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JAN 13 1998

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA  
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7 UNITED STATES DISTRICT COURT  
8 EASTERN DISTRICT OF CALIFORNIA

CIV-S- 98 - 0083 GEB DAD

Case No: Federal

11 Dale Cindy Nolan-Dissell,  
12 Plaintiff,

13 vs.

- 14 1. County of Mono;  
15 2. Marilyn Berg  
16 3. Doug Weitz;  
17 4. Debbie Jennings;  
18 5. Edward Terry Nolan; and  
19 6. Does 1-50

20 Defendants

COMPLAINT for

1. Wrongful Death;  
2. Intentional Infliction of Emotional Distress; and  
3. Negligent Infliction of Emotional Distress;  
4. Violation of Federal Civil Rights  
(42 U.S.C. § 1983);

and DEMAND FOR JURY TRIAL

24 Plaintiff, Dale Cindy Nolan-Dissell alleges the following:

## JURISDICTION

1     Subject Matter Jurisdiction. Plaintiff is informed and believes, and thereon alleges, the following. The jurisdiction of this Court over the subject matter of each of Plaintiff's Claims is predicated on 28 USC § 1332 because

2     (a) The amount in controversy exceeds the sum of seventy five thousand dollars (\$75,000.00), exclusive of interest and costs.

3     (b) Plaintiff is a citizen of the State of Arizona.

4     (c) Each of the Defendants is a citizen of the State of California.

5     The Court also has jurisdiction over the subject matter of the Fourth Claim based on 28 USC § 1343

6     2.     Personal Jurisdiction. Plaintiff is informed and believes, and thereon alleges, the following. Each of the Defendants is subject to personal jurisdiction in California and in this District at the time this action is commenced because:

7     (a)     The State of California, and this District, each has a sufficient relationship with each Defendant and the litigation such that it is reasonable to require Defendant to defend the action in this Federal Court;

8     (b) Each Defendant is a citizen of the State of California, and this District; and

9     (c) A "substantial part of the events or omissions" on which each of these claims is based occurred in this Judicial District.

10     3.     Venue. Plaintiff is informed and believes the following. Venue is proper in this judicial district because one or more of the Defendants resides in this district. Furthermore, venue is proper in this judicial district because a "substantial part of the events or omissions" on which the claim is based occurred in this judicial district. [28 USC § 1391(a)(2)].

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**II.**  
**STATEMENT OF THE FACTS**  
**ESTABLISHING ENTITLEMENT TO RELIEF**

**Regarding the Identities of the Persons Involved**

4. On May 10, 1991, Trevor Michael Edward Nolan was born. He died on April 12, 1997. Hereinafter he is referred to as "Trevor" or the "decedent". The incidents surrounding the death of Trevor are the subject of this Complaint.

5. Trevor's parents are his mother, Plaintiff Dale Cindy Nolan-Dissell ("Dale" or "Plaintiff") and his father, Defendant Edward Terry Nolan ("Edward"). Dale and Edward are now divorced.

6. Dale has since remarried. She is a citizen of the United States. At the time this lawsuit was filed she was, and she continues to be, a domiciliary of the State of Arizona.

7. Plaintiff is informed and believes, and thereon alleges, that Edward is a citizen of the United States and at the time this lawsuit was filed he was, and he continues to be, a domiciliary of the State of California.

8. Besides Trevor, Dale and Edward had one other son together, Wade Dalton Nolan ("Wade"). Wade was born May 18, 1990. Trevor and Wade are hereinafter referred to collectively as "the boys."

9. Defendant County of Mono ("the County") is a county within the state of California and a public entity. One of the County's administrative units is its Department of Social Services ("DSS"). The County is "citizen" of California for diversity purposes.

10. Plaintiff is informed and believes, and thereon alleges, the following. At all times

relevant to this Complaint Defendant **Marilyn Berg** ("Berg") was an employee of the County working in the County's DSS. Her job designation was Department Director. Berg is a citizen of the United States. At the time this lawsuit was filed she was, and she continues to be, a domiciliary of the State of California.

11 Plaintiff is informed and believes, and thereon alleges, the following. At all times relevant to this Complaint Defendant **Doug Weitz** ("Weitz") was an employee of the County working in the County's DSS. His job designation was Children's Services Program Manager. Weitz is a citizen of the United States. At the time this lawsuit was filed he was, and he continues to be, a domiciliary of the State of California.

12. Plaintiff is informed and believes, and thereon alleges, the following. At all times relevant to this Complaint Defendant **Debbie Jennings** ("Jennings") was an employee of the County working in the County's DSS. Her job designation was Children's Social Worker III Jennings is a citizen of the United States. At the time this lawsuit was filed she was, and she continues to be, a domiciliary of the State of California.

13 Plaintiff is informed and believes, and thereon alleges, that all times relevant to this Complaint, Berg was the supervisor of Weitz and Jennings; and Weitz was the supervisor of Jennings.

14. Plaintiff is informed and believes, and thereon alleges, that the improper conduct of Weitz and Jennings described below was a result of (a) Weitz and/or Jennings seeking and receiving Berg's approval for the conduct; and/ or (b) Berg's failure to properly train Weitz and/or Jennings; and/or (c) Berg's failure to properly supervise Weitz and/or Jennings.

15 Plaintiff is informed and believes, and thereon alleges, that during all times relevant to this Complaint, Berg, Weitz, and Jennings were each public employees acting in the course and scope of their employment. Each was engaged in work each was employed to perform. The acts and

omissions of Berg, Weitz, and Jennings were incident to their public employee duties. Each of these acts and omissions were done for the benefit of their employer and not to serve their own purposes or conveniences.

16. Plaintiff is informed and believes, and thereon alleges, that at all times relevant to this Complaint, Ken and Jenny A. Geheb ("the Gehebs") were married and resided together in Mono County. On or about March 28, 1997, the County DSS issued Jenny and/or Ken Geheb an emergency "pre-license certification" giving them authority to act as "licensed" foster parents for Wade and Trevor and to operate a "licensed" Foster Family Home.

17. Plaintiff does not know the true names of defendants **DOES 1 through 50**, and therefore sues them by those fictitious names. Plaintiff is informed and believes, and thereon alleges, the following. At all times mentioned in this Complaint, these fictitiously named Defendants were the agents and/or employees of their Co-Defendants, and in doing the things alleged in this Complaint were acting within the course and scope of that agency and/or employment. Each of these fictitiously named Defendants was in some manner negligently and proximately responsible for the events and happenings alleged in this Complaint and for Plaintiffs' damages.

**Regarding any Pre-Suit Claims Requirements**

18. As to the First, Second, and Third Claims, Plaintiff is informed and believes, and thereon alleges, she has complied with the requirements of the California Tort Claims Act because:

(a.) Plaintiff filed her Claim against the County and its agents and representatives on a form entitled "Claim for Damages County of Mono" with the County on June 26, 1997.

(b.) The County did not give Plaintiff notice that this Claim was insufficient in any way. Therefore, the County waived any defense as to the sufficiency of the Claim based upon a defect or

1 omission in the Claim as presented. [Cal. Govt. Code § 911].

2 (c.) The County rejected this Claim by certified letter dated July 17, 1997. This letter was  
3 postmarked July 18, 1997.

4 (d.) Plaintiff has filed this Action within six months of the date the County's written notice of  
5 rejection was deposited in the mail. [Cal. Govt. Code § 945.6(1)].  
6

7 19. As to the Fourth Claim, Plaintiff is informed and believes, and thereon alleges, that she  
8 is not obligated to comply with the requirements of the California Tort Claims Act.

9 20. As to any claim for damages arising out of the acts or omissions of the Gehebs as foster  
10 care parents, or in the operation of their Foster Family Home, Plaintiff is informed and believes, and  
11 thereon alleges, the following:  
12

13 (a.) This type of claim is governed by California Health & Safety Code § 1527 et. seq., not by  
14 the California Tort Claims Act.

15 (b.) On or before the date this Action was filed, Plaintiff filed an Insurance Claim with the  
16 California Foster Family Home and Small Family Home Insurance Fund ("the Fund") pursuant to Cal.  
17 Health & Safety Code § 1527.6  
18

19 (c.) As of the date this Action was filed, the Fund has not yet acted upon this Insurance Claim.

20 (d.) Plaintiff is stayed from naming the Gehebs or the Fund as Defendants in this Action until the  
21 Fund acts upon this Insurance Claim. However, if the Fund rejects this Insurance Claim, or does not  
22 compensate Plaintiff for her full amount of damages, Plaintiff reserves its right to amend this Complaint  
23 (or to file a separate action) to pursue the Gehebs or the Fund as Defendants. [Cal. Health & Safety  
24 Code § 1527.6(d)].  
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*Regarding the Sequence of Events Leading up to Trevor's Death*

21 Plaintiff is informed and believes, and thereon alleges, the information set forth in paragraphs 22 through 56 below. All dates and times are reasonable approximates. Unless otherwise noted, all dates are in 1997.

22. Trevor was born with Glycogen Storage Disease Type 1b. This is a metabolic disease which can be treated and controlled but not cured. Among other problems, the condition causes problems in the body fighting infection (neutropenia) and requires strict management of his diet. Trevor's disorder required a variety of interventions on a 24 hour basis in order to maintain his health. In order to keep his blood sugar stable, he required frequent feedings during the day and also needed continuous drip feedings through a nasogastric tube ("NG tube") at night.

23 Dale was very competent in the multiple interventions that Trevor needed throughout the day. She was, and still is, a licensed emergency medical technician. She had been trained in the management of Trevor's condition. In general, Dale allowed Trevor to wear his NG tube during the day because it facilitated the feeding process and allowed her to quickly intervene if Trevor's blood sugar level dropped too low.

24. At no time in the five years and ten months Trevor was under his mother's care, did he have a medical emergency like the First Crisis or the Second Crisis described below.

25. Dale and Edward began their divorce proceedings and became legally separated in December of 1995. They subsequently maintained separate residences in Bridgeport, California. The boys continued to live with Dale but Edward would visit them approximately every other weekend.

26. The situation began to intensify in February of 1997 when Dale sought to move back to the Gardnerville, Nevada in order to be closer to a medical facility that could treat Trevor (Carson Tahoe Hospital). Edward vigorously opposed this move.



27 On March 7th, the Mono County Superior Court issued temporary custody orders prohibiting Dale from changing the boys' residence until completion of a custody evaluation by Dr. Cynthia Stout, a licensed Marriage, Family, and Child Counselor. The boys primary residence was to remain with Dale.

28 On March 20th, the events began to get ugly and they ultimately proved tragic. On that day, Edward falsely reported to the Mono County Sheriff's Office ("MCSO") that Dale had committed grand theft and criminal trespass. At about 5:30 p.m., MCSO "arrested" Dale and detained her for questioning until about 10:00 p.m.

29 After Dale left for the MCSO Office, a MCSO deputy accompanied Edward to enter Dale's home to take custody of the boys. According to Weitz and the County, the boys "were taken into protective custody by the Mono County DSS and placed with their father, Ed Nolan.

30 The next day, March 21st, Weitz on behalf of DSS, filed a Petition with the Superior Court asking the Court to declare the boys dependents of the Court with care custody and control vested with DSS and to approve DSS' plan to have the boys remain in Edward's custody "until the conclusion of the criminal proceedings." ("the Petition"

31 Edward would not have been able to legally retain custody and control of Trevor without the Petition. Weitz knew, or reasonably should have known, that Trevor would not be safe with Edward

32 In the Petition, Weitz failed to disclose known exculpatory evidence and made false statements under penalty of perjury. Weitz had the intent to cause injury to Plaintiff or a willful and conscious disregard of the rights of Plaintiff or the safety of Trevor. In so doing, he forfeited any civil immunity protection for his conduct. [Cal. Govt. Code § 820.21] He made the false statements knowing they were false or with a reckless disregard for their truth or falsity. Those false statements



included, but are not limited to, the following:

(a.) Trevor had suffered or was at substantial risk to suffer serious physical harm or illness because Dale could not supervise or protect Trevor adequately

(b.) Trevor had suffered or was at substantial risk to suffer serious physical harm or illness because Dale failed to provide Trevor with adequate food, clothing, shelter, or medical treatment.

(c.) As a result of Dale's conduct, Trevor had suffered or was at substantial risk of suffering serious emotional damage evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward himself or others.

33 In the Petition, Weitz declared under penalty of perjury that "the minors will be in a stable environment if left with their father, and should remain with him until the conclusion of the criminal proceedings." On the same day Weitz told the Court that it was "in the emotional best interest of the children to remain in the care of their father". (Emphasis added.)

34. Later that evening of March 21st, while in the "care" of his father, Trevor's blood sugar dropped dangerously low and he became seriously ill. Edward drove Trevor to Washoe Medical Center in Reno, Nevada. ("Washoe") approximately two and a half hours away by car. During this trip, Trevor may have had a hypoglycemic seizure and may have passed in and out of consciousness. Upon arrival at Washoe's emergency room (at approximately 2:00 am on March 22nd) Trevor was directly moved to Washoe's Pediatric Intensive Care Unit. This incident is referred to herein as "the First Crisis".

35. When Edward brought Trevor to Washoe during the First Crisis, Edward was so mentally unstable that he could not communicate to Washoe's medical staff the details of Trevor's allergies, feeding schedules, or the purpose of the NG tube.

36. By 7:22 p.m. on March 22nd, Edward's mental instability had become suicidal. He was approached in Washoe's parking garage by two Washoe security guards. Edward pulled a knife out

from his pants and placed it to his stomach. According to one of the Guards, Edward said he had “done something very bad and he was going to kill himself.” The Reno Police Department was called to the scene and tried to talk Ed into putting down the knife. Eventually, the Reno Police were able to subdue Edward with pepper spray. The standoff lasted approximately three hours.

37. Meanwhile in the evening of March 22nd, Dale learned that Trevor had been hospitalized and drove to Washoe to be with Trevor in Pediatrics Intensive Care Unit. Unlike Edward, she was able to provide the medical staff with Trevor’s critical medical information. She stayed by Trevor’s Washoe bedside until he was released from Washoe on March 28, 1997.

38. Either late in the evening of March 22nd, or early in the morning of March 23rd, Edward was admitted to the Nevada Mental Health Institute as a “mentally ill person” He was released on or about March 24th.

39. On March 24th, Weitz, presumably acting under Berg’s authority, filed an amendment to the Petition to ask the Court to place the boys in “out of home settings until such time as findings and/or admissions are made concerning the dependency.” On his own admission, Weitz made this recommendation without knowing Trevor’s health status. In this amendment, Weitz did not disclose known exculpatory evidence and he did not correct his previous false statements made under penalty of perjury. Weitz continued to display an intent to cause injury to Plaintiff or a willful and conscious disregard of the rights or safety of Plaintiff and/or Trevor.

40. On March 28th, at approximately 10:30 am, while Dale was at Trevor’s bedside, The Superior Court ruled on the Petition and found that it was “in the best interest of the minor children that they remain out of home placement” and placed “care, custody and control of the minor children in the D.S.S. for suitable placement” pending a jurisdictional hearing on April 1th.

41. Later that day on March 28th, Trevor was released from Washoe. He was home with

1 Dale at approximately 7:30 p.m.. Trevor spent the night with Dale without complications. While  
2 Trevor was at Washoe, Wade was with his grandparents.

3 42. On or about March 28th, DSS issued the Gehebs a "pre-license certification" to allow  
4 them to serve as Foster Parents and to operate a Foster Family Home while their license application was  
5 pending. The County must have determined that the Gehebs had met all prelicense standards and  
6 requirements for such a placement.  
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8 43. On March 29th, Weitz placed the boys with the Gehebs.

9 44. On March 30th or 31st, Dale had learned that Ken and Jenny Geheb were each employed  
10 full time during the business day in their respective jobs. Ms. Geheb did not want to give up her job to  
11 "baby-sit the boys." The Gehebs hired Betty Mendes ("Mendes") to "baby-sit the boys" each work day.  
12 In the first work-week ( March 31st - April 4th), the boys were out of school and Mendes served from  
13 approximately 8:30 a.m. to approximately 4:30 p.m. at the Gehebs home. In the first three days of the  
14 second work-week (April 7th , 8th, and 9th ) , Mendes "baby-sat" the boys after school until about  
15 4:30 p.m. each day. Trevor got out of school at approximately 12 noon on those days.  
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18 45. During these two work-weeks, Mendes was never asked to, nor did she ever, monitor  
19 or manage Trevor's blood sugar level. Trevor was placed in this situation within approximately three  
20 days of being released from the hospital for the First Crisis.  
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22 46. On approximately April 1st, Dale called Weitz to express her concerns that the Gehebs  
23 were each working during the day. Dale complained that the Gehebs would not be able to devote the  
24 appropriate attention to Trevor's care if they were each holding down full time jobs. Dale reminded  
25 Weitz that Trevor's conditioned required hour by hour monitoring. Weitz and DSS did not remove the  
26 boys from the Gehebs.  
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28 47. On April 2, Jennings arranged for Dale to visit the boys. This visit was supervised by a

family friend, Beth Hartstrom ("Hartstrom") and held at Hartstrom's home. During this visit, Trevor was wearing his NG tube. Prior to this visit, Jennings had informed Hartstrom and Dale of the County's "rules" for all of Dale's visits (hereinafter "the Rules"). According to "the Rules":

- \* Dale was not allowed to be alone with Trevor,
- \* Dale was not allowed to feed Trevor,
- \* Dale was not allowed to take Trevor to the bathroom, and
- \* Dale was not allowed to check Trevor's blood sugar level

Jennings told Dale that if she did not follow "the Rules", Dale would not be allowed to see the boys

Dale followed "the Rules" for each of her visits with the boys

48. On April 7th, the County imposed a "visitation schedule" that restricted Dale's access to the boys to supervised visits on Mondays and Wednesdays from 3:00 to 5:00 p.m. Jennings wrote a letter to Dale informing her of this "visitation schedule" Jennings also wrote "hopefully the visits can focus on happy things, rather than illness and medication." (Emphasis added.)

49. On that same day (a Monday), Jennings arranged another visit for Dale and the boys at Hartstrom's home. Trevor said he had a headache (Dale knew that a headache is a symptom of hypoglycemia), Dale noticed that Trevor did not look well, and his forehead was sweating. She wanted to test his blood sugar level. Hartstrom called Jennings to ask for permission, but Jennings refused to change "the Rules" to allow Dale to test Trevor's blood sugar level. On this day, Trevor was not wearing his NG tube

50. On April 8th, Dale complained to Jennings about the missing tube. Jennings told Dale that she had received a doctors permission to remove the tube. Dale complained that Trevor's blood sugar level was not being monitored. Jennings reminded Dale that if she did not follow "the Rules", she would not be allowed to see the boys

51. On April 9th, Jennings arranged for a third visit for Dale and the boys at Hartstrom's home. Trevor appeared to be tired, sweaty, and cranky. He did not have his NG tube. Dale believed Trevor's blood sugar was low and that he needed to be fed cornstarch (which stabilized his blood sugar level) but she was restrained from acting by "the Rules". Dale told Hartstrom to tell Jennings that Trevor's blood sugar level was getting low. Dale planned to raise the issue at the scheduled Court hearing on April 11th. Dale left. This was the last time Dale saw her son Trevor alive.

52. On the morning of April 10th, Trevor began vomiting. He was running a fever. Mendes picked him up at school and brought him to the local Mono County Medical Group Clinic ("the Clinic"). At the Clinic, Dr. Jack Bertman prescribed "clear fluids and glucose only by tube." Later that afternoon, Trevor returned to the Gehebs' home. But by 1:15 a.m. on April 11th, Trevor's condition worsened. He was vomiting and his blood sugar level was dangerously low. The Gehebs called 911. Medics transported Trevor back to the Clinic. From the Clinic he was taken by ambulance to Carson Tahoe Hospital. From there he was taken by helicopter to Washoe. This incident is referred to herein as "the Second Crisis".

53. Meanwhile, on the morning of April 11th, Dale learned that Trevor was in an ambulance on his way to a hospital. Dale attended the Court hearing that morning and asked to immediately go to Trevor's side. The Court she would have to wait until DSS could arrange equal time for each parent and DSS would be contacting her. DSS took no action on this matter until approximately 7:30 a.m. the next morning when Weitz gave Dale approval to go to Washoe. But by the time she got there, it was too late.

54. On April 12, 1997, at 9:37 a.m., Trevor died.

55. The death certificate issued by the Washoe County District Health Department listed "Hypoglycemia, Glucose Storage Disease" as a significant condition contributing to Trevor's death and

1 the immediate cause of his death as "cardiorespiratory arrest".

2 56. In summary, Trevor was under his mother's care for the first five years, ten months, and ten  
3 days of his life. At no time in that period did he have a medical emergency as severe as the First Crisis  
4 or the Second Crisis. Within 31 hours of the County separating Trevor from his Mother and placing  
5 him under Edward's "care", the First Crisis occurred. Trevor was hospitalized for one week as a result  
6 of the First Crisis. The day after his release from the hospital, the County again separated Trevor from  
7 his mother to place him with the Gehebs. Within 14 days, the Second Crisis occurred, and Trevor died.  
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### 10 *III.*

#### 11 ***PLAINTIFF'S CLAIMS FOR RELIEF***

##### 12 **First Claim for Wrongful Death**

13 (Against all Defendants)

14 57. Paragraphs 1 through 56 above are restated and incorporated herein.

15 58. At Trevor's death, he left no surviving spouse, children, or issue of deceased children.

16 The only surviving heirs of the decedent were his mother (Plaintiff) and his father (Edward)

17 59. Plaintiff is entitled to bring this Wrongful Death Action under California Code of Civil  
18 Procedure § 1377.60(a) because she is a person who is entitled to the property of the decedent by  
19 intestate succession.  
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21 60. Edward has been named as a Defendant in this Action, and can not be joined as a  
22 Plaintiff, because Plaintiff is informed and believes that Edward's negligence was wholly, or in part, an  
23 actual and proximate cause of Trevor's death. Furthermore, Plaintiff is informed and believes that  
24 Edward did not file a timely claim with the County under the California Government Tort Claims Act.  
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26 61. Plaintiff is informed and believes and thereon alleges that the acts and/or omissions of  
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1 the Defendants proximately caused and/or were substantial factors in bringing about Trevor's death,  
2 including but not limited to, the following:

3 (a.) The County, Berg, Weitz, and Jennings each had mandatory duties imposed on them by the  
4 California Welfare and Institutions Code and their own DSS policies and procedures. These duties  
5 were designed to prevent children such as Trevor, from encountering fatal illnesses and traumas while  
6 under the care of foster parents, such as the Gehebs. The County, Berg, Weitz, and Jennings  
7 proximately caused Trevor's death by their failure to discharge these duties with reasonable diligence.

9 (b.) The County, Berg, and Weitz knew of Trevor's special medical condition and  
10 the special care he required, yet failed to place Trevor with foster parents who were (1) competent to  
11 evaluate and manage his health and (2) committed to providing him with reasonable care.

13 (c.) The County, Berg, and Weitz did not sufficiently investigate the Gehebs' qualifications  
14 prior to placing Trevor with them. (Jenny Geheb and Ken Geheb did not have sufficient experience  
15 evaluating or working with a child with Glycogen Storage Disease Type 1b.)

17 (d.) The County, Berg, Weitz, and Jennings made no effort (either before or after placement) to  
18 provide the Gehebs with the special training necessary to monitor and intervene in Trevor's condition  
19 on a 24 hour basis. The Gehebs were not properly trained to monitor and intervene in Trevor's  
20 condition on a 24 hour basis.

22 (e.) The County, Berg, and Weitz did not make a reasonable effort to investigate Trevor's  
23 medical history or review his medical records or interview his physicians prior to placing Trevor with  
24 the Gehebs.

26 (f.) The County, Berg, and Weitz did not sufficiently interview Dale to determine  
27 Trevor's health patterns for feedings, interventions, schedules, or blood level monitoring prior to  
28 placing Trevor with the Gehebs.



2 (g.) The County, Berg, Weitz, and Jennings did not sufficiently monitor Trevor's health or  
3 properly evaluate his health or seek timely and competent medical help for Trevor while he was under  
4 their authority.

5 (h.) The County, Berg, Weitz, and Jennings unreasonably ignored Dale's recommendations for  
6 Trevor's medical care.

7 (i.) Berg, Weitz, and Jennings were not qualified or competent to make medical decisions for  
8 Trevor. Each made one or more decisions with reckless disregard for Trevor's health.

9 (j.) The County, Berg, Weitz, and Jennings did not sufficiently monitor the Gehebs' management  
10 of Trevor's condition. When presented with reasonable information indicating Trevor may be in  
11 distress, the County, Berg, Weitz, and Jennings failed to act to protect Trevor.

12 (k.) The County, Berg, Weitz, and Jennings either approved, or failed to prevent: (1) the Gehebs  
13 from delegating their foster parent duties to Mendes; and (2) the Gehebs from placing Trevor in a  
14 situation (with Mendes) where his blood sugar level was not monitored or managed for 4 - 8 hour  
15 periods.  
16

17 (l.) The County, Berg, Weitz, and Jennings did not obtain sufficient and timely medical care for  
18 Trevor while he was under their authority.

19 (m.) Edward's acts and/or omissions made while Trevor was under his "care" were  
20 made with reckless disregard for Trevor's health and safety. These acts and/or omissions caused the  
21 First Crisis, and significantly compromised Trevor's health, and led to his death.

22 (n.) The County, Berg, and Weitz "placed" Trevor under Edward's "care" even though they  
23 knew, or reasonably should have known, that Edward was not capable of monitoring and managing  
24 Trevor's medical needs. This decision caused the First Crisis which significantly compromised Trevor's  
25 health and led to his death.  
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(o.) In the Petition, Weitz failed to disclose known exculpatory evidence about Plaintiff and made several false statements about Plaintiff, insuring that Trevor would be separated from his mother, the one person best suited to monitor and manage his health on a daily basis. This helped cause the Second Crisis and led to Trevor's death.

(p.) The County, Berg, and Jennings unreasonably imposed and enforced "the Rules" and "visitation schedule" insuring that Plaintiff could not monitor and manage Trevor's health. This helped cause the Second Crisis and led to Trevor's death.

(q.) The County, Berg, and Weitz, unreasonably delayed in giving Dale approval to go to Trevor's bedside on April 11th. This delay prevented Trevor's medical team from receiving vital information from Plaintiff about Trevor's health history.

62. The injuries so inflicted on Trevor resulted in his death on April 12, 1997.

63 As a direct and proximate result of the death of Trevor, Plaintiff has been deprived of Trevor's future love, care, comfort, affection, society, presence, companionship, protection, advice, physical assistance, financial support, services, and other contributions, and thus has suffered pecuniary loss

64 As a further direct and proximate result of the death of Trevor, Plaintiff has incurred additional expenses.

### **Second Claim for Intentional Infliction of Emotional Distress**

(Against all Defendants)

65 Paragraphs 1 through 56, and 61, set forth above, are restated and incorporated herein.

66. One or more of each Defendant's acts or omissions, including but not limited to those described above, was extreme and outrageous.

1 67. One or more of each Defendant's acts or omissions, including but not limited to those  
2 described above, was done with the intent to cause Plaintiff emotional distress or with reckless disregard  
3 of the probability that such act or omission would cause Plaintiff emotional distress.

4 68. Plaintiff suffered significant emotional distress.

5 69. One or more of Defendants' acts or omissions, including but not limited to those  
6 described above, was the actual and proximate cause of Plaintiff's significant emotional distress.  
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9 **Third Claim for Negligent Infliction of Emotional Distress**

10 (Against all Defendants)

11 70. Paragraphs 1 through 56 , and 61, set forth above, are restated and incorporated herein.

12 71. Each Defendant owed Plaintiff a duty of due care.

13 72. One or more of each Defendant's acts or omissions, including but not limited to those  
14 described above, was a breach of one or more of each Defendant's duties owed to Plaintiff.  
15

16 73. Plaintiff suffered significant emotional distress.

17 74. One or more of each Defendant's acts or omissions, including but not limited to those  
18 described above, was an actual and proximate cause of Plaintiff's significant emotional distress.  
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21 **Fourth Claim for Violation of Federal Civil Rights (42 U.S.C. § 1983)**

22 (Against the County, Berg, Weitz, and Jennings only )

23 75. Paragraphs 1 through 56, and 61, above are restated and incorporated herein.

24 76. Plaintiff is informed and believes, and thereon alleges, that the acts and omissions of the  
25 County, Berg, Weitz, and Jennings were committed by persons acting under color of state law (i.e. by  
26 persons acting in performance of official duties under a state or county law, ordinance, or regulation.)  
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1 77. Plaintiff is informed and believes, and thereon alleges, that no reasonable person in  
2 each Defendant's position could have thought the facts justified their acts and/or omissions.

3 78. Plaintiff is informed and believes, and thereon alleges, that the acts and/or omissions of  
4 the County, Berg, Weitz, and Jennings were the proximate and legal cause of the deprivation of  
5 Plaintiff's rights, privileges, and immunities secured by the Constitution or laws of the United States  
6 because:  
7

8 (a.) These acts and/or omissions caused the death of Plaintiff's son, Trevor.

9 (b.) These acts and/or omissions permanently deprived Plaintiff of the love, affection,  
10 society, companionship, support and pecuniary benefits of Trevor, and of her familial relationship with  
11 him in violation of her rights, privileges, and immunities guaranteed by the Fourteenth Amendment to  
12 the United States Constitution. This is a "liberty" interest protected by the due process clause of the  
13 Fourteenth Amendment.  
14

15 (c.) These acts and/or omissions violated Plaintiff's parental interest in the continuation of  
16 her companionship, care, custody, and management of her child. This is a "liberty" interest protected by  
17 the due process clause of the Fourteenth Amendment.  
18

19 (d.) This protected "liberty" interest was clearly established at the time of each  
20 Defendant's impermissible act or omission.

21 79. Plaintiff is informed and believes, and thereon alleges, that the acts or omissions of  
22 Berg, Weitz, and Jennings conformed to, implemented, or executed one or more of the County's official  
23 ordinances, regulations, customs, policies, or practices as created by Berg and/or Weitz and/or the  
24 County's Board of Supervisors acting under color of their respective authority. Regarding DSS matters,  
25 the edicts or acts of Berg and/or Weitz represented official County policy. These acts or omissions  
26 caused the described constitutional injury.  
27  
28

80. Plaintiff is informed and believes, and thereon alleges, the following. The County's official customs, policies, or practices include, but are not limited to, the "the Rules" described in paragraph 47 and the "visitation schedule" described in paragraph 48. Although Plaintiff disagreed with "the Rules" and this "visitation schedule", she understood them to be a legitimate exercise of the County's authority and she grudgingly conformed her conduct to them, even though they prevented her from gaining access to Trevor to provide him with reasonable medical care.

81. Plaintiff is informed and believes, and thereon alleges, that Weitz and Jennings, acting on behalf of the County, each made certain acts and/or omissions, under color of law, with evil motive or intent, or with reckless and callous indifference to Plaintiff's rights and Trevor's health, including but not limited to, the following:

(a.) Weitz failed to disclose known exculpatory evidence and made false statements in the Petition.

(b.) Weitz unreasonably delayed in giving Plaintiff approval to go to Trevor's bedside on April 11, 1997.

(c.) Jennings used "the Rules" to prohibit Plaintiff from testing Trevor's blood sugar level.

(d.) Jennings used "the Rules" to prohibit Plaintiff from feeding Trevor.

#### *IV.*

#### *PLAINTIFF'S PRAYER FOR RELIEF*

82. Wherefore, Plaintiff, prays for judgment against the Defendants, and each of them, as follows:

#### AS TO ALL CLAIMS FOR RELIEF:

(a.) For damages in an amount to be determined at trial, but reasonably expected to

1 be in excess of this Court's minimum jurisdictional amount for Diversity Actions.

2 (b.) For Plaintiff's costs and expenses incurred herein;

3 (c.) For pre-judgment interest where permitted under applicable law; and

4 (d.) For such other and further relief as the Court deems just and proper.

5 AS TO THE SECOND CLAIM ONLY:

6 (a.) For exemplary damages against Weitz, Jennings, and Edward.

7 AS TO THE FOURTH CLAIM ONLY:

8 (a.) For exemplary damages against Weitz and Jennings; and

9 (b.) For reasonable attorney's fees pursuant to 42 USC § 1988(b).

10 Date: January 13, 1998.

11 

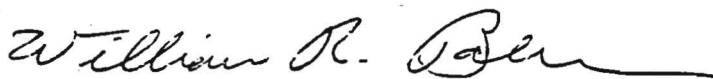
12 William R. Baber  
13 Attorney for Plaintiff,  
14 Dale Cindy Nolan-Dissell

15 \*\*\*

16 ***DEMAND FOR JURY TRIAL***

17 Plaintiff hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules of Civil  
18 Procedure.

19 Date: January 13, 1998.

20 

21 William R. Baber  
22 Attorney for Plaintiff,  
23 Dale Cindy Nolan-Dissell