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15 JUVENILE COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF SAN DIEGO
17

18 V.R. & B.R.

19 Petitioners/Plaintiffs,

20 v.

21 County of San Diego, Health and Human
22 Services Agency, Child Welfare Services

23 Respondent/Defendant.
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Case No.

**PETITION FOR WRIT OF MANDATE
AND COMPLAINT FOR:**

- (1) Breach of Fiduciary Duty**
- (2) Violation of Due Process**
- (3) Writ of Mandate**
- (4) Accounting; and**
- (5) Declaratory Relief**

1 **INTRODUCTION AND SUMMARY OF THE CASE**

2 **Social Security Survivor's Benefits and Foster Children**

3 1. Under federal and state law, when a parent dies, their children are entitled to
4 receive what are called "survivor's benefits" from the deceased parent's basic Social
5 Security (SS) entitlement. These sums can be significant, amounting to as much as 75% of
6 what the parent would have obtained in SS benefits had they lived. Usually these benefits
7 end when the child reaches 18 years of age but can continue based on the individual needs
8 of a child; *e.g.*, if the child is either a student or disabled.

9 2. When a child is placed in foster care, federal and state law do not further
10 disadvantage these abused and neglected children by terminating their entitlement to
11 survivor's benefits. Rather, these laws impose prescriptive formulas and processes
12 governing how these benefits are to be managed in the best interest of children such as
13 Plaintiffs. These formulas, mostly found in federal regulations but also reflected in state
14 law binding on agencies such as Defendant San Diego County Child Welfare Services
15 (Defendant), wisely and compassionately require a probative and highly individualized
16 assessment of each child's current and future circumstances and needs. As articulated by
17 the Social Security Administration (SSA), "[c]ases involving foster care are among the
18 most sensitive SSA encounters. It is essential that SSA do all it can to protect the rights of
19 children who may not be able to rely on their parents to do so." SSA Program Operations
20 Manual System [POMS], GM 00502.159.

21 **Why This Action Is Being Brought**

22 3. Former foster children Plaintiffs bring this action against Defendant based on
23 Defendant's wrongful and unlawful taking and use of Plaintiffs' SS survivor's benefits in a
24 manner violating both federal and state law.

25 4. While they were in foster care and, thus, while the Defendant was acting as
26 Plaintiffs' legal guardian owing them fiduciary duties and bound by state and federal laws
27 to operate in their best interests, Defendant applied to the SSA to be Plaintiffs'
28 representative payee. Defendant did so without identifying other potential preferred

1 representative payees, and without notifying or consulting (i) the Plaintiffs; (ii) their
2 attorneys who are charged with representing Plaintiffs' interests including Plaintiffs'
3 financial interests; (iii) the judges in this County solemnly and legally charged with
4 assuring Plaintiffs' overall welfare *in loco parentis*, including Plaintiffs' financial welfare;
5 or (iv) adults in Plaintiffs' lives whom federal and state law prefers to be appointed over
6 Defendant.

7 5. After being appointed, Defendant thereafter received and spent all or
8 substantially all of Plaintiffs' SS survivor's benefits on what it describes as "placement
9 costs[.]" despite the fact that federal, State, and County sources already appropriate money
10 to Defendant for the care and maintenance of foster children like Plaintiffs and in violation
11 of, *inter alia*, state laws requiring such benefits to be spend in ways that benefit the child,
12 not the Defendant.

13 6. Defendant moreover spent all or substantially all of Plaintiffs' money on
14 "placement costs" without notifying or consulting with (i) Plaintiffs; (ii) their attorneys
15 who are charged with representing Plaintiffs' interests including Plaintiffs' financial
16 interests; (iii) the judges in this County solemnly and legally charged with assuring
17 Plaintiffs' overall welfare *in loco parentis*, including Plaintiffs' financial welfare; or (iv)
18 adults in Plaintiffs' lives — including their caregivers, relatives, friends, teachers, and
19 therapists — who may have and would have suggested alternative uses of Plaintiffs'
20 money to serve their interests. In so doing, Defendant used Plaintiffs' money to supplant
21 the funds Defendant would otherwise have spent to fulfill Defendant's legal duties, taking
22 money from Plaintiffs' pockets rather than from Defendant's own budget.

23 7. Defendant also received and spent all or substantially all of Plaintiffs' money
24 on "placement costs" without placing any of that money in individualized, interest-bearing
25 accounts for Plaintiffs' future use and without providing Plaintiffs, their attorneys, the
26 judge overseeing their cases, or their caregivers, an accounting of Plaintiffs' money that
27 includes the amount spent, when it was spent, to whom payments were made, and how
28 such payments benefitted the Plaintiffs or served their best interests.

1 8. Defendant applied to be the representative payee for Plaintiffs' money and
2 spent their money without notice to or input from Plaintiffs, their attorneys, the judges
3 legally responsible for their overall welfare, or other adults in Plaintiffs' lives. Defendant
4 also failed to preserve Plaintiffs' money in individualized interest- bearing accounts and
5 account for what was spent for the benefit and in the best interest of Plaintiffs. In doing so,
6 Defendant violated and is violating numerous state and federal laws as described herein,
7 including federal and state constitutional laws requiring that Plaintiffs not be denied their
8 property by Defendant without Due Process.

9 **Foster Children Like Plaintiffs Need Individualized Assessments Of Financial**
10 **Need Even More Than Other Children**

11 9. Children and youth who experience abuse or neglect are at increased risk for
12 long-term emotional, behavioral and physical challenges that often require ongoing
13 support and services.¹ However, these vital services are often difficult to access. The cost
14 of services as well as the lack of availability of services are significant barriers to obtaining
15 necessary treatment.² Plaintiffs would benefit from financial resources, now and into their
16 adulthood, to facilitate access to such services.

17 10. SSA policy requires special consideration of children experiencing foster
18 care's current and future needs. To ensure the appropriate use and conservation of a
19 child's benefits to meet these needs, the SSA directs that appointment of a foster care
20 agency as a representative payee "is not automatic" because "[r]elatives with close ties to
21 the child might be better able to make more balanced choices regarding use of the child's
22 benefits." SSA Program Operations Manual System [POMS], GM 00502.159.

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25 ¹ See Annie E. Casey Foundation, Child Welfare and Foster Care Statistics, at
26 <https://www.aecf.org/blog/child-welfare-and-foster-care-statistics> (September 26,
2022).

27 ² Amy Conley Wright, Investing in Adoption: Exploring Child Development Accounts for
28 Children Adopted from Foster Care, 45 The Journal of Sociology and Social
Welfare, 129, 133 (2018), at <https://scholarworks.wmich.edu/jssw/vol45/iss4/8>.

1 11. Children who have been adopted out of foster care face significant emotional
2 and behavioral difficulties that can result in adoption disruption. Such disruptions and the
3 resulting return to foster care are estimated to occur in up to 25% of cases.³ Thus,
4 Defendant’s failure to develop and implement policies, practices, or procedures regarding
5 the distribution of SS survivor’s benefits to foster children presents a question of “broad
6 public interest that is likely to recur.” *Ballard v. Anderson* (1971) 4 Cal.3d 873, 876.

7 **JURISDICTION AND VENUE**

8 12. This court has jurisdiction because Plaintiffs are under the age of 18, were
9 adjudicated to be dependents under the jurisdiction of this court pursuant to Cal. Welf. and
10 Inst. Code §§ 300, *et seq.*, and could again come under the jurisdiction of the court
11 pursuant to Cal. Welf. and Inst. Code § 303(a).

12 13. Venue is proper because Plaintiffs and Defendant are both residents of San
13 Diego County.

14 **THE PARTIES**

15 14. Plaintiffs V.R and B.R. are two minor sisters, ages 11 and 13 respectively,
16 previously under the jurisdiction of this Court and the Defendant as foster children,
17 pursuant to Cal. Welf. and Inst. Code §§ 300, *et seq.*, recently having been adopted.

18 15. Plaintiffs are entitled to SS survivor’s benefits under the Old-Age, Survivors,
19 and Disability Insurance program because of their birth father’s passing in 2020. 42 USC
20 § 402(d). Under this program, Plaintiffs are entitled to benefits in the amount of about
21 \$861 each per month.

22 16. Plaintiffs were removed from their parents and placed under the care and
23 custody of Defendant and under the jurisdiction of this Court in 2015 when they were
24 about 4 and 6 years old, respectively. Importantly, they were not newborns and had
25 attached to their parents by these ages. The trauma of being separated from their parents is
26 likely added to the trauma they suffered by dint of the abuse or neglect that caused the

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³ *Id.* at 132.

1 County to intervene. Plaintiffs were first placed with their eventual adoptive parents as a
2 foster care placement in October of 2015.

3 17. Plaintiffs were briefly reunified with their birth parents for a time, but were
4 returned to the custody of Defendant and the jurisdiction of this court in April 2021, at the
5 ages of about 9 and 11 respectively. Plaintiffs were placed into the foster care of the
6 eventual adoptive parents, first for two days (April 16-17, 2021) under the designation of a
7 “family friend” and subsequently as “foster parents” on April 21, 2021.

8 18. The foster parents informed Defendant that Plaintiffs were receiving SS
9 survivor’s benefits prior to their placement with them on April 21, 2021.

10 19. Plaintiffs have a great aunt as well as a brother who was age 19 when
11 Plaintiffs again came into Defendant’s custody in April 2021. Upon information and
12 belief, both the great aunt and brother have demonstrated and are demonstrating strong
13 concern for the Plaintiffs.

14 20. Plaintiffs have current and future needs, interests, and aspirations that require
15 financial support and investment. Both girls are receiving therapy and intend to continue
16 mental health treatment.

17 21. V.R. participates in multiple team sports. She aspires to become a Sheriff
18 and would like to take part in the “Deputy Explorer Program” offered by the San Diego
19 County Sheriff when she reaches age 16. B.R. is an avid reader, finishing 2-3 books per
20 week. She enjoys ballet class and individual sports. Plaintiffs benefit greatly from
21 participation in camps and school activities. They had a wonderful experience at a horse
22 camp last summer, with their attendance funded by a non-profit agency. The cost to
23 provide this experience again will total \$5,000. Additional opportunities for educational
24 trips throughout middle school will cost almost \$4,000.

25 22. Plaintiffs’ adoptive parents anticipate both children entering post-secondary
26 educational or vocational institutions and hope to establish savings accounts to help
27 support the girls’ educational and career goals.

28

1 23. Neglect of Plaintiffs' teeth throughout their lives has led to the need for
2 extensive dental work, some of which is not covered by Medi-Cal. Both Plaintiffs require
3 extensive orthodontic work as well. The high cost prohibits both girls from accessing
4 orthodontic care at the same time, therefore only V.R. is currently receiving this service.

5 24. Defendant is the government agency charged with administering the
6 provisions of California law and related regulations pertaining to the welfare of children
7 and families including, but not limited to, Cal. Welf. and Inst. Code §§ 300, *et seq.*

8 25. Unless Defendant desists from engaging in the unlawful conduct previously
9 and subsequently alleged herein, Plaintiffs and other foster children residing in the County
10 who are owed and legally entitled to benefits under the Social Security Act will continue to
11 be unlawfully and unjustly deprived of the use of money, owing to them, intended to
12 address their widely varying and ever-changing individual circumstances and needs, both
13 in the present and in the future.

14 **APPLICABLE LAW RELATED TO SS BENEFITS AND**
15 **REPRESENTATIVE PAYEES**

16 **Federal Law**

17 26. Controlling federal law permits the appointment of a "representative payee"
18 who receives the SS benefits on behalf of the entitled recipient under certain prescribed
19 circumstances. Representative payees are "generally" appointed when the entitled
20 recipient is a child but such an appointment is not automatic. If the SSA is aware of
21 certain facts, it will permit a minor to receive their payments directly, based on individual
22 circumstances. 20 CFR § 404.2010.

23 27. Pursuant to 20 CFR § 404.2010, a child under 18 who "shows the ability to
24 manage the benefits" may receive such benefits directly. Federal law provides some
25 illustrative but non-exhaustive examples of when such "ability" is most likely.
26 Importantly, therefore, a child who is entitled to receive SS benefits is also entitled under
27 federal law to "show[] [to the SSA their] ability to manage [their] benefits" as a part of the
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1 determination of whether someone else should receive their money as their representative.
2 20 CFR § 404.2010(b).

3 28. In the same vein, if the child is unable to “show[] [their] ability to manage
4 [their] benefits,” 20 CFR § 404.2010(b), the SSA will next make an inquiry into who is the
5 best representative payee for a child based on the individual needs and circumstances of
6 each child. The SSA’s ability to perform this function consistent with federal regulations
7 depends upon the information provided to it by an applicant. 20 CFR § 404.2020 provides:

8 In selecting a payee we try to select the person, agency, organization or institution
9 that will best serve the interest of the beneficiary. In making our selection we
10 consider—

11 (a) The relationship of the person to the beneficiary;

12 (b) The amount of interest that the person shows in the beneficiary;

13 (c) Any legal authority the person, agency, organization or institution has to act on
14 behalf of the beneficiary;

15 (d) Whether the potential payee has custody of the beneficiary;

16 (e) Whether the potential payee is in a position to know of and look after the needs
17 of the beneficiary; ...

18 29. Federal law dictates that Defendant is to be the representative payee only as a
19 last resort. Pursuant to federal regulations, *any* person in the child’s life should be
20 appointed as a representative payee – even a noncustodial friend – if possible before the
21 Defendant is appointed. Moreover, federal regulations require the SSA to appoint the
22 representative payee that is the child’s “highest priority”– something that cannot happen
23 unless the child or their legal representatives are notified of a pending appointment and
24 permitted to a way to voice their preferences. 20 CFR § 404.2021 in relevant part
25 provides:

26 As a guide in selecting a representative payee, we have established
27 categories of preferred payees. These preferences are flexible. ... When we
28 select a representative payee, **we will choose the designee of the**

1 **beneficiary's highest priority**, provided that the designee is willing and able
2 to serve, is not prohibited from serving[], and supports the best interest of the
3 beneficiary[]. The preferences are:

4 (c) For beneficiaries under age 18, our preference is—

5 (1) **A natural or adoptive parent** who has custody of the beneficiary, or a
6 guardian;

7 (2) **A natural or adoptive parent who does not have custody of the**
8 **beneficiary, but is contributing toward the beneficiary's support and is**
9 **demonstrating strong concern** for the beneficiary's well being;

10 (3) **A natural or adoptive parent who does not have custody of the**
11 **beneficiary and is not contributing toward his or her support but is**
12 **demonstrating strong concern for the beneficiary's well being;**

13 (4) **A relative or stepparent who has custody** of the beneficiary;

14 (5) **A relative who does not have custody** of the beneficiary but is
15 contributing toward the beneficiary's support and is demonstrating concern
16 for the beneficiary's well being;

17 (6) **A relative or close friend who does not have custody** of the beneficiary
18 but is demonstrating concern for the beneficiary's well being; and

19 (7) **An authorized social agency or custodial institution.** (Emphasis added)

20 30. Post-appointment, federal regulation prescribes how the representative payee
21 may use the benefits: “We will consider that payments we certify to a representative payee
22 have been used for the use and benefit of the beneficiary if they are used for the
23 beneficiary's current maintenance. Current maintenance includes cost incurred in
24 obtaining food, shelter, clothing, medical care, and personal comfort items.” 20 CFR
25 § 404.2040(a)(1). Not described here are “placement costs.”

26 31. Federal regulation also prescribes how benefits not spent pursuant to the
27 aforementioned regulation are to be treated: they are to be preserved and invested for the
28 future benefit of the child. 20 CFR § 404.2045 provides in pertinent part as follows:

1 (a) *General*. After the representative payee has used benefit payments consistent
2 with the guidelines in this subpart[], any remaining amount shall be conserved or
3 invested on behalf of the beneficiary. Conserved funds should be invested in
4 accordance with the rules followed by trustees. Any investment must show clearly
5 that the payee holds the property in trust for the beneficiary.

6 32. If current maintenance costs are otherwise provided for, federal policy
7 directs that the representative payee must conserve or invest SS benefits. *See* POMS GN
8 00602.001 (“A payee must use benefits to provide for the beneficiary’s current needs such
9 as food, clothing, housing, medical care and personal comfort items, or for reasonably
10 foreseeable needs. *If not needed for these purposes...* the payee must conserve or invest
11 benefits on behalf of the beneficiary.”) (emphasis added).

12 33. Defendant receives Title IV-E funds to provide foster care maintenance
13 payments to foster care providers. Federal law defines Title IV-E foster care maintenance
14 payments to include “payments to cover the cost of (and the cost of providing) food,
15 clothing, shelter[.]” 42 U.S.C. § 675(4)(A).

16 State Law

17 34. “Minors under the jurisdiction of the juvenile court who are in need of
18 protective services shall receive care, treatment, and guidance consistent with their best
19 interest[.]” Cal. Welf. & Inst. Code § 202(b).

20 35. “The state has a duty to care for and protect the children that the state places
21 into foster care[.]” Cal. Welf. & Inst. Code § 16000.1(a)(1).

22 36. Under Cal. Welf. & Inst. Code § 13754, a county “shall apply to be
23 appointed representative payee on behalf of a child beneficiary in its custody ***when no***
24 ***other appropriate party is available to serve.***” Cal. Welf. & Inst. Code § 13754(b)(1)
25 (emphasis added).

26 37. In the event a child welfare agency like Defendant becomes a representative
27 payee, then it must “[e]stablish a no-cost, interest-bearing maintenance account for each
28 child in the department's custody for whom the department serves as representative payee.

1 Interest earned shall be credited to the account. The county shall keep an itemized current
2 account, in the manner required by federal law, of all income and expense items for each
3 child's maintenance account.” Cal. Welf. & Inst. Code § 13754(c)(1).

4 38. If appointed representative payee, Defendant is also required by state law to
5 use the child’s benefits “for the use and benefit of the child” and for purposes “in the
6 child’s best interest.” Cal. Welf. & Inst. Code § 13754(c)(2).

7 **Specific Allegations**

8 39. Defendant applied to the SSA to be Plaintiffs’ representative payee, and on
9 or around August 21, 2021, was so appointed.

10 40. Defendant received and spent all or substantially all of Plaintiffs’ benefits
11 without notifying or consulting with (i) Plaintiffs; (ii) their attorneys who are charged with
12 representing Plaintiffs’ interests including Plaintiffs’ financial interests; (iii) the judges in
13 this County solemnly and legally charged with assuring Plaintiffs’ overall welfare *in loco*
14 *parentis*, including Plaintiffs’ financial welfare; or (iv) adults in Plaintiffs’ lives—
15 including their caregivers, relatives, friends, teachers, and therapists—who may have and
16 would have suggested alternative uses of Plaintiffs’ money to serve their interests.

17 41. On information and belief, Defendant likewise failed to inform Plaintiffs’
18 great aunt, brother, or foster parents that they could apply to be appointed as potential
19 representative payees or consult with them, *inter alia*, to determine whether they or others
20 might qualify under federal law to be a preferred representative payee in lieu of Defendant.

21 42. On information and belief, Defendant itself engaged in no assessment of the
22 Plaintiffs’ individualized needs, best interests, or preferences in a manner consistent with
23 state law, federal law, or the requirements of Due Process.

24 43. Instead, Defendant used the money it obtained outside the knowledge of
25 Plaintiffs, their lawyers, or their judges to reimburse itself for the cost of Plaintiffs’
26 “placement” even though Defendant is (i) legally obligated to pay for such costs; (ii)
27 receives state and federal money to pay for such costs; and (iii) such self-payments are not
28 among the uses of SS benefits described by federal regulation, and not in the child’s best

1 interest or for the use and benefit of the child, as required by state law, but for the use and
2 benefit of Defendant. Indeed, Defendant even received and kept money for Plaintiffs
3 received after Plaintiffs' custody was transferred to their adoptive parents.

4 44. More specifically, on September 15, 2022, Senior Deputy County Counsel
5 Lisa Storing informed Plaintiffs' guardian-ad-litem that "[d]uring the time that [Defendant]
6 was designated the payee, the full amount of the monthly benefit payments were applied
7 towards [V.R's] and [B.R's] placement costs." On information and belief, "placement
8 costs" are among the costs that Defendant is supposed to pay from public funds
9 appropriated to Defendant from state, federal and County sources.

10 45. Plaintiffs' foster mother, who was designated a "family friend" by
11 Defendant, and thus a preferred representative payee under federal law, has contacted the
12 SSA to inquire as to the status of Plaintiffs' survivor's benefits. The SSA informed
13 Plaintiffs' foster mother that it could not provide any information regarding the status of
14 Plaintiffs' survivor's benefits because she was, at that time, neither Plaintiffs' adoptive
15 parent nor Plaintiffs' representative payee.

16 46. Defendant routinely and as a matter of custom or practice has treated, is
17 treating, and will treat SS survivor's benefits for foster children in the manner described
18 herein.

19 47. Defendant has no policies, practices, or procedures in place that prevented,
20 are preventing, or will prevent SS survivor's benefits for foster children from being treated
21 in the same way as Defendant treated Plaintiffs' SS benefits.

22 48. Because of the actions of Defendant, Plaintiffs were denied their right under
23 federal law:

24 (i) to "show[] [to SSA their] ability to manage [their] benefits", 20 CFR
25 § 404.2010(b);

26 (ii) to express their preferences as to who should be appointed when
27 meeting such preferences is the "highest priority" of SSA in making representative payee
28 appointments, 20 CFR § 404.2021(b);

1 (iii) to have the SSA consider the propriety under federal law of
2 appointing relatives or friends all of whom supersede Defendant in appointment priority;
3 (iv) to have their money used for the permitted purposes described by
4 federal regulation;
5 (v) to have their money conserved and invested as required by federal
6 regulation; and
7 (vi) to Due Process of law as guaranteed by the Fifth and Fourteenth
8 Amendments of the United States Constitution.

9 49. Because of the actions of Defendant Plaintiffs were denied their right under
10 state law:

11 (i) to care, treatment, and guidance consistent with their best interests;
12 (ii) to appointment of an alternative representative payee;
13 (iii) to have their SS benefits placed in a no-cost, interest-bearing
14 maintenance account and an itemization of that account that includes all income and
15 expense items;
16 (iv) to have their benefits used for their benefit and for their best interests;
17 and
18 (v) to Due Process under Article I, section 7 of the California
19 Constitution.

20 **FIRST CAUSE OF ACTION—BREACH OF FIDUCIARY DUTY**

21 50. Plaintiffs incorporate all preceding paragraphs as if fully stated herein.

22 51. Upon becoming Plaintiffs' legal guardian in 2021, Defendant owed Plaintiffs
23 fiduciary duties to act in the best interest of Plaintiffs. Cal. Welf. & Inst. Code §§ 202(b);
24 Cal. Welf. & Inst. Code § 16000.1(a)(1).

25 52. Under the core tenets of fiduciary law, Defendant must act in the best
26 interests of their beneficiaries (the children) and can never use the fiduciary power to
27 elevate its own interests over the interests of the children. These obligations reach their
28 apogee here given the unique and vulnerable position of foster children.

1 53. The facts alleged above constitute a breach of Defendant’s fiduciary duties to
2 Plaintiffs.

3 54. Plaintiffs were harmed and are being harmed as a result of Defendant’s
4 actions.

5 **SECOND CAUSE OF ACTION—VIOLATION OF DUE PROCESS**

6 55. Plaintiffs incorporate all preceding paragraphs as if fully stated herein.

7 56. Plaintiffs are entitled to public benefits provided by the SSA.

8 57. Plaintiffs cannot be denied those public benefits without due process. *See*
9 *generally Goldberg v. Kelly* (1970) 397 U.S. 254.

10 58. The facts alleged above constitute a breach of Defendant’s right to Due
11 Process under both the state and federal Constitutions.

12 59. Plaintiffs were harmed and are being harmed as a result of Defendant’s
13 actions.

14 **THIRD CAUSE OF ACTION—WRIT OF MANDATE**

15 60. Plaintiffs incorporate all preceding paragraphs as if fully stated herein.

16 61. “A writ of mandate may be issued by any court to any inferior tribunal,
17 corporation, board, or person, to compel the performance of an act which the law specially
18 enjoins, as a duty resulting from an office, trust, or station, or to compel the admission of a
19 party to the use and enjoyment of a right or office to which the party is entitled, and from
20 which the party is unlawfully precluded by that inferior tribunal, corporation, board, or
21 person.” Cal. Code Civ. Proc. § 1085(a).

22 62. Plaintiffs here in part seek a writ pursuant to California Code of Civil
23 Procedure section 1085 and where, as here “the question is one of public right and the
24 object of the mandamus is to procure the enforcement of a public duty... the [petitioner]
25 need not show that he has any legal or special interest in the result, since it is sufficient that
26 he is interested as a citizen in having the laws executed and the duty in question enforced
27 ...” *Green v. Obledo* (1981) 29 Cal.3d 126, 144
28

1 63. Defendant does not have the discretion to violate their fiduciary duties to
2 Plaintiffs, to deny them their property without Due Process of law, or to violate any of the
3 federal or state laws Defendant has and is violating, as described above.

4 64. Defendant is ministerially obligated to comply with the Due Process
5 requirements of the United States and California Constitutions, laws imposing duties on
6 fiduciaries, and the state and federal laws described above. In particular, Defendant has a
7 clear, present, and ministerial duty to search for other appropriate parties to serve as
8 Plaintiffs' representative payee in accordance with SSA regulations and state law, and, if
9 none can be found, to establish accounts for each child for whom Defendant acts as
10 representative payee, and use the funds received only for the benefit of the Plaintiffs and
11 for their best interests as required under California Welfare & Institutions Code § 13754.

12 65. Plaintiffs have a beneficial interest in the performance of the laws described
13 above.

14 66. At all times relevant here, Defendant has, and continues to have, the ability
15 to perform its legal duties in accordance with state law but has failed to do so.

16 67. Defendant, by failing to comply with state law, has denied Plaintiffs and
17 others similarly situated their rights secured by law.

18 68. Plaintiffs have no plain, speedy, or adequate remedy at law except by way of
19 peremptory writ of mandate pursuant to Code of Civil Procedure § 1085.

20 69. Plaintiffs seek a writ of mandate ordering Defendant:

21 (i) to return to them the funds unlawfully obtained and spent and to place
22 the money in an interest-bearing account under either their control, their future control, or
23 under the control of another representative payee;

24 (ii) to henceforth apply to be an appointed SS representative payee for
25 any youth in its foster care only after making and documenting its reasonable efforts to
26 identify an alternative representative payee in conformity with SSA regulations and
27 California law;

28

1 (iii) to notify beneficiaries, attorneys, judges, and other possible
2 representative payees when Defendant becomes aware of the existence of the benefits,
3 when it applies to be a representative payee, when the appointment is made; and when the
4 money is received;

5 (iv) to consult during the times described in (i) through (iii) with all the
6 aforementioned individuals, including Plaintiffs, about the best use of SS benefits in the
7 present and in the future; and

8 (v) to “[e]stablish a no-cost, interest-bearing maintenance account for
9 each child in the Defendant’s custody for whom the Defendant in any capacity serves as
10 representative payee[]” and to “keep an itemized current account, in the manner required
11 by federal law, of all income and expense items for each child's maintenance account[]” in
12 the event Defendant is appointed a representative payee for a minor in its custody. Cal.
13 Welf. & Inst. Code § 13754(c)(1).

14 (vi) to use the benefits of youth in foster care only for the benefit of the
15 child and for the best interest of the child, not for reimbursement of placement costs.

16 **FOURTH CAUSE OF ACTION—ACCOUNTING**

17 70. Plaintiffs incorporate all preceding paragraphs as if fully stated herein.

18 71. Defendant must pursuant the laws described above provide an accounting
19 showing its use of Plaintiffs’ benefits.

20 **FIFTH CAUSE OF ACTION—DECLARATORY RELIEF**

21 72. Plaintiffs incorporate all preceding paragraphs as if fully stated herein.

22 73. An active controversy exists between Plaintiffs and Defendant regarding (i)
23 the sufficiency of Defendant’s efforts to identify alternative representative payees for
24 Plaintiffs, and (ii) the propriety of Defendant’s use of Plaintiffs’ benefits.

25 74. Accordingly, Plaintiffs seek a declaration that Defendant has and is violating
26 the laws and authorities described above, including the fiduciary duties Defendant owes to
27 Plaintiffs and the Due Process rights granted to Plaintiffs under the United States and
28 California Constitutions.

1 **PRAYER FOR RELIEF**

2 1. Plaintiffs pray for relief as follows:

3 2. A writ of mandate as described above.

4 3. An accounting showing how Defendant spent any benefits received as
5 Plaintiffs' representative payee.

6 4. A declaration as described above.

7 5. For costs of suit incurred herein, including reasonable attorneys' fees as
8 allowed by law; and

9 6. For such other and further relief as the Court may deem just and proper.

10 Dated: February 28, 2023

11 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

12
13 By



14 TRAVIS J. ANDERSON
15 T. SEAN MANN-O'HALLORAN

16 Attorneys for Plaintiff
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