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Attorney for Plaintiffs

[redacted]
Chambersburg, PA 17202

[redacted]
Chambersburg, PA 17202

T.R., a minor,
L.B., a minor

Plaintiffs

v.

Penn State Milton S. Hershey Medical Center
500 University Drive
Hershey, PA 17033

Mark S. Dias, M.D.
1046 Peggy Drive
Hummelstown, PA 17036-9205

Kathryn R. Crowell, M.D.
106 Turtle Hollow Drive
Lewisberry, PA 17339

Arabinda K. Choudhary, M.D.
770 Sylvan Road
Lancaster, PA 17601

Kathleen D. Eggli, M.D.
6244 Schoolhouse Rd
Elizabethtown, PA 17022-9102

UNITED STATES
DISTRICT COURT FOR THE
MIDDLE DISTRICT OF
PENNSYLVANIA

CIVIL ACTION No. 1:11-cv-01784

(Chief Judge Kane)

JURY TRIAL DEMANDED

AMENDED COMPLAINT

Franklin County
14 N. Main Street
Chambersburg, PA 17201

Kari Coccagna
15 Noble Drive
Shippensburg, PA 17257

Minnie Tuner
539 Rife Street
Chambersburg, PA 17201

Defendants

Plaintiffs, [redacted] T.R. and L.B. allege the following:

JURISDICTION

1. This action is brought pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1985 and the Fourth, Fifth and Fourteenth Amendment of the Constitution of the United States.

2. The jurisdiction of the Court is predicated on 28 U.S.C. § 1343(a),(1), (2), (3) and (4) and 28 U.S.C. § 1331.

ALLEGATIONS-PARTIES

3. Plaintiff, [redacted] hereinafter '[redacted] at all relevant times to this complaint was a resident of Franklin County, Pennsylvania. [redacted] is the father of two children T.R. and L.B. and, when the Penn State Hershey Medical Center's Child Safety Team falsely attributed L.B's childhood stroke and congenital rickets to child abuse, [redacted] was incarcerated for 414 days and was listed as a perpetrator of child abuse on Childline. [redacted] was acquitted of all criminal charges that he abused his daughter, L.B. After his acquittal, Franklin County threatened to send the police to his home to immediately remove his children if he did not agree to a safety plan in which he could not be alone with his children and was subject to announced and unannounced visits from Franklin County employees.

4. Plaintiff, [redacted] hereinafter "[redacted] at all relevant times to this complaint was a resident of Franklin County, Pennsylvania. [redacted] is the mother of T.R. and L.B. and, when the Penn State Hershey Medical Center's Child Safety Team falsely attributed L.B's childhood stroke and congenital rickets to child abuse, lost custody of her children and was listed as a perpetrator of abuse on Childline. After [redacted] acquittal, Franklin County threatened to send the police to the [redacted] home to immediately forcibly remove her children if she did not agree to a safety plan in which [redacted] could not be alone with his children and [redacted] and [redacted] were subject to announced and unannounced visits from Franklin County employees.

5. Plaintiff, T.R., a minor, is the first child of [redacted] and [redacted] was born in 2007 and at all relevant times was a resident of Franklin County, Pennsylvania. When the Penn State Hershey Medical Center's Child Safety Team falsely attributed L.B's childhood stroke and congenital rickets to child abuse, T.R. was removed from the care, custody and control of her mother and her father and placed in foster care. After [redacted] was acquitted of all criminal charges, she was denied the ability to be alone with her father for six months.

6. Plaintiff, L.B., a minor, is the second child of [redacted] and [redacted] was born in 2009 and at all relevant times was a resident of Franklin County, Pennsylvania. L.B. suffered from congenital rickets and on October 19, 2009 L.B. suffered a childhood stroke (thrombosis). The Child Safety Team at the Penn State Milton S. Hershey Medical Center falsely attributed L.B.'s stroke and congenital rickets to child abuse. As a result of the false allegations of child abuse, L.B. was removed from the care, custody and control of her mother and her father and placed in foster care. After [redacted] was acquitted of all criminal charges, she was denied the ability to be alone with her father for six months.

7. Defendant Penn State Milton S. Hershey Medical Center, hereinafter "Penn State", is a Pennsylvania non-profit corporation wholly owned by the Pennsylvania State University and operates a hospital, medical school and children's hospital. Penn State receives Federal and State funding for various activities related to child abuse. For purposes of 42 U.S.C. §1983, Penn State and its employees are state actors. Penn State created a Child Safety Team on September 1, 2009 for the express purpose, *inter alia*, of investigating whether injuries reported as suspicious for child abuse were, in fact, caused by child abuse. Penn State has a discriminatory policy that lends the full faith and credit of Penn State to employees who testify for the Commonwealth of Pennsylvania in criminal prosecutions, for the Commonwealth's county child protection agencies in dependency proceedings and Childline expunction hearings but denies the same full faith and credit of the Penn State Hershey Medical Center to those employees who testify for the accused parents. Defendant Penn State received a 2.8 million dollar grant from the United States Center for Disease Control (CDC) for educating parents about shaken baby syndrome.

8. Defendant Mark S. Dias, M.D. is an employee of Penn State and a resident of Pennsylvania. Defendant Dias is a neurosurgeon, a Fellow of the American Academy of Pediatrics and has served as the co-director of the Penn State Child Safety Team since 2009. Defendant Dias holds himself out as a medical expert who can differentiate between child abuse and medical conditions that can cause intracranial hemorrhage and multiple fractures, frequently testifies with the full faith and credit of Penn State for the government in criminal and dependency cases. Defendant Dias was appointed by the Attorney General of Pennsylvania to serve on the Attorney General's Medical/Legal Advisory Board on Child Abuse. Defendant Dias was not the surgeon at Penn State who performed surgery on L.B. Defendant Dias attributed L.B.'s venous childhood stroke to a congenital anomaly (an anatomic impossibility) and with reckless indifference to the truth wrote a report rendering the false

conclusion that L.B.'s injuries were caused by abuse on Penn State letterhead, testified at [redacted] criminal trial that Defendant Dias was a professor at Penn State and, upon belief, was paid by, and enjoyed the liability insurance, of Penn State when he participated in the investigation of whether L.B.'s injuries were caused by abuse and testified at [redacted] criminal trial. At no time relevant to this complaint was Defendant Dias ever L.B.'s treating physician. In 2010, Defendant Dias wrote a chapter of a book about child abuse entitled "The Case for Shaking" where he reversed the position he previously held and testified that the brain injury from alleged shaken baby cases was from the traumatic tearing of axons. Dr. Dias has now adopted the belief that the brain injury seen in alleged shaken baby cases is from non-traumatic hypoxic ischemia. Defendant Dias believes that "confessions" are the evidentiary basis that validates the shaken baby syndrome. It was Defendant Dias' published efforts that enabled Penn State to receive the CDC 2.8 million dollar grant to "educate" parents about shaken baby syndrome.

9. Defendant Kathryn R. Crowell, M.D. is an employee of Penn State and resident of Pennsylvania. Defendant Crowell hold herself out as a medical expert who can differentiate between child abuse and medical conditions that can cause intracranial hemorrhage and multiple fractures, is a member of the American Academy of Pediatrics and has completed a 60-hour child abuse and neglect preceptorship with the American Academy of Pediatrics. Defendant Crowell has served as the co-director of the Penn State Child Safety Team since it was created in September of 2009 and in that capacity issued a consult report on October 29, 2009, with reckless indifference to the truth, in which she falsely concluded that L.B.'s congenital rickets and childhood venous stroke were caused by abuse on Penn State letterhead. Defendant Crowell testified at the dependency trial, testified at [redacted] preliminary criminal hearing and testified at [redacted] criminal trial with the full faith and credit of Penn State. Dr. Crowell holds herself out as an expert in investigating suspected child abuse who can

determine whether an injury was caused by abuse. Dr. Crowell was qualified as an expert in child abuse for the first time in her life at the dependency hearing for L.B. and T.R on December 18, 2009. Defendant Crowell was qualified as an expert in child abuse for the second time in her life at [redacted] preliminary criminal hearing on December 28, 2009. Dr. Crowell acknowledged under oath at [redacted] criminal trial that she misrepresented medical evidence critical to L.B.'s case when she testified at [redacted] preliminary hearing. Defendant Crowell testified that she was an assistant professor at Penn State and, upon belief, Defendant Crowell was paid by, and enjoyed the liability insurance, of Penn State when she participated in the investigation of whether L.B.'s injuries were caused by abuse and testified at [redacted] preliminary hearing and criminal trial and the dependency hearing of T.R. and L.B. At no time relevant to this complaint was Defendant Crowell ever L.B.'s treating physician. While Dr. Crowell is not sued for her testimony at any hearing or trial, her testimony illustrates her bias, incompetence and failure to require that testing actually be performed for alternative medical conditions that can cause intracranial bleeding and multiple fractures during the investigation by members of the Child Safety Team before claiming to have ruled out all alternative causes of intracranial hemorrhage and multiple fractures.

10. Defendant Arabinda K. Choudhary, M.D. is an employee of Penn State and a resident of Pennsylvania. Defendant Choudhary graduated from medical school and is licensed to practice medicine in Pennsylvania however, at all times relevant to this complaint, Defendant Choudhary was not board certified by the American Board of Radiology nor does he possess any certificates of additional qualifications in pediatric radiology or neuro-radiology. At all times relevant to this complaint, Defendant Choudhary served as a member of the Penn State Child Safety Team and held the title of Director of Pediatric Neuroradiology. Defendant Choudhary, with reckless indifference to the truth, changed his initial diagnosis of L.B.'s venous stroke from possible thrombosis to the

anatomically impossible diagnosis of a congenital/developmental anomaly. Defendant Choudhary testified that he was an assistant professor at Penn State and, upon belief, Defendant Choudhary was paid by, and enjoyed the liability insurance, of Penn State when he participated in the investigation of whether L.B.'s injuries were caused by abuse and testified at [redacted] criminal trial. At no time relevant to this complaint was Defendant Choudhary L.B.'s treating physician.

11. Defendant Kathleen D. Eggli, M.D. is an employee of Penn State and a resident of Pennsylvania. Defendant Eggli holds the title of chair of the Radiology Department at Penn State. In 2010, just before the scheduled criminal trial of [redacted] Dr. Eggli implemented a new policy in the radiology department in which Defendant Eggli selectively imposed restrictions on a Penn State radiologist, Dr. Mack, who was sought out for a second opinion by the [redacted] family and rendered an opinion different than that of the Penn State Child Safety Team. The restrictions imposed on Dr. Mack, who was willing to testify for the [redacted] family, were not imposed on the Penn State radiologist who testified for the prosecution, defendant Choudhary, or on any other doctor at Penn State who testified for the prosecution. The restrictions included a prohibition on communicating the doctor's faculty appointment as an assistant professor of radiology at Penn State, denial of liability insurance coverage from Penn State, and a prohibition on the use of Penn State logo and letterhead, among others, all prohibitions that were not applied to Defendants Dias, Crowell or Choudhary during their investigation and testimony on behalf of the prosecution and county children and youth agency.

12. Defendant Franklin County is a political subdivision of the Commonwealth of Pennsylvania. The Franklin County Commissioners are annually licensed by the Commonwealth of Pennsylvania's Department of Public Welfare to operate a child protective services agency on behalf of the Commonwealth, Franklin County Children and Youth Services, pursuant to 55 Pa. Code Chapter 3130. Franklin County has a policy of relying upon doctors affiliated with the American Academy

Pediatrics, whose opinions are tainted by a burden shifting medical presumption that the cause of any intracranial injury in a child under the age of one year is caused by abuse unless the parents provide an accidental explanation, to perform the medical investigation into whether injuries suspected to have been caused by child abuse were, in fact, caused by child abuse.

13. Defendants Kari Coccagna and Minnie Tuner are employees of Franklin County and residents of Pennsylvania. After [redacted] was acquitted of criminal charges, Coccagna and Tuner threatened to immediately send the police to the [redacted] home to forcibly remove T.R. and L.B. from [redacted] and [redacted] if [redacted] and [redacted] did not agree to a "voluntary" safety plan. The "voluntary" safety plan required that [redacted] "agree" that he would not be alone with his children and required [redacted] and [redacted] to "agree" to unannounced visits from employees of Franklin County or suffer the immediate removal of their children from their care by the police. At all times relevant to this complaint, Defendant Franklin County had a policy of using safety plans and extending those safety plans without affording parents any due process of law. Defendants Franklin County, Coccagna and Tuner first coerced agreement to the safety plan and then extended the safety plan in violation of [redacted] and [redacted] right to due process pursuant to Franklin County policy or, in the alternative, Defendants Coccagna and Tuner violated the [redacted] family's right to due process by their own actions in violation of Franklin County policy.

ALLEGATIONS - FACTUAL

14. In October of 2009, [redacted] was employed as a phlebotomist at the Norland Family Practice in Chambersburg, Pennsylvania and [redacted] was the primary caretaker of [redacted] and [redacted] two children, T.R. and L.B.

15. [redacted] and [redacted] have been together since 2006 and have two children together, T.R. and L.B. [redacted] and [redacted] agreed that [redacted] would watch T.R. and L.B. while [redacted] worked as a phlebotomist so that the children would not have to go to daycare.

16. T.R., the [redacted] family's first child, was born in 2007 and was 2 years old in October of 2009. L.B., the [redacted] family's second child, was 4 months old in October of 2009.

17. On October 19, 2009, [redacted] watched T.R. and L.B. while [redacted] was at work as was their usual practice. Shortly before [redacted] returned home, [redacted] heard L.B. cry and he went to the bedroom to check on her.

18. [redacted] saw L.B. arching her back and tensed up on the bed. [redacted] picked L.B. up and carried her to the living room to sit down with her when he noticed L.B. stretch her arms out rigidly with her eyes open. L.B. did not look right to [redacted] and appeared to be having trouble breathing. [redacted] attempted to get L.B. to respond to him by gently shaking her to revive her breathing and tapped both sides of L.B.'s face to get her to respond to him. [redacted] called [redacted] in distress and [redacted] was already in the parking lot of their apartment building. After calling 911, [redacted] and [redacted] decided they could get L.B. help faster by taking L.B. immediately to Chambersburg Hospital themselves.

19. At Chambersburg hospital there was absolutely no external evidence of trauma to L.B.'s head or anywhere else on her body.

20. At Chambersburg Hospital a CT taken at 5:31p.m. showed a small amount of subdural and subarachnoid hemorrhage and edema. No soft tissue swelling or skull fracture was evident.

21. L.B. was transferred from Chambersburg hospital to Penn State, arriving at approximately 7:37 p.m. on October 19, 2009 because, according to the Chambersburg emergency room

note, L.B.'s "intracranial hemorrhage and bilateral healed/healing rib fractures" were "suspicious of nonaccidental trauma" and Penn State had a Child Safety Team.

22. At Penn State an MRI/MRV was taken the following day at 4:29 p.m. on October 20, 2009. The MRI/MRV showed that L.B. had a childhood stroke, a condition where one or more veins that drain blood from L.B.'s brain were clotted. The medical term for this condition is called thrombosis. In addition, a vein known to provide an alternative path for blood to flow around the clotted veins was dilated demonstrating increased flow to compensate for the clotted veins. There was a non-specific increased signal in L.B.'s neck also representing increased flow as a result of L.B.'s brain finding alternative pathways to compensate for the clotted veins in her brain. There was no evidence of any injury to L.B.'s spine or any evidence of disruption of her spinal ligaments.

23. Defendant Choudhary interpreted the October 20, 2009 MRI/MRV exam stating in his report that the "superficial cortical vessels on the left side are not visualized" and that thrombosis was a possible explanation. Defendant Choudhary's October 20, 2009 report did not identify a developmental or congenital venous anomaly as a possible explanation for the lack of blood flow in L.B.'s superficial cortical veins in his October 20, 2009 report.

24. It is well established in the medical literature that a thrombophilia workup should be performed looking for potential risk factors for clotting when thrombosis is a possibility. No such thrombophilia workup was ordered to be performed in 2009 by L.B.'s treating physician or by any member of Defendant Penn State's Child Safety Team.

25. On the day after L.B.'s admission to Penn State and presumably before the results of the October 20, 2009 MRI that was taken at 4:29 p.m. was known, Franklin County made an ex parte request and the court granted temporary custody of T.R. and L.B. to Franklin County.

26. On October 20, 2009, also presumably before the result of the MRI were known, Franklin County clerk of courts docketed a dependency petition seeking the custody of T.R. and L.B. and seeking appointment for an attorney for [redacted] The court also ordered a psychological evaluation of [redacted] and [redacted]

27. According to the dependency petition, "On 10/20/09, following an emergency administrative staffing, the agency determined Court intervention was also necessary in order to ensure the continued safety and well being of [L.B.]."

28. Upon belief, Franklin County employees would have consulted with L.B.'s treating physician and/or a member of the Child Safety Team for an update on L.B.'s condition and diagnosis prior to the October 20, 2009 "emergency administrative staffing" meeting during which Franklin County "administrative staffing" "determined court intervention was also necessary [in addition to the emergency ex parte Court intervention] in order to ensure the continued safety and well-being of L.B."

29. An abdominal CT scan and skeletal surveys demonstrated no internal injuries associated with the sixteen (16) bilateral rib fractures found in the anterior region of L.B.'s ribs. No rib fractures were acute and all of the rib fractures were aged from "4 to 8 weeks" old. No rib fractures were identified at the posterior end of L.B.'s ribs. In multiple studies of traumatic fractures, patients suffering traumatic rib fractures also suffered associated internal injuries such as injury to the lung, throat, liver, kidney and liver. In one study cited by proponent(s) of the shaken baby syndrome hypothesis, 100% of patients with four (4) or more traumatic rib fractures had associated internal injuries. L.B.'s ribs demonstrated sixteen (16) rib fractures, more than four (4) times the number of rib fractures that produce internal injuries 100% of the time with trauma, yet L.B. suffered absolutely no internal injuries making it a virtual certainty that L.B.'s rib fractures were a result of weak bones rather

than abusive trauma. The report of the skeletal survey of L.B. which identified none of L.B.'s rib fractures as being posterior was authored by Dr. Danielle Boal.

30. It is well established in the medical literature that there is a vitamin D epidemic in the United States, particularly in northern latitudes and among children of non-white parents. [redacted] is Latino and [redacted] is African American. Vitamin D deficiency can lead to rickets, a condition known to flare the anterior ends of a child's ribs sometimes appearing as if they were healing fractures and sometimes referred to as a rachitic rosary. Vitamin D deficiency and rickets can also lead to weak bones that fracture with birth and/or normal infant handling.

31. From October 20, 2009 through April 5, 2010, neither [redacted] nor [redacted] had legal custody over L.B.

32. It was Franklin County that had custody of L.B. during the entire medical investigation into any possible alternative medical explanations for L.B.'s intracranial hemorrhage and multiple fractures.

33. The responsibility and obligation to perform a thrombophilia workup and a workup for vitamin D deficiency rested with Defendants Penn State, Dias, Crowell and Choudhary and Franklin County, not with [redacted] and [redacted]

34. During the 8 ½ days between L.B.'s admission to Penn State and the consult report in which Defendant Crowell concluded L.B.'s injuries were caused by abuse, Defendant Crowell and Defendant Dias, in their roles as co-directors of Defendant Penn State's Child Safety Team, failed to insist that L.B.'s blood be tested for abnormal clotting factors or, that L.B.'s or [redacted] blood be tested for a vitamin D deficiency.

35. Defendant Franklin County relied exclusively upon the conclusion of Defendant Penn State's Child Safety Team and Defendants Dias, Crowell and Choudhary that L.B.'s intracranial

hemorrhages were caused by abuse on the afternoon of October 19, 2009 and rib fractures were caused by abuse 4 to 8 weeks prior to her hospitalization without conducting any independent medical review or confirmation of their own.

36. On October 28, 2009, with reckless indifference to the truth and with conscious disregard to a great risk that there was no abuse, Defendant Crowell issued a report on Penn State letterhead falsely concluding that L.B.'s childhood stroke and 16 rib fractures without any associated internal or external injuries were caused by abuse. Without actually testing L.B. for known risk factors for thrombophilia or vitamin D, Defendant Crowell's report stated that L.B. "does not have any evidence of coagulopathy or bleeding disorder" and concluded that 16 anterior rib fractures without any associated internal injuries "occurred as a previous incident of inflicted trauma" concluding that "this is a clinical picture of inflicted trauma" of "some event…likely a short time before [L.B.] had difficulty breathing".

37. Chambersburg Borough Detective Frisby relied exclusively upon the conclusion of Penn State's Child Safety Team, Defendants Dias, Crowell and Choudhary that L.B.'s intracranial hemorrhages were caused by abuse on the afternoon of October 19, 2009 and rib fractures were caused by abuse 4 to 8 weeks prior to her hospitalization without any independent review or confirmation of his own.

38. Based entirely upon Defendant Crowell's October 28, 2011 consult report on behalf of Penn State's Child Safety Team, on October 29, 2009, Detective Frisby presented an affidavit of probable cause alleging that L.B.'s "trauma was inflicted and caused by some event that likely occurred a short time period before L.B. experienced difficulty breathing on the afternoon of 10-19-09". In his affidavit of probable cause, Frisby claimed that a crime had been committed and identified [redacted]

as the alleged perpetrator. Frisby charged [redacted] with felony aggravated assault and endangering the welfare of a child.

39. As soon as [redacted] learned of the issuance of the arrest warrant on the day it was issued, on October 29, 2009, he immediately and voluntarily reported to the Chambersburg police station and was taken into custody. The court set a $200,000.00 straight bail for [redacted] a bail that the [redacted] family could not post. [redacted] remained in jail from October 29, 2009 until December 17, 2010, when a jury acquitted [redacted] of all criminal charges.

40. On November 9, 2009, Franklin County implemented a Family Service Plan which required, inter alia, that [redacted] and [redacted] "participate in a parenting assessment and comply with all recommendations", Visit with [T.R.] and [L.B.] as approved by Children and Youth. Will visit at least one hour biweekly" and that [redacted] "demonstrate appropriate behaviors in the Jail" to be measured by Franklin County's "contact with the Franklin County Jail".

41. On December 18, 2009, Defendant Crowell was qualified as an expert witness in the area of child abuse at the dependency hearing. She had never been qualified as an expert in child abuse before. Crowell testified, "if you don't do a complete workup to eliminate metabolic and genetic causes why children might have fractures or might have bleeding, that you can sometimes miss kids who have other difficulties." Crowell further testified falsely that L.B. had "an extensive screening" for "coagulation problems" and "an extensive screening for bleeding disorders" that were "normal" and that L.B.'s "metabolic workup was normal".

42. On December 18, 2009, Defendant Crowell testified that she reviewed the x-rays herself with the radiologist and that "[t]he radiologist indicated they were on the posterior side" of L.B.'s ribs. Crowell further testified that rib fractures in child abuse were "typically lateral or posterior". On October 22, 2009, the Penn State radiologist reported that L.B.'s rib findings were "at

the anterior axillary line" and the "lateral aspect and anterior axillary line". Contrary to Crowell's testimony, no Penn State radiologist ever reported that any of L.B.'s rib findings were posterior.

43. Posterior rib fractures have been considered by proponents of the shaken baby syndrome hypothesis as pathognomonic, or having a virtual 100% predictive diagnostic value, of the diagnosis of abuse in the medical literature. Whether L.B.'s rib fractures were located posterior, in the back near the spinal column, or anterior in the front, as was L.B.'s rib findings, has been considered by proponents of shaken baby syndrome as critical to making conclusion of child abuse.

44. When questioned about the discrepancy between the Penn State radiology report which states that L.B.'s rib fractures were anterior and Defendant Crowell's testimony that L.B.' rib fractures were posterior, with reckless disregard of the truth, Crowell testified falsely that the radiologist's reference to the "anterior axillary line" "refers to where they view them but not that they were anterior rib fractures".

45. On December 28, 2009, Defendant Crowell was qualified as an expert in child abuse for the second time in her life at [redacted] preliminary criminal hearing. Crowell testified that she was a Penn State "assistant professor of pediatrics" during [redacted] criminal trial.

46. On December 28, 2009, Defendant Crowell testified that "in terms of possible coagulation problems or bleeding disorders, we did an extensive screen, and all the studies that were done on [L.B.] were normal, so she had no evidence of a bleeding problem that would have caused this problem." Crowell testified that L.B. had "an MRI done of her brain that looked in detail at the vessels and there was no abnormality of how the vessels were formed. Sometimes we think of something called an arterial venous malformation, so when the arteries and veins connect inside, there can be problems that predispose to bleeding. She did not have evidence of that."

47. In direct contradiction to Defendant Crowell's December 28, 2009 testimony, with reckless indifference to the truth and conscious disregard of a great risk that there was no abuse, Defendant Dias reported that L.B. "had a paucity of veins draining toward the superior sagittal sinus. This was initially thought to represent either thrombosis of the veins on the left side or a congenital venous anomaly unrelated to her presumed traumatic injuries. The developmental/congenital nature of these veins was confirmed on an MRI … which showed the same anomaly, similar in appearance to the original MRI performed during her acute admission."

48. Upon information and belief, after Choudhary spoke with Dias, Choudhary changed his initial differential diagnosis of L.B.'s "superficial cortical vessels on the left side" that were "not visualized" from possible thrombosis to a "developmental/congenital" "anomaly". The proposition that the "superficial cortical vessels on the left side" that were "not visualized" in L.B.'s brain were a "developmental/congenital" "anomaly" is anatomically impossible. If, in fact, the vessels in the left side of L.B.'s head had never developed, the left side of L.B.'s brain would not have developed normally in utero or in her first three months of life. It is not known when Defendant Choudhary spoke to Defendant Dias or changed his position except that it was sometime after he wrote his MRI/MRV report on October 20, 2009 and before the time of [redacted] criminal trial in December of 2010.

49. On December 18, 2009, T.R. and L.B. were found to be children dependent on the State with no parents fit to care for them. In support of its December 18, 2009 finding of dependency, the Franklin County Court of Common Pleas stated, "The child had … a cluster of symptoms indicative of shaken baby syndrome. Furthermore, her parents could offer no plausible explanation for her symptoms and tests ruled out potential non-abusive causes. … in light of the comprehensive tests run on L.B. at [Penn State] Hershey Medical Center and L.B.'s symptoms, it is highly unlikely that any credible

expert could have come to a different conclusion at all different than that at which Dr. Crowell arrived … testimony from a retained expert would not have had a high degree of likelihood of changing the result in this case, since the evidence in favor of dependency came from a treating physician and was so credible and overwhelming."

50. At no time was Defendant Crowell ever L.B.'s treating physician. Defendant Crowell did not testify that she was L.B.'s treating physician.

51. Five credible experts rendered conclusions differing from Defendant Crowell's and the Penn State Child Abuse team, including one other Penn State doctor.

52. In January of 2010, [redacted] discharged her court appointed attorney and obtained new pro bono counsel. [redacted] then sought second opinions from Dr. Julie Mack and Dr. Patrick Barnes.

53. Dr. Julie Mack is board certified by the American Board of Radiology with an added certification in pediatric radiology. Dr. Mack has an academic interest in the infant dura and the source of infant subdural hemorrhage. Dr. Mack is an employee of Penn State who is an assistant professor of radiology and works part-time in Penn State's breast imaging department. Dr. Mack is the principle investigator of two different research projects at Penn State involving pediatric neuro-imaging funded by Penn State's Center for Emerging Neurotechnology and Imaging within the Penn State's department of Neurosurgery. Dr. Mack has recently published articles in peer reviewed medical journals about the potential sources of infant subdural hemorrhage.

54. Dr. Barnes is a board certified by the American Board of Radiology with added certification in neuro-radiology with 32 years of experience. Dr. Barnes has extensive peer reviewed medical journal publications including publications in the area of pediatric neuro-radiology, congenital rickets and the misdiagnosis of metabolic disorders as child abuse. Dr. Barnes, *inter alia*, serves on the

Child Safety Team and as the Director of the Pediatric MRI & CT Center at the Stanford University Medical Center's Lucile Packard Children's Hospital.

55. Defendant Choudhary, at all times relevant to this complaint, was not board certified in radiology by the American Board of Radiology nor did he possess any board certifications in pediatric radiology or neuro-radiology. Subsequently, after the events relevant to this action, Choudhary obtained certification by the American Board of Radiology in 2010.

56. On January 15, 2010, a Franklin County employee filed an "indicated" report of child abuse naming both [redacted] and [redacted] as perpetrators of abuse with Childline.

57. On February 14, 2010, Dr. Patrick Barnes, reported that L.B.'s rib fractures were anterior, that thrombosis and congenital rickets were possible explanations for L.B.'s imaging and that "the imaging abnormalities in this case indicate the necessity for a thorough hematology/coagulopathy and vascular workup beyond the simple 'screening tests'. This includes the hemophilic vs. thrombophilic states as well as vascular anomalies known to be associated with hemorrhages of this type" and that "a bone fragility disorder (e.g. maternal-fetal vitamin D deficiency with congenital rickets) should be considered and fully evaluated." Dr. Barnes' report was sent to Franklin County.

58. Although legal custody of T.R. and L.B. continued to remain with Franklin County, on February 15, 2010, physical custody of T.R. and L.B. was returned to [redacted]

59. Dr. Mack reviewed L.B.'s case and agreed with Dr. Barnes' interpretation of L.B.'s brain imaging. Dr. Mack was concerned that the Penn State Child Safety Team had mistakenly concluded that L.B.'s thrombosis and congenital rickets were caused by abuse. Upon information and belief, Dr. Mack contacted Defendants Crowell and Choudhary and Dr. Mark Iantasco, L.B.'s attending physician – a neurosurgeon, to explain why Dr. Mack believed the Child Safety Team's conclusions

about L.B.'s imaging findings were wrong. Dr. Mack's requests to discuss the case were not well received.

60. Defendant Crowell did invite Dr. Mack to present Dr. Mack's interpretation of L.B.'s imaging and to explain to the Child Safety Team why Dr. Mack believed L.B.'s intracranial hemorrhages were attributable to thrombosis and why Dias' opinion and Choudhary's new opinion characterizing L.B.'s intracranial hemorrhage as a "congenital venous anomaly unrelated to her presumed traumatic injuries" was an anatomic impossibility.

61. As a result of Dr. Barnes' report and at the request of Dr. Mack, on March 2, 2010, [redacted] was tested for vitamin D2 and D3. [redacted] vitamin D2 level was so low it was undetectable and her D3 level was severely deficient. Severe maternal vitamin D deficiency is a known risk factor for congenital rickets. In addition to [redacted] severe vitamin D deficiency, Dr. Barnes found evidence of congenital rickets on L.B.'s skeletal x-rays.

62. As a result of Dr. Barnes' report, on March 9, 2010, L.B. had further blood tests that revealed L.B. had a low Protein S level. A low Protein S level is well recognized in the medical literature as a risk factor for abnormal blood clotting and thrombosis.

63. On March 10, 2010, counsel for the [redacted] family sent Defendant Crowell a letter pointing out her prior false testimony misidentifying the location of L.B.'s rib fractures and her prior false testimony that "a complete workup to eliminate metabolic and genetic causes why children might have fractures or might have bleeding" had been done when, as demonstrated by L.B.'s low Protein S levels and [redacted] non-existent and severely deficient maternal vitamin D levels, such alternative non-traumatic causes for L.B.'s brain and rib findings had, in fact, not been "extensively" tested or ruled out. Counsel urged Defendant Crowell to contact the Courts in which she had testified falsely and inform them of her false testimony. That letter was copied to Franklin County.

64. To date, with reckless indifference to the truth and a conscious disregard of a great risk that there was no abuse, Defendant Crowell has not corrected her false testimony with either the dependency court or the preliminary hearing criminal court.

65. Subsequently, with reckless indifference to the truth and with a conscious disregard to the great risk that there was no abuse, Defendant Crowell revoked the invitation she made to Dr. Mack to present her imaging interpretations and explain why Dr. Mack believed the Child Safety Team was wrong about L.B.'s condition.

66. Upon information and belief, Defendant Crowell cited risk management as the reason she revoked Dr. Mack's invitation to the Child Safety Team meeting.

67. On April 5, 2010, the Court's order of dependency was terminated and legal custody of T.R. and L.B. was returned to [redacted] and [redacted] The Court's April 5, 2010 order stated the reason for the termination of court supervision was that "The family has completed the terms of the family service plan." [redacted] remained in jail awaiting the criminal trial.

68. On April 29, 2010, the Franklin County Court of Common Pleas ordered that prosecutor Sulcove obtain an expert report from Dias and provide it to defense counsel by May 20, 2010.

69. On May 1, 2010, Dr. Joseph Scheller, a board certified pediatrician and a board certified neurologist with a certificate of added qualification in child neurology, issued a report concluding that L.B.'s intracranial hemorrhage was caused by a blood clot (thrombosis) in her head and that there was no evidence of trauma to L.B.'s head.

70. On May 21, 2011, prosecutor Sulcove filed a motion stating, "On May 19, 2010, after numerous attempts were made to communicate with Dr. Dias about the Court's Order, the Commonwealth was informed by Dr. Dias that he is too busy with other consultations to participate in

this litigation. Dr. Dias suggested that the Commonwealth contact Mark Iantasco, M.D., Associate Professor of Neurosurgery at [Penn State] Hershey Medical Center to inquire whether he would be available to prepare a report and testify at trial. Dr. Dias noted that Dr. Iantasco was directly involved in [L.B.'s] care while she was at the Hershey Medical Center. In addition, he served in a supervisory role to Kathryn Crowell, M.D., who prepared the Final Consultation Report." Sulcove requested, and was granted, an extension of time until June 21, 2010 to obtain a report from Dr. Iantasco.

71. On June 15, 2010, in lieu of a report from L.B.s treating physician Dr. Iantasco, Defendant Dias issued an expert report, written on Penn State letterhead and containing the Penn State logo, to Sulcove and Sulcove identified Dias as the expert witness she would call at trial rather than L.B.'s treating doctor and neurosurgeon, Dr. Iantasco.

72. Though the medical literature widely recognizes a low Protein S level as a risk factor for thrombosis and childhood stroke and the literature widely recognizes maternal vitamin D deficiency as a risk factor for congenital rickets, with reckless indifference to the truth and a conscious disregard of the great risk that there was no abuse, Defendant Dias completely ignored L.B.'s low Protein S level in his report and he completely ignored [redacted] non-existent vitamin D2 level and severely deficient vitamin D3 level in his June 15, 2010 report.

73. On July 2, 2010, Dr. Mack issued a detailed report explaining her conclusion that thrombosis (blood clots) caused L.B.'s intracranial bleeding and noted that L.B.'s vitamin D levels could not have been higher than [redacted] at birth and that the presence of a large number of asymptomatic rib fractures is suggestive of an underlying bony mineralization disorder.

74. Dr. David Ayoub, is a board certified radiologist with an academic interest in infant bone disease and has been an invited speaker about rickets and bone fractures misdiagnosed as child abuse. On December 6, 2010, Dr. Ayoub issued a report rendering an

opinion that L.B.'s rib fractures "did not posses highly specific radiographic signs of abuse" and "the symmetrical and multiple nature of the rib fractures suggest that that the rib fractures occurred under the circumstances of normal stresses upon fragile bones". Subsequent to [redacted] criminal trial at the invitation of Defendant Dias, Dr. Ayoub presented "Congenital Rickets and Misdiagnosed Child Abuse" at a conference on pediatric abusive head trauma hosted by Defendant Penn State in San Francisco in July of 2011.

75. Dr. Holmes Morton is a board certified pediatrician who serves as the Director of The Clinic for Special Children in Lancaster County, Pennsylvania. Dr. Morton serves on the Pennsylvania Attorney General's Board on Child Abuse and has expertise in metabolic conditions that mimic child abuse. Dr. Morton issued a report concluding, "the finding of rib fractures in this clinical setting does not support the diagnosis of Shaken Baby Syndrome. There is too much atypical about the fractures themselves and these fractures took place in the clinical setting suggestive of an underlying metabolic bone disease" and "the diagnosis of *Shaken Baby Syndrome* is not well supported by clinic signs or laboratory data in the medical record. I believe that Dr. Mack's interpretation is more likely correct than SBS [Shaken Baby Syndrome] and her opinion should serve to educate her fellow physicians, and the Court, about a group of common disorders, both acquired and inherited, that mimic the ocular and CNS findings of child abuse."

76. On December 13, 2010 during [redacted] criminal trial, Defendant Crowell admitted under oath that she had misrepresented the location of L.B.'s rib findings as being posterior in the preliminary criminal hearing on December 18, 2009 and in the dependency trial on December 28, 2009, when, in fact, they were anterior and no rib fracture was posterior. Crowell could not recall why she had been incorrect and testified "I'll be honest with you. When I realized that I had been inaccurate in describing the rib fractures I tried to rectify the situation.

I met with the hospital attorney and he submitted a letter to the lawyers and the Court that corrected that statement."

77. Crowell's testimony on December 13, 2010 that Penn State's attorney had sent a letter to the lawyers and the Court was also false as no letter was ever sent to "the lawyers and the Court".

78. Subsequent to Defendant Crowell's testimony, co-counsel requested a copy of the letter purportedly "submitted" to "the lawyers and the Court that corrected that statement".

79. In response, on December 23, 2010, April C. Simpson, of the law firm, McQuaide Blasko, of State College, Pennsylvania, acting as legal counsel for Defendant Crowell wrote "In response to your inquiry about correspondence I have prepared on behalf of Dr. Crowell, please be advised that a letter was in fact prepared by me. … however, through an oversight on my part, the letter was not sent."

80. To this date, the [redacted] family is not aware of Defendant Crowell ever sending such a letter to counsel and/or either of the Courts, or of any attempt by Crowell to correct her false testimony in the December 18, 2009 dependency hearing or Crowell's false testimony in the December 28, 2009 preliminary criminal hearing or to the criminal trial Court correcting her false testimony on December 12, 2010 that such a letter had been sent.

81. On December 17, 2010, a unanimous jury acquitted [redacted] of all charges.

82. On December 17, 2010, [redacted] was released from jail having remained continuously incarcerated for 414 days since October 29, 2009.

83. On December 20, 2010, Franklin County employees threatened to immediately send the police to the [redacted] home and remove T.R. and L.B. from [redacted] and

[redacted] custody unless they "voluntarily" agreed for [redacted] to not be alone with his children. The Third Circuit Court of Appeals characterized the use of the threat to remove children in order to secure a parent's "voluntary" agreement to curtail a parents' right to the custody, care and control of their children as a "blatantly coercive" act triggering due process considerations.

84. Under the Franklin County threat of having their children immediately removed from their home by the police, on December 20, 2010, [redacted] and [redacted] were coerced into signing a "voluntary" safety plan in which [redacted] agreed not to be alone with his children and [redacted] and [redacted] waived their fourth amendment right to be secure in their home with no government intrusion except upon probable cause by "agreeing" to unannounced and announced visits from employees of Franklin County.

85. The "voluntary" safety plan in which [redacted] could not be alone with his children and [redacted] and [redacted] consented to the warrantless entry into their home by Franklin County employees, remained in effect for 180 days, from December 20, 2010 until June 18, 2011 without a court order and without any court oversight.

86. At no time did Defendant Coccagna, Tuner or Franklin County afford [redacted] or [redacted] any due process concerning the coerced safety plan.

87. On June 18, 2011, Franklin County closed its case with the [redacted] family and terminated the "voluntary" safety plan.

COUNT I-A

FOURTEENTH AMENDMENT SUBSTANTIVE DUE PROCESS CLAIM AGAINST PENN STATE, DIAS, CROWELL AND CHOUDHARY FOR RECKLESS INDIFFERENCE TO THE TRUTH AND GROSS NEGLIGENCE AND A CONSCIOUS DISREGARD OF A GREAT RISK THAT THERE HAD BEEN NO ABUSE IN FAILING TO ENSURE A COMPLETE WORKUP FOR THROMBOSIS AND METABOLIC BONE DISEASE PRIOR TO CLAIMING TO HAVING RULED OUT ALL OTHER EXPLANATIONS FOR L.B.'S FINDINGS

88. The allegations contained in the above numbered paragraphs are incorporated into this Count as if fully recited herein.

89. While there is no right to be free of child abuse investigations, investigators that demonstrate a deliberate indifference to the truth and a conscious disregard of a great risk that there had been no abuse do violate due process.

90. In this case, L.B. exhibited absolutely no external evidence of trauma to her head, her abdomen or anywhere else on her body. In addition, L.B. had low Protein S level, a known risk factor for stroke, L.B.'s mother had severe vitamin D deficiency, a risk factor for congenital rickets and L.B. demonstrated no internal organ injury in the face of 16 asymptomatic rib fractures.

91. In the face of no external signs of trauma, the failure of the members of the Penn State Child Safety Team to complete testing for known causes of L.B.'s intracranial bleeding and multiple asymptomatic fractures demonstrates a conscious disregard of a great risk that there had been no abuse.

92. Defendant Choudhary identified thrombosis (blood clotting in the veins) as a possible cause of L.B.'s lack of flow in the superficial cortical veins in his MRI/MRV report on October 20, 2009. On October 22, 2009 radiologic imaging demonstrated that L.B. suffered what appeared to be 16 rib fractures without any associated internal organ injury.

93. There are a number of known risk factors for thrombosis (blood clots) including an abnormally low Protein S level.

94. The medical literature and the CDC recognize an epidemic of vitamin D deficiency in the United States, particularly among non-white mothers and in northern latitudes.

95. The medical literature recognizes that "Ongoing rickets will manifest itself as acute and healing fractures, most commonly seen at the ribs and forearms."

96. Though thrombosis and vitamin D deficient rickets are well recognized in the medical literature as possible explanations for L.B.'s intracranial bleeding and fractures, on or before October 28, 2009, only nine days after L.B. was admitted to Penn State, the Penn State Child Safety team, including Defendants Dias, Crowell and Choudhary, with reckless indifference to the truth and a conscious disregard of a great risk that there had been no abuse, misrepresented that they had ruled out thrombosis and metabolic bone disease, when, in fact, no thrombophilia workup or vitamin D testing had been done on L.B. and/or [redacted]

97. Four months later, after Dr. Barnes reviewed L.B.'s case and issued his report in which he described the standard of care, that a thrombophilia workup and patient/maternal vitamin D testing should be done, L.B. tested abnormally low for the clotting factor, Protein S, and [redacted] tested severely deficient in vitamin D.

98. [redacted] medical treatment for her vitamin D deficiency since March of 2009 has had difficulty raising her vitamin D levels to normal levels.

PENN STATE, DIAS, CROWELL AND CHOUDHARY ARE STATE ACTORS

99. Defendant Penn State's website declares its "Public Character" as follows, "The Pennsylvania legislature designated Penn State as the Commonwealth's sole land-grant institution in 1863, … Although the University is privately chartered by the Commonwealth, it was from the outset considered an 'instrumentality of the state,' that is, it carries out many of the functions of a public institution and promotes the general welfare of the citizenry. The Governor and other representatives of the Commonwealth have held seats on Penn State's Board of Trustees since the University's founding, and the legislature has made regular appropriations in

support of the University's mission since 1887. Today Penn State is one of four 'state-related' universities … that have the character of public universities and receive substantial state appropriations. … With its administrative and research hub at the University Park campus, Penn State has 23 additional locations across Pennsylvania. … some of these locations, such as the Penn State Milton S. Hershey Medical Center, have specialized academic roles …"

100. State law mandates that Defendant Penn State and/or its employees report suspected child abuse.

101. There is no State or Federal law that requires Defendant Penn State and/or its employees investigate reports of suspected child abuse to determine whether the suspected child abuse is, in fact, actually child abuse and there is no State or Federal law mandate that Penn State establish a Child Safety Team for such purposes.

102. Child abuse is not a medical condition and Child Safety Teams do not treat patients. The establishment of a Child Safety Team is not for the purpose of providing medical care to a patient. One of the primary purposes of the Child Safety Team is to conduct an investigation into, and render a conclusion about, whether suspected child abuse is, in fact, actual child abuse and another purpose of the Child Safety Team is to provide the government with a "child abuse pediatrician" such as Defendant Crowell to testify at dependency and criminal proceedings.

103. On September 1, 2009, Defendant Penn State, on its own initiative, established a Child Safety Team to, *inter alia*, investigate reports of suspected child abuse to determine whether the suspected child abuse is, in fact, actually child abuse.

104. Upon information and belief, Defendant Penn State receives Federal and/or State funding used for the investigation of suspected child abuse and to make a

determination of whether the suspected child abuse is, in fact, actual child abuse. In addition, in 2007 Defendant Penn State received a 2.8 million dollar grant to "educate" parents about shaken baby syndrome from the Federal Agency, the Center for Disease Control.

105. Defendant Penn State's public character and its establishment of a Child Safety Team to investigate whether suspected child abuse is actually child abuse, along with its government funding, renders the activities of Defendant Penn State and its employees to be actions fairly attributable to the state in general and, in particular, for activities in which Penn State or its employees are investigating and making conclusions about whether suspected abuse is, in fact, abuse and/or shaken baby syndrome.

106. Defendant Penn State voluntary undertook a function traditionally performed by child protective service agencies and prosecutors with the establishment of its Child Safety Team on September 1, 2009 to ensure the safety of children and to investigate whether suspected child abuse is, in fact, child abuse. Defendant Penn State's voluntary establishment of its Child Safety Team and the reliance by prosecutors and Children and Youth Services agencies, including Defendants Franklin County, Coccagna and Tuner, upon Penn State's Child Safety Team and its members sufficiently entwines Penn State with the activity of prosecutors and Children and Youth County agencies to render Penn State and its employees state actors with respect to investigation into whether reports of suspected child abuse are, in fact, actually child abuse and/or shaken baby syndrome.

107. Defendant Dias was appointed by the Attorney General of Pennsylvania to serve on the Attorney General's Medical/Legal Advisory Board on Child Abuse. According to literature published by the Pennsylvania Attorney General, "The Pennsylvania Attorney General's Medical/Legal Advisory Board on Child Abuse is a body of approximately 50 child

abuse experts who meet bimonthly to provide professional consultation to the prosecution, law enforcement and child protective services communities … The Board's membership includes Pennsylvania's premier medical experts ... Rounding out the expertise of the Board are district attorneys, investigators, representatives from state and local child protective services agencies …The Board functions as a consulting and advisory body in cases of child homicide, abuse (both physical and sexual) and neglect which are under investigation by a child protective service agency or law enforcement agency … The Board also assists investigators and prosecutors in further defining the goals of an investigation … Examples of topics and questions posed to the Board include: what key questions should be asked of suspects and witnesses in the course of an investigation; and whether existing evidence is sufficient for prosecution, and if not, how further evidence should be gathered."

108. Defendant Dias' employment by Penn State, an institution of "Public Character", his service as co-director of Penn State's Child Safety Team and his appointment to the Pennsylvania Attorney General's Medical/Legal Advisory Board on Child Abuse, and the reliance upon Defendant Dias' conclusion by Franklin County employees renders Dias' activities during the investigation of whether suspected child abuse is, in fact, child abuse, fairly attributable to the state.

109. Defendant Crowell's employment by Penn State, an institution of "Public Character", and her service as co-director of Penn State's Child Safety Team, and the reliance upon Defendant Crowell's conclusion by Franklin County employees renders her activities during the investigation of whether suspected child abuse is, in fact, child abuse, fairly attributable to the state.

110. Defendant Choudhary's employment by Penn State, an institution of "Public Character", and his service as a member of Penn State's Child Safety Team renders his activities during the investigation of whether suspected child abuse is, in fact, child abuse, fairly attributable to the state.

111. Dr. Barnes identified the standard of care in a child abuse investigation in his report, "[t]he differential diagnosis of ALTE [Acute Life Threatening Event] must also include predisposing or complicating conditions such as coagulopathy (including thrombophilia with venous thrombosis), vascular disease, metabolic disorders … A complete and thorough medical workup is required … appropriate laboratory testing (extensive testing for coagulopathy, metabolic disorder, and vascular/ connective tissue disorder) … the imaging abnormalities in this case indicate the necessity for a thorough hematology/coagulopathy and vascular workup beyond the simple 'screening tests'. This includes the hemophilic vs. thrombophilic states as well as vascular anomalies known to be associated with hemorrhages of this type."

112. Defendant Dias, as co-director of the Child Safety Team, Defendant Crowell, as co-director of the Child Safety Team and author of the Child Safety Team report on L.B. and Defendant Choudhary, as a member of the Child Safety Team, who identified thrombosis as a potential cause of L.B.'s neurological imaging, and Penn State's Child Safety Team are state actors and were recklessly indifferent to the truth and consciously disregarded a great risk that there was not abuse when they misrepresented that thrombosis had been ruled out when thrombosis was identified as a possibility in L.B. and no testing for known risk factors for thrombosis and no thrombophilia workup had been performed.

113. Dr. Barnes identified the standard of care in a child abuse investigation in his report regarding multiple bilateral healing rib fractures with no associated internal injuries,

"[t]he skeletal findings are old and may easily date back to birth. Furthermore, a bone fragility disorder (e.g. maternal-fetal vitamin D deficiency with congenital rickets) should be considered and fully evaluated."

114. Defendant Dias, as co-director of the Penn State Child Safety Team, Defendant Crowell, as co-director of the Penn State Child Safety Team and author of the Penn State Child Safety Team report on L.B. and Defendant Choudhary, as a member of the Penn State Child Safety Team, were recklessly indifferent to the truth and consciously disregarded a great risk that there had been no abuse when they misrepresented that L.B.'s rib "fractures occurred as a result of a previous incident of trauma" and that metabolic bone disease had been ruled out when no testing on L.B. or [redacted] for even the most common form of metabolic bone disease, vitamin D deficient rickets, had been performed.

IN THE ABSENCE OF ANY EXTERNAL EVIDENCE OF TRAUMA TO L.B.'S HEAD OR THE REST OF HER BODY AND THE ABSENCE OF INJURY TO ANY INTERNAL ORGANS IN THE FACE OF 16 ASYMPTOMATIC RIB FRACTURES, THE FAILURE TO CONDUCT THROMBOPHILIA TESTING AND FAILURE TO CONDUCT A WORKUP FOR CONGENITAL RICKETS DEMONSTRATES A CONSCIOUS DISREGARD OF A GREAT RISK THAT THERE HAD BEEN NO ABUSE

115. While intracranial bleeding and multiple fractures may be suspicious for child abuse and an investigation should be conducted, the investigation should include testing to rule out the possible alternative non-traumatic causes.

116. After the report of suspected child abuse is made, an investigation must be conducted into whether there is substantial evidence of child abuse and whether there is probable cause that child abuse has occurred.

117. Penn State established its Child Safety Team precisely to conduct such an investigation. The process for conducting such an investigation is to identify the alternative

potential causes for the intracranial bleeding and multiple asymptomatic fractures and to test for and rule out those possible alternative non-traumatic causes.

118. Penn State and the members of the Penn State Child Safety Team hold themselves out as having expertise in differentiating child abuse from other medical conditions that can mimic the symptoms of child abuse. As a result, the members of the Penn State Child Safety Team are held to a higher standard of care when it comes to performing the differential diagnosis of medical conditions that can present with symptoms that mimic child abuse.

119. Medical studies conducted within the past decade describe the chances of a child being born with insufficient vitamin D as "high risk" and the rate of children, including newborn infants, with insufficient levels of vitamin D as being "epidemic". Vitamin D insufficiency is well known to cause weak bones susceptible to fracture with normal infant handling.

120. Medical studies clearly indicate that children with risk factors for clotting, such as a low Protein S level, have a predisposition to suffering clots and stroke.

121. When medical conditions are identified in a child that can predispose that child to intracranial bleeding and fractures from non-abusive forces, it is gross negligence and a conscious disregard of a great risk that there had been no abuse for a doctor to misrepresent that there are no other explanations for the child's injuries other than abuse.

122. It is a conscious disregard of a great risk that there was no abuse for doctors who hold themselves out as experts in differentiating cases of abuse from the mimics to fail to test for obvious medical conditions that are "high risk" and "epidemic" that cause fragile bones and for the failure to test for conditions that are well recognized in the literature to

predispose a child to stroke when thrombosis and multiple asymptomatic fractures are present in a child.

123. Defendants Dias, Crowell, Choudhary are sued, not for reporting suspected abuse (there is no allegation that any of these Defendants made any report of suspected abuse) nor are they sued for their testimony in any legal proceeding. Defendants Dias, Crowell and Choudhary are sued for their misrepresentation during and at the conclusion of their investigation that, although L.B. had absolutely no external signs of trauma to her head or anywhere else on her body and had no internal organ injury in the face of 16 asymptomatic rib fractures, that their investigation had determined that all other non-traumatic causes had been ruled out for her intracranial bleeding and multiple asymptomatic rib fractures and for their grossly negligent misrepresentation that there were no other non-traumatic explanations for L.B.'s stroke and congenital rickets, such as a low protein S level and severe vitamin D deficiency, and thus consciously disregarded a great risk that there had been no abuse.

124. Once they rendered an opinion that all alternative medical causes of L.B.'s intracranial hemorrhages and multiple asymptomatic fractures had been ruled out and that abuse was their conclusion, Defendants Penn State, Dias, Crowell and Choudhary knew, or should have known that based on their conclusion Franklin County and/or its employees would take steps to impair [redacted] and [redacted] fundamental right to the custody of L.B. and T.R. and file indicated reports of abuse with Childline. Removal of children from an allegedly abusive home is one of the primary purposes for which Penn State established its Child Safety Team.

125. For Defendants Dias, Choudhary and Crowell, doctors who hold themselves out as experts in differentiating abuse from medical conditions that "mimic" abuse, to have completed their investigation and concluded that bleeding and metabolic disorders had been

ruled out without actually conducting a thrombophilia workup and without having worked L.B. and her [redacted] up for congenital rickets is gross negligence, deliberate indifference to the truth, shocks the conscience and disregards a great risk that there had been no abuse.

126. As a direct and proximate result of the misrepresentations and gross negligence of Defendants Penn State, Dias, Crowell and Choudhary in failing to rule out thrombosis, a condition identified by Defendant Choudhary on October 20, 2009, and for failing to rule out congenital rickets, a condition indicated by a lack of any internal injury in L.B. in the presence of 16 "4 – 8 week" old non-posterior rib fractures and a condition known to be caused by the epidemic of vitamin D deficiency in the United States, particularly in non-white mothers in northern latitudes, before concluding L.B.'s clinical findings were caused by abuse, [redacted] [redacted] T.R. and L.B. were harmed.

127. As a direct and proximate result of the misrepresentations and gross negligence of Defendants Penn State, Dias, Crowell and Choudhary, [redacted] and [redacted] had to defend a dependency petition, were listed as perpetrators of child abuse with Childline and, after [redacted] criminal trial, were coerced into a safety plan in which they gave up the protective capacity of their children and gave up their Fourth Amendment right to be secure in their home from warrantless government intrusion. [redacted] [redacted] T.R. and L.B., suffered damages as a result of the reckless indifference to the truth, gross negligence and conscious disregard of a great risk that there had been no abuse of Defendants Penn State, Dias, Crowell and Choudhary as detailed below.

COUNT I-B

FOURTH AMENDMENT CLAIM
AGAINST PENN STATE, DIAS, CROWELL AND CHOUDHARY

FOR RECKLESS INDIFFERENCE TO THE TRUTH AND GROSS NEGLIGENCE AND A CONSCIOUS DISREGARD OF A GREAT RISK THAT THERE HAD BEEN NO ABUSE IN FAILING TO ENSURE A COMPLETE WORKUP FOR THROMBOSIS AND METABOLIC BONE DISEASE PRIOR TO CLAIMING TO HAVING RULED OUT ALL OTHER EXPLANATIONS FOR L.B.'S FINDINGS

128. The allegations contained in the above numbered paragraphs are incorporated into this Count as if fully recited herein.

129. As a result of the failure of Defendants Penn State, Dias, Crowell and Choudhary to require testing for risk factors for thrombosis and failure to conduct testing for metabolic disorders such as vitamin D deficiency prior to claiming that bleeding disorders and metabolic disorders had been ruled out as the cause of L.B.'s intracranial bleeding and multiple asymptomatic fractures, probable cause did not exist that a crime had been committed against L.B. or that [redacted] had committed a crime.

130. Once they rendered an opinion that all alternative medical causes of L.B.'s intracranial hemorrhages and multiple asymptomatic fractures had been ruled out and that abuse was their conclusion, Defendants Penn State, Dias, Crowell and Choudhary knew, or should have known, that based on their conclusion the prosecutor and the court would find probable cause to arrest [redacted] Prosecution of alleged child abusers is one of the primary purposes of the Child Safety Team.

131. As a direct and proximate result of the misrepresentations and gross negligence of Defendants Penn State, Dias, Crowell and Choudhary in failing to rule out thrombosis, a condition identified by Defendant Choudhary on October 20, 2009, and for failing to rule out congenital rickets, a condition indicated by a lack of any internal injury in L.B. in the presence of 16 "4 – 8 week" old non-posterior rib fractures and a condition known to be caused

by the epidemic of vitamin D deficiency in the United States, particularly in non-white mothers in northern latitudes, before concluding L.B.'s clinical findings were caused by abuse, [redacted] [redacted] T.R. and L.B. were harmed.

132. As a direct and proximate result of the misrepresentations and gross negligence of Defendants Penn State, Dias, Crowell and Choudhary, [redacted] was incarcerated for 414 days. [redacted] [redacted] T.R. and L.B., suffered damages as a result of the reckless indifference to the truth and gross negligence of Defendants Penn State, Dias, Crowell and Choudhary as detailed below.

COUNT II-A

SUBSTANTIVE DUE PROCESS CLAIM
AGAINST PENN STATE, DIAS, CROWELL AND CHOUDHARY
FOR POLICY OF ADOPTING THE BURDEN SHIFTING PRESUMPTION THAT SUBDURAL HEMORRHAGE AND MULTIPLE FRACTURES ARE CAUSED BY ABUSIVE TRAUMA DURING THEIR INVESTIGATION OF WHETHER L.B.'S SUSPECTED ABUSE WAS, IN FACT, ACTUALLY ABUSE

133. The allegations contained in the above numbered paragraphs are incorporated into this Count as if fully recited herein.

134. For purposes of 42 U.S.C. §1983, Defendants Penn State, Dias, Crowell and Choudhary are state actors in activities related to the investigation of whether suspected child abuse is, in fact, actually child abuse.

135. Defendants Dias, Crowell and Choudhary are affiliated with the American Academy of Pediatrics. Defendant Dias is a Fellow of the American Academy of Pediatrics. Defendant Crowell is a member of the American Academy of Pediatrics and completed a 60-hour preceptorship in child abuse with the American Academy of Pediatrics. Defendant Choudhary is an invited speaker to at least one conference of the American Academy of Pediatrics.

136. In the official position paper issued by the American Academy of Pediatrics Committee on Child Abuse and Neglect entitled, "Shaken Baby Syndrome: Rotational Cranial Injuries – Technical Report" in 2001, the Academy stated, "Although physical abuse in the past has been a diagnosis of exclusion, data regarding the nature and frequency of head trauma consistently support the need for a presumption of child abuse when a child younger than 1 year has suffered an intracranial injury."

137. Although the Committee of Child Abuse and Neglect issued a new position paper in 2009, the American Academy of Pediatrics has never retracted the position that child abuse should be presumed whenever there is an intracranial injury in a child under the age of 1 year.

138. The presumption of abuse continues to be made by doctors affiliated with the American Academy of Pediatrics, at least in the presence of "unexplained fractures" and retinal hemorrhages. In 2009, the American Academy of Pediatrics published a textbook on Child Abuse which states, "Children … who present with subdural hemorrhage and unexplained skeletal injuries … or severe retinal hemorrhages generally are presumed by most physicians to have a non-accidental mechanism of injury."

139. Another doctor, one who served as the Chair of the American Academy of Pediatrics Committee on Child Abuse and Neglect in 2009 when it issued its last position statement on shaken baby syndrome, served on the executive committee and as chair of the American Academy of Pediatrics Section on Child Abuse and Neglect and is "a leading figure at the National Center on Shaken Baby Syndrome", in an interview on July 18, 2011 stated, "[t]he Shaken Baby Syndrome diagnosis presumes a mechanism—major traumatic injury to the head

… Sometimes it's obviously [that]. Sometimes it's not." In L.B.'s case there is no obvious trauma to L.B.'s head, there was no bruising, abrasions, scalp swelling or skull fractures.

140. Defendant Dias, co-director of Penn State's Child Safety Team, explicitly stated that a presumption of trauma was operative during the investigation of L.B.'s suspected abuse in his report that L.B. "had a paucity of veins draining toward the superior sagittal sinus. This was initially thought to represent either thrombosis of the veins on the left side or a congenital venous anomaly unrelated to her presumed traumatic injuries."

141. The prevailing bias in operation among doctors affiliated with the American Academy of Pediatrics is that, in a child without any evidence of impact to the child's head (no fracture, swelling, bruising or neck injury) and in the absence of a history of accidental trauma, the presence of intracranial hemorrhage, including subdural hemorrhage, subarachnoid hemorrhage or retinal hemorrhage, gives rise to a presumption that the hemorrhage was caused by abusive trauma, hereinafter referred to as "the presumption of abuse" or "the presumption".

142. Child abuse is not a medical condition, it is a legal conclusion.

143. The determination of whether suspected child abuse is actually child abuse is not necessary for medical treatment. The investigation into whether suspected child abuse is, in fact, actually child abuse is done for the purpose of protecting the child and prosecuting the alleged perpetrator, not for medical treatment.

144. While there is no presumption of innocence, due process of law mandates that the burden of proof rest upon the government in the administrative act of filing Childline reports and in the administrative act of investigating reports of suspected child abuse.

145. When there exists no external evidence of trauma and a parent fails to provide an accidental explanation for intracranial hemorrhages and multiple fractures and the

Penn State Child Safety Team, consisting of doctors who hold themselves out as having a higher level of expertise than other doctors in differentiating abuse from the mimics, fails to actually test for alternative medical conditions such as vitamin D deficiency and risk factors for clotting, a burden shifting medical presumption applied during an investigation by the members of the Child Safety Team is a violation of due process.

146. It is the adoption of the presumption that leads Penn State and the members of its Child Safety Team to believe that they do not have to actually perform testing to rule out medical conditions that can cause intracranial hemorrhage and weak bones before they can rule out those medical conditions.

147. When testing for a medical condition has not been performed to rule it out as a cause of intracranial hemorrhage or weak bones, it is a due process violation for the members of the Child Safety Team to claim alternative medical causes have been ruled out.

148. As of October 20, 2009, neither [redacted] nor [redacted] no longer had legal custody over L.B. and therefore did not have the authority to insist that the appropriate workup be performed during the time period when such testing should have been performed.

149. It was Franklin County that had custody of L.B. during the entire medical investigation into any possible alternative medical explanations for L.B.'s intracranial hemorrhage and multiple fractures.

150. The responsibility to perform a thrombophilia workup and a workup for vitamin D deficiency rested with Defendants Penn State, Dias, Crowell and Choudhary and Franklin County, not with [redacted] and [redacted]

151. Franklin County had legal custody of L.B. beginning on October 20, 2009 and upon belief, Franklin County deferred the decisions about what testing should be performed

on L.B. to Penn State and the members of its Child Safety Team because Penn State and the members of its Child Safety Team hold themselves out as having expertise in differentiating between medical conditions that can cause intracranial hemorrhage and multiple asymptomatic fractures and abuse.

152. Once Defendants Dias, Crowell and Choudhary adopted the presumption that L.B.'s intracranial bleeding was traumatic, the presumption shifted the burden to [redacted] and [redacted] to provide a non-accidental explanation for the trauma. The presumption and burden shift omitted the possibility that L.B.'s intracranial bleeding was not traumatic in origin altogether and only allowed for a legal conclusion of either an accidental or abusive traumatic origin. The presumption is predicated on the Defendants actually having performed a complete workup and testing for known alternative medical explanations to thrombosis and multiple asymptomatic fractures, which was not done in L.B.'s case, and not just a nominal workup with just the "basic screening tests".

153. The presumption of abuse led to the premature closure of the investigation into alternative medical causes of L.B.'s clinical and imaging findings, a well-recognized result of cognitive bias widely reported in the medical literature. In L.B.'s case, the presumption of abuse led to the premature closure of the investigation into whether L.B. had a condition that would predispose her to thrombosis and a condition that would predispose her to fragile bones. That premature closure of the investigation prior to actually performing a thrombophilia workup and rickets workup demonstrates deliberate indifference to the truth and gross negligence and led the Defendants to misrepresent that an "extensive" workup had been performed and that all other causes had been ruled out, when, in fact, testing for many known causes, some of which are very common, had not been performed.

154. Premature closure of the investigation and the failure of Penn State and the members of its Child Safety Team to perform the appropriate workup for alternative medical conditions during its investigation and before rendering a conclusion demonstrate a conscious disregard of a great risk that there was not abuse.

155. Demonstrating the Child Safety Team's methodology used during the investigation that testing for a condition does not actually have to be performed to rule the condition out, Defendant Crowell testified in December of 2009 that "in terms of possible coagulation problems or bleeding disorders, we did an extensive screen, and all the studies that were done on [L.B.] were normal, so she had no evidence of a bleeding problem that would have caused this problem" when, in fact, a thrombophilia workup had not been done (until four months later in March of 2010 after Dr. Barnes' Report), and even though Defendant Choudhary reported on October 20, 2009 that thrombosis was a possible diagnosis for the lack of flow in L.B.'s superficial cortical veins on her MRI/MRV.

156. Despite the fact that L.B.'s Protein S level tested low in March of 2010, Defendant Dias misrepresented in his June 15, 2010 report that "[t]here is no evidence of a coagulopathy or clotting disorder that would have contributed to [L.B.'s] presentation or findings…" demonstrating reckless misrepresentation, or gross negligence, or both, by the co-director of Penn State's Child Safety Team. Defendant Dias' statement that there "is no evidence of a clotting disorder", when L.B.'s Protein S tested abnormally low demonstrates reckless misrepresentation of medical evidence of a condition that explains L.B.'s intracranial hemorrhage and a conscious disregard of a great risk that there was not abuse.

157. After the Defendants performed only a nominal workup and then misrepresented that "an extensive screen" indicated "no evidence of a bleeding problem", the

Defendants' adoption of the presumption of abuse shifted the burden to the [redacted] and [redacted] to prove their innocence with an accidental "explanation", when the explanation for L.B.'s injuries lurked in the metabolic testing the Penn State Defendants decided not to perform because they presumed abuse.

158. Defendant Crowell testified, "[when] we interviewed the family there was no history of accident or trauma provided" demonstrating and leading to the presumption tainted legal conclusion that [redacted] and [redacted] had inflicted L.B.'s intracranial hemorrhage and rib fractures.

159. There are a number of conditions known to cause intracranial bleeding that can be misdiagnosed as child abuse and the medical literature is replete with case studies of children that were first thought to be abused but later were diagnosed with a variety of metabolic disorders that cause symptoms thought to be virtually diagnostic of abuse including subdural hemorrhage, retinal hemorrhage and multiple fractures. The list of metabolic and genetic conditions known to cause intracranial bleeding and fractures that mimic abuse has been described in the medical literature as an "ever expanding" list.

160. The medical literature is replete with admonitions to carefully investigate suspected child abuse to rule out the ever expanding list of conditions known to cause intracranial bleeding and weakened bones leading to asymptomatic multiple fractures with no external signs of trauma before making a conclusion of abuse.

161. The American Academy of Pediatrics Committee on Child Abuse and Neglect's position statement entitled "Abusive Head Trauma in Infants and Children" confirms what the vast literature on child abuse from various medical disciplines and common sense tells us which is, before a conclusion of child abuse is made, "a thorough and objective medical

evaluation of infants and children who present for medical care with signs and symptoms of potential" abuse should be performed.

162. The "presumption of child abuse when a child younger than 1 year has suffered an intracranial injury" propounded by the American Academy of Pediatrics is inconsistent with its own admonition to conduct an "objective medical evaluation". Yet among those doctors affiliated with the American Academy of Pediatrics, such as Defendants, Dias, Crowell and Choudhary whom hold themselves out as experts in determining whether suspected child abuse is really child abuse, the presumption of abuse prevails over objective medical evaluation.

163. Defendants Dias, Crowell and Choudhary all are affiliated with the American Academy of Pediatrics at some level and demonstrate they have adopted the Committee on Child Abuse and Neglect's presumption of abuse in the presence of intracranial injury in a child under the age of 1 year.

164. The Penn State Defendants adoption of the American Academy of Pediatrics' presumption of abuse caused them to only require and accept a nominal workup for alternative medical causes for L.B.'s intracranial bleeding and fractures and willfully misrepresent the nominal workup as "extensive". Once the nominal workup revealed no abnormal results, then the Defendants recklessly misrepresented that all other causes of L.B.'s intracranial hemorrhages and rib fractures had been ruled out. Once all alternative causes of L.B.'s intracranial hemorrhages and rib fractures were purportedly ruled out, trauma remained as the only "explanation". Then, when [redacted] and [redacted] failed to prove that L.B. suffered an "accidental trauma" that was consistent with her injuries (and there are none), the presumption of trauma and their guilt remained. Defendants Franklin County, Coccagna and Tuner all relied

upon the presumption tainted investigation and reckless misrepresentations of Defendants Penn State, Dias, Crowell and Choudhary without any independent, non-presumption tainted investigation of their own.

165. In the context of a child exhibiting no external evidence of trauma, a conclusion that a child's intracranial hemorrhage and multiple asymptomatic fractures were caused by abuse, without having actually tested for all of the medical conditions known to cause intracranial hemorrhage and multiple asymptomatic fractures, is based upon a burden shifting presumption.

166. In the context of a child exhibiting no external evidence of trauma, a conclusion that a child's intracranial hemorrhage and multiple fractures were caused by abuse, without having actually tested for all of the medical conditions known to cause intracranial hemorrhage and multiple asymptomatic fractures, does not rise above suspicion and achieve the level of probable cause.

PENN STATE'S POLICY OF ADOPTING THE PRESUMPTION OF ABUSE IS DEMONSTRATED BY A PATTERN OF BEHAVIOR APPLIED BY MULTIPLE DOCTORS IN MULTIPLE OTHER CASES.

167. In a Delaware County dependency case that arose in November of 2008, the Court of Common Pleas found that Delaware County had failed to prove abuse by even a preponderance of the evidence and the Court dismissed the dependency. The child had intracranial hemorrhage and multiple fractures due to birth trauma and vitamin D deficiency and had no external evidence of trauma. After the Court of Common Please found that abuse had not been proved by even a preponderance of evidence and dismissed the dependency petition, the prosecutor continued his prosecution and found a doctor on the West Coast to review the case. Having failed to obtain a report from the doctor on the West Coast, the prosecutor then retained

Dr. Paul Kleinman of Harvard University and Boston Children's Hospital. After failing to obtain a report from Dr. Kleinman, the prosecutor then obtained a report from Dr. Danielle Boal, a radiologist at Penn State, who adopted the presumption of abuse and concluded the child's injuries were abusive. After first stating it was against the policy of his office to offer an ARD in a case of alleged child abuse, the prosecutor then did a 180 degree turn around and offered an ARD. Reginald Dennis accepted the 16 hours of community service and costs of the ARD rather than face the time and massive expense of a 2 week criminal jury trial with five expert defense witnesses. It was Dr. Boal's report adopting the presumption of abuse that, at least in part, enabled this prosecutor to avoid an outright dismissal of the criminal charges.

168. Upon information, in a Lancaster County case that arose in 2009, where the child experienced cardiac arrest, had intracranial hemorrhage and no evidence of trauma to the child's scalp, skull or brain. The child continued to experience intracranial bleeding and cardiac arrest after the child was placed in foster care. Dr. Dias adopted the presumption of abuse in rendering his conclusion that the child had been abused.

169. In a 2010 York County dependency case in which there was intracranial bleeding and no external evidence of abuse, Defendant Dias and Dr. Laura Duda, another pediatrician employed by Penn State who claims to have expertise in child abuse, adopted the presumption of abuse in rendering their conclusion that the child suffered from abuse. The dependency petition was withdrawn by York County after both Dr. Dias and Dr. Duda declined to testify in Court that the child's injuries were due to abuse. Concerning the Penn State Child Safety Team, the York County case worker noted the following:

> "Medical staff reported that the child had serious injuries that they felt could only occur as a result of child abuse and they were willing to testify this in Court. After the family obtained an attorney, the medical staff felt, maybe they did miss something … They stated there was a chance that the child had a medical condition called Benign Extra

> Axial Collections of Infancy which means the child has a larger than normal size head and fluid collection on his brain. If the child does have this condition, there are studies that support the child could have bumped his head, causing the Subdural Hematoma. … Based on the lack of concrete evidence, the Agency withdrew the dependency petition …"

Penn State Child Safety Team members Dr. Dias and Dr. Duda only changed their opinions that they may have missed something after the attorney consulted with Dr. Mack and she wrote her report. See Starkey v. York County, Civil Action No. 1:11-CV-0981 (MDPA 2011).

170. Upon information, in a 2011 York County dependency case with intracranial hemorrhage and multiple fractures, the child demonstrated an elevated parathyroid hormone level and a low vitamin D level, Dr. Dias and Dr. Crowell both ignored abnormal lab values and adopted the presumption of abuse. Upon information, the York County Court of Common Pleas heard the testimony of Dr. Dias and Dr. Crowell and the defense experts, dismissed the dependency petition and returned the child to the parents.

171. Upon information, in a 2011 Lancaster County case, Dr. Dias and Dr. Crowell both failed to review the birth records and ignored low fibrinogen levels of a child who presented with intracranial hemorrhage and no external evidence of trauma and adopted the presumption of abuse in rendering their conclusion that the child's intracranial hemorrhages were caused by abuse.

172. The adoption of the presumption of abuse and burden shift to [redacted] and [redacted] to "explain" L.B.'s intracranial hemorrhage and rib fractures, when L.B. had no external evidence of trauma, by the Penn State Defendants violated [redacted] and [redacted] due process right that the government carry the burden of proof to an unbiased investigation into whether suspected child abuse is, in fact, actually child abuse and constitutes a substantive due process violation of the [redacted] family's right to due process.

173. As a direct and proximate result of the substantive due process violations of Defendants Penn State, Dias, Crowell and Choudhary, [redacted] and [redacted] lost custody of T.R. and L.B., had to defend a dependency petition, were listed as perpetrators of child abuse with Childline and were coerced to give up their right to exercise "protective capacity" over their children and their Fourth amendment right over the warrantless intrusion of the government into their home. [redacted] [redacted] T.R. and L.B., suffered damages as a result of the due process violations of Defendants Penn State, Dias, Crowell and Choudhary as detailed below.

COUNT II-B

FOURTH AMENDEMENT CLAIM
AGAINST PENN STATE, DIAS, CROWELL AND CHOUDHARY
FOR POLICY OF ADOPTING THE BURDEN SHIFTING PRESUMPTION THAT SUBDURAL HEMORRHAGE AND MULTIPLE FRACTURES ARE CAUSED BY ABUSIVE TRAUMA DURING THEIR INVESTIGATION OF WHETHER L.B.'S SUSPECTED ABUSE WAS, IN FACT, ACTUALLY ABUSE

174. The allegations contained in the above numbered paragraphs are incorporated into this Count as if fully recited herein.

175. In the context of a child with no external evidence of trauma with intracranial hemorrhage that was possibly thrombosis and 16 non-posterior asymptomatic rib fractures with no associated internal organ injury, a Child Safety Team conclusion of child abuse without having performed testing to rule out thrombophilia and vitamin D deficiency, among many other medical conditions, does not rise to the level of probable cause that a crime has been committed or a child has been abused.

176. As a direct and proximate result of the actions of Defendants Penn State, Dias, Crowell and Choudhary, [redacted] was arrested and was incarcerated for 414 days. [redacted]

[redacted] T.R. and L.B., suffered damages as a result of the due process violations of Defendants Penn State, Dias, Crowell and Choudhary as detailed below.

COUNT II-C

MONELL CLAIM AGAINST PENN STATE FOR FAILING TO TRAIN CHILD SAFETY TEAM EMPLOYEES THAT THE GOVERNMENT HAS THE BURDEN TO PROVE ITS CASE AND THAT BURDEN SHIFTING PRESUMPTIONS USED DURING AN INVESTIGATION VIOLATES DUE PROCESS

177. The allegations contained in the above numbered paragraphs are incorporated into this Count as if fully recited herein.

178. Penn State is a government actor for purposes of 42 U.S.C. §1983.

179. In September of 2009, Penn State established its Child Safety Team for the specific purpose of investigating suspected child abuse to make a determination about whether the suspicions of abuse are true.

180. Penn State appointed Defendant Crowell as a co-director of the Child Safety Team.

181. Upon information, Penn State sent Defendant Crowell to an American Academy of Pediatrics 60-hour preceptorship program in child abuse as training for her position as co-director of the Child Safety Team.

182. Upon information, Penn State appointed Dr. Laura Duda to serve as co-director of the Child Safety Team when it was established in September of 2009.

183. Upon information, Penn State sent Dr. Duda to an American Academy of Pediatrics 60-hour preceptorship program in child abuse as training for her position as co-director of the Child Safety Team.

184. Upon belief, the American Academy of Pediatrics 60 hour preceptorship program in child abuse teaches, consistent with the statements made by the American Academy of Pediatrics Committee on Child Abuse and Neglect and statements made in a text published by the Academy, that a presumption of abuse should be made anytime there is an intracranial hemorrhage and/or unexplained fractures in a child under the age of 1 year.

185. Upon belief, the American Academy of Pediatrics preceptorship program does not teach that a presumption that shifts the burden to parents to explain intracranial hemorrhage when there is no external evidence of trauma applied during a child abuse investigation is in any way appropriate and violates due process of law.

186. In the same year that Penn State established its Child Safety Team, in 2009, the American Academy of Pediatrics published a position paper that admitted there was "controversy" about whether intracranial hemorrhage could be caused without impact and/or without evidence of neck injury. The "controversy" recognized by the American Academy of Pediatrics consisted of over a decade of medical literature questioning the fundamental underpinnings what had come to be called "abusive head trauma" in 2009.

187. Despite the "controversy", the American Academy of Pediatrics never renounced its presumption of abuse and upon information, continues to train doctors in its child abuse preceptorship to make a presumption of abuse.

188. In 2007, the Wisconsin Supreme Court granted Audrey Edmunds a new trial stating that "a significant and legitimate debate in the medical community has developed in the past ten years over whether infants can be fatally injured through shaking alone, whether an infant may suffer head trauma and yet experience a significant lucid interval prior to death, and

whether other causes may mimic the symptoms traditionally viewed as indicating shaken baby or shaken impact syndrome". State v. Edmunds, 746 N.W. 2d 590.

189. In 2007, the Province of Ontario established the Inquiry into Pediatric Forensic Pathology in Ontario and appointed Steven Goudge as Commissioner. As a result of the Goudge Inquiry, a number of convictions based on the hypothesis of the shaken baby syndrome have been reversed.

190. The Goudge Inquiry identified a parallel to the American Academy of Pediatrics's presumption of abuse in the form of a pathologist's "Thinking Dirty v. Thinking Truth". One of the factors identified in the false convictions was an instruction that doctors "think dirty" which essentially required a presumption of abuse whenever there were certain intracranial injuries in a child.

191. In the decade prior to Penn State's establishment of its Child Safety Team, the medical literature has described and placed Penn State on notice that the fundamental medical and scientific underpinnings of the hypothesis of shaken baby syndrome and its successor term, abusive head trauma, is not an accepted or scientifically viable hypothesis upon which a diagnosis of abuse can be reasonably based. This literature was recounted by a minority of Justices of the United States Supreme Court in an opinion handed down on October 31, 2011 in Cavazos v. Smith. (The majority found there was good reason to doubt the conviction based on the hypothesis of shaken baby syndrome but suggested clemency was the appropriate remedy rather than judicial intervention. Shirley Ree Smith's sentence was commuted by Governor Jerry Brown on April 6, 2012.)

192. Penn State knew, or should have known, that the American Academy of Pediatric's presumption of abuse was not supported by the medical and scientific literature and

when Penn State sent the co-directors of its newly formed Child Safety Team to the Academy's preceptorship for training, such action demonstrates a deliberate indifference to the rights of parents of children for whom the Child Safety Team was designed to investigate reports of suspected child abuse.

193. Each child abuse investigation performed by Penn State's Child Safety Team is tainted with a burden shifting presumption that gives the government the benefit of presumption and relieves the government of carrying its burden to prove their case in whatever forum, dependency or criminal court or in the administrative acts of making a Childline report or coercing parents into a safety plan.

194. It is readily foreseeable that many children that have a medical condition that causes intracranial hemorrhage and multiple fractures without the application of abusive forces will be misdiagnosed as a case of child abuse when the doctors have been trained to presume abuse rather than trained to ensure that a complete workup for the mimics is actually completed before rendering a conclusion.

195. Penn State's failure to train doctors who are appointed to a Child Safety Team that a presumption of abuse should not be made and that all of the possible alternative medical conditions must be explicitly tested for prior to stating that such conditions have been ruled out is so obvious and so likely to lead to a misdiagnosis of abuse and cause county agencies to file dependencies and police to file criminal charges against innocent parents that Penn State's failure to do so amounts to deliberate indifference to the rights of parents with children who have these medical conditions.

196. As detailed above, multiple doctors of the Penn State Child Safety Team in multiple cases have made the presumption of abuse demonstrating a pattern of constitutional

violations as a result of Penn State's failure to train its Child Safety Team Members that a presumption should not be made and that testing to rule out all alternative medical explanations for intracranial hemorrhage and multiple fractures must be made before they can be ruled out.

197. Penn State knew, or should have known, that the Child Safety Team would investigate allegations of abuse where there is no external evidence of abuse and intracranial hemorrhages and/or multiple fractures, that the differentiation between abusive injury and natural causes involves a very difficult choice and the wrong choice will frequently result in an innocent parent being arrested and/or losing custody of their child.

198. As a direct and proximate result of Defendant Penn State's training of the co-directors of its Child Safety Team by the American Academy of Pediatrics 60-hour preceptorship, the training by the American Academy of Pediatrics to presume child abuse in any child with intracranial injury under the age of one year, the failure of Penn State to train the members of its Child Safety Team that when there is no external evidence of trauma testing to rule out all of the alternative medical causes of intracranial hemorrhage and multiple fractures must be done prior to rendering a conclusion, L.B.'s stroke and congenital rickets were misdiagnosed as abuse, [redacted] was arrested and was incarcerated for 414 days, [redacted] and [redacted] lost custody of their children and were subject to a coerced safety plan after [redacted] was acquitted in which they were denied their right to the "protective capacity" over their children and the Fourth Amendment right to be secure in their home without warrantless government intrusion. [redacted] [redacted] T.R. and L.B., suffered damages as a result of the due process violations of Defendants Penn State, Dias, Crowell and Choudhary as detailed below.

COUNT III

SUBSTANTIVE DUE PROCESS CLAIM
AGAINST FRANKLIN COUNTY

FOR POLICY OF RELYING EXCLUSIVELY UPON THE PRESUMPTION TAINTED MEDICAL INVESTIGATION AND CONCLUSION OF THE PENN STATE CHILD SAFETY TEAM, DIAS, CROWELL AND CHOUDHARY WITHOUT ANY INDEPENDENT UNTAINTED MEDICAL REVIEW AND WITHOUT TRAINING THE PENN STATE CHILD SAFETY TEAM, DIAS, CROWELL OR CHOUDHARY ABOUT HOW A PRESUMPTION SHIFTS THE BURDEN OF PROOF IN VIOLATION OF DUE PROCESS

199. The allegations contained in the above numbered paragraphs are incorporated into this Count as if fully recited herein.

200. Franklin County has a policy of relying upon medical professionals to explain unexplained injuries suspected of being caused by child abuse.

201. Franklin County has a policy of exclusively relying upon presumption tainted medical experts affiliated with the American Academy of Pediatrics, including the Penn State Child Safety Team, Dias, Crowell and Choudhary for the medical investigation into whether suspected child abuse is, in fact, actually child abuse.

202. Franklin County has a policy of doing no independent medical investigation of its own into whether suspected child abuse is, in fact, actually child abuse, that is not tainted with the presumption of abuse propounded by the American Academy of Pediatrics.

203. Franklin County has a policy of not training the medical experts upon whom they exclusively rely for investigating whether suspected child abuse is, in fact, actually child abuse, including the Penn State Child Safety Team, Dias, Crowell and Choudhary, that a presumption shifts the burden of proof in violation of due process.

204. Franklin County's policy of relying exclusively upon presumption tainted medical experts to conduct the medical investigation, policy of failing to conduct its own non-presumption tainted medical investigation and policy of failing to train the medical experts upon whom they exclusively rely about how a presumption shifts the burden of proof in violation of

due process, or some combination of one or more of these policies violated the [redacted] family's right to the presumption of innocence and due process during the investigation of whether the report of L.B.'s suspected child abuse was in fact, actually child abuse.

205. As a direct and proximate result of the substantive due process violations as a result of the policy or policies of Franklin County, [redacted] and [redacted] lost custody of T.R. and L.B., had to defend a dependency petition, were listed as perpetrators of child abuse with Childline, [redacted] was incarcerated for 414 days and had to defend criminal charges. [redacted] [redacted] T.R. and L.B., suffered damages as detailed below.

COUNT IV - DISMISSED

COUNT V - DISMISSED

COUNT VI - DISMISSED

COUNT VII

PENN STATE HERSHEY MEDICAL CENTER AND DR. EGGLI HAS AN UNCONSTITUTIONAL POLICY OF FAVORING EXPERT WITNESS EMPLOYEES FOR THE GOVERNMENT AND DISADVANTAGING EXPERT WITNESS EMPLOYEES FOR DEFENDANTS AND PARENTS

206. The allegations contained in the above numbered paragraphs are incorporated into this Count as if fully recited herein.

207. In January of 2010, [redacted] was not satisfied that Penn State's Child Safety Team had insisted upon a complete workup for alternative medical explanations, and sought a second opinion about what might have caused L.B.'s intracranial hemorrhage and 16 asymptomatic rib fractures with no associated internal injuries from Penn State radiologist Dr. Julie Mack. Dr. Mack is an assistant professor of radiology employed by Defendant Penn State.

Dr. Mack is the principle investigator of two research projects at Penn State involving pediatric neuro-imaging funded by Penn State's Center for Emerging Neurotechnology and Imaging within the Penn State's department of Neurosurgery. Dr. Mack has recently published articles in peer reviewed medical journals about the source of infant subdural hemorrhage. Dr. Mack's papers suggest that the long held hypothesis of the shaken baby syndrome that bridging veins are torn from violent shaking is anatomically unlikely and is considered controversial by proponents of the shaken baby syndrome hypothesis such as Defendants Dias, Crowell and Choudhary.

208. Defendant Dias has published studies claiming that educating parents about the inherent dangers of shaking has reduced the incidence of cases of shaken baby syndrome.

209. In 2007, the Center for Disease Control awarded Defendant Penn State 2.8 million dollars to fund an expansion of Defendant Dias' and Penn State's shaken baby syndrome education program.

210. A study published in 2010 was unable to replicate Defendant Dias' results of a reduction in shaken baby cases after educating parents and the authors of the study observed that one reason they were unable to obtain data corroborating Dias' data and conclusion was that Defendant Dias' study lacked a scientific control against which to compare Defendant Dias' data.

211. In 2010, Defendant Dias wrote a chapter of a book edited by Carole Jenny about child abuse. The chapter authored by Defendant Dias is entitled, "The Case For Shaking". Defendant Dias concedes that violent shaking may not be the cause of brain injury directly, as has been hypothesized by proponents of the shaken baby syndrome for over 30 years. Dias continues to defend the shaking mechanism, "To those who argue that the contribution of

shaking to the pathophysiology of AHT [stands for Abusive Head Trauma - the new term for shaken baby syndrome] is a hypothesis lacking a sufficient evidentiary base, the consistent and repeated observation that confessed shaking results in stereotypical injuries that are so frequently encountered in AHT … *is* the evidentiary basis for shaking." Emphasis in the original.

212. No credible doctor or scientist would consider "confessions" scientific evidence of any hypothesis, particularly when the "confessions" are procured by prosecutors offering to remove the threat of the death penalty if the parent "confesses" and/or by County agencies offering to return children to one parent if the other parent "confesses" to shaking the child. That law enforcement can obtain confessions from innocent defendants, even confessions to murder and rape, has been well documented by the Innocence Project with DNA evidence.

213. Further explanation as to why the confessions Defendant Dias considers to be the "evidentiary basis" for the validity of the shaken baby syndrome are "worthless as evidence, and as a premise for an arrest" is provided by the United States Court of Appeals for the 7th Circuit in Aleman v. Hanover Park, 2011 U.S.App.LEXIS 23241.

214. Dr. Mack disagreed with the opinion of Penn State's Child Safety Team, co-director of the Team, Defendant Dias, co-director of the Team, Defendant Crowell and Team member, Defendant Choudhary regarding their conclusion that L.B.'s injuries were abusive in origin.

215. Upon information and belief, The Pennsylvania State University is an "instrumentality of the state" whose mission includes teaching, research and public service in many disciplines.

216. Upon information and belief, Penn State Hershey Medical Center is a medical facility, children's hospital and medical school wholly owned by the Pennsylvania State

University whose mission is "enhance the quality of life" through, among other things, "the discovery of knowledge that will benefit all."

217. The Pennsylvania State University recognizes that, as a University that receives public funding, it has a Public Responsibility that includes members of the faculty and staff serving as expert witnesses in matters of public interest. Upon information and belief, criminal matters in which the Commonwealth is the prosecuting party are such public matters.

218. Upon information and belief, on September 12, 2010, Defendant Dias was an invited speaker and attended a conference sponsored by the National Center on Shaken Baby Syndrome. Another invited speaker at the very same conference, Detective Inspector Colin Welsh, of Stratford, UK, gave a presentation on September 13, 2010, entitled "A National Co-ordinated Approach to Cases of Non-Accidental Head Injury in the UK".

219. Detective Inspector Colin Walsh detailed a concerted strategy by UK proponents of Shaken Baby Syndrome to target and intimidate doctors in the UK who were effectively testifying for defendants in shaken baby syndrome cases and obtaining acquittals.

220. One of the doctors targeted by proponents of the shaken baby syndrome in the UK is Dr. Waney Squier, an experienced consultant neuro-pathologist with 27 years of experience, who is affiliated with Oxford University. Upon information and belief, Dr. Squier was falsely accused by a UK proponent of the shaken baby syndrome of ethical violations in her handling of human tissue during autopsies in an effort to silence Dr. Squier's testimony on behalf of defendants in shaken baby cases.

221. In 2009, Dr. Squier and Dr. Mack co-authored an article entitled "Anatomy and development of the meninges: implications for subdural collections and CSF circulation" in the medical journal Pediatric Radiology. The article is a seminal paper that challenged the long held hypothesis that the subdural hemorrhage in shaken baby cases was caused by violent tearing of the bridging veins, veins

that traverse from the surface of the brain the superior sagittal sinus, and suggested that the blood vessels in the dura itself are a more anatomically likely source of the hemorrhage often found in alleged shaken baby cases. The significance of subdural bleeding originating from the dural vessels is that dural vessels leaking blood does not presuppose violent trauma as does the bridging vein rupture hypothesis advocated by doctors affiliated with the American Academy of Pediatrics. Some proponents of the shaken baby syndrome, and in particular, doctors affiliated with the American Academy of Pediatrics, consider Dr. Mack's and Dr. Squier's paper to be controversial.

222. Upon information and belief in late September of 2010, Defendant Dias, a doctor in the neurosurgery department, on at least one occasion, went to office of Defendant Eggli, the chair of the radiology department, and demanded that Eggli forbid Dr. Mack from writing expert reports and testifying for criminal defendants and parents in dependency proceedings.

223. On October 1, 2010, only 17 days after Detective Inspector Colin Welsh's presentation at the conference in which Defendant Dias participated, Defendant Eggli sent Dr. Mack a letter regarding Dr. Mack's expert witness activities on behalf of defendants and parents stating, "you may not use our stationary or logo, nor may you use your title as faculty in communications regarding this expert testimony … your testimony will not be covered insured or indemnified by the Department of Radiology or the Milton S. Hershey Medical Center." Defendant Eggli's letter continued, "independent expert witness activities must not conflict with the scope and duty of the physician's employment responsibilities at [Penn State]" and without identifying any specific conflict, threatened, "[t]his potential conflict will undergo further assessment at the Medical Staff level."

224. Upon information and belief, this policy was not applied by Penn State to Defendant Choudhary, a member of the radiology department whose supervisor is Defendant Eggli, in his investigation and testimony of whether suspected child abuse was, in fact, actually child abuse on behalf of the Commonwealth of Pennsylvania in [redacted] case or in other criminal cases and on behalf of County Children and Youth agencies in dependency cases.

225. Upon information and belief, this policy was not applied by Penn State to Defendant Crowell in her investigation and testimony of whether suspected child abuse was, in fact, actually child abuse on behalf of the Commonwealth of Pennsylvania and Franklin County in [redacted] case or in any other criminal or dependency cases.

226. Upon information and belief, this policy was not applied by Penn State to Defendant Dias in his investigation and testimony of whether suspected child abuse was, in fact, actually child abuse on behalf of the Commonwealth of Pennsylvania in [redacted] case or in other criminal cases and on behalf of County Children and Youth agencies in dependency cases.

227. Counsel for the [redacted] filed a motion for a protective order against Penn State to enjoin Penn State from prohibiting Dr. Mack from testifying at [redacted] criminal trial that she was an assistant professor of radiology at Penn State. The Franklin County Court of Common Please denied the motion.

228. On December 10, 2010, Defendant Dias admitted under oath in a deposition that he was not following the policy imposed on Dr. Mack in another case, a Florida criminal case, where Dias was serving as an expert witness for the prosecution.

229. On December 12, 2010, the jury heard Defendant Crowell testify that she was a Penn State assistant professor of pediatrics at [redacted] criminal jury trial. Upon

information and belief, Crowell was paid by Penn State and was covered by the liability insurance policy of Penn State for the time she testified.

230. On December 13, 2010, the jury heard Defendant Choudhary testify that he was a Penn State assistant professor of radiology at [redacted] criminal jury trial. Upon information and belief, Choudhary was paid by Penn State and was covered by the liability insurance policy of Penn State for the time he testified.

231. On December 13, 2010, the jury heard Defendant Dias testify that he was a Penn State professor of neuro-surgery at [redacted] criminal jury trial. Upon information and belief, Dias was paid by Penn State and was covered by the liability insurance policy of Defendant Penn State for the time he testified.

232. On December 14, because she was testifying for a criminal defendant accused of child abuse and pursuant to the policy imposed upon her by Defendant Eggli and Penn State, the jury did not hear that Dr. Mack was a Penn State assistant professor of radiology at [redacted] criminal jury trial. Dr. Mack was not paid by Penn State and was not covered by the liability insurance policy of Penn State for the time she testified.

233. On September 21, 2011, [redacted] and [redacted] filed a motion for reconsideration with the Department of Public Welfare requesting that the founded report of abuse be expunged. The founded report is based upon the testimony of Defendant Crowell at the dependency hearing, testimony that Defendant Crowell now admits is false and testimony for which Defendant Crowell has never corrected with the Court.

234. As a result, the policy of Penn State continues to restrict Dr. Mack from testifying that she holds a faculty appointment with Penn State and that the policy continues to deny Dr. Mack the other accoutrements of her employment with Penn State that have been and

upon information and belief, will be, afforded to Defendants Dias, Crowell and Choudhary, should the Franklin County call them as witnesses in the FAIR Hearing on [redacted] and [redacted] request for expungement, thus putting [redacted] and [redacted] at a distinct disadvantage as a result of Penn State's policy.

235. Penn State's policy as implemented by Defendant Eggli, regarding expert witness reports and testimony in child abuse criminal cases heavily discriminates in favor of physicians writing reports and testifying for the Commonwealth's prosecution and against physicians writing reports and testifying for defendants.

236. Penn State's policy and practice violates the public service mission of the Pennsylvania State University and the mission of the Penn State Hershey Medical Center to "enhance the quality of life" through, among other things, "the discovery of knowledge that will benefit all". Penn State's "discovery of knowledge" should truly be available to "all" including criminal and dependency defendants and not just to the prosecution.

237. Penn State's policy and practice has a chilling effect on any physician at Penn State considering writing a report and/or testifying on behalf of any defendant and undermines the judicial process by depriving judges and juries of information relevant and necessary to rendering fair and impartial decisions.

238. While Penn State's policy has a chilling effect on employees who might be inclined to testify for parents who have to defend false allegations of abuse, Penn State's policy disparately provides encouragement to employees who testify for the prosecution and county agencies.

MULTIPLE OTHER PARENTS AND DEFENDANTS HAVE EXPERIENCED THE DISCRIMINATORY POLICY OF PENN STATE AGAINST PARENTS AND DEFENDANTS AND IN FAVOR OF THE GOVERNMENT

239. In a Delaware County criminal case that arose in November of 2009, Dr. Mack was forbidden to testify that she was a professor at Penn State for the Defendant, Reginald Dennis. Dr. Danielle Boal, another doctor at Penn State was given no such restriction when testifying for the prosecution. The case did not go to trial.

240. Upon information, in a Lancaster County criminal case that arose in 2009, where the child experienced cardiac arrest, had intracranial hemorrhage and absolutely no evidence of trauma to the child's scalp, skull or brain. The child continued to experience bleeding and another cardiac arrest after the child was placed in foster care. The case is currently scheduled for trial in June of 2012. Dr. Dias will testify that he is a professor at Penn State and will do so on Penn State time while covered by Penn State liability insurance. Dr. Mack is forbidden by Penn State policy to testify that she has a faculty appointment at Penn State and will testify on her own time and without liability insurance coverage from Penn State.

241. Upon information, in a 2011 York County dependency case with intracranial hemorrhage and multiple fractures. Dr. Dias and Dr. Crowell both were permitted to testify to their faculty appointments at Penn State. Dr. Mack declined to write a report or to testify in that case due to the Penn State policy.

242. Upon information, in a 2011 Lancaster County case, Dr. Dias and Dr. Crowell both failed to review the child's birth records and ignored low fibrinogen levels of a child who presented with intracranial hemorrhage and no external evidence of trauma. Penn State's policy will permit Dr. Dias and Dr. Crowell to testify to their faculty appointments, to testify on Penn State time with Penn State liability insurance coverage and have permission to write reports on Penn State letterhead. Dr. Mack has reviewed the case and is forbidden to testify to her faculty appointment, will testify on her own time, will not be covered by Penn State

liability insurance and is forbidden to write a report on Penn State letterhead. The Childline Bureau of Hearings and Appeals hearing in that matter is pending as of the writing of this amended complaint.

243. In January of 2011, Dr. Mack testified on behalf of a parent in a Lycoming County dependency hearing. Dr. Mack was forbidden to testify to her faculty appointment at Penn State on behalf of the father and was forbidden to write her report on Penn State letterhead. See Isbell v. Montour County, Case No.:4:12-cv-00043 (MDPA).

244. In a criminal case currently pending in Montour County and related to the above dismissed dependency case, Dr. Mack is forbidden to testify to her faculty appointment at Penn State on behalf of the defendant father during the criminal trial and was forbidden to write her report on Penn State letterhead. The criminal trial will take place in 2012.

245. In a dependency proceeding in Otsego County, New York, in July of 2011, Dr. Mack was forbidden to testify to her faculty appointment at Penn State on behalf of the mother and was forbidden to write her report on Penn State letterhead.

246. In a Marion County, Florida criminal case, State of Florida v. Rishi Ramgoolie, Defendant Dias wrote a report on Penn State letterhead in June of 2010. Defendant Dias was deposed in connection with that criminal case in December of 2010 at Penn State's facility in Hershey. That case is still pending and Penn State policy permits Dr. Dias to testify to his faculty appointment at Penn State on behalf of the prosecution.

247. In a dependency proceeding in Berks County, PA in January of 2012, Dr. Mack was forbidden to testify to her faculty appointment at Penn State and was forbidden to write a report on Penn State Letterhead. Upon information, that child is now a dependant child.

248. Defendant Dias wrote a report in September of 2010 on Penn State letterhead in opposition to a Federal petition for a writ of habeus corpus filed by Travis Gullion, a Pennsylvania inmate serving a 20 to 40 year sentence for 3rd degree murder based upon Defendant Dias' testimony that violent shaking tears axons in the head of a child who is shaken. The Court found that Travis failed to admit to his actions based upon testimony by Dr. Dias that the injury could only have been caused by violent shaking and concluded that Travis had failed to own up to his actions. On that basis the Court imposed the maximum sentence of 20 to 40 years. Defendant Dias has subsequently reversed his position on the axon tearing theory in favor of a non-traumatic hypoxic theory yet has failed to communicate his reversal of the testimony he provided during the degree of guilt hearing to the Court. Should a hearing on Travis' habeus petition be granted, Penn State's policy will permit Dr. Dias to testify to his faculty appointment at Penn State, will likely testify on Penn State time and with Penn State liability insurance coverage. Travis Gullion's Petition for a writ of habeus corpus is still pending in the Middle District of Pennsylvania as of the drafting of this amended complaint. See Gullion v. Wenerowicz, Case No.:3:10-cv-0954-WGN-DB (MDPA).

249. In February of 2011, Dr. Mack testified on behalf of defendant Scott Goodrick in a Venango County criminal case. Upon information, Dr. Mack was not permitted to testify to her faculty appointment at Penn State and was cross examined by the prosecutor about Penn State's policy that forbids her from writing reports on Penn State letterhead. Dr. Rachel Berger testified for the prosecution and, upon information, testified that she was a professor at the University of Pittsburgh and wrote her report on University of Pittsburgh letterhead. Scott Goodrick was convicted and sentenced on March 31, 2011 to 60 to 180 months and is currently

serving that sentence. His conviction is currently on appeal in the Superior Court of Pennsylvania. See Commonwealth v. Scott Goodrick, 1162 WDA 2011 (Pa Superior Court).

250. In a November 19, 2010 email from Defendant Dias to Dr. Holmes Morton, Defendant Dias stated the following:

> [Dr. Mack]'s opinions were provided on Penn State Hershey letterhead. This is something that is not allowed under the faculty rules and regulations, … This further confused Children and Youth who were in charge of the case as they felt, understandably, that there were conflicting 'official' PSHMC opinions on the case. Dr. Eggli, the Chair of Radiology here, has determined there is and will be only ONE official PSHMC opinion, that of the neuroradiologist officially interpreting the films for the institution.

251. Despite Defendant Dias' proclamation that there is only "ONE official PSHMC [Penn State] opinion, that of the neuroradiologist officially interpreting the films for the institution" Defendant Dias' opinion in L.B.'s case conflicts with the "official" opinion, issued by Defendant Choudhary on October 20, 2009 which states that thrombosis is a possibility and never mentions the possibility of an arterial venous anomoly.

252. Despite Defendant Dias' proclamation that "Dr. Mack's opinion cannot be provided on Hershey letterhead" and that Dr. Mack is "not allowed under the faculty rules and regulations" to provide her opinions on Penn State letterhead, Penn State continues to permit Defendant Dias to provide his opinions, on cases within and without Penn State on behalf of the government on Penn State letterhead.

253. In the Travis Gullion case, Penn State permitted Dr. Dias to provide his September 29, 2010 report on Penn State letterhead in opposition to Mr. Gullion's petition for a writ of habeus corpus.

254. In the Florida Ramgoolie case, not only did Penn State permit Dr. Dias to write his June 29, 2010 opinion on Penn State letterhead, Penn State even permitted Defendant

Dias to be deposed at Penn State's facility giving the endorsement of the full faith and credit of Penn State to Defendant Dias' opinion against the defendant.

255. In addition to attempting to silence Dr. Mack and consistent with the advice given by Detective Inspector Colin Walsh to the National Center on Shaken Baby Syndrome in September of 2010, Dr. Dias has filed a March 20, 2011 complaint against a fellow neurosurgeon with the Professional Ethics Committee of the American Association of Neurosurgeons. Dr. Dias' complaint centered around the other neurosurgeon's testimony on behalf of defendants and parents accused of shaking their children.

256. Dr. Dias has corresponded with the Professional Ethics Committee of the American Association of Neurosurgeons on Penn State letterhead giving the Professional Ethics Committee reason to believe that the full faith and credit of Penn State supports his complaint against a neurosurgeon who testifies for defendants.

257. The doctor against whom Dr. Dias filed his ethics complaint has published multiple peer reviewed papers in medical journals in support of his position. One of these papers was cited in the Cavazos v. Smith dissent by Justices of the United States Supreme Court in support of its review of the medical literature that calls into question the hypothesis of the shaken baby syndrome.

258. In cases where it is claimed that the medical evidence purportedly proves abuse was committed and even purportedly proves the time frame the abuse was allegedly committed, such as L.B.'s and other alleged shaken baby cases, Penn State's policy regarding expert witness reports and testimony in criminal and dependency cases puts all defendants and parents in such cases at a significant disadvantage in securing the opinions of physicians at Penn

State and violated [redacted] and [redacted] and all defendants and parents similarly situated, right to prepare a defense and to rights secured by the 4th and 14th Amendment of the U.S. Constitution.

259. As a direct and proximate result of Penn State's policy and practice of withholding the use of Penn State's letterhead and logo, withholding the use of faculty title in communications and withholding the benefit of liability insurance for physicians testifying for the defense but not withholding such for physicians testifying for the prosecution, [redacted] and [redacted] were denied the right to test the prosecution's case and their right to a fair trial under due process of law.

260. [redacted] and [redacted] seek injunctive relief for themselves to prohibit Penn State from withholding use of faculty title in communications, withholding use of Penn State's letterhead and logo, and withholding the benefit of liability insurance for physicians testifying for the defense but not withholding such for physicians testifying for the prosecution and further, that since Defendant Penn State considers employee activity on behalf of prosecutors and Children And Youth agencies to be within the scope of employment at Penn State then [redacted] and [redacted] seek injunctive relief that Penn State uniformly consider activity by employees on behalf of accused parents to be within the scope of their employment as well. The [redacted] family is not demanding that Penn State provide expert witnesses for parents and defendants, only that whatever policy they have be applied equally and the same to employees testifying for the prosecution as to employees testifying for the defense. At the current time, Penn State allows employees to serve as expert witnesses for the prosecution with the policy of providing those witnesses with the full faith and credit of Penn State including the ability for the employee to use his or her faculty title in communications, to use Penn State logo on letterhead and liability insurance and that such activity is within the scope of their employment. The [redacted] family

seeks to have Penn State apply that policy uniformly to those employees who are willing to testify for defendants and parents accused of shaking their children.

261. [redacted] [redacted] T.R. and L.B. seek money damages as articulated below, for Penn State's policy and practice of withholding use of faculty title in communications, withholding use of Penn State's letterhead and logo and withholding the benefit of liability insurance for physicians testifying for the defense but not withholding such for physicians testifying for the prosecution.

COUNT VIII

SUBSTANTIVE DUE PROCESS CLAIM AGAINST FRANKLIN COUNTY AND FOR A POLICY OF COERCING AND EXTENDING SAFETY PLANS IN VIOLATION OF DUE PROCESS OF LAW

262. The allegations contained in the above numbered paragraphs are incorporated into this Count as if fully recited herein.

263. After [redacted] was acquitted of all criminal charges, Franklin County threatened to immediately send police officers to the [redacted] home to forcibly remove L.B. and T.R. if [redacted] and [redacted] and [redacted] did not agree that [redacted] would not be alone with his children and would agree to visits from Franklin County.

264. It is well-established law that parents have a fundamental right to the care, custody and control of their children that cannot be curtailed without due process, even when there is a compelling state interest to investigate allegations of child abuse. Due process does not have to be in the form of a hearing prior to the curtailment of the right. When a pre-deprivation hearing is not provided due process requires notice and opportunity to be heard within a reasonable time after the deprivation.

265. It is well-established law that all citizens have a right to be secure in their homes from warrantless government intrusion, even parents who are suspected of abusing their children.

266. Defendant Franklin County has a custom, practice and policy of using the threat of immediate police removal and/or an ex parte order removing a child from the parents' custody in order to coerce parents into abiding by a safety plan, with or without the parents signature or agreement.

267. Franklin County has a policy in which Franklin County assumes the protective capacity of a child subject to a safety plan thus necessarily curtailing a parent's right to the care, custody and control of their child.

268. Franklin County has a policy that does not require the agreement of the parents, or the signature of the parents, in order to institute a safety plan. The policy of Franklin County is simply that the case worker explain the safety plan to the parents and Franklin County policy allows a safety plan to proceed even when parents refuse to sign it as long as caseworkers "document their explanation of the safety plan to the caregiver/parent and document that they [the caregiver/parent] were unwilling to sign."

269. The very form provided by Defendant Franklin County demonstrates a policy of failing to provide due process and opportunity for the parents to be heard because such notices are absent and lacking on the form provided by Franklin County.

270. Such due process provisions are absent and lacking from the safety plan prepared by Defendant Coccagna on the form provided by Franklin County and entered into by the [redacted] family on or about December 20, 2010.

271. When Franklin County employees coerced the [redacted] family's "agreement" to a safety plan on December 20, 2010 with the threat of sending police to forcibly remove their children if they did not agree, due process considerations were triggered by the curtailment of [redacted] and [redacted]

right to the care, custody and control of their children and their right to be secure in their home from warrantless government intrusion in the safety plan.

272. Due process does not have to be prior process but does have to afford the [redacted] family a forum in which to defend themselves within a reasonable time after the safety plan was coerced.

273. Defendant Franklin County has a policy of coercing safety plans without affording due process to parents before coercing agreement to the safety plan and without affording parents due process after coercing the safety plan. In effect, Franklin County has a policy of coercing safety plans without affording parents any due process of law.

274. The policy of Defendant Franklin County not to provide due process when safety plans are used to curtail parental rights is a direct and proximate cause of [redacted] loss of the right to be alone with his children and [redacted] and [redacted] right to be secure in their home from warrantless government intrusion for six months in violation of due process protections against such arbitrary actions afforded under 14th amendment of the United States Constitution and in violation of the 4th Amendment.

275. The policy resulted in the coerced "voluntary" curtailment of [redacted] right to be alone with his children, [redacted] and [redacted] loss of the right to have protective capacity over their children and [redacted] and [redacted] coerced waiver of their right to be secure in their home for 180 days without court supervision or due process over the arbitrary actions of the Defendants in violation of due process and caused the [redacted] family damages.

276. The [redacted] family seeks damages as articulated below against Defendant Franklin County for the six months during which [redacted] could not be alone with his own children and [redacted] and [redacted] were subject to announced and unannounced visits from Defendant Coccagna and

Tuner, as a result of the policy of Franklin County not to provide due process when Franklin County employees threaten to immediately send the police to remove children from parents unless the parents abide by a safety plan, with or without the parents signature or agreement, that curtails the parents right to the care, custody and control of their children and their right to be secure in their home.

COUNT IX

DEFENDANTS TUNER AND COCCAGNA VIOLATED PLAINTIFFS' SUBSTANTIVE DUE PROCESS RIGHTS BY COERCING AGREEMENT AND EXTENDING THE SAFETY PLAN IN VIOLATION OF DUE PROCESS

277. The allegations contained in the above numbered paragraphs are incorporated into this Count as if fully recited herein.

278. It is well-established law that parents have a fundamental right to the care, custody and control of their children that cannot be curtailed without due process of law, and due process of law must be afforded even when there is a compelling state interest to protect children.

279. It is well-established law that all citizens have a right to be secure in their homes from warrantless government intrusion, even parents who are suspected of abusing their children.

280. Defendants Tuner and Coccagna knew or should have known that the use of the coercive threat to parents that unless they agree to curtail their right to the care, custody and control of their child(ren) in the form of a "voluntary" safety plan, the child(ren) will be forcibly removed from the parents home by the police, raises due process considerations.

281. With reckless indifference to the due process rights of the [redacted] family, Defendants Tuner and Coccagna coerced [redacted] and [redacted] into a safety plan in which Franklin County assumed the protective capacity of their children and in which [redacted] and [redacted] waived their right to be secure in their home from warrantless government intrusion and extended that safety plan for 180 days without affording [redacted] due process of law and in violation of the Fourth amendment.

282. The reckless indifference of Defendants Tuner and Coccagna coercion and extension of the safety plan is a direct and proximate cause of [redacted] not being able to be alone with his own children and [redacted] and [redacted] being subject to announced and unannounced visits from Defendants Coccagna and Tuner without any court order or court supervision over the arbitrary actions of the Defendants in violation of due process protections against such arbitrary actions afforded under the 4th and 14th amendments of the United States Constitution.

283. The coerced "voluntary" curtailment of the [redacted] family's right to the care, custody and control of their children and coerced "voluntary" curtailment of their right to be secure from warrantless government intrusion for 180 days without any court order or court supervision over the arbitrary actions of the Defendants is a violation of due process that caused the [redacted] family damages.

284. The [redacted] family seeks punitive and compensatory money damages as articulated below against Defendants Tuner and Coccagna for the six months during which [redacted] could not be alone with his own children and [redacted] and [redacted] were subject to unannounced visits from Defendants Coccagna and Tuner and other Franklin County employees in violation of due process of law under the Fourteenth Amendment and the Fourth Amendment of the United States Constitution.

DAMAGES

285. [redacted] [redacted] T.R. and L.B. seek compensatory, punitive and other damages as the court may find appropriate for the following:

a. For the 414 days that [redacted] was incarcerated for a crime he did not commit and was separated from [redacted] T.R. and L.B., from October 29, 2009 to December 17, 2010.

b. For the 169 days T.R. and L.B. were in the legal custody of Franklin County, from October 19, 2009 to April 5, 2010.

c. For the 120 days T.R. and L.B. were in foster care and the physical custody of Franklin County, from October 19, 2009 to February 15, 2010.

d. For the 180 days during which the coerced safety plan was in effect without the [redacted] family being provided any due process of law, from December 29, 2010 through June 18, 2011, that [redacted] and [redacted] were deprived of their protective capacity over their children, [redacted] could not be alone with his children and [redacted] and [redacted] were subject to warrantless announced and unannounced visits from Franklin County.

e. The cost of daycare for T.R. and L.B. during the 594 days in which [redacted] was either incarcerated for a crime he did not commit or was denied the right to be alone with his children after his acquittal as a result of being coerced into a "voluntary" safety plan, from December 29, 2009 to June 18, 2011.

f. Attorneys' fees, costs and other expenses to expunge the Childline report and defend and appeal the dependency.

g. Attorneys' fees and costs to defend [redacted] criminal charges.

h. The false Childline report adversely impacts [redacted] and/or [redacted] ability to seek employment as an educator, daycare provider or any other occupation requiring a child abuse background check.

i. The false Childline report adversely impacts [redacted] and/or [redacted] ability to volunteer to help with children's programs at church, participate in scouting type programs, coach baseball, softball, football or any other of their children's sport's teams or participate in any activity that requires a child abuse background check.

j. T.R. and L.B. will have to live the rest of their lives, and emotionally cope, with the knowledge that their mother and father were both indicated for abusing L.B., that [redacted] was arrested and incarcerated and falsely accused of abusing L.B. and that they both were taken away from their parents and placed in foster care.

WHEREFORE, Plaintiffs, [redacted] [redacted] L.B. and T.R. respectfully request the court enter judgment in favor of Plaintiffs and against Defendants.

Respectfully submitted,

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