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Dan Stormer, Esq. (S.B. #101967)
Anne Richardson, Esq. (S.B. #151541)
Mohammad Tajsar, Esq. (S.B. #280152)
HADSELL STORMER

RICHARDSON & RENICK LLP
128 N. Fair Oaks Avenue
Pasadena, CA 91103
Telephone: (626) 585-9600
Facsimile: (626) 577-7079

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County Of Los Angeles

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Sherri R. Carter, Executive Officer/Clerk
By: Judi Lara, Deputy

Robert Newman, Esq. (S.B. #86534)
ROBERT D. NEWMAN, ATTORNEY AT LAW
Los Angeles, CA 90010
Telephone: (213) 487-7211
Facsimile: (213) 487-0242

Attorneys for Petitioners and Plaintiffs
ADVOKIDS, *et al.*

[ADDITIONAL COUNSEL
LISTED ON NEXT PAGE]

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

ADVOKIDS, HEATHER WHELAN,
PATRICK J. GUSKE, and CARRIE
CHUNG,

Petitioners and Plaintiffs,

vs.

COUNTY OF LOS ANGELES, LOS
ANGELES COUNTY DEPARTMENT OF
CHILDREN AND FAMILY SERVICES,
PHILLIP BROWNING and DOES 1-10,

Respondents and Defendants.

BS150163

Case No:

**PETITION FOR WRIT OF MANDATE
UNDER C.C.P. SECTION 1085 AND
COMPLAINT FOR INJUNCTIVE AND
DECLARATORY RELIEF UNDER C.C.P.
SECTION 526 (a)**

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[ADDITIONAL COUNSEL CONTINUED
FROM FIRST PAGE]

Robert Jacobs, Esq. (S.B. #102745)
1000 Walnut Street, #212
Pasadena, CA 91106
Telephone: (626) 795-1986
Facsimile: (626) 795-3204

Deborah Dentler, Esq. (S.B. #92957)
LAW OFFICE OF DEBORAH DENTLER
1125 E. Broadway, # 146
Glendale, CA 91205
Telephone: (818) 548-3681
Facsimile: (626) 577-0124

I.

INTRODUCTORY STATEMENT

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3 1. Petitioners and Plaintiffs Advokids, a non-profit organization, Heather Whelan, a
4 foster parent, Patrick J. Guske, an adoptive parent and former foster parent, and Carrie Chung, an
5 adoptive parent, former foster parent and licensed family therapist, bring this action because
6 Respondent and Defendant Los Angeles County Department of Children and Family Services
7 (“DCFS”) routinely fails to provide foster parents with the requisite notices of court hearings
8 concerning children in their care and fails to comply with regulations and other requirements that
9 entitle foster parents to written notice and an opportunity to object and be heard when foster
10 children are removed from their homes.

11 2. The California Legislature has found and declared that:

12 “Foster parents are one of the most important sources of information about the
13 children in their care. Courts, lawyers, and social workers should have the benefit
14 of caregivers' perceptions. Both federal and state law recognize the importance of
15 foster parents' participation in juvenile court proceedings. Federal law requires
16 that foster parents and other caregivers receive expanded opportunities for notice,
17 the right to participate in dependency court review and permanency hearings, and
18 the right to communicate concerns to the courts. State law similarly provides that
19 caregivers may submit their concerns to courts in writing.”

20 Welf. & Inst. Code §16010.4(b).

21 3. Welfare and Institutions Code § 293(a)(6) and (c), for example, mandate that when
22 the court has removed a child from the physical custody of his or her parent or legal guardian,
23 DCFS shall give notice of review hearings to the current caregiver of the child. Welfare and
24 Institutions Code § 294(a)(8) mandates that foster parents “shall” receive advance notice of any
25 hearings to decide whether children in their care be placed for adoption or in long term foster care
26 and that these foster parents may thereafter attend all hearings and submit information in writing
27 to the juvenile court. Welfare and Institutions Code, § 295(a)(6) similarly mandates that foster
28 parents “shall” receive advance notice of any hearings to review the status of a permanent plan of

1 adoption or legal guardianship for children within their care. In all these cases, the foster parents
2 may attend these hearing and submit written information to the juvenile court. DCFS Procedural
3 Guide 0300-306.05, *Petitions*, p.4. Additionally, state regulations and DCFS Procedural Guides
4 entitle foster children’s caregivers to: receive written notice in most circumstances before foster
5 children are removed from a foster home; submit written administrative grievances objecting to
6 the removal of children, and be given speedy and fair review and decision of these grievances by
7 DCFS’ Director.

8 4. All too often, DCFS does not, however, comply with the requirements of the
9 Welfare and Institutions Code, California Rules of Court, regulations of the California
10 Department of Social Services, and DCFS’ own procedures in keeping foster parents apprised of
11 what is being or will be done with the foster children living in their homes.

12 5. As a result of DCFS’ violations of its legal duties, juvenile dependency courts are
13 deprived of relevant information regarding the current status of foster children, and make judicial
14 decisions about foster children without the benefit of readily-available information. Foster
15 parents and other caregivers are an especially critical source of information in part because too
16 few DCFS employees are responsible for monitoring these children’s welfare.

17 6. A series of grand jury investigations, management audits, and governmental
18 commissions over a period of many years has concluded that DCFS either does not gather the
19 information it needs to protect foster children, or fails to put it to proper use. In its 1999-2000
20 report, the Los Angeles County Civil Grand Jury excoriated the County’s foster care system,
21 observing that “[t]he best interests of the child are rarely paramount in considering the placement
22 options for children in the system.” In March, 2012, California’s State Auditor concluded that
23 DCFS has “struggled to perform required assessments of homes and caregivers prior to placing
24 children with relatives.” The following month, Los Angeles County’s Children’s Special
25 Investigations Unit delivered to the Board of Supervisors a *Report Regarding DCFS Recurring*
26 *Systemic Issues*, which identified at least 13 child deaths that might have been prevented had
27 Respondents taken basic steps to assess risks. As recently as April 18, 2014, Los Angeles
28 County’s Blue Ribbon Commission on Child Protection issued a report entitled *The Road to*

1 *Safety for Our Children*, which concluded that “judges confirmed that the judicial system
2 operates under the burden of too many cases and, at times, incomplete or inaccurate information.”
3 “Foster parents have the fewest rights or protections and often have the least amount of
4 information about the children in their home and about the system overall...Foster parents are
5 typically left out of critical decision-making processes (e.g., they are not allowed in court),
6 although they spend the most time with the child.” Grand Jury Report at page 134.

7 7. Given all of DCFS’ shortcomings, it is more important than ever that judicial
8 decision makers consider information submitted by children’s caregivers before making high-
9 stakes rulings that affect children’s lives. What the best interests of the child are must be
10 determined case-by-case, and will vary for each child. Sometimes, being reunited with a family
11 member is the best outcome. Sometimes it is not. In either case, the Legislature has mandated
12 that juvenile dependency courts should receive the information they can, from the sources that
13 have pertinent information, including in particular foster parents, to make the best possible
14 decision based on the available evidence.

15 8. Petitioners and Plaintiffs (“Petitioners”) have brought this action to prohibit
16 Respondents and Defendants DCFS, its current Director and the County of Los Angeles
17 (“Respondents”) from failing to comply with their legal duties on providing notice to foster
18 parents regarding the children in their care. Petitioners are seeking such relief by a writ of
19 mandate pursuant to Code of Civil Procedure § 1085 or, in the alternative, by a taxpayer action
20 for injunctive and declaratory relief pursuant to Code of Civil Procedure § 526a.

21 **II.**

22 **PARTIES**

23 9. Petitioner Advokids (“Advokids”) is a nonprofit organization headquartered in
24 Corte Madera, California, with a branch office in Los Angeles County. Advokids is staffed by
25 attorneys who specialize in juvenile dependency law. Advokids operates a telephone “hotline”
26 (1-877-ADVOKID) which provides free legal and procedural information and referrals for
27 children’s caregivers, relatives, Court Appointed Special Advocates (“CASA”) volunteers, social
28 workers, children’s attorneys, and anyone concerned about a child in foster care in California.

1 Advokids also maintains a website (www.advokids.org) to inform advocates for foster children
2 about juvenile dependency law, agency procedures, and court procedures. Advokids conducts
3 trainings for lawyers, CASA volunteers, social workers, mental health providers and foster and
4 adoptive parents. The organization promotes public awareness of the needs of foster children for
5 safety, security, placement stability, mental and physical health services. The organization
6 advocates for improved standards of practice in juvenile courts and improved access to juvenile
7 courts for foster child advocates, including caregivers, many of whom at all relevant times were
8 residents of Los Angeles County. Advokids regularly offers training classes to Los Angeles
9 County professionals and foster parents, informs the public about the rights of foster parents to
10 notice and participation in juvenile court proceedings, and advocates for improved child welfare
11 practices. Advokids has a direct beneficial interest in Respondents' performance of their legal
12 duties alleged below.

13 10. Petitioner Heather Whelan is a fifth- grade schoolteacher who resides in Los
14 Angeles County. Ms. Whelan has been a certified foster parent since 2010 and has provided foster
15 care for approximately twenty children in the Los Angeles County foster care system. This
16 Petitioner has a direct beneficial interest in Respondents' performance of their legal duties alleged
17 below. She has also paid a property tax to the County of Los Angeles and income tax to the State
18 of California within one year before the commencement of this action.

19 11. Petitioner Patrick J. Guske is an aeronautical engineer who resides in Los Angeles
20 County. Mr. Guske and his wife were foster parents to twin babies from 2012 until 2013, at
21 which time they adopted the twins. This Petitioner has a direct beneficial interest in
22 Respondents' performance of their legal duties alleged below. He has also paid a property tax to
23 the County of Los Angeles and income tax to the State of California within one year before the
24 commencement of this action.

25 12. Petitioner Carrie Chung is a licensed Clinical Social Worker who resides in Los
26 Angeles County. Ms. Chung has provided foster care for four juvenile court dependents. This
27 Petitioner has a direct beneficial interest in Respondents' performance of their legal duties alleged
28 below. She has also paid a property tax to the County of Los Angeles and an income tax to the

1 State of California within one year before the commencement of this action.

2 13. Respondent and Defendant County of Los Angeles (“County”) is a local
3 governmental entity, duly authorized and formed under the laws of the State of California. Gov’t
4 Code §900.4. The County’s Board of Supervisors is responsible for administering child welfare
5 services in Los Angeles County. Cal. Const. Art. XI § 4, Los Angeles County Charter Articles I
6 and III, Gov’t Code §25303 and Welf. & Inst. Code §§ 202.5, 272, 281, 10800 and 16500 *et seq.*

7 14. Respondent DCFS is the agency responsible for administering child welfare
8 services in Los Angeles County, for locating placements for children in the County foster care
9 system, for recruiting, training, and compensating residents of Los Angeles County to serve as
10 foster parents, and for ensuring the safety and well-being of children under court supervision.
11 Welf. & Inst. Code §§ 10800 and 16501 and Los Angeles County Code Chapter 2.38.

12 15. Respondent Philip Browning is the current Director of DCFS. Under Welfare and
13 Institutions Code § 10802 and Los Angeles County Code § 2.38.040, Respondent Browning is
14 responsible for administering child welfare services in Los Angeles County, and for ensuring the
15 safety and well-being of children under court supervision pursuant to Welfare & Institutions Code
16 § 300, state regulations, and the DCFS policies and procedures manual. Respondent Browning is
17 sued in his official capacity.

18 16. Petitioners are informed and believe, and on that basis allege, that Respondents
19 acted as agents of the remaining Respondents, or ratified the conduct of the others, and that each
20 is therefore jointly liable for the acts alleged herein.

21 17. Petitioners are unaware of the true names and legal capacities of the Respondents
22 sued here as DOES 1 through 10 and, therefore, sue those Respondents by such fictitious names.
23 Petitioners will amend their complaint to allege their true names and capacities when the same
24 has been ascertained. Petitioners are informed and believe, and on this basis allege, that each
25 DOE Respondent is in some way legally responsible for the acts, omissions, and damages alleged
26 here to have been caused by each remaining Respondent.

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III.

FACTUAL BACKGROUND

A. Facts Common to All Parties

Children’s Entering, Remaining and Departing from the Foster Care System

18. The foster care system provides services to children who cannot remain in their parents’ or guardian’s homes. Many children enter foster care at one of the worst moments in their lives – when a peace officer or social worker has reason to believe that a parent has “abused, neglected [or] abandoned” them within the meaning of Welfare & Institutions Code §§ 300, 305, 306; Cal. R. Ct., Rule 5.520. A child can also enter foster care when a parent or guardian consents to a period of voluntary supervision. Welf. & Inst. Code §§ 11400(o) and 16507.4(b); DCFS Procedural Guide 0100-510.21, *Voluntary Placement*.

19. A county’s department of child welfare services (“CWS”) must file a petition in juvenile dependency court within 48 hours of the child’s removal from his or her home, not including non-judicial days, to “declare” the child a dependent of the court, or release the child to his or her parents. Welf. & Inst. Code § 313. The juvenile court must hold an “initial hearing” (known as a “detention hearing”) no later than the next judicial day. Welf. & Inst. Code § 315; Cal. R. Ct., Rules 5.501-5.504, 5.668. At the detention hearing, the court must decide whether to release of the child from custody, or detain the child in foster care. Welf. & Inst. Code § 319. If the court detains the child in foster care, then CWS must develop and implement a family reunification plan unless the juvenile court places the child on a “fast track to permanency” at a “disposition” hearing. Welf. & Inst. Code §§ 319(e), 361.5(b); DCFS Procedural Guide 0080-508.05, *Fast Track to Permanency (FTP) Provisions*.

20. Reunification services are time limited. Parents are generally entitled to a maximum of six or twelve months of reunification services, measured from the date the child entered foster care, depending on the age of the child at the time of detention. Welf. & Inst. Code §§ 361.5(A)(1)(B). The juvenile court has discretion to extend reunification services under certain circumstances. Welf. & Inst. Code §§ 361.5 (a)(3); 366.22(b). After a maximum period of 24 months, the juvenile court must terminate reunification services and order a permanent plan

1 hearing unless the parent has substantially resolved the problem(s) that prompted the court's
2 intervention. Welf. & Inst. Code §§ 361.5(a)(3); 361.5 (a)(1); 366.21(g)(1); 366.22 and 366.25(a).

3 21. Once the court orders a permanent plan hearing, the juvenile court's only options
4 are to place the child for adoption, under legal guardianship, or in long-term foster care with a
5 foster parent or relative "willing to provide, and capable of providing, a stable and permanent
6 home for the child and [who] must have substantial psychological ties with the child." Cal. R.
7 Ct., Rule 5.725(d)(7)(D). The court must terminate parental rights when the child is "adoptable"
8 unless specified exceptional circumstances exist. Welf. & Inst. Code § 366.26(b).

9 22. DCFS has published "Procedural Guides" designed to ensure that children's social
10 workers ("CSWs") comply with federal and state statutes and regulations. The Legislature and
11 DCFS have adopted "concurrent planning" procedures to "move children through the child
12 welfare system quickly to . . . a secure permanent home." DCFS Procedural Guide 0080-507.20,
13 *Concurrent Planning and the Concurrent Planning Assessment*, p. 1. Planning a permanent
14 placement for a child begins with the "initial removal from his or her parents." DCFS Procedural
15 Guide 0300-503.21, *Concurrent Planning & Termination of Parental Rights (TPR)-Related*
16 *Activities*, p. 1. Concurrent planning procedures require DCFS to approve all foster parents to
17 serve not only as temporary foster parents, but also as prospective adoptive parents. DCFS Online
18 Policies and Procedures, Handbook 11, *Concurrent Planning and Adoption*, §§ 1 and 1.1. This
19 ensures that if family reunification proves impossible, the child can remain in the same home and
20 be adopted rather than move to a new home to achieve legal permanency.

21 23. Most non-relative foster placements are now "concurrent homes," or "fost-adopt
22 homes" wherein the foster parents have agreed to adopt the child should reunification not occur.
23 DCFS Procedural Guide 0200-509.30, *Fost-Adopt and Adoptive Placements, passim*. DCFS
24 regulations refer to the families in these homes as "prospective adoptive families." DCFS
25 Procedural Guide 0200-507.10, *Identifying a Prospective Adoptive Family for a Child Through*
26 *the Placement and Recruitment Unit (PRU), passim*.

27 24. By its very nature, concurrent planning, also known as "early adoptive planning,"
28 encourages foster parents and foster children to develop attachments long before the juvenile

1 court orders a permanent plan hearing. DCFS Procedural Guide 0080-507.20(B)(1)(c),
2 *Concurrent Planning and the Concurrent Planning Assessment (CPA)* (requiring Children’s
3 Social Workers to “ask the current caregiver . . . whether s/he would like to be considered as a
4 permanency option for the child shortly after placement”); *id.* at 0080-507.20(B)(7)(a) (requiring
5 CSWs to “obtain a statement from the child regarding permanency planning” shortly after
6 detention.) A child who has been removed from his natural parent’s custody often forms a
7 parent-child relationship with the substitute caregiver.

8 25. DCFS Procedural Guide 0200-509.30, *Pre-Placement Steps: Fost-Adopt and*
9 *Adoptive Placements*, and 0200-501.25, *Preparing Children for Adoption*, require prospective
10 adoptive parents to help prepare foster children for adoption. The goals of preparation are to:

- 11 a. Help the child understand how s/he got where s/he is.
- 12 b. Understand the child’s beliefs about his or her current situation and correct
13 any misconceptions.
- 14 c. Help the child mourn the loss of parents and previous caregivers, deal with
15 fantasies, resolve past attachments, and accept that s/he cannot live with
16 those previous caregivers.
- 17 d. Help the child deal with feelings of anger, loss, and grief and grieving.
- 18 e. Help important attachment figure(s) give the child permission to love
19 someone else.
- 20 f. Help the child learn that she can love more than one set of parents. In
21 learning to love the [prospective] adoptive parent, s/he doesn’t have to
22 reject the birth parents.
- 23 g. Give the child a sense of where s/he is going.

24 Procedural Guide 0200-501.25, *supra*, at p.2

25 **Number of Children in Foster Care**

26 26. According to DCFS’ website, as of June 30, 2014, more than 20,000 children were
27 under DCFS’ supervision living in out-of-home placements, with 1,389 children in DCFS foster
28 family homes and another 5,086 children in foster family agency (“FFA”) certified homes. There

1 are 46 FFAs currently under contract with the County of Los Angeles to provide foster care.

2 27. During June of 2014, more than 13,000 children were referred to DCFS for
3 investigation based on allegations of sexual, physical or emotional abuse, severe or general
4 neglect, exploitation, caretaker absence or incapacity or at risk regarding sibling abuse. The
5 children within DCFS' jurisdiction are disproportionately Hispanic (more than 50%) and African-
6 American (more than 25%).

7 **Years Spent by Children in Foster Care and the Consequences**

8 28. Many children spend their formative years in foster care. For these children, foster
9 care is a home, not just a temporary refuge. In California, over two thirds (69.5%) of foster
10 children who had entered care when they were older than 12 "aged out" at age 18 without finding
11 a permanent family. Almost a third (30.5%) of the children who had entered foster care before
12 their twelfth birthday aged out of foster care without finding a permanent home. Child Welfare
13 Outcomes Report 2012, U.S. State Dept. of Health and Human Services, California Outcomes
14 Data. In Los Angeles County, more than half of the children who "age out" of foster care are
15 black or Hispanic. Needell, B, et al., *CCWIP Report* (2014) Retrieved 7/11/14 from University of
16 California at Berkeley, California Child Welfare Indicators Project Website. URL:
17 http://cssr.berkeley.edu/ucb_childwelfare/C3m3.aspx.

18 29. A child who suffers the loss of a parent suffers an increased risk of emotional and
19 social problems in adulthood. This risk further increases if the child develops bonds with a new
20 potential family and then is forced to separate from these new parental figures. Researchers have
21 concluded that "[d]isruptions to early relationships resulting in insecure attachment experiences
22 and representations make it difficult for individuals to relate well to other people for the rest of
23 their lives." See, e.g., Marcus T. Boccaccini & Eleanor Willemson, *Contested Adoption and the*
24 *Liberty Interest of the Child*, 10 St. Thomas L. Rev. 211, 219 (1997).

25 30. Many children – disproportionately minority children – spend their entire
26 childhoods in foster care only to "age out" of the system at ages eighteen or twenty-one, without
27 ever being adopted or reunified with their families of origin. Sylvia Junn and Jennifer Rodriguez,
28 *COMMENT: Out on Their Own. California's Foster Youth and the Inequality of the Independent*

1 *Living Program*, 6 UC Davis. J.Juv.L and Policy 189 (2002). These children suffer
2 developmental and emotional damage from a loss of trust in adults and from a lack of stability
3 and continuity of attachment to others. Foster youths “receive little to no formal preparation [for
4 adulthood] from the state.” Melinda Atkinson, *Aging Out of Foster Care: Towards a Universal*
5 *Safety Net for Former Foster Care Youth*, 43 Harv. C.R. – C.L. L. Rev. 182, 191 (2008). Children
6 who “age out” of foster care are therefore one of the highest-risk groups in America for just about
7 every adverse social phenomenon, from high mortality to high unemployment. *Id.*

8 **Notices to Foster Parents Regarding Children in Their Care**

9 31. Throughout the time that children remain in the foster care system, caregivers are
10 supposed to be given notices and opportunities to be heard so that the juvenile courts, social
11 workers and lawyers will have the benefit of the foster parents’ perceptions about the children in
12 their care. Welf. & Inst. Code § 16010.4(b). A 2002 study commissioned by the California
13 Administrative Office of the Courts surveyed judges’ attitudes toward foster parents and reported
14 that judges “overwhelmingly” expressed a desire to hear from children’s caregivers before
15 judicial decisions are made. R. Deihl, *et al.*, *Caregivers and The Courts: Improving Court*
16 *Decisions Affecting Children in Foster Care*,” by Center for Families, Children & the Courts,
17 Administrative Office of the Courts (Jan. 2002) at 164.

18 32. Welfare and Institutions Code § 16010.4(f) sets forth a general notice requirement
19 that “Caregivers should have knowledge,” among other things, of the following:

20 “(1) Their right to receive notice of all review and permanency hearings
21 concerning the child during the placement.

22 (2) Their right to attend those hearings or submit information they deem
23 relevant to the court in writing.

24 (3) The “Caregiver Information Form” (Judicial Council Form JV-290), which
25 allows the caregiver to provide information directly to the court.”

26 33. Welfare & Institutions Code §361.5(f) governs disposition hearings when DCFS
27 recommends that the court place a child on a “fast track to permanency,” *i.e.* refuse to provide
28 reunification services, as described at ¶20 above. Welfare & Institutions Code § 291(a)(8) and

1 (c)(1) govern notice of such hearings.

2 34. Under DCFS Procedural Guide Sections 0300-306.05, *Notice of Hearing in*
3 *Juvenile Court*, and 0080-508.05, *Fast Track to Permanency*, DCFS “shall provide notice to the
4 current caregiver” at least five days before such disposition hearings, unless the hearing is set in
5 less than five days and then at least 24 hours prior to the hearing.

6 35. Rule 5.534(n)(3) of the California Rules of Court mandates that social workers
7 “must provide” certain documents to a child’s “current caregiver” at least ten days prior to each
8 regular review hearing and any dispositional hearing that serves as a permanency hearing so that
9 the caregiver may provide written information to the court for the hearing if the caregiver wishes
10 to do so. Specifically, Rule 5.534(n)(3) requires social workers to give caregivers a “summary of
11 the recommendations for disposition,” “any recommendations for change in custody or status,” a
12 blank copy of the Caregiver Information Form (Judicial Council form JV-290) and a copy of the
13 “Instruction Sheet for Caregiver Information Form” (Judicial Council form JV 290 INFO).

14 36. Welfare and Institutions Code §§ 366.21, 366.22 and 366.25 govern periodic
15 review hearings to review the status of dependent children. Advance written notice of these
16 periodic review hearings must be given in accordance with Welfare & Institutions Code § 293.
17 When the court has removed a child from the physical custody of his or her parent or legal
18 guardian, “[t]he social worker . . . shall give notice of the review hearings . . . to the current
19 caregiver of the child, including the foster parents. . . or the foster family agency having custody
20 of the child” not earlier than 30 days, nor later than 15 days, before the hearing. Welf. & Inst.
21 Code § 293(a)(6) and (c). “In a case in which a foster family agency is notified of the hearing
22 pursuant to this section, and the child resides in a foster home certified by the foster family
23 agency, the foster family agency shall provide timely notice of the hearing to the child’s
24 caregivers.” *Id.* at § 293(a)(6).

25 37. Notices of review hearings are required to contain certain information, at a
26 minimum. “The notice shall contain a statement regarding the nature of the hearing to be held and
27 any change in the custody or status of the child being recommended by the supervising agency.”
28 Welf. & Inst. Code § 366.21(d). In addition: “the social worker shall, at least 10 calendar days

1 prior to the [review] hearing, provide a summary of his or her recommendation for disposition to
2 any foster parents . . . or foster family agency having the physical custody of the child.” Welf. &
3 Inst. Code § 366.21(c). “The social worker shall [also] include a copy of the Judicial Council
4 Caregiver Information Form (J-290) with the summary of recommendations to the child’s foster
5 parents . . . along with information on how to file the form with the court.” *Id.* Finally, Welfare
6 and Institutions Code § 293(f) states: “Notice to the current caregiver of the child, including a
7 foster parent, . . . shall indicate that the person notified may attend all hearings or may submit any
8 information he or she deems relevant to the court in writing.”

9 38. Welfare and Institutions Code § 366.26 governs selection and implementation
10 hearings, *i.e.*, hearings to decide whether to terminate parental rights, order that the children be
11 placed for adoption or in long term foster care or establish legal guardianship of the children.
12 Welfare and Institutions Code § 294(a)(8) mandates that the “social worker . . . shall give notice
13 of a selection and implementation hearing held pursuant to Section 366.26 [to] . . . the current
14 caregiver of the child, including foster parents” Any foster parents who received these
15 notices “may attend all hearings and may submit any information he or she deems relevant to the
16 court in writing.” Welf. & Inst. Code § 294(a)(8). “Service of the notice shall be completed at
17 least 45 days before the hearing date.” Welf. & Inst. Code § 294(c)(1).

18 39. Rule 5.534 of the California Rules of Court states that the current caregiver of the
19 child “has the right to be heard” in “each” statutory review hearing, permanency hearing and
20 section 366.26 hearing, “including the right to submit information about the child before the
21 hearing.” Cal. R. Ct., Rule 5.534(n)(1) and (2). “Written information about the child may be
22 submitted to the court using the Caregiver Information Form (form JV-290) or in the form of a
23 letter to the court.” Cal. R. Ct., Rule 5.534(n)(2).

24 40. Rule 5.708(b) of the California Rules of Court mandates that DCFS must serve
25 written notice of review hearings on Judicial Council Form JV-280 in the manner provided in
26 Welfare and Institutions Code § 293, to all persons or entities entitled to notice under § 293. Item
27 5(a) of form JV-280 advises “the present custodians of the children” that they “may be present at
28 the hearing” and may “submit relevant written material to the court.”

1 shall be given at least seven calendar days' advance written notice of intent to remove a child, and
2 of the right to request a grievance review."

3 46. MPP § 31-020 explains that the purpose of the grievance procedure is to prevent
4 unnecessary disruption of foster families, and reduce the risk of trauma associated with
5 unnecessary placement changes. It requires:

6 * * *

7 .3 Review request procedures shall include the following:

8 .31 The county shall explain the right to a review, and shall provide a copy of
9 the grievance procedure regulations to the following parties:

10 .311 A legal parent/guardian at the time the child is placed.

11 .312 A foster parent at the time of licensing.

12 .313 Any complainant at the time a complaint is filed.

13 .32 A review request shall be filed in the form of a written statement signed by
14 the complainant.

15 * * *

16 .35 The county shall assist in preparation of the complaint if assistance is
17 requested or necessary.

18 .4 The review shall be held within ten working days from the date the written
19 complaint is received by the agency.

20 .41 Notice of the date, time and place for the review shall be received by all
21 parties not less than five calendar days prior to the hearing

22 * * *

23 .7 Unless the child is in immediate danger, he/she shall remain with the foster
24 parent(s), pending [resolution of the grievance].

25 47. DCFS Procedural Guide 0100-502.52, *Seven Day Prior Notice to Foster Parents*
26 *of Intent to Remove Child and Grievance Review Regarding Placement/Removal of a Child From*
27 *a Foster Home*, instructs CSWs (the children's social workers) to comply with MPP §§ 31-020
28 and 31-040 by providing a 7-day notice to foster parents before removing a child from their

1 homes, and to notify foster parents of their grievance rights:

2 **A. WHEN: AT THE INITIAL PLACEMENT OF A CHILD**

3 CSW Responsibilities

4 1. At the time of the initial placement, discuss the Grievance Review process
5 with the child, the parent(s) or legal guardian(s), and the relative or non relative
6 extended family member, that you are placing with, and provide the caregiver with
7 . . . [forms] DCFS 4161 and DCFS 4161 1 [i.e., the forms necessary to initiate the
8 grievance process].

9 **B. WHEN: NOTIFICATION REQUIREMENTS OF INTENT TO**
10 **REMOVE A CHILD**

11 CSW Responsibilities

12 1. Unless the child's situation warrants removal without prior notification as
13 stated in the Grievance Process . . . , notify the caregiver in writing, of the planned
14 removal, at least seven calendar days prior to the expected removal/replacement
15 date. . . .

16 48. MPP § 31-440.2.21 through 25 and DCFS Procedural Guide 0100-502.52, *Seven*
17 *Day Prior Notice to Foster Parents of Intent to Remove Child and Grievance Review Regarding*
18 *Placement/Removal of a Child from a Foster Home*, exempt removals based on court orders or
19 exigent circumstances from the grievance process.

20 49. Respondents implemented revised grievance and seven-day notice procedures on
21 March 26, 2014, and highlighted those revisions in a “Weekly Policy Alert” the following day.
22 The Alert reminded CSWs to comply with DCFS Procedural Guide 0100-502.52, but has had
23 little or no practical effect on Respondents’ actual practice.

24 **Failure to Comply with Notice Requirements**

25 50. Petitioners are informed and believe and, based upon such information and belief,
26 allege that at all times material herein, Respondents have failed to send the notices required by
27 Welfare and Institutions Code §§ 291(a)(8), 293(a)(6), 294(a)(8) and 295(a)(6) 366.21, 366.22
28 and MPP § 31-440.1 to foster parents and foster family agencies in Los Angeles County.

- 1 placement, or prior to removal of a child in their care;
- 2 e. Refuse to accept requests for grievance hearing that are not on Form 4161;
- 3 f. Refuse to provide timely grievance reviews upon receipt of a grievance
- 4 submitted by foster parents;
- 5 g. Refuse to decide grievances within the deadlines required by state
- 6 regulations; and
- 7 h. Remove children from foster parents with whom they have developed a
- 8 parent-child relationship in order to retaliate against the foster parents for
- 9 engaging in lawful behavior.

10 **Critical Decisions about Foster Children Are Made without**
11 **Required Input from Foster Parents**

12 54. By their above-mentioned actions, Respondents discourage and prevent foster
13 parents from participating in juvenile court proceedings in which they are entitled to participate
14 under state law. As a consequence, the juvenile courts often make decisions about foster children
15 without the benefit of relevant information from foster parents regarding the children’s specific
16 physical, psychological, educational, medical, and emotional needs.

17 55. Providing foster parents with notice and an opportunity to be heard is particularly
18 important because there are too few social workers in the County, and children’s attorneys in Los
19 Angeles County have overwhelming case loads. A 2013 arbitration decision found that social
20 workers in Los Angeles were responsible for as many as 100 foster children each, whereas the
21 contract limits caseloads to a maximum of 31 children per social worker. *See Los Angeles County*
22 *Employee Association Local 721 v. County of Los Angeles, Department of Children and Family*
23 *Services*, Arb. No. 154-11 (2013). Staff attorneys for the non-profit agency that serves as
24 appointed counsel for children subject to dependent proceedings carry as many as 395 cases at a
25 time. More recently, in April of 2014, Los Angeles County’s Blue Ribbon Commission on Child
26 Protection issued a report entitled *The Road to Safety for Our Children*, which concluded that
27 “Social workers testified that they were unable to perform essential functions because of
28 overwhelming caseloads and insufficient support, supervision, and training. Similarly, judges

1 confirmed that the judicial system operates under the burden of too many cases and, at times,
2 incomplete or inaccurate information.”

3 56. The recruitment and retention of foster and foster-adoption parents is a systemic
4 problem. According to two studies by the Office of Inspector General, the recruitment of foster
5 parents has become a critical problem in most states, including California, and the low rates of
6 retention of foster parents is due in part to foster parents’ beliefs that they are “unsupported and
7 unappreciated” by child welfare agencies who do not provide them with “any formal procedures
8 to allow them to voice their concerns.” U.S. Dept. of Health and Human Services, Office of the
9 Inspector General, Report OEI-07-00-00600 (2002) at i-ii, 5-8, Report OEI-07-00-00601 (2002)
10 at 5-6. Last year “Los Angeles County’s shortage of foster care beds reached a crisis point, with
11 State officials threatening to impose fines because too many children are languishing in
12 sometimes chaotic holding rooms during traumatic separations from their families.” Garrett
13 Therolf, *Los Angeles County’s Foster Care Shortage Reaches Crisis Level*, Los Angeles Times,
14 August 23, 2013.

15 **B. Facts Relating to Petitioner Heather Whelan**

16 57. Petitioner Heather Whelan is a fifth-grade schoolteacher who lives in Whittier. She
17 is 31-years old, single and has taught elementary school for seven years.

18 58. Ms. Whelan has been a certified foster parent with Serenity Infant Care Homes
19 FFA (“Serenity”) in Covina since 2010. Serenity has placed approximately 20 foster children
20 with her. Approximately four of those children lived with Ms. Whelan for short periods known as
21 “respite care.” The others stayed in her care for months or years, and the majority of them were
22 reunified with birth parents or moved to be placed with siblings or relatives. The most recent
23 child to be placed with Ms. Whelan arrived in June 2014. Ms. Whelan currently provides care for
24 three girls under age five. One of them is on track to be adopted, and another is expected to
25 return to her parents shortly.

26 59. Ms. Whelan never planned to adopt a child. She originally became interested in
27 helping abused and abandoned children while travelling abroad and volunteering to help orphans
28 around the world. She continued to pursue this interest upon settling in Whittier and embarking

1 on her teaching career.

2 60. Ms. Whelan leads her church's "foster care awareness" group. She is also a leader
3 of a choir made up of foster families and children who perform at events throughout Southern
4 California to raise awareness about foster care.

5 61. Most of Ms. Whelan's foster children were babies and toddlers who were
6 successfully reunified with their parents. Ms. Whelan prides herself on building rapport with the
7 biological parents and supporting their reunification efforts. Some mothers continue to stay in
8 touch with Ms. Whelan long after their children are returned from foster care, and many have
9 thanked her for her services.

10 62. One child currently in Ms. Whelan's home has lived there for the past 14 months.
11 Ms. Whelan does not recall ever receiving a notice of court hearing in this child's case. Had she
12 received hearing notices, she would have made every effort to attend the child's hearings.

13 63. Ms. Whelan has cared over the years for several children who had siblings living
14 in other foster homes. To the best of her knowledge, Ms. Whelan has never received written
15 notice of a sibling's court hearing. Ms. Whelan goes to any court hearings she learns about, but
16 she remembers receiving only two written hearing notices concerning any of the children she
17 has cared for.

18 64. Ms. Whelan does not recall being given a blank JV-290 "Caregiver Information
19 Form" by a social worker. She does not recall being informed by a social worker about how to fill
20 out the JV-290 form or receiving assistance from DCFS in filing out the form. Ms. Whelan
21 instead learned about the existence of the JV-290 form from Advokids and from other foster
22 parents. She has filled out JV-290 forms and given the completed form to social workers. On
23 information and belief, her completed JV-290 forms have not been attached to social worker
24 reports or submitted to juvenile courts by DCFS social workers, though Ms. Whelan is aware
25 from her study of the Advokids' website that the law requires social workers to submit them with
26 reports filed for the court's consideration in a foster child's case.

27 65. On March 26, 2014, DCFS suddenly removed a six-month old child from Ms.
28 Whelan's care. Prior to the child's removal, no Seven-Day notice was given, and no grievance

1 form or grievance procedures were given by DCFS to Ms. Whelan. The children's appointed
2 counsel did not receive the legally required advance notice of the move, nor was counsel
3 informed until after the move of where the child had been placed.

4 66. On April 7, 2014, Ms. Whelan submitted a written grievance to DCFS (using her
5 own home-made version of the grievance form since one had not been provided by the CSW and
6 DCFS refuses to make the form available to the public). Ms. Whelan's grievance sought review
7 of the child's removal and asserted that the move was retaliatory and that it violated written
8 DCFS procedures and was not in the child's best interest, and that the move not been planned or
9 carried out in keeping with DCFS procedures and was contrary to the best interest of the sibling
10 who remained in Ms. Whelan's care. A grievance review was initially scheduled by County
11 Counsel but DCFS later canceled the grievance review on the basis of a court order that County
12 Counsel obtained by an ex parte request.

13 67. Ms. Whelan currently receives written notices of court hearings because after
14 retaining an attorney she obtained de facto status in the juvenile court and DCFS then began
15 serving notices of hearings on her counsel.

16 **C. Facts Relating to Petitioner Patrick J. Guske**

17 68. Petitioner Patrick J. Guske is an aeronautical engineer who works on an orbital
18 space mission project at Jet Propulsion Laboratories in Pasadena, California. He and his wife,
19 Julie Guske, have fostered and adopted neglected and abused children in Los Angeles County
20 since 2011. They founded and operated out of their garage a free "store" where foster parents can
21 "shop" for clothing and supplies they need to provide for foster children when first placed in their
22 homes.

23 69. Between 2012 and 2013, Mr. Guske and his wife were foster parents of twin
24 babies ("the twins"). The twins were placed with them by Olive Crest Foster Family Agency
25 under contract with DCFS and under the supervision of DCFS. The Guskes do not recall being
26 given a blank grievance form or the grievance procedures at the time of the twins' placement.

27 70. While Mr. Guske and his wife were the twins' foster parents, the Guskes recall
28 receiving only one written court hearing notice. Mr. Guske repeatedly inquired about court

1 hearing dates and was repeatedly told by the twins' DCFS social worker that foster parents are
2 "not allowed" to attend their foster children's court hearings.

3 71. DCFS made several verbal threats to remove the twins but did not give Mr. Guske
4 a written Seven Day Notice of Intent to Remove Foster Child or inform him of the rights to file a
5 grievance to object to the planned removal.

6 72. Mr. Guske filed multiple JV-290 Caregiver Information Forms without being
7 informed by DCFS or its agents of the existence of the JV-290 form, being given a blank JV-290
8 form or receiving instructions for completing it. Mr. Guske learned of his right to file a JV-290
9 form from Advokids and obtained instructions for filling the forms out from Advokids, not social
10 workers.

11 73. DCFS employees told Mr. Guske that they had never heard of the JV-290 forms.
12 Having learned from Advokids of the value of the information on the JV-290 form to the judicial
13 decision-maker, Mr. Guske persisted in trying to file his own JV-290 forms without help from
14 DCFS.

15 74. The Guskes adopted the twins in 2013. The judge who made orders freeing the
16 twins for adoption thanked the Guskes for the helpful information they provided to the court.

17 **D. Facts Relating to Petitioner Carrie Chung**

18 75. Petitioner Carrie Chung is a Licensed Clinical Social Worker with an office in
19 Covina, California. She provided foster care to four children under DCFS' supervision between
20 2010 and 2012. Ms. Chung became even more convinced that foster parents should provide
21 information to the courts about placement and parenting decisions when one of those foster
22 children was later killed because DCFS ignored the objections of the then foster parents for the
23 child about the placement decision.

24 76. Ms. Chung previously worked as an adoption social worker for Serenity Infant
25 Care Homes in Covina, California. She also served as a clinical supervisor and later the clinical
26 director for a community mental health agency serving children and families in the San Gabriel
27 Valley and established the mental health services for Serenity Infant Care Homes.

28 77. During the period that Ms. Chung served as foster mother, she does not recall

1 receiving written notices for a single court hearing for three of the four children. This Petitioner
2 recalls receiving written notices for the fourth child, who will be identified by the fictitious
3 pseudonym of "R," but only after the juvenile court designated her as R's de facto parent. Ms.
4 Chung repeatedly asked R's DCFS social worker why no court hearing notices were being
5 provided for a period of time. Ms. Chung cited to the social worker the written policies and laws
6 requiring provision of hearing notices. The child's DCFS social worker replied that she was
7 unaware that her duties included the provision of hearing notices.

8 78. DCFS threatened to remove R several times from Ms. Chung's care but she does
9 not recall ever receiving the required written Seven Day Notice of Intent to Remove Foster Child.

10 79. Ms. Chung has brought to the attention of DCFS her concerns about the agency's
11 pattern and practice of not giving court hearing notices, not assisting foster parents with the filing
12 of JV-290 forms, and not providing written Seven Day Notices and grievance procedures when a
13 removal of a foster child is threatened. The response from the social worker was that employees
14 of DCFS do not receive all of the directives promulgated to staff nor do they have the time to
15 read and follow those directives.

16 IV.

17 CLAIMS FOR RELIEF

18 FIRST CAUSE OF ACTION

19 Writ of Mandate Pursuant to C.C.P. § 1085 for Denial of Foster Parents' Rights under

20 California Statutes, Regulations and Court Rules to

21 Participate in Judicial and Administrative Proceedings

22 [All Petitioners Against All Respondents]

23 80. Petitioners incorporate paragraphs 1 through 80 of this Petition as if fully set forth
24 herein.

25 81. Respondents have a clear and present duty to administer child welfare services in
26 conformity with all governing laws and regulations.

27 82. Respondents' above-mentioned actions violate their legal duties under the
28 following: Welfare & Institutions Code §§ 291(a)(8), 293(a)(6), 294(a)(8) and (e), 295(a)(6),

1 366.21(c), 366.23, Rules 5.534(n) and 5.708 of the California Rules of Court, DSS MPP §§ 31-
2 4020 and 31-31-440, and DCFS Procedural Guide 0100-502.52.

3 83. Petitioners lack a plain, speedy and adequate remedy at law except by way of
4 peremptory writ of mandate pursuant to Code of Civil Procedure § 1085.

5 84. Respondents' acts and omissions constitute a policy, pattern, practice, custom,
6 final policymaking act, and/or ratification of a subordinate's action that deprived Petitioners and
7 others of particular statutory rights.

8 85. Respondents have failed in their duties to properly hire, train, instruct, monitor,
9 supervise, evaluate and investigate their employees who are responsible for complying with these
10 statutes, which has directly resulted in the deprivation of the Petitioners' and others' statutory
11 rights.

12 **SECOND CAUSE OF ACTION**

13 **Taxpayer Claim for Declaratory and Injunctive Relief**

14 **[Petitioners Whelan, Guske and Chung Against All Respondents]**

15 86. Petitioners incorporate paragraph 1 through 80 of this Petition as if fully set forth
16 herein.

17 87. Respondents' expenditure of county and state taxpayers' funds for the
18 implementation of the above-mentioned pattern, practice and/or policy of not providing foster
19 parents from getting notice and an opportunity to be heard, , is unlawful. Petitioners Whelan,
20 Guske, and Chung, as county and state taxpayers, have an interest in enjoining the continued
21 unlawful expenditure of tax funds. Pursuant to Code of Civil Procedure § 526a and this Court's
22 equitable power, Petitioners seek declaratory and equitable relief to prevent continued harm and
23 to protect Petitioners and the public from Respondents' unlawful policies and practices, as alleged
24 herein.

25 88. There is an actual controversy between Petitioners and Respondents concerning
26 their respective rights and duties in that Petitioners contend that the policies and practices of
27 Respondents, as described herein, are in violation of state law, and Respondents contend in all
28 respects to the contrary. Petitioners seek a judicial declaration of the rights and duties of the

1 respective parties with respect to the instant matter.

2 89. Unless and until Respondents' unlawful policies and practices as alleged herein are
3 enjoined and restrained by order of this court, they will continue to cause great and irreparable
4 injury to Respondents and other taxpayers, who have no adequate remedy at law. Further, relief
5 by damages alone for Respondents' continuing unlawful practices and conduct would require a
6 multiplicity of suits.

7 V.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Petitioners and Plaintiffs respectfully request that the Court:

10 (a) Enter a Peremptory Writ of Mandate commanding Respondents to provide foster
11 parents with notice and the opportunity to be heard and submit evidence at all proceedings
12 involving a child in their care, in accordance with all the particular statutes, regulations, DCFS
13 Procedure Manuals and laws cited in the First Cause of Action.

14 (b) Enter a declaratory judgment that the policies and practices complained of herein
15 are unlawful and violative of state laws and DCFS' Procedure Manuals.

16 (c) Permanently and preliminarily enjoin Respondents and their respective directors,
17 officers, agents, and employees from engaging in any of the unlawful conduct specified herein,
18 and from continuing any and all other practices shown to be in violation of applicable law.
19 including but not limited to, failing to provide caregivers with notice to and an opportunity to be
20 heard in any proceeding to be held with respect to the child in their care and retaliating against
21 those caregivers who take steps to participate in such hearings.

22 (d) Award Petitioners their expenses, costs, fees, and other disbursements associated
23 with the filing and maintenance of this action, including reasonable attorneys' fees pursuant to
24 Code of Civil Procedure § 1021.5 and any other applicable provision of law; and

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(e) Grant such other equitable and further relief as the Court deems just and proper.
Petitioners hereby demand a jury trial on all issues so triable.

Dated: August 5, 2014

Respectfully submitted,
HADSELL STORMER
RICHARDSON & RENICK LLP
ROBERT D. NEWMAN, ATTORNEY AT LAW
ROBERT JACOBS, ATTORNEY AT LAW
LAW OFFICE OF DEBORAH DENTLER

By: 
Dan Stormer
Attorneys for Petitioners

Verifications

VERIFICATION

I, Carrie Chung, am a petitioner in the action titled *Advokids et al. v. County of Los Angeles Department of Children and Family Services et al.* I declare under penalty of perjury that the facts alleged in the foregoing document are true and correct to the best of my information and belief, except as to the allegations relating to the other individual petitioners. Executed in Pasadena, California, on this 4th day of August, 2014.

A handwritten signature in black ink, appearing to read 'Carrie Chung', written over a horizontal line.

Carrie Chung

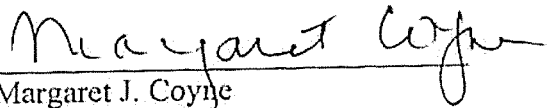
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VERIFICATION

I, Margaret J. Coyne, declare and say that I am the Executive Director of Advokids, a petitioner in the action titled *Advokids, et al. v. County of Los Angeles Department of Children and Family Services et al.*

I have read the foregoing petition and know the contents thereof. I declare under penalty of perjury under the laws of the State of California that the foregoing facts are true and correct except as to the allegations relating to the three individual petitioners.

Executed in Corte Madera, California on this 4th day of August, 2014.


Margaret J. Coyne
Executive Director
Advokids

VERIFICATION

I, Patrick J. Guske, am a petitioner in the action titled *Advokids et al. v. County of Los Angeles Department of Children and Family Services et al.* I declare under penalty of perjury that the facts that relate to me, which are alleged in Sections II and III (B) of the foregoing document, are true and correct to the best of my information and belief.

Executed under the laws of the State of California, in Dulles, Virginia on this 4th day of August, 2014.


A handwritten signature in cursive script, reading "P. J. Guske", is written above a horizontal line.

Patrick J. Guske

VERIFICATION

I, Heather Whelan, am a petitioner in the action titled *Advokids et al. v. County of Los Angeles Department of Children and Family Services et al.* I declare under penalty of perjury that the facts that relate to me, which are alleged in Sections II and III (B) of the foregoing document, are true and correct to the best of my information and belief.

Executed in Whittier, California, on this 4th day of August, 2014.


Heather Whelan