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13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 IN AND FOR THE COUNTY OF FRESNO

16 CALIFORNIA PLANNED PARENTHOOD
EDUCATION FUND, PLANNED
17 PARENTHOOD MAR MONTE, S.H., A.Z.,
L.B., E.B., by and through her next friend,
18 R.T., and V.R., by and through her next
friend, K.S.,

19 Plaintiffs,

20 v.

21 PROMESA BEHAVIORAL HEALTH,

22 Defendant.
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Case No. 16CECG00543

FIRST AMENDED COMPLAINT

Judge: Hon. Mark W. Snauffer
Dept. 501

Trial Date: None set

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I. INTRODUCTION

1. The California Constitutional right to privacy protects the fundamental right of California women to retain personal control over the integrity of their bodies and to decide whether and when to parent. Plaintiffs S.H., A.Z, L.B., E.B., and V.R. (the “Individual Plaintiffs”), California Planned Parenthood Education Fund (“CPPEF”), and Planned Parenthood Mar Monte (“PPMM”) (collectively, “Plaintiffs”) bring this case to challenge the policies and practices of Defendant Promesa Behavioral Health (“Promesa”), which infringe on the constitutional privacy interests of young women in foster care who have been placed in Promesa’s group homes.

2. Promesa is a nonprofit 501(c) corporation that receives millions of dollars each year in government funding to provide care and housing to California children who are in foster care due to abuse or neglect by their families. Counties with responsibility for these foster youth place them in Promesa’s residential group homes in Fresno County and entrust Promesa with ensuring their health, safety, and well-being.

3. Promesa has violated the privacy rights of the foster youth placed in their group homes. Promesa has regularly searched the belongings of foster youth for contraceptives, such as condoms, and confiscated any contraceptives found. Promesa has also prohibited some foster youth from receiving reproductive health care, forced foster youth to waive their right to confidential reproductive health care, required foster youth to sign an agreement that they would not engage in sexual activity, and punished them when they sought or received reproductive health services. Promesa’s actions have harmed Plaintiffs S.H., A.Z, L.B., E.B., and V.R., who have all lived at Promesa group homes, and have jeopardized the health and safety of countless foster youth.

4. Promesa’s actions are all the more harmful because youth in foster care have a particularly compelling need for access to contraception and regular reproductive health care. Young women in California’s foster care system experience higher rates of unwanted teen pregnancy and childbirth than their counterparts who are not in care, higher rates of forced

1 sexual activity, and higher rates of sexually transmitted infections that if not caught early and
2 treated, can cause lifetime infertility.

3 5. In November 2015, Plaintiff CPPEF placed Promesa on notice that its policies
4 and practices, including confiscating condoms from foster youth and forcing foster youth to
5 allow group home staff into their ob-gyn examination rooms, violate California law. CPPEF
6 demanded that Promesa cease these unlawful practices and revise their policies. Promesa has
7 categorically denied any wrongdoing and has failed to take steps to resolve Plaintiffs' concerns.
8 Promesa maintained that it could not be held accountable to the very foster youth it receives
9 millions of dollars in foster care payments to serve.

10 6. Plaintiffs bring this action to enjoin Promesa from violating the privacy rights of
11 foster youth placed in its care.

12 **II. PARTIES**

13 7. Plaintiff California Planned Parenthood Education Fund is a non-profit
14 corporation organized and existing under the laws of California. CPPEF's principal place of
15 business is in Sacramento, California. CPPEF works to ensure access to comprehensive
16 reproductive and complementary health care services in settings that preserve and protect the
17 essential privacy and rights of each individual.

18 8. CPPEF is a membership organization consisting of the seven California Planned
19 Parenthood affiliates, including Plaintiff Planned Parenthood Mar Monte with health centers in
20 Fresno. CPPEF provides policy analysis, advocacy, technical assistance and legal services to its
21 affiliates and the general public and coordinates statewide projects on issues related to
22 reproductive health, clinic regulations and access to health care. These affiliates provide sexual
23 education and reproductive health care across California. Collectively, they operate 117 health
24 centers. In 2015, they served over 800,000 patients, 75% of whom were at or below 100% of the
25 federal poverty line. The California Planned Parenthood affiliates conducted 1.5 million patient
26 visits, 1.2 million family planning visits, and provided 1.2 million tests of sexually transmitted
27 diseases in 2015. They also provided sex education to over 280,000 youth in California.

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1 9. Plaintiff Planned Parenthood Mar Monte is a not-for-profit corporation organized
2 and existing under the laws of California. PPMM's principal place of business is San Jose,
3 California. PPMM delivers clinical, educational and counseling services to patients at 34 health
4 centers, including several locations in Fresno. In 2014, the affiliate had 236,173 patients and
5 447,549 total patient visits. PPMM provides primary care services, as well as a full range of
6 reproductive health services including contraceptive services, pregnancy testing and options
7 counseling, sexually transmitted disease screening and treatment, HIV education and testing,
8 breast and cervical cancer screening, emergency contraceptives and supplies, safe, legal
9 abortion, prenatal care, pediatrics and adult primary health care.

10 10. PPMM's education programs feature classroom and community presentations,
11 one-to-one outreach, peer education, family communication classes, and supportive youth
12 development programs for at-risk male and female teens and pregnant/parenting teen girls to
13 help them plan positive futures. Among other things, PPMM runs the Fresno Teen Success
14 program, a weekly support group for pregnant and parenting teen mothers that offers strategies
15 for coping with young motherhood and building a positive future.

16 11. Planned Parenthood has been, is and will be the reproductive health provider of
17 choice for some of the foster youth in Promesa group homes because of its reputation for quality
18 confidential care. Youth placed in Promesa group homes also are, have and will be part of
19 Planned Parenthood education and support groups in Fresno. CPPEF and PPMM bring this
20 action on behalf of Planned Parenthood's vulnerable patients living in the Promesa group homes
21 whose ability to take action on their own is hindered.

22 12. Foster youth placed in Promesa group homes, including some of the Individual
23 Plaintiffs, have had condoms provided by Planned Parenthood confiscated and have been denied
24 services at Planned Parenthood. Promesa's actions have undermined PPMM's organizational
25 effectiveness and delivery of services to its patients.

26 13. Plaintiff S.H. is an eighteen-year-old woman and resident of Fresno County. S.H.
27 has spent more than six years in foster care in Fresno County. During that time, Fresno County
28 placed S.H. in numerous group homes, including multiple facilities run by Promesa. S.H. is

1 currently a non-minor dependent receiving extended foster care services in Fresno County. As a
2 non-minor dependent, S.H. remains in foster care and is subject to the placement authority of the
3 Fresno County Department of Social Services (“Fresno DSS”). S.H. is required to live in an
4 approved placement, as determined by Fresno DSS, her county child welfare department.

5 14. Plaintiff A.Z. is an eighteen-year-old woman currently residing in Tulare County.
6 A.Z. spent almost three years in foster care in Fresno County. Fresno County placed A.Z. in a
7 Promesa group home on two occasions for a total of about twelve months. Because A.Z. turned
8 eighteen years old while still in foster care, she is eligible to re-enter foster care as a non-minor
9 dependent through age twenty-one. Upon re-entry, A.Z. would be subject to the placement
10 authority of Fresno DSS and would be required to live in an approved placement, including a
11 licensed group home, as determined by Fresno DSS, her county child welfare department.

12 15. Plaintiff L.B. is an eighteen-year-old woman currently residing in a supervised
13 independent living placement in San Joaquin County. L.B. spent about four years in foster care
14 through Solano County. Solano County placed L.B. in a Promesa group home for about ten
15 months in 2015. L.B. is currently a non-minor dependent receiving extended foster care services
16 through Solano County. As a non-minor dependent, L.B. remains in foster care; is subject to the
17 placement authority of the Solano County Department of Health and Social Services (Solano
18 County DHSS); and is required to live in an approved placement, including a licensed group
19 home, as determined by Solano County DHSS, her county child welfare department.

20 16. Plaintiff E.B. is a seventeen-year-old woman currently residing in a foster home
21 in Fresno County. E.B. has been in foster care through Fresno County on and off since 2013,
22 and has been in foster care continuously since April 2015. Fresno County DSS placed E.B. in a
23 Promesa group home twice for about six weeks in 2014 and 2015. Fresno County DSS
24 determines E.B.’s placement, including whether she lives in a licensed group home such as
25 Promesa. E.B. brings this action by and through her next friend, R.T.

26 17. Plaintiff V.R. is a young woman under the age of eighteen currently residing in a
27 Promesa group home. V.R. is in foster care and is required to live in a placement such as
28

1 Promesa, as determined by her county child welfare department. V.R. brings this action by and
2 through her next friend, K.S.¹

3 18. Defendant Promesa Behavioral Health is a nonprofit 501(c) corporation organized
4 and existing under the laws of the State of California with a principal place of business in Fresno
5 County and with offices in the cities of Fresno and Merced. Among other activities, Promesa
6 runs seven group homes in Fresno County that are licensed by the state and that serve as Level
7 12 residential care facilities that provide shelter, supervision, and counseling to youth who are
8 dependents of the court and placed in Promesa by their county of origin. Each of Promesa's
9 group homes in Fresno County is licensed to provide foster care for six or more children.

10 Plaintiffs are informed and believe, and on such information and belief, allege that Promesa
11 receives \$8,935 per month per child from more than thirty counties across California to provide
12 room, board, and services to each foster youth placed in its group homes. Children and Family
13 Services Division, Cal. Dept. of Social Services, *Group Home Standard Schedule of Rates*, 1,
14 <http://www.childsworld.ca.gov/res/pdf/StandardRateSchedule.pdf> (last accessed Feb. 16, 2016).
15 According to Promesa's 2015 Annual Report, Promesa received \$4,776,950 from government
16 funding in 2014 to provide room, board, and care to youth living in its group homes. Promesa
17 Behavioral Health, *Futures Rising: Community Impact Report*, 3 (2015),
18 [http://promesabehavioral.org/wp-](http://promesabehavioral.org/wp-content/uploads/2015/08/Promesa_AnnualReport_Web2015.pdf)
19 [content/uploads/2015/08/Promesa_AnnualReport_Web2015.pdf](http://promesabehavioral.org/wp-content/uploads/2015/08/Promesa_AnnualReport_Web2015.pdf).

20 **III. JURISDICTION AND VENUE**

21 19. This Court has jurisdiction over this matter pursuant to article VI, section 10 of
22 the California Constitution and section 410.10 of the California Code of Civil Procedure.

23 20. Venue in Fresno County is proper under section 395.5 of the California Code of
24 Civil Procedure because Promesa is a nonprofit corporation with its principal place of business
25 in Fresno County at 7120 N. Marks Avenue, Suite 110, Fresno, California 93711.

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28 ¹ Plaintiffs will separately seek permission for V.R. and K.S. to proceed in this action using
pseudonyms and initials.

1 **IV. FACTUAL ALLEGATIONS**

2 **A. Preventing Foster Youth from Accessing Contraception and Other**
3 **Reproductive Health Care Causes Great Harm.**

4 **1. Young Women in Foster Care Face a Significantly Heightened Risk of**
5 **Unwanted Teenage Pregnancy.**

6 21. Studies show that approximately 71% of American teens have had sexual
7 intercourse by the time they are nineteen years old. Guttmacher Institute, *Fact Sheet: American*
8 *Teens' Sexual and Reproductive Health*, 1 (May 2014), [https://www.guttmacher.org/pubs/FB-](https://www.guttmacher.org/pubs/FB-ATSRH.pdf)
9 *ATSRH.pdf*. Almost 615,000 American fifteen- to nineteen-year-old girls become pregnant
10 annually. *Id.* at 3. In 2012, there were 34,921 births to fifteen- to nineteen-year-old California
11 girls. Center for Research on Adolescent Health & Development, Public Health Institute, *No*
12 *Time for Complacency: Teen Births & Costs by California County, 2012 Data* (May 2014),
<http://teenbirths.phi.org/CountyTable2012Data.pdf>.

13 22. Young women in foster care are nearly twice as likely to have had sexual
14 intercourse before age sixteen than their peers not in the foster care system. Jennifer Manlove et
15 al., *Teen Parents in Foster Care: Risk Factors and Outcomes for Teens and Their Children*,
16 *Child Trends*, 4 (2011), [http://www.childtrends.org/wp-content/uploads/2011/11/Child_Trends-](http://www.childtrends.org/wp-content/uploads/2011/11/Child_Trends-2011_11_01_RB_TeenParentsFC.pdf)
17 *2011_11_01_RB_TeenParentsFC.pdf*.

18 23. Young women in foster care are also far more likely to get pregnant and to give
19 birth. One Midwestern study found that half of young women in foster care had been pregnant
20 by age nineteen, compared with just 20% of young women in the general population. Amy
21 Dworsky & Mark E. Courtney, *The Risk of Teen Pregnancy Among Transitioning Foster Youth:*
22 *Implications for Extending State Care Beyond Age 18*, 32 *Child. & Youth Servs. Rev.* 1351,
23 1352 (2010). A study of California foster youth found that over a third of the young women who
24 are in California's foster care system at age seventeen will give birth at least once by the time
25 they turn twenty-one. Emily Putnam-Hornstein & Bryn King, *Cumulative Teen Birth Rates*
26 *Among Girls in Foster Care at Age 17: An Analysis of Linked Birth and Child Protection*
27 *Records from California*, 38 *Child Abuse & Neglect* 698, 700 (2014).

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1 24. Critically, foster youth also report more unwanted pregnancies than do their peers
2 not in foster care. In one key study, about 70% of foster youth who had been pregnant did not
3 report that their most recent pregnancy was wanted, compared with more than half of their peers
4 not in care. Mark E. Courtney, Amy Dworsky, Gretchen Ruth Cusick, Judy Havlicek, Alfred
5 Perez & Tom Keller, *Midwest Evaluation of the Adult Functioning of Former Foster Youth:
6 Outcomes at Age 21*, Chapin Hall Ctr. for Child. at the U. Chi., 51 (2007). In a 2013 survey of
7 California seventeen-year-olds in foster care, more than two-thirds of the young women who
8 said that they had been pregnant did not describe their pregnancy as wanted. Mark E. Courtney,
9 Pajarita Charles, Nathanael J. Okpych, Laura Napolitano & Katherine Halsted, *Findings from
10 the California Youth Transitions to Adulthood Study (CalYOUTH): Conditions of Foster Youth
11 at Age 17*, Chapin Hall Ctr. for Child. at the U. Chi., 44 (2014).

12 25. The alarmingly high rates of unwanted pregnancy and birth for young women in
13 California's foster care system are not surprising given the childhood experiences and challenges
14 faced by many foster youth. They experience more risk factors demonstrably linked to early and
15 unwanted teen pregnancy and at much greater rates than their peers who are not in foster care.
16 These risk factors include: physical or sexual abuse during childhood, low levels of parental
17 income and education, lack of parent/child connectedness, depression, and placement instability.
18 *See, e.g.,* Manlove, *supra*, 1-4.

19 26. Foster youth are also more likely than their peers to experience sexual assault.
20 One study showed that 49% of women aged twenty to twenty-four who were in foster care
21 during their youth experienced forced sex, a rate four times higher than that for similar aged
22 women who were never in foster care (11%). *Id.* at 4. More than 30% of female foster youth in
23 California were raped before they entered care, and about 45% were sexually molested.
24 Courtney, Charles, Okpych, Napolitano & Halsted, *supra*, 15.

25 27. Unfortunately, foster youth also have worse pregnancy outcomes than their
26 counterparts not in care and are less likely to get prenatal care. In a survey of California female
27 foster youth aged sixteen and seventeen, about 43% reported that their last pregnancy ended in a
28 miscarriage or stillbirth. *Id.* at 44. While some reported receiving prenatal care, almost 21%

1 never saw a doctor or nurse for their entire pregnancy. *Id.* In contrast, only 14% of pregnancies
2 to fifteen- to seventeen-year-old Californians in 2010 resulted in miscarriage or stillbirth.
3 Kathryn Kost & Stanley Henshaw, *U.S. Teenage Pregnancies, Births and Abortions, 2010:
4 National and State Trends by Age, Race and Ethnicity*, Guttmacher Inst., 18 (May 2014),
5 <https://www.guttmacher.org/pubs/USTPtrends10.pdf>.

6 **2. Youth in Fresno County Face a Heightened Risk of Infection with
7 Sexually Transmitted Diseases That Can Lead to Lifetime Infertility.**

8 28. Teenagers are disproportionately likely to be infected with a sexually transmitted
9 disease (STD). Although fifteen- to twenty-four-year-olds comprise approximately 25% of the
10 sexually-active population, they account for almost half of new cases of STD infection each
11 year. Guttmacher Institute, *supra*, 2.

12 29. For the past five years, Fresno County has had one of the highest incidence rates
13 of chlamydia in California. Sexually Transmitted Diseases Control Branch, Cal. Dept. of Public
14 Health, *Chlamydia, Cases and Incidence Rates, California Counties and Selected City Health
15 Jurisdictions, 2010-2014*, [http://www.cdph.ca.gov/data/statistics/Documents/STD-Data-
16 Chlamydia-Tables.pdf](http://www.cdph.ca.gov/data/statistics/Documents/STD-Data-Chlamydia-Tables.pdf) (last visited February 11, 2016).

17 30. Adolescent and young adult females aged fifteen through twenty-four experience
18 the highest rates of chlamydia infection in Fresno County. Sexually Transmitted Diseases
19 Control Branch, Cal. Dept. of Public Health, *California Local Health Jurisdiction, STD Data
20 Summaries, 2014 Provisional Data*, 29 (July 2015),
21 <http://www.cdph.ca.gov/data/statistics/Documents/STD-Data-LHJ-DataSummaries-All.pdf>.
22 Although fifteen- to nineteen-year-olds constituted only 7.8% of females in the county in 2014,
23 this age group accounted for 26.9% of chlamydia cases and 21.3% of gonorrhea cases among
24 females. *Id.*

25 31. Both chlamydia and gonorrhea can have serious, long-term health consequences.
26 According to the Centers for Disease Control and Prevention, while easily cured, chlamydia left
27 untreated “can cause serious, permanent damage to a woman’s reproductive system, making it
28 difficult or impossible for her to get pregnant later in life. Chlamydia can also cause a
potentially fatal ectopic pregnancy (pregnancy that occurs outside the womb).” Centers for

1 Disease Control and Prevention, *Chlamydia – CDC Fact Sheet*, 1 (Jan. 23, 2014),
2 <http://www.cdc.gov/std/chlamydia/chlamydia-factsheet-june-2014.pdf>. A pregnant woman can
3 pass chlamydia to her baby during childbirth. *Id.* Similarly, untreated gonorrhea can lead to
4 pelvic inflammatory disease and infertility. Centers for Disease Control and Prevention,
5 *Gonorrhea – CDC Fact Sheet*, 2 (Jan. 29, 2014), [http://www.cdc.gov/std/gonorrhea/gon-](http://www.cdc.gov/std/gonorrhea/gonorrhea-factsheet-july-2014.pdf)
6 [factsheet-july-2014.pdf](http://www.cdc.gov/std/gonorrhea/gonorrhea-factsheet-july-2014.pdf). Gonorrhea can also be passed to an infant during childbirth. *Id.* at 1.
7 For these reasons, the CDC recommends that all sexually active women under 25 be screened for
8 chlamydia and gonorrhea annually. *Id.*; Centers for Disease Control and Prevention, *Chlamydia*
9 *– CDC Fact Sheet, supra*, 1. These tests are reimbursed for low-income patients by California’s
10 Family Planning, Access, Care, and Treatment (PACT) Program.

11 **3. Contraception Prevents Unwanted Teen Pregnancy and Infection with**
12 **Sexually Transmitted Diseases That Lead to Infertility.**

13 32. Modern contraceptives are highly effective at preventing teen pregnancy and
14 reducing infections with sexually transmitted diseases.

15 33. Researchers have concluded that the dramatic reduction in teen pregnancy
16 between 1995 and 2010 was primarily the result of increased use of contraceptives. Heather D.
17 Boonstra, *What is Behind the Decline in Teen Pregnancy Rates?*, 17 *Guttmacher Policy Rev.* 15,
18 16-17 (Summer 2014); John S. Santelli, Laura Duberstein Lindberg, Lawrence B. Finer &
19 Susheela Singh, *Explaining Recent Declines in Adolescent Pregnancy in the United States: The*
20 *Contribution of Abstinence and Improved Contraception Use*, 97 *Am. J. Pub. Health* 150, 150
21 (Jan. 2007).

22 34. Young women who do not use a contraceptive method the first time they have sex
23 are more than twice as likely to have had a child by age nineteen than young women who do use
24 a contraceptive method the first time they have sex. Gladys Martinez, Casey E. Copen & Joyce
25 C. Abma, *Teenagers in the United States: Sexual Activity, Contraceptive Use, and Childbearing,*
26 *2006-2010 National Survey of Family Growth*, Centers for Disease Control and Prevention, 25
27 (Oct. 2011), www.cdc.gov/nchs/data/series/sr_23_sr23_031.pdf.

28 35. Condoms are highly effective in preventing the sexual transmission of HIV
infection and significantly reduce the risk for other STDs, including chlamydia, gonorrhea, and

1 syphilis. King K. Holmes, Ruth Levine & Marcia Weaver, *Effectiveness of Condoms in*
2 *Preventing Sexually Transmitted Infections*, 82 Bulletin of the World Health Organization 454,
3 455-57 (June 2004). HIV-negative partners who consistently used condoms in heterosexual
4 relationships in which their partner was HIV-positive were 80% less likely to become HIV-
5 infected compared with persons in similar relationships in which condoms were not used. *Id.* at
6 455. The Centers for Disease Control states that latex condoms significantly reduce the risk of
7 infection with STDs, including chlamydia and gonorrhea. Centers for Disease Control and
8 Prevention, *Condom Fact Sheet in Brief* (March 25, 2013),
9 <http://www.cdc.gov/condomeffectiveness/brief.html>.

10 **B. Promesa Has Harmed Foster Youth by Denying Access to Contraception and**
11 **Prohibiting Them from Receiving Confidential Reproductive Health Services.**

12 36. Promesa’s policies and practices have harmed, and continue to harm, the
13 Individual Plaintiffs and other foster youth placed in Promesa’s group homes. Promesa’s
14 unlawful policies and practices include:

- 15 • Confiscating contraceptives, such as condoms, from foster youth;
- 16 • Denying foster youth access to confidential reproductive health care services;
- 17 • Requiring youth to waive their medical confidentiality rights;
- 18 • Arbitrarily prohibiting foster youth from receiving services from Planned Parenthood;
- 19 and
- 20 • Arbitrarily punishing foster youth who violate the “no contraceptives” or abstinence
21 policies by taking away “privileges,” such as visits with their parents or children.

22 37. Plaintiffs are informed and believe, and on such information and belief, allege
23 that, Promesa has also failed to supervise, evaluate, and train its childcare staff to ensure they
24 understand the healthcare rights of foster youth and have the “appropriate skills necessary to
25 supervise the children in care.” Cal. Code Regs. tit. 22, §§ 84065(h),(i); Cal. Code Regs. tit. 22,
26 § 84065(i)(3).

27 **1. Promesa’s Actions Have Harmed Plaintiff S.H.**

28 38. Plaintiff S.H. entered foster care at twelve years old after her stepfather sexually
abused her for more than four years. Since she entered foster care, S.H. has lived in at least

1 eleven foster care placements and spent almost two years on runaway status, often homeless.
2 While she was on runaway status when she was sixteen years old, S.H. gave birth to her
3 daughter. S.H. is now eighteen years old. She lives on her own with her daughter and receives
4 extended foster care services through Fresno County.

5 39. S.H. has been in Fresno County's foster care system since she entered foster care.
6 Since she turned fourteen, she has been placed at three different Promesa group homes. While
7 living at Promesa group homes, S.H. attended the Teen Success group run by PPM.

8 40. Plaintiffs are informed and believe, and on such information and belief, allege
9 that when S.H. lived at the Promesa group homes, Promesa required her to sign paperwork
10 agreeing that she would "avoid participating in sexual activity" and have "no physical contact
11 with peers" while away from the group home on a home visit. Staff members told S.H. that she
12 was prohibited from having sex while living at Promesa, and would frequently remind her of this
13 prohibition. Plaintiffs are informed and believe, and on such information and belief, allege that
14 Promesa group home staff interpreted Promesa's written policies as prohibiting any sexual
15 activity while living at Promesa.

16 41. The staff at the Promesa group homes told S.H. and the other foster youth who
17 lived there that if one of them had condoms, the staff would take the condoms away and the
18 youth would be in trouble. Promesa staff members threatened to punish S.H., including by
19 putting her on "off-program status" and by taking away S.H.'s visits with her family, including
20 with her child, if she violated the rules against having contraception or the rules prohibiting
21 sexual activity.

22 42. S.H. was also denied access to reproductive health care and punished for
23 exercising her reproductive rights. When she was seventeen years old and living in a Promesa
24 group home, S.H. had an irregular menstrual cycle and sought birth control to help regulate her
25 menstruation. She asked to be taken to her health care provider of choice, Planned Parenthood,
26 but staff members refused to take her there and instead took her elsewhere, where she learned
27 that she was pregnant for a second time. Promesa staff punished her for being pregnant by
28 denying her visits with her mother and child. Promesa staff pressured her to get an abortion and

1 later punished her by denying her visits with her child when she decided not to terminate her
2 pregnancy. After S.H. miscarried her second pregnancy, Promesa finally allowed her to get
3 contraception, but still refused to let her obtain health services from her preferred provider.

4 43. In accordance with Promesa's policies, S.H. was not allowed to leave the group
5 home without permission or transportation from the group home staff members. Youth who
6 leave the group home without permission are subjected to punishment. When Promesa staff
7 members refuse to take foster youth, or to give them permission to go, to Planned Parenthood or
8 other health care providers, those youth are unable to access those providers on their own.

9 44. Promesa pressured S.H. to waive her rights to medical confidentiality while living
10 at its group homes, and punished her refusal to do so by refusing to let her live in the group
11 homes. When S.H. went to medical appointments related to her reproductive health, Promesa
12 staff members asked S.H.'s doctor for information about the visit. S.H. understood from
13 Promesa staff that if she did not allow the doctor to disclose this information, she would be
14 punished. At some point, S.H. refused to continue to allow Promesa staff to access her
15 confidential medical information. Promesa staff made clear to her that her refusal was
16 unacceptable, and shortly after, issued a notice that she had to move out of the group home
17 within seven days. Plaintiffs are informed and believe, and on such information and belief,
18 allege that Promesa's stated reason for requiring S.H. to leave was pretextual.

19 **2. Promesa's Actions Have Harmed Plaintiff A.Z.**

20 45. Plaintiff A.Z. entered the foster care system in 2013 when she was fifteen years
21 old. A.Z. was physically and emotionally abused by her family, who eventually kicked her out of
22 the house. Because A.Z. was homeless, she was placed in foster care.

23 46. A.Z. lived in the Promesa Milbrook group home from October 2014 to June 2,
24 2015, and then again from September 9, 2015 until early December 2015. While she lived at
25 Promesa Millbrook, A.Z. attended the Teen Success group run by PPM.

26 47. When A.Z. was first admitted to the Promesa Millbrook group home, the group
27 home staff gave her a large stack of papers and told her that she was required to sign all of the
28 papers. Plaintiffs are informed and believe, and on such information and belief, allege that one

1 of the papers was an agreement that she would “avoid participating in sexual activity.” A.Z. was
2 not given a choice about whether or not she would sign these papers. When she later asked to
3 see the papers she signed, the head of the group home told her that she was not permitted to see
4 them.

5 48. In or around March or April 2015, A.Z. went to an ob-gyn appointment
6 accompanied by Promesa staff. When A.Z. said that she wanted to have the Depo-Provera birth
7 control shot, the group home staff member told her that she was not allowed to have the shot.
8 Promesa staff told A.Z. that she did not need the shot because she was not allowed to have
9 sexual contact while living at the group home, and that if she did have the shot, she would be
10 punished and get an “R.” A.Z. decided to get the Depo-Provera shot that day anyway. When
11 she told Promesa staff, the response was, “just know you are getting an R.”

12 49. Getting an “R” means that a Promesa resident loses important “privileges” at the
13 group home, including leaving the house, watching television, or listening to music. Sometimes
14 it results in an early bedtime or loss of visitation, including visits with family members.

15 50. Subsequently, A.Z. asked Promesa staff to take her to Planned Parenthood so she
16 could get condoms. Promesa staff told her that she was not allowed to have condoms at the
17 group home, because she was not allowed to have sexual contact while living at the group home,
18 and did not take her to Planned Parenthood as she had requested. Plaintiffs are informed and
19 believe, and on such information and belief, allege that Promesa group home staff interpreted
20 Promesa’s written policies as prohibiting any sexual activity while living at Promesa. Promesa
21 staff also have refused to take her to Planned Parenthood on other occasions.

22 51. On a number of occasions, Promesa staff also tried to force A.Z. to let her ob-gyn
23 share confidential medical information with the group home staff. When A.Z. directed her
24 doctor not to fill out forms disclosing to Promesa what happened during her ob-gyn appointment,
25 Promesa staff threatened her with an R if she did not permit her doctor to complete the forms.

26 52. Plaintiffs are informed and believe, and on such information and belief, allege
27 that Promesa staff have also confiscated A.Z.’s contraception, by taking a female condom from
28 her room while she was at school. A.Z. has also witnessed Promesa staff tell other girls who

1 have condoms that they have to give them to the staff or they will get in trouble, and she has
2 seen the staff take condoms away from other girls.

3 53. Plaintiffs are informed and believe, and on such information and belief, allege
4 that Promesa punished A.Z. for asserting her rights and working with counsel to address the
5 problems she was experiencing in Promesa Millbrook, including by trying to provoke A.Z. to
6 become angry and by giving A.Z. a seven-day notice requiring her to move out of the Promesa
7 Millbrook group home. Plaintiffs are informed and believe, and on such information and belief,
8 allege that staff members at Promesa Millbrook said that they should not take A.Z. and other girls
9 to Planned Parenthood's Teen Success group, because the girls were learning about their rights
10 there.

11 **3. Promesa's Actions Have Harmed Plaintiff L.B.**

12 54. Plaintiff L.B. entered the foster care system when she was fourteen years old,
13 because her family decided that they no longer wanted to take care of her.

14 55. L.B. was placed in the Promesa Millbrook group home in February 2015, when
15 she was seven months pregnant. She lived there with her son until November 23, 2015. While
16 she lived at Promesa Millbrook, L.B. attended the Teen Success group run by PPMM.

17 56. When L.B. was first placed at Promesa, Promesa staff gave her a large stack of
18 papers and told her that she had to sign them. One of the papers that she was told to sign was an
19 agreement that she would not engage in sexual activity. Promesa staff told L.B. that if the group
20 home caught her having sex or had proof that she had sex while living there, she would get in
21 trouble. Plaintiffs are informed and believe, and on such information and belief, allege that
22 Promesa group home staff interpreted Promesa's written policies as prohibiting any sexual
23 activity while living at Promesa.

24 57. When L.B. later asked to see the papers that Promesa had made her sign, Promesa
25 staff members told her that she was not allowed to look at her file and refused to allow her to see
26 the papers.

27 58. During the time that L.B. was living at Promesa, Promesa staff confiscated
28 condoms from her on at least five occasions. Promesa staff told her that she was not allowed to

1 have them, and asked why she had them, because she would get in trouble if she were having
2 sex.

3 59. On at least three different occasions, Promesa staff took away condoms that
4 L.B.'s medical provider gave her during medical appointments. Promesa staff told L.B. that she
5 would get in trouble if she had them or had any reason to use them.

6 60. Another time, while L.B. was at school, Promesa staff searched her room and
7 took condoms that she had stored in a drawer. Promesa staff punished her for having those
8 condoms by taking away a privilege.

9 61. When L.B. went to gynecological appointments, Promesa staff insisted on staying
10 in the exam room with her, and listening to her conversation with the medical provider. On one
11 occasion, when a doctor asked L.B. if she had had any sexual contact, and she told her doctor
12 that she had had sex during a home pass, the Promesa staff member that was present gave her an
13 R because she had sex in violation of Promesa's rules.

14 62. When L.B. asked the Promesa staff for the number for California Community
15 Care Licensing's statewide complaint hotline, Promesa staff refused to give her the number.
16 L.B. also found grievance forms, which she had completed and given to Promesa staff, discarded
17 in the garbage can.

18 63. Promesa staff threatened and punished L.B. for learning about and asserting her
19 rights as a foster youth. Promesa staff told her that they were tired of hearing her talk about her
20 rights and threatened to report that she was irresponsible, so her son would be taken away.
21 Promesa staff gave L.B. a seven-day notice requiring her to move out of the group home.

22 **4. Promesa's Actions Have Harmed Plaintiff E.B.**

23 64. Plaintiff E.B. first entered the foster care system three years ago, and is still in
24 foster care. E.B. lived in Promesa's Millbrook group home with her minor child in 2014 and
25 2015. E.B. currently lives in a foster home in Fresno County. While living at the Promesa
26 group home, E.B. attended the Teen Success group run by PPMM.

27 65. When E.B. moved into Promesa, she was warned by other foster youth that
28 Promesa staff confiscated condoms if they found them. She witnessed other residents who were

1 caught with condoms being punished by Promesa staff, including by giving them Rs and putting
2 them off-program.

3 66. E.B. wanted to have condoms while she was living at Promesa in order to protect
4 herself against sexually transmitted diseases and pregnancy, but did not, because she understood
5 that Promesa's rules prohibited her from having condoms and that she would be punished if she
6 were found with them. Promesa staff frequently searched her belongings, and E.B. feared that
7 they would find any condoms that she had.

8 67. E.B. witnessed Promesa staff refuse to take residents to Planned Parenthood for
9 medical appointments or allow them to access birth control. E.B. was present when other foster
10 youth asked the group home staff if they could go to Planned Parenthood to obtain birth control.
11 Promesa staff refused to take the youth or allow them to go to Planned Parenthood. E.B. heard
12 the staff explain that Promesa residents were not allowed to have sex while living at the Promesa
13 group homes, and so the girls did not need to have birth control. Plaintiffs are informed and
14 believe, and on such information and belief allege, that Promesa staff interpreted Promesa's
15 written policies as prohibiting any sexual activity while living at Promesa. E.B. did not access
16 Planned Parenthood medical services while living at Promesa, because she understood from the
17 staff members' statements that residents were not allowed to do so.

18 68. E.B. is fearful that if her social worker returns her to a Promesa group home, and
19 Promesa continues to deny her access to condoms and reproductive health services, she will be
20 at serious risk of getting a sexually transmitted disease or becoming pregnant. She is also
21 concerned that other foster youth are similarly at risk.

22 5. Promesa's Actions Have Harmed Plaintiff V.R.

23 69. Plaintiff V.R. is a minor currently in foster care. Her county child welfare
24 department placed her in a Promesa group home, where she currently lives.

25 70. V.R. experienced sexual abuse before she entered foster care. When V.R. was
26 sexually abused, V.R. was fearful of becoming pregnant or getting an STD. V.R. is afraid that if
27 she is sexually abused again, and she does not have access to birth control or condoms, she may
28 become pregnant or get an STD.

1 71. Promesa staff have confiscated condoms from V.R. and other youth in her group
2 home, and told V.R. that she is not allowed to have them. Promesa staff searched V.R.'s
3 belongings, found condoms, and took them away from her, saying that they were
4 "inappropriates." When V.R. asked Promesa staff if she could have a condom, Promesa staff
5 told her that she cannot have condoms. Another youth living in her group home told V.R. that
6 Promesa staff searched her room and took condoms that they found there.

7 72. Promesa has denied V.R.'s request to visit Planned Parenthood so that V.R. might
8 receive reproductive and sexual health care. Within the last three weeks, V.R. scheduled an
9 appointment at Planned Parenthood to obtain birth control. Promesa staff questioned why she
10 needed an appointment and did not take her to her scheduled appointment, and have still failed to
11 take her to Planned Parenthood.

12 73. Promesa has failed to take other girls in V.R.'s group home to Planned
13 Parenthood as well. V.R. heard other residents of her group home asking staff members to take
14 them to appointments at Planned Parenthood, and later complaining that the Promesa staff had
15 not taken them to Planned Parenthood.

16 74. Promesa has required that Promesa staff be present in medical appointments that
17 V.R. has had with doctors, even after V.R. has requested that they not be. When V.R. had a
18 gynecological medical issue, V.R. asked to see a doctor without a Promesa staff member present
19 because V.R. was not comfortable having them in the room while she was examined. Promesa
20 staff told V.R. that she was not allowed to be alone for the examination and refused to leave for
21 the examination.

22 75. Within the last two months, Promesa has put into place a new rule that residents
23 are not allowed to masturbate inside V.R.'s group home. Staff members read the new rule out
24 loud to the youth living in her group home, and required residents, including V.R., to sign the
25 papers agreeing to the rule. Staff members told residents that they would face consequences if
26 they refused to sign the paper agreeing to the new rule or if they violated the rule.

27
28

1 **V. LEGAL FRAMEWORK**

2 **A. California Law Provides that Minors Are Entitled to Unfettered Confidential**
3 **Access to Reproductive and Sexual Health Services.**

4 **1. The California Legislature Has Definitively Granted Youth the Right**
5 **to Access Confidential Reproductive and Sexual Health Services.**

6 76. The California Legislature first granted minors the right to consent to and obtain
7 pregnancy-related care without parent involvement in 1953. 1953 Cal. Stat. 3383 (enacting
8 former Cal. Civ. Code § 34.5, now Cal. Fam. Code § 6925). Through the 1960s and 1970s, the
9 California Legislature continued to expand the rights of minors in this area. Today, a minor may
10 on her own consent to and receive health services related to pregnancy, family planning, sexual
11 assault and, at twelve years or older, rape or sexually transmitted diseases. Cal. Fam. Code §§
12 6925, 6926, 6927, 6928; *see also* Cal. Code of Regs. tit. 22, § 51473.2.

13 77. California's medical confidentiality statutes additionally provide adolescents,
14 including foster youth, the right to control and limit the release of information regarding the
15 reproductive and sexual health services they receive. Cal. Health & Safety Code §§ 123110(a),
16 123115(a)(1); Cal. Civ. Code §§ 56.10, 56.103(h), 56.11(c)(1),(2).

17 **2. California Has Developed Programs to Ensure Youth Have Access to**
18 **Confidential Services and Comprehensive Sex Education.**

19 78. To help ensure that minors are able to access confidential reproductive and sexual
20 health services on their own, California has created several insurance programs that allow youth
21 to obtain these services free of charge, including the Family PACT Program and the Medi-Cal
22 Minor Consent Program. Cal. Welf. & Inst. Code § 14132(aa); Cal. Code Regs. tit. 22, §§
23 50063.5, 50147.1, 50157(f)(3); Dept. of Health Care Services, Cal. Health and Human Services
24 Agency, *Family PACT Policies, Procedures, and Billing Instructions Manual: Client Eligibility*
25 *Determination*, 3 (Oct. 2015), [http://files.medi-cal.ca.gov/pubsdoco/publications/masters-](http://files.medi-cal.ca.gov/pubsdoco/publications/masters-mtp/fpact/clienteligdet_f00.doc)
26 [mtp/fpact/clienteligdet_f00.doc](http://files.medi-cal.ca.gov/pubsdoco/publications/masters-mtp/fpact/clienteligdet_f00.doc).

27 79. These programs provide, among other things, STD testing and treatment, family
28 planning services, including pregnancy testing, counseling, and contraception, and treatment
related to sexual assault.

1 80. The California Legislature has mandated comprehensive sex education in
2 schools,² which is shown to be more effective at delaying sex, increasing contraceptive use, and
3 decreasing teenage pregnancy rates than abstinence-only education or no sex education.
4 Advocates for Youth, *Comprehensive Sex Education: Research and Results*, 1-2 (Sept. 2009)
5 <http://www.advocatesforyouth.org/storage/advfy/documents/fscse.pdf>. The Legislature has
6 rejected abstinence-only strategies, such as Promesa’s rules prohibiting sexual activity, to
7 prevent teen pregnancy and lower STD infections. Abstinence-only education is not permitted
8 in California schools. *Am. Acad. of Pediatrics v. Clovis Unified Sch. Dist.*, Case No.
9 12CECG02608 (Fresno Super. Ct. April 28, 2015).

10 **3. Fresno County Recognizes that Foster Youth Should Have Access to**
11 **Reproductive and Sexual Health Services.**

12 81. Fresno DSS has published a “Caregiver Resource Handbook” to provide
13 information and guidance to those providing care for foster youth in Fresno County. *See* Fresno
14 County DSS, *Caregiver Resource Handbook* (May 2014),
15 [http://www.co.fresno.ca.us/uploadedFiles/Departments/DSS/Family_Services/Foster_Care/Care](http://www.co.fresno.ca.us/uploadedFiles/Departments/DSS/Family_Services/Foster_Care/Caregiver%20Handbook%20Final%20May%202014.pdf)
16 [giver%20Handbook%20Final%20May%202014.pdf](http://www.co.fresno.ca.us/uploadedFiles/Departments/DSS/Family_Services/Foster_Care/Caregiver%20Handbook%20Final%20May%202014.pdf). Fresno DSS’s Handbook states that minors,
17 including those in the foster care system, have the right to access and consent to certain health
18 care services, including those related to reproductive health, without parental consent. *Id.* at 30.
19 The Fresno DSS Handbook also states that youth have the right to access family planning and
20 pregnancy and STD treatment and prevention services, including contraception and sexual
21 counseling, and directs foster care providers to contact the child’s social worker regarding these
22 services if needed. *Id.* at 29-30, 58.

23 **B. The California Constitution Protects a Minor’s Right to Privacy.**

24 82. The California Constitution contains an explicit right to privacy. *Am. Acad. of*
25 *Pediatrics v. Lungren*, 940 P.2d 797, 808 (Cal. 1997). Article I, section 1 provides: “All people
26 are by nature free and independent and have inalienable rights. Among these are enjoying and

27 ² Under the California Healthy Youth Act, schools must provide students with the knowledge and
28 skills necessary to protect their sexual and reproductive health from unintended pregnancy and
STDs. Cal. Dept. of Education, *Comprehensive Sexual Health and HIV/AIDS Instruction* (last
updated Dec. 30, 2015), <http://www.cde.ca.gov/ls/he/se> (citing Educ. Code §§ 51930-51939).

1 defending life and liberty, acquiring, possessing, and protecting property, and pursuing and
2 obtaining safety, happiness, and privacy.” Cal. Const. art. I, § 1. This right is self-executing.
3 *People v. Wiener*, 35 Ca. Rptr. 2d. 321, 326 (Cal. Ct. App. 1994). The right of procreative
4 choice protected by Article 1, section 1 has been established as significantly broader than the
5 comparable federal right. *Lungren*, 940 P.2d at 808-10.

6 83. The right to privacy includes the right of all women of childbearing age to use
7 contraceptive methods to choose whether or not to bear children. *Conservatorship of Valerie N.*,
8 707 P.2d 760, 772 (Cal. 1985); *see also Carey v. Population Servs. Int’l*, 431 U.S. 678, 686-87
9 (1977) (the federal right to privacy protects the rights of an individual to be free of unwarranted
10 governmental intrusion in personal decisions regarding intimate relations).

11 84. This right incorporates the right to make decisions regarding whether to continue
12 or terminate a pregnancy without parental involvement, *Lungren*, 940 P.2d at 815-16, and the
13 right to retain personal control over the integrity of one’s own body, *id.* at 813. A “fundamental”
14 component of the right to privacy is “[t]he right to control circulation of personal information.”
15 *Pettus v. Cole*, 57 Cal. Rptr. 2d 46, 72 (Cal. Ct. App. 1996) (internal quotation marks omitted).
16 It is well established that the “zones of privacy” protected by the California Constitution “extend
17 to the details of one’s medical history.” *Id.*; *see also Jones v. Superior Court of Alameda Cty.*,
18 174 Cal. Rptr. 148, 156-57 (Cal. Ct. App. 1981). It is an “egregious breach of the social norms
19 underlying the privacy right” to penalize an individual for assertion of that right. *Pettus*, 57 Cal.
20 Rptr. 2d at 86.

21 85. Minors possess a constitutional privacy right. *Lungren*, 940 P.2d at 814 (“the
22 constitutional right to privacy widely has been recognized as applying to minors as well as
23 adults”); *see also Carey*, 431 U.S. at 693-94 (finding that the federal right to privacy protecting
24 the rights of an individual to be free of unwarranted governmental intrusion in personal decisions
25 regarding intimate relations extends to minors).

26 86. Minors in the foster care system have the same right to consent for and obtain
27 pregnancy-related care, including contraception, as minors not in the foster care system. Cal.
28 Welf. & Inst. Code § 369(h). Other courts considering whether foster youth should be permitted

1 to have access to contraception in their group home or consent to an elective abortion have
2 concluded that they should. *See, e.g., Arneith v. Gross*, 699 F. Supp. 450, 452-53 (S.D.N.Y.
3 1988) (holding that a religiously affiliated group home must allow foster youth to have access to
4 contraception); *Lady Jane v. Maher*, 420 F. Supp. 318, 321 (D. Conn. 1976) (holding a
5 Connecticut regulation which required all dependent minors to obtain written consent of the
6 Commissioner of Children and Youth Services to obtain elective abortions unconstitutional).
7 Even under the more narrow federal right to privacy, the *Arneith* court found that “[m]inors have
8 a constitutional privacy right to practice artificial contraception absent compelling state
9 considerations to the contrary, and this is not diminished because they are in foster care.”
10 *Arneith*, 699 F. Supp. at 452.

11 **C. Promesa Must Respect the Constitutional and Statutory Rights of Foster**
12 **Youth Placed in its Care.**

13 87. Promesa is required to respect non-minor and minor foster youth’s constitutional
14 right to privacy. The California constitutional right to privacy protects against invasions of
15 privacy by private individuals and actors. *Sheehan v. San Francisco 49ers, Ltd.*, 201 P.2d 472,
16 477 (Cal. 2009). The California Supreme Court has held that the California Constitution
17 “creates a right of action against private as well as government entities.” *Id.* (citation omitted);
18 *see also Porten v. University of San Francisco*, 134 Cal. Rptr. 839, 842 (Cal. Ct. App. 1976)
19 (“Privacy is protected not merely against state action; it is considered an inalienable right which
20 may not be violated by anyone.”).

21 88. Promesa is also required to respect foster youth’s statutory and regulatory
22 personal rights. Promesa, like other providers of residential foster care for youth in California, is
23 legally permitted to operate its group homes only pursuant to licenses issued by California
24 Department of Social Services (“CDSS”) and in compliance with the governing statutes and
25 CDSS’s regulations and rules. Cal. Health & Safety Code § 1508; Cal. Code Regs. tit. 22, §
26 80000(b).

27 89. State law further specifies that foster youth’s rights include the right to receive
28 medical care, to be free from unreasonable searches of their personal belongings, to have contact
with family members, and to have access to age-appropriate and medically accurate information

1 about reproductive health care, the prevention of unplanned pregnancy, and the prevention and
2 treatment of sexually transmitted infections at twelve years of age or older. Cal. Welf. & Inst.
3 Code §§ 16001.9(a)(4), (6), (7), (21), (27); *see also* Cal. Welf. & Inst. Code § 27.

4 90. Under these statutes, regulations, and rules governing its operation of group
5 homes, Promesa is responsible for ensuring that each youth placed in its care “is accorded
6 [these] personal rights.” Cal. Code Regs. tit. 22, §§ 80072(d), 84072.

7 **VI. NEED FOR INJUNCTIVE AND DECLARATORY RELIEF**

8 91. An actual controversy has arisen and now exists concerning Promesa’s treatment
9 of the foster youth placed in its care. Plaintiffs contend that foster youth have a legally protected
10 privacy interest to practice contraception, to make decisions regarding whether and when to
11 parent, to have private communications with medical providers, to have their medical records
12 remain confidential, and to not be punished for exercising these rights. Plaintiffs further contend
13 that Promesa’s policies and practices violate foster youths’ constitutional right to privacy.
14 Plaintiffs are informed and believe, and on such information and belief, allege that Promesa has
15 denied its policies and practices are unlawful.

16 92. Plaintiffs also contend that foster youth, including non-minor dependents, have a
17 legal right to receive medical health services, Cal. Welf. & Inst. Code § 16001.9(a)(4), Cal. Code
18 Regs. tit. 22, § 84072(c)(18), AB 12 Interim Licensing Standards for Nonminor Dependents in
19 Foster Care (AB 12 Interim Licensing Standards) § 84472(b)(5); to visit and contact siblings and
20 family members, unless prohibited by court order, Cal. Welf. & Inst. Code §§ 16001.9(a)(6), (7),
21 Cal. Code Regs. tit. 22, §§ 84072(c)(5), (20), AB 12 Interim Licensing Standards § 84472(b)(6);
22 to be free from threats or punishments for making complaints, Cal. Welf. & Inst. Code §
23 16001.9(a)(8), Cal. Code Regs. tit. 22, § 84072(c)(21); to possess and use their own personal
24 items, Cal. Code Regs. tit. 22, § 84072(c)(9), AB 12 Interim Licensing Standards § 84472(b)(2);
25 to be free from unreasonable searches of personal belongings, Cal. Welf. & Inst. Code
26 § 16001.9(a)(21), Cal. Code Regs. tit. 22, § 84072(c)(31), AB 12 Interim Licensing Standards
27 § 84472(b)(12); and to have access to age-appropriate, medically accurate information about
28 reproductive health care, the prevention of unplanned pregnancy, and the prevention and

1 treatment of sexually transmitted infections at twelve years of age or older, Cal. Welf. & Inst.
2 Code § 16001.9(a)(27). Plaintiffs further contend that Promesa's policies and practices violate
3 foster youths' statutory rights. Plaintiffs are informed and believe, and on such information and
4 belief, allege that Promesa has denied that its policies and practices violate foster youths'
5 statutory rights.

6 93. The issues raised in this Complaint affect the rights of all California foster youth,
7 including vulnerable clients of Planned Parenthood, who are placed in Promesa and other group
8 homes with similar policies. Promesa's actions including confiscating contraception such
9 condoms that Planned Parenthood has given to its clients, arbitrarily punishing youth for using
10 those items that Planned Parenthood has given to them, interfering with its ability to provide
11 confidential health care to its clients, interfering with the Individual Plaintiffs' and other foster
12 youths' right to access age-appropriate, medically accurate information about reproductive
13 health care, and arbitrarily prohibiting youth from receiving Planned Parenthood's services, also
14 violate CPPEF's and PPMM's interests in providing services and care to foster youth residing in
15 the Promesa group homes.

16 94. Individual foster youth currently placed in Promesa group homes face substantial
17 barriers in vindicating their rights directly. Group home placements in California are intended to
18 last for a limited amount of time. *See, e.g.*, Cal. Dept. of Social Services, All County Letter No.
19 13-86. State law provides that youth should not live in a group home for longer than one year.
20 Cal. Welf. & Inst. Code § 16010.8. Plaintiffs are informed and believe, and on such information
21 and belief, allege that many foster youth who are placed in Promesa's group homes stay there for
22 significantly less than a year, and sometimes for only a few months or weeks. Such turnover
23 hinders their ability to litigate a court action fully while still placed in a Promesa group home.
24 Foster youth placed at Promesa may also be chilled from asserting their rights due to fear of
25 reprisal by Promesa, which controls their housing and their day-to-day lives, for publicly
26 challenging its practices. In addition, foster youth may be chilled from asserting their rights by
27 fear of disclosure of private information about their sexual activities.

28

1 95. Unless enjoined, Promesa will continue these harmful and unlawful policies and
2 practices.

3 96. Plaintiffs lack a plain, speedy, and adequate remedy at law, and will suffer
4 irreparable harm if Promesa is not enjoined. No money damages or other legal remedy could
5 adequately compensate for the irreparable harm Promesa has caused, continues to cause, and
6 threatens to cause Plaintiffs and other foster youth who are being denied access to contraceptives
7 and confidential reproductive health care. Plaintiffs have exhausted all available administrative
8 remedies.

9 **FIRST CAUSE OF ACTION**

10 **Violation of the California Constitution's Right to Privacy**

11 **(Cal. Const., art. I, § 1) (By All Plaintiffs Against Promesa)**

12 97. Plaintiffs reallege and incorporate by reference each and every allegation
13 contained in the above paragraphs as though fully set forth above.

14 98. Under the privacy clause of the California Constitution, article I, section 1, and
15 applicable case law, California women of childbearing age have the right to use contraceptive
16 methods to choose whether or not to have children. Minors' legally protected privacy interest
17 includes the right to practice contraception, to make decisions regarding whether and when to
18 parent, to have private communications with medical providers, to have their medical records
19 remain confidential, and to not be subjected to punishment for asserting their privacy interests.

20 99. Plaintiffs S.H., A.Z., L.B., E.B., V.R., and other similarly situated foster youth
21 who are placed at Promesa by their counties of origin, including the vulnerable clients of
22 Planned Parenthood, have an objectively reasonable expectation that Promesa will not violate the
23 legally protected privacy interests described above. They did not choose to enter foster care or
24 live in a Promesa group home, but rather were required to do so by their county child welfare
25 agency.

26 100. Promesa has violated the constitutional rights of Plaintiffs S.H., A.Z., L.B., E.B.,
27 V.R., and other similarly situated foster youth, including the vulnerable clients of Planned
28 Parenthood, by confiscating contraceptives, by forcing foster youth to waive their right to

1 confidential medical care, by denying foster youth access to confidential reproductive health care
2 services, by arbitrarily prohibiting foster youth from receiving services from Planned
3 Parenthood, and by arbitrarily punishing some foster youth who exercise their reproductive
4 health rights by taking away “privileges,” such as visits with their parents or children.

5 101. Promesa has violated the interests of CPPEF and PPMM, in providing services
6 and care to foster youth residing in the Promesa group homes, by confiscating contraception,
7 including condoms, that Planned Parenthood has given to its clients, by arbitrarily punishing
8 youth for using those items that Planned Parenthood has given to them, by interfering with its
9 ability to provide confidential health care to its clients, and by arbitrarily prohibiting youth from
10 receiving Planned Parenthood’s services.

11 102. Promesa’s actions impede an interest fundamental to the Individual Plaintiffs and
12 other foster youth’s personal autonomy and do not serve a compelling state interest.

13 103. Plaintiffs seek an injunction prohibiting Promesa from confiscating contraception,
14 including condoms, from arbitrarily punishing foster youth for having contraception in their
15 possession, from interfering with foster youth’s right to confidential health care, and from
16 arbitrarily prohibiting foster youth from receiving Planned Parenthood’s services.

17 104. Plaintiffs also seek a declaration that Promesa’s policies and practices violate the
18 legally protected privacy interests of current and future foster youth placed in its group homes.

19 **SECOND CAUSE OF ACTION**

20 **Violation of Foster Youth’s Rights Under State Law (Cal. Code**

21 **Civil Proc. § 1060) (By All Plaintiffs Against Promesa)**

22 105. Plaintiffs reallege and incorporate by reference each and every allegation
23 contained in the above paragraphs as though fully set forth above.

24 106. All minors and non-minors in foster care have legal rights to choose or refuse
25 birth control, Cal. Health & Safety Code § 123462(a); to choose to bear a child, Cal. Health &
26 Safety Code § 123462(b); to receive medical health services, Cal. Welf. & Inst. Code §
27 16001.9(a)(4), Cal. Code Regs. tit. 22, § 84072(c)(18); to consent to medical care related to the
28 prevention or treatment of pregnancy, Cal. Fam. Code § 6925(a), or to the diagnosis, treatment,

1 or prevention of a sexually transmitted disease at twelve years of age or older, Cal. Fam. Code
2 §§ 6926(a),(b); to confidentiality of their medical records related to such care, Cal. Health &
3 Safety Code §§ 123110(a), 123115(a)(1), Cal. Civ. Code §§ 56.10, 56.103(h), 56.11(c)(1),(2); to
4 visit and contact siblings and family members, unless prohibited by court order, Cal. Welf. &
5 Inst. Code §§ 16001.9(a)(6), (7), Cal. Code Regs. tit. 22, §§ 84072(c)(5), (20), AB 12 Interim
6 Licensing Standards § 84472(b)(6); to be free from threats or punishments for making
7 complaints, Cal. Welf. & Inst. Code § 16001.9(a)(8), Cal. Code Regs. tit. 22, § 84072(c)(21); to
8 possess and use their own personal items, Cal. Code Regs. tit. 22, § 84072(c)(9), AB 12 Interim
9 Licensing Standards § 84472(b)(2); to be free from unreasonable searches of personal
10 belongings, Cal. Welf. & Inst. Code § 16001.9(a)(21), Cal. Code Regs. tit. 22, § 84072(c)(31),
11 AB 12 Interim Licensing Standards § 84472(b)(12); and to have access to age-appropriate,
12 medically accurate information about reproductive health care, the prevention of unplanned
13 pregnancy, and the prevention and treatment of sexually transmitted infections at twelve years of
14 age or older, Cal. Welf. & Inst. Code § 16001.9(a)(27).

15 107. Promesa has violated the legal rights of the Individual Plaintiffs and other foster
16 youth, including the vulnerable clients of Planned Parenthood, by confiscating contraception,
17 including condoms, by conducting unreasonable searches of their personal belongings, by not
18 allowing foster youth to have contraception in their possession, by arbitrarily punishing foster
19 youth for having contraception, including by depriving them of visitation with family members,
20 by interfering with the Individual Plaintiffs and other foster youth's ability to obtain confidential
21 health care, by retaliating against foster youth who assert their rights, and by interfering with the
22 Individual Plaintiffs' and other foster youths' right to access age-appropriate, medically accurate
23 information about reproductive health care.

24 108. Promesa has violated the interests of CPPEF and PPMM, in providing services
25 and care to foster youth residing in the Promesa group homes, by confiscating contraception,
26 including condoms, that Planned Parenthood has given to its clients, by arbitrarily punishing
27 foster youth for using those items that Planned Parenthood has given to them, by interfering with
28 its ability to provide confidential health care to its clients, and by interfering with the Individual

1 Plaintiffs' and other foster youths' right to access age-appropriate, medically accurate
2 information about reproductive health care.

3 109. Plaintiffs seek a declaration that Promesa's policies and practices violate the
4 legally protected rights of current and future youth placed in its group homes.

5 **THIRD CAUSE OF ACTION**

6 **Violation of the Bane Act (Cal. Civ. Code § 52.1)**

7 **(By Plaintiffs S.H., A.Z., and L.B. Against Promesa)**

8 110. Plaintiffs reallege and incorporate by reference each and every allegation
9 contained in the above paragraphs as though fully set forth above.

10 111. Promesa interfered, or attempted to interfere, by threats, intimidation, or coercion
11 with the rights of Plaintiffs secured by state law and the state constitution, including, but not
12 limited to: their right to privacy under the state constitution, Cal. Const., art. 1, § 1; their right to
13 choose or refuse birth control, Cal. Health & Safety Code § 123462(a); their right to choose to
14 bear a child, Cal. Health & Safety Code § 123462(b); their right to receive medical services, Cal.
15 Welf. & Inst. Code § 16001.9(a)(4); their right to be free from unreasonable searches of their
16 personal belongings, Cal. Welf. & Inst. Code § 16001.9(a)(21); their right to access age-
17 appropriate, medically-accurate information about reproductive health care, prevention of
18 unplanned pregnancy, and prevention and treatment of sexually-transmitted infections at twelve
19 years of age or older, Cal. Welf. & Inst. Code § 16001.9(a)(27); their right to consent to medical
20 care related to the prevention or treatment of pregnancy, Cal. Fam. Code § 6925(a), or to the
21 diagnosis, treatment, or prevention of a sexually transmitted disease at twelve years of age or
22 older, Cal. Fam. Code §§ 6926(a),(b); and their right to confidentiality of their medical records
23 related to such care, Cal. Health & Safety Code §§ 123110(a), 123115(a)(1), Cal. Civ. Code §§
24 56.10, 56.103(h), 56.11(c)(1),(2).

25 112. As specified in the paragraphs below, through its policies and practices, Promesa
26 intentionally prohibited Plaintiffs from accessing reproductive health, sexually transmitted
27 disease, and pregnancy prevention care and education, refused to permit Plaintiffs to go to
28 certain care providers, including Planned Parenthood, and confiscated contraception, including

1 condoms, that it found in Plaintiffs' possession during unreasonable searches of their person or
2 belongings. Promesa required Plaintiffs to waive their rights to confidentiality of their private
3 medical information, and forced Plaintiffs to agree to adhere its rules and restrictions, including
4 those against contraception, as conditions of continued housing. Promesa punished, or
5 threatened to punish, Plaintiffs for violation of its rules, including by depriving Plaintiffs of
6 "privileges," such as visiting family members. Promesa made Plaintiffs fear that if they asserted
7 their rights, Promesa would deny them housing and they would lose their home. When Plaintiffs
8 attempted to assert their rights, Promesa issued them a seven-day notice that it would no longer
9 take care of them and required them to abruptly leave.

10 113. Promesa used threats, intimidation and coercion to interfere with S.H.'s rights by
11 engaging in a course of conduct that included: (a) punishing her for becoming pregnant and
12 refusing to have an abortion by denying her visitation with her family members and other rights,
13 (b) preventing her from accessing reproductive health services at Planned Parenthood by
14 refusing to transport her or give her permission to go, (c) telling her that Promesa would punish
15 her for obtaining and using contraception, and (d) depriving her of continued housing in their
16 group homes for asserting her rights.

17 114. Promesa used threats, intimidation and coercion to interfere with A.Z.'s rights by
18 engaging in a course of conduct that included: (a) telling her that Promesa would punish her,
19 including giving her an R and depriving her of privileges, for obtaining and using contraception
20 and for accessing reproductive health care confidentially, (b) searching her room and physically
21 removing condoms from her room, (c) preventing her from accessing reproductive health
22 services at Planned Parenthood by refusing to transport her or give her permission to go, and (d)
23 depriving her of continued housing in their group homes for asserting her rights.

24 115. Promesa used threats, intimidation and coercion to interfere with L.B.'s rights by
25 engaging in a course of conduct that included: (a) telling her that Promesa would punish her,
26 including giving her an R and depriving her of privileges, for obtaining and using contraception,
27 (b) physically taking condoms away from her person while telling her that if she did not give up
28 the condoms, she would be punished, (c) searching her room, physically removing condoms

1 from her room, and punishing her for having condoms by depriving her of privileges, (d)
2 insisting on being present in her gynecological appointments and punishing her for
3 communications with her doctor, and (e) depriving her of continued housing in their group
4 homes for asserting her rights.

5 116. As a proximate result of the Promesa's actions, Plaintiffs S.H., A.Z., and L.B.
6 suffered damages in a sum according to proof, and are entitled to the statutory and compensatory
7 damages, treble damages, attorneys' fees, and costs provided for by sections 52 and 52.1 of the
8 California Civil Code.

9 117. Unless enjoined, Promesa will continue to engage in its pattern and practice of
10 using threats, coercion, or intimidation to interfere with foster youths' exercise and enjoyment of
11 their rights under the state laws and constitution.

12 118. Plaintiffs S.H., A.Z., and L.B. are entitled to appropriate equitable relief,
13 including injunctive relief, and declaratory relief to eliminate Promesa's pattern and practice of
14 unlawful conduct and to protect their peaceable exercise or enjoyment of their rights under state
15 law. Plaintiffs S.H., A.Z., and L.B. are entitled to preliminary and permanent injunctive relief
16 compelling Promesa to establish policies and practices that ensure foster youth have access to
17 contraceptives, including condoms, that they are not forced to waive their right to confidential
18 medical care, that foster youth are permitted to seek medical care and services from Planned
19 Parenthood; and that foster youth are not punished for exercising their reproductive health rights
20 by taking away "privileges," such as visits with their parents or children.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiffs pray for entry of judgment in their favor and against Promesa as
23 follows:

24 1. A preliminary and permanent order enjoining Promesa from confiscating
25 contraceptives, including condoms; from forcing foster youth to waive their right to confidential
26 medical care; from refusing to permit foster youth to access services from Planned Parenthood;
27 from punishing foster youth who exercise their reproductive health rights by taking away
28

1 “privileges,” such as visits with their parents or children; and from retaliating against foster youth
2 who assert their rights.

3 2. A declaratory judgment stating that certain of Promesa practices violate article 1,
4 section 1 of the California Constitution, section 16001.9 of the California Welfare and Institutions
5 Code, and section 84072 of title 22 of the California Code of Regulations, specifically:
6 confiscating contraceptives, including condoms; forcing foster youth to waive their right to
7 confidential medical care; refusing to permit foster youth to access services from Planned
8 Parenthood; and punishing foster youth who exercise their reproductive health rights by taking
9 away “privileges,” such as visits with their parents or children.

10 3. An award of statutory and compensatory damages, according to proof, under
11 section 52.1 of the California Civil Code.

12 4. An award of Plaintiffs’ attorney’s fees, costs, and out-of-pocket expenses under
13 California Code of Civil Procedure section 1021.5 and the Bane Act; and

14 5. Such other and further relief that the Court deems just and proper.
15
16
17

18 Dated: May 5, 2016

NATIONAL CENTER FOR YOUTH LAW

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PROOF OF SERVICE

I am employed in the City and County of San Francisco, State of California in the office of a member of the bar of this court at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Kecker & Van Nest LLP, 633 Battery Street, San Francisco, CA 94111-1809.

On May 5, I served the following document(s):

FIRST AMENDED COMPLAINT

by **E-MAIL VIA PDF FILE**, by transmitting on this date via e-mail a true and correct copy scanned into an electronic file in Adobe "pdf" format. The transmission was reported as complete and without error.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct and that this Proof of Service was executed on May 5, 2016, in San Francisco, California.



Jacquelyn Smith