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9 **SUPERIOR COURT OF CALIFORNIA**

10 **COUNTY OF SAN DIEGO**

11 A.M., a minor, Individually and as Successor-in-)
12 Interest to the Estate of Arabella McCormack, by)
13 and through her Guardian ad Litem, STEVEN)
14 RATNER; E.M., a minor, Individually and as)
15 Successor-in-Interest to the Estate of Arabella)
16 McCormack, by and through her Guardian ad)
17 Litem STEVEN RATNER,)

18 Plaintiffs,)

19 vs.)

20 SAN DIEGO ROCK CHURCH; KEVIN)
21 JOHNSTONE; CITY OF SAN DIEGO POLICE)
22 DEPARTMENT; LAWANDA FISHER; CITY OF)
23 SAN DIEGO FIRE RESCUE DEPARTMENT;)
24 PACIFIC COAST ACADEMY; DEBORAH)
25 KOHL; EMILY MENDENHALL; COUNTY OF)
26 SAN DIEGO CHILD WELFARE SERVICES;)
27 SHARA FREEMAN; DENNIS LEGGETT;)
28 LETICIA McCORMACK; ESTATE OF BRIAN)
McCORMACK; ADELLA TOM; STANLEY)
TOM; and DOES 1-100,)

Defendants.)
_____)

CASE NO.

COMPLAINT FOR DAMAGES

- 1) **NEGLIGENCE**
- 2) **FAILURE TO PERFORM MANDATORY DUTIES**
- 3) **VIOLATION OF FEDERAL CIVIL RIGHTS**
- 4) **ASSAULT AND BATTERY**
- 5) **INTENTIONAL INFLECTION OF EMOTIONAL DISTRESS**

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Plaintiffs allege on information and belief:

THE PARTIES

1. Decedent Arabella McCormack was a minor child residing in the County of San Diego, California, at all relevant times. Arabella was 11 years old when she died on August 30, 2022, as a result of years of neglect, abuse, and torture perpetrated by her adoptive parents Leticia and Brian McCormack.

2. Plaintiff A.M. is a minor child residing in the County of San Diego, California, at all relevant times. A.M. is Arabella’s younger sister, heir, and successor-in-interest. Attorney Steven Ratner is the court appointed guardian ad litem for A.M.

3. Plaintiff E.M. is a minor child residing in the County of San Diego, California, at all relevant times. E.M. is also Arabella’s younger sister, heir, and successor-in-interest. Attorney Steven Ratner is the court appointed guardian ad litem for E.M.

4. Defendant San Diego Rock Church is a nonprofit religious corporation organized, existing, and conducting business under the laws of the County of San Diego and the State of California. Defendant Kevin Johnstone was an employee of the Rock Church and acted within the scope of his employment or as an agent of the Rock Church at all relevant times.

5. Defendant City of San Diego is a public entity organized, existing, and conducting business under the laws of the County of San Diego and the State of California. The City of San Diego Police Department [SDPD] is a department of the City. Defendant Officer Lawanda Fisher was an employee of the Police Department and was acting within the scope of her employment or as an agent of the SDPD at all relevant times.

1 6. Defendant City of San Diego Fire Rescue Department [SDFRD] is a
2 department of the City of San Diego, organized, existing, and conducting business under the
3 laws of the County of San Diego and the State of California. Defendant Kevin Johnstone
4 was an employee of the Fire Department and acted within the scope of his employment or as
5 an agent of SDFRD at all relevant times.
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7 7. Defendant Pacific Coast Academy is a nonprofit public benefit corporation
8 and charter school organized, existing, and conducting business under the laws of the
9 County of San Diego and the State of California. Defendants Deborah Kohl and Emily
10 Mendenhall were employees of Pacific Coast Academy and acted within the scope of their
11 employment at all relevant times.
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13 8. Defendant County of San Diego is a public entity organized, existing, and
14 conducting business under the laws of the County of San Diego and the State of California.
15 Child Welfare Services is a department of the County of San Diego.
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17 9. Defendants Shara Freeman and Dennis Leggett were employees of the
18 County of San Diego Child Welfare Services department and were acting within the scope
19 of their employment at all relevant times.
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21 10. Defendant Leticia McCormack was the adoptive mother of Arabella, A.M.,
22 and E.M. Ms. McCormack resided with all three girls in the County of San Diego,
23 California, at all relevant times.
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25 11. Defendant the Estate of Brian McCormack is the estate of Brian McCormack
26 (deceased). Brian McCormack was the adoptive father of Arabella, A.M., and E.M. Mr.
27 McCormack resided with all three girls in the County of San Diego, California, at all
28 relevant times. Decedent's estate is being sued pursuant to Probate Code Section 550-555.

1 12. Defendant Adella Tom is Ms. McCormack’s mother and the adoptive
2 grandmother of Arabella, A.M., and E.M. Adella Tom resided in the County of San Diego,
3 California, at all relevant times.

4 13. Defendant Stanley Tom is Ms. McCormack’s father and the adoptive
5 grandfather of Arabella, A.M., and E.M. Stanley Tom resided in the County of San Diego,
6 California, at all relevant times.

7 14. Defendants DOES 1 through 25, inclusive, were the agents or employees of
8 other named Defendants who acted within the scope of that agency or employment, the true
9 names of whom are presently unknown to Plaintiffs.

10 15. Defendants DOES 26 through 50, inclusive, are persons or entities whose
11 capacities are presently unknown to Plaintiffs, but whose acts or omissions contributed to
12 Plaintiffs’ harm.

13 16. Plaintiffs are ignorant of the true names and capacities of the defendants sued
14 herein as DOES 51 through 100 and sue these defendants by fictitious names. Plaintiffs will
15 amend the Complaint to state their true names and capacities when the same has been
16 ascertained. DOE defendants are responsible in some manner, either by act or omission,
17 fraud, negligence, breach of contract, breach of mandatory duty, or otherwise, for the
18 occurrences herein alleged, and caused or contributed to Plaintiffs’ harm.

19 17. Plaintiffs allege that at all times herein mentioned, each of the defendants was
20 the agent, servant, joint venturer, conspirator, alter ego, partner and/or employee of the other
21 defendants, and was at all times acting within the purpose and scope of such agency,
22 servitude, joint venture, conspiracy, alter ego, partnership or employment, and with the
23 authority, consent, approval and ratification of each of the other defendants.
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1 **VENUE AND JURISDICTION**

2 18. Venue is proper in the Superior Court of the State of California, for the
3 County of San Diego, Central Division, in that the underlying wrongdoing, acts, omissions,
4 injuries, and related facts and circumstances upon which the present action is based occurred
5 in the City and County of San Diego, within the judicial boundaries of the Central Division
6 of this Superior Court. This Superior Court has jurisdiction over the present matter because,
7 as described herein, the nature of the claims and amounts in controversy meet the
8 requirements for unlimited damages jurisdiction.
9

10 **GENERAL ALLEGATIONS**
11 **Years of Abuse and Neglect**

12 19. On August 30, 2022, Sheriff deputies and paramedics responded to a 911 call
13 at Leticia and Brian McCormack’s residence and discovered that the McCormacks’ three
14 adopted girls, Arabella (11 yrs. old), A.M. (7 yrs. old), and E.M. (6 yrs. old), were severely
15 malnourished, neglected, and abused.
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17 20. When the medics arrived, Arabella had no pulse, was not breathing, was cold
18 to the touch, and nonresponsive. She weighed just 40 pounds. Her bones were sticking out.
19 Her eyes were sunken with dark circles. Her teeth were yellow and calcified. She had
20 bruises, ulcerations, cuts, and scabs. The medics performed CPR and rushed her to the
21 hospital. Doctors attempted to save her life, but her heart kept failing and she was
22 pronounced dead at 12:28 pm. X-rays revealed that she had thirteen bone fractures. Arabella
23 was starved, beaten, and abused to death.
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25 21. A.M. and E.M. were also severely malnourished, neglected, and abused.
26 Doctors described them as “near death.” Their bones could be seen through their skin. They
27 had no fat on their bodies. A.M.’s hands and feet were bright red and badly swollen. They
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1 both appeared younger than their ages due to underdevelopment. They suffered from
2 refeeding syndrome (a phenomenon identified following World War II when prisoners of
3 war were provided with food after a prolonged period of starvation and subsequently died
4 from cardiac failure) and had to be nourished gradually. They were hospitalized and
5 received treatment that saved their lives.
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7 22. The Defendants in this case include not only the perpetrators of this horrific
8 abuse - Leticia McCormack, Brian McCormack (sued through his estate), Adella Tom
9 (Leticia's mother), and Stanley Tom (Leticia's father), but also the individuals and entities
10 who interacted with the McCormacks and the girls in the weeks, months, and years leading
11 up to Arabella's death, and who owed mandatory duties to report the girls' neglect to the
12 proper authorities.
13

14 **San Diego Rock Church**

15 23. Leticia McCormack served as an ordained elder and ministry leadership
16 coordinator with the Rock Church. During the course of her involvement with the church,
17 the Rock Church (through its volunteers and employees) became aware of issues of child
18 neglect and/or abuse relating to Ms. McCormack.
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20 24. After Arabella's death, church member Janet Horvath reported that she saw
21 A.M. and E.M. in December 2021 at the McCormacks' home and that they looked like
22 "little ghosts." She said that Arabella was kept upstairs away from her while she visited. She
23 said that she was concerned for the girls because they appeared "fragile" and smaller than
24 her own grandchildren. Ms. Horvath was part of a prayer group at the Rock Church that
25 prayed for the McCormack girls. Ms. McCormack told the prayer group that Arabella had
26 "bad behaviors," that they couldn't have people over, and that there was "spiritual warfare"
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1 and “demonic activity” with Arabella. Rather than report these troubling observations about
2 the girls and Ms. McCormack to the authorities, the prayer group kept it within the church
3 and took no action to protect the children.

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5 25. At some point, the Rock Church Child Abuse Investigator and Safety
6 Operations Manager Kevin Johnstone became involved and visited the McCormacks’ home
7 and the girls on multiple occasions. In fact, Mr. Johnstone visited all three children just the
8 week prior to Arabella’s death. When circumstances giving rise to a reasonable suspicion of
9 child abuse exist, Penal Code section 11164, et seq., triggers the mandatory duty to report
10 the circumstances to a designated outside agency. It is the responsibility of the outside
11 agency to investigate reports of suspected abuse, not the church.

12
13 26. Mr. Johnstone’s job description with the Rock Church as a “CPS
14 investigator” was false and misleading. Child Protective Services, or CPS, is a government
15 agency responsible for investigating reports of suspected child abuse and neglect. CPS
16 investigators receive specialized training and policies for the protection of children. Mr.
17 Johnstone was never employed, trained, or endorsed by CPS. The Rock Church and Mr.
18 Johnstone provided a false narrative to the public by holding him out as a CPS investigator.

19
20 27. When Mr. Johnstone saw the girls in the weeks and months prior to
21 Arabella’s death, their neglect and abuse was apparent to him. All three girls were severely
22 emaciated, underdeveloped, and the victims of prolonged starvation, isolation, lack of
23 medical care, torture, and abuse. Mr. Johnstone’s knowledge of the neglect and abuse,
24 acquired while acting within the scope of his duties as an employee and agent of the Rock
25 Church, are imputed to the Rock Church. Mr. Johnstone communicated and/or reasonably
26 should have communicated the neglect to the Rock Church leadership. The Rock Church
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1 Mr. Johnstone owed a duty to report the girls' neglect and abuse under Penal Code section
2 11164, et seq.

3 34. San Diego Fire Rescue Department is vicariously liable for Mr. Johnstone's
4 failure to report. Mr. Johnstone's failure within the scope of his employment is imputed to
5 the fire department. The fire department also negligently failed to provide essential training
6 to Mr. Johnstone regarding reporting child neglect and abuse.
7

8 **Pacific Coast Academy**

9 35. All three girls were enrolled in a home school program through Pacific Coast
10 Academy. As part of the program, Pacific Coast teachers saw the girls every 20 days or so.
11 The girls' homeschool teachers were Deborah Kohl (2021-2022) and Emily Mendenhall
12 (2019-2021).
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14 36. When Ms. Kohl and Ms. Mendenhall saw the children, all three children were
15 severely emaciated, underdeveloped, and the victims of prolonged starvation, isolation, lack
16 of medical care, torture and abuse. The girls' neglect and abuse was and should have been
17 apparent. As teachers, Ms. Kohl and Ms. Mendenhall owed mandatory duties to report the
18 girls' neglect under Penal Code section 11164, et seq., and they failed to do so.
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20 37. Pacific Coast Academy is vicariously liable for its teachers' failure to report.
21 Their failures within the scope of their employment are imputed to Pacific Coast Academy.
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23 38. Additionally, Pacific Coast Academy failed to provide required mandatory
24 training to its teachers, aides, and/or employees, including Ms. Kohl and Ms. Mendenhall,
25 regarding identifying and reporting child abuse pursuant to CA Assembly Bill 1432.
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1 **County of San Diego Child Welfare Services**

2 39. Defendant County of San Diego Child Welfare Services (CWS) is
3 responsible for protecting San Diego’s children by investigating reports of child abuse and
4 intervening to protect children where appropriate. CWS has mandatory duties in fulfilling its
5 responsibilities.
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7 40. For example, CWS owes a mandatory duty to report claims of neglect or
8 abuse relating to children of Native American Indian heritage to designated representatives
9 of the child’s tribe pursuant to Department of Social Services Regulations and Child Welfare
10 Services Manual, including DSS Regulation 31-110.32 [“If [...] the referral involves an
11 Indian child the social worker **shall contact the designated representative of the child’s**
12 **tribe** so that Active Efforts to prevent the breakup of the Indian family can be commenced
13 and coordinated by the social worker [...].”].
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15 41. The tribe must be informed about complaints of abuse relating to an Indian
16 child so that it can employ active efforts to protect the interests of the child, intervene in
17 custody proceedings, and/or take action to maintain or reunite the child with the tribal family
18 or tribe. An Indian child’s tribe has the right to intervene at any point in a child custody
19 proceeding. (Welf. and Inst. Code § 224.4.)
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21 42. Tribes have their own Tribal Family Services departments responsible for the
22 welfare of Indian children. Tribal Family Services coordinates with CWS in child custody
23 proceedings involving Indian children. A tribal representative is a required member of the
24 child’s “child and family team,” which is responsible for participating in the custody
25 proceedings. This is part of CWS’s “team-based approach” to coordinating services for
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1 Indian children. (Welf. and Inst. Code § 16501(a)(4).) The tribe cannot fulfill its role as a
2 team member without being informed of critical information.

3 43. CWS's mandatory duty to inform the tribe of complaints of abuse relating to
4 Indian children stems from the Indian Child Welfare Act (ICWA), which was enacted to
5 1978 to "protect the best interests of Indian children." (25 CFR Part § 23.3.) It was enacted
6 in response to a crisis involving Indian children being separated from their families and
7 tribes by state child welfare agencies. Among the protections for Indian children afforded by
8 ICWA, it requires state child welfare caseworkers to actively involve the tribe in custody
9 proceedings involving Indian children.
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11 44. Arabella, A.M., and E.M. are children of Native American Indian heritage.
12 They were removed by CWS from their tribal parents and put up for foster care and
13 adoption. Tribal Family Services was involved in the girls' custody proceedings until the
14 adoption was finalized in July 2019, and was supposed to have been notified of any
15 complaints of abuse. CWS had a mandatory duty to notify the Tribe, but failed to do so.
16

17 45. After Arabella's death, it came to light that as early as August 27, 2018, CWS
18 received complaints of child abuse relating to then 7-year-old Arabella and her foster parents
19 the McCormacks. The complaints came from Arabella's elementary school. At the time,
20 Arabella was in the process of being adopted by the McCormacks, along with her younger
21 sisters A.M. (then 3 yrs. old) and E.M. (then 2 yrs. old). The school told CWS that the
22 McCormacks withheld water from Arabella and limited her drinking to one Dixie cup per
23 day. The school reported that the McCormacks controlled what and when Arabella could
24 eat, punished her by making her sleep on the floor without a pillow, and called her a liar. It
25 said that Arabella was under stress and that her stomach ached.
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1 46. The withholding of water and food, and bizarre punishments, are red flags for
2 child abuse. These are the types of red flags that child welfare agents are trained to identify
3 and act upon.

4 47. CWS was required to conduct an in-person investigation of the school's
5 complaints within 10 calendar days. On September 12, 2018, 16 days after receiving the
6 complaints, CWS agent Shara Freeman met with Ms. McCormack and Arabella at their
7 home. Ms. Freeman knew that children are unlikely to report abuse in front of their abusers.
8 This is why CWS has the right to interview children apart from their parents. Ms. Freeman
9 should have interviewed Arabella at her school where she could feel safe speaking.

10 48. Instead, Ms. Freeman interviewed Arabella in front of Ms. McCormack.
11 Arabella denied being abused, and Ms. McCormack denied abusing Arabella. Ms.
12 McCormack blamed Arabella's dietary restrictions on unspecified "stomach issues." Ms.
13 Freeman did not ask what "stomach issues" required the withholding of water from a child.
14 Nor did Ms. Freeman ask for any medical support for the extreme dietary restrictions. Ms.
15 Freeman simply concluded that the complaints were "unfounded" and closed the file.

16 49. Because Arabella and her sisters are of Native American Indian heritage, Ms.
17 Freeman was required to inform a representative of Arabella's tribe regarding the
18 complaints of abuse. Arabella's tribe has its own Tribal Family Services that was closely
19 involved in the adoption of Arabella and her sisters.

20 50. But Ms. Freeman never contacted a representative of the tribe as required.
21 Nor did Ms. Freeman's supervisor, Dennis Leggett, who signed off on the investigation. Had
22 Ms. Freeman or Mr. Leggett contacted the tribe, they would have learned that the tribe had
23 serious concerns about the McCormacks. Tribal representative Karen Kolb believed that
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1 “something was wrong.” The McCormacks wouldn’t make the children accessible for visits.
2 Ms. Kolb said that the children’s bedrooms “looked like dungeons” and that the
3 McCormacks exhibited strange behaviors. In fact, the tribe considered asking the court to
4 remove the girls from the McCormacks’ custody before the adoption was finalized. Had Ms.
5 Freeman informed the tribe about the complaints of abuse, the tribe would have shared its
6 concerns and the adoption would have been stopped.
7

8 51. On November 3, 2018, just 3 months after the first complaint, CWS received
9 additional complaints of abuse reporting that Mr. McCormack aggressively picked Arabella
10 up at school and pinned her on her side while she was screaming and crying. He held her
11 there for 2-3 minutes while he searched her pockets for candy. The McCormacks did not
12 allow Arabella to have any candy and kept her home from school on Halloween day. After
13 holding her down and aggressively searching her pockets, Mr. McCormack dragged
14 Arabella outside to his car. Arabella later told a teacher that after she got home, Mr.
15 McCormack made her stand in the shower with her pants off while he dumped cold water on
16 her. That evening, she was not allowed to eat dinner with the rest of the family, and the only
17 food she was given was beans. The complainant told CWS that the McCormacks were
18 “mentally abusive,” that Arabella was “always hungry,” and that she was “afraid of her
19 parents.” The complaint also reiterated that the parents did not allow Arabella to eat during
20 after school care.
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23 52. On November 7, 2018, Ms. Freeman again met with Ms. McCormack and
24 Arabella at their house. Arabella’s sisters, A.M. and E.M., were also present. Ms. Freeman
25 learned that after the most recent report of abuse, Ms. McCormack decided to home school
26 Arabella. This was another red flag warning for abuse. Ms. Freeman knew, or should have
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1 known with proper training, that abusers avoid people and places likely to perceive and
2 report their abuse. By homeschooling, Ms. McCormack removed Arabella from the one
3 place she could be protected.

4 53. Ms. Freeman knew from the complaint that Arabella was afraid of her
5 parents, yet Ms. Freeman again interviewed Arabella in front of Mr. and Ms. McCormack.
6 Not surprisingly, Arabella and the McCormacks denied any abuse. Ms. Freeman attempted
7 to talk with A.M. but gave up because she was upset. In Ms. Freeman's report, she found
8 "nothing to be worried about" and closed the file for a second time.
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10 54. Once again, Ms. Freeman did not contact a representative of Arabella's tribe
11 regarding the complaints as required by DSS mandatory regulations. Had Ms. Freeman
12 contacted the tribe and shared information, the tribe would have stopped the adoption. But
13 CWS never gave the tribe an opportunity to act on the complaints, and on July 19, 2019, the
14 McCormacks' adoption of the girls was finalized.
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16 55. Over the next three years, all three girls were abused, neglected, starved, and
17 tortured. The hallmarks of the McCormacks' abuse were the withholding of food and water,
18 isolation, and corporal punishment.
19

20 56. CWS had the opportunity and duty to avoid this horrific outcome in 2018. It
21 merely had to do its mandatory job requirements and inform the girls' tribe about the
22 complaints of abuse.
23

24 57. Ms. Freeman was inexperienced and unskilled in emergency response in
25 violation of DSS Regulation 31-101.2, which requires that "the social worker responding to
26 a referral shall be skilled in emergency response." Ms. Freeman's lack of skill is evidenced
27 by her failure to contact the tribe, failure to find out if Arabella even had a physician [she
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1 didn't], let alone to contact any such physician about the alleged stomach issues and limiting
2 her water intake. Her lack of skill and training is further evidenced by her failure to
3 interview Arabella privately, failure to take action when Arabella was removed from school,
4 and failure to inform the court of the removal from school in advance of the finalization of
5 the adoption.
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7 GOVERNMENT CLAIMS

8 58. Plaintiffs have exhausted their administrative remedies by duly and properly
9 filing notices of claims pursuant to the Government Claims Act.

10 59. Plaintiffs timely submitted the required government claims within 6 months
11 of Arabella's death. Arabella's death marks the last day of A.M. and E.M.'s abuse by the
12 McCormacks, and their removal from the McCormacks' custody and placement into the care
13 of doctors and the juvenile justice system.
14

15 60. Plaintiffs' wrongful death claims accrued on the date of Arabella's death,
16 because under California law the date of accrual of a cause of action for wrongful death is
17 the date of death. The accrual of Plaintiffs' personal injury claims and Arabella's survival
18 claims was delayed until the minor girls were removed from the McCormacks and assigned
19 a guardian ad litem by the court.
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21 61. To the extent wrongdoing by Defendants occurred prior to Arabella's death,
22 Plaintiffs did not and could not have discovered such wrongdoing while they were minors
23 under the thumb of the McCormacks. The delayed discovery doctrine protects a plaintiff by
24 postponing accrual of a cause of action until the plaintiff discovers, or has reason to
25 discover, the cause of action.
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1 62. The delayed discovery rule is applied in cases where it is manifestly unjust to
2 deprive plaintiffs of a cause of action before they are aware that they have a cause of action.
3 The rule protects a plaintiff who is blamelessly ignorant of her cause of action from the
4 often harsh and unjust results which flow from such a rigid application of the statute of
5 limitations. Plaintiffs who file suit as soon as they have reason to believe that they are
6 entitled to recourse should not be precluded.
7

8 63. Courts have applied the delayed discovery doctrine to causes of action arising
9 out of child abuse. In *Curtis T. v. County of Los Angeles* (2004) 123 Cal.App.4th 1405, for
10 example, the minor plaintiff brought a tort action against a county alleging he had been
11 molested while in foster care for several years, between March 1996 and February 1999.
12 The plaintiff contended his government claim was timely filed in March 2003, within six
13 months of his mother’s discovery of the alleged molestation in September 2002. The county
14 responded that the claim was untimely because the cause of action accrued no later than
15 February 1999, when the alleged abuse ended. (*Id.*)
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18 64. In reversing the sustaining of a demurrer without leave to amend, *Curtis T.*
19 “held that plaintiff must be given leave to amend to allege, if he is able to do so truthfully —
20 given his youth, ignorance, and inexperience, as well as his foster parent's alleged
21 complicity in the abuse — that he lacked a real awareness, until his mother's discovery of
22 the alleged molestation, that what happened to him between the ages of five and eight was
23 wrong. Such truthful allegations would be sufficient, in our view, to invoke the equitable
24 delayed discovery rule of accrual, under which plaintiff’s claim would be deemed timely for
25 pleading purposes.” (*Curtis T., supra*, 123 Cal.App.4th at 1422-1423; *K.J. v. Arcadia*
26 *Unified* (2009) 172 Cal.App.4th 1229, 1241.)
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1 65. Here, Plaintiffs' abuse did not end until the date of Arabella's death and the
2 removal of A.M. and E.M. from the home. Plaintiffs, given their youth, ignorance, and
3 inexperience, as well as the McCormacks' complicity in their abuse, lacked a real awareness
4 of either the wrongdoing or their causes of action, until the sheriff's department, paramedics,
5 and doctors discovered the abuse, and Plaintiffs' court appointed guardian ad litem
6 discovered the government negligence that contributed to it.

8 66. Thus, claims were timely presented to the County of San Diego and City of
9 San Diego within six months of Arabella's death. Those claims were for the wrongful death
10 of Arabella and the personal injuries of A.M. and E.M. The County wrongfully rejected the
11 claims as untimely.

13 **WRONGFUL DEATH AND SURVIVAL STANDING**

14 67. Plaintiffs have standing to bring wrongful death and survival claims relating
15 to their sister Arabella's death. A.M. and E.M. are Arabella's heirs and successors-in-
16 interest. Ms. McCormack's inheritance rights are cut off under Probate Code section 250
17 because she feloniously and intentionally killed Arabella, and Mr. McCormack killed
18 himself after the abuse was discovered. Arabella's biological parents did not maintain any
19 rights to inherit from Arabella in the adoption. Under California law, those rights were
20 terminated and vested in the adoptive parents upon finalization of the adoption.

22 **FIRST CAUSE OF ACTION**
23 **NEGLIGENCE - Personal Injury, Wrongful Death and Survival**
24 **(Against All Defendants)**

25 68. Plaintiffs incorporate all the above allegations fully herein.

26 69. Defendant the Rock Church, acting through its employees and agents, was a
27 mandatory reporter of child neglect and abuse pursuant to Penal Code section 11164, et seq.
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1 The Rock Church failed to report child neglect and abuse relating to Plaintiffs, and failed to
2 adequately train and supervise its employees, including Mr. Johnstone. These failures were a
3 substantial factor in causing Plaintiffs' harm, including Arabella's death.

4 70. Defendant City of San Diego Police Department, acting through its
5 employees, was a mandatory reporter of child neglect and abuse pursuant to Penal Code
6 section 11164, et seq. The Police Department's failure to report child neglect and abuse
7 relating to Plaintiffs, and its failure to provide appropriate mandatory reporter training to its
8 employees, was a substantial factor in causing Plaintiffs' harm, including Arabella's death.

9 71. Defendant City of San Diego Fire Rescue Department, acting through its
10 employees, was a mandatory reporter of child neglect and abuse pursuant to Penal Code
11 section 11164, et seq. The Fire Department's failure to report child neglect and abuse
12 relating to Plaintiffs, and its failure to provide appropriate mandatory reporter training to its
13 employees, was a substantial factor in causing Plaintiffs' harm, including Arabella's death.

14 72. Defendant County of San Diego Child Welfare Services acting through its
15 employees, owed a mandatory duty to contact a representative of Plaintiffs' Native
16 American Indian tribe and report the complaints of neglect and abuse that it received in
17 August and November 2018, prior to the finalization of the girl's adoption by the
18 McCormacks in early 2019. This mandatory duty is pursuant to the Department of Social
19 Services Regulations and Child Welfare Services Manual, including DSS Regulation 31-
20 110.32. Child Welfare's breach of its mandatory duty to contact the tribe was a substantial
21 factor in causing Plaintiffs' harm, including Arabella's death.

22 73. County of San Diego Child Welfare Services owed other mandatory duties,
23 including duties to cross-report to the appropriate licensing agency (DSS Regulation 31-
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1 101.141, 31-110.6), to investigate reports of abuse within 10 days (DSS Regulation 31-120),
2 to utilize investigators skilled in emergency response (DSS Regulation 31-101.2), and to
3 report suspected child neglect or abuse. Its breach of each of these duties was a substantial
4 factor in causing Plaintiffs' harm, including Arabella's death.

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6 74. Defendants Leticia McCormack, the Estate of Brian McCormack, Adella
7 Tom, and Stanley Tom owed the adopted girls a duty to use reasonable care to prevent harm
8 to them. Defendants breached this duty by failing to provide the girls with food, water,
9 medical care, and protection from harm. Defendants' negligence was a substantial factor in
10 causing the girls' harm, including Arabella's death.

11
12 75. As a result of Defendants' negligence, Plaintiffs A.M. and E.M. have
13 suffered and will continue to suffer extraordinary damages, including physical pain, mental
14 suffering, loss of enjoyment of life, disfigurement, physical impairment, grief, anxiety,
15 humiliation, and emotional distress. Plaintiffs A.M. and E.M. have also suffered the
16 wrongful death of their sister, Arabella, including the loss of Arabella's love,
17 companionship, comfort, care, assistance, protection, affection, society, and moral support.
18 The Estate of Arabella is also entitled to recover pre-death pain and suffering damages.

19
20 **SECOND CAUSE OF ACTION**
21 **FAILURE TO PERFORM MANDATORY DUTIES (Gov. Code § 815.6) –**
22 **Personal Injury, Wrongful Death and Survival**
(Against All Public Entity Defendants and all DOES)

23 76. Plaintiffs incorporate all the above allegations fully herein.

24 77. Defendant City of San Diego Police Department, acting through its
25 employees, was a mandatory reporter of child neglect and abuse pursuant to Penal Code
26 section 11164, et seq. The Police Department's failure to report child neglect and abuse
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1 relating to Plaintiffs, and its failure to provide appropriate mandatory reporter training to its
2 employees, was a substantial factor in causing Plaintiffs' harm, including Arabella's death.

3 78. Defendant City of San Diego Fire Rescue Department, acting through its
4 employees, was a mandatory reporter of child neglect and abuse pursuant to Penal Code
5 section 11164, et seq. The Fire Department's failure to report child neglect and abuse
6 relating to Plaintiffs, and its failure to provide appropriate mandatory reporter training to its
7 employees, was a substantial factor in causing Plaintiffs' harm, including Arabella's death.

8 79. Defendant County of San Diego Child Welfare Services, acting through its
9 employees, owed a mandatory duty to contact a representative of Plaintiffs' Native
10 American Indian tribe and report the complaints of neglect and abuse that it received in
11 August and November 2018, prior to the finalization of the girl's adoption by the
12 McCormacks in early 2019. This mandatory duty is pursuant to the Department of Social
13 Services Regulations and Child Welfare Services Manual, including DSS Regulation 31-
14 110.32. Child Welfare's breach of its mandatory duty to contact the tribe was a substantial
15 factor in causing Plaintiffs' harm, including Arabella's death.

16 80. County of San Diego Child Welfare Services owed other mandatory duties,
17 including duties to cross-report to the appropriate licensing agency (DSS Regulation 31-
18 101.141, 31-110.6), to investigate reports of abuse within 10 days (DSS Regulation 31-120),
19 to utilize investigators skilled in emergency response (DSS Regulation 31-101.2), and to
20 report suspected child neglect or abuse . Its breach of each of these duties was a substantial
21 factor in causing Plaintiffs' harm, including Arabella's death.

22 81. As a result of Defendants' failure to perform mandatory duties, Plaintiffs
23 A.M. and E.M. have suffered and will continue to suffer extraordinary damages, including
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1 physical pain, mental suffering, loss of enjoyment of life, disfigurement, physical
2 impairment, grief, anxiety, humiliation, and emotional distress. Plaintiffs A.M. and E.M.
3 have also suffered the wrongful death of their sister, Arabella, including the loss of
4 Arabella's love, companionship, comfort, care, assistance, protection, affection, society, and
5 moral support. The Estate of Arabella is also entitled to recover pre-death pain and suffering
6 damages.
7

8 **THIRD CAUSE OF ACTION**
9 **VIOLATION OF FEDERAL CIVIL RIGHTS (42 USC § 1983) –**
10 **Personal Injury, Wrongful Death and Survival**
11 **(Against County of San Diego, Shara Freeman, Dennis Leggett, and all DOES)**

12 82. Plaintiffs incorporate all the above allegations fully herein.

13 83. Defendants County of San Diego, Shara Freeman and Dennis Leggett
14 violated Plaintiffs' civil rights.

15 84. Defendants were at all relevant times acting in the performance of their
16 official duties.

17 85. The Fourteenth Amendment substantive due process clause protects a foster
18 child's liberty interest in social worker supervision and protection from harm inflicted by a
19 foster parent. The County of San Diego, including social workers Shara Freeman and Dennis
20 Leggett, and DOES 1 through 25, owed Arabella and Plaintiffs a duty to supervise and
21 protect them from harm inflicted by their foster parents, the McCormacks.
22

23 86. Rather than supervise and protect the girls from harm, Defendants
24 affirmatively created the danger that exposed the girls to torture and abuse. Despite credible
25 reports of the McCormacks' abuse from Arabella's school, Defendants approved of the
26 foster care and adoption, paving the way for continued abuse. Defendants' approval of foster
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1 care and the adoption created the danger of ongoing abuse, which Plaintiffs would not have
2 faced had Defendants adequately safeguarded and protected them.

3 87. Defendants acted with deliberate indifference to Plaintiffs' liberty interests.
4 The reports of abuse gave rise to an objectively substantial risk of harm to Plaintiffs. The
5 withholding of water and food from a developing child is objectively harmful. Defendants
6 were aware that a substantial risk of serious harm existed, and a reasonable social worker
7 would have been aware that a substantial risk of serious harm existed. Nevertheless,
8 Defendants chose to ignore the obvious dangers to the vulnerable girls and failed to take
9 adequate action to prevent the substantial risk of harm.
10

11 88. Defendants closed their file on both reports of abuse after inadequate
12 investigations. Defendants failed to disclose the reports of abuse to the Plaintiffs' tribal
13 representative, as was mandatory under the law for the protection of the children.
14 Defendants failed to confirm any medical condition that could justify the withholding of
15 water from Arabella, which was Ms. McCormack's excuse for the bizarre and harmful
16 restriction. Defendants failed to interview Arabella apart from her foster parents, even
17 though Arabella's school told Defendants that she was afraid of her foster parents.
18 Defendants failed to interview Plaintiffs in any capacity despite their living in the same
19 house. Defendants failed to follow up or check on Arabella or Plaintiffs after Ms.
20 McCormack informed them that she had pulled Arabella out of school and intended to home
21 school her.
22

23 89. Defendants deferred to the foster parents at every turn. They accepted the
24 parents' word over that of Arabella's teachers and Arabella's own statements made to her
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1 teachers. Defendants deliberately disregarded their duties to protect Arabella, A.M., and
2 E.M., because it was less work to take the foster parents' word and close the file.

3 90. Defendants' failure to supervise and protect the girls from harm inflicted by
4 their foster parents was a substantial factor in causing their harm, including Arabella's death.
5 Arabella died as a result of prolonged starvation, the very danger that her school had told
6 Defendants about shortly before the McCormacks removed her from school.

8 91. Defendants' violation of the girls' civil rights was the result of County of San
9 Diego official customs and practices of inadequate caseworker training on assessing foster
10 child safety, of deferring to foster parents rather than focusing on the rights of the foster
11 children, of not conducting in-depth private conversations with children, of failing to follow
12 up on and continue to supervise foster children who have been the subject of reported abuse,
13 of failing to report complaints of abuse relating to tribal children to their tribe, of
14 understaffing and overloading caseworkers responsible for investigations, of closing files as
15 "unfounded" as a means of avoiding further case plans and investigation, and of failing to
16 conduct periodic audits of "unfounded" findings to ensure that sufficient investigations are
17 being conducted and to identify further training needs.

20 92. Many of these official customs and practices are addressed in the December
21 2018 Report to the County of San Diego Chief Administrative Officer entitled
22 Recommendations for Improving County of San Diego Child Welfare Services. The report
23 identifies problematic customs and practices and includes recommendations for
24 improvement.
25

26 93. These official customs and practices are also the subject of numerous past
27 lawsuits against the County involving the failure to protect foster children from abuse,
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1 including the placement of twin minor boys in the foster care of Christopher Hayes, despite
2 credible reports that they were subject to sexual abuse. In each of these cases, social workers
3 disregarded red flags, failed to conduct adequate investigations, closed files as “unfounded”
4 despite credible evidence to the contrary, failed to follow up or monitor the foster children,
5 and otherwise acted with indifference to the rights of the children.
6

7 94. The County knew because of the pattern of similar violations, and because it
8 should have been obvious to it, that its inadequate training of social workers responsible for
9 investigating reports of foster child abuse was likely to result in civil rights violations,
10 including the failure to supervise and protect foster children from harm by their foster
11 parents. The County’s failure to provide Ms. Freeman and Mr. Leggett with adequate
12 training was a substantial factor in causing the violation of the girls’ liberty interests.
13

14 95. As a result of Defendants’ civil rights violations, Plaintiffs A.M. and E.M.
15 have suffered and will continue to suffer extraordinary damages, including physical pain,
16 mental suffering, loss of enjoyment of life, disfigurement, physical impairment, grief,
17 anxiety, humiliation, and emotional distress. Plaintiffs A.M. and E.M. have also suffered the
18 wrongful death of their sister, Arabella, including the loss of Arabella’s love,
19 companionship, comfort, care, assistance, protection, affection, society, and moral support.
20 The Estate of Arabella is also entitled to recover pre-death pain and suffering damages.
21 Plaintiffs will also incur attorney fees in accordance with 42 USC § 1983.
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23

24 **FOURTH CAUSE OF ACTION**
25 **ASSAULT AND BATTERY**
26 **Personal Injury, Wrongful Death and Survival**
(Against Leticia McCormack, the Estate of Brian McCormack,
Adella Tom, and Stanley Tom)

27 96. Plaintiffs incorporate all the above allegations fully herein.
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1 97. Defendants Leticia McCormack, the Estate of Brian McCormack, Adella
2 Tom, and Stanley Tom touched, and threatened to touch, Plaintiffs in a harmful and
3 offensive manner without Plaintiffs' consent. Defendants intentionally assaulted, battered,
4 starved, beat, tortured, and abused Plaintiffs, which was a substantial factor in causing
5 Plaintiffs' harm, including Arabella's death.
6

7 98. Defendants acted with malice, oppression, and fraud. Their conduct was
8 despicable, vile, base, contemptible, willful, and knowing.

9
10 **FIFTH CAUSE OF ACTION**
11 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS –**
12 **Personal Injury, Wrongful Death and Survival**
13 (Against Leticia McCormack, the Estate of Brian McCormack,
14 Adella Tom, and Stanley Tom)

15 99. Plaintiffs incorporate all the above allegations fully herein.

16 100. Defendants Leticia McCormack, the Estate of Brian McCormack, Adella
17 Tom, and Stanley Tom intentionally starved, beat, tortured, neglected and abused Plaintiffs.

18 101. Defendants' conduct was outrageous, was intended to cause Plaintiffs'
19 emotional distress, and was inflicted with reckless disregard of the probability that Plaintiffs
20 would suffer emotional distress. Defendants' conduct was a substantial factor in causing
21 Plaintiffs severe emotional distress. Defendants acted with malice, oppression, and fraud.
22 Their conduct was despicable, vile, base, contemptible, willful, and knowing.

23 **PRAYER**

24 Plaintiffs pray for judgment as follows:


- 25 1. Past and future non-economic damages according to proof.
- 26 2. Past and future economic damages according to proof.
- 27 3. Pre-death pain and suffering (Survival) according to proof.
- 28 4. Punitive damages (Personal Injury and Survival) against Leticia McCormack, the
Estate of Brian McCormack, Adella Tom, and Stanley Tom according to proof.

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- 5. Attorney fees (Civil Rights Causes of Action) according to proof.
- 6. Costs of suit.
- 7. Such other and further relief as the court may deem proper.

Dated: July 13, 2023

THE McCLELLAN LAW FIRM


By: 
CONOR J. HULBURT
CRAIG R. McCLELLAN
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury.

Dated: July 13, 2023

THE McCLELLAN LAW FIRM

By: 
CONOR J. HULBURT
CRAIG R. McCLELLAN
Attorneys for Plaintiffs