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Attorney for Plaintiffs

A.P. & V.P.

Plaintiffs

v.

Gladibel Medina, M.D.
123 How Lane
New Brunswick, NJ 08901

Defendant

UNITED STATES
DISTRICT COURT FOR THE
DISTRICT OF NEW JERSEY

JURY TRIAL DEMANDED

COMPLAINT

Plaintiffs, A.P. and V.P. through undersigned counsel hereby allege the following:

INTRODUCTION

Plaintiffs A.P. and V.P. bring this action pursuant to 42 U.S.C. §1983 for the violation of their right to due process in the context of their son having a medical condition that was misdiagnosed as child abuse. Defendant Dr. Gladibel Medina is a pediatrician who claims that she can distinguish actual cases of child abuse from accidental injuries and does so on behalf of the government. On December 23, 2015, A.V.P., who was then two months old, squirmed out of his caregiver's arms falling to the floor and hitting his head on a television stand as he fell. A.V.P. was rushed to Christ Hospital in Jersey City where he was transferred to St. Peter's Hospital for treatment. A.V.P. was found to have a gash on his forehead, subdural hemorrhages and retinal hemorrhages. A December 26, 2015 brain MRI showed A.V.P. had prominent extra-axial space between his brain and skull filled with cerebral spinal fluid, a condition that predisposes children to subdural and retinal hemorrhages with minor, or even no trauma. Defendant Medina performed a medical investigation and produced a report on January 20, 2016. Defendant Medina's report misrepresented A.V.P.'s prominent extra-axial cerebral spinal fluid as "chronic subdural bleeding" and completely omitted any mention of A.V.P.'s extra-axial space filled with cerebral spinal fluid identified in the MRI report. Using junk science, Defendant Medina misrepresented that A.V.P.'s accidental fall could not account for his retinal hemorrhages and instead falsely attributed the retinal hemorrhages and "chronic subdural bleeding" to abuse. As a direct and proximate result of Defendant

Medina's misrepresentation(s), omission(s) and use of junk science, A.V.P. was kept from the care, custody and control of his parents, Plaintiffs A.P. and V.P. for seven months.

Jurisdiction and Venue

1. This action is brought pursuant to one or more of 42 U.S.C. § 1981, 42 U.S.C. § 1983 and 42 U.S.C. § 1985; the First, Fourth, Fifth, Sixth, Seventh 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.

3. Venue is proper in the District of New Jersey pursuant to 28 U.S.C. § 1391(a) in that the defendants are subject to personal jurisdiction within the District of New Jersey and the events that give rise to this action occurred within the District of New Jersey.

Parties

4. Plaintiff V.P. is the natural mother of A.V.P. At all times relevant to this action, V.P. was a legal resident of Jersey City, New Jersey. V.P. was thirty-one (31) years old in December of 2015.

5. Plaintiff A.P. is the natural father of A.V.P. At all times relevant to this action, V.P. was a legal resident of Jersey City, New Jersey. A.P. was thirty-four (34) years old in December of 2015.

6. Plaintiffs A.P., V.P. and A.P.'s parents are identified only by their initials to protect the identity of the minor child that is the subject of this complaint. There is no prejudice to the Defendant as she will be aware of the identity of the Plaintiffs and there is little, if any, public interest in the identity of A.P.

7. Defendant Gladibel Medina, M.D. is a physician licensed to practice medicine in New Jersey who holds herself out as an expert in distinguishing accidental causes of medical findings from actual cases of child abuse. Defendant Medina is a board certified pediatrician employed by St. Peter's University Hospital. In 2015 and 2016, Defendant Medina served as the Medical Director of the Dorothy B. Hersch Regional Child Protection Center. Defendant Medina's activities, where she is the primary medical investigator on behalf of the State, renders her actions to be state actions.

Allegations – Factual

8. A.V.P. was diagnosed with a condition where there is a little extra space between his brain and skull that fills with cerebral spinal fluid. This condition has several different names, External Hydrocephalus, Benign Extra-Cerebral Collections (BECC), Benign Extra-Axial Collections (BEAC), Benign Extra-axial Hydrocephalus (BEH) and others. For purposes of this complaint, A.V.P.'s condition will be referred to as "BECC".

9. BECC is common in boys and is recognized to predispose a child to subdural and retinal hemorrhages with minor or no trauma at all.

10. V.P. and A.P. were married in 2010.

11. After receiving fertility treatments, V.P. became pregnant and had their first child, A.V.P. in 2015.

12. V.P. was diligent to attend pre-natal care appointments in anticipation of A.V.P.'s birth.

13. When V.P. was seven months pregnant, A.P. and V. P. moved to Jersey City, New Jersey.

14. A.P.'s mother and father, P.L. and A.K., came to stay with A.P. and V.P. when A.V.P. was born and remained with them, living in their 2 bedroom apartment, from the time A.V.P. was born through the events relevant to this action in December of 2015 and January of 2016.

15. A.V.P. was delivered via cesarean section at Christ Hospital in Jersey City due to "suspected macrosomia".

16. V.P. and A.P. were diligent to take A.V.P. to the pediatrician after his birth.

17. In October of 2015, V.P. was diligent to bring 5 day old A.V.P. to the pediatrician for his newborn well pediatrician visit.

18. In November of 2015, V.P. was diligent to bring A.V.P. to the pediatrician for his one month well visit.

19. On December 2, 2015, V.P. was diligent to take A.V.P. to the pediatrician because A.V.P. was fussy and gassy.

20. On December 2, 2015, A.V.P.'s pediatrician performed a complete physical examination of A.V.P. finding no concerns.

21. On December 14, 2015, V.P. was diligent to take A.V.P. to the pediatrician because A.V.P.'s mouth and tongue were white.

22. On December 14, 2015, A.V.P.'s pediatrician performed a complete physical examination of A.V.P. finding no concerns.

23. On December 23, 2015, A.P. was at work while V.P., and A.P.'s parents, P.L. and A.K., were at home together with A.V.P. in their Jersey City two bedroom apartment.

24. At approximately 4:00 p.m. in the afternoon, A.P. was preparing to take A.V.P. to an appointment with the pediatrician when A.V.P. kicked her caregiver's left arm.

25. As a result of A.V.P. kicking her left arm, he rolled out of his caregiver's arms and fell to the hard wood floor in the living room of the apartment.

26. While falling to the hardwood floor, A.V.P. hit his head on the television stand.

27. A.V.P. first just closed his eyes for a short period of time, and then he started to cry.

28. A.V.P. was bleeding from a gash on his forehead from where his head contacted the television stand.

29. V.P. called A.P. to tell him what happened and that she was taking A.V.P. to Christ Hospital.

30. Christ Hospital records state:

Pt's mother states she was holding pt in arms, bouncing him around and the pt flipped, hitting head on tv set then floor. Pt's mother states baby was still and quiet for first minute or so then began to cry. Pt was alert and was able to acknowledge mother. Mother called husband, who called the pediatrician, who recommended that patient is brought to the ER ASAP."

31. A head CT scan performed on A.V.P. showed A.V.P. had small amounts of dense acute blood alongside of the low density cerebral spinal fluid present, as is often seen in patients with BECC such as A.V.P.

32. The Christ Hospital radiologist interpreted A.V.P.'s CT scan as "Differential diagnosis includes blood products of variable ages or hypodense CSF [cerebral spinal fluid] leaking into the subdural space from an arachnoid tear".

33. CT technology is based on density.

34. A head CT cannot distinguish between low density fluids such as old or "chronic" hemorrhage and cerebral spinal fluid.

35. MRI technology can detect magnetic properties, such as that of iron which is magnetic and found in blood.

36. MRI studies provide much more information than CT studies.

37. A brain MRI can distinguish between low density fluids such as old or "chronic" hemorrhage and cerebral spinal fluid.

38. Christ Hospital transferred A.V.P. to the Children's Hospital of St. Peter's University ("St. Peter's").

39. A St. Peter's December 24, 2015, 11:30 a.m. neurosurgical consult note based on CT technology (density) states:

Fall from mom's arms. Mom was holding baby when he slipped hitting the TV table + then hit the wooden floor ... Baby noted to have blood draining from forehead ... **may have benign SD of infancy with superimposed blood from fall** given HC [head circumference] in 97% but explained to parents that we must r/o nonaccidental trauma .../ no surgical intervention (emphasis supplied)

40. The condition referenced by the neurologist, “benign SD of infancy” is the same medical condition as BESS.

41. A St. Peter’s December 25, 2015, 1:58 p.m. pediatric critical care note states:

While the fluid collections appear to be related to trauma, **there may be some baseline extra-axial fluid that is present** possibly contributing to the mixed density; however, this may need to be further elucidated with further imaging such as MRI of the brain, which is recommended when the patient is stabilized and can obtain one.
(emphasis supplied)

42. The critical care doctor’s note, based on A.V.P.’s head CT, that “there may be some baseline extra-axial fluid” is a reference to the medical condition that A.V.P. had, BESS.

43. The critical care doctor’s note that “this may need to be further elucidated with further imaging such as MRI of the brain, which is recommended” confirms that the CT scan cannot make the distinction between old or “chronic” hemorrhage and cerebral spinal fluid, but that MRI can make such a distinction.

44. On December 26, 2015, a brain MRI performed on A.V.P. reported “[r]edemonstration of prominent bilateral frontoparietal temporal extra-axial CSF collections ...superimposed acute and subacute subdural hemorrhages”.

45. The brain MRI confirmed what the head CT scan suggested, that the low density fluid in the space between A.V.P.’s brain and skull was cerebral spinal fluid due to A.V.P.’s BESS and was not old or “chronic” subdural hemorrhage.

46. The MRI report does not identify any old or “chronic” hemorrhage.

47. A.V.P. was observed to have severe retinal hemorrhages as has been observed in children with BECC who have suffered minor accidental trauma.

48. On December 25, 2015, police officers from the Hudson County Special Victims Unit interviewed both parents, A.P. and V.P., at St. Peter's.

49. On December 28, 2015, police officers from the Hudson County Special Victims Unit interviewed A.P.'s parents, P.L. and A.K., and with consent, searched the two bedroom apartment belonging to A.P. and V.P.

50. After interviewing A.P., V.P. and A.P.'s parents (P.L. and A.K.), police officers from the Hudson County Special Victims Unit found the family had provided consistent statements that A.V.P. fell out of his caregiver's arms, and on his fall to the floor, hit his forehead on the tv stand.

51. Both grandparents, P.L. and A.K., who were present at the time of the fall, and had been living with A.P. and V.P. in the two bedroom apartment since A.V.P.'s birth, stated to police that the child was never shaken and had not been dropped or fallen prior to December 23, 2015.

52. The grandparents confirmed to police that A.V.P. had fallen, hit his head, was silent for a short period of time, then cried and that care was immediately sought for A.V.P.

53. On December 30, 2015, the Hudson County Division of Child Protection and Permanency ("HCD CPP") took custody of A.V.P. without a court order based on the concern that A.V.P.'s injuries had been inflicted.

54. On January 4, 2015, the Superior Court of Hudson County granted HCDCPP continuing custody of A.V.P. pending the Fact Finding hearing on the petition for custody of A.V.P. filed by HCDCPP.

55. The petition for custody of A.V.P. filed by HCDCPP on January 4, 2016 alleged that abusive shaking had caused the injuries he sustained in his fall on December 23, 2015.

56. A.V.P. was treated for post-traumatic seizures, as would be expected from his accidental fall, and released from St. Peter's on January 6, 2016.

57. HCDCPP placed A.V.P. in foster care upon his discharge from St. Peter's on January 6, 2016.

58. A.P. and V.P. were permitted only supervised visitation with A.V.P. from January 6, 2016 through August 2, 2016 when the Hudson County Superior Court dismissed HCDCPP's Petition for custody of A.V.P.

59. HCDCPP requested the assistance of the Dorothy B. Hersch Regional Child Protection Center in determining whether A.V.P.'s injuries were due to abuse or from his accidental fall as reported by A.V.P.'s mother.

60. Pursuant to HCDCPP's request, on January 6, 2016 Defendant Medina examined A.V.P.

61. On January 20, 2016, Defendant Medina, in her role as the Medical Director of the Dorothy B. Hersch Regional Child Protection Center, issued an "Inpatient Consultation" report ("Child Protection Center Report" or "CPC Report").

DEFENDANT MEDINA IS A STATE ACTOR

62. The Dorothy B. Hersch Regional Child Protection Center is one of four regional centers established by the New Jersey Commissioner of Children and Families. *NJ Rev Stat § 9:6-8.99 – Regional diagnostic and treatment centers for child abuse established.*

63. New Jersey law mandates, and St. Peter's has accepted that mandate, that the Dorothy B. Hersch Regional Child Protection Center work closely with law enforcement and county child protective services agencies in the investigation and prosecution of child abuse:

- a. "Each center shall demonstrate a multidisciplinary approach to identifying and responding to child abuse ... The center staff shall include, at a minimum, a pediatrician, ... who are trained to evaluate ... children who have been abused ... Each center shall establish a liaison with the district office of the Division of Youth and Family Services in the Department of Children and Families and the prosecutor's office from the county in which the child who is undergoing evaluation ... resides." *NJ Rev Stat § 9:6-8.100 (2013) Function of center, staffing.*
- b. "Regional centers shall act as a resource in the establishment and maintenance of county-based multidisciplinary teams which work in conjunction with the county prosecutor and the Department of Children and Families in the investigation of child abuse and neglect... The county team shall consist of representatives of the following disciplines: law enforcement; child protective services; ... and medicine" *NJ Rev Stat § 9:6-8.104.*
- c. "Services provided by the center's staff shall include ... Providing testimony regarding alleged child abuse or neglect at judicial proceedings... Receiving referrals from the Department of Children and Families and the county prosecutor's office and assisting them in any investigation of child abuse or neglect ... Providing

educational material and seminars on child abuse and neglect ... to ... law enforcement officials, the judiciary ...” *NJ Rev Stat § 9:6-8.102 (2013)*

- d. “A state-designated child protection center, Saint Peter's Dorothy B. Hersh Regional Child Protection Center ... provides ... child abuse assessments In addition, our staff provides expert consultation to social agencies, reviews sexual and physical cases for the prosecutor's office, and testifies in court cases of child abuse and neglect.”²

64. At all times relevant to this matter, Defendant Medina served as the Medical Director of the Dorothy B. Hersch Regional Child Protection Center.

65. Defendant Medina examined A.V.P. on January 6, 2016, the last day of his admission at St. Peter's, just before he was discharged.

66. The purpose of Defendant Medina's examination was not to provide medical treatment or care, but rather to investigate the cause of A.V.P.'s injuries and determine whether they were accidental or inflicted on behalf of the State.

67. As a result of New Jersey law establishing and defining the role of Regional Child Protection Centers and the role of its staff in assisting law enforcement and county agencies in the investigation and prosecution child abuse, and Defendant Medina's role as Medical Director of the Dorothy B. Hersch Regional Child Protection Center, and Defendant Medina's role in providing medical investigation and reports for the State that formed the basis for

² <https://www.saintpetershcs.com/Locations/Dorothy-B-Hersh-Child-Protection-Center>, last accessed on December 22, 2017.

maintaining A.V.P. in the temporary custody of Hudson County until August 2, 2016, Defendant Medina is a state actor for purposes of 42 U.S.C. § 1983.

DEFENDANT MEDINA VIOLATED PLAINTIFFS' RIGHT TO SUBSTANTIVE DUE PROCESS WHEN SHE OMITTED THE MRI FINDING THAT A.V.P. HAD EXTRA-AXIAL CEREBRAL SPINAL FLUID COLLECTIONS AND MISREPRESENTED THEM AS "CHRONIC SUBDURAL HEMORRHAGE" CAUSED BY "ACCELERATION/DECELERATION"

68. Misrepresenting medical evidence to those with the authority to remove and keep children from the custody of their parents is unlawful and a clearly established substantive due process violation.

69. Defendant Medina's January 20, 2016 Child Protection Center Report states, "Hudson County DCPD requested our assistance in determining the nature of [A.V.P.]'s injuries."

70. Defendant Medina misrepresented the cerebral spinal fluid in A.V.P.'s extra-axial space (outside of his brain and inside his skull), caused by A.V.P.'s BECC, as "chronic subdural hemorrhages" in her January 20, 2016 Child Protection Center Report.

71. Defendant Medina misrepresented that the cerebral spinal fluid in A.V.P.'s extra-axial space, caused by A.V.P.'s BECC was actually "chronic subdural hemorrhages" that had been caused by "inflicted head trauma, as occur with repetitive acceleration/deceleration incidents with or without impact" in her January 20, 2016 Child Protection Center Report.

72. Defendant Medina omitted from her January 20, 2016 Child Protection Center Report that the December 26, 2015 MRI report identified A.V.P.'s "prominent" "extra-axial CSF [cerebral spinal fluid] collections".

73. Defendant Medina omitted from her January 20, 2016 Child Protection Center Report that the December 26, 2015 MRI Report does not identify ANY “chronic” or old subdural hemorrhage.

DEFENDANT MEDINA VIOLATED PLAINTIFFS’ RIGHT TO SUBSTANTIVE DUE PROCESS WHEN SHE USED JUNK SCIENCE TO FALSELY CLAIM A.V.P.’S RETINAL HEMORRHAGES COULD NOT BE ACCOUNTED FOR BY HIS ACCIDENTAL FALL

74. In 1999, a case report by neurosurgeon Joseph Piatt, Jr. was published in the Medical journal Neurosurgical Focus. The case report was about a four month old boy with BECC whose mother, in the presence of his father and grandmother, propped the boy up in a standing position. The child fell backwards onto a carpeted floor, then experienced seizures and was rushed to the hospital. The child sustained subdural and severe retinal hemorrhages as a result of his minor fall. The parents insisted on, and passed polygraph tests. Dr. Piatt cautioned “the forensic interpretation of retinal hemorrhage should be handled cautiously in the setting of” BECC. *Piatt, JH, A pitfall in the diagnosis of child abuse: external hydrocephalus, subdural hematoma, and retinal hemorrhage, Neurosurg Focus 7 (4):Article 4, 1999*

75. While some doctors in the past have attempted to maintain that retinal hemorrhages are caused by “acceleration/deceleration” forces believed to be present during violent shaking of a child, the association of retinal hemorrhages has been criticized by nationally prominent child abuse physician Dr. Carole Jenny:

One resounding criticism in this body of literature poses a methodological dilemma when attempting to study mode of presentation of inflicted head trauma. This dilemma is **the**

problem of circularity of reasoning. That is, we use certain predetermined, generally accepted criteria to determine if a child's injuries are inflicted or unintentional, such as delay in seeking care and **presence of retinal hemorrhages**. Then, when we ascribe the mode of presentation, those criteria are found to occur most frequently in abused children. *Modes of Presentation of Inflicted Childhood Neurotrauma* Carole Jenny, MD, MBA, published by the American Academy of Pediatrics, Library of Congress Control Number 2003105082; ISBN: 1-58110-119-8. (emphasis supplied)

76. In 2003, biomechanical studies found that the forces from a short fall are equal to, or greater than, the forces that can be generated by a human shaking an infant.

77. A 2009 pair of articles published as a point/counter point in the *Journal Eye*, the Journal of the U.K.'s Royal College of Ophthalmologists, debated the hypothesis that abusive head trauma causes retinal hemorrhages. Dr. Alex Levin, a prominent Philadelphia pediatric ophthalmologist, authored the article in favor of the hypothesis and U.K. ophthalmologist Dr. M.P. Clark authored the article opposed.

78. Dr. Clark concluded his article saying, "without a clearer understanding of the processes involved in the pathogenesis of these findings, it remains impossible, despite the assertions of some authors, to be certain that all infants demonstrating them have been the victims of attempted, or actual, murder." *Clarke MP, "Vitreoretinal Traction is a major factor in causing the hemorrhagic retinopathy of abusive head injury?- No" Eye (2009) 23, 1761-1763*, (emphasis supplied).

79. Dr. Brian Forbes, a nationally prominent pediatric ophthalmologist who also practices in Philadelphia, provided testimony upon which a Federal District Court concluded, “**ophthalmologists cannot identify the precise mechanism in the body that causes retinal hemorrhaging and that medicine has not established a causative relationship between abusive head trauma and retinal hemorrhages.**” *Del Prete v. Thompson*, 10 F.Supp.3d 907, 931-2 (N.D.Ill. 2014)(emphasis supplied).

80. When medicine/science has not established a causative relationship, any assertion that the presence of retinal hemorrhages, or the presence of severe retinal hemorrhages, is indicative that the cause of the retinal hemorrhages is from violent shaking or “repetitive acceleration/deceleration” trauma is junk science.

81. A prosecution based on junk science violates substantive due process, *Han Tak Lee v. Glunt*, 667 F.3d 397, (3rd Cir. 2012)

82. Defendant Medina’s January 20, 2016 CPC Report states:

[A.V.P.]’s forehead abrasion and contusion with mental status changes is consistent with the fall described by his mother. This fall could have also contributed to the acute rebleeding into the old subdural hemorrhage collections present, However, the chronic subdural bleeding and extensive retinal hemorrhages described are not accounted for by this mechanism of injury; These are lesions commonly seen with inflicted head trauma, as occur with repetitive, acceleration/deceleration incidents with or without impact.

83. Because she claims expertise in distinguishing actual child abuse from accidents, Defendant Medina knew, or should have known, that no causative relationship between abusive head trauma and retinal hemorrhages

has been established within science and/or medicine and that short falls produce the same or greater forces than shaking, and can lead to retinal hemorrhages, even severe retinal hemorrhages.

84. Defendant Medina's claim that A.V.P.'s retinal hemorrhages were caused by "inflicted head trauma" and "repetitive acceleration/deceleration incidents" is junk science and violates substantive due process.

85. Defendant Medina's claim that A.V.P.'s retinal hemorrhages cannot be accounted for by his accidental fall is junk science and violates substantive due process.

DEFENDANT MEDINA'S MISREPRESENTATION(S), OMISSION(S) AND USE OF JUNK SCIENCE IN HER CPC REPORTS ARE THE PROXIMATE CAUSE FOR A.V.P.'S 7 MONTH SEPARATION FROM HIS PARENTS

86. In her January 20, 2016 CPC Report, Defendant Medina should have been truthful and stated that A.V.P. had prominent extra-axial spaces filled with cerebral spinal fluid (as was stated in the December 26, 2015 MRI report), a condition that predisposed him to subdural and retinal hemorrhage from little or no trauma, and that the injuries sustained by A.V.P. were completely consistent with his accidental fall.

87. Had Defendant Medina been truthful, and not omitted the fact that A.V.P. had prominent extra-axial spaces filled with cerebral spinal fluid (not "chronic subdural hemorrhages" as she misrepresented in her CPC Report) but instead, that the condition A.V.P. had predisposed A.V.P. to severe retinal hemorrhages from accidental falls as is recognized and reported in the medical

literature, HCDCPP would have immediately withdrawn their petition and A.V.P. would have been reunited with his parents, A.P. and V.P. on January 20, 2016.

88. Defendant Medina violated due process when she omitted from her January 20, 2016 report the MRI finding that A.V.P. had prominent extra-axial space between his brain and skull filled with cerebral spinal fluid as reported in the December 26, 2015 MRI report.

89. Defendant Medina violated due process when she misrepresented in her January 20, 2016 and later CPC Reports that the cerebral spinal fluid between A.V.P.'s brain and skull was "chronic subdural hemorrhage" that could not be explained by his accidental fall.

90. Defendant Medina violated due process when she used junk science in her January 20, 2016 CPC and later Reports to claim that A.V.D.'s retinal hemorrhages were not explained by his accidental fall.

91. HCDCPP relied upon Defendant Medina's January 20, 2016 and later CPC Reports to continue their custody of A.V.P.

92. On February 8, 2016, HCDCPP submitted a report to the court to which DCPD attached a copy of Defendant Medina's January 20, 2016 CPC Report and formed the basis for HCDCPP's continued custody of A.V.P.

93. On February 16, 2016, the Hudson County Superior Court continued custody of A.V.P. based on Defendant Medina's January 20, 2016 CPC Report.

94. On March 1, 2016, A.P. filed a motion with the Hudson County Superior Court to exclude testimony or other evidence that [A.V.P.]’s retinal hemorrhages are not accounted for by the fall from his caregiver’s arms.

95. The Hudson County Superior Court denied A.P.’s motion without prejudice, allowing the motion to be renewed at the fact finding hearing on the HCDCPP’s petition for custody of A.V.P.

96. On March 16, 2016, the Hudson County Superior Court continued custody of A.V.P. based on Defendant Medina’s January 20, 2016 and later CPC Reports.

97. The Hudson County Superior Court rescheduled the case management conference originally scheduled for April 27, 2016 to May 11, 2016.

98. On May 11, 2016, the Hudson County Superior Court continued custody of A.V.P. based on Defendant Medina’s January 20, 2016 and later CPC Reports.

99. The Hudson County Superior Court rescheduled the case management conference originally scheduled for July 15, 2016 to August 25, 2016.

DEFENDANT MEDINA USED A “GENETIC ABNORMALITY OF UNKNOWN SIGNIFICANCE” TO AVOID ADMITTING SHE USED JUNK SCIENCE AND MISREPRESENTED THAT A.V.P.’S ACCIDENTAL FALL COULD NOT ACCOUNT FOR HIS RETINAL HEMORRHAGES

100. In Defendant Medina’s January 20, 2016 report, she states, A.V.P. “did not have any medical evidence of a bleeding disorder that could account for the retinal hemorrhages seen. ... However, medical work-up is not complete and

metabolic testing through genetics is still pending to rule out an organic disorder ...”

101. On March 8, 2016, genetic doctor, Dr. Day-Salvatore issued a “Follow Up Consultation Note” which identified A.V.P. with having two genetic abnormalities and stated:

While this deletion is not associated with a specific syndrome, deletions of variable sizes within this same region have been previously reported with a variable pattern of findings. These findings have included physical/ facial features, neurocognitive / psychological impairment, notably issues with development (hypotonia, speech, behavior, and learning), as well as with general health (such as being overweight). An association with microcephaly (small head circumference) and increased risk of seizures has also been described. Developmental features reported have included hypotonia as an infant as well as language and learning delays, the latter of which may be associated with an increased (but not definite) susceptibility to autism spectrum disorder. There is great variability among patients. Individuals with no known physical or developmental issues have also been reported with this deletion. ...

Based on the increased risk for an autosomal recessive condition, either through unmasking of a recessive gene within the deleted region on 16p or through uniparental disomy/inheritance of a common haplotype on 4q, it is recommended that exonic sequencing (whole exome analysis) be performed to determine if there is evidence of any pathogenic mutations, particularly within these regions.

102. On March 21, 2016, Defendant Medina issued a “Follow up Review” in which she again misrepresented the cerebral spinal fluid in the space between A.V.P.’s brain and skull due to his BECC as “chronic subdural bleeds” and again asserted her junk science claim that A.V.P.’s accidental fall did not explain his retinal hemorrhages:

Child presented after a fall from his mother's arms impacting a television stand and hardwood flooring, [A.V.P.] sustained an abrasion and contusion to the right side of his forehead consistent with this fall; the acute bleeding into the older blood can also be accounted for by this fall. However, this accidental event would not account for the chronic subdural bleeds and retinal hemorrhages found on this child.

103. In her March 21, 2016, "Follow up Review" report, Defendant Medina claims that "extensive hematological and genetic studies" have "ruled out" an "organic disorder" and states:

Although chronic subdural fluid collections can occur following birth, these extra-axial hemorrhages would not result in the character of the retinal hemorrhages described for [A.V.P.] at the time of his admission. [A.V.P.] had extensive hematological and genetics studies that have ruled out and excluded organic disorders as etiologies for this physical finding....

104. On April 19, 2016, Defendant Medina reversed herself on whether genetic studies have "ruled out" a "medical etiology" for A.V.P.'s BESS induced cerebral spinal fluid and retinal hemorrhages in a "Genetics Update" letter in which she claims "significant new information" from Dr. Day-Salvatore:

According to Dr. Day-Salvatore, [A.V.P.]'s gene deletion warranted a more in-depth testing for a medical condition that, although very rare, can be associated with subdural and retinal bleeding from minor trauma... in light of this significant new information and potential diagnosis of this systemic disorder, [A.V.P.]'s retinal bleeding could have a medical etiology to account for the hemorrhaging other than abusive head trauma.

105. On August 1, 2016, Defendant Medina issued a report in which she claims there is a "possibility" and it "must be considered" that a genetic abnormality of "medically unknown significance" predisposed A.V.P. to BESS

induced prominent extra-axial spaces filled with cerebral spinal fluid (that Defendant Medina mischaracterized as “chronic subdural hemorrhage” from birth trauma) and severe retinal hemorrhages as a result of the his accidental fall:

A.V.P. has a genetic abnormality of medically unknown significance in a gene region known to be associated with bleeding disorders involving platelet dysfunction. The possibility that this gene anomaly being linked or contributing to [A.V.D.]’s intracranial bleeding and retinal hemorrhages following birth trauma (for the subdural blood) and fall out of his mother’s arms impacting a table and then the floor (for the retinal hemorrhages) must be considered in this case.

106. Defendant Medina’s claim in her August 1, 2016 report that there is a “possibility” that a “genetic abnormality of medically unknown significance” “must be considered” as “contributing” to A.V.P.’s injuries as a result of his accidental fall is in direct contrast to her March 21, 2016 report in which she claimed “extensive hematological and genetics studies” “have ruled out and excluded organic disorders as etiologies for this physical finding” and her January 20, 2016 claim that “the chronic subdural bleeding and extensive retinal hemorrhages described are not accounted for by” A.V.P.’s accidental fall.

107. Defendant Medina’s August 1, 2016 report citing the “possibility” that a “genetic abnormality of medically unknown significance” “must be considered in this case” as “contributing” to causing A.V.P.’s BESS induced extra-axial fluid collection and retinal hemorrhages as a result of his accidental fall is a thinly disguised attempt to cover up her misrepresentations, omissions and use of junk science in her January 20, 2016 report where she claimed “the chronic subdural bleeding [which was actually BESS induced cerebral spinal fluid occupying his prominent extra-axial space between his brain and skull as noted

on the December 26, 2015 MRI report] and extensive retinal hemorrhages described are not accounted for by” A.V.P.’s accidental fall.

108. Upon receiving Defendant Medina’s August 1, 2016 cover up report, HCDCPP immediately asked the Hudson County Superior Court to dismiss their petition on August 1, 2016.

109. On August 2, 2016, the Hudson County Superior Court dismissed HCDCPP’s petition and A.V.P. was immediately reunited with his parents ending this parental due process nightmare for A.P. and V.P.

110. A.P. and V.P. were never given any due process opportunity to challenge Defendant Medina’s misrepresentation(s), omission(s) and junk science, or to cross examine Defendant Medina.

**DEFENDANT MEDINA IS HEREBY PLACED ON NOTICE
OF THE FOLLOWING CLAIMS:**

I. **Violation of Due Process** – Defendant Medina’s deliberate omission of any mention of the “[r]edemonstration of prominent bilateral frontoparietal temporal extra-axial CSF collections” reported on A.V.P.’s December 26, 2015 MRI from her January 20, 2016 CPC Report is a violation of due process.

II. **Violation of Due Process** – Defendant Medina’s repeated misrepresentations of A.V.P.’s cerebral spinal fluid that occupied the expanded prominent extra-axial space between his brain and skull due to BECC, the significant MRI finding that she omitted from her January 20, 2016 CPC Report, as “chronic subdural hemorrhage” are violations of due process.

III. **Violation of Due Process** – Defendant Medina’s misrepresentation that A.V.P.’s cerebral spinal fluid that occupied the expanded prominent extra-axial

space between his brain and skull due to BECC (that she misrepresented as “chronic subdural hemorrhage”) was due to previous incidents of abusive “acceleration/deceleration”, which resulted in the foreseeable reliance by HCDPP and the Hudson County Superior Court to continue the separation of A.V.P. from his parents, is a violation of due process.

IV. Violation of Due Process – Defendant Medina’s claim that A.V.P.’s cerebral spinal fluid that occupied the prominent extra-axial space between his brain and skull due to BECC was “chronic subdural hemorrhage” and could not be accounted for by his accidental fall, which resulted in the foreseeable reliance by HCDPP and the Hudson County Superior Court to continue the separation of A.V.P. from his parents is a violation of due process and A.P.’s and V.P.’s fundamental right to the care, custody and control of their son A.V.P.

V. Violation of Due Process – Defendant Medina’s junk science claim that A.V.P.’s retinal hemorrhages could not be accounted for by his accidental fall which resulted in the foreseeable reliance by HCDPP and the Hudson County Superior Court to continue the separation of A.V.P. from his parents is a violation of due process and the fundamental right of A.P. and V.P. to the care, custody and control of their son.

VI. Violation of Due Process – Defendant Medina’s August 1, 2016 report in which she made the bogus claim that a “genetic abnormality of medically unknown significance” required that A.V.P.’s accidental fall “must be considered” as “contributing” to have caused his retinal hemorrhages seven months after she claimed the accidental fall could not account for his retinal hemorrhages was a

thinly disguised cover up of her use of junk science that violated the Plaintiffs' right to due process.

VII. Violation of Due Process – Any combination of one, some or all of the above resulted in the foreseeable reliance by HCDPP and the Hudson County Superior Court to continue the separation of A.V.P. from his parents are violations of due process and the fundamental right of A.P. and V.P. to the care, custody and control of their son.

VIII. Any other relief and/or claims against the Defendants supported by the above facts and facts obtained during discovery.

DAMAGES TO THE PLAINTIFFS INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING:

a. V.P.'s and A.P.'s seven month denial of the companionship, care, custody and control of their firstborn and only child, A.V.P., during his first year of life, time and precious moments they can never recapture.

b. V.P.'s and A.P.'s emotional distress for being falsely accused of abusing A.V.P.

c. V.P.'s and A.P.'s legal fees for defending Defendant Medina's misrepresentation(s), omission(s) and use of junk science.

d. Costs and Attorney's fees incurred in this litigation pursuant to 42 U.S.C. §1988.

e. Other damages as the Court deems appropriate.

WHEREFORE, Plaintiffs, V.P. and A.P. respectfully request the Court enter judgment in favor of A.P. and V.P. and against Defendant Medina.

Respectfully submitted,

/s/ Mark D Freeman
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