 Gill's custody. There were no circumstances that could not have been handled with

1 a safety plan that allowed Plaintiff to continue custody of BR and BI.

2 53. Martin removed BR and BI from Plaintiff's custody because Martin
3 substituted her personal, modern, "American" views of what would be good
4 parenting values and cultural norms for BR and BI instead of Plaintiff's traditional
5 Chinese-Vietnamese parenting values and cultural norms, which Martin dismissed
6 as old fashioned and harmful to the children.

7 54. Martin prepared and/or otherwise assisted in the filing with the California
8 DOJ of an unsubstantiated and/or false report about Phu as a perpetrator of
9 emotional abuse on BR and BI. Martin's purpose in filing this report was to
10 discriminate against and discredit Phu because of her traditional Chinese-
11 Vietnamese parenting values and cultural norms.

12 55. The foregoing conduct of Martin was comprised of actions and omissions
13 under the color of state law that were the direct and proximate cause of the
14 violation of the constitutional rights of Plaintiff Phu, including without limitation,
15 the violation of her procedural due process rights for proper notice and hearing and
16 a prior judicial determination before any changes were made in her custody of BR
17 and BI under the Fourteenth Amendment to the United States Constitution.

18 56. As a direct and proximate result of the wrongful conduct of Martin as set
19 forth above, Plaintiff Phu has sustained general damages of an estimated \$500,000,
20 according to proof, including, but not limited to: (a) the attorney's fees and costs
21 incurred by Phu in objecting to the findings of the FCS and Martin in the
22 Investigative Report that the allegations against Phu were unsubstantiated and a
23 formal retraction thereof by Placer County in an amount of approximately \$1,578;
24 (b) interest and reimbursable costs of borrowing the sums necessary to pay
25 attorneys fees in an approximate amount of \$75 to date; (c) damage to reputation;
26 and (d) severe emotional and mental distress caused by the loss of familial relations
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1 with her daughter and feelings of shame, anxiety, humiliation, and the loss of a
2 sense of security, dignity, and pride.

3 57. As a direct and proximate result of the wrongful conduct of Martin as set
4 forth above, Plaintiff Phu has been forced to file this action under 42 U.S.C. §1983,
5 and is entitled to recover her attorneys fees and costs under 42 U.S.C. §1988.

6 58. The foregoing acts and omissions of Martin were willful and in conscious
7 disregard of the constitutional rights of Phu and such conduct was knowing,
8 intentional, wrongful, despicable, and oppressive. As a result, punitive damages
9 should be awarded against Martin.

10 **FOURTH CAUSE OF ACTION**

11 **Defendant Martin**

12 **Unlawful Interference With Phu-BR and PHU-BI Relationships**

13 59. Plaintiffs hereby incorporate by reference paragraphs 1 through 35,
14 inclusive, as though set forth fully herein.

15 60. Martin failed to follow the FCS policies, practice, and procedures regarding
16 the removal of a child from the custody of a parent without prior judicial approval,
17 including *inter alia*, failing to:

18 (a) employ the SDM procedures (see ¶ 34);

19 (b) conduct an investigation in good faith, including *inter alia*, failing to
20 investigate the home of Gill before ordering the transfer of custody to Gill;

21 (c) failing to investigate after the transfer of custody to Gill to verify that BR
22 and BI were living with Gill and were doing well.; and

23 (d) failing to confirm with Placer County counsel that there were exigent
24 circumstances for the immediate removal of BR and BI from Plaintiff's custody.

25 61. Martin removed BR and BI from Plaintiff Phu's custody without a court order
26 and without exigent circumstances, i.e., BR or BI were not in "imminent" danger.
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1 In fact, both children were observed by Martin to be in good health and doing well
2 in school prior to Martin's order transferring the children from Plaintiff's custody to
3 Gill's custody. There were no circumstances that could not have been handled with
4 a safety plan that allowed Plaintiff to continue custody of BR and BI.

5 62. Martin removed BR and BI from Plaintiff's custody because Martin
6 substituted her personal, modern, "American" views of what would be good
7 parenting values and cultural norms for BR and BI instead of Plaintiff's traditional
8 Chinese-Vietnamese parenting values and cultural norms, which Martin dismissed
9 as old fashioned and harmful to the children.

10 63. Martin prepared and/or otherwise assisted in the filing with the California
11 DOJ of an unsubstantiated and/or false report about Phu as a perpetrator of
12 emotional abuse on BR and BI. Martin's purpose in filing this report was to
13 discriminate against and discredit Phu because of her traditional Chinese-
14 Vietnamese parenting values and cultural norms.

15 64. The foregoing conduct of Martin was comprised of actions and omissions
16 under the color of state law that were the direct and proximate cause of the
17 violation of the constitutional rights of Plaintiff Phu, including without limitation,
18 the violation of her constitutional right to a mother-daughter relationship under the
19 Fourth and/or Fourteenth Amendment to the United States Constitution.

20 65. As a direct and proximate result of the wrongful conduct of Martin as set
21 forth above, Plaintiff Phu has sustained general damages of an estimated \$500,000,
22 according to proof, including, but not limited to: (a) the attorney's fees and costs
23 incurred by Phu in objecting to the findings of the FCS and Martin in the
24 Investigative Report that the allegations against Phu were unsubstantiated and a
25 formal retraction thereof by Placer County in an amount of approximately \$1,578;
26 (b) interest and reimbursable costs of borrowing the sums necessary to pay
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1 attorneys fees in an approximate amount of \$75 to date; (c) damage to reputation;
2 and (d) severe emotional and mental distress caused by the loss of familial relations
3 with her daughter and feelings of shame, anxiety, humiliation, and the loss of a
4 sense of security, dignity, and pride.

5 66. As a direct and proximate result of the wrongful conduct of Martin as set
6 forth above, Plaintiff Phu has been forced to file this action under 42 U.S.C. §1983,
7 and is entitled to recover her attorneys fees and costs under 42 U.S.C. §1988.

8 67. The foregoing acts and omissions of Martin were willful and in conscious
9 disregard of the constitutional rights of Phu and such conduct was knowing,
10 intentional, wrongful, despicable, and oppressive. As a result, punitive damages
11 should be awarded against Martin.

12 **FIFTH CAUSE OF ACTION**

13 **Defendant Long**

14 **Violation Of Phu's Substantive and Procedural Due Process Rights**

15 68. Plaintiffs hereby incorporate by reference paragraphs 1 through 35,
16 inclusive, as though set forth fully herein.

17 69. In supervising Martin, Long failed to follow the FCS policies, practices, and
18 procedures regarding the removal of a child from the custody of a parent without
19 prior judicial approval, including *inter alia*, failing to verify that Martin had:

20 (a) properly employed the SDM procedures (see ¶ 34);

21 (b) conducted a thorough investigation in good faith, including *inter alia*,
22 investigating the home of Gill before ordering the transfer of custody to Gill;

23 (c) contacted Placer County counsel to confirm that there were exigent
24 circumstances for the immediate removal of BR and BI from Plaintiff's custody; and

25 (d) performed a follow up investigation after the transfer of custody to Gill to
26 confirm that BR and BI were living with Gill and were doing well.

1 70. In the course of supervising Martin, Long became aware that Martin's
2 removal of BR and BI from Plaintiff Phu's custody was in violation of Phu's
3 constitutional rights as set forth in paragraphs 37-39, 44-46, 51-54, 60-63, and 69.
4 Long then failed to correct Martin's actions and return BR and BI to Plaintiff's
5 custody.

6 71. Long further helped Martin to prepare and/or otherwise assist Martin in the
7 filing with the California DOJ of an unsubstantiated and/or false report about Phu
8 as a perpetrator of emotional abuse on BR and BI (Exhibit 5).

9 72. The foregoing conduct of Long was comprised of actions and omissions under
10 the color of state law that were the direct and proximate cause of the violation of
11 the constitutional rights of Plaintiff Phu, including without limitation, the violation
12 of Phu's substantive due process right to a mother-child relationship and Phu's
13 procedural due process rights for proper notice and hearing and a prior judicial
14 determination before any changes were made in her custody of BR and BI under the
15 Fourteenth Amendment to the United States Constitution.

16 73. As a direct and proximate result of the wrongful conduct of Long as set forth
17 above, Plaintiff Phu has sustained general damages of an estimated \$500,000,
18 according to proof, including, but not limited to: (a) the attorney's fees and costs
19 incurred by Phu in objecting to the findings of the FCS and Martin in the
20 Investigative Report that the allegations against Phu were unsubstantiated and a
21 formal retraction thereof by Placer County in an amount of approximately \$1,578;
22 (b) interest and reimbursable costs of borrowing the sums necessary to pay
23 attorneys fees in an approximate amount of \$75 to date; (c) damage to reputation;
24 and (d) severe emotional and mental distress caused by the loss of familial relations
25 with her daughter and feelings of shame, anxiety, humiliation, and the loss of a
26 sense of security, dignity, and pride.

1 75. As a direct and proximate result of the wrongful conduct of Long as set forth
2 above, Plaintiff Phu has been forced to file this action under 42 U.S.C. §1983, and is
3 entitled to recover her attorneys fees and costs under 42 U.S.C. §1988.

4 76. The foregoing acts and omissions of Long were willful and in conscious
5 disregard of the constitutional rights of Phu and such conduct was knowing,
6 intentional, wrongful, despicable, and oppressive. As a result, punitive damages
7 should be awarded against Martin.

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V.
STATE LAW CLAIMS
SIXTH CAUSE OF ACTION

Defendant MARTIN

Violation of California Civil Code §51

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77. Plaintiffs hereby incorporate by reference paragraphs 1 through 35,
8 inclusive, as though set forth fully herein.

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78. Martin's removal and giving of sole custody of BR and BI to Gill was an act of
15 discrimination against Phu based upon Plaintiff's Chinese-Vietnamese ancestry,
16 origin, and cultural traditions of child rearing.

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79. Martin removed BR and BI from Plaintiff's custody because Martin
substituted her personal, modern, "American" views of what would be good
parenting values and cultural norms for BR and BI instead of Plaintiff's traditional
Chinese-Vietnamese parenting values and cultural norms, which Martin dismissed
as old fashioned and harmful to the children.

80. Martin prepared and/or otherwise assisted in the filing with the California
DOJ of an unsubstantiated and/or false report about Phu as a perpetrator of
emotional abuse on BR and BI. Martin's purpose in filing this report was to
discriminate against and discredit Phu because of her traditional Chinese-
Vietnamese parenting values and cultural norms.

81. As a direct and proximate result of the wrongful conduct of Martin as set
forth above, Plaintiff Phu has sustained general damages of an estimated \$500,000,
according to proof, including, but not limited to: (a) the attorney's fees and costs
incurred by Phu in objecting to the findings of the FCS and Martin in the
Investigative Report that the allegations against Phu were unsubstantiated and a
formal retraction thereof by Placer County in an amount of approximately \$1,578;
(b) interest and reimbursable costs of borrowing the sums necessary to pay

1 attorneys fees in an approximate amount of \$75 to date; (c) damage to reputation;
2 and (d) severe emotional and mental distress caused by the loss of familial relations
3 with her daughter and feelings of shame, anxiety, humiliation, and the loss of a
4 sense of security, dignity, and pride.

5 Additionally, pursuant to California Civil Code §52(a) and §52.1(b), Plaintiff
6 Phu is entitled to treble the amount of consequential damages that are proven.

7 82. As the direct and proximate result of the wrongful conduct of Martin as set
8 forth above, Plaintiff Phu is entitled to recover her attorneys fees and costs under
9 Civil Code § 52(a) and § 52.1(h).

10 **SEVENTH CAUSE OF ACTION**

11 **Defendant Long**

12 **Violation of California Civil Code §51**

13 83. Plaintiffs hereby incorporate by reference paragraphs 1 through 35,
14 inclusive, as though set forth fully herein.

15 84. In supervising Martin, Long became aware that:

16 (a) Martin removed BR and BI from Plaintiff's custody because Martin
17 substituted her personal, modern "American" views of what would be good
18 parenting values and cultural norms for BR and BI in place of Plaintiff's
19 traditional Chinese-Vietnamese parenting values and cultural norms; and

20 (b) Martin's removal and giving of sole custody of BR and BI to Gill was
21 an act of discrimination against Phu based upon Plaintiff's Chinese-
22 Vietnamese ancestry, origin, and cultural traditions of child rearing.

23 However, Long took no action either at the time of the events or thereafter to
24 correct the wrongful conduct of Martin or to return BR and BI to the custody of Phu.

25 85. Long further helped Martin to prepare and/or otherwise assist Martin in the
26 filing with the California DOJ of an unsubstantiated and/or false report about Phu
27

1 as a perpetrator of emotional abuse on BR and BI (Exhibit 5).

2 86. As a direct and proximate result of the wrongful conduct of Long as set forth
3 above, Plaintiff Phu has sustained general damages of an estimated \$500,000,
4 according to proof, including, but not limited to: (a) the attorney's fees and costs
5 incurred by Phu in objecting to the findings of the FCS and Martin in the
6 Investigative Report that the allegations against Phu were unsubstantiated and a
7 formal retraction thereof by Placer County in an amount of approximately \$1,578;
8 (b) interest and reimbursable costs of borrowing the sums necessary to pay
9 attorneys fees in an approximate amount of \$75 to date; (c) damage to reputation;
10 and (d) severe emotional and mental distress caused by the loss of familial relations
11 with her daughter and feelings of shame, anxiety, humiliation, and the loss of a
12 sense of security, dignity, and pride.

13 Additionally, pursuant to California Civil Code §52(a) and §52.1(b), Plaintiff
14 Phu is entitled to treble the amount of consequential damages that are proven.

15 87. As the direct and proximate result of the wrongful conduct of Long as set
16 forth above, Plaintiff Phu is entitled to recover her attorneys fees and costs under
17 Civil Code § 52(a) and § 52.1(h).

18 **EIGHTH CAUSE OF ACTION**

19 **Defendant Placer County**

20 **Respondeat Superior Liability Under California**
21 **Government Code §815.2(a) And/Or §815.6**

22 88. Plaintiffs hereby incorporate by reference paragraphs 1 through 35,
23 inclusive, as though set forth fully herein.

24 89. Defendant Placer County as the employer of Martin and Long, has full
25 authority to train, supervise, and direct all of the actions of Martin and Long while
26 working for FCS.

1 90. California Civil Code §51 imposes a mandatory duty upon Placer County, as
2 the master of Defendant Long, to protect against discrimination based upon
3 ancestry, national origin, and heritage.

4 91. Martin, in her capacity and in the performance of her duties as a social
5 worker for FCS, engaged in the acts and omissions alleged in the Fifth Cause of
6 Action, which acts and omissions are hereby incorporated by reference.

7 92. Long, in her capacity and in the performance of her duties as a supervisor of
8 Long, engaged in the acts and omissions alleged in the Sixth Cause of Action, which
9 acts and omissions are hereby incorporated by reference.

10 93. As a direct and proximate result of the wrongful conduct of Martin and Long
11 set forth above, for which Defendant Placer County is liable under the doctrine of
12 *respondeat superior* and/or California Government Code §815.6, Plaintiff Phu has
13 sustained general damages of an estimated \$500,000, according to proof, including,
14 but not limited to: (a) the attorney's fees and costs incurred by Phu in objecting to
15 the findings of the FCS and Martin in the Investigative Report that the allegations
16 against Phu were unsubstantiated and a formal retraction thereof by Placer County
17 in an amount of approximately \$1,578; (b) interest and reimbursable costs of
18 borrowing the sums necessary to pay attorneys fees in an approximate amount of
19 \$75 to date; (c) damage to reputation; and (d) severe emotional and mental distress
20 caused by the loss of familial relations with her daughter and feelings of shame,
21 anxiety, humiliation, and the loss of a sense of security, dignity, and pride.

22 Additionally, pursuant to California Civil Code §52(a) and §52.1(b), Plaintiff
23 Phu is entitled to treble the amount of consequential damages that are proven.

24 94. As the direct and proximate result of the wrongful conduct of Martin and
25 Long as set forth in the Fifth and Sixth Causes of Action, for which Defendant
26 Placer County is liable under the doctrine of *respondeat superior* and/or California
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1 Government Code §815.6, Plaintiff Phu is entitled to recover her attorneys fees and
2 costs under Civil Code §52(a) and §52.1(h).

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**VI.
PRAYER**

Wherefore, Plaintiff prays for judgment against Defendants as follows:

1. For general, consequential, and special damages in the sum set forth in each count according to proof;
2. For punitive damages in a sum according to proof in counts Three to Five;
3. For reasonable attorney's fees and costs pursuant to 42 U.S.C. §1988 in counts One Through Five;
4. For reasonable attorney's fees and costs pursuant to California Civil Code §51 and §52 in counts Sixth through Eight;
5. For treble damages (3x consequential) in counts Five through Eight;
6. For cost of suit herein incurred for all counts; and
7. For such other and further relief as the Court deems just and proper.

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Dated: May 10, 2016

Respectfully,

By: /s/ Patrick H. Dwyer
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