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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT *of* CALIFORNIA**

10) **Case No.: 2:23-cv-08230-SVW-E**
11 **1. JASON D'SOUZA**)
12 **2. KRISTINA EISENACHER**) **FIRST AMENDED**
13 **3. ROB EMERT**) **CLASS ACTION COMPLAINT**
14 **4. JENNIFER GARNICA**) *for DAMAGES and INJUNCTION,*
15 **5. KRISTEN JOSEPH**) *[42 U.S.C. § 1983].*
16 **6. RHONDA REYNA**)
17 **7. PATRICIA BOONE**)
18 **8. MARK FIDELMAN**)
19 **9. DAVID KING**)
20 **10. ALISA ROTHMAN**)

21 *Plaintiffs*)

22 **vs.**)

23 **HON. PATRICIA GUERRERO**)
24 *In Her Honor's Official Capacity*)
25 *as Council Chair for the*)
26 *Judicial Council of California*)

27 *Defendants*)
28)

1 (13) Plaintiff 10: ALISA ROTHMAN IS a fit parent, subject to a Sonoma
2 County court order, (Apr. 12, 2023), that grants her no actual parenting time.

3 (14) Jury Trial: Plaintiffs demand trial by jury, [VII Amendment].
4

5 II. Statement of the Case.

6 (15) Nature of the Action: JUDICIAL COUNCIL is the policy-making body
7 for California courts. Plaintiffs are “fit” parents, *i.e.*, they’ve never been
8 found “unfit.” Plaintiffs challenge Defendants’ policy of *not* training judges —
9 *first*, that “parenting” is a fundamental right, [*Meyer vs. Nebraska*, 262 U.S.
10 390 (1923)], and *second*, that the Constitution forbids physical custody orders
11 that grant no “actual parenting time” — *unless a parent is found ‘unfit’* — *i.e.*,
12 with clear and convincing evidence of actual harm to a minor child, pursuant
13 to a properly noticed fitness proceeding brought by the State.

14 (16) Injunction: Plaintiffs seek an injunction requiring Defendants to train
15 its judicial officers, *first*, that “parenting” is a fundamental right, and *second*,
16 that the Constitution forbids physical custody orders that grant no “actual
17 parenting time” — *unless a parent is found ‘unfit’* — with actual harm to a
18 minor child, which is the constitutional minimum required to divest a
19 parent’s custodial rights.

20 (17) Damages: Plaintiffs also seek money damages — for each day they and
21 their children were wrongfully dispossessed of their fundamental rights.

22 (18) Right to Parent: The term *liberty* denotes — “not merely freedom from
23 bodily restraint, but also the right of the individual to contract, to engage in
24 any of the common occupations of life, to acquire useful knowledge, to marry,
25 establish a home and ***bring up children***, to worship God according to the
26 dictates of his own conscience, and generally to enjoy those privileges long
27 recognized at common law as essential to the orderly pursuit of happiness by
28 free men,” [*Meyer vs. Nebraska*, 262 U.S. 390, 399 (1923); (bold italics added)].

1 (19) Plaintiff's Argument: Under U.S. Supreme Court precedent, courts
2 may not issue physical custody orders that grant no “actual parenting time”
3 to a parent — *unless that parent is found ‘unfit’* — with clear and convincing
4 evidence of actual harm to a minor child, [*see Stanley vs. Illinois*, 405 U.S.
5 645 (1972); *Smith vs. Org. of Foster Families*, 431 U.S. 816 (1977); *Quilloin*
6 *vs. Walcott*, 434 U.S. 246 (1978); *Parham vs. J.R.*, 442 U.S. 584 (1979); and,
7 *Santosky vs. Kramer*, 455 U.S. 745 (1982)].

8 (20) ‘Actual Parenting Time’—Defined: The crux of Plaintiffs’ argument is
9 that “actual parenting time” happens (if at all) when parents have the actual
10 ability to exercise (a) ***care, custody, and control*** of their minor children,
11 and to exercise, (b) ***private familial speech*** with their children. But here,
12 the State wrongfully dispossessed Plaintiffs of these fundamental rights —
13 *despite the fact that they’ve never been found ‘unfit’* — *i.e.*, no findings of (i)
14 child abuse, (ii) child neglect, (iii) abandonment, or (iv) endangerment.

15 (21) Private Familial Speech: While the 14th Amendment guarantees the
16 People’s right to “bring up children,” the 1st Amendment guarantees the
17 right to “familial association,” including private familial speech. Where, as
18 here, custody orders forbid “fit” parents from speaking privately with their
19 children, it results in unconstitutional *time, place and manner* restrictions.

20 (22) Familial Association: As *Rotary Int’l*, [*id.*], explains, “First, the Court
21 has held that the Constitution protects against unjustified government
22 interference with an individual's choice to enter into and maintain certain
23 intimate or private relationships. Second, the Court has upheld the freedom
24 of individuals to associate for the purpose of engaging in protected speech or
25 religious activities,” [*Rotary Int’l*, (*id.*, at 544)].

26 (23) Analysis: Where, as here, “fit” parents are subject to physical custody
27 orders that grant no “actual parenting time,” it violates the noncustodial
28 parent’s right to “bring up children” — by precluding their ability to exercise

1 ***care, custody, and control*** of their children, [*Troxel vs. Granville*, 530
2 U.S. 57 (2000)]; so too, it violates the right to “familial association” — by
3 precluding the parent’s ability to exercise ***private familial speech*** with
4 their children, [*Rotary Int’l vs. Rotary Club of Duarte*, 481 U.S. 537 (1987)].

5 (24) Infringement: Where, as here, physical custody orders grant no
6 “actual parenting time” to “fit” parents, it necessarily infringes upon
7 fundamental rights that the 1st and 14th Amendments guarantee.

8 (25) Supervised Visitation: Notably, where courts require supervised
9 visitation, it leaves noncustodial parents with no “actual parenting time.”
10 During supervised visits — *the State is in control* — in decidedly prison-like
11 settings — where noncustodial parents have, (a) no actual ability to exercise
12 ***care, custody, and control*** of their children (which deprives 14th
13 Amendment rights), and (b) no actual ability to exercise ***private familial***
14 ***speech*** with their children (which deprives 1st Amendment rights).

15 (26) Severance of Parent-Child Relationships: The stark reality is that,
16 when courts issue “supervised visitation” orders, (and “no-contact” orders),
17 the noncustodial parents enjoy zero parental rights. Where courts deprive a
18 parent’s 14th Amendment right to ***care, custody, and control*** of their
19 children, as well as their 1st Amendment right to ***private familial speech***
20 with their children, it effectively severs the parent-child relationship.

21 (27) Constructive Termination: Where physical custody orders grant no
22 “actual parenting time” to “fit” parents, the noncustodial parents suffer
23 *constructive termination* — *i.e.*, of what many believe are the most cherished
24 fundamental rights, (a) the right to “bring up children,” [14th Amendment],
25 as well as, (b) the right to “familial association,” [1st Amendment].

26 (28) Lifetime Consequences: Where physical custody orders grant no
27 “actual parenting time” to “fit” parents — such orders run contrary to public
28 policy. Under such restrictive orders, noncustodial parents have no actual

1 ability to “parent” their children (in any meaningful sense), nor are their
2 children actually “being parented” (in any meaningful sense); and, this comes
3 with devastating consequences — including lifetimes of severe mental and
4 emotional trauma for the noncustodial parents and their children.

5 (29) Fundamental Rights: Plaintiffs invoke (a) their 14th Amendment right
6 to “bring up children,” *i.e.*, ***care, custody and control*** of their children,
7 [*Troxel vs. Granville*, 530 U.S. 57 (2000)] — and (b) their 1st Amendment
8 right to “familial association,” *i.e.*, ***private familial speech***, (*e.g.*, to pray
9 together, do homework together, and lead by example on a daily basis),
10 [*Rotary Int’l vs. Rotary Club of Duarte*, 481 U.S. 537, 544 (1987)].

11 (30) Arbitrary Discretion: Sadly, judges statewide issue physical custody
12 orders that grant no “actual parenting time” to “fit” parents — and for the
13 flimsiest of reasons — based only on arbitrary discretion — *with no findings*
14 *of ‘unfitness.’* But this is unconstitutional. With no findings that a given
15 parent is “unfit,” there’s no legal or factual basis to issue physical custody
16 orders that grant no “actual parenting time” to that parent.

17 (31) Policy No. 1—Parenting is a Fundamental Right: Defendants maintain
18 a policy of *not* training judges that parenting is a fundamental right, [*see*
19 *Meyer vs. Nebraska*, 262 U.S. 390 (1923)], and this has tragic and deleterious
20 consequences; it results in continuous and ongoing violations of federally
21 protected civil rights, which are so prevalent, so commonplace, and so
22 regularized, as to become *de facto* judicial policy statewide.

23 (32) Policy No. 2—Fit Parents Entitled to ‘Actual Parenting Time’:
24 Defendants also fail to train judges that “fit” parents are entitled to “actual
25 parenting time” and that the Constitution forbids physical custody orders
26 that grant no “actual parenting time” — *unless a parent is found ‘unfit’* —
27 based on clear and convincing evidence of actual harm to a minor child, *i.e.*,
28 (i) child abuse, (ii) child neglect, (iii) abandonment, or (iv) endangerment.

1 (33) SCOTUS Decisions: The U.S. Supreme Court provides that courts may
2 not issue physical custody orders that grant no “actual parenting time” —
3 *unless a parent is deemed ‘unfit’* — with clear and convincing evidence of
4 actual harm to a minor child — pursuant to a properly noticed fitness
5 proceeding prosecuted by the State, (*not* the other parent), [*see, e.g., Stanley*
6 *vs. Illinois*, 405 U.S. 645 (1972); *Smith vs. Org. of Foster Families*, 431 U.S.
7 816 (1977); *Quilloin vs. Walcott*, 434 U.S. 246 (1978); *Parham vs. J.R.*, 442
8 U.S. 584 (1979); and, *Santosky vs. Kramer*, 455 U.S. 745 (1982)].

9 (34) ‘Unfitness’ Required to Divest ‘Actual Parenting Time’: As per U.S.
10 Supreme Court precedent, where parents are “fit,” courts must grant “actual
11 parenting time” — *precisely because there are no findings of ‘unfitness’* —
12 *i.e.*, no findings of actual harm to a minor child — meaning no findings of
13 (i) child abuse, (ii) child neglect, (iii) abandonment, or (iv) endangerment.

14 (35) Strict Scrutiny Analysis: Note, in those unhappy instances where
15 parents are found “unfit,” courts must undertake *strict scrutiny* analyses —
16 to determine whether the taking of parental rights was narrowly tailored,
17 *i.e.*, “*Is this custodial timeshare the least-restrictive plan possible?*”

18 (36) No Strict Scrutiny for Plaintiffs: Notably, when the State deprived
19 Plaintiffs of “actual parenting time,” the court undertook no strict scrutiny
20 analyses. Plaintiffs’ custody orders reveal no judicial effort to narrowly tailor
21 the taking of Plaintiffs’ parental rights — and no enquiry into whether the
22 parties’ custodial timeshare plans are the least-restrictive possible.

23 (37) ‘Fit’ Parents: When it comes to “fit” parents, there’s no legal basis to
24 issue physical custody orders that grant no “actual parenting time” —
25 precisely because neither parent has been found “unfit.”

26 (38) The *Troxel* Fitness Presumption: “There is a presumption that fit
27 parents act in their children’s best interests,” [*Troxel vs. Granville*, 530 U.S.
28 57, 58 (2000)].

1 (39) Equal Protection: Where physical custody orders grant no “actual
2 parenting time” — *and there’s no showing of ‘unfitness’* — such orders are
3 unconstitutional *per se*. Such “unequal custodial timeshares” do not pass
4 constitutional muster. Equal Protection demands *equal* custodial timeshares,
5 *first*, because two “fit” parents are similarly situated, and *second*, because the
6 *Troxel* fitness presumption applies to both parents equally.

7 (40) Federal Public Policy: Public policy seeks to strengthen and weld the
8 parent-child relationship; *however*, Defendants’ judicial policies frustrate
9 federal policy. Most significantly, Defendants’ policies grant unto the People
10 **less** parental rights than the **minimum** constitutional guarantee.

11 (41) ‘Best Interests’ vs. Constitution: In making custodial determinations,
12 state courts rely exclusively on the “best interest” of the child standard;
13 *however*, a child’s constitutional “right to be parented” is paramount to a
14 child’s “best interests.” Why? — because, of course, the Constitution is the
15 *Supreme Law of the Land*. Where courts make custody determinations based
16 only on “best interest” standards, *with no regard for constitutional standards*,
17 it robs the People of minimum constitutional guarantees.

18 (42) ‘Best Interest’ Resides with ‘Fit’ Parents: Note also, as a threshold
19 matter, state courts lack subject-matter jurisdiction to decide a child’s
20 “best interests.” Where two parents are “fit,” states lack authority to meddle
21 in private family relationships. As a matter of law, “the custody, care and
22 nurture of the child reside first in the parents,” [*Prince vs. Mass.*, 321 U.S.
23 158, 166 (1944)]. Unless there are findings of unfitness, states may not enter
24 “the private realm of family life,” [*id.*].

25 (43) Humanitarian Crisis: Prison inmates have greater access to their kids
26 than do Plaintiffs. But there’s a *basic human need* to bring up one’s children;
27 it’s a basic necessity, like food or water; and yet, judges statewide daily
28 deprive the People of this basic human necessity. It’s a humanitarian crisis.

1 (49) Typicality Requirement: Plaintiffs’ legal claims include all claims that
2 any given parent might reasonably assert under like circumstances.

3 (50) Finite & Ascertainable Class: Plaintiffs submit the following definition
4 for Class Members—

5 “All fit parents subject to physical custody orders — *issued in the last*
6 *two years* — that grant no ‘actual parenting time’ — *i.e.*, no actual
7 ability (a) to exercise ***care, custody, and control*** of their children,
8 or, (b) to exercise ***private familial speech*** with their children —
9 *despite the fact that they’ve never been found ‘unfit’* — *i.e.*, no findings
10 of (i) child abuse, (ii) child neglect, (iii) abandonment, or (iv)
11 endangerment.”

12 (51) Fair & Adequate Representation: Plaintiffs’ counsel will zealously
13 prosecute this action on behalf of all Plaintiffs and putative class members.

14 (52) Substantial Benefits: Class action certification brings substantial
15 benefits to many parents and children. Plaintiffs are thus entitled to
16 attorney’s fees under Rule 23(h) and 42 U.S.C. § 1988.

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1 CAUSE of ACTION No. 1

2 (53) Monell Claim—(42 U.S.C. § 1983): Plaintiffs’ Cause-of-Action No. 1
3 seeks damages and injunction, as per 42 U.S.C. § 1983. Plaintiffs bring a
4 *Monell* claim, challenging Defendants’ judicial “policies,” which result in
5 statewide deprivations of federally protected civil rights, [*see Monell v. Dept.*
6 *of Soc. Svcs.*, 436 U.S. 658 (1978)].

7 (54) State Actors: Defendants are “state actors.” Defendants are “persons”
8 subject to suit under Section 1983. Defendants are responsible for the
9 unconstitutional judicial “policies” now deployed in California courts.

10 (55) Plaintiffs are ‘Fit’ Parents: Plaintiffs are “fit” parents. They have
11 never been found “unfit” — *i.e.*, no findings of (i) child abuse, (ii) child neglect,
12 (iii) abandonment, or (iv) endangerment.

13 (56) Color of Law: JUDICIAL COUNCIL creates California judicial policy.
14 Acting under *colorable authority*, Defendants’ policies fail to train its judges,
15 *first*, that parenting is a fundamental right, and, *second*, that courts may not
16 issue physical custody orders that grant no “actual parenting time,” absent
17 findings of “unfitness.” These unconstitutional policies, ubiquitous statewide,
18 work a harsh result for Plaintiffs — by constructively terminating (a) their
19 right to “bring up children,” and (b) their right to “familial association.”

20 (57) Policy No. 1—Parenting is a Fundamental Right: Defendants maintain
21 a policy of *not* training judges that parenting is a fundamental right, [*see*
22 *Meyer vs. Nebraska*, 262 U.S. 390 (1923)], and this has tragic and deleterious
23 consequences; it results in continuous and ongoing violations of federally
24 protected civil rights, which are so prevalent, so commonplace, and so
25 regularized, as to become *de facto* judicial policy statewide.

26 (58) Policy No. 2—Fit Parents Entitled to ‘Actual Parenting Time’:
27 Defendants also fail to train judges that “fit” parents are entitled to “actual
28 parenting time” and that the Constitution forbids physical custody orders

1 that grant no “actual parenting time” — *unless a parent is found ‘unfit’*—
2 based on clear and convincing evidence of actual harm to a minor child, *i.e.*,
3 (i) child abuse, (ii) child neglect, (iii) abandonment, or (iv) endangerment.

4 (59) Causation: Defendants’ inadequate judicial training policies are a
5 proximate cause of the constitutional harms that Plaintiffs suffer.

6 (60) No 11th Amendment Immunity: Plaintiffs are informed and believe
7 that JUDICIAL COUNCIL is financially self-sufficient; that it generates its own
8 revenues; that it pays its own debts; that it has a *Dun & Bradstreet* number;
9 and, that the State is *not* obligated to pay JUDICIAL COUNCIL debts; *therefore*,
10 the Eleventh Amendment core concern is not implicated.

11 (61) Injunctive Relief: Plaintiffs seek a court order that requires JUDICIAL
12 COUNCIL to train judicial officers, *first*, that parenting is a fundamental right,
13 and, *second*, that courts may not issue physical custody orders that grant no
14 “actual parenting time” — absent findings of “unfitness.”

15 (62) Money Damages: Defendants’ judicial policies cause Plaintiffs and
16 their children to sustain massive headache and heartache injuries. Plaintiffs
17 seek money damages, for each day they and their children were subjected to
18 court orders that grant no “actual parenting time.” Defendants’ policies were
19 a *substantial factor* in causing the harm. Plaintiffs seek presumed general
20 damages, as well as special damages, in sums T.B.D. at trial.

21 (63) Plaintiffs Entitled to Prevail: Plaintiffs are entitled to prevail because
22 statewide judicial policies grant unto the People *less* parental rights than
23 the *minimum* constitutional guarantee.

24 (64) Attorney’s Fees: Plaintiffs request an attorney’s fees award under
25 Rule 23(h) and 42 U.S.C. § 1988.

26 * * *

PRAYER for RELIEF

(65) WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as follows—

- (a) that the Court certify a Plaintiff Class;
- (b) that Plaintiffs be adjudged the prevailing parties;
- (c) for an award of judgment on Plaintiffs’ cause of action;
- (d) for presumed general damages, and special damages, in sums T.B.D. in accordance with proof at trial;
- (e) for an order requiring the JUDICIAL COUNCIL to train its judicial officers, *first*, that parenting is a fundamental right, and, *second*, that courts may not issue physical custody orders that grant no “actual parenting time,” absent findings of “unfitness”;
- (f) for costs and expenses incurred in this prosecuting this action;
- (g) for such other and further relief as the court may deems just and proper.

Dated: **Oct. 10, 2023**

Respectfully Submitted,

T. Matthew Phillips

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Plaintiffs’ Counsel

* * *

VERIFICATION of JASON D'SOUZA

My name is JASON D'SOUZA. I am a Plaintiff herein. All facts alleged are true and correct of my own personal knowledge; as to those matters alleged on information and belief, I reasonably believe them true. If called to testify, I could and would give competent and truthful evidence.

1. I am subject to a physical custody order, issued in the last two years, that grants me no "actual parenting time" with my minor child.

2. I have never been found "unfit." I never committed (i) child abuse, (ii) child neglect, (iii) abandonment, or (iv) endangerment. As a "fit" parent, I decide my child's best interests, not the state.

3. I believe my child's constitutional "right to be parented" is more important than my child's "best interests," as defined by state court judges. I ask the federal government, *respectfully*, to grant me the minimum parental rights that the Constitution guarantees in California state courts.

I declare under penalty of perjury, pursuant to the laws of the United States, the foregoing is both true and correct.

Dated: **Oct. 10, 2023**

Respectfully Submitted,

Jason D'Souza
JASON D'SOUZA,
Plaintiff

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